

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

COLETTE MCNALLY, an individual,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	No. CV2014-009496
	)	
	)	
SUN LAKES HOMEOWNERS ASSOCIATION	)	
#1, INC., an Arizona non-profit	)	
corporation,	)	
	)	
	)	
Defendant.	)	
_____	)	

DEPOSITION OF RICK SCHWARTZ

Phoenix, Arizona  
July 15, 2015  
9:05 a.m.

Plaintiff's Designations

Defendant's R. 106 ADDS

Prepared by:  
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1 DEPOSITION OF RICK SCHWARTZ commenced at  
2 9:05 a.m. on July 15, 2015 at the law offices of CHEIFETZ  
3 IANNITELLI MARCOLINI, P.C., 111 WEST MONROE STREET, 17TH  
4 FLOOR, PHOENIX, ARIZONA, before MICHAELA HERMAN DAVIS, a  
5 Certified Reporter, in and for the County of Maricopa,  
6 State of Arizona.  
7  
8  
9 \*\*\*  
10 APPEARANCES  
11 FOR THE PLAINTIFF:  
12 CHEIFETZ IANNITELLI MARCOLINI, P.C.  
13 BY: MR. STEVEN W. CHEIFETZ  
14 111 WEST MONROE STREET  
15 17TH FLOOR  
16 PHOENIX, ARIZONA 85003  
17  
18 FOR THE DEFENDANT:  
19  
20 GRASSO LAW FIRM  
21 BY: MS. JENNY WINKLER  
22 2121 WEST CHANDLER BOULEVARD  
23 SUITE 100  
24 CHANDLER, ARIZONA 85224  
25  
26 ALSO PRESENT:  
27 MS. COLETTE McNALLY

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1 Phoenix, Arizona  
2 July 15, 2015  
3 9:05 a.m.  
4  
5 RICK SCHWARTZ, called as a witness herein,  
6 having been first duly sworn, was examined and testified  
7 as follows:  
8 \*\*\*  
9 EXAMINATION  
10 BY MR. CHEIFETZ:  
11 Q. Good morning, Mr. Schwartz. My name is Steve  
12 Cheifetz. I'm the attorney for Ms. McNally. I will be  
13 taking your deposition today. Have you ever had your  
14 deposition taken before?  
15 A. No, sir.  
16 Q. All right. Well, I'm going to ask questions and  
17 try to create a record. So if you don't like my question,  
18 by all means speak up. And not if you just don't like the  
19 substance, but I mean, main thing is I want to make sure  
20 you understand what I'm getting at and that if you want me  
21 to reword it or - I'm not trying to trick you or  
22 anything. I want you to have as much opportunity to speak  
23 up and tell me if you don't understand the question.  
24 A. Okay.  
25 Q. And I'll do my best to clarify it.  
In addition, if you could keep in mind that

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1 nonverbal answers, shake of the head, doesn't create a  
 2 record, or uh-huh and huh-uh don't come across well on the  
 3 record, so try to answer affirmatively, yes, no, or an  
 4 explanation, but try to avoid that type of answer.  
 5 If you need to take a break, you can take a  
 6 break at any time, just let me know. I'll just ask that  
 7 you finish the answer to the question that I asked before  
 8 you take a break.  
 9 A. Okay.  
 10 Q. Okay. Tell me a little bit about your  
 11 background. I'll try to run through the background  
 12 questions quickly. What kind of education do you have?  
 13 A. I had -- I had a five-year apprenticeship.  
 14 Well, high school, and then a five-year -- four years in  
 15 the Marine Corps, five-year apprenticeship at the Central  
 16 Newspapers, and a couple of semesters of college for  
 17 the -- management. And real estate license, if that  
 18 counts.  
 19 Q. Sure. And Central Newspapers, is that here in  
 20 Phoenix?  
 21 A. Central Newspapers are Indianapolis and Phoenix.  
 22 They owned both the Arizona Republic and the Indianapolis  
 23 Star News before they sold to Gannett.  
 24 Q. Okay. Right. I knew that sounded familiar.  
 25 Did you -- at that time did you live in Phoenix

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1 or did you --  
 2 A. I lived in both. I worked 27 years for the  
 3 paper in Indianapolis, and then we relocated out here.  
 4 Q. So that's what brought you to Phoenix?  
 5 A. Yeah, basically. I was -- the weather.  
 6 Q. And so you asked -- so they allowed you to  
 7 transfer within the company?  
 8 A. No, they didn't. I came out, and I got a real  
 9 estate license. I wasn't interested in staying in the  
 10 newspaper business, but then they called me back. The  
 11 paper called me from here and asked me if I wanted to  
 12 start subbing, and pretty soon I end up, you know,  
 13 full-time job.  
 14 Q. What was your position with the newspaper?  
 15 A. I was a supervisor for a while -- which paper?  
 16 Both of them?  
 17 Q. Maybe back --  
 18 A. Both of them was still a supervisor. I was a  
 19 color super -- a photo engraver originally started out,  
 20 and I did graphics, you know, once the computer systems  
 21 came in. And then when we came out here, it was strictly  
 22 plate making. But I became a shift supervisor out here  
 23 down the road. I think I was here for 13 years. I'm not  
 24 sure exactly. Ended up with 40 years complete.  
 25 Q. When did you move into Sun Lakes?

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1 A. About ten years ago.  
 2 Q. And when did you first, I guess, get involved in  
 3 Sun Lakes politics?  
 4 A. About three years ago.  
 5 Q. So have you -- is this your second term on the  
 6 board?  
 7 A. Third term.  
 8 No, this is only my first term, but my third  
 9 year.  
 10 Q. So three-year term?  
 11 A. This term is up at the end of the year.  
 12 Q. And how long have you been president?  
 13 A. Three years.  
 14 Q. Prior to your inclusion on the board, did you  
 15 pay attention to what was going on with the board of  
 16 directors at the community?  
 17 A. Yes.  
 18 Q. When did you -- when did you first meet my  
 19 client, Ms. McNally?  
 20 A. When I came on the board.  
 21 Q. So you didn't know her personally before you  
 22 came on the board?  
 23 A. Not personally.  
 24 Q. Did you know of Ms. McNally before you came on  
 25 the board?

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1 A. I knew all those board members before I came on.  
 2 Just on, like you say, politics.  
 3 Q. Is it fair to say that before you joined the  
 4 board, that you were aware of some of Ms. McNally's  
 5 political concerns that maybe she had expressed over open  
 6 meeting violations?  
 7 A. I'm not sure I understand that.  
 8 Q. Doesn't a large part of this lawsuit and just  
 9 ongoing dispute with Ms. McNally center around, I guess,  
 10 her interpretation of the open meeting laws and the  
 11 board's interpretation of the open meeting laws? Is that  
 12 fair to say?  
 13 MS. WINKLER: Form.  
 14 THE WITNESS: That's fair to say.  
 15 BY MR. CHEIFETZ:  
 16 Q. She may object at times. You still need to  
 17 answer, but we'll try not to distract you. But unless she  
 18 tells you not to answer, then that's a different issue.  
 19 A. Okay.  
 20 Q. So you were aware of -- prior to being elected  
 21 to the board, you were aware of the fact that Ms. McNally  
 22 and the board were often fighting over open meeting law  
 23 issues?  
 24 A. I don't know if it was -- I know that that board  
 25 was having a lot of issues. I wasn't that in tune to

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1 Ms. McNally.  
 2 Q. Okay.  
 3 A. It was the whole board that was having problems  
 4 at the time.  
 5 Q. Is it fair to say that prior to your election,  
 6 did you think the board was dysfunctional?  
 7 A. No.  
 8 Q. You thought they were operating properly?  
 9 A. I think so.  
 10 Q. Do you think the board has always been operating  
 11 properly?  
 12 A. I can't speak for the past. But -- I can't  
 13 speak for when President Tolar and I -- I was elected  
 14 after her, I think, so...  
 15 Q. What about during Ms. Tolar's term, or do you  
 16 know?  
 17 A. No, I don't know.  
 18 Q. But as far as your view since you've been  
 19 elected, you think the board's been operating reasonably  
 20 well since you've been elected as president?  
 21 A. Yes.  
 22 Q. And you wouldn't define it as dysfunctional?  
 23 A. No.  
 24 Q. When did you -- when you became -- when you were  
 25 elected to the board and became president, was that at the

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1 same time? Did you immediately become president after  
 2 getting elected?  
 3 A. Yes, sir.  
 4 Q. When you were elected, when did you first start  
 5 having -- or did you during that time have concerns over  
 6 Ms. McNally's behavior as a board member?  
 7 A. No.  
 8 Q. Have you ever had concerns with Ms. McNally's  
 9 behavior as a board member?  
 10 A. Yes.  
 11 Q. When did you first have those concerns?  
 12 A. When I first -- well, I think when the open  
 13 meeting thing came up. What we're involved with now.  
 14 Q. So when the -- basically this lawsuit, I guess,  
 15 seems to have been -- the fight seems to have started when  
 16 Ms. Martens submitted her e-mail that some suggest is a  
 17 confession; right?  
 18 Is that a yes?  
 19 A. Yes.  
 20 MS. WINKLER: Form.  
 21 BY MR. CHEIFETZ:  
 22 Q. And so -- so since that e-mail, you started  
 23 having concerns with Ms. McNally's behavior; is that  
 24 correct?  
 25 A. Yes.

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1 Q. Prior to that e-mail, did you have any such  
 2 concerns?  
 3 A. Not really.  
 4 Q. Had you heard from any other board members that  
 5 prior to that e-mail, that they had had concerns with  
 6 Ms. McNally?  
 7 A. No.  
 8 Q. So none of the board members at the time you  
 9 joined the board ever said anything to you like  
 10 Ms. McNally is a troublemaker or anything to suggest that?  
 11 A. Well, yes, but I formed my own opinion.  
 12 Q. And -- right. And that's laudable. I just --  
 13 at this point I want to ask you what was expressed to you  
 14 when you joined the board about Ms. McNally by other board  
 15 members that may have been critical about her behavior.  
 16 A. I don't know. I mean, just hard to answer that  
 17 question because I don't really remember. I mean, I'm not  
 18 one to -- I make my own judgments as far as people go.  
 19 And whatever somebody said about Colette -- or  
 20 Ms. McNally, I'm sorry -- but whatever, I just take it  
 21 with a grain of salt, so to speak, until I work with the  
 22 person.  
 23 Q. Right.  
 24 A. Does that make sense to you?  
 25 Q. No, it certainly does. I'd still like to know

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1 what people said to you even if you didn't give it  
 2 credence because you wanted to formulate your own opinion.  
 3 I still would like to know what people said to you when  
 4 you joined the board about Ms. McNally.  
 5 A. Well, I can recall that they thought that she  
 6 liked to operate on her own without board direction. Kind  
 7 of a free spirit, so to speak.  
 8 Q. She seemed to -- is it fair to say that certain  
 9 board members didn't view her as a team player?  
 10 A. Yes.  
 11 Q. And is it fair to say that much of that concern  
 12 over her behavior was over her -- over her desire to be, I  
 13 guess, more open about board deliberations? Is that a  
 14 fair way to --  
 15 MS. WINKLER: Form.  
 16 BY MR. CHEIFETZ:  
 17 Q. I mean, isn't it true that for years there's  
 18 been ongoing disputes between Ms. McNally and the board  
 19 over her views on what should be shared with the community  
 20 and what should not be shared with the community?  
 21 MS. WINKLER: Form, foundation.  
 22 THE WITNESS: I can only speak for my board.  
 23 Before that, all I know is what I've read in the, you  
 24 know, the minutes and the stuff that -- and that I  
 25 testified to.

1 BY MR. CHEIFETZ:  
 2 Q. Right. You provided an affidavit about the  
 3 things --  
 4 A. That's the stuff that. I'm sorry. I thought I  
 5 turned it off.  
 6 Now go ahead and repeat your question, if you  
 7 don't mind.  
 8 Q. You indicated you really had no opinion of what  
 9 happened before the board, but -- I know you submitted an  
 10 affidavit where you expressed -- at least went through the  
 11 record of what you understood occurred.  
 12 A. Right.  
 13 Q. And weren't some of the issues you were talking  
 14 about from before you became president that you attested  
 15 to in your affidavit about disputes with Ms. McNally and  
 16 the board over her desire to share more information with  
 17 the community than you desired or that the board desired  
 18 she share with the community?  
 19 MS. WINKLER: Form.  
 20 THE WITNESS: Well, the affidavit I testified to  
 21 is the information I found out. But like I said before, I  
 22 didn't put much credence into it, but you have to know  
 23 your board members.  
 24 BY MR. CHEIFETZ:  
 25 Q. Okay.

