

Line 1 IN THE CLARK CIRCUIT COURT NO. 2
STATE OF INDIANA
2 CAUSE NO. 10C02-1208-PL-88
3
4 STATE OF INDIANA,)
5)
Plaintiff,)
6)
-vs-)
7)
KEVIN ZIPPERLE,)
8 MARY LOU TRAUTWEIN-LAMKIN,)
SHARON CHANDLER, and)
9 FRANK PRELL,)
))
10 Defendants.)
11)

12 The deposition upon oral examination of
13 KEVIN ZIPPERLE, a witness produced and sworn before me,
14 Angela Thompson Stidham, a Notary Public in and for the
15 County of Scott, State of Indiana, taken on behalf of the
16 Plaintiff at the offices of the Culotta and Culotta, 815
17 East Market Street, New Albany, Floyd County, Indiana, on
18 the 26th day of August, 2013, pursuant to the Indiana
19 Rules of Trial Procedure.
20

21
22 Angela Thompson Stidham, CCR
Court Reporting and Video Services
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25

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1 A P P E A R A N C E S
2
3 FOR THE PLAINTIFF: Jennie Beller
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4 David Miller
Sally Miller
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Indiana Government Center South
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Indianapolis, Indiana 46204
7
8
9 FOR THE DEFENDANTS: James Clayton Culotta
Culotta and Culotta
10 815 East Market Street
New Albany, Indiana 47150
11
12
13 ALSO PRESENT: Sharon Chandler
Mary Lou Trautwein-Lamkin
14 Frank Prell
15

16 * * *
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0004

1 KEVIN ZIPPERLE, having been first duly
2 sworn to tell the truth, the whole truth and nothing but
3 the truth relating to said matter, was examined and
4 testified as follows:
5
6 DIRECT EXAMINATION,

7 QUESTIONS BY JENNIE BELLER:
8 Q. Have you ever been deposed before?
9 A. No.
10 Q. So I'm going to ask you questions. You're
11 expected to answer truthfully because you are under oath.
12 And if you do not understand the nature of the question
13 that I'm asking, or somehow it's unclear, you need to let
14 me know that as well.
15 A. Okay.
16 Q. You're Kevin Zipperle. What is your
17 address?
18 A. It's One Riverpointe Plaza, Number 312,
19 Jeffersonville, Indiana.
20 Q. And how long have you lived there?
21 A. Since late 2006.
22 Q. Okay. And where did you live previous to
23 that?
24 A. I lived in another condominium at The
25 Harbours, Number 311.

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1 Q. Number 311?
2 A. Uh-huh.
3 Q. And did you originally purchase that
4 condominium, or did you start out as a renter there?
5 A. No, I originally purchased.
6 Q. You originally purchased?
7 A. That's correct.
8 Q. So you've never rented at The Harbours?
9 A. That's correct.
10 Q. When did you originally purchase your
11 condominium at The Harbours?
12 A. First condominium was purchased in, I'm
13 going to say, 2001. That was condominium 421.
14 Q. 421?
15 A. Uh-huh.
16 Q. How many condos have you owned at The
17 Harbours? Let me rephrase that.
18 How many condominiums have you been a part
19 of the purchase? And I'm qualifying this, because I
20 understand that maybe you have relatives that live in
21 certain condominiums, so how many have you been involved
22 in the purchase? You may not have an ownership in it now,
23 or however you have it structured.
24 A. Do you want me to count them, or do you
25 want me to list the numbers?

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1 Q. List the numbers. That would be good.
2-9 [Personal information redacted.]
10 Q. Okay. I was going to ask you, can you give
11 me some of your educational background?
12 A. College?
13 Q. Yeah.
14 A. University of Louisville. I have a
15 bachelor of science degree, I have got a master of
16 engineering from Louisville, and a MBA from
17 Louisville.
18 Q. Okay. What kind of work did you -- how are
19 you employed now?
20 A. I am semi-retired.
21-25 [Personal information removed.]

0007

1-25 [Personal information removed.]

0008

1-9 [Personal information removed.]
10 Q. Okay. You were elected to serve as a board
11 member at The Harbours condominiums. That's correct?
12 A. That's correct.
13 Q. Okay. And you're familiar with the
14 defendant Mary Lou Trautwein-Lamkin?
15 A. Yes.
16 Q. How are you familiar with her?
17 A. She was a fellow board member, and so
18 someone I got to know through the association.
19 Q. When did you meet her?
20 A. I don't know the exact date. I certainly
21 served on the transition committee with her in -- I guess
22 it was late 2003. That would have been the first
23 opportunity that I know of.
24 Q. So you have known her at least ten years?
25 A. That would be correct.

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1 Q. Do you socialize with her?
2 A. A little bit. My wife probably more than
3 me.
4 Q. But you would consider her a friend?
5 A. Sure. As close a friend as I have, I guess.
6 Q. Do you have many close friends?
7 A. Not particularly. I'm not a -- I don't
8 play cards with the guys, or anything like that.
9 Q. And you're familiar with the defendant
10 Sharon Chandler?
11 A. Yes.
12 Q. How are you familiar with Sharon?
13 A. Pretty much the same way.
14 Q. You have known her for at least ten years?
15 A. That's correct.
16 Q. And do you socialize with her?
17 A. About the same.
18 Q. About the same?
19 A. Uh-huh.
20 Q. Do you consider her a friend?
21 A. Yes.
22 Q. You mentioned the transition committee.
23 A. Uh-huh.
24 Q. How did you become involved in the
25 transition committee?

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1 A. Well, the committee members were appointed
2 by the developer, or the declarant. I guess I first got
3 involved with Harbours management, so to speak, informally
4 with homeowners who had met informally and decided that
5 there was some issues that they wanted to cover with the
6 developer, and I was the lucky guy that was kind of
7 informally elected or asked to do it. I went basically to
8 management at that time and talked to them about some of
9 the issues. They sensed that I had some interest and
10 ability, so they appointed me to the transition committee.
11 Q. Who were these individuals that had
12 concerns with the developer?
13 A. I don't know -- there is a spectrum. A
14 couple of people have had issues from probably the day
15 they bought there, and other people that were probably
16 more curious. I was probably in the curious camp.
17 Obviously, there was money being paid to an
18 entity to manage the place, and they wanted to see where
19 the money was going, and so I got interested from that
20 standpoint. I had no particular issues with the
21 developer, or an ax to grind, or anything like that. Do
22 you want names of people that had issues?
23 Q. Please.
24 A. Well, probably the most outspoken people
25 that had issues with the developer were people like Betty

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1 Cantrell, Sheila Rudder, Marcia Hall-Craig possibly.
2 And at that time they were more interested
3 in trying to organize and oppose as opposed to getting
4 together and understanding what was going on, and that's
5 really why I was there.
6 Q. What were they opposed to?
7 A. To be honest with you, I don't remember
8 some of the specific issues. I know Betty Cantrell had
9 issues from day one because of the property she bought
10 there, she thinks she was sold a bill of goods on some of
11 the property that she bought there I guess in terms of
12 rental income, appreciation potential, that type of thing.
13 She had an ax to grind with the developer almost from day
14 one.
15 I think Sheila Rudder was essentially a
16 disgruntled ex-employee, from what I understand. You
17 would have to research that more with those people. I
18 really don't know what their issues were firsthand.
19 Q. But yet they felt like you were somebody
20 that could go to management for them?
21 A. I suppose. I don't know. I just found
22 myself in a position of where, Kevin, go in and do this
23 and I guess see what you can find out.
24 Q. Okay. We were discussing that you knew
25 Sharon Chandler?

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1 A. Uh-huh.
2 Q. Now, she works for a real estate company?
3 A. Uh-huh.

4 Q. Is that company still the preferred realtor
5 at The Harbours?

6 A. As we speak, I don't think that designation
7 exists, so I guess the answer to your question is no.

8 Q. But prior to that, when that designation
9 did exist, was there a phone that rang into her apartment?

10 MR. CULOTTA: I'm going to object. It
11 calls for speculation. If you know.

12 A. There was a phone number that was first put
13 in place by the declarant and his marketing team. We call
14 it the 283-VIEW number, which is what the digits worked
15 out to. When they no longer needed it, The Harbours kept it.

16 And I don't remember at the transition
17 point how that was managed, but eventually that number was
18 bought and paid for by the preferred provider.

19 Q. Okay.

20 A. And that number -- it's actually under the
21 association's control. It's in the office, and it rings
22 through the office, but I think what maybe you're
23 referring to, the number was forwarded to her extension,
24 or her phone number, or something like that.

25 Q. It was forwarded to her phone number?

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1 A. That was my understanding. I don't know
2 that firsthand. I never operated it.

3 Q. When someone came in from the street and
4 wanted to find out if there was a condominium for sale at
5 The Harbours, who were employees instructed to contact?

6 MR. CULOTTA: Again, calls for speculation.
7 But if you know.

8 A. Well, again, I don't -- since I didn't
9 manage it firsthand, I can't tell you exactly how that
10 communication took place. But the preferred provider
11 certainly had an opportunity -- probably the first
12 opportunity with that client, that prospect.

13 And I don't know that necessarily they were
14 told to call 283-VIEW, or call Sharon Chandler, or let me
15 call Sharon Chandler. I don't know exactly how that
16 process took place.

17 Q. Who would know how that process took place?

18 A. Well, office operations people would have.

19 Q. Who were --

20 A. [Former employee name removed] would have known that.
21 Our current assistant out there, [former employee name removed], would
22 know how it's handled, and then whoever preceded her, potentially.

23 Q. Okay. What kind of a relationship do you
24 have with [former employee name removed]?

25 A. She was basically someone who was kind of

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1 like Mary Lou and Sharon, someone who was -- you know, we
2 worked with, I suppose, and a friend, basically.

3 Q. Did you work closely with her on the --
4-21 [Personal information removed.]

22 Q. How long did you hold that property [condo 307]?

23 A. I don't think very long. I'm going to say
24 six months, maybe, between the time we bought it and sold
25 it. I would have to look at the records.

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1 Q. Did you make money on it?

2 A. Well, that was in '05 or so, which was a
3 lot better real estate market, and certainly things were
4 doing better at that time.

5 Like most real estate, you make money on
6 the purchase. We got it at a pretty good price. Again, I
7 don't know the circumstances of why it was being offered
8 for what it was, but we went and renovated it, so it had
9 all the finishes, and sold for a pretty good price. I
10 don't remember what we sold it for. It was in line with
11 the market, basically.

12 Q. And given the market at that time?

13 A. Right.

14 Q. So when you purchase real estate, your goal
15 is to purchase it at a good price?

16 A. Well, my experience -- and I think most
17 real estate people will tell you, you make the money on
18 the purchase so much more so than appreciation. Of
19 course, you're only holding it for six months, you're not
20 allowing it to appreciate.

21 And this particular property had a little
22 bit of a distressed condition, which might have been the
23 reason it was selling for what it was. It wasn't very

0016 24 much to look at on the inside, so we put a few finishing
25 touches on it, smart additions, and it worked out for us.

1 Q. Okay. Are you familiar with a gentleman
2 named Frank Prell?

3 A. Yes.

4 Q. And how do you know Frank Prell?

5 A. I guess I first heard about Frank when he
6 was buying properties at The Harbours for investment and
7 renovation. My understanding is he bought a few of the
8 units that could be combined, and he was going in and
9 combining the units and trying to sell them at a profit.

10 Q. Okay. Did you have a lot of conversation
11 with him?

12 A. No. I didn't even know Frank for probably
13 a couple of years except by name.

14 Q. Okay.

15 A. I don't think I had ever met him.

16 Q. Do you remember when you met him?

17 A. No. That's a good question. No, I don't
18 remember the exact instance, or the location for that
19 matter, to be honest with you. It might have just been in
20 the office or something in passing.

21 Q. Okay. Have you had any business dealings
22 with him?

23 A. Well, the first business dealing, if you
24 want to call it that, that I recall was some parking
25 spaces that we bought from Frank. There were four parking

0017 1 spaces. And I say we, because they ended up going to four
2 different people.

3 And then the property that he was selling
4 on the short sale, I talked to Frank about that, and
5 bought that on short sale. And that was the only other
6 property that I know of.

7 Q. Have you ever socialized with him?

8 A. I don't think Frank and I have ever been
9 to -- I mean, I went to his condo one Thunder to hook up a
10 cable television box for him, and we probably chatted a
11 few minutes there, but I don't think Frank and I have ever
12 had any kind of a social event or anything, that I
13 remember.

14 Q. Okay. Ever gotten together for dinner or
15 anything?

16 A. No.

17 Q. So you're familiar with The Harbours
18 declaration and the bylaws?

19 A. Somewhat.

20 Q. Somewhat?

21 A. Uh-huh.

22 Q. If I were to have printed the declaration
23 and bylaws -- first, excuse me, let's go back.

24 There is a website that The Harbours
25 maintains; is that correct?

0018 1 A. Correct.

2 Q. And it's www.theharbours.com?

3 A. That's correct.

4 Q. And on that website, there is an
5 association page that has documents that are relevant to
6 the association?

7 A. Right.

8 Q. If I were to have downloaded documents from
9 that page, such as the declaration and bylaws, can those
10 be considered accurate?

11 A. I would say so. It's a living document, so
12 at any particular point in time it could change. I
13 haven't looked at it for -- for all of its accuracies or
14 inaccuracies, but I would say it's 99 percent accurate
15 anyway.

16 Q. So how many condominiums are at The
17 Harbours now?

18 A. Well, as-built, 184. And I don't know the
19 exact number, but there are approximately 15 that have been
20 combined with another condo, so that reduces that number
21 by that amount. So there are about 168 or 169 individual
22 addresses at this point.

23 Q. Okay. Now, it is a mutual benefit
24 corporation, and it's registered with the State of Indiana
25 as a not-for-profit corporation?

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1 A. That sounds right. I don't know any of
2 that factually.
3 Q. Does The Harbours complete any forms for,
4 say, the IRS or the Department of Revenue?
5 A. We file returns each year, as I understand.
6 I don't get involved with that, but we do.
7 Q. As president, do you sign the return?
8 A. I don't think so.
9 Q. Who would sign the return?
10 A. I don't know. The tax preparer would
11 probably sign it. We don't prepare our own taxes. I
12 don't know who officially signed it.
13 Q. Who prepares your taxes?
14 A. Currently, they are done by, I believe,
15 Monroe Shine.
16 Q. Okay. What do you consider the purpose of
17 the HOA to be?
18 A. Well, we are an organization of homeowners,
19 designed to basically look out for everyone's common
20 interests. Obviously, half the property -- I say
21 obviously. It's not so obvious, maybe.
22 Half of the property under roof is
23 not owned individually, it's owned by the members,
24 basically common areas. All of the outdoor amenities and
25 all of that are all commonly owned, and we certainly have

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1 to look after all of that.
2 Q. So it's the maintenance, would you agree?
3 A. That's correct.
4 Q. The repair, replacement, administrating,
5 and the operation of The Harbours?
6 A. That's correct.
7 Q. That's correct?
8 A. Yeah.
9 Q. Anything else?
10 A. Well, you didn't mention anything
11 financial, but financial is under all of that. That's
12 probably the most important responsibility.
13 Q. So the membership at The Harbours, what
14 composes the membership?
15 A. It's basically an organization of owners.
16 Q. Okay.
17 A. If there are multiple owners, it would be a
18 designated owner representing each unit for each unit in
19 the building. That is the membership when I say that.
20 Q. So we're talking about the voting. There
21 is a designated person who is the designated voter for a
22 condominium unit?
23 A. That's correct.
24 Q. That's correct?
25 A. Uh-huh.

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1 Q. I have a question just about voting. If
2 there is a designated voter -- say it's John Smith, and he
3 gives -- let's use you for the example, his proxy as the
4 designated voter. You have what they call the permanent
5 proxy. If John Smith showed up at an election, could you
6 vote, or are you the only one allowed to vote?
7 A. That is actually a good question,
8 because -- and in certain instances that may, in fact,
9 happen.
10 If you're talking about that type of proxy,
11 they have given it out in some cases to people that they
12 don't see that often. And I don't think any of them had
13 forgotten that they have given it out, but if they are in
14 town, let's say if it's an absentee owner, they may show
15 up for a meeting.
16 In my opinion -- and I don't know how a
17 situation where there is a conflict would be resolved, but
18 in my opinion the owner would always have precedence to
19 vote his interest in an election. So if there were two
20 votes cast, one by a proxy and one by the owner, the
21 owner's vote should take precedence, in my opinion. If
22 that's the kind of question you're asking?
23 Q. Yeah. I'm just wondering.
24 A. I don't think that's recorded anywhere, and
25 I don't know how the law would look at that, but that's

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1 the way I would look at it.
2 Q. The HOA is governed by a board of
3 directors; correct?

4 A. Yes.
5 Q. And that board of directors is elected
6 annually?
7 A. One-third of the board is elected annually,
8 correct.
9 Q. And you have been on the board in one form
10 or another since 2004?
11 A. That's correct.
12 Q. Now, you've held several offices. Can you
13 walk me through the time frame and the offices held?
14 A. Well, the specific time frames I cannot
15 remember exactly. I was president from the first board's
16 formation up until around 2008. There was another
17 president that took office at that point in time, and I
18 think I served as vice president at that time.
19 I believe -- I don't remember exactly, but
20 I believe there was another president behind that second
21 president, and I continued to serve as vice president for
22 that person.
23 For your information, what would happen is
24 we would try to get other people to serve as president,
25 and they really didn't want to. The way that we

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1 encouraged them would be if I served as vice president,
2 and did the work they didn't want to do as president, so
3 it turned out to be more of a facilitating role for me
4 than anything else.
5 At one point I served as secretary. I
6 think that was just for one year. It's been, like, maybe
7 two years ago. And now currently I don't have an office.
8 I am just an at-large board member.
9 Q. Okay. About how many hours a week do you
10 suppose you've averaged over time in your activities?
11 A. Averaged? Well, since I don't account for
12 my time, it's kind of difficult to pin it down exactly,
13 but I would say it's probably a part-time job.
14 Q. Twenty hours a week, maybe?
15 A. Probably 15 to 20 hours a week on average.
16 Q. So you have a lot invested in it?
17 A. There is a lot of stuff that goes on there.
18 There's a lot of things to deal with, unfortunately.
19 Q. Can you elaborate on that?
20 A. There's 180 -- well, 170 residences all
21 under one big roof, and there's just a lot of complexity.
22 There is a \$900,000 annual budget. We have people there
23 who tend not to get along with some people, and there is
24 always stuff going on.
25 Q. Can you give me some examples?

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1 A. Well, I mean, specifically, it's some of
2 the folks that -- you know, I mentioned a couple names
3 earlier in the deposition. There are just a couple people
4 there that, for whatever reason, they want to raise issues
5 about parking spaces, or whatever it may be, and you have
6 to deal with that stuff.
7 Q. And some of the issues maybe they have is
8 with you?
9 A. Well, I will acknowledge that certainly
10 with some of them it's personal, yes.
11 Q. Now, the attorney general's office, you're
12 aware that we've received numerous complaints from
13 members?
14 A. Yeah. I don't know what numerous is, but I
15 am aware you have received complaints.
16 Q. What would you call numerous?
17 A. Well, it's certainly more than one.
18 Whether you told me there were 30 or 15 or 10, I'm not
19 sure.
20 Q. What if I said there were 47 --
21 A. Okay.
22 Q. -- would you call that numerous?
23 A. That's more than I would care to have to
24 deal with.
25 Q. Is that numerous?

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1 A. I would call it numerous, sure, what the
2 heck.
3 Q. And many of them were allegations that were
4 specifically against yourself --
5 A. Uh-huh.
6 Q. -- is that correct?

7 MR. CULOTTA: I'm going to object to the
8 extent -- if you've got them, and you want to show them to
9 him so he can review them and acknowledge what you're
10 saying. If you're asking him to speculate on something
11 that he's never seen before --

12 MS. BELLER: Well, let me ask some
13 preliminary questions.

14 Q. As a president of the association, have you
15 seen these complaints?

16 A. I have seen probably most of them. I don't
17 remember specifically. You would have to show me a
18 complaint, and I could give you a little better answer,
19 but I've seen most of them, I believe.

20 Q. Would you say many of them did name
21 yourself?

22 A. Among other parties, sure.

23 Q. And Sharon Chandler?

24 A. They were typically against board members.
25 I mean, there was some of them I remember against the

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1 entire board. Some of them didn't name me. I mean, there
2 were many instances, as the president, where I didn't vote
3 on something.

4 I don't remember the particular matter, but
5 I do remember a series of complaints coming in for the
6 same issue, and I was one of the people who didn't get
7 mentioned on it because I was a nonvoting member of the
8 board at the time. I mean, I voted, but I only voted in
9 special situations. Break a tie, or something like that.

10 Q. I was going to ask you about that. When
11 you have your board meetings, are your board meetings done
12 with like Robert's Rules?

13 A. Well, we don't really officially follow any
14 particular set of rules of order, but that would be
15 something we try to -- along those lines, what we would
16 adhere to, yes.

17 Q. When you were president -- let me ask you
18 this -- did you reserve your vote for tiebreaking?

19 A. I can tell you, at the beginning none of us
20 really knew how to behave. We were brought in as a
21 transition committee, and in most cases, because we were
22 novices, no one had ever managed a board of directors or
23 even served on one, and we probably didn't follow certain
24 things like that.

25 But as we became more educated, and people

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1 would say, well, we really shouldn't have the president
2 voting in that situation, or even making a motion, then we
3 started to follow that script. Certainly that's the way
4 we mostly operate now.

5 Q. Did you read any information on Robert's
6 Rules or study it?

7 A. As the need came up. Did I study it? No.
8 I wouldn't call me a student, no.

9 Q. Okay.

10 A. And I was never -- as president, I was
11 never one to challenge a particular rule of order or
12 objection that someone would make. If someone said
13 something, you know, we ought to do it this way. Is that
14 okay? I said, okay, well, let's do it that way.

15 Q. Okay.

16 A. Unless, for some reason, it didn't make
17 sense for our operation.

18 Q. So you have been aware for some time that
19 the office of the attorney general has been looking at the
20 activities at The Harbours?

21 A. That's my understanding, yes.

22 Q. Have you been contacted by any criminal
23 authorities?

24 A. No.

25 Q. No local detectives?

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1 A. No one that represented themselves that
2 way, no.

3 Q. No federal detectives?

4 A. No.

5 Q. No one from the Bank of America fraud unit?

6 A. No.

7 Q. What is your understanding of your
8 responsibilities as a board member?

9 A. Well, as I said, we're an association

10 formed to represent all membership, certainly as regards
11 to managing all of our common interests. And as a board
12 member, we are a distilled down to a representative body of
13 that membership to do things expediently and as
14 effectively as we can do, which is a much smaller group to
15 operate.

16 We don't engage in anything that the
17 membership -- we believe the membership wouldn't want us
18 to engage in or vote for us to engage in. If they were
19 all meeting in a room and said, yeah, let's do something
20 here, let's look into that, or let's make a decision about
21 something.

22 Q. Do you understand what your duties are as a
23 board member?

24 A. They are spelled out for me. I couldn't --
25 I don't think I could recite them back to you, but they

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1 are spelled out in the bylaws.

