

COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY

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

A hearing in the above-entitled matter was held on September 19, 2014, commencing at 9:34 a.m., at the County Office Building, Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Room 200, Rockville, Maryland 20850 before:

Lynn Robeson, Chairperson

A P P E A R A N C E S

On Behalf of the Complainant:

Corrine Rosen, Esquire

On Behalf of the Respondents:

Farrokh Mohammadi, Esquire

Also Present

Michael Ball, Respondent

Peter Ball, Respondent

P R O C E E D I N G S

1 MS. ROBESON: All Right. I'm calling the case of  
2 Potowmack Preserve, Inc. v. Michael and Peter Ball, CCOC  
3 Case No. 72-13, OZAH Case No. C-14-01. Good morning.  
4 MULTIPLE PARTIES: Good morning.  
5 MS. ROBESON: I hope your wife is well.  
6 MR. MOHAMMADI: She'd doing well. Thank you so  
7 much.  
8 MS. ROBESON: Good. Are there any preliminary  
9 matters?  
10 Mr. Mohammadi: I don't believe so.  
11 MS. ROBESON: I did -- did you get my email from  
12 yesterday?  
13 MS. ROSEN: Yeah.  
14 MS. ROBESON: Have you had the opportunity to --  
15 MR. MOHAMMADI: I haven't had a chance to read the  
16 opinion yet. I don't know if I can access it yet. I've  
17 tried several times in the past and I just could not get the  
18 opinion. So --  
19 MS. ROBESON: Okay.  
20 MS. ROSEN: I think -- I thought I provided it to  
21 you, didn't I? Way back in an email.  
22 MS. ROBESON: Well --  
23 MS. ROSEN: If not, I have it. I can give it to  
24 you, if not. I'll just scan it again.  
25

C O N T E N T S

COMPLAINANT'S WITNESSES	Direct	Cross	Redirect	Recross
Sharon Washburn (Expert)	8	62	170	
Lynn Gowan (Rebuttal)			179; 196	187
Linda Green (Rebuttal)	203	205		
Judy Dworkin (Rebuttal)	210	213		
Leigh Alfer (Rebuttal)	215	221	240	239; 242
Peter Gibson (Rebuttal)			245; 264	260

E X H I B I T S

COMPLAINANT'S EXHIBITS	PAGE(S)
162 Sharon Washburn's CV	18
163 Large scale drawing or reproduction of Exhibit 126, sheet A/B5	35
164 Large scale drawing or reproduction of Exhibit 126, sheet A5	40
165 Blow-up of Exhibit 126 drawing, Sheet A4	51
166 Possible architectural ridge lines	74
167 Enlargement of Exhibit 160 (front and rear elevations)	171
168 Comparisons between Exhibits 160 and 165	176

1 MR. MOHAMMADI: You may have, but I don't  
2 remember.  
3 MS. ROSEN: Yeah. I thought I did, but I can just  
4 scan it again and provide him with a copy.  
5 MS. ROBESON: Okay. Well then I'll reserve and  
6 give you an opportunity to look at it.  
7 Before we begin with all those stickies on that  
8 exhibit, I do -- I did -- when I went through the file, I  
9 had some questions. You don't have to answer them now, but  
10 if you could answer them, you know, at some point through  
11 witness.  
12 There is -- exhibit 141 is an email about -- it's  
13 the email where Peter Gibson wrote to Dr. Barr about the  
14 chain of custody of the plans. And it looked like there  
15 were some plans attached to that email. I think the email  
16 was 9/16/13. And I thought I saw some PDFs attached to  
17 that, and I wondered if those are in the record? So that's  
18 one question.  
19 MS. ROSEN: You are asking me if the attachments  
20 are in the record?  
21 MS. ROBESON: Yes.  
22 MS. ROSEN: Okay.  
23 MS. ROBESON: Also in Exhibit 129, there are two  
24 different agendas for the 10/7/13 meeting. And Exhibit 129  
25 was the full set of agendas and minutes that were supplied

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1 later in the hearing. And I didn't understand -- I couldn't  
2 understand that. Why? May I just -- I don't know. If you  
3 could address that?  
4 And the other thing is there is mention of a  
5 letter to Mr. Ball denying the vinyl siding, and I wondered  
6 if that was in the record. And unfortunately I don't have  
7 -- it's mentioned in one of the minutes that a letter was  
8 sent to him denying the vinyl siding, and I wondered where  
9 -- if that's in the record.  
10 So those are more housekeeping matters, but I  
11 would like them addressed. Okay?  
12 MS. ROSEN: Yeah. I think with regard -- just  
13 going off the top of my head, there were three. I think the  
14 vinyl siding was originally denied in the original denial --  
15 in the original letter that approved the project I think it  
16 said that the vinyl siding was denied, but I think Mr. Ball  
17 kept asking for it again and again; so there could have been  
18 other letters saying, no, we already told you that it's not.  
19 But I'm not quite sure, you know, because it was multiple --  
20  
21 MS. ROBESON: Yeah, it's hard.  
22 MS. ROSEN: It's kind of hard to --  
23 MS. ROBESON: I'm actually making a timeline of  
24 everything.  
25 MS. ROSEN: Okay.

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1 MS. ROBESON: So I'm trying to piece the puzzles  
2 --  
3 MS. ROSEN: No, I understand. I'll try to make --  
4 MS. ROBESON: -- piece these things together so I  
5 have a clearer picture.  
6 MS. ROSEN: That's quite a task.  
7 MS. ROBESON: So it may -- you may be right, now  
8 that you say that, but if I could just verify that?  
9 MS. ROSEN: Okay.  
10 MS. ROBESON: Okay. So you are saying it would be  
11 in the 5/11 -- May 10th, 2011 approval?  
12 MS. ROSEN: Yeah. I believe it would have been in  
13 the approval letter because it would have said that we are  
14 approving everything except I think -- and I'm just kind of  
15 going off the top of my head --  
16 MS. ROBESON: Yeah.  
17 MS. ROSEN: -- when the siding was denied or not.  
18 MS. ROBESON: Well, if you could just --  
19 MS. ROSEN: I'll look and see what I could find.  
20 MS. ROBESON: If you could just -- if you or your  
21 witnesses could check that, that would be helpful to me.  
22 All right, is there anything else?  
23 (No audible response.)  
24 MS. ROBESON: All right, Ms. Rosen, I think that  
25 you are up.

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1 MS. ROSEN: Okay. We'll be calling Ms. Washburn  
2 as our witness, an expert witness rebuttal.  
3 MS. ROBESON: Okay.  
4 (WITNESS IS SWORN IN.)  
5 THE WITNESS: Yes.  
6 MS. ROBESON: Go ahead, Ms. Rosen.  
7 WHEREUPON  
8 SHARON WASHBURN,  
9 having been called for examination by counsel for  
10 complainant and having been duly sworn, was examined and  
11 testified as follows:  
12 DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
13 BY MS. ROSEN:  
14 Q Could you please state your full name for the  
15 record?  
16 A My name is Sharon Washburn Southerland (phonetic  
17 sp.). I use Washburn as my professional name.  
18 Q And how do you prefer to be addressed?  
19 A Washburn for this hearing.  
20 Q Okay. And what is your profession, Ms. Washburn?  
21 A I'm an architect.  
22 Q And what is your business address?  
23 A 5410 Huntington Parkway, in Bethesda, Maryland  
24 20814.  
25 Q Okay. So how many years have you been an

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1 architect?  
2 A Thirty-six years.  
3 Q Okay. And by whom are you employed?  
4 A The name of my firm is Sharon Washburn Architect,  
5 P.C.  
6 Q Okay. And when did you establish your firm?  
7 A I established my firm in 1978 initially, and then  
8 it was incorporated in 1988/1989.  
9 Q Okay. And are you the owner of your firm?  
10 A Yes.  
11 Q And does your firm have any employees?  
12 A No, just me at this time.  
13 Q Okay. And what kind of work does your firm  
14 specialize in?  
15 A Residential work, remodeling, some new historic  
16 preservation, and occasionally small commercial projects.  
17 Q Okay. And do you hold any professional licenses?  
18 A I have three professional licenses as an architect  
19 in Maryland, Virginia, and the District of Columbia.  
20 Q Okay. And when did you receive those licenses?  
21 A 1978 and 1979.  
22 Q Okay. And are those licenses current?  
23 A Yes.  
24 Q And have any of those licenses ever been revoked?  
25 A No.

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1 Q Okay. And what do those licenses permit you to  
2 do?  
3 A Practice architecture.  
4 Q Okay. And what is your level of education?  
5 A I have a Bachelor of Architecture from Cornell  
6 University.  
7 Q Okay. And are you involved in any professional  
8 organizations or societies?  
9 A The American Institute of Architects.  
10 Q Okay. And what is your involvement? Are you a  
11 member?  
12 A I am a member of the D.C. Chapter. I'm an  
13 affiliated member of the Potomac Valley AIA Chapter.  
14 Q Okay. And have you received any types of awards  
15 or honors in your profession as an architect?  
16 A Yes. I am a fellow of the American Institute of  
17 Architects. It's an honor for service and distinguished  
18 practice. About one percent of the architects in the United  
19 States are fellows.  
20 Q Okay. As an architect, do you have any experience  
21 in designing residential projects, generally?  
22 A Yes. 95 percent of my work is residential work.  
23 Q Okay. And can you explain generally what you do  
24 as an architect in connection with designing residential  
25 projects?

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1 A I work with the client on design. I measure the  
2 existing house and prepare as-built drawings of the  
3 property. I produce working drawings that reflect the  
4 designs. Those are used for bidding and obtaining permits  
5 for construction. I work with the client to select a  
6 general contractor. I get building permits, as well as  
7 approval of any outside authorities, like Homeowners  
8 Association, Historic Review, Historic Review Boards or  
9 Zoning Adjustment Boards, and during construction I ensure  
10 that the work is built per plan, and I approve general  
11 contract applications for payment.  
12 Q Okay. And approximately how many residential  
13 projects have you designed as an architect?  
14 A 450 to 500 projects.  
15 Q Okay. And, in Montgomery County, if you know,  
16 approximately how many residential projects have you  
17 designed in Montgomery County, Maryland?  
18 A Over 225.  
19 Q And have you ever worked on projects with  
20 Homeowners Associations, Architectural Review Boards, and  
21 other similar types of groups or entities?  
22 A I've done at least 10 projects with Homeowners  
23 Associations, and more than four dozen projects that  
24 require approval by Historic Preservation Review Boards, and  
25 then I've done projects where there are only variances

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1 involved as well.  
2 Q Okay. And as an architect working on residential  
3 projects, are you involved in every aspect of the design  
4 process from start to finish?  
5 A Yes.  
6 Q Okay. And what would that -- could you just  
7 summarize what that would be?  
8 A All aspects of the design process. It's working  
9 with the client. It's looking at the various aspects of  
10 regulations that apply to that project, like if there are  
11 zoning variances needed; and the zoning requirements, it's  
12 looking and seeing if there are requirements for Homeowners  
13 Associations or Historic Preservation; and I have to  
14 incorporate those outside entity requirements in with the  
15 design concerns of the client, as well as the architectural  
16 aspects of the work, like the structure and construction  
17 method, and the look of the project.  
18 Q Okay. Now with regard to the look of the project  
19 generally when you are involved in designing, let's say for  
20 example, you are done with a remodel or with the design of a  
21 home in the Homeowners Association, are there any aspects  
22 that you look at in terms of how that property should be in  
23 connection with the other surrounding properties?  
24 A Yes. If I'm working in an area that has a  
25 Homeowners Association, I look at the Homeowner Association

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1 requirements, as to why they have an Architectural Review  
2 Board. And it will usually state the purpose of why there's  
3 a Homeowners Association Architectural Review Board. It  
4 will state that it's to -- typically to keep the new  
5 construction in harmony with the existing.  
6 MS. ROBESON: Okay. All right. Okay. Is this  
7 testimony or is this qualifying her, because --  
8 MS. ROSEN: I'm qualifying her basically.  
9 MS. ROBESON: Okay.  
10 MS. ROSEN: So, at this point, qualifying her.  
11 MS. ROBESON: That's more substantive testimony in  
12 the role --  
13 MS. ROSEN: Okay. Okay. All right. I'll --  
14 MS. ROBESON: Mr. Mohammadi, are you going to have  
15 any objections to her qualifications as an expert?  
16 MR. MOHAMMADI: Most likely not, although I may  
17 have few questions before I --  
18 MS. ROBESON: Okay. Go ahead.  
19 MS. ROSEN: Okay.  
20 BY MS. ROSEN:  
21 Q What if any involvement do you have in the  
22 construction process for projects where you are the  
23 architect for?  
24 A During construction I do job site visits and I  
25 consult with general contractor and/or the subcontractors,

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1 if there are any questions that arise during the  
2 construction, which always do arise. So I try and  
3 facilitate the construction so that the end result meets the  
4 initial drawings, and I approve general contractor  
5 applications for payment.  
6 Q Okay. And as an architect, do you create  
7 architectural drawings?  
8 A Yes, both hand-drawn and CAD.  
9 Q Okay. And do you also review other people's  
10 architectural viewings?  
11 A I review my own drawings and other architect and  
12 designer drawings, and I taught architectural drafting and  
13 building materials at George Washington University for over  
14 six years. So I know what proper drawings should look like  
15 with written dimensions and information, and what  
16 information is needed to build from those drawings.  
17 Q Okay. And as an architect, are you also familiar  
18 with architectural plans in general?  
19 A Yes.  
20 Q Okay. And your experience as an architect, I mean  
21 does it also include residential renovations?  
22 A Over 95 percent of my work is residential  
23 remodeling.  
24 Q Okay. And can you say what types of renovations  
25 have you been involved in as an architect?

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1 A I have worked the oldest house in Montgomery  
2 County that was built in 1706 to homes that are only a few  
3 years old. I have designed from very large additions to  
4 furniture. I have done projects that are a million-and-a-  
5 half to projects where there's only \$500 worth of work. And  
6 I've done pure historic preservation to modern design.  
7 Q Okay. And do you have any experience as an  
8 architect specifically with regard to roofs?  
9 A Yes.  
10 Q Okay. And can you explain what that experience  
11 is?  
12 A Every project I design I have to deal with the  
13 roof and what's happening with the existing roof versus new  
14 roofs and how they join, and how to make them function so  
15 that they are weather-tight.  
16 Q Okay.  
17 MS. ROSEN: Okay. I'm going to ask the Hearing  
18 Examiner to qualify Ms. Washburn as an expert in residential  
19 architecture, design and construction.  
20 MS. ROBESON: I just have question.  
21 THE WITNESS: Sure.  
22 MS. ROBESON: Have you ever testified as -- been  
23 recognized as -- qualified as an expert in any hearing?  
24 THE WITNESS: I have not testified in court, but I  
25 have heard before -- been heard before Planning Boards,

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1 Zoning Boards, in this very room.  
2 MS. ROBESON: As an expert or as an applicant?  
3 THE WITNESS: As an applicant.  
4 MS. ROBESON: Okay. Mr. Mohammadi?  
5 MR. MOHAMMADI: That was my question.  
6 MS. ROBESON: Oh.  
7 MR. MOHAMMADI: So I don't have any other  
8 questions.  
9 MS. ROBESON: Well, the test is, you know, can she  
10 shed more light than a layman? So I'm going to qualify her  
11 -- is it as an expert in architecture?  
12 MS. ROSEN: Yeah, in residential architecture,  
13 design and construction.  
14 MS. ROBESON: Design and construction. That is a  
15 pretty specific -- usually we say architect. Okay?  
16 MS. ROSEN: As an architect. Well then that's  
17 fine. We can go ahead with that. That's okay.  
18 MS. ROBESON: Okay.  
19 MS. ROSEN: All right.  
20 MS. ROBESON: She is qualified.  
21 MS. ROSEN: Okay.  
22 BY MS. ROSEN:  
23 Q Okay, Ms. Washburn, have you had an occasion to  
24 see the house, the property at issue here, Michael Ball's  
25 house, on Vantage Court in Potomac?

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1 A Yes. I saw it on 7/15, 7/25 and 9/13 of 2014. I  
2 saw it from both the front and side streets, and I saw it on  
3 the right side and rear from the neighbors' yards.  
4 Q Okay. And just to clarify, you viewed it -- where  
5 did you view the property from? Did you actually enter onto  
6 the lot or were you viewing it from the street or other  
7 people's properties?  
8 A I viewed it from the street and other people's  
9 properties. I've not been on the property directly.  
10 Q Okay. All right. Now have you also had an  
11 opportunity to review any documents, drawings, plans, or  
12 photos in connection with this case?  
13 A Yes.  
14 Q Okay. I'm going to just quickly show you some  
15 documents and just ask you to tell the Hearing Examiner  
16 whether you have seen this document before.  
17 MS. ROSEN: Also, actually I was -- I forgot -- I  
18 wanted to offer -- just go ahead and introduce into evidence  
19 the Curriculum Vitae of Ms. Washburn.  
20 MS. ROBESON: Yeah. I think that's already been  
21 marked. It was supplied. Mr. Mohammadi, do you have any  
22 objections?  
23 MR. MOHAMMADI: I do not.  
24 MS. ROBESON: Okay. Let me just get the --  
25 BY MS. ROSEN:

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1 Q Can you just identify that document, please?  
2 A Mmm-hmm.  
3 Q And what is that?  
4 A It's my Curriculum Vitae.  
5 Q Okay.  
6 MR. MOHAMMADI: I'm not sure where it's --  
7 MS. ROBESON: I thought I saw it in the file.  
8 MS. ROSEN: Yeah. I don't think it's been in, but  
9 I have brought copies for everybody so -- and I gave it to  
10 Mr. Mohammadi before. So I'll just enter it as Exhibit 164.  
11 MR. MOHAMMADI: I don't think it was ever marked.  
12 It may have been in an email of --  
13 MS. ROBESON: All right. That's --  
14 MS. ROSEN: Yeah. It was an email.  
15 MS. ROBESON: Let's take -- we'll take it in, and  
16 maybe that was it. Okay. So this will be Exhibit 162,  
17 Washburn CV.  
18 (Complainant's Exhibit 162 is  
19 marked/entered into evidence.)  
20 BY MS. ROSEN:  
21 Q Okay. I'm first going to show you a document  
22 which has been previously marked as Exhibit 85. And that  
23 is basically -- it's an email dated July 20, 2010 to various  
24 persons from Tania Bruno. I'm just going to ask you to look  
25 at that and tell me if you have ever seen that document

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1 before?  
2 A Yes, I have.  
3 Q Okay. And I'm also going to show you a document,  
4 which has been marked as Exhibit 76 previously, which is a  
5 letter dated April 15th, 2011 and ask you if you have ever  
6 seen that document before?  
7 A Yes, I have.  
8 MS. ROBESON: I'm sorry. Which document are you  
9 referring to?  
10 MS. ROSEN: Exhibit 76, which was the April 15th  
11 --  
12 MS. ROBESON: Oh, okay. I know that one.  
13 MS. ROSEN: Okay.  
14 BY MS. ROSEN:  
15 Q And then I will show you a document, which has  
16 been marked as Exhibit 77, which is an email from Jamie  
17 Dietz with some drawings attached to it and ask if you have  
18 seen that document before?  
19 A Yes, I have.  
20 Q Okay.  
21 (Discussion off the record.)  
22 BY MS. ROSEN:  
23 Q Okay. I'm going to show you a document, which has  
24 been previously marked as Exhibit 126, which a series of  
25 drawings with the date on the upper right-hand corner as

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1 being 2/22/11, and if you can look through that and tell me  
2 if you've seen that document before?  
3 A Yes, I have.  
4 Q Okay. I'm also going to show you a document,  
5 which has previously been marked as Exhibit 127-A, and ask  
6 if you've seen that document before?  
7 A I want to make sure it's what I'm thinking it is.  
8 Yes, I have.  
9 Q Okay. And I want to show you a document, which  
10 has been previously marked as Exhibit 148 in this case and  
11 ask if you've seen that document before?  
12 A Yes.  
13 Q Okay. I'm going to ask you to look at the  
14 document, which has been previously marked as Exhibit 159 in  
15 this case, and I'll ask you if you have ever seen this  
16 document before, the two drawings?  
17 A Yes, I have.  
18 Q Okay. And also, this document shows permit  
19 stamps. Have you ever seen the full permit set in this  
20 case?  
21 A I've seen it in a reduced drawing format, but I  
22 haven't ever looked at a large scale format.  
23 Q Okay. And I'm going to ask you also if you have  
24 seen the document which has been previously marked as  
25 Exhibit 160 in this case?

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1 A Yes, I have.  
2 Q Okay. And there are various photographs, I  
3 believe, that you also testified that you looked at photos.  
4 So I'm just going to ask you, the group of photos which has  
5 been marked as Exhibit 82 in this case, have you had an  
6 opportunity to look at those photos?  
7 A Yes.  
8 Q Okay. And also a group of photos that were marked  
9 as Exhibit 80, have you had an opportunity to take a look at  
10 those photographs?  
11 A Yes.  
12 Q Okay. And also Exhibit 81?  
13 A Yes.  
14 Q Okay. And Exhibit 83?  
15 A Yes.  
16 Q Okay. Exhibit 84?  
17 A Yes.  
18 Q And Exhibit 132?  
19 A Yes, although on the 132 drawings, I did not focus  
20 on drawings that -- or photos that were not of Mr. Ball's  
21 property. I was just focusing on the photos of Mr. Ball's  
22 property.  
23 Q And you also had an opportunity to review the  
24 complaint and the attachments to the complaint in this case?  
25 A Yes.

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1 Q Okay. All right. Now did you also have an  
2 opportunity to review the transcript of the expert testimony  
3 of Mr. Leo Schwartz, who was Mr. Ball's construction expert  
4 in this case?  
5 A Yes.  
6 Q Okay. And did you also have an opportunity to  
7 review the transcript of the testimony of Peter Ball  
8 concerning his roof and other construction renovations on  
9 this property?  
10 A Yes.  
11 Q Okay. And I believe -- I think you were also here  
12 during the last -- the last hearing when Mr. Ball testified?  
13 A Yes. I have been here during some of the  
14 testimony. Yes.  
15 Q Okay. All right. That's all of it. Now in the  
16 field of architecture or construction -- you know  
17 architecture generally, is there a generally accepted  
18 definition of the term of what a material change or material  
19 deviation is in connection with construction or  
20 architecture?  
21 A I think you could say that a material difference  
22 would be something that changes the look or the construction  
23 technique dramatically. So, for example, if you've shown  
24 two-inch trim on your drawing and you've put 2.25 inch;  
25 that's not a material difference because it doesn't affect

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1 the look or the structure. But, if you put 5.5 inch trim,  
2 that would be a material difference because it changes the  
3 look and intention of the design in the drawing.  
4 Q Okay. And can you tell us basically -- you know  
5 we've been dealing with a lot of architectural drawings in  
6 this case. Can you just explain what the kind of basic  
7 parts of an architectural drawings are?  
8 A The basic parts of an architectural drawing you  
9 need plans, which are drawings that look down from above  
10 onto the layout and they show the rooms in a horizontal  
11 fashion.  
12 You have elevations which are like a picture of  
13 what the front is. It's looking at the vertical faces of  
14 the drawings of the house or the structure.  
15 You have sections, which is like slicing through  
16 the structure, like if you slice through an orange, you  
17 wouldn't just see a round ball. You'd see the little  
18 sectional parts of the orange in there. And you might have  
19 other detailed drawings that get to specific parts -- for  
20 example, how a wall joins to a roof. So those are the basic  
21 drawings that you need.  
22 And then additionally, if you want to bid the  
23 project, you usually have specification and notes along with  
24 those.  
25 Q Okay. And just generally, are there certain basic

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1 principles that, for example, that a person who is not  
2 trained in the field of architecture or construction would  
3 kind of need to understand -- would need to have some handle  
4 on it, in order to understand the drawings or the plans for  
5 the construction that was done in this case?  
6 MR. MOHAMMADI: Objection. I don't know how  
7 that's expert testimony. And I don't even know what the  
8 question really is, but I don't see how that's expert  
9 opinion or testimony.  
10 MS. ROBESON: Yeah. I mean are you saying how  
11 laymen --  
12 MS. ROSEN: Yeah. I'm basically asking her if  
13 there is basically any kind of general principles that --  
14 you know, in order for laymen, such as ourselves, to make  
15 sure that we are understanding, if there are any basic  
16 principles that she can kind of explain in the laymen terms  
17 that we should be aware -- you know, aware of to understand  
18 these drawings.  
19 MS. ROBESON: Well, I'll let it in. I'm not sure  
20 how much weight I'm going to give it, but I'll let it in.  
21 MS. ROSEN: Okay.  
22 MS. ROBESON: It's presuming -- I guess the thing  
23 is it's presuming. The question is -- there is a factual  
24 underpinning, which is how much laymen know. Because we  
25 work with plans all the time but I'm not an architect.

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1 Nevertheless, I'll let it in and give it the weight it  
2 deserves.  
3 MS. ROSEN: Okay.  
4 THE WITNESS: Okay. There's obviously drawings  
5 when I try to explain things to contractors or laymen, as we  
6 are referring to them. You add graphic information to the  
7 drawings to make them more understandable. So, for example,  
8 instead of just having a blank wall in an elevation, you  
9 would show brick work or siding, something that gives  
10 somebody a visual indication as to what is happening that  
11 shows them graphically.  
12 You do written dimensions. Very importantly, if I  
13 am presenting something to non-architects, I try and include  
14 written descriptions into my drawings, or architects would,  
15 because it's very important, because words -- adding words  
16 helps a layman understand the construction, because graphics  
17 don't always mean something to the non-professional. And so  
18 you put written words in, because if you don't say you are  
19 doing something, then -- for example, if you don't say you  
20 are making a change, by implication there is no change. So  
21 it's very important to have written words saying this is  
22 what I'm doing. This is the new section. This is the  
23 existing section. This is a new siding. This is an old  
24 siding. That helps make it clear for people.  
25 MS. ROBESON: That helps, but I guess the question

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1 is -- well, go ahead.  
2 THE WITNESS: I'm finished.  
3 MS. ROSEN: Okay.  
4 MS. ROBESON: Go ahead.  
5 BY MS. ROSEN:  
6 Q All right. Now Mr. Schwartz in his testimony  
7 opined that the roof and the roof height conforms with the  
8 HOA approved plans. You had indicated that you had an  
9 opportunity there to review his testimony. Do you agree or  
10 disagree with the opinions expressed by Mr. Schwartz that  
11 the roof and the roof height of the subject properties had  
12 conformed with the HOA approved plans?  
13 A I disagree with him.  
14 Q Okay.  
15 A It does not.  
16 Q You are familiar with the HOA approved plans,  
17 correct?  
18 A Yes.  
19 Q Okay. Now Mr. Schwartz also opined that with  
20 respect to the construction at the property generally that  
21 there had been no materially changes to what had been  
22 approved by the HOA and what Mr. Ball has actually built.  
23 Do you agree or disagree with the opinion given by Mr.  
24 Schwartz with respect to the construction of the property  
25 generally; that there has been no material changes to what

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1 was approved by the HOA and what was constructed by Mr.  
2 Ball?  
3 A I disagree. I think there are a number of items  
4 that are material differences. The roof line is very  
5 different from the ones that were on the approved drawings.  
6 The approved drawings show basically two different roof  
7 levels, and the final version that has been built so far has  
8 five different roof lines. The window size, the trim  
9 treatments, the panel detailing, the window-like pattern to  
10 a prairie style are different. There are windows that had  
11 been removed that are on the approved the drawings, but that  
12 are not built. There are added windows in the not yet built  
13 portion on his drawing as to what he will be building. The  
14 wind bracing paneled corners are very different from the  
15 original. There are windows used instead of French doors.  
16 These and other changes alter the character of the  
17 approved drawings to a more traditional than contemporary  
18 look, and they are substantially different from the approved  
19 drawings.  
20 Q Okay. Now based upon your visit to the property  
21 and your view of the plans, Exhibit -- I'm referring now to  
22 Exhibit 126, which was -- which are the HOA approved plans  
23 -- in your own expertise, have you reached any expert  
24 opinions with respect to whether the building, meaning the  
25 roof and the other construction aspects, as constructed,

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1 conform with the plans that are contained in this Exhibit  
2 126?  
3 A They do not conform.  
4 Q Okay. All right. Now, based upon your visit to  
5 the property and your review of -- to the extent that you  
6 were able to review the permit plans, which were introduced  
7 in this Exhibit 88, and also I think you did review a  
8 portion -- I think it was Exhibit 159 --  
9 A Mmm-hmm. The drawings of 159.  
10 Q Have you reached any expert opinions with respect  
11 to whether the building, as constructed, the roof and other  
12 aspects, conform with the permit plans, the portions shown  
13 in 159 are accordance with the other portions that you have  
14 reviewed?  
15 A They do not comply. They do not conform.  
16 Q Okay.  
17 MR. MOHAMMADI: Was that 159? I'm sorry.  
18 MS. ROSEN: Yes, 159. Okay.  
19 BY MS. ROSEN:  
20 Q All right. And based upon your visit to the  
21 property and your review of the plans that were marked as  
22 Exhibit 148 and your own expertise, have you reached any  
23 expert opinions with respect to whether the building is  
24 constructed, including the roof and other aspects of the  
25 construction, conform with these plans shown in 148, which I

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1 think were dated 4/6/11, if I remember correctly?  
2 A They do not conform to those drawings.  
3 MS. ROBESON: Which exhibit is that?  
4 MS. ROSEN: 148.  
5 MS. ROBESON: Okay.  
6 MS. ROSEN: That was the dimension drawings that  
7 were introduced the last time.  
8 BY MS. ROSEN:  
9 Q Okay. Okay, now based upon your visit to the  
10 property and your review of the drawings and your own  
11 expertise, have you reached any expert opinions with respect  
12 to whether the building, as constructed, roof and otherwise,  
13 conforms with drawings that were dated -- it looks like --  
14 okay, I'm just handing you the drawings that were introduced  
15 into evidence as -- yeah -- drawings that were actually  
16 dated, it looks like December 5th of 2013, and also that  
17 have a handwriting -- handwriting, which I think Mr. Ball  
18 previously testified was his handwriting that say 5/12/14.  
19 But it's marked as Exhibit 160.  
20 A Exhibit 160 -- those elevations appear to come  
21 closest to what was actually built, and it appears to be a  
22 drawing of the present state of construction and the  
23 unfinished additional rear work that Mr. Ball is proposing  
24 to finish. What I do find interesting in this is that there  
25 is a transom in this drawing that Mr. Ball said that he was

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1 foregoing because it was first shown in the rejected 2010,  
2 Exhibit 126-A, and it's reappeared in this drawing of this  
3 proposed construction.  
4 MS. ROBESON: And can you identify -- you are  
5 looking at 160?  
6 THE WITNESS: Yes.  
7 MS. ROBESON: Which elevation?  
8 THE WITNESS: Okay. Give me --  
9 MS. ROBESON: The front or rear?  
10 THE WITNESS: Okay. I'm going --  
11 MS. ROSEN: I'm going to have -- this is a blown up  
12 drawing -- this is a blow up of 160, and I think --  
13 THE WITNESS: All of these drawings here are --  
14 those drawings taken to a printer, blown up to quarter inch  
15 scale, because I thought it would be easier to show things  
16 at a scale where everybody could look at it.  
17 MS. ROBESON: Okay.  
18 THE WITNESS: I did not change the drawings. All  
19 we did was increase the scale so that it was a larger scale.  
20 MS. ROBESON: Okay.  
21 THE WITNESS: So this is what I was just  
22 referring to. There are roof lines.  
23 MS. ROBESON: On the rear elevation?  
24 THE WITNESS: Uh-huh.  
25 MS. ROBESON: When you say this, you are pointing

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1 to --  
2 THE WITNESS: This transom.  
3 MS. ROBESON: -- the transom on the rear elevation?  
4 THE WITNESS: Yes.  
5 MS. ROBESON: Okay.  
6 MS. ROSEN: Okay.  
7 BY MS. ROSEN:  
8 Q And Ms. Washburn, w  
9 ould it be your testimony that -- you just testified that  
10 the drawing in 160 most closely resembles what Mr. Ball at  
11 this point has actually built. Does that -- does what is  
12 built and depicted in this drawing materially -- generally  
13 materially deviate from what -- than the other plans that  
14 you have identified in the HOA approved plans of 126?  
15 A Yes, it's materially different.  
16 Q Okay. Now can you explain to the Hearing Examiner  
17 the bases for your professional opinion that the actual  
18 construction at the Ball property does not conform to the  
19 HOA approved plans?  
20 A I can probably do it best by going through these  
21 drawings and overlaying them, because that helps --  
22 MS. ROBESON: Before you start doing that.  
23 THE WITNESS: Mmm-hmm.  
24 MS. ROBESON: We are on a transcript.  
25 THE WITNESS: Mmm-hmm.

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1 MS. ROBESON: So the transcript, when you point  
2 and say this --  
3 THE WITNESS: Yes.  
4 MS. ROBESON: So if you can kind of describe where  
5 you are point to?  
6 THE WITNESS: Okay. Thank you.  
7 MS. ROSEN: Before that, I'm just going to have  
8 you -- I'm just going to ask a couple questions about  
9 Exhibit 85 and Exhibit 76, just so you know - we are going  
10 to keep it sequential.  
11 THE WITNESS: Okay.  
12 MS. ROSEN: Exhibit 85 was the email dated Tuesday,  
13 July 20th, 2010, and Exhibit 76 is the letter dated April  
14 15th of 2011.  
15 Okay. First, I'm going to show you the letter  
16 that was the email from Tania Bruno to the Board written in  
17 2010, and that is Exhibit 85. And in that email, I'm going  
18 to have you take a look at the section where it has -- I'm  
19 going to have you take a look at that email. I think  
20 there's a section there --  
21 MS. ROBESON: Which email, 85?  
22 MS. ROSEN: That's 85. Yeah. I think there's a  
23 statement that starts at some point where it says Peter Ball  
24 will forego a second story addition.  
25 MS. ROBESON: Well, I can read that.

