

ARBITRATION OF PETITIONS FOR CAPITAL PASS THROUGHs FOR
2013, 2014 AND 2015 PURSUANT TO TITLE 20 OF CITY OF
SAN RAFAEL MUNICIPAL CODE

MHC FINANCING LIMITED PARTNERSHIP
and its AFFILIATE MHC OPERATING
LIMITED PARTNERSHIP,

Petitioner,

vs.

CONTEMPO MARIN HOMEOWNERS'
ASSOCIATION, et al.,

/

Respondents.

Reporter's Transcript of Proceedings
BEFORE ARBITRATOR LAWRENCE BASKIN, ESQ.

RESOLUTION REMEDIES
1000 Fourth Street, Eighth Floor
San Rafael, California

July 19, 2016
10:00 a.m.

REPORTED BY: JODY GIBNEY, CSR NO. 12308, RPR

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1 --oOo--
 2 THE ARBITRATOR: Let me call the matter in
 3 the matter of Arbitration of Petitions for Capital
 4 Pass Throughs for years 2013, 2014 and 2015 for
 5 Contempo Marin Mobile Home Park. The petitioner is
 6 MHC Financing Limited Partnership.
 7 And this arbitration is being conducted
 8 before me as the agreed-upon and appointed arbitrator
 9 Lawrence Baskin under the City of San Rafael
 10 ordinance.
 11 And, I guess, we should get appearances for
 12 the record, please.
 13 MR. MORAN: Good morning, my name is Neil
 14 Moran, M-O-R-A-N. I'm the attorney for MHC Financial,
 15 which I think of as Equity LifeStyle Properties. And
 16 with me here are my clients, the client
 17 representatives, and I'd like each to introduce
 18 themselves, starting with Jennifer, and your title.
 19 MS. BARRETT: Jennifer Barrett, senior
 20 regional manager with Equity LifeStyle Properties.
 21 MR. JACCARD: Walter Jaccard. I'm the vice
 22 president in the legal department of Equity LifeStyle
 23 Properties.
 24 MR. ANDREWS: Robert Andrews, community
 25 manager of Contempo Marin in San Rafael.

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 2
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 23 ALSO PRESENT: Walter B. Jaccard, Jennifer Barrett,
 24 Jeff Kimes - Equity LifeStyle Properties, Inc.; Robert
 25 Andrews, Keith R. Meloney, Richard Heine
 --oOo--

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1 MR. KIMES: Jeff Kimes, regional vice
 2 president for Equity LifeStyle Properties.
 3 MR. MORAN: That's K-I-M-E-S and Jaccard is
 4 J-A-C-C-A-R-D.
 5 MR. COOPER: I'm Nate Cooper; our firm is
 6 Cooley LLP. We represent the tenant homeowners at the
 7 Contempo Marin Mobile Home Park, Respondents.
 8 With me are my colleagues Max Bernstein and
 9 Matt Brown with my firm. And I have with me two
 10 client representatives, the homeowners represented
 11 here by Contempo Marin Homeowners Association, and
 12 I'll let these two gentlemen introduce themselves and
 13 their affiliations.
 14 MR. HEINE: Dick Heine. I'm the president of
 15 the homeowners association.
 16 MR. MELONEY: Keith Meloney, past president
 17 of the homeowners association.
 18 THE ARBITRATOR: Thank you all for coming.
 19 I wanted to invite a conversation by counsel
 20 with regard to whether or not there were any
 21 stipulations that we can have with regard to factual
 22 items that are in the petitions that are being
 23 presented today.
 24 Neil?
 25 MR. MORAN: Yes. We considered some of the

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<p>1 objections in the homeowners' brief, and we think some 2 of them are well founded. We, therefore, would like 3 to withdraw four items from our petition. 4 THE ARBITRATOR: Let me -- excuse me for 5 interrupting. 6 MR. MORAN: Please. 7 THE ARBITRATOR: Just by way of getting 8 myself organized for the hearing, what I did was I 9 went through each of the petitions as you presented 10 them in your brief, and in each one attached to the 11 petition as the first exhibit for most of them after 12 the filing fee check was a list. It's entitled 13 "Contempo Marin Capital Expenditure Worksheet," it was 14 done by year. And then what I did was I gave each of 15 the items in each petition a number. And I want to 16 tell you what they are. You might -- 17 MR. MORAN: Thank you. 18 THE ARBITRATOR: -- scratch them. Then if you 19 can, while you're presenting what is being contested 20 and what is not, kind of go through it. And that way 21 I can keep my notes in order without having to redo a 22 lot of things. 23 So referring first to 2013, the first item is 24 -- September 8th is No. 1, and it just goes right down 25 the list, 2, 3, 4, 5, each of the -- next to each of</p> <p style="text-align: right;">Page 10</p>	<p>1 THE ARBITRATOR: Is 16. 2 MR. MORAN: Thank you. 3 THE ARBITRATOR: Pool furniture is 17, 4 fitness room equipment 18. 5 MR. MORAN: Thank you. 6 THE ARBITRATOR: So it's just that one that 7 threw the numbering off. 8 So, then, if you can, when you present what 9 you're about to talk about in terms of where you're 10 withdrawing things, if you can help guide me by 11 referring to the year of the item and number. 12 MR. MORAN: Yes. Just for the record, there 13 are three petitions. We call them 2013, 2014 and 14 2015. So there are four items that we withdraw, and 15 they are all in the 2014 petition. And those items, 16 following the arbitrator's numbering system, are Item 17 No. 9, which is April 17, 2014, Peter Levi Plumbing, 18 in the amount of 2,643. 19 Item No. 10, July 8, 2014, Peter Levi 20 Plumbing, in the amount of \$2,624. 21 Item No. 11, dated July 11, 2014, Peter Levi 22 Plumbing, in amount of \$3,669. 23 And finally, Item No. 12, dated June 11, 24 2014, Gym, G-Y-M, Source in the amount of \$2,343.11, 25 and we withdraw -- the petitioner withdraws the</p> <p style="text-align: right;">Page 12</p>
<p>1 the dates that are listed. 2 When you get to 2014, it's 6, 7, 8, 9, 10, 3 11, 12. 4 When you get to 2015, the numbering is just a 5 tad different because I took the payments for the 6 roof, so the first one, the July 9th item, is No. 13 7 but then the one that is August 18th, which is 8 actually near the bottom, the last -- the second from 9 the bottom where it's replacement of clubhouse roof, I 10 made that 14 because it seemed to me that they're -- 11 it's the same issue, just two different payments. 12 Am I correct in that regard? 13 MR. MORAN: Yes. 14 THE ARBITRATOR: Okay. And then going down 15 the list, and so February 18th, to the concrete in the 16 pathway is No. 15. And then it goes 16, 17 -- 17 MR. MORAN: Just a second. 18 So just -- so then we have -- there's another 19 roofing item. 20 THE ARBITRATOR: Right. And I have that just 21 separately numbered, the laundry room roof. 22 MR. MORAN: What number is that? 23 THE ARBITRATOR: Turns out to be 19. 24 MR. MORAN: Then the Valley Furniture 25 clubhouse.</p> <p style="text-align: right;">Page 11</p>	<p>1 request to pass through those items. 2 THE ARBITRATOR: Okay, thank you. 3 MR. COOPER: And, Neil, you mentioned that 4 you're making these withdrawals based on the 5 objections raised in the petition. Am I to interpret 6 that as to indicate that you agree with them and are 7 effectively conceding them or just don't wish to 8 proceed with them? 9 MR. MORAN: We do not think they qualify as 10 either capital replacements or capital improvements 11 under the City's ordinance. 12 THE ARBITRATOR: And somehow my numbering got 13 off. It was 9, 10, 11 and 12? Is that -- the Peter 14 Levi stuff. 15 MR. MORAN: Correct. 9, 10 -- 16 THE ARBITRATOR: So Peter Levi is 169 17 Yosemite, 77 to 78 Yosemite, and the main line at 253 18 Teton. 19 MR. MORAN: Yes. 20 THE ARBITRATOR: Those three, and then the 21 gym equipment, which was No. 12. 22 MR. MORAN: Yes. 23 THE ARBITRATOR: Okay. 24 MR. MORAN: So to go back to the numbering 25 system on the 2015 petition, is it correct that the</p> <p style="text-align: right;">Page 13</p>

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1 clubhouse furniture is No. 16?
 2 THE ARBITRATOR: Yes.
 3 MR. MORAN: Okay, thank you.
 4 THE ARBITRATOR: Thank you. That's helpful.
 5 With that in mind then, let's proceed to the 2013
 6 petition.
 7 MR. MORAN: Okay. I'd like to call as our
 8 first witness Jennifer Barrett.
 9 Mr. Baskin, would you like to swear the
 10 witness.
 11 THE ARBITRATOR: Yes.
 12 JENNIFER BARRETT,
 13 was called as a witness, and the said witness, being
 14 first duly sworn, was thereupon examined and testified
 15 as hereinafter set forth.
 16 --oOo--
 17 THE ARBITRATOR: Is it B-A-R-R-E-T-T?
 18 THE WITNESS: Yes.
 19 THE ARBITRATOR: Tell me again your position.
 20 THE WITNESS: Senior regional manager.
 21 THE ARBITRATOR: Okay. Neil.
 22 ISSUE - PUMP REPLACEMENTS
 23 DIRECT EXAMINATION BY MR. MORAN
 24 MR. MORAN: Q. Jennifer, would you give us a
 25 short but fair description of your duties as senior

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1 regional manager?
 2 A. Sure. I, actually, am responsible for 15
 3 properties of my own, making sure that our residents
 4 are taken care of, making sure I'm supporting the
 5 management and the managers of each of the properties,
 6 effectively ensuring that the properties are
 7 maintained to the expectations of both the company and
 8 the residents and the homeowners.
 9 And I also, in addition to that, support
 10 another regional manager with his 11 properties in the
 11 Northern California portfolio.
 12 Q. And do you have any role in regard to
 13 capital improvements or capital expenditures,
 14 generally?
 15 A. Yes.
 16 Q. Generally, what role do you have on that
 17 topic?
 18 A. My role is to assist the property
 19 managers or maintenance supervisors in what projects
 20 we're going to be completing over the years -- we
 21 usually plan a year in advance -- and helping them if
 22 they should need help finding vendors, and more
 23 importantly, approving the project itself.
 24 Q. Do you have the -- pardon me.
 25 Do you have a list of capital expenditures in

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1 front of you?
 2 A. Yes.
 3 Q. Let's talk about Item No. 1. We're on
 4 the 2013 petition, and this is dated September 8,
 5 2012. And I have the vendor as Systems Operations
 6 Services, Inc. out of Berkeley.
 7 Are you familiar with that?
 8 A. I'm familiar with the company and
 9 familiar with pump replacements.
 10 Q. So the first three items, 1, 2, and 3,
 11 they are invoices from the same company. I'll call it
 12 SOS, Inc.
 13 Are you aware of that?
 14 A. Yes.
 15 Q. Please describe for the arbitrator what
 16 those three items, 1, 2 and 3, what they're about?
 17 A. At Contempo Marin, we have three lift
 18 stations on the property. One is near the tennis
 19 courts, one is near Site 97, and one is near Site 15,
 20 and we have lift stations. And these particular lift
 21 stations failed and the pumps needed to be replaced.
 22 So Items 1 and 2 are replacements of the
 23 pumps, and then Item 3 is the additional parts that
 24 needed to go in to replace the pump.
 25 MR. MORAN: Let's -- I provided this in an

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1 email last week. Let's mark as an exhibit a map of
 2 the park.
 3 May I take it to the court reporter?
 4 THE ARBITRATOR: Yes, please, do. And we'll
 5 use letters for you. A, is that all right?
 6 And then yours will be numbered.
 7 (Petitioner's Exhibit A was marked for
 8 identification and received into evidence.)
 9 MR. MORAN: Q. Jennifer, the court reporter
 10 marked as Exhibit A a map. Would you tell us what
 11 that is?
 12 A. This is a map of Contempo Marin. It
 13 reflects the sites on the property. It demonstrates
 14 the amenities on the property and the office.
 15 Q. And a few minutes ago you testified
 16 regarding the location of lift stations. Will you
 17 tell us where those lift stations, all of them, are
 18 located on this map, Exhibit A?
 19 A. Sure.
 20 So we have one which is highlighted "lift
 21 station" over by the tennis courts. We have another
 22 one located by Site 15, and then we have another one
 23 located at Site 97.
 24 Q. And on Exhibit A, the first one appears
 25 to be adjacent to site -- near site, generally, 248?

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1 A. Yes.
 2 Q. The second lift station is near Unit 15?
 3 A. Yes.
 4 Q. And the third lift station is near Unit
 5 97?
 6 A. Yes.
 7 Q. And these are highlighted on the exhibit?
 8 A. Yes.
 9 Q. Now, going back to Items 1, 2 and 3,
 10 would you, using the map, tell us begin where the lift
 11 stations are that were replaced, where the pumps were
 12 replaced?
 13 A. I do not know which pumps on the map were
 14 replaced; I was not involved with the property at that
 15 time.
 16 Q. Let me check my documentation for a
 17 second. I don't have it either, but I'd like us to
 18 refer to -- I'm going to ask you to look at the
 19 arbitration brief, the hearing brief of MHC, and go
 20 down to Exhibit A?
 21 THE ARBITRATOR: I'm there.
 22 MR. MORAN: And then I'd like you to look at
 23 the SOS invoice dated September 1st, 2012.
 24 THE ARBITRATOR: Okay.
 25 MR. MORAN: And I'd like to -- do you have

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1 that in front of you?
 2 THE ARBITRATOR: I do.
 3 MR. MORAN: Q. And the witness, do you have
 4 that in front of you?
 5 A. I do.
 6 Q. And then I notice that the invoice
 7 amount -- pardon me -- the item for which we're
 8 seeking reimbursement, the first item is in the amount
 9 of \$7,500. The invoice that we're looking at dated
 10 September 1, 2012, has two items on it. One is for
 11 \$7,500. It says: "New ABS lift station pump."
 12 Do you see that?
 13 A. Yes.
 14 Q. There's a second item, and the
 15 description is just August, the word "August," and the
 16 cost is \$1,650.
 17 And are we seeking reimbursement or pass
 18 through of the \$1,650 items?
 19 A. No, we are not.
 20 Q. Would you explain why that is?
 21 A. That was for the pH balance; it was for
 22 chemicals, so that would not be considered capital
 23 improvements or replacement.
 24 Q. Right.
 25 Then, what do the AVS lift station pumps do?

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1 What's their purposes?
 2 A. For pumping sewage through the park.
 3 Q. And where does the -- these pumps
 4 collect -- describe generally how the sewage system
 5 works. In other words, they're individual homeowners,
 6 and they have their homes, and then their sewage goes
 7 somewhere, and there are three pumps at the park?
 8 A. There are three pumps at the park that
 9 pump the sewage into the city's system.
 10 Q. Item No. 2 on the -- using the
 11 arbitrator's numbering system is also from the 2013
 12 petition.
 13 Do you have that invoice in front of you from
 14 the arbitration hearing brief?
 15 A. Yes, I do.
 16 Q. And tell us what Item No. 2 is. It's
 17 October 3, 2012, SOS, \$7,500.
 18 A. It is for the replacement of the pump in
 19 one of the lift stations.
 20 Q. The same kind of thing?
 21 A. Yes.
 22 Q. The invoice for that is attached to the
 23 hearing brief; is that correct?
 24 A. Yes.
 25 Q. What's the date of the invoice?

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1 A. September 28th, 2012.
 2 Q. And is there -- are there two items that
 3 comprise this invoice?
 4 A. Yes.
 5 Q. And is one of them for the replacement of
 6 the sewage pump station pump?
 7 A. Yes.
 8 Q. And what's that amount?
 9 A. 7,500.
 10 Q. \$7,500?
 11 A. Yes.
 12 Q. Was that a replacement?
 13 A. Yes, it was.
 14 Q. What's the second item on that same
 15 invoice?
 16 A. Also for chemicals for the pH adjustment
 17 in the amount of \$1,650.
 18 Q. And is ELS seeking to pass through that
 19 particular expense for \$1,650?
 20 A. No.
 21 Q. Item No. 3 on the 2013 petition is
 22 \$1,505.07.
 23 Do you have that invoice?
 24 A. Yes, I do.
 25 Q. What's the date of the invoice?

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1 A. November 1st of 2012.
2 Q. The first item on the invoice says
3 October, \$1,650.
4 What is that for?
5 A. For the chemical adjustments.
6 Q. And is ELS seeking to pass through that
7 expense to the homeowners?
8 A. No, they are not.
9 Q. What are the two remaining items on that
10 invoice?
11 A. It's for additional parts and labor
12 needed to install, actually, lift station No. 15 at
13 the park, at Contempo Marin.
14 MR. COOPER: I'd like to interpose an
15 objection. The witness testified earlier that she
16 wasn't involved in this item, so I'm not sure what the
17 basis for her testimony is, so we object based on lack
18 of foundation.
19 THE ARBITRATOR: All right.
20 MR. MORAN: Q. Are these business records?
21 THE ARBITRATOR: Why don't you lay a
22 foundation.
23 MR. MORAN: Sure.
24 Q. Did you obtain business records --
25 A. Yeah.

Page 22

1 Q. -- from ELS?
2 A. Yes, I did.
3 Q. And are these kept in the regular course
4 of business?
5 A. Yes, they are.
6 Q. And do you typically rely on these
7 invoices in performing your duties at ELS?
8 A. Yes, I do.
9 Q. And is that true for all the properties
10 that you manage for ELS?
11 A. Yes, it is.
12 Q. Okay.
13 A. Thanks. That's all I have.
14 THE ARBITRATOR: Okay on Items 1, 2 and 3, on
15 that?
16 MR. MORAN: Right.
17 THE ARBITRATOR: Let me just ask you also.
18 Prior coming here today, did you make inquiries of
19 people who would know about these items in order to
20 have a basis for your testimony?
21 THE WITNESS: I spoke with the previous VP
22 for California, and more important, I've been with the
23 company for ten years, and I understand the operations
24 of each of the properties, which is why I understand
25 what these invoices are saying. I've been doing this

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1 for a long time.
2 THE ARBITRATOR: Okay, very good. Go ahead.
3 I'm satisfied; she can testify.
4 MR. MORAN: Okay. Let's move on to the
5 fourth item on the 2013 petition.
6 THE ARBITRATOR: Excuse me for one second.
7 MR. MORAN: Yes.
8 THE ARBITRATOR: So this might be a little
9 bit unorthodox in terms of how we would conduct
10 things, but one way that we might do this, if you're
11 interested, is we could have a series of mini trials,
12 if you will.
13 MR. MORAN: Oh, yeah.
14 THE ARBITRATOR: And deal with them item by
15 item or groups of items, and it will help my notes and
16 my decision-making process, and if it won't throw you
17 off -- I mean, these three items group together pretty
18 readily. There's a couple other places where there's
19 some groups of items. I mean, the good news is we
20 only have, what did we get this down to --
21 MR. COOPER: 17.
22 THE ARBITRATOR: -- 17. So, you know, I want
23 to move it along, but I want it to be a fair hearing
24 in terms of making sure that you have an opportunity
25 to present all the information as well as the owners.

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1 So do you want to respond, perhaps, to those?
2 MR. COOPER: Yeah, I think that makes sense,
3 with the caveat that there may be some additional
4 lines of questioning that doesn't necessarily fall
5 into one of these buckets, and we might like the
6 opportunity at the end of closing Counsel's
7 presentation to examine the witness on maybe some
8 summary topics.
9 THE ARBITRATOR: I don't have a problem with
10 that.
11 MR. MORAN: That's agreeable to us.
12 THE ARBITRATOR: Why don't we do that. Let's
13 take these Items 1, 2, and 3 of the '13 petition and
14 let's address them.
15 MR. COOPER: Sure.
16 CROSS-EXAMINATION BY MR. COOPER
17 MR. COOPER: Q. Ms. Barrett, I think you
18 testified to the effect that you're familiar with the
19 nature of these items because you deal with sewage
20 issues regularly and so understand what these invoices
21 are conveying?
22 A. Yes.
23 Q. So I want to look at the description in
24 the first two invoices. It's not entirely clear to me
25 what it's describing. It says: "New ABS lift station

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1 pump."
2 Can you explain to me in as much detail as
3 you can provide what that means, what that job
4 entails?
5 A. Sure. So in a lift station, you have a
6 pump that is at the bottom of the lift station. As
7 far as the depth, I'm not familiar exactly how deep it
8 is, and the lift station, actually, the pump pumps the
9 sewage through the system, to then pump it through to
10 the city. That is my understanding of the lift
11 station pumps.
12 Q. And just unpacking these words here.
13 What is ABS?
14 A. Oh, I do not remember right off the top
15 of my head.
16 Q. Is it your understanding that it's a type
17 of pipe, similar to the PVC?
18 A. I can't answer yes or no on that.
19 Q. And so when you see this line item here,
20 "New ABS lift station pump," your interpretation of
21 that is that a new pump was installed --
22 A. Yes.
23 Q. -- correct?
24 And it's not that there was a new pipe
25 installed?

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1 A. Correct.
2 Q. And is \$7,500 the unit cost for the pump
3 itself, or, for example, the cost for the pump and the
4 installation together?
5 A. Looking at this, it would be for both.
6 It would be for the installation and the labor.
7 Q. And --
8 A. Pardon me. The pump and the labor.
9 Q. Understood.
10 And I believe you testified previously that
11 you're not sure which pumps were replaced for Items 1
12 and 2; is that right?
13 A. Correct, until we look at the Item 3,
14 which says one of them was No. 15.
15 Q. And what's the reason why you believe
16 Item 3 tells us that one of them was at No. 15? I
17 mean, I can see what it says here, "Install new ABS in
18 lift station 15," but what about that leads you to
19 believe that these two other invoices relate to lift
20 station 15 as well?
21 A. Because we only installed two lift
22 station pumps. We didn't install three, and this
23 references 15.
24 Q. That's right. Do you see this item on 3,
25 it says: "Install new ABS in lift station No. 15,"

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1 correct?
2 A. Yes.
3 Q. Do you see the word "pump" in there
4 anywhere?
5 A. No, I do not.
6 Q. So what about this item leads you to
7 believe that this relates to the replacement of a
8 pump?
9 A. Because it was the same project.
10 Q. And what's the basis for your
11 understanding that it was the same project?
12 A. The time period in which all of this was
13 replaced.
14 Q. So I can see that these invoices are all
15 from the same vendor, SOS, and I can see the dates on
16 top, and the first one says September 1, 2012, and as
17 Mr. Moran pointed out, there's a line item on there
18 that says August, correct? I think you testified that
19 related to the pH balancing work that was done in
20 August?
21 A. Correct.
22 Q. And then the second item is dated
23 September 28th, the end of September, and there's
24 another pH balancing item that says September,
25 correct?

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1 A. Correct.
2 Q. And this third item says -- October 31st
3 is the date of the invoice, and there's a line item
4 that says October, and that's the pH balancing for
5 October, correct?
6 A. I think it says November 1st in here.
7 Q. Does yours say November 1st?
8 A. November 1st.
9 Q. I see November 1st at the top. I think
10 that's maybe a fax transmission stamp.
11 A. I see that, yes.
12 Q. In any case, these three invoices are
13 spread over the course of two months --
14 A. Correct.
15 Q. -- correct? And each one of them
16 reflects, at least the pH balancing maintenance
17 balancing work that was done in a separate month. So
18 I'm still trying to get at -- and you stated that it's
19 the timing of these invoices that leads you to believe
20 that they're part of the same project.
21 So I guess I'm just trying to get at what
22 about the timing of the invoices leads you to believe
23 that that's part of the same project?
24 A. I don't know.
25 Q. 'Cuz I see these, I see that they

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1 occurred in three separate months, and it's difficult
2 for me to draw that conclusion, so I'm trying to see
3 where you're taking that from.
4 Do you have any understanding about the
5 issues with -- the specific issues with the lift
6 station pump at Site 15?
7 A. I do not.
8 Q. And that's true as of the time period of
9 October 2012, correct?
10 A. Correct.
11 Q. And that's currently true as well?
12 A. Correct.
13 Q. I'm not sure if this question was asked,
14 and perhaps you've answered it, when did you begin
15 working for ELS?
16 A. In November of 2006.
17 Q. And when did you assume responsibility
18 for the Contempo Marin Mobile Home Park?
19 A. Not direct responsibility, but I became a
20 part of Contempo Marin, I think, in September of '14.
21 Q. So prior to September of '14, did you
22 have any involvement in the capital expenditure
23 decision-making process at Contempo Marin?
24 A. No, I did not.
25 Q. Did you have any involvement prior to

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1 September of '14 in the capital expenditure petition
2 process?
3 A. No, I did not.
4 Q. Do you have any understanding about
5 sewage leaks at Site 15?
6 A. No, I do not.
7 Q. Do you have any understanding that there
8 was -- there were complaints from the resident at that
9 site about leaking sewage in the 2012 time period?
10 A. No, I do not.
11 Q. Do you have an understanding that this
12 invoice reflects the repair work that was done in
13 response to those complaints at Site 15?
14 A. No, I do not.
15 Q. Did you have an understanding that the
16 pumps that were replaced took place at the other two
17 pump stations and not at the pump at Site No. 15?
18 A. I do not.
19 Q. Is it possible that is the case?
20 A. It is possible.
21 Q. Mr. Moran had previously -- well, I take
22 that back.
23 I have in front of me the brief that ELS
24 submitted in connection with this arbitration. And
25 I'm looking at the characterization of this -- of

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1 these three items here on Page 5 on Line 12.
2 Do you have the copy of the brief that ELS
3 gave to Mr. Baskin?
4 A. Yes.
5 Q. And I'm just focused here on the single
6 bullet point related to these items. It says:
7 "\$16,595.07 for replacement of two ABS lift station
8 pumps for the sewage system to the 396 home park;
9 7,500 per pump, plus \$1,595.07 installation."
10 Do you have any understanding as to why ELS
11 characterized in its brief this \$1,595 as an
12 installation cost for the pumps?
13 A. I do not.
14 MR. COOPER: I think that's all we have on
15 that item.
16 THE ARBITRATOR: Do you have any testimony
17 from the homeowners with regard to the items you asked
18 on cross-examination.
19 MR. COOPER: I did speak with the homeowner
20 about the issue. He's not able to be here today.
21 THE ARBITRATOR: Okay.
22 And, Neil, do you have anything else that's
23 going to talk about these items?
24 MR. MORAN: I'll talk to my clients at the
25 break and find out.