2 Q. In the bylaws?

3 A. Uh-huh.

4 Q. Do you have what they call a fiduciary
5 duty?

6 A. Sure.

7 MR. CULOTTA: I am going to object to the
8 extent it calls for a legal conclusion or legal
9 understanding of the term, but you can --

10 A. I believe I do, yes.

11 Q. And what do you believe the fiduciary duty
12 is?

13 A. Essentially, trusted with someone's power
14 or property to represent their interest, basically.

15 Q. Okay. And how does one go about doing
16 that?

17 A. I'm not sure I understand that question.

18 Q. Okay. Are you prohibited from doing
19 anything in your capacity as a board member?

20 A. Well, the most obvious response to that is
21 I can't do anything that's spelled out that I can't in the
22 declarations or bylaws, or at a higher level certainly the
23 law -- the state law, or federal law, I guess, if it
24 applies. I don't know.

25 Beyond that, it needs to be something that

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1 has an association interest. We are not going to go out
2 and take on some project that has nothing to do with The
3 Harbours, for example. It has got to be germane to The
4 Harbours. I'm not sure if I am answering the question the
5 way you want it answered.

6 Q. Is it okay for you to benefit in your
7 position as president or as a board member?

8 A. It shouldn't be -- it shouldn't be
9 associated with my service as a board member. You know,
10 buying -- as an example, buying a condominium and turning
11 it over and selling it while a board member should not be
12 a problem. It shouldn't be a problem for anyone. If I
13 had a specific opportunity as a board member that no one
14 else had, that would be a problem.

15 Q. Okay. So if you have the opportunity that
16 no one else had, then that's a problem?

17 A. That would be a potential problem, that's
18 correct.

19 Q. As part of your duties as a board member,
20 you work closely with the manager.

21 A. Uh-huh.

22 Q. And the manager kept the books; is that
23 correct?

24 A. That's correct.

25 Q. And then the manager would also know who

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1 was behind in their dues; is that correct?

2 A. That's correct.

3 Q. And being behind in dues might be an
4 indicator of a financial problem?

5 A. That makes sense.

6 Q. Now, in your position as president, would
7 you have access to that information?

8 A. Well, I mean, I don't think I would
9 uniquely have access to it. Certainly, if a person acting
10 in a financial capacity for The Harbours, let's say the
11 finance chair, treasurer, the president, any of those
12 people get to know that information.

13 Q. But it's a very limited number of people.
14 It's not the entire membership; correct?

15 A. That would be correct. Yeah, we
16 don't just -- that's the type of thing that's private in
17 nature, so we wouldn't publicize that.

18 Although, it does eventually get to a point
19 where if someone is -- they don't owe me money, or they
20 don't owe the property money, they owe everybody in The
21 Harbours money if they are not paying their dues, so at
22 some point in time it may be publicized to everyone,
23 because they have a right to know if someone owes them
24 money, basically.

0032 25 Q. Have you ever purchased property lower than
1 market at The Harbours?

2 A. I try to all the time, actually, if I buy
3 something.

4 Q. Have you ever bought anything that someone
5 was behind in?

6 A. You mean on maintenance fees or something?

7 Q. On their dues. Yeah, maintenance fees.

8 A. To my knowledge, no. I can't say that I
9 know that factually. I don't remember -- let me put it
10 this way. I don't ever remember at closing having money
11 paid back to the association for something that was in
12 arrears. It wasn't significant. Maybe a \$25 work order,
13 or something like that, that somebody didn't know about,
14 whatever, or forgot about, but nothing like months of
15 maintenance fees or anything.

16 Q. Have you ever been alerted early to the
17 fact that a condominium might be available as a board
18 member?

19 A. I don't think -- I mean, to the extent
20 that, let's say, a property at The Harbours would be sold
21 with a document that would say something was being
22 foreclosed on, or something like that, that would possibly
23 be the only type of situation.

0033 24 I mean, at that point in time -- you know
25 better than me. At that point in time, that may be a

1 public record instrument anyway, so anyone could know
2 that. I might see it in passing the office. There was no
3 directive to give me that information, or anything like
4 that.

5 Q. But you did spend 20 hours a week in the
6 office, so you would have more access than most?

7 A. Not in the office. I would spend that much
8 time on Harbours' business throughout the week.

9 Q. How much time did you spend in the office?

10 A. I don't know. Maybe two or three hours a
11 week total, just coming and going.

12 Q. Did you spend any time in there at night?

13 A. It just depends on the circumstances.
14 Sometimes if someone would bring up an issue like with
15 security, or couldn't get into a condo with a key, or
16 something like that. Sometimes I would have to scan a
17 document, and the office staff had gone for the day, if it
18 was a document that I needed to send to someone in an
19 e-mail, I might go down there and use the scanning device,
20 but nothing other than that.

21 Q. So you had no problems going in there at
22 night by yourself?

23 A. Yeah, we all have keys. All the current
24 board members have keys.

0034 25 Q. Did the past board members all have keys?

1 A. Other people had keys besides me. I don't
2 know what -- I think previously it was more on an
3 as-needed basis. Now I think the president has basically
4 ordained that everyone will have a key.

5 Q. I want to ask you about some individuals.
6 Do you know a gentleman named Marty Haley?

7 A. I do.

8 Q. How do you know Marty?

9 A. How did I meet him? I think I probably met
10 him when he was either running for and then elected to the
11 first -- not the first board, but his first service on the
12 board as a board member.

13 Q. Did you have a working relationship with
14 him as a board member?

15 A. As a board member, I have a pretty positive

16 recollection of a working relationship with Marty.
17 Q. And what's happened since then?
18 A. Well, he's -- for whatever reason, he's
19 decided he doesn't support a lot of what the board does,
20 both boards I was -- had a lot to do with in terms of
21 running, or the current board even. He's just not a happy
22 camper nowadays.
23 Q. Do you know what his problem is? Has he
24 communicated to you why he's disgruntled?
25 A. I don't think in any particularly

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1 constructive way, no. He has never sat down and said can
2 I discuss a few things with you, and here's the issues
3 I've got. We have never had that kind of discussion.
4 Q. You have brought some documents that I
5 requested pursuant to a subpoena; is that correct?
6 A. Are you referring to the 312 purchase?
7 Q. Right.
8 A. Uh-huh.
9 Q. Now, did you discuss the purchase of 312
10 with Marty?
11 A. I don't think he was on the board at that
12 time.
13 Q. Okay. So you never mentioned the --
14 A. I think he came on the board -- well, he
15 was actually on two terms, as I recall. He was on very
16 early, and I think he resigned, and then he came on, I
17 believe, in late 2006, and served most of the three-year
18 term. As I recall, he resigned from that one as well.
19 Q. So you never communicated to Marty the
20 details of your purchase of 312?
21 MR. CULOTTA: I object to the extent that
22 he hasn't said yes, no or otherwise whether he had any
23 communications.
24 A. I really don't remember.
25 Q. You don't remember?

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1 A. He wasn't on the board at the time it was
2 purchased, I know that.
3 Q. Did you sit down with him and show him the
4 HUD-1 Settlement Statements?
5 A. I don't remember.
6 Q. You don't remember doing that?
7 A. I don't.
8 Q. I have to tell you, I find that difficult
9 to believe.
10 A. That I don't remember discussing it with
11 Marty?
12 Q. Yes. Well, I find it difficult to believe,
13 as much as you were difficult about -- we agreed not to
14 make photocopies in an interview -- do you recall the
15 interview we had with you?
16 A. I recall interviews. I don't recall --
17 Q. Do you remember we were at Dawn Elston's
18 office?
19 A. Uh-huh.
20 Q. And you had brought, in fact, most of the
21 documents that we have used for exhibits and were asked
22 pursuant to a subpoena.
23 A. Uh-huh.
24 Q. And you didn't want the HUD-1 Settlement
25 Statements or the purchase agreements out for public, so

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1 we agreed not to photocopy them.
2 A. Okay.
3 Q. Okay. So given the fact that you were so
4 persnickety about what you wanted out or not, for you to
5 tell me that I don't recall whether I shared that with him
6 or not, seems kind of convenient.
7 MR. CULOTTA: I'm going to object to the
8 extent that it's argumentative. And if you have a
9 question for him, he can answer the question. I think he
10 has already answered the question.
11 And prior to our discussing it, I said we
12 had some housekeeping to attend to, and we found the HUD-1
13 and the documents that previously had been provided as
14 Number 7, and that should be in the materials that you
15 already had received back in, I think it was, September of
16 2011.
17 MS. BELLER: We did not receive those
18 materials, because we agreed -- we reviewed them, but we

19 agreed not to photocopy them, and we returned them to Mr.
20 Zipperle. We didn't photocopy them.

21 MR. CULOTTA: Okay. They are here. To my
22 understanding, they were produced, and I have got them
23 here for you today.

24 MS. BELLER: Yeah.

0038 25 Q. My concern is, did you discuss your

1 purchase of 312 with anyone, outside of your wife and the
2 people involved in it?

3 A. At the time of the purchase, the board knew
4 about the purchase. Marty wasn't on the board at that
5 time.

6 Q. Did they know the mechanics of the
7 purchase?

8 MR. CULOTTA: I am going to object to
9 relevance.

10 A. Mechanics? I don't know what that means.

11 MS. BELLER: It's very relevant.

12 Q. Did they have an opportunity to review the
13 purchase agreement?

14 A. I don't think anyone asked to review it.
15 They could have reviewed it if they wanted to.

16 Q. Did they have a chance to review the HUD-1
17 Settlement Statement?

18 A. Same answer.

19 Q. So they wouldn't know the specifics of the
20 transaction?

21 A. Well, they knew that -- they knew that --
22 they knew how that particular condo was linked to the
23 other part of the transaction.

24 As you know, it's three parties and two
25 condos and some parking spaces. They knew the essence of

0039 1 what was going on there; they knew the money that the
2 association was going to be out of pocket -- or an
3 estimate to use that condominium as a community space to
4 get it in that condition; they knew what would result in a
5 way of an asset, the condo and the parking spaces.

6 Did they know how much of a deposit I put
7 down on it, and how much went back and forth between
8 parties? I don't think so. The net they knew. The net
9 that the board members knew was what the association's net
10 was going to be. There wasn't any effort to not tell them
11 that.

12 And for that matter, if anyone had asked,
13 they would have been given the information. If Marty
14 would have asked, I would have sat down with him and
15 talked with him about it. I don't remember talking with
16 him about it. Marty was on good enough terms with us at
17 the time, I didn't have any particular issues talking with
18 him.

19 You all came in, with all due respect, in
20 the context of an investigation, and at this point in
21 time, with not knowing what you were after in the way of
22 information, I was being somewhat guarded potentially in
23 what I was willing to convey. And certainly not knowing
24 where else this was going to go.

0040 25 If I would have sat down with Marty Haley

1 and talked to him about it at that point in time, I
2 wouldn't have any particular concern as to where it was
3 going to go. Forty-seven AG complaints, and not knowing
4 where those people are in the communications flow, I was
5 not very comfortable with all of those people getting the
6 information.

7 Q. And that's why we didn't copy it. Really,
8 I am not trying to be difficult.

9 A. Well, I'm trying to explain why I may have
10 given you a different answer than I would have given Marty
11 Haley in the account of I don't remember.

12 Q. Did Marty have anything to do with the
13 purchase of 1103 and 1004? Was he involved with that in
14 any way?

15 MR. CULOTTA: I am going to object to the
16 extent that we had already discussed -- depending on where
17 you are going to go with this. I think we can answer
18 this, but we're not going to go into any of the details
19 with regard to that based upon the complaint and the
20 charges that are there. And we have already had the
21 discussion about, you know, what potential ramifications

22 that potentially carries, and we're just not going to
23 answer any of those questions.

24 MS. BELLER: Well, he needs to assert his
25 privilege. I'll ask them, but he can assert his

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1 privilege.

2 MR. CULOTTA: That's fine.

3 MS. BELLER: We'll establish the record.

4 MR. CULOTTA: That's fine.

5 A. Well, the only thing I'll say about Marty
6 Haley's question is he tried to take an interest. It
7 wasn't an interest that I tried to satisfy. I mean, I
8 wasn't sitting there and having a discussion like this
9 with Marty Haley over 1103 or 1104.

10 Q. But he wasn't involved in that transaction?

11 A. He wasn't a party to it, so there was no
12 reason.

13 Q. So he had no knowledge of it, other than
14 what he speculates?

15 A. What he was able to find out on his own.

16 Q. Let's talk [former board member name removed].

17 Do you know a gentleman named [former board member name removed]?

18 A. I do.

19 Q. And how do you know that person?

20 A. Through his board service. [Personal information removed.]

21-25 [Personal information removed.]

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1 Q. Was he on the board of directors?

2 A. Yes, he was.

3 Q. And do you recall when he was on the board
4 of directors?

5 A. Exact service years, I don't remember. I
6 am going to say approximately '05, '06, in that time
7 frame.

8 Q. Was he involved in your purchase and
9 negotiation for 312?

10 A. He would have been potentially on the board
11 when that condo was purchased. I don't know -- he wasn't
12 involved as some sort of a participant in the sale. He
13 would have been waving his hands over it from an
14 association standpoint.

15 Q. Was he involved at all in the purchase of
16 1103 and 1104?

17 A. No.

18 Q. What about a woman named [former board member name removed]?

19 A. As I recall -- well, how I got to know
20 [former board member name removed]. Again, board service. As I recall,
21 [former board member names removed] served about the same time. I can't
22 say that for sure, but their terms were very close.

23 Q. Was she involved in the negotiation and
24 purchase of 312?

25 A. Not the negotiation and purchase part. She

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1 would have been involved in the decision, potentially,
2 about does the association want to take the asset and use
3 it as a community space.

4 Q. Was she involved in 1103 or 1104?

5 A. No.

6 Q. Let me go back for a minute. Was Marty
7 Haley involved in any purchase of parking spaces or sale
8 of parking places at The Harbours?

9 A. Any, yes. Involving me, no.

10 Q. Okay.

11 A. Not that I remember anyway.

12 Q. What about [former board member name removed]?

13 A. I don't remember.

14 Q. [former board member name removed]?

15 A. Again, no.

16 Q. Okay. Let's talk about [former board member name removed].

17 How do you know [former board member name removed]?

18 A. I knew [former board member name removed] prior to serving
19 on the board I don't know how I met him, he and his wife [spouse name
20 removed]. But I didn't know them a long time before he came on the board.
21 Maybe a year or so. And he came on the board for a few
22 years, and I got to know him a little bit better there.

23 Q. Was he involved in the sale or purchase of
24 312?

25 A. I don't think he was on the board at that

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1 time.

2 Q. Okay. Has he been involved in any parking

3 space sales?
4 A. There's none that I know of.
5 Q. Okay. Was he involved in the purchase of
6 1103 or 1104?
7 A. No, he wasn't on the board, and he wasn't a
8 party to the transaction.
9 Q. Okay. Gary Davis. Now, Gary Davis sold
10 you 312; is that correct?
11 A. He was involved in that sale, correct.
12 Q. So he was definitely involved in that sale?
13 A. Uh-huh.
14 Q. Now, did he purchase any parking spaces
15 from you, or has he been involved --
16 A. I don't think Gary has ever bought any
17 parking spaces outright.
18 Q. Okay.
19 A. Only with condominiums.
20 Q. What about 1103 and 1104? Did he have
21 anything to do with that?
22 A. No.
23 Q. Doug Farnsley. Do you know a gentleman by
24 the name of Doug Farnsley?
25 A. Uh-huh.

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1 Q. How do you know Doug?
2 A. I first got to know Doug when he was
3 appointed to the -- I think we called it the special
4 litigation committee, back in -- I'm going to say 2005,
5 but it might have been 2006. There were three of us that
6 were on a committee to deal with the lawsuit that Betty
7 Cantrell and several other defendants -- or plaintiffs had
8 filed against the developer.
9 Q. Okay. So you've had a --
10 A. And he was on the board, of course,
11 subsequent to that.
12 Q. So you have had a working relationship with
13 him?
14 A. It has been pretty much professional. It
15 has been with The Harbours association.
16 Q. Was he involved in the purchase of 312?
17 A. Well, he was certainly -- he was working, I
18 think, on the special litigation committee at that time.
19 I don't remember any discussion I had with him about it.
20 He wasn't on the board at that time, I don't believe. I
21 don't think so.
22 Q. Did he purchase any parking spaces from
23 you?
24 A. No.
25 Q. Was he involved in the purchase of 1103 and

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1 1104?
2 A. No. He was off the board by that time and
3 wasn't a participant or anything with that.
4 Q. Do you know why he left the board?
5 A. Let's see. He left the board in -- I'm
6 going to say mid-2012, I guess it was. Another person --
7 the prior president at that time, [former Board member name removed],
8 had resigned, and Doug resigned at the same time with him.
9 And I don't remember Doug offering an explanation, I just
10 remember he wanted to resign. He had been on the board
11 for -- I think Doug probably was looking for an
12 opportunity to get off the board anyway. He had been on
13 the board for about four years, five years maybe, and I
14 think he was just getting tired of it.
15 Q. Did [former board member name removed] offer an explanation?
16 A. [Former board member name removed] is just a little bit of
17 an interesting situation. He was only president for about a month. And
18 I don't remember the particular issue, but he didn't -- he
19 came at it from not being much involved to almost involved
20 to an excess, and I think he got into it and decided he
21 didn't want to do it anymore.
22 Q. Would you be surprised if both gentlemen
23 told us they thought you were a bully?
24 A. Well, I mean, I --
25 MR. CULOTTA: I am going to object from the

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1 standpoint it calls for speculation. He doesn't know what
2 they said.
3 MS. BELLER: I'm asking him if he's
4 surprised if that's what they told us.
5 A. I mean, it could have been because I didn't

6 agree with them. You know, I get people that say that
7 kind of stuff occasionally at The Harbours, typically not
8 a board member, and they don't like to be disagreed with
9 strongly.

10 Q. Well, there is a business center at The
11 Harbours; is that correct?

12 A. Uh-huh.

13 Q. And that's open to all residents at The
14 Harbours --

15 A. That's correct.

16 Q. -- to use?

17 A. Right.

18 Q. At any point in time, did you remove either
19 a printer or the cord or something that would allow the
20 people to use the equipment?

21 A. There was a situation -- if I am
22 remembering what you're referring to, there was a
23 situation where a woman, Betty Haley, Marty Haley's
24 mother, was reproducing documents on that machine
25 basically that, quite honestly, The Harbours didn't want

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1 anything to do with, and she wouldn't stop, so one
2 solution was simply to disable it temporarily, and it
3 stopped happening.

4 Q. By whose authority was that done?

5 A. Well, the board president knew about it.

6 Q. Who disabled it?

7 A. I took the cable off of it. But the board
8 knew about it.

9 Q. The board knew about it?

10 A. Uh-huh.

11 Q. Who at the board knew about it?

12 A. Well, [former board member name removed] was the
13 president at the time. And I specifically remember talking to
14 her in the manager's office about it, and certainly the other
15 members knew about it as well, but [former board member name
16 removed] was the one I spoke to personally about it.

17 Q. Did anyone disagree with your decision to
18 do that?

19 A. I don't remember any dissent. I remember a
20 lot of issues with what it was being used for. Like I
21 said, it worked. It stopped happening.

22 Q. Well, you disabled the printer.

23 A. Yeah, I know. It worked.

24 Q. What was being printed?

25 A. I don't even remember. She is so prolific

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1 with -- hate stuff, basically. I am just going to call it
2 hate information about me or somebody else at The
3 Harbours, and we basically said if she is not going to
4 behave, we are just going to have to suspend the
5 privilege.

6 You can't ask her not to do certain things,
7 because she won't comply, so you just have to take it
8 away. It's like dealing with a child.

9 Q. Have you ever done anything back, like put
10 something on a screen as a screen saver?

11 A. It gets into a little cat and mouse stuff
12 there, and that usually works, too. If someone comes at
13 you with something, and you give them a little bit of it
14 back, it stops.

15 Q. That doesn't quite answer my question.

16 A. Yes.

17 Q. Have you ever put things on screen savers?

18 A. In response to somebody else doing it,
19 that's correct.

20 Q. Okay.

21 A. Not a screen saver. I think it was a
22 Windows desktop, I believe is what you're talking about.
23 Yeah.

24 By the way, it's a computer that sits there
25 to do whatever they want to with. It's not like you're

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1 violating the rule or anything else. It's simply what
2 someone's -- down the path somebody chooses to go.

3 Q. So it's a choice?

4 A. It's a choice for all parties.

5 Q. So tell me about how -- what's your
6 understanding of what the nature of the parking spaces is
7 at The Harbours? I'm talking about are they common space?
8 Are they owned? What are they?

9 A. We refer to them as limited common area.
10 Q. Okay.
11 A. Which means that it's common like
12 everything else that's common at The Harbours, but use of
13 them is limited to the person who has the privilege to use
14 it, who has been assigned the privilege or bought the
15 privilege.
16 Q. And that's what is being bought and sold?
17 A. Yeah. You are not really buying the real
18 estate, you are buying the use of it, basically. We call
19 it an assignment.
20 Q. Okay. Take yourself back to 2006. What's
21 attractive about the purchase of parking spaces?
22 A. Well, I mean, if you need extra parking
23 spaces, then there is a value added for that. It's like
24 eating more food. The more of it you eat, the less of it
25 you're interested in. So it's not an inexhaustible value

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1 for people.
2 The association would have more use for
3 spaces than an individual, typically, because of all the
4 contractors we have, people asking for temporary parking
5 privileges, or whatever. And that was why in 2006, with
6 the 312 purchase, that the developer thought there might
7 be an -- more of an interest by the association if more
8 parking spaces went with it, so that's why it was in the
9 mix.
10 Q. So what was your interest in extra parking
11 spaces?
12 A. Well, I have got a half a dozen condos. We
13 went through the list. I've got any number of people who
14 occasionally ask me for parking. They don't typically
15 need five parking spaces, but certainly an extra parking
16 space at a certain location on the property is of value to
17 people.
18 They also have some tangible value,
19 depending on where they are located. In fact, it's quite
20 variable how much they are worth based on where they are
21 located, so they have some sort of redemption value, I
22 guess you would call it. I don't know if that answers
23 your question.
24 Q. So they potentially could be an investment?
25 And I'm looking at -- we're looking at the years of 2006,

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1 prior to the change and the economic circumstances.
2 A. Well, I can tell you from where the
3 developer sold them, and where they were changing hands --
4 I am going to say routinely, although they didn't change
5 hands all that often, in 2006 they were going down in
6 value at that time. They never sold for what the
7 developer sold them for.
8 Q. And what did the developer sell them for?
9 A. Well, I think you have got it in the
10 Complaint.
11 Q. I am showing you what's marked as [Exhibit](#)
12 [B.](#)
13 A. Yeah, those numbers correspond to what I
14 remember. They were 15,000 for a covered space, and 7,500
15 for an uncovered space.
16 Q. And there were parking spaces -- my
17 understanding they were like 5,000 for motorcycle spots,
18 or something like that?
19 A. As I said, they vary depending on where
20 they are located in terms of value. They are spaces that
21 they call inferior spaces, which are spaces that had some
22 sort of obstruction -- a column, or something like that --
23 in the space. Some people think those are only suitable
24 for a vehicle like a motorcycle, they are so narrow.
25 I don't particularly think any of the

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1 spaces are that inferior, except for one that I happen to
2 have gotten with the 312 purchase. But they vary by
3 location and by basically whether there are issues with
4 the space, whether it's on flat or an incline, or if the
5 water can blow in off the side. They are almost as
6 individual as people are.
7 Q. Do you believe this is a true and accurate
8 representation of the flyer?
9 A. It looks to me like it is. Without
10 researching it, it looks to me like it is.
11 Q. And this was a document that was provided

12 to us via subpoena?
13 A. I suspect that's true, yeah.
14-25 [Personal information removed.]

