

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN
ILIESCU, JR. and SONNIA SANTEE
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT,

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346
Washoe County Case No. CV07-
00341
(Consolidated w/CV07-01021)

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME VI**

Appeal from the Second Judicial District Court of the State of Nevada
in and for the County of Washoe County
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Counsel for Appellants

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DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
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3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

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13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
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21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577

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26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
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		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
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35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
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	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

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	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887
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42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
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62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
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¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

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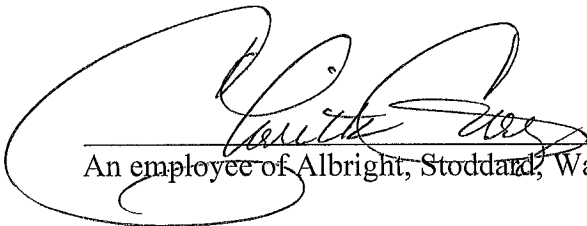
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		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571
32	12/06/13	Trial Stipulation	IV	AA0729-0735

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME VI**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com
Attorney for Respondent Mark Steppan



An employee of Albright, Stoddard, Warnick & Albright

1 February 7th of 2006.

2 Q Why don't you go to page 2107.

3 A Yes.

4 Q That application is for how many units?

5 A It says 499.

6 Q So would you agree with me that the work
7 product of Fisher-Friedman in connection with those 499
8 units that you were exposed to for purposes of
9 submission to the governmental agencies was done by the
10 time you prepared that application?

11 A No. I neglected to change the date on the
12 cover.

13 Q You neglected to change the date on the cover.
14 You mean the date of February 7th, '06 is a misdate?

15 A Yeah, that date in number 37, because if you
16 look at Exhibit 36-- Go to page 2525.

17 Q You mean-- Excuse me. Exhibit 36?

18 A I'm sorry. Exhibit 36.

19 Q Okay.

20 A Go to page 2525. It's 394 units.

21 Q Okay. And my question is, what date did you
22 neglect to change?

23 A I have a date up here that's been marked on
24 here, current, 5/7, city council planning approval. I

1 don't know whether that was marked on there by City of
2 Reno staff or who was-- who marked that on there.

3 Q So are you telling us that the date of the
4 application on Exhibit 37 is incorrect, the February--

5 A I believe that that is incorrect. That is what
6 I'm telling you.

7 Q Do you know when this Tentative Map and Special
8 Use Permit Application was filed, the one that's marked
9 Exhibit 37 with the incorrect date?

10 A I don't know the exact date.

11 Q Do you know if it was filed in this format,
12 that is, Exhibit 37, which is the Tentative Map and
13 Special Use Permit Application for the 499 units
14 contains the first page as it appears as Bate number
15 page 2100 without the handwritten interlineations in
16 the upper right-hand corner?

17 A You're talking about the cover page?

18 Q Yes.

19 A And can you ask the question again. I was
20 trying to figure out which page you were on.

21 Q Sure. Are you on page Steppan 2100?

22 A Yes, I am.

23 Q Do you know at the time that this application
24 was filed for 499 units that this is the page that was

1 attached to that application exclusive of the
2 handwritten delineation marks in the upper right-hand
3 corner?

4 A To the best of my recollection, it was, if this
5 is what came from the city's documents, from their
6 files.

7 Q So when did the change occur to the 499 units
8 that precipitated the third application?

9 A I would have to say sometime in between
10 February and when this was submitted. On page 2101 I
11 caught another one of my typos, because it says
12 originally submitted February 1st of 2005 which is
13 incorrect. That's on the bottom of page 2101.

14 Q Well, let me ask you this question. You
15 prepared or at least assimilated Exhibit 37 for
16 submission?

17 A Um-hum.

18 Q Is that correct?

19 A Yes.

20 Q And you assimilated it from a conglomerate of
21 documents, some of which you acquired from the
22 architect, some of which you acquired from Wood Reese--

23 A Wood Rodgers.

24 Q --Wood Rodgers and whatever source you've got;

1 is that correct?

2 A That's correct.

3 Q All right. Now, can you tell me, okay, in
4 going through Exhibit 37 what documents were delivered
5 to you by the architect that have a date on the legend
6 that's later than April 21st, 2006?

7 A I don't see any in here that were on the
8 architect's letterhead that dated the date that Wood
9 Rodgers does have reflected on our grading sheet and
10 our utility sheet of 5/15/2006.

11 Q Yeah. But that's work product of Wood Rodgers,
12 correct?

13 A Yeah.

14 Q Okay.

15 A We took theirs for consistency and put them
16 into the same title block. And that's why you see some
17 of the architectural information with Wood Rodgers'
18 title block. And the pages that would have changed
19 would have been the ones that are in the-- more in the
20 S-1, S-2, S-3 format.

21 Q All right. However, the first application that
22 you did was on January 17th, and that was for the 394
23 units. And I believe that's Exhibit 35.

24 THE COURT: I would like-- You need to clarify

1 something, because now we keep saying the same things.
2 My recollection of Exhibit 35, the January 17th, 2006,
3 is that there are 309 units, not 394 units. Then in
4 Exhibit 36 it goes up to 394. In Exhibit No. 37 it
5 goes up to 499. And so they're not-- 35 and 36 are not
6 the same.

7 If you look at page-- in Exhibit No. 35, if you
8 look at page Steppan 2372 under Project Description,
9 "Two mixed-use towers containing retail, office, health
10 club and 390 units," three nine zero units, "of
11 residential space."

12 Then you go to number 36, February 7th of 2006.
13 And it says-- I need to find the page, because I just
14 went back and looked at it again. It says on page
15 Steppan 2575, "Project description: Two mixed-use
16 towers containing retail, office, health club and 394
17 units of residential space."

18 And I haven't read them, so I don't know exactly
19 why there's a difference of four residential units.

20 But then, as Mr. Snelgrove and Mr. Pereos have
21 discussed, the final exhibit, Exhibit No. 37, that
22 still has the February 7th, 2006 date on it and is
23 stamped on the front Steppan 2100, that's where it goes
24 up to 499 units, if memory serves me correctly. And

1 that's on page 2107.

2 So there are three different numbers of units, not
3 just two that are going back and forth. Is that
4 accurate, Mr. Hoy?

5 MR. HOY: Yes, Your Honor.

6 THE COURT: And, Mr. Pereos, is that accurate?

7 MR. PEREOS: That's fine. Yes.

8 BY MR. PEREOS:

9 Q Do you agree with what the Judge just
10 indicated?

11 A Yes. I just looked at all of them, and, yes, I
12 agree.

13 Q Now, I thought you testified earlier that you
14 did a submission in mid-January of '06 and mid-February
15 of '06 in response to your direct, questions from
16 Mr. Hoy.

17 A We've got one that's dated January 17th here.
18 And in looking through the application-- You know, I
19 don't recall. This is eight plus or minus years ago.
20 The information that's in there that would encompass a
21 project description is vastly different than what's--
22 I'm talking about Exhibit 35. The project description
23 is vastly different than the project description that
24 you'll find in the application contained under Exhibit

1 36.

2 THE COURT: Is that because there's more
3 information in 36?

4 THE WITNESS: We had more time to put information
5 together in a standard typically digestible format that
6 we would put together. So that's why you see a
7 difference.

8 THE COURT: And then in 37 it's different again,
9 because now we've added-- we've gone from approximately
10 400 to approximately 500 units.

11 THE WITNESS: Correct.

12 THE COURT: With different parking.

13 THE WITNESS: Correct.

14 BY MR. PEREOS:

15 Q Okay. Now, going on-- I'm going with my
16 thought here on it. You would agree with me that
17 you've not seen any documents from the architect in the
18 latter application of Exhibit 7-- excuse me, 37 of the
19 499 units that are dated after April 21st, 2006?

20 A I didn't see--

21 THE COURT: Hold on. Hold on.

22 Are you objecting to that, Mr. Hoy?

23 MR. HOY: That wasn't his-- I object. That wasn't
24 his testimony.

1 THE COURT: It's not his testimony. Overruled.

2 Mr. Pereos is asking, would you agree with me? And the
3 answer can either be yes or no or some explanation.

4 But he can answer Mr. Pereos's question.

5 THE WITNESS: In flipping through this I didn't see
6 any dates on the architect's title block that
7 identified a date later.

8 BY MR. PEREOS:

9 Q All right. Now, in all fairness,
10 Mr. Snelgrove, we're talking eight years later in time;
11 is that not fair?

12 A That's accurate.

13 Q And it's not like this is your only project?

14 A Correct.

15 Q Okay. Do you remember your deposition being
16 taken on November 18th, 2008?

17 A I remember that I was there.

18 Q Well, do you remember testifying at the
19 deposition?

20 A I do remember testifying at deposition.

21 Q Do you think your memory would be more accurate
22 then than it is today?

23 A In all likelihood, yes.

24 MR. PEREOS: May I have the deposition of

1 Mr. Snelgrove opened and published?

2 THE COURT: Yes.

3 THE CLERK: It's not sealed.

4 THE COURT: That's fine.

5 THE CLERK: The deposition of David Snelgrove dated
6 Tuesday, November 18th, 2008 is opened and published.

7 THE COURT: Any objection, Mr. Hoy?

8 MR. HOY: No objection, Your Honor.

9 THE COURT: Go ahead, Mr. Pereos.

10 MR. PEREOS: If I may.

11 THE COURT: You may. Do you want to use the--

12 MR. PEREOS: No, no. I want to ask this Court
13 something so I know in the future if I happen to be in
14 front of this court again. How does it like to receive
15 the original depos? Because I just had these handed
16 down to me.

17 THE COURT: It is my understanding-- And I would
18 allow my court clerk to clarify this. --that they are
19 generally sealed--

20 MR. PEREOS: In a sealed envelope?

21 THE COURT: --in a sealed envelope when it is
22 received. That's always been my experience. I would
23 note for the record that the document that was provided
24 by Mr. Pereos was not in a sealed envelope, but Mr. Hoy

1 has no objection to its admissibility.

2 MR. PEREOS: Well, I'll ask the witness whether or
3 not it appears that there's any changes to the--

4 THE COURT: Mr. Hoy?

5 MR. HOY: Yeah. Maybe I can shortcut this for the
6 Court and counsel. In this case both Mr. Pereos and I
7 have inherited files from prior counsel. Not all of
8 the depo transcripts are in the envelopes that you
9 would normally see. And I think criminal cases might
10 take less time than this case certainly did to get to a
11 trial and that may explain part of what the problem is.

12 But here's the real point. We all get copies and
13 copies and copies of these depositions. If there's a
14 discrepancy between what's being offered, what the
15 witness is reading with my copy, I'm going to stand up
16 and say, Gosh, I think there's a problem here. And I
17 think we can sort it out that way.

18 So if you don't hear from me, I-- It's got
19 "original" marked on it. I don't have any reason to
20 believe that it's been altered in any way.

21 THE COURT: Thank you, Mr. Hoy. I appreciate that.

22 Go ahead Mr. Pereos.

23 BY MR. PEREOS:

24 Q Let me show you what has been identified as

1 your original deposition having been taken on
2 November 18th, 2008. Let me first ask you the question
3 as to whether or not anybody ever gave you an
4 opportunity to review your deposition before you
5 approved it or-- let me-- did anybody ever-- Excuse
6 me. Let me rephrase the question.

7 Did anybody ever give you an opportunity to review
8 the deposition to see if there were any changes that
9 you wanted to make?

10 A Yes, I did have the opportunity.

11 Q You did have an opportunity to read it?

12 A Yes.

13 Q I've never opened that original. Is it even
14 signed?

15 A I know there were some markings in red pen that
16 looked like my handwriting, page and line change.
17 Let's see. See page for markup, and then-- There were
18 a couple pages-- Yeah. Page 40. It looks like I
19 marked some corrections in here.

20 Let's see. At the top of page 40 of my deposition
21 it says "tack," t-a-c-k, "and draftsman," which is
22 actually a tech, like a technician and a draftsman. So
23 that's my handwriting.

24 Q That's your handwriting. So we know you had an

1 opportunity to look at that?

2 A That's my signature.

3 Q And that's your signature?

4 A Yep.

5 Q Okay. Now, having said that, let me direct
6 your attention to page 51 of the deposition. Tell me
7 when you're there.

8 A I'm there.

9 Q Read to yourself line 21 down to line-- to page
10 52, line 3.

11 A Okay.

12 Q Go to the next question, too. Let's go down to
13 line 9, page 53-- or 52. Excuse me.

14 A Okay.

15 Q Were those questions asked of you and those
16 answers given at that time?

17 A Yes.

18 Q Okay. Now, the question from Mr. Mollath, I'll
19 read it and you correct me if I make a mistake.

20 THE COURT: Hold on a second. Prior to doing
21 that--

22 MR. PEREOS: I'm sorry?

23 THE COURT: Prior to doing that, before just
24 reading it into the record, is it a prior inconsistent

1 answer?

2 MR. PEREOS: Yes.

3 THE COURT: To what question? I've lost what the
4 question was that you were trying to--

5 MR. PEREOS: I'll lay a foundation.

6 THE COURT: Thank you. Then we can go forward. I
7 just didn't know what the prior inconsistent statement
8 was.

9 BY MR. PEREOS:

10 Q Let me go about it this way. Does that
11 testimony refresh your recollection as to when you
12 received the work product from the architect in
13 relationship to the submission of your applications?

14 A To which application?

15 Q Let's say to your first application--

16 A Um-hum.

17 Q --on January 17th.

18 A Yeah. The architectural plans that we
19 submitted on the 17th of January, we got the
20 information from the architect.

21 Q And did you--

22 A And we included that in the application.

23 Q Did you testify that you got all of what you
24 needed from the architect before the first submission?

1 A My answer to that in my deposition is yes.

2 Q No.

3 THE COURT: You kind of-- you kind of missed the
4 point. The only way we read depositions into the
5 record here is if it is a prior inconsistent statement.
6 But what Mr. Pereos is doing is something different.
7 He's trying to refresh your recollection.

8 You refresh someone's recollection when they say, I
9 don't recall, I don't remember as I sit here what the
10 answer to that question is.

11 And so then he gave you that transcript, and you
12 can look at it. And then the next process is,
13 Mr. Pereos says, Having refreshed your recollection,
14 can you now answer the question? It's not that he
15 wants you to read from that document. It's now that
16 you've read that, is it fresh again in your mind what
17 occurred? If the answer is yes, you can say yes and
18 answer. If the answer is no, then they can use that as
19 what's called a past recollection recorded. Or if it's
20 a different statement, it's a prior inconsistent
21 statement.

22 But the first step is, do you remember it now? Now
23 that you've read that and put it down, do you remember
24 what happened now?

1 THE WITNESS: Yes, I recall that we got information
2 from the architect.

3 BY MR. PEREOS:

4 Q Okay. Do you remember testifying that you got
5 substantially all or a great portion of all the
6 information you needed from the architect before your
7 first submission?

8 THE COURT: Mr. Hoy.

9 MR. HOY: Objection, Your Honor. That's not what
10 the question and answer was.

11 MR. PEREOS: I'll rephrase the question.

12 THE COURT: Okay. Go ahead and rephrase the
13 question.

14 BY MR. PEREOS:

15 Q Do you remember testifying that you got
16 substantially all or a great portion of the architect's
17 work, okay, that had been done for this project--

18 MR. HOY: Your Honor, if I may.

19 THE COURT: Hold on, Mr. Hoy.

20 BY MR. PEREOS:

21 Q --when you were first engaged?

22 THE COURT: Now, Mr. Hoy, do you have an objection?

23 MR. HOY: I would make this offer. Let counsel
24 read this record into the-- this portion of the

1 transcript into the record, and the Court can decide if
2 it's consistent or inconsistent with the testimony that
3 the Court has already heard from this witness.

4 THE COURT: That's fine. So you're just waiving
5 the hearsay objection. Go ahead and read the record.
6 Thank you, Mr. Hoy.

7 MR. PEREOS: All right.

8 BY MR. PEREOS:

9 Q Let me read the question and you can correct me
10 if I read the answer incorrectly or the answer.

11 Question from Mr. Mollath: "If I understand your
12 testimony, when Wood Rodgers became involved to process
13 the application before the City of Reno, substantially
14 all or a great portion of the architectural work had
15 been done for this project to put it in the position to
16 be processed through the City of Reno?

17 "Answer: Yes.

18 "Question: Okay. And your involvement was such
19 that you were needed to facilitate from an engineering
20 and planning standpoint the processing of the approvals
21 and entitlements for the project which included to a
22 great degree the architectural component of that?

23 "Answer: Yes."

24 Did I read that correctly.

1 A You read that correctly.

2 Q I think we're done with that now.

3 Let's go to Exhibit 38. Tell me when you're there.

4 A 11-by-17 maps? I'm there.

5 Q Now, at the lower right-hand margin there are
6 the legends showing the dates in which the documents
7 were put together; is that correct?

8 A Yes.

9 Q And they're on the legend of Wood Rodgers; are
10 they not?

11 A Correct.

12 Q Now, do you-- now, that's the dates that
13 appear-- which have a date of May 15th; is that
14 correct?

15 A That is correct.

16 Q Okay. Now, do you know whether or not the
17 materials that are put on those documents having the
18 legend of May 15th had already been prepared by Wood
19 Rodgers before May-- before April 21st?

20 A The date of May 15th appears to be the
21 submittal date, so some of these would have been done--
22 probably completed prior.

23 THE COURT: Mr. Pereos, when you use the date
24 April 21st, do you mean April 26th?

1 MR. PEREOS: Yes. They're interchangeable.

2 THE COURT: Well, it's your question. I just want
3 to make sure.

4 BY MR. PEREOS:

5 Q So they would have been done before May 15th?

6 A There were probably some that were done right
7 up to the hour we submitted in the way that our
8 engineering plans will be put together, that you're
9 racing a clock. So some may have been done a little
10 earlier and some may have been done right up to the end
11 when we submitted.

12 Q Could you identify those that were done after
13 April 26th?

14 A No, I couldn't.

15 Q Well, what about if I was to tell you, why
16 don't you compare those submittals or those plans,
17 architectural plans, that appear in Exhibit 38 with
18 Exhibit 37, could you then compare the two to discern
19 which ones were done before Exhibit 37 was put
20 together?

21 A It appears to me that the dates on these are
22 the same from 37 to 38.

23 Q All right. So what we're basically saying is
24 whatever documents prepared by the architect that

1 appears part of Exhibit 38 you already had in hand for
2 Exhibit 37?

3 A It appears so.

4 Q Okay. Fine. All right.

5 Now, you testified that one of the two owner's
6 affidavits, either in Exhibit 36 or 37, was signed by
7 John Iliescu in your presence.

8 A Yes.

9 MR. HOY: Objection; misstates--

10 THE WITNESS: I believe so.

11 MR. HOY: Misstates the evidence. We were talking
12 about the affidavits of 35 and 36.

13 MR. PEREOS: I'll clean it up.

14 THE COURT: Sustained, but you can reask the
15 question.

16 MR. PEREOS: I'll clean it up.

17 BY MR. PEREOS:

18 Q 36 and 37 are basically the same dated owner's
19 affidavit. Go ahead and take a look. I think I have
20 it committed to memory now. They're both dated
21 January 31st, 36 and 37?

22 A Okay.

23 Q Okay. Now, the affidavit, the owner's
24 affidavit, in Exhibit 35, I believe, is dated

1 January 17th.

2 A Yes, those appear to be dated January 17th.

3 Q So one of those two were signed in your
4 presence?

5 A I believe so.

6 Q Okay. All right. I understand. It's been a
7 couple years.

8 A More than a couple.

9 Q Okay. Now, when they were signed in your
10 presence, if I understood you correctly, you testified
11 that the owner's affidavit was put on a table, okay,
12 from which then Mr. Iliescu affixed his signature?

13 A Can you repeat the question?

14 Q Well, maybe I misunderstood--

15 A Yeah, I don't recall saying what you just said.

16 Q Then let me go about it this way. When the
17 owner's affidavit was signed in your presence by John
18 Iliescu, was it signed at the Wood Rodgers office?

19 A I believe as such.

20 Q Was it signed at a particular room in the
21 offices of Wood Rodgers?

22 A It would have either been in the conference
23 room or the table where I had the applications.

24 Q Okay. Either one?

1 A Um-hum.

2 Q Now, if it was in the table with the
3 applications, on that table would there have been the
4 graphic plans that were laid out?

5 A Yes.

6 Q Okay. I assume then that table with the
7 applications was a pretty big table?

8 A Um-hum.

9 Q All right. And we're talking about plans that
10 are, what, three feet by five feet?

11 A I think they might have been three feet by four
12 feet for this application.

13 Q Three feet by four feet. Okay. Now, what
14 you're saying also is that in those plans, those
15 graphic plans, in the lower legend was the name Mark
16 Steppan?

17 A Yes, as they appear in the elevations here. We
18 had these for the application. This is-- The
19 elevations, they keep going. There's a lot of them.
20 Steppan 2387 through 2396 gives the colored elevation.
21 These are more like the ones that we used in the
22 PowerPoint presentation as well.

23 Q Okay. Now, you didn't discuss those plans with
24 Mr. Iliescu, did you?

1 A I don't recall having a specific discussion,
2 saying, These are the plans and this is-- But I know
3 he looked at it. There was some discussion of this
4 being a large project, because this was a large-- the
5 tallest project I had worked on.

6 Q So there was a discussion about or a comment
7 about the height of the project?

8 A Um-hum.

9 Q And we're talking about the-- there's one
10 building of 40 floors and there's the other building of
11 28 floors?

12 A Right.

13 Q Now, you didn't have any discussion with him
14 about Steppan being an architect, did you?

15 A I don't believe I did.

16 Q You don't even know if he looked at the legend
17 at the right-hand corner?

18 A I can't answer that for you.

19 Q All you know is that it was available for him
20 to see?

21 A Correct.

22 Q How long did the meeting last?

23 A Not very long.

24 Q Two, three minutes?

1 A It was probably within three to five minutes.

2 Q Thank you, Mr. Snelgrove. I have no further
3 questions.

4 THE COURT: Any redirect, Mr. Hoy?

5 MR. HOY: Just very briefly, Your Honor.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. HOY:

9 Q Mr. Snelgrove, do you still have your
10 deposition up there?

11 A Yes.

12 Q Please turn to page 52. I apologize. We'll
13 start on page 51. I'm just going to read the same
14 section that was read into the record before and ask
15 you a question about it.

16 A Okay.

17 Q "By Mr. Mollath:

18 "Question: If I understand your testimony, when
19 Wood Rodgers became involved to process the application
20 before the City of Reno, substantially all or a great
21 portion of the architectural work had been done for
22 this project to put it in the position to be processed
23 through the City of Reno?

24 "Answer: Yes."

1 When you answered that question, what did you
2 understand the phrase "to put it in the position to be
3 processed through the City of Reno" to mean?

4 A The application that was submitted when we
5 initially became involved, if the application didn't
6 change, yeah, it was enough to go forward with. That
7 application-- these are-- these can be moving documents
8 as you've seen in this example.

9 We submitted in January, we submitted in February,
10 we submitted in May. And each time there were tweaks
11 and adjustments.

12 I know from the civil engineering, land use
13 planning, land-surveying end, those can have a domino
14 effect in terms of what your design is. So if somebody
15 gave me a map-- or, I'm sorry, architectural plans and
16 said, Here, this is what I would like to build, and
17 then things shifted around on the project, the exterior
18 of the building may still look the same, but the
19 interior, that can have changes. And it can also have
20 impact on what we do on the grading standpoint, what we
21 have to put in from the planning documents standpoint.

22 So with that initial submittal on January 17th, we
23 had enough there to process through the City of Reno,
24 to process that by what we knew. Then when we added

1 the tentative map application in, that meant we were
2 going to condominiumize, break it up. Then we had
3 enough at that time to process if it didn't change.
4 But it changed. So when we submitted on the-- in May,
5 then we had enough to process again. So they can be
6 living moving documents.

7 Q Thank you.

8 MR. HOY: No more questions, Your Honor.

9 THE COURT: Do you have any recross based on--

10 MR. PEREOS: No, Your Honor.

11 THE COURT: Thank you for your testimony,
12 Mr. Snelgrove. Thank you for your time today.

13 Gentlemen, it's about 5 minutes of 3:00. I would
14 propose we take our afternoon recess until 3:15. And
15 then we'll come back and go to about 4:45 this evening
16 and break for the evening. So court will be in recess
17 for approximately 20 minutes.

18 (A recess was taken.)

19 THE COURT: Mr. Hoy, your next witness, please.

20 MR. HOY: Thank you. The plaintiff calls Dr. John
21 Iliescu, Jr.

22 (The Clerk administered the oath
23 to the prospective witness.)

24 THE COURT: Dr. Iliescu, I don't know what you have

1 in your hands there, but could you please leave it at
2 your counsel table. You're not supposed to take
3 anything that the lawyers don't know about onto the
4 witness stand. Thank you. Go ahead and have a seat.

5 JOHN ILIESCU, JR.,
6 having been called as a witness herein,
7 being first duly sworn, was examined
8 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HOY:

10 Q Good afternoon, Doctor. Can you please state
11 your full name for the record.

12 A John Iliescu, Jr.

13 Q Can you please spell your last name.

14 A I-l-i-e-s-c-u.

15 Q Thank you, Doctor. Now, you didn't receive a
16 witness plan from me for this case, did you?

17 A No, I did not.

18 Q All right.

19 MR. HOY: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MR. HOY:

22 Q Dr. Iliescu, I would like to start with some
23 questions about Exhibit 68.

24 A Excuse me one minute. Can you talk up just a

1 little bit more?

2 Q I'll do my best.

3 A I know it's different. I apologize for that.

4 Q You know, I've got a softer voice, too, and it
5 takes a little more air for me to get it out. So if
6 you can't understand my question, please just let me
7 know and I'll do my best to speak out. I'm also
8 dealing with a thing in the back of my throat today.

9 A Thank you very much.

10 Q I would like to begin today with Exhibit 68.
11 This is a July 29th, 2005 Land Purchase Agreement. And
12 I want to apologize to the witness and to the Court.
13 The exhibit here is tiny. It's difficult to read. And
14 the reason we used this one is because it came out of
15 Dr. Iliescu's file. And so that's why we've used the
16 small one.

17 If there's a problem reading, Doctor, please let me
18 know and maybe we can blow this up for you or otherwise
19 help you out.

20 This Land Purchase Agreement is a document that
21 Richard Johnson created for you; is that true?

22 A This Land Purchase Agreement is a document that
23 I believe was presented with Mr. Johnson and Judy Otto
24 and Sam Caniglia. They both-- or all of them got

1 together and we all agreed on this document in their
2 office or thereabouts. But, yes, they drew that up.

3 Q Can you please tell the Court what discussions
4 you had with anybody leading up to the Land Purchase
5 Agreement in Exhibit 68.

6 A Well, it's a little lengthy, and I apologize
7 for it. We met with-- Dick met with Mr. Caniglia and
8 brought an offer to us. And it was a familiar party,
9 because we had a similar encounter four or five years
10 before that when the same party came to us and offered
11 us or suggested or wanted to get involved with a
12 highrise condominium on my property and was interested
13 in buying my property.

14 And as I subsequently learned some time in that
15 period, he wanted to do it on a time basis, that it was
16 going to be a large condominium development,
17 approximately somewhere in the vicinity of 28 stories,
18 and that he had to do it on a time basis because he had
19 to get entitlements and it would probably take nine,
20 ten months, somewhere in that period of time.

21 And as this document reflects, it was going to be
22 on a schedule where they show good faith, he would pay
23 certain amounts of money which ultimately would be
24 subtracted from the final monies that he would give us.

1 So if we ended up with \$500,000, the sales price was X
2 number of dollars, that would be accredited to him.

3 THE COURT: And when you said-- Was it
4 Mr. Caniglia had tried to purchase this exact piece of
5 property or pieces of property in the past?

6 THE WITNESS: Yes, Your Honor. He came to us four
7 or five years ago with the same concept exactly. At
8 that time, in fact, it was published in the newspaper.
9 And I stood out in front of my little office there that
10 we talk about and some reporter came there and tried to
11 get some information about what was going to happen.
12 So this must have been sometime in 2000.

13 THE COURT: Wasn't there another residence on that
14 property at one point a long time ago?

15 THE WITNESS: Yes, sir. Let me-- May I explain
16 that?

17 THE COURT: No. That's okay.

18 THE WITNESS: It was my home.

19 THE COURT: Yeah, there was another house there.

20 THE WITNESS: My home burned. We lived in that
21 house.

22 THE COURT: I remember when that happened.

23 THE WITNESS: And the adjacent piece was there also
24 which was uninsured. We owned that, and that burned

1 also.

2 THE COURT: It was around the holiday season, if I
3 remember correctly.

4 THE WITNESS: No. The holiday season was something
5 else. I don't remember the exact time.

6 THE COURT: Okay. Go ahead. I just remembered
7 there was another house there.

8 THE WITNESS: Thank you. That clears it up.

9 BY MR. HOY:

10 Q Doctor, could you turn to page Iliescu 61. And
11 the 61 is a little bit cut off, so you'll have to find
12 it between 60 and 62.

13 A Is that the next page? Excuse me. Is that the
14 next page?

15 Q Well, it's near the end of Exhibit 68.

16 A Okay.

17 Q I'm looking for the signature page which is
18 Iliescu 61.

19 A My goodness. I have it.

20 Q All right. Does your signature appear on that
21 page Iliescu 61?

22 A Yes, it does.

23 Q And did you-- There's a date next to your
24 signature there of August 3rd, 2005.

1 A Correct.

2 Q Did you put that August 3rd, 2005 on there?

3 A I may have. It looks like it could be my
4 handwriting.

5 Q Was August 3rd, 2005 at or about the time you
6 actually signed Exhibit 68?

7 A Yes.

8 Q Did you read Exhibit 68 cover to cover before
9 you signed it?

10 A No. I seldom do that, because my-- this came
11 to me from a broker that I was very familiar with,
12 actually a friend, and most of it is what they call
13 boilerplate.

14 Q All right. So the person that you're talking
15 about who brought it to you is Richard Johnson; is that
16 right?

17 A That's correct.

18 Q And Richard Johnson you think of as a friend?

19 A Yes.

20 Q How long has he been your friend?

21 A Well, he initially started out as my broker
22 some 15 years ago. It's hard not to like him. We
23 became friends.

24 Q Do you socialize with Richard Johnson?

1 A Only at lunches. We never have any evening or
2 anything. In fact, I've never met his wife, but I do
3 know his boys. One of his sons. Excuse me.

4 Q How do you know his sons?

5 A His one son works in the office with him, Ryan.

6 Q Okay. Have you and Mr. Johnson both testified
7 in the same trial before this case?

8 A Not to my recollection. No.

9 Q All right. Did you just rely on Mr. Johnson to
10 give you a contract to sign that was designed to
11 protect your interests?

12 A I don't understand that question.

13 Q Right. Did you read any part of Exhibit 68
14 before you signed it?

15 A Mr. Johnson-- May I answer it to the best of
16 my knowledge? And it happens this way with him.

17 Mr. Johnson brought me this concept, refreshed me that
18 it was Mr. Caniglia, that he wanted to purchase the
19 property and that he wanted these terms and these
20 conditions and was I amenable to it.

21 I thought it was a wonderful thing at this stage of
22 our life, at 80, when we could use-- We have a large
23 family. So we agreed to it. And he drew up these
24 papers in harmony with Mr.-- Sam. I'm going to call

1 him Sam. That's a little easier. Sam is the first
2 name of Mr. Caniglia. And that was this document.

3 Q I ask you to turn to paragraph 31 which begins
4 on page 11 of the contract. And the Bates number is
5 Iliescu 52.

6 A Where would that be in here?

7 Q Well, it's-- we're still in Exhibit 68.

8 A Yes, I have that.

9 Q So page 11. Down in the middle of the bottom
10 of each page there's a page number.

11 A Yes, I have that page.

12 Q And I'll do my best to read this out loud to
13 you, because I even struggle with the tiny print on
14 this exhibit.

15 Paragraph 31. "Access to property. Seller--"

16 A Excuse me. 31 did you say?

17 Q Paragraph 31.

18 A I don't have that in 31. I have-- on the next
19 page-- "Access to property." Thank you. I have it
20 now.

21 Q Okay. "Seller agrees to provide access to the
22 property to buyer, inspectors, appraisers and all other
23 professionals representing buyer. Buyer shall
24 indemnify, defend and hold seller harmless from any

1 lien, loss, claim, liability or expense, including,
2 without limitation, reasonable attorney's fees and
3 costs arising out of or in connection with the
4 activities, paren, including, without limitation,
5 buyers, agents and employees and independent
6 contractors retained by or acting on behalf of buyer,
7 paren, collectively buyer's agents, end paren, on the
8 property."

9 Did you read that boilerplate language before you
10 signed Exhibit 68?

11 A I truly don't remember it, but I would agree to
12 it if that's the point you want-- if I saw that and
13 knew a buyer needed that for his own-- for a purpose
14 that was beneficial to both of us, I would agree to
15 that, yes.

16 Q Okay. So when you signed your name to Exhibit
17 68, you understood that your buyer could have its own
18 agents coming onto the property and they would inspect
19 and appraise and do other things?

20 A That's correct.

21 Q And because of the language, you knew that that
22 activity could result in a lien on your property?

23 A I never even thought about it. In the years
24 I've been dealing in real estate, if I thought

1 everything would amount to a lien, I wouldn't sell
2 anything. I just never thought about it. I was
3 being-- just this minute took this as cooperating with
4 the buyer.

5 Q I would like you to turn to page 13 of the
6 exhibit with the Bates number of Iliescu 54 on it and
7 reference paragraph 39. And I'm going to skip right
8 down to 39E at the bottom of the page.

9 "Buyer shall have a due diligence period of 30 days
10 from date of acceptance of this agreement by both buyer
11 and seller within which at buyer's expense to do any
12 and all inspections and reports buyer deems necessary,
13 such as, but not limited to, availability and
14 suitability of utilities, geological reports, well
15 reports, zoning, flood zones, master plans--"

16 I apologize to the Court. I can't read that next
17 word.

18 "--and costs of off-site and on-site improvements,
19 building requirements, conditions and requirements
20 affecting the development of said property for buyer's
21 intended use, inspect the site, inclusive of surveys
22 and soil tests, analyze information pertaining to
23 roadways."

24 I think they left an article or a conjunction out

1 of there.

2 "Buyer shall indemnify seller for all such work
3 performed."

4 Do you remember reading that boilerplate before you
5 signed Exhibit 68?

6 A No, I did not. I look at this as a form that
7 Mr. Johnson has in his office. It's probably submitted
8 to hundreds and many people that buy these things. And
9 I don't read every word verbatim. But would you ask me
10 if I-- if this would help the buyer put this project
11 together-- And all we were interested in doing was
12 selling our property. --would I cooperate? Yes.

13 Q Okay. Moving down to it's paragraph 39F, we're
14 still on page 14, Bates number Iliescu 55, "This offer
15 is conditioned upon buyer at buyer's expense obtaining
16 the following governmental approvals within 270 days of
17 acceptance of this agreement as may be extended
18 pursuant to paragraph 1.2 above: Variance, tentative
19 map, special use permits, zone change and land use
20 designations and other: Architectural and design
21 review and approval."

22 Did you read that portion of the boilerplate before
23 you signed your name to Exhibit 68?

24 A I did not. To elaborate on it, which is not

1 smart they tell me, I knew it was going 270 days. So
2 if I read that, I would have lived with that. And I
3 don't know what else you said in there, but there was
4 another thing or two. I would have never given it a
5 second thought.

6 Q You understood from your discussions with
7 Mr. Caniglia and Mr. Johnson that close of escrow and
8 transfer of title would be extended for a period of
9 time where Mr. Caniglia and his company sought certain
10 governmental approvals for development of the land?

11 A That's correct.

12 Q And you knew that Caniglia's obligation to
13 close escrow and pay you the total purchase price was
14 conditioned on him receiving the governmental
15 approvals?

16 A That's correct.

17 Q And you knew that to get those governmental
18 approvals there would be architects and engineers
19 involved in the design of a project?

20 A That's correct. At the time it didn't
21 register, but, yes, that's correct. I knew work had to
22 be done. I just was selling my property. I wasn't
23 really wrapped up with all of that.

24 Q Now, the contract talks about the seller is

1 going to keep your property-- I'm sorry. Let me start
2 again.

3 The contract says that the buyer is going to keep
4 your property free and clear of liens through this
5 pre-closing period. Did you have any discussions with
6 Mr. Caniglia at or before the time you signed Exhibit
7 68 about liens?

8 A I had no discussions with Mr. Caniglia, Sam, if
9 I can say that, during the bulk of that. I did meet
10 with Sam on two or three occasions with the initial
11 writing, and a few other occasions, but we were
12 specifically talking about the project, how long it
13 might take him to get the entitlements. He seemed like
14 a very nice man and I believed in him. So this was the
15 grounds we proceeded.

16 Q May I ask you now to turn to Exhibit 71.

17 A I don't know where that is.

18 MR. HOY: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 THE WITNESS: I'm sorry. I apologize. I see 71
21 here.

22 BY MR. HOY:

23 Q Exhibit 71 is Addendum No. 3 to the Land
24 Purchase Agreement that we were just speaking of

1 earlier. Can you please turn to page 8, which is Bates
2 numbered Iliescu 97, and tell the Court whether or not
3 your signature appears on that page.

4 A Yes, it does.

5 Q Okay. By signing Addendum No. 3 did you intend
6 to modify the agreement in Exhibit 68?

7 A I don't understand that question.

8 Q What was your reason for signing Addendum No. 3
9 in Exhibit 71?

10 A Addendum No. 3 was drafted up by Karen
11 Dennison. We spent considerable time together trying
12 to cover what we thought would make-- would make us
13 happy, Sam happy. It went back and forth. And when it
14 got to that point based on what you will read in this
15 addendum, we agreed and signed it.

16 THE COURT: But what was the point of it? Not
17 because Ms. Dennison-- What was your understanding of
18 what you were signing Exhibit No. 71?

19 THE WITNESS: Addendum 3, sir?

20 THE COURT: Yes. Why did you do that?

21 THE WITNESS: Well, Addendum No. 3 completed all of
22 the parameters of what was involved in this project.
23 And I-- we would get a condominium. We lived in a
24 condominium. And we would get a condominium that once

1 they finished designing the building and everything
2 that would be somewhat modified to our liking on the
3 interior. Two, we had a little building that I dearly
4 love. And one of the initial parts of our negotiation
5 with Sam is he wanted that building. And I said, "No,
6 I'm not selling that building. You can do what you
7 need on this property here, the rest of it, fine."

8 And in that time it was agreed upon through Dick
9 and Sam that I would not put any structures on for that
10 building in excess of 15 feet, because it would stand
11 as an entity. We wanted some parking, but that's--
12 The building is a small apartment building with eight
13 units. And we knew we needed some parking. They were
14 taking all the rest of the land.

15 And some discussions came up then, well, Sam had
16 suggested to Dick that maybe that might be a nice
17 building to use as a restaurant. And if it was used as
18 a restaurant, the city would require so much parking.
19 All those things were brought to me and they were all
20 presented to Karen and myself. And we wrote those
21 items out to some degree in detail.

22 Let me think what else is in it. And the addendum
23 is really pretty good about that.

24 THE COURT: But you knew what it was and--

1 THE WITNESS: Absolutely. I knew exactly what it
2 was, Your Honor.

3 THE COURT: And the small building you're talking
4 is your office building, isn't it?

5 THE WITNESS: My office building never was involved
6 in it at all. The only thing I wanted-- I love the
7 building. It's a long story. But I wanted to be able
8 to get around the building, so I asked them to give me
9 ten feet regardless of what happened and to provide
10 some parking for me for that building.

11 Now, if it's just going to be a small building for
12 eight tenants, I only needed eight parking. If it was
13 going to be a restaurant or something else, it would
14 need more. And we left that door open with the
15 stipulation, and it's very clearly spelled out in
16 there, that I can make that decision.

17 And, you know, we didn't want to press anyway, we
18 didn't want anything we didn't need. We just wanted to
19 make it work.

20 THE COURT: I understand.

21 Go ahead, Mr. Hoy.

22 BY MR. HOY:

23 Q So, Doctor, after you signed Exhibit 68, which
24 is the Land Purchase Agreement, you then went to Karen

1 Dennison for her to draft up this Addendum No. 3?

2 A I did.

3 Q And then you signed Addendum No. 3?

4 A I did.

5 Q And as a prelude to Karen Dennison drafting
6 Addendum No. 3, you personally met with her?

7 A Yes.

8 Your Honor, may I elaborate on that?

9 THE COURT: No. Go ahead. Mr. Hoy is going to ask
10 you--

11 THE WITNESS: I don't want to sound like I'm
12 rambling on.

13 THE COURT: No, that's okay. No. He asked you a
14 question; you answered it. So go ahead. He'll ask you
15 the next question. Dr. Iliescu, he's going to ask you
16 another question.

17 THE WITNESS: I heard the question. And I can
18 answer your question. I apologize. I shouldn't have
19 directed that to you.

20 May I give you some of the background as to what
21 happened in that timeframe?

22 THE COURT: It's up-- Stop, Dr. Iliescu.

23 MR. HOY: It's fine.

24 THE COURT: Go ahead, Mr. Iliescu. Go ahead and

1 provide your answer. Thank you.

2 THE WITNESS: Ask me that question again and I'll
3 answer it.

4 BY MR. HOY:

5 Q I simply asked whether you met with Karen
6 Dennison before you signed Addendum No. 3.

7 A I did.

8 Q All right. How long did you meet with Karen
9 Dennison before she drafted Addendum No. 3?

10 A I met with her probably three times at some
11 length.

12 Q Okay. Can you give us an approximate total
13 amount of time you spent with Ms. Dennison to give her
14 information that was used to draft Addendum No. 3?

15 A I don't know. I'm going to guess I spent an
16 hour, hour and a half at each meeting, so five, six
17 hours total. But then she did some other work for me
18 subsequently.

19 Q All right. And did Mr. Johnson go with you to
20 any of the meetings with Karen Dennison?

21 A No.

22 Q Did your wife Sonnia go with you to any of the
23 meetings with Karen Dennison?

24 A Yes.

1 Q Did your wife go to all of the meetings that
2 you had with Karen Dennison related to this Addendum
3 No. 3?

4 A I don't remember if she came to the first one,
5 but she certainly was there all that time, if not the
6 bulk of the time.

7 Q All right. Did Sam Caniglia go with you to
8 meet Ms. Dennison with regard to Addendum No. 3?

9 A No.

10 Q All right. Did you tell Ms. Dennison that you
11 had a buyer for your property between Island and Court
12 Street?

13 A I did.

14 Q Did you tell Ms. Dennison that the buyer was
15 going to have a period of time within which to seek
16 governmental entitlements before closing escrow?

17 A I gave her all the information I knew about it,
18 yes, and that was part of it.

19 Q All right. And you knew at that time that
20 architects and engineers might be involved with getting
21 governmental entitlements to develop your property for
22 the buyer?

23 A Yes, that's realistic. Yes, I knew that.

24 Q I ask you to turn to page 3 of Addendum No. 3,

1 Exhibit 71. This is Bates numbered Iliescu 92.
2 Paragraph number 7 of the addendum references paragraph
3 39F of the original Land Purchase Agreement. It says,
4 "Paragraph 39F is hereby amended and restated as
5 follows: This offer is conditioned upon as conditions
6 precedent (conditions precedent) buyer obtaining at
7 buyer's expense all necessary approvals (governmental
8 approvals) for the construction of a mixed-use
9 residential and commercial highrise condominium project
10 on the property, approximately 28 stories in height
11 (the project) within 270 days after August 3rd, 2005,
12 as such time period may be extended pursuant to
13 paragraph 1.2 above, including, but not limited to, 1,
14 any required height setback or other variances; 2, any
15 required special use permit; 3, any required zoning or
16 land use designation changes; 4, any required master
17 plan amendment; 5, any approved tentative condominium
18 map for the project; and, 6, any required design
19 approvals."

20 And so you agreed to that language in this Addendum
21 No. 3?

22 A I did.

23 Q And, again, you anticipated when you signed
24 Addendum No. 3 that your buyer was going to be seeking

1 all of these various forms of governmental relief that
2 are listed here in this paragraph 7?

3 A I believe that's true.

4 Q And you knew that he would have to have
5 engineers to do some of that work?

6 A I didn't go to it in my mind, but, yes, that
7 would certainly-- if all these things had to be done,
8 absolutely.

9 Q And you knew that an architect would be
10 required to get a tentative condominium map for the
11 project?

12 A Let me-- The answer is going to be yes to
13 that, but let me say, I never developed anything and so
14 I didn't know all the specifics of what would be
15 needed. But would I have been surprised? Absolutely
16 not.

17 Q And in fact you weren't surprised to learn that
18 an architect had actually submitted for a tentative
19 condominium map for your property sometime in 2006?

20 A I was not aware-- Wait. Let me answer that.
21 Ask me again the question.

22 Q Certainly. You were not surprised to learn
23 that an architect was involved in designing a project
24 in order to get City of Reno approval of a tentative

1 condominium map for a project to be built on your
2 property?

3 A And I never gave it a thought, but I would not
4 have been surprised. Certainly, as I mentioned before,
5 if that's what it took to get to this point, the answer
6 is yes.

7 Q In fact, your testimony in this case is that
8 you knew that there were architects involved in this
9 entitlement process, you just didn't know the identity
10 of the architect; is that right?

11 A I had a very-- I was strongly informed by a
12 letter we received from Sam Caniglia before he started
13 the project. When he came to us a second time, there
14 was a big question mark. You know, he had been to us
15 before, he tied up the property. And now he came with
16 a letter that specifically outlined what he was going
17 to do. He had the financing. I think that letter is
18 in the records.

19 He had an in-house architect and engineer. And in
20 addition, I really think what really stuck with me is
21 he wanted me to sign this agreement as soon as
22 possible, because he was ready to come to Reno within
23 ten days with the architect and the engineer to get the
24 project started. So we're talking when we initially

1 signed I'll get involved.

2 So I know these things were going to happen. And
3 we had the assurance that Mr. Caniglia had all these
4 things in place. I was concerned about selling my
5 property. He was concerned about developing it.

6 Q Can you please turn to Exhibit 67. Exhibit 67
7 is a July 14th, 2005 letter from Sam Caniglia to
8 Mr. Dick Johnson. Is this the letter that you just
9 referenced in your last answer about being the last
10 letter that you received from Sam Caniglia talking
11 about his in-house architects?

12 A This is the letter, yes.

13 Q Okay. Maybe I'm missing something, Doctor, but
14 I don't see anything in here that says he's got
15 in-house architects. It says on page 2, paragraph
16 number 3, "Architect and engineers in place ready to
17 start work."

18 A Okay. Now, I don't know how you're
19 interpreting that, but may I go through this and show
20 you how I interpret it?

21 Q Sure.

22 A The first thing it says is, "Financing has
23 already been tentatively arranged." That left a
24 question mark in my mind. Tentatively, what's that

1 mean? Okay.

2 "The project is to be built by an expert developer
3 building team with a proven record." Well, who was
4 that? He implied it was-- he was going to do the--
5 something, but I don't know what that was.

6 And then when we get to 3, 3 says, "Architect and
7 engineer in place ready to start work." That's the
8 first concrete thing I read. The architect and the
9 engineer are in place. Everything else up until that
10 point had a question mark in my mind. I remember that,
11 because I was a little skeptical about him.

12 They were going to occupy the building in 30
13 months. But when you read further down, it says,
14 "Please be advised at your earliest convenience--" No.
15 "David, I have told you on repeated occasions I would
16 not come to the table unless I was prepared to move
17 forward predicated on our past experience. Now is the
18 time. Please advise me at your earliest convenience as
19 my group with the bankers, architects and engineers are
20 scheduled to visit the site next Wednesday."

21 That was one week away or ten days away. So my
22 thoughts were, This man is ready to go. Sign these
23 papers. He's got this thing and he's got the architect
24 coming to look at the site. So that was my mindset,

1 Mr. Hoy, truly.

2 Q Fair enough. So you had had proposals from Sam
3 Caniglia as early as the year 2000?

4 A I missed your question, sir. Forgive me.

5 Q As early as the year 2000 you had had proposals
6 from Sam Caniglia to buy your land between Island and
7 Court Street?

8 A We had an offer then. I don't remember the
9 great details, but yes.

10 Q And so when you received this July 2005 letter
11 from Sam Caniglia, you were skeptical?

12 A Yes, I accepted it for face value.

13 Q But you said you were skeptical about the
14 things it said.

15 A I was skeptical about portions of it, not all
16 of it. I thought I made that clear. I was skeptical
17 as to what he meant when he said financing had already
18 been tentatively-- That's tentatively. That's nothing
19 definitive.

20 Q Right.

21 A Okay. That it was going to be built by expert
22 builders team. Well, who is that? I didn't have to
23 know, but it was-- Number 3, though, no question about
24 that one. That's the one. "Architects and engineers

1 in place ready to start work." He says he already had
2 that.

3 And then he says to me he wants to be here in ten
4 days with them. Within ten days he wanted to be on the
5 site. So I never-- Why would I question that? Excuse
6 me. I don't mean to act that way, but it just never
7 occurred to me.

8 Q All right. You were skeptical about the
9 financing?

10 A I was skeptical-- Just what I just told you,
11 no more, can't add any more than that.

12 Q You were skeptical about the financing, right?

13 A Yes. Yes. I wasn't skeptical. I listened to
14 what he said, but he didn't say to me, I had X number
15 of dollars waiting. He said he had tentative. I have
16 tentative plans to go with my wife to go see my great
17 grandchildren, but that doesn't mean it's going to
18 happen.

19 Q Did you ask Mr. Caniglia for a loan commitment?

20 A What?

21 Q Do you know what a loan commitment letter is?

22 A No.

23 Q All right.

24 A I would have left that to Dick anyway.

1 Q Okay. Did you ask Dick to ask Sam Caniglia
2 whether there was any documentation to show what
3 financing had been tentatively arranged?

4 A Mr. Hoy, I was just trying to sell my property.
5 I didn't want to get involved with any of that. I was
6 80 years old. I have never developed anything but a
7 treehouse when I was trying to be a Eagle Scout. I was
8 just trying to sell my property, truly.

9 Q Did you ask Mr. Caniglia directly who these
10 architects and engineers were that he thought he would
11 have on the site in ten days?

12 A No.

13 Q Did you ask Dick Johnson to ask Sam Caniglia
14 who the architects and engineers were that were going
15 to be on site in ten days?

16 A No. And I don't believe Dick knew. I think
17 Dick knew as much as I did. We just took him at face
18 value.

19 Q Now, I want to ask you to go back to Exhibit 71
20 which is Addendum No. 3. And I apologize to you, sir,
21 for bouncing around. I only did it because you had
22 mentioned that letter.

23 A I missed some of that, so you'll forgive me. I
24 was looking and not paying attention.

1 Q Certainly, sir. I just asked if you would
2 return to Exhibit 71 which is Addendum No. 3. And then
3 I apologized to you for bouncing around in the exhibits
4 the way I did.

5 A No problem.

6 Q All right. Could you please turn to page 2 of
7 that exhibit. And it's Bates number Iliescu 92 at the
8 bottom.

9 THE COURT: Is that page 2 or page 3?

10 MR. PEREOS: 92 is page 3.

11 MR. HOY: I apologize, Your Honor. 91.

12 BY MR. HOY:

13 Q It's numbered paragraph 5 and it purports to
14 amend paragraph 31 of the Land Purchase Agreement. And
15 it says, "Paragraph 31 is hereby amended to add the
16 following paragraph: Buyer agrees to keep the property
17 free from all liens and to indemnify, defend and hold
18 harmless seller and its successors and assigns from and
19 against any and all claims, actions, losses,
20 liabilities, damages, costs and expenses (including,
21 but not limited to, attorney's fees, charges and
22 disbursements) incurred, suffered by or claimed against
23 seller by reason of any work performed with respect to
24 the property at the instance or request of buyer or any

1 damage to the property or injury to persons," et
2 cetera, et cetera.

3 Now, did you-- You initialed that page at the
4 bottom. Do you see that?

5 A Yes, I do.

6 Q When you initial documents at the bottom, do
7 you mean to tell people that you've actually read that
8 page?

9 A Yes, that's correct, for the most part.
10 Sometimes it's boilerplate and-- But I did initial it
11 and I did know about that, because Karen and I-- she
12 insisted or told me it would be my protection to put
13 that in.

14 Q Did she explain to you what she was protecting
15 you against?

16 A She was-- Just what the words say. She was
17 protecting me that the buyers do just that.

18 Q Karen Dennison was protecting you against liens
19 from people invited by the buyers to do work for the
20 improvement of your property?

21 A Yes. She was looking out for me in drawing up
22 this contract for my relationship in selling my
23 property to the buyers.

24 Q Okay. And in your conversations with Karen

1 Dennison you came to understand that people like
2 engineers and architects doing work for this buyer
3 might have a mechanic's lien on your property for the
4 work that they did?

5 A Well, that gets to the heart of the problem.
6 That's why we went to see Mrs. Dennison. Yes, we went
7 to her firm for complete coverage, legal coverage, of
8 this whole project. We had had a bad experience prior
9 to that, but I won't go into that at the moment unless
10 you ask me.

11 But we went to that firm for protection. And in
12 writing this document for the buyers, this is like a
13 portion of it. We went for the overall to her and she
14 in turn drew up this for the buyers.

15 Q When you signed this Addendum No. 3, you signed
16 it after talking to Karen Dennison about the prospect
17 that the buyer could hire engineers and architects and
18 those engineers and architects could have a mechanic's
19 lien on your property?

20 A That's correct.

21 Q All right. And is it your testimony that you
22 knew about that possibility before you even went to see
23 Karen Dennison?

24 A Yes.

1 Q And how did you know that before you went to
2 see Karen Dennison?

3 A About three months before or four months-- I
4 went to see Karen Dennison in 2005. In 2004, the early
5 part of 2004, I had an experience which was a new
6 experience for me. I leased a place to a tenant and
7 the tenant put some improvements into the place and an
8 architect-- I mean a contractor named Pinecrest-- We
9 weren't informed-- The person that was going to do the
10 work was Pinecrest. And Pinecrest sent us a pre-lien
11 notice.

12 I called-- The party that rented the property, his
13 name was Mike Mannion. I called Mike Mannion and I
14 said, "Look, Mike, I'm not going to be responsible for
15 any of this."

16 And I also called Pinecrest. I have many letters
17 to him telling him, calling his girl-- It's a Polish
18 name. --"I'm not going to be responsible for this.
19 Please have your firm collect this money up front." I
20 even posted a notice on the door.

21 About two months later we got a lien against us.
22 And that really came as a surprise. So I called Steve
23 Mollath who had been an attorney friend for many years.

24 Q Let me stop you right there. Your discussions

1 with Karen Dennison as far as I'm concerned have been
2 waived, that privilege has been waived. I don't know
3 about your conversations with Mr. Mollath.

4 MR. PEREOS: We're not waiving.

5 BY MR. HOY:

6 Q So you don't want to talk about your
7 conversations with Mr. Mollath.

8 A I apologize. I just wanted to give you a
9 sequence. So we'll forget about Mr. Mollath. At any
10 rate, I called an attorney. And I asked the attorney--

11 Q No, no. Don't tell me what you said to any
12 attorney.

13 A I learned the hard way. Can I go into that?

14 THE COURT: I don't really think it's necessary at
15 this point.

16 Mr. Hoy, why don't you pose another question.

17 MR. HOY: Thank you, Your Honor.

18 I would like to move on to Exhibit 35, please.

19 May I approach the witness?

20 THE COURT: You may.

21 THE WITNESS: I apologize Mr. Hoy. I don't know my
22 limits here.

23 BY MR. HOY:

24 Q Dr. Iliescu, I've opened the binder up for you

1 to Exhibit 35. This is a January 17th, 2006 Special
2 Use Permit Application submitted to the City of Reno
3 for a special use for certain development on property
4 owned by you and your wife; true?

5 A That's correct.

6 Q If you could please turn to the third sheet--
7 I'm sorry, the fourth sheet in the exhibit. It's Bates
8 numbered Steppan 2368.

9 A I'm sorry. The fourth page or the fourth what?

10 Q The fourth page. It's marked Steppan 2638 at
11 the bottom.

12 A Owner's affidavit?

13 Q Yes.

14 A Yes, I have that.

15 Q Do you see a name printed on that page?

16 A I see my wife's name on the page, yes.

17 Q Do you recognize your wife's signature on that
18 page?

19 A Yes. And I also signed that, to save you the
20 trouble.

21 Q Did you and your wife discuss the reasons why
22 you were being asked to sign this owner affidavit in
23 Exhibit 35?

24 A Because--

1 MR. PEREOS: That goes into the marital privilege.

2 I'm not sure I'm waiving marital privilege. I

3 understand why we went into the Karen Dennison

4 communications.

5 MR. HOY: Withdrawn, Your Honor.

6 BY MR. HOY:

7 Q I don't want to ask you any questions about

8 communications that were private between you and your

9 wife Sonnia.

10 A My wife and me--

11 Q Yes.

12 A --we're like one. That's not a problem.

13 Q That's the point of the privilege, you're like

14 one. So I can't ask you what you two talked about, you

15 know, unless it's out with other people.

16 A Ask me the question as clear as you can and

17 I'll answer it as clear as I can.

18 Q Thank you. I wasn't being clear, and I

19 apologize.

20 A Okay.

21 Q On page 2369, is that your signature?

22 A Yes, it is.

23 Q Why did you sign this owner affidavit in

24 Exhibit 35?

1 A I was told I was the property owner, and for
2 this project to go through, the property owner had to
3 be involved to the extent that they gave permission for
4 things to happen on the property.

5 Q Who told you that?

6 A I don't know for sure. It could have been any
7 number of people. But the person who brought me this
8 told me that. And Sam told me that on one occasion,
9 because Sam brought me or was involved with one of
10 these. And I think it was the very first one. Sam
11 brought it to me, just the sheet. I never saw anything
12 more than this sheet. He said, "John--" And I
13 remember specifically Sam being involved with that. He
14 got my signature.

15 Q All right. So Sam Caniglia-- your testimony--
16 your recollection is Sam Caniglia brought you the owner
17 affidavit and asked you to sign it?

18 A Either we met somewhere or-- Yes. Truly, I
19 think he came and met me when I was parked somewhere
20 and I signed it on the back of my car.

21 Q And did Sam Caniglia tell you what would be
22 attached to your owner's affidavit?

23 A No, just simply that he had to have that to
24 continue with the process.

1 Q So the actual text of this owner affidavit
2 says, "I am an owner of property/authorized agent
3 involved in this petition and that I authorize Sam
4 Caniglia to request development-related applications on
5 my property."

6 Did you understand that you were appointing Sam
7 Caniglia as your agent to request development
8 entitlements for your property?

9 A Well, I never thought of it that way, but did I
10 agree-- If that's what he had to have in order to
11 continue with the project, I would have signed it, yes.
12 I didn't think in these legal terms that he was author
13 of this or had legal this. I was giving this
14 permission to the city or whomever was involved to
15 proceed with this project.

16 Q And at the time you signed your owner affidavit
17 in front of Mr. Caniglia, did you have any discussion
18 about what the project was that was being proposed for
19 your property?

20 A No, absolutely not. I wasn't interested. I
21 was selling my land. I knew they were going to put a
22 highrise condo, but that was the extent of it.

23 Q Well, Doctor, to be fair, you were interested,
24 you had a condominium, you had a penthouse coming out

1 of the deal, didn't you?

2 A I was interested because I wanted to sell my
3 project, and I also wanted to see the project happen.

4 Q You were interested because you were to get a
5 2.2-million-dollar credit on a penthouse in the
6 project, right?

7 A Absolutely. And I was looking forward to that.
8 And nobody was more heartbroken than I that this
9 project didn't happen.

10 Q Right. So you were interested in knowing how
11 high up your penthouse would be, weren't you?

12 A I was under the assumption it was going to be
13 28 stories from day one. It was in the initial
14 agreement.

15 Q Okay. So you did have some understanding of
16 what the scope and size of the project was from the day
17 you signed the Land Purchase Agreement?

18 A Yes.

19 Q All right. Weren't you interested to
20 understand what the project was that was being
21 submitted to the City of Reno for approval?

22 A I had no idea. I mean, I didn't know whether
23 the building was going to be round, square. All I knew
24 is that they were going to put a highrise condo in

1 there, I was going to sell my land, and I was going to
2 get a condo and down the road we would decide where
3 based on my workup with Karen Dennison and Addendum 3.

4 Q And you also had some parking spaces coming to
5 you, didn't you?

6 A Yes.

7 Q Explain to the Court about the parking spaces.

8 A I thought I did, but I'll be glad to explain it
9 again. When you live in a condo, you're allowed to
10 have at least a parking place for your wife and
11 yourself. We live in a condo. We'd like to have a
12 little-- We live in the Arlington Towers. We'd like
13 to have 500 square feet so we can put our Christmas
14 trees and junk in it. We would like to have--

15 The one we live in, the bedroom is too small. They
16 could have expanded the wall and made it bigger. The
17 floor plan could have been different. And that's what
18 we had in mind.

19 Now, in Addendum 3, as I mentioned to you, there
20 was more parking requested, but that's not predicated
21 on our condo. Our condo has specific things we wanted,
22 the parking places for parking, one for her and me,
23 when my grandchildren came or somebody came, they would
24 have a place to park, and then we would have the 500

1 square feet. And then when they finish the building
2 with all the gross stuff, when they came to a unit we
3 wanted-- And we did not want a penthouse when we
4 finally saw them. We wanted something way down closer
5 to the ground. And you'll see that in the subsequent
6 documents.

7 Q All right. So on the topic of parking in
8 condominium complexes, you currently live in the
9 Arlington Towers project; true?

10 A That's correct.

11 Q And the parking for Arlington Towers is in the
12 parking garage across the alley owned by the Plaza
13 Resort Club?

14 A That's correct.

15 Q And, in fact, there's been litigation involving
16 the way the parking is allocated for residents of the
17 Arlington Towers?

18 A That's correct. Just recently resolved.

19 Q Right. And you've been very vocal in the way
20 that the parking is allocated and what the parking
21 rules are?

22 A My involvement with the vocal was this: There
23 are a multitude of old people that live in the
24 Arlington Towers. At some stage the people that have

1 that garage wanted control as to the fees. And the
2 thing they wanted to do was have open parking.

3 I was opposed to that, because a person 80, 90
4 years old with open parking might have to park on the
5 fourth floor, forget where his car is, or park on the
6 second floor and then have to take the elevator up,
7 because the elevator is on the fourth floor. And it's
8 cold, the garage is open.

9 I just didn't think it was a humane thing. And it
10 could have been resolved so easy. And I voiced what I
11 thought would be nicer, and that is-- At no time in
12 the years I've been familiar with that project did they
13 ever need more than 50 parking places. And so I
14 suggested, why don't they wait until we get beyond that
15 point.

16 Q All right. I took that too far. And I
17 apologize.

18 My point was, you are concerned about parking in
19 this new project to be built on your land because you
20 intend to live there?

21 A Correct.

22 Q All right. But there was another 50 or 51
23 parking spaces that you were also concerned about,
24 right?

1 A I explained that, yes, that in case we had a
2 restaurant. If we did not have a restaurant and I used
3 it for residential, it would go down to whatever.
4 Because if there was a restaurant with 50, I would have
5 been responsible for the insurance, for the
6 maintenance, a whole bunch of things. And I wasn't
7 going to run a restaurant at 80. So that would have to
8 be somebody that wanted to get involved.

9 And Sam specifically said, boy, he would like to
10 have that building as a restaurant for the rest of the
11 units.

12 Q So one of your personal interests in this
13 entire transaction was to preserve your historic
14 building and have that new development dovetail with
15 the operations in your historic building; is that fair?

16 A Rephrase that again. I'm sorry.

17 Q Sure. You were interested in making sure that
18 you could operate your historic building as a
19 restaurant, among other things, and to do that you
20 needed to have parking in the new development?

21 A Yes.

22 Q So you were really interested in having this
23 new project development dovetail in some way with your
24 historic building from a permitting and design

1 standpoint?

2 A Sure. If people were going to use it as a
3 restaurant, they didn't want to walk all the way over
4 to Court Street, that they be able to walk straight
5 across.

6 Q So you have personal interest in what this new
7 project is going to look like. Is it really your
8 testimony that you had no idea what was being submitted
9 to the City of Reno under your owner affidavit
10 appointing Sam Caniglia and granting him authority to
11 submit this application to the city?

12 A Absolutely not. I was shocked when in addition
13 to the 28-foot-story building there was a 40-story
14 building coming on a street that's crowded now without
15 any buildings. I mean, Island is a small street. They
16 wanted to make it one way one time. And Court is
17 occupied with the court and Park Towers. I was
18 shocked.

19 Q All right. How did you learn that the project
20 size was bigger than one 28-story tower?

21 A You know, I have wracked my brains for that. I
22 don't know exactly when I found out. It was certainly
23 not in Snelgrove's office.

24 Q Well, "shock" is a very powerful word.

1 A I apologize. I was amazed.

2 Q "Amazed" is a powerful word as well. How did
3 you become amazed?

4 A Well, now, just think about it. An 80-story
5 building higher than the Silver Legacy which sits on
6 the block, that's--

7 Q Sir, I don't doubt that you were shocked and
8 amazed, or amazed. What I'm getting to is, how did you
9 become aware that the project had gone from one
10 28-story tower to two buildings with one tower up to 40
11 stories?

12 A Sir, I don't remember when, but it was a shock.

13 Q Do you remember how?

14 A No. It was in the newspaper, it was talked
15 about, and I could have learned it in a multitude of
16 ways. I don't remember.

17 THE COURT: I'm just following your testimony,
18 Dr. Iliescu. So you're telling me that the first time
19 that you realized that there was going to be two
20 buildings, one of them over 40 stories tall, was
21 through some news media account?

22 THE WITNESS: I don't know where, Your Honor, I
23 learned that, but both Dick Johnson and I were shocked,
24 if I can use that. We were looking at a 28-story

1 building. Here's a 28-story building and here's a
2 40-story building on an acre and a half. That's 60,000
3 square feet. I don't know how they could do it
4 anywhere. And Caranos' hotel, it sits on almost a
5 square block. And this would have been taller than
6 that.

7 BY MR. HOY:

8 Q Dr. Iliescu, you heard Mr. Snelgrove this
9 afternoon talk about some neighborhood meetings. And
10 he specifically talked about a neighborhood meeting at
11 the Arlington Towers and said you were there. Were you
12 there?

13 A I could have been there, yes. In retrospect, I
14 thought about that. It was such a short meeting. That
15 room is right where you go out the lobby over to the
16 parking garage. So I could have momentarily been
17 there. It was not a successful one. But do I remember
18 it? No. But could I have been there? Do I doubt
19 Mr. Snelgrove? No, I don't doubt him.

20 Q Well, it's the building you live in.

21 A Yeah, it's the building I live in.

22 Q And you're friends with all the people in the
23 HOA there?

24 A Not all the people. There's a lot of people.

1 But I could have been there, I just didn't recall it at
2 the time. And I don't really recall it for sure now.

3 Q Was there-- You know what a PowerPoint
4 presentation is?

5 A I'm assuming that you put slides up or
6 whatever. That's the only way I relate it.

7 Q Did you see a slide show at the Arlington
8 Towers?

9 A You know, I don't remember. All I know is that
10 from everything I'm hearing from everyone, including
11 Dave, it didn't go well, it didn't show anything to
12 speak of.

13 Q Did you see this video fly-through, this movie
14 that we watched earlier this morning?

15 A I did not.

16 Q Okay. Was there a discussion about the size
17 and scope of the building during that meeting?

18 A I don't remember. I don't remember anything
19 particularly pertaining to that.

20 Q Okay. Did you learn about-- were you shocked
21 and amazed by the size and scope of the project before
22 or after this meeting at the Arlington Towers?

23 A I don't know when I learned it, but I don't
24 believe I learned it before then. I learned it later

1 on. Because that would have shocked me then. And I
2 don't know if you could have found out then, because he
3 admits himself there wasn't anything shown. I just
4 don't recall it.

5 Q How long did it take you to get over the shock
6 and amazement?

7 A I beg your pardon?

8 Q After you were initially shocked and amazed by
9 the size and scope of the project, how long was it
10 before you were over the shock?

11 A I'm still shocked.

12 Q All right.

13 A I'm still amazed that they can do that. I
14 don't know. I don't know. It's amazing to me.

15 Q Did you attend a meeting at the downtown
16 improvement district?

17 A I don't remember that meeting. I did attend
18 for sure the planning commission meeting and the city
19 council meeting. I am sure I attended those.

20 Q So at those meetings you saw the size and scope
21 of the project?

22 A I apparently saw that. Yes, I saw those. And
23 then I was-- Maybe that was the first time I was
24 thoroughly amazed. That may have been the time I

1 learned it. But there was no question I saw that
2 project then, I think prior to the planning commission
3 or at the planning commission-- that evening when it
4 was given, that presentation was given.

5 Q Who presented on behalf of the developer?

6 A I don't know. I think Dave presented it. You
7 know, I've known Dave for some time. I knew him when
8 he worked for Gray and Associates. And we always have
9 small talk, hi, how are you, like we did today in
10 court. But I don't remember details.

11 Q All right. Do you know who Gary Duhon is?

12 A I met him for the first time that evening. And
13 I was very impressed with him.

14 Q Do you know who Nathan Ogle is?

15 A No.

16 Q During the planning commission meeting was the
17 name of the architect ever mentioned?

18 A If it was, I didn't recall it. It's my
19 understanding from what I've heard, they weren't there.

20 Q All right. At the Reno City Council meeting
21 was the name of the architect mentioned?

22 A You know, I don't recall, and I wouldn't have
23 been looking for it. I was looking to see what was
24 going on. That's the last thing I would be looking

1 for.

2 Q All right.

3 A Any more than I would looking for engineers'
4 names or anyone else.

5 Q Now, after the city council voted to grant
6 entitlements for your property, there were two efforts
7 to extend the deadline for the final map. And I don't
8 want to go into all the details of that. But you would
9 agree with me that you signed one of the applications
10 for the first extension of time to file the final map,
11 right?

12 A Yes, that's true.

13 Q Why did you do that?

14 A Well, first of all, I got a letter from the
15 architect and I had that letter. It simply documented
16 that they wanted this project to go forward and blah,
17 blah, blah, blah. And when I-- It didn't cost very
18 much money. And when I signed-- And I agreed. I
19 thought, you know, I want to sell my property, there's
20 a condominium out of this. Absolutely. So I asked for
21 an extension in light of the fact--

22 Q Excuse me. And that application was in October
23 of 2008, right?

24 A I don't remember the date. You'll have to show

1 me that.

2 Q Between the time the city council granted the
3 entitlements and the time that you filed the
4 application to extend the final map filing deadline,
5 what activities did you have with Sam Caniglia to sell
6 the property?

7 A I had none. Dick had all the contacts with
8 Sam.

9 Q In April of 2007 didn't you sign a bunch of
10 deeds in preparation for a closing of escrow?

11 A Did I-- I'm sorry.

12 Q In April of 2007 did you sign deeds and other
13 documents for a closing of escrow for your property?

14 A You'll have to show me that and refresh my
15 memory.

16 Q All right. I will get to that in a moment.
17 Let me turn your attention, please, to Exhibit No. 1.
18 And I think I'll have to swap the binders for you.

19 THE COURT: It's in that. I think it's in that
20 one.

21 MR. HOY: You're right, Your Honor.

22 BY MR. HOY:

23 Q Please turn to Exhibit No. 1, sir.

24 A I have it, Mr. Hoy.

1 Q Thank you, Doctor. Exhibit No. 1 is a Notice
2 and Claim of Lien recorded November 7th, 2006. Have
3 you seen Exhibit 1 before today?

4 A Yes, I have.

5 Q When was the first time that you saw Exhibit
6 No. 1?

7 A The first time I saw this lien was an attorney
8 named Michael Morrison who is my corporate attorney of
9 many years called my office concerned that I had this
10 lien. And I think he faxed a copy or somehow. He was
11 the first person that notified me.

12 I have learned since then, and I don't remember
13 details, that I also received a copy in my office or
14 somewhere. You know, after all these years, you hear
15 all these depositions and things like that, it gets to
16 be muddled. But I knew about it, yes.

17 Q Do you maintain a mailing address at 219 Court
18 Street?

19 A That's correct.

20 Q Do you maintain an office at 260 Island Avenue?

21 A Do I maintain-- I live at 1000 Island-- I mean
22 Arlington. I have an office at 219 Court Street.

23 Q Okay. Do you know this address, 260 Island
24 Avenue?

1 A Yes, that's the-- that's the building next to
2 this project.

3 Q And do you have an address, 200 Court Street?

4 A That's the one on Court Street that I have my
5 office that we just talked about.

6 Q Do you know somebody named Flannery?

7 A I want to take that back. 219 Court Street was
8 my home that burned that was the old Wingfield house.
9 Right across the street is 200 Court Street which is my
10 office. I apologize.

11 Q That was that old title company that has the
12 huge vault in the middle of it; is that right?

13 A That's my office now. That's the old Cord
14 building, E.L. Cord.

15 Q That's right. And do you know somebody named
16 Flannery?

17 A Flannery is my office girl of 35 years.

18 Q Okay. And did Flannery receive a copy of the
19 lien notice?

20 A She would have been the logical person, yes.

21 Q And did she-- when she handed you the lien, did
22 she tell you how long previously she had received that
23 lien?

24 A I don't know.

1 Q All right. In any event, you also got it from
2 Mr. Morrison, Michael Morrison, the lawyer?

3 A I was aware of it in that timeframe, yes.

4 MR. HOY: Counsel, is there any dispute that the
5 lien was served within 30 days after recordation?

6 MR. PEREOS: No.

7 THE COURT: Thank you, Mr. Pereos.

8 MR. HOY: Beg the Court's pardon.

9 THE COURT: Go ahead. Take your time.

10 BY MR. HOY:

11 Q I'm going to attempt a shortcut. Dr. Iliescu,
12 under the Land Purchase Agreement you were entitled to
13 receive nonrefundable deposits during the first 270
14 days between signing the agreement and close of escrow;
15 is that right?

16 A That's right, to be credited to the final--
17 How do you want to call it?

18 Q Purchase price?

19 A Purchase price. Thank you. Yes.

20 Q And you actually received those payments that
21 were specified in the contract?

22 A I did.

23 Q And you paid a commission to Mr. Johnson on
24 those deposits?

1 A Mr. Johnson and the title company handled all
2 that. I did not handle any of that money.

3 Q And then through several addenda, the close of
4 escrow was extended further from that point in time?

5 A That's correct.

6 Q And in exchange for extending the close of
7 escrow date, you received more nonrefundable money; is
8 that right?

9 A That is correct.

10 Q And, in fact, in the last extension,
11 Mr. Caniglia was out of cash and so you took \$100,000
12 worth of water rights to further extend the close of
13 escrow; is that true?

14 A Yes. That was Dick's idea. And we liked Sam
15 and, yes, we agreed to it. Unfortunately, it's down to
16 about 15,000 now in value, because we just set them
17 aside.

18 Q So in terms of the cash that you received,
19 nonrefundable deposits, you received more than a
20 million dollars; is that right?

21 A I haven't tabulated it, but I wouldn't be
22 surprised, yes. If you say that's what it is, that's
23 what it is.

24 THE COURT: Is that including the \$100,000 for the

1 water rights?

2 MR. HOY: No, Your Honor.

3 THE COURT: Just cash it's over a million dollars?

4 THE WITNESS: We received-- You know, Sam fell in
5 and out of the deal. And, you know, it was initially
6 set up where we would get so much money every other
7 month or every month. Well, it had gone a period of
8 time. And I had none of this negotiation. And Sam
9 kept-- in all fairness, Sam, he kept trying to keep the
10 project alive, find more people with money, because it
11 was bad times, especially for a major project like
12 this.

13 So somehow Dick talked to Sam. Sam had a friend
14 that was willing to let him have \$100,000 worth of
15 water rights. And in that time water rights were worth
16 about \$20-- pardon me, \$20,000 an acre. Unbelievable.

17 THE COURT: Dr. Iliescu--

18 THE WITNESS: Did I misunderstand your question?

19 THE COURT: You misunderstood my question. I
20 apologize.

21 THE WITNESS: I apologize to you.

22 THE COURT: I might not have phrased it correctly.

23 You received over a million dollars in
24 nonrefundable cash, and then in addition to that, you

1 also received these water rights. And I understand
2 you're saying they're not worth now what they were
3 then.

4 THE WITNESS: I did. You're right.

5 THE COURT: I just wanted to make sure I got the
6 numbers down correctly on my notes. Go ahead.

7 MR. HOY: Thank you, Doctor.

8 I don't have any more questions at this time.

9 THE COURT: Mr. Pereos, do you wish to
10 cross-examine your client now or would you rather
11 recall him during your portion of the evidence in this
12 case? I'll give you the opportunity to do both.

13 MR. PEREOS: Cross-examine now.

14 THE COURT: Go ahead.

15 CROSS-EXAMINATION

16 BY MR. PEREOS:

17 Q Mr. Iliescu, has the property lost value during
18 the period of time that it's been tied up on this
19 project?

20 A Yes. Well, there's nothing going on and it's
21 only worth bare land, what it is there.

22 Q And is the value of the bare land now the same
23 as the value of the bare land that existed at the time
24 you went into the buy/sell agreement marked Exhibit 71?

1 A We had a recent appraisal by a quantified--
2 longtime appraiser and he said--

3 Q I don't want you to testify to what somebody
4 else told you. I want to know simply--

5 A It's worth-- I understand it's worth 7-,
6 \$800,000 now.

7 Q So you've lost value in the land during the
8 period of time that this property was tied up for this
9 project?

10 A Absolutely, yes.

11 Q Did the nonrefundable deposits even come close
12 to equating to the value of that land that you have
13 lost while it was tied up in this project?

14 A No.

15 Q Prior to the receipt of the mechanic's lien did
16 you ever hear about a gentleman by the name of Mark
17 Steppan?

18 A No, absolutely not.

19 Q Anybody ever tell you that Mark Steppan and/or
20 Fisher-Friedman Associates was an architect doing work
21 on this project?

22 A Absolutely not. My hand to God. I'm sorry.

23 Q Let me direct your attention to Exhibit 129.
24 I'll get it for you. 129. Are you there?

1 Did you receive that e-mail from-- or that
2 communication from Mr. Steppan?

3 A I don't remember how I received it, but I did
4 receive it, yes.

5 Q Okay. And was that a request by Mr. Steppan
6 for purposes of securing an extension?

7 A Yes, it was a request and an explanation.

8 Q Did you accommodate Mr. Steppan?

9 A I did.

10 Q At any time did you ever refuse to accommodate
11 anyone, whether it be the architect or the developer,
12 in a request for an extension?

13 A No. No. Well, I did after two extensions, but
14 during this time phase, no.

15 THE COURT: But did you hear the testimony earlier
16 today of Mr. Friedman where Mr. Friedman said that he
17 paid or that-- I believe it was that he paid for the
18 extension and did the extension because you didn't want
19 to?

20 THE WITNESS: Well, this is the extension we're
21 talking about.

22 THE COURT: Right.

23 THE WITNESS: And, honestly, Your Honor, I don't
24 remember whether I refused to pay for number two or he

1 volunteered to pay for one. I believe he paid for one,
2 so there was no reason for me not to cooperate with
3 him.

4 THE COURT: Right. He paid for it, so you agreed?

5 THE WITNESS: Certainly.

6 THE COURT: But then after were there any other
7 requests-- Hold on a second. Let me finish my
8 question, Doctor.

9 After that extension where Mr. Friedman put up the
10 \$2,300 or so for the extension, were there any other
11 extensions that you recall that were sought that you
12 didn't agree to, that you just said, No, I don't want
13 to do this anymore?

14 THE WITNESS: I said-- yes, I did say that. In
15 talking to Sam-- I mean to Dick and to a number of
16 people, they said, "Well, why don't you go ahead? What
17 harm will it cause?"

18 The biggest problem I had, Your Honor, was in order
19 to get an extension, the people that you deal with with
20 the city, the mayor, the people in the planning
21 department, they're looking to you to know what's going
22 on. And when I'm asking them for an extension, they're
23 saying to me, "John, is this real?"

24 And, you know, to ad lib, my dear friend Pete

1 Stremmel who had a similar project with five acres to
2 build a highrise condominium said to me one day when we
3 had coffee, he said, "John, your deal was dead on
4 arrival. Mine is in resuscitation." And he had about
5 28, 30 stories.

6 So I couldn't go with an open heart and ask these
7 people down at the city to extend it when they were
8 sticking their neck out. And I-- it's just not my
9 style.

10 BY MR. PEREOS:

11 Q And that's your explanation concerning why at
12 one point in time you said no more for the extensions?

13 A Yes. I didn't want to humiliate myself and--
14 humiliate myself in front of my friends at the city and
15 people in the city and-- It was a dead horse.

16 Q Well, what is your educational background?

17 A My educational background?

18 Q Yes.

19 A Well, it will take about five minutes.

20 THE COURT: Go ahead.

21 THE WITNESS: Both my parents came from Europe.
22 They immigrated here, settled in Chicago shortly after
23 the first world war. I was born in 1926. This next
24 year, if I live, I'll be 88. My third year in junior

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1 high school I went to a technical high school. The war
2 was in 1943, full blast.

3 My dad was working as a carpenter in a large naval
4 ship building plant, fell two and a half stories, broke
5 both his legs. It was a tough time. I quit school.
6 And he got well. And--

7 THE COURT: Take a moment.

8 THE WITNESS: I went back to work. No. I couldn't
9 go back to school. I quit work. He went back to work.
10 I volunteered for the Navy in 1943 and went to Great
11 Lakes. I lived in Chicago to finish boot camp. I was
12 asked to join a special unit, the frogmen. They became
13 precursors to the Navy Seals.

14 THE COURT: Doctor, can you tell me--

15 THE WITNESS: I'm sorry. I'm fine.

16 THE COURT: No.

17 THE WITNESS: I was just very close to my dad.

18 THE COURT: I appreciate that. Can you just kind
19 of step away from your dad, because I understand how
20 important those relationships are. Mr. Pereos asked
21 you about your educational background.

22 THE WITNESS: It's coming right now.

23 THE COURT: Go for it. Thank you.

24 THE WITNESS: After two and a half years I got out

1 of the Navy with a medical honorable discharge, spent
2 six months in the hospital and then started my
3 education. Then I was a high school dropout. I went
4 to a refresher course for eight, nine months. I didn't
5 know a noun from a pronoun. And I started at the
6 University of Illinois as an engineer. I had a year of
7 engineering.

8 In the meantime, I got married and had a little
9 girl. I took an aptitude test at the end of one year
10 and-- a bunch of us did in the class of engineering,
11 and it was determined I had a strong background for
12 physics and also a strong background in biological
13 science. And I was told that I could become a good
14 doctor, that I had a natural inclination towards that.

15 I switched my curriculum, took two or three more
16 years of premed. I applied-- It was very difficult to
17 get into school. I had a choice to go to dental or
18 medical school. I went to dental school. I had a
19 daughter, as I mentioned, and my wife and I agreed that
20 as a dentist I would have more time in raising my
21 family.

22 I applied to dental school and was accepted. The
23 third year of my dental school changed my life. The
24 plastic surgeon at the University of Illinois,

1 Dr. Sarnett, was involved in a major project doing
2 artificial clefts in macaque rhesus monkeys to see what
3 the effects would be on the symmetry of the middle
4 third of the face. I obtained a job-- I needed the
5 extra money. --to do the cephalometric studies in scar
6 tissue dissection. I became interested in cleft
7 palate. But as a dentist, you can't do very much.

8 Subsequently, I was high in my class, third or
9 fourth in my class. I applied to medical school. I
10 was accepted to George Washington Medical School in
11 Washington, D.C. I was able to get a patronage job at
12 the United States Senate with Senator Paul Douglas
13 where I worked for four years on the senate police
14 force.

15 My third and fourth year I got a scholarship and
16 had another boy and a girl. So by this time I had--
17 when I graduated medical school I had two girls and a
18 boy.

19 I applied for my internship and then my general
20 surgery training. I went to the Mayo Clinic and then
21 back to a program in San Francisco, a combination of UC
22 and Stanford program, and finished my general surgery
23 there and applied for my plastic training for cleft
24 palate work. This is the field they had me in.

1 And the two best programs in the country then were
2 Duke University and the University of Texas. They had
3 it all over Mayo and Harvard and all that. They had a
4 massive load of patients.

5 I chose University of Texas because of two or three
6 reasons. One is that they have a strong reconstructive
7 program, the way they do burns and major head and neck
8 cancer and major reconstruction and trauma. At that
9 time cosmetic surgery was still in the closet.

10 In my senior year I was asked to think about taking
11 a professorship at the University of Iowa. The strong
12 point of this university was that they put out many of
13 their graduates into university centers as chiefs of
14 plastic surgery. And this is what they like to do, to
15 get their-- It's academia. They get their name out.
16 I agreed to and got excited. By this time I wanted to
17 stay in academic medicine, academia.

18 Six months before this program I was operating on a
19 patient and got stuck by a needle, got a severe case of
20 hepatitis. The patient died. And I lost 40 pounds.
21 And I kind of reevaluated my life. Iowa is awful cold.
22 And it was a tough program. And I decided I would come
23 into private practice.

24 THE COURT: And so after-- If we could just put an

1 end to the education portion of your background. Was
2 it at the University of Iowa-- Is that in Ames, Iowa?

3 THE WITNESS: Sir, I'm sorry?

4 THE COURT: Des Moines or Ames, Iowa?

5 THE WITNESS: I missed your question.

6 THE COURT: Where in Iowa is that?

7 THE WITNESS: Iowa is-- You mean the medical
8 school?

9 THE COURT: Yeah.

10 THE WITNESS: Don't ask me these hard questions.

11 THE COURT: Okay. At the end of your-- Stop.
12 Don't answer my question.

13 At the end of your professorship at the University
14 of Iowa, then you said that you had decided that you
15 didn't like being there because it's cold,
16 understandably, and you were going to go into private
17 practice.

18 THE WITNESS: I was going too fast.

19 THE COURT: That's okay. Hold on.

20 THE WITNESS: I was at Texas.

21 THE COURT: I apologize. Texas.

22 I think that this would be a good time to take a
23 break for the day, because it sounds to me like I've
24 got a good understanding of at least your educational

1 background which is the last question that Mr. Pereos
2 asked. And so what we'll do today is take a break
3 right now. And then we'll come back tomorrow at 8:30
4 and then we'll begin at that point. And then
5 Mr. Pereos will still have you on cross-examination.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: And so we will be in recess until
8 8:30 a.m. tomorrow morning. I will remind counsel that
9 we'll break a little bit early for lunch tomorrow
10 because I do have a preexisting appointment that I have
11 to go to.

12 Is it anticipated still that we're on some kind of
13 track? I know, Mr. Hoy, you had suggested that
14 Mr. Steppan would begin his testimony today, but
15 obviously we have not gotten there.

16 MR. HOY: Yes. And I changed my schedule a little
17 bit. I believe I've got about no more than two hours
18 with Mr. Steppan and then I'll be in a position to
19 close. I don't know what Mr. Pereos's plans are for
20 this witness. I've heard that Karen Dennison is
21 waiting is the wings to testify tomorrow afternoon
22 sometime.

23 THE COURT: And I saw in the pretrial motion
24 practice, and by that I mean the trial statements, that

1 there were a lot more witnesses noticed than it sounds
2 like are anticipated to be testifying.

3 I will let the parties know, as I stated at the
4 beginning of the trial, that Friday is the judicial
5 retreat. There was some question whether or not that
6 was going to occur. It is going to occur. And so I do
7 need to go to that Friday. I don't know if there will
8 be any time Friday afternoon that we can come back.

9 And then, as I stated, Monday I'm not available.
10 Tuesday I begin a jury trial on a criminal matter. So
11 if we need to continue, it will on Monday,
12 December 23rd, which I'm sure is not super palatable to
13 anyone, but that is the next available court time that
14 I have is the 23rd of December. And then if we have to
15 go, we'll organize the Court's schedule with the staff.

16 My court clerk just gave me a shocked look, but I
17 was just trying to anticipate what it is we will do if
18 we're not finished by Thursday. And I'm just letting
19 the parties know that the next available day that I
20 have with some staff is going to be December 23rd. And
21 then we'll kind of go from there.

22 So I don't know what you're anticipated time is,
23 Mr. Pereos, but hopefully we can get it done this week.
24 And, if not, I'll give you the next available time that

1 we have and we'll just keep going.

2 MR. PEREOS: I'm optimistic we should wrap up by
3 Thursday.

4 MR. HOY: Your Honor, I do have one question for
5 the Court. And you may not know the answer to this
6 yet. You may put it off for a couple days. Sometimes
7 in a bench trial our district judges do not want an
8 oral closing argument but prefer to have it in writing;
9 sometimes judges want an oral argument but put time
10 limits on it. Do you have a preference or a rule for
11 this case?

12 THE COURT: I have no--

13 Dr. Iliescu, you can go over and sit down. You
14 don't need to stand up.

15 DR. ILIESCU: Thank you, sir.

16 THE COURT: And, Mr. Steppan, you can feel free to
17 sit down.

18 I don't really have a preference. As I stated
19 earlier, my last nonjury trial-- I've never done a
20 nonjury trial as a judge. I've done a few of them as
21 an attorney. And I always just did a closing argument.
22 And it gave the Court the opportunity to ask any
23 questions or to get clarification from the parties. I
24 don't look at it as a traditional closing argument in

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1 the sense that I just sit and listen to the argument.

2 There may be the opportunity for me to ask questions of
3 counsel during the closing arguments.

4 So if you prefer to do a closing argument, that's
5 fine. If you and Mr. Pereos get together and decide
6 that you would rather just submit a post-trial
7 statement for me to review, I'll be happy to review
8 that. I would leave it really more to the counsel.

9 I think that you guys know better what you think
10 will work in this case. And I'm open to either one.
11 So if you can come to an agreement, I'll follow
12 whatever your agreement is. If you can't, then that's,
13 I guess, why I sit up here. I'll make the decision for
14 you. But if you can come to some decision, I will go
15 along with whatever you both want to do. Thank you.

16 Court's in recess.

17 (The proceedings were adjourned at 4:52 p.m.)

18 --o0o--

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24

[illegible]

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 24th day of
20 February, 2014.

LORI URMSTON, CCR #51

LORI URMSTON, CCR #51

CASE NO. CV07-00341 **MARK STEPPAN VS. JOHN ILIESCU, ETAL**

PAGE 1

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

12/10/13
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
L. Urmston
(Reporter)

ONGOING BENCH TRIAL

8:30 a.m. – Court reconvened.

Plaintiff Mark Steppan was present with counsel, Michael Hoy, Esq.

Defendants Dr. John Iliescu and Sonia Iliescu were present with counsel, C. Nicholas Pereos, Esq.

Witness **Rodney Friedman** was reminded by the Court that he remained under oath; further direct examined.

Counsel Hoy played Exhibit 42, and witness Rodney Friedman narrated for the Court.

Witness further direct examined.

Counsel Hoy offered Exhibit 34; witness questioned briefly by counsel Pereos and then no objection; ordered ADMITTED into evidence.

Witness further direct examined; questioned by the Court; cross examined.

10:16 a.m. – Court stood in recess.

10:32 a.m. – Court reconvened.

Witness further cross examined.

Counsel Pereos offered Exhibit 25; no objection; ordered ADMITTED into evidence.

Witness further cross examined; re-direct examined; re-cross examined; and excused.

12:01 p.m. – Court stood in recess for lunch.

12:19 p.m. – Court reconvened.

Counsel Hoy called **Ronald David Snelgrove** who was sworn and direct examined; cross examined.

The deposition of David Snelgrove, dated November 18, 2008, was opened and published.

Discussion ensued between the Court and respective counsel regarding the deposition as it was not sealed. Counsel Hoy had no objection to the deposition being used, and he noted that the deposition is stamped “original” and he would make the Court aware if he thinks there are any discrepancies.

Witness further cross examined; re-direct examined; and excused.

2:59 p.m. – Court stood in recess.

3:19 p.m. – Court reconvened.

Counsel Hoy called Defendant **Dr. John Iliescu, Jr.**, who was sworn and direct examined; cross examined.

4:52 p.m. – Court stood in recess for the evening, to reconvene tomorrow December 11, 2013 at 8:30 a.m.

ORIGINAL

FILED

DEC 11 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

CODE: 2315
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
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RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR DEFENDANTS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST,

Defendants.

AND RELATED MATTERS.

Case No.: CV07-00341
(Consolidated w/ CV07-01021)

Trial Date: December 9, 2013
Dept. No.: 10

**LEGAL MEMORANDUM IN
SUPPORT OF DISMISSAL FOR
FAILURE TO COMPLY WITH
STATUTE FOR FORECLOSURE
PURSUANT TO NRCP 50**

The Nevada Supreme Court has repeatedly held that there must be strict compliance by the moving party with statutes creating a remedy particularly the foreclosure of mechanic's lien. In the case of Schofield v. Copeland Lumber, 101 Nev. 83, 692 P.2d 519 (1985), the Nevada Supreme Court reversed the decision for summary judgment in an action filed by a contractor to foreclose the mechanic's lien. In discussing the complaint of foreclosure, the Supreme Court observed:

"The mechanic's lien is a creature of statute, unknown at common law. Strict compliance with the statute creating the remedy is therefore required before a party is entitled to any benefits occasion by its existence.... If one pursues his statutory remedy by filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the statutory prerequisite giving rise to the cause of action." Id. at Page 84.

Although the Nevada Supreme Court has recognized that strict compliance with the language of the mechanic's lien is not required in connection with the content of the lien,

CV07-00341
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MARK STEPPAN VS. JOHN ILIESCU, JR. AND SONNIA ILIESCU
District Court
Washoe County
2315
12/11/2013 03:00 PM

1 the same does not hold true in connection with compliance with the statute to perfect and
2 foreclose the lien. The perfection of the lien is discussed in NRS 108.226 which indicates
3 that the lien is to be recorded within ninety (90) days after the date in which the last
4 services have been rendered by the contractor. The lien must then be served within thirty
5 (30) days after the recording. NRS 108.227. The lien is good for six (6) months. NRS
6 108.233. If one seeks to enforce the lien, one must comply with NRS 108.239. Which
7 provides in pertinent part:

8 NRS 108.239 Action to enforce notice of lien: Complaint;
9 required notices; joinder of persons holding or claiming notice
10 of lien; consolidation of actions; hearing and judgment;
11 preferential trial setting; binding arbitration; sale of property.

12 1. A notice of lien may be enforced by an action in any
13 court of competent jurisdiction that is located within the county
14 where the property upon which the work of improvement is
15 located, on setting out in the complaint the particulars of the
16 demand, with a description of the property to be charged with
17 the lien.

18 2. At the time of filing the complaint and issuing the
19 summons, the lien claimant shall:

20 (a) File a notice of pendency of the action in the manner
21 provided in NRS 14.010; and

22 (b) Cause a notice of foreclosure to be published at least
23 once a week for 3 successive weeks, in one newspaper
24 published in the county, and if there is no newspaper published
25 in the county, then in such mode as the court may determine,
26 notifying all persons holding or claiming a notice of lien
27 pursuant to the provisions of NRS 108.221 to 08.246,
28 inclusive, on the property to file with the clerk and serve on the
lien claimant and also on the defendant, if the defendant is
within the State or is represented by counsel, written
statements of the facts constituting their liens, together with the
dates and amounts thereof.

21 The statute clearly provides that the "lien claimant shall" file a notice of pendency of the
22 action in the manner provided in NRS 14.010. NRS 14.010 provides impertinent part:

23 **NRS 14.010 Notice of pendency of actions affecting real
24 property: Recording.**

25 1. In an action for the foreclosure of a mortgage upon real
26 property, or affecting the title or possession of real property,
27 the plaintiff, at the time of filing the complaint, and the
28 defendant, at the time of filing his or her answer, if affirmative
relief is claimed in the answer, shall record with the recorder of
the county in which the property, or some part thereof, is
situated, a notice of the pendency of the action, containing the
names of the parties, the object of the action and a description

1 of the property in that county affected thereby, and the
2 defendant shall also in the notice state the nature and extent
of the relief claimed in the answer.

3 There has been no evidence concerning the recording of a notice of pendency of the action
4 at the time of filing of the complaint as required by NRS 14.010.

5 NRS 108.239 goes on to provide that a notice is to be published at least once a
6 week for three (3) successive weeks in a newspaper published in the County so other lien
7 claimants may join the lawsuit. There has been no evidence introduced that there has
8 been a publication of a notice. The Plaintiff, in seeking to foreclose his mechanic's lien
9 in the subject real property, has not complied with the statute. In Fisher Bros., Inc. v.
10 Harrah Realty Co., 92 Nev. 65, 545 P.2d 203 (1976). Harrah's contracted with Stolte, Inc.
11 Stolte engaged Terry Construction. Terry Construction engaged Fisher Brothers. Harrah
12 paid Terry Construction. Terry Construction did not pay Fisher Brothers. In an action to
13 foreclose the lien to be distinguished from deficiencies in the lien language, the Court
14 observed:

15 "Strict compliance with the statutes creating the remedy is
16 therefore required before a party is entitled to any benefits
17 occasioned by its existence [citation omitted]. If one pursues
18 his statutory remedy by filing a complaint to perfect a
mechanic's lien, he necessarily implies full compliance with the
statutory prerequisites giving rise to the cause of action." Id.
at Page 67.

19 Accordingly, the obligations of the lien claimant in foreclosing the lien is to file a
20 complaint for foreclosure and record a notice of lis pendens and to publish. In Hardy
21 Companies, Inc. v. SNMARK, Inc., 126 Nev. Adv. Op. 49, 240 P.3d 1149 (2010), the court
22 noted:

23 "Failure to either fully or substantially comply with the
24 mechanic's lien statute will render a mechanic's lien invalid as
a matter of law." Id. at Page 155.

25 In the present case, the Plaintiff Steppan has failed to comply with NRS
26 108.239(2)(a) or NRS 108.239(2)(b). This lack of compliance with the statute is fatal to the
27 case to foreclose a mechanic's lien notwithstanding the merit of the case under the
28 contract.

1 There is additional case law from other jurisdictions that indicate that failure to
2 comply with a mechanic's lien statute's procedural provisions will preclude the lien's validity
3 and enforcement. In Rollar Construction and Demolition, Inc. v. Granite Rock Assoc's.
4 LLC, 891 A.2d 133, 135-36, (Conn.Ct.App. 2006), the court stated:

5 Although the mechanic's lien statute creates a statutory right in derogation
6 of the common law . . . its provisions should be liberally construed in order
7 to implement its remedial purpose of furnishing security for one who provides
8 services or materials. . . . Our interpretation, however, may not depart from
reasonable compliance with the specific terms of the statute under the guise
of a liberal construction.

9 (Citations omitted.) The court further noted:

10 General Statutes Sec. 49-34 includes five requirements to filing a valid
mechanic's lien. If any of those requirements fail, the lien is invalid.

11 Id. at FN 7. Similarly, in Westcon/Dillingham Microtunnelling v. Walsh Constr. Co. of
12 Illinois, 747 N.E.2d 410 (Ill.Ct.App. 2001), the court stated:

13 The purpose of the Act is to protect those who, in good faith, have furnished
14 materials and labor for the construction of buildings or public improvements.
Section 39 of this Act states that "[t]his act is and shall be liberally construed
15 as a remedial act." 770 ILCS 60/39 (West 1998). Nevertheless, because
the rights created are statutory and in derogation of common law, the
16 technical and procedural requirements necessary for a party to invoke the
protection of the Act must be strictly construed. . . . Once a plaintiff has
17 complied with the procedural requirements upon which a right to a lien is
based, the Act should be liberally construed to accomplish its remedial
purpose.

18 Id. at 416 (citations omitted). Further,

19 It is well established that the creation of a mechanic's lien is entirely
20 governed by the Act, and the rules of equity jurisprudence are irrelevant at
this stage.

21 Id. See also Crawford Supply Co. v. Schwartz, 919 N.E.2d 5, 12:

22 Because the rights under the Act are in derogation of the common law, the
23 steps necessary to invoke those rights must be strictly construed.

24 (Citing Westcon/Dillingham, *supra*.)

25 In National Lumber Co. v. Inman, 933 N.E.2d 675 (Mass.Ct.App. 2010), the court
26 noted that the purposes of the mechanic's lien statute "include the protection of the owners'
27 real estate," and that "the statute contains filing and notice requirements to protect the
28 owner and others with an interest in the property."

1 In In Re Trilogy Development Co., 468 B.R. 854 (W.D. Mo. 2011), the court noted
2 that while "mechanic's liens in Missouri are remedial in nature and should be liberally
3 construed for the benefit of the lien claimants," it further stated that "this liberal policy is not
4 open-ended and does not relieve a lien claimant of reasonable and substantial compliance
5 with statutory requirements." Id. at 862 (citations omitted).

6 Finally, in Southern Management Co. v. Kevin Willes Constr. Co., Inc., 856 A.2d
7 626, 637, (Md.Ct.App. 2004), the court held:

8 Mechanic's liens, as they exist in this State, are creatures of
9 statute, and, thus, to be entitled to a mechanic's lien against
10 property in Maryland, a claimant must satisfy the procedural
11 criteria set forth in the statute.

12 See also Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 179 A.2d. 683, 685
13 (Md.S.Ct. 1962)(stating that "a mechanic's lien is a claim created by statute and is
14 obtainable only if the requirements of the statute are complied with.")

15 A foreclosure of property under a mechanic's lien will result in the divestiture of the
16 property owner of its property. In this case, Iliescu has steadfastly taken the position that
17 they have never been a party to the AIA contract which the architect alleges defines the
18 amount of money that is due him. Notwithstanding, a review of Nevada position on
19 foreclosure of real property is instructive. It has always been the stated position of a
20 Nevada Supreme Court that there is to be strict compliance with the foreclosure laws
21 involving real property. In Leyva v. Nat'l Default Servicing Corp., et al., 255 P.3d 1275, 127
22 Nev.Adv.Op. 40 (2011), the Supreme Court observed that substantial compliance with the
23 foreclosure laws of NRS 107.086 is not satisfactory as there must be strict compliance.
24 Before the recent legislation in the last eight (8) years following the economic recession,
25 the foreclosure laws of Nevada were very similar to that of California. A foreclosure was
26 started by filing a notice of default. The statute dictated that which was to be contained in
27 the notice of default. The old NRS 107.080 which provision is still in effect today provides
28 that the notice of default must describe "the deficiency in performance of payment."
California's provision is similar. It too required a definition as to the nature of default.

1 Prior to the institution of the foreclosure laws that permit the use of a power of sale
2 in a deed of trust, the old court of equity would conduct foreclosures under mortgages.
3 With the institution of the concept of the power of sale, property can now be sold without
4 judicial oversight. Accordingly, it has been held that the power of sale under a deed of
5 trust is considered to be a harsh method of foreclosing the rights of the grantor and courts
6 are to scrutinize the sales with great care. Unless conducted with fairness, regularity and
7 scrupulous integrity, the sale is not to be sustained. System Inv. Corp. v. Union Bank, 98
8 Cal.Rptr. 735, 745, 21 Cal.App.3d 137 (1971). Similarly, a deficiency in the notice of
9 default that precedes the use of the power of sale in a deed of trust is grounds to set a
10 foreclosure aside. Statutes requiring a notice of default and election to sell pursuant to a
11 deed of trust are to state the breach of the obligation for which the mortgage and/or
12 transfer of trust is to set forth the nature of the breach must be strictly followed. Bisno v.
13 Sax, 175 Cal.App.2d 714, 346 P.2d 814 (Cal.App.2 Dist., 1959); Kleckner v. Bank of
14 America, 217 P.2d 28, 97 Cal.App.2d 30 (Cal.App. 2 Dist., 1950). Because sales under
15 a power of sale are liable to abuse, they are to be jealously watched by courts and they will
16 be set aside on proof of unfair conduct, particularly with respect to the notice of sale. Pugh
17 v. Richmond, 58 Tenn.App. 62, 425 S.W.2d 789 (Tenn. App., 1967).

18 The case before the court does not involve a foreclosure under a deed of trust that
19 mandates the notice of sale. However, the foregoing language is indicative of the court's
20 attitude requiring strict compliance with the statutory remedies that permit an owner to lose
21 his property by reason of a foreclosure. As our Supreme Court has observed in McCall v.
22 Carlson, 63 Nev. 390, 406, 127 P.2d 171 (1946), the legal maxim that equity abhors a
23 forfeiture requires no citation. Id. at Page 406.

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1 ***The undersigned affirms that the foregoing pleading does not contain a social***
2 ***security number.***

3 DATED this 11 day of December, 2013.

C. NICHOLAS PEREOS, LTD.

4 

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

--oOo--

MARK B. STEPPAN,

Case No. CV07-00341

Plaintiff,

Dept. No. 10

vs.

JOHN ILIESCU et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
TRIAL - DAY 3
Wednesday, December 11, 2013

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1 E X H I B I T S

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3	21	8/10/06 Letter agreement for	660
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RENO, NEVADA, WEDNESDAY, DECEMBER 11, 2013, 8:34 A.M.
2 -oOo-

4 THE COURT: Good morning. Please be seated.

5 This is CV07-00341, Mark Steppan versus John
6 -- or Dr. John Iliescu, Jr., and Mrs. Iliescu. The
7 parties are present. And when we broke last night,
8 Dr. Iliescu was on the stand.

9 So, Dr. Iliescu, if you could take the stand
10 again, please.

11 At the time that we broke last night,
12 Dr. Iliescu was on cross-examination with Mr. Pereos.

13 Dr. Iliescu, I will remind you that you are
14 still under oath.

15 Mr. Pereos, I believe the last issue that we
16 covered last night prior to breaking was the doctor's
17 educational background, and so you may continue with your
18 cross-examination from there.

19 MR. PEREOS: Thank you very much, Your Honor.

20 CROSS-EXAMINATION (RESUMED)

21 BY MR. PEREOS:

22 Q Staying with some of your -- the background
23 information, Dr. Iliescu, could you tell the Court
24 whether or not you had any teaching positions?

25 A A teaching position?

1 Q. Yes.

2 A. Well, as I stated, when I finished my -- when I was at
3 the University of Texas completing my program, I had an
4 opportunity to go to Iowa University Medical Center as a
5 potential -- as a full professor.