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1 THE ARBITRATOR: Anybody know what "ABS"
2 stands for?
3 MR. MORAN: It's the name of the manufacturer
4 of these pumps.
5 THE ARBITRATOR: Okay.
6 MR. MORAN: It also has another meaning in
7 plumbing, which is a type of sewer pipe, plastic sewer
8 pipe. Also polyvinyl chloride is used in some sewage
9 applications, as well as cast iron and --
10 THE ARBITRATOR: Well, I mean, the reference
11 I would be familiar with would be the abbreviation for
12 PVC, and I'm wondering if ABS is another -- an acronym
13 for another type of pipe.
14 MR. MORAN: It is, but there's a manufacturer
15 of sewage injection pumps called ABS, and that's what
16 this is.
17 THE ARBITRATOR: Okay. All right. That's it
18 on Item Nos. 1, 2 and 3.
19 Going to --
20 MR. COOPER: Before we proceed, just a quick
21 rebuttal on that.
22 It's ELS' burden to show that these expenses
23 qualify, and the fact that Mr. Moran has a
24 characterization or belief about this last item sounds
25 like it's relating to the ejector pump, but I think

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1 our understanding, based on interviewing this one
2 resident and looking on the internet as to what ABS
3 means is that this is a replacement of a piece of
4 pipe, that it was not related to the other -- to the
5 two pump replacements.
6 THE ARBITRATOR: All right. So I understand
7 the argument.
8 MR. BROWN: Mr. Baskin, if I could -- this is
9 Matt Brown from Cooley -- if I could, just on the
10 process point, I think what we would be comfortable
11 with -- I like your idea of doing the -- kind of
12 breaking this up, at least clustering items together
13 and doing the direct and the cross-examination.
14 I think we would prefer, in terms of putting
15 on our affirmative testimony, to have that come later
16 in sort of -- and do that all at once, as opposed to
17 trying to put on our own, sort of, direct testimony on
18 an item-by-item basis. I'd much prefer to have the
19 petitioner put in their entire case, since it's their
20 burden, and then make a decision about how to present
21 our case once they've done that.
22 So, although, I'm comfortable with the, sort
23 of, alternative --
24 THE ARBITRATOR: Well, you're not is what
25 you're saying. What you're saying is that you'd

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1 rather not.
2 MR. BROWN: Well, typically, someone would
3 give their entire direct, and then you would do an
4 entire cross. And so I think the creative idea that
5 you came up with was let's break up the direct and
6 crosses so that they're being done, sort of, item by
7 item. But I don't know that I'm comfortable with our
8 trying to, kind of, put on our direct testimony of our
9 witnesses piecemeal throughout the day, as opposed to
10 just waiting until after Petitioner has put in their
11 entire case.
12 THE ARBITRATOR: I'd like to suggest that we
13 do a little bit of a hybrid in that regard. I
14 understood from reading your brief that you have
15 certain criticisms of how these things are done as an
16 overall matter versus criticisms or, if you will,
17 contesting specific items. So what I'd like to do is
18 to say if you have evidence testimony to offer that
19 contradicts or questions the specifics of the
20 particular items, like Nate just did with regard to
21 that invoice, I would like to hear it at the time that
22 we're dealing with the item.
23 You'll have plenty of time to put on
24 additional witnesses, and if it means there's a little
25 bit of duplication, and they circle back a little bit,

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1 I can tolerate that. But I'd kind of like -- you
2 know, we're talking about three pumps. If you have
3 somebody that's going to talk about the three pumps,
4 let's hear from them now.
5 MR. COOPER: Sure.
6 THE ARBITRATOR: And then if there's
7 testimony later that touches upon it, I'm not going to
8 be --
9 MR. BROWN: It's wasn't so much a duplication
10 issue as it was -- and ultimately, it's your
11 decision --
12 THE ARBITRATOR: Right.
13 MR. BROWN: -- and I'm going to respect your
14 decision, trust me --
15 THE ARBITRATOR: Thank you.
16 MR. BROWN: -- but my point was simply, given
17 that it's the petitioner's burden, you know, I'm a
18 believer in having them put on their entire case first
19 and then being able to make the decision what kind of
20 case we want to put on as the responding party. So
21 that's the way that I would prefer to do it, but I
22 understand that you're sort of overruling that, and so
23 we'll abide by that.
24 THE ARBITRATOR: Duly noted.
25 MR. COOPER: And maybe I could ask a couple

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1 of questions --
2 THE ARBITRATOR: Sure.
3 MR. COOPER: -- and one would be whether ELS
4 has any other witnesses to call because we've been
5 talking about whether we would have a rebuttal witness
6 on these three items. Are any of ELS' -- of the other
7 gentlemen in the room here going to be testifying on
8 this item, and perhaps if so --
9 THE ARBITRATOR: If so, I want to hear from
10 them now, yeah. I mean that's the idea.
11 MR. MORAN: Oh, yeah.
12 Let me just have a brief moment with Robert.
13 THE ARBITRATOR: Sure.
14 MR. MORAN: I think I know the answer to
15 that, but let me make sure.
16 THE ARBITRATOR: We can go off the record.
17 [Short recess.]
18 THE ARBITRATOR: Back on the record.
19 Mr. Moran, you were going to consider whether
20 or not you had any other testimony to offer on Items
21 No. 1, 2, 3 for the 2013 petition.
22 MR. MORAN: I do. He's not here yet. The
23 gentleman is Jorge Gonzalez, J-O-R-G-E, Gonzalez, I
24 think it's with a Z. He's the maintenance supervisor
25 of Contempo Marin. He's been there approximately

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1 20 years. He's on his way.
 2 THE ARBITRATOR: So we'll move to other items
 3 and then we'll leave little spot for Mr. Gonzalez's
 4 testimony.
 5 Now, we're on Item No. 4, "Replacement of a
 6 sitting mower."
 7 MR. COOPER: Before we do that, I'd like to
 8 introduce a little bit of testimony from Mr. Meloney
 9 here, if that's okay.
 10 THE ARBITRATOR: Sure.
 11 Tell me your name again.
 12 THE WITNESS: Keith Meloney.
 13 THE ARBITRATOR: Spell your last name.
 14 THE WITNESS: M-E-L-O-N-E-Y.
 15 THE ARBITRATOR: And you're the past present?
 16 THE WITNESS: Past president.
 17 KEITH MELONEY,
 18 was called as a witness, and the said witness, being
 19 first duly sworn, was thereupon examined and testified
 20 as hereinafter set forth.
 21 --oOo--
 22 DIRECT EXAMINATION BY MR. COOPER
 23 MR. COOPER: Q. Keith, you're a resident of
 24 Contempo Marin, correct?
 25 A. Correct.

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1 Q. How long have you lived there?
 2 A. 17 years.
 3 Q. Are you familiar with Site 15?
 4 A. Yes.
 5 Q. Are you familiar with the resident of
 6 Site 15?
 7 A. Yes.
 8 Q. Can you tell me that gentleman's name?
 9 A. Pavel Genowski [phonetic].
 10 Q. Have you ever spoken with Mr. Genowski
 11 about the lift station pump at his property?
 12 A. Numerous times.
 13 Q. Do you understand there to have been
 14 issues with that pump?
 15 A. Yes.
 16 Q. Do you understand it to have leaked
 17 sewage onto his property at some point?
 18 A. Yes, leaks and I don't know exactly how
 19 extensive they were, but leaks.
 20 MR. MORAN: Let me interpose an objection but
 21 really just ask for an understanding or agreement. I
 22 think it's okay to have a certain amount of hearsay in
 23 a proceeding, and I know we're not subject to the
 24 formal rules of evidence, and I will not object to, at
 25 least yet, to hearsay, for example, if Mr. Meloney

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1 spoke to Mr. Genowski, and Mr. Meloney testifies what
 2 Mr. Genowski said. I would just like similar
 3 understanding, within reason, for my witnesses. And I
 4 don't know -- there's going to be some grey areas; I
 5 don't know where the line is drawn, so I do not ask
 6 for 100 percent agreement to what you don't know is
 7 coming; that would be unfair.
 8 THE ARBITRATOR: Well, my thought on it is
 9 this: If you have a problem with particular
 10 references, you should reiterate your objection;
 11 otherwise, I'll take as a standing objection from both
 12 of you that you object to hearsay, and then I'll say
 13 that I'm going to hear it, and I'll decide what weight
 14 to give it based thereon. And as the arbitrator, I'm
 15 allowed to do that, so --
 16 MR. MORAN: Great.
 17 THE ARBITRATOR: -- we'll just move along.
 18 Go ahead.
 19 MR. COOPER: Q. Mr. Meloney, have you seen
 20 the pump station at Mr. Genowski's property?
 21 A. Yes.
 22 [Reporter interjection.]
 23 MR. COOPER: Q. Have you seen the lift
 24 station at Mr. Genowski's property at Site 15?
 25 A. Yes.

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1 Q. Did you see it before it was repaired?
 2 A. Yes.
 3 Q. What was the state of it?
 4 A. There were sections like, what do you
 5 call them, little charley-horses that block it off
 6 while the work was being done on it, so you couldn't
 7 get to it. There were cones, as I recall, it was
 8 sectioned off.
 9 Q. Do you have an understanding about the
 10 nature of the work that was performed there?
 11 A. There were as -- not with seeing it
 12 because it was sealed off while I was there observing
 13 it, so the details of what was being done were only
 14 conveyed to me by the nature of the repeated visits
 15 Pavel made to me and to our meetings reporting it to
 16 us as an HOA.
 17 MR. COOPER: I think that's all I have for
 18 you.
 19 THE ARBITRATOR: Okay.
 20 CROSS-EXAMINATION BY MR. MORAN
 21 MR. MORAN: Q. Could I ask, Mr. Meloney, at
 22 the end of that you said, as I wrote down, you didn't
 23 see it yourself but -- would you repeat the last part
 24 of it? I wear two hearing aids, and sometimes I
 25 don't --

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1 A. What I mean is the lift station is a
2 sealed entity, and so when the workers aren't working
3 on it, it's closed off, so I can't see inside of it.
4 That's what I meant by I can't physically see it
5 myself. I can only see that work was being done on
6 it, it was closed off. And there were blockades put
7 up for safety reasons.
8 Q. Thank you.
9 THE ARBITRATOR: Okay. Moving on to No. 4,
10 and I've left a spot in my notes for Mr. Gonzalez when
11 he appears.
12 MR. MORAN: So I'll go back to Jennifer
13 Barrett, our witness.
14 ISSUE - MOWERS
15 JENNIFER BARRETT
16 REDIRECT EXAMINATION BY MR. MORAN
17 MR. MORAN: Q. Jennifer, will you tell us
18 what Item 4 is?
19 A. Item 4 is a Buck's Saw mower, a Kawasaki
20 ride-on mower.
21 Q. For the record, what is a ride-on mower?
22 A. It is a lawn mower that you sit on and
23 drive versus a push mower.
24 Q. Okay. And this item is in the amount of
25 \$8,603.42?

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1 A. Yes.
2 Q. And is there a piece of paper attached to
3 our hearing brief at Exhibit A that deals with this?
4 A. Yes, there is.
5 Q. Seriously, what do you call -- is this a
6 screen shot? What is this? Is this an invoice?
7 A. This is a -- an invoice, yes.
8 Q. Okay. That's right.
9 Okay. And who is the vendor?
10 A. The vendor is Buck's Saw Service.
11 Q. Jennifer what -- there's some handwriting
12 at the top of that invoice. The date of the invoice,
13 I'll just say for the record, is November 26, 2012; is
14 that correct?
15 A. That is correct.
16 Q. And at the top right corner is some
17 handwriting that says: "MEF number," and then it
18 says: "604012," and it looks like "10."
19 Did I read that correctly?
20 A. Correct.
21 Q. What is -- if you know, what does MEF
22 mean in that context?
23 A. Major expenditure form.
24 Q. Tell us what that is in simple words.
25 A. So during this year, we -- when we had a

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1 major expenditure, this was a three-part form that we
2 would fill out with all the vendor information and the
3 request. This is the way that we tracked capital
4 projects in that year, and everybody would have to
5 sign off on it, and that was the reference to that
6 number.
7 Once we submitted the major expense form, the
8 accounting team would then give us an MEF number to
9 correlate with that expense.
10 Q. Thank you.
11 To what purpose at Contempo Marin was a
12 sitting mower put? What gets mowed, if anything?
13 A. I don't know what was being done at the
14 property during this time period to speak to exactly
15 what the lawn mower was used for.
16 Q. Is there grass? Are there lawns at the
17 park?
18 A. Yes. There's large grassy areas, both on
19 the front of the property, all around the lagoon
20 there's grassy areas, and the tennis courts there's
21 large glassy areas.
22 Q. And are those grassy areas that you just
23 described, are those maintained? Are there people who
24 cut the grass?
25 A. There is.

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1 Q. And at present, here we are in July 2016,
2 who performs the duties of cutting the grass?
3 A. We have outsourced it to a vendor, and
4 the vendor's name is Enviroscapes.
5 Q. Enviroscapes?
6 A. Yes.
7 Q. And is it correct that this Kawasaki
8 19 horsepower 44-inch -- what do you call it, ride-on?
9 A. Ride-on mower.
10 Q. -- ride-on mower is no longer in use at
11 Contempo Marin?
12 A. I have not seen it in use. I don't know
13 if it's being used to do our firebreaks every year --
14 Q. Okay.
15 A. -- but I have not seen it in use.
16 Q. I'll ask Mr. Gonzalez when he gets here.
17 Are there ride-on mowers that are used at
18 other ELS properties that are used there?
19 A. Yes, several.
20 MR. MORAN: Okay. That's all I have on this
21 item until Mr. Gonzalez gets here.
22 THE ARBITRATOR: Nate.
23 RECROSS-EXAMINATION BY MR. COOPER
24 MR. COOPER: Q. Jennifer, I believe you
25 testified previously that you weren't involved in the

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1 capital expenditure process during the 2012/2013 year
 2 at Contempo Marin?
 3 A. Correct.
 4 Q. So your understanding of the mower is
 5 based on your personal experience since you became
 6 involved at the property; is that right?
 7 A. That's personal experience based on our
 8 company's procedures since I've been with the
 9 company --
 10 Q. Sure.
 11 A. -- not just Contempo Marin.
 12 Q. I understand.
 13 Do you know if there was a previous sitting
 14 mower at Contempo Marin at the time this purchase was
 15 made?
 16 A. I do not.
 17 Q. So you don't know if this mower was
 18 purchased to replace a prior similar mower?
 19 A. I do not.
 20 Q. What's ELS' policy for soliciting bids
 21 for a capital expenditure?
 22 A. It depends on the situation. We,
 23 actually, because we are a national company, we have
 24 set up national accounts with certain vendors to
 25 secure discounted prices and special rates for all of

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1 our properties. So it could be we went through a
 2 preferred vendor.
 3 But if it's not a preferred vendor, then the
 4 policy is to try to get at least three proposals
 5 before making a decision on an experience?
 6 Q. Do you know if three proposals were
 7 solicited in connection with the sitting mower?
 8 A. I do not.
 9 Q. If you look at this screen shot that Neil
 10 was discussing with you, along the top it says:
 11 Buck's Saw Service in the upper left.
 12 A. Yes.
 13 Q. Do you -- are you familiar with Buck's
 14 Saw Service?
 15 A. No, I am not.
 16 Q. Do you know whether Buck's Saw Service is
 17 it one of your preferred national vendors?
 18 A. I do not.
 19 Q. Do you know -- am I right that you
 20 testified earlier that you don't believe that this
 21 sitting mower is currently being used at the property?
 22 A. I'm not sure if it is or not.
 23 Q. Do you know if it has been at any time?
 24 A. I do not know.
 25 Q. And you also testified that ELS currently

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1 outsources the lawn mowing, at least?
 2 A. The landscaping, yes.
 3 Q. What does that entail?
 4 A. Mowing, edging, trimming, plants,
 5 irrigation. The general maintenance of the landscape
 6 in common areas.
 7 Q. And prior to the -- when did it start
 8 outsourcing the landscaping?
 9 A. I took a look, and it looks like it was
 10 in late '14 or '15.
 11 Q. And prior to that, who would have been
 12 responsible for mowing the lawn?
 13 A. I don't know who was responsible at that
 14 time. I would be guessing.
 15 Q. Do you believe that the sitting lawn
 16 mower currently benefits the residents of the Contempo
 17 Marin?
 18 A. Currently, today, I don't have an answer
 19 on that. I don't know.
 20 Q. Do you believe that prior to the time
 21 that it -- do you believe that during the time that
 22 the landscaping services were performed by ELS
 23 personnel that it benefited the homeowners?
 24 A. Yes.
 25 Q. Can you explain how it benefited the

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1 homeowners?
 2 A. So as manager and staff, it's our
 3 responsibility to make sure that residents in the
 4 community are happy, and part of that is doing the
 5 maintenance of the grounds and making sure everything
 6 is mowed and maintained to the standards that we would
 7 like for our homeowners.
 8 Q. So keeping the grass trimmed benefits the
 9 homeowners?
 10 A. Yes.
 11 Q. Do you know whether ELS owns any other
 12 lawn mowers that are on site at Contempo Marin?
 13 A. I don't know.
 14 Q. Do you know whether ELS has petitioned to
 15 have the homeowners pay for other lawn mowers at
 16 Contempo Marin in the past?
 17 A. I do not know.
 18 Q. Do you know whether it's necessary for
 19 ELS to have a sitting mower in order to trim the grass
 20 at Contempo Marin?
 21 A. I can't speak for what was necessary in
 22 2012. I do know that we're very careful on what we
 23 purchase. We don't just make decisions without a
 24 need, so -- but in 2012, I can't speak to what was
 25 needed at that time.

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1 Q. You mentioned -- and this may have been
2 Neil's characterization -- but that the invoice here
3 for the exhibit that we are looking at that shows the
4 purchase of the -- reflects the purchase of the
5 sitting mower was a screen shot? Did you agree with
6 that characterization?
7 A. I don't know if it's a screen shot or
8 not.
9 Q. You don't know where this document came
10 from?
11 A. Right.
12 MR. MORAN: I think she testified it was an
13 invoice.
14 THE WITNESS: I did, yeah.
15 MR. COOPER: Q. Okay. And I see in the
16 upper left it says: "Systems Software, Inc.", right
17 below Buck's Saw Service.
18 Do you see that? It's difficult to read.
19 A. I do.
20 Q. Do you know what Systems Software, Inc.
21 is?
22 A. No, I do not.
23 Q. And then in the far right corner, there
24 are some little squares there that are also difficult
25 to decipher -- in the upper right, sorry -- kind of in

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1 the grey. Do you see what I'm talking about?
2 Here, underneath the numbers, the MEF number,
3 in the right corner of the grey area?
4 A. No.
5 Q. Do you understand this to be --
6 withdrawn.
7 Would you agree that a sitting mower would
8 allow ELS to cut the grass at the park more
9 efficiently than a push mower would?
10 A. I don't have an opinion on what's more
11 efficient. I don't mow lawns, so I don't know.
12 MR. COOPER: Maybe I should save these
13 questions for Jorge when he gets here.
14 I don't have any further questions of the
15 witness.
16 THE ARBITRATOR: Anything else on the ride-on
17 mower, other than Jorge, when he gets here?
18 MR. MORAN: Let me just quickly ask.
19 Yeah, I do.
20 THE ARBITRATOR: Okay.
21 MR. MORAN: I'd like you to swear Robert
22 Andrews as a witness.
23 ROBERT ANDREWS,
24 was called as a witness, and the said witness, being
25 first duly sworn, was thereupon examined and testified

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1 as hereinafter set forth.
2 --oOo--
3 THE ARBITRATOR: It's Robert Andrews, and
4 tell me again your position.
5 THE WITNESS: I'm the community manager at
6 Contempo Marin Mobile Home Park.
7 THE ARBITRATOR: All right. Neil.
8 DIRECT EXAMINATION BY MR. MORAN
9 MR. MORAN: Q. Robert, how long have you
10 worked for Contempo Marin?
11 A. I have worked for them since late
12 November of 2014.
13 Q. Do you have any knowledge about the
14 Kawasaki 19 horsepower 44-inch-wide sitting mower?
15 A. I do. I've personally seen it and driven
16 it.
17 Q. And for what purpose did you drive the
18 mower?
19 A. To cut grass and weedy areas.
20 Q. Where? Where -- we have Exhibit 1 [sic],
21 which is a -- Exhibit A, excuse me -- which is a map
22 of the park.
23 Would you tell us and for everyone here,
24 point so that people can see where you're talking
25 about.

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1 A. Okay. It's kind of off the map a little
2 bit [indicating]. This is the perimeter where we
3 sometimes will mow the fire lane.
4 THE ARBITRATOR: I think it would be easier,
5 Robert, if you'd just describe the purpose of the
6 mower. For instance, like around the perimeter if it
7 was for fire break purposes or if it was to do
8 something that the independent contractor landscaping
9 wasn't doing. I don't know what it was, but you can
10 tell us.
11 THE WITNESS: Okay. It was to cut down weeds
12 around the perimeter of the park.
13 MR. MORAN: I'd like to have the court
14 reporter mark a second exhibit as B, a Google Earth
15 map.
16 (Petitioner's Exhibit B was marked for
17 identification and received into evidence.)
18 MR. MORAN: I provided the link to this
19 before to --
20 THE ARBITRATOR: What we should do, just to
21 keep this straight, give me the originals and provide
22 him a copy. The one that has the sticker on it, 'cuz
23 I should keep these exhibits and try to be orderly
24 about it.
25 MR. MORAN: Q. Robert, here's a copy of

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1 Exhibit B.
 2 Is the area that you mowed depicted here?
 3 A. It's not.
 4 Q. Let me --
 5 A. It's off the --
 6 Q. I have a different version of that. I'll
 7 ask the court reporter to mark it as C.
 8 THE ARBITRATOR: Why don't you make it B1.
 9 (Petitioner's Exhibit B1 was marked for
 10 identification and received into evidence.)
 11 MR. MORAN: Q. You have B1 in front of you?
 12 A. B1, okay.
 13 So it was just briefly in this area
 14 [indicating] just to try out the equipment because I'm
 15 not a qualified maintenance person, but I had never
 16 tried it.
 17 I'm just testifying that we have this unit,
 18 and it's available, you know, when we need it for this
 19 purpose.
 20 Q. Excellent. I'd like you to circle the
 21 area that you just described, and then put your
 22 initials and today's date, which is July 19th.
 23 THE ARBITRATOR: Well, if he's going to do
 24 that, he should do it on the original.
 25 THE WITNESS: My initials?

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1 MR. MORAN: Q. Yes. And today's date.
 2 A. [Witness complied.]
 3 MR. MORAN: Is it legible, Mr. --
 4 THE ARBITRATOR: Yes. Yeah, I got the idea.
 5 MR. MORAN: Q. Do you have any other
 6 knowledge about the use of the mower from personal
 7 experience or from what you've seen?
 8 A. Yes.
 9 Q. Okay.
 10 A. From personal knowledge, I don't. I know
 11 that we acquired the machine back some time ago, and
 12 at that time ELS employed a number of maintenance
 13 personnel that took care of all the landscaping. And
 14 from personal experience, to mow the kind of common
 15 areas that we have would take an immense amount of
 16 time with just a push mower. So to be able to move
 17 swiftly and cut wider swaths, it eliminates a lot of
 18 time.
 19 Q. Do you know anything more about this
 20 sit-on mower? We're going to have Mr. Gonzalez
 21 testify.
 22 A. That's it. I know that he is very expert
 23 at running it 'cuz he was, you know, in charge, at
 24 least at one point, of the maintenance --
 25 Q. Okay.

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1 A. -- of the landscape.
 2 Q. Thank you.
 3 MR. MORAN: I'm done with questions for this
 4 witness.
 5 THE ARBITRATOR: Anything -- do you want to
 6 ask anything of Robert.
 7 MR. COOPER: We do. Max.
 8 MR. BERNSTEIN: Max Bernstein for the CM HOA.
 9 CROSS-EXAMINATION BY MR. BERNSTEIN
 10 MR. BERNSTEIN: Q. Good morning,
 11 Mr. Andrews.
 12 A. Good morning.
 13 Q. I just want to start by making clear.
 14 You don't have any personal knowledge of how the mower
 15 was used before the date you arrived at the company;
 16 isn't that right?
 17 A. Not personally, just what I've been told.
 18 Q. But that wasn't the first time that the
 19 park used a sitting mower; isn't that true?
 20 A. I can't answer that. I don't know.
 21 Q. They certainly had mowing needs before
 22 this mower was purchased, right?
 23 A. Yes.
 24 Q. And you told us they had a number of
 25 people that worked in maintenance at the park?

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1 A. Yes.
 2 Q. It would surprise you if the park was
 3 renting a mower prior to the purchase of this mower,
 4 wouldn't it?
 5 A. That would be asking me to express an
 6 opinion.
 7 Q. Okay. Mr. Andrews, you have available to
 8 you the petitions submitted by ELS in this case,
 9 right?
 10 A. Yes.
 11 Q. And you're looking at this screen right
 12 now, the screen shot which, I actually believe is just
 13 an invoice?
 14 A. Yes.
 15 Q. You see that the mower itself cost just
 16 over \$5,000; is that correct?
 17 A. That is correct.
 18 Q. And are you aware of the fact that a
 19 replacement can only qualify as a capital expenditure
 20 if it's over \$5,000?
 21 A. Not 100 percent aware of that.
 22 Q. Are you aware of the fact that there are
 23 sitting mowers that are sold for much less than
 24 \$5,000?
 25 A. I'm not.