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1-20 [Personal information removed.]
21 Q. So as early as the first transition
22 committee meeting -- this is a copy of [Exhibit C](#) attached
23 to the State's Complaint, and it is titled The First
24 Meeting of the Transition Meeting for The Harbours. I
25 believe it was taken by Mary Lou Trautwein. Do you

0055
1 have -- if you want to review that for a second.
2 A. Okay.
3 Q. Does that appear to be accurate?
4 A. It looks like the -- it looks like the real
5 thing. I can't say that I see anything that I have an
6 issue with.
7 Q. And it shows that it's respectively
8 submitted by Mary Lou Trautwein.
9 A. It does.
10 Q. Okay. Mary Lou has taken a number of the
11 minutes for The Harbours; is that correct?
12 A. That's correct.
13 Q. And would you say that her minutes are
14 accurate?
15 A. Certainly what's included, I wouldn't have
16 any issue with their accuracy. I don't believe them to be
17 a complete archive of all association goings on, but
18 certainly what's in them should be accurate.
19 Q. And they reflect the business of the
20 association; is that correct?
21 A. That's what their focus is. Yes, that's
22 correct.
23 Q. When minutes are taken at one meeting --
24 A. Uh-huh.
25 Q. -- are they reviewed at the next meeting?

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1 A. That's typically what happens, yes.
2 Q. They are reviewed, and then people offer
3 corrections?
4 A. That's right. They usually circulate
5 electronically prior to the meeting, and people can come
6 to the meeting with prepared responses so we don't have to
7 sit there and try to do what I just did.
8 Q. So they can go through, and if they have to
9 make a correction, the correction can be made and noted?
10 A. Right.
11 Q. And then that would be noted in that
12 meeting, that there were corrections?
13 A. You know, I assume the minutes -- the
14 current month's goings on -- I know they note the review
15 of the minutes and the approval of the minutes, and I
16 think they note also revisions to the prior month, yes.
17 Q. On [Exhibit \[C\]](#), I believe it is. Let me
18 double check. Of this set of minutes for the transition
19 committee, it says that there is a discussion on a
20 community room facility or a meeting room.
21 A. Uh-huh.
22 Q. So as early as 2003, that was in
23 discussion?
24 A. That sounds right based on that.
25 Q. And that being that there was a need for

0057
1 The Harbours to have some type of community room?
2 MR. CULOTTA: I'm going to object to the
3 form, to the extent that need is not necessarily --
4 Q. Desire?
5 MS. BELLER: I'll rephrase.
6 A. There was some discussion about it, yes.
7 Q. So it's been a theme for a while?
8 A. Uh-huh.
9 Q. Now, prior to -- let me go back for a
10 minute.
11 The developer had -- we'll just call him
12 the developer, Mr. Feinsilver -- had a period of time
13 where he was in what was called the sales phase; is that
14 correct?
15 A. Uh-huh.
16 Q. And that prior to the end of that sales
17 phase, he allowed the unit to use 1110 -- yeah, 1110 at
18 The Harbours; is that correct?

19 A. Yeah. As I recall, there were two
20 different condos we had used for a meeting, let's say,
21 that he owned.
22 Q. Okay.
23 A. And that was the one we primarily used when
24 he owned it.
25 Q. Okay. Was it used for a meeting room or
0058
1 community space?
2 A. It was used -- we had one or two Christmas
3 parties there. We had mostly meetings there.
4 Q. But it was used as a community room?
5 A. As I would think of one, yes.
6 Q. Okay. Now, a gentleman named Gary Davis --
7 you said you knew who he was --
8 A. Uh-huh.
9 Q. -- decided to purchase 1110 from the
10 developer?
11 A. Right.
12 Q. Okay.
13 A. I said right. I know nothing about any
14 prior contacts between the two, who approached which
15 party, and that type of thing. I just know eventually --
16 Q. Eventually there was a purchase, so at some
17 point there was a decision to purchase. We can
18 extrapolate that.
19 So Mr. Davis owned condominium 312?
20 A. Correct.
21 Q. And you owned 311?
22 A. Correct.
23 Q. Let me go back and get some clarification
24 on something. Were 310 and 311 already combined? Was
25 that a combined unit?
0059
1 A. No.
2 Q. No?
3 A. No, 310 and 311 were never combined.
4 Q. So 312 is physically next to 311; is that
5 correct?
6 A. And 313.
7 Q. And 313?
8 A. Uh-huh.
9 Q. Do you own all three of those now?
10 A. Yes.
11 Q. And they are combined --
12 A. Now there is no 313.
13 Q. Okay.
14 A. 312 and 313 are now 312.
15-22 [Personal information removed.]
23 Q. So how is it that you got involved with the
24 transaction to purchase 312?
25 A. I don't remember who approached me, but
0060
1 someone approached me about the possibility of the
2 association buying 312 as community space in
3 conjunction with Gary Davis wanting to buy 1110.
4 I believe it was the developer's director
5 of sales or marketing who contacted me, but I don't
6 remember that firsthand -- or exactly.
7 Q. And what did they -- what was the offer or
8 the suggestion?
9 A. Well, the offer was if the association
10 would consider or buy 312, that the developer would add to
11 the transaction the parking spaces, the eight parking
12 spaces, that were perceived to be of value to the
13 association, so that might be an inducement or whatever
14 for the association to buy it.
15 Q. I think it's sweeten the deal?
16 A. I saw that you all used that word.
17 Q. Okay.
18 A. It's an incentive.
19 Q. So the offer was not for you to buy it
20 initially?
21 A. The offer was for the association to buy
22 it. Yes, that's correct.
23 Q. How did it come that you bought it? How
24 was that -- how did that become?
25 A. Well, you understand both of these other
0061
1 parties wanted to make a quick transaction, a timely
2 transaction. This was a -- estimated, a \$400,000 purchase

3 by the association. The association had probably -- I'm
4 just going to estimate -- half of that money in the bank.
5 So at a minimum we would have had to get financing for the
6 other half. But, of course, in practicality we probably
7 would have tried to finance as much of it as we could
8 have.

9 It would have required a lot of
10 communicating and basically educating on the part of
11 homeowners as to what we want to do, and why we want to do
12 it, and we would have to have a meeting, and get
13 financing, and it would play out over a long period of
14 time, and that deal was not going to happen without
15 something to facilitate it.

16 As someone else who lived in the building,
17 and who basically could have been interested in more
18 square footage, I said, I tell you what, let's do the
19 transaction as if the association was going to buy it. If
20 the association doesn't buy it, I'll take it, so you've
21 got the deal either way. Basically, I would backstop the
22 association.

23 Q. Why did you feel the need to accommodate
24 their hurriedness?

0062

25 A. If it was going to happen for the
1 association, it was not going to happen at the pace that
2 the association would have taken. Six months, maybe
3 longer. Who knows. It was not going to happen. They
4 weren't going to wait that long.

5 Q. Is that what they told you?

6 A. Yeah, basically. We have got to have a
7 quicker decision than I'll get back to you type of thing.

8 We closed it for -- me, I was in a
9 situation at the time I could pay cash, so it was a fairly
10 quick close. I think we closed it within probably 30
11 days. I don't remember, but it didn't take a long time to
12 close it.

13 And basically the understanding was that
14 the association would get the same deal, if you want to
15 call it that, that I got. Basically, whatever my out of
16 pocket was from the time I purchased it and the time the
17 association took possession of it, would be what they
18 would pay, what the association would pay, and the board
19 knew about that.

20 Q. Okay. Can I see the documents, please?

21 MS. BELLER: Do we want to take a little
22 break while I have an opportunity to review them?

23 MR. CULOTTA: That's fine. We have been at
24 it for about an hour or so, if you want to go off the
25 record.

0063

1 MS. BELLER: Yes, please.

2 (A RECESS WAS TAKEN AT THIS TIME.)

3 QUESTIONS BY MS. BELLER:

4 Q. Now, did the developer or Mr. Davis
5 communicate to you that, you know, we're not going to wait
6 forever?

7 A. I don't remember a specific conversation.
8 I don't think there was anything -- I don't think there
9 was any time limit given necessarily, but they
10 understood -- certainly the developer understood how much
11 he wanted to get out of The Harbours project. And it
12 wasn't too long after that I think he sold his remaining
13 couple of condos and parking spaces, so there was -- time
14 was of the essence. And, again, I don't remember any
15 specific --

16 Q. And why was time of the essence? Was it of
17 the essence for The Harbours, or --

18 A. Well, just because -- I mean, perhaps --
19 you know, this was late '06, so perhaps the developer saw
20 the demise of the real estate market. Maybe he wanted to
21 get out. He's got -- these were some of his last, most
22 expensive, properties, and he maybe felt like I need to
23 cut a deal now and get out of there. I don't know.

24 MR. CULOTTA: Objection to the extent that
25 you're -- it's asking for speculation, and clearly that's

0064

1 all his answer has been, you know. I'll object to the --

2 Q. Well, I'm being very specific. What were
3 you -- why was it so urgent for you? What indication was
4 given to you that this was a time-is-of-the-essence deal?

5 A. Well, the developer -- I'll just say it

6 again. The developer and Mr. Davis wanted to do a deal
7 under normal circumstances, which is to say a 30-day
8 close, a 60-day close maybe. That was not the time frame
9 the association was going to be operating within --
10 Q. Do you know --
11 A. -- outside of --
12 Q. -- was Mr. Davis's condominium listed for
13 sale?
14 A. Not to my knowledge. I don't remember. I
15 know there was no real estate agent involved with it. I
16 know that.
17 Q. Okay.
18 A. So I don't think ---
19 Q. Were you aware of --
20 A. -- he may have had one at -- excuse me. He
21 may have had it on the website for sale by owner is what
22 I'm saying.
23 Q. Were you aware of any potential buyers?
24 A. I never really was monitoring for that.
25 Q. So --

0065

1 A. There may have been. I don't know.
2 Q. You didn't -- you had no knowledge of a
3 buyer waiting to purchase 312?
4 A. That wasn't the timing issue, no. That
5 wasn't related to the timing. If we're still on the
6 timing issue, that wasn't related to the timing issue.
7 No, I don't think so.
8 Q. So potentially you had more time to get the
9 deal together for the -- for the HOA to buy it?
10 A. That's speculation. I really don't know.
11 I really don't know. It could have.
12 Q. Okay. Given that there was no other person
13 bargaining for 312. There's no buyer in the wings that
14 you're aware of?
15 A. That's my knowledge, but I'm not -- I mean,
16 again, I was approached by them. I wasn't monitoring for
17 what the developer was trying to sell, what people around
18 there were trying to sell, so I don't know. I don't...
19 Q. So you were just accommodating them?
20 A. I was trying to see if we could make out a
21 transaction that would work for the association and would
22 meet what their expectations were, and trying to close the
23 property out, basically for the developer and for Mr.
24 Davis. I mean, you know, when anybody sells a piece of
25 property, time is always of the essence. It says that in

0066

1 most of the contracts.
2 Q. Yeah, but you weren't a party to it yet. I
3 mean, they're trying -- Mr. Davis -- let me see if I
4 understand this correctly.
5 A. Uh-huh.
6 Q. Mr. Davis was interested in purchasing
7 1110?
8 A. My understanding, that's correct. I don't
9 know who -- I don't know who was more interested there,
10 but there was an interest obviously on his part or he
11 wouldn't have purchased it.
12 Q. And why was 312 attractive as a community
13 space?
14 A. Well, its floor plan was -- a portion of
15 its floor plan was similar to the space that Mr. Davis
16 owned. He owned -- I'm sorry, 1110, the one he would have
17 owned. 1110, which is eight floors above it in the
18 building, with some remodification or renovation, I should
19 say, the floor space would be utilized by membership, we
20 thought, much as that condo was when we had a meeting
21 there. It lacked some of the additional space, like
22 bedrooms and that type of thing, but that wouldn't have
23 been something the association was going to use anyway.
24 And it was in a reasonably convenient location, I suppose.
25 Third floor, near the elevator. People who lived nearby

0067

1 it might not have liked it. I don't know. We never
2 really got that far with it.
3 Q. You lived nearby; right?
4 A. Right.
5 Q. Would you have liked having the party room
6 next to you?
7 A. It wouldn't have bothered me, personally.
8 I mean, I -- that's a lifestyle choice. It wouldn't have

9 bothered me.
10 When you say party room, we don't have a
11 lot of parties at The Harbours. It would have been -- I
12 think it would have been fairly infrequently used, about
13 like we need it now, basically, which is maybe once a
14 quarter for something.
15 Q. Maybe a Christmas party?
16 A. Which are fairly low-key.
17 Q. Was it considered to be potentially rented
18 out by other homeowners?
19 A. We talked about that.
20 Q. As a way to make money?
21 A. Correct.
22 Q. So it could be a party room?
23 A. Could be. Could have been.
24 Q. So would you have liked -- you would have
25 liked having that next to your house?

0068

1 A. It wouldn't have bothered me, probably. If
2 it got to bothering me, it would have been an issue that I
3 would have dealt with the association on. I would have
4 just stepped away from the board and said this is a
5 problem, you guys deal with it. Does that answer your
6 question?
7 Q. Would you have preferred to have put --
8 combine your units?
9 MR. CULOTTA: I'm going to object to --
10 nevermind.
11 Q. Would you rather have, you know, bought 312
12 as you did, and combined it with your unit, or would you
13 have preferred to have the party room?
14 A. I wanted to -- I went into the transaction
15 with the hope that the association was going to buy it.
16 That was my first priority. But I had to be prepared for
17 the second, which is they wouldn't buy it, and I would
18 have to buy it, and I did.
19 Let me tell you -- let me also say this: I
20 don't typically buy any piece of real estate because it's
21 something I want and got to have. That's not the way I do
22 business, even on my own personal dwelling. If there's an
23 opportunity, I buy it. So I didn't look at that and say,
24 oh, I can do this. That's not my style, or the way I do
25 business.

0069

1 Q. So what was the opportunity with 312?
2 A. It was -- it was strictly an opportunity
3 for the association. The association could get a good
4 piece of real estate, I think, and a set of parking spaces
5 that -- they were at that time, I thought, a pretty
6 attractive price. It was a fair price. Everything at
7 that time was going kind of crazy in terms of value.
8 Q. So it was an attractive deal to you
9 personally as well; is that what you're saying?
10 A. Well, let me put it this way: If it wasn't
11 a good deal for the association, we would have never had
12 the discussion. I would never had -- I would have never
13 entered into the discussion if I didn't think I could make
14 a good deal for the association. Does that answer the
15 question?
16 Q. Not exactly.
17 A. Okay.
18 Q. If it was a good deal for the association
19 and you were -- I believe in bulletin one you describe
20 yourself as guaranteeing the purchase?
21 A. Right.
22 Q. That you're purchasing it, and if the
23 association doesn't have it, I'll keep it?
24 A. Right.
25 Q. Was it a good deal for you?

0070

1 A. Well, I mean, in hindsight I got probably
2 about the fair value for the property. I mean, I had an
3 appraisal done, you know, shortly thereafter for about
4 what I paid for it, including the parking spaces. So,
5 fair price. It was a fair price.
6 But, of course, in late 2006, sometimes it
7 was hard to get a fair price on a piece of property. I
8 mean, properties were selling for, you know, two-thirds
9 that size for almost as much money. So, you know, you
10 just had to be in the context of where we were at that
11 point in time.

12 Q. Okay. Let's look at the contract to
13 purchase. I'm going to look at what you've identified as
14 enclosure three. And this is the information that you're
15 giving us, that the attorney general's office had an
16 opportunity to review some time ago.

17 A. Uh-huh.

18 Q. September 26, 2011, there was a letter
19 addressed to Sally Miller, Investigator, regarding
20 subpoena duces tecum. Request to Deborah Zipperle and
21 Kevin Zipperle, and in this letter and the attachments
22 you've provided, there are exhibits, or enclosures.

23 A. Uh-huh.

24 Q. And you have enclosure number three,
25 which -- will you examine this?

0071

1 A. Sure.

2 Q. Let me make sure I'm giving you all the
3 pages. Will you examine this and describe for me what it
4 is?

5 A. Without reading it verbatim, it certainly
6 appears to be one of the contracts that were submitted to
7 purchase 312, condo 312, from Gary Davis.

8 Q. Okay. And which contract is this?

9 A. Well, based on the price, it looks to be
10 the first -- I believe it was the first contract. I'd
11 have to go back and look at the particulars, but it looks
12 to be the first contract that was submitted where the
13 parking spaces were separately priced.

14 Q. Now, did you submit this offer?

15 A. Well, it was -- I mean, most of this was
16 verbally agreed. I documented it. I did the -- I think I
17 did the document production.

18 Q. Okay. So your original intent was only to
19 purchase 312 for \$315,000. Is that your original offer?

20 A. Yeah, but the -- let me look at something
21 here real quick, because I thought that it was documented
22 on here.

23 There was never any attempt to separate the
24 transaction 312 from the parking spaces, only potentially
25 to price them separately, if that was decided to be a

0072

1 convenience or a necessity. But there was never any
2 attempt to simply buy the condo by itself.

3 Q. Okay. May I see that, please?

4 A. Uh-huh.

5 Q. So this first one contemplates it, you're
6 saying, as --

7 A. I remembered -- excuse me. I remembered
8 another provision, section, or something on there that
9 referenced parking spaces --

10 Q. This is four --

11 A. -- but I don't -- I hadn't seen the bill
12 on --

13 Q. Okay. Here is what appears to be enclosure
14 four. Is this what you're looking for?

15 A. Yeah, I remembered something that
16 referenced the parking spaces.

17 Q. And what does that say?

18 A. Are you talking about that other provision?

19 Q. Yes.

20 A. Do you want me to just read it?

21 Q. Yeah. That will be great.

22 A. Buyer will receive a decorating allowance
23 of \$120,000 to be paid in cash from seller's funds at
24 closing. Buyer must close the sale of this Harbours
25 residence number 312 simultaneous with his purchase of

0073

1 number 1110. Seller will have the option to sell, through
2 a separate contract with Kevin Zipperle as buyer, of the
3 following eight -- following eight parking spaces for the
4 total sum of \$40,000. Parking spaces 5, 6, 136, 137, 138,
5 443, 601 and 635. Seller's contract to convey these
6 parking spaces shall occur in conjunction with Kevin
7 Zipperle's purchase of condominium unit 312 from Gary
8 Davis.

9 Q. Okay.

10 A. And this is not the same. That's not the
11 same last page as corresponding to that contract. That's
12 Gary Davis's purchase of 1110.

13 Q. That's Gary Davis's. Okay. So this is
14 what's marked as enclosure -- enclosure one and two. And

15 can you identify that, please?
16 A. Okay. You said this is one and two?
17 Q. Yes.
18 A. Okay. Yeah, the first one is, it looks
19 like the subsequent contract which priced the parking
20 spaces in with the condo. Added the 40,000 to the 315,
21 for a total of 355. And the -- the other document is the
22 last page of Gary Davis's purchase of 1110, which also
23 references the parking spaces.
24 Q. Okay. Now, when you had your property
25 appraised --

0074

1 A. Uh-huh.
2 Q. -- do you still have that appraisal?
3 A. Actually, I was looking for that. I think
4 I do. I just can't find it.
5 Q. Okay. When you had the appraisal done, did
6 you provide them with a contract?
7 A. This was a refi after the fact. I don't
8 think I submitted a contract with it. I probably told the
9 appraiser what I paid for it, so he had a reasonable idea.
10 But he didn't -- I don't remember him asking for a
11 purchase contract.
12 Q. So do you understand -- I'm just curious
13 what your knowledge is. You had to do a sales disclosure
14 on this; correct?
15 A. Right.
16 Q. So it was reported at \$355,000 was what you
17 purchased it at?
18 A. Right.
19 Q. But -- now wait a minute. Sales
20 disclosure. Is the additional parking spaces accounted
21 for?
22 A. At the -- on the -- as I recall, the
23 parking spaces were conveyed separately from the -- like
24 the deed, for example, I don't believe references -- I'd
25 have to go back and look at it. You may have a copy of

0075

1 it. I don't remember if the deed referenced all those
2 parking spaces or not. They were transferred, as I
3 recall, separately --
4 Q. Okay.
5 A. -- in terms of that, an instrument of
6 assignment.
7 Q. So let me get to where the -- okay. Can
8 you identify this document, please?
9 A. This looks like the closing statement for
10 the -- what I call the closing statement, whatever you
11 guys call it, the HUD-1, or something like that.
12 Q. Okay. Do you have any reason to believe
13 that it's not accurate?
14 A. It looks to be the genuine document, or a
15 copy thereof.
16 Q. And this is the document that you're
17 providing pursuant to your subpoena duces tecum?
18 A. That's my understanding.
19 Q. Okay. Can you tell me, on the right column
20 there is a spot that says the mortgage payoff of home loan
21 mortgage is how much?
22 A. Well, this form says payoff of first
23 mortgage to U.S. Bank Home Mortgage. Is that what you're
24 talking about?
25 Q. Yes.

0076

1 A. \$297,071.79.
2 Q. And what does the one behind -- underneath
3 that say?
4 A. Payoff of the second mortgage to First
5 Savings Bank, \$24,332.04.
6 Q. Okay. Can you add those two numbers?
7 A. It's approximately 321.
8 Q. Okay. So that's -- would you agree that's
9 more than \$315,000?
10 A. Yeah.
11 Q. Okay. So without the additional parking
12 spaces, the purchase price of \$315,000 does not work for
13 Mr. Davis's situation?
14 MR. CULOTTA: I'm going to object. Calls
15 for speculation. We don't know what Mr. Davis's situation
16 is, nor is there any relevance. I mean, if Mr. Davis is
17 making a profit on a sale of his condo, that's -- I don't

18 understand how that correlates to this closing statement.
19 MS. BELLER: It will become very relevant
20 in a moment. The -- and first I'll say he can say what
21 Mr. Davis's situation is, because this is a true and
22 accurate representation of a HUD-1 Settlement Statement --
23 is that correct? -- and so it's going to have the payoff
24 loans on it.
25 MR. CULOTTA: Sure.

