

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 August 4, 2014, commencing at 9:36 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Complainant:

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For the Respondents:

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Peter Gibson				
By Mr. Mohammadi:	9			74
By Ms. Rosen:		60		
Michael Ball				
By Mr. Mohammadi:	82			106
By Ms. Rosen:		84		107
Peter Ball				
By Mr. Mohammadi:	109			
By Ms. Rosen:		181		

E X H I B I T S

Exhibit No.		Marked/Received	
145	October 24, 2013, e-mail from Peter Ball to Peter Gibson	34	35
146	July 26, 2013, e-mail from Peter Gibson to Peter Ball	40	40
147	September 10, 2008, deed to Michael Ball	89	
148	House plans, including sections	126	130
149	Notice of exterior alteration at 10602 Vantage Court	159	162
150	July 31, 2003, deed	193	194
151	Peter Ball's May 27, 2003, architectural application	195	197
152	Peter Ball's March 17, 2004, architectural application	197	198
153	May 25, 2004, letter from Peter Ball to Jeff Williams	208	
154	September 1, 2004, letter from Peter Ball to the CCOC	235	236

P R O C E E D I N G S

1 MS. ROBESON: Good morning.
2 MR. MOHAMMADI: Good morning.
3 MS. ROSEN: Good morning.
4 MS. ROBESON: I am calling the case of CCOC 72-13,
5 OZAH Case No. 1401, Potowmack Preserve, Inc., versus Peter
6 and Michael Ball. Are there any preliminary matters?
7 (No audible response.)
8 MS. ROBESON: I just had one. I had a question on
9 126 and -- when I was rereading the file, I had a question
10 on 126 and 126(a), if I could recall, or if I could bring
11 Mr. Barr back up.
12 (Witness previously sworn.)
13 MR. BARR: Yeah.
14 MS. ROBESON: Mr. Barr, you're still under oath.
15 On, I noticed that -- I think it's 126(a). 126 is an 11 by
16 17 set of plans, but then you also submitted a smaller set
17 of plans, eight-and-a-half by 11. Let's see. 126 is the 11
18 by 17, and 126(a) is the eight-and-a-half by 11. And my
19 question is --
20 MR. BARR: Can I see what that -- is that, is that
21 what was called 77?
22 MS. ROSEN: Well, I think what we're talking about
23 is 126(a), which was originally Complainant's 1 in the other
24 case --
25

1 MR. BARR: Oh, I see. Okay.
2 MS. ROSEN: -- and 126.
3 MS. ROBESON: No, I thought 77 was Complainant's
4 1.
5 MS. ROSEN: Oh, I guess I'm getting confused of
6 which one we're --
7 MR. MOHAMMADI: They're both the same thing.
8 MS. ROSEN: No, they're not.
9 MS. ROBESON: Well, no they're not.
10 MS. ROSEN: No, they're not.
11 MS. ROBESON: When I reread the transcript -- I
12 don't think they are anyway. Here I am --
13 MS. ROSEN: No, they're not.
14 MS. ROBESON: -- I'll let you testify. I don't
15 understand why -- I think you said that the as-builts on
16 126(a) are the same but the proposed plans are different,
17 and then I noticed that 126(a) is a 2010 revision date and
18 126 is 2011. So I -- but from what I read of the testimony,
19 you submitted both as the approved plans. And so my
20 question is, am I, is that incorrect or --
21 MR. BARR: That's incorrect.
22 MS. ROBESON: Okay. What is 126(a)?
23 MR. BARR: This one that is -- I'll just refer to
24 it by the date that's on it. The 26 '10 --
25 MS. ROBESON: Well, that's 126(a).

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1 MR. BARR: Okay. That's, it was dated May of '10,
2 of 2010.
3 MS. ROBESON: Yes.
4 MR. BARR: Okay. 126(a) was the first submission
5 of drawings prepared and submitted by Mr. Ball --
6 MS. ROBESON: Yes.
7 MR. BARR: -- and prepared by Tania Bruno.
8 MS. ROBESON: Okay.
9 MR. BARR: And what it had in it -- and there is
10 correspondence back from the president, Jeff Williams --
11 MS. ROBESON: Yes.
12 MR. BARR: -- who summarized the review of these
13 drawings and rejected the third- -- and the board --
14 rejected the third-floor addition of the proposed on top of
15 the flat roof. There was a third level that they were
16 proposing --
17 MS. ROBESON: Okay. All right.
18 MR. BARR: -- and that was rejected.
19 MS. ROBESON: All right.
20 MR. BARR: So this was never approved. It was
21 rejected, and they were asked to remove that.
22 MS. ROBESON: Okay. Well, I won't go into what
23 the transcript indicates. Well, let me ask you something.
24 I guess what I'm trying to figure out is, what did the board
25 have in front of them when they approved the, at the 5 -- I

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1 can't remember if it was --
2 MR. BARR: 5/11.
3 MS. ROBESON: -- 5/5/11. Did they have Exhibit
4 77?
5 MR. BARR: 77 and the letter from Mr. Ball that
6 had been sent to the board. Those are --
7 MS. ROBESON: Okay. Can you just, for my
8 edification, can you just identify which letter that is? I
9 know --
10 MS. ROSEN: I think it's --
11 MR. BARR: It says 76 on this.
12 MS. ROSEN: Exhibit 76.
13 MS. ROBESON: Okay. All right. So that's what
14 they had in front of them?
15 MR. BARR: These are the two things they had.
16 They had the written description from Mr. Ball --
17 MS. ROBESON: Yes. Yes.
18 MR. BARR: -- and it says Without Attachments at
19 the bottom --
20 MS. ROBESON: No, no. Okay. Just --
21 MR. BARR: -- and the, and the other one they had
22 was 77.
23 MS. ROBESON: Okay. All right.
24 MR. BARR: That's what they were working from.
25 MS. ROBESON: Okay. That was my question. Thank

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1 you.
2 MR. BARR: Thank you.
3 MS. ROBESON: All right. I also have some
4 potential hearing dates that I can run off now for
5 September, and then maybe you can check with your witnesses.
6 They're either on Mondays or Fridays. The Mondays I have
7 are the 15th, 22nd, and 29th, and the Fridays are 5, 12, 19,
8 and 26.
9 I didn't ask for cross-examination based on -- or
10 do you have any follow-up questions for Mr. Barr based on my
11 questions?
12 MS. ROSEN: No. I think it's clear.
13 MS. ROBESON: Okay. Mr. Mohammadi, do you have
14 any?
15 MR. MOHAMMADI: None.
16 MS. ROBESON: Okay. So those are some dates.
17 Mr. Michael Ball, I'm going to ask, you have not been at
18 all, present at all these hearings. Do I take it -- I don't
19 think you're sworn in yet. So can you raise your right
20 hand?
21 (Witness sworn.)
22 MS. ROBESON: Okay. Do you agree to waive your
23 due process rights -- cross-examination of witnesses, the
24 right to object to exhibits -- for the periods that you
25 weren't here?

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1 MR. MICHAEL BALL: Yes.
2 MS. ROBESON: All right. All right. I think -- I
3 don't have the next, the transcript yet from the next
4 hearing, but I believe we're on, still on Mr. Mohammadi. So
5 please call your next witness.
6 MR. MOHAMMADI: I'd like to call Mr. Gibson,
7 please.
8 MS. ROBESON: Okay. Mr. Gibson, you are still
9 under oath.
10 MR. GIBSON: Okay.
11 (Witness previously sworn.)
12 DIRECT EXAMINATION
13 BY MR. MOHAMMADI:
14 Q Good morning, Mr. Gibson.
15 A Hello.
16 Q You were at the board meeting in which the HOA
17 voted to bring this CCOC action?
18 A Yeah. What date was that?
19 Q Well --
20 MS. ROBESON: Well, you can't ask questions.
21 THE WITNESS: Okay.
22 MS. ROBESON: You have to answer his questions.
23 THE WITNESS: Okay.
24 BY MR. MOHAMMADI:
25 Q Well, do you recall taking a vote?

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1 A Yes.
2 Q Okay. And do you recall what the vote was about?
3 A What the vote was about?
4 Q Yes. What was the vote pertaining to?
5 A It was pertaining to bringing this, bringing the
6 issue to the CCOC.
7 Q Okay. And what issue?
8 A The issue of the noncompliance -- the noncompliant
9 construction with the approved plans.
10 Q All right. Okay. So can you be specific? What
11 noncompliant -- what noncompliant construction are we
12 talking about?
13 A What specific aspects --
14 Q Yes.
15 A -- of it? I mean, I don't recall exactly every
16 issue, but there was, there was the, the -- well, I don't
17 recall which issues precisely were --
18 Q Okay.
19 A -- were discussed at the meeting, but you know,
20 clearly there was, you know, the construction was not in
21 compliance, which was why we had the vote and why it was
22 voted to --
23 Q All right. Who would know what issues were
24 discussed?
25 A Whoever was there, if it was in, if it was in the

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1 minutes. I don't --
2 Q Okay.
3 A Whoever was there, I suppose.
4 Q All right. Are you familiar with the complaint
5 that is currently in front of the CCOC?
6 A Uh-huh.
7 Q Do you know what all the issues in that complaint
8 are?
9 A Generally speaking, it's the noncompliant
10 construction.
11 Q Right, but again, I'm trying to find out what,
12 what -- what's considered the noncompliant construction?
13 A Anything that was built that wasn't as per the
14 approved plans.
15 Q Okay. And what's that?
16 A You want the whole list?
17 Q As best as you can recall.
18 A There's the, the, the roof above the garage.
19 There's the roof above the foyer. There are miscellaneous
20 issues with respect to trim size, window location, size and
21 scope of the added room on the left side of the house as
22 you're facing the house. The foyer, I believe, was on the
23 list. I don't, I don't have the, the entire list from
24 memory, but it was, I believe, in this -- in this forum
25 there's been a pretty detailed discussion of what's, what we

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1 deem as per the plans and what's not.
2 Q Okay. Well, with respect to the roof over the
3 garage, if you recall, when you had the meeting where you
4 voted to take this, take this matter to the CCOC, what was
5 the discussions with the roof over the garage?
6 A The issue was, was the height.
7 Q Okay. And what specifically was the issue?
8 A That it was too high. It was too -- that it was,
9 it was taller than, than what was approved.
10 Q Okay. Well, if you can be a little bit more
11 specifically, specific, what do you mean -- what was
12 approved ultimately?
13 A What height was approved?
14 Q Correct.
15 A I don't know what the, offhand, what the, what the
16 height was.
17 Q Okay. And that there was some discussions that
18 what was built was not what was approved?
19 A Correct.
20 Q But you don't recall exactly what the issue was?
21 A The issue was the height.
22 Q Okay.
23 A The issue was that what was built above the garage
24 and above, and above the foyer, if memory serves, was taller
25 than what was approved --

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1 Q Okay.
2 A -- and the exact details, as far as the number of
3 feet, what was approved, and the number of feet that it was
4 above that, I don't recall, but the issue was that it was,
5 that it was taller than, that what was approved.
6 Q Okay. But you do believe there was some
7 discussions about the actual measurements of how tall it was
8 at the time it was approved and then how tall the roof was
9 when it was actually built? You were talking about
10 measurements. I'm --
11 A Yeah. I mean --
12 Q -- trying to see when those, when those -- how did
13 the board know what the actual measurements were, I guess is
14 my question.
15 A I, I don't recall, you know, what the -- I don't
16 recall what the, what the height discussion was
17 specifically, just that it was, it was clear that the, the
18 construction was taller than, than what was built. But I
19 don't recall, like I said, you know, that the approved, you
20 know, height was 25 feet and this was 27 feet. I don't, I
21 don't recall that there was those specifics but that it was,
22 that it was, it was clearly out of scope with the approval.
23 Q Okay. Well, if -- let's try to clarify something.
24 Did you, in fact, at that, at that meeting or any time prior
25 to filing CCOC case, know what the measurements of the roof

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1 heights were, both as approved and as built?
2 A No.
3 Q Okay. So if you did not know the measurements,
4 how did you know it was higher than what was approved?
5 A Well, I was, I was relying on, on Raj's expertise
6 as an architect for the, for the, for the information.
7 Q Okay. And what was Mr. Barr or Dr. Barr telling
8 you as his basis for the determination that the roof was
9 higher than approved? Was he just saying it's higher than
10 approved, or was he telling you a reason why he believed it
11 was higher than approved?
12 A Oh, he believed it was higher because he visited
13 the site and he, and he saw it. So based on his knowledge
14 of the approved plans and based on, you know, what he saw at
15 the site, that was his basis for the -- and you know, he --
16 I don't recall, you know, what the, whether he said it was,
17 you know, four feet above or five feet above, but you know,
18 there was, there was no dispute about, you know, his, his
19 opinion that it was, that it was, that it was higher and,
20 and out of scope.
21 Q And when you say, just to be clear, when you say
22 there was no dispute, the HOA didn't dispute it, correct?
23 A Well, what I mean is that it wasn't -- we didn't
24 look at it and think, you know, it might be a little higher.
25 I mean, it was, it was, it was very clear from Raj's

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1 perspective that it was, it was above the, it was above the
2 height.
3 Q Okay. Now, I'm going to remind you -- and
4 unfortunately, I don't have this in front of me right now --
5 you are aware that the complaint states that the approved
6 plans showed that the roof would not be raised at all,
7 correct, either above the foyer or above the garage, that it
8 would not be raised at all?
9 A I, I mean, I don't know what the, again, I don't
10 know what the height was on the approved plans. So I don't
11 know what the, what the, you know, what the approved height
12 was.
13 Q Okay. All right. Well, you also talked about
14 trim size. What was the approved trim size?
15 A I don't know.
16 Q Okay. What was the deviation, I guess, from the
17 approved plans?
18 A The, the trim is, is wider, taller than, than I
19 believe what was, what was approved or what was, what was
20 expected based on the drawings, based on the trim size of
21 all the other houses in the neighborhood. That was the --
22 if you look at the trim today, it is, it is bigger than
23 other trim and bigger than what was on the approved plans.
24 Q Okay. Well, what trim are we talking about?
25 A The trim up near the roofline. I don't know what

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1 you, what the official terminology is, but that, you know,
2 but that's --
3 Q It might help, I'll show you the plans, okay, and
4 maybe it's a little easier to refer. I'm showing you what's
5 been marked as Exhibit 126. I'm showing you A4. All right.
6 If you don't mind pointing out what you're talking about the
7 trim that was approved and now is, what is built is bigger.
8 A The trim here --
9 Q Okay.
10 A -- here, you know, the trim at the --
11 MS. ROBESON: Well, you --
12 BY MR. MOHAMMADI:
13 Q Yes. You need to be --
14 MS. ROBESON: -- have to describe where here is.
15 THE WITNESS: Okay. So the trim at the, at the
16 top of the exterior wall, right below --
17 MS. ROBESON: Is that the front elevation? I
18 can't --
19 MS. ROSEN: I'm sorry. Yes, it is A4, is what
20 we're looking at.
21 MS. ROBESON: A4 of 126. Okay.
22 MS. ROSEN: A4 of 126.
23 MR. MOHAMMADI: Pointing to the rear elevation
24 right now.
25 MS. ROBESON: Okay, the rear elevation --

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1 THE WITNESS: Right. Right, Rear Elevation.
2 MS. ROBESON: -- and you're pointing to where?
3 THE WITNESS: Right, right here, the top of the --
4 well, over on this side, for example, the top of the wall,
5 right, right below --
6 MS. ROBESON: Where the top of the wall and the
7 roof meet?
8 THE WITNESS: Sort of come together, right.
9 MS. ROBESON: That line --
10 THE WITNESS: Right.
11 MS. ROBESON: -- that strip?
12 THE WITNESS: Right.
13 MS. ROBESON: Okay.
14 THE WITNESS: Right.
15 BY MR. MOHAMMADI:
16 Q Mr. Gibson, you're aware that no work on the back
17 of the house has been done yet, right?
18 A No, there's been work in the back of the house.
19 Q Okay. What work that's subject to this complaint
20 has been done on the back of the house?
21 A Well, there's been, there's been new siding added,
22 and there's been new trim added.
23 Q Well, you know the siding issue is not part of
24 this, right?
25 A Right. Right.

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1 Q Okay. So --

2 A I'm just -- when you said there's, no work's been

3 done, that's -- work, work has been done in the back of the

4 house.

5 Q Specifically related to this complaint, I mean.

6 A To this complaint?

7 Q Yes. So, in other words, there's no new roof over

8 the, over the foyer yet, right?

9 A Right now?

10 Q Correct. On the back of the house, the foyer

11 area, there's no addition built yet; the flat roof is still

12 existing there, right?

13 A Right. Well, their foyer is not in the back of

14 the house. So there wouldn't be a roof on the --

15 Q Okay. Well, the second addition over the back of

16 the house, has there been any work done on that? Do you

17 know?

18 A I, I don't know.

19 Q Okay. Did you know that the roof from the back of

20 the house has not even been started?

21 A Okay. I --

22 Q Okay.

23 MS. ROBESON: If you don't know --

24 THE WITNESS: Yeah. I, I don't know --

25 MS. ROBESON: Okay.

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1 BY MR. MOHAMMADI:

2 Q Okay.

3 A -- whether that's been done or not.

4 Q All right. So your testimony is that the trim

5 sort of where the roof and the wall meet up, that's thicker

6 than what has actually been approved?

7 A Well, it is, it is thicker than, than what was

8 expected. I don't -- if you look at those plans, I don't

9 know whether there is actual, you know, trim height

10 specified there. That's, that's not really the focus of

11 this, of the issue. I think on the, on the list of

12 concerns, you know, the trim height is not at the top of the

13 list, but that was my -- my reference to that was in

14 response to your question about, you know, what's been, some

15 of the things that have been, that have been completed.

16 Q Well, I guess, I understand maybe the board

17 doesn't think it's an issue, which, if that's the case,

18 that's fine, but the board did ultimately bring a complaint,

19 listing that as an issue. Is that not fair to say?

20 A If it's on the list, yes, that's --

21 Q All right. With respect to the trim size, when

22 was the discussions held that the trim size did not match

23 what was approved?

24 A There was a list that Lynn, Lynn Gowan prepared,

25 was kind of a laundry list of exceptions, and I believe that

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1 was on the -- that was on the list.

2 Q Okay. Why did Ms. Gowan prepare it?

3 MS. ROSEN: If you know.

4 THE WITNESS: I mean, I --

5 MS. ROSEN: I'm objecting. It's speculative.

6 THE WITNESS: She has --

7 MS. ROBESON: Just a second. What's your

8 objection?

9 MS. ROSEN: That it's speculative. He's asking

10 why Lynn Gowan prepared the list. I'm not sure that he

11 would know that. It seems speculative.

12 MS. ROBESON: Well, he can answer if he knows.

13 THE WITNESS: I think she, in her, in her day job

14 she does something that is -- she has some familiarity and

15 understanding and expertise of the deviations from plans and

16 construction, and so I think she had some, some kind of

17 expertise to, to pull that together.

18 BY MR. MOHAMMADI:

19 Q Well, I guess, let me rephrase the question. What

20 I meant is, why did the board choose Lynn Gowan to prepare

21 this list over somebody else?

22 A I don't know whether the board actually chose Lynn

23 or whether she just did it voluntarily.

24 Q Oh, okay. So the board never tasked her with it;

25 Ms. Gowan just sort of took it upon herself to, okay, here's

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1 some issues?

2 A I --

3 MS. ROSEN: I'm going to object.

4 THE WITNESS: -- I believe so. I don't --

5 MS. ROBESON: No. Just a second.

6 THE WITNESS: Yeah.

7 MS. ROBESON: There's an objection. Go ahead.

8 MS. ROSEN: I mean, I'm just objecting to the

9 extent that it may be speculative. He seems to be asking

10 about something that he's speculating that maybe he would

11 not have personal knowledge of. So I only want him to --

12 MS. ROBESON: Well --

13 MR. MOHAMMADI: Well --

14 MS. ROSEN: -- answer if he has knowledge.

15 MS. ROBESON: Yes, Mr. Mohammadi.

16 MR. MOHAMMADI: He is on the board, and

17 presumably, board's decisions you should be at least aware

18 of. So I think I can ask.

19 MS. ROBESON: Yes. He can answer if he knows.

20 MS. ROSEN: Okay.

21 MS. ROBESON: To the extent you know.

22 THE WITNESS: Yeah, I don't, I don't know whether

23 we, whether the board asked Lynn to do it or whether she

24 just did it voluntarily. I don't, I don't know.

25 BY MR. MOHAMMADI:

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1 Q Mr. Gibson, are you aware of Ms. Gowan and
2 Mr. Ball's history --
3 A Yes.
4 Q -- let's just put it that way.
5 A Uh-huh, I am.
6 Q Okay. How would you characterize that sort of
7 history?
8 MS. ROSEN: I'm going to object. What is the
9 relevance of that?
10 MS. ROBESON: Mr. Mohammadi.
11 MR. MOHAMMADI: Well, again --
12 MS. ROBESON: I was like, why am I answering? Go
13 ahead.
14 MR. MOHAMMADI: It goes, again, towards the bias
15 that I believe existed there. So --
16 MS. ROBESON: No, I think it's a fair question.
17 So go ahead.
18 THE WITNESS: How would I characterize the --
19 BY MR. MOHAMMADI:
20 Q Yes.
21 A There have been -- Lynn has been, as the next-door
22 neighbor to Mr. Ball, you know, has been aware and, you
23 know, interested in and, you know, personally impacted by
24 the, by the issues over the years. And so, you know, she
25 has, you know, initiated complaints and, you know, raised

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1 issues and, and been, and been, you know, actively involved
2 in, in understanding and, and, you know, determining whether
3 there's been any, you know, HOA violations or whether he's,
4 you know, followed, you know, plans that have been approved
5 and submitted and et cetera, et cetera, and it's been
6 fairly, fairly long-standing.
7 Q Okay. And I guess you're aware that several
8 lawsuits were filed against, both by Mr. Ball and by
9 Ms. Gowan, against each other? You just said complaints
10 filed. So I assume you meant lawsuits.
11 A More that, I mean, you know, there have been sort
12 of ongoing, you know, issues for, you know, for a long time.
13 So, you know, if, you know, when Mr. Ball -- when the
14 construction was, was deemed out of compliance, you know,
15 Lynn noticed that and, you know, brought that to people's
16 attention. I don't know of the, specifically of the, you
17 know, the lawsuits back and forth between them, but I know
18 that there have been --
19 Q There have been lawsuits?
20 A -- issues and, and --
21 MS. ROSEN: I'm just going to object to the extent
22 that Mr. Mohammadi, you know, basically is testifying. He's
23 saying there have been lawsuits. Now, he just testified
24 he's not aware of lawsuits. I don't think it's appropriate
25 for Mr. Mohammadi to be making commentary.

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1 MS. ROBESON: Well, he can do that on cross.
2 MS. ROSEN: But he's not --
3 MS. ROBESON: He's saying, isn't it true there are
4 lawsuits?
5 MS. ROSEN: No, I understand that, but he just
6 basically made a statement as opposed to asking a question
7 just now. So --
8 MS. ROBESON: Well, Mr. Mohammadi --
9 MS. ROSEN: -- I would ask that he just refrain
10 from making statements.
11 MR. MOHAMMADI: I guess, if I did make a
12 statement, I'll strike my statement, but I don't know what
13 statement I made.
14 BY MR. MOHAMMADI:
15 Q In any event, I guess I'm asking, are you aware of
16 lawsuits between them?
17 MS. ROSEN: I think that's been asked and
18 answered.
19 MS. ROBESON: No. Just a second. I don't recall
20 an answer, a clear answer to that question. Mr. Mohammadi,
21 can you just -- when you say lawsuits, are you talking about
22 lawsuits filed in court?
23 MR. MOHAMMADI: Yes.
24 MS. ROBESON: Okay. Can you answer that?
25 THE WITNESS: I don't know. I'm not aware of --

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1 BY MR. MOHAMMADI:
2 Q Okay.
3 A -- of lawsuits filed between them or amongst them.
4 Q All right. Are you aware of any DPS complaints
5 that were filed between, between the two?
6 A Department of? What's that?
7 Q Permitting services.
8 A Yes.
9 Q Okay. And you said that the history was fairly
10 lengthy?
11 A Yes. They've been neighbors for a long time.
12 Q All right. Do you consider them friends?
13 A No.
14 Q Okay. Okay. Would you agree that the board act,
15 in dealing with any homeowner, not just Mr. Ball, but with
16 any homeowner, is supposed to act neutral?
17 A Yes.
18 Q Okay. Do you believe Ms. Gowan was able -- acted
19 neutral throughout this whole process?
20 A It's, I mean, it's hard for me to --
21 MS. ROBESON: No. Just a -- I'm sorry.
22 THE WITNESS: Okay.
23 MS. ROBESON: No sounds from the people in the
24 back. Okay? Go ahead.
25 THE WITNESS: I mean, I can't --

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1 MS. ROBESON: Not, not --
2 THE WITNESS: Yeah. I mean, it's hard for me to
3 know sort of what Lynn was, what Lynn was thinking when --
4 she's been, she's been diligent. You know, she's been
5 actively involved in this, you know, both from an HOA
6 perspective and, and, and obviously there's, you know, it
7 affects her individually as well. So she's been, she's been
8 actively involved and, and diligent.
9 BY MR. MOHAMMADI:
10 Q Okay. Do you recall sending one of the HOA, just
11 members, an e-mail, stating that you believe part of the
12 reason she got, she decided to join the board was to be
13 closer to the action, with respect to Mr. Ball?
14 A Do I recall sending it?
15 Q Yes, sending an e-mail saying that.
16 A Yeah.
17 Q You talked about --
18 A Well, let me clarify. That was a possible reason.
19 Q Okay. Okay. You talked about another issue being
20 window location?
21 A Uh-huh.
22 Q What's the issue?
23 A My understanding is that the, the approved plans
24 had windows in a certain spot and that the windows were
25 built in a different spot.

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1 Q All right. And where were they supposed to be
2 built and where are they built? Again, maybe it makes it
3 easier for you to look at the plans. So I'll show you
4 Exhibit 126. You can look through this document. Tell me
5 what was to be built and what was actually built.
6 A I -- the, the window location that I recall was of
7 concern was on the garage side; as you're looking at the
8 house, on the right side. So where's the garage? Oh,
9 that's the left side. Over, over here.
10 Q All right. So you're looking at A5, right-side
11 elevation.
12 A A5, right-side elevation.
13 Q Okay. And what are you pointing at?
14 A The window that's, just the three-part window
15 that's --
16 Q On the left-hand side?
17 A On the left-hand side, on the, looks like it's on
18 the, on the, on the garage or what would be above the, the
19 garage.
20 Q And what's the issue with that?
21 A The, that it's -- the window, at least the last
22 time I saw it, was not, was not in that location and was not
23 the right size perhaps. I don't -- I haven't seen it in a
24 while, but I know that was on the, that was on the list of,
25 of issues that, that was pulled together.

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1 Q Right, but I'm trying to understand from your
2 independent knowledge. Okay?
3 A Right.
4 Q Not what was on the list. I understand there's a
5 list. From your independent knowledge, as an HOA board
6 member, what do you believe the issue is with that window?
7 A My, my understanding is that it is, it was smaller
8 than this and it was not in the same, the same spot.
9 Q Okay. Where is it actually built?
10 A I don't know exactly.
11 Q What's the actual size?
12 A I don't know.
13 Q Okay. What was the approved size?
14 A The, the dimensions aren't on here.
15 Q Okay. So you don't, you don't know?
16 A Right.
17 Q Okay. All right. You said, I believe, the size
18 on the addition on the left side of the house, there's
19 something wrong with the size. What's wrong with the size
20 on the left-side addition of the house?
21 A It was, it's -- it's not the same dimensions that
22 was, that was approved.
23 Q Okay. What was approved, dimension-wise?
24 A I don't recall the exact dimensions, but when --
25 on one of the site visits, in talking with, with Peter, you

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1 know, we sort of walked around the house, and he said, you
2 know, this, this addition, you know, had to be changed in
3 size because of, something with the, to do with the
4 topography or the, you know, sewer system or something, and
5 it was changed from, like, oh, by a couple of feet. It was
6 either -- and I don't recall whether it was smaller or
7 larger, but it was, it was, it was off from the original
8 plan by a few feet.
9 Q Okay. Maybe this will help. Do you recall the
10 discussion being that there are utility lines where he
11 wanted to build the addition and, because they're utility
12 lines, he couldn't build the addition over it, he had to cut
13 it back?
14 A That is -- that could very well be the case.
15 Q Okay. And so what's the HOA's problem with him
16 having done that? Is it simply because it's not on, part of
17 the approved plans that he made it smaller?
18 A Well, I don't, I don't know whether that is, I'm
19 not even sure whether that was on -- was that on the list
20 of --
21 Q I don't know. You --
22 A I don't --
23 Q -- I asked you.
24 A The focus, I mean, my -- the focus has been on
25 other aspects of the, of the construction.

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1 Q Okay. Well, you keep saying that, and I guess I
2 don't know what that means. What -- in other words, we have
3 a complaint and supplemental lists, okay, that are not
4 subject in front of the CCOC.
5 A Right.
6 Q It sounds like what you're saying is some of those
7 items are not really the HOA's concern, there were some
8 items that we're really focused on. What are those items
9 that we're really focused on, the HOA?
10 A The, the construction above the garage and above
11 the foyer.
12 Q Okay. And when you say above the foyer, would you
13 mind pointing out what -- because I think you and I have a
14 different idea of what that meant, actually. On, again, on
15 Exhibit 126, what area are you talking about?
16 A Where's the front elevation?
17 Q 84, I believe, is what you're looking for.
18 MR. MOHAMMADI: Dr. Barr, please don't point for
19 him.
20 MS. ROBESON: Yes, Dr. Barr, please.
21 THE WITNESS: Above the --
22 MS. ROBESON: In fact, if you need to move back,
23 move back, because --
24 MR. BARR: I'd be glad to.
25 MS. ROBESON: What?

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1 MR. BARR: I'd be glad to. I don't want to be
2 accused.
3 MS. ROBESON: Yes.
4 THE WITNESS: This, this area here. You know, the
5 foyer is above, above the front door, and so the roof
6 construction above this, above this part, so right, right
7 there. You've got, you got the, you know, the roof
8 construction, I mean, above the garage, and then there was
9 the part above the foyer. So that's that area right there.
10 BY MR. MOHAMMADI:
11 Q Okay. So over the front elevation, sort of above
12 the front door area --
13 A The front door, right.
14 Q -- the roof area, whatever?
15 A Right.
16 Q What's wrong with that roof construction up there?
17 MS. ROBESON: No talking, please.
18 THE WITNESS: It's the height.
19 BY MR. MOHAMMADI:
20 Q Okay. All right. And, again, what's wrong with
21 the height?
22 A It's taller than what was approved.
23 Q Okay. Do you know what the height is of the
24 approved plans?
25 A I don't.

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1 Q Do you know what the height is of the new
2 construction?
3 A Without seeing the, another set of plans, no.
4 Q Okay.
5 A 128, something. I can't say with certainty.
6 Q Okay. Well, what did you do to confirm that it
7 was actually higher than the approved plans?
8 A I relied on the judgment of, of Mr. Barr.
9 Q Okay. Did he present that at the meeting where
10 you, where you voted to take this to the CCOC?
11 A I don't -- probably. I know it was, it was a more
12 broad discussion of, of issues that were out of compliance,
13 and you know, the roof above the -- the roof in general was,
14 was in discussion. The primary focus was above the garage,
15 but I know the roof above the foyer was also, was also an
16 issue -- was also at issue.
17 Q Okay. Did Dr. Barr ever explain how he arrived at
18 the conclusion that the roof above the foyer was higher than
19 it should have been?
20 A If memory, if memory serves, I'm not a hundred
21 percent sure about this, but I believe it had to do with the
22 chimney height in that you couldn't have a roofline be
23 higher than the height of the chimney. I remember that
24 being part of the, part of the conversation.
25 Q Okay. All right. At the meeting where the board

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1 voted to take this matter to the CCOC, do you recall whether
2 any non-board members were present at the meeting?
3 A I don't recall.
4 Q Okay. Do you recall whether Mr. Ball was there at
5 that, at the meeting where the vote was taken?
6 A I don't.
7 Q You don't recall?
8 A I don't recall, right.
9 Q Okay.
10 A Right. Maybe if the --
11 Q Yes, give me one second. Let me try to find the
12 document here. Showing you what's been previously marked as
13 Exhibit 93, does this help you remember who all was present
14 at the meeting?
15 A It -- yes. I mean, it states which, which board
16 members were in attendance.
17 Q Okay. So do you see anybody besides board members
18 on that list?
19 A No.
20 Q Prior to this board meeting, when did, when --
21 well, when did you first become aware of the supplemental
22 items on, presented on the punch list from Ms. Gowan? When
23 did you become aware of those lists?
24 A The exact, I don't recall the exact date, but
25 there was, I know there was -- I think there was an e-mail

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1 that went around there that was sent that had the, that had
2 the list.
3 Q E-mail between board members?
4 A Yeah.
5 Q Okay. Would that e-mail have been something that
6 would have been produced? Do you know?
7 A Produced?
8 Q In discovery for this case.
9 A I don't know.
10 Q Okay. With respect to that supplemental list of
11 items, when did you discuss that the -- when I say you, I
12 meant the board -- when did the board discuss those items
13 with Mr. Ball?
14 A I don't know whether they were discussed at a
15 meeting with Mr. Ball.
16 Q Okay. With respect to -- well, strike that.
17 MR. MOHAMMADI: I believe we are up to Exhibit
18 145.
19 MS. ROBESON: All right. Let me check. Yes.
20 Okay. This is an e-mail from Peter Ball to Mr. Gibson dated
21 10/24/2013. Does Ms. Rosen have a copy of this? Do you
22 have --
23 (Exhibit No. 145 was marked
24 for identification.)
25 MS. ROSEN: Yes. I'm just going to ask my client

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1 to take a look at it.
2 MS. ROBESON: Okay.
3 BY MR. MOHAMMADI:
4 Q Okay. Do you recognize --
5 MS. ROBESON: Okay. Do you -- just a second.
6 MR. MOHAMMADI: I'm sorry.
7 MS. ROBESON: Do you have any objections to its
8 admission?
9 MS. ROSEN: No. I've seen this before.
10 MS. ROBESON: Okay. It's admitted.
11 (Exhibit No. 145 was received
12 in evidence.)
13 BY MR. MOHAMMADI:
14 Q All right. Just for the record, this is an e-mail
15 that you responded to on October 24, 2013, right?
16 MS. ROSEN: Actually, it -- which one are we
17 looking at?
18 BY MR. MOHAMMADI:
19 Q It's a string of e-mails, right?
20 A Which, which one are you --
21 Q Well, this is a, just --
22 A Right. Right. Right.
23 Q -- the document is a string of e-mails --
24 A Right.
25 Q -- between you and Mr. Ball, right?