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1 Q. Can you tell us today what benefit would
2 be derived to the residents of buying a more expensive
3 sitting mower rather than a cheaper one?
4 A. Well, the benefits to the residents, you
5 know, from personal experience, if we don't maintain
6 the landscaping in really good condition, I hear about
7 it and get complaints because they feel that we have
8 an obligation to make it as beautiful as possible for
9 them.
10 Q. But, Mr. Andrews, you can't think of any
11 reason why a more expensive mower would benefit the
12 residents more than, say, a cheaper mower?
13 A. Less expensive mowers tend to be less
14 quality.
15 Q. Okay. And you mentioned that you
16 test-rode the mower; is that right?
17 A. Yes.
18 Q. But that's the only time that you ever
19 used this mower?
20 A. Personally, yes.
21 Q. Isn't it also true that now a landscaping
22 contractor is brought in to do the mowing on site for
23 the most part?
24 A. Inside, yes.
25 Q. And they don't make use of this Kawasaki

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1 mower?
2 A. That is correct.
3 Q. Okay. No further questions.
4 I'm sorry. May I ask one more question?
5 THE ARBITRATOR: Go ahead, but let's move
6 along. It's a mower.
7 MR. BERNSTEIN: It's a lot of money for our
8 clients, Mr. Baskin.
9 Q. Mr. Andrews, it's the intent going
10 forward to continue to use an outside contractor for
11 mowing, isn't that true?
12 A. Yes.
13 MR. BERNSTEIN: Okay. No further questions.
14 THE ARBITRATOR: All right. Next, No. 5.
15 MR. COOPER: I think we have some direct
16 examination that we'd like to do with our clients on
17 the mower.
18 THE ARBITRATOR: Okay. Go ahead.
19 MR. BERNSTEIN: We'll keep it brief.
20 ROBERT HEINE
21 DIRECT EXAMINATION BY MR. BERNSTEIN
22 MR. BERNSTEIN: Q. Mr. Heine, will you
23 introduce yourself for the record?
24 A. I'm Dick Heine. I'm the president of the
25 homeowners' association.

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1 Q. And how long have you lived at the park,
2 Mr. Heine?
3 A. Living in the park?
4 Q. Yes.
5 A. 22 years.
6 Q. So you've been in the park for the last
7 three years?
8 A. Yes.
9 Q. Do you ever see anybody mowing the
10 property?
11 A. Every week.
12 Q. And what kind of mowers do you see them
13 using?
14 A. I've seen three kinds. Several years ago
15 I saw the sitting mower that's been described here.
16 Recently, I see the outside contractor using one that
17 is motorized, but he walks behind it. I've seen a
18 second one where he stands on a little rail on a
19 motorized mower.
20 MR. BERNSTEIN: That's all the testimony that
21 we're seeking at this point.
22 THE ARBITRATOR: Moving on.
23 No. 5, drainage improvements, the last item
24 in 2013.
25 ///

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1 ISSUE - DRAINAGE IMPROVEMENTS
2 JENNIFER BARRETT
3 DIRECT EXAMINATION BY MR. MORAN
4 MR. MORAN: Q. Why don't you tell us what
5 this item is. We're looking at No. 5, May 12, 2013,
6 Linscott Engineering Contractors, \$12,708?
7 A. So we have two separate jobs that were
8 considered here, and I believe we sent last week the
9 proposals that went with these.
10 So we have No. 79, where we removed and
11 replaced a roll of -- there was -- and replaced some
12 concrete that was rolled up that was causing some
13 drainage problems, so they removed and replaced the
14 concrete and the asphalt for better drainage, and that
15 is on the February 19th, 2013, proposal.
16 And then if we move to -- that one is in the
17 amount of \$7,109.
18 Then if we go to the second one, which is No.
19 67, they also removed and replaced existing concrete
20 gutter, 85 linear feet, and the adjoining asphalt and
21 replaced it for better drainage as well.
22 MR. MORAN: Can I see Exhibit A, Mr. Baskin?
23 THE ARBITRATOR: [Arbitrator complied.]
24 MR. MORAN: Q. Jennifer, we're looking at
25 this March 18th, 2013, invoice, and it has some

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1 numbers. No. 79, \$7,109; No. 67, \$5,599. Do those
 2 numbers correspond to unit numbers?
 3 A. They do.
 4 Q. So looking at Exhibit A, the Contempo
 5 Marin map, we can find Units 79 and 67, and that's
 6 where the work was performed?
 7 A. Correct.
 8 Q. Have you spoken with anybody about this
 9 particular capital expenditure for the work that was
 10 performed by Linscott Engineering?
 11 A. No, I have not.
 12 Q. You said you reviewed a proposal in
 13 regard to this?
 14 A. I did.
 15 Q. And is that the proposal dated
 16 February 19th, 2013 --
 17 A. Yes, it is.
 18 Q. -- that we provided last week? I'm
 19 looking for a copy.
 20 And that's the proposal that's referenced in
 21 the invoice?
 22 A. Yes, it is.
 23 THE ARBITRATOR: So why don't we -- Neil,
 24 what you gave me -- I think you saw these, Nate?
 25 MR. COOPER: Yes.

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1 THE ARBITRATOR: Why don't we mark this C.
 2 (Petitioner's Exhibit C was marked for
 3 identification and received into evidence.)
 4 THE ARBITRATOR: So I have C, which consists
 5 of two pages. One is a Linscott Engineering proposal
 6 with regard to No. 67, and the other one is regarding
 7 No. 79.
 8 THE WITNESS: Correct.
 9 THE ARBITRATOR: Okay, go ahead.
 10 MR. MORAN: Your witness.
 11 CROSS-EXAMINATION BY MR. COOPER
 12 MR. COOPER: Q. Ms. Barrett, looking at
 13 Exhibit C, did you provide these documents to Counsel
 14 personally?
 15 A. Yes.
 16 Q. Where did you obtain these documents?
 17 A. From the files at Contempo Marin.
 18 Q. When did you obtain them from the files
 19 at Contempo Marin?
 20 A. Last Thursday.
 21 Q. And can you describe, when you say "the
 22 files," is that an electronic file or a file cabinet?
 23 Where did you find the documents?
 24 A. File cabinet.
 25 Q. It was a file cabinet?

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1 A. [Witness nodded head.]
 2 Q. How is it organized?
 3 A. By vendor name.
 4 Q. How is it that you were able to locate
 5 this document and determine that it related to the
 6 petition?
 7 A. By looking at the files.
 8 Q. So you -- maybe I can summarize. You
 9 would have seen that this was a Linscott Engineering
 10 expense, opened the file cabinet, known from the
 11 petition that we were talking about the Linscott
 12 Engineering expenditure, and seen it in the Linscott
 13 Engineering file?
 14 A. So we met at the property, and Robert
 15 actually personally pulled the file.
 16 Q. Understood.
 17 Does ELS keep similar files for its other
 18 vendors?
 19 A. During this time period, we did keep
 20 everything in the file cabinet. Now, everything is
 21 computerized, and it's all in the back office system.
 22 So the answer is yes for this time period;
 23 today it would be in a computer.
 24 Q. And in connection with your preparation
 25 for this arbitration, did you look for invoices or

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1 additional documentation relating to the other vendors
 2 who performed services that are at issue in the
 3 petitions here?
 4 A. No, just this one.
 5 MR. COOPER: I don't have any further
 6 questions.
 7 THE ARBITRATOR: Okay. Neil?
 8 MR. MORAN: Okay. Let's go to the 2014
 9 petition.
 10 THE ARBITRATOR: Well, before we do that, let
 11 me invite a question to Counsel, okay? And I elicit
 12 your -- or enlist your support in understanding it.
 13 So it strikes me that when I read these
 14 invoices, it's a little hard to tell whether or not
 15 this is a maintenance or repair item of existing
 16 drainage systems or if it's a -- it's not a capital
 17 replacement item because they're not talking about
 18 replacing the whole drainage system, and so it's not a
 19 \$5,000 minimum item under capital replacement.
 20 So then the question is is it a capital
 21 improvement -- I think I'm being called upon to
 22 determine whether it's a capital improvement or if
 23 it's a maintenance and repair item. And this
 24 analysis -- this required analysis will come up with
 25 some other items that are coming up later, so I

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1 thought maybe I'd invite a little bit of discussion by
2 Counsel on the issue.
3 Maybe, Matt, this is something that fits into
4 what you were thinking about that would come at the
5 end, but the timing is good now because it will help
6 with your -- how you address subsequent issues as they
7 come up.
8 So what would you say, first, since it's your
9 burden of proof, Neil, with regard to how I can
10 determine whether or not this is a capital improvement
11 item or is it a maintenance and repair item?
12 MR. MORAN: Well, I'm glad you brought it up
13 Mr. Baskin. I would, on this item, ask a few other
14 questions of my witness, Jennifer Barrett.
15 THE ARBITRATOR: Go ahead.
16 REDIRECT EXAMINATION BY MR. MORAN
17 MR. MORAN: Q. Jennifer, did you -- do you
18 have an understanding of what the condition was that
19 necessitated this work by Linscott Engineering, these
20 drainage improvements?
21 A. I do not.
22 Q. Was there -- were you told there was some
23 drainage problem there?
24 A. I wasn't told. I read it in the
25 proposal.

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1 Q. And what are you referring to in the
2 proposal in that regard?
3 A. Where it states "remove and replace
4 concrete rolls and adjoining asphalt to accommodate
5 new curb with proper slope for drainage."
6 Q. What do you understand from that about
7 the drainage that existed before this work was done?
8 A. What do you mean by that?
9 Q. Sure.
10 Where it says "improve drainage," from your
11 duties at -- excuse me, "proper slope for drainage,"
12 do you have an understanding of what that means?
13 A. I would be assuming --
14 Q. Okay.
15 A. -- what that means.
16 Q. I'll deal with it with Mr. Gonzalez;
17 that's fine.
18 MR. MORAN: I don't have any more questions
19 of this witness on that line.
20 MR. JACCARD: I have a few questions for
21 Jennifer.
22 DIRECT EXAMINATION BY MR. JACCARD
23 MR. JACCARD: Q. Jennifer, this concrete
24 work that was done --
25 A. Yes.

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1 Q. -- it will extend -- have a useful life
2 that will last longer than one year?
3 A. Yes.
4 Q. And most likely for many years?
5 A. Yes.
6 MR. COOPER: I think -- I don't have any
7 questions for the witness.
8 I think maybe I can provide a bit of response
9 to your question about --
10 THE ARBITRATOR: Yeah, that's kind of what I
11 had in mind.
12 MR. COOPER: I think we would have
13 appreciated hearing in ELS' brief whether they
14 believed items were replacements or improvements, and
15 that would have at least gotten us past kind of a
16 threshold inquiry there, and then we could focus on
17 whether it's capital or maintenance.
18 I think Mr. Jaccard's point here is --
19 relates to the language of the statute or the
20 ordinance in the definitions of replacements or
21 improvements, and we would acknowledge that the
22 ordinance says that if it extends the useful life of
23 an asset, appreciably extends the usable life, that it
24 qualifies.
25 And I don't think we really have much of a

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1 disagreement about whether this one qualifies, but we
2 do have an objection to the timeliness of the
3 information that we received about this item and the
4 fact that we didn't get any information about what
5 work was done, despite the fact that it was available,
6 until just the eve of this arbitration, and we'll
7 address that separately at a later time.
8 But there are other points that we could make
9 about the difference between a capital replacement and
10 a maintenance and repair item. If you'd like, I can
11 point you to something here, I know it's not really
12 the issue with this specific item that we're
13 discussing, but --
14 THE ARBITRATOR: Why don't we wait, then,
15 until we get to it.
16 MR. COOPER: Sure.
17 THE ARBITRATOR: All right. Thank you.
18 MR. BROWN: Just one housekeeping matter.
19 THE ARBITRATOR: Sure.
20 MR. BROWN: I may have missed it, but when
21 Dick testified on, maybe the item before last or two
22 items ago, I don't know if he was sworn in.
23 THE ARBITRATOR: Yes, he was.
24 MR. BROWN: Okay. Obviously, I did miss it,
25 so if --

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1 THE ARBITRATOR: And if he wasn't --
 2 MR. BERNSTEIN: He was.
 3 THE ARBITRATOR: That's a good thing, though.
 4 MR. BROWN: I just wanted to make sure we
 5 didn't have a problem on the record later.
 6 MR. BERNSTEIN: Dick is slippery like that.
 7 MR. MORAN: He's as honest as the day is
 8 long.
 9 MR. BROWN: I might just add, we can always
 10 count on Max here for the one-liners, as you've seen.
 11 THE ARBITRATOR: All right. We're moving
 12 along to the 2014 petition, and we're now at No. 6 as
 13 I've -- 6 and 7, really.
 14 Neil?
 15 MR. MORAN: Just a second. I lost my
 16 numbering system.
 17 ISSUE - HVAC
 18 DIRECT EXAMINATION BY MR. MORAN
 19 MR. MORAN: Q. Jennifer, on the 2014
 20 petition, Nos. 6 and 7 involved Caron, C-A-R-O-N,
 21 Climate Control. The first item is \$14,400.
 22 Tell us about that.
 23 A. This is for replacement of the HVAC
 24 system in the clubhouse.
 25 Q. And just to make a full record, since our

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1 nice court reporter is here, "HVAC" is heating,
 2 ventilation and air conditioning, correct?
 3 A. Correct.
 4 THE ARBITRATOR: Are the clubhouse and the
 5 office -- excuse me for interrupting -- the clubhouse
 6 and office, is that a single building?
 7 THE WITNESS: Yes.
 8 MR. MORAN: Q. Why don't you describe what's
 9 in the clubhouse?
 10 A. So in the clubhouse, we have the office,
 11 the management office to the left. To the right is
 12 the cardio room. If you keep going down to the right,
 13 we have a library area. And then below, there's a
 14 nice seating area with couch and TV for our residents.
 15 Then we have a large meeting room. And to the other
 16 left, we have the weight room, and then we have some
 17 restrooms.
 18 Q. And on Exhibit B -- what did we call it,
 19 B1?
 20 THE ARBITRATOR: Yes.
 21 MR. MORAN: Can I have her refer to that?
 22 It's behind you.
 23 THE ARBITRATOR: Yep. Okay.
 24 MR. MORAN: Q. Why don't you point out,
 25 Jennifer, where the clubhouse is?

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1 A. Right here [indicating].
 2 Q. And for the record, why don't you circle
 3 the clubhouse and initial it.
 4 A. [Witness complied.]
 5 Q. And --
 6 THE ARBITRATOR: I've drawn a little line on
 7 here, "Clubhouse."
 8 MR. MORAN: Q. And other than the office, is
 9 the rest of the clubhouse facility there for the park
 10 residents?
 11 A. I actually would say that the office is
 12 there for the residents as well. The entire building
 13 is there for the residents.
 14 Q. Right. But your company's employees use
 15 the office?
 16 A. Yes.
 17 Q. And then the rest of the clubhouse, I
 18 think you said, one room was the cardio. Tell us
 19 what's in that room.
 20 A. Cardio equipment. We have an elliptical,
 21 we have treadmills, and I think we have a bike in
 22 there as well.
 23 Q. So exercise equipment?
 24 A. Yes.
 25 Q. And is that there for the residents of

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1 Contempo Marin?
 2 A. Yes.
 3 Q. And before it had cardio, and that is
 4 exercise equipment, was that a -- was there a pool
 5 table there?
 6 A. Yes.
 7 Q. And then you described the library.
 8 What's in there?
 9 A. Lots of books and bookshelves and, I
 10 think, five or six tables.
 11 Q. And is that area for the residents?
 12 A. Yes, it is.
 13 Q. And then did you say there was a seating
 14 area --
 15 A. Yes.
 16 Q. -- in the center?
 17 A. Yes.
 18 Q. Same thing; it's for the residents?
 19 A. Yes.
 20 Q. And then you said there are meeting
 21 rooms?
 22 A. Meeting room, a large meeting room.
 23 Q. Meeting room. And are the homeowners'
 24 association meetings conducted there?
 25 A. I believe that's where they hold the

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1 majority of their meetings.
2 Q. So what is the HVAC -- so what areas of
3 the clubhouse do the new heating, ventilation, and air
4 conditioning system serve?
5 A. The entire clubhouse.
6 Q. Okay. And what was the amount of that
7 expenditure?
8 A. \$14,400.
9 Q. And was there an associated expenditure
10 of \$1,720?
11 A. Yes.
12 Q. What was that for?
13 A. For the titling and permitting.
14 Q. What was the titling?
15 A. Titling is the Title 24 building analysis
16 and documentation and permits.
17 Q. Title 24, is that a government
18 requirement?
19 A. Yes. Actually, Title 24, I believe, is
20 state.
21 Q. Right, state government requirement?
22 A. Right, state.
23 Q. And the company paid that for that
24 expenditure?
25 A. Yes.

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1 Q. And do you think it benefits the
2 residents of the facility?
3 A. Yes.
4 Q. All right.
5 MR. MORAN: That's all I have on this one.
6 THE ARBITRATOR: Okay. Nate?
7 CROSS-EXAMINATION BY MR. COOPER
8 MR. COOPER: Q. Ms. Barrett, were you
9 working at Contempo Marin at the time that the HVAC
10 units were replaced?
11 A. It's right about that time period that I
12 was taking over as senior. I did not have anything to
13 do with this in particular, but I was just getting
14 involved.
15 Q. You weren't involved with the replacement
16 when it happened?
17 A. No.
18 Q. I'm looking at the invoice Caron Climate
19 Control. Are you on that same page? And it says:
20 "Replaced HVAC No. 1 and HVAC Unit No. 2."
21 Am I to understand that there are two
22 separate HVAC units?
23 A. I have not been up on the roof to verify
24 that there are two. I'm assuming that's what this is,
25 yes.

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1 Q. Do you know what portions of the building
2 those units serve?
3 A. No, I couldn't say which one does what.
4 Q. Do you know whether one of those units
5 serves the office and one serves the remainder of the
6 clubhouse?
7 A. I don't know.
8 Q. Do you know what the state of the
9 prior -- well, let me withdraw that and ask am I
10 correct that these units replaced two existing units
11 that were already at the property, if you know?
12 A. I don't know.
13 Q. There was an HVAC system prior to this
14 work being performed, correct?
15 A. I don't know. I would be assuming, but I
16 would assume, yes, there was.
17 Q. And safe to say that you don't have any
18 information about the -- whether the prior HVAC
19 system, if there was one, was in working order?
20 A. I do not have knowledge of that.
21 Q. Do you know how ELS determined that --
22 what the decision-making process was when it decided
23 to undertake this project?
24 A. I can speak to overall what our
25 decision-process making is when it comes to replacing

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1 heating and AC units. We have -- we have them
2 assessed. We always repair when we can, and sometimes
3 they've reached a useful life, and we need to replace
4 the system with a new one.
5 Q. Thank you.
6 But you have no specific knowledge about
7 whether that was the process that led to this
8 replacement?
9 A. Our company's pretty firm about our
10 policies on that stuff.
11 Q. Do you know who would have been in that
12 decision-making process?
13 A. During this time, it would have been Beau
14 Robinson [phonetic], and the manager at the time, I
15 believe, was Peter -- Peter Maxwell.
16 MR. COOPER: I don't have any further
17 questions.
18 THE ARBITRATOR: Okay.
19 REDIRECT EXAMINATION BY MR. JACCARD
20 MR. JACCARD: Again, I just have one quick
21 additional question.
22 Q. How old is that building?
23 A. 1970, when the park was built.
24 THE ARBITRATOR: Okay. Moving on, No. 8 is
25 the lagoon pump.

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1 MR. KIMES: Neil, can I --
2 Can I speak with Neil for a moment, please?
3 THE ARBITRATOR: Sure, let's make it short,
4 please.
5 [Short recess.]
6 MR. MORAN: Thank you for the break.
7 THE ARBITRATOR: Okay.
8 MR. MORAN: I don't have anything additional
9 on Items 6 or 7.
10 On Item 8, after talking to my clients about
11 it, we withdraw Item 8. This is Linscott Engineering
12 \$5,627 and some cents. On reflection and reading the
13 narrative in the document that we submitted, we do not
14 believe it qualifies as a capital replacement and
15 capital improvement, and we therefore do not seek to
16 pass the expenditure through to the homeowners.
17 THE ARBITRATOR: Okay.
18 MR. COOPER: We appreciate that.
19 THE ARBITRATOR: Okay. And then you've
20 already withdrawn 9, 10, 11 and 12.
21 MR. JACCARD: That's correct.
22 THE ARBITRATOR: So that concludes us on
23 2014.
24 MR. MORAN: While we have a moment --
25 THE ARBITRATOR: Let's go off the record for

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1 a moment.
2 MR. MORAN: I'll ask the court reporter to
3 mark the declaration of Ann Wallin and Jill Price.
4 (Petitioner's Exhibit D was marked for
5 identification and received into evidence.)
6 THE ARBITRATOR: You're moving on to the 2015
7 petition.
8 And did you want to break in on these
9 declarations before we got to that?
10 MR. MORAN: Yes, I asked the court
11 reporter --
12 THE ARBITRATOR: That might even take us to
13 lunch.
14 MR. MORAN: One of the, as you know,
15 requirements of the ordinance is that the -- on
16 capital replacements that the expenditures have been
17 amortized over the useful life pursuant to the
18 provisions of the Internal Revenue code and Internal
19 Revenue regulations, so we've submitted a declaration
20 of Ann Wallin and Jill Price.
21 MR. COOPER: Just let me interrupt, and I
22 apologize, to correct the record. You said capital
23 replacement, I believe --
24 MR. MORAN: Thank you.
25 MR. COOPER: -- I think you're talking about

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1 capital improvements.
2 MR. MORAN: You're 100 percent correct.
3 So this declaration satisfies that
4 requirement in the City's ordinance.
5 THE ARBITRATOR: Anything you want to say
6 about that?
7 MR. COOPER: Only that I'm not sure that any
8 of these items here that we're talking about are
9 capital improvements. Again, we have been provided
10 with ELS' position on that. We discussed the item
11 previously that -- the drainage improvements that we
12 effectively conceded that. I'm just unclear about
13 whether any of the remaining items, or the items that
14 we discussed previously, are being analyzed as capital
15 improvements and if not, then wonder whether this
16 declaration is relevant.
17 THE ARBITRATOR: Okay. I mean, I look at it
18 from the issue of whether or not something is a
19 capital improvement is a fact-based issue. The dollar
20 amount for purposes of the ordinance is only pertinent
21 in a capital replacement question. As to capital
22 improvement, the IRS minimum standard is one thing;
23 what you do as an office policy is something else.
24 So it's not exactly the cost of the item that
25 is pertinent; it's really what is the subject matter

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1 issue and whether or not it meets the definition under
2 the City's ordinance. So, I mean, I'll just have to
3 infer what it is and move on.
4 All right. We might as well get started on
5 the 2015 petition.
6 MR. MORAN: Yes. Let's take up, if it's all
7 right, 13 and 14, which are the roofing, July 9, 2015,
8 Thomas Brooke Roofing, \$34,250. And I have as Item 14
9 the August 18, 2015, expenditure for the same
10 contractor, Thomas Brooke Roofing, for \$39,750.
11 ISSUE - ROOFING
12 DIRECT EXAMINATION BY MR. MORAN
13 MR. MORAN: Q. Jennifer, can you tell us
14 what these items are?
15 A. Yes, it's replacement of the roof on the
16 clubhouse at Contempo Marin.
17 Q. And were you working -- did your
18 responsibilities include Contempo Marin at the time
19 these improvements -- at the time these expenditures
20 were made?
21 A. Yes.
22 Q. Can you tell us about the process that
23 led to this expenditure?
24 A. Sure.
25 I actually started this process in 2014 in

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1 trying to find a vendor to replace the roof at
2 Contempo Marin. We met with several vendors
3 throughout a seven- or eight-month period of time, and
4 I just wasn't satisfied with the proposals that we
5 were receiving. We were receiving proposals anywhere
6 from 120,000 to \$150,000, and I just wasn't -- I
7 didn't think that was a fair price to replace the roof
8 at Contempo Marin.
9 So Robert actually had worked with this
10 gentleman in the Central Valley and asked if he could
11 go ahead and contact this vendor and have him come and
12 give us a proposal for the roof.
13 Q. Just a second. That would be Robert
14 Andrews, your community manager at Contempo Marin?
15 A. Yes.
16 Q. Okay.
17 A. And Thomas Brooke came out to the
18 property on several occasions, and his proposal was
19 very fair. Unfortunately, I could not get it done in
20 the 2014 time period because of scheduling purposes,
21 so we actually moved the roof into the new year and
22 began the roof in the new period.
23 Q. In 2015?
24 A. Correct.
25 Q. Did you see any part of the work while

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1 the contractor was there performing the roofing work?
2 A. I didn't see any of the work that was
3 being performed. What I was involved with -- and the
4 HOA was there and met this gentleman -- I was involved
5 in the meeting of the vendor. We were actually
6 meeting for a separate reason with the HOA where the
7 vendor brought out several of the -- brought out the
8 roofing material that we were going to use -- it's a
9 very unique roof at Contempo Marin -- and brought out
10 colors that we could choose from, and I took the
11 opportunity for the HOA to meet the vendor and take a
12 look at the product.
13 Q. And the vendor being the roofer?
14 A. Correct.
15 Q. And when did those -- that meeting take
16 place?
17 A. I don't have an exact date on when the
18 meeting took place.
19 Q. And did you say you consulted with the
20 homeowners' association about what colors to pick for
21 the roofing material?
22 A. They were a part of that, yes.
23 Q. Were different colors of roofing shown
24 to -- were they board members of the homeowners
25 association?

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1 A. I believe that it was all board members
2 at that particular meeting.
3 Q. Who was there?
4 A. Dick was there.
5 Q. Mr. Heine --
6 A. Correct.
7 Q. -- the president?
8 A. Correct. Keith was there.
9 Q. Mr. Meloney, the past president?
10 A. Correct.
11 There was, I believe, three other board
12 members there. I don't have their names off the top
13 of my head.
14 MR. HEINE: I believe Carol Wells was there.
15 THE WITNESS: Yes.
16 THE ARBITRATOR: It's hard for the court
17 reporter to hear.
18 MR. MORAN: Carol Wells was there. And Pat
19 somebody?
20 MR. HEINE: Patrick Lynch, and one other.
21 No, it was just the four of us.
22 THE ARBITRATOR: All right.
23 THE WITNESS: No, I think there was one more,
24 and I think there was one more.
25 MR. MELONEY: I think it was an older lady.

