

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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

A hearing in the above-entitled matter was held on
October 6, 2014, commencing at 9:35 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Complainant:

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E X H I B I T S

Exhibit No.		Marked/Received	
170	Section drawings	64	64
171	Full set of drawings	66	66
172	Letter from Dr. Barr to Mr. Ball	86	90
173	October 5, 2011, letter	90	96
174	January 21, 2013, letter	107	107
175	July 7, 2014, letter	107	107
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177	Complainant's attorney's and expert witness fees	231	231
178	Respondents' attorney's fees	231	231
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Rebuttal Witnesses:	Direct	Cross	Redirect	Recross
Adrian Miller				
By Ms. Rosen:	17			
By Mr. Mohammadi:			23	
Alexis Reisin Miller				
By Ms. Rosen:	28			
By Mr. Mohammadi:			31	
Raj Barr				
By Ms. Rosen:	32			
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Surrebuttal Witnesses:				
Beth Bentolila				
By Mr. Mohammadi:	192		196,198	
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Charles Bruno				
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By Ms. Rosen:		207		210
Peter Ball				
By Mr. Mohammadi:	211			
By Ms. Rosen:		222		

P R O C E E D I N G S

1
2 MS. ROBESON: I am calling the case of CCOC 72-13,
3 OZAH Case No. 14-01, Potowmack Preserve, Inc., versus Peter
4 and Michael Ball. Are there any preliminary matters?
5 MS. ROSEN: Yes. Well, I think just the question
6 that, of the taking of official notice of Case No. 720-G.
7 MS. ROBESON: Yes.
8 MR. MOHAMMADI: Yes.
9 MS. ROBESON: Did you have an objection?
10 MR. MOHAMMADI: I would still object to it. I
11 just think it's a little bit prejudicial in terms of coming
12 in, the exhibits and the transcript of that case. The
13 decision itself is public record. So that's -- obviously,
14 that's fine, but in terms of what happened in that case, I
15 think that's a little prejudicial to be taking judicial
16 notice of for this case.
17 MS. ROBESON: Do you have a problem with just the
18 decision coming in?
19 MS. ROSEN: Well --
20 MS. ROBESON: I have not reviewed it. So --
21 MS. ROSEN: I understand. I mean, our position --
22 yes.
23 MS. ROBESON: I've reviewed the -- I'm sorry to
24 interrupt -- I've reviewed the decision, not the rest of the
25 record.

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1 MS. ROSEN: Right. Okay. Yes, our position would
2 be that the entire record should come in because it does go
3 to the question -- one of, part of what we have said in our
4 complaint, basically, is that this is an, there's an ongoing
5 pattern of behavior on the part of the Balls with regard to
6 this property of applying to do X and then going ahead and
7 doing X, Y, and Z and then basically fighting tooth and nail
8 after, you know, with regard to their after, what they've
9 done after the fact and their -- we feel that the entire
10 record is appropriate to be taken official notice of as
11 opposed to just the decision.
12 There have been some documents introduced in this
13 case that I think actually come from that time, but I see no
14 reason why the entire record should not be included as
15 taking official notice of. It's basically, it's part of the
16 record of the case. It's what underlies the decision
17 itself.
18 MS. ROBESON: Why do you think it's, did -- well,
19 first let me clarify --
20 MS. ROSEN: It is what it is.
21 MS. ROBESON: -- the whole file is a public
22 record.
23 MR. MOHAMMADI: I understand.
24 MS. ROBESON: And why do you think it's
25 prejudicial to let it in?

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1 MR. MOHAMMADI: Because the process in that case
2 was substantially -- in all previous cases -- was
3 substantially different than the process in this case in
4 terms of what Mr. Ball did in terms of preparing and
5 presenting a case in those cases, and I just think it's not
6 reflective of what's actually transpired, historically
7 transpired between the HOA and the Balls.
8 And although I understand the decision stands on
9 its own merits at this point and it -- it is what it is, and
10 if it's coming in for the sole purpose of showing the
11 history that there have been violations, the decision is
12 sufficient, but to bring in the underlying evidence,
13 testimony, and exhibits that were presented and brought in,
14 as I said, would be prejudicial because of, just simply
15 because of the nature of how those proceedings went forward
16 and they're not reflective of what actually, what we believe
17 actually happened.
18 MS. ROSEN: Well --
19 MS. ROBESON: Can I just, is there a transcript
20 associated with that case?
21 MS. ROSEN: To be honest, I don't, I don't even
22 know.
23 MS. ROBESON: Because, if it wasn't appealed, I
24 know the panel's, you know, it doesn't -- they don't produce
25 a transcript like we do unless it would be appealed to court

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1 under the --
2 MS. ROSEN: I'm trying to remember, but there are
3 documents, obviously, that were introduced, you know, that
4 are part of the Commission files. And just to respond,
5 Mr. Ball had counsel in both of those proceedings. To sit
6 there, and now what he seems to be saying is, well, you
7 know, it really didn't happen that way. Well, you know
8 what? He had a -- we had a hearing. He was represented by
9 counsel. You don't get to come back now and say, well, you
10 know, it didn't really happen that way. It is what it is.
11 I don't know that there's any transcripts, but as
12 far as whatever -- there are documents in the, in the
13 Commission files and that certainly should be, you know,
14 that is certainly part of the record. You know, I just have
15 no recollection of whether or not there's a transcript or
16 not, but there are documents that were introduced, you know,
17 into evidence in that case and that are part of the
18 Commission's file, and that should certainly be taken notice
19 of.
20 MR. MOHAMMADI: It's highly unusual to bring in,
21 in my mind, highly unusual to bring in the entire underlying
22 case, all the evidence and exhibits, and just make that an
23 official part of another case when it's unrelated. There's
24 nothing that's part of those cases that applies to this
25 application process or anything. All it simply shows is

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1 that the, the HOA brought another case against Mr. Ball and
2 that's it, and for that purpose it's already in there.
3 Bringing in anything else doesn't add anything to
4 this case because it's -- they don't stem out of the same
5 application; they don't stem out of the same history. It's
6 just highly unusual. And like I said, I'm not saying that
7 he was not represented. What I'm saying is that what
8 happened at those cases is not reflective of what we believe
9 actually transpired. It doesn't matter --
10 MS. ROBESON: No, Ms. Rosen, please.
11 MR. MOHAMMADI: -- I understand, the decision is
12 the decision, but I just think it's prejudicial.
13 MS. ROBESON: I want to keep this -- I'm sorry,
14 Mr. Mohammadi. I did hear you. I want to keep this hearing
15 as calm as possible. Okay. Go ahead.
16 MR. MOHAMMADI: All I'm saying is that I think
17 it's prejudicial to bring it in now, years after it already
18 happened, and it has nothing to do with this particular
19 application or set of facts in this case.
20 MS. ROBESON: Well, I am going to let it in and
21 give it the weight it deserves. I do understand your point.
22 It does not take much to understand your point about the
23 difference in counsel in the previous case, but it is a
24 public record. It is relevant to their, Potowmack's
25 allegation that this is a pattern.

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1 And so I am going to let it in. What weight I
2 give it I -- you know, it's no longer subject to
3 cross-examination, you know, via particular documents. So
4 what weight I give it is another matter, but it is a public
5 record, and I'm going to let it in. All right?
6 MR. MOHAMMADI: Okay.
7 MS. ROBESON: Okay. Anything else?
8 MS. ROSEN: Yes. Just the only other, a while
9 back in one of the previous hearings, you know, there was a
10 question about whether or not res judicata, you know, would
11 apply with administrative agency decisions --
12 MS. ROBESON: Yes.
13 MS. ROSEN: -- and you asked me if I could take a
14 look at some court cases. I did find a case that, it's
15 relatively -- it's a 2010 case that basically said that when
16 an administrative agency is performing a quasi-judicial
17 function, the principles of res judicata are applicable, and
18 whether or not the administrative agency decision would be
19 given a preclusive effect depends upon three factors, one of
20 them being whether the agency was acting in a judicial
21 capacity, whether the issue presented to review in court was
22 actually litigated before the agency, and whether there was
23 a, a resolution is necessary to the agency's decision.
24 So I think I had originally argued -- and now I'm
25 almost forgetting -- but originally some of the defenses

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1 that they tried to raise in this case are basically the same
2 ones as were raised in the previous case, 73-12, and my
3 position was, you know, that's already been litigated,
4 essentially, and that it shouldn't be re-litigated here
5 because the opportunity to present those issues was in the
6 other case. So I just wanted to bring that to your
7 attention.
8 MS. ROBESON: Well, why don't you give us a cite.
9 MS. ROSEN: I'm going to give you the cite. I
10 have -- I made you a copy of the case.
11 MS. ROBESON: I'm not sure it's a preliminary
12 matter, but I guess --
13 MS. ROSEN: Okay.
14 MS. ROBESON: -- what you're doing is giving us a
15 heads-up. I do want to say that there's a lot of case law
16 saying the principles of res judicata apply, but -- well,
17 you can argue it. I would like the case citation so I can
18 take a look at it.
19 MS. ROSEN: Absolutely. I can actually give you
20 the copy of the case. I brought it, but --
21 MS. ROBESON: That's -- or why don't you give it
22 to Mr. Mohammadi so he has the benefit of it.
23 MS. ROSEN: Well, anyway, the case is Seminary
24 Galleria, LLC, versus Dulaney Valley Improvement
25 Association, Inc., and the cite is 995 A.2d 1068.

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1 MS. ROBESON: You don't have the Maryland cite, do
2 you?
3 MS. ROSEN: Yes, I do, 192 Md. App. 719. So it
4 was just -- I just wanted to raise that.
5 MS. ROBESON: All right. Thank you.
6 MS. ROSEN: You're welcome.
7 MS. ROBESON: Anything else?
8 MS. ROSEN: Don't think so.
9 MS. ROBESON: I have one preliminary matter, is --
10 and I reviewed the transcript of the last hearing, and I
11 noted that there's a lot of conversations that they label
12 off the record, and I don't remember going off the record.
13 So I don't know. Sometimes -- the person that does this
14 here is not the person that actually transcribes it. So I
15 am going to check with Deposition Services to understand
16 what happened there.
17 There were a couple of times in the prior hearing
18 where I remember going off the record, but for some reason,
19 in the last transcript, there's a lot of off-the-record
20 conversations, and I don't remember going off the record.
21 So I am going to check through that. I don't understand
22 exactly what happened.
23 All right. With that, any other preliminary
24 matters before we begin with Dr. Barr?
25 MS. ROSEN: Just one question. You had sent us an

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1 e-mail with 10 questions that you had --
2 MS. ROBESON: Yes.
3 MS. ROSEN: -- and I wasn't sure how you wanted to
4 do that. I mean, I just basically, you know, spent some
5 time, basically, putting answers together to the 10
6 questions. I didn't know whether you wanted us to deal with
7 that now, or how did you want to deal with that?
8 MS. ROBESON: Well, some of them are factual
9 questions --
10 MS. ROSEN: Right.
11 MS. ROBESON: -- and some of them are what I -- I
12 was e-mailing that on my iPhone --
13 MS. ROSEN: Okay. No.
14 MS. ROBESON: -- from a doctor's appointment. So
15 it -- I don't know if I was 100 percent clear. What I
16 wanted you to do -- some of them are factual questions, and
17 some of them are just legal questions: where is the
18 authority to do this, where is the authority to do that.
19 Those you can address in your closing arguments. All right?
20 MS. ROSEN: Okay. That's good.
21 MS. ROBESON: So if you want to do that, I think I
22 had some factual questions, and so -- so, you know, the
23 factual questions, if Dr. Barr can answer them, it will take
24 care of that, I think. They included --
25 MS. ROSEN: I just want to make sure I don't miss

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1 anything.

2 MS. ROBESON: No, I know. I understand.

3 MS. ROSEN: Okay. Maybe if you can tell me what

4 you, what you consider to be the factual questions, it'll be

5 helpful. Thank you.

6 MS. ROBESON: Yes. I'm just looking for the --

7 well, I can tell you there's one about Exhibit 122.

8 MS. ROSEN: And that one I may have to look at

9 because I may have mislabeled my Exhibit 122. So --

10 MS. ROBESON: Well --

11 MS. ROSEN: Because my 122 didn't refer to an

12 architect. So I think I must have wrote it, wrote the wrong

13 122.

14 MS. ROBESON: Well, some of them are e-mail

15 chains.

16 MS. ROSEN: Yes. I might just need to borrow

17 yours to show him, just so I make sure that we're looking at

18 the right thing.

19 MS. ROBESON: No, that's fine.

20 MS. ROSEN: And I think probably No. 2 is factual,

21 and that one I'm going to, I had planned to address.

22 MS. ROBESON: Well, she didn't enter my questions

23 as an exhibit yet. Well, I'll tell you what. Let me do

24 this --

25 MS. ROSEN: Do you want me to read through the

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1 questions real quick and --

2 MS. ROBESON: Oh, I hate to do that, but why don't

3 you.

4 MS. ROSEN: Okay. Well, the first one, I think --

5 it just says: Identify the CCOC's authority to --

6 MS. ROBESON: Yes, that's a legal argument.

7 MS. ROSEN: Yes, that's legal. The second one, I

8 think, is probably factual: Is there a letter from the HOA,

9 denying Mr. Ball's application for vinyl siding filed on

10 9/3/11?

11 MS. ROBESON: 9/30/11.

12 MS. ROSEN: 9/30/11, whoops.

13 MS. ROBESON: Yes.

14 MS. ROSEN: That's the -- third one has to do with

15 identifying authority in the governing documents for

16 Dr. Ball's letters. That's legal.

17 MS. ROBESON: Legal.

18 MS. ROSEN: Fourth one: CCOC's order required HOA

19 to specifically list all items to be ratified. Should this

20 have been included in the vote authorizing enforcement? I

21 assume that's legal.

22 MS. ROBESON: Legal.

23 MS. ROSEN: Five is, who is Mr. Ball's architect?

24 Factual. Identify where the architectural guidelines of

25 governing documents authorize the form. I'm assume that

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1 would be more legal. Seven is, factual basis about the

2 garden wall. So we'll assume --

3 MS. ROBESON: Yes.

4 MS. ROSEN: -- that's factual. And No. 8 is,

5 identify authority in governing documents about persons not

6 in good standing or if they're in violation. I assume

7 that's legal.

8 MS. ROBESON: Yes.

9 MS. ROSEN: Okay. Is there any written denial of

10 the 2008 application for an addition with the third story --

11 MS. ROBESON: Factual.

12 MS. ROSEN: -- I guess that's going to be more

13 factual. And No. 10 sounds legal: Identify the Board's

14 authority.

15 MS. ROBESON: Yes.

16 MS. ROSEN: Okay. All right. Actually, the first

17 witness I'm going to call very briefly are, is -- Mr. and

18 Mrs. Miller are here. They are the neighbors of Dr. Ball.

19 I'm just going to call them very briefly with regards to

20 rebuttal issues, just via receiving notice of meetings and

21 about some of the construction or timing of what they've

22 seen constructed on the property.

23 MS. ROBESON: Well, tell me how this --

24 Mr. Mohammadi, do you have any objections?

25 MR. MOHAMMADI: Well, I mean, it's rebuttal; so I

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1 guess there doesn't need to be any notice that there's going

2 to be other witnesses, but if it's on the notice issue, I

3 think it's been covered. I don't know if it adds anything,

4 but it's her, it's her case.

5 MS. ROBESON: I'll let it in. Okay. Go ahead.

6 MS. ROSEN: Okay. All right. Call -- actually,

7 if you want to make it go faster, I can probably just have

8 them, Mr. and Mrs. Miller both sit here up at the same time.

9 MS. ROBESON: No. It's fine.

10 MR. MOHAMMADI: No. I would --

11 MS. ROSEN: No? Okay. All right. Mr. Miller.

12 MS. ROBESON: One at a time, please. Mr. Miller,

13 please raise your right hand.

14 MR. MILLER: Yeah.

15 MS. ROBESON: Do you solemnly -- you don't have to

16 stand.

17 MR. MILLER: Oh.

18 (Witness sworn.)

19 MS. ROBESON: Go ahead.

20 REBUTTAL DIRECT EXAMINATION

21 BY MS. ROSEN:

22 Q Okay. Could you please state your name and

23 address for the record?

24 A Sure. My name is Adrian; last name is Miller, and

25 my address is 10602 Vantage Court, Potomac, Maryland 20854.

1 Q Okay. And for how long have you lived at that
 2 property?
 3 A Since November 2011.
 4 Q Okay. And where is that property in relation to
 5 Mr. Ball's property?
 6 A We're right -- next-door neighbors.
 7 Q Okay. With regard to the construction at that
 8 property, can you tell me basically what the state of that
 9 construction was around the time of September of 2013 with
 10 regard to the roofs?
 11 A Uh-huh. So around September --
 12 MS. ROBESON: Wait a minute. This is rebuttal.
 13 So what --
 14 MS. ROSEN: Correct.
 15 MS. ROBESON: -- what point is he addressing?
 16 MS. ROSEN: He's addressing, there was testimony
 17 that, by Mr. Ball, that basically that there's been no real
 18 construction of any substance at this property since about
 19 September of 2013. We have had witnesses who've testified
 20 that there was a flurry of construction after the decision
 21 came down in the order of the other CCOC case, including
 22 construction on the roof, and Mr. Ball has denied that and
 23 basically said the only thing that's been done was putting
 24 up some type of paper.
 25 MS. ROBESON: I'll let it in. I don't, you know,

1 I don't remember -- well, I'll let it in, give it the weight
 2 it deserves. I guess I don't remember -- well, go ahead.
 3 BY MS. ROSEN:
 4 Q Could you tell, what was the condition of the
 5 construction at the property, especially with regard to the
 6 roof, around the time of September 2013?
 7 A Well, the only thing I can say is there's been --
 8 since we moved in, it's been an ongoing construction
 9 process, say --
 10 MS. ROBESON: Well, when did you move in?
 11 THE WITNESS: November 2011, and then from one
 12 thing or another, we're always seeing things happening, and
 13 the main reason that we're here is because we can't live
 14 next to a construction zone that seems that the situation is
 15 never ending.
 16 And with regard to the situation of the roof, I
 17 remember, you know, that the process, the addition of the
 18 roof started sometime September or August last year. That
 19 was an addition to the, where the garage is located. So
 20 that started sometime in August, I remember, and then the
 21 roof sometime in September started to emerge, and since then
 22 we thought that's great, you know, it seems like
 23 construction is ongoing, everything's going to be done, but
 24 we've been -- it hasn't happened that way and still is in
 25 progress and TBD.

1 The last recollection I have in terms of someone
 2 working on it is last month, in September, mid-September,
 3 someone working on the roof, and I don't know if replacing
 4 sort of the tape on top of the plywood or the roof. So
 5 that's the last recollection I have.
 6 BY MS. ROSEN:
 7 Q Do you recall any difference between the condition
 8 of the roof around September of 2013 as opposed to after the
 9 end of March 2014 in terms of the progress of the
 10 construction?
 11 A Well, the only thing I would say is, the changes
 12 I've seen is, you know, the trusses and the roof being put
 13 on and then on the side of, you know, on the side, just
 14 covering, covering the roof, some sort of tape or material
 15 that seems to be that it's -- that tape or material is to be
 16 applied prior to put shingles on it and that's, that's what
 17 I've observed. And, also, covering --
 18 MS. ROBESON: How do you know that?
 19 THE WITNESS: Because I'm a homeowner and I, you
 20 know, I take care of my house and I, inclusively, recently
 21 I, I inspecting my roof and I did a cleanup on my roof. So
 22 I talked to a contractor in terms of what's, how's the
 23 condition of my roof and what should be done to maintain a
 24 roof, and I've to clean moss and --
 25 MS. ROBESON: But you don't have any professional

1 experience.
 2 THE WITNESS: No, I do not. That's the only thing
 3 I could say --
 4 MS. ROBESON: Yes.
 5 THE WITNESS: -- I do not have any, and again,
 6 that's, that's what I observed from outside, and I do not
 7 have --
 8 MS. ROBESON: That's fine.
 9 THE WITNESS: -- I'm not in the, in construction
 10 industry.
 11 MS. ROBESON: Okay.
 12 THE WITNESS: So that's the only thing I observed
 13 and sort of, you know, with, you were right, just sort of a
 14 covering during the summer. I saw a blue covering that made
 15 sense for, just to protect from water or storm, just sort of
 16 that, too, that this roof had.
 17 MS. ROBESON: Okay.
 18 BY MS. ROSEN:
 19 Q Okay. Right around September of 2013, do you
 20 remember whether the roof trusses were exposed? Could you
 21 see them?
 22 A I don't have -- I don't remember that. The only
 23 thing I remember, that I saw trusses on -- when they were
 24 delivered. You know, they were huge trusses. That's -- and
 25 then I worked out of town during that period of time. So I

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1 came during the week; I came during the weekend, and I saw
2 the, the roof then on it. So that's what I remember.
3 Q And, Mr. Miller, do you receive notices of the HOA
4 meetings, homeowner association meetings?
5 A Meaning just generally, since we moved in? Yes.
6 We, inclusively, we -- when we moved in, someone came to my,
7 to our house and gave us a welcoming package and information
8 to sign on to a blog or sort of way of communicating
9 throughout the community. So I did sign on for that, and
10 even I remember, at the time, I attended one of the board
11 meetings and I received notice on the mail and through
12 e-mail as well, and since then we have been seeing those
13 communications.
14 Q Okay. And have you ever been to any board meeting
15 where, where Mr. Ball was present?
16 A No. No, I have not. I have not, and I only
17 participated in two board meetings. So those I haven't.
18 Q All right. Thank you, Mr. Miller.
19 MS. ROBESON: All right. Mr. -- now it's
20 Mr. Mohammadi's time to ask --
21 THE WITNESS: Oh.
22 MS. ROBESON: -- you questions about your
23 testimony.
24 THE WITNESS: Sure.
25 MS. ROBESON: All right? So Mr. Mohammadi.

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1 MR. MOHAMMADI: Thank you.
2 REBUTTAL CROSS-EXAMINATION
3 BY MR. MOHAMMADI:
4 Q Good morning, Mr. Miller. You said you saw that
5 the roof, there was some covering put on?
6 A Last month or around September.
7 Q Of this year?
8 A This year.
9 Q Okay. Did you see any covering put on back in
10 March?
11 A I don't recall that.
12 Q Okay. You said you saw what you thought was some
13 tape or material being put on for shingles?
14 A Not for shingles. It seems like it's a prior
15 treatment to it. It seems like it's just to protect the
16 wood.
17 Q Okay. But you didn't see any shingles, right?
18 A No. No.
19 Q Okay. And do you know when you saw this covering
20 being put on, this material to protect the wood? When was
21 that put on?
22 A In September I saw -- it's just --
23 Q Also this year?
24 A Yep.
25 Q Okay. So all of this was in the last month,

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1 you're saying?
2 A Last month I observed, again, just to verify,
3 observed someone working on the roof and apply sort of white
4 tape with brand or something to the roof --
5 Q Okay.
6 A -- on the roof --
7 Q And that was --
8 A -- and the shingles, I see they're -- I see boxes
9 of shingles right next to where I live. In the garage area,
10 I see boxes of shingles, but they have not been applied,
11 just from my knowledge.
12 Q When did you become aware of this particular CCOC
13 case?
14 A This meeting, particular meeting, or --
15 Q This lawsuit filed by the HOA against Mr. Ball,
16 when did you become aware of that?
17 A Well, in -- nobody, when we moved in, nobody gave
18 us, the prior owners didn't give us any background of it,
19 but I, but I learned about the situation by speaking with,
20 even with Mr. Ball. With Peter I discussed, you know, the
21 situation of the house, this and that, and he even mentioned
22 that he has been with the situation, dealing with the board
23 for many years, and you know, that's been preventing him to
24 move on with construction. And as well as from -- the
25 neighbors or members of the board, as well, I've heard about

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1 this situation and that's how we learned.
2 Q But you don't know when this particular lawsuit
3 was filed, do you?
4 A No.
5 Q Okay. All right. You said when you moved, then
6 you received a welcome package, which included a sign-up
7 sheet for a blog?
8 A Yeah, information, general information. Two
9 ladies, I don't remember, came into our house and gave us
10 sort of a welcoming package with information about, I don't
11 know, the neighborhood. And then we learned about there's
12 existing -- there is a blog; there was a blog at the time
13 that the neighbors use to communicate. Yep, that's how I --
14 Q And you signed up for that blog?
15 A Yep, I did.
16 Q Right when you moved in?
17 A Yep.
18 Q Okay. And that's how you've been receiving your
19 notices, through the blog?
20 A Through e-mails and as well as through mail.
21 Q Okay. And you get every -- you get it through
22 mail as well?
23 A Yep.
24 Q And so have you ever compared the e-mail notices
25 that you get to the mail notices?

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1 A No.

2 Q Okay. So do you know whether you get the same

3 amount of mail notices as e-mail notices?

4 MS. ROSEN: Objection. I don't think this is

5 relevant. He's basically indicated that he receives meeting

6 notices and he gets them by e-mail and mail. I didn't --

7 MS. ROBESON: Well --

8 MS. ROSEN: -- ask about a comparison of them.

9 MS. ROBESON: Well, it is relevant to how he's

10 been receiving notices. You opened the door to notices, and

11 so --

12 MS. ROSEN: Well --

13 MS. ROBESON: -- it is relevant to the notices.

14 MS. ROSEN: I did indicate, I did ask about

15 whether he receives them. I didn't ask him about what was

16 in them, so to speak. He seems to be going beyond my

17 direct.

18 MR. MOHAMMADI: This is --

19 MS. ROBESON: I disagree because, you know, one of

20 the issues in this case is whether or not -- you know, the

21 manner and method. So, Mr. Mohammadi, I'm going to let --

22 MR. MOHAMMADI: Thank you.

23 MS. ROBESON: -- I'm going to let it in.

24 MR. MOHAMMADI: Thank you.

25 BY MR. MOHAMMADI:

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1 Q With respect to those notices, have you ever

2 compared your written notices that you receive by mail to

3 the electronic notices that you receive by e-mail?

4 A No, I've not. I -- when I read them, I say, well,

5 it seems like it's a notice for board meetings and then an

6 agenda. That's basically it. I --

7 Q And so you don't know whether there's, you receive

8 the same amount of written notices as you receive the same

9 amount of e-mail notices?

10 A At the same time that I receive the e-mails -- and

11 usually, there are more, I believe there are more e-mails

12 than the mail because it seems like they, they send the

13 e-mail, from my -- I have recollection that they send

14 e-mails more than once, just in case people didn't get it or

15 they forward that.

16 Q Okay. Have you ever attended any board meetings

17 at which a vote was taken on Mr. Ball's house?

18 A No.

19 Q Have you attended any board meetings at which

20 Mr. Ball's house was discussed?

21 A No.

22 MR. MOHAMMADI: No further questions.

23 MS. ROBESON: Ms. Rosen.

24 MS. ROSEN: I don't have any further questions.

25 MS. ROBESON: All right. You may be excused.

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1 THE WITNESS: Thank you.

2 MS. ROBESON: Thank you.

3 MS. ROSEN: Okay. We'll call Ms. Miller.

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

5 (Witness sworn.)

6 MS. ROBESON: Ms. Rosen.

7 REBUTTAL DIRECT EXAMINATION

8 BY MS. ROSEN:

9 Q Okay. Ms. Miller, could you please indicate the

10 address of the property that you live at?

11 A 10602 Vantage Court, Potomac, Maryland 20854.

12 Q Okay. And where is that property in relation to

13 Mr. Ball's property?

14 A Next door to Mr. Ball's property.

15 Q Okay. And have you had any opportunity to observe

16 any of the construction being done at Mr. Ball's property?

17 A Yes. As my husband indicated, essentially, since

18 we've moved in, the house has constantly been under

19 construction, with workers coming and going all the time.

20 Q Okay. Do you have any recollection, going back to

21 the time of about September of 2013, what the condition of

22 the construction at the property was, especially with

23 respect to the roofs?

24 A I recall, as my husband mentioned, when the roof

25 trusses were delivered, and I recall a period of time when

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1 the roof trusses had been installed and they were exposed.

2 Q Okay. Now, are those roof trusses still exposed?

3 A No, they're not.

4 Q Can you please describe the difference between the

5 condition of the time when you -- when the roof trusses were

6 exposed in September of 2013 and what the, what is there

7 now, so to speak?

8 A Now the roof trusses are covered. At one point,

9 they were covered with a blue tarp. It looks like they're

10 no longer covered with a blue tarp. They're covered with

11 some sort of plastic. It's not Tyvek. It's another brand.

12 It looks like material. I don't remember what it's called.

13 I don't know that much about construction. It looks like

14 they're covered with something that would go on before you

15 would put on, I don't know, siding, whatever it is that you

16 put on the sides of houses.

17 Q Okay. And what other construction have you seen

18 that you can recall specifically at the property since about

19 the end of March 2014 onward? What have you seen being done

20 at the property?

21 A I recall that there was some activity going on on

22 the roof recently, as my husband mentioned. There was

23 someone on the roof, taking up, I don't know if it was like

24 a membrane or some sort of thing that was on the roof, maybe

25 adding a new one. Maybe it had to do -- I think we had

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1 storms last month; so maybe he was concerned about water
2 getting in. I'm not sure.
3 I also recall some construction being done on the
4 entryway of the house. Maybe it was like a different door
5 or -- I don't know what was going on. I think, at some
6 point, there was some temporary doors. I don't know,
7 something along those lines.
8 Q Okay. Do you have any recollection of seeing any
9 windows being put onto the property?
10 A I do install windows being --
11 MR. MOHAMMADI: Objection.
12 MS. ROBESON: Basis?
13 MR. MOHAMMADI: Leading.
14 MS. ROBESON: Can you rephrase?
15 BY MS. ROSEN:
16 Q Do you recall any other, any other components of
17 the construction being done on the property?
18 A I do recall windows being installed and that there
19 were -- I thought it odd that they were sort of square, and
20 then they seemed to have changed to be a different shape. I
21 think that there were windows on the front that were a
22 certain shape and then they were modified, and -- sort of
23 the hole for the window, not the window itself -- and then
24 windows that were delivered were installed, and then I think
25 some were changed, seemed a little strange, but something

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1 happened with the windows along those lines.
2 I, like my husband, was just happy that something
3 was happening because we just want it to be done. We have a
4 small child. There's also a lot of garbage, a lot of
5 people, and trucks and construction materials and chemicals,
6 and it's just -- we can't open the curtains in our living
7 room. It's crazy.
8 Q Okay. Thank you, Mrs. Miller.
9 MS. ROBESON: Just a second. Now --
10 THE WITNESS: Uh-huh. I'm not going anywhere.
11 MS. ROBESON: Well, that's good. Mr. Mohammadi.
12 REBUTTAL CROSS-EXAMINATION
13 BY MR. MOHAMMADI:
14 Q Ms. Miller, good morning. Could you state your
15 full name for the record?
16 A Sure. My name is Alexis Reisin Miller.
17 Q All right. You testified that some windows were
18 installed at some point. Do you know when that was?
19 A No, I do not.
20 Q Okay. When did you become aware of this
21 particular lawsuit, the CCOC lawsuit?
22 A I'm not sure when I became aware of this
23 particular lawsuit. I -- shortly after I moved in, I
24 understood from our dealings with other neighbors and our
25 inquiries about construction that was going on that there

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1 were certain challenges in getting things approved.
2 Mr. Ball had said that he had, was going to do certain work.
3 So I know there were different phases of
4 construction and also various lawsuits. I don't know when I
5 became aware of this particular lawsuit. I'm not even sure,
6 frankly, that I understood that it was a separate lawsuit.
7 I had thought they were related to one application. I don't
8 -- you know, I didn't make any distinction in my mind. I
9 just kind of said, whatever, I hope this gets finished soon.
10 Q Okay.
11 MR. MOHAMMADI: Nothing further.
12 MS. ROBESON: Ms. Rosen.
13 MS. ROSEN: Nothing further.
14 MS. ROBESON: All right. You may be excused.
15 Thank you.
16 THE WITNESS: Thank you.
17 MS. ROBESON: All right. Ms. Rosen.
18 MS. ROSEN: I'm going to call Dr. Barr.
19 (Witness previously sworn.)
20 MS. ROBESON: Dr. Barr, you're still under oath.
21 THE WITNESS: Yes.
22 REBUTTAL DIRECT EXAMINATION
23 BY MS. ROSEN:
24 Q Okay. Dr. Barr, Peter Ball testified that he gave
25 you his application in year 2008 for this project. Is that

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1 correct?
2 A No, that's not correct.
3 Q Okay. I'm going to show you the, Exhibit 74,
4 which I think -- what is the document, the first document of
5 Exhibit 74?
6 A It says: Hand-delivered to Jeff Williams, January
7 15, 2008.
8 Q Okay. So what does this document show? Who was
9 this actually delivered to?
10 A It says, Dear Mr. Williams, and it says,
11 hand-delivered to Jeff Williams, president, East Gate 1.
12 Q Okay. Now, what was proposed in this application,
13 this original one?
14 A If I might look at it. What was proposed is -- it
15 says there's an application. It says there are scaled
16 drawings of the proposed work and a site plan of the
17 property. And what was proposed effectively was -- and
18 there's a list of nine items, and I'm going to read them all
19 -- second-floor addition in the rear, second-floor addition
20 at the rear of the house and in the second-floor addition
21 above the garage, similar to Steinberg (phonetic sp.), which
22 is No. 1. Number 3 was two-story addition on the left side
23 of the house --
24 MR. MOHAMMADI: Objection.
25 MS. ROBESON: Basis?

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1 MR. MOHAMMADI: Just, it stands on it's, I mean --
2 MS. ROBESON: Yes. It would --
3 BY MS. ROSEN:
4 Q You don't need to read it.
5 A Don't need to read it. Okay. Okay.
6 MS. ROBESON: That would be helpful.
7 MS. ROSEN: Okay.
8 Ms. ROBESON: We do want to end this case.
9 THE WITNESS: Yes.
10 MS. ROSEN: I understand. I'm trying to --
11 BY MS. ROSEN:
12 Q Why was this rejected originally?
13 A There is the next item on the third page, which is
14 a letter dated 26 February 2008, sent to Mr. Ball and signed
15 by Irma Spencer, the chair of the architectural review
16 committee, and it lists that --
17 Q Okay. You don't need to, you don't need to read
18 that.
19 MS. ROBESON: Yes.
20 THE WITNESS: Okay. It just says it's missing a
21 lot of items. There's no site plan. You saw that.
22 MS. ROBESON: And I'm sorry. I missed -- what
23 exhibit was that?
24 MS. ROSEN: We're still, we're in 74, the
25 second --

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1 MS. ROBESON: Oh.
2 MS. ROSEN: Yes.
3 THE WITNESS: The third letter.
4 MS. ROBESON: Okay. Oh, okay, I got you.
5 THE WITNESS: And it lists that there's not enough
6 information --
7 MS. ROBESON: Right.
8 THE WITNESS: -- and so on.
9 BY MS. ROSEN:
10 Q Okay. And what was Peter Ball's response to that
11 rejection?
12 A He supplied another application, which I believe
13 is in here, on March --
14 MS. ROSEN: We're looking at the third document
15 that's in Exhibit 74.
16 MS. ROBESON: I see. I see. I see.
17 MS. ROSEN: Okay.
18 THE WITNESS: -- March 26, hand-delivered to Irma
19 Spencer.
20 BY MS. ROSEN:
21 Q Okay. And so this is the application then? This
22 May 26, 2008, is the new application?
23 A And it comes with the reference to the material
24 he's going to use, Hardie board samples provided;
25 HardiePlank, it says, siding material we propose to use.

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1 And it also says: We did not provide plans. What is the,
2 why, what is the interior of my building a concern of the
3 architectural committee?
4 Q And why is that significant?
5 A Because the guidelines very clearly ask for a list
6 of items, which are referred to in the previous letter from
7 Irma Spencer, and said: Your project looks excessively
8 large; so please be prudent and supply all the information
9 required.
10 Q Okay. Did there come a time when Mr. Ball asked
11 for some guidance from the association?
12 A Yes. I believe there was a letter that -- it's
13 referenced in a letter Jeffrey Williams wrote back in 2010.
14 I'm not sure that I have --
15 Q Do you recall, generally, what that letter said?
16 A Yeah. It was addressed and said: Thank you for
17 your request for guidance. Because of the scope and scale
18 of your project, we see that -- and Jeffrey Williams looked
19 at the drawings and said, at that particular time, I
20 believe, I'm not sure -- God, my brain's fried. I'm sorry.
21 Let me just get my things together here.
22 Effectively, it said: We suggest, because of the
23 scale of your project, it'll convert your -- February the
24 2nd, 2010, is the letter from Jeffrey Williams, and at the
25 bottom of the first page it says: The renovations are

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1 proposed for housing in new model, which is --
2 MR. MOHAMMADI: Objection.
3 THE WITNESS: -- incompatible.
4 MS. ROBESON: Okay. Just, you have to stop when
5 he objects.
6 THE WITNESS: Okay.
7 MR. MOHAMMADI: I guess, is this an exhibit we're
8 looking at right now, because if not, if he's going to --
9 MS. ROSEN: It is an exhibit. I can't remember
10 which one it is. It's the February 2010 letter from -- I do
11 remember this is an exhibit.
12 MS. ROBESON: February 2010?
13 MS. ROSEN: Yes. It was a letter dated February
14 of 2010.
15 MR. MOHAMMADI: Is it 87?
16 MS. ROBESON: 87.
17 MS. ROSEN: 87.
18 THE WITNESS: And to answer your question, if I
19 might? Yes? To answer the question, the recommendation --
20 MS. ROBESON: No, I'm sorry.
21 THE WITNESS: Oh, I'm sorry, yeah.
22 MS. ROBESON: I didn't rule on his --
23 MR. MOHAMMADI: I just didn't know if it was
24 marked already. If it's marked, that's fine.
25 MS. ROBESON: Okay.

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1 THE WITNESS: Okay.
2 MS. ROBESON: Now you can go ahead.
3 THE WITNESS: To answer your question, they asked
4 for guidance. Jeffrey made a comment and then said: We
5 strongly recommend, suggest that you get an architect
6 familiar with contemporary design.
7 BY MS. ROSEN:
8 Q Okay. And did Mr. Ball start to work with an
9 architect regarding this application?
10 A Yes, he did.
11 Q And who was that architect?
12 A That was Tania Bruno.
13 Q Okay. And did he then, with Ms. Bruno, submit any
14 further proposals in connection with the pending
15 application?
16 A Yes, she did.
17 Q Okay. And what did he, what did he submit?
18 A The minutes of June 29, 2010 --
19 MS. ROSEN: This is Exhibit 75, which is the
20 exhibits that have a group of minutes with them.
21 THE WITNESS: -- refers to her coming in and
22 explaining that she was hired because she was asked to make
23 the building more acceptable and bring it into conformance
24 with the area -- it's in paragraph 3; I won't read it out to
25 you -- and, effectively, the back of the house is the most

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1 complicated part, conspicuous part. And Jeffrey said,
2 Jeffrey Williams in his comment says: If we had to take a
3 vote now, I would not be able to support the entire project;
4 one, it could create a precedent for McMansions. And,
5 and --
6 MR. MOHAMMADI: I'm sorry. Objection. What
7 exhibit is this?
8 THE WITNESS: It's in the minutes.
9 MS. ROBESON: It's 75 --
10 MR. MOHAMMADI: Oh, 70.
11 MS. ROBESON: -- and 127.
12 MR. MOHAMMADI: I thought he said 85. I
13 apologize.
14 MS. ROBESON: It's in both. Do you need a moment
15 to find it?
16 MR. MOHAMMADI: No. I got it. I thought he said
17 85. I apologize. Okay.
18 MS. ROBESON: Well, I have in my notes, it's 75.
19 MS. ROSEN: 75.
20 MR. MOHAMMADI: Yes. I see it now.
21 MS. ROBESON: Okay. So you don't have an
22 objection, Mr. Mohammadi?
23 MR. MOHAMMADI: No. No.
24 MS. ROBESON: Okay. You can continue, Mr. Barr.
25 MR. MOHAMMADI: I'll withdraw.

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1 THE WITNESS: And Jeffrey Williams said that this,
2 if we took a vote, would be, would create a precedent for
3 McMansions, and there were other concerns expressed about
4 time lines and so forth by other members. Ms. Bruno
5 responded with an e-mail on --
6 MS. ROBESON: Is that Exhibit 85?
7 THE WITNESS: -- July 20, 2010.
8 MS. ROBESON: That is Exhibit 85. Can you give
9 Mr. Mohammadi a minute to --
10 THE WITNESS: Sure.
11 MS. ROBESON: -- locate, because it does take some
12 time to --
13 THE WITNESS: Yeah.
14 MS. ROBESON: -- flip through everything.
15 MR. MOHAMMADI: Thank you.
16 MS. ROBESON: I think it is 85.
17 MS. ROSEN: Yes, you're correct. We're getting
18 used to --
19 MR. MOHAMMADI: I got it.
20 MS. ROSEN: -- there's certain exhibits that we're
21 getting used to seeing all the time.
22 MS. ROBESON: I have a cheat sheet now.
23 MS. ROSEN: Ah, smart move.
24 MR. MOHAMMADI: I got it. Thank you.
25 MS. ROBESON: Are you ready?

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1 MR. MOHAMMADI: Yes. Thank you.
2 MS. ROBESON: Okay. Go ahead, Dr. Barr.
3 THE WITNESS: So, effectively, she came back,
4 responding that Peter is willing to forfeit the third-story
5 suggestion -- it's not really a third story; it's a
6 third-level addition in the back -- that he's prepared to
7 forgo the transom window, and that she was -- that's the
8 famous story about starting at the top of the flat roof
9 and --
10 MS. ROBESON: Yes. You don't have to --
11 THE WITNESS: -- and all he wanted was -- I know,
12 we know it by heart now. I know.
13 MS. ROBESON: You don't have to repeat that one.
14 MS. ROSEN: Okay. All he wanted was a little
15 closet in there or something.
16 BY MS. ROSEN:
17 Q Now, was this e-mail, this was prior to -- there
18 was previous testimony about plans that involved or included
19 a gabled roof. Was this e-mail subsequent to that?
20 MS. ROBESON: Now, which e-mail are you talking
21 about?
22 MS. ROSEN: I'm sorry, the e-mail, the June -- the
23 one he's looking at.
24 THE WITNESS: July 20, 2010.
25 MS. ROBESON: Okay.

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1 MS. ROSEN: Exhibit 85, with reference to -- there
2 was previously, previous testimony about plans that included
3 a gabled roof.
4 THE WITNESS: Yes.
5 MS. ROSEN: I think that would have been
6 Complainant's Exhibit 126(a), if I'm remember correctly. I
7 could have that --
8 THE WITNESS: Yes. This was after that drawing,
9 if I recall, because --
10 BY MS. ROSEN:
11 Q Okay. Well, that's what I was asking you, was --
12 A Yes.
13 Q -- that was after this was --
14 A Right, and that was the response to the board
15 meeting that was still saying that this was oversized, that
16 what had been proposed was oversized. She was coming back
17 and saying, we are removing the second-floor addition in the
18 rear, and at that first -- that application, which is 2010,
19 126(a), showed a gabled addition on top of the garage,
20 similar to the neighbor's, which is what he referenced
21 before, and that was never referenced.
22 Q Okay. All right. I'm going to show you a
23 document which has been previously marked as Exhibit 76.
24 Now, did you receive this letter by hand delivery, as is
25 stated on the letter?

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1 A No, I did not.
2 Q How did you receive it?
3 A It was left at my doorstep.
4 Q Okay. And were there drawings left with that
5 letter?
6 A Yeah. There was drawings and material sample.
7 Q Okay. And I'm going to show you a document which
8 has been previously marked as Exhibit 126. Are those the
9 drawings that were left on your doorstep with the letter?
10 A Yes.
11 Q Okay. And what did you do with those drawings
12 when you received them?
13 A I gave them the same day to the secretary, Jamie
14 Deise --
15 Q Okay.
16 A -- with the material sample.
17 MR. MOHAMMADI: I'm sorry. What was -- with the
18 what?
19 THE WITNESS: With the sample of the material.
20 BY MS. ROSEN:
21 Q Okay. And what did Jamie Deise do with them?
22 A She copied them. She scanned the portion of it
23 and sent it around to the board. That's the e-mail that we
24 have seen before.
25 Q One second.