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1 MS. ROSEN: Okay. Okay.  
2 MS. ROBESON: I mean I remember that -- well now I  
3 don't see it, but --  
4 THE WITNESS: It's at the top of the second page.  
5 MS. ROBESON: Okay. He's foregoing the transom  
6 detail.  
7 THE WITNESS: Yes.  
8 MS. ROBESON: And where does it say he's foregoing  
9 the second floor addition?  
10 THE WITNESS: The first paragraph, he's willing to  
11 forfeit the third story as suggested for a roof area  
12 instead.  
13 MS. ROBESON: Okay.  
14 MS. ROSEN: Okay.  
15 BY MS. ROSEN:  
16 Q What do you understand from the statements made in  
17 that email generally?  
18 A If I can do it on a drawing, because that makes it  
19 easier for me to describe it? The statement says he would  
20 be agreeable -- this is from the paragraph at the top of the  
21 second page -- he's willing to abandon the transom detail.  
22 And again, this refers to a transom detail like this on  
23 Exhibit 160 over the garage portion.  
24 Q Okay. So basically is that -- basically in your  
25 observation, has that transom actually been constructed? Is

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1 that there?  
2 A Yes.  
3 Q Okay.  
4 MR. MOHAMMADI: For the record, that's the rear  
5 elevation you are pointing to?  
6 THE WITNESS: Yes. Okay. Yes, that's the rear  
7 elevation. The second part of that sentence says, would be  
8 agreeable if the new roof only spanned from the lower top --  
9 lower floor, top of wall to the upper floor, top of wall,  
10 not to the top of the main house ridge.  
11 If we look --  
12 MS. ROSEN: And just, Ms. Washburn, when you are  
13 pointing to whatever drawing you are going to, just make  
14 sure to indicate which exhibit it is.  
15 THE WITNESS: Absolutely. I am looking at sheet  
16 85 drawing dated 2/22/11, which I believe --  
17 MS. ROSEN: Exhibit 126.  
18 THE WITNESS: -- 126. And there -- on the bottom  
19 there is an as-built right side elevation. And if I read  
20 what Tania wrote, the new roof only spans from the lower  
21 floor/top of wall.  
22 MS. ROBESON: Now, if we're going to mark on that,  
23 that has to be a new exhibit.  
24 MS. ROSEN: Okay.  
25 MS. ROBESON: So you can mark. Do you have any

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1 objection, Mr. Mohammadi?  
2 MR. MOHAMMADI: To marking? No. But, yes, I  
3 would ask that it be marked as an exhibit if there are going  
4 to be markings on it.  
5 MS. ROBESON: Right. So this would be -- what is  
6 this a reproduction of, a large scale of --  
7 THE WITNESS: These are large scale of --  
8 MS. ROBESON: Is that --  
9 THE WITNESS: Do you want all of these or this  
10 particular one?  
11 MS. ROSEN: Yeah. It's Exhibit --  
12 MS. ROBESON: Is that 126, sheet A/B5?  
13 MS. ROSEN: Yes.  
14 THE WITNESS: Yes.  
15 MS. ROBESON: Okay. So 163 will be large scale  
16 drawing or reproduction of Exhibit 126, sheet A/B5.  
17 (Complaint's Exhibit 163 is  
18 marked/entered into evidence.)  
19 MS. ROBESON: All right.  
20 THE WITNESS: Okay.  
21 MS. ROBESON: Now you can mark.  
22 THE WITNESS: So, on the as-built right side  
23 elevation drawing, on the right side, which represents the  
24 rear of the house, there is a room that sticks out to that  
25 side that has a low pitched, almost flat roof. And, if you

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1 start from this description it says, new roof only spans  
2 from the lower floor, top of wall, which is at the low point  
3 of the roof there, to the upper floor, top of wall, not to  
4 the top of the main house ridge, which is up there.  
5 So that is what Tania Bruno described starting at  
6 the top -- lower floor, top of wall to the top of the wall  
7 of the main house, the original wall.  
8 MS. ROBESON: Well that's assuming she's referring  
9 -- see, this is what I had a problem with. That's assuming  
10 she's referring to the as-builts.  
11 THE WITNESS: Well --  
12 MS. ROBESON: You see what I am saying? I'm not -  
13 -- I'm --  
14 THE WITNESS: She has --  
15 MS. ROBESON: Because that's the thought that  
16 occurred to me as I was re-reading this.  
17 THE WITNESS: Well, the reason I am using the as-  
18 built is because that's the place where you can clearly see  
19 where the upper floor top of wall is, and where the existing  
20 --  
21 MS. ROBESON: Yeah, but if you go to A5 -- go to  
22 A5 for a moment.  
23 THE WITNESS: Okay. I can do that. This is sheet  
24 A5 from 126 dated 2/22/11.  
25 MS. ROBESON: Yes. Now look at the -- I can't

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1 read what elevation -- the top elevation.  
2 THE WITNESS: The top is the left side elevation  
3 and the bottom is the right side elevation. This is the --  
4 the bottom drawing is the same view as the as-built.  
5 Because, move these around, you -- these drawings vellums.  
6 They are transparent. So you can actually see one drawing  
7 below the other. I did that specifically so you can lay  
8 them over and see what --  
9 MS. ROBESON: So why isn't she talking about the  
10 proposed? Because if she's talking about the proposed, it's  
11 okay.  
12 THE WITNESS: Well, let me show you what's  
13 different between this proposed and the written description,  
14 because that's what these people had to go by, the written  
15 description. Forgive me. This will take a moment.  
16 MS. ROBESON: So you are saying they can't read  
17 the plans?  
18 THE WITNESS: I'm saying it's not clear in the  
19 plans, and that the plans did not follow the written work.  
20 May I just put this here for a moment and out of the way?  
21 MS. ROBESON: Sure. Sure. I guess the other  
22 thing -- you know I don't want to be -- I want to be fair.  
23 And so she also says she wants -- they want closet space.  
24 So how can you add closet space to the second floor?  
25 THE WITNESS: You could still get closet space in

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1 that space that's there.  
2 MS. ROBESON: Yeah. All right.  
3 THE WITNESS: I'm doing a job right now that has  
4 less height than that and is getting them closet space.  
5 MS. ROBESON: Okay.  
6 THE WITNESS: So we are now looking at sheet A5  
7 dated 2/22 from set 126, and it is overlaid over sheet A/B5.  
8 And, if I go back to the written description that Ms. Bruno  
9 gave and draw that written description on this drawing, it  
10 says it goes from the top of wall of the existing -- the  
11 lower floor top of wall.  
12 MS. ROBESON: No it doesn't say existing, does it?  
13 You can tell I've been parsing through this. So I --  
14 THE WITNESS: Okay. The new roof --  
15 MS. ROBESON: It doesn't say --  
16 THE WITNESS: Well, it's a new roof. Well, it  
17 says it only spans from the lower floor, top of wall --  
18 MS. ROBESON: To get rid of --  
19 THE WITNESS: -- to the upper floor, top of wall.  
20 MS. ROBESON: But she doesn't say existing.  
21 THE WITNESS: There isn't any other top of wall on  
22 the back of the house.  
23 MS. ROBESON: I thought there was a top of wall  
24 marked.  
25 THE WITNESS: There is -- there is the top of the

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1 wall at the back addition. This is all referencing the back  
2 of the house.  
3 MS. ROBESON: But there is a top of wall marked?  
4 THE WITNESS: Yes, and it's right here.  
5 MS. ROBESON: Well what's the -- okay -- let me  
6 get it. Well why don't you continue, and then I'll figure  
7 out what I was trying to ask.  
8 THE WITNESS: Okay. Okay. So on --  
9 MS. ROBESON: Oh, here it is. There is a top of  
10 wall on A5.  
11 THE WITNESS: Mmm-hmm.  
12 MS. ROBESON: There is a top of wall --  
13 MR. MOHAMMADI: I'm sorry. What exhibit is that?  
14 MS. ROBESON: 126. On the right side elevation  
15 there is a top of wall ceiling line that begins above where  
16 the flat roof comes down.  
17 THE WITNESS: This point up here.  
18 MS. ROBESON: Look over on the left of the right  
19 side of the elevation.  
20 THE WITNESS: Right. That point?  
21 MS. ROBESON: That says top of wall ceiling.  
22 THE WITNESS: That goes to right here.  
23 MS. ROBESON: Well it extends out though on those  
24 plans. You see that?  
25 THE WITNESS: Well, the line extends out because

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1 graphically you extend it out so that it's past the house.  
2 That's a graphic drawing technique. And you extend it out  
3 so that when you additionally draw things, it doesn't cover  
4 over those lines so that you can't see them again.  
5 MS. ROBESON: But the area where it intersects --  
6 okay. Well I'll -- I -- I think I understand your position.  
7 THE WITNESS: Okay. So if I follow the description  
8 the way I read her description, as an architect, the new  
9 roof only spans from the lower floor, top of wall, which is  
10 this point here. This is the lower floor on the rear of the  
11 house. This is the upper floor. So you are going from the  
12 lower floor, top of wall, and you -- it's very faint here,  
13 but that's the existing line. So it's going from the lower  
14 floor, top of wall, to the upper floor, top of wall.  
15 MS. ROBESON: Now you've marked A5 of --  
16 THE WITNESS: I've drawn on A5 the same  
17 information that this reading would have me interpret that  
18 was meant for construction.  
19 MS. ROBESON: I understand. I just -- out of an  
20 abundance of caution, I'm going to mark it as 164, same  
21 title, large scale reproduction, sheet A5.  
22 THE WITNESS: Mmm-hmm.  
23 (Complaint's Exhibit 164 is  
24 marked/entered into evidence.)  
25 MR. MOHAMMADI: What was 163? I'm sorry. What

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1 did we call that?  
2 MS. ROBESON: Large scale reproduction of 26,  
3 sheet A/B5.  
4 THE WITNESS: A5.  
5 MR. MOHAMMADI: No, that was --  
6 MS. ROBESON: No. I mean he asked for the prior  
7 one.  
8 MR. MOHAMMADI: I was asking about the previous  
9 one.  
10 MS. ROBESON: The previous one was the A/B5 and  
11 this one is A5.  
12 THE WITNESS: Yes.  
13 MR. MOHAMMADI: Thank you.  
14 MS. ROBESON: You're welcome. Okay.  
15 MS. ROSEN: Okay. All right.  
16 BY MS. ROSEN:  
17 Q I am now going to -- thank you -- I am now going  
18 to show you the exhibit that was previously marked as  
19 Exhibit 76, which is the April 15th 2011 letter.  
20 A Right.  
21 Q And I want to ask you to look at page two --  
22 A Mmm-hmm.  
23 Q -- I think it's paragraph two. If you can just  
24 take a look at that paragraph and explain what that  
25 paragraph means to you as an architect?

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1 A Okay. Do you want me to read the paragraph again?  
2 Q No. I --  
3 MS. ROBESON: Everybody has parsed through it.  
4 THE WITNESS: Okay. I would go back to the same  
5 A/B5 sheet.  
6 MS. ROBESON: Okay. So that would be Exhibit 161.  
7 THE WITNESS: Yeah.  
8 MS. ROBESON: Actually, do you have a pen? Can  
9 you mark that exhibit?  
10 THE WITNESS: Sure.  
11 MS. ROBESON: We don't have a clerk in the  
12 courtroom, so we have to make do.  
13 THE WITNESS: So A/B5 is Exhibit --  
14 MR. MOHAMMADI: 164.  
15 MS. ROBESON: 163.  
16 MR. MOHAMMADI: Oh, I'm sorry. A/B --  
17 MS. ROSEN: Yeah. 163 is A/B and 164 was the  
18 other one that was just the A5.  
19 THE WITNESS: So the next one is 147 -- 164?  
20 MS. ROBESON: If you would be so kind?  
21 THE WITNESS: Sure.  
22 MS. ROBESON: Thank you.  
23 THE WITNESS: So if I return to Exhibit 163, and I  
24 start with the as-built, because that's what Peter and Tania  
25 are starting with. They are starting with what is here and

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1 they are describing what they are going to do to that. So  
2 the same point; it says -- he talks about roof pitches and  
3 what it means, but he also says that his goal is to change  
4 the roof from flat to slope, and -- okay -- just a second.  
5 I have to get to my exact point. He again refers to the  
6 height of existing structure is only eight foot where the  
7 new roof line would meet the current structure.  
8 He's talking about starting -- he wants to change  
9 the roof from flat to sloped. So you start a roof at the  
10 low point and you slope up to the house. And his  
11 description is that if he did that at 3/12, that point would  
12 reach lower than the existing roof, and therefore he wants  
13 to change it so it goes up to the existing current roof  
14 ridge, so it will be a more attractive and flowing design.  
15 So again, the description as I read it is that it  
16 starts at the existing flat roof and goes up to the current  
17 roof. And I would like to -- because you are getting these  
18 drawings, I want to make a correction to my previous sketch,  
19 because I drew to the wrong roof point here. So I want to  
20 make sure that it's drawn correctly. Yeah.  
21 MS. ROBESON: Well why don't you -- wait -- why  
22 don't you label them, one line incorrect and one line -- or  
23 label it not correct -- not correct? Well I mean --  
24 THE WITNESS: Yeah. Because it should be going to  
25 there.

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1 MS. ROBESON: And then label correct line, not a  
2 -- presuming that it's in relation to her testimony. Now  
3 presuming question of fact.  
4 THE WITNESS: Okay. Because it should be -- the  
5 description goes to the adjacent roof ridge to that lower  
6 portion. So he's describing that if he uses a 3/12 pitch it  
7 will come lower on that wall. He wants it to go up to the  
8 roof line, so he wants to change the pitch so that it goes  
9 up to the existing roof line.  
10 And if we look at that on the proposed drawing,  
11 again, we start at the existing top of wall, because he's  
12 not saying he wants to raise the wall. He's just saying he  
13 wants to change from flat to sloped. And you start at the  
14 top of wall and you go to the adjacent roof, and that  
15 creates a line that does -- joins the current roof ridge,  
16 and does not go above it.  
17 MS. ROBESON: Well that -- that's not in there.  
18 That's your opinion as to what it says.  
19 THE WITNESS: Right. Well he says if joined the  
20 current roof ridge. And that would be how you get to  
21 joining the current roof ridge.  
22 (Discussion off the record.)  
23 BY MS. ROSEN:  
24 Q Okay. In your professional opinion, how did this  
25 discrepancy come about, or how do you think it came about?

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1 A The discrepancy as to the roof heights?  
2 Q Yes.  
3 A Yes. Okay. The difference that I see when I  
4 overlay these drawings and I take the written description of  
5 Tania Bruno's and Mr. Ball's was that instead of starting at  
6 the flat roof that's shown in Exhibit 164 -- instead of  
7 starting the low point of the flat roof and continuing up to  
8 meet the existing roof, they built a low wall and then ran  
9 the roof up from there. But there's nothing in their  
10 written statement that says that they are building that. So  
11 by building up and then continuing up to the existing house,  
12 it raised -- ultimately raised the roof height.  
13 Q Okay. But it is shown on the plan?  
14 A As being raised?  
15 Q Mmm-hmm.  
16 A It is shown graphically, but there are no graphics  
17 to indicate that, and there are no words or dimensions to  
18 indicate that. So it shows and becomes a little more  
19 obvious when we do an overlay like this. But, as an  
20 architect, you would not expect people to take two drawings,  
21 particularly ones that aren't transparent like this that you  
22 can see through, but that are solid -- you would not expect  
23 anybody to put them together, hold them up to the light, to  
24 see if there is a difference.  
25 So if there is not any words saying raised roof,

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1 raised chimney, you are not going to look for it.  
2 Additionally, one of the things that is a standard  
3 format for drawings that architects use is we use dash lines  
4 to indicate where things are that are either hidden in the  
5 drawings that you can't always see.  
6 So, for example, in A5 of 126, when we look at  
7 those side elevations, we see the lines that indicate lower  
8 floor, bottom of joist, upper floor, top of wall, and those  
9 are the dash lines that run all the way across the drawings.  
10 Those aren't anything visible from the exterior of the  
11 house. Those are things that are hidden within the house.  
12 And when you look at A/B5 of set 126, which is  
13 Exhibit 163, you also see those lines that run all the way  
14 across the house to indicate there's something happening  
15 that you can't see. And, on the as built left side  
16 elevation, you specifically see the roof line of the -- what  
17 would be the side of the living room. And then in dashed  
18 lines behind that you see the lower roof line of the  
19 existing lower portion of the roof.  
20 So, in these drawings you specifically see that  
21 technique showing you where there are hidden things or  
22 things that you can't see. And what I see when I look at --  
23 we're going to have to add these, I guess -- when we look at  
24 A4 and 84, both of Exhibit 126 --  
25 MS. ROBESON: Okay. So Exhibit 165. Are you going

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1 to mark on them?  
2 THE WITNESS: Umm --  
3 MS. ROBESON: Well, why don't you just -- let's  
4 just proceed and we'll see what happens?  
5 THE WITNESS: Yes. Okay. I just want to throw a  
6 little piece of paper first so that we don't get too many  
7 layers going and that you can't see.  
8 MS. ROBESON: So you're just placing a sheet of  
9 paper over the prior exhibit?  
10 THE WITNESS: Right.  
11 MS. ROBESON: So it doesn't show through?  
12 THE WITNESS: Exactly.  
13 MS. ROBESON: I'm just saying that for the record.  
14 Now what you've just put up is 159 or 160, correct?  
15 THE WITNESS: No. These are 126es.  
16 MS. ROBESON: Okay. They are. Okay. I see.  
17 THE WITNESS: Because the roof line is level all  
18 the way across.  
19 MS. ROBESON: Right.  
20 THE WITNESS: So this is the proposed front and  
21 rear elevations of --  
22 MS. ROBESON: Of 126?  
23 THE WITNESS: -- 126. And this drawing clearly  
24 shows those same top of wall, upper floors, lower floors,  
25 bottom of joist, lines running all the way across the

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1 drawings so that you can see where those points are.  
2 MS. ROBESON: Okay.  
3 THE WITNESS: What is missing from this drawing  
4 for me to fully understand it as an architect is where is  
5 the existing roof line? As an architect, an architect would  
6 draw these. And just as we have been overlaying things I'm  
7 looking at what's behind it, and I'm putting up now A/B4,  
8 which is the as built drawing from sheet 126. You start with  
9 an as built drawing. You have to start with what's there,  
10 and then you add to it.  
11 So that's a clear drawing of what's there, and  
12 there's a clear roof line. And when I then go to do my new  
13 design, I've still got this drawing hidden behind my new  
14 drawing, so that I can see what's there and what I'm  
15 changing. And when you look at this --  
16 MS. ROBESON: And when you say this, you are --  
17 THE WITNESS: This -- the sheet -- the as built --  
18 MS. ROBESON: A/B4 of 126?  
19 THE WITNESS: A/B4. That would show through as I  
20 then went to draw A4. And this would show through on the  
21 computer just like it does in these drawings. So when I go  
22 to draw A4 -- forgive me. I'm going to switch these again,  
23 because that's more like -- I want to put A/B4 behind A4.  
24 Sorry. This always takes a minute to get everything lined  
25 up so that you are comparing apples and apples.

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1 So I now have sheet A/B4 of 126 behind sheet A4 of  
2 126. And when I do that I would see what an architect would  
3 be seeing on the computer screen or in a hand drawing, and  
4 that shows not just all those top of wall, bottom of walls,  
5 and where chimneys are and where old windows and things are,  
6 but it also shows the existing roof line. And if you look  
7 at this you can very clearly see a line of the old roof line  
8 that is hidden behind there and that is there on another  
9 drawing. And just as these top of wall lines are dashed --  
10 and I'm going to draw on the drawing now. I'm going to show  
11 a line that represents where the original existing roof is  
12 behind -- and that's hidden by the new construction.  
13 So when I look at this drawing, I would expect to  
14 see that information because it's a very important piece of  
15 information. That is the only clue that is clear and  
16 graphic that the roof is being raised other than written  
17 words. And since there are no written words and there are  
18 no written dimensions on this drawing, the clue that I would  
19 have that something is happening is this dashed line going  
20 through that. To not have that dashed line says to me that  
21 it was specifically, in CAD drawing speak, erased or taken  
22 out, so that that information is omitted and hidden, and it  
23 appears that it's -- the drawings are falsified.  
24 MS. ROBESON: So you are saying Tania Bruno  
25 misrepresented -- who is not here -- purposefully

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1 misrepresented?  
2 THE WITNESS: What I'm saying is when I see that  
3 line omitted and I know that the computer would draw it --  
4 MS. ROBESON: She's got a license too.  
5 THE WITNESS: Yes.  
6 MS. ROBESON: That's a big accusation.  
7 THE WITNESS: I'm just saying that is what I would  
8 expect to see in the drawings, and that's what the computer  
9 would bring through. So that is omitted in my -- in my  
10 expertise, I would not have omitted that. That is a major  
11 way of showing that this is happening. And if all these  
12 other lines are shown, why was that one line that made it  
13 clear what was happening not shown?  
14 MS. ROBESON: Well -- okay -- the side elevations  
15 also show what's happening, don't they?  
16 THE WITNESS: They don't distinguish old roof from  
17 new roof.  
18 MS. ROBESON: Oh, you're saying -- but they show  
19 an extra floor, but -- okay.  
20 THE WITNESS: They show an extra floor but they  
21 don't show where the old roof was relative to where the new  
22 proposed roof fits.  
23 MS. ROBESON: I see. I understand. So this is a  
24 large scale reproduction of Exhibit -- I should have made  
25 this shorter --

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1 THE WITNESS: Sorry.  
2 MS. ROBESON: -- of Exhibit --  
3 THE WITNESS: 126.  
4 MS. ROBESON: -- 126.  
5 THE WITNESS: Sheet A4.  
6 MS. ROBESON: Sheet A4.  
7 THE WITNESS: Okay. And do you want me to write  
8 the exhibit number?  
9 MS. ROBESON: Yeah. It's 165. Thank you.  
10 (Complainant's Exhibit 165 is  
11 marked/entered into evidence.)  
12 MS. ROBESON: We can't pay you for this.  
13 THE WITNESS: That's okay. 165?  
14 MS. ROBESON: Yes. You don't need to write  
15 exhibit. If you can just mark the number, that's fine.  
16 THE WITNESS: Okay.  
17 MS. ROBESON: So you are saying she showed the  
18 dashed line -- all right -- I understand.  
19 MS. ROSEN: Okay. All right.  
20 BY MS. ROSEN:  
21 Q Ms. Washburn, let's go through some of the other  
22 -- what are the other elements in the building, as it has  
23 been constructed, that do not conform to the HOA approved  
24 plans? And take your time going -- you know, going to each  
25 -- going through each of them one by one. And if you need

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1 the photographs here that you have already identified, that  
2 you have looked at, if you need any of them to explain that,  
3 go ahead and use them and just let the Hearing Examiner know  
4 which photograph you are looking at in the exhibit.  
5 A Okay.  
6 Q Why don't we start with let's say the windows?  
7 What are you doing?  
8 A I'm just trying to clarify.  
9 Q Okay.  
10 A Do you want me to do it from Exhibit 160, which is  
11 what's built -- or the drawings that represent most closely  
12 what is built --  
13 Q Yeah. I think you have already --  
14 A -- versus the drawings of 126 that show what was  
15 proposed?  
16 Q Yes. I think that would be -- I think comparing  
17 -- because since you testified that 160 is like closest to  
18 what has been built --  
19 A Okay.  
20 Q -- and 126 of the HOA approved plans, I think  
21 where the appropriate comparison could be made. And if you  
22 need to need any photographs that show the actual -- you  
23 know, that's fine also. We can use the photographs too.  
24 A Okay. I'm going back to drawings because that is  
25 -- that is how I speak.

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1 Okay. I'm just removing some drawings so that we  
2 don't have as many layers to look through and try and  
3 understand.  
4 I have a base drawing, which is Exhibit 165, which  
5 is sheet A4 of set 126, and I am overlaying on that a  
6 reproduction of 160, which is blown up to be the same scale,  
7 a quarter inch scale.  
8 And thank you for your indulgence while I line  
9 these things up.  
10 The first thing that I look at when I see this is  
11 that the roof line is different. The -- oh wait -- and I'm  
12 looking at sheet -- it's the first sheet of 160 that shows  
13 the front and rear elevations.  
14 MS. ROBESON: Okay.  
15 THE WITNESS: It doesn't have a -- there's no  
16 drawing number on it.  
17 MS. ROBESON: Okay.  
18 THE WITNESS: But it's the first sheet of 160.  
19 MS. ROBESON: Front and rear elevations of 160?  
20 THE WITNESS: Correct. The roof line has changed  
21 substantially. On sheet A4, Exhibit 165, there's a roof  
22 line on the new left side addition. The roof line bumps up.  
23 There's pretty much a smooth, continuous roof line until you  
24 hit the garage. The roof bumps up about six inches or so and  
25 then bumps down a little bit on the right side of the

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1 garage. But, in essence, it's one even roof line across.  
2 And, in the front elevation of sheet 160  
3 reflecting what's built to date, the roof line of the left-  
4 hand addition is lower; then it jumps up to the roof line  
5 that's the existing height of the living room portion; then  
6 it jumps over the foyer; then it jumps over the garage; and  
7 then then jumps down again on the right side of the garage.  
8 So that's one, two, three, four, five different  
9 roof lines as opposed to two roof lines.  
10 The window configuration -- the windows are  
11 different sizes and the trim and detailing around the  
12 windows are different. There are these traditional sort of  
13 panels that are done under the windows that change the  
14 character of the house.  
15 The balconies to either side of the -- like over  
16 the garage and on the second floor of the left side  
17 addition, there are railings that are shorter than the  
18 original drawing of sheet A4. Instead of being --  
19 Q Second?  
20 A I have to scale since it's not mentioned on the  
21 drawings. Instead of being about eight-and-half feet long,  
22 the balcony on the left is five feet, nine inches,  
23 approximately. And on the right of the garage the railing,  
24 instead of being 9.5 feet, is about the same, 5 feet, 9  
25 inches.

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1 Additionally, the approved plans 126 show behind  
2 that railing is a pair of French doors. It is now a window  
3 behind that railing. There is an additional -- on the front  
4 foyer elevation, instead of being mostly glass across the  
5 front with a little bit of siding, there are now solid  
6 panels to the right and left of pair of glass front doors on  
7 the first floor. The second floor, again, has solid panels  
8 on either side with a window in the middle that has a little  
9 bit of railing across in front of it. None of the paneling  
10 and railing is shown on sheet A4 of Exhibit 126. That's a  
11 whole new detail.  
12 The brick detailing around the windows in the  
13 living room section where brick has been added has been  
14 changed. It's just not detailed the same.  
15 Just a second. Now is when I need to go through  
16 my little post-its here.  
17 There is an additional difference that -- two of  
18 the windows that you can't see in these drawings because he  
19 did not put the same type of windows in this drawing that he  
20 actually put in the actual construction. So, if you look at  
21 --  
22 MS. ROBESON: When you say this drawing, you are  
23 talking about the --  
24 THE WITNESS: I'm sorry.  
25 MS. ROBESON: -- the large scale 160?

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1 THE WITNESS: Yes. Yes. So it will take me a  
2 second. There is a -- a-ha -- Exhibit 82, photos E, there  
3 is -- the top drawing is showing the roof, and the bottom  
4 drawing shows the front elevation with the garage on the  
5 right.  
6 MS. ROBESON: I apologize.  
7 THE WITNESS: Do you want me to bring it up to you  
8 and show you?  
9 MS. ROB  
10 SON: No. I just know where it is here. Okay. I am sorry.  
11 Which in 82?  
12 THE WITNESS: 82E.  
13 MS. ROBESON: Okay.  
14 THE WITNESS: Okay. The bottom drawing -- or the  
15 photo --  
16 MS. ROBESON: Yes.  
17 THE WITNESS: Sorry.  
18 MS. ROBESON: Okay.  
19 THE WITNESS: Okay. If you look at the actual  
20 windows, they are not one big pane of glass. They have a  
21 little white line around the exterior that creates a pattern  
22 on them.  
23 MS. ROBESON: Mmm-hmm. Mmm-hmm.  
24 THE WITNESS: We can refer to those as lights.  
25 There are other technical names for it, but the dividing

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1 bars that create patterns and lights within the window. As  
2 opposed to one big pane of glass, this has little panes of  
3 glass all the way around the exterior in a windows style  
4 that we would call a prairie style. And that prairie style  
5 window pattern is not shown on either 126 drawings or 160  
6 drawings. And that changes the character of the house from  
7 contemporary to maybe more arts and crafts traditional.  
8 It's not in the same style.  
9 Another difference -- and as long as we are on  
10 page E of the photos of Exhibit 82 -- if you look at the  
11 photo that's directly above it, that photo is taken from the  
12 left looking back up to the roofs. The main piece in the  
13 middle of the photo shows a roof overhang that is at the  
14 foyer, and a little bit of a roof overhang that's over the  
15 living room section. In the original proposal, all the roof  
16 overhangs on the project were being very small ones, a  
17 couple ventures at most, which is the same as the original  
18 house, and which is what is in harmony and what all the  
19 other houses in the neighborhood have.  
20 So the approved drawings -- the approved drawings  
21 show a very small overhang, which you can see, Exhibit 164  
22 or Exhibit 126, a five on the right side and left side  
23 elevations show minimal overhangs. And, if you look at this  
24 photo of what is actually physically built there, you see a  
25 large overhang. And I believe Mr. Ball testified that those





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1 measuring it from?  
2 THE WITNESS: The grade at the front to the top of  
3 this roof here.  
4 MS. ROBESON: Well, let's do this -- well, let's  
5 do this. Why don't you actually take 126 and scale that  
6 into an eighth, and then you don't have to assume the eight  
7 foot --  
8 MS. ROSEN: Could we take a five-minute break?  
9 MS. ROBESON: Well, can we finish this witness,  
10 because I really need to -- I would like to move through  
11 this?  
12 (Discussion off the record.)  
13 THE WITNESS: I'm getting the same results when I  
14 measure on the eighths scale, A/B4 drawing of 126.  
15 MS. ROBESON: So there is no -- you are saying  
16 there is no difference between the as-built when you scale  
17 it and the proposed?  
18 THE WITNESS: On the left side portion of the  
19 house under the living room. Because that -- the one ridge  
20 of that portion, which I think Mr. Ball testified as well,  
21 he said he left that ridge the same height and that  
22 everything was built up from there. So the left portion is  
23 the same height as the original according to his testimony  
24 and what I can see in the drawings.  
25 MS. ROBESON: What about the right portion?

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1 THE WITNESS: The right portion --  
2 MS. ROBESON: Because I think the as-built showed  
3 that the original roof was different levels.  
4 MR. MOHAMMADI: Mmm-hmm.  
5 THE WITNESS: The as-built -- yes, there are two  
6 different levels.  
7 MS. ROBESON: So can you perform the same  
8 comparison -- 126-A -- well, the left side -- no, the --  
9 MR. MOHAMMADI: Right side.  
10 MS. ROBESON: I'm sorry. The right side.  
11 THE WITNESS: Over the garage portion? Is that  
12 what you are asking for?  
13 MS. ROBESON: Yes.  
14 THE WITNESS: At the garage?  
15 MS. ROBESON: Because that's where the trusses are.  
16 Am I mistaken in that?  
17 MR. MOHAMMADI: Mmm-hmm.  
18 THE WITNESS: Yes. And that's where it's raised  
19 considerably over the existing roof line. Right?  
20 MS. ROBESON: Right. Correct.  
21 THE WITNESS: Okay. So I am on sheet A/B4 of 126.  
22 MS. ROBESON: And I hate to do this. I think you  
23 are going to have to show them where you are measuring. Do  
24 you want to approach rather than mounting a --  
25 THE WITNESS: Sure. Can I bring my expert up just

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1 in case?  
2 MS. ROBESON: That's fine. Mr. Schwartz.  
3 THE WITNESS: I think he mentioned there, and I  
4 think --  
5 MS. ROBESON: No. Where is there; from what to --  
6 THE WITNESS: From the front of the garage to the  
7 ridge on the as-built A/B4 drawings. And measuring it at  
8 eighth (phonetic sp.) scale drawing, and I get 24 foot. And  
9 I'm measuring on the blown up drawing and I'm getting a  
10 little under 24 foot.  
11 MS. ROBESON: No. Okay.  
12 MR. SCHWARTZ: That's on --  
13 MR. MOHAMMADI: They are the same drawings that  
14 blown up, correct?  
15 THE WITNESS: Yes.  
16 MS. ROBESON: No. No. They're -- okay -- can you  
17 do all your measurements on 126?  
18 THE WITNESS: They are both 126.  
19 MS. ROBESON: No, they are not.  
20 THE WITNESS: Oh, okay. Okay.  
21 MS. ROBESON: Yours is assuming that -- so -- I  
22 just want absolutely apples to apples, okay?  
23 THE WITNESS: Okay. So, if I use my scale and I  
24 measure from the ridge of the original house that's behind  
25 the garage area, I get just under 24 feet.

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1 MS. ROBESON: Okay. And that's on A/B4 of the real  
2 126?  
3 THE WITNESS: Yes.  
4 MS. ROBESON: Okay. Can you do the -- measure the  
5 same point on A4 of the real 126, which is the 11x17? Can  
6 you --  
7 MR. MOHAMMADI: Sure.  
8 THE WITNESS: That shows 27 foot, a little bit  
9 more than 27 foot. 27.3 foot or so.  
10 MS. ROBESON: I got 27.4 feet, but I'll go with  
11 yours.  
12 THE WITNESS: Well, at eighth inch scale it's --  
13 the thickness of the pencil --  
14 MS. ROBESON: I know. I know. I'm teasing.  
15 THE WITNESS: Yeah.  
16 MS. ROBESON: I really --  
17 THE WITNESS: And that's a continuation of the  
18 same roof line that's over the living room, in essence.  
19 MS. ROBESON: Okay. All right.  
20 (Discussion off the record.)  
21 MS. ROBESON: Do you have a question, Ms. Rosen?  
22 MS. ROSEN: No. I just wanted to go over  
23 something with you. Can we do it on the record?  
24 MS. ROBESON: Yeah. I need to move on, if this is  
25 our last day, otherwise, I --

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1 BY MS. ROSEN:  
2 Q Are there any other additional deviations which  
3 you believe need to be illustrated to the Hearing Examiner  
4 to understand our position here?  
5 A I think the other deviation, which I did not  
6 mention in all of this, is that the chimneys are all being  
7 raised, which is shown but is not indicated, just as --  
8 MS. ROBESON: Wait. Wait. Shown but not  
9 indicated? You mean there are no dashed lines through the  
10 chimney showing where the existing chimney is? Is that what  
11 you mean by --  
12 THE WITNESS: Right. There is -- there is no line  
13 indicated that the chimneys are being raised. There is no  
14 written words saying they are being raised.  
15 MS. ROBESON: Mmm-hmm. Mmm-hmm.  
16 THE WITNESS: And additionally, one of the things  
17 that architects would do to distinguish old work from new  
18 work --  
19 MS. ROBESON: Mmm-hmm.  
20 THE WITNESS: -- new work gets shown with a  
21 graphic indicator.  
22 For example, I've got an existing wall of the  
23 house and there is siding on it and that siding is staying,  
24 I'm not doing anything with it. It's just shown as a blank.  
25 I'm adding an addition and it's going to have siding that

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1 matches. So the addition has lines on it showing the  
2 siding. And that is -- and I also would have a note that  
3 says existing portion, existing siding, new addition, new  
4 siding. The graphic indication, the graphic -- the drawing  
5 that shows that siding indicates this is something that's  
6 happening versus something -- this blank portion, that's  
7 existing. That's not changing. But, where I've drawn a new  
8 material, that is a new feature, and that's a graphic way of  
9 also illustrating it.  
10 So, in A4 of 126 -- and I'm looking at Exhibit  
11 165, which is the blown up version where I've made some  
12 drawings by --  
13 MS. ROBESON: Noted the existing roof line by  
14 drawing --  
15 THE WITNESS: I'm showing the existing roof line -  
16 --  
17 MS. ROBESON: -- on the front elevation?  
18 THE WITNESS: Right.  
19 MS. ROBESON: When you look at the chimneys, there  
20 is also -- (a) there are no dimensions showing where those  
21 chimneys are supposed to go. By code they are supposed to  
22 be a minimum of 2 foot above any roof height. So there is  
23 no visual dimension showing that. There is no written word  
24 that said this chimney is being raised.  
25 And the other thing that's happening here is

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1 there's an existing chimney that has an existing treatment  
2 on it that's existing up to a certain height, the height of  
3 the existing chimney, and you only need to add new treatment  
4 on top of that. So I would have expected part of that  
5 chimney to be existing and part of it to show the new  
6 treatment of where it's being extended. That would be again  
7 a new visual clue that, oh, this is old chimney, this is new  
8 chimney on top of it; the new chimney gets siding, the old  
9 chimney exists.  
10 So that visual -- those visual clues are missing,  
11 the dimensions are missing, the dotted line indicating the  
12 old roof line is missing, so you can't tell what is being  
13 raised in these drawings. I -- I can't imagine any builder  
14 agreeing to bid off of these drawings. And even bidding off  
15 of the permit set would be very difficult because there are  
16 none of these lines that you compare old and new structure.  
17 MS. ROBESON: Okay.  
18 BY MS. ROSEN:  
19 Q Okay. Now, Mr. Ball had testified that he had to  
20 raise the roof ridge in order to keep the pitch, I believe  
21 it was. Are there other ways to have kept the existing  
22 ridge line that was shown on the approved drawings, and keep  
23 a pitch of -- a 3/12 or 4/12 type of pitch?  
24 A Yes. Can I use my pencil again? Because my  
25 pencil is my verbal --

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1 MS. ROBESON: Yeah. Absolutely.  
2 (Discussion off the record.)  
3 THE WITNESS: And you are more than welcome to  
4 take my drawing and incorporate it. I have some blank paper  
5 here. Oh, actually, do they mind if I use the paper that's  
6 up here?  
7 MS. ROBESON: No. I don't know whose paper that  
8 is, but you can use it.  
9 THE WITNESS: Okay. I am drawing a sort of side  
10 view of what would be let's say a typical house.  
11 MS. ROBESON: Can everyone see that? Okay. And  
12 we are going to have to mark this as a new exhibit, 167.  
13 What are you going to draw us?  
14 THE WITNESS: I am drawing means that architects  
15 can use to keep existing ridge lines and not have to raise a  
16 ridge line when you are adding onto a house.  
17 MS. ROBESON: Okay. Okay. I'm just trying to  
18 think of a succinct description for that. Possible  
19 architectural ridge lines.  
20 THE WITNESS: Solutions to not raising a ridge  
21 line.  
22 MS. ROBESON: That -- let's just -- it doesn't  
23 have to be --  
24 THE WITNESS: Okay.  
25 MS. ROBESON: Possible architectural ridge lines.