1 A. And that is what she did before her and I met  
 2 up, so to speak.  
 3 Q. Okay. Well, I'll focus on what's happened since  
 4 you came on the board.  
 5 A. Sure.  
 6 Q. Why are we here? What concerns did you have  
 7 with Ms. McNally that caused the board to exclude her from  
 8 participating in executive session?  
 9 A. Exposing executive session material.  
 10 Q. So is it your position that she cannot talk  
 11 about what's said in executive session?  
 12 A. It's my position that she can talk about it in  
 13 executive session, but she can't take it to the general  
 14 membership with -- when the executive session votes or has  
 15 a motion that says that we're not going to deal with this  
 16 or this is executive stuff, whatever it says in  
 17 Section 1804, legal, personal, you know, all the different  
 18 things that are there. That's what I base my whole thing  
 19 on.  
 20 Q. Okay. So is it your position that whatever is  
 21 discussed in executive session cannot be discussed outside  
 22 executive session?  
 23 A. Well, if it involves legal, personal,  
 24 financial -- the five things, I think it is, that's in  
 25 there, yeah.

1 Q. What if Ms. McNally has information that --  
 2 let's just give an example. Like an employee drove their  
 3 car and ran into her car, and she talks about it in  
 4 executive session. Are you suggesting she can't talk  
 5 about that outside of executive session?  
 6 A. Well, that's between her and the employee. But  
 7 if the employee -- I mean, yeah, I would suggest that's  
 8 between her and the employee. That's not like -- to me,  
 9 that's not like the employee was, you know -- maybe the  
 10 employee ran into her car because they didn't like her or  
 11 vice versa. I don't know. But I mean, that wouldn't be  
 12 business to me. I mean, my thing, if an employee and her  
 13 had an incident, that's between them. That's not even  
 14 executive material.  
 15 Q. So is it fair to say that there are things that  
 16 even if it was discussed in executive session, you still  
 17 can talk about it outside of executive session, under  
 18 those circumstances anyway?  
 19 A. I would think so, yeah. Common sense would tell  
 20 you that you could, but it's not -- I don't believe you  
 21 could say I ran into the car and they owe me X amount of  
 22 money and go on. You know, we can't go broadcast that to  
 23 the rest of the body.  
 24 Q. Can she do it though? I mean, if it's her  
 25 personal incident with the employee and is she able to

1 tell people -- let's say the employee was drunk and ran  
 2 into her car. Is she entitled to tell -- if it was  
 3 discussed in executive session, does it then become  
 4 confidential that she can't discuss it personally anymore?  
 5 Or does she still have the right to discuss it with  
 6 others?  
 7 MS. WINKLER: Form.  
 8 THE WITNESS: I'm not sure -- I mean -- you  
 9 know, I figure that -- I say "I," but if -- I would think  
 10 not. If you bring it to the executive session and you're  
 11 asking the board to rule on it, then no. But if you just  
 12 bring it in a general conversation, it's not a problem.  
 13 BY MR. CHEIFETZ:  
 14 Q. So is it fair to say that to a certain extent it  
 15 depends upon what was discussed in executive session?  
 16 A. Well, it depends on how it was discussed.  
 17 Q. And the issue with Ms. -- the e-mail from  
 18 Ms. Martens, that was brought by Ms. McNally to your  
 19 attention; correct?  
 20 A. Correct.  
 21 Q. And subsequently there was discussions in  
 22 executive session about what to do -- why don't you tell  
 23 me. What was discussed in executive session -- well,  
 24 wasn't the concern in the executive session over what to  
 25 do about it, if anything?

1 A. Yes.

2 Q. Prior to discussing this in executive session,

3 hadn't all the board members seen the e-mail from

4 Ms. Martens?

5 A. I don't know.

6 Q. Did you provide the e-mail to other board

7 members?

8 A. You know, I think I forwarded. I did. But I

9 don't know if all of them seen it because some of the

10 board members are a little bit slow about picking up

11 e-mails.

12 Q. Did you send it to all, and they may not have

13 picked it up? Is that what you're thinking?

14 A. That's what I'm thinking. But they were aware

15 of it at the meeting.

16 Q. So by the time you went to the meeting to

17 discuss it, the e-mail had already been --

18 A. Disseminated.

19 Q. Yes.

20 And the purpose of the meeting wasn't so much to

21 discuss the contents of the e-mail but what to do about

22 the e-mail; correct?

23 A. Not at first. Where we felt, the board felt,

24 the mistake was made that it was brought to executive

25 session and we were asked to act upon it. We agreed that

1 we didn't have enough proof to act upon it.

2 Now, if Ms. McNally would have taken that

3 straight to the community and not brought it to executive

4 session asking us to do something, we probably wouldn't

5 have had any objection. That would have been up to her

6 because it wasn't -- it didn't become executive

7 information until she brought it there.

8 Q. So you're saying if she had taken the e-mail and

9 simply communicated directly -- let's say she got the

10 e-mail and sent it to everyone she knew in the community,

11 That's not something you would have objected to because it

12 hadn't been addressed in executive session?

13 A. It wasn't our e-mail. Didn't become our problem

14 until it got into executive session.

15 Q. But once she brought the discussion about the

16 e-mail to executive session, then you thought this was

17 inappropriate for her to then take it to the community?

18 A. We were instructed not to because we didn't have

19 any proof that these employees did that. And I have to

20 look out for the people for the same thing of getting a

21 lawsuit from the two employees that were involved or any

22 other incident that comes up.

23 Q. At the executive session, you did not read the

24 e-mail out loud; correct?

25 A. At the executive session?

1 Q. Yeah.

2 A. Yeah, it was read out loud.

3 Q. It was read out loud at the executive session --

4 A. As far as I know it was. I didn't read it out

5 loud unless Ms. McNally did.

6 Q. Do you have any recollection of any board member

7 you can identify --

8 A. It was all given to the board members. I can't

9 say it wasn't read out loud, but it was all given to the

10 board members.

11 Q. That's my point. Everybody had already read it

12 before the executive session; correct?

13 A. I'm sure they had.

14 Q. So when they get to executive session, they were

15 talking not about the contents of the e-mail as much as

16 talking about what do we do about this e-mail?

17 A. Uh-huh.

18 Q. Is that fair to say?

19 A. That's fair.

20 Q. And earlier you indicated that you didn't have

21 any proof that it was -- what Ms. Martens said was true.

22 Isn't it fair to say that Ms. Martens' e-mail in itself is

23 evidence? I mean, here's a woman saying this is my

24 position on what occurred. Isn't that a certain level of

25 proof?

1 MS. WINKLER: Form.

2 THE WITNESS: Not really. Because I wasn't even

3 on the board at the time of this e-mail. I had no

4 knowledge of the incident other than what I was told.

5 BY MR. CHEIFETZ:

6 Q. But you didn't -- is it fair to say that when

7 you saw that e-mail, you didn't know if it was true or

8 not?

9 A. No, I didn't. But I did inquire.

10 Q. Why did you inquire?

11 A. I inquired as much as I could with the two

12 employees.

13 Q. Why?

14 A. Is this true -- well, because if it was true,

15 then, you know, we'd have to do something. I don't know

16 what it would have been. But then I inquired with our

17 attorney.

18 Q. So you think that determining if it was true or

19 not was important?

20 A. Well, yeah.

21 Q. And if you viewed it as true, do you think it

22 would have been appropriate to share it with the

23 community?

24 A. I don't believe so. Not until there was a

25 resolution.

1 Q. So you don't think the community is entitled to  
 2 know if this type of thing occurs? You don't think the  
 3 community is entitled to know until there's a, what you  
 4 define as a resolution?  
 5 A. At certain point, yes.  
 6 Q. When is the point where you think the community  
 7 is entitled to know about, for instance, this e-mail?  
 8 A. Well, when it's either -- we're either in court  
 9 with it being sued by two employees, or there's no  
 10 foundation for it. The board felt that we weren't going  
 11 to do anything about it because there was no place to go  
 12 with it.  
 13 Q. Well, certainly you could have --  
 14 A. We did call in the three people that were  
 15 involved with the letter, yes.  
 16 Q. Who did you speak to about the letter?  
 17 A. Ray Smith, Tom -- man, I can never remember his  
 18 last name.  
 19 MS. COLETTE MCNALLY: Tom West.  
 20 THE WITNESS: Tom West.  
 21 MS. WINKLER: That is not -- so we had this  
 22 happen last time, and I'm going to say on the record, your  
 23 client may not testify during this deposition.  
 24 You may not say anything. If you can't avoid  
 25 saying stuff, then perhaps you should not be here.

1 MR. CHEIFETZ: I spoke to her about it.  
 2 BY MR. CHEIFETZ:  
 3 Q. Okay. Let me start over again.  
 4 You spoke with Ray Smith, Tom West and who else?  
 5 A. And Ms. McNally.  
 6 Q. Did you -- are those -- so when you received  
 7 this e-mail, in order to determine if it was true or not,  
 8 you spoke to those three individuals?  
 9 MS. WINKLER: Form.  
 10 THE WITNESS: Not right away.  
 11 BY MR. CHEIFETZ:  
 12 Q. When did you -- is it fair to say that you  
 13 investigated whether the e-mail was true or not?  
 14 MS. WINKLER: Form.  
 15 THE WITNESS: I would say yes.  
 16 BY MR. CHEIFETZ:  
 17 Q. Did you do -- but you're not certain about that?  
 18 A. No, because we -- it got to the point where the  
 19 board wasn't going to do anything on it. There's no  
 20 information or proof any of this stuff happened, but they  
 21 insisted upon having their day in front of the board, and  
 22 I gave it to them.  
 23 Q. But it was -- if it was up to you, you wouldn't  
 24 have investigated whether or not the e-mail was true or  
 25 not?

1 MS. WINKLER: Form.  
 2 THE WITNESS: I had no basis to investigate it  
 3 other than -- I don't have any assets to do it other than  
 4 asking the employees. Like I said, I wasn't even on the  
 5 board at the time.  
 6 BY MR. CHEIFETZ:  
 7 Q. No, but you were on the board at the time the  
 8 e-mail --  
 9 A. The e-mail came up, sure.  
 10 Q. The confession of -- the alleged confession of  
 11 Ms. Martens, you were on the board at the time it was  
 12 received?  
 13 A. Uh-huh.  
 14 Q. And -- that's a yes?  
 15 A. Yes.  
 16 Q. And you were taking the lead as president in  
 17 deciding what to do about it; is that fair to say?  
 18 A. That's correct.  
 19 Q. And did you think it was important to first  
 20 determine whether the e-mail was true or not before you  
 21 decide what to do about it?  
 22 A. We did.  
 23 Q. What steps did you take to determine if the  
 24 e-mail was true or not?  
 25 A. We questioned the employees. Both Clint and

1 Roberta, the two employees involved.  
 2 Q. Did you question --  
 3 A. We asked them -- all I could ask them, is this  
 4 true, did this happen.  
 5 Q. Did you ever ask Ms. Martens?  
 6 A. Ms. Martens wasn't employed at the time. She  
 7 was not -- she was someplace else.  
 8 Q. So is it fair to say you did not question  
 9 Ms. Martens?  
 10 A. I did not.  
 11 Q. Did you ever attempt to contact Ms. Martens  
 12 about the e-mail?  
 13 A. I did not.  
 14 Q. If she's the one that was making the  
 15 allegations, do you think it would have been wise to  
 16 question her as well as the employees that were still with  
 17 you?  
 18 A. Well, she left the association and just walked  
 19 out.  
 20 Q. You had her phone number; correct?  
 21 A. No, I didn't.  
 22 Q. You didn't?  
 23 A. I'm sure they had it at the office. I didn't  
 24 have it personally.  
 25 Q. You didn't think it would be important to

- 1 contact her and ask her yourself?  
 2 A. No.  
 3 Q. What about Bill Hoyt? Did you talk to Bill Hoyt  
 4 about this issue?  
 5 A. No, I didn't.  
 6 Q. Have you ever talked to Bill Hoyt about this  
 7 issue?  
 8 A. No.  
 9 Q. Did you think it would be important to talk to  
 10 Bill Hoyt about what happened?  
 11 A. No.  
 12 Q. Why is that?  
 13 A. Because I don't trust Bill Hoyt.  
 14 Q. But you trust Mr. -- you trusted Mr. Warrell?  
 15 A. I didn't know -- yes, Clint, yes. I forgot the  
 16 last name.  
 17 Q. That's fine.  
 18 So you trusted Mr. Warrell?  
 19 A. Correct.  
 20 Q. And you trusted Ms. Laird?  
 21 A. Correct.  
 22 Q. And when they told you they didn't know --  
 23 what -- let me back up.  
 24 How did you question them? Did you question  
 25 them separately? Individually? Together? How did that