0077

1 MS. BELLER: Okay. So he knows what his
2 situation is.
3 Q. And my question is, is \$315,000 enough to
4 pay off Mr. Davis's loans?
5 MR. CULOTTA: Well, that wasn't the
6 question, but...
7 MS. BELLER: I'll break it down.
8 MR. CULOTTA: Sure.
9 A. Well, if you're asking would \$315,000 cover
10 those two liens, no.
11 Q. No, it would not?
12 A. Right.
13 Q. So where on this HUD-1 Settlement Statement
14 are the additional eight parking spaces reflected?
15 A. They're not explicitly listed. They're
16 basically included in that purchase price --
17 Q. Okay. Now, where is the --
18 A. -- from the standpoint of the buyer.
19 Q. -- the developer included on this?
20 A. I don't think the developer has any line
21 item that involves him on here anywhere. Not that I
22 recall anyway.
23 Q. Okay.
24 A. If that's what you're asking.
25 Q. If you'll look on the last page of this

0078

1 attachment --
2 A. Uh-huh.
3 Q. -- there's a signature that you're
4 verifying that this is -- this is the truth of the
5 transaction.
6 A. Okay.
7 Q. That the HUD-1 Settlement reflects all the
8 terms of the transaction.
9 A. Okay.
10 Q. It doesn't reflect all the terms of the
11 transaction, does it?
12 A. I don't know what else there was. Just
13 condo and parking spaces.
14 Q. Okay. But the parking spaces aren't -- the
15 \$40,000 and the parking spaces isn't reflected.
16 A. The parking spaces never get listed.
17 MR. CULOTTA: Wait until she finishes her
18 question.
19 A. Okay. Are you finished?
20 Q. Yes.
21 A. Parking spaces, to my recollection, I've
22 never seen listed in one of these HUD-1s anywhere.
23 Q. Would you say that those parking spaces
24 were given a monetary value of \$40,000?
25 A. That was the value, quite honestly, I put

0079

1 on them based on what I thought their approximate value
2 would be if you would buy them, you know, in bulk that
3 way.
4 But, I mean, that wasn't -- to be honest
5 with you, I'm not sure that's a number that even Gary or
6 Allen Feinsilver would have signed below. That was simply
7 a number that I put on there thinking that that's the way
8 we were going to structure the transaction the first time.
9 Q. So these eight additional spaces, which are
10 an inducement to the purchase --
11 A. Uh-huh.
12 Q. -- are not reflected on that HUD-1
13 Settlement Statement?
14 A. They're not -- they don't, nor would they,
15 have a specific line item. They're essentially the price
16 that we've agreed that are included in that price. I
17 mean, the purchase contracts say that.
18 Q. I would say it doesn't reflect -- I mean,
19 my argument on this would be that this does not reflect
20 the truth of the situation, because you've received

21 outside consideration that's not reflected on this
22 contract, on this closing statement.
23 A. That's your point of view of --
24 MR. CULOTTA: Wait. Stop right there,
25 because she's making a statement. She's not asking

0080

1 what --
2 Q. So my question is where is Mr. Feinsilver
3 included in this HUD-1?
4 A. Where --
5 Q. Just in this purchase price, there's no --
6 A. Mr. Feinsilver doesn't -- that -- that was
7 a transaction between myself and Mr. Davis. Mr.
8 Feinsilver had already conveyed the -- I think -- I'm
9 going from memory -- had already conveyed the parking
10 spaces through a separate assignment, instrument of
11 assignment.
12 Q. Okay. And this settlement was held on the
13 14th; right?
14 A. Whatever the date is.
15 Q. Let me look at -- let me let you look at
16 it.
17 A. That's the date that's indicated here.
18 Q. Now, when was the date, do you recall, of
19 the meeting, the town meeting? Do you recall a town
20 meeting?
21 A. I recall the meeting. I don't remember the
22 exact date.
23 Q. Okay. Would it surprise you if the town
24 meeting was held on September 12, 2006?
25 A. Would that surprise me? No. I remembered

0081

1 it was in September, close to the -- close to that.
2 Q. Closing. You closed two days after it?
3 A. I -- I remember that the closing was
4 coincident with that transaction. I don't remember like
5 how the dates went.
6 Q. Okay. I'm showing you what's marked
7 Exhibit G, from the State's Complaint.
8 A. Okay.
9 Q. And that -- what does that indicate about
10 the town meeting?
11 A. This says September 12th.
12 Q. And do you have any reason to believe this
13 is not an accurate document?
14 A. I -- I can't say, but I don't have any
15 reason to believe that it's not.
16 Q. So here's my question: This was going to
17 be a closing that was 30 days; right?
18 A. Uh-huh.
19 Q. It was never set to be sold to The
20 Harbours.
21 A. It was never set to be sold directly to The
22 Harbours, no, because they couldn't meet that timetable.
23 The Harbours could not meet that timetable.
24 Q. So you -- so The Harbours couldn't meet
25 that timetable?

0082

1 A. Correct.
2 Q. So you were going to buy it?
3 A. Correct.
4 Q. And so it's just set up for you to
5 purchase?
6 A. Well, that's what the association was told
7 during the meeting. It was told that -- it was told that
8 I would convey the property to The Harbours for my
9 out-of-pocket costs at the point of sale, and during the
10 time frame it took to close it, which would have been
11 potentially taxes, carrying costs, whatever.
12 Q. Okay. This is what's marked as State's
13 Exhibit W. Do you recall this document?
14 A. It looks like the bulletin that we
15 prepared. Uh-huh.
16 Q. Do you have any reason to believe that it's
17 not accurate?
18 A. Huh-uh.
19 Q. Okay. And it's State's Exhibit W from our
20 Complaint file.
21 A. Uh-huh.
22 Q. What you're telling me doesn't seem that
23 it's reflected in here.

24 A. Okay.
25 Q. Let me -- let me read this to you. "Because
0083
1 of the amount of money involved and the time required to
2 get approval from homeowners and arrange financing,
3 Zipperle negotiated the best deal he could for the condo
4 and parking spaces, and guaranteed the purchase as
5 follows: The condo and parking was first offered to the
6 association, and if it was refused by a majority of
7 homeowners, Zipperle would make the purchase himself at
8 the negotiated price."
9 A. Uh-huh.
10 Q. But what you've just told me is that's not
11 what happened.
12 A. How is it different?
13 Q. It differs in the fact that -- okay. It
14 says, "the condo and the parking was first offered to the
15 association --"
16 A. Uh-huh.
17 Q. "-- and if it was refused by a majority of
18 homeowners --"
19 A. Uh-huh.
20 Q. "-- Zipperle would make the purchase himself
21 at the negotiated price. "
22 A. Uh-huh.
23 Q. It was not offered to the homeowners -- to
24 the association --
25 A. Uh-huh.

0084
1 Q. -- the membership until September 12th?
2 A. Formally. Formally, it wasn't communicated
3 to beyond the board. The board knew about it, but
4 formally it wasn't communicated to anyone outside the
5 board. That's correct.
6 Q. That's correct?
7 A. That's correct.
8 Q. But then two days later you close on it.
9 A. Those dates would bear that out, yes.
10 Q. Yes. So it wasn't -- you had already
11 entered into the contract to purchase personally,
12 yourself?
13 A. Right.
14 Q. You had set a closing date?
15 A. Right.
16 Q. You had no reason to believe at that time
17 that it was going to be accepted. Did you believe at all
18 that the association would accept it?
19 A. I wasn't sure. I mean, the board -- the
20 board didn't really give me a strong read either way how
21 it was going. It was pretty clear at the meeting what
22 people wanted. Basically, nobody wanted to spend that
23 kind of money, so...
24 Q. But it wasn't offered to a majority, was
25 it, of the homeowners?

0085
1 A. We never got that far.
2 Q. Excuse me. Let me go back. If you were
3 going to purchase this property, if the homeowners
4 association was going to purchase it --
5 A. Uh-huh.
6 Q. -- it needed to be approved by -- a
7 purchase of that magnitude would need to be approved by a
8 majority of the homeowners, and that would be 51 percent;
9 is that correct?
10 A. That would be 51 percent of those casting a
11 vote. That's correct.
12 Q. I'm not sure that's --
13 A. Yeah. Fifty-one percent of -- unless it's
14 an amendment, the denominator, it's those casting votes.
15 So if 40 percent of the membership cast a vote, you'd need
16 20-plus percent of the total...
17 Q. Do you have any documentation of the votes
18 cast?
19 A. There's no -- it was basically a meeting
20 of, I recall, maybe 40 people, which is a pretty good
21 sample of the people that would have voted, including a
22 number of the people who were -- had filed an AG complaint,
23 so we had a spectrum of people as well. And I think there
24 were maybe one or two board members who raised their hand
25 in support, and nobody else wanted to do it.

0086

1 Q. Were there any ballots taken?
2 A. No. It was really intended to be more of a
3 straw vote type thing to see if there was an interest. If
4 there was no interest, we wouldn't go any further with it
5 as far as the membership.
6 Q. And then you got your purchase?
7 A. Then I would have to -- then I would
8 complete the purchase. That's correct.

9 Q. But it was a benefit to you?
10 A. I would --
11 Q. Was the purchase --
12 MR. CULOTTA: I'm going to object to the
13 characterization. You can ask him, you know, did he get
14 it. But benefit -- I mean, he had offered to purchase it
15 for the association. Whether he's now stuck with it, that
16 could be another way of phrasing it.

17 Q. Have you benefited from the purchase of
18 312?
19 A. I don't -- I'm happy. I mean, I don't know
20 what you mean by benefit. I haven't financially benefited
21 from it.
22 Q. But it increased your home size; is that
23 correct?
24 A. Yeah. Which I might have done otherwise,
25 but yes.

0087

1 Q. It increased your home size?
2 A. Uh-huh.
3 Q. It gave you some additional parking spaces?
4 A. Which some were sold.
5 Q. Have you sold some of those?
6 A. I'm pretty sure a couple or three have been
7 sold, at least.

8 Q. And maybe you've rented some of the others?
9 Do you know?
10 A. I don't know. I'd have to look at them.
11 Some of them are not saleable, basically.

12 Q. Okay. Why is that?
13 A. Well, they're inferior spaces, basically.
14 I mean, \$40,000 puts an average of \$5000. But as I said
15 earlier, these spaces are almost as individual as people.
16 One of them is an uncovered motorcycle space. You tell me
17 what that's worth. I couldn't get \$500 for that, much
18 less \$5000. So I'm not even sure they're worth \$40,000,
19 but that's the price I put on it, and that's what I had to
20 basically agree to.

21 Q. So initially it was thought that the extra
22 parking spaces -- what was the association going to do
23 with the extra parking spaces in this purchase?

24 A. Well, they were in various locations, but
25 the thinking was that some people would have been

0088

1 interested in using them.
2 We have what we call a reciprocal exchange
3 process, which means if someone's got a parking space that
4 they don't like the location of, as opposed to having to
5 go out and buy one, typically it's for handicapped or
6 special needs people, but they can swap with us, being the
7 association, for one of the association's spaces.

8 We have many vendors. There's always
9 vendors on the prop -- or contractors on the property.
10 And if we had bought that condominium, we would have ended
11 up probably incurring some cost to renovate it. We might
12 have sold off two or three spaces to offset that cost too.

13 Q. So you're saying that -- let me see if I
14 heard you then, that some of those extra parking spaces
15 could in fact be sold --

16 A. Yeah, I mean...
17 Q. -- to offset the renovation cost?
18 A. That was the thinking.

19 Q. And so that would generate income for the
20 association?
21 A. Uh-huh.

22 Q. Did Mr. Davis tell you at any time that he
23 would not sell his condo unless he got a certain amount of
24 money for it?

25 A. I remember talking to Gary Davis and Allen

0089

1 Feinsilver both. I think I talked to actually Sandy
2 Wilson, who was Allen's representative, about price. I
3 don't remember the specifics of any one conversation.

4 They -- obviously, they each had their minimum price that
5 they would accept in some sort of a three-way transaction.
6 But I don't remember the specifics of what we talked
7 about. I'm sure he would tell you the 355 was as low as
8 he would take at this point, or something close to that.

9 Q. So were you authorized by the board to
10 negotiate this transaction?

11 A. Well, certainly I was in the position as
12 president, and as one of the potential parties involved,
13 to be essentially in the middle of it. So, yeah, I mean I
14 don't remember anyone saying, you know, please do that,
15 but that's certainly what the board knew I was doing, and
16 was okay with it.

17 Q. Was there any action, formal action, taken
18 at all? There was no --

19 A. I don't remember.

20 Q. -- Kevin, investigate this on behalf of the
21 board?

22 A. I don't remember. I mean, I had -- if it's
23 documented in the minutes, then it's there. If not, then
24 it doesn't mean it didn't happen, but...

25 Q. Why was your wife Deborah the purchaser?

0090

1-15 [Personal information removed.]

16 Q. Okay. So the second contract included this
17 condition that the eight parking spaces got -- were
18 assigned \$40,000. Or their -- the eight --

19 A. The first time.

20 Q. The eight parking spaces raised the
21 purchase price by \$40,000; is that correct?

22 A. That was understood that that was included
23 in that price.

24 Q. And Allen Feinsilver is not a party to that
25 contract?

0091

1 A. That's correct. But he understood them all
2 to be related. Everything was always understood by all
3 parties to be related at all points in time.

4 Q. Was that understood by Gary Davis as
5 mortgagor -- mortgagee? Excuse me.

6 A. I don't have -- I mean, I have no idea.

7 Q. Because this, outside the statute of
8 limitations, has huge fraudulent input -- mortgage fraud
9 implications to it. I'm just telling you that concealing
10 where the \$40,000 came, and it's concealed, because it
11 doesn't appear, is a huge omission.

12 A. I don't have any idea.

13 Q. So you've seen the math on this. Without
14 the additional \$40,000, Davis wouldn't receive \$28,000 in
15 proceeds. You saw the two -- I'll get it out again, the
16 HUD-1 Settlement Statement. Mr. Davis had two mortgages
17 on it.

18 A. Uh-huh. Is this the \$28,000 you're
19 referring to?

20 Q. Yes.

21 A. Yeah. Well, I have no idea what somebody
22 else would have paid him, but I wouldn't have paid him
23 \$355,000 just for the condo.

24 Q. You would not have paid him --

25 A. For or on behalf of The Harbours, which is

0092

1 the more important thing. No, I wouldn't have.

2 Q. Okay. So he's got --

3 A. They had more than zero value.

4 Q. Okay. The -- so if it hadn't had those
5 extra parking places in the contract you were negotiating,
6 there wouldn't -- you wouldn't have had a deal?

7 A. Not with me on behalf of the association.

8 Q. Okay. So the eight parking spaces -- I'm
9 showing you what's marked [Exhibit D](#). Do you recognize
10 this document? And this is Exhibit D to the State's
11 Complaint.

12 A. Let's see. It looks like the assignment
13 document to Debbie on our behalf.

14 Q. Okay.

15 A. It looks like that.

16 Q. And when is that dated?

17 A. The notary date is the 8th of September.

18 Q. Okay. And that was four days prior to the
19 meeting where these are offered to the association?

20 A. If you're referencing that September 12th

21 date, yeah.
22 Q. Yeah. So how often -- let me ask you
23 something about your meetings, your homeowner association
24 meetings.
25 A. Uh-huh.

0093
1 Q. Who -- is there a written agenda produced?
2 A. Where are the association meetings. Okay.
3 If you're talking about --
4 Q. Oh, the board meetings. Excuse me.
5 A. Okay. board meetings. Yes, usually.
6 Q. Okay. Who produces that agenda?
7 A. Typically, it's the president in
8 conjunction with the property manager and/or the
9 secretary.
10 Q. Okay. How do items come to be addressed?
11 A. Well, they're usually -- I mean, there's
12 typically about a one-month interval between them, so it's
13 business that's come up within the month.
14 If it's old business, it's carried forward
15 as old business. It's basically matters that need the
16 full board's attention. The president doesn't have the
17 authority, or doesn't feel he or she has the authority to
18 act on their own, by their self, or the property manager,
19 the same way. They can't make the decision on their own.
20 Q. Okay. So I'm showing you what is marked as
21 State's [Exhibit E](#) to its Complaint. Do you recognize this
22 document?
23 A. It looks like it's presented as the minutes
24 from that particular meeting.
25 Q. Okay. And on those minutes there's a

0094
1 topic, Internet satellite cable?
2 A. Oh, yeah, there it is. Uh-huh.
3 Q. And what does that say?
4 A. Do you want me to read it?
5 Q. Yes, please.
6 A. After discussion, a motion was made and
7 seconded that the board accept the following
8 recommendation from the satellite cable Internet committee
9 to be presented for homeowner approval. That we enter
10 into a contract with Insight Communications to purchase
11 programming Internet services for the entire building.
12 Passed unanimously.
13 Q. Okay. And on that same minutes is there a
14 reference to common space options?
15 A. Someone circled on the second page at the
16 bottom there, yes.
17 Q. And what is that reference?
18 A. It says, common space options due to
19 constraints of time, this was tabled.
20 Q. Okay. Who would make the decision to table
21 an item?
22 A. Well, it's usually done by the entire
23 board. It looks like this meeting ran for three hours and
24 ten minutes, so I imagine everybody was pretty tired.
25 Q. Okay. And at this point -- and remember

0095
1 this is -- is it July 19th that --
2 A. Uh-huh.
3 Q. Had you been approached yet by the
4 developer?
5 A. I -- to be honest with you, I don't
6 remember exactly when I was approached. I don't remember
7 the dates. If I dug deep, I might be able to find
8 something that pinned it down a little bit, but certainly
9 the dates of those contracts would -- it would be before
10 that date. But when, I don't remember exactly.
11 Q. Okay. May I see those quickly?
12 A. Sure.
13 Q. So it also says that a date separate will
14 be set for the town meeting.
15 A. Uh-huh.
16 Q. And it says, at which time this will be
17 brought to the homeowners association for discussion.
18 A. Uh-huh.
19 Q. Let's look at [Exhibit F](#).
20 A. Okay.
21 Q. And can you identify the State's Exhibit F
22 to its Complaint?
23 A. It looks like it's a set of minutes for the

24 next month, August -- August 16th.
25 Q. Okay. Is there an Internet satellite cable
0096
1 item?
2 A. Yes, there is. Uh-huh.
3 Q. And what does that say?
4 A. Telling me it will be held on September 12,
5 2006 at 6:00 p.m. to discuss the proposal from Insight. A
6 representative from Insight is to be present. Location
7 will be announced in a mailing to homeowners.
8 Q. Okay. This is -- is there an item for
9 community space options, or common space options?
10 A. Uh-huh. That's down toward the end. It's
11 circled. It says, this item was tabled due to the length
12 of the meeting.
13 Q. Okay. And what was the date of this
14 meeting?
15 A. August 16th.
16 Q. Do you think by that time you'd been
17 contacted by the developer regarding his proposal?
18 A. Probably, but I'm just speculating. I
19 don't know. That much time prior to the closing,
20 probably.
21 Q. Yeah, well, within 30 days of the closing?
22 A. Uh-huh.
23 Q. There's no discussion of the fact that
24 you'd been approached by the developer?
25 A. It didn't look like at this meeting there

0097
1 wasn't.
2 Q. Okay. Now, I'm showing you -- you
3 previously identified this as State's [Exhibit G](#) to its
4 Complaint.
5 A. Uh-huh.
6 Q. And that is what?
7 A. It appears to be a meeting announcement.
8 Q. And what is the meeting announcing? What's
9 the topic?
10 A. Well, I'm reading under purpose: Town
11 meeting information night to discuss building-wide cable
12 television votes on high-speed Internet connectivity. As
13 time allows, there may be other topics of discussion.
14 Q. Okay. What was contemplated -- do you know
15 what was contemplated as other topics of discussion?
16 A. I don't remember specifically. I mean,
17 the -- that's the meeting we talked about the community
18 space options, but I don't remember anything else.
19 Q. Now, you had a ballot, I believe, connected
20 to the cable discussion? Was there a ballot? A yea or
21 nay ballot?
22 A. I read that in the Complaint, but I don't
23 remember that.
24 Q. Okay. So homeowners would have had no
25 reason to be prepared for discussion on a community space

0098
1 option? Is there any reason that, to your knowledge, they
2 would have had a -- they would have been prepared to come
3 to a meeting to discuss community space options?
4 A. I don't know what prepared -- I don't know
5 what preparation --
6 Q. Did they have any notice that it was going
7 to be discussed?
8 A. Well, that meeting -- that particular
9 meeting we expected high attendance, and that was simply
10 because of that cable TV and Internet service option.
11 There wasn't any need to incentive it with anyone else, or
12 anything else.
13 Q. Did they have any reason to be prepared
14 though? Were they notified that common space was going to
15 be --
16 A. Separate from that, I don't know. I don't
17 remember.
18 Q. How would they be notified?
19 A. There could have been a newsletter. I
20 don't remember. I don't remember what we were even
21 issuing at that time.
22 Q. Did they have an opportunity to review
23 board minutes?
24 A. Probably. I don't remember what our
25 convention was then.

0099

1 Q. So in July there was no common space being
2 announced; is that correct?
3 A. Well, those minutes didn't reflect that.
4 Q. Okay. And in August, when you were in
5 active negotiations, there's no reflection?
6 A. I don't know that I was in active
7 negotiations, but I suspect we were talking about it.
8 There was no mention in those minutes about it
9 specifically.
10 Q. Specifically. So -- and there's no mention
11 on the flyer.
12 A. Uh-huh.
13 Q. So there's no reason people would have a
14 reason to believe it was going to be discussed?
15 MR. CULOTTA: I'm going to have to insert
16 an objection now. I think it's been asked and answered,
17 and I think he said he just doesn't know or recall. So
18 you can answer it one more time, but...
19 Q. Is there any other method they would have
20 gotten indication?
21 A. Well, like I said, we had newsletters. I
22 don't remember when they -- we didn't have the website up
23 and running at that time. We had newsletters we posted
24 minutes. I mean, there's no end to the communication that
25 takes place in that building. So there's no reason to try
0100 1 to suppress it in some way, if that's what you're asking.
2 And for that matter, no one needed that
3 type of incentive, because we knew for the cable project
4 there was going to be a massive turnout for that. And
5 there was, relatively speaking. I mean, we didn't get 95
6 percent of the membership there, but that's -- you'll
7 never get that. There was a lot of people there simply
8 for that topic. So we decided to just take a straw vote
9 while we had the chance on this other one.
10 Q. So what -- were there individuals you were
11 discussing this purchases of 312 with?
12 A. Individuals? Well, certainly the
13 principals in the transaction.
14 Q. Okay.
15 A. And other board members, but I don't --
16 Q. Who were those other board members?
17 A. I don't remember.
18 Q. Did [former employee name removed] know about
19 the transaction?
20 A. Probably, yeah. I'm pretty sure she did.
21 I don't remember, but she probably would say she did.
22 Q. Okay. Now, [former employee name removed] --
23 just to interject something in here.
24 A. Uh-huh.
25 Q. Now, she worked for the developer?
0101 1 A. Not at this point in time.
2 Q. But prior to?
3 A. She was hired in with the developer.
4 That's correct. All the staff worked for the developer at
5 one time.
6 Q. Okay. So do you recall any -- here's
7 State's [Exhibit I](#). Do you recall seeing this document?
8 A. I probably read it in this, but I never --
9 I don't remember that from that meeting.
10 Q. Because this -- do you recall providing
11 this to us in a group of documents --
12 A. I mean, I --
13 Q. -- pursuant to a subpoena?
14 A. -- I -- my recollection -- I'm sorry. My
15 recollection is [former employee name removed] prepared those,
16 and I don't remember that going out, but I'm sure it did.
17 Q. Okay.
18 A. I'm not questioning it did.
19 Q. Now, do you recall the sequence of events
20 at the town meeting?
21 A. Vaguely, but not in great detail, no.
22 Q. Do you recall what the first item discussed
23 was?
24 A. I believe it was the cable television. But
25 if you told me it was the other way around, I probably
0102 1 wouldn't challenge you on it.
2 Q. Do you recall -- so you've already
3 stated -- let me make sure I understand this correctly,

4 that the majority of homeowners were there to discuss the
5 cable television?

6 A. That's my -- certainly my recollection of
7 things.

8 Q. At the opening of the meeting -- I'm
9 assuming you were running the meeting?

10 A. I believe I was. I was just the president
11 at that time.

12 Q. Okay. Did you tell them that you would be
13 discussing community space options?

14 A. We -- at the meeting we probably went over
15 what a brief agenda would have been, yeah.

16 Q. Okay.

17 A. I don't remember.

18 Q. Do you recall there being any kind of a
19 break?

20 A. No. I saw you all comment on a cookie
21 break, but I don't remember that. I'm sure there...

22 Q. You don't remember that?

23 A. Yeah.

24 Q. Do you recall people leaving after the
25 break?

0103

1 A. No. I don't have any recollection of that.

2 Q. Okay.

3 A. I don't remember the meeting going on for
4 hours, so there would have been no reason for a big
5 fatigue factor to set in, or anything like that.