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1 A Yeah.
2 Q Okay. And if you look at the first page --
3 A Uh-huh.
4 Q -- and this is an e-mail coming from you at the
5 bottom. It says --
6 A Right. Where it says that it's --
7 Q Correct.
8 A Yeah. Yep. Yep.
9 Q Okay. If you look at the second paragraph and
10 then the second sentence in that, could you just read that?
11 A The second paragraph?
12 Q Yes.
13 A I've had several conversations with Raj over the
14 past couple weeks, and his focus is clearly on the area
15 above the foyer and above the garage. The other parts of
16 the construction are generally in line with what we
17 expected, although not completely, and are not of
18 significant concern.
19 Q Okay. And you sent this e-mail on October 24,
20 2013, right?
21 A Yes.
22 Q Okay. And isn't it fair, that was only four days
23 before the board met and voted to take the matter to the
24 CCOC?
25 A Okay.

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1 Q I'm asking you if you recall --
2 MS. ROBESON: Well, do you know or --
3 THE WITNESS: What was the date? What was -- I
4 don't recall the exact date that it was --
5 BY MR. MOHAMMADI:
6 Q Okay. No problem, one second.
7 A -- voted to.
8 Q Okay. I'm showing you Exhibit 93. Does this
9 help --
10 A Okay.
11 Q -- refresh?
12 A Yes. Yep.
13 Q Four days, right?
14 A Yes.
15 Q In your mind, as a board member, what changed
16 between this e-mail that you sent on the 24th and then you
17 vote on the 28th to take the matter to the CCOC on all the
18 supplemental issues? I'm not talking about the roof. I'm
19 talking about the supplemental issues. What has, what
20 changed between those four days that made you change your
21 mind about the other issues?
22 A The -- my, my understanding is that there, you
23 can't do it piecemeal. It's, either it's -- either you go
24 to the CCOC because the construction is not in compliance or
25 you don't go because it is in compliance, and so you can't

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1 cherry-pick which, which aspects you want to, you want to --
2 Q Yes, but I guess what I'm trying to understand is,
3 in your e-mail you're saying those other items, besides the
4 roof over the garage and the foyer, those other items were
5 not of significant concern, right? And, in fact, you say
6 most of the items are actually in line, although not
7 completely, but most of them are in line.
8 A Right.
9 Q So what's changed in four days that you have now
10 decided those other 17 items on the supplemental list are no
11 longer in line and are of significant enough concern to take
12 to the CCOC?
13 MS. ROSEN: I'm going to object because he -- it's
14 been asked and answered -- he already answered the question.
15 MS. ROBESON: I didn't hear him answer. I'm going
16 to let him answer.
17 THE WITNESS: The answer is that the -- my
18 understanding is that it's either, you either file a, file a
19 complaint that the construction is not in compliance --
20 MS. ROBESON: Okay.
21 THE WITNESS: -- or you don't. You can't file a
22 complaint that says, okay, just --
23 MS. ROBESON: Yes.
24 BY MR. MOHAMMADI:
25 Q Okay.

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1 A -- just this one piece of it is not in compliance.
2 It's either --
3 MS. ROBESON: I understand.
4 THE WITNESS: -- the whole kit and caboodle or
5 nothing. So --
6 MS. ROBESON: I'm sorry. I thought he was
7 asking --
8 MS. ROSEN: Okay.
9 THE WITNESS: Yeah.
10 MS. ROBESON: -- something different. Okay.
11 BY MR. MOHAMMADI:
12 Q You are aware that there was another CCOC case,
13 right, between the board and Mr. Ball?
14 A Right. Regarding the whole siding?
15 Q Well, regarding the siding, and there was also one
16 regarding the deck and the shed, right?
17 A Right. Right, yes.
18 Q They all stem from the same set of construction,
19 approved plans, right?
20 A Yes.
21 Q But there's several now different on different
22 parts of the construction? There's -- let me strike that.
23 I don't even know what I said.
24 MS. ROSEN: Neither do I. I was like, okay.
25 BY MR. MOHAMMADI:

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1 Q You would agree that there are several CCOC cases
2 on various --
3 A At least two.
4 Q Right -- on various parts of the same approved
5 construction?
6 A Yes.
7 Q Okay. All right.
8 MR. MOHAMMADI: Monday mornings do that sometimes.
9 MS. ROBESON: Okay. This is 146?
10 MR. MOHAMMADI: 146, yes. It's an e-mail
11 between --
12 MS. ROBESON: From Peter Gibson to Peter Ball
13 dated July 26, 2013.
14 (Exhibit No. 146 was marked
15 for identification.)
16 MR. MOHAMMADI: Right. Any objection?
17 MS. ROSEN: No.
18 MR. MOHAMMADI: Okay.
19 MS. ROBESON: It's admitted.
20 (Exhibit No. 146 was received
21 in evidence.)
22 BY MR. MOHAMMADI:
23 Q Mr. Gibson, again, if you take a look at this
24 e-mail, I'd like you to focus on the second paragraph.
25 Could you just, could you read that, please?

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1 A At this point, we think the best course of action
2 is for you to simply keep on working on the renovation.
3 Despite what other people in the neighborhood have claimed,
4 Raj and I think that the work thus far reasonably conforms
5 to the approved plans and we see no reason to slow down or
6 stop. We want you to keep working.
7 Q Okay. Now, this July 26, 2013, e-mail was sent
8 before or after a site visit? Do you recall?
9 A I don't recall.
10 Q Okay. But at that point, again, you believed that
11 the construction complied with the approved plans, right?
12 A Reasonably conformed. You know -- yes.
13 Q Okay.
14 A Yeah. Well, in our -- can I say something?
15 MS. ROBESON: You're always welcome to say
16 something.
17 MS. ROSEN: Okay. If you have further -- answer
18 the question, go ahead.
19 THE WITNESS: Yeah. The -- you know, my personal
20 perspective was that there were, it was, it made sense to
21 focus on the bigger-ticket items; that if there were, if
22 there were, you know, minor deviations from the, from the
23 approved plans, then, you know, that was, that was something
24 that I could get comfortable with, perhaps the board could
25 get comfortable with so long as, generally speaking, the

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1 scope of the project was in line with the approved plans.
2 So, you know, my -- and I didn't want to sort of, you know,
3 dicker about, you know, whether the, you know, a window was
4 a foot here or a foot there, you know, if the -- you know,
5 the bigger issue was the size and scope, you know,
6 particularly the, you know, the part, you know, above the
7 garage and above the foyer.
8 So that's -- when I say here that the work sort of
9 reasonably conforms, that it's, you know, other than those
10 aspects, it was generally in line, you know. Some of it
11 clearly was not exactly specifically in line, but you know,
12 that was my, my personal opinion --
13 BY MR. MOHAMMADI:
14 Q Okay.
15 A -- so -- and also just to confirm that, you know,
16 that my personal opinion, which is relayed in some of my
17 conversations in some of my e-mails, you know, is clearly
18 not the board's perspective but, you know, was my, my
19 perspective.
20 Q Well, I guess my question, follow-up then is, if
21 that's the case, how was Mr. Ball supposed to know, when you
22 say that both Raj and I are, think there's, reasonably
23 conforms, how is Mr. Ball supposed to know that that's not
24 the board's opinion but rather just sort of your personal
25 opinion?

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1 A Well, because I don't say the board --
2 Q Okay.
3 A -- thinks this.
4 Q Fair enough. All right. With respect to the trim
5 size, just a few more questions on that. Have you seen --
6 are you familiar with other houses in the neighborhood?
7 A Uh-huh.
8 Q Are you saying that the trim size that Mr. Ball
9 used on that house is not anything that the other houses in
10 the community have?
11 A I wouldn't -- I couldn't say that there isn't a
12 single house that has the same trim. I know on the majority
13 of the houses, most of the houses what the trim size is and
14 what it looks like, and you know, the trim on the, that's
15 been put on the back of his house looks bigger than the trim
16 that is typically on other houses.
17 Q Okay. What about the window sizes and, I guess,
18 locations -- are the sizes and locations on Mr. Ball's house
19 different in such a way that there are no other houses in
20 the community that have similar sizes or locations?
21 A I'm sure I couldn't say that with certainty.
22 Q Let me ask you a different way then. Okay? With
23 respect to the window sizes and locations, if Mr. Ball had
24 presented approved -- a set of plans that showed exactly
25 what he currently built, is it your opinion as a board

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1 member that those plans would have been rejected?
2 MS. ROSEN: I'm going to object. I think it's
3 speculative.
4 THE WITNESS: I can't --
5 MS. ROBESON: Well, just a second. He can testify
6 about his personal opinion.
7 MS. ROSEN: He can testify based on his personal
8 opinion, but I thought his question, unless I'm mistaken,
9 was referring to what the board --
10 MS. ROBESON: From a board member.
11 MS. ROSEN: -- would have done, and I --
12 MR. MOHAMMADI: I'll rephrase it.
13 MS. ROBESON: Yes. Okay.
14 BY MR. MOHAMMADI:
15 Q As a member of the board, would you have
16 rejected --
17 MS. ROBESON: That -- oh, yes.
18 BY MR. MOHAMMADI:
19 Q -- would you have rejected plans that showed the
20 windows that he currently has?
21 A I would, I'd --
22 MS. ROSEN: I'm still going to object. I just
23 think it's -- it feels like it's speculative.
24 MS. ROBESON: I'm going to let it in.
25 MS. ROSEN: Okay.

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1 THE WITNESS: To be honest with you, I haven't
2 looked at the, at the, the windows recently. So I need to
3 look at them and see sort of size and location and -- it's
4 just a hard, it's a hard question to answer.
5 BY MR. MOHAMMADI:
6 Q Oh, okay. Well, with respect to the addition on
7 the left side of the house, if he had come to you, if
8 Mr. Ball had come to you and said I can't build it the way
9 it is, I have to build it smaller because of utility lines,
10 could you guys approve it, approve this, would you, as a
11 member of the board, have rejected that at that point?
12 A I personally would have been with it. I can't
13 speak as to what the rest of the board would, would have
14 done.
15 Q Okay.
16 MR. MOHAMMADI: All right. Nothing further.
17 MS. ROBESON: I just had a couple of questions.
18 When you were approving this, approving the plans in 2011 --
19 THE WITNESS: Uh-huh.
20 MS. ROBESON: -- do you have Exhibit 77 in front
21 of you, the --
22 MS. ROSEN: I can pull it out if you give me a
23 second.
24 MS. ROBESON: It's my understanding -- I was
25 rereading the transcript in the file -- it's my

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1 understanding that you had Exhibit 77 in front of you.
2 THE WITNESS: When the, when the board approved
3 the plans?
4 MS. ROBESON: Yes.
5 THE WITNESS: Yes.
6 MS. ROBESON: Okay. Did you have Exhibit 126,
7 which is this 11 by 17?
8 THE WITNESS: Exhibit 126. I don't, I don't know,
9 actually. I mean, you know, these are the plans that came
10 by, by e-mail that were distributed prior to the board
11 meeting at which the approval was, was made.
12 MS. ROBESON: Okay.
13 THE WITNESS: So these are the -- I believe these
14 are the only plans that were, that were used at the meeting.
15 MS. ROBESON: Okay. I think earlier, when you
16 appeared on behalf of the association, you testified that at
17 some time in December 2013, Mr. Ball delivered a copy of
18 plans, rolled-up plans --
19 THE WITNESS: Uh-huh.
20 MS. ROBESON: -- on your doorstep. Did you ever
21 look at those plans, or did you --
22 THE WITNESS: I mean, yeah. I mean, I probably --
23 I'm sure I did. I mean, I, you know, I'm not an architect.
24 I don't know what the -- I mean, it was more curiosity to
25 sort of see what was, you know, what was done and what --

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1 MS. ROBESON: Well, what would you do if you
2 didn't have an architect on your board? How would you make
3 these decisions?
4 THE WITNESS: That's a good question. I'm not
5 sure what we, what we would do. I don't know whether we
6 would hire an architect or whether -- I'm not sure.
7 MS. ROBESON: So you don't think you have any
8 capability to read these plans on your own?
9 THE WITNESS: No, no. I mean, I can, I can, I
10 mean, I can certainly look at them and sort of understand,
11 you know, what the, what they mean and -- I mean, as far as,
12 you know, scale and sort of architectural detail, not that
13 I'm smart enough to be able to look and see what the, you
14 know, what it, what it means, you know, what's --
15 MS. ROBESON: All right.
16 THE WITNESS: Yeah. But -- okay.
17 MS. ROBESON: I have one more -- no, just a
18 second. I'm going to lose my train of thought. Well, I've
19 lost it. So --
20 MR. MOHAMMADI: Monday, like I said.
21 MS. ROBESON: Yes.
22 THE WITNESS: Happens to me all the time.
23 MS. ROBESON: So, I'm going to let Ms. -- well,
24 you can pick up on my questions.
25 MR. MOHAMMADI: I have one follow-up question.

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1 MS. ROBESON: Yes, okay, and then we'll give
2 Ms. Rosen -- I guess it's cross-exam for you, but go ahead.
3 BY MR. MOHAMMADI:
4 Q With respect to the December 16, 2013, set of
5 plans that Mr. Ball dropped off at your house --
6 A Uh-huh.
7 Q -- in fact, you actually sent him an e-mail a
8 couple days later, confirming you have received them, right?
9 A Yes.
10 Q Okay.
11 A Yeah.
12 Q Okay.
13 A And that was just, just to clarify the, the time
14 line there. You know, after there was the dispute, you
15 know, the HOA had determined that the construction was out
16 of compliance, you know, there was some conversation between
17 Peter and me, you know, what do I do, how do we fix this.
18 You know, my, my suggestion was, you know, get a third-party
19 architect to determine, you know, how you can, you know,
20 bring it back into compliance and --
21 Q And submit a plan?
22 A Yeah --
23 Q Okay.
24 A -- well, or just so that -- because, you know,
25 clearly there needed to be -- having an uninterested

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1 third-party architect tell him how to bring the plans, how
2 to bring the construction back into compliance seemed like a
3 logical step to me, and so that was the, that was my, my
4 suggestion --
5 MS. ROBESON: Okay.
6 THE WITNESS: -- which is why I believe he, you
7 know, had those plans created.
8 MR. MOHAMMADI: Okay. Nothing further.
9 MS. ROBESON: Well, I thought I read in the July
10 -- we just got a whole bunch of minutes, and I think there's
11 July 13th, no, July 17th --
12 MR. MOHAMMADI: Yes.
13 MS. ROBESON: -- 2013, minutes, and I do have a
14 question for later, Ms. Rosen, as to why those -- they had
15 several references pertinent to this case, and I guess I'm
16 kind of wondering why they weren't provided earlier, because
17 I was kind of playing catch-up. But, in any event, I
18 thought there was a July 17th, 2013, meeting where Mr. Ball
19 appeared and briefed the board on some of the changes, like
20 the size of the addition. Am I incorrect on that?
21 MR. MOHAMMADI: I think you're looking at Exhibit
22 92.
23 MS. ROSEN: Let me see if it's in here.
24 MS. ROBESON: No. I think I was in 129. There's
25 a pile of minutes that were provided at the last meeting.

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1 MR. MOHAMMADI: 129 for me is an e-mail.
2 MS. ROBESON: Oh. Well, then it's not 129. It's
3 127, and there's paper-clipped minutes.
4 MS. ROSEN: One minute. I need --
5 MS. ROBESON: Well, I can ask it later when I -- I
6 don't want to spend a lot of time going through, but I was
7 kind of outlining what was in here, and I thought I saw --
8 MS. ROSEN: Let me see it.
9 MR. MOHAMMADI: 92 does have it. I think that
10 might be the draft.
11 MS. ROSEN: You're talking about -- right.
12 MS. ROBESON: Yes, and I don't want to work with
13 composite --
14 MR. MOHAMMADI: Right.
15 MS. ROBESON: -- too much because there's more in
16 the minutes.
17 MS. ROSEN: What was the number of the other?
18 MS. ROBESON: 127.
19 MR. MOHAMMADI: 127. Unfortunately, I don't have
20 a copy with me.
21 MS. ROSEN: Yes. Let me see if I have it. I
22 probably do.
23 MS. ROBESON: Well, you know what? I can
24 double-check. Now I'm not finding it. So --
25 MS. ROSEN: Well, one second. I may have it. I

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1 tried to keep them in numerical order to not drive me so
2 crazy.
3 MS. ROBESON: Yes, the -- I did not remove your
4 paper clip system.
5 MS. ROSEN: I don't see anything.
6 MS. ROBESON: Well, maybe I was reading the
7 composite, which would lead me to the question, do we have
8 the full set of minutes for --
9 MS. ROSEN: We do.
10 MS. ROBESON: Oh, here. It is in here on a blue
11 paper clip. It says, the change for the front setback at
12 eight feet was due to existing Pepco lines. So isn't it
13 fair to say you did know that? You're listed as being
14 present.
15 MS. ROSEN: Can I borrow that copy so I can show
16 him --
17 MS. ROBESON: Absolutely.
18 MS. ROSEN: -- because I can't seem to put my hand
19 on it. I just want to make sure we're all looking at the
20 same thing.
21 MS. ROBESON: Don't move the paper clips --
22 MS. ROSEN: I won't, no.
23 MS. ROBESON: -- because they worked well.
24 MS. ROSEN: Yes, I -- I did that, actually it was
25 in the first CCOC case with this case. I remember the panel

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1 chair loved my paper clip system. I had --
2 MS. ROBESON: Yes, I like them.
3 MS. ROSEN: -- colored paper clips.
4 MS. ROBESON: I'm just afraid somebody is going to
5 review the file and take them all out or something.
6 MR. MOHAMMADI: You should put a Post-it: Don't
7 remove paper clips.
8 MS. ROSEN: Okay. All right. Okay. I think this
9 is the section that she was referring to, and you can tell
10 me if you have it.
11 THE WITNESS: And what was the question or the --
12 MS. ROBESON: Well, I guess my question is, isn't
13 it fair to say that the board knew about the -- knew that he
14 couldn't build the correct size of the addition?
15 THE WITNESS: Yeah. I mean, it's clearly
16 referenced here. So it was, you know, it was, it was, it
17 was obviously discussed at the, at the meeting.
18 MS. ROBESON: Yes. All right. That was my
19 question. And one other thing -- and maybe this is for
20 Ms. Rosen -- it's my recollection, when I was going through
21 this Friday, it's my recollection that notice of meetings
22 has to be sent by mail and can't be hand-delivered. Now, I
23 could be wrong. I do know you can't hand-deliver mail into
24 a mailbox. That's a violation of federal law. It's my
25 recollection, but I haven't had the opportunity, somewhere

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1 in 11B I thought it said that you have to mail, hand
2 delivery is not good enough, but I could -- that one I could
3 be wrong.
4 MS. ROSEN: Yes, I don't have any recollection of
5 11B having that provision in it. I'd have to go look at
6 11B, but I don't think --
7 MS. ROBESON: Notices. 11B -- wait a minute.
8 MS. ROSEN: You know, most associations do it by
9 mail. That's pretty much the standard way.
10 MS. ROBESON: Right, but that's not the case here.
11 So I guess --
12 MS. ROSEN: Yes.
13 MS. ROBESON: -- I guess my question is -- you
14 know, except for the annual meeting -- I guess my question
15 is, if it is incorrect notice, you know, what effect does
16 that have on the board members' decisions? And I have one
17 other question that may be -- I'll never do homework again,
18 I promise; I'll ease up -- but I have one other question,
19 and that is from the minutes of the May 2011 -- now I can't
20 remember which meeting. I have my notes --
21 MR. MOHAMMADI: I think it was May 5th.
22 MS. ROBESON: Well, one of the meetings it looked
23 like there was a closed meeting where the board discussed
24 the meeting and then the homeowner was brought in to answer
25 questions, and maybe it was the 2011 meeting. So it looked

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1 like it was discussed, before the applicant was brought in,
2 in a closed meeting.
3 MS. ROSEN: Wait. I'm sorry. Which meeting are
4 we referring to?
5 MS. ROBESON: Well, that would be nice if I
6 could --
7 MS. ROSEN: Okay.
8 MS. ROBESON: -- provide you with it. Let me
9 double-check. I think it might have been the 2011 meeting
10 where it was approved. So let me double-check.
11 All right. So I'm raising these now just to give
12 you an opportunity to address them, when I was going through
13 everything on Friday. And do you have the current, the
14 amended bylaws with you today?
15 MS. ROSEN: Yes. Actually, I think I faxed them
16 to you on, on Friday because it wouldn't go through your
17 e-mail. It said it was too --
18 MS. ROBESON: Our e-mail has a limit of 10
19 megabytes.
20 MS. ROSEN: Yes, because, I mean, every time I've
21 tried to e-mail something --
22 MS. ROBESON: It's really a pain. There is, if
23 you ever have that trouble again, there is a secure way to
24 do it via www.transferbigfiles.com, but I haven't seen it yet
25 then; so -- all right. Now --

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1 MS. ROSEN: Yes, just noting -- you had the
2 question with regard to the amended bylaws. They were
3 amended in, I think it was like March, at the end of March
4 or so of 2014. It was all afterwards and --
5 MS. ROBESON: Yes. You said they were in the
6 directory.
7 MS. ROSEN: -- and then I went, you know, I
8 recorded them in the depository in, it was early April or --
9 MS. ROBESON: Yes.
10 MS. ROSEN: -- shortly after. So that's when they
11 would have become effective. So I don't think --
12 MS. ROBESON: Right.
13 MS. ROSEN: -- to this case, they really --
14 MS. ROBESON: Right. I guess it just took me by
15 surprise --
16 MS. ROSEN: Yes.
17 MS. ROBESON: -- when I saw the minutes that had
18 the full, the full minutes, it took me by surprise that I
19 didn't have the current version of the bylaws.
20 MS. ROSEN: Yes.
21 MR. ROBESON: I'm not saying --
22 MS. ROSEN: No, I understand. I mean, the reason,
23 basically, was because that was, that was an amendment that
24 was done, and it really wasn't pertinent to this case
25 because everything that occurred in this case really pretty

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1 much, the decisions and everything, that was all under the
2 previous bylaws. Part of the reason, you know, amending the
3 bylaws was just to --
4 MS. ROBESON: Although if he, if Mr. Ball has to
5 go back for some reason, the new bylaws would apply,
6 correct?
7 MS. ROSEN: Well, I'm saying, if there was
8 another, I mean, the new bylaws with regard to a dispute, if
9 there was -- let's say in the future there was a dispute
10 between Mr. Ball --
11 MS. ROBESON: Yeah.
12 MS. ROSEN: -- or any other homeowner and the
13 association. Then, at that point, the new bylaws, you know,
14 from the date -- they become effective the date that they're
15 recorded. So they're recorded --
16 MS. ROBESON: Right, in the depository.
17 MS. ROSEN: Yes. So if there were to be a dispute
18 in the future, then they would be -- part of the reason that
19 the bylaws were amended was also to try to create a, you
20 know, a more formalized dispute resolution mechanism. So --
21 MS. ROBESON: Yes. I guess the thing that raised
22 my comment, I saw in the minutes several comments by
23 Mr. Barr that he wanted to have a penalty for people who
24 didn't comply with the guidelines when I looked through the
25 minutes, but I -- you know what? I --

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1 MS. ROSEN: Well, there was, I mean, I can, there
2 was no -- because, first of all, I mean, it's common for a
3 lot of homeowner associations, for example, to have, to
4 impose fines when you have someone who's not complying, but
5 in order to really do that airtight, you do that in the
6 declaration, not in the bylaws at this point in time.
7 So if they wanted to have a fining system, which
8 -- more so, the modern associations, when they're drawing up
9 bylaws and declarations now, they put the fining, you know,
10 that is put in the declaration except it's not -- if a fine
11 of that nature is not put in the declaration, chances are --
12 MS. ROBESON: It's not binding. It has to be
13 recorded.
14 MS. ROSEN: -- it's not going to be binding and
15 it's going to get kicked down. So --
16 MS. ROBESON: Well, I guess --
17 MS. ROSEN: So that wasn't done, you know, the
18 bylaws -- that couldn't be properly done in the bylaws; so
19 there was no penalty for that.
20 MS. ROBESON: Okay. Well, I guess -- and for some
21 reason I didn't get the --
22 MS. ROSEN: Right.
23 MS. ROBESON: -- the bylaws yet, but it was my
24 recollection that Section 17 said something like, the
25 decision of the, or the board of directors is final, but

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1 then it had language, saying, well, this doesn't qualify the
2 rights of the association to file a complaint at the CCOC,
3 but I didn't see anything relative to the rights of the
4 homeowner.
5 MS. ROSEN: Well, what I indicated in the e-mail,
6 I mean, that's actually fairly standard. I mean, you
7 wouldn't normally see, in the bylaws it wouldn't, it doesn't
8 say that -- the homeowner can always go to court and go to
9 the CCOC the same way that the association does, but --
10 MS. ROBESON: Even though it says the decision of
11 the board of directors is final?
12 MS. ROSEN: Yes, because it's, the way it works
13 usually with, when you have a, whether it's architectural or
14 whether it's a violation, depending on the nature of it,
15 once the board -- let's say if you have an architectural
16 situation and then the homeowner is not happy with what the
17 ACC did; they appeal it up to the board. Then the board
18 makes a decision on that. That decision is a final
19 decision, and from that final decision, that homeowner,
20 let's say, for example, if the homeowner doesn't like the
21 final decision, the homeowner can certainly, for example, go
22 to court or the CCOC if they feel it's not appropriate.
23 MS. ROBESON: Yes. I guess I just didn't see that
24 explicitly --
25 MS. ROSEN: Yes.

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1 MS. ROBESON: -- in the section, but you know --
2 MS. ROSEN: Yes, and I'm just saying, I could be,
3 you know, but there was certainly nothing, you know, it's --
4 and then it's kind of common to say like, you know, let's
5 say that the board decision is final because that basically
6 means the board's made a final decision, whether it's on the
7 violation issue -- it's like you can't keep coming back and
8 coming back and coming back. If you don't like the decision
9 of the board at that point, then, let's say, for example, if
10 the homeowner decides that they're not going to comply, then
11 the association can decide, okay, we want to take him to the
12 CCOC or in court, or if the homeowner doesn't like the
13 decision and says, you know what, I don't like this
14 decision, I'm going to challenge it, then the homeowner can
15 certainly go up to court or the CCOC.
16 MR. MOHAMMADI: Can we go off the record for one
17 second on this issue --
18 MS. ROBESON: Yes. Go ahead.
19 MR. MOHAMMADI: -- because I think it's sort of
20 unrelated to --
21 MS. ROSEN: Okay.
22 MS. ROBESON: We're off.
23 (Discussion off the record.)
24 MS. ROBESON: I'm finished with my questions.
25 Ms. Rosen, do you have, quote, cross-examination for

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1 Mr. Gibson?
2 MS. ROSEN: Yes, if you can just give me a second.
3 Okay.
4 CROSS-EXAMINATION
5 BY MS. ROSEN:
6 Q Okay. Now, Mr. Gibson, you were asked about
7 whether you recalled sending an HOA member an e-mail about,
8 with regard to Lynn Gowan wanting to get on the board to be
9 closer to the action with regards to Mr. Ball. Did Lynn
10 Gowan ever discuss with you why she wanted to go on the
11 board, or was that just something that you were speculating
12 on?
13 A Just speculation. She never, she never told me or
14 indicated what her reasons were for joining the board.
15 Q Okay. And if you recall, do you recall whether
16 the association initially tried to bring what is now this
17 case, you know, the roof and other areas, was that something
18 that the board of directors initially tried to bring into
19 the previous case?
20 A The one about the deck and the shed?
21 Q About the deck and the shed, yes, the same
22 application.
23 A No, I don't.
24 Q Do you have any recollection of that, of trying,
25 of the CCOC saying that it was too late to bring that aspect

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1 into the existing case?
2 A I honestly don't recall whether --
3 Q Okay. With regard to the vote in October, I guess
4 it would be in October of 2013, to bring this case, was one
5 of the issues that the board had to look at, was whether or
6 not the association was going to want to incur additional
7 legal expenses to bring this case?
8 A Yes, that was part of the -- I'm sure that was
9 part of the discussion.
10 Q Okay. And do you recall whether that was why it
11 was placed under Old Business rather than New Business
12 category?
13 A Can you clarify that question for me?
14 Q Okay. Well, let me go back. This case and the
15 previous CCOC case --
16 A Right.
17 Q -- they stem from the same application, is that
18 correct?
19 A Yes.
20 Q Okay. So would it be fair to say that the board,
21 you know, in terms of the, of violations of the approved
22 application, that it was viewed by the board as being kind
23 of an ongoing type of violation?
24 A Sure. Yes.
25 Q It was a continuation of the case rather than

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1 A Yes. He, there was, there was ample opportunity
2 for -- you know, we gave him our feedback when, you know,
3 when we determined that it was, it was out of scope. You
4 know, we told him what the issue was. We asked him to keep,
5 to keep building, and the message was just fix it and build
6 it according to the, to the approved plans.
7 Q And is it fair to say that Peter Ball was present
8 at several board meetings where his construction project at
9 issue in this case was discussed?
10 A Uh-huh, yes.
11 Q Okay. And is it fair to say that, that with
12 regard to even the prior CCOC case, which involved the deck
13 and the shed, that Peter Ball was also present at many of
14 the board meetings at which his project was discussed?
15 A Yes.
16 Q Okay. And as a board member, do you think it's
17 fair to say that Peter Ball has, that -- let me see how I
18 want to phrase it -- that Peter Ball has had ample
19 opportunity to present his case, so to speak, to the board
20 of directors concerning his ongoing project?
21 A Yes.
22 Q Do you have, I mean, if you can answer this, how
23 much time would you say that the board has devoted to
24 dealing with Peter Ball's construction project, both at
25 issue in this case and the previous case involving the shed

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1 and the deck, if you had to give a general amount of time
2 spent?
3 A Like a, like the number of hours spent?
4 Q If you could, yes. If you have any idea as to the
5 number of hours that the board has devoted to this.
6 A Many, many.
7 Q Well, would you say, for example --
8 A I mean --
9 Q -- 50 hours, 10 hours, 30 hours? Do you have
10 any --
11 A I mean, if you, if you -- I mean, just at board
12 meetings alone, it's, you know, it's the accumulative time
13 of the board meetings, but there, there's obviously, you
14 know, many, many other hours spent to, you know, on things
15 like this, you know, preparation for this and, you know,
16 discussions about it. I mean, it's, it is the, it has been
17 the dominant issue at the board for almost as long as I can
18 remember.
19 Q Okay. Is it fair to say that Mr. Ball has a
20 history with the association of noncompliant construction?
21 MR. MOHAMMADI: Objection. Mischaracterization.
22 MS. ROBESON: It's --
23 MS. ROSEN: Okay. I can --
24 MS. ROBESON: -- it is technically
25 cross-examination. I'm going to let it in. I may ask you

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1 to define it because, I mean, one of the issues is, is this
2 noncompliant construction. So go ahead, you can answer the
3 question.
4 THE WITNESS: The answer is yes.
5 BY MS. ROSEN:
6 Q Okay. And can you please describe, or for
7 example, in the prior case that involved the shed and the
8 deck, if you recall, what was the, what was the issue, what
9 was the problem with what Peter Ball did?
10 A The specific steps? I mean, you know, there was,
11 there was, there was the approved plan for the deck and for
12 the shed, and initially the deck was not built according to
13 the approved plans and neither was the shed.
14 Q Now, how long have you lived at the Potowmack
15 Preserve?
16 A A little more than 10 years.
17 Q Okay. During the time that you've lived there, do
18 you have any knowledge of whether Peter Ball has ever
19 constructed anything on his property without having gotten
20 approval of the association?
21 A Yes.
22 Q Okay. And what is that?
23 A There were -- there was, I believe, at least one,
24 if not two prior cases, before I came on the board, of, you
25 know, construction creep, if you will, you know, a smaller

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1 project that morphed into a larger unapproved project with
2 respect to the addition --
3 MS. ROBESON: Can you be --
4 THE WITNESS: -- on the back of his house. You
5 know, the exact, you know, dates and, you know, details I
6 don't --
7 MS. ROBESON: Do you have personal knowledge of
8 that?
9 THE WITNESS: Yes. Yes, just from being on the
10 board and from, you know, hearing, having conversations
11 and --
12 MS. ROBESON: Well, I was going to say, you really
13 don't -- you're learning this from other people on the
14 board, is that correct?
15 THE WITNESS: Yes, and from other sort of, you
16 know, evidence, you know, prior, you know, e-mails and, you
17 know, CCOC communications and, you know, from, you know,
18 board actions before I was on the board.
19 BY MS. ROSEN:
20 Q Okay. Well, for example, you are aware that there
21 were at least two prior CCOC cases against Mr. Ball in which
22 the association filed the cases because he had constructed
23 something that was not approved?
24 A Correct --
25 Q Okay.