6 About six months before that, I was injected with a
7 needle while in surgery by a patient that subsequently died
8 from fulminanting hepatitis.

9 I contracted hepatitis, lost 40 pounds; a difficult
10 time; recovered, obviously, and decided I wouldn't go to Iowa.

11 Iowa had a very, very weak plastic surgery center; in
12 fact, even to this day. Most of the time the specialties --
13 orthopedics, plastic surgery, neurosurgery -- are all kind of
14 separate departments. In Iowa it's still under general
15 surgery; even as of this day, is my understanding.

16 And what they wanted of me was to go there and create
17 a department of plastic surgery, which would have been a real
18 political battle. I decided then that I would not do that,
19 that -- I really was on an ego trip and started looking around
20 for a little town or somewhere, because I was worried that --
21 you know, that -- I had been very ill and wanting to go
22 somewhere where I would have a peaceful life.

23 And a dear friend that was my next-door neighbor at
24 the Mayo Clinic, who was here in Reno, invited me to come up.

1 I had gone back to San Francisco, where I had a bunch of
2 friends and I, of course, trained there. And came up to Reno
3 and found out they had one plastic surgeon here, who at
4 5 o'clock stopped working, never took emergency calls, and did
5 about, oh, 20 percent of what plastic surgeons do.

6 I was surprised. I trained in a very large burn
7 center, a very large trauma center, a center that did major
8 reconstructive cancer surgery, major hand surgery, major
9 cranial and facial deformities for severe congenital anomalies.

10 And it looked like it was a perfect spot. I loved the
11 mountains. And I was all by myself then, not married. I had
12 gotten a divorce, which was a heartbreaker for me. I had three
13 children; ended up with five grandchildren and nine -- excuse
14 me -- eight grandchildren. That was a document I wanted to
15 bring. I don't remember all of this in detail.

16 THE COURT: Dr. Iliescu, if I can interrupt you at
17 this point. The focus of the question was whether or not you
18 had ever been a teacher.

19 Did you ever teach anywhere?

20 THE WITNESS: Yes. Here at the university, I had -- I
21 was on a staff, associate staff, as a professor to teach. I
22 always had students with me, which I enjoyed immensely, Your
23 Honor.

24 THE COURT: That was here at the University of Nevada

1 Medical Center?

2 THE WITNESS: University of Nevada. I received an
3 honorary degree from the university in that respect. And I was
4 involved with multiple -- if you want me to go into it,
5 multiple social things. I was, of course, a Mason and a
6 Shriner.

7 THE COURT: Well, hold on a second, Dr. Iliescu. It's
8 not appropriate for you to go into that. I'll let Mr. Pereos
9 ask you a follow-up question now, because as I stated the first
10 question he asked you was about teaching. So now if there's an
11 additional area that he would like to get into, I'll allow
12 Mr. Pereos to ask the next question.

13 Go ahead, Mr. Pereos.

14 MR. PEREOS: Thank you, Your Honor.

15 BY MR. PEREOS:

16 Q. Did you ever receive a grant from the American Cancer
17 Society?

18 A. Yes, I did.

19 Q. Okay. And was that in the area of surgery?

20 A. Area research on cancer, yes.

21 Q. What states were you licensed in as a doctor?

22 A. I was licensed in three states that I've been in,
23 Florida, Texas and, of course, Nevada, and California. And I
24 had taken national boards so I could be licensed in any state

1 in the United States by just applying for it. That general
2 test covers all the states.

3 Q. Are you an author of any publications in your field of
4 practice?

5 A. Yes.

6 Q. How many publications? Approximate is good enough.

7 A. Two or three major publications and -- a book was
8 written on the cutting edge of surgery and eight or ten
9 pioneers here in this community, and the various specialties
10 were in this book. It's available. And I was in the book as a
11 pioneer of plastic surgery here in the area.

12 Q. Have several of your articles been published in
13 journals regarding plastic surgery?

14 A. Yes.

15 Q. At any time did you ever receive any type of notice
16 that the property that is the subject of this adjudication,
17 this litigation, was down-zoned or the zone was changing?

18 A. Never. The zoning is the same today as it was then.

19 Q. At any time did you ever authorize Mr. Sam Caniglia to
20 engage architects or engineers on your behalf?

21 A. No.

22 Q. Let's discuss the Pinecrest transaction. Okay? You
23 had mentioned it earlier in response to some examination by
24 Mr. Hoy.

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1 What happened by Pinecrest Construction Company? What
2 occurred?

3 A. In 19 -- in 2004 -- I retained Hale Lane in 2005. In
4 2004, I had, as I mentioned before, a tenant that leased a
5 piece of property from me and subsequently undertook some
6 repairs of it.

7 I received a notice and lien -- a pre-lien notice from
8 Pinecrest that they were going to be doing some work on this --
9 in this building.

10 And at that time I -- not being too familiar with the
11 process, I called Pinecrest and told them, "Please collect from
12 the tenant." He was only a tenant and I didn't know his
13 background. And in addition posted notices in -- on the door
14 that I was not responsible for any work that was done there.

15 THE COURT: Is Pinecrest an office building or is it
16 an apartment? What kind of place is it?

17 THE WITNESS: Pinecrest, Your Honor, is a construction
18 company.

19 THE COURT: Oh, okay. Thank you.

20 THE WITNESS: They were doing this work.

21 BY MR. PEREOS:

22 Q. So the notice actually came from Pinecrest?

23 A. Yes.

24 Q. They were the claimants, the ones making the claim?

1 A. Yes. They were the ones in the pre-lien that said
2 they were going to do this work and I should have a heads-up on
3 it.

4 Q. Who represented Pinecrest?

5 A. I found out six months later that Jerry Snyder, from
6 Hale Lane, represented them. I did not know that until we went
7 to the hearing as regarding the lien that was placed on it,
8 because he represented me in a lien.

9 Q. Okay. Now, let's stay with Pinecrest.

10 A. I'm sorry.

11 Q. Okay?

12 A. Jerry Snyder.

13 Q. Jerry Snyder represented Pinecrest?

14 A. That's correct.

15 Q. All right. Now, he was representing a lien claimant
16 against you?

17 A. That is correct.

18 Q. Okay. All right. Now, eventually did you have to pay
19 money on that lien claim?

20 A. Yes. We retained Steve Mollath. Judge Adams rightly
21 ruled that I did not file a notice of non-responsibility with
22 the County; that from the time I got the pre-lien notice I had
23 72 hours to do that; I knew who the architect was, I -- excuse
24 me. I knew who the contractor was and I had 72 hours at which

1 time my responsibility was to go down to the county, file a
2 notify of non-responsibility.

3 I was not aware of that. I posted everything else.
4 It was brought out I should have done that and ended up paying,
5 between the attorney fee and Pinecrest, approximately \$30,000.

6 Q. All right. Now, when you -- did you eventually engage
7 Karen Dennison to work with you with regard to Addendum No. 3?

8 A. I did.

9 Q. Karen Dennison is affiliated with what law firm?

10 A. Hale Lane.

11 Q. Okay. During your engagement with Karen Dennison when
12 she was working with you with Addendum No. 3, did you discuss
13 with her the Pinecrest matter?

14 A. Yes.

15 Q. Did you discuss with her your anxieties regarding the
16 Pinecrest matter?

17 A. Yes. I -- if I may elaborate?

18 Q. Go ahead.

19 A. Personally, you know, I --

20 THE COURT: Dr. Iliescu, do me a favor first, before
21 you elaborate. You just keep saying "Pinecrest." Was it
22 Pinecrest Construction?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Pinecrest Plumbing? I don't know --

1 THE WITNESS: No, no. Pinecrest is an overall
2 construction company, to my knowledge, and they didn't
3 specifically pick out plumbing or electrical. They were the
4 construction company that was going to do this work.

5 THE COURT: And what was the piece of property or the
6 building that you owned where Pinecrest was going to work?

7 THE WITNESS: Right across the street, on Arlington.
8 Do you know where the Imperial Lounge is at Second and
9 Arlington?

10 THE COURT: Yes.

11 THE WITNESS: That was the exact building.

12 THE COURT: Okay. I just want to make sure -- and I
13 think it might be in my notes from yesterday and I didn't
14 review them again -- but you had a tenant. And what was the
15 address where the tenant was?

16 THE WITNESS: That was the address, in that building.
17 And his name was Mike Mannion. He wanted to put a club in
18 there and he never completed that.

19 He did do -- Pinecrest did do the demolition and did
20 do some work in there, sir, Your Honor.

21 THE COURT: So you own the building, Doctor; Pinecrest
22 came in and you were letting Pinecrest know you weren't going
23 to pay for it. But if I understand correctly, you didn't
24 follow the process and, therefore, eventually you were

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1 responsible for the improvements that Pinecrest did on your
2 piece of property?

3 THE WITNESS: Exactly, Your Honor.

4 THE COURT: Thank you.

5 Go ahead, Mr. Pereos, I just wanted to make sure I got
6 that all correct.

7 MR. PEREOS: Sure.

8 BY MR. PEREOS:

9 Q. Now, the events -- your meeting with Ms. Dennison was
10 in the last quarter of 2005, was it not?

11 A. Yes.

12 Q. Was that about the time that you were experiencing the
13 situation with regard to Pinecrest?

14 A. Yes. Pinecrest, of course, was before that -- I went
15 to them. Before I engaged them, I already had that experience
16 with Pinecrest.

17 Q. Do you remember how much time before you talked to
18 Karen Dennison that you had to pay the Pinecrest lien?

19 A. The Pinecrest situation occurred in maybe March of
20 2004, April, give or take a month or two; I'm not sure. I
21 engaged Karen Dennison in the following year, in October or
22 thereabouts.

23 Q. Of 2005?

24 A. Five, yes, sir.

1 Q. All right. So you had a conversation with Karen
2 Dennison regarding the Pinecrest transaction?

3 A. Yes, I did.

4 Q. Okay. And you explained to her your anxiety?

5 A. I told her -- I did not mention Pinecrest by name.

6 Q. Okay.

7 A. I told her that I had had a bad experience and then
8 I -- I knew that I was not very legally savvy and that this was
9 a big project I was coming to her on, 28 stories, and I wanted
10 her firm to represent me from a legal point of view and
11 fine-tune this contract and give me the protection I needed.

12 I was 80 years old and I was starting with enough
13 funds to retain two attorney firms, and I came to her with
14 that. With the understanding from Julie Arc that she was
15 probably the best firm to come to. I had never been to that
16 firm before that.

17 Q. Now, during your interaction with Karen Dennison, were
18 you ever advised that Mark Steppan was an architect working on
19 this project?

20 A. No.

21 Q. Did you ever record a notice of non-responsibility?

22 A. I did not. I had sent them over for them to take care
23 of those bases.

24 Q. For "them" being who?

1 A. Hale Lane, and Karen Dennison was the only contact I
2 had with anybody in that particular moment.

3 Q. So you never signed a notice of non-responsibility or
4 ever directed anybody to record a notice of non-responsibility?

5 A. No.

6 Q. And the reason for that?

7 A. The reason for that was, I -- they assured me that
8 they would handle all of the legal things, in the sense that I
9 came to them with that idea in mind: Please take care of
10 whatever subdivision has to happen, whatever legal fees have to
11 happen in this matter, and having, of course, stressed that
12 situation about what had happened to me and my concern.

13 Q. Okay. Now, we heard testimony that you received
14 somewhat in excess of one million dollars as deposits with
15 regard to this particular property.

16 Do you remember that testimony?

17 A. That's correct.

18 Q. Okay. Can you tell us what happened to that million
19 dollars?

20 A. Well, approximately \$365,000 of that was -- so that
21 went to the IRS, and I had 39 percent bracket. Without any
22 exaggeration, over 400, \$450,000 in the last seven years have
23 gone to attorney fees. We have records of that.

24 Of course, there was Dick Johnson's commission. I

1 think for the most part it's pretty close, an even balance.

2 MR. PEREOS: I have no further questions.

3 THE COURT: Hold on one second.

4 Redirect, Mr. Hoy?

5 MR. HOY: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. HOY:

8 Q. Dr. Iliescu, yesterday on cross-examination, you
9 testified that you never refused to file extensions of the
10 development entitlements on your property there between Island
11 and Court Street. And then you explained that you had, in
12 fact, refused to file extensions. And I would like to follow
13 up on that a little bit.

14 A. Repeat that a little bit, Mr. Hoy. I'm not up to the
15 timetable you're at. What are we talking about, specifically?

16 Q. Sure. Let me give you some more background.

17 A. Okay. Thank you.

18 Q. We've had evidence in this trial that on November 15,
19 2006, the Reno City Council approved a tentative map and
20 special use permit for development of the Wingfield Towers
21 project on your land between Island Avenue and Court Street.

22 A. That's correct.

23 Q. And the original conditions of that approval were that
24 a final map would have to be filed with the City within two

1 years of that approval. With me?

2 A. I didn't go into that, but I will assume that's
3 correct. I mean, it's -- I didn't read those documents, but --

4 Q. And then in 2008, Wood Rodgers prepared an application
5 to the City of Reno to extend that filing deadline by another
6 two years?

7 A. Yes, that's correct.

8 Q. And then in 2010, October, November of 2010, Rodney
9 Friedman paid for and applied for a further extension of that
10 filing deadline. Do you remember all of that?

11 A. Yes, I remember that. I don't know which one
12 Mr. Friedman paid for, whether he paid for the initial one or
13 he paid for the second one; I have no idea.

14 Q. Okay. And then on cross-examination, you were asked
15 by Mr. Pereos whether you ever refused a further extension of
16 that filing deadline for the final map. And initially you
17 said, "No, I never refused to seek a further extension," and
18 then you went back on that and you said, yeah, you had refused.

19 Do you remember that testimony?

20 A. Mr. Hoy, I don't really remember. I can tell you my
21 frame of mind, but I don't really remember. When I have -- if
22 you're asking me whether I have gone along with their plan, no.
23 Because, if you remember, I live in this community.

24 THE COURT: Dr. Pereos, he's not -- or, excuse me,

1 Dr. Iliescu, not Dr. Pereos. I just --

2 THE WITNESS: No.

3 THE COURT: No offense to either party.

4 Dr. Iliescu, he's not asking you about your frame of
5 mind at the time --

6 THE WITNESS: Okay.

7 THE COURT: -- those things occurred, he's asking you
8 if you recall testifying that way yesterday.

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 Next question.

12 BY MR. HOY:

13 Q. All right. So you remember yesterday that you
14 testified that you refused to seek a third extension of the
15 filing deadline for the final map. Do you remember that much?

16 A. Yes, of course.

17 Q. Okay. And you remember your reason for refusing, you
18 said, was that you have friends in the City of Reno and that
19 you thought that your credibility would be hampered if you
20 sought a third extension for the project. Do you remember that
21 testimony?

22 A. Yes. I don't think they -- in talking to the mayor
23 and everybody, they wouldn't have done it; wouldn't have done
24 it. They had put themselves on the line.

1 Q. So you --

2 A. It didn't make sense for them.

3 Q. Are you telling us that you actually talked to the
4 mayor of the city of Reno about a third extension?

5 A. Yes. I talked -- I talked to them on the second
6 extension and they didn't want to do it. They were hesitant to
7 do it then, but they wanted the project to occur.

8 And the recession was on and, of course, they have to
9 account for these thing. That's a big project.

10 Q. Were you at the city council meeting when the city
11 council approved the second extension of the filing deadline?

12 A. Yes. When that city council approved it, yes, I was
13 there.

14 Q. Okay. And you remember, then, that Richard Johnson
15 stood up on your behalf and addressed the city council at that
16 hearing. Do you remember that?

17 A. Remember what? I'm sorry.

18 Q. Do you remember Richard Johnson?

19 A. Dick Johnson?

20 Q. Dick Johnson.

21 A. Yes.

22 Q. You know he was at that hearing --

23 A. Yes. I don't know that he was at that hearing, but I
24 assume he was, it was a logical time. Do I specifically know,

1 no, but I believe he was; I just don't know for sure.

2 Q. Do you remember that Dick Johnson stood up in front of
3 the city council and addressed the city council at that
4 hearing?

5 A. To my recollection, no.

6 Q. Do you remember the mayor at that hearing asking how
7 come the architect hadn't been paid?

8 A. Yes, I do remember that. No, not the architects. I
9 remember the mayor stating that a number of people hadn't been
10 paid.

11 And, yes, I recall now that Dick Johnson said, when we
12 get that second extension that we would pay all the rest of the
13 people involved, which we didn't know about. Dick was upset
14 about that with Sam.

15 We didn't know about all the people that had been
16 filed, with the surveyors and all that, that were owed money.
17 They never received a pre-lien. We didn't know anything about
18 that.

19 At that point the people involved said to somebody in
20 the City, well, if you're going to give them an extension and
21 this happens, make sure we get paid, because they owe us money,
22 too.

23 We had never been pre-liened, we knew none of that
24 work from any of those people that was done.

1 Q. But Dick Johnson stood up -- when the major -- when
2 the mayor asked the question, Dick Johnson stood up and said,
3 "If you grant the second extension, everybody will be paid"?

4 A. I think that's true now that you've refreshed my
5 memory.

6 THE COURT: And were you present when that happened or
7 did Mr. Johnson tell you that after the meeting?

8 THE WITNESS: I'm sorry, Your Honor. I didn't hear
9 your question. Was I present?

10 THE COURT: Dr. Iliescu, were you present during that
11 meeting when Mr. Johnson made those representations and had the
12 conversation with Mayor Cashell; or did Mr. Johnson, Dick
13 Johnson, come and tell you that after the meeting, that this
14 happened at the meeting and that Mayor Cashell made these
15 comments and Mr. Johnson said, "We're going to get everybody
16 paid if we get this continuance"? Which one.

17 THE WITNESS: Your Honor, I was at the meeting; but I
18 knew ahead of time, when Dave Snelgrove or whoever was
19 preparing those documents, that those people that had been
20 involved had not been paid. That upset Dick Johnson.

21 We learned about it and he went to Sam Caniglia -- in
22 fact, as I understand it, there is a letter somewhere -- and
23 asked Sam, "Why wasn't that done?" He was upset. And the
24 letter, specifically, from Sam said that he was disappointed,

1 wondered why Dick was so upset with him. And Dick explained to
2 him, "Why haven't you paid these people?"

3 THE COURT: Just so I'm crystal clear about this,
4 then, you physically were present at the city council meeting
5 where the fact that people had not been paid, including the
6 architect, was discussed by the mayor and when representations
7 were made that, if we continue this, if we get this extension,
8 those people are going to get paid?

9 THE WITNESS: That's correct, your Honor.

10 THE COURT: Okay. Thank you.

11 Next question.

12 BY MR. HOY:

13 Q. And Dick Johnson stood up on your behalf at that
14 meeting, didn't he?

15 A. You know, I didn't remember in detail, but I suspect
16 that's probably true. If he did, I wouldn't be a bit
17 surprised.

18 Q. Well, I mean, Dick Johnson didn't have any interest in
19 your property himself; he was there as your agent, your broker?

20 A. Well, no, he was interested in the project happening,
21 and if it did, he was interested financially and also as, to
22 get the project done, yes.

23 Q. Dick Johnson had a financial interest in getting the
24 project done?

1 A. Well, he got interest in -- you know, he got six
2 percent.

3 Q. Okay. And when Dick Johnson stood up and told the
4 city council that people would be paid, the people who had
5 worked on the entitlements would be paid, did you stand up and
6 object to that?

7 A. No, I never said a word at that meeting.

8 THE COURT: Mr. Hoy, this is the second request for
9 the extension --

10 MR. HOY: Yes.

11 THE COURT: -- that turned out to be the one-year
12 extension?

13 MR. HOY: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. HOY:

16 Q. You testified this morning that the zoning has never
17 changed on your property between Island and Court Street; is
18 that --

19 A. That is correct.

20 Q. And how do you know that?

21 A. Well, in order to -- that whole zone is zoned
22 commercial redevelopment. If they change the zoning they have
23 to come and tell you. There has to be a hearing. That zone
24 was never changed. In fact, I happened to run across

1 Mr. Clouse and nothing has changed there.

2 In order to get this project going, that zone was
3 basically there for that potential. The only thing they had to
4 do was get a special use permit and approval from all the
5 agencies that they would allow such a thing in that area. But
6 the basic zoning is there for that project and that type of
7 project.

8 Could you put another high-rise there tomorrow with
9 that zoning? Absolutely. I asked Mr. Clouse that
10 specifically, as recent as -- I ran across him, I've known
11 Mr. Clouse for 25 years.

12 Q. And by "Mr. Clouse," do you mean Vern Kloos?

13 A. Vernon Kloos, yes. And he's very active in the --
14 down in the -- senility -- in the community development. It
15 will come eventually.

16 Q. So it's Vern Kloos, K-l-o-o-s?

17 A. Thank you.

18 Q. Do you know that's how you spell his name?

19 A. I'm -- yes, fine.

20 Q. And you said you came across him. Did you come across
21 Mr. Kloos to ask him specifically that question so that you
22 could testify about that in this trial?

23 A. Absolutely not. I own the property, it's my life, I
24 need to know what's happening on it.

1 Q. All right. So your testimony -- your understanding is
2 that the zoning hasn't changed and that you can put another
3 high-rise building on the same property under the current
4 zoning; is that accurate?

5 A. You could put a high-rise structure where they would
6 ever allow; what they did there is very questionable.

7 Q. Okay. So as part of the approvals back in November of
8 2006, there was a special use permit granted by the City of
9 Reno, right?

10 A. Yes. Which is -- happens with many projects, not just
11 this, anything. In that kind of zoning, if you want anything,
12 you have to get a special use permit. They review it, see how
13 much sense it makes, et cetera.

14 Q. Right. So zoning refers to the density of the project
15 that can be built on a particular parcel; is that accurate?

16 A. I don't know that, but the special use permit would
17 take that into account.

18 Q. Right. The special -- you need a special use permit
19 in the city of Reno to build a project with more than a hundred
20 residential condominium units, for example, right?

21 A. I don't know that. I've never tried to build a
22 hundred -- I've never tried to build anything.

23 Q. So are you familiar with the special use permit that
24 was granted by the City of Reno in November of 2006?

1 A. I am not.

2 Q. Okay. Do you know that you need a special use permit
3 for hillside development in the city of Reno?

4 A. I'm sorry, I didn't hear the question.

5 Q. Do you know whether or not you need a special use
6 permit for hillside development in the city of Reno?

7 A. Hillside?

8 Q. Hillside?

9 A. What is hillside?

10 Q. Where there is a certain slope to the property.

11 A. You know, I don't know any of those details.

12 Q. All right. So with the expiration of the 2006 special
13 use permit, do you know whether or not it would be automatic
14 that you could build a project with the same special use permit
15 conditions today?

16 A. I know only that the same situations exist today that
17 existed when this -- when Mr. Caniglia came here to our
18 property and Dick Johnson represented him.

19 Nothing from the basic zoning has changed. That basic
20 zoning, you could go next door, you could go anywhere with that
21 zoning, and I suppose if you presented the right project and it
22 necessitated a special use permit, it could happen, yes.

23 Q. So let me see if I can summarize your understanding.
24 You understand that the zoning has not changed on your land,

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1 but you also understand that the same project that was approved
2 in 2006 would not be approved today?

3 A. I don't know that. I don't know what they would do
4 with it. It takes the City, it takes a whole team of people to
5 decide whether that's a feasible project. I don't know. I
6 wasn't involved with that to begin with. I have no idea.
7 That's not my expertise. That's something I have never done.

8 Q. Now, you testified that your property there has lost
9 value since the land purchase agreement back in 2005; is that
10 true?

11 A. That's -- yes, that's true.

12 Q. And that's based on appraisal information you've
13 received?

14 A. Yes. Plus, you know, properties are valuable as to
15 their usage. If you take that piece of property and put a
16 little potato patch on it, it wouldn't be worth more than what
17 that value of that property is.

18 But I suppose -- the way I looked at that, they wanted
19 to get a loan; they inflated the value of the property to
20 justify some of the sums of the money. I really am not too
21 sophisticated about that, I've never done any developmental
22 work. I saw these astronomical figures as to what it was
23 worth. I can tell you what I paid for it, but I can't give you
24 any more than that.

1 Q. What did you pay for it?

2 A. It took me probably 15, 20 years to bring that project
3 together. Of course, I had my home on there and it was a home,
4 not a empty lot.

5 Probably in the vicinity of at least a
6 million-and-a-half of hard money in different times. Of
7 course, money was much more -- it was difficult. I would
8 package one and then I bought the other and then the other one
9 came up.

10 Just for that little empty lot back in behind the Park
11 Towers, that was \$350,000. That would have bought quite a --
12 quite a nice home. It was just an empty lot, less than maybe
13 20,000 square feet.

14 Q. So your hard money in to purchase all of the land was
15 about a million?

16 A. About a million-and-a-half, Mr. Hoy. I don't have
17 those details, but certainly in that neighborhood.

18 THE COURT: To buy all four -- it's four lots total,
19 isn't it?

20 THE WITNESS: Yes, Your Honor. It's four lots.

21 THE COURT: All four was about a million-and-a-half?

22 THE WITNESS: Yes. I bought the building first, Your
23 Honor, and then had an opportunity to buy the big Wingfield
24 House. That was about \$750,000, to my recollection. And then

1 I bought the other lot -- excuse me -- the other lot to the
2 west of it -- west of it, sir, and that was probably 350,
3 400,000.

4 So by the time I put it all together over a period of
5 time -- you know, that's money you have to -- you have to put
6 together. And some of it was on time payments, some was money
7 I borrowed from the bank and paid over -- it was all -- I had
8 none of that in cash, other than to secure notes and pay them
9 off.

10 BY MR. HOY:

11 Q. So when you talk about paying 100 -- I'm sorry, a
12 million-and-a-half dollars for the parcels between Island
13 Avenue and Court Street, does that include the little
14 building -- well, not little building, the building where you
15 had your medical practice?

16 A. Yes. My favorite building, absolutely.

17 Q. Okay.

18 A. And that cost me -- that was my best buy -- somewhere
19 in the neighborhood of a couple hundred thousand, and we became
20 very -- very friendly with the people involved. It's a cute
21 story, but I'm not going into that, of course.

22 Q. All right. And then in 2005, you sold all of those
23 parcels that you had acquired for a million-and-a-half, except
24 for your office building, to Sam Caniglia's company for

1 seven-and-a-half million?

2 A. That's correct.

3 Q. All right. So on paper that's a six-million-dollar
4 capital gain, I guess?

5 A. That's correct.

6 Q. All right. And then after the project was entitled,
7 the value of the property went up; is that right?

8 A. Well, I understand that. I understand that -- I never
9 saw any of the appraisals, but it was certainly my
10 understanding that the property values did go up and the whole
11 project went up. The project was -- gee, when I hear figures
12 of 100 million -- \$880 million on that piece of property, it
13 certainly went up from when I was involved with it.

14 Q. Okay. Do you have any understanding of what the value
15 of the property with the project entitlements was?

16 A. I don't know what it was, but certainly it was worth
17 more than what I paid for it.

18 Q. All right. And then after the project entitlements
19 lapsed, the value of the land went down, didn't it?

20 A. Yes.

21 Q. And so the lapse of those project entitlements had an
22 impact on the value of the land?

23 A. Yes.

24 Q. And you mentioned that you had an appraisal, an MAI --

1 and I can't remember what that stands for, I always think of it
2 as "made as instructed," but I know that's just a joke.

3 A. That's the way I know it, too.

4 Q. All right. So do you know what MAI stands for?

5 A. I'm embarrassed. I should know, I'm intelligent
6 enough to know that, but we kid so much with that phrase of
7 yours, that I never -- do I -- is that a -- is that a
8 discrediment on MAI appraisers, of course not. They're
9 professional people. They take into consideration potential
10 value of property, what's been sold in the area. So I have
11 great respect for them and I shouldn't kid about them, but we
12 kid about a lot of things in life.

13 Q. And who is the MAI? I think it's something like
14 Master Appraisal Institute or something like that. Does that
15 sound right?

16 A. Well, you're helping me. I don't know.

17 Q. All right. Who is the individual who wrote the most
18 recent appraisal report for your land between Island and Court
19 Street?

20 A. The current one?

21 Q. Yes.

22 A. Well, first of all, I'm terrible on names. And second
23 of all, I know who he is, because I met with him. But I can't
24 remember his name for the moment, so maybe you can help me and

1 I'll verify it.

2 Q. Is it Joe Campbell?

3 A. No. No, I have known Bill for years.

4 Q. Not Bill Kimmel, Joe Campbell.

5 A. Oh, Joe Campbell. Yes, it is Joe Campbell.

6 Q. And how many appraisal reports has Joe Campbell
7 provided at your request over the years?

8 A. Joe Campbell came to my attention through, I believe,
9 Dick Johnson. About a year ago, my accountant and I sat down
10 and he said: John, you and Sonnia don't spend a lot of money,
11 you have no debts, no fancy habits, and you have accumulated
12 considerable property. Now may be a good time to dispense of
13 it, because the law had changed, now, where you can get
14 \$5 million credit in your death, each one of you, you and your
15 wife, and it's \$10 million, and you probably have that kind of
16 property out there. It's a good time to disburse it to your
17 family.

18 And, of course, my family is my whole life, besides
19 medicine. Medicine was my whole life. And we've bought homes
20 for my kids and got them -- all those things you don't need to
21 hear about.

22 And we've then sat down with an attorney, an estate
23 attorney, and said: We would like to do this. We have a
24 chance to give them this property without any tax consequences

1 to them.

2 And went to -- and it will come to me in a minute,
3 because I spent considerable time with him deciding. And in
4 order to do that, we had to get an appraisal on the properties,
5 because how would the government know otherwise?

6 So I asked this attorney and I --

7 MR. PEREOS: Your Honor, we're getting into -- the
8 witness doesn't realize, but we're getting into communications
9 with --

10 THE WITNESS: And that's -- yes, we had had that
11 contact with Mr. Campbell prior to that --

12 THE COURT: Next question.

13 THE WITNESS: -- for those appraisals.

14 THE COURT: Thank you, Doctor.

15 Next question, Mr. Hoy.

16 BY MR. HOY:

17 Q. All right. So you hired Joe Campbell to appraise the
18 property between Island Avenue and Court Street?

19 A. Yes.

20 Q. Did you also hire Joe Campbell to appraise other land
21 owned by you?

22 A. Yes, as I just mentioned.

23 Q. How many other parcels owned by you did you ask Joe
24 Campbell to appraise?

1 A. Probably eight or ten.

2 Q. And did Joe Campbell give you appraisals that fit all
3 of that land value within the \$10 million exemption for estate
4 tax purposes?

5 A. He gave me the appraisal of each property, individual.
6 I didn't ever -- I never counted it up, because we never did
7 it.

8 Q. Okay. For the purposes of estate tax planning, your
9 motive was to have a lower valuation rather than a higher
10 valuation, right?

11 A. Well, that really -- you know, once you're dead, what
12 difference does it make? My idea was to make sure my family
13 was secure. I have, as I see mentioned, eight, nine, great
14 grandchildren.

15 Q. Right, okay. The purpose of an appraisal for estate
16 tax purposes is to minimize the amount of taxes paid on the
17 transfer of that land upon your death or upon making a gift?

18 A. That's correct.

19 Q. All right.

20 A. That's correct.

21 Q. So the goal here is to have lower appraisals rather
22 than higher appraisals?

23 A. I just wanted an honest appraisal. I don't know
24 whether lower, higher -- I don't look at that. The government

1 expects you to have an honest appraisal -- he has a right to
2 challenge it -- and that's what we wanted.

3 Q. Okay.

4 A. Just whatever that value of that property is in that
5 timetable.

6 Q. And you had mentioned that during the development of
7 the Wingfield Towers project, these developers went out and had
8 these appraisals that struck you as being very high. Do you
9 remember that?

10 A. I never saw those appraisals, Mr. Hoy, but they
11 certainly, from my information -- you know, I read all these
12 depositions -- excuse me. I attended all these depositions and
13 heard all these things, so it's a little cloudy in my mind.
14 Every deposition that was taken, I was there. So I was able to
15 accumulate who was saying what and what was happening. And if
16 that came up, I don't recall.

17 Q. All right. So Joe Campbell appraised your land
18 between Island Avenue and Court Street and that's the basis
19 upon which you told this Court yesterday that the current value
20 of the land is 700,000 to \$800,000?

21 A. That's correct, sir.

22 Q. Does that appraisal include the office building?

23 A. I don't believe it does.

24 Q. Okay. When you received the appraisal for your land

1 between Island Avenue and Court Street, was there a separate
2 appraisal for each legal parcel or was it the aggregate of four
3 parcels together?

4 A. It was aggregated, as Your Honor pointed out, of three
5 parcels and they were already now presented as such because
6 I -- I think that in this project, they were all brought
7 together. Do you understand? All -- even though they were
8 separate, they were all brought together for legal reasons.
9 That's my understanding.

10 Q. It's your understanding that there was a parcel map or
11 a boundary line adjustment or some other legal process to
12 combine what was previously four parcels identified in the land
13 purchase agreement so they're now one legal parcel?

14 A. I understand -- when we were involved as to my
15 building, in order for me to get that ten-foot setback from
16 everything, that they were in the process of bringing all the
17 rest of it together.

18 Did I look into it, do I know what happened? No. I
19 just was concerned about that building and that I had that ten
20 feet and they had what they wanted to do what they wanted to
21 do. Because I -- I was just interested in keeping that and
22 selling that parcel of land and to be sure I had adequate
23 parking for that building, which I love. I love that building.

24 Q. All right.

1 A. It's -- I shouldn't be attached to real estate, any
2 real estate, but I do love that building.

3 Q. Do you know whether you pay taxes on each of those
4 parcels separately today or whether you pay taxes, property
5 taxes, on all of those parcels put together?

6 A. I don't know. My office girl has been doing that for
7 me for 35 years. I have no idea how they pay my taxes. I
8 don't even know how they collect my rents, to be honest with
9 you. I don't want to know. I just want to know it's all
10 together and everything.

11 Q. All right. You've given testimony today about the
12 cost of the land originally, how the value of the land went up
13 to seven-and-a-half million, and that's exclusive of your
14 office building, in 2005, and how the property values have now
15 gone back to somewhere between 700 and \$800,000.

16 Has the Washoe County Assessor reappraised your land
17 during this time frame?

18 A. I'm sure they have. All the properties in town,
19 everywhere, have gone down. And I believe from what I heard --
20 and I may be wrong -- that the County pretty much appraised it
21 at the same price. I don't know. This is what -- what I'm
22 told it's worth. And it's disappointing, but that's what it
23 is.

24 Q. All right. Have you ever challenged an appraisal by

1 the Washoe County Assessor with respect to your property
2 between Island Avenue and Court Street?

3 A. Never.

4 Q. You gave some testimony about the mechanic's lien
5 recorded by Pinecrest Construction and Development. Did that
6 case actually go to a trial?

7 A. I'm sorry, I didn't hear the questioning.

8 Q. Sure. You gave testimony this morning and yesterday
9 about Pinecrest, Pinecrest Construction and Development. Do
10 you remember that?

11 A. Yes, of course.

12 Q. Okay. And you mentioned that you ultimately had to
13 pay Pinecrest Construction and Development.

14 A. I paid it what ultimately?

15 Q. You had to pay Pinecrest?

16 A. That's correct.

17 Q. Okay. Did you have to go to a trial with Pinecrest?

18 A. I went before Judge Brent Adams, yes.

19 Q. Was it actually a trial, as opposed to a settlement
20 conference?

21 A. Well, I don't know -- it wasn't a trial, it was a
22 settlement conference. I'm not legally sophisticated as to
23 know when you go before a judge whether it's a trial or what it
24 is.

1 We were before Judge Adams. Judge Adams ruled:
2 Dr. Iliescu, you should have known to file this within
3 72 hours. That was -- and that, therefore, it's so much.

4 And rightly so. That was the NRA -- he did the right
5 thing. And so I paid it. I was with Steve Mollath and when
6 I'm responsible for something, I'm responsible. I paid it.

7 Q. So in the case of the Pinecrest mechanic's lien -- and
8 that was a lien that encumbered what is now known as the
9 Imperial Lounge?

10 A. That was -- had nothing to do with the Imperial
11 Lounge, that was the location.

12 Q. Right.

13 A. The Imperial Lounge is a different tenant that came
14 in --

15 Q. Sure.

16 A. -- they've been wonderful to work with.

17 Q. But that lien was recorded against the real estate
18 that is now called the Imperial Lounge?

19 A. No, it was recorded against the work that was done in
20 that building.

21 Q. Okay. I'm only using "Imperial Lounge" for the
22 location.

23 A. Thank you, thank you. And that's good. That's good,
24 that's the way I do it.

1 Q. All right. So that parcel, that piece of land now
2 called the Imperial Lounge, there was a lien by Pinecrest on
3 that land, and rather than allow that lien to be foreclosed so
4 that the land would be taken away from you, you elected to pay
5 off the mechanic's lien?

6 A. Yes. If that was the consequence, yes, I paid it.

7 MR. HOY: Your Honor, the case number on that is
8 CV05-00842. The Court can certainly take judicial notice of
9 the case.

10 I looked at the docket, there is really -- there's no
11 judgment there. All it is, is a Complaint, Answer and it looks
12 like a settlement conference. So I don't know that there is
13 anything important in there.

14 THE COURT: I don't believe that there is. If I do go
15 look at those documents, I will advise the parties of that, but
16 I can't see any reason that I would go look at it. I think I
17 have an understanding of what occurred in that case based on
18 Dr. Iliescu's testimony. Go ahead.

19 MR. HOY: I have no more questions, Your Honor. Thank
20 you.

21 THE WITNESS: Thank you, Mr. Hoy.

22 THE COURT: One moment, Mr. Pereos.

23 Go ahead. Any recross based solely on the redirect
24 examination?

1 MR. PEREOS: Yes.

2 RECROSS EXAMINATION

3 BY MR. PEREOS:

4 Q. Mr. Iliescu, at that second extension when Dick
5 Johnson made the remark that the delinquent bills with regard
6 to this property were going to be paid, okay, if the second
7 extension were granted, did he do so from conferring with Sam
8 Caniglia?

9 A. I believe that's true, yes.

10 Q. So that's something that Sam Caniglia had mentioned to
11 Dick Johnson as an assurance?

12 A. Yes.

13 Q. Now, at that time were there still efforts to fund a
14 loan so that this project could go forward?

15 A. That was my understanding, yes.

16 Q. Okay. In fact, I believe -- Court's indulgence.

17 Was escrow later positioned, that is, put into
18 position, the escrow, with Mary Infantino, so that the deal
19 could close, so that a deal could close on the property?

20 Do you understand what I just asked you?

21 A. I didn't hear your question.

22 Q. Sure. After that second extension was escrow
23 postured -- in other words, were things put together with Mary
24 Infantino, at the escrow company, in anticipation that there

1 was going to be funding of a loan so that the deal could close?

2 A. I assumed -- I had no -- I had no part in the closure
3 of escrow. That was Mary Infantino, Dick. When I -- I may
4 have signed some documents to close escrow, but -- but, yes,
5 that was the understanding, that they would take care of that,
6 that the money that was owed out there --

7 Q. Well, do you remember seeing the stock or exchange
8 documents? Do you --

9 A. I don't remember that, but I'm familiar with those and
10 I didn't want that, yes, but -- I don't remember that detail,
11 but that's a good possibility, yes, something I would be
12 involved with.

13 Q. Let me show you what has been marked as Exhibit 100.
14 Go ahead and open it to 100.

15 MR. HOY: Your Honor, may I confer with counsel for a
16 moment?

17 THE COURT: Certainly.

18 (Discussion held between the attorneys.)

19 BY MR. PEREOS:

20 Q. Do you remember that document?

21 A. Yes.

22 Q. Okay. So do you remember those documents being
23 deposited with the escrow company --

24 A. Yes.

1 Q. -- so that they could be postured --

2 A. Yes.

3 Q. -- that is, put into a position so an escrow could
4 close?

5 A. Yes. And I did sign these documents in preparation, a
6 number of documents, to get this -- this thing closed.

7 MR. PEREOS: That's all I've got, Your Honor.

8 THE COURT: Thank you for your testimony, Dr. Iliescu.
9 You can just leave that binder there and you can step down and
10 go back to your seat next to Mr. Pereos.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Mr. Hoy, your next witness, please.

13 MR. HOY: Thank you. The plaintiff calls himself,
14 Mark B. Steppan.

15 THE COURT: Mr. Steppan, please step forward and be
16 sworn as a witness.

17 MARK B. STEPPAN,
18 called as a witness herein, being first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HOY:

22 Q. Good morning, Mr. Steppan. Can you please give your
23 full name and spell your last name for the record.

24 A. Mark Bainum Steppan, S-t-e-p-p-a-n.

1 Q. Can you spell your middle name for us, too, please?

2 A. B-a-i-n-u-m.

3 Q. Thank you. Mr. Steppan, do you have a profession?

4 A. I'm an architect.

5 Q. All right. Can you please give the court your
6 educational background?

7 A. I have a Bachelor of Arts degree with a major in
8 architecture from the University of California, Berkeley.

9 Q. When did you earn that degree?

10 A. I graduated in 1979.

11 Q. Can you please give us an overview of your work
12 history as an architect?

13 A. My work history in the profession started in 1978,
14 when I started working for Fisher-Friedman Associates while I
15 was still in school. When I graduated, I started full-time in
16 January of 1980 with Fisher-Friedman, and continued there until
17 the firm closed down in 2010.

18 And then I went to the firm that we -- that purchased
19 Fisher-Friedman, NBBJ. And then I moved to a different firm
20 called Atypic, A-t-y-p-i-c, in January of 2013.

21 History from the architect standpoint would be, once I
22 was initially licensed as an architect and that was 1987.
23 That's an overview.

24 Q. Okay. Are you currently a registered architect in any

1 jurisdiction?

2 A. I'm licensed in California, Nevada, Oregon, Texas and
3 New Jersey.

4 Q. What was the first state in which you were a
5 registered architect?

6 A. California.

7 Q. And when did that happen?

8 A. 1987.

9 Q. And when were you first licensed in the State of
10 Nevada?

11 A. 2004.

12 Q. And can you please explain to the Court what you had
13 to do between college and becoming licensed in order to earn
14 that registration?

15 A. Sure. At the time that I was in school and had
16 started to work, the requirements for obtaining an architect's
17 license in California were to complete a minimum of eight years
18 of combined schooling and professional service.

19 And prior to being able to take the licensing exams,
20 my college degree gave me, I believe, two-and-a-half years of
21 credit towards the eight, something on that order. So I needed
22 to work in the profession for the balance of time before I
23 could start to try to -- or before you could be licensed.
24 Whether that was when you started to take the exams or not, I

1 don't remember at this time.

2 The licensing exam situation then was set up with 12
3 exams, ten written-type exams, a design exam that lasted
4 12 hours, another site exam. And if you passed all of those
5 tests you were given an oral exam that occurred a minimum of
6 six months after the fact. If you passed that, then you were
7 granted your license in California.

8 Q. So you were licensed in California a number of years
9 before you were licensed in the State of Nevada?

10 A. Yes.

11 Q. What did you have to do to become licensed in the
12 State of Nevada?

13 A. I had to become a member of NCARB, but I don't
14 remember the exact year; approximately 2000, I believe. And by
15 being a member of NCARB -- which was previously explained in
16 other testimony is the National Council of Architectural
17 Registration Board -- it allows you the ability through
18 reciprocity to become licensed in other states.

19 Every state has a different process. Nevada had the
20 process of paying a registration fee and taking a written test
21 that could be taken out of state.

22 Q. Okay. So you had to actually take a Nevada-specific
23 test in order to become licensed here?

24 A. That is correct.

1 Q. And you did that sometime in 2004?

2 A. Correct.

3 Q. I would like to ask you a little bit about the
4 background of Fisher-Friedman Associates. What kind of work,
5 generally, did Fisher-Friedman Associates focus on?

6 A. The majority of the history of Fisher-Friedman's work
7 was multifamily housing. From before I started in 1980, from
8 when the firm started in 1964, up until the time that it was
9 sold in 2010, probably 90 percent of the work was multifamily
10 housing. And we were one of the foremost firms doing
11 developer-type housing in the early '70s, '80s and '90s.

12 THE COURT: By "multifamily housing" do you mean
13 apartments, condominiums, that kind of thing?

14 THE WITNESS: Correct.

15 THE COURT: Thank you.

16 BY MR. HOY:

17 Q. And when you say Fisher-Friedman Associates was one of
18 the foremost firms, what did you mean by that?

19 A. Based on the number of awards and the recognition
20 within the industry, our firm, Fisher-Friedman Associates, was
21 very well respected for the quality of architecture that was
22 produced for developer housing.

23 Developer housing, whether it was condos or
24 apartments, went through many variations and changes in time,

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1 where developers that we were working with were very interested
2 in making profit, which was good, but many of them did not care
3 dramatically about the end product, per se, as far as the
4 quality of the architecture, what they could be providing to
5 their tenants or buyers.

6 And we were able to work with them and show how we
7 could provide affordable but quality architecture. That
8 allowed us to get many projects and do a lot of quality and
9 award-winning work over the course of history.

10 Q. And have books been written about the work of
11 Fisher-Friedman Associates?

12 A. Yes. There were two monographs, numbered one and two,
13 that were produced.

14 Q. Is this the cover of one of the monographs?

15 A. Yes. That's the first one, "Community Space."

16 Q. And then there's a second book called, "In praise of
17 Pragmatism: Fisher-Friedman Associates"?

18 A. Correct. That's the most recent one.

19 Q. Is it common for architecture firms to have books
20 written about their work?

21 A. Many do; many do not.

22 Q. Can you please give us an overview of the jobs that
23 you did at Fisher-Friedman from the beginning, for you in 1980,
24 until the end of the firm?

1 A. I started doing all the office-boy-type work and
2 learning what was going on in the firm when I was there in '78,
3 starting to learn how to do drawings and do lettering and
4 working with projects; anything that was requested of me.

5 Filing of projects, what we called dead filing, that
6 allowed me to learn about the different projects. I looked at
7 the drawings of all the projects as I was filing them. I felt
8 it was a good way to learn about the firm as well as the
9 profession.

10 I then continued with doing the normal early tasks of
11 an architect in training, which would be a drawing what was
12 given to you as a drafter; moving up to job captain, which was
13 a more experienced role to help oversee projects, do detailing,
14 working out the construction documents.

15 I also did design on multiple -- on multiple projects
16 over the course of time. I have acted as a project architect,
17 running and overseeing projects; project manager, doing a very
18 similar role.

19 The firm size changed over the course of my tenure
20 there, from on the order of 18 people to 85 people and back to
21 about six when we closed down. So there were many different
22 tasks that I did over that time.

23 At some point in -- I believe in the '90s, I was made
24 a vice president of the firm. I believe it was around 2000, I

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1 was made an executive vice president. And a little bit later
2 became a director of the corporation, along with Rodney and his
3 wife, Shirley. I oversaw, basically, the operations of the
4 office for the last five or so years of its existence, working
5 with accounting and Rodney and everybody else in running the
6 offices effectively.

7 I did things like taking out the garbage and opening
8 the doors and answering phones and running projects, and
9 overseeing all of my projects and overseeing other people's
10 projects, assisting in marketing -- anything that was required,
11 I was the one that would tend to see to those things.

12 THE COURT: And just -- I don't know, Mr. Hoy, if you
13 are going to cover this, but I just want to make sure while I'm
14 thinking of it, Mr. Friedman testified on Tuesday, I believe it
15 was, that after Fisher-Friedman and Associates was sold to some
16 other entity, that this lawsuit, shall we say, for lack of a
17 better term, was retained out of that sale. Is that correct?

18 THE WITNESS: Correct.

19 THE COURT: That's your understanding, as well?

20 THE WITNESS: Correct.

21 THE COURT: Thank you. Go ahead.

22 BY MR. HOY:

23 Q. Now, we're here in this case on a project called
24 Wingfield Towers. Are you familiar with the project that we're

1 talking about in this trial?

2 A. Yes.

3 Q. Can you please give us an overview of what the project
4 was.

5 A. To use the Court's indulgence for repeating things
6 that have been said, obviously, previously on the project
7 scope, it is a two-story, multiuse project, combining parking,
8 commercial space, office space, residential towers --
9 condominium in nature versus apartments -- to be constructed in
10 Reno out of concrete and other materials. The scope of the
11 unit count is currently designed at 499 units. It was a very
12 ambitious, but exciting project. And I'm sure I could
13 continue, if need be, on the extent of the project.

14 Q. We may get into more details.

15 In your last answer, though, I think you said the
16 project was a two-story project, is that --

17 A. I'm sorry. A two-building project.

18 Q. All right. Thank you.

19 A. As far as the residential towers on top of the parking
20 garage. Excuse my mistake.

21 Q. And what were the number of stories in each of the two
22 buildings?

23 A. Well, the smaller of the two buildings is 28 stories
24 and that's got the swimming pool on that top floor. The other

1 building is -- the other tower is 40 stories, plus, I believe,
2 and mechanical on top of that.

3 Q. Can you give us an overview of the work that you
4 personally did with respect to the Wingfield Towers project?

5 A. I provided what would be called typical project
6 management from an executive level: Oversight of the project
7 by attending meetings when necessary; overseeing the staff
8 designing the project; discussing it with Rodney or Nathan Ogle
9 as required; attending any meetings that seemed reasonable for
10 me to attend; looking at the work product; walking by desks.

11 I handled it the same way I handle my oversight on
12 other projects where I'm not personally doing the drawing,
13 which is to talk to people, walk up and down the rows of desks,
14 participate in meetings, go to meetings, et cetera.

15 Q. Did you review any of the instruments of service?

16 A. Yes.

17 Q. Have you heard the term "responsible control" as used
18 in the architecture profession?

19 A. Yes.

20 Q. What does "responsible control" mean?

21 A. Responsible control is really about your supervision
22 of the project as it's approaching a time for sealing and
23 signing to make sure that what is presented to the agency for
24 permitting review, in essence, in my mind, is what -- is what

1 that's talking about.

2 In the broader sense it is the responsible control or
3 oversight that an architect in the standard of care would
4 provide by overseeing the production and creation of a project
5 from the design through construction documents.

6 Q. Okay. And did you maintain responsible control over
7 the Wingfield Towers project up until the time the project was
8 abandoned?

9 A. Yes.

10 Q. Did you also maintain direct supervision of the design
11 process?

12 A. Yes. Inasmuch as Rodney was the project designer and
13 I was overseeing the work.

14 Q. Okay.

15 MR. HOY: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. HOY:

18 Q. Mr. Steppan, please turn to Exhibit No. 6.

19 A. Okay. Yes.

20 Q. Exhibit No. 6 is a standard form of agreement between
21 owner and architect and it's got a "Received" stamp, dated
22 April 26, 2006, and an effective date, October 31, 2005.

23 Does your signature appear on Exhibit 6?

24 A. Yes, as far as I remember. Let me double check the

1 page.

2 Yes, it does. It's on page 11007508.

3 Q. Does your signature also appear on page 7519, the very
4 last sheet of the exhibit?

5 A. That would be part two of the agreement. Yes. Excuse
6 me. Yes.

7 Q. Very briefly, we need to make a complete record, but
8 we don't want to elaborate on things that have been elaborated
9 upon for days.

10 Can you give the Court your recollection of the events
11 that led to you signing this Exhibit No. 6?

12 A. Sure. We provided to Sam and company a letter
13 requesting -- starting the project, we sent Sam a letter
14 outlining the basic scope as we understood it at the time, as
15 well as a blank one, B141 contract agreement, proposing that
16 that would be the form of the contract that we were suggesting
17 to use for this project.

18 We knew that they would then take time to review it,
19 make comments. I don't think I've ever done a contract where
20 there were not comments from either the owner, seller, buyer,
21 client side or their legal counsel.

22 Once that contract then went off for review, there
23 were months spent doing a review by Sam and his group and Hale
24 Lane, reviewing it from Sam's point of view or BSC's, or

1 however you want to phrase that group.

2 And then there were multiple back-and-forth
3 communications, either via email or phone, with Sam's group and
4 the attorney for Hale Lane, who was working on adjusting the
5 basic language that's stock, to fit the particular project as
6 they all felt could be agreed to on their end and our end. And
7 there were many back-and-forth discussions that led to the
8 final agreement in late April.

9 Q. All right. Would you please turn to Exhibit No. 7.

10 Does your signature appear on the last page of
11 Exhibit 7?

12 A. Yes, on 007522.

13 Q. And is Exhibit 7 an amendment to the contract in
14 Exhibit 8?

15 A. Yes. To the contract in Exhibit 6.

16 Q. I'm sorry, Exhibit 6. You're right.

17 I would ask you to take a look at Exhibit No. 9. Does
18 your signature appear on Exhibit No. 9?

19 A. Yes.

20 Q. And Exhibit No. 9 is your October 25, 2005, initial
21 proposal to Anthony Iamesi?

22 A. Yes.

23 Q. And "Iamesi" is I-a-m-e-s-i.

24 And in this initial proposal to Mr. Iamesi, your

1 proposal is for a fee of 5.75 percent of the total construction
2 costs.

3 A. Correct.

4 Q. But at the time of Exhibit 9, you didn't know what the
5 total construction costs would be?

6 A. Correct.

7 Q. You didn't even have an estimate of what the
8 construction costs would be?

9 A. I don't remember when the first 160,000 number was
10 discussed, but if it's not listed here, then it was probably
11 not when this was written.

12 THE COURT: 160,000 or 160,000,000?

13 THE WITNESS: I'm sorry, excuse me, 160,000,000.

14 BY MR. HOY:

15 Q. I would ask you to take a look at Exhibit No. 10.
16 This is a memorandum from Sarah Class, who is a lawyer at Hale
17 Lane, to Cal Baty.

18 Do you know who Cal Baty is?

19 A. Calvin Baty was one of the partners of the BSC Group
20 that we were working with to design the project.

21 Q. And "Baty" is B-a-t-y.

22 Did you and your firm receive comments from
23 Mr. Caniglia's company regarding the form of contract for the
24 design surfaces?

1 A. I don't remember receiving comments, other than those
2 that came from Sarah Class, representing Hale Lane and Sam and
3 group.

4 Q. Do you remember ever looking at Exhibit No. 10?

5 A. Yes.

6 Q. And then Exhibit No. 11 is also a memorandum, this
7 time in the form of an email.

8 Do you remember seeing this email?

9 A. Yes.

10 Q. And then Exhibit No. 12 is also a short memorandum in
11 the form of an email from Sarah Class to Sam Caniglia, again
12 addressing the language in the AIA contract.

13 Do you remember seeing this Exhibit 12?

14 A. I would imagine I did; I do not remember this specific
15 one.

16 Q. Exhibit No. 13 is a December 20, 2005, letter
17 entitled, "Response to AIA Contract Review, Owners Issues;
18 Hale, Lane File No. 20606-0004."

19 And this went out on your letterhead. Did you approve
20 this letter before it went out?

21 A. Yes. Nathan drafted it. I approved it and I signed
22 it, as he was not around.

23 Q. And can you please explain to the Court what the
24 purpose of this letter was?

1 A. This purpose -- the purpose of this letter is to give
2 them our take on their comments, as to whether we agree,
3 disagree or have further suggested modifications to either the
4 base agreement or the amendment for the contract for the work
5 for this project.

6 Q. So this December 20, 2005, agreement was sort of --
7 was part of the back and forth between the architect and the
8 developers for the design contract?

9 A. Correct.

10 Q. Please turn to Exhibit No. 14. This is a November 15,
11 2005, letter.

12 Does Exhibit 14 bear your signature?

13 A. Yes.

14 Q. What is the purpose of Exhibit 14?

15 A. Just let me refresh my memory.

16 Q. Yes.

17 A. This is what has been termed, effectively, the stopgap
18 letter, which requests approval to proceed on an hourly basis
19 while the contract is being negotiated.

20 Q. Did you intend at the time you signed Exhibit 14, that
21 the billings that were paid under this stopgap arrangement
22 would be credited against the fixed fee that was part and
23 parcel of Exhibit 6?

24 MR. PEREOS: Leading and suggestive.

1 THE COURT: Sustained. Sustained.

2 You can rephrase the question.

3 BY MR. HOY:

4 Q. When you signed Exhibit 14, please explain what your
5 understanding of the billing arrangement on a going-forward
6 basis would be.

7 A. This is consistent with how projects like this would
8 be handled. The intent was that any of the hours that were
9 tracked per this agreement, prior to the contract signing,
10 would be credited back against the phase of the contract that
11 was in place.

12 THE COURT: Because you had already started to work on
13 the project, shall we say --

14 THE WITNESS: Correct.

15 THE COURT: -- while this is going on?

16 THE WITNESS: Correct.

17 THE COURT: Thank you.

18 BY MR. HOY:

19 Q. Would you please turn to Exhibit No. 15. Exhibit 15
20 is a December 14, 2005, letter on your stationery.

21 Did you approve Exhibit 15 before it went out?

22 A. Yes.

23 Q. What was the purpose of Exhibit 15?

24 A. It's to continue the notice of approval and

1 continuation of work with the client while the contract is
2 being negotiated.

3 Q. Please turn to Exhibit 16. This is a February 7,
4 2006, letter on your stationery.

5 Did you approve Exhibit 16 before it went out?

6 A. Yes.

7 Q. What is the purpose of Exhibit 16?

8 A. The same purpose as 15, to inform the client that
9 we're continuing to work, give them the opportunity to tell us
10 to stop if they wish us to while the contract is being
11 negotiated.

12 Q. All right. And turn to Exhibit 17, please. This is a
13 March 24, 2006, letter on your stationery.

14 Did you approve Exhibit 17 before it went out?

15 A. I believe so, yes.

16 Q. Now, in Exhibit 17, numbered paragraph 8 says,
17 "Continue to assist in updating the current construction
18 budget."

19 Do you know what that sentence referenced?

20 A. I don't remember specifically, other than to continue
21 with discussions with our client as to what their checking with
22 Turner or other folks were saying about the contract, the
23 estimated construction costs as we were developing the design.

24 Because as you develop the design over time you

1 obviously make decisions about materials and you are setting
2 floor-to-floors and other important pieces of information that
3 affect construction costs.

4 Q. And then numbered paragraph 9 says, "Implement the
5 minor agreed to, Addendum 1 agreement items, and investigate
6 the three items pending resolution for consequential damages,
7 successors and assigns and termination expenses."

8 Can you please explain to the Court what that
9 references?

10 A. Well, Addendum 1 was one of the previous exhibits that
11 modifies the base B141, and in that had -- there were some
12 terms that were still in discussion regarding consequential
13 damages, successors and assigns and the termination expenses,
14 that here we clearly wanted to investigate the final resolution
15 of; but that we were implementing all of the other agreed-to
16 items in Amendment 1 to the contract.

17 Q. And then jumping back up to numbered paragraph 2, it
18 says, "Review and implement the new desired unit mix from 394
19 to 499 units, involving adding studio and one-bedroom units in
20 lieu of some two and three-bedroom units."

21 What is that language referencing?

22 A. Well, that's referencing the requested change in the
23 mix, which was previously testified to by Rodney and David
24 Snelgrove, where our client was requesting a change from what

1 was the second proposed unit count of 394, to be what ended up
2 being the approved count, 499; and in March, at the very end of
3 March, was actually just starting that process of design
4 reassessment to see what would be entailed with having to
5 change that mix; which mostly included, as was testified
6 yesterday by David, reducing the numbers of twos, threes and
7 penthouses to accomplish the ability to add studios and more
8 one-bedrooms.

9 Q. All right. I would ask you to turn, now, to Exhibit
10 No. 18.

11 A. I'm there.

12 Q. Thank you. I'm just letting --

13 A. I know.

14 Q. -- giving the judge time to finish his notes.

15 THE COURT: No, go ahead. Go ahead.

16 BY MR. HOY:

17 Q. All right. Exhibit 18 is a February 27, 2006, letter
18 on your stationery, to Sam Caniglia and Calvin Bosma.

19 Did you approve this letter before it went out?

20 A. To the best of my memory, yes.

21 Q. Can you please explain to the Court what the purpose
22 of Exhibit 18 is.

23 A. This is a letter informing our clients of a breakdown
24 of presentation services that we felt was required based on

1 either discussions with the client or discussions with the
2 City, and a price for each of them or a cost for each of them,
3 as they would probably be handled as an added service or
4 reimbursable expense. So we projected costs for the city model
5 base or the end-of-model completion.

6 The base is the platform that the model of the city
7 was to sit on. The completion, I assume, would be all of the
8 foam blocks that represented the buildings, vignette
9 renderings, which are perspective drawings done by either
10 in-house or, as Rodney Friedman mentioned, an external renderer
11 or presentation gentleman that we had used before.

12 Typically the costs for those are three to \$5,000 per
13 rendering. They're done by hand and they have either
14 watercolor or other methods.

15 That's just an example of something that was being
16 presented here as a probable component of the presentation
17 materials that would be produced for submission of the project
18 to the City, as well as for approval by our client, of the
19 design.

20 THE COURT: And so Exhibit 18 and the total estimate
21 of approximately \$190,000, that's your representation of what
22 Fisher-Friedman and Associates will be spending to make the --
23 the ultimate presentation to the city council; is that right?

24 THE WITNESS: No. It is only a representation of the

1 defined tasks on this letter.

2 THE COURT: Okay.

3 THE WITNESS: That is irrespective of all the other
4 work going on to prepare the documents for the presentation or
5 the submission of the tentative map, special use permit
6 packages.

7 THE COURT: So it would be -- the ultimate cost of
8 your representation or of your involvement in that presentation
9 would be greater than, not less than, a hundred and,
10 approximately, ninety thousand dollars?

11 THE WITNESS: Correct. Because it's the bulk of the
12 design phase, as well as any other exterior, external added
13 costs for additional services not originally anticipated to
14 produce the work required for submission and approval.

15 BY MR. HOY:

16 Q. All right. So Exhibit 18 lists Items 1 through 8 of
17 things that your firm considered to be additional services not
18 within the scope of the fixed-fee contract?

19 A. Not necessarily. I think part of this -- for example,
20 the FFA general time -- is helping to define for the client,
21 given that we were currently still on an hourly because the
22 contract wasn't agreed to yet, these are -- so I will just
23 make -- slightly adjust what I've just said.

24 These are estimates of the amount of costs that we are

1 anticipating, that the client needs to be aware of that he
2 might be spending in the upcoming months, not knowing exactly
3 when we are going to get the contract signed. So some of
4 these, in the end, probably are part of the base contract.

5 Q. So, for example --

6 A. But they've given -- excuse me. But they've given the
7 client the idea of some of the projected costs; so from a
8 cash-flow standpoint they have an idea of what we might be
9 billing for that are very specific to tasks that were in
10 discussion at that time.

11 Q. All right. So let's take an example. The shadow
12 study updates, \$8,000, what this letter is warning is that if
13 you continue to pay us on an hourly basis, you're going to
14 spend 8,000; but after the fixed-fee-contract was actually
15 signed, there was no further billing for additional services
16 for the shadow study, for example?

17 MR. PEREOS: Objection, leading and suggestive and
18 actually arguing his case.

19 THE COURT: Sustained. Please rephrase.

20 BY MR. HOY:

21 Q. All right. With respect to the shadow study updates
22 was there ever a billing from Fisher-Friedman Associates or
23 you, for additional services?

24 A. Not that I remember. And when you read the first

1 paragraph of the letter, it's actually talking about the fact
2 that it's an estimate for the task associated with responding
3 for upcoming presentations, based on, probably, things we've
4 heard from the City and from the client.

5 Given the fact that this is in February, we've already
6 made two submissions to the City.

7 THE COURT: And are you sending this letter to
8 Mr. Caniglia and Mr. Bosma to let them know, in essence, "Hey,
9 these are some of the billing that's going on; these are sums
10 that we will be expected to be paid regardless of what happens
11 with the ultimate contract"?

12 THE WITNESS: Correct.

13 THE COURT: Is it required, is there any term or
14 condition of the contract or your stopgap understanding, as
15 Mr. Hoy has referred to it, that you provide these periodic
16 billing statements or notices to them that these are sums that
17 we are expending?

18 THE WITNESS: I don't think it's a requirement of the
19 letter, per se, but it is a professional courtesy and
20 appropriate to inform the client when you have an understanding
21 of what might be upcoming, specific expenses.

22 They generally wanted to know what would be coming up
23 from a cost standpoint and so we tried to be cooperative by
24 telling them what we foresaw as upcoming tasks. Especially in

1 this case, where these might be revisions to things we've
2 already done in response to comments from the City, to help
3 finalize the package or advance the package.

4 THE COURT: And these aren't minor things, this isn't
5 the spending of a couple hundred bucks, you're talking almost
6 \$200,000.

7 THE WITNESS: Correct.

8 THE COURT: Thank you.

9 Go ahead.

10 BY MR. HOY:

11 Q. Now, down at the bottom of this Exhibit 18, it says,
12 "We will continue tracking and billing this work effort under
13 the Project No. 0515-01 and 0515-01R."

14 Can you please explain to the Court what that language
15 means?

16 A. Well, there's two parts. One is, we've informed them
17 that we're going to track them and bill this work because it is
18 still technically under the hourly agreement; and two, we have
19 reminded them of what project numbers we're using for this
20 work.

21 So throughout the documents there are numbers that
22 appear on documents, such as this, that say "0515 dash," either
23 base, 0515 or 0515 with a dash and another number after that,
24 or a number and an "R" after that. And that is the project

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1 number. The dash numbers are subsets of activities within that
2 base project number. And the "R" represents reimbursable
3 expenses, which are basically things other than labor or added
4 services that are determined and agreed to in a contract or
5 added service letter as a reimbursable expense, separate from
6 percentage completion of the phase.

7 So in this case, this project is the fifth --
8 basically the fifteenth project of 2005. That's how that
9 number is generated.

10 Q. All right. If we go back to Exhibit No. 14, the very
11 last sentence says, "We will track this work effort under the
12 project number 0515-01 and 0515-01R."

13 And the same explanation with respect to the stopgap
14 agreement?

15 A. Yes.

16 Q. I would ask you to turn now to Exhibit No. 19.
17 Exhibit No. 19 is a May 31, 2006, letter signed by -- I don't
18 know if that's Caniglia or Mr. Bosma.

19 Did you approve Exhibit 19 before it went out to the
20 client for signature?

21 A. Yes.

22 Q. What is the purpose of Exhibit 19?

23 A. It's an added service request letter, effectively a
24 one-page agreement, for the scope of work as defined, which is

1 to analyze the building and site and provide the foam massing
2 models, some of which showed up in PowerPoint, I believe, and
3 to study building configurations based on the zoning
4 requirements; to provide a schedule or a discussion on
5 schedule.

6 And then it defines the terms of compensation, as well
7 as the specific project number that the project is tracked
8 under, which in this case is dash 02.

9 And I'm pretty sure that that's Cal Bosma's signature.

10 Q. Turn to Exhibit No. 20, please.

11 THE COURT: Wait, before you go to 20, 19, then,
12 that's just something -- the subject matter of Exhibit 19 is
13 activity taken outside the scope of the flat -- or the
14 fixed-fee contract; is that correct?

15 THE WITNESS: It's outside the scope of the fixed-fee
16 contract and it's outside the scope of the hourly stopgap
17 agreement.

18 THE COURT: So it is something you would be
19 reimbursed -- and by "you," of course, I mean Fisher-Friedman
20 and Associates -- reimbursed for separately?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. HOY:

24 Q. Please turn to Exhibit No. 19.

1 A. I'm on Exhibit 19.

2 Q. I'm sorry, 20. Exhibit 20 is a May 31, 2006, letter
3 also signed -- it looks like by Cal Bosma, on June 14, 2006.

4 Can you please explain to the Court what the purpose
5 of Exhibit 20 is?

6 A. It's another added service request, confirmation
7 letter. And this was specifically covering the adjacent church
8 parking studies. And that was mentioned in the testimony
9 yesterday of Rodney.

10 Q. All right. And the last sentence of this letter says,
11 "We will track this work effort under the Project No. 0515-03
12 and 0515-03R."

13 A. Yes.

14 Q. And again, the explanation for that is, you're
15 invoicing and otherwise tracking this project separately from
16 other work?

17 A. Correct.

18 Q. And the work to be performed under Exhibit 20 is
19 outside the scope of the stopgap and outside the scope of the
20 fixed fee?

21 A. Correct.

22 Q. Please turn to Exhibit 21.

23 MR. HOY: Exhibit 21 is not in evidence, Your Honor.

24 THE COURT: Okay. Well, then, I'm not going to look

1 at it yet until it is admitted.

2 BY MR. HOY:

3 Q. Mr. Steppan, Exhibit 21 appears to be an August 10,
4 2006, letter, on your stationery, to BSC Financial, LLC,
5 Sam Caniglia, in care of Consolidated Pacific Development,
6 Inc., and Cal Bosma, Decal Nevada, Inc., regarding City staff
7 meeting (Vern Kloos), requested studies agreement."

8 Did you review and approve this Exhibit 21 before it
9 was sent?

10 A. Yes.

11 Q. Do you know if the client ever signed this agreement
12 or another copy of this agreement?

13 A. No, I do not remember.

14 Q. Did Fisher-Friedman Associates ever perform work --
15 did Fisher-Friedman Associates ever analyze and document an
16 Island Drive landscape plan?

17 A. I believe it's part of this, yes.

18 Q. Did Fisher-Friedman ever do an aerial perspective
19 along Island Drive illustrating the streetscape and landscape
20 plan?

21 A. I believe so.

22 Q. Did the client ever object to being billed for any of
23 the work that is specified in Exhibit 21?

24 A. Not that I'm aware of.

1 MR. HOY: Offer Exhibit 21.

2 MR. PEREOS: May I take the witness on voir dire?

3 THE COURT: Certainly, Mr. Pereos.

4 VOIR DIRE EXAMINATION

5 BY MR. PEREOS:

6 Q. Is Exhibit 21 designed to cover added-scope work?

7 A. Yes.

8 Q. Doesn't the AIA contract require that it mandates that
9 there be a signed agreement if there's to be a modification of
10 the AIA contract, particularly as it relates to added scope?

11 A. Yeah, I believe so. And as I said, I do not know if
12 this has been signed.

13 Q. Thank you.

14 MR. PEREOS: Objection --

15 THE WITNESS: -- by a member of --

16 MR. PEREOS: Excuse me.

17 THE COURT: The document itself will be admitted,
18 because I don't believe that the additional questions offered
19 by Mr. Pereos go to the admissibility of the document, the
20 document itself.

21 Whether or not it's something that entitles
22 Fisher-Friedman Associates to compensation is different. If it
23 doesn't comply with the terms and conditions of Exhibit 6 for
24 an added services request, that's a different issue altogether.

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1 But at least whether or not, is the document admissible, the
2 Court finds that it is admissible; and therefore, it will admit
3 it.

4 I don't know if it would make the defendant subject to
5 any additional financial responsibility, because if it doesn't
6 qualify with the contract, then it doesn't; but the document
7 itself is admissible.

8 (Exhibit No. 21 admitted into evidence.)

9 THE WITNESS: Your Honor, may I make a qualification?

10 THE COURT: No. I will allow Mr. Hoy to ask any
11 questions that he wants to ask you. Go ahead.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION (RESUMED)

14 BY MR. HOY:

15 Q. Did Fisher-Friedman actually invoice the client for
16 the work that's described in Exhibit 21?

17 A. I would have to look at the invoices; I don't remember
18 off the top of my head.

19 Q. Okay. So this letter indicates that the -- the work
20 will be billed under Project No. 0515-05?

21 A. Correct.

22 Q. And again, that's just the mechanism to segregate the
23 billing for each of these extra work subprojects?

24 A. Correct.

1 Q. Please turn to Exhibit 22. Exhibit 22 is an
2 unsigned -- and this is not in evidence, Your Honor.

3 THE COURT: And is it going to be the same --

4 MR. HOY: Exactly.

5 THE COURT: -- type of issue and the same type of
6 objection, Mr. Pereos?

7 MR. PEREOS: Yes, Your Honor, understanding the ruling
8 of the Court.

9 THE COURT: Then the Court will admit Exhibit No. 22
10 for the same limited purpose. The Court would find that
11 Exhibit 22, based on the previous argument, is admissible as a
12 piece of evidence in the case; whether or not it entitles
13 Fisher-Friedman Associates to any compensation would be a
14 totally different issue and something that can be argued by the
15 parties.

16 (Exhibit No. 22 admitted into evidence.)

17 MR. HOY: Thank you, Your Honor.

18 BY MR. HOY:

19 Q. Mr. Steppan, Exhibit 22 is a September 13, 2006,
20 letter, unsigned.

21 Did you review and approve Exhibit 22 before it was
22 sent out to the client?

23 A. Yes.

24 Q. Exhibit 22 talks about the video fly-through that was

1 testified at some length for the last two days.

2 Did Fisher-Friedman Associates bill separately for the
3 video fly-through?

4 A. I believe so.

5 Q. Did Fisher-Friedman ever receive any objection to
6 invoices for the video fly-through?

7 A. No.

8 THE COURT: Can you tell me, either Mr. Pereos or
9 Mr. Hoy, what section of the April 26, 2006, contract I need to
10 look at to confirm the requirements that both the offering
11 party, that being the architect, and the accepting party, that
12 being the client, have to sign off on any added service
13 request?

14 MR. HOY: Yes, Your Honor. It's Exhibit 6, Bates
15 No. 7503, and it's Section 1.3.3.1.

16 THE COURT: 1.3.3.1? And what page is that again?

17 MR. HOY: 7503 is the Bates number.

18 THE COURT: Thank you.

19 MR. HOY: It's page 6 of Part 1 of the agreement.

20 THE COURT: Do you agree with that, Mr. Pereos?

21 MR. PEREOS: It is the change of services section of
22 the agreement and I haven't read each of those paragraphs; but,
23 yes, I agree that we're in the same section.

24 THE COURT: Thank you.

1 BY MR. HOY:

2 Q. Mr. Steppan, can you please turn back to Exhibit
3 No. 6.

4 A. Certainly. Yes.

5 Q. I am going to read into the record, Section 1.3.3.1.
6 "Changes in services of the architect, including
7 services required of the architect's consultants, may be
8 accomplished after execution of this agreement without
9 invalidating the agreement, if mutually agreed in writing, if
10 required by circumstances beyond the architect's control or if
11 the architect services are affected as described in Section
12 1.3.2 point" -- "1.3.3.2."

13 "In the absence of mutual agreement in writing, the
14 architect shall notify the owner prior to providing such
15 services. If the owner deems that all or a part of such change
16 in services is not required, the owner shall give prompt
17 written notice to the architect and the architect shall have no
18 obligation to provide those services. Except for a change due
19 to the fault of the architect, change in services of the
20 architect shall entitle the architect to an adjustment in
21 compensation pursuant to Section 1.5.2, and to any reimbursable
22 expenses described in Section 1.3.9.2 and Section 1.5.5."

23 Was there ever a time with respect to the Wingfield
24 Towers project, where the architect gave the owner notice of

1 additional services to be performed and the owner said, "No,
2 don't do those additional services"?

3 A. No.

4 Q. So with respect to the letter in Exhibit 21, for
5 Project 0515-05 -- and this is the City staff meeting requested
6 studies agreement -- did the owner ever tell you or
7 Fisher-Friedman Associates, "Don't do that work"?

8 A. No.

9 Q. Did Fisher-Friedman Associates in fact perform the
10 work that was described in Exhibit 21?

11 A. To the best of my knowledge, yes.

12 Q. And the same with respect to Exhibit 22, did you and
13 Fisher-Friedman Associates give the developer notice that you
14 were going to do a video fly-through?

15 A. Yes.

16 Q. And you gave that notice before the work began on the
17 video fly-through?

18 A. As far as I know, yes.

19 Q. And did the owner ever object to spending money on a
20 video fly-through?

21 A. Definitely not.

22 Q. Why do you say "definitely not"?

23 A. Because they thought it was a fantastic idea.

24 THE COURT: When you say "the owner" -- I just want

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1 some clarification -- you're talking about BSC, the developer,
2 not the owner being Dr. and Mrs. Iliescu; is that correct?

3 THE WITNESS: That is correct.

4 THE COURT: So all of your conversations, all
5 throughout your testimony, are with BSC or representatives of
6 the developer. Are any of them ever with Dr. or Mrs. Iliescu?

7 THE WITNESS: No.

8 THE COURT: Did you ever speak to Dr. Iliescu or
9 Mrs. Iliescu about this project?

10 THE WITNESS: Not until after the project was
11 approved.

12 THE COURT: After that --

13 THE WITNESS: In November.

14 THE COURT: -- city council meeting in November.
15 Okay.

16 THE WITNESS: Not until after that.

17 THE COURT: I just -- he kept saying "the owner," and
18 I just wanted to make that clarification. Thank you.

19 MR. HOY: Yes, Your Honor, and it's only because the
20 AIA form documents define an architect and an owner. In this
21 case the developer is defined as "the owner" for the purposes
22 of the design contract.

23 THE COURT: Oh, I understand that, and that was always
24 my understanding of the witness's testimony. I just want to

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1 make sure that the record is clear down the road that that was
2 Mr. Steppan's understanding, as well. Go ahead.

3 MR. HOY: Thank you, Your Honor.

4 BY MR. HOY:

5 Q. Please turn to Exhibit No. 25. Exhibit No. 25 was
6 admitted yesterday when Mr. Friedman was on the stand.

7 Are you familiar with Exhibit 25?

8 A. In total?

9 Q. Yes.

10 A. Yes. It is a compilation of invoicing.

11 Q. All right. Now, as the executive vice president of
12 Fisher-Friedman Associates, were you familiar with the way the
13 firm created invoices for the company?

14 A. Yes.

15 Q. Can you please give us an overview of that process?

16 A. Simply put, there is a software system on a computer
17 that our accounting, business manager inputs time into. It
18 then generates a draft, what we call a project review,
19 basically.

20 And then that form is discussed between the business
21 manager and the project manager or the project architect or
22 whoever might be overseeing that portion of a project, and then
23 they determine if the -- the amount of invoicing that's
24 indicated has been expended in the month time frame, is what

1 should be billed in that billing session or not.

2 If it is agreed to and there is no modifications, then
3 the accounting business person would go back and input it into
4 a full billing cycle software and print out the invoicing.

5 THE COURT: So it's basically a draft that is done and
6 then the project manager and the business manager come together
7 and decide if the draft is appropriate based on the information
8 that they have, and assuming that it is and no modifications
9 are made, then it goes into final form and is sent out to the
10 developer, the client, shall we say?

11 THE WITNESS: Client, correct.

12 THE COURT: At this point we will take our morning
13 recess. It is 10:20. Court will be in recess for
14 approximately 15 minutes and then we'll come back and have
15 further testimony from Mr. Steppan until approximately 11:45,
16 maybe 11:50, depending on how the questioning goes and then
17 we'll break for lunch.

18 MR. HOY: Thank you.

19 (Recess taken.)

20 THE COURT: Go ahead, Mr. Hoy.

21 MR. HOY: Thank you.

22 BY MR. HOY:

23 Q. Mr. Steppan, before the break I was asking questions
24 about Fisher-Friedman Associates' standard practices for

1 creating invoices.

2 Were all of the invoices in Exhibit 25 created at or
3 about the time of the dates of the invoices?

4 A. Yes.

5 Q. And does Fisher-Friedman -- or did Fisher-Friedman
6 have a standard method for filing invoices after they were sent
7 out?

8 A. Yes. The accounting person had files that were
9 invoice files.

10 Q. All right. And --

11 A. The architect did not retain copies of the invoicing;
12 invoicing stayed in the accounting department.

13 Q. Please turn to Exhibit 24.

14 MR. HOY: This is not in evidence, Your Honor.

15 THE COURT: Okay.

16 BY MR. HOY:

17 Q. Do you recognize Exhibit 24?

18 A. Yes. It's a collection of invoices.

19 Q. All right. Is it a collection of invoices for hourly
20 billing under the stopgap agreement?

21 A. Yes.

22 Q. Were the invoices in Exhibit 24 prepared using the
23 same standard methods that you discussed with respect to
24 Exhibit 25?

1 A. Yes.

2 Q. And were the exhibits in Exhibit 24 stored in the same
3 manner as the invoices under Exhibit 25?

4 A. To the best of my knowledge.

5 MR. HOY: Offer Exhibit 24, Your Honor.

6 THE COURT: Mr. Pereos?

7 MR. PEREOS: Sure, may I take the witness on voir
8 dire?

9 THE COURT: You may.

10 MR. PEREOS: Thank you.

11 VOIR DIRE EXAMINATION

12 BY MR. PEREOS:

13 Q. CAN I direct your attention to Bates number page 3308?

14 A. Yes.

15 Q. Is that your handwriting, the handwritten notations
16 thereon?

17 A. No, that is not my handwriting.

18 Q. Do you know whose handwriting that is, from personal
19 knowledge?

20 A. It looks like the account manager's handwriting.

21 Q. Your account manager's handwriting?

22 A. Correct.

23 MR. PEREOS: Well, he kind of answered it. It's an
24 internal writing, so I have no objection to the admission of

1 the document.

2 THE COURT: Exhibit No. 24 will be admitted without
3 objection.

4 (Exhibit No. 24 admitted into evidence.)

5 MR. HOY: Thank you, Your Honor.

6 REDIRECT EXAMINATION (RESUMED)

7 BY MR. HOY:

8 Q. On that Bates No. 3308, the handwriting says, "Note:
9 Billings shall be credited to SD/entitlements phase once
10 contract is signed."

11 Did you direct somebody in the accounting department
12 to put that on the invoice?

13 A. Not that I'm aware of.

14 Q. Is that notation consistent with the dealings that you
15 were having with the client with respect to this hourly stopgap
16 agreement?

17 A. Yes.

18 Q. Now, yesterday the Court, the Judge of the court,
19 noted on the billings in Exhibit 25, that there had been a
20 credit noted for the payments that had been received. So I'll
21 direct you to Exhibit 25, Bates No. 7604. This is a July 19,
22 2006, invoice.

23 A. Yes.

24 Q. Are those payments that are reflected there on that

1 page, payments that Fisher-Friedman Associates received under
2 the stopgap agreement?

3 A. Yes.

4 Q. Going back to Exhibit 24 --

5 THE COURT: Okay. Hold on. I just want to make sure
6 I'm understanding the point you are trying to make.

7 So you're saying that the payments that are referenced
8 in the months of February, March, May and June of 2006, were
9 all to pay off the stopgap work that was done; is that
10 accurate? Is that the point you're trying to make?

11 MR. HOY: Insofar as it goes. The real point is that
12 under the stopgap agreement, the parties agreed to an hourly
13 compensation, but they also agreed that once a contract for a
14 fixed fee was signed that those payments received under the
15 stopgap would be credited against the ultimate fixed fee under
16 the master agreement, what I call the master agreement,
17 Exhibits 6 and 7.

18 THE COURT: The April 26th agreement with the
19 addendum?

20 MR. HOY: Correct.

21 THE COURT: And so Fisher-Friedman and Associates did
22 receive the payments that are referenced as payments on
23 page 7604 in Exhibit No. 25; is that correct?

24 THE WITNESS: Yes.

1 THE COURT: Okay. Thank you.

2 BY MR. HOY:

3 Q. Now, Mr. Steppan, taking you back to Exhibit 24. The
4 first invoice is dated November 22, 2005, and it's on your
5 letterhead.

6 Do you see that?

7 A. Yes.

8 Q. And the second invoice, December 20, 2005, is also on
9 your letterhead?

10 A. Yes.

11 Q. And the next invoice for January 12, 2006, is on your
12 letterhead?

13 A. Yes.

14 Q. And then the next invoice after that, the next day,
15 January 13, 2006, is also on your letterhead?

16 A. Yes.

17 Q. And then the very next invoice for February 23, 2006,
18 is on Fisher-Friedman Associates letterhead.

19 A. Correct.

20 Q. Can you please explain to the Court what happened
21 there?

22 A. As I remember it, there -- after an invoice or two had
23 gone out in this fashion, I found out that that had been the
24 case and had a conversation with Rodney in our accounting

1 department about the fact that it had changed from my
2 letterhead to the Fisher-Friedman letterhead, and I thought
3 that things should stay on the Mark Steppan letterhead for
4 form.

5 We found -- had determined it was a mistake in the
6 paper that was stuck in the printer at the time that the
7 invoice, the final invoices were created. And so we ended up
8 having a phone conversation with, I believe it was Sam -- it
9 could have been Cal, I don't remember exactly, but I'm pretty
10 sure it was Sam -- to discuss the fact that he had obviously
11 received some Fisher-Friedman invoicing versus keeping it on
12 Mark Steppan letterhead, was that acceptable to him, since all
13 parties knew the arrangement of how I was overseeing the
14 project as architect of record for the purposes of license
15 requirements in Nevada, and that the payments were not coming
16 into me directly, they were coming into Fisher-Friedman
17 Associates. So was it acceptable to retain that way, or did he
18 want us to change back. And it was determined to just keep it
19 the way it was, on Fisher-Friedman letterhead.

20 Q. So the client never objected to having invoices from
21 Mark B. Steppan?

22 A. No.

23 Q. And the client never objected to having the invoices
24 come out from Fisher-Friedman?

1 A. No.

2 Q. Please turn to Exhibit No. 26. And take the time you
3 need to familiarize yourself with Exhibit 26.

4 MR. HOY: This is not in evidence, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: Okay.

7 BY MR. HOY:

8 Q. Do you recognize Exhibit 26?

9 A. Yes. They're invoices for reimbursable expenses.

10 Q. Are the invoices in Exhibit 26 -- were the invoices in
11 Exhibit 26 prepared in the same standard fashion that you
12 testified previously with respect to the invoices in Exhibit 25
13 and 24?

14 A. Generally, yes. It's only slightly different in the
15 fact that it's a fixed amount of money based on printing costs,
16 air fare, mileage. There is no discussion of needing to adjust
17 those typically, unless you feel the need to hold off invoicing
18 for a month or two for other reasons, which is why the
19 accounting manager would discuss it with the project manager to
20 determine if it made the most sense to invoice it that month or
21 to actually delay invoicing.

22 Q. And the invoices in Exhibit 26 were sent to the
23 client?

24 A. Yes.

1 Q. And did the client ever object to any of the invoices
2 in Exhibit 26?

3 A. Not to my knowledge.

4 Q. Were these copies of the invoices filed and maintained
5 in a file in the standard method used by Fisher-Friedman
6 Associates?

7 A. Yes.

8 MR. HOY: Offer Exhibit 26.

9 THE COURT: Any objection?

10 MR. PEREOS: May I take the witness on voir dire?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. PEREOS:

14 Q. Am I correct in understanding that the Project
15 No. 515-R are the reimbursables expense invoices?

16 A. 0515R would be reimbursable expenses.

17 Q. And -- I'm sorry, I didn't mean to cut you off.

18 A. 0515-R are base contract reimbursable expenses.

19 Q. Okay. So you're actually jumping ahead. Base
20 contract meaning the AIA contract?

21 A. Yes.

22 Q. Okay. Because it does discuss in that contract, does
23 it not, that you're entitled to your reimbursable expenses?

24 A. Correct.

1 Q. Okay. Now, having said that, let me ask you this
2 question, because this is where I got a little confused.

3 Bates number page 7621, which is your largest invoice
4 for reimbursable expenses of 15,000. Do you see that?

5 A. Yes.

6 Q. Apparently you had a consulting fee in there?

7 A. Yes. This is the charge for the renderer that we
8 mentioned previously and Rodney talked about yesterday as being
9 an outsourced perspective renderer.

10 Q. And what did they render?

11 A. They did the colored elevation drawings that were, for
12 example, part of the fly-through that had all the colored
13 skies, some of those other drawings. And they did other
14 renderings that had to do with freehand drawings that were
15 perspectives with color and things like that.

16 Q. Okay.

17 A. As I mentioned earlier today, those ran approximately
18 \$3,000 apiece.

19 Q. Okay. Now, was that paid, that amount paid to a
20 renderer as a consulting fee in the amount of 13,750?

21 A. I have no personal knowledge as to whether it was paid
22 or not paid.

23 MR. PEREOS: Well, in response to the request for
24 admission, I don't have a problem with the invoices of 0515-R

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1 based upon the witness's testimony that they're reimbursable
2 expenses. Okay.

3 That consulting fee, I have a problem with, okay, in
4 the fact that it's not reimbursable unless it's been paid
5 first, by definition. So to that extent -- I don't know if it
6 goes to the weight or to the -- the admissibility versus the
7 weight.

8 THE COURT: Under the same analysis as previously
9 noted, I don't believe that there is an issue to object to the
10 admissibility of the documents; whether or not Fisher-Friedman
11 Associates is entitled to compensation based on what is
12 represented in the documents may be a different question I
13 would leave for counsel to argue at the appropriate time,
14 whether or not the evidence has been shown that they are
15 entitled to that compensation.

16 Exhibit No. 26 is admitted by stipulation.

17 (Exhibit No. 26 admitted into evidence.)

18 DIRECT EXAMINATION (RESUMED)

19 BY MR. HOY:

20 Q. Mr. Steppan, you testified earlier about how hours are
21 put into the accounting system and then there's a consultation
22 between the project manager and others associated with the
23 project and the accounting department, to go over the draft
24 bills and then turn those into final invoice s.

1 Was there a standard method of operating in the
2 accounting department with respect to these reimbursables? Do
3 you know what that work flow was?

4 A. Well, typically, there's multiple avenues for
5 reimbursables. So if I may, with the Court's indulgence
6 explain?

7 If I fly someplace, I have a receipt for flying, for
8 the air travel costs. Or if the front desk receptionist made
9 the reservation, she might have the receipt for that. That
10 would have a job number attached to it. It would be given into
11 accounting.

12 I would personally fill out an expense form that lists
13 the date, the time, the location, the project number and the
14 costs for whatever expenses I have personally incurred on my
15 own credit cards or via cash or using the office credit card.
16 That could include the air fare, car rental, lunch, dinner, et
17 cetera.

18 Those would then go from -- with that expense report
19 as receipts, to the accounting department for inclusion in the
20 project files and for invoicing to the client.

21 Many clients require copies of the reimbursable
22 invoices, the expenses, the receipts, to prove -- for
23 verification that that was actually done.

24 Other items, such as postage and printing costs, are

1 handled by the front desk or whoever is handling stamping
2 envelopes. They record how many stamps and things like that
3 were put on envelopes for those projects.

4 And printing costs, since they're done generally
5 externally, you get invoicing from the blueprint company. Or
6 if it's internal plotting costs on a plotter, because of all
7 the computer-aided drafting work that is done, you keep a
8 record in a log of how many sheets were produced, at what size,
9 and whether it was black and white or colored, and there's an
10 agreed-to charge per sheet with the client that makes it a
11 reimbursable expense.

12 And those were all logged, categorized, put together
13 and made into invoicing monthly or -- and there might not be
14 any reimbursables in a month, so the timing would be as you get
15 reimbursables.

16 Q. Using the procedures, the accounting procedures within
17 Fisher-Friedman, was it possible to have an invoice for a
18 reimbursable expense for which there was no corresponding
19 payment from Fisher-Friedman to somebody else, to a vendor?

20 A. I suppose. I haven't thought about it. If you are
21 talking about a reimbursable expense from a consultant,
22 typically our consultants wouldn't have gotten paid until we
23 got paid.

24 But things that are typical, normal, standard

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1 reimbursable expenses, the way the contracts are typically
2 written -- which is mileage, food, air fare, those kinds of
3 things, printing -- that's much more easily defined and usually
4 you don't have that situation.

5 Q. So this renderer, did you ever receive any
6 correspondence from the this renderer saying, "Geez, I haven't
7 been paid. When are you going to pay me?"

8 A. I'm not aware of it.

9 THE COURT: But would that come to you, or would it go
10 to the business manager?

11 THE WITNESS: It would go -- it would go to -- it
12 could come to me, it could go to Nathan, it could go to Rodney,
13 it could go to --

14 THE COURT: Nathan is Nathan Ogle.

15 THE WITNESS: Nathan Ogle, sorry.

16 THE COURT: Who is Rodney?

17 THE WITNESS: Rodney Friedman.

18 THE COURT: Okay.

19 THE WITNESS: It depends on who the -- who the
20 consultant is, who the relationship is with. It could have
21 come in to many people. It could have just simply come in to
22 the accounting manager person, "Hey, I haven't been paid. Can
23 you look into it?"

24 Typically the first time around it might be a

1 communication from that consultant to the project manager
2 saying, "Hey, I haven't gotten payment in two months. What's
3 up? Just give me a heads-up."

4 And then that person would go and talk to the
5 accounting manager and find out why it hasn't been paid.
6 Because we don't have to approve or look at every single
7 invoice that goes out. You know, it's typical, but you don't
8 have to look at every single one. There is some latitude of
9 understanding about how things are done.

10 THE COURT: And your testimony only is that you have
11 no personal knowledge that this was not paid; is that correct?

12 THE WITNESS: That is correct.

13 THE COURT: Next question.

14 BY MR. HOY:

15 Q. Please turn to Exhibit No. 27.

16 Do you recognize Exhibit 27?

17 A. It's invoices for the massing studies.

18 Q. Were the invoices in Exhibit No. 27 prepared the same
19 way as the invoices in Exhibits 24, 25 and 26?

20 A. Yes.

21 Q. And were they, the copies of the invoices, then stored
22 within the files of Fisher-Friedman Associates in the same
23 fashion?

24 A. Yes.

1 MR. HOY: Offer Exhibit 27.

2 THE COURT: Oh, I didn't realize it wasn't admitted.

3 MR. HOY: I apologize, Your Honor, I should have let
4 you know.

5 THE COURT: Any objection to Exhibit No. 27?

6 MR. PEREOS: May I take the witness on voir dire
7 again?

8 THE COURT: You may.

9 VOIR DIRE EXAMINATION

10 BY MR. PEREOS:

11 Q. Is Exhibit 27, having Project No. 0515-02, an
12 add-on --

13 A. Yes.

14 Q. -- for basic services?

15 A. Yes.

16 MR. PEREOS: Okay. Yes, I do have an objection, and
17 the objection will go not only to 27, but to all the other
18 exhibits that are add-ons. It violates the Partial Order For
19 Summary Judgment issued by this Court limiting the fee
20 arrangement to a fixed fee. And as a result of that order, I
21 did not get into a study of all the time cards and everything
22 else that was delivered through discovery to my predecessors
23 prior to this period of time.

24 THE COURT: Mr. Hoy?

1 MR. HOY: So the objection is relevance, I guess.

2 The last line of the Summary Judgment Order says that,
3 something to the effect that the Court agrees that as a matter
4 of law that the mechanic's lien secures the unpaid fixed fee
5 under the, what we call the base contract or the master
6 contract.

7 I think that the relief that we -- the motion
8 definitely addressed the fixed fee foremost, but the motion for
9 summary judgment was really that the unpaid balance under the
10 base contract was what we were seeking with our mechanic's lien
11 foreclosure action.

12 As the Court has seen, the base contract includes the
13 fixed-base fee, plus the additional services that are discussed
14 in that section that we went over right before the break, in
15 Exhibit 6. So I would argue that the Summary Judgment Order
16 does not preclude us from seeking all amounts that are due
17 under the base agreement.

18 I guess I would also point out, Your Honor, that
19 Mr. Pereos is correct that all of the time records and all of
20 the invoices for this project were produced in discovery
21 30 days before trial, when we gave our disclosure of the
22 documents that we intended to use as trial exhibits. All of
23 these invoices were included in that disclosure. So there's no
24 real surprise here. I don't -- I don't really understand the

1 surprise element of the argument.

2 THE COURT: Well, I don't know that Mr. Pereos is
3 arguing that he is, quote, unquote, surprised, I think he's
4 arguing that he didn't prepare for that issue based on the
5 Court's ruling in its May 9, 2013, file-stamped Order Granting
6 Motion For Partial Summary Judgment.

7 The language that you are looking at -- or looking for
8 on page 3 of that document, Mr. Hoy, is beginning at line 4 of
9 page three: "This Court agrees with defendant" -- and
10 defendant, as the order was written, was Mr. Steppan -- "that
11 as a matter of law, the mechanic's lien secures the fixed fee
12 specified in the lien claimant's written contract."

13 So, Mr. Hoy, your argument is that that's the fee
14 itself, but that the contract also specifies other fees that
15 can be incurred as a result of the act -- or, excuse me -- as a
16 result of the actions of the parties. Is that correct?

17 MR. HOY: Yes.

18 THE COURT: The Court will admit the exhibits noted.
19 And I assume -- well, strike that.

20 The argument would be the same for the additional
21 exhibits that are marked, Mr. Pereos?

22 MR. PEREOS: That's correct, your Honor. I will not
23 repeat myself for the rest of the exhibits.

24 THE COURT: Thank you. I appreciate that for the

1 convenience of the Court.

2 The objection for each of the exhibits noted by
3 Mr. Pereos is duly noted and overruled, and the Court finds
4 that the documents are admissible.

5 If the parties choose to address that during the
6 argument portion of the proceedings, the Court would certainly
7 consider argument regarding that.

8 But just for the evidentiary value that they have, the
9 Court will consider them. And I'm not -- haven't made a final
10 decision whether or not the Court would find that that --
11 strike that -- that the Court would find that those are sums
12 due and owing to Mr. Steppan as a result of this lawsuit. But
13 just to get the evidence before the Court, as far as
14 admissibility goes, the Court finds that it is relevant and
15 admissible.

16 MR. HOY: Just to --

17 THE COURT: And just as a point of clarification, have
18 the parties decided whether or not you want to do a closing
19 argument in this case or a written post-trial brief? Have you
20 talked about that, the thought of coming in on December 23,
21 possibly, to argue the case?

22 MR. HOY: What we've discussed is this: That we would
23 both prefer to do an oral argument, an oral closing argument.
24 We further discussed the possibility of just setting Friday

1 afternoon aside so that the Court has plenty of time for the
2 retreat and we can get started whenever the Court wants to in
3 the afternoon on Friday. I think the evidence will be closed
4 sometime tomorrow.

5 THE COURT: Okay. And that's fine with me. I
6 don't -- I just don't want the parties to be under any
7 delusions. I believe that the retreat, the judicial retreat,
8 will be over sometime in the afternoon, I'm not sure. I don't
9 expect you or your clients to sit around all day waiting for me
10 to -- to appear. And so we'll talk about that again a little
11 bit further today.

12 But the Court has made its ruling regarding the
13 evidentiary objection. We'll go forward.

14 Go ahead, Mr. Hoy.

15 MR. HOY: Let me see if I can shortcut this. Offer
16 Exhibit 28.

17 THE COURT: Admitted over objection.

18 MR. HOY: I apologize, Your Honor. We were talking
19 about Exhibit 27 before. This is a new exhibit, 28, which is
20 not in evidence, and I'm offering it without asking the
21 foundational questions.

22 THE COURT: And with the objection that you've
23 previously noted, do you have any other issues to raise
24 Mr. Pereos?

1 MR. PEREOS: No, assuming that the foundation -- can I
2 just have on the record -- this is a CYA thing.

3 MR. HOY: Sure.

4 MR. PEREOS: -- on the record that the foundational
5 question is repeated as to the other exhibits as it pertains to
6 the same, as these other exhibits and then --

7 THE COURT: And is it 27, 28, 29 and --

8 MR. HOY: Thirty.

9 THE COURT: -- 30, Mr. Hoy?

10 MR. HOY: Yes.

11 THE COURT: Those documents will all be admitted with
12 the objection that has been raised by Mr. Pereos being noted
13 for each individual exhibit.

14 And, Mr. Hoy, if you could just lay the appropriate
15 foundation when each of those exhibits are addressed in your
16 direct examination of Mr. Steppan, the Court would appreciate
17 that.

18 (Exhibit Nos. 27, 28, 29 and 30 marked for identification.)

19 DIRECT EXAMINATION, RESUMED

20 BY MR. HOY:

21 Q. All right. Mr. Steppan, please turn to Exhibit 28.
22 Do you recognize Exhibit 28?

23 A. It's invoicing for the church parcel parking studies.

24 Q. Were the invoices in Exhibit 28 prepared the same way

1 that the other invoices we've looked at?

2 A. Yes.

3 Q. And were these copies of the invoices created and
4 stored in the same uniform fashion as the other invoices at
5 Fisher-Friedman Associates?

6 A. Yes.

7 Q. Please turn to Exhibit 29. Do you recognize
8 Exhibit 29?

9 A. It's a collection of invoices for responding to staff
10 comments.

11 Q. Were the invoices in Exhibit 29 created in the same
12 fashion as the uniform process that you discussed earlier at
13 Fisher-Friedman?

14 A. Yes.

15 Q. And were these copies of the invoice created and
16 maintained in files of Fisher-Friedman in accordance with this
17 uniform practice for storing invoices?

18 A. Yes.

19 Q. Please turn to Exhibit 30. Do you recognize the
20 document in Exhibit 30?

21 A. Yes. It's an invoice on editing the fly-through.

22 Q. All right. And was the invoice in Exhibit 30 created
23 in the same uniform fashion as the other invoices that we've
24 discussed this morning?

1 A. Yes.

2 Q. And was this copy of the invoice created and stored in
3 the same uniform fashion at Fisher-Friedman Associates as the
4 other exhibits?

5 A. Yes.

6 Q. I would ask you to turn back to Exhibit No. 6.

7 A. Okay.

8 Q. And I'm at page 8 of Part 1, also Bates numbered 7505.
9 And direct your attention to Sections 3 -- I'm sorry --
10 1.3.8.4. Did the client ever provide a written Notice of
11 Termination under this provision?

12 A. No.

13 Q. Direct your attention to Section 1.3.8.7, which reads,
14 "Termination expenses are in addition to compensation for the
15 services of the agreement and include expenses directly
16 attributable to the termination for which the architect is not
17 otherwise compensated, plus an amount for the architect's
18 anticipated profit on the value of the services not performed
19 by the architect."

20 Are you seeking a judgment in this case for
21 anticipated but lost profits for the project in the case?

22 A. No, we're not seeking any additional termination costs
23 that we would be entitled to by the contract.

24 THE COURT: Only up through the schematic design,

1 correct?

2 THE WITNESS: Correct.

3 BY MR. HOY:

4 Q. Did your client ever object to any of the invoices
5 that we've looked at this morning?

6 A. Not that I'm aware of.

7 Q. Did you complete schematic design as defined in the
8 contract?

9 A. Yes.

10 MR. HOY: That's all the questions I have at this
11 time, Your Honor.

12 Thank you, Mr. Steppan.

13 THE COURT: Thank you.

14 Mr. Pereos, you may begin your cross-examination.

15 MR. PEREOS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PEREOS:

18 Q. You would agree with me, Mr. Steppan, that you do not
19 have an agreement with John Iliescu?

20 A. Correct.

21 Q. Your source for reimbursement or payment of your fees
22 is the agreement that you have with the developer?

23 A. That's part of it. I do not know the relationship
24 past that to the lien requirements.

1 Q. Okay. All right. But the point that I'm simply
2 saying is that it's the agreement with the developer that you
3 have that creates the basis for your compensation that you're
4 asking for in these proceedings?

5 A. Correct.

6 Q. And the compensation that you're asking for in these
7 proceedings, you're hope -- you're anticipating will
8 materialize into a lien against the property?

9 A. Please rephrase the question.

10 Q. Sure. The compensation you're seeking in these
11 proceedings will materialize into a lien against the property?

12 A. No, because the lien is already in place, so it
13 wouldn't materialize into it, it's already in place.

14 Q. All right. Then I'll rephrase it.

15 Will materialize into a judgment for foreclosure of
16 the lien?

17 A. I don't know -- know all the nuances of what's being
18 required by the lien.

19 Q. Okay. Now, it's your position and -- well, it's
20 basically your position in these proceedings that a stopgap
21 agreement was signed, pending signature on the AIA contract?

22 A. Yes.

23 Q. And that's Mr. Hoy's characterization and it's a good
24 characterization. Okay?

1 Now, under the AIA Fixed E contract, you're looking
2 for compensation in the amount of 2,000 -- \$2,070,000, are you
3 not?

4 A. That's the 20 percent fee for schematic design,
5 correct.

6 Q. Okay. By the way, your son-in-law is Rodney Friedman?

7 A. That's correct.

8 Q. When you took the test for Nevada, to be licensed in
9 the State of Nevada as an architect, was there legal on that
10 test? Was there a legal section?

11 A. The test had mostly to do with the Nevada statutes.

12 Q. And did that include --

13 A. So the answer would be, typically yes.

14 Q. Okay. And that would include legal, as well,
15 like mechanic's liens?

16 A. Legal is a very broad heading.

17 Q. Okay. Well, let me rephrase. Let me see if I can
18 narrow it down.

19 Did the test include the statutes regarding -- did the
20 test require knowledge of the mechanic lien statutes in the
21 State of Nevada?

22 A. I don't honestly remember.

23 Q. Okay. Do you have Exhibit 14 before you? Can you
24 access that quickly, please?

1 A. Yes.

2 Q. Now, this is the letter that you referenced as
3 creating the basis for your fee engagement pending the
4 signature of the AIA contract.

5 A. It is the starting agreement, yes.

6 Q. Well, didn't you testify that, "We are still on an
7 hourly basis," when you were talking about Exhibit 18, and
8 referencing that this was the engagement putting you on an
9 hourly basis, being Exhibit 14?

10 A. Yes. Exhibit 14 is the hourly basis discussion for
11 starting of the project, and Exhibit 18 is the discussion of a
12 further delineation of proposed tasks and associated projected
13 costs.

14 Q. Okay. We'll get to 18, but right now let's stay with
15 14.

16 Now, it's your position that Exhibit 14, the initial
17 fee arrangement which was referred to by Mr. Hoy as a stopgap,
18 okay, is intended to compensate the firm for the hourly work
19 pending completion of the AIA contract; is that correct?

20 A. Yes.

21 Q. And under the AIA contract, you're going to receive a
22 fee for the schematic design in the amount of \$2,070,000?

23 A. Correct, plus any additional services.

24 Q. All right. Plus additional services. Okay. That's

1 fine. Okay.

2 Tell me where Exhibit 14 says that.

3 A. It doesn't and nor does it have to.

4 Q. It doesn't. Well, why doesn't it have to?

5 A. This is a negotiated start point for the project.

6 This letter defines that starting of the project and defines
7 that at this time, we are performing on that particular basis
8 as agreed to by these terms.