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1 That's Exhibit 166. Can you kindly --  
2 MR. MOHAMMADI: 167 or 166?  
3 MS. ROBESON: I have 166. Did I miss one?  
4 MS. ROSEN: I don't think so because I was --  
5 MR. MOHAMMADI: No, I think you are right.  
6 MS. ROSEN: Yeah, 166 is what I thought it would  
7 be too.  
8 THE WITNESS: 166.  
9 MS. ROBESON: Okay. I was going to say something.  
10 (Complainant's Exhibit 166 is  
11 marked/entered into evidence.)  
12 THE WITNESS: So I've got -- I've just shown what  
13 would be like a two-story house with a triangular gable roof  
14 on it, and the top of the point of the triangle is the  
15 ridge. Let's call that point A. And where the roof line  
16 meets the wall, which is the gutter line -- we also call it  
17 a soffit -- let's call that point B.  
18 MS. ROBESON: Okay.  
19 THE WITNESS: I am now adding another box that  
20 represents a two-story addition, and I want to put a roof on  
21 this addition, and I don't want that roof to go past point  
22 A.  
23 MS. ROBESON: All right.  
24 THE WITNESS: Well, if I started A and go to --  
25 MS. ROBESON: Do you want to mark the addition

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1 roof C? Yeah.  
2 THE WITNESS: Yeah. Point C is the gutter line  
3 aligning with point B of the addition. So I can connect  
4 from C to A. That's the most obvious solution. But, Mr.  
5 Ball's concern was that when he went from A to C it created  
6 a low-pitch roof and he didn't want a low-pitch roof. He  
7 wanted a higher pitch roof. So his solution was to go from  
8 C and take the pitch that he wanted, which was, in this  
9 particular case what -- 3/12, 4/12 -- something that was  
10 easier to roof, and he just kept that going up until it went  
11 past A and created a new ridge.  
12 There is no reason though when you are doing this  
13 -- there are two variables. One is A, and one is the lower  
14 point of the soffit or gutter, which in this particular  
15 drawing is B and C. So instead of starting at C and going  
16 up to A or starting at C changing the pitch and going higher  
17 than A, if you start at A and take the pitch that somebody  
18 wants and do that, you can go to a point that is lower than  
19 C. C and B -- in this case probably a typical 8' ceiling --  
20 is not a given that is violet (phonetic sp.). You can lower  
21 C and B -- or C in this particular case -- and still have a  
22 room that is useable, a room that meets code, and that keeps  
23 the existing ridge.  
24  
25 So all the explanations is that he had to raise

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1 the ridge to meet the roof line; there were other ways of  
2 doing this. That's one way if you just deal with a straight  
3 ridge. The other way of approaching this, which Mr. Ball  
4 presented and the adjacent neighbor did on that extension  
5 over the garage, was to use a gable, where he said he wanted  
6 to keep the roof down low to the existing ridge, and you  
7 could use a gable to do that as well.  
8 So there are other ways of making that happen.  
9 MS. ROBESON: But I though the HOA said no to the  
10 gable option.  
11 THE WITNESS: My understanding is they did not say  
12 no to the gable option. What was rejected at that time was  
13 the circle --  
14 MS. ROBESON: Okay. Is that what you know?  
15 THE WITNESS: When I read the information it says  
16 that what was rejected was the transom and the third --  
17 MS. ROBESON: Okay.  
18 THE WITNESS: -- what they referred to as the  
19 third floor addition at the rear.  
20 MS. ROBESON: Okay.  
21 THE WITNESS: There wasn't something that  
22 specifically rejected the gable, in my reading and  
23 recollection.  
24 MS. ROBESON: Okay.  
25 THE WITNESS: So --

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1 MS. ROSEN: Okay.  
2 BY MS. ROSEN:  
3 Q Again, as an architect, when you submit a drawing  
4 for some purpose, let's say to an HOA client or somebody, is  
5 that drawing considered to be a work in progress, or is that  
6 like a final drawing? How does that work?  
7 A When I submit drawings to an HOA, the first thing  
8 I've done -- or any architect should be doing -- is you go  
9 to the HOA. You find out what their requirements are.  
10 MS. ROBESON: As far as what?  
11 THE WITNESS: What their goal is. Are they trying  
12 to match the character of the existing neighborhood? Are  
13 they trying to keep similar building materials? What is  
14 their statement as to why they have architectural review?  
15 So I read those documents. I look at similar  
16 things maybe in the neighborhood that have been done, but I  
17 read that document and say, okay, what can they do? I of  
18 course have talked with my client to find out what they  
19 want, and I produced a set of drawings that reflect both  
20 what I feel would be acceptable to the HOA, as well as -- or  
21 Historic Preservation Review Board, which are often far more  
22 stringent -- but you do that and you look, and you give them  
23 something that reflects the HOA requirements, as well as  
24 your client's wishes. So that's the first step; what is the  
25 HOA looking for in terms of design?

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1 I produce drawings that show the new work and the  
2 existing house. They show what materials are proposed.  
3 They show the dimensions. They show what's new. They show  
4 what's old. Fill out forms in conjunction with the owner  
5 because there is quite often an HOA thing; a request for a  
6 written description, and that written description is very  
7 important because the written description is what helps the  
8 HOA review and clarify what is or might not be shown the  
9 drawings.

10 I also, of course, have to produce the drawings  
11 that are requested by the HOA. They are going to define  
12 what type of drawings they need. These are then presented  
13 to the Boards. Sometimes I do it. Sometimes the owner does  
14 it. And then you get approval. And once you get that  
15 approval, that is not a suggestion of, oh, it sort of can  
16 look like this. That approval is the final design. If, as  
17 we continue to produce working drawings, if my client wants  
18 to change something that makes it materially different, if  
19 the building permit people ask for something that changes,  
20 then you go back to the HOA for approval for those changes.  
21 It is a final look --

22 MR. MOHAMMADI: Objection.  
23 MS. ROBESON: Just a second.  
24 MR. MOHAMMADI: This is beyond architect --  
25 testimony beyond what an architect would testify to.

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1 MS. ROBESON: I agree. I agree.  
2 THE WITNESS: I must say having done this many,  
3 many times with Historic Preservation Review Boards, this is  
4 what I do on the HOAs.  
5 MS. ROBESON: Well this is a Historic --  
6 THE WITNESS: Well, this is for HOAs as well.  
7 MS. ROBESON: I guess the question is -- I don't  
8 think it's a legal issue. I mean it -- the way you do it is  
9 a very good way.  
10 THE WITNESS: Okay.  
11 MS. ROBESON: But, I guess -- I lost my train of  
12 thought there.  
13 THE WITNESS: Okay. Maybe I can summarize this.  
14 Those approved drawings --  
15 MS. ROBESON: If you want to say industry practice  
16 --  
17 THE WITNESS: Industry practices. Those approved  
18 drawings by the HOA are your direction. That is a final  
19 look. You can't go varying it and changing it without going  
20 back to that Board for approval. And that is an industry  
21 standard.  
22 MS. ROBESON: Thank you.  
23 BY MS. ROSEN:  
24 Q Now, in a plan drawing, if you don't specifically  
25 state that you are going to do something such as raise the

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1 roof, it's not specifically stated, you know, or properly  
2 shown in a drawing, what does it mean?  
3 A I think I stated there before, in -- by not saying  
4 you are doing something, it's assumed that there's no  
5 change. If you don't specifically state I am changing this,  
6 it is assumed that it is original and that it's not  
7 changing.  
8 MS. ROSEN: Just a kind of procedural question.  
9 You know we are going to be, you know -- under the governing  
10 documents, you know, the Association can seek litigation  
11 expenses in addition to attorney's fees, and I will be  
12 seeking reimbursement to the Association for Ms. Washburn's  
13 time. And I didn't know whether that's -- whether you'd  
14 want to hear about anything -- I mean I don't have all of  
15 her compensation with me. I don't know if you want to hear  
16 about what her general hour to hour rate is and all right  
17 now or later.  
18 MS. ROBESON: Well, wait. I know that you are  
19 counting that as litigation.  
20 MS. ROSEN: Well we can submit -- yeah -- I mean,  
21 under the governing documents it references that we can --  
22 the Association, in connection with enforcement actions, can  
23 ask for its reasonable attorney's fees and litigation  
24 expenses. We consider it to be a litigation expense and  
25 stuff, but I just didn't know if you wanted to --

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1 MS. ROBESON: I'm not ready to answer that one  
2 right now.  
3 MS. ROSEN: Okay.  
4 MS. ROBESON: That's something that you can  
5 submit.  
6 MS. ROSEN: Okay.  
7 MS. ROBESON: She could her -- you know, her  
8 invoice to you in an affidavit.  
9 MS. ROSEN: Okay. That's fine. Then that's what  
10 we'll do.  
11 MS. ROBESON: Okay.  
12 MS. ROSEN: That's why I just wanted to find out  
13 -- we'll do it that way.  
14 MS. ROBESON: Yeah.  
15 MS. ROSEN: All right. Well then that's fine.  
16 MS. ROBESON: Generally we don't -- okay -- go  
17 ahead.  
18 MS. ROSEN: All right. I don't -- I don't think  
19 there's anything further at this time. Hold on one second.  
20 Just making a quick look. All right. No further questions.  
21 MS. ROBESON: Okay. Now, it is quarter to 11:00  
22 -- or 12:00 -- 12:00. We could take a break now, or would  
23 you prefer to do your cross-exam and then we'll -- not wait  
24 for cross-examination?  
25 MR. MOHAMMADI: I just need five minutes for a

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1 bathroom break. Otherwise, I can --  
2 MS. ROBESON: Okay. Well let's take 15 minutes  
3 and we'll start back at noon.  
4 MS. ROSEN: Okay.  
5 THE WITNESS: Thank you.  
6 (Brief recess.)  
7 (OFF THE RECORD)  
8 (ON THE RECORD)  
9 MS. ROBESON: On the record. Mr. Mohammadi.  
10 MR. MOHAMMADI: Thank you.  
11 CROSS EXAMINATION BY COUNSEL FOR RESPONDENTS  
12 BY MR. MOHAMMADI:  
13 Q Ms. Washburn, how do you know this HOA?  
14 A Excuse me?  
15 Q How do you know this HOA, the Potowmack Preserve  
16 HOA; how do you know them?  
17 A I am aware of them through this suit. I am also  
18 aware of them because I have worked in this HOA.  
19 Q Okay. And what have you done in this HOA?  
20 A I did an addition on a house.  
21 Q Okay. For a homeowner?  
22 A Yes.  
23 Q Who was this homeowner?  
24 A Gloria and Irving Billick (phonetic sp.).  
25 Q And when was that addition done?

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1 A 1996ish.  
2 Q And so you went through the whole submittal  
3 process and got approval, and then you had the addition  
4 built?  
5 A Mmm-hmm.  
6 Q What was the addition?  
7 A It was a one-story addition on the rear of the  
8 house. And it was against -- you know, one-story against a  
9 two-story portion of the house, and there were a number of  
10 internal changes, and the windows were replaced.  
11 Q Okay. Do you know Dr. Barr?  
12 A Yes, I do.  
13 Q How do you know Dr. Barr?  
14 A I know him through the American Institute of  
15 Architects activities that I do.  
16 Q Okay. How long have you known him?  
17 A Since I believe 1981/1982 -- early 1980s.  
18 Q Have you two ever worked together?  
19 A Yes.  
20 Q And when was that?  
21 A God you're really testing me. Probably around  
22 2000.  
23 Q Just one time or multiple times?  
24 A No. There are two projects that I can think of.  
25 Q Okay. And what were those projects?

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1 A National Cathedral restroom renovations. And  
2 there was some work -- some neighborhood associations owned  
3 by Arlington Housing Corporation in Virginia where I hired  
4 him to help me put together a report for that.  
5 Q Okay. And when was the most recent one of these  
6 A I'm guessing around 2000. I don't remember  
7 exactly off the top of my head.  
8 Q And do you know what position Dr. Barr holds  
9 within the American Institute of Architects?  
10 A He's a --  
11 MS. ROSEN: I'm going to object. Is this  
12 relevant?  
13 MS. ROBESON: It goes to bias.  
14 MS. ROSEN: Okay.  
15 THE WITNESS: He is a fellow of the American  
16 Institute of Architects. He was an officer of the local  
17 chapter, as well as a national officer.  
18 BY MR. MOHAMMADI:  
19 Q Would you consider Dr. Barr to be a competent  
20 architect?  
21 A Yes.  
22 Q Okay. And you know how many years he's been an  
23 architect, correct? I mean if these --  
24 A I do not know when he was registered, but he's  
25 been an architect since I met him.

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1 Q And you said you worked with him; you know sort of  
2 his work ethic, et cetera, right?  
3 A Mmm-hmm. Mmm-hmm.  
4 Q Yes? I'm sorry. We have to be on the record.  
5 Sorry.  
6 A Yes.  
7 Q Okay. Have you ever testified or been hired by  
8 this particular HOA on the Board side of it? In other  
9 words, has the Board ever hired you for anything or  
10 consulted with you on anything before?  
11 A No.  
12 Q So this is the first time the Board has hired you  
13 on anything?  
14 A Yes.  
15 Q Are you aware that Dr. Barr is the President of  
16 the HOA?  
17 A I became aware of that when this was brought to my  
18 attention. Yes.  
19 Q And are you aware that there is an actual  
20 Architectural Committee?  
21 A Yes.  
22 Q Okay. And that's -- in your experience that's  
23 typical, for an HOA to have an Architectural Committee?  
24 A Absolutely. Yeah.  
25 Q And you are aware that the Architectural Committee

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1 has set forth certain guidelines for submissions of any  
2 changes to a home, correct?  
3 A Yes. I submitted before this same group for any  
4 changes to a house. Yes.  
5 Q Okay. Right. And have you reviewed the most  
6 recent guidelines in preparation for this case?  
7 A I was given a set of guidelines. I looked at  
8 them.  
9 Q Okay. So you are aware of the Architectural  
10 Committee's Guidelines, correct?  
11 A Mmm-hmm.  
12 Q Specifically the design guidelines?  
13 A Yes. I'd like to see them, if you are going to be  
14 asking me questions about them because they are not all at  
15 the top of my head.  
16 Q Sure. I'm just trying --  
17 MS. ROSEN: I guess I'm going to object to the  
18 extent that I -- this is going beyond the scope of my  
19 direct. I didn't ask her anything about whether she had  
20 reviewed particular governing documents of the Association.  
21 MS. ROBESON: Well she -- Mr. Mohammadi.  
22 MR. MOHAMMADI: Well it goes into -- her testimony  
23 was that certain things were not submitted and --  
24 MS. ROBESON: Yeah. It goes into customary  
25 practice.

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1 THE WITNESS: Okay.  
2 MS. ROBESON: She did testify on that.  
3 MR. MOHAMMADI: The Court's indulgence. I just  
4 need to figure out which exhibit was the guidelines.  
5 MS. ROBESON: It's earlier. I know that. It was  
6 prior to the June 12th hearing, I think. We need a  
7 searchable exhibit list.  
8 MR. MOHAMMADI: That would -- that's coming in the  
9 future.  
10 MS. ROBESON: Oh, I requested it. It's Exhibit  
11 67. Exhibit 69 is page six, and 70 is the full set.  
12 MR. MOHAMMADI: Very good. Thank you.  
13 BY MR. MOHAMMADI:  
14 Q Okay. I'm showing you what's been marked as  
15 Exhibit 69. Those are the Architectural Design Guidelines.  
16 A Okay. I -- is this different from the 67 that you  
17 just --  
18 Q Exhibit 67 was the email, and 69 is the actual  
19 document.  
20 A Oh, okay.  
21 MS. ROBESON: Well, 69 is page six. 70 is the  
22 full set with the procedures in it.  
23 THE WITNESS: Okay. Okay.  
24 MS. ROBESON: Well, which -- I just wanted to --  
25 MR. MOHAMMADI: We are looking at 69, just page

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1 six.  
2 MS. ROBESON: Okay.  
3 MS. ROSEN: Okay.  
4 BY MR. MOHAMMADI:  
5 Q Have you had a chance to review this before?  
6 A I looked at it, yes.  
7 Q Okay. Could you point to me where in that  
8 document the Architectural Committee requires written  
9 descriptions of what is being done?  
10 A What is not on this sheet but that I know exists,  
11 which is where I would expect more written descriptions to  
12 come is the application, because it asks to describe what  
13 you are doing. But, a standard architectural drawing is not  
14 just a drawing. It is a graphic representation of what is  
15 being built. It has written dimension and it has written  
16 notes as to what is happening. And that is a standard  
17 within the industry, that there are written notes on  
18 drawings.  
19 So I would not expect this to say you should write  
20 all of this down and write the written words as well.  
21 MS. ROBESON: Well I think the --  
22 MR. MOHAMMADI: Well, my --  
23 MS. ROBESON: Okay. Okay.  
24 THE WITNESS: Because that's part of a drawing.  
25 MR. MOHAMMADI: I'll re-ask the question, okay,

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1 and if you can try to answer the question.  
2 MS. ROBESON: Yeah.  
3 BY MR. MOHAMMADI:  
4 Q Where does it say on there that written  
5 descriptions of what is being done need to be submitted?  
6 And maybe it will help if I point out -- look at number  
7 nine, if you don't mind.  
8 A Okay.  
9 Q Okay?  
10 A All right.  
11 Q And that says to submit scale drawings with  
12 dimensions and colored photographs, correct?  
13 A It says -- yes -- showing existing and proposed  
14 designs. If you are submitting something showing existing  
15 and proposed designs, you would have writing extinguishing  
16 what is going on, just as you have something that says --  
17 Q Well, maybe -- let's be fair.  
18 MS. ROSEN: Let her finish answering the question.  
19 Don't interrupt. Just --  
20 THE WITNESS: And elevation drawings -- that's  
21 writing.  
22 MS. ROBESON: Just a second. If you have an  
23 objection to him, you can address it to me.  
24 MS. ROSEN: Okay. I'm sorry. He just --  
25 MS. ROBESON: You don't address it to her.

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1 MS. ROSEN: He's just leaning across me and  
2 interrupting her, so --  
3 MR. MOHAMMADI: Well, I'll walk on the other side,  
4 if that makes it easier?  
5 THE WITNESS: I have a copy of that as well, so --  
6 MR. MOHAMMADI: I'll come over here so we are not  
7 --  
8 MS. ROBESON: Leaning over --  
9 MR. MOHAMMADI: -- leaning over each other, okay?  
10 BY MR. MOHAMMADI:  
11 Q If you take -- and to be fair, number nine says,  
12 accurate site plans, floor plans, sections and elevations  
13 showing existing and proposed designs must be submitted  
14 together with color photographs of existing conditions.  
15 Nowhere in there does it say those conditions need  
16 to be described in writing, correct? Those are just site  
17 plans, correct?  
18 MS. ROSEN: I think the document speaks for itself  
19 as to what it says.  
20 MS. ROBESON: Well, she can answer.  
21 THE WITNESS: Site plans, floor plans, sections,  
22 elevations, show both in drawing and in writing what you are  
23 proposing to do.  
24 MR. MOHAMMADI: Okay.  
25 THE WITNESS: And if you do not have the writing,

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1 you do not have the full explanation of what is happening.  
2 MR. MOHAMMADI: Okay.  
3 THE WITNESS: And if you do not have the writing,  
4 you do not have the full explanation of what is happening.  
5 MR. MOHAMMADI: Okay.  
6 BY MR. MOHAMMADI:  
7 Q So, if those writings were not submitted, would  
8 you agree that the HOA would not approve those, because  
9 there are no writings?  
10 MS. ROSEN: Objection. I think that's speculative  
11 as to what she would agree that the HOA would approve or not  
12 approve.  
13 MS. ROBESON: No. What's good for the goose is  
14 good for the gander. I'm going to let her answer the  
15 question.  
16 THE WITNESS: I have seen documents from the HOA  
17 requesting this additional information from Mr. Ball, so  
18 that they could better understand. And I've seen more than  
19 one request.  
20 MR. MOHAMMADI: Okay. Well, let me ask the  
21 question a different way, okay?  
22 THE WITNESS: Mmm-hmm.  
23 BY MR. MOHAMMADI:  
24 Q Plans were ultimately approved, to your knowledge,  
25 correct?

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1 A Yes.  
2 Q And, to the best of your knowledge, Exhibit 126  
3 are the approved plans, is that fair to say?  
4 A Yes.  
5 Q Okay. And, to the best of your knowledge based on  
6 your review of 126, there are no written descriptions on  
7 those plans, is that fair to say?  
8 A Not ones that distinguish clearly what is being  
9 raised or added.  
10 MS. ROBESON: Are there written descriptions or  
11 aren't there? That's his question. Try to answer the  
12 question.  
13 THE WITNESS: There are some, but there's not a  
14 complete set. There are notes that say existing pitch. So  
15 there are written descriptions on it.  
16 MR. MOHAMMADI: Okay.  
17 THE WITNESS: But there are not as many as I would  
18 have expected for an appropriate set of drawings.  
19 BY MR. MOHAMMADI:  
20 Q If the HOA approved those plans, which they did,  
21 would you expect that they thought that was sufficient?  
22 A Now this is me speaking from what I've seen in the  
23 documents, and the best sort of description I can give it,  
24 having read going back and forth the number of times they  
25 requested additional information and didn't get it, and

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1 requested information and didn't get it; it reminds me of  
2 taking a kid to the grocery store, and you said if you clean  
3 your room you know I'll get you candy at the checkout, and  
4 the kid didn't.  
5 MS. ROBESON: Well --  
6 THE WITNESS: But the kid complains and whines and  
7 comes back and comes back, and then you finally just say,  
8 okay, let's just get out of the grocery store. Here, have a  
9 candy, and you go. And that is my interpretation of all  
10 this backing and forthing (phonetic sp.) and why they went  
11 ahead and did it.  
12 BY MR. MOHAMMADI:  
13 Q Okay. So --  
14 A Again, my interpretation. And I've seen that  
15 happen with Boards before.  
16 Q So what you're saying is the HOA just got tired of  
17 dealing with Mr. Ball and then just went ahead; you know  
18 what, do what do what you are saying here? We approve it.  
19 Do what you're saying here. We don't want to argue with  
20 you. That's what you think the HOA did?  
21 MS. ROSEN: I'm going to object to this  
22 questioning. This is getting very speculative.  
23 MS. ROBESON: No. That's what I heard.  
24 THE WITNESS: They -- based on the written  
25 applications and those drawings, they said this is what's

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1 approved. And they had written descriptions and those  
2 drawings. They happened to be in discrepancy because the  
3 drawings weren't as complete, but they -- they accepted  
4 those drawings.  
5 BY MR. MOHAMMADI:  
6 Q But, to be fair, the written descriptions you are  
7 talking about that they had were Exhibits, I believe you  
8 said, 85 and 76; those are the two you are talking about?  
9 MS. ROSEN: Well I think you need to put them in  
10 front of her to look at them.  
11 THE WITNESS: I don't know your exhibit numbers.  
12 MS. ROSEN: She doesn't know the numbers.  
13 MS. ROBESON: Yeah. They are -- well I can show  
14 you --  
15 MR. MOHAMMADI: I'll pull them out. No problem.  
16 BY MR. MOHAMMADI:  
17 Q These are the two you testified about as being  
18 provided; one by Tania Bruno and one by Peter Ball?  
19 A Yep. Mmm-hmm.  
20 Q Those are the two descriptions you are talking  
21 about, right?  
22 A Yes.  
23 Q Okay. Now, are you -- in preparation for this  
24 hearing today, did you review all the transcripts for all  
25 the dates of this hearing?

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1 A I reviewed the transcripts -- umm -- I don't --  
2 let me just see if I can -- let me see if I can find what  
3 the initial date is on these and please --  
4 MS. ROSEN: Yeah. Unfortunately there's a piece  
5 that's got the -- these don't have a date on them because it  
6 looks like it's a part of the transcript.  
7 THE WITNESS: None of them seem to have a date.  
8 MS. ROBESON: Well, I think the question was did  
9 you review all of the transcripts?  
10 THE WITNESS: No.  
11 MR. MOHAMMADI: Okay.  
12 THE WITNESS: I reviewed some of the transcripts.  
13 BY MR. MOHAMMADI:  
14 Q How did you know which transcripts to review and  
15 which not to review?  
16 A I was given transcripts on the testimony of Mr.  
17 Ball, Mr. Schwartz, other people that were on those pages --  
18 Dr. Barr, ones that seemed to be relevant to my expertise.  
19 Q Okay. Well, you are testifying as to the various  
20 submissions and written descriptions submitted by Peter Ball  
21 and the back and forth between the HOA and the Balls about  
22 this application, and I'm trying to find out if you have  
23 reviewed all the transcripts that discuss the 1.5 years they  
24 had submissions going back and forth? Is it fair to say --  
25 A If they are in the August 4th hearing, the July

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1 25th hearing, or this other one that I -- somewhere around  
2 in that timeframe then, yes, I have reviewed them. I have  
3 not been given every transcript from every part.  
4 Q Is it fair to say you just -- you don't know  
5 whether you reviewed all of the relevant ones that go to the  
6 1.5 years of discussions? You are not sure?  
7 A No.  
8 Q Okay. All right. Were you aware that this  
9 application process took approximately 1.5 years?  
10 A Yes.  
11 Q Okay. And were you aware that throughout this 1.5  
12 years several submissions were submitted -- several  
13 different plans and drawings?  
14 A Yes.  
15 Q Were you aware that one of those plans -- one of  
16 the early plans included a gable roof over the garage?  
17 A Yes.  
18 Q Okay. And are you aware that that gable roof was  
19 ultimately rejected?  
20 A I believe I have already testified that I believe  
21 what was rejected was the transom on the third floor, and  
22 therefore that submission was rejected, but that the  
23 physical gable roof wasn't necessarily.  
24 Q I'm curious, since that was not in any testimony  
25 that I'm aware of, and I was here every day, where did you

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1 get that understanding?  
2 A You'll have to give me a minute to look back  
3 through and find --  
4 MS. ROSEN: Do you want the -- that exhibit?  
5 THE WITNESS: Yes.  
6 MS. ROSEN: Okay. It would be 126-A.  
7 THE WITNESS: I think there was some written stuff  
8 that went back and forth about this -- that went on, and  
9 moving its -- one thing that leads me to some of this -- and  
10 I'm still looking through stuff -- in the 20 July 2010 email  
11 from Tania Bruno to the HOA Board --  
12 MR. MOHAMMADI: Could you identify the exhibit so  
13 that we can have -- make sure we have it all.  
14 MS. ROBESON: Hang on.  
15 THE WITNESS: Is that it?  
16 MS. ROSEN: 77.  
17 THE WITNESS: 77.  
18 MS. ROSEN: Exhibit 85.  
19 TH WITNESS: Exhibit --  
20 MS. ROBESON: Oh, that's the one.  
21 MR. MOHAMMADI: Okay.  
22 THE WITNESS: -- 85.  
23 MS. ROBESON: 85.  
24 THE WITNESS: She references a meeting, and she  
25 references what changes she feels need to be made based on

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1 feedback from that meeting, where she says he is willing to  
2 forfeit the third story for a roofed area instead, abandon  
3 the transom detail so the roof does not appear too high.  
4 There is no reference to abandoning or that there  
5 was a problem with the gable. She is only referencing what  
6 there seems to be problems and issues, and she is addressing  
7 the issues that were raised by that group. I do not see  
8 anything there that says, and by the way, you know, he's  
9 willing to give up that gable too.  
10 MR. MOHAMMADI: Okay.  
11 BY MR. MOHAMMADI:  
12 Q So you are just -- basically you are assuming,  
13 based on two documents, written documents, that at some  
14 point, he just gave it up -- the gable roof -- gave it up?  
15 (No audible response.)  
16 Q Are you sure that you are --  
17 MS. ROBESON: Wait. You have to answer.  
18 THE WITNESS: Oh. Yes.  
19 MS. ROBESON: They can't hear a shrug.  
20 THE WITNESS: Yes, that's very true. From what I  
21 can quickly pull together right now, no. But I thought  
22 there was some written stuff that I saw going back and  
23 forth, but you'd need to give me five or 10 minutes to pull  
24 through this stack to see that.  
25 BY MR. MOHAMMADI:

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1 Q Have you looked -- have you kept a list of all the  
2 documents you reviewed in preparation for this?  
3 A I have them all here and Ms. Rosen has shown had  
4 shown me the ones that she gave me.  
5 Q Okay. In other words, you didn't keep anything  
6 independently of I reviewed Exhibit 76, I reviewed Exhibit  
7 80, I reviewed 83?  
8 A Well, I have mentally --  
9 Q You didn't keep anything independent, right?  
10 A No, but I have the actual documents with notes all  
11 over them.  
12 Q And you have not reviewed every single exhibit  
13 either?  
14 MS. ROBESON: Wait. What do you mean with note  
15 all over them? Whose notes?  
16 THE WITNESS: My notes.  
17 MS. ROBESON: Oh. Oh.  
18 BY MR. MOHAMMADI:  
19 Q Of the transcripts?  
20 A Transcripts.  
21 Q And of --  
22 A All these documents.  
23 MS. ROBESON: Okay. Now, just try and answer his  
24 questions, okay?  
25 THE WITNESS: Oh, okay.

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1 MS. ROBESON: That makes it go much more quickly.  
2 BY MR. MOHAMMADI:  
3 Q And you have not reviewed all of the exhibits,  
4 which is -- this is not all of them, but you have not  
5 reviewed every single exhibit in this case either, right?  
6 A No.  
7 Q Is it your belief that these two documents,  
8 Exhibit 85 and Exhibit 76, are the only two communications  
9 Peter Ball and the Board had regarding this application  
10 throughout this 1.5 years?  
11 A No.  
12 Q Okay. So it's fair to say that there could have  
13 been other communications, both in person and in writing  
14 that say the gable roof is rejected, is that fair to say? I  
15 mean you would agree with that, that that could have  
16 happened?  
17 A It is possible. There is another document that I  
18 know specifically that gives information, and that is the  
19 application of the -- that goes with -- I guess it would be  
20 126-A. There's an application that's been written.  
21 Q You are talking about the application that was  
22 initially --  
23 MS. ROBESON: Oh, the form?  
24 THE WITNESS: The form.  
25 MR. MOHAMMADI: The first application submitted

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1 back in 2010 or 2009 -- 2008 -- excuse me? I don't know  
2 what (12:26:46).  
3 THE WITNESS: 3/2/11 application.  
4 MR. MOHAMMADI: I don't know what exhibit that is.  
5 MS. ROBESON: It's in here. I know it's in here.  
6 MR. MOHAMMADI: I know.  
7 THE WITNESS: That's part of 126.  
8 MR. MOHAMMADI: Yeah.  
9 THE WITNESS: It goes with 126 according to what I  
10 have clipped together.  
11 THE ROBESON: Well, that's not the way it's been  
12 introduced.  
13 THE WITNESS: I -- I --  
14 MR. MOHAMMADI: All right. Well, I'll move on  
15 from this. Okay.  
16 BY MR. MOHAMMADI:  
17 Q On 166 you made a drawing --  
18 A Mmm-hmm.  
19 Q -- and your drawing was based on the fact that if  
20 you add an addition to this house, there is a way to keep  
21 the ridge the same and keep the pitch the same, correct?  
22 A Mmm-hmm. Mmm-hmm.  
23 Q And your assumption -- and, by your method, the  
24 way you would do it is you would connect point C, instead of  
25 at the top of the wall, at some lower point on the wall; is

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1 that fair to say?  
2 A Instead of starting from, in this case, an 8' high  
3 wall, you would start with a lower wall.  
4 Q Lower wall. Okay. You would agree with me though  
5 that if this room on a second-story addition was to be a  
6 room that was to be approved by the County, the County Code  
7 requires windows to have egress --  
8 A Mmm-hmm.  
9 Q -- egress windows, right?  
10 A Sure.  
11 Q And they have to be at a certain height and a  
12 certain size, is that correct?  
13 A Yes. Mmm-hmm.  
14 Q And so if that roof connected to a lower point on  
15 the wall, you would agree that if the windows would have to  
16 be smaller than the egress size, that would no longer be an  
17 approved room for use, as in a bedroom?  
18 A On that wall. There's nothing that says you can't  
19 put the egress window on a side wall that has the higher  
20 ceiling height.  
21 Q So --  
22 A So there's no problem -- it has nothing to do with  
23 egress. It simply has to do with roof pitch and other means  
24 of keeping an existing ridge.  
25 Q If you don't mind, I'm going to flip through your

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1 drawings?  
2 A No. Please do.  
3 Q On Exhibit 160 -- I don't know if this is sheet 1  
4 or sheet 2 --  
5 A They weren't numbered.  
6 Q But the ones that showed the front and rear  
7 elevations.  
8 A Mmm-hmm.  
9 Q If that was done, let's say on the living room  
10 area or the foyer area, the only window that's available is  
11 the one that's facing out on C, right?  
12 A On the foyer area you are not required to have an  
13 egress window.  
14 Q Okay. So what about the living room area?  
15 A The living room area you are not required to have  
16 an egress window.  
17 Q And when did you require an egress window?  
18 A In the bedroom.  
19 Q Okay. And so just because it's labeled the living  
20 room area, that just means at that point you don't need the  
21 egress windows?  
22 A The only place that they require egress windows is  
23 in bedrooms.  
24 Q Okay. So, in your opinion, it's possible to do it  
25 here and go lower because those are not bedrooms, is that

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1 what you're saying?  
2 A Which section are you pointing to?  
3 Q The middle sections that don't have windows on the  
4 -- that can't have windows on the side.  
5 MS. ROBESON: 160 rear elevation?  
6 MR. MOHAMMADI: Sure. Either rear or front, the  
7 living room and foyer sections.  
8 THE WITNESS: Well, the foyer section on the rear  
9 elevation does not have a bedroom. It has what is supposed  
10 to be a closet. The living room section on the rear  
11 elevation already has a low point that is lower than the top  
12 of the wall, as he has shown it, and it's got egress doors,  
13 which are now egress windows.  
14 The front elevation does not require egress. And,  
15 as I look at these drawings, I also note that the front wall  
16 over the garage, as shown in the 160 front elevation, the  
17 low point of that wall is higher than C in my drawings. He  
18 actually didn't -- the work wasn't started at 8' point. It  
19 looks like it was started up at least an additional foot  
20 above that point.  
21 MR. MOHAMMADI: Do you mind pointing out what  
22 you're talking about?  
23 THE WITNESS: You want to put this up so others  
24 can see it?  
25 MR. MOHAMMADI: Then you have your --

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1 THE WITNESS: Yeah. Let's just see if that works.  
2 Is that better?  
3 There's dash lines here indicating the top of the  
4 ceiling and top of wall.  
5 MS. ROBESON: When you say here, you're pointing  
6 to the section above the left garage door?  
7 THE WITNESS: Yes. The front elevation, Exhibit  
8 160, the section above -- around the -- of the garage.  
9 That's the actual roof line. It does not start at the 8'  
10 mark, but starts a foot or so above that. So if we go back  
11 to this drawing, his starting point is up here. He started  
12 above the 8' mark.  
13 MS. ROBESON: Assuming the original plans had 8'  
14 between floors? That's your --  
15 THE WITNESS: Yes, which Mr. Ball testified that  
16 that's what they were.  
17 MS. ROBESON: Okay.  
18 BY MR. MOHAMMADI:  
19 Q I guess my question is this. If he wanted to have  
20 his -- because this is a bedroom on 160 over the garage in  
21 the front elevation -- if that is a bedroom and he wanted to  
22 have his egress window right there, the roof would have to  
23 be built the way it's shown here on C so that he can have  
24 his window there, right?  
25 A It only requires an egress window. So that could

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1 be the front window.  
2 Q I understand what you're saying.  
3 A Sorry. I have to go back to the side elevations.  
4 Q In other words, you can place the egress window on  
5 the side of the house, right?  
6 A Yes. So the window could be on the side there.  
7 The window could be --  
8 Q On this side -- I'm sorry -- here?  
9 A It could be on this side. It could be on this  
10 side. And there is already one shown on this side in his  
11 proposed drawings. And that could be an egress window. So  
12 not every window has to be an egress window; so, yes.  
13 Q That wasn't my question. My question was if he  
14 wanted to have his egress window here, he could not build  
15 the roof the way you are saying he needs to build the roof,  
16 or he could build the roof, right? That's my question.  
17 A It depends how low the low point goes, and I'd  
18 have to go back and run calculations. But there is nothing  
19 that says your egress has to be at a certain top. It how  
20 high it is --  
21 MS. ROBESON: Okay.  
22 THE WITNESS: -- and how wide it is.  
23 MR. MOHAMMADI: That was not my question though.  
24 MS. ROBESON: Yeah.  
25 MS. ROSEN: Asked and answered.

