

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
ROBERT BALL :
:
v. : Case No. 72-13
:
POTOWMACK PRESERVE :
:
-----X

A hearing in the above-entitled matter was held on June 12, 2014, commencing at 9:42 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Corinne Rosen, Esq.

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Rockville, Maryland 20853

On Behalf of the Respondent:

Farrokh Mohammadi, Esq.

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Rockville, MD 20850

E X H I B I T S

Exhibit No.		Marked/Received
86	International fraud alerts	115, 123
87	Letter dated 2/2/10 to Peter and Michael Ball	148
88	Renovations	159
89	Picture	187
90	Letter from Peter Ball to Peter Gibson 12/16/13	189
91	Special meeting notes	199
92	Minutes - board meeting 2013	204
93	Minutes - HOA board meeting 2013	219
94A	Application for Approval of Exterior change (current)	255
94B	Application for Approval of Exterior change	255
95	9/1/13 HOA notice	259

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Raj Barr				
By Ms. Rosen:		27		253
By Mr. Mohammadi:		113		261

E X H I B I T S

Exhibit No.		Marked/Received
72	Resume of Raj Barr	32
74	2008 Application	48
75	Minutes of HOA meetings	55, 56
76	April 15, 2011 letter	62, 63
77	HOA Approved Drawings	65, 66
78	HOA letter of approval	66, 67
79	Letter from Barr to Balls 9/15/13	79, 80
80	Roof line 12/2012	84
81	Photo front roof	86
82	Pictures A through O	
83	Photos Alley non-conforming	
84	Emails from Barr to Bruno	101, 102

P R O C E E D I N G S

1
2 MS. ROBESON: I'm calling the case of CCOC 72-13
3 Potowmack Preserve, Inc. v. Peter and Michael Ball. I see
4 some new faces there. My name is Lynn Robeson. I'm the
5 hearing examiner in this case which means I'll be conducting
6 the hearing and taking all the evidence in this case.
7 Once this hearing concludes, I issue a report and
8 recommendation that is then forwarded to the panel chair for
9 the Commission on Common Ownership Communities and they'll
10 make the final decision. They will be limited to the
11 evidence presented here. So if you have anything to say,
12 now is the time to say it.
13 If we could please have, I'd like counsel to
14 identify themselves for the record.
15 MS. ROSEN: Corinne Rosen, counsel for Potowmack
16 Preserve, Inc.
17 MS. ROBESON: Okay.
18 MR. MOHAMMADI: Good morning. Farrokh Mohammadi
19 on behalf of the respondents, Peter Ball and Michael Ball,
20 who are present.
21 MS. ROBESON: Okay.
22 MR. MOHAMMADI: Mr., just to note, Mr. Meyer will
23 be joining us later this afternoon. He's in a trial at the
24 moment, but he'll be joining us later.
25 MS. ROBESON: All right. Now the purpose of

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1 today's hearing is to hear the merits of the complaint filed
2 by Potowmack Preserve and the one aspect of the counter-
3 claim filed by the respondents. These proceedings for those
4 of you who haven't been here before are informal, but we do
5 have certain formalities. The testimony is under oath and
6 subject to cross-examination.

7 Please keep in mind, I don't know if all of you
8 are being called by an attorney, but please keep in mind
9 that when, if you cross-examine yourself, those questions
10 are limited to just questioning the witness. You will get a
11 time to testify on your own later.

12 All right. As preliminary matters, before we get
13 into the photographs that were taken or sent two days ago,
14 we have little, a different procedure that normal CCOC cases
15 because we don't have an Exhibit 1, per se. Now what we do
16 is everything that has been submitted is in our official
17 file which you are welcome to review at any time during
18 normal business hours. At the end of the hearing, I will
19 say does anyone have any objections to admitting what's in
20 the file, all right? So keep that in mind. I don't know if
21 all of you have reviewed the official file in-depth, but
22 everything, all the correspondence, everything that has gone
23 on between the parties is in this file, all right? So that
24 will be at the end of the hearing. If you need to review
25 it, talk to Ellen Forbes of our office.

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1 Are there any other preliminary matters besides
2 the photographs?

3 MS. ROSEN: Okay. Just one or two other
4 questions. I believe that during the pre-hearing conference
5 or at some point thereafter, you know, I had indicated that
6 I believe that you indicated you were going to take judicial
7 notice of the previous case, 73-12?

8 MS. ROBESON: Yes.

9 MS. ROSEN: Okay. I just wanted to make sure that
10 that was --

11 MS. ROBESON: Yes, I am taking --

12 MS. ROSEN: Okay.

13 MS. ROBESON: -- official notice. All of you have
14 been, our rules require that we give you some notice of my
15 official notice, so I am taking notice of that. All right.

16 MR. MOHAMMADI: I also have a preliminary matter.
17 Just briefly. It's more of a jurisdictional issue. I don't
18 know if it can be addressed at this point or at the end of
19 complainant's case, but essentially we are of the opinion
20 that this case is improperly before the CCOC. Not all the
21 remedies within the HOA were exhausted and properly followed
22 and, therefore, shouldn't even be at this stage. Again, I
23 think that's subject to some fact-finding before a decision
24 can be reached on that issue, but I'm noting it at this
25 preliminary stage.

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1 MS. ROBESON: All right. It's noted. You can
2 present your evidence. I think that would be part and
3 parcel of your counter-claim relating to failure to follow
4 administrative procedures. Anything else other than the
5 pictures? Okay.

6 Let's get to the pictures. Ms. Corinne, you said
7 you wanted to, or Ms. Rosen, I'm sorry --

8 MS. ROSEN: That's okay.

9 MS. ROBESON: You said you wanted to object to the
10 introduction of the pictures. I have not seen, as you know,
11 I have not seen any of the discovery in this case. So with
12 that, do you want to state your basis for the objection?

13 MS. ROSEN: Yes. The basis for the objection is
14 that the discovery, their discovery responses to my
15 discovery requests were due on May 27th. They came to me on
16 May 28th. That's not a problem.

17 These photographs which were originally just
18 emailed to me on, I guess it would have been Tuesday, you
19 know, and then delivered to me on Tuesday afternoon, they're
20 basically what they appear to be. Some of them are
21 photographs of the subject property. Some appear to be
22 photographs of other, other properties.

23 My position is that there's no reason why these
24 photographs could not have been taken and delivered to me in
25 a timely manner in accordance with the timeline of discovery

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1 or that counsel should have asked, you know, for some type
2 of an extension on that. You know, my clients, I have not
3 even had an opportunity to go through these photos with,
4 with my witnesses. I just don't see -- I don't see any
5 reason why these photographs, why I waited so long for these
6 things, for these photographs to be taken and/or delivered
7 to me. These, like I said, they're photos primarily of the
8 subject property and other properties. It's not like they
9 couldn't have taken these photos in a timely manner.

10 In terms of my discovery responses to the
11 respondent, I had my clients go out and take photographs,
12 you know, that I would want to use in a timely manner so
13 that I could deliver them in a timely manner to them and I
14 don't feel that it's appropriate for these photographs to
15 now come into evidence. It could have been very easily,
16 these photos could have been taken and delivered to me in a
17 timely manner.

18 MS. ROBESON: To what do you, on what, what
19 discovery request -- did you have a discovery request for
20 any document to be, any exhibit to be produced at the
21 hearing?

22 MS. ROSEN: Yeah, hold on. Let me just look to
23 see my discovery requests. One of my discovery requests was
24 copies of any and all photographs or other graphic
25 depictions of the roof and any other portion of the exterior

1 of your property at issue in this litigation which has been
2 constructed, partially or completely, since the day of the
3 architectural application at issue was submitted to the
4 Association to date. And another one was copies of any and
5 all documents which you intend to rely upon for any defense
6 asserted by you and any answer and/or counter-claim filed in
7 this litigation.

8 MS. ROBESON: Okay. And assuming, as you know the
9 discovery doesn't necessarily follow the Maryland Rules
10 here. Are you claiming prejudice for failure to, to provide
11 these earlier?

12 MS. ROSEN: Well, I mean part of the problem that
13 I have, I mean I don't really, some of them I'm not quite
14 sure even what they are. Some of them, you know, are
15 different properties, but I wouldn't claim prejudice because
16 normally one of the reasons you have discovery is to give an
17 opportunity for, let's say, for example, for myself to go
18 sit down with my witness and say now here are these
19 photographs and go through them and spend a little time with
20 them and being given them on Tuesday afternoon, that --

21 MS. ROBESON: I guess what I'm asking you is is
22 there something -- I see two potential things, but neither
23 one of them prohibits discovery. You have disclose under
24 the APA, you must disclose all the exhibits you intend to
25 rely on in trial, but, or the hearing. But the hearing

1 examiner, and I'm going to get to why this happened two days
2 before the hearing in a minute with Mr. Mohammadi. But as I
3 read APA 2-A, 2A-7, it says the hearing authority may in its
4 discretion include, exclude from evidence any materials or
5 documents not included in a pre-hearing submission.

6 I also see in the Concor (phonetic sp.)
7 regulations that there is a statement saying no departures
8 from the final pre-hearing order will be permitted, except
9 in the judgment of the hearing panel.

10 MS. ROSEN: Uh-huh.

11 MS. ROBESON: So as I read this, it's, it's within
12 the discretion of the hearing authority to accept these.

13 Are you saying that there's an outright prohibition on it?

14 MS. ROSEN: I'm not necessarily saying it's an
15 outright prohibition, but I just think that when you have a
16 discovery deadline, that you should probably comply with it
17 and my other thing is that I don't understand, this is,
18 these are photographs of property, you know, real estate.
19 These are not, these houses don't have legs and get up and
20 walk away.

21 MS. ROBESON: Uh-huh.

22 MS. ROSEN: I see no reason why these photographs
23 of this nature could not have been taken, let's say, for
24 example, on the weekend right before, May 27th, 28th, they
25 could have been taken and provided to me. There's no reason

1 why these couldn't have been taken earlier and provided to
2 me earlier. So I don't see, I don't think it's appropriate
3 to just --

4 MS. ROBESON: Okay. What if you're given more
5 time to, what if I prohibit introduction of these pictures
6 until you have the chance to review them?

7 MS. ROSEN: Well, the problem with that is that
8 then, you know, that's just going to, for example, that
9 would mean, for example, we'd probably have to come back
10 another day. That's just dragging out --

11 MS. ROBESON: We may have to do that anyway, but
12 go ahead.

13 MS. ROSEN: Well, yes, I'd like to say, I mean I
14 think that's just -- I don't, I think that's just making
15 this hearing take longer than it should and I don't think
16 that someone should be rewarded essentially for not doing
17 something in a timely manner and I don't see, and maybe Mr.
18 Mohammadi brought some explanation, I don't see any real
19 valid reason why these pictures could not have been taken
20 prior, you know, why it had to wait until the 11th hour for
21 photographs. There was no reason why you couldn't take a
22 picture of the subject property, other houses, I assume, in
23 the neighborhood prior to that. We had plenty of time to do
24 that. There's no, especially, for example, houses, other
25 houses in the neighborhood. Well, did they change in the

1 last 10 days? I don't think so. But that's --

2 MS. ROBESON: Okay. All right. Thank you.

3 Okay, Mr. Mohammadi, your explanation. Ms.
4 Corinne makes valid, I mean Ms. Rosen -- I will get that
5 straight. I apologize.

6 MS. ROSEN: That's okay.

7 MS. ROBESON: Ms. Rosen makes a valid point. That
8 house hasn't gone anywhere. So, and this is 50 pictures.

9 MR. MOHAMMADI: Sure.

10 MS. ROBESON: That's a lot to respond to two days
11 before trial. So you need to justify to me why they would
12 come in.

13 MR. MOHAMMADI: Sure. I'll go back and remind you
14 that you have some issues with our expert. Bill Hancock was
15 supposed to be our original expert. We had to replace him
16 with Neil Schwartzman when Bill Hancock became unavailable.
17 And I think you recall the subpoena issues that were going
18 on and --

19 MS. ROBESON: Yes.

20 MR. MOHAMMADI: -- the emails that were exchanged.
21 At the same, so when we retained Mr. Schwartz to replace Mr.
22 Hancock, he went out and he took pictures of the property as
23 part of preparation for this, for this hearing. That was
24 not done until this weekend, this last weekend. And I think
25 it was the week before when we were having the issues with

1 Mr. Hancock or Mr. Schwartz. So it's not that we were
 2 delaying on purpose. This is something that came up.
 3 I would additionally add --
 4 MS. ROBESON: Well, why can't Mr. Schwartz -- did
 5 you provide photos of the --
 6 MR. MOHAMMADI: Mr. Hancock didn't have any photos
 7 that we were going to use, but Mr. Schwartz went out, looked
 8 at the property and took pictures of the property and he's
 9 going to rely on those pictures in his testimony. And so
 10 when, when I was provided them after he took them, I
 11 provided immediately to Ms. Rosen. I would add discovery is
 12 discovery. We don't have to be prepared for trial by the
 13 end of whatever the discovery cutoff is. I'll have to have
 14 all my witnesses lined up, all the testimony lined up,
 15 everything, all the exhibits lined up. We need to produce
 16 everything that we have up to that date.
 17 I would also add the discovery, the requirement
 18 for discovery to supplement is ongoing. If things become
 19 available after the deadline --
 20 MS. ROBESON: Well --
 21 MR. MOHAMMADI: -- we will, we produce them when
 22 they become available. The pictures did not exist until
 23 they were taken. I'm not the one going out there taking
 24 pictures. It's my expert that's going out to take the
 25 pictures. So, again, when my expert took those pictures and

1 I received them within, I think, 36 hours or 48 hours I
 2 received them after he took them is when I provided them to
 3 Ms. Rosen. They were not available before to provide.
 4 Additionally, I would note I also received
 5 pictures from Ms. Rosen. A fair amount of them, at least
 6 half, if not more, of the pictures that we produced are
 7 essentially the same pictures that they produced to us in
 8 discovery, it's pictures of the house. Those have, they
 9 have seen them, they have taken pictures themselves. The
 10 pictures that we produced are basically the same thing, they
 11 show the house. Now there's some additional pictures of
 12 other property --
 13 MS. ROBESON: Yeah. What's the relevance of the
 14 other property?
 15 MR. MOHAMMADI: The whole thing is part of
 16 reasonableness and deviations that's sort of the issue, the
 17 overall issue in this case, that there are deviations from
 18 the original approved plans, that the issues are not
 19 reasonable, that the, they're not substantially compliant,
 20 et cetera. These other houses show that what Mr. Ball has
 21 at the house exists in the neighborhood.
 22 MS. ROBESON: Well, wait. Are we getting into
 23 vinyl siding?
 24 MR. MOHAMMADI: No.
 25 MS. ROBESON: Okay.

1 MR. MOHAMMADI: We are not. Although, I will, I
 2 will preface this. Although we're not litigating the vinyl
 3 siding issue today, the vinyl siding is certainly relevant
 4 in terms of our bad faith claims here, that it's
 5 inconsistent application. So it's just an example. I'm not
 6 asking for a ruling on whether vinyl siding should be
 7 allowed or not. That's not in front of this, this hearing.
 8 But the application of the Architectural Committee and the
 9 Board's decisions, meetings, votes, et cetera, with respect
 10 to Mr. Ball and other people in the neighborhood, it
 11 certainly is relevant with respect to consistent
 12 applications of -- the vinyl siding issue will come up in
 13 that respect.
 14 MS. ROBESON: Now do you really need 50 pictures?
 15 MR. MOHAMMADI: I don't and I don't intend to use
 16 every single one of the pictures.
 17 MS. ROBESON: Well, can you, to shorten any burden
 18 on Ms. Rosen and her client, can you take a moment and pick
 19 out, you know, it's really 50 pictures two days before
 20 trial. That's a lot of pictures. And I am in Ms. Rosen's
 21 camp as far as I don't want to delay the trial. If you want
 22 to take a 15-minute break and sit down with your expert, you
 23 know, if you can take it down to 10 pictures, that's a lot
 24 different than 50 pictures. The other option would be we
 25 don't, my feeling is we really do not have a prohibition on

1 this and part of our process is to try to get to the heart
 2 of the matter. I'm inclined to let the pictures in.
 3 I can do one of two things. I can let all 50
 4 pictures in and we'll delay the hearing and if there's an
 5 award of attorney's fees at the end of the hearing, you
 6 would certainly be assessed or Ms. Rosen could certainly
 7 claim that the additional attorney's fees are warranted
 8 because of the delay in getting the pictures.
 9 Now what you're saying is that your expert, you
 10 had to switch your expert unexpectedly. So what I'm trying
 11 to do is say do you have the ability to limit the number of
 12 pictures? I invite you to sit down with your expert.
 13 MR. MOHAMMADI: I can absolutely do that. That's
 14 not a problem. My, it may make sense because I think we
 15 might at some point take a lunch break given that how long
 16 Ms. Rosen believes the case goes, I can do that during
 17 lunch.
 18 MS. ROBESON: Okay. That, that's a good solution.
 19 I also encourage you to communicate with Ms. Rosen so that
 20 you know which, she knows which pictures are going to be
 21 addressed.
 22 MR. MOHAMMADI: That, that won't be a problem.
 23 MS. ROSEN: And I just would like to indicate in
 24 the answers to interrogatories, both Mr. William Hancock and
 25 Mr. Leo Schwartz were named as experts. So it's not as

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1 though Mr. Leo Schwartz was not initially named as an expert
2 here. And I don't --
3 MR. MOHAMMADI: That was last --
4 MS. ROSEN: -- and I'd also, I'd also like to
5 indicate here that in the answer it says that Leo Schwartz
6 is expected to testify that the roof over the garage was
7 built according to plan. So many of these photographs are
8 not of the subject properties. So I don't see how Mr.
9 Schwartz, I mean if he's testifying that it's built
10 according to plan and there is a plan so to speak, I don't
11 see how other photographs of other properties would have,
12 why he would be able, why his testimony would be about any
13 of these photographs or any other properties.
14 MS. ROBESON: Well, I think what --
15 MS. ROSEN: It just says --
16 MS. ROBESON: -- Mr. Mohammadi is saying is that
17 Mr. Hancock was going to supplement some of Mr. Schwartz's,
18 or, yeah, some of Mr. Schwartz's testimony, is that all what
19 you're saying?
20 MS. ROSEN: I, that's not what it says.
21 MR. MOHAMMADI: Essentially --
22 MS. ROBESON: That's true, but he -- okay.
23 MS. ROSEN: He actually, in the answers to
24 interrogatories, they're identical, as it says, what Mr.
25 Hancock and Mr. Schwartz had testified to. The answers are

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1 absolutely, are totally identical because both of them say
2 that they're expected to testify the roof over the garage is
3 built according to plan.
4 MS. ROBESON: Do you want to address that?
5 MR. MOHAMMADI: Just briefly. The same, the same
6 thing that I said. We discovered that Mr. Hancock may not
7 become, not be available for this hearing. Mr. Ball
8 informed me of this, said Leo Schwartz will probably replace
9 him. At that point when the answer to interrogatories, we
10 had not made a 100 percent determination of what was going
11 on. We put both in there.
12 Later we discovered, okay, Mr. Hancock is --
13 MS. ROBESON: When did you discover Mr. --
14 MR. MOHAMMADI: It was, it was shortly after the
15 discovery deadline. It was sometime last week, right around
16 the same time when I --
17 MS. ROBESON: Asked for the subpoena?
18 MR. MOHAMMADI: -- sent an email. Exactly. Our
19 discovery responses were due on the 27th. I want to say
20 sometime in June 1st, 2nd, something like that, is when this
21 issue arose. So it was shortly thereafter that we made the
22 final determination that Mr. Hancock was not going to be
23 available at all. We listed both because we were aware
24 there could be an issue and that's why their, that the
25 designation and the description of what they're going to be

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1 testifying about is identical.
2 MS. ROBESON: All right. I understand. What I am
3 going to do is see if you can't narrow down these pictures
4 and share them with Ms. Rosen and her client prior to
5 introduction.
6 MR. MOHAMMADI: Not a problem.
7 MS. ROBESON: All right? Because 50 is too much.
8 All right. With that, we're going to move on and get to
9 opening statements. Ms. Rosen, do you have an opening
10 statement?
11 MS. ROSEN: I'll just keep it very brief.
12 MS. ROBESON: Uh-huh.
13 MS. ROSEN: The evidence here is basically going
14 to show that the Association approved the construction
15 application submitted by the respondent. It was actually
16 submitted, I believe, back in the year 2008. They went back
17 and forth with it and it was ultimately conditionally
18 approved in May of 2011. That application is the same, but
19 just for, you know, that's the same application that was in
20 the previous CCOC case and that's, our position is that
21 there has been no other approved application. That is the
22 application and the plans that are with that application are
23 what was approved by the Association.
24 The respondent's construction as it now stands
25 with regard to the roof and some of the other issues that

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1 are in the supplement substantially deviates from those
2 approved application plans and drawings. Among other
3 things, the approved construction application did not
4 provide for a roof higher than the existing, original roof
5 and basically what the respondents have done, they have
6 constructed a roof much higher than the original roof. They
7 basically stuck trusses on top of their existing roof and
8 went ahead and constructed over that.
9 The respondent in this case continued to construct
10 a non-compliant roof after being told numerous times that it
11 was not in compliance and there were issues with its height
12 and other, and the general massing of this property. And
13 the evidence will show that he, in fact, began to
14 substantially complete the construction of the non-compliant
15 roof a few days after the CCOC issued what we would consider
16 a pretty scathing decision against the respondents with
17 regard to the substantial deviations from and non-compliance
18 with the same construction application at issue here with
19 regard to the shed and the deck.
20 The construction generally, the evidence is going
21 to show, it's not in accordance with community design
22 standards in the existing home models. What this house
23 looks like, the evidence is going to show, it basically now
24 looks like four townhouses slapped together. It doesn't
25 look like anything in the community. It looks like nothing,

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1 nothing at all in the rest of the community.
2 And contrary to respondent's assertion otherwise,
3 the Association did not approve any other construction
4 application. The respondent seemed to take the position
5 that they, that some other application was submitted and/or
6 approved in December of 2013, which was actually a month
7 after this action was filed and the evidence will show that
8 there was never any application submitted nor any approval
9 of that, that that's basically what, he was basically
10 creating what he has done in the past and continues to do is
11 create facts on the ground and then try to submit drawings
12 and say, well, here's my application and here's my drawings
13 and approved what I've already done. And this has been a
14 long-standing situation here.
15 The evidence will show the respondents have a long
16 history of substantial deviations from approved construction
17 projects and have engaged in a long-standing, stubborn
18 refusal to come into compliance and we will basically be
19 requesting an order requiring the respondents to bring their
20 construction into total and full compliance and that within
21 a 3-month time period and we'll be asking for attorney's
22 fees and costs.
23 MS. ROBESON: Okay. Mr. Mohammadi.
24 MR. MOHAMMADI: Thank you. What the evidence will
25 show is that this is, this dispute between the Balls and the

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1 HOA has been ongoing for some time. I think that the
2 Commission is aware of the various complaints that were
3 filed. I won't get into that. But this has been going on
4 for a long time.
5 The evidence will show that the first application
6 for this particular project, these renovations and
7 additions, was in 2008. And subsequently there were several
8 other applications that were submitted as they kept getting
9 rejected, kept getting rejected, kept getting rejected and
10 it was not until May of 2011 that this particular project
11 was approved.
12 Immediately after that, issues arose again with
13 the HOA taking issue with the project and the deck issue
14 particularly comes up, as well as the siding. All of these
15 disputes caused delay, caused the boss to have to stop
16 construction of the project and that's what's been going on.
17 Since 2008, they have just wanted to add these additions and
18 we are now in 2014 and they still have not been permitted to
19 complete the permitted construction. They have been told to
20 stop on several occasions. They have not wanted to proceed
21 with construction when certain issues arose that may require
22 subsequent additions to be torn down to fix whatever the
23 issues were before. So that's what's caused the delay.
24 The application in 2011 that was approved is in
25 front of this Commission and it shows clearly that the roof

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1 is going to be raised. There's no question about it. The
2 experts will testify that the applications clearly show and
3 the drawings clearly show that the roof has to be raised.
4 If you're adding an addition over a garage, it's going to
5 cause the roof to be raised and that's part of our claim
6 that it's already in there.
7 The complaint states that the original application
8 does not show any deviations from the existing roof line.
9 It's not going to be raised. That's not true. It clearly
10 shows that, and our experts will testify as to that.
11 With respect to the supplemental items, again,
12 none of those are substantial deviations. And the key here
13 is substantial and material deviations. Deviations will
14 come up and the experts, again, will testify that as they do
15 construction, some things can just not be done as drawn and
16 deviations will come up, but they're not substantial and
17 they conform with the general guidelines and principles of
18 keeping the community harmony and the general, contemporary
19 look. And that what Mr. Ball is building is keeping with
20 that and the expert will testify as to that.
21 I would note the construction is ongoing. There
22 is, it's not completed, so a lot of the issues raised cannot
23 even be determined whether there are, in fact, issues or
24 whether they're looking to the future that they may become
25 issues. And so that's an important fact when they say, you

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1 know, the window is not properly spaced or the glass that is
2 being used is not properly -- things like that, the
3 construction is still going on. It's not completed.
4 With respect to our claims, it's pretty
5 straightforward. As I said, this has been going on for a
6 significant amount of time and the way the HOA has applied
7 the rules, the architectural guidelines and their own rules
8 to the Balls has been inconsistent with how everybody else
9 has been treated in the community. When other people submit
10 applications for approval, they're accepted. When there are
11 deviations, if there are, there's no issue made out of them.
12 And then here no votes were taken, no meetings were held, no
13 opportunities were provided for him to present what was
14 being done, why things were being changed, if they are being
15 changed and went straight to the CCOC without the proper
16 hearings and dispute resolution being followed. Again, it's
17 all in bad faith. It's all disputes between certain Board
18 members of the HOA and the Balls. It's not, it's not in the
19 community's best interest.
20 I would note that on, the evidence will also show
21 that on December 16, 2013, a completely new application was
22 submitted that basically is exactly in line with what was,
23 what is currently there on the property. And that
24 application was deemed to be approved because the HOA did
25 not act on it, did not do anything with it, it sat around

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1 and it's, at this point after 45 days have passed, it's
2 deemed by their own, the HOA's own rules to have been
3 accepted.
4 So that latest application is what's controlling
5 what the, what the project should be today and we believe it
6 shows that, exactly what's, what's going to be built and
7 what is there currently and, therefore, there are no
8 deviations whatsoever based on that application.
9 We will be asking that the complainant's requests
10 for relief be denied. We will request attorney's fees for
11 bringing this case in bad faith. We will request that Mr.
12 Ball at the very least be subject to some kind of training
13 to make sure that rules are followed. I will note there was
14 a previous decision, 30-12, I believe, CCOC Case 30-12, it
15 was Charles Bruner v. Potomac, in which the CCOC said the
16 HOA is not following its own procedures. They need to hold
17 meetings. They need to hold votes. The minutes need to
18 reflect all of these.
19 MS. ROBESON: Okay. I don't, I have not admitted
20 that into the record. I haven't, I haven't taken official
21 notice of that. So as the hearing progresses, I don't, just
22 think about that. You can request me to.
23 MR. MOHAMMADI: Sure.
24 MS. ROBESON: Okay. Keep going.
25 MR. MOHAMMADI: But with respect to that, there's

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1 a history here and that decision notes a 2008 mediation
2 where they were told to do things and they didn't and in
3 2012 in that decision they said to do things and they didn't
4 and they still are not doing what they're supposed to. And
5 we believe, again, that's, that they're acting in bad faith
6 specifically with the Balls.
7 MS. ROBESON: All right. Ms. Rosen, call your
8 first witness please.
9 MS. ROSEN: I will call Dr. Raj Barr as our first
10 witness.
11 MS. ROBESON: Please raise your right hand.
12 WHEREUPON
13 RAJ BARR,
14 having been called for examination by counsel for
15 complainant and having been first duly sworn by the notary,
16 was examined and testified as follows:
17 MS. ROBESON: Go ahead, Ms. Rosen.
18 DIRECT EXAMINATION
19 BY MS. ROSEN:
20 Q Can you please state your name and address for the
21 record?
22 A Raj Barr, 10404 Great Harbor Drive, Potomac,
23 Maryland 20854.
24 Q Again, what is your relationship to the Potowmack
25 Preserve?

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1 A I'm a homeowner since 1998, served on the board of
2 directors and I'm currently president.
3 Q Okay. And how many years have you owned your home
4 at the Potowmack Preserve?
5 A Since 1998, so it's probably 16 years.
6 Q And how many years have you served on the
7 Potowmack Preserve's board of directions?
8 A I thought it was about five or six. I must have
9 been having a good time because then I found it's from about
10 10 years. 2003 was my first one.
11 MS. ROBESON: Time flies.
12 THE WITNESS: Yeah, while you're having fun.
13 BY MS. ROSEN:
14 Q And when were you elected to the board?
15 A I don't know that I was elected, but I see that I
16 attended a meeting in 2003. I was named immediately, so I
17 was there officially.
18 Q Okay. And how many years have you served as the
19 board president?
20 A Three years.
21 Q Okay.
22 A This is my third year.
23 Q Okay. And what is your occupation or profession?
24 A I'm an architect and construction manager.
25 Q Okay. And what is your educational background?

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1 A Undergraduate degree in built environment.
2 MS. ROBESON: In what?
3 THE WITNESS: Built environment, which is a
4 prelude to architecture, a fancy way of saying it.
5 MS. ROBESON: Okay.
6 THE WITNESS: A graduate degree in architecture
7 from the University of London. A master of architecture in
8 urban design from the University of Kansas and a doctorate
9 of architecture in sustainable design from the University of
10 Hawaii.
11 BY MS. ROSEN:
12 Q Okay. And what degrees, certificates or licenses
13 do you hold?
14 A I just kind of went ahead, I guess.
15 Q Okay. And are you a member of any professional
16 organizations and societies?
17 A Yes, the American Institute of Architects. I'm a
18 fellow of the American Institute of Architects and a former
19 president, national president. I'm a corporate member of
20 the Royal Institute of British Architects, RIBA; a corporate
21 member of the U.S. Green building Council and a professional
22 member of the International Interior Design Association.
23 Q Okay. And how many years have you worked in the
24 field of architecture?
25 A It sounds very long when I say it. It's 40 years.

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1 Q Okay. I'm going to show you a document, I'm not
2 quite sure how, quite frankly, how we do it in the OZAH
3 hearings.
4 MS. ROBESON: Are you trying to qualify him as an
5 expert or --
6 MS. ROSEN: Yes. And I'm going to introduce his -
7 -
8 MS. ROBESON: Well, let me just say that we don't
9 qualify -- usually experts are independent, they're not a
10 party. So we don't usually qualify a party as an expert,
11 but we do give weight to his expertise in his testimony. Do
12 you follow what I'm saying?
13 MS. ROSEN: Yes. I mean, you know, I mean
14 obviously he can, you know, I mean in the CCOC cases, I've
15 qualified him as an expert previously.
16 MS. ROBESON: Yes. We have this numerous times in
17 other types of cases and experts are, case law indicates
18 experts are to be independent outside of, so we don't
19 qualify parties as experts, but we do give his testimony, we
20 do review it in light of his qualifications.
21 MS. ROSEN: I will go ahead and have him identify
22 --
23 MS. ROBESON: Please do.
24 MS. ROSEN: -- his resume.
25 BY MS. ROSEN:

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1 Q Will you please identify this document?
2 A My resume.
3 Q Okay.
4 MS. ROBESON: Do each of you have copies of the
5 exhibit list, because when these come in, we add to this
6 exhibit list.
7 MS. ROSEN: Okay. I do have a copy of it. If you
8 can tell me which number we're starting at --
9 MS. ROBESON: 72.
10 MS. ROSEN: -- that would be helpful. Okay. I
11 will mark --
12 MS. ROBESON: Are they pre-marked?
13 MS. ROSEN: No, they're not.
14 MS. ROBESON: Okay. Good.
15 MS. ROSEN: I wasn't really sure how you do things
16 here, so --
17 MS. ROBESON: Good. That's fine.
18 MS. ROSEN: Do you want me to write 72 --
19 MS. ROBESON: Yes, please.
20 MS. ROSEN: -- on it, Your Honor?
21 MS. ROBESON: Since we don't have a formal clerk
22 here. Resume of Raj Barr. Are you a doctor, Mr. -- is that
23 the right --
24 THE WITNESS: Yes, but I don't know the history of
25 that.

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1 MS. ROBESON: Yes.
2 THE WITNESS: Yes, I'm a doctor of architecture.
3 MS. ROSEN: Now do you prefer, I have extra
4 copies. I can bring them up to you.
5 MS. ROBESON: Yes, I need that for the file.
6 MS. ROSEN: Okay.
7 MS. ROBESON: If you can bring the copy up here?
8 MS. ROSEN: Does the court reporter need one also?
9 I mean I have --
10 MS. ROBESON: No, I just need one.
11 MS. ROSEN: Okay. We move to admit No. 72 into
12 evidence.
13 MS. ROBESON: Any objection?
14 MR. MOHAMMADI: No objection.
15 MS. ROBESON: All right. That's admitted.
16 (Exhibit No. 72 was marked for
17 identification.)
18 BY MS. ROSEN:
19 Q Okay. Dr. Barr, how many homes are there in the
20 Potowmack Preserve community?
21 A 159.
22 Q And how many different types of home models are
23 there in Potowmack Preserve community?
24 A There are five models.
25 Q Okay. And, Dr. Barr, I'm going to ask you to look

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1 at an exhibit that I'm marking as Exhibit 73 and if you
2 could look through those photographs and tell the Hearing
3 Examiner what they are.
4 A They show on the very first page the Brook Grove
5 model. I'm not an expert in the various models. I'm
6 reading off the side here. And the second model is
7 Monteverdi.
8 MS. ROBESON: Wait. I'm sorry. The first page is
9 --
10 THE WITNESS: Yes, first page is Brook Grove.
11 MS. ROBESON: Okay. And the second page is?
12 THE WITNESS: Monteverdi.
13 MS. ROBESON: I see.
14 THE WITNESS: It's labeled on there.
15 MS. ROBESON: I see. Okay.
16 THE WITNESS: Third page is Holly View it says.
17 The Meadow Hall is at the bottom of page 4, Meadow Hall
18 model.
19 MS. ROBESON: Uh-huh.
20 THE WITNESS: Page 6 at the bottom is the Fair
21 Hill model.
22 MS. ROBESON: Mr. Barr --
23 THE WITNESS: Yeah?
24 MS. ROBESON: -- on page 6 --
25 THE WITNESS: Yeah?