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1 A -- I'm aware of that.
2 Q And in both of those cases, are you aware that the
3 CCOC did in fact find that Mr. Ball constructed things that
4 were not approved?
5 A Yes, I'm aware of that.
6 Q Okay. And in this case, the association is also
7 contending that Mr. Ball is constructing things that have
8 not been approved, is that correct?
9 A Correct.
10 Q Okay. And is it fair to say that the association
11 feels that there is a long-standing pattern by Mr. Ball of
12 constructing things that are not approved?
13 A Yes.
14 Q Okay. And is that of concern to the association?
15 A Yes.
16 Q And can you tell us why that is of concern to the
17 association?
18 A This specific?
19 Q Well, the general -- I mean, you've testified that
20 there's been a pattern.
21 A Right. It's a concern, you know, because it, it
22 takes up an inordinate amount of our time. It's an issue
23 of, you know, contention within the neighborhood and at
24 board meetings. You know, it isn't, you know, germane just
25 to the board. You know, the, you know, the lion's share of

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1 the neighborhood is, you know, very familiar with, you know,
2 this pattern and these issues and, you know, the current,
3 the current dispute. So it's, it's of concern for, for a
4 variety of reasons.
5 Q Okay. And to the best of your knowledge, has
6 Peter Ball ever filed any lawsuits against the association?
7 A Yes.
8 Q Okay. And if you know, what was the result of
9 those lawsuits? Did he ever win any of those lawsuits?
10 MR. MOHAMMADI: Objection.
11 MS. ROBESON: Basis?
12 MR. MOHAMMADI: I don't know what the relevance of
13 that is, that question is.
14 MS. ROSEN: Well --
15 MS. ROBESON: Well, I think she's -- I'm going to
16 let it in.
17 THE WITNESS: To my knowledge, he has not --
18 BY MS. ROSEN:
19 Q Okay.
20 A -- he has not prevailed in any of the, the
21 lawsuits.
22 Q Okay. And if you know, were those lawsuits filed
23 as subsequent to or as a response to actions taken by the
24 association against Mr. Ball?
25 A I believe so, yes.

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1 Q Okay.
2 MS. ROBESON: Are you talking about one lawsuit or
3 two? What are you talking about?
4 THE WITNESS: The lawsuit regarding the --
5 MS. ROBESON: Siding?
6 THE WITNESS: -- the siding.
7 MS. ROBESON: So you're talking about one
8 lawsuit --
9 THE WITNESS: Right.
10 MS. ROBESON: -- relating to the siding?
11 THE WITNESS: Correct.
12 MS. ROBESON: Okay.
13 BY MS. ROSEN:
14 Q Are you aware of any, of a lawsuit that was filed
15 by Mr. Ball against the association around the time of the
16 -- now I have to remember the cases.
17 MS. ROBESON: Well, if he knows.
18 MS. ROSEN: Yes.
19 BY MS. ROSEN:
20 Q Are you aware of any other prior lawsuits filed by
21 Mr. Ball against the association?
22 A I don't know the specifics, but I believe there
23 have been at least one other, one other suit previously
24 filed, although --
25 MS. ROBESON: But you don't know?

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1 THE WITNESS: I don't know what the outcome was.
2 MS. ROBESON: Well, do you know there was a suit?
3 THE WITNESS: I believe there was, yes. I believe
4 I've heard.
5 MS. ROBESON: Well, you say you believe there was.
6 Do you actually know or not?
7 THE WITNESS: No, not --
8 MS. ROBESON: Okay.
9 THE WITNESS: -- not -- no.
10 MS. ROBESON: Personally.
11 THE WITNESS: No, right.
12 MS. ROBESON: You don't have personal knowledge of
13 it.
14 THE WITNESS: I have heard of it, but I
15 personally --
16 MS. ROBESON: Yes, because --
17 THE WITNESS: I'm only aware of it by being told
18 by other people, but I was not personally involved in --
19 MS. ROBESON: Okay. So a lot of -- well, go
20 ahead.
21 MS. ROSEN: Go ahead.
22 BY MS. ROSEN:
23 Q Do you have any personal knowledge as to whether
24 Mr. Ball has ever threatened to file suits in order to get
25 what he wants from the association?

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1 MS. ROBESON: Well, wait.
2 MS. ROSEN: Maybe that's not the best way to say
3 it.
4 MS. ROBESON: Wait a minute. I'm giving you a
5 little leeway because --
6 MS. ROSEN: Okay.
7 MS. ROBESON: -- but technically, he's your
8 witness. So cross-examination --
9 MS. ROSEN: Well, I understand, but he's not
10 really my witness because he was called by -- he's been
11 called in their case.
12 MS. ROBESON: I know. I know, but --
13 MS. ROSEN: Okay.
14 MS. ROBESON: -- that was a little too far.
15 MS. ROSEN: All right. I don't think I have any
16 further questions.
17 MS. ROBESON: Mr. Mohammadi.
18 MR. MOHAMMADI: Thank you.
19 REDIRECT EXAMINATION
20 BY MR. MOHAMMADI:
21 Q With respect to the lawsuit that you do have
22 personal knowledge about, it's regarding the siding? It was
23 regarding the siding, right?
24 A Yes.
25 Q And it was brought because, as Mr. Ball claimed,

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1 he requested a change in the siding that he wanted to use
2 and that was not approved by the board, correct? That was
3 the basis of his lawsuit, right?
4 A Yes, basically.
5 Q Okay. And that was filed close to the same time
6 this CCOC case was filed, maybe slightly after that; is that
7 fair to say?
8 A I believe so.
9 Q All right. And with respect to that lawsuit, you
10 know the outcome was that he dismissed it without prejudice?
11 Are you aware of that?
12 A Yes.
13 MS. ROSEN: Excuse me. Are you referring to --
14 who are you referring to as having dismissed it without
15 prejudice? Are you referring to Michael Ball or Peter Ball?
16 BY MR. MOHAMMADI:
17 Q The lawsuit itself was dismissed without
18 prejudice, correct?
19 MS. ROBESON: If you know.
20 THE WITNESS: I know it was dismissed. I don't
21 recall whether it was with prejudice or without prejudice,
22 but I do recall it was dismissed.
23 BY MR. MOHAMMADI:
24 Q Okay. And do you recall that the siding issue was
25 also filed in this current CCOC case as a counterclaim

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1 by the Balls? Are you aware of that?
2 A No.
3 Q Okay. All right. You were testifying that
4 there's been some kind of, sort of a history between the
5 CCOC and Mr. Ball, correct, with respect to disputes?
6 MS. ROBESON: The CCOC?
7 BY MR. MOHAMMADI:
8 Q Excuse me --
9 A The HOA.
10 Q -- the HOA.
11 A Yes.
12 Q Right?
13 A Right.
14 Q And I think you stated that it was a long-standing
15 pattern of not complying, was your testimony?
16 A Uh-huh.
17 Q Yes?
18 A Yes.
19 Q Okay.
20 A Yes.
21 Q You also stated that the HOA is concerned with
22 that, right?
23 A Yes.
24 Q I mean, you're concerned that, you believe he's
25 not complying consistently or constantly, right?

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1 A Sure. Yes.
2 Q Right. Did that play any role in determining
3 whether the plans submitted back in 2009 and later approved
4 in 2011, did that concern have any role in determining
5 whether to approve plans or not?
6 A Well, the plans were approved. So --
7 Q Right, but --
8 A I mean, there was --
9 Q -- that process.
10 A There was, there was discussion. There was
11 concern at the board level about, about, you know, about how
12 the construction process would proceed. You know, there
13 were concerns voiced that, you know, he's had approved plans
14 before that were, that were not built according to the, to
15 the approval, and people were concerned that the same thing
16 would happen this time.
17 Q Okay. With respect to the siding issue, was that
18 part of the concern, why the siding was denied, that he
19 would not comply again?
20 A No.
21 Q Okay. With respect to the current filing of the
22 CCOC case, was that -- was part of the reason why it was
23 filed the concern that he was not complying?
24 A Well, it was filed because he was not complying.
25 Q Right. Was that part of the consideration, that

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1 you believed his ongoing pattern of noncompliance --
2 A No, that --
3 Q -- should have been cause for filing the CCOC
4 case?
5 A No.
6 Q Okay. And with respect to the CCOC filing today,
7 had there not been what you believe to be a long pattern of
8 non-conformity, would this CCOC action have been brought
9 still?
10 A Yeah.
11 Q Okay. All right. With respect to, you said you
12 met with Mr. Ball twice regarding his applications, one
13 personally, just you and him, and once with a couple other
14 members?
15 A Regarding this, regarding this specific issue,
16 yes.
17 Q Okay. Do you remember the October 7th meeting
18 where the CCOC voted not to take this matter to the CCOC?
19 MS. ROSEN: Objection. I think you'd have to ask
20 him whether he was -- are you talking about the CCOC vote?
21 MR. MOHAMMADI: Correct.
22 MS. ROBESON: Wait. Just a second. What's --
23 MS. ROSEN: Right. No, I'm just trying to
24 clarify.
25 MS. ROBESON: -- your objection? To clarify his

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1 question?
2 MS. ROSEN: Yes, I'm trying to get some
3 clarification because he's asking if he remembers about the
4 CCOC taking a vote, and I would think that you'd have to ask
5 him if he was at the meeting first.
6 MR. MOHAMMADI: I meant the HOA. If I said --
7 MS. ROSEN: I'm getting confused.
8 MS. ROBESON: No, he meant the HOA.
9 MS. ROSEN: Okay. Well, that's why I'm getting
10 confused.
11 MR. MOHAMMADI: Sorry, let me ask it again.
12 BY MR. MOHAMMADI:
13 Q Do you remember the HOA meeting on October 7,
14 2013, and voting not to take this matter to the CCOC?
15 A Yes. That was the -- I think it was the meeting
16 at the, at the Potomac Community Center where Raj was not
17 present. Is that -- I mean, it's --
18 Q But do you remember that vote taking place?
19 A If that's the one, yes, yeah.
20 Q Okay. Now, you said that the HOA has spent many
21 hours --
22 A Yeah.
23 Q -- on this case?
24 A Yes.
25 Q Right? Do you know how many hours?

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1 A No.
2 Q Do you know whether the Balls have spent many
3 hours on this case as well?
4 A I'm sure they have.
5 MR. MOHAMMADI: Nothing further.
6 MS. ROBESON: All right. Ms. Rosen, any redirect,
7 recross?
8 MS. ROSEN: No, I think we're finished with
9 Mr. Gibson.
10 MS. ROBESON: Okay. Let me give you the section
11 of Maryland law. It's 11B-113.3, and it's entitled
12 Distribution of Written Information and Materials, and
13 section (b), subsection (b) has, indicates door-to-door
14 distribution. So you can address that --
15 MR. MOHAMMADI: What was the section again? I'm
16 sorry.
17 MS. ROBESON: It's 11B-111.3, subsection (b).
18 MS. ROSEN: Isn't that the section that referred
19 -- I mean, I'm going off the top of my head -- was that the
20 section that refers to, like, what, for example, if an
21 association does certain things in a certain way, then a
22 unit owner can do it also? I mean, I'm --
23 MS. ROBESON: I don't know.
24 MS. ROSEN: Or am I thinking something different?
25 Okay. Because I think there's a, I think there's a section

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1 -- and I'm kind of going off the top of my head -- that, you
2 know, for example, if a unit owner wants to distribute
3 materials, that they can basically do it.
4 MS. ROBESON: No, no. Well, that's C.
5 MS. ROSEN: Okay.
6 MS. ROBESON: That's Section C. This is
7 different.
8 MS. ROSEN: Okay.
9 MS. ROBESON: So this is subsection (b). I just
10 want to point it out because I, when I go through the cases
11 and I have questions, I want to point it out while I
12 remember them, so you can address them. All right. We're
13 going to take a 10-minute break, and Mr. Mohammadi, do you
14 have another witness?
15 MR. MOHAMMADI: I have two more witnesses, Your
16 Honor.
17 MS. ROBESON: Two more. Okay. Mr. Gibson, you
18 may be excused.
19 THE WITNESS: Thank you.
20 (Whereupon, at 11:12 a.m., a brief recess was
21 taken.)
22 MS. ROBESON: Mr. Mohammadi, I think it's -- are
23 we waiting for Mr. Ball?
24 MR. MOHAMMADI: Yes, Michael Ball. One moment.
25 MS. ROBESON: We can go off the record.

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1 (Whereupon, at 11:26 a.m., a brief recess was
2 taken.)
3 MS. ROBESON: We're back on the record.
4 Mr. Mohammadi.
5 MR. MOHAMMADI: Thank you. I'd like to call
6 Mr. Michael Ball, please.
7 MS. ROBESON: All right. Mr. Ball, you're already
8 sworn in. Okay. Go ahead.
9 MR. MOHAMMADI: Thank you.
10 (Witness previously sworn.)
11 DIRECT EXAMINATION
12 BY MR. MOHAMMADI:
13 Q Could you state your full name for the record?
14 A Michael Luhu Ball.
15 Q And what is your address, sir?
16 A 755 26th Place South, Arlington, Virginia.
17 Q Okay. What's your relationship to Peter Ball?
18 A I'm his son.
19 Q Okay. And do you have any interest in the
20 property that's subject to this case?
21 A I own it.
22 Q Okay. And what authority, if any, does Mr. Ball
23 have, your father have with respect to this property?
24 A He acts on my behalf on the property.
25 Q Okay. Does he have a power of attorney to act on

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1 your behalf?
2 A Yes.
3 Q Okay. So does he have the authority to make
4 decisions with respect to the property?
5 A Yes.
6 Q Does he have the authority to pursue claims that
7 stem out of the property or the HOA?
8 A Yes.
9 Q Okay. And do you personally live at the property?
10 A No.
11 Q So do you get notices or anything?
12 A No.
13 Q From the HOA, I mean.
14 A No.
15 Q And that's because you don't live on the property,
16 right?
17 A Correct.
18 Q Are you familiar with the claims in this case?
19 A Some of them.
20 Q Some of them. And are you aware of the claims
21 Peter Ball has made against the HOA?
22 A Some of them.
23 Q Okay.
24 MR. MOHAMMADI: Nothing further.
25 MS. ROBESON: Ms. Rosen.

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1 CROSS-EXAMINATION
2 BY MS. ROSEN:
3 Q Okay. Mr. Ball, when did you first become the
4 owner of this property?
5 A 2010.
6 Q Okay. And at that time, did you move into the
7 property?
8 A No.
9 Q Okay. Have you ever lived at the property?
10 A Yes.
11 Q Well, when was that?
12 A Late 2000s, in high school.
13 Q Okay.
14 MS. ROSEN: Court's indulgence.
15 BY MS. ROSEN:
16 Q Since you've become the owner of the property,
17 you've never lived in the property, is that correct?
18 A Correct.
19 Q Okay. Okay. And you said the property was
20 conveyed to you in 2010, is that correct?
21 A Yes.
22 Q Okay. And it was conveyed by whom, if you
23 remember?
24 A Irene Sivinski (phonetic sp.).
25 Q Okay. And who is Irene Sivinski?

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1 A My dad's ex-wife.
2 Q Okay. And was there a time, prior to it being
3 conveyed to you, that you owned the property with Iryna
4 Sivinski --
5 A Yes.
6 Q -- as a co-owner? Okay. And that conveyance, was
7 that made in 2008? Do you recall?
8 A I think so, yes.
9 Q Okay. And did you live at the property at that
10 point in time, in 2008?
11 A No.
12 Q Okay.
13 MS. ROSEN: I have a copy. This is a deed to the
14 property, but I only have one copy of it, but I did want
15 to --
16 MS. ROBESON: Well, let me ask you, what's the
17 relevance of -- I mean --
18 MS. ROSEN: Well, it --
19 MS. ROBESON: -- he testified just that he owns
20 the property. So I guess I can't figure out what the
21 relevance of who --
22 MS. ROSEN: Well, part of on cross -- I mean,
23 there's an affidavit on this deed, which is signed by
24 Michael Ball --
25 MS. ROBESON: Yes.

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1 MS. ROSEN: -- and that affidavit states that the
2 residence -- it basically states, Michael Ball and Iryna
3 Sivinska, the grantees in the within deed, hereby certify
4 under the penalties of perjury, as evidenced by the joinder
5 herein, that the land conveyed in this deed is residentially
6 improved owner-occupied real property and that the residence
7 will be occupied by us. And I want to ask -- and it's
8 signed by, looks like Michael Ball and Iryna Sivinska. I
9 mean, I do have a right to go, do -- question him as to
10 credibility, and at this point, he's testified that he
11 doesn't live in the property, that he's not lived in the
12 property, and --
13 MS. ROBESON: Well, I guess your --
14 MR. MOHAMMADI: Just --
15 MS. ROBESON: Go ahead.
16 MR. MOHAMMADI: Credibility, it's second to
17 relevance. So you can't just ask about anything out there
18 to get credibility. It has to be relevant to this case, and
19 I don't know what previous ownerships in 2008 --
20 MS. ROBESON: Are you saying --
21 MS. ROSEN: It goes to his veracity as a witness.
22 I mean, he's basically testified that he's never lived in
23 the property, and I have a deed which has an affidavit that
24 he signed where his --
25 MS. ROBESON: Yes, he did testify --

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1 MR. MOHAMMADI: He did say --
2 MS. ROBESON: -- that he did live in the property.
3 MS. ROSEN: But he testified that he has not lived
4 in the property -- he said he lived in the property back in
5 high school, but he says that he did not live in the
6 property 2008 onwards, since he's owned this property, and
7 this affidavit that he signed states that it will be
8 occupied --
9 MS. ROBESON: Well --
10 MS. ROSEN: -- by him. So it does go to his
11 veracity as a witness. I think that's perfectly legitimate
12 for me to ask --
13 MS. ROBESON: I'm going to --
14 MS. ROSEN: -- on cross-exam.
15 MS. ROBESON: I'm going to let, I'll let it in for
16 the weight it deserves, but you know, a lot of, if we did a
17 poll of how many people for tax reasons were -- it's my
18 understanding Mr. Ball's ex-wife, did she live there?
19 THE WITNESS: (No audible response.)
20 MS. ROBESON: You have to say yes or no.
21 THE WITNESS: Yes.
22 MS. ROBESON: Yes?
23 THE WITNESS: Yes.
24 MS. ROBESON: Okay. So I'll let it in, and you
25 can cross-examine him on it.

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1 BY MS. ROSEN:
2 Q Now, I'm just going to ask Mr. Ball if he can
3 identify -- is that your signature, Mr. Ball?
4 A Yes.
5 Q Okay. And this is a copy of the deed that was
6 dated 10 September 2008 between your father and his ex-wife,
7 Sivinska, and yourself and Ms. Sivinska, correct?
8 A Yes.
9 Q Okay. So when you signed this affidavit, stating
10 that the residence would be occupied by you, you were not
11 being truthful, is that correct?
12 MR. MOHAMMADI: Objection.
13 MS. ROBESON: Sustained. You don't have to
14 answer.
15 MR. MOHAMMADI: Don't answer.
16 THE WITNESS: No, I'm not.
17 BY MS. ROSEN:
18 Q You have testified you've never lived in this --
19 you've not lived in this property since the time you became
20 the owner, correct?
21 A Correct.
22 Q Okay. So is it fair to say then that this
23 statement here, did you intend -- you never intended to live
24 in this property, is that correct?
25 MR. MOHAMMADI: Objection.

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1 MS. ROBESON: Sustained.
2 MS. ROSEN: I'm going to move this exhibit, 140 --
3 MR. MOHAMMADI: 7.
4 MS. ROSEN: -- 147.
5 MS. ROBESON: Okay. So 147 will be 9/10/2008 deed
6 to Michael Ball.
7 (Exhibit No. 147 was marked
8 for identification.)
9 BY MS. ROSEN:
10 Q Okay. Now, Mr. Ball, you've testified that you've
11 given Peter Ball, your father, authority with respect to
12 this property, is that correct?
13 A Yes.
14 Q And you testified that you executed a power of
15 attorney to that effect?
16 A Yes.
17 Q Did you provide a -- well, first of all, when was
18 that power of attorney executed?
19 A I can't recall the year.
20 Q Are you referring to the power of attorney you
21 executed in connection with the recent court case in circuit
22 court that was given to Mr. Dever?
23 A What was, what was that over? What issue was
24 that?
25 Q Okay. You were a plaintiff in a case filed

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1 against the association with regards to the siding and other
2 issues that were involved in the prior CCOC case. Do you
3 recall that?
4 A Yes.
5 Q Okay. And do you recall giving Mr. Dever a power
6 of attorney at that time, indicating that Mr., that, that
7 your father had any authority with regards to the property?
8 A Yes.
9 Q And what was the purpose of that power of
10 attorney?
11 A To allow my father to mind the house.
12 Q Do you have a copy of that power of attorney with
13 you today?
14 A No.
15 Q Does your counsel have a copy of that power of
16 attorney?
17 MS. ROBESON: Well, you're asking him.
18 BY MS. ROSEN:
19 Q Okay. Did you give your counsel a copy of that
20 power of attorney in this case?
21 A I don't know. I don't think so.
22 Q Did you ever give that power of attorney to the
23 association? Yes or no?
24 A I don't know.
25 Q So it'd be fair to say that if you didn't give the

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1 power of attorney to the association, that they would have
2 no knowledge as to whether or not, whether or not your
3 father had the authority to act on your behalf, isn't that
4 fair to say?
5 A I don't remember if I gave it to them or not. I
6 don't know if it was given to them.
7 Q Well, you were the owner of the property from 2008
8 onwards, is that correct?
9 A 2008 to 2010 was myself and Irene --
10 Q Okay.
11 A -- and then 2010 to present, yes.
12 Q Okay. During that time period, have you ever
13 provided anything in writing to the association, indicating
14 that you were the -- that you had given your father a power
15 of attorney on your behalf?
16 A I sent an e-mail, yes.
17 Q Sent an e-mail to who?
18 A Dr. Barr.
19 Q Really? Do you have a copy of that e-mail?
20 A Do you have a copy of that?
21 MS. ROBESON: No, you can't --
22 THE WITNESS: I'm sorry.
23 MS. ROBESON: -- other witnesses questions. If
24 you know.
25 THE WITNESS: I don't, I don't think so. I don't

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1 know if we have a copy of that.
2 BY MS. ROSEN:
3 Q Do you know when you sent that e-mail, supposedly?
4 A Maybe five months ago --
5 Q Okay.
6 A -- but I sent it to Dr. Barr and copied my dad.
7 Q Okay. And prior to that time, you have, isn't it
8 fair to say that you have never given anything to the
9 association that states that your father was authorized to
10 act on your behalf as the property owner, isn't that
11 correct?
12 MR. MOHAMMADI: Objection. Asked and answered.
13 MS. ROBESON: He did. He doesn't know.
14 BY MS. ROSEN:
15 Q Okay. Mr. Ball, you were also a defendant in the
16 prior CCOC case involving the same construction application
17 about the shed, the shed and the deck, isn't that correct?
18 MR. MOHAMMADI: Your Honor, just, you know,
19 objection just generally. I mean, my scope of direct --
20 MS. ROBESON: Yes, I was just wondering that.
21 MR. MOHAMMADI: -- I mean, I just asked very few
22 questions. So I don't know where we're going.
23 MS. ROBESON: Where are you going with this?
24 MS. ROSEN: Okay. I'm going to switch over to
25 something here.

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1 BY MS. ROSEN:
2 Q Okay. You've testified that you do not get
3 notices, is that correct?
4 A Yes.
5 Q Okay. And you've also testified that you reside
6 at 755 26th Place in Arlington, Virginia, is that correct?
7 A Yes.
8 Q Have you ever provided that address to the
9 association to send notices to you?
10 A No.
11 Q Okay. So it would be fair to say the association
12 would have no way of knowing that in order to give notice to
13 you, as the owner of the property, that they should send a
14 notice to that address, correct?
15 A I received subpoenas to my address in Virginia.
16 Q And when did you receive that subpoena?
17 A Three months ago.
18 Q Okay. Prior to that time, from between the time
19 -- have you lived at this address, 755 26 Place in
20 Arlington, Virginia, how long have you lived at that
21 address?
22 A 2011, January 2011.
23 Q Okay. And where did you live before that?
24 A Bethesda.
25 Q Okay. And how long did you live at the Bethesda

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1 address?
2 A Approximately 10 years.
3 Q Okay. But you never provided that Bethesda
4 address to the association either during the time that you
5 owned this property, isn't that correct?
6 A No.
7 Q Okay. So it'd be fair to say that the association
8 would have no way of knowing to provide you meeting notices
9 at these off-site addresses, correct?
10 A Yes.
11 Q Okay. And that would be because you've never told
12 them of those addresses?
13 A Yes.
14 Q Okay. So you would have no expectation to receive
15 any notices of the meetings, isn't that correct?
16 A Yes.
17 Q Okay. And I think you've testified that you gave
18 your father the authority to prosecute claims on your
19 behalf, is that correct?
20 A Yes.
21 Q And did you give him authority to prosecute the
22 circuit court case that was filed with regard to the siding
23 and the other issues that were involved in the previous
24 case?
25 MR. MOHAMMADI: Objection.

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1 MS. ROBESON: Basis?
2 MR. MOHAMMADI: Again, what's the relevance, and
3 also, it's not within the scope. We're --
4 MS. ROSEN: It is within the scope.
5 MR. MOHAMMADI: -- talking about this case, not
6 the circuit court case.
7 MS. ROBESON: I guess I am wondering why you're
8 going there.
9 MS. ROSEN: Well, first of all, it is within the
10 scope because he testified that he had authority to pursue
11 claims. I mean, that's a pretty general question. He said
12 he had the authority to pursue claims.
13 MS. ROBESON: So your question --
14 MS. ROSEN: So I think on my cross-examination --
15 I asked, I was asking him about the, about giving the, about
16 that he gave his father the authority to prosecute the
17 claims in the circuit court case on his behalf.
18 MS. ROBESON: I thought he already testified on
19 that, but --
20 BY MS. ROSEN:
21 Q Are you aware that the court, that the circuit
22 court found that you could not give your father the
23 authority to prosecute a claim on your behalf?
24 MR. MOHAMMADI: Objection.
25 MS. ROBESON: Yes. Well, what's your basis?

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1 MR. MOHAMMADI: Well, first of all, it's asking
2 for sort of a legal determination. He's not an attorney.
3 It's not relevant --
4 MS. ROSEN: All right.
5 MR. MOHAMMADI: -- I mean, I don't understand what
6 the relevance to this case is.
7 MS. ROBESON: Yes. I guess --
8 MS. ROSEN: All right.
9 MS. ROBESON: -- that's where I'm going. If you
10 could bring it to something relevant to this case.
11 MS. ROSEN: Okay. I'm going to -- I can rephrase
12 that.
13 BY MS. ROSEN:
14 Q Do you know whether the court, the circuit court,
15 dismissed your father's case in the circuit court, correct?
16 MR. MOHAMMADI: Objection, same, same issue with
17 relevance.
18 MS. ROSEN: I think I'm entitled to a fairly wide
19 latitude of cross-examination to this witness. I mean, he's
20 been conspicuously absent from these proceedings, in many
21 respects. He was conspicuously absent in the circuit court
22 proceedings that he's got his name on. I think, I think
23 we're entitled to be able to have some latitude with him.
24 MS. ROBESON: Well, I don't see what that has to
25 do with the scope of his direct, and I don't see what that

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1 has to do with this case, whether he's absent or he's not.
2 MR. MOHAMMADI: Yes, I don't know what that has to
3 do with anything.
4 MS. ROBESON: So I guess I'm not getting the extra
5 step of how his absence is relevant.
6 MS. ROSEN: Well, I think, once again, he was
7 asked about -- in direct he was asked about the authority to
8 pursue claims --
9 MS. ROBESON: And he said he --
10 MS. ROSEN: -- and he said yes. So I think I'm
11 entitled to then cross-examine about this authority to
12 pursue claims, which is what I'm asking him about. I mean,
13 he opened the door to it. I didn't.
14 MS. ROBESON: But what I don't get is he made, he
15 testified he gave his authority to pursue claims --
16 MS. ROSEN: Right.
17 MS. ROBESON: -- what does the circuit court's
18 decision about that have anything to do with, with what
19 he's --
20 MS. ROSEN: Okay. Well, what I was asking him
21 about before was about, you know, he, about the claim in the
22 circuit court, because I asked, I indicated -- he said he'd
23 given a power of attorney, and I asked him about a power of
24 -- the only power of attorney I'm aware of is one that he
25 gave his attorney in the circuit court case when I filed the

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1 case, when I filed a motion to dismiss the case --
2 MS. ROBESON: So --
3 MS. ROSEN: -- as to Peter Ball, and he, and his
4 attorney, you know -- and I challenged Peter Ball's standing
5 to bring the case. And --
6 MS. ROBESON: But so -- I don't want to say --
7 MS. ROSEN: All right. You know what? Okay.
8 MS. ROBESON: What does that have to do with this
9 case?
10 MS. ROSEN: All right. I'm just going to ask, you
11 know --
12 MS. ROBESON: He may have thought he was giving
13 him -- I mean, I guess I just don't understand the
14 connection.
15 MS. ROSEN: All right. You know what? I'm just
16 going to ask -- I mean, I think they had asked previously
17 that this body take official notice of the, of the pleadings
18 and what was filed in the circuit court case also, because
19 the circuit court, the siding --
20 MS. ROBESON: Well, I just, I don't get why.
21 That's what -- what does it matter if a judge disagreed with
22 him? I don't --
23 MS. ROSEN: All right. I'm just going to -- I'll
24 withdraw that. I'm not --
25 MS. ROBESON: No, I'm not trying to be hard. I'm

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1 just trying to figure out --
2 MS. ROSEN: You know, I believe that, you know --
3 MS. ROBESON: -- why it's relevant.
4 MS. ROSEN: I think that I have a very -- I'm
5 entitled to a wide latitude of cross-examination. He's a
6 party to this case, and they opened up the door when they
7 asked about pursuing claims. So I think I can ask him about
8 the claims that were related to this -- you know, they have
9 a relationship to this case and a relationship --
10 MS. ROBESON: To what end, though?
11 MS. ROSEN: -- to the prior claims.
12 MS. ROBESON: To what end?
13 MS. ROSEN: Well, he's indicated that -- that case
14 was, that case was dismissed by the court --
15 MS. ROBESON: So?
16 MS. ROSEN: -- as to Peter Ball. So I just want
17 to get that, and also as to, I wanted to get into it to
18 Michael Ball, the case, because he -- I mean, counsel
19 indicated that it was, that he dismissed it, but it was
20 actually, just ended up being dismissed. I wanted to get
21 into a little bit of that also, as to when it was dismissed
22 and why it was dismissed, because it --
23 MR. MOHAMMADI: Again, it's not subject to this --
24 MS. ROBESON: I'm going to ask you to move on. I
25 just --

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1 MS. ROSEN: All right.
2 MS. ROBESON: -- I guess I can't find the
3 relevance, even to credibility, because he, you know, he's
4 not a judge. He -- if there's some credibility issue here,
5 I'm missing it.
6 MS. ROSEN: All right. All right. One second.
7 BY MS. ROSEN:
8 Q Can you explain, if you know, why the property was
9 conveyed by your father to you in year 2008?
10 MR. MOHAMMADI: Objection.
11 MS. ROBESON: Basis?
12 MR. MOHAMMADI: Relevance.
13 MS. ROBESON: Well, I'm going to give her a little
14 leeway on this, and see if you can bring up some kind of
15 credibility or bias. If you know.
16 THE WITNESS: He asked me to, and I could; so I
17 did.
18 MS. ROBESON: He asked you to what?
19 THE WITNESS: He asked me --
20 MS. ROBESON: Take the property?
21 THE WITNESS: Right. He asked me to buy the
22 property, which I did.
23 BY MS. ROSEN:
24 Q Okay. Did you pay for the, did you pay any
25 consideration for this property, or was it just, was it

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1 given as a gift?
2 A It wasn't free.
3 Q Did your father provide you with a resale package,
4 what is known as a resale package for the property when he
5 sold it to you?
6 MR. MOHAMMADI: Objection.
7 MS. ROBESON: Yes. Where are you going? I don't
8 understand where you're going with this.
9 BY MS. ROSEN:
10 Q Were you aware at the time that your father
11 conveyed the property to you that there had been a case
12 between him and the CCOC that had been resolved right prior
13 to the conveyance?
14 MR. MOHAMMADI: Objection.
15 MS. ROBESON: Well, I'm going to let her pursue
16 that because at least it has CCOC in it and --
17 MR. MOHAMMADI: Okay.
18 THE WITNESS: No, I did not know.
19 BY MS. ROSEN:
20 Q Okay. Who's been living in the property since,
21 since the year 2008, since you acquired the ownership of the
22 property or partial ownership?
23 A My dad, also Irene and my grandmother.
24 Q And what is your grandmother's name?
25 A Trudy.

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1 Q Okay. Now, Iryna, to the best of your knowledge,
2 does Iryna still live there?
3 A No.
4 Q Okay. Does your grandmother still live there?
5 A Yes.
6 Q Okay. With regard to the construction application
7 at issue in this case, did you ever look at -- did you ever
8 see it yourself?
9 A I have.
10 Q Okay.
11 MS. ROBESON: Well, wait a minute. He didn't --
12 all he testified to on direct was the authority he had given
13 his father and that he owned the property. So why are we
14 now opening the door on the construction application?
15 MS. ROSEN: Well, he's an owner. If he's an owner
16 of the property, the construction application was supposedly
17 -- he supposedly authorized his father to do certain things.
18 So I think it's a fair question to ask him what he was, what
19 he was aware of because he supposedly authorized his father
20 to deal with this property.
21 MR. MOHAMMADI: I don't think that's a fair
22 characterization of what he said. He said he authorized him
23 with respect to acting on the property generally.
24 MS. ROSEN: Okay. Well --
25 MS. ROBESON: Well, I'll let it in.