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1 MS. ROBESON: That's 77, correct?
2 MS. ROSEN: Yes, that's 77 --
3 THE WITNESS: That's 77 --
4 MS. ROSEN: -- famous 77.
5 THE WITNESS: -- the cover letter from her.
6 MS. ROBESON: Yes.
7 THE WITNESS: And she also copied Tania Bruno, the
8 architect, even though she was not on the board, and --
9 MS. ROBESON: I understand.
10 THE WITNESS: You know that. Okay. All right.
11 Fine.
12 BY MS. ROSEN:
13 Q Okay. And why did Jamie Deise have to scan, copy,
14 and distribute them?
15 A Because Peter Ball had also sent a letter to the
16 board -- had copied the letter to the board, the previous
17 one that you showed me, the April 15 one, and it said:
18 Without attachments. So there was a written record, and the
19 drawings had to be distributed to the board, and she had no
20 way of getting it to them; so she had to scan it.
21 Q Okay. Okay. Now, Mr. Ball, I believe, testified
22 that he did not attach those drawings because they were in a
23 large format and too large to send by e-mail. Based on your
24 understanding of how these things work, could he have not
25 obtained a PDF version from his architect, similar to the

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1 way that Exhibit 148 was supplied?
2 MR. MOHAMMADI: Objection.
3 THE WITNESS: Yes, he could have.
4 MS. ROBESON: Basis?
5 MR. MOHAMMADI: Speculating about what he could
6 and couldn't have done.
7 THE REPORTER: I'm sorry. Please keep your voice
8 up.
9 MR. MOHAMMADI: Speculating about what he could
10 and couldn't have done.
11 MS. ROBESON: I'm going to sustain that. Go
12 ahead, Ms. Rosen.
13 BY MS. ROSEN:
14 Q Let's go to the board meeting of May 5th of 2011.
15 Did you attend that board meeting?
16 A Yes, I did.
17 Q Okay. And what did the board have at the May 2011
18 board meeting?
19 A We had a copy of the drawings that were scanned
20 and sent. Every board member had it. They had a copy of
21 the letter from Peter Ball, and we had the large-scale
22 drawing, the one that was, whatever the number is --
23 Q 126?
24 A 126, as well as the material -- all of them
25 brought to the meeting by the secretary.

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1 Q Okay. Now, was Peter Ball present at that
2 meeting?
3 A Yes.
4 Q Okay. And was Peter Ball's attorney James Deaver
5 present at that meeting?
6 A Yes.
7 Q Okay. And was Tania Bruno, his architect, also
8 present at that meeting?
9 A Yes.
10 Q Okay. Did any of them ever state at that meeting
11 that the plans in front of the board at that meeting, which
12 have been identified as the large-sized 126 and the small
13 size of Exhibit 77, did any of them ever state that those
14 were the wrong plans?
15 A No.
16 Q Okay. Did any of them ever state at that meeting
17 that any -- that those plans, 126 and 177, that everyone was
18 looking at, did anyone state that they were incomplete in
19 any way?
20 A No.
21 Q Okay. Did the board allow Mr. Ball and his
22 representatives to speak about those proposed plans at that
23 meeting?
24 A Yes.
25 Q And did they in fact speak about those proposed

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1 plans at that meeting?
2 A Yes.
3 Q Okay. And during that meeting at which those
4 plans were being considered, was there any discussion from
5 anybody -- Mr. Ball's attorney, Ms. Bruno, board members --
6 about raising the existing roof ridgeline?
7 A No.
8 Q And was there any discussion about raising the
9 roof, generally, or the chimneys?
10 A No.
11 Q Okay. And from the time in year 2010, after Tania
12 Bruno started working with Mr. Ball, was there any
13 discussion by anybody -- Mr. Ball, his architect, or his
14 attorney or the board -- about raising existing roof
15 ridgeline?
16 A No.
17 Q Or was there any discussion about raising the roof
18 and/or the chimneys?
19 A No.
20 Q Okay. All right. Going back to the May 5th,
21 2011, meeting, what did the board do after the discussion on
22 Mr. Ball's plans ended?
23 A We took a vote. We discussed the issues under
24 consideration, and primarily, the concern came down to the
25 bump-out on the Crossing Creek Road, the bump-out on the

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1 left-hand side. We took a vote, and it turned out to be
2 three-three, and it's recorded in the minutes of that day.
3 MS. ROBESON: Okay. And I don't want to stop you,
4 but we've -- this is rebuttal. So we --
5 THE WITNESS: Uh-huh.
6 MS. ROBESON: -- I recall quite a bit of testimony
7 already about that.
8 THE WITNESS: Okay.
9 MS. ROBESON: Is there something that --
10 MS. ROSEN: Yes. It's coming, because there were
11 issues; there has been -- and I'm getting to the part --
12 there was the e-mail about the, quote, chain of custody of
13 documents, and this kind of leads into that. So --
14 MS. ROBESON: Well, can we just get to the chain
15 of custody issue?
16 MS. ROSEN: Yes. We're just about, just about
17 there.
18 BY MS. ROSEN:
19 Q Okay. And then what happened after this vote was
20 taken? I want to show you Exhibit 78. Was this -- tell us
21 what happened after the vote was taken.
22 A Just prior to that, if I might, Mr. Ball testified
23 that he didn't know when the vote was taken. The vote was
24 taken that same day. He was brought in. He and Mr. Deaver
25 came into the room, and I brought them up to date as to

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1 where we were in the position, and then he explained that
2 even though at the previous board meeting on March 31 he had
3 said he would give up the vinyl and would do plank, Hardie
4 board, now he came into the meeting, and after I told him
5 where we were with the three-three, he explained that he was
6 wanting to do --
7 MR. MOHAMMADI: Objection.
8 MS. ROBESON: Basis?
9 MR. MOHAMMADI: It's not responsive to the
10 question.
11 THE WITNESS: I'm explaining -- this is a rebuttal
12 answer, if I understand what that means.
13 MS. ROBESON: Well, can we get to --
14 THE WITNESS: Yes.
15 MS. ROBESON: -- I remember this testimony.
16 THE WITNESS: No, he said -- okay. He said there
17 was no vote taken. I'm explaining to you --
18 MR. MOHAMMADI: That was not the question.
19 THE WITNESS: The question was what happened at
20 the meeting and what followed, and I'm getting to what
21 happened at the meeting.
22 MR. MOHAMMADI: If I recall, the question was what
23 happened after the vote.
24 MS. ROSEN: I could rephrase the question.
25 MS. ROBESON: Why don't you.

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1 BY MS. ROSEN:
2 Q What happened at the meeting?
3 A At the meeting -- so I'm not going to repeat what
4 I just said --
5 MS. ROBESON: Good.
6 THE WITNESS: -- we took a vote. Mr. Ball came
7 in. I explained where we were, that it was, and he
8 explained that -- and I told him the bump-out on the
9 Crossing Creek side was what was the sticking point. He
10 explained that he thought that was better than the bump-out
11 he had done on top of the garage, and that's recorded in the
12 minutes. He then -- and he said he would start, from start
13 to finish, he would get it done by, in one year and repeated
14 that he had been working on this for seven years, and my
15 goal always on this board has been to try to get him to get
16 this project finished. So I changed my vote, and it was
17 four to two, and that was what took place at the meeting.
18 BY MS. ROSEN:
19 Q Okay. And then after that what was done?
20 A After that this letter was sent out, which was a
21 conditional approval.
22 Q Okay. And that was --
23 MS. ROBESON: 78.
24 THE WITNESS: 76.
25 MS. ROSEN: 76, actually.

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1 THE WITNESS: Right.
2 BY MS. ROSEN:
3 Q Okay. All right.
4 A No, that's not.
5 Q Wait. I'm sorry. I'm looking at the --
6 A No, that's the wrong one.
7 Q I'm sorry. I handed you the wrong --
8 A It's not 76. It must be --
9 MR. MOHAMMADI: 78 is right.
10 MS. ROSEN: It's 78. I'm sorry.
11 THE WITNESS: Yeah.
12 BY MS. ROSEN:
13 Q Okay. I think we can move on. All right. Now,
14 both Peter Ball and his expert witness, Mr. Schwartz, both
15 testified that the current constructed structure, as it's at
16 least been constructed up until now, has been constructed in
17 accordance with the HOA-approved plans, 126. Do you agree
18 with that?
19 A No.
20 Q And why not?
21 MR. MOHAMMADI: Objection.
22 MS. ROBESON: Basis?
23 MR. MOHAMMADI: He's not an expert. I know he is,
24 but he's not the expert in this case. I don't think he can
25 give his opinion as to why, if it approves --

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1 MS. ROBESON: Does he have -- I understand -- does
2 he have anything to add over what Ms. Washburn testified to?
3 THE WITNESS: I'm just saying, I went there on
4 September 14, I looked at it, and --
5 MS. ROBESON: Well, wait.
6 THE WITNESS: So it's not an --
7 MS. ROBESON: No. No. You can't --
8 THE WITNESS: -- expert witness. It's just
9 visual.
10 MS. ROBESON: You need to stop. There's an
11 objection. I'm not being mean. There's --
12 THE WITNESS: No, that's fine.
13 MS. ROBESON: -- an objection on the table.
14 THE WITNESS: I didn't understand.
15 MS. ROBESON: Ms. Rosen --
16 MS. ROSEN: I understand. I believe that Mr. Ball
17 has also testified that his, that his position is basically
18 that the current constructed structure was built in
19 accordance with the HOA plans, and he can certainly rebut
20 what Mr. Ball has testified.
21 MS. ROBESON: No, I don't --
22 MR. MOHAMMADI: I don't think that's --
23 MS. ROSEN: I think he's testified that.
24 MR. MOHAMMADI: -- I'm sorry, but I don't think
25 that's a fair representation at all of what he said.

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1 MS. ROBESON: No, I agree with you. Can he move
2 on, because we really have --
3 MS. ROSEN: All right.
4 MS. ROBESON: -- beat that horse.
5 BY MS. ROSEN:
6 Q All right. Mr. Ball stated that the roof that he
7 built over his foyer was temporary and built to see if the
8 HOA would like it. Did he ever make that representation to
9 -- when you went to the site visit at his property around
10 September 14th, 2013, did he ever make that representation
11 to you or Mr. Gibson and Ms. Alpher, who were with you --
12 A No.
13 Q -- at that site visit?
14 A No.
15 Q Okay. And I'm going to bring your attention to
16 what was previously marked as Exhibit 141. Can you take a
17 look at that?
18 MS. ROBESON: What date is that? I'm sorry.
19 MS. ROSEN: Exhibit 141, the chain of custody
20 e-mail.
21 MS. ROBESON: Do you have a date?
22 MS. ROSEN: The date of that e-mail was --
23 MR. MOHAMMADI: September 17, 2013.
24 MS. ROBESON: Thank you.
25 MS. ROSEN: -- September 17, 2013.

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1 THE WITNESS: Yes.
2 BY MS. ROSEN:
3 Q Can you tell us, how did that e-mail come about?
4 A When we went to the site -- and Peter talks about
5 it here -- he said he contacted Tania Bruno because there
6 was some reference to sections and he was a little confused.
7 So as a result, he sent me, attached to -- prior to this
8 e-mail, he sent me an e-mail, saying --
9 Q Okay. Wait for me. I --
10 MS. ROSEN: Okay. I'm going to -- I've got a new
11 exhibit to mark.
12 MS. ROBESON: Has Mr. Mohammadi seen it?
13 MS. ROSEN: Yes. I provided it to him by e-mail.
14 MS. ROBESON: Okay. This is the attachments?
15 MS. ROSEN: Which number are we up to? I'm sorry.
16 MS. ROBESON: We are up to --
17 MR. MOHAMMADI: 170.
18 MS. ROSEN: Thank you.
19 MS. ROBESON: How would you describe this,
20 Ms. Rosen?
21 MS. ROSEN: This is an e-mail dated September 16th
22 of 2013.
23 MS. ROBESON: From whom to whom?
24 MS. ROSEN: Looks like it's from Raj to Pete
25 Gibson.

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1 MS. ROBESON: Mr. Mohammadi, do you have any
2 objections?
3 MR. MOHAMMADI: Well, yes.
4 MS. ROBESON: I think this is already in one of
5 the records.
6 THE WITNESS: Uh-huh.
7 MS. ROSEN: I think it is already, and this is
8 just separated, you know, because it was already in one of
9 the e-mails, I think, that was provided. I've seen it
10 before.
11 MS. ROBESON: Well, anyway, Mr. Mohammadi, do you
12 have objection?
13 MR. MOHAMMADI: I guess -- well, with that, I'm
14 not sure in what e-mail it is. This is the first --
15 MS. ROBESON: Hold on. Let me get my --
16 MR. MOHAMMADI: The first time I saw this was, to
17 my recollection, was when I got this e-mail last week, but
18 if it's already in the record --
19 THE WITNESS: Uh-huh.
20 MS. ROBESON: Well, wait. I'm not sure the whole
21 thing is. September 16th. Okay. I have 110, but I don't
22 know if it has the drawings.
23 MS. ROSEN: Well, you had asked us, I believe,
24 about --
25 MS. ROBESON: Yes, I did.

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1 MS. ROSEN: -- getting these drawings, which is
2 what I've done.
3 MR. MOHAMMADI: I'm sorry, 110?
4 MS. ROBESON: Well, I think I got my list messed
5 up. I have seen this e-mail, but I'm going to, because I
6 can't figure out exactly where it is --
7 MS. ROSEN: It's been seen before, I know it,
8 because it's all part of that same --
9 MS. ROBESON: I don't know if the plans were
10 attached. So I'll put it in --
11 MS. ROSEN: Yes. Well, the -- yes. I'm saying,
12 you --
13 MS. ROBESON: -- unless, do you have any other
14 objections, Mr. Mohammadi?
15 MR. MOHAMMADI: Well, my point is, it would -- I
16 mean, I don't know why I'm getting this now.
17 MS. ROBESON: Well, I had the same question --
18 MS. ROSEN: Well, I --
19 MS. ROBESON: -- why wasn't this provided in
20 discovery?
21 MS. ROSEN: Well, you had asked us about these
22 attachments --
23 MS. ROBESON: Yes, I did.
24 MS. ROSEN: -- to this e-mail, and so these, these
25 were sections, apparently, that were also, had been

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1 attached. I asked. I said, well, since you asked about the
2 attachments, that's what I told them, to go ahead and find
3 where these attachments were, because I had not seen the
4 attachments before either.
5 MS. ROBESON: I know, but why -- that's not the
6 question. The question is, why weren't they provided?
7 MS. ROSEN: Well, partial, I mean, well, first of
8 all, I didn't have them before either, but they are drawings
9 that -- you know, originally, when we started discovery, in
10 my, in my objections to their discovery, I basically
11 objected to having to provide, for example, like drawings
12 that were already, that came from plans, drawings that came
13 from them, and you actually sustained my objection.
14 The drawings, all these drawings emanate from
15 them, but I never had these attachments until now either,
16 with regard to this e-mail, but I was --
17 MR. MOHAMMADI: I don't think -- I'm sorry. Go
18 ahead. I apologize.
19 MS. ROSEN: -- I did, I looked over my discovery
20 originally, how -- I'm going to have to pull this thing out
21 again -- but you just asked us the other day --
22 MS. ROBESON: No, I did ask you.
23 MS. ROSEN: -- to get this. So that's what I was
24 doing.
25 MS. ROBESON: I did ask you. My question is not

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1 whether I asked you. My question is, why is it just
2 appearing now? Where was it?
3 MS. ROSEN: I don't know where it was. I never
4 had -- I never had any copies of these drawings, of any
5 attachments myself, and I'm looking, if you could bear with
6 me for a second --
7 MS. ROBESON: Why don't we take a 10-minute break.
8 I need to look back at --
9 MS. ROSEN: Yes.
10 MS. ROBESON: -- some of the items. These are
11 public, you know, HOA documents are public records, but --
12 well, not public records. They're not. Let me take a few
13 minutes and look back because I don't want to spend a huge
14 amount of time on the record while we go through this. All
15 right?
16 MS. ROSEN: What I do recall was, when original
17 discovery requests were propounded upon me and --
18 MS. ROBESON: That's what I want to look at.
19 MS. ROSEN: Yes. I'm saying, and I -- and I made
20 an objection, made objections, and you sustained several of
21 my objections, and one of my --
22 MS. ROBESON: Yes.
23 MS. ROSEN: -- objections was to providing
24 drawings because they were already, or plans, they would
25 have already been in their hands. They emanate from Peter

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1 Ball. They're his original drawings, so to speak. So
2 that's basically --
3 MS. ROBESON: I guess my question is --
4 MR. MOHAMMADI: If I may also address --
5 MS. ROBESON: Yes.
6 MR. MOHAMMADI: -- I guess, just, just to be
7 clear, my objection is not necessarily to the sections.
8 That's the second page. We asked for all communications
9 between HOA regarding this project. This e-mail on the
10 first page I have never -- you seem to think that it's
11 somewhere, and I don't -- I believe you, but I've never seen
12 it.
13 MS. ROBESON: Well, I'm thinking it's in 7 --
14 MR. MOHAMMADI: In other words, I have never seen
15 this, and this should have been something that should have,
16 would have been -- should have been provided in response to
17 discovery if it's --
18 MS. ROBESON: Correct.
19 MR. MOHAMMADI: -- especially now that it's being
20 used. The sections, while the sections -- I guess I don't
21 really have a problem with the sections coming in. I think
22 they're already in in other, as part of other documents, and
23 let me just check. 148 might be where it came in. I think
24 they're in 148, maybe not. Yes, I believe they're in 148,
25 but the e-mail I have never seen before, and I think that's

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1 why this document is coming in as -- because of what the
2 e-mail says, not because of the sections, and that's my
3 objection. I mean, it's sort of --
4 MS. ROSEN: Well, unfortunately, we've had --
5 MR. MOHAMMADI: -- four months late, five months
6 late now.
7 MS. ROSEN: 148 wasn't exactly timely either, but
8 I mean, we both had these kind of situations popping up, so
9 to speak.
10 MS. ROBESON: Well, yes, but --
11 MS. ROSEN: But I believe that this e-mail was
12 already produced. I mean, I -- because it was part of a
13 chain.
14 MR. MOHAMMADI: Quite frankly, I don't think this
15 would have been produced because Ms. Rosen is on this. I
16 mean, it almost seems like it would be attorney-client
17 privilege. So that's why maybe it wasn't produced, but --
18 MS. ROSEN: It's possible.
19 MR. MOHAMMADI: -- if you're going to use it, it
20 needs to be produced. That's, that's, that's my point.
21 MS. ROSEN: Well, we had the similar situation
22 with Exhibit 148, which is a drawing that certainly should
23 have been produced long before it was. So --
24 MR. MOHAMMADI: As I --
25 MS. ROSEN: -- we've both been in this situation.

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1 MR. MOHAMMADI: 148 is not something that was in
2 our possession.
3 MS. ROBESON: That's right.
4 MS. ROSEN: Well --
5 MR. MOHAMMADI: It's not from us.
6 MS. ROBESON: Okay. Just a second. Let's not go
7 into this. I -- it's got to be somewhere or I wouldn't have
8 it on my time line. Well, what I have down -- maybe it's
9 not the same thing -- what I have down for 9/16/13 is an
10 e-mail from Ball to Gibson, inviting him to visit the
11 property. So I guess I don't have that particular e-mail.
12 I'm going to -- do you agree, Ms. Rosen, that the plans, the
13 plans are already in the record?
14 MS. ROSEN: I mean, let's -- what are we talking
15 about as the plans? I just want to make sure we're talking
16 about the same thing, yes.
17 MS. ROBESON: No, I know. There's -- yes.
18 MS. ROSEN: Okay.
19 MS. ROBESON: I understand.
20 MS. ROSEN: Otherwise, it's going to get --
21 MS. ROBESON: That the attachments are already in
22 the record.
23 MS. ROSEN: Well, the attachments that are
24 referred to, that is what I -- you asked me to see if we
25 could get that.

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1 MS. ROBESON: Yes, I know I did that.
2 MS. ROSEN: And I was going to put those in the
3 record. I have them here, and I gave a copy to
4 Mr. Mohammadi.
5 MS. ROBESON: Why don't we just put the plans --
6 MS. ROSEN: You want just the attachment to the
7 e-mail.
8 MS. ROBESON: Do you have an objection to letting
9 the attachments in?
10 MR. MOHAMMADI: Well, I don't have an objection to
11 the plans because -- but they're already in. So I don't
12 know why we are duplicating what's already in.
13 MS. ROSEN: I was asked to --
14 MS. ROBESON: No, I know that. Don't --
15 MS. ROSEN: Okay.
16 MS. ROBESON: I understand you're trying to be
17 responsive. I'm just --
18 MS. ROSEN: Exactly.
19 MS. ROBESON: -- trying to figure out --
20 MS. ROSEN: Well, I guess what the question is
21 going to be, and -- is, what are these plans, are they the
22 same as some other plan or not, and that's something
23 Mr. Barr would --
24 MS. ROBESON: And can you ask Dr. Barr that?
25 MS. ROSEN: And I will ask, I will be asking

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1 Dr. Barr that.
2 MS. ROBESON: Do you, Mr. Mohammadi, do you have
3 -- is it 148 that you say these are the attachments to?
4 MR. MOHAMMADI: Correct. Those, those drawings
5 are in 148, not -- they're not presented in the same way as
6 148. If you look at 148, there's three drawings of sections
7 in 148 and two of those sections are identical to the
8 sections in this e-mail --
9 MS. ROSEN: Well --
10 MR. MOHAMMADI: -- but they're not on the same
11 piece of paper and they're not presented in the same way as
12 this attachment, but they're the same exact sections.
13 MS. ROSEN: Well, I don't think Mr. Mohammadi
14 should be testifying, which is basically what he seems to be
15 doing.
16 MS. ROBESON: Well, what I'm going to do is I am
17 going to let just the drawings in --
18 MS. ROSEN: Okay.
19 MS. ROBESON: -- as 171, and then if Dr. Barr can
20 testify as to the origination of those drawings, we can do
21 it that way. So this would be 170, correct?
22 MS. ROSEN: This is now 170?
23 MS. ROBESON: Wait.
24 MS. ROSEN: Or 171?
25 MS. ROBESON: I thought we excluded the e-mail.

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1 MS. ROSEN: Okay. Well, then -- so if we're
2 excluding it, we're going to call this one 170?
3 MR. MOHAMMADI: 1.
4 MS. ROSEN: Or 171?
5 MS. ROBESON: No, 1 -- oh.
6 MR. MOHAMMADI: Right. Without the e-mail, the
7 drawing would be 170, right?
8 MS. ROBESON: Right.
9 MS. ROSEN: Right. So we're going to call it 170
10 then?
11 MS. ROBESON: Yes.
12 (Exhibit No. 170 was marked
13 for identification and was
14 received in evidence.)
15 MS. ROSEN: Okay.
16 MR. MOHAMMADI: By the way, I think what you were
17 referring to, the e-mail that you have or --
18 MS. ROBESON: Yes.
19 MR. MOHAMMADI: -- that's September 16th, that's,
20 I think, Exhibit 110.
21 MS. ROBESON: Yes, that's what I have down. So I
22 haven't seen that e-mail.
23 MS. ROSEN: I'm sorry?
24 MS. ROBESON: I was just saying, I had an e-mail
25 and I've marked it as 110, dated 9/16, but it was an e-mail

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1 from Ball to Dr. -- Mr. Ball, sorry. I have shorthand in my
2 head. I was going to say Ball to Barr; so I was doing it on
3 both sides, but it's a different e-mail. So with that, I am
4 going to mark these, Plan Drawings -- I'm looking for a date
5 or something.
6 MR. MOHAMMADI: Ms. Robeson, if I may just inquire
7 here, the previous e-mail with the one drawing of the
8 sections, are the sections coming in, because if so, isn't
9 that 170?
10 MS. ROBESON: Wait. Can I see the e-mail? I
11 don't have the --
12 MR. MOHAMMADI: I just want the record to reflect
13 the exact exhibits we're on. That's it.
14 MS. ROBESON: You may have taken it back, or I may
15 have misplaced it.
16 MS. ROSEN: That was --
17 MR. MOHAMMADI: That's my copy, but --
18 MS. ROBESON: Okay. So -- okay. Yes, I agree. I
19 apologize for taking so much time. This I will, just the
20 sections, I will put in as Exhibit 170, and so I'm going to
21 give this back to you, and I'm going to ask Dr. Ball to
22 identify what those sections are.
23 So I'm just calling 170, Section Drawings, and
24 then we have 171, which is Full Set of Drawings. Now, what
25 I have to -- now, what I don't have is a single sheet of the

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1 sections. So I guess at the break I'll have to make a copy
2 of that.
3 (Exhibit No. 171 was marked
4 for identification and was
5 received in evidence.)
6 MR. MOHAMMADI: You can have my copy because I
7 have two.
8 MS. ROBESON: Well, why don't you hold on to them
9 until we finish, unless you're going to testify as to them.
10 All right. Go ahead, Ms. Rosen.
11 BY MS. ROSEN:
12 Q Okay. Dr. Barr, I'm going to show you a document
13 which was marked as Exhibit 170, and can you identify what
14 that document is?
15 A If it's a single sheet with two sections, it's
16 what Peter Gibson sent to me and it's part of a chain of
17 e-mails that went back and forth. And I was quite surprised
18 to see when Mr. Mohammadi brought out one sheet, which is
19 now called the chain of custody sheet that was presented to
20 me, and I remember saying in that, in response, it's part of
21 a whole chain.
22 And when I saw these two, I e-mailed Peter back.
23 I couldn't see it on my iPhone. I came back to the office,
24 and I looked it up, and I said, I have, these look like
25 orphans -- and I'm doing this from memory now, as to what I

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1 wrote, because -- I said: These drawings look like orphans.
2 They are from a different stage in the drawing process.
3 They are not, they have no author; they have no date. It
4 looks like they were prepared for, more for a permit set for
5 submission to the county. And I explained to Peter that the
6 drawings we had seen previously at the HOA hearing, the
7 meeting that we approved, were what are more schematic
8 drawings and these were more advanced and they have all
9 sections and that, and I said, why don't you ask her for the
10 complete set, and that's when the next set of drawings, 171,
11 was given. I had a chance to look at them and --
12 Q I'm going to show you the document which you're
13 now referring to as --
14 A Okay.
15 Q -- 171. If you could identify that --
16 A Yes.
17 Q -- set of documents. Is that -- so is that the
18 set of documents that was referenced in this e-mail dated
19 Tuesday, September 17th, 2013, which has been marked as
20 Exhibit 141?
21 A Yes. Yes. These are the drawings that were
22 attached to that e-mail. I didn't have a chance to look at
23 it right away. One week later I wrote back to him, having
24 looked at it, and said: I have studied this. They are not
25 in any way the same drawings as was first given to us.

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1 MS. ROBESON: Okay. You wrote back to whom?
2 Mr. Gibson?
3 THE WITNESS: To Peter Gibson --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- on the 23rd of September --
6 MS. ROBESON: That's all I want.
7 THE WITNESS: -- on the e-mail chain.
8 MS. ROBESON: Right.
9 BY MS. ROSEN:
10 Q Okay. Now, prior to September 17th of 2013, had
11 you ever seen the drawings that are marked here as Exhibit
12 171?
13 A No. No.
14 Q Okay. Are they the same drawings as the
15 HOA-approved drawings that are in Exhibit 126?
16 A No.
17 Q Or 77?
18 A No.
19 Q Okay. Have you had a chance to compare these
20 drawings to Exhibit 148?
21 A Yes.
22 Q Okay. And are they identical to the drawings in
23 Exhibit 148?
24 A No, they're not.
25 Q Okay. I might have to show you 148. Perhaps you

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1 can tell us what exactly is different.
2 MS. ROSEN: Indulgence. One second, please. I'm
3 sorry. I'm just getting --
4 BY MS. ROSEN:
5 Q I'm going to show you the document which is marked
6 as Exhibit 148, and I'm just going to ask you to take a
7 second look and compare Exhibit 148 to Exhibit 171 and tell
8 the Hearing Examiner what is different about those sets of
9 drawings from each other.
10 MR. MOHAMMADI: Objection.
11 MS. ROBESON: Basis?
12 MR. MOHAMMADI: Again, he's not qualified as an
13 expert in this case. So I don't know -- I mean, maybe he
14 can -- well, let me take that back. I don't think he can
15 just give a layperson opinion as to whether one set of plans
16 is similar or identical to another set of plans. I think an
17 expert has to do that, and he's -- and I understand his
18 qualifications to be an expert. He's not in this case,
19 however.
20 MS. ROSEN: See, I think the Hearing Examiner has
21 acknowledged that he does have superior knowledge, and I
22 don't think he needs to be an expert to look at the two
23 drawings, two sets of drawings and say whether they are the
24 same or whether they have a difference in them.
25 MS. ROBESON: Well, wait. That belies what you're

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1 saying. You're saying you have to be an expert --
2 MS. ROSEN: No.
3 MS. ROBESON: -- to compare plans. I am, I am
4 going to let it in and give it the weight it deserves. Go
5 ahead, Dr. Barr.
6 THE WITNESS: I'm not going to give expert
7 witness. I'm just looking at two drawings, one of which is
8 a title block. 148 has a title block --
9 MS. ROBESON: Yes, I see it.
10 THE WITNESS: -- with the architect's name, and
11 the one that we hold now as 171 has no such thing. It is
12 still authorless, dateless, and only has a cover sheet,
13 doesn't even say who it's done for.
14 The second striking thing about it -- and, again,
15 as a layperson, I can look at this plan, which is A1 in 148,
16 and compare it to a plan that looks like it's a similar
17 layout of the, whatever floor that is, and --
18 BY MS. ROSEN:
19 Q Well, can you describe what we're looking at, this
20 drawing has on it?
21 A A1 does not show a trellis along the back.
22 MS. ROBESON: Okay.
23 THE WITNESS: And on this sheet, which has no name
24 or number --
25 BY MS. ROSEN:

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1 Q Right. Can you --
2 A -- there is a long trellis.
3 MS. ROBESON: Yes, I see.
4 THE WITNESS: She can see it, yeah. So it doesn't
5 need to be an expert. You can just see, one has a trellis;
6 the other one doesn't. One has a title block; the other one
7 doesn't. One has an author and a date; this has nothing,
8 and this is what we were given by Tania Bruno to Peter
9 Gibson.
10 MS. ROBESON: No. What is this?
11 THE WITNESS: This, 171 was sent, as you saw, with
12 an attachment to --
13 MS. ROBESON: Yes.
14 THE WITNESS: -- by Peter Gibson. He forwarded it
15 to me, and I responded back to him, and I said the set of
16 drawings bear no resemblance to what we looked at at the
17 HOA.
18 MS. ROBESON: No, you don't have to read it.
19 THE WITNESS: Okay. I'm not reading it.
20 MS. ROBESON: Your testimony is that it's
21 different --
22 THE WITNESS: It's different.
23 MS. ROBESON: -- and your testimony is the
24 trellis --
25 THE WITNESS: Yeah.

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1 MS. ROBESON: -- and the title block is missing.
2 THE WITNESS: I'm just saying that was one very
3 obvious place --
4 MS. ROBESON: Yes.
5 THE WITNESS: -- I didn't have to go any further
6 with that --
7 MS. ROBESON: Okay.
8 THE WITNESS: -- but I also told him that this
9 looks to me very much like something that was prepared
10 differently, entirely, and we don't even know why these two
11 are both being sent and compared to each other.
12 MS. ROBESON: Okay.
13 BY MS. ROSEN:
14 Q Okay. And when was the first time you saw the
15 drawings that are in Exhibit 148?
16 A A few days before they were presented at the case.
17 Q In this case, you mean?
18 A In this case, when you brought it here and gave --
19 like, end of July, I think, last days of July.
20 Q Okay. Now, Mr. Ball testified that you and/or the
21 HOA told him that he had to stop construction. Did you
22 direct him to stop construction?
23 A No.
24 Q Okay.
25 MS. ROBESON: Well, what about the September 15th

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1 letter?
2 THE WITNESS: That's the letter.
3 MS. ROSEN: Well, that is the letter, but on its
4 face --
5 THE WITNESS: It did not say stop at all.
6 MS. ROSEN: Okay.
7 THE WITNESS: My intent was never to say stop. In
8 fact, if I might explain, one of the people who went out
9 there said, get him to stop the work, and I said, no, he's
10 on a good roll, he just has to make this slight correction
11 and keep going. And so the letter at the bottom of the
12 page --
13 MS. ROSEN: That's Exhibit 179.
14 THE WITNESS: Yeah, Exhibit 179, on the bottom,
15 says -- I was very specific not to ask for a stop because
16 someone did recommend that we stop him, of the three of us,
17 and what I said was, what I said to him on site -- he asked
18 me what can be done, and I said: You have a professional
19 architect and engineer working on this. Consult them. They
20 should be able to give you a solution. And I told Peter
21 Gibson, this should not take more than two weeks to correct
22 and keep going.
23 So the letter effectively said on the bottom line,
24 underlined: You are hereby asked to proceed immediately to
25 remedy and bring the building back into conformity with the

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1 approved HOA drawings. You are doing -- we note that you
2 have made good progress on the construction and encourage
3 you to work continuously on the construction to remedy all
4 nonconforming elements.
5 We were very interested in getting him to finish
6 to the deadline that he wanted to finish it by, and the
7 reason we ran out, at least I ran out, as soon as I heard
8 about it -- I went pretty much, like, two days later to see
9 what was going on -- was because there had been lots of
10 rumor and scuttlebutt. And I don't make a point of going to
11 somebody's house and checking on them; that's not my
12 business, but this seemed serious enough that I went over
13 there, and I, we surely saw that things were different from
14 what I saw on the plan and even on the building permit set,
15 and I didn't want him to get into deeper financial crisis --
16 MS. ROBESON: Yes, I remember that.
17 THE WITNESS: -- and so that's why --
18 MS. ROBESON: I just don't want to repeat --
19 THE WITNESS: No.
20 MS. ROBESON: -- everything. I don't --
21 THE WITNESS: No. I'm just --
22 MS. ROBESON: -- want to stop you, but I do want
23 to finish this hearing.
24 THE WITNESS: No. No. You did say that you
25 thought I had written stop, and the intent was exactly the

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1 opposite --
2 MS. ROBESON: I see.
3 THE WITNESS: -- and the opposite was to say get
4 this corrected. And I kept asking Peter Gibson, has he
5 hired the architect, has he consulted the architect, and you
6 can see a chain of e-mails on that between him and me,
7 saying, where is he with this?
8 So this chain of e-mails, when they get detached
9 one from the other and one is presented as a freestanding
10 chain of custody thing, gives the wrong impression. And
11 what we were trying to enter into it, it's my response to
12 Peter when he sent the section, I followed up --
13 MS. ROBESON: To which you've testified.
14 THE WITNESS: Yes, and now --
15 MS. ROBESON: Yes.
16 THE WITNESS: -- I've testified that I then looked
17 at these things and sent it back to him, saying --
18 MS. ROBESON: I understand.
19 THE WITNESS: Okay. I'm done.
20 MS. ROBESON: Ms. Rosen.
21 MS. ROSEN: Okay.
22 BY MS. ROSEN:
23 Q Did Mr. Ball ever admit to you, either verbally or
24 in writing, that his construction was not in compliance with
25 the approved plans?

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1 A A letter that he sent to Peter Gibson December 13
2 or 16 of 2013 references something there.
3 Q Okay. And I'm just having a little trouble
4 putting my hands on that letter, but it's already been --
5 it's already in evidence.
6 MS. ROBESON: What date is it?
7 MS. ROSEN: It's a December --
8 THE WITNESS: December 2013.
9 MS. ROSEN: -- December 16th, 2013, letter, which
10 I could have sworn I put right in here with the rest of my
11 stuff. I think it's Exhibit 90 for some reason.
12 MS. ROBESON: Well, wait a minute.
13 MS. ROSEN: Give me one second, and I will --
14 MS. ROBESON: 86. No --
15 MS. ROSEN: 86? No, I think it's 90.
16 MS. ROBESON: -- it is 90. It's 90.
17 THE WITNESS: Can you find it, please?
18 BY MS. ROSEN:
19 Q No, I can't. I'm trying to look for it.
20 A It's not there. That's my pile.
21 MS. ROSEN: May I borrow somebody's Exhibit 90 for
22 one second?
23 MS. ROBESON: You can have the official one.
24 MR. MOHAMMADI: I got it.
25 MS. ROSEN: Thank you. I had it here, and I think

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1 it just got a little shuffled someplace.
2 MR. MOHAMMADI: Just give me one second, okay?
3 BY MS. ROSEN:
4 Q Okay. I'm going to show you the document that's
5 been marked as Exhibit 90. If you could take a look at
6 that.
7 A Yes, uh-huh.
8 Q Okay. I'm going to turn your attention to the
9 portion where -- referencing, making adjustments.
10 A Yeah. It says: Also, please find elevations for
11 our adjustments to the approved plans, which are submitted
12 for the board's approval. The adjustments address the roof
13 issues brought up by Raj, as well as the issues raised by
14 the supplemental complaint written by Lynn Gowen.
15 Q What is attached to this letter?
16 A What was attached to the letter --
17 Q No. What is attached to this exhibit, I'm asking
18 you.
19 A -- were drawings dated December 5, 2013.
20 Q No. No. What I'm asking you is --
21 A They are drawings, elevation drawings.
22 Q This letter refers to an attached copy of the
23 elevations for our approved plans.
24 A Uh-huh.
25 Q There are elevations that are attached to this

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1 Q Yes.

2 A -- when we saw this as part of the deck

3 submission, we were surprised that there was a completely

4 different drawing, which was dated December 2013, which

5 coincided with the cover letter, saying, we made

6 adjustments. And we didn't pay much attention to it at the

7 time, but once it went into the, into the response to the

8 shed, tear down, we noticed that it was also marked approved

9 5/12/14, and we said, what --

10 MS. ROBESON: Yes, but Mr. Ball already

11 testified --

12 THE WITNESS: Okay.

13 MS. ROBESON: -- as to what that meant.

14 THE WITNESS: Yeah. So effectively, this letter

15 -- this drawing was probably the second part of that letter

16 that I looked at, which was a December 16, 2013, letter --

17 MS. ROBESON: Okay.

18 MS. ROSEN: Okay.

19 THE WITNESS: -- saying, we made adjustments, and

20 we see no adjustments; in fact, it just recorded what --

21 MS. ROSEN: And I guess my question to him was,

22 because in that letter it said that he was going to lower

23 the roof --

24 MS. ROBESON: Okay. I need you -- okay. Are you

25 asking a question?

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1 MS. ROSEN: All right. No, that's okay. I'll get

2 to it in argument.

3 MS. ROBESON: I just want, I want you to ask, I'm

4 asking you -- I understand. I appreciate your assistance.

5 I understand.

6 MS. ROSEN: Okay.

7 MS. ROBESON: So go ahead.

8 BY MS. ROSEN:

9 Q All right. What do you understand from this

10 handwritten approved 5/12/14?

11 A As a layperson looking at it, I would think that

12 this approval was for the entire elevation.

13 Q Okay. But just for the record, that was not an

14 approval made by -- that was not your handwriting --

15 A No.

16 Q -- or anyone else from the association doing that?

17 A No.

18 Q Okay. And I'm also just going to show you the

19 document that's been previously marked as Exhibit 159, and

20 that also has a handwriting. It says: Approved 5/11/2011.

21 What strikes, does anything strike you as -- what was your

22 understanding?

23 MS. ROBESON: No, just non-leading.

24 THE WITNESS: Yeah. Yeah.

25 BY MS. ROSEN:

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1 Q What is your understanding of that?

2 A My understanding, looking at this drawing --

3 MS. ROBESON: And this is 159?

4 MS. ROSEN: 159.

5 THE WITNESS: 159. I can see there are county

6 stamps along the sides. So it's obviously the permit set --

7 MS. ROBESON: Yes.

8 THE WITNESS: -- and the permit set, we were told

9 by Mr. Ball, was prepared in September or August of 2012.

10 So here it is marked as Approved Plans 5/11/11. It's

11 approved before it was even produced, according to this

12 statement, the Approved Plans 5 --

13 MS. ROBESON: No, I get what you're saying --

14 THE WITNESS: Yeah. Okay.

15 MS. ROBESON: -- I'm not sure Mr. Ball said that,

16 but you go ahead.

17 THE WITNESS: My understanding is what I'm

18 showing --

19 MS. ROBESON: No, that's fine.

20 THE WITNESS: -- if I saw it for the first time

21 and I was at CCOC or received this, I would have said, oh,

22 here's a permit set that's been approved by somebody, we

23 don't know who, on May 11, 2011. It's one day off from the

24 day on which we approved the HOA-approved plan, which is

25 5/10/11, but we never marked the drawing. What I find

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1 strange about this statement here, whatever the intent, is

2 that it says this drawing is approved on a day before it was

3 produced, one year before it was produced. It's a

4 contradiction to me. I'm confused by it.

5 MS. ROBESON: Join the club.

6 THE WITNESS: It seems misleading.

7 MS. ROBESON: No. No, just --

8 THE WITNESS: Yeah.

9 MS. ROSEN: I'm sorry. I just put it back in my

10 stuff. I think I --

11 MR. MOHAMMADI: I think so because I don't have

12 it.

13 MS. ROSEN: Oh, I think I did. I apologize to

14 you. It's kind of like pens, you know, if it's --

15 THE WITNESS: I steal pens, yeah.

16 MS. ROSEN: I steal pens all the time. All right.

17 Exhibit 90. Here it is.

18 MR. MOHAMMADI: Thank you.

19 MS. ROSEN: If I can just have a second, just to

20 put this stuff back together again, that would be helpful.

21 BY MS. ROSEN:

22 Q Now, did the association respond to Mr. Ball's

23 application dated September 26, 2011, which, in which he

24 asked for a change in brick color and something with siding?

25 A Yes, we did.

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1 Q Okay. Okay. One second.
2 MS. ROBESON: I thought that was September 30th,
3 his application.
4 MS. ROSEN: Okay. Maybe I just wrote it wrong on
5 my question list, but it was, it's in September of 2011.
6 THE WITNESS: The application is signed, that was
7 signed by Tania Bruno?
8 BY MS. ROSEN:
9 Q Yes. It was Exhibit --
10 A Yeah. Here it is.
11 MS. ROBESON: It's 37.
12 MS. ROSEN: Okay.
13 MS. ROBESON: It's September 30th --
14 MS. ROSEN: Okay.
15 MS. ROBESON: -- at least the application form.
16 So go ahead.
17 MS. ROSEN: Okay. I need to mark a new exhibit,
18 and I guess this will be 172.
19 (Exhibit No. 172 was marked
20 for identification.)
21 MS. ROBESON: Mr. Mohammadi, I assume you have a
22 copy of this?
23 MS. ROSEN: Yes, I provided that. That's also, I
24 think -- I think it's part of the record in the other case
25 from looking at the, the underlying --

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1 MS. ROBESON: And --
2 MR. MOHAMMADI: Did you e-mail that to me?
3 MS. ROSEN: Yes, that was part of what I e-mailed
4 to you.
5 MS. ROBESON: Is that on Potowmack Preserve
6 letterhead, because it's not, I barely see --
7 MS. ROSEN: Yes, it -- I can give you mine.
8 THE WITNESS: Give it to her.
9 MS. ROSEN: I'll give you this one. Maybe it was
10 my copy machine. I think it was from the other --
11 MR. MOHAMMADI: What is the date of that?
12 MS. ROSEN: September, it's dated September 26,
13 2011. It's part of the e-mail. I think it was from the
14 other case, too, because I'm looking at the --
15 MS. ROBESON: Okay.
16 MS. ROSEN: -- that little circled page number. I
17 think it was, came from Commission Exhibit 1 in the other
18 case also. Do you have it?
19 MR. MOHAMMADI: Yes.
20 MS. ROSEN: Okay.
21 MS. ROBESON: Now, this is odd because this is
22 September 26 --
23 THE WITNESS: What is September 26?
24 MS. ROBESON: -- but his application is 9/30.
25 MS. ROSEN: Well, actually, this is -- one minute.