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1 MS. ROBESON: -- in the middle, is that, should
2 that be side, S-I-D-E, view of same house, Meadow Hall
3 model? See, see right after the top picture --
4 THE WITNESS: Oh, I think, I think it's meant to
5 be site.
6 MS. ROBESON: Site view? Okay.
7 THE WITNESS: And it's showing the whole plan.
8 MS. ROBESON: I just wanted to make sure for the
9 record --
10 THE WITNESS: Yes, I didn't notice that.
11 MS. ROBESON: -- all right. Go ahead.
12 THE WITNESS: And the Fair View model is also on
13 page 7.
14 MS. ROBESON: All right.
15 THE WITNESS: The bottom one shows it very
16 clearly. And the Fair Hill model is also on page 8, top and
17 bottom.
18 MS. ROBESON: Well, one says Fair View and one
19 says Fair Hill.
20 THE WITNESS: I think that's, like I said, I'm not
21 an expert. I don't think there is such a thing.
22 MS. ROSEN: I have another witness that holds up
23 the photos and she'll be able to, you know --
24 MS. ROBESON: Okay. That's fine.
25 MS. ROSEN: -- clarify that. I think it just --

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1 MS. ROBESON: That's fine.
2 MS. ROSEN: -- a typo, but she can clarify that.
3 MS. ROBESON: I think Fair Hill and Fair View are
4 two different models, I think, but go ahead.
5 THE WITNESS: Yeah, I think the name might be not
6 exact, Your Honor. The Fair Hill model is correct on page
7 6.
8 MS. ROBESON: Okay.
9 THE WITNESS: The Fair Hill model, I believe, is
10 correct on page 6 and page 7, especially the bottom one.
11 MS. ROBESON: Okay.
12 THE WITNESS: The one on page 7.
13 BY MS. ROSEN:
14 Q And which of these models --
15 MS. ROBESON: Wait just a second. Mr. Mohammadi,
16 do you have any objections?
17 MR. MOHAMMADI: Well, I don't know if he knows
18 what he's testifying to except for reading off of these
19 pictures.
20 MS. ROBESON: Well, you can do that on cross. Is
21 there any reason to believe that these are not accurate
22 depictions?
23 MR. MOHAMMADI: I mean I haven't heard any
24 testimony that these are houses in the neighborhood, but
25 with respect to what they say --

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1 MS. ROBESON: I think he did.
2 MR. MOHAMMADI: -- I think that's fine.
3 MS. ROBESON: I think he did say that. Are these
4 houses --
5 MR. MOHAMMADI: I don't, I don't have a real
6 objection to this.
7 MS. ROBESON: Okay. And do they fairly and
8 accurately depict the properties to your knowledge?
9 THE WITNESS: Yes.
10 MS. ROBESON: Okay. Well, we'll ask the other,
11 we'll lay the foundation with the other witness that took
12 them. All right. So I'm going to admit these subject to
13 the foundation of the other, laid by the other witness,
14 okay? Go ahead, Mr. Barr.
15 BY MS. ROSEN:
16 Q And, Mr. Barr, which of these models, if you know,
17 is the model that is the, Michael Ball's house?
18 A It's the Fair Hill model.
19 MS. ROBESON: 73 will be photos of home models.
20 And I'm sorry, I missed what you were saying. It's the Fair
21 Hill?
22 THE WITNESS: Yes, the Fair Hill model --
23 MS. ROBESON: Okay.
24 THE WITNESS: -- very clearly depicted on the
25 bottom of page 7, the lower photograph.

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1 MS. ROBESON: Okay.
2 BY MS. ROSEN:
3 Q So that would be, would that be a fair depiction
4 of what Michael Ball's house originally would like before --
5 A Yes.
6 Q -- construction? Okay. Now are you familiar with
7 the property at issue here located at 10600 Hampton Court?
8 A Yes, I am.
9 Q Okay. And how are you familiar with that
10 property?
11 A I've been to the site many times for previous
12 projects, not this, necessarily this and the first time I
13 got on the board in 2003, as I discovered, I didn't know the
14 exact date, the first hearing was with the board's
15 application to close in a basement wall which had two CMU
16 walls running along supporting what was a deck. And --
17 MS. ROBESON: Can you explain CMU for me?
18 THE WITNESS: Oh, I'm sorry. Concrete masonry,
19 what we call a block wall.
20 MS. ROBESON: Okay.
21 THE WITNESS: And it's, it was --
22 MS. ROBESON: I went to law school, not
23 architecture school.
24 THE WITNESS: And the presentation being made at
25 that time, and I remember it quite clearly, was that the

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1 board members were asked to close off the third side, if you
2 can imagine, from the basement, a deck had gone up above it.
3 It was supposed to be on columns and the board members, and
4 I was not involved in any of that, I came in the middle of
5 this and the concrete block wall had been built on the two
6 flanking sides supporting the deck structure above it. But
7 it was not what was approved. And now --
8 MS. ROBESON: What was approved?
9 THE WITNESS: With columns, as would normally be
10 the case to support a deck.
11 MR. MOHAMMADI: Objection. I don't know how
12 that's relevant to the claims made, but --
13 MS. ROBESON: Well, I'm going to let him, I have a
14 feeling this is leading to something, but -- so that's
15 overruled. Go ahead, Mr. Barr.
16 THE WITNESS: What it was was that the two CMU
17 walls Mr. Ball was telling them was requested by the County
18 and, to be built.
19 MS. ROBESON: Uh-huh.
20 THE WITNESS: So he had built them. So now he was
21 there saying this space under this deck is so dark, there's
22 nothing they can do, nothing is going to grow there, can I
23 close that off in the front end and make an enclosed space
24 below, below this deck?
25 MS. ROBESON: Uh-huh.

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1 THE WITNESS: And so at that point I had missed
2 the previous meeting since this was my very first one. And
3 what I faced looked to me a reasonable request, that two
4 sides were now completely darkening space below and the
5 person was asking to enclose it.
6 And so I suggested that they do. To prove it, I
7 was only the one voice, but that's what was done. At some
8 point I believe he was asked to produce drawings showing the
9 enclosure in concrete block wall as supports, not as what
10 was initially designed. So this idea that you get something
11 approved by the Association, but don't have to build it when
12 the County requests something else. It seems to have been
13 well-established way back in time and it's a repeating
14 pattern that I, that's one of the reasons I went into it in
15 greater length. The --
16 MS. ROBESON: Now that was the subject of CCOC
17 Case 73-12, correct?
18 THE WITNESS: No, this is way back. They didn't
19 even serve him on that. There was no case on that. This --
20 MS. ROBESON: Okay.
21 THE WITNESS: This was a completely different deck
22 --
23 MS. ROBESON: Oh.
24 THE WITNESS: -- which has now become a single-
25 story structure with a roof on it, with an extension from

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1 the living room with the room below it in the basement,
2 which was the enclosed --
3 MS. ROBESON: On the rear?
4 THE WITNESS: On the rear, correct.
5 MS. ROBESON: I saw that on one of the drawings.
6 THE WITNESS: A big box on the back.
7 MS. ROSEN: There is actually another CCOC case
8 that I want to also, I guess, ask you, the hearing panel to
9 take judicial notice of, which was, which involved, I
10 believe it was, involved another deck situation. It was, it
11 was, I know it was 703, I think, was the case number if I
12 remember it correctly, similar type of case. When my
13 witness is testifying about this pattern of behavior, it was
14 a similar type of case where the --
15 MS. ROBESON: Okay. But what's the relevance to
16 this case of the pattern of behavior?
17 MS. ROSEN: Well, it was bad faith on the part of
18 Peter Ball.
19 MS. ROBESON: Oh.
20 MS. ROSEN: This has been an ongoing pattern of
21 behavior. And what he, what I think he was testifying
22 basically, saying this was an ongoing type of thing and he
23 applies to do something and then he does something else and
24 tries to force the Association to accept it. And the case
25 number is actually 720G, the decision, it was a decision and

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1 order in that case.
2 MS. ROBESON: I saw that referenced in some, in
3 the 73-12 file.
4 MS. ROSEN: Okay.
5 MS. ROBESON: Why does every case involving this
6 has seven and two and --
7 MS. ROSEN: Yeah, I know. It was strange. The
8 numbers get confusing.
9 MS. ROBESON: In any event, I've had that request.
10 I'll give you an opportunity to object. It doesn't -- it
11 can be at the beginning of your case if you want to take
12 time to think about it.
13 MR. MOHAMMADI: I'm sorry, you've had the request
14 just now you're saying, or before?
15 MS. ROBESON: Just now to take official notice of,
16 of, I mean it's a public file, but if you have some reason
17 you want to object, you should do so at the beginning of
18 your case, all right? All right.
19 Ms. Rosen, Mr. Barr, continue.
20 THE WITNESS: So at that same application point,
21 he had also requested two decks to be on either side of the
22 house and they were specifically asked, with noted as being
23 with shed roofs over the decks.
24 MS. ROBESON: Uh-huh.
25 THE WITNESS: And any time an application is made

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1 and there's a written objection, it comes to the board from
2 the architecture, it comes up to the board. And one of the
3 complaints had been, had predicted these sound more like a
4 future enclosed shed to me, is a direct quote.
5 The next time I got involved in this particular
6 property, I was on the board and Jeff Williams, Jeffrey
7 Williams was the president, and one of the decks had been
8 built and lo and behold it became an enclosed shed with no
9 windows.
10 MS. ROBESON: Is this the deck in the rear?
11 THE WITNESS: This is off to the side under the
12 deck.
13 MS. ROBESON: Or in the side yard?
14 THE WITNESS: The right-hand side.
15 MS. ROBESON: Okay.
16 THE WITNESS: And this became a big issue for a
17 long time.
18 MS. ROBESON: And when you say right side, I'm
19 used to north, south, east, west.
20 THE WITNESS: Yes.
21 MS. ROBESON: Right side, are you --
22 THE WITNESS: Right.
23 MS. ROBESON: -- facing the house?
24 THE WITNESS: Facing the house on the right-hand
25 side.

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1 MS. ROBESON: Okay.
2 THE WITNESS: Right, right-hand view. On the
3 right, on the right elevation. So this was the subject in
4 the first CCOC filing and it was not made by me. It was by
5 the board. I was not in any official capacity, in a
6 position to do that, but I had, was called in to testify
7 about this action. I think I did, yeah. I, I'm not quite
8 clear but, yes, I, I think I was involved in saying this
9 shed is not what was requested. And he was asked to take it
10 down and pay attorneys' fees. And that was enforced.
11 Shortly thereafter there was another application
12 made, which is the current one, started in February of 2008.
13 And in that application, notably, there was reference to
14 material that the person, that Mr. Ball used. It was hardy
15 board and he applied, supplied a sample of the material
16 which is the Simmons vertical planking board in 2008.
17 MS. ROBESON: Right.
18 THE WITNESS: That application was turned down as
19 being incomplete and there's a letter re-telling all of
20 that, which I don't necessarily have to go into.
21 MS. ROBESON: But why was it incomplete?
22 THE WITNESS: It was incomplete -- let me find the
23 exact one. It's --
24 MR. MOHAMMADI: Just, I'm going to object. I'm
25 not sure if he's testifying from memory, which is reading

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1 something. I --
2 MS. ROBESON: Well, he can use notes to refresh
3 his memory.
4 THE WITNESS: And I was there and I saw the letter
5 when I became president. Effectively, the application was
6 submitted, but did not have a complete set of plans, did not
7 have the site plan, did not have material sample, and for
8 all those reasons it was sent back and the person sending it
9 back was the former chair of the architecture committee.
10 And then in May of 2008, another application was
11 submitted to the architecture chair, Velma Spencer, with a
12 sample of the hardy board he planned to use.
13 BY MS. ROSEN:
14 Q Okay. I'd like you to, if you could please
15 explain generally the architectural change application
16 process in Potowmack Preserve to the Hearing Examiner.
17 A Sure. It is initially listed in our declarations
18 and covenants and talks about keeping the harmony. The
19 procedure is printed up in every directory, it's in the
20 current directory, and runs multi-pages and talks about the
21 steps one goes through. It talks about the president being
22 in charge and assigning a number.
23 Now, obviously, that was when they first set it
24 up. We have now, we're brought into a situation where an
25 application is sent directly to the architecture committee

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1 chair who will log it in and what, the first thing they do
2 is send copies to the affected neighbors, meaning those who
3 might have visual impact from whatever is being proposed.
4 If any one of them writes a written objection, that
5 application that is brought to the board of directors and
6 they have to figure out what's going on. So that's the
7 normal process.
8 The material sample is requested every time
9 there's a change of material being proposed. The plans of a
10 specific scale, a minimum scale of one inch equals 20 feet
11 for a site plan, one inch equals eight feet for --
12 Q Right.
13 A -- and so on. And so it's, and it's a very
14 detailed -- trying to help the process be understood by a
15 homeowner. It explains itself as a process and a procedure
16 in detail.
17 MS. ROBESON: And that's, is that the document
18 that, I think, you, Ms. Rosen submitted page 6 and then we
19 got from Mr. Mohammadi the complete document, it's Exhibit
20 70?
21 THE WITNESS: Yeah, the one we took the page 6
22 from is the current directory and in that portion, the
23 procedures, actually three pages because the front is over.
24 So --
25 MS. ROBESON: So you're saying that --

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1 THE WITNESS: It might be the same. I haven't
2 really read what --
3 MS. ROBESON: Okay. Well, can, can you submit, if
4 it's not what is the current version --
5 MS. ROSEN: I think it is the same.
6 MS. ROBESON: It is the same?
7 THE WITNESS: But, but we have the current version
8 there, so that's, yeah, absolutely sure.
9 MS. ROBESON: Okay.
10 MS. ROSEN: Hold on. I'm checking for her.
11 THE WITNESS: I just gave it to you.
12 MS. ROSEN: I have it?
13 THE WITNESS: Yeah.
14 MS. ROSEN: Yeah, I think what Mr. Mohammadi
15 submitted --
16 THE WITNESS: These are for --
17 MS. ROSEN: Yes, I mean it, it --
18 MS. ROBESON: Okay.
19 MS. ROSEN: -- ours, ours was printed, it was
20 bigger, but it's the same.
21 MS. ROBESON: All right.
22 THE WITNESS: So this may be from a previous
23 generation. It's the same thing.
24 MS. ROBESON: Okay. Then we'll stay with Exhibit
25 70.

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1 THE WITNESS: And the whole procedure from time of
2 application, completed application, meaning all, all the
3 information and materials are submitted, then you have a 45-
4 day period in which to respond, the HOA does.
5 MS. ROBESON: Uh-huh. Okay.
6 BY MS. ROSEN:
7 Q Now what constitutes an application?
8 A An application has a formal submission form that
9 they are building and there's a copy of it here. It's also
10 sent around with a newsletter last year to all the members
11 so they can see what the form looks like or make it easier
12 for them to access it. Previously they used to have the,
13 that you call the chair of the architecture committee,
14 mainly it was streamlined is because volunteers are spending
15 a lot of time back and forth. I'm proud to say that we just
16 opened a website, so now it's on the website so they can
17 download the directions. And last year we also sent this
18 form around with the new set-up so that it's right in there
19 so you understand the process.
20 We also make it a point in at least once a year in
21 the new statement, we have a detailed description of what is
22 permitted in exterior, of the process. You cannot make
23 changes. Look at this and figure out what, what you can do.
24 It also comes with another sheet called the design
25 guidelines which are referenced, which is page six. So it's

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1 a fairly well-known form and once that's done, it takes 45
2 days after feedback and the board works on it.
3 Q Okay. And so, for example, if somebody submits a
4 formal application and if the board needs more information
5 or if it's incomplete, then what happens?
6 A If it's incomplete, then the letter will go back
7 from the chair or if it has come from the board, from the
8 board, requesting additional information to the already made
9 application, but the application is, only the clock starts
10 when the application is complete.
11 Q Now if somebody were to submit something that is
12 not with that formal application form, is that considered an
13 application?
14 A No, it's not an application. It has to have the
15 formal, the complete set of drawings and the material if
16 it's a material change and the form of, form completed.
17 Q Okay. And going to, we're up to Exhibit 74, I
18 think. I'm sorry, I tend to lose track. Okay. I'm going
19 to show you a document which I've marked as Exhibit 74.
20 (Exhibit 74 was marked for
21 identification.)
22 BY MS. ROSEN:
23 Q And if you could please identify that?
24 A Yes.
25 Q Yes, I'd like you to --

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1 A Yeah.
2 Q -- tell the Hearing Examiner, identify the
3 document, each, where each document, it's several pages, I
4 believe.
5 A Yes. So on the second page is the, I'm coming
6 from this label. So this is the form as it existed in,
7 actually it's dated February 1994 at the bottom, the form
8 itself. And it's an application filled out by Peter Ball.
9 MS. ROBESON: Wait, I don't see the February '94.
10 THE WITNESS: Oh, on page, on the second page at
11 the bottom.
12 MS. ROBESON: Oh, I see it, yes. Uh-huh. I see
13 what you're referring to.
14 THE WITNESS: I just saw it for the first time.
15 MS. ROBESON: I was looking at the date submitted.
16 Okay. Go ahead.
17 THE WITNESS: So that's the form that existed at
18 this time of application in 2008. And the next page over is
19 the Potowmack Preserve chairperson, Irma Spencer, the
20 architecture review committee, we don't call it control
21 committee, it's now the review committee, sending back, in
22 the main body of the letter you will see five bullets or
23 seven bullets. There is no site plan. There are no
24 sections. The elevation drawings provided are not labeled.
25 There's no dimension shown on any of the drawings. There

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1 are no drawings showing the person building in the proposed
2 addition.
3 There are no specifications to actual samples of
4 proposed materials. And the 71, there are no floor plans.
5 And so, and saying, therefore, it is not a complete
6 application.
7 On the first page --
8 Q Are you talking about the first page or you're
9 talking about --
10 A I'm going to the very first one. I'm in the same
11 --
12 Q Okay.
13 A -- I can label my way to the next page over which
14 also says May 26, 2008, hand-delivered --
15 MS. ROBESON: I see it.
16 THE WITNESS: -- and so on. You see that, right?
17 So on the first one, and it submits the color sample of the
18 hardy board.
19 MS. ROBESON: Just, just for the record so it's
20 clear what we're talking about, the transcript is clear, I'm
21 going to label each page one, page one, two, three, four,
22 five, six. So when you testify, would you kindly refer to
23 the page number of Exhibit 74?
24 THE WITNESS: Do you want me to go over the last
25 piece again?

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1 MS. ROBESON: Yeah, just identify --
2 THE WITNESS: Okay.
3 MS. ROBESON: -- the page number of the letter you
4 were referencing.
5 THE WITNESS: Yes. So Exhibit No. 2 --
6 MS. ROBESON: Page 2 of --
7 THE WITNESS: Page 2 of this exhibit is the form
8 filled out in 2008 --
9 MS. ROBESON: Uh-huh.
10 THE WITNESS: -- for the application. Page 3 of
11 the exhibit is a letter from the chair of that committee, of
12 the architecture review committee saying that the
13 application is incomplete because it's missing key
14 information. One, there is no site plan; two, there are no
15 sections; three, elevation plots provided are not labeled;
16 there are no dimensions shown on any of the drawings; there
17 are no drawings showing the person building and the proposed
18 addition; there are no specific, actual samples of proposed
19 materials. References to materials and colors currently
20 will be on other members' homes is not acceptable. And .7
21 there are no floor plans.
22 Page 4 of this exhibit is a conclusion of the
23 letter, I would labor my way through that, unless you want
24 me to.
25 MS. ROBESON: No.

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1 THE WITNESS: And page 5 is the application dated
2 May 26, 2008, which is a cover letter, I guess. Dear Ms.
3 Spencer, please find a copy and the samples of the materials
4 are indicated here, particularly notice .6, the brochure of
5 hardy plank, the siding material, we propose to use on the
6 house and 600 Crossing Creek just had hardy plank installed
7 and 10604 Cross Creek just had hardy plank installed. And
8 the paint chip sample is also proposed.
9 MS. ROBESON: All right. You've identified it.
10 Thank you. Mr. Mohammadi, any objections?
11 MR. MOHAMMADI: No objections.
12 MS. ROBESON: Okay. I'm going to admit it, this
13 Exhibit 74.
14 MS. ROSEN: Well, just one other question, I want
15 him to identify and explain the first, the first page of
16 that, January 15, 2008, what that is.
17 MS. ROBESON: Oh, I'm sorry.
18 THE WITNESS: Yeah, this one is a hand-delivered
19 thing to the former president, Jeff Williams, in 2008,
20 accompanying the page 15.
21 MS. ROSEN: Okay. So --
22 THE WITNESS: Page 2.
23 MS. ROBESON: Okay. So 2, 74 will be 2008
24 application?
25 MS. ROSEN: Okay. Yes, that's our understanding.

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1 THE WITNESS: That's correct. That's --
2 MS. ROSEN: This is the application.
3 BY MS. ROSEN:
4 Q And this is the application that's at issue in
5 this case that includes their roof and --
6 A Uh-huh.
7 Q -- everything else at issue in this case, correct?
8 A I believe, no, this is, this is the whole thing.
9 Q Okay. Now after this --
10 MR. MOHAMMADI: What are you calling this
11 officially so I can write it down?
12 MS. ROBESON: 2008 application.
13 MS. ROSEN: Court's indulgence for one second. It
14 looks like the people who did my copying missed a copy of
15 something.
16 MS. ROBESON: We can recess for 5 minutes if you
17 need some time to --
18 MS. ROSEN: Okay. That's okay. I mean I guess
19 one of my copies is missing, one copy of the minutes from
20 this exhibit.
21 MS. ROBESON: Okay. Well, then, well, we'll take
22 a 10-minute break. That's a little easier. We'll be back
23 at five till 11:00.
24 MS. ROSEN: Okay. If I could just try and get a
25 copy? Is there a copy machine --

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1 MS. ROBESON: Sure.
2 MS. ROSEN: -- I can use? Thank you.
3 MS. ROBESON: Yes, there is. If you give it to
4 Ellen Forbes in our office, she'll make a copy.
5 MS. ROSEN: Thank you. Appreciate it.
6 (Whereupon, a brief recess was taken.)
7 MS. ROBESON: Have we located the exhibit you
8 wanted to introduce?
9 MS. ROSEN: Yes. Yeah. It was just a question of
10 something that was stapled in the wrong spot --
11 MS. ROBESON: Yes.
12 MS. ROSEN: -- on one of them, so --
13 MS. ROBESON: That's why I always take a recess
14 because sometimes people can't find it if we stay in session
15 and then suddenly it appears on recess. Go ahead.
16 MR. MOHAMMADI: Your Honor, just very briefly. I
17 spoke to Ms. Rosen. She's okay with it. My client, Mr.
18 Ball, needs to step out for a couple hours for work-related
19 reasons. If that's okay with you, I'd like to excuse him
20 for now. He'll be back later.
21 MS. ROBESON: It's okay with me as long as he
22 agrees to waive any objections. If not, I'm required to
23 give reasonable cross-examination. He can wait. It's a due
24 process right, so --
25 MR. MOHAMMADI: We can waive that while he's gone.

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1 MS. ROBESON: All right. That's fine. So I am
2 looking at Exhibit 75. Can you identify what this is, Mr.
3 Barr?
4 THE WITNESS: It's page 1, it's the board meeting
5 minutes from June 29, 2010.
6 MS. ROBESON: Okay. So I'm just going to identify
7 this as minutes of the Potowmack Preserve Homeowner's
8 Association, June 29, 2010.
9 (Exhibit No. 75 was marked for
10 identification.)
11 MS. ROSEN: There are various other -- this is a
12 group of minutes.
13 MS. ROBESON: Oh, it is?
14 MR. MOHAMMADI: Yes.
15 MS. ROSEN: Yes.
16 MS. ROBESON: I'm sorry. Go ahead, keep, then I
17 spoke too soon.
18 MS. ROSEN: Okay. Well, I'll have him identify
19 each of the minutes for the record, each set of minutes
20 that's in this one exhibit.
21 MS. ROBESON: Okay.
22 MS. ROSEN: Okay.
23 THE WITNESS: On page 3 of the exhibit is meeting
24 minutes from October 21, 2010. On page 4 of the exhibit is
25 March 31, 2011. The next one is April 11, 2011. The

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1 following one is May 5, 2011.
2 BY MS. ROSEN:
3 Q Dr. Barr, could you please -- after the
4 application in 2008 was submitted, is it accurate to say
5 that between that time and the time the application was
6 essentially, conditionally approved in May of 2011, there
7 were various other meetings at which the application was
8 discussed?
9 A Yes.
10 Q Okay.
11 MS. ROBESON: Before we do that, do you have any
12 objections, Mr. Mohammadi, for, to admission of 75, which is
13 I'm calling minutes of HOA meetings?
14 MR. MOHAMMADI: No objection.
15 MS. ROBESON: All right. I'm sorry. Go ahead.
16 BY MS. ROSEN:
17 Q Okay. Dr. Barr, perhaps, what I'm going to do is
18 I'm going to have you go through each of the minutes and
19 just kind of summarize for the panel, not the panel, I mean
20 the Hearing Examiner various discussions and issues that
21 came up with regard to this application.
22 A Yes. On the underlying section on page 1, calls
23 out that Tonya Brunnell, Peter Ball's architect was present.
24 She explained that Peter hired her for drawings primarily in
25 order to change his home back to being in compliance with

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1 the neighborhood. He plans an addition over the garage.
2 She tried to add more inches and variety in the elevation so
3 the home doesn't look like a giant box.
4 The back of the house is the most conspicuous
5 part. And then I'm not sure how much I want to read of
6 this, but --
7 Q You don't need to read it, but just kind of
8 summarize. I know it's in the next, it looks like there's
9 some discussion of a gentlemen named Harry Steinberg --
10 A Yes.
11 Q -- and making comments. Can you just explain
12 generally what was happening at that meeting with regard to
13 the --
14 A Yeah. Harry Steinberg said that Peter, there's
15 always activity going on in the area due to Peter's
16 construction company and he fears that construction further
17 encroaches on the property. He noted that Peter has never
18 finished a project and has always deviated from submitted
19 plans. Jeff said that earlier boards let Peter get away
20 with this behavior, but this board would not. And I have
21 chimed in saying that the current issue is the scale and
22 volume, not just the look, square feet going from 30 to 42
23 square feet, currently 49, 31, and proposed to be 6,452
24 square feet.
25 Q Okay. So that was, because was there other

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1 discussion in terms of the, I guess some concerns about the
2 house needing to be scaled back?
3 A Right. So page 2, Jeffrey Williams notes that the
4 45-day clock will start with the vote, so let's not vote so
5 we can continue with the dialogue. He was very interested
6 in getting the process moving, everything but from the '09,
7 this architect. He's hopeful that Tonya's involvement
8 signals that Peter wants to work with the board in terms of
9 size. The house needs to be scaled back. Tonya will go to
10 Peter and report back.
11 Q Okay. Now I'm going to turn the issue to the
12 October 21, 2010, if you can help summarize --
13 A Yes.
14 Q -- with regards to, it looks like there was an
15 issue with the roof?
16 A Yeah, and update by Raj, it says, on paragraph 2.
17 The last issue was the slope of the roof. We need new
18 drawings, haven't got drawings or heard back, anything back.
19 After 45 days, the time has expired and Irma, the chair of
20 the architecture committee, can write a letter saying it's
21 done.
22 Q Okay. Now turn your attention to the minutes of
23 March 31, 2011, if you can kind of summarize what was going
24 on with regard to the discussions of the application?
25 A At this meeting, from the attendees, you can see

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1 on paragraph 1 that Peter Ball introduced his attorney, Jim
2 Deever (phonetic sp.), who introduced himself as I'm here as
3 his friend, but I'm an attorney. I seem to have been
4 calling that meeting through all the years and identify the
5 following things. Summarized, I summarized the neighbor's
6 concerns with Peter's proposed architectural changes, a
7 bigger footprint, more water shedding to the other
8 properties, facade doesn't appear cohesive, sample materials
9 were not included with the application, unclear where the
10 roof line is, lack of clarity on properly on the property
11 line and the bump outs.
12 The next paragraph says back elevation is
13 continuing the roof slope, only asking for an addition over
14 the garage and next to the house. Peter responded that so
15 the realization is with Peter in this instance and they say
16 it's only increasing by 200 feet, the footprint by 200 feet.
17 Says he made a mistake with the flat roof when he first
18 built it. He is now trying to finish everything at one
19 time. He wants to take the back deck up into a sloped roof,
20 reduce the back elevation, is continuing the roof slope.
21 Q Okay.
22 A He wants to, again, he redirects that he want to
23 use hardy plank to replace the T-111 that he has.
24 Q And is hardy plank what was actually approved in
25 his application technically?

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1 A Yes, it was.
2 Q Okay. And within brackets in that, this is in
3 that bottom of that third paragraph, it says, therefore, the
4 siding is not at issue. The siding is not an issue. It's
5 making a point saying that issue went away. Large, I asked
6 at what point is there enough of a slope on the roof for it
7 to drain. Peter said that his roof needs to be high enough
8 to get it at the right pitch. He has given up 50 percent of
9 what he originally wanted, can't keep throwing out designs
10 and one thing was going to work. Raj asked for Peter's
11 timeline. Peter said that once being given the go ahead, he
12 will start at the end of June 2011, he'll start with the
13 garage, then the back and the addition facing Crossing
14 Creek. Siding will be done on a continuous basis. The back
15 will have minimal construction. The total time span should
16 be about six months. He work fast and not only on the
17 weekends. He would work fast and not only on the weekends.
18 Even by adding the side addition, the whole front
19 of the house is 50 feet. Lot coverage is only 20 feet, 32
20 percent.
21 And on April 11, at the bottom, there is a
22 complaint from Harry Steinberg and Steven Squires
23 complaining about Peter's way to continually skirt the HOA
24 and concrete rules, just one of the highlighted ones.
25 On May 5th minutes, now he's saying he can't use

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1 hardy plank for vertical siding. The track is too shallow.
2 He will use vinyl siding. Peter Ball summed up that he and
3 his son built the addition together, that's the portion in
4 the back, and the roof was a mistake. He has been trying
5 for several years, plans have been rejected. He thinks a 10
6 by 20 bump looks better than the one on the garage that he
7 has proposed to build. He doesn't want to have to come back
8 to the board. This is the last project he plans to do.
9 This is the last project. This is his last project. He
10 plans to do the roof first, then the bump out over the
11 garage. Last is the side and exterior before starting with
12 the interior. He'll be completely done within a year.
13 Raj changes more in favor of the 10 by 20 bump out
14 on the side to the street on the left side and still needs
15 to talk about planting and other ways to soften the look.
16 Q Okay. Now at the bottom you're, was, there was a
17 comment by Lee?
18 A Lee requested the roof, that he not exceed the 1-
19 year timeline. Also pointed out that there's only approved
20 to make those changes that the board approved.
21 Q Okay. And those changes would be basically the
22 application that you previously, and the, you know, and the
23 drawings with that application --
24 A And the drawings --
25 Q -- from May 2011?

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1 A And then it says the minutes from the March 21,
2 '11 meeting reviewed, it is further that during that meeting
3 Peter Ball pitched a 6-month timeline. The board agreed to
4 return to Peter and called him to the 6-month timeline.
5 Motion to approve the minutes from the March 31 meeting was
6 made, seconded and approved.
7 Q I'll show you a document which has been marked as
8 Exhibit 76.
9 MS. ROBESON: What do you call this document?
10 MS. ROSEN: This one is a letter dated April 15,
11 2011.
12 (Exhibit No. 76 was marked for
13 identification.)
14 BY MS. ROSEN:
15 Q Now, Mr. Barr, could you please identify what that
16 document is?
17 A Yes, this is a letter from Peter Ball and it says
18 to Raj Barr with my handwriting.
19 Q And what's the date of that letter?
20 A April 15, 2011.
21 Q Okay. I want to bring your attention to, I think
22 on the second page there's discussion about the roof.
23 MS. ROBESON: Okay. Just one second. Do you have
24 any objections, Mr. Mohammadi?
25 MR. MOHAMMADI: No, no objections.

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1 MS. ROBESON: Okay. It's admitted. Go ahead, Ms.
2 Rosen.
3 THE WITNESS: On page 2 of the exhibit, item 2,
4 bullet number two. Our request is only to change the roof
5 line from flat to sloped and because they're using it as
6 four shingled to be consistent with the rest of the roofs,
7 Montgomery County requires a 312 pitch. On our home,
8 employing a 14-inch roof truss, a 312 pitch would mean the
9 roof would meet the existing structure at 68 inches from the
10 flat roof.
11 BY MS. ROSEN:
12 Q And what does that mean?
13 A The existing, the existing vertical roof that's
14 behind the flat roof starting with the wall that's the flat
15 roof and come in at 68 inches and the next sentences
16 explains it a little clearer.
17 The height of the existing structure is only eight
18 feet. So this structure vertical is eight feet. He's
19 saying it's only coming in at 5 foot eight. And so that
20 will look a little large, so he's going to, I'll read the
21 whole thing.
22 MS. ROBESON: Well, you don't have to read it. If
23 you can just --
24 THE WITNESS: I can summarize that.
25 MS. ROBESON: Yes.

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1 THE WITNESS: So what he's doing is he's saying I
2 am, therefore, going to bring this to meet the existing
3 ridge of the roof, that's the high point.
4 MS. ROBESON: Right.
5 THE WITNESS: That's, so the new roof on the back
6 --
7 MS. ROBESON: And he's, is it, is what you're
8 saying that he's saying the County is going to require a
9 higher pitch?
10 THE WITNESS: No. He's saying he's using a pitch
11 that the County requires, the 312 pitch.
12 MS. ROBESON: Okay.
13 THE WITNESS: And when he does that, he's still
14 going to come in under the roof height.
15 MS. ROBESON: Okay.
16 THE WITNESS: Not his is the only discussion about
17 roof height that we ever had in the seven or eight meetings
18 we had over a year and a half.
19 MS. ROBESON: Okay.
20 THE WITNESS: And that's why I'm getting into more
21 detail of that. So he says --
22 MS. ROBESON: And that's fine.
23 THE WITNESS: -- even when he does the slope, it's
24 going to come in short, so that in regards they're going to
25 take it to meet the ridge.