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1 I don't know if it was one of the twins.
2 THE WITNESS: And, of course, Robert was
3 there as well.
4 MR. HEINE: Sheryl Clark.
5 MR. MELONEY: Megan Clark.
6 THE ARBITRATOR: All right. Megan Clark
7 might have been there.
8 MR. BROWN: We'll have some cross on that
9 point later.
10 MR. MORAN: Q. Have there been any leaks in
11 the clubhouse roof since this work was done?
12 A. No, not that I'm aware of.
13 THE ARBITRATOR: If I may?
14 MR. MORAN: Yeah.
15 THE ARBITRATOR: Prior to the replacement of
16 the roof in 2015 at the clubhouse, are you aware of
17 there having been a replacement of the roof before
18 that?
19 THE WITNESS: No.
20 THE ARBITRATOR: As far as you know, was
21 there ever a replacement roof, or was that the
22 original roof?
23 THE WITNESS: I believe this was the original
24 roof, and that was the contractor's belief as well.
25 THE ARBITRATOR: When you were talking to

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1 them --
2 THE WITNESS: Yes.
3 THE ARBITRATOR: -- that was their opinion.
4 THE WITNESS: Yes.
5 THE ARBITRATOR: So it was a 1970 roof that
6 was being replaced?
7 THE WITNESS: Yes.
8 THE ARBITRATOR: All right. Nate?
9 CROSS-EXAMINATION BY MR. COOPER
10 MR. COOPER: Q. What was the impetus for
11 examining whether to replace the roof? Leaks, for
12 example, or known problems with the roof, or as part
13 of the routine upgrading of the property?
14 A. I was aware of one leak in the -- in
15 the -- if you walked in the office, and there's a
16 storage area where all of the tables are kept for the
17 parties, and I was aware that there was a leak in
18 there. So when we had that looked at, it was noted
19 that we needed a new roof altogether.
20 Q. And you mentioned, I recall, you called
21 it a unique roof. Can you describe the roof there?
22 A. It's the design of the roof. It's not a
23 typical pitched roof or a flat roof. It actually
24 has -- it's metal, and it goes up and then over and
25 then down. It's a very unique style to the property.

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1 Not one I have ever dealt with before.
2 Q. I've seen it.
3 And if you look at Exhibit B here, maybe you
4 can just speak to that?
5 A. Sure.
6 Q. And show Mr. Baskin.
7 A. Sure. So the roof, you can see, it's got
8 a center. The roof goes up and over and then down,
9 and it's all metal.
10 THE ARBITRATOR: Okay.
11 MR. COOPER: Q. And the center, is the
12 center metal as well? I see that in this color image,
13 it looks grey.
14 A. I don't know if it's metal or not.
15 Q. Is it a possible that it's a gravel and
16 tar --
17 A. Yes, it is --
18 Q. -- flat roof?
19 A. -- possible.
20 Q. Are you aware -- you also see on this
21 image a couple little areas where it looks like
22 there's equipment. Are those the HVAC units that we
23 talked about earlier? I think you said that they were
24 up on the roof.
25 A. I'm going to assume they are. I don't

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1 know.
2 Q. Are you aware of what part of the roof
3 was the source of the leaks?
4 A. On this map?
5 Q. Um-hm.
6 A. No, I couldn't pinpoint where it's at.
7 Q. You don't know -- well, do you know
8 whether it was leaking on the flat, potentially,
9 gravel and tar portion on the top, or on the sloped
10 portions on the sides?
11 A. I know that there was a leak in the flat
12 area.
13 Q. On the flat part.
14 And when you spoke with the contractors, did
15 you discuss the cost for just repairing the leaks on
16 the flat portion?
17 A. When we originally started the process,
18 yes.
19 Q. Do you remember what the cost estimates
20 were for those, if you received any?
21 A. They recommended replacement. There was
22 no -- it wasn't a repairable situation.
23 Q. Replacement of the --
24 A. The roof.
25 Q. Of the portion of the roof -- well, the

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1 portion of the roof that's flat or of the entire --
2 A. The entire roof.
3 Q. Do you know why they recommended the
4 replacement of the pitched portions together with the
5 flat portion? Did they discuss that at all?
6 A. It had reached its useful life.
7 Q. Do you have a belief as to whether the --
8 withdraw that.
9 May I have just one moment to confer with my
10 colleague here?
11 THE ARBITRATOR: You may.
12 MR. COOPER: I don't have any further
13 questions.
14 THE ARBITRATOR: Okay.
15 MR. COOPER: Or witness on that.
16 THE ARBITRATOR: All right. Why don't we,
17 just -- for since we're talking about roofs, jump to
18 No. 19.
19 MR. MORAN: Yes.
20 THE ARBITRATOR: And talk about that, and
21 then we'll take our break.
22 MR. MORAN: So No. 19, for the record, is
23 August 18, 2015, Thomas Brooke Roofing. The amount is
24 \$5,250, and I believe it pertains to the laundry room
25 roof.

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1 DIRECT EXAMINATION BY MR. MORAN
2 MR. MORAN: Q. Jennifer, when you find that
3 invoice --
4 THE ARBITRATOR: Before you do that, where's
5 the laundry room?
6 THE WITNESS: The laundry room is right here
7 [indicating].
8 THE ARBITRATOR: Just opposite the pool from
9 the clubhouse?
10 THE WITNESS: Yes.
11 THE ARBITRATOR: All right.
12 MR. MORAN: Q. Did she mark your original
13 exhibit? Sometimes these things get appealed.
14 THE ARBITRATOR: Okay.
15 MR. MORAN: I've made a lot of -- anyway,
16 strike that.
17 THE ARBITRATOR: Here we go.
18 THE WITNESS: [Witness complied.]
19 THE ARBITRATOR: Okay.
20 MR. MORAN: Q. So you've circled the laundry
21 room area on Exhibit B in a purple pen?
22 A. Correct.
23 THE ARBITRATOR: I've done the extension in
24 case we need to refer to it.
25 MR. MORAN: Thank you.

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1 Q. Jennifer, is there an invoice that
2 pertains to this item?
3 A. Yes, there is.
4 Q. What's the date of the invoice? And it
5 is attached to our hearing brief as Exhibit C.
6 A. August 18th of 2015.
7 Q. And it says in part, "Re-roof laundry
8 building"?
9 A. Correct. This is roofing of laundry
10 building.
11 Q. Tell us what you know about that.
12 A. So the roof on the laundry room was the
13 same age and condition of the roof on the clubhouse
14 building, so we made the decision at that time to
15 replace that as well.
16 Q. In looking at the August 18th, 2015,
17 invoice there are three subtotals or sub-items, I
18 guess.
19 Why don't you take us through each one of
20 those?
21 A. Sure.
22 So the roofing of the laundry building with
23 the metal R-panel was \$3,200.
24 Q. Before you go on, would you tell us what
25 that means?

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1 A. Sure. That would be the re-roofing of
2 the red panels, the replacement of the red panels.
3 Q. You're indicating the sloped portion?
4 A. Yes, it matched the clubhouse; it was the
5 exact design.
6 THE ARBITRATOR: Same design?
7 THE WITNESS: Yes.
8 THE ARBITRATOR: Okay.
9 MR. MORAN: Q. What does R-panel mean?
10 That's the letter R, Rosco.
11 Do you know what that means?
12 A. I don't.
13 Q. Okay.
14 A. I'm going to have to do some studying.
15 Q. Yes. No, not today.
16 A. "Install new modified" --
17 Q. Bitumen?
18 A. -- "bitumen on flat area, not included
19 with the metal roof portion, \$1,100."
20 And then "new gutter and downspouts for \$950,
21 a colonial red color to match the roof."
22 Q. What role did you have in authorizing
23 this work?
24 A. I had to approve.
25 Q. Did you ever speak to the contractor

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1 about this?
2 A. Yeah, I met with the contractor, yes.
3 Q. And what discussions did you have with
4 him about the necessity for this work?
5 A. The roof was the same age as the
6 clubhouse. We had also had a compromising situation
7 where a car had crashed into the laundry room area and
8 compromised the roof as well. The entire left side of
9 the building had to be replaced.
10 Q. Let's go back to this car crash. In what
11 year did this happen?
12 A. I believe it was last year.
13 Q. That would be 2015?
14 A. Yeah, yes.
15 Q. In what season or month?
16 A. I would have to refer to Robert or maybe
17 Keith.
18 Q. Tell us what you know about this car
19 crash.
20 A. That somebody hit the building and left.
21 Q. In a car?
22 A. Yes.
23 Q. And what does that have to do with the
24 roof?
25 A. Nothing.

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1 Q. Well --
2 A. I felt that it compromised the building.
3 Q. In what way?
4 A. The whole left side of the building had
5 to be replaced. There was a big hole in the building.
6 Q. Like a wall?
7 A. Yes --
8 Q. Okay.
9 A. -- and the washers and dryers.
10 Q. What -- tell us about the washers and
11 dryers. What happened to them?
12 A. I believe we had to replace the washers
13 and dryers and the plumbing in that area.
14 Q. And for this damage to the exterior wall
15 of the laundry building, was it one foot -- from the
16 ground up, one foot or two foot, or how high did the
17 damage extend?
18 A. I think it was six feet high.
19 Q. Did you ever see it?
20 A. Yes.
21 Q. Can you describe how tall, how wide, the
22 damage was to this exterior wall?
23 A. So it was probably six by six.
24 Q. Six inches?
25 A. Feet.

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1 Q. Okay. All right.
2 And when you were talking to the -- this is
3 the same contractor who did the clubhouse roof?
4 A. Yes, it is.
5 Q. And when was the work -- the roofing work
6 on the laundry building, was that contemplated at the
7 same time as the roofing work on the clubhouse?
8 A. Yes.
9 Q. So as I understand your testimony, is it
10 correct that there's two components to the laundry
11 room roof? There's the sloped metal part of the roof,
12 and then there's a flat area; is that right?
13 A. I'm not for sure on the flat area. I
14 know the sloped area.
15 Q. Okay. Says, the second item: "Install
16 new modified bitumen on flat area."
17 A. Yeah, that's about the center.
18 Q. The center?
19 A. Center of the roof.
20 Q. Okay. And then what discussion, if any,
21 was there about new gutters and downspouts?
22 A. I don't think there was any discussion on
23 the gutters and downspouts.
24 Q. Why were they -- did you authorize this
25 \$950 expenditure?

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1 A. Yes.
2 Q. Did you believe it was necessary?
3 A. Yes.
4 Q. Why?
5 A. Normally, when you're replacing a roof,
6 you replace the downspouts and gutters at the same
7 time.
8 Q. And have you ever done that on other
9 properties that were owned by ELS?
10 A. Yes.
11 Q. Were gutters and downspouts replaced on
12 the clubhouse?
13 THE ARBITRATOR: If you know.
14 THE WITNESS: Yes.
15 THE ARBITRATOR: Okay.
16 MR. MORAN: Q. With respect to the laundry
17 building, have there been any leaks since this work
18 was done?
19 A. No.
20 Q. Okay.
21 MR. MORAN: I don't have any questions on
22 this item with Jennifer anymore.
23 THE ARBITRATOR: Okay. Nate?
24 CROSS-EXAMINATION BY MR. COOPER
25 MR. COOPER: Q. Jennifer, you said that the

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1 laundry room roof was the same age as the clubhouse
2 roof?
3 A. Yes.
4 Q. And the basis for that understanding was?
5 A. The contractor.
6 Q. That's what the contractor told you. Do
7 you know approximately how old that was? Or what is
8 your understanding as to how old the --
9 A. Original; that was my understanding.
10 Q. You testified previously about the age of
11 the building. Can you remind me?
12 A. The '70s.
13 Q. Were you aware of any specific problems
14 with the laundry room roof?
15 A. No.
16 Q. Were you aware of any leaks -- putting
17 aside the car crash, were you aware of any leaks of
18 the laundry room?
19 A. No, just the metal was rotting in some
20 areas.
21 Q. What areas?
22 A. In corners of the building.
23 Q. And let's talk about the car crash
24 quickly.
25 I think you said during your prior testimony

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1 that the roof was damaged by the car crash; is that
2 right?
3 A. I didn't say it was damaged. I said that
4 it could have been compromised.
5 Q. Was that factor a part of the decision to
6 replace the new roof, that it might have been
7 compromised by the car crash?
8 A. No. It was completely because we were
9 replacing the clubhouse roof. We had the laundry room
10 roof assessed at the same time for the replacement to
11 see if it needed to be replaced as well.
12 Q. So the car crash was an independent event
13 that also involved the laundry room --
14 A. Correct.
15 Q. -- and created to you some concern that
16 there might be an issue?
17 A. Correct.
18 Q. You eventually repaired the damage,
19 replaced the wall?
20 A. Correct.
21 Q. Was that covered by insurance?
22 A. No. It was a hit-and-run.
23 Q. When you spoke with the contractors, did
24 they recommend that you replace each one of these
25 separate items here associated with the roof, the

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1 metal R-panel, the bitumen on the flat area, and the
2 downspouts?
3 A. So what I recall talking to them about
4 was the roof itself, the whole roof. The downspouts,
5 I can't recall having that specific conversation with
6 them as it relates to that replacement, but I
7 definitely talked about the roof.
8 Q. How about the bitumen on the flat area?
9 A. Yes.
10 Q. You discussed with them replacing that?
11 A. Yes.
12 Q. And they recommended replacement of all
13 three portions --
14 A. Yes.
15 Q. -- though you don't recall the
16 downspouts?
17 Did you discuss with them whether it would
18 have been possible to replace one portion, to
19 undertake one of these items here and not the others?
20 A. No, I did not.
21 Q. I think you mentioned in connection with
22 the clubhouse roof that you obtained a number of bids
23 from a number of contractors?
24 A. Correct.
25 Q. Did you discuss the laundry room roof

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1 with any of those contractors?
2 A. Yes.
3 Q. Did you obtain other bids?
4 A. Yes.
5 Q. Were they all higher than the bid you
6 received?
7 A. Yes.
8 MR. COOPER: I don't have any further
9 questions on the roof.
10 THE ARBITRATOR: Okay. All right. I think
11 I'll go check on lunch, but we're going to take our
12 lunch break and hope the food's here.
13 [Lunch recess.]
14 THE ARBITRATOR: Back on the record.
15 Mr. Bloom [sic], you have some housekeeping matters.
16 MR. BROWN: Yes, thanks.
17 Matthew Brown with the homeowners' --
18 THE ARBITRATOR: Brown. I called you
19 "Bloom," but it's all right.
20 MR. BROWN: That's okay. I was going to do
21 it gracefully so as not to call that out.
22 -- on behalf of homeowners' association, so
23 one issue is, and this may not even need to be said,
24 but there were certain pieces of evidence proffered
25 for admission earlier, and to the extent we did not

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1 object to their admissibility, obviously, we still
2 reserve the right to make any arguments about that
3 evidence and draw any inferences from it, even if we
4 didn't object to the admissibility.
5 I was thinking in particular, just as an
6 example, of the declaration which was submitted, and I
7 know that the petitioner contends that that's evidence
8 but supports a pass through. We didn't object to the
9 admissibility of that, but, obviously, we reserve all
10 rights to make any arguments about it.
11 THE ARBITRATOR: Right. Well, again, I think
12 a good way to do that is to take that as an objection
13 and -- that you've lodged, and then I'll receive it as
14 an exhibit, and I already sort of commented on what I
15 thought its relevance or limited relevance was.
16 So if you have any arguments you want to add
17 to that when the time comes, you can do that.
18 MR. BROWN: The other issue I wanted to raise
19 was, obviously, under the ordinance you could only
20 have a pass through if a certain item is either a
21 capital improvement or a capital replacement. It's
22 either one or the other. Obviously, each of those is
23 a defined term; each of those has its own set of
24 requirements under the statute.
25 I find myself, at least partway through the

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1 arbitration, and am still not completely clear what
2 the position is of the petitioner on each of the
3 remaining items in dispute as to whether they contend
4 each item as a capital improvement and qualifies as
5 such for pass through, or whether they contend instead
6 that it's a capital replacement, and therefore it
7 qualifies for pass through.

8 We, obviously, object to all of the remaining
9 disputed items, but my point is that typically in a
10 contested hearing, you wouldn't be at this point and
11 have there be any ambiguity about what the position
12 was of the party who has the burden of proof. So I
13 would ask for -- to hear the petitioner's position as
14 to each of the remaining items. Some of them are now,
15 obviously, off of the table because they've been
16 withdrawn, but for the few remaining items that are
17 still in dispute, it would be good to know whether
18 they're contending it is a capital improvement under
19 the ordinance or whether instead it is a capital
20 replacement under the ordinance.

21 THE ARBITRATOR: Why don't we wait until it's
22 time to do a closing, and then Neil can take an
23 opportunity, if he wants to, to go through the list
24 and make the argument on the respective items, and
25 then you can also make an argument.

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1 As long as I'm speaking about closing and the
2 arguments, I'd like each of you when we're at the
3 closing of evidence, we can take a few minutes to let
4 you prepare, but I'd like some commentary from both
5 sides on a couple of items.

6 One is the question of, to the extent I award
7 a rent increase to the petitioner on any of the
8 claims, the question is, well, A, are they entitled
9 to -- if that's not going to be done in one lump sum
10 assessment, which is one issue, but if it's going to
11 be paid over time, on a monthly basis -- and I
12 noticed, for instance, that the city council in one of
13 its decisions where I think the arbitrator had even
14 proposed that it be done over 12 months, and they
15 broke it down over 24 months, and in that one instance
16 they didn't award interest. In another case, interest
17 has been awarded.

18 I'm curious as to what the authority is or
19 what the arguments are with regard to whether there
20 should be interest or not, and I'd like to hear from
21 the homeowners, to the extent an award is made, what
22 their proposal would be in terms of whether it should
23 be done on a 12-month or other basis.

24 And then, you know, as Matt said earlier, and
25 then any other argument you want to make, I'll

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1 entertain. But, I think those are a couple of issues
2 that I want to get your feedback on before we close
3 the hearing.

4 With that in mind, let's go to the next item.
5 We're in 2015, and we're on -- let's see, it's Item
6 No. 15, so we've done 13, 14 and 19, and now we're on
7 No. 15.

8 MR. MORAN: For the record, this is Marin
9 Asphalt. The date is February 18th, 2015. The amount
10 of the expenditure is \$9,280, and it's in the 2015
11 petition, and so I have my witness, Jennifer Barrett.

12 ISSUE - ASPHALT REPLACEMENT
13 DIRECT EXAMINATION BY MR. MORAN

14 MR. MORAN: Q. Do you have any documentation
15 in front of you that's part of our hearing brief that
16 pertains to this item?

17 A. Yes, I do.

18 Q. And what is that?

19 A. So I have an invoice from American
20 Asphalt in the amount of \$8,990. In addition, I have
21 a change order in the amount of \$290. And then the
22 corresponding check for a total amount of \$9,280.

23 Q. First, why don't you tell us what your
24 personal knowledge is of this item.

25 A. My personal knowledge is the -- if I

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1 could refer to the map?

2 THE ARBITRATOR: Yes. Let's use my map.

3 THE WITNESS: So we have, all the way around
4 here [indicating], you can see we have sidewalks.

5 MR. MORAN: Q. You're indicating around --

6 A. Around the lagoon, there's a pathway that
7 goes all the way around the lagoon, and we have some
8 off areas of pathways through -- that go between
9 homes, and we had some areas in the lagoon area that
10 needed to have the concrete replaced because of some
11 lifting and potential hazards to our residents.

12 THE ARBITRATOR: So you mean like what we
13 call in construction, differential settlement cracks,
14 and you have a higher area, lower area, and stuff like
15 that?

16 THE WITNESS: Yes.

17 THE ARBITRATOR: Okay.

18 THE WITNESS: This was actually brought to
19 our attention from the homeowners themselves as well
20 in some meetings, and we did an evaluation and deemed
21 that it was appropriate to replace the concrete.

22 MR. MORAN: Q. What -- you mentioned it was
23 brought up by the homeowners. Tell us more about
24 that.

25 A. I would actually want to refer to Robert

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1 on that. He had more intimate knowledge in working
2 with the residents on that.
3 Q. Were you personally present when the need
4 for this repair or replacement was discussed with any
5 owners, site owners at the park, any residents?
6 A. No. My involvement became when I was
7 doing the property visit, and I believe it was Jorge
8 was replacing an area by himself in-house, and I
9 didn't feel he was qualified to do that, and that's
10 when I talked about it with him, and he let me know
11 that there was a concern, and I had him get a
12 professional company out there to get a proposal to
13 replace those areas.
14 Q. And that would be Jorge Gonzales, the
15 maintenance supervisor?
16 A. Correct.
17 Q. And in what year did this occur that you
18 were just describing Jorge Gonzalez starting work on
19 it?
20 A. 2015.
21 Q. And you also mentioned -- do you have any
22 documents available to you that would help you
23 pinpoint when this was discussed with the homeowners?
24 A. I believe there might be some
25 documentation in the minutes that -- you may need to

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1 refer to Robert --
2 Q. Okay.
3 A. -- on that.
4 Q. Have you -- so at some point you
5 contracted with American Asphalt; is that correct?
6 A. That is correct.
7 Q. And had you ever worked with them before?
8 A. Yes.
9 Q. On how many occasions?
10 A. Oh, several. I've been working with them
11 for ten years.
12 Q. And can you generally describe how much
13 of the walkway they replaced?
14 A. I don't know exactly. There were several
15 locations throughout the park. I couldn't pinpoint
16 exactly the square footage.
17 Q. So this was a -- the sidewalk that was --
18 sections of sidewalk around the lagoon were removed
19 and replaced; is that correct?
20 A. Correct, and there may have been another
21 area as well over by the office. This top corner area
22 [indicating], I believe, we might have had a small
23 area on there. I'm not for sure on that; Robert would
24 definitely be able to testify to that.
25 Q. Is the concrete walkway around the lagoon

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1 at the park, is this available for use by residents?
2 A. Yes.
3 Q. All right. And you paid -- on behalf of
4 ELS, you paid this invoice?
5 A. Correct.
6 MR. MORAN: Okay. That's all the questions I
7 have for Ms. Barrett about this item.
8 THE ARBITRATOR: Okay, Nate.
9 CROSS-EXAMINATION BY MR. COOPER
10 MR. COOPER: Q. Ms. Barrett, I think at the
11 beginning of -- there are a number of pages here that
12 address this concrete sidewalk repair item. The first
13 is, if I'm not mistaken, it looks like a contract
14 here.
15 Do you have that in front of you? It has
16 Contempo Marin at the top, Agreement. I think it's
17 just in front of the -- it's a couple of pages in
18 front of the invoice and then the change order that
19 you referred to earlier. It's maybe three pages in
20 front of the change order in the packet.
21 THE ARBITRATOR: So I'm not finding that in
22 mine either. Was that in Exhibit C?
23 MR. COOPER: I'm not looking at Exhibit C.
24 I'm looking at the packet that we prepared that has
25 all of the petitions in chronological order and with

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1 the numbers, the stamped numbers on the bottom, that I
2 emailed around, and in this set it's Page 44. That
3 change order that we were talking about, it was one,
4 two -- it would be three pages in front of the change
5 order.
6 THE ARBITRATOR: All right. So I didn't
7 bring that.
8 MR. COOPER: Sure.
9 THE ARBITRATOR: So why don't you --
10 MR. COOPER: Distribute copies.
11 THE ARBITRATOR: Yeah, distribute copies.
12 MR. COOPER: Sure thing.
13 THE ARBITRATOR: Why don't you have it marked
14 as 1.
15 (Respondents' Exhibit 1 was marked for
16 identification and received into evidence.)
17 THE ARBITRATOR: Let's first deal with
18 Exhibit 1 from the homeowners' association, and this
19 is a 64-page collection of, what, various ELS
20 documents that support the petition?
21 MR. COOPER: Right. We have in chronological
22 order each of the petitions at issue here today, each
23 of the three objection letters that were provided by
24 the homeowners in response to those petitions.
25 THE ARBITRATOR: Okay.

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1 MR. COOPER: Part of the ordinance requires
2 the homeowners to file this letter with the City to
3 initiate the arbitration process, and those are
4 interspersed between the petitions, all in
5 chronological order.
6 THE ARBITRATOR: Very good, thanks.
7 My attention is directed to Page 44.
8 MR. COOPER: Q. Ms. Barrett, is it your
9 understanding that this document at Page 44 relates to
10 the American Asphalt item, dated February 18th, that
11 is in the 2015 petition?
12 A. No, our contracts are 30 pages long, and
13 this doesn't really clarify what this project is.
14 Q. Right. Just a single page and if you
15 look at the bottom, would you agree that the last line
16 appears cut off, as if there were more pages to this
17 document that are not included here?
18 A. Yes.
19 Q. You don't have any -- have you seen this
20 document before?
21 A. This is our typical contract.
22 Q. It's --
23 A. What makes me think that this is not this
24 is the dollar amount.
25 Q. You're speaking about Paragraph 2. It

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1 says: "The contractor shall deliver to owner an
2 invoice in a sum not to exceed 16,000"
3 A. Right.
4 Q. If you look in the first paragraph, it
5 has a date, February 3rd --
6 A. Right.
7 Q. -- 2013, and I think we have dates for
8 these other invoices that are -- we have February 18th
9 here on the next page. Was that next page part of the
10 exhibit that you were discussing with Mr. Moran
11 previously?
12 A. Which page?
13 Q. The conditional waiver and release on
14 final payment, Page 45?
15 A. That looks like it goes with that, yes.
16 Q. And then the next page is the invoice, I
17 believe you did discuss this with Mr. Moran, for 8990?
18 A. Yes.
19 Q. And that's for February 18th?
20 A. Yes.
21 Q. And then next page. This is the change
22 order that's dated February 10th, 2015, and it refers
23 to a construction agreement dated January 26th, 2015,
24 correct?
25 A. Yes.

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1 Q. So is it your recollection that the
2 conversation with American Asphalt started sometime in
3 January 2015?
4 A. I wouldn't be able to say when it
5 started.
6 Q. Do you agree that this change order
7 indicates at least that there were conversations with
8 American Asphalt as far back as January?
9 A. Yes.
10 Q. Really, I'm just trying to pinpoint
11 whether this document here dated February 3rd,
12 Page 44, might have been part of that discussion.
13 A. It -- so the way our contracts -- our
14 contract would read what the project was. So if it
15 was a \$9,000 project, it would read "not to exceed
16 \$9,000."
17 Q. Got it. And you don't have any
18 understanding about the project -- whether or not this
19 contract related to the project that's at issue on the
20 table?
21 A. No.
22 MR. MORAN: Well, she already testified that
23 she didn't think it does.
24 MR. COOPER: Q. And the basis for that
25 belief is the amount in the -- in Paragraph 2 here?