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1 THE WITNESS: That's my response.
2 MS. ROBESON: Well, let's make sure, let me see if
3 it's in --
4 MS. ROSEN: Well, there's two -- wait, wait.
5 MS. ROBESON: -- let's first, before we go
6 somewhere --
7 MS. ROSEN: Well, wait, okay, because there's
8 another document. There are two different documents, and
9 I'll go ahead and give you the other one, too, because one
10 of them, if you read this letter, it refers to receiving an
11 e-mail request and if you wish to make a fresh application.
12 There's a subsequent letter, which is October 5th.
13 MS. ROBESON: Okay. Then I'll just let you
14 continue. So 172 is, Letter from Dr. Barr to Mr. Ball.
15 BY MS. ROSEN:
16 Q Could you please identify the document marked as
17 172?
18 MS. ROBESON: Mr. Mohammadi, do you have any
19 objections?
20 MR. MOHAMMADI: I mean, it's the same objection I
21 had previously. I don't think this, I have seen this
22 previously. This is, I think, the first time I've seen it.
23 Again, why is it coming in now and not previously, but same
24 objection.
25 MS. ROSEN: I believe that this was part of the

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1 previous case, number one, and --
2 MS. ROBESON: Yes, but --
3 MS. ROSEN: -- the other item is, the siding --
4 the question of the siding was, that claim was dismissed in
5 this case, but you asked me in this -- you sent us an
6 e-mail, and you asked was there any written response to this
7 application. So --
8 MS. ROBESON: Well, I think I ruled several
9 hearings ago that the siding was relevant to the
10 discriminatory -- this case is not going to approve vinyl
11 siding, but it was relevant to the discriminatory,
12 Mr. Ball's allegation that he was discriminated against;
13 plus it's clearly from this application.
14 MS. ROSEN: But I believe that this was, by
15 looking, by the number that's on the bottom -- like I
16 indicated, there's, like, handwritten numbers 19 and 20 -- I
17 think this is actually from, I'm pretty sure --
18 THE WITNESS: Uh-huh.
19 MS. ROSEN: -- this is from 73 --
20 MS. ROBESON: 12.
21 MS. ROSEN: -- 12 because those are the numbering
22 when I was, when I did the Commission, when I put together
23 that Commission exhibit into the red file. I'm pretty sure
24 that this is where it comes from that, because that's why
25 those numbers are there.

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1 MS. ROBESON: Well, I will let it in.
2 (Exhibit No. 172 was received
3 in evidence.)
4 BY MS. ROSEN:
5 Q Could you please identify the document that's been
6 marked as 172?
7 A Yes. This is the letter that I've written to him
8 in response to his e-mail request to change the Hardie board
9 to vinyl siding.
10 Q Okay. And what did you tell him to do?
11 A If you wish to make a fresh application to the
12 vinyl siding, please follow HOA procedures, describing the
13 design guidelines, and submit the application, drawings and
14 samples, to Lee Alpher, chair of the architectural review
15 committee.
16 (Exhibit No. 173 was marked
17 for identification.)
18 BY MS. ROSEN:
19 Q Okay. I'm going to show you a document that's
20 marked as Exhibit 173.
21 MS. ROSEN: Give the Hearing Examiner this one
22 because it has, you can see the green Potowmack Preserve
23 letterhead on it.
24 MR. MOHAMMADI: Which one is that?
25 MS. ROSEN: That's the one dated October 5th of

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1 2011, from the architectural review committee.
2 BY MS. ROSEN:
3 Q And what is that document?
4 A This one is the one explaining to Peter that the
5 application was received and noted that it covered the same
6 construction submitted in your previous application. No new
7 construction is proposed. The new application, therefore,
8 requests to revisit the previous application and decision.
9 MS. ROBESON: Now, this was not in Exhibit 1.
10 MS. ROSEN: I'm sorry?
11 MS. ROBESON: This was not --
12 MS. ROSEN: I'm not talking about my -- I'm not
13 talking about Exhibit 1 in this case. What I'm referring to
14 is, I believe it was in --
15 MS. ROBESON: I know, and it's not in there.
16 MS. ROSEN: It's not, because it looks like it's
17 numbered the way it would have been --
18 THE WITNESS: Numbered, yeah.
19 MS. ROSEN: -- in the other case. I mean, I could
20 be wrong, but I'm just saying that the numbering on it --
21 MS. ROBESON: Well, maybe I don't have the
22 complete record --
23 THE WITNESS: Right.
24 MS. ROBESON: -- of Exhibit 1.
25 MS. ROSEN: I'm saying this has, it has these

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1 handwritten numbers on the corner of the right-hand side --
2 MS. ROBESON: I know. Usually, they're circled.
3 MS. ROSEN: -- and, you know, that's what it would
4 be, but -- and I would also indicate that it is a letter
5 that was, that is addressed to Mr. Ball. So I think
6 Mr. Ball would certainly have a document that was, or the
7 letter that was addressed to him, and under the discovery
8 rules, you're not normally -- in CCOC you're not normally
9 required to produce something that the other party would
10 have, whatever, possession or control of, and it's a letter
11 that's addressed to him.
12 MS. ROBESON: I guess it's not, my concern is not
13 that it's -- Mr. Mohammadi.
14 MR. MOHAMMADI: We specifically asked for all
15 communications between the HOA and the -- and Mr. Ball,
16 Michael Ball and Peter Ball. This should have been
17 produced. It's part of the initial application process. At
18 the time we conducted discovery, the vinyl siding issue I
19 don't believe had been ruled on at that time yet, and so I
20 believe this should have been produced anyways.
21 MS. ROSEN: I think the vinyl siding was -- I
22 think that was ruled on at our pre-hearing conference.
23 MR. MOHAMMADI: Which was, I believe, after --
24 MS. ROBESON: No, but --
25 MS. ROSEN: No, but it was ruled on, I believe it

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1 was ruled on --
2 MS. ROBESON: No, it wasn't. It wasn't. I know
3 when it was ruled on, but why would you assume, if he asked
4 for anything -- the standard under discovery --
5 MS. ROSEN: Well, I mean --
6 MS. ROBESON: -- is anything likely to lead to
7 admissible evidence. So why would you exclude this?
8 MS. ROSEN: I believe we probably didn't get into
9 producing it because the claim for the siding had been
10 dismissed. It was, I mean, in this hearing it has suddenly
11 become -- you know, I objected to --
12 MS. ROBESON: It has not suddenly become.
13 MS. ROSEN: -- I objected to, you know, when you
14 started going about the siding in this hearing, I objected
15 because I said, hey, it's been dismissed.
16 MS. ROBESON: And I said, and I -- do you want me
17 to read the transcript?
18 MS. ROSEN: No. I understand that you indicated
19 that it was, I guess, that you were going to allow things in
20 on the siding --
21 MS. ROBESON: Right.
22 MS. ROSEN: -- because of the discriminatory
23 intent.
24 MS. ROBESON: Correct.
25 MR. MOHAMMADI: I have to pull up my discovery

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1 requests, but I think my discovery requests were a little
2 bit broader than specifically on the roof or specifically on
3 supplemental issues. I think what we raised was any
4 discussions regarding any communications between the HOA and
5 the Balls since, I want to say, 2008 or something like that.
6 MS. ROBESON: '08.
7 MR. MOHAMMADI: So this clearly falls within that
8 request, and it's irrelevant what my client has or does not
9 have. It does not, just because he received the e-mail --
10 MS. ROSEN: It's not irrelevant.
11 MS. ROBESON: It's the association's records.
12 MS. ROSEN: I understand that, but I believe, and
13 I have to look in the --
14 MS. ROBESON: Do you have an objection, let me go
15 at it this way, do you have an objection to it coming in
16 or --
17 MR. MOHAMMADI: Well, I guess, besides what I
18 already noted, I don't know what the point is yet.
19 MS. ROBESON: He was only --
20 MR. MOHAMMADI: It's in response to your
21 request --
22 MS. ROBESON: Yes.
23 MR. MOHAMMADI: -- is that what this is?
24 MS. ROSEN: Yes. That's why it's --
25 MS. ROBESON: I guess I'm very concerned because I

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1 have been trying to put this case together since day one
2 about what happened when and, you know, I'm just getting
3 these on the last day of trial, hopefully. That's my
4 concern.
5 MS. ROSEN: Okay. Like I said, I believe, and I
6 can't, without looking at the record in 73-12, I believe
7 that these documents were in that record because of those
8 numbers that are on the page, the pagination. So unless we
9 look at 73-12, 73, if it's in --
10 MS. ROBESON: Well, I guess -- I went through
11 73-12 --
12 MS. ROSEN: Okay.
13 MS. ROBESON: -- and put every document in a time
14 line.
15 MS. ROSEN: Okay.
16 MS. ROBESON: Now, either I don't, I missed them
17 -- I put every document --
18 MS. ROSEN: Okay.
19 MS. ROBESON: -- in every case --
20 MS. ROSEN: Okay.
21 MS. ROBESON: -- 720-G, 73-12, and this case -- in
22 a time line. Now, either I don't have a complete set of
23 Exhibit 1, which could be, or I missed it, which could be,
24 but I really went through all these files with a fine-tooth
25 comb. And I guess it's bothersome to me to try to prepare

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1 for this case, with all the factual issues and --
2 MS. ROSEN: I understand. When you sent the
3 e-mail, I went looking and I said --
4 MS. ROBESON: I know. I know that.
5 MS. ROSEN: -- you know, I tried to be responsive.
6 MS. ROBESON: I know that. So my question is, I
7 sent it, thinking is it there, you know -- I didn't expect
8 to get one, I guess.
9 MS. ROSEN: Okay.
10 MS. ROBESON: So -- well, Mr. Mohammadi, do you
11 have a position as to whether these should be in or out?
12 MR. MOHAMMADI: For me, the only reason they would
13 be in is to show that there is this discovery issue and it's
14 an ongoing one throughout the hearing, not for the purpose
15 of whatever these letters say or stand for, but to just
16 show, again, we're getting additional materials, you know,
17 four months after we started this process.
18 MS. ROBESON: I'm going to let them in and give
19 them the weight they deserve. I don't know if staff of the
20 CCOC gave me a copy of the file or the original file, but
21 this means I would have missed two letters, but --
22 (Exhibit No. 173 was received
23 in evidence.)
24 MS. ROSEN: Like I said, I'm not 100 percent sure.
25 I'm going by those numbers. It was like 19 and 20 --

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1 MS. ROBESON: No. The circle 19 --
2 MS. ROSEN: -- and that's what's making me think
3 that it was in there.
4 MS. ROBESON: The circle 19 looks like what they
5 typically do with their Exhibit 1s.
6 MS. ROSEN: Yes, and it doesn't look like my
7 handwriting; so that's why I don't think it's -- it's not
8 my, it doesn't look like it's me, my handwriting, but --
9 MS. ROBESON: Well, I'm going to let them in; I --
10 and give them the weight they deserve. So you can continue.
11 MS. ROSEN: Okay.
12 BY MS. ROSEN:
13 Q Did Mr. Ball accept that rejection of the siding
14 portion of the application?
15 A Well, he came to the board meeting, after I wrote
16 the first letter on the 26th, which is, I think, on the
17 27th, and again made the case for using the vinyl, which I
18 found quite disappointing, considering there were many
19 instances where he's the person who first proposed Hardie
20 board.
21 MS. ROBESON: What board meeting was that?
22 THE WITNESS: September 27, 2011, the day after
23 the letter that he -- that I wrote to him in response to his
24 question about, can we take a look at it?
25 MS. ROBESON: Yes.

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1 THE WITNESS: I think somewhere in there it refers
2 to that. I'm just doing it from memory.
3 MS. ROBESON: No, that's fine.
4 THE WITNESS: The disappointment, you know, has
5 been that in preparing and looking through the first
6 application in 2008, twice he proposed -- in January and in
7 March of, or May of 26 -- he proposed Hardie board. It's a
8 moving target. I'm trying to help to get it moving, and
9 once -- on the March 31 board meeting, March 31, 2011, board
10 meeting, he came and said: I will accept it. We are not
11 going to use vinyl siding. The board meeting prior --
12 MS. ROBESON: What date was that?
13 THE WITNESS: March 31, 2011, the board meeting
14 immediately before the board meeting of May 5th at which we
15 voted.
16 MS. ROBESON: Okay.
17 THE WITNESS: And it clearly states, I think, in
18 paragraph 2 or 3, and I said siding is no longer an issue,
19 and so we proceeded on that basis. So once the whole thing
20 is approved, he comes back and wants to cherry-pick and pick
21 vinyl again.
22 And when we met with him on the site in January, I
23 think it was '12, 2012, about the deck and not lining up the
24 two feet, we had a long discussion in the back with Peter
25 Gibson and Tania Bruno and him, talking about why it was the

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1 horizontality would extend the linear quality of that long
2 wall he got, and his elevation right now, in its original
3 condition, had vertical siding, and we understand T-111 is
4 not the best material to replicate. So we were suggesting
5 anything vertical, and you could see that there are many
6 other materials by which you could achieve that, but he
7 keeps coming back to this horizontal siding, even at the
8 meeting immediately after the one where he agreed to.
9 So, again, he's back, asking for it. We asked for
10 an application. We found that he didn't propose anything
11 new, just the changing of the siding and the color of the
12 brick, and we said brick is okay, you can change the color,
13 but the vinyl siding is already decided, I explained it to
14 you at the meeting. In fact, I told him at the meeting, at
15 May 5, 2011, when we had the board meeting, when he came in,
16 that this is not in keeping with what he said previously.
17 We then had an off-the-record meeting --
18 MS. ROBESON: Well, there is no off-the-record --
19 THE WITNESS: No, no, no. I'm sorry, between --
20 he said, while we were in --
21 MS. ROBESON: You mean an informal, not a board
22 meeting.
23 THE WITNESS: Informal, yes. I don't know what is
24 -- my legal terms are very wobbly.
25 MS. ROBESON: Yes.

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1 THE WITNESS: When we were in the middle of the
2 deck and shed hearing, he said, let's you and I meet, no
3 attorneys, and I think at that time he had already filed the
4 circuit court case in vinyl. And we met at the Cabin John
5 Mall, and it was a good meeting. He said, I'm not going to
6 be doing the vinyl, I'll follow what you guys want to do,
7 and I said, that's great. And what he wanted me to do was
8 to withdraw the CCOC case, and I said, I'll do that once you
9 have withdrawn the circuit court case, because I knew they
10 were on the --
11 MS. ROBESON: And by the CCOC case, are you --
12 THE WITNESS: The deck and shed.
13 MS. ROBESON: -- referring to 73-12?
14 THE WITNESS: The first one, 73-12.
15 MS. ROBESON: Okay.
16 THE WITNESS: And I was very happy to hear this.
17 I came back and realized all aspects had been covered except
18 the attorney's fees, which we had expended because he had
19 caused us to have to go into CCOC, and I called him back and
20 said, we need to meet again to see what we can do about
21 this, and he said, I've given you all this, you can pay the
22 fee. You know, it was like, no, I'm not going to pay the
23 fee. This was one week later after we had agreed on not
24 using vinyl, and at that point, I found later that two days
25 prior to that meeting of April 30th, 2013, I believe it was,

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1 his attorney had filed a follow-up, something to keep the
2 circuit court case going.
3 So it's been a very disappointing and saddening
4 thing for me. Well, I worked from the day I met him to try
5 to help the project move along, to find a target that keeps
6 moving, and I'm unable to solve that problem. And that's,
7 that's all this vinyl story is about as far as I'm
8 concerned, because it's not about vinyl and horizontal vinyl
9 and I have no particular inclination one way or the other
10 about this application, different locations, but in this
11 particular house, which has vertical siding right now and
12 has been extended horizontally, to extend the horizontal
13 line by changing the vertical to horizontal would emphasize
14 that even more. So that's all we were saying.
15 MS. ROSEN: I don't have any further questions for
16 Mr. Barr, but I would just like to -- in the beginning of
17 this case, there was an exhibit that was introduced into
18 evidence that was accepted. It was a, I'm going to call it
19 the International Fraud Alert, which was a, basically an
20 unauthenticated document that, in my mind, in my view and in
21 Dr. Barr's view, was disparaging to him, and it contained
22 things that were not true. And we have a letter from --
23 MS. ROBESON: Well, are you testifying? Are
24 you --
25 MS. ROSEN: But I'm basically asking, Mr. Barr has

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1 gotten a letter that certifies, you know, that he has not,
2 does not have any management or operational involvement with
3 this company that supposedly --
4 MS. ROBESON: Did you provide this to --
5 MS. ROSEN: Yes, I did, and I'm just -- I gave, I
6 provided a copy of this letter to Mr. Mohammadi. It's with
7 -- and Dr. Barr, because this is a public record and this
8 was allowed into evidence, Dr. Barr would like to be able to
9 just have this letter also just be placed into the public
10 record, because he does have a professional reputation that
11 he'd like to protect.
12 MS. ROBESON: Mr. Mohammadi.
13 MR. MOHAMMADI: First of all, I'd like to see this
14 letter because I've not sure if I've ever seen it, but even
15 if --
16 MS. ROSEN: It was part of what I e-mailed. I
17 gave this to you as part of that. Actually, it was actually
18 in the, I think, in the previous stack that I mailed to you,
19 but it was, it was stapled into two other -- one other
20 letter in front of it was in a foreign language and I don't
21 think has any bearing. It's actually in this, it's actually
22 in this package, but that was the top letter, but I don't
23 need that. That doesn't -- it's in a foreign language; so I
24 can't read it.
25 MR. MOHAMMADI: Did you e-mail me this or

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1 hand-deliver it?
2 MS. ROSEN: No, I think, I think it was part of
3 that package that I, you know, the stack that I mailed to
4 you the last time around.
5 MR. MOHAMMADI: Okay.
6 MS. ROSEN: But this is really more, just because,
7 you know, this is now, this is a public record, and since
8 that was allowed in --
9 MR. MOHAMMADI: If Dr. Barr wants to testify, I
10 guess he can testify about it, but I don't -- I would object
11 to it just coming in without any --
12 MS. ROSEN: Well, that's fine. I can have him
13 identify it --
14 MR. MOHAMMADI: -- testimony or --
15 MS. ROSEN: -- but he just, you know, but since
16 that was allowed --
17 MS. ROBESON: Well, may I see it?
18 MS. ROSEN: Sure. It's primarily just because it
19 is a public record. And this is the cover of it, which I
20 think you have also.
21 MR. MOHAMMADI: Yes, I see it.
22 MS. ROSEN: Okay. And this --
23 MS. ROBESON: Do you know, I, I --
24 MS. ROSEN: This was the cover to it. I'm sorry.
25 MS. ROBESON: I am not inclined to, frankly, I am

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1 not inclined to take this in because, not because I think
2 that Dr. Barr did anything wrong. I -- there's just a lot
3 of facts here that I have no verification from except from
4 the head of the corporation.
5 MS. ROSEN: Well, I think --
6 MS. ROBESON: I don't want, I mean, Mr. Barr is
7 not on trial --
8 MS. ROSEN: I understand that.
9 MS. ROBESON: -- and the association is, and --
10 MS. ROSEN: What I'm saying, the reason why we
11 objected originally to that other document coming in,
12 because it was an unauthenticated document from an unknown
13 source off of the Internet, and that's why we didn't want it
14 in.
15 MS. ROBESON: Right, and I said I would give it
16 the weight it deserves, and --
17 MS. ROSEN: Right, but the problem from his, from
18 Dr. Barr's perspective is that that document is now part of
19 a public record. So we would just like this document to
20 also just be part of that public record.
21 MS. ROBESON: But I have, there's no -- I mean,
22 this is a letter from the corporation.
23 THE WITNESS: And the attorney, I think, is -- one
24 in your right hand.
25 MS. ROBESON: Yes.

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1 MS. ROSEN: Well, I mean, but the other document
2 was --
3 MS. ROBESON: Ana Graciela Medina.
4 MS. ROSEN: -- something just off of the Internet
5 that wasn't even authenticated. So the problem from
6 Dr. Barr's perspective is just that there's --
7 MS. ROBESON: Mr. Mohammadi, do you have an
8 objection?
9 MR. MOHAMMADI: I do not have an objection.
10 MS. ROBESON: All right. So he can testify to it.
11 I'll let it in. I just don't want to get off on this
12 sidetrack.
13 MS. ROSEN: I understand. We didn't want that
14 in --
15 MS. ROBESON: I didn't --
16 MS. ROSEN: -- in the first place. I understand
17 that, though.
18 MS. ROBESON: I wasn't persuaded when it came in
19 the first time. I --
20 MS. ROSEN: I understand you were not, but the
21 problem is --
22 MS. ROBESON: Yes, I understand.
23 MS. ROSEN: -- from his perspective it's in the
24 public record.
25 BY MS. ROSEN:

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1 Q Can you please identify what these two documents
2 are?
3 A Yeah. The first one is by the attorneys for the
4 corporation, authenticating that is a legitimate project, it
5 has a public deed number, it is lien-free, it has all the
6 records for zoning, land use, and building permits issued.
7 And so I'm surprised that something, if I might
8 editorialize, I'm surprised that something that has no
9 author, comes off the Internet, and disparages me by
10 association in a minor line at the bottom has entered the
11 public record but an attorney's letter, authenticating this
12 project, is not admissible.
13 MS. ROBESON: And do you personally know that --
14 THE WITNESS: Yes. I met these attorneys. I was
15 their architect. I've been there. They've seen me.
16 MS. ROBESON: It's not that it's not admissible.
17 I just don't want a lot of cross-examination on it --
18 THE WITNESS: It's --
19 MS. ROBESON: -- because I want to end this.
20 MS. ROSEN: I know.
21 THE WITNESS: I understand, but all I'm suggesting
22 is, if it's a public record, it has something negative there
23 about me, which has no basis in fact --
24 MS. ROBESON: Okay. All right.
25 THE WITNESS: -- and this one does.

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1 MS. ROBESON: Okay.
2 THE WITNESS: I would really appreciate you taking
3 that.
4 MS. ROBESON: I'm letting it in.
5 THE WITNESS: Thank you. Thank you very much.
6 MS. ROBESON: Is it 173 and 174?
7 MS. ROSEN: That's fine. We'll do it that way,
8 and I think --
9 MS. ROBESON: Now, what is, I --
10 MR. MOHAMMADI: Isn't it 174 and -- 173 was the
11 October 5 letter. No? Or they've been marked as 172 as
12 well?
13 MS. ROBESON: Oh, yes.
14 MS. ROSEN: Okay. So it'll be what, 174 and 175?
15 Yes. So I just have two, a couple of other questions for
16 Dr. Barr based upon your questions that you e-mailed to us.
17 Let me just go ahead and get that taken care of.
18 (Exhibit Nos. 174 and 175 were
19 marked for identification and
20 received in evidence.)
21 MS. ROBESON: So which one is -- I don't have them
22 in front of me.
23 MS. ROSEN: Okay. Well, you had some questions.
24 THE WITNESS: No.
25 MS. ROBESON: No. Can you give me the exhibits?

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1 THE WITNESS: The documents, yeah.
2 MS. ROBESON: Wait. I don't know which is --
3 okay. Well, I will make the January 21st, 2013, letter 174.
4 Now, if you question why I do what I do, Dr. Barr, then you
5 can be an attorney someday --
6 THE WITNESS: No, I'm not an attorney.
7 MS. ROBESON: -- and running a hearing like this.
8 THE WITNESS: I'm sorry. I was just expressing my
9 disappointment. That's all, yeah.
10 MS. ROBESON: Well, you know what?
11 THE WITNESS: I'm not --
12 MS. ROBESON: From Ana Graciela Medina, and then
13 175 is a 7/7/14 letter from Mahadevan, from -- I can't say
14 it. I'm going to write it, the first name, Mahadevan,
15 Mahadevan.
16 THE WITNESS: Very good.
17 MS. ROBESON: All right.
18 MS. ROSEN: Okay. All right.
19 MS. ROBESON: They are in.
20 MS. ROSEN: Okay. If I may just borrow the
21 exhibit 122, because I think the one that I marked as 122 on
22 my list is not what you're looking at. If I can just put
23 that in front of Dr. Barr to answer your question. I'll
24 say, your file is much better organized than mine.
25 MS. ROBESON: Someday we will all be electronic.

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1 I go from -- oh, no. I see.
2 MS. ROSEN: I'm just trying to find the place
3 where it referred to the architect. If you recall, that'd
4 be helpful.
5 MS. ROBESON: Actually, maybe I gave you the wrong
6 number. There is an e-mail where he asks the Millers to be
7 on the board, where Dr. Barr asked the Millers to be on the
8 board. Oh, here, right here, right there.
9 MS. ROSEN: Oh, okay, I see.
10 BY MS. ROSEN:
11 Q Okay. Dr. Barr, if you could take a look at, just
12 read this e-mail that is Sunday, April 27th, 2014, looks
13 like it's from you --
14 A Yeah.
15 Q -- to Adrian Miller, and there's a reference to an
16 architect. If you could just read that e-mail and tell the
17 Hearing Examiner who the architect --
18 MR. MOHAMMADI: What exhibit?
19 MS. ROBESON: 122.
20 MS. ROSEN: 122.
21 BY MS. ROSEN:
22 Q Who is the architect that you're referring to?
23 A Yeah, his architect was Tania Bruno. She was
24 already on the board at the time we voted.
25 MS. ROBESON: But I thought she'd already

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1 clarified to you that she was not his architect.
2 THE WITNESS: Well, that was the issue that was
3 the problem for me, because for me, an understanding of
4 architect is a person who is working with a client --
5 MS. ROBESON: But she said --
6 THE WITNESS: -- to produce drawings, which she
7 was.
8 MS. ROBESON: But she said she wasn't.
9 THE WITNESS: No, she was, because she produced
10 the drawings that were submitted and admitted into the
11 HOA --
12 MS. ROBESON: Yes, but she --
13 THE WITNESS: -- approved plans.
14 MS. ROBESON: All right.
15 THE WITNESS: What she was saying, if I might
16 clarify, what she --
17 MS. ROBESON: Go ahead.
18 THE WITNESS: -- what she was saying was that she
19 was not the architect of record, which is the person who
20 stamps the drawing for a building permit. And I didn't
21 realize that or understand that, because she had, in my
22 mind, been the person who had done the design work, until
23 Mr. Ball's testimony came in the interrogatories, saying
24 that he hired Tania Bruno as the architect to do the
25 conceptual drawing at the front end for the HOA approval;

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1 then he hired another architect in December to do the
2 December drawing, 2013 drawing, that he did the permit set,
3 that he himself did the --
4 MS. ROBESON: Well, it's in an e-mail to you from
5 two years before. It's an e-mail from Ms. Bruno to you.
6 THE WITNESS: Yeah. What -- right. What we had
7 to go on --
8 MS. ROBESON: 2/22/12, Exhibit 142.
9 THE WITNESS: Yes.
10 MS. ROBESON: So why, why are you saying that
11 she's his architect?
12 THE WITNESS: Because we have approved drawings
13 that were approved primarily on the strength that she came
14 on. In fact, when she came to the meeting and produced the
15 first set of drawings in 2010 -- the minutes will reflect
16 whenever that was, July 2010 -- that I said we finally have
17 drawings that look like drawings that you could understand
18 and we're glad to have an architect on board. And she
19 actually made a good effort in the schematic version, trying
20 to make things happen, as she said in the July 2010 letter.
21 The confusion was, he had started construction,
22 based on what was approved, without telling us. And if you
23 remember, the approval was for the entire remodeling, not
24 just a deck and shed. That was another separate
25 application, not a separate approval. All of it was one

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1 approval. He chose to build only the deck and the shed
2 first, did not inform us, didn't give us a building permit,
3 as we had asked for in the approval letter, and so --
4 MS. ROBESON: Well, under the, I mean, I have to
5 say, under the --
6 THE WITNESS: No, so I'm coming back to the
7 architect thing. So why do I think --
8 MS. ROBESON: -- under the -- just a second.
9 THE WITNESS: Uh-huh.
10 MS. ROBESON: Under the building code, because I
11 used to do all the enforcement --
12 THE WITNESS: Yeah.
13 MS. ROBESON: -- you don't need a permit for the
14 retaining wall and it's not uncommon to do sequential
15 permits. So I guess, well, the other thing, well, so that's
16 why -- I understand that. I'm trying to -- it was your
17 position that he needed a building permit for the --
18 THE WITNESS: No, no. No. Let me explain myself,
19 because now there are two conversations.
20 MS. ROBESON: Well, before you explain, I'm going
21 to throw in the other factual question that I think I asked
22 about the, where did the term garden wall --
23 THE WITNESS: I got that for you as an answer.
24 Let me start with that --
25 MS. ROBESON: Okay.

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1 THE WITNESS: -- because that's, that's the more
2 relevant --
3 MS. ROBESON: Because I saw English Basement and
4 Garden Wall. Where did you get that information?
5 THE WITNESS: I didn't come up with any of these
6 terms. Let me first explain that the application was one
7 application for the entire construction. We're expecting
8 the person who got it approved schematically to be the
9 architect producing the construction drawings. So when we
10 heard that there was construction happening on the site and
11 we're not being informed, the inspector, Donald Holloway,
12 went over to the site. He walked the site, and he wrote an
13 e-mail --
14 MS. ROBESON: Is he a DPS inspector?
15 THE WITNESS: Yes. Yes.
16 MS. ROBESON: Okay.
17 THE WITNESS: And it was just an inquiry, saying,
18 is there a permit for the work that is taking place there,
19 because work had started and we expected to be informed,
20 according to what we said, please give us a building permit,
21 not for the deck or the wall, but for the, what we thought
22 was the whole thing, and we thought, construction is
23 starting, we haven't seen anything, there's been nothing
24 said. There was a request for a landscape plan as a
25 prerequisite, a sample of the Hardie board that he was going

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1 to use as a prerequisite. None of those had come in, but
2 work appeared to have started.
3 So Donald Holloway is the one -- and I'll read
4 this for you --
5 MS. ROBESON: Wait. What are you reading?
6 THE WITNESS: I'm reading from his e-mail. Do you
7 want --
8 MS. ROBESON: Whose e-mail? Wait. Is that in the
9 record?
10 THE WITNESS: Donald Holloway.
11 MS. ROSEN: No. This is --
12 MS. ROBESON: No, no.
13 THE WITNESS: This is in response to your
14 question.
15 MS. ROSEN: -- this is in response to your
16 question. He went and looked to see what he could find,
17 because when I got your questions on Friday --
18 THE WITNESS: I was trying to see where that term
19 came from. I said we didn't invent it.
20 MS. ROSEN: -- he was trying to find out where the
21 term came from, and he found an e-mail, apparently, through
22 Lynn Gowen that came from Donald Holloway from Montgomery
23 County, Maryland. So I can provide -- we're trying to
24 answer your question, basically. This is really, I mean, I
25 was kind of wondering --

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1 MS. ROBESON: Can you show it to -- I know. I
2 guess I'm --
3 MS. ROSEN: Yes. I mean, I was, quite frankly,
4 when I saw this question, I --
5 MS. ROBESON: Where are all of these documents?
6 MS. ROSEN: -- I couldn't figure out what this
7 was.
8 THE WITNESS: But these are not --
9 MS. ROSEN: Well, this is not --
10 MS. ROBESON: Why aren't these --
11 MS. ROSEN: This is not germane to this case.
12 THE WITNESS: These aren't HOA documents at all.
13 MS. ROBESON: Why?
14 THE WITNESS: Because this is between --
15 MS. ROBESON: This is HOA business.
16 THE WITNESS: Yeah, but --
17 MS. ROSEN: Well, this is not, I mean --
18 THE WITNESS: This was not official business.
19 MS. ROSEN: Well, hold on a second. I was kind of
20 wondering, when I got your questions on Friday at 1:30, when
21 you're asking about what factual basis formed the HOA
22 determination that the retaining wall for the shed in 73-12
23 was a garden wall, I, quite frankly, didn't know what that
24 even had to do with this case.
25 I mean, that was coming to me -- maybe it's

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1 because I don't, I'm not any kind of a construction expert,
2 but I have no, didn't even understand where it was coming
3 from, but obviously I contacted my client, said, hey, can
4 you answer that question? So he -- apparently, they went
5 and, you know, he went and spoke to others and said, you
6 know, what do you remember about this?
7 I mean, this is not something I would have
8 expected to, in my mind, to ever -- I mean, I've never seen
9 this before myself, but it's certainly not something I ever
10 would have expected to be in this case. This is not about a
11 garden wall. That case has been adjudicated already. I
12 mean, that's --
13 MS. ROBESON: All right. Mr. Mohammadi.
14 MR. MOHAMMADI: I will agree with Ms. Rosen on
15 that. When I saw that question, I was a little bit confused
16 what the purpose or where that's coming from in terms of
17 relevance. I guess, although this doesn't mention -- I
18 don't see the word garden wall in this. It says retaining
19 wall in here, but --
20 MS. ROSEN: Right.
21 THE WITNESS: Yeah.
22 MS. ROSEN: Well, it --
23 MR. MOHAMMADI: -- I'm not sure what the relevance
24 of that e-mail is either --
25 MS. ROSEN: Right. I'm just going to --

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1 MR. MOHAMMADI: -- or that letter.
2 MS. ROSEN: -- if you look at Case -- I'm just
3 going to go a little bit into CCOC 73-12 because, you know,
4 when I just went back and looked at it, it's referred in
5 CCOC 73-12 interchangeably as the garden wall; it's also
6 referred to as the retaining wall. And, basically, in CCOC
7 Case 73-12's order, all it basically said in reference to
8 that, it just said that it does not conform to approved
9 right side of the rear elevation drawings of the
10 HOA-approved plans. You know, they made a finding about
11 that, but basically that case -- that issue about the garden
12 wall slash retaining wall, because it was interchangeably
13 referenced, was part of that case.
14 MS. ROBESON: My concern --
15 MS. ROSEN: I don't --
16 MS. ROBESON: -- is this, and this is why I think
17 -- Mr. Mohammadi, can you listen up for a minute --
18 MR. MOHAMMADI: I'm sorry.
19 MS. ROBESON: -- because I don't want to repeat
20 it.
21 MR. MOHAMMADI: I apologize.
22 MS. ROBESON: My concern is this: What I have
23 seen in the record of this case is a flow of information
24 from Ms. Gowen to Dr. Barr that leads to -- that, in some
25 cases, in my opinion, is inaccurate and has, is biased. So

1 I'm telling you -- and that was the stem of my question,
2 because I was trying to get at, there are a series of
3 letters from Dr. Barr to Mr. Ball in, all the way up to 2014
4 where Mr. Ball -- now, he did visit the property on several
5 occasions, but he also starts with a lot of allegations, and
6 I want to know, you know, what is the basis for those,
7 because Mr. Ball is saying bad faith. And I also know,
8 Dr. Barr, that, you know, Mr. Ball's other allegation is
9 that the board is Dr. Barr, and when I see a series of
10 letters on Potowmack letterhead that I don't know if the
11 board's ever seen them and that, and that -- and I really
12 haven't decided this case, but I'll be honest with you, that
13 is a pattern that, when I did my time line, it caused me
14 concern.

15 So that's where that's coming from, because how is
16 he to distinguish -- I noted that you wanted to get the
17 9/15/14 letter out right away, but you know, you can have a
18 board of directors special meeting within five days, and
19 nothing was going to happen under your governing documents
20 and nothing was going to happen in five days that was going
21 to be irretrievable. And so that and all, I guess the other
22 problem is -- and I'm just telling you my impression upfront
23 so you can -- sorry, wait one second -- so you can respond.

24 THE WITNESS: Yes, thank you.

25 MS. ROBESON: That's, and that's why I'm asking

1 these --

2 THE WITNESS: No --

3 MS. ROBESON: -- and I'm also asking, I am not
4 sure that the association right now has proper recordkeeping
5 because, when it's on association business, it's association
6 documents, and I've had many clients subject to the Public
7 Information Act, and sometimes people don't realize, but --
8 so that's my concern. And the other thing is, all these
9 e-mails between people in the background, you know, if you
10 did stick-built or if you did, you know, there's just a lot
11 of back conversations --

12 THE WITNESS: Uh-huh.

13 MS. ROBESON: -- that appear prejudicial.

14 THE WITNESS: Let me begin. I'm glad for the
15 opportunity because, when I saw the questions, I was
16 actually saying this is a chance to explain --

17 MS. ROBESON: Well, good.

18 THE WITNESS: -- whatever you need cleared --

19 MS. ROBESON: Good.

20 THE WITNESS: -- and when you asked for the time
21 line or the chronology of the drawings --

22 MS. ROBESON: Yes.

23 THE WITNESS: -- that you said you were trying to
24 put together, my testimony today was trying to fit that
25 sequence in one by one, and that, I think you kind of got

1 that drift on that.

2 This thing that I'm about -- I don't have to read
3 the whole thing. Donald Holloway went on the 22nd of --
4 wrote this e-mail on the 22nd of November in response to my
5 request to Lynn Gowen, saying -- who told me there was
6 construction started, have you -- and she asked me, have you
7 received any of the preliminary stuff, and I said no. And
8 she then contacted Donald Holloway at the DPS, or whoever it
9 was at DPS, and he's the one who came out. And what was
10 said was -- and this is what he says: Grading excavation
11 area is for retaining wall the owner plans on building. It
12 is not an, it's not an addition. It is not an addition,
13 because he was asking, instead, a permit for this addition
14 that he's starting work on. He's aware that if a wall
15 height from the bottom of the footing to the top of the wall
16 is 54 inches, a permit is required, it exceeds that. If
17 it's within that, he doesn't need one, is effectively what
18 he's saying, and --

19 MS. ROBESON: And he's right.

20 THE WITNESS: And he's right, and I knew that as
21 well.

22 MS. ROBESON: So why do you keep saying in those
23 letters all about a technicality?

24 THE WITNESS: No. No, no. No. Please let me
25 finish.

1 MS. ROBESON: Okay.

2 THE WITNESS: If it exceeds the -- if it's below
3 that, it's a garden wall. If it exceeds that, it's a
4 retaining wall.

5 MS. ROBESON: Does he say that in the letter?

6 THE WITNESS: I know that. His letter just says
7 -- what he says is what I read to you. It is not --

8 MS. ROBESON: Okay. You don't have to read it
9 then.

10 THE WITNESS: Okay. What he said is, if it's
11 greater than -- bottom of the footing to the top of the wall
12 is 54 inches, that's pretty much a two-and-a-half or
13 three-foot wall, that's a garden wall; it does not require a
14 permit, and that was fine.

15 Unfortunately, as -- I contacted him when he
16 started building the deck and said: You've started building
17 a deck. Do you have a building permit for it? Can you send
18 us a copy of the building permit? And he did send it, and
19 the deck itself had a permit just for a deck, not a shed.
20 And so when we out to see it -- and the deck door, he showed
21 it to me, and the permit shows a square box with no
22 dimensions. I recognized that the deck he had asked for was
23 rectangular. So I wrote to him and said this shows a square
24 box, not a rectangular one, and he correctly said, I will
25 make sure it's built according to the dimensions that I,

1 that I -- that the HOA approved.
2 It turned out that this garden wall lined up with
3 the top of the deck, with the edge of the deck or short of
4 it, and so it looked like what I had been told when we were
5 first at the board meeting, making the approvals, and
6 something I've seen now in files going back to 2003, that it
7 said -- and it's in the minutes of the 5th -- one person
8 saying, he asks for X, then builds X, Y, Z. I was never
9 biased by that at all or taking that into any heed.

10 So this whole question of the garden wall slash
11 retaining wall is a function of height, of the height. So
12 when it exceeds that -- his elevation of the house showed a
13 storage area under the deck, which was covered with the same
14 siding and looked integral to the house, and that's what we
15 approved. So I thought, how could now this wall transform
16 itself into something that has to go to meet the underside
17 and be included in the house? It is a garden wall and
18 that's the technicality I meant.

19 MS. ROBESON: Okay. Just a second.

20 THE WITNESS: Yeah.

21 MS. ROBESON: Now, one thing I've really had a
22 problem with in this case is noises from the gallery. If
23 you can't keep your expressions straight -- and in this
24 regard, it's been the HOA members -- if you can't not make a
25 noise or keep your expression straight -- I've never had a

1 hearing with this many outbursts -- then you need to leave.

2 THE WITNESS: So --

3 MS. ROBESON: Go ahead, Dr. Barr.

4 THE WITNESS: So that is the, that's the origin of
5 the garden wall, and sometimes -- and Peter Ball then wrote
6 to me, saying that he was building a garden wall, and that
7 is fine by me, but the moment it turned up to line up with
8 the deck and was starting to look like it wanted to be what
9 it was approved as, which is a wall integral to the house, I
10 knew that could not be, longer be a garden wall because it
11 had no inspection.

12 MS. ROBESON: But where's the requirement that he
13 give you notice prior to construction?

14 THE WITNESS: We have that in the letter of
15 approval, conditional approval, because the conditional
16 approval --

17 MS. ROBESON: No. The conditions said he had to
18 give you a building permit plan.

19 THE WITNESS: No. Can you find that? The
20 conditional -- I'm doing it from memory -- the conditional
21 approval --

22 MS. ROBESON: I'm giving you a hard time
23 because --

24 THE WITNESS: No, no, please do, because I want to
25 hear the questions so I can answer them. There is nothing

1 magical about this. The conditions were -- the first point
2 was, we have considered and would strongly recommend and
3 urge that you do the Hardie board that you said you wanted
4 to use, not the vinyl siding. That was the first one.

5 MS. ROBESON: But is it the, was it the -- well,
6 go ahead.

7 THE WITNESS: Okay. The second one was, the board
8 requires a planting -- appropriate evergreen plants and
9 please provide us a planting schedule. The third was, all
10 work must be constructed in strict conformity with the
11 drawings as submitted and approved; any changes or
12 substitutions must be submitted for approval by the board.

13 MS. ROBESON: Right. Now, where's the one about
14 prior --

15 THE WITNESS: Okay.

16 MS. ROBESON: -- notice of construction?

17 THE WITNESS: Please submit a copy of building
18 permit for our records, and let us know; that was my
19 understanding. Normally, when you get the building permit,
20 you give it to the owner and say, here, now I'm starting
21 construction. So in the absence of any --

22 MS. ROBESON: So that was an assumption.

23 THE WITNESS: Yes, correct, that's my assumption,
24 okay, but primarily, that construction began and we knew
25 nothing about it. There was no further conversation after

1 this letter. There was a hiatus, and then six months later
2 there was -- somewhere in between, there was a request to
3 use vinyl siding, and then it went back to building the
4 deck. So that's what started that.

5 To address the -- if you had a --

6 MS. ROBESON: Go ahead.

7 THE WITNESS: No, no. If you have a question, I
8 will answer it.

9 MS. ROBESON: Well, I'm moving to another topic.
10 So --

11 THE WITNESS: Yeah. I was trying to move to the
12 -- I was trying to move to that thing about the board is
13 Dr. Barr. It's very interesting, because I have observed on
14 the board -- I've been on the board since 2003. The very
15 first action I did, when I met Peter, was, he was at the
16 board meeting, requesting a change to support what has the
17 flat roof now down below, not from columns, to CMU walls,
18 and the CMU walls had been built prior to my coming on the
19 board.