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1 MS. ROBESON: All the way to the --
2 THE WITNESS: Top of the existing ridge.
3 MS. ROBESON: Okay.
4 THE WITNESS: And that's the only discussion that
5 we've had on that.
6 BY MS. ROSEN:
7 Q So does that mean basically when he, when he says
8 it's going to meet the existing ridge, that the roof is not
9 going to be higher than the existing --
10 A Yes.
11 Q -- roof? And as I said, that's the only
12 discussion about roof heights that came up in this analysis,
13 in the whole year and a half or so that we discussed it.
14 (Exhibit No. 77 was marked for
15 identification.)
16 BY MS. ROSEN:
17 Q Okay. I'm going to ask you to identify a document
18 which has been marked as Exhibit 77.
19 A Exhibit 77 is the email from the secretary, Jamie
20 Dietz, on April 21, 2011, and it reads, "In preparation for
21 our first and May 5th board meeting I'm attaching scans of
22 Peter Ball's latest designs. They are higher resolutions,
23 so I'll need to send a few different emails. Tonya, I know
24 you don't need the drawings, but I'm giving it to you
25 anyway." And that should be --

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1 MS. ROBESON: Okay. You don't have to --
2 THE WITNESS: Yeah.
3 MS. ROBESON: You're saying this is -- okay.
4 THE WITNESS: This is the application.
5 BY MS. ROSEN:
6 Q Let me, all right. You see there's a notation
7 marked Complainant's Exhibit 2 on the right-hand corner?
8 A Right.
9 Q And attached to this document there are several
10 drawings, is that correct?
11 A Yes.
12 Q Okay. Are these the, are these the approved
13 drawings or the approved application plan that was approved
14 in May 2011?
15 A That's correct.
16 Q So these drawings constitute the approved plan?
17 MS. ROBESON: Any objection, Mr. Mohammadi?
18 MR. MOHAMMADI: No objection.
19 MS. ROBESON: Okay. So 77 will be HOA-approved
20 drawings. Okay. Go ahead, Ms. Rosen.
21 (Exhibit No. 78 was marked for
22 identification.)
23 BY MS. ROSEN:
24 Q Okay, Dr. Barr, I'm going to have you identify a
25 document which I marked it as Exhibit 78. Thank you.

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1 Please identify what the document is?
2 A Yeah, this is a letter from, from me as president
3 for the board and on behalf of the board of directors, and
4 it summarizes, it is a letter of approval. It is a letter
5 of conditional approval.
6 MS. ROBESON: Mr. Mohammadi, do you have any
7 objections?
8 MR. MOHAMMADI: No.
9 MS. ROBESON: So this will be, 78 will be HOA
10 letter of approval.
11 THE WITNESS: Conditional letter.
12 MS. ROBESON: Approval with conditions.
13 BY MS. ROSEN:
14 Q And if you could just summarize the approval
15 letter? You don't need to read it, just --
16 A Yeah.
17 Q -- summarize it.
18 A Certainly. We rejected the vinyl siding, neither
19 horizontal nor vertical siding is an acceptable
20 substitution. The board rejects the subs. And you
21 mentioned hardy board at the March 31 meeting. You
22 mentioned you were inserting hardy board as a replacement
23 for the T-11 siding. Please submit samples of the proposed
24 material prior to construction, meaning the hardy board that
25 you said you were going to use.

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1 And we, the letter reinforced the fact that we
2 require planting of appropriate evergreen plants to provide
3 privacy and to screen the mass of the building from the
4 street. All work must be constructed in strict conformity
5 with the drawings as submitted and approved. Please ensure
6 that all exterior work is started and carried on, carried
7 continuously through the completion without intermittent
8 delays, ideally the 6-month timeframe from June through
9 December 2011 that is specified at the March 31 meeting.
10 Please ensure that all construction materials,
11 equipment and trucks are stored on your property and no
12 construction delivery or equipment inconveniences the
13 neighborhood. Please submit a copy of your building permit
14 for our records. Thank you for your cooperation getting the
15 projected completed in a timely fashion.
16 Q Okay. Again, were you authorized by the board of
17 directors to send this approval letter to Peter Ball?
18 A Yes, it's, as the president it says in the
19 articles that the person who is the CEO of the corporation.
20 Q Uh-huh.
21 A And as you saw in the previous description of the
22 articles, it even charges the president being the person who
23 logs the submission of the drawings. So any time the
24 president, whoever it is, writes a letter or speaks on
25 behalf, they're speaking on behalf of the board, and --

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1 Q Right.
2 A -- therefore, the HOA --
3 Q Right.
4 A -- it's not a personal comment.
5 Q Now in general are you authorized by the board to
6 communicate by letter with Mr. Ball concerning the
7 construction at his property?
8 A Yes. I mean that's a process that they have used
9 with even previous presidents. We put it in writing so it's
10 on record, the spoken word is going in there, so.
11 Q Uh-huh. And if you sent a letter to Peter or
12 Michael Ball concerning the construction on the property,
13 then would it be fair to say that you were authorized to do
14 so on the letterhead of the Association?
15 A Yes.
16 Q Okay. And did you have any other communications
17 with Peter Ball, whether verbal or otherwise, concerning the
18 construction at his property after that application was
19 approved?
20 A Yes, I had several conversations. I don't know
21 which one you're referring to.
22 Q Okay. But you're just saying in general?
23 A Yeah. Yeah.
24 Q And if you had any conversations with Mr. Peter
25 Ball, did you also, did you communicate those conversations

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1 with other board members?
2 A I, at the next board meeting, or shortly
3 thereafter, if there's an issue, I make a presentation on
4 that.
5 Q Okay. And did you ever have any communications
6 with Michael Ball, the actual owner of this property?
7 A No, I have not. I just had the pleasure of seeing
8 him for the first time today.
9 Q But did Michael Ball ever come to any, any
10 meetings in connection with this application?
11 A No.
12 Q Did Michael Ball ever contact you at all in
13 connection with this application?
14 A He has written one letter and I responded by
15 asking who is Michael Ball because it came from the same
16 email address as Peter Ball and that's in the file
17 somewhere. And he was asking through review of the files of
18 the HOA and it said Peter Ball has not missed before. He
19 knows the process. So I'm sure he can lead you to it. He
20 made it available, but it was never reviewed by anybody.
21 Q Okay. And at the time the initial application was
22 submitted back in 2008, the owner of the property at that
23 time, was that Peter Ball and Ariana Savinska (phonetic
24 sp.)_at that point in time in 2008?
25 A Yes, it was.

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1 Q Okay. And at some point thereafter, apparently
2 Michael Ball became the owner of that property?
3 A We were only aware of that when that email arrived
4 because I asked the question is he in that email, in the
5 letter that I sent, the formal letter from the HOA. My
6 question is who is Michael Ball, why is he asking to see
7 this? Is he the property owner? If so, when did he become
8 owner? I never got a reply on that. But after that, he
9 started including him in the communication and would sent it
10 do him.
11 Q Would it be fair to say that at no point in time
12 did either, you know, did Peter Ball ever inform you during
13 this process that he was no longer the owner of the
14 property?
15 A No, he did not.
16 Q Okay. Okay. Do you know approximately when
17 construction of the roof began at this property, if you
18 know?
19 A Well, construction began in what was the subject
20 of 73-12. It didn't start -- it was supposed to be all
21 started at one time and completed in six months was the
22 statement that was made. But, and I don't want to go with
23 that history because it's in the, it's about building a
24 garden wall that then became a retaining wall and happened
25 to line up with the deck that was built on top and we were

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1 never informed that he was starting the process. And none
2 of the pre-conditions of that construction were fulfilled,
3 including the planting plan or submitting a building permit.
4 So we called for a building permit and at that time it
5 became, and one was delivered one month after the fact. So
6 that deck was started, I believe, in 2011, November.
7 There was then a big lull because there was a
8 delay asking for vinyl siding to be used after the approval.
9 So we took the, that in this application and said, well,
10 they've reviewed it, the original position was made
11 holistically, so we're not going to come back and revisit
12 one element of that. At that time he wanted to also change
13 the color of the brick and we said that the color of the
14 brick is approved, but the vinyl siding is not. The sample
15 was, there was not --
16 MS. ROBESON: But I thought you said that they
17 could amend their application?
18 THE WITNESS: If it was holistically not, this
19 construction, the vinyl siding came in after we called him
20 on the partial construction he had started of the deck and
21 the shed. And so there was an attempt to, I want to phrase
22 this correctly, to get back at the Association for doing the
23 CCOC filing, or at least writing the letters. And so that -
24 -
25 MR. MOHAMMADI: Objection.

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1 THE WITNESS: Okay --
2 MS. ROBESON: Well, he, he's testifying. He can
3 testify as to his opinion. I'm going to, well, not his
4 opinion, his belief. Let me ask you something. Well, keep
5 going. Just continue the narrative.
6 THE WITNESS: The construction that was begun was
7 under the approval given conditionally on May 10, 2011, for
8 the entire project. He had already gone well past the
9 deadline for completion, leave alone the start and
10 completion in six months. So, and there had been starting
11 of the project without informing us, that he was starting
12 even a partial version. We had to go on that side, look at
13 what was not done correctly and so on. That is all part of
14 73-12.
15 So the request for the vinyl to be substituted
16 came in. We looked at it and we said we do not agree with
17 this thing because the whole thing is going to take 2 1/2
18 years again.
19 MS. ROBESON: Well, who looked at it?
20 THE WITNESS: Who? The board. The architecture
21 committee and the board looked at it without any, just
22 looked at the application and said this is going to open a
23 whole can of worms back up again. We need, we looked at it
24 holistically so he'll have to submit a complete drawing and
25 application.

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1 But it was already underway. He said he was going
2 to start the construction because there was a communication
3 on that telling him to complete the deck for the shared
4 permit, not to do any work on the shed down below, which he
5 had no permit for in 73-12 and also said please get a
6 complete building permit and start that as the process by
7 which you're including the board project. So we were still
8 on that track of moving along.
9 MS. ROBESON: Well, did you consider the vinyl
10 siding as an application?
11 THE WITNESS: No, it was not an application.
12 Sorry, it was an application, but it was not an application
13 to substitute one material and we said if you're going to do
14 it, you have to submit the whole thing.
15 MS. ROBESON: You mean all the drawings?
16 THE WITNESS: All the drawings, the entire thing.
17 Kind of just make one amendment of one, one item. And the
18 letter, I remember the phrase was the decision was made
19 holistically and the decision is still in effect. Okay. So
20 --
21 MS. ROBESON: So you felt it wasn't a complete
22 application?
23 THE WITNESS: It was not a complete application
24 because, as you know, the complete application requires a
25 complete set of drawings, requires material samples and only

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1 one element that got turned down.
2 MS. ROBESON: Okay. And that element was the
3 siding?
4 THE WITNESS: The siding sample.
5 MS. ROBESON: But no new elevations or --
6 THE WITNESS: No. No.
7 MS. ROBESON: Okay.
8 THE WITNESS: So your question was when did the
9 construction start on the roof? I don't have an exact date
10 because I was gone out of the country for awhile and then I,
11 I came back. I was pleased to see that the construction,
12 sorry, somewhere before that the building permit had, was
13 supplied to us with a complete set of drawings.
14 MS. ROSEN: All right. I'm going to go to about
15 September of 2013. I'm going to show you my, my original
16 complaint had some photographs in it. I don't remember off
17 the top of my head what exhibit my original complaint is,
18 but that's what I'm looking at.
19 MS. ROBESON: Okay. Let's --
20 MS. ROSEN: I've got so much in front of me.
21 MS. ROBESON: Hold on.
22 MS. ROSEN: I'm falling back.
23 MS. ROBESON: I know. It is I believe it's
24 Exhibit 4, CCOC complaint form with the following
25 attachments of summary and desired action.

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1 MS. ROSEN: Yeah, it would be the complaint, it's,
2 it's the actual complaint and the complaint form --
3 MS. ROBESON: Right.
4 MS. ROSEN: -- the one that has the, you know, the
5 attachments to it.
6 MS. ROBESON: Yeah.
7 MS. ROSEN: Okay.
8 BY MS. ROSEN:
9 Q Dr. Barr, I'm going to ask you to look at the
10 photographs that are attached to this complaint and describe
11 what these photographs depict.
12 A The photograph on Exhibit 19 --
13 Q Yeah, I guess we'll say the first, I guess if
14 you'll look at the first photograph, it's in the complaint.
15 A Yes. The first photograph shows a new
16 construction of the roof and the roof height, you can see
17 clearly it's higher than the chimney. And --
18 MS. ROBESON: Can you hold on one minute --
19 THE WITNESS: Sure.
20 MS. ROBESON: -- and allow me to get that picture
21 so I can make sure I understand? All right. Go ahead.
22 THE WITNESS: Yes. So this is a photograph of the
23 roof with the new construction roof truss of some kind, some
24 roof element that's higher than the chimney. And this is a
25 new element of roof that's kind of --

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1 MS. ROBESON: Right.
2 THE WITNESS: The second photograph is a closer
3 view of the roof construction again.
4 MS. ROBESON: Right. Now does that show, the
5 second photograph, where is the existing roof?
6 THE WITNESS: Yeah, the next photograph shows --
7 MS. ROSEN: No, she's asking about the second
8 photograph.
9 THE WITNESS: Yeah, the second photograph, I
10 couldn't tell myself, but --
11 MS. ROBESON: Okay.
12 THE WITNESS: -- the other witness can shed light.
13 MS. ROBESON: All right.
14 THE WITNESS: And I would say the same is for the
15 third one. What is very clear in these photographs is that
16 the construction is much higher than the roofs. It's
17 actually higher than the chimney. No drawings --
18 MS. ROBESON: Okay. These are Exhibit 9A, B, C,
19 D, so just for the record, all right.
20 THE WITNESS: Oh, I see, yes.
21 MS. ROBESON: So you're saying in 9, 9C, which is
22 the third photograph, that the existing roof, the eave of
23 the existing roof is shown in the foreground of the picture?
24 THE WITNESS: Yeah. I would draw the, that, some
25 --

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1 MS. ROBESON: Oh, okay.
2 THE WITNESS: -- let the person who took the
3 photograph say that.
4 MS. ROBESON: All right. Yeah.
5 THE WITNESS: That's what I believe it is, but I
6 don't want to compromise if I say something, say the wrong
7 thing.
8 MS. ROBESON: Yes, that's fine.
9 THE WITNESS: And the same is true for the next
10 photograph.
11 MS. ROBESON: Okay.
12 THE WITNESS: What it shows pretty clearly is on
13 the very first photograph is that it's clearly taller than
14 the chimney.
15 MS. ROBESON: Okay.
16 THE WITNESS: And I remembered that the drawings
17 never had any roof taller than the chimney.
18 MS. ROBESON: Okay.
19 BY MS. ROSEN:
20 Q So you're referring to the elevation drawings made
21 --
22 A The elevations drawings.
23 Q -- for the --
24 A -- of the approved --
25 Q -- applications?

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1 A Right. E, photograph E shows the roof stepping
2 up. You can see the original, the roof in the previous one
3 is kind of poking through the trees and then the one next to
4 it is the one that is the original roof, the point to which
5 the roof, the roof over the boxes would come and meet that
6 ridge. And then the one to the right of that is the new
7 roof.
8 F, I'll let Lynn talk to that.
9 Q Okay.
10 A This is all taken from the back. But you can see,
11 I can talk to this too. The middle picture, the middle of
12 the picture, the center portion shows the roof ridge there.
13 And that was the original roof height. And to the left of
14 that is the new roof which is towering above it. And
15 further to the back would be the chimney that was being,
16 that was shorter even than the roof. And this is the back
17 of the box that you're seeing in the foreground left.
18 (Exhibit No. 79 was marked for
19 identification.)
20 Q I would ask you to identify a document which I'm
21 marking as Plaintiff's Exhibit 79. If you could tell us
22 what this is about.
23 A Do you need the background for this letter, this
24 letter written by me on September 15th?
25 MS. ROBESON: Well, first just, just --

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1 THE WITNESS: Yeah, I find the letter is letter
2 written by me on September 15, 2013.
3 MS. ROBESON: Okay. Any objections, Mr.
4 Mohammadi?
5 MR. MOHAMMADI: No.
6 MS. ROBESON: Okay. It will be letter from Barr
7 to the Balls dated September 15, 2013.
8 THE WITNESS: And it starts by saying what took
9 place. There were numerous emails and communication with
10 members of the home owner's association from all around the
11 community regarding the construction at the above premises.
12 Vice President Peter Gibson met with Mr. Ball onsite on
13 September 10 and came back and said it seemed to him that
14 things were being done, but nothing on the roof was
15 discussed. The roof height was not discussed.
16 September 12, the, I asked Pete Gibson to set up a
17 meeting because now that email is saying roof trusses are
18 being laid on top of existing roofs. And so we arranged a
19 meeting onsite with Peter and Michael Ball, to Peter, I mean
20 Pete Gibson set it up, and going there, Lee Alfer (phonetic
21 sp.), the chair of the architecture committee; Pete Gibson,
22 the vice president; and myself. And we took the drawings
23 with us and spent more than an hour in discussion with Peter
24 Ball. Michael Ball was not present.
25 And we discussed, and I will just summarize this

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1 for you. We had received a dozen complaints, over a dozen
2 complaints from HOA members. The most striking of these
3 complaints was that the roof line was being built higher
4 than the existing roof line, that roof trusses were being
5 laid on top of existing roofs. That the roof of the
6 addition over the garage was projecting well above the
7 existing roof line and extending higher than the chimney.
8 We were met by Peter Ball and we were told that
9 the owner, Michael Ball, was not available. The onsite
10 review showed that the construction of the new roof was
11 substantially higher than that shown on the HOA approved
12 plans. The HOA approved drawings submitted by you show the
13 height of the existing chimneys. It also shows the roof
14 over the left half of the original house where no work was
15 proposed.
16 At the numerous HOA meetings and discussions,
17 neither new nor your architect discussed raising the
18 existing roof where no work was proposed or discussed
19 increasing the height of the chimneys.
20 MR. MOHAMMADI: Your Honor, just objection. The
21 letter stands for itself. I don't know if he needs to read
22 it every time, but --
23 MS. ROBESON: Why don't you just summarize --
24 THE WITNESS: I'm reading the important pieces
25 then.

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1 MS. ROBESON: Well, I guess what I'd like you to
2 do is summarize the, your discussion and also what you saw.
3 THE WITNESS: Yes. This was the discussion that's
4 summarized in the letter and I just want to read the two
5 sentences because that will take longer to describe.
6 MS. ROBESON: No, I, I can read it.
7 THE WITNESS: Okay.
8 MS. ROBESON: It says the roof trusses were
9 higher.
10 THE WITNESS: Right.
11 MS. ROBESON: Was that your observation when you
12 were out there too?
13 THE WITNESS: And there was a discussion about it
14 and it was very clear as to how it was set up. So if you
15 read the last paragraph from the bottom, it talks about
16 setting up a datum with an existing room that does not
17 change and the one next to it had a truss laid over it that
18 was naturally higher and the third one is higher still. And
19 the key element I want --
20 MS. ROBESON: And when you say the first, the
21 second and the third --
22 THE WITNESS: Third. Okay.
23 MS. ROBESON: -- which --
24 THE WITNESS: I'm going from left to right.
25 MS. ROBESON: -- parts -- okay. So the one over

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1 the, I guess it's a study or an office?
2 THE WITNESS: I know the one over the foyer was
3 the first one that was higher --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- than the existing roof.
6 MS. ROBESON: All right.
7 THE WITNESS: Because the foyer was constructed by
8 laying a truss over it rather than normal stick building as
9 you would a 10-foot bump out. And the one next to that to
10 the right over the garage was the highest one. So looking
11 at it from the front on the left is the non-renovated arc of
12 the roof. It shows the existing roof line.
13 MS. ROBESON: Yes.
14 THE WITNESS: The drawing showed that consistently
15 across. The foyer itself was stepping up --
16 MS. ROBESON: Okay.
17 THE WITNESS: -- because of the truss and --
18 MS. ROBESON: The --
19 THE WITNESS: -- to the right. Over by the garage
20 it stepped up even higher. And what we had requested him to
21 do, and I just want to read this, you are hereby asked to
22 proceed immediately to remedy and bring the building back
23 into conformity with the approved HOA drawing, underlined.
24 BY MS. ROSEN:
25 Q And did, and did Mr. Ball do that?

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1 A No, he did not. What he did was he put a blue
2 tarp over it almost immediately and let it sit like that for
3 6 1/2 months.
4 Q And did there come a point --
5 MS. ROBESON: Okay.
6 MS. ROSEN: -- in time when he resumed
7 construction?
8 THE WITNESS: Yes, he did resume construction.
9 BY MS. ROSEN:
10 Q And when was that?
11 A That was in the latter part of March 2014.
12 Q And did anything significant happen shortly before
13 they resumed construction?
14 A Yeah, on March 21 the order came down from CCOC on
15 73-12 or whatever the number is. And within three days of
16 that, three to four days of that, this project which had
17 laid dormant through winter with a big tarp over it,
18 suddenly was a hive of activity and no correction was made.
19 It was being consolidated in its higher condition and was
20 being pushed to finish.
21 Q Thank you.
22 (Exhibit No. 80 was marked for
23 identification.)
24 BY MS. ROSEN:
25 Q I'm going to ask you if you can identify a

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1 document marked as Exhibit 80 and tell us what that is?
2 A This is the roof line December 2012 of the house
3 taken from the rear.
4 Q Okay. So that was before construction of the
5 roof?
6 A Before construction started. It shows the flat
7 roof in the foreground of the big box.
8 MS. ROBESON: Okay. So do you have any
9 objections, Mr. Mohammadi?
10 MR. MOHAMMADI: Authenticity. I don't know who
11 took it.
12 MS. ROSEN: Well, I have another witness who, an
13 eyewitness here who took it would be Ms. Gowen and she will
14 testify that she's --
15 MS. ROBESON: Okay. I'm going to let it in --
16 MS. ROSEN: -- taken all these photos.
17 MS. ROBESON: -- subject to being authenticated by
18 Ms. Gowen. So this is roof line of 12/2012.
19 MS. ROSEN: And Ms. Gowen took all the photographs
20 here, so all the photographs I'm showing I will have, I can
21 have her authenticate all of them. And I'm in the second
22 photograph.
23 THE WITNESS: This shows that the existing chimney
24 and the original roof line.
25 BY MS. ROSEN:

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1 Q Pre-construction?

2 A Pre-construction. But it shows other non-

3 complying pieces of this construction as well.

4 Q Okay.

5 A Like the deck.

6 (Exhibit No. 81 was marked for

7 identification.)

8 BY MS. ROSEN:

9 Q Okay. I'm going to ask would you identify a

10 document marked as Exhibit 81. Tell the Hearing Examiner

11 what --

12 A Exhibit, Exhibit 81 is very clearly the original,

13 the existing roof with a looming, large, over structure

14 which is a new roof, Exhibit 1, Exhibit 81, 81, page 1, 81.

15 MS. ROBESON: So is this in the front? I mean

16 where is --

17 THE WITNESS: This is --

18 MS. ROBESON: -- this roof?

19 THE WITNESS: This is seen from the rear, but it's

20 on the front, the construction is on the front.

21 MS. ROBESON: Okay. Photo of front roof

22 construction. Mr. Mohammadi -- did you take this picture or

23 did Ms. Gowen?

24 THE WITNESS: Ms. Gowen.

25 MS. ROSEN: Ms. Gowen took them all.

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1 MS. ROBESON: Okay. Same, we'll do the same --

2 MS. ROSEN: But I've indicated, the photos that

3 I'm using now are, were taken by Ms. Gowen and she can

4 authenticate all of them.

5 MS. ROBESON: Okay.

6 MS. ROSEN: She took the pictures.

7 MS. ROBESON: So this will be, 81 will be photo of

8 front roof.

9 THE WITNESS: Of the roof, yeah, the roof in the

10 front seen from the rear.

11 BY MS. ROSEN:

12 Q Okay. And the next picture?

13 A It shows how much higher on the right-hand side

14 the chimney is visible, I think.

15 Q Okay.

16 A And it shows the roof being much higher than that.

17 And this is the roof, I believe, on the top of the garage.

18 Q Okay. And the chimney is left, I'm just looking,

19 there's a lot of leaves in the picture --

20 A Yeah.

21 Q -- on the right-hand side, it looks like a grayish

22 kind of a --

23 A Yeah, little cylinder.

24 Q Okay. And that's the chimney.

25 A Uh-huh.

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1 MS. ROBESON: What's the -- well, I'll ask Ms.

2 Gowen. All right.

3 MS. ROSEN: I'm marking as Exhibit 82 is a group

4 of photographs. Those were all taken by Ms. Gowen. I'll go

5 through them with Dr. Barr.

6 MS. ROBESON: Can you give me a description?

7 THE WITNESS: Yes, this is --

8 MS. ROBESON: Oh, I'm sorry, wait one second.

9 MS. ROSEN: Photographs of --

10 MS. ROBESON: Are these all taken in April of

11 2014?

12 THE WITNESS: Yes.

13 MS. ROSEN: Oh, wait. No. They're taken, some of

14 them, they're labeled. Each photograph is labeled.

15 MS. ROBESON: Okay. Then I'm --

16 MS. ROSEN: Some --

17 MS. ROBESON: -- going to mark the first page A,

18 B, C, D.

19 MS. ROSEN: Okay. I'll just go ahead and do that.

20 Some were taken April of 2014 and some were in May. Okay.

21 I have labeled them A through O.

22 MS. ROBESON: Okay.

23 BY MS. ROSEN:

24 Q And, Dr. Barr, if you could go through these

25 photographs and indicate from your testimony which one

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1 you're looking at, you know, which page --

2 A Yes.

3 Q -- A, B, C and basically describe what, describe

4 what is at the property, the work that's been done and if

5 it's non-conforming, why it's non-conforming.

6 A This is Exhibit 82A on page 1. And the brick-

7 faced building that you see second in from the left is the

8 existing building with the existing ridge height and the

9 chimney showing higher than the ridge. You can see it on

10 the lower photograph, quite clearly and even the upper one.

11 The next block, it steps forward.

12 MS. ROBESON: Wait. When you say block --

13 THE WITNESS: Next block, oh, I'm sorry.

14 MS. ROBESON: -- are you looking at the --

15 THE WITNESS: I'm going from left to right. I'm

16 on --

17 MS. ROBESON: Oh, I see, the same page.

18 THE WITNESS: I'm just, I'm trying to show you the

19 four --

20 MS. ROBESON: The next section.

21 THE WITNESS: Yes, the next --

22 MS. ROBESON: I understand. Okay.

23 THE WITNESS: That's the one over the foyer and is

24 higher than the existing ridge roof of the existing ridge.

25 MS. ROBESON: Uh-huh.

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1 THE WITNESS: Higher still is the addition over
 2 the garage.
 3 MS. ROBESON: Uh-huh.
 4 BY MS. ROSEN:
 5 Q I might ask you to just give me, you previously
 6 identified the model of home that, the original model of the
 7 home of Mr. Ball. In your opinion, you know, based on your
 8 observation, is this what is shown here, look anything like
 9 the original model?
 10 A No, it does not and, unfortunately, it even looks
 11 like four townhouses slapped together, each with higher and
 12 higher stepping roofs.
 13 Q Does this --
 14 A So this is --
 15 Q -- is there --
 16 A Uh-huh.
 17 Q Is there any other house in this community that
 18 looks anything like this?
 19 A No, not at all.
 20 Q Have you ever in your, and you're an architect,
 21 have you ever seen any single family home that looks like
 22 this?
 23 A I've never seen a single family home trying
 24 desperately to look like four townhouses. Normally four
 25 townhouses try to look like a mansion and masquerade their

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1 massiveness by trying to look like a single-family
 2 residence. And part of the reason for that is real estate
 3 values. The real estate values on townhouses individually
 4 may be higher. Collectively, they'd be higher, but the look
 5 is not what people want.
 6 Q Okay. And your community is located in what town?
 7 A Potomac, Maryland.
 8 Q Okay. And what is the average home price in your
 9 community, if you know?
 10 A In our neighborhood it's about \$950,000 now.
 11 They've gone over a million on a few houses.
 12 Q All right. I guess you can continue the, your, if
 13 you can --
 14 A Well, on this one from --
 15 Q Photograph B?
 16 A Yeah, photograph B, you can see the chimney,
 17 existing chimney on the left and the new construction over
 18 the garage towering over it right behind it. Exhibit C is,
 19 again, from the rear and you can see the blue top on the
 20 upper photograph. You can see the blue top stepping higher
 21 and higher, quite a ways up from the ridge line.
 22 And I think that theme carries on. You can see it
 23 in the next photograph again on April 2nd. The blue top is
 24 way higher than the roof line and the chimney to the left of
 25 it. And on photograph D, the front view, the problem is

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1 exacerbated not just because the, in an elevation, the
 2 drawings show the, the, the original drawings show the flat,
 3 single line for the roof ridge. Now we have a condition
 4 which is stepping up in height and also stepping forward.
 5 So the fore-shot gives, makes it look even taller. So from
 6 the street view, it appears even higher than it really is
 7 and from the back you can see that clearly that it is the
 8 two blue tops over the garage extension in the back and it's
 9 higher than the roof.
 10 And on E, this is the frantic activity on the
 11 construction in March and May and April.
 12 Q Okay. Actually, I'd like you to look at E --
 13 A Oh.
 14 Q -- the first photograph.
 15 A Yeah, E shows the garage roof as the backdrop of
 16 the highest one, the foyer roof next to it and in the lower
 17 photograph taken from the street side you can see very
 18 distinctly and clearly the existing roof is the one on the
 19 extreme left immediately to the right of the chimney and
 20 next to that is the roof over the foyer, very clearly higher
 21 than the existing roof. And then the third element over the
 22 garage, the extension is the highest point going across.
 23 The photograph on page F, on F shows the
 24 distinctive nature of this creation which is the four
 25 townhouses. They step forward and step up. And this is the

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1 view from the major entrance to our neighborhood, Crossing
 2 Creek Road, one of two major entrances. And no such
 3 construction or look exists in our neighborhood and I would
 4 be hard-pressed to find one in all of Potomac because that's
 5 a single-family house masquerading as in G as a townhouse
 6 cluster.
 7 H is similar view showing the construction and its
 8 result. And I shows a missing window where one was supposed
 9 to have been put in on the right side.
 10 Q Missing window that was supposed to be put in,
 11 that would be --
 12 A In the plans --
 13 Q -- in the plans?
 14 A -- according to the plans, sorry, I should have
 15 been more clear. According to the plans as a window and so
 16 when a window is missing, that's a major event.
 17 MS. ROBESON: You mean on the upper portion of the
 18 --
 19 THE WITNESS: On the upper portion where you see
 20 the Tyvek.
 21 MS. ROBESON: -- addition? Yes.
 22 THE WITNESS: Yes. And when a window is missing,
 23 the window is like the eye on a face. It's like there's no
 24 eye socket. I'll let Lynn talk about the next --
 25 MS. ROBESON: Well, that's, is that just Tyvek

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1 covering that? I mean could --
2 THE WITNESS: I'll let --
3 MS. ROBESON: All right. You --
4 THE WITNESS: -- Lynn go and talk to that.
5 MS. ROBESON: - you, yeah.
6 THE WITNESS: I know it's not so, but Lynn would
7 be the authority on that --
8 MS. ROBESON: I guess my question was was there
9 some kind of fill-in drywall or some wall?
10 THE WITNESS: Not as far as I know. She can tell
11 you that.
12 MS. ROBESON: All right.
13 THE WITNESS: And --
14 MS. ROBESON: K.
15 THE WITNESS: -- it looks like a U to me, and
16 photograph K is, again, more of the same. It's about as far
17 as you can get from the approved drawing.
18 BY MS. ROSEN:
19 Q Are there any ones that you're not familiar or
20 comfortable with?
21 A No, not that I'm comfortable. I'm saying the same
22 thing.
23 Q Yeah.
24 A It's a step, one is the, on the L, it's the view
25 from the street looking up the driveway. The other is from

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1 the side and the rear, the lower one is from the rear and
2 side. And this is another set of photographs from May 2014
3 where the top is still in place from the rear, I guess. And
4 so is N and so it's O.
5 Q Uh-huh.
6 MS. ROBESON: So looking at the lower floor plan
7 that was approved by the board, there is a progression --
8 MS. ROSEN: One second. Let me just --
9 MS. ROBESON: It's Exhibit 77.
10 MS. ROSEN: Okay.
11 MS. ROBESON: There is a progression of setbacks
12 so that the garage is --
13 MS. ROSEN: Which page are we looking at in there?
14 MS. ROBESON: On 77. I'm looking at the lower
15 floor plan which is the --
16 THE WITNESS: Page 3, yeah.
17 MS. ROBESON: So I understand, I want to make sure
18 I understand your point. There's a progression of setback,
19 the least setback is the garage, then there's a second tier
20 of the expanded foyer and then there's a second tier of the
21 living room and then there's another tier of what's labeled
22 as the new office. But what you're saying is, so there is a
23 progression of step back from, but what you're saying is the
24 roof, because the roof heights exceed what was permitted --
25 THE WITNESS: Right.

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1 MS. ROBESON: -- you get an appearance of a two-
2 story or, well, it's actually two stories above grade and
3 then a story below, but you get an appearance of a solid
4 line stepping back, is that what you're saying, similar to
5 townhouses?
6 THE WITNESS: Right. And what you're also
7 noticing is that's why there was such a ruckus about the
8 additions on either side, one on the left-hand side. What's
9 now marked the office was a sticking point when the work was
10 tied three, three and the street Crossing Creek is on the
11 left-hand side. That's where the photographs are taken.
12 More --
13 BY MS. ROSEN:
14 Q What is significant about Crossing Creek?
15 A Crossing Creek is one of the two main entrances
16 into our property and it's the second house down the side
17 lane, down that street, and it's on a higher point, so it's
18 very prominently displayed. Most people did not want that
19 bump out and I did, I voted against it and made it a three-
20 three with a tie and then the promise was made that they
21 would be fixing all the top, but it had been exposed for
22 almost 10 years on the back roof behind the flat roof and
23 set as a construction site for so long.
24 I saw the opportunity with the promise that it
25 will all be wrapped up in this construction and completed in

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1 six months as would the, the, my changing the rule to make
2 this happen. So we continued with this construction site
3 eternally. By that, I mean going on for 10 years.
4 The point I'm making is the step back in plan is
5 not the issue. Though it deviates from the model, it still
6 would not have been as --
7 MS. ROBESON: You mean it deviates in the amount -
8 -
9 THE WITNESS: From the --
10 MS. ROBESON: -- of step back?
11 THE WITNESS: No, the original had only one step,
12 was the garage, original model, original model.
13 MS. ROBESON: Oh, oh, I see what you're saying. I
14 --
15 THE WITNESS: So the Fair Hill model was a
16 straight, flat face with the garage bumped out and --
17 MS. ROBESON: Protruding?
18 THE WITNESS: -- and the living room portion
19 sticking out just a little bit. The exacerbation is because
20 not only is it stepping forward, it's stepping higher as you
21 go. So when you look at it, it appears much higher in a
22 photo shopped picture than the real roof height if you
23 would, an elevation drawing. And none of that stepping up
24 was in the approved drawings, the elevation.
25 MS. ROSEN: Okay.