9 Q. Oh, I'm --

10 A. There are other discussions going on that are not
11 recorded on this particular document.

12 Q. Well, I don't want to cut you off, so -- okay.

13 I agree with you that this letter is the basis for
14 your compensation. I want to know why you're testifying that
15 this letter does not state or have to state that, "Oh, by the
16 way, this hourly compensation will be credited to the
17 \$2,070,000 that we're going to be owed for doing this work."

18 A. Regardless of what this letter says, the understanding
19 and agreement with our client was how to proceed on the project
20 through the effort of starting on an hourly -- because we
21 needed to get started and it was understood that it would take
22 time to solve the agreement.

23 Having started other projects similarly to this, those
24 documents also did not say, "We're doing this while we'll

1 negotiate the contract." Sometimes they do, sometimes they
2 don't.

3 As long as the parties understand the parameters of
4 the starting of the project and the timing for the signature or
5 the execution or agreement on the formal contract, that is what
6 is necessary to proceed.

7 Q. Did you verbalize to Sam Caniglia or his people that
8 you expected to receive a \$2,070,000 fee for securing the
9 schematic design work?

10 A. Yes. The fee was discussed with the client.

11 Q. And you discussed the \$2,070,000 fee that you expected
12 to receive?

13 A. All phases were discussed.

14 Q. Okay. Let me see if I can still micro my question.
15 Did you mention a 2,070,000 figure?

16 A. I don't remember personally mentioning that to Sam.

17 Q. Fine. Now, it's your position, though, in these
18 proceedings, that you're entitled to that \$2,070,000 fee and
19 that this work that was done pursuant to Exhibit 14, is only a
20 credit against the \$2,070,000, to the extent that you were
21 paid?

22 A. Correct. It was a vehicle to allow us to receive
23 payments while the work was progressing, as we're not a bank
24 and cannot pay for everyone's salaries without getting income.

1 And so this was a method, that is pretty standard, to allow an
2 architect to receive compensation while performing work while
3 the formal contract is being negotiated.

4 Q. Don't you think it would have been a good business
5 practice to identify in your engagement letter that you're
6 entitled to a fee for schematic design the day you start your
7 work, in the amount of \$2,070,000, but you will credit the
8 payments on a time-and-material basis under Exhibit 14?

9 THE COURT: Don't answer that question, Mr. Steppan.

10 Mr. Hoy?

11 MR. HOY: The objections are compound and
12 argumentative.

13 THE COURT: It's not compound, I don't think. It
14 might be argumentative.

15 Can you rephrase the question?

16 MR. PEREOS: All right.

17 THE COURT: And let me just see if I can understand
18 something in my mind, as well, Mr. Steppan.

19 In a general sense, if time is not of the essence, if
20 you're not pressed because of some issue, would it be
21 Fisher-Friedman and Associate's practice to get the contract
22 done first, before you start doing the work?

23 THE WITNESS: Typically.

24 THE COURT: And in this case --

1 THE WITNESS: Sorry.

2 THE COURT: -- was it different for some reason?

3 THE WITNESS: Typically the clients want us to start
4 as soon as possible, so --

5 THE COURT: I understand.

6 THE WITNESS: So typically we start or started on a
7 similar type of letter that says, "You've come in, it was great
8 to meet you, this is the project you've asked us to start with,
9 we're going to start billing on a time and material, not to
10 exceed \$5,000," and off we go.

11 Because the discussions with the client are, "We've
12 got to start, this is what we're going to do, and then down the
13 road we'll figure out what contract basis we are going to use."
14 But until we get to that point, we have something to cover the
15 interim.

16 THE COURT: Understood. So that's -- what you did in
17 this case, it's your testimony, is more the norm than the
18 exception, at least at Fisher-Friedman and Associates, based on
19 your experience?

20 THE WITNESS: Correct. And in fact, it's the norm in
21 my current firm, as well, where you still do a proposal, get an
22 agreement to a term. And the clients that we're working with,
23 many of them have their own forms of agreement, such as Sutter
24 Health, and it takes six months to reach a final agreement.

1 But you don't necessarily say in that proposal that
2 you are doing this while you are negotiating the other. You
3 can, it can be helpful, but it's not a requirement.

4 THE COURT: Okay. Go ahead, Mr. Pereos.

5 BY MR. PEREOS:

6 Q. Well, my question was, would it not have been good
7 business practices to identify in your first engagement letter
8 of Exhibit 14 that you're expecting a fee of \$2,070,000?

9 MR. HOY: Objection, argumentative.

10 THE COURT: Overruled.

11 You can answer the question.

12 THE WITNESS: I can't speak to whether we felt as a
13 firm it was a good business practice to not include it or a
14 good business practice -- or it would have been a better
15 business practice to include it, given the fact that all of
16 this was being discussed at the time.

17 BY MR. PEREOS:

18 Q. Exhibit 18, let's go to Exhibit 18. Your testimony on
19 Exhibit 18 was that this was the letter designed to alert the
20 client as to what type of fees he's going to be incurring on a
21 go-forward basis in connection with the work being all
22 performed by the architect.

23 A. Yes, but specific to the defined tasks.

24 Q. Okay. Specific to the defined tasks in Exhibit 18?

1 A. Correct.

2 Q. But some of the defined tasks in Exhibit 18, your
3 testimony was, include the scope of the work that would be
4 covered by the fixed-fee contract?

5 A. Correct.

6 Q. But meanwhile, if I'm understanding you correctly, by
7 February of '06, when Exhibit 18 was drafted, the client
8 already knew that he would be obligated under the fixed-fee
9 contract, in the amount of \$2,070,000 for the schematic design
10 work?

11 A. I believe that to be the case.

12 Q. But you're still including the same work that would
13 have been included in the fixed-fee contract on Exhibit 18,
14 correct?

15 A. Part of the work that's required for the project is
16 defined in this exhibit, which gives the client a heads-up
17 about upcoming expenses while the contract is still being
18 negotiated. At this time we didn't know if the contract would
19 be signed in March, April, May, June, July. It's hard to know.
20 So in fairness and with discussions with the client, we gave
21 them a heads-up.

22 Q. But you wouldn't have known whether or not the
23 contract was going to be signed at all at that time, did you?

24 A. One never knows.

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1 Q. That's right. But at least you had your reimbursable
2 letter of Exhibit 14 to fall back on?

3 A. Correct.

4 Q. And if a contract was not signed, your measure of
5 recovery would have been based upon the time-and-material
6 billings that you submitted, pursuant to Exhibit 14?

7 A. I assume so.

8 Q. You would agree with me, as you're advancing your case
9 to foreclose the mechanic's lien, that what you're alleging
10 controls the relationship between you and your client is the
11 AIA contract, marked Exhibit 6?

12 A. I'm not sure I'm alleging anything. All I think
13 that's been stated is that we have a signed agreement with a
14 client and it's Exhibit 6 and I believe Exhibit 7 for the
15 amendment.

16 Q. Okay. All right. And what you're alleging, also, is
17 that's what defines your compensation?

18 A. Yes. Our compensation is defined by the executed
19 agreement.

20 Q. Okay. And the executed agreement, Exhibit 6, calls
21 for the development of 499 units, does it not? Let's say
22 Exhibits 6 and 7.

23 A. Yes, because the 499 is not included in the base
24 agreement, it's in the addendum.

1 Q. Okay. It was picked up in the addendum.

2 Now, did it also include securing the entitlements as
3 a basis for your compensation?

4 A. Let me see how it's actually worded.

5 It says that the project should obtain entitlements
6 and approvals and we participate in that process, providing the
7 appropriate documentation to do so.

8 Q. Okay. So would you agree with me that the triggering
9 effect of what creates the basis for your compensation for
10 schematic design is not only the preparation of the schematic
11 design documents, but securing the entitlements?

12 A. I suppose that's how you would read this, yes.

13 Q. Oh, okay. Well, is that a consistent reading with
14 what the -- what the intent of the parties was through the
15 negotiations going back and forth?

16 A. I don't remember all the specific discussions on this
17 particular item.

18 Q. But that's because Nathan Ogle handled those
19 negotiations, isn't it?

20 A. No.

21 Q. So you handled --

22 A. I was a party to half of those phone conversations, at
23 a minimum.

24 Q. Okay. All right. Now, you agree with me that the

1 contract and actually the intellectual property rights -- well,
2 let me go about it this way.

3 The contract, the AIA contract, affords the architect
4 intellectual property rights on his work product in connection
5 with this project; isn't that correct?

6 A. Yes.

7 Q. And you would agree with me that those intellectual
8 property rights are not assignable without the consent of the
9 architect?

10 A. As previously testified, that is correct.

11 Q. And basically, the architect owns that work product --

12 A. Right.

13 Q. -- the intellectual property rights?

14 A. Correct.

15 Q. You're only giving a license to use those work
16 products; isn't that correct?

17 A. Correct.

18 Q. Do you still earn your fee if you secure the
19 entitlements with conditions that are too onerous?

20 MR. HOY: Objection, vague and also calls for a legal
21 conclusion.

22 MR. PEREOS: I'll rephrase.

23 THE COURT: Sustained.

24 MR. PEREOS: I will. Okay.

1 BY MR. PEREOS:

2 Q. You're familiar with the fact that the entitlement
3 process would result in the imposition of conditions?

4 A. I'm unaware of one happening that hasn't.

5 Q. Okay. Which means, yeah, you're familiar with it;
6 fair?

7 A. Fair.

8 THE COURT: And by "conditions," you're meaning,
9 Mr. Pereos, that you don't go before the city council and the
10 Planning Commission and they just look at it and say,
11 "Everything is perfect, you guys are wonderful, no additions or
12 changes"?

13 THE WITNESS: That is correct. I am not aware of any
14 project that we've -- I've ever worked on or been around that's
15 had approvals from a jurisdiction that has not had conditions
16 on the approval.

17 BY MR. PEREOS:

18 Q. So we're all on the same page.

19 Now, my question to you is, if those conditions are
20 financially too onerous, that is, too expensive to facilitate,
21 have you still earned your fee because you've secured the
22 entitlements?

23 A. Personally, I haven't thought about it, because that's
24 never been the case. So if you take this project as an example

1 and it's approved with conditions and you review the conditions
2 and they're all things that, as a team, you believe can be
3 accomplished for the project, then you have successfully
4 obtained the entitlements and satisfied, initially, the City's
5 requirements.

6 You will still have to show compliance with all of
7 those conditions when you file the final map and do other
8 things for building permit, et cetera.

9 In that interim you have the ability to resolve all of
10 those conditions. And if there's something that appears upon
11 first blush to be, shall we say, very costly or could have a
12 major impact to the feasibility of the project, then you have
13 the opportunity to come to some resolution as to the make-up of
14 that.

15 Generally speaking, in my experience, the city
16 councils and other groups are not going to put conditions of
17 approval on a project that they're approving that that feel
18 would make that project unfeasible or unavailable to be
19 afforded by the client.

20 THE COURT: They would just deny the project.

21 THE WITNESS: They would make other changes or do
22 other things or possibly deny the project if they felt, for
23 whatever reason, it had to change to that large of a degree or
24 their conditions that they wanted to impose would be of such

1 magnitude that it would impact the feasibility of the project.

2 THE COURT: And so to just use an absurd example in
3 this case, if they gave you the entitlements but one of the
4 conditions was you need to divert the Truckee River and change
5 the course of the Truckee River, obviously that would be
6 something that, as Mr. Pereos is suggesting, would be cost
7 prohibitive to comply with.

8 Is that what you are suggesting?

9 MR. PEREOS: That's what I'm suggesting.

10 THE COURT: It didn't happen in this case. But under
11 those circumstances, would you have still completed your
12 assignment?

13 THE WITNESS: No.

14 THE COURT: Next question.

15 BY MR. PEREOS:

16 Q. No. You would agree with me, though, that you're not
17 going to know the cost of all the conditions that are affixed
18 to the entitlement until you start looking into its compliance?

19 A. While that is true, you have an idea or based on
20 experience as to the magnitude or impact of the conditions of
21 approval, some of which have costs associated with them and
22 some that wouldn't, typically speaking.

23 So had there been something of a magnitude that the
24 team, which was a very experienced team, felt had a large

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1 impact on the success or ability to design the project, then it
2 would have been brought to people's attentions at the time.

3 Q. Okay. What you are telling us is this: You are
4 telling us that if you do your due diligence correctly before
5 you show up at either the Planning Commission hearing or the
6 Reno City Council hearing, you would have anticipated some
7 issues that would surface that you would then investigate and
8 have knowledge of so you could address it at the hearing?

9 A. That's certainly a way to have approached it, yes.

10 Q. Okay. But for instance, let's talk about your
11 geotechnical report. Do you know whether or not the
12 geotechnical report that was done before you submitted your
13 applications for approval did any core sample drilling?

14 MR. HOY: Object to the form of the question,
15 particularly the possessive pronoun "your," with respect to the
16 geotechnical report and the application.

17 MR. PEREOS: Fine.

18 THE COURT: Well, I understood it to be "the" not
19 "your," as in Mr. Steppan produced the document or conducted
20 the investigation.

21 MR. PEREOS: I'll rephrase it, Your Honor.

22 THE COURT: That's okay. You can just simply -- do
23 you understand the question?

24 THE WITNESS: Yes.

1 THE COURT: Go ahead and answer the question.

2 THE WITNESS: I don't remember what it showed at this
3 time; I have not looked at it in many years.

4 BY MR. PEREOS:

5 Q. All right. Well, the point that I am getting at is,
6 your geotechnical report might be a superficial report based
7 upon the knowledge of the engineer; but, for instance, when you
8 get a condition that you've got to address FEMA, the flood
9 zones and/or the groundwater -- I hate to use the word
10 "pollution," but the groundwater flow back to the river, you
11 might wind up having to do some core samples whereby you are
12 finding that the groundwater level is only a few feet down and
13 now you've got a major condition that has to be addressed?

14 A. I believe a lot of those things were addressed, looked
15 into and investigated by the geotech consultant and that there
16 were discussions on how to deal with those types of issues.

17 Typically speaking, you have the geotech report before
18 you start designing the project, so you have parameters or it's
19 in process while you are doing schematics, so --

20 Q. Well, let's get a little more specific. Let's go
21 to -- I will give you Exhibit 119. Don't put that book too far
22 away.

23 A. Could you repeat the exhibit number, please.

24 Q. Sure. One nineteen.

1 Tell me when you're there.

2 A. I'm there.

3 Q. Okay. This is the geotechnical report that was
4 prepared for the project. In fact, I believe this exact same
5 report is the geotechnical report that is attached to one of
6 the applications. My best memory, it might be application
7 Exhibit 36, but I could be incorrect on that one.

8 A. It's a geotech report and it looks like it's one that
9 was attached to one of the applications, correct. It's dated
10 the 17th, so I imagine it went in on the first one.

11 Q. All right. Let's go to "Conclusions," page 2254. He
12 says: "The primary concern, however" -- this is the first full
13 paragraph, last sentence.

14 "The primary concern, however, to be considered in the
15 design and construction of a project are the presence of
16 oversized aggregate."

17 Now, let me stop there. There was some discussion on
18 that, okay, in a response by Mr. Friedman on this issue of
19 oversized aggregate. Do you remember that?

20 A. Yes.

21 Q. Okay. But then he goes on and he says, "The potential
22 presence of shallow groundwater and the potential for flooding
23 to occur."

24 Do you see that?

1 A. Yes.

2 Q. Now, nowhere in the report -- unless you saw something
3 that I didn't see -- does he actually address an issue as to
4 how to address those issues for those potential problems.

5 Now, I didn't see it in the report, unless you saw it
6 in the report.

7 A. I have not re-read the report, so I don't know what's
8 completely in it.

9 Q. Okay. So right now, we have an unknown, that is, the
10 shallow groundwater, as to how we are going to address it and
11 what the cost factor is going to be, and the flooding and how
12 we're going to address it and how the cost factor is going to
13 be; isn't that correct?

14 A. Those are issues that have been brought forth by the
15 consultant. And as Rodney Friedman testified yesterday, they
16 were known items that were being discussed as to how to best
17 deal with them.

18 Q. Okay. Now, particularly the flooding is of concern
19 because we have sub-tiered parking garages, in other words,
20 parking garages down below ground level; do we not?

21 A. Yes.

22 Q. By the way, how do the cars get around in those
23 parking levels? Do they drive around, up to each of the levels
24 or were they lifted by an elevator? I'm just asking. I'm

1 curious.

2 A. Okay. A multilevel garage, you get from floor to
3 floor by driving up or down ramps.

4 Q. Okay. And the same with this project?

5 A. Yes. The difference is that we also had what are
6 called car lifts --

7 Q. Okay. Fine, all right. Thank you.

8 A. -- which allow you to stack cars within a space within
9 a floor.

10 Q. Oh, okay. All right. So what you're telling me is --

11 THE COURT: Like cars -- like in a little pod stacked
12 on top of another car?

13 THE WITNESS: Yes. Generally there's a frame on the
14 side, whether it's an H-frame or a single-column frame and a
15 platform that the car drives on, gets lifted up and the other
16 car drives underneath.

17 THE COURT: So you can have more cars in the same,
18 roughly --

19 THE WITNESS: The same footprint, yes.

20 THE COURT: -- space.

21 BY MR. PEREOS:

22 Q. Okay. I've got that. That's common, actually, in the
23 Bay Area, is it not?

24 A. It's common in a lot of places these days, yes.

1 Q. All right. Now, let's go back to the flooding issue.
2 Okay? Right now you don't know and, actually, nobody ever got
3 into the issue as to how much the cost factor was going to be
4 to address any issues regarding flooding or the potential of
5 flooding?

6 A. I don't know any side-bar issues -- discussions about
7 solutions that you could do for the garage at that point, that
8 would have been worked out at schematic design.

9 Q. Okay. The reason for that is because your schematic
10 design work is too yet generalized to address those particular
11 issues?

12 A. No, you can still talk about them, but you don't get
13 into the details of exact solutions. But I know that we were
14 already talking about the impact of water and flooding and how
15 to deal with it.

16 Q. Okay. Now, did you understand or do you think that
17 you were supposed to design a project within the parameters of
18 a \$180,000,000 project or \$180,000,000 budget?

19 A. The dollar amounts that were given and discussed to us
20 were for purposes of budgeting the fee for the client. They
21 were in an initial cost assessment that the client gave us as a
22 starting point. And it was discussed that, as we developed the
23 project through the different phases and with the cost
24 estimators, you would arrive at a closer approximation of the

1 construction costs. And by the time you're all done, you will
2 know what the project is going to cost.

3 But for the purposes of starting the project, as is
4 typical, the client either has or does not have a budget but
5 they have an idea of what the project might cost or what they
6 feel they can afford to spend, and you use that as a starting
7 point. Sometimes they give you as a hard budget and sometimes
8 they don't. This was not given as a hard budget.

9 Q. Okay. But let's stay with the point. The client is
10 thinking about spending \$180,000,000 on this project.

11 A. Yes.

12 Q. Isn't that correct?

13 A. Yes.

14 Q. Now, did you feel that that was within the parameters
15 of what your design should include?

16 A. It was certainly a factor in understanding what we
17 were designing. It's a parameter.

18 Q. Do you think you had a license to go above the
19 \$180,000,000 in your design?

20 A. If the client agrees to -- once you've actually
21 determined what the real cost is potentially, yes.

22 Q. Okay. So let's assume the client changes the
23 complexion of a project from 399 to 499 units on that and the
24 client agrees that the budget should be more than \$180,000,000.

1 Under the AIA contract, should you have that in writing?

2 A. You've described an occurrence. What is it that you
3 are asking to have in writing?

4 Q. The fact that the clients agree that the budget is
5 going to go more than \$180,000,000.

6 MR. HOY: I object to the question, Your Honor. The
7 question is whether there should be a separate written
8 agreement that the budgeted amount would go over \$180,000,000.
9 The contract actually speaks to that and so, therefore, the
10 question is asking for a legal conclusion, which I think is the
11 Court's purview to interpret the contract itself.

12 THE COURT: Mr. Pereos?

13 MR. PEREOS: The witness can testify to what his
14 understanding of the contract is. In this particular situation
15 the contract clearly says any modification of its terms are to
16 be in writing. All right?

17 The witness just testified that, yes, he can go above
18 the \$180,000,000, if there's an understanding and agreement
19 with the client that the budget is going to go beyond that.
20 I'm asking him, should it be in writing.

21 THE COURT: The contract, then, would speak for
22 itself. In the alternative, the response to the question would
23 be a legal conclusion and, therefore, the objection is
24 sustained.

1 MR. PEREOS: Okay.

2 BY MR. PEREOS:

3 Q. Now, the contract also identified a completion period
4 of 32 months. Are you familiar with that?

5 MR. HOY: Objection, Your Honor, that misstates what
6 the document says. We went through this yesterday.

7 MR. PEREOS: Well, that's fine, I'll rephrase it.

8 THE COURT: Sustained.

9 MR. PEREOS: Okay.

10 BY MR. PEREOS:

11 Q. I want to direct your attention to Article 1.5.9 that
12 appears on page 10.

13 THE COURT: Mr. Pereos, you need to provide
14 Mr. Steppan with Binder No. 1, which contains the contract.

15 MR. PEREOS: Oh. Was that taken away?

16 THE WITNESS: I have it, but you didn't tell me what
17 exhibit you wanted me to look at.

18 MR. PEREOS: Oh, I'm sorry, Exhibit 6. Exhibit 6.

19 THE COURT: I apologize. I didn't see the binder over
20 there with you. You had it on the floor, Mr. Steppan.

21 THE WITNESS: Yes.

22 THE COURT: Go ahead. We're about five minutes out,
23 from concluding for the morning, just so you know.

24 THE WITNESS: I have Exhibit 6. Which page?

1 BY MR. PEREOS:

2 Q. Page 10, Bates number 7507.

3 A. I'm there.

4 Q. Okay. Now, why don't you look at 1.5.9.

5 A. Okay.

6 Q. Okay. Does that provide that the architect's services
7 are to be completed within 32 months?

8 A. No.

9 Q. Okay. What does that provide?

10 A. It says if they have not been, we are entitled to
11 additional compensation if the reason for them not being
12 completed within 32 months is outside of our creation.

13 Q. Oh. Does that 32 months identify a scope of a time
14 frame in which the architect services are to be completed?

15 A. No.

16 Q. Okay. Who puts the 32 months in there?

17 A. We do, in agreement with the client. Or the client
18 tells us that's how long they expect the project to last, based
19 on their discussions with their contractor or whatever it might
20 be.

21 I just had a very similar situation on another
22 high-rise. It had 36 months listed as the total time, the same
23 exact paragraph that was negotiated between Fisher-Friedman and
24 the client.

1 Q. Well, the --

2 A. And the project took six years.

3 Q. Excuse me. I didn't mean to be rude.

4 Does the shorter time frame work within the benefit of
5 the architect?

6 A. Generally speaking.

7 Q. Because then you've got to go back and negotiate
8 additional fees?

9 A. No, because a shorter time frame means you have less
10 time to keep spending money that you may not get compensated
11 for.

12 Q. Okay. So the 32 months was the subject of discussions
13 between you and the developer? I mean the architect and the
14 developer.

15 A. I believe so.

16 Q. And all you're telling me is that after -- the reason
17 that provision is in that paragraph is only to address at what
18 point in time the architect is entitled to additional fees,
19 thereafter?

20 A. It's a basic timeline that is understood when the
21 contract is negotiated, for an expected conclusions of the
22 project pending normal timing of situations, of developing the
23 design and documents, permitting and construction. It cannot
24 anticipate extended times in any of those phases. That's why

1 it's phrased this way.

2 Q. Well, let me -- let's say assume that after the
3 engagement was started on, let's assume October 31,
4 November 1st, you were able to get your entitlements within two
5 months. Okay? Is it your belief that this complex or project
6 could have been built out within 30 months, as designed?

7 A. The project could be completed or built in 30 months?

8 Q. So that's, yes, it could be?

9 A. No, I asked a question.

10 Q. Oh, I'm sorry. What's the question?

11 A. I'll rephrase it. Are you asking if it could be
12 completed or if it could be built in 30 months?

13 Q. Built to the point of completion as defined in the
14 architect's contract. And specifically, I believe it's
15 paragraph 2.6.6 that talks in terms of project completion.

16 A. Okay. So you're asking, could the project be built in
17 32 months?

18 Q. That's correct.

19 A. Yes.

20 Q. In 30 months.

21 A. Yes.

22 THE COURT: At this point, we'll take our morning
23 recess.

24 Court will be in recess until approximately 1:15. I

718

1 will certainly endeavor to be back as close to 1:15 as possible
2 so as not to waste Mr. Hoy's or Mr. Pereos' or their parties'
3 time in any way. Court is in recess.

4 (Lunch recess was taken from 11:48 to 1:18 p.m.)

5 THE COURT: We'll go back on the record.

6 And, Mr. Pereos, I believe that you were
7 cross-examining Mr. Steppan when we took our break, and the
8 last area of discussion, to my recollection, was the time to
9 complete the project, or somewhere in that area, so --

10 MR. PEREOS: Okay.

11 THE COURT: -- the floor is yours.

12 MR. PEREOS: Thank you.

13 CROSS-EXAMINATION, RESUMED

14 BY MR. PEREOS:

15 Q. Mr. Steppan, let me direct you again to Exhibit 15.

16 A. Yes.

17 Q. And go look at 16, please.

18 A. Okay.

19 Q. Now, you indicated that these letters were basically
20 an affirmation that you are continuing work on the project?

21 A. Yes.

22 Q. Why were you sending letters?

23 A. I don't remember the base reasons as to why those were
24 required to be sent, other than there was a meeting with John

1 Schleining, for example, on the December one and somehow it
2 necessitated the decision to send a letter about continuing the
3 services. Maybe it was a discussion that transpired from me.
4 I don't remember all the nuances.

5 And the second one is a base -- a continuation letter,
6 that pursuant to, as it states, upcoming presentation meeting
7 that was previously unscheduled or known -- unknown of meeting
8 with the City. So it was, again, reminding them that we were
9 having some things to do that might not have been anticipated.

10 Q. Now, at the time you sent those letters, Exhibits 15
11 and 16, you were operating under the letter agreement of
12 Exhibit 14; is that correct?

13 A. Yes.

14 Q. Now, when we go to -- neither of those two letters, by
15 the way, reaffirm what you've indicated, that is to say, that
16 you're anticipating a fee for the schematic design work at
17 2,070,000; is that correct?

18 A. They're not required to do so, nor do they do so.

19 THE COURT: In the future, Mr. Steppan, if you could
20 just answer the question that's asked of you.

21 THE WITNESS: Sure.

22 THE COURT: Thank you.

23 BY MR. PEREOS:

24 Q. Now, direct your attention to Exhibit 17. What you're

1 doing now, in this letter, is affirming that the scope of the
2 work is now changing. It's changing from 394 units to
3 499 units.

4 A. Yes, that's --

5 Q. Is that correct?

6 Now, the budget went up from 160,000,000 to
7 180,000,000 at the time that the scope of the work went up, did
8 it not?

9 A. The dollar amount that was included in the contract is
10 the basis for compensation. It went up from 160,000,000 to
11 180,000,000.

12 Q. Okay. All right. Did you identify anything in this
13 letter that the basis for your compensation was now also going
14 up?

15 A. No.

16 Q. I would like you to turn to Exhibit 1, please. That's
17 your initial lien that you recorded against the subject
18 property?

19 A. That's what it appears to be, yes.

20 Q. Okay. Now, let's go to Exhibit 2. Did you
21 authorize -- well, strike that. You actually signed it.

22 This is an Amended Notice of Lien that you recorded?

23 A. Correct.

24 Q. Why did you record the Amended Notice of Lien?

1 A. Without reading through all the documents, I don't --
2 including the Amended Notice, I don't remember off the top of
3 my head.

4 Q. Well, why don't you go ahead and take a look at the
5 document and compare it with the first Notice of Lien, see if
6 that helps refresh your recollection.

7 THE COURT: While he's doing that, just so I'm
8 clear -- just keep going ahead and looking at it,
9 Mr. Steppan -- Mr. Hoy and Mr. Pereos, on Exhibit No. 1 -- I
10 think it might have to do with the photocopying process -- just
11 so we're all clear, that date is November 7th of 2006, not --

12 MR. HOY: Yes.

13 THE COURT: -- not 2005; is that correct?

14 MR. PEREOS: Yes, Your Honor.

15 THE COURT: Okay. Because it almost looks like a
16 five, so I just want to make sure we're talking the same date,
17 November 7, 2006, the first lien is placed on the property.

18 MR. PEREOS: Yes.

19 MR. HOY: The recorder's stamp is a little clearer on
20 the subsequent pages, Your Honor.

21 THE COURT: It was. And the reason that I even raised
22 the issue was, I went back and I had always, by looking at that
23 document, assumed that that was a five; but then when I looked
24 at Exhibit 3, because Mr. Pereos referenced Mr. Steppan to

1 that, it says in the second line, "the original Notice and
2 Claim of Lien, recorded November 7, 2006." And so that made me
3 go back and make sure. So I'm good with 2006. Thank you.

4 THE WITNESS: The main difference that I can see, in
5 this cursory review, is the paragraph that altered the amounts
6 being requested as part of the lien, from the 1,700,000 and
7 change number to a \$1,939,000 number.

8 BY MR. PEREOS:

9 Q. Okay. So what had happened was, an amended lien was
10 recorded altering the amount of the claim?

11 A. Correct.

12 Q. Okay. Did you serve a pre-lien notice before you did
13 the second -- or the first amended lien, being Exhibit 2?

14 MR. HOY: Objection, irrelevant, Your Honor.

15 THE COURT: I believe -- I know that this was the
16 subject of pre-trial motion practice. If memory serves me
17 correctly, at the beginning of the trial, Mr. Pereos indicated
18 that he would just like to make a record.

19 MR. PEREOS: That's right.

20 THE COURT: If that's all he's doing, the Court will
21 not modify any previous orders that have been issued in this
22 case. However, if just for the purposes of making a record and
23 for the purpose of appeal, if you would like to ask those
24 questions, I'll allow him to ask the questions.

1 With that understanding do you have any objection,
2 Mr. Hoy?

3 MR. HOY: No, Your Honor.

4 THE COURT: Thank you.

5 BY MR. PEREOS:

6 Q. Did you serve a pre-lien notice before doing
7 Exhibit 2?

8 A. I don't remember. I don't believe so.

9 Q. Did you cause it to be recorded?

10 A. Did I cause what --

11 Q. Did you arrange to have it recorded?

12 A. I'm sorry. Can you rephrase -- repeat the question?

13 Q. Did you authorize the recording or -- the recording or
14 service of a pre-lien notice?

15 MR. HOY: Object, compound. Also, you don't record a
16 pre-lien notice.

17 MR. PEREOS: All right. I'll rephrase it.

18 THE COURT: You can ask the question. And I would
19 divulge ignorance to the fact that you don't record the
20 pre-lien notice, but I will take Mr. Hoy's representation,
21 unless Mr. Pereos can cite me to some contrary position.

22 MR. PEREOS: That's fine.

23 THE COURT: Sustained.

24 Go ahead.

1 BY MR. PEREOS:

2 Q. Did you authorize a pre-lien notice to be served?

3 A. I don't remember authorizing a pre-lien notice.

4 Q. All right. Let me show you this document and ask if
5 it refreshes your recollection as to whether or not a pre-lien
6 notice was prepared.

7 A. That looks like a pre-lien notice.

8 Q. Okay. And is it signed by Gayle Kern?

9 A. Yes.

10 THE COURT: Stop, stop.

11 MR. PEREOS: Okay. I'm sorry, I'm sorry, Your Honor.

12 THE COURT: Mr. Pereos, please let me talk and then
13 I'll give the floor back to you.

14 The process for refreshing recollection is to provide
15 the document that refreshes the recollection and then ask the
16 question, "Does that refresh your recollection?"

17 MR. PEREOS: I'm sorry.

18 THE COURT: And ask the question again. So I don't
19 know if it refreshes his recollection or not.

20 So now, having reviewed that document, does it refresh
21 your recollection whether or not you authorized a pre-lien
22 notice?

23 THE WITNESS: No, I just don't remember.

24 MR. PEREOS: Okay.

1 BY MR. PEREOS:

2 Q. Now, you learned around September or October of 2005
3 that the client in the AIA, as identified later in the AIA
4 contract, was not the owner of the property; isn't that
5 correct?

6 A. I can't say that's true or not true, because I don't
7 remember what the first date of meeting the client was. It
8 might have been late September, early October. And I really
9 don't remember if at that time that was disclosed or not
10 disclosed.

11 Q. Can I have the deposition -- well, let me --
12 Mr. Steppan, do you remember your first deposition being taken
13 on September 29, 2008?

14 A. I know one was taken.

15 Q. Do you remember it being taken on September 29, 2008?

16 A. No, I don't remember the date, other than the year.

17 MR. PEREOS: Do we have the original or do you want me
18 to bring in a copy?

19 MR. HOY: Let me see what I've got here.

20 I have all four volumes, the first of which is
21 September 29, 2008; I have a volume, February 16, 2010; Volume
22 II, March 2, 2010; and a Volume III, March 3, 2010. And I will
23 just deliver these to the clerk.

24 THE CLERK: Do you want them all filed?

1 MR. HOY: Oh, it's up to Mr. Pereos.

2 MR. PEREOS: I don't know if we need to open and
3 publish, except -- may I have the first one opened and
4 published, Your Honor, the one that is dated February 29, 2008?

5 THE COURT: That's fine. The record will reflect that
6 the documents -- that the four volumes have been at least
7 proffered by Mr. Hoy. The only volume so far that has actually
8 been offered by Mr. Pereos is Volume No. 1. And so Volume I of
9 Mr. Steppan's pretrial deposition testimony will be offered and
10 admitted.

11 THE CLERK: The deposition of Mark Steppan, dated
12 Monday, September 29, 2008, is opened and published.

13 MR. HOY: I was concerned, Your Honor, I thought I
14 heard you say that it was offered and admitted.

15 THE COURT: No.

16 MR. HOY: Okay.

17 THE COURT: I apologize, I misspoke, it is not
18 admitted.

19 MR. HOY: All right. Thank you.

20 THE COURT: It is offered. And I believe the correct
21 term is "published."

22 MR. HOY: Correct.

23 BY MR. PEREOS:

24 Q. Let me direct your attention to page 9 of your

1 deposition. If you will read to yourself -- tell me when you
2 are there -- commencing on line 6, down to line 21.

3 A. Okay.

4 Q. Were those questions asked of you and those answers
5 given?

6 A. Yes.

7 Q. "Question" --

8 MR. HOY: Wait. Are you asking the witness to refresh
9 his recollection or are you trying to impeach him?

10 MR. PEREOS: I believe the last question before the
11 witness is whether or not they knew that the owner, around
12 September, October of '05, okay, was not the client or the --
13 was not the -- the owner of the contract was not the owner of
14 the land. I believe that was the last question.

15 THE COURT: Right. And I think Mr. Hoy is correct. I
16 think that the witness can review the deposition and refresh
17 his recollection. And if he reviews it and it does refresh his
18 recollection, then he can answer the question without the
19 testimony or the statements in the deposition being read into
20 the record.

21 If, as I stated before, the witness cannot refresh his
22 recollection, if he testifies consistently with the way he
23 testified regarding -- I think it was Ms. Kern's activities --
24 even reviewing what you provided him, it doesn't refresh his

1 recollection, then it can be, you know, a prior sworn statement
2 and it can be read in.

3 But I think you have to go through that first step
4 first of, "Have you refreshed your recollection, and now having
5 refreshed your recollection, can you answer the question?"
6 Then you can go to the next step of using the affidavit -- or,
7 excuse me, the deposition testimony.

8 MR. PEREOS: Okay. I'm a little confused only because
9 my understanding of the rules is the deposition of a party can
10 be used for any purposes.

11 THE COURT: Well, it can be used -- I agree with you
12 100 percent, Mr. Pereos, it can be used for any purpose. One
13 of those purposes is refreshing his recollection.

14 MR. PEREOS: All right. Okay.

15 MR. HOY: Actually, I'm going to withdraw -- well, I
16 didn't make an objection, but I think Mr. Pereos is correct,
17 that the prior sworn testimony of a witness -- of a party to
18 the case is not hearsay, so --

19 THE COURT: I'm not disagreeing with you that it's
20 hearsay.

21 MR. HOY: All right.

22 THE COURT: The issue that was raised was refreshing
23 recollection.

24 MR. HOY: Yes.

1 THE COURT: So you can refresh your recollection with
2 hearsay. You can't read it into the record, but you can
3 refresh your recollection with anything. The old example from
4 law school, you can refresh somebody's recollection with a ham
5 sandwich. It doesn't matter what it is that refreshes the
6 recollection.

7 So go ahead, Mr. Pereos. I apologize for divulging
8 from your cross-examination, but I will allow you to ask any
9 question at this moment and we'll just proceed forward from
10 there.

11 BY MR. PEREOS:

12 Q. Okay. In your deposition at that place that you
13 testified, did it refresh your recollection as to your
14 testimony as to what you knew in September of '05?

15 A. The only thing it's refreshed my memory on is that it
16 reminds me that at that time I remembered a date that there was
17 a meeting at; otherwise, the rest of the testimony is
18 consistent with what I've just said. So I didn't have any
19 additional refreshment.

20 THE COURT: And now if you want to ask him a question
21 based on his testimony, go right ahead, Mr. Pereos.

22 BY MR. PEREOS:

23 Q. Did you testify at that time that you knew in
24 September of '05 that the client in the AIA contract was not

1 the owner of the property?

2 A. What I testified to was that at some point thereafter,
3 we knew it was not owned by your client.

4 THE COURT: Well, based on that --

5 THE WITNESS: Not at the September 5th meeting, that I
6 knew.

7 THE COURT: Okay. On the September 5th meeting --
8 strike that.

9 You just testified at some point after the
10 September 5th meeting, you found out that the land owner was
11 not your client, correct?

12 THE WITNESS: Correct.

13 THE COURT: So presumably you would have had that --
14 the knowledge back on the September 5th meeting, wouldn't you?

15 THE WITNESS: No.

16 THE COURT: Maybe I'm missing something.

17 THE WITNESS: At the September 5th meeting, a meeting
18 with Sam and John Schleining and Calvin Baty, we were talking
19 about the project and there was no discussion of who actually
20 owned the land at that meeting.

21 But later in September or early October, we had
22 subsequently learned that our client-to-be did not actually own
23 the land yet. That's consistent with my testimony in the
24 deposition and my current understanding.

1 THE COURT: Thank you. And now I understand exactly
2 what your testimony was. It just got a little muddled there
3 for a moment.

4 THE WITNESS: Sorry about that.

5 THE COURT: That's okay.

6 Was it your understanding that Mr. Caniglia and the
7 other people were the owners of the property when you were
8 initially meeting with them in September of 2005?

9 THE WITNESS: I don't remember even thinking about it
10 one way or the other.

11 THE COURT: Next question, Mr. Pereos.

12 BY MR. PEREOS:

13 Q. Direct your question to -- so is it your testimony
14 that -- that between August 31, 2005, when you first had your
15 meeting with Sam Caniglia, and April 21, 2006, the date of the
16 contract, okay, that you did not know that Mr. and Mrs. Iliescu
17 owned the subject property?

18 MR. HOY: Objection, no foundation as to the
19 August 31st of 2005, date.

20 MR. PEREOS: It was October. I'll rephrase the
21 question.

22 THE COURT: I think you did say "August," so I will
23 let you rephrase the question.

24 MR. PEREOS: I'll rephrase. Okay.

1 BY MR. PEREOS:

2 Q. Between October 31, 2005, and April 21, 2006, did you
3 know that Dr. and Mrs. Iliescu owned the subject property?

4 A. I do not know when I learned of that piece of
5 information, which is consistent with the testimony in the
6 deposition in 2008.

7 Q. Let me direct your attention to page 54 of your
8 deposition. Read to yourself lines 1 through line 9.

9 MR. HOY: I'm sorry, the lines again?

10 MR. PEREOS: Lines 1 through line 9.

11 MR. HOY: Thank you.

12 THE WITNESS: Okay.

13 BY MR. PEREOS:

14 Q. Did you testify at that time that you knew that
15 Dr. and Mrs. Iliescu owned the property, at the time frame of
16 October 31, 2005, to April 21, 2006?

17 A. Yes, that's what I said during the deposition.

18 Q. Now, the first time you met Dr. Iliescu was after the
19 lawsuit was filed; is that correct?

20 A. That's correct.

21 Q. And that you didn't have any interaction with
22 Mr. Iliescu before the contract was signed?

23 A. That's correct.

24 Q. And none of your firm members had any contact with

1 John Iliescu before the contract was signed?

2 MR. HOY: Objection, foundation.

3 THE COURT: Mr. Pereos?

4 MR. PEREOS: He can testify what his knowledge is.

5 THE COURT: He can testify to his own personal
6 knowledge, but he can't testify to the knowledge of other
7 people in his firm.

8 And, therefore, you can testify just based on what
9 your knowledge is regarding the contact of the firm.

10 THE WITNESS: Sure. I'm personally am not aware of
11 other employees' contact with Dr. Iliescu --

12 MR. PEREOS: Fine.

13 THE WITNESS: -- prior to April of 2006.

14 BY MR. PEREOS:

15 Q. This was the first occasion that you ever had to be
16 the architect on an agreement for work that was being done by
17 FF&A; is that correct?

18 A. Please rephrase the question.

19 Q. Sure. This was the first occasion that you had or
20 were the contracting party on an architectural agreement for
21 work that was going to be done by FF&A?

22 A. I don't know that that's true or not true.

23 MR. PEREOS: May I have the second volume of the
24 deposition opened and published, Your Honor, being -- I believe

1 it was February 16, 2010.

2 THE COURT: Yes.

3 Any objection, Mr. Hoy?

4 MR. HOY: No.

5 THE CLERK: The deposition of Mark Steppan, dated
6 Tuesday, February 16, 2010, is opened and published.

7 MR. PEREOS: Thank you.

8 BY MR. PEREOS:

9 Q. Let me direct your attention to page 71, please.

10 A. Okay.

11 Q. And if you will commence reading to yourself, starting
12 on line 8 and go to page 73, line 18. And I'd ask if that
13 refreshes your recollection in connection with my last question
14 to you?

15 A. You wanted me to go to how far?

16 Q. Page 73, line 18.

17 A. Okay. I've read it.

18 Q. Okay. Now, did you previously testify that this was
19 your first contract of this nature?

20 A. That -- I don't believe that was your earlier
21 question.

22 Q. Okay. So let me rephrase my earlier question to make
23 it easier for you.

24 The AIA contract that's marked Exhibit 6, signed by

1 you, was the work -- was it anticipated that most of the work
2 would be done by FF&A?

3 A. Yes.

4 Q. Okay. Had you previously ever signed such an
5 agreement while you were affiliated with FF&A?

6 A. By "such an agreement" -- if I may ask you a question
7 for clarification, by "such an agreement," do you mean signing
8 an AIA agreement?

9 Q. In your individual capacity.

10 A. So it's a capacity where the firm listed is my name?

11 Q. With your name versus a firm name.

12 A. I have done work signing contracts under my name, not
13 where Fisher-Friedman was going to do the bulk of the work, a
14 contract under my name.

15 Q. Had you done work signing an AIA contract?

16 A. I'm sorry, please repeat.

17 Q. Had you done work under your name where an AIA
18 contract was signed?

19 A. No.

20 Q. So had you ever signed an AIA contract in your name
21 alone?

22 A. Not that I'm aware of.

23 Q. Now, FFA, Fisher-Friedman Associates, is not licensed
24 in Nevada; is that correct?

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN
ILIESCU, JR. and SONNIA SANTEE
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT,

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346
Washoe County Case No. CV07-
00341
(Consolidated w/CV07-01021)

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME VI**

Appeal from the Second Judicial District Court of the State of Nevada
in and for the County of Washoe County
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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DOCUMENT INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
12	04/17/08	Applicants/Defendants' Motion for Partial Summary Judgment including Exhibits 2, 4, 5, 6, (first 24 pages of) 7, 10, 11, & (first 12 pages of) 12	II	AA0230-0340
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
23	07/11/13	Motion to Strike Jury or Limit Demand without Exhibits	III	AA0582-0586
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
32	12/06/13	Trial Stipulation	IV	AA0729-0735
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
	12/09/13	Trial Exhibit 1 [Original Lien Notice]		AA1730-1734
	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753
	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923
45	06/10/14	Hearing Brief Regarding Calculation of Principal and Interest	VIII	AA1924-1931

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
46	06/12/14	Minutes: Hearing on Final Amount Owed, Pursuant to the Order Filed on May 28, 2014 (Hearing Date - 06/12/14)	VIII	AA1932
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	X	AA2449-2453
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
		SUPPLEMENTAL DOCUMENTS¹		
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571

ALPHABETICAL INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

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7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484
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18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
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70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923

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45	06/10/14	Hearing Brief Regarding Calculation of Principal and Interest	VIII	AA1924-1931
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
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36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
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	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753

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	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
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	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
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	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887

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	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
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56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539

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24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
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14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624

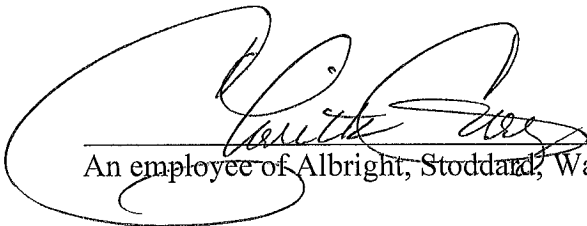
DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571
32	12/06/13	Trial Stipulation	IV	AA0729-0735

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME VI**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
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Attorney for Respondent Mark Steppan



An employee of Albright, Stoddard, Warnick & Albright

1 February 7th of 2006.

2 Q Why don't you go to page 2107.

3 A Yes.

4 Q That application is for how many units?

5 A It says 499.

6 Q So would you agree with me that the work
7 product of Fisher-Friedman in connection with those 499
8 units that you were exposed to for purposes of
9 submission to the governmental agencies was done by the
10 time you prepared that application?

11 A No. I neglected to change the date on the
12 cover.

13 Q You neglected to change the date on the cover.
14 You mean the date of February 7th, '06 is a misdate?

15 A Yeah, that date in number 37, because if you
16 look at Exhibit 36-- Go to page 2525.

17 Q You mean-- Excuse me. Exhibit 36?

18 A I'm sorry. Exhibit 36.

19 Q Okay.

20 A Go to page 2525. It's 394 units.

21 Q Okay. And my question is, what date did you
22 neglect to change?

23 A I have a date up here that's been marked on
24 here, current, 5/7, city council planning approval. I

1 don't know whether that was marked on there by City of
2 Reno staff or who was-- who marked that on there.

3 Q So are you telling us that the date of the
4 application on Exhibit 37 is incorrect, the February--

5 A I believe that that is incorrect. That is what
6 I'm telling you.

7 Q Do you know when this Tentative Map and Special
8 Use Permit Application was filed, the one that's marked
9 Exhibit 37 with the incorrect date?

10 A I don't know the exact date.

11 Q Do you know if it was filed in this format,
12 that is, Exhibit 37, which is the Tentative Map and
13 Special Use Permit Application for the 499 units
14 contains the first page as it appears as Bate number
15 page 2100 without the handwritten interlineations in
16 the upper right-hand corner?

17 A You're talking about the cover page?

18 Q Yes.

19 A And can you ask the question again. I was
20 trying to figure out which page you were on.

21 Q Sure. Are you on page Steppan 2100?

22 A Yes, I am.

23 Q Do you know at the time that this application
24 was filed for 499 units that this is the page that was

1 attached to that application exclusive of the
2 handwritten delineation marks in the upper right-hand
3 corner?

4 A To the best of my recollection, it was, if this
5 is what came from the city's documents, from their
6 files.

7 Q So when did the change occur to the 499 units
8 that precipitated the third application?

9 A I would have to say sometime in between
10 February and when this was submitted. On page 2101 I
11 caught another one of my typos, because it says
12 originally submitted February 1st of 2005 which is
13 incorrect. That's on the bottom of page 2101.

14 Q Well, let me ask you this question. You
15 prepared or at least assimilated Exhibit 37 for
16 submission?

17 A Um-hum.

18 Q Is that correct?

19 A Yes.

20 Q And you assimilated it from a conglomerate of
21 documents, some of which you acquired from the
22 architect, some of which you acquired from Wood Reese--

23 A Wood Rodgers.

24 Q --Wood Rodgers and whatever source you've got;

1 is that correct?

2 A That's correct.

3 Q All right. Now, can you tell me, okay, in
4 going through Exhibit 37 what documents were delivered
5 to you by the architect that have a date on the legend
6 that's later than April 21st, 2006?

7 A I don't see any in here that were on the
8 architect's letterhead that dated the date that Wood
9 Rodgers does have reflected on our grading sheet and
10 our utility sheet of 5/15/2006.

11 Q Yeah. But that's work product of Wood Rodgers,
12 correct?

13 A Yeah.

14 Q Okay.

15 A We took theirs for consistency and put them
16 into the same title block. And that's why you see some
17 of the architectural information with Wood Rodgers'
18 title block. And the pages that would have changed
19 would have been the ones that are in the-- more in the
20 S-1, S-2, S-3 format.

21 Q All right. However, the first application that
22 you did was on January 17th, and that was for the 394
23 units. And I believe that's Exhibit 35.

24 THE COURT: I would like-- You need to clarify

1 something, because now we keep saying the same things.
2 My recollection of Exhibit 35, the January 17th, 2006,
3 is that there are 309 units, not 394 units. Then in
4 Exhibit 36 it goes up to 394. In Exhibit No. 37 it
5 goes up to 499. And so they're not-- 35 and 36 are not
6 the same.

7 If you look at page-- in Exhibit No. 35, if you
8 look at page Steppan 2372 under Project Description,
9 "Two mixed-use towers containing retail, office, health
10 club and 390 units," three nine zero units, "of
11 residential space."

12 Then you go to number 36, February 7th of 2006.
13 And it says-- I need to find the page, because I just
14 went back and looked at it again. It says on page
15 Steppan 2575, "Project description: Two mixed-use
16 towers containing retail, office, health club and 394
17 units of residential space."

18 And I haven't read them, so I don't know exactly
19 why there's a difference of four residential units.

20 But then, as Mr. Snelgrove and Mr. Pereos have
21 discussed, the final exhibit, Exhibit No. 37, that
22 still has the February 7th, 2006 date on it and is
23 stamped on the front Steppan 2100, that's where it goes
24 up to 499 units, if memory serves me correctly. And

1 that's on page 2107.

2 So there are three different numbers of units, not
3 just two that are going back and forth. Is that
4 accurate, Mr. Hoy?

5 MR. HOY: Yes, Your Honor.

6 THE COURT: And, Mr. Pereos, is that accurate?

7 MR. PEREOS: That's fine. Yes.

8 BY MR. PEREOS:

9 Q Do you agree with what the Judge just
10 indicated?

11 A Yes. I just looked at all of them, and, yes, I
12 agree.

13 Q Now, I thought you testified earlier that you
14 did a submission in mid-January of '06 and mid-February
15 of '06 in response to your direct, questions from
16 Mr. Hoy.

17 A We've got one that's dated January 17th here.
18 And in looking through the application-- You know, I
19 don't recall. This is eight plus or minus years ago.
20 The information that's in there that would encompass a
21 project description is vastly different than what's--
22 I'm talking about Exhibit 35. The project description
23 is vastly different than the project description that
24 you'll find in the application contained under Exhibit

1 36.

2 THE COURT: Is that because there's more
3 information in 36?

4 THE WITNESS: We had more time to put information
5 together in a standard typically digestible format that
6 we would put together. So that's why you see a
7 difference.

8 THE COURT: And then in 37 it's different again,
9 because now we've added-- we've gone from approximately
10 400 to approximately 500 units.

11 THE WITNESS: Correct.

12 THE COURT: With different parking.

13 THE WITNESS: Correct.

14 BY MR. PEREOS:

15 Q Okay. Now, going on-- I'm going with my
16 thought here on it. You would agree with me that
17 you've not seen any documents from the architect in the
18 latter application of Exhibit 7-- excuse me, 37 of the
19 499 units that are dated after April 21st, 2006?

20 A I didn't see--

21 THE COURT: Hold on. Hold on.

22 Are you objecting to that, Mr. Hoy?

23 MR. HOY: That wasn't his-- I object. That wasn't
24 his testimony.

1 THE COURT: It's not his testimony. Overruled.

2 Mr. Pereos is asking, would you agree with me? And the
3 answer can either be yes or no or some explanation.

4 But he can answer Mr. Pereos's question.

5 THE WITNESS: In flipping through this I didn't see
6 any dates on the architect's title block that
7 identified a date later.

8 BY MR. PEREOS:

9 Q All right. Now, in all fairness,
10 Mr. Snelgrove, we're talking eight years later in time;
11 is that not fair?

12 A That's accurate.

13 Q And it's not like this is your only project?

14 A Correct.

15 Q Okay. Do you remember your deposition being
16 taken on November 18th, 2008?

17 A I remember that I was there.

18 Q Well, do you remember testifying at the
19 deposition?

20 A I do remember testifying at deposition.

21 Q Do you think your memory would be more accurate
22 then than it is today?

23 A In all likelihood, yes.

24 MR. PEREOS: May I have the deposition of

1 Mr. Snelgrove opened and published?

2 THE COURT: Yes.

3 THE CLERK: It's not sealed.

4 THE COURT: That's fine.

5 THE CLERK: The deposition of David Snelgrove dated
6 Tuesday, November 18th, 2008 is opened and published.

7 THE COURT: Any objection, Mr. Hoy?

8 MR. HOY: No objection, Your Honor.

9 THE COURT: Go ahead, Mr. Pereos.

10 MR. PEREOS: If I may.

11 THE COURT: You may. Do you want to use the--

12 MR. PEREOS: No, no. I want to ask this Court
13 something so I know in the future if I happen to be in
14 front of this court again. How does it like to receive
15 the original depos? Because I just had these handed
16 down to me.

17 THE COURT: It is my understanding-- And I would
18 allow my court clerk to clarify this. --that they are
19 generally sealed--

20 MR. PEREOS: In a sealed envelope?

21 THE COURT: --in a sealed envelope when it is
22 received. That's always been my experience. I would
23 note for the record that the document that was provided
24 by Mr. Pereos was not in a sealed envelope, but Mr. Hoy

1 has no objection to its admissibility.

2 MR. PEREOS: Well, I'll ask the witness whether or
3 not it appears that there's any changes to the--

4 THE COURT: Mr. Hoy?

5 MR. HOY: Yeah. Maybe I can shortcut this for the
6 Court and counsel. In this case both Mr. Pereos and I
7 have inherited files from prior counsel. Not all of
8 the depo transcripts are in the envelopes that you
9 would normally see. And I think criminal cases might
10 take less time than this case certainly did to get to a
11 trial and that may explain part of what the problem is.

12 But here's the real point. We all get copies and
13 copies and copies of these depositions. If there's a
14 discrepancy between what's being offered, what the
15 witness is reading with my copy, I'm going to stand up
16 and say, Gosh, I think there's a problem here. And I
17 think we can sort it out that way.

18 So if you don't hear from me, I-- It's got
19 "original" marked on it. I don't have any reason to
20 believe that it's been altered in any way.

21 THE COURT: Thank you, Mr. Hoy. I appreciate that.

22 Go ahead Mr. Pereos.

23 BY MR. PEREOS:

24 Q Let me show you what has been identified as

1 your original deposition having been taken on
2 November 18th, 2008. Let me first ask you the question
3 as to whether or not anybody ever gave you an
4 opportunity to review your deposition before you
5 approved it or-- let me-- did anybody ever-- Excuse
6 me. Let me rephrase the question.

7 Did anybody ever give you an opportunity to review
8 the deposition to see if there were any changes that
9 you wanted to make?

10 A Yes, I did have the opportunity.

11 Q You did have an opportunity to read it?

12 A Yes.

13 Q I've never opened that original. Is it even
14 signed?

15 A I know there were some markings in red pen that
16 looked like my handwriting, page and line change.
17 Let's see. See page for markup, and then-- There were
18 a couple pages-- Yeah. Page 40. It looks like I
19 marked some corrections in here.

20 Let's see. At the top of page 40 of my deposition
21 it says "tack," t-a-c-k, "and draftsman," which is
22 actually a tech, like a technician and a draftsman. So
23 that's my handwriting.

24 Q That's your handwriting. So we know you had an

1 opportunity to look at that?

2 A That's my signature.

3 Q And that's your signature?

4 A Yep.

5 Q Okay. Now, having said that, let me direct
6 your attention to page 51 of the deposition. Tell me
7 when you're there.

8 A I'm there.

9 Q Read to yourself line 21 down to line-- to page
10 52, line 3.

11 A Okay.

12 Q Go to the next question, too. Let's go down to
13 line 9, page 53-- or 52. Excuse me.

14 A Okay.

15 Q Were those questions asked of you and those
16 answers given at that time?

17 A Yes.

18 Q Okay. Now, the question from Mr. Mollath, I'll
19 read it and you correct me if I make a mistake.

20 THE COURT: Hold on a second. Prior to doing
21 that--

22 MR. PEREOS: I'm sorry?

23 THE COURT: Prior to doing that, before just
24 reading it into the record, is it a prior inconsistent

1 answer?

2 MR. PEREOS: Yes.

3 THE COURT: To what question? I've lost what the
4 question was that you were trying to--

5 MR. PEREOS: I'll lay a foundation.

6 THE COURT: Thank you. Then we can go forward. I
7 just didn't know what the prior inconsistent statement
8 was.

9 BY MR. PEREOS:

10 Q Let me go about it this way. Does that
11 testimony refresh your recollection as to when you
12 received the work product from the architect in
13 relationship to the submission of your applications?

14 A To which application?

15 Q Let's say to your first application--

16 A Um-hum.

17 Q --on January 17th.

18 A Yeah. The architectural plans that we
19 submitted on the 17th of January, we got the
20 information from the architect.

21 Q And did you--

22 A And we included that in the application.

23 Q Did you testify that you got all of what you
24 needed from the architect before the first submission?

1 A My answer to that in my deposition is yes.

2 Q No.

3 THE COURT: You kind of-- you kind of missed the
4 point. The only way we read depositions into the
5 record here is if it is a prior inconsistent statement.
6 But what Mr. Pereos is doing is something different.
7 He's trying to refresh your recollection.

8 You refresh someone's recollection when they say, I
9 don't recall, I don't remember as I sit here what the
10 answer to that question is.

11 And so then he gave you that transcript, and you
12 can look at it. And then the next process is,
13 Mr. Pereos says, Having refreshed your recollection,
14 can you now answer the question? It's not that he
15 wants you to read from that document. It's now that
16 you've read that, is it fresh again in your mind what
17 occurred? If the answer is yes, you can say yes and
18 answer. If the answer is no, then they can use that as
19 what's called a past recollection recorded. Or if it's
20 a different statement, it's a prior inconsistent
21 statement.

22 But the first step is, do you remember it now? Now
23 that you've read that and put it down, do you remember
24 what happened now?

1 THE WITNESS: Yes, I recall that we got information
2 from the architect.

3 BY MR. PEREOS:

4 Q Okay. Do you remember testifying that you got
5 substantially all or a great portion of all the
6 information you needed from the architect before your
7 first submission?

8 THE COURT: Mr. Hoy.

9 MR. HOY: Objection, Your Honor. That's not what
10 the question and answer was.

11 MR. PEREOS: I'll rephrase the question.

12 THE COURT: Okay. Go ahead and rephrase the
13 question.

14 BY MR. PEREOS:

15 Q Do you remember testifying that you got
16 substantially all or a great portion of the architect's
17 work, okay, that had been done for this project--

18 MR. HOY: Your Honor, if I may.

19 THE COURT: Hold on, Mr. Hoy.

20 BY MR. PEREOS:

21 Q --when you were first engaged?

22 THE COURT: Now, Mr. Hoy, do you have an objection?

23 MR. HOY: I would make this offer. Let counsel
24 read this record into the-- this portion of the

1 transcript into the record, and the Court can decide if
2 it's consistent or inconsistent with the testimony that
3 the Court has already heard from this witness.

4 THE COURT: That's fine. So you're just waiving
5 the hearsay objection. Go ahead and read the record.
6 Thank you, Mr. Hoy.

7 MR. PEREOS: All right.

8 BY MR. PEREOS:

9 Q Let me read the question and you can correct me
10 if I read the answer incorrectly or the answer.

11 Question from Mr. Mollath: "If I understand your
12 testimony, when Wood Rodgers became involved to process
13 the application before the City of Reno, substantially
14 all or a great portion of the architectural work had
15 been done for this project to put it in the position to
16 be processed through the City of Reno?

17 "Answer: Yes.

18 "Question: Okay. And your involvement was such
19 that you were needed to facilitate from an engineering
20 and planning standpoint the processing of the approvals
21 and entitlements for the project which included to a
22 great degree the architectural component of that?

23 "Answer: Yes."

24 Did I read that correctly.

1 A You read that correctly.

2 Q I think we're done with that now.

3 Let's go to Exhibit 38. Tell me when you're there.

4 A 11-by-17 maps? I'm there.

5 Q Now, at the lower right-hand margin there are
6 the legends showing the dates in which the documents
7 were put together; is that correct?

8 A Yes.

9 Q And they're on the legend of Wood Rodgers; are
10 they not?

11 A Correct.

12 Q Now, do you-- now, that's the dates that
13 appear-- which have a date of May 15th; is that
14 correct?

15 A That is correct.

16 Q Okay. Now, do you know whether or not the
17 materials that are put on those documents having the
18 legend of May 15th had already been prepared by Wood
19 Rodgers before May-- before April 21st?

20 A The date of May 15th appears to be the
21 submittal date, so some of these would have been done--
22 probably completed prior.

23 THE COURT: Mr. Pereos, when you use the date
24 April 21st, do you mean April 26th?

1 MR. PEREOS: Yes. They're interchangeable.

2 THE COURT: Well, it's your question. I just want
3 to make sure.

4 BY MR. PEREOS:

5 Q So they would have been done before May 15th?

6 A There were probably some that were done right
7 up to the hour we submitted in the way that our
8 engineering plans will be put together, that you're
9 racing a clock. So some may have been done a little
10 earlier and some may have been done right up to the end
11 when we submitted.

12 Q Could you identify those that were done after
13 April 26th?

14 A No, I couldn't.

15 Q Well, what about if I was to tell you, why
16 don't you compare those submittals or those plans,
17 architectural plans, that appear in Exhibit 38 with
18 Exhibit 37, could you then compare the two to discern
19 which ones were done before Exhibit 37 was put
20 together?

21 A It appears to me that the dates on these are
22 the same from 37 to 38.

23 Q All right. So what we're basically saying is
24 whatever documents prepared by the architect that

1 appears part of Exhibit 38 you already had in hand for
2 Exhibit 37?

3 A It appears so.

4 Q Okay. Fine. All right.

5 Now, you testified that one of the two owner's
6 affidavits, either in Exhibit 36 or 37, was signed by
7 John Iliescu in your presence.

8 A Yes.

9 MR. HOY: Objection; misstates--

10 THE WITNESS: I believe so.

11 MR. HOY: Misstates the evidence. We were talking
12 about the affidavits of 35 and 36.

13 MR. PEREOS: I'll clean it up.

14 THE COURT: Sustained, but you can reask the
15 question.

16 MR. PEREOS: I'll clean it up.

17 BY MR. PEREOS:

18 Q 36 and 37 are basically the same dated owner's
19 affidavit. Go ahead and take a look. I think I have
20 it committed to memory now. They're both dated
21 January 31st, 36 and 37?

22 A Okay.

23 Q Okay. Now, the affidavit, the owner's
24 affidavit, in Exhibit 35, I believe, is dated

1 January 17th.

2 A Yes, those appear to be dated January 17th.

3 Q So one of those two were signed in your
4 presence?

5 A I believe so.

6 Q Okay. All right. I understand. It's been a
7 couple years.

8 A More than a couple.

9 Q Okay. Now, when they were signed in your
10 presence, if I understood you correctly, you testified
11 that the owner's affidavit was put on a table, okay,
12 from which then Mr. Iliescu affixed his signature?

13 A Can you repeat the question?

14 Q Well, maybe I misunderstood--

15 A Yeah, I don't recall saying what you just said.

16 Q Then let me go about it this way. When the
17 owner's affidavit was signed in your presence by John
18 Iliescu, was it signed at the Wood Rodgers office?

19 A I believe as such.

20 Q Was it signed at a particular room in the
21 offices of Wood Rodgers?

22 A It would have either been in the conference
23 room or the table where I had the applications.

24 Q Okay. Either one?

1 A Um-hum.

2 Q Now, if it was in the table with the
3 applications, on that table would there have been the
4 graphic plans that were laid out?

5 A Yes.

6 Q Okay. I assume then that table with the
7 applications was a pretty big table?

8 A Um-hum.

9 Q All right. And we're talking about plans that
10 are, what, three feet by five feet?

11 A I think they might have been three feet by four
12 feet for this application.

13 Q Three feet by four feet. Okay. Now, what
14 you're saying also is that in those plans, those
15 graphic plans, in the lower legend was the name Mark
16 Steppan?

17 A Yes, as they appear in the elevations here. We
18 had these for the application. This is-- The
19 elevations, they keep going. There's a lot of them.
20 Steppan 2387 through 2396 gives the colored elevation.
21 These are more like the ones that we used in the
22 PowerPoint presentation as well.

23 Q Okay. Now, you didn't discuss those plans with
24 Mr. Iliescu, did you?

1 A I don't recall having a specific discussion,
2 saying, These are the plans and this is-- But I know
3 he looked at it. There was some discussion of this
4 being a large project, because this was a large-- the
5 tallest project I had worked on.

6 Q So there was a discussion about or a comment
7 about the height of the project?

8 A Um-hum.

9 Q And we're talking about the-- there's one
10 building of 40 floors and there's the other building of
11 28 floors?

12 A Right.

13 Q Now, you didn't have any discussion with him
14 about Steppan being an architect, did you?

15 A I don't believe I did.

16 Q You don't even know if he looked at the legend
17 at the right-hand corner?

18 A I can't answer that for you.

19 Q All you know is that it was available for him
20 to see?

21 A Correct.

22 Q How long did the meeting last?

23 A Not very long.

24 Q Two, three minutes?

1 A It was probably within three to five minutes.

2 Q Thank you, Mr. Snelgrove. I have no further
3 questions.

4 THE COURT: Any redirect, Mr. Hoy?

5 MR. HOY: Just very briefly, Your Honor.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. HOY:

9 Q Mr. Snelgrove, do you still have your
10 deposition up there?

11 A Yes.

12 Q Please turn to page 52. I apologize. We'll
13 start on page 51. I'm just going to read the same
14 section that was read into the record before and ask
15 you a question about it.

16 A Okay.

17 Q "By Mr. Mollath:

18 "Question: If I understand your testimony, when
19 Wood Rodgers became involved to process the application
20 before the City of Reno, substantially all or a great
21 portion of the architectural work had been done for
22 this project to put it in the position to be processed
23 through the City of Reno?

24 "Answer: Yes."

1 When you answered that question, what did you
2 understand the phrase "to put it in the position to be
3 processed through the City of Reno" to mean?

4 A The application that was submitted when we
5 initially became involved, if the application didn't
6 change, yeah, it was enough to go forward with. That
7 application-- these are-- these can be moving documents
8 as you've seen in this example.

9 We submitted in January, we submitted in February,
10 we submitted in May. And each time there were tweaks
11 and adjustments.

12 I know from the civil engineering, land use
13 planning, land-surveying end, those can have a domino
14 effect in terms of what your design is. So if somebody
15 gave me a map-- or, I'm sorry, architectural plans and
16 said, Here, this is what I would like to build, and
17 then things shifted around on the project, the exterior
18 of the building may still look the same, but the
19 interior, that can have changes. And it can also have
20 impact on what we do on the grading standpoint, what we
21 have to put in from the planning documents standpoint.

22 So with that initial submittal on January 17th, we
23 had enough there to process through the City of Reno,
24 to process that by what we knew. Then when we added

1 the tentative map application in, that meant we were
2 going to condominiumize, break it up. Then we had
3 enough at that time to process if it didn't change.
4 But it changed. So when we submitted on the-- in May,
5 then we had enough to process again. So they can be
6 living moving documents.

7 Q Thank you.

8 MR. HOY: No more questions, Your Honor.

9 THE COURT: Do you have any recross based on--

10 MR. PEREOS: No, Your Honor.

11 THE COURT: Thank you for your testimony,
12 Mr. Snelgrove. Thank you for your time today.

13 Gentlemen, it's about 5 minutes of 3:00. I would
14 propose we take our afternoon recess until 3:15. And
15 then we'll come back and go to about 4:45 this evening
16 and break for the evening. So court will be in recess
17 for approximately 20 minutes.

18 (A recess was taken.)

19 THE COURT: Mr. Hoy, your next witness, please.

20 MR. HOY: Thank you. The plaintiff calls Dr. John
21 Iliescu, Jr.

22 (The Clerk administered the oath
23 to the prospective witness.)

24 THE COURT: Dr. Iliescu, I don't know what you have

1 in your hands there, but could you please leave it at
2 your counsel table. You're not supposed to take
3 anything that the lawyers don't know about onto the
4 witness stand. Thank you. Go ahead and have a seat.

5 JOHN ILIESCU, JR.,
6 having been called as a witness herein,
7 being first duly sworn, was examined
8 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HOY:

10 Q Good afternoon, Doctor. Can you please state
11 your full name for the record.

12 A John Iliescu, Jr.

13 Q Can you please spell your last name.

14 A I-l-i-e-s-c-u.

15 Q Thank you, Doctor. Now, you didn't receive a
16 witness plan from me for this case, did you?

17 A No, I did not.

18 Q All right.

19 MR. HOY: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MR. HOY:

22 Q Dr. Iliescu, I would like to start with some
23 questions about Exhibit 68.

24 A Excuse me one minute. Can you talk up just a

1 little bit more?

2 Q I'll do my best.

3 A I know it's different. I apologize for that.

4 Q You know, I've got a softer voice, too, and it
5 takes a little more air for me to get it out. So if
6 you can't understand my question, please just let me
7 know and I'll do my best to speak out. I'm also
8 dealing with a thing in the back of my throat today.

9 A Thank you very much.

10 Q I would like to begin today with Exhibit 68.
11 This is a July 29th, 2005 Land Purchase Agreement. And
12 I want to apologize to the witness and to the Court.
13 The exhibit here is tiny. It's difficult to read. And
14 the reason we used this one is because it came out of
15 Dr. Iliescu's file. And so that's why we've used the
16 small one.

17 If there's a problem reading, Doctor, please let me
18 know and maybe we can blow this up for you or otherwise
19 help you out.

20 This Land Purchase Agreement is a document that
21 Richard Johnson created for you; is that true?

22 A This Land Purchase Agreement is a document that
23 I believe was presented with Mr. Johnson and Judy Otto
24 and Sam Caniglia. They both-- or all of them got

1 together and we all agreed on this document in their
2 office or thereabouts. But, yes, they drew that up.

3 Q Can you please tell the Court what discussions
4 you had with anybody leading up to the Land Purchase
5 Agreement in Exhibit 68.

6 A Well, it's a little lengthy, and I apologize
7 for it. We met with-- Dick met with Mr. Caniglia and
8 brought an offer to us. And it was a familiar party,
9 because we had a similar encounter four or five years
10 before that when the same party came to us and offered
11 us or suggested or wanted to get involved with a
12 highrise condominium on my property and was interested
13 in buying my property.

14 And as I subsequently learned some time in that
15 period, he wanted to do it on a time basis, that it was
16 going to be a large condominium development,
17 approximately somewhere in the vicinity of 28 stories,
18 and that he had to do it on a time basis because he had
19 to get entitlements and it would probably take nine,
20 ten months, somewhere in that period of time.

21 And as this document reflects, it was going to be
22 on a schedule where they show good faith, he would pay
23 certain amounts of money which ultimately would be
24 subtracted from the final monies that he would give us.

1 So if we ended up with \$500,000, the sales price was X
2 number of dollars, that would be accredited to him.

3 THE COURT: And when you said-- Was it
4 Mr. Caniglia had tried to purchase this exact piece of
5 property or pieces of property in the past?

6 THE WITNESS: Yes, Your Honor. He came to us four
7 or five years ago with the same concept exactly. At
8 that time, in fact, it was published in the newspaper.
9 And I stood out in front of my little office there that
10 we talk about and some reporter came there and tried to
11 get some information about what was going to happen.
12 So this must have been sometime in 2000.

13 THE COURT: Wasn't there another residence on that
14 property at one point a long time ago?

15 THE WITNESS: Yes, sir. Let me-- May I explain
16 that?

17 THE COURT: No. That's okay.

18 THE WITNESS: It was my home.

19 THE COURT: Yeah, there was another house there.

20 THE WITNESS: My home burned. We lived in that
21 house.

22 THE COURT: I remember when that happened.

23 THE WITNESS: And the adjacent piece was there also
24 which was uninsured. We owned that, and that burned

1 also.

2 THE COURT: It was around the holiday season, if I
3 remember correctly.

4 THE WITNESS: No. The holiday season was something
5 else. I don't remember the exact time.

6 THE COURT: Okay. Go ahead. I just remembered
7 there was another house there.

8 THE WITNESS: Thank you. That clears it up.

9 BY MR. HOY:

10 Q Doctor, could you turn to page Iliescu 61. And
11 the 61 is a little bit cut off, so you'll have to find
12 it between 60 and 62.

13 A Is that the next page? Excuse me. Is that the
14 next page?

15 Q Well, it's near the end of Exhibit 68.

16 A Okay.

17 Q I'm looking for the signature page which is
18 Iliescu 61.

19 A My goodness. I have it.

20 Q All right. Does your signature appear on that
21 page Iliescu 61?

22 A Yes, it does.

23 Q And did you-- There's a date next to your
24 signature there of August 3rd, 2005.

1 A Correct.

2 Q Did you put that August 3rd, 2005 on there?

3 A I may have. It looks like it could be my
4 handwriting.

5 Q Was August 3rd, 2005 at or about the time you
6 actually signed Exhibit 68?

7 A Yes.

8 Q Did you read Exhibit 68 cover to cover before
9 you signed it?

10 A No. I seldom do that, because my-- this came
11 to me from a broker that I was very familiar with,
12 actually a friend, and most of it is what they call
13 boilerplate.

14 Q All right. So the person that you're talking
15 about who brought it to you is Richard Johnson; is that
16 right?

17 A That's correct.

18 Q And Richard Johnson you think of as a friend?

19 A Yes.

20 Q How long has he been your friend?

21 A Well, he initially started out as my broker
22 some 15 years ago. It's hard not to like him. We
23 became friends.

24 Q Do you socialize with Richard Johnson?

1 A Only at lunches. We never have any evening or
2 anything. In fact, I've never met his wife, but I do
3 know his boys. One of his sons. Excuse me.

4 Q How do you know his sons?

5 A His one son works in the office with him, Ryan.

6 Q Okay. Have you and Mr. Johnson both testified
7 in the same trial before this case?

8 A Not to my recollection. No.

9 Q All right. Did you just rely on Mr. Johnson to
10 give you a contract to sign that was designed to
11 protect your interests?

12 A I don't understand that question.

13 Q Right. Did you read any part of Exhibit 68
14 before you signed it?

15 A Mr. Johnson-- May I answer it to the best of
16 my knowledge? And it happens this way with him.

17 Mr. Johnson brought me this concept, refreshed me that
18 it was Mr. Caniglia, that he wanted to purchase the
19 property and that he wanted these terms and these
20 conditions and was I amenable to it.

21 I thought it was a wonderful thing at this stage of
22 our life, at 80, when we could use-- We have a large
23 family. So we agreed to it. And he drew up these
24 papers in harmony with Mr.-- Sam. I'm going to call

1 him Sam. That's a little easier. Sam is the first
2 name of Mr. Caniglia. And that was this document.

3 Q I ask you to turn to paragraph 31 which begins
4 on page 11 of the contract. And the Bates number is
5 Iliescu 52.

6 A Where would that be in here?

7 Q Well, it's-- we're still in Exhibit 68.

8 A Yes, I have that.

9 Q So page 11. Down in the middle of the bottom
10 of each page there's a page number.

11 A Yes, I have that page.

12 Q And I'll do my best to read this out loud to
13 you, because I even struggle with the tiny print on
14 this exhibit.

15 Paragraph 31. "Access to property. Seller--"

16 A Excuse me. 31 did you say?

17 Q Paragraph 31.

18 A I don't have that in 31. I have-- on the next
19 page-- "Access to property." Thank you. I have it
20 now.

21 Q Okay. "Seller agrees to provide access to the
22 property to buyer, inspectors, appraisers and all other
23 professionals representing buyer. Buyer shall
24 indemnify, defend and hold seller harmless from any

1 lien, loss, claim, liability or expense, including,
2 without limitation, reasonable attorney's fees and
3 costs arising out of or in connection with the
4 activities, paren, including, without limitation,
5 buyers, agents and employees and independent
6 contractors retained by or acting on behalf of buyer,
7 paren, collectively buyer's agents, end paren, on the
8 property."

9 Did you read that boilerplate language before you
10 signed Exhibit 68?

11 A I truly don't remember it, but I would agree to
12 it if that's the point you want-- if I saw that and
13 knew a buyer needed that for his own-- for a purpose
14 that was beneficial to both of us, I would agree to
15 that, yes.

16 Q Okay. So when you signed your name to Exhibit
17 68, you understood that your buyer could have its own
18 agents coming onto the property and they would inspect
19 and appraise and do other things?

20 A That's correct.

21 Q And because of the language, you knew that that
22 activity could result in a lien on your property?

23 A I never even thought about it. In the years
24 I've been dealing in real estate, if I thought

1 everything would amount to a lien, I wouldn't sell
2 anything. I just never thought about it. I was
3 being-- just this minute took this as cooperating with
4 the buyer.

5 Q I would like you to turn to page 13 of the
6 exhibit with the Bates number of Iliescu 54 on it and
7 reference paragraph 39. And I'm going to skip right
8 down to 39E at the bottom of the page.

9 "Buyer shall have a due diligence period of 30 days
10 from date of acceptance of this agreement by both buyer
11 and seller within which at buyer's expense to do any
12 and all inspections and reports buyer deems necessary,
13 such as, but not limited to, availability and
14 suitability of utilities, geological reports, well
15 reports, zoning, flood zones, master plans--"

16 I apologize to the Court. I can't read that next
17 word.

18 "--and costs of off-site and on-site improvements,
19 building requirements, conditions and requirements
20 affecting the development of said property for buyer's
21 intended use, inspect the site, inclusive of surveys
22 and soil tests, analyze information pertaining to
23 roadways."

24 I think they left an article or a conjunction out

1 of there.

2 "Buyer shall indemnify seller for all such work
3 performed."

4 Do you remember reading that boilerplate before you
5 signed Exhibit 68?

6 A No, I did not. I look at this as a form that
7 Mr. Johnson has in his office. It's probably submitted
8 to hundreds and many people that buy these things. And
9 I don't read every word verbatim. But would you ask me
10 if I-- if this would help the buyer put this project
11 together-- And all we were interested in doing was
12 selling our property. --would I cooperate? Yes.

13 Q Okay. Moving down to it's paragraph 39F, we're
14 still on page 14, Bates number Iliescu 55, "This offer
15 is conditioned upon buyer at buyer's expense obtaining
16 the following governmental approvals within 270 days of
17 acceptance of this agreement as may be extended
18 pursuant to paragraph 1.2 above: Variance, tentative
19 map, special use permits, zone change and land use
20 designations and other: Architectural and design
21 review and approval."

22 Did you read that portion of the boilerplate before
23 you signed your name to Exhibit 68?

24 A I did not. To elaborate on it, which is not

1 smart they tell me, I knew it was going 270 days. So
2 if I read that, I would have lived with that. And I
3 don't know what else you said in there, but there was
4 another thing or two. I would have never given it a
5 second thought.

6 Q You understood from your discussions with
7 Mr. Caniglia and Mr. Johnson that close of escrow and
8 transfer of title would be extended for a period of
9 time where Mr. Caniglia and his company sought certain
10 governmental approvals for development of the land?

11 A That's correct.

12 Q And you knew that Caniglia's obligation to
13 close escrow and pay you the total purchase price was
14 conditioned on him receiving the governmental
15 approvals?

16 A That's correct.

17 Q And you knew that to get those governmental
18 approvals there would be architects and engineers
19 involved in the design of a project?

20 A That's correct. At the time it didn't
21 register, but, yes, that's correct. I knew work had to
22 be done. I just was selling my property. I wasn't
23 really wrapped up with all of that.

24 Q Now, the contract talks about the seller is

1 going to keep your property-- I'm sorry. Let me start
2 again.

3 The contract says that the buyer is going to keep
4 your property free and clear of liens through this
5 pre-closing period. Did you have any discussions with
6 Mr. Caniglia at or before the time you signed Exhibit
7 68 about liens?

8 A I had no discussions with Mr. Caniglia, Sam, if
9 I can say that, during the bulk of that. I did meet
10 with Sam on two or three occasions with the initial
11 writing, and a few other occasions, but we were
12 specifically talking about the project, how long it
13 might take him to get the entitlements. He seemed like
14 a very nice man and I believed in him. So this was the
15 grounds we proceeded.

16 Q May I ask you now to turn to Exhibit 71.

17 A I don't know where that is.

18 MR. HOY: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 THE WITNESS: I'm sorry. I apologize. I see 71
21 here.

22 BY MR. HOY:

23 Q Exhibit 71 is Addendum No. 3 to the Land
24 Purchase Agreement that we were just speaking of

1 earlier. Can you please turn to page 8, which is Bates
2 numbered Iliescu 97, and tell the Court whether or not
3 your signature appears on that page.

4 A Yes, it does.

5 Q Okay. By signing Addendum No. 3 did you intend
6 to modify the agreement in Exhibit 68?

7 A I don't understand that question.

8 Q What was your reason for signing Addendum No. 3
9 in Exhibit 71?

10 A Addendum No. 3 was drafted up by Karen
11 Dennison. We spent considerable time together trying
12 to cover what we thought would make-- would make us
13 happy, Sam happy. It went back and forth. And when it
14 got to that point based on what you will read in this
15 addendum, we agreed and signed it.

16 THE COURT: But what was the point of it? Not
17 because Ms. Dennison-- What was your understanding of
18 what you were signing Exhibit No. 71?

19 THE WITNESS: Addendum 3, sir?

20 THE COURT: Yes. Why did you do that?

21 THE WITNESS: Well, Addendum No. 3 completed all of
22 the parameters of what was involved in this project.
23 And I-- we would get a condominium. We lived in a
24 condominium. And we would get a condominium that once

1 they finished designing the building and everything
2 that would be somewhat modified to our liking on the
3 interior. Two, we had a little building that I dearly
4 love. And one of the initial parts of our negotiation
5 with Sam is he wanted that building. And I said, "No,
6 I'm not selling that building. You can do what you
7 need on this property here, the rest of it, fine."

8 And in that time it was agreed upon through Dick
9 and Sam that I would not put any structures on for that
10 building in excess of 15 feet, because it would stand
11 as an entity. We wanted some parking, but that's--
12 The building is a small apartment building with eight
13 units. And we knew we needed some parking. They were
14 taking all the rest of the land.

15 And some discussions came up then, well, Sam had
16 suggested to Dick that maybe that might be a nice
17 building to use as a restaurant. And if it was used as
18 a restaurant, the city would require so much parking.
19 All those things were brought to me and they were all
20 presented to Karen and myself. And we wrote those
21 items out to some degree in detail.

22 Let me think what else is in it. And the addendum
23 is really pretty good about that.

24 THE COURT: But you knew what it was and--

1 THE WITNESS: Absolutely. I knew exactly what it
2 was, Your Honor.

3 THE COURT: And the small building you're talking
4 is your office building, isn't it?

5 THE WITNESS: My office building never was involved
6 in it at all. The only thing I wanted-- I love the
7 building. It's a long story. But I wanted to be able
8 to get around the building, so I asked them to give me
9 ten feet regardless of what happened and to provide
10 some parking for me for that building.

11 Now, if it's just going to be a small building for
12 eight tenants, I only needed eight parking. If it was
13 going to be a restaurant or something else, it would
14 need more. And we left that door open with the
15 stipulation, and it's very clearly spelled out in
16 there, that I can make that decision.

17 And, you know, we didn't want to press anyway, we
18 didn't want anything we didn't need. We just wanted to
19 make it work.

20 THE COURT: I understand.

21 Go ahead, Mr. Hoy.

22 BY MR. HOY:

23 Q So, Doctor, after you signed Exhibit 68, which
24 is the Land Purchase Agreement, you then went to Karen

1 Dennison for her to draft up this Addendum No. 3?

2 A I did.

3 Q And then you signed Addendum No. 3?

4 A I did.

5 Q And as a prelude to Karen Dennison drafting
6 Addendum No. 3, you personally met with her?

7 A Yes.

8 Your Honor, may I elaborate on that?

9 THE COURT: No. Go ahead. Mr. Hoy is going to ask
10 you--

11 THE WITNESS: I don't want to sound like I'm
12 rambling on.

13 THE COURT: No, that's okay. No. He asked you a
14 question; you answered it. So go ahead. He'll ask you
15 the next question. Dr. Iliescu, he's going to ask you
16 another question.

17 THE WITNESS: I heard the question. And I can
18 answer your question. I apologize. I shouldn't have
19 directed that to you.

20 May I give you some of the background as to what
21 happened in that timeframe?

22 THE COURT: It's up-- Stop, Dr. Iliescu.

23 MR. HOY: It's fine.

24 THE COURT: Go ahead, Mr. Iliescu. Go ahead and

1 provide your answer. Thank you.

2 THE WITNESS: Ask me that question again and I'll
3 answer it.

4 BY MR. HOY:

5 Q I simply asked whether you met with Karen
6 Dennison before you signed Addendum No. 3.

7 A I did.

8 Q All right. How long did you meet with Karen
9 Dennison before she drafted Addendum No. 3?

10 A I met with her probably three times at some
11 length.

12 Q Okay. Can you give us an approximate total
13 amount of time you spent with Ms. Dennison to give her
14 information that was used to draft Addendum No. 3?

15 A I don't know. I'm going to guess I spent an
16 hour, hour and a half at each meeting, so five, six
17 hours total. But then she did some other work for me
18 subsequently.

19 Q All right. And did Mr. Johnson go with you to
20 any of the meetings with Karen Dennison?

21 A No.

22 Q Did your wife Sonnia go with you to any of the
23 meetings with Karen Dennison?

24 A Yes.

1 Q Did your wife go to all of the meetings that
2 you had with Karen Dennison related to this Addendum
3 No. 3?

4 A I don't remember if she came to the first one,
5 but she certainly was there all that time, if not the
6 bulk of the time.

7 Q All right. Did Sam Caniglia go with you to
8 meet Ms. Dennison with regard to Addendum No. 3?

9 A No.

10 Q All right. Did you tell Ms. Dennison that you
11 had a buyer for your property between Island and Court
12 Street?

13 A I did.

14 Q Did you tell Ms. Dennison that the buyer was
15 going to have a period of time within which to seek
16 governmental entitlements before closing escrow?

17 A I gave her all the information I knew about it,
18 yes, and that was part of it.

19 Q All right. And you knew at that time that
20 architects and engineers might be involved with getting
21 governmental entitlements to develop your property for
22 the buyer?

23 A Yes, that's realistic. Yes, I knew that.

24 Q I ask you to turn to page 3 of Addendum No. 3,

1 Exhibit 71. This is Bates numbered Iliescu 92.
2 Paragraph number 7 of the addendum references paragraph
3 39F of the original Land Purchase Agreement. It says,
4 "Paragraph 39F is hereby amended and restated as
5 follows: This offer is conditioned upon as conditions
6 precedent (conditions precedent) buyer obtaining at
7 buyer's expense all necessary approvals (governmental
8 approvals) for the construction of a mixed-use
9 residential and commercial highrise condominium project
10 on the property, approximately 28 stories in height
11 (the project) within 270 days after August 3rd, 2005,
12 as such time period may be extended pursuant to
13 paragraph 1.2 above, including, but not limited to, 1,
14 any required height setback or other variances; 2, any
15 required special use permit; 3, any required zoning or
16 land use designation changes; 4, any required master
17 plan amendment; 5, any approved tentative condominium
18 map for the project; and, 6, any required design
19 approvals."

20 And so you agreed to that language in this Addendum
21 No. 3?

22 A I did.

23 Q And, again, you anticipated when you signed
24 Addendum No. 3 that your buyer was going to be seeking

1 all of these various forms of governmental relief that
2 are listed here in this paragraph 7?

3 A I believe that's true.

4 Q And you knew that he would have to have
5 engineers to do some of that work?

6 A I didn't go to it in my mind, but, yes, that
7 would certainly-- if all these things had to be done,
8 absolutely.

9 Q And you knew that an architect would be
10 required to get a tentative condominium map for the
11 project?

12 A Let me-- The answer is going to be yes to
13 that, but let me say, I never developed anything and so
14 I didn't know all the specifics of what would be
15 needed. But would I have been surprised? Absolutely
16 not.

17 Q And in fact you weren't surprised to learn that
18 an architect had actually submitted for a tentative
19 condominium map for your property sometime in 2006?

20 A I was not aware-- Wait. Let me answer that.
21 Ask me again the question.

22 Q Certainly. You were not surprised to learn
23 that an architect was involved in designing a project
24 in order to get City of Reno approval of a tentative

1 condominium map for a project to be built on your
2 property?

3 A And I never gave it a thought, but I would not
4 have been surprised. Certainly, as I mentioned before,
5 if that's what it took to get to this point, the answer
6 is yes.

7 Q In fact, your testimony in this case is that
8 you knew that there were architects involved in this
9 entitlement process, you just didn't know the identity
10 of the architect; is that right?

11 A I had a very-- I was strongly informed by a
12 letter we received from Sam Caniglia before he started
13 the project. When he came to us a second time, there
14 was a big question mark. You know, he had been to us
15 before, he tied up the property. And now he came with
16 a letter that specifically outlined what he was going
17 to do. He had the financing. I think that letter is
18 in the records.

19 He had an in-house architect and engineer. And in
20 addition, I really think what really stuck with me is
21 he wanted me to sign this agreement as soon as
22 possible, because he was ready to come to Reno within
23 ten days with the architect and the engineer to get the
24 project started. So we're talking when we initially

1 signed I'll get involved.

2 So I know these things were going to happen. And
3 we had the assurance that Mr. Caniglia had all these
4 things in place. I was concerned about selling my
5 property. He was concerned about developing it.

6 Q Can you please turn to Exhibit 67. Exhibit 67
7 is a July 14th, 2005 letter from Sam Caniglia to
8 Mr. Dick Johnson. Is this the letter that you just
9 referenced in your last answer about being the last
10 letter that you received from Sam Caniglia talking
11 about his in-house architects?

12 A This is the letter, yes.

13 Q Okay. Maybe I'm missing something, Doctor, but
14 I don't see anything in here that says he's got
15 in-house architects. It says on page 2, paragraph
16 number 3, "Architect and engineers in place ready to
17 start work."

18 A Okay. Now, I don't know how you're
19 interpreting that, but may I go through this and show
20 you how I interpret it?

21 Q Sure.

22 A The first thing it says is, "Financing has
23 already been tentatively arranged." That left a
24 question mark in my mind. Tentatively, what's that

1 mean? Okay.

2 "The project is to be built by an expert developer
3 building team with a proven record." Well, who was
4 that? He implied it was-- he was going to do the--
5 something, but I don't know what that was.

6 And then when we get to 3, 3 says, "Architect and
7 engineer in place ready to start work." That's the
8 first concrete thing I read. The architect and the
9 engineer are in place. Everything else up until that
10 point had a question mark in my mind. I remember that,
11 because I was a little skeptical about him.

12 They were going to occupy the building in 30
13 months. But when you read further down, it says,
14 "Please be advised at your earliest convenience--" No.
15 "David, I have told you on repeated occasions I would
16 not come to the table unless I was prepared to move
17 forward predicated on our past experience. Now is the
18 time. Please advise me at your earliest convenience as
19 my group with the bankers, architects and engineers are
20 scheduled to visit the site next Wednesday."

21 That was one week away or ten days away. So my
22 thoughts were, This man is ready to go. Sign these
23 papers. He's got this thing and he's got the architect
24 coming to look at the site. So that was my mindset,

1 Mr. Hoy, truly.

2 Q Fair enough. So you had had proposals from Sam
3 Caniglia as early as the year 2000?

4 A I missed your question, sir. Forgive me.

5 Q As early as the year 2000 you had had proposals
6 from Sam Caniglia to buy your land between Island and
7 Court Street?

8 A We had an offer then. I don't remember the
9 great details, but yes.

10 Q And so when you received this July 2005 letter
11 from Sam Caniglia, you were skeptical?

12 A Yes, I accepted it for face value.

13 Q But you said you were skeptical about the
14 things it said.

15 A I was skeptical about portions of it, not all
16 of it. I thought I made that clear. I was skeptical
17 as to what he meant when he said financing had already
18 been tentatively-- That's tentatively. That's nothing
19 definitive.

20 Q Right.

21 A Okay. That it was going to be built by expert
22 builders team. Well, who is that? I didn't have to
23 know, but it was-- Number 3, though, no question about
24 that one. That's the one. "Architects and engineers

1 in place ready to start work." He says he already had
2 that.

3 And then he says to me he wants to be here in ten
4 days with them. Within ten days he wanted to be on the
5 site. So I never-- Why would I question that? Excuse
6 me. I don't mean to act that way, but it just never
7 occurred to me.

8 Q All right. You were skeptical about the
9 financing?

10 A I was skeptical-- Just what I just told you,
11 no more, can't add any more than that.

12 Q You were skeptical about the financing, right?

13 A Yes. Yes. I wasn't skeptical. I listened to
14 what he said, but he didn't say to me, I had X number
15 of dollars waiting. He said he had tentative. I have
16 tentative plans to go with my wife to go see my great
17 grandchildren, but that doesn't mean it's going to
18 happen.

19 Q Did you ask Mr. Caniglia for a loan commitment?

20 A What?

21 Q Do you know what a loan commitment letter is?

22 A No.

23 Q All right.

24 A I would have left that to Dick anyway.

1 Q Okay. Did you ask Dick to ask Sam Caniglia
2 whether there was any documentation to show what
3 financing had been tentatively arranged?

4 A Mr. Hoy, I was just trying to sell my property.
5 I didn't want to get involved with any of that. I was
6 80 years old. I have never developed anything but a
7 treehouse when I was trying to be a Eagle Scout. I was
8 just trying to sell my property, truly.

9 Q Did you ask Mr. Caniglia directly who these
10 architects and engineers were that he thought he would
11 have on the site in ten days?

12 A No.

13 Q Did you ask Dick Johnson to ask Sam Caniglia
14 who the architects and engineers were that were going
15 to be on site in ten days?

16 A No. And I don't believe Dick knew. I think
17 Dick knew as much as I did. We just took him at face
18 value.

19 Q Now, I want to ask you to go back to Exhibit 71
20 which is Addendum No. 3. And I apologize to you, sir,
21 for bouncing around. I only did it because you had
22 mentioned that letter.

23 A I missed some of that, so you'll forgive me. I
24 was looking and not paying attention.

1 Q Certainly, sir. I just asked if you would
2 return to Exhibit 71 which is Addendum No. 3. And then
3 I apologized to you for bouncing around in the exhibits
4 the way I did.

5 A No problem.

6 Q All right. Could you please turn to page 2 of
7 that exhibit. And it's Bates number Iliescu 92 at the
8 bottom.

9 THE COURT: Is that page 2 or page 3?

10 MR. PEREOS: 92 is page 3.

11 MR. HOY: I apologize, Your Honor. 91.

12 BY MR. HOY:

13 Q It's numbered paragraph 5 and it purports to
14 amend paragraph 31 of the Land Purchase Agreement. And
15 it says, "Paragraph 31 is hereby amended to add the
16 following paragraph: Buyer agrees to keep the property
17 free from all liens and to indemnify, defend and hold
18 harmless seller and its successors and assigns from and
19 against any and all claims, actions, losses,
20 liabilities, damages, costs and expenses (including,
21 but not limited to, attorney's fees, charges and
22 disbursements) incurred, suffered by or claimed against
23 seller by reason of any work performed with respect to
24 the property at the instance or request of buyer or any

1 damage to the property or injury to persons," et
2 cetera, et cetera.

3 Now, did you-- You initialed that page at the
4 bottom. Do you see that?

5 A Yes, I do.

6 Q When you initial documents at the bottom, do
7 you mean to tell people that you've actually read that
8 page?

9 A Yes, that's correct, for the most part.
10 Sometimes it's boilerplate and-- But I did initial it
11 and I did know about that, because Karen and I-- she
12 insisted or told me it would be my protection to put
13 that in.

14 Q Did she explain to you what she was protecting
15 you against?

16 A She was-- Just what the words say. She was
17 protecting me that the buyers do just that.

18 Q Karen Dennison was protecting you against liens
19 from people invited by the buyers to do work for the
20 improvement of your property?

21 A Yes. She was looking out for me in drawing up
22 this contract for my relationship in selling my
23 property to the buyers.

24 Q Okay. And in your conversations with Karen

1 Dennison you came to understand that people like
2 engineers and architects doing work for this buyer
3 might have a mechanic's lien on your property for the
4 work that they did?

5 A Well, that gets to the heart of the problem.
6 That's why we went to see Mrs. Dennison. Yes, we went
7 to her firm for complete coverage, legal coverage, of
8 this whole project. We had had a bad experience prior
9 to that, but I won't go into that at the moment unless
10 you ask me.

11 But we went to that firm for protection. And in
12 writing this document for the buyers, this is like a
13 portion of it. We went for the overall to her and she
14 in turn drew up this for the buyers.

15 Q When you signed this Addendum No. 3, you signed
16 it after talking to Karen Dennison about the prospect
17 that the buyer could hire engineers and architects and
18 those engineers and architects could have a mechanic's
19 lien on your property?

20 A That's correct.

21 Q All right. And is it your testimony that you
22 knew about that possibility before you even went to see
23 Karen Dennison?

24 A Yes.

1 Q And how did you know that before you went to
2 see Karen Dennison?

3 A About three months before or four months-- I
4 went to see Karen Dennison in 2005. In 2004, the early
5 part of 2004, I had an experience which was a new
6 experience for me. I leased a place to a tenant and
7 the tenant put some improvements into the place and an
8 architect-- I mean a contractor named Pinecrest-- We
9 weren't informed-- The person that was going to do the
10 work was Pinecrest. And Pinecrest sent us a pre-lien
11 notice.

12 I called-- The party that rented the property, his
13 name was Mike Mannion. I called Mike Mannion and I
14 said, "Look, Mike, I'm not going to be responsible for
15 any of this."

16 And I also called Pinecrest. I have many letters
17 to him telling him, calling his girl-- It's a Polish
18 name. --"I'm not going to be responsible for this.
19 Please have your firm collect this money up front." I
20 even posted a notice on the door.

21 About two months later we got a lien against us.
22 And that really came as a surprise. So I called Steve
23 Mollath who had been an attorney friend for many years.

24 Q Let me stop you right there. Your discussions

1 with Karen Dennison as far as I'm concerned have been
2 waived, that privilege has been waived. I don't know
3 about your conversations with Mr. Mollath.

4 MR. PEREOS: We're not waiving.

5 BY MR. HOY:

6 Q So you don't want to talk about your
7 conversations with Mr. Mollath.

8 A I apologize. I just wanted to give you a
9 sequence. So we'll forget about Mr. Mollath. At any
10 rate, I called an attorney. And I asked the attorney--

11 Q No, no. Don't tell me what you said to any
12 attorney.

13 A I learned the hard way. Can I go into that?

14 THE COURT: I don't really think it's necessary at
15 this point.

16 Mr. Hoy, why don't you pose another question.

17 MR. HOY: Thank you, Your Honor.

18 I would like to move on to Exhibit 35, please.

19 May I approach the witness?

20 THE COURT: You may.

21 THE WITNESS: I apologize Mr. Hoy. I don't know my
22 limits here.

23 BY MR. HOY:

24 Q Dr. Iliescu, I've opened the binder up for you

1 to Exhibit 35. This is a January 17th, 2006 Special
2 Use Permit Application submitted to the City of Reno
3 for a special use for certain development on property
4 owned by you and your wife; true?

5 A That's correct.

6 Q If you could please turn to the third sheet--
7 I'm sorry, the fourth sheet in the exhibit. It's Bates
8 numbered Steppan 2368.

9 A I'm sorry. The fourth page or the fourth what?

10 Q The fourth page. It's marked Steppan 2638 at
11 the bottom.

12 A Owner's affidavit?

13 Q Yes.

14 A Yes, I have that.

15 Q Do you see a name printed on that page?

16 A I see my wife's name on the page, yes.

17 Q Do you recognize your wife's signature on that
18 page?

19 A Yes. And I also signed that, to save you the
20 trouble.

21 Q Did you and your wife discuss the reasons why
22 you were being asked to sign this owner affidavit in
23 Exhibit 35?

24 A Because--

1 MR. PEREOS: That goes into the marital privilege.

2 I'm not sure I'm waiving marital privilege. I

3 understand why we went into the Karen Dennison

4 communications.

5 MR. HOY: Withdrawn, Your Honor.

6 BY MR. HOY:

7 Q I don't want to ask you any questions about

8 communications that were private between you and your

9 wife Sonnia.

10 A My wife and me--

11 Q Yes.

12 A --we're like one. That's not a problem.

13 Q That's the point of the privilege, you're like

14 one. So I can't ask you what you two talked about, you

15 know, unless it's out with other people.

16 A Ask me the question as clear as you can and

17 I'll answer it as clear as I can.

18 Q Thank you. I wasn't being clear, and I

19 apologize.

20 A Okay.

21 Q On page 2369, is that your signature?

22 A Yes, it is.

23 Q Why did you sign this owner affidavit in

24 Exhibit 35?

1 A I was told I was the property owner, and for
2 this project to go through, the property owner had to
3 be involved to the extent that they gave permission for
4 things to happen on the property.

5 Q Who told you that?

6 A I don't know for sure. It could have been any
7 number of people. But the person who brought me this
8 told me that. And Sam told me that on one occasion,
9 because Sam brought me or was involved with one of
10 these. And I think it was the very first one. Sam
11 brought it to me, just the sheet. I never saw anything
12 more than this sheet. He said, "John--" And I
13 remember specifically Sam being involved with that. He
14 got my signature.

15 Q All right. So Sam Caniglia-- your testimony--
16 your recollection is Sam Caniglia brought you the owner
17 affidavit and asked you to sign it?

18 A Either we met somewhere or-- Yes. Truly, I
19 think he came and met me when I was parked somewhere
20 and I signed it on the back of my car.

21 Q And did Sam Caniglia tell you what would be
22 attached to your owner's affidavit?

23 A No, just simply that he had to have that to
24 continue with the process.

1 Q So the actual text of this owner affidavit
2 says, "I am an owner of property/authorized agent
3 involved in this petition and that I authorize Sam
4 Caniglia to request development-related applications on
5 my property."

6 Did you understand that you were appointing Sam
7 Caniglia as your agent to request development
8 entitlements for your property?

9 A Well, I never thought of it that way, but did I
10 agree-- If that's what he had to have in order to
11 continue with the project, I would have signed it, yes.
12 I didn't think in these legal terms that he was author
13 of this or had legal this. I was giving this
14 permission to the city or whomever was involved to
15 proceed with this project.

16 Q And at the time you signed your owner affidavit
17 in front of Mr. Caniglia, did you have any discussion
18 about what the project was that was being proposed for
19 your property?

20 A No, absolutely not. I wasn't interested. I
21 was selling my land. I knew they were going to put a
22 highrise condo, but that was the extent of it.

23 Q Well, Doctor, to be fair, you were interested,
24 you had a condominium, you had a penthouse coming out

1 of the deal, didn't you?

2 A I was interested because I wanted to sell my
3 project, and I also wanted to see the project happen.

4 Q You were interested because you were to get a
5 2.2-million-dollar credit on a penthouse in the
6 project, right?

7 A Absolutely. And I was looking forward to that.
8 And nobody was more heartbroken than I that this
9 project didn't happen.

10 Q Right. So you were interested in knowing how
11 high up your penthouse would be, weren't you?

12 A I was under the assumption it was going to be
13 28 stories from day one. It was in the initial
14 agreement.

15 Q Okay. So you did have some understanding of
16 what the scope and size of the project was from the day
17 you signed the Land Purchase Agreement?

18 A Yes.

19 Q All right. Weren't you interested to
20 understand what the project was that was being
21 submitted to the City of Reno for approval?

22 A I had no idea. I mean, I didn't know whether
23 the building was going to be round, square. All I knew
24 is that they were going to put a highrise condo in

1 there, I was going to sell my land, and I was going to
2 get a condo and down the road we would decide where
3 based on my workup with Karen Dennison and Addendum 3.

4 Q And you also had some parking spaces coming to
5 you, didn't you?

6 A Yes.

7 Q Explain to the Court about the parking spaces.

8 A I thought I did, but I'll be glad to explain it
9 again. When you live in a condo, you're allowed to
10 have at least a parking place for your wife and
11 yourself. We live in a condo. We'd like to have a
12 little-- We live in the Arlington Towers. We'd like
13 to have 500 square feet so we can put our Christmas
14 trees and junk in it. We would like to have--

15 The one we live in, the bedroom is too small. They
16 could have expanded the wall and made it bigger. The
17 floor plan could have been different. And that's what
18 we had in mind.

19 Now, in Addendum 3, as I mentioned to you, there
20 was more parking requested, but that's not predicated
21 on our condo. Our condo has specific things we wanted,
22 the parking places for parking, one for her and me,
23 when my grandchildren came or somebody came, they would
24 have a place to park, and then we would have the 500

1 square feet. And then when they finish the building
2 with all the gross stuff, when they came to a unit we
3 wanted-- And we did not want a penthouse when we
4 finally saw them. We wanted something way down closer
5 to the ground. And you'll see that in the subsequent
6 documents.

7 Q All right. So on the topic of parking in
8 condominium complexes, you currently live in the
9 Arlington Towers project; true?

10 A That's correct.

11 Q And the parking for Arlington Towers is in the
12 parking garage across the alley owned by the Plaza
13 Resort Club?

14 A That's correct.

15 Q And, in fact, there's been litigation involving
16 the way the parking is allocated for residents of the
17 Arlington Towers?

18 A That's correct. Just recently resolved.

19 Q Right. And you've been very vocal in the way
20 that the parking is allocated and what the parking
21 rules are?

22 A My involvement with the vocal was this: There
23 are a multitude of old people that live in the
24 Arlington Towers. At some stage the people that have

1 that garage wanted control as to the fees. And the
2 thing they wanted to do was have open parking.