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1 MS. ROBESON: If you could stick -- your attorney  
2 has a chance to elicit questions after he cross-examines  
3 you.  
4 THE WITNESS: Right.  
5 MS. ROBESON: So if she feels like something is  
6 unclear, she'll ask it. If you can just answer his  
7 question, that would be helpful.  
8 THE WITNESS: Okay.  
9 BY MR. MOHAMMADI:  
10 Q Okay. I'll just ask it one more time. If he  
11 wanted to have is window where I pointed to, there is no way  
12 the roof can be -- can meet up at a lower point because you  
13 can no longer have an egress window at that point, is that  
14 fair?  
15 A No.  
16 Q Okay. And why is it not fair?  
17 A It depends on how low that point is, and we  
18 haven't defined how low that point is. It could be a foot  
19 lower and you could still get an egress. It could be 4 foot  
20 lower and you might not be able to get an egress window  
21 there.  
22 Q Correct me if I'm wrong, but you testified that  
23 this is possible; this is a method of what Mr. Ball could  
24 have done in order to bring the height -- not raise the roof  
25 height and keep the same pitch? Just because it's

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1 theoretically possible doesn't mean it's actually possible.  
2 So my question is, is it actually possible to do what you  
3 are proposing here with that house?  
4 A Yes.  
5 Q Okay. And what are the measurements?  
6 A I can't give them to you off the top of my head  
7 because it's a complicated calculation that I haven't done.  
8 Q All right. You haven't done it yet, so how do you  
9 know it's actually possible? That's my question. In other  
10 words --  
11 A There is more than one way to do this. If you  
12 give me 15 minutes, I could go back and give you an exact  
13 height probably, but that was not the purpose of my  
14 demonstration here.  
15 Q Okay. I'm the layman here, right? I don't -- I'm  
16 not the architect, okay? And I'm trying to understand from  
17 the expert what Peter Ball could have done or should have  
18 done when he submitted his application, okay? Your  
19 testimony was that he should have done this. Am I incorrect  
20 about that, or was that just a --  
21 A I said that was a possible solution. He could  
22 also use a gable. He had other solutions --  
23 Q And that's exactly --  
24 A -- than what he proposed.  
25 Q -- that's exactly what I wanted to know. You

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1 don't actually know whether this is an actual possibility?  
2 You'd have to go back and do the math and do the  
3 calculations and figure it out, and you don't know that at  
4 this point, is that fair?  
5 MS. ROSEN: This has been asked and answered. I  
6 mean she's already answered.  
7 MS. ROBESON: Well, I guess I haven't quite heard  
8 the answer. Do you know that it could be done on the  
9 illustration from A to -- I don't remember -- D, or the  
10 lower -- the point lower than C.  
11 THE WITNESS: The lower point.  
12 MS. ROBESON: His question is do you know if it's  
13 actually possible to do that on this particular house?  
14 THE WITNESS: My initial reaction is yes, but I  
15 would have to run specific calculations.  
16 MS. ROBESON: Okay. You --  
17 THE WITNESS: But I know that he could --  
18 MS. ROBESON: It's yes or -- you --  
19 THE WITNESS: Okay. No --  
20 MS ROBESON: You either know or you don't know.  
21 THE WITNESS: No, I did not run all the  
22 calculations.  
23 MS. ROBESON: Okay. That's good.  
24 BY MR. MOHAMMADI:  
25 Q Let's take a step back. It really doesn't matter

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1 though, does it? I mean what has been approved is what has  
2 been approved, right?  
3 A What's been approved is not what's been built, but  
4 it has been approved.  
5 MS. ROBESON: Well, that wasn't his question.  
6 Just -- if you could really focus on his question.  
7 THE WITNESS: Okay.  
8 MS. ROBESON: This is cross. He's entitled to ask  
9 these questions, and your attorney comes in on redirect, and  
10 she gets to fill in all these blanks.  
11 THE WITNESS: Okay.  
12 MS. ROBESON: So --  
13 BY MR. MOHAMMADI:  
14 Q I guess my focus is, and what I want to get at is,  
15 we don't really care what's theoretically possible. What  
16 this case is about and what this hearing is about is whether  
17 the plan was approved and whether it was built according to  
18 the plan, okay? So my question is what has been approved is  
19 not this, right?  
20 A Yes.  
21 Q What's been approved is point C to the roof line?  
22 A Yes.  
23 Q Okay. All right. So this really doesn't even  
24 matter, is that fair to say?  
25 A Uh -- not in my opinion.

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1 Q Okay. You stated that when you do these types of  
2 home renovations where you are building additions and making  
3 changes to the exterior --  
4 A Mmm-hmm.  
5 Q I think your testimony was that there is always  
6 some issues that come up, right?  
7 A During construction?  
8 Q Correct.  
9 A Yes.  
10 Q Okay. And when those issues come up, you sort of  
11 have to account for them, adjust, and you know, compensate  
12 essentially for those issues, right?  
13 A Yes.  
14 Q Okay. And I think you also testified, to be fair,  
15 that when you, as the architect of a project do this and  
16 issues come up, you always resubmit to an HOA whatever the  
17 change may be?  
18 A If it's a material difference and is -- if it's a  
19 material difference, yes.  
20 Q Is a material difference -- and I think you did  
21 define it --  
22 A Mmm-hmm.  
23 Q A material difference isn't that in the eye of the  
24 beholder?  
25 (No audible response.)

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1 Q Okay.  
2 A Not architecturally speaking.  
3 MS. ROBESON: No, okay, you --  
4 THE WITNESS: Not architecturally.  
5 BY MR. MOHAMMADI:  
6 Q All right. Let's say one of the material  
7 differences you talked about is the trim size.  
8 A Mmm-hmm.  
9 Q If you say you want to have 2 inch trim and you  
10 build 5.25 inch -- you'll put up 5.25 inch trim; that's  
11 material?  
12 A Yes.  
13 Q What if you put 5 inch trim; is that material?  
14 A Yes.  
15 Q What about 4 2/3 inch trim; is that material?  
16 A Yes.  
17 Q What about 4.5 inch trim?  
18 A Yes.  
19 Q Okay. 4.25 inch?  
20 A If you're trying to get down to the size when it  
21 becomes material, I'd say it's within a 1/2 inch.  
22 Q Okay. So you can deviate about 1/2 inch and  
23 that's not material? Anything more than a 1/2 inch makes it  
24 material?  
25 A When it becomes visually obvious that there is a

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1 difference.  
2 Q Okay. And you would agree that that also depends  
3 on the type of house it is, the kind of HOA community it's  
4 built in; so all of those things matter, right?  
5 A Yes.  
6 Q It's not just one standard; every time there is a  
7 1/2" deviation, its material?  
8 A Can you repeat that?  
9 Q In other words, in the industry, okay, there is  
10 no specific guideline that every time there's a 1/2 inch  
11 deviation from the size of trim that you propose, that that  
12 at that point becomes material? That's not how it's set up,  
13 am I correct about that?  
14 A No. There is not a document that says that is the  
15 difference.  
16 Q Okay. So that's why I asked if it's somewhat  
17 based on who's looking at it? I mean sometimes it's  
18 painfully obvious that there is a huge deviation and  
19 therefore it's material. But, when you start making the  
20 sizes smaller and smaller, at some point it becomes an  
21 opinion and not a fact; is that fair?  
22 A A very well-informed opinion.  
23 Q Okay. When you went to Mr. Ball's house -- and  
24 you said you never entered the property, right --  
25 A Mmm-hmm.

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1 Q -- what measurements did you take of the current  
2 construction, either on 7/15, 7/25, or 9 -- I think either  
3 13 or 15, whichever you said it was?  
4 A I used a laser tape measure and I stood on the  
5 neighbor's property, and I made laser measurements as to  
6 height differentials.  
7 Q Okay. Do you have those measurements with you?  
8 A No.  
9 Q Okay. What did the measurements show?  
10 A That the -- what was built was higher than what  
11 the plans -- the approved plans showed.  
12 Q And again, how much higher?  
13 A Several feet above -- it depends which ridge line  
14 you are going from, but higher than the highest ridge line  
15 on the approved drawing by several feet.  
16 Q By several feet?  
17 A Mmm-hmm.  
18 Q Okay. All right. Is it your opinion that the  
19 roof is higher than 30 feet at any point? I was not able to  
20 measure to that point. Based on photographs that are in  
21 evidence and my ability to scale off of drawings and photos,  
22 I would estimate that it's several feet higher than the high  
23 point that he has shown on the approved drawings.  
24 Q I'm confused. I'm sorry. But you said you just  
25 took laser measurements from a neighbor's house.

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1 A Mmm-hmm.  
2 Q So wouldn't those laser measurements show the  
3 exact height of a roof?  
4 A Technology is a wonderful thing, but the laser  
5 point works really well inside when it's a dark or an  
6 enclosed environment. It's a lot harder to get those  
7 dimensions on the outside when its light and daylight and  
8 you've got this teeny little red dot that you are trying to  
9 align with something. So the exact height of the ridge  
10 wasn't something that the laser pointer could determine.  
11 But, I went to photographs, and knowing standard dimensions  
12 of things, I was able to interpolate where it was.  
13 I also saw a photo of what's there -- and I  
14 believe it's photo -- Exhibit 81, the photo on page seven  
15 where there is a picture of the roofs and trusses on top of  
16 the roof -- and I was able to look at the height of the  
17 chimney and come up with what that height was, and then look  
18 at the trusses and I know the trusses are made with 2x4s,  
19 and you take a little piece of paper and you make the  
20 dimension of 3.5 inch and you space it up, and I come with  
21 that that's about 4.5 foot to 5 foot higher.  
22 Q Okay. I'm going to revisit a question that I just  
23 asked, because I thought your answer was, when I asked,  
24 based on your laser measurements is the roof higher than  
25 what's on the approved plans, and you said, yes, it's

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1 several feet higher. Now you are testifying that it's not  
2 based on the laser measurements? Did I mis-hear you or  
3 misunderstand?  
4 A It's based -- my information is based on drawing  
5 160, the A/B drawings of all these various drawings.  
6 MS. ROBESON: Now is it based on 160, your  
7 enlargement to the one-quart to one inch scale assuming the  
8 8 foot -- okay. It's not -- it's not the original plan, the  
9 160.  
10 THE WITNESS: Well I started with that and then  
11 blew it up, so to --  
12 MS. ROBESON: No, no, no. Well, I don't need -- I  
13 mean this plan. You started with this plan, correct?  
14 THE WITNESS: Yes.  
15 MS. ROBESON: The 11x17. Okay.  
16 BY MR. MOHAMMADI:  
17 Q Well, to follow-up on that question, your  
18 measurements, are they based off of the 11x17, or are they  
19 based off of these larger ones?  
20 A Both.  
21 Q Okay. All right. Go ahead.  
22 A I'll have -- Ms. Rosen asked me something that I  
23 think should be clarified.  
24 MS. ROBESON: What?  
25 MR. MOHAMMADI: Well I don't think you can tell

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1 her what she should ask you, but --  
2 THE WITNESS: Oh, okay.  
3 MS. ROBESON: What should I ask? I missed that.  
4 THE WITNESS: No, no. They --  
5 MS. ROBESON: I was looking at this plan.  
6 MR. MOHAMMADI: She was --  
7 THE WITNESS: Okay.  
8 MR. MOHAMMADI: Well --  
9 MS. ROBESON: The transcript will tell, I guess.  
10 Go ahead, Mr. Mohammadi.  
11 BY MR. MOHAMMADI:  
12 Q I'll ask the question again. Based on your laser  
13 measurements -- laser measurements, okay -- is there a  
14 deviation that you know from measurements of the roof height  
15 from the approved roof -- plans -- excuse me?  
16 A No. My laser measurements could not measure to  
17 the peak because of the exterior lighting conditions. Did  
18 you take any other measures, actual measurements, of the  
19 house -- not from drawings and things like that, or pictures  
20 -- but actual measurements of the house that would help you  
21 -- from which you can conclude that the roof height is  
22 taller than the approved plans?  
23 A No, I did not go on the property.  
24 Q You testified that Exhibit 160 appears to be the  
25 closest drawing of what is actually built, right?

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1 A Yes.  
2 Q Okay. It's not -- you are not sure if it's the  
3 actual, exactly what's there, but it appears to be what's  
4 there?  
5 A Yes.  
6 Q And you would agree with me that the construction  
7 is ongoing at the property?  
8 A Yes.  
9 Q And when I say ongoing, I mean it's not completed  
10 yet, right?  
11 A Yes.  
12 Q Okay. And, in fact, the only -- well, strike that  
13 -- in fact, on the rear elevation, the addition and the roof  
14 hasn't even been started, correct?  
15 A Correct.  
16 Q And on the front elevation, the new addition shown  
17 on the front elevation -- again, I'm looking at 160 all the  
18 way on the left side -- that's not completed, right? The  
19 structure is there, but it's not completed, correct?  
20 A It has not got all the finished materials on it.  
21 Q Okay. And you would again agree that the living  
22 room, the next section over to the right of the new  
23 addition, that's also not completed, correct?  
24 A It's as complete as I would have expected. It's  
25 got brick. It's got trim. It's got a roof. I'm not sure

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1 what else -- what other details aren't finished or complete,  
2 but that's the most complete looking portion of the  
3 construction.  
4 Q Okay. What about the foyer, is that completed?  
5 A No.  
6 Q And, from the front elevation, again, what about  
7 the area above the garage, is that completed?  
8 A Not that I can see.  
9 Q Okay. I mean the roof trusses are up, but they  
10 are just roof trusses at this point that are sort of  
11 covered, right?  
12 A Yeah.  
13 Q Okay.  
14 A There is not finished roofing on any --  
15 Q Okay. So you would agree with me that it's hard  
16 to say at this point whether all the elements on this are  
17 actually there -- and I'm again showing the new addition on  
18 Exhibit 160 -- it's hard to say whether all the elements are  
19 there at this point, correct? I mean you see windows, but  
20 since it's not finished, those things could change still,  
21 correct?  
22 A Mr. Ball could take out the windows that he just  
23 put in and put new windows in again and change them again,  
24 yes.  
25 Q Okay. And the same thing with the --

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1 A But that's not normal.  
2 Q The same thing with the foyer area, things can  
3 change on this as well?  
4 A Yes.  
5 Q All right. And same with the garage area, things  
6 could change, right?  
7 A Yes.  
8 Q So it's hard to say what's actually there that's a  
9 deviation and what's not at this point since we're still in  
10 the middle of construction, right?  
11 A Well, he could change things. It's not typical  
12 that somebody would install a set of windows and then rip  
13 them out and install another set of windows. So --  
14 Q Are you in agreement that the roof over the garage  
15 area is sort of the tallest and highest roof?  
16 A Yes.  
17 Q On the property?  
18 A Yes.  
19 Q Okay. And so if that was the baseline, the other  
20 roofs could be raised to that height by just putting new  
21 trusses up?  
22 A I don't understand what you mean by baseline.  
23 Q In other words, your testimony, if I understood it  
24 correctly, is that the approved plans basically have a  
25 straight line of a roof. There's some minor deviation, but

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1 basically straight line, right?  
2 A Mmm-hmm.  
3 Q So if we use that -- if that straight line is the  
4 garage roof, the rest of these roofs could be brought up to  
5 that height by just adding new roof trusses?  
6 A Mr. Ball testified on Monday that the roof line  
7 over the living room --  
8 MR. ROBESON: Could you --  
9 THE WITNESS: -- stayed the same.  
10 MS. ROBESON: Okay. Could you just answer his  
11 question, okay? Just -- his question is could the other  
12 ridges be brought up to have a straight roof line? Because  
13 looking at 160 -- so could they be brought up to have a  
14 single plane roof line?  
15 THE WITNESS: Yes. Physically he could build  
16 another set of roofs on top of the existing roof. Yes.  
17 BY MR. MOHAMMADI:  
18 Q I mean that's what he's doing with the garage,  
19 right? I mean he's putting trusses on top of an existing  
20 roof?  
21 A Yes.  
22 Q There's no reason he couldn't do that with the  
23 other areas of the house, right?  
24 A Yes.  
25 Q Okay. In your preparation for today's testimony

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1 and in your review of transcripts, especially Dr. Barr's  
2 transcript, do you recall Dr. Barr stating that you can't  
3 rely on these large, blown up plans because when you blow  
4 things up you are not sure whether the scale is still the  
5 same? Do you recall reading that?  
6 A No. That's a problem any time when you blow  
7 drawings up or down, which is why when I took this in to the  
8 printers to blow it up, I stood there, I measured the eight  
9 foot height, which was the given known height. I measured  
10 that several times. I made them blow it up and down until  
11 it hit that eight foot dimensioned point.  
12 Q Okay. So you -- in essence what you did is you  
13 had several ones printed out and you made sure that when you  
14 scaled the blown up one it actually was the correct scale?  
15 A Yes.  
16 Q Okay. In order to avoid that, it's fair to say  
17 that you would use original plans if they are submitted in a  
18 specific format, you would just use those plans to be 100  
19 percent certain that the scale is the correct scale, right?  
20 A If there were original plans available, yes.  
21 Q Okay. And you are aware that Exhibit 126 are the  
22 actual original submittals of the approved plans, as well as  
23 the as-built plans; you are aware of that, right?  
24 A Are you pointing to my specific ones, because  
25 these have all been reproduced many times?

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1 Q Okay.  
2 A So the scale is potentially off a little.  
3 Q So what you are saying is, if you copy it without  
4 making any changes to the actual size of the copy, if you  
5 just straight copied, that would affect the scale as well?  
6 A Absolutely. When you do a typical copier machine,  
7 every copy has the ability to go up and down just a little  
8 bit, which is why when I do drawings I take them to my  
9 blueprinters, and they have what's referred to as engineered  
10 copies, which make reproductions that are size-to-size the  
11 exact size, because my copier and anybody's home copier is  
12 not as precise and doesn't give precise, scale-to-scale  
13 reproduction.  
14 Q That's fair. But, as an architect, if you were  
15 providing your drawings and submitting it to the HOA for  
16 approval, you would provide them in the format that has the  
17 accurate scale, is that fair to say?  
18 A Yes.  
19 Q Because the scale is what's relied upon to make  
20 sure everything -- the dimensions and everything match up,  
21 right?  
22 A you have the scale, you have the written  
23 dimensions --  
24 Q Okay.  
25 A And a graphic scale should be there as well so

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1 that if it is blown up or down, you know something is off?  
2 Q Right. If you're not sure if it's the accurate  
3 scale, you can just take a scale and scale it yourself,  
4 right?  
5 A Yes, if you know that it's been reproduced to the  
6 written scale that's there.  
7 Q Okay. Well what I mean is if you don't have  
8 confidence that it's proper scale, you could take your scale  
9 and put it up against one of these, you know, walls that  
10 have the dimension and make sure it's scaled properly,  
11 right?  
12 A I could do that, yes.  
13 Q Okay. And any --  
14 A Because every person out there in the world can  
15 they do that? No.  
16 Q Okay. But you would expect an architect to be  
17 able to do that?  
18 A Yes.  
19 Q So I'm showing you what's been marked as Exhibit  
20 126. This says -- on A-1 for example, it says scale --  
21 drawings scale 1/8th to one foot, right -- 1/8th inch to one  
22 foot, right?  
23 A Mmm-hmm.  
24 Q Could you verify that that's in fact to scale?  
25 A It appears to be. Yes.

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1 Q Okay. And, by the way, I noticed you measured two  
2 different parts of it. If one matches up, the rest should  
3 technically match up, right?  
4 A I've been given drawings where they don't do that  
5 because people do something on the computer and say size to  
6 fit, and one dimension goes to one scale and one dimension  
7 goes to another scale.  
8 Q Okay. So you'd measure one side and the other  
9 side to make sure that it's accurate. Okay. And how long --  
10 I mean, to be fair, this whole exercise that we just went  
11 through where you measured took what, 10 seconds, 15  
12 seconds?  
13 A Mmm-hmm.  
14 Q It's very easy to do, right, especially if you're  
15 an architect?  
16 A Something that I can do with a scale, yes.  
17 Q Okay. Is this something you would in fact do if  
18 you weren't sure that the copies were to scale, as an  
19 architect?  
20 A If I was given drawings and told they were to  
21 scale and there was nothing in the drawings that made me  
22 question the scale, I wouldn't do it.  
23 Q You wouldn't do it at all? You would just accept  
24 them as is?  
25 A Yeah.

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1 Q Okay. And if there was something that made you  
2 question it and you weren't sure, would you do what I just  
3 -- what we just did?  
4 A I could.  
5 Q Have you seen the County approved plans?  
6 A I've seen a reduction of them. I have not seen  
7 full scale drawings, but I have seen a reduction of them,  
8 yes.  
9 Q Do they -- based on what you have seen, do they  
10 appear to be different, the actual dimensions and sizes, not  
11 the information that's contained on the piece of paper with  
12 writing? I'm talking about the actual submission. Do they  
13 appear to be different than the approved plans?  
14 A There are some differences, yes.  
15 Q Okay. And what are those differences that you are  
16 aware of?  
17 A On the second floor plan, the approved drawings  
18 call for French doors off of the new storage unfinished  
19 space over the garage. On the second floor of the 10 foot  
20 by whatever bump-out to the left side of the house, on the  
21 master bedroom to the new covered deck; those all call for  
22 French doors in the approved plans, and they are shown as  
23 windows in this plan.  
24 MS. ROBESON: Which exhibit are you referring to?  
25 Mr. Mohammadi, do you know what exhibit that is?

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1 THE WITNESS: Umm --  
2 MR. MOHAMMADI: It looks -- it's not an actual --  
3 THE WITNESS: 88 permit set. Like I said, all I  
4 have is --  
5 MS. ROBESON: Because we have a couple of sets.  
6 We have 138 and 88.  
7 MS. ROSEN: 140 -- yeah -- 148 is -- was what they  
8 had given and said -- they claimed that those were the plans  
9 that were submitted that HOA approved, but the permit set  
10 would be --  
11 MS. ROBESON: Okay. So is this then -- is it 88?  
12 MS. ROSEN: I believe it would be -- 88 would have  
13 been the permit set, and --  
14 MR. MOHAMMADI: What she's looking at is a smaller  
15 version of 88.  
16 MS. ROBESON: Okay.  
17 MR. MOHAMMADI: 88 for us is the actual --  
18 MS. ROBESON: DPS plans submitted to DPS?  
19 MR. MOHAMMADI: -- DPS plans. Those full size  
20 ones, which she's looking up, I believe is the smaller  
21 version of it.  
22 MS. ROBESON: Okay.  
23 THE WITNESS: Yes, it appears to be reduced.  
24 MS. ROBESON: I just want to make sure I know what  
25 you're talking about.

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1 THE WITNESS: Obviously these drawings have  
2 dimensions in them. They have sections so that you can  
3 understand what is happening with roof lines. They have  
4 additional information on wind bracing, which changes the  
5 plans and what's happening in the foyer and the addition to  
6 the left and addition over the garage.  
7 They have drawings that show trusses -- new  
8 trusses only going over the additions, not going over the  
9 old portion of the house, per the truss roof framing plan.  
10 They have detailed drawings. And as-built drawings have  
11 dimensions as well. And there is information in those  
12 drawings that I believe are inaccurate because those  
13 drawings show the floor-to-floor height as being six foot.  
14 This is the as-built drawings A/B --  
15 MS. ROBESON: Which sheet are you on?  
16 THE WITNESS: A/B-2, which shows the as-built  
17 elevations.  
18 MS. ROSEN: Hold one second. Let her -- let the  
19 Hearing Examiner get her copy.  
20 THE WITNESS: Yeah.  
21 MS. ROBESON: Whoever folded these didn't -- okay.  
22 THE WITNESS: They are supposed to fold them so  
23 that the corner with the information is exposed.  
24 MS. ROBESON: I know. I know that. Well, I'm not  
25 making any editorial comment other than it's taking me a

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1 little bit to find them.  
2 THE WITNESS: I'm surprised you can find them this  
3 quickly.  
4 MS. ROBESON: I've got every proposed. I've got  
5 -- oh, here's an A/B. Now which A/B.  
6 THE WITNESS: Two.  
7 MS. ROBESON: A-ha. Got it. All right. Thank  
8 you. Okay. Go ahead.  
9 THE WITNESS: Okay. Drawing A/B-2 has what I  
10 believe are discrepancies in sizing and dimensioning of the  
11 as-built dimensions of the elevations. The dimensions that  
12 are written on this drawing say that the floor to ceiling  
13 heights are six foot. And we know that --  
14 MS. ROBESON: Where are -- which dimension?  
15 THE WITNESS: If you look at any -- well let's  
16 start in the as-built elevation. There are dimensions going  
17 vertically on the left side.  
18 MS. ROBESON: Yeah.  
19 THE WITNESS: And it shows the bottom of those,  
20 and it says lower floor to bottom of joist, and it says six  
21 foot?  
22 MS. ROBESON: Yeah.  
23 THE WITNESS: And that's supposed to be a floor to  
24 floor height, the actual input. So I see this drawing,  
25 which has these discrepancies, and shows heights of existing

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1 roofs that are incorrect when you start adding up these  
2 dimensions, which are not true dimensions. So I saw that  
3 and I started going, wait a second; what's happening here?  
4 And I started dimension. The drawing says it's scaled at  
5 3/16ths, but the 3/32nd, and the original drawing is  
6 3/16ths, but the written dimensions are 1/8th inch scale.  
7 And so this drawing is total fabrication and doesn't give  
8 indication of what is actually there because the dimensions  
9 are not accurate to the drawing.  
10 BY MR. MOHAMMADI:  
11 Q You are talking about on the original large scale  
12 print?  
13 A On A/B-2 of the building permit set --  
14 Q Right.  
15 A -- and --  
16 MS. ROBESON: 11x17 of the building permit set?  
17 THE WITNESS: Right.  
18 MR. MOHAMMADI: The one that you -- the shrunk  
19 down version that you have?  
20 THE WITNESS: All of them.  
21 MR. MOHAMMADI: I'm talking about the large scale  
22 --  
23 MS. ROBESON: And the original?  
24 THE WITNESS: Does it say six foot for the floor  
25 to floor -- floor to ceiling height on the A/B drawing?

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1 MS. ROBESON: Well, why don't we put it in front  
2 of the witness?  
3 MR. MOHAMMADI: These are the ones you are talking  
4 about? I don't want to knock over your water or anything.  
5 THE WITNESS: Thank you. Yes, that looks the  
6 same.  
7 MR. MOHAMMADI: Okay.  
8 THE WITNESS: So the dimensions that are written  
9 are not accurate to real dimensions. They were put in as a  
10 different dimension than reality.  
11 MS. ROBESON: Well, what are you referring to as  
12 reality; the scale?  
13 THE WITNESS: Well, that a floor to floor height is  
14 eight foot and this is saying its six foot, and when you add  
15 all these dimensions it's saying that the peak of a roof is  
16 19 foot 9 3/4, when if you -- in other words, the drawing is  
17 not accurate to the reality.  
18 MS. ROBESON: Okay. Define reality. What is your  
19 reality?  
20 MR. MOHAMMADI: Well --  
21 THE WITNESS: Okay. My reality is that the floor  
22 to ceiling height --  
23 MS. ROBESON: Has to be eight feet?  
24 THE WITNESS: -- is eight foot. Mr. Ball has  
25 testified he has eight foot ceiling height. That is typical

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1 height. And there are as-built drawings here that show that  
2 we've got six foot floor to ceiling heights.  
3 MS. ROBESON: Oh, I see.  
4 MR. MOHAMMADI: My -- I guess --  
5 THE WITNESS: and therefore all of the dimensions  
6 on this drawing, A/B-2, and it turns out on A/B-1, the floor  
7 plans of existing, those are all incorrect, inaccurate  
8 drawings that --  
9 MS. ROBESON: Based on his testimony that the  
10 floor to ceiling height is eight feet?  
11 THE WITNESS: Yes.  
12 MS. ROBESON: Okay. So you are not saying that  
13 the dimensions -- what I'm trying to get at is if I scaled  
14 this --  
15 THE WITNESS: Mmm-hmm.  
16 MS. ROBESON: -- it would come out six feet?  
17 THE WITNESS: No. If you scale it -- well, that's  
18 part of the problem is there are three different scales  
19 used. But, if you scale it at -- the drawing scale is  
20 poorly printed here -- it says 3/16ths on one of the sheets.  
21 If I scale it at 3/16ths --  
22 MS. ROBESON: But you are also saying he used --  
23 whoever prepared these used different scales for different  
24 sheets?  
25 THE WITNESS: Not only that, but within the as-

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1 built drawings they used one scale for doing the drawing,  
2 3/16ths of an inch, and they used 1/8th inch scale for  
3 marking the physical dimensions, which means that the  
4 dimensions that are physically written here are a lie.  
5 MS. ROBESON: I see.  
6 THE WITNESS: They are not accurate. Because  
7 they are done at a different scale. So it's very hard to  
8 tell what's going on because the written stuff and the scale  
9 stuff is totally different.  
10 BY MR. MOHAMMADI:  
11 Q By the way, you said something that -- what -- the  
12 exercise that you went through in your direct examination  
13 where you put one plan over another to compare --  
14 A Mmm-hmm.  
15 Q -- you say that's a normal way of doing this, if  
16 the scales are -- if the scales are accurate, that's not  
17 something you would do to compare?  
18 A Would I expect a contractor on the job to do that?  
19 Q That's not --  
20 A No.  
21 Q Okay. Let me be clear. We are not dealing with  
22 the contract on the job in this case, right? We are dealing  
23 with Mr. Ball, who is the builder and the homeowner and the  
24 HOA in this case?  
25 A Right.