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1 A. And it's an incomplete contract, correct.
2 Q. Do you have any understanding how this
3 document ended up in ELS' petition to the City?
4 A. I don't know.
5 Q. Do you know whether a contract of a
6 similar form -- withdraw that.
7 You testified previously that this appears to
8 have been based off an ELS form contract; is that
9 right, that you use with vendors?
10 A. Yes.
11 Q. Do you have an understanding of whether a
12 contract using this form would have been prepared for
13 this American Asphalt project?
14 A. Yes, it would be.
15 Q. But you don't have that contract with you
16 here today, do you?
17 A. No.
18 Q. I want to talk just about the sidewalk
19 and the decision to have this work done here.
20 You testified that there were a number of
21 cracks in multiple locations in the sidewalk, correct?
22 A. Raises.
23 Q. Raised areas?
24 A. Yes.
25 Q. Differential settlement cracks --

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1 A. Yes.
2 Q. -- as Mr. Baskin said.
3 Do you know what they were caused by?
4 A. I do not, no.
5 Q. And was the surface asphalt or concrete?
6 A. Concrete.
7 Q. And were all of the cracks of the same
8 material? It was all concrete at each one of those
9 different locations that was repaired?
10 A. Yes.
11 Q. Did you obtain a proposal for repairing
12 any of those cracks separately?
13 A. What do you --
14 Q. Meaning one at a time. Did you look at
15 what it would cost to repair each one of those cracks?
16 A. I would have to defer to Robert as to
17 whether it was broken out or not.
18 MR. COOPER: Okay. I don't have any further
19 questions for Jennifer.
20 THE ARBITRATOR: Okay.
21 REDIRECT EXAMINATION BY MR. MORAN
22 MR. MORAN: Q. I did have one question. On
23 this one page of contract that's attached as part of
24 Exhibit 1 at 44, what's the date at the top, lower --
25 lower first paragraph, second line?

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1 A. February 3rd, 2015.
2 Q. And then what's the date on the change
3 order of the contract?
4 A. January 26th of 2015.
5 Q. Those are different dates.
6 A. Correct.
7 MR. MORAN: Okay. That's all I have on that
8 item.
9 THE ARBITRATOR: Okay. Next.
10 MR. MORAN: Okay, Item 16.
11 THE WITNESS: We eliminated that.
12 THE ARBITRATOR: I didn't even have that on
13 my --
14 THE WITNESS: That's the clubhouse furniture.
15 MR. MORAN: Yes. Just a second.
16 THE ARBITRATOR: Okay.
17 MR. MORAN: Okay, we're dropping that item.
18 We do not think it qualifies as a capital replacement
19 or capital improvement under the City's ordinance.
20 ISSUE - POOL FURNITURE
21 DIRECT EXAMINATION BY MR. MORAN
22 MR. MORAN: Q. Let's go to Item 17, which is
23 dated June 19th, 2015. The vendor is Horizon Casual,
24 and it's in the amount of \$14,838.25. It says "pool
25 furniture."

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1 Do you have any -- are you familiar with this
2 item?
3 A. I am familiar with this item.
4 Q. How are you familiar with it?
5 A. I approved the order.
6 Q. And why did you -- what was the need?
7 A. The pool furniture at Contempo Marin, we
8 didn't have a lot of pool furniture to begin with, and
9 what they did have was -- it wasn't commercial grade.
10 It was not -- it needed to be replaced; it was not in
11 good shape. So we needed additional pool furniture.
12 We needed to buy some tables, some chaise lounges and
13 various items for the pool.
14 Q. Were you the person who authorized this
15 capital expenditure?
16 A. I am.
17 Q. Was this the subject of any discussion
18 with any park residents?
19 A. So the -- only discussion that I had was
20 when I first took over the property and I walked with
21 Keith and another person and just gave them kind of an
22 overview of my plan as far as individually talking
23 about the pool furniture. That would be Robert who
24 had any kind of discussions with the residents during
25 the meetings.

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1 The one part that I had in this when we
2 placed the order is I had four other properties that
3 were purchasing pool furniture at the same time we had
4 budgeted for this, and I wanted to make sure that
5 everybody worked together to get the pool furniture at
6 the same time so that we could obtain a special
7 pricing discount for ordering on several properties.
8 And that is reflected, the 5 percent discount, on the
9 last line item for Contempo Marin.
10 Q. Let's go back.
11 You mentioned that when you first took over
12 this property, as part of your duties at Contempo
13 Marin, you had a, what, you walked around with the --
14 did you say Mr. Meloney?
15 A. Meloney.
16 Q. And someone else?
17 A. Yes, and I don't remember her name.
18 Carol Wells.
19 Q. And approximately when was this?
20 A. August or September of 2014, I believe.
21 It was to open up a dialogue to get to know Keith.
22 Q. And how long did this take place? Where
23 did you walk?
24 A. We walked the entire property, and I
25 think it took us a good hour and a half or two hours

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1 to walk the property and talk about various items on
 2 the property.
 3 Q. And tell us what was discussed.
 4 A. So I discussed what my visions were, what
 5 we needed to do on the property. Keith kind of
 6 expressed his concerns over the years of what's
 7 happened at Contempo Marin, and, Ms. Wells as well was
 8 there discussing the same items. And we walked
 9 through the park, and I just pointed out areas that I
 10 felt needed improvement, we can talk about rules and
 11 regulations violation. It was just a meeting to get
 12 to know Keith, get to know the history of ELS and the
 13 homeowners association and build that relationship
 14 going forward of how things would be.
 15 Q. During that hour-, hour-and-a-half walk
 16 around the property with Mr. Meloney and Carol Wells,
 17 did you discuss any capital expenditures that you had
 18 in mind?
 19 A. Many capital expenditures, yes.
 20 Q. Which ones did you discuss?
 21 A. I discussed the clubhouse, the spa area,
 22 the pool area, the -- I believe some of the driveways,
 23 we discussed some driveways as we were going through.
 24 Just general overall, clubhouse . . .
 25 Q. And with respect to the clubhouse, what

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1 did you talk about in the way of capital expenditures
 2 if anything?
 3 A. Just updating the clubhouse. It wasn't
 4 anything specific.
 5 Q. Updating. What did that mean to you at
 6 the time?
 7 A. Well, what it meant to me was the
 8 flooring was -- needed to be replaced, the carpets.
 9 The bathrooms were -- needed to be updated. Painting,
 10 lots of painting needed to be done in the clubhouse.
 11 The spa room area needed to be painted. Various
 12 projects that needed to be done that were both capital
 13 and then some just general maintenance.
 14 Q. And were any of those accomplished?
 15 A. Many of them.
 16 Q. Which ones?
 17 A. All the painting has been done to the
 18 inside of the clubhouse and inside of the spa area.
 19 Exterior painting of the clubhouse has been completed.
 20 The clubhouse flooring has been completed. The
 21 library shelving has been done. And we purchased some
 22 tables for the clubhouse. All the furniture for the
 23 clubhouse. A lot of general upkeep in the community,
 24 changing landscaping company. It's a lot of
 25 improvements over the last year and a half.

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1 Q. Was the paint work you described included
 2 in any pass through petition?
 3 A. No.
 4 Q. Did the subject of the pool furniture
 5 come up in this walk with Mr. Meloney and Ms. Wells?
 6 A. I don't recall specifically talking about
 7 the pool furniture.
 8 Q. All right.
 9 Before you authorized the purchase of the
 10 pool furniture for \$14,838, had you ever heard from
 11 anybody that any residents of the park wanted Contempo
 12 Marin to make this expenditure?
 13 A. I wouldn't say they used the words we
 14 want you to make this expenditure, but there were
 15 concerns about the condition of the pool furniture and
 16 the lack of pool furniture.
 17 Q. Elaborate on that. Who said that? What
 18 did you hear?
 19 A. Robert would be the one to be able to
 20 talk about that --
 21 Q. Okay.
 22 A. -- specifically.
 23 MR. BROWN: I'll object to the previous
 24 answer on the basis of hearsay.
 25 MR. MORAN: Q. After the pool furniture was

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1 purchased and put into the clubhouse -- or put around
 2 the pool, did you ever hear anything from any
 3 residents of the park?
 4 A. Positive or negative or an opinion?
 5 Q. Yeah.
 6 MR. BROWN: Objection; hearsay.
 7 MR. MORAN: Q. You can answer.
 8 THE ARBITRATOR: Yeah, you can answer.
 9 Did you hear from any residents?
 10 THE WITNESS: Well, we hosted a meeting on
 11 December 5th of 2015, Robert and myself, and they were
 12 very appreciative of all the changes in the community.
 13 They thanked us for all the improvements that we were
 14 making in the park.
 15 MR. MORAN: Q. And, specifically, did you
 16 hear positive feedback on the pool furniture?
 17 MR. BROWN: Objection; hearsay.
 18 THE ARBITRATOR: Noted.
 19 MR. MORAN: Q. Go ahead.
 20 A. Not that I can recall specifically for
 21 pool furniture.
 22 Q. Do you have any personal knowledge of
 23 anything else with respect to the pool furniture that
 24 was purchased?
 25 A. No.

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1 Q. Okay.
2 MR. MORAN: Okay, your witness.
3 CROSS-EXAMINATION BY MR. BERNSTEIN
4 MR. BERNSTEIN: Q. Good afternoon,
5 Ms. Barrett.
6 A. Hi.
7 Q. In the view of ELS, pool furniture is not
8 equipment, isn't that right?
9 A. I wouldn't say it's not considered
10 equipment; it's for the pool.
11 Q. All right. So you're not sure if it's
12 considered equipment in the view of the ELS?
13 A. I would have to -- I would say it's pool
14 furniture.
15 Q. You were about to say, it looked like,
16 you would have to review something. Would that be --
17 A. The capital --
18 Q. -- capital expenditure --
19 A. Right.
20 MR. BERNSTEIN: Go ahead and have the court
21 reporter mark this as exhibit -- I believe we're on 2.
22 (Petitioner's Exhibit 2 was marked for
23 identification and received into evidence.)
24 MR. COOPER: You know it's attached to the --
25 MR. BERNSTEIN: Oh, we've already got it

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1 attached to the --
2 MR. COOPER: -- declaration.
3 MR. MORAN: It's attached. I appreciate the
4 courtesy.
5 MR. BERNSTEIN: All right. So we can go
6 ahead and we can use Exhibit D, which is the
7 declaration already entered into evidence.
8 THE ARBITRATOR: Well, this one's in.
9 MR. BERNSTEIN: All right. Then we'll use
10 this one.
11 Q. So when I asked you a moment ago if ELS
12 considered pool furniture equipment, you just
13 testified you'd have to review the capitalization
14 policy and procedure to make that determination.
15 A. Correct.
16 Q. So I draw your attention to the
17 capitalization policy and procedure, specifically to
18 Page 5.
19 You'll note that a category of capital assets
20 is furniture; isn't that correct?
21 A. Correct.
22 Q. And a subcategory of furniture is pool
23 furniture; isn't that also right?
24 A. Yes.
25 Q. Then it's got its own spending account

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1 number?
2 A. Correct.
3 Q. I want to draw your attention to Page 7.
4 -- I'm sorry, Page 8 of the same procedure.
5 Page 8 lists a separate category called
6 Equipment and Vehicles; isn't that true?
7 A. Yes, it is.
8 Q. And a subcategory of that category is
9 equipment; isn't that right?
10 A. Yes.
11 Q. So you would agree, the furniture and
12 equipment are two different categories within the ELS
13 cap X procedures?
14 A. Yes.
15 MR. MORAN: Objection; that calls for a legal
16 conclusion, that's irrelevant. What's relevant is
17 what's in the City of San Rafael's ordinance.
18 MR. BERNSTEIN: Mr. Baskin, would you like to
19 rule.
20 THE ARBITRATOR: Go ahead with the question.
21 I'm noting the objection.
22 MR. BERNSTEIN: Very well.
23 Q. You would agree that listed within the
24 equipment category is not any kind of furniture; isn't
25 that right?

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1 THE ARBITRATOR: The document speaks for
2 itself.
3 MR. BERNSTEIN: Q. So you would agree then
4 that in the view of ELS, pool furniture is not, for
5 the purposes of capitalization, equipment.
6 MR. MORAN: Objection; there's no foundation
7 that she knows about the meaning of these, that she
8 had any role in these, that she's authorized to speak
9 for the company about these.
10 THE ARBITRATOR: Okay, noted.
11 MR. BERNSTEIN: Q. Ms. Barrett, do you want
12 me to repeat the question?
13 A. No.
14 Q. Okay.
15 A. Yes, that is my understanding of what I'm
16 reading.
17 Q. And just to clarify, pool furniture is
18 also not a form of machinery; isn't that right?
19 A. Correct.
20 MR. MORAN: Objection; vague.
21 THE ARBITRATOR: Are you asking her what her
22 belief is or what the document says?
23 MR. BROWN: Q. I'll ask you about your own
24 belief. Pool furniture is not a form of machinery?
25 A. No, it's not.

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1 Q. It's not a type of street or sidewalk?
2 A. No, it's not.
3 Q. It's not a utility line or a type of
4 landscaping?
5 A. No.
6 Q. And certainly not a structure on the
7 property; isn't that right?
8 A. No.
9 MR. BERNSTEIN: No further questions for this
10 witness.
11 THE ARBITRATOR: Do you have another witness
12 you want to call on the pool furniture?
13 MR. BROWN: Just for clarity so we have a
14 clear record, we've been referring to Exhibit 2.
15 THE ARBITRATOR: Yes.
16 MR. MORAN: I do have a question of this
17 witness.
18 THE ARBITRATOR: All right.
19 REDIRECT EXAMINATION BY MR. MORAN
20 MR. MORAN: Q. Was the purchase of the pool
21 furniture capitalized by ELS?
22 A. Yes.
23 Q. Does ELS' capitalization policy, is it,
24 to your knowledge, modeled after the City of San
25 Rafael's definition in the mobile home ordinance?

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1 A. No, it is not.
2 Q. Those are two separate things?
3 A. Yes.
4 Q. Okay, thank you.
5 MR. BERNSTEIN: Do we allow recross in --
6 THE ARBITRATOR: Sure.
7 RECROSS-EXAMINATION BY MR. BERNSTEIN
8 MR. BERNSTEIN: Q. So, Ms. Barrett, then,
9 given the answers you just gave, you would agree that
10 the fact that something was capitalized by ELS does
11 not mean that it qualifies under the ordinance as a
12 capital expenditure, right.
13 A. No, I don't have a legal opinion on that.
14 I can't answer that.
15 Q. Well, I believe you were just asked a
16 question which you gave an answer to that the
17 requirements of the ordinance differ from the
18 requirements for capitalization procedures as
19 explained in this policy, right?
20 A. My -- what I'm saying as it relates to
21 ELS' capital expenditure policy is that's written as a
22 national account, everybody runs under the same thing;
23 it's not specific to any county. This is just ELS'
24 guidelines as a general indication as to how they
25 would like to see things coded.

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1 Q. So just to put a capstone question on
2 this, that means that just because something was
3 capitalized under the procedure, that doesn't mean
4 that it qualifies under the ordinance since those two
5 documents weren't written interconnectedly; isn't that
6 right?
7 MR. MORAN: Objection; that's argumentative.
8 THE ARBITRATOR: It is, really. And you're
9 asking her -- really it's a legal question you're --
10 You don't need to answer that question.
11 MR. BROWN: Very well. No further questions.
12 THE ARBITRATOR: All right. Anything else on
13 pool furniture?
14 MR. MORAN: No.
15 MR. COOPER: I had a quick question for
16 Mr. Andrews, I think there was a moment during
17 Jennifer's examination where she suggested he might
18 have more information on that, and if Counsel would
19 permit.
20 THE ARBITRATOR: That's consistent with the
21 way I wanted to do it. If you want to call him as an
22 adverse witness, go ahead. You can ask away.
23 ROBERT ANDREWS
24 DIRECT EXAMINATION BY MR. COOPER
25 MR. COOPER: Q. Mr. Andrews, I believe that

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1 Mr. Barrett discussed earlier in her testimony a
2 walk-through with Mr. Meloney and another member of
3 the board during which -- at which you attended as
4 well; is that right?
5 A. That's not correct.
6 Q. You were not -- you weren't --
7 A. I was not on board with Contempo Marin.
8 I was managing another community at that time.
9 Q. Okay. That's all I wanted to discuss.
10 Thank you. THE ARBITRATOR: Okay.
11 MR. MORAN: Why don't we move on to Item 18.
12 THE ARBITRATOR: All right. Fitness room
13 equipment.
14 MR. MORAN: Yes. That's dated June 8th,
15 2015. The vendor appears Gym Source. The amount is
16 \$10,518.93.
17 ISSUE - FITNESS ROOM EQUIPMENT
18 JENNIFER BARRETT
19 DIRECT EXAMINATION BY MR. MORAN
20 MR. MORAN: Q. Jennifer, are you familiar
21 with that expenditure?
22 A. Yes.
23 Q. Why don't you tell us what it was for.
24 A. It was for both the cardio room and the
25 weight room.

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1 Q. Okay. And what was the -- what items
2 were purchased?
3 A. So if I could start off by saying the
4 property only had one room that had, I think, three
5 pieces of equipment. It was a really crowded room,
6 and we decided that it would be best suited to have
7 two separate rooms, one for cardio equipment, and one
8 for the weight-lifting equipment, and then move the
9 billiards room into another room that was
10 underutilized; it was actually the weight room at that
11 time.
12 And I walked with some of the board members
13 to kind of discuss what the changes were going to be,
14 and that's when we -- we actually hire out Gym Source
15 as a preferred vendor of Equity LifeStyle Properties,
16 and what we do with Gym Source is we send them layouts
17 of each of the rooms, and they design the rooms for us
18 to decide what can fit into these rooms appropriately.
19 So it's the -- the insight for the gym equipment.
20 They let us know what they think will work, and we
21 approve it based on that.
22 Q. And what documentation is there in the
23 hearing brief that pertains to this item?
24 A. The invoice in the amount of -- looks
25 like there's a page missing.

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1 Q. I think you can go down two pages.
2 A. There you go, \$10,818.93.
3 Q. Would that be 518.93?
4 A. Yes, it is.
5 Q. So ten thousand --
6 A. -- 518.93, and then the canceled check.
7 Q. And that's a two-page document; is that
8 correct, the invoice?
9 A. Yes, it is.
10 Q. And there just happens to be a check
11 between the two pages?
12 A. Yes.
13 Q. And what's the invoice number?
14 A. 1728231.
15 Q. And the invoice date?
16 A. 6/8 of 2015.
17 Q. And then the second page of that invoice,
18 is there some notation about savings?
19 A. Yes.
20 Q. And what does it say about that?
21 A. Total saving is \$4,907.23.
22 Q. And what does that refer to?
23 A. That is our preferred pricing.
24 Q. Okay. And I think you did testify that
25 there was a discussion with a board member or board

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1 members about this item. Did you ever talk to any
2 residents of the park about this before it was done?
3 A. We talked about making the new rooms,
4 yes, that was discussed.
5 Q. And specifically turning the what had
6 been the pool table room into an exercise room?
7 A. Yes.
8 Q. Did some of this equipment go in that
9 room?
10 A. Yes.
11 Q. And you call that the cardio room?
12 A. Yes.
13 Q. And did you ever get any feedback from
14 any residents of the park after the exercise equipment
15 was put in that new fitness room that had been the
16 pool table room?
17 A. Yes. On my property visits, I made it a
18 point to talk to the people that were working out to
19 see how they liked the equipment, and they love it,
20 and they love the new room.
21 Q. Was this expenditure amortized by ELS?
22 A. I wouldn't know --
23 Q. I mean capitalized?
24 A. It is capitalized, yes.
25 MR. MORAN: That's all I have on this item.

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1 CROSS-EXAMINATION BY MR. COOPER
2 MR. COOPER: Q. Jennifer, you described the
3 fitness room that existed prior to reorganization.
4 What pieces of equipment were in the fitness room at
5 that time?
6 A. So we had one room that had a -- this is
7 the -- the weight room, and I believe it had a donated
8 machine that you sit on and you go back and forth on.
9 It had a -- just the bench, a regular bench, that was,
10 I think, also was a donation. I'm not sure that it
11 was actually ELS property. And then it had some free
12 weights in there, and I believe it had some of the
13 little, smaller weights in there.
14 In the cardio room, it had, of course, the
15 elliptical, and I think it had one treadmill.
16 Q. So I'm looking at this invoice here. I'm
17 not sure if that's the one that you have in front of
18 you.
19 A. Yes.
20 Q. Looks like it?
21 A. Yes.
22 Q. Just ticking down these items, MSG -- I'm
23 reading from the description column -- "MSG two stack
24 1/170-pound, 1/250 pound."
25 Do you know what piece of equipment that item

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1 is referring to?
 2 A. I'd be guessing, but I would think it's
 3 the big piece of equipment that has three different
 4 things on it. It's one of the big multifunction
 5 weight machines.
 6 Q. That was not a piece of equipment for
 7 which there was a comparable piece already in the gym
 8 before this --
 9 A. No.
 10 Q. -- project?
 11 The next items is a:
 12 "Bench-flat/incline/decline?"
 13 Do you have an understanding about what that
 14 item is?
 15 A. That would be a normal, like, workout
 16 bench, the flat bench that you lay down on.
 17 Q. Was there already a workout bench in the
 18 fitness room prior to the purchase?
 19 A. There was, but it -- I believe it was a
 20 donation workout bench. It was not a commercial; it's
 21 not anything that we would ever purchase.
 22 Q. The next item is -- says: Durabell
 23 2.5-50W/3 TRK club pack."
 24 Do you have an understanding of what that
 25 item is?

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1 A. Yes. Individual weights with, I think
 2 they're dumbbells, individual weights.
 3 Q. And were there individuals weights
 4 already in the weight room, fitness room prior to the
 5 purchase?
 6 A. There was, but not as many as they are
 7 now. We have a full setup, now.
 8 Q. How many weights would you say you had
 9 before this purchase?
 10 A. Oh, I think we only had five or six.
 11 Q. And now you have a full rack?
 12 A. Full rack.
 13 Q. The next item says "treadmill."
 14 A. Um-hm.
 15 Q. And I believe you testified that you
 16 already had a treadmill?
 17 A. No, the -- we had a treadmill and an
 18 elliptical, and I think we now have two treadmills.
 19 Did we have a treadmill?
 20 MR. ANDREWS: Yes.
 21 THE WITNESS: No, I'm sorry. I thought we
 22 did. There was one treadmill.
 23 Q. You had one treadmill previously?
 24 A. Yes.
 25 Q. And you have one treadmill now?

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1 A. Yes.
 2 Q. So you replaced the treadmill?
 3 A. Yes.
 4 Q. The next two line items are pretty
 5 self-explanatory. Freight and delivery and
 6 installation.
 7 MR. COOPER: I don't have any further
 8 questions.
 9 THE ARBITRATOR: So that's all the items,
 10 except for, I think, Neil, you want to circle back
 11 with Jorge, now that he's here, with any of these
 12 items?
 13 JORGE GONZALEZ,
 14 was called as a witness, and the said witness, being
 15 first duly sworn, was thereupon examined and testified
 16 as hereinafter set forth.
 17 --oOo--
 18 ISSUE - LANDSCAPING/MOWERS
 19 DIRECT EXAMINATION BY MR. MORAN
 20 MR. MORAN: Q. Good afternoon, Mr. Gonzalez.
 21 What's your full name, Jorge?
 22 A. Jorge Gonzalez.
 23 Q. And who's your employer?
 24 A. Jennifer.
 25 Q. Yes, she is.

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1 THE ARBITRATOR: That's good enough; we got
 2 it.
 3 MR. MORAN: Q. We got it. Equity LifeStyle?
 4 A. Equity LifeStyle. Sorry.
 5 Q. That's all right.
 6 You're pretty good in English?
 7 A. Not too good, so . . .
 8 Q. You sound good.
 9 A. To be honest.
 10 THE ARBITRATOR: Neil's been studying Spanish
 11 for a few years, so he could do it if he had to.
 12 MR. MORAN: Q. And how many years have you
 13 worked for the company?
 14 A. Like 18 to 19 years, so --
 15 Q. And what do you do for Equity LifeStyle?
 16 A. I do maintenance, so . . .
 17 Q. Right. And have you ever used the
 18 Husqvarna mower, the one that you can sit on?
 19 A. Yes, we use it up on the pass and like
 20 probably like three or four years ago, something like
 21 that, so, yeah.
 22 Q. And you're -- when I said the Husqvarna,
 23 mower, do you know what piece of equipment I'm talking
 24 about? Do you understand me?
 25 A. Yeah, I understand you. So the brand new

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1 Husqvarna, the big machine that's probably like --
2 that's I want to say that's a brand new because we use
3 it out for probably like -- probably like six months
4 when the company is deciding to give the job of
5 landscaping to other companies.
6 Q. To an outside company?
7 A. Yeah.
8 Q. And what's the name of the outside
9 company that does the landscape maintenance now?
10 A. Now?
11 Q. Now.
12 A. That's Enviros.
13 Q. What was it?
14 A. Enviros.
15 THE ARBITRATOR: Enviros.
16 MR. ANDREWS: Enviros, Inc.
17 MR. MORAN: Q. Okay. And have you ever sat
18 on that Husqvarna mower?
19 A. I'm sorry?
20 Q. Have you ever sat on this Husqvarna
21 mower? You ever use it?
22 A. No.
23 Q. Okay.
24 A. Not now, so --
25 Q. Well, in the past?

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1 A. In the past, yeah. Like -- yeah, so, in
2 the past, yeah.
3 Q. And what -- in the past, what did you use
4 the mower for? What did you do?
5 A. Landscaping and was because now we have
6 like two mowers. We use it like Husky -- no, we use
7 a -- had a walker -- a walker mower. We have -- I had
8 like two mowers. That's the first one. The second
9 one is the Husqvarna; that's the new one.
10 Q. Right.
11 A. Another new one for this, yeah.
12 Q. And in the past, what did you use the big
13 Husqvarna mower to do? What parts -- where in the
14 park did you use it?
15 A. Around the lagoon and --
16 Q. Okay. I'm showing you Exhibit B1.
17 A. So this -- all this around the level
18 right here [indicating], so all the grass right here.
19 Q. And you're indicating the grass around
20 the lagoon?
21 A. Yes.
22 Q. And does that -- you mentioned there's a
23 second mower, a smaller mower?
24 A. That's like 36-inch blade.
25 Q. The small one?