6 Q. Okay. Here are the documents marked H.
7 It's two pages.

8 A. Uh-huh.

9 Q. Do you recall seeing this document?

10 A. These look like documents I had prepared
11 for the community space.

12 Q. Okay. Can you identify where the purchase
13 of 312 is discussed?

14 A. It looks like -- well, from just
15 referencing how this is set up, it looks like item four.

16 Q. Okay.

17 A. It says it on there.

18 Q. And on the second page of twelve. Where is
19 it there?

20 A. It looks like the last one. I don't -- I
21 guess that's a four. It's copied -- the copy's poor, but
22 it looks like there is a four in front of it.

23 Q. Okay.

24 A. Roman numeral four.

25 Q. Okay. And what did you present as the

0104

1 purchase price?

2 A. It looks like there's nothing on the one
3 document. It looks like the second document showed
4 \$400,000 total upfront cost.

5 Q. Okay. And what did you make that basis on?

6 A. It was based on the purchase price,
7 carrying costs, and renovation costs, basically. It was
8 just a WAG.

9 Q. Okay.

10 A. Just so people knew what they were getting
11 into.

12 Q. So it could be less? It could have been
13 more?

14 A. It was whatever the actual cost would have
15 been.

16 Q. Okay. And it is the most expensive --

17 A. Yeah. I mean, everyone kind of knew that
18 was the case. We really didn't know. I mean, the second
19 one and the third one with \$200,000, all those were
20 estimates. You can see they're nice round numbers,
21 obviously. But they were all estimates, and we didn't
22 know really how anybody was going to perceive them.

23 Q. And the vote was taken by a show of hands?

24 A. That's what I recall, yes.

25 Q. Okay. And we've established your wife

0105

1 closed two days after, 312.

2 And do you -- are you familiar with this
3 document? It's [Exhibit J](#) to the State's Complaint.

4 A. It looks like September -- a similar set of
5 meeting minutes from September.

6 Q. Okay. And what does that tell of the

7 community space options?
8 A. The underlying text says community space
9 options, four options, had been presented at the town
10 meeting. Only two received any support, those being
11 continue to rent space elsewhere, or renovate some
12 existing space. This was tabled until further study could
13 be done.
14 Q. Do you have any reason to believe that
15 that's not an actual statement of what happened?
16 A. No. And I think it is what happened
17 actually.
18 Q. Okay.
19 A. From my recollection.
20 Q. So that ends it, and you purchase it,
21 and...
22 A. Well, no, it didn't end it. It said
23 further study would be done. Now, Walter Kindler, I
24 remember, was in charge of an effort to research what
25 renovating the existing space in the building would cost.

0106

1 And the second, the \$50,000 option was researched.
2 Q. Okay. For community space options. But as
3 far as your purchase of 312?
4 A. There was no -- we didn't really know
5 people were going to spend \$50,000, much less \$400,000. I
6 mean...
7 Q. So you really -- when you purchased it, you
8 had no reason to believe that the homeowners association
9 was really going to buy it?
10 A. I hoped they would, but I really didn't
11 know. I didn't have any way of understanding. People
12 liked having the space that we had available to us for
13 community space events, meetings, and the like, but I
14 didn't know how important it was, you know.
15 I mean, I probably said something to the
16 effect -- I think the one time -- grab your documents, but
17 I think one of the documents spelled out for each
18 individual condo potentially how much it was going to
19 cost. So if you broke it down, it wasn't too bad of a
20 cost. But people don't want to write a check for, you
21 know, \$20, much less \$2000, so...
22 Q. Okay. I'm going to shift back to -- do you
23 recall the conversation that we were having at Dawn
24 Elston's office when you brought in subpoena documents --
25 A. Uh-huh.

0107

1 Q. -- and you were explaining to me, and I'd
2 like you to go into some detail, that the developer was in
3 some sort of litigation regarding the balconies and the
4 painting of the balconies?
5 A. Well, actually, I didn't -- I wasn't
6 involved with the litigation, so I don't know what I said
7 in the way of litigation. Hopefully, I didn't mislead,
8 because I didn't really have a firsthand understanding of
9 that.
10 But there was a dispute, I'm going to call
11 it, debate or dispute, between the developer and the
12 contractor and us -- us being the association -- as far as
13 the condition of the balcony railings that were painted,
14 either with an inappropriate material or a process, one or
15 the other, and they were starting to peel significantly,
16 and we were trying to get that situation resolved.
17 And the developer believed -- I assume that
18 we did as well -- but the people who had studied it, that
19 the contractor bore -- had borne some responsibility on
20 that. And I think the lawsuit was to collect from the --
21 the developer to collect from the contractor, as I recall.
22 Q. Okay. Now, did you have any responsibility
23 in the transition committee to make sure that the
24 balconies were taken care of?
25 A. Well, I mean, in a comprehensive way, sure.

0108

1 Everything was our responsi- -- well, the transition
2 committee not so much so, because we weren't -- we really
3 didn't have any decision-making authority. The developer
4 was transitioning that, hence the name, to us. But
5 certainly we would have had an interest in understanding
6 that and trying to, you know, make it work out for the
7 association's benefit.
8 Q. Okay. And how did you view that, making it
9 work out for the association's benefit? What would have

10 been the goal?

11 A. Well, my recollection was that we were --
12 we were going to need somewhere in the mid-\$50,000 range,
13 \$55,000 let's say, to fix the problem. And the contractor
14 was not in a position, as I understood it, to pay that
15 money. So we were trying to collect as much of that as we
16 could toward the -- fixing the problem. I'm not sure if I
17 answered your question or not.

18 Q. Yeah. So I am showing you what is marked
19 as State's [Exhibit K](#) to the State's Complaint. Do you
20 recognize this document, exactly two pages there, so...

21 A. Yeah. Now, I've seen this. I don't
22 remember it specifically, but it's communication about the
23 balcony railings from our property manager.

24 Q. And what is she requesting?

25 A. She's essentially requesting it looks like

0109

1 resolution of the problem. Please advise the association
2 when the funding will be available to properly paint the
3 railings, question mark.

4 Q. So at this time the -- I'm going to
5 assume -- is [former employee name removed] -- operating
6 under the direction of the board?

7 A. Uh-huh.

8 Q. So she's -- they're trying to find some
9 resolution?

10 A. Right.

11 Q. Okay. Okay. I'm showing you what is
12 marked as State's [Exhibit L](#). Do you recognize this
13 document?

14 A. Again, it's -- yeah, I'm copied on this
15 one. I don't remember it, but it looks like she's trying
16 to get the problem resolved again at a later date.

17 Q. Okay. And it's also -- would you agree
18 it's the -- the e-mail says that it's now nearing close of
19 the development phase at 1110?

20 A. Uh-huh.

21 Q. What happened when the development phase
22 ended?

23 A. That was -- what a reference thereto is, I
24 believe, the developer selling his last properties at The
25 Harbours.

0110

1 Q. Okay. And what would happen then?

2 A. At this point in time he had turned over
3 operating control to the association, so he simply would
4 have no longer been a voting member of the association.
5 That was about all his -- I mean, he retained, if you read
6 the declaration, certain privileges to keep a marketing
7 office open and all that, but at this point in time,
8 functionally, I don't think he did a great deal there
9 other than own property, so...

10 Q. Okay.

11 A. Maybe he probably shared some of the cost
12 maybe for a fax machine or something like that.

13 Q. Okay. In November of 2006 -- I'm showing
14 you what is marked as State's [Exhibit M](#) to its Complaint.
15 The developer made some sort of a marketing plan proposal?

16 A. Uh-huh.

17 Q. Can you tell me about that?

18 A. Well, he's basically liquidating his
19 remaining inventory of parking spaces. I assume these are
20 ones separate from the condos he had left to liquidate.
21 Some of them he just gifted to the association, one of the
22 first six listed, it looks like. And then the remaining
23 ones are -- it looks like seven were sold, or were to be
24 sold, with proceeds in part going to offset the cost for
25 the balcony railings. I assume at this point in time the

0111

1 developer had understood that he probably wasn't going to
2 collect any money from the contractor. He was just simply
3 trying to make the situation a little better.

4 Q. Now, help me understand that after he sold
5 his last condominium --

6 A. Uh-huh.

7 Q. -- which was 1110.

8 A. Uh-huh. I stand corrected. It wasn't
9 1110. I think -- I don't know which one it was, but the
10 last two he owned, as I understood, were 1108 and 1113.

11 Q. Okay. Once he sold his condominiums, how
12 did he retain control of common space and the parking

13 spaces?
14 A. You're saying how? He was allowed to do
15 that per the declarations.
16 Q. Now, you know that because you read the
17 declarations?
18 A. Yeah.
19 Q. Did he tell you that he was allowed to do
20 that? Did you have any discussion as the transition
21 committee?
22 A. No. It's in the declarations, though. I
23 mean, it's section five of the declarations.
24 Q. Because there are different -- there are
25 differing opinions on whether he could do that or not.

0112

1 A. That's not an opinion. It's in the
2 declarations. It doesn't say -- well, I'll answer your
3 questions. It's in the declarations, section five.
4 Q. Okay. Were you aware that other homeowners
5 read the declarations differently?
6 A. I'm aware that at least one did.
7 Q. Okay. And who was that?
8 A. That would probably be Betty Cantrell.
9 Q. Okay. Do you know that there are
10 actually -- would you be surprised that Gary Davis said
11 there was some question as to whether he could really do
12 that or not?
13 A. Well, I think that a lot of people don't
14 know what's in the declarations. I personally had no idea
15 what was in there until I got into the job as a board
16 member and started to look at them more closely.
17 Until this particular question came up
18 about those spaces, I couldn't have told you where it was
19 in there. Now I can tell you exactly where it is.
20 Q. Okay. Well, so what's your --
21 A. It really doesn't matter what people think.
22 It's what's in the declarations.
23 Q. Right. And it's a matter of how it's
24 interpreted. So that's your interpretation?
25 A. I don't think it's really a subject for

0113

1 interpretation if you read it.
2 Q. Has there been a legal interpretation made
3 on it?
4 A. Not to my knowledge, but...
5 Q. Did you think at any time that perhaps --
6 did you consult The Harbours' attorney?
7 A. It clearly says in there after the
8 developer sold his parking spaces. All of this occurred
9 prior to that, so whatever language is in that section of
10 the declarations after that phrase doesn't apply.
11 Q. Did you consider that? I mean -- because
12 we're talking about the common space of the association.
13 You did not find that worthy of seeking a legal opinion?
14 A. Not when it's worded that explicitly. It
15 says after the developer has sold his inventory of parking
16 spaces, dot, dot, dot, dot, dot. All of that dotted stuff
17 didn't apply to him because he hadn't sold all of his
18 parking spaces at this point. That's what people
19 misunderstand. They think that you have to attach a
20 parking space to a condominium, which now you do. But
21 prior to him selling the inventory, that wasn't the case.
22 It says it.
23 Q. No, I think that it's subject to a
24 different interpretation. I think there is a reasonable
25 different interpretation to it.

0114

1 A. Okay.
2 Q. That's my opinion.
3 A. Okay.
4 Q. So you recognize this Exhibit M; is that
5 correct?
6 A. I believe that to be the -- with the
7 documents you're referring to.
8 Q. And that's the marketing plan?
9 A. Uh-huh.
10 Q. And I'm showing you now what is marked as
11 [Exhibit N](#).
12 A. Okay.
13 Q. Do you recognize that document?
14 A. I don't remember it explicitly. I remember
15 it as being an attachment in there, but I'm just

16 refreshing my memory of what it says.
17 Q. Okay. Would you have any reason to believe
18 that this document was not factually correct?
19 A. No. We can discuss it based on it being
20 correct.
21 Q. Okay. So each board member agreed to this
22 marketing plan; is that correct?
23 A. Yeah, it wasn't necessarily an executed
24 plan, but it was a plan. That's correct.
25 Q. Okay. What do you mean it wasn't

0115

1 necessarily an executed plan?
2 A. Well, it wasn't -- obviously, before we
3 went to that extent to try to sell parking spaces, we had
4 a buyer step forward and agree to buy them at a very
5 attractive price, and buy them all at one time. That was
6 all the money we needed.
7 Q. And --
8 A. Or most of the money we needed.
9 Q. And how did that buyer step forward?
10 A. I really don't know the circumstances of
11 that. I suspect it was Mr. Prell, and I suspect there was
12 maybe a communication to begin with the property manager.
13 Q. And the property manager at that time was?
14 A. [Former employee name removed].
15 Q. [Former employee name removed]?
16 A. Uh-huh.
17 Q. And so the association just determined that
18 it wasn't offering it out to bid for everyone?
19 A. Well, the association's objective was to
20 get as much money as we could as quickly as possible. The
21 time was of the essence thing we talked about earlier.
22 And...
23 Q. Why was time of the essence in this case?
24 A. Well, simply because we wanted to get the
25 balcony railings painted. We wanted to address the

0116

1 problem.
2 Q. When were the balcony railings painted?
3 A. They weren't. Unfortunately, as we speak,
4 they still haven't been painted, believe it or not.
5 Q. Okay.
6 A. But at that time we wanted to paint the
7 balcony railings.
8 Q. Okay. Because it seems like there's a lot
9 of benefit for Mr. Feinsilver, and not as much taking time
10 for the condominiums. This is my -- if it's time is of
11 the essence because Mr. Feinsilver wants to sell a
12 condominium, and then it's time is of the essence because
13 Mr. Feinsilver wants to sell a -- some parking spaces,
14 wants to get rid of some parking spaces.
15 A. Well, I mean, just based on my own personal
16 experience, I don't float any offers out there to people
17 to buy something, just say take your time, come back to me
18 next year and let me know if you wanted me to buy it. I
19 mean, most people want to get something over with.
20 He was based in Texas, so I think still
21 probably is. This was a remote project for him. He was
22 in the very final stages of it, and he simply wanted to
23 get out of it. And I didn't see anything unusual about
24 that.

0117

25 Q. So was there any decision as the board to
1 disregard the marketing plan?
2 A. We didn't disregard it. We said we could
3 get a good portion of this money right away from Mr. Prell
4 at what appeared to us to be an attractive price, and
5 which history had shown is a good price -- was a good
6 price, so we took it.
7 Q. So do you know if [former employee name
8 removed] contacted Mr. Prell?
9 A. I don't know the circumstances of that.
10 Q. Why would Mr. Prell have been identified as
11 a potential purchaser of these parking spaces?
12 A. Well, she knew he was an investor at The
13 Harbours. I tend to be more of a circumstantial investor.
14 You know, I just bought something when they came up.
15 Frank came in as someone who wanted to develop properties
16 there and market them to a high-end clientele, which is
17 something that The Harbours certainly wanted to see
18 happen, although it probably has not happened as much as

19 certainly he would have hoped. And she figured he
20 probably would be interested in some extra parking spaces
21 for these people. And so I'm guessing she called him, but
22 I don't know that. I'm just speculating.
23 Q. My question is, according to the
24 developer's proposal, at a minimum, the sale of the
25 parking spaces would have resulted in a profit of \$74,250,
0118
1 had they been sold as they were supposed to be sold. Do
2 you agree with that?
3 A. At those prices, those list prices.
4 Q. Okay. And the distribution was the
5 association was to receive \$30,000.
6 A. Uh-huh.
7 Q. Is that correct?
8 A. Right. I think that's right, yeah.
9 Q. And then the rest of that -- the
10 association was to receive the first \$30,000 --
11 A. Uh-huh.
12 Q. -- and then from the rest of that there was
13 supposed to be a 50/50 split between the association and
14 the developer?
15 A. That sounds right.
16 Q. Okay. So the minutes of December 19,
17 2006 -- I'm showing you what is marked as State's [Exhibit](#)
18 [Q](#).
19 A. Uh-huh.
20 Q. Do you recognize this document?
21 A. It looks to be another set of minutes from
22 December of '06.
23 Q. Okay. Do those minutes reflect any
24 discussion regarding painting the balconies?
25 A. The section that's asterisked, highlighted
0119
1 here. It says -- I can read it. Agreement with declarant
2 relating to remaining parking spaces, with portions of the
3 sale to be retained by the association to offset the
4 majority portion of the expense to paint balcony railings.
5 Q. Okay. So as of December, it's announced
6 via the minutes, that there is an agreement on the parking
7 spaces?
8 A. Uh-huh.
9 Q. Okay. And according to the proposal,
10 there's supposed to be a letter go out to the homeowners;
11 is that correct?
12 A. You are talking about this marketing
13 effort, if it had gone that way?
14 Q. Yeah.
15 A. I think that's what I read there, yeah.
16 Q. Okay. And no letter was ever sent?
17 A. I don't remember one, but I don't know any
18 of that factually.
19 Q. Okay. There was no sealed bid?
20 A. I don't remember. I don't think so, but I
21 don't remember. I don't think anyone stepped forward
22 to -- I'm not sure how much time people would have had to
23 find out and step forward, to be honest.
24 Q. Was there any discussion of target
25 marketing among the board? I mean, did the board get
0120
1 together and say, hey, let's target Frank Prell?
2 A. No, I don't think so.
3 Q. Okay.
4 A. [Former employee name removed] might have said
5 something to us about Frank might be interested. Let's float
6 him a price and see what he thinks. And, you know, we very
7 well set that price, and Frank agreed to it. I don't remember.
8 Q. Okay. So I'm showing you what is marked as
9 State's [Exhibit P](#). Do you recall this document?
10 A. I don't -- again, I'm copied. I don't
11 remember it specifically, but I understand it, I believe.
12 Q. Okay. And how much money was the
13 association to receive?
14 A. It looks like \$43,000 on here.
15 Q. And how much did the developer receive?
16 A. This says \$20,000.
17 Q. Okay. Can you explain what appears to be a
18 discrepancy according to the formula that the developer
19 had, that -- okay. So 20 and 43 is 63,000; is that
20 correct?
21 A. Uh-huh.

22 Q. Okay. So subtract out 30,000.
23 A. Uh-huh.
24 Q. So that leaves 33,000 left. And what's
25 half of that?

0121 1 A. Sixteen five?
2 Q. Sixteen five?
3 A. Uh-huh.
4 Q. So the association should have received
5 \$46,500?
6 A. Uh-huh.
7 Q. Do you know why it only received \$43,000?
8 A. No, I don't have any idea.
9 Q. Okay. And the developer should have only
10 received \$16,500?
11 A. Uh-huh.
12 Q. And do you have any idea why he received
13 \$20,000?
14 A. Huh-uh.
15 Q. Who would know why that happened?
16 A. Well, if anyone would remember, it would
17 probably be [former employee name removed]. I don't know of
18 anyone unless Frank would -- I don't think Frank knew what the
19 association's situation was with the developer, so I don't --
20 I don't know. Frank was simply cutting the checks. But I
21 don't remember.
22 Q. Okay. So the association was shorted a bit
23 from its agreement?
24 A. Well, I don't know that. I think there may
25 well have been an explanation for that. [Former employee name

0122 1 removed] didn't make math errors, so...
2 There may well have been an explanation for
3 it, I just don't know what it is.
4 Q. Okay. And then on February 22nd, I'm
5 showing you what's marked as State's [Exhibit U](#).
6 A. Uh-huh.
7 Q. Do you recall that document?
8 A. It's a set of minutes from the following
9 February it looks like.
10 Q. And what does that say with regard to the
11 condominium and parking space sale?
12 A. The list of available -- are you talking
13 about that's underlined?
14 Q. Let me see.
15 A. What's underlined there at the bottom?
16 Q. No. Under parking spaces. It's the first
17 paragraph.
18 A. Oh. The developer -- I'll read it. The
19 developer has gifted to Harbours condominium association
20 six additional parking spaces, four located in front of
21 the building. One will remain the handicapped space. One
22 will be a homeowner guest space with a four-hour limit.
23 One will be a space with a one-hour limit to allow for
24 homeowners picking up mail, et cetera, and one will be a
25 staff parking space. The remaining parking spaces will be

0123 1 for association assigned by permit only vendor parking.
2 Signs will be posted to this effect, and this will be
3 strictly enforced.
4 Q. Is there a part about the developer has
5 gifted his -- The Harbours association -- oh, right down
6 here. I'm sorry. The second paragraph.
7 A. Developer has sold his remaining
8 condominium parking spaces, gifted the association \$43,000
9 here marked for painting the balconies. Is that the one?
10 Q. Yeah.
11 A. Okay.
12 Q. Why the choice of the word gifted?
13 A. Why the choice? I guess we could have used
14 settled. Technically, per what we all bought into as a
15 regime, there was no obligation for the developer to give
16 us any parking spaces, or the proceeds therefrom.
17 In this particular space, it was a link to
18 a settlement on this balcony railing issue. So you
19 probably could have said as settlement on that balcony
20 railing issue. But he wasn't obligated to give us
21 anything except what we were due, basically.
22 Q. So you were due something for the --
23 A. Balcony railings.
24 Q. -- balcony railings.

0124 25 A. Well, I'm not a lawyer, and I don't
1 understand the circumstances of that situation. We
2 obviously were left with a property in the condition it
3 was in. It was defective due to some contractor materials
4 or whatever, and there was litigation over it that was,
5 you know, pending. So someone felt somebody was due
6 something, obviously. We could have been that party, I
7 guess. I don't know.
8 Q. Did you discuss anything with your
9 homeowners association lawyer as to what --
10 A. I don't --
11 Q. -- you needed to do?
12 A. I'm sorry. I didn't let you finish. I
13 don't remember. I don't remember having a discussion. We
14 probably did. There was a reference in there to a Junie --
15 that's George Gesenhues. George probably knew what was
16 going on and may have given us some counsel on that. I
17 don't remember.
18 Q. Was George Gesenhues your counsel at that
19 time?
20 A. I believe he was our outside counsel for
21 most routine stuff.
22 Q. Okay. When did you go to the Vissing Law
23 Firm?
24 A. I'd estimate the date probably like '08.
25 Q. Okay.

0125 1 A. Somewhere in that time frame.
2 Q. Up until the time that Mr. Gesenhues --
3 however you say it --
4 A. Gesenhues.
5 Q. Gesenhues. Had he been your counsel?
6 A. He had been.
7 Q. Okay.
8 A. He was a carryover from the developer, who
9 had worked with him, basically.
10 Q. So he had worked with the developer?
11 A. That's my understanding and recollection.
12 Q. So there might have been a conflict with
13 him working on the association?
14 A. Well, not at this point in time. The
15 developer -- well, the developer was still potentially in
16 the picture. What's the date of this thing? February of
17 '07. That was about the time that the developer was
18 leaving the association. But at the end of his ownership
19 at The Harbours being a property, he was simply like an
20 at-large homeowner. He retained a few privileges as is
21 outlined in the declarations for like a marketing office,
22 and that type of thing, but he had no voting control or
23 any operating control that he exercised.
24 Q. Okay. I want to go back to this where he
25 has gifted spaces to The Harbours.