3 I was opposed to that, because a person 80, 90
4 years old with open parking might have to park on the
5 fourth floor, forget where his car is, or park on the
6 second floor and then have to take the elevator up,
7 because the elevator is on the fourth floor. And it's
8 cold, the garage is open.

9 I just didn't think it was a humane thing. And it
10 could have been resolved so easy. And I voiced what I
11 thought would be nicer, and that is-- At no time in
12 the years I've been familiar with that project did they
13 ever need more than 50 parking places. And so I
14 suggested, why don't they wait until we get beyond that
15 point.

16 Q All right. I took that too far. And I
17 apologize.

18 My point was, you are concerned about parking in
19 this new project to be built on your land because you
20 intend to live there?

21 A Correct.

22 Q All right. But there was another 50 or 51
23 parking spaces that you were also concerned about,
24 right?

1 A I explained that, yes, that in case we had a
2 restaurant. If we did not have a restaurant and I used
3 it for residential, it would go down to whatever.
4 Because if there was a restaurant with 50, I would have
5 been responsible for the insurance, for the
6 maintenance, a whole bunch of things. And I wasn't
7 going to run a restaurant at 80. So that would have to
8 be somebody that wanted to get involved.

9 And Sam specifically said, boy, he would like to
10 have that building as a restaurant for the rest of the
11 units.

12 Q So one of your personal interests in this
13 entire transaction was to preserve your historic
14 building and have that new development dovetail with
15 the operations in your historic building; is that fair?

16 A Rephrase that again. I'm sorry.

17 Q Sure. You were interested in making sure that
18 you could operate your historic building as a
19 restaurant, among other things, and to do that you
20 needed to have parking in the new development?

21 A Yes.

22 Q So you were really interested in having this
23 new project development dovetail in some way with your
24 historic building from a permitting and design

1 standpoint?

2 A Sure. If people were going to use it as a
3 restaurant, they didn't want to walk all the way over
4 to Court Street, that they be able to walk straight
5 across.

6 Q So you have personal interest in what this new
7 project is going to look like. Is it really your
8 testimony that you had no idea what was being submitted
9 to the City of Reno under your owner affidavit
10 appointing Sam Caniglia and granting him authority to
11 submit this application to the city?

12 A Absolutely not. I was shocked when in addition
13 to the 28-foot-story building there was a 40-story
14 building coming on a street that's crowded now without
15 any buildings. I mean, Island is a small street. They
16 wanted to make it one way one time. And Court is
17 occupied with the court and Park Towers. I was
18 shocked.

19 Q All right. How did you learn that the project
20 size was bigger than one 28-story tower?

21 A You know, I have wracked my brains for that. I
22 don't know exactly when I found out. It was certainly
23 not in Snelgrove's office.

24 Q Well, "shock" is a very powerful word.

1 A I apologize. I was amazed.

2 Q "Amazed" is a powerful word as well. How did
3 you become amazed?

4 A Well, now, just think about it. An 80-story
5 building higher than the Silver Legacy which sits on
6 the block, that's--

7 Q Sir, I don't doubt that you were shocked and
8 amazed, or amazed. What I'm getting to is, how did you
9 become aware that the project had gone from one
10 28-story tower to two buildings with one tower up to 40
11 stories?

12 A Sir, I don't remember when, but it was a shock.

13 Q Do you remember how?

14 A No. It was in the newspaper, it was talked
15 about, and I could have learned it in a multitude of
16 ways. I don't remember.

17 THE COURT: I'm just following your testimony,
18 Dr. Iliescu. So you're telling me that the first time
19 that you realized that there was going to be two
20 buildings, one of them over 40 stories tall, was
21 through some news media account?

22 THE WITNESS: I don't know where, Your Honor, I
23 learned that, but both Dick Johnson and I were shocked,
24 if I can use that. We were looking at a 28-story

1 building. Here's a 28-story building and here's a
2 40-story building on an acre and a half. That's 60,000
3 square feet. I don't know how they could do it
4 anywhere. And Caranos' hotel, it sits on almost a
5 square block. And this would have been taller than
6 that.

7 BY MR. HOY:

8 Q Dr. Iliescu, you heard Mr. Snelgrove this
9 afternoon talk about some neighborhood meetings. And
10 he specifically talked about a neighborhood meeting at
11 the Arlington Towers and said you were there. Were you
12 there?

13 A I could have been there, yes. In retrospect, I
14 thought about that. It was such a short meeting. That
15 room is right where you go out the lobby over to the
16 parking garage. So I could have momentarily been
17 there. It was not a successful one. But do I remember
18 it? No. But could I have been there? Do I doubt
19 Mr. Snelgrove? No, I don't doubt him.

20 Q Well, it's the building you live in.

21 A Yeah, it's the building I live in.

22 Q And you're friends with all the people in the
23 HOA there?

24 A Not all the people. There's a lot of people.

1 But I could have been there, I just didn't recall it at
2 the time. And I don't really recall it for sure now.

3 Q Was there-- You know what a PowerPoint
4 presentation is?

5 A I'm assuming that you put slides up or
6 whatever. That's the only way I relate it.

7 Q Did you see a slide show at the Arlington
8 Towers?

9 A You know, I don't remember. All I know is that
10 from everything I'm hearing from everyone, including
11 Dave, it didn't go well, it didn't show anything to
12 speak of.

13 Q Did you see this video fly-through, this movie
14 that we watched earlier this morning?

15 A I did not.

16 Q Okay. Was there a discussion about the size
17 and scope of the building during that meeting?

18 A I don't remember. I don't remember anything
19 particularly pertaining to that.

20 Q Okay. Did you learn about-- were you shocked
21 and amazed by the size and scope of the project before
22 or after this meeting at the Arlington Towers?

23 A I don't know when I learned it, but I don't
24 believe I learned it before then. I learned it later

1 on. Because that would have shocked me then. And I
2 don't know if you could have found out then, because he
3 admits himself there wasn't anything shown. I just
4 don't recall it.

5 Q How long did it take you to get over the shock
6 and amazement?

7 A I beg your pardon?

8 Q After you were initially shocked and amazed by
9 the size and scope of the project, how long was it
10 before you were over the shock?

11 A I'm still shocked.

12 Q All right.

13 A I'm still amazed that they can do that. I
14 don't know. I don't know. It's amazing to me.

15 Q Did you attend a meeting at the downtown
16 improvement district?

17 A I don't remember that meeting. I did attend
18 for sure the planning commission meeting and the city
19 council meeting. I am sure I attended those.

20 Q So at those meetings you saw the size and scope
21 of the project?

22 A I apparently saw that. Yes, I saw those. And
23 then I was-- Maybe that was the first time I was
24 thoroughly amazed. That may have been the time I

1 learned it. But there was no question I saw that
2 project then, I think prior to the planning commission
3 or at the planning commission-- that evening when it
4 was given, that presentation was given.

5 Q Who presented on behalf of the developer?

6 A I don't know. I think Dave presented it. You
7 know, I've known Dave for some time. I knew him when
8 he worked for Gray and Associates. And we always have
9 small talk, hi, how are you, like we did today in
10 court. But I don't remember details.

11 Q All right. Do you know who Gary Duhon is?

12 A I met him for the first time that evening. And
13 I was very impressed with him.

14 Q Do you know who Nathan Ogle is?

15 A No.

16 Q During the planning commission meeting was the
17 name of the architect ever mentioned?

18 A If it was, I didn't recall it. It's my
19 understanding from what I've heard, they weren't there.

20 Q All right. At the Reno City Council meeting
21 was the name of the architect mentioned?

22 A You know, I don't recall, and I wouldn't have
23 been looking for it. I was looking to see what was
24 going on. That's the last thing I would be looking

1 for.

2 Q All right.

3 A Any more than I would looking for engineers'
4 names or anyone else.

5 Q Now, after the city council voted to grant
6 entitlements for your property, there were two efforts
7 to extend the deadline for the final map. And I don't
8 want to go into all the details of that. But you would
9 agree with me that you signed one of the applications
10 for the first extension of time to file the final map,
11 right?

12 A Yes, that's true.

13 Q Why did you do that?

14 A Well, first of all, I got a letter from the
15 architect and I had that letter. It simply documented
16 that they wanted this project to go forward and blah,
17 blah, blah, blah. And when I-- It didn't cost very
18 much money. And when I signed-- And I agreed. I
19 thought, you know, I want to sell my property, there's
20 a condominium out of this. Absolutely. So I asked for
21 an extension in light of the fact--

22 Q Excuse me. And that application was in October
23 of 2008, right?

24 A I don't remember the date. You'll have to show

1 me that.

2 Q Between the time the city council granted the
3 entitlements and the time that you filed the
4 application to extend the final map filing deadline,
5 what activities did you have with Sam Caniglia to sell
6 the property?

7 A I had none. Dick had all the contacts with
8 Sam.

9 Q In April of 2007 didn't you sign a bunch of
10 deeds in preparation for a closing of escrow?

11 A Did I-- I'm sorry.

12 Q In April of 2007 did you sign deeds and other
13 documents for a closing of escrow for your property?

14 A You'll have to show me that and refresh my
15 memory.

16 Q All right. I will get to that in a moment.
17 Let me turn your attention, please, to Exhibit No. 1.
18 And I think I'll have to swap the binders for you.

19 THE COURT: It's in that. I think it's in that
20 one.

21 MR. HOY: You're right, Your Honor.

22 BY MR. HOY:

23 Q Please turn to Exhibit No. 1, sir.

24 A I have it, Mr. Hoy.

1 Q Thank you, Doctor. Exhibit No. 1 is a Notice
2 and Claim of Lien recorded November 7th, 2006. Have
3 you seen Exhibit 1 before today?

4 A Yes, I have.

5 Q When was the first time that you saw Exhibit
6 No. 1?

7 A The first time I saw this lien was an attorney
8 named Michael Morrison who is my corporate attorney of
9 many years called my office concerned that I had this
10 lien. And I think he faxed a copy or somehow. He was
11 the first person that notified me.

12 I have learned since then, and I don't remember
13 details, that I also received a copy in my office or
14 somewhere. You know, after all these years, you hear
15 all these depositions and things like that, it gets to
16 be muddled. But I knew about it, yes.

17 Q Do you maintain a mailing address at 219 Court
18 Street?

19 A That's correct.

20 Q Do you maintain an office at 260 Island Avenue?

21 A Do I maintain-- I live at 1000 Island-- I mean
22 Arlington. I have an office at 219 Court Street.

23 Q Okay. Do you know this address, 260 Island
24 Avenue?

1 A Yes, that's the-- that's the building next to
2 this project.

3 Q And do you have an address, 200 Court Street?

4 A That's the one on Court Street that I have my
5 office that we just talked about.

6 Q Do you know somebody named Flannery?

7 A I want to take that back. 219 Court Street was
8 my home that burned that was the old Wingfield house.
9 Right across the street is 200 Court Street which is my
10 office. I apologize.

11 Q That was that old title company that has the
12 huge vault in the middle of it; is that right?

13 A That's my office now. That's the old Cord
14 building, E.L. Cord.

15 Q That's right. And do you know somebody named
16 Flannery?

17 A Flannery is my office girl of 35 years.

18 Q Okay. And did Flannery receive a copy of the
19 lien notice?

20 A She would have been the logical person, yes.

21 Q And did she-- when she handed you the lien, did
22 she tell you how long previously she had received that
23 lien?

24 A I don't know.

1 Q All right. In any event, you also got it from
2 Mr. Morrison, Michael Morrison, the lawyer?

3 A I was aware of it in that timeframe, yes.

4 MR. HOY: Counsel, is there any dispute that the
5 lien was served within 30 days after recordation?

6 MR. PEREOS: No.

7 THE COURT: Thank you, Mr. Pereos.

8 MR. HOY: Beg the Court's pardon.

9 THE COURT: Go ahead. Take your time.

10 BY MR. HOY:

11 Q I'm going to attempt a shortcut. Dr. Iliescu,
12 under the Land Purchase Agreement you were entitled to
13 receive nonrefundable deposits during the first 270
14 days between signing the agreement and close of escrow;
15 is that right?

16 A That's right, to be credited to the final--
17 How do you want to call it?

18 Q Purchase price?

19 A Purchase price. Thank you. Yes.

20 Q And you actually received those payments that
21 were specified in the contract?

22 A I did.

23 Q And you paid a commission to Mr. Johnson on
24 those deposits?

1 A Mr. Johnson and the title company handled all
2 that. I did not handle any of that money.

3 Q And then through several addenda, the close of
4 escrow was extended further from that point in time?

5 A That's correct.

6 Q And in exchange for extending the close of
7 escrow date, you received more nonrefundable money; is
8 that right?

9 A That is correct.

10 Q And, in fact, in the last extension,
11 Mr. Caniglia was out of cash and so you took \$100,000
12 worth of water rights to further extend the close of
13 escrow; is that true?

14 A Yes. That was Dick's idea. And we liked Sam
15 and, yes, we agreed to it. Unfortunately, it's down to
16 about 15,000 now in value, because we just set them
17 aside.

18 Q So in terms of the cash that you received,
19 nonrefundable deposits, you received more than a
20 million dollars; is that right?

21 A I haven't tabulated it, but I wouldn't be
22 surprised, yes. If you say that's what it is, that's
23 what it is.

24 THE COURT: Is that including the \$100,000 for the

1 water rights?

2 MR. HOY: No, Your Honor.

3 THE COURT: Just cash it's over a million dollars?

4 THE WITNESS: We received-- You know, Sam fell in
5 and out of the deal. And, you know, it was initially
6 set up where we would get so much money every other
7 month or every month. Well, it had gone a period of
8 time. And I had none of this negotiation. And Sam
9 kept-- in all fairness, Sam, he kept trying to keep the
10 project alive, find more people with money, because it
11 was bad times, especially for a major project like
12 this.

13 So somehow Dick talked to Sam. Sam had a friend
14 that was willing to let him have \$100,000 worth of
15 water rights. And in that time water rights were worth
16 about \$20-- pardon me, \$20,000 an acre. Unbelievable.

17 THE COURT: Dr. Iliescu--

18 THE WITNESS: Did I misunderstand your question?

19 THE COURT: You misunderstood my question. I
20 apologize.

21 THE WITNESS: I apologize to you.

22 THE COURT: I might not have phrased it correctly.

23 You received over a million dollars in
24 nonrefundable cash, and then in addition to that, you

1 also received these water rights. And I understand
2 you're saying they're not worth now what they were
3 then.

4 THE WITNESS: I did. You're right.

5 THE COURT: I just wanted to make sure I got the
6 numbers down correctly on my notes. Go ahead.

7 MR. HOY: Thank you, Doctor.

8 I don't have any more questions at this time.

9 THE COURT: Mr. Pereos, do you wish to
10 cross-examine your client now or would you rather
11 recall him during your portion of the evidence in this
12 case? I'll give you the opportunity to do both.

13 MR. PEREOS: Cross-examine now.

14 THE COURT: Go ahead.

15 CROSS-EXAMINATION

16 BY MR. PEREOS:

17 Q Mr. Iliescu, has the property lost value during
18 the period of time that it's been tied up on this
19 project?

20 A Yes. Well, there's nothing going on and it's
21 only worth bare land, what it is there.

22 Q And is the value of the bare land now the same
23 as the value of the bare land that existed at the time
24 you went into the buy/sell agreement marked Exhibit 71?

1 A We had a recent appraisal by a quantified--
2 longtime appraiser and he said--

3 Q I don't want you to testify to what somebody
4 else told you. I want to know simply--

5 A It's worth-- I understand it's worth 7-,
6 \$800,000 now.

7 Q So you've lost value in the land during the
8 period of time that this property was tied up for this
9 project?

10 A Absolutely, yes.

11 Q Did the nonrefundable deposits even come close
12 to equating to the value of that land that you have
13 lost while it was tied up in this project?

14 A No.

15 Q Prior to the receipt of the mechanic's lien did
16 you ever hear about a gentleman by the name of Mark
17 Steppan?

18 A No, absolutely not.

19 Q Anybody ever tell you that Mark Steppan and/or
20 Fisher-Friedman Associates was an architect doing work
21 on this project?

22 A Absolutely not. My hand to God. I'm sorry.

23 Q Let me direct your attention to Exhibit 129.
24 I'll get it for you. 129. Are you there?

1 Did you receive that e-mail from-- or that
2 communication from Mr. Steppan?

3 A I don't remember how I received it, but I did
4 receive it, yes.

5 Q Okay. And was that a request by Mr. Steppan
6 for purposes of securing an extension?

7 A Yes, it was a request and an explanation.

8 Q Did you accommodate Mr. Steppan?

9 A I did.

10 Q At any time did you ever refuse to accommodate
11 anyone, whether it be the architect or the developer,
12 in a request for an extension?

13 A No. No. Well, I did after two extensions, but
14 during this time phase, no.

15 THE COURT: But did you hear the testimony earlier
16 today of Mr. Friedman where Mr. Friedman said that he
17 paid or that-- I believe it was that he paid for the
18 extension and did the extension because you didn't want
19 to?

20 THE WITNESS: Well, this is the extension we're
21 talking about.

22 THE COURT: Right.

23 THE WITNESS: And, honestly, Your Honor, I don't
24 remember whether I refused to pay for number two or he

1 volunteered to pay for one. I believe he paid for one,
2 so there was no reason for me not to cooperate with
3 him.

4 THE COURT: Right. He paid for it, so you agreed?

5 THE WITNESS: Certainly.

6 THE COURT: But then after were there any other
7 requests-- Hold on a second. Let me finish my
8 question, Doctor.

9 After that extension where Mr. Friedman put up the
10 \$2,300 or so for the extension, were there any other
11 extensions that you recall that were sought that you
12 didn't agree to, that you just said, No, I don't want
13 to do this anymore?

14 THE WITNESS: I said-- yes, I did say that. In
15 talking to Sam-- I mean to Dick and to a number of
16 people, they said, "Well, why don't you go ahead? What
17 harm will it cause?"

18 The biggest problem I had, Your Honor, was in order
19 to get an extension, the people that you deal with with
20 the city, the mayor, the people in the planning
21 department, they're looking to you to know what's going
22 on. And when I'm asking them for an extension, they're
23 saying to me, "John, is this real?"

24 And, you know, to ad lib, my dear friend Pete

1 Stremmel who had a similar project with five acres to
2 build a highrise condominium said to me one day when we
3 had coffee, he said, "John, your deal was dead on
4 arrival. Mine is in resuscitation." And he had about
5 28, 30 stories.

6 So I couldn't go with an open heart and ask these
7 people down at the city to extend it when they were
8 sticking their neck out. And I-- it's just not my
9 style.

10 BY MR. PEREOS:

11 Q And that's your explanation concerning why at
12 one point in time you said no more for the extensions?

13 A Yes. I didn't want to humiliate myself and--
14 humiliate myself in front of my friends at the city and
15 people in the city and-- It was a dead horse.

16 Q Well, what is your educational background?

17 A My educational background?

18 Q Yes.

19 A Well, it will take about five minutes.

20 THE COURT: Go ahead.

21 THE WITNESS: Both my parents came from Europe.
22 They immigrated here, settled in Chicago shortly after
23 the first world war. I was born in 1926. This next
24 year, if I live, I'll be 88. My third year in junior

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1 high school I went to a technical high school. The war
2 was in 1943, full blast.

3 My dad was working as a carpenter in a large naval
4 ship building plant, fell two and a half stories, broke
5 both his legs. It was a tough time. I quit school.
6 And he got well. And--

7 THE COURT: Take a moment.

8 THE WITNESS: I went back to work. No. I couldn't
9 go back to school. I quit work. He went back to work.
10 I volunteered for the Navy in 1943 and went to Great
11 Lakes. I lived in Chicago to finish boot camp. I was
12 asked to join a special unit, the frogmen. They became
13 precursors to the Navy Seals.

14 THE COURT: Doctor, can you tell me--

15 THE WITNESS: I'm sorry. I'm fine.

16 THE COURT: No.

17 THE WITNESS: I was just very close to my dad.

18 THE COURT: I appreciate that. Can you just kind
19 of step away from your dad, because I understand how
20 important those relationships are. Mr. Pereos asked
21 you about your educational background.

22 THE WITNESS: It's coming right now.

23 THE COURT: Go for it. Thank you.

24 THE WITNESS: After two and a half years I got out

1 of the Navy with a medical honorable discharge, spent
2 six months in the hospital and then started my
3 education. Then I was a high school dropout. I went
4 to a refresher course for eight, nine months. I didn't
5 know a noun from a pronoun. And I started at the
6 University of Illinois as an engineer. I had a year of
7 engineering.

8 In the meantime, I got married and had a little
9 girl. I took an aptitude test at the end of one year
10 and-- a bunch of us did in the class of engineering,
11 and it was determined I had a strong background for
12 physics and also a strong background in biological
13 science. And I was told that I could become a good
14 doctor, that I had a natural inclination towards that.

15 I switched my curriculum, took two or three more
16 years of premed. I applied-- It was very difficult to
17 get into school. I had a choice to go to dental or
18 medical school. I went to dental school. I had a
19 daughter, as I mentioned, and my wife and I agreed that
20 as a dentist I would have more time in raising my
21 family.

22 I applied to dental school and was accepted. The
23 third year of my dental school changed my life. The
24 plastic surgeon at the University of Illinois,

1 Dr. Sarnett, was involved in a major project doing
2 artificial clefts in macaque rhesus monkeys to see what
3 the effects would be on the symmetry of the middle
4 third of the face. I obtained a job-- I needed the
5 extra money. --to do the cephalometric studies in scar
6 tissue dissection. I became interested in cleft
7 palate. But as a dentist, you can't do very much.

8 Subsequently, I was high in my class, third or
9 fourth in my class. I applied to medical school. I
10 was accepted to George Washington Medical School in
11 Washington, D.C. I was able to get a patronage job at
12 the United States Senate with Senator Paul Douglas
13 where I worked for four years on the senate police
14 force.

15 My third and fourth year I got a scholarship and
16 had another boy and a girl. So by this time I had--
17 when I graduated medical school I had two girls and a
18 boy.

19 I applied for my internship and then my general
20 surgery training. I went to the Mayo Clinic and then
21 back to a program in San Francisco, a combination of UC
22 and Stanford program, and finished my general surgery
23 there and applied for my plastic training for cleft
24 palate work. This is the field they had me in.

1 And the two best programs in the country then were
2 Duke University and the University of Texas. They had
3 it all over Mayo and Harvard and all that. They had a
4 massive load of patients.

5 I chose University of Texas because of two or three
6 reasons. One is that they have a strong reconstructive
7 program, the way they do burns and major head and neck
8 cancer and major reconstruction and trauma. At that
9 time cosmetic surgery was still in the closet.

10 In my senior year I was asked to think about taking
11 a professorship at the University of Iowa. The strong
12 point of this university was that they put out many of
13 their graduates into university centers as chiefs of
14 plastic surgery. And this is what they like to do, to
15 get their-- It's academia. They get their name out.
16 I agreed to and got excited. By this time I wanted to
17 stay in academic medicine, academia.

18 Six months before this program I was operating on a
19 patient and got stuck by a needle, got a severe case of
20 hepatitis. The patient died. And I lost 40 pounds.
21 And I kind of reevaluated my life. Iowa is awful cold.
22 And it was a tough program. And I decided I would come
23 into private practice.

24 THE COURT: And so after-- If we could just put an

1 end to the education portion of your background. Was
2 it at the University of Iowa-- Is that in Ames, Iowa?

3 THE WITNESS: Sir, I'm sorry?

4 THE COURT: Des Moines or Ames, Iowa?

5 THE WITNESS: I missed your question.

6 THE COURT: Where in Iowa is that?

7 THE WITNESS: Iowa is-- You mean the medical
8 school?

9 THE COURT: Yeah.

10 THE WITNESS: Don't ask me these hard questions.

11 THE COURT: Okay. At the end of your-- Stop.
12 Don't answer my question.

13 At the end of your professorship at the University
14 of Iowa, then you said that you had decided that you
15 didn't like being there because it's cold,
16 understandably, and you were going to go into private
17 practice.

18 THE WITNESS: I was going too fast.

19 THE COURT: That's okay. Hold on.

20 THE WITNESS: I was at Texas.

21 THE COURT: I apologize. Texas.

22 I think that this would be a good time to take a
23 break for the day, because it sounds to me like I've
24 got a good understanding of at least your educational

1 background which is the last question that Mr. Pereos
2 asked. And so what we'll do today is take a break
3 right now. And then we'll come back tomorrow at 8:30
4 and then we'll begin at that point. And then
5 Mr. Pereos will still have you on cross-examination.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: And so we will be in recess until
8 8:30 a.m. tomorrow morning. I will remind counsel that
9 we'll break a little bit early for lunch tomorrow
10 because I do have a preexisting appointment that I have
11 to go to.

12 Is it anticipated still that we're on some kind of
13 track? I know, Mr. Hoy, you had suggested that
14 Mr. Steppan would begin his testimony today, but
15 obviously we have not gotten there.

16 MR. HOY: Yes. And I changed my schedule a little
17 bit. I believe I've got about no more than two hours
18 with Mr. Steppan and then I'll be in a position to
19 close. I don't know what Mr. Pereos's plans are for
20 this witness. I've heard that Karen Dennison is
21 waiting is the wings to testify tomorrow afternoon
22 sometime.

23 THE COURT: And I saw in the pretrial motion
24 practice, and by that I mean the trial statements, that

1 there were a lot more witnesses noticed than it sounds
2 like are anticipated to be testifying.

3 I will let the parties know, as I stated at the
4 beginning of the trial, that Friday is the judicial
5 retreat. There was some question whether or not that
6 was going to occur. It is going to occur. And so I do
7 need to go to that Friday. I don't know if there will
8 be any time Friday afternoon that we can come back.

9 And then, as I stated, Monday I'm not available.
10 Tuesday I begin a jury trial on a criminal matter. So
11 if we need to continue, it will on Monday,
12 December 23rd, which I'm sure is not super palatable to
13 anyone, but that is the next available court time that
14 I have is the 23rd of December. And then if we have to
15 go, we'll organize the Court's schedule with the staff.

16 My court clerk just gave me a shocked look, but I
17 was just trying to anticipate what it is we will do if
18 we're not finished by Thursday. And I'm just letting
19 the parties know that the next available day that I
20 have with some staff is going to be December 23rd. And
21 then we'll kind of go from there.

22 So I don't know what you're anticipated time is,
23 Mr. Pereos, but hopefully we can get it done this week.
24 And, if not, I'll give you the next available time that

1 we have and we'll just keep going.

2 MR. PEREOS: I'm optimistic we should wrap up by
3 Thursday.

4 MR. HOY: Your Honor, I do have one question for
5 the Court. And you may not know the answer to this
6 yet. You may put it off for a couple days. Sometimes
7 in a bench trial our district judges do not want an
8 oral closing argument but prefer to have it in writing;
9 sometimes judges want an oral argument but put time
10 limits on it. Do you have a preference or a rule for
11 this case?

12 THE COURT: I have no--

13 Dr. Iliescu, you can go over and sit down. You
14 don't need to stand up.

15 DR. ILIESCU: Thank you, sir.

16 THE COURT: And, Mr. Steppan, you can feel free to
17 sit down.

18 I don't really have a preference. As I stated
19 earlier, my last nonjury trial-- I've never done a
20 nonjury trial as a judge. I've done a few of them as
21 an attorney. And I always just did a closing argument.
22 And it gave the Court the opportunity to ask any
23 questions or to get clarification from the parties. I
24 don't look at it as a traditional closing argument in

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1 the sense that I just sit and listen to the argument.

2 There may be the opportunity for me to ask questions of
3 counsel during the closing arguments.

4 So if you prefer to do a closing argument, that's
5 fine. If you and Mr. Pereos get together and decide
6 that you would rather just submit a post-trial
7 statement for me to review, I'll be happy to review
8 that. I would leave it really more to the counsel.

9 I think that you guys know better what you think
10 will work in this case. And I'm open to either one.
11 So if you can come to an agreement, I'll follow
12 whatever your agreement is. If you can't, then that's,
13 I guess, why I sit up here. I'll make the decision for
14 you. But if you can come to some decision, I will go
15 along with whatever you both want to do. Thank you.

16 Court's in recess.

17 (The proceedings were adjourned at 4:52 p.m.)

18 --o0o--

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24

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 24th day of
20 February, 2014.

LORI URMSTON, CCR #51

LORI URMSTON, CCR #51

CASE NO. CV07-00341 **MARK STEPPAN VS. JOHN ILIESCU, ETAL**

PAGE 1

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

12/10/13
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
L. Urmston
(Reporter)

ONGOING BENCH TRIAL

8:30 a.m. – Court reconvened.

Plaintiff Mark Steppan was present with counsel, Michael Hoy, Esq.

Defendants Dr. John Iliescu and Sonia Iliescu were present with counsel, C. Nicholas Pereos, Esq.

Witness **Rodney Friedman** was reminded by the Court that he remained under oath; further direct examined.

Counsel Hoy played Exhibit 42, and witness Rodney Friedman narrated for the Court.

Witness further direct examined.

Counsel Hoy offered Exhibit 34; witness questioned briefly by counsel Pereos and then no objection; ordered ADMITTED into evidence.

Witness further direct examined; questioned by the Court; cross examined.

10:16 a.m. – Court stood in recess.

10:32 a.m. – Court reconvened.

Witness further cross examined.

Counsel Pereos offered Exhibit 25; no objection; ordered ADMITTED into evidence.

Witness further cross examined; re-direct examined; re-cross examined; and excused.

12:01 p.m. – Court stood in recess for lunch.

12:19 p.m. – Court reconvened.

Counsel Hoy called **Ronald David Snelgrove** who was sworn and direct examined; cross examined.

The deposition of David Snelgrove, dated November 18, 2008, was opened and published.

Discussion ensued between the Court and respective counsel regarding the deposition as it was not sealed. Counsel Hoy had no objection to the deposition being used, and he noted that the deposition is stamped “original” and he would make the Court aware if he thinks there are any discrepancies.

Witness further cross examined; re-direct examined; and excused.

2:59 p.m. – Court stood in recess.

3:19 p.m. – Court reconvened.

Counsel Hoy called Defendant **Dr. John Iliescu, Jr.**, who was sworn and direct examined; cross examined.

4:52 p.m. – Court stood in recess for the evening, to reconvene tomorrow December 11, 2013 at 8:30 a.m.

ORIGINAL

FILED

DEC 11 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

CODE: 2315
C. NICHOLAS PEREOS, ESQ.
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RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR DEFENDANTS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST,

Defendants.

AND RELATED MATTERS.

Case No.: CV07-00341
(Consolidated w/ CV07-01021)

Trial Date: December 9, 2013
Dept. No.: 10

**LEGAL MEMORANDUM IN
SUPPORT OF DISMISSAL FOR
FAILURE TO COMPLY WITH
STATUTE FOR FORECLOSURE
PURSUANT TO NRCP 50**

The Nevada Supreme Court has repeatedly held that there must be strict compliance by the moving party with statutes creating a remedy particularly the foreclosure of mechanic's lien. In the case of Schofield v. Copeland Lumber, 101 Nev. 83, 692 P.2d 519 (1985), the Nevada Supreme Court reversed the decision for summary judgment in an action filed by a contractor to foreclose the mechanic's lien. In discussing the complaint of foreclosure, the Supreme Court observed:

"The mechanic's lien is a creature of statute, unknown at common law. Strict compliance with the statute creating the remedy is therefore required before a party is entitled to any benefits occasion by its existence.... If one pursues his statutory remedy by filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the statutory prerequisite giving rise to the cause of action." Id. at Page 84.

Although the Nevada Supreme Court has recognized that strict compliance with the language of the mechanic's lien is not required in connection with the content of the lien,

CV07-00341
DC-9900051836-012
MARK STEPPAN VS. JOHN ILIESCU, JR. AND SONNIA ILIESCU
District Court
Washoe County
2315
12/11/2013 03:00 PM

1 the same does not hold true in connection with compliance with the statute to perfect and
2 foreclose the lien. The perfection of the lien is discussed in NRS 108.226 which indicates
3 that the lien is to be recorded within ninety (90) days after the date in which the last
4 services have been rendered by the contractor. The lien must then be served within thirty
5 (30) days after the recording. NRS 108.227. The lien is good for six (6) months. NRS
6 108.233. If one seeks to enforce the lien, one must comply with NRS 108.239. Which
7 provides in pertinent part:

8 NRS 108.239 Action to enforce notice of lien: Complaint;
9 required notices; joinder of persons holding or claiming notice
10 of lien; consolidation of actions; hearing and judgment;
11 preferential trial setting; binding arbitration; sale of property.

12 1. A notice of lien may be enforced by an action in any
13 court of competent jurisdiction that is located within the county
14 where the property upon which the work of improvement is
15 located, on setting out in the complaint the particulars of the
16 demand, with a description of the property to be charged with
17 the lien.

18 2. At the time of filing the complaint and issuing the
19 summons, the lien claimant shall:

20 (a) File a notice of pendency of the action in the manner
21 provided in NRS 14.010; and

22 (b) Cause a notice of foreclosure to be published at least
23 once a week for 3 successive weeks, in one newspaper
24 published in the county, and if there is no newspaper published
25 in the county, then in such mode as the court may determine,
26 notifying all persons holding or claiming a notice of lien
27 pursuant to the provisions of NRS 108.221 to 08.246,
28 inclusive, on the property to file with the clerk and serve on the
lien claimant and also on the defendant, if the defendant is
within the State or is represented by counsel, written
statements of the facts constituting their liens, together with the
dates and amounts thereof.

21 The statute clearly provides that the "lien claimant shall" file a notice of pendency of the
22 action in the manner provided in NRS 14.010. NRS 14.010 provides impertinent part:

23 **NRS 14.010 Notice of pendency of actions affecting real
24 property: Recording.**

25 1. In an action for the foreclosure of a mortgage upon real
26 property, or affecting the title or possession of real property,
27 the plaintiff, at the time of filing the complaint, and the
28 defendant, at the time of filing his or her answer, if affirmative
relief is claimed in the answer, shall record with the recorder of
the county in which the property, or some part thereof, is
situated, a notice of the pendency of the action, containing the
names of the parties, the object of the action and a description

1 of the property in that county affected thereby, and the
2 defendant shall also in the notice state the nature and extent
of the relief claimed in the answer.

3 There has been no evidence concerning the recording of a notice of pendency of the action
4 at the time of filing of the complaint as required by NRS 14.010.

5 NRS 108.239 goes on to provide that a notice is to be published at least once a
6 week for three (3) successive weeks in a newspaper published in the County so other lien
7 claimants may join the lawsuit. There has been no evidence introduced that there has
8 been a publication of a notice. The Plaintiff, in seeking to foreclose his mechanic's lien
9 in the subject real property, has not complied with the statute. In Fisher Bros., Inc. v.
10 Harrah Realty Co., 92 Nev. 65, 545 P.2d 203 (1976). Harrah's contracted with Stolte, Inc.
11 Stolte engaged Terry Construction. Terry Construction engaged Fisher Brothers. Harrah
12 paid Terry Construction. Terry Construction did not pay Fisher Brothers. In an action to
13 foreclose the lien to be distinguished from deficiencies in the lien language, the Court
14 observed:

15 "Strict compliance with the statutes creating the remedy is
16 therefore required before a party is entitled to any benefits
17 occasioned by its existence [citation omitted]. If one pursues
18 his statutory remedy by filing a complaint to perfect a
mechanic's lien, he necessarily implies full compliance with the
statutory prerequisites giving rise to the cause of action." Id.
at Page 67.

19 Accordingly, the obligations of the lien claimant in foreclosing the lien is to file a
20 complaint for foreclosure and record a notice of lis pendens and to publish. In Hardy
21 Companies, Inc. v. SNMARK, Inc., 126 Nev. Adv. Op. 49, 240 P.3d 1149 (2010), the court
22 noted:

23 "Failure to either fully or substantially comply with the
24 mechanic's lien statute will render a mechanic's lien invalid as
a matter of law." Id. at Page 155.

25 In the present case, the Plaintiff Steppan has failed to comply with NRS
26 108.239(2)(a) or NRS 108.239(2)(b). This lack of compliance with the statute is fatal to the
27 case to foreclose a mechanic's lien notwithstanding the merit of the case under the
28 contract.

1 There is additional case law from other jurisdictions that indicate that failure to
2 comply with a mechanic's lien statute's procedural provisions will preclude the lien's validity
3 and enforcement. In Rollar Construction and Demolition, Inc. v. Granite Rock Assoc's.
4 LLC, 891 A.2d 133, 135-36, (Conn.Ct.App. 2006), the court stated:

5 Although the mechanic's lien statute creates a statutory right in derogation
6 of the common law . . . its provisions should be liberally construed in order
7 to implement its remedial purpose of furnishing security for one who provides
8 services or materials. . . . Our interpretation, however, may not depart from
reasonable compliance with the specific terms of the statute under the guise
of a liberal construction.

9 (Citations omitted.) The court further noted:

10 General Statutes Sec. 49-34 includes five requirements to filing a valid
mechanic's lien. If any of those requirements fail, the lien is invalid.

11 Id. at FN 7. Similarly, in Westcon/Dillingham Microtunnelling v. Walsh Constr. Co. of
12 Illinois, 747 N.E.2d 410 (Ill.Ct.App. 2001), the court stated:

13 The purpose of the Act is to protect those who, in good faith, have furnished
14 materials and labor for the construction of buildings or public improvements.
Section 39 of this Act states that "[t]his act is and shall be liberally construed
15 as a remedial act." 770 ILCS 60/39 (West 1998). Nevertheless, because
the rights created are statutory and in derogation of common law, the
16 technical and procedural requirements necessary for a party to invoke the
protection of the Act must be strictly construed. . . . Once a plaintiff has
17 complied with the procedural requirements upon which a right to a lien is
based, the Act should be liberally construed to accomplish its remedial
purpose.

18 Id. at 416 (citations omitted). Further,

19 It is well established that the creation of a mechanic's lien is entirely
20 governed by the Act, and the rules of equity jurisprudence are irrelevant at
this stage.

21 Id. See also Crawford Supply Co. v. Schwartz, 919 N.E.2d 5, 12:

22 Because the rights under the Act are in derogation of the common law, the
23 steps necessary to invoke those rights must be strictly construed.

24 (Citing Westcon/Dillingham, *supra*.)

25 In National Lumber Co. v. Inman, 933 N.E.2d 675 (Mass.Ct.App. 2010), the court
26 noted that the purposes of the mechanic's lien statute "include the protection of the owners'
27 real estate," and that "the statute contains filing and notice requirements to protect the
28 owner and others with an interest in the property."

1 In In Re Trilogy Development Co., 468 B.R. 854 (W.D. Mo. 2011), the court noted
2 that while "mechanic's liens in Missouri are remedial in nature and should be liberally
3 construed for the benefit of the lien claimants," it further stated that "this liberal policy is not
4 open-ended and does not relieve a lien claimant of reasonable and substantial compliance
5 with statutory requirements." Id. at 862 (citations omitted).

6 Finally, in Southern Management Co. v. Kevin Willes Constr. Co., Inc., 856 A.2d
7 626, 637, (Md.Ct.App. 2004), the court held:

8 Mechanic's liens, as they exist in this State, are creatures of
9 statute, and, thus, to be entitled to a mechanic's lien against
10 property in Maryland, a claimant must satisfy the procedural
11 criteria set forth in the statute.

12 See also Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 179 A.2d. 683, 685
13 (Md.S.Ct. 1962)(stating that "a mechanic's lien is a claim created by statute and is
14 obtainable only if the requirements of the statute are complied with.")

15 A foreclosure of property under a mechanic's lien will result in the divestiture of the
16 property owner of its property. In this case, Iliescu has steadfastly taken the position that
17 they have never been a party to the AIA contract which the architect alleges defines the
18 amount of money that is due him. Notwithstanding, a review of Nevada position on
19 foreclosure of real property is instructive. It has always been the stated position of a
20 Nevada Supreme Court that there is to be strict compliance with the foreclosure laws
21 involving real property. In Leyva v. Nat'l Default Servicing Corp., et al., 255 P.3d 1275, 127
22 Nev.Adv.Op. 40 (2011), the Supreme Court observed that substantial compliance with the
23 foreclosure laws of NRS 107.086 is not satisfactory as there must be strict compliance.
24 Before the recent legislation in the last eight (8) years following the economic recession,
25 the foreclosure laws of Nevada were very similar to that of California. A foreclosure was
26 started by filing a notice of default. The statute dictated that which was to be contained in
27 the notice of default. The old NRS 107.080 which provision is still in effect today provides
28 that the notice of default must describe "the deficiency in performance of payment."
California's provision is similar. It too required a definition as to the nature of default.

1 Prior to the institution of the foreclosure laws that permit the use of a power of sale
2 in a deed of trust, the old court of equity would conduct foreclosures under mortgages.
3 With the institution of the concept of the power of sale, property can now be sold without
4 judicial oversight. Accordingly, it has been held that the power of sale under a deed of
5 trust is considered to be a harsh method of foreclosing the rights of the grantor and courts
6 are to scrutinize the sales with great care. Unless conducted with fairness, regularity and
7 scrupulous integrity, the sale is not to be sustained. System Inv. Corp. v. Union Bank, 98
8 Cal.Rptr. 735, 745, 21 Cal.App.3d 137 (1971). Similarly, a deficiency in the notice of
9 default that precedes the use of the power of sale in a deed of trust is grounds to set a
10 foreclosure aside. Statutes requiring a notice of default and election to sell pursuant to a
11 deed of trust are to state the breach of the obligation for which the mortgage and/or
12 transfer of trust is to set forth the nature of the breach must be strictly followed. Bisno v.
13 Sax, 175 Cal.App.2d 714, 346 P.2d 814 (Cal.App.2 Dist., 1959); Kleckner v. Bank of
14 America, 217 P.2d 28, 97 Cal.App.2d 30 (Cal.App. 2 Dist., 1950). Because sales under
15 a power of sale are liable to abuse, they are to be jealously watched by courts and they will
16 be set aside on proof of unfair conduct, particularly with respect to the notice of sale. Pugh
17 v. Richmond, 58 Tenn.App. 62, 425 S.W.2d 789 (Tenn. App., 1967).

18 The case before the court does not involve a foreclosure under a deed of trust that
19 mandates the notice of sale. However, the foregoing language is indicative of the court's
20 attitude requiring strict compliance with the statutory remedies that permit an owner to lose
21 his property by reason of a foreclosure. As our Supreme Court has observed in McCall v.
22 Carlson, 63 Nev. 390, 406, 127 P.2d 171 (1946), the legal maxim that equity abhors a
23 forfeiture requires no citation. Id. at Page 406.

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1 ***The undersigned affirms that the foregoing pleading does not contain a social***
2 ***security number.***

3 DATED this 11 day of December, 2013.

C. NICHOLAS PEREOS, LTD.

4 

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

--oOo--

MARK B. STEPPAN,

Case No. CV07-00341

Plaintiff,

Dept. No. 10

vs.

JOHN ILIESCU et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
TRIAL - DAY 3
Wednesday, December 11, 2013

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1 E X H I B I T S

2	NO.	DESCRIPTION	MARKED/ADMITTED
3	21	8/10/06 Letter agreement for	660
4		Project 0515-03 (Adjacent Church Parking Studies)	
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RENO, NEVADA, WEDNESDAY, DECEMBER 11, 2013, 8:34 A.M.
2 -oOo-

1 Q. Yes.

2 A. Well, as I stated, when I finished my -- when I was at
3 the University of Texas completing my program, I had an
4 opportunity to go to Iowa University Medical Center as a
5 potential -- as a full professor.

6 About six months before that, I was injected with a
7 needle while in surgery by a patient that subsequently died
8 from fulminant hepatitis.

9 I contracted hepatitis, lost 40 pounds; a difficult
10 time; recovered, obviously, and decided I wouldn't go to Iowa.

11 Iowa had a very, very weak plastic surgery center; in
12 fact, even to this day. Most of the time the specialties --
13 orthopedics, plastic surgery, neurosurgery -- are all kind of
14 separate departments. In Iowa it's still under general
15 surgery; even as of this day, is my understanding.

16 And what they wanted of me was to go there and create
17 a department of plastic surgery, which would have been a real
18 political battle. I decided then that I would not do that,
19 that -- I really was on an ego trip and started looking around
20 for a little town or somewhere, because I was worried that --
21 you know, that -- I had been very ill and wanting to go
22 somewhere where I would have a peaceful life.

23 And a dear friend that was my next-door neighbor at
24 the Mayo Clinic, who was here in Reno, invited me to come up.

1 I had gone back to San Francisco, where I had a bunch of
2 friends and I, of course, trained there. And came up to Reno
3 and found out they had one plastic surgeon here, who at
4 5 o'clock stopped working, never took emergency calls, and did
5 about, oh, 20 percent of what plastic surgeons do.

6 I was surprised. I trained in a very large burn
7 center, a very large trauma center, a center that did major
8 reconstructive cancer surgery, major hand surgery, major
9 cranial and facial deformities for severe congenital anomalies.

10 And it looked like it was a perfect spot. I loved the
11 mountains. And I was all by myself then, not married. I had
12 gotten a divorce, which was a heartbreaker for me. I had three
13 children; ended up with five grandchildren and nine -- excuse
14 me -- eight grandchildren. That was a document I wanted to
15 bring. I don't remember all of this in detail.

16 THE COURT: Dr. Iliescu, if I can interrupt you at
17 this point. The focus of the question was whether or not you
18 had ever been a teacher.

19 Did you ever teach anywhere?

20 THE WITNESS: Yes. Here at the university, I had -- I
21 was on a staff, associate staff, as a professor to teach. I
22 always had students with me, which I enjoyed immensely, Your
23 Honor.

24 THE COURT: That was here at the University of Nevada

1 Medical Center?

2 THE WITNESS: University of Nevada. I received an
3 honorary degree from the university in that respect. And I was
4 involved with multiple -- if you want me to go into it,
5 multiple social things. I was, of course, a Mason and a
6 Shriner.

7 THE COURT: Well, hold on a second, Dr. Iliescu. It's
8 not appropriate for you to go into that. I'll let Mr. Pereos
9 ask you a follow-up question now, because as I stated the first
10 question he asked you was about teaching. So now if there's an
11 additional area that he would like to get into, I'll allow
12 Mr. Pereos to ask the next question.

13 Go ahead, Mr. Pereos.

14 MR. PEREOS: Thank you, Your Honor.

15 BY MR. PEREOS:

16 Q. Did you ever receive a grant from the American Cancer
17 Society?

18 A. Yes, I did.

19 Q. Okay. And was that in the area of surgery?

20 A. Area research on cancer, yes.

21 Q. What states were you licensed in as a doctor?

22 A. I was licensed in three states that I've been in,
23 Florida, Texas and, of course, Nevada, and California. And I
24 had taken national boards so I could be licensed in any state

1 in the United States by just applying for it. That general
2 test covers all the states.

3 Q. Are you an author of any publications in your field of
4 practice?

5 A. Yes.

6 Q. How many publications? Approximate is good enough.

7 A. Two or three major publications and -- a book was
8 written on the cutting edge of surgery and eight or ten
9 pioneers here in this community, and the various specialties
10 were in this book. It's available. And I was in the book as a
11 pioneer of plastic surgery here in the area.

12 Q. Have several of your articles been published in
13 journals regarding plastic surgery?

14 A. Yes.

15 Q. At any time did you ever receive any type of notice
16 that the property that is the subject of this adjudication,
17 this litigation, was down-zoned or the zone was changing?

18 A. Never. The zoning is the same today as it was then.

19 Q. At any time did you ever authorize Mr. Sam Caniglia to
20 engage architects or engineers on your behalf?

21 A. No.

22 Q. Let's discuss the Pinecrest transaction. Okay? You
23 had mentioned it earlier in response to some examination by
24 Mr. Hoy.

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1 What happened by Pinecrest Construction Company? What
2 occurred?

3 A. In 19 -- in 2004 -- I retained Hale Lane in 2005. In
4 2004, I had, as I mentioned before, a tenant that leased a
5 piece of property from me and subsequently undertook some
6 repairs of it.

7 I received a notice and lien -- a pre-lien notice from
8 Pinecrest that they were going to be doing some work on this --
9 in this building.

10 And at that time I -- not being too familiar with the
11 process, I called Pinecrest and told them, "Please collect from
12 the tenant." He was only a tenant and I didn't know his
13 background. And in addition posted notices in -- on the door
14 that I was not responsible for any work that was done there.

15 THE COURT: Is Pinecrest an office building or is it
16 an apartment? What kind of place is it?

17 THE WITNESS: Pinecrest, Your Honor, is a construction
18 company.

19 THE COURT: Oh, okay. Thank you.

20 THE WITNESS: They were doing this work.

21 BY MR. PEREOS:

22 Q. So the notice actually came from Pinecrest?

23 A. Yes.

24 Q. They were the claimants, the ones making the claim?

1 A. Yes. They were the ones in the pre-lien that said
2 they were going to do this work and I should have a heads-up on
3 it.

4 Q. Who represented Pinecrest?

5 A. I found out six months later that Jerry Snyder, from
6 Hale Lane, represented them. I did not know that until we went
7 to the hearing as regarding the lien that was placed on it,
8 because he represented me in a lien.

9 Q. Okay. Now, let's stay with Pinecrest.

10 A. I'm sorry.

11 Q. Okay?

12 A. Jerry Snyder.

13 Q. Jerry Snyder represented Pinecrest?

14 A. That's correct.

15 Q. All right. Now, he was representing a lien claimant
16 against you?

17 A. That is correct.

18 Q. Okay. All right. Now, eventually did you have to pay
19 money on that lien claim?

20 A. Yes. We retained Steve Mollath. Judge Adams rightly
21 ruled that I did not file a notice of non-responsibility with
22 the County; that from the time I got the pre-lien notice I had
23 72 hours to do that; I knew who the architect was, I -- excuse
24 me. I knew who the contractor was and I had 72 hours at which

1 time my responsibility was to go down to the county, file a
2 notify of non-responsibility.

3 I was not aware of that. I posted everything else.
4 It was brought out I should have done that and ended up paying,
5 between the attorney fee and Pinecrest, approximately \$30,000.

6 Q. All right. Now, when you -- did you eventually engage
7 Karen Dennison to work with you with regard to Addendum No. 3?

8 A. I did.

9 Q. Karen Dennison is affiliated with what law firm?

10 A. Hale Lane.

11 Q. Okay. During your engagement with Karen Dennison when
12 she was working with you with Addendum No. 3, did you discuss
13 with her the Pinecrest matter?

14 A. Yes.

15 Q. Did you discuss with her your anxieties regarding the
16 Pinecrest matter?

17 A. Yes. I -- if I may elaborate?

18 Q. Go ahead.

19 A. Personally, you know, I --

20 THE COURT: Dr. Iliescu, do me a favor first, before
21 you elaborate. You just keep saying "Pinecrest." Was it
22 Pinecrest Construction?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Pinecrest Plumbing? I don't know --

1 THE WITNESS: No, no. Pinecrest is an overall
2 construction company, to my knowledge, and they didn't
3 specifically pick out plumbing or electrical. They were the
4 construction company that was going to do this work.

5 THE COURT: And what was the piece of property or the
6 building that you owned where Pinecrest was going to work?

7 THE WITNESS: Right across the street, on Arlington.
8 Do you know where the Imperial Lounge is at Second and
9 Arlington?

10 THE COURT: Yes.

11 THE WITNESS: That was the exact building.

12 THE COURT: Okay. I just want to make sure -- and I
13 think it might be in my notes from yesterday and I didn't
14 review them again -- but you had a tenant. And what was the
15 address where the tenant was?

16 THE WITNESS: That was the address, in that building.
17 And his name was Mike Mannion. He wanted to put a club in
18 there and he never completed that.

19 He did do -- Pinecrest did do the demolition and did
20 do some work in there, sir, Your Honor.

21 THE COURT: So you own the building, Doctor; Pinecrest
22 came in and you were letting Pinecrest know you weren't going
23 to pay for it. But if I understand correctly, you didn't
24 follow the process and, therefore, eventually you were

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1 responsible for the improvements that Pinecrest did on your
2 piece of property?

3 THE WITNESS: Exactly, Your Honor.

4 THE COURT: Thank you.

5 Go ahead, Mr. Pereos, I just wanted to make sure I got
6 that all correct.

7 MR. PEREOS: Sure.

8 BY MR. PEREOS:

9 Q. Now, the events -- your meeting with Ms. Dennison was
10 in the last quarter of 2005, was it not?

11 A. Yes.

12 Q. Was that about the time that you were experiencing the
13 situation with regard to Pinecrest?

14 A. Yes. Pinecrest, of course, was before that -- I went
15 to them. Before I engaged them, I already had that experience
16 with Pinecrest.

17 Q. Do you remember how much time before you talked to
18 Karen Dennison that you had to pay the Pinecrest lien?

19 A. The Pinecrest situation occurred in maybe March of
20 2004, April, give or take a month or two; I'm not sure. I
21 engaged Karen Dennison in the following year, in October or
22 thereabouts.

23 Q. Of 2005?

24 A. Five, yes, sir.

1 Q. All right. So you had a conversation with Karen
2 Dennison regarding the Pinecrest transaction?

3 A. Yes, I did.

4 Q. Okay. And you explained to her your anxiety?

5 A. I told her -- I did not mention Pinecrest by name.

6 Q. Okay.

7 A. I told her that I had had a bad experience and then
8 I -- I knew that I was not very legally savvy and that this was
9 a big project I was coming to her on, 28 stories, and I wanted
10 her firm to represent me from a legal point of view and
11 fine-tune this contract and give me the protection I needed.

12 I was 80 years old and I was starting with enough
13 funds to retain two attorney firms, and I came to her with
14 that. With the understanding from Julie Arc that she was
15 probably the best firm to come to. I had never been to that
16 firm before that.

17 Q. Now, during your interaction with Karen Dennison, were
18 you ever advised that Mark Steppan was an architect working on
19 this project?

20 A. No.

21 Q. Did you ever record a notice of non-responsibility?

22 A. I did not. I had sent them over for them to take care
23 of those bases.

24 Q. For "them" being who?

1 A. Hale Lane, and Karen Dennison was the only contact I
2 had with anybody in that particular moment.

3 Q. So you never signed a notice of non-responsibility or
4 ever directed anybody to record a notice of non-responsibility?

5 A. No.

6 Q. And the reason for that?

7 A. The reason for that was, I -- they assured me that
8 they would handle all of the legal things, in the sense that I
9 came to them with that idea in mind: Please take care of
10 whatever subdivision has to happen, whatever legal fees have to
11 happen in this matter, and having, of course, stressed that
12 situation about what had happened to me and my concern.

13 Q. Okay. Now, we heard testimony that you received
14 somewhat in excess of one million dollars as deposits with
15 regard to this particular property.

16 Do you remember that testimony?

17 A. That's correct.

18 Q. Okay. Can you tell us what happened to that million
19 dollars?

20 A. Well, approximately \$365,000 of that was -- so that
21 went to the IRS, and I had 39 percent bracket. Without any
22 exaggeration, over 400, \$450,000 in the last seven years have
23 gone to attorney fees. We have records of that.

24 Of course, there was Dick Johnson's commission. I

1 think for the most part it's pretty close, an even balance.

2 MR. PEREOS: I have no further questions.

3 THE COURT: Hold on one second.

4 Redirect, Mr. Hoy?

5 MR. HOY: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. HOY:

8 Q. Dr. Iliescu, yesterday on cross-examination, you
9 testified that you never refused to file extensions of the
10 development entitlements on your property there between Island
11 and Court Street. And then you explained that you had, in
12 fact, refused to file extensions. And I would like to follow
13 up on that a little bit.

14 A. Repeat that a little bit, Mr. Hoy. I'm not up to the
15 timetable you're at. What are we talking about, specifically?

16 Q. Sure. Let me give you some more background.

17 A. Okay. Thank you.

18 Q. We've had evidence in this trial that on November 15,
19 2006, the Reno City Council approved a tentative map and
20 special use permit for development of the Wingfield Towers
21 project on your land between Island Avenue and Court Street.

22 A. That's correct.

23 Q. And the original conditions of that approval were that
24 a final map would have to be filed with the City within two

1 years of that approval. With me?

2 A. I didn't go into that, but I will assume that's
3 correct. I mean, it's -- I didn't read those documents, but --

4 Q. And then in 2008, Wood Rodgers prepared an application
5 to the City of Reno to extend that filing deadline by another
6 two years?

7 A. Yes, that's correct.

8 Q. And then in 2010, October, November of 2010, Rodney
9 Friedman paid for and applied for a further extension of that
10 filing deadline. Do you remember all of that?

11 A. Yes, I remember that. I don't know which one
12 Mr. Friedman paid for, whether he paid for the initial one or
13 he paid for the second one; I have no idea.

14 Q. Okay. And then on cross-examination, you were asked
15 by Mr. Pereos whether you ever refused a further extension of
16 that filing deadline for the final map. And initially you
17 said, "No, I never refused to seek a further extension," and
18 then you went back on that and you said, yeah, you had refused.

19 Do you remember that testimony?

20 A. Mr. Hoy, I don't really remember. I can tell you my
21 frame of mind, but I don't really remember. When I have -- if
22 you're asking me whether I have gone along with their plan, no.
23 Because, if you remember, I live in this community.

24 THE COURT: Dr. Pereos, he's not -- or, excuse me,

1 Dr. Iliescu, not Dr. Pereos. I just --

2 THE WITNESS: No.

3 THE COURT: No offense to either party.

4 Dr. Iliescu, he's not asking you about your frame of
5 mind at the time --

6 THE WITNESS: Okay.

7 THE COURT: -- those things occurred, he's asking you
8 if you recall testifying that way yesterday.

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 Next question.

12 BY MR. HOY:

13 Q. All right. So you remember yesterday that you
14 testified that you refused to seek a third extension of the
15 filing deadline for the final map. Do you remember that much?

16 A. Yes, of course.

17 Q. Okay. And you remember your reason for refusing, you
18 said, was that you have friends in the City of Reno and that
19 you thought that your credibility would be hampered if you
20 sought a third extension for the project. Do you remember that
21 testimony?

22 A. Yes. I don't think they -- in talking to the mayor
23 and everybody, they wouldn't have done it; wouldn't have done
24 it. They had put themselves on the line.

1 Q. So you --

2 A. It didn't make sense for them.

3 Q. Are you telling us that you actually talked to the
4 mayor of the city of Reno about a third extension?

5 A. Yes. I talked -- I talked to them on the second
6 extension and they didn't want to do it. They were hesitant to
7 do it then, but they wanted the project to occur.

8 And the recession was on and, of course, they have to
9 account for these thing. That's a big project.

10 Q. Were you at the city council meeting when the city
11 council approved the second extension of the filing deadline?

12 A. Yes. When that city council approved it, yes, I was
13 there.

14 Q. Okay. And you remember, then, that Richard Johnson
15 stood up on your behalf and addressed the city council at that
16 hearing. Do you remember that?

17 A. Remember what? I'm sorry.

18 Q. Do you remember Richard Johnson?

19 A. Dick Johnson?

20 Q. Dick Johnson.

21 A. Yes.

22 Q. You know he was at that hearing --

23 A. Yes. I don't know that he was at that hearing, but I
24 assume he was, it was a logical time. Do I specifically know,

1 no, but I believe he was; I just don't know for sure.

2 Q. Do you remember that Dick Johnson stood up in front of
3 the city council and addressed the city council at that
4 hearing?

5 A. To my recollection, no.

6 Q. Do you remember the mayor at that hearing asking how
7 come the architect hadn't been paid?

8 A. Yes, I do remember that. No, not the architects. I
9 remember the mayor stating that a number of people hadn't been
10 paid.

11 And, yes, I recall now that Dick Johnson said, when we
12 get that second extension that we would pay all the rest of the
13 people involved, which we didn't know about. Dick was upset
14 about that with Sam.

15 We didn't know about all the people that had been
16 filed, with the surveyors and all that, that were owed money.
17 They never received a pre-lien. We didn't know anything about
18 that.

19 At that point the people involved said to somebody in
20 the City, well, if you're going to give them an extension and
21 this happens, make sure we get paid, because they owe us money,
22 too.

23 We had never been pre-liened, we knew none of that
24 work from any of those people that was done.

1 Q. But Dick Johnson stood up -- when the major -- when
2 the mayor asked the question, Dick Johnson stood up and said,
3 "If you grant the second extension, everybody will be paid"?

4 A. I think that's true now that you've refreshed my
5 memory.

6 THE COURT: And were you present when that happened or
7 did Mr. Johnson tell you that after the meeting?

8 THE WITNESS: I'm sorry, Your Honor. I didn't hear
9 your question. Was I present?

10 THE COURT: Dr. Iliescu, were you present during that
11 meeting when Mr. Johnson made those representations and had the
12 conversation with Mayor Cashell; or did Mr. Johnson, Dick
13 Johnson, come and tell you that after the meeting, that this
14 happened at the meeting and that Mayor Cashell made these
15 comments and Mr. Johnson said, "We're going to get everybody
16 paid if we get this continuance"? Which one.

17 THE WITNESS: Your Honor, I was at the meeting; but I
18 knew ahead of time, when Dave Snelgrove or whoever was
19 preparing those documents, that those people that had been
20 involved had not been paid. That upset Dick Johnson.

21 We learned about it and he went to Sam Caniglia -- in
22 fact, as I understand it, there is a letter somewhere -- and
23 asked Sam, "Why wasn't that done?" He was upset. And the
24 letter, specifically, from Sam said that he was disappointed,

1 wondered why Dick was so upset with him. And Dick explained to
2 him, "Why haven't you paid these people?"

3 THE COURT: Just so I'm crystal clear about this,
4 then, you physically were present at the city council meeting
5 where the fact that people had not been paid, including the
6 architect, was discussed by the mayor and when representations
7 were made that, if we continue this, if we get this extension,
8 those people are going to get paid?

9 THE WITNESS: That's correct, your Honor.

10 THE COURT: Okay. Thank you.

11 Next question.

12 BY MR. HOY:

13 Q. And Dick Johnson stood up on your behalf at that
14 meeting, didn't he?

15 A. You know, I didn't remember in detail, but I suspect
16 that's probably true. If he did, I wouldn't be a bit
17 surprised.

18 Q. Well, I mean, Dick Johnson didn't have any interest in
19 your property himself; he was there as your agent, your broker?

20 A. Well, no, he was interested in the project happening,
21 and if it did, he was interested financially and also as, to
22 get the project done, yes.

23 Q. Dick Johnson had a financial interest in getting the
24 project done?

1 A. Well, he got interest in -- you know, he got six
2 percent.

3 Q. Okay. And when Dick Johnson stood up and told the
4 city council that people would be paid, the people who had
5 worked on the entitlements would be paid, did you stand up and
6 object to that?

7 A. No, I never said a word at that meeting.

8 THE COURT: Mr. Hoy, this is the second request for
9 the extension --

10 MR. HOY: Yes.

11 THE COURT: -- that turned out to be the one-year
12 extension?

13 MR. HOY: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. HOY:

16 Q. You testified this morning that the zoning has never
17 changed on your property between Island and Court Street; is
18 that --

19 A. That is correct.

20 Q. And how do you know that?

21 A. Well, in order to -- that whole zone is zoned
22 commercial redevelopment. If they change the zoning they have
23 to come and tell you. There has to be a hearing. That zone
24 was never changed. In fact, I happened to run across

1 Mr. Clouse and nothing has changed there.

2 In order to get this project going, that zone was
3 basically there for that potential. The only thing they had to
4 do was get a special use permit and approval from all the
5 agencies that they would allow such a thing in that area. But
6 the basic zoning is there for that project and that type of
7 project.

8 Could you put another high-rise there tomorrow with
9 that zoning? Absolutely. I asked Mr. Clouse that
10 specifically, as recent as -- I ran across him, I've known
11 Mr. Clouse for 25 years.

12 Q. And by "Mr. Clouse," do you mean Vern Kloos?

13 A. Vernon Kloos, yes. And he's very active in the --
14 down in the -- senility -- in the community development. It
15 will come eventually.

16 Q. So it's Vern Kloos, K-l-o-o-s?

17 A. Thank you.

18 Q. Do you know that's how you spell his name?

19 A. I'm -- yes, fine.

20 Q. And you said you came across him. Did you come across
21 Mr. Kloos to ask him specifically that question so that you
22 could testify about that in this trial?

23 A. Absolutely not. I own the property, it's my life, I
24 need to know what's happening on it.

1 Q. All right. So your testimony -- your understanding is
2 that the zoning hasn't changed and that you can put another
3 high-rise building on the same property under the current
4 zoning; is that accurate?

5 A. You could put a high-rise structure where they would
6 ever allow; what they did there is very questionable.

7 Q. Okay. So as part of the approvals back in November of
8 2006, there was a special use permit granted by the City of
9 Reno, right?

10 A. Yes. Which is -- happens with many projects, not just
11 this, anything. In that kind of zoning, if you want anything,
12 you have to get a special use permit. They review it, see how
13 much sense it makes, et cetera.

14 Q. Right. So zoning refers to the density of the project
15 that can be built on a particular parcel; is that accurate?

16 A. I don't know that, but the special use permit would
17 take that into account.

18 Q. Right. The special -- you need a special use permit
19 in the city of Reno to build a project with more than a hundred
20 residential condominium units, for example, right?

21 A. I don't know that. I've never tried to build a
22 hundred -- I've never tried to build anything.

23 Q. So are you familiar with the special use permit that
24 was granted by the City of Reno in November of 2006?

1 A. I am not.

2 Q. Okay. Do you know that you need a special use permit
3 for hillside development in the city of Reno?

4 A. I'm sorry, I didn't hear the question.

5 Q. Do you know whether or not you need a special use
6 permit for hillside development in the city of Reno?

7 A. Hillside?

8 Q. Hillside?

9 A. What is hillside?

10 Q. Where there is a certain slope to the property.

11 A. You know, I don't know any of those details.

12 Q. All right. So with the expiration of the 2006 special
13 use permit, do you know whether or not it would be automatic
14 that you could build a project with the same special use permit
15 conditions today?

16 A. I know only that the same situations exist today that
17 existed when this -- when Mr. Caniglia came here to our
18 property and Dick Johnson represented him.

19 Nothing from the basic zoning has changed. That basic
20 zoning, you could go next door, you could go anywhere with that
21 zoning, and I suppose if you presented the right project and it
22 necessitated a special use permit, it could happen, yes.

23 Q. So let me see if I can summarize your understanding.
24 You understand that the zoning has not changed on your land,

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1 but you also understand that the same project that was approved
2 in 2006 would not be approved today?

3 A. I don't know that. I don't know what they would do
4 with it. It takes the City, it takes a whole team of people to
5 decide whether that's a feasible project. I don't know. I
6 wasn't involved with that to begin with. I have no idea.
7 That's not my expertise. That's something I have never done.

8 Q. Now, you testified that your property there has lost
9 value since the land purchase agreement back in 2005; is that
10 true?

11 A. That's -- yes, that's true.

12 Q. And that's based on appraisal information you've
13 received?

14 A. Yes. Plus, you know, properties are valuable as to
15 their usage. If you take that piece of property and put a
16 little potato patch on it, it wouldn't be worth more than what
17 that value of that property is.

18 But I suppose -- the way I looked at that, they wanted
19 to get a loan; they inflated the value of the property to
20 justify some of the sums of the money. I really am not too
21 sophisticated about that, I've never done any developmental
22 work. I saw these astronomical figures as to what it was
23 worth. I can tell you what I paid for it, but I can't give you
24 any more than that.

1 Q. What did you pay for it?

2 A. It took me probably 15, 20 years to bring that project
3 together. Of course, I had my home on there and it was a home,
4 not a empty lot.

5 Probably in the vicinity of at least a
6 million-and-a-half of hard money in different times. Of
7 course, money was much more -- it was difficult. I would
8 package one and then I bought the other and then the other one
9 came up.

10 Just for that little empty lot back in behind the Park
11 Towers, that was \$350,000. That would have bought quite a --
12 quite a nice home. It was just an empty lot, less than maybe
13 20,000 square feet.

14 Q. So your hard money in to purchase all of the land was
15 about a million?

16 A. About a million-and-a-half, Mr. Hoy. I don't have
17 those details, but certainly in that neighborhood.

18 THE COURT: To buy all four -- it's four lots total,
19 isn't it?

20 THE WITNESS: Yes, Your Honor. It's four lots.

21 THE COURT: All four was about a million-and-a-half?

22 THE WITNESS: Yes. I bought the building first, Your
23 Honor, and then had an opportunity to buy the big Wingfield
24 House. That was about \$750,000, to my recollection. And then

1 I bought the other lot -- excuse me -- the other lot to the
2 west of it -- west of it, sir, and that was probably 350,
3 400,000.

4 So by the time I put it all together over a period of
5 time -- you know, that's money you have to -- you have to put
6 together. And some of it was on time payments, some was money
7 I borrowed from the bank and paid over -- it was all -- I had
8 none of that in cash, other than to secure notes and pay them
9 off.

10 BY MR. HOY:

11 Q. So when you talk about paying 100 -- I'm sorry, a
12 million-and-a-half dollars for the parcels between Island
13 Avenue and Court Street, does that include the little
14 building -- well, not little building, the building where you
15 had your medical practice?

16 A. Yes. My favorite building, absolutely.

17 Q. Okay.

18 A. And that cost me -- that was my best buy -- somewhere
19 in the neighborhood of a couple hundred thousand, and we became
20 very -- very friendly with the people involved. It's a cute
21 story, but I'm not going into that, of course.

22 Q. All right. And then in 2005, you sold all of those
23 parcels that you had acquired for a million-and-a-half, except
24 for your office building, to Sam Caniglia's company for

1 seven-and-a-half million?

2 A. That's correct.

3 Q. All right. So on paper that's a six-million-dollar
4 capital gain, I guess?

5 A. That's correct.

6 Q. All right. And then after the project was entitled,
7 the value of the property went up; is that right?

8 A. Well, I understand that. I understand that -- I never
9 saw any of the appraisals, but it was certainly my
10 understanding that the property values did go up and the whole
11 project went up. The project was -- gee, when I hear figures
12 of 100 million -- \$880 million on that piece of property, it
13 certainly went up from when I was involved with it.

14 Q. Okay. Do you have any understanding of what the value
15 of the property with the project entitlements was?

16 A. I don't know what it was, but certainly it was worth
17 more than what I paid for it.

18 Q. All right. And then after the project entitlements
19 lapsed, the value of the land went down, didn't it?

20 A. Yes.

21 Q. And so the lapse of those project entitlements had an
22 impact on the value of the land?

23 A. Yes.

24 Q. And you mentioned that you had an appraisal, an MAI --

1 and I can't remember what that stands for, I always think of it
2 as "made as instructed," but I know that's just a joke.

3 A. That's the way I know it, too.

4 Q. All right. So do you know what MAI stands for?

5 A. I'm embarrassed. I should know, I'm intelligent
6 enough to know that, but we kid so much with that phrase of
7 yours, that I never -- do I -- is that a -- is that a
8 discrediment on MAI appraisers, of course not. They're
9 professional people. They take into consideration potential
10 value of property, what's been sold in the area. So I have
11 great respect for them and I shouldn't kid about them, but we
12 kid about a lot of things in life.

13 Q. And who is the MAI? I think it's something like
14 Master Appraisal Institute or something like that. Does that
15 sound right?

16 A. Well, you're helping me. I don't know.

17 Q. All right. Who is the individual who wrote the most
18 recent appraisal report for your land between Island and Court
19 Street?

20 A. The current one?

21 Q. Yes.

22 A. Well, first of all, I'm terrible on names. And second
23 of all, I know who he is, because I met with him. But I can't
24 remember his name for the moment, so maybe you can help me and

1 I'll verify it.

2 Q. Is it Joe Campbell?

3 A. No. No, I have known Bill for years.

4 Q. Not Bill Kimmel, Joe Campbell.

5 A. Oh, Joe Campbell. Yes, it is Joe Campbell.

6 Q. And how many appraisal reports has Joe Campbell
7 provided at your request over the years?

8 A. Joe Campbell came to my attention through, I believe,
9 Dick Johnson. About a year ago, my accountant and I sat down
10 and he said: John, you and Sonnia don't spend a lot of money,
11 you have no debts, no fancy habits, and you have accumulated
12 considerable property. Now may be a good time to dispense of
13 it, because the law had changed, now, where you can get
14 \$5 million credit in your death, each one of you, you and your
15 wife, and it's \$10 million, and you probably have that kind of
16 property out there. It's a good time to disburse it to your
17 family.

18 And, of course, my family is my whole life, besides
19 medicine. Medicine was my whole life. And we've bought homes
20 for my kids and got them -- all those things you don't need to
21 hear about.

22 And we've then sat down with an attorney, an estate
23 attorney, and said: We would like to do this. We have a
24 chance to give them this property without any tax consequences

1 to them.

2 And went to -- and it will come to me in a minute,
3 because I spent considerable time with him deciding. And in
4 order to do that, we had to get an appraisal on the properties,
5 because how would the government know otherwise?

6 So I asked this attorney and I --

7 MR. PEREOS: Your Honor, we're getting into -- the
8 witness doesn't realize, but we're getting into communications
9 with --

10 THE WITNESS: And that's -- yes, we had had that
11 contact with Mr. Campbell prior to that --

12 THE COURT: Next question.

13 THE WITNESS: -- for those appraisals.

14 THE COURT: Thank you, Doctor.

15 Next question, Mr. Hoy.

16 BY MR. HOY:

17 Q. All right. So you hired Joe Campbell to appraise the
18 property between Island Avenue and Court Street?

19 A. Yes.

20 Q. Did you also hire Joe Campbell to appraise other land
21 owned by you?

22 A. Yes, as I just mentioned.

23 Q. How many other parcels owned by you did you ask Joe
24 Campbell to appraise?

1 A. Probably eight or ten.

2 Q. And did Joe Campbell give you appraisals that fit all
3 of that land value within the \$10 million exemption for estate
4 tax purposes?

5 A. He gave me the appraisal of each property, individual.
6 I didn't ever -- I never counted it up, because we never did
7 it.

8 Q. Okay. For the purposes of estate tax planning, your
9 motive was to have a lower valuation rather than a higher
10 valuation, right?

11 A. Well, that really -- you know, once you're dead, what
12 difference does it make? My idea was to make sure my family
13 was secure. I have, as I see mentioned, eight, nine, great
14 grandchildren.

15 Q. Right, okay. The purpose of an appraisal for estate
16 tax purposes is to minimize the amount of taxes paid on the
17 transfer of that land upon your death or upon making a gift?

18 A. That's correct.

19 Q. All right.

20 A. That's correct.

21 Q. So the goal here is to have lower appraisals rather
22 than higher appraisals?

23 A. I just wanted an honest appraisal. I don't know
24 whether lower, higher -- I don't look at that. The government

1 expects you to have an honest appraisal -- he has a right to
2 challenge it -- and that's what we wanted.

3 Q. Okay.

4 A. Just whatever that value of that property is in that
5 timetable.

6 Q. And you had mentioned that during the development of
7 the Wingfield Towers project, these developers went out and had
8 these appraisals that struck you as being very high. Do you
9 remember that?

10 A. I never saw those appraisals, Mr. Hoy, but they
11 certainly, from my information -- you know, I read all these
12 depositions -- excuse me. I attended all these depositions and
13 heard all these things, so it's a little cloudy in my mind.
14 Every deposition that was taken, I was there. So I was able to
15 accumulate who was saying what and what was happening. And if
16 that came up, I don't recall.

17 Q. All right. So Joe Campbell appraised your land
18 between Island Avenue and Court Street and that's the basis
19 upon which you told this Court yesterday that the current value
20 of the land is 700,000 to \$800,000?

21 A. That's correct, sir.

22 Q. Does that appraisal include the office building?

23 A. I don't believe it does.

24 Q. Okay. When you received the appraisal for your land

1 between Island Avenue and Court Street, was there a separate
2 appraisal for each legal parcel or was it the aggregate of four
3 parcels together?

4 A. It was aggregated, as Your Honor pointed out, of three
5 parcels and they were already now presented as such because
6 I -- I think that in this project, they were all brought
7 together. Do you understand? All -- even though they were
8 separate, they were all brought together for legal reasons.
9 That's my understanding.

10 Q. It's your understanding that there was a parcel map or
11 a boundary line adjustment or some other legal process to
12 combine what was previously four parcels identified in the land
13 purchase agreement so they're now one legal parcel?

14 A. I understand -- when we were involved as to my
15 building, in order for me to get that ten-foot setback from
16 everything, that they were in the process of bringing all the
17 rest of it together.

18 Did I look into it, do I know what happened? No. I
19 just was concerned about that building and that I had that ten
20 feet and they had what they wanted to do what they wanted to
21 do. Because I -- I was just interested in keeping that and
22 selling that parcel of land and to be sure I had adequate
23 parking for that building, which I love. I love that building.

24 Q. All right.

1 A. It's -- I shouldn't be attached to real estate, any
2 real estate, but I do love that building.

3 Q. Do you know whether you pay taxes on each of those
4 parcels separately today or whether you pay taxes, property
5 taxes, on all of those parcels put together?

6 A. I don't know. My office girl has been doing that for
7 me for 35 years. I have no idea how they pay my taxes. I
8 don't even know how they collect my rents, to be honest with
9 you. I don't want to know. I just want to know it's all
10 together and everything.

11 Q. All right. You've given testimony today about the
12 cost of the land originally, how the value of the land went up
13 to seven-and-a-half million, and that's exclusive of your
14 office building, in 2005, and how the property values have now
15 gone back to somewhere between 700 and \$800,000.

16 Has the Washoe County Assessor reappraised your land
17 during this time frame?

18 A. I'm sure they have. All the properties in town,
19 everywhere, have gone down. And I believe from what I heard --
20 and I may be wrong -- that the County pretty much appraised it
21 at the same price. I don't know. This is what -- what I'm
22 told it's worth. And it's disappointing, but that's what it
23 is.

24 Q. All right. Have you ever challenged an appraisal by

1 the Washoe County Assessor with respect to your property
2 between Island Avenue and Court Street?

3 A. Never.

4 Q. You gave some testimony about the mechanic's lien
5 recorded by Pinecrest Construction and Development. Did that
6 case actually go to a trial?

7 A. I'm sorry, I didn't hear the questioning.

8 Q. Sure. You gave testimony this morning and yesterday
9 about Pinecrest, Pinecrest Construction and Development. Do
10 you remember that?

11 A. Yes, of course.

12 Q. Okay. And you mentioned that you ultimately had to
13 pay Pinecrest Construction and Development.

14 A. I paid it what ultimately?

15 Q. You had to pay Pinecrest?

16 A. That's correct.

17 Q. Okay. Did you have to go to a trial with Pinecrest?

18 A. I went before Judge Brent Adams, yes.

19 Q. Was it actually a trial, as opposed to a settlement
20 conference?

21 A. Well, I don't know -- it wasn't a trial, it was a
22 settlement conference. I'm not legally sophisticated as to
23 know when you go before a judge whether it's a trial or what it
24 is.

1 We were before Judge Adams. Judge Adams ruled:
2 Dr. Iliescu, you should have known to file this within
3 72 hours. That was -- and that, therefore, it's so much.

4 And rightly so. That was the NRA -- he did the right
5 thing. And so I paid it. I was with Steve Mollath and when
6 I'm responsible for something, I'm responsible. I paid it.

7 Q. So in the case of the Pinecrest mechanic's lien -- and
8 that was a lien that encumbered what is now known as the
9 Imperial Lounge?

10 A. That was -- had nothing to do with the Imperial
11 Lounge, that was the location.

12 Q. Right.

13 A. The Imperial Lounge is a different tenant that came
14 in --

15 Q. Sure.

16 A. -- they've been wonderful to work with.

17 Q. But that lien was recorded against the real estate
18 that is now called the Imperial Lounge?

19 A. No, it was recorded against the work that was done in
20 that building.

21 Q. Okay. I'm only using "Imperial Lounge" for the
22 location.

23 A. Thank you, thank you. And that's good. That's good,
24 that's the way I do it.

1 Q. All right. So that parcel, that piece of land now
2 called the Imperial Lounge, there was a lien by Pinecrest on
3 that land, and rather than allow that lien to be foreclosed so
4 that the land would be taken away from you, you elected to pay
5 off the mechanic's lien?

6 A. Yes. If that was the consequence, yes, I paid it.

7 MR. HOY: Your Honor, the case number on that is
8 CV05-00842. The Court can certainly take judicial notice of
9 the case.

10 I looked at the docket, there is really -- there's no
11 judgment there. All it is, is a Complaint, Answer and it looks
12 like a settlement conference. So I don't know that there is
13 anything important in there.

14 THE COURT: I don't believe that there is. If I do go
15 look at those documents, I will advise the parties of that, but
16 I can't see any reason that I would go look at it. I think I
17 have an understanding of what occurred in that case based on
18 Dr. Iliescu's testimony. Go ahead.

19 MR. HOY: I have no more questions, Your Honor. Thank
20 you.

21 THE WITNESS: Thank you, Mr. Hoy.

22 THE COURT: One moment, Mr. Pereos.

23 Go ahead. Any recross based solely on the redirect
24 examination?

1 MR. PEREOS: Yes.

2 RECROSS EXAMINATION

3 BY MR. PEREOS:

4 Q. Mr. Iliescu, at that second extension when Dick
5 Johnson made the remark that the delinquent bills with regard
6 to this property were going to be paid, okay, if the second
7 extension were granted, did he do so from conferring with Sam
8 Caniglia?

9 A. I believe that's true, yes.

10 Q. So that's something that Sam Caniglia had mentioned to
11 Dick Johnson as an assurance?

12 A. Yes.

13 Q. Now, at that time were there still efforts to fund a
14 loan so that this project could go forward?

15 A. That was my understanding, yes.

16 Q. Okay. In fact, I believe -- Court's indulgence.

17 Was escrow later positioned, that is, put into
18 position, the escrow, with Mary Infantino, so that the deal
19 could close, so that a deal could close on the property?

20 Do you understand what I just asked you?

21 A. I didn't hear your question.

22 Q. Sure. After that second extension was escrow
23 postured -- in other words, were things put together with Mary
24 Infantino, at the escrow company, in anticipation that there

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1 was going to be funding of a loan so that the deal could close?

2 A. I assumed -- I had no -- I had no part in the closure
3 of escrow. That was Mary Infantino, Dick. When I -- I may
4 have signed some documents to close escrow, but -- but, yes,
5 that was the understanding, that they would take care of that,
6 that the money that was owed out there --

7 Q. Well, do you remember seeing the stock or exchange
8 documents? Do you --

9 A. I don't remember that, but I'm familiar with those and
10 I didn't want that, yes, but -- I don't remember that detail,
11 but that's a good possibility, yes, something I would be
12 involved with.

13 Q. Let me show you what has been marked as Exhibit 100.
14 Go ahead and open it to 100.

15 MR. HOY: Your Honor, may I confer with counsel for a
16 moment?

17 THE COURT: Certainly.

18 (Discussion held between the attorneys.)

19 BY MR. PEREOS:

20 Q. Do you remember that document?

21 A. Yes.

22 Q. Okay. So do you remember those documents being
23 deposited with the escrow company --

24 A. Yes.

1 Q. -- so that they could be postured --

2 A. Yes.

3 Q. -- that is, put into a position so an escrow could
4 close?

5 A. Yes. And I did sign these documents in preparation, a
6 number of documents, to get this -- this thing closed.

7 MR. PEREOS: That's all I've got, Your Honor.

8 THE COURT: Thank you for your testimony, Dr. Iliescu.
9 You can just leave that binder there and you can step down and
10 go back to your seat next to Mr. Pereos.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Mr. Hoy, your next witness, please.

13 MR. HOY: Thank you. The plaintiff calls himself,
14 Mark B. Steppan.

15 THE COURT: Mr. Steppan, please step forward and be
16 sworn as a witness.

17 MARK B. STEPPAN,
18 called as a witness herein, being first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HOY:

22 Q. Good morning, Mr. Steppan. Can you please give your
23 full name and spell your last name for the record.

24 A. Mark Bainum Steppan, S-t-e-p-p-a-n.

1 Q. Can you spell your middle name for us, too, please?

2 A. B-a-i-n-u-m.

3 Q. Thank you. Mr. Steppan, do you have a profession?

4 A. I'm an architect.

5 Q. All right. Can you please give the court your
6 educational background?

7 A. I have a Bachelor of Arts degree with a major in
8 architecture from the University of California, Berkeley.

9 Q. When did you earn that degree?

10 A. I graduated in 1979.

11 Q. Can you please give us an overview of your work
12 history as an architect?

13 A. My work history in the profession started in 1978,
14 when I started working for Fisher-Friedman Associates while I
15 was still in school. When I graduated, I started full-time in
16 January of 1980 with Fisher-Friedman, and continued there until
17 the firm closed down in 2010.

18 And then I went to the firm that we -- that purchased
19 Fisher-Friedman, NBBJ. And then I moved to a different firm
20 called Atypic, A-t-y-p-i-c, in January of 2013.

21 History from the architect standpoint would be, once I
22 was initially licensed as an architect and that was 1987.
23 That's an overview.

24 Q. Okay. Are you currently a registered architect in any

1 jurisdiction?

2 A. I'm licensed in California, Nevada, Oregon, Texas and
3 New Jersey.

4 Q. What was the first state in which you were a
5 registered architect?

6 A. California.

7 Q. And when did that happen?

8 A. 1987.

9 Q. And when were you first licensed in the State of
10 Nevada?

11 A. 2004.

12 Q. And can you please explain to the Court what you had
13 to do between college and becoming licensed in order to earn
14 that registration?

15 A. Sure. At the time that I was in school and had
16 started to work, the requirements for obtaining an architect's
17 license in California were to complete a minimum of eight years
18 of combined schooling and professional service.

19 And prior to being able to take the licensing exams,
20 my college degree gave me, I believe, two-and-a-half years of
21 credit towards the eight, something on that order. So I needed
22 to work in the profession for the balance of time before I
23 could start to try to -- or before you could be licensed.
24 Whether that was when you started to take the exams or not, I

1 don't remember at this time.

2 The licensing exam situation then was set up with 12
3 exams, ten written-type exams, a design exam that lasted
4 12 hours, another site exam. And if you passed all of those
5 tests you were given an oral exam that occurred a minimum of
6 six months after the fact. If you passed that, then you were
7 granted your license in California.

8 Q. So you were licensed in California a number of years
9 before you were licensed in the State of Nevada?

10 A. Yes.

11 Q. What did you have to do to become licensed in the
12 State of Nevada?

13 A. I had to become a member of NCARB, but I don't
14 remember the exact year; approximately 2000, I believe. And by
15 being a member of NCARB -- which was previously explained in
16 other testimony is the National Council of Architectural
17 Registration Board -- it allows you the ability through
18 reciprocity to become licensed in other states.

19 Every state has a different process. Nevada had the
20 process of paying a registration fee and taking a written test
21 that could be taken out of state.

22 Q. Okay. So you had to actually take a Nevada-specific
23 test in order to become licensed here?

24 A. That is correct.

1 Q. And you did that sometime in 2004?

2 A. Correct.

3 Q. I would like to ask you a little bit about the
4 background of Fisher-Friedman Associates. What kind of work,
5 generally, did Fisher-Friedman Associates focus on?

6 A. The majority of the history of Fisher-Friedman's work
7 was multifamily housing. From before I started in 1980, from
8 when the firm started in 1964, up until the time that it was
9 sold in 2010, probably 90 percent of the work was multifamily
10 housing. And we were one of the foremost firms doing
11 developer-type housing in the early '70s, '80s and '90s.

12 THE COURT: By "multifamily housing" do you mean
13 apartments, condominiums, that kind of thing?

14 THE WITNESS: Correct.

15 THE COURT: Thank you.

16 BY MR. HOY:

17 Q. And when you say Fisher-Friedman Associates was one of
18 the foremost firms, what did you mean by that?

19 A. Based on the number of awards and the recognition
20 within the industry, our firm, Fisher-Friedman Associates, was
21 very well respected for the quality of architecture that was
22 produced for developer housing.

23 Developer housing, whether it was condos or
24 apartments, went through many variations and changes in time,

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1 where developers that we were working with were very interested
2 in making profit, which was good, but many of them did not care
3 dramatically about the end product, per se, as far as the
4 quality of the architecture, what they could be providing to
5 their tenants or buyers.

6 And we were able to work with them and show how we
7 could provide affordable but quality architecture. That
8 allowed us to get many projects and do a lot of quality and
9 award-winning work over the course of history.

10 Q. And have books been written about the work of
11 Fisher-Friedman Associates?

12 A. Yes. There were two monographs, numbered one and two,
13 that were produced.

14 Q. Is this the cover of one of the monographs?

15 A. Yes. That's the first one, "Community Space."

16 Q. And then there's a second book called, "In praise of
17 Pragmatism: Fisher-Friedman Associates"?

18 A. Correct. That's the most recent one.

19 Q. Is it common for architecture firms to have books
20 written about their work?

21 A. Many do; many do not.

22 Q. Can you please give us an overview of the jobs that
23 you did at Fisher-Friedman from the beginning, for you in 1980,
24 until the end of the firm?

1 A. I started doing all the office-boy-type work and
2 learning what was going on in the firm when I was there in '78,
3 starting to learn how to do drawings and do lettering and
4 working with projects; anything that was requested of me.

5 Filing of projects, what we called dead filing, that
6 allowed me to learn about the different projects. I looked at
7 the drawings of all the projects as I was filing them. I felt
8 it was a good way to learn about the firm as well as the
9 profession.

10 I then continued with doing the normal early tasks of
11 an architect in training, which would be a drawing what was
12 given to you as a drafter; moving up to job captain, which was
13 a more experienced role to help oversee projects, do detailing,
14 working out the construction documents.

15 I also did design on multiple -- on multiple projects
16 over the course of time. I have acted as a project architect,
17 running and overseeing projects; project manager, doing a very
18 similar role.

19 The firm size changed over the course of my tenure
20 there, from on the order of 18 people to 85 people and back to
21 about six when we closed down. So there were many different
22 tasks that I did over that time.

23 At some point in -- I believe in the '90s, I was made
24 a vice president of the firm. I believe it was around 2000, I

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1 was made an executive vice president. And a little bit later
2 became a director of the corporation, along with Rodney and his
3 wife, Shirley. I oversaw, basically, the operations of the
4 office for the last five or so years of its existence, working
5 with accounting and Rodney and everybody else in running the
6 offices effectively.

7 I did things like taking out the garbage and opening
8 the doors and answering phones and running projects, and
9 overseeing all of my projects and overseeing other people's
10 projects, assisting in marketing -- anything that was required,
11 I was the one that would tend to see to those things.

12 THE COURT: And just -- I don't know, Mr. Hoy, if you
13 are going to cover this, but I just want to make sure while I'm
14 thinking of it, Mr. Friedman testified on Tuesday, I believe it
15 was, that after Fisher-Friedman and Associates was sold to some
16 other entity, that this lawsuit, shall we say, for lack of a
17 better term, was retained out of that sale. Is that correct?

18 THE WITNESS: Correct.

19 THE COURT: That's your understanding, as well?

20 THE WITNESS: Correct.

21 THE COURT: Thank you. Go ahead.

22 BY MR. HOY:

23 Q. Now, we're here in this case on a project called
24 Wingfield Towers. Are you familiar with the project that we're

1 talking about in this trial?

2 A. Yes.

3 Q. Can you please give us an overview of what the project
4 was.

5 A. To use the Court's indulgence for repeating things
6 that have been said, obviously, previously on the project
7 scope, it is a two-story, multiuse project, combining parking,
8 commercial space, office space, residential towers --
9 condominium in nature versus apartments -- to be constructed in
10 Reno out of concrete and other materials. The scope of the
11 unit count is currently designed at 499 units. It was a very
12 ambitious, but exciting project. And I'm sure I could
13 continue, if need be, on the extent of the project.

14 Q. We may get into more details.

15 In your last answer, though, I think you said the
16 project was a two-story project, is that --

17 A. I'm sorry. A two-building project.

18 Q. All right. Thank you.

19 A. As far as the residential towers on top of the parking
20 garage. Excuse my mistake.

21 Q. And what were the number of stories in each of the two
22 buildings?

23 A. Well, the smaller of the two buildings is 28 stories
24 and that's got the swimming pool on that top floor. The other

1 building is -- the other tower is 40 stories, plus, I believe,
2 and mechanical on top of that.

3 Q. Can you give us an overview of the work that you
4 personally did with respect to the Wingfield Towers project?

5 A. I provided what would be called typical project
6 management from an executive level: Oversight of the project
7 by attending meetings when necessary; overseeing the staff
8 designing the project; discussing it with Rodney or Nathan Ogle
9 as required; attending any meetings that seemed reasonable for
10 me to attend; looking at the work product; walking by desks.

11 I handled it the same way I handle my oversight on
12 other projects where I'm not personally doing the drawing,
13 which is to talk to people, walk up and down the rows of desks,
14 participate in meetings, go to meetings, et cetera.

15 Q. Did you review any of the instruments of service?

16 A. Yes.

17 Q. Have you heard the term "responsible control" as used
18 in the architecture profession?

19 A. Yes.

20 Q. What does "responsible control" mean?

21 A. Responsible control is really about your supervision
22 of the project as it's approaching a time for sealing and
23 signing to make sure that what is presented to the agency for
24 permitting review, in essence, in my mind, is what -- is what

1 that's talking about.

2 In the broader sense it is the responsible control or
3 oversight that an architect in the standard of care would
4 provide by overseeing the production and creation of a project
5 from the design through construction documents.

6 Q. Okay. And did you maintain responsible control over
7 the Wingfield Towers project up until the time the project was
8 abandoned?

9 A. Yes.

10 Q. Did you also maintain direct supervision of the design
11 process?

12 A. Yes. Inasmuch as Rodney was the project designer and
13 I was overseeing the work.

14 Q. Okay.

15 MR. HOY: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. HOY:

18 Q. Mr. Steppan, please turn to Exhibit No. 6.

19 A. Okay. Yes.

20 Q. Exhibit No. 6 is a standard form of agreement between
21 owner and architect and it's got a "Received" stamp, dated
22 April 26, 2006, and an effective date, October 31, 2005.

23 Does your signature appear on Exhibit 6?

24 A. Yes, as far as I remember. Let me double check the

1 page.

2 Yes, it does. It's on page 11007508.

3 Q. Does your signature also appear on page 7519, the very
4 last sheet of the exhibit?

5 A. That would be part two of the agreement. Yes. Excuse
6 me. Yes.

7 Q. Very briefly, we need to make a complete record, but
8 we don't want to elaborate on things that have been elaborated
9 upon for days.

10 Can you give the Court your recollection of the events
11 that led to you signing this Exhibit No. 6?

12 A. Sure. We provided to Sam and company a letter
13 requesting -- starting the project, we sent Sam a letter
14 outlining the basic scope as we understood it at the time, as
15 well as a blank one, B141 contract agreement, proposing that
16 that would be the form of the contract that we were suggesting
17 to use for this project.

18 We knew that they would then take time to review it,
19 make comments. I don't think I've ever done a contract where
20 there were not comments from either the owner, seller, buyer,
21 client side or their legal counsel.

22 Once that contract then went off for review, there
23 were months spent doing a review by Sam and his group and Hale
24 Lane, reviewing it from Sam's point of view or BSC's, or

1 however you want to phrase that group.

2 And then there were multiple back-and-forth
3 communications, either via email or phone, with Sam's group and
4 the attorney for Hale Lane, who was working on adjusting the
5 basic language that's stock, to fit the particular project as
6 they all felt could be agreed to on their end and our end. And
7 there were many back-and-forth discussions that led to the
8 final agreement in late April.

9 Q. All right. Would you please turn to Exhibit No. 7.

10 Does your signature appear on the last page of
11 Exhibit 7?

12 A. Yes, on 007522.

13 Q. And is Exhibit 7 an amendment to the contract in
14 Exhibit 8?

15 A. Yes. To the contract in Exhibit 6.

16 Q. I'm sorry, Exhibit 6. You're right.

17 I would ask you to take a look at Exhibit No. 9. Does
18 your signature appear on Exhibit No. 9?

19 A. Yes.

20 Q. And Exhibit No. 9 is your October 25, 2005, initial
21 proposal to Anthony Iamesi?

22 A. Yes.

23 Q. And "Iamesi" is I-a-m-e-s-i.

24 And in this initial proposal to Mr. Iamesi, your

1 proposal is for a fee of 5.75 percent of the total construction
2 costs.

3 A. Correct.

4 Q. But at the time of Exhibit 9, you didn't know what the
5 total construction costs would be?

6 A. Correct.

7 Q. You didn't even have an estimate of what the
8 construction costs would be?

9 A. I don't remember when the first 160,000 number was
10 discussed, but if it's not listed here, then it was probably
11 not when this was written.

12 THE COURT: 160,000 or 160,000,000?

13 THE WITNESS: I'm sorry, excuse me, 160,000,000.

14 BY MR. HOY:

15 Q. I would ask you to take a look at Exhibit No. 10.
16 This is a memorandum from Sarah Class, who is a lawyer at Hale
17 Lane, to Cal Baty.

18 Do you know who Cal Baty is?

19 A. Calvin Baty was one of the partners of the BSC Group
20 that we were working with to design the project.

21 Q. And "Baty" is B-a-t-y.

22 Did you and your firm receive comments from
23 Mr. Caniglia's company regarding the form of contract for the
24 design surfaces?

1 A. I don't remember receiving comments, other than those
2 that came from Sarah Class, representing Hale Lane and Sam and
3 group.

4 Q. Do you remember ever looking at Exhibit No. 10?

5 A. Yes.

6 Q. And then Exhibit No. 11 is also a memorandum, this
7 time in the form of an email.

8 Do you remember seeing this email?

9 A. Yes.

10 Q. And then Exhibit No. 12 is also a short memorandum in
11 the form of an email from Sarah Class to Sam Caniglia, again
12 addressing the language in the AIA contract.

13 Do you remember seeing this Exhibit 12?

14 A. I would imagine I did; I do not remember this specific
15 one.

16 Q. Exhibit No. 13 is a December 20, 2005, letter
17 entitled, "Response to AIA Contract Review, Owners Issues;
18 Hale, Lane File No. 20606-0004."

19 And this went out on your letterhead. Did you approve
20 this letter before it went out?

21 A. Yes. Nathan drafted it. I approved it and I signed
22 it, as he was not around.

23 Q. And can you please explain to the Court what the
24 purpose of this letter was?

1 A. This purpose -- the purpose of this letter is to give
2 them our take on their comments, as to whether we agree,
3 disagree or have further suggested modifications to either the
4 base agreement or the amendment for the contract for the work
5 for this project.

6 Q. So this December 20, 2005, agreement was sort of --
7 was part of the back and forth between the architect and the
8 developers for the design contract?

9 A. Correct.

10 Q. Please turn to Exhibit No. 14. This is a November 15,
11 2005, letter.

12 Does Exhibit 14 bear your signature?

13 A. Yes.

14 Q. What is the purpose of Exhibit 14?

15 A. Just let me refresh my memory.

16 Q. Yes.

17 A. This is what has been termed, effectively, the stopgap
18 letter, which requests approval to proceed on an hourly basis
19 while the contract is being negotiated.

20 Q. Did you intend at the time you signed Exhibit 14, that
21 the billings that were paid under this stopgap arrangement
22 would be credited against the fixed fee that was part and
23 parcel of Exhibit 6?

24 MR. PEREOS: Leading and suggestive.

1 THE COURT: Sustained. Sustained.

2 You can rephrase the question.

3 BY MR. HOY:

4 Q. When you signed Exhibit 14, please explain what your
5 understanding of the billing arrangement on a going-forward
6 basis would be.

7 A. This is consistent with how projects like this would
8 be handled. The intent was that any of the hours that were
9 tracked per this agreement, prior to the contract signing,
10 would be credited back against the phase of the contract that
11 was in place.

12 THE COURT: Because you had already started to work on
13 the project, shall we say --

14 THE WITNESS: Correct.

15 THE COURT: -- while this is going on?

16 THE WITNESS: Correct.

17 THE COURT: Thank you.

18 BY MR. HOY:

19 Q. Would you please turn to Exhibit No. 15. Exhibit 15
20 is a December 14, 2005, letter on your stationery.

21 Did you approve Exhibit 15 before it went out?

22 A. Yes.

23 Q. What was the purpose of Exhibit 15?

24 A. It's to continue the notice of approval and

1 continuation of work with the client while the contract is
2 being negotiated.

3 Q. Please turn to Exhibit 16. This is a February 7,
4 2006, letter on your stationery.

5 Did you approve Exhibit 16 before it went out?

6 A. Yes.

7 Q. What is the purpose of Exhibit 16?

8 A. The same purpose as 15, to inform the client that
9 we're continuing to work, give them the opportunity to tell us
10 to stop if they wish us to while the contract is being
11 negotiated.

12 Q. All right. And turn to Exhibit 17, please. This is a
13 March 24, 2006, letter on your stationery.

14 Did you approve Exhibit 17 before it went out?

15 A. I believe so, yes.

16 Q. Now, in Exhibit 17, numbered paragraph 8 says,
17 "Continue to assist in updating the current construction
18 budget."

19 Do you know what that sentence referenced?

20 A. I don't remember specifically, other than to continue
21 with discussions with our client as to what their checking with
22 Turner or other folks were saying about the contract, the
23 estimated construction costs as we were developing the design.

24 Because as you develop the design over time you

1 obviously make decisions about materials and you are setting
2 floor-to-floors and other important pieces of information that
3 affect construction costs.

4 Q. And then numbered paragraph 9 says, "Implement the
5 minor agreed to, Addendum 1 agreement items, and investigate
6 the three items pending resolution for consequential damages,
7 successors and assigns and termination expenses."

8 Can you please explain to the Court what that
9 references?

10 A. Well, Addendum 1 was one of the previous exhibits that
11 modifies the base B141, and in that had -- there were some
12 terms that were still in discussion regarding consequential
13 damages, successors and assigns and the termination expenses,
14 that here we clearly wanted to investigate the final resolution
15 of; but that we were implementing all of the other agreed-to
16 items in Amendment 1 to the contract.

17 Q. And then jumping back up to numbered paragraph 2, it
18 says, "Review and implement the new desired unit mix from 394
19 to 499 units, involving adding studio and one-bedroom units in
20 lieu of some two and three-bedroom units."

21 What is that language referencing?

22 A. Well, that's referencing the requested change in the
23 mix, which was previously testified to by Rodney and David
24 Snelgrove, where our client was requesting a change from what

1 was the second proposed unit count of 394, to be what ended up
2 being the approved count, 499; and in March, at the very end of
3 March, was actually just starting that process of design
4 reassessment to see what would be entailed with having to
5 change that mix; which mostly included, as was testified
6 yesterday by David, reducing the numbers of twos, threes and
7 penthouses to accomplish the ability to add studios and more
8 one-bedrooms.

9 Q. All right. I would ask you to turn, now, to Exhibit
10 No. 18.

11 A. I'm there.

12 Q. Thank you. I'm just letting --

13 A. I know.

14 Q. -- giving the judge time to finish his notes.

15 THE COURT: No, go ahead. Go ahead.

16 BY MR. HOY:

17 Q. All right. Exhibit 18 is a February 27, 2006, letter
18 on your stationery, to Sam Caniglia and Calvin Bosma.

19 Did you approve this letter before it went out?

20 A. To the best of my memory, yes.

21 Q. Can you please explain to the Court what the purpose
22 of Exhibit 18 is.

23 A. This is a letter informing our clients of a breakdown
24 of presentation services that we felt was required based on

1 either discussions with the client or discussions with the
2 City, and a price for each of them or a cost for each of them,
3 as they would probably be handled as an added service or
4 reimbursable expense. So we projected costs for the city model
5 base or the end-of-model completion.

6 The base is the platform that the model of the city
7 was to sit on. The completion, I assume, would be all of the
8 foam blocks that represented the buildings, vignette
9 renderings, which are perspective drawings done by either
10 in-house or, as Rodney Friedman mentioned, an external renderer
11 or presentation gentleman that we had used before.

12 Typically the costs for those are three to \$5,000 per
13 rendering. They're done by hand and they have either
14 watercolor or other methods.

15 That's just an example of something that was being
16 presented here as a probable component of the presentation
17 materials that would be produced for submission of the project
18 to the City, as well as for approval by our client, of the
19 design.

20 THE COURT: And so Exhibit 18 and the total estimate
21 of approximately \$190,000, that's your representation of what
22 Fisher-Friedman and Associates will be spending to make the --
23 the ultimate presentation to the city council; is that right?

24 THE WITNESS: No. It is only a representation of the

1 defined tasks on this letter.

2 THE COURT: Okay.

3 THE WITNESS: That is irrespective of all the other
4 work going on to prepare the documents for the presentation or
5 the submission of the tentative map, special use permit
6 packages.

7 THE COURT: So it would be -- the ultimate cost of
8 your representation or of your involvement in that presentation
9 would be greater than, not less than, a hundred and,
10 approximately, ninety thousand dollars?

11 THE WITNESS: Correct. Because it's the bulk of the
12 design phase, as well as any other exterior, external added
13 costs for additional services not originally anticipated to
14 produce the work required for submission and approval.

15 BY MR. HOY:

16 Q. All right. So Exhibit 18 lists Items 1 through 8 of
17 things that your firm considered to be additional services not
18 within the scope of the fixed-fee contract?

19 A. Not necessarily. I think part of this -- for example,
20 the FFA general time -- is helping to define for the client,
21 given that we were currently still on an hourly because the
22 contract wasn't agreed to yet, these are -- so I will just
23 make -- slightly adjust what I've just said.

24 These are estimates of the amount of costs that we are

1 anticipating, that the client needs to be aware of that he
2 might be spending in the upcoming months, not knowing exactly
3 when we are going to get the contract signed. So some of
4 these, in the end, probably are part of the base contract.

5 Q. So, for example --

6 A. But they've given -- excuse me. But they've given the
7 client the idea of some of the projected costs; so from a
8 cash-flow standpoint they have an idea of what we might be
9 billing for that are very specific to tasks that were in
10 discussion at that time.

11 Q. All right. So let's take an example. The shadow
12 study updates, \$8,000, what this letter is warning is that if
13 you continue to pay us on an hourly basis, you're going to
14 spend 8,000; but after the fixed-fee-contract was actually
15 signed, there was no further billing for additional services
16 for the shadow study, for example?