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1 BY MS. ROSEN:
2 Q When was the first time you saw a construction
3 application for this property for the, that was supposedly
4 submitted to the HOA?
5 A Say that again.
6 Q When was the first time you saw the construction
7 application at issue in this case?
8 A A few years ago, years ago.
9 Q Okay. And who showed it to you?
10 A You said application?
11 Q Yes, the application for the construction that's
12 at issue in this case.
13 A That would be my dad.
14 Q Have you ever seen a copy of the approval letter
15 of the association for the construction at issue in this
16 case?
17 A No.
18 Q And have you ever seen the plans that the
19 homeowner association approved in May of 2011?
20 A No.
21 Q What is your occupation?
22 A Sales engineer.
23 Q Are you a builder, or have you ever been a
24 builder?
25 MR. MOHAMMADI: Objection.

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1 MS. ROSEN: I thought he was one.
2 MS. ROBESON: I don't know what --
3 MS. ROSEN: Okay.
4 MS. ROBESON: -- you're searching for here.
5 MS. ROSEN: Yes. Yes.
6 BY MS. ROSEN:
7 Q What, if any, involvement have you have had, have
8 you had with the construction project at issue in this case?
9 A I helped him put on roof trusses on the left-side
10 addition and that's it.
11 Q Is that the only involvement you've had with this
12 construction, with the construction at issue in this case,
13 was just putting the roof trusses on on the left-side
14 addition?
15 A Yes.
16 Q Have you ever attended any of the, any of the
17 board meetings at which this property and this construction
18 application were discussed?
19 A No.
20 Q Have you ever attended any of the meetings that
21 have been testified to with regards -- between your father,
22 Peter Ball, and any of the board members?
23 A No.
24 Q Did your father tell you about those meetings
25 before, before he had those meetings?

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1 A Before he had the meeting?
2 Q Before he attended, before he participated in
3 those meetings.
4 A No.
5 Q Okay. To be fair, did your father ever invite you
6 to any of those meetings?
7 A Yes.
8 Q Okay. Well, which one?
9 A I don't know which one, but he has invited me to
10 those meetings.
11 Q Okay. And you basically decided you didn't want
12 to go to them?
13 A Right.
14 Q Okay. And were you aware, were you aware that
15 there were, I'm going to say, disagreements between the
16 association and your father about the construction work
17 being done on the house?
18 A Yes.
19 Q Okay. And what was your awareness? What were you
20 aware of?
21 MR. MOHAMMADI: Objection.
22 MS. ROBESON: Yes. This is way beyond the scope.
23 I mean, all he asked was his authority. He didn't say, I
24 know everything. So I guess I'm just, there has to be --
25 it's not a fishing expedition.

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1 MR. MOHAMMADI: It's not a deposition.
2 MS. ROBESON: So it's way beyond -- we're getting
3 into things that are way beyond the scope of what he did.
4 He had a very narrow direct.
5 MS. ROSEN: Well, like I said, I think that under
6 the circumstances he is the property owner, and I think -- I
7 would think that the Hearing Examiner would also want to
8 know what, if any, involvement or knowledge that Michael
9 Ball had, you know, given the history, that Michael Ball was
10 also a party in the last case, you know.
11 MS. ROBESON: Well, that's for me to decide.
12 MS. ROSEN: Okay.
13 MS. ROBESON: That's not to go on
14 cross-examination. My, you know, my concern was, legally,
15 does he have standing to be sitting here as a respondent,
16 but I'm not going to delve into that unless there's a
17 question in my mind that needs to be answered. You may want
18 to know, but this isn't the forum for you to find out.
19 MS. ROSEN: Yes. Okay. I don't have any further
20 questions for Michael Ball. I'll save them for Mr. Peter
21 Ball.
22 MS. ROBESON: Okay. Mr. Mohammadi.
23 REDIRECT EXAMINATION
24 BY MR. MOHAMMADI:
25 Q To the best of your knowledge, has the HOA in this

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1 case dealt with you or your father throughout?
2 A My father.
3 MR. MOHAMMADI: Nothing further.
4 MS. ROBESON: All right. Ms. Rosen, any recross
5 based on the redirect?
6 RECROSS EXAMINATION
7 BY MS. ROSEN:
8 Q And is that because --
9 MS. ROBESON: Wait. Okay. Go ahead.
10 BY MS. ROSEN:
11 Q Is that because you wanted, you directed your
12 father to deal with the HOA?
13 A Yes.
14 Q So you did not want to deal with the HOA directly.
15 Would that be fair to say?
16 A I let my dad deal with them.
17 Q Okay.
18 MS. ROBESON: Okay. That's it. All right. Next
19 witness.
20 MR. MOHAMMADI: Peter Ball.
21 MS. ROBESON: Okay. Do you have other witnesses
22 for today?
23 MS. ROSEN: We may have some rebuttal witnesses
24 coming in, I think, in the afternoon, but I do expect --
25 yes.

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1 MS. ROBESON: Okay. Is this your last witness for
2 your case?
3 MR. MOHAMMADI: I anticipate this to be my last
4 witness, yes.
5 MS. ROBESON: Okay. Because I anticipate it
6 taking a while with cross-examination.
7 MS. ROSEN: Yes.
8 MS. ROBESON: We can break for lunch now. I would
9 -- for, we'll just go an hour, and he can come back. And
10 then if you have the opportunity -- I have to announce the
11 next hearing date at the end of this session; otherwise, we
12 have to send out new notice -- so if you have the
13 opportunity to check with your witnesses, that would be
14 helpful. All right? Okay. With that, we're adjourned
15 until 1 o'clock.
16 MR. MOHAMMADI: Thank you.
17 (Whereupon, at 12:01 p.m., a luncheon recess was
18 taken.)
19 MS. ROBESON: All right. We're back on the
20 record. Is Mr. Barr going to be here or --
21 MS. ROSEN: Yes, he will be here. He must have
22 just went to the men's room or something.
23 MS. ROBESON: Okay. We can wait to start for a
24 minute or two.
25 (Discussion off the record.)

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1 MS. ROBESON: All right.
2 MS. ROSEN: Okay.
3 MS. ROBESON: Mr. Ball, please raise your right
4 hand.
5 (Witness sworn.)
6 MS. ROBESON: All right. Go ahead, Mr. Mohammadi.
7 DIRECT EXAMINATION
8 BY MR. MOHAMMADI:
9 Q Good afternoon, Mr. Ball. Could you state your
10 full name for the record, please?
11 A Peter Luhu Ball.
12 Q And what is your address?
13 A 10600 Vantage Court, Potomac, Maryland.
14 Q And how long have you lived there?
15 A Since 1995.
16 Q Okay. Were you or are you married?
17 A I'm currently not married.
18 Q Okay. Were you married at any time?
19 A Yes.
20 Q Who were you married to?
21 A Iryna Sivinska.
22 Q And I guess you're divorced at this point?
23 A Yes.
24 Q When did you get divorced?
25 A In 2010.

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1 Q When did you get separated?
2 A 2008.
3 Q Okay. Do you have any children?
4 A Yes.
5 Q And what are the names of your children or your
6 child?
7 A Timothy Ball and Michael Ball.
8 Q Okay. And is Michael Ball sitting next to you
9 currently?
10 A Yes.
11 Q All right. How old is Michael Ball?
12 A 33.
13 Q Now, the house that you currently live in, is that
14 the house that's subject to this dispute today?
15 A Yes.
16 Q And you said you purchased this in 1995?
17 A Yes.
18 Q Okay. Who did you purchase it with? Do you
19 recall?
20 A It was a friend, I Ching Ku.
21 Q Okay. All right. Could you briefly tell the
22 Court about your educational background? How far did you
23 get in school?
24 A Graduate school.
25 Q Graduate school. What did you study in graduate

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1 school?
2 A Business.
3 Q Okay. What do you do currently?
4 A I'm in the building trade.
5 Q Okay. Could you elaborate on that?
6 A Home remodeling.
7 Q Okay. Is it new construction or is it remodeling?
8 A Oh, we're strictly remodelers.
9 Q Okay. And how long have you been doing that?
10 A Twenty years.
11 Q Okay. Do you own a business or do you work for
12 somebody?
13 A I own a business along with my son.
14 Q All right. What's the name of the business?
15 A PHI Construction, Incorporated.
16 Q Which son do you own the business with?
17 A Michael.
18 Q All right. And how long has that company been in
19 existence?
20 A 19, I think, 1999/2000.
21 Q Okay. And that company is, primarily does home
22 remodeling?
23 A Yes.
24 Q And is that your only employment, or do you do
25 anything else?

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1 A That's it.
2 Q Do you have any licenses?
3 A I have a salesman license with MHIC.
4 Q Okay. And when did you receive that license?
5 A I had one back in, I think, 1999, and I renewed it
6 maybe four -- three, four years ago.
7 Q Okay. You don't have any other licenses?
8 A No.
9 Q All right. Now, your property is governed by the
10 Potowmack Preserve Homeowners Association?
11 A Yes.
12 Q Okay. Has this homeowners association always
13 governed your property since you moved in?
14 A Yes.
15 Q Did they go by a different name at some point?
16 A Yes.
17 Q Okay. But it's been essentially the same entity,
18 right?
19 A Yes.
20 Q All right. Okay. You're aware of what the nature
21 of the complaint here today is?
22 A Yes.
23 Q All right. Is this the first time you've had any
24 disputes with the HOA?
25 A No.

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1 Q Okay. If you can start sort of from the
2 beginning, when was the first time you had an issue with the
3 HOA, if you recall?
4 A About 2005.
5 Q Okay. And what was the issue at that point?
6 A I had applied and received approval for two side
7 decks on the house with, with a shed roof over the deck. I
8 built one of them on the right-hand side, and I then
9 enclosed the deck completely, the side of the deck
10 completely. Instead of having, instead of having just a
11 railing with a shed roof, I enclosed the side -- in essence,
12 three feet of it, from the top of the railing to the bottom
13 of the roof trusses -- with matching house siding.
14 Q Okay. And that was in 2005?
15 A 2005, 2006, I can't remember exactly now.
16 Q Okay. So what happened? What did the HOA do as a
17 consequence of those -- of that?
18 A Well, they told me to take it down, and I was
19 trying to understand, I mean, you know, why. I understood
20 that, that I didn't get permission to enclose it, but I
21 thought the fact that the deck was on the side of the house,
22 it didn't impact any neighbors or the neighbor that lived
23 next to me on 10602 Vantage Court. I just didn't
24 understand, you know, their reasoning for me to tear it
25 down.

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1 Q Did that case ever get resolved?
2 A No. It went to the CCOC.
3 Q Okay. And is that 73-12? Is that the case
4 number?
5 A I don't remember.
6 Q Okay. Did that go to the CCOC just last year?
7 A No.
8 Q Okay. So when did that go to the CCOC?
9 A That went to the CC probably 2000, I don't, '6, 7,
10 '8. I'm not -- probably between 2006 or 2007.
11 Q Okay. And the CCOC rendered a decision?
12 A Yes.
13 Q Did you follow whatever that decision was?
14 A Yes.
15 Q If you were required to correct anything, did you
16 do that?
17 A Yes.
18 Q If you were required to pay any fees or fines or
19 anything like that, did you do that?
20 A Yes.
21 Q Okay. And that resolved that issue?
22 A Yes.
23 Q When was the next time you had an issue with the
24 HOA, if you did?
25 A 2013 -- well, 2011 I had these plans that were

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1 before the Hearing Examiner today, I had those plans
2 approved in May of 2011. Included in those plans was a deck
3 with a shed underneath the deck. When I received the letter
4 from the HOA, it said I couldn't use vinyl siding,
5 horizontal vinyl siding, and I, I wrote and questioned Raj
6 Barr why I couldn't use vinyl siding, and I didn't want to
7 get started on the project until the vinyl siding issue was
8 resolved; there was an economic issue. All right? But we
9 went back and forth, back and forth six, seven months. He
10 never replied to me as to why. All right? So I decided, I
11 guess, at the end of 2011/beginning of 2012 to pull a permit
12 just for the deck, all right, on the job, which I did, all
13 right, and we started building the deck, I guess, probably
14 January/February 2012.
15 Q And that became an issue, as well, and went to the
16 CCOC as well?
17 A That's correct.
18 Q And is that that case I previously mentioned,
19 73-12?
20 A Yes.
21 Q Okay. And that case has been resolved?
22 A Yes.
23 Q Is there anything currently still pending with
24 respect to the deck and shed?
25 A Well, Ms. Rosen filed a request to the CCOC to

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1 tell me to tear the shed down. I replied that I had
2 complied with their order. So if there is anything
3 outstanding, there, there is that -- her motion before the
4 panel is still, still outstanding --
5 Q Okay.
6 A -- but I complied with what we said we would do.
7 Q So there's still something outstanding with
8 respect to that case?
9 A That's correct.
10 Q Subsequent to when the CCOC rendered its decision?
11 A That's correct.
12 Q All right. Besides this current matter, is there
13 anything, any other cases that stemmed out of your occupancy
14 and ownership of the subject property besides what you've
15 discussed already?
16 A When the HOA decided to take us to the CCOC over
17 the deck and the shed issue in 2012, my attorney and I, we
18 filed a, I guess a corresponding claim, a suit in the
19 circuit court over that, asked for a declaratory judgment on
20 the vinyl siding and also to hear the deck and the shed
21 issue.
22 Q Now, you filed this in Montgomery County Circuit
23 Court?
24 A Yes.
25 Q Okay. Well, what was the status of that case when

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1 this case was brought?
2 A Well, the circuit court kind of partitioned the,
3 the issues and allowed the, the deck and the shed to be
4 heard by the CCOC, all right, and kept the siding issue,
5 which we had dismissed earlier this month, either July or,
6 June or July, and it was, it was dismissed without
7 prejudice. Ms. Rosen had asked for legal fees, and the
8 legal fee was denied.
9 Q So just to be clear, why did you want to dismiss
10 that -- well, strike that.
11 You moved to dismiss the case in the circuit
12 court, correct?
13 A That's correct.
14 Q And was there a hearing held to determine whether
15 it should be dismissed or not?
16 A There was a hearing. There was a hearing, I
17 guess, about the dismissal. I mean, I didn't attend. It
18 was just the two attorneys.
19 Q And ultimately the court decided that it should be
20 dismissed?
21 A Well, we, we wanted it dismissed because it was an
22 economic issue. I mean, this particular case before the
23 Hearing Examiner is -- went way beyond, you know, our
24 expectations. So we just couldn't, you know, continue to
25 fund two separate, you know, legal battles and nor did we

1 have the time to deal with both of the matters
2 simultaneously.
3 Q Who represented you in the CCOC case?
4 A Jim Dever.
5 Q And that case is no longer pending, is that
6 correct?
7 A Well, the CCOC, I mean, that particular case with
8 the deck and the shed, they rendered a decision.
9 Q I'm sorry. I'm talking about the circuit court
10 case. That case is no longer pending, is that correct?
11 A No, it's been dismissed.
12 Q Okay. All right. With respect to the current
13 CCOC case pending today, when was it that you first applied
14 for approval of the project or the construction on your
15 property?
16 A Probably 2008/2007.
17 Q Okay. And it did not get approved until May of
18 2011, I think you testified, correct?
19 A That's correct.
20 Q Why did it take so long for you to get approval?
21 A Initially I did a hand sketch of what I wanted,
22 and I presented that to Raj Barr, all right, and he said he
23 wanted scale drawings. I asked him, I said, you know, okay,
24 but can you tell us what elements that were presented is
25 acceptable, not acceptable, or just tell us, you know, what

1 is acceptable, what is not acceptable. His response was,
2 put it, you know, give us a scale drawing and we'll look at
3 it at that time. I said to him, I said, you know, it costs
4 a lot of money to have these plans drawn up; I mean, at the
5 very least, if you can tell us what we can do and what we
6 can't do, all right, it would help, you know, the process.
7 So that kind of went back and forth, back and forth until --
8 I bit the bullet in 2010 by hiring Tania Bruno to draw up
9 the plans.
10 Q Okay. Why did you hire Ms. Bruno?
11 A One, she lived in the neighborhood. She happened
12 to live in the same model house that I lived in. She was a
13 registered architect, and she gave me a very reasonable
14 price.
15 Q Okay. And did she in fact --
16 A And she was willing -- and she was willing to act
17 on our behalf, my son and my behalf, all right, in dealing
18 with the HOA, specifically Raj Barr.
19 Q Okay. Well, I guess I'm trying to get
20 clarification. What, what's the issue with Raj Barr? I
21 mean, what was the problem?
22 A He's never given us a straight answer. I mean,
23 what we've -- we're not wedded to any particular design.
24 All right? We just had certain things that we would like to
25 do, to accomplish, all right, on the property, and we've

1 asked him for guidance all along in terms of, well, tell us
2 what we can do and what we can't do. I mean, his response
3 would be, I'm not your architect or put it in a scale
4 drawing and we'll approve it. And I kept saying to him, I
5 said, you know, how can I tell, you know, an architect to
6 draw something if I, if you're not going to approve it; I
7 mean, at the very least, tell me what I can't do. I've
8 never gotten any response from him --
9 Q Okay.
10 A -- or guidance from him.
11 Q To your knowledge, how many drawings, did you,
12 different drawings, did you submit to the HOA throughout
13 this approval process?
14 A Oh, I probably submitted three or four hand-drawn
15 sketches. Tania probably submitted at least three sets of
16 drawings to them.
17 Q Okay. I'm going to show you what has been marked
18 as Exhibit 126(a), okay, and specifically referring you to
19 A4 and A5 on 126(a). Could you identify this document or
20 these drawings?
21 A I think these were the first sets --
22 MS. ROSEN: Can you just give me a second? I'm
23 sorry. Can --
24 MR. MOHAMMADI: Sure.
25 MS. ROSEN: -- you give me a second to put my

1 hands on that too? Okay. Thanks.
2 THE WITNESS: These are the front and rear
3 elevations of the first set of drawings that Tania Bruno had
4 prepared and submitted to, to Raj Barr.
5 BY MR. MOHAMMADI:
6 Q Okay. Now, just to be clear, this set of plans do
7 show an addition over the garage, but the roof is different
8 than what was finally approved?
9 A That's correct.
10 Q What's the difference between this roof and the
11 approved roof?
12 A This one had a, has a gable roof over the garage.
13 Q Okay. And you can see what that is on Front
14 Elevation, on the front elevation?
15 A Yes.
16 Q Why did you propose to have a gable roof built?
17 A Well, there's two reasons: one, my immediate
18 neighbor next door at 10602 has an addition built over his
19 garage and he has a gable roof. So that was, that was
20 reason number one. So thinking if he had it, I mean, you
21 know, the HOA would approve if we had it, if we drew it.
22 Then the second reason was, by having a gable roof, we could
23 keep this, the roof at the same existing house ridge.
24 Q Okay. With respect to the rear elevation, the
25 same side, on the left side of the house, sort of opposite

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1 of where the roof is, I mean, the garage is, were you
2 proposing to build an addition on top of -- on top?
3 A Right. These particular drawings showed a full
4 second story on the rear side of the house.
5 Q Okay. Now, ultimately, what happened with this
6 submission?
7 A Raj rejected it.
8 Q Okay. And why was it rejected?
9 A Oh, I think it was for two reasons. I think, one,
10 he objected to the full second story, all right, saying that
11 it was too big, because my backyard faces the street, all
12 right, and he says that was going -- that just made it look
13 too big. And then the second was, he objected to the gable
14 roof over the garage.
15 Q Okay. And why?
16 A I don't, I don't remember exactly, but I think the
17 reasoning was that it wasn't contemporary enough.
18 Q Okay. Did you get any guidance on what you should
19 do to get the, you know, for the next set of submissions?
20 A No.
21 Q Okay. And you said --
22 A I mean, other than not to have those two things.
23 Q Okay. And you said that Raj Barr specifically
24 rejected it. How do you know it was Raj Barr and not the
25 board or somebody else?

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1 A I mean, he makes -- in terms of these decisions,
2 he makes them pretty much unilaterally.
3 MS. ROSEN: Objection. Basis for that?
4 MS. ROBESON: Well, you can bring that out on
5 cross-examination.
6 MS. ROSEN: Okay.
7 BY MR. MOHAMMADI:
8 Q Now, I guess, let me take a step back for a second
9 here. You submitted -- are you familiar with the
10 architectural committee guidelines and procedures that are
11 in place?
12 A Yes.
13 Q All right. And when you first submitted your
14 application, who did you submit it to? Was it the board or
15 the architectural committee?
16 A It was probably to the architectural committee.
17 Q Okay. Do you know what, how it ended up in front
18 of the board?
19 A Well --
20 Q In other words, were you ever provided the basis
21 why the architectural committee could not make a decision,
22 it had to be the board that made the decision?
23 A I can't recall why. I mean, generally, the policy
24 is, if there's a dispute with your surrounding neighbors,
25 then the architectural committee would then kick the issue

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1 upstairs or to the full board.
2 Q Do you know if there was any dispute with any
3 surrounding neighbors?
4 A No. I mean, I wouldn't be surprised, but I'm not
5 sure specifically who.
6 Q So, in other words, nobody ever told you what the
7 reason is why it ended up in front of the board?
8 A Nobody had told me, say, you know, Neighbor A told
9 me, objected, or Neighbor B objected.
10 Q All right. Thank you. Did you submit, after this
11 first set of drawings prepared by Ms. Bruno were essentially
12 rejected, did you submit a new set of drawings?
13 A We submitted, I think, two additional sets.
14 Q Okay. And I'm going to show you what's been
15 marked as, again, Exhibit No. 126, okay, these, what are
16 they -- 17 by 11 I think is the size.
17 A Uh-huh.
18 Q Are these the final approved set of drawings?
19 A They look similar, but I mean, they don't -- with
20 the exception of a few places that has dimensions, all
21 right, no dimensions or virtually none of them have any
22 measurements. All right? I mean, it's -- they have
23 measurement on the layout, for instance, where the shed is.
24 Q You're looking at the basement plan?
25 A Right, and then on the first-floor plan they have,

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1 you know, a measurement for the new deck, but I mean,
2 nothing else -- I'm sorry. They have a measurement for the,
3 for the new office, but if you turn to the second floor,
4 there's no, there's no dimensions. Elevation has no
5 dimensions. Rear Elevation has no dimensions. As-Built
6 Basement has no dimensions. As-Built Lower Floor Plan/Upper
7 Floor Plan, As-Built Rear/Front/Side Elevations don't have
8 measurements, and at least two or three pages missing with
9 regards to sections. All right.
10 Q Okay. Well, you are aware that these are
11 apparently the approved plans. Are you stating there are
12 other plans that have measurements and dimensions?
13 A They're not complete --
14 Q Okay.
15 A -- is what I'm saying.
16 Q Right.
17 A Right.
18 Q Well, let me show you what's going to be marked as
19 148.
20 MS. ROBESON: I believe you're right. Yes.
21 MS. ROSEN: Is that what you gave me last time?
22 MR. MOHAMMADI: That's what I e-mailed you last
23 time, yes.
24 MS. ROBESON: And what should I call these?
25 MR. MOHAMMADI: More detailed plans, I don't know.

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1 MS. ROBESON: Okay.
2 MR. MOHAMMADI: Plans, including sections, maybe.
3 MS. ROBESON: Okay. Approved plans, including --
4 MS. ROSEN: No. No, no, we're not, they're not --
5 MR. MOHAMMADI: Well --
6 MS. ROBESON: Okay. Plans -- house plans,
7 including sections.
8 (Exhibit No. 148 was marked
9 for identification.)
10 MR. MOHAMMADI: Okay.
11 MS. ROSEN: Not me.
12 MR. MOHAMMADI: I apologize.
13 MS. ROSEN: I was going, what was that?
14 BY MR. MOHAMMADI:
15 Q Okay. All right. Could you, Mr. Ball, could you
16 identify this document?
17 A Yeah. These look more like what I, what I have.
18 Q Okay. And why do you say that?
19 A Well, they have dimensions, actual dimensions on
20 them, elevations; they have sections.
21 Q Okay. Is it your testimony that these are plans
22 that you submitted, or is it just plans that you have?
23 A These would be the plans that we submitted. I
24 mean --
25 Q What's the revision date of this set of plans?

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1 A 4/6/11.
2 Q I'm showing you what's been marked as Exhibit 76.
3 Okay? This is a letter from you, April 15, 2011, to Raj
4 Barr?
5 A Yes.
6 Q Could you read that first line, please?
7 A This letter is in response to your request for
8 information and the community concerns that you mailed to me
9 on April 1, 2011.
10 Q Okay. Then it follows with, on sort of a heading
11 called Requested Information and then No. 3. Could you read
12 No. 3?
13 A The drawing is attached with through sections for
14 all proposed construction and with the height of the ridge
15 and other dimension you requested.
16 Q Okay. So this was, at least this letter that you
17 sent, which, as it is in our, in the exhibits, does not have
18 any attached drawings, but you stated in the letter that you
19 would be providing drawings, is that correct?
20 A That's correct.
21 Q Okay. Would this exhibit, 148, be those drawings?
22 A Huh?
23 Q This exhibit we just marked as 148 --
24 A Yes.
25 Q -- would those be the drawings you're referencing

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1 in that letter or no?
2 A Probably. This is, the revision is 4/6. That
3 letter is 4/15. So I assumed, you know, this is what went
4 to him.
5 Q Okay. And looking at, if you could, A4 of 146 --
6 A Okay.
7 Q -- on the, if you look at the front elevations,
8 are there any dimensions with respect to the height of the
9 roof?
10 A Yes.
11 Q What does it say?
12 A My eyes are bad. I think it's 26, 27-6, 27-8.
13 Q Okay. And is there any notations about the pitch
14 of the roof as well?
15 A 4-12, 4-12 on the two, on the two roof over the
16 garage. On the, over the foyer in the existing living room,
17 it says, Existing Roof Pitch, and on the left-side addition,
18 it says, Existing Roof Pitch.
19 Q Okay. Now, Mr. Ball, are you aware that the set
20 of approved plans, the larger-scale ones in 126, are missing
21 some of these dimensions?
22 A Yes.
23 Q Can you explain that, why that's missing, if you
24 can explain it? Can you explain it?
25 A Somebody, somebody left it out on purpose.

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1 MR. MOHAMMADI: All right. I move to admit 148.
2 MS. ROBESON: Any objections, Ms. Rosen?
3 MS. ROSEN: Yes, I'm going to object to these
4 drawings being admitted. First of all, aside from the
5 timing issue, when we got them, if you look at Exhibit 77,
6 which is the e-mail from Jamie Dees (phonetic sp.), which
7 attaches the small-sized drawings that are actually part of
8 Exhibit 126, that e-mail included Tania Bruno, and it
9 specifically said, you know, quote, Tania, I know you don't
10 need this, but I'm including your e-mail address in this
11 e-mail in case people have questions for you prior to the
12 meeting. Be my position, if the attached drawings were not
13 the correct drawings, then Tania Bruno, who was the
14 architect, as he's testified, should have them, presumably
15 would have spoken up.
16 And these drawings were not -- there's no evidence
17 to show that these drawings were attached to the April 15th,
18 2011, letter from Peter Ball to the board because, if Peter
19 Ball -- you know, he's the one who would have the copy of
20 that letter. He was the originator of the letter. So if he
21 -- you know, he's now trying to contend that they presumably
22 were attached, but we've never gotten a copy/discovery of an
23 April 15th, 2011, letter with these drawings attached.
24 I think Mr. Mohammadi said last time that he had
25 just gotten these drawings from Tania Bruno. I think that

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1 counsel would have had ample time to get them from Tania
2 Bruno and certainly could have issued a document subpoena
3 for them a long time ago, and Tania Bruno is not here to
4 testify in the respondent's case. So I think it would be
5 prejudicial to allow these drawings in, because we've
6 actually took a look at them, and my client says that
7 they've never seen them.

8 MS. ROBESON: Well, I mean, all of that -- we have
9 him here to authenticate them -- all of that or what you
10 just said you can bring out on cross-examination, but as for
11 their admission, I'm going to let it, I'm going to admit it
12 because what you're raising is factual issues about whether
13 the board received them. So I'm going to --

14 MS. ROSEN: Okay. That's fine. I'll call
15 rebuttal witnesses on that issue anyway.

16 MS. ROBESON: Yes, that's --

17 MS. ROSEN: Okay.

18 MS. ROBESON: -- that's fine. Okay. It's
19 admitted.

(Exhibit No. 148 was received
20 in evidence.)

21

22 MR. MOHAMMADI: Okay. Thank you.

23 MS. ROBESON: Except I haven't -- house plans,
24 including sections, is what I'm calling it.

25 MS. ROSEN: Which number? It's 140?

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1 MS. ROBESON: 8.

2 MS. ROSEN: 8. That's what I thought. I thought
3 you said, someone said 146. I got confused.

4 MR. MOHAMMADI: Yes, I think that's a fine
5 description.

6 MS. ROBESON: Did I say 146? I meant 148. Okay.
7 Continue.

8 MR. MOHAMMADI: All right. Thank you.

9 BY MR. MOHAMMADI:

10 Q Now, ultimately, those plans, some set of plans
11 were approved, correct?

12 A Yes.

13 Q Okay. And that was in May of 2011?

14 A Yes.

15 Q All right. I want to draw your attention back to
16 Exhibit 76 for a moment. Okay?

17 A Okay.

18 Q With respect to this April 15, 2011, letter --

19 A Uh-huh.

20 Q -- and I want you to, on the community concerns, I
21 want you to -- on page 2, No. 2, you're discussing something
22 about, I guess, the roof height. Could you explain what you
23 were saying or trying to say in this portion of the letter?

24 MS. ROBESON: Wait. Can you wait one second while
25 I get there?

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1 MR. MOHAMMADI: Sure.

2 MS. ROBESON: It's 76 and what?

3 MR. MOHAMMADI: Page 2.

4 MS. ROBESON: Page 2.

5 MR. MOHAMMADI: Number 2.

6 MS. ROBESON: Okay. Yes. Okay. Go ahead.

7 THE WITNESS: When we, when we changed the plans,
8 there was no longer a full second story on the, the rear of
9 the house. Using -- and I think we were going to use --
10 it's the wrong word. Instead of a 14-inch roof truss, it
11 should probably read 14-inch I-joist. By using that, we,
12 the pitch following a 4-12 pitch, the rear of the roof was
13 actually going to be below the existing house roofline. All
14 right. However, what I was saying on that, in this, in this
15 letter, by having it in like that, it would look kind of
16 funny because the front of the house, all right, would be
17 higher. So what we were doing is, we were going to change
18 the roof pitch at what, about a 28-inch, whatever that, the
19 I-joist was going to hit, and then a new pitch, roof pitch
20 would then intersect the roof, the new roof of the front of
21 the house.

22 So if you look at A4 --

23 BY MR. MOHAMMADI:

24 Q Is that 148?

25 MS. ROBESON: Wait. On 148?

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1 MR. MOHAMMADI: 148.

2 THE WITNESS: Yes, A4. If you look at the rear
3 elevation --

4 MS. ROBESON: Wait. Let me get there. One
5 second. All right. I'm there.

6 THE WITNESS: If you look at the rear elevation,
7 there's a line on the main section of the roof that says,
8 Pitch Change.

9 MS. ROBESON: Right.

10 THE WITNESS: That's exactly what we were trying
11 to do. In other words, it was a shallower pitch from the
12 back of the house to the, to the Pitch Change line, and then
13 it was going to be a higher pitch --

14 MS. ROSEN: I'm sorry.

15 MR. MOHAMMADI: 128.

16 THE WITNESS: -- from the Pitch Change line to
17 the --

18 BY MR. MOHAMMADI:

19 Q I'm sorry. Hold on one second.

20 MS. ROBESON: Just a second.

21 MS. ROSEN: I'm sorry. I'm getting confused.

22 MR. MOHAMMADI: 148. I'm sorry.

23 MS. ROSEN: Okay. I thought you said -- all
24 right. So what --

25 MR. MOHAMMADI: Actually, that might be my copy,

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1 but --
2 MS. ROSEN: All right, 148. Just give me a
3 second. I'm sorry. 148. Okay. We're on A4 of 148?
4 MR. MOHAMMADI: Yes.
5 MS. ROSEN: Okay. I thought we were on --
6 MR. MOHAMMADI: I think you have it right there.
7 MS. ROSEN: Okay. I just want to make sure I'm
8 looking at the right thing. Sorry.
9 THE WITNESS: So you would have a steeper pitch
10 from the Pitch Change line to the new ridge of the, that was
11 formed from the front of the house. It's even more clear if
12 you look at A5, the right-side elevation. You can see the
13 dotted line, all right, of the chimney is showing the change
14 of the pitch. That's what that, that --
15 MS. ROBESON: Wait. I don't see that. Can you
16 come forward and mark on --
17 THE WITNESS: A5. Okay.
18 MS. ROBESON: -- mark on A5 where that is? Well,
19 I think I see it, but I'm not a hundred percent sure. Is
20 it, is it this?
21 THE WITNESS: This line right here. This line --
22 MS. ROBESON: Okay. Now, for the record, mark
23 that line with just an X so we know that that's where the
24 roof pitch changes.
25 THE WITNESS: That X corresponds back to A4.

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1 MS. ROBESON: Okay. So A4, that X is where the
2 Roof Pitch Change line on A4 is, which let me get there.
3 THE WITNESS: Right here.
4 MS. ROBESON: Okay. So when you're here, when you
5 say here, you're looking at the rear elevation Pitch Change
6 line on the main roof --
7 THE WITNESS: Right.
8 MS. ROBESON: -- largest area of roof?
9 THE WITNESS: Right.
10 MS. ROBESON: Okay.
11 THE WITNESS: So, in other words, the pitch --
12 MS. ROSEN: I'm sorry. It's so small. I'm sorry.
13 I can't even --
14 MS. ROBESON: Okay. So it's, it's right here.
15 MS. ROSEN: Okay.
16 MS. ROBESON: I'm pointing to the Pitch Change
17 line on Ms. Rosen's copy of 148.
18 MS. ROSEN: So it's this line. We're calling that
19 a Pitch Change line?
20 MS. ROBESON: Yes. It is labeled that. I can see
21 that.
22 MS. ROSEN: Okay. I can't see it.
23 MS. ROBESON: All right.
24 MR. MOHAMMADI: Anything else you need from him up
25 here?