20 At the very first meeting, he was now saying that
21 he had to close it up -- and this is recorded in the minutes
22 in 2003 that I came on -- and I made a motion to have him
23 enclose the third side, because I said: What else is he
24 going to do now? I don't know the history behind it. I'm
25 just looking at the condition now. There are CMU walls on

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1 either side. There's nothing he can do in it underneath.
2 And then the board approved it, and it got closed off. So
3 that was the move that gave him a basement on what used to
4 be a deck.
5 The ask for X, do X, Y, Z became more relevant
6 once he asked for the two decks on either side, which became
7 the rooms. He built one deck with a shed roof and made it a
8 room. The deck in the back, which is the bump-out, which
9 has a flat roof now, also -- the flat roof section started
10 off as a deck. That was called a deck with a shed roof and
11 was supported on columns in its initial version. When it
12 transformed into CMU walls, the statement he made was, the
13 county made me do it. So the president at the time was the
14 person who said, bring us a drawing which shows that and
15 we'll approve it. And so when I turned up in 2003 at that
16 meeting, I helped him to get that enclosed.
17 It is -- when Jeffrey Williams was writing the
18 letters as president, he --
19 MS. ROBESON: Co-president.
20 THE WITNESS: No. He was the president. I was
21 the vice president.
22 MS. ROBESON: Well, I just noticed that even
23 before the CCOC --
24 THE WITNESS: I have -- yeah.
25 MS. ROBESON: -- in 720-G, he called himself the

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1 co-president.
2 THE WITNESS: He did, and all those letters
3 were --
4 MS. ROBESON: I'm just saying, it's all perception
5 too. It's --
6 THE WITNESS: Yeah, I understand. I'm just
7 explaining to you what, what took place. All the letters
8 that have Jeffrey Ball's -- Jeffrey Williams' name on it
9 were authored by him. I didn't necessarily see them. I
10 didn't see them. In fact, some of them I'm, I was reading
11 for the first time, and they have my name on it.
12 MS. ROBESON: Well, how is somebody in the
13 community supposed to know that?
14 THE WITNESS: Because what, so what I'm saying is,
15 the documents in the HOA define -- and I don't have a copy
16 of it, but I'm sure you can see it or the attorney can
17 provide you --
18 MS. ROBESON: So you can do whatever --
19 THE WITNESS: No, no.
20 MS. ROBESON: -- Jeff Williams can call himself
21 the king of England, and if you don't read the fine print,
22 or what you'd have to do is find the minutes of the meeting
23 where the officers were elected --
24 THE WITNESS: Yeah, but --
25 MS. ROBESON: -- that's what a homeowner would

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1 have to do.
2 THE WITNESS: Yeah. What I was surprised by was,
3 when I -- quite frankly, until I became the president, I had
4 never read the HOA documents, and even then I read it only
5 because of the case about sending the minutes out and
6 sending notice out in time and so forth, and then I started
7 realizing that these documents had not been changed in 40
8 years. So I, I personally took on the challenge of revising
9 this, which is impossible with 159 people and having to get
10 whatever percentage of that. Fifty percent, I think, was
11 for that. We had to make three different attempts at it and
12 finally got it done, because I -- I, in fact, told the
13 board, this is my contribution to the HOA so that any future
14 persons aren't going to be get broadsided, thinking that
15 what we're doing is correct and the documents are completely
16 out of date.
17 So when Jeffrey Williams was the president and I
18 was the vice president, for whatever reason he used the word
19 co-president and put my name on it. I did not co-author any
20 of those letters; he wrote them, and I think he was going --
21 he's the lawyer. So I was deferring to him. I mean, that's
22 his expertise. I'm in some other field.
23 When the -- when it came to a point where I became
24 the president, that's when Peter Ball came in with his
25 application, and I had been at the place where I had to

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1 testify about the deck and shed thing, and I found -- I
2 really related to what he was doing because I'm a property
3 owner kind of person. I'm a -- I came to this country with
4 barely anything, and I've made it okay to where I can pay my
5 mortgage. So I felt grateful for this.
6 So they -- first, when they saw I was an
7 architect, you can see the 2003 says, we can get him on the
8 architectural committee, and I said, no, I'm not doing that
9 because that's what I do for a living, I'm not going to keep
10 looking at that some more; but then, we have no one to read
11 the plans, can you help? Yeah, I can help you do that from
12 being on -- I was at-large director for the longest time.
13 So long and short of it is, this accusation that I
14 am the chief villain in this to Peter Ball hurts me more
15 than anything else because I was the one who changed the
16 board and made it possible on the 5th of May for him to get
17 the entire package, even though I didn't like the bump-out
18 on the side. When we took the vote, it was three to three.
19 He came in. I told him the thing. He said, I don't -- that
20 bump-out is better, and I am -- and the minutes state very
21 clearly, we can take care of that problem with planting or
22 some kind of buffering -- and I changed it because I saw in
23 him the possibility that someone who had been trying to get
24 his project completed for a long -- I mean, he actually said
25 seven years; I think it was, it was going back to 2003, so

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1 it'd be eight years that I'm aware of -- that that was my
2 goal: let's help this guy get this thing built, and I had
3 every expectation that he would be able to do it in time
4 because he's a builder.
5 MS. ROBESON: Well, why would you tell him to
6 continue construction, knowing that the plans, or believing
7 that the plans differed in the trim and the windows --
8 THE WITNESS: When --
9 MS. ROBESON: -- and then sue him for it?
10 THE WITNESS: No. When did, when did I --
11 MS. ROBESON: Why would you do that?
12 THE WITNESS: -- tell him to continue?
13 MS. ROBESON: What?
14 THE WITNESS: Are you going back to the letter of
15 the --
16 MS. ROBESON: July sometime.
17 THE WITNESS: September 15 letter, you're talking
18 about?
19 MS. ROBESON: No. No.
20 THE WITNESS: July 2013, you're talking about?
21 MS. ROSEN: You're going back to the September
22 2013 letter?
23 MS. ROBESON: Yes.
24 THE WITNESS: So September 15th.
25 MS. ROBESON: So why would you do that?

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1 THE WITNESS: No. What I -- please find that
2 letter so I can, I can read it for her very clearly. I
3 don't know. There's too much paper. I'm not used to
4 digging for it. What I said was --
5 BY MS. ROSEN:
6 Q Hold on a second.
7 A Yes. What I said was: You are making great
8 progress. Please make the correction. You're asked to
9 proceed immediately to remedy, to remedy. Remedy, the trim
10 and things are very easy; windows and things are easy. The
11 roof is the one I was concerned about. He asked me for an
12 answer on how it could be done, and I said your architect
13 and your engineer can help you do this. Please get the
14 remedy made and then proceed. It's the bottom of the first
15 page.
16 MS. ROBESON: Of what?
17 THE WITNESS: Of the --
18 MS. ROSEN: Of Exhibit --
19 THE WITNESS: Exhibit 79.
20 MS. ROSEN: Exhibit 79, where he says: You are
21 hereby asked to proceed immediately to remedy and bring the
22 building back into conformance with the approved HOA
23 drawings.
24 MS. ROBESON: No, before that, before that.
25 THE WITNESS: What is before?

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1 MS. ROSEN: What are we talking about?
2 THE WITNESS: Did I write a letter before that? I
3 don't think so.
4 MS. ROSEN: I don't know. I'm not sure what we're
5 talking about.
6 MS. ROBESON: 146.
7 THE WITNESS: Can you find that?
8 MS. ROSEN: 146? You're talking about -- this is
9 the e-mail that's dated July 26?
10 MS. ROBESON: Yes.
11 MS. ROSEN: Okay.
12 BY MS. ROSEN:
13 Q Take a look at that. That's July 26 of 2013.
14 A Yeah. I'm not writing that. It's from Pete.
15 MS. ROSEN: This is from Peter Gibson, actually.
16 THE WITNESS: Peter Gibson.
17 MS. ROSEN: It's an e-mail from Peter Gibson.
18 THE WITNESS: July, July 28, 2013.
19 MS. ROBESON: So you didn't --
20 THE WITNESS: No, I'm not even copied on it.
21 MS. ROBESON: So you didn't, you -- but your
22 original -- well, okay.
23 MS. ROSEN: I think, I'm just going to -- may I
24 look at this, please?
25 THE WITNESS: Am I even in there?

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1 MS. ROSEN: All right. One minute.
2 THE WITNESS: See, I was out of the country in all
3 of May -- May and June, most of June.
4 MS. ROSEN: I think -- what Peter Gibson says at
5 the bottom of this e-mail: Bottom line is we're not going
6 to do anything that will interfere with or impede your
7 ability to continue working on the project as long as it's
8 per the approved plans. That's what it says.
9 THE WITNESS: And --
10 MS. ROSEN: As long as it's per the approved
11 plans, we're not trying to stop you. We just want you to
12 construct in accordance with what you were approved to do.
13 THE WITNESS: And, quite frankly, Pete Gibson and
14 I agreed that there was a lot of buzz in the neighborhood,
15 which he had copied me, and I was out of e-mail access when
16 I was out of the country, and he, being the vice president,
17 was in charge.
18 So he was getting a lot of the communication back
19 and forth, and when I came back, I think I spoke to him or
20 e-mailed him and said -- I think it was an e-mail, saying,
21 whatever is going out there can't be of any significance,
22 I'm sure he's doing well and -- because Peter reported back
23 that there's not a whole lot going on that's different, but
24 the roof hadn't happened at that time. I was back in town.
25 The roof suddenly blew up as a major event --

1 MS. ROBESON: Well --
 2 THE WITNESS: -- I mean, blew up literally --
 3 MS. ROBESON: Yes. I'm --
 4 THE WITNESS: -- and was a major event in the
 5 community, and I had to, that's why, rushed over there and
 6 made sure Pete Gibson came with me.
 7 Pete and I are on the same page in terms of
 8 helping him to get it built. You'll notice in the minutes
 9 of the meeting in March and May of 2011 that I'm saying our
 10 goal is to get Peter to get his project done and Pete Gibson
 11 says, well, the bump-out on the side may be ugly, but he's
 12 got bump-outs everywhere, so what's one more going to make
 13 us a difference.
 14 So he took a more laissez-faire approach. I'm
 15 saying, no, we can't, we have to kind of hold the line on
 16 what is the harmony of the community, but we can get there.
 17 And when we finally saw the drawing that we thought did not
 18 raise the roof or change the ridge height, there's even a
 19 comment, saying there's -- the sloping addition on the side
 20 over the garage, I was surprised it changed from a gable,
 21 quite frankly, but it was not something that we had said.
 22 MS. ROBESON: Okay. All right. All right.
 23 THE WITNESS: So the long and short of it is, this
 24 is not my board. I'm not the board. We are a little
 25 shell-shocked because of the new rules, because previously I

1 had got on board, as I said, and worked -- we just did what
 2 the previous groups had done. We are shell-shocked because
 3 now, sending out -- having a board meeting requires
 4 informing 159 people, some of whom are on e-mail, some of
 5 whom will not be on, will never be on e-mail --
 6 MS. ROBESON: Well, that's not a new rule.
 7 THE WITNESS: Huh?
 8 MS. ROBESON: That's not a new rule.
 9 THE WITNESS: No, no. It's new to us, as --
 10 MS. ROBESON: Yes.
 11 THE WITNESS: So we did not know what had been
 12 going on for 40 years outside our community, literally, and
 13 now that's it in place, so it's not -- I took it as 10 days,
 14 you're saying it's five, but to get the notice --
 15 MS. ROBESON: You need to read your governing
 16 documents.
 17 THE WITNESS: No. No. No, no. Our, our new
 18 version of the thing changed to meet Maryland law --
 19 MS. ROBESON: Okay.
 20 THE WITNESS: -- and my understanding is it needs
 21 10 days' notice for a board meeting and 30 days' for --
 22 MS. ROBESON: Well, you can have a special
 23 meeting.
 24 MS. ROSEN: Well, I mean, that's --
 25 THE WITNESS: But --

1 MS. ROSEN: -- regardless. I think the point he's
 2 trying to make is that, you know, they --
 3 THE WITNESS: We're trying to meet the law now --
 4 MS. ROBESON: Yes.
 5 THE WITNESS: -- and trying to do it accordingly.
 6 So most importantly, as I said previously, this is one
 7 application which had been dragging on from 2008 to 2010.
 8 Then Tania came on. She writes things, saying he doesn't,
 9 he's now, he's going to give up the stuff in the back. It
 10 was down to only three issues, actually four, three issues:
 11 the bump-out over the garage --
 12 MS. ROBESON: Yes, I -- I do understand that.
 13 THE WITNESS: Okay. So it was down to just the
 14 three, and so we took a vote on that. There was nothing to
 15 do with the ridge or the roof or raising the height, and I
 16 was like, okay, now we are home; so I'm going to worry less
 17 about my concern about a bump-out on the Crossing Creek side
 18 and switch the vote so he can get going.
 19 So why did we have a -- you asked the question,
 20 why did we then say go ahead and then sue him. We didn't
 21 sue him because we wanted to. We don't want to go into
 22 lawsuit. This takes more out of my working day. This is
 23 not my paying job, and I get no joy out of this. I have
 24 a --
 25 MS. ROBESON: Okay.

1 THE WITNESS: -- sick family member and all kinds
 2 of things going on. So the issue really is, once the board
 3 voted to say a two-foot offset off a deck from an elevation
 4 is important to us -- and I didn't push that vote. I was
 5 just saying, this is what has happened, and it voted seven
 6 to two, I believe, to take that case to CCOC, to make the
 7 complaint to CCOC. Peter was there; he made a presentation.
 8 We took a vote, and, and that's what happened.
 9 When this happened and the roof was way off what I
 10 thought was going to be, or as I said, you could see the
 11 ridge when you go there, the existing ridge. So the fact
 12 that it was stepped up, was way bigger, because more people
 13 were complaining about it and, really, everybody was talking
 14 about it, I understand, this is part of the same
 15 application, same approval, same violation --
 16 MS. ROBESON: Okay. I do understand that.
 17 THE WITNESS: So that's all we did there. We --
 18 MS. ROBESON: Okay.
 19 THE WITNESS: -- we were not trying to
 20 short-circuit anything. I would have brought Peter gladly
 21 to the meeting. As you can see from the May 5 meeting, we
 22 have open sessions, and that was even before the law. We
 23 didn't know about -- you know, we thought the vote had to be
 24 taken in private. So it's not about me, Ms. Robeson,
 25 believe me. It's -- that may be the accusation, but that's

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1 not me.
2 MS. ROBESON: All right. Ms. Rosen, do you have
3 any follow-up questions?
4 MS. ROSEN: No, but I just have one thing I want
5 to --
6 MS. ROBESON: You get cross-examination.
7 MR. MOHAMMADI: Well, I wanted to just object to
8 that whole, whole whatever we want to call it. I don't
9 think he was -- I know you wanted to find some information.
10 So he's sort of responding to you, but it's almost like a
11 filibuster in terms of what happened here. So that's my
12 objection.
13 MS. ROBESON: All right. It's noted. Ms. Rosen.
14 MS. ROSEN: I just want to go back because I just
15 found the paperwork with reference to this issue of why
16 didn't I give certain documents related to the vinyl siding,
17 and I said -- if you go back to my request, the response to
18 the request for production of documents, Response No. 10,
19 the Request No. 10 was any and all plans submitted by the
20 community, any community member for remodeling,
21 installation, or construction of vinyl siding -- any
22 community member including, obviously, Mr. Ball.
23 The discovery order basically sustained that
24 objection, because I made an objection -- I think it was
25 here -- yes, I made an objection. I believe it was

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1 sustained. So, I mean, nobody told me -- if at any point in
2 time in this hearing, if I had been told, well, go ahead and
3 give certain documents related to siding, I would have done
4 it.
5 MS. ROBESON: Ms. Rosen, it's fine. Okay? Now we
6 need to move on.
7 MS. ROSEN: I just want it in the record.
8 MS. ROBESON: What did you say?
9 MS. ROSEN: I said I just wanted it into the
10 record, that's all, because --
11 MS. ROBESON: Oh.
12 MS. ROSEN: -- I wanted it in the record --
13 MS. ROBESON: That's fine.
14 MS. ROSEN: -- I was trying to find these
15 documents.
16 MS. ROBESON: We're going to take a 15-minute
17 break, and then we're going to come back with
18 cross-examination from Mr. Mohammadi.
19 MR. MOHAMMADI: Thank you.
20 (Whereupon, at 12:15 p.m., a brief recess was
21 taken.)
22 MS. ROBESON: We are now back on the record.
23 Cross-examination.
24 MR. MOHAMMADI: Yes. Thank you.
25 REBUTTAL CROSS-EXAMINATION

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1 BY MR. MOHAMMADI:
2 Q Dr. Barr, I think you mentioned that in the second
3 application on 5/26/08 -- and I don't know if I got the date
4 correct -- there was certain information that you requested
5 that be provided. Do you know where that, the board's
6 authorization comes from to request that information?
7 MS. ROSEN: I'm going to object to the extent he's
8 asking -- it calls for a legal conclusion.
9 MS. ROBESON: Well, I'm going to give it, let it
10 in and give it the weight he deserves.
11 MS. ROSEN: Okay.
12 MS. ROBESON: It deserves.
13 THE WITNESS: What date? May 26th one?
14 BY MR. MOHAMMADI:
15 Q I believe that was your testimony, that the first
16 application was --
17 MS. ROBESON: Do you have an exhibit number for
18 him?
19 MR. MOHAMMADI: Well, let me just -- 74, but I
20 don't, unfortunately, I don't have a copy of 74.
21 MS. ROSEN: I have it.
22 MS. ROBESON: Well, let me see if I have it.
23 MS. ROSEN: I have it. I'll put it -- I'm going
24 to have you use the exhibit to keep --
25 BY MR. MOHAMMADI:

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1 Q And I think in the second part of that --
2 MS. ROSEN: Now, which part of 74 are you
3 referring to --
4 MR. MOHAMMADI: Well, the --
5 MS. ROSEN: -- because there's three documents
6 attached to it.
7 MR. MOHAMMADI: Right. So it's the second
8 application, the May 26, '08.
9 MS. ROBESON: May 26. Okay. Here, I want you to
10 look at that.
11 THE WITNESS: Yeah, I see it.
12 BY MR. MOHAMMADI:
13 Q You're requesting a certain amount of information.
14 I'm just trying to find out where the board has the
15 authority to request that information. What is your
16 understanding of that?
17 A I have no understanding of it. I didn't author
18 that letter. That was authored by Jeffrey Williams. So I
19 have no knowledge about where his legal basis is for it.
20 Q Okay. What about the approval letter with
21 conditions, the May 10th, 2011, letter --
22 A Yes.
23 Q -- there were certain conditions in there as well.
24 A Which ones are you referring to?
25 Q Let me pull the letter up. One second.

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1 MS. ROBESON: Is that 77?
2 MR. MOHAMMADI: Yes. One second.
3 MS. ROSEN: Which exhibit are we looking at now?
4 I'm going to have you look at actual exhibits --
5 THE WITNESS: Yeah, sure.
6 MS. ROSEN: -- so we're not getting confused.
7 MR. MOHAMMADI: It is 78, I believe.
8 MS. ROSEN: What are we looking at?
9 MR. MOHAMMADI: 78.
10 BY MR. MOHAMMADI:
11 Q If I'm not mistaken, this is the approval,
12 conditional approval letter.
13 A And what part of it?
14 Q Well, it says, the application was approved as
15 submitted, with the following caveats --
16 A Uh-huh.
17 Q -- and there's a number of requirements here --
18 A Uh-huh.
19 Q -- for example: Please submit a copy of your
20 building permit for our records, No. 6; please ensure that
21 all construction materials, equipment, and trucks are stored
22 on your property and no construction materials, equipment
23 inconvenience the neighbors, No. 5; et cetera. I'm just
24 trying to find out where the board has the authority to
25 require and request these things. Where's that coming from?

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1 MS. ROSEN: I'm going to object once again, just
2 continuing, that he's asking for a legal conclusion.
3 MS. ROBESON: I understand. I'm going to
4 answer --
5 MS. ROSEN: Okay.
6 MS. ROBESON: -- let him answer to the -- he was
7 president at the time. So I'm going to --
8 MS. ROSEN: Okay.
9 THE WITNESS: Yeah.
10 MS. ROBESON: -- let him answer as to his
11 understanding.
12 THE WITNESS: Yeah. The letter just summarizes
13 the board discussion and decision and conveys it to him
14 fairly quickly so he can start working with it. My
15 understanding was that this is what was normally required.
16 The debris had been an ongoing problem with the site for at
17 least 10 years before that. So I was kind of heading that
18 off by saying, make sure you don't have that same thing
19 happen again.
20 BY MR. MOHAMMADI:
21 Q So, I guess, is your testimony that because it was
22 done in the past, we're just continuing that pattern?
23 A No. What I was saying -- what I said to you was
24 that the items that had become contentious in the previous
25 years with this particular site I wanted to address up in

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1 front so that Peter would not have the same issues come up
2 again and have more people complain --
3 Q Okay. Well --
4 A -- just drawing his attention to it, that's all.
5 Q Well, if you can focus on No. 6, the building
6 permits.
7 A Yeah.
8 Q What authorizes the board to request that and --
9 yes, what authorizes the board to request those?
10 A We think that anything that's built in our
11 neighborhood that requires a building permit -- we're not
12 asking for anything other than authorization from the
13 authorities to say that you got proof, approval to do it.
14 Q You would agree with me that the board does, has
15 no authority to determine whether permits should be gotten
16 or not? That's not a board function, right?
17 A No, it's not a board function. What is a board
18 function is what is stated on the face of the building
19 permit that I'm sure you're aware of. On, right on the face
20 of the building permit itself, it says some certain
21 jurisdiction, I'm paraphrasing, some certain jurisdictions
22 will require and have requirements that will exceed what was
23 given as --
24 Q Understood.
25 A Okay.

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1 Q And the board's position throughout has been that
2 -- and correct me if I'm wrong -- that certain things are
3 required and that he should have provided it, like the
4 building permits, and I think you testified, he started
5 construction before building permits were even provided to
6 us. That was your testimony. So I'm asking, what
7 authorizes the board to even request building permits be
8 provided at any point?
9 MS. ROSEN: I'm just going to object to the
10 framing of your question. I think you're becoming
11 argumentative with my witness.
12 MS. ROBESON: Well, I haven't heard him answer the
13 question yet.
14 THE WITNESS: Yeah. No, I was going to say, it
15 was not about the building permit. What we were trying to
16 really do with this --
17 MS. ROBESON: No. No. That's -- his question is,
18 where's your authority, well --
19 THE WITNESS: We believe it's in the documents.
20 As I said, I'm not a legal expert. I didn't study the
21 documents, but I was doing what the president, when I was
22 vice president, was doing and what was done before that I
23 know of, going back at least 20, 30 years --
24 BY MR. MOHAMMADI:
25 Q So --

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1 A -- okay? That's all I'm going by.
2 Q So my previous question was not incorrect; it was
3 accurate when I said you were just doing what the HOA had
4 been doing all along?
5 A By what I understood to be the practice, yes.
6 Q Okay. And you have no idea where that requirement
7 comes from?
8 A I know it comes from the architectural review --
9 architectural review committee and its authorization that is
10 discussed in there. There's a whole paragraph on it --
11 Q Okay.
12 A -- and now made a copy of it but I didn't bring
13 it.
14 Q I'm showing you what's been marked as Exhibit 70.
15 I presume this is what you're talking about.
16 A No, that's not what I'm talking about. I'm
17 talking about from the HOA documents.
18 Q These are the HOA documents.
19 A No. I'm talking about the -- whatever you call
20 those things.
21 MS. ROBESON: The articles of, or the bylaws --
22 THE WITNESS: Yeah.
23 MS. ROSEN: The governing documents?
24 MS. ROBESON: -- or one of those?
25 THE WITNESS: Right, the blue-covered thing, yeah.

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1 BY MR. MOHAMMADI:
2 Q I see. So you're talking about the governing
3 documents --
4 A Yes.
5 Q -- not the architectural committee guidelines and
6 procedures?
7 A Yes, right.
8 Q Okay.
9 A Everything else derives from that, yeah.
10 Q Is there anybody in the board that would
11 specifically know where that requirement comes from?
12 MS. ROSEN: Objection. It's speculative. He just
13 said that everything, he believes, comes, derives from the
14 governing documents.
15 MS. ROBESON: He can say, to your knowledge.
16 THE WITNESS: To my knowledge, it comes from the
17 governing documents. I don't know if --
18 MS. ROBESON: No, no.
19 THE WITNESS: You mean on the board?
20 MS. ROBESON: Just a second.
21 THE WITNESS: Yeah.
22 MS. ROBESON: Let him --
23 THE WITNESS: Uh-huh.
24 MS. ROBESON: -- ask his question again.
25 THE WITNESS: Okay.

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1 BY MR. MOHAMMADI:
2 Q To your knowledge, do you know if, of anybody on
3 the board that would know where those requirements are
4 stated in the governing documents?
5 A No.
6 Q I want to try to nail this time line just a little
7 bit. Okay? When was the -- the first application was in
8 the beginning of 2008, correct?
9 A Application for this particular one.
10 Q Correct.
11 A Yes.
12 Q Okay. And that application did not include any
13 drawings, correct?
14 A That's what it says in the record, and it was
15 rejected as a result.
16 Q Right. And so from 2008 until 2010, when drawings
17 were first submitted, there was some back-and-forth between
18 Mr. Ball and the board about the requirements of what needs
19 to be in an application, correct?
20 A There were not a back-and-forth. The 2008
21 application was rejected, and it specifically mentions no
22 floor plans, no sections.
23 Q Is it your testimony that you and Mr. Ball never
24 talked during that time frame and he never asked you what
25 is, what do you want from me, what is required?

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1 A Why would he talk to me? I was not the president.
2 He was, he was dealing with the president.
3 Q Simply yes or no, you never had that, any
4 conversations like that during that time frame?
5 A No, because the design -- the letter that rejects
6 it says follow the design guidelines.
7 Q Okay. And he never came to you and asked you what
8 are, what is it specifically the design guidelines --
9 A No.
10 Q -- require of me?
11 A No.
12 Q Okay. And you agree with me that the first time a
13 plan was submitted was sometime in 2010, correct?
14 A No. There was a plan submitted previously that
15 was rejected. It didn't have supporting documentation.
16 Q I understand. My question is, the first time an
17 actual plan, drawings were submitted was in 2010, is that
18 fair?
19 A No, that's not correct.
20 Q When was the first time plans were actually
21 submitted?
22 A I thought it was submitted in May 2006, or 2008,
23 I'm sorry. The second application, when the first one was
24 rejected, saying you're missing sections, site plan, floor
25 plans, and so forth, the next, the next application in May

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1 28, 2008, hand-delivered, says: We have dimensions of the
2 house. The architectural guidelines did not require them
3 because the drawings -- the drawings are to scale.
4 Q What are you looking at?
5 A I'm looking at the document you referenced, which
6 is May 26, 2008 --
7 Q Yes.
8 A -- hand-delivered to Irma Spencer, listing the
9 drawings that he sent. It says: Site Plan of the New
10 Addition, Elevation of the House. So these are drawings.
11 Q Okay. And have --
12 A So that's not the first time, was not 2010.
13 Q Do you have those drawings?
14 A I don't have the drawings. I'm not a keeper of
15 the drawings.
16 Q Well, when I say you, I mean the board. Does the
17 board have those drawings?
18 A Probably so. I don't know.
19 Q Okay. Have you ever seen those drawings yourself?
20 A Not that I recall.
21 Q Okay. Why would you have not looked at those
22 drawings if they were rejected?
23 A Because I was not the one rejecting it. It was
24 coming from the, Irma Spencer.
25 Q From the board?

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1 A Irma Spencer, the architectural committee chair --
2 Q Okay.
3 A -- she's the one who received it and rejected it,
4 I thought. I'm not sure. I think that's what it was.
5 MS. ROBESON: She, wait, she rejected it because
6 she didn't -- he didn't provide the plans?
7 THE WITNESS: She rejected the, on February 26,
8 2008 --
9 MS. ROBESON: February?
10 THE WITNESS: February 26, 2008, the --
11 MR. MOHAMMADI: That's on the first application.
12 THE WITNESS: The first application was rejected
13 because, and it says, because you're missing seven items.
14 MS. ROBESON: Okay.
15 BY MR. MOHAMMADI:
16 Q Then a new application was provided end of May of
17 2008, correct?
18 A Right. Right.
19 Q And your testimony is that application had some
20 drawings?
21 A Had some drawings, but if you remember from the --
22 I can go to the document faster here.
23 MR. MOHAMMADI: Can I see that, Ms. Rosen? Thank
24 you.
25 BY MR. MOHAMMADI:

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1 Q In other words, I'm trying to find out, this, this
2 May 2008 letter --
3 A Uh-huh.
4 Q -- from Peter Ball to Irma Spencer, okay?
5 A Yeah.
6 Q That application, the second set of application,
7 or the second application was also rejected at some point,
8 right?
9 A I believe -- I don't have the response here -- but
10 I believe it is in a minutes somewhere that the, I think --
11 I'm not sure what happened. It was rejected, but I don't
12 know how or why. I don't recall it right now --
13 Q Okay.
14 A -- so I'm not going to speculate on it. I
15 remember reading somewhere.
16 Q So my question to you is, do you recall whether
17 there were any drawings submitted with that?
18 A Yeah. It must have been because it says he
19 submitted something; he's got some sample stone. In the May
20 26, 2008 --
21 Q Yes.
22 A -- what it says is: We did not include floor
23 plans. Why is the interior of my dwelling any concern of
24 the architectural committee --
25 Q Correct.

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1 A -- even though that's part of the guidelines. So
2 I don't know what the basis for rejection was. I don't, I
3 don't write that letter.
4 Q Well, we'll get to that as well, but --
5 A Okay.
6 Q -- after that was submitted, I guess -- I'm trying
7 to understand, if the board has it, where is it?
8 A Must be in the secretary's files or in the
9 architectural committee files. Those are the two places
10 they are --
11 Q Okay. And --
12 A -- and if it's come to the board, then it comes to
13 the board files.
14 Q Okay. And your testimony today is that you never
15 saw those plans?
16 A I don't recall seeing them, which is different --
17 Q Okay.
18 A -- yeah. Actually, I remember reading something
19 about it being rejected. There were so many meetings and so
20 many plans that it's all kind of blending together now.
21 Q Well, that's my point exactly. There has been a
22 lot of back-and-forth since 2008 about the application,
23 isn't that fair to say?
24 A There was a lot of meetings and a lot of
25 back-and-forth, which is why, when I got my chance, I was

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1 trying to help it along --
2 Q Okay.
3 A -- as a process.
4 Q All right. In this, in this -- and you testified
5 to this just now as well -- you stated that interior
6 drawings were required as well?
7 A They're not interior drawings. They're floor
8 plans.
9 Q Okay.
10 A Yeah.
11 Q Why do those matter?
12 A Because that's how you know what the outside is
13 going to look like. You don't judge, you don't judge a
14 building just from the outside. What's on the outside is
15 reflected by what's happening on the inside.
16 Q Okay. Where does the HOA get the authority --
17 A From --
18 Q -- to make that decision about what's going on in
19 the inside?
20 A Okay. I'm going back to the governing documents,
21 and these requirements -- the floor plans, sections,
22 elevations, what's proposed, what's here -- are part of that
23 way of understanding what is being proposed.
24 Q So is your testimony today that the actual
25 governing documents themselves say sections of -- interior

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1 sections and drawings are required, floor plans are
2 required, et cetera?
3 MS. ROSEN: I'm going to object. The governing
4 documents speak for themselves.
5 MS. ROBESON: Well, I --
6 MR. MOHAMMADI: Dr. Barr's understanding of what
7 the governing documents, as president of the HOA, is
8 certainly relevant.
9 MS. ROSEN: Well, that's not what, that's not what
10 he asked. You asked him what the governing documents
11 actually say, and they speak for themselves.
12 MR. MOHAMMADI: Well, he's testifying as to where
13 those, these requirements are coming from. So I'm trying to
14 get clarification if that's what the governing documents are
15 saying.
16 MS. ROBESON: Well, you can ask him if he has seen
17 that word in the governing documents. Have you seen floor
18 plans in the governing documents?
19 THE WITNESS: When I say the authority comes from
20 the governing documents, I mean the authority comes from the
21 documents. Deriving from that, there are operational
22 documents that are being used by the association for 30
23 years. They have been developed in response to what they
24 feel they need, and that's where I think it comes from.
25 BY MR. MOHAMMADI:

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1 Q Okay. And those operational documents are like
2 the architectural committee guidelines?
3 A Designing guidelines, right.
4 Q Okay. And does it anywhere, does it say on the
5 guidelines, the architectural committee guidelines, anywhere
6 that floor plans, et cetera, are required? And I can show
7 you Exhibit 70.
8 A Okay. Yeah, point nine --
9 Q Yes.
10 A -- accurate site plans at a minimum scale; floor
11 plans, sections, elevations at minimum one-eighth scale --
12 Q Okay.
13 A -- show existing and proposed design.
14 Q Right. And so my question is exactly that --
15 A Uh-huh.
16 Q -- that requirement stems from something in the
17 governing, in the governing documents, right?
18 A Yeah.
19 Q These are not just made up, correct?
20 A Yeah.
21 Q Okay. What in the governing documents gives the
22 board the authority to have those --
23 MS. ROSEN: Oh, I'm going to object to that. That
24 is calling for a legal conclusion.
25 MS. ROBESON: No. I think he wants to test -- I

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1 don't think that's where it's going. I think --
2 MR. MOHAMMADI: Correct.
3 MS. ROBESON: -- it wants to test Dr. Barr's
4 familiarity with the governing documents. So I'm going to
5 let you answer.
6 THE WITNESS: Uh-huh. The governing documents
7 talk about maintaining the harmony, massing, and scale,
8 which, to that effect, I don't know it by heart, and these
9 are interpretations of that. And one thing that I've
10 noticed in this particular HOA, whereas other governing
11 bodies, not just HOAs, is that they're not prescriptive.
12 The governing documents say you must have this tile. They
13 don't say that in our. Our just gives you latitude but
14 keeping harmony and leaves every homeowner, gives every
15 homeowner latitude within that. It's not a slavish copying
16 of five models that can't be changed. This is not
17 Williamsburg.
18 BY MR. MOHAMMADI:
19 Q Okay.
20 A Yeah.
21 Q Would you agree with me that because it's the
22 governing -- and it's just one page, approximately, of, for
23 the guidelines --
24 A Yeah, but --
25 Q -- maybe three pages, apologize.

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1 A Yeah. Yeah.
2 Q Would you agree with me that those three pages,
3 because they're so loose, also make it difficult for a
4 homeowner sometimes to know exactly what they can and cannot
5 do?
6 A Not really, because we engage in conversation a
7 lot --
8 Q Okay.
9 A -- and especially Mr. Ball. Peter has had a lot
10 of conversations, over five years --
11 Q Okay.
12 A -- more than any other homeowner that I know.
13 Q Okay. And so the board then, when they engage,
14 the board is giving guidelines to the homeowner as to what
15 they can and cannot do?
16 A When we spend time going to the site and talking
17 about why we're saying not horizontal siding and taking time
18 to explain it and so on, yes, I think we are.
19 Q Okay. And by talking to the homeowner, is it your
20 testimony that the application of all the rules are uniform
21 throughout, with every homeowner?
22 A As I said, we don't have a prescriptive rule which
23 says this model must remain this way or only can be added
24 this way. Based on your particular set of circumstances --
25 and I think in the minutes reflect it too, and I told Peter

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1 before as well -- his unfortunate location, he has really no
2 private yard. His rear is, faces the main entrance to the
3 street. So in most houses they're turned the other way so
4 that what happens in the back of the house is less of
5 concern. This particular one is off a side street. He's
6 the first one off the main entering street, and so he got
7 some presence, so -- which is where the planting comes in to
8 buffer.
9 Q Okay. So because of his location of the house,
10 his house is looked at slightly different than other houses?
11 A No, I wouldn't say that. It has a unique set of
12 circumstances, just as each one of the 159 do.
13 Q Okay. And those unique set of circumstances is
14 why, for example, Mr. Ball can't have vinyl siding, whereas
15 other homes in the community have it?
16 A I've explained it previously. I'll say it again.
17 He has vertical siding right now on a relatively small
18 footprint. That's the original model. He has expanded that
19 model substantially, and by using horizontal lines, you
20 emphasize the horizontality of it. So we are saying, you
21 have something that's vertical, we have let you expand it,
22 please make it so that it's not going to be exaggerated in
23 its expanse.
24 Q Let me just make sure I understand.
25 A Uh-huh.

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1 Q You're saying, because of the bump-out of the
2 house, by adding horizontal siding, it makes it look even
3 larger than it is, lengthwise, correct?
4 A I didn't say anything about the bump-out.
5 Q Well, you said --
6 MS. ROSEN: Excuse me. I'm sorry.
7 MS. ROBESON: Yes. Don't --
8 MR. MOHAMMADI: What's the objection?
9 MS. ROBESON: -- please.
10 MS. ROSEN: Well, I'm going to object because he's
11 basically, you know, he's asking a question and he's
12 essentially testifying. He's using the language, because of
13 the bump-out, when that's not what Dr. Barr testified. I
14 would just ask him to -- if you're going to ask questions
15 based upon what Mr. Barr just testified, at least be
16 accurate.
17 MR. MOHAMMADI: I think it was a legitimate
18 question. He can just say no.
19 MS. ROBESON: Well, just a second. I --
20 MS. ROSEN: But that's not how we ask the
21 question.
22 MS. ROBESON: -- I thought that Dr. Barr did
23 testify that, with the additions, the length of the house
24 was broad.
25 MS. ROSEN: Okay, but he didn't say anything about

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1 the bump-out, particularly. So it's not, the way he --
2 MS. ROBESON: Okay. Well --
3 MS. ROSEN: -- I mean, I would just like him to be
4 more precise, I guess. If you're going to say, Dr. Barr,
5 you just testified X, you know, let's just keep it precise
6 so it doesn't get more confusing.
7 MR. MOHAMMADI: I can rephrase the question --
8 MS. ROBESON: Yes, why don't you.
9 MR. MOHAMMADI: -- but it's going to be the same
10 question, essentially.
11 BY MR. MOHAMMADI:
12 Q You're saying, because of the additions, the house
13 looks a little larger --
14 A I can make it --
15 Q -- and the horizontal would make it look larger,
16 correct?
17 A I can make it very simple for you. If you have --
18 I wear vertical stripes most of the time because I'm trying
19 to look slim. Okay? It doesn't always work. If I wear a
20 rugby shirt and it goes broadband, I look broader. So that
21 same principle is what applies here. It's a visual --
22 MS. ROBESON: Well, wait.
23 THE WITNESS: -- it's a visual trick.
24 MS. ROBESON: Is that a yes or a no? I guess
25 that's where I --

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1 THE WITNESS: That's a yes, because he's broadened
2 and lengthened the house and --
3 MS. ROBESON: So the horizontal lines --
4 THE WITNESS: They will emphasize it even more.
5 BY MR. MOHAMMADI:
6 Q And when you say he's broadened and lengthened the
7 house, you're talking about the bump-out on the side. What
8 else --
9 A No. I was talking --
10 Q -- has he done that lengthens the house?
11 A The width of the house is much longer now. The
12 bump-out is -- what we are referring to as the bump-out is
13 the 10 by 20 addition --
14 Q Right.
15 A -- on the side.
16 Q Correct.
17 A That doesn't make it look -- that actually breaks
18 the mass.
19 Q You said longer. What makes it look longer?
20 A Longer, the rear elevation is what I was thinking
21 of. The rear elevation is one straight line going across,
22 and Peter and I had that conversation with Peter Gibson when
23 we were there, about how he might tend to, want to break
24 that mass up. But, you know, we're not here to design for
25 him, which is just to say, given the conditions you have, a

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1 vertical arrangement will de-emphasize what you've got and
2 then use some planting to buffer it some more. Okay?
3 Q Okay. What has he done to the back of the house
4 per the plans that makes the house look longer? The only
5 thing he has, his plans ask for is an addition over the flat
6 roof area, isn't that correct?
7 A Yes.
8 Q That doesn't make it look longer, would you agree
9 with me?
10 A I'm comparing it to the original model and where
11 it began. Original model is vertical in its siding. So the
12 primary emphasis is a, it's a vertical building. I mean, I
13 don't want to make an architectural treatise out of this
14 thing. It's -- very simply, to answer your question, the
15 verticality is what is there. We would like to see it
16 replicated. That's all there is to it.
17 Q Dr. Barr, I don't ask questions just to ask
18 questions. There is a point to this. Okay?
19 A I know that. I know.
20 Q So my question --
21 MS. ROSEN: Objection. He's being argumentative
22 now.
23 MS. ROBESON: No. Dr. Barr is explaining the
24 principles but not answering the questions. So ask it
25 again, but I only want you to answer -- maybe you can

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1 rephrase to say what physical construction or something like
2 that.
3 MR. MOHAMMADI: Let me ask a different question.
4 I'll come back to it. Okay?
5 BY MR. MOHAMMADI:
6 Q The architectural principle is that if you add
7 horizontal siding to something, because of the way, the
8 direction the siding is going, horizontally, it makes
9 everything look longer, isn't that correct?
10 A Yeah.
11 Q Okay. Do you agree with me that if you do
12 vertical siding, that makes it look taller?
13 A It'll certainly help to make it look less wide,
14 yeah.
15 Q That's not my question.
16 A So I agree. I agree.
17 MS. ROBESON: No, that's not the question.
18 THE WITNESS: Oh.
19 MS. ROBESON: The question is, would it make it
20 look taller?
21 THE WITNESS: Not necessarily look taller, no. I
22 don't look any slimmer by wearing vertical stripes.
23 BY MR. MOHAMMADI:
24 Q Well, and just a minute ago, you said you don't
25 necessarily look that way, but the whole goal is to vertical

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1 stripes --
2 A Yeah.
3 Q -- so you look slimmer, right?
4 A Right.
5 Q So my question is, if you add vertical siding,
6 isn't the point -- isn't one of the architectural criteria
7 or designs for vertical siding to make it look taller?
8 A I think of slimmer but not taller.
9 Q Okay.
10 A Yeah.
11 Q Isn't the chief complaint in this case that the
12 roof is too high?
13 A No.
14 Q Okay. So the roof is not too high?
15 A The chief complaint is that the roof was raised.
16 We were never discussed it in three of five years of
17 discussions on this project. One time it came up in 2010;
18 it was rejected, and we got written documentation from both
19 Tania Bruno and Peter Ball, just before we voted, that they
20 are not going to be doing anything other than staying with
21 the existing ridge. It's --
22 Q So let me just make sure I understand.
23 A -- about the existing ridge and roof.
24 Q The current height of the roof is not a problem?
25 A The current height of the roof is a problem

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1 because it does not meet what was told us -- there was never
2 a discussion, sir, about raising the roof, raising the
3 ridge, or raising the chimneys.
4 Q All right. Maybe I'll ask it a little different
5 for you. Okay? The current height of the roof would not be
6 a problem had it been approved. Is that what your testimony
7 is?
8 A No. My testimony is exactly what I said. During
9 all the discussions -- this was not a blind drawing sent to
10 us -- during all the discussions that we had after the 2010
11 rejection of the addition on the rear, we got commentary
12 that I made a mistake with the flat roof, my son and I built
13 it, and there's been a big mistake, we want to just slope
14 that up to meet the existing ridge. There was no
15 expectation of anybody in that room that anything would be
16 done to raise the roof, the ridge, or the chimneys and no
17 discussion about it --
18 Q Okay.
19 A -- and that's the problem.
20 Q Had Mr. Ball come to you, the board, and said I
21 want to raise the roof, would that have been rejected?
22 A Not outright. We would have seen what it was
23 being done and because earlier the discussion was about
24 raising the roof in the back. There was a reference from
25 Jeff Williams, the previous president, who wrote, it would