- 1 come about?  
 2 A. We brought them into a board meeting. And we  
 3 all asked the same question.  
 4 Q. Was it a board meeting, or was it an executive  
 5 session?  
 6 A. You know, I think it was an executive session,  
 7 plus -- I don't recall totally how we did that. But they  
 8 requested.  
 9 Q. Were they questioned together or separately?  
 10 A. Separately.  
 11 Q. How soon after you received the e-mail were they  
 12 questioned?  
 13 A. Oh, right away, I believe.  
 14 Q. And what type of questions did you ask them, do  
 15 you remember?  
 16 A. I just remember asking them if this is true, and  
 17 they both denied it. That's as far as I could go with it.  
 18 I mean --  
 19 Q. So you couldn't have done any further  
 20 investigation?  
 21 A. I wouldn't know how to begin.  
 22 Q. Well --  
 23 A. I mean, other than -- well, we did talk to the  
 24 names I gave you after they, you know, said -- they wanted  
 25 to come have their day in court, so to speak, to the

- 1 board. They were all invited in to tell their side of the  
 2 story.  
 3 Q. But Ray Smith, Tom West, and Colette McNally  
 4 were not called in to determine if the e-mail was true.  
 5 Isn't it they were called in because they felt the board  
 6 should do something about it?  
 7 A. Yes. And we asked them what they thought we  
 8 should do.  
 9 Q. And what did they think you should do?  
 10 A. Ray Smith said we just want a letter of  
 11 reprimand. Tom West said he wanted no part of it; it was  
 12 water under the dam, so to speak. And I honestly don't  
 13 remember what Ms. McNally said.  
 14 Q. You understand that Ms. Martens suggested that  
 15 Ms. Laird -- let me back up.  
 16 Did you ever investigate how the letter or  
 17 the -- let me back up.  
 18 The e-mail from Ms. Martens was alleging that  
 19 she had taken notes from a board member's book and  
 20 provided them to Ms. Laird and that Ms. Laird had provided  
 21 them to Mr. Hoyt; correct?  
 22 A. That's what I heard, yes.  
 23 Q. And that's what the e-mail said; right?  
 24 A. I believe so, yeah.  
 25 Q. Did you ever investigate how the notes were

- 1 distributed to the community, how they became in the  
 2 possession of Mr. Hoyt?  
 3 A. No. That was not -- I wasn't there at the time  
 4 of how he would have done it.  
 5 Q. Did you ever investigate it when you got the  
 6 e-mail?  
 7 A. No.  
 8 Q. Couldn't you have gone to Mr. Hoyt and said,  
 9 Mr. Hoyt, did you receive this -- these notes from  
 10 Ms. Laird?  
 11 A. I suppose I could have.  
 12 Q. And if he said he did, wouldn't that have  
 13 undercut Ms. Laird's story that she didn't participate?  
 14 A. Probably so, but I -- Mr. Hoyt is known not to  
 15 be exactly forthcoming with information or honesty.  
 16 Q. Did you ever know Ms. Martens to be dishonest?  
 17 A. No, not to my knowledge.  
 18 Q. Did you ever know -- strike that.  
 19 As you sit here today, do you know whether or  
 20 not the information in Ms. Martens' e-mail is true or not?  
 21 A. I don't know.  
 22 Q. As you sit here today, what is your knowledge  
 23 regarding the open meeting law statute that applies to  
 24 homeowner's associations?  
 25 A. I've read it several times, yes.

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1 Q. Isn't it true that the purpose of the open  
 2 meeting statute is to seek to cause deliberations of  
 3 homeowner's associations, boards, and committees to be  
 4 done in the open?  
 5 MS. WINKLER: Form.  
 6 THE WITNESS: To a certain extent, yes.  
 7 BY MR. CHEIFETZ:  
 8 Q. Have you sought to interpret the statute on your  
 9 own?  
 10 A. No, sir.  
 11 Q. So when you read the statute, it wasn't to  
 12 attempt to understand its meaning or -- why did you read  
 13 it?  
 14 A. I read it because of the five things -- four or  
 15 five things it has on there. And when we were -- also  
 16 were in a training session with Charlie Maxwell, and I  
 17 sought (phonetic) advice from him when this situation  
 18 happened.  
 19 Q. So is it fair to say that the open meeting law  
 20 provides that things are going to be openly discussed  
 21 unless there's an exception that applies?  
 22 MS. WINKLER: Form.  
 23 THE WITNESS: Yes.  
 24 BY MR. CHEIFETZ:  
 25 Q. And when considering whether or not something

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1 fits within one of the exceptions to the requirement of  
 2 openness, do you typically err on the side of openness or  
 3 err on the side of secrecy?  
 4 MS. WINKLER: Form.  
 5 THE WITNESS: We err on the side of what the  
 6 board feels is right.  
 7 BY MR. CHEIFETZ:  
 8 Q. And do you feel it's right to not risk sharing  
 9 information with the community if you're uncertain about  
 10 whether it should be kept secret or not, or to err on the  
 11 side of openness to ensure the community knows what's  
 12 being discussed?  
 13 MS. WINKLER: Form.  
 14 THE WITNESS: We just -- we are on the side of  
 15 what the statute tells us in our own minds.  
 16 BY MR. CHEIFETZ:  
 17 Q. And what does the statute tell you? Does  
 18 the --  
 19 A. The statute tells me that we have two employees  
 20 being accused of doing something that if it was proven  
 21 wrong that they didn't do that, they could have a lawsuit  
 22 against the association. We have to protect the  
 23 employees, the other members, you know, the statute. I  
 24 mean --  
 25 Q. But -- and we'll get to that in more detail, but

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1 does the statute provide that you should err one way or  
 2 the other?  
 3 A. No, I don't think so.  
 4 Q. You don't think it provides for that?  
 5 A. No. I think it's pretty cut and dried as far as  
 6 I'm concerned, but I'm not a...  
 7 (Exhibit No. 1 was marked for identification.)  
 8 BY MR. CHEIFETZ:  
 9 Q. If you could take a look at the last sentence of  
 10 Exhibit 1, the second page. It indicates that any person  
 11 or entity that is charged with the interpretation of these  
 12 provisions shall take into account this declaration of  
 13 policy and shall construe any provision of the section in  
 14 favor of open meetings.  
 15 Do you see that?  
 16 A. Where?  
 17 Q. The last sentence.  
 18 A. Okay. I'm sorry.  
 19 Q. Doesn't that suggest that you should err on the  
 20 side of open meetings?  
 21 A. Not to my knowledge. I don't have the knowledge  
 22 to know. That's basically why I ran it past our attorney.  
 23 Q. How often did you run it past your attorney?  
 24 MS. WINKLER: Form.  
 25 THE WITNESS: Couple times.

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1 BY MR. CHEIFETZ:  
 2 Q. So over the -- oh, I guess how many years it's  
 3 been. How long have you been on the board?  
 4 A. About two and a half years.  
 5 Q. So is it fair to say in the two and a half years  
 6 you've been on the board, you've discussed with your  
 7 attorney maybe twice the meaning of the open meeting  
 8 statute?  
 9 MS. WINKLER: Form.  
 10 THE WITNESS: Yeah. Probably that, and he -- in  
 11 the training sessions also it was discussed.  
 12 BY MR. CHEIFETZ:  
 13 Q. So would this have been the third time, or would  
 14 that have been the second time?  
 15 A. Third time.  
 16 Q. So when deciding what to discuss in executive  
 17 session or not, it's not like you asked him before every  
 18 meeting?  
 19 A. Correct. No.  
 20 Q. So to a certain extent you relied on your own  
 21 judgement under the open meeting law of what should be  
 22 properly discussed or not, right?  
 23 MS. WINKLER: Form.  
 24 THE WITNESS: Yes.  
 25 MS. WINKLER: Can we take a real quick break?

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1 MR. CHEIFETZ: Yeah. Of course.  
 2 (WHEREUPON, a brief recess was taken from  
 3 9:42 a.m. to 9:48 a.m.)  
 4 (Exhibit No. 2 was marked for identification.)  
 5 BY MR. CHEIFETZ:  
 6 Q. Next I'd like to show you what's marked as  
 7 Exhibit 2. Are you familiar with Exhibit 2? Take your  
 8 time.  
 9 A. Okay. Yeah.  
 10 Q. Are you familiar with Exhibit 2?  
 11 A. Yeah, I'm familiar with it.  
 12 Q. What is Exhibit 2?  
 13 A. Exhibit 2 is the letter written to Elaine Hair  
 14 about her conduct in the Sunset Grill.  
 15 Q. Isn't Exhibit 2 executive session minutes?  
 16 A. Correct.  
 17 Q. And who prepared these minutes, do you know?  
 18 A. I'm not sure at the time of the -- probably  
 19 Elaine Johnson, the administrative assistant.  
 20 Q. And on this executive session minutes, it has  
 21 next to Ms. McNally's name an asterisk suggesting she was  
 22 absent; correct?  
 23 A. Correct.  
 24 Q. And the reason she wasn't there is because the  
 25 board had ordered that she not attend; correct?

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1 A. Correct.  
 2 Q. And, in fact, wasn't this the first meeting  
 3 after she had been excluded from executive session?  
 4 A. I don't know.  
 5 Q. Do you remember when she was excluded from  
 6 executive session?  
 7 A. September.  
 8 Q. Of what year?  
 9 A. Of, I believe, this year. I mean, of last year.  
 10 2014. '13. Honestly, I forget. I know it's in my thing,  
 11 but September.  
 12 Q. I'll help you out with that.  
 13 (Exhibit No. 11 was marked for identification.)  
 14 BY MR. CHEIFETZ:  
 15 Q. If you look at the bottom of Exhibit 11, talks  
 16 about a motion being made to ban Colette McNally from all  
 17 executive session meetings for the balance of her term.  
 18 Do you see that?  
 19 A. Uh-huh.  
 20 Q. Is that yes?  
 21 A. Yes.  
 22 Q. No problem.  
 23 And would this have been the meeting on  
 24 September 20, 2013 when she would have been banned from  
 25 executive session?

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1 A. I believe so. That was -- yeah, I believe so,  
 2 after I talked to Charlie Maxwell.  
 3 Q. And now it says at the top of Exhibit 11, the  
 4 second paragraph, that the purpose of the meeting was to  
 5 discuss the e-mail exchange and phone call Janice had with  
 6 attorney Charlie Maxwell. Is that what you are referring  
 7 to --  
 8 A. Correct.  
 9 Q. Did you talk to him or did Janice talk to him?  
 10 A. I talked to him first with Janice at his office.  
 11 And then there was an e-mail exchange after that.  
 12 Q. Okay. I see.  
 13 And is it fair to say that Exhibit 2 was the  
 14 first executive session that you had after Ms. McNally was  
 15 removed from executive session?  
 16 A. I don't know. I don't recall any in between.  
 17 Q. Okay. Fair enough.  
 18 And it appears that in this executive session  
 19 you discussed an incident with Elaine Hair in the Sunset  
 20 Grill; correct?  
 21 A. Correct.  
 22 Q. Why was the incident with Elaine Hair discussed  
 23 in executive session rather than in open meeting?  
 24 A. Because it dealt with an employee and also dealt  
 25 with a member.

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1 Q. Okay. Now, so you're suggesting anything  
 2 dealing with an employee is properly discussed in  
 3 executive session?  
 4 A. Well, the -- anything to do with an employee?  
 5 Q. Yes.  
 6 A. I would think so. I mean, it's -- you can't  
 7 have them abused. I mean --  
 8 Q. So anything dealing -- your position is anything  
 9 dealing with an employee is properly discussed in  
 10 executive session?  
 11 MS. WINKLER: Form.  
 12 THE WITNESS: I believe so.  
 13 BY MR. CHEIFETZ:  
 14 Q. And is it also your position anything dealing  
 15 with a member of the community is properly discussed in  
 16 executive session?  
 17 MS. WINKLER: Form.  
 18 THE WITNESS: If it's discipline.  
 19 BY MR. CHEIFETZ:  
 20 Q. So if you are -- so any time you're discussing  
 21 about the discipline of a community member, that's  
 22 properly discussed in executive session?  
 23 A. Yes.  
 24 Q. And is that based on your understanding of an  
 25 exception to the statute? I mean, to the open meeting

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1 law?