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1 A. Yeah, the small one.
2 Q. And this one is bigger?
3 A. This one is it bigger.
4 Q. 44-inch?
5 A. That's 44-inch.
6 Q. So the Husky is 44-inch?
7 A. Yes.
8 Q. Have you ever used the Husky mower in the
9 past outside the park?
10 A. No.
11 Q. Have you ever seen anyone use the Husky
12 to mow any of the -- what do you call it, weeds?
13 MS. BARRETT: The firebreak.
14 THE WITNESS: No, I don't use those on the
15 firebreak, so --
16 MR. MORAN: Q. Does anybody else use the
17 Husky to mow the weeds in the firebreak area? Someone
18 else?
19 A. So when you talking about the firebreak,
20 let me see on here. I'm sorry. So, yeah, we use a
21 little bit. So right here in this area right here.
22 [Indicating], yeah, so --
23 THE ARBITRATOR: Why don't you describe it to
24 me. Is it above where it says "Yosemite Road"?
25 THE WITNESS: That's 4042 Yosemite Road back

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1 there.
2 THE ARBITRATOR: Okay.
3 MR. MORAN: Q. Was there -- in the past, was
4 there a fire?
5 A. This is like, yeah, a long time, so about
6 four years, four years ago. Sometime like that, yeah.
7 Q. Where was the fire four years ago?
8 A. All the way back to the -- down to the
9 hill.
10 Q. Can you show us on this map?
11 A. So somewhere over here.
12 THE ARBITRATOR: Up in the upper left corner.
13 MR. MORAN: Thank you.
14 Q. So was that Husky used at some point in
15 the past to cut the weeds in that area?
16 A. No.
17 Q. In that place?
18 A. No.
19 Q. What has the Husky been used for in the
20 past?
21 A. We use it for the run to the lagoon and
22 all the common areas for the -- for Contempo Marin.
23 Q. What common area?
24 A. Like common areas, like close to the
25 clubhouse, between 152 and 153.

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1 Q. Okay. And where -- today where is the
2 Husky mower?
3 A. On the shop.
4 Q. Okay.
5 A. Yeah, okay. Yeah, in the shop.
6 Q. So Contempo still has the mower?
7 A. Yes.
8 Q. And does Contempo have any other mowers
9 besides the Husky?
10 A. Contempo has got -- all the equipment is
11 right there. We have like lawn mowers, speed walkers
12 airstreamers and blowers.
13 MR. MORAN: That's all the questions I have
14 for now.
15 This gentleman can ask you some questions.
16 CROSS-EXAMINATION BY MR. COOPER
17 MR. COOPER: Q. Hi.
18 A. Hi.
19 Q. My name is Nate Cooper.
20 A. Nice to meet you.
21 Q. You too.
22 Would you agree that using the Husky mower
23 when it's been used allows you or whoever is using it
24 to cut these areas more quickly?
25 A. So -- I'm sorry. So, yeah, we use that

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1 because -- so, like, three or four guys was working on
2 the Contempo, so like three, four guys, we use it
3 for -- the Husqvarna for that, so, yes.
4 Q. And it's easier to cut the grass with
5 the --
6 A. Yeah, it's easier to drive with that,
7 so . . .
8 Q. You need less people to do the job with
9 that mower than you would with another mower?
10 A. No.
11 MR. COOPER: I don't really have any more
12 questions on this for Mr. Gonzalez, but maybe I could
13 ask a follow-up question to either Jennifer or Robert,
14 if that would be okay?
15 THE ARBITRATOR: Yeah.
16 Were you going to have Jorge testify about
17 any other issues?
18 MR. MORAN: Let me take a look.
19 THE ARBITRATOR: Go ahead, and why don't you
20 ask Robert and Jennifer your questions.
21 And we're talking about --
22 MR. COOPER: The mower.
23 THE ARBITRATOR: The mower. Okay.
24 MR. COOPER: Just a couple quick questions
25 about that.

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1 ROBERT ANDREWS
2 RE-CROSS-EXAMINATION BY MR. COOPER
3 MR. COOPER: Q. Robert, is it your
4 understanding that, as Jorge testified, that the mower
5 is in storage or a shop somewhere?
6 A. Yes.
7 Q. And can you explain where that is?
8 A. It's in a fenced-off area where we have
9 shops and locked away.
10 Q. And do you know what the plan is for the
11 mower going forward?
12 A. I do not.
13 JENNIFER BARRETT
14 CROSS-EXAMINATION BY MR. COOPER
15 MR. COOPER: Q. Jennifer, can I ask you that
16 same question? What's the plan? Is the mower going
17 to remain in the shop?
18 A. We don't have a plan for it right now.
19 It's something we can look up.
20 Q. The park is not using the mower
21 currently, and it's parked in the shop?
22 A. Right.
23 Q. And it's unclear what use it's going to
24 have?
25 A. Right.

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1 MR. COOPER: That's it.
2 THE ARBITRATOR: Okay.
3 MR. MORAN: I do not have any more questions
4 of Mr. Gonzalez.
5 THE ARBITRATOR: Okay. No more.
6 So then we've completed the list. So now how
7 do you want to proceed? Do you want to do a wrap-up
8 from each side?
9 Matt, did you have -- did you want to call
10 some witnesses or introduce some testimony by way of
11 rebuttal to the petition, so to speak?
12 MR. BROWN: Yes.
13 MR. COOPER: Possibly another --
14 MR. MORAN: Mr. Baskin, this might dovetail
15 with that. There is one additional area that I'd like
16 to call Mr. Andrews to testify about. It's not
17 related to a specific expenditure. It has to do with
18 his regular meetings with homeowners and the board,
19 because the city council has expressed their wish
20 that, for lack of a better term, that there be a
21 dialogue on expenditures and other issues.
22 THE ARBITRATOR: All right. Why don't you go
23 ahead, and then we'll give them some time to --
24 MR. COOPER: Can I just make one suggestion?
25 That's that we defer that testimony for a moment, if

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1 we could, so that Mr. Heine can return since he's the
2 president of the homeowners' association, and I assume
3 would be probably the next person most knowledgeable
4 besides Mr. Andrews.
5 THE ARBITRATOR: All right.
6 MR. COOPER: And instead, we have a similar
7 area to cover that sort of relates generally, I think,
8 to the capital expenditure issues but doesn't actually
9 go to the dialogue between the parties. And Max is
10 going to take the lead on that questioning, and I
11 suggest that we do that first and then go back to
12 the --
13 THE ARBITRATOR: All right. We can be
14 flexible.
15 DIRECT EXAMINATION BY MR. BERNSTEIN
16 MR. BERNSTEIN: Q. So I have some
17 non-item-specific questions, I think, Ms. Barrett,
18 you're probably going to be the best person to answer
19 those, and you can let me know if you don't think that
20 that's the case.
21 So my questions are about the cap X
22 procedures employed by the company. You would agree
23 that these procedures are in place to make sure that
24 expenditures are properly tracked; isn't that right?
25 MR. MORAN: You know, wait a minute. Max is

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1 welcome to examine any witness he likes; I do not know
2 that Jennifer, Ms. Barrett, is the person most
3 knowledgeable here. I could also talk with Mr. Kimes
4 and Mr. Jaccard to see if they would be more
5 knowledgeable but if he wants to cross-examine
6 Jennifer --
7 THE ARBITRATOR: Why don't we see what the
8 questions are and see where it goes.
9 MR. BERNSTEIN: So you know, my questions are
10 going to have to do with some of the items we've
11 discussed in a sense -- in some sense, so I would like
12 to question somebody that actually has some knowledge
13 of how these particular expenditures were run.
14 So let me go ahead and start again.
15 Q. These cap X procedures, they ensure that
16 capital expenditures conform to company policy; isn't
17 that right?
18 A. The expenditures at the park as it
19 relates to -- or the pass throughs? What is the
20 question?
21 Q. Let me put it differently. What do you
22 see as the purpose of the capital expenditure policy?
23 A. ELS' or the City's.
24 Q. Oh, I apologize. ELS' policies?
25 A. What is the purpose of it?

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1 Q. Um-hm.
2 A. To have control of what's being spent on
3 the properties and understand what we're doing to the
4 property.
5 Q. So you would agree, one of the purposes
6 is to make sure there aren't expenditures that are
7 inappropriate in some way?
8 A. Correct.
9 Q. And another purpose of it is to make sure
10 that there's a track record of what expenditures have
11 gone on at the park; isn't that also right?
12 A. Correct.
13 Q. And you would agree, then, that it's
14 important that these procedures are followed?
15 A. The company procedures, yes.
16 Q. Right. My whole line questioning is
17 going to be about the company procedures.
18 A. Okay.
19 Q. And, Ms. Barrett, you -- and part of your
20 responsibility is overseeing this very capital
21 expenditure process; isn't that right?
22 A. I'm a part of it, yes.
23 Q. And you would agree that in your time at
24 the company, which I believe dates back to 2014; is
25 that right?

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1 A. 2006.
2 Q. Okay. That's right. In the time in
3 which you've been overseeing expenditures at Contempo
4 Marin, that dates back to 2014; is that correct?
5 A. Correct.
6 Q. During that time, you would agree that
7 you have followed the company's capital expenditure
8 policies?
9 MR. MORAN: Objection; that's overbroad.
10 MR. BERNSTEIN: Q. You've made an attempt --
11 well, actually, I'll have the witness answer the
12 question.
13 THE ARBITRATOR: You generally follow the
14 company's rules?
15 THE WITNESS: Yes.
16 MR. BERNSTEIN: Q. Are there any ways that
17 you don't follow the capital expenditure policy?
18 MR. MORAN: Same objection; it's overbroad as
19 to time and as to policy.
20 THE ARBITRATOR: Well, he's talking about
21 since 2014, right?
22 MR. BERNSTEIN: That's right.
23 THE ARBITRATOR: Okay. Go ahead.
24 THE WITNESS: Yes, I always make an effort to
25 ensure that I'm following the policies.

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1 MR. BERNSTEIN: Q. And I think you told us
 2 on direct examination, and this is a quote I wrote
 3 down, and you can correct me, "Our company is pretty
 4 firm when it comes to cap X decision-making."
 5 A. Yes.
 6 Q. Isn't that right?
 7 So one of the policies of the company was to
 8 fill out what's called an MEF form for each
 9 expenditure exceeding a thousand dollars; isn't that
 10 true?
 11 A. That was true. That has changed since --
 12 so in the -- I explained, in 2012 and 2013 -- it was
 13 like in 2013 the MEF process went away, but a new
 14 system came into play.
 15 Q. Okay. So in the period before the most
 16 recent procedures were implemented, an MEF form was
 17 required for any expenditure over one thousand
 18 dollars?
 19 A. Correct.
 20 Q. And just for the record, MEF stands for
 21 major expense form; isn't that right?
 22 A. Correct.
 23 Q. And these forms, they don't get thrown
 24 away, do they?
 25 A. They should not be thrown away.

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1 Q. In fact, they're kept at the Contempo
 2 Marin office in the office itself; isn't that true?
 3 A. I don't know where they're kept.
 4 MR. MORAN: Objection; overbroad as to time.
 5 MR. BROWN: Q. These forms, to the best of
 6 your knowledge, are not disposed of; isn't that true?
 7 THE ARBITRATOR: You're talking about since
 8 she came to Contempo Marin in 2014?
 9 MR. BERNSTEIN: I believe the questioning has
 10 changed slightly. Ms. Barrett explained that the MEF
 11 forms were in place before the most recent policy. So
 12 let me limit my questions, then, to 2012 until the
 13 most recent procedures were implemented, which, I
 14 believe, were in January of 2014.
 15 THE ARBITRATOR: So then your question would
 16 be at ELS facilities, were the MEF forms kept in the
 17 respective offices 'cuz she couldn't speak
 18 specifically to Contempo Marin.
 19 MR. BERNSTEIN: Q. Okay, Ms. Barrett, so to
 20 the best of your knowledge, these MEF forms from 2012
 21 to 2014, they were maintained by ELS at their
 22 respective offices; isn't that right.
 23 A. They should be, yes.
 24 Q. But to the best of your knowledge, none
 25 of these MEF form in connection with any of the items

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1 at issue today were ever provided to the homeowners?
 2 A. I don't know. I wasn't involved with
 3 that property then.
 4 Q. You don't have any of these MEF forms
 5 from the 2012 to 2014 expenditures with you today, do
 6 you?
 7 A. No, I do not.
 8 Q. So if don't have those forms, you would
 9 agree that those forms were never provided to us?
 10 A. I didn't look for those forms. When
 11 preparing the packets we were required prepare, I
 12 didn't -- even for this submission last year, I did
 13 not send in any forms, documentation from our back
 14 end, our office.
 15 Q. So just to be clear, when preparing the
 16 petitions that are at issue today, you did not look
 17 for these MEF forms?
 18 A. No, the MEF form is an internal document
 19 that's used. It's not meant to distribute to any
 20 residents. It's an internal document.
 21 Q. Now I want to draw your attention to the
 22 capitalization policy and procedure, which was
 23 recently labeled Exhibit 2.
 24 Do you have that document before you?
 25 A. Yes.

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1 Q. Now, this is the policy that came into
 2 place in January of 2014; isn't that right?
 3 THE ARBITRATOR: Here, I'll share mine.
 4 THE WITNESS: Yes.
 5 MR. BERNSTEIN: Q. Yes, it is?
 6 A. It's dated January of 2014.
 7 Q. So this is the policy that would have
 8 applied to each expenditure that took place in 2014
 9 and in 2015; is that right?
 10 A. Yes.
 11 Q. I'd like to draw your attention to the
 12 third page of that document. I'd like you to read
 13 silently while I read aloud.
 14 "A capital expenditure project request needs
 15 to be completed for the entire project. When entering
 16 a project into the cap X system, as much" --
 17 THE ARBITRATOR: Wait, wait, wait, Max.
 18 Where are you reading?
 19 MR. BERNSTEIN: I apologize. It's the top of
 20 Page 3, Paragraph 2.
 21 THE ARBITRATOR: Oh, okay. I got it.
 22 MR. BROWN: Read slowly so that the court
 23 reporter can get it down.
 24 MR. BERNSTEIN: Q. "When entering a project
 25 into the cap X system, as much detail as possible

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1 should be provided, including but not limited to
2 project reason descriptions, invoice descriptions,
3 comment boxes and backup documentation, such as bids,
4 insurance certificates, and photos."
5 Did I read that correctly?
6 A. You did read that correctly.
7 Q. You told us before that you ensure that
8 these procedures are followed; is that right?
9 A. Yes.
10 Q. So that means that for each capital
11 expenditure project, all of these various forms of
12 documentation are kept; is that also true?
13 A. Yes, that is correct.
14 Q. These various forms of documents are kept
15 in what's referred to in this document cap X system;
16 is that right?
17 A. Correct.
18 Q. Are you familiar with the cap X system?
19 A. Yes.
20 Q. And do you have access to the cap X
21 system?
22 A. Yes.
23 Q. Would you agree that it's relatively --
24 or fairly easy for an ELS employee to take a document
25 off of the cap X system?

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1 A. No, I wouldn't agree with that.
2 Q. Would you agree that if properly
3 authorized, an ELS employee could get a document off
4 of the cap X system?
5 MR. MORAN: Objection; vague. Vague as to
6 time, what document, when.
7 THE ARBITRATOR: Go ahead.
8 THE WITNESS: That was my question. What
9 documents are you speaking of?
10 MR. BERNSTEIN: Q. Well, let's say that your
11 boss came to you and said, I want a document from the
12 cap X system. Would you be able to get that document?
13 A. It depends on the document.
14 Q. Tell us, which documents can you not
15 access?
16 A. I can't -- I would have -- so, for
17 example, if I wanted to go in there today for a
18 project that has not been started yet and look at
19 proposals, I can go do that. If the project has been
20 started, I would have to go -- and we've chosen a
21 vendor, I wouldn't be able to pull those proposals now
22 that it's been started.
23 Q. So once a project has been started
24 there's a freeze on accessing documents in the cap X
25 system?

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1 A. I wouldn't say there's a freeze on
2 accessing the documents.
3 Q. Well, let me get this clear, Ms. Barrett.
4 If your boss needed a document, say, because of a
5 litigation, are you telling us that you would not be
6 able to access that document?
7 A. I'm not saying that. I'm not -- wouldn't
8 be able to access it. We would be able to obtain that
9 document.
10 Q. You would be able to obtain any document
11 on the cap X system?
12 A. I don't know about "any document."
13 Q. Can you identify any document on the cap
14 X system that you would not be able to obtain if it
15 was necessary?
16 A. I would not be able to drill down and
17 answer that question without having a specific
18 question on which document you're asking for.
19 Q. Okay. Well, let's look at this. Every
20 single project requires a project reason description.
21 That's what the procedure says, right?
22 A. Yes.
23 Q. So that means for every project at issue
24 today that took place in 2014 and 2015, it was
25 required by these procedures that a project reason

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1 description be drafted; isn't that right?
2 A. Yes.
3 Q. And to the best of your understanding,
4 those procedures were followed?
5 A. Yes.
6 Q. So that means that somewhere on the cap X
7 system maintained by ELS every project at issue today
8 has a project reason description?
9 A. Yes.
10 Q. Would you be able to access the project
11 reason description associated with the petition items
12 at issue today?
13 A. Yes.
14 Q. And would you be able to take those
15 documents and print them out if needed and authorized
16 by ELS?
17 A. So the way the system is, it's not a
18 document in there for the description. It's a
19 step-by-step template that you complete. So it's not
20 a printable document.
21 Q. Well, certainly there's a way to take
22 information from the system and use it in paper form;
23 isn't that right?
24 A. Yes.
25 Q. So you could have gotten these project

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1 reason descriptions off of the system and provided
2 them to the homeowners; isn't that right?
3 **A.** I could have, yes.
4 **Q.** But you did not?
5 **A.** So these items for -- and I'm going to
6 speak to my year -- were discussed with the
7 homeowners. So it wasn't an option -- I didn't even
8 think that there was a need to go into our internal
9 system, print something off, and give it to the
10 homeowners because they were involved with all of
11 this.
12 The one thing that I didn't do was I didn't
13 write it down and follow up in email. But they were
14 definitely involved. I couldn't speak for 2012, 2013,
15 but I can speak for late '14 and '15, they were very
16 involved with what we were doing on the property.
17 **Q.** So, Ms. Barrett, just for clarity, you
18 did not produce -- or rather you did not print project
19 reason descriptions and provide them with the
20 petitions issues to the City? That's a yes, you did
21 not do that?
22 **A.** I'm not going to say yes because there's
23 a process in the capital expenditures that, for
24 example, the moneys that we're going to spend in 2017,
25 we're already planning those projects. So it's done

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1 prior to the new year, prior to the expenditures,
2 unless it is an un-budgeted request, meaning it's an
3 emergency situation. So those items have already been
4 discussed with the homeowners before they even go into
5 the system, so we plan a year in advance.
6 **Q.** Ms. Barrett, I appreciate your answer.
7 Let's put aside for a second the discussion with the
8 homeowners.
9 **A.** Sure.
10 **Q.** This is a very straightforward question.
11 The project reason descriptions that were in
12 the cap X system, they were not printed out and
13 provided to the City as part of 2013, 2014 and 2015
14 petitions; isn't that right?
15 **A.** So they wouldn't have been printed out
16 for 2013 or 2014 'cuz the cap X system didn't exist at
17 that time; it was just getting off the ground. And
18 for 2015 they were not.
19 **Q.** Looking at some of these other items,
20 there's also comment boxes that are contained within
21 the cap X system. Those were not printed out and
22 provided with any petition to the City --
23 **A.** No.
24 **Q.** -- isn't that right?
25 We have here backup documentation, such as

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1 bids. And those were also entered into the cap X
2 system?
3 **A.** Correct.
4 **Q.** And I believe you described some of the
5 bids. For example, you mentioned with the roof that
6 proposals came in for 110- and \$150,000?
7 **A.** Right.
8 **Q.** And those bids were entered into the cap
9 X system following the procedure outlined here?
10 **A.** Correct.
11 **Q.** But those bids were not provided in
12 connection with any of the petitions at issue today?
13 **A.** No.
14 **Q.** In fact, no bids of any kind, other than
15 those that were ultimately acted on, were provided to
16 the homeowners or the City through a petition system?
17 **A.** Correct.
18 **Q.** Looking here, there's also photos of each
19 project at issue today. And those photos -- is that
20 correct?
21 **A.** Yes.
22 **Q.** And those photos were not provided to the
23 homeowners or the City through the petitions at issue
24 today?
25 **A.** No.

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1 **MR. BERNSTEIN:** No further questions at this
2 time.
3 **THE ARBITRATOR:** Okay.
4 **DIRECT EXAMINATION BY MR. JACCARD**
5 **MR. JACCARD:** Q. Jennifer, I'd like to call
6 your attention to the language that Max asked you to
7 read at the very beginning.
8 **A.** Yes.
9 **Q.** And it says, "When entering a project
10 into the cap X system, as much detail as possible
11 should be provided."
12 That doesn't say does that every one of these
13 items necessarily is provided?
14 **A.** Correct.
15 **Q.** So for any particular project, some of
16 these things may not be provided?
17 **A.** Correct.
18 **Q.** Based on whoever is making the input
19 decision to input whatever is put in the system?
20 **A.** Correct.
21 **Q.** So Max's assumption that each one of
22 these items exist for every project isn't true,
23 correct?
24 **A.** Correct.
25 **MR. JACCARD:** Thank you.

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1 THE ARBITRATOR: Okay.
2 MR. BERNSTEIN: Mr. Baskin, may I ask one
3 more short line of questioning of Ms. Barrett?
4 THE ARBITRATOR: I don't know. It depends on
5 what it's about.
6 MR. BERNSTEIN: It's about a very related
7 issue. It's about the contracts at issue in this
8 case.
9 THE ARBITRATOR: Go ahead.
10 REDIRECT EXAMINATION BY MR. BERNSTEIN
11 MR. BERNSTEIN: Q. Ms. Barrett, you also
12 mentioned that the standard contracts with the vendor
13 is 30 pages long; isn't that right.
14 A. I might have been exaggerating a little
15 bit. I'm not sure exactly how many pages, but it's
16 pretty lengthy.
17 Q. There's a lengthy contract --
18 A. Yes.
19 Q. -- with each vendor?
20 A. Yes.
21 Q. And that's to protect ELS?
22 A. Yes.
23 Q. So you make sure that every transaction
24 of a big nature is going to have one of these
25 contracts, right?

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1 A. Correct.
2 Q. You would agree that in these contracts,
3 I believe this is actually a quote from your earlier
4 testimony, it reads what the job would be; isn't that
5 true?
6 A. Correct.
7 Q. That's written into the contract. But
8 other than the one or two-page excerpts that we've
9 already discussed, none of those contracts were
10 attached to the petitions provided to the City; isn't
11 that true?
12 A. Correct.
13 Q. But you did keep those contracts?
14 A. Yes.
15 MR. BERNSTEIN: No further questions.
16 RE-CROSS-EXAMINATION BY MR. JACCARD
17 MR. JACCARD: Q. Isn't it true that on our
18 standard form contract, the description of work is
19 actually not entered into the contract? It's actually
20 in Exhibit A, which is typically the vendor's
21 proposal, which in those cases is the documents here?
22 A. Yes, correct.
23 THE ARBITRATOR: Okay. Any other questions?
24 MR. JACCARD: No.
25 THE ARBITRATOR: Any more here?

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1 So we're waiting for Mr. Heine; is that
2 right?
3 MR. MORAN: Mr. Heine.
4 THE ARBITRATOR: We can go off the record.
5 (Discussion held off the record.)
6 THE ARBITRATOR: I'd like to entertain from
7 respective Counsel, Neil and Nate or whoever Nate
8 wants to designate --
9 MR. ANDREWS: Excuse me. May I -- can we
10 release Jorge?
11 (Discussion held off the record.)
12 THE ARBITRATOR: What I'd like to hear is
13 from the petitioners with regard to each of these
14 items that remain on the list whether or not they're
15 seeking the pass through as a capital replacement or a
16 capital improvement.
17 MR. MORAN: Yes.
18 THE ARBITRATOR: And then hear from you as to
19 whether or not you think it's a capital improvement,
20 capital replacement, or maybe you are going to argue
21 that it's maintenance and repair. And I'd like to
22 know where we're going with that. I'm required to
23 make specific findings on the issues, so I should know
24 what is being requested.
25 MR. MORAN: Excellent. Could we have a short

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1 break so I can talk to the client representatives
2 about that?
3 THE ARBITRATOR: Sure.
4 [Short recess.]
5 THE ARBITRATOR: You guys wanted to present
6 some testimony about homeowners' communications or
7 decision-making?
8 MR. COOPER: We did. I think that Neil had
9 wanted to call Robert on that issue, but we're happy
10 to --
11 THE ARBITRATOR: You want to call Robert and
12 then they're going to respond?
13 MR. MORAN: I'll let them put on their case,
14 and then I'll have Robert bat cleanup.
15 THE ARBITRATOR: Is that all right with you?
16 MR. COOPER: Yes, it is.
17 THE ARBITRATOR: Okay.
18 MR. BERNSTEIN: We'll go ahead and get
19 started by talking to Mr. Heine a little bit.
20 Q. Mr. Heine, you mentioned before that
21 you're currently the CM HOA president and a resident?
22 A. I should point out that even though I
23 talked earlier, I haven't been sworn.
24 Q. Oh, okay. Well, let's swear in Mr.
25 Heine.

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1 RICHARD HEINE,
 2 was called as a witness, and the said witness, being
 3 first duly sworn, was thereupon examined and testified
 4 as hereinafter set forth.
 5 --oOo--
 6 THE ARBITRATOR: And state and spell your
 7 name for the record.
 8 THE WITNESS: Richard Heine, H-E-I-N-E.
 9 MR. BROWN: And can we have a stipulation
 10 from the petitioner that there's no objection to his
 11 previous testimony, and it will be treated as though
 12 it were under oath?
 13 MR. MORAN: Yes.
 14 DIRECT EXAMINATION BY MR. BERNSTEIN
 15 MR. BERNSTEIN: Q. All right. Mr. Heine,
 16 can you tell us, how long have you lived at Contempo
 17 Marin.
 18 A. 22 years.
 19 Q. What did you do or what do you do
 20 currently for a living?
 21 A. I'm retired, but I devote most of my time
 22 to the HOA.
 23 Q. What did you do before you were retired?
 24 A. I worked for Apple Computer.
 25 Q. I'd like to ask you a few questions about

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1 your income and how an arbitration like this and a
 2 pass through like this affects you.
 3 Can you tell us, what are the sources of
 4 income that you have now?
 5 A. My wife and I both get Social Security,
 6 and she has two part-time jobs.
 7 Q. And is Social Security what you would
 8 consider a fixed income?
 9 A. It has been recently because this year,
 10 and as projected for next year, there will be no cost
 11 of living increase in Social Security.
 12 Q. Even if there was no pass through of any
 13 capital cost here, do you anticipate that your rent
 14 would go up this year at Contempo Marin?
 15 A. Certainly, under the terms of the
 16 ordinance.
 17 Q. Can you explain a little bit about why
 18 that's the case?
 19 A. Well, the ordinance allows them to raise
 20 the rent a percentage based on the cost of living
 21 percentage for the Bay Area.
 22 Q. And can you explain, does the fact that
 23 your Social Security income is also based on the cost
 24 of living, does that not cover the raise in cost of
 25 living?