17 MR. PEREOS: Objection, leading and suggestive and
18 actually arguing his case.

19 THE COURT: Sustained. Please rephrase.

20 BY MR. HOY:

21 Q. All right. With respect to the shadow study updates
22 was there ever a billing from Fisher-Friedman Associates or
23 you, for additional services?

24 A. Not that I remember. And when you read the first

1 paragraph of the letter, it's actually talking about the fact
2 that it's an estimate for the task associated with responding
3 for upcoming presentations, based on, probably, things we've
4 heard from the City and from the client.

5 Given the fact that this is in February, we've already
6 made two submissions to the City.

7 THE COURT: And are you sending this letter to
8 Mr. Caniglia and Mr. Bosma to let them know, in essence, "Hey,
9 these are some of the billing that's going on; these are sums
10 that we will be expected to be paid regardless of what happens
11 with the ultimate contract"?

12 THE WITNESS: Correct.

13 THE COURT: Is it required, is there any term or
14 condition of the contract or your stopgap understanding, as
15 Mr. Hoy has referred to it, that you provide these periodic
16 billing statements or notices to them that these are sums that
17 we are expending?

18 THE WITNESS: I don't think it's a requirement of the
19 letter, per se, but it is a professional courtesy and
20 appropriate to inform the client when you have an understanding
21 of what might be upcoming, specific expenses.

22 They generally wanted to know what would be coming up
23 from a cost standpoint and so we tried to be cooperative by
24 telling them what we foresaw as upcoming tasks. Especially in

1 this case, where these might be revisions to things we've
2 already done in response to comments from the City, to help
3 finalize the package or advance the package.

4 THE COURT: And these aren't minor things, this isn't
5 the spending of a couple hundred bucks, you're talking almost
6 \$200,000.

7 THE WITNESS: Correct.

8 THE COURT: Thank you.

9 Go ahead.

10 BY MR. HOY:

11 Q. Now, down at the bottom of this Exhibit 18, it says,
12 "We will continue tracking and billing this work effort under
13 the Project No. 0515-01 and 0515-01R."

14 Can you please explain to the Court what that language
15 means?

16 A. Well, there's two parts. One is, we've informed them
17 that we're going to track them and bill this work because it is
18 still technically under the hourly agreement; and two, we have
19 reminded them of what project numbers we're using for this
20 work.

21 So throughout the documents there are numbers that
22 appear on documents, such as this, that say "0515 dash," either
23 base, 0515 or 0515 with a dash and another number after that,
24 or a number and an "R" after that. And that is the project

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1 number. The dash numbers are subsets of activities within that
2 base project number. And the "R" represents reimbursable
3 expenses, which are basically things other than labor or added
4 services that are determined and agreed to in a contract or
5 added service letter as a reimbursable expense, separate from
6 percentage completion of the phase.

7 So in this case, this project is the fifth --
8 basically the fifteenth project of 2005. That's how that
9 number is generated.

10 Q. All right. If we go back to Exhibit No. 14, the very
11 last sentence says, "We will track this work effort under the
12 project number 0515-01 and 0515-01R."

13 And the same explanation with respect to the stopgap
14 agreement?

15 A. Yes.

16 Q. I would ask you to turn now to Exhibit No. 19.
17 Exhibit No. 19 is a May 31, 2006, letter signed by -- I don't
18 know if that's Caniglia or Mr. Bosma.

19 Did you approve Exhibit 19 before it went out to the
20 client for signature?

21 A. Yes.

22 Q. What is the purpose of Exhibit 19?

23 A. It's an added service request letter, effectively a
24 one-page agreement, for the scope of work as defined, which is

1 to analyze the building and site and provide the foam massing
2 models, some of which showed up in PowerPoint, I believe, and
3 to study building configurations based on the zoning
4 requirements; to provide a schedule or a discussion on
5 schedule.

6 And then it defines the terms of compensation, as well
7 as the specific project number that the project is tracked
8 under, which in this case is dash 02.

9 And I'm pretty sure that that's Cal Bosma's signature.

10 Q. Turn to Exhibit No. 20, please.

11 THE COURT: Wait, before you go to 20, 19, then,
12 that's just something -- the subject matter of Exhibit 19 is
13 activity taken outside the scope of the flat -- or the
14 fixed-fee contract; is that correct?

15 THE WITNESS: It's outside the scope of the fixed-fee
16 contract and it's outside the scope of the hourly stopgap
17 agreement.

18 THE COURT: So it is something you would be
19 reimbursed -- and by "you," of course, I mean Fisher-Friedman
20 and Associates -- reimbursed for separately?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. HOY:

24 Q. Please turn to Exhibit No. 19.

1 A. I'm on Exhibit 19.

2 Q. I'm sorry, 20. Exhibit 20 is a May 31, 2006, letter
3 also signed -- it looks like by Cal Bosma, on June 14, 2006.

4 Can you please explain to the Court what the purpose
5 of Exhibit 20 is?

6 A. It's another added service request, confirmation
7 letter. And this was specifically covering the adjacent church
8 parking studies. And that was mentioned in the testimony
9 yesterday of Rodney.

10 Q. All right. And the last sentence of this letter says,
11 "We will track this work effort under the Project No. 0515-03
12 and 0515-03R."

13 A. Yes.

14 Q. And again, the explanation for that is, you're
15 invoicing and otherwise tracking this project separately from
16 other work?

17 A. Correct.

18 Q. And the work to be performed under Exhibit 20 is
19 outside the scope of the stopgap and outside the scope of the
20 fixed fee?

21 A. Correct.

22 Q. Please turn to Exhibit 21.

23 MR. HOY: Exhibit 21 is not in evidence, Your Honor.

24 THE COURT: Okay. Well, then, I'm not going to look

1 at it yet until it is admitted.

2 BY MR. HOY:

3 Q. Mr. Steppan, Exhibit 21 appears to be an August 10,
4 2006, letter, on your stationery, to BSC Financial, LLC,
5 Sam Caniglia, in care of Consolidated Pacific Development,
6 Inc., and Cal Bosma, Decal Nevada, Inc., regarding City staff
7 meeting (Vern Kloos), requested studies agreement."

8 Did you review and approve this Exhibit 21 before it
9 was sent?

10 A. Yes.

11 Q. Do you know if the client ever signed this agreement
12 or another copy of this agreement?

13 A. No, I do not remember.

14 Q. Did Fisher-Friedman Associates ever perform work --
15 did Fisher-Friedman Associates ever analyze and document an
16 Island Drive landscape plan?

17 A. I believe it's part of this, yes.

18 Q. Did Fisher-Friedman ever do an aerial perspective
19 along Island Drive illustrating the streetscape and landscape
20 plan?

21 A. I believe so.

22 Q. Did the client ever object to being billed for any of
23 the work that is specified in Exhibit 21?

24 A. Not that I'm aware of.

1 MR. HOY: Offer Exhibit 21.

2 MR. PEREOS: May I take the witness on voir dire?

3 THE COURT: Certainly, Mr. Pereos.

4 VOIR DIRE EXAMINATION

5 BY MR. PEREOS:

6 Q. Is Exhibit 21 designed to cover added-scope work?

7 A. Yes.

8 Q. Doesn't the AIA contract require that it mandates that
9 there be a signed agreement if there's to be a modification of
10 the AIA contract, particularly as it relates to added scope?

11 A. Yeah, I believe so. And as I said, I do not know if
12 this has been signed.

13 Q. Thank you.

14 MR. PEREOS: Objection --

15 THE WITNESS: -- by a member of --

16 MR. PEREOS: Excuse me.

17 THE COURT: The document itself will be admitted,
18 because I don't believe that the additional questions offered
19 by Mr. Pereos go to the admissibility of the document, the
20 document itself.

21 Whether or not it's something that entitles
22 Fisher-Friedman Associates to compensation is different. If it
23 doesn't comply with the terms and conditions of Exhibit 6 for
24 an added services request, that's a different issue altogether.

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1 But at least whether or not, is the document admissible, the
2 Court finds that it is admissible; and therefore, it will admit
3 it.

4 I don't know if it would make the defendant subject to
5 any additional financial responsibility, because if it doesn't
6 qualify with the contract, then it doesn't; but the document
7 itself is admissible.

8 (Exhibit No. 21 admitted into evidence.)

9 THE WITNESS: Your Honor, may I make a qualification?

10 THE COURT: No. I will allow Mr. Hoy to ask any
11 questions that he wants to ask you. Go ahead.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION (RESUMED)

14 BY MR. HOY:

15 Q. Did Fisher-Friedman actually invoice the client for
16 the work that's described in Exhibit 21?

17 A. I would have to look at the invoices; I don't remember
18 off the top of my head.

19 Q. Okay. So this letter indicates that the -- the work
20 will be billed under Project No. 0515-05?

21 A. Correct.

22 Q. And again, that's just the mechanism to segregate the
23 billing for each of these extra work subprojects?

24 A. Correct.

1 Q. Please turn to Exhibit 22. Exhibit 22 is an
2 unsigned -- and this is not in evidence, Your Honor.

3 THE COURT: And is it going to be the same --

4 MR. HOY: Exactly.

5 THE COURT: -- type of issue and the same type of
6 objection, Mr. Pereos?

7 MR. PEREOS: Yes, Your Honor, understanding the ruling
8 of the Court.

9 THE COURT: Then the Court will admit Exhibit No. 22
10 for the same limited purpose. The Court would find that
11 Exhibit 22, based on the previous argument, is admissible as a
12 piece of evidence in the case; whether or not it entitles
13 Fisher-Friedman Associates to any compensation would be a
14 totally different issue and something that can be argued by the
15 parties.

16 (Exhibit No. 22 admitted into evidence.)

17 MR. HOY: Thank you, Your Honor.

18 BY MR. HOY:

19 Q. Mr. Steppan, Exhibit 22 is a September 13, 2006,
20 letter, unsigned.

21 Did you review and approve Exhibit 22 before it was
22 sent out to the client?

23 A. Yes.

24 Q. Exhibit 22 talks about the video fly-through that was

1 testified at some length for the last two days.

2 Did Fisher-Friedman Associates bill separately for the
3 video fly-through?

4 A. I believe so.

5 Q. Did Fisher-Friedman ever receive any objection to
6 invoices for the video fly-through?

7 A. No.

8 THE COURT: Can you tell me, either Mr. Pereos or
9 Mr. Hoy, what section of the April 26, 2006, contract I need to
10 look at to confirm the requirements that both the offering
11 party, that being the architect, and the accepting party, that
12 being the client, have to sign off on any added service
13 request?

14 MR. HOY: Yes, Your Honor. It's Exhibit 6, Bates
15 No. 7503, and it's Section 1.3.3.1.

16 THE COURT: 1.3.3.1? And what page is that again?

17 MR. HOY: 7503 is the Bates number.

18 THE COURT: Thank you.

19 MR. HOY: It's page 6 of Part 1 of the agreement.

20 THE COURT: Do you agree with that, Mr. Pereos?

21 MR. PEREOS: It is the change of services section of
22 the agreement and I haven't read each of those paragraphs; but,
23 yes, I agree that we're in the same section.

24 THE COURT: Thank you.

1 BY MR. HOY:

2 Q. Mr. Steppan, can you please turn back to Exhibit
3 No. 6.

4 A. Certainly. Yes.

5 Q. I am going to read into the record, Section 1.3.3.1.
6 "Changes in services of the architect, including
7 services required of the architect's consultants, may be
8 accomplished after execution of this agreement without
9 invalidating the agreement, if mutually agreed in writing, if
10 required by circumstances beyond the architect's control or if
11 the architect services are affected as described in Section
12 1.3.2 point" -- "1.3.3.2."

13 "In the absence of mutual agreement in writing, the
14 architect shall notify the owner prior to providing such
15 services. If the owner deems that all or a part of such change
16 in services is not required, the owner shall give prompt
17 written notice to the architect and the architect shall have no
18 obligation to provide those services. Except for a change due
19 to the fault of the architect, change in services of the
20 architect shall entitle the architect to an adjustment in
21 compensation pursuant to Section 1.5.2, and to any reimbursable
22 expenses described in Section 1.3.9.2 and Section 1.5.5."

23 Was there ever a time with respect to the Wingfield
24 Towers project, where the architect gave the owner notice of

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1 additional services to be performed and the owner said, "No,
2 don't do those additional services"?

3 A. No.

4 Q. So with respect to the letter in Exhibit 21, for
5 Project 0515-05 -- and this is the City staff meeting requested
6 studies agreement -- did the owner ever tell you or
7 Fisher-Friedman Associates, "Don't do that work"?

8 A. No.

9 Q. Did Fisher-Friedman Associates in fact perform the
10 work that was described in Exhibit 21?

11 A. To the best of my knowledge, yes.

12 Q. And the same with respect to Exhibit 22, did you and
13 Fisher-Friedman Associates give the developer notice that you
14 were going to do a video fly-through?

15 A. Yes.

16 Q. And you gave that notice before the work began on the
17 video fly-through?

18 A. As far as I know, yes.

19 Q. And did the owner ever object to spending money on a
20 video fly-through?

21 A. Definitely not.

22 Q. Why do you say "definitely not"?

23 A. Because they thought it was a fantastic idea.

24 THE COURT: When you say "the owner" -- I just want

1 some clarification -- you're talking about BSC, the developer,
2 not the owner being Dr. and Mrs. Iliescu; is that correct?

3 THE WITNESS: That is correct.

4 THE COURT: So all of your conversations, all
5 throughout your testimony, are with BSC or representatives of
6 the developer. Are any of them ever with Dr. or Mrs. Iliescu?

7 THE WITNESS: No.

8 THE COURT: Did you ever speak to Dr. Iliescu or
9 Mrs. Iliescu about this project?

10 THE WITNESS: Not until after the project was
11 approved.

12 THE COURT: After that --

13 THE WITNESS: In November.

14 THE COURT: -- city council meeting in November.
15 Okay.

16 THE WITNESS: Not until after that.

17 THE COURT: I just -- he kept saying "the owner," and
18 I just wanted to make that clarification. Thank you.

19 MR. HOY: Yes, Your Honor, and it's only because the
20 AIA form documents define an architect and an owner. In this
21 case the developer is defined as "the owner" for the purposes
22 of the design contract.

23 THE COURT: Oh, I understand that, and that was always
24 my understanding of the witness's testimony. I just want to

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1 make sure that the record is clear down the road that that was
2 Mr. Steppan's understanding, as well. Go ahead.

3 MR. HOY: Thank you, Your Honor.

4 BY MR. HOY:

5 Q. Please turn to Exhibit No. 25. Exhibit No. 25 was
6 admitted yesterday when Mr. Friedman was on the stand.

7 Are you familiar with Exhibit 25?

8 A. In total?

9 Q. Yes.

10 A. Yes. It is a compilation of invoicing.

11 Q. All right. Now, as the executive vice president of
12 Fisher-Friedman Associates, were you familiar with the way the
13 firm created invoices for the company?

14 A. Yes.

15 Q. Can you please give us an overview of that process?

16 A. Simply put, there is a software system on a computer
17 that our accounting, business manager inputs time into. It
18 then generates a draft, what we call a project review,
19 basically.

20 And then that form is discussed between the business
21 manager and the project manager or the project architect or
22 whoever might be overseeing that portion of a project, and then
23 they determine if the -- the amount of invoicing that's
24 indicated has been expended in the month time frame, is what

1 should be billed in that billing session or not.

2 If it is agreed to and there is no modifications, then
3 the accounting business person would go back and input it into
4 a full billing cycle software and print out the invoicing.

5 THE COURT: So it's basically a draft that is done and
6 then the project manager and the business manager come together
7 and decide if the draft is appropriate based on the information
8 that they have, and assuming that it is and no modifications
9 are made, then it goes into final form and is sent out to the
10 developer, the client, shall we say?

11 THE WITNESS: Client, correct.

12 THE COURT: At this point we will take our morning
13 recess. It is 10:20. Court will be in recess for
14 approximately 15 minutes and then we'll come back and have
15 further testimony from Mr. Steppan until approximately 11:45,
16 maybe 11:50, depending on how the questioning goes and then
17 we'll break for lunch.

18 MR. HOY: Thank you.

19 (Recess taken.)

20 THE COURT: Go ahead, Mr. Hoy.

21 MR. HOY: Thank you.

22 BY MR. HOY:

23 Q. Mr. Steppan, before the break I was asking questions
24 about Fisher-Friedman Associates' standard practices for

1 creating invoices.

2 Were all of the invoices in Exhibit 25 created at or
3 about the time of the dates of the invoices?

4 A. Yes.

5 Q. And does Fisher-Friedman -- or did Fisher-Friedman
6 have a standard method for filing invoices after they were sent
7 out?

8 A. Yes. The accounting person had files that were
9 invoice files.

10 Q. All right. And --

11 A. The architect did not retain copies of the invoicing;
12 invoicing stayed in the accounting department.

13 Q. Please turn to Exhibit 24.

14 MR. HOY: This is not in evidence, Your Honor.

15 THE COURT: Okay.

16 BY MR. HOY:

17 Q. Do you recognize Exhibit 24?

18 A. Yes. It's a collection of invoices.

19 Q. All right. Is it a collection of invoices for hourly
20 billing under the stopgap agreement?

21 A. Yes.

22 Q. Were the invoices in Exhibit 24 prepared using the
23 same standard methods that you discussed with respect to
24 Exhibit 25?

1 A. Yes.

2 Q. And were the exhibits in Exhibit 24 stored in the same
3 manner as the invoices under Exhibit 25?

4 A. To the best of my knowledge.

5 MR. HOY: Offer Exhibit 24, Your Honor.

6 THE COURT: Mr. Pereos?

7 MR. PEREOS: Sure, may I take the witness on voir
8 dire?

9 THE COURT: You may.

10 MR. PEREOS: Thank you.

11 VOIR DIRE EXAMINATION

12 BY MR. PEREOS:

13 Q. CAN I direct your attention to Bates number page 3308?

14 A. Yes.

15 Q. Is that your handwriting, the handwritten notations
16 thereon?

17 A. No, that is not my handwriting.

18 Q. Do you know whose handwriting that is, from personal
19 knowledge?

20 A. It looks like the account manager's handwriting.

21 Q. Your account manager's handwriting?

22 A. Correct.

23 MR. PEREOS: Well, he kind of answered it. It's an
24 internal writing, so I have no objection to the admission of

1 the document.

2 THE COURT: Exhibit No. 24 will be admitted without
3 objection.

4 (Exhibit No. 24 admitted into evidence.)

5 MR. HOY: Thank you, Your Honor.

6 REDIRECT EXAMINATION (RESUMED)

7 BY MR. HOY:

8 Q. On that Bates No. 3308, the handwriting says, "Note:
9 Billings shall be credited to SD/entitlements phase once
10 contract is signed."

11 Did you direct somebody in the accounting department
12 to put that on the invoice?

13 A. Not that I'm aware of.

14 Q. Is that notation consistent with the dealings that you
15 were having with the client with respect to this hourly stopgap
16 agreement?

17 A. Yes.

18 Q. Now, yesterday the Court, the Judge of the court,
19 noted on the billings in Exhibit 25, that there had been a
20 credit noted for the payments that had been received. So I'll
21 direct you to Exhibit 25, Bates No. 7604. This is a July 19,
22 2006, invoice.

23 A. Yes.

24 Q. Are those payments that are reflected there on that

1 page, payments that Fisher-Friedman Associates received under
2 the stopgap agreement?

3 A. Yes.

4 Q. Going back to Exhibit 24 --

5 THE COURT: Okay. Hold on. I just want to make sure
6 I'm understanding the point you are trying to make.

7 So you're saying that the payments that are referenced
8 in the months of February, March, May and June of 2006, were
9 all to pay off the stopgap work that was done; is that
10 accurate? Is that the point you're trying to make?

11 MR. HOY: Insofar as it goes. The real point is that
12 under the stopgap agreement, the parties agreed to an hourly
13 compensation, but they also agreed that once a contract for a
14 fixed fee was signed that those payments received under the
15 stopgap would be credited against the ultimate fixed fee under
16 the master agreement, what I call the master agreement,
17 Exhibits 6 and 7.

18 THE COURT: The April 26th agreement with the
19 addendum?

20 MR. HOY: Correct.

21 THE COURT: And so Fisher-Friedman and Associates did
22 receive the payments that are referenced as payments on
23 page 7604 in Exhibit No. 25; is that correct?

24 THE WITNESS: Yes.

1 THE COURT: Okay. Thank you.

2 BY MR. HOY:

3 Q. Now, Mr. Steppan, taking you back to Exhibit 24. The
4 first invoice is dated November 22, 2005, and it's on your
5 letterhead.

6 Do you see that?

7 A. Yes.

8 Q. And the second invoice, December 20, 2005, is also on
9 your letterhead?

10 A. Yes.

11 Q. And the next invoice for January 12, 2006, is on your
12 letterhead?

13 A. Yes.

14 Q. And then the next invoice after that, the next day,
15 January 13, 2006, is also on your letterhead?

16 A. Yes.

17 Q. And then the very next invoice for February 23, 2006,
18 is on Fisher-Friedman Associates letterhead.

19 A. Correct.

20 Q. Can you please explain to the Court what happened
21 there?

22 A. As I remember it, there -- after an invoice or two had
23 gone out in this fashion, I found out that that had been the
24 case and had a conversation with Rodney in our accounting

1 department about the fact that it had changed from my
2 letterhead to the Fisher-Friedman letterhead, and I thought
3 that things should stay on the Mark Steppan letterhead for
4 form.

5 We found -- had determined it was a mistake in the
6 paper that was stuck in the printer at the time that the
7 invoice, the final invoices were created. And so we ended up
8 having a phone conversation with, I believe it was Sam -- it
9 could have been Cal, I don't remember exactly, but I'm pretty
10 sure it was Sam -- to discuss the fact that he had obviously
11 received some Fisher-Friedman invoicing versus keeping it on
12 Mark Steppan letterhead, was that acceptable to him, since all
13 parties knew the arrangement of how I was overseeing the
14 project as architect of record for the purposes of license
15 requirements in Nevada, and that the payments were not coming
16 into me directly, they were coming into Fisher-Friedman
17 Associates. So was it acceptable to retain that way, or did he
18 want us to change back. And it was determined to just keep it
19 the way it was, on Fisher-Friedman letterhead.

20 Q. So the client never objected to having invoices from
21 Mark B. Steppan?

22 A. No.

23 Q. And the client never objected to having the invoices
24 come out from Fisher-Friedman?

1 A. No.

2 Q. Please turn to Exhibit No. 26. And take the time you
3 need to familiarize yourself with Exhibit 26.

4 MR. HOY: This is not in evidence, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: Okay.

7 BY MR. HOY:

8 Q. Do you recognize Exhibit 26?

9 A. Yes. They're invoices for reimbursable expenses.

10 Q. Are the invoices in Exhibit 26 -- were the invoices in
11 Exhibit 26 prepared in the same standard fashion that you
12 testified previously with respect to the invoices in Exhibit 25
13 and 24?

14 A. Generally, yes. It's only slightly different in the
15 fact that it's a fixed amount of money based on printing costs,
16 air fare, mileage. There is no discussion of needing to adjust
17 those typically, unless you feel the need to hold off invoicing
18 for a month or two for other reasons, which is why the
19 accounting manager would discuss it with the project manager to
20 determine if it made the most sense to invoice it that month or
21 to actually delay invoicing.

22 Q. And the invoices in Exhibit 26 were sent to the
23 client?

24 A. Yes.

1 Q. And did the client ever object to any of the invoices
2 in Exhibit 26?

3 A. Not to my knowledge.

4 Q. Were these copies of the invoices filed and maintained
5 in a file in the standard method used by Fisher-Friedman
6 Associates?

7 A. Yes.

8 MR. HOY: Offer Exhibit 26.

9 THE COURT: Any objection?

10 MR. PEREOS: May I take the witness on voir dire?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. PEREOS:

14 Q. Am I correct in understanding that the Project
15 No. 515-R are the reimbursables expense invoices?

16 A. 0515R would be reimbursable expenses.

17 Q. And -- I'm sorry, I didn't mean to cut you off.

18 A. 0515-R are base contract reimbursable expenses.

19 Q. Okay. So you're actually jumping ahead. Base
20 contract meaning the AIA contract?

21 A. Yes.

22 Q. Okay. Because it does discuss in that contract, does
23 it not, that you're entitled to your reimbursable expenses?

24 A. Correct.

1 Q. Okay. Now, having said that, let me ask you this
2 question, because this is where I got a little confused.

3 Bates number page 7621, which is your largest invoice
4 for reimbursable expenses of 15,000. Do you see that?

5 A. Yes.

6 Q. Apparently you had a consulting fee in there?

7 A. Yes. This is the charge for the renderer that we
8 mentioned previously and Rodney talked about yesterday as being
9 an outsourced perspective renderer.

10 Q. And what did they render?

11 A. They did the colored elevation drawings that were, for
12 example, part of the fly-through that had all the colored
13 skies, some of those other drawings. And they did other
14 renderings that had to do with freehand drawings that were
15 perspectives with color and things like that.

16 Q. Okay.

17 A. As I mentioned earlier today, those ran approximately
18 \$3,000 apiece.

19 Q. Okay. Now, was that paid, that amount paid to a
20 renderer as a consulting fee in the amount of 13,750?

21 A. I have no personal knowledge as to whether it was paid
22 or not paid.

23 MR. PEREOS: Well, in response to the request for
24 admission, I don't have a problem with the invoices of 0515-R

1 based upon the witness's testimony that they're reimbursable
2 expenses. Okay.

3 That consulting fee, I have a problem with, okay, in
4 the fact that it's not reimbursable unless it's been paid
5 first, by definition. So to that extent -- I don't know if it
6 goes to the weight or to the -- the admissibility versus the
7 weight.

8 THE COURT: Under the same analysis as previously
9 noted, I don't believe that there is an issue to object to the
10 admissibility of the documents; whether or not Fisher-Friedman
11 Associates is entitled to compensation based on what is
12 represented in the documents may be a different question I
13 would leave for counsel to argue at the appropriate time,
14 whether or not the evidence has been shown that they are
15 entitled to that compensation.

16 Exhibit No. 26 is admitted by stipulation.

17 (Exhibit No. 26 admitted into evidence.)

18 DIRECT EXAMINATION (RESUMED)

19 BY MR. HOY:

20 Q. Mr. Steppan, you testified earlier about how hours are
21 put into the accounting system and then there's a consultation
22 between the project manager and others associated with the
23 project and the accounting department, to go over the draft
24 bills and then turn those into final invoice s.

1 Was there a standard method of operating in the
2 accounting department with respect to these reimbursables? Do
3 you know what that work flow was?

4 A. Well, typically, there's multiple avenues for
5 reimbursables. So if I may, with the Court's indulgence
6 explain?

7 If I fly someplace, I have a receipt for flying, for
8 the air travel costs. Or if the front desk receptionist made
9 the reservation, she might have the receipt for that. That
10 would have a job number attached to it. It would be given into
11 accounting.

12 I would personally fill out an expense form that lists
13 the date, the time, the location, the project number and the
14 costs for whatever expenses I have personally incurred on my
15 own credit cards or via cash or using the office credit card.
16 That could include the air fare, car rental, lunch, dinner, et
17 cetera.

18 Those would then go from -- with that expense report
19 as receipts, to the accounting department for inclusion in the
20 project files and for invoicing to the client.

21 Many clients require copies of the reimbursable
22 invoices, the expenses, the receipts, to prove -- for
23 verification that that was actually done.

24 Other items, such as postage and printing costs, are

1 handled by the front desk or whoever is handling stamping
2 envelopes. They record how many stamps and things like that
3 were put on envelopes for those projects.

4 And printing costs, since they're done generally
5 externally, you get invoicing from the blueprint company. Or
6 if it's internal plotting costs on a plotter, because of all
7 the computer-aided drafting work that is done, you keep a
8 record in a log of how many sheets were produced, at what size,
9 and whether it was black and white or colored, and there's an
10 agreed-to charge per sheet with the client that makes it a
11 reimbursable expense.

12 And those were all logged, categorized, put together
13 and made into invoicing monthly or -- and there might not be
14 any reimbursables in a month, so the timing would be as you get
15 reimbursables.

16 Q. Using the procedures, the accounting procedures within
17 Fisher-Friedman, was it possible to have an invoice for a
18 reimbursable expense for which there was no corresponding
19 payment from Fisher-Friedman to somebody else, to a vendor?

20 A. I suppose. I haven't thought about it. If you are
21 talking about a reimbursable expense from a consultant,
22 typically our consultants wouldn't have gotten paid until we
23 got paid.

24 But things that are typical, normal, standard

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1 reimbursable expenses, the way the contracts are typically
2 written -- which is mileage, food, air fare, those kinds of
3 things, printing -- that's much more easily defined and usually
4 you don't have that situation.

5 Q. So this renderer, did you ever receive any
6 correspondence from the this renderer saying, "Geez, I haven't
7 been paid. When are you going to pay me?"

8 A. I'm not aware of it.

9 THE COURT: But would that come to you, or would it go
10 to the business manager?

11 THE WITNESS: It would go -- it would go to -- it
12 could come to me, it could go to Nathan, it could go to Rodney,
13 it could go to --

14 THE COURT: Nathan is Nathan Ogle.

15 THE WITNESS: Nathan Ogle, sorry.

16 THE COURT: Who is Rodney?

17 THE WITNESS: Rodney Friedman.

18 THE COURT: Okay.

19 THE WITNESS: It depends on who the -- who the
20 consultant is, who the relationship is with. It could have
21 come in to many people. It could have just simply come in to
22 the accounting manager person, "Hey, I haven't been paid. Can
23 you look into it?"

24 Typically the first time around it might be a

1 communication from that consultant to the project manager
2 saying, "Hey, I haven't gotten payment in two months. What's
3 up? Just give me a heads-up."

4 And then that person would go and talk to the
5 accounting manager and find out why it hasn't been paid.
6 Because we don't have to approve or look at every single
7 invoice that goes out. You know, it's typical, but you don't
8 have to look at every single one. There is some latitude of
9 understanding about how things are done.

10 THE COURT: And your testimony only is that you have
11 no personal knowledge that this was not paid; is that correct?

12 THE WITNESS: That is correct.

13 THE COURT: Next question.

14 BY MR. HOY:

15 Q. Please turn to Exhibit No. 27.

16 Do you recognize Exhibit 27?

17 A. It's invoices for the massing studies.

18 Q. Were the invoices in Exhibit No. 27 prepared the same
19 way as the invoices in Exhibits 24, 25 and 26?

20 A. Yes.

21 Q. And were they, the copies of the invoices, then stored
22 within the files of Fisher-Friedman Associates in the same
23 fashion?

24 A. Yes.

1 MR. HOY: Offer Exhibit 27.

2 THE COURT: Oh, I didn't realize it wasn't admitted.

3 MR. HOY: I apologize, Your Honor, I should have let
4 you know.

5 THE COURT: Any objection to Exhibit No. 27?

6 MR. PEREOS: May I take the witness on voir dire
7 again?

8 THE COURT: You may.

9 VOIR DIRE EXAMINATION

10 BY MR. PEREOS:

11 Q. Is Exhibit 27, having Project No. 0515-02, an
12 add-on --

13 A. Yes.

14 Q. -- for basic services?

15 A. Yes.

16 MR. PEREOS: Okay. Yes, I do have an objection, and
17 the objection will go not only to 27, but to all the other
18 exhibits that are add-ons. It violates the Partial Order For
19 Summary Judgment issued by this Court limiting the fee
20 arrangement to a fixed fee. And as a result of that order, I
21 did not get into a study of all the time cards and everything
22 else that was delivered through discovery to my predecessors
23 prior to this period of time.

24 THE COURT: Mr. Hoy?

1 MR. HOY: So the objection is relevance, I guess.

2 The last line of the Summary Judgment Order says that,
3 something to the effect that the Court agrees that as a matter
4 of law that the mechanic's lien secures the unpaid fixed fee
5 under the, what we call the base contract or the master
6 contract.

7 I think that the relief that we -- the motion
8 definitely addressed the fixed fee foremost, but the motion for
9 summary judgment was really that the unpaid balance under the
10 base contract was what we were seeking with our mechanic's lien
11 foreclosure action.

12 As the Court has seen, the base contract includes the
13 fixed-base fee, plus the additional services that are discussed
14 in that section that we went over right before the break, in
15 Exhibit 6. So I would argue that the Summary Judgment Order
16 does not preclude us from seeking all amounts that are due
17 under the base agreement.

18 I guess I would also point out, Your Honor, that
19 Mr. Pereos is correct that all of the time records and all of
20 the invoices for this project were produced in discovery
21 30 days before trial, when we gave our disclosure of the
22 documents that we intended to use as trial exhibits. All of
23 these invoices were included in that disclosure. So there's no
24 real surprise here. I don't -- I don't really understand the

1 surprise element of the argument.

2 THE COURT: Well, I don't know that Mr. Pereos is
3 arguing that he is, quote, unquote, surprised, I think he's
4 arguing that he didn't prepare for that issue based on the
5 Court's ruling in its May 9, 2013, file-stamped Order Granting
6 Motion For Partial Summary Judgment.

7 The language that you are looking at -- or looking for
8 on page 3 of that document, Mr. Hoy, is beginning at line 4 of
9 page three: "This Court agrees with defendant" -- and
10 defendant, as the order was written, was Mr. Steppan -- "that
11 as a matter of law, the mechanic's lien secures the fixed fee
12 specified in the lien claimant's written contract."

13 So, Mr. Hoy, your argument is that that's the fee
14 itself, but that the contract also specifies other fees that
15 can be incurred as a result of the act -- or, excuse me -- as a
16 result of the actions of the parties. Is that correct?

17 MR. HOY: Yes.

18 THE COURT: The Court will admit the exhibits noted.
19 And I assume -- well, strike that.

20 The argument would be the same for the additional
21 exhibits that are marked, Mr. Pereos?

22 MR. PEREOS: That's correct, your Honor. I will not
23 repeat myself for the rest of the exhibits.

24 THE COURT: Thank you. I appreciate that for the

1 convenience of the Court.

2 The objection for each of the exhibits noted by
3 Mr. Pereos is duly noted and overruled, and the Court finds
4 that the documents are admissible.

5 If the parties choose to address that during the
6 argument portion of the proceedings, the Court would certainly
7 consider argument regarding that.

8 But just for the evidentiary value that they have, the
9 Court will consider them. And I'm not -- haven't made a final
10 decision whether or not the Court would find that that --
11 strike that -- that the Court would find that those are sums
12 due and owing to Mr. Steppan as a result of this lawsuit. But
13 just to get the evidence before the Court, as far as
14 admissibility goes, the Court finds that it is relevant and
15 admissible.

16 MR. HOY: Just to --

17 THE COURT: And just as a point of clarification, have
18 the parties decided whether or not you want to do a closing
19 argument in this case or a written post-trial brief? Have you
20 talked about that, the thought of coming in on December 23,
21 possibly, to argue the case?

22 MR. HOY: What we've discussed is this: That we would
23 both prefer to do an oral argument, an oral closing argument.
24 We further discussed the possibility of just setting Friday

1 afternoon aside so that the Court has plenty of time for the
2 retreat and we can get started whenever the Court wants to in
3 the afternoon on Friday. I think the evidence will be closed
4 sometime tomorrow.

5 THE COURT: Okay. And that's fine with me. I
6 don't -- I just don't want the parties to be under any
7 delusions. I believe that the retreat, the judicial retreat,
8 will be over sometime in the afternoon, I'm not sure. I don't
9 expect you or your clients to sit around all day waiting for me
10 to -- to appear. And so we'll talk about that again a little
11 bit further today.

12 But the Court has made its ruling regarding the
13 evidentiary objection. We'll go forward.

14 Go ahead, Mr. Hoy.

15 MR. HOY: Let me see if I can shortcut this. Offer
16 Exhibit 28.

17 THE COURT: Admitted over objection.

18 MR. HOY: I apologize, Your Honor. We were talking
19 about Exhibit 27 before. This is a new exhibit, 28, which is
20 not in evidence, and I'm offering it without asking the
21 foundational questions.

22 THE COURT: And with the objection that you've
23 previously noted, do you have any other issues to raise
24 Mr. Pereos?

1 MR. PEREOS: No, assuming that the foundation -- can I
2 just have on the record -- this is a CYA thing.

3 MR. HOY: Sure.

4 MR. PEREOS: -- on the record that the foundational
5 question is repeated as to the other exhibits as it pertains to
6 the same, as these other exhibits and then --

7 THE COURT: And is it 27, 28, 29 and --

8 MR. HOY: Thirty.

9 THE COURT: -- 30, Mr. Hoy?

10 MR. HOY: Yes.

11 THE COURT: Those documents will all be admitted with
12 the objection that has been raised by Mr. Pereos being noted
13 for each individual exhibit.

14 And, Mr. Hoy, if you could just lay the appropriate
15 foundation when each of those exhibits are addressed in your
16 direct examination of Mr. Steppan, the Court would appreciate
17 that.

18 (Exhibit Nos. 27, 28, 29 and 30 marked for identification.)

19 DIRECT EXAMINATION, RESUMED

20 BY MR. HOY:

21 Q. All right. Mr. Steppan, please turn to Exhibit 28.
22 Do you recognize Exhibit 28?

23 A. It's invoicing for the church parcel parking studies.

24 Q. Were the invoices in Exhibit 28 prepared the same way

1 that the other invoices we've looked at?

2 A. Yes.

3 Q. And were these copies of the invoices created and
4 stored in the same uniform fashion as the other invoices at
5 Fisher-Friedman Associates?

6 A. Yes.

7 Q. Please turn to Exhibit 29. Do you recognize
8 Exhibit 29?

9 A. It's a collection of invoices for responding to staff
10 comments.

11 Q. Were the invoices in Exhibit 29 created in the same
12 fashion as the uniform process that you discussed earlier at
13 Fisher-Friedman?

14 A. Yes.

15 Q. And were these copies of the invoice created and
16 maintained in files of Fisher-Friedman in accordance with this
17 uniform practice for storing invoices?

18 A. Yes.

19 Q. Please turn to Exhibit 30. Do you recognize the
20 document in Exhibit 30?

21 A. Yes. It's an invoice on editing the fly-through.

22 Q. All right. And was the invoice in Exhibit 30 created
23 in the same uniform fashion as the other invoices that we've
24 discussed this morning?

1 A. Yes.

2 Q. And was this copy of the invoice created and stored in
3 the same uniform fashion at Fisher-Friedman Associates as the
4 other exhibits?

5 A. Yes.

6 Q. I would ask you to turn back to Exhibit No. 6.

7 A. Okay.

8 Q. And I'm at page 8 of Part 1, also Bates numbered 7505.
9 And direct your attention to Sections 3 -- I'm sorry --
10 1.3.8.4. Did the client ever provide a written Notice of
11 Termination under this provision?

12 A. No.

13 Q. Direct your attention to Section 1.3.8.7, which reads,
14 "Termination expenses are in addition to compensation for the
15 services of the agreement and include expenses directly
16 attributable to the termination for which the architect is not
17 otherwise compensated, plus an amount for the architect's
18 anticipated profit on the value of the services not performed
19 by the architect."

20 Are you seeking a judgment in this case for
21 anticipated but lost profits for the project in the case?

22 A. No, we're not seeking any additional termination costs
23 that we would be entitled to by the contract.

24 THE COURT: Only up through the schematic design,

1 correct?

2 THE WITNESS: Correct.

3 BY MR. HOY:

4 Q. Did your client ever object to any of the invoices
5 that we've looked at this morning?

6 A. Not that I'm aware of.

7 Q. Did you complete schematic design as defined in the
8 contract?

9 A. Yes.

10 MR. HOY: That's all the questions I have at this
11 time, Your Honor.

12 Thank you, Mr. Steppan.

13 THE COURT: Thank you.

14 Mr. Pereos, you may begin your cross-examination.

15 MR. PEREOS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PEREOS:

18 Q. You would agree with me, Mr. Steppan, that you do not
19 have an agreement with John Iliescu?

20 A. Correct.

21 Q. Your source for reimbursement or payment of your fees
22 is the agreement that you have with the developer?

23 A. That's part of it. I do not know the relationship
24 past that to the lien requirements.

1 Q. Okay. All right. But the point that I'm simply
2 saying is that it's the agreement with the developer that you
3 have that creates the basis for your compensation that you're
4 asking for in these proceedings?

5 A. Correct.

6 Q. And the compensation that you're asking for in these
7 proceedings, you're hope -- you're anticipating will
8 materialize into a lien against the property?

9 A. Please rephrase the question.

10 Q. Sure. The compensation you're seeking in these
11 proceedings will materialize into a lien against the property?

12 A. No, because the lien is already in place, so it
13 wouldn't materialize into it, it's already in place.

14 Q. All right. Then I'll rephrase it.

15 Will materialize into a judgment for foreclosure of
16 the lien?

17 A. I don't know -- know all the nuances of what's being
18 required by the lien.

19 Q. Okay. Now, it's your position and -- well, it's
20 basically your position in these proceedings that a stopgap
21 agreement was signed, pending signature on the AIA contract?

22 A. Yes.

23 Q. And that's Mr. Hoy's characterization and it's a good
24 characterization. Okay?

1 Now, under the AIA Fixed E contract, you're looking
2 for compensation in the amount of 2,000 -- \$2,070,000, are you
3 not?

4 A. That's the 20 percent fee for schematic design,
5 correct.

6 Q. Okay. By the way, your son-in-law is Rodney Friedman?

7 A. That's correct.

8 Q. When you took the test for Nevada, to be licensed in
9 the State of Nevada as an architect, was there legal on that
10 test? Was there a legal section?

11 A. The test had mostly to do with the Nevada statutes.

12 Q. And did that include --

13 A. So the answer would be, typically yes.

14 Q. Okay. And that would include legal, as well,
15 like mechanic's liens?

16 A. Legal is a very broad heading.

17 Q. Okay. Well, let me rephrase. Let me see if I can
18 narrow it down.

19 Did the test include the statutes regarding -- did the
20 test require knowledge of the mechanic lien statutes in the
21 State of Nevada?

22 A. I don't honestly remember.

23 Q. Okay. Do you have Exhibit 14 before you? Can you
24 access that quickly, please?

1 A. Yes.

2 Q. Now, this is the letter that you referenced as
3 creating the basis for your fee engagement pending the
4 signature of the AIA contract.

5 A. It is the starting agreement, yes.

6 Q. Well, didn't you testify that, "We are still on an
7 hourly basis," when you were talking about Exhibit 18, and
8 referencing that this was the engagement putting you on an
9 hourly basis, being Exhibit 14?

10 A. Yes. Exhibit 14 is the hourly basis discussion for
11 starting of the project, and Exhibit 18 is the discussion of a
12 further delineation of proposed tasks and associated projected
13 costs.

14 Q. Okay. We'll get to 18, but right now let's stay with
15 14.

16 Now, it's your position that Exhibit 14, the initial
17 fee arrangement which was referred to by Mr. Hoy as a stopgap,
18 okay, is intended to compensate the firm for the hourly work
19 pending completion of the AIA contract; is that correct?

20 A. Yes.

21 Q. And under the AIA contract, you're going to receive a
22 fee for the schematic design in the amount of \$2,070,000?

23 A. Correct, plus any additional services.

24 Q. All right. Plus additional services. Okay. That's

1 fine. Okay.

2 Tell me where Exhibit 14 says that.

3 A. It doesn't and nor does it have to.

4 Q. It doesn't. Well, why doesn't it have to?

5 A. This is a negotiated start point for the project.

6 This letter defines that starting of the project and defines
7 that at this time, we are performing on that particular basis
8 as agreed to by these terms.

9 Q. Oh, I'm --

10 A. There are other discussions going on that are not
11 recorded on this particular document.

12 Q. Well, I don't want to cut you off, so -- okay.

13 I agree with you that this letter is the basis for
14 your compensation. I want to know why you're testifying that
15 this letter does not state or have to state that, "Oh, by the
16 way, this hourly compensation will be credited to the
17 \$2,070,000 that we're going to be owed for doing this work."

18 A. Regardless of what this letter says, the understanding
19 and agreement with our client was how to proceed on the project
20 through the effort of starting on an hourly -- because we
21 needed to get started and it was understood that it would take
22 time to solve the agreement.

23 Having started other projects similarly to this, those
24 documents also did not say, "We're doing this while we'll

1 negotiate the contract." Sometimes they do, sometimes they
2 don't.

3 As long as the parties understand the parameters of
4 the starting of the project and the timing for the signature or
5 the execution or agreement on the formal contract, that is what
6 is necessary to proceed.

7 Q. Did you verbalize to Sam Caniglia or his people that
8 you expected to receive a \$2,070,000 fee for securing the
9 schematic design work?

10 A. Yes. The fee was discussed with the client.

11 Q. And you discussed the \$2,070,000 fee that you expected
12 to receive?

13 A. All phases were discussed.

14 Q. Okay. Let me see if I can still micro my question.
15 Did you mention a 2,070,000 figure?

16 A. I don't remember personally mentioning that to Sam.

17 Q. Fine. Now, it's your position, though, in these
18 proceedings, that you're entitled to that \$2,070,000 fee and
19 that this work that was done pursuant to Exhibit 14, is only a
20 credit against the \$2,070,000, to the extent that you were
21 paid?

22 A. Correct. It was a vehicle to allow us to receive
23 payments while the work was progressing, as we're not a bank
24 and cannot pay for everyone's salaries without getting income.

1 And so this was a method, that is pretty standard, to allow an
2 architect to receive compensation while performing work while
3 the formal contract is being negotiated.

4 Q. Don't you think it would have been a good business
5 practice to identify in your engagement letter that you're
6 entitled to a fee for schematic design the day you start your
7 work, in the amount of \$2,070,000, but you will credit the
8 payments on a time-and-material basis under Exhibit 14?

9 THE COURT: Don't answer that question, Mr. Steppan.

10 Mr. Hoy?

11 MR. HOY: The objections are compound and
12 argumentative.

13 THE COURT: It's not compound, I don't think. It
14 might be argumentative.

15 Can you rephrase the question?

16 MR. PEREOS: All right.

17 THE COURT: And let me just see if I can understand
18 something in my mind, as well, Mr. Steppan.

19 In a general sense, if time is not of the essence, if
20 you're not pressed because of some issue, would it be
21 Fisher-Friedman and Associate's practice to get the contract
22 done first, before you start doing the work?

23 THE WITNESS: Typically.

24 THE COURT: And in this case --

1 THE WITNESS: Sorry.

2 THE COURT: -- was it different for some reason?

3 THE WITNESS: Typically the clients want us to start
4 as soon as possible, so --

5 THE COURT: I understand.

6 THE WITNESS: So typically we start or started on a
7 similar type of letter that says, "You've come in, it was great
8 to meet you, this is the project you've asked us to start with,
9 we're going to start billing on a time and material, not to
10 exceed \$5,000," and off we go.

11 Because the discussions with the client are, "We've
12 got to start, this is what we're going to do, and then down the
13 road we'll figure out what contract basis we are going to use."
14 But until we get to that point, we have something to cover the
15 interim.

16 THE COURT: Understood. So that's -- what you did in
17 this case, it's your testimony, is more the norm than the
18 exception, at least at Fisher-Friedman and Associates, based on
19 your experience?

20 THE WITNESS: Correct. And in fact, it's the norm in
21 my current firm, as well, where you still do a proposal, get an
22 agreement to a term. And the clients that we're working with,
23 many of them have their own forms of agreement, such as Sutter
24 Health, and it takes six months to reach a final agreement.

1 But you don't necessarily say in that proposal that
2 you are doing this while you are negotiating the other. You
3 can, it can be helpful, but it's not a requirement.

4 THE COURT: Okay. Go ahead, Mr. Pereos.

5 BY MR. PEREOS:

6 Q. Well, my question was, would it not have been good
7 business practices to identify in your first engagement letter
8 of Exhibit 14 that you're expecting a fee of \$2,070,000?

9 MR. HOY: Objection, argumentative.

10 THE COURT: Overruled.

11 You can answer the question.

12 THE WITNESS: I can't speak to whether we felt as a
13 firm it was a good business practice to not include it or a
14 good business practice -- or it would have been a better
15 business practice to include it, given the fact that all of
16 this was being discussed at the time.

17 BY MR. PEREOS:

18 Q. Exhibit 18, let's go to Exhibit 18. Your testimony on
19 Exhibit 18 was that this was the letter designed to alert the
20 client as to what type of fees he's going to be incurring on a
21 go-forward basis in connection with the work being all
22 performed by the architect.

23 A. Yes, but specific to the defined tasks.

24 Q. Okay. Specific to the defined tasks in Exhibit 18?

1 A. Correct.

2 Q. But some of the defined tasks in Exhibit 18, your
3 testimony was, include the scope of the work that would be
4 covered by the fixed-fee contract?

5 A. Correct.

6 Q. But meanwhile, if I'm understanding you correctly, by
7 February of '06, when Exhibit 18 was drafted, the client
8 already knew that he would be obligated under the fixed-fee
9 contract, in the amount of \$2,070,000 for the schematic design
10 work?

11 A. I believe that to be the case.

12 Q. But you're still including the same work that would
13 have been included in the fixed-fee contract on Exhibit 18,
14 correct?

15 A. Part of the work that's required for the project is
16 defined in this exhibit, which gives the client a heads-up
17 about upcoming expenses while the contract is still being
18 negotiated. At this time we didn't know if the contract would
19 be signed in March, April, May, June, July. It's hard to know.
20 So in fairness and with discussions with the client, we gave
21 them a heads-up.

22 Q. But you wouldn't have known whether or not the
23 contract was going to be signed at all at that time, did you?

24 A. One never knows.

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1 Q. That's right. But at least you had your reimbursable
2 letter of Exhibit 14 to fall back on?

3 A. Correct.

4 Q. And if a contract was not signed, your measure of
5 recovery would have been based upon the time-and-material
6 billings that you submitted, pursuant to Exhibit 14?

7 A. I assume so.

8 Q. You would agree with me, as you're advancing your case
9 to foreclose the mechanic's lien, that what you're alleging
10 controls the relationship between you and your client is the
11 AIA contract, marked Exhibit 6?

12 A. I'm not sure I'm alleging anything. All I think
13 that's been stated is that we have a signed agreement with a
14 client and it's Exhibit 6 and I believe Exhibit 7 for the
15 amendment.

16 Q. Okay. All right. And what you're alleging, also, is
17 that's what defines your compensation?

18 A. Yes. Our compensation is defined by the executed
19 agreement.

20 Q. Okay. And the executed agreement, Exhibit 6, calls
21 for the development of 499 units, does it not? Let's say
22 Exhibits 6 and 7.

23 A. Yes, because the 499 is not included in the base
24 agreement, it's in the addendum.

1 Q. Okay. It was picked up in the addendum.

2 Now, did it also include securing the entitlements as
3 a basis for your compensation?

4 A. Let me see how it's actually worded.

5 It says that the project should obtain entitlements
6 and approvals and we participate in that process, providing the
7 appropriate documentation to do so.

8 Q. Okay. So would you agree with me that the triggering
9 effect of what creates the basis for your compensation for
10 schematic design is not only the preparation of the schematic
11 design documents, but securing the entitlements?

12 A. I suppose that's how you would read this, yes.

13 Q. Oh, okay. Well, is that a consistent reading with
14 what the -- what the intent of the parties was through the
15 negotiations going back and forth?

16 A. I don't remember all the specific discussions on this
17 particular item.

18 Q. But that's because Nathan Ogle handled those
19 negotiations, isn't it?

20 A. No.

21 Q. So you handled --

22 A. I was a party to half of those phone conversations, at
23 a minimum.

24 Q. Okay. All right. Now, you agree with me that the

1 contract and actually the intellectual property rights -- well,
2 let me go about it this way.

3 The contract, the AIA contract, affords the architect
4 intellectual property rights on his work product in connection
5 with this project; isn't that correct?

6 A. Yes.

7 Q. And you would agree with me that those intellectual
8 property rights are not assignable without the consent of the
9 architect?

10 A. As previously testified, that is correct.

11 Q. And basically, the architect owns that work product --

12 A. Right.

13 Q. -- the intellectual property rights?

14 A. Correct.

15 Q. You're only giving a license to use those work
16 products; isn't that correct?

17 A. Correct.

18 Q. Do you still earn your fee if you secure the
19 entitlements with conditions that are too onerous?

20 MR. HOY: Objection, vague and also calls for a legal
21 conclusion.

22 MR. PEREOS: I'll rephrase.

23 THE COURT: Sustained.

24 MR. PEREOS: I will. Okay.

1 BY MR. PEREOS:

2 Q. You're familiar with the fact that the entitlement
3 process would result in the imposition of conditions?

4 A. I'm unaware of one happening that hasn't.

5 Q. Okay. Which means, yeah, you're familiar with it;
6 fair?

7 A. Fair.

8 THE COURT: And by "conditions," you're meaning,
9 Mr. Pereos, that you don't go before the city council and the
10 Planning Commission and they just look at it and say,
11 "Everything is perfect, you guys are wonderful, no additions or
12 changes"?

13 THE WITNESS: That is correct. I am not aware of any
14 project that we've -- I've ever worked on or been around that's
15 had approvals from a jurisdiction that has not had conditions
16 on the approval.

17 BY MR. PEREOS:

18 Q. So we're all on the same page.

19 Now, my question to you is, if those conditions are
20 financially too onerous, that is, too expensive to facilitate,
21 have you still earned your fee because you've secured the
22 entitlements?

23 A. Personally, I haven't thought about it, because that's
24 never been the case. So if you take this project as an example

1 and it's approved with conditions and you review the conditions
2 and they're all things that, as a team, you believe can be
3 accomplished for the project, then you have successfully
4 obtained the entitlements and satisfied, initially, the City's
5 requirements.

6 You will still have to show compliance with all of
7 those conditions when you file the final map and do other
8 things for building permit, et cetera.

9 In that interim you have the ability to resolve all of
10 those conditions. And if there's something that appears upon
11 first blush to be, shall we say, very costly or could have a
12 major impact to the feasibility of the project, then you have
13 the opportunity to come to some resolution as to the make-up of
14 that.

15 Generally speaking, in my experience, the city
16 councils and other groups are not going to put conditions of
17 approval on a project that they're approving that that feel
18 would make that project unfeasible or unavailable to be
19 afforded by the client.

20 THE COURT: They would just deny the project.

21 THE WITNESS: They would make other changes or do
22 other things or possibly deny the project if they felt, for
23 whatever reason, it had to change to that large of a degree or
24 their conditions that they wanted to impose would be of such

1 magnitude that it would impact the feasibility of the project.

2 THE COURT: And so to just use an absurd example in
3 this case, if they gave you the entitlements but one of the
4 conditions was you need to divert the Truckee River and change
5 the course of the Truckee River, obviously that would be
6 something that, as Mr. Pereos is suggesting, would be cost
7 prohibitive to comply with.

8 Is that what you are suggesting?

9 MR. PEREOS: That's what I'm suggesting.

10 THE COURT: It didn't happen in this case. But under
11 those circumstances, would you have still completed your
12 assignment?

13 THE WITNESS: No.

14 THE COURT: Next question.

15 BY MR. PEREOS:

16 Q. No. You would agree with me, though, that you're not
17 going to know the cost of all the conditions that are affixed
18 to the entitlement until you start looking into its compliance?

19 A. While that is true, you have an idea or based on
20 experience as to the magnitude or impact of the conditions of
21 approval, some of which have costs associated with them and
22 some that wouldn't, typically speaking.

23 So had there been something of a magnitude that the
24 team, which was a very experienced team, felt had a large

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1 impact on the success or ability to design the project, then it
2 would have been brought to people's attentions at the time.

3 Q. Okay. What you are telling us is this: You are
4 telling us that if you do your due diligence correctly before
5 you show up at either the Planning Commission hearing or the
6 Reno City Council hearing, you would have anticipated some
7 issues that would surface that you would then investigate and
8 have knowledge of so you could address it at the hearing?

9 A. That's certainly a way to have approached it, yes.

10 Q. Okay. But for instance, let's talk about your
11 geotechnical report. Do you know whether or not the
12 geotechnical report that was done before you submitted your
13 applications for approval did any core sample drilling?

14 MR. HOY: Object to the form of the question,
15 particularly the possessive pronoun "your," with respect to the
16 geotechnical report and the application.

17 MR. PEREOS: Fine.

18 THE COURT: Well, I understood it to be "the" not
19 "your," as in Mr. Steppan produced the document or conducted
20 the investigation.

21 MR. PEREOS: I'll rephrase it, Your Honor.

22 THE COURT: That's okay. You can just simply -- do
23 you understand the question?

24 THE WITNESS: Yes.

1 THE COURT: Go ahead and answer the question.

2 THE WITNESS: I don't remember what it showed at this
3 time; I have not looked at it in many years.

4 BY MR. PEREOS:

5 Q. All right. Well, the point that I am getting at is,
6 your geotechnical report might be a superficial report based
7 upon the knowledge of the engineer; but, for instance, when you
8 get a condition that you've got to address FEMA, the flood
9 zones and/or the groundwater -- I hate to use the word
10 "pollution," but the groundwater flow back to the river, you
11 might wind up having to do some core samples whereby you are
12 finding that the groundwater level is only a few feet down and
13 now you've got a major condition that has to be addressed?

14 A. I believe a lot of those things were addressed, looked
15 into and investigated by the geotech consultant and that there
16 were discussions on how to deal with those types of issues.

17 Typically speaking, you have the geotech report before
18 you start designing the project, so you have parameters or it's
19 in process while you are doing schematics, so --

20 Q. Well, let's get a little more specific. Let's go
21 to -- I will give you Exhibit 119. Don't put that book too far
22 away.

23 A. Could you repeat the exhibit number, please.

24 Q. Sure. One nineteen.

1 Tell me when you're there.

2 A. I'm there.

3 Q. Okay. This is the geotechnical report that was
4 prepared for the project. In fact, I believe this exact same
5 report is the geotechnical report that is attached to one of
6 the applications. My best memory, it might be application
7 Exhibit 36, but I could be incorrect on that one.

8 A. It's a geotech report and it looks like it's one that
9 was attached to one of the applications, correct. It's dated
10 the 17th, so I imagine it went in on the first one.

11 Q. All right. Let's go to "Conclusions," page 2254. He
12 says: "The primary concern, however" -- this is the first full
13 paragraph, last sentence.

14 "The primary concern, however, to be considered in the
15 design and construction of a project are the presence of
16 oversized aggregate."

17 Now, let me stop there. There was some discussion on
18 that, okay, in a response by Mr. Friedman on this issue of
19 oversized aggregate. Do you remember that?

20 A. Yes.

21 Q. Okay. But then he goes on and he says, "The potential
22 presence of shallow groundwater and the potential for flooding
23 to occur."

24 Do you see that?

1 A. Yes.

2 Q. Now, nowhere in the report -- unless you saw something
3 that I didn't see -- does he actually address an issue as to
4 how to address those issues for those potential problems.

5 Now, I didn't see it in the report, unless you saw it
6 in the report.

7 A. I have not re-read the report, so I don't know what's
8 completely in it.

9 Q. Okay. So right now, we have an unknown, that is, the
10 shallow groundwater, as to how we are going to address it and
11 what the cost factor is going to be, and the flooding and how
12 we're going to address it and how the cost factor is going to
13 be; isn't that correct?

14 A. Those are issues that have been brought forth by the
15 consultant. And as Rodney Friedman testified yesterday, they
16 were known items that were being discussed as to how to best
17 deal with them.

18 Q. Okay. Now, particularly the flooding is of concern
19 because we have sub-tiered parking garages, in other words,
20 parking garages down below ground level; do we not?

21 A. Yes.

22 Q. By the way, how do the cars get around in those
23 parking levels? Do they drive around, up to each of the levels
24 or were they lifted by an elevator? I'm just asking. I'm

1 curious.

2 A. Okay. A multilevel garage, you get from floor to
3 floor by driving up or down ramps.

4 Q. Okay. And the same with this project?

5 A. Yes. The difference is that we also had what are
6 called car lifts --

7 Q. Okay. Fine, all right. Thank you.

8 A. -- which allow you to stack cars within a space within
9 a floor.

10 Q. Oh, okay. All right. So what you're telling me is --

11 THE COURT: Like cars -- like in a little pod stacked
12 on top of another car?

13 THE WITNESS: Yes. Generally there's a frame on the
14 side, whether it's an H-frame or a single-column frame and a
15 platform that the car drives on, gets lifted up and the other
16 car drives underneath.

17 THE COURT: So you can have more cars in the same,
18 roughly --

19 THE WITNESS: The same footprint, yes.

20 THE COURT: -- space.

21 BY MR. PEREOS:

22 Q. Okay. I've got that. That's common, actually, in the
23 Bay Area, is it not?

24 A. It's common in a lot of places these days, yes.

1 Q. All right. Now, let's go back to the flooding issue.
2 Okay? Right now you don't know and, actually, nobody ever got
3 into the issue as to how much the cost factor was going to be
4 to address any issues regarding flooding or the potential of
5 flooding?

6 A. I don't know any side-bar issues -- discussions about
7 solutions that you could do for the garage at that point, that
8 would have been worked out at schematic design.

9 Q. Okay. The reason for that is because your schematic
10 design work is too yet generalized to address those particular
11 issues?

12 A. No, you can still talk about them, but you don't get
13 into the details of exact solutions. But I know that we were
14 already talking about the impact of water and flooding and how
15 to deal with it.

16 Q. Okay. Now, did you understand or do you think that
17 you were supposed to design a project within the parameters of
18 a \$180,000,000 project or \$180,000,000 budget?

19 A. The dollar amounts that were given and discussed to us
20 were for purposes of budgeting the fee for the client. They
21 were in an initial cost assessment that the client gave us as a
22 starting point. And it was discussed that, as we developed the
23 project through the different phases and with the cost
24 estimators, you would arrive at a closer approximation of the

1 construction costs. And by the time you're all done, you will
2 know what the project is going to cost.

3 But for the purposes of starting the project, as is
4 typical, the client either has or does not have a budget but
5 they have an idea of what the project might cost or what they
6 feel they can afford to spend, and you use that as a starting
7 point. Sometimes they give you as a hard budget and sometimes
8 they don't. This was not given as a hard budget.

9 Q. Okay. But let's stay with the point. The client is
10 thinking about spending \$180,000,000 on this project.

11 A. Yes.

12 Q. Isn't that correct?

13 A. Yes.

14 Q. Now, did you feel that that was within the parameters
15 of what your design should include?

16 A. It was certainly a factor in understanding what we
17 were designing. It's a parameter.

18 Q. Do you think you had a license to go above the
19 \$180,000,000 in your design?

20 A. If the client agrees to -- once you've actually
21 determined what the real cost is potentially, yes.

22 Q. Okay. So let's assume the client changes the
23 complexion of a project from 399 to 499 units on that and the
24 client agrees that the budget should be more than \$180,000,000.

1 Under the AIA contract, should you have that in writing?

2 A. You've described an occurrence. What is it that you
3 are asking to have in writing?

4 Q. The fact that the clients agree that the budget is
5 going to go more than \$180,000,000.

6 MR. HOY: I object to the question, Your Honor. The
7 question is whether there should be a separate written
8 agreement that the budgeted amount would go over \$180,000,000.
9 The contract actually speaks to that and so, therefore, the
10 question is asking for a legal conclusion, which I think is the
11 Court's purview to interpret the contract itself.

12 THE COURT: Mr. Pereos?

13 MR. PEREOS: The witness can testify to what his
14 understanding of the contract is. In this particular situation
15 the contract clearly says any modification of its terms are to
16 be in writing. All right?

17 The witness just testified that, yes, he can go above
18 the \$180,000,000, if there's an understanding and agreement
19 with the client that the budget is going to go beyond that.
20 I'm asking him, should it be in writing.

21 THE COURT: The contract, then, would speak for
22 itself. In the alternative, the response to the question would
23 be a legal conclusion and, therefore, the objection is
24 sustained.

1 MR. PEREOS: Okay.

2 BY MR. PEREOS:

3 Q. Now, the contract also identified a completion period
4 of 32 months. Are you familiar with that?

5 MR. HOY: Objection, Your Honor, that misstates what
6 the document says. We went through this yesterday.

7 MR. PEREOS: Well, that's fine, I'll rephrase it.

8 THE COURT: Sustained.

9 MR. PEREOS: Okay.

10 BY MR. PEREOS:

11 Q. I want to direct your attention to Article 1.5.9 that
12 appears on page 10.

13 THE COURT: Mr. Pereos, you need to provide
14 Mr. Steppan with Binder No. 1, which contains the contract.

15 MR. PEREOS: Oh. Was that taken away?

16 THE WITNESS: I have it, but you didn't tell me what
17 exhibit you wanted me to look at.

18 MR. PEREOS: Oh, I'm sorry, Exhibit 6. Exhibit 6.

19 THE COURT: I apologize. I didn't see the binder over
20 there with you. You had it on the floor, Mr. Steppan.

21 THE WITNESS: Yes.

22 THE COURT: Go ahead. We're about five minutes out,
23 from concluding for the morning, just so you know.

24 THE WITNESS: I have Exhibit 6. Which page?

1 BY MR. PEREOS:

2 Q. Page 10, Bates number 7507.

3 A. I'm there.

4 Q. Okay. Now, why don't you look at 1.5.9.

5 A. Okay.

6 Q. Okay. Does that provide that the architect's services
7 are to be completed within 32 months?

8 A. No.

9 Q. Okay. What does that provide?

10 A. It says if they have not been, we are entitled to
11 additional compensation if the reason for them not being
12 completed within 32 months is outside of our creation.

13 Q. Oh. Does that 32 months identify a scope of a time
14 frame in which the architect services are to be completed?

15 A. No.

16 Q. Okay. Who puts the 32 months in there?

17 A. We do, in agreement with the client. Or the client
18 tells us that's how long they expect the project to last, based
19 on their discussions with their contractor or whatever it might
20 be.

21 I just had a very similar situation on another
22 high-rise. It had 36 months listed as the total time, the same
23 exact paragraph that was negotiated between Fisher-Friedman and
24 the client.

1 Q. Well, the --

2 A. And the project took six years.

3 Q. Excuse me. I didn't mean to be rude.

4 Does the shorter time frame work within the benefit of
5 the architect?

6 A. Generally speaking.

7 Q. Because then you've got to go back and negotiate
8 additional fees?

9 A. No, because a shorter time frame means you have less
10 time to keep spending money that you may not get compensated
11 for.

12 Q. Okay. So the 32 months was the subject of discussions
13 between you and the developer? I mean the architect and the
14 developer.

15 A. I believe so.

16 Q. And all you're telling me is that after -- the reason
17 that provision is in that paragraph is only to address at what
18 point in time the architect is entitled to additional fees,
19 thereafter?

20 A. It's a basic timeline that is understood when the
21 contract is negotiated, for an expected conclusions of the
22 project pending normal timing of situations, of developing the
23 design and documents, permitting and construction. It cannot
24 anticipate extended times in any of those phases. That's why

1 it's phrased this way.

2 Q. Well, let me -- let's say assume that after the
3 engagement was started on, let's assume October 31,
4 November 1st, you were able to get your entitlements within two
5 months. Okay? Is it your belief that this complex or project
6 could have been built out within 30 months, as designed?

7 A. The project could be completed or built in 30 months?

8 Q. So that's, yes, it could be?

9 A. No, I asked a question.

10 Q. Oh, I'm sorry. What's the question?

11 A. I'll rephrase it. Are you asking if it could be
12 completed or if it could be built in 30 months?

13 Q. Built to the point of completion as defined in the
14 architect's contract. And specifically, I believe it's
15 paragraph 2.6.6 that talks in terms of project completion.

16 A. Okay. So you're asking, could the project be built in
17 32 months?

18 Q. That's correct.

19 A. Yes.

20 Q. In 30 months.

21 A. Yes.

22 THE COURT: At this point, we'll take our morning
23 recess.

24 Court will be in recess until approximately 1:15. I

718

1 will certainly endeavor to be back as close to 1:15 as possible
2 so as not to waste Mr. Hoy's or Mr. Pereos' or their parties'
3 time in any way. Court is in recess.

4 (Lunch recess was taken from 11:48 to 1:18 p.m.)

5 THE COURT: We'll go back on the record.

6 And, Mr. Pereos, I believe that you were
7 cross-examining Mr. Steppan when we took our break, and the
8 last area of discussion, to my recollection, was the time to
9 complete the project, or somewhere in that area, so --

10 MR. PEREOS: Okay.

11 THE COURT: -- the floor is yours.

12 MR. PEREOS: Thank you.

13 CROSS-EXAMINATION, RESUMED

14 BY MR. PEREOS:

15 Q. Mr. Steppan, let me direct you again to Exhibit 15.

16 A. Yes.

17 Q. And go look at 16, please.

18 A. Okay.

19 Q. Now, you indicated that these letters were basically
20 an affirmation that you are continuing work on the project?

21 A. Yes.

22 Q. Why were you sending letters?

23 A. I don't remember the base reasons as to why those were
24 required to be sent, other than there was a meeting with John

1 Schleining, for example, on the December one and somehow it
2 necessitated the decision to send a letter about continuing the
3 services. Maybe it was a discussion that transpired from me.
4 I don't remember all the nuances.

5 And the second one is a base -- a continuation letter,
6 that pursuant to, as it states, upcoming presentation meeting
7 that was previously unscheduled or known -- unknown of meeting
8 with the City. So it was, again, reminding them that we were
9 having some things to do that might not have been anticipated.

10 Q. Now, at the time you sent those letters, Exhibits 15
11 and 16, you were operating under the letter agreement of
12 Exhibit 14; is that correct?

13 A. Yes.

14 Q. Now, when we go to -- neither of those two letters, by
15 the way, reaffirm what you've indicated, that is to say, that
16 you're anticipating a fee for the schematic design work at
17 2,070,000; is that correct?

18 A. They're not required to do so, nor do they do so.

19 THE COURT: In the future, Mr. Steppan, if you could
20 just answer the question that's asked of you.

21 THE WITNESS: Sure.

22 THE COURT: Thank you.

23 BY MR. PEREOS:

24 Q. Now, direct your attention to Exhibit 17. What you're

1 doing now, in this letter, is affirming that the scope of the
2 work is now changing. It's changing from 394 units to
3 499 units.

4 A. Yes, that's --

5 Q. Is that correct?

6 Now, the budget went up from 160,000,000 to
7 180,000,000 at the time that the scope of the work went up, did
8 it not?

9 A. The dollar amount that was included in the contract is
10 the basis for compensation. It went up from 160,000,000 to
11 180,000,000.

12 Q. Okay. All right. Did you identify anything in this
13 letter that the basis for your compensation was now also going
14 up?

15 A. No.

16 Q. I would like you to turn to Exhibit 1, please. That's
17 your initial lien that you recorded against the subject
18 property?

19 A. That's what it appears to be, yes.

20 Q. Okay. Now, let's go to Exhibit 2. Did you
21 authorize -- well, strike that. You actually signed it.

22 This is an Amended Notice of Lien that you recorded?

23 A. Correct.

24 Q. Why did you record the Amended Notice of Lien?

1 A. Without reading through all the documents, I don't --
2 including the Amended Notice, I don't remember off the top of
3 my head.

4 Q. Well, why don't you go ahead and take a look at the
5 document and compare it with the first Notice of Lien, see if
6 that helps refresh your recollection.

7 THE COURT: While he's doing that, just so I'm
8 clear -- just keep going ahead and looking at it,
9 Mr. Steppan -- Mr. Hoy and Mr. Pereos, on Exhibit No. 1 -- I
10 think it might have to do with the photocopying process -- just
11 so we're all clear, that date is November 7th of 2006, not --

12 MR. HOY: Yes.

13 THE COURT: -- not 2005; is that correct?

14 MR. PEREOS: Yes, Your Honor.

15 THE COURT: Okay. Because it almost looks like a
16 five, so I just want to make sure we're talking the same date,
17 November 7, 2006, the first lien is placed on the property.

18 MR. PEREOS: Yes.

19 MR. HOY: The recorder's stamp is a little clearer on
20 the subsequent pages, Your Honor.

21 THE COURT: It was. And the reason that I even raised
22 the issue was, I went back and I had always, by looking at that
23 document, assumed that that was a five; but then when I looked
24 at Exhibit 3, because Mr. Pereos referenced Mr. Steppan to

1 that, it says in the second line, "the original Notice and
2 Claim of Lien, recorded November 7, 2006." And so that made me
3 go back and make sure. So I'm good with 2006. Thank you.

4 THE WITNESS: The main difference that I can see, in
5 this cursory review, is the paragraph that altered the amounts
6 being requested as part of the lien, from the 1,700,000 and
7 change number to a \$1,939,000 number.

8 BY MR. PEREOS:

9 Q. Okay. So what had happened was, an amended lien was
10 recorded altering the amount of the claim?

11 A. Correct.

12 Q. Okay. Did you serve a pre-lien notice before you did
13 the second -- or the first amended lien, being Exhibit 2?

14 MR. HOY: Objection, irrelevant, Your Honor.

15 THE COURT: I believe -- I know that this was the
16 subject of pre-trial motion practice. If memory serves me
17 correctly, at the beginning of the trial, Mr. Pereos indicated
18 that he would just like to make a record.

19 MR. PEREOS: That's right.

20 THE COURT: If that's all he's doing, the Court will
21 not modify any previous orders that have been issued in this
22 case. However, if just for the purposes of making a record and
23 for the purpose of appeal, if you would like to ask those
24 questions, I'll allow him to ask the questions.

1 With that understanding do you have any objection,
2 Mr. Hoy?

3 MR. HOY: No, Your Honor.

4 THE COURT: Thank you.

5 BY MR. PEREOS:

6 Q. Did you serve a pre-lien notice before doing
7 Exhibit 2?

8 A. I don't remember. I don't believe so.

9 Q. Did you cause it to be recorded?

10 A. Did I cause what --

11 Q. Did you arrange to have it recorded?

12 A. I'm sorry. Can you rephrase -- repeat the question?

13 Q. Did you authorize the recording or -- the recording or
14 service of a pre-lien notice?

15 MR. HOY: Object, compound. Also, you don't record a
16 pre-lien notice.

17 MR. PEREOS: All right. I'll rephrase it.

18 THE COURT: You can ask the question. And I would
19 divulge ignorance to the fact that you don't record the
20 pre-lien notice, but I will take Mr. Hoy's representation,
21 unless Mr. Pereos can cite me to some contrary position.

22 MR. PEREOS: That's fine.

23 THE COURT: Sustained.

24 Go ahead.

1 BY MR. PEREOS:

2 Q. Did you authorize a pre-lien notice to be served?

3 A. I don't remember authorizing a pre-lien notice.

4 Q. All right. Let me show you this document and ask if
5 it refreshes your recollection as to whether or not a pre-lien
6 notice was prepared.

7 A. That looks like a pre-lien notice.

8 Q. Okay. And is it signed by Gayle Kern?

9 A. Yes.

10 THE COURT: Stop, stop.

11 MR. PEREOS: Okay. I'm sorry, I'm sorry, Your Honor.

12 THE COURT: Mr. Pereos, please let me talk and then
13 I'll give the floor back to you.

14 The process for refreshing recollection is to provide
15 the document that refreshes the recollection and then ask the
16 question, "Does that refresh your recollection?"

17 MR. PEREOS: I'm sorry.

18 THE COURT: And ask the question again. So I don't
19 know if it refreshes his recollection or not.

20 So now, having reviewed that document, does it refresh
21 your recollection whether or not you authorized a pre-lien
22 notice?

23 THE WITNESS: No, I just don't remember.

24 MR. PEREOS: Okay.

1 BY MR. PEREOS:

2 Q. Now, you learned around September or October of 2005
3 that the client in the AIA, as identified later in the AIA
4 contract, was not the owner of the property; isn't that
5 correct?

6 A. I can't say that's true or not true, because I don't
7 remember what the first date of meeting the client was. It
8 might have been late September, early October. And I really
9 don't remember if at that time that was disclosed or not
10 disclosed.

11 Q. Can I have the deposition -- well, let me --
12 Mr. Steppan, do you remember your first deposition being taken
13 on September 29, 2008?

14 A. I know one was taken.

15 Q. Do you remember it being taken on September 29, 2008?

16 A. No, I don't remember the date, other than the year.

17 MR. PEREOS: Do we have the original or do you want me
18 to bring in a copy?

19 MR. HOY: Let me see what I've got here.

20 I have all four volumes, the first of which is
21 September 29, 2008; I have a volume, February 16, 2010; Volume
22 II, March 2, 2010; and a Volume III, March 3, 2010. And I will
23 just deliver these to the clerk.

24 THE CLERK: Do you want them all filed?

1 MR. HOY: Oh, it's up to Mr. Pereos.

2 MR. PEREOS: I don't know if we need to open and
3 publish, except -- may I have the first one opened and
4 published, Your Honor, the one that is dated February 29, 2008?

5 THE COURT: That's fine. The record will reflect that
6 the documents -- that the four volumes have been at least
7 proffered by Mr. Hoy. The only volume so far that has actually
8 been offered by Mr. Pereos is Volume No. 1. And so Volume I of
9 Mr. Steppan's pretrial deposition testimony will be offered and
10 admitted.

11 THE CLERK: The deposition of Mark Steppan, dated
12 Monday, September 29, 2008, is opened and published.

13 MR. HOY: I was concerned, Your Honor, I thought I
14 heard you say that it was offered and admitted.

15 THE COURT: No.

16 MR. HOY: Okay.

17 THE COURT: I apologize, I misspoke, it is not
18 admitted.

19 MR. HOY: All right. Thank you.

20 THE COURT: It is offered. And I believe the correct
21 term is "published."

22 MR. HOY: Correct.

23 BY MR. PEREOS:

24 Q. Let me direct your attention to page 9 of your

1 deposition. If you will read to yourself -- tell me when you
2 are there -- commencing on line 6, down to line 21.

3 A. Okay.

4 Q. Were those questions asked of you and those answers
5 given?

6 A. Yes.

7 Q. "Question" --

8 MR. HOY: Wait. Are you asking the witness to refresh
9 his recollection or are you trying to impeach him?

10 MR. PEREOS: I believe the last question before the
11 witness is whether or not they knew that the owner, around
12 September, October of '05, okay, was not the client or the --
13 was not the -- the owner of the contract was not the owner of
14 the land. I believe that was the last question.

15 THE COURT: Right. And I think Mr. Hoy is correct. I
16 think that the witness can review the deposition and refresh
17 his recollection. And if he reviews it and it does refresh his
18 recollection, then he can answer the question without the
19 testimony or the statements in the deposition being read into
20 the record.

21 If, as I stated before, the witness cannot refresh his
22 recollection, if he testifies consistently with the way he
23 testified regarding -- I think it was Ms. Kern's activities --
24 even reviewing what you provided him, it doesn't refresh his

1 recollection, then it can be, you know, a prior sworn statement
2 and it can be read in.

3 But I think you have to go through that first step
4 first of, "Have you refreshed your recollection, and now having
5 refreshed your recollection, can you answer the question?"
6 Then you can go to the next step of using the affidavit -- or,
7 excuse me, the deposition testimony.

8 MR. PEREOS: Okay. I'm a little confused only because
9 my understanding of the rules is the deposition of a party can
10 be used for any purposes.

11 THE COURT: Well, it can be used -- I agree with you
12 100 percent, Mr. Pereos, it can be used for any purpose. One
13 of those purposes is refreshing his recollection.

14 MR. PEREOS: All right. Okay.

15 MR. HOY: Actually, I'm going to withdraw -- well, I
16 didn't make an objection, but I think Mr. Pereos is correct,
17 that the prior sworn testimony of a witness -- of a party to
18 the case is not hearsay, so --

19 THE COURT: I'm not disagreeing with you that it's
20 hearsay.

21 MR. HOY: All right.

22 THE COURT: The issue that was raised was refreshing
23 recollection.

24 MR. HOY: Yes.

1 THE COURT: So you can refresh your recollection with
2 hearsay. You can't read it into the record, but you can
3 refresh your recollection with anything. The old example from
4 law school, you can refresh somebody's recollection with a ham
5 sandwich. It doesn't matter what it is that refreshes the
6 recollection.

7 So go ahead, Mr. Pereos. I apologize for divulging
8 from your cross-examination, but I will allow you to ask any
9 question at this moment and we'll just proceed forward from
10 there.

11 BY MR. PEREOS:

12 Q. Okay. In your deposition at that place that you
13 testified, did it refresh your recollection as to your
14 testimony as to what you knew in September of '05?

15 A. The only thing it's refreshed my memory on is that it
16 reminds me that at that time I remembered a date that there was
17 a meeting at; otherwise, the rest of the testimony is
18 consistent with what I've just said. So I didn't have any
19 additional refreshment.

20 THE COURT: And now if you want to ask him a question
21 based on his testimony, go right ahead, Mr. Pereos.

22 BY MR. PEREOS:

23 Q. Did you testify at that time that you knew in
24 September of '05 that the client in the AIA contract was not

1 the owner of the property?

2 A. What I testified to was that at some point thereafter,
3 we knew it was not owned by your client.

4 THE COURT: Well, based on that --

5 THE WITNESS: Not at the September 5th meeting, that I
6 knew.

7 THE COURT: Okay. On the September 5th meeting --
8 strike that.

9 You just testified at some point after the
10 September 5th meeting, you found out that the land owner was
11 not your client, correct?

12 THE WITNESS: Correct.

13 THE COURT: So presumably you would have had that --
14 the knowledge back on the September 5th meeting, wouldn't you?

15 THE WITNESS: No.

16 THE COURT: Maybe I'm missing something.

17 THE WITNESS: At the September 5th meeting, a meeting
18 with Sam and John Schleining and Calvin Baty, we were talking
19 about the project and there was no discussion of who actually
20 owned the land at that meeting.

21 But later in September or early October, we had
22 subsequently learned that our client-to-be did not actually own
23 the land yet. That's consistent with my testimony in the
24 deposition and my current understanding.

1 THE COURT: Thank you. And now I understand exactly
2 what your testimony was. It just got a little muddled there
3 for a moment.

4 THE WITNESS: Sorry about that.

5 THE COURT: That's okay.

6 Was it your understanding that Mr. Caniglia and the
7 other people were the owners of the property when you were
8 initially meeting with them in September of 2005?

9 THE WITNESS: I don't remember even thinking about it
10 one way or the other.

11 THE COURT: Next question, Mr. Pereos.

12 BY MR. PEREOS:

13 Q. Direct your question to -- so is it your testimony
14 that -- that between August 31, 2005, when you first had your
15 meeting with Sam Caniglia, and April 21, 2006, the date of the
16 contract, okay, that you did not know that Mr. and Mrs. Iliescu
17 owned the subject property?

18 MR. HOY: Objection, no foundation as to the
19 August 31st of 2005, date.

20 MR. PEREOS: It was October. I'll rephrase the
21 question.

22 THE COURT: I think you did say "August," so I will
23 let you rephrase the question.

24 MR. PEREOS: I'll rephrase. Okay.

1 BY MR. PEREOS:

2 Q. Between October 31, 2005, and April 21, 2006, did you
3 know that Dr. and Mrs. Iliescu owned the subject property?

4 A. I do not know when I learned of that piece of
5 information, which is consistent with the testimony in the
6 deposition in 2008.

7 Q. Let me direct your attention to page 54 of your
8 deposition. Read to yourself lines 1 through line 9.

9 MR. HOY: I'm sorry, the lines again?

10 MR. PEREOS: Lines 1 through line 9.

11 MR. HOY: Thank you.

12 THE WITNESS: Okay.

13 BY MR. PEREOS:

14 Q. Did you testify at that time that you knew that
15 Dr. and Mrs. Iliescu owned the property, at the time frame of
16 October 31, 2005, to April 21, 2006?

17 A. Yes, that's what I said during the deposition.

18 Q. Now, the first time you met Dr. Iliescu was after the
19 lawsuit was filed; is that correct?

20 A. That's correct.

21 Q. And that you didn't have any interaction with
22 Mr. Iliescu before the contract was signed?

23 A. That's correct.

24 Q. And none of your firm members had any contact with

1 John Iliescu before the contract was signed?

2 MR. HOY: Objection, foundation.

3 THE COURT: Mr. Pereos?

4 MR. PEREOS: He can testify what his knowledge is.

5 THE COURT: He can testify to his own personal
6 knowledge, but he can't testify to the knowledge of other
7 people in his firm.

8 And, therefore, you can testify just based on what
9 your knowledge is regarding the contact of the firm.

10 THE WITNESS: Sure. I'm personally am not aware of
11 other employees' contact with Dr. Iliescu --

12 MR. PEREOS: Fine.

13 THE WITNESS: -- prior to April of 2006.

14 BY MR. PEREOS:

15 Q. This was the first occasion that you ever had to be
16 the architect on an agreement for work that was being done by
17 FF&A; is that correct?

18 A. Please rephrase the question.

19 Q. Sure. This was the first occasion that you had or
20 were the contracting party on an architectural agreement for
21 work that was going to be done by FF&A?

22 A. I don't know that that's true or not true.

23 MR. PEREOS: May I have the second volume of the
24 deposition opened and published, Your Honor, being -- I believe

1 it was February 16, 2010.

2 THE COURT: Yes.

3 Any objection, Mr. Hoy?

4 MR. HOY: No.

5 THE CLERK: The deposition of Mark Steppan, dated
6 Tuesday, February 16, 2010, is opened and published.

7 MR. PEREOS: Thank you.

8 BY MR. PEREOS:

9 Q. Let me direct your attention to page 71, please.

10 A. Okay.

11 Q. And if you will commence reading to yourself, starting
12 on line 8 and go to page 73, line 18. And I'd ask if that
13 refreshes your recollection in connection with my last question
14 to you?

15 A. You wanted me to go to how far?

16 Q. Page 73, line 18.

17 A. Okay. I've read it.

18 Q. Okay. Now, did you previously testify that this was
19 your first contract of this nature?

20 A. That -- I don't believe that was your earlier
21 question.

22 Q. Okay. So let me rephrase my earlier question to make
23 it easier for you.

24 The AIA contract that's marked Exhibit 6, signed by

1 you, was the work -- was it anticipated that most of the work
2 would be done by FF&A?

3 A. Yes.

4 Q. Okay. Had you previously ever signed such an
5 agreement while you were affiliated with FF&A?

6 A. By "such an agreement" -- if I may ask you a question
7 for clarification, by "such an agreement," do you mean signing
8 an AIA agreement?

9 Q. In your individual capacity.

10 A. So it's a capacity where the firm listed is my name?

11 Q. With your name versus a firm name.

12 A. I have done work signing contracts under my name, not
13 where Fisher-Friedman was going to do the bulk of the work, a
14 contract under my name.

15 Q. Had you done work signing an AIA contract?

16 A. I'm sorry, please repeat.

17 Q. Had you done work under your name where an AIA
18 contract was signed?

19 A. No.

20 Q. So had you ever signed an AIA contract in your name
21 alone?

22 A. Not that I'm aware of.

23 Q. Now, FFA, Fisher-Friedman Associates, is not licensed
24 in Nevada; is that correct?

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN
ILIESCU, JR. and SONNIA SANTEE
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT,

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346
Washoe County Case No. CV07-
00341
(Consolidated w/CV07-01021)

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME V**

Appeal from the Second Judicial District Court of the State of Nevada
in and for the County of Washoe County
Case No. CV07-00341

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DOCUMENT INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
12	04/17/08	Applicants/Defendants' Motion for Partial Summary Judgment including Exhibits 2, 4, 5, 6, (first 24 pages of) 7, 10, 11, & (first 12 pages of) 12	II	AA0230-0340
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
23	07/11/13	Motion to Strike Jury or Limit Demand without Exhibits	III	AA0582-0586
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
32	12/06/13	Trial Stipulation	IV	AA0729-0735
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
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38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753
	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923
45	06/10/14	Hearing Brief Regarding Calculation of Principal and Interest	VIII	AA1924-1931

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50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383

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58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	X	AA2449-2453
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484

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69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
		SUPPLEMENTAL DOCUMENTS¹		
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571

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68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

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7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484
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18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
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30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
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34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753

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	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887

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	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
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52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
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63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624

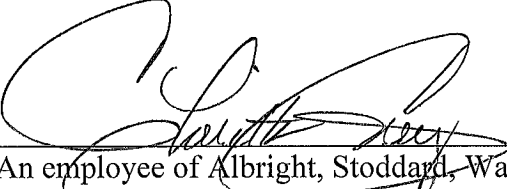
DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571
32	12/06/13	Trial Stipulation	IV	AA0729-0735

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME V**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.
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An employee of Albright, Stoddard, Warnick & Albright

1 the city statutes in order to retain our grandfathering
2 for the zoning which basically is completed schematic
3 design.

4 So the documents that we submitted were the
5 elevations, the floor plans, the column and bay
6 spacing, the description of the exterior materials,
7 et cetera, et cetera. We built a whole model of the
8 City of Reno. We did a fly-through, computer
9 fly-through. But all that had to go in.

10 And we had Wood Rodgers representing us, because
11 they had civil engineering documents that they had to
12 submit in order to comply with these-- And we got in
13 the night before.

14 THE COURT: You wanted to get that ball rolling, as
15 they say.

16 THE WITNESS: We had no choice.

17 THE COURT: Right. Okay. Thank you.

18 Go ahead.

19 BY MR. HOY:

20 Q I ask you to turn back to Exhibit No. 6. And
21 in the lower right-hand corner of most of these
22 exhibits there are some numbers. And those numbers
23 tell us who produced the document and tells us the
24 unique identifier for each document. And what I would

1 like you to do is find a document labeled Steppan
2 007503.

3 A I don't know if I'm looking at the right thing.

4 MR. HOY: May I approach, Your Honor?

5 THE COURT: Um-hum. Go ahead.

6 THE WITNESS: All right. 7503.

7 BY MR. HOY:

8 Q Okay. So Section 1.3.3.1.

9 A 1.3--

10 Q It's right at the very top.

11 A Okay.

12 Q 1.3.3.1, Changes in Services of the Architect.

13 A Right.

14 Q Were there times in the course of doing work on
15 the Reno Wingfield Towers project that your firm did--
16 that your firm performed services that weren't part of
17 the original scope of this--

18 A Correct.

19 Q --Exhibit 6?

20 A Correct.

21 Q Can you give the Judge an overview of the
22 additional services that were performed?

23 A We were contacted by the head of the church
24 next door and were asking assistance for-- to solve

1 their parking problem, because when the congregation
2 meets on Sundays or special occasions, they didn't have
3 enough parking. And they had been using street parking
4 and getting by. And we were proposing in our building
5 a large parking garage.

6 They also wanted to see if we could assist them in
7 doing a big meeting hall for their congregation so that
8 they would have a place to celebrate occasions.

9 So at the top of the hill on Court Street we did a
10 study to show how we could build a garage that was
11 shared with the congregation and with Wingfield Towers
12 and elevators connecting the church to the garage. And
13 then on top of that, we made a proposal for a big
14 congregation room for functions, you know, wedding
15 ceremonies, et cetera, et cetera.

16 We also looked at-- we did some special studies for
17 Dr. Iliescu's proposed restaurant and the setbacks
18 required and how we could honor his building, because
19 he wanted to build a restaurant. And we did extra
20 studies looking to do additional parking across the
21 street on Court Street, and even including the historic
22 building on the corner of Court and I can't remember
23 the name of the street that crosses the bridge.

24 So those were a number of tasks that we looked at,

1 because if we could substitute an on-grade parking or
2 above-grade parking space for a below-grade parking
3 space, it was a financial incentive, and we hoped we
4 could save enough money to actually build the room for
5 the congregation and save money in the process.

6 THE COURT: So those would all be billed out at a
7 different hourly rate that has nothing to do with the
8 5.75 percent?

9 THE WITNESS: No, it has nothing to do with the
10 5.75 percent.

11 THE COURT: It's just additional work you're doing?

12 THE WITNESS: It was additional work on an hourly
13 basis, but we never did get paid. But it was-- you
14 know, it was a meritorious study, because it could help
15 our neighbor. And our neighbor was concerned about the
16 noise coming from Wingfield Tower and our owners were
17 concerned about the chiming of the bells early Sunday
18 morning.

19 THE COURT: When you say you didn't get paid, did
20 you have to go to BSC to get approval or someone to get
21 approval to do this additional study?

22 THE WITNESS: BSC asked us to do the study.

23 THE COURT: Okay.

24 THE WITNESS: Well, it's to their advantage. It

1 was a good idea.

2 THE COURT: Okay. Go ahead.

3 BY MR. HOY:

4 Q Mr. Friedman, can you please take a look at
5 Exhibit No. 20. Exhibit No. 20 is a May 31st, 2006
6 letter not signed by Mark Steppan but signed by Sam
7 Caniglia and Cal Bosma. And the re line on it is:
8 Architectural adjacent church parking studies
9 agreement.

10 A Correct.

11 Q And is this a letter that authorizes
12 Mr. Steppan to perform these additional services with
13 respect to the church parking issue that you were just
14 talking about?

15 A Yeah. And there's an estimated cost in there
16 of between 5- and \$10,000 to do the study, and that
17 seems about right.

18 Q And then down on the very last paragraph, it
19 says, "We will track this work effort under Project No.
20 0515-03 and 0515-03R."

21 A Okay.

22 Q Can you explain to the Court what that means?

23 A When Mark comes up, ask him.

24 Q Fair enough.

1 A That's bookkeeping. I run the studio. I don't
2 run bookkeeping and accounting.

3 Q I ask you now to--

4 A But I can tell you the 05 stands for the year.
5 Okay. And the date is the 15th-- Well, I don't know.
6 The 15th day of the third month is probably what-- No.
7 The other way around, Mark? Mark will explain.

8 THE COURT: We'll wait to hear from somebody else.

9 MR. HOY: Yes, please.

10 BY MR. HOY:

11 Q Mr. Friedman, can you please look at Exhibit
12 No. 19. Exhibit No. 19 is a May 31st, 2006 letter
13 agreement signed by Mr. Caniglia that appears to
14 authorize Mr. Steppan to provide additional services
15 called architectural building massing model exhibits.
16 Do you know what is meant by that?

17 A Yes. We built several models for the owners to
18 show at the different community meetings and the city.
19 Some of them were large scale models in foam showing
20 the massing of the building and Mr. Iliescu's adjoining
21 buildings that related to the river. The big model was
22 about, oh, five-by-ten feet that showed the whole City
23 of Reno in foam so that anybody could see how the
24 buildings were in context with-- how the buildings

1 would work in the context of the city. And that's here
2 someplace in Reno. We've lost track of it.

3 Q Mr. Friedman, can you please turn to Exhibit
4 No. 21.

5 MR. HOY: This is not in evidence, Your Honor.

6 BY MR. HOY:

7 Q Mr. Friedman, this is unsigned letter dated
8 August 10th, 2006, regarding City Staff Meeting (Vern
9 Kloos), K-l-o-o-s, Requested Studies Agreement. Did
10 you have any discussions with BSC Financial about
11 performing additional services requested-- or having to
12 do with the city staff meeting?

13 A Well, we worked with Kloos a lot, closely with
14 Kloos. And our final solution with showing exhibits
15 was to do what I don't believe had been done in Reno
16 before. It was to do a big fly-through for the entire
17 project.

18 Q Did the city staff generate a list of questions
19 that BSC then asked you to go study?

20 A Yes.

21 Q Okay. Can you give us some idea of what those
22 questions were?

23 A Well, the questions they asked are pretty
24 normal in large cities today, urban development. They

1 want to know what the shadow studies are of the
2 building. They want to know how you're taking care of
3 environmental situations. They want to know about
4 energy on the building. They want to know about wind
5 studies. They want some idea of what the structure is
6 going to be like. They want a list of materials,
7 et cetera, et cetera, et cetera. So they want to know--

8 In this particular case there wasn't a request for
9 affordable housing, but we had-- So we were very, very
10 lucky, because we had some young hotshots that were
11 really up to date in computer skills. So using GPS and
12 shadow studies on the computer, we recreated the entire
13 City of Reno. So we could fly down any street in Reno
14 and show our building and superimpose our buildings.
15 And we could do it at any hour of any moment during the
16 year, the season. And we could show how the sun would
17 be reflected on the building, what it would look like
18 from upriver, from downriver.

19 One of the councilmen lived down the street and he
20 wanted to know what his building would look like when
21 he stepped out of his driveway. So we did that. We
22 did it seasonally so he could see what would happen if
23 there was snow on the trees and in autumn and summer.

24 And we were pioneers in that technology. But,

1 luckily, these kids coming out of school knew how to do
2 it but us old-timers didn't. And if Pixar had done it,
3 it would probably cost a half a million dollars. And
4 we did it for about 60K.

5 Q So the City of Reno posed questions to the
6 developer and the developer asked you to provide
7 answers to those questions?

8 A Yes, but they didn't ask us to do the
9 fly-through. Fly-throughs were not common then. But
10 we did the fly-through.

11 Q And so your firm billed BSC Financial to answer
12 those questions generated by the city review process?

13 A Right.

14 Q And then the video fly-through, is that
15 something that BSC Financial asked your firm to do?

16 A Well, when we described it to them, yes, but
17 they didn't even know this stuff existed.

18 Q And was the fly-through helpful in getting any
19 entitlements through the city council?

20 A We took the-- There were two versions of the
21 fly-through, one longer and one shorter. The one
22 longer I think went for 12 minutes and we finally
23 edited it down to three minutes. But we could answer
24 any question that anybody ever asked.

1 And we showed it to all the community
2 organizations. And if they wanted to know what the
3 building looked like from downtown or across the river
4 or from the moon, we could show it to them. And it was
5 pretty amazing. And we got it down to a three-minute
6 version that was narrated by the attorney that
7 represented the developer at the city council meeting.

8 And they all applauded and said they had never seen
9 such a thing and said this would be an asset to the
10 city. We had a big celebration. Iliescu was there,
11 his wife was there. Everybody hugged and kissed and we
12 thought we had a project.

13 Q Okay. Let's shift gears a little bit.

14 THE COURT: Let's not shift yet, Mr. Hoy. You just
15 identified Exhibit No. 21. Was that just for the
16 witness's point of reference? You said that it's not
17 admitted.

18 MR. HOY: Right. I'm not going to offer it.

19 THE COURT: He hasn't testified to anything on it.
20 You're not offering Exhibit 21?

21 MR. HOY: Not at this time, Your Honor.

22 THE COURT: Okay. Thank you. Go ahead. I just
23 didn't want to move on without making that note.

24

1 BY MR. HOY:

2 Q Mr. Friedman, are you familiar with the term
3 instruments of service--

4 A Yes.

5 Q --as it is used in the architectural
6 profession?

7 A Yes.

8 Q What does instruments of service mean to you as
9 an architect?

10 A It describes all of the services that the
11 architect is going to provide during the course of
12 design, execution and then finally construction and
13 management, construction management, through to the
14 final payments of the project.

15 Q Do instruments of service include sketches?

16 A Yes.

17 Q Elevations?

18 A Yes.

19 Q Floor plans?

20 A Yes.

21 Q Renderings?

22 A Yes.

23 Q Blueprints?

24 A Let me make a correction. They're not

1 blueprints anymore.

2 Q I know.

3 A That's old fashioned.

4 Q Okay. CAD drawings?

5 A Yes.

6 Q Technical specifications for construction
7 purposes?

8 A Yes.

9 Q In this case the video fly-through, would you
10 consider that--

11 A That would not be a normal instrument of
12 service.

13 Q Okay. How about the shadow studies?

14 A That would not be a normal instrument of
15 service. Usually those kinds of things show up when
16 they hire a special consultant to do any IR for a
17 building.

18 Q What do you mean by "IR"?

19 A Environmental impact report. They would hire
20 an independent firm to do an environmental impact
21 report and their attorneys get together with the
22 developer's attorneys and they argue about it and
23 finally a decision is made whether-- you know, who's
24 right and the project proceeds. In this particular

1 case, because of the existing zoning, there's no EIR
2 required.

3 Q All right.

4 THE COURT: What do you mean by "EIR"?

5 THE WITNESS: Environmental impact report. In
6 layman's terms, the Truckee River can flood.

7 THE COURT: I've seen it. It occurs.

8 THE WITNESS: And it floods to the degree that it
9 would flood our garage.

10 THE COURT: I was wondering about that already.

11 THE WITNESS: So I've got an answer for you. So we
12 would-- They would ask us, Well, how are you going to
13 keep the garage from flooding? Okay. And we had to
14 come up with an answer of how to keep the garage from
15 flooding. So that would be an environmental impact.

16 Another environmental impact would be like a day
17 like today. How are you going to keep these plazas
18 from freezing and keep the-- you know, the occupants of
19 the building safe from falling down? So we would use
20 heat trace and we heat all the pavement.

21 That would all show up in an environmental impact
22 report. And it's pretty standard now in most major
23 cities.

24

1 BY MR. HOY:

2 Q Mr. Friedman, you had mentioned earlier this
3 afternoon that you were in charge of the studio.

4 A Correct.

5 Q With respect to this Wingfield Towers project
6 or BSC Towers project in Reno, can you please give us
7 an overview of what your job duties were?

8 A I'm going to get a little artistic with the
9 Judge's permission.

10 THE COURT: Go ahead.

11 THE WITNESS: And I'll use names that should be
12 familiar, Leonardo da Vinci and Michelangelo.

13 THE COURT: I've heard of them.

14 THE WITNESS: Michelangelo was asked, "Well when
15 you were working on the statute of David, what do you
16 do?"

17 And the response was, "I didn't do anything. He
18 was always there. All I had to do was chip away the
19 stone."

20 There are various methods of designing now.
21 Remember, I'm a visiting professor and I've taught all
22 over the world. Some people rely on computers and they
23 do computer renderings and they put all the criteria of
24 a building in and they punch it up on a keyboard and

1 type away and think a building pops out of it.

2 Eric Mendelsohn and some of these people,
3 psychiatrists, think about the aha experience. So some
4 designers have-- Frank Gehry is one of those. He had
5 an aha experience. They can visualize this thing in
6 their dreams and they just get up the next morning and
7 draw it.

8 I'm in that camp. So I don't have to sit at a
9 computer and do all this stuff. My computer is an
10 Eagle drafting pencil, or now a pen. And I've got the
11 good fortunate of dreaming in technicolor and I see all
12 these things and the next day I just get up and draw
13 it.

14 And if I draw it and it doesn't work, I rumple up
15 the paper and throw it away. Ninety percent of the
16 time it works. And having enough developer experience
17 and working with 80 percent of our clients who are
18 developers, we know what the limits are for building
19 design, so we know pretty much whether they're feasible
20 or not before we present it to our client. And they
21 always say-- you know, 90 percent of the time
22 everything goes through on the first take.

23 BY MR. HOY:

24 Q All right. So I take it--

1 A So in running the studio, getting back to your
2 question, I provide the sketches to the other people in
3 the studio and then they use the computer drawings to
4 delineate what I've sketched.

5 Q Do you then supervise those people that take
6 your sketches and turn them into CAD files?

7 A Yes.

8 Q And how many people-- during late 2005, early
9 2006, how many people were in the studio for
10 Fisher-Friedman Associates?

11 A Well, the office had around 50. I think our
12 staff was around 50 when we were first engaged. And at
13 various times that group of people might vary from five
14 to ten at different tasks. Plus outside consultants
15 that we were using to do delineations and renderings
16 and et cetera, et cetera. So it seems like a zoo, but
17 it's very, very easy to run if you've got skilled
18 people on the project.

19 THE COURT: Is CAD C-A-D? Is that
20 computer-animated design or drawing?

21 THE WITNESS: Yes.

22 THE COURT: Which one?

23 THE WITNESS: Drawing.

24 MR. HOY: It can be either.

1 THE COURT: Either one. Okay. But they're just
2 the people who-- you give the-- you're the creative
3 genius, you give it to the computer geek and he makes a
4 picture?

5 THE WITNESS: Bingo.

6 THE COURT: I'm the guy you give it to.

7 THE WITNESS: Bingo.

8 BY MR. HOY:

9 Q All right. How many employees of
10 Fisher-Friedman Associates would you say worked on this
11 Reno project in the studio?

12 A I'm going to have to give you a guess. I'll
13 say--

14 Q You can't guess.

15 THE COURT: Approximate.

16 THE WITNESS: Approximately five to ten, depending
17 on the task that needed to be taken care of at hand.

18 BY MR. HOY:

19 Q Now, you mentioned earlier that you had some
20 dealings with Ron Klemencic. Did you deal with
21 Mr. Klemencic with respect to this Reno project?

22 A Correct, yes.

23 Q What dealings did you have with Mr. Klemencic
24 on the Reno project?

1 A We first got involved with him on a highrise
2 project we were doing in Seattle. We realized that he
3 knew more about concrete than we did. He was one of
4 the innovators in this computer-assisted design for
5 reinforced concrete and later on did some of the
6 tallest buildings in the world.

7 He was on the structural engineering team that did
8 the Petronas Towers that Cesar Pelli did in Malaysia,
9 the twin towers. And he was a friend of ours, so I
10 gave him a call and described this project and he flew
11 down from Seattle. They're headquartered in Seattle.

12 And they are so skilled that they could look at our
13 floor plans and set the column and bay spacing. And I
14 had worked with him before, so I pretty much knew what
15 had to go up here. These buildings with subterranean
16 garages, you really have to do the column and the bay
17 spacing in the garage and project it up through the
18 building. And he sized the columns for us and gave us
19 the floor-to-floor heights and the beam heights and
20 the slab thicknesses. He could do that in an
21 afternoon. He didn't do the rebar and all of the, you
22 know, computer-assisted engineering.

23 But what happens when you go into the city review,
24 the city staffs-- none of the city staffs are equipped

1 to evaluate the drawings the engineers provide. So
2 they will go to peer review with the structural
3 engineers at the University of Nevada or Berkeley or
4 UCLA. And all the computer files that the engineers
5 produce are reviewed by the peer review. And there's a
6 half a dozen of these people and that's all they do.

7 And I'm sure the University of Nevada has those skills.

8 So they would-- And they get paid. A developer
9 has to pay. And then after the review process, it goes
10 to the-- you know, the city staff and then they punch
11 it.

12 So we had gone through enough in the schematic
13 design that we were confident we could hold up the
14 building. What happens in these concrete buildings is
15 the reason they work is-- It goes back to some of the
16 highrises Frank Lloyd Wright designed for the
17 earthquakes in Japan. --there's a huge concrete column
18 in the middle of the building or surrounding the
19 elevator shafts. And they're immensely reinforced with
20 steel, but the walls are five, six, seven, eight feet
21 thick and they surround the elevator shafts. So it's
22 like building this tree trunk. Okay.