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1 MS. ROBESON: No. Thank you.
2 MS. ROSEN: Am I standing in line?
3 BY MR. MOHAMMADI:
4 Q Is it fair to say that what you're talking about
5 here in No. 2 is about the rear of the house?
6 A Correct.
7 Q Okay. What about the front of the house, the area
8 above the garage -- what was the, what was going to happen
9 with the roof there?
10 A I mean, it's a 4-12 pitch in the front of the
11 house on top of the garage. The new ridge for that section
12 would always be higher than the existing house. It's just,
13 it's just simple mathematics.
14 Q Okay. So --
15 MS. ROBESON: Well, explain your math.
16 MR. MOHAMMADI: Right.
17 THE WITNESS: Well, it's 4-12, which, I think, Leo
18 Schwartz explained. It means for every 12, for every 12
19 inches or one foot, the rise goes up four inches.
20 MS. ROBESON: Right.
21 THE WITNESS: The total run of this is 38 feet, I
22 believe. So 38 times four is what? Hundred and thirty-six?
23 MS. ROBESON: Sixty somewhere, yes, somewhere.
24 THE WITNESS: So it's over 10-some feet, and I'm
25 at, I'm exactly at that, okay, in terms of where my ridge is

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1 now, the new ridge versus the old ridge. It's --
2 MS. ROBESON: Wait. Say that -- okay. Take me
3 through that again.
4 THE WITNESS: Okay. The run approximately from
5 the front of the garage to the middle of the existing
6 house --
7 MS. ROBESON: Okay. Let's look at A5.
8 THE WITNESS: Okay.
9 MS. ROBESON: Okay. From the front, if you look
10 at the -- which elevation best illustrates it?
11 THE WITNESS: Doesn't matter, you can take either
12 one, but if you take the front -- if you take the left-side
13 elevation --
14 MS. ROBESON: Okay.
15 THE WITNESS: -- okay, you measure --
16 MS. ROBESON: And there's the pitch marked. I see
17 it.
18 THE WITNESS: Right. It says 4-12.
19 MS. ROBESON: Yes. If you take from the front of
20 the garage to the new ridgeline, all right, I believe that's
21 38 feet. Thirty-eight feet times 12 --
22 UNIDENTIFIED SPEAKER: Four.
23 BY MR. MOHAMMADI:
24 Q Times four.
25 A Oh, times four, is what?

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1 MS. ROBESON: Well, it's rise over run. So it's
2 12 times four, isn't it?
3 THE WITNESS: Okay. It's 152 inches.
4 MS. ROBESON: Okay.
5 THE WITNESS: What's 152 inches divided by 12? So
6 it's 12.66 feet above, all right, above the second floor,
7 top of the second-floor joists.
8 MS. ROBESON: Okay. So where the line is marked
9 Second -- the, I think it's a hatched line, dashed line --
10 THE WITNESS: Right.
11 MS. ROBESON: -- that says, Top of Wall, and then
12 it says -- I can't read it. It's too little, but on the big
13 one it says, Top of -- it may say, Top of Joists.
14 THE WITNESS: Right.
15 MR. MOHAMMADI: I think that's right.
16 MS. ROBESON: So -- okay.
17 BY MR. MOHAMMADI:
18 Q Just to wrap this up here, how tall is each floor?
19 How high is each floor?
20 A Eight feet plus 10 inches for the floor joists or
21 ceiling joists.
22 Q Okay. So if you add --
23 A Less than 11 feet, or less than nine feet.
24 Q Okay. So let's just say eight plus eight is 16
25 for the two floors, right? Sixteen feet?

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1 A Well, it's going to be eight; so 16 plus -- you
2 can figure another foot between the floor joists and your
3 plywood. So, you know, you're, you know -- so it's 18 feet.
4 Q Okay. And then add the approximately 12 feet?
5 A You're at 30 feet.
6 Q And how tall was your roof before that?
7 A I -- Tania's drawing on the as-built, I think, had
8 it at 19-something, all right, but if you call around 20
9 feet, but if you look, the number that's actually probably
10 more accurate is the spread between the as-built and the
11 new-built, which is eight feet, in other words, the height
12 difference that she showed. All right.
13 MS. ROBESON: Yes.
14 THE WITNESS: All right.
15 MS. ROBESON: Which page demonstrates this? I'm
16 looking for the sections.
17 MR. MOHAMMADI: Sections is, I think, A7 --
18 MS. ROBESON: Here we are.
19 MR. MOHAMMADI: -- A6.
20 MS. ROBESON: Okay. So this shows the two
21 additions on the upper story, the new storage, correct?
22 THE WITNESS: Which --
23 MS. ROBESON: I'm looking at A7.
24 THE WITNESS: Okay. Uh-huh.
25 MS. ROBESON: It shows the new office/bonus room

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1 and the new storage, correct?
2 THE WITNESS: Right. You can see it labeled
3 Existing Roof, okay, New Roof, okay, whereas --
4 MS. ROBESON: That's what I'm looking at.
5 THE WITNESS: Right.
6 MS. ROBESON: Okay.
7 BY MR. MOHAMMADI:
8 Q And looking at A7, there's something that says
9 Existing Roof Trusses that's marked, correct?
10 A Right.
11 Q Okay. And that would be where the old roof was,
12 essentially?
13 A That's correct.
14 Q Okay. And, again, can you tell from this drawing
15 where the roof height would be raised?
16 A Sure. You see the existing roof, all right, and
17 then the items above it, it's even labeled, New -- I can't
18 read it.
19 Q Over-Framing?
20 A Right, New Over-Framing.
21 Q Had there ever been an intention after the gable
22 roof, okay, submission to raise the roof height over the
23 garage?
24 A I don't understand.
25 Q Okay. When you submitted the drawing with the

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1 gable roof, there was no intention to raise the roof height,
2 is that, is that correct, over the garage?
3 A Right, because what you're doing, you're splitting
4 the run in half, all right, and you're splitting it, you
5 know, between the width of the garage.
6 Q Okay. But there was always an intention to add
7 that second story over the garage?
8 A That's correct.
9 MS. ROBESON: Well, how can you add the second
10 story without --
11 THE WITNESS: Okay. The answer is very simple.
12 When you have a gable roof and the garage is only 20 feet,
13 you're splitting that 20 feet in 10. So I'm only going --
14 MS. ROBESON: What's a gable roof? I think
15 that's --
16 THE WITNESS: A roof that goes this way. It's
17 like a triangle. If you face the --
18 MS. ROBESON: Oh, oh, like -- okay.
19 THE WITNESS: Right.
20 MS. ROBESON: Well, for the record, if I go to
21 126(a), I'm going to see a gable roof, right?
22 THE WITNESS: That's right.
23 MR. MOHAMMADI: Correct.
24 THE WITNESS: Gable roof --
25 MS. ROBESON: Above the garage?

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1 THE WITNESS: Right.
2 MS. ROBESON: Okay.
3 THE WITNESS: And a shed roof, it's just one-half
4 of a gable roof. Okay?
5 MS. ROBESON: Oh, because it's not coming to a
6 peak at the top?
7 THE WITNESS: That's correct, right.
8 MS. ROBESON: Okay.
9 THE WITNESS: So on a gable roof over the garage,
10 I'm only splitting the rise over 10 feet --
11 MS. ROBESON: I understand that.
12 THE WITNESS: -- okay, whereas on a shed roof over
13 the garage, I got to pitch it 38 feet --
14 MS. ROBESON: Okay.
15 THE WITNESS: -- all the way back, you know. So
16 that's the difference.
17 BY MR. MOHAMMADI:
18 Q And just to be clear, the as-built house didn't
19 have a gable roof; it had a shed roof, correct?
20 A That's correct.
21 Q Okay. Now --
22 A On one floor. It was a shed roof over one floor
23 over the garage. Okay.
24 Q Okay. And a flat roof on the back?
25 A Flat roof on the back.

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1 Q Do you know Ms. Gowan?
2 A Yes.
3 Q How do you know Ms. Gowan?
4 A Been a neighbor since about 2000.
5 Q Okay. Have you and Ms. Gowan had any disputes
6 since you've been neighbors?
7 A Yes.
8 Q Could you describe those disputes briefly?
9 A When I first moved into the community, I erected a
10 fence along what is now the property line between Ms. Gowan
11 and myself. At the time, I didn't have a survey, nor was
12 the corner stake available. So what I did was, I err on the
13 side of caution, which is I put a, I put the fence knowing
14 that it was more close on my property. All right.
15 About, I guess, eight, six, seven years later,
16 that fence was rotting and it was tilting over, and I
17 informed Ms. Gowan that I was going to -- I had wrote this
18 letter, I remember, in August, saying that I was going to do
19 the fence, okay, that following spring and that if she had
20 any plantings, to move the plantings, okay, figured that's
21 the perfect time, in the fall, you -- well, I didn't hear
22 anything. I got busy.
23 A year went by, and I wrote her another letter,
24 saying, look, I'm going to move my fence, okay, it's falling
25 down, and if you don't do it, okay, I'm not going to take

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1 responsibility if there's any damage to your plants. She
2 wrote back and said, no, I don't believe that, that your
3 fence -- I mean, I don't believe that my property line is
4 where you say it is; prove it to me. Well, ironically it
5 was she that told me that my fence was in the wrong place,
6 to begin with, when she moved in, because apparently she had
7 the survey done.
8 So I went and I had to submit \$500 and get a
9 survey, and I sent it to her. She looked at it and said,
10 no, I don't believe it. At that point, I got really upset
11 and I filed a case in the district court, seeking my \$500
12 and court costs for the, that, from Ms. Gowan. When I did
13 that, Ms. Gowan moved the fence, I mean, moved her plants.
14 I did put the new fence up, and on that particular
15 side of the fence, normally you put, you know, the --
16 stockade fence has a good side and a bad side, the bad side
17 being the side that shows where the two by four, where it's
18 attached. Normally you put the good side facing out and the
19 bad side facing your house. Well, in my case, I put the
20 good side facing my house because she had called the police,
21 all right, who -- and said that I was trespassing her
22 property. So I had to do all the work on my side of the
23 house.
24 When everything was completed, I guess maybe six,
25 seven months later I got a, I got a notice from the district

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1 court that she sued me that my fence was on her property
2 line, and she attached a survey, and the survey looked like
3 I was perfectly fine except for, the last post on the
4 property line, it looked like it was one-eighth of an inch
5 on her property. And so she took me to court, and the judge
6 found in her favor for \$1 and that was it.
7 All right. Ever since that day, I probably have
8 had 12, 13 complaints from DPS for everything, from, you
9 know, water runoff to roof height, you know, the fences,
10 whatever. Every time they came out, you know, you know,
11 they gave me a clean bill of health. All right? And, yeah,
12 she's been a real source of problem, okay, just causing
13 unnecessary, you know, headaches.
14 Q Based on what you just described, could you
15 characterize your relationship with Ms. Gowan?
16 A There is no relationship.
17 Q Is it a friendly relationship, a -- can you use an
18 adjective to describe it?
19 A No. I mean, friendly neighbors wouldn't do what
20 she did. Okay.
21 Q All right. When you decided you wanted to do work
22 on your property back in 2008, what was your goal? What did
23 you want to do?
24 A Well, a couple of things: one, I had to get rid
25 of that flat roof on the back of the house. It was just, it

1 was constant leak, all right, because of that flat roof, but
 2 at the same time, I said to myself, having, having had such
 3 a difficult time dealing with the HOA, I said I'm going to
 4 do everything one time, I'm going to do a global request,
 5 anything that I wanted done I'm going to ask for it now.
 6 And I wanted a little study office for my use.
 7 All right. That's where the addition on the left-hand side
 8 came. And that roof over the garage was just a problem. It
 9 was 20 feet, shed roof. It was always in disrepair. So I
 10 wanted to get rid of that and just put what my neighbor had,
 11 okay, a second story. I didn't really need it, okay, but I
 12 figured, I'm just going to ask for everything one time,
 13 because there was, there was, there was talk by the board,
 14 saying that I constantly, I kept going back to the board for
 15 this and that and this and that. So I said to myself, I'm
 16 not going to ask them for anything else, just one time, get
 17 it all done. Okay?
 18 So being a builder, building the addition on the
 19 left-hand side, to put a second story, the cost was minimal
 20 to us. So I said, okay, fine, even though I don't need it,
 21 I'm going to put it up anyway. Okay? So just get
 22 everything I want one time and be done with, but the real
 23 genesis was always the flat roof on the back.
 24 Q Okay. What happened -- and try to be a little bit
 25 specific about this -- once the plans were approved in May

1 of 2011, we are now in 2014 and the project is not done,
 2 could you describe why it has taken so long to get the
 3 project completed to date?
 4 A Well, we submitted the plans to the board, and it
 5 was finally approved, which was a big surprise to us because
 6 my attorney and I went to the board meeting the night that
 7 they should have taken a vote. We discussed the plan, and
 8 no vote was taken. All right? We requested to be back
 9 before the board when there was going to be a vote taken.
 10 I guess maybe a week, two weeks later I got in the
 11 mail from Raj that was approved, but it was approved with
 12 these conditions, and the main condition that I had problems
 13 with was with not being allowed to use vinyl siding. All
 14 right. Me -- the reason I wanted to use vinyl siding is
 15 really a cost issue. It's just an economic issue. The
 16 material that we had previously was called T1-11. It's an
 17 exterior-grade plywood, and it was just nothing but
 18 problems; just, you know, once it rot, it was, it was gone.
 19 All right? I didn't I want to deal with that. All right?
 20 The other solution to the siding were cost, and
 21 the HardiePlank was approximately three to four times more
 22 expensive to install than, than vinyl siding. In addition,
 23 14 homes in the neighborhood had vinyl siding, including my
 24 two immediate neighbors, one of which was Lynn Gowan.
 25 All right. In the explanation Raj gave me about

1 not allowing me to use vinyl siding, I guess, quite frankly,
 2 it just didn't sit well with me. I mean, his response was,
 3 regardless of the ones that, that have horizontal vinyl
 4 siding that slipped under the, you know, the wire, like,
 5 these were done without approval, all right, the board, the
 6 community has never allowed horizontal vinyl siding. I
 7 mean, I just thought the statement to be really
 8 disingenuous. So I kept bugging him about that. All right?
 9 I went to meetings. I went to one meeting in
 10 September or October 2011, and I tried to raise it before
 11 the board. I had Lance Pelter with me, who, who had been on
 12 the board when all this vinyl siding issue started, all
 13 right, and I was told by Raj at the time, well, this is a
 14 new item, we can't discuss it now, resubmit it, it's a new
 15 architectural submission. Well, I did that. Well, instead
 16 of having a hearing or, you know, a meeting about it, I got
 17 a letter back about 30, 40 days later, saying, well, it was
 18 already previously decided that you can't have vinyl siding
 19 and that, and that decision stays. So it just didn't sit
 20 well with me because I just thought, you know, I mean, I'm
 21 owed at least a decent explanation as to why.
 22 So I didn't want to start the project, all right,
 23 on the house with this siding issue kind of just up in the
 24 air, because what happened if I finished the house, the
 25 exterior, I'm only waiting for siding and this thing is

1 still outstanding, and the next thing they're going to say
 2 is, see how long he's taking, you know, dragging his feet
 3 and delaying in completing construction. I wanted to try to
 4 get the job done as quickly as possible, without -- minimal
 5 interruption. In fact, I told Raj that I would do the house
 6 in phases. All right? You know, one phase would be the
 7 side addition, one phase would be the rear addition, one
 8 phase would be the addition over the garage, and I would
 9 complete each phase before I start the next phase.
 10 So, yeah, that's why it took so long. Okay. We
 11 -- the only reason we did the deck was because I thought the
 12 deck was so simple, a nonissue, all right, that nothing
 13 could possibly happen with that. All right? That's why I
 14 started the deck, but I didn't do anything with the house.
 15 The house wasn't started. I pulled the permit, I believe,
 16 in August of 2012, and the reason was, is because in
 17 September 2012 new code was going to take effect which would
 18 have impacted on the construction costs. All right? So I
 19 wanted to make sure I get it under the wire. So even though
 20 the siding wasn't approved by that time, I did submit it,
 21 all right, but I didn't start the work on the house until
 22 March 2013. I started on the left-side addition first.
 23 Q Okay. When you started the -- I guess you said
 24 March 2013 is when you first actually started doing work?
 25 A Right.

1 Q Besides the deck, and let's ignore that for a
2 second, did you encounter any problems as you began to do
3 that work with the HOA, or as you did the work?

4 A I guess around, it must have been late May/June of
5 2013, there were a lot of stuff going on in the, at the HOA
6 blog, all right, about my house. You know, it was
7 basically, well, you know, what's he doing, I mean, all
8 right, does he have approval, you know, all of that. I
9 mean, Rande Joiner was one of the most vocal, you know, you
10 know, raising the issue about me not having, you know,
11 approval of the HOA and having a permit and all of that.

12 I never went on the blog to defend myself, but
13 rather, individually I got the information from Beth and
14 Chuck, and I wrote to these various people that had
15 complained, inviting them to come to my house, look at the
16 approved plans, look at the approved letter from the HOA.

17 Q Okay. Well, to your knowledge, what was the issue
18 with the house at that point, with the construction?

19 A I mean, it was just, what's he doing? Is he, you
20 know, it's like, is he, is he building something, you know,
21 without the HOA's approval? All right? I mean, I guess
22 what was, what I felt was kind of an injustice, instead of
23 going on the blog, specifically Lee Alford, saying to these
24 people, saying, hey, he, he has been approved, we don't know
25 whether he's got a permit or not but he's been approved,

1 they gave these people the impression that I was doing
2 things, you know, without approval, that I was just, you
3 know, just being reckless.

4 So Peter Gibson came -- e-mailed me and asked me
5 for a copy of the approved plans, and by the way, before I
6 started the construction, I had delivered my building permit
7 to Raj. All right? I had placed it in his home's mailbox,
8 like I told him I would. I told him that I would not start
9 work without first providing him a copy of the permit. Even
10 though I got the permit in August/September, I didn't start
11 work until March. So I didn't provide that document to him
12 until March, two or three days before I started. But Peter
13 Gibson e-mailed me and requested a copy of my DPS plans,
14 which I made a copy of and gave it to him.

15 He then came to my house on the 28th of June to
16 look at things. By that time, the structure, the left-hand
17 structure, the windows above the, I mean, in the existing
18 living room, above, in the room above the existing living
19 room, the brick veneer, the knee walls, they had all been
20 done. Okay? The foyer had been started. The only thing
21 that hadn't -- the demolition of the garage had taken place.
22 We had not put the, built the garage wall, nor had we put
23 the trusses up, but by the 28th, when he came, all but those
24 were done.

25 He looked at the job, and he says everything

1 looked good. I explained to him about the setback of the
2 addition. What had happened was, when Beth's house across
3 the street was undergoing construction, the excavator hit a
4 Pepco line and knocked out the electricity for our block,
5 and I had called Miss Utility already, but that just made me
6 call Miss Utility again and had them remark everything, and
7 sure enough, there were Pepco and Washington Gas line that
8 ran underneath where, where the front of the addition would
9 have been. All right? We were told in no certain word that
10 we couldn't, we could not put it in that location.

11 So if you look at my, the initial plan, the
12 left-side addition originally called for a solid front, all
13 right, on the bottom. What we built was an opening so that
14 we could straddle the Washington Gas and the electric power
15 line, all right, and we had to move it back far enough so
16 that we could avoid everything. And so as a result, that
17 addition was pushed back maybe five feet, all right, from
18 what it was.

19 Peter Gibson, on the 28th, came out, looked at it.
20 I explained everything to him. All right. I explained to
21 him about the windows. I explained to him about some of the
22 wind bracing issues and such, and he said he was fine with
23 it. All right? He told us, you know, go ahead, keep
24 moving. There was a board meeting on the 17th. All right.

25 Q What month? Of what month?

1 A July 17th, 2013, and the only reason I knew about
2 this was because Chuck told me that there was a meeting, all
3 right, and he suggested that I go. I'm sorry. Tania
4 suggested that I go. All right. I went and I asked Beth to
5 come with me, all right, along with Lance, just to, you
6 know, have a second, a third, you know, ear in case, you
7 know, what I heard, you know -- I mean, if I ever had to
8 testify, you know, somebody else could testify on my behalf.
9 And the first issue was those variations, all right, that
10 were made on the house.

11 Raj, at that point, said they were minor. He --
12 well, first thing he said, he had compared my DPS, DPS plans
13 with the plans that were submitted, and they said they were
14 identical. The second thing he said, those minor things,
15 that the changes were not of great consequences; he didn't
16 care. The whole bulk of that meeting -- which the rest of
17 that meeting may have lasted another 45 minutes to an hour
18 -- was, when are you going to finish, okay, and I talked
19 about finishing at the end of the year, which, December
20 31st. And then the issue was, well, if you don't finish,
21 what penalty can we impose on him, all right, all right,
22 like some sort of, you know, like a, sort of construction
23 delay. And I said to them, I said, I don't think anybody
24 else in this community has ever been subjected to that, but
25 tell me something reasonable and I'll consider it. Well,

1 nothing was ever talked further about it, okay, and as far
2 as I was concerned, I was given the green light. All the,
3 quote, stuff that were of issue, you know, I was, I had been
4 given a blessing: keep moving, go ahead, continue
5 construction.

6 So the next phase was the garage. All right? We
7 put on the sidewall. We put on the trusses and put on the
8 sheathing, and shortly after that, we got a -- on the 11th
9 of September, Peter came by, Peter Gibson, and looked at it,
10 and I kind of explained to him, and I explained to him, I
11 said, look, the reason -- I said, the reason I lowered the
12 height of the foyer roof in relationship to the garage is
13 because, I said, if you look at the height of the garage and
14 look at, look at my existing roof, all right, there was a
15 difference of about four feet. I said, it looks so odd.
16 Okay? I thought by breaking this up, okay, it would kind of
17 soften the transition. I mean, again, I wasn't wed to any
18 of this, and I told him, I said, this is simple correction
19 to be made. I said, I can get, you know, the truss
20 manufacturer to give me a repair schedule, we can change
21 whatever. All right. He said, okay, and I guess one or two
22 days later he sent me an e-mail, said, well, I don't
23 understand everything, can Raj come up, and that was on the
24 14th of September.

25 Raj Barr, Lee Alford, and Peter Gibson came to my

1 house about 3:00, 4 o'clock in the afternoon, all right, and
2 looked at the project, and the first thing Raj said to me,
3 it's too high. I said to him, I said, well, look at the
4 plans. I pulled out the plans. I had them with me. I
5 pulled out the plans. I said, look, Raj, this is 4-12; tell
6 me how I cannot be where I'm at if I follow 4-12. His
7 response was really quite interesting, was, I'm not an
8 architect, don't ask me about that. It was -- you know, I
9 said to him, I said, you're an architect, tell me how you,
10 or how can I not be where I'm at if it's 4-12. Flat out
11 would not even, you know, listen to it. All right? You're
12 in violation.

13 The next thing I knew, I got a letter from him,
14 all right, saying that I'm in nonconformance, bring it to
15 conformance. I'm thinking, how can I bring it to
16 conformance? You know, I mean, it was one of these
17 questions, I mean, there's no answer to it. Okay? All
18 right. How can I do something that I can't do? All right.

19 And then, you know, we had that meeting, I mean,
20 that board meeting on the 7th, all right, where Raj wasn't
21 there. Peter Gibson chaired it. All right. The meeting
22 was whether to take me to the CCOC. It was voted four-two
23 not to take me to the CCOC but to try to work this thing
24 out. Only reason I knew about that meeting, again, was
25 because I got a call from Chuck.

1 All right? Otherwise, I wouldn't have known that meeting
2 was going to take place.

3 Q When you say Chuck, you mean Charles Bruno?

4 A Charles Bruno.

5 Q When you say Beth, you mean Ms. Bentolila?

6 A Right.

7 Q Okay. All right. Let me, let me see if I can
8 break this down a little bit. Okay? When the site visit
9 happened on September 14th or September 15th with
10 Ms. Alford, Mr. Gibson, and Dr. Barr, what was the primary
11 concern at that point?

12 A Well, Peter said that he didn't understand. Okay?
13 All right.

14 Q Understand what?

15 A He didn't understand the roof issue.

16 Q Okay.

17 A He says, you know, it's better to have Raj there.
18 Okay?

19 Q And so was that the focus of that meeting?

20 A Right.

21 Q Okay.

22 A There was something else, too, all right, I need
23 to -- there's been testimony before the Court that, about me
24 stopping the work or not stopping the work and such. Lee
25 Alford was the one that told me, you better stop work now,

1 don't do anymore. All right? So it's been almost a year we
2 haven't done anything.

3 Q When was that, when you were told that?

4 A September 14.

5 Q Okay. Now, just to be clear, you did do a little
6 bit of work afterwards to your roof, right?

7 A Yeah. We attempted to put some flashing on the
8 edges, you know, to hold the felt paper down, to -- I mean,
9 that roof is porous. I mean, when it rained, like last
10 night, it rains right down to the, you know, into the
11 existing garage. All right? All we were trying to do was
12 minimize some of that water penetration. All right.

13 Q All right. When did you become aware that this
14 matter was actually taken to the CCOC?

15 A I don't know, probably sometime in early November.

16 Q Okay. And how did you become aware of it?

17 A I think I became aware of it when my attorney said
18 that they had filed something.

19 Q So the board never told you?

20 A No.

21 Q Okay. Were you aware of the vote that took place
22 to take it to the CCOC?

23 A No.

24 Q When did you become aware that a vote was in fact
25 taken?

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1 A I mean, this came out in these hearing.
2 Q I want to go back to the various meetings that you
3 talked about. All right? Did you ever receive notices for
4 any of the meetings you talked about?
5 A I received selective notices.
6 Q Okay. Did you receive a notice for the July 17th
7 meeting that you were talking about?
8 A No.
9 Q And what about the October 7th meeting, 2013 --
10 did you receive a notice for that?
11 A What day?
12 Q October 7, 2013.
13 A No.
14 Q And then the October 28th, 2013, meeting, did you
15 receive a note for that?
16 A No, but I did receive a notice, okay, from Raj
17 Barr, all right, telling me about the vote, all right, on
18 the deck, the new deck submission that was required by the
19 CCOC and for a board meeting that was held in May of 2014.
20 I got an e-mail, all right, from him, saying, you know, that
21 they were going to consider that that night. I've gotten
22 some stuff recently. Okay? I had two. One was put in my
23 mailbox, and then I got something last week that was mailed.
24 Q Okay. And what was that that you were mailed last
25 week? Do you recall?

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1 A It was a notice of a board meeting set for August
2 6, two days from now, and plus I received this from the
3 architectural committee.
4 Q Okay. Well --
5 MS. ROBESON: Well, what is that?
6 MR. MOHAMMADI: I haven't marked it yet, but --
7 MS. ROBESON: Okay.
8 MR. MOHAMMADI: -- I guess we'll do that now.
9 MS. ROBESON: So this will be 149. Can you tell
10 me what this is?
11 (Exhibit No. 149 was marked
12 for identification.)
13 THE WITNESS: This --
14 MR. MOHAMMADI: So this is the architectural
15 committee notice to neighbors about changes.
16 MS. ROSEN: Well, I think, shouldn't the witness
17 identify the document?
18 MS. ROBESON: Can you tell me what it is, Mr. --
19 THE WITNESS: My neighbor at 10602 Vantage Court
20 apparently had installed an air-condition outside unit at
21 the rear of their house on the upper level.
22 MS. ROBESON: So did you get this in the mail?
23 How did --
24 THE WITNESS: No. It was put in my mailbox.
25 MS. ROBESON: So --

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1 MR. MOHAMMADI: I believe there's actually a
2 second page to it, although I don't --
3 THE WITNESS: Right. The second page, it says, if
4 I had a complaint, I can --
5 MR. MOHAMMADI: It's this one, but I just got
6 that.
7 THE WITNESS: -- I can --
8 MS. ROBESON: 149 is notice of exterior
9 alteration, is that what it is, at --
10 MR. MOHAMMADI: I think that's fair.
11 MS. ROBESON: -- 10602 Vantage Court? Any
12 objections, Ms. Rosen?
13 MS. ROSEN: I guess I don't know what the
14 relevance of this document is at this point.
15 MS. ROBESON: Mr. Mohammadi.
16 MR. MOHAMMADI: I mean, he said that he received a
17 note. This is one of the notices he did receive recently.
18 So that's the only reason I have it in there right now,
19 but --
20 MS. ROBESON: Oh, okay.
21 MR. MOHAMMADI: -- it's --
22 BY MR. MOHAMMADI:
23 Q Well, what is this pertaining --
24 MS. ROBESON: Well, that --
25 MS. ROSEN: Well --

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1 MS. ROBESON: -- if it's just to, just to --
2 you're saying it's just to save some time? He's admitting
3 when he does get notice and that backs --
4 MR. MOHAMMADI: Correct, but there's an actual
5 second part to this, if I can inquire.
6 MS. ROBESON: Okay. I'll give you some leeway.
7 MR. MOHAMMADI: Thank you.
8 BY MR. MOHAMMADI:
9 Q Do you know why you received this notice?
10 A Right. The neighbor at 10602 Vantage Court had
11 installed an outside air-condition unit on the, I guess it's
12 on the second floor at the rear of their house, and there
13 was a complaint, all right, all right, and the HOA gave them
14 the opportunity, or to submit an after-the-fact application
15 for approval of this unit.
16 MS. ROBESON: Okay.
17 THE WITNESS: All right.
18 MS. ROBESON: I'm going to --
19 MS. ROSEN: I'd like, well, to the extent -- this
20 notice doesn't indicate any of that, and I don't know what
21 his foundation is for claiming what, what the, what the HOA
22 is allowing this other person to do in terms of submitting
23 an application.
24 MS. ROBESON: Well, do you have -- how do you know
25 that the --

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1 THE WITNESS: He told me.
2 MS. ROBESON: Okay. Well, I'm going to let it in.
3 Hearsay is admissible, and I'm going to give it the weight
4 it deserves.
5 (Exhibit No. 149 was received
6 in evidence.)
7 BY MR. MOHAMMADI:
8 Q Is this the notice the architectural committee is
9 supposed to send when somebody's doing changes to their
10 property and -- send it to their neighbor, to that person's
11 neighbors?
12 A Right. In other words, they're supposed to give
13 it to their immediate neighbors. If their immediate
14 neighbors have any objections to, you know, what is being
15 done, all right, this would be a form that you can send back
16 to the architectural committee, notifying of your concern,
17 all right, and generally speaking, then they would then kick
18 this up to the full board.
19 Q Okay.
20 MS. ROSEN: Well, I'm going to object to him being
21 able to say what -- he basically seems to be testifying as
22 to what board or architectural committee procedures are, and
23 I don't know that he's really qualified to do that. I
24 don't --
25 MR. MOHAMMADI: Well --

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1 MS. ROSEN: -- know what his basis is for that.
2 MS. ROBESON: Well, he has to follow them. So I'm
3 going to let him testify as to his understanding.
4 MS. ROSEN: All right. That's fine, his
5 understanding, but I mean, I don't want him to --
6 MS. ROBESON: Isn't that what the procedures say,
7 if there's an objection, the board makes the decision?
8 MS. ROSEN: Well, I'm just saying that he, you
9 know, I mean, in terms of him, the way he was testifying. I
10 don't have any problem with him testifying as to what his
11 understanding of something is, but I just don't, you know --
12 but it's not for him to testify as to what the actual
13 procedure is at this point --
14 MS. ROBESON: Oh.
15 MS. ROSEN: -- you know. It's a, kind of a subtle
16 difference, but he's not testifying as an architectural
17 committee member or a board member on an official procedure.
18 He's --
19 MR. MOHAMMADI: He's testifying --
20 MS. ROSEN: -- testifying his understanding.
21 MR. MOHAMMADI: -- as a member of the community
22 that has to follow the rules that are prescribed.
23 MS. ROBESON: That's right.
24 MS. ROSEN: Okay. Well, that's, just want it
25 clear that that's what he's testifying as.

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1 BY MR. MOHAMMADI:
2 Q Okay. Have you, besides this July 18, 2014,
3 notice, since you've lived at the community, have you ever
4 received a notice like this before?
5 A Never.
6 Q So this is the first time you've ever received
7 such a notice?
8 A For example, when Beth, Beth's house burnt down, I
9 didn't get any notice. All right. When my neighbor Carl
10 Baker, you know, put on an addition, all right, I didn't get
11 a notice. When my neighbor that lived at 10602 Vantage
12 Court put on their addition, not these current neighbors,
13 but the previous neighbor, I didn't get a notice. When
14 Beth, I mean, when Lynn Gowan, all right, made changes to
15 her exterior, I didn't get a notice.
16 MS. ROBESON: Was that the playhouse I saw
17 referenced in some of the minutes? Well, it doesn't --
18 THE WITNESS: She, when she first moved in, she,
19 she did a lot of work, one of which was the vinyl siding,
20 replaced the windows, vinyl siding. She removed windows and
21 such, you know. I never received any notice about that.
22 BY MR. MOHAMMADI:
23 Q Once you found out that the HOA had filed the CCOC
24 action, did you do anything with respect -- did you do
25 anything else with respect to the house?

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1 A No. Nothing's been done on the house since the
2 14th of September.
3 Q Okay. Did you submit anything new to the HOA with
4 respect to the house?
5 A December 16th, 2013, I submitted some adjustments,
6 revision to the house, okay, that would bring, quote,
7 everything back in line.
8 Q Okay. And would that have been Exhibit -- showing
9 you what's been marked as Exhibit 90.
10 A Yes.
11 Q Is this it?
12 A Yes.
13 Q Okay. And if you don't mind, this also includes
14 at least two drawings of the front and rear elevations?
15 A Yes.
16 Q Okay. Do you know who prepared those set of
17 drawings?
18 A Gusto Gasparie, Gasparie (phonetic sp.).
19 Q Once you submitted those December 16th plans, did
20 the board at any point act upon them in any way?
21 A No.
22 Q Do you know what the status of this application is
23 at this point?
24 A According to our bylaws, I mean, they had 45 days
25 to act and, failure to act within 45 days, deemed to be

1 approved.