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1 Q And the HOA -- the president of the HOA is an  
2 architect, right?  
3 A Mmm-hmm.  
4 Q Okay. So what I'm asking is what you just did  
5 there, putting one drawing over another, would you expect an  
6 HOA run by an architect to be able to do this?  
7 A You can't do it when you have prints that are n  
8 regular paper. That only works when you've got vellums that  
9 are transparent that you can look through and look at them.  
10 Q And is it very difficult to put it on those kinds  
11 of paper?  
12 A In a home situation with, you know, somebody's  
13 standard printer and scanner, it's very difficult to do  
14 because you don't have that sort of paper. I had to take  
15 this to a specialty printer to get them to do that.  
16 Q In other words, as an architect who does this for  
17 a living, would this be a difficult task, to put it on  
18 vellum paper so that it is transparent?  
19 A It is not what I would expect the -- I would not  
20 expect a Homeowners Association Board, whether or not there  
21 is an architect on it or not, to have to take my drawings or  
22 take an architect's drawing to a printer, have it reprinted  
23 on vellum, so they can compare as-builts to proposed. It  
24 should be clear within the drawing that is submitted where  
25 the old roof line is, where the new roof line, and what is

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1 being changed in heights. If they have to go to a specialty  
2 printer to get that done, then you have not given them  
3 adequate information.  
4 Q You could also do what we just did and scale both  
5 and then just compare, right?  
6 (No audible response.)  
7 Q Right? I mean you could just scale the as-builts  
8 and figure out what it says the roof height is, and then  
9 scale the proposed and figure out what the roof height is,  
10 and know exactly what is supposed to be -- what the  
11 different is? Right?  
12 A Somebody could do that if they are familiar, but  
13 at the same time it is the -- I have always -- as an  
14 architect, the onus has been on me to give adequate  
15 information so that the people reviewing it can understand.  
16 Q In your 500-and-some renovations that you have  
17 done, how many times has your client also been the builder?  
18 A Umm --  
19 Q In other words, a situation like Mr. Ball's case  
20 --  
21 A Well, yeah, yeah. I'm --  
22 Q -- where he hires an architect to prepare drawings  
23 -- not for him because he is the builder. He knows what he  
24 wants to build on his own house. -- hires an architect to  
25 prepare drawings for an HOA. How many times have you done

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1 that?  
2 A Where the owner is the builder? I've done  
3 probably 10 or 12 additions where they are -- four builders  
4 for their own home. I don't think any of those were in an  
5 HOA.  
6 Q Okay. So I mean you would then agree with me that  
7 this is not a competitive bid project, right? You are not  
8 preparing plans so you can submit it to various contractors  
9 to submit their bids on it -- on this project?  
10 A No.  
11 Q The builder, who is also the homeowner, knows  
12 exactly what he wants, right? Presumably? Presumably?  
13 A Thank you, because --  
14 MS. ROBESON: No -- please.  
15 THE WITNESS: Yes.  
16 MR. MOHAMMADI: Right?  
17 MS. ROBESON: You -- you --  
18 THE WITNESS: Yes.  
19 MS. ROBESON: You're an expert here.  
20 THE WITNESS: Yes.  
21 MS. ROBESON: We have way too much who struck John  
22 in this case. So no editorial comments, because it just  
23 makes the  
24 THE WITNESS: Yes. Okay.  
25 BY MR. MOHAMMADI:

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1 Q And so what I'm saying is this may not be what you  
2 would do if you had a homeowner hiring a contractor to build  
3 it and you were the homeowner's architect; this may not be  
4 the submission you would have prepared if it's for a  
5 competitive bid, but in this situation, it was just for the  
6 Homeowners Association, right, to get approval?  
7 A I would not have done, nor should any architect  
8 have done any less of a clear submission to the Homeowners  
9 Association just because the person who's building it needs  
10 less drawing at the construction drawing point.  
11 Q Okay.  
12 A The drawings to the Homeowners Association should  
13 still be as clear with written dimensions and descriptions.  
14 Q And whose fault is it that those not detailed  
15 drawings were approved?  
16 A I -- I wasn't there.  
17 Q It's not Mr. Ball's fault that they were approved,  
18 right?  
19 MS. ROSEN: Well I'm going to object. I think  
20 it's going beyond -- beyond scope --  
21 MS. ROBESON: It is beyond the scope.  
22 MS. ROSEN: This is way beyond the scope.  
23 BY MR. MOHAMMADI:  
24 Q I just want to be clear about one thing. Your  
25 testimony is that Tania Bruno, the architect, purposefully

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1 took out information that you would typically see?  
2 A There is information that is not on those drawings  
3 that is in the CAD Program that developed those drawings.  
4 Q Okay.  
5 A Because you can't do a new drawing without knowing  
6 -- you can't do a new addition without knowing what was as-  
7 built.  
8 Q What conversations have you had with Ms. Bruno to  
9 come to that conclusion?  
10 A I have not spoken with Ms. Bruno, but knowing what  
11 is typically prepared and how it is typically prepared, when  
12 I don't see that there, it's omitted.  
13 Q Can I ask you a question?  
14 MS. ROBESON: But you said purposefully.  
15 THE WITNESS: You --  
16 MS. ROBESON: See, I really --  
17 THE WITNESS: You would have to go to the computer  
18 and turn off a layer and say do not print this. If it shows  
19 those lines going across showing the floor levels, it would  
20 show the ridge line as well. In my program.  
21 MS. ROBESON: But why --  
22 THE WITNESS: So I would have to purposefully say  
23 don't show this line.  
24 MS. ROBESON: But -- and -- okay. So you are not  
25 implying that she purposefully lied?

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1 MR. MOHAMMADI: Mmm-hmm.  
2 THE WITNESS: I have --  
3 MS. ROBESON: You are just saying she --  
4 THE WITNESS: -- her word that he was not raising  
5 the ridge --  
6 MS. ROBESON: No. You don't have her word.  
7 THE WITNESS: I have her written testimony that  
8 Peter did not want to raise the ridge.  
9 MS. ROBESON: Your interpretation of her written --  
10 what I can't understand is we cannot get through this case  
11 without people attacking each other, and that's my issue.  
12 THE WITNESS: Well this --  
13 MS. ROBESON: You are telling me that a licensed  
14 architect --  
15 UNIDENTIFIED SPEAKER: Yes.  
16 MS. ROBESON: And she -- yes, you are telling me  
17 that? Who is this gentleman? Do you want to testify?  
18 UNIDENTIFIED SPEAKER: You might find that  
19 interesting, but I'm not saying.  
20 MS. ROBESON: Well, I'm not going to deal with  
21 that.  
22 UNIDENTIFIED SPEAKER: I'm not --  
23 MS. ROBESON: You either say it or you don't say  
24 it.  
25 UNIDENTIFIED SPEAKER 2: Don't call my wife a

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1 liar.  
2 UNIDENTIFIED SPEAKER: I said nothing.  
3 MS. ROBESON: Unless you -- she may have  
4 purposefully deleted it but without the intent to lie. Do  
5 you agree with that?  
6 THE WITNESS: Yes.  
7 MS. ROBESON: Okay. Well that's okay.  
8 THE WITNESS: I have not talked with her.  
9 MS. ROBESON: Then let's get through this case.  
10 THE WITNESS: Okay.  
11 MS. ROBESON: Because whether she lied or whether  
12 you want to speculate it was purposeful, there is way too  
13 much speculation.  
14 MR. MOHAMMADI: Just --  
15 MS. ROBESON: I just want to act like civilized  
16 people.  
17 MS. ROSEN: I just want to state that I don't  
18 think that her testimony should be interpreted that she is  
19 making some kind of personal attack. I think her testimony  
20 is based upon you know her expertise as an architect, and  
21 how something is done and how the program works, and --  
22 MS. ROBESON: Well, that may be what she intended,  
23 but that's not what I heard. So it's clarified now that in  
24 your -- if you were doing it, you would have shown that  
25 ridge line -- or the existing ridge line --

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1 THE WITNESS: Absolutely.  
2 MS. ROBESON: -- but Ms. Bruno did not?  
3 THE WITNESS: Yes.  
4 BY MR. MOHAMMADI:  
5 Q Just to be clear, Exhibit 160, are you aware that  
6 that this exhibit right here was not prepared by Tania  
7 Bruno?  
8 A Yes, I am.  
9 Q Okay. And this gentleman, JRG, whoever prepared  
10 this, you don't see the existing roof line and things like  
11 that on this drawing either, right?  
12 A There is no as-built to compare it to. He is just  
13 documenting -- my understanding is he was documenting an  
14 existing condition. He did not have the old original -- the  
15 old original house did not exist at this point.  
16 Q You don't know?  
17 A This construction has been totally built around  
18 the old original house and it's hidden. So this is just  
19 what does it look like now, not what did it look like  
20 before? So, no, it doesn't reflect that because that's not  
21 what this drawing is showing.  
22 Q Are you aware that sections of the house were also  
23 submitted? Have you seen those sections?  
24 A Yes.  
25 Q Okay. If sections are submitted as well, does

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1 that alleviate your concern that some of these lines that  
2 show existing roofs and other parts are not on it because  
3 there are sections that actually show?  
4 A Sections would have helped understand this.  
5 Q Okay.  
6 A Some of them are confusing to me, but they would  
7 have helped. Yes.  
8 Q Okay. I'm showing you what's been previously  
9 marked as Exhibit 164.  
10 A Mmm-hmm.  
11 Q This is the approved set of plans, correct?  
12 A Yes.  
13 Q I want to direct your attention to the right side  
14 elevation, which is the bottom portion here.  
15 A Mmm-hmm.  
16 Q And you will agree that this is -- on the left-  
17 hand side is where the garage is, is that correct?  
18 A Yes.  
19 Q Okay. And you would agree that what has been  
20 built, which is different from the as-built, is that there  
21 is a complete addition over the garage?  
22 A Yes.  
23 Q And the addition is, give or take, about eight  
24 feet in height? In other words, it's a regular --  
25 A The floor to ceiling height?

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1 Q Yes.  
2 A Yes.  
3 Q Is approximately eight feet high. Okay. Explain  
4 to me, if you could, how it's possible to keep the same  
5 existing ridge line --  
6 A Mmm-hmm.  
7 Q -- when you are keeping the same pitch and you are  
8 adding eight feet of floor without doing what you did here?  
9 A I would like to clarify that that addition is  
10 brand new; so you are not keeping any existing pitch because  
11 it didn't -- it's brand new. It can be any pitch you want  
12 it to be. So --  
13 MS. ROBESON: No, but his question is, it's  
14 showing existing pitch, 4/12 --  
15 MR. MOHAMMADI: Well --  
16 MS. ROBESON: One of them does.  
17 MR. MOHAMMADI: -- I don't know if it shows it on  
18 that, but --  
19 MS. ROBESON: Which set of plans --  
20 THE WITNESS: Here, it shows 4/12.  
21 MR. MOHAMMADI: Well, let me just show you on 126,  
22 okay? Well, it doesn't say existing pitch. That's fine.  
23 On this one. There is a drawing where you have seen it says  
24 existing pitch, correct?  
25 THE WITNESS: Umm --

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1 MR. MOHAMMADI: I think it may have been --  
2 MS. ROBESON: 77.  
3 MR. MOHAMMADI: I think that might have been it.  
4 MS. ROBESON: 77. 126 has --  
5 MR. MOHAMMADI: Actual --  
6 MS. ROSEN: Why don't you show her which drawing  
7 you are referring to instead of her figuring it out?  
8 MR. MOHAMMADI: Well, let's just stick with this  
9 one.  
10 BY MR. MOHAMMADI:  
11 Q 164 shows the pitch, right?  
12 A Mmm-hmm. Yeah.  
13 Q My question again is assuming the pitch of the  
14 previous roof, the old roof -- the as-built roof was also  
15 4/12 pitch, assuming that --  
16 A Mmm-hmm.  
17 Q -- how do you end up with the same ridge line when  
18 you add eight feet of height.  
19 A 4/12 is not a God-given pitch. He could have made  
20 it any pitch he wanted --  
21 Q I said that --  
22 A -- if he started with 4/12 --  
23 Q -- hold on. I'm going to stop you for a second.  
24 MS. ROBESON: You need to answer his question.  
25 BY MR. MOHAMMADI:

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1 Q My question is the submittal is 4/12. This is  
2 what has been approved as 4/12, right? We are talking about  
3 the approved set of plans here. I want to know how you can  
4 end up at the same existing height if the approved plans,  
5 which are 4/12 pitch, and the as-built, which is also 4/12  
6 pitch, is what is used, and you are adding eight feet of  
7 height over the garage? By adding a completely new addition,  
8 how do you still end up at the same ridge? How is that  
9 possible?  
10 A Again, I would have to go back and run some  
11 calculations. If you have 4/12, it goes -- apparently from  
12 this it goes higher. Because I am not sure exactly where  
13 the existing roof is in this drawing, because it is not  
14 marked and indicated so that I can compare in this drawing.  
15 Q Well one of the reasons I went to law school is  
16 because I'm terrible with numbers, okay?  
17 A Okay.  
18 Q I can't do anything with numbers. But, to me,  
19 this seems pretty simple. If you keep everything constant  
20 and the only thing you do is raise -- raise it by eight feet  
21 on one side, and you keep everything else constant, the  
22 length and the pitch constant, isn't the height going to  
23 change by eight feet? If you end up at the same point,  
24 everything stays the same, except you are adding eight feet  
25 over here, doesn't that result in an eight feet height

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1 difference? Am I missing something?  
2 A I would have to see what's underneath here to know  
3 what you are comparing because the existing wall here I  
4 don't know where it is; so I don't know what point you are  
5 starting from.  
6 MS. ROBESON: Well --  
7 THE WITNESS: Your words seem to make sense, but  
8 if I don't know what's -- at what point I'm starting from --  
9 MS. ROBESON: Well answer his question. Assume  
10 that the plans show his questions, okay? You are raising --  
11 you are adding six -- eight feet, and starting from that  
12 point at a 4/12 pitch.  
13 MS. ROSEN: I'm not sure she understands what you  
14 are trying --  
15 THE WITNESS: I -- the problem is this is a  
16 variable. I don't know where the existing house that  
17 supposedly has 4/12 -- where that's starting from and  
18 ending. So it's very hard to just say automatically yes.  
19 If it's just a simple math geometry problem and you have a  
20 triangle and you raise it up eight foot; yes, then the peak  
21 would raise things as well.  
22 MR. MOHAMMADI: Okay. Thank you.  
23 THE WITNESS: I'm not sure that's what we have  
24 here.  
25 BY MR. MOHAMMADI:

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1 Q Similar question again, okay? On the other side  
2 of the house, again looking at the right side elevation, if  
3 you add whatever amount this is -- and it's sort of hard for  
4 me to describe what that -- where this is -- but on the --  
5 MS. ROBESON: It's going from -- is that the top  
6 of the beginning --  
7 MR. MOHAMMADI: -- the flat roof part --  
8 MS. ROBESON: -- the level of the flat roof. It's  
9 marked. Those little dash lines are marked. Can you call  
10 that a --  
11 MR. MOHAMMADI: Upper floor.  
12 THE WITNESS: Upper floor.  
13 BY MR. MOHAMMADI:  
14 Q So on this set of approved plans, the plans show  
15 that the roof doesn't start at the upper floor, but there is  
16 actually some additional height added on and the roof starts  
17 over there, right?  
18 A Yes.  
19 Q Okay. So again the same question; if you add some  
20 height but you keep the pitch the same as whatever was  
21 existing -- I understand this is a flat roof, okay, so there  
22 is no pitch -- but assuming the pitch remained the same,  
23 wouldn't that also raise the height of the ridge line?  
24 A No. This drawing shows that they started up three  
25 foot, and they went in the continuous plane of what was

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1 here, because we overlaid those drawings, and that continues  
2 and it would not have to -- it went to the existing bottom  
3 point of the roof. Starting there would not have to raise  
4 the roof at the ridge line.  
5 Q My question is, if your peaks remained the same,  
6 okay -- this is a hypothetical. This is not the actual  
7 situation because there was no roof here, right?  
8 A Right.  
9 Q Correct? There's no pitched roof whatsoever?  
10 A Right. It goes like that.  
11 Q Okay. And I don't want to keep drawing on your  
12 drawing --  
13 MS. ROBESON: When you say it goes like that, you  
14 are roughing in --  
15 THE WITNESS: I am just --  
16 MS. ROBESON: -- roughing in approximately the  
17 current exterior wall with a flat roof?  
18 THE WITNESS: Yes. The --  
19 MS. ROBESON: Can you write approximate exterior  
20 wall?  
21 THE WITNESS: Exterior second floor wall?  
22 MS. ROBESON: Yeah.  
23 THE WITNESS: Yes, with is shown dashed in.  
24 MS. ROBESON: Okay.  
25 BY MR. MOHAMMADI:

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1 Q Again, assuming, okay, there was a roof that went  
2 something like this, okay, from the bottom of the as-built  
3 roof to the peak or the ridge of the original roof. It was  
4 a straight ridge like this, okay? If you added this portion  
5 of height and you kept everything else the same, meaning you  
6 kept the pitch the same and you kept the point where the  
7 peak of the roof is the same, wouldn't you agree that that  
8 would raise the roof height if you added whatever -- how  
9 many feet that is?  
10 A They have already shown in their drawing that that  
11 point connects to an existing point on the ridge and doesn't  
12 need to raise that ridge. So I'm not sure --  
13 Q I know --  
14 A -- how -- how to answer your question, because I'm  
15 looking at a drawing that shows something that works from  
16 that raised point, and you're asking --  
17 MS. ROBESON: Well, are you looking at the A4?  
18 THE WITNESS: A5.  
19 MS. ROBESON: A5, which is proposed, right?  
20 THE WITNESS: Yes.  
21 MS. ROBESON: So it doesn't -- and that doesn't  
22 show the existing roof ridge, correct?  
23 THE WITNESS: I don't know what --  
24 MS. ROBESON: That --  
25 THE WITNESS: I don't know exactly where it is.

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1 No. It's not defined in this drawing.  
2 MS. ROBESON: Right. So what you your line shows  
3 is that when he -- that upper line right there --  
4 THE WITNESS: That one?  
5 MS. ROBESON: Extend it. That one.  
6 THE WITNESS: Mmm-hmm.  
7 MS. ROBESON: Which is your drawing taking the  
8 roof from a point that is approximately -- you know maybe  
9 three to four feet --  
10 THE WITNESS: Three --  
11 MS. ROBESON: -- above the top of the flat roof or  
12 the top of the ceiling?  
13 THE WITNESS: Right.  
14 MS. ROBESON: Okay. When you draw a straight  
15 line, if that elevation -- if the roof is already raised --  
16 the peak of the roof is already raised, then it comes out --  
17 the basis of that drawing is that the peak of the roof is  
18 already raised and therefore you would get a straight line.  
19 MR. MOHAMMADI: This part is already raised,  
20 right?  
21 THE WITNESS: Yeah, but it breaks there. It comes  
22 up and then it changes angle --  
23 MS. ROBESON: Yes. And that's --  
24 THE WITNESS: -- so it's a higher point.  
25 MS. ROBESON: And that's what I think Mr. Ball

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1 testified as to; that he needed the steeper angle to come  
2 and have it -- he had a roof that went like this.  
3 MR. MOHAMMADI: In other words --  
4 MS. ROBESON: If you disagree, tell me, but he was  
5 saying it had a roof that goes like that.  
6 THE WITNESS: Mmm-hmm.  
7 (Discussion off the record.)  
8 MS. ROBESON: What did you say, Mr. Barr?  
9 MR. BARR: I was talking to myself. I wasn't  
10 saying anything to anybody.  
11 MS. ROBESON: You know what, we're going to take a  
12 10-minute break.  
13 MR. BARR: I think --  
14 MS. ROBESON: I know you do not like what is going  
15 on, but I am trying to run a fair hearing.  
16 MR. BARR: Mmm-hmm.  
17 MS. ROBESON: It doesn't help with all the who  
18 struck John about whom, because all my job is is to  
19 understand what these plans are and to make factual  
20 findings, because there is a lot of disputed fact in this  
21 case. And this is a critical issue.  
22 And my question is to you, if that plan shows the  
23 raised roof, of course it would come out in a straight line  
24 because the roof is -- the peak is higher?  
25 THE WITNESS: I -- I --

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1 MS. ROBESON: What he said is -- no, I see what  
2 you are saying. You are saying the angle comes in and then  
3 up.  
4 THE WITNESS: And then down.  
5 MS. ROBESON: So he could have kept -- but then  
6 wouldn't the angle be very steep on the -- he is saying the  
7 angle came in and then up to the peak.  
8 THE WITNESS: that's what it's showing it does. It  
9 comes up, and at the chimney it breaks and goes --  
10 MS. ROBESON: But do you know what the two  
11 different pitches are?  
12 THE WITNESS: I would have to -- wait -- I have my  
13 little pitch play toy and I can figure it.  
14 MS. ROBESON: Okay. All right. If he had to  
15 raise the roof to keep the existing pitch for the front of  
16 the garage -- all right?  
17 THE WITNESS: Mmm-hmm.  
18 MS. ROBESON: What I understood his testimony to  
19 be is that he wanted the roof line to, instead of  
20 intersecting the wall, to match the peak.  
21 THE WITNESS: Mmm-hmm.  
22 MS. ROBESON: Now, is that what that plan --  
23 because he had to raise the roof of the peak?  
24 THE WITNESS: No. This plan -- this elevation  
25 does not show that. This elevation shows -- as I study it

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1 -- if you go to the approximate location of exterior second  
2 floor wall. Where that hits the top of wall is at the eight  
3 foot point. So, according to this, that's where the old  
4 original wall is, and that's the full eight foot height.  
5 MS. ROBESON: Mmm-hmm.  
6 THE WITNESS: So when I look at this drawing, by  
7 coming up approximately three foot here and then continuing  
8 this line here, he was able to get his entire closet storage  
9 area from the point of the gutter down. He didn't need to  
10 continue up to make that a continuous surface.  
11 MS. ROBESON: He didn't need to, but I thought  
12 that that's what he was saying.  
13 THE WITNESS: But his drawing doesn't show that.  
14 MR. MOHAMMADI: I'm sorry. His drawing is showing  
15 that it is continuing all the way through --  
16 THE WITNESS: Right.  
17 MR. MOHAMMADI: -- and then changing angles  
18 slightly to meet up with the ridge, right?  
19 THE WITNESS: Yeah.  
20 MR. MOHAMMADI: That's what the drawing is  
21 showing?  
22 THE WITNESS: But what I am saying is this -- if  
23 that is the existing roof line, which I don't know.  
24 MS. ROBESON: Well see that's where -- but say  
25 it's not the existing roof line. That's what I keep saying.

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1 These are the proposed drawings.  
2 THE WITNESS: Right. This is a given point though  
3 that is the same. This point right there does not change.  
4 This point being the top of the exterior second floor wall  
5 and the gutter line. That point is a given. Its eight foot  
6 ceiling, and that could be its given point. And I -- and we  
7 got that by laying the -- this over his as-builts.  
8 MS. ROBESON: Correct.  
9 THE WITNESS: We got this line by putting it over  
10 his as-built drawings.  
11 MS. ROBESON: Mmm-hmm.  
12 THE WITNESS: So that point is the same. And what  
13 this proves to me whether the -- is that he could fill that  
14 in, as he has shown here, without having to totally rebuild  
15 to the ridge. He could fill that in just as he's done  
16 there.  
17 MS. ROBESON: He could. And you are saying that's  
18 what the plans show; that that's what he did?  
19 THE WITNESS: That's what I see, yes.  
20 MS. ROBESON: But those plans don't show the  
21 existing roof line?  
22 THE WITNESS: Well --  
23 BY MR. MOHAMMADI:  
24 Q Maybe more importantly, none of this is built yet,  
25 right?

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1 A Correct. It's --  
2 Q So how can you say that what he's --  
3 A Proposed.  
4 Q -- done?  
5 A Well, what this drawing has done is come up some  
6 and go with the roof line to the height of the present --  
7 MS. ROBESON: Wall.  
8 THE WITNESS: -- wall --  
9 MS. ROBESON: -- top of wall.  
10 THE WITNESS: -- of what was the original back  
11 wall of the house of the house.  
12 MS. ROBESON: Right.  
13 BY MR. MOHAMMADI:  
14 Q I want to refocus though. How can you say he has  
15 deviated from these approved plans if nothing is built there  
16 yet? How do you know he has not done what is being shown  
17 here, if it's not built?  
18 A I'm talking about the deviation is what's built  
19 that's on the front of the house. I can't -- I can only look  
20 at his proposed drawings --  
21 Q Okay.  
22 A -- and the proposed drawings of 160, is it, which  
23 show a very similar treatment.  
24 Q Okay.  
25 A So that's what he has proposed. He hasn't built

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1 that yet, but per these drawings, you know referencing that  
2 point --  
3 (Discussion off the record.)  
4 THE WITNESS: -- he could have joined to the  
5 existing roof point.  
6 BY MR. MOHAMMADI:  
7 Q You have reviewed the complaint in this case?  
8 A Yes.  
9 Q Okay. And you know what the complaint says about  
10 the roof, right?  
11 A Which part?  
12 Q Doesn't the complaint say that the plans -- the  
13 approved plans -- don't show that the roof height would be  
14 increased, and what he has built is a roof that is higher  
15 than the original roof line; isn't that what the complaint  
16 says?  
17 A It was higher than the original ridge line or  
18 higher than the approved?  
19 Q In other words, the complaint says these approved  
20 plans don't show that the roof height would be increased.  
21 It would stay the same roof height throughout. That's what  
22 the complaint says, right?  
23 A That's part of what the complaint says.  
24 Q Okay. Do you agree or disagree that these plans  
25 -- these approved plans -- don't show that the roof would be

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1 raised?  
2 A They do not make it clear that the roof is being  
3 raised because they do not say it. They do not show  
4 graphically that it's being raised. And you would have to  
5 spend a lot of time figuring it out that they are not doing  
6 what his written words say they are doing.  
7 Q Here's your scale, okay? In your expert opinion,  
8 okay --  
9 A Mmm-hmm.  
10 Q -- after reviewing these plans and measuring the  
11 plans and doing whatever you do as an expert to determine  
12 what the heights are and dimensions are, is it your expert  
13 opinion that this plan -- the height of this roof is the  
14 same as the as-built height of the roof?  
15 A If I come back and scale over it, it shows it as  
16 higher.  
17 Q Okay.  
18 A There is no written dimension that says that, and  
19 there's no written note that says that.  
20 Q And previously when you did this exercise it took  
21 you about 10 seconds, 15 seconds, to do the measurements,  
22 right, with your scale?  
23 A It was quick. Yes.  
24 Q I'm showing you what's been marked as Exhibit 126,  
25 sheet A4. If you look at the front elevation it says brick

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1 typical, right?  
2 A Yes.  
3 Q Okay. What does that mean?  
4 A That that graphic indicator means that it is  
5 brick.  
6 Q Okay. And you would agree that brick has been put  
7 on that part of the wall -- of the house, right?  
8 A Yes.  
9 Q Okay. This also reads siding typical?  
10 A Yes.  
11 Q Okay. And you would agree on the parts of the  
12 house where this siding -- and I understand some parts don't  
13 have siding on yet -- on the parts that there is siding on,  
14 siding has been put on?  
15 A Sorry. I have to go back and look at the photos.  
16 (Discussion off the record.)  
17 THE WITNESS: Thanks for letting me take the time  
18 to look through those. Per the photos and my recollection,  
19 there has been no siding added on the house. It is covered  
20 in Tyvek right now. The only vertical surfaces that have  
21 been added are the brick and the paneling around the entry  
22 foyer and second floor balconies.  
23 BY MR. MOHAMMADI:  
24 Q Okay. I just want to make sure I understand.  
25 When it says brick typical, it doesn't specifically mean you

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1 are going to have 108 rows of brick and it's going to be  
2 this type; it just says it's going to be brick, right?  
3 A Brick. Yeah.  
4 Q But, for the trim around the window, if it shows  
5 whatever this type of trim is around the windows, you would  
6 expect that that exact trim would be used on the windows,  
7 that exact sort of size and everything?  
8 A I would expect what this shows, which is very  
9 narrow trim around the window.  
10 Q Okay. Do you know how large that trim is?  
11 A As an architect with years of experience, I would  
12 guess it's about two inches or so. I could go back and  
13 scale that tiny little space and guess, and it's looking to  
14 be about two inches or so.  
15 Q Okay. And you can discern that from this picture?  
16 A The character of that shows a very narrow trim.  
17 Yes.  
18 Q You are aware of Montgomery County Code as an  
19 architect, right? I mean you have to be aware of those  
20 things?  
21 A Yes.  
22 Q Okay. You would agree with me that per Montgomery  
23 County Code, chimneys are supposed to be -- and correct me  
24 if I'm wrong -- two feet above the ridge line?  
25 A Yes.

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1 Q Okay. So if the ridge line of a roof -- if the  
2 ridge line is raised, would you expect that the chimney  
3 would also have to be raised to be in conformity with the  
4 two feet?  
5 A Yes, to meet code.  
6 Q Okay. And so the fact that the chimneys are  
7 raised on these drawings and the fact that the chimneys are  
8 actually raised on the house has to do with meeting  
9 Montgomery County Code?  
10 A The Code calls for it.  
11 Q Right. Would you ever as an architect compare --  
12 in other words, if you were doing a visual inspection of a  
13 house and you saw that the chimney was raised, is that your  
14 indication that the roof height was raised as well or no?  
15 A Not necessarily.  
16 Q So you wouldn't rely as just the chimney being  
17 raised as also the indicator that the roof height was  
18 raised, is that fair?  
19 A Yeah.  
20 Q Because you could just --  
21 A That's a minimum point. It could be higher or  
22 lower -- it could be higher than that --  
23 Q Right.  
24 A -- or whim (phonetic sp.).  
25 Q Right. So that's what I was trying to get at is

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1 you could raise the chimney higher than two feet? It's not  
2 a requirement that it be exactly two feet?  
3 A That's a minimum.  
4 Q Okay. And so if you saw that a chimney was  
5 raised, you couldn't rely on that to determine whether the  
6 roof was raised as well or not?  
7 A Not without notes on the drawings telling me that  
8 that's -- those things are happening.  
9 Q Okay. If you were to remove an element that's  
10 already existing on the as-builts, if you were to remove  
11 that in the proposal, is there anything you would do to show  
12 that it's being removed?  
13 A Use a dashed line.  
14 Q Okay. So there would be some indication that the  
15 as-built had something here, but the new proposal has that  
16 removed?  
17 A Yes.  
18 Q I think you were very specific when you said, I  
19 did not compare this house to any of the other houses in the  
20 neighborhood, or you didn't look at anything else; you just  
21 looked at Mr. Ball's house?  
22 A No, that's not true. I didn't.  
23 Q Okay. So you went and looked and compared this  
24 house to other houses in the neighborhood?  
25 A I saw the house next door. I'm familiar with the

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1 neighborhood. I drove through the neighborhood.  
2 Q Okay.  
3 A I can tell the character of the neighborhood by  
4 driving through it. I'm an architect.  
5 Q Okay. And is it your opinion that the elements  
6 contained in Mr. Ball's house don't appear anywhere else in  
7 the neighborhood?  
8 A They have elements in what he's doing that are not  
9 consistent with the neighborhood, in my opinion as an  
10 architect.  
11 Q Okay. Would you be so kind as to say which  
12 elements those would be?  
13 A Yes. The bi-panels around the windows and below  
14 the windows, and around the front entry foyer doors. The  
15 big trim around the windows, and the roof line, which has so  
16 many levels where it keeps stepping up and up and up. Most  
17 of those homes have relatively few roof line changes. There  
18 might be two levels, but there is not a lot of levels.  
19 Q Well, you are probably aware of this, but the roof  
20 line being stepped down is not part of the complaint, but I  
21 did want to focus in on that for a second, if you don't  
22 mind.  
23 Do you know how many roof lines or different steps  
24 there were in the proposed drawings?  
25 A I think I testified to that already. There is the

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1 roof line over the 10 foot bump out on the left. Then there  
2 is the roof line over the living room, which continues  
3 until it hits a slight bump up at the left side of the  
4 garage, and then it goes down to the same height on the  
5 right side of the garage. And, in essence, that pretty much  
6 appears to be one roof line with a minor bump up. So it's  
7 two major roof lines and one of those roof lines has a  
8 little bump up.  
9 Q Well, I just -- I guess, to clarify, there are in  
10 fact four separate bump outs, looking at 126, A4, the front  
11 elevation. There are four bump outs that you can tell from  
12 this, right? But because they are -- well, you are saying  
13 it's a straight line; so what makes you think it's a  
14 straight line when there are four bump outs up and down?  
15 A The large --  
16 MS. ROSEN: Let me see if I have it.  
17 THE WITNESS: I am just holding up the front  
18 elevation, rear elevation, of 88, the building permit set,  
19 because it happens to be a large one that I've got blown up.  
20 I can usually put my hand on it.  
21 MS. ROSEN: I think it's 159 then? Is that the  
22 one that has handwriting on it?  
23 THE WITNESS: No. No, no, no.  
24 MS. ROSEN: Oh, okay.  
25 THE WITNESS: This is -- okay -- the line over the

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1 living room and foyer section is a very similar and  
2 continuous line with the section to the right of the garage,  
3 and it has a small bump up over the left portion of the  
4 garage. Visually those will appear to be pretty much one  
5 continuous line, as opposed -- that is --  
6 MS. ROBESON: Mr. Mohammadi, do you mind moving?  
7 MR. MOHAMMADI: I'm sorry.  
8 THE WITNESS: -- different from the existing  
9 MR. MOHAMMADI: I'll get it for you.  
10 THE WITNESS: -- from the new roof line over the  
11 10 foot bump out to the left. So it's a much smoother roof  
12 line than the one that has built that comes up, goes up,  
13 goes up, goes up, and then it has another drop on the far  
14 side.  
15 MR. MOHAMMADI: Okay.  
16 BY MR. MOHAMMADI:  
17 Q So the one that's been built looks like it's going  
18 up at an angle, whereas this one looks straight, just  
19 appearance-wise?  
20 A It keeps stepping up. Step up, step up, step up.  
21 And -- and the other factor is these are big roof planes  
22 that are continuous, as opposed to the as-built at the front  
23 where --  
24 MS. ROBESON: Wait. What as-built? The --  
25 THE WITNESS: The 160 drawing. Sorry.

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1 MS. ROBESON: Is that what's actually built?  
2 THE WITNESS: Well, Mr. Ball I believe testified  
3 that that was --  
4 MS. ROBESON: What he wanted to build?  
5 THE WITNESS: -- what he felt was close to the  
6 existing structure that existed now. And if you look at --  
7 (Discussion off the record.)  
8 THE WITNESS: So if you look at this roof, not  
9 only does it step up and then way back down again, but there  
10 is no continuity between the roofs over the living room and  
11 foyer. They break. So instead of having larger surfaces  
12 and planes, each of these is like its own little section  
13 that doesn't connect smoothly with the adjacent section. So  
14 it makes a very business roof line as opposed to a more  
15 simple roof line.  
16 MR. MOHAMMADI: Okay.  
17 BY MR. MOHAMMADI:  
18 Q Do you know whether the house is built on a slope,  
19 by the way?  
20 A The front of the house there -- yes, the yard  
21 slopes.  
22 Q Okay. And which way does it slope, if you can  
23 indicated on this, please?  
24 A It's higher on the front of the house and lower on  
25 the back of the house.

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1 Q Okay. Thank you. I'm showing you what's been  
2 marked as Exhibit 130.  
3 (Discussion of the record.)  
4 Q Okay. You just testified that Mr. Ball's property  
5 has some elements that are not in the neighborhood, such as  
6 the panels around the windows and big trim. If I can direct  
7 your attention to B of this. Would you consider the trim  
8 around the window big or small?  
9 A That's bigger trim.  
10 Q Okay. Looking at F, what about the trim here,  
11 pretty big?  
12 A That's bigger trim.  
13 Q And if I told you that these are all in the  
14 neighborhood, would that surprise you in any way?  
15 A No.  
16 Q Okay. With respect to panels around doors, I'm  
17 showing you E; that's a front door with glass panels around  
18 it.  
19 A Glass panels and the panels I am referring to are  
20 two different things. These are side lights. I'm referring  
21 to solid panels.  
22 Q Okay. What about the one that you see on G;  
23 that's a solid one on one side?  
24 A Those are glass all the way around the door.  
25 Q You can --

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1 A Those are glass down below. Those are windows.  
2 Q So the one around the door on both sides; those  
3 are all glass?  
4 A Those are glass. Those are side lights.  
5 Q Okay. And so the fact that there's a panel there  
6 is somehow the problem?  
7 A It's the fact that it's solid and not glass, which  
8 is a much more typical arrangement.  
9 Q Okay. Looking at Exhibit 130 again, A, would you  
10 agree that there is sort of three heights on this house,  
11 three different roof lines?  
12 A There are two main roof lines, and there is one  
13 roof line of the gable forward sitting on top of the garage.  
14 Q Okay. So there are other houses that have  
15 multiple roof lines that are not a straight line, right?  
16 A Yes.  
17 Q Okay.  
18 MR. MOHAMMADI: The Court's indulgence.  
19 MS. ROBESON: How many more witnesses do you have,  
20 Ms. Rosen?  
21 MS. ROSEN: It's only -- they are going to be  
22 short ones, and there are, I think, three people who are  
23 just going to testify I think about receiving meeting  
24 notices and that type of thing. And then I do have to put  
25 some of my Board members back on just really kind of short

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1 rebuttals.  
2 MS. ROBESON: Okay.  
3 MS. ROSEN: But I guess depending on the timing,  
4 I'll try to -- depending on when we finish the witness and  
5 everything, when I start with them I'll try to take some of  
6 the short ones first.  
7 MS. ROBESON: Well, it's okay.  
8 MS. ROSEN: I'll try to move as many as I can  
9 through given the time.  
10 MS. ROBESON: I'm just wondering if we'll need  
11 another hearing date, because --  
12 MS. ROSEN: Yeah. Well I think we will just  
13 because of closing argument and attorney's fees; that alone  
14 is going to require another date set. So I guess we are  
15 going to have to have one.  
16 And I don't know if Mr. Mohammadi has any -- I  
17 guess, rebuttal on his end. How it works --  
18 MR. MOHAMMADI: I just have just a couple more  
19 questions.  
20 MS. ROBESON: That's fine.  
21 BY MR. MOHAMMADI:  
22 Q I'm showing you what's been previously marked as  
23 Exhibit 88.  
24 MR. MOHAMMADI: Am I right?  
25 MS. ROBESON: 88 are plans. I know that.