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1 turn it into a McMansion and I would have to vote no, please
2 get an architect who is familiar with contemporary
3 architecture to help you. And so I can't outright say what
4 would have happened, but I can tell you that in this
5 particular instance, that proposal was rejected in 2010, and
6 unfortunately, what has happened is, the written word, which
7 came along with the vote that Mr. Ball sent around, said
8 very soothing things. It said nothing about raising the
9 roof and raising the ridge, raising the chimneys. He said,
10 all I'm doing is sloping the flat roof, which is a leaky
11 thing, and I'm just going to take it to the existing ridge
12 and stop there because I want to make sure it doesn't leak,
13 and all I want is, from Tania Bruno previously, all he wants
14 is a little closet inside it.
15 So we were expecting nothing other than the
16 existing ridge level to stay the same, the sort of bump-out
17 on the side of CCR; we expected a bump-out on the top of the
18 garage, and we expected a sloping roof in the back. That
19 was it and that's what we thought we saw and that's what we
20 thought we approved.
21 Q Could you explain how you put a bump-out on top of
22 a garage without there being a new roof on top of the
23 garage?
24 A It was very successfully done in the 2010 version
25 because, if you recall, the 2008 application from Peter Ball

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1 specifically cites 10602 Vantage Court, next door to him,
2 which had a bump-out, which was a gable roof, and --
3 Q Is your testimony today that the HOA never
4 rejected the gable roof?
5 A Absolutely not, and it was cited to me, and I know
6 I was actually quite amazed by how well Tania Bruno had
7 taken -- let me explain, take one second to explain this.
8 Q No, that's not my question. You don't need to
9 explain it.
10 A Okay. Fine.
11 MS. ROBESON: Yes, you are under
12 cross-examination.
13 THE WITNESS: Okay. All right.
14 BY MR. MOHAMMADI:
15 Q You were requested in 2003 to join the
16 architectural committee?
17 A No, nobody asked me --
18 MS. ROSEN: I'm going to --
19 THE WITNESS: -- but I see in the minutes that it
20 says, oh, now that he's here, maybe he could help with the
21 plans.
22 BY MR. MOHAMMADI:
23 Q All right. And you're, well --
24 MS. ROSEN: I'm going to object to that question.
25 I didn't get my opportunity, but it seems to go beyond the

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1 scope of my direct. I didn't say anything about him being
2 on the architectural committee in 2003.
3 MR. MOHAMMADI: Absolutely what he said.
4 MS. ROSEN: I don't recall that --
5 MS. ROBESON: Yes, he did --
6 MS. ROSEN: -- was that said?
7 MS. ROBESON: -- he actually did testify --
8 MS. ROSEN: Oh.
9 THE WITNESS: Uh-huh.
10 MS. ROBESON: -- to that, and he said, I didn't --
11 MS. ROSEN: Okay. I guess I missed it. I
12 apologize.
13 THE WITNESS: Yeah. It's okay.
14 MS. ROBESON: -- I didn't want to --
15 MS. ROSEN: Okay.
16 MS. ROBESON: -- be on the architectural
17 committee --
18 MS. ROSEN: Okay.
19 MS. ROBESON: -- because that's what I do for a
20 living.
21 MS. ROSEN: Okay.
22 THE WITNESS: Uh-huh, that's right.
23 BY MR. MOHAMMADI:
24 Q I mean, I think you also testified that the reason
25 they wanted you on the architectural committee is because

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1 you are an architect and can read plans, and when you said
2 no, your testimony was like, well, who's going to help us
3 with the plans, will you help us read plans, and you said,
4 yes, I can help you read plans --
5 A No --
6 Q -- that was your testimony, right?
7 A Right, but I will -- I can expand on that
8 testimony. The architect --
9 Q So --
10 MS. ROBESON: Well, you have to wait for a
11 question. Go ahead.
12 THE WITNESS: Okay. All right.
13 BY MR. MOHAMMADI:
14 Q So that was your testimony. So part of the
15 reason, at least, that they wanted you is because you have
16 some knowledge in reading plans, correct?
17 A Yes, but the engineer --
18 Q Okay. And so when you --
19 A -- the chairman at that time was an engineer.
20 Q -- when you were --
21 MS. ROBESON: Mr. --
22 THE WITNESS: Sorry, sorry, sorry.
23 MS. ROBESON: -- Dr. Barr, I'm sorry --
24 THE WITNESS: Don't worry.
25 MS. ROBESON: -- you have to --

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1 THE WITNESS: Okay.
2 BY MR. MOHAMMADI:
3 Q Okay. And so when you were reading the plans
4 submitted by Peter Ball, is it your testimony that you could
5 not tell from those plans that the roof height would be
6 raised?
7 A I trusted, when nobody mentions anything about
8 doing something and the only three issues at, discussion at
9 the board meeting did not say anything about raising it, I
10 trusted the architect, I trusted the drawings, and I took
11 one look and it looked to me like it was similar, this
12 height of the chimney above the roof was the same. So I
13 didn't, I didn't really put a ruler to it or study it.
14 Okay?
15 Q Okay. You have done that subsequently, right? I
16 mean, since, since that --
17 A No.
18 Q You have not reviewed the --
19 A No, I did it for the 2010 version when Jeff
20 Williams said, can you help us understand this?
21 Q Well, I distinctly recall asking you, as you
22 testified before, that do you see that the roof height is
23 raised here, and your answer was, yes, I see it now.
24 A Yeah, now I see it, yeah, yeah.
25 Q Okay. And my question is, you actually now looked

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1 at the plans and you can tell the roof height is raised,
2 correct?
3 A Right.
4 Q In the approved plans, correct?
5 A Yes.
6 Q Okay. And that didn't take you a lot of effort to
7 see that, correct?
8 A Actually, the person who showed it to me was the
9 expert testimony --
10 Q Okay.
11 A -- of Sharon Washburn. That's when --
12 Q Do you recall, I asked you that question before
13 you had even designated her as an expert? Do you recall
14 that?
15 MS. ROSEN: I'm going to object. He's now going
16 beyond, he's going beyond the rebuttal questions that I
17 originally was asking in his testimony. He's going back to
18 previous testimony.
19 MS. ROBESON: No. I think this comes within the
20 roof height. I'm going to let him answer the question.
21 THE WITNESS: What's the question?
22 BY MR. MOHAMMADI:
23 Q Well, the question was, you, you said Ms. Washburn
24 showed it to you, but you testified to that before
25 Ms. Washburn was even retained or even designated as an

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1 expert in this case, right?
2 A Do you mean when you showed me the -- did you do
3 this and put this on top, can you see it higher --
4 Q Right.
5 A -- is that what you're talking about?
6 Q Correct.
7 A Yes, but that's not something we do at the
8 hearing, but what I -- at the meeting or prior to the
9 meeting -- what I was --
10 MS. ROBESON: You mean the board meeting.
11 THE WITNESS: At the board meeting, because we had
12 drawings that looked like what was being said, and so we
13 didn't do that there. Is that the question, or am I wrong
14 here?
15 BY MR. MOHAMMADI:
16 Q Well, what's the point of, in your guidelines,
17 requiring scales and dimensions if you're not actually going
18 to use the scales or dimensions to determine what is being
19 built?
20 A Because we have written words which all the
21 members of the board can read and understand. We are not
22 operating -- as I told you, my interest is not reading
23 plans. Okay? My interest is not necessarily -- that is not
24 why I got into architecture. When I'm acting as the
25 president of the association, I'm looking at the overall

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1 guidance for the harmony of the neighborhood and the
2 community and the individuals' rights to be able to build
3 what they build. That's what I was approaching it as.
4 No indication was made that anything was being
5 raised; so there was no reason for me to put sheet on top of
6 sheet or scale it. I just looked to see what does the
7 bump-out look like. As I testified before, the bump-out on
8 the street side I was not in love with, but Peter came in
9 and said he thought that was a better version than what he
10 had going on top, and I said, hey, if he likes it, that's
11 good enough, we can always put planting around it and buffer
12 it.
13 Q That's at the meeting that happened in May of --
14 A Yeah, that's at the meeting, right. Right.
15 Q -- or April 2011?
16 A May, May --
17 Q May 2011.
18 A -- May 5th, 2011.
19 Q I'm sorry. When was the date of that meeting?
20 A May 5, 2011.
21 Q Okay. And I think your testimony for that meeting
22 was that Mr. Ball and his attorney were present at that
23 meeting?
24 A Uh-huh.
25 Q Okay. But you never took the vote in front of

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1 him, correct?
2 A No, and as I told you, we didn't know that was the
3 practice that was required in the State of Maryland. Now we
4 do.
5 Q I understand, but you never took the vote in front
6 of him?
7 A Not in front of him, but we had him come in, I
8 explained the vote to him, and he got a chance to present.
9 Q Okay. And when you took your vote and decided
10 that there would be certain caveats, you didn't tell him
11 that either until you sent that letter on May 10th, 2011?
12 A That's not true at all because I went -- when he
13 came in, we discussed the vinyl siding material that was
14 there, which there was lots of people on the board who were
15 against it. Almost everybody unanimously was against the
16 horizontal vinyl siding. So I conveyed that to him, and I
17 said -- in the minutes it reflects that too, that I showed
18 the material and said, we recommend that you go with what
19 you initially proposed, which is the Hardie board siding,
20 which you said you were going to do at the previous board
21 meeting.
22 Q The issue of whether the roof would be raised, was
23 that important for the board, that the roof should not be
24 raised?
25 A I could, I could say yes, absolutely, positively,

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1 had they known it. They're complaining about a bump-out
2 here and a bump-out there, and they took a vote to take
3 someone to CCOC because it was, the two-foot offset was not
4 met in the back of the house. So definitely --
5 Q Okay.
6 A -- raising the roof would have been a big deal.
7 Q Was that concern ever communicated to Mr. Ball,
8 that raising the roof was a concern?
9 A Yeah. The 2010 rejection letter was -- the
10 minutes were very clear. He was in the minutes, discussing
11 it. Tania Bruno comes in and acknowledges that she was
12 hired to make the back -- what did she say exactly? She
13 said something like the back --
14 Q I know the meeting.
15 A -- the back of the, the rear of the house is the
16 problem, I'm trying to make it less boxy, and so on. So
17 the --
18 Q Okay. And --
19 A -- the rejection of the raising was definitely --
20 Q Okay. So from 2010 on, until the actual approval,
21 whether that roof height would be raised was a continuing
22 concern for the board?
23 A No, it was not, because she had already written
24 that to us in the e-mail on July 20, 2010, that Peter was
25 foregoing the addition in the back and, at the risk of

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1 repeating it again, that all they wanted to do was start
2 from the top of the flat roof and go to the existing ridge.
3 Q You're talking about the 2010 e-mail?
4 A Yeah, and --
5 Q And you agree with me that subsequent to that
6 e-mail, several other drawings were submitted, correct?
7 A That was the first drawing that came in, was the
8 one that was approved, I believe.
9 Q You --
10 A No?
11 MS. ROBESON: But that --
12 THE WITNESS: I'm not sure.
13 MS. ROBESON: -- that wasn't the question.
14 THE WITNESS: Okay. Sorry.
15 BY MR. MOHAMMADI:
16 Q You would agree with me that since Tania Bruno's
17 e-mail to you that you were referencing --
18 A Uh-huh.
19 Q -- since that time, several other applications --
20 and I'm using the word application, but what I mean is,
21 several other drawings were submitted by Peter Ball, showing
22 what he wanted to build, correct?
23 A After the approval?
24 Q After the 2010 e-mail from Tania Bruno.
25 A I'm saying, what he sent to us for approval was

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1 the 2011 approved plan.
2 Q Right. Between that plan, the approved plan, and
3 Tania Bruno's e-mail in 2010, in that one-year period, would
4 you agree that additional drawings were submitted?
5 A Not that I know of or recall because they were not
6 official. We looked at the 2010 drawing. It was rejected.
7 She said he's prepared to do this, this, and this, remove
8 the second floor in the back, and all he wants are these
9 three other things, and the next drawing we saw was the one
10 that we got. So there are not several other drawings that
11 came in, no.
12 Q To the best of your recollection, there hasn't
13 been any other drawings except for that one?
14 A Except the HOA, yeah.
15 Q And --
16 MS. ROBESON: I'm sorry. Except for the --
17 THE WITNESS: HOA-approved --
18 MS. ROBESON: -- approved plans?
19 THE WITNESS: Yes.
20 MS. ROBESON: Okay.
21 BY MR. MOHAMMADI:
22 Q At the meeting in May, on May 5, 2011, who asked
23 whether the roof would be raised?
24 A Nobody asked that I know of.
25 Q Okay. Who asked whether the ridgeline would be

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1 raised?
2 A Nobody did.
3 Q And who asked whether the chimney would be raised?
4 A No, nobody did.
5 Q You would agree with me that although Mr. Ball has
6 applied for vinyl siding at least on two occasions, he has
7 never actually put up horizontal vinyl siding, correct?
8 A I don't know that. He's asked for it. He has
9 said he would not do it. Then he said --
10 Q Have you seen any since you're -- since you're so
11 intimately involved in this case and been to the house, have
12 you seen any?
13 A I haven't seen any, but my last trip out there was
14 September 14 --
15 Q Let me make sure I understand.
16 A -- I don't make a habit of going there.
17 Q Mr. Ball's house is at the corner of the street,
18 right at the entrance of the community, correct?
19 A I don't take that route.
20 Q Okay.
21 MS. ROSEN: I'm going to object to the relevance
22 of this. I mean, nobody's ever claimed that he's put up the
23 horizontal vinyl siding, as far as I know. It's not part of
24 my complaint.
25 MS. ROBESON: Mr. Mohammadi.

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1 MR. MOHAMMADI: They're saying he's constantly
2 violating various decisions --
3 MS. ROBESON: Ah.
4 MR. MOHAMMADI: -- and --
5 MS. ROSEN: Okay.
6 MR. MOHAMMADI: -- here's one where he's not
7 violating.
8 MS. ROSEN: That's nice.
9 MS. ROBESON: I understand.
10 THE WITNESS: Okay.
11 MS. ROBESON: I'll let it in.
12 MS. ROSEN: Okay.
13 THE WITNESS: And I agree.
14 BY MR. MOHAMMADI:
15 Q Okay. You testified about a meeting that happened
16 in May 2013 between you and Mr. Ball, right? You met at a
17 coffee shop?
18 A Yeah, I think it was April '13, something, yeah.
19 Q Okay. You met in a coffee shop?
20 A Uh-huh.
21 Q And you had basically reached an agreement with
22 respect to resolving this --
23 A Yes.
24 Q -- all the issues, right?
25 A Yeah.

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1 Q And then subsequent to that, you sent a letter or
2 an e-mail, saying, by the way, you just -- I forgot to tell
3 you, you have to pay the attorney's fees, correct?
4 A No. What I did was, I thought of it and I called
5 him and said, we need to talk again --
6 Q Right.
7 A -- so I don't think I sent an e-mail. I'm not
8 sure, but --
9 Q Okay.
10 A -- the conversation was, hey, I forgot to tell you
11 about this one thing, can we solve it?
12 Q Okay. And so even though you had reached an
13 agreement at that meeting in the coffee house, subsequently
14 you said, there's one other condition --
15 A But I'm not --
16 Q -- you have to pay my attorney's fees, correct?
17 A Okay. I'm sorry. I'm not the association, much
18 as everybody seems to want to believe that I'm the
19 decision-maker.
20 MS. ROBESON: Okay. Just --
21 THE WITNESS: So I went back. That was my
22 agreement with him, but I don't have the authority to speak
23 for the whole board.
24 BY MR. MOHAMMADI:
25 Q Right.

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1 A So I went and spoke to people, and they said, what
2 about the fees --
3 Q Okay.
4 A -- and so I came back and said, hey.
5 Q Which people did you speak to?
6 A I spoke to Lee, Noah, Dan, and whoever was
7 available I spoke to. It wasn't a formal meeting. It was
8 just like, looks like we have some resolution here. Okay?
9 Q So you, on your own behalf, went and talked to
10 Mr. Ball, and then you, on your own behalf, went and talked
11 to other board members, and then you, on your own behalf,
12 came back and said, actually, the attorney's fees is another
13 issue?
14 A When I presented it to them, they said, but what's
15 happening with the attorney's fees we have expended? So I
16 thought I would bring that up with Peter.
17 Q Did you at any point let Mr. Ball know that you
18 were acting on your own behalf and not on the board's
19 authority?
20 A No, I -- when he calls and wants to talk to me, I
21 guess he was calling me as the president of the association,
22 but as the president of the association, I don't make the
23 decisions solely on my own.
24 Q It was the following day after your meeting that
25 you contacted him again and said --

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1 A I called him -- yeah.
2 Q -- actually, we need to talk about the attorney's
3 fees, right?
4 A Right. Right.
5 Q Exhibit 175, that letter that you wanted into
6 evidence, that's from your --
7 A Which one? Which one is that?
8 MS. ROSEN: That's the letter for the --
9 MR. MOHAMMADI: Do I have --
10 THE WITNESS: Oh, the one we put in today?
11 MS. ROBESON: I think that is the --
12 MS. ROSEN: E-mail.
13 MR. MOHAMMADI: I don't know where I put my
14 copies.
15 MS. ROBESON: That is the letter from
16 Mr. Mahadevan --
17 THE WITNESS: Yeah.
18 MS. ROBESON: -- from the foreign project.
19 THE WITNESS: Okay.
20 BY MR. MOHAMMADI:
21 Q That's your brother, right?
22 A Yeah.
23 Q Okay.
24 A It's actually my half brother, but that's okay.
25 Q Okay. And, also, you referred to Mr. Williams as

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1 an attorney, right?
2 A As far as I know, he has legal training, yeah.
3 Q He's also the attorney on this Panama project,
4 correct?
5 A No, absolutely not.
6 Q He's not?
7 A No.
8 Q Okay. And he's not your personal attorney in any
9 way?
10 A No. No.
11 Q Or for your company?
12 A No.
13 Q Before we ended, you testified that you would have
14 brought Peter to the meeting. That's -- I think I'm quoting
15 that correctly, and I think the reference was to the October
16 28, 2013, meeting, is that correct?
17 A If we were going to discuss his construction
18 problem and we're going to take a vote on that, I would
19 certainly have invited him to the meeting, just like we did
20 for the previous one when we took the, what -- yes, that's
21 the answer.
22 Q Okay. So you said you would have brought Peter to
23 the meeting, and that's in --
24 A If that was the intent, yeah.
25 Q Okay. And that's the October 28, 2013, meeting?

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1 A Or whenever it would have been held, yeah.
2 Q Okay. So then you would agree that he was not
3 invited to the October 28, 2013, meeting?
4 A Everyone -- no. When -- this is how it works:
5 When there is a dispute that we want to have discussed with
6 any homeowner, the president or the secretary or the vice
7 president will send a letter directly to that person so that
8 they are not -- so they're informed that that's what's being
9 discussed that day. So that's how -- and it's on the
10 agenda, listed as 10600 Vantage Court.
11 Q Now, to the best of my knowledge, I've never seen
12 anything informing, that has been produced, informing of the
13 October 28th meeting.
14 A That's correct, yeah, because that was not, was
15 not to discuss whether we were taking him to CCOC.
16 Q But that's when you did take him to CCOC, right?
17 A No. What I testified was that what we were doing
18 then was getting funding authorization for the extended work
19 that we knew we were going to do, because we have a second
20 violation, which everybody was aware of, and we were going
21 to expend more money. So it was a funding authorization.
22 That's what we were --
23 Q Okay. So -- okay.
24 MR. MOHAMMADI: All right. No further questions.
25 MS. ROBESON: Ms. Rosen.

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1 MS. ROSEN: I don't have any further questions.
2 MS. ROBESON: All right.
3 THE WITNESS: Thank you. I'm fried.
4 MS. ROBESON: Ms. Rosen, any other witnesses?
5 MS. ROSEN: No.
6 MS. ROBESON: All right.
7 MS. ROSEN: Moving right along.
8 MS. ROBESON: We're going to take a break for
9 lunch, and then we'll come back at 2:20. Is that enough
10 time for you to finish closing arguments, and then did you
11 bring affidavits of attorney's fees? Is that --
12 MS. ROSEN: Well, what I --
13 MR. MOHAMMADI: I can submit -- well, I didn't
14 bring one yet, but I can submit it --
15 MS. ROBESON: Okay.
16 MR. MOHAMMADI: -- if you would like, because I
17 have the invoice but I don't have the affidavit.
18 MS. ROBESON: Okay. That's typically how we do it
19 so you don't end up as witnesses, and --
20 MR. MOHAMMADI: Right.
21 MS. ROBESON: -- I mean, you are --
22 MS. ROSEN: Yes. Well, basically, what I have,
23 you know, like what we do in CCOC, you know, where we just,
24 you know, you bring your billing statements, you know,
25 whatever, and just submit those in. I do have an affidavit

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1 from Sharon Washburn, and I have a bill. I've asked her for
2 her specific time sheets, you know, but she can only get
3 them to me by October 16th. So I would ask that record stay
4 open, you know, just in case you want the time sheets that
5 are behind her bill, because her bill is just a one-page
6 thing.
7 MS. ROBESON: Okay. All right. Why don't you
8 submit your invoice that you have with you today. Is that
9 what you said you have, the invoice today?
10 MR. MOHAMMADI: I have the invoice, yes.
11 MS. ROBESON: Okay. That's fine. We'll do that,
12 and you have Sharon Washburn's affidavit?
13 MS. ROSEN: Yes. I also have her invoice. You
14 know, what I have, what I'm going to be submitting is,
15 basically I have my invoices, you know, from my bills, you
16 know, on just a summary sheet, and then I have Sharon
17 Washburn's invoice, and I have a short affidavit from her,
18 but I did ask her if she could also submit time sheets
19 because of, you know, the nature. It's just like a, her
20 invoice just has like a one-paragraph description. So I
21 thought you might want time sheets behind it.
22 MS. ROBESON: All right.
23 MS. ROSEN: That's why I asked her -- you know,
24 because my billing statements, the way I do mine, mine
25 describe, you know, what I'm doing. So I'd just asked

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1 that --
2 MS. ROBESON: How about yours, Mr. Mohammadi?
3 MS. ROSEN: Yes.
4 MR. MOHAMMADI: Mine do, but I have redacted some
5 things that were, I believe, attorney-client privilege or
6 work product. So --
7 MS. ROBESON: All right. Well, we'll take --
8 MR. MOHAMMADI: -- there's some redactions, but --
9 MS. ROBESON: Right. We'll take a look at them.
10 MS. ROSEN: Okay.
11 MR. MOHAMMADI: If necessary, I can produce them
12 without, but I would prefer not to.
13 MS. ROBESON: Okay. That's fine. All right. So
14 when we come back at 2:20, we will hear closing arguments
15 and I'll accept the invoices. Yes.
16 MR. MOHAMMADI: May I put on some rebuttal
17 witnesses, as well, or no?
18 MS. ROBESON: Yes.
19 MR. MOHAMMADI: It won't be -- I don't think it'll
20 be very long.
21 MS. ROBESON: No, you have, you're, you're -- I
22 think you're absolutely correct, you get surrebuttal --
23 MR. MOHAMMADI: Okay.
24 MS. ROBESON: -- under the rules.
25 MR. MOHAMMADI: All right. It won't be very

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1 extensive, in my, in my belief, but --
2 MS. ROBESON: You can --
3 MS. ROSEN: Can you just identify who those
4 witnesses will be and about how long?
5 MR. MOHAMMADI: It's going to be Mr. Bruno,
6 Ms. Bentolila, and Peter Ball.
7 MS. ROBESON: You are entitled to that. So maybe
8 I was wishful thinking a little bit, but no --
9 MR. MOHAMMADI: Sorry.
10 MS. ROBESON: No, no, don't apologize. All right.
11 That's --
12 MS. ROSEN: We could, I'm saying, we could
13 probably save a little time, also, with reference to the,
14 you know, with the -- I don't think the attorney's fee stuff
15 will take very long, you know, to submit both on either
16 side, but --
17 MS. ROBESON: We don't typically --
18 MS. ROSEN: Yes.
19 MS. ROBESON: -- we don't cross-examine on the --
20 MS. ROSEN: Right.
21 MS. ROBESON: Now, what we do is leave the record
22 open --
23 MS. ROSEN: Okay.
24 MS. ROBESON: -- for a certain number of days in
25 case the parties wish to challenge what's on the statement,

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1 but we don't have a full hearing on the attorney's fees.
2 MS. ROSEN: Right. That's usually the way it's
3 done in the CCOC. So --
4 MS. ROBESON: Yes.
5 MS. ROSEN: Okay.
6 MS. ROBESON: All right. Okay. So we'll be back
7 at 2:20.
8 MS. ROSEN: Thank you. We will finish today. We
9 will.
10 MS. ROBESON: No, it's --
11 MS. ROSEN: We will.
12 MS. ROBESON: -- okay. It's okay.
13 (Whereupon, at 1:22 p.m., a luncheon recess was
14 taken.)
15 MS. ROBESON: All right. With that, we're back on
16 the record. Mr. Mohammadi.
17 MR. MOHAMMADI: Yes, preliminary, though, at this
18 point, procedurally, I'm going to ask that the expert
19 testimony be stricken, and it's on a technical issue really.
20 Ms. Washburn testified throughout her testimony and gave a
21 number of opinions, but none of them were opinionated to a
22 reasonable degree of probability within the profession. It
23 was just an opinion, and I think that's a -- it is a
24 technicality, but I think that's a requirement of expert
25 testimony. She never did that. She never said it's on, to

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1 a reasonable degree of probability within the, within the
2 profession.
3 And so we will -- I would move to strike the
4 entirety of her opinions as a result of that, and I think
5 that is important, especially on appeal, if it goes there,
6 et cetera. Her testimony under oath that it is in fact what
7 the standard is in the industry and it's within the industry
8 standard makes her testimony expert testimony; otherwise, it
9 simply becomes laywitness opinion.
10 And so by not saying that and by not opinionating
11 that her testimony is to a reasonable degree of probability
12 within the profession, as an architect, I think it takes it
13 out of the realm of expert testimony and it just makes it
14 laywitness testimony, and since it's technical, she can't
15 give that kind of testimony unless it is to that degree. So
16 I would move to strike that testimony.
17 MS. ROBESON: Ms. Rosen.
18 MS. ROSEN: Well, first of all, this is an
19 administrative proceeding, and the rules are a little bit, a
20 little bit more relaxed. Second of all, I think that, you
21 know, I find it interesting that he makes that argument
22 because I think you can say the same thing for his expert's
23 testimony.
24 I think it's also untimely at this point. If he
25 was going to make these objections, it should have been made

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1 while she was testifying. Certainly, you know, she was
2 testifying as an expert. There was no question she was
3 testifying as an expert, and I think this motion, whatever
4 you want to call it, should be denied.
5 MS. ROBESON: I understand what you're saying,
6 Mr. Mohammadi, because I did notice that as I went through
7 her testimony in preparation for this hearing. However, I
8 agree with Ms. Rosen, it is -- this is an administrative
9 proceeding, and it goes to, in my view, it goes more to the
10 weight of the evidence than it does to striking the
11 evidence. So I am going -- I am not going to strike it.
12 All right?
13 MR. MOHAMMADI: Okay. All right. I'd like to
14 call Ms. Bentolila.
15 (Witness previously sworn.)
16 MS. ROBESON: Ms. Bentolila, you are still under
17 oath.
18 THE WITNESS: Okay.
19 SURREBUTTAL DIRECT EXAMINATION
20 BY MR. MOHAMMADI:
21 Q Good afternoon. Ms. Bentolila, did you hear
22 testimony that the work being done, that the work -- that
23 there has been recently work being done on Mr. Ball's house?
24 A Yes.
25 Q Okay. Have you observed anything like that?

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1 A One afternoon they were trying to put
2 waterproofing on the roof that had -- part of the roof
3 paper, black tar paper had blown off; so they were trying to
4 cover those bare spots.
5 Q Okay. And how do you know that's what they were
6 doing?
7 A Because I could see it.
8 Q Okay. And do you know how Mr. Ball found out that
9 he needed to do that?
10 A I called him.
11 Q And what did you tell him?
12 A There were bare spots on the roof.
13 Q Okay. And when was this approximately?
14 A September.
15 Q Of this year?
16 A Of this year, August/September.
17 Q Okay. And did you actually observe the work being
18 done?
19 A Yes.
20 Q From your house?
21 A Yes.
22 Q And how long did that work last?
23 A An afternoon --
24 Q Okay.
25 A -- if that.

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1 Q And you also just heard Dr. Barr testify that part
2 of the architectural guidelines require floor plans?
3 A Yes.
4 Q When you had your house rebuilt and when you
5 submitted your plans, did you submit floor plans?
6 A No.
7 Q Were you ever required to submit floor plans?
8 A They asked, and my builder said no.
9 Q Okay. And you didn't, and they let you finish
10 your construction?
11 A Yes.
12 MR. MOHAMMADI: Nothing further.
13 THE WITNESS: Thank you.
14 MS. ROBESON: Cross -- just a second,
15 Ms. Bentolila.
16 SURREBUTTAL CROSS-EXAMINATION
17 BY MS. ROSEN:
18 Q Okay. You just testified that you observed
19 workers putting waterproofing on the roof and that you could
20 see it. How far away were you from, from where the workers
21 were putting this up on the roof? Where were you standing
22 or sitting where you saw this?
23 A In my house.
24 Q And how far is that from the, how far -- what's
25 the distance from your house to the roof where these workers

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1 were working, how many feet approximately?
2 A I have no idea. My house is across the street
3 from Peter's, but it's very obvious, when you have a big
4 roof, that there's two people up there and where there was a
5 bare spot, there's not.
6 MS. ROBESON: Your house is higher, correct?
7 THE WITNESS: Uh-huh.
8 MS. ROBESON: Yes.
9 BY MS. ROSEN:
10 Q And where were you in your house when you saw the
11 work being done?
12 A Probably, at one point, the kitchen. My kitchen
13 window looks into his house. I have various windows that
14 look in across the street.
15 Q Okay. But do you recall specifically where you
16 were in your house at the time you saw the work being done?
17 A Well, at one point, the kitchen; another point, I
18 took my dog out the front door.
19 Q What did you observe that made you believe that
20 they were putting waterproofing on the roof as opposed to
21 doing something else? I mean, how did you actually know
22 that?
23 A Well, before there were bare spots, you could see
24 the wood, and after they finished, they were covered.
25 Q Okay. Bare spots, what do you mean? Where were

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1 these bare spots? I'm getting a little bit confused. On
2 top of the roof?
3 A Yes.
4 Q Okay. And is your testimony that you could see
5 the top of the roof from when you were in the kitchen and
6 outside with the dog?
7 A Yes.
8 Q Okay.
9 MS. ROSEN: No further questions.
10 MS. ROBESON: Mr. Mohammadi.
11 SURREBUTTAL REDIRECT EXAMINATION
12 BY MR. MOHAMMADI:
13 Q Your house is not only taller than Mr. Ball's
14 house, but it's also on top of a hill, correct?
15 A Yes.
16 Q So it's already built on a higher point than
17 Mr. Ball's house, correct?
18 A Yes.
19 Q Okay. And when you observed the bare spots and
20 you informed Mr. Ball about that, that wasn't necessarily
21 when you were outside, but that was sometime when you were
22 in the house, looking out your window, correct?
23 MS. ROSEN: Okay. I'm going to object. He's
24 leading.
25 MS. ROBESON: Can you rephrase?

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1 MR. MOHAMMADI: Sure.
2 BY MR. MOHAMMADI:
3 Q Do you remember exactly where you were when you
4 saw the bare spots and then you called Mr. Ball?
5 A Like I testified earlier, I was either in my
6 kitchen, I was out my front door, I was pulling out of my
7 driveway, all of which are visible -- Peter's roof is
8 visible to my house.
9 MS. ROBESON: Okay.
10 MR. MOHAMMADI: Nothing further.
11 MS. ROBESON: All right. Any recross?
12 SURREBUTTAL RECROSS EXAMINATION
13 BY MS. ROSEN:
14 Q Just to clarify, what floor in your house is the
15 kitchen on?
16 A First floor.
17 Q Okay. And is the kitchen, is your kitchen higher
18 than, higher than or at the same height level as the roof of
19 Mr. Ball's house?
20 A No.
21 Q Okay. So then how would you be able to see the
22 bare spots on his roof from the kitchen?
23 A Because the roof is this big empty space and, when
24 the black tar paper or whatever it is was blown off in a
25 storm, you could see bare wood.

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1 Q Bare wood on top of the roof?
2 A Yes.
3 MS. ROSEN: No further questions.
4 MS. ROBESON: All right.
5 MR. MOHAMMADI: Just one. I'm sorry, just one.
6 MS. ROBESON: All right.
7 FURTHER SURREBUTTAL REDIRECT EXAMINATION
8 BY MR. MOHAMMADI:
9 Q The roof is sloped, correct?
10 A Yes.
11 MR. MOHAMMADI: Nothing further.
12 MS. ROBESON: Okay. Thank you, Ms. Bentolila.
13 THE WITNESS: You're welcome.
14 MS. ROBESON: Your next witness?
15 MR. MOHAMMADI: Charles Bruno, please.
16 (Witness previously sworn.)
17 MS. ROBESON: Mr. Bruno, you're still under oath.
18 SURREBUTTAL DIRECT EXAMINATION
19 BY MR. MOHAMMADI:
20 Q Mr. Bruno, were you present when Mr. Gibson
21 testified that no vote took place at the October 7th
22 meeting?
23 A Yes.
24 Q October 7, 2013, correct?
25 A Yes.

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1 Q Were you present at that board meeting?
2 A Yes, I was.
3 Q Is it your testimony that there was in fact a vote
4 that took place?
5 A Yes, there was.
6 Q Okay. And what was the vote, to your
7 understanding?
8 A The vote was not to bring this case against Peter.
9 Q Okay. Did you have any subsequent communications
10 regarding that vote with Mr. Gibson or anybody from the
11 board?
12 A Yes, with Mr. Gibson.
13 Q Okay.
14 MR. MOHAMMADI: Unfortunately, I only have one
15 copy of these e-mails because I just received these this
16 morning.
17 MS. ROBESON: Okay.
18 MR. MOHAMMADI: So I'll need to make copies,
19 but --
20 MS. ROBESON: Okay. Well --
21 MR. MOHAMMADI: -- what would you like me to do?
22 MS. ROSEN: May I see them? Have I seen them?
23 I'm not sure.
24 MR. MOHAMMADI: No, you have not. So I'll give it
25 to you in a second, but I'm trying to figure out how to mark

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1 these.
2 MS. ROBESON: Well, let me have them copied for
3 everyone.
4 MR. MOHAMMADI: Okay.
5 MS. ROBESON: We'll go off the record for two
6 minutes, just --
7 MS. ROSEN: Yes, I'd like to look at them. I
8 don't want to be like a broken record, but you know, it's,
9 had a lot of back-and-forth with --
10 (Whereupon, at 2:35 p.m., a brief recess was
11 taken.)
12 MS. ROBESON: These are yours.
13 MR. MOHAMMADI: Thank you.
14 MS. ROBESON: And here are, I'm sorry, a set for
15 Ms. Rosen, and that's for -- and then I am going to put this
16 set -- do you want to look at these and make sure they're
17 correct? These will be the ones that go in the record.
18 MS. ROSEN: I'd like to read them first.
19 MR. MOHAMMADI: They're the same one.
20 MS. ROBESON: I'm sorry?
21 MS. ROSEN: I'd like to just get a chance to read
22 them first because --
23 MS. ROBESON: Oh, yes. I meant --
24 MS. ROSEN: -- I've never seen them.
25 MS. ROBESON: -- I meant potentially the ones as

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1 opposed to the copies.
2 MR. MOHAMMADI: So let me just make sure you got
3 two. These are -- those two are the same one. There's --
4 MS. ROBESON: That you had, right.
5 MR. MOHAMMADI: No, no, no, but the two you have
6 are identical to each other.
7 MS. ROBESON: Oh.
8 MR. MOHAMMADI: There's another one. This, yes,
9 there you are.
10 MS. ROBESON: No.
11 MR. MOHAMMADI: No, that's it. That's it. These
12 are the two.
13 MS. ROBESON: That is it? Oh, okay. They're not
14 admitted yet, Ms. Rosen.
15 MS. ROSEN: Yes, I know. I just want to read
16 them, but I've never seen them before, and I know we've had
17 some back-and-forth in terms of people not providing
18 documents, this and that, but I will say that at least when
19 I become aware, I try to provide them before the hearing.
20 MS. ROBESON: All right. So --
21 MS. ROSEN: I am, I'm sorry, I am going to object
22 to these documents because, if I had had these documents,
23 even if I had had them over the weekend or Friday given to
24 me, I could have, let's say, for example, had Peter Gibson
25 come in today, but having them sprung upon me at this moment

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1 in time, I think that it's unfair. It's not like he even
2 provided them to me. He could have e-mailed. I mean, at
3 least when I find a document, I try -- I send it by an
4 e-mail, I scan it. I don't wait until we're in the middle
5 of the hearing, with the witness sitting right here, and
6 say, oh, by the way. I think this is just getting a little
7 too much.

8 MS. ROBESON: Mr. Mohammadi.

9 MR. MOHAMMADI: I'll ask Mr. Bruno, but I received
10 these today, this morning. So I don't have any other way to
11 provide them. The other thing I would note is I am under no
12 obligation to provide these. One, they're not responsive to
13 any discovery requests. These are communications between
14 Mr. Bruno and Peter Gibson. I'm not privy to those, neither
15 is my client. The second part of it is they're for
16 impeachment purposes.

17 MS. ROBESON: Yes.

18 MR. MOHAMMADI: So I don't have an obligation
19 either to provide impeachment materials, and quite frankly,
20 this only became relevant since the last hearing when
21 Mr. Gibson basically redacted his statement that a vote took
22 place on October 7, which he previously did say.

23 And so this is just to impeach that, and again,
24 one more -- I know I said this, but I only received this
25 this morning. I would have scanned it otherwise. I agree,

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1 I would have scanned it and sent it, but I just received it.
2 So --

3 MS. ROBESON: I --

4 MR. MOHAMMADI: They are certainly relevant,
5 though, with respect to that testimony.

6 MS. ROSEN: Well, I will just note that Mr. Bruno
7 has been here pretty much, I think, almost every, if not,
8 every hearing in this case. So I would have to think that,
9 that he was aware of these documents and probably spoke to
10 Mr. Mohammadi, otherwise, obviously, you know, wouldn't know
11 that, but it just seems a little incongruous to me that this
12 just pops up at this very moment in time. I mean --

13 MR. MOHAMMADI: Obviously Mr. Bruno is an
14 interested homeowner in the community. He has brought his
15 -- he previously brought his own case against this HOA. So,
16 yes, he has been here, but he's not my client; he's not a
17 party to this case.

18 MS. ROBESON: Yes. I am going to let them in and
19 give them the weight they deserve. 176 will be -- these are
20 both on November 26.

21 MR. MOHAMMADI: Yes. I'd just mark them 176
22 together and then --

23 MS. ROBESON: All right. I'm going to make the
24 one with the 12:31 p.m. time stamp, that'll be 176(a), and
25 176(b) is the other one. And they'll be, E-mail Chain

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1 Between Bruno and Gibson. Okay. Go ahead, Mr. Mohammadi.
2 (Exhibit Nos. 176(a) and (b)
3 were marked for identification
4 and received in evidence.)

5 BY MR. MOHAMMADI:

6 Q Is this an exchange that you had with Mr. Gibson?
7 A Yes, it is.

8 Q Or is this a true and accurate copy of the e-mail
9 exchange that you had, both of these?
10 A Yes.

11 Q Okay. Just to summarize, what do these e-mails --
12 what does Mr. Gibson say in these e-mails?
13 MS. ROSEN: Objection. The e-mail speaks for
14 itself.

15 MS. ROBESON: That's true.

16 MR. MOHAMMADI: Okay.

17 BY MR. MOHAMMADI:

18 Q Did Mr. Gibson provide you any explanation as to
19 why the vote was taken on October 28th?
20 MS. ROSEN: Well, are we talking about an
21 explanation outside of this e-mail? I just want to be
22 clear.

23 MR. MOHAMMADI: It doesn't matter, any
24 explanation.

25 MS. ROSEN: Well, the e-mail speaks for itself.

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1 So that's why I'm asking.

2 MS. ROBESON: Well, I'm going to let him answer
3 it. Go ahead.

4 THE WITNESS: He said that mainly they wanted to
5 exert pressure on Mr. Ball to settle, that they thought
6 filing the case would move him to settlement.

7 BY MR. MOHAMMADI:

8 Q Okay. And with respect to the October 7th, 2013,
9 meeting and what you testified to as vote, did he say
10 anything about that meeting and vote?
11 A Well, what I have is in the letter --

12 Q Okay.

13 A -- you know. We did speak about it, and he put in
14 the letter also that it was genuine. I mean, I saw a
15 motion. I mean, I saw a motion and a vote.

16 Q At the October 7 --

17 A Yes.

18 Q -- 2013 --

19 A Yes, I did.

20 Q Okay. Do you know who brought the motion?
21 A I can't recall.

22 Q All right. Now, there's also been some
23 discussions about sections that were submitted in this case.
24 Have you ever seen any sections submitted?
25 A Yes, I have.

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1 Q Okay. When was the first time you saw sections?
2 A One meeting that my wife didn't go to, I attended
3 at Carl Baker's house -- this was weeks before the approval
4 -- and the sections were at that meeting.
5 Q Okay. And who else was present at that meeting?
6 A Peter Gibson, Dr. Barr, and Mr. Ling, Jamie Deise,
7 Carl Baker.
8 Q And was Mr. Ball present?
9 A Yes, Mr. Ball and, I believe, Mr. Deaver.
10 Q Okay. And how do you know Dr. Barr actually saw
11 the sections at that meeting?
12 A I can't say he saw them, but the sections were
13 there at the meeting. I saw them with Peter Gibson because
14 Peter Gibson didn't understand them.
15 Q Okay. And this meeting was prior to the meeting
16 in which the application was approved?
17 A This was weeks before, because my wife would have
18 never had done these unless she was requested to by
19 Dr. Barr.
20 MS. ROSEN: I'm going to object to him testifying
21 as to what his wife would have done or not done. His wife
22 could have been here to testify.
23 MS. ROBESON: Sustained.
24 MR. MOHAMMADI: Nothing further.
25 SURREBUTTAL CROSS-EXAMINATION

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1 BY MS. ROSEN:
2 Q Okay. Mr. Bruno, the meeting of October 7th, was
3 your understanding that was a special meeting of the board
4 of directors?
5 A Yes.
6 Q Okay. Did you receive a notice concerning that
7 special meeting --
8 A Yes, I did.
9 Q -- do you recall? Okay. And I'm just going to
10 ask you if you can look at what was previously marked as
11 Exhibit 95.
12 A Uh-huh.
13 Q Okay. Do you recognize that? Do you recognize
14 that letter, for example?
15 A Well, if I got it. I mean --
16 Q Okay.
17 MS. ROBESON: I mean, if you don't, you don't.
18 BY MS. ROSEN:
19 Q Do you recall this, this -- do you recall
20 receiving this notice --
21 A Yes, I do.
22 Q -- about the special meeting?
23 A Yes, I do.
24 Q Okay. And I'm going to turn your attention to the
25 second page of that where it says, Agenda.

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1 A Uh-huh.
2 Q And that was the agenda for the special meeting.
3 Is that that notice that you received?
4 A Yes.
5 Q Okay. Thank you.
6 A Uh-huh.
7 Q Just give me one second. The meeting that you
8 were just, that you were just testifying about that you
9 indicate took place a few weeks before the May meeting, is
10 that the, which -- was that the meeting of March 31 of 2011?
11 Do you recall?
12 A Which meeting?
13 Q Well, you just testified that you were at a
14 meeting where you said that there were sections, that people
15 were looking at sections.
16 A Yes.
17 Q When did that meeting take place?
18 A Probably four weeks, about a month before the
19 submission.
20 Q Would that have been in March of 2011, possibly?
21 A I don't know the date.
22 Q I'm going to show you a document which was
23 previously marked as Exhibit 75, and they're some, copies of
24 some minutes of a board meeting, March 31 of 2011. Have you
25 ever seen those minutes before?