23 Then the beams come out and the exterior columns,
24 there's span-- there's limits on the spans you can have

1 and the depth of those beams to support the exterior
2 skin of the building. But it's this trunk that holds
3 up the building. And they're building one that they've
4 proposed for Saudi Arabia which is going to be a
5 thousand meters which is over 3000 feet tall. One in
6 Dubai is 25-, 2600 feet. And that's how they do it.
7 Same concept Frank Lloyd Wright put together in the
8 '20s.

9 Q Mr. Friedman, did the schematic design created
10 for the Reno Wingfield Towers project include some
11 structural engineering?

12 A Yes. Klemencic did the column and bay spacings
13 for it. We incorporated-- We didn't have an agreement
14 yet to fill. Our clients were tardy in payment. So we
15 designated Klemencic to be the structural engineer, and
16 he did this for us under the-- under the proviso. We
17 he had already done projects together before. So he
18 knew that if it went ahead, they would go forward, and
19 he did this work for us.

20 Q Did the schematic design created for the
21 Wingfield Towers project by your firm include any
22 mechanical engineering?

23 A Yeah. We had C&B, which are mechanical
24 engineers that we've been working with for 50 years.

1 And they came up with two schemes for the MEP. In
2 these tall buildings--

3 THE COURT: Mr. Friedman--

4 Hold on a second, Mr. Hoy.

5 Mr. Friedman, I know that you're used to saying
6 acronyms all day long and people understand exactly
7 what you're saying. But assume that I have no idea
8 what you're talking about when we create a record. So
9 when you say "MEP" or "CAD," you've got to identify
10 what it is that you're actually saying and then you can
11 use the acronym.

12 THE WITNESS: Mechanical engineer.

13 THE COURT: Thank you.

14 BY MR. HOY:

15 Q And MEP actually means mechanical, electrical
16 and plumbing?

17 A Right. So we had-- we had one firm that does
18 mechanical, electrical and plumbing for us, and they
19 are a multidiscipline firm. And it's C&B Engineers in
20 San Francisco. And we've been working with them since
21 the time before there were C&B.

22 And when this whole technology changed for these
23 ultra-tall buildings, the mechanical, electrical and
24 plumbing changed, okay, because now you couldn't just

1 put a mechanical equipment room on the roof and service
2 a whole building. So on our 17th floor we had an
3 additional mechanical equipment room. And on the roof
4 we had another mechanical equipment room. And then the
5 elevators have to be very, very carefully done, because
6 we have something called stack effect.

7 Now, I'm going to elaborate. Stack effect is like
8 a piston effect. When the elevator goes up and down,
9 it causes the building to shake or unwanted noise to
10 the tenants. So they have to be very, very careful
11 with the stack effect. So you have special elevator
12 consultants come in to reduce this.

13 And sometimes they stage the elevators. One
14 elevator will go up to the 20th floor and the second
15 elevator goes up to the remaining floors, et cetera,
16 et cetera, so you don't--

17 And then the same thing is true with the ducting
18 systems for the air conditioning, because the ducts get
19 so big that when you put the motors on the roof, the
20 exhaust, it creates so much velocity it can shake the
21 building. And it's not good to shake the building.
22 You make lots of noise. So it creates a stack effect.

23 So they have-- This gets complicated. So in
24 Vancouver, when we did our projects in Vancouver, we

1 had lots of 60-story buildings that were proposed. We
2 didn't design any of them. We did the master plan for
3 the government. They had cores in the horizontal slabs
4 of the building that were hollow and they could bring
5 in air horizontally and evacuate air horizontally and
6 reduce the stack effect.

7 We had-- at the time that we submitted the
8 building, we allowed for the floor-to-floor height, so
9 we had the choice of either coming in horizontally or
10 figuring out how to do it vertically.

11 I hope that answers your question.

12 Q I think we've got the flavor of what your
13 involvement with the project was.

14 Let me turn now to Nathan Ogle. I believe it's
15 O-g-l-e.

16 A Right.

17 Q Mr. Ogle's name appears on many of the
18 documents, e-mails, letters, and so forth. What were
19 Mr. Ogle's job duties with respect to the Reno
20 Wingfield Towers project?

21 A He helped clerically with some of this stuff
22 and attended some of the civic meetings. He worked
23 directly under Mark, and Mark works for the firm. He
24 was part of that five or six people that worked on the

1 project. He was not a delineator or a drawer or a
2 designer, you know, but he would help set up the
3 projectors and the presentations and go to the public
4 meetings and--

5 Q Let's turn now to Mr. Steppan. Is Mr. Steppan
6 currently-- well, was Mr. Steppan an employee of
7 Fisher-Friedman Associates in late 2005 and through
8 2006?

9 A Yes.

10 Q When did Mr. Steppan first go to work at
11 Fisher-Friedman Associates?

12 A Upon graduation from the University of
13 California. It was approximately 1980, I will say.

14 Q All right. And did Mr. Steppan have any
15 particular responsibilities within the firm?

16 A Well, he worked his way up from drafter to
17 being sort of the second in charge of the firm.

18 Q When you say "second in charge of the firm," to
19 whom was he second?

20 A The owner, Rodney Friedman.

21 Q All right. And with respect to the Reno
22 project, what were Mark Steppan's job responsibilities?

23 A Well, he was the architect of record. So
24 anything that we did he basically reviewed and had to

1 okay, because he was the architect of record. He did
2 the same thing that Bob Fisher would have done if Bob
3 Fisher hadn't retired. And he would have been the
4 architect of record if he hadn't retired.

5 Q So the architect of record is the man or woman
6 who actually stamps the drawings and other technical
7 documents and signs on the seal; is that right?

8 A Correct. Now, just to give you a little-- And
9 this is mainly for Your Honor. We are considered a
10 small firm. Okay. But even small firms, we have our
11 counsel and our attorneys that keep us out of trouble.
12 Okay. There's an enormous amount of litigation in the
13 architectural field. You may have actually sat in on
14 some of that. Architects are always in trouble with
15 errors and omissions suits.

16 Even the largest firm in the world, the principals
17 of the largest firm, have never signed any documents
18 ever under the advice of their attorneys. Okay.
19 They're either incorporated or an LLC or subchapter S's
20 and they have licensed members of their firm, okay, who
21 sign the documents to insulate the owners from
22 lawsuits. And this is the advice that's been given to
23 us for 20, 30 years.

24 So Fisher and I never signed anything. And usually

1 it's an architect of record. It must be a licensed
2 architect to comply with all the different state and
3 city statutes in the nation. Overseas, it doesn't
4 matter.

5 Q So if this project had gotten to the point
6 where the developer was submitting an application for a
7 building permit, at that point an architect would have
8 had to sign and seal the architectural drawings; true?

9 A A licensed architect in Nevada.

10 Q Yes.

11 A It couldn't have been-- must have been licensed
12 in Nevada.

13 Q Right. Somebody licensed as an architect, a
14 registered architect in the state of Nevada, would have
15 to have signed those drawings before they could be
16 submitted to the building department?

17 A Correct, or a representative, a licensed
18 representative, like a structural engineer or a civil
19 engineer or-- they could have been the signees.

20 Q In this particular project no construction
21 drawings were ever submitted to the building
22 department?

23 A Correct.

24 Q There was never a time when there was a need to

1 have an architect sign and seal any of the instruments
2 of service for the Wingfield Towers project?

3 MR. PEREOS: Your Honor, we're getting a lot of
4 leading questions now.

5 THE COURT: Sustained. That was a leading
6 question.

7 MR. HOY: Sure.

8 THE COURT: You can rephrase the question.

9 BY MR. HOY:

10 Q Was there ever a time when documents for the
11 Wingfield Towers project needed to be signed and sealed
12 by a registered architect?

13 A No.

14 Q All right.

15 A Not by us.

16 Q Did Mr. Steppan have any supervisory role with
17 respect to the Wingfield Towers project?

18 A At various times, yes.

19 Q What did he do?

20 A I go on vacation to Hawaii; the project
21 continues. Mark has to make sure that the project
22 continues. If I'm absent, I get sick, I break a leg,
23 he's the guy in charge.

24 Q Mr. Steppan is in charge when you're not

1 geographically in the office?

2 A Yeah. He's in charge of everything.

3 Q Did Mr. Steppan also sit in on meetings for the
4 Wingfield Towers project?

5 A Well, you're going to have to ask him. He
6 was-- he was present at some of the meetings I was in.
7 I was not in all the meetings. He may have been in
8 other meetings.

9 Q All right. Let's turn to Exhibit 35, please.
10 This is the January 17th, 2006 special use permit
11 application. Take the time that you need to
12 familiarize yourself with the exhibit and let me know
13 when you're prepared to answer a few questions.

14 A All right.

15 Q Okay. Did Fisher-Friedman Associates prepare
16 any of the pages that are contained within Exhibit 35?

17 A Yes.

18 Q Can you please identify those pages for the
19 Court.

20 A The cover page?

21 Q Actually let's just go through it one page at a
22 time from the beginning and just call out the numbers
23 in the lower right-hand corner.

24 A 00341.

1 THE COURT: Hold on. Let me get with you.

2 BY MR. HOY:

3 Q I'm not certain you're on the same exhibit.

4 Are you on Exhibit 35?

5 A Why don't you come up here and help-- Yeah, I
6 think I am.

7 THE COURT: I've got Exhibit 35, Mr. Friedman,
8 beginning with page 2365.

9 THE WITNESS: Well, that's not what I've got.

10 THE COURT: It's dated January 17th of 2006.

11 MR. HOY: May I approach the witness?

12 THE COURT: You may.

13 THE WITNESS: Yeah. Okay. Yes. I was looking at
14 the numbers above that says exhibit and then it says
15 COW.

16 Okay. 2365. We did that.

17 BY MR. HOY:

18 Q Okay. So 2366, is this a document prepared by
19 Fisher-Friedman Associates?

20 A Yes. Yes.

21 Q 2367?

22 A Yes.

23 Q 2368?

24 A I don't believe we did that.

1 Q 2369?

2 A This is the one that's got Iliescu's signature
3 on it?

4 Q Yes, sir.

5 A And Sonnia Iliescu's signature on it?

6 Q Well, they're on separate pages.

7 A 2368?

8 Q Yes.

9 A And it designates the owner as Dr. Iliescu?

10 Q Yes. Mr. Friedman, at this point I would like
11 you to just say whether or not each page was something
12 that was created by Fisher-Friedman and Associates or
13 Mark Steppan.

14 A We did not do 2368.

15 Q Okay. 2369?

16 A No.

17 Q 2370?

18 A No.

19 Q 2371?

20 A I don't know.

21 Q Okay. Did Fisher-Friedman Associates work with
22 another firm to put together the various submittals to
23 the City of Reno?

24 A Yes.

1 Q What firm was that?

2 A Wood Rodgers.

3 Q Is there a particular individual at Wood
4 Rodgers that you worked with the most?

5 A Oh, boy. Help me. Yes. It will come to me.
6 I'm drawing a little blank.

7 Q All right. On this page 2371, it indicates
8 that the person to contact regarding the application is
9 Fisher-Friedman Associates, Nathan Ogle, AIA.

10 A Correct.

11 Q Do you remember having any discussions with
12 Wood Rodgers or anybody else about designating Nathan
13 Ogle as the person to contact regarding the
14 application?

15 A I just don't recall the conversation. Right
16 now I'm trying to think-- The name is on the tip of my
17 tongue from Wood Rodgers who was involved.

18 Q All right. Let's go to page 2372. Is this a
19 document that was drafted by your firm?

20 A I don't think so.

21 Q How about 2373?

22 A I don't think so.

23 Q I'm going to skip ahead a little bit. If you
24 could, sir, please turn to--

1 A Snelgrove. There it is.

2 Q Yes. David Snelgrove?

3 A David Snelgrove.

4 Q He's with Wood Rodgers?

5 A He's with Wood Rodgers. I knew I would
6 remember sooner or later. It's a good thing I
7 remembered today.

8 Q Do you remember any discussions with Dave
9 Snelgrove regarding the Reno Wingfield Towers project?

10 A Oh, we had hundreds of discussions, yes. And I
11 remember a lot of them.

12 Q All right. Page 2380, this is a project
13 description. Is this a document that was drafted by
14 your firm?

15 A 2380?

16 Q Yes.

17 A It's a good question. Probably. If we didn't
18 do it, Snelgrove may have done it.

19 Q Let's look at page 2382. This is a parking
20 calculation.

21 A We did that.

22 Q That was done by Fisher-Friedman Associates?

23 A It's got our title block on the bottom right.

24 Q Let me ask you about that. It says, "Mark B.

1 Steppan, AIA, CSI, NCARB, Architect," and then below
2 that it says, "Fisher-Friedman Associates, Design
3 Consultant." Can you please explain why that title
4 block is used?

5 A Well, that's pretty normal for us, even if
6 you're not the architect of record. And we've done
7 this on numerous occasions with out-of-state projects.
8 Okay. We would not be designated as the architect.
9 Okay. But we would be designated as the consultant to
10 the architect.

11 So when we did our projects in New Jersey and New
12 York and in-- you know, where have you, there's usually
13 an architect of record in that state and then they
14 engage us to do the work. We are the consulting
15 architect.

16 Q Okay. So is it safe to say that those pages in
17 Exhibit 35 that have this title block with Mark Steppan
18 and Fisher-Friedman Associates, those pages are the
19 work product of your firm?

20 A Yes.

21 Q Let me ask you to turn to page 2395. And 2395
22 has some-- has an incomplete elevation, but the moniker
23 at the bottom is "Address signage at Court Street."

24 A Yes.

1 Q And this is a product of your firm?

2 A Yes.

3 Q Is address signage documentation needed to
4 complete schematic design in your view?

5 A No, but we thought it was necessary to let the
6 people on staff know where the official main entrance
7 of the building was. And you can see that staircase
8 coming down, the main entrance of the garage is here on
9 the top on Court Street and there's a curvilinear
10 staircase going up and there's a water feature along
11 side of that, retail shops to the left. And you can
12 see the office building section on the second building
13 there on the left-hand side as you're going up to the
14 plaza.

15 Q Okay. The next page, 2396, this looks like a
16 south elevation from the other side of the project.

17 A No, this is on Court Street. This has a
18 section-- What page are you on?

19 Q 2396.

20 A Oh, -96. Oh, yes, this is on the river side.
21 This is on-- And it shows Dr. Iliescu's building, it
22 shows the setbacks, it shows the staircase coming down.
23 And we had an elevator coming down and a water feature.
24 We were going to try and recycle some of the water from

1 the Truckee River, pump it up to a fountain system and
2 then bring it back down in a cascade to the river. It
3 didn't get built.

4 Q Turn to page 2397.

5 A Yes.

6 Q This says, "Exterior lighting diagram." As
7 part of the schematic design package did your firm
8 address exterior lighting of the project?

9 A Yes.

10 Q Is that normal for schematic design?

11 A Actually it's kind of extra. We just thought
12 it would help out in describing the building to the
13 city.

14 Q Now, the next page is Steppan 2398.

15 A Yes.

16 Q And this doesn't have a title block for Steppan
17 or Fisher-Friedman Associates on it. It appears to be
18 a topographic map with a site plan superimposed on it.

19 A Yeah, right.

20 Q Is the outline of the buildings the product of
21 Fisher-Friedman Associates?

22 A Yes. In fact, all that building footprint--
23 All the information on the site I'm sure we drew. But
24 the balance of the site where it's superimposed on the

1 rest of the site somebody else may have drawn. See,
2 this is-- the reason for-- if you look at the title
3 block, you can see topographic survey, Group (phonetic)
4 Street, highrise-- Court Street highrise and then
5 State-- the State Surveying, Limited.

6 Q Tri State Surveying?

7 A Yeah, Tri State. In order to make the
8 submission complete, we had to produce the civil
9 engineering drawings that authenticated where our site
10 was related to the other buildings and have all the
11 dimensions of the property on it. And that's prepared
12 by the civil engineers.

13 Q Okay. I ask you to look at a group of
14 documents now starting at page 2399--

15 A Yes.

16 Q --and ending at 24-- I apologize. Let me try
17 that question again.

18 I'll ask you to look at a group of pages with the
19 range of 2399 through 2425. Each of these pages has
20 the Mark Steppan and Fisher-Friedman Associates title
21 block on it. Are these all the work product of your
22 firm?

23 A Yes. Let me draw your-- Let's see. 2407,
24 let's look at that for a moment. And this is to help

1 out the Judge, because we don't want to get too far
2 ahead. If you look at that drawing, you can see some
3 very, very heavy black lines. Those are all the deep
4 concrete shear walls that the engineer sized for us to
5 allow the building to stand up in earthquakes. And you
6 can see the other sort of like blank rectangles around
7 the perimeter of the building. That's the column
8 location and the sizes of the columns.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: And those columns-- if you went to
11 the earlier pages, and I'm not going to overdo it, they
12 extend down through the garage, okay, that permit the
13 parking bays.

14 BY MR. HOY:

15 Q Starting at page 2428 is a report called
16 Preliminary Sanitary Sewer Report. Did your firm have
17 any role in preparing the sanitary sewer report?

18 A No.

19 Q Starting at page 2438 there's a January 13,
20 2006 letter from Solaegui Engineers and it's got some
21 data for parking evaluation. Did your firm have
22 anything to do with parking studies for the project?

23 A Yes.

24 Q What did your firm have to do with parking

1 studies for the project?

2 A Well, we described the parking garage that we--
3 In order for these guys to do their work, okay, the
4 consultants to do their work, they have to know what
5 the occupancy of the building is and they have to have
6 an idea of what we're providing for the parking
7 garages. And then what they do is they incorporate
8 that with their studies on traffic on Court. I can't
9 remember the name of the street at the bottom of--
10 alongside the river.

11 THE COURT: Island Street.

12 MR. HOY: Island Avenue.

13 THE WITNESS: Yeah, Island Avenue. So we helped
14 them by giving them this kind of information.

15 BY MR. HOY:

16 Q Was Solaegui Engineers-- And for the record,
17 that's S-o-l-a-e-g-u-i. Was Solaegui Engineers a
18 subconsultant to your company?

19 A No.

20 Q But you had to coordinate with Solaegui
21 Engineers?

22 A Right.

23 Q Starting at page 2447 there's a report from
24 Pezonella and Associates, Inc. And the report has to

1 do with geotechnical and hydrology issues. Was
2 Pezonella and Associates a subconsultant to your firm?

3 A No.

4 Q Did your firm have to coordinate with Pezonella
5 and Associates?

6 A Yes, in these buildings.

7 Q Very briefly describe what coordination had to
8 be done between your firm and Pezonella.

9 A When you design a building like this, it's
10 really not the structural engineer that designs the
11 foundations for the building, it's the soils engineers
12 that provides the information and usually the
13 documentation is done by the structural engineer. They
14 provide the criteria.

15 Q Starting at page 2462 is a Preliminary Title
16 Report from First Centennial Title Company. Your firm
17 didn't have any role in preparing that report, did it?

18 A Let me look at it. 2462?

19 Q Yes.

20 A No.

21 Q Page 2470 is part of this exhibit. It's the
22 Washoe County regulatory zones. Your firm didn't
23 obviously create the ordinance and the zoning behind
24 the ordinance, did it?

1 A Correct.

2 Q But your firm had to comply with these zones
3 with its designs?

4 A Yes. We did make recommendations to the staff,
5 though.

6 Q What kind of recommendations?

7 A There was some negotiation in interpreting our
8 drawings, because they hadn't seen a building like
9 this, so there was some collaboration, but we didn't
10 have anything to do with the final document.

11 Q All right. Please turn to page 2505. I
12 apologize. I'm going to-- We'll take a look at these
13 later. Look at 2511 through 2518. 2511 through 2518.

14 A Okay.

15 Q Again, these all have the title block for Mark
16 Steppan and Fisher-Friedman Associates?

17 A Correct.

18 Q And these are all work product from your firm?

19 A Yes. For the Judge's behalf, these were all
20 done on CAD. These are not hand drawn.

21 Q Sir, please turn to Exhibit No. 36.

22 A 36. Yes.

23 Q This is a February 7th, 2006 Tentative Map and
24 Special Use Permit Application. It's to the City of

1 Reno. And this document also has many documents in it
2 that have the Mark Steppan and Fisher-Friedman
3 Associates title block on them. Are those pages of
4 this Exhibit 36 work product from your firm?

5 A Well, the page 2519 is, but you can see it's
6 got Wood Rodgers' title block on it.

7 Q Okay. So what portion of the first page, 2519,
8 is the work product of Fisher-Friedman Associates?

9 A The drawing.

10 Q Okay.

11 A Where it says-- like where it says "BSC
12 mixed-use towers" across the drawing on the top, we
13 didn't write that on there. I'm sure that was done by
14 Wood Rodgers to do the final submission. And on the
15 next page you've got the Wood Rodgers' logo and it's
16 got an index of all the information that follows.

17 Q Okay. Now, in Exhibit 35 we have a
18 January 17th, 2006 Special Use Permit Application and
19 then February 7th, 2006 we have a Tentative Map and
20 Special Use Permit Application.

21 A I'm sorry. Can you slow down a little bit?
22 Tell me which exhibit we're looking at.

23 Q I apologize. Exhibit 35 is the January 17th--

24 A Okay.

1 Q --January 17th, 2006 application to the City of
2 Reno. Exhibit 36 is a February 7th, 2006 application
3 to the City of Reno.

4 A Yes.

5 Q Can you please explain to us why there are two
6 applications submitted just a few weeks apart.

7 A There are changes from the first application to
8 the second application, so there's some revisions. My
9 recollection is that staff probably wanted additional
10 information and it was provided in the second
11 submission.

12 Q In the January submission the project
13 description is 390 residential units.

14 A Correct.

15 Q In the February 7th, 2006 application the
16 number of residential units goes up to 394 units.

17 A Correct.

18 Q And then in Exhibit No. 37 the project
19 parameters are revised again to go all the way up to
20 499--

21 A Correct.

22 Q --residential units.

23 A Correct.

24 Q Can you please explain to the Court how that

1 change came about.

2 A I would be happy to. When we first got
3 involved with Iamesi and Caniglia, they envisioned a
4 project of this size but containing luxury units to be
5 sold at very high prices. Okay. Bosma and Baty and
6 Schleining-- Those are names that were partners of
7 Caniglia. --their opinion was that the building had to
8 be made up of much, much smaller units that were more
9 affordable.

10 So without changing the building envelope or any of
11 the circulation or hallways or stairs, we took some of
12 the largest units on the lower floors and divided them
13 so that they could be smaller dwelling units. So we
14 included a larger number of studios and one bedrooms
15 instead of two- and three-bedroom units.

16 And when we did that, we also had to modify the
17 garage, because the parking requirement changed. So
18 that accounts for the revisions.

19 Now, the drawings that accompanied that, we didn't
20 have to do anything on the tower design except
21 reconfigure the floor plates to show smaller units, but
22 we didn't really have to do the kitchens and baths,
23 because we knew that would be easy to do. The city
24 didn't mind.

1 We redid-- we reconfigured the garage and included
2 automated parking, so we had parking machines to help
3 increase the parking count. And at the same time--
4 about the same time we started talking about what would
5 happen-- when the church people came to us, what would
6 happen to help mitigate this parking solution with the
7 church.

8 Q So as the number of units was increasing, the
9 building footprint did not change?

10 A It didn't change. It didn't change a bit.

11 Q And the building height didn't change?

12 A It didn't change.

13 Q What changed was the interior floor plans?

14 A Right.

15 Q The ultimate schematic design that was approved
16 by the city had the larger number of units?

17 A Larger number of dwellings and the larger
18 number of cars for the parking garage.

19 Q And by that point in time when the city finally
20 signed off on the tentative map, the units were
21 actually drawn into the floors?

22 A The majority of the units were drawn in the
23 floors. We divided the building up to show what would
24 happen when we did the studios and one bedrooms.

1 Q Let me ask you to turn to Exhibit No. 38.

2 THE COURT: Mr. Hoy, you might want to be wrapping
3 up.

4 MR. HOY: Yeah, just a few more minutes, I think,
5 Your Honor.

6 BY MR. HOY:

7 Q Now, Exhibit No. 38 is a series of sheets
8 called Revised Tentative Map and it's dated May 15th,
9 2006. And the title block on every single one of these
10 pages is Wood Rodgers.

11 A Yes.

12 Q Do you recognize any of the drawings in any
13 portion of Exhibit 38 as being the work product of
14 Fisher-Friedman Associates?

15 A Yes. We did all of the-- On page-- Where's
16 the page number?

17 Q The pages are up in the upper right-hand corner
18 on this exhibit.

19 A On 2344 you see some dotted lines overlapping
20 the sort of outline elevations of the buildings and the
21 parking garage?

22 Q Yes.

23 A Wood Rodgers may have done that, but I'm not
24 sure whether we did that or not. But the other

1 drawings on that page we did for sure.

2 Q Let me ask you to turn to-- this is page 2357.

3 This is sheet S13 of 18.

4 THE COURT: Just so I understand correctly,

5 Mr. Friedman, it's your testimony that even though Wood

6 Rodgers' stamp is on here, it was FFA that produced the

7 information that is contained in everything on Exhibit

8 38; is that right?

9 THE WITNESS: I'll try and clarify.

10 THE COURT: Except for some minor changes that you

11 just noted.

12 THE WITNESS: Well, we did the base sheets for

13 them. And then they superimposed the information that

14 they needed for their application to go in. So the

15 drawings were the work product of both firms

16 cooperating. And then that lets them-- and then their

17 stamp is on there because they did the modifications to

18 our drawings. It's an additive process. There's

19 nothing subtracted. They just added information.

20 BY MR. HOY:

21 Q Mr. Friedman, you used the word "stamp." Is

22 there a difference between a title block and a stamp

23 when it comes to the design professions?

24 A No, no. They're interchangeable.

1 Q All right. On this page 2357, for the building
2 number 1 there's actually a layout of units within a
3 floor.

4 A Yes.

5 Q So that portion of the plate that says building
6 1, 18 through 30 floor, residential, and then gives
7 elevations, starting at the 12 o'clock position and
8 going clockwise, it says two bedroom, 1629 square feet,
9 one bedroom, 724 square feet, et cetera?

10 A Right.

11 Q So those are the actual layouts within a floor
12 of the condominium units that are being proposed?

13 A Correct. If the engineers would lay out the
14 condominium map, that's what they would draw.

15 MR. HOY: I think that's a good stopping point,
16 Your Honor.

17 THE COURT: Okay. Hold on one moment.

18 BY MR. HOY:

19 Q Well, I apologize. I think I might have
20 misheard you. The layout of the units within the
21 floor, is that the work product of Fisher-Friedman?

22 A Yes.

23 Q Okay. Thank you. Nothing more at this time.

24 THE COURT: And so, Mr. Friedman, I just want to be

1 clear about 38. You and Wood Rodgers come together in
2 a collaborative way to create this document that Wood
3 Rodgers puts their stamp or their-- What is it?
4 Identity block? I forget the name of it.

5 THE WITNESS: Title block.

6 THE COURT: Title block. Thank you. They put
7 their title block on it. They come to you and they
8 say, We need to make a revised tentative map, that's
9 their job, you provide them with all the information
10 that you have, they put it in and come up with this
11 form; is that accurate?

12 THE WITNESS: Yes.

13 THE COURT: Thank you. Court will be in recess
14 until 8:30 in the morning tomorrow. I'm see you
15 tomorrow, Mr. Friedman.

16 (The proceedings were adjourned at 4:51 p.m.)

17 --o0o--

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22

23

24

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 24th day of
20 February, 2015.

21

22 LORI URMSTON, CCR #51

23

24 LORI URMSTON, CCR #51

CASE NO. CV07-00341

MARK STEPPAN VS. JOHN ILIESCU, ETAL

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

12/9/13

BENCH TRIAL

HONORABLE

8:38 a.m. – Court convened.

ELLIOTT A.

Plaintiff Mark Steppan was present with counsel, Michael Hoy, Esq.

SATTLER

Defendants Dr. John Iliescu, Jr. and Sonia Iliescu were present with counsel, C. Nicholas

DEPT. NO. 10

Pereos, Esq.

M. Merkouris

COURT gave respective counsel information regarding the how the trial will proceed with regard to breaks, lunch recesses, etc.

(Clerk)

COURT further advised that the has reviewed the Exhibit List; **COURT ORDERED** the following Exhibits shall be ADMITTED into evidence pursuant to the stipulation of respective counsel: **1-3, 6-21, 32-33, 35-38, 40-92, 94-101, 105-123, 129-129, and 133. (Clerk's note: exhibit numbers 4, 23, 54, 78 & 103 were not used.)**

L. Urmston

Counsel Pereos addressed the Court and advised that he does not stipulate to Exhibits 21, 51, 74 & 75, however he will stipulate to all other exhibits as listed by the Court.

(Reporter)

COURT FURTHER ORDERED: Exhibits 21, 51, 74 & 75 are NOT admitted into evidence at this time as Counsel Pereos is not stipulating to these exhibits.Counsel Pereos moved to Invoke the Rule of Exclusion; no objection; **SO ORDERED.**

Counsel Hoy presented opening statements.

Counsel Pereos presented opening statements.

Counsel Hoy called **Richard K. Johnson** who was sworn and direct examined.**Counsel Hoy offered Exhibit 67; no objection (previously admitted as respective counsel stipulated to this Exhibit at the beginning of trial.)**

Witness further direct examined.

Counsel Hoy requested to mark Exhibit 134 (next in line); COURT advised respective counsel that he would prefer that the unused exhibit numbers be used first (4, 23, 54, 78 & 103). Counsel Hoy marked and offered Exhibit 4; no objection; ordered ADMITTED into evidence.

Witness further direct examined.

Counsel Hoy offered Exhibit 75; no objection; ordered ADMITTED into evidence.

Witness further direct examined; questioned by the Court; cross examined; re-direct examined; and excused.

11:25 a.m. – Court stood in recess for lunch, to reconvene at 1:00 p.m.

1:03 p.m. – Court reconvened.

Counsel Hoy called **Kenneth Bradley Van Woert, III**, who was sworn and direct examined; cross examined; questioned by the Court; and excused.Counsel Hoy called **Rodney Friedman** who was sworn and direct examined.

3:03 p.m. – Court stood in recess.

3:20 p.m. – Court reconvened.

Witness further direct examined.

4:49 p.m. – Court stood in recess, to reconvene tomorrow, December 10, 2013 at 8:30 a.m.

CODE: 4185
LORI URMSTON, CCR #51
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

MARK STEPPAN,

Plaintiff,

Case No. CV07-00341

vs.

Dept. No. 10

JOHN ILIESCU, et al.,

Defendants.

_____/

TRANSCRIPT OF PROCEEDINGS
TRIAL - VOLUME II
DECEMBER 10, 2013; TUESDAY
RENO, NEVADA

Reported by:

LORI URMSTON, CCR #51

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APPEARANCES:

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I N D E X

PLAINTIFF'S WITNESSES

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1 RENO, NEVADA; TUESDAY, DECEMBER 10, 2013; 8:34 A.M.

2 --o0o--

3 THE COURT: This is CV07-00341, Mark Steppan versus
4 Dr. John Iliescu and Mrs. Iliescu. The parties are all
5 present. Counsel is present. Mr. Friedman is back on
6 the stand.

7 Mr. Friedman, I will remind you that you're under
8 oath, though I'm sure you remember that.

9 And, Mr. Hoy, you were doing direct examination, I
10 believe, of Mr. Friedman when we broke last night.

11 MR. HOY: Yes, Your Honor.

12 THE COURT: So you may continue.

13 MR. HOY: Thank you.

14 DIRECT EXAMINATION (Resumed)

15 BY MR. HOY:

16 Q Good morning again, Mr. Friedman.

17 During your testimony yesterday you talked about a
18 video fly-through several times. Can you please
19 describe to the Court what the purpose of the video
20 fly-through is.

21 A The purpose of the fly-through is to illustrate
22 what we were proposing for that piece of property in
23 the clearest fashion and most graphic presentation.
24 And in an animation we found that we could precisely

1 describe what the intent of the design was as opposed
2 to illustrations, drawings, cross-sections, et cetera,
3 et cetera, which many laypeople just don't-- they're
4 not trained to understand. But if you see something in
5 motion and in three dimension, even a child can
6 understand what's going on.

7 So basically we're doing what we've seen as
8 cartoons in our childhood and transposing them into a
9 graphic architectural presentation so that everybody
10 knows what's going on.

11 THE COURT: I know that Exhibit No. 42 has been
12 admitted into evidence, and I viewed that last night
13 after court was over with, so I saw it. I was
14 impressed.

15 THE WITNESS: Thank you.

16 BY MR. HOY:

17 Q All right. Would you please give the Court an
18 overview of the work that was done to create the video.

19 A Well, this is interesting, because it's a
20 pioneering effort for the techies who know-- Google
21 had just come out with Google Earth that you could
22 subscribe to. So by using Google Earth we could do a
23 flyover of the City of Reno. And by calculating the
24 length of the shadows of the building and the precise

1 time of day, we could reconstruct the height of every
2 building in Reno within three feet. That's pretty
3 impressive technology. That's coming from-- that's
4 really an enhancement of the satellite information.

5 So the base of the video is really a
6 three-dimensional video presentation of the whole city
7 of downtown Reno. Then we're able with Photoshop to
8 graphically take the proposed project and superimpose
9 it into the context of the city of Reno.

10 The only flaw in this graphic presentation is when
11 you see the Truckee River, you see the bottom of the
12 Truckee River. We couldn't really-- the GPS or Google
13 wouldn't give us the surface of the river, so you're
14 actually looking at the bottom of the river.

15 Q Can you please describe what the actual process
16 was in your studio to put the video together.

17 A Well, we have a couple of real computer geeks.
18 They love doing this stuff. So by using Google and the
19 GPS and reconstructing the city of Reno, put it into a
20 disk, then took the drawings of our building and
21 graphically represented them, you know, using the
22 digital process and Photoshop and built, you know, the
23 project on the side.

24 In addition to that, we hired renderers and artists

1 to actually draw the buildings, you know, so that we
2 could do it in color and make it more lifelike. Then
3 we took those drawings and Photoshopped them and
4 spliced them into the video. So it's the same thing,
5 you know, as guys who were doing the Star Wars and
6 Pixar movies.

7 THE COURT: Mr. Friedman, just so I'm clear, did
8 you have employees of FFA doing this in house?

9 THE WITNESS: Yes.

10 THE COURT: The majority of it in house with some
11 outside assistance, or was it sent out?

12 THE WITNESS: No, it wasn't sent out, it was all in
13 house--

14 THE COURT: Except for the artist--

15 THE WITNESS: --except for the artist's
16 delineation.

17 THE COURT: Thank you.

18 THE WITNESS: And the artist delineation we've been
19 working with for 30 years.

20 BY MR. HOY:

21 Q Was the video shown to any boards of the City
22 of Reno?

23 A It was-- it made the rounds with all the
24 community organizations and the neighborhoods so that

1 they had an idea of what was being proposed. Any new
2 project, you know, people are going to be apprehensive
3 about the impact to the community. And we showed it to
4 a couple of councilmen that were-- well, one in
5 particular who was-- had a home in a nearby
6 neighborhood. And then we showed it to the labor
7 unions. And we showed it to any public organization
8 that wanted to see it. And we were met with
9 overwhelming support.

10 So then when it was shown the last time at the city
11 council, all we got was praise and unanimous approval
12 for the project. And all the developers were ecstatic.
13 Dr. Iliescu was ecstatic and threw a big cocktail party
14 afterwards. And I remember the mayor remarking that
15 this was going to be the most significant building in
16 Reno.

17 MR. PEREOS: Objection, Your Honor, hearsay.

18 THE COURT: Sustained.

19 BY MR. HOY:

20 Q Mr. Friedman, if you could just keep your
21 answers--

22 A I'll try.

23 Q --narrower so that you're answering my question
24 as opposed to talking about other matters.

1 MR. HOY: Your Honor, we had intended to show the
2 video this morning and have Mr. Friedman narrate what's
3 being shown. I know the Court has said that it has
4 seen the video. Is it okay if we watch it again?

5 THE COURT: We can watch it again. And if
6 Mr. Friedman wants to narrate it, my bailiff will dim
7 the lights and we'll be able to see it. Go ahead and
8 play it. Like I said, I did see it yesterday.

9 THE WITNESS: May I move up closer?

10 THE COURT: Sure. And if you want-- Do you need a
11 pointer or something or can you just narrate?

12 THE WITNESS: I will try and narrate. And if I go
13 overboard, please remind me and I'll bring it back.

14 THE COURT: Before you turn it on, Mr. Hoy--
15 Mr. Pereos, any objection to him testifying in a
16 narrative as he narrates?

17 MR. PEREOS: That's okay, Your Honor.

18 THE COURT: Thank you. I appreciate that,
19 Mr. Pereos.

20 THE WITNESS: Thank you, Mr. Pereos.

21 (Video played.)

22 THE WITNESS: Here you can see the city of Reno as
23 we reconstructed it. And we spliced the city into the
24 background. It's remarkable what you're able to do

1 with the Google information, because all these
2 buildings that we're illustrating are within three feet
3 of their real height.

4 Now we're going to have a view coming down West
5 Street as we're looking at the taller building in the
6 project and past the Legacy and continue down west.

7 Now, that's all-- that's all a graphic model. And
8 then when we had-- We did the background for the
9 delineator who put the color and the detail into the
10 rendering and then respliced it in. So now we're
11 approaching the river. And you can see the base of the
12 building. And here you can see it animated with the
13 adjoining buildings on the right and left.

14 And the building is terraced, so it breaks up into
15 three parts, and you can see the different balconies.
16 That's the second building.

17 Now we're moving around. And you can see the
18 Truckee River, but you're actually looking at the
19 bottom of the Truckee River. And we're flying over the
20 town. There's the Silver Legacy in the background.
21 And the courthouse is in here.

22 Now we're coming down moving towards Court Street.
23 The taller building in the foreground. And here we
24 actually were able to splice in some actual shots of

1 Court. And this is all Google, Google Earth.

2 Now we've superimposed our building onto Court
3 Street. That's part of the church and part of the
4 addition we were going to do to the church. The garage
5 entrance and retail shops. We had a great monumental
6 staircase. This would be the main entrance. The
7 elevators so we can take care of handicapped and
8 disabled. More retail, office building complex on the
9 left and the potential for either hotel or residential
10 on the top of the building. So it's a truly mixed-use
11 project.

12 We have a water cascade that comes down and some
13 water features. Everything here would be on heat
14 trace, because we didn't want any ice forming at any
15 time. And this is part of the water course that we
16 were hoping to pump up water from the Truckee and then
17 recycle it and take it back down to the Truckee.
18 Again, you're looking at the bottom of the Truckee.

19 And that's-- you see the church in the background.
20 This is the retail. The entrance to the garage in this
21 location. More residential here. Dr. Iliescu's
22 offices. And a staircase that takes you up to the main
23 plaza.

24 There's about four levels here and about-- four or

1 five and about 40 residential floors. I can't remember
2 the exact number.

3 Back up onto the plaza. And this is part of one of
4 the highrises we did in San Francisco. We had an
5 exercise facility. So this is-- this is the lobby of
6 one of our highrises in San Francisco that we were
7 superimposing there to get an idea of what it might be
8 like.

9 Now you're back on the plaza of Wingfield Towers.
10 And this is a dining terrace that would overlook the
11 Truckee River.

12 Now, it's interesting. There's a catalog of all
13 this furniture that you can get on the internet and
14 then you can splice it right into the video.

15 THE COURT: So that guy with the parrot on his
16 shoulder--

17 THE WITNESS: Including the guy with the parrot on
18 his shoulder.

19 MR. HOY: That's in the catalog.

20 THE WITNESS: That's in the catalog.

21 Now, this is-- Remember, this is 2006. It's much
22 more sophisticated now. All the kids in school do this
23 stuff. Kids in high school can do this stuff.

24 Now going down the Truckee, but that's the bottom

1 of the Truckee, so you get an idea of what the
2 buildings would look like and the bridges.

3 A lot of the inspirations-- and this is a-- one of
4 the inspirations is to use, as an example, the
5 Riverwalk, the red river, in San Antonio, because we
6 wanted to create this more exciting river experience
7 for the citizens of Reno. And that drew a lot of
8 support from the community.

9 This gives you an idea of the potential we had with
10 Dr. Iliescu's restaurant. We created these terraces.
11 The river is on the right. We could have the
12 celebration of Christmas and the holidays by lighting
13 up the Truckee. That would be an exciting place to be.

14 Now we're looking in the other direction with the
15 smaller building there. This is the-- that triangle is
16 part of the bandshell. And you experience-- Now
17 you're looking across from the bandshell. There's the
18 Truckee and that's Dr. Iliescu's building.

19 So the whole idea was to take this part of that
20 street and turn it into accommodation pedestrian and
21 vehicular, limited vehicular, make it a really exciting
22 river walk like they have in San Antonio.

23 Swimming pool on the top of the second building.
24 And that would serve whether this is a hotel or a

1 mixed-use, offices, hotel, residential. Dr. Iliescu's
2 penthouse is going to be off of one of those terraces.

3 That's the bandshell. The highrise building in
4 front of the project.

5 Now, this is going to be fun. You're going to fly
6 right through the swimming pool, which is 25 yards.

7 You're going to go-- we're going to make a turn, look
8 out toward the Silver Legacy, across the bridge that
9 connects it to the building, into the taller building.

10 And this is sort of a-- Now, these apartments that
11 we're showing you are in the highrises we've done in
12 San Francisco.

13 And now you're on one of the upper terraces. And
14 all this would have to be heat traced because at this
15 time of year it would be covered-- if we didn't heat
16 trace it, it would be covered with ice and snow.

17 This is kind of like a sunset shot from the Truckee
18 River.

19 And that finished the video. If you have any
20 questions, I would be happy to answer them.

21 Incidentally, this is the shorter version. We had
22 a 12-minute version that showed all the shadow studies
23 and wind studies and views from different parts of the
24 city for all those concerned citizens that thought the

1 buildings might block the views. And we had other
2 views that showed how from the residences and from the
3 upper parts you could see the Sierra and the snowbanks,
4 et cetera. So this is what was shown at the city
5 council. The planning staff, they saw the 12-minute
6 video.

7 THE COURT: Thank you.

8 BY MR. HOY:

9 Q Mr. Friedman, to follow up on something that
10 you just mentioned, there's a project in Reno called
11 the Palladio. Are you familiar with that project?

12 A Yes.

13 Q And was there any attempt to study the site
14 lines from the Palladio and your proposed project and
15 how that would interfere or not interfere with the
16 mountain scenery?

17 A Yes.

18 Q Can you please explain what that effort was.

19 A Part of that was in the 12-minute version. But
20 the Palladio is a really significantly smaller
21 building. And our site is not-- you know, it starts
22 with a raised plaza to begin with. So we didn't think
23 the Palladio would interfere. But since you mention
24 the Palladio, some of the marketing information for our

1 building, okay, the market studies, part of that
2 information was from the Palladio, because it had
3 started construction before we had and they had booked
4 a number of sales before we did. And Turner
5 Construction was the contractor. So we actually talked
6 to Turner as well.

7 MR. HOY: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MR. HOY:

10 Q Mr. Friedman, I ask you to turn to Exhibit No.
11 56. Can you please briefly explain what Exhibit 56 is.

12 A Well, on 4270 we're looking at part of the
13 video showing the highrise standing by itself. And
14 there's no development yet on the Iliescu property.
15 And then as you go from 4271, you can see part of some
16 massing diagrams in foam and you can see the buildings
17 being built up in foam. 4272--

18 Q Did you say foam, f-o-a-m?

19 A Yes. Foam, plastic.

20 Q And so did somebody in your studio actually
21 build these foam models that are depicted in Exhibit
22 56?

23 A Correct.

24 Q What was the purpose of doing that?

1 A We wanted to show our client what we were doing
2 and what we were proposing. And what we used to cut
3 the foam is something called a hot knife, so it's a
4 very simple quick process.

5 Q Okay. Please turn to Exhibit 57.

6 A Well, let's-- By the time you get to 4275, you
7 can see the full foam model, but you can see it's been
8 changed, because we had bridges connecting the two
9 buildings on multiple levels. And then as the design,
10 you know, continued, we limited it to one bridge.

11 Q Okay. Exhibit 57--

12 THE COURT: Mr. Hoy, if I can just--

13 MR. HOY: Yes.

14 THE COURT: --get a little bit of clarification.

15 As I was going through Exhibit 56 with Mr. Friedman,
16 mine goes to Steppan-- Bates stamp Steppan 4281. And
17 then if I turn the page, it actually-- while still
18 contained in Exhibit 56, the next page says Exhibit 57.
19 That might just be--

20 MR. HOY: I know what that is. Your Honor, when
21 they-- when they send these to the copy shop, there are
22 slip sheets in there to indicate where the exhibits
23 begin and end. And they just forgot to pull out that
24 slip sheet before they put the tab in.

1 THE COURT: I just need some clarification then,
2 Mr. Hoy. Does Exhibit 57 begin at page Steppan 4109?

3 MR. HOY: Yes, Your Honor.

4 THE COURT: Hold on a second. Let me just fix
5 this.

6 Go ahead. Thank you.

7 BY MR. HOY:

8 Q Mr. Friedman, Exhibit 57 in evidence, can you
9 please describe what that exhibit is.

10 A This is a podium level plan of the-- of the
11 proposed two buildings. And it shows the lobbies and
12 offices in the smaller building and the different suite
13 arrangements for offices in the taller building and the
14 elevator bank and the stairs.

15 Q And when you use the word "podium" in your
16 testimony, what do you mean by that?

17 A Well, it's a raised plaza. From Court Street
18 you had to go up two levels to the plaza and underneath
19 the plaza and then the area below grade overwhelming is
20 a parking garage. But facing the river we had more
21 retail and facing Court we had more retail. So you
22 never saw an exposed garage in any of the proposals.

23 Q All right. And so Exhibit 57 includes some
24 drawings and then also includes some photographs of

1 foam models. Is there a relationship between the
2 drawings and the foam models depicted?

3 A Well, in the earlier foam models we showed
4 bridges that connected the buildings on every level.
5 Let me look at this. In the final iteration there is
6 only one bridge that connected the two buildings.

7 Q Right.

8 A So that would be the major difference. And
9 when you get to 4113, you're on the upper levels of
10 building number A and there is no connection to the
11 smaller building, because now it's above the height of
12 the bridges.

13 Q I see my problem. I used the word "connection"
14 in my question and you used it differently in your
15 answer. Is there a relationship between the drawings
16 in Exhibit 57 and the foam models?

17 A Yes.

18 Q What is the relationship?

19 A Well, the massing of the buildings is the same,
20 okay, in the drawings and in the foam models. The only
21 difference is when you look at the foam models, you see
22 a number of bridges connecting the two buildings. And
23 they were eliminated and all we had was one bridge.
24 And that bridge was put in on the-- at the swimming

1 pool level.

2 So if you were in either of the two buildings, to
3 get to the swimming pool you would have to take the
4 elevator up to the swimming pool, or in building A, you
5 take the elevator up to the bridge if you resided there
6 or down to the bridge and cross the bridge to the pool
7 and the spa.

8 Q All right. I'm going to skip over 58 and 59.
9 Those appear to just be renderings placed in
10 photographs of the scene that are included in the
11 PowerPoint and included in the video fly-through.

12 A Correct.

13 Q If you could turn to Exhibit 60, please, and
14 explain-- Let's just take it one page at a time. 1475
15 is a sketch of some sort. Can you explain what that
16 is?

17 A 1475 is the drawing from Court Street of the
18 monumental staircase that goes up to the podium or
19 plaza level. And it shows the retail on the left-hand
20 side underneath the podium. Okay. And you can see
21 there's a difference in the window grid, because that
22 portrays the offices that would be on the lower floor
23 in the smaller building. But the window grid wouldn't
24 have to be changed. If it was either residential or

1 hotel, it would remain.

2 Q Is this drawing in Steppan 1475 the kind of
3 drawing that you would do yourself and then hand off to
4 the computer-aided designers?

5 A Yeah, I could do that, yeah.

6 Q It looks like--

7 A I didn't do this one, but, yes, that's the same
8 technique I would use.

9 Q 1476 appears to be a duplicate of 1475.

10 A I think you're right.

11 Q Can you explain what the wire frame is in pages
12 1477, -78 and -79?

13 A Yeah. This is-- We wanted to give back to the
14 community a remembrance of the original Wingfield
15 mansion that had burned down. Okay. And we heard all
16 kinds of stories as to--

17 Q Don't go there.

18 A Anyhow, we did a wire frame of what the mansion
19 was and were going to propose it as a piece of art to
20 be used on the podium. And that's the same true for
21 1478.

22 MR. HOY: May I approach again, Your Honor?

23 THE COURT: You may. And for both counsel, I
24 appreciate the request to approach the witness, but you

1 don't need to every time you approach him.

2 MR. HOY: Thank you, Your Honor.

3 THE COURT: You don't need to ask is what I meant
4 to say.

5 BY MR. HOY:

6 Q Mr. Friedman, please turn to Exhibit 6. This
7 is the Master Design Agreement.

8 A Yes.

9 Q And if you could find page Steppan 7513.

10 A 7513?

11 Q Yes.

12 A Yes.

13 Q And take a look at Section 2.4.2?

14 A 2.4.--

15 Q --.2, Schematic Design Documents.

16 A 2.4.2. Yes. Schematic Design Documents.

17 Q And I don't want to read this into the record
18 again, because I've done that a couple of times
19 already. But let me just ask you a couple of questions
20 about this. Did Fisher-Friedman Associates and Mark
21 Steppan provide schematic design documents based upon a
22 mutually agreed-upon program?

23 A Yes.

24 Q Did the architect provide schematic design

1 documents based upon a mutually agreed-upon schedule?

2 MR. PEREOS: Objection; leading and suggestive.

3 THE COURT: Overruled. Go ahead and answer the
4 question.

5 BY MR. HOY:

6 Q Can you answer that--

7 A I'm sorry. Please repeat it.

8 Q Did the architect provide schematic design
9 documents based on a mutually agreed-upon schedule?

10 A Yes.

11 Q And a mutually agreed-upon budget?

12 A Yes. No. We didn't have a budget for-- We
13 had a fee proposal for schematic design, but we didn't
14 have to provide a budget for completing schematic
15 design.

16 Q Okay. The word "budget" used in the context of
17 that sentence, does that refer to the construction
18 costs or does that refer to the design costs?

19 A Can you come up here and show me where it says
20 "budget"?

21 Q Yes.

22 A I see it. Okay. Thank you. That refers to
23 the architectural work, not the construction.

24 Q Now, did you or Fisher-Friedman Associates do

1 any work to estimate what the construction costs would
2 be for this project?

3 A The owners did that with the help of Turner
4 Construction.

5 Q Okay. What do you know about that?

6 A When we were first engaged, Iamesi who had been
7 with Knickerbocker and--

8 MR. PEREOS: Your Honor, I have an objection.
9 We're getting into a dialogue and most of the dialogue
10 now is hearsay.

11 THE COURT: Sustained.

12 MR. PEREOS: Thank you.

13 BY MR. HOY:

14 Q Did Fisher-Friedman Associates do any work to
15 determine what the projected construction costs would
16 be for the design?

17 A No.

18 Q Why is that?

19 A The owner provided the information.

20 Q Did the architect's schematic design documents
21 include a conceptual site plan?

22 A Yes.

23 Q Did it include preliminary building plans,
24 sections and elevations?

1 A Yes.

2 Q Did the schematic design documents include any
3 study models?

4 A Yes.

5 Q What are study models as used there?

6 A Well, you've just seen the illustrations of the
7 study models that we did in foam and you've seen the
8 perfected study models in the video.

9 Q Did the schematic design documents provided by
10 the architect include any perspective sketches?

11 A Yes.

12 Q Did they include any electronic modeling?

13 A Yes.

14 Q Were there-- did the architect make any
15 preliminary selections of major building systems?

16 A Yes.

17 Q What are the major building systems that are
18 referred to there?

19 A Mechanical, electrical, plumbing, structural
20 design, civil engineering, water retention, irrigation,
21 landscape, flood studies, shadow studies. We could be
22 here all day to describe it.

23 Q And were there preliminary selections of
24 construction materials to be used?

1 A Yes.

2 Q And are those noted on the drawings or
3 described in writing?

4 A Yes.

5 Q I ask you to turn to Exhibit No. 48. I
6 apologize. That's back in the other binder.

7 Exhibit 48 is a November 30th, 2006 letter from the
8 City of Reno addressed to John and Sonnia Iliescu. And
9 it says in the first paragraph, "At a regular meeting
10 held November 15th, 2006, and following a public
11 hearing thereon, the city council upheld the
12 recommendation of the planning commission and approved
13 the request for the following: A, a tentative map to
14 develop a 499-unit residential condominium
15 subdivision," et cetera, et cetera. And then the
16 letter goes on to describe all the conditions of the
17 approval.

18 Were you present at a meeting of the Reno City
19 Council on November 15th, 2006?

20 A Yes.

21 Q Was Dr. Iliescu present?

22 A Yes.

23 Q Did you meet Dr. Iliescu after the meeting?

24 A Yes.

1 Q Did you have any discussion with Dr. Iliescu?

2 A Yes.

3 Q What discussion did you have?

4 A Well, he was very happy that we got approved.

5 Sam Caniglia introduced us. And it was a very festive
6 occasion. Everybody was delighted with what was going
7 on.

8 THE COURT: Was that the first time you met
9 Mr. Iliescu?

10 THE WITNESS: No. I think he sat next to me or
11 behind me at the city council meeting.

12 THE COURT: But that city council meeting was on
13 November 15th. So, Mr. Friedman, I guess the question
14 could be phrased, was November 15th the first time that
15 you met Dr. Iliescu?

16 THE WITNESS: I met Dr. Iliescu the same day we
17 received our approvals and we went to his bar to
18 celebrate the approval from the city council. This
19 letter is dated the 30th, but it refers to the meeting
20 of the 15th.

21 THE COURT: Okay.

22 THE WITNESS: So I met him on the 15th.

23 THE COURT: Thank you.

24 /////

1 BY MR. HOY:

2 Q Now, please turn to Exhibit No. 49. Exhibit 49
3 is an October 9th, 2008 request to amend the conditions
4 of the approval that was given on November 15th, 2006.
5 Did you have any role in applying for the amendment to
6 the conditions in October of 2008?

7 A I'm going to have to refresh my memory. Yes.

8 Q Now, I want to caution you not to discuss any
9 judicial proceedings or quasi-judicial proceedings,
10 meetings with judges and so forth. If you can answer
11 this question without violating that rule, what was
12 your role in the October 2008 request to extend the
13 time for the final map?

14 A I supported the-- I supported the request,
15 because we knew at that time that they were going to be
16 searching for financing and this gave them more time to
17 search for the financing.

18 Q And did you pay a filing fee for the 2008
19 request to extend the time for the final map?

20 A You know, I can't remember-- I paid for one
21 extension, but I don't remember whether it was this
22 particular extension.

23 Q Turning to Exhibit No. 50, this is the
24 November 24th, 2008 letter from the City of Reno

1 indicating that on November 10th, 2008, the city
2 council approved the two-year extension of the final
3 map deadline so that now the deadline was going to be
4 in 2010. Did you attend that hearing?

5 A No.

6 Q I ask you to turn to Exhibit 51. This is an
7 October 11, 2010 application to the City of Reno to
8 extend the filing deadline for the final map again.
9 And on this exhibit, Wood Rodgers has indicated that
10 this report or this application was prepared for Rodney
11 Friedman, FAIA. Did you ask Wood Rodgers to prepare
12 this request in your name?

13 A Yes.

14 Q Why did you do that?

15 A We thought, again, the developers had a better
16 chance to continue with the project and more time to
17 look for financing and it would benefit the landowner
18 as well as the developers.

19 Q And would it also benefit you or your firm in
20 some way?

21 A Well, it would enhance the chances of the
22 project going forward. It gave them time to search for
23 new developers if they-- By that time the old
24 developers were in real trouble.

1 Q And then turn to Exhibit No. 52, please.

2 THE COURT: Can we just go back to 51 for a second.
3 I just want to make sure I understand the importance of
4 51. It's a 2010-- it's a second request for an
5 extension; is that correct?

6 MR. HOY: Yes, Your Honor.

7 THE COURT: And Fisher-Friedman requested the--
8 requested that Wood Rodgers prepare this extension; is
9 that right?

10 THE WITNESS: Correct, with Dr. Iliescu's
11 permission, because he was the signatory to make the
12 application for the extension.

13 THE COURT: For two more years?

14 THE WITNESS: Well, I think we got one year.

15 THE COURT: One year.

16 MR. HOY: They asked for two and they got one.

17 THE WITNESS: Yes.

18 BY MR. HOY:

19 Q Mr. Friedman, please turn to Exhibit 52.
20 Exhibit 52 is a receipt from the City of Reno for a
21 check from Rodney Friedman, check number 102, in the
22 amount of \$2,330.

23 A Yes.

24 Q Did you personally pay the filing fee for the

1 application to extend the deadline for filing the final
2 map for this project?

3 A Yes, I did.

4 Q Why did you do that?

5 A I did that to enhance the odds of the project
6 going forward. It would make it easier for Mr. Iliescu
7 to sell the property, because the entitlements would be
8 enact. It would be easier for Sam Caniglia who was
9 still active in trying to develop the property and
10 looking for investors to carry it forward. So I
11 thought it was beneficial to all the parties. And
12 Dr. Iliescu refused to pay any of the fees, but he did
13 sign the applications for the extension as long as I
14 paid all the expenses.

15 Q Now, can you please turn to Exhibit 53. And
16 this is the November 12th, 2010 letter, again addressed
17 to John and Sonnia Iliescu as the applicant for the
18 extension of time to file the final map. And this
19 letter extends the time to November 15th, 2011.

20 Did you have any discussions outside of any kind of
21 a settlement or mediation privilege with Dr. Iliescu
22 after the time that this further extension was granted?

23 A No, not with Dr. Iliescu.

24 Q I ask you to turn to Exhibit 32, please.

1 THE COURT: I want to go back to Exhibit 52 and the
2 comments that were just made by Mr. Friedman.

3 Mr. Friedman, you stated in relation to Exhibit No.
4 52 that you paid personally the \$2,330 to get the
5 extension in 2010; is that correct?

6 THE WITNESS: Well, let me correct that. The check
7 was probably not signed by me, but it was
8 Fisher-Friedman Associates.

9 THE COURT: Right. I understand that, sir. I
10 didn't think you wrote it out of your personal checking
11 account. But it was a business decision that FFA
12 decided to pay this because you wanted to get the
13 extension, correct?

14 THE WITNESS: Correct.

15 THE COURT: And would it be fair to say that you
16 knew at that point that the developer was having some
17 significant problems getting financing for any portion
18 of this project?

19 THE WITNESS: Absolutely.

20 THE COURT: And that the reason that you did that,
21 as you said, was for the benefit of all parties, the
22 Iliescus, and hopefully getting the place built, your
23 business would be benefited in that if the final
24 project was built, then you would be able to collect

1 your 5.75 percent of whatever the ultimate construction
2 costs of the building were?

3 THE WITNESS: And we would see the building built.

4 THE COURT: I understand there's the--

5 THE WITNESS: Minor part.

6 THE COURT: --there's that little part, that you're
7 happy that the building is built and that it's a
8 benefit to the community, but there's also a financial
9 benefit--

10 THE WITNESS: Absolutely.

11 THE COURT: --in that that's how you get paid.

12 THE WITNESS: Absolutely.

13 THE COURT: Okay. And so you're making a business
14 decision because you want to see this go forward,
15 understanding that at that point there were some
16 significant issues with the financing overall for the
17 project?

18 THE WITNESS: Correct.

19 THE COURT: What would your thought process be-- or
20 what was your thought process if there was no financing
21 for the project?

22 THE WITNESS: If there was no financing for the
23 project and we were absolutely certain that there was
24 no likelihood and the entitlements expired, we're all

1 dead ducks.

2 THE COURT: You get what? You get paid what?

3 THE WITNESS: I would get paid for the schematic
4 design, because in the terms of our agreement, if you
5 read the abandonment clause, I would be entitled to my
6 compensation which is under contract.

7 THE COURT: Right, fixed by the contract.

8 THE WITNESS: Plus the profit that I didn't get had
9 we completed the working drawings. And it would have
10 also been based on the real estimated costs of the
11 building. But in the spirit of cooperation with the
12 owners, the developers-- because the developers kept
13 searching for financing. They didn't want to put up
14 the money.

15 So I figured, well, it's best for everybody, I'll
16 write the check. So I'm rolling the dice. And we
17 asked for two years and we were granted one. And we
18 got it. And Dr. Iliescu didn't contribute financially,
19 but he did sign the documents because he was the owner
20 of the property and the only applicant, you know, that
21 could sign the documents, which actually puts him in
22 the developer's role.

23 THE COURT: But getting back to my question, the
24 big picture for you is you want to continue the

1 possibility that the project will be developed to
2 completion, because-- And I'm not slighting you at
3 all. You're a businessman. --because in the end, you
4 make more money once the business-- or, excuse me, once
5 the project is completed?

6 THE WITNESS: Correct.

7 THE COURT: Okay.

8 THE WITNESS: I make more money, the developer
9 makes more money, everybody makes more money.

10 THE COURT: Mr. Friedman, I think that you think
11 I'm trying to say something negative about making
12 money. I'm not. I understand that you're a
13 businessman. As an architect you like to see beautiful
14 buildings. As a businessman you like to pay your
15 bills. They're not mutually exclusive.

16 THE WITNESS: Correct.

17 THE COURT: Okay. Go ahead.

18 BY MR. HOY:

19 Q Mr. Friedman, can you please turn to Exhibit
20 No. 32. And now we're going back in time four years or
21 so prior to what we were just talking about. This is
22 a-- Let me know when you're there.

23 A 32?

24 THE COURT: 32 is in the other book.

1 BY MR. HOY:

2 Q Have you got it?

3 A It's a different book.

4 THE COURT: It's over there on the rail.

5 MR. HOY: I apologize.

6 THE WITNESS: Okay.

7 BY MR. HOY:

8 Q So Exhibit 32, this is a September 1st, 2006
9 letter from you addressed to Calvin Bosma. This
10 particular exhibit is not signed. Do you remember
11 writing this letter to Mr. Bosma?

12 A Yes.

13 Q Did you actually sign it before you sent it
14 out?

15 A I don't remember whether I did or not, but
16 there's no signature over my name block on this-- on
17 this letter.

18 Q Now, this is Bates numbered Iliescu 000645. Do
19 you have any understanding of how your letter got into
20 Mr.-- or Dr. Iliescu's file?

21 A I have no idea.

22 Q All right. Back in September of 2006 were you
23 concerned about being paid for the work that had been
24 performed to that date?

1 A Yes.

2 Q Please give us an overview of the discussions
3 that you were having with the developers around that
4 time.

5 A With all due respect, this may get a little
6 lengthy and kind of a narrative, but with the Judge's
7 permission, I'll--

8 THE COURT: Well, it's not just up to me. It's up
9 to counsel for Dr. and Mrs. Iliescu. If he feels it's
10 appropriate to object, then the Court will rule on the
11 evidentiary objection. Go ahead and answer the
12 question.

13 THE WITNESS: We were concerned that we were not
14 going to get paid. And we had a good relationship with
15 the owners and developers and Cal Bosma kept assuring
16 us that financing was underway. And they were working
17 with a number of banks. And they said, "Well, would
18 you take a guarantee from the bank that you're going to
19 get paid and continue work?" blah, blah, blah. And I
20 said yes.

21 And there were many times in our office where the
22 developers-- This is in my offices. --were sitting
23 waiting for responses from the bank and letters of
24 authorization and monies going into the escrow account.

1 Unfortunately for all parties, that never happened.

2 The bills didn't get paid. But I want to emphasize,

3 they never objected to the amounts that--

4 MR. PEREOS: Objection. Now we're volunteering and

5 advocating the case. I don't mind if he gives a

6 monologue that's responsive to the question, but when

7 he starts putting an advocacy of the case--

8 THE COURT: Sustained.

9 MR. PEREOS: --I have a problem with that.

10 THE COURT: I agree. Sustained.

11 BY MR. HOY:

12 Q Let's pick it off in smaller chunks. In

13 September of 2006 did you have concerns about getting

14 paid for the work that had been done to date?

15 A Yes.

16 Q Did you have-- This is a yes or no. Did you

17 have conversations with the developers about getting

18 paid?

19 A Yes.

20 Q Did the developers give you assurances that

21 they were seeking financing and that the financing

22 would close soon?

23 A Yes.

24 Q Can you please turn to the next exhibit, number

1 33. This is an October 20th, 2006 e-mail from Nathan
2 Ogle to Calvin Bosma. And Cal Bosma was the same guy
3 that you wrote to earlier in September; is that right?

4 A Correct.

5 Q And this schedule indicates-- I'm sorry. This
6 e-mail says, "FFA has tabulated the following basic
7 services-only payment schedule as discussed by
8 telephone on October 2nd, 2006 below. This schedule
9 shall supersede all previously agreed to payment
10 schedules."

11 And my first question is, did you participate in a
12 phone call on October 20th, 2006?

13 A I believe so.

14 Q And during that phone call was the
15 2,070,000-dollar value of schematic design/entitlements
16 phase discussed?

17 A Yes.

18 Q Was there-- during that phone call was there
19 any objection from Mr. Bosma to the 2,070,000-dollar
20 number being owed?

21 MR. PEREOS: Objection. We're into hearsay.

22 THE COURT: Mr. Hoy.

23 MR. HOY: Let me try and rephrase.

24 THE COURT: Okay.

1 BY MR. HOY:

2 Q At any time did your company ever receive an
3 objection from any of the developer entities or
4 individuals that you were not entitled to the
5 2,070,000-dollar fee for schematic design?

6 A Absolutely not.

7 Q Can you please explain what this schedule is
8 all about here in this e-mail?

9 A It was Cal Bosma's request that we divide it up
10 into equal monthly payments, as the practice he used in
11 the Coast Guard, as opposed to guessing at the
12 percentages of completion.

13 Q All right. Please turn to Exhibit No. 34.

14 MR. HOY: This is not in evidence, Your Honor.

15 BY MR. HOY:

16 Q Exhibit 34 is an October 24th, 2006 e-mail from
17 Nathan Ogle to John-- Is it Larvin? --Calvin Bosma at
18 Decal Custom Homes, Sam Caniglia, Sanford Mangolin,
19 Mark Steppan, Susie Fay, Cal Bosma, Tim Fasel. Just
20 without reading it out loud, can you please read the
21 e-mail to yourself. And let me know when you're done.

22 A Yes, I've read it.

23 Q Did you have any role in preparing Exhibit 34?

24 A Only with conversations with Nathan Ogle.

1 Q Does Exhibit 34 reflect conversations that you
2 had with people outside of Fisher-Friedman Associates?

3 A Yes.

4 Q Was the e-mail in Exhibit 34 created as a
5 memorandum to remind you or folks within
6 Fisher-Friedman Associates of the conversations that
7 were held with outside folks?

8 A I think it's just communication on the face of
9 it to developers and our clients about what was going
10 on, but if you look at the distribution, you can see--

11 Q You can't read from the exhibit out loud.

12 A I'm not. But cc's are to our attorneys and to
13 the clients as well.

14 Q All right.

15 MR. HOY: Offer Exhibit 34.

16 MR. PEREOS: May I take the witness on one question
17 for voir dire?

18 THE COURT: Sure.

19 VOIR DIRE EXAMINATION

20 BY MR. PEREOS:

21 Q Was 34 sent?

22 A Yes.

23 MR. PEREOS: No objection.

24 THE COURT: Admitted.

1 (Exhibit 34 was admitted.)

2 DIRECT EXAMINATION (Resumed)

3 BY MR. HOY:

4 Q Did Fisher-Friedman Associates ever receive any
5 response, any written response, back from any of the
6 developers to Exhibit 34?

7 A I can't remember.

8 Q In the middle of the page it says, "These fees
9 are based on the current construction budget of
10 \$180,000,000, and this fee should be adjusted based on
11 actual real construction costs."

12 Did the developers ever object to that concept?

13 A No.

14 Q The next paragraph says, "Note that the above
15 values include basic services only. Additional
16 services/reimbursables are separate and in addition to
17 the basic services currently totaling approximately
18 \$50,000 outstanding."

19 Did Fisher-Friedman ever receive any objection from
20 the developers to the concept of additional services
21 and reimbursables being billed in addition to the fee?

22 A No.

23 Q Please turn to Exhibit No. 1.

24 A Is that in this book?

1 Q Yes, sir. Exhibit No. 1 is a Notice and Claim
2 of Lien and it's in the name of Mark Steppan. Do you
3 have an understanding why the lien was recorded in the
4 name of Mark Steppan?

5 A He's the architect of record.

6 Q Okay. And this lien was recorded on
7 November 7, 2006, so that's roughly three weeks after
8 the e-mail that we just looked at. Did anything
9 transpire between the e-mail in Exhibit 33 and
10 November 7th that caused your company and Mark Steppan
11 to record a mechanic's lien?

12 A I had conversations with one of the developers
13 and he actually encouraged us to file a lien.

14 MR. PEREOS: Objection, Your Honor. Back to
15 hearsay.

16 THE WITNESS: That's not hearsay.

17 THE COURT: Hold on a second. Mr. Friedman, this
18 isn't a normal conversation. This isn't a time where
19 we just interject our own feelings and opinions. This
20 is a court of law. And so even though a jury is not
21 here, I make the decisions regarding the admissibility
22 of evidence. Do you understand that?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

1 Mr. Hoy, do you have a-- or do you have a position
2 regarding the hearsay objection?

3 MR. HOY: It's hearsay, Your Honor.

4 THE COURT: So you agree?

5 MR. HOY: Yes.

6 THE COURT: Sustained, in spite of Mr. Friedman's
7 opinion.

8 THE WITNESS: Maybe I heard the question
9 incorrectly.

10 BY MR. HOY:

11 Q Did you hear anything between the e-mail in
12 Exhibit 33 on November 7th, 2006 to dissuade your fears
13 that you wouldn't get paid for the schematic design?

14 A No.

15 Q Now, this lien was recorded at about the same
16 time the application was pending with the City of Reno
17 for the tentative map. Was there a particular reason
18 why the lien was recorded before the city council
19 acted?

20 A It's based on our lack of confidence in getting
21 paid.

22 THE COURT: Counsel, I think that what would be
23 important to note is that the Court could consider the
24 statement of why he paid-- or why the lien was filed

1 and what he was told. It's not being offered for the
2 truth of the matter asserted; that is, that he was not
3 going to get paid, it's offered for the effect upon the
4 listener. And for that limited purpose the Court could
5 consider the fact that Mr. Friedman may have had
6 conversations with someone that caused the filing of
7 the lien on November 7th of 2006, but the Court
8 wouldn't consider that as a fact. It's just the reason
9 why Friedman-Fisher and Associates took the action that
10 did.

11 BY MR. HOY:

12 Q Were you-- was your company motivated to record
13 the mechanic's lien on November 7th, 2006 based on
14 something that you heard from the developers?

15 A Yes.

16 Q And did you-- did your confidence in the
17 developers' ability or willingness to pay diminish
18 based on what you had heard?

19 A Yes.

20 Q Thank you.

21 MR. HOY: I have no more questions at this time,
22 Your Honor.

23 THE COURT: Before cross-examination, I do have one
24 question for you, Mr. Friedman.

1 EXAMINATION

2 BY THE COURT:

3 Q On a case like-- or in a situation like this
4 with this type of contract, the anticipation is that at
5 the end of the line the beautiful buildings are going
6 to be built and you and your firm will be entitled to
7 5.75 percent of the construction costs of those
8 buildings; is that correct?

9 A Right.

10 BY THE COURT:

11 Q And that during the course of the contract
12 you'll get paid certain amounts as the contract goes on
13 based on project phase levels; is that right?

14 A Correct.

15 Q Now, in the end, the end result is you just
16 take whatever the construction contract costs are,
17 multiply it by .0575 and that's what your fee is?

18 A Yes.

19 Q But during the course of that time do you keep
20 hourly bills or do you keep running totals for all of
21 the different things that you do for each individual
22 phase? Is that how you keep coming up with the fees
23 that we see in these different e-mails and the
24 different letters? Is it-- Tell me how the billing

1 process goes in Fisher-Friedman.

2 A You take on commissions in a number of
3 different ways. Okay. And you arrange with your
4 clients on the technique of compensation. You can do
5 projects certainly on an hourly basis, open end. And
6 the time records are kept on timecards, they go to the
7 bookkeeping department, they're tabulated monthly and
8 the bills go out. Okay. That's one way.

9 If you have a fixed-fee contract, you record your
10 timecards, okay, with a different purpose, not for
11 billing purposes but to track how much it's costing you
12 to do the project. You don't make money on every
13 project. Probably 30 percent of our projects we go
14 over budget and we lose money and we still have to
15 perform the work.

16 So for internal tracking, all offices keep the time
17 records so they check by phases whether they're making
18 money, losing money or whether they're going to be
19 ahead at the end. Okay. Usually the front end of the
20 project on a fixed-fee basis with a schematic design is
21 if you're in a very strong design studio and things go
22 well, that actually can be the most profitable part of
23 the project.

24 During the middle of the project while you're doing

1 the construction documents and design development
2 drawings, you're probably breaking even, because you're
3 going to have dozens of people working on the project.
4 And depending on their efficiency, you're either making
5 money or losing money or you have to do things over
6 again.

7 At the back end of the project when you're doing
8 construction management, okay, you have a percentage of
9 the fee based on the construction amount. That doesn't
10 change. If the project takes three years to build
11 instead of two years to build, you're killed, because
12 you still have to provide the services.

13 So in this particular case, it was a fixed-fee
14 contract. We would get our commission based on the
15 schematic design and get paid, go into the next phase
16 of DDs, design development drawings, which we were
17 going to condense and go right to the construction
18 documents. And we had arranged for a local architect
19 to represent us during construction phase because it
20 would save the commute from San Francisco to Reno.

21 Q I'm going to interrupt you at this point,
22 because you're kind of getting a little far afield of
23 what my question was. But, Mr. Friedman, I want to
24 take you back just to this specific case then. Given

340

1 the fact that you're on a fixed-fee contract and you're
2 only through the schematic design phase, my question
3 is, is there some sort of internal billing system going
4 on at Fisher-Friedman and Associates to document how
5 much time and how much-- how much resources have been
6 expended on the schematic design phase to this point?

7 A Yes.

8 Q And that, as you've just testified, is just for
9 your internal records, it's so you know kind of if
10 you're ahead or behind, if this is a good idea in the
11 future to do or a bad idea; is that right?

12 A Correct. However, in this particular case, to
13 get the jump start while the attorneys are negotiating
14 the contract, we had authorization to proceed on an
15 hourly basis and bill a progress payment on an hourly
16 basis.

17 Q I understand that.

18 A It didn't change the fee.

19 Q I understand that. And anything that you would
20 have collected in that hourly basis would have been
21 offset on your end fee; is that correct?

22 A We would have credited what had been paid
23 against the fee.

24

1 Q All right. Okay. Thank you.

2 But you do have-- you did keep that running total--

3 A Yes.

4 Q --at all times?

5 A Yes. The only variation is the owner of the
6 firm, okay, because not a hundred percent of my time is
7 spent on this project. We have a number of different
8 projects in the office. Okay. So the amount of time
9 that I'm spending, you know, overtime in the evenings,
10 et cetera, et cetera, and conversations with clients
11 really won't appear on the timecards.

12 Q I understand that.

13 A All right. Thank you.

14 Q Contrary to what you may hope or believe, law
15 firms and architectural firms are very similar in the
16 way that they're run, except for the creative end.
17 We're not going to negotiate that.

18 A Well, there is--

19 Q Hold on. Mr. Friedman, the beauty of this
20 conversation is I get to say when it's over. So that's
21 the end of that observation. And I will now--

22 THE COURT: Mr. Hoy, do you have additional
23 questions based on my questions before
24 cross-examination?

1 MR. HOY: Well, I'm not sure it's a question for
2 the witness. We've looked at the contract and we've
3 made the legal argument about how this billing
4 mechanism works.

5 MR. PEREOS: Your Honor, I'm not sure this is the
6 time to do argument.

7 THE COURT: Yeah, we can discuss that. Mr. Hoy, if
8 you want to take that up or what you're about to tell
9 me up in between witnesses or after a break or
10 something, we can do that, but I don't want to somehow
11 stop Mr. Pereos's ability to cross-examine the witness.
12 And so what I'll do at this point is just turn
13 Mr. Friedman over to Mr. Pereos for cross-examination.
14 Go ahead, Mr. Pereos.

15 MR. PEREOS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PEREOS:

18 Q Mr. Friedman, let's work on that last message
19 from the Judge. You would agree that you were billing
20 for your time and resources to the developer until such
21 time as you got your fixed-fee contract signed, the AIA
22 contract?

23 A Correct.

24 Q And the developer was actually paying you for

1 that work until he went delinquent on the payments?

2 A Yes. He was behind.

3 Q That's right. And you received approximately
4 480,000, thereabouts, approximately?

5 A Correct.

6 Q Now, you tell us that you recorded the lien or
7 at least you caused the lien to be recorded because you
8 were having anxieties as to whether or not you were
9 ever going to be paid your fee.

10 A It was more than anxieties.

11 Q Well, how else would you describe it to be more
12 than an anxiety?

13 A I was pretty sure we weren't going to get paid.

14 Q You were confident you weren't going to be
15 paid?

16 A Pretty close.

17 Q Okay. Now, are we talking about you were
18 confident that you weren't going to be paid for the
19 delinquency on the billings that you were doing on the
20 time-and-material basis or are you talking about the
21 20 percent of the 5.75 percent?

22 A Both.

23 Q Both. And you wanted the 20 percent of the
24 5.75 percent?

1 A It's in our agreement.

2 Q Okay. But you wanted it?

3 A Of course.

4 Q Is that correct?

5 A Yes.

6 Q Well, okay. So--

7 A It's in our agreement.

8 THE COURT: Hold on. Hold on. Mr. Friedman and
9 Mr. Pereos, please allow one person to finish answering
10 the question before you pose the next question.

11 Mr. Friedman, please don't just interject thoughts.

12 You said it was in the agreement on a number of
13 occasions, and I get that.

14 Mr. Friedman, just so you know, my court reporter
15 can't take down two people talking at the exact same
16 time. And, therefore, it's important that we have a
17 question and an answer followed by a question and an
18 answer.

19 Go ahead, Mr. Pereos.

20 BY MR. PEREOS:

21 Q Okay. So you had these-- How would you
22 describe it? I would say major anxieties; you're
23 saying you're not going to be paid. How do you want to
24 describe it?

1 A I'm not going to describe it as major
2 anxieties.

3 Q All right. Then I'll use the phrase major
4 anxieties.

5 THE COURT: Stop. Mr. Pereos, you need to listen
6 to the answer to the question. The answer was, I would
7 not describe it as major anxieties. Therefore, I'm not
8 going to allow you to describe it as major anxieties.
9 He's expressed that he's concerned that he's not going
10 to be paid. I believe the term was he was confident
11 that he was not going to be paid. That's my
12 understanding.

13 Go ahead with the next question.

14 BY MR. PEREOS:

15 Q Okay. So you were concerned that you were not
16 going to be paid by the time you showed up at the Reno
17 City Council meeting hearing?

18 A At the time we showed up for the city council
19 meeting we hadn't been paid. I was hoping that after
20 the approvals we would get paid. And the developers
21 kept reassuring me that we would get paid, but they
22 hadn't secured their financing.

23 Q What I'm concerned about is this. You were
24 sitting next to Mr. Iliescu.

1 A No.

2 Q He was sitting behind you.

3 A Yes.

4 Q You saw him at the reception after the Reno
5 City Council meeting. Why didn't you tell him about
6 the lien?

7 A He was not the developer of the property.

8 Q Oh, so you didn't think the lien pertained to
9 him because he was not the developer?

10 A I'm not an attorney, counselor.

11 Q Well, I'm asking you your mindset, what you
12 were thinking at the time as to why you didn't tell him
13 about the lien.

14 A My concern at the time of the party is that
15 this had a good possibility of going forward, but for
16 protection we were going to file a lien in case it
17 didn't. You would do the same thing.

18 Q Do you have a financial-- Let me rephrase
19 this. Fisher-Friedman and Associates, what type of
20 entity is that today? Is that a corporation? Sole
21 proprietorship? A limited liability company?

22 A Fisher-Friedman Associates, okay, was sold two
23 years ago. It was a subchapter S corporation.

24 Q It was a sub S corporation. And prior to its

1 sale two years ago, who was the principal stockholder?

2 A I was.

3 Q Who was the-- were there any other stockholders
4 other than you prior to its sale?

5 A Not at that point, because we were not doing
6 well financially, so none of the employees wanted
7 stock.

8 Q Okay. All right. Now, I'm not interested in
9 going into the terms of the sale, but some other entity
10 now owns Fisher-Friedman Associates?

11 MR. HOY: Objection. It exceeds the scope.

12 THE COURT: No, I don't think so. For the purposes
13 of-- the testimony of a witness-- the Court doesn't
14 believe that Chapter I believe it's 47 off the top of
15 my head contemplates that counsel for the defense or
16 the cross-examining attorney only gets to ask questions
17 on what you ask. That would be absurd. I believe that
18 the attorney gets to ask questions that he wants to ask
19 on cross-examination.

20 I guess the argument could be made that he could
21 then recall the witness and do direct examination. I
22 think that's just a giant waste of time.

23 MR. HOY: I don't disagree. Some courts see it
24 your way; some courts do it the other way.

1 THE COURT: I appreciate that.

2 MR. HOY: And so now we know from this test how
3 this department interprets that rule.

4 THE COURT: I appreciate that. As you can probably
5 tell so far, I'm interested in the efficient way. And
6 so he's here now, he's answering questions now, it
7 saves Mr. Pereos from having to recall him at some
8 point in his case in chief.

9 So go ahead and ask the question.

10 MR. PEREOS: Thank you.

11 BY MR. PEREOS:

12 Q I'm not interested in the details, but does
13 some other entity, company, people own Fisher-Friedman
14 Associates today?

15 A Yes.

16 Q In your arrangement with regard to the transfer
17 of Fisher-Friedman and Associates, did you retain
18 ownership of the claims arising from this lawsuit?

19 A Correct.

20 Q That's what I thought. Do you have a financial
21 interest in the outcome of this lawsuit?

22 A Yes.

23 Q Are you financing this lawsuit?

24 A Yes.

1 Q You testified that your firm has more awards as
2 an architectural firm than any other firm in the
3 nation.

4 A Yeah.

5 Q Do you remember saying that?

6 A Yeah. The AIA awards.

7 Q AIA awards?

8 A Yes.

9 Q What's your source information for that?

10 A The people who give out the awards.

11 Q Oh, did they tell you or did you do your own
12 investigation to learn that?

13 A They told us. And that's why I became the
14 first member of the Housing Hall of Fame.

15 Q Before testifying or during your testimony--
16 let's say before today, did you have a salutation with
17 Mr. John Iliescu and Mrs. Iliescu in this courtroom?

18 A Yes.

19 Q Did you tell them in that salutation that
20 they're liable to you because they signed the
21 agreement?

22 A I said more than that.

23 Q You said more than that?

24 A Yes.

1 Q Okay. Did you tell them that you were a
2 multimillionaire and you're going to bury them?

3 A No.

4 Q Oh, you didn't? What else did you tell them?

5 A First I went-- Do you want me to tell you
6 about the conversation or are you going to ask
7 questions?

8 THE COURT: Stop. Can you lay some foundation,
9 where this conversation took place?

10 MR. PEREOS: Sure.

11 THE COURT: Was it today?

12 MR. PEREOS: I will.

13 THE COURT: Okay. Who was present.

14 MR. PEREOS: Yeah.

15 BY MR. PEREOS:

16 Q The conversation took place yesterday?

17 A Yes.

18 Q In the courtroom?

19 A Yes.

20 Q You had a conversation with Mr. John Iliescu?

21 A Yes.

22 Q And Mrs. Sonnia Iliescu?

23 A I didn't have a conversation with her.

24 Q Well, was she listening to the conversation?

1 A I believe so.

2 Q Okay. On that end did that conversation occur
3 after you testified--

4 A Yes.

5 Q --yesterday?

6 THE COURT: Was anyone present other than yourself,
7 Dr. Iliescu and Mrs. Iliescu?

8 THE WITNESS: No.

9 THE COURT: Next question.

10 BY MR. PEREOS:

11 Q Do you have Exhibit 6 in that book in front of
12 you?

13 A Yes, I do.

14 Q Let's open up to Exhibit 6. Tell me when
15 you're there, sir.

16 A I'm there.

17 Q Okay. Now, Exhibit 6 was not received by your
18 office until April 26th, 2006; isn't that correct?

19 A April 26th, yes.

20 Q Okay. And it's actually signed April 21st, but
21 you didn't get it until April 26th?

22 A That's when we received it.

23 Q And then after you received it is when you
24 caused the signature of Mr. Steppan to be affixed

1 thereto?

2 A Yes.

3 Q Now, is John Iliescu a party to that agreement?

4 A No.

5 Q Did you know that he was not a party to that
6 agreement--

7 A Yes.

8 Q --at the Reno City Council meeting after you
9 filed the lien?

10 A Yes.

11 Q By the way, had you ever filed a lien before?

12 A Yes.

13 Q How many prior occasions?

14 A Oh, several. I don't know the exact number.

15 Q Had you ever filed a lien in a set of
16 circumstances where you're doing work for the developer
17 who was not the owner of the property?

18 A Will you repeat the question?

19 Q Sure. Had you ever filed a lien in a set of
20 circumstances-- When I say "you," I mean FFA.

21 A Yes.

22 Q --where you were doing work for a developer--

23 A Yes.

24 Q --who was not the owner of the property?

1 A You know, I don't know whether they're owners
2 or not. I let the lawyers handle that.

3 Q Now, you told us that-- Let's direct our
4 attention to Exhibit 7. You told us that you caused to
5 transmit the letter of Exhibit 7-- Excuse me. My
6 apologies. Exhibit 9.

7 You told us that you caused to transmit the letter
8 of Exhibit 9 with an uncompleted AIA document attached
9 thereto; is that correct?

10 A Yes.

11 Q Okay. Now, this document, the AIA document,
12 doesn't tell us anything, does it?

13 A It tells you a lot. Read it.

14 Q The one I'm talking about that's attached to
15 Exhibit 9, you're saying it tells a lot?

16 A When it refers to the AIA document, you have to
17 look-- for it to be complete, you have to read the AIA
18 document.

19 Q I'm sorry. In order to be complete you have to
20 read, what, the letter that accompanies the AIA
21 document?

22 A You can't do one without the other. If you
23 refer to the AIA agreement and letter, then you have to
24 read the AIA agreement to find out what the letter is

1 all about. It's simple logic, counselor.

2 Q Okay. All right. So what you're telling me is
3 that the letter coupled with the attachment of the AIA
4 document provides further definition?

5 A Correct.

6 Q Does it provide definition as to what the
7 parameters of the project is?

8 A Absolutely.

9 Q Show that to me in Exhibit 9.

10 A You show-- Well, right down here at 4373, you
11 can go right down through the list of all the things
12 from survey 1 to fire protection through 16. And on
13 4372 you can go through 1 through 11 and it gives you
14 an idea what's involved. And if you combine scope with
15 schematic design, design development, construction
16 drawings, bidding, permitting, construction
17 administration, along with the AIA agreement, you'll
18 get all the information you want, counselor. You
19 should know that.

20 Q Now, tell me, Mr. Friedman, what are you
21 designing for?

22 A What do you mean, "What am I designing for?"
23 Explain it.

24 Q I understand you're telling me that you're

1 telling us that Exhibit 9 discusses the scope of the
2 work that you're doing, and I'm asking you, what's it
3 towards, what's the project?

4 A Counselor, it's for the design of the Wingfield
5 Towers. It's obvious. That's why we've been working
6 on it for seven years.

7 Q And what I'm saying to you is, Mr. Friedman,
8 where does Exhibit 9 discuss the Wingfield Towers
9 project?

10 A It doesn't have to.

11 Q Does your AIA agreement that's in blank discuss
12 the Wingfield Towers project?

13 A By name the AIA agreement when complete will
14 describe the project as Wingfield Towers.

15 Q Okay.

16 A The AIA agreements, if you read them,
17 counselor-- You know, there's thousands of those out
18 there. --don't describe in detail the project itself.
19 It describes a methodology and what services will be
20 provided for the project. It doesn't describe the
21 project. That's why we get hired, is to do the
22 project. You know that.

23 Q So are you telling us that an AIA contract
24 alone will not define the parameters of the project

1 without looking outside the four corners of the
2 document?

3 A All you have to do is read the agreement.

4 THE COURT: Hold on, Mr. Friedman.

5 Do you have an objection?

6 MR. HOY: Objection; badgering this witness. It's
7 a form contract to be filled in by the parties.

8 THE COURT: I'll allow you to rephrase the
9 question. I'm not sure-- I wasn't sure even what the
10 focus of the question was. I think that the testimony
11 of the witness, at least as I've understood it so far,
12 is that this letter contained in Exhibit 9 basically
13 describes what is going on, what the suggested-- I
14 don't want to say the project, because that wouldn't be
15 accurate, but what is anticipated, it's a bid process,
16 and they're saying this is what we're going to be
17 doing. And then they attach--

18 And, Mr. Friedman, correct me if I'm wrong about
19 this.

20 Then they attach a blank AIA document, the document
21 number B141, a 1997 version. That's the proposed or
22 kind of like the general standard contract that we use
23 in these types of things.

24 THE WITNESS: Absolutely.

1 THE COURT: As if to say, Here, this is the
2 contract we generally use. It's the starting point.
3 But it is not the contract. It's just a suggested form
4 of a contract. Is that accurate? Just yes or no.

5 THE WITNESS: Yes.

6 THE COURT: Thank you. Next question.

7 BY MR. PEREOS:

8 Q Anywhere in Exhibit 9 does it discuss a 499
9 two-story highrise condominium project known as
10 Wingfield Towers?

11 A No. And it doesn't have to.

12 Q Okay. Anywhere in Exhibit 9 does it discuss a
13 multiuse project that's intended to be a multiuse--

14 A No. And it doesn't have to. It's a form.

15 Q So when you sent Exhibit 9, you're simply
16 inviting them to use that particular form in defining
17 the relationship that's going to exist between your
18 architectural firm and the developer?

19 A Correct.

20 Q Okay.

21 A You know that.

22 Q And that takes us to Exhibit 6. Now, before
23 Exhibit 6 was signed, you were doing work and you were
24 billing for your time and resources?

1 A Correct.

2 Q And I believe you testified that you didn't
3 want to wait until the contract got signed.

4 A That's not true. The owners didn't want to
5 wait.

6 Q Oh, the owners didn't want to wait?

7 A That's right.

8 Q Okay. So you felt it acceptable
9 notwithstanding the fact that the owners didn't want to
10 wait in order to go forward?

11 A Correct. We had a deadline. The entitlements
12 were going to expire. They had no choice. We had no
13 choice.

14 Q Entitlements were going to expire. What
15 entitlements?

16 A You know what they are.

17 THE COURT: Sir, answer the question.

18 THE WITNESS: I will. The zoning requirements on
19 the property that existed when we were retained
20 permitted a building-- buildings of this scope and
21 scale, height and mass and density. The planning
22 department had put a deadline on that zoning
23 requirement and were going to downzone the entire
24 property in that whole neighborhood. There was an

1 expiration date.

2 If we didn't get the submittal in on time, then the
3 new ordinance would take place and the entitlements--
4 the existing entitlements would expire and require that
5 the project be about a third of the size that we were
6 asked to design.

7 BY MR. PEREOS:

8 Q Okay. So what you're telling me is they were
9 going to downzone the property?

10 A Absolutely.

11 Q Okay.

12 A And they did.

13 Q And that you had to get your application
14 submitted before the downzoning?

15 A The owners had to get the application
16 submitted.

17 Q Before the downzoning?

18 A Exactly.

19 Q Okay. And when was the downzoning going to be
20 implemented?

21 A Actually it's about a day after we made the
22 submission.

23 Q Okay. So you got the application submitted
24 within 24 hours or 48 hours--

1 A Pretty close.

2 Q --before the downzoning?

3 A Pretty close.

4 Q The application submitted to who, planning
5 commission or--

6 A Planning department.

7 Q Planning department. So it's your testimony
8 today that without this project having gone forward--
9 Well, let me ask you this preliminary question. You'll
10 agree with me this project has not gone forward?

11 A Correct.

12 Q You would agree with me that any entitlements
13 that were secured from your services or efforts have
14 now expired?

15 A Correct.

16 Q So it's your testimony today that this property
17 as it now exists could not support a project of this
18 nature because it's been downzoned?

19 A Correct.

20 Q Now, if the property has been downzoned, okay,
21 do you know whether or not the owner is supposed to be
22 so notified?

23 A The owner was notified by the planning
24 department.

1 Q So it's your testimony that Mr. Iliescu was
2 notified from the planning department or some
3 governmental agency that his property has been
4 downzoned?

5 THE COURT: Don't answer the question.

6 MR. HOY: Objection; no foundation. There's been
7 nothing to establish that this witness would know--

8 THE WITNESS: I wouldn't know that.

9 MR. PEREOS: Well, I--

10 THE COURT: Stop. There's been an objection, and
11 I'm going to rule on the objection.

12 Have you ever discussed that with Mr. Iliescu?

13 THE WITNESS: No.

14 THE COURT: Do you have any reason to be able to
15 answer that question?

16 THE WITNESS: I'll try to answer it as best--

17 THE COURT: I don't want you to try and answer it,
18 Mr. Friedman.

19 THE WITNESS: Well, I have an answer.

20 THE COURT: The answer is either going to be yes or
21 no. And if it's a yes, then you're going to need to
22 tell me the basis for the yes. The question was, was
23 Dr. Iliescu notified of that? And the only way you
24 would know that is that you somehow had a discussion

1 with Dr. Iliescu. That would be not hearsay, because
2 it would be an admission of a party opponent. So you
3 can answer yes if you know it for that reason.

4 If the answer is yes for any other reason, any
5 conversation you had with any other person or any
6 document that you may have read that wasn't authored by
7 Mr. Iliescu, then you cannot answer the question.

8 So do you have any personal knowledge that
9 Mr. Iliescu was notified that his property has been
10 downzoned I guess would be the term?

11 THE WITNESS: Yes.

12 THE COURT: Okay. And how do you know that before
13 telling me you know?

14 THE WITNESS: Because we had filed for an
15 extension. The extension was granted the first time.

16 THE COURT: For two years.

17 THE WITNESS: For two years. We filed the second
18 extension which I paid for.

19 THE COURT: For one year.

20 THE WITNESS: That was granted. At the end of that
21 one year, okay, we recommended that he go back for
22 another extension. Dr. Iliescu refused. And,
23 therefore, the zoning on the property was changed.

24 THE COURT: Thank you.

1 Next question.

2 BY MR. PEREOS:

3 Q That's the basis for your information that he
4 knew that the property was downzoned?

5 A He knew his extension had expired. There was a
6 date on it. He signed the extension documents. He had
7 them. He knew. He was a participant, an active
8 participant, in filing for the extension. The
9 extension was one year after the date he signed it.
10 The year expired. You would have to be a dummy not to
11 know it expired.

12 THE COURT: Mr. Hoy, do you have an objection to
13 that?

14 MR. HOY: No. I was only going to suggest that
15 maybe we take our morning break a little earlier.

16 THE COURT: No, we're okay. We got at least
17 another 15 minutes. We'll use the time in the same way
18 I suggested yesterday.

19 Go ahead. Next question.

20 BY MR. PEREOS:

21 Q I'm a little confused, sir. You're going to
22 have to help me out on that. Did you approach John
23 Iliescu for purposes of securing a third extension?

24 A We recommended through Sam Caniglia and the

1 realtor that he go for another extension. We talked to
2 Wood Rodgers about it. Dr. Iliescu didn't take any
3 action at all. Because I wasn't going to pay for the
4 additional expense.

5 Q So you don't know what his response was to your
6 recommendation for a third extension?

7 A His response is clear and evident. He didn't
8 file for an extension.

9 Q Because he didn't file for the extension,
10 you're assuming that he was the one who torpedoed the
11 request for the third extension?

12 A Absolutely not. If I had wanted to say that,
13 counselor, I would have said he torpedoed it. You said
14 he torpedoed it.

15 Q Well, let's go back then. I'm going to cover
16 this issue with you.

17 THE COURT: Well, you're not going to cover it much
18 further, Mr. Pereos.

19 MR. PEREOS: I'll move on.

20 THE COURT: Because I understand Mr. Friedman's
21 response to the question. I understand that he had no
22 direct contact now with Dr. Iliescu, telephone
23 conversation or in person or through letter with the
24 doctor himself about that. But at the same time, I

1 would say that it's safe to assume the inference was
2 that there was a decision not to seek a third
3 extension. Therefore, a third extension did not occur
4 for whatever reason.

5 Next question, please.

6 BY MR. PEREOS:

7 Q Let's direct our attention to Exhibit 6, the
8 architect contract. You would agree with me that the
9 parameters defined in this contract was 499 units?

10 A Yes.

11 Q And that you were to secure the entitlements?

12 A No, I don't secure the entitlements. The
13 developer secures the entitlements. I provide the
14 documents.

15 Q Well, in order for you to earn a fee, the fixed
16 fee, you had to secure the entitlements; do you not?

17 A Read the contract. It doesn't say anything
18 about the architect securing entitlements. You know
19 better than that.

20 THE COURT: Mr. Friedman, at this point I am
21 getting a little tired of the editorial comments. I
22 understand you may be getting slightly frustrated with
23 the questions. Mr. Pereos has a right to ask you
24 questions on cross-examination. Please confine your

1 answers to the information provided and avoid
2 editorializing as you've done repeatedly at the end of
3 your answers.

4 THE WITNESS: I'll try.

5 THE COURT: No, you will. Please.

6 THE WITNESS: I will. Thank you.

7 THE COURT: Thank you. Oftentimes, sir-- And I
8 can tell you this as a trial attorney for over 20 years
9 myself. I tell witnesses, "If you can answer a
10 question yes or no, answer the question yes or no."

11 THE WITNESS: Thank you.

12 THE COURT: If it requires some more information,
13 go ahead. But editorial comments are not necessary.

14 Go ahead.

15 BY MR. PEREOS:

16 Q Why don't you go to page 2 of the AIA contract
17 bearing Steppan Bate number 7499. Tell me if you're
18 there.

19 A Yes.

20 Q And why don't you read into the record what's
21 printed in Section 1.1.2.3.

22 THE COURT: The Court has reviewed it itself. He
23 doesn't need to read it into the record. It speaks for
24 itself. It's an admitted document.

1 Go ahead. Next question.

2 BY MR. PEREOS:

3 Q All right. Let's go to Exhibit 7, please.

4 A Yes.

5 Q Why don't you go to Bate page number 7520.

6 A Yes.

7 Q And why don't you read 1.1.2.3.

8 A "To obtain entitlements and approvals for the
9 property and proposed buildings as shown in Exhibit B
10 as attached," blah, blah, blah.

11 Q You can read it to yourself. You can just read
12 it to yourself. Tell me when you're done.

13 A Yes.

14 Q Are you done?

15 A Yes.

16 Q Now, that talks in terms of the owner's program
17 is to secure entitlements; does it not?

18 A Yes.

19 Q And it's entitlements for 499 units?

20 A Yes.

21 Q Now, you didn't consider it incumbent on
22 yourself as the architect to see that those
23 entitlements were secured for the 499 units?

24 A No.

1 Q It was not your responsibility under the
2 contract?

3 A To secure entitlements?

4 Q Yes.

5 A We don't-- Can I--

6 THE COURT: No, just answer the question. Did you
7 think that it was your responsibility to secure the
8 entitlements?

9 THE WITNESS: No.

10 THE COURT: Next question.

11 MR. PEREOS: Thank you.

12 BY MR. PEREOS:

13 Q Now, you would agree with me that this contract
14 and-- well, this contract provides that you have
15 intellectual property rights with regard to your
16 instruments of service, your work product?

17 A Correct.

18 Q Okay. And the contract is not assignable
19 without your consent, is it?

20 A Correct.

21 Q So even if John Iliescu wanted to sell this
22 property with these entitlements, he could not sell the
23 property with your work product?

24 MR. HOY: Objection; legal conclusion asked for.

1 THE COURT: Well, I don't know.

2 THE WITNESS: I understand the question.

3 THE COURT: Do you understand the question?

4 I don't think it calls for a legal conclusion. It
5 might be speculation on whether or not he wants to do
6 that and could do it.

7 MR. HOY: The question is legally could the
8 property owner sell the property with the entitlements
9 without permission from Fisher-Friedman Associates or
10 Mark Steppan I think is what the question is.

11 THE COURT: Is that the question, Mr. Pereos?

12 MR. PEREOS: The question is whether or not those
13 entitlements-- whether or not the work product, the
14 intellectual work product, of the architect can be
15 transferred to a new owner if he were to sell the
16 property.

17 THE WITNESS: Not without our permission.

18 THE COURT: Next question. That was my
19 understanding as well. Next question.

20 BY MR. PEREOS:

21 Q And it's your work product that constituted the
22 basis for the entitlements, correct?

23 A Correct.

24 Q So if the entitlement is 499 units based upon

1 the applications that were filed, it's basically saying
2 the 499 units are going to be in these buildings that
3 are shown up in these applications?

4 A Correct.

5 Q Is that correct?

6 A Yeah.

7 Q And you've already told us that those buildings
8 are going to be reinforced concrete.

9 A Correct.

10 Q And they're going to have that big major anchor
11 in terms of the reinforced concrete in the center of
12 the building.

13 A Well, in this building the concrete is
14 distributed. But go on.

15 Q I'm sorry?

16 A The concrete reinforcement and the anchoring is
17 distributed throughout the building because of the
18 length of the building, but--

19 Q Okay. And it's 40 stories high, 40 floors?

20 A Yeah. More than that. But go ahead.

21 Q All right. Is the 40 floors, by the way, on
22 the street side of Court Street or on the Island Drive
23 side?

24 A Well, on Island Drive it's taller.

1 Q It's taller.

2 A If you measure from Island Drive, from Court
3 it's lower because the site slopes. And you can count
4 the 40 floors, if you want to, from the plaza level.
5 So you pick. I'm not going to argue with you, you
6 picking the height of the building. The building is
7 what it is.

8 Q Okay. Were the floors going to be reinforced
9 concrete or post-tension cable?

10 A Well, they were going to be reinforced
11 concrete. They would probably have post-tensioning.

12 Q Okay. So it's reinforced concrete with
13 post-tension cable?

14 A Probably.

15 Q All right. Let's help the Judge out a little
16 bit. Now, you tell me if I'm describing post-tension
17 cabling correctly. It's when the cable determined by
18 your engineers in terms of their width, their tenacity
19 and their strength are laid over the floors with a
20 tensile strength, t-e-n-s-i-l-e strength placed there
21 before the floors are poured. Is that what we mean by
22 post-tension cable?

23 A Yes.

24 Q Can you pour a post-tension cable in the

1 wintertime, like as cold as it is now?

2 A It's up to the engineers to decide. And we
3 have the ability to heat the floors. We cover the
4 building and we heat the floors. So, yes, we can do it
5 during the winter.

6 Q So you can pour the post-tension cable floors
7 in the winter time?

8 A Yeah, if you heat the building.

9 Q Now, you've told us that the building was not
10 going to be structural steel, it's going to be
11 reinforced concrete.

12 A Correct. That's what the engineers told us.

13 Q Well, in your experience do you know what
14 handles earthquakes better, structural steel or
15 reinforced concrete?

16 A It's proven that structural concrete does a
17 superior job. The world's tallest buildings are
18 reinforced concrete.

19 Q And they handle earthquakes better?

20 A Yes, they do.

21 Q Okay. Just asking. Fine.

22 By the way, do you know what the seismic area is,
23 the seismic zone is of Northern Nevada?

24 A No, I don't. But I know it graduates and it

1 changes from district to district and the engineers use
2 the calculations on the seismic forces to do their
3 calculations and size everything. This was started in
4 California, in my state.

5 Q Okay. Well--

6 A You've adopted it.

7 Q I'll go about it this way. Do you know what
8 the most active seismic state in the union is?

9 A No.

10 Q Do you know what the second most active seismic
11 state in the union is?

12 A No.

13 Q When did you first learn that your client, the
14 developer, was not the owner of the property?

15 A We knew that from the outset.

16 Q Okay. At any time did you ever have any
17 interaction with John Iliescu before the AIA contract
18 was signed?

19 A No.

20 Q Did you ever send him a copy of the AIA
21 contract?

22 A No.

23 Q Any of your members of your firm ever have
24 contact with John Iliescu before the contract was

1 signed?

2 A I don't know.

3 Q Now, you told us that because of your desire to
4 accelerate the work or get the work done before the
5 zone changed, the downzoning, that you were working
6 under a time-and-material basis.

7 A Correct.

8 Q And you've told us that the contract was not
9 signed or at least not received by you by April-- until
10 April 26th.

11 A Correct.

12 Q What instruments of service were done by your
13 firm after April 26th?

14 A I don't remember.

15 Q Well, how about this? You can take-- Have you
16 got Exhibits 35, 36, 37, 38 handy?

17 A Yes.

18 Q Why don't you take a look at those, 35, 36, 37,
19 38, and see if you can identify for us what instruments
20 of service were done before April-- after April 26th.

21 A What was the date you were asking me about?

22 Q April 26th.

23 A What year?

24 Q 2006.

1 A Based on what you've asked me-- You said
2 Exhibits through 37?

3 Q And 38.

4 A And 38. In those tabs all the work that was
5 done was done prior to April.

6 Q April 26th?

7 A Yes.

8 Q So all that work that's referenced as the
9 instruments of service in those exhibits you billed for
10 on a time-and-material basis; did you not?

11 A Yes.

12 Q In fact, you also billed on the video
13 fly-through; did you not?

14 A Yes.

15 THE COURT: At this point I think it is a good idea
16 to take our morning recess. It is approximately 10:15.
17 And so we will take a 15-minute recess. Court will be
18 in recess.

19 (A recess was taken.)

20 THE COURT: The parties are present.

21 Mr. Pereos, you're on cross-examination.

22 MR. PEREOS: Thank you, Your Honor.

23 BY MR. PEREOS:

24 Q Mr. Friedman, do you have Exhibit-- Well,

1 before I get to that, let me direct your attention to
2 Exhibit 35. Tell me when you're there.