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1 THE WITNESS: Permits.  
2 MS. ROSEN: I think they are the permit plans.  
3 MR. MOHAMMADI: The permit plans. Right.  
4 BY MR. MOHAMMADI:  
5 Q Just out of curiosity, look at A5, would you mind  
6 -- let's just take, on the right side elevation, the window  
7 by the garage -- would you mind measuring that trim with the  
8 scale and tell me if it's two inches or three inches or four  
9 inches?  
10 A At quarter inch scale it appears to be about two  
11 inches.  
12 Q About two inches. Okay. So these ones also show  
13 that they are all two inches?  
14 A Yes.  
15 Q Okay. And where are you measuring from, the  
16 inside of the window?  
17 A The end of the window to the edge of the siding,  
18 which is what the trim is.  
19 Q Thank you.  
20 MR. MOHAMMADI: I think that's it, Your Honor.  
21 MS. ROBESON: All right. Redirect?  
22 MS. ROSEN: I need to use the restroom before I do  
23 anything.  
24 MS. ROBESON: Well, I would prefer to get through.  
25 How many questions do you have?

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1 MS. ROSEN: Just a few. I mean I just -- I just  
2 need to use the restroom, and then I can come back to --  
3 MS. ROBESON: Well, we'll take a five-minute  
4 break.  
5 MS. ROSEN: Thank you.  
6 (OFF THE RECORD)  
7 (ON THE RECORD)  
8 MS. ROBESON: All right. We're back on the  
9 record. Ms. Rosen.  
10 MS. ROSEN: Okay. All right.  
11 REDIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
12 BY MS. ROSEN:  
13 Q Ms. Washburn, I think we're going to try to go  
14 back to the fundamentals here. Now if you look at the -- if  
15 we go back to the plans that were originally approved by the  
16 HOA, which is 162 --  
17 A 126.  
18 Q -- 126.  
19 MR. MOHAMMADI: 126.  
20 MS. ROSEN: I'm sorry. I'm going -- where are  
21 you? My brain is going out here. 126.  
22 Okay. And then we compare them with what has  
23 actually been -- or what is closest to what has actually  
24 been built, which I think you testified as 160.  
25 With regards to the roof and the roof ridge lines,

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1 what is fundamentally -- are the deviations between what has  
2 been -- what is on 160 compared to what has actually been  
3 approved?  
4 (Discussion off the record.)  
5 THE WITNESS: The roof line breaks and steps up  
6 and then steps back down again. And if I were to draw --  
7 MS. ROBESON: Well, do you have to draw?  
8 (No audible response.)  
9 MS. ROBESON: You want to draw. Okay. All right.  
10 THE WITNESS: Well --  
11 MS. ROSEN: She speaks to her pen.  
12 THE WITNESS: That's my --  
13 MS. ROBESON: I know. You can draw. Go ahead and  
14 draw.  
15 THE WITNESS: Okay. You want to give it an  
16 exhibit number?  
17 MS. ROBESON: I do. 167.  
18 UNIDENTIFIED SPEAKER: I can do that too.  
19 MS. ROBESON: What do I call this?  
20 THE WITNESS: This was Exhibit 160, right? This  
21 was Exhibit 160?  
22 MS. ROBESON: 160 enlarged.  
23 THE WITNESS: Enlarged.  
24 MS. ROBESON: Large scale reproduction of Exhibit  
25 160.

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1 THE WITNESS: Which is the front and rear  
2 elevations.  
3 MS. ROBESON: Right.  
4 (Complainant's Exhibit 167 is  
5 marked/entered into evidence.)  
6 THE WITNESS: If I come across here and draw what  
7 I think was the approved line, because it's very -- it goes  
8 back and forth -- the approved roof line on the bump out  
9 appears to be higher. The roof over the living room is the  
10 same. This would have -- over the foyer section -- and I'm  
11 now drawing on the rear elevation-- would have been there.  
12 It jumps -- bumps up about six inches, and it comes over,  
13 bumps down about nine inches, and then continues over. And  
14 the differences -- I can shade in the differences.  
15 MS. ROBESON: Now you are comparing this 167 with  
16 -- wait a minute, wait a minute.  
17 MS. ROSEN: No, 160 --  
18 THE WITNESS: 167 with the -- Exhibit 165, which  
19 is the blown up version of --  
20 MS. ROBESON: Okay.  
21 THE WITNESS: -- 126.  
22 MS. ROBESON: 126. Okay.  
23 THE WITNESS: So if you see the shaded sections,  
24 those are differences in the roof line.  
25 If you come across the front -- again, let me

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1 adjust these -- sorry to cover it, but I can't draw it  
2 without standing in front of it.  
3 Again, I have used a dashed line to show -- and  
4 show where the approved drawing shows the roof line, and I'm  
5 shading in the differences. And you can see over the garage  
6 portion it's a lot higher. Over the foyer section it's a  
7 foot or so higher. Over the new addition it's actually  
8 lower. And then there's a break in the roof lines, which  
9 are on the front elevations.  
10 And then we can compare those to the as-built,  
11 which is ever lower, which is the height that the  
12 association expected him to be building this addition to  
13 given his verbiage, and what he was saying in his proposals.  
14 And if I drew what he seemed to be saying in his  
15 proposal that he gave them, then this line here would have  
16 been lower all the way across.  
17 MS. ROBESON: So this line you are referring to --  
18 THE WITNESS: To --  
19 MS. ROBESON: -- A4 of Exhibit --  
20 UNIDENTIFIED SPEAKER: 126.  
21 THE WITNESS: A4 of 126.  
22 MS. ROBESON: No. It's A4 of 160 -- didn't we mark  
23 out 165?  
24 THE WITNESS: 165. Yes, 165.  
25 MS. ROBESON: Okay. So it's A4 of 165. You are

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1 now marking -- what is the mark you are making on the bottom  
2 elevation?  
3 THE WITNESS: I'm showing where his written  
4 description would be of what he -- what the -- his written  
5 description would be of what they expected him to be  
6 building. In other words --  
7 MS. ROBESON: So basically -- without  
8 characterizing what his description was -- basically the  
9 existing ridge lines --  
10 THE WITNESS: Yes.  
11 MS. ROBESON: -- the existing roof ridge line is  
12 what you are saying?  
13 THE WITNESS: Yes. Yes. So we would have  
14 expected to see that existing --  
15 (Discussion off the record.)  
16 THE WITNESS: I would have expected to see this  
17 built to the existing ridge line, and these things could  
18 still be angled back. Thy might not have been 4/12, but  
19 they would have been angled to meet an existing ridge. And  
20 it would have bumped a little because this last little  
21 section isn't as deep, but it would have been that. And  
22 across this side is -- that is over here --  
23 MS. ROBESON: This side is the rear elevation?  
24 THE WITNESS: The rear elevation starting from the  
25 right. I would have expected this whole thing to look lower

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1 all the way across. I will mark these for you. The blue  
2 line is HOA --  
3 MS. ROBESON: Approximate location of existing.  
4 THE WITNESS: It's not just that. It's also what  
5 I would think would be the -- what they expected these roofs  
6 to do, which is go to the existing.  
7 MS. ROBESON: Wait. What who expected? The HOA?  
8 THE WITNESS: The HOA based on the written --  
9 MS. ROBESON: On the actual description?  
10 THE WITNESS: Right.  
11 MS. ROBESON: Okay. But it is the existing ridge  
12 line, right?  
13 THE WITNESS: Yes.  
14 MS. ROBESON: Okay. Because I don't want to mark  
15 exhibits favoring one side or the other. So if you could  
16 just say existing ridge line?  
17 THE WITNESS: Okay. And I'll write it up here  
18 too. Existing -- okay. So the blue line shows the existing  
19 ridge line. And the shaded area should be described as the  
20 discrepancy between the -- what's built now versus what was  
21 approved.  
22 MS. ROBESON: Well, just -- all right.  
23 THE WITNESS: Well, the 126 drawings --  
24 MS. ROBESON: Compare -- just mark it comparison  
25 --

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1 THE WITNESS: Okay.  
2 MS. ROBESON: -- between Exhibit 160 and Exhibit  
3 -- is that 160 -- is that 8-5? No. Comparison between --  
4 what exhibit are you comparing it to?  
5 THE WITNESS: I am comparing this to 126.  
6 MS. ROBESON: But -- okay -- which sheet of -- is  
7 it a large sheet that you are comparing it to?  
8 THE WITNESS: Its' --  
9 MS. ROBESON: Okay. Just say the --  
10 THE WITNESS: Okay. I am comparing it to Exhibit  
11 165.  
12 MS. ROBESON: Okay.  
13 (Complainant's Exhibit 168 is  
14 marked/entered into evidence.)  
15 THE WITNESS: Okay.  
16 MS. ROBESON: Okay.  
17 THE WITNESS: Okay.  
18 MS. ROSEN: And just for clarification, when you  
19 are showing -- when you are referring to the -- I want to  
20 say the existing ridge line, is that the ridge line on the -  
21 - is that the as-built ridge line? I just want to make sure  
22 we are --  
23 THE WITNESS: Right now on 167 that is relative to  
24 the 126 drawing ridge line --  
25 MS. ROBESON: Okay.

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1 THE WITNESS: -- not the original as-built ridge  
2 line. I can add that line in there, if that would be  
3 helpful?  
4 MS. ROBESON: Okay. Yes, I'd like you to add that  
5 line in there. So we kind of need to know.  
6 THE WITNESS: I'm going to do that in the same  
7 blue that we used on the other drawing. And I'm marking  
8 this blue line as original house roof line.  
9 MS. ROBESON: Approximate?  
10 THE WITNESS: Approximate. Yes. Nobody is going  
11 to scale off of that. In fact they are going to --  
12 MS. ROBESON: That's why I said it.  
13 THE WITNESS: Okay.  
14 BY MS. ROSEN:  
15 Q Okay. And I guess my last question is going to be  
16 is that -- is there anything in the approved themselves --  
17 you know, 126 -- that show that the ridge line was -- that  
18 there was going to be a raising from the, I guess -- maybe  
19 I'm not terming this right -- from the original roof line up  
20 to a newer ridge line? Am I doing that right, or am I --  
21 A There was nothing written that indicated that --  
22 either in the application or on the drawings, to indicate  
23 that.  
24 MS. ROSEN: Okay. All right. No further  
25 questions.

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1 MS. ROBESON: Re-cross, Mr. Mohammadi?  
2 MR. MOHAMMADI: Nothing.  
3 MS. ROBESON: All right. You may be excused.  
4 THE WITNESS: Okay.  
5 MS. ROSEN: Okay. You are excused. Lucky you.  
6 THE WITNESS: Give me a moment to clear all my  
7 stuff. Okay. That's mine.  
8 MS. ROSEN: Speak while you can.  
9 MS. ROBESON: You may be excused.  
10 THE WITNESS: Finished. Since you are taking some  
11 of these as exhibits, should I remove all my stuff and leave  
12 --  
13 MS. ROBESON: No. Just keep it on.  
14 THE WITNESS: Even all my little post-it notes, or  
15 not?  
16 MS. ROBESON: Yeah. That's okay. Please keep it  
17 on.  
18 THE WITNESS: Okay.  
19 MS. ROBESON: Okay.  
20 (Discussion off the record.)  
21 MS. ROSEN: Are we just going straight through, or  
22 what are we doing?  
23 MS. ROBESON: I'm going straight through.  
24 MS. ROSEN: Okay. That's what I wanted to find  
25 out. Okay. Let me see here who I want to call first. I'm

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1 going to call Lynn Gowan as a rebuttal witness first.  
2 MS. ROBESON: You are still under oath.  
3 MS. GOWAN: Yes.  
4 WHEREUPON  
5 LYNN GOWAN,  
6 having been previously called for examination by counsel for  
7 complainant and having been previously sworn, was examined  
8 and testified as follows:  
9 REDIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
10 BY MS. ROSEN:  
11 Q Okay. Now, Ms. Gowan, there has been testimony in  
12 this case by Mr. Ball that he has not done any substantial  
13 kind of work on the roof since September of 2013. Have you  
14 had any opportunity to observe any work being constructed on  
15 the roof or other parts of the building --  
16 A Yes.  
17 Q -- in or about March of 2014?  
18 A Yes.  
19 Q Okay. Can you just explain specifically what you  
20 saw being done by Mr. Ball on the roof?  
21 A Some trim work, some fascias to the front of the  
22 two sections of the garage, some trim on the sides, and then  
23 most recently we saw some people working on the roof again,  
24 and it looked like actual construction. It wasn't roof  
25 paper or anything like that. It looked like just more

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1 construction. It's kind of like if you go away a month and  
2 you come back, there are changes.  
3 Q I'm going to show you -- just give me a second --  
4 MS. ROBESON: Do you need a minute to get  
5 organized for her testimony?  
6 MS. ROSEN: Yeah. It would have been nice to have  
7 a little bit of time between -- you know, a few minutes so I  
8 can just get organized. Also for the rebuttal witnesses, I  
9 can just try and get them through quickly.  
10 MS. ROBESON: Okay. Why don't we take a half hour  
11 break, and if you can grab something to eat in that time, or  
12 we can go for 45 minutes? We can come back at 3:15.  
13 MR. MOHAMMADI: Do you have any -- it sounds like  
14 this hearing is going to go another day. Do you have any  
15 dates in mind?  
16 MS. ROBESON: I'm going to -- well, I can tell you  
17 right now I have the entire week except for Wednesday,  
18 October 6th. The other weeks I have several hearings, but  
19 that will be my freest week, except Wednesday because the  
20 Board of Appeals uses this room on the Wednesday of that  
21 week.  
22 MS. ROSEN: That week is basically good for me.  
23 I'm just going -- I don't -- I've kind of memorized what I  
24 had in court coming up.  
25 MS. ROBESON: Well, you don't have to answer me

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1 right now. I'm just giving you that -- those are the best  
2 dates for me.  
3 MR. MOHAMMADI: October 6th?  
4 MS. ROBESON: And I think the only other one I had  
5 potentially was 9/29, which is Monday.  
6 MS. ROSEN: I don't have that.  
7 MR. MOHAMMADI: Okay.  
8 MS. ROBESON: Okay?  
9 MR. MOHAMMADI: I'll look in my calendar.  
10 MS. ROBESON: We are going to adjourn until 3:20.  
11 (Brief recess)  
12 (OFF THE RECORD)  
13 (ON THE RECORD)  
14 MS. ROBESON: All right. We are back on the  
15 record. Ms. Rosen?  
16 MS. ROSEN: Okay. Well I guess I'll call Ms.  
17 Gowan back.  
18 MS. ROBESON: And you are still under oath.  
19 THE WITNESS: Yes, ma'am.  
20 MS. ROBESON: Go ahead.  
21 BY MS. ROSEN:  
22 Q Okay, Ms. Gowan, were you at attendance at a  
23 special meeting on October 7th of 2013?  
24 A Yes.  
25 Q Okay. And at that meeting there was testimony by

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1 I believe it was Peter Gibson that a vote was taken at that  
2 meeting to not take Peter Ball to the CCOC about his new  
3 non-compliant complaint items. Do you have any recollection  
4 of any vote of that nature being taken at the October 7,  
5 2013 meeting?  
6 A No.  
7 Q Okay. Was there ever a vote -- was a vote taken  
8 at any meeting that you are aware of or that you attended to  
9 not take Peter Ball to the CCOC about non-compliant items?  
10 A No.  
11 Q Okay. All right. Thank you.  
12 MS. ROSEN: That's all the questions I have for  
13 Ms. Gowan.  
14 MS. ROBESON: I just have one question, and this  
15 is the question about the two different agendas. In the  
16 materials you submitted, which is Exhibit 120 -- oh, I'm  
17 sorry -- it's 127 -- there are two agendas. And now I'm  
18 trying to find them, because we had just labeled this as one  
19 exhibit. Well there are two agendas that are different, and  
20 my question is why is that?  
21 THE WITNESS: There was a draft agenda for 2013  
22 that had like a composite of all of the meetings done for  
23 that year, and it was never -- I never presented it at a  
24 Board meeting. We never reviewed it. We never approved it.  
25 We reviewed and approved the 2012 meetings that were put all

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1 together as a composite.  
2 MS. ROBESON: Well I guess the critical issue,  
3 that's an important meeting, in my estimation of ruling on  
4 the case. So I'd like to know which agenda --  
5 THE WITNESS: For 2013, the individual meeting  
6 minutes --  
7 MS. ROSEN: We talking about the October 7, 2013  
8 meeting?  
9 MS. ROBESON: Yeah.  
10 MS. ROSEN: Okay. Maybe we can show Ms. Gowan the  
11 two --  
12 MS. ROBESON: Well, I was trying to --  
13 MS. ROSEN: Okay.  
14 MS. ROBESON: I'm trying to find it.  
15 MS. ROSEN: Your notes? You're having the same  
16 problem I'm having, going nuts with all these pieces of  
17 paper.  
18 MR. MOHAMMADI: I think it's 91.  
19 MS. ROBESON: Well, there is also two in 127.  
20 Okay. I'll show it to you. I found it. I --  
21 MS. ROSEN: Should I have Ms. -- should we come up  
22 to you, or do you want me to bring it back here?  
23 MS. ROBESON: One says Notice of Board/Special  
24 Meeting, and one is entitled -- you can -- why don't you  
25 approach? I think it would be good to approach.

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1 MR. MOHAMMADI: What exhibit is it? I'm sorry.  
2 MS. ROBESON: 127. It's the full copies of all  
3 the agendas --  
4 MR. MOHAMMADI: Sorry.  
5 MS. ROBESON: -- or all the meeting minutes, not  
6 all the agendas, but -- okay. So here is one that says  
7 Notice of Board/Special Meeting. Do you see that?  
8 THE WITNESS: Right. That's the agenda.  
9 MS. ROBESON: And then I have this one, Notice of  
10 Board/Notice of Special Meeting.  
11 THE WITNESS: Yeah. These are copies of -- you  
12 had wanted samples of agendas.  
13 MS. ROBESON: Okay. But --  
14 THE WITNESS: And that's what these area is  
15 agendas. These are not the meeting notes.  
16 MS. ROBESON: No, no, no. Which agenda was sent  
17 out?  
18 THE WITNESS: I'd have to go back and look.  
19 MS. ROBESON: Because, see, they are the same but  
20 they are different?  
21 THE WITNESS: Yeah. One is a little more detailed  
22 and one is not.  
23 MS. ROBESON: Right.  
24 MS. ROSEN: I believe there's a separate exhibit  
25 that had -- that was like a package, a package from that

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1 October 7th meeting. I can't remember which exhibit number  
2 it is, but I -- because this looks like -- this looks to me  
3 like this -- this was just part of like a package of I guess  
4 minutes and agendas, and I thought it was in a separate  
5 exhibit, and I can't remember now. In fact I'd have to  
6 look, but the whole package of that special meeting was in  
7 one exhibit.  
8 MS. ROBESON: Well let me just find it, because I  
9 want to know what the actual --  
10 MS. ROSEN: Mine is double-sided.  
11 MR. MOHAMMADI: Sure.  
12 MS. ROBESON: I need an iPad and I could search  
13 this electronically.  
14 MR. MOHAMMADI: I think you've got to go through  
15 seven or something to find it.  
16 MS. ROSEN: Yeah.  
17 THE WITNESS: This one more represents the outline  
18 of the actual meeting and notes.  
19 MS. ROSEN: Well, I just want to know which one  
20 was sent. That's what I really want to know. Why are there  
21 two?  
22 MS. ROSEN: I believe it would be Exhibit 95 --  
23 Exhibit 95 -- because I think it meets -- the next special  
24 HOA mailings, all homeowners, date is 9/1/13. It might be  
25 that one.

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1 MS. ROBESON: Mmm-hmm.  
2 THE WITNESS: Let me take a look at Exhibit 95.  
3 That might be -- kind of going for the time in that  
4 description. This. That's exactly it.  
5 MS. ROBESON: So this is the meeting where you set  
6 the budget, agenda for the Board -- okay -- so is it your  
7 testimony that this is the --  
8 THE WITNESS: This must have been sent out.  
9 MS. ROBESON: Well must have been or do you know?  
10 THE WITNESS: I -- I --  
11 MS. ROBESON: If you don't know, just say it.  
12 THE WITNESS: I would have to go and look at  
13 everything, but this is a lot more detail and this would  
14 have gone out. The other one looks like something that  
15 would have been placed on the listserv (phonetic sp.),  
16 because it's not quite as detailed. But this --  
17 MS. ROSEN: Why do you place less detail on the  
18 listserv?  
19 THE WITNESS: If this goes out to a homeowner,  
20 this would cover more information. It would be more  
21 informative.  
22 MS. ROBESON: Okay. All right. Okay.  
23 THE WITNESS: Our annual meetings are similar  
24 where we can give a lot more detailed agendas.  
25 MS. ROBESON: Okay. Okay. That was my question.

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1 Is that all you have for her?  
2 MS. ROSEN: I think that was all I have for Ms.  
3 Gowan. I'm trying to keep it short and simple on rebuttal.  
4 MS. ROBESON: Mr. Mohammadi?  
5 MR. MOHAMMADI: Thank you.  
6 RE-CROSS EXAMINATION BY COUNSEL FOR RESPONDENT  
7 BY MR. MOHAMMADI:  
8 Q Just to be clear, the listserv is something that  
9 homeowners can opt into, and if they opt into it they don't  
10 get any mailings, correct?  
11 A Not necessarily. We -- they have to send us a  
12 form that says that they want to get emails or they want to  
13 get mailings. The listserv does provide them information as  
14 far as what's going on. So, in other words, if we do an  
15 agenda, the agenda is put on the listserv.  
16 MS. ROBESON: But it's two different agendas?  
17 THE WITNESS: For the special meeting or for the  
18 annual meeting, it could either be the same or it could be  
19 just a slight bullet where it would just show generally what  
20 is going on.  
21 BY MR. MOHAMMADI:  
22 Q Is there a reason why two separate agenda would be  
23 created for the same meeting?  
24 A I really would have to go back and look through my  
25 notes to -- to respond. I meant his is now September 2014

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1 --  
2 Q Well, you could generally --  
3 A -- and I'd have to look.  
4 Q Are two separate agendas usually created, or is  
5 that maybe an anomaly just for October 7th, 2013 meeting?  
6 A I think even for like the annual meetings we will  
7 put in a general, because they will get notification.  
8 Q I'm not sure what that means. Are you saying even  
9 for other meetings you would have two agendas?  
10 A No.  
11 Q Okay. So it's just kind of unique to this meeting  
12 that there were two?  
13 A I -- I don't know.  
14 Q All right. You testified that you observed some  
15 work being done on the house I guess a week or two ago?  
16 A Yes.  
17 Q And you testified it looked like actual  
18 construction was being done?  
19 A Yes.  
20 Q You are not sure what was being done, right?  
21 A I just know that back in 2013 there was basically  
22 just sheathing and some roofing paper and now there is trim,  
23 there is fascia.  
24 Q Wasn't there something covering the roof before?  
25 A There was roof paper placed on the roof in most

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1 sections.  
2 Q Did you just observe this from your house?  
3 MS. ROBESON: Can you -- just a second -- can the  
4 audience -- I can hear with you are saying. You are not  
5 under oath. I don't want to be swayed by it. So please, if  
6 you can, refrain from speaking, because our mikes are very  
7 sensitive and many times they pick up what's said -- the  
8 recording mikes are. All right? So I am going to ask you  
9 to keep quiet.  
10 I'm sorry, Mr. Mohammadi. Go ahead.  
11 MR. MOHAMMADI: No problem.  
12 BY MR. MOHAMMADI:  
13 Q What I'm trying to get at is you observed one day  
14 of some work being done, just one day, right?  
15 A No.  
16 Q All right. How many days was it?  
17 A Several.  
18 Q That's very vague. How many -- what's several?  
19 A I observed work a little over the winter. I  
20 observed work in March and April.  
21 Q All right. Let me -- let me rephrase that.  
22 A I observed work over the summer.  
23 Q Let me rephrase. When you saw work being done  
24 last week or approximately last week, how many days of work  
25 did you observe being done?

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1 A I saw them one day.  
2 Q And you said it looked like some kind of  
3 construction was being done?  
4 A Yes.  
5 Q And let me make sure I understood what you said  
6 about the October 7, 2013 special meeting. Are you saying  
7 that Peter Gibson was incorrect when he said there was a  
8 vote taken not to take Peter Ball to the CCOC at that point?  
9 A There was no -- there was no vote taken on October  
10 7.  
11 Q Okay. So again, he was incorrect when he said  
12 there was a vote taken on October 7?  
13 A Must have been.  
14 Q Okay. And October 7th was the public hearing,  
15 meaning Peter Ball was present at that hearing?  
16 A Yes.  
17 Q Okay. And you are basing your testimony that no  
18 vote was taken on October 7 on your own recollection, or are  
19 you basing it on the meeting notes that you are looking at?  
20 A Meeting notes, and I keep some personal notes.  
21 There was no vote taken that day.  
22 Q But a vote was taken on October 15, 2013?  
23 A October 15th?  
24 Q Oh, maybe I have the date wrong.  
25 A No.

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1 Q October 28, I believe.  
2 A Yes.  
3 Q October 28, 2013 -- and a vote was taken on that  
4 day?  
5 A Yes.  
6 Q And again, to be clear, no notice went out about  
7 that meeting having --  
8 MS. ROSEN: I'm going to object. I only -- I only  
9 asked about an October 7th meeting. He is now talking --  
10 now he's asking about other meetings and now notices.  
11 That's not what I asked her about on direct.  
12 MR. MOHAMMADI: I think it's fair within the fact  
13 that she is saying no vote was taken whatsoever on October  
14 7th, and I'm trying to figure when -- if -- the testimony  
15 has changed essentially, so I'm trying to figure out what --  
16 MS. ROBESON: I am going to let him find out when  
17 the vote was taken, but not to -- you know, the February  
18 2nd, 2013 meeting. So you can cross-examine as to when the  
19 vote was taken.  
20 MR. MOHAMMADI: Okay.  
21 BY MR. MOHAMMADI:  
22 Q When was the vote taken to take Peter Ball and  
23 Mike Ball to the CCOC?  
24 A Oh wow. I think either April, May or June of  
25 2013.

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1 Q For this case?  
2 A For this case? The vote for October 28th was to  
3 approve the attorney fees for this case.  
4 Q I'm sorry. What? To approve the what, attorney's  
5 fees?  
6 A The attorney -- the additional attorney fees to  
7 this case.  
8 Q So the substance of the October 28, 2013 meeting  
9 was to determine whether to add a request for attorney's  
10 fees?  
11 A To pay for this.  
12 MS. ROBESON: When you say this, what are you  
13 referring to?  
14 THE WITNESS: To pay for the -- to pay the  
15 hearings and everything for the OZAH trial.  
16  
17 BY MR. MOHAMMADI:  
18 Q Okay. But, when you took a vote back in May/June  
19 -- April, May or June of 2013 to actually take Mr. Peter  
20 Ball and Michael Ball to CCOC, you didn't also vote to  
21 determine whether an attorney would be hired to do that?  
22 A We -- there was a vote then to go to trial, and  
23 also -- or go to the hearing, go to CCOC, and to pay for the  
24 attorney fees.  
25 Q And then --

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1 A Then the actual CCOC hearing was I think October  
2 13, but I'd have to go back and look.  
3 Q Ms. Gowan --  
4 A It was 10/4 of '13.  
5 MS. ROBESON: Okay. That's not his question. Go  
6 ahead.  
7 BY MR. MOHAMMADI:  
8 Q Ms. Gowan, I'm talking about the current CCOC case  
9 we are -- right here, right now, right? I'm talking about  
10 this case. When was the vote taken to take Peter Ball and  
11 Michael Ball to the CCOC on this case?  
12 A Back in 2012 for the --  
13 Q Do you know when this was filed?  
14 A -- for the deficiencies and deviations.  
15 Q Okay. And when -- and is that the deviations, the  
16 list that you created?  
17 A That was the deviations that was put together by  
18 -- and you could go through all of the documents, but it was  
19 a composite from what several people had noted that were  
20 deviations.  
21 Q Okay. Wasn't the testimony before that it was you  
22 who put those -- that composite together?  
23 MS. ROSEN: Well I'm going to object. We are  
24 going way beyond what my --  
25 THE WITNESS: I -- I typed it.

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1 MS. ROSEN: -- when I put her on for rebuttal now.  
2 MS. ROBESON: I'm trying to figure out what was  
3 voted on, and if -- so --  
4 MS. ROSEN: I think there had been previous  
5 testimony that they tried to originally put the substance of  
6 this case into a previous case, but we couldn't do it  
7 because the CCO -- it was too close to the hearing date.  
8 MS. ROBESON: That --  
9 MS. ROSEN: I mean that kind of going around the  
10 circle on it.  
11 THE WITNESS: Mmm-hmm.  
12 MS. ROBESON: Yeah. You need -- okay --  
13 MR. MOHAMMADI: I think it's --  
14 THE WITNESS: And that's it.  
15 MR. MOHAMMADI: I think her testimony is --  
16 MS. ROBESON: Don't talk while there is an  
17 objection on the floor. Go ahead.  
18 MR. MOHAMMADI: The testimony is completely  
19 changed as of right now based on this -- and my question was  
20 within what was originally testified to; when was the vote  
21 for this case? She testified as to that. Now the vote is  
22 apparently taking place sometime in 2012. I think that's a  
23 legitimate inquiry at this point since the door has been  
24 opened.  
25 MS. ROBESON: I agree. So you can answer --

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1 THE WITNESS: I'd have to look, because I know in  
2 all of our meetings --  
3 MS. ROBESON: But --  
4 THE WITNESS: -- it shows when we voted on it, but  
5 it was not October 28th. The October 28th was to provide  
6 the funds because we could not include the deviations beyond  
7 the deck -- the deck and the shed into -- they were bumped  
8 out from the hearing. We weren't allowed to include them.  
9 We had them. They are in the court documents. They are  
10 clearly shown. So we had to have this hearing, but in order  
11 to have this hearing to continue, we had to approve the  
12 funds.  
13 So if I'm wrong about April, May or June, they are  
14 in the documents.  
15 BY MR. MOHAMMADI:  
16 Q You are aware that the roof wasn't constructed  
17 until sometime in 2013, right?  
18 A The roof was constructed in September of 2013.  
19 Q Okay. So if you took a vote in 2012 to take Mr.  
20 Ball -- both Peter Ball and Michael Ball to the CCOC, how  
21 would there have been a deviation if the roof hadn't even  
22 been constructed yet? You would agree there wouldn't have  
23 been, right?  
24 A Then the deviations for the roof was added into  
25 the list --

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1 MR. MOHAMMADI: Nothing further.  
2 THE WITNESS: -- of all of the other deviations.  
3 MR. MOHAMMADI: Nothing further.  
4 MS. ROBESON: All right. Redirect?  
5 REDIRECT EXAMINATION BY COUNSEL FOR COMPLAINANTS  
6 BY MS. ROSEN:  
7 Q Just to clarify, there was an original case that  
8 involved the deck and the shed, correct?  
9 A Right.  
10 Q All right. And at some point in time the Board  
11 voted to go ahead and prosecute that case against Mr. Ball,  
12 is that correct?  
13 A Right.  
14 Q Okay. And then during -- while that case was  
15 pending, is it correct to say that other issues involving  
16 Mr. Ball's construction had arisen?  
17 A Yes.  
18 Q Okay. And at some point in time the Board wanted  
19 to try to include those issues in that case that involved  
20 the deck and the shed, correct?  
21 A Yes.  
22 Q Okay. And because the hearing date had already  
23 been scheduled and was very close, the CCOC said that we  
24 could not bring those --  
25 MS. ROBESON: Okay. I'm giving --

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1 MS. ROSEN: I'm just trying to --  
2 MS. ROBESON: I know. I know.  
3 MS. ROSEN: Since it's been raised, we've gone  
4 over this.  
5 MS. ROBESON: But I'm -- I understand what your  
6 position is, but you are really leading. So if we could --  
7 I mean I understand your position.  
8 MS. ROSEN: Okay.  
9 MS. ROBESON: So --  
10 MS. ROSEN: Okay. I guess in -- so --  
11 MS. ROBESON: Can you ask a question without  
12 leading?  
13 MS. ROSEN: Okay.  
14 BY MS. ROSEN:  
15 Q Was there a point in time while the other CCOC  
16 case was pending that the Board became aware of other  
17 violations that were occurring on Mr. -- with regard to Mr.  
18 Ball's construction -- non-compliance?  
19 A Yes.  
20 Q And did there come a time while the CCOC case was  
21 pending that the Board of Directors wanted to try to include  
22 those other ongoing non-compliance issues into the already  
23 existing case?  
24 MR. MOHAMMADI: Objection.  
25 THE WITNESS: Yes.

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1 MR. MOHAMMADI: Still leading.  
2 MS. ROBESON: Yes.  
3 BY MS. ROSEN:  
4 Q All right. Did there come a time when the Board  
5 --  
6 MS. ROBESON: Maybe -- how about this?  
7 MS. ROSEN: No? Just --  
8 MS. ROBESON: How about this?  
9 MS. ROSEN: Okay.  
10 MS. ROBESON: MS. Gowan, why do you feel -- if you  
11 didn't know what the roof height was, why was it voted on --  
12 what was it part of the -- why did you consider it part of  
13 the original complaint?  
14 THE WITNESS: Because there's nothing in any of  
15 the documents, nothing that clearly shows on the plans, the  
16 approved plans or the as-built plans, that the roof was  
17 being raised. There was other deviations shown. The  
18 documents that I got from the Permit Office showed  
19 deviations.  
20 MS. ROBESON: Well, you wouldn't have known that  
21 back in -- I mean --  
22 THE WITNESS: Well, we received numerous  
23 complaints about the roof line. And when we were looking at  
24 the plans, there was no one that -- that understood that it  
25 was being raised. The Architectural Committee said that,

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1 you know, they were caught kind of off guard. There was  
2 nothing shown that it was being raised. So --  
3 MS. ROBESON: All right. I'll let you follow  
4 through.  
5 MS. ROSEN: Okay.  
6 BY MS. ROSEN:  
7 Q All right. In the previous CCOC complaint -- all  
8 right -- there's been issues in this case about what I'm  
9 going to refer to as the supplements to this complaint,  
10 okay. And we have in this complaint the roof, and then  
11 there were other issues in this complaint. Are you familiar  
12 with that?  
13 A Yes.  
14 Q Okay. And the issues that were in the supplement  
15 part of this complaint, did those issues arise during the  
16 previous case?  
17 A Yes.  
18 Q Okay. And did the Board of Directors want to try  
19 to include those issues in that CCOC case?  
20 A Yes.  
21 Q Okay. And --  
22 MR. MOHAMMADI: Your Honor --  
23 MS. ROBESON: Yeah. It's way too leading. In  
24 fact, I --  
25 MS. ROSEN: I mean I think we all know. I mean

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1 this has all been testified to before --  
2 MS. ROBESON: Yeah, it has.  
3 MS. ROSEN: -- which is kind of why I objected to  
4 this whole line of questioning on his part in the first  
5 place, because I kept it to the --  
6 MR. MOHAMMADI: I apologize, but I did not open  
7 the door.  
8 MS. ROSEN: -- I kept it to the October 7th, which  
9 is --  
10 MS. ROBESON: But he -- the door was opened as to  
11 what they voted on, and he's got a right to cross-examine on  
12 that. You have a right to redirect. She -- but you can't  
13 lead. She's not coming -- articulating it the way you would  
14 like her to articulate it, but that's the purposes of not  
15 asking leading questions. So you know that's the best I can  
16 tell you right now. You can continue to try and not lead.  
17 BY MS. ROSEN:  
18 Q All right. Ms. Gowan, can you please explain how  
19 it is that -- let me try to think how I want to do this --  
20 if you know, how did the vote -- what was voted on with  
21 regards to bringing this case into the CCOC?  
22 MS. ROBESON: When you say this case, you mean 72-  
23 13?  
24 MS. ROSEN: Right. That's correct.  
25 MS. ROBESON: The one we're hearing right now?