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1 A No.
2 Q Do you recall whether that was the meeting at
3 which you allege sections were present?
4 A I don't know. I don't know.
5 MS. ROSEN: I have no further questions. Thank
6 you.
7 MS. ROBESON: All right. Redirect, Mr. Mohammadi.
8 SURREBUTTAL REDIRECT EXAMINATION
9 BY MR. MOHAMMADI:
10 Q Just to be clear, the vote, to the best of your
11 recollection, the vote that took place on October 7, 2013,
12 was that a vote to affirm the approval of Mr. Ball's
13 application or was that a vote to determine whether a new
14 CCOC case should be filed?
15 A That was a, that was a vote not to take him, not
16 to go with this hearing.
17 Q Not to go to the CCOC hearing?
18 A Yes, this hearing, yes.
19 Q Okay.
20 MR. MOHAMMADI: Nothing further.
21 MS. ROSEN: Did you -- I'm sorry.
22 MS. ROBESON: Recross.
23 MS. ROSEN: Okay.
24 SURREBUTTAL RECROSS EXAMINATION
25 BY MS. ROSEN:

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1 Q At that meeting, was there not, was there not the
2 purpose of this meeting, according to the agenda that you
3 said that you received, for example, wasn't one of the
4 purposes of this meeting to affirm actions taken by the
5 board previously, including but not limited to the approval
6 of the conditional approval of the application at Mr. Ball's
7 property?
8 A That was the purpose.
9 Q Right. And that was the purpose of the meeting,
10 and that was based upon an order from the case that you had
11 filed, correct?
12 A Yes.
13 Q And these actions that are referenced in the
14 agenda, they did occur at this meeting, isn't that correct?
15 A Not really.
16 Q What do you mean not really?
17 A They just took a blanket vote to affirm every
18 action they did in the past. It was a blanket --
19 Q Okay. So they did --
20 A -- they didn't even discuss it. They didn't even
21 discuss any of it at the meeting, and then it went into
22 Peter Ball's architectural thing.
23 Q It's fair to say that there was more than one
24 issue, more than one issue discussed at, and/or voted, this
25 meeting, correct?

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1 A Yeah, sure. Yeah.
2 Q Okay. All right. Thank you.
3 MS. ROSEN: No further questions.
4 MS. ROBESON: All right.
5 MR. MOHAMMADI: Thank you.
6 MS. ROBESON: You may be excused.
7 MR. MOHAMMADI: All right. I'd like to call
8 Mr. Ball.
9 (Witness previously sworn.)
10 MS. ROBESON: Mr. Ball, you're still under oath.
11 SURREBUTTAL DIRECT EXAMINATION
12 BY MR. MOHAMMADI:
13 Q Showing you what's been marked as Exhibit 148, as
14 well as Exhibit 171, could you take a look at those
15 exhibits, please?
16 MS. ROBESON: Wait. Can you give me a moment to
17 get to those?
18 MS. ROSEN: Wait. Yes, give us all an opportunity
19 to get to them.
20 MR. MOHAMMADI: Oh, I apologize.
21 MS. ROBESON: I have to shift files. I'm sorry.
22 MS. ROSEN: I have to find --
23 MS. ROBESON: Okay. I've got 148.
24 MS. ROSEN: I've got to find 171.
25 MS. ROBESON: And then 171 was admitted today,

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1 correct?
2 MR. MOHAMMADI: Correct.
3 MS. ROBESON: And it would be the --
4 MS. ROSEN: What is 171?
5 MS. ROBESON: -- two sections that were attached
6 to the --
7 MS. ROSEN: Oh, okay.
8 MS. ROBESON: -- I think that's what it is.
9 MR. MOHAMMADI: No. That was a set of -- 171 --
10 MS. ROBESON: Is the full --
11 MR. MOHAMMADI: Plan, that's right.
12 MS. ROSEN: Oh, okay. That's --
13 MS. ROBESON: Do you recognize it, Ms. Rosen, just
14 so you know what we're --
15 MS. ROSEN: Yes, I know. I have it here. It's --
16 MS. ROBESON: Okay.
17 MR. MOHAMMADI: Right there, yes.
18 MS. ROSEN: Okay, 170. Okay. Just like to --
19 MS. ROBESON: All right.
20 MS. ROSEN: -- have it in front of me at the same
21 time.
22 THE WITNESS: Yes, I do.
23 BY MR. MOHAMMADI:
24 Q Okay. You heard Dr. Barr testify that one had a
25 trellis, I think that's --

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1 A Yes.
2 Q -- what he said, and another one doesn't?
3 A Yes.
4 Q Okay. Could you please state why there's a
5 difference between the two plans?
6 A Exhibit 148 is a revised plan of, dated 4/6/11, of
7 a previous set of plans, and these were the plans, I
8 believe, that were sent, dropped off by me to Dr. Barr on
9 the 14th.
10 MS. ROBESON: Wait. Which were the plans? The --
11 THE WITNESS: 148.
12 MS. ROBESON: 148. Okay.
13 THE WITNESS: Yeah, these were the plans that were
14 dropped off at his house I guess on the 14th of April, 2011.
15 Exhibit 171, they don't look, they don't look complete
16 because it doesn't have -- I don't know. They're the
17 identical plans with the exception that there's a rear
18 trellis that, that shows up on the, what would be A1, all
19 right, which tells me that these were the plans that were
20 drawn up sometime in February or March of 2012 after Raj
21 Barr, Peter Gibson, and Tania Bruno had come to the house to
22 look at the shed that was being built. All right?
23 One of the things that we had discussed was how I
24 could use, how could I use horizontal vinyl siding at the
25 rear of the house, and one suggestion was -- and Raj Barr

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1 said, you know, it was, it was this massing issue -- so one
2 option that I had mentioned was, what if we had, we create
3 some sort of trellis, okay, on the back of the house. He
4 says, yeah, that would break things up, all right, and
5 that's why I had Tania draw up and submit -- these are the
6 plans that the construction plans, my construction plans to
7 DPS comes from. I submitted the DPS plans sometime in
8 August of 2012, all right, and I used the most recent set of
9 plans that I have from Tania, which included the trellis.

10 BY MR. MOHAMMADI:
11 Q Is there any intention to build that trellis?
12 A No, and I mean, it wasn't approved. We never even
13 really applied for the trellis. It was something that Raj
14 had talked about, and when I submitted a copy of this to him
15 to see if we could get our vinyl siding, he, he nixed the
16 idea of the vinyl siding. So, you know, we never pursued
17 this any further.
18 Q Okay. All right.
19 MS. ROBESON: I'm sorry. Can you go over for me
20 the time -- these 171s, I just want to make sure I'm clear,
21 what were these plans?
22 THE WITNESS: All right. Maybe I can step back
23 further in terms of the time line. There was -- the
24 original plans that we submitted, when I first hired Tania
25 back in 2010, was -- our first set of plans through the HOA

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1 was a set of plans with a gable roof over the garage.
2 MS. ROBESON: Right, I remember that.
3 THE WITNESS: All right. And the reason we, we, I
4 started with that was because my next-door neighbor, the
5 Millers now --
6 MS. ROBESON: Right. Well, I don't want you to --
7 THE WITNESS: Okay.
8 MS. ROBESON: -- revisit all of that.
9 THE WITNESS: No. Okay.
10 MS. ROBESON: I'm sorry. I just want -- I did not
11 get exactly where these plans came from, 171.
12 THE WITNESS: Okay. 171? Okay. 171 and 148 are
13 identical plans with the exception of the trellis.
14 MS. ROBESON: Okay.
15 THE WITNESS: In February of 2012, when I had
16 started build the deck on the side of the house and Raj
17 Barr, Peter Gibson, and Tania Bruno came to look at the
18 deck, after looking at the deck, one of the things I --
19 well, since they were there, I asked them about the vinyl
20 siding issue, all right, and Raj said, well, you can't use
21 vinyl siding because of this massing issue.
22 MS. ROBESON: Yes.
23 THE WITNESS: So we started talking, what can we
24 do, all right --
25 MS. ROBESON: Right.

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1 THE WITNESS: -- if we added, it would break up
2 the mass, and things such as a brick chimney was discussed,
3 all right, and which kind of didn't make sense because there
4 were no chimneys, all right, in the back of the house. So I
5 brought up the point of, well, what about a trellis on the
6 first floor? He said, well, that, you know, that would
7 break up the mass. So that's how it came. Sometime in
8 February or March of 2012, Tania drew, added that trellis to
9 Exhibit 148 plan and -- which I submitted to Raj. All
10 right?
11 MS. ROBESON: When? When?
12 THE WITNESS: It must have been --
13 MS. ROBESON: Was it the December 16th submission?
14 THE WITNESS: No. No.
15 MS. ROBESON: No.
16 THE WITNESS: No, no, no. It was submitted
17 sometime, probably March, February/March of 2012.
18 MS. ROBESON: Okay. All right.
19 THE WITNESS: All right?
20 BY MR. MOHAMMADI:
21 Q And just to be clear, that was submitted because
22 you were trying to get some kind of approval on this
23 horizontal vinyl siding?
24 A That's correct. That's correct.
25 Q And the reason you submitted this plan with the

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1 trellis was because of a suggestion by Raj Barr, the way
2 to --
3 MS. ROSEN: Okay. I'm going to object to him
4 testifying. I mean, Mr. Mohammadi should not be testifying.
5 MR. MOHAMMADI: It's his testimony. I'm just
6 clarifying.
7 MS. ROBESON: It's leading. I do understand now.
8 MR. MOHAMMADI: Okay.
9 MS. ROBESON: You don't need to clarify anymore.
10 MR. MOHAMMADI: All right. I do want to point
11 something else out then.
12 BY MR. MOHAMMADI:
13 Q If you, just to reiterate --
14 MS. ROBESON: Non-leading.
15 MR. MOHAMMADI: Right.
16 BY MR. MOHAMMADI:
17 Q Just to reiterate this vinyl siding issue, could
18 you take a look at, on 148 A4 and the corresponding set of
19 plans on 171, which would be page 7?
20 A Yeah. The --
21 Q Hold on one second. Let everybody get to it.
22 MS. ROBESON: Wait. Which is page --
23 MR. MOHAMMADI: A4 on 148 and --
24 MS. ROBESON: Got that.
25 MR. MOHAMMADI: -- page 7 on 171.

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1 MS. ROBESON: Okay.
2 MS. ROSEN: I just want to make sure --
3 MR. MOHAMMADI: You got it.
4 MS. ROSEN: -- is this page 7?
5 MR. MOHAMMADI: That's the one.
6 MS. ROBESON: Is it the cross sections? Is that
7 what you're -- or the page before?
8 MR. MOHAMMADI: I think it's -- let me see the
9 page before. It's this --
10 THE WITNESS: The page before.
11 MS. ROBESON: Okay.
12 MR. MOHAMMADI: It's this one.
13 MS. ROBESON: Okay.
14 THE WITNESS: Front and rear elevation.
15 MS. ROBESON: All right. I see the left side,
16 right side, and a cross section showing --
17 MR. MOHAMMADI: No.
18 THE WITNESS: It's the front and rear elevation.
19 MR. MOHAMMADI: A4 on 148 is the front and left
20 elevations, and then there's a corresponding one on 171
21 that's the same exact --
22 MS. ROBESON: I'm sorry. I'm sorry. Oh, I see
23 what I did. Some of them are marked A and -- this one?
24 MR. MOHAMMADI: That's the one.
25 MS. ROBESON: Okay.

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1 BY MR. MOHAMMADI:
2 Q Do you --
3 MS. ROBESON: Which only, for the record, it only
4 has the front and rear elevations on it. Okay. Go ahead.
5 BY MR. MOHAMMADI:
6 Q Is there any other difference between A1 and page
7 7 of 171 that you notice?
8 A Well, the -- on 171 the horizontal siding has,
9 those lines have been taken out; it just shows a blank wall
10 in both the front and rear elevation, where in Exhibit 148
11 the vertical line for the horizontal siding is shown.
12 MS. ROBESON: A vertical line or --
13 MR. MOHAMMADI: Horizontal line.
14 THE WITNESS: I mean, horizontal.
15 MS. ROBESON: Yes. Okay.
16 BY MR. MOHAMMADI:
17 Q Do you know why in 171 the horizontal lines were
18 taken out?
19 A I don't even know.
20 Q Okay. All right. All right. Do you recall on
21 Exhibits 159 and Exhibit 160 there were some notation,
22 handwritten notation that said Approved?
23 A Oh, yes. Yes.
24 Q Could you just explain what that means?
25 A They took it --

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1 Q Who's they?
2 A When Dr. Barr testified earlier today, they took
3 these exhibits out of context. In, I believe, May of this
4 year, 2014, I submitted, my son and I submitted for the, to
5 the board for their approval on the deck issue, all right,
6 because the CCOC had ordered us to resubmit our plans, we
7 resubmitted plans to the board for their approval of the
8 deck and the shed. There was a board meeting, and because
9 the plan only had the word shed on it, I mean, deck on it,
10 Raj would not even consider deck and said, because you don't
11 have a deck -- a shed on it, we're only going to consider
12 the deck, and that was approved.
13 We did -- subsequently, Ms. Rosen filed a motion
14 with the CCOC to order us, requesting an order, directing us
15 to remove the shed. The exhibit that you're referring to
16 today are exhibits that I included in our response to the
17 CCOC. In other words, there was a, one exhibit showing what
18 had been approved in May of, 10th of 2011 and also a plan
19 showing what was approved, quote, deck, in May of 2014.
20 That's why I made those notation exhibit, all right,
21 Approved. Those were approval of May 14th, I guess, 2014.
22 All right? It wasn't meant, as a, as he had suggested, that
23 they had somehow approved those plans. All right?
24 MS. ROBESON: Okay.
25 THE WITNESS: That's how, that's how it came

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1 about. All right.
2 BY MR. MOHAMMADI:
3 Q And they were only used in this other, in 73-12,
4 correct?
5 A Only in response to Ms. Rosen's request to have
6 the shed removed.
7 Q Okay. Did you hear testimony from Dr. Barr that
8 you never provided any permits in -- in violation of the
9 contingent approval of May 2011?
10 A I heard what he said.
11 Q Okay. Did you or did you not ever provide
12 permits?
13 A Yeah, what he said was completely true. We never
14 did anything, we didn't put one nail into one piece of wood
15 without first delivering a copy of the permit to him. Now,
16 I will tell you, we never were able to deliver the permit
17 directly to Mr. Barr's hand. We'd knock on the door. No
18 one ever answered the door, on two occasions -- one for the
19 deck permit; one for the rest of the house permit. So we
20 left them both times in his mailbox, but we did not start
21 the work until the permits were delivered to Raj Barr.
22 MR. MOHAMMADI: Nothing further.
23 MS. ROBESON: Ms. Rosen.
24 MS. ROSEN: Okay.
25 SURREBUTTAL CROSS-EXAMINATION

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1 BY MS. ROSEN:
2 Q Just to clarify here, I'm going to have you look
3 at what was previously introduced as Exhibit 160 that you
4 were just discussing.
5 MS. ROBESON: 160 or 159?
6 MS. ROSEN: 160. Oh, wait. Maybe, actually --
7 actually, let me -- yes, 160. Let me not confuse myself.
8 BY MS. ROSEN:
9 Q Okay. Just to clarify your testimony, this was
10 the, this is what you had submitted. You attached this, as
11 you indicated, on a motion. It says, Submission for Deck
12 Only, and you indicate that what you wrote here, Approved
13 5/12/14, you intended that only to be an approval of the
14 deck, is that correct?
15 A Yes --
16 Q Okay.
17 A -- it says, very simply, Submission for Deck Only.
18 Q I understand that. So you are not contending that
19 the association has approved the structure shown in this
20 drawing, isn't that correct, just the deck?
21 A The answer to your question is, I do believe that
22 this, the -- my plan that was submitted in December of 2013,
23 I deemed them to be approved, because under the covenant of
24 the HOA, they had 45 days to accept or reject it. All
25 right? So the answer is, yes, I do believe it, but on this

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1 particular exhibit, this was only, the word Approval was
2 only applicable to the deck that was approved 5/12/2014.
3 Q You agree that this, what is shown, the entire
4 structure shown on this exhibit, is materially different
5 than what is shown, the structure on Exhibit 126, which we
6 contend are the approved plans?
7 MR. MOHAMMADI: Objection.
8 MS. ROBESON: Basis?
9 MR. MOHAMMADI: It's not really within the scope.
10 MS. ROBESON: I'm going to let it in because --
11 well, wait a minute. Are we going down what's a materially
12 different change --
13 MR. MOHAMMADI: That's what I think it is.
14 MS. ROBESON: -- because I don't want to go down
15 there. I don't think he brought that up. He was explaining
16 the different dates of the different plans.
17 BY MS. ROSEN:
18 Q You would agree that the plan, that what is shown
19 in 160 is not identical to the rear and front elevation as
20 shown in 126, which were the plans approved by the HOA in
21 May of 2011; is that fair to say?
22 A That's correct.
23 Q Okay. Now, just to clarify, I just want to make
24 sure that I understand, Exhibit 171, that was, those plans
25 were drawn up, just to make sure I understand, you testified

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1 those plans were drawn up in March of 2012?
2 A They were drawn up sometime in that, in that
3 period of time, yes.
4 Q Okay.
5 MS. ROBESON: Are you talking about 170 or 171?
6 MS. ROSEN: I'm talking about 170, 170 --
7 MR. MOHAMMADI: 1.
8 MS. ROSEN: -- 171, I'm sorry, 171.
9 MR. MOHAMMADI: Which I think is what you were
10 just looking at.
11 MS. ROSEN: Yes.
12 MS. ROBESON: Okay.
13 MS. ROSEN: 171 is what has been --
14 MS. ROBESON: Cross sections.
15 MR. MOHAMMADI: No.
16 MS. ROSEN: No. 171 is the --
17 MS. ROBESON: Oh, I'm sorry. Yes, I see it.
18 MS. ROSEN: It was this. It's the package that
19 we, I think we just --
20 MS. ROBESON: Right, this one.
21 MS. ROSEN: -- as we previously established, was,
22 are the, is the drawings that were referenced in Exhibit
23 141. Attached is a packet that Tania dropped off yesterday.
24 MR. MOHAMMADI: The one-page cross section is 170,
25 I believe.

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1 MS. ROBESON: Yes. I saw, I -- yes.
2 MS. ROSEN: Okay. Okay. One second.
3 BY MS. ROSEN:
4 Q I believe that you testified Exhibit 148, 148 has
5 no trellis, if I'm remembering correctly, is that correct?
6 A That's correct.
7 Q Okay. Why does 148 have no trellis?
8 A 148 was done on 4/6/2011, all right, before those
9 plans were even, had even been approved.
10 Q Now, you were at the meeting of May 5th, 2011, is
11 that correct? You remember that meeting?
12 A That's correct.
13 Q Okay. And your attorney James Deaver was also at
14 that meeting, isn't that correct?
15 A That's correct.
16 Q And so was Tania Bruno, isn't that correct?
17 A That's correct.
18 Q And the plans that everybody was looking at at the
19 meeting were not 148, isn't that correct?
20 A I'm not sure what plans that people were looking
21 at. All I know is that 148 was the plans that were
22 delivered to Raj Barr on the 14th of April.
23 Q Now, you've seen the e-mail -- hold on. One
24 second. Back to Exhibit, Exhibit 177, I mean, Exhibit 77,
25 you've seen that previously? That's the e-mail from Jamie

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1 Deise --
2 A Yes.
3 Q -- that included Tania Bruno, your architect. Do
4 you recognize that?
5 A I've seen this before, yes.
6 Q Okay. And you notice that Tania Bruno was copied
7 on that e-mail, isn't that correct?
8 A That's correct.
9 Q Okay. And Tania Bruno, to the best of your
10 knowledge, never, never informed the board that the drawings
11 that were attached with this Exhibit 77 were not the correct
12 drawings, isn't that correct?
13 A Well --
14 Q My question to you is, to the best of your
15 knowledge, did she ever inform the board? Do you know
16 whether she informed the board? Yes or no?
17 A I have no, I have no clue.
18 MS. ROBESON: Ms. Rosen.
19 THE WITNESS: But she was also a board member.
20 MS. ROBESON: Well, is that a yes or a no?
21 THE WITNESS: The answer is, when she showed me
22 that e-mail and said that Tania Bruno, I mean --
23 MS. ROBESON: Did she inform -- oh, I see.
24 THE WITNESS: I'm saying, it looks as if those
25 were all sent to all the board members, because I can tell,

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1 because there were four people that came on the board the
2 same time: Lee Alpher, Joseph Su, Ling, and Tania Bruno.
3 They all came on the board the same time. So all four of
4 those names appear on that e-mail. So I assume what Jamie
5 Deise had done was to send it not to Tania Bruno/architect
6 but Tania Bruno/board member.
7 MS. ROBESON: Ah.
8 BY MS. ROSEN:
9 Q So is it then you're testimony that regardless, I
10 mean, it was Tania Bruno? Tania Bruno/architect and Tania
11 Bruno/board member are the same person, are they not?
12 A Yes.
13 Q So, Tania Bruno, to the best of your knowledge,
14 never informed the board or anybody else that these were
15 supposedly the wrong drawings, isn't that correct?
16 A I don't know how to answer that question in the
17 sense that I delivered some plans to Raj -- I know I
18 delivered some on the 14th of April. All right? Tania had
19 delivered things to Raj previously. So I'm not sure what
20 we're talking about.
21 Q Did Tania Bruno ever tell you that these were the
22 wrong -- that the plans that are on this e-mail are the
23 wrong plans?
24 A I have no clue.
25 Q Did Tania Bruno ever tell you at the meeting of

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1 May 5th, 2011, that the plans that everybody was looking at
2 were the wrong plans? Yes or no?
3 A I don't believe the discussion about whether the
4 plans were the right plans, wrong plans, whatever, were ever
5 discussed that evening. All right?
6 Q Well, you looked at those plans at the meeting,
7 did you not?
8 A I don't even recall looking at the plans as much
9 discussing about what we were going to do.
10 Q Would it be fair to say that since the plans were
11 at that meeting, that you certainly had an opportunity to
12 look at them at that meeting? Yes or no?
13 A If the plans were there, I'm sure everybody had a
14 chance to look at it, yes.
15 Q So then your attorney also had an opportunity to
16 look at them, correct?
17 A Yes.
18 Q And so did Tania Bruno, isn't that correct?
19 A Yes.
20 Q Has Tania Bruno from that time until now ever
21 stated to you that the plans that the HOA approved, Exhibit
22 126 slash, I'm going to call it slash 77, are the wrong
23 plans?
24 MR. MOHAMMADI: Objection, still not within the
25 scope.

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1 MS. ROBESON: That's sustained.
2 MS. ROSEN: Okay. I don't think I have any
3 further questions.
4 MS. ROBESON: Mr. Mohammadi.
5 MR. MOHAMMADI: Nothing.
6 MS. ROBESON: All right. Mr. Ball, you're excused
7 as a witness.
8 THE WITNESS: Thank you.
9 MS. ROBESON: All right. We are going to take a
10 five-minute break. Are you prepared for closing arguments
11 and/or -- and attorney's fees? I know there'll be
12 attorney's fees.
13 MS. ROSEN: Yes.
14 MS. ROBESON: All right. So we're going to -- are
15 you, Mr. Mohammadi? You didn't --
16 MR. MOHAMMADI: Yes, I'm ready.
17 MS. ROBESON: Okay. So we're going to take a
18 five-minute break. I'll give you a chance to recoup, and
19 then we'll be back on the record. Well, why don't we just
20 say 3:30. Is that enough time for you?
21 MS. ROSEN: That's fine. Thank you. That's fine.
22 (Whereupon, at 3:17 p.m., a brief recess was
23 taken.)
24 MS. ROBESON: We're back on the record.
25 Ms. Rosen, this is your case. So --

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1 MS. ROSEN: Well, how do we wish -- I mean, I have
2 the attorney's fee -- I indicated that I have, you know, the
3 documentation. I don't know if you just want me to go ahead
4 and submit it. Do you want me to have any kind of testimony
5 on it? I'm just not quite sure how you want to do this.
6 MS. ROBESON: No, we, in the past, we've just
7 submitted it --
8 MS. ROSEN: Okay.
9 MS. ROBESON: -- unless, Dr. Barr, have you
10 reviewed it?
11 MS. ROSEN: Yes, he, I've given -- you know, he's
12 already seen this.
13 MR. BARR: I've seen Sharon's one. I've seen
14 hers, yeah.
15 MS. ROBESON: Okay.
16 MS. ROSEN: Yes, I've provided it. So --
17 MS. ROBESON: And you don't have any questions as
18 to its --
19 MR. BARR: No.
20 MS. ROBESON: -- accuracy? Mr. Mohammadi, do you
21 have your invoice?
22 MR. MOHAMMADI: I have my invoice, yes.
23 MS. ROSEN: My feeling is, you know, help to speed
24 things up a bit, is, you know, we just both submit and then
25 making arguments --

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1 MS. ROBESON: And that's --
2 MS. ROSEN: -- oral argument as to -- I think
3 that's the easy way to do it.
4 MS. ROBESON: Mr. Ball, do you have any questions
5 as to the accuracy of Mr. Mohammadi's invoice?
6 MR. BALL: No, ma'am.
7 MS. ROBESON: All right. Why don't you bring them
8 both up.
9 MS. ROSEN: Ms. Washburn's, it's like a package.
10 I did a cover sheet and then everything in it.
11 MS. ROBESON: Okay.
12 MR. MOHAMMADI: Mine is just, as I said, just the
13 invoice with redactions of certain communications.
14 MS. ROBESON: Is this both yours and
15 Ms. Washburn's?
16 MS. ROSEN: Yes, Ms. Washburn's is there with
17 mine.
18 MS. ROBESON: Okay. Well, I'm just going to, out
19 of an abundance of caution, mark these as an exhibit, and
20 Exhibit 177 will be Complainant's Fees, Complainant's
21 Attorney and Expert Witness Fees, and 178 will be
22 Respondents' Attorney's Fees. Did you also submit expert
23 witness fees?
24 (Exhibit Nos. 177 and 178
25 were marked for identification

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1 and received in evidence.)
2 MR. MOHAMMADI: No.
3 MS. ROSEN: I'm just going to note -- and I think
4 I put a note on my, on the front cover sheet -- I actually
5 spent a lot more time on this case than I actually billed,
6 and the reason for that -- and I think, actually, I may just
7 put Mr. Barr to testify for just a couple seconds -- because
8 the reason for that is because this association has a very,
9 very limited budget.
10 Actually, now I'll just ask Mr. Barr just to
11 testify as to what the association's, what the assessments
12 are, whether they're annual, and what the, what the annual
13 budget is, because that goes to the reason why my fees are a
14 lot lower than they normally would be in this case, but I
15 discounted them very severely.
16 Mr. Barr, could you just testify as to what the --
17 what are the assessments per lot in the association?
18 MR. BARR: It's, I believe it's -- for 2014 it was
19 \$99 --
20 MS. ROSEN: Okay.
21 MR. BARR: -- for the year, and we have 159 homes;
22 so if you round it up to 100 even, it turns out to be
23 15,900. That's our income.
24 MS. ROBESON: Okay. All right.
25 MS. ROSEN: Okay. And just, you know, I'll just

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1 indicate that we're seeking the attorney's fees pursuant to
2 Montgomery County Code Chapter 10B-13, which allows the,
3 that the hearing panel -- 10-13(d), the hearing panel may
4 also award costs or attorney's fees if an association
5 document so requires and you --
6 MS. ROBESON: Now, did you take into account the
7 bill that went into effect? Are you reading --
8 MS. ROSEN: Yes. I mean, actually, I can -- I
9 wanted to address that. I guess --
10 MS. ROBESON: Okay. That's fine.
11 MS. ROSEN: All right. Well, let me just go
12 backwards. I'll identify -- your question was to identify
13 the CCOC's authority to award expert witness fees in light
14 of recent Council legislation --
15 MS. ROBESON: Yes.
16 MS. ROSEN: -- modifying the Commission's ability
17 to award attorney's fees. With regards to -- first of all,
18 we're seeking under, you know, seeking under the governing
19 documents is one of our bases, and this case was filed with
20 the CCOC on November 19th of 2013, and it's governed by the
21 prior statute, the statute that came into effect later on,
22 which -- I believe what they did is they took out the part
23 about the governing documents. I think --
24 MS. ROBESON: Right.
25 MS. ROSEN: -- basically, what they were basically

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1 saying is if you win the case, so to speak, and your
2 governing documents allow it, you're going to have to go to
3 circuit court or district court --
4 MS. ROBESON: Right.
5 MS. ROSEN: -- but that doesn't apply in this case
6 because my case was filed before that change.
7 So we are governed under the prior statute, where
8 the hearing panel may award the costs, including reasonable
9 attorney's fees, based upon the governing documents. And
10 the association's bylaws, Section 9, Litigation Expenses,
11 provides for the payment of all reasonable litigation
12 expenses incurred by the association, including taxable
13 court costs, attorney's fees, and all other litigation costs
14 incurred by the association in seeking enforcement of any of
15 the covenants and restrictions contained in the declaration.
16 And I just also wanted to note with regard to
17 attorney's fees that in the case of Potowmack Preserve
18 versus -- in, I'm just going to call it 720-G, after quoting
19 that text of the section 9, that the panel, the CCOC panel
20 interpreted that section of the bylaws as providing for the
21 mandatory award of attorney's fees, and that the hearing
22 panel in Case No. 73-12 held that the ruling that the
23 association's bylaws provide for the mandatory award of
24 attorney's fees is res judicata and is binding upon the
25 parties and this panel.

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1 So that's one basis upon which we seek attorney's
2 fees, and the other bases is under 10B-13, I guess it would
3 be (d), (d)(1) under the -- well, its exact text is, you
4 know, hearing panel may award costs, including reasonable
5 attorney's fee, to any party if another party filed or
6 maintained a frivolous dispute or filed or maintained a
7 dispute in other than good faith. You know, our position is
8 that he's, that the Balls have maintained the dispute in
9 other than good faith.
10 MS. ROBESON: And are you going to address that in
11 your closing argument, why it's in bad faith?
12 MS. ROSEN: Yes, I can address that in the closing
13 argument. So that's -- okay. So I think with regard to
14 that item, those are my, those are the bases. Actually, I
15 can probably, it might just be easier now if I just address
16 the bad-faith aspects perhaps --
17 MS. ROBESON: Okay.
18 MS. ROSEN: -- might just make it a little bit
19 simpler, because actually what we -- in response to the
20 interrogatories of the respondent in this case, they had
21 asked my client, you know, to state in detail the basis for
22 our allegation that the respondents have acted in bad faith,
23 and what actually might save a little bit of time, because
24 obviously Mr. Mohammadi already has the answers to those
25 interrogatories, my client listed I think about 27 separate

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1 items, you know, which form the basis for why they believe
2 there is bad faith here on the part of the respondents.
3 So maybe rather than waste everybody's time from
4 me reading a 27 list --
5 MS. ROBESON: Okay.
6 MS. ROSEN: -- I would ask that I can submit that.
7 MS. ROBESON: Now, I have some interrogatories in
8 the record, but I don't know if they're the --
9 MS. ROSEN: Those are the respondents' answers to
10 my interrogatories.
11 MS. ROBESON: Okay. Do you have any objection to
12 this coming in, Mr. Mohammadi, in this format?
13 MR. MOHAMMADI: Yes, I do.
14 MS. ROBESON: Okay. Go ahead.
15 MR. MOHAMMADI: I just think it needs to -- bad
16 faith should have come in through testimony. It's a factual
17 determination. And so if you want interrogatories in, that
18 should have been an exhibit, and if it is an exhibit, I have
19 no problem. And I think you're right, there are some
20 interrogatories in there somewhere, but I don't know if this
21 specific response is in the record.
22 So bad faith is a factual determination, as I
23 said. It has to be based on the testimony and the evidence
24 as it is in the record, and to just now submit an
25 interrogatory answer that had 27 points on it, with no

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1 opportunity to cross-examine or question, shouldn't be,
2 shouldn't be permitted to now claim tens of thousands of
3 dollars of attorney's fees.
4 MS. ROSEN: These facts are already in the record.
5 I mean, I think in the beginning we indicated that we would
6 do the attorney's fees at the end, but I can certainly just
7 have Dr. Barr testify to it, and then if Mr. Mohammadi would
8 like to cross-examine him on it, we can do it that way. I
9 was figuring we could speed it up, but it's all basically
10 in --
11 MS. ROBESON: I think it is --
12 MS. ROSEN: -- things that are in the record.
13 MS. ROBESON: Well, I guess the thing is, the
14 facts need to have --
15 MS. ROSEN: They're --
16 MS. ROBESON: Are the facts in the record as to
17 what, is it -- I thought it was just more theory as to what
18 you claimed as bad faith, but --
19 MS. ROSEN: The facts are basically --
20 MS. ROBESON: Just a second.
21 MS. ROSEN: -- the facts are, of these things, are
22 basically in the record, but I guess I can summarize it in
23 my oral argument towards the end if that will make it
24 easier. I was just trying to find a way to move things
25 along.

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1 MS. ROBESON: Because we have a disagreement on
2 the facts, clearly. So does that address your concern if
3 she summarizes?
4 MR. MOHAMMADI: Again, I believe, to determine
5 whether there is bad faith that would warrant an award of
6 attorney's fees from either side, that's a factual inquiry.
7 What constitutes bad faith? Obviously, there's a legal
8 definition for what bad faith is, but the facts supporting
9 it are specific to this case. She can summarize it, and so
10 long as it's already in the, in the record through testimony
11 or otherwise, I have no objection to her summary --
12 MS. ROBESON: Right.
13 MR. MOHAMMADI: -- and that's what closing is, in
14 essence, but --
15 MS. ROSEN: Right.
16 MS. ROBESON: Right.
17 MR. MOHAMMADI: -- but if it's not in there
18 already --
19 MS. ROBESON: You know what?
20 MR. MOHAMMADI: -- I'm going to have an issue.
21 MS. ROSEN: I --
22 MS. ROBESON: Just to avoid -- I don't think
23 Dr. --
24 MS. ROSEN: That's fine. He doesn't -- I mean, I
25 can, I can even summarize this now or I can put it into my

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1 closing, you know. I have this. I can summarize or just --
2 I'll just do it at the end of my closing. I'll just make it
3 easier.
4 MS. ROBESON: Okay. That's fine. All right.
5 MS. ROSEN: Okay.
6 MS. ROBESON: So are you ready for closing?
7 MS. ROSEN: Yes. I think what I'm just going to
8 do first, though, as part of closing, but I'm just going to,
9 if it's easier separately, your questions, rather --
10 MS. ROBESON: Okay.
11 MS. ROSEN: -- because I, you know, I already had
12 a closing argument when I got your questions --
13 MS. ROBESON: Yes.
14 MS. ROSEN: -- it would be easier for me if I
15 could just go through them --
16 MS. ROBESON: Okay.
17 MS. ROSEN: -- rather than trying to weave it in.
18 Okay. Your Question No. 3, you know, you had: Identify the
19 authority in the governing documents for Dr. Barr's
20 letters --
21 MS. ROBESON: Well, okay.
22 MS. ROSEN: Okay. I just want to make sure that's
23 on the record, what I'm --
24 MS. ROBESON: You're not introducing new evidence;
25 you're just saying this is what our position is, correct?

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1 MS. ROSEN: Correct. Yes, I'm --
2 MS. ROBESON: So this is in the nature of closing
3 arguments.
4 MS. ROSEN: Correct. This is the -- we went
5 before over what was legal and what was --
6 MS. ROBESON: Right.
7 MS. ROSEN: So that's why I'm --
8 MS. ROBESON: I just wanted to clear that --
9 MS. ROSEN: Okay. Okay.
10 MS. ROBESON: -- clarify that.
11 MS. ROSEN: All right. In fact, I'm responding to
12 your question that said: Identify the authority in the
13 governing documents for Dr. Barr's letters to Mr. Ball, CEG,
14 and you referred to several CCOC 73-12 exhibits. And our
15 response --
16 MS. ROBESON: Plus 9/14.
17 MS. ROSEN: Plus the letter of 9/15/13.
18 MS. ROBESON: Yes. I didn't get all of them, but
19 that was --
20 MS. ROSEN: It's okay. It's a lot to get. Okay.
21 Well, our response to that argument is that the bylaws,
22 Article II, provide that the purpose of the corporation is,
23 among other things, to provide for architectural control for
24 the residential properties. The bylaws, Article VII,
25 Section 4, provide that the president shall be the chief

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1 executive officer of the corporation and shall have all the
2 general duties and powers which are usually vested in the
3 president of the corporation.
4 Our position is that no, I want to use the term,
5 quote, specific authority is required for the president to
6 send letters. A corporation under the business judgment
7 rule on general corporate law has a discretion to adopt,
8 formally or informally, practices that effectuate its
9 purpose and that includes who can act on behalf of a
10 corporation in its communication, including letter
11 communications, which are a common and routine way of
12 communicating with members, applicants, and others
13 regardless of content.
14 MS. ROBESON: Okay.
15 MS. ROSEN: Okay. With regard to Question 4, your
16 question was: The CCOC's order in Case No. 30-12 required
17 the HOA to specifically list all items to be ratified.
18 Should this have included the vote authorizing enforcement
19 against 10600 Vantage Court?
20 My response to that is, looking at the order, I
21 don't see any language in the order that requires the HOA,
22 you know, quote, to specifically list all items to be
23 ratified. Paragraph 2 of the order states that the actions
24 taken by the board outside of meetings or at any board
25 meeting, other than the January 30, 2012, meeting, must be

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1 affirmed at an open meeting to be valid and that the meeting
2 notice must include the agenda items which will be discussed
3 at the meeting.
4 The HOA complied with that order. The agenda -- I
5 would turn, refer to Exhibit 95. The agenda references
6 affirming the conditional approval at the Ball property, and
7 it also references to hiring an attorney to represent the
8 HOA at the hearings that were going on. The only hearings,
9 the hearings that were involved were in prosecuting the Ball
10 construction violations, and this is also reflected in the
11 minutes of the October 7, 2013, meeting. And our position
12 is that this encompassed authorizing the enforcement action
13 against 10600 Vantage Court to the extent that that was
14 required at any point in time.
15 I'd just also, as an aside, note that, with regard
16 to -- with regard to Mr. Bruno's testimony that there was
17 allegedly a vote on October 7 special meeting that the
18 association would not take action or would go to mediation
19 or whatever it may be with regards to Mr. Ball in this case,
20 that was a special meeting, and even, even if we assume for
21 argument's sake that such a vote actually took place, I
22 don't even think it would be valid because it was a special
23 meeting and what the -- topics of the special meeting were
24 on that agenda, and there was nothing on that agenda
25 referencing that that topic was going to be taken up.

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1 So just -- like I said, assuming only for the sake
2 of argument, even if such a vote in fact occurred, it would
3 have no consequence because it would not be valid. And
4 there was also, obviously, a vote on October 28th, you know,
5 for the funding of the suit.
6 Next question was: Please identify where the
7 architectural guidelines or governing documents authorize
8 the form application required by the HOA.
9 Response: The declaration, Article VIII, requires
10 that plans and specifications for any and all proposed
11 exterior changes be submitted to and approved in writing
12 before such exterior changes can be made. The bylaws,
13 Article II, provides that the purpose of the corporation is
14 to provide architectural control for residential properties.
15 The bylaws, Article V, says the board shall have all powers
16 and duties necessary to administer the affairs of the
17 corporation.
18 Thus the association, through its board, has the
19 authority to require the use of a form to effectuate its
20 purposes in architectural control. An application form has
21 been used in this community for more than 30 years. It is a
22 reasonable means of obtaining required documents and
23 information from applicants. The board has the discretion
24 to require the use of a reasonable form or other mechanism
25 to obtain the information it is entitled to and required to

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1 get pursuant to its declaration.
2 Okay. The next one would be No. 8: Please
3 identify the authority in the governing documents that a
4 person in violation of architectural approvals is not a
5 member in good standing, entitled to membership rights.
6 Response: I don't think the association has ever
7 said that a person in violation of architectural approvals
8 is not entitled to membership rights per se. The
9 association does not allow members who are in violation of
10 existing architectural change applications to submit
11 additional architectural change applications while they were
12 in violation of an existing approved application or order --
13 order meaning court or CCOC that was pertaining to that
14 existing application.
15 The bylaws, Article V, Section 2(g), empower the
16 board to, quote, suspend membership rights for cause. The
17 CCOC in Case No. 720-G ordered that Mr. Ball could not file
18 an application for any new architectural change to the
19 property until either the property was restored to the
20 status quo as of May 7, 2003, or he obtained approval for a
21 new application for changes requested and timely completed
22 those changes, if approved.
23 Number 10: Please identify the board's authority
24 for determining that the architectural guidelines mean that
25 the architectural alterations must conform with the original

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1 five models in the neighborhood.
2 The authority lies in the declaration, Article
3 VIII; bylaws, Article II, as previously referenced in my
4 response to Question 6. Further, authority lies in the
5 common law and statutory and case law that allows the board
6 to decide reasonable policies in the best interest of the
7 community, which includes decisions to remain in conformity
8 with the harmonious design standards adopted by the founders
9 of this community; that the most important aspect of having
10 an HOA throughout, in general and through this nation, is to
11 maintain similar look and feel of structures and to disallow
12 deviant designs, colors, structures, styles, and materials,
13 et cetera, which do not conform with and are disharmonious
14 with the harmony and character of development.
15 And I think that covers the questions. I also
16 just wanted to submit -- I did a, some points and
17 authorities that I wanted to submit into the record for our
18 case, various cases that support our position.
19 MS. ROBESON: Any objection? I would've preferred
20 if you could've exchanged this beforehand.
21 MS. ROSEN: Well, I just did it over the weekend.
22 I thought it would be a good idea, in support of our case,
23 to do a -- points and authorities. I think anybody, any
24 lawyer can do that. It's not evidence. It's just a bunch
25 of cases that I feel support our position.

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1 MS. ROBESON: I know, but the point of going
2 through trial is you kind of know that in advance, your
3 legal theory.
4 MS. ROSEN: Well, I understand, but these are just
5 points and authorities in support. I mean, I could sit here
6 and read the points and authorities into the record, but I
7 don't really think you want to hear that. I mean, this is
8 my points and authorities.
9 MR. MOHAMMADI: Well, my objection, I guess, is
10 that it's in this format. I sort of agree with what
11 Ms. Rosen says, that in closing you argue precedence that
12 applies, but you don't submit a memorandum in your argument
13 because it is just argument. So this is --
14 MS. ROBESON: Well, I'll tell you what. I am
15 going to --
16 MS. ROSEN: It's not argument. It's actually just
17 a -- it's just a listing of cases and sort of a digesting of
18 the cases that I contend support our position.
19 MS. ROBESON: I am going to do this: I am going
20 to take it in, and I am going to keep the record open for 10
21 days if Mr. Mohammadi decides that he would like to submit
22 authorities.
23 MS. ROSEN: Okay.
24 MS. ROBESON: How's that?
25 MR. MOHAMMADI: That would work.

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1 MS. ROSEN: That's fair enough, yes. Like I said,
2 this is not --
3 MS. ROBESON: Let's do it that way.
4 MS. ROSEN: Yes. This is basically just, you
5 know, digested cases that I feel --
6 MS. ROBESON: That's fine.
7 MS. ROSEN: -- support our position.
8 MS. ROBESON: I guess the way we're structured,
9 I'm going to have to put an exhibit on this --
10 MS. ROSEN: Okay.
11 MS. ROBESON: -- even though it's not a factual --
12 so 179 will be Complainant's Points and Authorities.
13 (Exhibit No. 179 was marked
14 for identification and was
15 received in evidence.)
16 MS. ROSEN: Okay. I'm just going to have a little
17 bit of water before I start talking again --
18 MS. ROBESON: You may.
19 MS. ROSEN: -- if that's okay.
20 MR. BARR: Empty.
21 MS. ROSEN: It's empty? Oh, no, I guess I'm not
22 going to have a little bit of water.
23 MS. ROBESON: Do you have any, Mr. Mohammadi?
24 MR. MOHAMMADI: Very little, but --
25 MS. ROSEN: Thank you. We'll split it.