2 **A. Based on that statute.**

3 **Q. Which provision of Exhibit 1 do you believe**

4 **gives you the right to discuss this in executive session?**

5 **MS. WINKLER: Form.**

6 **THE WITNESS: I think number 3 would be it.**

7 **BY MR. CHEIFETZ:**

8 **Q. All right. So when there is a public dispute**

9 **with a member of the community, you believe that's**

10 **personal information?**

11 **MS. WINKLER: Form.**

12 **THE WITNESS: It's not personal information.**

13 **But it – restate.**

14 **BY MR. CHEIFETZ:**

15 **Q. Sure.**

16 **You indicated you thought number 3, exception**

17 **number 3 was that it was personal information about an**

18 **employee – or I'm sorry, a member. And I think I asked,**

19 **why is it that a public dispute with a member is --**

20 **qualifies as personal information about a member?**

21 **MS. WINKLER: Form.**

22 **THE WITNESS: When it's a public dispute between**

23 **members and if it's brought to the board, we don't discuss**

24 **that, our findings in an open meeting because it – that's**

25 **just – we don't do it.**

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1 **BY MR. CHEIFETZ:**

2 **Q. Is it based on 33-1804, or is that just the**

3 **policy of the board?**

4 **A. It's based on 1804 as the board understands it.**

5 **We protect the interest of both parties by not bringing it**

6 **to the whole committee – I mean, the whole membership.**

7 **Q. Isn't this the very type of issue Ms. McNally**

8 **complained about that she thought you were often too**

9 **insistent on discussing things in executive session that**

10 **should be discussed openly before the community?**

11 **MS. WINKLER: Form.**

12 **THE WITNESS: No.**

13 **BY MR. CHEIFETZ:**

14 **Q. Ms. McNally never expressed to you any concern**

15 **over the community's – or the board's desire to do things**

16 **in executive session that she thought should be done in**

17 **open meetings?**

18 **A. Oh, yes, she did.**

19 **Q. In fact, wasn't that something she constantly**

20 **complained about?**

21 **A. Yes.**

22 **Q. In fact, she complained about it to the point**

23 **where you found it to be disruptive; is that fair to say?**

24 **MS. WINKLER: Form.**

25 **THE WITNESS: We just moved on. I don't know if**

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1 you – what do you say probably.

2 **BY MR. CHEIFETZ:**

3 **Q. Fair enough.**

4 **So it's your position that when a community**

5 **member gets in a fight in the Sunset Grill, that that's**

6 **something that is properly discussed in executive session**

7 **rather than open meeting?**

8 **MS. WINKLER: Form.**

9 **THE WITNESS: That's not my position, and it's**

10 **not the board's position. We go by the statute of 1804,**

11 **and it tells us that we have to protect the interest – we**

12 **interpret it like – I'm not a lawyer, so if there's a**

13 **question, we'll consult an attorney to make sure we're**

14 **fair to both parties.**

15 **BY MR. CHEIFETZ:**

16 **Q. But you didn't consult an attorney on this**

17 **issue; correct?**

18 **A. No.**

19 **Q. Can you point to anything in Exhibit 2 that's**

20 **personal information concerning a homeowner?**

21 **A. Well, Elaine Hair, I mean, she's complaining**

22 **about the food order and the service in there. That's a**

23 **homeowner. And kind of browbeating the staff.**

24 **Q. And you think that's personal information about**

25 **Ms. Hair?**

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1 **A. No, but I think it's personal – it's harassment**

2 **of the staff.**

3 **Q. And is harassment of the staff something you**

4 **think should be discussed in executive session?**

5 **A. Yes. Absolutely.**

6 **MR. CHEIFETZ: Next I'd like to you take a look**

7 **at Exhibit 3.**

8 **(Exhibit No. 3 was marked for identification.)**

9 **MS. WINKLER: What exhibit is this?**

10 **MR. CHEIFETZ: 3.**

11 **MS. WINKLER: What is this exhibit then?**

12 **MR. CHEIFETZ: 11.**

13 **MS. WINKLER: Okay.**

14 **BY MR. CHEIFETZ:**

15 **Q. Are you familiar with Exhibit 3?**

16 **A. Yes. Yeah.**

17 **Q. And these are executive session minutes of a**

18 **meeting dated October 15, 2013?**

19 **A. Yes, sir.**

20 **Q. And this would have been two weeks after the**

21 **previous executive session; correct?**

22 **A. Correct.**

23 **Q. How often do you have regular open board**

24 **meetings?**

25 **A. Once a month.**

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1 Q. So this is more often than you would have a  
 2 regular open board meeting; correct?  
 3 A. You mean executive session?  
 4 Q. Yes.  
 5 A. Yes. This is -- usually if we have problems,  
 6 we'll call an executive session, yes.  
 7 Q. Isn't it fair to say that since you've been  
 8 president of the board, that you meet in executive session  
 9 more than you meet in open meetings?  
 10 MS. WINKLER: Form.  
 11 THE WITNESS: I don't know what to compare that  
 12 to.  
 13 BY MR. CHEIFETZ:  
 14 Q. Compare it to the open meetings. Is it fair to  
 15 say you meet in executive session more than you meet in  
 16 open meetings?  
 17 MS. WINKLER: Form.  
 18 THE WITNESS: I don't think so. We have some we  
 19 don't have executive session before the meetings. But --  
 20 I'm not trying to skirt your question, but I suppose at  
 21 the time, yes. I can't argue that because I don't know.  
 22 BY MR. CHEIFETZ:  
 23 Q. Don't you meet in executive session every  
 24 two weeks?  
 25 A. No.

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1 Q. Looking at Exhibit 3, again Ms. McNally was  
 2 excluded because she had been banned from executive  
 3 session; correct?  
 4 A. Correct.  
 5 Q. And appears that -- what was the purpose of this  
 6 executive session?  
 7 MS. WINKLER: Form.  
 8 BY MR. CHEIFETZ:  
 9 Q. Let me reask that. Let's start off with part A,  
 10 Management Authority.  
 11 Do you see that on the first page?  
 12 A. Uh-huh. I see it, yes.  
 13 Q. What was the purpose of the part A discussion?  
 14 A. To authorize senior management to have a -- it  
 15 used to be that -- we changed it because it used to be  
 16 where if there was a violation of the code of conduct,  
 17 they had to go before the board and other stuff. But we  
 18 gave senior management the authority to warn, as it says  
 19 here, right on the spot rather than going through the  
 20 board.  
 21 Q. So is it -- this was a discussion regarding a  
 22 change of policy by the association regarding how to deal  
 23 with discipline issues?  
 24 A. Correct.  
 25 Q. And the change was to give authority to the

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1 senior management so that they could reprimand somebody on  
 2 their own without having to give board approval?  
 3 A. Correct.  
 4 Q. And you specified which senior management would  
 5 have the authority to do that; correct?  
 6 A. Correct.  
 7 Q. And you specified the type of warnings that  
 8 would be provided for first offense, second offense, third  
 9 offense; correct?  
 10 A. Correct.  
 11 Q. And then you specified if a member is suspended  
 12 by management, that they will receive written notice and a  
 13 copy will be provided to the board of directors?  
 14 A. Correct.  
 15 Q. And then you talked about an example of an issue  
 16 at a fish fry; correct?  
 17 MS. WINKLER: Form.  
 18 THE WITNESS: Correct.  
 19 BY MR. CHEIFETZ:  
 20 Q. And then you talked about the code of conduct  
 21 policy should be published in the Sun Laker; correct?  
 22 A. Correct.  
 23 Q. And the Sun Laker, was that some sort of  
 24 publication you provide to the community?  
 25 A. Yes.

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1 Q. You're a pretty large community, aren't you?  
 2 A. 2,300. 2,300 lots. I'm trying to think of the  
 3 exact number but roughly 2,300. We figure two people per  
 4 lot. Generally.  
 5 Q. And how many employees do you employ to manage  
 6 your community?  
 7 A. At one time we had 93.  
 8 Q. Has that shrunk?  
 9 A. That's shrunk.  
 10 Q. Do you know how many you have now?  
 11 A. I think around 40-some full-time, and I'm not  
 12 sure the part-time.  
 13 Q. Why has it declined so much?  
 14 A. Well, people quit. We've rearranged stuff. Our  
 15 previous general manager hired a lot of people the board  
 16 felt they didn't need. Two jobs for one job. It was just  
 17 simply an administrative thing.  
 18 Q. Just trying to be more efficient?  
 19 A. Trying to be more efficient.  
 20 Q. Right. Okay. So on this part A, the change in  
 21 policy by the board on how to deal with, I guess,  
 22 disciplinary issues with members, why was this discussed  
 23 in executive session?  
 24 A. Because it dealt with -- well, it dealt with  
 25 members of the community and management.

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1 Q. So it's your position when you make -- discuss a  
 2 change in policy of the board, that it's properly  
 3 discussed in executive session?  
 4 MS. WINKLER: Form.  
 5 THE WITNESS: This was discussed in executive  
 6 session as a legal advice, I'm sure, from -- well, I'm not  
 7 sure. I won't say I am. But from that information. But  
 8 later on, it was disseminated in the open meeting.  
 9 BY MR. CHEIFETZ:  
 10 Q. Right. And isn't it common that you will  
 11 initially address issues in executive session, and then,  
 12 after you've debated the issue, you will then bring it up  
 13 in open meeting? Is that a fair description of how you  
 14 address these issues?  
 15 MS. WINKLER: Form.  
 16 THE WITNESS: No, because the only thing --  
 17 we'll discuss something, a legal matter which this was, we  
 18 had to get advice from our attorney which I'm sure we did.  
 19 I can't say the way the thing is written. And -- but if  
 20 there's a finding where we have a problem with a homeowner  
 21 or employee or whatever, after it's resolved in executive  
 22 session, it won't be taken to an open meeting just to  
 23 protect their rights and protect the board and the  
 24 association from being sued.  
 25 //

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1 BY MR. CHEIFETZ:  
 2 Q. And so are you suggesting that this part A was  
 3 discussed in executive session because, as you have it  
 4 under the heading, it involved legal advice and member  
 5 discipline information?  
 6 A. I'm suggesting that we probably -- since we had  
 7 probably checked with our attorney.  
 8 Q. You think you checked with your attorney --  
 9 A. Yes, I think we did.  
 10 Q. And your attorney told you that this was  
 11 properly addressed in executive session?  
 12 A. I can't answer that.  
 13 Q. Okay. Part B talks about the fact that you paid  
 14 for the representation of Ms. Laird and Mr. Warrell;  
 15 correct?  
 16 A. Correct.  
 17 Q. And, in fact, didn't you direct them to seek  
 18 counsel?  
 19 A. No.  
 20 Q. Do you know why they sought counsel?  
 21 A. They felt like they were in a hostile work  
 22 environment.  
 23 Q. Didn't you meet with Mr. Warrell and Ms. Laird's  
 24 counsel?  
 25 A. No, I never did.

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1 Q. You never met him?  
 2 A. Yes, I met him. Yes. I take that back. I met  
 3 him -- I walked in the office and he was there. But I  
 4 didn't meet with him concerning this.  
 5 Q. And why was he in the office?  
 6 A. I have no idea.  
 7 Q. Did he ever come and speak to the board?  
 8 A. No.  
 9 Q. Did he ever speak to the community?  
 10 A. No.  
 11 Q. Did you ever receive copies of the letters and  
 12 legal pleadings he prepared?  
 13 A. No.  
 14 Q. Did you ever see a letter that I sent to the  
 15 attorney for Mr. Warrell and Ms. Laird?  
 16 A. I don't believe so.  
 17 Q. Can you recall ever in the history of Sun Lakes  
 18 that the board has ever authorized payment of an  
 19 employee's attorney's fees other than this example?  
 20 MS. WINKLER: Form.  
 21 THE WITNESS: I don't recall. I wouldn't  
 22 have -- I wouldn't have any way of knowing that.  
 23 BY MR. CHEIFETZ:  
 24 Q. So this is the only situation that you're aware  
 25 of where the board approved payment of an employee's legal

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1 fees?  
 2 A. Correct.  
 3 Q. It says here at the bottom of page 3 of  
 4 Exhibit 3, last paragraph says, Clint Warrell further  
 5 advised the board of directors that an attorney from the  
 6 Frisbee Law Group would be present at the community board  
 7 meeting?  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. It's your understanding that that did not occur?  
 11 A. I wouldn't have known who he was other than if  
 12 he was at the meeting. If he was there, he was there. I  
 13 don't recall.  
 14 Q. Okay. So he could have been there?  
 15 A. He could have been there, yes. I mean, I  
 16 probably didn't meet him until afterwards even knowing who  
 17 they were. There's probably 60 or 70 people there at the  
 18 meeting.  
 19 Q. It talks about Janice Courmoyer. What is her  
 20 position on the board?  
 21 A. She's treasurer.  
 22 Q. And do you rely on Ms. Courmoyer for advice?  
 23 A. Yes, I do.  
 24 Q. Is she one of your main confidants on the board?  
 25 MS. WINKLER: Form.