2 Q I want to briefly talk about some of these issues,

3 and you've already touched on them, but I want to raise them

4 one by one. With respect to the left side of your house,

5 the addition that you built, you had to deviate from the

6 plans, correct?

7 A Yes.

8 Q Okay. And --

9 A The utility companies would not allow me to build,

10 all right, over their lines.

11 Q Okay. Was there any other way for you to build

12 that than what you have there now? In other words, to stick

13 with the approved plans but still comply with what the

14 utility companies told you, is there any other way you could

15 have built this?

16 A The general answer to that is, if you throw enough

17 money at it, the answer is yes. Okay? If I'm willing to

18 spend a couple of thousand dollars with a structural

19 engineer, okay, if I'm willing to make some substantial

20 changes, okay, in terms of the construction methods,

21 absolutely, okay, but it would have been very costly.

22 Q Okay. With respect to the wind bracing issues

23 that were raised, what are those wind -- first of all, what

24 is, what's the issue with that?

25 A The county has a prescribed wind bracing

1 procedure. All right? Typically it's 27 inches of solid

2 material on the corners. All right. You can't have the

3 windows, you know, extend closer than 27 inches. All right.

4 That's their prescribed method. If you want to get an

5 engineer involved and change the way some of the building

6 construction techniques, yes, you can, you can build it

7 almost any way. All right. Again, it's just a cost issue.

8 Q And what portion of your house did this wind

9 bracing issue affect?

10 A It affected the two little porches on the left

11 side of the new addition -- on the second floor of the new

12 addition on the left side and on the right-side new addition

13 of the garage. I mean, both of these were to replicate kind

14 of a little balcony, all right, and they were completely

15 non-functional. I mean, they were only going to be a foot

16 deep, but it was just to create this, this look. And all of

17 these elements were elements that Raj Barr wanted in these

18 plans.

19 I mean, I mean, I sat here listening to him about

20 this house looking like a townhouse. Well, that was his

21 idea. He was so concerned about massing. He wanted this

22 in-and-out look, all right, on the house and that's where

23 the genesis of these, you know, this, things being pushed

24 back and forth. All right.

25 Q When you say massing, could you, could you

1 elaborate what you mean with massing? What's, what's

2 massing?

3 A It took me a long time to understand it myself.

4 Okay? Massing, as an architect, means what he -- having a

5 big broad surface. All right. It just looked like this one

6 big mass. So instead of being, let's say, 60 feet of flat

7 surface, he wanted 20 feet, all right, and then break in

8 another 20 feet, then break in, so you have this kind of

9 in-and-out look, so it's not just one continuous flat

10 surface. And this, the genesis of this townhouse look is

11 really his. All right? It's not mine. All right.

12 Q Okay. And so how does this massing thing play

13 into the balcony look that you're describing?

14 A Well, again, it was all of this in and out that he

15 wanted. Okay?

16 Q Okay.

17 A I mean, you know, we complied because, I mean,

18 fine. I mean, we weren't -- I wasn't married on any

19 particular design that I had to have and such, but I mean, a

20 one-foot balcony? I mean, it's just worthless. All right?

21 It's just a look.

22 Q Okay. What about what Mr. Gibson was testifying

23 to, the trim on the back of your house -- what have you

24 changed on that?

25 A Nothing. The only thing we did was to replace the

1 T1-11 in the rear of the house with a newer version of T1-11

2 that's, that seemed to be a little bit better.

3 Q Okay. And what part of the house did that affect?

4 A Just the rear.

5 Q Right, but --

6 A But I have not increased it. I have not built it.

7 I haven't put a roof up or any of that.

8 Q Have you done any work on the rear of the house?

9 A No.

10 Q Okay. So have you done any work that would

11 involve changing or installing or doing anything with trim

12 on the back of the house?

13 A No.

14 Q So the trim that's currently there is the same

15 trim that existed prior to any construction?

16 A That's correct.

17 Q What about with windows -- any, any issues with

18 the windows?

19 A Where? In the front or the back?

20 Q Anywhere. Any issues with the windows?

21 A The two front windows, the one on the living room

22 and the one above the living room. On the original drawing,

23 the window upstairs, if you look at the plan, it's smaller

24 than the window downstairs. The window downstairs is a

25 three-sectional slider, operable on left and right side with

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1 a picture window in the middle, and upstairs it's just a
2 single slider. However, when I changed that -- the opening
3 for, the existing opening, all right, of the house was eight
4 feet -- what I did was I re-put back in an eight-foot
5 window. All right? I was able to get just a slider with
6 two, with two panels instead of having to go to a
7 three-panel slider. All right? That's all I did. Upstairs
8 I had to go to a slightly larger window anyway, just to
9 meet, you know, current egress code. All right?
10 So the answer is yes, we changed the window
11 downstairs, went from a three-sectional, from a
12 three-sectional --
13 MS. ROBESON: Wait. Which window are you talking
14 about that had to meet egress code?
15 THE WITNESS: On --
16 MR. MOHAMMADI: 148, I believe, is what he's
17 looking at.
18 MS. ROBESON: Oh.
19 BY MR. MOHAMMADI:
20 Q Why don't we look at 126 since there's no dispute
21 as to what that is.
22 A Okay. On --
23 MS. ROSEN: Which page are we on?
24 THE WITNESS: On A4, all right, on A4 --
25 MS. ROBESON: The front elevation.

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1 THE WITNESS: Right -- if you look at the upper
2 window where the brick section is --
3 MS. ROBESON: Yes.
4 THE WITNESS: -- all right, that window is
5 actually smaller than the, than the existing window opening.
6 So in other words, to do that window, I actually would have
7 had to bring the walls closer. And it's interesting that
8 you bring this up about this 126 versus this one.
9 MS. ROBESON: Well, wait. First answer my
10 question.
11 THE WITNESS: Oh.
12 MS. ROBESON: The window on the front elevation,
13 on A4 on 126, is the existing window smaller or -- you're
14 saying the window as shown had to be bigger.
15 THE WITNESS: The existing window that these two
16 windows replace, the rough, the opening are actually the
17 size of the lower window. The upper window, if I had
18 complied with the drawing exactly, I would have actually had
19 to bring the two sides closer together to make a smaller
20 window. All right? All I did was, whatever I took out I
21 just brought back in. All right.
22 MS. ROBESON: Well, why does it show then as a
23 smaller window on the plan?
24 THE WITNESS: Well, that's interesting too, all
25 right, and maybe this will shed --

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1 MS. ROBESON: But you didn't have to do it for
2 egress because egress --
3 THE WITNESS: Well, the --
4 MS. ROBESON: -- it would have to be, I mean, you
5 have to have a net clear opening. Most --
6 THE WITNESS: Well, I had to --
7 MS. ROBESON: -- people don't change a window to
8 make it smaller, because egress keeps getting bigger.
9 THE WITNESS: Okay. If I may explain to the
10 Court, Tania Bruno drew up these set of plans. They are
11 really conceptual plans. Okay? I mean, I, I gave her
12 pretty much free rein in terms of doing it. My purpose was,
13 get me a set of plans that I can, that's approved, you know,
14 by --
15 MS. ROBESON: Okay. All right.
16 THE WITNESS: All right. She made some element
17 changes here. I didn't -- to me, it wasn't that big of a
18 deal, and I didn't think it was that big of a deal to the
19 HOA. She actually made the upper window slightly smaller.
20 Okay?
21 MS. ROBESON: Okay.
22 THE WITNESS: This window upstairs, for egress
23 purpose I need a minimum of 24 inches, clear opening.
24 MS. ROBESON: Net clear opening.
25 THE WITNESS: Net clear opening. So, in other

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1 words, a four-foot window doesn't meet, slider, doesn't meet
2 egress --
3 MS. ROBESON: Yes. All right.
4 THE WITNESS: -- all right, because I got, I got
5 the frame to deal with. So what I did was, whatever size
6 the opening was, which was eight feet, I just put back the
7 same size window, all right, that was there before. All
8 right? Those changes I made, but the other thing I want to
9 bring up, if these plans are dated 2/22/11, these plans, the
10 smaller plan, the --
11 MS. ROBESON: You're looking at 148? Is he
12 looking at 148?
13 THE WITNESS: I'm --
14 MR. MOHAMMADI: Yes.
15 THE WITNESS: Right. I'm looking at both.
16 MS. ROBESON: I saw that. They're --
17 THE WITNESS: You saw the revision date?
18 MS. ROBESON: -- dated 4/6/11.
19 THE WITNESS: I guess my point is, is that there
20 were so many plans that had been back and forth, back and
21 forth. Okay? The only thing I relied on was what I have in
22 the final approval, all right, and made my DPS drawings
23 based on that. All right.
24 MS. ROBESON: Is it a WSSC easement that you can't
25 build over the addition or is it Pepco?

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1 THE WITNESS: It wasn't WSSC. It was, it was
2 Washington Gas and Pepco.
3 MS. ROBESON: Oh, okay --
4 THE WITNESS: In fact --
5 MS. ROBESON: -- because WSSC won't let you put --
6 okay. All right.
7 THE WITNESS: But even after we did that, we hit
8 the gas line.
9 MS. ROBESON: All right.
10 BY MR. MOHAMMADI:
11 Q Now, with respect to this house that you have
12 currently, working on, how much longer, if you were to start
13 today, how much longer would it take you to complete
14 construction?
15 A Six months. You know, it's all --
16 MS. ROBESON: Well, you're saying as per the, as
17 per Exhibit 148, without changing anything, just going
18 forward with 148?
19 THE WITNESS: At this point, correct. At this --
20 MS. ROBESON: Or are you saying with going forward
21 from the plans you submitted to Peter Gibson in December?
22 THE WITNESS: Either one. At this point, in order
23 for me to put my siding, the county has to give me their
24 closing, a closing insulation inspection, two inspections,
25 all right, and then once that's done, the siding can

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1 probably go up in less than two weeks, all right,
2 painting --
3 MS. ROBESON: Well, are you saying you want to do
4 HardiePlank or --
5 THE WITNESS: No. I want to use, I want to use
6 T1-11, existing T1-11 that's on the house now, but it's
7 called -- it's a new product called SmartSide. It's T1-11
8 with a plastic coating on it.
9 MS. ROBESON: What's it called?
10 THE WITNESS: SmartSide, S-M-A-R-T Side.
11 MS. ROBESON: I have T1-11. So --
12 THE WITNESS: Okay. This is better, SmartSide.
13 MS. ROBESON: Okay. Now, was that in the plans
14 you gave Peter, the SmartSide? Was that in the plans you
15 gave Peter Gibson?
16 THE WITNESS: You know, I don't know, but I guess
17 the bottom line is, I have T1-11 on my house now; why can't
18 I -- I mean --
19 MS. ROBESON: No, we're not arguing T1-11. I'm
20 just trying to understand what the HOA has as opposed to
21 what it --
22 THE WITNESS: SmartSide is T1-11.
23 MS. ROBESON: No, no, no. I know. I'm trying --
24 in terms of your requests to the HOA.
25 BY MR. MOHAMMADI:

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1 Q When you submitted your December 16, 2013, plans,
2 what type of siding were you requesting with that to be --
3 A Vinyl siding.
4 MS. ROBESON: Okay. So that's still the vinyl
5 siding, and now you're saying, I can do this T1-11
6 SmartSide?
7 THE WITNESS: I was always willing to give -- I
8 mean, they wore me out, okay, with the siding issue, all
9 right, even though, you know, it's really an economic issue.
10 All right. The siding, the vinyl siding will last longer,
11 it's easier to put up, all right, and it's slightly cheaper
12 to, product. T1-11, even the SmartSide, I got to put it up,
13 I got to caulk it, I got to paint it and got to maintain it.
14 All right? So, I mean, it's an economic issue. I mean, I'm
15 willing to give, I was -- they know that -- I was willing to
16 give it up. All right. What I'm not willing to use is, I'm
17 not willing to use HardiePlank vertical siding.
18 MS. ROBESON: Well, then I guess the question is,
19 why did you propose it?
20 THE WITNESS: I never did. That was one of the
21 things. He wrote in the letter, saying -- I never --
22 MS. ROBESON: Who wrote?
23 THE WITNESS: Raj, Raj Barr, in that, that May
24 letter, put HardiePlank. I never said it. All right? I
25 never agreed to that.

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1 MS. ROBESON: Okay.
2 THE WITNESS: That's one of the things -- I mean,
3 on one hand, when we got the approval in May, we were
4 delighted after all these years, but on the other hand, we,
5 I felt we were never given a chance to explain what we
6 wanted. All right? It was just kind of like, here's the
7 bone, you take it or leave it.
8 MS. ROBESON: Okay. Mr. Mohammadi.
9 MR. MOHAMMADI: Yes.
10 BY MR. MOHAMMADI:
11 Q You currently have a claim against the board and
12 Raj, Dr. Raj Barr, correct?
13 A In this case, yes.
14 Q Okay. What's the issue?
15 A No one else in the community has ever been treated
16 like, or have been dealt this way. This is completely
17 unfair. All right? I mean, were we wrong in the CCOC case?
18 Yeah, we were wrong, okay, but as an example, all right,
19 after spending, having to pay their \$2800 legal fees for
20 building a deck that was in noncompliance, all right, and
21 ordered by the CCOC to resubmit the plans, well, we
22 resubmitted exactly what was built. In five minutes it was
23 approved, no discussion. I'm sitting there thinking, what
24 was this, what just took place for the last year and a half?
25 All right?

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1 Example on that particular thing, yeah, we were,
2 we were negligent in terms of not preparing. We were
3 negligent in not willing to step up to the plate to pay the
4 kind of money that it's costing us now in legal fees to
5 defend ourself, all right, because we didn't understand the
6 issue. Raj had came, come to the property on February 17th,
7 2012, with Peter Gibson and Tania Bruno to look at the deck
8 when it was first being built. All right? Raj was the one
9 that says, oh, I understand why you're setting this thing
10 back, okay, at one foot; you got an air condition, you got a
11 window, you don't want to, you can't impact on that. All
12 right? He saw that -- he saw the block wall that was built:
13 Oh, I see you cut the corner to, you know, to save the tree.
14 All right?
15 I mean, we thought we got a blessing from him and
16 then two months later said, tear it down. All right? And
17 then we kept asking, well, what do you want us to do? His
18 response was, put it back the way it was, and I'm thinking,
19 well, you said it was okay because you understood about the
20 window and the air condition, you understand I'm saving a
21 tree, what do you want me to do? All right? Never gave us
22 a straight answer. It wasn't anything that we cared about.
23 All right? If you told us what you wanted done, we would
24 have been happy to do it. All right? Never got a straight
25 answer from him.

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1 Q Okay.
2 A So, you know, CCOC, we lose \$2800, all right, and
3 we resubmit a set of plans exactly the way it is, gets
4 approved. You tell me. I don't understand.
5 Q Okay. So your claim is that you are being sort of
6 singled out and being treated differently than other
7 homeowners in the community?
8 A If they could show me one other person in the
9 community in the 40-some years that's been treated like us,
10 I'll shut up and go away.
11 Q With respect to Dr. Barr specifically, what's your
12 claim against Dr. Barr specifically?
13 A He puts himself out as this world-renowned
14 architect, and he can't even deal with slope. All right? I
15 mean, a simple issue of slope, you know, he just ignores it.
16 Okay? He tries to tell the Court that, you know, that
17 somehow or another, if you stick-built this, you know,
18 versus truss, you can lower the height. All right?
19 Q Well, but how is he -- I'm not talking about his
20 credentials. I'm not talking about his, you know, knowledge
21 of architectural design or drawing or building. I'm talking
22 about, what about Dr. Barr in his dealings with you causes
23 you to have brought this claim?
24 A He just has not been honest with us. Okay? I
25 mean, if he has ever said one -- if he ever told us

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1 specifically, if he can produce one document to the Court
2 that tells us exactly what he wants done, okay, we would
3 have been happy to do it. It's always been this kind of
4 fluff. All right? All right? Put it back in the same way.
5 Well, if you understand that I got an air condition, a
6 window that impacts the deck, how do you want me to correct
7 it? Just trying to get a simple answer from him has always
8 been difficult.
9 Additionally, another example, how many times has
10 he come and says, keep going, good job, move on, and then
11 turns around, I'm taking you to court? I mean, it's always
12 one foot in, one foot out.
13 MR. MOHAMMADI: Nothing further.
14 MS. ROBESON: Ms. Rosen.
15 MS. ROSEN: I think we'd like to take a little
16 break.
17 MS. ROBESON: Okay. We'll take a 10-minute break.
18 We'll be back at five till 3:00.
19 (Whereupon, at 2:44 p.m., a brief recess was
20 taken.)
21 MS. ROBESON: We're back on the record.
22 Ms. Rosen.
23 MS. ROSEN: Okay. Bear with me for a second.
24 CROSS-EXAMINATION
25 BY MS. ROSEN:

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1 Q Okay. Mr. Ball, now, for the record, you are not
2 currently the owner of 10600 Vantage Court, is that correct?
3 A Yes.
4 Q Okay. And, in fact, you have not had any
5 ownership interest in 10600 Vantage Court since September of
6 2008, is that correct?
7 A Yes.
8 Q Okay. And in September of 2008, you and the
9 co-owner at that time was Ms. Sivinska, is that correct?
10 A Yes.
11 Q Okay. And you conveyed that property to
12 Ms. Sivinska and to your son Michael Ball, is that correct?
13 A Yes.
14 Q Okay. And at the time that you conveyed the
15 property to Michael Ball with Ms. Sivinska, she was your
16 wife at that time, Ms. Sivinska?
17 A Yes.
18 Q Okay. Okay. Now, in or around June of year 2008,
19 the CCOC, in Case No. 720G, ruled against you in a case that
20 was filed by the association which involved your
21 construction, is that correct?
22 A I'm sorry. Say that again.
23 Q In or about June of 2008, the CCOC, in Case No.
24 720G, ruled against you in a case that was filed by the
25 association which involved construction on that property, is

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1 that correct?
2 A Is this the issue of the shed, enclosed shed on a
3 deck?
4 Q Yes. That would have been the first CCOC case.
5 A Yeah, they ruled against both me and my wife.
6 Q Okay. And in that case, isn't it correct that
7 the, that the CCOC assessed attorney's fees against you
8 based upon the bylaw provision that provided for an award of
9 attorney's fees? Is that correct?
10 A Yes.
11 MR. MOHAMMADI: Objection. I'm not sure what the
12 relevance is, but --
13 MS. ROSEN: Well, I'll get there.
14 MS. ROBESON: Well, okay.
15 MS. ROSEN: Okay.
16 MS. ROBESON: You got to wait for me to make a
17 ruling before you respond. Go ahead.
18 BY MS. ROSEN:
19 Q Okay. Now, is it not a fact that your conveyance
20 of 10600 Vantage Court to your son Michael Ball occurred
21 just a few months after the ruling in that CCOC case that
22 assessed attorney's fees against you?
23 A The date is whatever -- whatever date the
24 conveyance is, is whatever it is.
25 Q Okay. So you agree that the conveyance occurred

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1 subsequent, shortly subsequent to the assessment of
2 attorney's fees against you in that case, isn't that
3 correct?
4 A I'm not sure what date. Okay? I'm just saying,
5 you know, you know, I conveyed the property to my son. All
6 right? Whatever that date is, all right, if that's before
7 or after the CCOC case, that's it. I have -- you know, I'm
8 not saying it's not. I just don't remember.
9 Q Okay. Was the assessment of the attorney's fees
10 against you in that case, which was based on the ownership
11 of the properties, was that one of the reason why you wanted
12 to get your name off of that property?
13 A No.
14 Q Then what --
15 MR. MOHAMMADI: Objection.
16 MS. ROBESON: Basis?
17 MR. MOHAMMADI: Again, I just don't know what the
18 relevance is to this case.
19 MS. ROBESON: I'm going to let it in. It does --
20 I'm not sure, but I'm going to let you continue, and then
21 hopefully you'll get to some credibility issue.
22 BY MS. ROSEN:
23 Q So I think, I don't think -- well, the question, I
24 guess, at this point, was, what was the reason you decided
25 to get your name off the property then, shortly after the

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1 award of attorney's fees against you?
2 MR. MOHAMMADI: Objection.
3 MS. ROBESON: Does it matter to this case?
4 MS. ROSEN: Well, I think this case involves, I
5 mean, this case involves --
6 MS. ROBESON: I mean, I know what you're implying
7 -- that he just did it to avoid having to pay the attorney's
8 fees?
9 MS. ROSEN: Well, I'm implying, also, I mean,
10 there -- our position is that there's a long history on the
11 part of Mr. Peter Ball in terms of defying the association
12 and resulting in litigations, which we have won. And at
13 this point, my -- you know, I think it's goes to a bad-faith
14 argument, which we are claiming that he's been acting in bad
15 faith, because by taking his name off of the property, he's
16 basically trying to avoid the assessment of attorney's fees
17 against him in the event he, he loses a case. So our --
18 that's basically what I'm trying to get at here.
19 MR. MOHAMMADI: Just a few, if I may respond to
20 it. First of all, as Mr. Ball testified in his direct, he
21 testified that any fines and fees that were awarded he paid
22 off. So if she wants to question about how he paid it, she
23 can do that, but saying you did it to avoid it, when he said
24 I paid it, is, is not proper. Second of all, with respect
25 to a bad-faith claim, they brought this action against Peter

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1 Ball.
2 MS. ROBESON: Really. I mean --
3 MS. ROSEN: I understand, but we're going to be
4 seeking, or with regard to Michael Ball, we generally seek
5 the attorney's fees based upon --
6 MS. ROBESON: Well, then the question is to ask
7 Michael Ball.
8 MS. ROSEN: Well, I'm saying, with regard to Peter
9 Ball, we seek attorney's fees based upon bad faith under
10 the, you know, under the statute with the CCOC. We can't
11 get attorney's fees against Michael Ball based upon the, I
12 mean, Peter Ball, based on the governing documents because
13 he's not the owner, but we can seek them against Peter Ball
14 on other grounds in the CCOC statute.
15 So our position is, is that, you know, that he is
16 basically -- that his, his defense of this suit and his
17 counterclaim is in bad faith, and I think this kind of goes
18 to the issue based upon the long history of this.
19 MS. ROBESON: Okay. You can ask him, but this
20 isn't -- there could be so many reasons somebody transfers
21 property. So if he's, if he's --
22 MS. ROSEN: Well, he can say --
23 MS. ROBESON: I just find it -- let me collect
24 what I'm trying to say. I find it -- I know there's bad
25 feelings here, and I know there's bad faith, but some --

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1 well, you can ask him. Did you, did you transfer the
2 property to avoid paying attorney's fees in this case?
3 THE WITNESS: No. I paid it.
4 MS. ROBESON: No, in this case.
5 THE WITNESS: No. Oh, I'm sorry. I'm sorry.
6 MR. MOHAMMADI: Again, this is 2008. This case
7 didn't even exist --
8 MS. ROBESON: No.
9 MR. MOHAMMADI: -- until 2013. So I don't know --
10 MS. ROSEN: Well --
11 MR. MOHAMMADI: -- what is it, got premonition,
12 five years, knows five years down the line he's going to do
13 this?
14 MS. ROSEN: Well --
15 MR. MOHAMMADI: It just doesn't, it doesn't make
16 sense to ask that question with respect to this case.
17 MS. ROSEN: I believe --
18 MS. ROBESON: Okay. Just --
19 MS. ROSEN: All right. In the other, in the most
20 recent case --
21 MS. ROBESON: There is so, I'll be honest, there
22 is so much speculation and there is far -- well, I can't
23 think how to articulate what I -- if it occurs to me, I
24 will, but I mean, I'll let you go some.
25 MS. ROSEN: You know, one other question I had,

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1 you know, if that was not the reason, then what was the
2 reason he decided to get his name off the property a few
3 months after the assessment of an attorney fee award against
4 him?
5 MR. MOHAMMADI: Objection. Can we approach?
6 MS. ROBESON: Yes.
7 MR. MOHAMMADI: I'd like to argue this off the
8 record for a moment.
9 MS. ROBESON: We're going to go off.
10 (Discussion off the record.)
11 BY MS. ROSEN:
12 Q Okay. Now, Mr. Ball, when you conveyed your
13 interest in 10600 Vantage Court in September of 2008, you
14 did not advise the association that you were no longer the
15 owner of the property, isn't that correct?
16 A That's correct.
17 Q Okay. Now I'm going to ask you to look at what
18 was previously marked as Exhibit 74, and if you could
19 identify what that -- that document for me.
20 A Uh-huh, yes.
21 Q Okay. Now, at that point in time, that was dated
22 -- what's the date on that document?
23 A Pardon?
24 Q The date on that document?
25 A January 15, 2008.

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1 Q Okay. And what is that document?
2 A It's an application for architectural changes.
3 Q Okay. And that was an application that was
4 submitted by who?
5 A That's correct.
6 Q By who was that application submitted?
7 A Jeff Williams.
8 Q No. I said, who submitted the application?
9 A I did.
10 Q Okay. That was submitted by you at the time, and
11 you were the owner of the property at that time, correct?
12 A I'm sorry?
13 Q You were the owner of the property at the time
14 that that application was submitted?
15 A No. I don't, I don't know. Okay? I mean, it's
16 2008. You have the records in front of you whether I was or
17 not.
18 Q The first document here is a letter that is dated
19 January 15th of 2008, and it appears to be from you to
20 Mr. Jeffrey Williams, and it refers to enclosing an
21 application for 10600 Vantage Court. Okay? Is that what
22 this document -- what is that document? Identify what the
23 document is.
24 A It's an application for an architectural change.
25 Q Okay. And did you own this -- you owned the

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1 property on January of 2008 when you submitted this, is that
2 correct?
3 A I'm not trying to be evasive. I don't know.
4 Okay? I mean, the record speaks for itself.
5 MS. ROBESON: Well, well, do --
6 THE WITNESS: I mean, I -- well, you have the
7 deed.
8 BY MS. ROSEN:
9 Q Okay.
10 A You have the deed. You have the deed.
11 Q Okay. I will show you the deed.
12 MR. MOHAMMADI: I think we only had one copy of
13 the --
14 MS. ROSEN: Yes. I may have to just steal the
15 deed back from you, if that's okay, because I think that's
16 the one I gave you.
17 MS. ROBESON: Okay. Let me find -- there.
18 MS. ROSEN: Thank you.
19 BY MS. ROSEN:
20 Q Okay. Mr. Ball, I'm going to show you a document
21 which was previously marked as Exhibit 147.
22 A Yes.
23 Q Okay. Do you recognize that document?
24 A It's some sort of deed transfer.
25 Q Okay. Well, basically, up on the top it says:

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1 This deed, made this 10th day of September --
2 A Uh-huh.
3 Q -- 2008, by and between Peter L.H. Ball and Iryna
4 Sivinska, grantors --
5 A Uh-huh.
6 Q -- and Michael Ball and Iryna Sivinska, grantees.
7 A Yes.
8 Q That's the deed from which you and Iryna Sivinska
9 conveyed the property to Michael Ball and Ms. Sivinska,
10 correct?
11 A That's correct.
12 Q So prior to September, when this document, which
13 was previously marked as Exhibit 74 --
14 A Yes.
15 Q -- you were the owner of the property at the time
16 that --
17 A That's correct.
18 Q -- this was submitted, in January of 2008?
19 A That's correct.
20 Q Okay. Okay. I want to show you what, the second
21 page of that, of Exhibit 74. Can you identify what that
22 document is?
23 A It's the, it's the form for the architectural
24 change.
25 Q Okay. It's an application for approval of

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1 exterior architectural change, correct?
2 A Yes.
3 Q Okay. And this was -- oh, is that your signature
4 on the form?
5 A Yes.
6 Q Okay. And that was submitted January 15th of
7 2008?
8 A Yes.
9 Q Okay. So it would be fair to say that you were
10 familiar with the application process in that you knew, when
11 you wanted to file an application, you --
12 A Yes.
13 Q -- fill out a form?
14 A Yes.
15 Q This was not the first time you had ever submitted
16 an application to the association, correct?
17 A That's correct.
18 Q Okay. For how long have you lived at 10600
19 Vantage Court?
20 A Since 1995.
21 Q Okay. Okay. I believe that you previously
22 testified that you had purchased the property in 1995 with a
23 friend named I Ching Ku, is that correct?
24 A I didn't purchase. She purchased it.
25 Q You're not claiming that you were the owner of the

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1 property then in 1995?
2 A No, I was. I wasn't on the deed.
3 Q Okay. That's what I was trying to clarify. Would
4 it be fair to say that prior to -- let me see. When did you
5 -- when did you purchase the property? Let's just clarify
6 that.
7 A I'm not sure when I --
8 MR. MOHAMMADI: Objection as to relevance again.
9 MS. ROBESON: I'm going to let her -- I don't know
10 where you're going --
11 MR. MOHAMMADI: Okay.
12 MS. ROBESON: -- but I'm going to let you try and
13 develop it, give you some leeway. Go ahead.
14 THE WITNESS: I don't remember when I went on the
15 deed.
16 MS. ROSEN: Okay. Let me see if we can -- showing
17 that to you.
18 MR. MOHAMMADI: Is this to refresh?
19 MS. ROSEN: It's a deed, yes. So I just -- that's
20 his deed. So I just want you to look at it first and get
21 that in also.
22 MR. MOHAMMADI: Oh, you're putting it in as
23 evidence?
24 MS. ROSEN: Yes. It's the deed that I looked up
25 in the land records.

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1 MR. MOHAMMADI: That's fine.
2 MS. ROSEN: Okay. So I guess that would be 150, I
3 guess. Is that 150?
4 MS. ROBESON: I'm sorry?
5 MS. ROSEN: Is it 149 or 150?
6 MS. ROBESON: 150?
7 MR. MOHAMMADI: I think we're at 150.
8 MS. ROSEN: Okay.
9 (Exhibit No. 150 was marked
10 for identification.)
11 MS. ROBESON: Any objections, Mr. Mohammadi?
12 MR. MOHAMMADI: Well, if he can identify it, then
13 no.
14 MS. ROSEN: Let him identify it. That's why I
15 was --
16 MS. ROBESON: Oh, okay.
17 MR. MOHAMMADI: I'm sorry. What was 148? I'm --
18 MS. ROBESON: 148 is the house plans, including
19 the sections.
20 MR. MOHAMMADI: And 149?
21 MS. ROBESON: 149 is notice of exterior alteration
22 at 10602 Vantage Court.
23 MR. MOHAMMADI: Thank you so much.
24 BY MS. ROSEN:
25 Q Okay. Mr. Ball, I just wanted you to identify

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1 this document. Is this document the deed that conveyed the
2 property to you from, looks like Timothy Ball --
3 A That's correct.
4 Q -- to you and Ms. Sivinska? And that was in, on
5 July 31st of 2003?
6 A That's correct.
7 Q Okay. So you owned this property then from July
8 of 2003 through September of 2008?
9 A Yes.
10 MS. ROBESON: Okay. So any objections,
11 Mr. Mohammadi?
12 MR. MOHAMMADI: None.
13 MS. ROBESON: It'll be deed dated July 31st, 2003.
14 (Exhibit No. 150 was received
15 in evidence.)
16 BY MS. ROSEN:
17 Q Okay. And I believe that you testified that the
18 first time that you had any kind of an issue with the
19 association on construction applications or things of that
20 nature was about year 2005, is that correct? Is that what
21 you testified?
22 A I'm not sure, you know, if the date's correct, but
23 I mean, the first time I had problems was with that, that
24 first CCOC issue, the shed with the -- the enclosed shed on
25 the deck.

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1 Q Well, when you say the first time you had
2 problems, do you mean that that was the first time that you
3 were involved in a litigation with the association about an
4 issue on the property?
5 A Yes.
6 Q Okay. But other than a litigation, prior to that
7 time, did you have any issues with the association regarding
8 construction on the property during the 1990s or early
9 2000s?
10 A I mean, nothing that resulted in going to court.
11 Q Okay. But what I'm asking you is, do you recall
12 whether you had any -- whether there were any issues between
13 you and the association concerning construction-related
14 matters on your property --
15 A When you say --
16 Q -- on the property?
17 A When you say issue, I mean, we had made an
18 application, all right, I guess, 1996 or '7, to build an --
19 there was an original addition of the rear of the house, and
20 then I don't -- 2003 we tore that addition down and had an
21 application to build what is existing now as the first, the
22 rear of the house, a basement and the first floor.
23 Q Okay. I'm going to show you documents which I
24 guess we're going to mark as 151.
25 (Exhibit No. 151 was marked

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1 for identification.)
2 MS. ROSEN: This is a document, actually, which
3 was part of the record in the, in the, not the previous
4 case, the one before that --
5 MS. ROBESON: Is that --
6 MS. ROSEN: -- 770G.
7 MS. ROBESON: 720G.
8 MS. ROSEN: 720G, yes.
9 MR. MOHAMMADI: Is this my copy?
10 MS. ROSEN: Yes.
11 MR. MOHAMMADI: Okay. Thanks.
12 MS. ROBESON: Thank you.
13 BY MS. ROSEN:
14 Q Okay. Mr. Ball, I'm going to ask you if you
15 recognize the document which is marked as Exhibit 151?
16 A Yes.
17 Q Okay. And what is that document?
18 A This was the request to build a shed, two sheds,
19 yeah, two sheds, a deck and two sheds on the side of the
20 house.
21 Q Okay. And that request was made on the
22 architectural control committee form for the HOA, is that
23 correct?
24 A That's correct.
25 Q Okay. So you were definitely familiar with the,

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1 with the architectural committee form that was required to
2 file an application, correct?
3 A That's correct.
4 Q Okay.
5 MS. ROSEN: I'm going to move 151 into evidence.
6 MS. ROBESON: Any objection?
7 MR. MOHAMMADI: No. What are we calling it?
8 MS. ROBESON: Ball architectural application dated
9 5/27/03.
10 (Exhibit No. 151 was received
11 in evidence.)
12 MS. ROSEN: I'm going to mark the next as,
13 exhibit, as 152.
14 (Exhibit No. 152 was marked
15 for identification.)
16 BY MS. ROSEN:
17 Q Mr. Ball, I'm going to ask you to identify a
18 document which has been marked as Exhibit 152.
19 A An application to enclose the two sides of the
20 deck to make it into a room.
21 Q Okay. And is that your signature on the document?
22 A Yes.
23 Q Okay. And this is also, for the record, this was
24 also an application submitted on the architectural control
25 committee form of the association?