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1 A. No, because the Social Security increase
 2 is base on a national cost of living index. The Bay
 3 Area one has for many years been much higher than the
 4 nation.
 5 Q. So, Mr. Heine, would it be a hardship for
 6 you to have to pay an additional, say, \$500 this year
 7 in rent?
 8 A. Absolutely.
 9 Q. Would it be a hardship for you to have to
 10 pay \$250 extra in rent?
 11 A. Yes.
 12 Q. Can you tell us a little bit about what
 13 that would look like?
 14 A. Well, we would be able to pay it, but it
 15 would certainly detract from other places where we
 16 would use that money.
 17 Q. I'd like to ask you a few questions, too,
 18 about some communications that you'd have with ELS.
 19 As the president of ELS -- I'm sorry, as the
 20 president of the homeowners' association --
 21 A. I just got promoted.
 22 Q. Mr. Heine, do you talk a lot with
 23 employees of ELS?
 24 A. I meet regularly with Robert.
 25 Q. And what kind of things do you discuss?

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1 A. We meet monthly with -- our whole board
 2 meets monthly with him to discuss issues that we would
 3 like to get resolved.
 4 Q. And do you also have conversations with
 5 Ms. Barrett?
 6 A. Yes.
 7 Q. Okay.
 8 A. Not as frequent, though.
 9 MR. BROWN: I'll have the court reporter mark
 10 this as Exhibit 3.
 11 (Respondents' Exhibit 3 was marked for
 12 identification and received into evidence.)
 13 MR. BROWN: Q. Mr. Heine, can you tell us
 14 what I've just handed you?
 15 A. You've handed me a copy of a letter that
 16 was written on January 13th of this year to Jennifer.
 17 Q. And who wrote that letter?
 18 A. I wrote it.
 19 Q. And who sent that letter to Jennifer?
 20 A. I sent it to her.
 21 Q. And can you tell us what the contents of
 22 that letter are, in general terms?
 23 A. Basically, we had been asking for some
 24 time that if ELS wants money from us to spend on a
 25 project, we would like to discuss the project before

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1 the money is spent.
2 Q. Can you tell us again the date of this
3 letter?
4 A. January 13th.
5 MR. BERNSTEIN: No further questions for
6 Mr. Heine at this time.
7 THE WITNESS: I'm sorry? No.
8 MR. BERNSTEIN: No further questions at this
9 time, Mr. Heine, from me.
10 CROSS-EXAMINATION BY MR. MORAN
11 MR. MORAN: Q. Mr. Heine, you had help from
12 a lawyer writing this letter?
13 A. We had some advice, yes.
14 Q. Yeah, so these words aren't yours; they
15 were cooked up by a lawyer --
16 MR. BROWN: Objection --
17 THE ARBITRATOR: Restate the question.
18 Rephrase your question.
19 MR. MORAN: Q. Let's go through a few parts.
20 THE ARBITRATOR: Remember, I'm not a jury.
21 MR. MORAN: All right. Thank you.
22 Q. How many times have you met or spoken
23 with Jennifer Barrett about anything to do with the
24 park?
25 A. Probably three or four times.

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1 Q. Total?
2 A. [Witness nodded head.]
3 Q. Is that "yes"?
4 A. [Witness nodded head.]
5 Q. I'm sorry, because we have a court
6 reporter, I need you to answer out loud.
7 A. Yes.
8 Q. Thank you, sir. I'm not trying to give
9 you a hard time, I promise.
10 A. I understand.
11 Q. And what have you discussed, if you
12 recall, with Ms. Barrett?
13 A. On at least one occasion we discussed
14 developing some procedure whereby we could be
15 consulted on cap X expenditures before the money was
16 spent.
17 Q. And why don't you tell us what you and
18 Jennifer talked about in that conversation?
19 A. As I recall the first time we talked
20 about it, she was going to prepare a draft procedure
21 and see if we could work out something that was
22 amenable to both of us.
23 Q. And when did that discussion take place?
24 A. I'm guessing a little bit, but I want to
25 say January.

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1 Q. Of 20 --
2 A. Of this year.
3 Q. -- 16.
4 And was that after your January 13, 2016,
5 letter?
6 A. I'm not sure.
7 Q. That's fair.
8 And do you remember it being agreed that a
9 Google document would be prepared?
10 A. That came up at a subsequent meeting.
11 Q. Thank you.
12 And is that that Mr. Meloney agreed to create
13 a Google document?
14 A. No. As I recall, Jennifer offered to
15 share some Google docs which would give us the
16 information prior to the expenditure.
17 Q. And what document did Mr. Meloney agree
18 to prepare in draft as a proposal?
19 A. I don't know.
20 Q. How about yourself, did you offer to
21 prepare something?
22 A. No.
23 Q. It was all Jennifer?
24 A. [Witness nodded head.]
25 Yes.

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1 Q. And did anybody -- so when do you recall
2 that Jennifer -- did she agree to prepare a draft
3 document?
4 A. As I recall in our first meeting, yes,
5 she offered to do that.
6 Q. And was that -- she was going to share a
7 document, a Google document that had already been
8 prepared?
9 A. That was a subsequent meeting.
10 Q. Okay.
11 A. And my understanding was some Google
12 document that ELS already had.
13 Q. And when was this -- the first meeting
14 we're talking about was in approximately January
15 of 2016?
16 A. Yes.
17 Q. And the second meeting where the subject
18 of a Google document being shared came up,
19 approximately when was that meeting?
20 A. I'm not really sure. I'd have to say
21 several months later.
22 Q. And did you ever follow up with Jennifer
23 and say, in effect, Where's the Google document?
24 A. No.
25 Q. Did anyone else for the homeowners' board

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1 do that --
 2 A. Not that --
 3 Q. -- follow-up?
 4 A. Not that I'm aware of.
 5 Q. Did you ever follow up with Jennifer and
 6 say, How about this cap X procedure that you were
 7 going to draft up?
 8 A. No.
 9 Q. Did Jennifer Barrett ever send an email
 10 out in the January, February 2016 time period where
 11 she was asking for follow-up from the homeowners'
 12 board?
 13 A. Follow up on what?
 14 Q. On preparing a draft capital expenditure
 15 document?
 16 A. Not that I'm aware of.
 17 Q. Have you found Jennifer Barrett to be
 18 fairly easy to talk to about these things, or
 19 difficult or how -- I know -- how would you describe
 20 the relationship?
 21 A. I'm not sure how to describe it.
 22 Q. Did I ask an awkward question, sir?
 23 A. Somewhat.
 24 Q. Okay; that's fair.
 25 Did Jennifer Barrett ever speak with you

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1 about her thoughts about what repairs and improvements
 2 should be made in the park?
 3 A. Yes, she's mentioned a few.
 4 Q. And which ones has she mentioned over
 5 time?
 6 A. I can't remember specific ones, but I
 7 know that we talked about improving the appearance of
 8 the clubhouse.
 9 Q. And did you ever speak with Jennifer
 10 about any of the capital expenditures that we've been
 11 talking about today?
 12 A. Not the ones we've been talking about
 13 today.
 14 Q. Did you ever talk to Jennifer Barrett and
 15 express disappointment that certain capital
 16 expenditures have been undertaken?
 17 A. Yes.
 18 Q. Which ones did you tell her you were
 19 disappointed had been undertaken?
 20 A. I believe we talked about the furniture
 21 at one point.
 22 Q. I'm sorry, the last two words?
 23 A. The furniture.
 24 Q. In the clubhouse?
 25 A. Yes.

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1 Q. The leather furniture?
 2 A. The leather furniture and possibly the
 3 pool furniture.
 4 Q. What was said about the leather
 5 furniture?
 6 A. I believe I mentioned that it's subject
 7 to almost instant vandalism.
 8 Q. And that item has been dropped from the
 9 petition today?
 10 A. Yeah.
 11 Q. But until today, it wasn't dropped?
 12 A. That's right.
 13 Q. And other than expressing some concern or
 14 disappointment about the choice of materials for the
 15 clubhouse furniture, did you express any
 16 disappointment in any other capital expenditures when
 17 you've spoken with Jennifer?
 18 A. Not that I can recall.
 19 Q. You mentioned -- and I'm not trying to
 20 put words in your mouth -- something about the pool
 21 furniture. Did that subject come up with Jennifer?
 22 A. Not that I can recall.
 23 Q. Have you spoken with Robert Andrews --
 24 well, you testified that you had regular meetings with
 25 Mr. Andrews?

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1 A. Yes.
 2 Q. And the board would meet on an
 3 approximately monthly basis with him?
 4 A. Yes.
 5 Q. And during your -- the board's regular
 6 meetings with Robert Andrews, did the subject of
 7 capital improvements ever come up?
 8 A. Not that I can recall. What came up
 9 mostly was ongoing smaller problems.
 10 Q. Would you give us an example?
 11 A. The lagoon area has three aerators, and
 12 one has been out for months. So on a regular basis,
 13 we would get an update on the status of that from
 14 Robert.
 15 We would occasionally have things like a leak
 16 in the kitchen, and we could discuss that. Ongoing
 17 problem is loud parties on weekends, and we've
 18 discussed that. Those sort of things.
 19 Q. Is it correct there have been discussions
 20 about parking regulations?
 21 A. Right.
 22 Q. And that has nothing to do with capital
 23 improvements?
 24 A. No.
 25 Q. Have you found it easy to communicate

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1 with Mr. Andrews?
2 A. Yes.
3 Q. How about have you found it easy to
4 communicate with Jennifer Barrett?
5 A. Somewhat.
6 Q. And when you say "somewhat," what do you
7 have in mind?
8 A. It disappoints me that when she visits
9 that I don't get a call and say, Can we spend 15 or
10 20 minutes and just catch up on what's going on.
11 Q. Okay. Did Jennifer Barrett ever invite
12 you to a meeting with a City official on the subject
13 of parking outside the park?
14 A. Yes.
15 Q. What did she -- what did you understand
16 she was inviting you to do?
17 A. To represent the HOA.
18 Q. At a meeting with officials from the City
19 of San Rafael?
20 A. We met with the vice mayor and the City
21 parking services manager.
22 Q. And when was that?
23 A. Within the last couple of months.
24 Q. And what did you understand instigated
25 that meeting?

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1 A. Because the residents, many residents are
2 forced to park out on Smith Ranch Road outside the
3 park. The homes on Smith Ranch Road have complained
4 to the City about the parking, the garbage that was
5 being disposed, the noise, and so forth. So the City
6 wanted to get together and talk about it.
7 Q. So did you understand that
8 representatives of the City called the park owner to
9 arrange a meeting?
10 A. That was my assumption.
11 Q. Yes, and that it was Jennifer who reached
12 out to the homeowners' association board to have
13 someone there?
14 A. I'm not sure if it was Jennifer or
15 Robert, but one of them told me that the meeting was
16 coming up.
17 Q. Okay, and invited board members to attend
18 or what?
19 A. No, just me.
20 Q. As the president?
21 A. Yes.
22 Q. And did you accept the invitation?
23 A. Sure.
24 MR. COOPER: Neil, can I interpose an
25 objection that I appreciate the work Jennifer has done

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1 working on the parking issue, but I'm not sure what
2 this has to do with the matters in front of us today
3 or cap X in general.
4 THE ARBITRATOR: So you're objecting on
5 relevancy.
6 MR. COOPER: That's the objection.
7 THE ARBITRATOR: Well, maybe you can try and
8 tie it in.
9 MR. MORAN: Yeah. Can I have a second?
10 THE ARBITRATOR: Can I make a suggestion?
11 MR. MORAN: Yeah.
12 THE ARBITRATOR: What's before me is a
13 request for a series of petitions for a pass through
14 of capital improvements or capital replacements.
15 MR. MORAN: Yes, sir.
16 THE ARBITRATOR: I'm aware of the transcript
17 from the city council hearing because you provided it
18 to me, thank you, and in some ways it did help give me
19 some direction on what I'm supposed to do. But it
20 didn't ask me to find whether or not in these recent
21 times whether there has been an increase in the
22 communication between ELS and the HOA and residents or
23 whether or not there's been any procedure established
24 to get pre-approval, input, or any of that. And it
25 wouldn't be in the ordinary course of things until you

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1 asked me to that I would comment on that in my
2 decision from today's hearing.
3 So I'm not sure we need to spend too much
4 time on that subject. Not to say that it's not
5 important or of significant interest and shouldn't be
6 pursued between ELS and the homeowners' association,
7 but I'm not sure it needs to be done here at the
8 arbitration hearing.
9 MR. MORAN: Thank you.
10 THE ARBITRATOR: Now, if you want me to act
11 as your mediator when this is done and help that out,
12 we can talk about it, but in the meantime, why don't
13 we try and focus on the petitions.
14 MR. MORAN: That's fine; that's great. I
15 agree.
16 THE ARBITRATOR: Okay.
17 MR. MORAN: I don't have any more questions
18 for Mr. Heine. Thank you.
19 THE ARBITRATOR: Anything else?
20 MR. COOPER: I think that your proposal is
21 fine. It sounds like you've already received into
22 evidence the portions of the transcript, and if I
23 don't have to do any work introducing those, I know
24 we're not following formal rules, but you have those
25 excerpts, you have the city council resolution, one

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1 attached to Mr. Moran's brief and one attached to
2 mine, and as long as those are part of the record, I
3 think --

4 THE ARBITRATOR: Well, if you want it to be
5 part of the record, you should introduce it because
6 what I'm referring to is, you know, you both submitted
7 pre-arbitration statements which had exhibits, all of
8 which I've read, but they aren't part of the record
9 and wouldn't be part of my decision-making process,
10 which will be limited to what's actually made a part
11 of the record.

12 So -- but consistent with what I earlier
13 said, I'm not so sure that I need that as a piece of
14 evidence because it's not pertinent to what I'm
15 deciding.

16 MR. COOPER: I understand that statement with
17 respect to the transcript. There are two city council
18 resolutions, and those in the past have been accepted
19 by the parties on how the ordinance would be
20 interpreted.

21 THE ARBITRATOR: Those would be welcome.

22 MR. COOPER: I think we have copies of those.
23 If we're done with all the testimony, we can mark
24 those.

25 THE ARBITRATOR: Let's find out.

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1 You were reserving the right to talk to
2 Robert. Do you want to talk to him about any of these
3 issues?

4 MR. MORAN: I don't -- no, I do not --
5 Yeah, there's one item I need to talk to him
6 about, which is the pool furniture --

7 THE ARBITRATOR: Okay.

8 MR. MORAN: -- but other than that, I
9 don't -- because I don't see it as a requirement of
10 the ordinance to get into how many meetings they've
11 had, it's not part of the ordinance, I don't need to
12 take our time today to walk him through that.

13 THE ARBITRATOR: So No. 17, the pool
14 furniture.

15 ISSUE - POOL FURNITURE
16 ROBERT ANDREWS
17 DIRECT EXAMINATION BY MR. MORAN

18 MR. MORAN: Q. Mr. Andrew, do you have the
19 invoice for the -- this is, for the record, this is
20 Item 18, which is new fitness room furniture in the
21 amount of \$10,518.93.

22 Mr. Andrews, do you have the -- I am not
23 seeing it in my --

24 MS. BARRETT: It's in Exhibit C.

25 MR. MORAN: Oh, pardon me, I've got the

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1 wrong --

2 MS. BARRETT: It's in Exhibit C in your
3 binder.

4 MR. MORAN: Actually, I identified the wrong
5 item. So the item I'm referring to is the pool
6 furniture, which is Item 17?

7 THE ARBITRATOR: Correct.

8 MR. MORAN: Pardon me.

9 Q. And the vendor is Gym Source, G-Y-M,
10 S-O-U-R-C-E.

11 A. No, Horizon Casual.

12 MR. MORAN: Gosh, darn it. Excuse me, rats.

13 Q. So just to set the table here, we're
14 looking at Horizon Casual invoice, and there appears
15 to be an invoice date in the upper right corner of
16 June 22, 2015.

17 Do I have the right document now?

18 A. That's what I'm looking at.

19 Q. So when I'm right, and I ask you
20 questions, say "yes."

21 A. Yes.

22 Q. Can you do that?

23 A. Yes, sir.

24 Q. That's an excellent answer.
25 So is it correct that -- just to identify how

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1 many items, there are 15 chaises?

2 A. Yes.

3 Q. Excellent. And there are 40 chairs?

4 A. Yes.

5 Q. And ten tables?

6 A. Yes.

7 Q. So let's talk about -- I want to walk you
8 through what was there before, okay? This is
9 furniture in the pool area, correct?

10 A. Correct.

11 Q. All right. And the pool area is what,
12 near the clubhouse?

13 A. Yes.

14 Q. So before the new furniture was purchased
15 from Horizon Casual, how many chaises were there? How
16 many chaise chairs?

17 A. My best recollection, I think there were
18 11.

19 Q. Let me get my notes here. So there
20 were -- so we have chaises. Those are like long
21 things you sit and lie on?

22 A. Yes.

23 Q. All right. And there were a total of how
24 many that were purchased?

25 A. Fifteen.

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1 Q. And there were, beforehand, 11?
2 A. Correct.
3 THE ARBITRATOR: Did you keep all 11?
4 THE WITNESS: [Witness shook head.]
5 MR. MORAN: I didn't hear that, Mr. Baskin.
6 THE ARBITRATOR: They didn't keep the 11.
7 THE WITNESS: No.
8 THE ARBITRATOR: The 11 were replaced by the
9 new 15?
10 THE WITNESS: Yes.
11 THE ARBITRATOR: So the net number is 15.
12 THE WITNESS: Correct.
13 MR. MORAN: Q. Of the 15, 11 were
14 replacements?
15 A. Correct.
16 Q. A total of 40 chairs were purchased,
17 correct?
18 A. Yes.
19 Q. And how many chairs were there before
20 this?
21 A. 20.
22 Q. So there were 20 new chairs after this
23 purchase, correct?
24 A. Yes.
25 Q. Tables, how many tables total were

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1 purchased?
2 A. Six tables.
3 MS. BARRETT: No, it's ten.
4 THE WITNESS: Sorry, ten tables.
5 MR. MORAN: Q. And how many were there
6 before?
7 A. Four tables.
8 Q. Yes. And so there was a net increase of
9 six tables, correct?
10 A. Correct.
11 MR. MORAN: Okay, that's all I have.
12 THE ARBITRATOR: Good.
13 All right. So the testimony is closed. I
14 now want to hear from Counsel.
15 So we were going to go through the list, and
16 you're going to -- I guess they could be in the nature
17 of closing, and you had a couple -- before we do that,
18 you had a couple exhibits you wanted to introduce.
19 MR. COOPER: That's right. We would
20 introduce the two city council resolutions.
21 THE ARBITRATOR: No. 4 is city council of
22 what date?
23 MR. COOPER: It's resolution NO. 12014. The
24 date at the end is August 7, 2006. This was Exhibit D
25 to ELS' brief.

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1 MR. BROWN: Why don't you describe both of
2 them and we'll have them marked at the same time.
3 MR. COOPER: And I also have Resolution
4 No. 13236. This is dated September 19th, 2011. This
5 was Exhibit 1 to the homeowners' brief.
6 THE ARBITRATOR: What was it, December 11th?
7 MR. COOPER: September 19th, 2011.
8 (Respondents' Exhibit 4 was marked for
9 identification and received into evidence.)
10 (Respondents' Exhibit 5 was marked for
11 identification and received into evidence.)
12 MR. MORAN: And then, in case it's not clear
13 already on behalf of petitioner, we ask that the
14 exhibits to our hearing brief be admitted.
15 THE ARBITRATOR: Okay. Now, if I understand
16 correctly, your 64-page Exhibit 1 includes all of the
17 items that he just referenced.
18 MR. COOPER: It does.
19 MR. MORAN: But ours do not include at least
20 one page that was in that collective Exhibit 1. My --
21 at least my copy of the hearing brief does not include
22 Page 1 of a contract that is dated February --
23 THE ARBITRATOR: Okay. But that's Page 44 of
24 of -- I recall that, Page 44 of Exhibit 1.
25 MR. MORAN: It is.

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1 THE ARBITRATOR: Yeah, okay. So just --
2 okay. But you would want that in, I would suppose.
3 MR. MORAN: No.
4 THE ARBITRATOR: Not necessarily.
5 MR. MORAN: No, we don't think it's --
6 THE ARBITRATOR: You don't think it's the
7 contract.
8 MR. MORAN: No.
9 THE ARBITRATOR: Okay.
10 Do you want to comment on either of these
11 exhibits, 4 or 5?
12 MR. COOPER: It would just be argument. I
13 can do so now or save it.
14 THE ARBITRATOR: Let's save it.
15 MR. COOPER: I'm just thinking here about
16 whether it makes sense for us to move into evidence
17 the exhibits in our brief. It's starting to create a
18 duplicate record because we're overlapping here, and
19 I'm not sure what purpose it would serve. But just in
20 the interest of being thorough.
21 THE ARBITRATOR: I don't have a problem with
22 accepting into evidence the exhibits attached to the
23 respective briefs.
24 MR. COOPER: Great.
25 THE ARBITRATOR: I think they are duplicative

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1 and --
2 MR. COOPER: Sounds good.
3 THE ARBITRATOR: That way I have a complete
4 record. The problem is the reporter doesn't have
5 them, and they won't be part of the transcript unless
6 you mark them separately.
7 MR. MORAN: I'm happy to mark ours
8 separately.
9 THE ARBITRATOR: For the record, then, so
10 you're going to submit your pre-arbitration brief with
11 exhibits, and that's going to be E.
12 (Petitioner's Exhibit E was marked for
13 identification and received into evidence.)
14 MR. BROWN: I would just say, obviously, you
15 as the arbitrator received the pre-hearing briefs and
16 considered them. Typically, briefs don't themselves
17 become evidence in a hearing; that's somewhat unusual,
18 but I have no problem marking them, you know, with the
19 objection that, you know, they can't be considered as
20 evidence as to fact, at least, the briefs themselves.
21 THE ARBITRATOR: Right. And, actually, I
22 mean, Neil, I kind of was getting a little bit sloppy
23 here but because you grabbed it from Jennifer, I
24 understood the expedience of it. All you really need
25 is the exhibits, not the brief itself.

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1 MR. MORAN: I just want the complete record.
2 I understand that in litigation we have these two
3 buckets of things. We have pleadings -- I guess many
4 buckets. We have fact evidence, we have the
5 documentary evidence, we have oral testimony evidence.
6 We -- but I wanted to make -- so I'm not offering the
7 narrative part of the brief as evidence. I'm offering
8 it as part of the record.
9 THE ARBITRATOR: Well, I don't think it's
10 necessary.
11 MR. MORAN: Okay.
12 THE ARBITRATOR: So why don't you just give
13 Neil back the part of E that is the argument, the
14 first whatever, I forget how many pages it is. I can
15 tell you. The narrative is Pages 1 through 9; it's
16 everything preceding Tab A, Exhibit A.
17 MR. MORAN: That's great.
18 THE ARBITRATOR: And then with regard to the
19 homeowners' association, your packet will be No. 6,
20 and it's the HOA exhibits to pre-arbitration
21 statement, right.
22 (Respondents' Exhibit 6 was marked for
23 identification and received into evidence.)
24 THE ARBITRATOR: I do think, as a general
25 proposition, arguments should be in the transcript,

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1 and evidence should be the exhibits.
2 So testimony is closed. Both sides have
3 presented such witnesses and testimony as they
4 desired, and I have now asked for argument from
5 Counsel. I guess it could be in the nature of closing
6 argument and asking for, as part of that, if you
7 would, Mr. Moran, tell me with regard to the various
8 items along the way while you're making your argument
9 whether you're urging that some something is a capital
10 replacement or capital improvement.
11 MR. MORAN: Yes.
12 CLOSING ARGUMENT BY PETITIONER
13 MR. MORAN: First, thank you, everybody, for
14 making this a pleasant hearing. Thank the arbitrator,
15 the court reporter, and especially the homeowners who
16 are here.
17 The first three items are capital
18 replacements as defined in the City's definitions at
19 20.04.020.
20 They're "substitution, replacement, or
21 reconstruction of pieces of equipment, machinery,
22 streets, sidewalks, utilities, landscape, structures
23 of \$5,000 or more which materially benefit and add
24 value."
25 Item No. 4, the 44-inch-wide 19 horsepower

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1 Kawasaki mower, we believe, is an improvement. There
2 was no 44-inch mower before. It does not have to meet
3 the \$5,000 threshold for capital replacement, but it
4 is an improvement. It directly and primarily benefits
5 and serves the existing mobile home park homeowners by
6 materially adding to the value of the park,
7 appreciably prolonging its useful life and adapting it
8 to new uses. It was amortized under the provisions of
9 the Internal Revenue code and ELS' own capitalization
10 policy.
11 Item No. 5, which is the Linscott Engineering
12 drainage improvements, we believe, qualify as both
13 capital improvements and capital replacement. It's an
14 improvement to the extent that it was a
15 reconfiguration of -- because it created a proper
16 slope for the drainage lines, it allowed water to
17 drain from an area that was not draining before, and
18 therefore, it qualifies as an improvement.
19 It could also be seen as a replacement
20 because there was -- one could say that it involved a
21 reconstruction or replacements or substitution of what
22 had been there before, and it certainly was over
23 \$5,000, so it qualifies as both.
24 Moving on to the 2014 petition, we have the
25 Items 6 and 7, which are the Caron, C-A-R-O-N, Climate

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1 Control, which were two new air-conditioning units
2 that were placed on the clubhouse, on the roof of the
3 clubhouse and office, and the related state-mandated
4 studies, the Title 24 analysis, permits, and
5 documentation. And those qualify as replacements
6 because there were air conditioning units before, and
7 it's more than \$5,000.
8 That's takes us over to Items 13 and 14 and
9 19. Those are all roofing items, Thomas Brooke
10 Roofing, for a new roof on the clubhouse. And that
11 was about \$75,000 and associated work, and then a new
12 roof over the laundry room for \$5,250. Because there
13 were roofs before, those are replacements.
14 Item No. 15 is the American Asphalt item for
15 \$9,280. That's a replacement because it involved the
16 replacement or reconstruction of a piece of --
17 actually, the ordinance says sidewalk. So these were
18 around the lagoon.
19 THE ARBITRATOR: Can you read to me again
20 what it says about sidewalk?
21 MR. MORAN: Yeah, in the -- I made a little
22 blowup of the capital replacement, and the full
23 definition is on the left, but I think the elements of
24 it are on the right in the way of -- under what you
25 call the demonstratives.