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1 MS. ROBESON: All right. But --
2 MS. ROSEN: Now do you want me to just mark them
3 before I bring it up to you?
4 MS. ROBESON: Okay. If you give them to me, I can
5 mark them.
6 MS. ROSEN: Okay.
7 MS. ROBESON: That speeds things up.
8 MS. ROSEN: This one is 83. I guess we'll just --
9 MS. ROBESON: Wait. I have 81 --
10 MR. MOHAMMADI: I have 83 as well.
11 MS. ROBESON: Wait a minute. 82, yeah, that's the
12 A through O. This is 83. And how do you describe these?
13 THE WITNESS: They're captioned at the bottom and
14 effectively starting with a nonconforming roof --
15 MS. ROSEN: And they're just --
16 THE WITNESS: -- and the missing windows.
17 MS. ROBESON: So these are more photos of --
18 THE WITNESS: The non-conformities.
19 MS. ROSEN: The non-conformities, I guess you can
20 say.
21 MS. ROBESON: Okay, alleged, okay.
22 MS. ROSEN: Alleged non-conformities.
23 MS. ROBESON: Photos of alleged non-conformities.
24 (Exhibit No. 83 was marked for
25 identification.)

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1 MS. ROBESON: And when we go through, this will be
2 A, A through H.
3 MS. ROSEN: Okay.
4 THE WITNESS: And here, if we take our eye off the
5 increasing roof height and look at the elements that are
6 there, there's a missing window in that upper level, as I
7 said.
8 MS. ROBESON: Uh-huh.
9 THE WITNESS: The balcony above the right garage
10 door is not per the approved plan on the second story
11 addition, the balcony there that is not built like it was to
12 be, like it was listed. Non-complying front entry door,
13 window system, that's in the middle of the picture, lower,
14 lower middle, and detail around the windows will not comply,
15 window size and then styles do not comply.
16 MS. ROBESON: Which, which page are you --
17 THE WITNESS: I'm on B.
18 MS. ROBESON: Okay.
19 THE WITNESS: So now I'm looking at all the detail
20 that makes up the house's composition.
21 MS. ROBESON: I understand. You're on the
22 supplemental --
23 THE WITNESS: Yes. And the fascia sizes, meaning
24 the end of the roof, the board that goes vertically along
25 that are of different sizes. And the overhangs do not

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1 comply and the roof line differences, of course, always
2 there. That's the main thing. And the chimney wrapped in
3 roofing papers. I think C says the same thing. I'll let
4 Ms. Gowen do the honors on this because I'll be just saying
5 the same thing that's printed up there, and I know it's the
6 same story.
7 MS. ROSEN: Okay. I know.
8 THE WITNESS: Unless, unless you want me to.
9 MS. ROSEN: That's okay. I'll have Ms. Gowen
10 testify as to these.
11 THE WITNESS: I agree with what is written there.
12 MS. ROSEN: Okay.
13 THE WITNESS: I don't want to not comment because
14 I don't know it. I just think --
15 MS. ROSEN: Okay.
16 THE WITNESS: I've been saying the same thing 50
17 times now.
18 MS. ROSEN: Okay. Exhibit 84.
19 MS. ROBESON: You don't have to, I'll go ahead and
20 number them.
21 MS. ROSEN: And I know your handwriting is better
22 than mine.
23 MS. ROBESON: Well, my secretary's handwriting.
24 Okay. So --
25 THE WITNESS: These are September 2013 photographs

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1 --
2 MS. ROBESON: These are, wait.
3 THE WITNESS: August --
4 MS. ROBESON: This is Exhibit 84.
5 THE WITNESS: 84?
6 (Exhibit No. 84 was marked for
7 identification.)
8 MS. ROBESON: And are these more photos of non-
9 compliance?
10 THE WITNESS: Yes. Now they're going to be
11 elements within the building on the elevations.
12 MS. ROBESON: Okay.
13 THE WITNESS: August 2013 --
14 MS. ROBESON: So these -- just a second.
15 THE WITNESS: Yes.
16 MS. ROBESON: These are photographs of elements?
17 THE WITNESS: Yeah, building elements, not just
18 the roof.
19 MS. ROBESON: Okay. Go ahead.
20 THE WITNESS: So August 2013, the first photograph
21 on A shows a window on the side of the open window, off the
22 open shed below and the open shed below will be talked about
23 in greater detail by Ms. Gowen. On September 2013, there's
24 a photograph of the roof truss, as well as the deck in the
25 back. So --

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1 MS. ROBESON: Now the deck, that's the lattice
2 that was part of 73-12, correct?
3 THE WITNESS: I am not sure, so I would --
4 MS. ROBESON: Okay.
5 THE WITNESS: Yeah.
6 MS. ROBESON: Well, maybe we should have, instead
7 of having him testify to this, maybe it's better to --
8 THE WITNESS: Yes.
9 MS. ROBESON: -- wait and have Ms. Gowen just
10 explain --
11 MS. ROSEN: Yes, I'll have Ms. Gowen, you know, go
12 into --
13 MS. ROBESON: Yes.
14 MS. ROSEN: -- more of the details because those
15 her, those are her typed of comments on the bottom of those
16 various photos.
17 MS. ROBESON: Okay.
18 MS. ROSEN: So I'll let her --
19 MS. ROBESON: All right.
20 MS. ROSEN: -- deal with that. Okay. Court's
21 indulgence one second.
22 MS. ROBESON: How many more exhibits do you have?
23 MS. ROSEN: Yes, this is 85. Not too many more.
24 But there's some, there's some that I may or may not want to
25 use, but I'm just trying to go through the ones I have here.

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1 MS. ROBESON: Okay.
2 BY MS. ROSEN:
3 Q Okay, Dr. Barr, could you identify that document
4 for us?
5 A Yeah, this is an email exchange between Tonya
6 Brunnell, who was serving as the architect on this project,
7 and myself and the board.
8 Q Okay.
9 A So Tonya initially says at the bottom of the
10 thing, July 20, 2010, addressed to Jeffrey Williams and the
11 rest of the board, Dear Raj and members of the board, thank
12 you for the third architectural committee meeting
13 considering the board residents. He is willing to forfeit
14 the third story and suggested for a roof area instead.
15 Comment was made to use a low slope roof, however, further
16 review using a low slope, that's when the 3/12 discussion
17 happens and she's now confirming what he wrote in his letter
18 that we looked at earlier and the second part of that
19 paragraph says, and I'll just paraphrase it, a 3/12 pitch
20 should be higher, would be quite high if it hits the
21 existing upper wall almost at five feet, same statement that
22 he made, so that the point of the roof geometry he would
23 like to use, it's not so different any he wants to go up to
24 meet it at the ridge.
25 MS. ROBESON: Okay. Do you have any objection,

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1 Mr. Mohammadi?
2 MR. MOHAMMADI: As to the email, no.
3 MS. ROBESON: Okay.
4 MR. MOHAMMADI: What are we calling this?
5 MS. ROBESON: This is email from Barr to Bruno
6 dated July 24, 2010.
7 MS. ROSEN: And it's actually, it's email from --
8 because the email from Bruno to board --
9 MS. ROBESON: Below it?
10 MS. ROSEN: Yeah, below it.
11 MS. ROBESON: Okay. Emails between --
12 MS. ROSEN: Between Barr and, between Bruno and
13 board.
14 MS. ROBESON: Well, I'm going to say Barr at the
15 moment.
16 BY MS. ROSEN:
17 Q Now do you, do you consider the --
18 MS. ROBESON: 2010?
19 MS. ROSEN: Yes. Okay.
20 MS. ROBESON: Are those member of the board, Mr. -
21 -
22 THE WITNESS: Yes.
23 MS. ROBESON: -- Barr?
24 THE WITNESS: And, and to the board?
25 MS. ROBESON: And all the cc's are members of the

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1 board?
2 THE WITNESS: Yeah, and she writes, mine is the
3 response to her, but previously she had just spoken about
4 it, so the first email is from her, July 20, to the board
5 and it's addressed to our general members of the board.
6 MS. ROSEN: I'll just clarify and just, when we
7 have, these are the individual-named persons --
8 THE WITNESS: Yeah, and --
9 MS. ROSEN: -- so --
10 THE WITNESS: And Jeffrey Ross Williams was the
11 president at the time.
12 BY MS. ROSEN:
13 Q At the time? Okay. And then Irma Spencer?
14 A And Irma Spencer is the architecture chair and a
15 member of the board. Jamie Dietz is secretary. Alan Balloy
16 (phonetic sp.) was a member of the board; Carl Bacon, member
17 of the board; Andy Zuckerman, Nancy Steinberg, George Lalos
18 (phonetic sp.) and Mr. Gibson with a different email, all
19 board members.
20 MS. ROBESON: All right.
21 BY MS. ROSEN:
22 Q How many people are on your board?
23 A Nine.
24 Q Okay.
25 MS. ROBESON: Okay. Then I will call it emails

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1 between Mr. Barr and members of the board. I mean Ms. Bruno
2 and members of the board, July 2010.
3 BY MS. ROSEN:
4 Q Now as a board member, did, were complaints ever
5 made to you, either you individually or to the board
6 primarily about why other homeowners, about the, about the
7 construction on Mr. Ball's property?
8 A Yeah, I think there was many more made to others
9 because I was just a member of the board at the time. And I
10 should also state at that time Tonya, when she wrote that
11 email, was a member of the board. Yes, there's complaints a
12 plenty.
13 Q Okay. And what were those, the nature of the
14 complaints that you received?
15 A Ongoing construction, the debris, building
16 materials in visible sight, the never-ending construction,
17 the fact that it was always non-compliant and I think there
18 were a lot of chatter on the lists of about --
19 MS. ROBESON: About what?
20 THE WITNESS: There was a lot of chatter on the
21 lists of, that we have a Yahoo group.
22 MS. ROBESON: Okay.
23 THE WITNESS: That's where most of the action was
24 taking place. And all members of the board were getting
25 complaints. I, I didn't get a whole lot. I am not on the

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1 list server.
2 BY MS. ROSEN:
3 Q Why don't I turn down to the supplement to the
4 complaint which I'm going to put in front of you just to
5 make things easier. And look at, let's go down the listing
6 of them --
7 A Okay.
8 Q -- as to what the, what the deviation is from the
9 existing plan and what it is that the association wants the,
10 wants the CCOC to --
11 MR. MOHAMMADI: Court's indulgence at this point -
12 -
13 MS. ROSEN: Yes.
14 MR. MOHAMMADI: -- if I may?
15 MS. ROSEN: Sure. Absolutely.
16 MR. MOHAMMADI: Thank you.
17 MS. ROBESON: Okay. Go ahead.
18 MS. ROSEN: Okay.
19 THE WITNESS: So I'll go down, down the list. On
20 the first item, the open shed, and the second item, enclosed
21 shed at laundry room, I'll let Ms. Gowen handle that one.
22 MS. ROBESON: Okay.
23 THE WITNESS: She knows more about it. The brick
24 facade in front of the original house should be corrected to
25 match the style around the windows, the brick molding around

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1 it.
2 MS. ROBESON: Now I don't --
3 THE WITNESS: It's the --
4 MS. ROSEN: Okay.
5 MS. ROBESON: Go ahead.
6 BY MS. ROSEN:
7 Q And can you explain what, what was approved in
8 terms of the style and what he put there?
9 A Yes. The drawing does not show brick molding
10 around --
11 MS. ROBESON: Around the windows?
12 THE WITNESS: Around the windows, on top of it,
13 especially with a keystone. So let me, I'll get to the ones
14 that I will.
15 MS. ROBESON: And which section is that? Oh, in
16 the foyer?
17 THE WITNESS: All around the house there's a knee
18 wall, a wall that comes up that's brick-faced.
19 MS. ROBESON: Right.
20 THE WITNESS: And --
21 MS. ROBESON: Oh.
22 THE WITNESS: -- it wraps around and it's various
23 heights. They're not one consistent height.
24 MS. ROBESON: Under, on the existing house?
25 THE WITNESS: I'm talking about the knee wall now,

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1 not the window.
2 MS. ROBESON: No, I know.
3 THE WITNESS: Yes.
4 MS. ROBESON: But I'm talking about, you're saying
5 there's a knee wall on the existing house?
6 THE WITNESS: No, on the proposed.
7 MS. ROBESON: On the proposed?
8 THE WITNESS: Yes.
9 MS. ROBESON: And I'm showing you, can you
10 approach for a minute? I'm showing you what is Exhibit 77
11 and I'm showing you the page label. It's front elevation.
12 Can you tell me what you're referring to?
13 THE WITNESS: This, this here, this is the knee
14 wall.
15 MS. ROBESON: Okay. Because --
16 THE WITNESS: This is a brick facing.
17 MS. ROBESON: All right. Because I don't see that
18 as -- all right. That's brick then?
19 THE WITNESS: That's brick.
20 MS. ROBESON: Now is that knee wall, well, when
21 it's there, is this the knee wall?
22 THE WITNESS: I don't see one in the drawing here.
23 And this is all brick.
24 MS. ROBESON: Okay. That's helpful for me.
25 THE WITNESS: The knee wall initially used to

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1 prevent water from splashing out.
2 MS. ROBESON: Right. Right. But I didn't see it.
3 When you --
4 THE WITNESS: Yeah, it's not on --
5 MS. ROBESON: -- you said all around the house --
6 THE WITNESS: Yeah.
7 MS. ROBESON: -- I don't see that.
8 THE WITNESS: All around the house wherever, they
9 used it, and it shows up in photographs.
10 MS. ROBESON: Do you have any objection if I mark
11 this --
12 THE WITNESS: No, no.
13 MS. ROBESON: -- brick knee wall with an arrow?
14 THE WITNESS: They should have been marked with
15 arrows, I know.
16 MS. ROBESON: They should have been because I, I
17 have trouble, and I've done a lot of these cases. Okay.
18 Here is the brick knee wall again.
19 THE WITNESS: That's what I mean by that.
20 MS. ROBESON: I have trouble with this elevation.
21 THE WITNESS: Uh-huh.
22 MS. ROBESON: Okay. Do you have any objection,
23 Mr. Mohammadi?
24 MR. MOHAMMADI: To you writing on it? No.
25 MS. ROBESON: Or, or do, is this not the brick

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1 knee wall in your opinion?
2 MR. MOHAMMADI: I'll cross him on that.
3 MS. ROBESON: Okay. All right. So, well, we'll
4 put it this way, this is what, what I've marked is what
5 you're referring to as the brick knee wall?
6 THE WITNESS: Correct.
7 MS. ROBESON: All right.
8 MS. ROSEN: And what I will do is I will go ahead
9 and try to pull that drawing out at the same time while he's
10 testifying. That would give the question, it might be
11 easier to kind of, right here.
12 THE WITNESS: And on bullet three --
13 MS. ROSEN: Okay. Well, number, number three is
14 the brick veneer correcting the veneer around the windows.
15 THE WITNESS: Yes, it also goes on to discuss the
16 windows.
17 MS. ROBESON: What's wrong with the brick veneer?
18 THE WITNESS: I'll let Ms. Gowen go deeper into
19 it, I don't want to take up time saying twice. There are
20 windows that need to be replaced to match the approved plans
21 and on four, that was the brick knee wall we just talked
22 about, so they can match what was approved and be consistent
23 across the building.
24 On six, all new windows and doors should match the
25 approved plans. On six --

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1 BY MS. ROSEN:
2 Q Have new, have new windows and doors been
3 installed that don't match the approved plan?
4 A Yes.
5 Q Okay.
6 A Yes. That's why the comment is made.
7 MS. ROBESON: In what way?
8 THE WITNESS: They are the wrong, different size,
9 different style and different proportion. On the six,
10 addition with the garage on the right side to correct the
11 setback, one for six inches. Actually, what I'm going to do
12 is just defer to her. She can go over this.
13 MS. ROBESON: That would be best.
14 MS. ROSEN: Okay. All right.
15 MS. ROBESON: Because the, you know, if she can
16 explain it, that would be --
17 THE WITNESS: Better than doing it twice.
18 MS. ROSEN: Right.
19 MS. ROBESON: Right.
20 MS. ROSEN: Okay. Okay. I'm finished with my
21 direct of Raj Barr, but I would like -- I may want to recall
22 him again at some point.
23 MS. ROBESON: Yes, and you --
24 MS. ROSEN: Yeah, because I'll have to recall, at
25 some point I'm going to have to either recall Dr. Barr or

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1 someone else in the end, you know, with regard to the
2 attorney's fees and I'm not going to get into that until the
3 end because I don't know what that's going to be until we
4 get to the end.
5 MS. ROBESON: Right. And you do have --
6 MS. ROSEN: So --
7 MS. ROBESON: -- rebuttal as well, so --
8 MS. ROSEN: Right. Okay.
9 MS. ROBESON: Mr. Barr, do you, Mr. Barr, would
10 you like a 10-minute -- we have cross-examination now.
11 Would you like a 10-minute break or are you ready for cross-
12 examination?
13 THE WITNESS: We can go, keep going.
14 MS. ROBESON: I'm sorry?
15 THE WITNESS: We can keep going.
16 MS. ROBESON: Okay. Mr. Mohammadi.
17 MR. MOHAMMADI: Court's indulgence.
18 MS. ROBESON: Go ahead.
19 MR. MOHAMMADI: Thank you.
20 CROSS-EXAMINATION
21 BY MR. MOHAMMADI:
22 Q Mr. Barr, how long have you been an architect?
23 A Over four years.
24 Q Over four years? Okay. And you do residential
25 work or commercial work or both?

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1 A I, I do both. I do a lot of residential work.
2 I've designed and built two homes for myself and about 30 in
3 Maryland.
4 Q Okay. Do you do international work as well?
5 A Yes, I do.
6 Q Are you familiar with the project that you did in
7 Panama?
8 A Yes, Panama, yes, I'm familiar with that. I've
9 done projects in Mexico and many other places.
10 Q Okay. And are you familiar specifically with the
11 Altos Escondidos?
12 A Yeah, the design architect for that.
13 Q Well --
14 MS. ROBESON: Mr. Mohammadi, you can't ask your --
15 MR. MOHAMMADI: Sorry. I only made two copies of
16 everything, so if you want to look with him --
17 MS. ROSEN: Yes, sure.
18 MR. MOHAMMADI: -- I can ask, I'll mark this up.
19 I think we have --
20 MS. ROBESON: Now do you, do you have a foundation
21 for this?
22 MR. MOHAMMADI: I'll ask him about it.
23 MS. ROBESON: All right.
24 MS. ROBESON: I have 86. This would be 86, which
25 is, states, is a document entitled international fraud

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1 alerts.
2 (Exhibit No. 86 was marked for
3 identification.)
4 BY MR. MOHAMMADI:
5 Q Mr. Barr, this project in Altos Escondidos, have
6 there been fraud allegations?
7 A There have been fraud allegations, not against me.
8 Q Okay. And what are the fraud allegations?
9 A Fraud allegation is one of the investors put their
10 money in. It's asking for their money back. The project
11 has increased in value by five times, but no one has bought
12 it yet and it's not been completed yet, which she wants out
13 and so she has started this scam.
14 Q You have --
15 A Let me finish my answer, if you don't mind,
16 because you asked me --
17 Q Go ahead.
18 A -- that person named is my brother who is the --
19 MS. ROBESON: The person named where, in the
20 article?
21 THE WITNESS: Raj Mahadevan, that's my brother.
22 MS. ROBESON: Okay.
23 THE WITNESS: That's my step-brother.
24 MS. ROBESON: Mr. Mahadevan?
25 THE WITNESS: Mahadevan, yes.

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1 MS. ROBESON: Mahadevan?
2 THE WITNESS: And he's the one that's being
3 targeted for them to get the \$50,000 that they invested in
4 it. My role in the project is strictly that of design
5 architect and I've invested money in it as well, but I'm not
6 an officer, I have had nothing to do with the finances or
7 the organization or the operation of the thing. I am
8 strictly the design architect.
9 What they are trying to do is --
10 MS. ROBESON: Wait. Wait. Now this is your time.
11 Your attorney can ask you questions --
12 THE WITNESS: Oh, sure.
13 MS. ROBESON: -- later. So I'm going to, this is
14 your time to answer Mr. Mohammadi's questions.
15 THE WITNESS: I thought he asked me what it was
16 about.
17 BY MR. MOHAMMADI:
18 Q Is it your contention that any fraud allegations
19 are not brought against you?
20 A Absolutely. If they are being brought, they're
21 totally fallacious, have no foundation. I never met the
22 lady who is making the allegations and I'm not involved with
23 operations or the finances other than being the design
24 architect.
25 Q Just to clarify, what do you mean if they have

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1 brought? You don't know if any have been brought?
2 A They, as I was trying to tell you, what is being
3 done is very clever writing which inwards affected us.
4 First names are the same. Allegations initially written
5 against him now have spread to surrounding people who are
6 close to him to put pressure on him, so I am accused of the
7 same thing with the very clever line which uses the Raj
8 independently and then at the bottom says beware of hiring
9 me. The story is mixed up. She's also gone after his
10 daughter and his grandchildren and so this is one of those
11 classic international wild things that's going on. I have
12 nothing to do with this.
13 Q I just, I just want to clarify.
14 A Yeah.
15 Q Are you saying no fraud charges have been brought
16 against or allegations have been brought against you or are
17 you saying they have been brought, but you don't believe
18 them to be true?
19 MS. ROSEN: Now I'm going to ask you what charges
20 are you talking about? Are you talking about in a court or
21 something?
22 MS. ROBESON: Well, wait. Wait. Wait. If you
23 have an objection, you can--
24 MS. ROSEN: Sorry.
25 MS. ROBESON: -- address it to me. Mr. Barr, can

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1 you clarify for Mr. Mohammadi what charges are being, or --
2 MS. ROSEN: Actually, what I would like is for Mr.
3 Mohammadi, he keeps referring to charges and I would like to
4 know, before we start talking about charges, is he alleging,
5 is there a, I also need some kind of a foundation. Is there
6 some charge by some kind of governmental authority? Is it a
7 court case? Because based on what my client is testifying
8 is if this is --
9 MS. ROBESON: Mr. --
10 MS. ROSEN: -- I can't tell what this is.
11 MS. ROBESON: Mr. Mohammadi, can you clarify what
12 you mean by charges so --
13 MR. MOHAMMADI: I'm trying to get clarification
14 about what he's referring to as fraud. Are you, are you
15 saying there are --
16 MS. ROBESON: What, who is --
17 MR. MOHAMMADI: -- charges or --
18 MS. ROBESON: He didn't --
19 MS. ROSEN: No.
20 MS. ROBESON: He didn't -- just a second. No
21 cross talk. He didn't refer to fraud. If you're asking,
22 are you asking --
23 MR. MOHAMMADI: I'll ask the question again.
24 MS. ROBESON: -- if any court --
25 MR. MOHAMMADI: -- very precise.

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1 MS. ROBESON: -- or any police, enforcement has
2 charged him with fraud --
3 MR. MOHAMMADI: That is correct.
4 MS. ROBESON: -- is that what you're asking?
5 MR. MOHAMMADI: Correct.
6 THE WITNESS: Ask the question again please.
7 BY MR. MOHAMMADI:
8 Q Have you been charged by any enforcement agency or
9 governmental agency of committing fraud with respect to this
10 particular project, the Altos Escondidos?
11 A Absolutely not. Absolutely not.
12 Q Okay. And is your, is it true that another
13 individual, an investor specifically, has alleged that you
14 committed fraud, is that true?
15 MS. ROBESON: Just -- no. Do you have an
16 objection?
17 MS. ROSEN: Yeah, I'm going to object. I don't
18 think it, I think it's irrelevant. Who care if somebody --
19 MS. ROBESON: I think he's --
20 MS. ROSEN: -- has alleged something? He's just
21 indicated that there's been no, there's no charges.
22 MS. ROBESON: Okay. I think it goes to
23 credibility. He's asking a follow-up. I, you know, whether
24 I take it into account is another matter, all right? So it
25 is a fair subject for cross-examination. Now your question,

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1 as I remember it, was are you aware of any allegations of
2 fraud against Mr. Barr concerning this project? Is that
3 your question?
4 MR. MOHAMMADI: Yes.
5 MS. ROBESON: Can you answer that question, Mr.
6 Barr?
7 THE WITNESS: I was not directly approached about
8 it, but this person has gone in on my Linked In page and my
9 brothers and his daughters and his grandchildren's, his
10 son's and, therefore, the grandchildren's, taken screen
11 shots and approached people on my contact which is not a
12 permissible act on the Linked In telling them the same story
13 where the story line is mixed in with my brother and I just,
14 they call me and I said I don't know this person. I'm just
15 being treated as bait to get him to give up the 50,000.
16 MS. ROBESON: Do you, does that answer your
17 question?
18 MR. MOHAMMADI: It does.
19 BY MR. MOHAMMADI:
20 Q Are you aware whether there are any investigations
21 going on against you with respect to any fraud allegations
22 for this property?
23 A None.
24 Q So you're aware there are none going on?
25 A Yeah.

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1 Q You, you said you were the architect on the
2 project and an investor?
3 A I'm, yes, I'm the design architect. I was hired
4 as a design architect, so I did the project. It was 159
5 acre project with 79 homes all of which are sustainably net
6 zero energy and --
7 MS. ROBESON: Okay.
8 THE WITNESS: -- and S-1.
9 MS. ROBESON: He, his question was --
10 THE WITNESS: That's what I did, design architect.
11 MS. ROBESON: -- okay.
12 BY MR. MOHAMMADI:
13 Q You were approached by your stepbrother?
14 A No, the company approached me.
15 Q What's the company?
16 A The company is Altos Escondidos --
17 Q Oh.
18 A -- they say these, they say whatever it's called.
19 Q Who, do you know who owns that company?
20 A The company is owned by a bunch of, a group of
21 investors.
22 Q And are you one of the investors?
23 A I'm one of the investors. I am already invested.
24 Q And you've been involved in the project from the
25 inception of the project?

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1 A I, in terms of laying out the design.
2 Q Have you seen this article before?
3 A No, I have not.
4 Q Do you, do you want to read through it to see if
5 the allegations in there are --
6 A I don't have to. I know they're --
7 Q -- is in line with what you, what you testified to
8 today?
9 A Yeah, I, I have not read this and I know what is
10 going on here, so I can't imagine anything complimentary is
11 being said and it's not about me. And my, my reference is
12 on page 3 and the title says, Mr. Raj Mahadevan is Dr. Raj
13 Barr's brother. I didn't know it was a crime to be
14 somebody's brother. If you want to accuse them, accuse
15 them.
16 Q Okay. Is this, do you believe this is an accurate
17 article?
18 A Of course not. It's not an accurate article.
19 MS. ROBESON: Okay. He just, all you have to say
20 is --
21 THE WITNESS: Okay.
22 MS. ROBESON: -- yes or not.
23 MR. MOHAMMADI: Your Honor, we'll move to admit
24 this.
25 MS. ROSEN: I'm going to object. There's no

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1 foundation for this. We have no idea who wrote this
2 article. There's nobody here authenticating this article.
3 This has no relevance whatsoever.
4 MS. ROBESON: Where did you get this article?
5 MS. ROSEN: It's a vague characterization.
6 MR. MOHAMMADI: It's --
7 MS. ROBESON: Obviously the Internet?
8 MR. MOHAMMADI: Correct.
9 MS. ROBESON: Well, I'm, I am going to --
10 MR. MOHAMMADI: It's off International Fraud.
11 It's at the bottom. The link is at the bottom,
12 InternationalFraudAlerts.org.
13 MS. ROSEN: Well, that doesn't mean anything.
14 Anybody can make up a website.
15 MS. ROBESON: All right. Okay. No cross talk.
16 I'm going to admit it, but give it the weight it deserves.
17 MR. MOHAMMADI: Thank you.
18 MS. ROBESON: And let's move on.
19 MR. HUMAYUN: Your Honor, is this an appropriate
20 time to interject?
21 MS. ROBESON: Now, just a second. Okay. What's a
22 perfect time to interject?
23 MR. HUMAYUN: No, Your Honor, it was
24 inappropriate. I just want to say Ashin Humayun for the
25 record for Mr. Peter Ball.

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1 MS. ROBESON: All right. Thank you. Go ahead.
2 MR. MOHAMMADI: Thank you.
3 MS. ROBESON: Mr. Barr, no talking with --
4 BY MR. MOHAMMADI:
5 Q Okay. Mr. Barr, I'm sorry, Dr. Barr --
6 MS. ROSEN: You can address him Dr. Barr.
7 MR. MOHAMMADI: Dr. Barr, not a problem.
8 BY MR. MOHAMMADI:
9 Q This, this HOA membership that you're a part of
10 right now, the work that you're doing for the HOA, this was
11 your first membership?
12 A What do you mean?
13 Q Have you ever served on a HOA board before?
14 A No.
15 Q So this is the first time you've served on a
16 board?
17 A Yeah.
18 Q Okay. And you've been the president, I think you
19 testified, for three years?
20 A Yes, I've been president for three years.
21 Q And who was the previous president?
22 A Jeffrey Williams.
23 Q Isn't it true that you and Jeffrey Williams were
24 sort of co-presidents for some period of time?
25 A Jeffrey Williams referred me to as a, as a co-

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1 president, but there's no such in the articles, there's a
2 president and a vice president.
3 Q Okay. So you were, there's no built-in structure
4 for a co-president, but you acted as a co-president?
5 A No, I acted as his assistant.
6 Q As his assistant?
7 A As the vice president.
8 Q Okay. So --
9 A He ran all the meetings.
10 Q I see. And your, while he was the president, your
11 title was vice president?
12 A My title was vice president, but he used it as co-
13 president in the letters he wrote.
14 Q And you did that since 2004?
15 A No, I don't think it went that far, but I got on
16 the board in 2003. I couldn't have got promoted that fast.
17 Q Okay. I want to draw your attention to sort of
18 the HOA procedures, okay? I think you testified that there
19 are a set of guidelines that are followed by the HOA,
20 architectural design guidelines?
21 A Yes.
22 Q And that was Exhibit No. 70?
23 A I --
24 Q Is that right?
25 A I think that is.

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1 MS. ROBESON: I believe that's correct.
2 MR. MOHAMMADI: That's correct? Okay.
3 MS. ROBESON: Well, Exhibit 70 is, there's a page,
4 procedures related to architectural control committee and
5 then on page 6, architectural design guidelines.
6 MR. MOHAMMADI: I have a copy if I can just ask
7 him about it without him taking it out of there.
8 MS. ROBESON: That's fine.
9 BY MR. MOHAMMADI:
10 Q What I'm showing you is, has been previously
11 marked as Exhibit 70. Pages 1 and 2 are, they're actually 4
12 and 5, but on this document, procedures related to
13 architectural control committee, is that, is that fair?
14 A Yes.
15 Q Okay. And what are, what is that document layout?
16 A It effectively talks about the process by which
17 the committee has three board members and period where an
18 application is being addressed, the process, and this is
19 what I was referring to. This is an earlier document that
20 has been in it and it refers to the president as being the
21 person who is logging the drawings in, giving it a number
22 and --
23 Q Okay. And pursuant to this document, isn't it
24 fair to say that, and I'm reading number three, according to
25 the covenants, the association has 45 days from receipt of

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1 an application to approve or disapprove it?
2 A If it's, if it's a complete application.
3 Q Okay. And when you say complete application, what
4 are you referring to?
5 A I'm, if you recall, the letter from Ms. Irma
6 Spencer when she was chair of the architectural committee
7 turned down an application and sent it back because it did
8 not have all the issues, like form, all the plans, the
9 elevations, the building materials indicated.
10 Q Let me see if I can locate what you're
11 specifically referring to. Are you talking about, if you
12 take a look at Exhibit No. 74, the third page, is this the
13 letter you're talking about?
14 A Yeah.
15 Q Okay. And that's the February 26, 2008 letter?
16 A Correct.
17 Q Okay. And pursuant to this letter, Ms. Irma,
18 after Mr. Ball sent, submitted his application, Ms. Spencer
19 replied back?
20 A It's an application, I mean because the
21 application was sent to the chair and the architecture
22 committee.
23 Q Okay. And the architectural committee replied
24 back and said --
25 A Right.