1 THE WITNESS: She's a board member. I have  
 2 six others.  
 3 BY MR. CHEIFETZ:  
 4 Q. You have a strong relationship with  
 5 Ms. Courmoyer? I mean, you rely on her experience and  
 6 expertise?  
 7 A. I rely on all of them. I mean, I do have a good  
 8 relationship with all of them, and she is our treasurer.  
 9 Q. It says in these executive meeting minutes that  
 10 there was -- that she advised the board that Colette  
 11 McNally would need to do a retraction letter.  
 12 Do you see that part?  
 13 A. Yes.  
 14 Q. Do you remember that being discussed in  
 15 executive session?  
 16 A. I remember we had discussed it with the attorney  
 17 of what would be -- of what was involved.  
 18 Q. And when did you discuss this with the attorney?  
 19 A. When it first came about. What it would take  
 20 for her to get back into executive sessions. It would  
 21 take a court order. And then the board tried to reach  
 22 out, and it was denied to her. She wasn't interested, and  
 23 the attorney tried to reach out.  
 24 Q. When you say "tried to reach out," what do you  
 25 mean by that?

1 A. Bring her back in if she agreed to sign a  
 2 statement saying she wouldn't give out executive session  
 3 information again.  
 4 Q. Isn't it true that the attorney asked that she  
 5 acknowledge that what she had read was false?  
 6 MS. WINKLER: Form.  
 7 THE WITNESS: Yes.  
 8 BY MR. CHEIFETZ:  
 9 Q. And that was a condition to her being brought  
 10 back into executive session is that she had to acknowledge  
 11 that Ms. Mertens' e-mail was false; correct?  
 12 MS. WINKLER: Form.  
 13 THE WITNESS: I don't think he put it that way.  
 14 Just that she wouldn't extend -- or give out any more  
 15 executive information. Not her e-mail was incorrect.  
 16 BY MR. CHEIFETZ:  
 17 Q. So anything -- she had to agree that anything  
 18 discussed in executive session that she would not discuss  
 19 outside executive session?  
 20 A. Correct.  
 21 Q. What if what was being discussed in executive  
 22 session was not properly discussed in executive session?  
 23 She'd still have to agree to not discuss it?  
 24 MS. WINKLER: Form.  
 25 THE WITNESS: If we discussed it in executive

1 session, we felt that's where it should stay.  
 2 BY MR. CHEIFETZ:  
 3 Q. What if you violated the law and discussed in  
 4 executive session something that was required to be  
 5 discussed openly with the community? Are you saying she  
 6 had to violate the law and insist that it only be  
 7 discussed in the executive session?  
 8 MS. WINKLER: Form.  
 9 THE WITNESS: I don't know how -- I'm not an  
 10 attorney, so I just go by our interpretation or -- the  
 11 board, the other six members. We don't try to interpret  
 12 it.  
 13 BY MR. CHEIFETZ:  
 14 Q. Do you think you ever made mistakes with your  
 15 interpretation of what should be discussed in executive  
 16 session or not?  
 17 A. I don't know.  
 18 Q. As you sit here today, do you have knowledge of  
 19 you making a single mistake?  
 20 A. I'm sure I make a lot of them, but I wouldn't --  
 21 I don't know. I don't think I did. I think -- I'm not --  
 22 like I say, I'm not versed in this. This is not my life's  
 23 work. I could have made a mistake, but if I did so, it  
 24 was -- I don't know if it's a mistake on my part or the  
 25 board's part. I mean, there are six other people that

1 this is all ran past; this is not just me.  
 2 Q. Right. But you acknowledge you could have made  
 3 a mistake that perhaps should have been discussed openly?  
 4 A. I don't think so.  
 5 Q. So you don't think you made a single mistake  
 6 throughout your term about what should be in executive  
 7 session or what should not be in executive session?  
 8 MS. WINKLER: Form.  
 9 THE WITNESS: I could have, but I'm not aware of  
 10 it. It's never been pointed out to me.  
 11 BY MR. CHEIFETZ:  
 12 Q. If you did make a mistake, do you think you  
 13 should have been punished?  
 14 MS. WINKLER: Form.  
 15 THE WITNESS: I don't know. Depends on what the  
 16 mistake is.  
 17 BY MR. CHEIFETZ:  
 18 Q. You could have made -- you could have been well  
 19 intentioned and made a mistake; right?  
 20 A. Correct.  
 21 Q. Do you think it would be fair to punish you for  
 22 making a single mistake?  
 23 MS. WINKLER: Form.  
 24 THE WITNESS: If I would have done that, I  
 25 probably would have just resigned.

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1 BY MR. CHEIFETZ:  
 2 Q. If you made a mistake and discussed in executive  
 3 session that which should have been discussed openly, you  
 4 think you should resign from the board?  
 5 A. I think I would. I have a community -- I don't  
 6 worry about Rick; I worry about the community.  
 7 Q. And so if you --  
 8 A. Depending on what the -- what do I want to say.  
 9 The severity of the mistake.  
 10 Q. Which mistake is more severe, do you believe,  
 11 withholding information from the community or sharing  
 12 information with the community?  
 13 MS. WINKLER: Form.  
 14 THE WITNESS: Depends on the information.  
 15 BY MR. CHEIFETZ:  
 16 Q. If you could look to part C of Exhibit 3.  
 17 A. Oh, Exhibit 3.  
 18 Q. I think that's it.  
 19 A. What page?  
 20 Q. Page 4.  
 21 A. Okay.  
 22 Q. See part C there talks about manager supervisor  
 23 board followup. And this appears to be where you  
 24 discuss -- you brought the managers into the executive  
 25 session and discussed the change in policy, correct? Is

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1 that what happened?  
 2 MS. WINKLER: Form.  
 3 THE WITNESS: Correct.  
 4 BY MR. CHEIFETZ:  
 5 Q. The change in policy we discussed earlier,  
 6 part A, about this new disciplinary process was then  
 7 discussed in part C with the actual managers that would  
 8 have this authority, correct?  
 9 A. Correct.  
 10 Q. And at the end of this page 5, the board of  
 11 directors at the end, last couple sentences talks about  
 12 how the board of directors supports Clint Warrell and  
 13 Roberta Laird 110 percent.  
 14 Do you see that?  
 15 A. Yes.  
 16 Q. Did you agree with that at that time?  
 17 A. Yes, I did.  
 18 Q. And also says that the managers support the  
 19 board of directors 100 percent.  
 20 Do you see that?  
 21 A. Correct.  
 22 Q. So everybody supported each other?  
 23 A. Correct.  
 24 (Exhibit No. 4 was marked for identification.)  
 25 //

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1 BY MR. CHEIFETZ:  
 2 Q. I'll show you what's marked as Exhibit 4. Are  
 3 you familiar with Exhibit 4?  
 4 A. Yes.  
 5 Q. Appears that Exhibit 4 is also executive session  
 6 minutes for the meeting of October 15, 2013; correct?  
 7 A. Correct.  
 8 Q. And again, Ms. McNally is marked as absent;  
 9 correct?  
 10 A. Correct.  
 11 Q. But these minutes appear to differ from the  
 12 minutes we just discussed, Exhibit 3; correct?  
 13 A. They appear to be.  
 14 Q. Do you know why there are two versions of the  
 15 minutes of the same meeting?  
 16 A. I have no idea.  
 17 Q. And it says at the bottom of page -- well, it's  
 18 numbers E-2, but it's the third page. Do you see where it  
 19 says "revised July 1, 2009," so that must be -- never mind  
 20 that question.  
 21 In Exhibit 4, it appears they go into greater  
 22 detail about this change in board policy; correct?  
 23 A. Code of conduct?  
 24 Q. Yes. There was a change in policy regarding the  
 25 code of conduct, correct?

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1 A. Correct.  
 2 Q. And Exhibit 4 looks like they go into greater  
 3 detail in discussing that.  
 4 Do you see that?  
 5 MS. WINKLER: Form.  
 6 THE WITNESS: I believe this is adding to the  
 7 code of conduct, they just added that in. Printed out the  
 8 whole thing.  
 9 BY MR. CHEIFETZ:  
 10 Q. Do you think Exhibit 4 could be the attachments  
 11 that would have been -- the documents that would have been  
 12 discussed at the executive session that was addressed in  
 13 Exhibit 3?  
 14 A. I'm wanting to say that this is just -- this is  
 15 2009. I think it was just a printout of how we made the  
 16 changes to the code of conduct. Do you know what I'm  
 17 saying?  
 18 Q. Yeah.  
 19 Is it possible that Exhibit 4 is just copies of  
 20 the documents that were discussed at that meeting?  
 21 A. No. It's just -- it would be -- Exhibit 4 would  
 22 probably be copies of the original of 2009 when they  
 23 changed it. And when we changed it, they sometimes sent  
 24 us both so we can say what the changes are. That's what  
 25 I'm thinking. Because we --

1 Q. Do you see -- were the documents attached to  
2 exhibit -- for instance, there's a letter attached from  
3 the attorney for Ms. Laird and Mr. Warrell attached to  
4 Exhibit 4. Was that letter discussed at that executive  
5 session meeting?  
6 A. I don't believe so. It was -- I don't know why  
7 it's attached. It's none of the board's business of --  
8 that's between Mr. Warrell and Ms. Laird and their  
9 attorney. Why it's attached, maybe the girl at the office  
10 did, I don't know. We don't -- certainly didn't approve  
11 it.  
12 Q. Right. Do you know what this document is, this  
13 letter from --  
14 A. No, it's the first time I've seen it. I don't  
15 know why it's attached that way.  
16 (Exhibit No. 5 was marked for identification.)  
17 BY MR. CHEIFETZ:  
18 Q. Let me show you what's marked as Exhibit 5. Are  
19 you familiar with Exhibit 5?  
20 A. Yeah. I'm familiar with it. I read over it.  
21 Q. Exhibit 5 are executive session meetings for the  
22 meeting November 6, 2013, correct?  
23 A. 5?  
24 Q. Is that what this is?  
25 Yeah. Exhibit 5 is the minutes for the meeting

1 dated November 6th.  
2 A. Yes, I'm sorry. Okay. I was looking for the  
3 numbers.  
4 Q. In Exhibit 5 looks like the first thing you  
5 discussed was the pro shop/golf lounge remodel, correct?  
6 A. Correct.  
7 Q. And it looks like before that there was a vote  
8 taken as to whether to discuss this in executive session.  
9 Executive agenda discussion for the pro shop/golf shop  
10 remodel; correct?  
11 A. Correct.  
12 Q. And then this was -- why was the golf shop pro  
13 shop -- pro shop/golf lounge remodel discussed in  
14 executive session?  
15 MS. WINKLER: Form.  
16 THE WITNESS: Because it concerned finances.  
17 BY MR. CHEIFETZ:  
18 Q. So any issue concerning finances is properly  
19 discussed in executive session?  
20 A. As far as I know, yes.  
21 Q. It also indicates that a vote was taken on the  
22 middle of page 2. It says, This past May, a  
23 motion -- wait a minute. Basically it refers back to a  
24 previous executive session dated May 1, 2013.  
25 Do you see that? In the middle of page 2 talks

1 about this past May, a motion?  
2 A. Oh, yeah, executive session.  
3 Q. And it says this -- I think they are referring  
4 to a motion that was made in the May 1, 2013 executive  
5 session; correct?  
6 A. Correct.  
7 Q. And that was basically a motion to pay half the  
8 cost to remove the ramada to be in compliance.  
9 Do you see that?  
10 A. Right.  
11 Q. And then it appears that another motion was made  
12 in this executive session, November 6, 2013, and it says  
13 Janice Coumoyer made a motion that a letter be sent to  
14 the Campions stating the board will reimburse him \$650 for  
15 removing of the ramada back within the setbacks.  
16 Do you see that?  
17 A. Correct.  
18 Q. And that motion was voted on and approved;  
19 correct?  
20 A. Correct.  
21 Q. When these issues are discussed in executive  
22 session, there's no members of the community present;  
23 correct?  
24 A. Correct.  
25 Q. And so there's no members that get to speak

1 prior to voting on whether to approve it or not; correct?  
2 A. Correct.  
3 Q. Do you think it's important that members are  
4 allowed to speak prior to you voting --  
5 A. Sure. But not in executive session because it  
6 concerns members.  
7 Q. So if you -- although you think it's important  
8 that the members be able to speak up regarding an issue,  
9 if you move it to executive session, you understand they  
10 can't speak up?  
11 A. We don't move anything to executive session.  
12 MS. WINKLER: Form.  
13 THE WITNESS: It's either there or it isn't. I  
14 mean, we don't go from community meeting to executive  
15 session because we didn't want to discuss it in open  
16 meeting. But this concerns the Campions and other  
17 homeowners, and that's why that was discussed there.  
18 BY MR. CHEIFETZ:  
19 Q. And the next issue says Other Homeowner Issues.  
20 Do you see that?  
21 A. Uh-huh. Yes.  
22 Q. It says -- and in this case you discussed they  
23 wanted to build an addition to a garage.  
24 Do you see that?  
25 A. Yes.