3 A Yes.

4 Q Okay. I will tell you, the attorneys kind of
5 had-- the attorneys have these exhibits almost
6 memorized, so we know exactly where to go versus the
7 witness.

8 Exhibits 35, 36 and 37 are applications that were
9 put together for the approval of this project. You're
10 welcome to look at it to assure yourself that my
11 statement to you is accurate.

12 A That's correct.

13 Q Okay. Did you see the applications before they
14 were filed?

15 A No.

16 Q Okay. Is there a reason why you didn't review
17 the applications before they were filed?

18 A The developer puts in the applications and the
19 form work and pays the fees; I don't.

20 Q So you didn't review them to satisfy yourself
21 regarding its accuracy?

22 A No.

23 Q Okay. That's fine.

24 Let's go to the Exhibit 6, the contract of sale,

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1 please. Excuse me. The AIA contract. I apologize. I
2 misspoke.

3 A Yes.

4 Q Before I get to that point, you testified when
5 you were discussing Exhibit 52-- That was the
6 application for the extension, but you can go to 52 to
7 satisfy yourself. --that it would have been easier for
8 the owner to sell the property if he had the
9 entitlements and that's why you participated in the
10 extension. Is that your thought process?

11 A Yes.

12 Q But he couldn't sell the property, okay, with
13 your work product or instruments of service without
14 your consent; isn't that correct?

15 A That's correct.

16 Q Okay. Let's go back to the contract of sale.
17 Excuse me. The AIA contract. I want to direct your
18 attention to page 9, Compensation, Article 1.5.

19 MR. HOY: Can you give the Bates number, please,
20 counsel.

21 MR. PEREOS: Sure. Bates number page 7506.

22 BY MR. PEREOS:

23 Q Are you there?

24 A Yes.

1 Q Now, I assume you're very familiar with these
2 contracts?

3 A Pretty much.

4 Q All right. Now, is it-- now, it's your
5 position that this article discusses the fixed fee,
6 correct?

7 A Yes.

8 Q All right. And it discusses what your
9 compensation is to be?

10 A Yes.

11 Q Okay. When does the article discuss you've
12 earned the compensation?

13 A Repeat the question.

14 Q When does that article discuss that you've
15 earned the compensation?

16 A I don't understand your question.

17 Q Okay. Well, is it your position that-- is
18 there anything else in the contract that supports your
19 position that you've earned that fixed fee other than
20 1.5?

21 A I don't know what you mean by "earned."

22 Q Okay. Let me see if I can go about it this
23 way. Do you think you've earned the compensation
24 because you've done the instruments of service?

1 A Correct.

2 THE COURT: Oh, I apologize. I was making a note.

3 MR. PEREOS: I just stopped and--

4 THE COURT: I didn't hear anyone-- I figured
5 someone was looking for something. Just so the record
6 is clear, I looked up and Mr. Hoy was standing and
7 there was a moment where nothing was said. I was just
8 making a note to myself. Mr. Hoy, if I'm looking down,
9 say, "Objection," I'll look up. What can I do for you.

10 MR. HOY: I'm waiting for the next question.

11 MR. PEREOS: I thought he was objecting.

12 THE COURT: Let's just move on. Go ahead,
13 Mr. Pereos.

14 MR. PEREOS: Okay.

15 BY MR. PEREOS:

16 Q However, you were paid for the work that you
17 did on a time-and-material basis; were you not?

18 A Those were progress payments. And we weren't
19 entirely paid.

20 Q But the engagement letter doesn't say progress
21 payments, it says you will bill for time and material,
22 and you attached your letter-- your schedule of what
23 your time and materials would cost.

24 MR. HOY: Objection; vague. We don't know what

1 "engagement letter" means.

2 MR. PEREOS: All right. That's fine.

3 THE COURT: Sustained. You can rephrase the
4 question.

5 MR. PEREOS: I'll come back to it.

6 THE COURT: Okay.

7 BY MR. PEREOS:

8 Q Now, let's direct our attention to Exhibit 25.

9 A Yes.

10 Q Now, Exhibit 25, do they represent billings
11 that were generated from your office?

12 A In Exhibit 25 which page are you referring to?

13 Q Well, let me take a look to see if you and I
14 are on the same page, if I may.

15 A This is the first page of 25.

16 Q Excuse me. I don't mean to be rude. I see
17 your confusion.

18 Okay. We're on the same page.

19 The first page of Exhibit 25 is the summary of--
20 it's just a summary page, is it not?

21 A No.

22 Q Okay. How would you describe the first page of
23 Exhibit 25?

24 A That's a payment schedule that the owners

1 proposed to pay us for the completion of schematic
2 design.

3 Q Okay. And who prepared this?

4 A The owners.

5 Q The owners--

6 A I'm sorry. The developers, not the owner of
7 the property.

8 Q Okay. Now, the remaining pages, were they
9 billings generated from your office?

10 A Yes. Well--

11 Q I'm sorry?

12 A Page 7599, yes, 7600, 7601, 7602, 7603, 7604,
13 7605, 7606, 7607. Well, if you continue through--
14 There's 7614. Yes, they're all prepared by our office.

15 MR. PEREOS: I would move for the admission of
16 Exhibit 25.

17 MR. HOY: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (Exhibit 25 was admitted.)

20 THE COURT: Mr. Friedman, just so I understand--
21 Correct me if I'm wrong. --is it your understanding of
22 how you're going to be compensated that you're going to
23 get 5.75 percent of the approximate construction cost
24 of \$180 million? And more specifically, I'm looking at

1 page 7601.

2 THE WITNESS: 7601.

3 THE COURT: And so your anticipated--

4 THE WITNESS: Wait.

5 THE COURT: Go ahead and get there. Are you with
6 me?

7 THE WITNESS: Yes.

8 THE COURT: See in the middle it says construction
9 costs, \$180 million?

10 THE WITNESS: Yes.

11 THE COURT: Percentage of construction costs, 5.75.

12 THE WITNESS: Correct.

13 THE COURT: And then you multiply that together
14 obviously and you come up with a total fee ultimately
15 of \$10,350,000; is that right?

16 THE WITNESS: Right.

17 THE COURT: Of which you're entitled to 20 percent
18 at the conclusion of the schematic design phase; is
19 that right?

20 THE WITNESS: Correct.

21 THE COURT: So that's the \$2,070,000?

22 THE WITNESS: Right.

23 THE COURT: And I know there's some other things,
24 but that's the number we're talking about in this case;

1 is that right?

2 THE WITNESS: Correct. That's the basis of the
3 case.

4 THE COURT: You're not saying I'm entitled to 10
5 million, you're saying we're entitled to 2?

6 THE WITNESS: Correct.

7 THE COURT: Go ahead, Mr. Pereos.

8 THE WITNESS: Can I add to that?

9 THE COURT: No. That's fine. He can ask you
10 questions about that, but I just want to make sure that
11 I'm tracking with everybody.

12 THE WITNESS: Correct.

13 BY MR. PEREOS:

14 Q So after the contract was signed, if you look
15 at the May billing that's on Bate number page 7599--

16 A Just give me a moment and I'll try-- Yes.

17 Q You billed 23.25 percent of that work on the
18 20 percent of the 5.75 percent fee?

19 A Yes.

20 Q Is that correct?

21 A Yes.

22 Q And then the next month for the-- well, for the
23 May billing-- I don't know if yours is out of order.

24 THE COURT: Stop. Let me ask a question, because

1 it's like you're skipping a logical question. Were you
2 paid \$481,275 as a result of the May 18th, 2006
3 invoice?

4 THE WITNESS: You know, I would have to refer to
5 Mark Steppan on that. I can't remember whether we were
6 paid or not.

7 THE COURT: Okay. Thank you.

8 Next question.

9 BY MR. PEREOS:

10 Q So when we go to the June billing, which
11 appears on page 7601, okay, we're still picking up the
12 23.25 percent?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q When we go to the July billing, now it goes up
17 to 28.1 percent?

18 A Yes. Wait a minute. No, I don't have-- I
19 still have--

20 Q I'm sorry. I'm looking at page 7603. Is that
21 what you're looking at?

22 A Yes. Oh, the percentage completion goes up to
23 28, yes.

24 Q It went up to 28 percent?

1 A Yes.

2 Q Okay. Now--

3 THE COURT: Wait. I apologize for interjecting
4 myself into your cross-examination, Mr. Pereos.

5 MR. PEREOS: That's okay.

6 THE COURT: But I think that the questions can be
7 answered that I had based on pages 7601 and 7602 that
8 are now admitted into evidence. So we know that the
9 billing in May was \$481,275. Then you look at 7701, as
10 of June 20th of 2006, so approximately one month after
11 the billing, the total amount due is zero, which leads
12 the Court to believe that \$481,275 was paid somehow.

13 You look onto the next page-- And I'll allow the
14 parties to clarify this before we go on with any
15 further cross-examination. But you go onto the next
16 page and you see the invoice of May 18th, \$481,275, and
17 then a series of deductions for February 16th-- There
18 are four of them by my count. --March 21st, May 16th
19 and June 16th of 2006. So that leaves a balance due
20 from the May billing of \$100,405; is that right?

21 MR. HOY: Yes.

22 THE COURT: So he paid-- and I apologize for
23 oftentimes using round numbers, but he paid
24 approximately-- the developer paid approximately

1 380,000 of the \$481,275 due; is that accurate?

2 MR. HOY: Yes. But to be fair to the point that
3 Mr. Pereos I think is trying to make, those payments in
4 February were--

5 THE COURT: On the costs-and-materials basis.

6 MR. HOY: On the stopgap agreement.

7 THE COURT: Right. Okay.

8 Go ahead. So you are getting some money.

9 THE WITNESS: Yes.

10 THE COURT: But as of June 20th, the developer is
11 approximately \$100,000 short on the first payment?

12 THE WITNESS: Correct.

13 THE COURT: The first bill.

14 THE WITNESS: Right.

15 THE COURT: Okay. Go ahead, Mr. Pereos.

16 BY MR. PEREOS:

17 Q Okay. So now if we go to the July billing,
18 being Bate page number 7603, we have a percent complete
19 of 28 percent.

20 A Correct.

21 Q With a request of 581,670?

22 A Correct.

23 Q Now, let's go to the August billing and the--

24 That's page 7605. Now the percent complete is 44.63--

1 six thirty percent; do you see that?

2 A Yes.

3 Q What work was done-- what instruments of
4 service were prepared from July 19th to August 23rd?

5 A I don't have all the data and records in front
6 of me. I can't answer you. I'm sorry.

7 Q Well, let me do this. If at any time during
8 this trial you find any instruments of service that
9 were completed during that 30-day period precipitating
10 this additional billing of 20 plus percent, okay, could
11 you please see to it that we have them for court?

12 A Yes.

13 Q Okay. Good.

14 Now, let's go to the September billing, Bate number
15 page 7607.

16 A Yes.

17 Q Now the percentage of completion goes up to
18 61.16 percent.

19 A Yes.

20 Q So would your-- if I asked you what instruments
21 of service were done between August and September,
22 would you know?

23 A Yes and no.

24 Q Okay. Give me the "yes" part and then you can

1 give me the "no" part, or you can give me the "no" part
2 first or give me the "yes" part first. I don't care.

3 A Thank you. We are continuing the same amount
4 of work to complete the project application for
5 obtaining the entitlements, so it's a stage-by-stage
6 situation. And I can't tell you as I sit here which
7 person did what in order to accomplish the completion
8 of schematic design. The important thing is that
9 schematic design was completed.

10 Q Are you telling me that you still did
11 instruments of service towards schematic design after
12 the applications were filed to the planning commission?

13 A There was some coordination done afterwards,
14 yes.

15 Q No, I'm asking you if you drafted any
16 instruments of service, not coordination.

17 A They're the same thing.

18 Q Is that answer yes?

19 A Yes.

20 Q And was the developer delinquent at that time?

21 A The developer was delinquent.

22 Q In the payments?

23 A Yes.

24 Q But you still did the work?

1 A Yes.

2 Q And while you were doing that work, knowing
3 that the developer was delinquent, you also knew that
4 the developer did not have his money lined up to go
5 forward with the project?

6 A Oftentimes he told us he did.

7 Q Well, but wait a minute. Okay. He verbalized
8 to you that he had his money lined up, but you never
9 saw it materialize, did you?

10 A Correct.

11 Q Did you start having concerns when you were
12 doing these additional schematic designs that, wait a
13 minute, maybe this developer is not being straight with
14 me, maybe he doesn't have his money lined up?

15 A Correct.

16 Q But you still went ahead and did the work?

17 A Correct.

18 Q When you were doing that work, knowing that the
19 developer was not paying you and not had his money
20 lined up to pay you, you knew from your prior
21 experiences that you had an opportunity to lien the
22 property?

23 A Yes.

24 Q By the way, do you know when your last work was

1 done?

2 A You would have to check with Mark. He may tell
3 you when you examine him.

4 Q So Mark would be the better person to answer
5 that question?

6 A Probably.

7 Q Okay. That's fine.

8 You told us that you paid for one of the extension
9 applications because the owner, John Iliescu, refused
10 to pay?

11 A Yes.

12 Q Why did you pay it? Why didn't you just let it
13 go?

14 A I've already answered that question.

15 THE COURT: Can you answer the question again, sir.

16 THE WITNESS: Yes. I thought it would enhance the
17 possibility of his making a successful sale and that he
18 could find a developer to take over the project, he
19 would be rewarded, the architects would be rewarded,
20 the developers would be rewarded, the city would have a
21 nice new building and I would have a financial gain,
22 the owner of the property would have a financial gain,
23 the developers would have a financial gain. It seemed
24 like a good business decision.

1 BY MR. PEREOS:

2 Q Well--

3 A And I'm repeating myself.

4 Q If Mr. Iliescu-- Well, let me ask you this
5 question. Did you know at the time you made that
6 payment for the extension as to whether or not the
7 developer was out of contract with John Iliescu? And
8 do you know what I mean by "out of contract"?

9 A I didn't know whether he was or not.

10 Q Did you make any inquiry to see whether or not,
11 okay, after you paid for that extension whether or not
12 the developer had any rights to still close the deal
13 with John Iliescu?

14 A We know that there was more than one developer
15 still making proposals to Dr. Iliescu to purchase the
16 property. At least that's what we were told by the
17 real estate man, Mr. Johnson.

18 Q More than one developer. Mr. Johnson led you
19 to believe that there were other people that were
20 making proposals to buy Mr. Iliescu's property?

21 A That's what we were told.

22 Q Somebody other than the developer?

23 A Yes.

24 Q Other than-- By the way, the developer that

1 you had contracted with as your client?

2 A One of the developers was still trying to
3 make-- put together a financial proposal, and he didn't
4 succeed. And we know of another one that was trying to
5 do it that also didn't succeed. And by keeping the
6 project active, they were still trying to get into the
7 financial community to secure financing.

8 Q All right. So when you're saying that there
9 were other developers seeking to make the project
10 succeed, are you talking about-- I want to make sure
11 you and I are on the same page. --other third parties
12 unrelated to the existing developers that were your
13 clients or other entities?

14 A Both.

15 Q Both. Okay.

16 THE COURT: Mr. Friedman, in the past had you ever
17 had-- I'm interested in your own personal experience.
18 Have you ever had an owner come to you and say, in
19 essence, we would like to transfer the instruments of
20 service from developer one to developer number two,
21 developer number one is falling out, but now we've
22 secured some new form of funding, we want to keep
23 everything the way it is, we just want to use your
24 instruments of service and go with a different

1 developer? Does that happen?

2 THE WITNESS: Yes.

3 THE COURT: Next question.

4 THE WITNESS: Several times.

5 BY MR. PEREOS:

6 Q The AIA contract marked Exhibit 6-- And you're
7 welcome to look through it, if you will. --is between
8 Mark Steppan and BSC Financial.

9 A Is that a question?

10 Q Okay. That's a question. Would you agree?

11 A Yes.

12 Q Okay. What rights did BSC Financial have to
13 this property?

14 A To the property?

15 Q Yes.

16 MR. HOY: Objection; calls for a legal conclusion.

17 THE WITNESS: I don't know.

18 THE COURT: Sustained. The witness testified he
19 doesn't know anyway.

20 BY MR. PEREOS:

21 Q Did you make any inquiry as to what rights BSC
22 Financial had to the property?

23 A No.

24 Q At any time after the execution of Exhibit 6,

1 the AIA contract, did you ever sign any documents
2 agreeing to assign your intellectual property rights
3 and your instruments of service to another entity other
4 than BSC as it relates to this project?

5 A No.

6 THE COURT: Is that "no" because you were never
7 asked or "no" because you didn't want to? It just
8 never came up?

9 THE WITNESS: It never came up. We had a federal
10 copyright on it.

11 THE COURT: No, I understand. Mr. Friedman, I
12 understand that. My question is-- He said did you
13 ever sign an assignment, in essence, and you just said
14 "no." I just wanted to clarify that it was never
15 brought to you to--

16 THE WITNESS: Both.

17 THE COURT: It just never was an issue?

18 THE WITNESS: It wasn't an issue.

19 BY MR. PEREOS:

20 Q Let me direct your attention to Exhibit 32.
21 Tell me when you're there.

22 A Yes.

23 Q This is the letter that you wrote to Calvin
24 Bosma regarding his delinquency in the amount of

1 573,657.70.

2 A Yes.

3 Q Now, this letter is dated September 1st, 2006;
4 is it not?

5 A September 1, 2006.

6 Q So this letter was after you started taking a
7 percentage of the fixed fee?

8 A Yes. Should I read the letter?

9 THE COURT: No. Thank you.

10 MR. PEREOS: It's okay.

11 BY MR. PEREOS:

12 Q Is it your testimony that this project could be
13 built within 20 months after the entitlements were
14 received?

15 A We never put an estimated completion time into
16 our schedule.

17 Q Well, what about your experience as an
18 architect?

19 A Well, I have a lot of experience as an
20 architect. Most projects don't get completed on time.

21 Q Could this project have been completed within
22 20 months?

23 A Probably not.

24 Q Probably not. Did you know that the architect

1 contract, Exhibit 6, called for a completion in 32
2 months from the date of start to the date of
3 completion?

4 MR. HOY: Objection; lacks foundation.

5 MR. PEREOS: I'll do it. I'll show foundation.

6 THE COURT: Well, the contract speaks for itself.
7 The document has been admitted. And so if you don't
8 know, then certainly Mr. Pereos can direct you to that
9 portion of the contract, you can refresh your
10 recollection, and then, if possible, Mr. Pereos would
11 have a question based on that.

12 I would note that, Mr. Pereos, you asked about 20
13 months and then you said the term of the contract is 32
14 months which is by my calculation one additional year.

15 BY MR. PEREOS:

16 Q Okay. Let me go about it this way. You can't
17 start construction until the entitlements are received;
18 isn't that correct?

19 A Correct.

20 Q The entitlements were not received until
21 November 15th, 2006, correct?

22 A Correct.

23 Q The date of the contract is October 31st, 2005,
24 correct?

1 A Correct.

2 Q So that's 11 months?

3 A Yes, approximately.

4 Q Why don't you direct your attention to Exhibit
5 6, Bate number page 7507, page 10.

6 A Page-- Exhibit 6?

7 Q Exhibit 6, Bate number page 7507.

8 A 7507.

9 THE COURT: Mr. Hoy, do you have an objection?

10 MR. HOY: I'm waiting for the question, Your Honor.

11 THE COURT: Go ahead. Next question, Mr. Pereos.

12 BY MR. PEREOS:

13 Q Does paragraph 1.5.9 contemplate, okay, that
14 the work of the architect is going to be completed in
15 32 months?

16 MR. HOY: Objection; misstates the evidence,
17 therefore, there's no foundation for that question.

18 THE COURT: That's not true. Overruled. It says
19 in that section, "If the services covered by this
20 agreement have not been completed within 32 months of
21 the date hereof, through no fault of the architect,
22 extensions of the architect services beyond that time
23 shall be compensated as provided in Section 1.5.2."

24 I don't know how that does or doesn't answer the

1 question, but that's what that says.

2 THE WITNESS: Help me out a little bit. I thought
3 counsel asked me how long it would take to build the
4 building. This talks about the architect.

5 THE COURT: Correct.

6 THE WITNESS: They're different.

7 THE COURT: 1.5.9 says what it says. I don't know
8 if that answers the question or if it provides any
9 context to the question Mr. Pereos asked. But why
10 don't we do this, Mr. Pereos. Why don't you reask the
11 question. And if the witness needs something to
12 refresh his recollection, then he can certainly refer
13 to the contract, any portion thereof, or any of the
14 other documents that have been admitted into evidence
15 in this case.

16 I think the rules of evidence contemplate he can
17 use anything he wants to refresh his recollection,
18 including something that's not admitted into evidence.

19 So why don't we just take the step back and ask the
20 question again.

21 BY MR. PEREOS:

22 Q Okay. Mr. Friedman, does paragraph 1.5.9
23 contemplate that the architect will complete his
24 services within 32 months?

1 A Yes. That's not a problem.

2 Q Okay. Now, in that regard, your services also
3 included under the contract services in connection with
4 the ongoing construction of the project; did it not?

5 A The construction administration, yeah.

6 Q So you're going to administer the project as
7 its being constructed?

8 A Correct.

9 Q So that would anticipate that your project or
10 your assignments would continue until the C of O was
11 issued, certificate of occupancy?

12 A Correct.

13 Q And then it goes back to my earlier question.
14 Do you think this building could have been built within
15 20 months from the date--

16 A No. Read the entire paragraph.

17 THE COURT: No. Stop. Mr. Friedman, the answer is
18 just no.

19 THE WITNESS: No.

20 THE COURT: Next question.

21 BY MR. PEREOS:

22 Q Now, you testified that the parties changed the
23 complexion of the project to 499 living units.

24 A Yes.

1 Q Is that correct?

2 A Yes.

3 Q Now, did that in turn change the parking
4 requirements?

5 A Yes.

6 Q Did you have to add more parking?

7 A Yes.

8 Q And the parking that you had previously
9 arranged for, was it subground parking?

10 A Yes.

11 Q Okay. Now, with the new parking, because of
12 the change in the complexion of the project to 499,
13 were you going deeper into the ground for parking?

14 A Yes.

15 Q How many levels down were you going for
16 parking?

17 A I would have to check the drawings. We'll
18 refer to those, as the Judge has recommended.

19 THE COURT: I don't know if it would assist you or
20 not. Is it Exhibit 38? Are those the drawings that
21 you're talking about?

22 THE WITNESS: Yes.

23 THE COURT: You can refresh your recollection by
24 looking at those.

1 THE WITNESS: Thank you. It's a combination of
2 adding levels and bringing in mechanical parking
3 devices to supplement the parking. But that coincided
4 with us going to the church and providing a parking lot
5 at the top of the church property that the church could
6 use and that the Wingfield Towers could use to defray
7 some of the cost. And the savings were going to be
8 provided to the church so we could build them a
9 community room on top of the garage.

10 And we also investigated property across the
11 street, to purchase that, so we could have an
12 on-grade-- you know, a parking structure on grade.

13 So those final determinations would have happened
14 in the design development phase. And that's totally
15 within the purview of the planning department to do
16 that.

17 THE COURT: But the question simply was,
18 Mr. Friedman, how many levels of parking?

19 THE WITNESS: Well, I'm going to count them. One,
20 two, three-- Incidentally, these drawings were
21 prepared after that April 6th date that you were
22 talking about.

23 THE COURT: Exhibit 38?

24 THE WITNESS: Yes.

1 BY MR. PEREOS:

2 Q After the April--

3 A I misspoke. Yeah. One, two, three, four,
4 five. It would be five levels below the grade on the
5 river side of the project.

6 Q And what is--

7 A And--

8 THE COURT: Hold on. He's answering the question.

9 MR. PEREOS: I'm so sorry, Your Honor. I thought
10 he was done.

11 THE COURT: It's okay.

12 THE WITNESS: There's four and a half levels
13 below-- What's the name of the street along the river?

14 THE COURT: Island.

15 THE WITNESS: Island. So it depends on-- because
16 of a sloping site we can determine where you are at
17 grade. Oftentimes we just take the midpoint.

18 MR. PEREOS: I'm sorry. Can I have that last
19 remark read back to me, Your Honor.

20 (The answer was read.)

21 MR. PEREOS: Okay. I got it.

22 BY MR. PEREOS:

23 Q So on the Island Drive you're four and a half
24 levels down?

1 A Yes.

2 Q And on the Court Street side you're five levels
3 down?

4 A Actually it's more. I'm going to be generous
5 and say seven, eight, seven or eight. Well, that's
6 below the plaza level. Let me get back to-- One, two,
7 three, four, five, six. Six and a half below Court.

8 Q What's the minimum height for each floor level
9 for parking?

10 A You can do parking garages anywhere from seven
11 to six if you just got a flat slap. But we were going
12 to use parking machines, so we wanted ten feet floor to
13 floor to enable us to use parking machines.

14 Q Does the fire department have a reg as to what
15 the minimum height has to be in terms of clearance for
16 parking?

17 A Yes. That's not a problem.

18 Q Do you know what the fire department's minimum
19 reg is?

20 A Well, in this particular jurisdiction, I can't
21 remember. We would have to look it up. But it's
22 probably something like eight feet.

23 Q So your parking garage would go down
24 approximately 32 to 40 feet on the Island Drive?

1 A Yes.

2 Q Okay. Do you know whether or not that could
3 have been achieved based upon the information contained
4 in the soils report?

5 A Yes.

6 Q It could have been?

7 A Oh, yes.

8 Q Could it have been achieved economically?

9 A Well, we were hoping to mitigate the costs by
10 finding parking on other sites, but, yes, it would be
11 worth it with the parking machines.

12 Q When you say a "parking machine," are you
13 talking about the elevator?

14 A No.

15 Q What are you talking about?

16 A It's like a lift in a garage. You stack two
17 cars up and you park one at grade, it goes up the lift,
18 and then you park underneath it.

19 Q And how were you going to address the fire
20 department's requirements for the upper levels?

21 A Not a problem.

22 Q How was it going to be addressed?

23 A Just by complying with the building code and
24 the fire code. It's done on every project.

1 Q Well, hold on for a second. Now, my
2 understanding is you were going to lift the cars up
3 with a lift-- I call it an elevator. --to get them to
4 the upper floors?

5 A No.

6 Q You were not?

7 A No.

8 Q Okay. So what's the lift-- how are the cars
9 going to get to the upper floors?

10 A The owner of the car drives it to the upper
11 floor.

12 Q Okay. Could you take a look at Exhibit 119.
13 Do you have the right book for that?

14 A I don't have the right binder.

15 THE COURT: You don't have that one.

16 THE WITNESS: I need some help with this binder.
17 Somebody take this away. Thank you.

18 119?

19 BY MR. PEREOS:

20 Q Please.

21 A Yes.

22 Q You know this to be the ground-- the geological
23 report?

24 A Yes.

1 Q I should say the geotechnical report.

2 A Yes.

3 Q Let me direct your attention to Conclusions,
4 page 2254 Steppan.

5 A 2254. Yes.

6 Q Do you see where he says the primary concern?

7 A I'm looking for it.

8 Q Well, it's the first full paragraph.

9 A Yes. Fine. It doesn't bother me.

10 Q So were you familiar with this when you were
11 designing the parking?

12 A Yes.

13 Q Okay. And from your perspective it was not
14 going to be an issue?

15 A No.

16 Q Do you know whether or not it was going to add
17 to the cost of the construction?

18 A Yes.

19 Q That's a yes?

20 A Yes.

21 Q In fact--

22 THE COURT: Hold on. "Yes," you knew, or, "yes,"
23 it was going to add to the cost to the construction?

24 THE WITNESS: Yes, it would add to the cost to the

1 construction, but it was still under the
2 200-million-dollar budget.

3 THE COURT: 180.

4 THE WITNESS: Well--

5 THE COURT: Approximate.

6 Go ahead. Next question.

7 BY MR. PEREOS:

8 Q Let's direct your attention to Exhibit 48,
9 please.

10 A Oh, we need a different book.

11 Q I'll get it for you.

12 A Here. Do you want this one back? Are we
13 coming back to this one?

14 Q I don't think so.

15 A Well, then it's yours.

16 48?

17 THE COURT: Mr. Pereos, if you would like to,
18 there's that table--

19 MR. PEREOS: Oh, put the books on there?

20 THE COURT: I just don't want to see one of the
21 binders fall onto the ground and everything fall out,
22 so we can do that. Thank you.

23 MR. HOY: Nick, can you put that in front of the
24 witness so it doesn't block the stairs, please. Here,

1 I'll--

2 THE WITNESS: We don't want to upset the fire
3 department, do we?

4 Mike, come back here. This thing is coming apart.
5 48?

6 MR. HOY: Yes.

7 THE WITNESS: All right.

8 BY MR. PEREOS:

9 Q Are you there?

10 A Yes.

11 Q Now, Exhibit 48 represents the approval from
12 the City of Reno?

13 A Yes.

14 Q And attached to Exhibit 48 were several
15 conditions?

16 A Yes.

17 Q And one of the conditions was number 10. Why
18 don't you read that to yourself.

19 A Yes.

20 Q Would that add to the cost of a project?

21 A Of course.

22 Q Why don't you look at number 11.

23 A Yes.

24 Q Would that add to the cost of a project?

1 A Yes. It's sort of like bathrooms.

2 Q Number 12.

3 A Yes.

4 Q Would that add to the cost of a project?

5 A Yes.

6 Q Number 13.

7 A Yes.

8 Q Would that add to the cost of a project?

9 A Yes.

10 Q Number 14.

11 A Yes.

12 Q Would that add to the cost of a project?

13 A Yes.

14 Q Let's go to number 28, page 4014.

15 A 4014?

16 Q Um-hum.

17 A 28?

18 Q Um-hum. Yes, sir.

19 A Yes.

20 Q Could that defeat the project?

21 A I don't believe in my opinion it would.

22 Q Okay. That's fine. Would it add to the cost
23 of the project?

24 A Not if we do it right.

1 Q Okay. What about condition 32?

2 MR. HOY: Object; vague. What about it?

3 THE COURT: Sustained.

4 BY MR. PEREOS:

5 Q Would you please review condition 32 and tell
6 me whether or not, okay, that can defeat the project.

7 A No.

8 Q Did you read that?

9 A Yeah. It wouldn't defeat the project.

10 Q Now, you were talking about-- I think you used
11 the phrase-- well, you were talking about the phrase of
12 heating-- you were basically talking in terms of
13 heating certain aspects of the common ways; were you
14 not?

15 A Yes.

16 Q And that's addressed in condition 37?

17 A Yes.

18 Q And would that add to the cost of a project?

19 A Yes, it does.

20 Q Now, when you were designing this project, you
21 were designing it with the parameter that the developer
22 was looking at a project of 180-- of paying
23 \$180 million for the construction; is that correct?

24 A Not really.

1 Q No?

2 A No.

3 Q Okay. So what was meant in the language of
4 Exhibit 6?

5 MR. HOY: 7.

6 THE COURT: I believe Mr. Hoy is correct. The
7 addendum where it goes from 160 to 180 is in Exhibit
8 No. 7.

9 BY MR. PEREOS:

10 Q What's meant in Exhibit 6, page 2, Article
11 1.1.--

12 A I don't have that book.

13 Q I'm sorry. Let me get that for you.

14 A The table comes in handy, doesn't it?

15 We're looking at what?

16 Q Exhibit 6, page 2.

17 MR. HOY: There's multiple page 2s, so maybe--

18 MR. PEREOS: Bates page number 7499.

19 THE WITNESS: Okay. I've got the page.

20 BY MR. PEREOS:

21 Q You've got the page?

22 A Yes.

23 Q What's meant by Article 1.1.2.5 that talks in
24 terms of the financial parameters?

1 A I'll explain it to you. For billing purposes,
2 we start out with 160 million, which is fine. Now,
3 that's before we've drawn a pen or a line. The owners
4 increase the amount to 180 based on the information
5 they get from Turner Construction and their own
6 internal cost estimating.

7 When we had finished the schematic design and they
8 made applications for a loan, they put into their
9 budgets and their application a 200-million-dollar
10 figure based on more information from Turner and from
11 Consolidated Construction.

12 So if you ask me whether the building is going to
13 be built for 160 or 180 or 200, you would have to ask
14 the contractors.

15 Q And my question to you was, was your assignment
16 to design a structure within the parameters of a budget
17 to build of \$180 million?

18 A No.

19 Q So as far as you're concerned, that particular
20 paragraph does not define your parameters of your
21 assignment in connection with the cost to construct
22 this building?

23 A What it is is a convenient way of determining
24 the fee so you can get paid progress payments. If the

1 building had come in higher, we would have gotten more
2 money. If for some reason the building would have come
3 in lower, we would have gotten less money. That
4 resolution is done at the end of the project.

5 Q Then do you have any explanation as to why the
6 AIA contract form that you used did not have that
7 section in Article 1.5 that discussed compensation?

8 A I don't know. I'm not the attorneys that write
9 the agreements. Remember, Hale Lane wrote the
10 agreement. The owner's attorneys wrote the agreement.
11 Ask them.

12 Q Is it your testimony that you know as you're
13 testifying today that the cost to construct the
14 structure or the project as designed by you for the
15 schematic design would have been at least 200 million?

16 A You would have to check with Turner's office,
17 because I didn't provide the numbers. The contractors
18 and the cost estimator did. That's not my job.

19 Q Is that what you had heard from others?

20 A Yes.

21 THE COURT: Referring to the Palladio, is that what
22 your testimony--

23 THE WITNESS: The Palladio.

24 THE COURT: The Palladio. Thank you.

1 THE WITNESS: Which you know went bankrupt for a
2 while.

3 BY MR. PEREOS:

4 Q If the cost to construct this building is
5 \$200 million, or this project as you designed it-- And
6 was that, by the way, after the conditions had been
7 issued by the planning commission and the Reno--

8 MR. HOY: Objection. Objection; vague. I lost the
9 question.

10 MR. PEREOS: All right. I'll rephrase the
11 question.

12 THE COURT: Sustained.

13 BY MR. PEREOS:

14 Q Was that number that you received from-- that
15 you heard of \$200 million, was that after the
16 conditions were issued by the Reno City Council in
17 their approval letter?

18 A You know, I don't know. I wasn't privy to that
19 information as to its date.

20 Q So all you know is that there was a number
21 thrown out of \$200 million but you're not sure when it
22 was thrown out?

23 A It was not thrown out.

24 Q All right. There was a number mentioned of

1 200 million?

2 A It wasn't mentioned.

3 Q You heard a number of 200?

4 A It wasn't a hearing. It was a cost estimate
5 prepared by professional cost estimators.

6 Q Do you have a copy of that?

7 A No.

8 Q Do you think you complied with the contract,
9 sir?

10 A Yes.

11 MR. PEREOS: No further questions.

12 THE COURT: Redirect.

13 MR. HOY: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HOY:

16 Q Let's begin with Exhibit 6. And I'm just going
17 to go through Exhibit 6 once on the multiple issues
18 that were raised.

19 First of all, if you could please turn to Article
20 1.5, Compensation. It's on Bates number 7506. And it
21 goes on to page 7507. And counsel asked you to inform
22 the Court where it says in that Article 1.5 on
23 compensation the timing of the payments to you. And
24 that provision doesn't talk about the timing of

1 payments, does it?

2 A No.

3 Q All right. Is there another provision in the
4 contract that does talk about the timing of the
5 payments?

6 A Not that I'm familiar with.

7 Q Well, take a look, sir, at Section 1.5-- I'm
8 sorry. I think it's one three nine. Let me find it
9 for you.

10 A Are we still on 7?

11 Q No. 6.

12 A Okay. What page number?

13 Q It's the Bates number 7505.

14 A Okay.

15 Q Section 1.3.9.1. "Payments on account of
16 services rendered and for reimbursable expenses
17 incurred shall be made monthly upon presentation of the
18 architect statement of services. No deductions shall
19 be made from the architect's compensation on account of
20 penalty, liquidated damages or other sums withheld from
21 payments to contractors or on account of the cost of
22 changes in the work other than those for which the
23 architect has been adjudged to be liable."

24 A Correct.

1 Q Is that provision consistent with your
2 testimony earlier today and yesterday that you were
3 entitled to be paid on a monthly basis for the progress
4 towards the completion of the schematic design phase as
5 that work was performed?

6 MR. PEREOS: Objection; leading and suggestive.

7 THE COURT: Sustained.

8 BY MR. HOY:

9 Q Can you please explain to the Court how the
10 billing mechanism works and when FFA and Steppan are
11 entitled to be paid for work on progress under Section
12 1.3.9.1?

13 A Without reading the provision to the Court,
14 because you already have, our expectations were
15 consistent with the contract which Hale Lane approved
16 and gave to us and we signed.

17 Q And was it your expectation under the contract
18 that you would be paid on a monthly basis--

19 A Absolutely.

20 Q --for progress?

21 All right. Please--

22 THE COURT: But then you modified that, didn't you,
23 at some point and you said that because the developer
24 was in, what, the-- some military service, that he

1 liked things done a different way?

2 THE WITNESS: Yes.

3 THE COURT: Describe that again for me.

4 THE WITNESS: He was connected with the Coast
5 Guard, and they liked to divide things up into equal
6 payments so we wouldn't have to go through the
7 percentage of completion and it was easier for the
8 bookkeeping department and you wouldn't have to go
9 through this resolution of trying to determine
10 percentage of completion. We agreed to do that, but
11 they didn't do it. They never did it.

12 BY MR. HOY:

13 Q Counsel examined you on Section 1.5.9 with
14 respect to the time of the services, the time within
15 which the services would be rendered. This is on Bates
16 number 7507, still Exhibit No. 6.

17 A What section is it?

18 Q 1.5.9. It's down near the bottom of the page.

19 A Okay.

20 Q Incidentally, on this form contract you see
21 these bars on the left side of some of the paragraphs.
22 Do you know what that means?

23 A No.

24 Q All right. And counsel asked if you agreed

1 with him that you were supposed to complete your work
2 within 32 months and whether your work included all of
3 the construction administration and, therefore, your
4 work had to be-- and, therefore, the construction had
5 to be completed within the 32-month period. Do you
6 remember that--

7 A Yes.

8 Q --line of questions?

9 A Yes.

10 Q And then he pointed to this provision that
11 says, "If the services covered by this agreement have
12 not been completed within the 32 months of the date
13 hereof, through no fault of the architect, extension of
14 the architect services beyond that time shall be
15 compensated as provided in Section 1.5.2."

16 A Correct. Counsel left that out.

17 Q Are you aware of any provision in the contract
18 that was signed by Mr. Steppan that said you had to
19 absolutely finish all of your work within a period of
20 time?

21 A No.

22 Q All right. So can you please explain to the
23 Court-- Well, let me ask a different question first.
24 In your 50 plus years as being an architect, you have

1 dealt with these AIA form contracts before, right?

2 A Yes.

3 Q Have you ever had a period of time or a project
4 in which the construction period ran over what was
5 expected?

6 A Frequently.

7 Q All right. And can you please explain to the
8 Court how that might affect the architect's
9 compensation.

10 A When we budget our fees, it's divided into
11 phases. And Your Honor has already gone through most
12 of that. But in the CA phase, we would program
13 20 percent for the construction administration. Okay.
14 And it's on an hourly basis.

15 On complex projects with weather delays, it's very
16 easy to go over and the architect burns up his
17 20 percent, because oftentimes they have a field
18 trailer, they have three or four people doing these
19 daily inspections. There's two buildings involved.
20 And if this project is phased, they do one building and
21 then they'll do a second building. So it's very easy
22 for the time limit to go-- to get extended. And at
23 that time, the owners and the developers and the
24 architects agree to extend the CA services for the

1 architect. If they don't, oftentimes the architect--
2 It's not a bad deal for the architect. --the architect
3 won't continue to do CA and he absolves himself of any
4 errors and omissions.

5 THE COURT: And is it accurate that during the
6 construction administration or CA phase that the
7 architect is physically required to be on site--

8 THE WITNESS: Yes.

9 THE COURT: --to answer any questions--

10 THE WITNESS: Yes.

11 THE COURT: --to resolve any issues that may come
12 up?

13 THE WITNESS: He's not on site. It depends on the
14 scale of the project. Okay. But in this particular
15 case, we would have an architect on site.

16 THE COURT: So it would be anticipated that
17 Mr. Steppan would have been physically in Reno?

18 THE WITNESS: Somebody from our office representing
19 our office would be physically on site.

20 THE COURT: And I chose Mr. Steppan because he's
21 licensed in the state of Nevada.

22 THE WITNESS: Yes. But then you've got the
23 internet connections between mother earth or the mother
24 ship to do these things. On small projects, they

1 generally don't go over. If you work for a university,
2 you sign their agreements and you're stuck. If the
3 project goes over, you're-- you're dead meat, you're
4 just there. But this is-- those are not AIA contracts.

5 THE COURT: Okay.

6 BY MR. HOY:

7 Q In any event, the construction administration
8 phase was never begun in this case because construction
9 never started?

10 A Yeah. It's irrelevant.

11 Q Thank you.

12 Turn to Exhibit No. 7, please. Counsel directed--
13 I'm sorry. Exhibit 7, first page.

14 A Yes.

15 Q Section 1.1.2.3.

16 A 1.1.2-- Oops. Okay. Got it.

17 Q And the provision in that addendum says--

18 Well, let me just start above. "Both parties are aware
19 of this contract addendum and do hereby elect and agree
20 to said terms and conditions as stated below."

21 Section 1.2.3. "To obtain entitlements and
22 approvals for the property and proposed buildings shown
23 in Exhibit B as attached to the AIA B141 agreement as
24 part of the design services and the schematic

1 design/entitlements phase."

2 Now, did your company actually assemble the
3 applications that went to the City of Reno?

4 A No.

5 Q Did your company provide documents that were
6 compiled into those permit applications by somebody
7 else?

8 A Yes.

9 Q And so those permit applications in 35, 36 and
10 37 have work product from Solaegui traffic engineers?

11 A Correct.

12 Q That doesn't come out of your office?

13 A Correct.

14 Q It had work product from Pezonella and
15 Associates who is a geotechnical and civil engineer?

16 A Correct.

17 Q And it had other reports from consultants for
18 hydrology, effect on the sewer mains and so forth?

19 A Yes.

20 Q None of that came from your office?

21 A Correct.

22 Q And in fact your office didn't ever have the
23 legal right to actually make the application in your
24 own name?

1 A That's correct.

2 Q So your role-- your company's role was simply
3 to provide the architectural side of the application
4 for entitlements?

5 A Correct.

6 Q The city could have turned down the package for
7 entitlements for reasons that had nothing to do with
8 architecture?

9 A Absolutely.

10 Q Now, how does this entitlements application
11 process bear upon when you figure out that you're done
12 with schematic design for this project under these
13 agreements?

14 A It's a very appropriate question. If for some
15 reason we had gone-- This happens frequently. --we
16 had gone to the planning department, we show all our
17 documents, we give them all the information, and the
18 planning department says, No, you know, we really can't
19 approve this project, you have to make 27 different
20 revisions to the design, we would still be obligated
21 under our agreement to continue schematic design. And
22 if we had gone over the 20 percent allocated, we eat
23 it.

24 So there's never a finite time as an architect you

1 know that you're absolutely complete with the schematic
2 design until the city has approved your scheme and
3 entitled you.

4 So it was very fortunate for the developer and the
5 owner of the property and ourselves that we did all the
6 work with the community and the labor unions and the
7 neighbors so that we knew going into the city council
8 they would approve it. And we spent enough time with
9 the planning department so we fleshed out all their
10 concerns ahead of time, including the hydrology, the
11 traffic, all these conditions that Mr. Pereos referred
12 to.

13 So we knew that in advance. None of that was a
14 surprise. And I was surprised when he kept asking me
15 whether it would add to the costs of the building.
16 Yes, it does.

17 THE COURT: So schematic design is in essence
18 concluded in house when the first package is completed,
19 you say, We're finished with schematic design, here's
20 the package? There might be additional requests that
21 are made by the city that you have to alter what the
22 instruments are.

23 THE WITNESS: But it can be dramatic.

24 THE COURT: But still schematic design--

1 Stop interrupting me, please, sir.

2 But schematic design from the contractual
3 perspective has concluded and you're into the next
4 phase, even though you have to go back and make
5 changes?

6 THE WITNESS: No.

7 THE COURT: Okay. Go ahead and clarify that for
8 me.

9 THE WITNESS: I'll give you a hypothetical. We
10 design this project, it's got two buildings in it.
11 They're beautiful towers. They say, We don't want two
12 buildings, we want one building. Go back to the
13 drawing board.

14 So we would have to basically start all over again
15 and go back to the city. It probably would have been
16 an absolute catastrophe, because we wouldn't have met
17 our deadline. But it's not the architect that
18 determines when schematic design is done. Schematic
19 design is done when the developer says, I approve it,
20 and when the city approves it. And then we can say
21 schematic design is done. Now that doesn't mean there
22 can't be revisions made.

23 THE COURT: Okay. I understand.

24 THE WITNESS: Which goes into the next phase of

1 what we call design development.

2 THE COURT: And in this case, had the developer
3 indicated to you that the schematic design phase was
4 completed?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 THE WITNESS: And he did that by submitting it to
8 the city.

9 THE COURT: Thank you. That makes sense.

10 THE WITNESS: So we were lucky, because we got in
11 the day or two before the deadline and everybody liked
12 it.

13 BY MR. HOY:

14 Q Mr. Friedman, I would like to direct your
15 attention back to this Addendum No. 1 in Exhibit No. 7.
16 And again, we're--

17 A Exhibit 7?

18 Q Yeah.

19 A What page do you want me on?

20 Q 7520.

21 A Okay.

22 Q And, again, this is the provision that
23 Mr. Pereos examined you on. And so let's try and
24 understand what this provision is in this addendum.

1 This addendum is modifying sections of the AIA B141
2 form; true?

3 A Right.

4 Q So when this addendum talks about Section
5 1.1.2.3, means to obtain entitlements and approvals for
6 the property, et cetera, if you go back to Exhibit No.
7 6--

8 A Yes.

9 Q Page 7499.

10 A Yes.

11 Q Section 1.2.-- I'm sorry. Section 1.1.2.3 is
12 entitled The Owner's Program. It says, "The owner's
13 program is..." and then it says, "as outlined in
14 Exhibit B."

15 A Right.

16 Q So is the owner's program something that the
17 architect completes or dictates?

18 A The architect doesn't dictate or provide it. I
19 design your house. Your wife comes to me and says she
20 wants four bedrooms, 75 baths--

21 Q She better not.

22 A --we don't argue. A thousand foot closet. We
23 don't argue; we design it. It's always the owner's
24 prerogative to set the program.

1 I think there was an error made in the drafting of
2 that section by Hale Lane, because they didn't really
3 mean that we were going to do the entitlements. They
4 meant that we were going to assist in providing the
5 documents for the entitlements.

6 Q But the point is that 1.1.2.3 in the addendum
7 is modifying 1.1.2.3 in the B141, and that's the
8 owner's program, that's not-- the architect is not
9 responsible for the owner's program?

10 MR. PEREOS: Objection, Your Honor, leading and
11 suggestive.

12 THE COURT: Sustained.

13 MR. HOY: It was a legal argument, Your Honor.

14 Beg your pardon, Your Honor. I'm trying to find
15 what I was after here.

16 THE COURT: Take your time.

17 BY MR. HOY:

18 Q All right. Please turn to Exhibit No. 9.

19 A Yes. Which page?

20 Q The first page.

21 A Okay.

22 Q Steppan 4372.

23 A 4372, yes.

24 Q This is the October 25th, 2005 proposal to Tony

1 Iamesi at Consolidated Pacific Construction, Inc. And
2 under Compensation there, it says, "The architect shall
3 perform the above-referenced services for a fee of 5.75
4 percent of the total construction costs, including
5 contractor's profit and overhead."

6 A Yes.

7 Q So is it fair to say that from the first formal
8 proposal to provide design work for this Reno Wingfield
9 Towers project, your proposal was always for a fixed
10 fee or fee based on the constructions costs?

11 A Our original proposal was 6 percent. We
12 reduced it because we were told that the Portland
13 architect who started it had a 5.75 percent fee. So we
14 agreed to reduce our fee.

15 Q You say a Portland architect started it.

16 A Yes.

17 Q Did your firm reuse any of the Portland
18 architect's work?

19 A No.

20 Q And at this point in time, October 25th, 2005,
21 was there any discussion about what the total
22 construction cost was estimated to be?

23 A Not really.

24 Q Let's turn to Exhibit 119.

1 A Whoops. Different book. 119?

2 Q 119. Exhibit 119 is a January 17th, 2006 Site
3 Feasibility Report by Pezonella and Associates. And,
4 again, Pezonella is a Reno local geotechnical engineer?

5 A Yes.

6 Q And, in fact, this Exhibit 119 was actually
7 part of the January 17th submission to the City of Reno
8 in Exhibit No. 35?

9 A All right.

10 Q Okay. I want to direct your attention to the
11 same page that counsel highlighted with you which is
12 the conclusions page, Bates number 2254.

13 A 2254.

14 Q And counsel directed you to this line, this
15 sentence: "The primary concerns, however, to be
16 considered in the design and construction of the
17 project are the presence of oversize aggregate, the
18 potential presence of shallow groundwater and the
19 potential for flooding to occur."

20 A Yes.

21 Q When engineers and architects design projects,
22 they don't start doing that work without having a
23 geotechnical report, do they?

24 A Correct.

1 Q And it's fairly typical for geotechnical
2 engineers to warn about the potential of things that
3 can't be seen from the top of the ground?

4 A Absolutely.

5 Q And oversize aggregate is one of those things
6 that they call out?

7 A Well, they would tell you the condition of the
8 substrates and the layering when they drill the cores,
9 yes.

10 Q What counsel didn't direct your attention to is
11 the next paragraph. And let me just read a portion of
12 this paragraph in and then ask you a question about it.

13 A Okay.

14 Q "Based on our review and knowledge of the area,
15 the underlying materials may contain oversize
16 aggregate, such as gravel, cobbles and boulders.
17 Consideration should be given to the difficulty of
18 earthwork associated with these materials and the fact
19 that excavation depths can be limited. Based on our
20 experience in the areas, we believe that excavations
21 can be completed overall with conventional earthmoving
22 equipment. Resistance areas may be encountered which
23 may require the use of specialty equipment, such as a
24 hydraulic rock hammer; however, we do not believe that

1 blasting will be necessary."

2 Is that fairly standard language for the types of
3 projects that your firm has designed for in the past?

4 A Yes. There's nothing in this report that makes
5 it uneconomic to build a garage.

6 Q Do you know what the-- Well, what does the
7 term "conventional earthmoving equipment" mean to you?

8 A Backhoes, drill rigs.

9 Q So there's no extraordinary cost with
10 excavating this site?

11 A Not for that. The nice thing is he doesn't
12 believe blasting will be required.

13 Q I bet that would cause a stir with the
14 neighborhood.

15 A A little seismic issues, yes. But this is
16 not-- there's nothing in here that's alarming.

17 Q Please turn to Exhibit 32.

18 A Yes.

19 Q Exhibit 32 is your September 1st, 2006 letter
20 to Cal Bosma.

21 A Yes.

22 Q And counsel had directed you to some of the
23 language in the first paragraph.

24 A Yes.

1 Q I want to follow up with the second paragraph
2 which reads, "In the meantime, we have been forced to
3 borrow capital at prime plus two percent to cover the
4 outstanding invoices. We would appreciate a partial
5 payment of at least 50 percent of the outstanding
6 amount. It is very difficult for us to finance this
7 project."

8 What did you mean by that language?

9 A We were running in a deficit in the office and
10 had to lay people off because we couldn't pay our
11 bills. So we went into the banking community to borrow
12 money to continue practice.

13 Q Ultimately did the failure of Wingfield Towers
14 have an affect on your firm financially?

15 A Yes. That caused us to reduce the staff
16 dramatically.

17 MR. PEREOS: Objection; relevancy.

18 THE COURT: What is the relevance of that?

19 MR. HOY: Withdrawn.

20 I have no more questions, Your Honor.

21 THE COURT: Any recross based on the redirect,
22 Mr. Pereos?

23 MR. PEREOS: Yes, Your Honor, I do.

24 THE COURT: Okay.

1 RECROSS EXAMINATION

2 BY MR. PEREOS:

3 Q You testified in response to redirect that the
4 developer asked you to send the bills on a monthly
5 basis because of his experience in the Coast Guard?

6 A Right.

7 Q To break it down?

8 A Yes.

9 Q Would you agree with me that that was an oral
10 modification of the AIA contract?

11 A Actually it was documented by a schedule that
12 the owner provided us and we agreed to it.

13 Q Oh, the owner provided you with such a
14 schedule?

15 A Yeah.

16 Q Okay. And what exhibit is that, do you know?

17 A No.

18 MR. HOY: I've never seen it in a schedule.

19 BY MR. PEREOS:

20 Q Okay. Your attorney has just commented that he
21 hasn't seen such a document. Are you telling me that
22 such a document exists?

23 A I don't know whether it exists, but I know that
24 Cal Bosma came into the office, sat down with our

1 accounting departments and came up with a revised
2 schedule for payment and we said fine.

3 Q Okay. So would you agree that that constituted
4 an oral modification of the contract?

5 A Yes.

6 Q Okay. Thank you.

7 As you're testifying today, is it your position
8 that you did not have to design this project so it
9 could be completed, that is, constructed and completed,
10 within the 32-month window defined in the contract?

11 A Right.

12 Q As you're testifying today, is it your position
13 that you did not have to define-- or, excuse me, design
14 this project so that it could be completed and
15 constructed within the 180-million-dollar budget?

16 A Correct.

17 Q Is that a modification of the contract?

18 A No.

19 Q Is that-- When you say you don't have such an
20 obligation, is it because it's not spelled out in this
21 contract?

22 A That's because the owners acknowledge--
23 Remember, we discussed \$180 million is a device for
24 billing, not the real constructions costs of the

1 project.

2 Q So it's because the owners verbally
3 acknowledged that fact?

4 A No. It's in the agreement. They're going to--
5 We're going to bill based on the constructions costs of
6 \$180 million. If the building comes in more, we get
7 paid more. If the building comes in less, we get paid
8 less. It's very simple.

9 Q I don't think that's my question.

10 THE COURT: Let me ask a question just so I
11 understand, there's some clarification in my mind,
12 though.

13 Mr. Friedman, you haven't even gotten at this point
14 to the solicitation of bids to build the building.

15 THE WITNESS: You're absolutely right.

16 THE COURT: So you don't know what the value or the
17 cost of the construction is until you go through the
18 schematic design. And I was just flipping through my
19 notes to find out what the next phase is. But at some
20 later time after the schematic design phase, you then
21 put the project out to bid and see if you get any
22 takers. And you might get somebody at 150 and you
23 might get somebody that the lowest bid is 250. You
24 don't know. Is that accurate?

1 THE WITNESS: That's absolutely correct.

2 THE COURT: Okay. Next question.

3 THE WITNESS: Even when we do university work it's
4 the same.

5 BY MR. PEREOS:

6 Q Well, let me ask you a question. As an
7 architect with your experience, do you think you have
8 the skill level by which you can design a project
9 within the parameters of a budget?

10 A Yes. But when we do that, we get paid to hire
11 cost estimators and there's usually-- when we do
12 university work there's two or three cost estimators
13 involved, one employed by the university, one employed
14 by the architect, and a referee to resolve the
15 difference between the two estimators in preparing the
16 information for the university.

17 Q Did you get ahold of a cost estimator to
18 determine whether or not what you were designing would
19 be within the parameters of the \$180 million?

20 A We didn't. The owners did. And it's Turner
21 Construction. And they told us-- And I don't have
22 anything on paper. --that the likely cost would be
23 about 200 million.

24 Q Well, what about before you designed it when

1 you were having the sketches and you were saying, We're
2 going to go up 40 stories on one building and 28
3 stories on another building, did you get ahold of any
4 cost estimators to say, Hey, I have a parameter of \$180
5 million on this budget, I've got to design something,
6 do I need to shorten it, make the building lower,
7 shorten the building, or do something else?

8 MR. HOY: Objection. That is a compound question.

9 THE COURT: That is-- there's no question that it
10 is a compound question, but I think that Mr. Friedman
11 can answer the question. Do you understand it?

12 THE WITNESS: Yes. If I'm allowed the same
13 latitude. The owners provided all the information.
14 The owners were talking to Continental Construction and
15 they were talking to Consolidated and they were talking
16 to Turner and they gave me the information. If they
17 had insisted that the building would be \$180 million,
18 we would have continued the design and designed a
19 building that conformed to a 180--million-dollar
20 budget. They didn't ask us to do that. That's their
21 job.

22 When you get-- My building is like giving birth to
23 a child. Okay. When I've got a brand-new child, I
24 don't know whether it's going to be six-foot-two,

1 five-foot-six or seven-foot-nine. I don't know.

2 Q So it's your testimony that it's not your
3 responsibility to bring the design of this building
4 within the parameters of the budget of \$180 million?

5 A The 180-- Correct, it's not mine. The
6 \$180 million is set for a payment schedule.

7 Q It has nothing to do with your assignment?

8 A No.

9 MR. PEREOS: I have no further questions.
10 The Court's indulgence.

11 BY MR. PEREOS:

12 Q Was Dr. Iliescu made aware of any of these
13 issues?

14 A I have no idea.

15 MR. PEREOS: All right. No further questions.

16 THE COURT: Mr. Friedman, I appreciate your
17 testimony yesterday and today. It's certainly been
18 enlightening to me and has helped me understand your
19 industry and understand this case more. So thank you
20 for being here.

21 THE WITNESS: Well, thank you, Your Honor. I'm
22 sorry I deflected and went on too long, but that's what
23 we do as architects.

24 THE COURT: No apology necessary, sir, but thank

1 you and I appreciate that.

2 Counsel, it is about five minutes to 12:00, so we
3 will take our lunch recess in a moment. And it will be
4 until 1:15.

5 As I stated yesterday when we began the trial, I
6 would during the course of the trial attempt to
7 determine if we were on track time-wise, a little
8 ahead, a little behind. So, Mr. Hoy, how do you feel
9 we're doing so far?

10 MR. HOY: We're pretty close to my schedule, Your
11 Honor. My plan is for David Snelgrove who is under
12 subpoena to be here after lunch. And when we're
13 finished with him, we will move on to Mark Steppan. I
14 don't know how long that's going to take. And
15 cross-examination is unpredictable. I have a hunch
16 that we can finish with Mr. Steppan early tomorrow
17 morning or midmorning.

18 THE COURT: Okay.

19 MR. HOY: I have a little bit of direct examination
20 with Dr. Iliescu and then I will be ready to close, I
21 believe.

22 THE COURT: Excellent. And so, Mr. Pereos, if you
23 could with that timeline in mind anticipate the
24 beginning of your presentation of evidence I would say

1 after the lunch hour tomorrow. We might take just a
2 few minutes extra at lunch tomorrow. The Washoe County
3 Bar Association lunch is tomorrow and I'm scheduled to
4 be there. And so just depending on how the day goes,
5 we might take an extra 15 minutes for lunch, just
6 because I don't like the parties to be waiting for me
7 to get here. I would rather just have a specific time.

8 And we will break tomorrow probably at about, I
9 would say, maybe five to ten minutes before noon and
10 come back maybe around 1:20 or so. That should be the
11 lunch hour. And so with that, we will be in recess
12 until 1:15.

13 Mr. Pereos, do you think that that--

14 MR. PEREOS: No, that's okay. I'm just standing
15 up. And then I will indicate, my first witness then
16 tomorrow afternoon will be Karen Dennison.

17 THE COURT: Okay. That will be great. It looks
18 like we're on time. Thank you, counsel.

19 (The lunch recess was taken at 12:01 p.m.)

20 --o0o--

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23

24

1 RENO, NEVADA; TUESDAY, DECEMBER 10, 2013; 1:19 P.M.

2 --o0o--

3 THE COURT: We'll go back on the record in Steppan
4 versus Iliescu, CV07-00341. Mr. Hoy, your next
5 witness, please.

6 MR. HOY: Thank you, Your Honor. Plaintiff calls
7 David Snelgrove.

8 THE CLERK: Just raise your right hand.

9 (The Clerk administered the oath
10 to the prospective witness.)

11 THE CLERK: Just have a seat.

12 RONALD DAVID SNELGROVE,
13 having been called as a witness herein,
14 being first duly sworn, was examined
and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HOY:

17 Q Good afternoon, sir. Can you please give us
18 your full name.

19 A Ronald David Snelgrove.

20 Q Can you please spell your last name.

21 A S-n-e-l-g-r-o-v-e.

22 Q Thank you, Mr. Snelgrove.

23 Can you very briefly give the Court your
24 educational background.

1 A I have a bachelor of science in economics from
2 the University of California, Riverside, and a master
3 of science also in economics from the University of
4 Nevada.

5 Q Do you currently have a profession or
6 occupation?

7 A Right now I'm working as a right-of-way agent
8 at NV Energy.

9 Q NV Energy being the utility that serves Nevada?

10 A Correct.

11 Q Have you ever been a land planner?

12 A Yes, for 22, 23 years prior. And I worked as a
13 private consultant in land use planning during that
14 entire time.

15 Q Can you please give us an overview of your
16 employment history as a land planner.

17 A It started here, all of it has been in the
18 Truckee Meadows area, starting at Codega and Fricke.

19 THE COURT: Can you spell that, please.

20 THE WITNESS: Codega, C-o-d-e-g-a. And Fricke is
21 F-r-i-c-k-e.

22 THE COURT: Thank you.

23 THE WITNESS: That company split and I stayed with
24 Jeff Codega for four, four and a half years. And then

1 Fricke brought me back over to FPE Engineering and
2 Planning. And I then went to Gray and Associates for
3 about five years and was with Wood Rodgers
4 approximately eight, I believe, before leaving.

5 Q Can you please give us an overview of the work
6 that you did at Wood Rodgers.

7 A I worked on a lot of different types of
8 projects. It didn't matter whether it was a parks
9 project, whether it was industrial, casino,
10 residential. We did a lot of residential during the--
11 during the big land development days.

12 Over my career I've worked on the Peppermill
13 project, I've worked on the Regional Public Safety
14 Training Complex, I've worked on master plan
15 communities, worked on the Wingfield Towers project.
16 That's just a highlight of a few.

17 Q All right. Can you please give us a general
18 idea of what a land planner does.

19 A A land use planner will work with the codes,
20 rules and regulations of the city or the municipality
21 in which you're working and try and make sure that what
22 we're putting forth does meet to the best of our
23 ability the rules that are put forth. There are times
24 that you have to request a variance from the rules, and

1 the land use planner will help create the justification
2 for those variances.

3 In the special use permit and tentative mapping
4 there's a lot of information that the cities or the
5 county want that we help to digest down. We'll get
6 information from architects, from engineers, from
7 traffic engineers, geotechnical engineers. And a lot
8 of times the technical end, especially with
9 engineering, the technical end we help digest down so
10 it can be easily digested by the bodies that end up
11 reviewing.

12 Q All right. Are you familiar with a project in
13 Reno-- proposed for Reno called the Wingfield Towers
14 project?

15 A Yes.

16 Q Did you ever know that project by a different
17 name?

18 A I don't recall whether we ever had a different
19 name for it from when we got involved.

20 Q Okay. Can you please turn to Exhibit 35 in the
21 binder in front of you.

22 A Yes, we did have a different name.

23 Q All right. Do you recognize Exhibit 35?

24 A Yes, I do.

1 Q What is it?

2 A It is the cover to the initial application that
3 we submitted to the City of Reno.

4 Q Can you please thumb through the exhibit and
5 familiarize yourself with it and answer this question:
6 Do you believe Exhibit 35 is a complete copy of the
7 January 17th, 2006 application to the City of Reno for
8 what we now know is Wingfield Towers?

9 A Save and except the full-size maps that would
10 have been included with this, I believe it is.

11 Q All right. Did you have any role in creating
12 Exhibit 35 or compiling Exhibit 35?

13 A Yes, I did.

14 Q Can you please give us-- please tell us what
15 you did to put together Exhibit 35.

16 A We were-- we were contacted by Sam Caniglia who
17 was involved. That was the first contact. And I
18 believe it came in-- the call and initial contact came
19 into one of the owners within Wood Rodgers to Scott
20 Christie. And then I was asked to lead up the planning
21 end of it.

22 And most of the time when we would have a project
23 that involved planning, I would write the-- write the
24 proposal for it. This included engineering. We had

1 civil engineering, hydrologic engineering, sewer study,
2 I believe were all prepared by us as well. But I put
3 that together. And then we got that authorized. I
4 believe Mr. Caniglia signed that. And we were off and
5 running and we coordinated with the architect. They
6 sent us over information.

7 I think we were contacted right about the start of
8 2006, so it was a very quick project. They had-- they
9 had prepared all their exhibits. We had our work to do
10 prior to submittal. So you'll see this was mid-January
11 and we were contacted at the start of January. It was
12 a very quick turnaround.

13 Q So Wood Rodgers' scope on this project was not
14 limited to land use planning but also had some
15 engineering scope in it?

16 A Correct.

17 Q And the engineering scope included the
18 hydrology?

19 A I believe the hydrology report and-- Let's see
20 if we have that in here. Hydrology and sewer reports
21 are typically done by the civil engineer. There's our
22 civil engineering plans. Let's see if we've got
23 reports behind here. There's geotech. There is the
24 hydrology report, yes, by Scott Christie in our office.

1 And this might be the sewer report. And, yeah,
2 preliminary sewer report, also stamped by Scott
3 Christie who was an owner at Wood Rodgers.

4 Q And could you elaborate on the communications
5 that you had with the architect as a prelude to putting
6 together this Exhibit 35. When did you first meet
7 somebody from Mark Steppan's office or Fisher-Friedman
8 and Associates?

9 A When I first met somebody was probably after
10 this submittal. I don't recall how long after
11 submittal. The communications were initially by phone.
12 And then I believe that some information was e-mailed
13 and then we got a very large-- ultimately got a very
14 large FedEx package with full-size maps that we had to
15 fold.

16 Q And was Wood Rodgers a subconsultant to
17 Fisher-Friedman Associates or Mark Steppan?

18 A No.

19 Q Was Mark Steppan or Fisher-Friedman a
20 subconsultant to Wood Rodgers?

21 A No.

22 Q So Wood Rodgers dealt directly with the owner?

23 A Yeah, with Mr. Caniglia.

24 Q I ask you to turn to about the fourth page of

1 this Exhibit 35-- fifth page of the exhibit.

2 A Including the cover?

3 Q Yes. And during your examination we may refer
4 to what we call Bates numbers in the lower right-hand
5 corner of the exhibits. And those are just there to
6 give us a unique identifier for each page of all the
7 massive stuff that's been produced in the case.

8 So I would like to ask you to go to Steppan 2369.

9 A 2369. Okay.

10 Q Do you recognize this document?

11 A Yeah. This is an owner affidavit for this
12 application.

13 Q Okay. And it says, "I am an owner of
14 property/authorized agent involved in this petition and
15 that I authorize Sam Caniglia to request
16 development-related applications on my property. I
17 declare under penalty of perjury that the foregoing is
18 true and correct." Executed on January 17th, 2006 in
19 Reno, Nevada.

20 Were you present when this page, 2369, was signed?

21 A I don't recall whether I was present for this.
22 Sometimes we will have them delivered to us; sometimes
23 I will be there in front of the person as they sign
24 them.

1 Q Okay. Were you ever in front of-- did you ever
2 have Dr. Iliescu in front of you when he signed an
3 owner affidavit for the Wingfield Towers project?

4 A For one of the applications that were
5 submitted, yes.

6 Q You just don't recall which--

7 A Yeah, I don't recall whether this one was. I
8 can't testify to that.

9 Q Okay. On the occasion when Dr. Iliescu was--
10 Let me withdraw that.

11 Turn to Exhibit No. 36, please. Exhibit 36 is a
12 February 7th, 2006 Tentative Map and Special Use Permit
13 Application. And it has an owner affidavit that
14 appears to be signed by John Iliescu at Steppan 2522.

15 A 2522?

16 Q Yes.

17 A Yes.

18 Q And this particular owner affidavit is dated
19 January 31st, 2006. So is it your testimony-- Well,
20 do you remember that Dr. Iliescu appeared before you to
21 sign either the owner affidavit in Exhibit 36 or the
22 owner affidavit in Exhibit 35?

23 A Yes, I believe that one of the two. And we had
24 packages we were putting together, I recall, and I

1 don't recall which one.

2 Q Okay. And where were you geographically when
3 you saw Dr. Iliescu sign the owner affidavit?

4 A It would have been at our office at-- What was
5 our street address? --Double Eagle Court when we were
6 down-- when Wood Rodgers was located south of IGT in
7 the business park area.

8 Q And did you witness Dr. Iliescu sign the owner
9 affidavit in a conference room or some other kind of
10 room?

11 A I don't recall whether it was in a conference
12 room or whether if it was at the table. I dealt with a
13 lot of different people signing documents or reviewing
14 documents over the years, and I don't specifically
15 recall what location.

16 Q Do you recall any other documents being on the
17 table at the time the owner affidavit was signed?

18 A Just copies of this document, because we were
19 needing and getting this together to submit it.

20 Q Okay. Did you have any discussions with
21 Dr. Iliescu about the engineers that were contributing
22 to the application for entitlements?

23 A I don't know if we spoke in specific about the
24 engineers or architects or any specific member of the

1 team. Whenever I'll submit something for somebody who
2 they're not the applicant, I'd like for them to have a
3 realization of what's being proposed on their property,
4 so I'll try and expose them to what the proposal is.

5 And we had full-size maps there and we had the
6 reduced copies, the same size, the 8 and a half by 11.
7 And probably some in the original submittal were 11 by
8 17 in size. And tried to let him know, you know, this
9 is the type of project that's being proposed to make
10 sure that he was aware.

11 Q And back in January of 2006 did you make the
12 effort to let Dr. Iliescu know what was being proposed
13 for his property?

14 A Yeah, I believe that I did.

15 Q Can you please elaborate on that and tell us
16 what you did to let Dr. Iliescu know what was being
17 proposed.

18 A I made sure that he saw some of the graphics
19 that we had. You can flip through. And granted, these
20 are reduced size, but if you just take a flip-through
21 on some of the architectural elevations and even on
22 some of the engineering plans, I think we've got some
23 information shown that kind of denotes size, scope and
24 scale.

1 This was a 40-story tower and a 28-story combined
2 on the property, so it was rather sizeable on an acre
3 and a quarter of land. So I wanted to make sure he
4 knew the size and the scope of what was being proposed.
5 Did I verbally elaborate that? Probably not fully.
6 But they were there for him to view and to understand.

7 Q Okay. And so the things that were there for
8 Dr. Iliescu to review and see included some of the
9 architectural drawings that say Mark B. Steppan on
10 them, for example?

11 A Yeah. The plans that Fisher-Friedman had
12 supplied would have had their logo or their information
13 on the bottom. And each of the pages say Mark Steppan
14 down in the bottom corner, like ours said Wood Rodgers.

15 Q Okay. And I'll ask you to turn to the third
16 page of Exhibit 36. And this is Steppan 2521. It
17 says, "Person to contact regarding application. Name:
18 Fisher-Friedman Associates. Contact Nathan Ogle, AIA."

19 Is this sheet a sheet that you created?

20 A Yeah, I put this together.

21 Q And why did you list Fisher-Friedman Associates
22 and Nathan Ogle as the person to contact regarding the
23 application?

24 A They had done the primary work. And on these

1 application pages they give one spot for an additional
2 person to contact. And I know subsequent to that I
3 started putting if there were more than-- if there was
4 more than one person who was kind of leading--
5 Fisher-Friedman had done work on this and had been
6 involved longer than we had. And this was a project
7 that had more vertical aspect than it did horizontal
8 aspect, so I felt it appropriate to put them as the
9 primary contact. Typically I would put myself, but
10 that's on more of a suburban-type development.

11 Q All right. And this sheet with the person to
12 contact listed on it, was that available for
13 Dr. Iliescu to see during the time he came to your
14 office to sign the owner affidavit?

15 A Whether this page was opened up directly, I'm
16 not sure. I couldn't testify to that.

17 Q Did you ever provide Dr. Iliescu with a
18 completed application book?

19 A That is my typical and I try and do that with
20 everyone. To sit here and say yes, we handed one to
21 Dr. Iliescu or we had someone deliver one to
22 Dr. Iliescu eight years ago, I can't say whether that
23 happened or not. I believe it did, because I always
24 try and do that in a conscientious manner.

1 Q Now, Exhibit 34 is called Special Use Permit
2 and it's dated January 17th, 2006. And Exhibit 36 is
3 entitled Tentative Map and Special Use Permit
4 Application and it's dated February 7th, 2006.

5 A Did you say Exhibit 34?

6 Q 35.

7 A Okay. So you're comparing 35 and 36?

8 Q Yes. Do you have a recollection of why there
9 were two applications filed two and a half or three
10 weeks apart?

11 A I don't recall the specifics, but what we did
12 with this is we submitted a special use permit
13 application which would typically cover like an
14 apartment-type project. You could do an apartment this
15 high with a special use permit.

16 I think given the timeframe that was put in front
17 of us, there wasn't a way to get all the tentative map
18 information put together within that short time, but
19 there must have been something timeframe-wise on when
20 we were trying to get an application in. And we
21 probably knew that there would be some amendment and we
22 would follow up. It's only vague memories on that.

23 Q Do you remember whether there was a filing
24 deadline to get one or both of these applications on

1 file with the city?

2 A No. The City of Reno, they were-- they
3 typically take applications once every couple weeks.
4 They've jockeyed that around over time and taken it to,
5 I think, twice a month. The 1st and the 15th tend to
6 be the dates. Given that this was the 17th, my
7 anticipation would be that the 15th was on either a
8 Saturday or Sunday. Well, probably Saturday, because
9 this would have been Monday.

10 Q All right. Do you have any recollection of any
11 issue about zoning about to expire, existing zoning
12 might be expiring on the land?

13 A Well, there was-- there was work going on with
14 the downtown regional center, standards that the City
15 of Reno was working on. They had not gone into effect.
16 And I know that what we designed under here used a lot
17 of the old standards, because they were technically
18 still in place as we were-- as we submitted this.

19 So timing-wise, sooner was better than later
20 because some of the restrictions that would have been
21 put on the property would have made some of this
22 undoable.

23 Q Okay. So we have in Exhibit 35 a January 7th--
24 I'm sorry, January 17th, 2006 application. Exhibit 36

1 is a February 7, 2006 application. And then we have a
2 third exhibit, 37, which begins at Steppan 2100. It's
3 also dated February 7th, 2006. And then there's a
4 handwritten notation at the top. But the contents are
5 not identical between 36 and 37.

6 And one of the differences appears to be that in
7 the original application the request was for 390
8 residential units. Then on February 7th the request
9 was for 394 residential units. And then in this
10 Exhibit 37 the request is for 499 residential units.
11 Do you remember how it came to be that the request was
12 changed over time?

13 A Well, I seem to recall through discussions that
14 we had with the project team, with the architect,
15 taking a look at some of the demographics associated
16 with marketability of certain size, size units, and I
17 recall-- Yeah, this had studio units. The latter
18 submittal had studio units. And I don't know-- I
19 think the number of studio units went up. So the
20 internal jockeying of the makeup of the building is my
21 recollection.

22 Let me see if I can find that graphic or the table.
23 The internal jockeying changed. I don't think it
24 really had any substantial change to the exterior and

1 the skeleton of the building. It was how things were
2 working internally.

3 Let's see. Oh, this one doesn't even have any
4 studio. This says one-bedroom units. The first one we
5 submitted, one-bedroom units were 222, two-bedroom
6 units were 163, three-bedroom units were 81. And then
7 penthouses were 28.

8 And then we go to studio units, which we didn't
9 have before, 71 studio units, 263 one-bedroom units.
10 Those went up from 122. Number of two-bedroom units
11 went down from 163 to 144. The number of three-bedroom
12 units went down substantially from 81 down to 17. And
13 the number of penthouses went down from 28 penthouse
14 units to four. So it was a changeover in internal
15 makeup.

16 Q I see. I'll ask you to turn to Exhibit No. 48
17 which is in a different binder. I'm sorry. It's 38.
18 I apologize. My outline is incorrect. 38.

19 Exhibit 38 is a series of sheets entitled Revised
20 Tentative Map and it's dated May 15th, 2006. Do you--
21 did you have anything to do with creating this Exhibit
22 38?

23 A This would have come from-- with our engineers
24 working on a lot of this and Fisher-Friedman's base

1 information. It would have been a combined effort
2 there. And knowing what happened with the number of
3 units, that has an impact on your parking, so the
4 parking had to be reworked. And I recall discussions
5 about the water table, because I think we had to go
6 deeper with the parking structure. And trying to make
7 sure that we either managed the water or we didn't
8 hit-- didn't go into the water table was of paramount
9 concern during this time.

10 Q And without going page by page, can you please
11 give the Court a general idea of what portion of
12 Exhibit 38 actually came from Fisher-Friedman
13 Associates versus what was original work by Wood
14 Rodgers.

15 A Oh, a substantial portion. We've got-- I think
16 we've got the same general elevations on each side,
17 each area. If you go to the back-- Let's see. Once
18 we get into the building itself, we had what was called
19 the pedestal that it sat on. And then once you get to
20 page-- Let's see. The pedestal, S-10 of 18, that's
21 when you start into the-- into the actual building that
22 is occupiable. It ends up having, you know, retail
23 businesses, lower retail or office lower and then you
24 go into residential higher.

1 So over on the right-hand side of the page and on
2 all these pages, the architectural footprints, the
3 architectural elevation, those would have been from
4 Fisher-Friedman when we were working with some of the
5 ground level and-- There's drainage information here.
6 The predominance of the information would have come
7 from Fisher-Friedman.

8 Q Okay. On sheet G-1 of 1, which is Steppan
9 2363, this is entitled Grading Plan Podium to Street
10 Level. And this sheet actually bears a seal of a
11 registered professional engineer and a date. Can you
12 please explain to the Court the significance of that
13 seal there.

14 A I'm not seeing a copy of the seal on this one
15 that's in front of me.

16 Q G-1 of 1?

17 A Oh, G-1 of 1. Let me see. This is in 38
18 still?

19 Q Yes.

20 A Or are we in 39?

21 Q We're in 38.

22 THE COURT: The second to the last page.

23 THE WITNESS: There's sheet U. There's the utility
24 plan. There we go. Yeah, this was stamped and signed

1 by Steve Strickland who is an engineer in our office.
2 This is an engineering-oriented plan. This would be
3 the grading sheet. That's the grading plan to show how
4 the-- how the water will drain off. And since we're so
5 close to the Truckee River, that was of paramount
6 importance in the project.

7 BY MR. HOY:

8 Q And then the next sheet is called U-1 or
9 Utility Plan. And that's also stamped by a
10 professional engineer?

11 A Correct.

12 Q But the other sheets, the S sheets, are not
13 stamped by an engineer?

14 A Correct.

15 Q Can you please explain why those are--

16 A Those are architectural sheets. Those are in
17 association with the architecture.

18 Q All right. Now let's go to Exhibit 48.

19 A Okay. 48?

20 Q Yes, sir.

21 A Okay.

22 Q Exhibit 48 is a November 30th letter from the
23 City of Reno to John and Sonnia Iliescu that states,
24 "At a regular meeting held November 15th, 2006, and

1 following a public hearing thereon, the city council
2 upheld the recommendation of the planning commission
3 and approved the request for the following; A, a
4 tentative map to develop a 499-unit residential
5 condominium subdivision," et cetera.

6 Is Exhibit 48 the written confirmation of what the
7 city council did on November 15th?

8 A No. This is a confirmation of what the-- I'm
9 sorry. This is the city council upheld. I'll back up.
10 Yes, this is what the city council did on the 15th.

11 Q And the city council approved the applications
12 as submitted in 35, 36 and 37, Exhibits, 35, 36, 37?

13 A It was amended through that time. Yes, they
14 approved it with conditions of approval which are
15 attached.

16 Q Okay. Can you please describe for the Court
17 how the application was amended after it was filed
18 initially with the city.

19 A Well, the initial filing from looking at the
20 last book was mid-January of 2006 and then we followed
21 up in adding a tentative map to that with all the
22 information that was necessary for a tentative map in
23 early, mid-February. Then we amended it again changing
24 the internal structure and changing the application

1 materials to reflect that modification to the internal
2 structure, taking us from 300 and some odd units-- I
3 can't remember what the number was. --to 499, which
4 ultimately got approved.

5 With any project-- And this one was a little bit
6 bigger. --you'll have some moving parts to it. You'll
7 have concerns that come about with staff, you'll have
8 concerns that come about with neighbors. And you try
9 and make reasonable accommodations as you can. And
10 this is the ultimate clerk's letter which says this
11 project was approved by the city council.

12 Q Were there any presentation materials created
13 by Fisher-Friedman Associates to promote approval of
14 the applications for Wingfield Towers?

15 A Yes. We obviously had the information, the
16 maps and elevations that were in the application, but
17 we also had a 3D fly-through presentation and a
18 PowerPoint presentation which were put together by
19 Fisher-Friedman. And then we went on a very extensive
20 circuit of meetings with those. And those really
21 helped to highlight what the project was and also
22 what-- and helped us explain what the project wasn't.

23 Q Okay. And did you personally attend any of
24 those meetings?

1 A I was at almost all of them, not every one, but
2 I was at almost all of them.

3 Q Did you attend any of those-- Over what
4 timeframe did you attend those meetings?

5 A Those would have been-- probably in the April,
6 May, June timeframe would have been when we were
7 starting to present. You have to go to a citizen's
8 advisory board. Well, in the city of Reno they're
9 called neighborhood advisory boards. I recall going
10 there twice. We had a couple homeowners association,
11 the Arlington Towers Homeowners Association and the one
12 that was right next to us. Park Tower I believe was
13 the name of the one at the very corner which we were
14 kind of wrapping around in an L.

15 We went to the Downtown Improvement Association
16 meeting. We went to the California Merchants
17 Association. Pretty much anyone that would talk to us,
18 we would give them the presentation. We actually met
19 individually with Mike Van Houten who runs
20 downtownmakeover.com, because we felt if he could put a
21 link up to this, people could see it and start to
22 understand what it was and what it wasn't. We felt it
23 was a very nice project.

24 Q When you say "put a link up to this," what do

1 you mean by that?

2 A He could actually link it so people could watch
3 the 3D fly-through and the PowerPoint presentation from
4 downtownmakeover.com.

5 Q Was the 3D fly-through actually put on the
6 internet?

7 A I'm not sure if it ever was, but the PowerPoint
8 presentation-- I think there were links that you could
9 get to them that Mike Van Houten put up.

10 Q So your recollection is that the PowerPoint was
11 available on the internet?

12 A I believe so.

13 Q And do you know approximately from what date
14 the PowerPoint was available on the internet?

15 A It would have been prior to planning
16 commission, around the planning commission and the city
17 council timeframe, in there. We probably met with Mike
18 a month or two prior to-- prior to final decision on
19 this.

20 Q Now, you mentioned that you went to a meeting
21 at the Arlington Towers Homeowners Association. Do you
22 remember that testimony?

23 A Yes.

24 Q Do you remember the approximate date of that

1 meeting?

2 A I couldn't-- It's probably in here somewhere.

3 Q Do you remember whether or not the PowerPoint
4 was shown at that meeting?

5 A Yeah. It was a tough night, because the way
6 that their meeting room faces, it faced south and it
7 was-- the sun was shining in at the time we wanted to
8 do the meeting. So we tried to make it as visible as
9 possible, but it was really, really tough.

10 That was probably the one presentation that we did
11 where the PowerPoint had a little bit harder time being
12 seen and wasn't as effective as we had hoped.

13 Q Was the fly-through shown at that meeting?

14 A I believe we tried to show the fly-through as
15 well. Again, because the sun was shining in through
16 the windows that faced out toward the river, it made it
17 a little hard to see.

18 Q And at that meeting were there any printed
19 materials available?

20 A I don't know if we had hard copies of materials
21 there. I doubt if we did. When I would go with
22 electronic presentation information, I usually wouldn't
23 bring hard copy information unless I was going to a
24 planning commission or city council where they need it

1 for the file.

2 Q Okay. And who else was there with you to
3 present?

4 A Nathan Ogle was there at that meeting from
5 Fisher-Friedman Associates. And he and I did the
6 presentation together.

7 Q Okay. Did Mr. Ogle introduce himself as a
8 member of Fisher-Friedman?

9 A I don't recall whether he introduced himself,
10 if I introduced him, how the introduction-- but I know
11 he was identified during the meeting. We did a number
12 of them together and had it down to a standard.

13 Sometimes he would start; sometimes I would start.

14 Q Was Mr. Ogle typically introduced as a member
15 of Fisher-Friedman at these meetings?

16 A Yeah, yeah, that he was with the architecture
17 team. If Fisher-Friedman wasn't called out directly,
18 it would be Nathan Ogle who is the project architect
19 working on the project.

20 Q And you mentioned a Downtown Improvement
21 Association meeting. Did you personally attend the
22 Downtown Improvement Association meeting?

23 A Yes.

24 Q And you presented the Wingfield Towers project

1 at that meeting?

2 A Yes.

3 Q Was the PowerPoint presentation shown?

4 A Yes.

5 Q Was the video fly-through shown at that
6 meeting?

7 A Yes.

8 Q Was Mr. Ogle at that meeting?

9 A I believe he was. I'm not a hundred percent
10 certain on whether he was able to attend that meeting
11 or not.

12 Q And how was the lighting for that meeting
13 insofar as the PowerPoint goes?

14 A That was good. That was in the bowling stadium
15 in a bigger meeting room that they have. And that was
16 dark enough that you could definitely see the
17 presentation.

18 Q Please turn to Exhibit No. 40. Is that in that
19 binder?

20 A Yes.

21 Q Do you recognize Exhibit 40 to be a printout of
22 the PowerPoint presentation?

23 A Yes, I do.

24 Q And the first page of Exhibit 40 is a title

1 sheet?

2 A Um-hum.

3 Q Yes?

4 A Yes.

5 Q And was that title sheet on the screen at the
6 Downtown Improvement Association meeting?

7 A Yes, it would have been the first page up in
8 the PowerPoint presentation.

9 Q And was that page up on the screen during the
10 Arlington Towers Homeowners Association meeting?

11 A Yes.

12 Q Was Dr. John Iliescu, Jr. present at the
13 Arlington Towers Homeowners Association meeting?

14 A Yes.

15 Q Was Dr. John Iliescu, Jr. present at the
16 Downtown Improvement Association meeting?

17 A Yes.

18 Q Thank you. Did you attend the Reno City
19 Planning Commission meeting?

20 A Yes.

21 Q Was the video fly-through shown at that
22 meeting?

23 A Yes.

24 Q And was there somebody present to narrate the

1 movie?

2 A Yes.

3 Q Who was that?

4 A At the planning commission it would have been a
5 combination of me, Gary Duhon, a local attorney who was
6 involved with the project. Nathan was there at the
7 meeting as well, I believe. When we start talking
8 about planning commission or city council, I don't
9 recall which one. They're in the same chambers and
10 they kind of run together.

11 Q And was the PowerPoint presentation shown to
12 the Reno City Planning Commission?

13 A Yes.

14 Q And did somebody narrate the PowerPoint?

15 A The PowerPoint was either narrated in all
16 likelihood by either me or Gary Duhon. Nathan may
17 have-- if Nathan was there, Nathan may have done the
18 fly-through. I don't recall. The records from the
19 planning commission would probably be a better
20 indicator rather than my recollection from seven and a
21 half to eight years ago.

22 Q Did you typically look at the cards that people
23 submitted at the beginning of these public meetings of
24 people for and against the project?

1 A No. Those go from the clerk and get handed
2 around to the chair of the planning commission or to
3 the mayor, as in the city council's case, and then they
4 say whether they want to speak or not, but they have
5 those cards. Those cards ultimately end up in the
6 file.

7 I think after the planning commission, because the
8 case was appealed, we ended up looking at who the
9 appellants were and taking a look at who was there in
10 opposition, finding out where the opposition was coming
11 from.

12 Q Did you look at the cards in support of the
13 project?

14 A I believe we probably looked at all the cards
15 and scanned through. Our big issue between planning
16 commission and city council was trying to find what was
17 the primary concern.

18 Q Do you have any recollection of seeing any
19 cards by Dr. and Mrs. Iliescu?

20 A I don't recall seeing any cards in particular.

21 Q All right. Was John Iliescu, Jr. present at
22 the planning commission meeting?

23 A I believe he was present at one of the two
24 meetings at least, because after one of the two, and I

1 don't recall whether it was planning commission or city
2 council, we went over to a place called the Sierra Tap
3 House which wasn't very far away and the design
4 development team was there and Dr. Iliescu was there.

5 Q Okay. Do you know whether or not Dr. Iliescu
6 was introduced to members of the design team at that
7 point?

8 A I would believe he would have been, but I can't
9 say for certain.

10 Q All right. I ask you to turn now to Exhibit
11 49. Exhibit 49 is an October 13th, 2008 application to
12 the City of Reno to extend the deadline for filing a
13 final map for the Wingfield Towers project.

14 A Um-hum.

15 Q Did you have any role in preparing this Exhibit
16 49?

17 A Yes, I did.

18 Q Can you please give the Court an overview--
19 let's give the Judge some background about why this
20 application came to be filed with the city.

21 A Initially in the conditions of approval, which
22 I don't recall which exhibit that was in with the
23 clerk's letter, they gave a timeframe that we had to
24 act upon the special use permit and tentative map

1 approval. You don't get an indefinite time on them.

2 In State law it was either two or four years. They've
3 changed it around over time.

4 Well, we were up against that time limit. We
5 knew-- and we talked to the architect and we knew that
6 it would take longer just through review and trying to
7 get-- This wasn't a normal project. So we took this
8 application forward to try and get more time before
9 the-- before the approval would expire, thus nullifying
10 all the work that had been done previously. So we
11 tried to get some extra time.

12 I recall talking to Vern Kloos. There were things
13 that were going on about four or five years, some
14 things-- I think the Summit down here at the south end
15 of town may have gotten a longer approval or extension
16 timeframe.

17 What we did is changed a condition. This says
18 here, "Specifically the request is made to change
19 condition 2 from the standard NRS two-year approval
20 allowing for an additional two years."

21 THE COURT: Where are you looking at, sir?

22 THE WITNESS: This is in the middle-- this is on
23 the second page. And the page number is Steppan 7437.

24 THE COURT: All right. Thank you.

1 THE WITNESS: It is the second sentence in the
2 letter that I wrote as part of the application.

3 BY MR. HOY:

4 Q Can you please turn to the next page of that
5 exhibit, Steppan 7738. And it's a cover sheet that
6 says in the middle, "Prepared for Dr. John and Sonnia
7 Iliescu, 200 Court Street, Reno, Nevada, 89501."

8 Did you prepare this sheet?

9 A Yes, I did.

10 Q Why did you say it was prepared for Dr. John
11 and Sonnia Iliescu?

12 A Because at that time that was the direction.
13 Whether it was coming from the realtor or whether it
14 was coming-- And Sam may have still had involvement.
15 I don't recall who I talked to. But they were the
16 owners of the property and there were things that were
17 going on by my understanding relative to BSC Financial
18 that in order for--

19 A special use permit and tentative map travels with
20 the land. So Dr. Iliescu and his wife actually had the
21 special use permit and tentative map approvals in their
22 holding. It doesn't travel with BSC Financial. It
23 really travels with the property that it's associated
24 with.

1 Q So if you could turn to the next sheet in that
2 Exhibit 7439. This is an owner affidavit. Did you
3 prepare the owner affidavit form for John Iliescu to
4 sign?

5 A Yes, I did. And this was signed with me
6 present. I know one of the applications that we
7 submitted, subsequent to the initial approval I met
8 with Dr. Iliescu and Sonnia at a Starbucks over here
9 not too far from the City of Reno offices. And it's
10 nice that this one has a notary on it. If you notice,
11 the previous ones didn't. Tonya Hunt was an employee
12 of Wood Rodgers.

13 So it was either stamped in our office, which meant
14 that they were either at our office or she went with me
15 and stamped it at Starbucks when I met with Dr. Iliescu
16 and Sonnia.

17 Q And the City of Reno approved that initial
18 request for a two-year extension?

19 A Correct.

20 Q And that's set forth on Exhibit 50?

21 A I'm sorry. What?

22 Q Exhibit 50 is the letter from the city
23 extending the time for the final map?

24 A Yeah. Our initial approval was for two years.

1 This is per Steppan 7384. It identifies in here that
2 we had the time in which to record the final map from
3 two to four years. So it got changed. An additional
4 two years were added which is what we requested per the
5 application.

6 Q If you can now turn to Exhibit 51. This is an
7 October 11th, 2010 application to the City of Reno to
8 extend the filing deadline for the final map a second
9 time. Did you have a role in preparing Exhibit 51?

10 A Yes, I did.

11 Q What was your role?

12 A Similar to the previous application in putting
13 together the application form and information. I have
14 a justification letter in here. Yes, a justification
15 on page 7372 which is the project description. It runs
16 through the background of what happened and what we
17 were requesting. And, again, it was another condition
18 amendment to that same condition number 2.

19 Q Now, in the 2008 application to extend the
20 time, the application says that it was prepared for
21 John and Sonnia Iliescu.

22 A Um-hum.

23 Q And then in Exhibit 51, October 2010, it says
24 prepared for Rodney Friedman, FAIA. Why did that

1 change from 2008?

2 A Rodney was requesting this one. And
3 previously, I don't know-- And I wouldn't have been a
4 party to the conversations that said, well, Dr. Iliescu
5 and his wife submitted the first one. Rodney was very
6 interested in having this continue on to try and get
7 things resolved to the best of my understanding.

8 Q And on the second page of Exhibit 51, the sheet
9 identifies the property owners as John and Sonnia
10 Iliescu.

11 A Correct.

12 Q But it says that the applicant is Rodney
13 Friedman. Can you please explain to the Court why in
14 one case the property owner and the applicant are the
15 same and then in the second case they are not.

16 A The first one, it was all directed and told how
17 we were going to submit it, whether it was Dr. Iliescu
18 as the owner and applicant. And that can happen, or
19 you can have somebody submit an application on your
20 property, but you have to give them the-- give them the
21 authorization for doing that submittal.

22 And I'm looking through here and looking for a copy
23 of the owner's affidavits. And I have had situations
24 in the past where the owner affidavits will come in

1 late and there will just be a copy at the City of
2 Reno's files.

3 I see the applicant affidavit in here. Let's see.
4 We must have submitted our-- submitted the information
5 on the affidavits separately from the application,
6 which I have done on many occasions to the city.

7 Q You wouldn't have submitted this application in
8 Exhibit 51 without permission from John and Sonnia
9 Iliescu, would you?

10 A Correct, I would not have.

11 Q In fact, the city wouldn't have accepted or
12 approved the application without that affidavit?

13 A Ultimately they would need the affidavit or
14 they would kick the application out.

15 Q And if you could turn to Exhibit 53. This is
16 the November 12th, 2010 letter from the City of Reno
17 addressed to John and Sonnia Iliescu extending by one
18 year the deadline for filing the final map; true?

19 A Correct.

20 Q No more questions. Thank you, sir.

21 THE COURT: Mr. Pereos, cross-examination.

22 MR. PEREOS: Thank you, Your Honor.

23 /////

24 /////

1 CROSS-EXAMINATION

2 BY MR. PEREOS:

3 Q Do you have Exhibit 49 in front of you,
4 Mr. Snelgrove?

5 A Yeah, that's in this book.

6 Q Now, my understanding is Exhibit 49 is the
7 application to extend the filing of the final map?

8 A Yeah. It gives more time to file the first
9 final map on the project, correct.

10 Q Okay. And that's-- is that the first
11 application for an extension, 49?

12 A I believe.

13 Q Is that the '08 application?

14 A Yes. It says received October 13th of 2008.

15 Q Okay. So someone got ahold of you and directed
16 you to prepare that application on behalf of the
17 Iliescus?

18 A Correct, that Iliescu would be the owner and
19 applicant on this.

20 Q Okay. I'm more interested with the final map
21 issue. Okay. So what you're asking for is you're
22 asking for some more time so you-- before you-- you're
23 asking for more time from the time that you got the
24 tentative map approved until you had to do the final

1 map?

2 A Um-hum.

3 Q Is that correct?

4 A Yes.

5 Q Now, would you agree with me that the final map
6 had to be approved before construction could start?

7 A Yes.

8 Q So you're looking for some more time before
9 you're even going to contemplate commencing
10 construction?

11 A There would be--

12 Q Not you starting construction, before the
13 developer can start construction.

14 A The final map would have to be approved. You
15 would have to have appropriate parts of that approved
16 so that you could start constructing.

17 Q Now-- I'm sorry. Are you done?

18 A Yes, I am.

19 Q Okay. Now, therein that application was an
20 owner's affidavit?

21 A Um-hum.

22 Q And the owner's affidavit was notarized by a
23 staff member of Wood Rodgers?

24 A Correct.

1 Q Okay. From that you're surmising that either
2 Iliescu came to the office to sign the owner's
3 affidavit or you recall some time meeting them at a
4 Starbucks?

5 A Yes.

6 Q Is that correct?

7 A Um-hum.

8 Q It's one of those--

9 A It was either this application or it was the
10 other application that was the extension that I met
11 with them at a Starbucks, one of those two.

12 Q All right. That's what I'm trying to fish out.

13 THE COURT: Stop. Stop. Again, gentlemen, this is
14 not a conversation. The court reporter is trying to
15 take down what you're saying. And so, Mr. Snelgrove,
16 if you could, please not talk at the same time that
17 Mr. Pereos is talking.

18 Mr. Pereos, you actually were interrupting
19 Mr. Snelgrove.

20 So one at a time, please, gentlemen.

21 BY MR. PEREOS:

22 Q That's what I'm trying to fish out. Okay? Is
23 it your mindset or your best belief that it was during
24 these extension applications that you had met with

1 Mr. Iliescu at the Starbucks?

2 A Yes, at one of those two, during one of those
3 two applications.

4 Q And then the other one was a meet at Wood
5 Rodgers' office?

6 A I believe so, yes.

7 Q Your best memory?

8 A Yes.

9 Q When you say, "I believe so," it's kind of
10 like, well-- it makes me wonder.

11 A Yes.

12 Q Now, you referenced that there was some type
13 of-- and I'm going to use my phrase, celebration,
14 that's my phrase, at the Tap House? Do you remember
15 that testimony?

16 A Yes.

17 Q I'm a little confused, because I've heard two
18 different stories so far. Was that at the end of the
19 planning commission approval or at the end of the Reno
20 City Council approval?

21 A I believe-- It was one of the two, end of one
22 of the two. They meet in the same chambers. And I do
23 a lot of meetings. So it would be reasonable to think
24 that it might have been after the city council, might

1 have been after the planning commission. And eight
2 years after the fact, I may not recall exactly which
3 one that was after.

4 Q All right. Now, you referenced-- you looked at
5 Exhibit 40 which I believe was the PowerPoint
6 presentation. Tell me if you're there.

7 A I'm there.

8 Q Would you agree with me that the work done by
9 the-- the work performed by the architect had already
10 been completed by the time of the PowerPoint
11 presentation?

12 MR. HOY: Objection; vague.

13 THE COURT: Could you--

14 MR. PEREOS: I'll rephrase.

15 THE COURT: --clarify what you mean by "completed."
16 BY MR. PEREOS:

17 Q Okay. The work that you had available that you
18 used in your application process and your submission
19 process to the City of Reno for approval had been
20 completed by the time of the PowerPoint presentation?

21 A For that initial submittal in early-- initial
22 two submittals in early 2006, I would agree. There
23 were modifications that were made through the process
24 with the May submittal and that Fisher-Friedman also

1 did the PowerPoint presentation and the 3D fly-through
2 and put those together which we utilized through the
3 process. So I want to make sure that, yes, for
4 submittal of the application, yes, but there was more
5 that they worked on.

6 Q Well, let's talk about the more that they
7 worked on.

8 A Um-hum.

9 Q Now, you've indicated that they worked on the
10 fly-through--

11 A Um-hum.

12 Q --after the submittal in February of '06,
13 correct?

14 A Correct.

15 Q And they worked on a PowerPoint presentation?

16 A Correct.

17 Q Correct? Okay. What else did they work on for
18 a submission to a governmental agency after the
19 February '06 packet?

20 A With the modifications to the plans in the May
21 submittal where we went from 300 and whatever number of
22 units up to 499, the internal reworkings of the floor
23 plans would have been done by them, the expansion of
24 the parking garage would have been done by

1 Fisher-Friedman and Associates and any other-- I'm not
2 an architect, so I can't say what else they did, but I
3 know that those are the-- those are the primary
4 modifications.

5 Q Why don't you direct your attention to Exhibit
6 37.

7 A I'm going to need the other book. Sorry.

8 Q Before you do that, did you have an opportunity
9 to discuss your testimony before you testified today?

10 A To discuss my testimony?

11 Q Yeah, discuss the contents of what you were
12 going to be testifying to today.

13 A I got a witness plan, but that was it.

14 Q A witness plan?

15 A Yeah, just as far as what generally-- what kind
16 of general things would be asked.

17 Q Oh, do you have a-- Did somebody give that to
18 you?

19 A That was provided by the attorney for
20 Fisher-Friedman.

21 Q Oh, do you have a copy of that with you?

22 A I do not.

23 Q So what he did was he prepared a document that
24 would outline where he was going with regard to your

1 testimony?

2 A No, just the general questions of what types of
3 things in terms of the different applications that I
4 would be asked about.

5 Q Did he actually give you typed-out questions?

6 A I wouldn't have considered them questions.

7 Q How many pages was this witness plan?

8 A I believe two. I looked at it on the computer.

9 Q Oh, so he e-mailed it to you?

10 A Yeah.

11 MR. HOY: Do you want a copy, counsel?

12 MR. PEREOS: Sure. Thank you.

13 Can I have this marked as an exhibit?

14 THE COURT: Why?

15 MR. PEREOS: Okay. That's fine. I'll withdraw
16 that.

17 THE COURT: I don't know what relevance it would
18 have. It's a hearsay document, number one. So you can
19 ask him questions about it, but I still don't know what
20 the relevance of that document would be other than a--

21 BY MR. PEREOS:

22 Q I notice that in this witness plan he also
23 referenced exhibit numbers. Did he give you copies of
24 exhibit numbers?

1 A They were available, but I didn't look at all.
2 I looked at some to refresh my memory-- They were the
3 applications. --because this was eight years ago, plus
4 or minus.

5 THE COURT: Mr. Hoy, I said no to the admission of
6 the document prior to your objecting or agreeing to its
7 admissibility. And so I would give you the opportunity
8 to decide whether or not you want it admitted.

9 MR. HOY: I don't think it's-- It's tough for me
10 to argue that my document is hearsay.

11 THE COURT: Well, it is hearsay. It's your
12 out-of-court statement.

13 MR. HOY: It's hearsay. I don't have any problem
14 with the Court seeing it, though.

15 THE COURT: I'm not concerned with it one way or
16 the other. It's the parties' decision what comes to
17 the Court. And given the fact that this is a bench
18 trial rather than a jury trial, I think my reflexive
19 "no" upon a brief amount of consideration was-- I
20 reconsidered that and decided to let the parties to
21 have the option of saying if you do or don't want me to
22 see it.

23 Mr. Pereos, I don't know what weight I would give
24 to it, other than the fact that it's an attempt, I

1 would assume, to direct the witness to the types of
2 questions and issues that would be asked during the
3 trial. And I wouldn't certainly think that there is
4 anything devious or nefarious about it. I'm sure that
5 you and Mr. Hoy, and I did it when I was a trial
6 attorney, you kind of let people know what they're
7 going to be coming to testify about.

8 So I would leave it to the parties. If you want me
9 to see it, I would happy to look at it.

10 MR. PEREOS: May I continue?

11 THE COURT: Certainly.

12 BY MR. PEREOS:

13 Q Did you read your deposition before testifying
14 today?

15 A Yes, I reread my deposition.

16 Q Did you find corroboration with regard to the
17 items discussed in this witness statement that were
18 delivered to you by Mr. Hoy on each and every item?
19 And if you would like, I'll show you the document.

20 A Can you restate the question? I'm not sure I
21 understand.

22 Q Sure. I want to know whether or not you were
23 able to corroborate each of the affirmative remarks
24 stated in that statement outside of the four corners of

1 that statement.

2 A In the-- in the-- my deposition or--

3 Q Anything. Well, let me give you a for
4 instance. Let's go to the Reno City Council meeting.
5 Do you see that in that witness statement?

6 A Yes.

7 Q Okay. Now, in that he says, "John and Sonnia
8 Iliescu present." Do you see that?

9 A Um-hum.

10 THE COURT: You need to say yes or no, sir.

11 THE WITNESS: I'm sorry.

12 I think that was on the planning commission rather
13 than the city council. There's the Reno City Council,
14 November 15th. Yes, I see that.

15 BY MR. PEREOS:

16 Q Now, do you have-- were you independently able
17 to corroborate that John and Sonnia Iliescu were
18 present at the Reno City Council meeting?

19 A As I told you in my last answer, one of my last
20 answers, was I recall them being at the celebration
21 afterwards. And I don't recall whether it was at the
22 city council or after city council or after planning
23 commission.

24 When I go up and prepare for a case, much as you

1 do, I'm focused on the case and less focused on who is
2 in or not in the room, especially if they're not part
3 of the presentation team.

4 Q Okay. So my question to you now is, do you
5 have an independent knowledge as to whether or not
6 Sonnia was at the Reno City Council meeting?

7 A I don't recall whether she was at the Reno City
8 Council meeting. And I can't tell you whether I recall
9 that Dr. Iliescu was at the city council meeting.

10 Q Do you have an independent knowledge now as to
11 whether or not Sonnia Iliescu was present at the Reno
12 Planning Commission meeting?

13 A I can tell you that they were present at at
14 least one of the two.

15 Q Both of them?

16 A I believe that it was both of them. And you
17 can use your definition of "belief."

18 Q Did the witness document plan that's in front
19 of you influence your thinking in connection with your
20 testimony?

21 A No, it did not.

22 Q Give it back to me.

23 Before I got sidetracked on your remark about the
24 witness plan, I believe you testified that

1 Fisher-Friedman had performed additional architectural
2 services after the submission of the application in
3 February of '06 because of the change in the
4 composition of the units in the project from 394 and
5 399 to 499?

6 A What's the-- I'm sorry, what was--

7 Q All right. Let's go about it this way. When
8 you first filed your application for approval from
9 planning on the project, how many units were in there?