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1 Q -- this is an incomplete application --
2 A Correct.
3 Q -- and they said go ahead and fix the incomplete
4 portions and resubmit this, is that fair representation?
5 A Yes.
6 Q Okay. And so and that's, is that typical of what
7 happens when, if something is incomplete, that you tell them
8 it's incomplete and resubmit?
9 A It goes to the occupational committee chair who
10 evaluates it and if it's incomplete before she distributes
11 it to the, he or she distributes it to the neighbors who are
12 affected, we'll ask for it to be completed.
13 Q Okay. And they'll let the applicant know it's
14 incomplete and what the issue is, right, so it can be
15 remedied?
16 A To the architectural committee, yes.
17 Q Okay. You're saying if it went to the
18 architectural committee, was there a difference?
19 A Yeah, it's very clearly indicated that the
20 drawings will be sent to look in design guidelines or
21 somewhere it says, the application form says it, submit this
22 to the architectural committee chair.
23 Q Does anywhere in the design guidelines, the
24 procedures related to the architectural committee or the
25 architectural design guidelines themselves say you have to

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1 fill out a specific form?
2 A Yes, there is a form attached to it.
3 Q Is it attached to this document?
4 A Well, as I've testified, it was distributed to all
5 the neighbors. Normally they call the architectural
6 committee chair who has the form. They call them to collect
7 the form.
8 Q I'll ask the question again. Does it say in any
9 of the guidelines that you have to fill out a formal
10 application anywhere?
11 A No, the guidelines are design guidelines. That's
12 this page.
13 Q That's the sixth page, right?
14 A Yeah.
15 Q Or the last page?
16 A Page number six. It talks about the design
17 guidelines, what's, what kind of design is done, what
18 materials have been approved and so forth.
19 Q Right.
20 A When you look for the application, the newsletter
21 every year states to make architectural changes, contact the
22 architectural committee chair. We give you a copy of the
23 form, fill it out, fill out all that --
24 Q I understand all that, Dr. Barr, but my question
25 is these control, control committee procedures, that's set

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1 forth in the procedures that the architectural committee is
2 to follow, right?
3 A Uh-huh.
4 Q And for submitting an application, what procedures
5 the applicant is supposed to follow, correct?
6 A As I said, this, this sets out something that
7 comes from 1994 as we saw on the form that was filled out
8 for Irma Spencer. So these are things that we have moved
9 on, we have not changed the form because this, this
10 architectural procedure, control committee and it's even
11 called the control committee, which is not the name we use
12 for it any more. We don't call it the Eastgate Homes One
13 Association. It's now called Potowmack Preserve.
14 So what we have done is we have evolved the
15 procedure to where the president is not involved in
16 receiving the application. We have set up a committee which
17 has three members who serve for one year and the committee
18 receives, the committee chair receives, and that's very
19 clearly indicated to every homeowner at least once a year
20 and the copy, as I said, was sent out.
21 MS. ROBESON: Okay. All right.
22 BY MR. MOHAMMADI:
23 Q I don't, I don't dispute that you're saying you
24 changed it. I'm trying to understand where are those
25 changes immortalized? Where can we find, whatever these

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1 changes you're talking about, where can we find them? If
2 they're not in this, where do we find them?
3 A Well, maybe we know that the articles don't call
4 for any, in fact, specifically say no standing committees.
5 What we have is a procedural set-up here that was
6 recommended in 1994. If that's evolved same as the
7 Association has evolved into where there's a committee
8 called the architectural review committee, that is the
9 intake for all applications and architecture. There's
10 another one called an environmental management committee.
11 That's the intake for all of the environmental and tree
12 issues. So they have not been memorialized, if you mean by
13 memorialized, a change, the articles of incorporation, the
14 declarations. We have been through that exercise when we
15 were trying to update our bylaws which have never been
16 changed since inception in 1970. So that whole, that
17 exercise took us a year and a half to get, so --
18 MS. ROBESON: Now, well --
19 THE WITNESS: -- these are not changed from the --
20 MS. ROBESON: Okay.
21 THE WITNESS: -- the bylaws.
22 MS. ROBESON: I understand. Who approves these
23 design guidelines?
24 THE WITNESS: The design guidelines was approved,
25 this, when I mean design guidelines, I mean design

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1 guidelines.
2 MS. ROBESON: Oh, no, the procedures. Who
3 approves --
4 THE WITNESS: And this was not approved. This
5 came from way back in time in 1994. It was just kept going.
6 We don't know who approved the property --
7 BY MR. MOHAMMADI:
8 Q Are you saying these are not applicable?
9 A No, I'm not.
10 MS. ROBESON: No, okay.
11 THE WITNESS: Did I say that? I'm just saying --
12 MS. ROBESON: Do you, do you know if these were
13 ever approved by the board?
14 THE WITNESS: I know that this was approved by the
15 board I served on so, therefore --
16 MS. ROBESON: But not, not the procedures?
17 THE WITNESS: -- I have no knowledge of how this
18 was approved. I would suspect it was also through my board.
19 MS. ROBESON: Well, don't suspect.
20 THE WITNESS: Okay.
21 MS. ROBESON: We'll just, okay. Mr. Mohammadi,
22 you can continue.
23 BY MR. MOHAMMADI:
24 Q Okay. So you just, you don't know whether these
25 have been approved? You assume they have, but you just

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1 don't know?
2 A They would make it the official document put out
3 by the Association --
4 Q Okay.
5 A -- from secretary to secretary, it had not been
6 handed down officially.
7 Q Let me --
8 A Nobody sat and made this up.
9 Q Let me ask a different question. You say that in
10 order to submit an application for work that's going to be
11 done on a house, it's supposed to be done on some pre-
12 existing form, correct?
13 A Yes.
14 Q Okay. Where can we find the procedures that say
15 you need to use this form in order to apply for any
16 modification, alterations, renovations, where do we find the
17 procedures for that?
18 A Every newsletter in the last three years that I
19 know of has that attached and we just recently attached it.
20 Q Is this the newsletter you're talking about?
21 A No, that's, that's the directory and that's about
22 three years old. That's a directory.
23 Q So some, so all the homeowners get a newsletter
24 and that newsletter --
25 A There's always an article at least in the three

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1 years that I've been president which says to make external
2 changes, once a year they're in the newsletter that will
3 cover that subject, to make external changes this is the
4 process you go through, contact the chair for a form of the
5 application and their contact information, same for the
6 trees and environment.
7 Q And have those newsletters been produced, do you
8 know?
9 A Yeah, they were produced. One went out in April
10 with the form for, just before the annual meeting, so
11 everybody got it. And now, as I was saying, we have just
12 launched a new website on which this will be posted so we
13 don't have to go through a --
14 Q I got, maybe, maybe more clearly, have those
15 newsletters been produced in discovery?
16 MS. ROSEN: I don't know that they were requested.
17 MR. MOHAMMADI: I mean we requested any guidelines
18 and policies.
19 MS. ROBESON: Well, he can answer whether they
20 were or weren't and we can look later if they were required.
21 So did you produce them in discovery?
22 THE WITNESS: No. It was not requested, so --
23 BY MR. MOHAMMADI:
24 Q I'll move on for now. You stated that once, once
25 an application is submitted, the architectural committee

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1 will review it --
2 A Uh-huh.
3 Q -- right? And they will either decide whether to,
4 whether it should be submitted essentially to neighbors for
5 comment, right?
6 A Uh-huh.
7 Q And if a neighbor objects, that neighbor will
8 voice that to the architectural committee?
9 A It has to be in writing.
10 Q In writing? Okay. And that, I presume that
11 happened with Mr. Ball's case?
12 A Yes.
13 Q Somebody, one of his neighbors objected?
14 A No, there were many that objected. As I recall,
15 and I'm not the architecture committee chair that sat on it.
16 The person who was there before could tell you. I, there
17 were multiple.
18 Q Do you know what the objection was?
19 A I don't know.
20 Q And once the objection was submitted, it went up
21 to --
22 A The board.
23 Q -- the board?
24 A Yeah.
25 Q Okay. And what does the board do at that point?

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1 A The board then calls a meeting and handles at the
2 next board meeting the subject of whatever and invites the
3 applicant to come in and meet with them.
4 Q Okay. So, again, is it fair to say that that
5 happened here today with this, with this particular project,
6 that there was a board meeting?
7 A Yeah, there was a board meeting held in April. We
8 had the minutes of that.
9 Q April of what year?
10 A April 2011 and the board, I went over that in
11 detail where the board, it was tied at three-three, I
12 switched my vote when I was realizing there was an
13 opportunity that we could grab a hold of to finish this
14 thing once and for all. And so that vote was positive. We
15 got the conditional letter written on May 15, 2011, and
16 that's the one under which we operated.
17 Q Let me ask you this. Would you agree that the
18 application submitted by Mr. Barr, I mean Mr. Ball was in
19 2008 for the project?
20 A He then submitted another one in 2011.
21 Q So no board meetings were held from 2008 regarding
22 this project until 2011 --
23 A Oh --
24 Q -- after three years?
25 A No, then you have not read the minutes. We met

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1 continuously, it was to the point of ad nauseum. Every
2 board meeting or every other board meeting was devoted to,
3 Mr. Ball would turn up. There was seven or eight meetings.
4 I can't really tell you exactly how many.
5 Q Let me, so --
6 A Because you asked about 2008 to 2010. There were
7 at least seven or eight. Mr. Ball would appear, his
8 architect would appear, sometimes they would come in
9 combination and sometimes he came with his friend who
10 identified himself as a lawyer.
11 Q Okay. I can assure you I've read all the board
12 minutes that you have produced, okay? Don't worry about
13 that. My question is when, when was a decision made by the
14 board to start having board meetings on this issue? When
15 was that? You, I thought your testimony was in 2011 is when
16 we had the board meeting. If happened before, when was
17 that?
18 A Starting in 2008 that I, the letters that Jeffrey
19 Williams wrote, Irma Spencer wrote to them saying, we just
20 went over one of those where that was a communication from
21 Irma Spencer saying fill stuff out. There is a
22 communication from Jeff Williams that I didn't read, but I
23 can refurnish to you or I think it was dated in, very early
24 in the game saying what you are trying to do here with the
25 multiple bump outs is going to make your project -- one

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1 second.

2 Q The only --

3 A One second. I'm just looking for this.

4 Q The only HOA meetings that I, notes that we have

5 so far are the 2010 ones, right, would you agree with that?

6 A I don't know that. Your proposed renovation, this

7 is Jeffrey Williams writing to Michael Ball, February 2,

8 2010. I have the letter here. Your proposed renovations

9 would convert your home into an entirely new model which is

10 incompatible with the existing community.

11 MS. ROBESON: Can, can you just tell me what, oh,

12 are you looking at your notes?

13 MR. MOHAMMADI: It's a handwritten --

14 THE WITNESS: No, I've got the letter here.

15 MS. ROBESON: Oh.

16 THE WITNESS: But it was not in discovery because

17 you did not ask for it. I just came across it when I was

18 looking to prepare this and I brought the original with me.

19 MS. ROBESON: Okay. Why don't we have that letter

20 in the record?

21 THE WITNESS: Sure.

22 MR. MOHAMMADI: I'll be curious to see this letter

23 that was not requested.

24 MS. ROBESON: I, I understand. You get two extra

25 pictures since this letter is coming in.

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1 MR. MOHAMMADI: Yes, and we'll end up at 50 at

2 some point.

3 MS. ROBESON: No, we're not.

4 MR. MOHAMMADI: Can I take a look at it first?

5 I'm sorry. Do you mind if I just see?

6 MS. ROBESON: Let his counsel see it first. She

7 can share it with you. Let me just make sure the audience

8 knows, anyone who wants to testify must sign in that, at the

9 sign-in sheet in front of the door there. So if you

10 haven't, do it now please.

11 MS. ROSEN: Well, we'll have to get copies made of

12 this at some point in this original letter.

13 MS. ROBESON: Let's take -- how much, how many

14 more questions to you think you --

15 MR. MOHAMMADI: A lot.

16 MS. ROBESON: A lot? Okay.

17 MR. MOHAMMADI: I mean that was a fairly lengthy

18 direct examination, so --

19 MS. ROBESON: It was. It is now almost 1:00.

20 MR. MOHAMMADI: -- I have a lot of questions.

21 MS. ROBESON: Let me do this. Can you hand me

22 that letter? We are going, now, this is your, what I'm

23 going to do is recess for an hour and I usually take a

24 shorter time, but I'd like you to go through your --

25 MR. MOHAMMADI: It will take my five minutes.

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1 We've already done it during our last recess, so --

2 MS. ROBESON: Okay. But you haven't showed them

3 to Ms. Rosen?

4 Ms. Rosen, would you like 45 minutes or an hour to

5 see these pictures that they took on Tuesday that they are

6 going to present?

7 MS. ROSEN: 45 minutes is fine.

8 MS. ROBESON: Okay. So we're going to recess

9 until 1:30, all right? And I will have copies of this made.

10 Is there anything else that anybody hasn't produced or needs

11 copies of or --

12 MR. MOHAMMADI: Well, I can tell you this.

13 Although, I can probably get this done myself, my exhibits

14 are, this is the universe of my exhibits. I have two copies

15 of everything and it looks like we'll need at least three.

16 I can probably just --

17 MS. ROBESON: Why --

18 MR. MOHAMMADI: -- go ahead and make them myself.

19 MS. ROBESON: Oh, you have two copies of

20 everything?

21 MR. MOHAMMADI: And one, one for a witness and one

22 for you, but then we don't have any --

23 MS. ROSEN: Have one for me.

24 MR. MOHAMMADI: So I can go ahead --

25 MS. ROBESON: Hand them over. I'll have us make -

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1 - oh my gosh.

2 MR. MOHAMMADI: I can go ahead and get them done

3 myself.

4 MS. ROBESON: Okay.

5 MR. MOHAMMADI: And some of them --

6 MS. ROBESON: Yeah.

7 MR. MOHAMMADI: -- this is not part of it, it's

8 just, it's just this.

9 MS. ROBESON: Oh, that's good because --

10 MR. MOHAMMADI: I'll do it myself.

11 MS. ROBESON: -- okay.

12 MS. ROSEN: That makes it easy.

13 MS. ROBESON: All right. So we'll be back at 1:30

14 and I will make copies of this. I am going to leave this

15 with Ellen Forbes of our office, so if one of you want to

16 come back early from lunch, she will have this so you can

17 review it before we reconvene.

18 MS. ROSEN: Actually, you know what, why don't we

19 go ahead? I have some, since we're talking about,

20 architectural forms, I've got a couple here with me.

21 MS. ROBESON: Okay. Now this is just copies.

22 This is not admission. All right.

23 MR. MOHAMMADI: Your Honor, just one housekeeping

24 matter. How late are we planning on going?

25 MS. ROBESON: We generally go until 5:30.

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1 MR. MOHAMMADI: Is it --
2 MS. ROBESON: If the court, if we have a court
3 reporter, otherwise 5:00.
4 MR. MOHAMMADI: Is it, does it make sense to
5 schedule something for another -- because I do not see this
6 completing today.
7 MS. ROBESON: I don't either. I would suggest --
8 MR. MOHAMMADI: And I do have a number of
9 witnesses. I don't want to have them sitting around if
10 they're not going to testify --
11 MS. ROBESON: Okay.
12 MR. MOHAMMADI: -- today.
13 MS. ROBESON: I would suggest that we look at
14 another date. I, if, if we can all, we're not off the
15 record yet, so everybody sit down. I'm going to get some
16 hearing dates, okay, and then you can cogitate them with
17 your witnesses over lunch. I'm going to add two days just
18 out of an abundance of caution and hopefully we will not
19 need them.
20 All right. So with, I am going to just recess the
21 hearing for a couple of minutes and get some dates, all
22 right? All right.
23 (Whereupon, a brief recess was taken.)
24 MS. ROBESON: We're back on the record.
25 MS. ROSEN: Let me get him back.

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1 MS. ROBESON: Oh, I'm sorry. I didn't see Mr.
2 Barr wasn't here.
3 MS. ROBESON: All right, everyone. Please --
4 we're done. We're back on the record. I have the potential
5 for tomorrow, Friday the 13th; June 23rd and 24th; June
6 30th; July 7th, 8th and 10th.
7 MR. MOHAMMADI: June 24th you said? I'm sorry, my
8 calendar is slow.
9 MS. ROBESON: Yeah, I have June 13th, which is
10 tomorrow. I could also potentially do something Friday the
11 20th, the 23rd, the 24th, and the 30th of June and then July
12 7, 8 and 10. So please discuss it with your witnesses and
13 when we come back, or hopefully we can set maybe two hearing
14 dates, all right?
15 MS. ROSEN: Okay.
16 MS. ROBESON: With that, we're going to take a
17 break until 1:40, okay? So we're in recess now.
18 MR. MOHAMMADI: Thank you.
19 (Whereupon, at 12:53 p.m., a luncheon recess was
20 taken.)
21 MS. ROBESON: All right. We're back on the
22 record. Did you get the copies of --
23 MS. ROSEN: Yes. We'll go ahead and give you your
24 set.
25 MS. ROBESON: Okay. Thank you. Were you able to

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1 make whatever copies you wanted?
2 MR. MOHAMMADI: I was.
3 MS. ROBESON: Okay.
4 MR. MOHAMMADI: I'll hand them out as I go through
5 them because it's going to be different orders.
6 MS. ROBESON: That's -- okay. Have you shared
7 what you are introducing with Ms. Rosen?
8 MR. MOHAMMADI: No, not, not separately.
9 MS. ROBESON: Well, has she ever seen --
10 MR. MOHAMMADI: Yes. They're all documents from
11 discovery.
12 MS. ROBESON: Okay.
13 MR. MOHAMMADI: So she's seen them all. She
14 doesn't know which ones right now, but the problem is
15 they're all together, so if I do this, it's going to -- and
16 I don't know if I'm going to use all of them yet.
17 MS. ROBESON: All right. I thought you were to
18 have listed all your exhibits that you were going, in your
19 pre-hearing statement?
20 MR. MOHAMMADI: Right.
21 MS. ROBESON: Have you done that?
22 MR. MOHAMMADI: Yes.
23 MS. ROBESON: Are these in the pre-hearing
24 statement?
25 A They are.

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1 Q Okay. All right. Because I need to make sure I
2 can move the hearing along without --
3 MR. MOHAMMADI: Okay.
4 MS. ROBESON: All right. Were you able to find
5 days, a date, two dates?
6 MS. ROSEN: I think June 30th was one day that we
7 were --
8 MS. ROBESON: Okay.
9 MR. MOHAMMADI: The only availabilities would be
10 June 30th and then July 10th would also possibly work.
11 MS. ROBESON: Okay. I have to continue, without,
12 I need to know for sure because in order to continue this
13 case, I have to announce it at the end of the hearing or I
14 don't have to have both dates, but I need to make sure that
15 the June 30th date --
16 MS. ROSEN: I think the June 30th, is that okay?
17 MR. MOHAMMADI: That will work.
18 MS. ROBESON: All right.
19 MS. ROSEN: Why don't we go ahead with the June
20 30th and then we'll --
21 MS. ROBESON: Go from there?
22 MS. ROSEN: -- we'll go from there.
23 MS. ROBESON: All right.
24 MS. ROSEN: Because also we could, if it were
25 permissible, we discussed a little bit if somebody needed to

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1 call a witness out of order because they weren't going to be
2 available on a different day, I think we could try to work
3 with that.
4 MS. ROBESON: Okay. That's fine.
5 MS. ROSEN: And make it easier.
6 MS. ROBESON: Okay. All right. So I have these
7 exhibits. Do you want to wait until you bring them in for
8 testimony or these are the items that you had copied?
9 MS. ROSEN: Right.
10 MS. ROBESON: Or let's finish with cross-
11 examination and then if you need to bring these in --
12 MS. ROSEN: I think that he had, I mean my
13 recollection was that the counsel had asked Mr. Barr, Dr.
14 Barr a question and he brought up that first document, so I
15 don't know if he wants to ask him about that.
16 MS. ROBESON: Oh, this letter?
17 MS. ROSEN: Yes.
18 MS. ROBESON: Okay.
19 MS. ROSEN: It is my recollection.
20 MR. MOHAMMADI: The February 2nd letter?
21 MS. ROSEN: Yeah, the letter, you had asked a
22 question and that was when he pulled the letter out, so you
23 asked for the document. The other two things are just
24 architectural applications, which I, I can bring in later
25 on.

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1 MS. ROBESON: You were reading from your notes and
2 then you said, no, I have it in the letter?
3 THE WITNESS: Yeah.
4 MS. ROBESON: Okay. So I am looking at a letter
5 from Mr. Barr and Jeffrey Williams dated February 2, 2010,
6 to Peter and Michael Ball. Is Michael Ball coming back or -
7 -
8 MR. MOHAMMADI: No, he's not. I talked to Ms.
9 Rosen. Nobody is going to call him today, so I told him he
10 doesn't need to come back here.
11 MS. ROBESON: Okay. But --
12 MR. MOHAMMADI: I understand.
13 MS. ROBESON: -- if she, if Ms. Rosen decides she
14 wants to call him, he has to come back.
15 MR. MOHAMMADI: He will be, again, I don't think
16 we're going to get to him today, so we talked about it.
17 Should we not --
18 MS. ROBESON: Okay. That's fine.
19 MR. MOHAMMADI: -- doesn't need to be here today.
20 He'll be here at the next hearing.
21 MS. ROBESON: Okay. So I'm marking this February
22 10th letter from Raj Barr and Mr. Williams to Peter and
23 Michael Ball as Exhibit 87. Mr. Barr, has your attorney
24 given you a copy of what's marked as 87?
25 MS. ROSEN: Yes, that's this letter --

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1 THE WITNESS: That's the document I originally --
2 MS. ROBESON: Right.
3 MS. ROSEN: Yes, well I've got the, he's got the
4 original.
5 MS. ROBESON: Yes. If you could just for the
6 record describe what it is?
7 THE WITNESS: Yeah. It's a letter dated 2nd
8 February 2010, addressed to Michael and Peter, Peter Ball
9 and Michael Ball. And it's, the author was Jeffrey
10 Williams. My name is on there too.
11 MS. ROBESON: Okay. Mr. Mohammadi, do you have
12 any objections to introducing this, I mean admitting this?
13 MR. MOHAMMADI: Being done a little bit backwards,
14 I guess, it's in my cross, but I don't, he was referencing
15 it, so I don't have a problem.
16 MS. ROBESON: Okay.
17 (Exhibit No. 87 was marked for
18 identification.)
19 MS. ROBESON: Okay. Let's do the, whatever these
20 forms are on your redirect, Ms. Rosen, okay?
21 MS. ROSEN: Okay.
22 MS. ROBESON: All right. Mr. Mohammadi, why don't
23 you continue with your cross?
24 MR. MOHAMMADI: Okay. Thank you.
25 BY MR. MOHAMMADI:

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1 Q Dr. Barr, I think before we, before we went on
2 break I was asking you about the architectural committee
3 procedures and specifically I wanted to know when the board
4 took a vote regarding this application that was submitted in
5 the beginning of 2008?
6 A It was the one held in 2011, May of 2011, and
7 resulted in the letter of conditional approval dated May 10,
8 2011.
9 Q Okay. Prior to that, were any votes held
10 regarding this project?
11 A I don't know that any votes were held, no, as to
12 the continuation, but oh, I'm sorry, let me correct myself.
13 Q Am I waiting for you? Am I --
14 A No, I was waiting for you. I thought you were --
15 MS. ROBESON: Oh, I thought you were getting
16 something. I think --
17 THE WITNESS: Mid-sentence, I saw him --
18 MS. ROBESON: Oh.
19 MR. MOHAMMADI: You said let me correct myself, so
20 why don't you correct yourself?
21 THE WITNESS: Oh, I see, okay. I don't recall any
22 vote being taken when Jeffrey was president, but there was
23 in 2010 Tania Bruno was the Ball's architect and she did
24 drawings and then the conversation continued with the board
25 and when I came in as president, I think there was a new

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1 application, but I couldn't swear to that because the
2 previous one I recall, there's a note saying the 45 days
3 have expired and Irma Spencer, the chair of the ARC could
4 write saying you haven't produced documents. Then they came
5 back with some drawings. So it was a continuation, I think,
6 of this original one.
7 Q Okay.
8 A The drawings were changed and operated. We didn't
9 --
10 Q Okay. I'm trying to get clarification about what
11 transpired, okay, because it's unclear to me what happened
12 from the submission, initial submission in the beginning of
13 2008 up until the approval in May, on May 15, 2011. That's
14 over, almost 3 1/2 years that this application for this one
15 project was pending.
16 A Right.
17 Q So I'm trying to understand when -- maybe we can
18 take it step by step. Do you know when the neighbor or
19 neighbors complained for the first time --
20 A Yes.
21 Q -- that took it from the architectural committee
22 to the board?
23 A I did see --
24 MS. ROBESON: Now let me start before that because
25 I'm, I want to understand too. When did the, when was the

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1 first application filed and what --
2 THE WITNESS: I think it was --
3 MS. ROBESON: -- did it consist of?
4 THE WITNESS: The first application under, going
5 from recollection --
6 MS. ROBESON: That's fine.
7 THE WITNESS: -- seemed to be in February 26th or
8 something that you went over in the previous document.
9 MS. ROBESON: Wait. Wait. Oh, what year?
10 THE WITNESS: 2008.
11 MS. ROBESON: 2008?
12 THE WITNESS: And then there was a letter from the
13 chair of the architecture committee at the time saying
14 you're missing all these items, and they were sent back.
15 MS. ROBESON: And this was in 2008?
16 THE WITNESS: These are all still 2008.
17 MS. ROSEN: I think this is all Exhibit 74 --
18 MS. ROBESON: Okay.
19 MS. ROSEN: -- he's already testified to.
20 BY MR. MOHAMMADI:
21 Q So that January 15, 2008, that was the first
22 application, that was the very first application, right on
23 Exhibit --
24 A On this one, yes.
25 Q Correct?

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1 A Yes.
2 Q And then --
3 A Because it's coming to with the application
4 attached to it.
5 Q Okay. What was the response to this first
6 application?
7 A That was, the response was the 26th of February,
8 2008, which says, you are missing all these elements --
9 MS. ROBESON: That's Ms. Spencer's letter?
10 THE WITNESS: Ms. Spencer's letter.
11 BY MR. MOHAMMADI:
12 Q Okay. Now when, do you know when the next
13 application was?
14 A No, I don't know, but it's a late year, so I
15 presume it says hand delivered on a certain date to the
16 architectural committee chair.
17 Q Okay. And that's, you're looking at the fifth
18 page, right, of the document?
19 A Yeah, fifth page.
20 Q Okay. And, again, who is that from?
21 A That's from Peter Ball and Ariel Simmons.
22 Q Okay. And that's their second application
23 essentially after your February 28th letter?
24 A That is correct.
25 Q And what was the HOA's response to this, do you

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1 know?
2 A Not off the top of my head, I don't, because I
3 saw, I referenced that letter by Jeffrey Williams talking
4 about, that was February 2010, so it was still in process
5 because it is on February 10, 2010, Jeffrey Williams is
6 writing and talking about how this would become, convert
7 your home into an entirely new model which is incompatible
8 with the existing community and would be in violation of the
9 board.
10 Q Let me make sure I understand. You're not
11 claiming that the first response the HOA gave --
12 A No.
13 Q -- after the May, May submission was this February
14 2010 letter, right?
15 A No, I --
16 Q There was other responses, is that fair to say?
17 A There would have been because there were meetings
18 that happened throughout 2008, 2009, 2010, board meetings.
19 Q Okay.
20 A But I don't know the dates of them and they would
21 be in those minutes.
22 Q Do you recall what the problem was with this, with
23 these applications all the way through 2010?
24 A The one that most, most obvious to that was there
25 were too many bump outs in every direction and it was

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1 changing the original model.
2 Q Basically what you testified to what the condition
3 is today, right, there's four bump outs essentially?
4 A No, it was much more. There was --
5 Q As far as what?
6 A -- there was a third floor addition on the, on
7 the, on the back side on top and so on. So --
8 Q So you required the Balls to reduce some of the
9 bump outs?
10 A I was just a board member at the time, so I don't
11 know exactly what they did, but --
12 Q When I say you --
13 A It was the HOA.
14 Q -- I meant the HOA for this --
15 A Yes.
16 Q -- for this question.
17 A Yeah.
18 Q Okay. By the way, this, this February 2010 letter
19 which is Exhibit 87, right, is addressed to who?
20 A It says Peter Ball and Michael Ball.
21 Q And it has your name on it, too, right?
22 A Yeah, I participated in it, but my name was
23 attached to it.
24 Q So it's not true that you didn't even know about
25 Michael Ball until 2013? In fact, you knew about him in

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1 2012?
2 A No, I did not, because I didn't get a copy of this
3 thing. Or if I did, I didn't pay attention. I thought
4 Jeffrey was handling it.
5 Q Okay. So you -- it has your name on it?
6 A He has put my name on it, but I, I have not been
7 conscious of Peter Ball and Michael Ball.
8 Q After, after that February 2010 letter, what was
9 the next step?
10 A I'm sure there were other board meetings because
11 all I remember was an endless parade of meetings with Mr.
12 Ball, his architect, Ms. Bruno by herself and I think I
13 reference in the minutes which talked about how she came in
14 and talked about the way the roof was pitched and that was
15 in 2010. She was hired sometime in September or July of
16 2010.
17 Q Do you recall when the actual plans were
18 submitted, the actual, approved plans were submitted?
19 A No, they were not submitted by me, so I don't know
20 when they were submitted. I only know what came through in
21 the email from the secretary.
22 Q Part of the, part of what's in the file is already
23 the application with the various drawings --
24 A Yeah.
25 Q -- but it's on regular-sized paper?

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1 A Yeah.
2 Q What I have here are full-scale --
3 MR. MOHAMMADI: Ms. Robeson, I have a copy for you
4 as well and I can give you, I can give you a copy, but it's
5 a lot.
6 THE WITNESS: When were these produced?
7 MS. ROBESON: Oh, yeah, I want the whole thing.
8 MR. MOHAMMADI: Okay.
9 MS. ROBESON: Now do you have, this is cross-
10 examination.
11 MR. MOHAMMADI: Right.
12 MS. ROBESON: I will mark it as an exhibit, but do
13 you have a witness who can authenticate it later?
14 MR. MOHAMMADI: My client.
15 MS. ROBESON: Okay. Then I'll mark it so you can
16 cross-examine, but I'm going to make it subject to
17 authentication later. Do you have any -- just a second --
18 Ms. Rosen, do you have any objection to that procedure? And
19 did you share this with Ms. Rosen?
20 MR. MOHAMMADI: Yes, I did, before all available,
21 these for inspection at her office, she stated the discovery
22 responses and we elicit in our pre-hearing statements, these
23 are all available. And I, I --
24 MS. ROBESON: Okay. Ms. Rosen, do you have any --
25 all I'm going to do now is mark it so he can --

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1 MS. ROSEN: That's fine.
2 MS. ROBESON: -- cross-examine on it. If you want
3 to --
4 MS. ROSEN: But I would like to, I mean I don't
5 really know quite what it is, so I'm not sure whether my
6 client is going to be able to tell that either. I guess
7 you'll have to authenticate it through somebody else as to
8 what exactly it's supposed to be.
9 BY MR. MOHAMMADI:
10 Q Have you, let me ask you this, have you ever seen
11 the plans?
12 MS. ROSEN: No, when you say the plans --
13 MS. ROBESON: Now is he asking Mr. Barr or Ms.
14 Rosen?
15 MR. MOHAMMADI: Mr. Barr.
16 MS. ROBESON: Okay.
17 MR. MOHAMMADI: Yes.
18 BY MR. MOHAMMADI:
19 Q Have you seen the approved, have you ever seen the
20 approved plans?
21 A Yes, I've seen the approved plans, but they were
22 all made out and I remember clearly it said Peter Ball's
23 residence. Now this one says Michael Ball's residence.
24 There is no date or architect's name on this, so I don't
25 know when it was produced.

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1 Q Okay. Well, I'll ask you if you recognize any of
2 these and you tell me if you do or don't, okay, since you
3 reviewed the plans?
4 MS. ROBESON: Well, let me mark it first. Well,
5 you know what, this is what I would like to do because I'm
6 looking at these and these look like the plans that were
7 submitted for the building permit. I don't know, so can you
8 have -- I hesitate to do this. Can you have Mr. Ball
9 testify whether these are the plans he submitted?
10 MR. MOHAMMADI: You mean taken out of order just
11 on that question?
12 MS. ROBESON: Just on that, please, just on that
13 question.
14 MR. MOHAMMADI: All right. I can do that.
15 MS. ROBESON: Mr. Ball, will you raise your right
16 hand?
17 WHEREUPON
18 PETER BALL,
19 having been called for examination by counsel for respondent
20 and having been first duly sworn by the notary, was examined
21 and testified as follows:
22 DIRECT EXAMINATION
23 BY MR. MOHAMMADI:
24 Q Mr. Ball, take a look at Exhibit No. 88. Maybe
25 you can go ahead and take a minute and go through them.

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1 MS. ROBESON: And I'm just calling these
2 renovation plans.
3 (Exhibit No. 88 was marked for
4 identification.)
5 BY MR. MOHAMMADI:
6 Q Have you, have you seen these drawings before?
7 A Yes.
8 Q Okay. And are these the drawings that were
9 submitted to the permitting office for approval?
10 A Yes.
11 Q And do these drawings also contain the drawings
12 that were submitted to the HOA for approval?
13 A No. A1 through A6 were part of the submittal to
14 the HOA.
15 Q Right. And are these true and accurate copies of
16 the plans that were submitted to the permitting office, the
17 Montgomery County Permitting, are they also accurate? I'm
18 sorry, did you say A1 through 6?
19 A A1 through 6.
20 Q Are A1 through 6 also accurate copies of the plans
21 submitted to the HOA for approval?
22 A Yes.
23 Q And are A1 through A6 ultimately the plans that
24 were approved on May 15, 2011?
25 A Yes.

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1 MS. ROBESON: Okay. Ms. Rosen, do you have any
2 questions of Mr. Ball based solely on Mr. Mohammadi's
3 question?
4 MS. ROSEN: Okay. I just want to ask. He's
5 testified that A1 through A6 is part of his submittal,
6 something that he submitted to the HOA for approval.
7 CROSS-EXAMINATION
8 BY MS. ROSEN:
9 Q When did he allegedly submit those to the HOA for
10 approval?
11 A These plans were submitted, I think, sometime in
12 March or April of 2011.
13 MS. ROSEN: Okay. Is it your, I mean we have
14 already submitted it into evidence and the CCOC has already
15 in the other case indicated that complainant's Exhibit 2,
16 which they had complainant's Exhibit 2 and ours is Exhibit
17 77, was the approved set of drawings from May of 2011. So I
18 think we'd have to compare -- I don't know what, whether,
19 what he's referring to at this point. What he's claiming is
20 identical. I guess we're going to have to see whether or
21 not they're really identical.
22 MR. MOHAMMADI: Well, I think he's testified that
23 they're the same thing.
24 MS. ROSEN: Okay, but that, he can testify, but we
25 don't know whether actually it's the case until we actually

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1 look at the drawings.
2 MS. ROBESON: Okay. Well, I thought that would be
3 quicker, but it's not. So --
4 MR. MOHAMMADI: I mean I think that's just subject
5 to cross-examination whether they're identical or not, but
6 he's testified these are --
7 MS. ROBESON: Well, I'm going to let her bring it
8 up again on Mr. Ball's cross-examination.
9 MR. MOHAMMADI: That's what I figured.
10 MS. ROBESON: Yeah. All right. So you can ask
11 questions on it for now.
12 MR. MOHAMMADI: Okay.
13 MR. MOHAMMADI: All right, Dr. Barr, again I want
14 to focus on A1 through A6 only, okay, because those were the
15 ones that Mr. Ball claims were submitted to the HOA and were
16 ultimately approved, okay?
17 (Witness previously sworn.)
18 BY MR. MOHAMMADI:
19 Q Does A1 look familiar to you since you, since you
20 said you reviewed the plans that were approved?
21 A Yeah, the first thing that strikes me is that this
22 was never the one that was approved, the pergola.
23 Q The pergola was not the drawing?
24 A Yeah.
25 Q And that's under, which, which one are you looking

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1 at?
2 MS. ROBESON: What are you --
3 THE WITNESS: A1.
4 MS. ROBESON: What are you referring to when you
5 say this?
6 THE WITNESS: I said this item up and it looks
7 like a railroad track and it's marked pergola.
8 MS. ROBESON: Well, I saw, I saw that on
9 something.
10 MR. MOHAMMADI: I mean I have, let me, maybe I'll
11 --
12 MS. ROBESON: Is it 74 that is the approved plans?
13 MS. ROSEN: 77 is the approved plans.
14 MS. ROBESON: Or what HOA is saying is -- okay.
15 Well, we don't have to examine it. Just, we can continue
16 with your questions.
17 MR. MOHAMMADI: Okay.
18 BY MR. MOHAMMADI:
19 Q Would you agree that A1 is the basement view floor
20 plan?
21 A I cannot because the basement view is showing some
22 element that is the same, that's not the same as what we
23 will show.
24 Q Okay. And that element is the pergola, you said?
25 A Yeah.