0126 1 A. Uh-huh.
2 Q. Among those was there a parking space
3 number 18?
4 A. Yes, uh-huh.
5 Q. Can you tell me about the history of
6 parking space number 18?
7 A. I say it's in there. I don't rem- -- if
8 it's referenced in that list. I know that came from the
9 developer. It's a surface parking space. It's uncovered,
10 not in the garage. We keep it -- or we have kept it for
11 handicapped or special needs individuals who need it on a
12 kind of a temporary basis. If someone has a broken leg,
13 or they've been in the hospital and they're recuperating,
14 whatever, and they need something close. It's a parking
15 space we've kept for that type of a situation.
16 Q. Okay. My understanding is it's been
17 painted over, as far as its handicapped sign?
18 A. Yeah. We don't have any -- there are no
19 handicapped per se parking spaces on the property, except
20 for the one out in front of the building, which is a --
21 more for public use. All our parking spaces are assigned.
22 Q. Okay. Even the handicapped ones?
23 A. Well, we have -- again, there's some that
24 the association needs that we've tried to keep available
25 for people that have a special need, a handicapped need,

0127 1 or whatever. But there are no -- there's no marker on

2 them.
3 Q. So none of them are...
4 A. Well, one reason is, it implies that if you
5 drive in, that you can just park there. You can't do
6 that. All the parking spaces are assigned and you have to
7 use them by permission only. So it would be a trap of
8 sorts for people to have put a handicapped logo on it.
9 Q. Now, have you ever used parking space 18?
10 A. Me personally? I don't think so. I don't
11 ever remember parking my car in there.
12 Q. Well, would it surprise you that people
13 have sent us photographs of your car parked in that space?
14 A. In parking space 18? People that do the
15 photo shop nowadays, they might have been able to put it
16 there. I don't think it's ever been parked there.
17 Q. Okay. Now, I believe it's a VW -- I don't
18 know if it's a convertible, but...
19 A. I had a convertible. I used to own a
20 convertible that I would park down there occasionally.
21 But I've got my own parking space there. There would be
22 no reason for me to park in 18. On 19, there could have
23 been someone confused.
24 Q. Okay. Speaking of cars --
25 A. Uh-huh.

0128 1-25 [Personal information removed.]
0129 1-25 [Personal information removed.]
0130 1-25 [Personal information removed.]
0131 1-13 [Personal information removed.]
13 Q. Okay.
14 MS. BELLER: So where are we at in time?
15 We're past lunch.
16 MR. CULOTTA: 1:30.
17 MS. BELLER: Do we want to break for lunch
18 and come back?
19 MR. CULOTTA: That's your call.
20 THE WITNESS: I need a break. I mean, if
21 you all had said -- I'll go with whatever the group wants
22 to do. It doesn't matter to me.
23 MS. BELLER: Let's break for lunch.
24 MR. CULOTTA: How long do you want to go?
25 MS. BELLER: An hour.

0132 1 (WHEREAS, A BRIEF RECESS WAS TAKEN.)
2 MS. BELLER: In the beginning when we
3 started the deposition I failed to introduce Paul
4 Schilling, who is with our office. He's a Deputy Attorney
5 General. He is going to be filing an appearance as
6 co-counsel, if he hasn't done already. So we'll be
7 working this case together. So I apologize, Paul. I
8 should have done that right away.
9 QUESTIONS BY MS. BELLER:
10 Q. I had gotten sidetracked, and I was asking
11 you about some various people we talked about, Marty
12 Haley, [three former board member names removed], Gary
13 Davis, Doug Farnsley. Can you tell me, do you know a
14 person named [former board member name removed]?
15 A. Uh-huh.
16 Q. And how do you know [former board member name removed]?
17 A. I think pretty much board service. I don't
18 believe there's any prior relationship.
19 Q. Now, would she -- would you have shared the
20 HUD-1 Settlement Statement or the purchase agreement for
21 312 with her?
22 A. Not to my knowledge. She's simply been on
23 the board.
24 Q. Okay. And was she involved with the
25 purchase of 1103 and 1104?

0133 1 A. No.
2 Q. Okay. What about Tom Pike? Do you know a
3 gentleman named Tom Pike?
4 A. I do.
5 Q. And how do you know Tom?
6 A. I think I might have met him before he came
7 onto the board, but then mostly while he's been on the
8 board and since that time.
9 Q. Okay. Had you shared any of the details of

10 the purchase agreement or the HUD-1 Settlement Statement
11 for your purchase of 312 with Tom?
12 A. No.
13 Q. What about your purchase of 1103 and 1104?
14 MR. CULOTTA: I'm going to object to the
15 extent that he did not purchase it, and any discussions
16 with regard to that -- I mean, I guess the same questions
17 you've asked before, but...
18 Q. Did you share any details of the purchase
19 of 1103 and 1104 with Tom Pike? 1103. You purchased
20 1103.
21 A. Right. No, nothing beyond their services
22 as board members in this case.
23 Q. Okay. And Tom Pike is a CPA; is that
24 correct?
25 A. I don't know that for a fact. I've heard

0134

1 that.
2 Q. You've heard that?
3 A. Uh-huh.
4 Q. You and Tom have had some disagreements on
5 the board?
6 A. Some, yes. Uh-huh.
7 Q. And some of those had to do with the way
8 the accounting subcommittee was being run?
9 A. I don't --
10 Q. Or its charter? Does that make sense to
11 you?
12 A. No, I don't know what that means.
13 Q. Okay. But he had set up the accounting,
14 the finance, or the accounting subcommittee -- or the
15 finance subcommittee?
16 A. Are you talking about the audit committee?
17 Q. Audit committee. Yes. Excuse me.
18 A. Right.
19 Q. And you had some disagreement about that?
20 A. He served as chair of that committee, and
21 basically I don't remember any particular issues that
22 went -- he was relieved of his responsibilities as the
23 chair by the board.
24 Q. And why was that?
25 A. I don't remember those particulars.

0135

1 Q. Okay.
2 A. I don't remember the particulars.
3 Q. Do you recall him making a charter for the
4 audit committee?
5 A. He possibly did. I don't remember.
6 Q. Okay. And you don't recall making changes
7 to that?
8 A. I vaguely remember a document, but I don't
9 remember what it was called. That had to do with probably
10 like responsibilities and authority and that type of
11 thing, if that's what you're talking about.
12 Q. Yeah.
13 A. I vaguely remember that, and maybe some
14 changes.
15 Q. And that he objected to those changes?
16 Would you recall that?
17 A. Not specifically. I don't remember.
18 Q. Okay. Do you know a gentleman named
19 [former board member name removed]?
20 A. Uh-huh. I do.
21 Q. Now, did you share the purchase agreement
22 or the HUD-1 Settlement Statement with [former board member
23 name removed] for the purchase of 312? Let me be --
24 A. No. No.
25 Q. Okay. What about the purchase of 1103 and

0136

1 1104?
2 A. Okay. To the extent that [former board member
3 name removed] is a friend of Mary Lou's, potentially. I don't
4 remem- -- I may have talked to him about it somewhat. I don't
5 remember specifically.
6 Q. Okay. What about [former board member name removed]?
7 Do you know a woman named [former board member name removed]?
8 A. [Former board member name removed]. Yes, I do.
9 Q. [Former board member name removed]?
10 A. Uh-huh.
11 Q. Thank you. How do you know her?
12 A. Pretty much through board service. I don't

13 think I knew her before that. I maybe knew -- had met her
14 before that, but mostly through as a result of her board
15 service.

16 Q. Okay. Did you share with her your purchase
17 agreement or the HUD-1 Settlement Statement for 312?

18 A. I don't -- I may have talked to her about
19 it, but I don't think I talked to her -- I didn't show her
20 the documents. I'm pretty sure of that.

21 Q. Okay. What about discussing the details of
22 the purchase of 1103 and 1104 with her?

23 A. Prior to purchase, probably not. I
24 don't -- if -- there was a disclosure made certainly to
25 the board about the purchase of that condo. And I don't

0137

1 remember if she was on the board. She probably was.

2 Q. Disclosure regarding 1103?

3 A. The -- right. Well, at one time there was
4 1103 and 1104.

5 Q. Okay.

6 A. And that would apply to all the board
7 members. I mean, I pretty much tell them that, you know,
8 if I'm going to look into buying a condo, blah, blah,
9 blah. But I don't remember anything in particular.

10 Q. Okay. Well, what about [former board member name removed]?
11 Do you know a person named [former board member name removed]?

12 A. Uh-huh. I do.

13 Q. And how do you know her?

14 A. I knew [former board member name removed] a
15 little bit before she got on the board, through just associating
16 at The Harbours a little bit. And then she was on the board,
17 and I obviously got to know her a little better as a board
18 member.

19 Q. Okay. Did you share the purchase agreement
20 or the HUD-1 Settlement Statement for purchase of 312 with
21 her?

22 A. I don't remember. For 312, no.

23 Q. Okay. What about 1103 and 1104?

24 A. Kind of as with [former board member name removed].
25 I may have talked to her about it, but it wasn't particulars.

0138

1 Q. No particulars?

2 A. Uh-huh.

3 Q. Okay. What about [former board member name removed]?
4 Do you know a woman named [former board member name removed]?

5 A. Uh-huh. Yes, I do.

6 Q. How do you know her?

7 A. I knew her a little bit before she came
8 onto the board, and then I knew her obviously through the
9 board service.

10 Q. Is she still on the board?

11 A. No, she's not.

12 Q. Okay. Do you know why she left?

13 A. I think she was -- I don't remember
14 specifically. I think she was probably a little bit -- a
15 little bit sideways with the rest of the board about the
16 property manager we had hired prior to the current
17 property -- the new property manager. And she didn't care
18 for, I guess, how the rest of the board members looked at
19 that situation.

20 Q. Okay. Which board member -- which property
21 manager are we discussing?

22 A. That would have been [former employee name removed].

23 Q. [Former employee name removed]?

24 A. Uh-huh.

25 Q. What did -- how was she crossways? Was she

0139

1 in favor of [former employee name removed], or...

2 A. More in favor than the rest of the board
3 was.

4 Q. And why was the board not in favor of
5 [former employee name removed]?

6 A. Just performance.

7 Q. What was wrong with her performance?

8 A. Just didn't get enough work done,
9 basically. She was there for a full-time job and just
10 didn't get enough work done.

11 Q. Okay. Was that communicated to her?

12 A. Yeah, through -- of course, [former board
13 member name removed] was the presi- -- was the board president.
14 She certainly should have probably been her -- she would have
15 been primarily responsible for that versus the other board

16 members. But one way or another, various board members that
17 worked with her tried to communicate it. I don't think that
18 was the -- I don't think that was the -- her performance
19 feedback was not probably the reason she left. I think
20 she was more at issue with the accounting responsibilities
21 she had, and not having as much responsibility as she
22 wanted to have.
23 Q. Why didn't she have as much responsibility?
24 A. I don't think she could get it done.
25 Q. Did [former employee name removed] -- at that time was

0140

1 [former employee name removed] maintaining the books in her possession?
2 A. At that particular time, it seems like they
3 transitioned the books about the time she left, [former
4 employee name removed] left.
5 [Former employee name removed] was there from March
6 through July, or something like that, of 2012, I guess that would
7 have been. And summer of 2012 would have been about the time
8 the books were transitioned away from [former employee name removed]
9 to the outside accountant.
10 Q. Okay. So during the time [former employee name removed]
11 was there, [former employee name removed] was doing the books?
12 A. Yeah, most of that time.
13 Q. So there was never any opportunity for
14 [former employee name removed] to do the books?
15 A. That would be correct.
16 Q. Okay.
17 A. Not the way we define.
18 Q. The -- at any time was [former employee name removed]
19 told not to provide services to any of the homeowners?
20 A. I don't know of that. Not to my knowledge.
21 Q. You didn't tell her not to provide
22 certain --
23 A. Me personally?
24 Q. -- amenities to malcontents?
25 A. I'm sorry. Did you say malcontents?

0141

1 Q. Malcontents?
2 A. No. No. Huh-uh.
3 Q. You don't refer to any of the homeowners as
4 malcontents?
5 A. I have heard that word used. I don't know
6 where the word came from, but I have certainly heard the
7 word used.
8 Q. You've never used the word?
9 A. I've -- well, I've referred to some, but
10 they refer to themselves that way. It's almost like a
11 badge of honor or something.
12 Q. You never put out a flyer that called them
13 malcontents?
14 A. I probably have, but they refer to them --
15 like I said, that's what they call themselves.
16 Q. Okay.
17 A. That's what they want to go by.
18 Q. Probably a chicken and egg discussion.
19 A. Could be.
20 Q. Do you know a gentleman named [former board member name removed]?
21 A. I do. Uh-huh.
22 Q. And how do you know [former board member name removed]?
23 A. He came onto the board. I don't think I met
24 [former board member name removed] prior to being on the board,
25 prior to him being on the board. I got to know him a little bit

0142

1 as a result of his board service.
2 Q. Okay. Did you share with him the purchase
3 agreement or the HUD-1 Settlement Statement for the
4 purchase of 312?
5 A. No. That would have preceded him.
6 Q. Okay. Did you share with him the details
7 of the purchase of 1103?
8 A. I don't remember. [Former board member name removed]'s
9 involvement on the board was somewhat limited, relative to some of
10 the other board members.
11 Q. Okay. Now, tell me about Russ Johnson. Do
12 you know a gentleman named Russ Johnson?
13 A. I do. Uh-huh.
14 Q. And who is Russ?
15 A. Russ is the current board president.
16 Q. Okay. And did you share with him the
17 details of the purchase of 312, the purchase agreement or
18 the HUD-1 Settlement Statement?

19 A. As a result of the AG suit, he's probably
20 asked a question or two, and I've probably answered. But
21 nothing -- certainly nothing upfront. It would have been
22 more of a get him up to speed on a little bit of what went
23 on.
24 Q. Okay. And what about the purchase of 1103?
25 A. Let's see. That would have pre- -- that

0143

1 would have preceded his -- it would have been simply after
2 the fact, FYI, because I think he came onto the board
3 after that --
4 Q. Okay.
5 A. -- after those condos had transacted.
6 Q. And what about -- do you know a Kim
7 Davis?
8 A. I do.
9 Q. Who is she?
10 A. That's Gary Davis's spouse. And I've known
11 Kim for, oh, probably several years.
12 Q. Okay.
13 A. Preceding her board service.
14 Q. Okay. And did you share -- well, she would
15 have presumably been involved in the purchase of 312. So
16 she may --
17 A. I don't remember. They probably weren't
18 spouses at the time of the transaction, but she would have
19 known about it. They've been together for quite a while.
20 Q. Okay. And what about 1103? Did you share
21 any of your details with that?
22 A. Again, I probably talked to her informally
23 about it, but...
24 Q. Okay. So these individuals,
25 Marty Haley, [nine former Board member

0144

1 names removed], Gary Davis, Doug
2 Farnsley, Thomas Pike, Russ
3 Johnson, and Kim Davis.
4 A. Uh-huh.
5 Q. Can you think of any reason why any of them
6 would have a reason to disbelieve you? Have you given
7 them any reason to disbelieve what you have to say?
8 MR. CULOTTA: I'm going to object to the
9 extent that it -- disbelieve about what?
10 MS. BELLER: For example, when he wrote
11 the -- let's go back to that.
12 Q. Did you write bulletin number one and
13 number two?
14 A. I can't remember which one was which. One, I
15 think, was about 312. I drafted that one. The other one was
16 mostly drafted by [former employee name removed], number two.
17 Q. Okay. Is there any reason why you've given
18 them that they would disbelieve what you were writing?
19 A. Well --
20 Q. For them to question what you're writing?
21 A. The list of people that you gave, there's
22 just --
23 MR. CULOTTA: I'm going to object. This
24 calls for speculation. I mean, how does he know what
25 these people would or would not believe?

0145

1 MS. BELLER: Well, he knows if he's acted
2 dishonestly at any point.
3 MR. CULOTTA: It still calls for
4 speculation on his part, as to whether or not these people
5 would believe or disbelieve him. So to the extent that he
6 knows that they believe him or disbelieve him, he can
7 respond. To the extent that you're asking for speculation
8 as to whether they believe him or not, he can't answer
9 that.
10 Q. Okay. Let me ask you this: Did any of
11 these individuals benefit from the transaction with 312,
12 outside of Kim Davis?
13 A. You said benefit. Do you mean financially?
14 Q. Financially. Did they get any kind of --
15 or financially, or other tangible --
16 A. Well, they would have -- in my view, they
17 would have benefited if there had been a transaction would
18 have gotten this community space. But they -- they opted,
19 along with the rest of the membership, not to go down that
20 path. So there would have been -- obviously, the way it
21 turned out, no one benefited by it other than, I guess if

22 you want to look at it that way.
23 Q. Okay. What about the purchase of 1103 and
24 1104?
25 A. They didn't involve the association, so...
0146 1 Q. So they didn't get any benefit from that
2 either?
3 A. Well --
4 MR. CULOTTA: Again, it calls for
5 speculation.
6 A. Yeah. I'd say this: The condo fees were
7 never missed.
8 Q. Okay.
9 A. All the condo fees were paid.
10 Q. What about parking spaces? Have any of
11 these individuals -- have you sold them any parking
12 spaces?
13 A. Do you want to read that list again?
14 I'll --
15 Q. Marty Haley?
16 A. Huh-uh.
17 Q. [Former board member name removed]?
18 A. No.
19 Q. [Former board member name removed]?
20 A. No.
21 Q. [Former board member name removed]?
22 A. No.
23 Q. Gary Davis?
24 A. No.
25 Q. Doug Farnsley?
0147 1 A. No.
2 Q. [Former board member name removed]?
3 A. No.
4 Q. Tom Pike?
5 A. No.
6 Q. [Former board member name removed]?
7 A. I -- yes.
8 Q. Okay. Maybe one, two? Do you know?
9 A. Well, I bought a space for him from Frank
10 Prell.
11 Q. Okay. You bought the space for him?
12 A. I signed the checks for the four spaces, and
13 one of them, [former board member name removed] paid me for it.
14 Q. [Former board member name removed] paid you for it?
15 A. Uh-huh.
16 Q. How much did he pay you?
17 A. I don't remember the number.
18 Q. Would you have a record of that?
19 A. Possibly.
20 Q. Okay.
21 A. That's my recollection of the circum- -- I
22 believe I bought it and then I sold it to him.
23 Q. Okay. What about [former board member name removed]?
24 A. No.
25 Q. Okay. [Former board member name removed]?
0148 1 A. No.
2 Q. [Former board member name removed]?
3 A. No.
4 Q. [Former board member name removed]?
5 A. No.
6 Q. Russ Johnson?
7 A. No.
8 Q. Kim Davis?
9 A. No.
10 Q. Okay. Okay. I'm showing you what's marked
11 as State's [Exhibit R](#), which is attached to the State's
12 Complaint. Do you recognize this document?
13 A. I remember -- yeah, it looks familiar.
14 Q. Okay. Is there any reason that you have to
15 believe this document is incorrect?
16 A. Unless -- assuming that's the entire chain
17 of communications, and it's pretty well in context, and --
18 Q. Okay. And can you tell me what the bottom
19 e-mail is?
20 A. It looks like it's from a homeowner named
21 [board member name removed] to [former employee name removed],
22 looking at buying maybe a parking space.
23 Q. Okay. And then what's the top e-mail?
24 A. That was a response from me to [former employee

0149 25 name removed] about how to, I assume, summarize and communicate

1 the parking space information.

2 Q. Okay. Do you want to go ahead and read it
3 for me? The part that's -- it's really not your problem?

4 A. Okay. We may need to compile and maintain
5 an updated list of parking spaces available for purchase.
6 Obviously, these are to be homeowner-to-homeowner
7 transactions. Prell's and mine would certainly go a long
8 way in creating a list, but I don't want other homeowners
9 overlooked. For example, I know that Sharon has a client
10 listing with an extra parking space that may be for sale.
11 I'd like to talk with you along these lines. Or if you
12 have any other option, consider calling me when you do
13 lunch today. I'll let you know when the best time is for
14 me.

15 Q. Okay. My question is, how did you know
16 Prell would be interested in selling his parking spaces?

17 A. I mean, he bought them. And I didn't --
18 quite honestly, I didn't know. It would just be -- it
19 would certainly go a long way if he wanted to put some up
20 for sale. I didn't know.

21 Q. Okay.

22 A. He obviously owned a bunch of them. And it
23 just -- I guess at that time he probably just completed
24 that purchase of the other ones. He was an investor, so
25 he was trying to make money.

0150

1 Q. So the parking spaces were at that point
2 viewed as lucrative?

3 MR. CULOTTA: I'm going to object to the --

4 A. I'm not sure what that word means. I mean,
5 I know what it means. I'm --

6 MS. BELLER: Okay.

7 MR. CULOTTA: I'm --

8 Q. Okay. Let me rephrase. If Frank was --
9 you stated -- and correct me if I'm wrong -- that he was
10 an investor. He had the parking spaces. And you included
11 him on the list because he was an investor and you thought
12 he wanted to make money.

13 MR. CULOTTA: That's not what he said.
14 What he said was that Frank had spaces and he thought he
15 might want to sell them.

16 MR. BELLER: No. He said investor. He
17 used that word. What did you say?

18 MR. SCHILLING: We can have the reporter
19 read it back.

20 MS. BELLER: Yeah. Thank you.

21 COURT REPORTER: Was it before he read the
22 e-mail?

23 MR. CULOTTA: It would have been just
24 after.

25 MS. BELLER: Just after that.

0151

1 MR. CULOTTA: I believe the question was:
2 How do you know Frank had spaces for sale? It was on one
3 of those lines.

4 A. Yes.

5 MR. CULOTTA: And it would have been that
6 next answer or two.

7 THE WITNESS: Uh-huh.

8 COURT REPORTER: He was an investor and he
9 was trying to make money.

10 MS. BELLER: Okay.

11 Q. So he's an investor. He's trying to make
12 money. So he'd be making money on the sale of the parking
13 spaces. Was that what you were saying?

14 A. If he sold them for more money than he paid
15 for them, yeah.

16 Q. Yeah. So the parking spaces were
17 investments?

18 A. Yeah, I could agree with that.

19 Q. Did you view yours as investments?

20 A. Mine came with a condo, basically, as added
21 value. So, I mean, I didn't buy them for investments, per
22 se. I didn't -- you know, the condo was a residence,
23 so...

24 Q. That you paid \$315,000 for?

25 A. Correct.

0152

1 Q. You paid an additional forty for the

2 parking spaces; is that correct?
3 A. Yes. Correct, but I was required to --
4 Q. And you thought you got a good deal on
5 them?
6 A. I thought it was a fair deal.
7 Q. Okay. So you had an -- you listed them for
8 sale?
9 A. I've had them listed for sale. I don't
10 need that many parking spaces.
11 Q. So maybe you had an expectation of making
12 some money on them?
13 A. I mean, potentially.
14 Q. Okay. Okay. I'm showing you what is
15 marked as State's [Exhibit S](#). Do you -- have you seen this
16 document? You're not included on the e-mail. It's S
17 which was attached to the State's Complaint.
18 A. I don't think...
19 Q. Do you recall seeing this document?
20 A. I don't remember. I didn't notice. Am I
21 copied on it?
22 Q. You're not copied on it.
23 A. Okay.
24 Q. But this was part of what was turned in to
25 the State.