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1 MR. MOHAMMADI: -- you can have it. You can have
2 it.
3 MS. ROSEN: Thank you. That's fine. I don't need
4 that much, just need a little bit. Thanks.
5 MS. ROBESON: Okay. Go ahead.
6 MS. ROSEN: Okay. This case, in our view, is
7 pretty simple and straightforward at its core. We have an
8 HOA with covenants which require advance approval to make
9 any exterior architectural changes. We have a homeowner who
10 received an approval and then proceeded to construct
11 something which, I think they admit at this point, is rather
12 different than what was approved, and we would consider it
13 to be radically different than what is approved. This is
14 now the third time that this homeowners association has had
15 to take enforcement action against this property owner
16 because what was constructed and what were approved are not
17 the same.
18 The noncompliant construction here includes but is
19 not limited to construction of a roofline that is higher
20 than the existing roofline, which results in a raised roof,
21 when the approved plans did not show raised roofline and
22 raised roof or raised chimney, and there's also other
23 noncompliant construction as set forth in the supplement to
24 this complaint and what has been testified to.
25 The construction on this property, in our view,

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1 can generally best be described as a moving target and has
2 been for a number of years, both in this case and in two
3 previous cases litigated in the CCOC. We believe the
4 evidence in this case clearly shows that the respondents'
5 construction materially deviates from the approved plans and
6 that the Court, this Court should grant all the relief
7 requested by the HOA and deny the respondents' counterclaim
8 in its entirety.
9 In the respondents' opening argument, they stated
10 that the evidence in this case would show that the first
11 application for this project was submitted in year 2008;
12 that there were several other applications submitted that
13 kept getting rejected until their project was finally
14 approved in May of 2011; that immediately after that, issues
15 arose with the HOA taking issue with the project -- the
16 shed, the deck, the siding -- and that they were told to
17 stop construction and that they have thus been delayed in
18 completing their construction.
19 And they -- they also say that the application
20 approved in 2011, quote, clearly shows that the roof was
21 going to be raised, unquote; that the items in the
22 supplemental complaint are not substantial and material
23 deviations; that the HOA's application of the rules and
24 guidelines to the Balls is inconsistent with application to
25 other owners; that no votes were taken or meetings held and

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1 elevation, continuing roof slope.
2 The evidence in this case also shows that on April
3 15th, 2011, President Barr received a letter with drawings
4 prepared by Tania Bruno, and those drawings were Exhibit
5 126, and that came from Peter Ball. And the testimony in
6 this case and the evidence shows that Dr. Barr gave the
7 drawings to Jamie Deise who copied, shrunk, and circulated
8 them, those drawings prepared by Tania Bruno to the board
9 members with a copy to their -- also to Tania Bruno in
10 preparation for the Thursday, May 5th, board meeting.
11 That's Exhibit 77.
12 Evidence also shows that the board meeting of May
13 5th, 2011, that Peter Ball, his attorney James Deaver, and
14 Tania Bruno, his architect, all attended that meeting and
15 that the respondents' application was approved
16 conditionally. The only thing that was not approved but
17 apparently was discussed was this concept of the horizontal
18 vinyl siding, but clearly, and the evidence in this case
19 clearly shows that at no time did anybody, whether it was
20 Peter Ball, James Deaver, or Tania Bruno, ever claim that
21 any, that the plans that they were all looking at and the
22 plans that were ultimately approved, which is 126, were the
23 wrong plans. There's no question that 126, and I'm going to
24 do, slash 77, which are the smaller version, are the
25 approved plans.

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1 Once again, I said there was only one application
2 for Mr. Ball's complicated construction project, and the HOA
3 spent an inordinate amount of time and effort working with
4 Mr. Ball and his representatives to get to the point where
5 the HOA could approve Mr. Ball's proposed construction
6 project. The record -- and the record in CCOC Case No.
7 73-12, I believe it's in paragraph 3, paragraphs 10 and 11
8 of the order, it indicates that Peter Ball attended two
9 board meetings and made presentations regarding his
10 architectural changes at both and that, in addition to those
11 meetings, the association met with Peter Ball and his
12 architect, Tania Bruno, on at least three occasions and with
13 Peter Ball's attorney James Deaver twice during this time
14 period.
15 I don't -- I think it's very clear and
16 incontrovertible that the association, in good faith, spent
17 an enormous amount of time trying to help Mr. Ball, to help
18 him achieve his goal of what he wanted to do. He has
19 nothing to complain about. His application was approved.
20 The board has a legal duty to enforce its
21 governing documents. The declaration purpose clause
22 provides that the purpose of the association is to provide
23 for the preservation of values, to administer and enforce
24 the covenants. The declaration also provides that no
25 exterior addition or change shall be made upon the lots

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1 until the plans and specs, showing nature, kind, height,
2 materials, et cetera, have been submitted to and approved in
3 writing as to the harmony of exterior design, color, and
4 location in relation to the surrounding structures and
5 topography by the board of the ACC.
6 Potowmack Preserve, in its conditional approval
7 letter of May 15th, 2011, stated that its primary concern
8 was to continue to preserve the texture, harmony, mass, and
9 scale of the neighborhood and to encourage changes which
10 retain the original spirit of the neighborhood.
11 The board was well within its rights in carrying
12 out its duties in requiring Mr. Ball to provide all
13 appropriate and required documentation and in providing
14 input along the way as to what would and would not be
15 acceptable in connection with this approval process,
16 especially for a project of the magnitude that the Balls
17 were proposing and in light of the history of the Ball, of
18 the property.
19 The board's actions in connection with reviewing
20 and working with Mr. Ball regarding his application that
21 resulted in the conditional approval of May 2011 were
22 reasonable and always done in good faith. When a governing
23 body makes a decision that restricts a member's right to use
24 his own property, the reasonableness standards in Kirkley
25 versus Seipelt applies, and under this standard a governing

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1 body's decision will be upheld if that body can produce a
2 good reason for it and the decision is otherwise made in
3 compliance with applicable laws and governing documents; the
4 HOA can show that it has a good reason that decision would
5 be upheld, even though there might be some reasonable
6 arguments in favor of perhaps a different decision.
7 It's also our position that there's been no
8 evidence presented by the respondents that they were treated
9 differently by the association than any other lot owner who
10 may have submitted an application, proposing the magnitude
11 of changes being proposed by Ball to his property. In fact,
12 there really hasn't been -- there hasn't been any evidence
13 submitted of any other type of applications that are along
14 the magnitude of the type of renovation work that was being
15 done at the Ball property.
16 The only example that the respondent presented
17 concerning another larger construction application was that
18 of Ms. Bentolila, whose house had completely burned down.
19 That is a unique situation, and to the extent that any
20 leeway was given to Ms. Bentolila by the association, that
21 -- the exigent circumstances of having, of her having to
22 completely rebuild her home are distinguishable from
23 Mr. Ball's renovation of his existing home. And quite
24 frankly, because Ms. Bentolila was having to rebuild --
25 these homes were built, I believe, around the 1970s, if I

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1 siding and his frivolous litigations against the association
2 regarding that issue both in this case, counterclaim, and
3 the circuit court litigation, which was dismissed this past
4 summer.

5 We also just indicate that to the extent that
6 siding has been addressed, you know, that evidence has come
7 in about siding in this case, I think it is very clear, the
8 association has given a valid reason as to why they do not
9 want -- they did not want to approve horizontal siding.
10 That was testified to by, by Dr. Barr, and there's been
11 ample evidence that, you know, that they -- when the
12 association is looking at an application, especially about,
13 you know, not a construction application, but they are
14 looking at the project holistically, and the board has
15 given, gave good, you know, good valid reason for not
16 wanting to approve horizontal vinyl siding. Now, maybe a
17 different board and a different homeowners association might
18 make a different decision, but that doesn't mean that the
19 board, the decision of this board is not a valid decision or
20 was not made in good faith. There's absolutely nothing, no
21 evidence to show that the decision was not made in good
22 faith.

23 There's also no evidence that the homeowners
24 association told Mr. Ball to stop construction. The letter
25 dated September 15th of 2013 directed Mr. Ball to proceed

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1 immediately to remedy and bring the building back into
2 conformity with the approved HOA drawings and encouraged him
3 to work continuously to remedy all nonconforming
4 construction. That is Exhibit 79.

5 Mr. Ball himself made his decision to place a tarp
6 over the nonconforming roof construction, and it is not a
7 coincidence, in our view, that within days after the -- days
8 after the decision in Case No. 73-12, was issued in March of
9 2014, suddenly there was a flurry of construction activity
10 to do additional work on the nonconforming roof and other
11 structures. Any delay has been -- Mr. Ball has been the
12 cause of his own delay. It's a self-inflicted wound as far
13 as the association is concerned, and we believe the evidence
14 shows that very clearly.

15 As to the respondents' claim that the application
16 in 2011 was approved, that was approved, clearly shows that
17 the roof is going to be raised, that contention is also, in
18 our view, not supported by the evidence. Starting with the
19 July 2010 e-mail from Mr. Ball's architect, Tania Bruno, to
20 the board, where she basically refers to, Peter's needs are
21 to get rid of an existing flat roof, gain some minimal
22 closet space, and that Peter would be agreeable if the new
23 roof only span the lower floor, top of the wall, to the
24 upper floor, top of the wall, nowhere in that e-mail did she
25 indicate that the roof would span to the top of the main

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1 house roof ridge, which is where the as-constructed
2 noncompliant roof spans to. Nor is there any evidence of
3 any discussion of raising the roof in the minutes of the
4 board meetings of October 21, 2013, or March 31, 2011, where
5 the construction application, including roof issues, were
6 discussed, or in any other meeting.

7 In Mr. Ball's April 15th, 2011, letter to the
8 board, he says, quote: There are some larger homes of the
9 same model in our community that have added shed roofs in
10 the rear that are either the same height of the ridge on the
11 existing house or exceed it. Our request is only to change
12 the roof from flat to slope. If the new sloping roof joined
13 at the current roof ridge, it would be a much more flowing
14 design and be much more attractive.

15 The association contends, its representatives
16 testified, and all the documents corroborate that raising
17 the ridge or raising the roof was never discussed in any
18 discussion between the board, the association, Mr. Ball, his
19 architect, or his attorney Mr. Deaver. The April 15th,
20 2011, letter to the board, prior to the vote, expressly
21 states the intention is to slope the flat roof to meet the
22 existing ridge.

23 The evidence is very clear that the HOA-approved
24 drawings are Exhibit 126, which includes the large -- which
25 includes a large size set of the A1 through A5 drawings that

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1 are part of the exhibit 77(d)'s e-mail. Exhibit 77 shows
2 that Tania Bruno, Mr. Ball's architect, was copied on that
3 e-mail with the drawings, and there's been no evidence
4 presented by the respondent that Tania Bruno ever contacted
5 the association or anybody else and said that those were not
6 the correct drawings, and she would be the one to know.

7 A chain of custody of the approved drawing set has
8 been clearly established by the HOA in this case through the
9 testimony of President Barr and the documents themselves.

10 The evidence in this case shows that the drawings, 126 slash
11 77, were available and looked at in the May 5, 2011, board
12 meeting attended by, according to the minutes of that
13 meeting and testimony, Peter Ball, Tania Bruno, and Attorney
14 Deaver. They were all present. No evidence has been
15 presented by the respondent that any drawings, other than
16 126/77, were the approved drawings and were looked at and
17 were -- those were the drawings that were available at that
18 meeting. And I would also indicate that there hasn't been
19 any testimony by, on the part of anybody, really, that the
20 exhibit 148, which they now seem to be claiming are the
21 approved drawings, that there's no -- Peter Ball is, at
22 best, ambiguous about that, and the other persons who might
23 have been able to testify on his behalf in that respect,
24 Tania Bruno and James Deaver, they're not here to testify.
25 It's our position that they are not here to testify to that

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1 because they can't testify to that.
2 We also submit that neither the permit set, which
3 was prepared only after the HOA-approved plans, are the
4 approved plans nor is the portion of the permit set marked
5 as Exhibit 159 and, in our view, deceptively marked as
6 being approved 5/11/11 by Peter Ball. They couldn't
7 possibly be approved 5/11/11. That's a permit set, and the
8 permit set didn't come until later.
9 These drawings in Exhibit 148 are clearly not the
10 approved, not the approved plans, and I would note, and I've
11 said this before, we had another case, 73-12. Mr. Ball may
12 not have been happy with his legal representation in that
13 case and the case prior, but that was the opportunity that
14 he had at that point in time to come forward if he felt that
15 we were -- that the evidence that we were presenting in that
16 case was incorrect in terms of what were the approved plans
17 and what the drawings were. The fact that he is not happy
18 with the outcome of those cases and now wants to blame his
19 prior counsels or anybody else is just inconsequential. It
20 is what it is. He had his opportunity at that time to
21 refute these things, and as I've indicated previously, that
22 in my view it is -- you know, issues that were adjudicated
23 before the CCOC in Case 73-12, they are res judicata in my
24 view, and I've indicated that. I gave you the case that I
25 feel supports our position on that, so won't go into any of

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1 that further.
2 It's also our position that the set of drawings
3 that are dated, that have a date of December of 2013, which
4 were used in the deck submission, which is 160 exhibit, and
5 were also marked as Mr. Ball by, as being approved, those
6 are not, they may be -- they are approved to the deck only,
7 not the entire structure. And I would further note that
8 with regards to -- I'll just get, I'll actually get to that
9 one a little bit later.
10 I think we all know at this point that the roof
11 structures as actually constructed on the Ball property most
12 closely resemble the drawings that were prepared, that are
13 -- that were prepared in December of year 2013, which is
14 160. I think anybody can look at the roofs over the
15 structure in that drawing and certainly see that they bear
16 no resemblance whatsoever to the roofs over the structure in
17 the HOA-approved set, 126/77. They don't even bear any
18 resemblance to the roofs of the permit set, and the reality
19 is, the respondents knew this all along; for their opening
20 argument, stated that the evidence would, we know that they
21 -- their opening argument says that the evidence will show
22 on December 16th, 2013, that, quote, a new application was
23 submitted which is, quote, basically in line with what is
24 currently there on the property.
25 Interestingly enough, I'm going to note that the

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1 exhibit 90, which was the December letter that had a picture
2 of two -- the two elevation drawings that were on that were
3 actually the, were ones from the original, from 126. That
4 letter referred to other, other drawings, but that exhibit
5 doesn't contain those other drawings and nor has, nor have
6 those other drawings been introduced into evidence in this
7 case and identified as being the drawings attached to that
8 letter. So those drawings are not even in evidence in this
9 case.
10 But more importantly, the respondents basically
11 admitted at the outset of this case that their existing
12 construction basically is not in compliance with the
13 HOA-approved plans, which are 126/77, which brings for me a
14 question: Why would the respondent put forward an expert
15 witness, building, Leo Schwartz, to testify that in his
16 opinion that the roof and construction on the Ball property
17 is in accordance with the HOA-approved plans, which are
18 126/77? I don't know what the reason for that is. It makes
19 no sense to me, but I think it's pretty clear that
20 Mr. Schwartz's opinion should be given no weight or credence
21 by this Court because it is very obvious that they are not
22 -- that the existing construction, as constructed, is not in
23 compliance with 126/77. It's more closely in line with,
24 with the drawing that is shown on 160.
25 The HOA's expert witness, Architect Sharon

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1 Washburn, correctly opines that the drawings that most
2 closely resemble what has in fact been constructed is 160,
3 not 126 or even 159, which were the portion of the permit
4 drawings, and not 148, these dimension drawings.
5 Ms. Washburn testified, and we can all plainly see, that the
6 approved drawings show basically two rooflines and the final
7 version of what has been built to date, as depicted in
8 Exhibit 160, shows five rooflines.
9 Ms. Washburn's testimony is consistent with that
10 of board president Barr, who is also an architect, as to the
11 meaning of the written descriptions of the proposed roof in
12 Tania Bruno's 2010 e-mail and Mr. Ball's April 15th, 2011,
13 letter. She testified that in her expert opinion the
14 discrepancy between the written description and the approved
15 drawings is that while the roof height is shown on the
16 approved plan graphically as being raised, that only becomes
17 apparent with an overlay and that it would not be expected
18 that the HOA would overlay drawings to look for a different.
19 Ms. Washburn testified that there are no words saying about
20 raised roofs and chimneys and, if there's no words, you're
21 not going to look for it.
22 Ms. Washburn further testified that what was
23 missing from Approved Drawing A4, when overlaid with, I
24 believe it's AB4, was the existing roofline, which would be
25 the only clue that is clear and graphic that a roof is being

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1 raised, other than written words.
2 Ms. Washburn further testified that the roofline
3 information, which would automatically appear in a CAD
4 drawing, had to have been purposefully deleted for it not to
5 be there because the computer would otherwise bring it
6 through. Well, there hasn't been any, any testimony
7 rebutting that, and it's not a question of we don't know
8 whether, whether it was accidental, someone pressed the
9 button, whatever the reason is.
10 What I find very interesting is that the person we
11 haven't heard from is Ms. Tania Bruno, and I'd have to
12 question, well, why not? She's the one who, you know, as
13 far as the respondent is concerned, it was her architect.
14 These are her drawings, but regardless, I think it's very
15 clear that that information, that's very important
16 information, was not readily available, was not there. And
17 it would certainly not be incumbent upon an HOA board to go
18 out and spend money to create transparencies of these
19 drawings and start putting them on top of each other to try
20 to figure out what Mr. Ball is doing. Based upon what
21 Mr. Ball provided, based upon the written e-mail and letters
22 from his own architect and from himself, this association
23 had no reason to believe that there was going to be a
24 raising of an existing roofline.
25 Ms. Washburn testified there was nothing in the

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1 HOA plans to show there would be a raising of the original
2 roofline to a newer roof ridgeline, and she illustrated
3 that's the discrepancy between what was approved and what
4 was built with the blue shading so that all could see that
5 discrepancy very clearly. So I don't think there's any
6 question about that.
7 She further testified that roof transom details
8 keep going up in Exhibit 160 and changing -- and change the
9 roof height of the approved drawings. She also testified
10 that the roof is built higher than the roof ridge in the
11 HOA-approved drawings. That's about four to five feet
12 higher than the old ridge; testified that the chimneys are
13 being raised but there's no line or written word showing
14 that and that architects would show new work with some type
15 of a graphic indicator or words; also indicated that the
16 roof ridge did not have to be raised to keep the pitch, the
17 desired pitch; and she testified that by not showing
18 something, which also Dr. Barr's testimony basically
19 corroborates, by not showing something, by not saying you're
20 making a change, it's assumed that you're not making a
21 change. I think she also testified that her measurements
22 showed that what was built is higher than what was approved,
23 several feet higher. It's higher than the highest ridgeline
24 on the approved drawings by several feet.
25 She also testified that with regards to the permit

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1 drawings, that whoever scaled them actually used different
2 scales for doing the drawings and marking physical
3 dimensions and that the person used three different scales,
4 that it was not accurate and difficult to tell what was
5 going on, and noted that one drawing showed a floor-to-floor
6 height of six feet as opposed to eight feet. And she also
7 opined that the -- it has built roofline structures, and
8 those shown in Exhibit 160 do constitute a substantial and
9 material deviation from the HOA-approved plans.
10 So, in my view, we can only presume that when the
11 respondent had his expert witness testify that the current
12 roof construction, including the roof over the foyer, does
13 not materially deviate from 126/77, that either he had no
14 real understanding of the construction drawings compared to
15 the actual construction or that they were being deceptive by
16 having him testify that the construction was in accordance
17 with Exhibit 126, which shows two rooflines, when the
18 respondent, even in their own opening statement, clearly,
19 you know, indicate that what was in line is the 2013
20 drawings, which actually shows five rooflines, and that's
21 what's actually been constructed.
22 Exhibit 160, which depicts what has actually been
23 constructed and what the structure would look like if he
24 were allowed to complete it in accordance with that, with
25 160, is clearly a material and substantial deviation from

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1 the roofline shown in 126/77, the HOA-approved plans.
2 Mr. Schwartz's testimony should be disregarded and be given
3 no weight whatsoever.
4 Furthermore, to the extent that there's any
5 ambiguity in the approved plans that were submitted by
6 Mr. Ball, I would point to the case of Black versus Dumont
7 Oaks Community, which is a CCOC case, 69-09, 74-09, where
8 the CCOC held that if a homeowner's application is
9 ambiguous, the ambiguity will be held against the homeowner.
10 The CCOC's ruling in that case is in line with the general
11 law concerning ambiguity in contracts and covenants
12 generally: the ambiguity is construed against the drafter.
13 Thus the ambiguity in -- if there's any ambiguity in,
14 concerning the question of whether the roof is being raised
15 or any other aspect of these plans, that ambiguity must be
16 construed against Mr. Ball, not the association.
17 The HOA's belief that the roof was not going to be
18 raised was reasonable based upon the writings of Mr. Ball's
19 architect in the July 2010 e-mail and Peter Ball's April
20 15th, 2011, letter and all the meetings between board, the
21 board, Mr. Ball, his attorney, the architect, formal and
22 informal, regarding this application in which not -- there's
23 not been one scintilla of evidence presented showing that
24 there was ever any type of discussion about raising the
25 roof. And, furthermore, Mr. Ball admitted that the roof

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1 currently over the foyer, which he described in his answers
2 to interrogatories as being, quote, temporary, he admits
3 under oath that it is not in compliance with the approved
4 plans.
5 With regard to other nonconforming aspects of the
6 construction which constitute material and substantial
7 deviations, Ms. Washburn testified -- you know, I'm just
8 going to kind of go over them pretty quickly -- you had a
9 window substituted for a pair of French doors; instead of
10 glass on a front foyer elevation, instead of glass across
11 the front with a little siding, there was solid panels to
12 the right and left; that none, that their second floor has
13 solid panels and that none of the paneling or railing is
14 shown on the approved plans; that brick detailing around the
15 windows in the living room has changed; that there are two
16 windows and actual construction which are different type, of
17 a different type than in the approved drawings -- she
18 referred to them as prairie-style windows, not shown in
19 either 126 or 160, which she testified changes the character
20 of the house from contemporary to more of an arts and crafts
21 traditional; the approved drawings had small roof overhangs
22 but there's actually large roof overhangs -- two feet,
23 according to Mr. Ball's testimony, which our expert said was
24 substantial.
25 Another material difference between 126 and 160,

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1 the height of the first floor to the gutter line of the
2 foyer. The window trim around the windows and the actual
3 construction is larger than on the approved plans. There's
4 a transom over the garage portion of the roof that makes
5 part of the ridge keep going up and up again and be higher
6 than the adjacent roof, which was not in any approved
7 drawings. 160 shows a window and a closet space where the
8 only reference is skylights, not a window. Basically, there
9 are so many, and I think I used the term moving target in
10 the beginning; that's basically what this has become.
11 The respondent now tries to claim that the plans
12 that were dropped on Peter Gibson's doorstep on or about
13 December 16th of 2013 constitute an application which, he
14 contends, was automatically approved because it was not
15 acted upon in 45 days. First of all, there's no evidence
16 that was submitted by the respondents as to which drawings
17 were actually part of this so-called application of
18 Mr. Ball's letter dated December 16th of 2013, which is
19 Exhibit 90. Exhibit 90 doesn't contain any of -- whatever
20 these drawings are, they're not part of Exhibit 90 nor have
21 they been independently introduced into evidence into this
22 case. That exhibit contains nothing but the two, two
23 elevations that were -- you know, I think it refers to the
24 elevations for the approved, you know, original approved
25 plans.

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1 Also, there was not -- this is not an application.
2 There was no application form. Mr. Ball is knowledgeable
3 that a form is required to make an application. He knows
4 this. He's done it at least four times: Exhibit 74, 128,
5 151, and 152. Mr. Gibson testified that he had been
6 encouraging Mr. Ball to work with the architect in the fall
7 and through drawings dropped off -- the drawings that were
8 dropped off show that Ball was trying to do that and he
9 himself did not view this as an application. His own
10 testimony supports that he did not view this submission as
11 an application either. Moreover, we have to look at the
12 declaration, which clearly and unambiguously states that no
13 building, fence, wall, or other structure shall be
14 commenced, erected, or maintained upon the property until
15 the plan, specs, et cetera, have been submitted to and
16 approved by the board or architectural control committee.
17 No association is required to accept or act upon
18 what is an after-the-fact submission. The plain language of
19 the declaration requires that before construction is
20 undertaken, approval must be obtained. A homeowner does not
21 get to construct something different than what has been
22 approved or construct something which has never been
23 approved and then come to the association and demand that
24 noncompliant construction be approved. There already was an
25 approved set of plans, the May -- those plans were approved

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1 in May of 2011. That was a final approved plans. If
2 Mr. Ball wanted to change that plan, he was required to
3 submit a new application to do that before doing any
4 construction, including but not limited to constructing a
5 roof, which he himself has admitted does not comply with the
6 approved plan and which he categorized as being temporary.
7 Moreover, this matter -- this case was in
8 litigation regarding this noncompliant construction when he
9 decided to drop his after-the-fact submission at the vice
10 president's doorstep. Mr. Ball cannot delay or avoid the
11 litigation by trying to submit an after-the-fact plan and
12 then turn around and say, well, you've got 45 days to, you
13 know, to act on it. It's not an application, and we are not
14 required to act on it. That's not how it works.
15 The problem, the main problem is that Mr. Ball, in
16 this case and in previous cases, Mr. Ball asks to build X.
17 After he gets approved to build X, he goes ahead and builds
18 X, Y, and Z, because the reality is that all along what he
19 really wanted to build is X, Y, and Z but he knows that X,
20 Y, and Z is not going to be approved but he figures if he
21 creates some facts on the ground, he gets the approval for X
22 and goes ahead and creates the facts on the ground by going
23 ahead and just building Y and Z and just digs in his heels,
24 creates confusion, and keeps badgering the board and asking
25 for meetings to prevent his case, threatening lawsuits, and

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1 just basically trying to wear the association down, he will
2 get his way. Fortunately, the CCOC in Case No. 720-G and
3 73-12 saw through this duplicitous behavior and twice found
4 the Balls to be in violation of the association's governing
5 documents for constructing something that was not approved
6 and awarded the attorney's fees and costs.

7 This pattern of behavior is very apparent in those
8 records. For example, an example is back in year 2003 when
9 Mr. Ball applied to build the deck with a shed roof but he
10 didn't build a deck; instead, he built a room. I'll refer
11 to Exhibit 154. The CCOC in Case No. 720-G found that
12 rather than construct what was approved, a deck, he built,
13 quote, a fully enclosed aboveground addition. In its
14 findings of fact, the CCOC made a finding that Mr. Ball
15 never intended to construct a deck but what he intended to
16 construct was a room, and the hearing panel found that
17 Mr. Ball's failure to construct the approved architectural
18 change and his construction of other changes without
19 approval and his submission for still other changes
20 demonstrated an absence of good faith, and that is basically
21 what we have here again, third time, third -- I mean, in the
22 case 73-12, I think the CCOC made a comment about it being,
23 that it wasn't Mr. Ball's first time to the rodeo, and now
24 we're at the third time to the rodeo.

25 The hearing panel also held that Mr. Ball in that

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1 case, 720-G, the hearing panel also held that Mr. Ball could
2 not seek approval for any other architectural changes until
3 the matter of the architectural change at issue in that case
4 was resolved, either by removing it and restoring it back to
5 status quo of May 2003 or upon approval of a proper
6 application and timely completion of any approved changes.

7 Mr. Ball was ultimately ordered to remove the structure and
8 ultimately had to restore the property back to the status
9 quo of May 27th of 2003, and it was only after that was done
10 that he was even allowed by the order of the CCOC to submit
11 the application which was at issue in the 73-12, I mean,
12 73-12 and this case.

13 In CCOC Case 73-12, the CCOC found that the May
14 15th, 2011, letter, approving the deck and the shed, did not
15 reference, much less approve, the construction of a garden
16 wall or retaining wall. The panel found that Peter Ball's
17 desire to create space under the deck, quote/unquote, via
18 the use of a retaining wall constituted an unapproved change
19 to plans approved by the association.

20 In this case, the evidence clearly shows that
21 Peter Ball caused the construction of a massive structure
22 which looks nothing like the original model of his house or
23 any other house in the neighborhood. It is completely out
24 of character and harmony with the neighborhood. It looks
25 nothing like the HOA-approved plans. It looks like four

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1 townhouses slapped together with five ascending rooflines.
2 The roofline was raised, and the approved plans don't show a
3 raised roofline. It has windows where windows are not
4 supposed to be. It doesn't have windows where it's supposed
5 to have windows. It has windows where French doors should
6 be, and a myriad of other material deviations.

7 It is precisely this type of big mass structure --
8 it is exactly the type of big mass structure that Mr. Ball
9 wanted to build which the board made clear to Mr. Ball
10 throughout the application process that it would not
11 approve, but just like before, Mr. Ball asked for X and,
12 when he got approved to build X, he went ahead and built X,
13 Y, and Z, which is what he really wanted to build and knew
14 wouldn't be approved. So here we are once again.

15 With regard to his allegations that no votes have
16 been taken, no meetings have been held, that he hasn't had
17 opportunities to present his case before the HOA filed in
18 the CCOC, as being proof of the HOA's -- is proof of the
19 HOA's bad faith is baseless. And I'm going to just note
20 here that I don't see anything in either the amended answer
21 to the supplemental complaint or the answer to the -- the
22 answer to the complaint itself, the answer to the
23 supplemental complaint, or the amended countercomplaint that
24 makes a bad-faith claim of this nature.

25 The only bad-faith claim that's in the pleadings

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1 was in reference to the horizontal siding. He claimed that
2 it was bad faith for the board not to approve his horizontal
3 siding, and it's been my position throughout that since the
4 horizontal siding is not an issue in this case, that that
5 cannot act as a bases for a bad-faith award of attorney's
6 fees in this case. And the reason for that is, if you look
7 at Chapter 10B-13(d)(1), under that statute the hearing
8 panel may award, it says, may award costs, including
9 reasonable attorney's fees, to any party if another party
10 filed or maintained a frivolous dispute or filed or
11 maintained a dispute in other than good faith. Well, the
12 siding is not part of this dispute; so therefore the siding
13 cannot, in my view, act as any basis for a bad-faith claim
14 in this case because it's not part of this case.

15 If he filed a case based on the siding and that
16 was a case that was being heard and if there was a finding
17 that, a finding of bad faith on the part of the board of
18 directors with regard to that application, then yes,
19 theoretically such an award could be made, but here that is
20 not at issue; so that cannot be the basis, and that actually
21 is the only reference to bad faith in these pleadings, and
22 I'm just making note of that.

23 The association had originally authorized the
24 filing of CCOC Complaint 73-12. I believe it was, okay, and
25 I think it was on December -- I think it was maybe around

1 consequence because the issue is now moot. I mean, first of
2 all, I think the evidence shows that Mr. Ball was basically
3 present at pretty much every meeting that involved his
4 application. There were numerous meetings that involved
5 where his -- his architect, his lawyer. I mean, I think
6 that that was shown in the CCOC 73-12. They had a total of
7 about, you know, eight different meetings, formal and
8 informal, but the issue is moot. His application was
9 approved in May of 2011. There was no application to
10 consider after that application was approved. It's a final
11 application. You don't keep -- you don't get to keep coming
12 back.

13 Just because he is not happy with the fact that
14 the vinyl siding was not approved doesn't mean he gets to
15 just keep on coming back and making an issue out of it.
16 It's done and over with. If he didn't like -- if he wasn't
17 happy with that decision, he certainly could have gone to
18 court or to the CCOC to say, to file an action. In fact, he
19 did do that, and this summer that action that he filed in
20 the court, in the circuit court, was dismissed, and the
21 action that he tried to file in this case was dismissed
22 also. That's a moot, that's a moot issue. I mean, there's
23 just no reason to keep going around in a circle on that.
24 It's of no consequence.

25 As far as any meetings, other things related to

1 the conditional application and other decisions made by the
2 board, it's our position that they were ratified by the
3 board at the special meeting, as was the decisions made to
4 hire the attorney to represent the HOA at hearings, being
5 obviously, you know, this being, these being the only
6 hearings involving Mr. Ball.

7 Like I said before, I mean, Mr. Bruno's testimony,
8 he alleges that a vote was taken at the October 7th meeting
9 supposedly to not take, to not take Mr. Ball into the CCOC.
10 Well, we dispute that, but I would argue that even if such a
11 vote did occur, this was a special meeting and that wasn't
12 on the special meeting agenda; so it would have no
13 consequence. The vote was -- there was a vote taken at the
14 October 28th meeting concerning funding the filing of the
15 second CCOC case against Mr. Ball for the ongoing violation
16 because we couldn't get it into the, get it into the first
17 case.

18 Meetings regarding his application were not
19 closed. I mean, the evidence shows that Peter Ball, his
20 lawyer Jim Deaver, and his architect, Ms. Bruno, attended
21 and presented at numerous meetings in consideration of his
22 application. I would submit that Mr. Ball's applications
23 have taken more time of this volunteer board than everybody
24 else, the other 158 homes put together.

25 The homeowner association representative testified

1 that notices of meetings have been delivered by hand, mail,
2 LISTSERV, or electronically. There were three witnesses
3 that came in and testified that they did not receive all the
4 notices. One of them was Mr. Charles Bruno; the other,
5 Ms. Bentolila. Six witnesses --

6 MS. ROBESON: I hate to interrupt. It's been
7 almost 50 minutes; so --

8 MS. ROSEN: Okay. I'm --

9 MS. ROBESON: -- and it's almost 5 o'clock.

10 MS. ROSEN: Oh, my.

11 MS. ROBESON: So I want to make sure Mr. -- are
12 you --

13 MS. ROSEN: I will be done in about five minutes.
14 I'll --

15 MS. ROBESON: I don't want you to curtail it, but
16 I do, I am trying to get a sense whether we need to come
17 back another day.

18 MS. ROSEN: I don't think so. I will -- I just
19 have this page and a piece of that page.

20 MS. ROBESON: Okay.

21 MS. ROSEN: Yes. Okay. The meetings regarding
22 these -- I think we indicated that the testimony about
23 meeting notices, we have some witnesses claiming they didn't
24 receive all notices. We brought in six witnesses that
25 receive, they do receive all their notices. There've been

1 some complaints about the idea of hand-delivering notices.
2 I would just note that the Maryland HOA Act does not
3 prescribe how notice is to be delivered. It just requires
4 reasonable notice. The Bruno order actually required the
5 HOA to hand-deliver or mail the meeting notice for the
6 budget meeting --

7 MS. ROBESON: Yes, I saw that.

8 MS. ROSEN: -- and a special meeting. So --

9 MS. ROBESON: I will say, though, it still is
10 illegal to put it in the mailbox.

11 MS. ROSEN: No, I -- yes, usually not supposed to
12 put in mailboxes, yes, but the bylaws in themselves actually
13 don't prescribe the notice method for board meetings, that
14 they do prescribe it for membership meetings but not for
15 board meetings. And I don't believe that the HOA Act
16 requires the association to deliver an agenda, generally, to
17 the membership when you're doing a notice of a board
18 meeting, and the bylaws don't require that either. I'm kind
19 of winging off the top of my head on that.

20 So, basically, the only specific remedy that is
21 requested in the counterclaim is that the CCOC remove
22 Dr. Barr as the president. Now, that's the only remedy that
23 they request.

24 MS. ROBESON: You don't need to argue that.

25 MS. ROSEN: Okay. All right. Yes. I was going

1 to say, only the, only -- under the bylaws, only the
 2 membership can do that. Okay.
 3 MS. ROBESON: Is there anything in evidence now
 4 that tells me when the board voted to take it to the CCOC,
 5 because I looked through the minutes and I didn't see it.
 6 So I guess I was curious.
 7 MS. ROSEN: Yes, I don't specifically recall, but
 8 I guess my position would be that the, that when the -- in
 9 the Bruno case, when the board was basically told to, you
 10 know, go back --
 11 MS. ROBESON: Well, wait. I don't, I can't have
 12 -- I'm saying, just based on the evidence so far --
 13 MS. ROSEN: Yes. Yes, I can't think off the top
 14 of my head of something in there specifically showing the
 15 vote. I mean, I --
 16 MS. ROBESON: Okay. If you can't, I'll peruse
 17 through again.
 18 MS. ROSEN: -- you know, I can't, you know, off
 19 the top of my head.
 20 MS. ROBESON: That's fine.
 21 MS. ROSEN: Okay. Okay. I mean, basically, the
 22 desired actions, I mean, the desired actions that the HOA
 23 seeks are set forth in the complaint under Desired Actions.
 24 So I will not repeat them.
 25 And I think in terms of the bad faith, I think

1 the, you know, I think I've gotten into that in my
 2 presentation, but I think Mr. Ball's long history of not
 3 building in conformity with approval -- he has consistently
 4 shown bad faith and disregard for the rules of the HOA, in
 5 this case and in previous cases. He constantly makes up
 6 excuses, you know, tries to say the county made me do it, my
 7 lawyers didn't do a good job. Whatever the problem is,
 8 it's, it's generally always somebody else's fault.
 9 He has continually badgered this association when
 10 he was rejected for the horizontal siding. His response to
 11 that is to just keep badgering the association, threaten
 12 litigation, file suits and then dismiss them and run up a
 13 bunch of unnecessary, run up a bunch of unnecessary bills
 14 with regard to the horizontal, you know, with that whole
 15 issue. I mean, he originally actually wanted to use Hardie
 16 board and not vinyl, and he basically tries to, tries to,
 17 I'm going use the term in quotes, negotiate, so to speak, to
 18 get what he wants by threatening litigation and things of
 19 that nature, and that's just, that's not appropriate and
 20 that does show, does show bad faith and, I think, just in
 21 general, the other areas that I addressed where he
 22 basically, you know, builds one thing, does another, and
 23 it's -- and the CCOC has made findings to that effect, that
 24 he intended, he, that he actually intended to do something
 25 other than what was built, and those were just a couple of

1 examples I kind of throw off at the top of my head.
 2 His behavior is consistent with the previous
 3 examples of his constant ongoing refusal to abide by the
 4 rules of the HOA. This is the only home out of 159 that is
 5 consistently built without conforming to guidelines. It's
 6 been a perennial construction site for well over 12 years,
 7 and Mr. Ball has consistently, if you -- when you look at
 8 the records in the other case, when Jeff Williams was the
 9 president, he was the villain. Now that Dr. Barr is the
 10 president, now Dr. Barr is the villain, and whoever the next
 11 president is going to be, that person will be the villain
 12 also. And despite two previous independent CCOC decisions
 13 against Mr. Ball, the pattern of noncompliance, ignoring HOA
 14 rules and guidelines continues to this day.
 15 And I would also just note that Mr. Ball has been,
 16 he testified, essentially he's -- he calls himself a
 17 builder. He's been in this industry for what, 20 years I
 18 think is what he said, if I remember correctly. It is
 19 astonishing to me, how could a person who considers himself
 20 to be a builder not know how to construct in accordance with
 21 their own plans? It is not the responsibility of the HOA,
 22 it is not the responsibility of Dr. Barr, who's a board
 23 president and happens to be an architect, to basically give
 24 free architectural advice to Mr. Ball.
 25 It's clear to me that Mr. Ball basically wants to

1 cut corners. He doesn't want to pay for the professional
 2 services that he obviously -- he either doesn't know how to
 3 do things correctly or he's deliberately not doing it
 4 correctly, but I think this all goes to bad faith.
 5 MS. ROBESON: Okay.
 6 MS. ROSEN: Thank you. I didn't realize --
 7 MS. ROBESON: Thank you.
 8 MS. ROSEN: -- I was talking so long, but --
 9 MS. ROBESON: No. It's a lot, there's a lot --
 10 MS. ROSEN: There's a lot, yes.
 11 MS. ROBESON: -- of facts. I just wanted to make
 12 sure --
 13 MS. ROSEN: That's why I had to write it. I knew
 14 I would never be able to --
 15 MS. ROBESON: That's why I had to do a time line.
 16 I just wanted to make sure Mr. Mohammadi got in before --
 17 MS. ROSEN: Absolutely.
 18 MS. ROBESON: -- we're all going to bed or
 19 watching an Os game. Well --
 20 MR. MOHAMMADI: Os are in.
 21 MS. ROBESON: -- I won't be watching the Os game.
 22 What?
 23 MR. MOHAMMADI: Os are in. So there's no games
 24 until Friday.
 25 MS. ROBESON: Oh.

1 MS. ROSEN: Okay.
 2 MR. MOHAMMADI: Okay. Thank you. Just, just
 3 briefly to start out with, Ms. Rosen just finished by saying
 4 she's astonished how a builder can't build in accordance
 5 with his own plans. What I find astonishing is that a
 6 world-renowned architect can't read his own -- can't read
 7 drawings, and this is what this case is really about.

8 A set of plans was submitted, and there is some
 9 dispute about what are the plans, but we have now Exhibit 77
 10 and 126 as the approved plans. Let's focus on 77 and 126.
 11 Those approved plans show very clearly, without a doubt that
 12 the roof heights would be raised. Leo Schwartz said that,
 13 Ms. Washburn said that -- their expert said that -- and
 14 Dr. Barr eventually, after significant prodding,
 15 acknowledged that as well: Now I see it. I had, I asked
 16 Ms. Washburn specifically to go through the exercise: Can
 17 you take a scale and tell me how high this is? And now can
 18 you take a scale and look at the as-built and tell me how
 19 high this is? It took all of 30 seconds to figure out that
 20 the roof height would be changed.

21 What I also find astonishing is this constant
 22 insistence that the HOA wants him to continue building and
 23 finish up, bring it in compliance and finish up. How is he
 24 supposed to do that when the approved plans show a roof
 25 height being raised and what they're saying is not in

1 compliance is that the roof height is being raised? It's a
 2 catch-22. How do you continue building what is approved
 3 when they're saying what is approved does not mean the roof
 4 height has changed? And so this is sort of the underlying
 5 issue.

6 They say that it's always been a moving target for
 7 Mr. Ball. Well, I submit that it's been a moving target
 8 with the board as well. If anything, it's been a moving
 9 target with them exclusively. From 2008 until May of 2011,
 10 three-and-a-half years is what we're talking about for an
 11 application to get approved. That's unheard of, in my mind.
 12 I've never seen that. Why should it take so long for a
 13 homeowner to get approval on his own home, to make changes
 14 to the exterior of his own home? Why should it take that
 15 long? It's because there is no guidance provided
 16 whatsoever.

17 You look at these HOA architectural control
 18 committee guidelines. It's Exhibit 70. They're very short,
 19 very brief, and out of that you're supposed to glean how
 20 wide the trim size is supposed to be, what kind of materials
 21 can and can't be used, how thick this is, how thick the
 22 windows are, whether there should be a setback here -- all
 23 kinds of things you're supposed to glean from this
 24 three-page document, and two pages of it is just procedures.

25 This has been the problem, and you heard Mr. Ball

1 testify. He said, I wanted all these things for my house.
 2 I submitted an application in 2008. It was rejected. They
 3 said, you need more things. So I went to Dr. Barr and the
 4 board, and I said, tell me what I need to do; tell me what I
 5 can and cannot do to get this approved, and his testimony
 6 was, they would refuse to tell me. Their response was,
 7 submit an application; we'll either approve it or reject it
 8 -- submit an application, and we'll either approve it or
 9 reject it.

10 If one thing is clear to me, throughout the
 11 testimony in these six days of trial, when Dr. Barr
 12 testified, it was almost impossible to get a straight answer
 13 out of him. It took, I don't want to mischaracterize it,
 14 but it took a lot of effort on cross to get him to just say
 15 yes or no to something and to just acknowledge one thing or
 16 another. There's always a way around it. There's always a
 17 way around the answer, and that's exactly what Peter Ball
 18 was testifying to, that he could never get a straight
 19 answer. If that's not been shown in this trial, I don't
 20 know what else can be done, but it's pretty clear that the
 21 whole time that this project has been pending, Mr. Ball has
 22 just wanted to get this done and he's just wanted to know
 23 what it is that needs to be done and to know how to bring it
 24 in compliance when the approved plans show what he said he's
 25 going to do and what he has been doing: raise the roofline.