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1 Q Okay. Ignoring the pergola then, is everything
2 else what was submitted?
3 MS. ROSEN: Okay. What we're going to have to do
4 here is we have to see what the equivalent page is because
5 what we have testified as submitted and as being approved is
6 Exhibit 77. So we need to look at 77 --
7 MS. ROBESON: Okay. Mr. Mohammadi --
8 MS. ROSEN: -- to see what page it's on.
9 MS. ROBESON: -- it is too difficult to try to use
10 this to cross-examine, there's so many questions as to its
11 foundation. Is there another exhibit you can use?
12 MR. MOHAMMADI: Well, the problem with the exhibit
13 that's in there, you can't see any of the numbers. 77,
14 which has the drawings and regular --
15 MS. ROBESON: Well, can't you bring that out
16 through Mr. Ball?
17 MR. MOHAMMADI: No, because in cross-examination,
18 I mean the whole thing I'm trying to show is that what he
19 saw, what was submitted to Mr. Barr in the HOA shows an
20 increase in the roof height. I can't get that through him.
21 I want him, I want Mr. Barr to say I don't see it or I see
22 it, it's here, it's not there. My client is maintaining
23 that the plans all along said there's a --
24 MS. ROBESON: Yeah, but you're trying to introduce
25 an exhibit. Okay. We'll do it this way then. We'll accept

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1 that this was introduced, he said it's both to the HOA and
2 to DPS, right?
3 MR. MOHAMMADI: Correct.
4 MS. ROBESON: Okay. So I am going to let that
5 finding of fact -- I'm not making a decision on that finding
6 of fact right now. You can ask him questions on this plan.
7 MR. MOHAMMADI: Okay.
8 MS. ROBESON: All right? But I'm not making the
9 finding of fact as to exactly what this plan is because
10 normally you don't introduce exhibits on cross-examination.
11 MR. MOHAMMADI: That's, that's fine. I mean I'm
12 trying to -- I can do it another way. I can call him again
13 as my own witness and ask him, ask him whether or not,
14 that's fine.
15 MS. ROBESON: No. No. Just keep going like, but
16 I'm not making a decision on what these plans are.
17 MR. MOHAMMADI: Okay.
18 MS. ROBESON: So --
19 BY MR. MOHAMMADI:
20 Q Looking at A3.
21 A The trouble, the problem that I see is I have to
22 spend time to figure out where the plans are the same
23 location. But I do know that at any scale the dimensions
24 were never on this drawing in the plan. They don't show up.
25 Even if, there would be a line and there would be a

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1 construction line.
2 MS. ROBESON: And when you say this drawing,
3 you're talking about --
4 THE WITNESS: I mean the approved HOA --
5 MS. ROBESON: -- Exhibit 77? All right.
6 THE WITNESS: There were no damages given. This
7 was obviously prepared for submission to construction
8 permit.
9 BY MR. MOHAMMADI:
10 Q Let me ask you something else then. Take a look
11 at A4 compared to what this, in 77, okay, Exhibit 77, rear
12 elevation, A4 --
13 A Yes.
14 Q -- let me ask my question, okay, you're comparing
15 them right now, okay? Do you see on Exhibit 77 some lines
16 and numbers drawn? Do you see those?
17 A Across the dotted lines?
18 Q Can you tell what they say?
19 A They're saying the floor level at that point, the
20 floor level or this level and that's the edge of the roof.
21 MS. ROBESON: Okay. See, I can't see what --
22 THE WITNESS: Oh, you can't see?
23 MS. ROBESON: -- what you're, now we have a
24 transcriber here.
25 THE WITNESS: Okay.

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1 MS. ROBESON: So you have to describe --
2 THE WITNESS: Let me, let me --
3 MS. ROBESON: -- these lines and where they are --
4 THE WITNESS: Okay.
5 MS. ROBESON: -- and what exhibit you're talking
6 about.
7 THE WITNESS: I'm looking at the rear elevation --
8 MS. ROBESON: Of what?
9 THE WITNESS: -- that is on A4.
10 MS. ROBESON: Of 88?
11 THE WITNESS: Of A4.
12 MS. ROBESON: A4? Okay.
13 MR. MOHAMMADI: 88, correct.
14 THE WITNESS: On 88. And he's asking me about
15 dotted lines going horizontally, parallel to the ground,
16 across the building.
17 MS. ROBESON: Yes.
18 THE WITNESS: Those are the only lines that show
19 up in the original that was approved drawing. There are no
20 dimension lines anywhere.
21 MS. ROBESON: So there's nothing above -- okay.
22 Keep going. I understand.
23 THE WITNESS: Okay. So this drawing that is the
24 HOA approved drawing, has no dimensions other than these
25 three horizontal, dotted lines.

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1 BY MR. MOHAMMADI:
2 Q Do you recall when the HOA submission was made in
3 April as Mr. Ball testified? Do you know whether it was,
4 what type of submission it was? Was it on this kind of
5 large scale drawing or was it the small scale, has this
6 shrunk? What's going on?
7 A All I can say is whatever the size of the original
8 drawing when it was scanned, it would still show up and I
9 did not see a large one quite so as this.
10 Q That's what was submitted?
11 A This is what was -- no, I'm not saying this is
12 what was distributed to the board and that's what the board
13 voted on. And it was accompanied by lettering, by the
14 letters which described what was being done, the bump out
15 over the garage, the bump out of the side, the slope of the
16 roof coming back up to meet the existing ridge point and
17 there were no dimensions. In fact, there was no reason for
18 us to -- even if there was as larger drawing, it would show
19 the dimension, dotted line and dimensions on it. They were
20 not, they were never submitted.
21 Q I will ask you again, okay?
22 A Uh-huh.
23 Q When the plan was submitted by Mr. Ball, do you
24 remember whether it was submitted in the format you're
25 looking at on Exhibit 77 or the format we're looking at on

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1 Exhibit 88?
2 A By format do you mean the size?
3 Q Correct.
4 A Okay.
5 Q The scale drawings.
6 A Okay.
7 Q All drawings are drawn scale, but we are told as
8 professional builders and engineers never to measure a
9 drawing, to rely only on the dimension line. There were no
10 dimensions, if I might just answer this more fully, there
11 were no dimension lines in the existing condition drawing.
12 There were none in the proposed condition drawing. There
13 were no dimensions given.
14 So the original is what got shrunk here, nothing
15 got left out, otherwise you would have seen these dimension
16 lines running across the top.
17 Q I'm not asking about the lines. All I wanted to
18 know is when it was submitted, was it in this format or was
19 it in this format? That's all.
20 A It was in a larger format.
21 Q Okay.
22 A Yeah.
23 Q And that's required by your own guidelines,
24 correct?
25 A It doesn't, it only says what scale the drawing

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1 has to be done is a minimum of one inch equals eight. This
2 one says it's one inch equals four.
3 MS. ROBESON: Wait. What's this one, 88?
4 THE WITNESS: 88, it's drawn and marked as one
5 equals four and this might have been one inch equals four,
6 but it's, the original drawing did not have any dimensions.
7 That's the only point I'm making. So when you're looking at
8 --
9 MS. ROBESON: When you say the original drawing --
10 THE WITNESS: The original approved drawing.
11 MS. ROBESON: -- you're saying Exhibit 77 --
12 THE WITNESS: Yes. Yes.
13 MS. ROBESON: -- what's attached -- okay.
14 THE WITNESS: The approved plans showed more
15 dimensions either of the existing condition or of the
16 proposed condition, either in plan or in elevation.
17 BY MR. MOHAMMADI:
18 Q Did you ever ask about dimensions?
19 A Yes, we did because, as you can see, this exercise
20 has been going on for three years and I had just come in as
21 president and I was trying to get it resolved because I had
22 seen an opportunity, as I said before, every time we asked
23 for something, the drawing would change. This, the
24 elevation shown both in the approved plan, but addition over
25 the garage, as well as in this drawing here in 88 on A4 --

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1 MS. ROBESON: Yeah.
2 THE WITNESS: -- was previously two pitched roofs,
3 not --
4 BY MR. MOHAMMADI:
5 Q A gable roof?
6 A A gable roof. Gable and less dominant than this
7 one which is a slope going backwards. We didn't, first of
8 all, did because we were trying to count the resolutions and
9 so we had asked and asked and, as you can see way back in
10 time, the previous chair of the architecture committee had
11 asked for dimensions. And here we are with the same client
12 and they have submitted drawings with no dimensions. We,
13 there was no discussion about the height of the roof being
14 raised. So we looked at the existing drawing condition of
15 the same elevation and said there is the line, there is the
16 next line. So they had no conversations about raising the
17 roof or raising the chimney. We had made an intelligent --
18 MS. ROBESON: Okay.
19 THE WITNESS: -- observation about it.
20 MS. ROBESON: I understand.
21 THE WITNESS: Okay.
22 MS. ROBESON: Continue with your cross-
23 examinations.
24 MR. MOHAMMADI: Okay. Thank you. If I may have
25 this back? Thank you.

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1 BY MR. MOHAMMADI:
2 Q When Mr. Ball, well, let me back up for a second.
3 Prior to approval of the May, prior to the May 2011
4 approval, did you ask for drawings with dimensions?
5 A Yes, we did.
6 Q And you say you never received those?
7 A We never got them because that was not what was
8 submitted.
9 Q Yet you approved the plans without receiving them?
10 A And like I, as I said, we were trying to not --
11 Q It's a yes or no question. Did you approve them
12 before receiving them?
13 A We got the approval on the last meeting that
14 prevailed in May about this. That drawing is what you're
15 seeing and it had no dimensions showing heights and --
16 Q But that's a yes?
17 A In the plans, there was some dimensions of the new
18 elements. So in the plans it showed the dimensions, but on
19 the heights it showed no dimensions and we did not raise it
20 as an issue because, as I said, there was no discussion for
21 the roof.
22 Q Okay.
23 A And we looked at the existing --
24 Q Do you know how --
25 A -- and the proposed and said it looks like it's

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1 keeping the same line, looks like same thing.
2 Q Do you know what the original height of the roof
3 was?
4 A We were never given it, so how would we know it?
5 Q Okay.
6 A The architect never provided that.
7 Q So --
8 A That never has been part of the conversation.
9 Q So you, you never went out and measured to see
10 what the heights were before and after, right?
11 A I don't get in the habit of climbing on roofs to
12 measure somebody's submission.
13 Q You didn't ask anybody to do it? You didn't ask
14 permission to do it? You didn't hire anybody to do it?
15 A We had asked ad nauseum for the client to submit
16 drawings with dimensions. They provided dimensions for the
17 new construction and plan, the deck on one side. I'm just
18 going to flip through this. The elements that they added,
19 they gave some dimension lines on it. They said, okay,
20 that's what we've been talking about, now we know the size
21 and proportion of it. There was no discussion other than,
22 as I told you, bring the roof to meet the existing ridge.
23 Q Can I ask you a question?
24 A Yeah.
25 Q Take a look at 77, okay, upper floor plan.

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1 A Uh-huh.
2 Q Does that show where the garage is?
3 A Upper floor plan? I'm not sure the garage with.
4 Q Would that show what a garage would be underneath
5 the upper floor?
6 A Not necessarily. All I can read on this plan is
7 what is on that plan.
8 Q Okay. Go back to the previous, lower floor plan.
9 A Lower floor plan shows a garage.
10 Q Okay. And how that's not shaded, correct?
11 A That's not shaded.
12 Q That means it's not an addition?
13 A Yes, that's something I had to request because the
14 only, there was no question understanding which is new and -
15 -
16 MS. ROBESON: Okay.
17 THE WITNESS: -- and which is not.
18 BY MR. MOHAMMADI:
19 Q All right. Going to the upper floor plan, there
20 is a shaded area that looks to line up with what would be
21 above the garage, is that correct?
22 A That's correct.
23 Q Is that a new addition?
24 A Yes. And I just talked about it.
25 Q And a new addition would increase the height,

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1 correct?
2 A Yes.
3 Q And if you're going to increase the height of the
4 new addition by what, what's the standard height of a room?
5 What's the standard height of a room?
6 A The standard height of a room doesn't come into
7 play because it's the slope of the roof that matters.
8 Q I understand. What's the standard height of a
9 room?
10 A It could be nine feet. It could be 14 feet.
11 There's no standard.
12 Q Let's, but the minimum it has to be nine feet, is
13 that fair?
14 A No, the minimum is eight feet.
15 Q Okay. Let's say it's eight feet.
16 A Yes.
17 Q Okay. You, I know you're saying you don't know
18 how much it is, but you're saying that's eight feet, at the
19 minimum it has to be 80 feet, that addition?
20 A I don't know that. I can only see it from the way
21 the elevation represents the outer covering.
22 Q As an architect --
23 A Yes.
24 Q -- who does drawings and who has to abide by code,
25 if you were to add an addition such as this one on top of an

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1 existing part of a building, at minimum you would have to
2 add eight feet on top, correct?
3 A Correct.
4 Q If you were going to connect your roof that you're
5 going to build on top of this new addition to a pre-existing
6 roof, do you understand what I'm saying --
7 A Uh-huh.
8 Q -- and you maintain the pitch, wouldn't that also
9 increase by at least eight feet, maintaining the pitch?
10 A If it's starting off at eight feet in the low
11 point and then climbing up, it would, but what the problem
12 here is that the original submission for here was the gable
13 roof and it showed it as being under. This one shows it
14 again being in the same line as the existing roof.
15 Q How, how can you tell from what you're pointing,
16 pointing to for the record?
17 A Yeah. Yeah.
18 MS. ROBESON: What is he pointing to?
19 THE WITNESS: I'm looking at A4.
20 BY MR. MOHAMMADI:
21 Q For the record, Exhibit 88, you're pointing to
22 page A4 to the top drawing, the front elevation drawing, and
23 you're pointing to the top of the line that's marked as
24 front grade, is that right?
25 A No, it's marked as front elevation and I'm looking

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1 at it because it says here, what, do you have the existing
2 plan or elevation?
3 Q You can look through it.
4 A I'm looking because I've never seen this thing.
5 MS. ROBESON: Well, you're introducing the
6 exhibit, so you can help him out.
7 MR. MOHAMMADI: Well, but I'm just not going to --
8 MS. ROBESON: Plus, we want to get through this
9 hearing.
10 MR. MOHAMMADI: -- cross-examination --
11 MS. ROBESON: So --
12 BY MR. MOHAMMADI:
13 Q I'm trying to find out what, if you are
14 maintaining the pitch of a roof, same pitch of a roof and
15 you are raising the foundation by eight feet, wouldn't that
16 also increase the height of the roof by eight feet?
17 A There is nothing to say that you're maintaining
18 the pitch of the roof. What we can go by is the existing
19 condition that you showed us.
20 Q What's the minimum pitch a roof has to have, do
21 you know that?
22 A It could be a flat roof as he has built before.
23 There is no --
24 Q This is, this is not a flat roof. You can't tell
25 from this that this is a flat roof, right?

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1 A Yes, sir, but unless you show me the existing
2 condition and the proposed together, I can't make my point.
3 Q Looking at AB2 on Exhibit 88.
4 A Uh-huh.
5 Q Is this, this says as built --
6 A Correct.
7 Q -- front elevation as built rear elevation, as
8 built left side elevation, as built --
9 A Uh-huh.
10 Q -- right side elevation, correct?
11 A Right. Right.
12 Q And as built means what existed previously --
13 A Right.
14 Q -- correct? Okay. Where here can you, can you
15 tell from this what the roof heights are?
16 A Not since it's been modified with the whole, more
17 definition of lines. None of these were on the drawings we
18 have.
19 MS. ROBESON: What he's asking you is --
20 THE WITNESS: Yes.
21 MS. ROBESON: -- can you tell from this drawing?
22 Assuming that this drawing --
23 THE WITNESS: Uh-huh.
24 MS. ROBESON: -- is the as built, pre-existing --
25 THE WITNESS: Right.

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1 MS. ROBESON: -- condition, do you know how high
2 the roof is?
3 THE WITNESS: No, but we, we were not looking --
4 MS. ROBESON: Well, wait a minute.
5 THE WITNESS: The answer is no.
6 MS. ROBESON: How can you say no?
7 THE WITNESS: Because our measure was the chimney
8 that was existing in that --
9 MS. ROBESON: But that's what his measure is.
10 THE WITNESS: But he has got dimensions on this
11 now.
12 MS. ROBESON: I know.
13 THE WITNESS: But we didn't have --
14 MS. ROBESON: But that's not the question.
15 THE WITNESS: Okay.
16 MS. ROBESON: The question is assuming this plan
17 is accurate and accurately assuming represents pre-existing
18 conditions, isn't it true that the, the chimney height of
19 the right side elevation is 19 feet, nine and three quarters
20 inches? So --
21 MR. MOHAMMADI: That's a yes?
22 THE WITNESS: Yes, that's a yes because I, it's
23 written here. It was not given to us.
24 MS. ROBESON: Yes. Yes.
25 THE WITNESS: Yes.

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1 MS. ROBESON: Okay. Go ahead.
2 THE WITNESS: I only take it because somebody is
3 saying 99.
4 MS. ROBESON: I understand. What he's asking you
5 is assuming this is correct, you can tell the dimension?
6 THE WITNESS: It's written here.
7 MS. ROBESON: Yes.
8 THE WITNESS: We did not have the benefit of that.
9 MS. ROBESON: I understand that.
10 BY MR. MOHAMMADI:
11 Q Okay. Comparing that with a fourth, I'm sorry,
12 can you tell what the height is now on the front elevation
13 drawing?
14 A This one says 26 feet, but the relationship of the
15 top of that roof to the chimney is still the same as what
16 was on your AB2.
17 Q Isn't that a County requirement that the chimney
18 be at least two feet higher than the roof pitch?
19 A Yes, sir. But here it says --
20 Q Of the roof ridge?
21 A -- it's 19 feet from the top of the chimney in AB2
22 as built front elevation.
23 Q Minus two feet, would put it, the roof pitch at
24 17?
25 A You don't mean, what you mean the roof height?

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1 Q Roof height, correct.
2 A Right.
3 Q And we didn't have these dimensions, so what we
4 were looking at was exactly what they described. The
5 chimney has to be two plus feet above the finished roof. So
6 we saw a roof with a chimney that much higher. Then we
7 looked in the proposed drawing, which we did not have that
8 picture, and saw that the chimney was the same distance
9 above the roof that was shown. As I said, there was no
10 discussion whatsoever.
11 MS. ROBESON: But, okay, I understand that. You
12 don't -- I really do. You don't have to keep saying it.
13 THE WITNESS: Okay. But --
14 MS. ROBESON: He's just, he gets a turn to ask you
15 questions.
16 THE WITNESS: No, no, that's fine.
17 MS. ROBESON: So I do understand that you did not
18 have, your testimony is that you did not have dimensions --
19 THE WITNESS: Exactly.
20 MS. ROBESON: -- that you approved it based on
21 Exhibit 77?
22 THE WITNESS: Correct.
23 MS. ROBESON: All right. Keep going.
24 BY MR. MOHAMMADI:
25 Q I don't like to, you know, belabor this point too

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1 much, but I'm going to ask it again. If you're raising, if
2 you're adding a completely new addition to an existing part
3 eight feet above at least, how can you, how is it possible
4 to keep the same roof height and still connect it up with
5 the whole, the roof height?
6 A Because you can do it --
7 Q If you keep the same pitch?
8 A If you, there's something called stick building,
9 stick framing. You say this is my existing ridge height,
10 this is what I'm springing from and I'm linking the two.
11 Q Right. A stick --
12 A And so --
13 Q Trusses can do the same thing, right? You can,
14 you can have the pitch on the trusses to make sure it links
15 the same way, right?
16 A Yeah. I mean that's true, but what we have to go
17 by when there are no dimensions and no discussion of raising
18 above the existing ridge point, we have only the visual
19 difference between the chimney top and the edge of the roof
20 as it was shown. So we said he has not given us any
21 dimensions. He didn't talk about raising it above the ridge
22 point. He actually mentioned how it's going to bring the
23 rear roof to meet the ridge point. That's the only time we
24 talked about the roof. And so our only clue barring no
25 conversation about going higher is not the roof pitch, not

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1 the slope of the roof or how it's construction, the HOA is
2 more about what is the finished product.
3 MS. ROBESON: I, and I do understand --
4 THE WITNESS: Right. So --
5 MS. ROBESON: -- what your testimony is and what
6 you believed you were approving. All right. Do you have
7 any other -- I mean we've kind of beat this to a --
8 MR. MOHAMMADI: Sure. Okay.
9 BY MR. MOHAMMADI:
10 Q Is it fair to say you don't care, if you had known
11 that the roof was going to be raised, it wouldn't matter?
12 A How could you say that when we, when we were
13 questioning the third floor addition and that got knocked
14 down?
15 MS. ROBESON: Okay. Don't --
16 THE WITNESS: Okay.
17 MS. ROBESON: -- you don't get, just answer the
18 question.
19 THE WITNESS: Yes, it would have been of great
20 concern.
21 MR. MOHAMMADI: Okay.
22 THE WITNESS: It would have been of even greater
23 concern than the bump out of the sides --
24 MR. MOHAMMADI: Is --
25 THE WITNESS: -- for which we had some dimensions.

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1 BY MR. MOHAMMADI:
2 Q Is there some magic number that the roof can't be
3 above?
4 A No.
5 Q Okay. So --
6 A The magic number is that we are trying to keep the
7 texture, massing and scale of the community to be what it is
8 and there is not a single house in the 159 that has been
9 built above the existing ridge line.
10 Q Okay. Of the 159 houses, none of them have been
11 built above the existing ridge line?
12 A Not that I know of.
13 Q Okay. Are you aware of Ms., Ms. Mary Beth's house
14 that burned down?
15 A Yes.
16 Q Okay. I show you, this is one of the pictures I
17 have produced here.
18 MS. ROSEN: I have got it.
19 MS. ROBESON: Do I have it?
20 MR. MOHAMMADI: You know what, I don't think you
21 do.
22 MS. ROBESON: Okay.
23 THE WITNESS: Can I look at yours? Can you look
24 at yours?
25 MS. ROBESON: Who am I?

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1 MR. MOHAMMADI: I'm sorry. You know, I made
2 copies of everything else except the pictures.
3 MS. ROSEN: And I have an extra full set. I'm
4 trying to find them over there now.
5 MS. ROBESON: Okay. So this was 89? Is that an
6 89 on here? Let me just -- and how --
7 MR. MOHAMMADI: It's supposed to be.
8 MS. ROBESON: And how, how would you identify
9 this?
10 MR. MOHAMMADI: Picture of --
11 MS. ROBESON: Of whose house?
12 MR. MOHAMMADI: Mary Beth Bentolila.
13 MS. ROBESON: Can you spell it?
14 MS. BENTOLILA: B-E-N-T-O-L-I-L-A.
15 MS. ROBESON: For the record, I'm assuming that
16 was Ms. Bentolila's voice?
17 MR. MOHAMMADI: That was Ms. --
18 MS. ROBESON: Is she going to testify?
19 MR. MOHAMMADI: She will.
20 MS. ROBESON: Okay.
21 BY MR. MOHAMMADI:
22 Q Her house burned down, right?
23 A Yes.
24 Q Okay. And she rebuilt her house?
25 A Correct.

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1 Q Okay. And is this the rebuilt house, the pictures
2 show that rebuilt house?
3 A I am being, but I think it is.
4 Q Okay. And does this appear to be an accurate copy
5 of the, of her house, a picture of her home?
6 A I mean it's a photograph. I would assume so.
7 Q Okay. Are you aware how tall that, that house is?
8 A When I was talking about existing ridge height,
9 you were talking about additions. When something is being
10 done from, from a burned down, brand new house, we are not
11 counting how high it is.
12 MS. ROBESON: Okay.
13 THE WITNESS: Yeah.
14 MS. ROBESON: You're, you're anticipating the
15 point of his question.
16 THE WITNESS: Oh, okay, I'll wait.
17 MS. ROBESON: I need you first --
18 THE WITNESS: I'll wait.
19 MS. ROBESON: -- to answer -- you will have an
20 attorney that is going to come back and have you clarify it.
21 I need you to answer his question which was do you know the
22 existing ridge line --
23 THE WITNESS: Ridge line.
24 MS. ROBESON: -- of the --
25 THE WITNESS: No, I don't.

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1 MS. ROBESON: Okay. That's all, that's all he was
2 asking.
3 BY MR. MOHAMMADI:
4 Q Do you know whether this existing ridge line of
5 this house exceeds the original ridge line of the pre-burned
6 down house?
7 A I don't know that.
8 Q You don't know that? Okay. I mean I would move
9 to admit 89. I don't know if I need to have her testify
10 about it, but --
11 MS. ROBESON: Well, all these pictures were -- do
12 you have an objection to proceeding --
13 MS. ROSEN: Well --
14 MS. ROBESON: -- subject to authentication or --
15 MS. ROSEN: The only thing I would have to just
16 indicate is I'm looking at the respondent's pre-hearing
17 statements and I don't see his continuing now as being a
18 witness and am I missing something here?
19 MR. MOHAMMADI: It's actually a picture taken by
20 the expert, so I don't think I need her to testify about it
21 anyway, but --
22 MS. ROSEN: She's not, I mean I don't believe
23 she's been listed as a witness, so I mean I don't, I would
24 object to her testifying because --
25 MS. ROBESON: All right.

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1 MS. ROSEN: -- she's not listed.
2 MS. ROBESON: You can do this through your expert?
3 MR. MOHAMMADI: Yes.
4 MS. ROBESON: Okay.
5 MR. MOHAMMADI: He's the one that took the
6 pictures.
7 MS. ROBESON: So for the time being, the picture
8 is marked as 89.
9 (Exhibit No. 89 was marked for
10 identification.)
11 BY MR. MOHAMMADI:
12 Q Let me, let me make sure I also got it straight
13 that you're saying there was no discussions about raising
14 the roof whatsoever prior to the work beginning?
15 A There was discussion about the third floor
16 addition and the only other conversation was about the bump
17 out on top of the garage and the bump out on the side by
18 Crossing Creek and bringing the slope of the roof in the
19 back to meet the existing roof.
20 Q I'm going to ask you to turn to Exhibit 75. I put
21 it right in front of you. If you could turn to March 31,
22 2011 meeting?
23 A Uh-huh.
24 Q Okay. I point you to this line, two-thirds of the
25 way down. Could you read that?

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1 A Raj asked what the height was at maximum. Peter
2 said it would not exceed 30 feet.
3 Q So there's at the very least at this board
4 meeting, prior to approval, discussion about roof height and
5 the maximum height it would be?
6 A That is, if I might answer it this way, that this
7 --
8 MS. ROBESON: No.
9 THE WITNESS: Okay, I may not.
10 MS. ROBESON: Just --
11 THE WITNESS: Yes or no?
12 MS. ROBESON: Yes, well --
13 MR. MOHAMMADI: Yes or no.
14 MS. ROBESON: -- start with yes or no, because --
15 THE WITNESS: No, because what it's asking is tell
16 us the height of the maximum roof pitch, roof height.
17 MR. MOHAMMADI: How is that --
18 THE WITNESS: It was never provided.
19 BY MR. MOHAMMADI:
20 Q How was, how is that different than me asking were
21 there any discussions about roof height? Would you not
22 consider this a discussion about roof height?
23 A It's not about increasing the roof height.
24 MS. ROBESON: Okay. Let's move on. I, I get, I
25 understand the communication.

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1 MR. MOHAMMADI: Court's indulgence on this.
2 BY MR. MOHAMMADI:
3 Q Are you aware that an application was submitted on
4 December 16, 2013, a new application?
5 A There was no application submitted that I know of.
6 Q Okay. Are you aware of any submission in December
7 16, 2013, by Peter Ball?
8 A On January 27, 2014, yes, I was given or left in
9 my mailbox was a set of drawings and a letter from Peter
10 Ball to Jeff, to Pete Gibson and that was marked, hand-
11 delivered December 16th. When I asked Pete why it was so
12 long before I got it, or why it came to him and not the
13 architecture committee chair, he said he did not see an
14 application with it and it was not given to him, but it said
15 the hand-delivered, it was left in his mailbox. I don't
16 know when he picked it up.
17 Q I show you what's going to be marked Exhibit 980.
18 (Exhibit No. 90 was marked for
19 identification.)
20 BY MR. MOHAMMADI:
21 Q Is that the letter you're talking about?
22 A That's, that's the letter that I received on
23 January 27th.
24 MS. ROBESON: Okay. So this is going to be marked
25 as Exhibit 90, unless Ms. Rosen objects and it is a 12/16/13

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1 letter from Peter Ball to Peter Gibson.
2 BY MR. MOHAMMADI:
3 Q And you saw this letter, right?
4 A I saw this letter, yes.
5 Q Okay. But you said you saw it sometime at the end
6 of January?
7 A January 27th.
8 Q Okay. And did, did, there's two drawings attached
9 to this letter, this exhibit. Are these the same drawings
10 you saw?
11 A I don't recall because I didn't really look at the
12 drawings because it was already told to me that there was no
13 application with it and it did not come to the president, it
14 didn't go to the architecture chair and it was not a
15 complete application. It didn't have the application form.
16 It had only some drawings. I don't recall any plans and you
17 are showing me two elevation drawings.
18 Q It's true that despite your claiming today that it
19 was incomplete, you never informed Mr. Barr that it was
20 incomplete, correct? You or the HOA or the --
21 MS. ROBESON: You mean he never informed Mr. Ball?
22 MR. MOHAMMADI: Ball, did I say Barr?
23 MS. ROBESON: Yes.
24 THE WITNESS: Yeah.
25 BY MR. MOHAMMADI:

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1 Q I'm sorry, Mr. Ball.
2 A That's okay. What I told Peter Gibson when he
3 gave, when I found the mail in my mailbox, as I told him,
4 and I said I find this drawing in my mailbox, what's going
5 on here, and we always stamp and put the date, January 27,
6 that's why I remembered it and I said I found this. It's
7 not a complete set and he wants us to go to the board
8 meeting about it. And I said to him we are not interested
9 in the methods and needs of the construction by which he is
10 going to achieve what HOA approved. We have gone ahead and
11 told him it is not complying with the drawings that were
12 approved by the HOA. And we said that to him on September
13 15 in writing. We never heard back from him, no response
14 whatsoever.
15 Q September 15th?
16 A September 15, 2013. And that was when we visited
17 on September 14. Did I say 13? I meant we visited on
18 September 14th. The letter was written September 15, 2013.
19 And it told him what was wrong with it and you have a copy
20 of the record.
21 Q Right.
22 A And we told him at the bottom line item something
23 to the effect that please make the corrections. And the
24 reason, please make the corrections and proceed to complete
25 your project. We did not ask for drawings. We got no

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1 communication back from him. And so all he did was put a
2 top on it and stop work as I told you for 6 1/2 months or
3 so.
4 Q So in September you sent him a letter saying
5 submit drawings and then you received this?
6 A No, we, sorry. May I interrupt you? That I did
7 not say I asked him to submit drawings. And if you can find
8 me the letter, I will point it out to you.
9 Q Well, you're turning to the second --
10 A Yes, see, no, I didn't ask you. I was asking,
11 sorry.
12 Q My question is after you received this, Peter,
13 December 16, 2013 letter, did you send Mr. Ball any notice
14 that this was not a complete application?
15 A I did something different. I called an attorney
16 and said there is a drawing here that's been submitted.
17 It's gone through the vice president. It has no application
18 with it and it's not a complete submission. And I was told
19 that no communication is needed about this because we are in
20 litigation and that should have gone to the attorney. But
21 all I can tell you is the September 15 letter got no
22 response and then this was left --
23 MS. ROBESON: Wait September 15th?
24 THE WITNESS: 15, 2013.
25 MS. ROSEN: September 15th.

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1 MR. MOHAMMADI: It would help if you focused on
2 the --
3 MS. ROSEN: Exhibit --
4 MR. MOHAMMADI: -- question. My question was
5 about this December 16th letter.
6 MS. ROSEN: Exhibit 79 is the September 15th.
7 MS. ROBESON: Okay. The December -- okay. Where
8 is the December 16 letter? What exhibit?
9 MR. MOHAMMADI: 90.
10 MS. ROBESON: Okay. Mr. Barr, was there ever a,
11 any kind of response to this letter?
12 THE WITNESS: No, because I did not get it until
13 January, no.
14 MS. ROBESON: No, don't, don't --
15 THE WITNESS: The answer is no.
16 MS. ROBESON: -- tell me. Okay.
17 THE WITNESS: No.
18 MS. ROBESON: Did anyone else from the Association
19 --
20 THE WITNESS: Not that I know of. It was sent to
21 Peter Gibson and he dropped it off in my mailbox and it was
22 not a complete application and we were already talking about
23 an approved set of plans from which he was building and we
24 had shown him very early, and the reason we took time to go
25 out there was we didn't want to get him into an expensive

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1 construction that we already saw was a problem and so we
2 took time out of our life to go over there and tell him that
3 in the hope that he will correct and keep going because he
4 was doing good progress. But he came to a screeching halt
5 and then told the neighbor on the side that we had asked him
6 to stop.
7 MS. ROBESON: Okay. All right. I'm -- okay. Go
8 ahead, Mr. Mohammadi.
9 MR. MOHAMMADI: Thank you.
10 BY MR. MOHAMMADI:
11 Q I just want to verify, previously you did testify
12 that when applications are submitted and they don't conform,
13 typically you send a letter or some kind of response to the
14 homeowner like Irma Spencer did in 2008 saying what was the
15 problem and that procedure was not followed here, correct?
16 A It was not followed here because this is not an
17 application. It was not accompanied by an application form
18 filled out, which Mr. Ball has done on at least four
19 occasions. It did not come as a complete set of drawings,
20 had no plat and, therefore, it was not an application. It
21 was just to drop off in somebody's mailbox which came to me
22 more than a month and a half later.
23 Q Okay.
24 A In my mailbox.
25 Q You, you're referencing a September 15, 2013

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1 letter and I think that was Exhibit 79, is that right? Yes,
2 that's Exhibit 79. This letter was sent after you and a
3 number of other board members visited Mr. Ball's house and
4 did a walk through for, I think you said over an hour?
5 A Yes.
6 Q Okay. Okay. And prior to that, Mr. Gibson, I
7 think you said, went to the house as well, right?
8 A He went there on September 10th.
9 Q Okay. And when Mr. Gibson went to the house, you
10 said, you said that he reported everything was okay?
11 A He also reported that they had no discussion about
12 the roof and he listened to what Mr. Ball said and said it
13 was fine. September 12, we started receiving what I thought
14 was a very important set of emails which was that the roof
15 height has been increased. And so he said let's help to
16 stop this before it gets too far and he's making good
17 progress, let him fix it and keep going. That was the only
18 intention for us to go there.
19 Q Okay. After you went to Mr. Ball's house on the
20 14th, the 15th letter is just to memorialize that meeting?
21 A It was to give him, yes, it was to give him the
22 information officially that all new roofs of the house were
23 shown in line with the existing roof height and were
24 approved as such.
25 Q Okay. No board meeting was held to determine

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1 whether this letter should be sent, right?
2 A The president, the vice president and the
3 architecture committee chair were the most informed about
4 this construction. We were operating still under the
5 approval given on May 15, 2011, and this violation was under
6 that same approval when there was, the deck had been stepped
7 back and a few other things done. We had a board meeting
8 and we got permission, Peter got to make a presentation to
9 the board and there was a board authorization to file a CCOC
10 action.
11 MR. MOHAMMADI: Your Honor, I'm just going to ask
12 for instruction that he just answer my question. This is
13 going to take literally past 5 o'clock.
14 MS. ROBESON: Mr., Mr. Barr, on cross-examination
15 you need to be what they call responsive, which means you're
16 leaping ahead and justifying your action or explaining your
17 action before you answer his question. You will get an
18 opportunity to, or explain the circumstances, but I need you
19 just to say yes or no or I agree with you, even though you
20 think it may look bad, you'll get a chance to turn, to tell
21 your side of the story and it would make the hearing go much
22 faster.
23 MR. MOHAMMADI: Okay.
24 BY MR. MOHAMMADI:
25 Q The question was no meeting or vote was held by

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1 the HOA prior to sending the September 15, 2013 letter,
2 correct?
3 A No, there was not. They were operating under the
4 same approval.
5 Q Okay. Is that typical that you sent letters about
6 violations without first taking a vote whether they are and
7 whether the board members agree?
8 A Yes, because I'm the designated person to head
9 this and we had a threesome who went out who were familiar
10 with the project.
11 Q So you can unilaterally decide that a letter
12 should be sent?
13 A No, sir, that's not what I said.
14 Q Well, you said you were the designated person,
15 correct?
16 A No, I said there were three of us who went by. We
17 operated under the original approval. We were operating
18 under the approval given for the violation under that
19 approval with the deck and this was a more egregious
20 violation to then, and to call a board meeting these days,
21 you need to give 10 days notice and we thought this was a
22 timely action that we would help Mr. Ball with, giving him a
23 quick response and a quick heads up.
24 Q Okay. Did you and the two other members that went
25 with you hold a vote?