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1 A Yes.

2 Q Okay. So, once again, you were quite familiar

3 with that process of having to submit applications using a

4 form, correct?

5 A Yes.

6 Q Okay.

7 MS. ROSEN: I would move Exhibit 152 into

8 evidence.

9 MS. ROBESON: Any objections --

10 MR. MOHAMMADI: No.

11 MS. ROBESON: -- Mr. Mohammadi?

12 MR. MOHAMMADI: No.

13 MS. ROBESON: Okay. So I'm going to call it Barr

14 architectural application dated 3/17/04.

15 MR. MOHAMMADI: You said Ball, right, not Barr?

16 MS. ROBESON: I said, I don't know, but it's

17 supposed to be Ball. Okay.

18 (Exhibit No. 152 was received

19 in evidence.)

20 BY MS. ROSEN:

21 Q Now, when you submitted this, the application to

22 build the deck, which is 151, isn't it true that you did not

23 build a deck but you instead went ahead and built a room on

24 the side of the house instead of building the deck?

25 A You had to built the deck first. Okay? What I

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1 did was, all right, enclose the top of the railing to the

2 bottom of the, of the roof trusses.

3 Q Okay. But you were clearly, based upon this, you

4 were to build a deck and not a room, isn't that correct?

5 A That's correct.

6 Q Okay. But you did go ahead and build a room

7 anyway, isn't that correct?

8 A That's correct.

9 Q Okay. And you did that knowing full well that you

10 had not been approved to build a room, that you had only

11 been approved to build a deck, isn't that correct?

12 A Well, I didn't think -- no. The answer is no.

13 MS. ROBESON: This is 151 you're asking him

14 questions about?

15 MS. ROSEN: Yes, I was asking about 151.

16 BY MS. ROSEN:

17 Q Now, you had then subsequently submitted an

18 application, an after-, I guess I'm going to call it an

19 after-the-fact application, to convert these side decks with

20 a roof to make them enclosed rooms, isn't that correct?

21 A Yes.

22 Q Okay. And you were denied, right? The

23 association said you could not do that, correct?

24 A Yes.

25 Q Okay. And the association ultimately ended up

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1 taking you into the CCOC to require that to be removed,

2 isn't that correct?

3 A Yes.

4 Q Okay. So isn't it fair to say that you have a

5 history of defying the association's -- the association's

6 rules?

7 MR. MOHAMMADI: Objection. That's, I think that's

8 characterizing it for him, essentially.

9 MS. ROBESON: Well --

10 MS. ROSEN: Well, it's cross-exam.

11 MS. ROBESON: -- she can do that on cross.

12 MR. MOHAMMADI: Okay.

13 BY MS. ROSEN:

14 Q Would it be fair to say, Mr. Ball, that you have

15 somewhat of a history of defying the association's rules

16 with regard to your construction?

17 A I don't think so.

18 Q Isn't it true, though, that you have in fact, for

19 example, you have constructed things without being approved

20 to construct them, isn't that correct?

21 A That's correct.

22 Q Okay. And how many times have you constructed

23 something that was not approved to be constructed by the

24 association prior to, I'm going to say, prior to this case?

25 A Well, if it went to the CCOC twice, so it was two

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1 times.

2 Q During the times when you were, when you were

3 dealing with the, with the board of directors at that time,

4 do you recall who the president of the board was during that

5 time?

6 A Jeff William was one co-president and Raj Barr was

7 the other co-president.

8 Q Okay. Now, during that time, when you were in the

9 dispute with the association concerning that construction,

10 is it fair to say that you took the position that the board

11 was selectively enforcing the rules against you?

12 A Yeah. Yes.

13 Q But the CCOC did not agree with your

14 characterization, isn't that correct?

15 A We lost the cases.

16 Q Now, back in that time, after that case, have you,

17 did you ever -- let me rephrase that.

18 Why did you not, when you were told that you could

19 not keep the structure that you had built back in, you know,

20 for the, I'm going to call it, the rooms that you had

21 created from the deck, when you were told that you could not

22 keep those structures, why did you not just take them down

23 as required?

24 MS. ROBESON: I'm confused. Are you talking about

25 720G?

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1 MS. ROSEN: Yes, I'm talking about 720 --
2 MS. ROBESON: Okay.
3 MS. ROSEN: -- yes. It's confusing because it's
4 different, it's, like, decks and sheds and things of that
5 nature.
6 MS. ROBESON: Yes.
7 MR. MOHAMMADI: What's going on with 72 being in,
8 like, all of these case numbers?
9 MS. ROBESON: Yes.
10 MS. ROSEN: Yes, it makes it confusing because we
11 have --
12 MS. ROBESON: It does.
13 MS. ROSEN: -- the 72-13 and 73-12.
14 BY MS. ROSEN:
15 Q Can you tell the Court why, for example, when you
16 were instructed or directed by the association to remove
17 construction which you basically admit, you know, had not
18 been approved, why did you not just remove the construction?
19 A I thought there was more fairness to all of this.
20 I was just naive. I didn't understand, you know, certain
21 people had certain agendas, and it was just stupidity on my
22 part. I'm thinking, I have a, I built one deck out of two
23 on the side of the house that nobody can see except for one
24 neighbor. All right? You gave me permission to put a shed
25 roof. You gave me permission to put a deck. The deck, you

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1 know, many people in this community have deck with railing
2 that are solid, the same T1-11 as the house. All I did was
3 to enclose from the bottom up. Yeah, that was wrong, but I
4 didn't think that was such a big issue. All right? Now,
5 obviously I was wrong, you know, and I paid the price for
6 being, you know, being stupid and being naive, but I thought
7 there was a little more fairness to this whole process.
8 Q Okay. So would it be fair to say that -- because,
9 I mean, based on some of your previous testimony in this, in
10 this case, you seem to be, in my view, you seem to be
11 blaming Raj Barr or other members of the board rather than,
12 and not taking any responsibility for your own behavior --
13 isn't it fair to say that your own behavior has certainly
14 contributed to the, to why we are here today?
15 A I'm sure my behavior contributed to all of these
16 problems, but all I, all I have ever asked from Raj Barr --
17 and I have no dispute with the other members of the HOA. I
18 have no dispute with Peter Gibson. All right? I hardly
19 know, you know, Ben Nawl (phonetic sp.) and the other
20 people. All right? I had virtually no interaction. All
21 right? It's basically with Raj Barr. Here he is, a
22 renowned architect, and he can't tell me what I can do and
23 not to do, and yet you're the head of the HOA. Just, it's
24 so simple. Why don't you just tell me what we can do and
25 what not to do instead of having us guess?

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1 Q Now, you hired an architect, Tania Bruno, to work
2 with you on your project, isn't that correct?
3 A I hired Tania Bruno to be able to draw plans that
4 are to scale because I can't draw plans to scale. The plans
5 that I submitted, which were my sketches, all right, were
6 thrown back at us because he wanted scale drawings -- he
7 being Raj Barr.
8 Q Why, if you did not understand how to do
9 something, why did you not consult with your own architect,
10 Tania Bruno, as to how to bring something into compliance?
11 A Because in the real world, when you talk to a
12 customer, all right, you first try to find out what they
13 want and such, all right, and then you create the product.
14 In our case, we asked the person, Raj Barr, what can be done
15 and what can't be done, and we get this answer: Put a, get,
16 you know, do a scale drawing, and we'll tell you whether
17 it's okay or not. That just doesn't make any sense. We
18 gave up. All right? I gave up and hired somebody to do
19 that.
20 Q Okay. But my question to you is, you hired Tania
21 Bruno, who is an architect, to provide the drawings for what
22 you wanted to do, correct?
23 A She didn't design it. She just kind of -- she had
24 to do it three times, four times because each time this was
25 rejected by Raj, that was rejected by Raj. There was never

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1 any guidance, whether to me or to Tania, what could be done
2 and what couldn't be done. It was just a big guess.
3 Q Is it your position that it is the association's
4 responsibility to basically design your house for you?
5 A No, but any, any architectural control committee
6 at least tell you what you cannot -- what you can do and not
7 do.
8 MS. ROBESON: You know what? I'm sorry. Can you
9 not talk in the background, please, because these mics are
10 really sensitive.
11 BY MS. ROSEN:
12 Q Okay. Just going back to the, I want to go, going
13 back to the 720G time period, so to speak, is it -- do you
14 recall ever sending the board a letter, basically stating
15 that you caused the, that you caused the situation because
16 of your own impetuous nature and impatient way of doing
17 things?
18 A I have done virtually everything, okay, to try to
19 please them, falling on my sword, telling them that it was
20 my fault, whatever, just to move the, you know, move things
21 off center. All right? I, I probably wrote something like
22 that. All right? I don't -- it's not a matter of saving
23 face at this point. It's just a matter of getting my job
24 done and finished. All right? If it means for me to, you
25 know, kowtow to these people, I'll be more than happy to.

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1 MS. ROSEN: I'm going to mark this document as
2 153, but unfortunately, it looks like I only have one copy
3 of it. This is another, this is another document that comes
4 from that case record.
5 MS. ROBESON: 720G.
6 MS. ROSEN: Yes, 720G.
7 MS. ROBESON: All right.
8 MS. ROSEN: I don't know if, whether you want me
9 -- want me to get a copy made or should I just use it now,
10 or how do we want to do this?
11 MS. ROBESON: Let's just use it now --
12 MS. ROSEN: Okay.
13 MS. ROBESON: -- and then I can make copies at --
14 MS. ROSEN: Let me let Mr. Mohammadi look at it.
15 MR. MOHAMMADI: I haven't seen this document.
16 I'll look at it now, but I have not seen this document
17 before.
18 MS. ROBESON: Oh.
19 MR. MOHAMMADI: So, I mean, I'm going to object to
20 it coming in, but --
21 MS. ROSEN: Well, in my pre-hearing statement, I
22 indicated that I could use any document which was part of a
23 public record involving these parties. So I assumed that
24 that would cover anything from the CCOC cases they were
25 involved in.

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1 MS. ROBESON: Mr. Mohammadi, have you had a chance
2 to look at it?
3 MR. MOHAMMADI: I'm reading it right now, if
4 that's what you mean.
5 MS. ROSEN: That was actually on page 2 of my
6 pre-hearing statement.
7 MS. ROBESON: Yes. I'm just --
8 MS. ROSEN: Okay.
9 MS. ROBESON: -- looking for which exhibit is your
10 pre-hearing -- oh, here --
11 MS. ROSEN: Oh, I'm sorry.
12 MS. ROBESON: -- 100 is one of them. Well, that
13 says court records.
14 MS. ROSEN: No, on 29, on page 2 of my original
15 pre-hearing statement.
16 MS. ROBESON: Exhibit 29?
17 MS. ROSEN: Well, I'm looking at my pre-hearing
18 statement, original pre-hearing statement that was dated 2
19 June of 2014, where it's under (a), documents --
20 MS. ROBESON: Yes. I just have to find --
21 MS. ROSEN: I'm sorry.
22 MS. ROBESON: -- which exhibit is your pre-hearing
23 statement. I thought I had it marked.
24 MR. MOHAMMADI: I think it's in the 50s. Hold on.
25 54.

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1 MS. ROBESON: Thank you. Okay. On page 2 and --
2 MS. ROSEN: On page, under the entry that says,
3 No. 29, and then at the last sentence of 29 or last section,
4 it says, any relevant document which is part of any public
5 record in any proceeding involving the parties herein.
6 MR. MOHAMMADI: Look, I --
7 MS. ROBESON: May I see it?
8 MS. ROSEN: Sure.
9 MR. MOHAMMADI: I mean, I understand she put that
10 on there. Don't you need this?
11 MS. ROSEN: Oops. Well, you need to --
12 MS. ROBESON: Oh, I have that. I found that.
13 MS. ROSEN: Oh, okay. I'm sorry. I didn't know
14 what you wanted. You wanted to look at that.
15 MS. ROBESON: Well, you did say that. It is one
16 of the files between the, between the two parties. So I'm
17 going to let it in. If you could hand it to me for a
18 moment, I'm going to make it 153, letter from Peter Ball to
19 Jeff Williams dated 5/25/04. All right.
20 (Exhibit No. 153 was marked
21 for identification.)
22 BY MS. ROSEN:
23 Q Mr. Ball, I'm going to ask you to identify a
24 document which has been marked as 153. If you can identify
25 what that document is.

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1 A It looks like a letter from me to Jeff William and
2 Raj Barr.
3 Q Okay. And what's the date on that letter?
4 A May 25th, 2004.
5 Q Okay. I'm going to call your attention to a part
6 that's been highlighted, and I'd like you to read that into
7 the record.
8 A I am afraid that my impetuous nature, impatient
9 way of doing things have led me to stretch the rule for
10 seeking approval of architectural changes. I apologize to
11 the member of architectural committee and the board of
12 director for the situation I caused by the decision to alter
13 the design of my utility deck work space during the
14 construction and implement the change before receiving
15 approval.
16 Q Okay. So it's fair to say then that, you know, at
17 this point in time, you were basically, you went ahead and
18 constructed something that wasn't approved?
19 A That's correct.
20 Q Instead of removing what was not approved, you
21 basically decided to fight the association over it, isn't
22 that correct?
23 A At that time, I thought, you know, I thought maybe
24 I could persuade them, okay, to approve the plan after the
25 fact, like so many other things that's been done in the past

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1 and in the present at the HOA. They had, they had it within
2 their power to do that, and my greatest misfortune is to try
3 to be honest with a person that wound up being a convicted
4 felon.
5 MS. ROSEN: I'm going to object to that. I don't
6 even know who you're referring to, but --
7 MS. ROBESON: Yes. Do you have a basis for saying
8 that?
9 THE WITNESS: Jeff Williams, the co-president of
10 the association, is a convicted federal, is a convicted
11 federal convict. All right? He's been disbarred, okay, by
12 the D.C. Bar for, for lying, all right, and my -- what I'm
13 saying is, I have the great misfortune of having to bare
14 myself to people like that.
15 MS. ROSEN: Well, I would object. I mean, unless
16 Mr. Jeff Williams had been --
17 MR. MOHAMMADI: It's public record, Your Honor.
18 MS. ROSEN: -- supposedly disbarred at the time
19 that this was, that this letter --
20 MS. ROBESON: You brought it in. I mean --
21 MS. ROSEN: I understand. I'm just saying, you
22 know, Mr. Williams was the board, was the president of the
23 board at that time, but unless Mr. Williams had been
24 convicted of a felony or disbarred at that time, I'm not
25 sure what his, what relevance his statement has.

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1 MS. ROBESON: I'm going to let it in.
2 MS. ROSEN: All right. Move in 153. Court's
3 indulgence.
4 BY MS. ROSEN:
5 Q Have you ever pled guilty to any criminal offense,
6 Mr. Ball?
7 MR. MOHAMMADI: Objection.
8 MS. ROBESON: Basis?
9 MR. MOHAMMADI: I don't think you can just get
10 into any criminal offense. It has to be, if it's for
11 credibility, it has to be certain ones. So the rule isn't
12 just as broad as any convictions or anything like that.
13 MS. ROBESON: It's got to be moral turpitude or --
14 MR. MOHAMMADI: Correct. So you can't just ask,
15 have you ever committed a crime, or have you been convicted
16 of any crime; it's not an appropriate question.
17 MS. ROSEN: Well, he raised an issue about
18 Mr. Jeff Williams being a, being a convicted felon. That's
19 the only reason why I'm asking about it, I mean, if that's
20 allowed in. So --
21 MS. ROBESON: Well, how many convicted people are
22 in this community?
23 MS. ROSEN: I don't know.
24 MR. BARR: Plenty.
25 MS. ROBESON: That was in --

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1 MS. ROSEN: Okay.
2 MS. ROBESON: That's too broad.
3 MS. ROSEN: Okay.
4 BY MS. ROSEN:
5 Q Are you, or maybe I can ask it this way, are you
6 currently on any type of probation?
7 MR. MOHAMMADI: Objection again.
8 MS. ROBESON: Sustained.
9 MS. ROSEN: All right. I'll come back to that
10 whole issue later on, related matters.
11 BY MS. ROSEN:
12 Q Now, you claim in this case, my understanding, you
13 claim in this case that the, if I'm understanding correctly,
14 that part of your counterclaim or defense in this case is
15 that you believe that the board of directors is selectively
16 enforcing against you. Is that accurate?
17 A I think it's more than just selective enforcement.
18 Q Okay. Well, what exactly do you mean by that?
19 A I'm not an attorney. Okay? I mean, legal theory
20 and such, you know, I'll let you deal with it with the
21 lawyers.
22 MS. ROBESON: I'm sorry?
23 THE WITNESS: I said I don't understand all the
24 legal theories behind it. All right? I think my attorney
25 can probably answer that better.

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1 MS. ROSEN: Well, I'm asking, you know, if he is
2 claiming that --
3 MS. ROBESON: Right.
4 MS. ROSEN: -- there's a selective enforcement.
5 I'm not expecting him to give me a legal treatise. I would
6 just like --
7 MS. ROBESON: Factually.
8 MS. ROSEN: -- a factual basis for why he believes
9 he's being -- there's a selective enforcement.
10 THE WITNESS: All right. Where should I begin?
11 Number one, I don't get notices of meeting. Meetings are
12 held in secret. All right? I'm asked to leave, you know,
13 when certain votes are taken. I'm --
14 MS. ROBESON: What votes?
15 THE WITNESS: Pardon?
16 MS. ROBESON: What votes?
17 THE WITNESS: Well, for instance, when the vote --
18 well, for the, for the approval of the, of my plan. You
19 know, we specifically asked, Jim Dever, my attorney and I,
20 to be present when the vote was taken, you know, all right,
21 and we were given, we were -- it was acknowledged that they
22 would call us back. You know, later on a vote took place
23 and nothing happened, and then there were these exceptions
24 that they said that we didn't even agree to. All right?
25 MS. ROBESON: Oh, the conditions?

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1 THE WITNESS: Yes.
2 MS. ROBESON: Oh, I see. Okay.
3 THE WITNESS: No notices, okay? We've never been
4 able to present our case to, to the board. For instance, if
5 they had said we're going to take you to the CCOC because of
6 this, well, at the very minimum, I may have been able to --
7 I would have tried to find an attorney to come with me, to
8 explain my side of the case before the full board. I mean,
9 maybe I would have prevailed, maybe not, but at least I
10 would've had an opportunity.
11 They offered to mediate this issue on the October
12 7th meeting when they decided not to go to the CCOC on this
13 particular issue. They never mediated. In fact, if you
14 look at the time line, October 7th, all right, the meeting
15 was held for a couple of reason; the most important reason,
16 it was ordered by the CCOC to ratify the meetings that were
17 conducted previously under Charles Bruno's case, all right,
18 that had not been properly noticed and such.
19 My case, I guess, my issue was a secondary issue,
20 but three days after that, on the 10th, there was a, was the
21 CCOC hearing on the deck. In fact, I went and asked
22 Mr. Gibson about that. I said, are you coming to that
23 meeting? At the time, he said he was, because, you know, he
24 had, he was privy to the, what was going on and he could
25 have at least testified, okay, to the truthfulness of, you

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1 know, of what the deck issue was. All right? He was then
2 told not to go. All right?
3 MS. ROSEN: Well, I'm going to object to this.
4 MS. ROBESON: Well, that's not what he testified
5 to, but --
6 THE WITNESS: Well, he sent me an e-mail on the
7 10th, the morning of that, and said -- the e-mail was, I'm
8 giving you a heads-up, I'm not coming tonight because my,
9 our attorney said they only need two people. All right? I
10 mean, I read that pretty clearly as saying, all right, why
11 would he give me a heads-up about his going to, or his going
12 or not going to that hearing? But regardless, the 10th was
13 the hearing on the deck.
14 After the deck hearing, 14, 18 days later they
15 hold another meeting without notifying me, all right, to go
16 back to the CCOC. All right? They create this list of
17 supplemental that I've never, no one ever see. All right?
18 Nobody on the board knows about it, all right --
19 MS. ROSEN: I'm going to object to him testifying
20 nobody on the board.
21 THE WITNESS: -- concocted by --
22 MS. ROBESON: Well, you asked him what his factual
23 basis --
24 MS. ROSEN: Well, I understand that but to say --
25 THE WITNESS: -- concocted by --

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1 MR. MOHAMMADI: Hold on.
2 MS. ROSEN: -- he has to have --
3 MS. ROBESON: Just a second.
4 MS. ROSEN: -- he has to have some foundation for
5 testifying that nobody knows something, and it's speculating
6 as to what nine other, whatever, how many other people on
7 the board know. That's what I have a problem with, the way
8 he's saying this.
9 MS. ROBESON: Why don't you testify as to your own
10 personal knowledge.
11 THE WITNESS: I certainly was not given any
12 notice, okay, and I think you've already heard from Charles
13 Bruno and from Beth Bentolila and from Lance Pelter. They
14 were not notified of that particular meeting, and 18 days
15 later -- it just, it seemed like coincident, you know. That
16 evening of the 10th it was very clear that they won. I
17 mean, we, we presented such a lousy case, okay, that there
18 was no question that we lost. Okay? All right.
19 MR. MOHAMMADI: I did not represent him.
20 THE WITNESS: Right.
21 MS. ROBESON: Was that Mr. Dever?
22 MR. BARR: I thought you were there.
23 THE WITNESS: So, I mean, it's just so
24 coincidental --
25 MS. ROBESON: Well --

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1 THE WITNESS: -- all of these things happened, you
2 know, and --
3 MS. ROBESON: You know, I think their main problem
4 is that you don't tell them when you're not going to be able
5 to do things, like the Pepco, you know. So --
6 THE WITNESS: Well, I, all right, ma'am, I never
7 say that I'm, my hands are clean. I've done things, okay,
8 clearly, you know --
9 MS. ROBESON: Well, no, I don't want you to start
10 that. I'm just saying, I'm just making a comment that I
11 think their main problem, what I'm hearing, is -- now, I
12 have some questions for them, too, about some things that I
13 don't understand -- but, you know, I think their main thing
14 is that you -- and I'm characterizing what they're saying --
15 you don't follow the plans that you get approved.
16 THE WITNESS: Ma'am, you know, for instance, I
17 have a neighbor, Lynn Gowan, that watches every move that I
18 make. There's nothing I can do to hide things, so to speak.
19 All right? With regard to these Pepco things and such, you
20 know, yes, we did certain things without initially notifying
21 them, but very shortly after that, Peter Gibson comes by,
22 takes a look at it, says, it's okay, keep going, move on.
23 Okay. July 17th meeting, it's okay. Raj Barr said, it's
24 okay, minor stuff, we're not concerned with it, keep moving,
25 we want you to finish the job. All right? These mixed

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1 signal, when is it real, when is it not real --
2 MS. ROBESON: I understand what you're saying.
3 THE WITNESS: -- how do I interpret any of this.
4 All right?
5 MS. ROBESON: Okay. Did you get an answer?
6 BY MS. ROSEN:
7 Q Okay. Is it just this board that you feel has
8 been selectively enforcing against you?
9 A This board has been --
10 Q When I say this board, I mean the board that was
11 -- the board that has dealt with this case.
12 A Raj Barr has served continuously for at least 10,
13 11 years. All right?
14 Q Well, other than Raj Barr, is there anybody else
15 on the board that you feel has been selectively enforcing
16 against you?
17 A He dominates the board.
18 Q Has he always dominated the board, in your view?
19 MS. ROBESON: Please, ma'am, don't make faces.
20 It's very -- I'm trying to keep all these facts straight up
21 here and to give each side a fair shot, and I can't do it if
22 you're making faces every time somebody says something you
23 don't like. All right? So just, if you can't control it,
24 you can step outside.
25 THE WITNESS: From my perspective, okay, I mean,

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1 no one's, no one's ever countered any of his decisions, all
2 right, especially in cases like this, where he puts himself
3 out as this world-renowned architect. Who on the board is
4 going to dare to say that he's wrong?
5 MS. ROBESON: So you feel he has undue influence
6 over the, or I don't know how you phrase it --
7 THE WITNESS: My phrasing --
8 MS. ROBESON: -- never mind. I think I understand
9 what you're saying.
10 THE WITNESS: My phrasing is very simple. What
11 he, you know, it's what Peter Gibson has said when he, other
12 -- we're not architect, we don't understand, okay, and to
13 get into the -- and you asked a question, well, what
14 happened if you didn't have -- that's the really problem.
15 No one even looks at these things without first looking at
16 Raj and say up or down. I mean it's just, there's, from my
17 perspective -- I don't go to all of these board meeting and
18 see all what goes on and such. Okay? At least with mine,
19 if he's against it, I have no chance.
20 MS. ROBESON: Okay.
21 BY MS. ROSEN:
22 Q Is it also your position that, for example, back
23 in, you know, year 2004/2005, when the other, when the issue
24 that was involved in 72G, is it your position that Raj Barr
25 also had undue influence at that time, too, on the board?

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1 A I didn't understand the dynamics between he and
2 Jeff Williams at the time, but they were co-president, okay,
3 and they, they, they were the two people that pretty much
4 dealt with the issues. Raj Barr was the only person that
5 really testified in both cases. It wasn't Jeff Williams
6 that testified. It was Raj. He was the, he was the HOA's
7 star witness in both cases.
8 Q Would you agree, I mean, you have, would it be
9 fair to say that you tried to persuade the board -- I'm
10 going to go back to 2004 just so we, you know, stay in a, on
11 one topic -- that you were, that you did try to persuade the
12 board to allow you to keep what you had already built, even
13 though it hadn't been approved? Is that fair to say?
14 A Absolutely. If it --
15 Q Okay.
16 A -- you know, if it meant, if it meant for me to
17 lose face, you know, whatever, to save, you know, 2, \$3,000,
18 not have to redo it and whatever, yeah, I was willing to,
19 you know, to do that.
20 Q When the board said, no, that we're not going to
21 allow that, would it be fair to say that their unwillingness
22 to allow that is part of why you believe that they are
23 selectively enforcing against you?
24 A Absolutely. They have, absolutely, they have
25 approved after the fact -- their reason was, after-the-fact

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1 approval or not grant it, all right, at all; so therefore,
2 you know, this application for after-the-fact, okay,
3 construction, we're not going to deal with it, tear it down.
4 This is the example of my neighbor. They put up, they put
5 up an air condition, okay, without getting your notice, HOA
6 approval. Now they're going to go before HOA. All right?
7 I suspect they're going to get approved. Okay? I could be
8 wrong, but I suspect they're going to get approved. All
9 right?
10 So this, the issue of never being approved, I
11 guess, I guess I take offense, okay, of having them treat me
12 in such a fashion. All right? All right? We never approve
13 an after-the-fact application. Okay? Vinyl sidings were
14 never approved; they all were, they were all done under the
15 wire. Those aren't real answers.
16 Q And, Mr. Ball, do you recall in or about year
17 2005, you know, while within the same issues, do you recall
18 ever threatening the association with expensive litigation?
19 A If I did, it didn't work.
20 Q Okay. But what I'm asking you is, do you recall
21 making a threat to the association of expensive litigation
22 if they didn't allow you to do as you wanted to do?
23 A I don't know. I don't remember.
24 Q Do you recall ever making an ultimatum to the
25 board of, or -- I won't say, I won't say an ultimatum. Do

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1 you recall ever stating to the board that before you would
2 remove or relocate the addition, that you had to get
3 something in return for that? Does --
4 A Yes.
5 Q -- that sound familiar to you?
6 A Yes.
7 Q Okay. So is it your position then that if the
8 board, if the association tells you that you need to do X,
9 for example, because something is not an approved
10 construction, that you view that as some type of an opening
11 to a negotiation for you to get Y?
12 A What I asked was not a quid pro quo. What I asked
13 was, from Jeff William, was, I'm more than happy to tear the
14 roof down, but please tell me what I can build;
15 specifically, these set of plans. It was already --
16 MS. ROBESON: Okay. I don't know what that set
17 of --
18 THE WITNESS: No, no. In other words, back when I
19 made that comment to Jeff Williams, it was, I'll tear this
20 deck down, but please tell me what I can construct, okay,
21 with regards to this, removing the flat roof and this and
22 that, and the -- because my feeling, my fear was, I can't
23 even get them, you know, some simple issue as the deck, to
24 come to some, some sort of, some sort of agreement or
25 whatever; I mean, my God, I mean, where am I going to be

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1 left with when this is -- this was not important. What was
2 important was getting rid of that flat roof and such.
3 I just wanted some idea as to what I could do and
4 not do. It wasn't, say, prove these plans and I'll do that.
5 That was never the case, never the case. It was to just --
6 all I wanted was some guideline. That's all. You give me
7 the guidelines; I'll tear the roof down, shed down, no
8 problem.
9 BY MS. ROSEN:
10 Q Mr. Ball, do you know of any other homeowner in
11 this association who's ever had -- well, I'm trying to think
12 of how I want to phrase this -- who's ever had to get
13 guidelines from the association to construct what was
14 approved by the association?
15 A Yeah, there are lots.
16 Q Really? Who? Name the properties, please.
17 A Montgomery Village.
18 Q No, no, I'm not, no, I'm not -- I'm sorry. You're
19 not understanding my question. Let me -- I'm asking you, do
20 you know of any homeowners in Potowmack Preserve who have
21 made applications and had them approved who had to
22 constantly go, felt they had to constantly go back to the
23 association to get a guideline to build what was, what had
24 been approved already?
25 A I don't know because I don't attend all those, but

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1 I can assure you, all right, no one in the HOA has been
2 subjected to the kind of scrutiny that I have.
3 Q Do you know whether anyone else in the HOA, for
4 example, has constructed something that was not approved,
5 been directed to remove it, and refused to do so?
6 A Well, the general answer to it is, I don't know
7 all the, every, every one, but I do know, for instance, my
8 neighbor Beth. All right? She --
9 Q Well, my question, I mean, I'd like, I mean --
10 A I know for a fact that she had, she had changes to
11 the plans. All right? No one made her make the changes,
12 resubmit the plans. No one made her tear it down. All
13 right? No one went there with a tape measure and measured
14 this and measured that. All right? And her project was,
15 took over a year.
16 Q Okay. Now, your neighbor Beth, she's the person
17 whose home burned down to the ground, is that correct?
18 A What difference does that make? The --
19 Q I'm just asking.
20 A -- standard should be the same.
21 MS. ROBESON: Well, just a second, Mr. Ball. You
22 need to answer her questions. Ms. Rosen, okay, you go
23 ahead.
24 MS. ROSEN: Okay.
25 BY MS. ROSEN:

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1 Q All right. I'm going to say, other than your
2 neighbor Beth, whose home, my understanding, had burned down
3 to the ground and she had to do a total rebuild, what I'm
4 asking you is if -- do you know of any specific homeowners
5 in your community, for example, who may have replaced a roof
6 or wanted to build a shed or a deck and had an approved
7 plan, did any of those people not figure out how to do their
8 construction that they had been approved to do?
9 A Well, I mean, I answered the question by telling
10 you, I mean, I don't, I'm not privy to all the submissions
11 to the architectural committee, all right, but I can give
12 you a further example. All right? I asked for vinyl
13 siding, both horizontal and vertical, and I was denied.
14 Charles Bruno applied for the same thing and was approved.
15 You tell me, you know, if that's fair play.
16 Q Now, you filed a court, an action in circuit court
17 -- you and your son Michael Ball filed an action in the
18 circuit court concerning this siding, isn't that correct?
19 A That's correct.
20 Q And what you sought was a, essentially, a court
21 order that would have required the association to approve
22 the siding, isn't that correct?
23 A I don't understand exactly what Jim Dever
24 requested. Okay? I think he -- it was some sort of, just a
25 declaration or something, but for me, it was even more

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1 simple. I just wanted an answer from Raj Barr as to what is
2 the reason I can't have horizontal or vertical siding.
3 Q Why did you not -- for example, we had a case in
4 the CCOC, 73-12 -- I don't want to -- and you, and that
5 issue of the siding, you know, that your siding application
6 had been rejected prior to that case being filed, isn't that
7 correct?
8 A I don't know if Jim ever filed that in, before the
9 CCOC. I thought --
10 Q My question to you -- I guess I'm going to -- you
11 have made an issue about the siding. It has come up, even
12 though it is not at issue in this case, but you filed a
13 lawsuit concerning the siding, and that lawsuit, that
14 lawsuit was dismissed, isn't that correct?
15 A It was dismissed without prejudice.
16 Q Okay. But my question to you, because I believe
17 -- I believe with regard to you, the court dismissed it, I
18 believe, because you did not -- the court said that you
19 didn't have standing, but with regard to Michael Ball, your
20 son, he is the owner of the property and he voluntarily
21 dismissed it, is that correct?
22 A I, I was dismissed from the case because I did not
23 have standing, yes.
24 Q Correct. Okay. And Michael Ball, very recently,
25 voluntarily dismissed the case shortly before the case was

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1 set for trial, isn't that correct?
2 A We dismissed the case -- my son dismissed the case
3 because of economic issue. We couldn't afford to both fight
4 in this venue as well as the circuit court, nor did we have
5 the time and energy to devote to both cases simultaneously.
6 Q Okay. Now, you also, during the other case, in
7 the 73-12, you could have prosecuted, as a counterclaim or
8 otherwise, as a counterclaim, you could have prosecuted that
9 siding case in the case that we just had in the CCOC, could
10 you not?
11 MR. MOHAMMADI: Objection. At this point, I think
12 she's getting into --
13 MS. ROSEN: All right. Maybe I'm not --
14 MR. MOHAMMADI: -- into attorney-client privilege,
15 discussions about why to bring something here versus there.
16 I just --
17 MS. ROBESON: Yes.
18 MS. ROSEN: Okay. Yes, I'm really not trying to
19 go there. I guess the point I'm trying to get at is, on the
20 siding -- he keeps bringing up the siding as an issue that
21 he has been selectively enforced again and all of that, but
22 he's had ample opportunity; even in the other case, he could
23 have brought, that case, that siding issue could have been
24 addressed. So I guess my, I'm trying to figure out how --
25 MS. ROBESON: Yes, I understand. The only --

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1 MS. ROSEN: -- where I'm trying to go is --
2 MS. ROBESON: -- the only thing is, you know, he
3 didn't, he had a different attorney --
4 MS. ROSEN: Yes, I understand.
5 MS. ROBESON: -- but legally, yes, he could have
6 brought it up, yes.
7 MS. ROSEN: Yes. Yes. I guess -- and maybe I'm
8 just not phrasing it -- I guess I'm having a little bit of a
9 difficulty understanding, because now he's basically
10 testified, well, it was an economic reason. Well, it would
11 seem to me that --
12 MS. ROBESON: No. He's -- oh, I'm sorry.
13 MS. ROSEN: Yes. Well, now he's saying --
14 MS. ROBESON: Go ahead.
15 MR. MOHAMMADI: For the record, if you recall, the
16 siding issue was actually part of this case --
17 MS. ROBESON: Yes.
18 MR. MOHAMMADI: -- which was dismissed out because
19 the circuit court case was pending and we got the option of
20 whether --
21 MS. ROBESON: Yes.
22 MR. MOHAMMADI: -- to continue the circuit court
23 case or this one. Well --
24 MS. ROBESON: Right.
25 MR. MOHAMMADI: -- I don't want to get into it

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1 right now, but we couldn't even dismiss the circuit court
2 case because opposing counsel would not agree to dismiss it
3 without her attorney's fees. So it was set for a hearing.
4 It -- way too late to be brought in this case. We still
5 dismissed it out from that case because, as Mr. Ball stated,
6 it got too expensive, but that's sort of the process that it
7 went through --
8 MS. ROBESON: Well --
9 MR. MOHAMMADI: -- but it was --
10 MS. ROSEN: Okay. I'm not --
11 MR. MOHAMMADI: -- brought here as well.
12 MS. ROBESON: Yes. I guess I don't see him as --
13 I don't see him as not advocating for what he wanted. I do
14 see him, you know, maybe picking the wrong forum. I don't
15 understand what your point is as far as why couldn't he have
16 prosecuted the vinyl siding, I guess is what I'm getting at.
17 MS. ROSEN: Okay. Well, I guess, I mean, the
18 siding, he keeps bringing up the siding. It's been brought
19 up many times in this proceeding, even though it's really
20 not an issue in this proceeding, because he had a choice.
21 He could have prosecuted -- he could have prosecuted the
22 siding in the CCOC, even in the previous case or in this
23 one, but they chose to keep it in the circuit court, and
24 then they decided towards the end, when the case was coming
25 closer to trial, they decided to, he wanted to dismiss it.