0153

1 A. Okay. Yeah, I mean, it doesn't look
2 familiar, but I know about the circum- -- somewhat about
3 the circumstances.
4 Q. And is it correct to summarize that Betty
5 Cantrell is trying to find out how she can list a parking
6 space for sale?
7 A. I remember that episode. Uh-huh.
8 Q. Okay. Let's step back for a second, and
9 say at this time in '07 was there a website?
10 A. I don't believe so.
11 Q. Okay. So this list was going to be
12 maintained in the office of the condominium; is that
13 correct?
14 A. That's pretty correct. Yeah.
15 Q. And who would be responsible for
16 maintaining the list?
17 A. It would have been the office staff.
18 Q. Okay.
19 A. It would have been the property manager
20 and/or the assistant.
21 Q. And who pays for that staffing?
22 A. The association does.
23 Q. And the association is composed of all the
24 members; is that correct?
25 A. Correct.

0154

1 Q. So all the homeowners would conceivably
2 have equal treatment?
3 A. Yeah.
4 Q. Okay. Do you recall -- this is State's
5 [Exhibit T](#), which is attached to the State's Complaint. Do
6 you recognize that document?
7 A. Yeah. It looks familiar. Uh-huh.
8 Q. Okay. This document discusses a minimum
9 pricing restriction?
10 A. Uh-huh.
11 Q. Can you explain that minimum pricing?
12 Whose idea was it to put a minimum or a pricing
13 restriction on?
14 A. I don't remember specifically. Someone
15 saying that, you know, let's do this. It was basically
16 a -- what would be called like a list price. You put --
17 it's a list, obviously. You put the price on there, and
18 you can sell it at that price, or you can sell it for any
19 other price, basically. It was just a price you would
20 agree to be selling yours at if you're on the list.
21 Q. Okay. Was that a board-directed activity,
22 or just a thought?
23 A. No. Whether a board -- I mean, there's
24 references to board members on there, as far as...
25 Q. Well, what it references is, is the four other

0155

1 board members, [two former board member names removed], Sharon,
2 and Mary Lou. Who is [former board member name removed]?
3 A. That's [former board member name removed].
4 Q. Okay. Is Sharon, Sharon Chandler?

5 A. Right.
6 Q. [Former board member name removed] -- is that [name removed]?
7 A. I think so.
8 Q. And Mary Lou Trautwein-Lamkin?
9 A. Uh-huh.
10 Q. Okay. The four other board members -- and
11 then there's parenthetical, I consulted with yesterday
12 morning, said they were comfortable imposing the minimum
13 pricing restriction on sellers.
14 A. Uh-huh.
15 Q. You're addressing this to [former employee
16 name removed]. Who originated the idea of the minimum
17 pricing restriction?
18 A. I don't remember specifically what -- who
19 said that, let's try this, or anything like that. I
20 certainly was on board with it, but I don't remember if it
21 was [former employee name removed]'s idea, or my idea, or someone else's.
22 Q. Okay. But there was no directed board
23 action. You weren't at a meeting and somebody said, hey,
24 let's create a pricing scheme?
25 A. It wasn't documented in the minutes

0156

1 anywhere. Not that I know of.
2 Q. Okay.
3 A. You have to look at the minutes and see.
4 Q. Okay. I am showing you what is marked as
5 State's [Exhibit U](#), which was attached to the State's
6 Complaint.
7 A. Uh-huh.
8 Q. Do you recognize that document?
9 A. It looks familiar with documents like this
10 I've seen. They were changed and updated over time,
11 but --
12 Q. Did you create these documents?
13 A. I don't think I issued that. I believe
14 that was something probably that the property manager kept
15 current and issued. That was something that they would
16 have given to homeowners if they'd asked for parking space
17 information.
18 Q. Okay. So you deny making this?
19 A. I don't remember. You say deny making it.
20 I mean, I don't remember. Maybe I did. I don't remember.
21 I've got a gazillion files and spreadsheets. If I did, it
22 was certainly with her help, because I didn't -- all of
23 that detail is not something that I remember researching.
24 Q. Okay. My next question is, was -- were
25 Frank Prell's spaces originally listed for sale on The

0157

1 Harbours list?
2 A. Well, they wouldn't have been until he -- I
3 don't think they were before he bought them.
4 Q. Okay.
5 A. The developer didn't have them listed.
6 Q. But after he bought them, were they listed?
7 A. That list. I assume. I don't know. I'd
8 have to look at the parking spaces.
9 Q. Okay. Did Frank authorize having them
10 listed?
11 A. I assume he did. We wouldn't have put them
12 on there without his blessing.
13 Q. Okay. Who would have put them on there?
14 Would it have been [former employee name removed]?
15 A. The office management.
16 Q. Okay. These are pretty significant values
17 to the parking spaces, wouldn't you say?
18 A. Well, they're list prices, and certainly
19 they're -- from a seller's standpoint it's what you'd want
20 to be starting from as a negotiating point. Right.
21 Q. So you want them higher; right? Even
22 though --
23 A. That's where list prices are, usually.
24 Q. Okay. And why would [former employee name
25 removed] be interested in the selling of parking spaces?

0158

1 What's her interest in that?
2 A. She got a lot of questions from people who
3 wanted to buy them and sell them. Both buy and sell.
4 They didn't know how to -- people didn't know -- came to
5 the office. They didn't know, A, what was available; and
6 B, how to price it. What was fair value. What wasn't.
7 So this was an effort to try to assist them in trying to

8 sell them, you know, in an objective way.
9 Q. Okay. But if you didn't go according to
10 the scheme, then you wouldn't be on the list?
11 A. It's a list price. If you want to be on
12 the list, that's the price.
13 Q. Everybody's paying for the same amenity.
14 They're being denied because there's a fixed price?
15 A. Everybody on the list is paying the same
16 proportion.
17 Q. Yeah, but everybody's allowed to -- I mean,
18 they're paying for the staffing.
19 A. I'm not sure what your point is. An
20 individual doesn't make a decision for the association,
21 regardless of the fact they paid part of the bills.
22 Q. But the association -- this was an attempt
23 to eliminate free choice by individuals and their
24 participation in the list?
25 MR. CULOTTA: Object to the form of the
0159
1 question.
2 Q. This was an attempt to set a minimum price?
3 A. A list price.
4 Q. Let's see. B, paragraph two. Yes. So,
5 yeah, that's on the -- I'd like you to look at T.
6 A. Uh-huh.
7 Q. That highlighted portion. Read that
8 paragraph.
9 A. The highlighted portion?
10 Q. Yes.
11 A. Anyone wanting to discount their list price
12 simply chooses not to be on the list.
13 Q. Okay. So if you discount, you don't get to
14 be on the list?
15 A. That's what it says. That's what -- it's a
16 list price.
17 Q. Yeah, but you're setting a bar for people.
18 How does that affect someone who really needs money? Say
19 they want to advertise their space for \$13,000, and they
20 really need money. They really need five grand for
21 something.
22 A. They communicate it through other channels.
23 You had a bulletin board. Probably could just tell the
24 office. Hey, tell them that I'll take -- I'll negotiate
25 on that price. Other people said that's the price, so you
0160
1 just communicate it. Like I said, all kinds of
2 communication happens in that building.
3 Q. But a special list is maintained for those
4 who agree to play by whatever rules, marketing rules,
5 there are; is that correct?
6 A. That's -- I wouldn't use those terms. It's
7 a list price based on the objective pricing system.
8 Q. Okay. So you didn't consider this fixing a
9 price?
10 A. I don't know what that means. I mean, I've
11 heard of it, but that's a legal term -- or it's laws
12 and -- I don't have any idea what that means.
13 Q. You find nothing inappropriate -- I'm just
14 curious about -- "most importantly, an individual parking
15 space owner didn't get the opportunity to price their
16 space at a discount to others on the list, simply to
17 attract a buyer. Our goal here is to provide potential
18 buyers with a list of available spaces, not as a marketing
19 tool. If you're allowed to discount your space on the
20 list, that may prompt another owner or lister to one-up
21 you and the two of you will leapfrog one another all the
22 way down in price. That is no rational way to maintain
23 property and asset values." But isn't that what the market
24 system is?
25 A. People are free to do that. They just
0161
1 can't do it with that list.
2 Q. But that list is being maintained using
3 homeowner association resources.
4 A. Everybody's.
5 Q. Everybody's. Who had the most parking
6 spaces in the place? Who owned more parking spaces than
7 anyone else, individually?
8 A. Individually? I don't know. I would guess
9 that Frank Prell and I probably had more spaces than
10 anybody else.

11 Q. Yeah. So if the parking spaces were
12 maintained and not allowed to be advertised through the
13 association-controlled list --
14 A. Uh-huh.
15 Q. -- then you and Frank stood to benefit if
16 the prices weren't allowed to fall, weren't advertised at
17 a lower rate?
18 A. Everybody owns parking spaces. Ninety-five
19 percent of the people that owned them that we -- that
20 weren't owned by us, would also benefit because their
21 asset values were maintained, if you want to look at it
22 that way.
23 Q. Yeah, but who were the group of people
24 selling parking spaces? Who had more parking spaces for
25 sale than anyone else?

0162

1 A. At that point in time we did.
2 Q. Is there anyone else now?
3 A. I don't know. I don't have any for sale.
4 I mean, I've got one I think I listed on there, but I mean
5 at one point in time, you know, you can't judge the whole
6 system or the whole -- look to the future, based on one
7 point in time. But the system was devised to try to bring
8 equity to the picture, and order so to speak.
9 Q. And it happened that the person who's
10 behind devising it was benefiting from it?
11 MR. CULOTTA: Object to the form.
12 Q. You were devising the scheme, the pricing
13 scheme I'm talking about, like a schematic?
14 A. I mean, I was one of the board members.
15 Q. What other board members were involved in
16 making this detail?
17 A. I don't remember. I mean, [former employee
18 name removed] was the one that developed it, so to speak,
19 and put some of the detail in it. But I don't remember any
20 other board -- I don't remember which board members were taking
21 a role with it necessarily. It's too long ago. I don't
22 remember, and I don't think it was probably documented.
23 Q. So eventually you notified Betty Cantrell
24 that the board decided to take the price list down; is
25 that correct?

0163

1 A. Well, it -- because she made an issue out
2 of it, the board decided it wasn't worth the trouble. The
3 majority of the board decided that.
4 Q. Okay. And --
5 A. I probably didn't support that, but
6 that's...
7 Q. How many other members were involved in
8 that, other than the four that you name in the e-mail?
9 A. I don't remember. I think there was maybe
10 something documented in the minutes about it, but it was a
11 board decision.
12 Q. Was Doug Farnsley on the board at that
13 time?
14 A. Could have been.
15 Q. Do you recall what any of those discussions
16 were at the board meeting about why it was a bad idea, or
17 a good idea?
18 A. Not really. Huh-huh.
19 Q. Did you hear the word price fixing then at
20 the board meeting? Did anybody say it?
21 A. I mean, people use those terms that mean
22 something in the law or something, but I mean, I don't --
23 it could have been mentioned, but I don't know what that
24 means relative to what price fixing actually is.
25 Q. But it might have been mentioned?

0164

1 A. It could have been. I don't remember.
2 Q. Okay. So the board decided to post parking
3 spaces for sale by owner, but without the pricing
4 template; is that correct?
5 A. Say that one more time?
6 Q. Subsequent to this decision, the board
7 decided to post parking spaces for sale by owner without
8 the pricing template?
9 A. I don't remember that. I mean, if we
10 published parking space lists without prices, I don't
11 remember that. It may have happened, but I don't remember
12 it.
13 Q. Okay. And you currently -- you said you

14 did have a parking space for sale?
15 A. I think I have one listed on the website.
16 Q. Okay. And do you know if Mr. Prell has any
17 listed on the website?
18 A. He doesn't own any parking space -- well,
19 the guy -- the other fellow has -- Keith Porter, I think,
20 is his name.
21 Q. Okay.
22 A. I believe he has one on there.
23 Q. Okay. Now, for several years, beginning
24 about 2007, there were several members of the HOA that
25 continued to question the acquisition of these parking

0165

1 spaces by you, and the gift of the developer. Is that
2 true?
3 MR. CULOTTA: I'm going to object to the
4 speculation. I mean, if you know the answer to that,
5 but...
6 A. If you want to read that first part again
7 about several people. I'm --
8 Q. For several years, starting in 2007, HOA
9 members continued to question the acquisition of various
10 parking spaces by Zipperle, and the gift by the developer
11 of \$43,000.
12 A. I don't know. I'm sure some people have
13 questioned it. I don't know who you're talking about.
14 Q. It wasn't ever brought up at a board
15 meeting, or a homeowner association meeting? People
16 didn't ask you about that?
17 A. I don't remember -- I don't remember any
18 board meeting. I remember -- I remember references in
19 communications, e-mails, or that type of thing possibly.
20 I don't remember in a board meeting that coming up. It
21 might have. I don't know. I don't remember.
22 Q. People maybe wondered how you got so many
23 parking spaces?
24 A. Well, it would be a couple of people that
25 would have wondered that, yeah.

0166

1 Q. Yeah.
2 A. But they wonder about everything, so...
3 Q. Okay. And in response there were two
4 bulletins that were created; is that correct?
5 A. That's correct.
6 Q. Okay. And the first bulletin is bulletin
7 number one?
8 A. Uh-huh.
9 Q. And I've shown this to you previously.
10 It's The Harbours bulletin number one, and it's attached
11 to the State's Exhibit as -- the State's Complaint as
12 [Exhibit W](#).
13 A. Uh-huh.
14 Q. Now, you said that you drafted bulletin
15 number one?
16 A. That's my recollection.
17 Q. Okay. And that [former employee name
18 removed] drafted bulletin number two?
19 A. I believe that's correct.
20 Q. Okay. And how was it decided that you
21 would draft these bulletins? Who decided that?
22 A. I was president at the time, I believe.
23 March of '09? Maybe not. I don't remember.
24 But anyway, I probably -- I could have -- I
25 don't know -- recommended -- I'm just speculating. I

0167

1 could have recommended to the board. Typically, the board
2 doesn't unanimously come to a realization at the same
3 time, but someone like me would have said we're getting a
4 lot of questions about this type thing. Let's draft an
5 explanation and put it on file. And when somebody asks a
6 question, well, how did that come to pass, you just hand
7 them that piece of paper describing it.
8 Q. So you're saying there were several
9 people -- there were people asking questions about it?
10 A. It would come up occasionally.
11 Q. Yeah.
12 A. Uh-huh.
13 Q. And probably more than just Betty?
14 A. Well, there would be people that were, say,
15 new to the property, that someone like Betty would feed a
16 lot of misinformation to. And then you were trying to

17 basically, okay, here I've got to explain it again. Let's
18 just give them the document that spells it out for them.

19 Q. Okay. So I'm going to show you this --
20 well, we'll hold this one for a minute.

21 I'm going to show you what's marked as
22 State's Exhibit Y. It's entitled the Minutes of the
23 Meeting of the Board of Directors, February 5th, 2009.

24 A. Okay.

0168

25 Q. Do you recognize that document?

1 A. It looks like a set of minutes from that
2 date, February of '09.

3 Q. Okay. And you'd have no reason to believe
4 that that wasn't an accurate copy?

5 A. As far as I can read here, it looks like it
6 very well is an accurate copy.

7 Q. Okay.

8 A. We can proceed on that basis.

9 Q. There's a section here where Doug further
10 requested that any information related to parking space
11 assignments be brought forward, especially if there is a
12 belief that impropriety is involved.

13 A. Uh-huh.

14 Q. Kevin responded that the developer space transfer
15 upon turnover had been summarized in the past. [Former employee
16 name removed] attempted to clarify the specific request, as
17 multiple transaction inquiries have surfaced in the past.

18 A. Uh-huh.

19 Q. She also stated that the information had
20 been presented at last year's pre-annual meeting. Gary
21 Davis then asked that the document detailing developer
22 transfer to the association was readily available and
23 suggested that be forwarded to Mr. (Glenn) Thomas.

0169

24 So what information would people have
25 available to them regarding the parking space assignments

1 that they could bring forward if they believed there was
2 impropriety?

3 A. As far as what's accessible, I'm guessing
4 something like the transfer -- recorded transfer forms
5 that are available at the courthouse. Beyond that, I
6 don't know.

7 Q. People wouldn't have then had access to the
8 purchase agreements between you and Mr. Davis?

9 A. No. They wouldn't, unless there was
10 someone on the board that had asked and seen a copy of it
11 that I don't remember.

12 Q. So people wouldn't know that the original
13 purchase price was 315 and then 40,000 was added for the
14 additional spaces?

15 A. They wouldn't have -- I don't think they
16 would have evidence of anything.

17 Q. That's one of the things -- the questions
18 that I have, is that, you know, when somebody throws in
19 something --

20 A. Uh-huh.

21 Q. -- to sweeten the deal --

22 A. Uh-huh.

23 Q. -- it's usually like a baker's dozen, where
24 you get 13 instead of 12 --

25 A. Uh-huh.

0170

1 Q. -- for the same price.

2 MR. CULOTTA: I'm going to object to the
3 extent that if you've got a question for him --

4 MS. BELLER: I've got to --

5 MR. CULOTTA: -- ask him.

6 MS. BELLER: -- explain it, though.

7 Q. That, for me, it doesn't seem like much of
8 an inducement if you have to pay for the benefit that
9 you're getting. I guess I don't understand why it's still
10 sweetening the deal when you get 40 -- you're paying
11 40,000 for eight parking spaces.

12 A. Well, the condo to a buyer wasn't worth
13 what the seller wanted for it. So it bridged the gap, I
14 guess. I think that's one way to look at it.

15 Q. So the developer, Mr. Feinsilver, by adding
16 the eight spaces, helped the deal to happen?

17 A. I think that's fair to say.

18 Q. Okay. So as you were saying earlier, no
19 one would have had any information to bring forward

20 because the homeowners were also not privy to the
21 marketing plan that was agreed to between the board of
22 directors and Mr. Feinsilver, were they?
23 A. I don't know. I don't know factually what
24 happened at that point in time. And information is just
25 what's recorded or what they had as a piece of paper. It

0171

1 could have simply been a belief upon which they had a
2 question or whatever. I mean, there was -- people were
3 asked to comment, and I don't remember, quite honestly,
4 what was commented.

5 Q. But they couldn't -- they didn't have the
6 facts. The facts weren't public, so they couldn't raise
7 questions about them, could they? I mean, they could ask.

8 MR. CULOTTA: I'm going to say it calls for
9 speculation.

10 A. I mean, there's only one set of facts. The
11 facts were in the documents. There would have been no
12 other facts for them to have.

13 Q. And they didn't have access to the
14 documents?

15 A. Well, if anybody wanted to have access to
16 them, they could have asked. At that point in time, I
17 very well could have shown them to other people. I just
18 don't remember showing -- you know, you asked specific
19 questions of specific individuals. I can't --

20 Q. Why couldn't you sit Betty Cantrell down
21 and go, Betty, this is what happened. I paid for them.

22 A. I could have. Maybe should have. But
23 Betty Cantrell is not someone you're going to sit there
24 and reason with. That's just -- that's the facts.

25 If you want to talk to somebody else at The

0172

1 Harbours, you could potentially sit down and reason with
2 them. You're not going to reason with her.

3 Q. You don't think maybe that would have
4 helped --

5 A. No.

6 Q. -- clear up the issue?

7 A. No.

8 Q. You think it might have raised questions?

9 A. I don't know what it would -- it's all
10 speculation at this point in time. I just know from
11 years, a decade or more of experience, it's just -- that's
12 not going to do any good.

13 But I would have been glad to sit down with
14 just about anybody and talk about it if they wanted to
15 know it. Nobody raised their hand and said let's talk
16 about it.

17 Q. Even when Tom Pike said, it sounds like a
18 good story, in an e-mail to you, with approving bulletin
19 number one, you didn't sit down with him and tell him,
20 say, no, it is true?

21 A. Well, "it sounds like a good story" doesn't
22 sound like a constructive question. That sounds like
23 somebody who's got a problem and doesn't want to hear the
24 truth, and he's got a problem with the truth going out in
25 the document like this. That's what it sounds like to me.

0173

1 Q. You don't think it had anything to do with
2 the truth -- a recognition that maybe part of the truth
3 was being omitted?

4 A. No, because I know the truth wasn't being
5 omitted. That wasn't the problem.

6 Q. The problem isn't that the parking spaces
7 were thrown into the deal?

8 A. I've talked about this at length. You'll
9 have to ask Tom what he thought.

10 Q. Would you have wanted this transaction
11 posted in the newsletter?

12 A. I wouldn't have had any problem with it.

13 Q. You wouldn't have had any problem with it
14 saying that, you know, I had to do this deal quick, so I
15 did this deal. I paid \$40,000 extra for the parking
16 spaces, because I couldn't get the condo unless I paid
17 \$355,000 for it because Mr. Davis wasn't going to sell it
18 for that, because we had to get it done quickly, so the
19 develop- -- so Mr. Davis could buy the --

20 A. Yes.

21 Q. -- you wouldn't have any problem with that?

22 A. I have no problem telling the truth. I

23 have a lot of problem with the way you worded it.
24 Q. Well, that's what happened.
25 MR. CULOTTA: Objection.

0174

1 MS. BELLER: I characterized the facts that
2 we've discussed that have been admitted to today.
3 MR. CULOTTA: Well, you're saying -- he's
4 answered your question that he doesn't have a problem with
5 the truth being printed in the newsletter. The way in
6 which you're characterizing it, I am not necessarily
7 exactly sure that that's the way he's testified today.
8 MS. BELLER: Okay. Let's go.
9 Q. Okay. You told me earlier --
10 MR. CULOTTA: To the extent that he's
11 already answered the question, I'm going to say it's been
12 asked and answered.
13 MS. BELLER: We're going to go through it
14 one at a time.
15 Q. You stated earlier today --
16 A. Uh-huh.
17 Q. -- that time was of the essence?
18 A. Uh-huh.
19 Q. And that this deal needed to happen as soon
20 as possible?
21 A. A reasonable time frame, yeah.
22 Q. Okay. That you were willing to buy the
23 condominium for \$315,000?
24 A. That's implied in those documents, yes.
25 Q. But Mr. Davis was not willing to accept

0175

1 \$315,000?
2 A. That is my belief and my recollection,
3 actually.
4 Q. So Mr. Feinsilver decides to offer you the
5 parking spaces for \$40,000?
6 A. On behalf of the association. Uh-huh.
7 Q. Well, the contract -- you signed the
8 contract individually?
9 A. Right. But with that understanding.
10 Q. That you were going to offer it --
11 A. That's correct.
12 Q. -- to the association?
13 A. That is correct.
14 Q. Okay. But you had a closing scheduled
15 before you offered it to the association?
16 A. That's -- the offer to the association and
17 the circumstances around the actual closing are unrelated.
18 Because it was understood that the offer to the
19 association and the execution of that purchase by the
20 association was going to go far beyond those closing
21 dates.
22 Q. Who understood that?
23 A. We all understood. The parties to the
24 contract.
25 Q. So the board wasn't part of that, though?