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1 A We were unanimous that this was a problem.
2 Q And did you hold a vote?
3 A Yes. It was three to zero if you want to make it
4 official.
5 Q Okay. And that's documented somewhere?
6 A No, it is not documented somewhere. We decided
7 that we would be helping the client by giving him, the
8 tenant, by giving him an early warning so he doesn't have 10
9 more days of construction along this wrong path that we all
10 agreed looking at drawings and having discussions with him
11 was, in fact, not what we had approved. And we were
12 expecting some kind of response. We didn't get any. And so
13 we figured he was taking care of what he needed to be doing.
14 Q You wanted a response to a September 15, 2013
15 letter, is that what you're saying you didn't get a response
16 to?
17 A No. No. I am saying what we said was you are
18 hereby asked to proceed immediately to remedy and bring the
19 building back into conformity with the approved
20 architectural drawing.
21 Q Did you --
22 A We didn't asked for any drawings. We didn't ask
23 for any response. We just told him this seems like a
24 problem, get, get to it.
25 Q It seems like a problem, but you don't even know

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1 if it's actually a problem?
2 A No. No.
3 Q Anyways --
4 A We thought it was a problem. That's why --
5 Q Well --
6 A -- we took time to write this.
7 Q -- we'll turn to -- you did hold some meetings in
8 October, right?
9 A Yeah, there was a board meeting.
10 MS. ROBESON: October of what year?
11 MR. MOHAMMADI: Of 2013.
12 BY MR. MOHAMMADI:
13 Q You had a board meeting October of 2013?
14 A Actually I was --
15 MS. ROBESON: I don't see that in the exhibits
16 thus far. Is that an exhibit yet?
17 MR. MOHAMMADI: It's not an exhibit yet. I'm
18 marking it as 91.
19 MS. ROBESON: Okay.
20 (Exhibit No. 91 was marked for
21 identification.)
22 MS. ROBESON: And can you describe what this is?
23 MR. MOHAMMADI: Yes.
24 BY MR. MOHAMMADI:
25 Q Mr. Barr, do you recognize this document?

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1 A Yes, it's --
2 Q -- the document marked as Exhibit --
3 A -- the minutes of a meeting, a special meeting
4 that was called to meet, comply with the 2012 CCOC order.
5 The meeting was conducted by Peter Gibson and I was absent
6 that day.
7 Q Okay. Have you seen these special meeting notes?
8 A Yes. Of course.
9 Q Okay. And -- yeah, I'm sorry, minutes. Do these
10 minutes at all, at this meeting was Mr. Ball's property
11 discussed at all?
12 A I don't know. I wasn't there, but I can see from
13 the minutes that complying with the order was to validate
14 all of the actions that are being taken in the previous
15 hearing that was CCOC ordered and they listed on the left, I
16 see, discussion of conditional approval of additions to
17 10600 Vantage and the conditional approval of the
18 construction at 10603 Vantage Court are listed.
19 Q Okay.
20 A And what the board did, as I understand, was
21 validate the, affirmed the 2012 budget and the actions that
22 were taken.
23 Q And that's pursuant to a CCOC order that was
24 entered before?
25 A Correct.

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1 Q Okay. And is it fair to say that that's 30-12,
2 CCOC case number 30-12?
3 A I don't know that.
4 Q Was that a case brought by Mr. Bruno against the
5 homeowner's association?
6 A Yes.
7 Q Okay. And so you held this special meeting to
8 abide by that CCOC order and affirm the actions that were
9 previously taken?
10 A Correct.
11 Q And the reason you did that is because you had not
12 affirmed those actions by a vote or otherwise previously?
13 A No. We had affirmed them, but we had -- can I
14 explain the answer?
15 Q Sure, go ahead.
16 A Okay.
17 MS. ROBESON: Yes.
18 THE WITNESS: The bylaws of the Association for 40
19 years are of date. They have never been revised. So we
20 were operating in good faith on what was in that document.
21 And when Mr. Bruno brought it to our attention, Jeffrey
22 Williams was present. He's an attorney, so I --
23 MS. ROBESON: Brought what to your attention?
24 THE WITNESS: The fact that we were not giving
25 sufficient notice or whatever was the thing. I don't

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1 remember what his complaint was. And so what we were doing
2 was we were following our HOA bylaws as they existed. And
3 once we heard about it, we tried to get these bylaws amended
4 and approved, but we still were to comply with the CCOC
5 order.
6 MS. ROBESON: So this was in a sense, in your
7 opinion, ratifying --
8 THE WITNESS: It is.
9 MS. ROBESON: -- your prior actions?
10 THE WITNESS: In fact, it says so right up there.
11 It says the order wanted us to affirm the budget set past
12 and any other actions that were taken by having the board
13 members read it.
14 MS. ROBESON: Did you publish an agenda, did you
15 publish an agenda --
16 THE WITNESS: Yes, there was an agenda published.
17 MS. ROSEN: And if I can answer? Because there
18 was, there was an order in the Bruno case that required them
19 to do this meeting, which they did, and they followed that
20 order and I actually have the documentation. They had to
21 send out a certain notice. They had to ratify --
22 MS. ROBESON: Okay.
23 MS. ROSEN: -- certain things.
24 MS. ROBESON: All right.
25 BY MR. MOHAMMADI:

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1 Q And I guess is it fair to say that you contend
2 there was notice given to all the members about this October
3 7, 2013 meeting?
4 A Yes, it was given, due notice was given according
5 to the laws of the state of Maryland and the CCOC order.
6 Q Okay.
7 MR. MOHAMMADI: I would ask at this point, Your
8 Honor, to take judicial notice of that case. I think 30-12.
9 MS. ROBESON: Any objections?
10 MS. ROSEN: No, Your Honor. I don't have any
11 objections. Just give me one second. In that case, on page
12 10 of that order, it says, No. 2, all actions taken by the
13 board of directors in 2012 outside of meetings or any board
14 meetings other than January 30, 2012 meeting must be
15 affirmed at an open board meeting to be valid. That is
16 basically what they -- and then --
17 MS. ROBESON: Okay. All right. That --
18 MS. ROSEN: -- there are other parts in this
19 order.
20 MS. ROBESON: All right. Are there any objections
21 to taking official notice?
22 MS. ROSEN: No, I have no objection, Your Honor.
23 MS. ROBESON: Okay. Continue, Mr. Mohammadi.
24 BY MR. MOHAMMADI:
25 Q Dr. Barr, just if you go down a little bit

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1 further, architectural committee section --
2 A Yes.
3 Q -- there is some discussion about Peter Gibson's
4 property during that time, right?
5 A You mean Peter Ball's?
6 Q Peter Ball's, yes, Peter Ball's property.
7 A I can see it in the minutes. As I said, I was not
8 at the meeting, so you should ask Peter Gibson that.
9 Q Okay. But I'm just asking, the document shows, at
10 least --
11 A Yeah.
12 Q -- purports that there was some kind of
13 discussions, right? I'm showing you what's going to be
14 marked as Exhibit 92.
15 (Exhibit 92 was marked for
16 identification.)
17 MS. ROBESON: Can you describe what this is? Are
18 these the minutes of the, the board minutes of the 2/11/13
19 meeting?
20 THE WITNESS: They're of the board meeting for the
21 year 2013, that year. The minutes of the board meeting in
22 2013.
23 MS. ROBESON: All the minutes?
24 THE WITNESS: I don't know if it's all, but it
25 includes a number of them.

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1 MS. ROBESON: Okay. Then 92 will be minutes, 2013
2 board minutes, various dates.
3 MR. MOHAMMADI: We think it is all of them just
4 simply because that was the request and Ms. Rosen provided.
5 BY MR. MOHAMMADI:
6 Q Dr. Barr, take another look at these minutes. Are
7 you familiar with these minutes?
8 A The individual meetings of every meeting stand
9 alone and have a description and a sign-off by the
10 secretary.
11 MS. ROBESON: Wait. The question is --
12 THE WITNESS: So this is --
13 MS. ROBESON: -- are you familiar with these?
14 THE WITNESS: No, I'm not.
15 MS. ROBESON: Okay.
16 THE WITNESS: I'm was showing, we have deposition,
17 that's all I've seen.
18 MS. ROBESON: Okay.
19 BY MR. MOHAMMADI:
20 Q Okay. Have you, have you reviewed the minutes
21 ever?
22 A I have reviewed the minutes, but this is not the
23 minutes. This is the compilation.
24 Q Isn't it true that once minutes are compiled for a
25 meeting, at the next meeting those minutes are affirmed or,

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1 I guess, accepted maybe?
2 MS. ROBESON: Adopted.
3 MR. MOHAMMADI: Adopted. Thank you.
4 MS. ROBESON: They have to be adopted and voted
5 on.
6 THE WITNESS: And the following meeting of the
7 board, there is adoption of the previous minutes when they
8 are standalone minutes. That's how minutes -- this is just
9 a compilation.
10 BY MR. MOHAMMADI:
11 Q This is a compilation, but this, this seems to be
12 a compilation of all the minutes for the year 2013, is that
13 fair?
14 A Yeah, that's what it seems to be.
15 Q Okay. And if you could flip to the second to the
16 last page, the second to the last page, I'm sorry.
17 A I'm sorry.
18 Q And take a look at that October 7, 2013 minutes.
19 Those are the same minutes we just looked at at Exhibit 91,
20 correct?
21 A I don't know that, I don't know why this is
22 compiled or what's in it or not.
23 Q I mean the date is the same one as the minutes we
24 just looked at in Exhibit 91, right?
25 A Right. As I said, I have not seen those minutes.

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1 Q Okay.
2 A This compilation.
3 MS. ROBESON: Assuming they're the same minutes.
4 BY MR. MOHAMMADI:
5 Q Well, that's my question is they don't look the
6 same, do they? If you compare 91 to 92, the October 7th
7 meeting, they don't appear to be the same minutes.
8 A I did not compile this. You should ask the
9 secretary when you get the chance.
10 Q I'm just asking --
11 A I don't know anything about it.
12 MS. ROSEN: The documents speak for themselves.
13 If he doesn't know --
14 MS. ROBESON: Yeah, I --
15 MS. ROSEN: -- he doesn't know.
16 THE WITNESS: I have no knowledge of this.
17 MS. ROBESON: Without a basis for where somebody
18 got these, I mean if he says he doesn't know, he doesn't
19 know.
20 MR. MOHAMMADI: He testified those were the
21 minutes that were adopted, it's a compilation of the
22 minutes, but those are the minutes that were adopted.
23 MS. ROBESON: Do you know whether these are the
24 minutes that were adopted?
25 THE WITNESS: I don't know that because I can look

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1 at this one which is October 7th and this was what was
2 adopted and October 7th in this.
3 MS. ROBESON: And what's this? The first --
4 THE WITNESS: First meeting, the compilation he
5 just gave me.
6 MS. ROBESON: Okay. What's the first one?
7 THE WITNESS: This is the minutes of the special
8 meeting of --
9 MS. ROBESON: No, exhibit number.
10 THE WITNESS: Exhibit No. 91.
11 MS. ROBESON: Okay. So --
12 THE WITNESS: This is a question to be addressed
13 to the secretary because I don't see this as being, we did
14 not work on this, had no reason to be voted on because each
15 individual board meeting does the summary of and the
16 adoption of the previous month's meeting.
17 MS. ROBESON: What's your question Mr. Mohammadi?
18 MR. MOHAMMADI: I'm trying to understand why
19 there's a difference between these two purportedly board
20 minutes for the same day. Were there two different board
21 meetings or is there some mistake or what's going on?
22 MS. ROSEN: Well, I think the question --
23 MS. ROBESON: Well --
24 MR. MOHAMMADI: The HOA is --
25 MS. ROSEN: -- was the secretary.

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1 MS. ROBESON: Yeah, that's what I was thinking. I
2 don't --
3 THE WITNESS: That's what I was just saying.
4 MS. ROBESON: He can't answer it, so --
5 MR. MOHAMMADI: If he has testimony he has no
6 personal knowledge, I won't ask him about it, but he's --
7 that didn't seem clear to me in his response, so --
8 THE WITNESS: I don't know the legal phrase. I
9 have no personal knowledge of this compiled set of minutes.
10 I don't know --
11 BY MR. MOHAMMADI:
12 Q Who would be the person that would have personal
13 knowledge?
14 A The secretary is the one who would have, knows
15 about it, so you should ask him.
16 Q And who is the secretary?
17 A Lynn Gowen.
18 MR. MOHAMMADI: I don't know if I moved to admit
19 91, but you did testify about it. I'll wait to move to
20 admit 92 until Ms. Gowen testified to it.
21 MS. ROBESON: All right. Do you have an objection
22 to 91?
23 MS. ROSEN: Me? No, 91, no, I have no objection
24 to 91.
25 MS. ROBESON: Okay. What about, what about the

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1 compilation?
2 MS. ROSEN: I think at this point I'll object to
3 it because --
4 MS. ROBESON: Okay. We'll wait --
5 MS. ROSEN: -- you know, I think --
6 MS. ROBESON: -- on that. I agree.
7 MS. ROSEN: She can testify to it.
8 MS. ROBESON: I'd rather --
9 MS. ROSEN: See what it is, it could be a draft to
10 those.
11 MS. ROBESON: Where, okay.
12 MR. MOHAMMADI: Okay.
13 BY MR. MOHAMMADI:
14 Q Dr. Barr, you, I think you testified, and correct
15 me if I'm wrong, if you do construction and something
16 changes about what you're building, you have to come get
17 approval, is that, is that fair to say?
18 A Changes?
19 Q About what you're building.
20 A You mean me building or anybody building?
21 Q If --
22 MS. ROBESON: Anybody --
23 MR. MOHAMMADI: If you remember --
24 MS. ROBESON: Mr. Barr --
25 THE WITNESS: I'm trying to understand the

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1 question.
2 MS. ROBESON: I'll tell you the question.
3 THE WITNESS: Okay.
4 MS. ROBESON: Because I can understand it.
5 THE WITNESS: Okay.
6 MS. ROBESON: The question is if anybody in the
7 Association gets approved plans and then they need to, want
8 or need to change those plans, do they have to come back
9 through the architectural committee and file a new
10 application? Is that your question, Mr. --
11 MR. MOHAMMADI: That's my question.
12 MS. ROBESON: -- Mr. Mohammadi? Okay. Go ahead.
13 THE WITNESS: Yes.
14 MS. ROBESON: Yes? Okay.
15 THE WITNESS: Correct. And that --
16 MS. ROBESON: Next question.
17 BY MR. MOHAMMADI:
18 Q And it doesn't matter what the deviation or the
19 change is for any change regardless of how minor it is to
20 have to come get approval again?
21 A If it's minor, informing and keeping the
22 Association in, in the knowledge loop is all that's
23 required.
24 Q Okay. So just if there is notification, that's
25 sufficient?

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1 A And then the Association can decide whether it's
2 sufficient or not.
3 MS. ROBESON: Well, how does the Association
4 decide if it's --
5 THE WITNESS: If it's, if it's a, if it's a
6 deviation that has been asked for, if you are informed of it
7 before, we will give it to the board to decide whether this
8 is large or small.
9 MS. ROBESON: But you don't have to file full sets
10 --
11 THE WITNESS: No, you don't --
12 MS. ROBESON: -- of plans or anything?
13 THE WITNESS: Not every time, no.
14 BY MR. MOHAMMADI:
15 Q And I'm assuming all of this is in the guidelines
16 that you've discussed before, but so if there's going to be
17 a deviation, you notify the board and then you stop work
18 until the board makes a decision on whether it's okay or
19 not, is that how it would work?
20 A No, as you have noticed, we are very proactive in
21 getting people help to keep moving, especially projects that
22 have been lingering. So we would immediately address that.
23 Now the difficulty in calling a board meeting is that some
24 previous --
25 MS. ROBESON: Well, what does that mean,

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1 immediately address that?
2 THE WITNESS: Immediately, as fast as, at the next
3 possible instance we would have a board meeting if it was
4 considered at large and not acceptable.
5 MS. ROBESON: Okay. Who makes the initial
6 determination whether it's --
7 THE WITNESS: The architectural committee chair.
8 MS. ROBESON: Okay. Keep going.
9 BY MR. MOHAMMADI:
10 Q When you say proactive, you mean from 2008 to
11 2011, before a decision is reached, whether construction can
12 go forward, is that what you consider proactive?
13 A I didn't understand the question.
14 Q I'll withdraw it.
15 MS. ROBESON: Yes, that's argumentative. And
16 really the, we don't need any name calling in this one,
17 okay, or characterizing or anything like that.
18 MR. MOHAMMADI: No problem, Your Honor.
19 MS. ROBESON: All right.
20 BY MR. MOHAMMADI:
21 Q With respect to, but I do, I still want to
22 understand, if there is going to be a deviation that is
23 notified, are you expecting the homeowner to stop working
24 until the board approves or are you, can the homeowner
25 continue doing work?

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1 A State it again. If it is informed, we can have
2 the board decide or the architecture committee decide
3 initially whether it's considered major or whether it's
4 something that was within the levels of authority. And if
5 it is something that was required by the County, the same
6 thing applies.
7 Q I'm sorry, if it's something required by the
8 County?
9 A If it's something required by the County, then the
10 same thing applies, inform the Association so they can take
11 a judgment, the committee can make a judgment on whether
12 this is serious or whether this is tolerable.
13 Q Okay. And just to clarify, when you say required
14 by the County, you mean if, if you go to get approval and
15 the County said actually you can't build it this way, you
16 could build it another way to bring it to code, that's what
17 you mean with required by County?
18 A Yes, because it says very clearly right on the
19 face of every building permit under which they are building,
20 let me just get to there if I could --
21 MS. ROBESON: Well, no, that's --
22 THE WITNESS: Necessary --
23 MS. ROBESON: -- that wasn't the question. The
24 question was only, he was trying to clarify what you meant -
25 -

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1 THE WITNESS: Right.
2 MS. ROBESON: -- by the County, all right? So you
3 don't have to tell us --
4 THE WITNESS: If the County and the building
5 permit wants us that way.
6 MS. ROBESON: Yeah. And -- okay.
7 MR. MOHAMMADI: Okay.
8 BY MR. MOHAMMADI:
9 Q And when that happens, the homeowner comes,
10 notifies the architectural committee, the County wants them
11 to do it this way and then the architecture committee
12 decides whether that's okay or not, is that fair?
13 A I would imagine so, yes. I would, yes, yes.
14 Q Okay. When a decision is made that a homeowner is
15 not abiding by what the architectural committee said to do
16 such as here with Mr. Ball, what's the process to determine
17 whether to go to essentially elevate the matter to the CCOC
18 level?
19 MS. ROBESON: CCOC? You mean the --
20 MR. MOHAMMADI: From the board, no, it's already
21 at the --
22 THE WITNESS: It's at the board already.
23 MR. MOHAMMADI: If it's already at the board and -
24 -
25 MS. ROBESON: Oh.

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1 MR. MOHAMMADI: -- and the resolution can't be
2 reached, or you don't think a resolution has been reached,
3 what's the process to get something to the CCOC within the,
4 within the HOA?
5 THE WITNESS: We would normally have a
6 communication with the owner of, of the project. We might
7 have a conversation. We've been there many times to have
8 conversations with people who needed help on that, ask for
9 their ordinate presentation that they would like to make and
10 then have a board meeting.
11 At the board meeting, we now have to give
12 sufficient notice and we do that. We invite the person to
13 come in and make a presentation. Then the board makes,
14 takes a vote and the vote is what decides that you're going
15 to CCOC or any other location. We normally go to the lowest
16 level of involvement because we're trying to keep this
17 moving along.
18 BY MR. MOHAMMADI:
19 Q Okay. So it's fair to say that you're going to
20 give the homeowner an opportunity to present his or her
21 case?
22 A We always do.
23 Q And after that homeowner, you invite him to attend
24 the board meeting, correct?
25 A Yes.

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1 Q And when he's at the board meeting, he presents
2 what he wants to do?
3 A Right.
4 Q And then after he makes his presentation, the
5 board at that point takes a vote?
6 A Yes.
7 Q Okay. And before the board meeting is even set
8 up, it's fair to say you have to give some kind of notice,
9 right, in writing?
10 A To the board?
11 Q To the, to the --
12 A Yeah, now --
13 Q -- to the homeowner?
14 A Yes.
15 Q Do you, do you know how long, how long that it is,
16 how much notice you have to give?
17 A Previously before we were operating under the
18 revised bylaws, we would try to have the meeting as fast as
19 possible to keep, again, to keep it going and then give them
20 the notice saying that's the day on which it's settled.
21 Q Okay.
22 A Now it is 10 days.
23 Q It's 10 days now? Okay.
24 A Yeah. Yeah.
25 Q Do you know what it was, just for clarification,

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1 for, at the time Mr. Ball's case was being taken to CCOC?
2 A I don't recall, but I know that we waited about
3 five months for corrective action. We gave him more than
4 five months for corrective action and then had the board
5 meeting. So we were giving as much time for him to do the
6 fixes.
7 Q And is it fair to say that you took your vote to
8 whether to take this case to the CCOC or not on October 28,
9 2013?
10 A That sounds about right.
11 Q Okay. And is it also fair to say that Mr. Ball
12 was not present at that hearing and neither, and was never
13 told to be present at that hearing?
14 A October 28th.
15 Q Or at that meeting?
16 A October 28, 2013?
17 Q Correct.
18 A To go to CCOC? No.
19 Q Correct.
20 A We took the vote in -- I need to see the paper.
21 Q I mean I'll show you -- 92 has not been admitted,
22 so but I'll show you 92 anyways so you can maybe decide --
23 A No, I'm going to go to the minutes.
24 MS. ROBESON: No, don't, don't show him 92.
25 THE WITNESS: I'm not looking at that right -- I'm

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1 waiting --
2 MS. ROBESON: Let's stick with what's admitted.
3 THE WITNESS: If you can find --
4 MS. ROBESON: You, why don't you take a minute?
5 THE WITNESS: It's 2013, right. Was it October
6 28th?
7 MR. MOHAMMADI: October 28, 2013.
8 MS. ROBESON: Do you need a few minutes to --
9 MS. ROSEN: Yes, that would help.
10 MS. ROBESON: Okay. Let's, let's take five
11 minutes and we'll come back at 3:15. We're going off the
12 record.
13 (Whereupon, a brief recess was taken.)
14 MS. ROBESON: Okay. Are the parties ready? Oh,
15 Mr. Barr is outside. Okay.
16 Okay. Are the parties ready?
17 MR. MOHAMMADI: I am, Your Honor.
18 MS. ROBESON: Please, I want quiet. Okay. We're
19 back on the record. I think we were -- Ms. Rosen had asked
20 for a copy of, or was going to produce a copy of minutes.
21 Thank you. So I am going to mark this as 93, which would be
22 minutes of the HOA board meeting, October 28, 2013.
23 (Exhibit No. 93 was marked for
24 identification.)
25 MS. ROBESON: Have you gotten a copy, Mr.

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1 Mohammadi?
2 MR. MOHAMMADI: I have it now, yes.
3 MS. ROBESON: Okay.
4 BY MR. MOHAMMADI:
5 Q Dr. Barr, this Exhibit No. 93, those are the
6 October 28, 2013 board meeting minutes?
7 A Right.
8 Q And you were present at the meeting?
9 A Yes, I was chair.
10 Q Okay. And does this look like an accurate copy of
11 the minutes?
12 A Yeah.
13 Q Okay.
14 MR. MOHAMMADI: Move to admit 93.
15 MS. ROBESON: It's admitted. Any objections, Ms.
16 Rosen?
17 MS. ROSEN: No.
18 MS. ROBESON: Okay. Is that no?
19 MS. ROSEN: No.
20 MS. ROBESON: Okay.
21 BY MR. MOHAMMADI:
22 Q Do you know who was present at that board meeting?
23 A It shows the board members in attendance. That's
24 all I have. The secretary might have more information.
25 Q Would that more information typically be contained

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1 on the minutes if other members were there, would they be
2 contained in the minutes?
3 A Yeah.
4 Q And since there's no other members except for the
5 board members there listed, it's fair to say nobody else was
6 present, correct?
7 A That's not necessarily true.
8 Q The question, again, I'll repeat, okay, my
9 question was if other people were present, the minutes would
10 reflect that, correct?
11 A If they were properly written up.
12 Q Okay. So is it your contention these may not be
13 properly written up minutes?
14 A Yes, I've seen that happen before.
15 Q Okay. So there's a possibility that these are in
16 error?
17 A What is in error?
18 Q There's, you're saying there's a possibility that
19 these are in error?
20 A I'm reading from a line that says board members in
21 attendance. I'm not seeing who else was there. So it's
22 possible that they were not listed or were not, they were
23 not listed.
24 MS. ROBESON: How many board members do you have?
25 THE WITNESS: Nine.

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1 MS. ROBESON: To your recollection, were all the
2 board members there --
3 THE WITNESS: No, actually --
4 MS. ROBESON: -- if you can recall?
5 THE WITNESS: No, I think it was about seven.
6 One, two, three, four, five, six, six.
7 BY MR. MOHAMMADI:
8 Q And to your recollection, was there anybody else
9 besides those six board members present?
10 A Not to my recollection.
11 Q Okay. Would you agree that on this date, October
12 28, 2013, is when you took the vote of whether to file this
13 second CCOC case?
14 A Under all this, does it say something to that
15 effect.
16 Q Okay. And when you say it says something to that
17 effect, are you, can you read what you talked about?
18 A Right. Raj made a motion to enter a second
19 complaint to the CCOC on initial non-conforming construction
20 on the same property. Lee seconded and the motion passed
21 unanimously.
22 Q All right. Mr. Ball was not present at this
23 meeting, correct?
24 A Actually I don't recollect that. I don't know
25 that.

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1 Q I think you just said nobody else was present?
2 A No, I didn't say that. I said it could have been
3 that they were not entered in here.
4 Q Okay. So to the best of your recollection, Mr.
5 Ball was not present, right?
6 A I don't know that.
7 MS. ROBESON: Okay. He just --
8 MR. MOHAMMADI: To the best of your --
9 MS. ROSEN: He just said he doesn't know.
10 MS. ROBESON: To the best --
11 MS. ROSEN: Asked and answered.
12 THE WITNESS: Of my recollection, no.
13 MS. ROBESON: I didn't hear him answer.
14 MS. ROBESON: Okay. Okay.
15 THE WITNESS: Okay.
16 MS. ROBESON: To the best --
17 THE WITNESS: No.
18 MS. ROBESON: -- of your recollection, no?
19 THE WITNESS: No.
20 MS. ROBESON: Okay. That's enough with that
21 question.
22 BY MR. MOHAMMADI:
23 Q Just to, just to clarify, you did previously
24 testify that before you take a vote, you allow the party to
25 present its case and then you take the vote, right?

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1 A Yes.
2 Q Would you agree that was not done on October 28,
3 2013?
4 A Can I give a slightly longer answer then? I'm
5 just trying to clarify this so we don't have to keep going
6 back and forth over the same thing if you don't mind.
7 Q I think you're --
8 A All I'm trying to say is this second action, the
9 second complaint was, initially we tried to attach it to the
10 CCOC file that was going through already, the deck, the 73-
11 12.
12 MS. ROBESON: The 73-12. Yes.
13 THE WITNESS: 12.
14 MS. ROBESON: Yes.
15 THE WITNESS: And we tried to attach it. My
16 understanding is that Ms. Rosen was told that that was
17 already moving along, so they wanted us to file another one.
18 And effectively we were told to file another one because
19 they could not attach it.
20 MS. ROBESON: Okay. My, I think Mr. Mohammadi's
21 question is was Mr. Ball here when you made the decision to
22 file the second complaint?
23 THE WITNESS: I don't know that because it was not
24 brought up as an agenda item. It was under old business,
25 old business meaning ongoing CCOC violation and adding to

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1 it.
2 MS. ROBESON: I don't understand your answer.
3 THE WITNESS: Okay.
4 MS. ROBESON: I, I just don't.
5 THE WITNESS: This --
6 MS. ROBESON: Mr. Mohammadi, you --
7 MR. MOHAMMADI: Your Honor, just to clarify where
8 I'm going with this, I think you know.
9 MS. ROBESON: Yeah, I know. I'm trying to --
10 okay. You take, you ask a question.
11 MR. MOHAMMADI: Okay.
12 BY MR. MOHAMMADI:
13 Q To be clear, you testified that in order for the
14 HOA to take somebody to the CCOC, there has to be a vote and
15 prior to that vote the HOA member gets to present his case,
16 is that, is that correct?
17 A Yes.
18 Q And isn't it, is it correct that that procedure
19 was not followed on October 28, 2013, when the vote was
20 taken to take Mr. Ball to the, to the CCOC on the second
21 complaint?
22 A He was already in CCOC on this project that we had
23 approved.
24 MS. ROBESON: Okay. Okay. Just answer the
25 question. Was he there when you voted on October 28th? I

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1 understand your position.
2 THE WITNESS: I don't recall if he was there or
3 not. And since the name is not there, so I can't, I can't
4 testify to that.
5 BY MR. MOHAMMADI:
6 Q Do you recall having a discussion with Mr. Ball on
7 that day about his construction?
8 MS. ROBESON: Well, how accurate, Mr. Barr, I
9 really, you know, how, I mean are your minutes regularly
10 inaccurate?
11 THE WITNESS: No, but I've come across ones where
12 the date was wrong and I've caught it enough before we went
13 to the meeting to get the date corrected.
14 MS. ROBESON: All right.
15 THE WITNESS: So that's all I'm saying. I, you
16 should ask the secretary that and she would be able to say
17 if she has notes because this comes, these minutes are put
18 together by handwritten notes that she makes.
19 MS. ROBESON: Okay. That's -- all right. To your
20 recollection then, was he there? That's all he's trying to
21 get at.
22 THE WITNESS: I already said -- that's all I'm
23 saying. I don't recall and I don't remember him being there
24 because if he was there, he would have asked to present. He
25 would just --

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1 MS. ROBESON: Okay. Okay.
2 THE WITNESS: -- continuing on on that --
3 MS. ROBESON: So you have no recollection whether
4 on October 28, 2013, Mr. Ball was there or not?
5 THE WITNESS: Because we had -- no.
6 MS. ROBESON: Okay.
7 THE WITNESS: We just --
8 MS. ROBESON: That's it.
9 THE WITNESS: Okay.
10 BY MR. MOHAMMADI:
11 Q If you don't know, who would know?
12 A No, I said he was not there.
13 MS. ROBESON: Okay.
14 BY MR. MOHAMMADI:
15 Q Oh, okay. So he was not there? Okay.
16 A Because if he was there, we would have a speak.
17 Q Okay. All right. Do you know if notice was sent
18 out about this, this board meeting?
19 A Yes, all board meetings are given a 10-day notice
20 and everyone in the homeowner's association is informed.
21 Q Okay. And do you know if that notice was, in
22 fact, sent out on, for this October 28, 2013 meeting?
23 A Yes.
24 Q Do you have a copy of that somewhere?
25 A I'm not the one generating it so, again, that's a

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1 question for the secretary.
2 Q Okay. Have you seen the notice yourself?
3 A I mean there are so many, I don't always -- if I
4 got it, I would see it. Yes.
5 Q Do you --
6 MS. ROBESON: Just say do you recall seeing it.
7 THE WITNESS: I, I recall seeing it. Yes.
8 BY MR. MOHAMMADI:
9 Q Okay.
10 MS. ROBESON: Did you have an agenda on it?
11 THE WITNESS: There would be an agenda.
12 MS. ROBESON: Did it list Mr. Ball's non-
13 compliance issue?
14 THE WITNESS: No, it did not.
15 MS. ROBESON: Okay. Keep going.
16 BY MR. MOHAMMADI:
17 Q And do you know if, if it was sent to Mr. Ball?
18 A Every homeowner would have got one.
19 Q You, I think, and correct me if I'm wrong, you
20 stated that the roof issue really became an issue and you
21 found out about it around September 12, 2013?
22 A Yes.
23 Q Okay. And then you went to the property on the
24 14th to take a look at the roof?
25 A Correct.