1 Now, he -- now, counsel is making an issue how I
2 stopped them from dismissing it. That's not the case. They
3 could have filed the motion to dismiss at any point in time.
4 The fact that I -- I reserved attorney's fees. It was a
5 court order that gave, that reserved it. So I wanted that
6 issue heard. The fact that they waited until the eve, the
7 last minute to dismiss it and then the court set up a
8 hearing, that's not, that's not upon me, okay, and he's
9 trying to make it look like it is.

10 MS. ROBESON: Okay. I understand, but it's your
11 cross-examination. So what I don't understand is how his
12 bringing up siding in the circuit court affects this case.
13 I guess that's --

14 MS. ROSEN: Okay. Well, I guess, because he
15 keeps, he keeps bringing siding up here and that this isn't
16 -- he feels he's been unfairly treated, he wants this
17 siding, you know, he has pushed for this siding, he's been
18 told no, and he took it to court and then he dismissed it.
19 So I guess my question is, why do we -- why is he even
20 continually talking about siding? If you wanted the siding,
21 you filed a court case, so why didn't you prosecute it?

22 MR. MOHAMMADI: All right. If I can respond.

23 MS. ROSEN: That's how I, you know.

24 MR. MOHAMMADI: The siding issue, I think, is
25 being confused with -- there's two issues with the siding.

1 One is that I want my siding, I'm filing a case to have a
2 judge rule that I can have my siding. That's one. The
3 other part of the siding is, look -- and that's not a siding
4 claim; it's a bad-faith claim -- things that I want I keep
5 continually being rejected upon, saying, you can't have
6 it --

7 MS. ROBESON: It's -- yes.

8 MR. MOHAMMADI: -- while other people, and it goes
9 -- so the siding issue is not --

10 MS. ROBESON: Right, and the --

11 MR. MOHAMMADI: -- specific to this case. It's --

12 MS. ROBESON: I understand.

13 MS. ROSEN: I guess, how I feel about that, you
14 know -- and I understand what he's saying -- but to me it's
15 like, if you're going to raise siding as bad faith, then you
16 should be raising it in a siding case, you know, basically
17 telling the court, you know what, I've applied for this
18 siding and the board of directors has said no and I believe
19 that they're acting in bad faith. That's where the bad
20 faith comes in with the siding. He's trying to,
21 essentially, have it both ways here. He wants to create
22 a --

23 MS. ROBESON: Well, I see what you're saying --

24 MS. ROSEN: -- bad-faith issue when he's already
25 dismissed the case.

1 MS. ROBESON: -- but you're also, I mean, you're,
2 you're essentially doing the same thing from your
3 perspective because you're going back to every single
4 lawsuit that he has ever lost, saying that's bad faith --

5 MS. ROSEN: Well --

6 MS. ROBESON: -- and so I think that the siding
7 issue and the discriminatory --

8 MS. ROSEN: Okay.

9 MS. ROBESON: -- enforcement, it's kind of the
10 same thing. I'm not -- nothing here is going to decide that
11 he can have siding.

12 MS. ROSEN: I understand. I understand what
13 you're saying.

14 MR. MOHAMMADI: And just for the record, I don't
15 think he's saying the only evidence of bad faith is the
16 siding. I think he's using --

17 MS. ROBESON: No, I definitely hear --

18 MR. MOHAMMADI: -- the siding as an example of --

19 MS. ROBESON: I definitely hear that. I hear
20 that. So I'm going to let him testify as far as his, or you
21 know, vis-à-vis the board allowing some and not allowing
22 others in his case.

23 MS. ROSEN: Okay. All right. I'm going to, this
24 is Exhibit -- I'm going to mark this as 154. It's been
25 previously provided in discovery.

1 MS. ROBESON: Now, we're going to stop at 5:00
2 today. Okay? So I hope you've had some opportunity to pick
3 -- to get with your clients about a new date. I'm just
4 reminding you. Okay. So this is -- you're offering this as
5 a new exhibit?

6 MS. ROSEN: Yes. It's 154.

7 MS. ROBESON: Okay. This is 154. Can you tell me
8 what -- I guess it's --

9 MS. ROSEN: It's a letter to Peter Ball from the
10 association dated July 13th of year 2005.

11 MS. ROBESON: Okay. Mr. Mohammadi, do you have
12 any objections?

13 MR. MOHAMMADI: First of all, subject to
14 authentication, but second of all, I think Ms. Rosen stated
15 they provided it. I don't recall seeing this, but I
16 could --

17 MS. ROSEN: Well, we can do that -- you know what
18 we'll do? Let's wait.

19 MR. MOHAMMADI: -- I could have seen it, but I
20 just don't recall seeing this 2005 letter before.

21 MS. ROSEN: Why don't we do this with this one: I
22 will just not use this at this point, and then I'll use it,
23 since we're going to be stopping at 5:00 anyhow and I'm not
24 going to be finished, I'll hold on to this, and you can
25 then, give you an opportunity to see whether you've seen it.

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1 I think it was produced, but I don't really want to get into
2 a --
3 MR. MOHAMMADI: Yes, I'll look into -- I'll look
4 at my documents at that point.
5 MS. ROSEN: I've got plenty of other things to do.
6 MS. ROBESON: All right. So that is not -- I'm
7 going to strike 154. That's not marked as an exhibit yet.
8 Okay?
9 MS. ROSEN: Okay. All right. And I'm just going
10 to mark another one as 155.
11 MS. ROBESON: Now, Ms. Rosen, no offense, I'm not,
12 but you don't have to mark the exhibits anymore --
13 MS. ROSEN: Oh, I'm sorry.
14 MS. ROBESON: -- because I can't read your
15 handwriting.
16 MS. ROSEN: I'm sorry. I take no offense. This
17 one I already did. I'm sorry. So you'll have to --
18 MS. ROBESON: No, that's okay, no worries.
19 MS. ROSEN: -- put up with that one. Actually, it
20 says 154. It should be 155.
21 MS. ROBESON: Okay. I'll change it back.
22 MS. ROSEN: I'm afraid it does look somewhat like
23 a chicken crossing the road.
24 BY MS. ROSEN:
25 Q Okay. Mr. Ball, I'm going to ask you to identify

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1 a document which has been marked as Exhibit 155, and if
2 counsel can share that with you.
3 A September 1, 2004, letter to CCOC from me.
4 Q Okay. And I'm going to take your attention down
5 to the section that's highlighted. It says --
6 MR. MOHAMMADI: I'm sorry. Are we marking this
7 154 or 155?
8 MS. ROBESON: Yes, 154.
9 MR. MOHAMMADI: 154.
10 MS. ROSEN: 154? Okay.
11 MS. ROBESON: And it'll be, letter from Ball to
12 CCOC dated 9/1/2004.
13 (Exhibit No. 154 was marked
14 for identification.)
15 BY MS. ROSEN:
16 Q Okay. Now, you state in that letter -- I have it
17 highlighted -- this present board has abused their power by
18 selectively enforcing rules and regulations.
19 A Yes.
20 Q Okay. Is it your, basically, your position that
21 all the boards throughout the years that you have owned the
22 property, I guess, because you've owned, you picked up the
23 property in --
24 MS. ROBESON: Wait. One second. Do you have any
25 -- did you have any objections?

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1 MR. MOHAMMADI: Well, I believe this is, again,
2 part of that record --
3 MS. ROSEN: It is, yes.
4 MR. MOHAMMADI: -- 72G. So, again, I've never
5 seen this, but if you let the other document in --
6 MS. ROBESON: Okay. All right.
7 MR. MOHAMMADI: -- I presume it's coming in under
8 the same reason.
9 (Exhibit No. 154 was received
10 in evidence.)
11 BY MS. ROSEN:
12 Q I mean, this seems to be a theme of yours that the
13 board of directors has been abusing their power by
14 selectively enforcing the rules and regulations. Is that
15 fair to say?
16 A I didn't say, I, I didn't -- well, let me clarify.
17 I certainly would not say the board from the time I moved
18 in. All right? I would say that this letter is directed at
19 Mr. Williams and Mr. Barr.
20 Q Okay. But the letter itself, it refers to the
21 present board. It doesn't say Mr. Williams and Mr. Barr --
22 A That's correct.
23 Q -- isn't that correct?
24 A They represent the board. That's correct.
25 Q Okay. Now, going to the, I guess I'm going to go

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1 to the third paragraph of that letter, which, where it
2 states, starts, I did not receive permission to enclose the
3 deck prior to enclosing the deck, and then it states, the
4 board's decision to reject my enclosure, quote, there are no
5 boxlike projections such as your unauthorized construction,
6 with or without windows, anywhere in the property comprising
7 this association, that is the reason, that's a reason given
8 by the board for rejecting this, this after-the-fact
9 application of yours, isn't that correct?
10 A Yes.
11 Q Okay. And is it your view that the board doesn't
12 have the right to make that assessment?
13 A It's just an untrue statement.
14 Q You don't agree with the statement?
15 A It's a lie.
16 MS. ROBESON: What's -- wait. I don't understand
17 that.
18 THE WITNESS: No, in other words, the statement
19 that the board used to reject my enclosure, that it being
20 boxlike, all right, unauthorized, with or without window,
21 anywhere in the community, association, it's a lie.
22 BY MS. ROSEN:
23 Q This case went to the CCOC, and the CCOC basically
24 agreed with the board of directors, isn't that correct? Yes
25 or no?

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1 A I already stated, you know --
2 Q It's correct that they agreed with it?
3 A -- my stupidity and being naive about fairness,
4 obviously I lost. Okay?
5 Q Are you basically saying that the CCOC is
6 basically --
7 MR. MOHAMMADI: Objection.
8 BY MS. ROSEN:
9 Q -- lying?
10 MR. MOHAMMADI: Objection.
11 MS. ROSEN: I mean, everything's a lie here, you
12 know.
13 MR. MOHAMMADI: Objection.
14 MS. ROBESON: I don't think he was saying that.
15 THE WITNESS: I did not say that.
16 BY MS. ROSEN:
17 Q But you do concede that the CCOC basically agreed
18 with the board of directors here, correct?
19 MR. MOHAMMADI: You know, it's -- objection, asked
20 and answered -- it's part of the public record. I mean, I
21 don't know how many times we need to ask the same thing.
22 MS. ROBESON: Well, I mean, it's fair. I mean, he
23 can just answer he's not -- you're not denying it, are you,
24 Mr. Ball, that the CCOC agreed with the homeowners
25 association?

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1 THE WITNESS: Yes, they absolutely, and my biggest
2 problem was we didn't -- my attorney who represented me on
3 that case, that case was the very first case before
4 anything, all right, and we thought, I thought the issue was
5 so simple, okay, that, you know, it could be relatively
6 easily resolved. As it turned out, we were not able to
7 provide -- there were documentations, discovery, things like
8 that that we didn't comply with. So, as a result, we lost.
9 I accept my lost. I've learned, I've learned a hard lesson.
10 I paid my fine. All right?
11 BY MS. ROSEN:
12 Q Okay. Is it your, because you indicate, I
13 believe, in the most recent CCOC case, you also -- I have
14 the impression, and you can correct me if I'm wrong -- do
15 you blame the attorney who represented you, Mr. Dever, for
16 your loss in that case, in any respect?
17 MR. MOHAMMADI: Objection.
18 MS. ROSEN: Well, he seems to be -- I mean, I
19 think it's a fair question because he seems to be shifting
20 some, he seems to be saying that --
21 MS. ROBESON: I'll let --
22 MS. ROSEN: Yes.
23 MS. ROBESON: -- I'll let you -- can you answer
24 that?
25 THE WITNESS: Jim Dever is my friend, and he has

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1 helped me out in many cases throughout, in the past. I
2 would never, I would never say anything derogatory about
3 him. The situation on that case before the CCOC, again, was
4 very quite simple. We did not understand what was wrong.
5 Having Raj Barr coming out with Peter Gibson and Tania Bruno
6 on February 17th, 2012, look at it and say it was okay,
7 having Peter Gibson coming back and looking at it and said,
8 he didn't have any objection to it, all right, we didn't
9 understand what the basis of their case was.
10 We thought that, we -- my attorney and I thought
11 even on the 10th that Ms. Rosen was going to call to dismiss
12 the case. Well, we do understand why it never got
13 dismissed, because we never submitted the document within
14 that 15-day period, all right, to the CCOC. So, as a
15 result, we had no case. We had no, no, nothing we could do
16 to defend ourself. We had witnesses that we had -- that we
17 were going to use. All right? They weren't even allowed to
18 be, to be used. All right? We were completely unprepared.
19 I take, myself, my full responsibility. I thought we
20 resolved this.
21 In May of 2013, I met with Raj Barr at Starbucks
22 in Potomac to resolve this. At the end of that meeting, we
23 shook hand and he said, look, he says, now that you have a
24 permit for this whole project, I have no problem with this
25 and this and this. All right. We shook hand; we're happy

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1 with it. Two days later I get an e-mail from him, saying,
2 oh, by the way, a little matter that I forgot to say, give
3 us \$1500 for our legal fees, and I said -- and I told him at
4 that point, I said --
5 MS. ROSEN: I'm going to object. He seems to be
6 testifying about what sounds like settlement discussions
7 that were occurring in the case, and I don't think that's
8 appropriate.
9 MS. ROBESON: Why don't you -- can you ask your
10 question again?
11 MS. ROSEN: Yes.
12 MS. ROBESON: Mr. Ball, just ask what, I mean,
13 just answer what she's asking. Okay?
14 BY MS. ROSEN:
15 Q My basic question to you, you have, based on your
16 testimony, it appears to me that you blame your attorneys in
17 both of your prior cases, at least in part, for you not, for
18 your loss in those cases. Is that a correct assessment?
19 Yes or no?
20 A I blame myself.
21 MS. ROBESON: All right.
22 BY MS. ROSEN:
23 Q Okay. Now, also, after the, after the case 72G,
24 isn't it, did you also at that -- sometime subsequent to
25 that case, isn't it correct that you also filed a lawsuit

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1 against the association in the circuit court around year
2 2008, March of 2008? Do you recall that?
3 A I recall something, but I can't recall why or what
4 it was. It may had to do with that -- oh, well, we lost the
5 case on the deck with the shed. I hired a firm called Van
6 Grack, Axelson & Williamowsky to file an appeal of that case
7 in the circuit court, yes.
8 Q Okay. But I was not actually, I was not actually
9 referring to the appeal. I was referring to a separate
10 civil action that you filed for a declaratory judgment,
11 somewhat similar to what you filed, the type of case that
12 you filed in the siding. Do you recall that?
13 A No.
14 Q Okay.
15 A What was the issue?
16 MS. ROBESON: Well, you can't ask the questions.
17 She has to ask the questions.
18 MS. ROSEN: Okay. I just, I'm going to mark --
19 this is just the judiciary case search of that case that I
20 pulled up. You know, it's such a long time ago that I
21 hardly remember it, but I just remembered it. This was the
22 case that was filed that was subsequent to, I believe, my
23 recollection -- I'll ask you.
24 BY MS. ROSEN:
25 Q Do you recall filing a case --

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1 MR. MOHAMMADI: Can I see this?
2 MS. ROSEN: Absolutely.
3 BY MS. ROSEN:
4 Q Filing a case somewhere in March of 2008 where you
5 were seeking to have, I believe, an application -- having
6 the court require or order the association to approve an
7 application that you submitted?
8 A No. I'm drawing a big blank on that.
9 MR. MOHAMMADI: I'm sorry. You can use this if
10 you want to.
11 Ms. ROSEN: Okay. Well, I was just, you know, I
12 mean, this is just the judiciary case search. I would have
13 to pull up this file, but I would like to introduce this
14 into evidence. This was a lawsuit that he filed against the
15 association. It was right subsequent to, I believe, the
16 decision in 72G, and the record shows it was a declaratory
17 judgment, and he ultimately dismissed the suit, kind of
18 similar to -- because I had filed a motion to dismiss. I
19 remember I filed a motion to dismiss, and we, there was a --
20 it was ultimately dismissed.
21 MS. ROBESON: Well, I don't want you to testify.
22 So --
23 MS. ROSEN: No, I understand that. So maybe what
24 I'd have to do is pull up -- if I can dig into my old file,
25 maybe we'll refresh his recollection with what he filed --

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1 MS. ROBESON: Okay. That's fine.
2 MS. ROSEN: -- back at that time. It's a little
3 hard to keep track of all the cases sometimes.
4 MS. ROBESON: Yes.
5 MS. ROSEN: Okay.
6 BY MS. ROSEN:
7 Q All right. Mr. Ball, I'm just going to ask you, I
8 believe you testified that you have a salesman's license for
9 remodeling, is that accurate?
10 A I have a salesman license from the Maryland Home
11 Improvement Commission.
12 Q And how long have you had that license?
13 A I think I first had that salesman license back in
14 1999.
15 Q And did you get that, you know, had that from 1999
16 until now consistently or --
17 A There was a period of time that it lapsed. I
18 can't remember when I reapplied for it, maybe three years
19 ago.
20 Q Okay. Now -- and I can't remember the name of it;
21 I don't know if I wrote it down -- but you indicated that
22 you are in the home, you're in the home remodeling business,
23 is that correct?
24 A We're in the remodeling business, yes.
25 Q Okay. And what is the name of the company you're

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1 with?
2 A PHI Construction, trading as Potomac Home
3 Improvement.
4 Q Now, is there somebody affiliated with that
5 company who has an MHIC builder's license?
6 A Yes.
7 Q And who is that?
8 A Michael, Michael Ball, my son.
9 Q Okay. Are you or Michael, are you owners of this
10 company?
11 A Yes.
12 Q Okay. So is it yourself and Michael, anybody else
13 in the family or other people?
14 A No.
15 Q Okay.
16 A At this point, I'm the sole shareholder of the
17 company.
18 Q You're the sole shareholder of the company?
19 A That's correct.
20 Q And is this basically your full-time occupation,
21 as a salesperson for this company?
22 A Yes.
23 Q Okay. So when this company does, you know, does
24 jobs as remodeling jobs -- I'm not that, I'll be honest, I'm
25 not that familiar with how, how builders work -- but I

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1 assume that Michael Ball is the one with the builder's
2 license. So what is his role in the company?
3 A MHIC issues the license to the person that passes
4 the MHIC test, all right, and that person becomes the,
5 quote, responsible person of the company to MHIC. All
6 right? It has nothing to do with ownership or anything.
7 All right? You know, so happened, Michael took the test and
8 passed it, all right, and that's why the license is in his
9 name.
10 Q Michael testified, I believe, that he was some
11 kind of a sales engineer, I believe is what he indicated, if
12 I'm remember correctly.
13 A Yes.
14 Q Okay. Does Michael work, is Michael's full-time
15 employment, is it with this construction company, PHI, or
16 does he work for somebody else as a sales engineer?
17 A He's a sales engineer with Boland Trane full-time.
18 Q What was the name of that company? I'm sorry.
19 A Boland Trane, T-R-A-N-E. Oh, I apologize. I
20 think the company now is just called Boland.
21 MR. MICHAEL BALL: No. It's Boland Trane.
22 BY MS. ROSEN:
23 Q Okay. And you indicated, he's a full-time sales
24 engineer?
25 A Yes.

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1 Q Okay. Well, what, if any, role does Michael play
2 in terms of the work, you know, the work that's done for,
3 I'm assuming, paying customers for this PHI Construction
4 company?
5 MR. MOHAMMADI: Objection. Relevance.
6 MS. ROBESON: Yes. Why are you delving into his
7 business?
8 MS. ROSEN: Well, I guess I was a little bit
9 confused because I had thought he was a builder, you know,
10 originally from the other case and then he indicated that he
11 was a sales, you know, he was a sales engineer, so --
12 MR. MOHAMMADI: Well --
13 MS. ROSEN: -- you know, and now, you know, and
14 now he indicates that he has, that he, there's a -- they
15 have a company together and that Michael Ball is the holder
16 of the license.
17 MR. MOHAMMADI: My limited knowledge of the
18 process, you need a salesperson's license in order to sell
19 the contracts and you need -- whoever's doing the home
20 improvement, that company needs to also have a home
21 improvement license. It doesn't have to be the same person.
22 That's the relationship, and he's testified as to that. I
23 don't know why -- first, I don't even know why that's
24 relevant, but be that as it may, I don't think this line of
25 question is --

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1 MS. ROSEN: All right. I want to ask -- I got
2 another question. I'm curious as to --
3 MS. ROBESON: Well, curious isn't good enough.
4 MS. ROSEN: All right. Well, I think -- well, I
5 think this is relevant.
6 BY MS. ROSEN:
7 Q I guess, given the fact that your son Michael
8 Ball, who owns property, has a builder's license, I guess I
9 -- why did you not consult with Michael about the
10 construction project that you were doing at his property, to
11 get advice -- for example, you've testified that you wanted,
12 that you were seeking advice, you didn't know what to do,
13 and you were going to Raj Barr, who's a board member, but my
14 question is, why did you not consult with your son Michael,
15 who's the owner of the property and holds a builder's
16 license and would presumably have some knowledge to be able
17 to assist you?
18 MS. ROBESON: Well, he doesn't know what the board
19 is going to approve, Michael doesn't, right? I guess --
20 MR. MOHAMMADI: Again --
21 MS. ROBESON: -- I keep, when you start delving
22 into these background issues, I'm losing you, because it
23 seems like --
24 MS. ROSEN: I -- yes.
25 MS. ROBESON: -- his testimony was what's the

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1 board going to approve, not what can I --
2 MR. MOHAMMADI: Not how to do it.
3 MS. ROBESON: Yes, not how to build it. Is there
4 another reason, I guess --
5 MS. ROSEN: You know, I guess it just seems very
6 odd to me that you have an owner of a property who has a
7 builder's license and we have all these issues, for example,
8 you know, with construction plans and what, you know, what
9 does this mean on this drawing and what does that mean, and
10 you have an owner who's got a builder's license. I guess
11 I'm just trying to kind of figure out why, why Peter Ball
12 doesn't, you know, who's a, has a license as a salesperson
13 and has been involved in the construction trade for so long,
14 can't seem to figure out how to construct a project
15 according to plans. I'm just kind of wondering -- I'm just
16 having a little difficulty.
17 MR. MOHAMMADI: Again, I would object. That's not
18 at all what he said.
19 MS. ROBESON: Yes, that's --
20 MS. ROSEN: I mean, I'm not really, you know.
21 MS. ROBESON: Yes, that is not what he said. You
22 can ask him why he constructed, you know, doesn't he know he
23 should follow the plans or something like that, but I don't
24 see getting into Michael's role in the business is
25 necessarily relevant.

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1 MS. ROSEN: Okay. Let me just go back to --
2 Court's indulgence. I'm just --
3 MS. ROBESON: Sure.
4 MR. MOHAMMADI: While Ms. Rosen is looking, I was
5 just trying to figure out some of these dates. September
6 5th would work with my client and I, just --
7 MS. ROSEN: That doesn't work for me. I've got
8 something else in court in Calvert County. The best dates,
9 I guess we can -- can I take a brain break for a second?
10 MS. ROBESON: Yes. Why don't you --
11 MS. ROSEN: That would help me.
12 MS. ROBESON: Why don't you take five minutes, or
13 how close, how many more questions do you have?
14 MS. ROSEN: Well, I'm going to, I mean, I'm going
15 to be going into the next session in this cross-exam with
16 him also. I mean, I'm trying to stay away from certain
17 technical things today because I would need to consult, but
18 you know, I, you know, I can keep going until 5 o'clock with
19 certain things and then --
20 MS. ROBESON: No. Well --
21 MS. ROSEN: Yes, if you prefer.
22 MS. ROBESON: -- I'd prefer then just to --
23 MS. ROSEN: Okay.
24 MS. ROBESON: -- let you consult before you --
25 MS. ROSEN: That's fine. Then that --

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1 MS. ROBESON: What I would like to do is tie up
2 dates --
3 MS. ROSEN: Okay.
4 MS. ROBESON: -- a date for next time.
5 Mr. Mohammadi --
6 MS. ROSEN: What works for you, Mr. Mohammadi?
7 MR. MOHAMMADI: One second.
8 MS. ROSEN: Okay.
9 MR. MOHAMMADI: 12th was the other date, right?
10 MS. ROSEN: Yes, 12th wasn't any good for me
11 either because I think I'm going to have a mediation on that
12 date. I was asked to hold that date, but the 15th and the
13 29th are good.
14 MS. ROBESON: The 29th I, if I said it, I should
15 have thought --
16 MS. ROSEN: Okay.
17 MS. ROBESON: -- more quickly. I can't do that.
18 MR. MOHAMMADI: 15th I don't think is going to
19 work.
20 MS. ROSEN: Okay. Are these two good with them,
21 or no?
22 MR. MOHAMMADI: The 19th would work --
23 MS. ROSEN: 19th?
24 MR. MOHAMMADI: -- I think.
25 UNIDENTIFIED SPEAKER: That's a Tuesday?

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1 MS. ROBESON: That's a Friday.
2 MR. MOHAMMADI: Friday. They're on Mondays or
3 Fridays.
4 UNIDENTIFIED SPEAKER: Oh, I'm sorry.
5 MS. ROSEN: Okay. 19th is okay for us. Is that
6 good for Sharon Washburn, because we're going to bring --
7 MR. BARR: Uh-huh.
8 MS. ROSEN: -- we expect we'll be bringing our
9 rebuttal expert on the 19th. We want --
10 MS. ROBESON: Okay.
11 MS. ROSEN: -- we'll be checking with her.
12 MR. MOHAMMADI: And the 22nd is also good for me,
13 if that's working for you guys. Both 19 and 22nd work.
14 MS. ROBESON: Okay. Ms. Rosen?
15 MS. ROSEN: Yes, 19th I know we're -- we're not
16 really sure about 22nd, but 19 we can definitely, yes.
17 MS. ROBESON: Okay. Well, let's go with the 19th
18 then.
19 MS. ROSEN: Let's commit to 19, and then we, I can
20 always, you know, I can always send you an e-mail --
21 MS. ROBESON: All right.
22 MS. ROSEN: -- and let you know if the 22nd works.
23 MR. MOHAMMADI: Can we get an idea of whether this
24 will be the last day? Do we know? I mean --
25 MS. ROBESON: Well, that's -- I mean, how many

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1 witnesses do you have?
2 MR. MOHAMMADI: I'd like to know, you know, should
3 I be prepping close now or not? Should I be --
4 MS. ROBESON: How many witnesses do you have?
5 MS. ROSEN: Well, I mean, we're going, obviously
6 we have our, we're going to have our rebuttal expert, and
7 I'll expect to put Mr. -- I'll expect to put some rebuttal
8 laywitnesses on. They're not going to be lengthy, but you
9 know, you know, based upon the testimony that's been given
10 here, I'd probably put Mr. Barr back on in rebuttal and
11 maybe one or two other homeowners with regard to just the
12 issue of notices, and they'll be very short, because
13 Mr. Barr will also be -- remember at the beginning I
14 indicated that when it came, when we got to the end, I would
15 have to put him also back on with regard to our attorney's
16 fees because I wasn't going to know what they were going to
17 be until we got to the end, you know.
18 MS. ROBESON: Yes. I guess, I guess the thing is,
19 I think both sides have requested attorney's fees. So we're
20 going to have to take something --
21 MS. ROSEN: Yes. I'm guessing that, you know, if
22 I had to guess, I would say we're going to need one more day
23 after this, and I think that's going to be -- I don't think
24 the 19th is going to be our finishing day. I think it's
25 going to be one more day.

1 MR. MOHAMMADI: Can we set the 19th and the 22nd
 2 now? That way we can --
 3 MS. ROSEN: Well, he said the 22nd doesn't really
 4 work. So --
 5 MR. MOHAMMADI: I just, these huge breaks between
 6 hearings make it a little tough to --
 7 MS. ROBESON: It's difficult to get back into it,
 8 I agree.
 9 MR. MOHAMMADI: Right, and I mean, we're sort of
 10 in the middle of testimony too. So --
 11 MS. ROBESON: Well, we can set both dates now.
 12 MS. ROSEN: Well, I think Mr. Barr indicated that
 13 the 22nd could be a problem. The 19th we know is good. I
 14 would suggest we set the 19th now and then we can just find
 15 some other date that works, you know, that's not too far
 16 from the 19th.
 17 MS. ROBESON: Well, all I need today is the 19th.
 18 MS. ROSEN: Okay.
 19 MR. MOHAMMADI: What about the 26th, was the other
 20 date.
 21 MS. ROBESON: That's not a good date for me. How
 22 about the 8th?
 23 MS. ROSEN: Of September?
 24 MS. ROBESON: Yes.
 25 MS. ROSEN: No. I think I'm in, I'm in -- that

1 week I'm in court. I believe it's --
 2 MR. MOHAMMADI: I'm willing to move my schedule
 3 around just to get this done. So --
 4 MS. ROSEN: That week in September, you know, it
 5 starts filling up.
 6 MR. MOHAMMADI: What about the 15th?
 7 MS. ROBESON: I could do the 15th.
 8 MS. ROSEN: 15th is okay. That was okay for me
 9 too.
 10 MS. ROBESON: So the 15th and the 19th?
 11 MS. ROSEN: Yes, I think that's fine. That should
 12 work.
 13 MS. ROBESON: Okay.
 14 MR. MOHAMMADI: Currently I do have two court
 15 cases scheduled for that day. I should be able to have
 16 somebody cover them, but there might be -- we might need to
 17 take an hour break in between, if that's okay, for me to run
 18 over, do a quick scheduling --
 19 MS. ROBESON: We've actually done that before.
 20 MR. MOHAMMADI: -- if I need to. I'll try to get
 21 coverage, but I can't guarantee that today without being
 22 able to do that --
 23 MS. ROBESON: I understand.
 24 MR. MOHAMMADI: -- but I want to get this done.
 25 MS. ROBESON: Why don't you --

1 MR. MOHAMMADI: Let's just do 15th and the 19th,
 2 and I should be able to --
 3 MS. ROBESON: Okay. All right.
 4 MR. MOHAMMADI: -- I should be able to make that,
 5 make that work.
 6 MS. ROBESON: Okay.
 7 MS. ROSEN: 15th and 19th are good.
 8 MS. ROBESON: Okay. Now, I think then that it's a
 9 good time to break now since we aren't going to get too much
 10 further, and I'm going to continue this case to September
 11 15th at 9:30 a.m. in the same room. And before we go off,
 12 the transcript, I guess, did come in today. It's on our
 13 website. It's posted on our website. So you should be able
 14 -- on the website for the Office of Zoning and
 15 Administrative Hearings -- so you should be able to download
 16 it from there. If you can't download it, you can call Ellen
 17 Forbes of our office, and she'll send you an electronic
 18 copy, but you should be able to download it. All right?
 19 MS. ROSEN: All right.
 20 MR. MOHAMMADI: Very well.
 21 MS. ROSEN: Thank you.
 22 MS. ROBESON: Thank you.
 23 MR. MOHAMMADI: Thank you.
 24 (Whereupon, at 4:40 p.m., the hearing was
 25 adjourned.)

C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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