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1 Q. And this was addressed in this executive  
 2 session; correct?  
 3 A. Correct.  
 4 Q. And they had a vote on whether to approve the  
 5 third car garage with an 8-foot garage door.  
 6 Do you see that?  
 7 A. Yeah.  
 8 Q. And they had a vote, and it was unanimously  
 9 approved; correct?  
 10 A. Correct.  
 11 Q. And then there was a discussion, appears to be  
 12 generally about homeowners ignoring guidelines; correct?  
 13 A. The architectural guidelines?  
 14 Q. Yeah. Top of page 3 it seems to --  
 15 A. Oh, I see.  
 16 Q. It says, Currently we are experiencing  
 17 homeowners who are completely ignoring these guidelines  
 18 they are sent?  
 19 A. Correct.  
 20 Q. And then again would these deliberations about  
 21 homeowners not complying with the guidelines be discussed  
 22 in executive session because it dealt with personal  
 23 information regarding homeowners?  
 24 MS. WINKLER: Form.  
 25 THE WITNESS: Correct.

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1 (Exhibit No. 6 was marked for identification.)  
 2 BY MR. CHEIFETZ:  
 3 Q. I'll show you what's marked as Exhibit 6. Again  
 4 these are executive session minutes for the meeting dated  
 5 February 18, 2014; is that correct?  
 6 MS. WINKLER: Form.  
 7 THE WITNESS: February 18, 2014. Is that what  
 8 you said?  
 9 BY MR. CHEIFETZ:  
 10 Q. Yes.  
 11 A. Yes, these are the minutes for that.  
 12 Q. Okay. And the middle of page 2 it talks about  
 13 three change orders. Do you see that?  
 14 A. Middle of page 2?  
 15 Q. Yeah.  
 16 A. Yes, I see that.  
 17 Q. Did you discuss at that meeting the -- it says  
 18 you will vote on the change orders at the next open  
 19 meeting.  
 20 Do you see that? Right there it says part B  
 21 Contractor.  
 22 A. Oh, okay. I'm sorry.  
 23 Q. No problem.  
 24 And it says, Discussion regarding three change  
 25 orders and it was agreed that the change orders would be

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1 voted on in the next meeting.  
 2 Do you see that?  
 3 A. Yes, I do.  
 4 Q. So is it fair to say you had a discussion  
 5 regarding the three change orders, and then at the end of  
 6 the discussion, you agreed you would vote on it at the  
 7 next meeting; is that correct?  
 8 MS. WINKLER: Form.  
 9 THE WITNESS: What it says here, yes.  
 10 BY MR. CHEIFETZ:  
 11 Q. And during that discussion, you would have  
 12 discussed the pros and cons of whether to agree to the  
 13 change orders or not?  
 14 MS. WINKLER: Form.  
 15 THE WITNESS: Well, it was financial, so we  
 16 would have probably discussed that, what the change orders  
 17 were going to be.  
 18 BY MR. CHEIFETZ:  
 19 Q. And whether you approved of them or not?  
 20 A. Well, we were taking it to the general -- or the  
 21 membership because this was financial information that the  
 22 board deemed should go before the membership because it  
 23 included change orders which was the pro shop.  
 24 Q. Before you took it to the open meeting, you did  
 25 have a discussion about the change orders in executive

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1 session?  
 2 A. The financial part of it, yes.  
 3 Q. And the financial part of it was how much are  
 4 these change orders going to cost? Or what type of  
 5 financial part did you discuss in executive session?  
 6 MS. WINKLER: Form.  
 7 THE WITNESS: The cost of them.  
 8 MS. WINKLER: Can we take a short break, please?  
 9 MR. CHEIFETZ: Sure.  
 10 (WHEREUPON, a brief recess was taken from  
 11 10:36 a.m. to 10:39 a.m.)  
 12 (Exhibit No. 8 was marked for identification.)  
 13 BY MR. CHEIFETZ:  
 14 Q. Let me know after you've had a chance to review  
 15 Exhibit 8.  
 16 A. Okay.  
 17 Q. Exhibit 8 is minutes of executive session dated  
 18 December 4, 2013; correct?  
 19 A. Correct.  
 20 Q. And first it talks about Ron Dombrowski was  
 21 given a 90-day suspension for his behavior while at the  
 22 golf lounge; correct?  
 23 A. Correct.  
 24 Q. And this was done in executive session because  
 25 you viewed it as personal information regarding

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1 Mr. Dombrowski?

2 MS. WINKLER: Form.

3 BY MR. CHEIFETZ:

4 Q. Why was this issue regarding Mr. Dombrowski

5 discussed in executive session?

6 MS. WINKLER: Form.

7 THE WITNESS: Because it concerns personal

8 information.

9 BY MR. CHEIFETZ:

10 Q. In subpart B it says Architectural Committee

11 issues.

12 Do you see that?

13 A. Yes, I do.

14 Q. And then it goes through seven architectural

15 committee issues.

16 Do you see that?

17 A. Yes.

18 Q. And the first one was regarding James Campion

19 received the board's letter regarding the 850

20 reimbursement. That's the first issue discussed; right?

21 A. Right.

22 Q. And then you talk about at homeowner Powell at

23 9101 Country Club had a leaky roof which required

24 emergency repairs over the Arizona room, and the homeowner

25 asked for variance and the variance was granted; correct?

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1 MS. WINKLER: Form.

2 THE WITNESS: Correct.

3 BY MR. CHEIFETZ:

4 Q. Why was this done -- why was this variance

5 addressed in executive session?

6 A. Homeowner. Concerned a homeowner.

7 Q. And the next issue says, Meeting scheduled with

8 Charles Maxwell to discuss architectural rules and the

9 concern over the ability of the architectural committee to

10 inspect a residence for any violation of the architectural

11 rules before selling or purchasing a home.

12 Why was that discussed in executive session?

13 MS. WINKLER: Form, foundation.

14 THE WITNESS: Well, it was executive session

15 because of violations of homeowners.

16 BY MR. CHEIFETZ:

17 Q. The next one is about Darryl --

18 A. I can't pronounce it either.

19 Q. And this one is regarding trash can rule. And

20 he had seen 25 trash cans visible that were in violation

21 of the architectural committee; correct?

22 A. Correct.

23 Q. Why was that discussed in executive session?

24 MS. WINKLER: Form.

25 THE WITNESS: It involved homeowners.

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1 BY MR. CHEIFETZ:

2 Q. Okay. Looks like the rest is dealing with

3 homeowners that had medical conditions and were seeking

4 golf dues reimbursement?

5 A. Correct.

6 Q. And I assume that was in executive session

7 because that was regarding personal information about

8 their medical condition?

9 A. Correct.

10 (Exhibit No. 9 was marked for identification.)

11 BY MR. CHEIFETZ:

12 Q. Next is Exhibit 9. Exhibit 9 is regarding

13 executive session meeting dated January 14, 2014; correct?

14 MS. WINKLER: Form.

15 THE WITNESS: Correct.

16 I know. She can't hear my head rattle.

17 BY MR. CHEIFETZ:

18 Q. And this appears that the purposes of this

19 executive session was to discuss my client, Colette

20 McNally; correct?

21 MS. WINKLER: Form.

22 THE WITNESS: Yes. That's what's written here,

23 yes.

24 BY MR. CHEIFETZ:

25 Q. And one was to discuss a violation of

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1 architectural rules for sun shades; right?

2 A. Correct.

3 Q. And then the other one was to address her Meet

4 the Candidate speech given to the community; correct?

5 MS. WINKLER: Form.

6 THE WITNESS: Correct.

7 BY MR. CHEIFETZ:

8 Q. Why was Ms. McNally's Meet the Candidate speech

9 discussed in executive session?

10 A. I don't recall.

11 MS. WINKLER: Form.

12 THE WITNESS: I don't recall that. I don't

13 remember that.

14 (Exhibit No. 10 was marked for identification.)

15 BY MR. CHEIFETZ:

16 Q. Is this the same copy of the other one?

17 A. Yeah, I think so. As Exhibit 5.

18 Q. You're suggesting Exhibit 5 and --

19 A. Exhibit 6. I think so. Other than the dark --

20 Q. Okay. Comparing Exhibit 6 to Exhibit 10, they

21 both appear to be minutes for the same meeting,

22 February 18, 2014; correct?

23 A. That's the date, yes.

24 Q. But isn't Exhibit 6 less detailed than

25 Exhibit 10? If you look on page 2 where it talks about

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1 contractor, it appears there was more details on the  
 2 change orders.  
 3 A. It appears that way. I don't know how these  
 4 come about. I didn't prepare either of these.  
 5 Q. I'm not suggesting you did. Do you have  
 6 any idea why there are two sets of minutes?  
 7 A. I wouldn't have any idea.  
 8 Q. And looking at Exhibit 10, it appears to  
 9 discuss – Exhibit 6 refers to three changes orders but  
 10 not in detail, whereas Exhibit 10 refers to the three  
 11 change orders, same ones regarding removal of columns from  
 12 the pro shop, second one is regarding upgrades to the pro  
 13 shop patio, and the third one is regarding upgrade to the  
 14 bar, right?  
 15 A. Right.  
 16 Q. And those details were not provided in  
 17 Exhibit 6?  
 18 A. Doesn't appear to be.  
 19 Q. Appear not to have been in there; correct?  
 20 A. Yes.  
 21 Q. And then in Exhibit 10, you actually discuss the  
 22 budgeted amount for these change orders; correct?  
 23 MS. WINKLER: Form.  
 24 THE WITNESS: Whatever is here is what we  
 25 discussed. I don't recall all of it.

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1 BY MR. CHEIFETZ:  
 2 Q. Exhibit 10 you think is a record of what would  
 3 have been discussed at the executive session meeting?  
 4 MS. WINKLER: Form.  
 5 THE WITNESS: I don't remember. I really don't.  
 6 BY MR. CHEIFETZ:  
 7 Q. Okay. Fair enough.  
 8 Do you have any personal knowledge regarding a  
 9 dispute between the association and Mark Wade?  
 10 A. No.  
 11 Q. So whatever you've heard was just information  
 12 provided to you by others?  
 13 A. Correct.  
 14 Q. Are you familiar with any records concerning  
 15 that matter?  
 16 A. I understand there is some, but I've not seen  
 17 them.  
 18 Q. Do you have any knowledge about Ms. McNally  
 19 being removed from the board in 2010 for allegedly  
 20 violating the executive session secrecy requirements?  
 21 A. Just what I was told.  
 22 Q. And what were you told regarding that matter?  
 23 A. What I wrote down there on the – what I  
 24 testified to.  
 25 Q. So whatever is in your affidavit?

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1 A. Yes.  
 2 Q. You assert in your affidavit she was removed for  
 3 cause because she disclosed confidential financial  
 4 information of the association to nonboard members; is  
 5 that your understanding?  
 6 A. That's correct.  
 7 Q. And wasn't it because she discussed the budget  
 8 with a nonboard member?  
 9 A. I don't know. This was just a history of why  
 10 she was removed.  
 11 Q. So you don't have any more details on it?  
 12 A. No.  
 13 Q. Did you view the issue with Ms. Martens' e-mail  
 14 as a serious issue?  
 15 A. I viewed it as a disgruntled employee.  
 16 Q. So you didn't take it that seriously?  
 17 MS. WINKLER: Form.  
 18 THE WITNESS: No.  
 19 BY MR. CHEIFETZ:  
 20 Q. You thought she was making it up, or you don't  
 21 think it was true?  
 22 A. No knowledge.  
 23 Q. Do you think that a management member that takes  
 24 documents from a board member's file, do you think that's  
 25 improper?