1 Now, it's important to know what the complaint
 2 says, and I've talked about it a little bit during this
 3 trial, but the complaint does not say anything about the
 4 ridgeline. All it says is that the approved plans did not
 5 show that the roof height would be raised from the as-built
 6 plans, that the roof height would remain the same from what
 7 was originally there to the built construction. Well,
 8 that's clearly not true. The approved plans clearly show
 9 that the roof height would be raised.

10 And so the shift now, in the second half of this
 11 trial, has been, well, let's get away from roof height and
 12 let's talk about this ridgeline that looks different than
 13 what the approved plan is. That's not the complaint.
 14 Whether that's correct or not, whether that's a violation or
 15 not, that's not part of the complaint. And Ms. Washburn and
 16 the board -- in rebuttal, specifically -- that's, the
 17 testimony shifted and the theory shifted to that, and I
 18 think that just goes to show they don't even, the board
 19 itself doesn't even know what the violations are. The board
 20 itself doesn't know what's wrong and what they said that
 21 Mr. Ball can do and what he can't do, and that goes back to
 22 the supplemental items, and it also goes to the bad-faith
 23 claims.

24 The only person that ever really testified about
 25 the supplemental items was Ms. Gowen, and she said: I went

1 there, I looked from my house and from the street, and I
 2 found all of these supplemental items to add, all these
 3 violations. First of all, I question how she's able to
 4 figure out some of these things from sort of eyeballing it
 5 from the street, that the trim is this high compared to
 6 something else. Be that as it may, I think we have clearly
 7 shown that Ms. Gowen has bias towards Mr. Ball, and that's
 8 just, it's natural. I don't think there's anything
 9 astonishing about that. That's natural given their history,
 10 but then to be the person that gets on the HOA, that submits
 11 the supplemental stuff, and then just get sort of a blanket
 12 vote without any discussion, without any review, without any
 13 input from Mr. Barr, that's problematic. That's where the
 14 bad faith comes in.

15 The HOA's dealings with Mr. Ball throughout this
 16 whole process is where the bad faith is, and the testimony
 17 by the various members, and as well as in Ms. Rosen's
 18 closing, is directly, supports our bad-faith claim. The
 19 board has said all along Mr. Ball has had violations in the
 20 past, so everything he does is scrutinized. Well, that's
 21 not the standard. The standard is, you're supposed to be
 22 neutral, and Dr. Barr testified and he agreed, you're
 23 supposed to be neutral regardless of who the homeowner is.
 24 Yet Mr. Ball's house and Mr. Ball are being treated
 25 differently because of past, quote/unquote, violations, and

1 now everything is being scrutinized, everything is being
 2 looked at with a microscope, and they just don't believe
 3 he's going to do or be able to do the things he's saying.
 4 If that's not bad faith, I don't know what is.

5 You're never going to get a situation where
 6 somebody comes out and says, we don't like this guy and
 7 we're going to screw him over, and pardon my language. That
 8 never happens. That is not how you show bad faith. You
 9 show bad faith by the circumstantial evidence that's in the
 10 case.

11 Circumstantial evidence here is that they clearly
 12 treated him differently. They clearly used a different
 13 process with Mr. Ball than they used with anybody else.
 14 Ms. Bentolila testified about her house, and Ms. Rosen wants
 15 to make a distinction that her house is unique: it burnt
 16 down and so it's a completely rebuilt house. Fair enough,
 17 it's unique in that it burnt down; so that's a factual
 18 difference, but the process that's supposed to apply --
 19 there's no distinction in the architectural guidelines or
 20 anywhere else that I'm aware of that says, if you're
 21 building a brand-new house, it's different than if you're
 22 applying to make changes to the exterior. The process
 23 remains the same. The way the application process is
 24 supposed to work, the way you communicate and vote on and
 25 approve and then subsequently follow up and make sure it's

1 in compliance is supposed to be the same.
 2 Ms. Bentolila came forward. I think that takes a
 3 little bit of courage on her part to come forward and say,
 4 yes, I violated some of my own approved plans, I built
 5 something that's taller than what was approved, I did not
 6 submit certain documents that they requested.
 7 Interestingly, she got no grief about it. There is no board
 8 action against her for building a house that's almost 30
 9 feet tall. She got no board action against her for not
 10 submitting floor plans, which apparently are always
 11 required.

12 She has been treated differently, and it doesn't
 13 matter what the reason is. The fact remains that that
 14 should not happen. Each member of the community should be
 15 treated equally and the same way and regardless of if you
 16 have one application, five application or 100 application.
 17 Each application and the process we follow is supposed to be
 18 treated the same way, and that was simply not done.

19 I find it interesting, Ms. Rosen says his vinyl
 20 siding was rejected, he can't keep coming back and
 21 submitting. Why not? What doesn't allow him to do that?
 22 Where is that authority that if you're unhappy with the
 23 board's decision, that you supply, submit a new application
 24 and ask, reconsider it, reconsider it? And they're saying,
 25 once it's been rejected, we no longer have to ever act on

1 it. That's not true. If it's an application, you have to
 2 act on it. It's in their own governing documents, it's in
 3 their own bylaws, and they have to do it.

4 Now, let me just take a step back. The history
 5 here is important, and I just want to talk about it very
 6 briefly. It does matter that Mr. Ball is a builder. This
 7 is what he does. He builds renovations for houses. So when
 8 he wanted to build his own renovations, make his own changes
 9 to his house, he doesn't have to go out and hire a builder
 10 to do it; he doesn't have to go out and hire all these other
 11 people that a homeowner would have to hire. He can do it
 12 himself because he knows what he wants to do and he knows
 13 how to do it.

14 And so, yes, he, in 2008, when he approached the
 15 board about making the changes, he submitted an application
 16 and said what he wanted to do, and he knew exactly what he
 17 wanted to do. He did not have to make plans that he would
 18 submit to a contractor for it to be bid on. They did not
 19 have to have that level of detail. A contractor would
 20 certainly need it because they want to build exactly what
 21 the homeowner was, wants; otherwise, they face liability.
 22 He's the builder and the homeowner. He doesn't need that
 23 level of detail. The only time he needs detail is for two
 24 things. One is for the board to get approval, and two is
 25 from the county to get approval on his plans. Well, he got

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1 approval from the board and he got approval from the county.
2 Now, three-and-a-half years is an absurd amount of
3 time to be in front of your HOA to get approval on your
4 house. They classify this as being something complex, and
5 maybe there are a lot of elements to this, to this
6 construction. There's a bump-out, there's an addition of a
7 roof, and then there's an addition in the back of the house.
8 Those are sort of the major elements of this. It might be
9 substantial, but it's not something that should have taken
10 three-and-a-half years to get done, and certainly it
11 shouldn't have taken another year and a half after Ms. Bruno
12 got hired and submitted plans.
13 You heard testimony that initially he wanted a
14 gable roof over the garage. Well, that was rejected, and
15 you heard testimony, the reason it was rejected by Dr. Barr
16 -- not the board, but Dr. Barr -- is because it did not fit
17 the model side; it changed sort of the way the house was.
18 Well, his next-door neighbor has a gable roof. How -- no
19 explanation provided why that is okay on that house and it's
20 not okay at this house, and again, that goes to bad faith:
21 treated differently than another homeowner.
22 Again, the HOA testified that due to the history,
23 they took a closer look at everything, and I want to sort of
24 try to nail this down in terms of the time line. We don't
25 have every single plan that was submitted in the record. I

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1 think that would have been too much anyways, especially
2 starting in 2008 and forward, but what we do have is Exhibit
3 77 and 126. If you look at them, they are the same thing
4 except one is a copy of another, and the testimony
5 eventually came out that they were, they are in fact the
6 same thing, that Ms. Deise took the large scales, scanned
7 them, and distributed them. And if you look at them, you
8 can see certain cutoffs on Exhibit 77, some words getting
9 cut off. You can tell it's just, it's not a complete
10 replica, but the drawings themselves are the same thing.
11 If you look at the dates, it says when the date of
12 that, of that 126 and 77 was. It's, if I -- off the top of
13 my head, it's February 22nd, 2011, was when that initially
14 was drawn by Tania Bruno. If you look at 148, the revision
15 date is 4/6/2011, prior to the vote of the HOA vote, and you
16 heard Mr. Ball testify that he got those -- those revisions
17 were made by Tania Bruno, and that's what he dropped off at
18 Dr. Barr to be discussed at the meeting.
19 It's correct that nobody seemed to realize at the
20 meeting that what they were looking at on 26 was different
21 than 148. I don't know how that happened, and I don't in
22 fact know if that's the case. In other words, I don't in
23 fact know whether, at the meeting that occurred, whether
24 they were looking at 126 or they were in fact looking at
25 148 and subsequently, when the vote took place, they voted

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1 on something else. I don't know that, but the fact remains,
2 148 was submitted prior to the vote to approve the plan.
3 You heard testimony, again, that the vote took
4 place outside of Mr. Ball's and his attorney's presence and
5 that the conditions that were imposed on the approval were
6 never communicated to him at the meeting. They were
7 communicated to him in that May 10th, 2011, letter. So,
8 again, what we have here is this conditional approval that
9 Mr. Ball doesn't even agree with but now he has no choice
10 because now that's what's been -- that's what's official,
11 that's what's been sent out, and that's what he has to rely
12 on.
13 Fine, he does it. He goes forward and tries to
14 get, you know, everything done. He doesn't agree with it;
15 so he keeps submitting on the vinyl siding. He wants his
16 vinyl siding; so he keeps submitting on it. There's nothing
17 wrong with that, and again, he's not -- he didn't build it.
18 He wants it, but he hasn't constructed it; he hasn't put up
19 horizontal vinyl siding. He has just requested it, and the
20 board just keeps rejecting it without an explanation why.
21 And why this goes to bad faith is the same reason as what
22 I've said before: he's being treated differently than other
23 homeowners. There is horizontal vinyl siding in the
24 community; so why can he not have it while others can have
25 it? We don't have an answer to that.

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1 Dr. Barr's testimony that horizontal vinyl siding
2 would make the mass -- would make the house look longer,
3 again, you heard the testimony; it wasn't very clear, and it
4 was very, it was kind of going around answering that
5 question. But when I asked him what about -- well, wouldn't
6 vertical siding make it look taller and the complaint is
7 that it's taller, and he said, no, the complaint is not that
8 the house is tall. Again, that goes away from what the
9 testimony in the case-in-chief was all along, that the house
10 is too tall, that it looks too big, that it's -- both width
11 and height -- but that it's just too tall and that the chief
12 complaint from neighbors and homeowners in the community has
13 been that the house is too tall and that's why the HOA has
14 been acting on this and has, has had all these concerns, and
15 all of a sudden, Dr. Barr changes his testimony to say, no,
16 height is not the issue. I just find that a little bit
17 incredible.
18 After the house was approved, you heard testimony
19 as to why there was delay. The big issue was with respect
20 to the vinyl siding. He did not want to start without
21 getting that result. It makes sense. Why should you start
22 a construction when you don't know what the exterior is
23 going to look like at the end? So he waited. At some
24 point, you heard Mr. Ball testify again that county code was
25 changing, and so with respect to the deck and shed, he went

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1 compared to Respondents' witnesses.
2 I think Mr. Ball testified very credibly. He was
3 direct in his testimony, answered all the questions, and
4 quite frankly, the explanations he gave for some of those
5 items -- for example, his letter about the back of the roof,
6 his letter about what approved plans mean, and things like
7 that -- all make complete sense, all are believable, and
8 it's not something he just sort of came up with. They're
9 credible and believable.
10 Same thing with Mr. Bruno, he's a third party.
11 Yes, he has filed a case before. So he has some interest
12 here against the CCOC, but his testimony about the meetings
13 he has attended and what he has seen and not seen and the
14 notices he does receive or does not receive was very
15 credible.
16 Same with Ms. Bentolila, she has no bone to pick
17 here. She testified: I don't receive all the meeting
18 notices. I don't -- I've attended meetings and, for which I
19 have not received notices.
20 Lance Pelter, he was on the HOA before. He has no
21 bone to pick either. He was very credible in testifying, I,
22 too, have not received the notices, as I'm supposed to get
23 them.
24 On the other hand, I think the testimony of the
25 witnesses for the complainant was just not believable. I

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1 already mentioned Dr. Barr. It was almost impossible to get
2 a straight answer out of him, and he testified three times,
3 and it was very difficult to pin him down on one thing. And
4 I think that just goes to show, he's not believable; that
5 he's, that he's trying to hide something, that he doesn't
6 know what's going on, I have no idea, but it just does not
7 make his testimony believable.
8 He specifically testified that he did not read
9 those plans that were submitted. He said, I relied on what
10 I was being told in a written description, or something, and
11 that's what he went by. Well, that's sort of preposterous.
12 The guidelines require plans. The whole three-and-a-half
13 years that it took for the plans to get approved, the
14 application to get approved, is because he kept not having
15 the plans that they wanted, didn't have dimensions, didn't
16 have scales, didn't have this, didn't have that on the
17 plans, keep resubmitting, keep resubmitting, keep
18 resubmitting until it meets what we want, and then to say I
19 didn't even look at the plans when we approved, it's just
20 absurd. Why go through all of that when you're not even
21 going to look at it? Had you looked at it, it would have
22 been very clear what was being described as what's going to
23 be built.
24 You can't say your own failure to look at the plan
25 is because of an ambiguity and blame it on the homeowner.

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1 There's no ambiguity. The plans are what the plans are.
2 Leo Schwartz said it's very clear to see that the roof
3 height is being raised, and quite frankly, Ms. Washburn,
4 after some prodding, also agreed that it's, it shows that
5 the roof height is going to be raised, and she determined
6 that in 30 seconds. So there is no ambiguity there. It's
7 pretty clear what was supposed to be done, and the roof was
8 in fact raised. Nobody's arguing that. Nobody's disputing
9 that. Nobody's claiming that the roof height was not
10 supposed to be raised, and to imply otherwise is just, just
11 incorrect.
12 Moving on to Ms. Gowen's testimony, again, she was
13 also very, very wishy-washy about what she was saying, also
14 very hard to pin down, and she got a lot of the dates and
15 sort of order of events that happened confused. Ms. Gowen's
16 testimony is just, it's just too biased. It just cannot be
17 believed. There's, it's clearly -- clearly, there's
18 animosity going on between her and Mr. Ball, and when asked
19 whether she believed there is, she would not really answer
20 that question either, which I think is just demonstrative of
21 what's actually going on, that there is in fact some bias
22 going on here.
23 And if you cannot believe her testimony, then all
24 those supplemental issues that are raised, which she's the
25 only one that raised, should not be believed because those

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1 were only presented at the October 28th hearing as well.
2 And I will get into some of these procedural issues in a
3 little bit more detail in a second, but again, she said it
4 -- she prepared this list, and she didn't really say how
5 that came about. She sort of took it on her own to do it,
6 but she prepared that list, presented it, and it got a
7 blanket vote and, and -- sort of on the 28th. There was no
8 real discussions about it. Nobody really asked questions.
9 And when I asked Peter Gibson or Dr. Barr some specific
10 questions about it, they couldn't really answer, and
11 Dr. Barr even testified, both in deposition, as we pointed
12 out, and himself, he didn't think those were a big deal.
13 Well, not a big deal, but I still voted on it -- that's the
14 problem. It's sort of, okay, one board member has presented
15 this, I'm just going to vote on it without making my own
16 determinations, without reviewing it, without looking into
17 it, and again, that goes towards bad faith.
18 Just very briefly, Mr. Gibson, again, his -- I
19 think he's trying to do the right thing, but, but the fact
20 that he said one thing and then the next time he testified
21 he flipped 180 when the e-mails show otherwise, it makes his
22 testimony questionable at best as well. I mean, it's pretty
23 clear that he believes that the vote was an actual vote that
24 took place. Why he gets on the stand and now changes, that
25 vote never took place, I don't understand, I don't know why,

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1 but he did say that, and I think it affects his testimony as
2 well.
3 Ms. Alpher, she, too, was not very persuasive in
4 my mind. She kept, you know, getting the amount of
5 applications that were submitted wrong, when they were
6 supplied, and that every time you want to make a change, she
7 testified you're supposed to submit a new application and
8 that was never done. Well, again -- but then she says there
9 has been applications subsequently. It just didn't match
10 up. The testimony does not line up, and I think she's also
11 not believable.
12 With respect to Ms. Washburn, as I pointed out,
13 she, her focus was not that the roof height would be raised.
14 Her focus was that the ridgeline was off, that the ridgeline
15 looked different than what's on the approved plans. Be that
16 -- whether that's true or not is sort of irrelevant for this
17 hearing because that's not what the complaint says and
18 that's not what the case-in-chief said was the issue.
19 Finally she did admit that yes, the plans were
20 supposed to be, that -- show that the roof height was
21 supposed to be raised. And when I asked her, can you show
22 how he could have, Mr. Ball could have done anything
23 different than what he is doing with respect to raising the
24 roof, meaning if you add eight feet of space above the
25 garage, how can you build a roof with the same slope that

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1 wouldn't cause the roof height to be raised, she talked
2 about this theoretical thing where you can have the roof
3 come down below. That's not what was submitted. Maybe it's
4 theoretically possible, and -- although she did not even say
5 that's actually workable in this scenario, but that's not
6 what was submitted and that's not what was approved.
7 What I wanted to know was how can he do what was
8 approved without raising the roof, and there was no answer,
9 and there can't be an answer because, if you add eight feet
10 -- it's simple, I think, geometry, simple geometry -- but if
11 you add eight feet on top and you keep everything else
12 proportionally the same, meaning the slope the same, how can
13 you build a roof that's not higher than the original roof?
14 It's not possible, and again, that goes to the heart of the
15 matter in this case.
16 The one other thing I would like to point out
17 about credibility and bad faith is you have observed the
18 gallery and the various members that were present throughout
19 these hearings and you commented on the outbursts that
20 happened and the reactions that happened --
21 MS. ROSEN: Well, I'm going to object to this.
22 This is not -- the behavior of the gallery, so to speak, is
23 really not relevant to the decisions that were ever taken in
24 the case.
25 MS. ROBESON: Well, I don't know where he's going

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1 with it. Where are you going with it?
2 MR. MOHAMMADI: I think it shows -- again, it goes
3 to the bad faith, and I think it shows how polarized this
4 whole thing is, how, how the parties view Mr. Ball and his,
5 and his actions throughout. This is not a situation --
6 MS. ROBESON: To rule, I'm going to let it in
7 because it's part of the record.
8 MR. MOHAMMADI: You --
9 MS. ROBESON: I have no reason to exclude it.
10 MR. MOHAMMADI: Absolutely. You commented on it,
11 it is part of the record, and I think it's somewhat
12 relevant, at the very least, because the outbursts came from
13 the complainant's side and, again, it shows that the
14 complainant has this view of Mr. Ball and his actions and it
15 goes -- and it's a negative view and, again, it goes towards
16 the bad faith that we believe exists when it came to the
17 dealings in this case.
18 To touch on some of the procedural issues here,
19 first of all, the votes are important, and I don't think
20 this whole, this case is properly before the CCOC because
21 the vote, as it should have taken place, was not properly
22 noticed and was behind closed doors.
23 MS. ROBESON: Which vote?
24 MR. MOHAMMADI: The October 28th, 2013, vote to
25 bring this action was not properly noticed, meaning Mr. Ball

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1 or any of the other three or four witnesses that testified
2 got notice of that, that vote's going to take place. There
3 should have been notice and opportunity to present your case
4 on that. That never took place.
5 If the argument is that opportunity was at the
6 October 7th hearing, well, at that October 7th hearing, a
7 vote took place and the vote was to not take this CCOC case,
8 to not bring the CCOC case. If something had changed from
9 then to October 28th, opportunity should have been provided
10 for Mr. Ball to present his case and that was not done. So
11 I don't believe this is in front of the board -- in front of
12 the CCOC properly, because the proper notice and the proper
13 vote was not taken.
14 Ms. Rosen was arguing in closing that the October
15 7 vote, even if it did take place, is irrelevant because it
16 wasn't a proper vote, because it was a special meeting. And
17 what she stated was, it wasn't on the agenda that that would
18 take place; so any vote that happened couldn't be upheld
19 because it's not on the agenda. Well, fine. If that's the
20 case, that same argument applies to October 28th. It wasn't
21 on any agenda. It wasn't on any notices. So why is the
22 October 28th vote now proper but the October 7th vote is
23 improper? You can't have your cake and eat it too, and
24 that's exactly what's being, being argued here today.
25 Similarly, to address -- specifically, with the

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1 supplemental issues, those were also not properly noticed.
2 No opportunity was presented at all on the supplemental
3 issues at any point prior to the October 28th vote, and I
4 think the testimony was pretty clear that the first time
5 that was actually ever brought up, those supplemental items,
6 that was actually brought up in front of the board was at
7 the October 28th meeting. And Ms. Gowen testified about
8 that, that I went right -- shortly before that hearing, I
9 prepared that list, submitted it, and we voted it on it.
10 And as I said, Mr. Gibson and Dr. Barr specifically said,
11 didn't really know what those supplemental items were and
12 really didn't seem to have issues with them, and yet they
13 voted on it. So those supplemental issues are not properly
14 before the, before this Court either because there was no
15 proper notice and no proper vote taken on them.
16 And, finally, specifically with respect to the
17 December 16, 2013, subsequent, I call it an application --
18 and I know the complainant tries to characterize it
19 something other than an application -- the fact remains, it
20 was a new set of drawings that were submitted for approval.
21 The letter specifically says that. The drawings are part of
22 that letter. They were submitted, and they should have been
23 ruled on or acted on in one way or another. Lee Alpher
24 testified to that. Dr. Barr, I believe, testified to that,
25 and Mr. Gibson also testified to that, that when they

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1 receive an application, even if it's not, doesn't have the
2 form that it's supposed to have, even if it doesn't have all
3 the elements it's supposed to have to make it a proper
4 application, what happens is, what they have always done is
5 get back to the homeowner and say, this is not a proper
6 application, you're missing X, Y, and Z, fix it.
7 That's the kind of response that should have
8 happened in this situation. Nothing happened in this
9 situation. They just essentially plain out ignored it, and
10 it doesn't matter that 73-12 was pending; it doesn't matter
11 that they had filed a case, doesn't, nothing -- none of
12 Mr. Ball's rights to make changes to his house had been
13 suspended or stopped as a subsequent, as a result of that
14 filing. That order didn't come out until March of 2014.
15 That's when they said, you can't make any changes until you
16 make, you fix what has been, what we find to be a violation;
17 you can't have a new application until you fix these
18 violations.
19 In December 2013 nothing precluded Mr. Ball to
20 submit a new application, and so he did. He submitted a new
21 application, and well, I submit to you that that application
22 is really what this case should be focused on, that that
23 application is what shows what is built and that's the
24 application that was subsequently approved and is now what
25 governs what has to be built or not. And this whole case

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1 has not even addressed that. The focus has just been the
2 2011 approval, and as I said, I submit to you that that's
3 incorrect. The focus should not be on that.
4 The complaint should have been regarding the
5 December 16, 2013, application, and that by submitting it
6 and by the board not acting on it within the 45 days per
7 their own governing documents, that application has been
8 deemed approved and that application is what governs whether
9 there's any violations or not, and there's no testimony on
10 whether that application has been deviated from or not.
11 In this case, we are requesting that the board be
12 found to have acted in bad faith when dealing with Mr. Ball
13 with respect to this application, and the bad feeling, bad
14 -- bad feeling -- bad-faith claim is specifically with
15 respect to attorney's fees. And the attorney's fees, the
16 only way you get attorney's fees awarded for the homeowner
17 is if you can show that there was some bad faith, and
18 Ms. Rosen quoted it -- I think it's 10B-13(d)(1) or
19 something like that -- and that's why the bad-faith claim is
20 relevant here, because ultimately, a lot of time has been
21 spent on this case.
22 I believe we are now on day six of this hearing.
23 You have my attorney's fees invoices. They're substantial.
24 I -- now they include everything. I've billed for
25 everything and you see everything in there, but they're

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1 substantial, and I think they're substantial with cause. I
2 don't think they're absurd given what we have in this case.
3 This is -- I got involved in this case in February
4 of 2014. That's approximately when I came into this case.
5 There has been substantial discovery throughout, and we have
6 had six days of trial that are not back-to-back. There have
7 been days in between; so it requires re-preparation every
8 time, re-review of exhibits and transcripts.
9 So there's been a substantial amount of time that
10 has had to be spent on this case out of necessity, and we
11 believe that should never have happened. We believe that
12 this, all of this could have been resolved and should have
13 been resolved initially had the board just done what they
14 were supposed to do and had the board dealt with the
15 respondents in good faith, and their failure to do that has
16 caused all of this, has caused us to be at this point today.
17 And I have discussed what we believe to be the bad
18 faith, but I think the key is their own admission that they
19 treat Mr. Ball differently than other homeowners because of
20 their belief that he has these ongoing violations, he can't
21 meet criteria, he can't meet his, what he, what the work
22 that he says he's going to do, and that all of his work is a
23 moving target. Unfortunately for the complainant, that's
24 not the standard that applies.
25 He needs to be treated like every other homeowner

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1 know, I would just direct you to paragraph 7 and 8. There's
2 more to the complaint than just talking about the height of
3 the roof.
4 MS. ROBESON: Well, where is the testimony that it
5 was intentionally deceptive? I missed that, because
6 Ms. Washburn said that she didn't think -- I thought she
7 said she didn't think it was deceptive, intentionally
8 deceptive. She just --
9 MS. ROSEN: I'm not necessarily referring to her.
10 I mean, I'm not necessarily referring to her testimony
11 specifically, but I think what we're basically, it kind of
12 goes back to what I was saying before about building,
13 wanting -- applying to build X and building X, Y, and Z.
14 MS. ROBESON: Oh, I see. Okay.
15 MS. ROSEN: That's basically what I'm -- intending
16 to say that. Now, with regards to --
17 MS. ROBESON: Oh, I see what you're --
18 MS. ROSEN: Yes, basically --
19 MS. ROBESON: Yes.
20 MS. ROSEN: -- you know, trying to -- it's a
21 pattern of trying to deceive this association, and then this
22 time he just did it on a much grander scale, so to speak.
23 With regard to the supplemental complaint and
24 Ms. Gowen's testimony, or first of all, Ms. Washburn also
25 testified on various aspects of that supplemental complaint

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1 as, you know, with windows and front doors and other
2 aspects, and also, I believe, Dr. Barr did. Once again,
3 more disparagement of Ms. Gowen, yes, obviously -- it's
4 pretty obvious that Mr. Ball and Ms. Gowen are not exactly
5 what we call the best of friends, but that doesn't make,
6 that doesn't mean that Ms. Gowen's testimony should be
7 disregarded in any way. She's a professional person with
8 substantial knowledge, more than, more than that of a
9 layperson. This is part of her profession, with design and
10 construction. She's a person who has volunteered to serve
11 on the board, and the fact that there's been some, there's
12 some bad blood between the two of them doesn't mean that
13 Ms. Gowen's testimony should be disregarded. I mean, that's
14 ludicrous.
15 I think I indicated before, it's ironic that
16 Mr. Mohammadi keeps trying, in his view, he wants to hold --
17 when, and when it comes to my complaint, he wants to keep it
18 right in the four corners, letter by letter, but when it
19 comes to his own works, you know, he seems to go far beyond
20 that. The only bad-faith claim made in any of his pleadings
21 has to do with the, with the siding issue.
22 And with regards to how many times can you ask
23 somebody to reconsider the siding, yes, it is, you know,
24 it's one thing -- it was rejected in May 2011. He was given
25 an opportunity again because he didn't originally apply. We

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1 got to keep in mind, his original application did not apply
2 for horizontal vinyl siding. It applied for Hardie board,
3 and then he kind of, at some point down the line, he
4 changed --
5 MS. ROBESON: Horizontal Hardie board or -- I'll
6 look.
7 MS. ROSEN: Okay. No, it was, I think it was --
8 was it vertical Hardie board? I can't remember.
9 MS. ROBESON: Anyway.
10 MS. ROSEN: But anyhow, you know, he goes and
11 changes it. According to Mr. Mohammadi, Mr. Ball can
12 basically, every month, if he feels like it, just, you know,
13 annoy this association by asking for the same thing over and
14 over and over again. It's no different than, for example,
15 if I file suit in court to collect, let's say -- let's say I
16 feel Dr. Barr owes me \$1,000 and I file suit in court to
17 collect that money and the court rules against me. Well,
18 my, I don't get to come, decide next month, I think I'm
19 going to file the same suit in district court again and see
20 if I can get my money, and then the court, judge says no,
21 and I decide a month later, gee, I think I'm just going to
22 do it again, and then that's basically what he's doing.
23 If Mr. Ball was not happy with the decision to
24 reject his horizontal siding, you know, then he could have
25 come to the CCOC or the circuit court. He in fact did do

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1 that, and both of those cases have been dismissed. So it's
2 basically, it's harassment and badgering what he's doing.
3 I also find it ironic, you know, it's interesting
4 how Leo Schwartz, I mean, it's interesting to me how Leo
5 Schwartz testifies based upon the plans in 126/77 and
6 Mr. Mohammadi is like, well, you know, it's actually the
7 December 16th plans, those are the real plans, those are the
8 approved plans, but it's kind of interesting to me that Leo
9 Schwartz never testified about any of those plans, which, in
10 my view, I think that the, when you look at the whole
11 history, not just in this case, but the prior case, it's
12 just a pattern of deceptive behavior on the part, on the
13 part of Mr. Ball, and I find it very deceptive. It's like
14 trying to create confusion.
15 I think there's been a lot of confusion in this
16 case, and some of that has been created by the respondent,
17 you know, and I think by -- by having an expert witness
18 who's basically testifying based on what we are saying is
19 the approved plans, but I find it interesting that he
20 doesn't testify as to what they are supposedly claiming as
21 the approved plans.
22 And like I've indicated before, the, the approved,
23 the December -- these December plans that they're referring
24 to, they're not even in evidence. There's no -- you know,
25 they're not in evidence, because Exhibit 90 doesn't have

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1 those drawings. Those drawings have never independently
2 been introduced into evidence in this case. So really,
3 there's no evidence as to exactly what those plans
4 supposedly are.

5 The only thing that is in evidence, there are some
6 December, there are some drawings from December with the
7 deck submission, but there's no evidence that those are the
8 plans that were actually in fact attached, you know, into
9 that December, you know, that December submission, which I'm
10 going to refer -- it is not an application. You, it is not
11 -- the declaration says that when you make an application,
12 when you're asking for permission to do something, you can't
13 construct, maintain, or erect something on the lot without
14 making an application. You don't get to construct something
15 on the lot and after the fact submit something and say,
16 well, now you got 45 days. That's not what the declaration
17 says and that's not how it works. People -- you have a set
18 of rules. The declaration clearly says that you, before you
19 construct or maintain or erect something, you must seek
20 approval.

21 So you don't get to just construct something and
22 then throw, you know, throw some drawings on somebody's
23 doorstep and say, you know, here's my, you know, and then,
24 and then call, and then -- especially because Mr. Ball knows
25 exactly how an application is filed. I mean, he's done it

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1 before numerous times. This is just basically another
2 attempt on his part, as he's done in the past, to basically
3 force what he wants. He wants X, Y, and Z, and he just
4 basically went ahead and did it, and now he just wants to
5 force it on the association.

6 With regards to the remedy, so to speak, even if
7 we assumed, even if we assumed that the homeowner
8 association didn't always follow every single procedure and
9 everything to a tee, I think you have to look as a practical
10 matter, and there are CCOC cases that deal with this, where
11 you have a situation where, let's say, an association didn't
12 follow all of its rules and sometimes what they'll do is
13 they'll say, okay, now you got to go back, we're going to
14 kick it back, you're going to have to go back and consider
15 this person's application. You know, for example, if you
16 didn't follow it, you're going to follow, you're going to --

17 So I'm not exactly -- what is Mr. Mohammadi
18 basically saying, because the remedy, if the, if, if, and
19 I'm just saying this for the sake of argument, let's say
20 that they -- let's say that Mr. Ball should have had an
21 opportunity to speak his piece before they went ahead and
22 filed the CCOC action, which in the governing documents,
23 there is no dispute mechanism, but let's just say that he
24 should have had that right. So what exactly is he asking --
25 what exactly is the remedy then?

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1 If you determine, for example, that, hey, well,
2 they should have given him, you know, an opportunity to
3 speak, so what are we going to do? Let's kick this back,
4 and then if the board doesn't approve the application at
5 that point, after he's had his opportunity to speak, then I
6 guess we can all just come back here and re-litigate the
7 case, because that's basically what the CCOC cases that have
8 had similar types of allegations and situations, that's
9 basically what they do, but, or -- but in some
10 circumstances, I think in one of the cases that I had cited,
11 in a similar type of situation, the panel basically said:
12 You know what? Kicking it back, despite the fact that maybe
13 all procedures weren't followed, kicking it back isn't
14 really going to do any good because it's probably not going
15 to change the outcome; it looks to me like the board, you
16 know, it's not going to change the outcome; it's probably,
17 the board is probably going to, you know, whatever, they're
18 going to -- it's not likely they're going to approve this,
19 so we're just going to basically go around in a circle and
20 be back here; so what we're just going to do is we're going
21 to deal with this on the merits, and as a practical matter,
22 that's basically what would need to be done. I mean, you
23 can either sit here and re-litigate the case or decide it on
24 the merits, and I think at this point, after six days of
25 hearing, deciding it on the merits is what's basically going

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1 to be the appropriate thing to do. Just one moment.

2 They're saying with regard to, you know, issues of
3 delay -- I mean, I'm absolutely flabbergasted at the, the
4 respondent tries to blame the association for all the delays
5 and things, you know, that, involving in this case. I mean,
6 there's --

7 MS. ROBESON: Okay. There's --

8 MS. ROSEN: Yes.

9 MS. ROBESON: -- I gave you five minutes.

10 MS. ROSEN: Okay.

11 MS. ROBESON: You had five minutes more the first
12 go-around than Mr. Mohammadi, just for the record.

13 MS. ROSEN: Okay.

14 MS. ROBESON: So I gave you five minutes. You're
15 now at nine. So if you can --

16 MS. ROSEN: Okay. I'm sorry. I'm not timing
17 this. So -- okay.

18 MS. ROBESON: I'll give you until 6:00. That's
19 five more minutes, unless Mr. Mohammadi, and you'll -- well,
20 I got to end, though.

21 MS. ROSEN: All right. I'm just going to
22 indicate, I mean, the, I mean, this -- I'm just going to
23 address a little bit of these, you know, when he referred to
24 the, the outbursts, you know, and saying that that is
25 evidence as any kind of bad faith. First of all, I think

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1 Mr. -- I think it's a little presumptuous to assume whatever
2 folks in the gallery, I don't know, I can't see them from
3 where I am, so if they're making a comment or making a face,
4 whatever it is, you know, first of all, I don't think we can
5 -- you know, I think it's presumptuous to try to assume that
6 that has anything to do with bad faith in this case, actions
7 supposedly taken by the board in this case. I mean,
8 somebody in the audience might not be happy about something
9 or this or that, but I think it is really kind of stretching
10 it.
11 And I think that, quite frankly, a big -- and I
12 don't want to take up too much time -- but quite frankly, a
13 big part of his closing and the supposed bad faith is just
14 basically a lot of disparagement. It's basically, he's
15 trying to take the attention off of Mr. Ball's behavior and
16 Mr. Ball's history and trying to disparage the volunteer
17 association board members, who have put probably hundreds of
18 hours of time into trying to address the issues of Mr. Ball
19 and have tried to do so in good faith.
20 And I'm just going to underline very quickly with
21 regards to, especially, you know, the disparagement of
22 Dr. Barr. I mean, there's actually -- there's nothing
23 unusual about the president of the board being the main
24 spokesman for the, spokesperson for the association. It's
25 not like every time a letter goes out, the entire board

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1 doesn't sign it. That's not how things work, as a practical
2 matter, in any corporation, including a homeowners
3 association. And it would be our position of the
4 polarization --
5 MS. ROBESON: Well, that's your -- I mean, I
6 haven't heard that anywhere else except you. So I --
7 MS. ROSEN: Well, it's part of argument. I mean,
8 it's basically a --
9 MS. ROBESON: I mean, he's got accusations in
10 there. He's got instructions in there. I mean, if there
11 were a -- in condo associations there's usually a property
12 manager that is formally given authority. So what do I do
13 with it? So --
14 MS. ROSEN: Well, the governing documents give --
15 I mean, I pointed out the protection --
16 MS. ROBESON: He does have some executive
17 authority.
18 MS. ROSEN: -- of the governing documents. He has
19 executive authority. If you don't have a management company
20 -- I think it, I mean, I think it's real kind of common
21 sense in the sense that if you have a self-managed
22 association that doesn't have a management company, well,
23 it's going to be the president of the board who is basically
24 going to be signing letters or this or that. It's not going
25 to be a member at large. I mean, it's going to be the

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1 president of a corporation. I mean --
2 MS. ROBESON: Okay.
3 MS. ROSEN: And I think as far as just, you know,
4 that the -- you know, our view is that the polarization is
5 not -- and he's trying to say polarization is being caused
6 by the board. It's not being caused by the board. It's
7 being caused by -- it's Mr. Ball's behavior and Mr. Ball's
8 ongoing, over a decade long, continuous construction
9 projects that have not complied with the HOA rules that are
10 basically the, causing the polarization in this community.
11 MS. ROBESON: Okay.
12 MS. ROSEN: So --
13 MS. ROBESON: All right.
14 MS. ROSEN: Okay.
15 MS. ROBESON: Thank you very much. Both --
16 MS. ROSEN: Thank you.
17 MS. ROBESON: -- both attorneys have done an
18 excellent job on behalf of their clients. So I commend you
19 for that. I am going to leave the record -- oh, did you
20 have something else?
21 MS. ROSEN: Just one thing. I just wanted to put
22 just put on the record -- I'm doing it partially because of
23 some of his closing argument -- but when we had this
24 situation when we were up at, speaking with you and I was
25 walking back and somebody had made some comment that you, on

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1 the record, thought it was me --
2 MS. ROBESON: That wasn't what I was referring to.
3 MS. ROSEN: No, but I just wanted to be clear on
4 this record, because we did, Mr. Mohammadi and I spoke with
5 you and indicated that it was not me who made the comment;
6 it was somebody in the audience.
7 MS. ROBESON: Gallery.
8 MS. ROSEN: Gallery.
9 MS. ROBESON: Right over behind Mr. --
10 MS. ROSEN: No, I understand that, but I --
11 MS. ROBESON: -- Dr. Barr.
12 MS. ROSEN: -- just wanted it to be clear that,
13 because -- because it's in the record of the transcripts
14 that --
15 MS. ROBESON: No, you're fine.
16 MS. ROSEN: -- you know, you thought it was me,
17 and I didn't want that in the record. So --
18 MS. ROBESON: You're correct.
19 MS. ROSEN: -- I just wanted to clear that.
20 MS. ROBESON: And that's fine. That's correct.
21 And so I am going to keep the record open for 10 days to,
22 for two reasons. One is to receive the transcript of this
23 hearing -- for three reasons. One is to, if Mr. Mohammadi
24 wishes to submit some points and authorities on his side,
25 you have 10 days to do that.

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1 MR. MOHAMMADI: Thank you.
2 MS. ROBESON: And, three, I did get the revised --
3 apparently they, Deposition Services did send a revised
4 transcript, but I haven't -- it looks better to me, but I
5 have to, I haven't gone back through it. So I'm going to
6 take a look at that and see if the corrections were made.
7 MS. ROSEN: And just also, I think there's
8 Ms. Washburn's time, the time sheets. I think I indicated
9 that, you know, I have -- I gave you her bill.
10 MS. ROBESON: Right.
11 MS. ROSEN: She said, she told me she has a
12 bookkeeper and the bookkeeper will be getting them to her by
13 October the 16th, I think.
14 MS. ROBESON: Okay. So today's the 6th.
15 MS. ROSEN: I can get them to you by the 17th. I
16 can e-mail them.
17 MS. ROBESON: Then we'll keep the record open --
18 MS. ROSEN: Maybe until the 17th?
19 MS. ROBESON: -- until October 17th.
20 MS. ROSEN: Thank you.
21 MS. ROBESON: Is that -- hold on one second. Let
22 me make sure --
23 MS. ROSEN: That's a Friday, I think.
24 MS. ROBESON: -- that's a weekday.
25 MS. ROSEN: Yes, I think it's a Friday.

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1 MS. ROBESON: It is. It's a Friday.
2 MS. ROSEN: Okay.
3 MS. ROBESON: So the record will stay open for
4 those items only until October 17th, and I will let you know
5 once I clear the transcript. Yes, Mr. Mohammadi.
6 MR. MOHAMMADI: Just for the record as well, and I
7 know you're going to do what you need to do and it's going
8 to take you probably some time to put this together, this
9 puzzle together, but I do want to note for the record that
10 we are now in October in this case and any work that they're
11 supposed to do on their house becomes more and more
12 difficult the colder it gets out, and I think that's just a
13 common problem with construction, especially on roofs and
14 exterior work like this.
15 Again, I'm not saying this to rush you or to do
16 anything like that, but I just would note that there's, this
17 house is still incomplete and it's probably going to stay
18 incomplete again because, until at least the spring, just
19 because of the weather conditions that are going to --
20 MS. ROBESON: So are you saying somebody might see
21 some weatherproofing work going on or --
22 MR. MOHAMMADI: I'm not saying -- I'm just saying,
23 whatever your decision is, because one of the requests is
24 that he should get the work done in three months or
25 something like that in the complaint --

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1 MS. ROBESON: Oh.
2 MR. MOHAMMADI: -- and --
3 MS. ROBESON: Oh.
4 MR. MOHAMMADI: Okay? So we are, again, we are in
5 October. Whenever that decision comes out, it may just not
6 be practical to do any work after the decision comes out,
7 and again, permits expire and all of these things are going
8 on right now. And there's no, I know that there's no
9 testimony about that, but those are issues --
10 MS. ROBESON: No, he did testify that it ended in
11 October 2014.
12 MR. MOHAMMADI: Right. So those are all -- I know
13 it took six days --
14 MS. ROBESON: Now, this still --
15 MR. MOHAMMADI: -- and it should have taken six
16 days, I guess, but it just causes a lot of problems for, for
17 this residence.
18 MS. ROSEN: Well, I think --
19 MS. ROBESON: Well, this still has to go to the
20 CCOC --
21 MS. ROSEN: Yes. I was going to say that.
22 MR. MOHAMMADI: I know.
23 MS. ROBESON: -- once I write my report.
24 MR. MOHAMMADI: I understand.
25 MS. ROSEN: Because --

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1 MS. ROBESON: So I will do my best to do it as
2 fast and as accurately -- as fast as I can and still have it
3 accurate.
4 MR. MOHAMMADI: I wasn't trying to say that to
5 rush you, like I said. I just wanted to put it on the
6 record, there are concerns at this point with doing any
7 additional work on the house due to permits expiring, the
8 weather, and things like that.
9 MS. ROSEN: Yes, because the way it works,
10 generally, because I'm familiar also, is obviously, you
11 know, it goes up to the CCOC panel, and then after the panel
12 looks at it, I think CCOC staff may, I think perhaps
13 Drymalski and then perhaps -- and the county attorney always
14 looks at these things before they go official too.
15 MS. ROBESON: Well, you would know more --
16 MS. ROSEN: Yes. Yes, I mean, because I've
17 done --
18 MS. ROBESON: -- than I do because you're a panel
19 chair.
20 MS. ROSEN: Yes. I'm saying that's usually how it
21 works. So --
22 MS. ROBESON: Okay.
23 MS. ROSEN: -- it's a couple layers of review.
24 MS. ROBESON: Thank you. We're off the --
25 MS. ROSEN: Thank you.

1 MS. ROBESON: -- we are adjourned.
2 (Whereupon, at 6:02 p.m., the hearing was
3 adjourned.)
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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:

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

By:

Wendy Campos, Transcriber

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