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1 Q And on the 15th of September, 2013, you wrote that
2 letter that you discussed?
3 A That's correct.
4 Q You also just testified the roof issue had been
5 going on for five months and that's, that's what we were
6 discussing, right?
7 A Well, I don't know whether it was five months. If
8 it's less than that, it's one month.
9 Q Okay.
10 A I wasn't counting months. I just knew it had been
11 going on for awhile. I'm sorry if I got it wrong.
12 Q Okay. So, well, I think that there's a difference
13 between one month and five months, would you agree?
14 A That's probably, that's correct.
15 Q Okay. It's more accurately about a month, a month
16 and a half, right?
17 A Yes.
18 Q Okay. I would like to turn your attention to the
19 supplement that you, that you went through.
20 MS. ROBESON: The supplemental complaint --
21 MR. MOHAMMADI: Correct.
22 MS. ROBESON: -- you mean?
23 MR. MOHAMMADI: Yes.
24 MS. ROBESON: And that would be Exhibit 7.
25 MR. MOHAMMADI: I have a copy, although mine has

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1 some handwritten notes. I don't know if there was a --
2 okay.
3 BY MR. MOHAMMADI:
4 Q Now I know in order, maybe don't take too much
5 time on this, okay? In your testimony you said it's better
6 if Ms. Gowen testifies about this?
7 A About some --
8 Q About some of this. But you also, I think, stated
9 in your testimony that you had knowledge about all of these
10 things, is that correct?
11 A Yes.
12 Q And you have to have knowledge about all the
13 issues if you're going to take a vote to take somebody to
14 the homeowner's, to the CCOC, correct?
15 A Yes.
16 Q So what I'm trying to say is all the board members
17 present at the meeting would know what the issues are, would
18 have a discussion about what the issues are and then take a
19 vote to determine whether to go to the CCOC or not, correct?
20 A In this instance we saw it as a continuation of
21 the existing CCOC complaint that was already in the system.
22 Q Okay. Did you specifically discuss every single
23 one of these supplemental items that you listed in the
24 complaint at the October 28, 2013 meeting?
25 A No.

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1 Q Did you only discuss the roof?
2 A The roof height to me was the one that are the
3 biggest problem and needed to be informed to Mr. Ball as
4 fast as possible, that's why we went there and that's why we
5 wrote the letter and then we were trying to attach that --
6 MS. ROBESON: Okay. I understand.
7 BY MR. MOHAMMADI:
8 Q So at best, the only item that was discussed was
9 the roof and voted on, is that fair to say?
10 A Yes.
11 Q Okay. The remaining supplemental items were not
12 discussed or voted on, is that fair to say?
13 A They were not mentioned, yes, definitely not voted
14 on.
15 Q Okay. I'd like to go through some of these
16 supplemental items with you since you did testify about some
17 of them, okay?
18 A Uh-huh.
19 Q Start with number one. It says Barr's involvement
20 on the removal of open shed, right, that's the first one?
21 A Yeah.
22 Q What's that, what's the open shed?
23 A The removal of open shed is a shed that has been
24 existing and was built without a permit. But, again, the
25 details are better know to Ms. Gormen.

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1 Q Okay. What's the issue with the open shed? I'm
2 trying to understand. What's the problem that this open
3 shed is --
4 A This was built without a permit and it still
5 exists and --
6 Q Do you know --
7 A Yeah.
8 Q Do you know when it was built?
9 A Like I told you, Ms. Gowen knows the date. I
10 don't want to speculate on the date and get something, and
11 get it wrong like I did about five months.
12 Q Okay. Do you believe it was built during this
13 2011 construction phase or before?
14 A I believe it was built before.
15 Q Okay. So it wasn't part of the 2011 submission to
16 begin with?
17 A Not that I know of, no.
18 Q Do you know where this shed is located?
19 A Yes.
20 Q Could you, could you try to --
21 A It's on the right-hand side of the house.
22 Q On the --
23 MS. ROBESON: Okay.
24 THE WITNESS: Right-hand side facing the elevation
25 past the garage.

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1 BY MR. MOHAMMADI:
2 Q Okay. So it's next to the house?
3 MS. ROBESON: I'm getting, is it the one under the
4 deck with the lattice or this is a separate shed?
5 THE WITNESS: This is a separate deck. This is a
6 separate deck.
7 MS. ROBESON: And this is the one off the deck in
8 the rear yard, in the rear --
9 THE WITNESS: I believe it's to the side and to
10 the rear.
11 MS. ROBESON: Okay.
12 THE WITNESS: The deck in the side was built and
13 this is still surviving on the side.
14 MR. MOHAMMADI: Court's indulgence. Let me see if
15 I can find the picture and what we already have in there.
16 MS. ROBESON: Well, you don't have to. Let's move
17 on.
18 MR. MOHAMMADI: Okay.
19 MS. ROBESON: So this is not the 73-12 --
20 THE WITNESS: Three, 12, no.
21 MS. ROBESON: -- deck?
22 MR. MOHAMMADI: Shed you mean?
23 MS. ROBESON: Shed, yes, shed. What do you mean
24 by open shed?
25 THE WITNESS: I don't know. I'm not the one who

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1 wrote it. I'm not the one who labeled it.
2 MS. ROBESON: Okay.
3 THE WITNESS: Okay? You have a person who can
4 testify to that.
5 MS. ROBESON: Okay.
6 BY MR. MOHAMMADI:
7 Q Okay. The second item is remove, removal of
8 enclosed shed at laundry room. Which one is that?
9 A I would say the same thing, the details are not
10 known to me. I can, I have not studied every item in this.
11 Some of these items relate to construction I can see from
12 the street in these photographs.
13 Q Do you at least know what the issue is with that
14 item? You say removal.
15 A Uh-huh.
16 Q What's the issue with that item?
17 A Because the approved plan show this as already
18 being removed.
19 Q Okay. So you're saying the approved plans say we
20 are going to remove the shed?
21 A It says it's removed.
22 Q And that's what you're saying the problem is?
23 A Yeah.
24 Q Because he didn't remove it from the approved
25 plans, he's kept it as it was, now it would be easy to

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1 remove because the approved plans don't show it, is that
2 what you're saying?
3 A That's my understanding.
4 Q Just to clarify, is your position that just
5 because the approved plans don't show the shed, it must mean
6 that he was going to remove it?
7 A I don't have the precise answer. Please ask the
8 person testifying next.
9 Q Okay. Number 3, brick veneer facade on the front,
10 front of original house.
11 A Again, I'll be very specific about this. I look
12 at the big picture and she did the detail work. So we split
13 the duties.
14 Q Okay. So you just have an overall problem with the
15 project and she looked at the specifics of each problem?
16 A Yeah, she --
17 Q Is that, is that what you're trying to say?
18 A You could say that, yeah. I have an overall
19 problem and she knows the final detail of which is beyond
20 that.
21 Q Okay. The brick, I think number four is with knee
22 walls?
23 A Knee walls, yeah.
24 Q Okay. And what's, what's that referring to?
25 A We talked about it at the desk. It's the wall

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1 that is on the front on the left-hand side. It's a brick
2 veneer that's applied from the ground up and then it also
3 appears in the approved drawings all the way around the
4 back.
5 Q Would you agree that -- you don't think that's a
6 big deal at all, do you?
7 A No, I think it's a big deal if it has various,
8 varying heights as built --
9 Q Isn't --
10 A -- and it's not as approved.
11 Q Isn't it true that you think you will not quibble
12 about this, isn't that what your testimony --
13 MS. ROSEN: No.
14 THE WITNESS: I'm not a quibbler, so I'm always
15 trying to make peace.
16 BY MR. MOHAMMADI:
17 Q Okay. I'm just going to show you a deposition
18 transcript, okay? Now you took a deposition. Do you recall
19 the deposition?
20 A Yeah, yeah.
21 Q Mr. Humayun was the one that took the deposition?
22 A Kim.
23 Q Page 65 of the deposition, well, let's start at
24 page 864 and since it goes two pages. Question on 64, as
25 far as the brick knee wall is concerned, what is indicated

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1 on the plan to your recollection as far as the brick knee
2 wall? I would say something out of line here. Is that your
3 answer?
4 A Yeah, because the built, the knee wall as built
5 did not match the height of the, knee, and I'll make this
6 easier for you, it's not a big deal. It's something that I
7 could live with, but the board is what decides, not me.
8 Q You specifically said you wouldn't quibble about
9 it.
10 A Right. I personally would not quibble about it.
11 Q Okay.
12 A But the board has much more weight than I do.
13 Q Okay. Who is quibbling about it if you're not
14 quibbling about it, the entire board?
15 A The board because we had discussion on settlement
16 agreement and --
17 MS. ROBESON: I'm going to object to the testimony
18 on the settlement agreement.
19 MS. ROBESON: That's -- so you object or you --
20 MS. ROSEN: I don't want him answering --
21 MS. ROBESON: -- want to stop him?
22 MS. ROSEN: -- about settlement --
23 MS. ROBESON: Okay.
24 MS. ROSEN: -- discussions.
25 THE WITNESS: Okay.

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1 MS. ROSEN: It's not appropriate.
2 BY MR. MOHAMMADI:
3 Q Are you saying the board is the one that makes
4 that decision, right?
5 A Yeah, the board is the one that makes a decision
6 on how much we can have deviation and these are all the
7 deviations we noted.
8 BY MR. MOHAMMADI:
9 Q I want to read you another passage from the
10 deposition, page 79, if you can follow with me, sir?
11 A Okay.
12 Q But when it comes to this kind of thing like the
13 knee wall, I can overrule that. So my voice will carry on
14 that knee wall was for sure.
15 A I'm being a little cocky there. I don't have that
16 power.
17 Q Okay. You testified under oath, right?
18 A Yeah.
19 Q And you're testifying under oath now?
20 A I was hoping I could convince people.
21 Q Going on to number five --
22 A Uh-huh.
23 Q -- all of your windows and doors to match approved
24 plans?
25 A Yes.

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1 Q What's wrong with the doors and windows?
2 A They don't match the approved plans.
3 Q What, what doesn't match?
4 A They are wrong in proportion, size and location.
5 Q Okay. Did you go out and measure anything?
6 A I don't have to measure them. We can look at the
7 drawing and look at the photograph and you can see that it
8 doesn't look exactly like it. It's not even sometimes in
9 the same place.
10 Q Okay.
11 A And some are missing.
12 Q So you previously said there's no dimensions on
13 the drawings. So you don't know what any sizes are, right?
14 A But you can judge proportions.
15 Q But now you can, but you are able to compare
16 somehow and now say actually the sizes are off?
17 A Actually it's not the sizes. I'll give you an
18 example if I might. In, in getting the building permit for
19 the deck, Mr. Ball submitted a building permit to me as I
20 told you. It had no damage on the building permit that was
21 issued by the County. It was square. I knew enough that
22 what we approved was not square. It was square and lined up
23 with the line of the building. And I told him this is, and
24 I wrote, wrote him in a letter and said you have shown, you
25 have got approval for a deck that has no damages, is in line

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1 with the outside and is square, whereas I recall that you
2 had one that was would wreck the venue and set back two
3 feet. And he responded, yes, I will make sure I build it
4 that way.
5 Q The architectural committee and, by extension the
6 board, is responsible to make sure what is being built is
7 sort of in line with the rest of the community, right?
8 A Yes.
9 Q Looking at number five again, okay, you request
10 that cut sheets and specifications be provided for approval
11 before installation. What are cut sheets?
12 A Cut sheets are specifications. Again, this is not
13 my writing. I would not need cut sheets myself. But I
14 would want to see the window that was supplied is what is
15 draw and approved, is what is installed, at least in
16 proportion --
17 Q Cut sheets --
18 A -- and style.
19 Q The question was what are cut sheets?
20 A Cut sheets are window manufacturers tabulation of
21 what it looks like.
22 Q From, if you cut it and then you --
23 A No, no --
24 Q -- look at it?
25 A A cut sheet is just a sheet, you would say, not

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1 like a section of a window. What it does is it says this is
2 this type of window, it's a slider, it's an awning and these
3 are the sizes of the ones we have.
4 Q Okay. What gives the board or the architectural
5 committee to request the cut sheets of specific pieces of
6 what's being constructed?
7 A In this instance, because what was proportionately
8 provided was not implemented. We want to make sure that we
9 didn't have to go around this circus three or four times
10 before installing or purchase it, make sure it was, so we
11 know it's the same.
12 Q Okay. So it's sort of --
13 A It was a helpful act rather than a --
14 Q That wasn't something that was requested before is
15 what I'm asking, right?
16 A No, no, no.
17 Q You're requesting that now, today?
18 A Yeah, because it's after the fact. We find that
19 it's not implemented correctly, so we said let's help out by
20 getting in there before money is spent purchasing something
21 that's the wrong proportion --
22 Q Okay.
23 A -- or the wrong type.
24 Q All right. Number six?
25 A Okay.

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1 Q If you want to have a drink of water, please --

2 A No, no, that's fine.

3 Q -- go ahead.

4 A That's okay.

5 Q Number six, addition over garage on the right side

6 to be corrected to show set back of one foot, six inches,

7 with French doors, a wood railing over an angled roof along

8 the front face.

9 A That's a description of what was approved and what

10 is built doesn't look like that. So it's being described as

11 provide us what you were approved for.

12 Q Okay. How, how is it deferred?

13 A It says so very clearly and I'm not going to give

14 you the, like I said, I don't know the precise inches, but I

15 accept that it's not built according to the way it was

16 approved.

17 Q Somebody, somebody within the board would know the

18 precise inches?

19 A Yes.

20 Q Who would that be?

21 A That would be Lynn Gowen, who is expertise is in

22 construction detailing.

23 Q Okay. So if I asked Ms. Gowen tell me how many

24 inches it is, she would be able to tell me?

25 A She would be able to tell you what was approved

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1 and what was built.

2 Q I guess that kind of answered my question. Okay.

3 A Yeah.

4 Q Now you would agree that the construction as is

5 currently standing on the property is not complete, right?

6 A Yeah, it's not complete.

7 Q It's still ongoing?

8 A Uh-huh.

9 Q Right? So things like railing needs to be

10 installed. Don't you agree that's because the construction

11 has not been completed?

12 A Well, this is a construction project that was told

13 to us as being completed in six months from start to finish.

14 Q That's not my question. My question was isn't the

15 reason why some of these items are not there is because the

16 construction project was not completed?

17 A That's correct.

18 Q All right. So things like a railing, for example,

19 I mean it's fair to say those are not installed until the

20 end, right?

21 A Sure. Sure.

22 Q Okay. And facades and things like that are not

23 installed until the end, correct?

24 A What do you mean by facade?

25 Q Like sidings and, and things like that usually are

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1 not installed until everything else is finished and it's

2 sort of the end process, right?

3 A We are, well, a facade includes doors and windows.

4 And we saw that those were not properly installed.

5 Q Okay.

6 A So that's what we're talking about here.

7 Q Okay. But, but you will agree that there are

8 certain things --

9 A Sure.

10 Q -- that are just not there because --

11 A Right, right.

12 Q -- it's not finished?

13 A Uh-huh.

14 Q And would you agree the railing would include

15 that?

16 A Yeah.

17 Q Okay. I think number seven is talking about

18 setbacks. What's that?

19 A Additional left side of house does not match

20 approved plan is what it's saying.

21 Q But what's that mean?

22 A The addition on the left-hand side as built does

23 not match the plan that was approved.

24 Q And I think you stated something like --

25 MS. ROBESON: Well, it says length and width. How

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1 doesn't it comply?

2 THE WITNESS: It, if you recall, ma'am, the

3 approved plan --

4 MS. ROBESON: How -- that did have a dimension,

5 didn't it?

6 THE WITNESS: But, again, it's a matter of

7 proportion and I think, yes, it does have dimensions.

8 MS. ROBESON: Well, it's a matter of --

9 THE WITNESS: It does have dimensions. And what

10 was built is smaller and fatter, I think.

11 MS. ROBESON: Well, how do you know?

12 THE WITNESS: Because you can see how far it would

13 have run on the face on the side. It runs about 2/3 of the

14 way and it does not now and it's set back further.

15 MS. ROBESON: Okay.

16 BY MR. MOHAMMADI:

17 Q So you, upon visual inspection, you can just tell

18 that it's smaller?

19 A Yeah, after you've done it about 40 years, you can

20 say that it's not the proportion it's supposed to be.

21 Q But you don't know how many inches or feet or

22 anything like that?

23 A No, no. And if I might just summarize this? Our

24 intention here is to help --

25 MS. ROBESON: No, no.

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1 THE WITNESS: -- identify --
2 MS. ROBESON: You, you --
3 THE WITNESS: Okay.
4 MS. ROBESON: -- get to do that later.
5 THE WITNESS: Okay. All right.
6 MS. ROBESON: You'll get to do that later.
7 THE WITNESS: Okay.
8 MS. ROBESON: Let's, let's try and get through
9 cross-examination.
10 THE WITNESS: Sorry.
11 MS. ROBESON: I, I'm not saying, nobody is saying
12 that you were ill-intentioned, okay? Go ahead, Mr. -- well,
13 some may, but I'm not viewing you that way. So, Mr.
14 Mohammadi, continue.
15 MR. MOHAMMADI: Okay. Thank you. Court's
16 indulgence?
17 MS. ROBESON: Yes.
18 MR. MOHAMMADI: Just, just two minutes?
19 MR. MOHAMMADI: If I may continue?
20 MS. ROBESON: Yes.
21 BY MR. MOHAMMADI:
22 Q Taking a look at number eight --
23 A Uh-huh.
24 Q -- what's, what's wrong here? What did you say
25 was the problem?

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1 A The entry does not match the plans in the way it
2 was presented and accepted and approved. The entrance door
3 and window have been changed.
4 Q Have been switched?
5 A Yeah, have been changed, that's all I would say,
6 yeah.
7 Q Okay. You would agree that that, as long as
8 they're the same location, it's not a problem?
9 A It depends and I think we'd say, so further down
10 it says we could go with an unconforming addition, a non-
11 conforming addition on the side and be stated for this, but
12 that's not relevant.
13 Q Yes, if it is, it's in your --
14 A Okay. Yeah, it's been supplemented as a caveat if
15 what I'm saying. That's what I mean.
16 Q I'm showing you your deposition, page 75 --
17 A Uh-huh.
18 Q -- again. If you see eventually there's a window
19 in place of door, does it cause concern for you if it looks
20 like a door? That's the question.
21 A Uh-huh.
22 Q Your answer is if you're asking a personal
23 opinion, if it's in the same location, no.
24 MS. ROBESON: Thank you.
25 THE WITNESS: Yes.

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1 BY MR. MOHAMMADI:
2 Q Okay. So it wouldn't cause a concern --
3 A I did say that, yeah.
4 Q -- if it's in the same location?
5 A For me personally, but this is the board.
6 Q Number nine, the rainwater drywalls?
7 A Yeah.
8 Q What's that?
9 A I would state that what is behind this subject is
10 not how it is done, but how storm water runoff can be
11 mitigated so that soil and silt displacement doesn't
12 continue.
13 Q Okay. That's a code issue?
14 A It's not when it starts affecting the neighborhood
15 --
16 Q Okay.
17 A -- when the water runs off.
18 MS. ROBESON: Aren't there silt fences out there?
19 THE WITNESS: No, there are not silt fences that I
20 know of.
21 BY MR. MOHAMMADI:
22 Q This is something that --
23 MS. ROBESON: Oh, because it's under 5,000 square
24 feet?
25 THE WITNESS: Under some number, yeah.

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1 MS. ROBESON: Uh-huh.
2 BY MR. MOHAMMADI:
3 Q If this is a situation -- this is a situation
4 that's, that the Montgomery County Code addresses, right?
5 A Uh-huh.
6 Q That HOA is not in the business of, and the
7 architectural committee is not in the business of enforcing
8 HOA code?
9 A Absolutely not, but --
10 Q Okay. So this is a code issue versus an
11 architectural committee in terms of a looks issue, correct?
12 A Yeah, but you will notice that in the condition of
13 the approval before right around May 10, May 15, 2011,
14 specifically made reference to area waterways and silt
15 movement.
16 Q I understand what you're saying.
17 A And to mitigate it. That's the only statement.
18 Q My --
19 MS. ROBESON: What is your answer? Is this a code
20 issue or an architectural?
21 THE WITNESS: We believe it's a neighborhood issue
22 when we have water runoff.
23 MS. ROBESON: Now that, no, that wasn't the
24 question.
25 THE WITNESS: It's a --

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1 MS. ROBESON: The question is is it an
2 architectural issue?
3 THE WITNESS: The results are an architectural
4 issue because they --
5 MS. ROBESON: In what way?
6 THE WITNESS: -- affect the environment.
7 MS. ROBESON: I'm sorry?
8 THE WITNESS: It affects the environment that's
9 around the property on the other side. But whether it's a
10 code, whether it's a drywall or not, that's a code issue.
11 BY MR. MOHAMMADI:
12 Q Page 76 of your deposition, moving on to the
13 question, moving on to, it says to install rainwater
14 drywells? Answer: Yes, that is a concern about water
15 runoff, I believe.
16 Question: That has nothing to do with the
17 architectural drawing of the property of Peter Ball? I
18 think it has more to do, answer, I think it has more to do
19 with the performance of preventing runoff and displacement
20 of soil than providing a solution as to how it should be
21 done.
22 A That's exactly what I said.
23 Q Okay. So it's not, you would agree --
24 A That's not --
25 Q You would agree that it's not an architectural

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1 issue, right?
2 A Yes, it is not a drywell issue, it's a water
3 runoff issue and that's the same thing I've said to them.
4 Q You continue on page 77, you said, had I caught
5 it, I would have struck it off, referring to the, to the
6 supplement, but I didn't. It's not for us to say how to
7 solve the problem, is that correct?
8 A That's correct.
9 Q Okay.
10 A And that's --
11 Q Thank you. That's --
12 A -- exactly my point.
13 MS. ROBESON: That's, that's --
14 BY MR. MOHAMMADI:
15 Q Number 10, number 10, the remaining additions
16 along the second floor rear of the house are not to be
17 built. The HOA has no confidence it will be built with
18 approved plans nor meet any reasonable deadlines since all
19 current additions are not built to approved plans. They
20 have continuously built outside of the approved plans. What
21 gives the HOA the authority to say don't built it again?
22 MS. ROBESON: Well, that's a legal question that,
23 that Ms. Rosen and you can address.
24 MR. MOHAMMADI: Okay. I mean I didn't hear an
25 objection or anything, but --

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1 MS. ROSEN: Well, she beat me to it, so --
2 MR. MOHAMMADI: Okay.
3 BY MR. MOHAMMADI:
4 Q Number eleven, window and door trim needs to be
5 replaced to match approved plans with two inches to further
6 help this, this home site blend with the surrounding homes
7 in the neighborhood, right? You, I believe you in the
8 deposition, you stated that if it's two inches or three
9 inches, it doesn't matter, is that fair?
10 A Not to me, yes.
11 Q Okay.
12 A Agreed.
13 Q And you also said that you need to take some of
14 the stuff off the table and be reasonable about what they
15 are looking for, is that fair to say as well --
16 A Yes.
17 Q -- when discussing this item?
18 A Yes.
19 Q Okay.
20 A That's, again, me.
21 Q Okay. And then number 12, the full glass window,
22 again, you stated that's not a big deal, right?
23 A Not to me.
24 MR. MOHAMMADI: I have no further questions.
25 MS. ROBESON: All right.

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1 MS. ROSEN: Can we take about five minutes because
2 I feel like I'm going to keel over?
3 MS. ROBESON: Absolutely.
4 MS. ROSEN: Thank you.
5 (Whereupon, a brief recess was taken.)
6 MS. ROBESON: All right. We're back on the
7 record. Mr. Mohammadi, you were finished?
8 MR. MOHAMMADI: I was, yeah, I was done with
9 cross.
10 MS. ROBESON: Okay. Ms. Rosen.
11 MS. ROSEN: Okay. I will be as brief as possible.
12 REDIRECT EXAMINATION
13 BY MS. ROSEN:
14 Q Okay. Dr. Barr, we had, you were asked some
15 questions about architectural applications for the
16 Association. I want to show you documents which I guess our
17 next exhibit number will be, 94, I believe.
18 MS. ROBESON: Okay. I have two forms here.
19 THE WITNESS: Yes.
20 MS. ROSEN: Okay. Yes, I think those are the ones
21 I just, might have just put up there.
22 MS. ROBESON: Yeah. Are you going to hand me a
23 form, a different form?
24 MS. ROSEN: Let me just take a quick look.
25 MS. ROBESON: Here you go.

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1 MS. ROSEN: Yeah, these are the same ones.
2 MS. ROBESON: Okay. So are these separate or A,
3 B?
4 MS. ROSEN: Let's make them A, B, 94A and 94B.
5 MS. ROBESON: Okay. I'm going to, let's see, the
6 one with Potowmack Preserve, Inc. on the top is going to be
7 94A and I'm going to say application for approval of
8 exterior change and the second one is going to be 94A. Is
9 there any difference between these two?
10 THE WITNESS: Shall I answer it?
11 MS. ROBESON: Yes.
12 THE WITNESS: Yes. The one with Potowmack
13 Preserve on top is the hopefully new and improved version.
14 MS. ROBESON: Okay. So this is the, this would be
15 --
16 THE WITNESS: This is --
17 MS. ROBESON: -- the current?
18 THE WITNESS: This is the current, this is the
19 form.
20 MS. ROBESON: Okay. So 94A is the current
21 application for approval of an exterior change. And then
22 94B is the prior --
23 THE WITNESS: Yeah.
24 MS. ROBESON: -- correct?
25 THE WITNESS: Yes.

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1 (Exhibits 94A and 94B were marked
2 for identification.)
3 BY MS. ROSEN:
4 Q Okay. Now you've testified previously that in
5 order to, there for a submission to be an application, that
6 it has to be, that it has to be made with a form --
7 A Yes.
8 Q -- is that correct?
9 A Correct.
10 Q Okay. And I'm showing you two, two exhibits which
11 are marked as 94A and 94B. Are those examples of forms that
12 have been, that are used or have been used by Potowmack
13 Preserve for applications?
14 A Yes.
15 Q And so if, let's say, for example, if an
16 application has already been approved and somebody starts to
17 submit other drawings or things after that application has
18 been approved already, is that considered a new application?
19 A No, it's not.
20 Q Okay. So it's going, it's a, it's a, so it would
21 not be, it's not considered a new application submission?
22 A No.
23 Q Okay. And once an application has been approved,
24 is that considered basically a final, it's considered a
25 final decision?

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1 A Yes, it is.
2 Q Okay. So, for example, then when, assuming that
3 Mr. Ball's, there was some testimony about something being
4 submitted, some drawings or a letter around December 2013,
5 that was, that, in your review, is, that was not considered
6 an application, was it?
7 A It was not an application because it did not come
8 to us first.
9 Q Okay. And at that point in time, this case was
10 actually pending, isn't that correct?
11 A That's correct.
12 Q Okay. And a decision had already been made at
13 that point in time, you know, obviously before that time you
14 don't have this case filed in the CCOC, correct?
15 A Correct.
16 Q Okay. And as you previously testified, you had,
17 the Association previously had tried to amend, amend the
18 complaint in the other case to include these items, is that
19 correct?
20 A That's correct.
21 Q And at that point CCOC indicated that it was not,
22 it would not do that indirectly, a new complaint filed?
23 A That's right.
24 Q But it is all, all part of the same application?
25 A The same and the same approval.

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1 Q And the same approval? Okay. So would it be fair
2 to say that this, you know, that Mr. Ball thought, you know,
3 that the construction being overtaken by Mr. Ball, was it
4 constantly moving and evolving?
5 A No, I would say that.
6 Q Okay.
7 A Yes.
8 Q So I mean at one point in time it could be at one
9 stage and at one point in time something, you know, let's
10 says at one point in time they could, let's say there wasn't
11 a violation with regard to the move, but then when you
12 started to do certain work, then all of a sudden there was?
13 A Yes.
14 Q Okay. So a moving target, would that be a fair
15 way to put it?
16 A Yes.
17 Q Okay. Now you also tell them that there was some
18 questions, there was some testimony about a case that was,
19 had been filed against the Association by a homeowner names
20 Charles Bruno --
21 A Yes.
22 Q -- are you familiar with that case?
23 A Yes.
24 Q Okay. Now, and the CCOC, as a result of that
25 case, issued an order that required the Association to do

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1 MS. ROBESON: Okay. That's your answer, Mr.
2 Mohammadi.
3 MR. MOHAMMADI: Okay.
4 THE WITNESS: But I don't know if it was this
5 meeting or something else.
6 BY MR. MOHAMMADI:
7 Q The reason you were not surprised is that because
8 it happened on a somewhat regular basis that members don't
9 get the notices?
10 A No, I was not surprised because I remember Peter
11 calling me about some meeting notice that he needed.
12 Q Okay. Would you be surprised if other members
13 besides Peter Ball did not get these notices?
14 A It can happen. These are volunteers doing their
15 thing, okay?
16 MS. ROBESON: Answered.
17 MR. MOHAMMADI: All right.
18 BY MR. MOHAMMADI:
19 Q This agenda talks about conditional approval of
20 additions to 10600 under Vantage Court, correct?
21 A Yes.
22 Q And 10603 Vantage Court?
23 A Yes.
24 Q That's speaking about the approval that happened
25 back in May, the conditional approval back in May of 2011?

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1 A Yeah, in the 10600 case, then the 10603 was a
2 different date.
3 Q Okay. And it doesn't say anything about
4 discussing the current issues with the property, correct,
5 the agenda doesn't list that?
6 A No, not that I know of.
7 MR. MOHAMMADI: Nothing further.
8 MS. ROBESON: All right. We have finished, Mr.
9 Barr, and everyone maybe, no, I'm teasing. How many more
10 witnesses do you have?
11 MS. ROSEN: Well, I'm certainly, I'm definitely
12 going to put Ms. Gowen as a witness. I am, you know, I am
13 not sure -- there are other people I was contemplating
14 putting on, but I may or may not put them on, but Ms. Gowen
15 will certainly be a witness.
16 MS. ROBESON: Okay. I can go until 5:30 or we can
17 -- how many do you have?
18 MR. MOHAMMADI: At this point, today I'm not going
19 to get any of them, but I think about six maximum, but it's
20 probably going to be less, especially if we, especially if
21 we have to pick a date because they're not all going to be
22 available.
23 MS. ROBESON: All right. What I'd like to do is
24 stop now and then we can do Ms., is it Gowen or Gowen?
25 MS. ROSEN: Gowen.

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1 MS. ROBESON: Gowen?
2 MS. ROSEN: Gowen.
3 MS. ROBESON: We can do Ms. Gowen continuously on
4 -- so I do want to make sure we have enough days. So can
5 you firm up, can the two attorneys firm up July 10th, I
6 think, was the second day?
7 MR. MOHAMMADI: Yeah, I think we picked that day.
8 I know at least one of my --
9 MS. ROBESON: I, I will not be in August 8th
10 through August 18th.
11 MR. MOHAMMADI: We'd like to get this resolved --
12 MS. ROSEN: Yeah, we'd like to get this done
13 before.
14 MR. MOHAMMADI: -- before that time.
15 MS. ROBESON: Well, I have to get a decision out
16 and summarize the testimony and all that. So the sooner I'm
17 able to do that -- what's the status of the circuit court
18 case?
19 MS. ROSEN: That is scheduled for the 7th of July
20 and was actually originally part of a two-day, that's why it
21 was --
22 MS. ROBESON: Is anyone requesting an extension of
23 that or --
24 MS. ROSEN: No, I don't believe the circuit court,
25 because remember it was stayed because Mr. Dever, who is Mr.

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1 Ball's counsel in that case, you know, he and I went down to
2 court because we have to put in our pre-trial statement. It
3 had already been stayed because of the CCOC case, it had
4 been stayed until that other decision came down. So some of
5 it is moot, but the siding issue is, is basically the siding
6 and the attorney's fees issue are what's before the Court.
7 MR. MOHAMMADI: Just for the record, I believe
8 there's a pre-hearing conference scheduled in that case
9 tomorrow, is that correct?
10 MS. ROSEN: I don't know. I think it's actually
11 a, just, I think it's actually just following the pre-trial
12 statement --
13 MR. MOHAMMADI: Oh, is that right?
14 MS. ROSEN: -- if I remember correctly.
15 MR. MOHAMMADI: Typically either way, I, since I
16 don't represent them, I don't want to make any
17 representations, but there might be a request by, made to
18 push that back a little bit to see if we can get this
19 resolved first.
20 MS. ROBESON: Okay. Would you let our office know
21 if any extension --
22 MR. MOHAMMADI: If I find out, I mean Ms., Ms.
23 Rosen is going to find out before I am, so --
24 MS. ROBESON: Okay.
25 MR. MOHAMMADI: -- about whether or not there's

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1 going to be an extension. I'm not in the case.
2 MS. ROBESON: Second question. The CCOC case, 30-
3 2, I think it was --
4 MR. MOHAMMADI: 12.
5 MS. ROBESON: 12, 30-12?
6 MR. MOHAMMADI: Yes, I believe that's the --
7 MS. ROBESON: That's the one we're talking
8 official notice of. Well, let me ask this first.
9 MR. MOHAMMADI: Yes.
10 MS. ROBESON: CCOC Case 73-12, was that appealed?
11 MS. ROSEN: No, 70, 70 --
12 MR. MOHAMMADI: That case, no, I don't --
13 MS. ROSEN: Oh, no, that case ultimately stood.
14 There was an order and then there was a supplement order and
15 then --
16 MS. ROBESON: But it was never appealed to a
17 circuit court?
18 MS. ROSEN: It may have been, but with the appeal,
19 I believe they might have dismissed. I'm trying to remember
20 now, but I mean that order, that order stood.
21 MR. MOHAMMADI: The appeal was withdrawn.
22 MS. ROBESON: That's the final order?
23 MR. MOHAMMADI: Correct.
24 MS. ROSEN: Yes.
25 MS. ROBESON: That's what I'm trying to --

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1 MS. ROSEN: Final order, yeah.
2 MS. ROBESON: -- get to.
3 MS. ROSEN: That was a final order.
4 MS. ROBESON: Okay.
5 MS. ROSEN: Yeah.
6 MS. ROBESON: Okay. And so there's nothing
7 pending on 30-12 anywhere? So I have the -- if I take
8 official notice of the CCOC file, there's no other decision
9 that's out there on that?
10 MR. MOHAMMADI: 30-12?
11 MS. ROBESON: 30-12, I'm sorry, yeah.
12 MS. ROSEN: And which one is 30-12?
13 MR. MOHAMMADI: Charles Bruno was 30-12.
14 MS. ROSEN: Okay. Yeah.
15 MR. MOHAMMADI: That one --
16 MS. ROSEN: There's nothing pending on 12.
17 MR. MOHAMMADI: There's nothing pending on that
18 and there was an amended memorandum decision and order which
19 there was nothing significant in the amendment, but there
20 was one amendment --
21 MS. ROBESON: Okay. But it didn't go further --
22 MS. ROSEN: Yeah, no, no. There wasn't --
23 MS. ROBESON: Okay. That's what I wanted to
24 double-check. All right.
25 So with that, we are going to adjourn, or continue

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1 this case to June 30th at 9:30 a.m. in this room, all right?
2 MS. ROSEN: Okay.
3 MS. ROBESON: All right. Thank you --
4 MR. MOHAMMADI: Thank you.
5 MS. ROBESON: -- very much.
6 MS. ROSEN: Thank you.
7 (Whereupon, at 5:08 p.m., the proceedings were
8 concluded.)
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C E R T I F I C A T E
DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:
Ball v. Potowmack Preserve
CCOC No. 72-13

By:

Tracy Hahn, Transcriber

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**Ball v.
Potowmack Preserve**

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