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1 MS. WINKLER: Form.  
 2 THE WITNESS: I don't know. I wouldn't know how  
 3 to answer that.  
 4 BY MR. CHEIFETZ:  
 5 Q. So – if somebody took something from your file  
 6 and shared it with the community, would it upset you?  
 7 MS. WINKLER: Form.  
 8 THE WITNESS: Well, they are in board books.  
 9 That's private information.  
 10 BY MR. CHEIFETZ:  
 11 Q. And when this issue came up with Ms. Martens,  
 12 you did not discipline Ms. Laird and you did not  
 13 discipline Mr. Warrell; correct?  
 14 A. Correct.  
 15 Q. But you deemed it appropriate to discipline your  
 16 fellow board member, Ms. McNally; correct?  
 17 MS. WINKLER: Form.  
 18 THE WITNESS: I didn't. The board did.  
 19 BY MR. CHEIFETZ:  
 20 Q. Did you believe that it was appropriate to  
 21 discipline her?  
 22 A. Yes.  
 23 Q. And prior to deciding not to discipline the  
 24 employees, you sought to investigate the employee issue to  
 25 a certain extent; correct? I mean, with Ms. Laird and

1 Mr. Warrell. You at least met with them to discuss?  
 2 A. Correct.  
 3 Q. Did you offer Ms. McNally any due process -- do  
 4 you know what the term "due process" means?  
 5 A. Yes.  
 6 Q. Did you offer Ms. McNally any due process before  
 7 voting to remove her from the executive session?  
 8 MS. WINKLER: Form.  
 9 THE WITNESS: Such as?  
 10 BY MR. CHEIFETZ:  
 11 Q. Basically a hearing to determine --  
 12 A. Yes, we did. We stated to her that if she read  
 13 it, that could be the circumstances.  
 14 Q. I'm sorry. So you --  
 15 A. The letter was read in the open.  
 16 Q. If the letter was read, you said, beforehand?  
 17 A. Not me. Board.  
 18 Q. Now you're saying the board advised her that if  
 19 she read this to the community, that she would get in  
 20 trouble?  
 21 A. The board advised her of our legal advice. She  
 22 was advised of that before.  
 23 Q. What was she advised of?  
 24 A. She was advised by us she could be removed by --  
 25 from the board for reading -- we made a motion not to read

1 Q. So once --  
 2 A. And then it becomes executive information.  
 3 MS. WINKLER: Form. Please allow my client to  
 4 complete his answer. You're interrupting him.  
 5 MR. CHEIFETZ: He's interrupting me as well, so  
 6 I think it would be fair --  
 7 MS. WINKLER: I don't think he's doing that on  
 8 purpose.  
 9 MR. CHEIFETZ: I'm not doing it on purpose  
 10 either.  
 11 MS. WINKLER: Both of you stop interrupting each  
 12 other.  
 13 MR. CHEIFETZ: Fair enough.  
 14 We've both been admonished.  
 15 THE WITNESS: Not the first time.  
 16 MR. CHEIFETZ: What was my last question?  
 17 (The record was read.)  
 18 MS. WINKLER: Form.  
 19 BY MR. CHEIFETZ:  
 20 Q. And you're saying once it goes into executive  
 21 session, she loses the right to discuss that private  
 22 e-mail with others. Is that your testimony?  
 23 MS. WINKLER: Form.  
 24 THE WITNESS: Not with others. That's her  
 25 business.

1 the letter to the public.  
 2 Q. So the motion was do not read the letter to the  
 3 public?  
 4 A. Yes. And it was voted on by the entire board  
 5 with the agreement that we had no --  
 6 Q. Was the motion to not read it, or was the motion  
 7 to not address the issue with the community?  
 8 MS. WINKLER: Form.  
 9 THE WITNESS: Same thing.  
 10 BY MR. CHEIFETZ:  
 11 Q. So when Ms. McNally gets a private e-mail sent  
 12 to her, not sent to the board, you're saying she can't  
 13 share that with others?  
 14 MS. WINKLER: Form.  
 15 THE WITNESS: She sent it to the board.  
 16 BY MR. CHEIFETZ:  
 17 Q. So once she sends it to the board, she loses the  
 18 right to share with others; is that your testimony?  
 19 MS. WINKLER: Form.  
 20 THE WITNESS: No.  
 21 BY MR. CHEIFETZ:  
 22 Q. Why is it that she can't share a private e-mail  
 23 sent to her with others?  
 24 A. She brought it to the board in executive  
 25 session.

1 BY MR. CHEIFETZ:  
 2 Q. So she could have taken that e-mail and shared  
 3 with it anybody she chose?  
 4 A. She did.  
 5 Q. And that was okay?  
 6 A. We didn't vote not to bring it in a meeting. We  
 7 voted -- we had a motion not to bring it up in an open  
 8 meeting. Whatever she did with it beyond that...  
 9 Q. So if she had read it -- if she had had a  
 10 private meeting and read it, that would have been okay?  
 11 A. I don't know. I mean, she read it in executive  
 12 session. I don't know about private meetings.  
 13 Q. So you're saying she could have --  
 14 A. Go ahead.  
 15 Q. I'm trying to understand why it is it was  
 16 improper. You acknowledge that when she gets a private  
 17 e-mail, she can share it with who she chooses; correct?  
 18 A. Sure.  
 19 Q. But basically you're saying the nature of that  
 20 information changes once she raises it in executive  
 21 session?  
 22 A. That's how the board felt, yes.  
 23 Q. And instead of disciplining the employees that  
 24 Ms. Martens accused of conducting the scheme to take  
 25 documents and distribute them to the community, you chose

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1 to discipline Ms. McNally?

2 MS. WINKLER: Form.

3 THE WITNESS: No.

4 BY MR. CHEIFETZ:

5 Q. What due process did you offer Ms. McNally?

6 MS. WINKLER: Form.

7 THE WITNESS: We offered just not to read it.

8 We voted as a motion, as a group, as a board, that we were

9 going to not address the situation. We went as far as we

10 could. We asked her not to read it and we voted not to

11 read it, but she disregarded that and read it.

12 BY MR. CHEIFETZ:

13 Q. After she did that, did you think it was

14 appropriate to offer her any due process before you

15 removed her from executive session?

16 MS. WINKLER: Form.

17 THE WITNESS: I consulted with the attorney.

18 BY MR. CHEIFETZ:

19 Q. Did you do anything with Ms. McNally to offer

20 her any due process after she -- before she was removed

21 from executive session?

22 MS. WINKLER: Form.

23 THE WITNESS: No.

24 BY MR. CHEIFETZ:

25 Q. Did you ever consider, rather than just

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1 unilaterally removing her from executive session, to --

2 filing a lawsuit to obtain a court order to remove her

3 from executive session?

4 MS. WINKLER: Form.

5 THE WITNESS: We went by our attorney's advice.

6 BY MR. CHEIFETZ:

7 Q. So you did not consider suing Ms. McNally --

8 A. If we did, it would have been up to our

9 attorney.

10 MS. WINKLER: Form.

11 BY MR. CHEIFETZ:

12 Q. But did you ever consider it or not?

13 A. I didn't personally.

14 Q. When you voted to exclude Ms. McNally from

15 executive session, how long a period was she to be

16 excluded at the time you voted?

17 A. Under attorney's advice, until she obtained a

18 court order.

19 Q. And so is it your position that this exclusion

20 from executive session continues forever?

21 MS. WINKLER: Form.

22 THE WITNESS: Court order would end it.

23 BY MR. CHEIFETZ:

24 Q. So it will -- it could last for years and years

25 unless she gets a court order stopping it?

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1 MS. WINKLER: Form.

2 THE WITNESS: I assume. I'm not an attorney.

3 BY MR. CHEIFETZ:

4 Q. But that's the position of the board that

5 you --

6 A. That's the position of our attorney to the

7 board, and the board accepted his position.

8 MS. WINKLER: Form.

9 BY MR. CHEIFETZ:

10 Q. What legal authority did you rely upon to remove

11 her from executive session?

12 MS. WINKLER: Form.

13 THE WITNESS: The statute.

14 BY MR. CHEIFETZ:

15 Q. All right. So you think the statute gave you

16 the authority to exclude her from executive session?

17 A. Our attorney did.

18 Q. Is there any -- are you familiar with any laws

19 that say you can remove her from executive session for

20 doing what she did?

21 A. Other than the statute. And our attorney's

22 advice.

23 Q. Are you familiar with any laws that say you can

24 remove a board member from executive session for

25 violations of the open meeting laws? Are you familiar

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1 with anything that allows that?

2 A. I'm not.

3 Q. Is there anything in your bylaws that allows it?

4 MS. WINKLER: Form.

5 THE WITNESS: I don't think so.

6 BY MR. CHEIFETZ:

7 Q. Is there anything in your CC&Rs that allows you

8 to remove a board member from executive session?

9 MS. WINKLER: Form.

10 THE WITNESS: Not from executive session but

11 from the board.

12 BY MR. CHEIFETZ:

13 Q. Only by vote of the community, correct?

14 A. Correct.

15 Q. But there's nothing that allows the board to

16 remove a fellow board member from executive session that's

17 provided in the CC&Rs; correct?

18 MS. WINKLER: Form.

19 THE WITNESS: It's Arizona statute which

20 circumvents the CC&Rs.

21 BY MR. CHEIFETZ:

22 Q. And what statute allows you --

23 A. You'll have to ask the attorney.

24 Q. So you're not aware of any statute that allows

25 you to remove --

1 A. No, just -- I'm sorry. I'm interrupting you.

2 MS. WINKLER: Let him finish his question.

3 BY MR. CHEIFETZ:

4 Q. You're not aware of any statute that allows

5 board members to -- and I'm saying you, not your attorney,

6 but you personally are not aware of any statute that

7 allows board members to remove a fellow board member from

8 executive session, are you?

9 A. No.

10 Q. And you're not aware of anything in the

11 governing documents for the community that allows board

12 members to remove a fellow board member from executive

13 session as well; correct?

14 A. No.

15 [REDACTED] In addition to removing Ms. McNally from

16 executive session, you've also sought to limit the

17 information provided to her; correct?

18 [REDACTED]

19 [REDACTED]

20 BY MR. CHEIFETZ:

21 Q. Do you provide her with agendas for the

22 executive session meetings?

23 A. No.

24 Q. Why is that?

25 A. She's not entitled to them.

1 Q. Does the community get agendas for executive

2 session meetings?

3 A. I don't believe so.

4 Q. So if you prepare an agenda for the community,

5 you don't know who it's shared with?

6 MS. WINKLER: Form.

7 THE WITNESS: Just the board members.

8 BY MR. CHEIFETZ:

9 Q. So as far as you understand, the community is

10 not entitled to see the agenda for executive session

11 meetings?

12 A. I know they post it. That's staff that takes

13 care of that.

14 Q. But isn't it typically the board members get the

15 agendas for all meetings; right?

16 A. Correct.

17 Q. But with Ms. McNally, you've -- the board made a

18 determination and instructed the staff to not provide her

19 with an agenda for executive sessions; correct?

20 MS. WINKLER: Form.

21 THE WITNESS: I believe so.

22 BY MR. CHEIFETZ:

23 Q. Do managers of the community typically do a

24 report for the board?

25 A. Yes.

1 Q. And they do that weekly?

2 A. That's administrative.

3 Q. You don't know how often they do the manager

4 reports?

5 A. No, I don't.

6 Q. It's usually more than --

7 A. That's our general manager handles that.

8 Q. Isn't it somewhat frequent that he would give

9 you a report?

10 A. I get a report every Friday from our general

11 manager.

12 Q. Do other board members typically get that report

13 as well?

14 A. They all get it. I assume she gets it too.

15 Q. Isn't it true that Ms. McNally, the management

16 was instructed not to give her that management report?

17 MS. WINKLER: Form.

18 THE WITNESS: Not to my knowledge.

19 BY MR. CHEIFETZ:

20 Q. So you think she should be getting that report?

21 A. Yes.

22 Q. Would you be surprised to learn that she's not

23 getting the manager report?

24 A. Yes, I would.

25 Q. What about e-mails concerning the -- between

1 board members. Isn't it true that Ms. McNally is also

2 excluded from e-mails that are distributed amongst board

3 members?

4 MS. WINKLER: Form.

5 THE WITNESS: That's up to the individual board

6 members.

7 BY MR. CHEIFETZ:

8 Q. So it's fair to say that -- is it your

9 understanding that Ms. McNally is often excluded from

10 e-mails between board members?