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1 THE WITNESS: It was the deviations in the roof  
2 line, the changing -- the raising of the roof line.  
3 BY MS. ROSEN:  
4 Q Okay. And were there also other issues that were  
5 brought into -- that the Board voted upon to bring into this  
6 case?  
7 A It was the architectural changes. It was the  
8 timeline. We are at three years. I think before this  
9 started we were at two years.  
10 MS. ROBESON: Well isn't that --  
11 BY MS. ROSEN:  
12 Q The issues are in the supplement -- why were the  
13 issues in the supplemental complaint brought in this case as  
14 opposed to the earlier case?  
15 A Because we couldn't include them in the earlier  
16 case.  
17 Q Okay.  
18 MS. ROBESON: But you added an issue.  
19 THE WITNESS: We initially had those that existed  
20 at that time in that case. We were not allowed to include  
21 them. And --  
22 MS. ROBESON: Yeah, I got that part.  
23 THE WITNESS: Okay.  
24 MS. ROSEN: Okay. Thanks. No further questions  
25 on that.

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1 MR. MOHAMMADI: Nothing.  
2 MS. ROBESON: No re-cross. All right. Thank you.  
3 MS. ROSEN: Okay. I will call Linda Green.  
4 MS. ROBESON: Green?  
5 MS. ROSEN: Yes.  
6 MS. ROBESON: Okay. Please raise your right hand.  
7 (Witness is sworn in.)  
8 MS. GREEN: I do.  
9 MS. ROBESON: Okay. Please take a seat. No, up  
10 here.  
11 MS. ROSEN: Up here. I'm sorry. You just have to  
12 sit over there.  
13 MS. ROBESON: You have to be --  
14 MS. GREEN: Got it.  
15 MS. ROBESON: You are talking into a recording  
16 mike.  
17 MS. GREEN: Oh, okay.  
18 MS. ROBESON: A transcript of this hearing is made  
19 and it goes to the CCOC.  
20 WHEREUPON  
21 LINDA GREEN,  
22 having been called for examination by counsel for  
23 complainant and having been duly sworn, was examined and  
24 testified as follows:  
25 EXAMINATION BY COUNSEL FOR COMPLAINANTS

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1 BY MS. ROSEN:  
2 Q Okay, Ms. Green, could you please state your name  
3 and address for the record?  
4 A It's Linda Green, and it's 8511 Timber Hill Lane.  
5 Q Okay. And is that address -- do you live in the  
6 Potowmack Preserve Homeowners Association?  
7 A Potowmack -- yes, we do.  
8 Q Okay. And how long have you lived there?  
9 A We are there for 41.5 years. December 12th will  
10 be 42 years. We are original homeowners.  
11 Q Okay. Now with regards to -- I'm going to ask you  
12 a question. Do you receive notices from the Association  
13 concerning Board or Association meetings?  
14 A We do.  
15 Q Okay. And how do you receive those notices?  
16 A Email. And since there has been email, previously  
17 by snail mail.  
18 Q Okay. So you have received it both by email and  
19 snail mail, so to speak. Okay. Have any other homeowners  
20 -- do you know other people in this community?  
21 A Yes.  
22 Q Okay. And approximately how people in this  
23 community do you know, if you --  
24 A I don't know. Obviously there have been changes.  
25 There are 100 -- I think 159 houses, and we've known people

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1 -- we've know people to come and go. When we first moved  
2 in, the Homeowners Association was so strict about the rules  
3 that you literally couldn't even change the paint on your  
4 front door without getting approval. So what's happening  
5 here is so far afield from -- from any restrictions that the  
6 Homeowners Association had that it's a travesty. It's like  
7 building an apartment house in a residential community.  
8 Q Okay. Do you talk with other homeowners generally?  
9 A Yes.  
10 Q Okay. And have any of these other homeowners --  
11 for example, have any other owners said to you that they are  
12 not receiving meeting notices?  
13 A No.  
14 Q Okay. Do you attend any -- have you ever attended  
15 any Board meetings where Peter Ball was present?  
16 A No.  
17 Q Okay.  
18 MS. ROSEN: All right. I don't have any further  
19 questions.  
20 MS. ROBESON: Mr. -- just a second, please.  
21 MS. ROSEN: Wait. You have to wait.  
22 THE WITNESS: Oh. Sorry. Sorry.  
23 MS. ROBESON: Mr. Mohammadi?  
24 MR. MOHAMMADI: One moment. I can't write as  
25 fast. I apologize.

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1 MS. ROBESON: Take your time.  
2 CROSS-EXAMINATION BY COUNSEL FOR RESPONDENTS  
3 BY MR. MOHAMMADI:  
4 Q Ms. Green, you receive your notices both by mail  
5 and email?  
6 A We used to receive them by -- before email. We  
7 were living there before email, so -- currently we are  
8 receiving them by email.  
9 Q Just email?  
10 A Yes, I believe so.  
11 Q Did you have to do anything specific to -- in  
12 order to receive it just by email?  
13 A I honestly don't remember. Recently the -- I  
14 guess it's the printing of the --  
15 MS. ROBESON: A newsletter.  
16 THE WITNESS: -- the Potowmack Preserve, you know,  
17 newsletter that's come out has been changed and you had to  
18 fill out a thing to receive it by email.  
19 BY MR. MOHAMMADI:  
20 Q Okay. So you opted in to just receive everything  
21 electronically?  
22 A Yes.  
23 Q Okay. Do you know when you did that?  
24 A Within the last year. I don't know exactly when.  
25 Q And is it your testimony today that you have

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1 received via email every single notice of every single  
2 meeting that's been held?  
3 A I can't answer that because I don't know of every  
4 single meeting. Whatever I get, I get. I don't know if  
5 there are other things I haven't gotten, obviously.  
6 Q So basically if you get it you know about it, but  
7 if you don't get it, you don't whether it's been there or  
8 not?  
9 A Well, of course.  
10 Q Okay. Would you guess that that's how it is with  
11 your other neighbors as well; if they don't get them they  
12 wouldn't know?  
13 MS. ROSEN: Objection.  
14 THE WITNESS: I would assume, but I can't speak  
15 for them.  
16 MS ROSEN: Speculative.  
17 MS. ROBESON: Sustained.  
18 THE WITNESS: What has that got to do with  
19 anything anyway?  
20 MR. MOHAMMADI: Well --  
21 MS. ROBESON: No, no, no.  
22 MR. MOHAMMADI:  
23 Q You stated that nobody has complained to you of  
24 receiving notices -- no, not receiving notices?  
25 A Nobody said anything to me about not receiving

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1 notices?  
2 Q Okay. Do you hold a special with them, the HOA?  
3 A No.  
4 Q Okay. So why would a neighbor come and complain  
5 to you about it and not the HOA?  
6 A I said nobody complained to me about receiving  
7 notices. I don't know what you're saying.  
8 Q I understand that's what you said, and I am trying  
9 to understand why a neighbor would come specifically to you  
10 to complain about it?  
11 A Nobody came to me to complain about it. I don't  
12 know where you're --  
13 MS. ROSEN: Objection.  
14 MS. ROBESON: Just -- just a second.  
15 MS. ROSEN: I'm going to object.  
16 MS. ROBESON: Just a second.  
17 MS. ROSEN: I think it's argumentative. I mean  
18 she has testified -- I mean she testified that she is a  
19 homeowner, that she speaks with other homeowners. I asked  
20 her a question has anyone ever complained or talked to you  
21 or mentioned they didn't receive notices? I mean I think  
22 this is just getting argumentative. She doesn't have to  
23 hold a special position to talk to other homeowners, and I  
24 asked a simple question; has anybody told you they are not  
25 getting notices. I mean it's getting argumentative.

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1 MR. MOHAMMADI: There is nothing argumentative to  
2 ask what her position of authority is that somebody would  
3 feel they would have to come to her to complain?  
4 THE WITNESS: Wait, wait, wait. Maybe I  
5 misunderstood the question. Nobody came to me to complain  
6 they weren't receiving notices. People have complained  
7 about what the situation is, not that they haven't received  
8 notices about the situation.  
9 MS. ROBESON: Okay. To your knowledge, no one has  
10 complained to you? But you don't have a position of  
11 authority on the Board?  
12 THE WITNESS: Wait. I don't know what your  
13 question is. Nobody has complained to me about not getting  
14 --  
15 MS. ROBESON: About notices.  
16 THE WITNESS: No. Nobody has complained about  
17 notices.  
18 MS. ROBESON: But you don't have a position on the  
19 Board?  
20 THE WITNESS: Correct.  
21 MR. MOHAMMADI: That was my question.  
22 MS. ROBESON: Yeah. Let's -- okay.  
23 MR. MOHAMMADI: Okay.  
24 BY MR. MOHAMMADI:  
25 Q Do you attend every meeting that you get a notice

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1 of?  
2 A No, absolutely not.  
3 Q How many meetings a year do you attend?  
4 A I have no idea. I have no idea. Not very many.  
5 Q This year how many did you attend?  
6 A This year probably none.  
7 Q Okay. Last year how many did you attend?  
8 A I really don't know. I don't understand what this  
9 questioning about going to the meetings --  
10 MS. ROBESON: No. You can't --  
11 THE WITNESS: Sorry.  
12 MS. ROBESON: Please. It's not a living room  
13 conversation.  
14 THE WITNESS: Okay.  
15 MS. ROBESON: It's a --  
16 THE WITNESS: Got it.  
17 MS. ROBESON: Even though it's informal, it has  
18 formalities.  
19 THE WITNESS: Okay.  
20 MR. MOHAMMADI: Nothing further.  
21 MS. ROBESON: Ms. Rosen?  
22 MS. ROSEN: Okay. I would just call Ms. Judy  
23 Dworkin also.  
24 MS. ROBESON: Okay. Please raise your right hand.  
25 (Witness is sworn in.)

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1 THE WITNESS: I do.  
2 WHEREUPON  
3 JUDY DWORKIN,  
4 having been previously called for examination by counsel for  
5 complainant and having been previously sworn, was examined  
6 and testified as follows:  
7 Q Okay. Can you please state your name and address  
8 for the record?  
9 A My name is Judy Dworkin, and my address is 8600  
10 Hidden Hill Lane.  
11 Q Okay. And do you live in the Potowmack Preserve  
12 Homeowners Association?  
13 A Yes.  
14 Q Okay. And how long have you lived there?  
15 A I think it's going to be 11 years in November.  
16 Q Okay. And do you receive notices from the  
17 Homeowners Association about Board or other Association  
18 meetings?  
19 A Yes, I do.  
20 Q Okay. And how do you receive those notices?  
21 A Yes.  
22 Q I said how do you receive them?  
23 A Oh, I'm sorry.  
24 Q Do you receive them by mail, email, or --  
25 A It's by email, but a secretary has been sending --

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1 putting together a newsletter, and it's also mentioned --  
2 the annual meeting is mentioned in there.  
3 Q Okay. For how long have you been receiving your  
4 meeting notices by email?  
5 A I think since I've been here.  
6 Q Have you ever received meeting notices by any  
7 other format, by regular mail or hand-delivery, anything of  
8 that nature, if you recall?  
9 A I -- I -- I'm not sure. I think so. But, you  
10 know, if that has happened, it would have happened maybe a  
11 while ago.  
12 Q Okay. Do you ever attend any Board meetings or  
13 Association meetings?  
14 A Actually I -- initially I wasn't aware that I  
15 could even attend the Board meetings, but we can. And, yes,  
16 I attended one.  
17 Q Okay. And have you ever attended any Board  
18 meetings where Peter ball was present?  
19 A Yes.  
20 Q Okay. Do you recall about when that was?  
21 A I'm very bad with time. One or two years ago.  
22 Q Okay. And do you recall at that meeting was there  
23 any discussion about construction on Peter Ball's property  
24 or Michael Ball's property?  
25 A Well, what I recall is that the -- Peter had come

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1 -- Peter Ball had come to kind of clarify his position.  
2 That's what comes to mind.  
3 Q Now at that meeting did you observe any Board  
4 member behaving in any way being hostile or unprofessional  
5 towards Peter Ball?  
6 A Not at all.  
7 Q Okay. And do you talk with any other -- do you  
8 talk with other neighbors or homeowners in general?  
9 A Periodically, yes.  
10 Q You don't hold any position in the Association, do  
11 you?  
12 A Well, I was on the Architectural Committee, but --  
13 Q Okay.  
14 A -- but there was a change on that. And I was also  
15 on the Welcoming Committee. That's not actually the Board.  
16 Its committees.  
17 Q Okay. And have you had any conversations with any  
18 neighbors and other persons -- have any neighbors or other  
19 homeowners told you that they don't receive meeting notices?  
20 A No.  
21 MS. ROSEN: No further questions.  
22 MS. ROBESON: Mr. Mohammadi?  
23 MR. MOHAMMADI: Thank you.  
24 MS. ROSEN: Wait.  
25 MS. ROBESON: No. You --

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1 CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT  
2 BY MR. MOHAMMADI:  
3 Q I'm sorry. Could you spell your last name?  
4 A Certainly. It's D-W-O-R-K-I-N.  
5 Q Thank you. Did you ever opt in to receive  
6 electronic emails of notices, if you recall?  
7 A I don't recall.  
8 Q When were you on the Architectural Committee?  
9 A It was a brief period of time. So I guess you  
10 could say this past year.  
11 Q Just approximately how many months?  
12 A Six months.  
13 Q And this was in 2013 or 2014?  
14 A 2014.  
15 Q Any reason why you left?  
16 A Yeah. It wasn't realized but there -- yeah --  
17 there was a main person that headed it up, and then there  
18 was supposed to be two other people helping. I would have  
19 made the third and that wasn't in the Bylaws.  
20 Q Oh, it would have been too many members?  
21 A Yes.  
22 Q I see. Just so I understand, is there a reason  
23 why you joined to begin with?  
24 A Yes. I think I'm just interested in the  
25 environment in our community and the way -- you know, the

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1 way it looks.  
2 Q Just generally or anything in particular?  
3 A Well the architectural is going to really have to  
4 do with mainly the houses. I don't think it has to do with  
5 the landscaping necessarily. So I would imagine -- one  
6 example would be I know of someone that had -- well  
7 actually, one example had to do with a fence that wasn't up,  
8 that was collapsing. And so that was something I mentioned.  
9 It happened to be a next door neighbor, but that's beside  
10 the point.  
11 Just in terms of whether there are trash cans that  
12 aren't supposed to be out or -- you know that's what's  
13 coming to mind, and how --  
14 Q Okay.  
15 A -- you know, just generally how the houses are  
16 kept up.  
17 Q Okay. Just one last question. Your reasons for  
18 joining the Architectural Committee had nothing to do with  
19 Peter Ball?  
20 A No.  
21 Q Or his property?  
22 A Not at all.  
23 MR. MOHAMMADI: Nothing further.  
24 MS. ROBESON: Ms. Rosen, any redirect?  
25 MS. ROSEN: No. No further questions.

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1 MS. ROBESON: Okay. You may be excused.  
2 MS. ROSEN: I'd like to call Leigh Alfer as my  
3 next witness. Okay.  
4 MS. ROBESON: You can sit. You don't have to  
5 stand.  
6 MS. ALFER: Okay. Great.  
7 MS. ROBESON: Just raise your right hand.  
8 (Witness is sworn in.)  
9 MS. ALFER: I do.  
10 WHEREUPON  
11 LEIGH ALFER,  
12 having been previously called for examination by counsel for  
13 complainant and having been previously sworn, was examined  
14 and testified as follows:  
15  
16 DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
17 BY MS. ROSEN:  
18 Q Okay. Could you please state your full name and  
19 address for the record?  
20 A Leigh Alfer. I reside at 8617 Timber Hill Lane,  
21 Potomac.  
22 Q Okay. And were you present at a meeting on or  
23 about May 5th of 2011 where Peter Ball's house -- the  
24 application of Peter and Michael Ball -- and/or Michael Ball  
25 was taken up by the Association?

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1 A I was. That is the May meeting you are referring  
2 to?  
3 Q May of 2011.  
4 A Yes.  
5 Q Okay. I'm going to show you a document which has  
6 been previously marked as Exhibit 77, and I'm going to ask  
7 you to carefully look at that -- first I'm going to ask you  
8 to carefully look at that document.  
9 A Mmm-hmm.  
10 Q Okay. Now were you on the Board in May of 2011?  
11 A Yes.  
12 Q Okay.  
13 A I had just become a Board member.  
14 Q Okay. So were you one of the Board members who  
15 voted on this application?  
16 A Yes.  
17 Q Okay. Now at the meeting was Peter Ball present  
18 at that meeting also?  
19 A Yes, he was.  
20 Q Okay. Now during that meeting, was this set of  
21 drawings available at that meeting?  
22 A Yes.  
23 MR. MOHAMMADI: Objection. The meeting.  
24 MS. ROBESON: Well, what set are you talking  
25 about?

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1 MS. ROSEN: Okay. I'm talking about Exhibit 77,  
2 but I'll come back.  
3 BY MS. ROSEN:  
4 Q Were there any drawings that were being looked at  
5 at the meeting in May -- the May 11th 2011 meeting?  
6 A Yes, they are.  
7 Q Okay. And are these the drawings -- the drawings  
8 that are attached to the first page of Exhibit 77, are those  
9 the drawings that were available?  
10 A Yes, these are the drawings from which the  
11 Committee -- I mean the Board was looked at -- were looking  
12 at. These are the drawings.  
13 Q Okay. Can you just tell a little bit about the  
14 meeting? Was there -- with regard to these drawings and  
15 just generally, was there interaction between Mr. Ball and  
16 the Board while these drawings were being looked at, at that  
17 meeting?  
18 A The meeting was held at the then Secretary of the  
19 HOA's house. We were sitting around her family room. The  
20 Board members were there. Mr. Ball was there with a  
21 gentleman, who represented himself as a friend/lawyer, who  
22 happened to be a lawyer, I think were his exact words. And  
23 -- yeah -- nothing.  
24 Q Okay. At any time during that meeting did either  
25 Mr. Ball or this other gentleman, the lawyer, did either of



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1 A No, I don't know the exact day of when he did  
2 that, because again, I don't think I, as the Chairman since  
3 May of 2011, received the plans for doing that. The only  
4 plans that I am aware of that I received were plans to add  
5 to an existing fence, to add more fencing. Those are the  
6 only drawings that I ever received.  
7 Q Well, are you aware that the first application was  
8 submitted sometime the beginning of 2008?  
9 A Well, from being at this hearing I am aware that  
10 there were earlier --  
11 Q Okay. Did you ever become aware of it as the  
12 Architectural Committee Chair in the past?  
13 A In 2008?  
14 Q In your capacity as the Architectural Committee  
15 Chair since 2011, May 2011, have you ever become aware of  
16 the fact that the application, the first application, was  
17 submitted in early 2008?  
18 A Yes.  
19 Q Okay. So you are aware, as the Architectural  
20 Committee chair, isn't it fair to say that you would never  
21 have received the original application?  
22 A But the original and what was built are two  
23 different things. They are -- when -- anytime you change  
24 from what you originally sent in that may or may not have  
25 been approved -- if it was approved and you then decided to

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1 make changes, you must then reapply.  
2 Q Okay. I'll ask it again. You wouldn't have  
3 received the 2008 application because you were not anywhere  
4 on the Board or the Chair?  
5 A 2008, I would not have received it.  
6 Q And any subsequent revisions to that up to May  
7 2011, you would not have received those either because you  
8 were not on the Board, correct?  
9 A I received notification that we -- for that May  
10 11, 2011 meeting, I received an email from the secretary,  
11 which gave me the plans --  
12 Q Exhibit 77.  
13 A -- yeah -- whatever -- that she showed me. Those  
14 I received ahead of time so that I would be at least  
15 familiar with what we were going to be doing.  
16 Q Okay. So, to your knowledge, what you received in  
17 this email, Exhibit 77, was the last set of plans, which  
18 were ultimately approved?  
19 A Those were the only plans I saw.  
20 Q Okay. Do you know when those plans were actually  
21 submitted to the Board?  
22 A Unless it was in the email, the body of the email  
23 that stated that, no, I don't know.  
24 Q To be clear, there is a specific set of procedures  
25 and guidelines that set forth this application process,

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1 correct?  
2 A Correct.  
3 Q And the first step is to submit your application  
4 to the Architectural Committee?  
5 A Yes.  
6 Q And if for some reason that Architectural  
7 Committee does not approve it, or if there are complaints or  
8 neighbors complain, it gets bumped up to the Board, correct?  
9 A Correct.  
10 Q Okay. And at that point the homeowner is dealing  
11 with the Board, no the Architectural Committee -- would be  
12 dealing directly with the Board, isn't that fair to say?  
13 A Yes, unless and in fact there are changes from  
14 that drawing that was given to, first, the Architectural  
15 Committee and then bumped up to the Board. If there are any  
16 changes from that drawing, then one must then go back to  
17 phase one, which would be the Architectural Committee, and  
18 resubmit.  
19 Q So, in other words, what you are describing is,  
20 2008, Peter Ball submits an application. The Board --  
21 excuse me -- the Architectural Committee says this is --  
22 there's a problem with this, and it gets bumped up to the  
23 HOA. Okay?  
24 A Mmm-hmm.  
25 Q The HOA says submit a new plan. You have to add

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1 this information and make these changes; submit a new plan.  
2 Mr. Ball does that. Is your testimony today that when he  
3 makes those changes, he needs to now submit it again to the  
4 Architectural Committee for their review first, or does he  
5 submit it directly to the HOA --  
6 A Umm --  
7 Q -- since the HOA was the one that suggested to  
8 make -- told him to make the changes?  
9 A It should go through the Architectural Committee  
10 first.  
11 Q Okay.  
12 A And then because he has made changes, so therefore  
13 we get to look at the changes. Maybe those changes -- then  
14 there are no objections to those changes. Maybe he has  
15 taken guidelines from the Board -- the overall Board -- that  
16 says if you do X, Y and Z and resubmit, then let's see what  
17 happens. Maybe there won't be objections by the Committee  
18 or by a neighbor.  
19 Q Okay. So at that point once he submitted his  
20 second application to the Architectural Committee, the  
21 Architectural Committee reviews it, and if there are  
22 problems again, it gets bumped up to the HOA again?  
23 A Mmm-hmm.  
24 Q And the HOA then has a meeting and tells the  
25 homeowner what the issues are and what changes are to be



1 MS. ROBESON: See, it's simple, guys, to get the  
 2 right answer quickly. Okay. Go ahead.  
 3 BY MR. MOHAMMADI:  
 4 Q How many applications are you aware of that were  
 5 submitted after this was approved?  
 6 A From what I gather -- and again, I did not get all  
 7 of the plans -- there were -- obviously just sitting here  
 8 for three or four days that I have been, there are many sets  
 9 of plans that have come forward from Mr. Ball. I didn't see  
 10 any of them. None of them came through my department. He  
 11 sent them all either to Peter Gibson or to Raj Barr. They  
 12 never came through me.  
 13 Q Ms. Alfer, as a member of the HOA Board, any plans  
 14 that were submitted to the Board you would have seen them at  
 15 some point? I mean typically you would see those, right, as  
 16 an HOA Board member?  
 17 A If there was a Board meeting to discuss those  
 18 particular plans and the agenda of that Board meeting, yes.  
 19 Q And I'm going to ask the question again because  
 20 I'm not sure if you answered it. Since these plans were  
 21 approved in May of 2011?  
 22 A Mmm-hmm.  
 23 Q Okay. And that's also when you joined the Board.  
 24 How many new or changes were made by Mr. Ball and submitted  
 25 to either the Architectural Committee or the Board?

1 A I don't know how many, but there are several.  
 2 This -- these plans is not what exists in his home. This is  
 3 not --  
 4 MS. ROBESON: Okay. That's not his question.  
 5 BY MR. MOHAMMADI:  
 6 Q Are you aware that there was only other  
 7 application submitted on December 16, 2013 and that's it  
 8 since that time?  
 9 A I'm not aware of how many. It could be one. It  
 10 could be two. I don't know. If you are telling me there  
 11 has only been one; there's only been one.  
 12 A If you don't know, as a member of the HOA Board,  
 13 who would know?  
 14 A Those that received the plans.  
 15 Q And is it typical that if a Board member does not  
 16 -- if a Board member independently receives plans that it's  
 17 not shared with the rest of the Board members?  
 18 A Generally it is shared at a Board meeting, yes.  
 19 Q Okay.  
 20 A And, you know, the question --  
 21 Q Okay. So is it your testimony that you were, for  
 22 some reason, not provided those plans by other Board  
 23 members?  
 24 (No audible response.)  
 25 Q Since you have not seen any, you said, I'm trying

1 to understand why that would be, if there have been several  
 2 submissions to the HOA Board.  
 3 A What I said is that I was not presented with the  
 4 plans first. These are the -- this is the set of plans that  
 5 I saw and voted on, on May of 2011. The subsequent plans  
 6 that were done were discussed at Board meetings. I was not  
 7 given an individual sheet to look at. It was thoroughly  
 8 discussed, but I did not look at the plans themselves.  
 9 Q Okay. And how many sets -- different plans were  
 10 discussed thoroughly?  
 11 A I can remember one Board meeting where it was  
 12 discussed that changes had been made and here were the  
 13 changes.  
 14 Q And were those changes pursuant to a submitted  
 15 plan, or were those changes brought up by members saying  
 16 this is deviations that he has done?  
 17 A Well it seems to me that there were -- they were  
 18 two -- two different things. That some of them were  
 19 deviations that were brought up by others that had been  
 20 noticed. Others were plans that actually were on drawings  
 21 that one could notice. And after that there were many  
 22 discussions in regard to Mr. Ball's alterations to his home.  
 23 Q Okay. Well since I'm aware of only one submission  
 24 since May 2011 -- that's the December 16, 2013 submission --  
 25 when did you actually see that submission?

1 A At a subsequent Board meeting, I suppose. I mean  
 2 I don't -- I don't know exactly.  
 3 Q But you have seen them?  
 4 A Which --  
 5 MS. ROBESON: Why don't you show her the December  
 6 16th, and then she -- that might help.  
 7 BY MR. MOHAMMADI:  
 8 Q I'm showing you what's been marked as Exhibit 90.  
 9 (Discussion off the record.)  
 10 MR. MOHAMMADI: Well, there's a reason I just  
 11 showed the second page. I'm not trying to give her the  
 12 context, so --  
 13 MS. ROBESON: That's fine. So what's your  
 14 question? You want to follow-up?  
 15  
 16 BY MR. MOHAMMADI:  
 17 Q Can you look at page two, please?  
 18 A Am I not to look at anything else?  
 19 Q No. No. Your attorney can tell you to look at  
 20 that later.  
 21 A Okay. The rear elevation?  
 22 Q Pages two and three, either one.  
 23 A Okay. So front elevation and rear.  
 24 Q Have you ever seen this set of drawings?  
 25 A I can't say for certain, but it seems to me that

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1 --  
2 MS. ROSEN: No. Just answer the question itself.  
3 He's asked if she ever saw them.  
4 MS. ROBESON: Okay. Don't tell her what to say.  
5 MS. ROSEN: I understand.  
6 MS. ROBESON: No hints, okay? Let -- just answer  
7 the question.  
8 THE WITNESS: Could you ask the question again,  
9 please?  
10 BY MR. MOHAMMADI:  
11 Q Have you ever seen those drawings?  
12 A I'm going to say yes.  
13 Q Are you guessing or do you know?  
14 A I'm going to say yes because I was at a Board  
15 meeting, and obviously if this was a second set at a Board  
16 meeting, I would not sit there without having been shown  
17 them.  
18 Q Okay. But you don't have independent recollection  
19 of whether you --  
20 A I do not have independent recollection.  
21 Q Okay. All right. In the year 2014, have you ever  
22 reviewed any new applications submitted by Peter Ball?  
23 A No.  
24 MR. MOHAMMADI: If I can have my exhibit back,  
25 please? Thank you. The Court's indulgence.

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1 BY MR. MOHAMMADI:  
2 Q The site visit that you had on September 14, 2013  
3 -- the one you testified about -- how did you notice that  
4 the roof was higher than what was approved?  
5 A The plans that Mr. Ball kept pulling out, was  
6 showing that -- he had two sets of drawings, pages, and he  
7 would say this is what was drawn. And Raj and Peter would  
8 say, no, this is what was drawn. And so I, not being an  
9 architect, would listen to what was being said and could  
10 clearly see on the drawings that it was different. I can't  
11 -- I'm not an architect, again, so therefore I can only  
12 judge by what I am seeing on the plans that Mr. Ball had.  
13 Neither -- any of the three of us did not have plans with us  
14 in our hands.  
15 Q How were the plans different than Exhibit 77?  
16 A What's Exhibit 77?  
17 Q Right there.  
18 A Oh, here?  
19 Q Right.  
20 A Okay.  
21 Q The plans you voted on and approved.  
22 A These -- okay -- they --  
23 Q How was what Mr. Ball showing you different?  
24 A They were more detailed. It appeared to me that  
25 they were much more detailed than what I'm looking at here.

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1 Q Okay. Okay. But, in terms of the roof height,  
2 how were they different than those?  
3 A Well, it was -- it was drawn differently. These do  
4 not indicate -- this does not indicate to me now, with  
5 having a little more knowledge, that the roof height was any  
6 particular thing.  
7 Q How do you -- how did you get on the Architectural  
8 Committee?  
9 A I was asked to be the Architectural Chair. The  
10 original Architectural Chair, who had been there for many,  
11 many years was moving, and they were soliciting people. And  
12 I did not want to be an Architectural Chairman. I was asked  
13 to be Architectural Chairman and begged to be Architectural  
14 Chairman.  
15 Q Okay. Is there a particular reason you were  
16 asked? Did you have any kind of qualifications that others  
17 did not have?  
18 A I don't think there are -- there are no  
19 qualifications other than being a homeowner and being  
20 interested in the community a lot.  
21 Q Okay. If you don't mind me asking, what do you  
22 do?  
23 A I have my Masters in nursing, nursing  
24 administration.  
25 Q When you said -- when you told Peter Ball at the

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1 site visit -- you said you strongly suggested to him to  
2 bring the roof into compliance. I think that was your  
3 testimony; that you said strongly suggest to bring roof into  
4 compliance.  
5 A That is not what I said.  
6 Q Okay. What did you -- I'm sorry -- what did you  
7 say?  
8 A I said that it was suggested. I never said  
9 anything because I'm not an architect, and I cannot make  
10 that decision to say you must do this. I was listening  
11 strongly to the discussion between Mr. Gibson, Mr. Ball, and  
12 Mr. Raj Barr about the roof. And it was their discussion.  
13 I was simply standing in and listening, and agreeing that if  
14 in fact the roof was not in compliance with what was turned  
15 in to us and voted on, then it needed to be brought back  
16 into compliance.  
17 Q I understand that, but I'm trying -- what does it  
18 mean to bring it back into compliance? What was wrong with  
19 the roof at the time that it was out of compliance?  
20 A It's my understanding that the roof line or the  
21 pitch of the roof was not in compliance.  
22 Q Do you know which one?  
23 A As I recall it was the pitch of the roof. It was  
24 not -- not as it was pre-designed and agreed upon.  
25 MR. MOHAMMADI: Nothing further.

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1 MS. ROBESON: Okay. I had a question and I should  
2 have asked it before cross, but when I -- you were at the  
3 May 5th 2011 meeting?  
4 THE WITNESS: Yes, that was my first meeting.  
5 MS. ROBESON: Do you recall -- it describes a  
6 vote, and then it says after the vote that Peter Ball was  
7 asked to comment. Do you recall that?  
8 THE WITNESS: I don't recall whether he was asked  
9 to comment one way or the other. Actually I think at that  
10 particular meeting he -- the HOA was under the guidelines  
11 that when a vote was taken that the vote -- the people that  
12 had to do with the vote were asked to leave the meeting,  
13 because we were under the impression from prior Board  
14 members that that's the way it's done; that you don't  
15 include those people that the subject matter is being  
16 discussed. So I think he left the room with his  
17 friend/lawyer and then perhaps came back in.  
18 MS. ROBESON: Okay. But he never saw the  
19 conditions until the letter that was sent to him?  
20 THE WITNESS: I don't know if he saw the  
21 conditions or not before that letter. I think he knew the  
22 -- I think perhaps when he left that meeting he might have  
23 -- if he wasn't verbally told, he might have had a sense of  
24 what was happening.  
25 MS. ROBESON: Okay. I apologize, both of you.

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1 Mr. Mohammadi, I'm going to let you cross and then we'll go  
2 to redirect. Do you have any questions based on my  
3 questions?  
4 MR. MOHAMMADI: Just one question.  
5 RE-CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT  
6 BY MR. MOHAMMADI:  
7 Q After Mr. Ball was asked to leave the room, do you  
8 know how long the rest of the Board was in the room  
9 reviewing and voting?  
10 A Not for very long. It wasn't an hour or so or  
11 anything like that. It may be 20 minutes -- 25, 30 minutes  
12 at most, if that long.  
13 Q Okay.  
14 MS. ROBESON: Okay. Redirect, Ms. Rosen.  
15 MS. ROSEN: Okay.  
16 REDIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
17 BY MS. ROSEN:  
18 Q Now when the application was voted upon, was it  
19 basically -- was it approved? Did the Board approve what  
20 Mr. Ball wanted to do?  
21 A They approved the plans that they were given.  
22 Q Okay. And these are the plans. Was there any  
23 part of this application, if you recall, that was not  
24 approved?  
25 A There was some discussion at that meeting in

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1 regard to vinyl siding.  
2 Q Okay. And other than vinyl siding, was everything  
3 else that he applied for approved?  
4 A To the best of my recollection, yes.  
5 Q Okay. And so generally as somebody -- as an  
6 Architectural Chair -- you did say that -- when some -- if  
7 somebody doesn't -- subsequent to having an approved plan --  
8 you know, a plan that the person has an approval to go ahead  
9 and do, you know, construction -- if that person just  
10 subsequently hands other drawings over to the Board or the  
11 Architectural Committee, does that in and of itself  
12 constitute a new application?  
13 A No.  
14 Q Okay.  
15 A There is an application process. There is an  
16 application form.  
17 Q Okay. So if somebody is going to use -- to make a  
18 new application, is it fair to say that they have to -- part  
19 of that application, they are required to use that form?  
20 A Yes.  
21 Q Okay. And to the best of your knowledge have  
22 there been any other approved changes to this plan that was  
23 already approved in May of 2011, other -- is the one that  
24 was approved in May of 2011 the only approved plan for Peter  
25 Ball's work?