0176

1 A. Well, sure, the board understood that.
2 Q. Well, the board didn't authorize you to
3 enter into these negotiations?
4 A. Sure they did.
5 Q. You told me that they didn't earlier.
6 A. No. Well, they -- when I was first
7 contacted. Obviously, I was contacted. The board wasn't
8 contacted, but the negotiations that were going on, the
9 board knew about.
10 Q. There's no reflection under common space in
11 the board minutes that there was any discussion about it.
12 MR. CULOTTA: Wait for the question.
13 Q. Do you deny that?
14 A. No, I don't deny it. But I'm just saying
15 those minutes don't document all that took place.
16 Q. So who did you discuss the purchase of 312
17 with?
18 A. Beyond the parties involved in the
19 transaction?
20 Q. Yes.
21 A. The board.
22 Q. Which board members?
23 A. Whoever was on the board at that time.
24 Q. So there's no documentation in the board
25 minutes that Kevin Zipperle disclosed --

0177

1 A. I --
2 Q. Do you think --
3 MR. CULOTTA: Wait for a question.
4 A. Okay.
5 Q. Do you think Mary Lou would have missed a
6 detail like that?
7 A. I think Mary Lou documented the minutes
8 based on decisions that were made and some sort of
9 significant issues that took place, and that was it.
10 Q. So you don't think the negotiation to
11 purchase a condominium and parking spaces was significant?
12 A. It was significant if the association had
13 acted on it.
14 Q. So you're going to tell me that if I go
15 through all of Mary Lou's minutes, that there's not going
16 to be somebody reported something?
17 A. I don't know. I don't know what's in the
18 minutes. I mean, other than the ones I've looked at here,
19 I don't know what's in them.
20 Q. Do you recall any individual conversations
21 with any members of the board, any specific individuals?
22 A. Not specifically. But we sat around at a
23 table and talked about a variety of things, and they just
24 didn't get documented in the minutes.
25 Q. So when did you schedule the closing? Do

0178

1 you recall?
2 A. Do you mean what date did I schedule it for
3 another date? I don't remember that.
4 Q. I mean, did you schedule it the day after
5 the 12th?
6 A. For the 14th? I don't -- I don't think so.
7 It probably wouldn't have been the next day. I don't
8 remember. I don't remember.
9 Q. Okay. So you had the closing scheduled
10 prior to the offer to the association?
11 A. It could have been. I don't know.
12 Q. Okay.
13 A. Again, one wasn't waiting for the other
14 one.
15 Q. But it was a time-is-of-the-essence deal is
16 what you testified to earlier; correct?
17 A. Most real estate transactions are.
18 Q. And that Mr. Davis wouldn't have sold it to
19 you unless the developer had -- unless the purchase price
20 was somehow increased; is that correct?
21 A. Are you talking about the purchase of 312?
22 Q. Yeah.
23 A. Somehow there had to be a gap bridged
24 between what net of the parking spaces I would have been
25 willing to pay on behalf of the association for it, and

0179

1 what he wanted for it.
2 Q. Okay. So you'd be comfortable with all
3 these details, you know, at that time being just with
4 everybody that the developer was participating in an
5 exchange -- I mean, regardless of -- you can say all day
6 that it was on behalf of the homeowners association --
7 A. Uh-huh.
8 Q. -- but the bottom line is you signed the
9 purchase agreement, and it was between you and Mr. Davis.
10 You don't think anybody would have an issue
11 with the developer, a person not a party to the contract,
12 participating in this sale?
13 MR. CULOTTA: I'm going to object. Calls
14 for speculation.
15 A. I -- as long as there was disclosure that
16 the proceeds, the benefit as you call it, of the sale
17 would have transferred over to the association at --
18 out-of-pocket costs for that, why would anybody have a
19 problem with it?
20 Q. When it's time is of the essence, perhaps
21 in six months it might have been a lower price.
22 A. That's --
23 MR. CULOTTA: It calls for speculation.
24 A. It's crystal ball gazing. I mean, I don't
25 know.

0180

1 Q. You could see where someone could look at
2 it and say it. Can you see that at all, Kevin?

3 A. I can understand how someone can take the
4 facts and twist them to mean something else, but I
5 can't -- knowing what happened, and what I know to be the
6 truth, and if someone is looking at it objectively, and
7 looking at all the facts, I can't see where there's a
8 problem with it.

9 Q. So my understanding of what happened with
10 the bulletin's approval process was you basically sent it
11 out to the board members; is that correct?

12 A. That's my recollection.

13 Q. And said, board members, here are a couple
14 of -- I drafted a couple of documents, attached for your
15 review. These are association bulletins, in quotes, that
16 each deal was a topic of interest. Typically, one that
17 surfaces time and again by different owners. We can
18 compose these and keep them on file for future use.

19 And then if they're okay -- I'm
20 paraphrasing a little bit here, skipping down.

21 A. Uh-huh.

22 Q. If they're okay with you guys, my
23 suggestion is that we present them to the board on
24 Thursday for final approval. These and future bulletins
25 will be kept in the office for routine distribution.

0181

1 A. Uh-huh.

2 Q. Do you recall that?

3 A. I don't remember the exact --
4 MR. CULOTTA: Which document was that?
5 MS. BELLER: That's from Z.

6 A. It sounds like mine. I don't recall
7 exactly, but that sounds like something I would have
8 authored if it was me.

9 Q. And do you recall Gary Davis responding
10 that he approved?

11 A. I think I do.

12 Q. Okay. And do you recall Doug Farnsley
13 saying that he approved?

14 A. I believe I do.

15 Q. Okay. Now, did the whole board vote on
16 this, the approval of these?

17 A. I don't -- procedurally, I don't remember.
18 I think Tom Pike was the only one who had any issue with
19 it.

20 Q. Okay. Because --

21 A. I'm just going to elaborate. What
22 typically happens -- okay.

23 MR. CULOTTA: Just wait for the question.

24 Q. Why don't you elaborate on that, please.

25 A. Well, just procedurally, if you don't read

0182

1 a response, it doesn't mean that someone was against it.

2 Typically, I learned as a board president,
3 that half the board's going to respond, and the other half
4 are going to, in their silence, affirm it. If you don't
5 proceed with that understanding, you don't get a lot of
6 business done. That's reality.

7 Q. So it wasn't, like, brought up at a board,
8 and there was an official vote taken?

9 A. It sounds like we may have taken the vote
10 outside of the board meeting, the way you're describing
11 it.

12 Q. Would that have been documented somewhere?

13 A. One would think.

14 Q. Okay. I'm having you look at what's been
15 marked [Exhibit BB](#).

16 A. There's something on the end of that. Is
17 that supposed to be on there?

18 These appear to be minutes from March,
19 don't they?

20 Q. They're minutes from March --

21 A. Of '09.

22 Q. -- of '09.

23 A. Uh-huh.

24 Q. And in these minutes it discusses you -- it
25 says, Kevin Zipperle discussed bulletin one regarding the

0183

1 parking spaces, et cetera. I'm skipping down. These have
2 been approved by the legal committee, and when such issues
3 continue to arise, the bulletins will be the official
4 response.

5 A. Uh-huh.

6 Q. I didn't see anything -- I don't know if
7 you -- that there was any action taken by the full board
8 approving these?
9 A. I don't see anything. I don't see any
10 reference either way.
11 Q. Okay. So I guess at some point -- I
12 believe there's an e-mail here, EE -- Tom Pike questions
13 whether they needed to be approved by the board. I
14 believe it's DD. Do you recall this e-mail?
15 A. It looks like something that I should
16 recall. I don't have any issue with it.
17 Q. Okay. Do you recall responding to
18 Pike's -- to all board members via e-mail to Pike's
19 inquiry as follows: "In truth" -- I believe it's the second
20 paragraph there of your response. "In truth, there isn't a
21 need for formal review of documents" -- that's the second
22 paragraph on top of [Exhibit DD](#).
23 "In truth, there isn't a need for formal
24 review of documents like these, since the originators are
25 the people who are in the middle of events."

0184

1 A. Uh-huh.
2 Q. The primary reason for Doug's input is to
3 deal with potential legal issues they may result.
4 A. Uh-huh.
5 Q. So is that kind of saying because I was
6 involved and I knew what was going on, I can explain it?
7 A. Well, it says -- to me, it says that
8 objecting based on the contents, is not within your
9 purview if you don't know what's -- if you didn't know
10 what was going on.
11 Q. How would he have known what was going on?
12 A. They wouldn't have.
13 Q. Because you hadn't shared the documents.
14 A. Well, in this particular instance, it was
15 because he didn't live there. He would have been going
16 purely on evidence and hearsay.
17 Q. But he's a board member, and you're showing
18 this as bulletins for the board's explanation for things
19 that happened.
20 A. Is there a record where he asked for those
21 documents?
22 Q. I don't have a written record.
23 A. I don't either.
24 Q. But he wouldn't have had any factual basis
25 to object, because he didn't have the facts.

0185

1 A. If he had a different version of the truth,
2 he never offered it.
3 Q. But you and Mr. Davis had the version of
4 the truth.
5 A. We had the truth. We knew what happened.
6 Q. Okay. You had what happened, but you
7 didn't share that fully with other people?
8 A. I don't remember them asking for it.
9 Q. So you don't think one of your duties is to
10 be transparent and forthcoming?
11 A. Sure. But I don't have to -- yes. Yes.
12 The answer is yes.
13 Q. But you weren't forthcoming in this?
14 A. No, I was forthcoming.
15 Q. But you didn't include all the details.
16 A. I didn't deny any requests --
17 Q. But you didn't --
18 A. -- that I recall. If you have a record of
19 me denying requests for the information, you can show it
20 to me. I don't recall that ever happening.
21 Q. I'll have to go back through my notes, but
22 I think a lot of people raised questions that you weren't
23 forthcoming on.
24 A. A few people do.
25 Q. And you just weren't forthcoming.

0186

1 MR. CULOTTA: I'm going to object. It
2 calls for -- that's a matter of opinion by some people
3 versus others.
4 Q. So Tom Pike, also in the minutes of April
5 2nd -- do you recall seeing [Exhibit EE](#)?
6 A. They look like a complete set of minutes
7 from April of '09.
8 Q. Okay. You have no reason to believe that

9 they're not?
10 A. At this point, no.
11 Q. Okay.
12 A. Uh-huh.
13 Q. Tom Pike voted that he didn't approve --
14 questioned that the board should not have approved
15 bulletins one and two as a matter of protocol prior to
16 distribution, and does not want his name attached to the
17 bulletins. Do you recall that?
18 A. I vaguely recall him having an issue with
19 them, yes.
20 Q. And he didn't say -- did he make any
21 comment at the board meeting as to why he had an issue
22 with it?
23 A. I don't remember.
24 Q. You don't remember?
25 A. I don't remember.

0187

1 Q. Do you suppose he might? That was
2 speculative.
3 The date of -- this is State's [Exhibit FF](#).
4 Do you recall what that is?
5 A. It looks like it's part of something, the
6 last part of something that -- I don't know what it is.
7 Q. Do you recall when I sent a subpoena and we
8 met at Dawn Elston's? I think it was at the Vissing Law
9 Firm at that time, in their conference room?
10 A. Uh-huh.
11 Q. And you provided me with a stack of
12 documents?
13 A. Okay.
14 Q. And there were questions to explain how
15 each document was compiled. Do you recall that?
16 A. I don't know that. I don't remember
17 specifically.
18 Q. Okay. Because this was one of those
19 documents that was in one of the green sheets dividing
20 your -- the association's response.
21 A. Uh-huh.
22 Q. And it says that [former employee name
23 removed] provided the data for bulletin two, and that
24 you - it was formatted by you.
25 A. Uh-huh.

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1 Q. Okay. Now, Mr. Davis approved both of
2 those bulletins; correct?
3 A. Well, the board did. I mean, the board
4 blessed the process, whatever you want to call it.
5 Q. Okay. But he said I approve it as a member
6 of the legal committee; is that correct?
7 A. But it sounds like that e-mail said that.
8 Q. Yeah. Did anybody on the board know that
9 he personally benefited from the transaction of 312?
10 MR. CULOTTA: I'm going to object. It
11 calls for speculation.
12 Q. Did anyone on the board know that he
13 received an additional \$40,000 for the sale of his
14 property because the developer kicked in eight parking
15 spaces?
16 MR. CULOTTA: Same objection.
17 A. Yeah. I don't think that happened. I
18 mean, you're asking me if something that didn't happen,
19 happened.
20 Q. You're saying that he didn't get \$355,000
21 as opposed to \$315,000 because there weren't eight parking
22 spaces attached?
23 A. I think if you ask him that question, the
24 answer is no. If you ask me the question, the answer is
25 possibly, or some portion of \$40,000. I wouldn't have

0189

1 paid him \$355,000. Somebody else might have who really
2 wanted the condo and needed it. I didn't.
3 Q. So are you aware of any homeowners who
4 would have had knowledge that he received an additional
5 \$40,000 because of the eight additional parking spaces?
6 A. Again, you're asking me a question of
7 something that I don't believe happened, happened. No, I
8 don't believe -- I don't believe anybody knew that,
9 because I don't believe that's what happened.
10 Q. I'm confused on how you don't believe
11 that's what happened, when you have a purchase agreement

12 that says \$315,000, which you said, you know, you wouldn't
13 have paid him for that.
14 A. Correct.
15 Q. And then you have what you referred to as
16 monetized parking spaces for \$40,000.
17 A. Correct.
18 Q. So how is it that he's not getting the
19 additional monies for the purchase of his property?
20 A. Well, when you say getting the additional
21 money, that's kind of an absolute. How can anybody who
22 would have been approaching that deal would have bought it
23 for the -- wanted the same deal and wanted the same price?
24 I don't know that to be a fact.
25 I think he had that condo listed for sale

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1 at one time -- and I don't have the information -- listed
2 at 399. So he would have said that I was getting a heck
3 of a deal at 355. Forget about the parking spaces.
4 That's the way he would look at it.
5 Q. Yeah, but that's how it was sold. And mind
6 you, we're talking about -- this is a -- in a real estate
7 transaction --
8 A. Uh-huh.
9 Q. -- you have bought a lot? --
10 A. Some.
11 Q. -- if you want to get it at the price it's
12 offered at, or you really want the property, you're going
13 to buy it quickly; right?
14 A. Well, I'm not going to wait around for
15 someone else to come in and buy it for that price, if
16 that's what you mean.
17 Q. Okay. But typically, if the price is too
18 high, over time the price gets reduced until it sells?
19 A. Yeah, that's normally the process.
20 Q. So you were negotiating the best deal for
21 the association in under 30 days, basically, but you
22 weren't paying the top dollar, is what you're telling me.
23 The 355 would have been a good deal?
24 A. I think it was a good deal for the
25 association, yeah. I mean, or a fair deal for the

0191

1 association. And, again, history would bear that out, I
2 guess.
3 Q. But Mr. Davis wouldn't have sold it to you
4 for 315,000?
5 A. That's correct. That's my understanding,
6 yeah.
7 Q. Okay. And he only sold it to you for
8 355,000 because there were extra parking spaces that you
9 were willing to buy?
10 A. That amount of property value was in the
11 property to come up with a total of 355, and it would not
12 have occurred if that property -- extra property had not
13 been in there from the standpoint of this buyer on behalf
14 of the association.
15 Q. Okay. And that's what we're dealing
16 with --
17 A. That's all I'm saying.
18 Q. -- the factual transaction.
19 So he's approving something that he
20 benefited from because the developer gave eight additional
21 parking spaces into the deal?
22 A. He doesn't look at it that way. He
23 actually got -- he thinks he gave me a deal, or gave the
24 association a deal, at 355.
25 Q. Have you talked to him recently about that?

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1 A. Well, I mean, I don't have to. I know the
2 way he looked at it at the time of the transaction. He
3 didn't think he was giving the property away, or getting
4 some kind of a windfall. On the other extreme some kind
5 of a windfall dollar amount for it. He didn't look at it
6 that way.
7 Q. He got his mortgages paid, and he had some
8 to put down on his new condo.
9 A. Obviously, somebody thought it was worth
10 that, or they wouldn't have given him the mortgages on it.
11 Q. That was pre-collapse of the market. I
12 really -- that I'd argue, but that's another subject.
13 A. Well, that's -- it's fact.
14 Q. That's not fact. We're going to get back

15 to this again.
16 A. Uh-huh.
17 Q. You agreed to purchase the condo for
18 355,000 because the developer included eight parking
19 spaces?
20 A. That is part of the deal. That's correct.
21 Q. And what did Davis give up in that? I
22 mean, did Davis --
23 A. Gave up his condo, and three parking spaces
24 that came with it.
25 Q. So it's not -- I mean, he sold it and he

0193

1 got what he wanted. He got the price he wanted for it
2 because the developer included the eight parking spaces.
3 And we'll add, in a timely manner for them. They had --
4 A. In the end, it made the sale happen.
5 Q. It made the sale happen?
6 A. There's no question about that.
7 Q. Okay. That's what I'm getting to.
8 A. But that's not the way he looks at it. The
9 way you phrased it is he got \$40,000 that just fell out of
10 the sky, so he could sell a condo for 315,000. That's not
11 the way he looks at it.
12 Q. Well, that's kind of what happened.
13 MR. CULOTTA: I'm going to object.
14 A. And it's just one perspective versus
15 another.
16 Q. Okay. I would like you to look at [Exhibit](#)
17 [Number W](#).
18 A. Okay.
19 Q. And show me where -- there's an explanation
20 of the spaces being offered as an inducement for the sale.
21 A. Based on what I think your question is, in
22 the middle of the second paragraph it says, as added value
23 he was willing to include eight parking spaces to offset
24 the condo purchase and renovation costs. Is that what you
25 mean?

0194

1 Q. Uh-huh. You earlier called that an
2 inducement? What I called sweeten the deal.
3 A. Well, I mean, we're sitting here using
4 words just to try to describe what happened, but it
5 wouldn't have -- the deal wouldn't have happened for the
6 association, as executed by me, without those parking
7 spaces having been in there. I did admit to that. I did
8 claim that.
9 Q. Okay. And that Mr. Davis needed the funds,
10 though, for his purchase price, to meet his purchase
11 price?
12 MR. CULOTTA: Objection. It calls for
13 speculation.
14 A. I don't know that that's true.
15 Q. I'm going to look at something for a minute
16 if you'll indulge me here.
17 A. Okay.
18 MS. BELLER: Do we want to take a break for
19 a minute?
20 MR. CULOTTA: Sure, if you need one. Okay.
21 MS. BELLER: I just need to look here.
22 (WHEREAS, A BRIEF RECESS WAS TAKEN.)

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23 QUESTIONS BY MS. BELLER:
24 Q. Now, do you recall sending a letter to the
25 office of the attorney general dated September 26, 2011?
1 A. This looks like the response. Yes, I do
2 remember this.
3 Q. And did you draft that response?
4 A. I'm pretty sure I did.
5 Q. Can you go to paragraph number seven and
6 read that, please?
7 A. Okay. Do you want me to read it out loud?
8 Q. Yes.
9 A. Financing, renovation, utilities, taxes,
10 and maintenance were ongoing expenses that need to be
11 considered. It was determined that this would likely be
12 the most cost-effective option and would present itself
13 for some time -- which I assume meant the purchase of
14 312 -- to more easily agree on the sales price for
15 condominium 312 and to aid in the sale of condominium
16 1110, which would conclude the sales efforts. The
17 developer is willing to convey parking spaces as added

18 value. The inclusion of spaces would allow for a more
19 attractive purchase of condominium 312, which effectively
20 would allow the buyer of condominium 1110 to come to the
21 closing table with more money.
22 Q. So it did benefit him directly?
23 A. Well, I mean, if he got 355,000 and would
24 have only gotten 315,000, yes.
25 Q. So he had money to come to the 1110

0196

1 closing?
2 A. He had money from that particular
3 transaction, potentially, that he wouldn't have otherwise
4 had.
5 Q. So in effect, in this case -- I'm not
6 speculating at all. In this particular case, where you
7 were purchasing the condo for 310,000 --
8 A. Uh-huh.
9 Q. -- and the parking spaces for 40,000 --
10 MR. CULOTTA: 315,000.
11 MS. BELLER: 315,000, correct.
12 A. I think you meant 312. Is that what we're
13 talking about?
14 Q. We're talking about 312.
15 A. Okay.
16 Q. You were offering to buy the condominium
17 for 315,000?
18 A. Uh-huh.
19 Q. The parking spaces for \$40,000?
20 A. Uh-huh.
21 Q. That Davis received a direct benefit from
22 the developer of about 40,000?
23 A. Well, from this buyer, representing the
24 HOA, he got some money in addition to what he would have
25 gotten without the parking spaces. That's correct.

0197

1 Q. Okay.
2 A. If that's what you said.
3 Q. That's what I said.
4 A. Uh-huh.
5 Q. Now, was there any reason to believe that
6 they would -- either the developer or Mr. Davis have taken
7 the parking spaces back in lieu of 40,000?
8 A. What was the first part of your -- is there
9 any reason that they would have done that?
10 Q. Yeah.
11 A. I don't know. I mean, that's why -- that's
12 one reason I wanted to put the price value, because they
13 weren't of particular value to me. And I wanted to put a
14 price on them in order to see if these guys were
15 interested in lieu of the 40[,000] in cash, to have the parking
16 spaces, and neither one of them was.
17 Q. Because they needed cash to make the deal
18 work?
19 A. Well --
20 MR. CULOTTA: Objection. Calls for
21 speculation.
22 A. Yeah, I don't know if that's true. They
23 just didn't think the parking spaces were worth \$40,000.
24 That would be my takeaway.
25 Q. Did you ever offer these spaces to the HOA

0198

1 separately from the condominium?
2 A. No. That was never a part of any kind of a
3 transaction.
4 Q. You never said, you know, I've got these
5 spaces, and I'll sell them?
6 A. No.
7 Q. So I guess I'm not seeing how you say that
8 you were compelled to take the parking space assignments
9 with the purchase of the condominium. How were you
10 compelled to do that?
11 A. Well, just the example we just went through
12 there. If Gary Davis, for example, had said I'll just
13 bring 40,000 more out of my own funds to the closing, and
14 keep the parking spaces, then my proceeds -- or the
15 association's net would have been 315,000 at the closing,
16 plus expenses. So -- but then no one wanted those parking
17 spaces for 40,000 bucks, is what it came down to, which
18 ought to indicate what value they really have.
19 Q. But you were willing to buy them for 40[,000].
20 A. It was part of the deal. You couldn't say,

21 I'll take the condo and not the parking spaces. The
22 developer was trying to get rid of everything at that
23 point in time. And Gary Davis didn't need parking spaces,
24 or didn't need them that bad.
25 Q. So in 2006 were parking spaces selling for

0199

1 between 7 and 13,000?
2 A. In what?
3 Q. 2006.
4 A. There were probably parking spaces that
5 sold in those price ranges. I don't know if 13,000 --
6 that would have been close to what the developer would have
7 been selling one for. I don't know of any that high, but
8 there could have been.
9 Q. Were they sold at seven?
10 A. Certainly they transacted at the lower end
11 of that range.
12 Q. Okay. Did you ever sell any at that price?
13 A. I believe I did.
14 Q. Okay. Did you anticipate making a profit
15 from those eight parking spaces?
16 A. No. Again, some were of poor value, and
17 others were of more value. Four of them were uncovered.
18 MS. BELLER: Okay. Why don't we go ahead
19 and -- it's almost -- we're getting close to 4:00; right?
20 THE WITNESS: Ten till.
21 MS. BELLER: Let's go ahead and break for
22 the day, of course. And discuss -- we'll have to continue
23 this deposition, and perhaps the next deposition we can
24 schedule Mr. Zipperle in the morning, and then to finish
25 off what we have to do with answering all the questions

0200

1 that you want to assert privilege on.
2 MR. CULOTTA: Okay.
3 MS. BELLER: And then go on to Mary Lou
4 Trautwein-Lamkin's deposition.
5 MR. CULOTTA: Okay.
6 MS. BELLER: So do you guys want to look at
7 your calendars and contact me?
8 MR. CULOTTA: Sure.
9
10 AND FURTHER THE DEPONENT SAITH NOT.
11
12

KEVIN ZIPPERLE