11 MS. WINKLER: Form.

12 THE WITNESS: I don't send out a lot of e-mails.

13 BY MR. CHEIFETZ:

14 Q. When you do send out e-mails to board members,

15 do you exclude Ms. McNally?

16 MS. WINKLER: Form.

17 THE WITNESS: Not necessarily?

18 BY MR. CHEIFETZ:

19 Q. Do you ever exclude her?

20 A. I don't recall when I've sent out e-mails I've

21 excluded her, but...

22 Q. Isn't it true that the board since Ms. McNally's

23 been removed from executive session has been -- that she's

24 been receiving much less information than she did prior to

25 being removed from executive session?

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1 MS. WINKLER: Form.  
 2 THE WITNESS: I wouldn't have any knowledge of  
 3 that.  
 4 BY MR. CHEIFETZ:  
 5 Q. You don't know if that's true or not?  
 6 A. No, I don't.  
 7 Q. But Ms. McNally would know, correct?  
 8 A. I assume.  
 9 Q. Does the board have the right to cause other  
 10 board members to conceal wrongful acts of the association?  
 11 MS. WINKLER: Form.  
 12 THE WITNESS: I'm not sure I understand.  
 13 BY MR. CHEIFETZ:  
 14 Q. If the association violates the law, do they  
 15 have the right to tell other board members that they must  
 16 conceal the legal violation?  
 17 A. I wouldn't -- I would assume not. I mean...  
 18 Q. If the board is doing something illegal, don't  
 19 you think the community has a right to know?  
 20 MS. WINKLER: Form.  
 21 THE WITNESS: I don't know -- depends. I'm not  
 22 an attorney.  
 23 BY MR. CHEIFETZ:  
 24 Q. Who saw Ms. Martens' e-mail as far as you know?  
 25 A. The entire board. And I don't know what members

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1 of the community did.  
 2 Q. Who did you provide the e-mail to? You  
 3 testified earlier you provided it to the board?  
 4 A. That's it.  
 5 Q. You didn't provide that e-mail to anybody else?  
 6 A. No, sir.  
 7 Q. I assume other than to your attorney?  
 8 A. Well, obviously, yes.  
 9 Q. When members of the community elect a member to  
 10 the board, do you think it's appropriate that the board  
 11 interfere with the rights of the community members by  
 12 causing that member not to be able to participate in all  
 13 the functions?  
 14 MS. WINKLER: Form.  
 15 THE WITNESS: The board are all elected, and the  
 16 board was charged with the operation of the community. If  
 17 it's detrimental to the community, then yes.  
 18 BY MR. CHEIFETZ:  
 19 Q. Isn't it true that the bylaws for the community  
 20 used to allow board members to remove fellow board  
 21 members?  
 22 A. I wasn't on the board at the time.  
 23 Q. That's not my question. My question is, isn't  
 24 it true that the bylaws used to allow board members to  
 25 remove fellow board members?

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1 MS. WINKLER: Form.  
 2 THE WITNESS: I don't know. I wasn't..  
 3 BY MR. CHEIFETZ:  
 4 Q. So you have no knowledge of the previous bylaws  
 5 that allowed board members to vote and remove other board  
 6 members?  
 7 A. I believe it was changed before I got on the  
 8 board.  
 9 Q. Okay. But you -- so you do have knowledge about  
 10 it?  
 11 A. I've never read it, let's put it that way.  
 12 Q. But it is your understanding that it used to be  
 13 that board members could vote to remove other board  
 14 members; correct?  
 15 MS. WINKLER: Form.  
 16 THE WITNESS: If it was, it was -- I remember  
 17 something about it, but I never read it or saw it, let's  
 18 put it that way.  
 19 BY MR. CHEIFETZ:  
 20 Q. But you do know enough about it to know that the  
 21 community voted to take away that right of the board to  
 22 take -- to vote to remove other board members?  
 23 A. Yeah, I do know that.  
 24 Q. Does the open meeting law require you to discuss  
 25 private information in executive session or only allow you

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1 to discuss such information in executive session?  
 2 MS. WINKLER: Form.  
 3 THE WITNESS: I just -- that's up for our  
 4 attorney to decide what we feel we'll check on.  
 5 BY MR. CHEIFETZ:  
 6 Q. Do you know whether it's a requirement or  
 7 whether it's up to you to decide what is discussed in  
 8 executive session?  
 9 A. No, I don't.  
 10 Q. If it's -- so you don't know whether it's your  
 11 choice or not?  
 12 A. No.  
 13 Q. If Clint Warrell and Roberta Laird were lying,  
 14 do you think the removal of Ms. McNally from the executive  
 15 session would have been appropriate?  
 16 MS. WINKLER: Form.  
 17 THE WITNESS: I don't know.  
 18 BY MR. CHEIFETZ:  
 19 Q. It would change things significantly, wouldn't  
 20 it?  
 21 MS. WINKLER: Form.  
 22 THE WITNESS: It could.  
 23 BY MR. CHEIFETZ:  
 24 Q. I mean, this whole -- the whole purpose of your  
 25 removing Ms. McNally from executive session was in large

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1 part due to your belief that Mr. Warrell and Ms. Laird  
 2 were telling you the truth; correct?  
 3 MS. WINKLER: Form.  
 4 THE WITNESS: Not my belief. The board's.  
 5 BY MR. CHEIFETZ:  
 6 Q. Do you want to know the truth about what  
 7 happened, or it's no longer a concern to you?  
 8 A. It's no longer a concern because we weren't  
 9 there to be involved. I mean, I can only take people's  
 10 words for things.  
 11 Q. When you met with Mr. Warrell to discuss whether  
 12 Ms. Martens' allegations were true or not, what did  
 13 Mr. Warrell tell you?  
 14 A. No, they weren't true.  
 15 Q. Was that the extent of the discussion?  
 16 A. Yep.  
 17 Q. So you basically said to Mr. Warrell are the  
 18 allegations true or not, and he denied them, and that was  
 19 the extent of it?  
 20 A. Correct.  
 21 Q. And is it fair to say that the discussion with  
 22 Mr. Laird was the same; you simply asked her whether it  
 23 was true or not, she denied it, and then that was the  
 24 extent of the discussion?  
 25 A. Yes.

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1 Q. Do you prefer to discuss things in private or  
 2 openly as a board member?  
 3 MS. WINKLER: Form.  
 4 THE WITNESS: Depends on what it is.  
 5 BY MR. CHEIFETZ:  
 6 Q. So you have no preference?  
 7 A. I have no preference.  
 8 Q. Did the board ever consider -- let me back up.  
 9 Once the board determined they believed  
 10 Ms. McNally had acted inappropriately, did you ever  
 11 consider different types of punishment?  
 12 MS. WINKLER: Form.  
 13 THE WITNESS: I don't recall. I don't believe  
 14 so.  
 15 BY MR. CHEIFETZ:  
 16 Q. Did you ever consider -- so basically there was  
 17 no discussion as to how severe the punishment should be?  
 18 A. Other than to check with our attorney.  
 19 Q. Do you have criteria that you apply to determine  
 20 how severe punishment should be of fellow board members?  
 21 MS. WINKLER: Form.  
 22 THE WITNESS: Legal advice.  
 23 BY MR. CHEIFETZ:  
 24 Q. So basically whatever your attorney tells you,  
 25 you just do that?

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1 A. We're not attorneys. Yes.  
 2 Q. Wasn't it discussed in executive session that  
 3 your goal was to exclude Ms. McNally from executive  
 4 session until her term was up?  
 5 MS. WINKLER: Form.  
 6 THE WITNESS: No.  
 7 BY MR. CHEIFETZ:  
 8 Q. Didn't you -- wasn't it discussed in executive  
 9 session that there were term limits, and that if you could  
 10 exclude her through her next term --  
 11 A. No.  
 12 Q. Never discussed?  
 13 A. No.  
 14 Q. When do you usually hold executive session  
 15 meetings? Is it usually at the same time of a regular  
 16 meeting or it varies?  
 17 A. We generally have it before the main, the main  
 18 meeting, but there is instances where we might have a  
 19 special meeting. Mostly before the meetings.  
 20 MR. CHEIFETZ: I'm going to take a break.  
 21 THE WITNESS: Okay.  
 22 (WHEREUPON, a brief recess was taken from  
 23 11:17 a.m. to 11:25 a.m.)  
 24 MR. CHEIFETZ: I've got nothing further.  
 25 MS. WINKLER: We'll read and sign. Thank you.

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1 (WHEREUPON, this deposition concluded at  
 2 11:25 a.m.)  
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 4  
 5  
 6 \_\_\_\_\_  
 7 RICK SCHWARTZ  
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1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF MARICOPA )

4 BE IT KNOWN that the foregoing proceedings were  
5 taken by me, MICHAELA HERMAN DAVIS, a Certified Reporter,  
6 in and for the County of Maricopa, State of Arizona; that  
7 the witness before testifying was duly sworn to testify to  
8 the whole truth; that the questions propounded to the  
9 witness and the answers of the witness thereto were taken  
10 down by me in shorthand and thereafter reduced to  
11 typewriting under my direction; that the witness will read  
12 and sign said deposition; that the foregoing pages are a  
13 true and correct transcript of all proceedings had, all  
14 done to the best of my skill and ability.

15 I FURTHER CERTIFY that I am in no way related to  
16 any of the parties hereto, nor am I in any way interested  
17 in the outcome hereof.

18 I FURTHER CERTIFY that I have complied with the  
19 ethical obligations set forth in ACJA 7-206(J)(1)(g)(1)  
20 and (2).

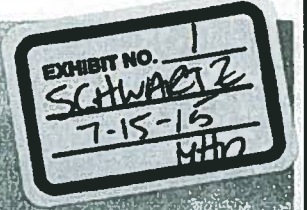
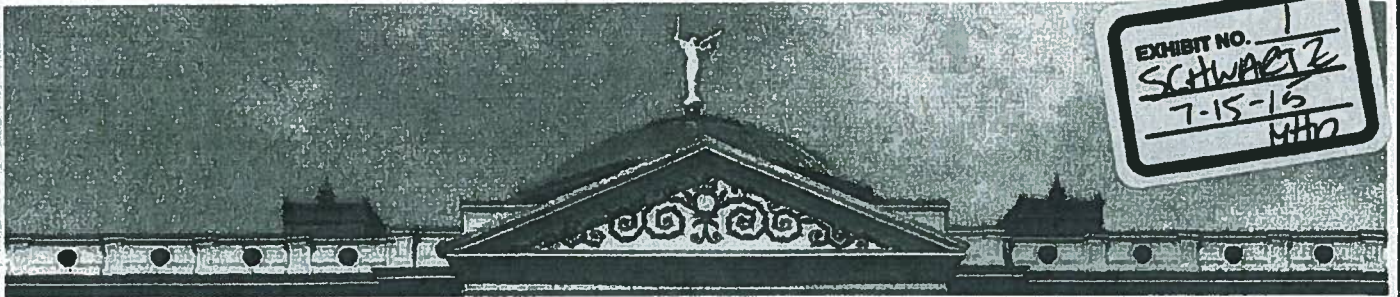
21 Michaela Herman Davis 50574  
22 Certified Reporter CR Number \_\_\_\_\_

23 Certified Reporter Date \_\_\_\_\_  
24 (Signature)

25 I CERTIFY that this Registered Reporting Firm has  
26 complied with the ethical obligations set forth in  
27 ACJA 7-206(J)(1)(g)(1) and (2).

28 Carrie Reporting, LLC R1064  
29 Registered Reporting Firm RRF Number \_\_\_\_\_

30 Registered Reporting Firm Date \_\_\_\_\_  
31 (Signature)



Fifty-second Legislature - First Regular Session

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A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association may adopt reasonable rules governing the taping of open portions of the meetings of the board and the membership, but such rules shall not preclude such tape recording or videotaping by those attending. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year. Special meetings of the members' association may be called by the president, by a majority of the board of directors or by members having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the members the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other mailing address designated in writing by a member. The notice shall state the time and place of the meeting. A notice of any special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. The failure of any member to receive actual notice of a meeting of the members does not affect the validity of any

action taken at that meeting.

C. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

D. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.
4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

**MCNALLY  
V.  
SUN LAKES HOA**

**CV2014-009496**

**SCHWARTZ EXHIBIT #5**

**[CONFIDENTIAL]**

**MCNALLY  
V.  
SUN LAKES HOA**

**CV2014-009496**

**SCHWARTZ EXHIBIT #6**

**[CONFIDENTIAL]**

**MCNALLY  
V.  
SUN LAKES HOA**

**CV2014-009496**

**SCHWARTZ EXHIBIT #8**

**[CONFIDENTIAL]**