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1 THE ARBITRATOR: Okay.
2 MR. MORAN: Then we dropped the clubhouse
3 furniture.
4 Moving on to the pool furniture. These --
5 there were both capital replacements and capital
6 improvements on the pool furniture, and Mr. Andrews
7 just testified to it. And the way the arithmetic
8 works, there were the -- when you prorate the delivery
9 and other changes, the replacements total
10 approximately \$8,634, and the improvements, which are
11 the four chaises, twenty chairs, and six tables that
12 were not there before, when you do the extension of
13 the cost, these improvements totaled \$6,203.
14 So it's both -- so one component of the pool
15 furniture is replacement, which is \$8,634, and the
16 other component is improvement, which is approximately
17 \$6,203. So it's partially replacement, partially
18 improvement.
19 The gym equipment, the final Item No. 18, has
20 a similar situation. There were replacements of the
21 weight bench, the treadmill, and the weights -- the
22 dumbbells, and those items, the extension of those
23 items is \$4,395. Then there was some heavy delivery
24 and setup charges. Those, the prorated amount of the
25 delivery charges and the installation was \$8,114, and

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1 then a whopping 9 percent sales tax at \$468, so the
2 total for the weight bench, the treadmill, and the
3 weights, which are replacements, is \$5,677.
4 The remaining exercise equipment is an
5 improvement because it was not there before, and the
6 item itself was approximately \$3,800 with tax, and the
7 prorated portion of the delivery and the installation
8 charge come to \$4,841. And under the definition of
9 capital improvement, it does not have to meet the
10 \$5,000 threshold.
11 There's nothing in the ordinance that says
12 that -- there's no definition in the ordinance of what
13 equipment is. I -- I've only been a lawyer for
14 35 years. I had hoped one day to be able to use
15 Black's Law Dictionary; today is my day. I've had
16 this book for a long time and never looked at it, but
17 this morning I did. And I represent to you, and we
18 can see this amazing thing.
19 The equipment is defined by Black's as
20 "furnishings or outfit for the required purposes, an
21 exceedingly elastic term, the meaning of which depends
22 on context." There's a citation. It goes on,
23 "whatever is needed in equipping; the articles
24 comprising an outfit," and this part is my favorite --
25 "equipage." And then there's a citation to something

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1 I don't understand.
2 And I, on a more serious level, if you just
3 Google it, as the young people say, I think you'll
4 find that the word equipment has quite a broad
5 definition, and I think it certainly encompasses
6 furniture.
7 MR. MORAN: Max, that's called a book.
8 THE ARBITRATOR: Look at the color of the
9 pages.
10 MR. MORAN: On a more serious vein, I think
11 the first one of these petitions I did was in 2006 or
12 it was for expenditures of 2006. I -- every three
13 years or so, we go through this drill. It's hard -- I
14 was just talking to Nate about this. I really believe
15 it's difficult, if I were a homeowner -- I think it's
16 difficult on both sides.
17 I think the most important thing to me in my
18 own life is autonomy, and if I lived in a situation
19 where someone could spend money and make me pay for it
20 to go buy a new chair or a new piece of sidewalk or a
21 piece of exercise equipment, lord knows I don't use
22 exercise equipment, but I don't mean to belittle it or
23 trivialize it. It would be almost intolerable. The
24 idea is sort of like -- it is like taxation.
25 But inherent in this relationship, for better

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1 or worse, is this constant tension between the park
2 owners, ELS, who are making these expenditures, and in
3 a rent-controlled environment that market doesn't pass
4 it through, we have a mechanism on the one hand, and
5 then wanting to get a return on that investment, and
6 then the park residents, who -- I mean, I don't speak
7 for any of them, obviously -- but who are on the
8 receiving end of other people's decisions.
9 And I don't have an answer to that, but I met
10 some nice people from the park, and two of them are
11 here today, and they're good people, and it's
12 difficult. And I -- we know these expenditures were
13 made, we know that ELS paid for them, and that's what
14 I've got to say.
15 MR. JACCARD: I would just add we have a lot
16 of different communal living situations, whether it be
17 a condominium or a residential subdivision that's got
18 an HOA, where expenses are made, and they're passed on
19 to a bigger group of people. It's not an unusual
20 situation; it's not an unfair situation. This just
21 happens to be a community living situation where
22 that's how it works.
23 THE ARBITRATOR: Okay. I asked you to
24 comment on the legal basis for your request for
25 interest.

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1 MR. MORAN: It's in my brief, Code of Civil
2 Procedure provides for it, I believe. I have
3 citations to particular CCP sections, and the statute
4 does not permit anything but a one-time payment, but
5 sometimes reality intrudes and -- but if it's going to
6 be passed on incrementally, I think under
7 Section 685.010, interest accrues at 10 percent on the
8 principal amount of the judgment.
9 And the same section at .020 talks about
10 interest accruing as of the date of entry of the
11 judgment, and then in the case of installment, money
12 payable in installments, interest accrues on each
13 installment on the date.
14 So the Code says 10 percent in a low interest
15 rate environment. But we also know that these
16 payments were made long ago. Payments were made as
17 early as, what, 2012 for a number of them and then --
18 and so forth 2013, '14 and '15.
19 THE ARBITRATOR: Okay.
20 MR. JACCARD: I would also point out that
21 both of the ordinances, if we had borrowed the money,
22 provide that debt service cost would be included. We
23 didn't borrow the money.
24 THE ARBITRATOR: Right.
25 MR. JACCARD: So we saved them that money.

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1 THE ARBITRATOR: I understand that. I'm not
2 sure what exactly my award is if it's a judgment since
3 there was no testimony -- and thank you for your frank
4 statement on that. You know, you paid for it out of
5 cash, which I'm not surprised, but -- so the ordinance
6 itself doesn't provide for interest if you haven't
7 borrowed the money.
8 And I noticed in the transcript from the
9 decision of the city council on a previous proceeding
10 when this -- he made the payments due over 24 months
11 and reinstated some of the items the arbitrator had
12 omitted, et cetera. But anyhow, they made a decision
13 that it was payable over 24 instead of 12 months, but
14 they didn't include an interest component.
15 And another thing that troubled me about the
16 question of interest -- and I haven't resolved this in
17 my own mind, which is why I invited you to speak about
18 it, and you will have your opportunity -- but is that
19 there's a number of factors that go into the situation
20 when you're trying to figure out when to award
21 interest on what amount from when.
22 And then you get the fact that you've delayed
23 filing until you filed three petitions at once. Now,
24 you're not asking for interest going back to when you
25 spent the money, I presume.

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1 MR. JACCARD: That's correct.
2 THE ARBITRATOR: So that being the case, I'm
3 not sure -- and in this environment of interest, I
4 suppose if I wanted to award interest, I have
5 discretion to set the rate and could -- if I was going
6 to amortize it over a certain period, I could just
7 figure out what the monthly -- whatever my award on
8 pass throughs is going to be, I could then attach an
9 interest rate, determine what period I wanted it paid
10 over, and then get you a principal and interest
11 payment, say, okay this is going to be the monthly
12 amount for the next number of months. Anyhow, I
13 haven't gotten there yet, but just some thoughts.
14 So taking a step back, haven't heard from
15 them. Do you want to go through the list and make
16 your closing arguments, and then you can address the
17 interests issue whenever you like.
18 CLOSING ARGUMENT BY RESPONDENT
19 MR. COOPER: Why don't I address that now
20 since you've already spoken on it.
21 I think I share most of the thoughts that you
22 just expressed there. We're not talking about
23 pre-judgment interest. As Walter acknowledged, the
24 statute provides that they're able to recover their
25 cost of capital, and not only did they not put on

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1 evidence of that, but they didn't have any cost of
 2 capital, and as you saw in the prior city council
 3 resolution on that, they did award a rate of return,
 4 but that was based on that pre-judgment cost of
 5 capital -- or pre-ruling; I don't want the use the
 6 term "judgment," because I agree with you that it's
 7 not necessarily a judgment to which -- and certainly
 8 not necessarily an award to which the CCP rule on
 9 post-judgment interest would apply.
 10 And you can see in those prior resolutions
 11 that the city council didn't find it appropriate to
 12 apply any rate of return. And you also have it right
 13 that the reason that we have three petitions being
 14 heard here today and ELS hasn't recouped or had the
 15 opportunity to recoup these expenditures earlier is
 16 because they delayed this the first year, and it was
 17 taken off calendar at their request and the second
 18 hearing, at both of the parties' request.
 19 So it doesn't seem that, considering that
 20 fact, it would be a little bit unfair, and also the
 21 equities point. We heard testimony from Mr. Heine
 22 about his economic situation, and it's pretty -- it's
 23 well understood between the parties that that's true
 24 for many of the residents. And so applying any rate
 25 of return on the award -- the pass through, in our

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1 view, would be unfair. As would forcing them to pay
 2 in a lump sum 2-, 3-, 4-, \$500. I'm not sure what's
 3 even at issue anymore.
 4 Something less than 500 is a large lump sum,
 5 and so we would suggest amortizing it over a 24-month
 6 period, and that makes it an expense that is easier
 7 for the homeowners to come up with.
 8 I can step back to the conversation before
 9 that. Both Neil and Walter had made some points about
 10 the ordinance in general and the pass through process,
 11 and I want to make clear that the homeowners don't
 12 object to the cap X mechanism in the abstract, and I
 13 think we recognize that it's for -- in part, for their
 14 benefit. It's not just so that ELS can secure a rate
 15 of return. It's to ensure that the property is
 16 maintained.
 17 ELS is in a regulated environment, and they
 18 have a different incentive to spend money on their
 19 property than a typical landlord would, and so the cap
 20 X mechanism enables them to recoup those costs, it
 21 incentivizes them to put money into the property and
 22 to make sure it stays nice, and the homeowners want
 23 the property to stay nice and experience the benefit
 24 from that and appreciate that and aren't opposed to
 25 reasonable pass throughs that qualify.

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1 I think the objection is to items that don't
 2 qualify, and we're here on the day of arbitration, and
 3 we have, I think, 7 items that came -- out of 19, that
 4 came off this petition at the last minute, and so that
 5 kind of all gets back to this need for there to be a
 6 process. And we feel that if there's a better process
 7 in place, we won't see those type of items, and we'll
 8 be able to perhaps avoid future arbitrations.
 9 I know that's not an issue before the
 10 arbitrator. So I'll go through the items here.
 11 Starting with No. 1. I guess Nos. 1, 2 and 3. The
 12 first point I'd like to make on these, and I don't
 13 think it's appropriate to consider them as a group.
 14 We heard some testimony from Jennifer that wasn't
 15 based on her firsthand knowledge or anything, I think,
 16 other than reading these invoices and trying to
 17 interpret the work that was performed.
 18 And this was spread out over a least a
 19 two-month period here, and I don't think there's
 20 evidence in the records from which the arbitrator
 21 could conclude that the last item, installation and
 22 parts to replace ABS lift station, related in any way
 23 to the other two items. We had testimony that SOS was
 24 coming out for regular maintenance calls once a month,
 25 and the first month they came out and performed some

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1 work that's described as Replace ABS lift station
 2 pump. The next month came out and performed work with
 3 the same description, and then the following month
 4 they came out and did this third job.
 5 Not only is there not evidence that this is
 6 all part of one project which should be considered
 7 together as one 16 and a half thousand dollar capital
 8 replacement, the evidence is that this last item was
 9 something completely separate and apart and considered
 10 as a capital replacement, if that. It falls below the
 11 \$5,000 threshold and so doesn't qualify.
 12 As to the first two items, the \$7,500 items
 13 described as Replace ABS lift station pump, I also
 14 think there's an issue with the proof. We don't
 15 really know what work was done there, and there's
 16 precedent here in prior arbitrations for
 17 characterizing work to the sewage system as routine
 18 service and maintenance, and that's in the first of
 19 the two resolutions that we introduced as exhibits.
 20 I'm just going to read this part here, the
 21 relevant part. It's from City Council Resolution
 22 12014, on Page 3. It says: "The record does contain
 23 substantial evidence to support the arbitrator's
 24 conclusion that the remaining \$13,562.31 expended for
 25 the sewer system is for work that should be considered

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1 as ordinary maintenance and repair. The invoices for
2 this work and the testimony of Bill Reams [phonetic]
3 considering the nature of the work performed indicate
4 that this work, which included replacing belts,
5 cleaning pump stations, checking valves, and clearing
6 obstructions in pumps and sewer lines was the type
7 that would be considered a regular part of operating
8 the sewer system."
9 What we can't tell from these invoices and
10 the evidence presented today is whether the
11 replacement was something analogous to the replacement
12 of a belt, was it a replacement of a piece of ABS
13 pipe? Or a pump? What was the value of the piece
14 that was replaced? And what part of that cost went
15 towards the maintenance? And we also heard testimony
16 that ELS has extensive records about these items, and
17 we haven't seen those.
18 And so, again, this kind of goes back to this
19 general matter of information sharing, but I think
20 it's the homeowners' position that these two items
21 don't qualify because they haven't carried their
22 burden to show that they're not ordinary maintenance
23 and repair and they are, in fact, capital replacement
24 items.
25 The next item, No. 4, sitting mower. In his

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1 closing statements, Mr. Moran states that ELS believes
2 that this was an improvement, but if you look here on
3 the cap X worksheet that we've all been using to track
4 these projects, the description -- this is ELS' own
5 document -- is "REPL sitting mower," replace sitting
6 mower, and I think the homeowners' understanding and
7 position is there's a sitting mower previously and
8 that it was replaced, and I don't know that there's
9 any evidence to the contrary, at least not any based
10 on firsthand knowledge.
11 So it's the homeowners' position that this
12 should be used as a replacement. If we look at the
13 definition of capital replacement, it requires that it
14 materially benefits and adds value to the mobile home
15 park. And it's hard for us to see how this purchase
16 materially benefits and adds value to the mobile home
17 park, when the mower is not being used at all; the
18 testimony is that it hasn't been used for --
19 THE ARBITRATOR: Did you misspeak? You meant
20 capital improvement?
21 MR. COOPER: I mean capital replacement.
22 THE ARBITRATOR: \$5,000 minimum.
23 MR. COOPER: That's right. It requires a
24 5,000 -- I see.
25 MR. BERNSTEIN: I think -- I just want to

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1 make sure I understand.
2 So was the petitioner's position on Item
3 No. 4 that they deem this to be an improvement --
4 THE ARBITRATOR: Yes.
5 MR. BERNSTEIN: -- and it passes through for
6 that on that ground?
7 THE ARBITRATOR: Yes.
8 MR. COOPER: Okay. Well, either way, I think
9 the city council has been pretty clear, and this is
10 borne out in the other resolution that we've
11 introduced, I think it's 13236, that expenses need to
12 be reasonable, and they need to primarily benefit the
13 homeowners, and, you know, the point remains the same.
14 This expense wasn't reasonable. The mower is not
15 being used for any purpose. It's not adapting the
16 park to new uses. It's not providing any benefits.
17 It's just sitting in a shed collecting dust, from what
18 we've heard, and it's not a reasonable or responsible
19 use of the HOA's money, and so we don't think that it
20 qualifies as either a capital improvement or a capital
21 replacement for that reason.
22 I don't have any comment on 5, 6 or 7.
23 And that takes us all the way to the 2015
24 petition, where I similarly don't have any comment on
25 13, 14, 15 or 19.

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1 No. 17 is the pool furniture. And I just,
2 again, draw your attention to the definition of
3 capital replacement, and it means the substitution,
4 replacement, or reconstruction of a piece of
5 equipment, machinery, streets, sidewalks, utility
6 lines, landscaping, structures, or parts therefore.
7 It's the homeowners' position that pool
8 furniture does not qualify as equipment, machinery,
9 streets, sidewalks, utility lanes, landscaping,
10 structures, or parts thereof. I think the only one
11 that it could reasonably qualify under is equipment,
12 and we heard testimony from Ms. Barrett, and we
13 received into evidence that ELS internal document that
14 was introduced by ELS that defines furniture and
15 equipment exclusively. And we think that supports our
16 interpretation.
17 Our interpretation is also consistent with
18 the spirit of the statute, which it provides this
19 \$5,000 capital replacement threshold, and our
20 understanding of that is it's a requirement that's
21 designed to ensure that something that's capital is
22 substantial and significant. It's not a chair. If
23 you replace one chair, and it costs \$200, it's not
24 going to meet that threshold; it's not going to come
25 close to it. It's equipment, large equipment. HVAC

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1 units; it's machinery, streets, sidewalks, these
 2 larger jobs that are more within the core definition
 3 of what is capital.
 4 And, I think, the last item on here is
 5 No. 18. These are the -- I guess I should address,
 6 actually, Mr. Moran's point which blew by me until his
 7 closing here about the replacement and improvement
 8 because I've only addressed the portion that they're
 9 characterizing as replacement, and if I read that
 10 correctly, that's \$8,634. The other portion, about
 11 \$6,200, is being characterized as a capital
 12 improvement.
 13 We also think that doesn't qualify. A
 14 capital improvement -- the definition of capital
 15 improvement in 20.04.020B requires that the
 16 expenditure be towards an item that materially
 17 benefits -- primarily benefits and serves the existing
 18 mobile home park owners by materially adding value to
 19 the mobile home park, appreciably prolonging its
 20 useful life, or adapting it to new uses, and then it
 21 has other additional requirements, and we don't think
 22 any of those elements are met here.
 23 It doesn't -- it's furniture. It doesn't
 24 materially add to the value of the mobile home park.
 25 It certainly doesn't prolong the useful life of the

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1 park, and it doesn't adapt it to new uses because the
 2 use of the pool was the same before with the old
 3 furniture.
 4 And so the last item is the fitness room
 5 equipment, and again we're sort of slicing between
 6 what's a capital replacement and what's a capital
 7 improvement, and it's the homeowners' position that
 8 those items that -- well, first, I suppose I'll just
 9 address these item by item.
 10 We have the treadmill for \$2,399.40. I think
 11 that testimony is fairly clear that this was a
 12 replacement. It's a replacement item that falls below
 13 the \$5,000 threshold, and so it doesn't qualify.
 14 We have the bench flat/incline/decline which
 15 was \$415. The testimony was -- seemed to suggest that
 16 that was also a replacement with some qualifications,
 17 either standing alone or bundled with the treadmill.
 18 It doesn't meet the \$5,000 threshold.
 19 The next item is the weight sets, the
 20 Durabell club pack for \$1,581. The testimony was that
 21 there were existing weights. These were better than
 22 the existing weights but that -- that these were
 23 significantly better than the existing weights, and so
 24 I think this qualifies -- likely qualifies as an
 25 improvement. It's unclear because of the limited

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1 nature of the information that we've been provided
 2 whether that's the case.
 3 It's also unclear, because of the limited
 4 nature of information we have been provided, whether
 5 any of the freight or delivery and installation costs
 6 should be allocated between these items and how.
 7 And I think that brings us to, sort of, the
 8 final point here. And that's that the City's
 9 ordinance, section 2012040 provides that: "Within
 10 30 days after filing the petition, the homeowners and
 11 the owner-operator shall file with the city clerk all
 12 information reasonably available in support of or
 13 opposition to any proposed increase of rent. Copies
 14 of said supporting information shall be provided to
 15 the opposing party and the arbitrator."
 16 Now, this is a requirement of the ordinance.
 17 This is the only thing that the ordinance says about
 18 anything that remotely resembles discovery.
 19 Homeowners have little to no information about these
 20 projects and they and rely on the information that
 21 they get from the ELS -- submission of the ELS
 22 petition in order to evaluate whether or not these are
 23 capital expenditures and whether or not they'll object
 24 and whether or not they'll proceed to arbitration.
 25 And, I think Ms. Barrett had some testimony

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1 regarding the type of documentation that's prepared
 2 for each one of these items, and I think that
 3 testimony suggests that the documentation is
 4 extensive, that there's internal planning documents,
 5 project descriptions, bids, all of which would be
 6 useful to the homeowners in determining whether or not
 7 these projects are appropriate. And we haven't been
 8 provided with any of that. And the homeowners'
 9 position is that the petitions are deficient without
 10 this information.
 11 And I think the issue with the weights
 12 illustrates that and particularly the issue with the
 13 ABS lift station pumps illustrates that. We have no
 14 idea -- nobody here has any real idea what was done in
 15 connection with these first two items, and it's really
 16 difficult to evaluate whether or not they're properly
 17 passed through.
 18 It's ELS' burden to show that they qualify as
 19 capital replacements and capital improvements, and
 20 they haven't done that, and they haven't complied with
 21 the terms of ordinance. So it's our position that the
 22 petitions are deficient in their entirety.
 23 THE ARBITRATOR: Okay. Any rebuttal from the
 24 petitioner?
 25 MR. MORAN: Just on that one legal point.

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1 The City -- this has to do with the -- I run into this
 2 every year or every time we have a petition or appeal
 3 and I get the same argument that there's some
 4 excruciating piece of detail we didn't supply. And
 5 today we got the ultimate, which is that even though
 6 under our cap X policies there is actually no
 7 document -- may I see the declaration that's received
 8 in evidence of -- 'cuz I --
 9 Here it is. The cap X policy. It was --
 10 it's going to absurd lengths that even though -- the
 11 argument is that even though there's not a specific
 12 document that would contain the excruciatingly
 13 detailed information that we went through, the project
 14 reason description -- so I'm at Page 3 at the top of
 15 the capitalization policy and procedure.
 16 Jennifer Barrett testified that actually the
 17 project reason descriptions are not in a document;
 18 they're in an electronic place, and there would be a
 19 way to extract it, but it wouldn't be a document.
 20 The invoice descriptions are actually not a
 21 document. They're in some electronic form, so one
 22 couldn't simply print a document that would have that.
 23 But I tell you from having done this since
 24 2006 that no matter what we provide, we're always
 25 accused of not providing enough. So the statute, the

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1 ordinance at 20.120.040 doesn't say we have to supply
 2 every excruciatingly detailed piece of information.
 3 It says that we have to file with the city clerk all
 4 information reasonably available. And we've done
 5 that.
 6 Now, there was some -- we did not have --
 7 submit at the beginning the proposal dated
 8 February 19th to Mr. Linscott's, the work that Mr. --
 9 that Linscott did, and I'm sorry for that. It was
 10 referred to -- we submitted the invoice, but the
 11 invoice referred to a proposal. So I made the
 12 independent decision that we should supply the
 13 corresponding -- it was -- it's Item No. 5, Linscott
 14 Engineering, \$12,708. It refers to a February 18th,
 15 2014, proposal, so I belatedly produced the proposal
 16 last Thursday, which is on the day that Jennifer
 17 Barrett found it and gave it to me, and I got it over
 18 to opposing counsel on the same day.
 19 But other than that, I think we've met our
 20 burden under the statute.
 21 Thank you.
 22 MR. BROWN: Just one follow-up on that. It
 23 is true at that time on the ordinance doesn't use the
 24 word excruciatingly. The ordinance has the language
 25 that it has, but what I would say is that every city

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1 council in enacting every ordinance has to consider
 2 the various competing interests that are presented
 3 before it, and it makes certain decisions on how to
 4 balance those interests, and then they also set out
 5 certain requirements to be met, and oftentimes those
 6 are based on principles of due process or fairness, in
 7 the judgment of the city council.
 8 We, in this room, some of us may disagree
 9 with where the city council came down in wording an
 10 ordinance in a particular way or the decisions they
 11 made, but that's not our job today. Our job is to
 12 follow the ordinance as it's written and the ordinance
 13 simply says that "the petitioner shall file," not may
 14 file or can file, but "shall file with the city clerk
 15 all information reasonably available in support of any
 16 proposed increase of rent."
 17 It doesn't use the term document, it doesn't
 18 say that you shall file information if it's contained
 19 in the form of a paper document. It says "all
 20 information." And we all know very well, those of us
 21 in this room who have litigated, that if this
 22 information on their cap X system had been requested
 23 in discovery, it absolutely would be readily
 24 available, very easily produced, whether in electronic
 25 form or reduced to paper form. If they received a

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1 search warrant from the prosecutor and had to produce
 2 the information, absolutely, it would be readily
 3 available. I guarantee it.
 4 And so the point is that the statute sets out
 5 a number of requirements that have to be met before
 6 the petitioner can get a pass through. It has to
 7 comply with the definition of capital improvement, or
 8 it has to comply with the definition and requirements
 9 of a capital replacement, and as well, it also needs
 10 to comply with this requirement to produce all
 11 information reasonably available that supports the
 12 proposed increase.
 13 Here, the testimony is very, very clear that
 14 there's all manner of information related to the
 15 sought pass throughs that is available and hasn't been
 16 provided, and so our very elemental point here is that
 17 the requirement of the statute hasn't been met, and
 18 therefore, the petitions must be denied because they
 19 don't comply with the plain language in the ordinance.
 20 THE ARBITRATOR: Okay, submitted?
 21 MR. MORAN: Yes, thank you.
 22 MR. COOPER: Submitted, yes.
 23 THE ARBITRATOR: Thank you all for your help
 24 in being here.
 25 THE REPORTER: Who would like a copy of the

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1 transcript?
2 MR. COOPER: We'd like a copy. You can send
3 it to me.
4 MR. MORAN: Yes, Jody.
5 [Proceedings concluded at 4:06 p.m.]
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1 I, Jody Gibney, R.P.R., C.S.R. No. 12308, a
2 Certified Shorthand Reporter in and for the State of
3 California, do hereby certify:
4 That the foregoing proceedings and testimony
5 were taken before me at the time and place set forth
6 and was taken down by me in shorthand and thereafter
7 reduced to computerized transcription under my
8 direction and supervision, and I hereby certify the
9 foregoing testimony is a full, true and correct
10 transcript of my shorthand notes so taken.
11 I further certify that I am neither counsel
12 for nor related to any party to said action nor in any
13 way interested in the outcome thereof.
14 IN WITNESS WHEREOF, I have hereunto
15 subscribed my name this ___ day of _____, 2016.
16
17 _____
18 Jody Gibney
19 Certified Shorthand Reporter No. 12308, RPR
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