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1 A Yes, by means of application. Yes.  
2 Q Okay. Thank you.  
3 MS. ROSEN: No further questions.  
4 MS. ROBESON: What do you mean by means of --  
5 THE WITNESS: By application process. By filling  
6 out --  
7 MS. ROBESON: Wasn't there an approved plan --  
8 wasn't there something about the -- wasn't there an  
9 amendment for the deck, or am I mis-remembering that?  
10 THE WITNESS: I don't know when that amendment  
11 might have come up. I don't -- I don't know that he  
12 actually filled out a form for an amendment.  
13 MS. ROBESON: No. You said there's no other  
14 amendments to this --  
15 THE WITNESS: Well I meant -- I meant any type of  
16 form. The Architectural Committee has a form and a process.  
17 MS. ROBESON: Yes, I understand. And you are  
18 saying the only amendment -- there are no amendments that  
19 use the form; is that what you are saying?  
20 THE WITNESS: Yes.  
21 MS. ROBESON: Okay. Okay. Mr. Mohammadi?  
22 MR. MOHAMMADI: Thank you.  
23 RE-CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT  
24 BY MR. MOHAMMADI:  
25 Q If a plan is submitted without that required form

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1 what does the Board or the Architectural Committee do with  
2 that submittal?  
3 A We request that they fill out the form.  
4 Q You inform the homeowner there is a problem with  
5 this; go give me the form?  
6 A Well, if I'm not given anything, it's very hard for  
7 me to go back to that person because I don't know about it.  
8 Q But the typical process for the Board or the  
9 Architectural Committee is if something is submitted without  
10 the appropriate form is to tell the homeowner submit it with  
11 the form?  
12 A Yes.  
13 Q And, to your knowledge and since May of 2011, is it  
14 your testimony that no homeowners' plans have ever been  
15 approved if they did not have an application with it?  
16 A Since I am -- since I have been the Architectural  
17 Chairman, I have requested that each and every person, if they  
18 are going to do something that falls within the  
19 HOA/Architectural guidelines that they fill out a form. If  
20 in fact a neighbor or someone says to me somebody just did  
21 something, are you aware of it; I then would go to the  
22 homeowner and say, did you bother to go through my Committee?  
23 You know, here's a form. You know I -- please fill out the  
24 form and then I -- if I find that there are strong objections  
25 to something that was done without my committee, I would then

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1 go back and tell the homeowner that this is going to be brought  
2 to the Board because something was built without consent.  
3 Q Okay. With respect to -- and this is going to the  
4 Hearing Examiner's question -- the CCOC case that involves the  
5 deck and the shed, you are aware of that case?  
6 A Yes. People have made me aware of that.  
7 Q Okay. Are you aware that subsequent to that  
8 hearing that was had in the last CCOC case, the CCOC  
9 required a new application to be submitted -- essentially a  
10 new set of plans to be submitted to the Board for approval?  
11 A I think so. You know I --  
12 Q And do you recall getting an application for the  
13 deck from Peter Ball fairly recently?  
14 A The only application I am really aware of is for  
15 the that fence. I'm not sure that I received an  
16 application, in fact, about the shed itself.  
17 Q In other words, the plans that were submitted for  
18 the deck, in accordance with the current CCOC Order, that  
19 set of plans did not have an application, correct?  
20 A I don't think so.  
21 Q And the Board still considered those set of plans  
22 regardless of the -- irregardless of -- despite the fact  
23 that there was no application attached to it?  
24 A I'm assuming that the Board -- that we decided or  
25 it was decided by the entire Board to look at that, because

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1 it was part of something else.  
2 MR. MOHAMMADI: Okay. Nothing further.  
3 MS. ROBESON: Do you have any redirect, because I  
4 think I asked her a question after you had finished? Do you  
5 have any? Then we have to go to re-cross, but I'm offering  
6 you the opportunity, if you wish it.  
7 MS. ROSEN: Okay. I don't think so.  
8 MS. ROBESON: Okay. All right. Anything else?  
9 (No audible response.)  
10 MS. ROBESON: All right. You may be excused. Now  
11 it's 20 to 5:00. So I -- do you have two more witnesses?  
12 MS. ROSEN: Yeah. I think we probably -- it would  
13 be Mr. Gibson and I guess Mr. Barr.  
14 MS. ROBESON: Okay. We can go to 5:30, if you  
15 would -- if the parties agree to, and see how much we can  
16 get done.  
17 (No audible response.)  
18 MS. ROBESON: No? Yes?  
19 MS. ROSEN: Okay.  
20 MR. MOHAMMADI: Yeah. I'm fine.  
21 MS. ROSEN: I'm fine with that.  
22 MS. ROBESON: You know I'm not mandating it.  
23 MS ROSEN: Yeah, that's fine. Let's just get this  
24 done. Okay. I'll call Mr. Gibson.  
25 MR. GIBSON: Hi.

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1 MS. ROBESON: You are still under oath, Mr.  
2 Gibson.  
3 MR. GIBSON: All right.  
4 WHEREUPON  
5 PETER GIBSON,  
6 having been previously called for examination by counsel for  
7 complainant and having been previously sworn, was examined  
8 and testified as follows:  
9 RE-DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
10 BY MS. ROSEN:  
11 Q All right, Mr. Gibson, in this case there was  
12 testimony by Peter Ball, I think at the last hearing, that  
13 he did not -- that with regards to some drawings that he  
14 dropped apparently at your doorstep around December of 2013,  
15 that he did not submit a form -- an application form,  
16 because he -- because the application form that he had was  
17 outdated. Do you know, did Mr. Ball ever tell you the  
18 reason why he didn't submit an application form was because  
19 he had an outdated form?  
20 A No.  
21 Q Okay. And, as far as you know, does Mr. Ball, to  
22 the best of your knowledge -- first of all, where are the  
23 application forms available?  
24 A Where are they available?  
25 Q Yeah. I mean how can Mr. Ball get an application

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1 form? Did he ever ask you for one, for example?  
2 A No.  
3 Q And do you know are they generally available? How  
4 does a homeowner get an application form if they want to get  
5 one?  
6 A They can get one from the Architectural Committee  
7 Chair.  
8 Q Okay. Are they also available on-line or anything  
9 like that, as far as you know?  
10 A They are now, yes.  
11 Q Okay. I mean I believe we have -- I may have gone  
12 through the October -- a meeting held on October 7th of  
13 2013. I believe that you previously testified that at that  
14 particular meeting that a vote was taken -- that a vote was  
15 taken, if my recollection is correct, to not take Peter Ball  
16 to the CCOC. Was that your -- do you recall giving that  
17 type of testimony?  
18 A I'm sure I used those terms when I testified last  
19 time. You know that -- the October 7th meeting -- the  
20 purpose of the meeting was it was a special meeting to --  
21 you know, to ratify the minutes from prior years and to  
22 address remedies that were required by the CCOC from a  
23 previous case.  
24 At the conclusion of that meeting -- you know the  
25 Board was there and we had a discussion about Peter Ball and

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1 whether to -- to go to the CCOC or whether to try to work it  
2 out more, you know, unofficially with him. And, you know  
3 there was discussion about that. There was not an official  
4 vote taken in the sense that, you know -- you know I -- you  
5 know there is a motion to take a vote, there is a vote,  
6 there is a second motion. It's -- you know it's sort of put  
7 into the minutes and it was official. There was discussion  
8 about it and people had opinions about whether to work with  
9 him or whether to -- you know, to go directly to the CCOC.  
10 So, in that sense, it was -- you know it was discussed, but  
11 there wasn't an official Board vote. If that's what the  
12 interpretation was from my prior -- through my prior  
13 testimony, then I just want to clarify that.  
14 Q Okay. All right. And you were present at the --  
15 at the May 5th, 2011 meeting when Peter Ball's application  
16 was voted on, is that correct? Were you on the Board?  
17 A Yes.  
18 Q Okay. And I'm going to show you what was  
19 previously marked as Exhibit 77, and if you could tell me if  
20 you recognize that document?  
21 A I do.  
22 Q Okay. And were you a recipient on this email?  
23 A Yes, I was.  
24 Q Okay. And are the drawings that are attached to  
25 this email, are those the drawings -- that are attached in

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1 this exhibit -- are those the drawings that were attached to  
2 this email when you received this email?  
3 A Yes.  
4 Q Okay. And are those the drawings that -- when you  
5 were present at that meeting, are those the basic set of  
6 drawings that were being -- that were discussed and voted  
7 upon at the May 2011 meeting?  
8 A Yes.  
9 Q Okay. And at that meeting was Peter Ball present  
10 at that meeting?  
11 A Yes, he was.  
12 Q Okay. And did he have -- was anyone else present  
13 with him at that meeting?  
14 A Jim Deavers, his attorney friend, was present.  
15 Q Now during that meeting was there a discussion --  
16 you know, interaction between the Board and Peter Ball  
17 and/or Mr. Deavers about the drawings that were being looked  
18 at by the Board?  
19 A You know I -- I don't honestly remember what the  
20 specific conversation was but, you know, there was obviously  
21 discussion about the submission, about his request, and you  
22 know his -- these plans were there and they were the topic  
23 of discussion. And so --  
24 Q Did any -- at any point during that meeting did  
25 either Peter Ball or his attorney, Mr. Deavers, claim that

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1 you guys were looking at the wrong plans?  
2 A No.  
3 Q Okay. Now you were present also at around  
4 September 14th of 2013. Do you recall visiting Peter Ball's  
5 property with Raj Ball and Leigh Alfer being present?  
6 A Yes.  
7 Q Okay. And can you just tell the Hearing Examiner  
8 what was discussed at that site visit?  
9 A Raj and I went -- initially we were the only two  
10 ones there. Initially we walked around the property and we,  
11 you know, looked at the construction that had taken place,  
12 and you know, talked about the bump out and the windows.  
13 And you know there were several, you know, topics of  
14 discussion. You know the majority of the discussion was  
15 about the roof above the garage and the foyer, and  
16 specifically that the -- you know, the roof height was out  
17 of scope with the approved plans.  
18 Q Okay. And do you recall what if anything did  
19 either you or Raj or Leigh say or suggest to Peter Ball?  
20 A Well he was told that he had to bring the -- you  
21 now, bring the construction back into compliance with what  
22 was approved by the HOA, specifically with respect to the --  
23 to the height of the roof.  
24 Q Okay. Did Peter Ball ever say at that -- during  
25 that site visit, did he ever refer to any portion of his --

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1 of the roof or what he did to it as being temporary?  
2 A No.  
3 Q Did he ever ask you whether you liked what he had  
4 done to the roof?  
5 A I don't remember whether that question was asked.  
6 Q Okay. And prior to making -- doing what -- and is  
7 it your position that what he did on -- the changes that he  
8 had done to the roof was different than what was on the  
9 approved plans?  
10 A Yes.  
11 Q Okay. And did he ever come back to you -- did he  
12 ever -- before doing what he did on the roof and other parts  
13 of the property, did he ever come back to the Board for  
14 approval prior to making any of those changes?  
15 A To clarify, when you say changes, do you mean did  
16 he come back to the Board before --  
17 Q Before doing --  
18 A -- before doing the construction on the roof?  
19 Q Yes.  
20 A No.  
21 Q Okay. And also, were you ever with -- at any  
22 point between April 21st, 2011 to the May -- May 5th 2011  
23 Board meeting -- were you ever contacted by Tania Bruno --  
24 were you ever contacted by Tania Bruno claiming that the  
25 drawings that were attached to this email were not the

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1 correct drawings?  
2 A No.  
3 Q Okay.  
4 MS. ROBESON: Are the drawings that -- to your  
5 knowledge, are the drawings that were attached to that  
6 email, are they in the record? Have you looked at the  
7 drawings that are in the record?  
8 MS. ROSEN: Well these -- this is Exhibit 77.  
9 They are in -- this is an exhibit.  
10 MS. ROBESON: Oh, I thought you - okay.  
11 MS. ROSEN: No.  
12 MS. ROBSON: I'm talking about exhibit -- okay.  
13 Can I ask a -- I'd like to ask a question, and that is,  
14 going to Exhibit 141 --  
15 MS ROSEN: 141? Which exhibit is 141?  
16 MS. ROBESON: I think it's 141.  
17 MS. ROSEN: Are you referring to the drawings that  
18 they brought in last time that you called 148, or is this  
19 different?  
20 MS. ROBESON: No.  
21 MR. MOHAMMADI: The email is 141.  
22 MS. ROBESON: There is an email that is 141.  
23 MR. MOHAMMADI: You have the right email.  
24 MS. ROBESON: And it's an email from Mr. Gibson to  
25 Dr. Barr attaching plans. And he says do we have a chain of

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1 custody problem? I'm going by memory. And there are two  
2 PDFs attached to that. And my question is --  
3 MS. ROSEN: Thank you.  
4 MS. ROBESON: -- did you look at those PDFs and  
5 are they in this record?  
6 THE WITNESS: Did I look at them?  
7 MS. ROBESON: Yeah.  
8 THE WITNESS: I'm sure I looked at them if they  
9 were -- if they were sent to me by email. Yes, I'm sure I  
10 looked at them.  
11 MS. ROBESON: Okay. But -- okay -- then my next  
12 question is, to your knowledge are they in our record?  
13 THE WITNESS: I don't know that they are.  
14 MS. ROBESON: Okay. Do you still have -- would  
15 Ms. Gowan have them if they -- Ms. Gowan -- for the record,  
16 Ms. Gowan is shaking her head no.  
17 MS. GOWAN: Oh, I'm sorry.  
18 MS. ROBESON: No, it's okay. You are not on the  
19 stand. I just -- so who -- where are those plans?  
20 THE WITNESS: Can I have just a second to look at  
21 this?  
22 MS. ROBESON: Sure.  
23 THE WITNESS: Thanks.  
24 MS. ROBESON: I didn't ask the court reporter if  
25 she's available until 5:30. Are you okay?

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1 COURT REPORTER: Yes.  
2 THE WITNESS: So the -- its -- and I'm working  
3 from memory here, not -- not remembering what the plans  
4 actually look like, but you know, after they were emailed to  
5 me I clearly looked at them and they were different than --  
6 than these plans, the ones that were originally --  
7 MS. ROBESON: 77?  
8 THE WITNESS: Correct. Right. But they were --  
9 you know -- but those -- the ones that were mailed --  
10 emailed to me weren't the ones that we used for approval.  
11 So --  
12 MS. ROBESON: You used 77?  
13 THE WITNESS: 77. Yes. Yes, we did. Right. And  
14 so that's -- the nature of my email was, you know, what are  
15 these plans? These are not the plans that were -- that, you  
16 know, we used for approval in the -- at the May meeting.  
17 Where did these come from?  
18 MS. ROBESON: But, to your knowledge, they haven't  
19 been produced in this case?  
20 THE WITNESS: I honestly don't know. I know there  
21 have been a lot -- I haven't been here the whole time. I  
22 don't know which plans have been approved --  
23 MS. ROBESON: Fair enough.  
24 THE WITNESS: -- so I can't really say.  
25 MS. ROBESON: Okay.

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1 MS. ROSEN: Just as an aside, I believe that in  
2 the -- I think in the beginning when we were doing  
3 discovery, and I had indicated in my discovery responses I'm  
4 not -- not particularly, but with regards to things that are  
5 in the possession -- that would be in the possession of  
6 somebody -- like, for example, if it's my drawing and I  
7 generated it, then under the CCOC's discovery rules, you  
8 don't have to -- if something is of public record or it's  
9 something -- that's something that you generated basically,  
10 it's not something that you'd be required to make a copy of  
11 it for the other side. That's -- and my objections I  
12 believe you even sustained that because we didn't -- you  
13 know we would not have been required to --  
14 MS. ROBESON: My question --  
15 MS. ROSEN: I'm just, you know --  
16 MS. ROBESON: But it is in your possession because  
17 it's in an email. I'm not --  
18 MS. ROSEN: I know, but I'm just --  
19 MS. ROBESON: I'm not going there.  
20 MS. ROSEN: I mean I don't know about this -- I  
21 don't even know -- I don't know what's next, but I'm just  
22 saying that generally we didn't --  
23 MS. ROBESON: I'm not asking about this --  
24 MS. ROSEN: Okay.  
25 MS. ROBESON: -- because of discovery, okay?

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1 MS. ROSEN: Mmm-hmm.  
2 MS. ROBESON: I just am trying to get a chain of  
3 what happened to which drawings.  
4 MS. ROSEN: Mmm-hmm. I understand that.  
5 MS. ROBESON: And somehow drawings got to the  
6 Board that were never made part of the Board's records is  
7 what I am saying -- what I'm hearing. Is that fair to say?  
8 THE WITNESS: Can I respond to that?  
9 MS. ROBESON: Yeah, sure.  
10 THE WITNESS: Are you referring to the -- to the  
11 --  
12 MS. ROBESON: To attachments.  
13 THE WITNESS: To the attachments that were sent to  
14 me in September of 2013. You have the email that I sent to  
15 Raj; you are referring to that?  
16 MS. ROBESON: 141, yeah.  
17 THE WITNESS: I mean those were -- I mean they  
18 were only, you know, provided to the Board, per se, because  
19 she -- she emailed them to me but it -- they weren't -- it  
20 wasn't part of any official, you know, approval process or  
21 -- I mean it was --  
22 MS. ROBESON: Okay.  
23 MS. ROSEN: I guess that was --  
24 THE WITNESS: Right? I mean --  
25 MS. ROBESON: I guess my concern is -- and, I mean

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1 there is a critical difference between 77 and 126, to me;  
2 and that is 126 has a scale, which is huge, and it's a lot  
3 easier to read. So I don't know why the Board maybe -- and  
4 -- but -- and 126 was never produced in discovery. So I'm  
5 trying -- so I'm concerned that there may have been  
6 submissions that were not -- never made the light of day.  
7 That's -- and it's all about the chain of -- it is about the  
8 chain of custody issue.  
9 So I guess maybe we do need to leave at 5:00,  
10 because I've lost my train of thought again.  
11 And I am just telling you this. I have not made a  
12 decision at all in this case. What I'm doing is trying to  
13 give you an opportunity to address -- when I see a concern,  
14 I am trying to give everybody an opportunity to address it,  
15 okay?  
16 MS. ROSEN: I guess the question might be -- and I  
17 don't know have the answer to it -- but you are referring to  
18 a packet that's on your drop cloth yesterday, and do you  
19 what that packet is?  
20 THE WITNESS: Right. Well, to address your  
21 question, I don't think there is any dispute as to which set  
22 of plans were used to approve the -- to approve his request,  
23 I mean, at least.  
24 MS. ROBESON: And that is 77.  
25 THE WITNESS: Right. It was the ones that were

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1 emailed, and those were the ones that were used at the -- at  
2 the May -- the May Board meeting. That's -- I don't think  
3 there is any doubt about that.  
4 MS. ROBESON: Okay.  
5 THE WITNESS: I think the --  
6 MS. ROBESON: Maybe I'm wrong. Maybe there is a  
7 scale on those. But it wouldn't be worth anything because  
8 they are 8.5x11.  
9 THE WITNESS: What --  
10 MS. ROSEN: Yeah. Maybe I'll, I don't want to  
11 testify here or anything like that, but I mean --  
12 MS. ROBESON: Yeah. Okay. Well, just continue.  
13 THE WITNESS: And I -- I think --  
14 MS. ROBESON: I was just trying to -- it's hard to  
15 match up when I do a timeline of all this. There are chunks  
16 that are just missing, and that was a chunk.  
17 THE WITNESS: Well, but I also believe that there  
18 was -- there was a larger version of these plans that were -  
19 - that were at the -- the meeting, but it was the same -- it  
20 was the same set. It was just -- just bigger.  
21 MS. ROBESON: So you are saying 126 was at the  
22 meeting?  
23 THE WITNESS: No.  
24 MS. ROBESON: Well this is -- I mean I think we've  
25 kind of already gone through this, but --

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1 MS. ROBESON: Well -- okay. You know what; maybe  
2 in my search for tracking down which plan was submitted  
3 when, I need to back off and just accept that there are  
4 plans that were transmitted but never made it into the  
5 Association's document.  
6 THE WITNESS: Well I don't -- if I can respond to  
7 that?  
8 MS. ROBESON: I'm not putting it pejoratively.  
9 I'm just trying to figure it out.  
10 THE WITNESS: Right. And --  
11 MS. ROBESON: Because 126 didn't appear until  
12 July. So that's all I'm saying.  
13 THE WITNESS: And I guess I would -- my response  
14 to that would be it's clear from, you know, my recollection  
15 and from the email from the secretary is that, you know,  
16 attached are the plans that are going to be discussed at the  
17 meeting to approve Peter's request.  
18 MS. ROBESON: Yes.  
19 THE WITNESS: So at that point, you know, there is  
20 no -- there is no dispute. There is nothing. So -- so --  
21 MS. ROBESON: And nobody objected.  
22 THE WITNESS: Right. So if there was another set  
23 of plans that was provided between April 21st and May 5th,  
24 there is no reason why they wouldn't have been presented at  
25 the Board meeting. There would have been no reason to

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1 withhold those plans, if there were a different set of plans  
2 that were -- that were provided after this email.  
3 MS. ROBESON: Yeah.  
4 THE WITNESS: So I -- it doesn't make any sense  
5 that there would have been. I'm convinced that the plans  
6 that we have discussed were --  
7 MS. ROBESON: Okay. I will be --  
8 THE WITNESS: -- were these.  
9 MS. ROBESON: Okay. I will just say -- well, I'm  
10 not going to say, but go ahead.  
11 MS. ROSEN: I don't have any further questions.  
12 MS. ROBESON: Mr. Mohammadi?  
13 RE-CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT  
14 BY MR. MOHAMMADI:  
15 Q Take a look at Exhibit 126, please.  
16 A Okay.  
17 Q Are you aware that Exhibit 126 is also in the  
18 record as the approved plans?  
19 A I was not aware of that.  
20 Q Okay. Have you ever seen those plans?  
21 A Uh --  
22 Q In other words, when you --  
23 A I mean, at some point during this whole process,  
24 I've probably seen them.  
25 Q Well --

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1 A I can't recall when.  
2 Q When you just testified that you said there were  
3 larger plans at the meeting as well, was it those plans that  
4 were at the meeting as well?  
5 A I honestly don't -- I don't recall.  
6 Q You don't recall?  
7 A No, I don't recall.  
8 Q You know I recall that there were -- that there  
9 were larger plans, but that they were just bigger versions  
10 of -- of this. I guess I'm assuming that they were bigger  
11 versions of this. I don't know why there would be different  
12 versions.  
13 Q Okay. How can you be sure that what was actually  
14 approved was Exhibit 77 and not Exhibit 126?  
15 A Well because these are the plans that were  
16 distributed for the purpose of that meeting. And so these  
17 were the ones that -- that I used and I'm assuming everyone  
18 else used because that's what was provided to everyone.  
19 Q Yeah. I understand that, and I understand that  
20 it's attached to an email, so the presumption that's what  
21 was attached to that email. Do you actually recall getting  
22 that -- those set of plans? Was it that size?  
23 A This size? Yeah.  
24 Q Okay. And do you know whether they were submitted  
25 by Mr. Ball in that size or if it was shrunk down by

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1 somebody?  
2 A I don't know.  
3 Q Okay. Are you aware of any reasons why, if those  
4 set of plans, 126, were available by Mr. Ball, why those  
5 were not -- would not have been submitted for Board  
6 approval?  
7 A No.  
8 Q Okay. Looking at Exhibit 141, just --  
9 A That one?  
10 Q Yes. The two PDFs that are attached to that, do  
11 you know by looking at Exhibit 126 whether those PDFs are  
12 the same thing that you are looking at, 126, or not?  
13 A I -- I don't know for sure. No.  
14 Q Sure. If Exhibit 77 is the plans that the Board  
15 ultimately reviewed and voted on --  
16 A Mmm-hmm.  
17 Q -- could you explain why they were approved if it  
18 contains no scale and no dimensions?  
19 MS. ROSEN: Objection. I mean he's going beyond  
20 -- beyond the scope here.  
21 MS. ROBESON: Well, he did testify as to which  
22 plans were approved. And I think the question is -- I'm  
23 going to let him answer it. You know it's --  
24 MR. MOHAMMADI: The purpose I guess of this --  
25 MS. ROBESON: Yeah. I guess I need to know the

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1 relevance.  
2 MR. MOHAMMADI: Well, the purpose of that question  
3 is --  
4 MS. ROBESON: I think it's within the scope, but  
5 now I'm wondering what the relevance is.  
6 MR. MOHAMMADI: In other words, there has been a  
7 lot of focus on plans requiring scale and plans requiring  
8 dimensions, and apparently the plans that were -- that the  
9 HOA is claiming were approved contain none of that  
10 information. So I'm trying to show that those couldn't have  
11 been the ones they voted on; it has to have been the ones  
12 that had the scales, and specifically 126, because that --  
13 those set of plans contained the information that the Board  
14 has required in the last three years in their approval  
15 process from the first set of application.  
16 MS. ROBESON: I'm going to let him answer. I  
17 don't want to go too far beyond this -- into this, but go  
18 ahead.  
19 THE WITNESS: So the question is why did we use  
20 this -- this set?  
21 MR. MOHAMMADI: Right. In other words, why would  
22 you approve a set of plans, 77, that doesn't contain a scale  
23 or doesn't contain dimensions, if that's what the Board's  
24 requirements are?  
25 THE WITNESS: I -- I don't know. I can't answer

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1 that. I mean I --  
2 BY MR. MOHAMMADI:  
3 Q Could it be that what you actually approved was  
4 126, which does contain a scale and does contain dimensions?  
5 A Well, I don't know how that could be, if the Board  
6 members were using this set of plans as the basis for the --  
7 for the approval.  
8 Q Okay. Fair enough. You stated that at the site  
9 visit on September 14, 2013 Mr. Ball was told to bring his  
10 construction back into compliance. Do you recall saying  
11 that?  
12 A Something along those lines, yes.  
13 Q Do you recall Mr. Ball asking how am I going to  
14 bring my roof into compliance? It's where it's supposed to  
15 be based on the drawings? Do you recall him saying that?  
16 A Yes. Yes.  
17 Q Okay. What was the suggestion of how to bring it  
18 into compliance then?  
19 A There was -- there was not a suggestion. The  
20 suggestion -- I'm paraphrasing -- was, you know, we -- we  
21 don't really care how you do it; just do it.  
22 Q Okay. And to your recollection, besides the  
23 December 16, 2013 plans that were I guess dropped off at  
24 your house --  
25 A Mmm-hmm.

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1 Q -- besides those and besides any plans submitted  
2 subsequently as a result of the other CCOC case for the deck  
3 and shed, have there been any other plans that were  
4 submitted by Mr. Ball since the approval in May of 2011?  
5 A Not that I know of. No.  
6 MR. MOHAMMADI: Nothing further.  
7 MS. ROBESON: Redirect?  
8 MS. ROSEN: Yeah.  
9 RE-DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT  
10 BY MS. ROSEN:  
11 Q Mr. Gibson, I'm just going to have you very  
12 quickly look at what has been previously marked as 126?  
13 MR. MOHAMMADI: Can I have my --  
14 MS. ROBESON: Oh, that is his exhibit.  
15 MR. MOHAMMADI: You can -- if you are using mine;  
16 that's fine, but just the ones that --  
17 MS. ROSEN: Okay. I'll just use my own. You sure  
18 that one is yours, or is that one mine?  
19 MR. MOHAMMADI: You know what, I don't even know.  
20 MS. ROSEN: I think that's mine.  
21 MR. MOHAMMADI: That might be yours.  
22 MS. ROSEN: That one I think is mine. Yeah.  
23 MR. MOHAMMADI: I think you have my email though.  
24 Right here.  
25 MS. ROSEN: Oh, okay. Yeah. That's yours.

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1 MS. ROBESON: I knew there was one of them --  
2 THE WITNESS: One of them is his. Yes.  
3 MS. ROSEN: Yeah, there was something that was  
4 yours.  
5 THE WITNESS: Yeah.  
6 MR. MOHAMMADI: And I think 126 is mine too, but  
7 I'll wait to get that back.  
8 MS. ROBESON: Okay.  
9 MS. ROSEN: Okay. Yeah, we'll figure it out  
10 later. Yeah, this is my 126. I think this one is yours.  
11 I'm sorry. That one looks like it's yours because it has  
12 your handwriting.  
13 MR. MOHAMMADI: Yeah, that's mine.  
14 BY MS. ROSEN:  
15 Q All right, Mr. Gibson, I'm just going to have you  
16 just quickly -- this is the Exhibit 77 --  
17 A Mmm-hmm.  
18 Q -- you know with the front -- on the front  
19 elevation page. I'm just going to have you look -- at least  
20 just visually looking at the front elevation portion on this  
21 Exhibit 77 and the front elevation on Exhibit 126, does it  
22 pretty much look the same to you?  
23 A Yes.  
24 Q Okay. Other than -- yeah -- okay. Now I want to  
25 turn to Exhibit 77 to the page that shows rear elevation,

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1 and on this 126 there is also a picture of rear elevation;  
2 does that pretty much look the same to you?  
3 A Yes.  
4 Q Okay. Based on your viewing of these two -- let's  
5 say for example these two pages of front and rear elevation  
6 on Exhibit 77, and looking at the same thing on A4, do this  
7 look like -- do these two look kind of like a shrunken down  
8 version of that drawing?  
9 A Yes.  
10 Q Okay. I mean this -- okay -- I'll ask you the  
11 same thing looking at the part that says left side  
12 elevation; does it look pretty much similar of what's on the  
13 left side elevation of 126?  
14 A It does.  
15 Q Okay. And the same thing with the right  
16 elevation, does it look pretty similar?  
17 A Yes.  
18 Q Okay. Is it possible, if you know that, let's say  
19 for example that 126 is just a larger sized version of what  
20 was shrunk down to be sent in this email by Jamie Dietz to  
21 the Board members?  
22 A It's certainly possible.  
23 MS. ROSEN: Okay. All right. Thank you. Nothing  
24 further.  
25 MS. ROBESON: Okay. Mr. Mohammadi?

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1 MR. MOHAMMADI: Nothing further.  
2 MS. ROBESON: All right. Mr. Gibson, you do not  
3 have to come back another day. You are excused.  
4 THE WITNESS: Excellent.  
5 MS. ROBESON: Unless Ms. Rosen asks you.  
6 THE WITNESS: Okay. Thank you.  
7 MS. ROSEN: Okay. And --  
8 THE WITNESS: Bow, it's quarter after. Is your  
9 next witness Dr. Barr?  
10 MS. ROSEN: Yeah. I mean I suppose we can just  
11 wait until the next go-around. Yeah.  
12 MS. ROBESON: That was my thought. Mr. Mohammadi,  
13 do you have any objection if we wait to bring Dr. Barr on,  
14 because I just don't think he's going to -- we are going to  
15 finish with him in 15 minutes? I was trying to get some of  
16 the witnesses excused so they didn't have to come back.  
17 MR. MOHAMMADI: That's fine.  
18 MS. ROBESON: Okay. So if you don't have an  
19 objection, did you come up with any dates? Were you able to  
20 come up with an additional --  
21 MS. ROSEN: I'm fine at any -- any day during that  
22 week of October 6th.  
23 MS. ROBESON: And your witnesses are okay too?  
24 MS. ROSEN: Yeah. Because, we'll --  
25 MS. ROBESON: Well, I guess you just have --

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1 MS. ROSEN: Yeah, just Dr. Barr, so I think we are  
2 pretty much --  
3 MS. ROBESON: Okay.  
4 MS. ROSEN: I don't know if Mr. Mohammadi is  
5 planning on calling, so -- but I guess we'll find out.  
6 MS. ROBESON: Mr. Mohammadi, are you going to have  
7 some rebuttal?  
8 MR. MOHAMMADI: I honestly have not decided yet.  
9 MS. ROBESON: Okay.  
10 MR. MOHAMMADI: I don't think I need it, so  
11 probably not, but --  
12 MS. ROBESON: But you don't know.  
13 MR. MOHAMMADI: I don't know 100 percent.  
14 MS. ROBESON: Well we'll set one date --  
15 MS. ROSEN: Okay.  
16 MS. ROBESON: -- just one extra date.  
17 MR. MOHAMMADI: If I do have it, it's going to be  
18 --  
19 MS. ROBESON: Very short?  
20 MR. MOHAMMADI: -- five minutes of maybe two  
21 witnesses, each.  
22 MS. ROBESON: Okay. All right.  
23 MR. MOHAMMADI: So it won't be long.  
24 MS. ROSEN: Okay.  
25 MS. ROBESON: Famous last words.

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1 MR. MOHAMMADI: I know. Don't hold me to it, I  
2 guess.  
3 MS. ROBESON: Okay. So I'm just going to set one  
4 additional date.  
5 MS. ROSEN: Okay.  
6 MS. ROBESON: Do you have a -- I haven't heard  
7 from you yet whether you have a preference.  
8 MR. MOHAMMADI: Well preference for me --  
9 obviously the 29th would have been preferable, but I don't  
10 think that's an availability, so the 6th will work.  
11 MS. ROBESON: Monday, October 6th?  
12 MR. MOHAMMADI: October 6th, yes.  
13 MS. ROBESON: All right. Thank you very much.  
14 MS. ROSEN: Thank you.  
15 MS. ROBESON: This hearing is adjourned for today  
16 and continued until Monday, October 6th, at 9:30. All  
17 right. Thank you for going the extra 15 minutes.  
18 MS. ROSEN: Thank you.  
19 MR. MOHAMMADI: Can I ask clarification?  
20 MS. ROBESON: Don't go off the record. Go ahead.  
21 MR. MOHAMMADI: Should we be prepared on October  
22 6th to present -- closing arguments, yes --  
23 MS. ROBESON: Yeah.  
24 MS. ROSEN: Yeah.  
25 MR. MOHAMMADI: -- but any evidence as to

1 attorney's fees that day as well?  
2 MS. ROBESON: Yes.  
3 MS. ROSEN: Yeah.  
4 MS. ROBESON: Yes. I'd like to, if we can, to  
5 avoid the expense to you guys, to --  
6 MS. ROSEN: Absolutely.  
7 MS. ROBESON: -- to wrap it up that day.  
8 MR. MOHAMMADI: Okay.  
9 MS. ROSEN: That works.  
10 MS. ROBESON: Okay.  
11 MS. ROSEN: Thank you very much.  
12 MS. ROBESON: Now we're off the record.  
13 MR. MOHAMMADI: Thank you.  
14 MS. ROSEN: Okay.  
15 (Whereupon, at 5:13 p.m., the hearing was  
16 concluded.)  
17  
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25

C E R T I F I C A T E

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

Potowmack Preserve v. Peter and Michael Ball

Case No. 72-13  
OZAH No. C14-01

By:

\_\_\_\_\_  
Patricia L. Destajo, Transcriber

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MICHAEL AND PETER BALL**

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