10 A Oh, that's it. 380 something, I believe.

11 Q Did you then change the composition number of
12 those units?

13 A Yes, that was changed. And it appears that it
14 was changed in May, give or take, of 2006.

15 Q May?

16 A Yes, I believe.

17 Q To how many units?

18 A 499.

19 Q Are you sure it was not changed in February?

20 A I don't recall that it was--

21 Q Why don't you direct your attention then to
22 Exhibit 37, please. What's the date set forth on that
23 application?

24 A The date set forth on this application says

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN
ILIESCU, JR. and SONNIA SANTEE
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT,

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346

Washoe County Case No. CV07-
00341

(Consolidated w/ CV07-01021)
Electronically Filed
May 12, 2016 04:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME IV**

Appeal from the Second Judicial District Court of the State of Nevada
in and for the County of Washoe County
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

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DOCUMENT INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0001-0007
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
12	04/17/08	Applicants/Defendants' Motion for Partial Summary Judgment including Exhibits 2, 4, 5, 6, (first 24 pages of) 7, 10, 11, & (first 12 pages of) 12	II	AA0230-0340
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
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24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
32	12/06/13	Trial Stipulation	IV	AA0729-0735
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
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38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
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	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753
	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
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48	10/27/14	Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (with Exhibit Nos. 9, 11, 12, 15, 16, 17, and 18)	IX	AA1964-2065
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50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
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53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
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56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383

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59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	X	AA2449-2453
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
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69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
		SUPPLEMENTAL DOCUMENTS¹		
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
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68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

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7	05/04/07	Complaint to Foreclose Mechanic's Lien and for Damages (Case No. CV07 01021)	I	AA0172-0177
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien (Case No. CV07-00341) with Exhibits	I	AA0008-0013
18	09/06/11	Defendant Iliescus' Demand for Jury Trial	III	AA0516-0519
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
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50	12/16/14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2184-2208
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
44	05/28/14	Findings of Fact, Conclusions of Law and Decision	VIII	AA1911-1923

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
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30	12/02/13	Iliescus' Pre-Trial Statement	III	AA0681-0691
55	02/26/15 Court	Judgment, Decree and Order for Foreclosure of Mechanics Lien	X	AA2378-2380
37	12/11/13	Legal Memorandum in Support of Dismissal for failure to Comply with Statute for Foreclosure Pursuant to NRCP 50	VI	AA1326-1332
13	02/03/09	Mark B. Steppan's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment with all originally attached exhibits (consisting of Exhibits 13-23)	II	AA0341-434
15	05/22/09	Mark B. Steppan's Reply to Opposition to Cross-Motion for Partial Summary Judgment with Exhibits	III	AA0479-0507
46	06/12/14	Minutes: Hearing on Final Amount Owed, Pursuant to the Order Filed on May 28, 2014 (Hearing Date - 06/12/14)	VIII	AA1932
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325
40	12/12/13	Minutes: Bench Trial (Day 3) (Hearing Date - 12/11/13)	VII	AA1713-1714
41	12/12/13	Minutes: Bench Trial (Day 4) and list of Marked, Offered, and Admitted Trial Exhibits (Hearing Date - 12/12/13)	VIII	AA1715-1729
		<u>Trial Exhibits:</u>		
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
	12/09/13	Trial Exhibit 3 [Second Amended Lien Notice]		AA1741-1750
	12/09/13	Trial Exhibit 14 [Hourly Fee Agreement]		AA1751-1753

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	12/09/13	Trial Exhibit 16 [February 7, 2006 Nathan Ogle Letter]		AA1756-1757
	12/09/13	Trial Exhibit 19 [May 31, 2006 Side Agreement Letter Proposal for Model Exhibits]		AA1758-1761
	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765
	12/11/13	Trial Exhibit 21 [August 10, 2006 Side Agreement Letter Proposal for City Staff Meeting Requested Studies]		AA1766-1767
	12/11/13	Trial Exhibit 22 [September 13, 2006 Side Agreement Letter Proposal for video fly-through]		AA1768-1771
	N/A	[Pages AA1772-1778 Intentionally Omitted]		[AA1772-1778 Intentionally Omitted]
	12/11/13	Trial Exhibit 24 [Hourly Fee Project Invoices]		AA1779-1796
	12/10/13	Trial Exhibit 25 [Post-AIA Flat Fee Project Invoices]		AA1797-1815
	12/11/13	Trial Exhibit 26 [Project Invoices for Reimbursable expenses]		AA1816-1843
	12/09/13	Portions of Trial Exhibit 35 [Portions of Application for Special Use Permit]		AA1844-1858
	12/09/13	Portions of Trial Exhibit 36 [Portions of February 7, 2006 Application for Special Use Permit and Tentative Map]		AA1859-1862
	12/09/13	Portions of Trial Exhibit 37 [Portions of Tentative Map & Special Use Permit Application Pages]		AA1863-1877
	12/09/13	Portions of Trial Exhibit 51 [Reno Development Application Documents Pages 1-7]		AA1878-1885
	12/09/13	Trial Exhibit 52 [October 13, 2010 City of Reno Permit Receipt]		AA1886-1887

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
	12/09/13 [Offered but Rejected]	Proposed Trial Exhibit 130-Never Admitted [September 30, 2013 Don Clark Expert Report]		AA1888-1892
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
52	02/18/15 Hrg.	Minutes: Oral Arguments re: Rule 60(b) (Day 1) (Hrg. Date - 02/15/18)	X	AA2257
54	02/23/15	Minutes: Oral Arguments re: Rule 60(b) (Day 2) (Hearing Date - 02/23/15)	X	AA2377
23	07/11/13	Motion to Strike Jury or Limit Demand without Exhibits	III	AA0582-0586
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnica Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnica Iliescu 1992 Family Trust Agreement	X	AA2449-2453
17	07/20/09	Notice of Entry of [First] Partial Summary Judgment and Certificate of Service	III	AA0512-0515
56	02/27/15	Notice of Entry of Judgment, Decree and Order for Foreclosure of Mechanic's Liens	X	AA2381-2383
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
28	11/08/13	NRCP 16.1(a)(3) Disclosure Statement	III	AA0664-0674
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
20	02/11/13	Opposition to Motion for Partial Summary Judgment [regarding lien amount]	III	AA0530-0539

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
24	07/26/13	Opposition to Motion to Strike Jury Demand	III	AA0587-0594
16	06/22/09	Order - Denying Motion for Partial Summary Judgment & Granting Cross Motion for Partial Summary Judgment [regarding failure to provide pre-lien notice]	III	AA0508-0511
6	05/03/07	Order [Setting Discovery Schedule before ruling on Mechanic's Lien Release Application]	I	AA0169-0171
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
22	05/09/13	Order Granting Motion for Partial Summary Judgment [regarding lien on contract amount]	III	AA0578-0581
26	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	III	AA0625-0627
8	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages (CV07-01021)	I	AA0178-0180
29	11/08/13	Plaintiff's Pre-Trial Disclosure	III	AA0675-0680
43	01/03/14	Post Trial Argument by Defendant Iliescu	VIII	AA1899-1910
21	02/21/13	Reply in Support of Motion for Partial Summary Judgment [regarding lien amount] with only Exhibits 2, 4, 5, 6, 7, 8 & 9	III	AA0540-0577
14	03/31/09	Reply in Support of Motion for Partial Summary Judgment and Opposition to Cross-Motion with Exhibits	II	AA0435-0478
25	08/06/13	Reply in Support of Motion to Strike Jury Demand with only Exhibits 2, 3 & 4	III	AA0595-0624

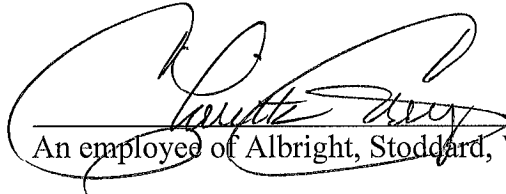
DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No. CV07-00341)	I	AA0016-0108
19	10/21/11	Steppan's Motion for Partial Summary Judgment [regarding lien amount] with Declaration of Mark B. Steppan	III	AA0520-0529
31	12/04/13	Steppan's Pre-Trial Statement	III	AA0692-0728
42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
10	09/06/07 & 09/24/07	Stipulation and Order to Consolidate Proceedings [Both filed versions]	I	AA0205-0212
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien (Case No. CV07-00341)	I	AA0181-0204
5	05/03/07 Hrg.	Transcript: Application for Release of Mechanic's Lien (File Date - 06/29/07)	I	AA0109-0168
47	06/12/14 Hrg.	Transcript: Hearing on Final Decree and Order based on the Court's 5/28/14 Findings of Fact, Conclusions of Law and Decision (File Date - 01/21/15)	VIII	AA1933-1963
27	09/09/13	Transcript: Hearing on Motion for Continuance & to Extend (File Date - 06/17/14)	III	AA0628-0663
53	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus Rule 60(b) Motion – Day 2 (File Date - 02/23/15)	X	AA2258-2376
51	02/18/15 Hrg.	Transcript: Oral Arguments regarding Iliescus' Rule 60(b) Motion – Day 1 (File Date - 02/23/15)	X	AA2209-2256
33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 736-844	VII	AA1482-1590
39	12/11/13 Hrg.	Transcript: Trial Day 4 - Volume IV (File Date - 02/24/14) Transcript pages 845-966	VII	AA1591-1712
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571
32	12/06/13	Trial Stipulation	IV	AA0729-0735

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME IV**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com
Attorney for Respondent Mark Steppan


An employee of Albright, Stoddard, Warnick & Albright

FILED

Electronically

12-06-2013:12:14:31 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4181224

Document Code: 3980

HOY CHRISSINGER & KIMMEL, PC

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Attorneys for: Mark B. Steppan

C. Nicholas Pereos

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Reno, Nevada 89502

(775) 329-0678

cpereos@att.net

Attorneys for John Iliescu, Jr. and Sonnia Iliescu

**In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe**

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Trial: December 9, 2013

And Related cross-claims and third-party
claims.

Trial Stipulation

Through counsel, the parties stipulate as follows:

Findings of Fact

Findings of Fact adopted after trial of this matter shall be deemed to incorporate the following matters, which are hereby proven without additional evidence:

1. The Property. In this litigation, Mark B. Steppan seeks foreclosure of a mechanics lien that describes real property in Washoe County, Nevada. The PROPERTY consists of four legal parcels described as follows:

Parcel 1.

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonio Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records; running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H.F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H.F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the true point of beginning.

SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.

APN: 011-112-03

Parcel 2.

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of 89°58' 140 feet; thence running Easterly at an angle of 90°05" 75 feet; thence running Southerly at an angle 80°55', 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.

APN: 011-112-06

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1 Parcel 3.

2 BEGINNING at the intersection of the Northerly extension of the Eastern line
3 of Flint Street with the Northern line of Court Street, in the City of Reno,
4 County of Washoe, State of Nevada, thence Easterly along the Northern line
5 of Court Street, 125 feet, more or less to the Western line of the parcel
6 conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File
7 No. 100219, Deed Records; thence Northerly along said last mentioned line
8 140 feet; thence Westerly parallel to the Northern line of Court Street, 125
9 feet; thence Southerly parallel to the Western line of Said Boudwin parcel
10 140 feet to the point of beginning.

11 APN: 011-112-07

12 Parcel 4.

13 Commencing on the North line of Court Street, at the intersection of the
14 North line of Court Street with the West line of Hill Street, if said Hill Street
15 was protracted Northerly to said point of inter-section according to the
16 official plat of Lake's South Addition to Reno, Washoe County, State of
17 Nevada; thence running westerly and along the North line of said Court
18 Street 100 feet; thence Northerly and parallel with the West line of said Hill
19 Street, if protracted, 276 feet more or less to the South Bank of the Truckee
20 River; thence Easterly and along the south bank of the Truckee River to the
21 West line of Hill Street, protracted, 324 feet more or less to the North line of
22 Court Street and the place of beginning, being the same lands conveyed by
23 Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27,
24 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds
25 duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page
296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel
conveyed to the City of Reno, a municipal corporation, in an instrument
recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of
Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove
described parcel conveyed to the City of Reno, a municipal corporation, in an
instrument recorded December 17, 1971, as Document No. 229332, in Book
600, Page 759 of Official Records.

APN: 011-112-12

2. Ownership. As of November 7, 2006, Parcels 1, 3 and 4 were owned by John
Iliescu, Jr. and Sonnia Iliescu as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992
Family Trust Agreement ("ILIESCU TRUST"). As of November 7, 2006, Parcel 2 was owned

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1 by John Iliescu, Jr. ("JOHN ILIESCU"), as his sole and separate property. While this suit was
2 pending, on March 18, 2010, JOHN ILIESCU transferred Parcel 2 to ILIESCU TRUST.

3 3. Mechanics Lien. On November 7, 2006, Mark B. Steppan ("STEPPAN")
4 recorded a Notice and Claim of Lien as Washoe County Recorder ("WCR") Document
5 3460499. On May 3, 2007, STEPPAN recorded an Amended Notice and Claim of Lien as WCR
6 3528313. On November 8, 2013, STEPPAN recorded a Second Amended Notice and Claim of
7 Lien as WCR 4297751.

8 4. Marketing the Property. JOHN ILIESCU and ILIESCU TRUST (collectively
9 "ILIESCUS") engaged real estate broker Richard K. Johnson and his firm, Metzker Johnson
10 Group (collectively "BROKER") to market the PROPERTY on behalf of ILIESCUS. BROKER
11 represented ILIESCUS in the negotiation of the Land Purchase Agreement and all addenda to
12 the Land Purchase Agreement.

13 5. Land Purchase Agreement. On or about July 29, 2005, ILIESCUS entered a
14 written Land Purchase Agreement to sell the PROPERTY to Consolidated Pacific
15 Development, Inc., a Nevada corporation ("DEVELOPER"). The Land Purchase Agreement
16 specifies a sales price of \$7.5 million, but does not allocate the sales price between Parcel 2
17 - which was owned by JOHN ILIESCU - and Parcels 1, 3, and 4 - which were owned by ILIESCU
18 TRUST. The Land Purchase Agreement further provided for pre-closing, non-refundable
19 deposits to be paid on the following schedule:
20
21

22	Initial deposit	\$25,000.00
23	Within 30 days from acceptance	\$75,000.00
24	Within 90 days from acceptance	\$100,000.00
25	Within 150 days from acceptance	\$100,000.00
	Within 210 days from acceptance	\$100,000.00
	Within 270 days from acceptance	\$100,000.00
	Total advance deposits	\$500,000.00

1 Balance at close of escrow\$7,000,000.00

2
3 6. Assignment of the purchase contract. On or about April 18, 2007,
4 Consolidated Pacific Development, Inc. assigned all of its rights under the Purchase
5 Agreement to BSC Investments, LLC, an Oregon limited liability company ("BSC"). BSC had
6 three members: (1) Consolidated Pacific Development, Inc., (2) Baty Schleining
7 Investments, LLC, and (3) Baty Investments, LLC.

8 7. Mark B. Steppan, AIA, NCARB. In 1979, the University of California (Berkley)
9 conferred upon Steppan a bachelor of arts degree in architecture. Following examinations
10 and practical work in the profession, Steppan was first registered as an architect in
11 approximately 1987. At all times relevant to this case, Steppan was a registered architect
12 in the State of Nevada.

13
14 8. Project 0515-R (Reimbursable Expenses.) ARCHITECT separately billed for
15 reimbursable expenses under Project 0515-R. The total amount invoiced was 37,411.53.
16 ARCHITECT received \$32,609.04 in payments. The principal amount due for Project 0515-R
17 is \$4,802.49.

18 9. Planning Commission Approval. On October 4, 2006, the Reno Planning
19 Commission approved Consolidated Pacific Development's application for: (1) a tentative
20 map to develop a 499-unit residential condominium subdivision; (2) special use permits to
21 allow (a) hillside development, (b) cuts of 20 feet or more, (c) modification to the building
22 setback envelopes, and (d) 100 or more condominium units; and (3) a variance to allow the
23 buildings to cast a shadow on a public park. The Planning Commission also approved ±
24
25

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1 19,817 square feet of retail space and ± 20,603 square feet of office space within two
2 towers which are ± 492 and ± 374 feet tall (the "APPROVED PROJECT")

3 10. City Council Approval. At a public hearing on November 15, 2006, the Reno
4 City Council upheld the Planning Commission's recommendation and granted development
5 entitlements for the APPROVED PROJECT. The development entitlements and the conditions
6 of those entitlements are further defined in a letter dated November 30, 2006 to John and
7 Sonnia Iliescu, as owners of the PROPERTY, the location of the APPROVED PROJECT.

8 11. Joint representation. HALE LANE represented (1) John Iliescu, Jr., (2) Sonnia
9 Santee Iliescu, (3) ILIESCU TRUST, (4) Calvin Baty, and (5) Consolidated Pacific Development
10 with respect to the PROPERTY and PROJECT. On or about December 14, 2005, HALE LANE and
11 these five clients signed a letter that provides in relevant part:
12

13 Lady and Gentlemen:

14 As you are aware, this firm has an existing attorney-client relationship with John
15 Iliescu, Jr., an individual, and Sonnia Santee Iliescu, an individual, and John
16 Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu
17 1992 Family Trust (collectively "Iliescu") the owners of property located between
18 Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm
19 has been requested to act as special counsel to the buyers of the Property in
20 obtaining the necessary entitlements for a condominium project to be
21 developed on the Property.

22 With your consent, we will represent Calvin Baty, an individual ("Baty"), and
23 Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated")
24 in assisting in obtaining the condominium entitlements and any entity to be
25 formed by them (Baty, Consolidated and such new entity being collectively
referred to as "Buyer").

It is understood and agreed that in the event a conflict between Iliescu and
Buyer should arise in matters involving the Property, this law firm will continue
to represent Iliescu in such matter. It is also understood and agreed by Buyer
that our representation of Buyer on this one matter will not preclude our
representation of Iliescu in matters not involving the Property in the event that
Buyer, or any of them, is an adversary to Iliescu on such other matters.

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Trial Exhibits

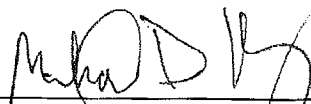
By stipulation, the following trial exhibits (as described on Exhibit 1) shall be admitted at the commencement of the trial: 1-3; 6-21; 32-33; 35-38; 40-92; 94-101; 105-123; 126-129; and 133.

Privacy Certification

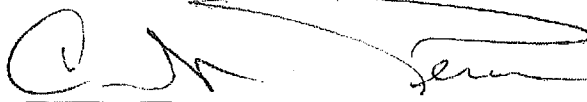
Undersigned counsel certify that the forgoing Trial Stipulation does not contain any social security numbers.

Dated December 3, 2013.

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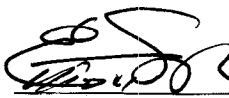

Michael D. Hoy
Attorneys for Mark B. Steppan

Dated December 3, 2013.


C. Nicholas Pereos, Esq.
Attorneys for John Iliescu, Jr. and Sonnia Iliescu

IT IS SO ORDERED.

Dated December 6, 2013.


Hon. Elliott A. Sattler
District Judge

CODE: 4185
LORI URMSTON, CCR #51
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

MARK STEPPAN,

Plaintiff,

Case No. CV07-00341

vs.

Dept. No. 10

JOHN ILIESCU, et al.,

Defendants.

_____ /

CORRECTED TRANSCRIPT OF PROCEEDINGS

TRIAL - VOLUME I

DECEMBER 9, 2013; MONDAY

RENO, NEVADA

Reported by:

LORI URMSTON, CCR #51

1

APPEARANCES:

2 For the Plaintiff:

3

MICHAEL D. HOY, ESQ.
Hoy Chrissinger Kimmel, PC
4741 Caughlin Parkway
Suite 4
Reno, Nevada 89519

6

For the Defendants:

7

8

C. NICHOLAS PEREOS, ESQ.
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane
Suite 202
Reno, Nevada 89502

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1 I N D E X

2

3 PLAINTIFF'S WITNESSES PAGE

4 RICHARD K. JOHNSON

Direct Examination by Mr. Hoy 38

5 Voir Dire Examination by Mr. Pereos 93

Direct Examination (Resumed) by Mr. Hoy 94

6 Cross-Examination by Mr. Pereos 97

Redirect Examination by Mr. Hoy 119

7

8 KENNETH BRADLEY VAN WOERT, III

Direct Examination by Mr. Hoy 130

9 Cross-Examination by Mr. Pereos 164

Examination by the Court 203

10

11 RODNEY FRIEDMAN

Direct Examination by Mr. Hoy 207

12

13

14 EXHIBITS MARKED ADMITTED

15 1 - Notice and Claim of Lien 16

16 2 - Amended Notice and Claim of
Lien 16

17

18 3 - Second Amended Notice and
Claim of Lien 16

19

20 4 - Timeline 72 72

21 6 - Standard Form of Agreement
between owner and architect 16

22

23 7 - Addendum No. 1 16

24 8 - 12/14/2005 waiver of conflict
letter 16

		2
1	EXHIBITS	MARKED ADMITTED
2	9 - 10/25/2005 letter proposal from	
3	Mark Steppan to Anthony Iamesi	16
4	10 - 11/14/2005 memorandum from Sarah	
5	Class to Calvin Baty	16
6	11 - 11/18/2005 e-mail memorandum from	
7	Sarah Class to Calvin Baty	16
8	12 - 11/29/2005 e-mail memorandum	
9	from Sarah Class to Sam Caniglia	16
10	13 - 12/20/05 Steppan response to	
11	owner issues on AIA contract	18
12	14 - 11/15/2005 letter agreement for	
13	Project 0515-01	16
14	15 - 12/14/2005 Design Services	
15	Continuation Letter	16
16	16 - 02/07/2005 Design Services	
17	Continuation Letter	16
18	17 - 03/24/2005 Design Services	
19	Continuation Letter	16
20	18 - 02/27/2006 Design Presentation	
21	Services Budget Evaluation	16
22	19 - 05/31/2006 letter agreement for	
23	Project 0515-02	16
24	20 - 05/31/2006 letter agreement for	
	Project 0515-03	16

		3
1	EXHIBITS	MARKED ADMITTED
2	32 - 09/01/2006 letter from Rodney Friedman to Calvin Bosma	16
3		
4	33 - 10/20/2006 e-mail from Nathan Ogle to Calvin Bosma re payment	16
5		
6	35 - 01/17/2006 Special Use Permit Application	16
7		
8	36 - 02/07/2006 Tentative Map & Special Use Permit Application	16
9		
10	37 - 05/07/2006 Tentative Map and Special Use Permit Application	16
11		
12	38 - Revised Tentative Map Sheets	16
13	40 - 05/08/2006 PowerPoint presentation to City of Reno (PDF version)	16
14		
15	41 - 05/08/2006 PowerPoint presentation to City of Reno (PPT version)	16
16		
17	42 - Fly-through video	16
18	43 - 06/26/2006 memo from Denny Peters re application review	16
19		
20	44 - 07/31/2006 letter from Wood Rodgers to City of Reno	16
21		
22	45 - 08/07/2006 letter from Wood Rodgers to Vern Kloos	16
23		
24	46 - 09/26/2006 memo from Denny Peters to Claudia Hanson	16

			4
1	EXHIBITS	MARKED	ADMITTED
2	47 - 10/05/2006 letter from Reno Planning		
3	Commission to Consolidated Pacific		
	Development		16
4	48 - 11/30/2006 letter from City of Reno		
5	to John and Sonnia Iliescu		16
6	49 - 10/09/2008 application to		
7	extend final map deadline and		
	receipt for filing fee		16
8	50 - 11/24/2008 letter from City of		
9	Reno to John and Sonnia Iliescu		16
10	52 - 10/13/2010 receipt City of Reno		16
11	53 - 11/12/2006 letter from City of		
12	Reno to John and Sonnia Iliescu		16
13	55 - Shadow Study		16
14	56 - Photographs of foam models		16
15	57 - Schematic floor plans, foam		
16	models, etc.		16
17	58 - Renderings in environment		16
18	59 - Renderings in environment		16
19	60 - Sketches		16
20	61 - HVAC Systems Comparison		16
21	62 - Living unit layouts		16
22	63 - South elevation along Court Street		16
23	64 - North elevation along Island Avenue		16
24	65 - Assessor's Parcel Map		16

			5
1	EXHIBITS	MARKED	ADMITTED
2	66 - 07/14/2005 proposal from		
3	Consolidated Pacific Development		
	to Richard Johnson		16
4	67 - 07/14/2005 proposal from		
5	Consolidated Pacific Development		
	to Richard Johnson (with handwriting)		16
6	68 - Land Purchase Agreement		16
7	69 - Addendum No. 1		16
8	70 - Addendum No. 2		16
9	71 - Addendum No. 3		16
10	72 - Addendum No. 4		16
11	73 - Addendum No. 5		16
12	75 - 05/20/2008 e-mail regarding		
13	Addendum No. 6		94
14	76 - 12/08/2006 Indemnity Agreement		16
15	77 - 01/17/2007 waiver of conflict		
16	letter		16
17	78 - Not used		16
18	79 - 04/12/2007 Escrow Instructions		16
19	80 - 04/17/2007 Operating Agreement		
20	of Wingfield Towers		16
21	81 - 04/17/2007 Bill of Sale and		
22	Assignment		16
23	82 - 04/18/2007 Purchase and Sale		
24	Agreement		16

			6
1	EXHIBITS	MARKED	ADMITTED
2	83 - Supplemental Escrow Instructions		16
3	84 - Escrow Instructions to extend closing		16
4			
5	85 - 04/19/2007 Buyer's Closing Statement		16
6			
7	86 - 04/23/2007 e-mail from First Centennial Title re accrual of interest		16
8			
9	87 - 04/20/2007 memo from Richard Johnson		16
10			
11	88 - 04/18/2007 Assignment of Rights		16
12	89 - Request for payoff on lien		16
13	90 - 10/17/2007 e-mail from Karen Dennison to Tim Lukas		16
14			
15	91 - October 2005 Sullivan Group Market Assessment		16
16			
17	92 - 05/01/2006 Fiscal and Economic Impact Analysis		16
18			
19	94 - Certificate of Resolution of Limited Liability Company for BSC Investments, LLC		16
20			
21	95 - Certificate of Resolution of Limited Liability Company for Baty Schleining Investments, LLC		16
22			
23	96 - Certificate of Resolution of Limited Liability Company for Baty Investments, LLC		16
24			

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1	EXHIBITS	MARKED ADMITTED
2	97 - Certificate of Corporate	
3	Resolution - Consolidated Pacific	
	Development	16
4	98 - 04/12/2007 e-mail from Gayle Kern	
5	to Maryann Infantino regarding	
	payoff of lien	16
6	99 - 04/19/2007 First Centennial	
7	Title Company demand for	
	payoff and response from Mark	
8	Steppan	16
9	100 - 04/18/2007 Agreement of	
10	Exchange of Real Property	16
11	101 - 04/18/2007 Assignment of Sale	
12	Contract/Purchase Agreement and	
	Deposit Receipt	16
13	105 - 04/18/2007 (unrecorded)	
14	Memorandum or Purchase and	
	Sale Agreement	16
15	106 - 04/18/2007 (unrecorded)	
16	Discharge or Release of Notice	
	of Lien	16
17	107 - 04/18/2007 (unrecorded)	
18	Grant, Bargain, Sale Deed	16
19	108 - 04/18/2007 (unrecorded)	
20	Grand, Bargain, Sale Deed	16
21	109 - 01/17/06 e-mail from David	
22	Snelgrove to Nathan Ogle	16
23	110 - 06/16/2006 letter from Katherine E.	
24	Knister to Rodney S. Friedman	16

			8
1	EXHIBITS	MARKED	ADMITTED
2	111 - 01/13/2006 e-mail from Paul		
3	Solaegui to Nathan Ogle		16
4	112 - 01/12/2006 e-mail from Paul		
5	Solaegui to Nathan Ogle		16
6	113 - 01/17/2006 e-mail from Paul		
7	Solaegui to Nathan Ogle and		
	David Snelgrove		16
8	114 - 01/16/2006 Fax transmittal		
9	and traffic letter with		
	attachments		16
10	115 - 02/28/2006 Traffic Analysis		16
11	116 - 03/24/2006 e-mail from David		
12	Snelgrove		16
13	117 - 05/01/2006 Traffic Analysis		16
14	118 - 09/25/2008 letter from Sam		
15	Caniglia to Dick Johnson		16
16	119 - 01/17/2006 Site Feasibility		
17	Study by Pezonella Associates		16
18	120 - Various Instruments of Service		16
19	121 - Tabulation (499 units) and		
20	sketches of floor plans		16
21	122 - Unit sizes (499 units)		16
22	123 - 10/04/2006 City of Reno Planning		
23	Commission Staff Report		18
24	126 - City of Reno receipt		16

	9
1 127 - 12/26/2007 e-mail from Sam Caniglia to John and Sonnia 2 Iliescu	16
3 128 - 09/25/2008 e-mail from Sam Caniglia to Dick Johnson	16
4	
5 129 - 10/09/2008 letter from Steppan to Iliescu	16
6	
7 133 - Unit sizes	16
8	
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1 RENO, NEVADA; MONDAY, DECEMBER 9, 2013; 8:36 A.M.

2 --o0o--

3 THE COURT: Mr. Pereos, thank you for the water.

4 MR. PEREOS: You're welcome, Your Honor.

5 THE COURT: I'm sure it will come in handy.

6 This is CV07-00341, Mark Steppan versus John
7 Iliescu, et al.

8 Mr. Iliescu-- Excuse me. Dr. Iliescu-- I
9 apologize. --is present in court with his attorney,
10 Mr. Pereos.

11 And who is seated behind you, sir?

12 DR. ILIESCU: Your Honor, my wife, Sonnia.

13 THE COURT: Nice to see you, ma'am.

14 DR. ILIESCU: I'm embarrassed to tell you, I'm a
15 little hard of hearing.

16 THE COURT: Don't be embarrassed.

17 DR. ILIESCU: And sometime I may miss something, so
18 please bear with me if I ask you if I don't hear
19 something.

20 THE COURT: I certainly will, Dr. Iliescu. If you
21 don't hear or understand something at any time, please
22 let me know or let Mr. Pereos know so we can make sure
23 that you can hear all the proceedings that are going
24 on. If at any time there's something you don't hear, I

11

1 want to make sure that you hear what is going on. And
2 I'll certainly have everybody speak up so they can hear
3 you-- so you can hear them while they're addressing the
4 court. Okay?

5 DR. ILIESCU: Thank you for your courtesy.

6 THE COURT: Thank you.

7 Mr. Steppan is here represented by Mr. Hoy.

8 Good morning, gentlemen.

9 MR. HOY: Good morning, Your Honor.

10 THE COURT: And this, as I stated, is the time set
11 for a civil trial. It is a bench trial.

12 Please be seated.

13 I just want to take care of a couple of
14 housekeeping matters prior to opening statements on
15 behalf of the parties. I know that you've spoken to my
16 judicial assistant about this, but I wanted to give the
17 parties an idea of the way I conduct a trial, because I
18 haven't had the pleasure of doing a trial with either
19 Mr. Hoy or Mr. Pereos in the past.

20 I will start the trial promptly at 8:30 every
21 morning. We will go until approximately 10:15, at
22 which point we will take a 15-minute break.

23 Fifteen-minute breaks, at least in Department 10, are
24 15 minutes long, so you don't need to worry that I'll

1 be making telephone calls or conducting any other
2 business. I really try and make sure that those
3 15-minute breaks are 15 minutes long.

4 We'll come back in then at approximately 10:30 and
5 go until noon. Lunch is from noon to 1:15. And then
6 we'll come back and begin the process again. And I
7 will take a 15-minute break in the afternoon sometime
8 around 3:15 or so.

9 And those times usually vary depending on where we
10 are during the course of the testimony. If it looks
11 like you're finishing with a witness and want to go
12 just a little bit farther, that's fine with me. If you
13 want to suggest, if you're either doing direct or
14 cross-examination, that it would be a good idea maybe
15 just to go a couple more questions, that's fine with
16 me. It's up to the parties, and I certainly want to
17 make sure that we are flexible in that. I just want to
18 use as much of the time in the day as humanly possible.
19 I try and get as many trial hours in an eight-hour
20 trial day as we can.

21 So that is just kind of the schedule of how we will
22 be conducting business. I will let the parties know
23 that this Friday is the annual judges' retreat for the
24 Second Judicial District Court. Again, my judicial

1 assistant has contacted the parties. And it's my
2 understanding that the parties believe that this trial
3 could be over with in four days. I know it's scheduled
4 for five days. I will not limit you obviously. That's
5 my business, not yours, the judicial retreat.

6 And so if we need to go longer in the evenings or
7 if we maybe need to come back at some time, if we need
8 to take a short break, we can certainly do so in the
9 presentation of the evidence. But I will not limit the
10 parties in any way based on the conflict in the Court's
11 schedule.

12 Please just keep me updated as we go through the
13 day each day to let me know if we're on track or
14 falling behind. And that way we can make sure to
15 address any issues as far as scheduling goes. But just
16 one more time, you will have all the time you need to
17 present both of your cases and make all of the
18 arguments that you want to make. I just want to let
19 you know that is a possibility, that I won't be
20 available on Friday.

21 And it's also my understanding that the judicial
22 retreat doesn't always take the full day on Friday. So
23 if we need to come back maybe in the afternoon to
24 conclude some things, we'll be able to do that as well.

1 Regarding the trial itself, I have familiarized
2 myself both with the recent orders that have been
3 entered and with all of the pleadings. I've also read
4 both of the trial statements that were submitted. And
5 I appreciate the thoroughness of both parties. And,
6 finally, I did sign the stipulation that the parties
7 had entered into.

8 What I would like to do first off is go through,
9 and it might be a little bit tedious, but put on the
10 record the exhibits that have been offered with no
11 objection and we can get them all admitted right now.

12 And so what I'll do is go through and just list
13 them. And then at the conclusion, if the parties can
14 stipulate to the admissibility of the exhibits, then
15 that will be good.

16 So the exhibits that have been offered with no
17 objection are as follows: Exhibit No. 1, Exhibit No.
18 2, Exhibit No. 3, Exhibit No. 6, Exhibit No. 7, Exhibit
19 No. 8, Exhibit No. 9, Exhibit No. 10, Exhibit No. 11,
20 Exhibit No. 12, Exhibit No. 13, 14, 15, 16, 17, 18, 19,
21 20, 21, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45,
22 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60,
23 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74,
24 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88,

1 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 105,
2 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116,
3 117, 118, 119, 120, 121, 122, 123, 126, 127, 128, 129
4 and 133.

5 Do the parties both stipulate to the admissibility
6 of the exhibits that I have just noted?

7 Mr. Hoy, on behalf of the plaintiff?

8 MR. HOY: Stipulated, Your Honor.

9 THE COURT: Mr. Pereos, on behalf of the
10 defendants?

11 MR. PEREOS: Yes, with certain exceptions, Your
12 Honor.

13 THE COURT: Which exceptions? I saw no objection.
14 I assumed that meant no one was objecting.

15 MR. PEREOS: I understand that, Your Honor, but
16 this list has been redrafted close to six, seven times.
17 And having said that, okay, I would like to reserve as
18 it relates to Exhibit 21.

19 THE COURT: One moment. Let me get that. Okay.
20 121 will not be admitted.

21 MR. PEREOS: No, 21.

22 THE COURT: Excuse me. 21. And that's what I
23 circled. So Exhibit No. 21 is not admitted.

24 MR. PEREOS: 51.

1 THE COURT: Exhibit No. 51 is not admitted.

2 MR. PEREOS: 74.

3 THE COURT: Exhibit No. 74 is not admitted.

4 MR. PEREOS: 75.

5 THE COURT: Exhibit No. 75 is not admitted.

6 MR. PEREOS: And the rest are fine.

7 THE COURT: Okay. With the exceptions that you've
8 just noted and the Court's recognition that those
9 exhibits are not admitted, do you stipulate to the
10 admissibility of the remaining?

11 MR. PEREOS: As to the remaining ones, yes, Your
12 Honor.

13 THE COURT: Thank you, Mr. Pereos.

14 So the remaining exhibits will be admitted for all
15 purposes during the trial obviously.

16 (The exhibits recited above by the Court were
17 admitted with the exception of Exhibit 21,
18 Exhibit 51, Exhibit 74 and Exhibit 75.)

19 And are there any other pretrial matters that we
20 need to take up? Mr. Hoy?

21 MR. HOY: I would like to start this morning, Your
22 Honor, by thanking our colleague, Mr. Pereos.

23 Mr. Pereos came to my office for more than four hours
24 to go through exhibits. And I think by doing that we
probably shaved a full day off this trial just laying

1 foundations and so forth.

2 The second thing about exhibits is we had a real
3 problem with our copy service. And so after we thought
4 we had everything put together, we were on the scramble
5 to set things right. They had cut off all the Bates
6 numbers and not done a good job. So we have been
7 dealing over the last few days with some problems with
8 the exhibits. And to the extent not everything is
9 coordinated between Mr. Pereos's set and the official
10 set, I apologize. We'll just deal with that as it
11 comes up.

12 THE COURT: And if anything of that nature does
13 come up, Mr. Hoy, if you could just let me know or,
14 Mr. Pereos, let me know. I always refer to the exhibit
15 as the parties are discussing it, and so if I see
16 something that's different or a page number that's
17 different or I can't tell exactly where you are, I'll
18 just interrupt you and let you know that I'm not quite
19 sure and we'll just clarify it at that point.

20 MR. HOY: Thank you.

21 And then the third thing about exhibits is this,
22 we've got a huge volume of paper here. And it's been
23 my experience in a civil bench trial that the Court
24 doesn't want to be responsible for reading everything

1 and tells the lawyers that the Court is only going to
2 consider those things that are specifically mentioned
3 during the testimony or during the argument phase of
4 the hearing. And I would expect that to be the rule.

5 THE COURT: Well, I don't know, Mr. Hoy. I can
6 tell you that this is my first bench trial as a judge.
7 As a trial attorney for many years, it was always my
8 assumption, at least my hope, that the judge, the
9 finder of fact, was reviewing all of the information
10 that was provided. And so the parties have admitted a
11 large amount of information for me as the finder of
12 fact to consider, and I can tell you that I will
13 consider all of it.

14 MR. HOY: Very well.

15 THE COURT: I will read all of it. It means,
16 unfortunately, that my ability to give you your
17 judgment at the conclusion of the trial, as you often,
18 I think, would be accustomed to, is hampered. I don't
19 believe that I'll be able to render a judgment
20 immediately or in some way contemporaneous with the
21 conclusion of the closing arguments. But I do think
22 it's important for the Court to consider everything.

23 I know that when we give juries a voluminous amount
24 of information as trial attorneys, I know we often are

1 wondering what they actually look at. And when a jury
2 comes back after getting six binders full of paper with
3 a jury verdict in two hours, I think it's a safe
4 assumption that they have not read every scrap of paper
5 that has been provided.

6 But I will review all of the documents that are
7 admitted. And if there are certain things that you
8 would like me to focus on or areas that you think are
9 more important than others, then please make sure and
10 draw them to my attention. But I think it's my
11 responsibility to look at everything. So that's just
12 kind of the way I approach it.

13 MR. HOY: Thank you, Your Honor.

14 THE COURT: Certainly.

15 MR. HOY: I just want to give the Court and counsel
16 an idea of what I think the schedule is for the next
17 two days. Our first witness will be Richard Johnson.
18 Mr. Johnson is here in the courtroom. He's here under
19 subpoena. Mr. Johnson sits on the Nevada Real Estate
20 Commission and needs to get to Las Vegas for a hearing.
21 So if it seems like we're rushing through his
22 testimony, it's because I have promised him that he'll
23 be done here by 11:30.

24 THE COURT: Okay. I'll stop talking.

1 MR. HOY: Our next witness after that is Brad
2 Van Woert. Mr. Van Woert is an architect. He is our
3 expert on the subject of whether or not substantial--
4 I'm sorry, schematic design as defined in the contract
5 was achieved in this case.

6 After that, and we may get to him this afternoon,
7 is Rodney Friedman. And I expect Mr. Friedman will be
8 on the stand for at least four or five hours. And then
9 after that I've got David Snelgrove lined up for
10 tomorrow afternoon.

11 With that, I'm ready to go.

12 THE COURT: And just so Mr. Johnson is aware, if it
13 looks like we're not getting his testimony completed,
14 then it would be my intention to accommodate his
15 schedule and we won't take a break, we'll just go until
16 his testimony is over with.

17 If it does turn out that we finish with his
18 testimony around 10:15 or 10:30 when we normally take
19 our morning recess, then we'll do so. But if not,
20 we'll just keep going until Mr. Johnson is finished,
21 both parties have had the opportunity to do direct,
22 cross, redirect and recross, if necessary, and then
23 Mr. Johnson will be free to leave. And I would assume
24 the pace of the testimony will be a little bit

1 different at that point.

2 MR. HOY: Thank you.

3 THE COURT: Thank you.

4 Mr. Pereos, any pretrial matters?

5 MR. PEREOS: Yes. I would like to invoke the rule
6 of exclusion.

7 THE COURT: Okay.

8 MR. PEREOS: That's all I have, Your Honor.

9 THE COURT: The rule of exclusion is invoked. The
10 only-- Obviously the parties get to remain in the
11 courtroom, though I would anticipate that some or all
12 of them may testify. Mr. Johnson is the only other
13 person who is present.

14 I will let the parties know, last night I was at a
15 function put on by the University of Nevada where there
16 were a number of judges from the United Arab Emirates
17 who are here in town. And there is a possibility that
18 they will be coming in and watching this trial.
19 They're at the judicial college, and they're doing a
20 number of other things, but I had the opportunity to
21 speak to them at a social gathering yesterday through
22 their interpreter, a very nice man, and I did let them
23 know that there were a number of trials. I know Judge
24 Adams is in trial. I'm in trial. I think Judge Berry

1 is in trial.

2 So there might be the possibility that there are--
3 there's a group of people that come in that don't look
4 familiar to either party, and that's who they are. I
5 think there are four or five-- five judges, if I
6 remember correctly, and an interpreter. So I don't
7 want the parties to be surprised by that.

8 With that, there are no other pretrial matters.
9 And so, Mr. Hoy, if you would like to make an opening
10 statement on behalf of Mr. Steppan.

11 MR. HOY: Thank you, Your Honor.

12 As I said in the trial statement, we see the trial
13 as having a fairly narrow scope. And that's because of
14 some of the pretrial orders in the case. The first, of
15 course, is the June of 2009 order on cross-motions for
16 summary judgment decided by Judge Adams.

17 And Judge Adams ruled that the landowners in this
18 case were not entitled to a pre-lien notice as a
19 prerequisite to recording a mechanic's lien because of
20 the Fondren case and that the landowners had actual
21 knowledge that Mark Steppan and his firm were providing
22 architectural design services to improve the property.

23 And I raise this now because I believe that part of
24 the trial presentation from the defense is going to

1 return to this concept that Dr. and Mrs. Iliescu just
2 didn't know under the Fondren case that this work was
3 being done on their property.

4 The second order is Your Honor's order of May 2013
5 granting partial summary judgment. And this order said
6 that as a matter of law the mechanic's lien secures the
7 fixed fee specified in the lien claim that's in the
8 written contract. And so much of our presentation is
9 going to really focus on what that contract says.

10 The contract is now in evidence, Your Honor. It's
11 Exhibit No. 6. The effective date of that contract is
12 October 31st, 2005. And you will hear quite a bit of
13 argument and testimony about how there was a stopgap
14 agreement in place for a period of time while a master
15 agreement was being reviewed and negotiated with the
16 Hale Lane law firm. But all of the evidence that
17 you're going to hear is that the fixed fee in the
18 October 31st, 2005 master agreement is what controls
19 the compensation for the purpose of this case.

20 There's three areas of compensation in this
21 contract that we will focus on, Your Honor. The first
22 is the actual master fee itself. And in Section 1.5.1,
23 the contract says that the architect's fee is going to
24 be 5.75 percent of the estimated construction costs and

1 that that overall fee will be divided amongst the
2 various phases of architectural work for this case.

3 And you're going to hear from Mr. Van Woert what
4 those phases are, what is encompassed in each of those
5 phases and what kind of work you would expect to see
6 performed in each of those phases.

7 The second form of compensation is just additional
8 services. And this is under Section 1.5.2. And the
9 master agreement says that the parties can agree to
10 have additional work done in several different ways.
11 Number one, the parties can just sign a letter
12 agreement or some other writing that says, We agree
13 that you're going to do additional services and this is
14 how it's going to be compensated. And, in fact, there
15 are three or four areas on this project where the
16 parties actually both sign a letter agreement for
17 additional services on an hourly basis.

18 The second way under this provision is the
19 architect can give the owner notice that additional
20 services are going to be performed, and if the owner
21 doesn't respond, doesn't object, then the architect is
22 entitled-- It's really just an estoppel theory, Your
23 Honor.

24 And the third area, and this is not a huge number

1 in the case, but it is part of the case, is
2 reimbursable expenses. And Section 1.5.4 provides that
3 the architect is entitled to the actual reimbursable
4 expenses plus a 15 percent markup.

5 So the main portion of the fee we contend is
6 governed by the master contract and it's based on a
7 percentage of completion. And in this particular case,
8 Your Honor, the architect only performed under the
9 schematic design phase. They never reached the later
10 phases which are called design development,
11 construction documents, bidding and construction
12 administration. The project just never went that far.

13 In this case schematic design was defined in the
14 contract. And then by addendum the parties made two--
15 well, one modification and one clarification, I guess.
16 The modification is that in the original contract the
17 estimated construction cost was 160 million. In the
18 addendum it went up to \$180 million.

19 And then they also decided in the addendum that
20 schematic design would also include receiving
21 entitlements from the City of Reno. And those
22 entitlements are approval of a tentative map and a
23 special use permit.

24 And just as an aside, part of what was going on

1 here is when you do fast-track construction, you can
2 actually start with the grading and start with the
3 foundation work before you design the whole tower. And
4 so that's sort of what was going on here. As soon as
5 you get your tentative map, you can very rapidly go in
6 for a grading permit and get going on the construction
7 while the design continues on.

8 In any event, the architect billed starting in May
9 of 2006 for a percentage of completion of the schematic
10 design and ultimately billed for a hundred percent of
11 the schematic design in an invoice dated November 21st,
12 2006. That date ties in to the date when the City of
13 Reno granted the tentative map and the special use
14 permit at a meeting of the city council on
15 November 15th, 2006. So the week before this
16 particular invoice.

17 And you will hear a lot of testimony about how
18 these numbers were arrived at and so on and so forth.

19 One thing you won't hear, Your Honor, is that the
20 developers on the other side of this contract ever
21 objected to any of these billings. They didn't.

22 The invoicing-- And this is not in evidence, Your
23 Honor. And if the Court doesn't want me to show these
24 at this point, I would be happy to move along.

1 MR. PEREOS: No objection.

2 THE COURT: Thank you, Mr. Pereos. I appreciate
3 that.

4 Go ahead, Mr. Hoy.

5 MR. HOY: Thank you.

6 So this first exhibit is Exhibit No. 24. And it
7 shows the first billing for schematic design. I
8 apologize. This is the first-- this is a billing in
9 November of 2005 under the stopgap agreement. And--

10 THE COURT: It says Exhibit 25 on it.

11 MR. HOY: I apologize, Your Honor. We didn't pick
12 very good colors here.

13 THE COURT: We can try and do either one of two
14 things. We can dim some of the lights if that would
15 make it easier. I didn't see the 24 over there. What
16 is Exhibit 25?

17 MR. HOY: It's another invoice.

18 THE COURT: Okay. Go ahead. Thank you.

19 MR. HOY: So Exhibit 24 is on the left, Your Honor.
20 And you will see on all of the invoices in this case
21 that there's a project number. 0515 is the master
22 project number. The dash 0102, et seq., are
23 subprojects.

24 So the master agreement has an effective date of

1 October 31st, 2005, but it wasn't actually signed until
2 April of 2006. While that contract was being vetted
3 through the Hale Lane law firm, the architect and the
4 developer signed a-- what I refer to as a stopgap
5 letter agreement for the architect to begin work and to
6 be paid on an hourly basis so that if the parties never
7 signed the master agreement stipulating a fixed fee,
8 the architects nevertheless would receive their hourly
9 fees.

10 And so when the first invoice went out under this
11 stopgap agreement, there's a notation on the invoice,
12 the billings will be credited to SD, meaning schematic
13 design/entitlements, phase once the contract is signed.

14 So after the contract is signed-- And this is
15 Exhibit 25 now. --the project number is now just 0515,
16 no dash and subproject, and it bills for a percentage
17 of the schematic design. So you've got the
18 construction cost, estimated, the 5.75 percent, to come
19 up with a total fee. And then that total fee is spread
20 out amongst the various-- they call them departments,
21 but they're various phases of the work, times the
22 percentage complete equals the fees earned.

23 And then on the next page of the invoice they give
24 credit for the payments that have been received under

1 the stopgap agreement.

2 You're going to hear from Brad Van Woert.

3 Mr. Van Woert is a local architect. He's been involved
4 in many commercial projects in the Northern Nevada area.
5 He's licensed in several jurisdictions, Nevada, Oregon
6 and I believe California. And he'll tell you more
7 about his resume.

8 Mr. Van Woert will testify that he's reviewed all
9 of the instruments of service, meaning the drawings,
10 the CAD drawings, the sketches, the renderings, and so
11 on and so forth. And he will tell the Court his view,
12 that the schematic design was achieved under the
13 contract and also that the work is exemplary and more
14 than satisfies the standard in the industry. Not that
15 there's a negligence claim in this case, but we believe
16 that the defense expert will testify about the standard
17 of care in the industry.

18 Don Clark is a proprietor, owner of Cathexes,
19 another local architecture firm. He's been engaged by
20 counsel for the defense. And Mr. Clark we believe will
21 testify that his office might do more than what Steppan
22 and Fisher-Friedman did for this particular project,
23 but he can't testify that Mark Steppan did not satisfy
24 all of the requisites of the contract in this case.

1 So that's a legal point. And we just don't think
2 that completion of the contract, in so far as schematic
3 design goes, is even contested in this case.

4 We will spend some time in this trial, Your Honor,
5 going through some of the schematic design documents.
6 I don't want to dwell on it too much right now, but we
7 contend that there was a complete design insofar as
8 schematic design goes.

9 We know what the relationship is between the
10 various elements of the project, which is one of the
11 requirements. We know what the program is. We know
12 how big the buildings are going to be. We know how
13 many units are going to be in the buildings. We know
14 how much parking there's going to be. We know the
15 basic construction is going to be reinforced concrete
16 with a glass curtain wall. We know how the structural
17 engineering was done or would be done. We know how the
18 mechanical engineering would be done. We know that
19 there's a site plan showing the relationship of the
20 building to the land and nearby structures. We know
21 that there's some fairly detailed, from a schematic
22 perspective, drawings to show the world how this
23 building is going to be constructed.

24 This is Exhibit No. 7 which is in evidence, Your

1 Honor. This is the addendum to the master agreement.

2 And I mentioned earlier that in Section 5.1.5, the

3 parties decided to include the City of Reno

4 entitlements as part of the schematic design phase.

5 And the entitlements were awarded in Exhibit 48 which

6 is in evidence. This is a November 15th, 2006 public

7 hearing with the Reno City Council that awarded those

8 entitlements.

9 The Second Amended Notice and Claim of Lien is in
10 evidence, Your Honor. And page 4 of that lien sets
11 forth what the principal claim is in this case. And to
12 get to the principal claim in the case, the lien also
13 sets forth what was billed, what was received and so
14 forth. So all of the accounting is actually included
15 in the claim of lien itself.

16 At some point, Your Honor, we're going to have to
17 deal with the computation of the statutory interest
18 which is awarded under NRS Chapter 108. This is
19 Exhibit 5. It's not in evidence. I contend, Your
20 Honor, that the computation of interest is really just
21 a legal argument, it's something for the Court to
22 decide, and then we put the numbers to the manner in
23 which the Court decides to compute the interest.

24 So I'm not going to offer any testimony about

1 computing the interest. I think that that's a legal
2 argument after three or four of us sit down and parse
3 the statute and try to understand what it says.

4 So at this point, Your Honor, the relief requested
5 on behalf of the lien claimant is principle in the
6 amount of \$1,755,299.99. The interest through today
7 computed in the fashion that I think is correct is
8 \$2,243,638.83. And we will seek the statutory costs
9 and statutory attorney's fees in a posttrial procedure.
10 I didn't think it was appropriate to bring it to the
11 Court because the statute awards attorney's fees
12 through the trial, so it's a little tough to present
13 evidence of what is going to happen in the future.

14 And with that, I would be happy to answer any
15 questions that the Court has at this time.

16 THE COURT: Thank you.

17 Mr. Pereos, would you like to make an opening
18 statement now or would you like to reserve it for your
19 case in chief?

20 MR. PEREOS: Currently, Your Honor, if I may,
21 please.

22 THE COURT: Please do.

23 MR. PEREOS: Thank you, Your Honor.

24 I would like to start off my opening by saying, I,

1 too, have read the prior orders that are in this file,
2 notwithstanding the fact that I was not involved at
3 that time. So I would like to emphasize that my
4 defense is defined by the parameters of those orders.
5 In other words, I have not covered like, for instance,
6 in my trial statement, territory, okay, because I felt
7 that it would be within the parameters of the order and
8 I would be wasting the Court's time. And the Court has
9 made it clear that, for instance, we are not revisiting
10 the issue of actual knowledge. Therefore, I didn't
11 bother briefing the issue as to whether or not
12 knowledge of a attorney or someone in the attorney's
13 firm constitutes knowledge to the client.

14 THE COURT: I appreciate that. And we did discuss
15 that, Mr. Pereos, at one of the pretrial hearings that
16 we had, that I felt that Judge Adams' order spoke for
17 itself and I wasn't going to revisit that. Obviously
18 depending on the outcome of the case, it may be the
19 subject of an appeal, but the Supreme Court will decide
20 that, not me. I'm not going to look at it again.

21 MR. PEREOS: Having said that, though, I would like
22 the Court to give me a little bit of indulgence in the
23 sense that I do have to make my record for the Supreme
24 Court.

1 THE COURT: Certainly.

2 MR. PEREOS: Now, in that regard, just as the Court
3 has indicated that this is its first bench trial, I
4 will tell the Court it's my first bench trial in close
5 to 30, 35 years. It's been a long time since I've had
6 a bench trial. So I'll try not to trip too often on
7 that.

8 It seems to me that the plaintiff has two aspects
9 that they have to prove in this case. Now, plaintiff
10 would submit that it's a pretty narrow case. And I'm
11 not going to say it's any less narrow or more or
12 broader. But the plaintiff has to prove its right to
13 recover a monetary sum under its contract.

14 Now, that's an oversimplification by also saying
15 the following. The plaintiff has to prove that it is
16 entitled to a fixed fee, it performed its assignment
17 under the contract and the contract defines what the
18 fixed fee is and, further, that the contract says that
19 he has earned that fixed fee.

20 The other aspect of the case is that the plaintiff
21 is entitled to a judgment for foreclosure. Now, this
22 gets into the mechanic's lien issue. Given the prior
23 orders of the Court as to the fact that the mechanic's
24 lien is legitimate as it relates to the pre-lien

1 notice, I'm not even going to go into those discussions
2 hereinafter, because it's already to me a fait accompli
3 by the prior decisions of the Court, that no pre-lien
4 notice was required. But they're seeking a judgment of
5 foreclosure. They're not seeking a judgment against
6 John Iliescu. They're seeking a judgment against the
7 property to foreclose. And as a result, they have to
8 comply with the statutory mandates.

9 Reference was made to this project being a fast
10 track. Now, I'm assuming that Mr. Friedman or somebody
11 is going to testify that the intended purpose of this
12 project is a fast-track project.

13 Now, having said that, I would like to embellish a
14 little more for the benefit of the Court what a fast
15 project is, particularly on a highrise-type building.
16 The fast track generally means, and counsel is correct,
17 that after you start getting your tentative approvals,
18 you basically can start doing your first grading by
19 submitting your grading plan and then you pull your
20 permit for your grading.

21 Now, after you've pulled your permit for your
22 grading, then what happens is you can then submit your
23 plans in order to start doing the work on your footings
24 and your foundations. Keep in mind, we're looking at a

1 building that's going to be approximately 40 stories on
2 1.4 acres of land. So then you start doing the
3 footprint of the building.

4 Now, while that's going on, and after all that's
5 been designed, presumably the architect or some
6 designer is now designing the actual construction of
7 the building. So the work is started and the architect
8 is doing his design work. And he's supposed to get to
9 what they call the construction design drawings on
10 that. Then in place what happens is he submits those
11 plans to the appropriate building department, gets
12 approval for those plans. So then after the footprint
13 is done, the building starts going up.

14 And in connection with the fast track, whether or
15 not the fast track is going to be a 24-hour job or a
16 10-hour job we're going to have to hear in terms of the
17 evidence, because a lot of fast-track jobs, they're
18 working that site 24 hours or at least 18 hours, two
19 shifts, if not three shifts, depending upon how fast
20 they want to push it through on that.

21 And when they're working two and three shifts,
22 okay, to push the job through, it also adds to the
23 expense of the job, because now they're facing issues
24 such as overtime, because, like, for instance, all of

1 Southern Nevada at one time during the construction
2 boom, and the evidence may come out to this effect, was
3 union shops which meant overtime when you're beyond
4 eight hours plus. Okay. The fringe benefits that have
5 to be paid, not only for the base salary but also for
6 the overtime. Now, that's a typical fast-track job on
7 that.

8 I don't know how we're going to define fast track,
9 because the issue was never covered by my prior
10 counsel, but I'll find out during the course of this
11 trial.

12 Having said that, the plaintiff has the burden of
13 showing that they have fulfilled the contract, that
14 they have earned a fee, a fixed fee, under the contract
15 and that they're entitled to foreclose on the
16 mechanic's lien. I remind the Court that this Court
17 made a partial decision for summary judgment basically
18 saying in that partial decision for summary judgment,
19 I'm satisfied that there's a mechanic's lien that
20 secures the fixed fee.

21 That's all I have.

22 THE COURT: Thank you, Mr. Pereos.

23 Mr. Hoy, your first witness, please.

24 MR. HOY: I call Richard Johnson.

1 THE COURT: And I know, gentlemen and ladies, it
2 might be a little bit warm in here today. I think it's
3 because during the weekend they turn off all of the
4 heat in the building and so then they turn it all on
5 really fast. So hopefully the temperature will
6 regulate a little bit for everybody's comfort. I was
7 working over the weekend on this case. I can tell you
8 it was very cold in here over the weekend.

9 THE CLERK: Raise your right hand, please.

10 (The Clerk administered the oath
11 to the prospective witness.)

12 MR. HOY: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 RICHARD K. JOHNSON,
15 having been called as a witness herein,
16 being first duly sworn, was examined
and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HOY:

19 Q Good morning. Can you please state your full
20 name for the record.

21 A Richard K. Johnson.

22 Q Good morning, Mr. Johnson.

23 Are you here under subpoena this morning?

24 A Yes.

1 Q And what is your business, profession or
2 occupation?

3 A Commercial real estate.

4 Q Are you licensed in the state of Nevada?

5 A I am.

6 Q How long have you been licensed in Nevada?

7 A About 28 years.

8 Q Do you serve on any state boards?

9 A Yes.

10 Q What board or boards?

11 A Nevada Real Estate Commission.

12 Q Do you currently operate under a business name?

13 A Johnson Group.

14 Q Did you previously operate under a company
15 called Metzger Johnson Group?

16 A That's still the corporate name, but we operate
17 under Johnson Group now.

18 THE COURT: Can you spell that for the court
19 reporter.

20 MR. HOY: Metzger, M-e-t-z-g-e-r.

21 THE COURT: Thank you.

22 BY MR. HOY:

23 Q Mr. Johnson, do you know John Iliescu, Jr.?

24 A Yes.

1 Q How long have you known Dr. Iliescu?

2 A Probably since the late '90s, I would guess,
3 something in that area. A long time.

4 Q Has Mr. Iliescu ever hired you to be his real
5 estate broker?

6 A Yes.

7 Q How many times?

8 A More than five, but I don't know how many
9 times.

10 Q Have you ever sold or marketed property that
11 was owned by Dr. Iliescu?

12 A Yes.

13 Q How many times?

14 A Like I say, I don't remember how many times.
15 More than five is my immediate answer to you, but I
16 don't know how many.

17 Q And in each of those cases you were paid a
18 commission on the sale of property owned by
19 Dr. Iliescu?

20 A When they sold, yes.

21 Q We're here about some vacant land in a block
22 that's bounded by Island Avenue on the north, Court
23 Street on the south, Arlington to the west and the
24 Episcopal Church to the east. Are you familiar with

1 that parcel or parcels?

2 A Parcels, yes.

3 Q And did you ever have any dealings with
4 Dr. Iliescu regarding those parcels?

5 A Yes.

6 Q Can you give us an overview of what your
7 dealings were with respect to those parcels?

8 A He decided to have those marketed for sale.
9 There were actually five adjoining parcels that he
10 owned. And we put four of them on the market.

11 Q Can you please turn to Exhibit 66 in the binder
12 that I've got for you there.

13 MR. HOY: Exhibit 66 is in evidence, Your Honor.

14 THE COURT: Thank you.

15 Given the fact that an overwhelming majority of the
16 exhibits have been stipulated into evidence, I would
17 only ask, Mr. Hoy, and, Mr. Pereos, that if you're
18 referring to an exhibit that's not in evidence that you
19 bring it to my attention. If not, I'll just assume
20 that it's one of the numerous exhibits that the parties
21 have admitted.

22 Go ahead.

23 MR. HOY: Thank you, Your Honor.

24 /////

1 BY MR. HOY:

2 Q Mr. Johnson, have you seen Exhibit 66 before?

3 A Yes.

4 Q This is a letter that Mr. Sam Caniglia wrote to
5 you back in July of 2005?

6 A Yes.

7 MR. HOY: And for the record, Caniglia is spelled
8 C-a-n-i-g-l-i-a.

9 BY MR. HOY:

10 Q Had you ever met Sam Caniglia before you saw
11 this letter the first time?

12 A Yes.

13 Q How did you first meet Sam Caniglia?

14 A We were already dealing on this project before
15 this letter was written.

16 Q Did you ever deal with Mr. Caniglia with
17 respect to any other property other than Dr. Iliescu's
18 land at Island and Court?

19 A No.

20 Q Did you ever conduct any investigation to
21 determine what Mr. Caniglia's background was?

22 A I had asked different people about it. I asked
23 him about it, what projects he had been involved in.

24 My understanding is he was involved in building

1 numerous properties in the San Francisco area,
2 hospitals, et cetera. He also told me that he did a
3 subdivision in Hidden Valley in Reno. That's about it.

4 Q Okay. And prior to this July 14th, 2005
5 letter, I think you mentioned you had dealings with
6 Mr. Caniglia regarding Dr. Iliescu's land. Is that
7 accurate?

8 A Yes.

9 Q What dealings did you have with Mr. Caniglia
10 before you received this letter?

11 A We had developed a contract that he had offered
12 to Dr. Iliescu for the purchase of the property. And
13 that was in August. It was finalized in August. It
14 was started prior to that.

15 Q Well, this letter is dated July 14th of 2005.
16 Did you have dealings with Mr. Caniglia before you
17 received the letter?

18 A To the best of my knowledge, yes, a long time
19 before. We had had many discussions earlier.

20 Q How many months-- well, was it months or weeks
21 before you received this letter that you first started
22 talking to Mr. Caniglia about this property?

23 A I think it was a lot longer before, but I'm not
24 a hundred percent sure of that. That's a long time ago

1 to remember.

2 Q Now, in this letter, paragraph number 4, it
3 says, "The sales price is to be \$6,500,000, plus one
4 penthouse." Did you have discussions with Mr. Caniglia
5 before July 14th, 2005 about what the sales price would
6 be?

7 A Yes.

8 Q What discussions did you have with him?

9 A Well, we had worked on developing an offer to
10 Dr. Iliescu, as I already said. And that was countered
11 or discussed, not accepted, if you will. And then we
12 went on and finally developed a mutually agreed upon
13 contract in August.

14 Q Prior to July 14th, 2005, did you hold an
15 actual listing agreement with Dr. and Mrs. Iliescu to
16 market their land?

17 A Yes.

18 Q And was there an asking price specified in that
19 listing agreement?

20 A I believe there would have been. To be candid
21 with you, I don't remember what it was. I know I have
22 a listing only because we can't do it without the
23 proper forms, duty owed and a listing agreement. But
24 as far as the details of that, I don't remember what

1 the details were.

2 Q All right. When you had the listing did you
3 actually publish the listing somewhere?

4 A It would have been-- LoopNet would have been
5 the one we were involved with at that time only, so it
6 would have been in that.

7 Q And LoopNet is a website for selling commercial
8 property?

9 A Correct. And then the other way we do it is
10 send out flyers to all the other commercial brokerages
11 in town and out of town, some of them.

12 Q Now, starting at the bottom of page 1 of
13 Exhibit 66, there's a heading that says, "These are the
14 advantages with our company and its partner." And the
15 company, I presume, is Consolidated Pacific
16 Development, Inc. on whose letterhead this letter is
17 written?

18 A I assume that also.

19 Q Do you know what is referred to by "its
20 partner"?

21 A He had different people working for him was my
22 understanding. So whether he had separate company
23 names or whatever, I don't know.

24 Q All right. Paragraph number 1 says, "Financing

1 has already been tentatively arranged and will be in
2 place well before the project is approved."

3 Did you have any discussions with Mr. Caniglia
4 about that topic?

5 A I would have, but very superficially, just
6 asking him if he had the money.

7 Q And did you ever conduct any investigation
8 yourself to determine whether Mr. Caniglia or
9 Consolidated Pacific Development had the finances to do
10 this project?

11 A Only what he told me.

12 Q All right.

13 THE COURT: If I may just interrupt. I apologize.
14 I'll do this occasionally, Mr. Hoy, but just for my own
15 clarification.

16 When you say he had the money, are you talking
17 about the money to purchase the land or the money for
18 the project in total?

19 THE WITNESS: Well, to purchase the land was what
20 my main concern was, because whether they built it or
21 not really wasn't my concern.

22 THE COURT: Your job is just to sell the land for
23 Dr. Iliescu?

24 THE WITNESS: Correct.

1 THE COURT: Okay. Go ahead. Thank you.

2 BY MR. HOY:

3 Q On the second page of Exhibit 66, let's just
4 skip to numbered paragraph 3. It says, "Architects and
5 engineers in place ready to start work."

6 On or before July 14, 2005, did you have any
7 discussions with Mr. Caniglia about an architect or
8 engineers being in place and ready to start work?

9 A No.

10 Q Please turn to Exhibit No.--

11 A Maybe I should add to that.

12 Q Yeah.

13 A I didn't have specific discussions on that, but
14 he had told me that he had everybody and everything he
15 needed to do to get this project going and off the
16 ground, if you will.

17 Q Okay. Thank you.

18 Can you please turn to Exhibit No. 67.

19 MR. HOY: This is not in evidence, Your Honor.

20 BY MR. HOY:

21 Q And, Mr. Johnson, I'll represent to you that
22 this is the same July 14th, 2005 letter in Exhibit 66
23 except that it has some handwriting on it. Do you
24 recognize any of the handwriting on Exhibit 67?

1 A Yes. Some of it for sure, maybe all of it, is
2 mine.

3 MR. HOY: I offer Exhibit 67.

4 MR. PEREOS: 67 has the handwriting?

5 Excuse me, Your Honor. If I may.

6 THE COURT: Certainly.

7 MR. PEREOS: 67 has the handwriting versus 66?

8 MR. HOY: Yeah. They were reversed.

9 MR. PEREOS: I have no problem with 66. I need to
10 correct my book, if I may.

11 THE COURT: Okay. And just so we're clear,
12 Mr. Pereos, 66 is the July 14th, 2005 letter with no
13 handwriting on it. 67, I have not reviewed the
14 handwriting because it's not admitted yet, beyond the
15 fact that on the top in someone's handwriting it says,
16 "July 18th of 2002."

17 MR. PEREOS: That's correct. Mine is the same,
18 Your Honor. I just had it reversed in my book for some
19 reason. But that's fine. I have no objection.

20 THE COURT: Exhibit 67 will be admitted.

21 Can somebody explain to me possibly why if you look
22 on page 1 of the exhibit there's-- at the bottom
23 underneath, "The advantages with our company and its
24 partner," it says 1, 2, and then you turn the page and

1 it begins 2, 3, 4?

2 MR. HOY: I can't.

3 THE COURT: Oh, it's just they repeated it. Now I
4 see. Got it. Thank you.

5 THE CLERK: 67 is admitted.

6 THE COURT: Okay. 66 and 67 are admitted,
7 regardless. And the Court answered its own question by
8 reviewing. It just appears that heading number 2 is
9 repeated on pages 1 and 2, but they say exactly the
10 same thing.

11 So we're on Exhibit No. 67. Go ahead, Mr. Hoy.

12 MR. HOY: Thank you, Your Honor. And I apologize
13 to Mr. Pereos. I think the two exhibits being flipped
14 is a fault of my office.

15 BY MR. HOY:

16 Q Mr. Johnson, in the left margin of Exhibit 67
17 there's a notation next to paragraph number 4. In type
18 it says, "The sales price is to be \$6,500,000," and it
19 says that in numbers, "plus one penthouse." And in the
20 handwriting next to that it says, "\$6,800,000."

21 Do you know why that 6.8-million-dollar notation is
22 there?

23 A I would be guessing, but it was probably--
24 usually I make notes on stuff when I'm talking to

1 somebody.

2 THE COURT: Well, I don't want you to guess,
3 Mr. Johnson.

4 THE WITNESS: Okay. I don't know is the answer.
5 BY MR. HOY:

6 Q And, if you could, please just read into the
7 record what the handwriting is in the right margin.

8 A It's, "Due," and then underlined is the word
9 "due," "\$100,000. 25,000 non R," nonrefundable. That
10 means immediate. "15,000 released at 30 days. 100,000
11 every 60 days." And below that there's, "Close of
12 escrow on or before nine months or approval, whichever
13 comes first."

14 Q Do those notes in the right margin reflect
15 negotiations that were going on between Dr. Iliescu on
16 one hand and Mr. Caniglia on the other?

17 A I don't know where Dr. Iliescu got into the
18 sequence. I don't remember.

19 Q And that's fair. I mean, this was eight years
20 ago.

21 A I have a hard time with eight days ago.

22 Q All right. I'll ask you now to turn to Exhibit
23 68. This is a July 29, 2005 Land Purchase Agreement.
24 Take whatever time you need to review the document.

1 And my first question will be: Do you know who drafted
2 Exhibit 68?

3 A I drafted it on a standard form that we have.
4 And on the past question, I think you're seeing here in
5 item 1.2 the payment schedule that ended up going in
6 here as reflected on what you had me read.

7 Q The payment schedule being under Article 1
8 there, Finance Terms?

9 A Yeah, 1.2.

10 Q So within three days after acceptance there's a
11 payment of \$25,000, and then under Section 1.2, there
12 are additional nonrefundable deposits that are being
13 paid at 30, 90, 120, maybe it's 150, 210 and 270 days?

14 A Correct.

15 Q I ask you to turn, sir, to Exhibit 69. This is
16 Addendum No. 1 to the Land Purchase Agreement. Is this
17 an addendum to the Land Purchase Agreement in Exhibit
18 68?

19 A Yes.

20 Q Do you know who drafted Exhibit 69?

21 A I drafted it.

22 Q Was Exhibit 69 signed at the same time as
23 Exhibit 68?

24 Let me rephrase the question. I apologize.

1 Did Dr. and Mrs. Iliescu sign Exhibits 68 and 69 at
2 the same time?

3 A Yes.

4 Q Please turn to Exhibit 70. This is Addendum
5 No. 2 to the Land Purchase Agreement. Is this Exhibit
6 70 an addendum to Exhibit 68?

7 A Yes.

8 Q Do you know who drafted Exhibit 70?

9 A I drafted it.

10 Q Now, the second non-form, I guess, typed
11 paragraph on Exhibit 70 says, "Both parties agree that
12 the Land Purchase Agreement needs to be fine tuned as
13 to the specifics of the intended agreement before its
14 finalization and that legal clarification and
15 documentation to achieve the full intent of both
16 parties is spelled out. This shall be accomplished as
17 soon as possible within the time constraints of the
18 buyer, seller and legal counsel of both parties."

19 Was there-- do you remember any discussion that led
20 you to draft that language in this Exhibit 70?

21 A I think that came more from my concern that
22 this was a property that had a lot of ins and outs to
23 it, if you will, and in representing my client I wanted
24 to make sure it was done correctly and, therefore, I

1 needed legal people to review and change, which both
2 happened.

3 Q Okay. So you didn't feel that you were
4 qualified to complete the final Land Purchase
5 Agreement, you thought legal counsel should be
6 involved?

7 A I am not qualified. I'm not authorized by the
8 state to draft a contract without it being reviewed by
9 legal.

10 Q All right. Can you please turn to Exhibit 71.
11 This is Addendum No. 3 to the July 29th Land Purchase
12 Agreement, Exhibit 68. Did you draft Exhibit 71?

13 A I believe that 71 was drafted by Hale Lane,
14 Karen Dennison. There was also some drafting that was
15 done prior to that, a review that was done prior to
16 that, by Judy Otto who is another counsel. And both
17 counsels were representing both parties at the time.

18 Q Did you sit in on any meetings with Dr. Iliescu
19 and Karen Dennison or other members of the Hale Lane
20 firm to discuss what would go into this Exhibit 71?

21 A Yeah, because we had different discussions, but
22 it's also taking what was already written that you
23 showed me and refined it.

24 Q And during the time you were present with Karen

1 Dennison and Dr. Iliescu, was it clear-- was it made
2 known to the lawyers that there would be architects and
3 engineers doing design work on the property being sold
4 before escrow closed?

5 A I wouldn't have, because I didn't know that
6 there were outside ones doing it. Sam was doing it as
7 far as I was concerned. Beyond that, I don't know if
8 they were or not.

9 Q All right. So the Land Purchase Agreement as
10 it was originally formulated anticipated that the buyer
11 would be paying these nonrefundable deposits up until
12 the time of close of escrow; true?

13 A True.

14 Q And then at close of escrow the full purchase
15 price would be paid and title would transfer?

16 A Correct.

17 Q But nobody anticipated that the escrow would
18 close before the City of Reno conferred entitlements
19 for the development of the land?

20 A I would have to go back to the contract and see
21 what they were allowed to do before the close of
22 escrow. I know there were some representations on
23 tests and stuff they were doing. As far as the
24 entitlements, I don't know if that was there or not.

1 Q You, did you personally subjectively understand
2 whether or not Mr. Caniglia's company was going to have
3 architects doing work in order to get development
4 entitlements and that that work would be performed
5 before close of escrow?

6 A My understanding is that he was doing all that
7 stuff internally in his company. Whether it was going
8 to be done before close of escrow, frankly, I didn't
9 care.

10 Q Okay. If you could, sir, turn to page 2 of
11 Exhibit 71.

12 A I'm sorry. Exhibit 2 of 71?

13 Q Exhibit 71, page 2.

14 A Page 2. Okay.

15 Q And at paragraph 5 it reads, "Paragraph 31 is
16 hereby amended to add the following paragraph: Buyer
17 agrees to keep the property free from all liens and to
18 indemnify, defend and hold harmless seller and its
19 successors and assigns from and against any and all
20 claims, actions, losses, liabilities, damages, costs
21 and expenses, et cetera."

22 Did you ever participate in or hear conversations
23 about the possibility that this buyer would engage
24 people who might have mechanics' liens rights that

1 would attach to the property before the close of
2 escrow?

3 A No.

4 Q Going back to Exhibit No. 69, this addendum in
5 paragraph 39H talks about the delivery of a penthouse.
6 And if I mischaracterize all of that language, please
7 feel free to correct it. As I read this, it basically
8 says that at some point the architects will create a
9 plan, Dr. Iliescu will be entitled to select a
10 penthouse at that time and he'll have a credit of
11 \$2.2 million against the cost of that penthouse and
12 that will be part of the purchase price for the land.
13 Is that approximately correct?

14 A Approximately, yes. I think-- I'm trying to
15 remember if we did it right away or after. He had the
16 right to not take a condo and to take money instead,
17 too. And I'm looking for that here, to see if it was
18 here or at a later one.

19 Q That might have been in a later addendum.

20 A Okay.

21 Q Did you have any discussions with Dr. Iliescu
22 and/or Mr. Caniglia about the mechanics of this
23 penthouse?

24 A Not at that time. Much later we did.

1 Q How did you come up with the language in
2 Exhibit 69 here regarding the penthouse?

3 A Well, the terms of what he wanted, Dr. Iliescu
4 wanted, and the terms of what Sam was willing to do was
5 negotiated and agreed to and that's what resulted
6 there.

7 Q Was there any discussion about whether or not
8 the plans for this penthouse would be available before
9 close of escrow?

10 A I don't remember that.

11 Q Do you know who selected Karen Dennison or the
12 Hale Lane firm to draft Addendum No. 3?

13 A Well, Addendum No. 3, discussions started on it
14 actually prior to Karen Dennison. It was Judy Otto.
15 And her firm was representing Caniglia. And
16 Dr. Iliescu, Caniglia, myself, we all went over and
17 talked to her about what was trying to be attained in
18 here.

19 Then in that same period, a week or whatever, I
20 mean, it was close, Caniglia was already operating at
21 that point with Karen Dennison's firm. Dr. Iliescu
22 knew her. I knew her from just associations and other
23 clients that weren't my clients but I was privy to
24 being involved in some meetings with her many years

1 prior to that. And she had a reputation of being a
2 good attorney.

3 It was agreed by the two parties, Dr. Iliescu and
4 Caniglia, to utilize her to do this. And we ended up
5 with that Addendum 3 I believe it is.

6 Q So was it your perspective that Karen Dennison
7 was representing both the buyer and the seller in this
8 transaction?

9 A Absolutely, to the point that it even concerned
10 me and I asked that there be a clarification that if
11 there was ever a controversy that she would represent
12 my client first and Caniglia second, or not at all, as
13 the case might be.

14 Q Do you have that concern before or after
15 Addendum No. 3 was signed?

16 A Before.

17 Q And did you ask Ms. Dennison to do anything
18 specific in order to show whose side she would be on if
19 there was a conflict between buyer and seller?

20 A Yes. And I'm not sure if that was before or
21 after the signing of 3, just to be clear. But, yes, I
22 asked that it be put in writing and signed by all
23 parties.

24 Q I'll ask you to turn to page 3 of Exhibit 71

1 and refer you to paragraph 7. Let me know when you're
2 there.

3 A Page 3 of 71?

4 Q Yes.

5 A Okay.

6 Q And paragraph 7. It says, "Paragraph 39F is
7 hereby amended and restated as follows: This offer is
8 conditioned upon as conditions precedent buyer
9 obtaining at buyer's expense all necessary approvals,
10 ("government approvals") for the construction of a
11 mixed-use residential and commercial highrise
12 condominium project on the property approximately 28
13 stories in heighth (the project) within 270 days after
14 August 3rd, 2005, as such time period may be extended
15 pursuant to paragraph 1.2 above, including but not
16 limited to, number 1, any required height setback or
17 other variances; 2, any required special use permit; 3,
18 any required zoning or land use designation changes; 4,
19 any required master plan amendment; 5, an approved
20 tentative condominium map for the project and; 6, any
21 required design approvals."

22 Do you remember any discussion that led to the
23 inclusion of that language in Addendum No. 3?

24 A No.

1 Q Do you know whether or not Dr. Iliescu ever met
2 Karen Dennison when you were not present regarding--

3 Let me start the question again. I apologize, Your
4 Honor.

5 Do you know whether or not Dr. Iliescu ever met
6 with Karen Dennison regarding the Land Purchase
7 Agreement when you were not present?

8 A I don't know if they discussed that or not. I
9 know he met with her, but I don't know what they
10 discussed.

11 Q I ask you now to turn to paragraph number 9 of
12 Exhibit 71. This would be on page 6. And paragraph 9
13 reads in part, "Paragraph 39I as amended by Addendum
14 No. 1 is hereby amended and fully restated as follows:
15 Seller owns the adjoining parcel commonly known as 260
16 Island Avenue, Reno, Nevada (Island property). Seller
17 intends but shall not be obligated to convert the
18 building located on the Island property into a
19 restaurant/bar business, or in the event a
20 restaurant/bar business is not permitted by the city,
21 county or state regulations or is not feasible in the
22 seller's sole judgment, then seller may convert the
23 Island property to another use of seller's choice
24 (seller's business). Buyer and seller each agree to

1 the following terms and conditions related to the
2 Island property."

3 And one of those conditions is that the new project
4 being built on the land that's going to be sold is
5 going to include a parking garage and a number of the
6 parking spaces will be permanently devoted to the
7 Island property building.

8 Tell the Court, please, what discussions led to
9 that language being included in the contract.

10 A My understanding is that Caniglia needed
11 additional space to the tune of about ten feet for
12 building the platform to accommodate the tower. And in
13 doing so, he wanted that property. We refused to sell
14 that property, but we did finally come to an agreement
15 where we would give up ten feet on the east side of
16 that property to the development in return for them to
17 do specific things, some of which was to do a lot line
18 adjustment, to provide parking, to accommodate a
19 restaurant/bar.

20 And the reason we used that is there was some talk
21 and some interest on maybe doing that, but,
22 furthermore, the requirements for parking are higher on
23 a bar/restaurant than they are for office, et cetera,
24 and we wanted to make sure we had the maximum parking

1 in this agreement in order to accommodate that
2 building. And so that's where it all started.

3 MR. HOY: May I approach the witness, Your Honor?

4 THE COURT: Certainly.

5 BY MR. HOY:

6 Q Mr. Johnson, please turn to Exhibit No. 35.

7 This is a January 17th, 2006 Special Use Permit
8 Application.

9 THE COURT: Hold on, Mr. Hoy. Let me-- Bear with
10 me.

11 Go ahead.

12 BY MR. HOY:

13 Q Let me know when you're there, Mr. Johnson.

14 A Um-hum.

15 Q Do you recognize Exhibit 30-- what are we on,
16 35?

17 A No.

18 Q Do you know that Mr. Caniglia's company
19 submitted applications to the City of Reno for a
20 tentative map and special use permit?

21 A Yes.

22 Q Did you review any of those applications before
23 they were submitted to the city?

24 A No.

1 Q Did you review any of those applications after
2 they were submitted to the city?

3 A No.

4 Q Did you ever have any input into the
5 applications to the City of Reno for development
6 entitlements on Dr. Iliescu's land at Island and Court?

7 A The only place where I had any involvement in
8 that was making sure that Dr. and Sonnia Iliescu were
9 available to sign because the landowner needs to sign
10 for this type of document to go in.

11 Q And what you're referring to is-- If you turn
12 to I guess it's page 3 of the exhibit-- Mr. Johnson,
13 in the lower right-hand corner of these exhibits we
14 generally have what we call Bates numbers. And this
15 particular exhibit was produced by Mr. Steppan and the
16 page number is Steppan 2368. Can you please turn to
17 that page.

18 A Yes.

19 Q This is called Owner Affidavit. It says, "I am
20 an owner of property/authorized agent involved in this
21 petition and that I authorize Sam Caniglia to request
22 development-related applications on my property. I
23 declare under penalty of perjury that the foregoing is
24 true and correct."

1 And it's signed there by Sonnia Iliescu. And then
2 the very next page is signed by John Iliescu, Jr. Is
3 that right?

4 A Yes.

5 Q Now, you mentioned in your prior testimony that
6 you had something to do with arranging for Dr. and
7 Mrs. Iliescu to sign these owner affidavits?

8 A I was called by-- I'm trying to remember the
9 guy's name from Wood Rodgers who was doing this area of
10 expertise, and he said that he needed their signatures
11 in order to submit the plan. And, as I recall, it was
12 at the building department that they actually met and
13 signed those documents.

14 Q Were you geographically present when Dr. and
15 Mrs. Iliescu signed these owner affidavits?

16 A I was there when they received a form. I think
17 they signed them at that time, yes.

18 Q Was the entire application booklet here in
19 Exhibit 35 available for inspection at the time you saw
20 them sign their affidavits?

21 A I didn't see it.

22 Q Did you ever go with Dr. and Mrs. Iliescu to
23 the Wood Rodgers' office to sign documents?

24 A Not that I remember.

1 Q Can you please turn to Exhibit No. 36. This is
2 a February 7th, 2006 Tentative Map and Special Use
3 Permit Application. And starting at pages Steppan 2523
4 and 2524, again, we have owner affidavits signed by
5 Sonnia and John Iliescu, right?

6 A Correct.

7 MR. HOY: I apologize, Your Honor. I got the
8 numbers wrong. It's 2522 and 2523.

9 BY MR. HOY:

10 Q Were you physically present when Dr. and
11 Mrs. Iliescu signed the owner affidavits in Exhibit 36?

12 A I didn't even realize there were two that were
13 signed. So I'm going to tell you I was present when
14 one of them was signed and I wasn't present when the
15 other one was signed.

16 Q Very good.

17 After applications were filed with the City of Reno
18 did you ever participate in any neighborhood meetings
19 or city council hearings or anything of that nature
20 regarding the applications for developments on the
21 Iliescu land?

22 A I never participated or even knew about mostly
23 any neighborhood meetings. As far as the-- I'm trying
24 to think of what-- I had introduced Sam to the mayor--

1 He used to be a client of mine before he was elected.

2 Therefore, I knew him well enough to introduce them.

3 --and a couple of the other people that were in the

4 city hall at that time. I remember doing that.

5 And then as we got closer to the presentation for

6 the entitlements, we had a meeting with-- well, one

7 councilman or two at a time, just to update them as far

8 as saying here's who Sam is. And when I say "we," I

9 didn't do any of the talking other than to introduce
10 them and then they talked.

11 Q At the meeting with Mayor Cashell was a
12 representative of Wood Rodgers present?

13 A They would have been because they were involved
14 in it, but I don't specifically remember that. I mean,
15 it's kind of like I know he had to be there, but I
16 don't remember.

17 Q Again, it was many years ago.

18 A Yeah.

19 Q At the meeting with the mayor, was the actual
20 application booklet available to discuss?

21 A Yeah, if somebody had known to ask for it. I
22 don't even know if it was there. But was it readily
23 available in sight where I was looking at it or knew
24 that it was there, no.

1 Q Was there any discussion about the actual
2 architectural design that had evolved to that point?

3 A Basically it was discussion around the terms
4 of-- I don't mean the terms, but the explanation of the
5 tentative map, i.e., the size, there was some concern
6 about shadowing on properties across the river, some of
7 the trigger points that were key to the councilmen to
8 ask.

9 Q All right. And did you ever see a PowerPoint
10 presentation of the design?

11 A Yes. And I don't know if it was there or if
12 Sam sent it to me, but there was a flyover, we used to
13 call it, whereby all the buildings in Reno were gray
14 and the plane came down, went down West Street and then
15 all of a sudden you saw the property in front of it.

16 Q All right. Can you please turn to Exhibit No.
17 40. That would be in the first binder, sir.

18 A You said 40?

19 Q Yes, four zero.

20 Exhibit No. 40 is a printout of a PowerPoint
21 presentation of the design in support of the
22 application for special use permit and tentative map.

23 MR. HOY: And for the Court, Exhibit 41 is the
24 actual PowerPoint presentation. It's submitted on a

1 DVD and it's in evidence. And if the Court wants to
2 see the actual presentation, that's available to the
3 Court.

4 THE COURT: Okay. It will probably be just as easy
5 for me to look at the printout, Exhibit 41.

6 BY MR. HOY:

7 Q Mr. Johnson, does Exhibit 40 appear to be the
8 PowerPoint presentation that you referred to earlier in
9 your testimony?

10 A I didn't remember it that extensively, but yes.

11 Q If you could please turn to the first page of
12 the PowerPoint. It's a title page. Go ahead and look
13 at the title page, sir. It says, "Wingfield Towers,
14 Reno, Nevada."

15 Did you ever come to know the project proposed for
16 Dr. Iliescu's land as Wingfield Towers?

17 A As Wingfield Towers, Yes.

18 Q Can you describe approximately when it became
19 known as Wingfield Towers?

20 A I would have told you from the very beginning,
21 but I don't know the date.

22 Q And then underneath that it says, "Owner, BSC
23 Financial, LLC." Do you know who BSC Financial, LLC
24 is?

1 A That was the eventual owners. First it was Sam
2 Caniglia and-- It's kind of interesting, because I
3 didn't think they were the owners. Sam Caniglia,
4 Consolidated Pacific, was the owner and he sold a share
5 to these guys, I thought.

6 Q And do you know what the B stands for in BSC?

7 A Baty, Schleining and Caniglia.

8 Q And Baty is B-a-t-y?

9 A I don't know how you spell it. There were
10 three partners. That's the only thing.

11 Q Schleining is S-c-h-l-e-i-n-i-n-g, or do you--
12 you don't remember?

13 A I don't know. I didn't have that much
14 interaction with those people at all.

15 Q The next line is "Architect, Mark B. Steppan,
16 AIA, CSI, NCARB." Did it strike you one way or another
17 that the architect was listed on this PowerPoint when
18 you first saw it?

19 A I don't even remember that page being on the
20 PowerPoint.

21 Q I see. Do you remember the first time-- Let
22 me start again. I'm not asking you for a date. But do
23 you remember the circumstances when you first saw the
24 PowerPoint presentation?

1 A It was probably a day or two before the
2 tentative map.

3 Q So that would have been in October of 2006?

4 A I don't remember the dates.

5 Yeah. I did a timeline of the different events
6 that took place back a couple years ago, but I pulled
7 it out yesterday. And on this I have the first time I
8 knew about architects was on October 4th, 2006.

9 Q So you're looking at a document that was
10 created a few years ago?

11 A Yeah. And it was in my-- it was in my-- What
12 should I say?

13 Q Your deposition?

14 A --the records-- well, the records that were
15 subpoenaed. They took copies of everything, and that
16 was in there. And when I did my deposition again a
17 couple years ago back, I was referring to this. And
18 the attorney at that time also took a copy of it.

19 THE COURT: So the first time you ever noted
20 Mr. Steppan as the architect of the Wingfield Towers
21 was October-- did you say October 4th of 2006?

22 THE WITNESS: On October 4th, yeah. And when I say
23 that, that would be the first time that I could have
24 known. Up until he was-- I think his name came up

1 during the presentation to the city council. Up until
2 then I really didn't know who he was or that he
3 existed.

4 MR. HOY: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 MR. HOY: May I see the document that you were
7 referring to?

8 THE WITNESS: Sure. My memory wasn't good at that
9 time either.

10 MR. PEREOS: Are you going to--

11 MR. HOY: I think I'll have it marked.

12 MR. PEREOS: Okay. You've got the foundation.
13 That's fine.

14 THE CLERK: Your Honor, Exhibit 144 marked for
15 identification.

16 THE COURT: Ms. Clerk, just out of curiosity, I
17 note that Mr. Steppan did not use Exhibit No. 4 for
18 some reason. Do we ever go back and backfill and use
19 that number so you're not adding a new number? He also
20 didn't use number 23 for some reason. And so in the
21 future, I don't know if it's easier to actually use
22 those spots that were not used by Mr. Steppan. Number
23 54 is also not used.

24 THE CLERK: Your Honor, that's fine with me. I can

1 mark this exhibit as Exhibit 4.

2 THE COURT: Do you have any objection to that,
3 Mr. Hoy?

4 MR. HOY: No, Your Honor.

5 THE COURT: Mr. Pereos?

6 MR. PEREOS: No objection, Your Honor.

7 THE COURT: Why don't we mark it as Exhibit No. 4.
8 That way we're filling in the exhibit list.
9 It will be Exhibit No. 4 and it will be admitted
10 without objection.

11 MR. HOY: Thank you, Your Honor.

12 (Exhibit 4 was marked and admitted.)

13 BY MR. HOY:

14 Q I would like you to turn now to Exhibit 72,
15 please. Exhibit 72 is Addendum No. 4 dated September
16 September 18th, 2006. And so that date is sometime
17 after the applications were submitted to the City of
18 Reno for the tentative map and the special use permit,
19 right? Is that true?

20 A I'm bad at dates. I just don't want to say yes
21 or no.

22 Q Certainly. Take whatever time you need.

23 A Ask your question again, if you would.

24 Q Sure. This Addendum No. 4 is dated

1 September 18th, 2006. And it looks like it was signed
2 September 19th, 2006. Is that date after the time that
3 the applications to the City of Reno for development
4 entitlements had been filed with the city?

5 A It would have been after application and prior
6 to approval, yes.

7 Q So after asking for the permits and before
8 they're granted, there is a need for this Addendum No.
9 4. Did you draft Addendum No. 4?

10 A Because it's on my letterhead, I probably
11 drafted it, but then it was reworked per the bottom
12 line by Karen Dennison again. So she was the final
13 draftee of this document.

14 Q Okay. In paragraph number 1 under the "now
15 therefore" portion of the document, it says, "Seller
16 and buyer hereby agree to extend the date for close of
17 escrow as set forth in the agreement to on or before
18 April 25th, 2007." And then it recites additional
19 consideration to be paid for that extension.

20 Can you please tell the Court what you remember
21 about discussions that led to this Addendum No. 4.

22 A The conversations on all the extensions tended
23 to be the same: Put up some money or shut up. If you
24 want to go ahead, you need to put up some money at risk

1 or we won't do it. And this is a reflection of that,
2 as are other addendums.

3 Q So at the time you drafted Addendum No. 4, you
4 knew that there had been applications submitted to the
5 City of Reno for development entitlements?

6 A I would have.

7 Q And if you wanted to go read those
8 applications, they were available to you, correct?

9 A I guess they were available to the public, yes,
10 so anybody could have. That's not something that we
11 do. That's what the attorney's job was to do.

12 Q And in this Addendum No. 4, the parties agreed
13 that there would be an add to the purchase price of
14 \$376,000, right?

15 A Yes.

16 Q And \$365,000 of that would be paid over to
17 Dr. Iliescu immediately?

18 A Be paid to him immediately is what I'm looking
19 for here. I don't think immediate.

20 Q Well, I'm in the middle of the paragraph number
21 1 and it's one, two, three, four, five lines up from
22 the bottom. At the very end of that line it says,
23 "\$365,000 of such sum shall be released immediately to
24 seller. \$11,000 of such sum shall be payable

1 immediately to Metzger Johnson as partial payment of
2 its brokerage commission."

3 A That's what it says. I didn't remember that.

4 Q And do you know whether or not the money was
5 immediately released to the seller, that 365,000?

6 A I don't remember it was and I don't remember it
7 wasn't.

8 Q Do you remember whether or not Metzger Johnson
9 Group received the \$11,000 referenced in Addendum 4?

10 A If Dr. Iliescu was paid, we were paid.

11 Q So do you remember whether or not the \$11,000
12 came to Metzger Johnson?

13 A I don't.

14 Q I ask you to turn now to Exhibit No. 78.

15 THE COURT: 78 in mine is empty.

16 THE WITNESS: Same here.

17 MR. HOY: Well, I will not ask you any questions
18 about an exhibit that does not exist.

19 BY MR. HOY:

20 Q Please turn to Exhibit 105.

21 Exhibit 105 is entitled Memorandum of Purchase and
22 Sale Agreement. And it is signed by Dr. and
23 Mrs. Iliescu; true?

24 A Yes.

1 Q And according to the notaries on-- This is
2 page 7 of the document also called Steppan-FCT-341.
3 According to those jurats by the notary, the document
4 was signed by Dr. and Mrs. Iliescu on April 13, 2007.

5 A What was the first part of-- I thought you
6 said Steppan.

7 Q I was just referring to the Bates number in the
8 lower right-hand corner. It's Steppan-FCT-341.

9 A Yes.

10 Q Which happens to be our case number.

11 A Yes.

12 Q So April 18, 2007. Was there an escrow in the
13 works in April of 2007 to sell Dr. and Mrs. Iliescu's
14 land?

15 A The reason I'm hesitating is because we were in
16 escrow, went out of escrow or were going to go out of
17 escrow and extend it or we left it there being out of
18 escrow and saying that Dr. Iliescu could cancel at any
19 time, we'll leave it there for you, Mr. Caniglia, but
20 when you come up with an agreement we can accept, then
21 we will continue moving forward, so we didn't have to
22 start over.

23 So when you ask was it in escrow, it was in escrow,
24 but was it an active escrow, I'm not sure.

1 Q Was there a lot of activity towards closing an
2 escrow in April of 2007?

3 A If the timing is right on that, actually, yes,
4 there was a lot of activity. We spent time over at the
5 escrow company, I did, with Maryann Infantino, the
6 escrow officer, and so did Karen Dennison. And the two
7 of them were working out which items had to be signed
8 off and dated prior to the next one that would be dated
9 and signed, et cetera.

10 Q And Maryann Infantino is an escrow officer over
11 at First Centennial Title?

12 A Correct.

13 Q And that office is over on Ridgeview in south
14 Reno?

15 A Correct.

16 Q So you were geographically present with Dr. and
17 Mrs. Iliescu and Karen Dennison to go through closing
18 documents in April of 2007?

19 A Sometimes I was; sometimes I wasn't. Sometimes
20 it was Maryann and Karen Dennison working on it. So
21 the way you said it, it was like we were all together
22 all the time, and that's not necessarily the case.

23 Q How much time total did you spend at First
24 Centennial Title back in April of 2007 to work on

1 Dr. Iliescu's land sale?

2 A One day I remember being there basically a
3 three- to four-hour period. And that's when they were
4 lining up getting everything ready for the final
5 signing and closing of the documentation. Prior to
6 that, most of it was done by phone between the
7 different parties.

8 Q Have you ever heard of a Starker exchange?

9 A Yes.

10 Q What is a Starker exchange?

11 A Well, Starker did the original 1031 tax
12 deferred exchange. Starker is a company. They tested
13 it and that's why everybody calls them Starkers, but
14 they're really not Starkers, they're tax deferred
15 exchanges. Starker, though, is the company that was
16 being used in a number of different properties that I
17 was buying or selling. So they are an exchanging or a
18 facilitator for a 1031 tax deferred exchange.

19 Q Just so we have a complete record, I'm not a
20 tax attorney, so correct me if my understanding of this
21 part of tax and real estate law is incorrect, but under
22 Section 1031 of the Internal Revenue Code, if you sell
23 a piece of property, you can take the proceeds, have it
24 held by an accommodation party for a period of time,

1 reinvest those funds and you just carry your tax basis
2 forward to the new property and you don't have a
3 capital gain on that transaction; is that right?

4 A Basically that's right.

5 Q Can you please turn to Exhibit 100.

6 THE COURT: Mr. Johnson, your travel plans, do you
7 have to actually be at the airport at 11:30?

8 THE WITNESS: No, leave here.

9 THE COURT: Leave here. Okay.

10 MR. HOY: And I'm not trying to filibuster. I'm
11 going as fast as I can.

12 THE COURT: I appreciate that. I just looked at
13 the clock. It's about 20 minutes after ten. So I just
14 wanted to make sure that Mr. Johnson wasn't speeding.

15 BY MR. HOY:

16 Q Mr. Johnson, did you have discussions with
17 Dr. Iliescu about doing a Starker exchange arising from
18 the April 2007 escrow?

19 A I would have, yes. You're mixing two terms
20 technically. Starker-- It's not a Starker exchange.
21 Starker is the accommodator. It's a 1031 tax deferred
22 exchange.

23 Q Did you advise Dr. and Mrs. Iliescu with regard
24 to Exhibit 100, the tax deferred exchange?

1 A I wanted to know if they want today do one for
2 sure. I do that on every property. Dr. Iliescu
3 understands a tax deferred exchange quite well.

4 Q Did it seem to you in April of 2007 that escrow
5 was actually going to close for the sale of this
6 property between Court and Island?

7 A I thought it was.

8 Q Please turn to Exhibit 79.

9 Exhibit 79 is an April 12, 2007 set of sale escrow
10 instructions. And these are escrow instructions that
11 were signed by Dr. and Mrs. Iliescu; is that right?

12 A We're on 69?

13 Q 79.

14 A 79. Okay.

15 Q Exhibit 79 is a set of escrow instructions
16 dated April 12th, 2007 between Dr. and Mrs. Iliescu and
17 their trust on the one hand and the buyer, BSC
18 Investments, LLC, on the other hand.

19 A Correct.

20 Q And if you could turn to Exhibit No. 81.

21 Exhibit 81 is an April 18, 2007 assignment from BSC
22 Investments, LLC to a company called Wingfield Towers,
23 LLC. Do you remember-- Have you ever heard of the
24 term double escrow?

1 A I've heard the term. I've never done one.

2 Q Did you know that in April of 2007 that BSC was
3 buying the land from Dr. Iliescu for roughly
4 \$7.8 million and that BSC was turning around and
5 selling the same land with the entitlements on it to
6 this Wingfield Towers, LLC entity?

7 A I wasn't. But at the same time, aren't they
8 the same people?

9 Q I don't know.

10 A I know both names of the companies. I thought
11 they were the same people.

12 Q All right. Please turn to Exhibit 82. This is
13 a Purchase and Sale Agreement and Joint Escrow
14 Instructions between BSC Investments, LLC and Wingfield
15 Towers. And on page 3 of this exhibit, the purchase
16 price between BSC and Wingfield Towers is \$24,282,000.

17 So based on these documents that are in evidence,
18 it appears that Dr. Iliescu was being paid roughly
19 7.8 million and then BSC was receiving almost
20 24.28 million. Did you back at the time understand
21 what was going on there--

22 A No.

23 Q --with this land?

24 A I was never made privy to this.

1 Q Back in April of 2007 were you privy to any
2 discussions about financing for the purchase of the
3 land from Dr. Iliescu?

4 A Only to the effect that Sam Caniglia said he
5 had financing lined up and they were ready to go.

6 Q Now, if you could look at Exhibit No. 4, sir.
7 You've got a reference to a Bill Kimmel appraisal on
8 your Exhibit 4. It's not in the binder. It's--

9 MR. HOY: May I approach the witness?

10 THE COURT: Yes. It's the document that you
11 brought with you.

12 THE WITNESS: Oh, okay. I'm with you.

13 THE COURT: You're the only one who has it,
14 Mr. Johnson.

15 BY MR. HOY:

16 Q Who is William Kimmel?

17 A Bill Kimmel is a MAI appraiser.

18 Q And your notation there says that you received
19 on a certain date an appraisal from Mr. Kimmel. What
20 was the amount of that appraisal?

21 MR. PEREOS: Objection; hearsay, witness testifying
22 to a document that's not been admitted into evidence,
23 no foundation.

24 THE COURT: I believe the document was admitted

1 into evidence.

2 MR. PEREOS: No, the Bill Kimmel.

3 THE COURT: But if it's on Exhibit No. 4--

4 MR. PEREOS: Oh, it's on 4. I don't have the
5 document in front of me. My apologies.

6 THE COURT: The objection is overruled. Exhibit
7 No. 4 has been admitted. Go ahead.

8 BY MR. HOY:

9 Q What was the amount of Mr. Kimmel's appraisal?

10 MR. PEREOS: Well, wait a minute. Objection;
11 foundation. He can testify to what Exhibit 4 contains.
12 He can't testify to what the amount of the appraisal
13 is.

14 MR. HOY: Withdraw, Your Honor.

15 THE COURT: Okay. Go ahead.

16 Don't answer that question.

17 BY MR. HOY:

18 Q Mr. Johnson, on Exhibit 4 you've got a notation
19 for an appraisal being received from Bill Kimmel,
20 right?

21 A I don't believe that would be true, because I
22 didn't receive one from Bill Kimmel.

23 Q Does your Exhibit 4 have a notation as to an
24 appraisal from Bill Kimmel?

1 A It--

2 Q Look at page 2.

3 A I'm not seeing it.

4 MR. HOY: May I approach?

5 THE WITNESS: If you can show me. Sorry. I'm not
6 trying to be difficult. I just don't see it.

7 MR. HOY: Of course. There it is.

8 May I show this to counsel?

9 THE COURT: Sure.

10 BY MR. HOY:

11 Q Mr. Johnson, on page 3 of Exhibit 4 is there a
12 notation about an appraisal by Bill Kimmel?

13 A Okay. I didn't think it said that I got-- I
14 did not get the appraisal from Kimmel. I did not order
15 an appraisal from Kimmel. I was told of an appraisal
16 by Caniglia, about an appraisal by Kimmel. And the
17 value that I wrote down was 30 million.

18 THE COURT: So I-- Well, now you kind of lost me a
19 little bit there. Mr. Kimmel was not retained by you
20 to do an appraisal of this property, you just told
21 Mr. Caniglia that you had in essence heard that
22 Mr. Kimmel appraised the value at roughly \$30 million?

23 THE WITNESS: No. Mr. Caniglia told me that.

24 THE COURT: Gotcha. Okay.

1 THE WITNESS: And I made a note of it, it was in my
2 files, and, therefore, I knew there was an appraisal.

3 BY MR. HOY:

4 Q Now, at the beginning of this case-- Well, let
5 me start again.

6 You gave a deposition years ago in this case, true?

7 A Um-hum.

8 Q Yes?

9 A Yes.

10 Q And you testified in your appraisal (sic) about
11 the file that you maintained for this project, and
12 essentially you were keeping all of the paperwork for
13 Dr. and Mrs. Iliescu; is that fair?

14 A That's correct.

15 Q And the documents that were produced in
16 discovery by Dr. Iliescu was really your file; is that
17 right?

18 A It would have been my box of files that I gave
19 to his attorney and they made copies of, yes.

20 Q And those documents were Bates numbered and
21 they said Iliescu and then a number next to them?

22 A I don't know what they did with them.

23 Q Please turn to Exhibit No. 93.

24 MR. HOY: This is not in evidence, Your Honor.

1 BY MR. HOY:

2 Q Mr. Johnson, are you on Exhibit 93?

3 A I'm on 93.

4 Q Is Exhibit No. 93 a document that was contained
5 in your files for Dr. and Mrs. Iliescu's land between
6 Court and Island?

7 A I don't remember it being in my file. This was
8 made out to Cal Bosma. And Cal Bosma represented Baty
9 Schleining.

10 Q When you say represented them, what do you mean
11 by that?

12 A He worked for them as kind of like a manager.

13 Q Please turn to Exhibit 73.

14 Exhibit 73 is Addendum No. 5 dated December 2nd,
15 2007. Did you personally draft Addendum No. 5?

16 A I would have done the initial drafting because
17 of the letterhead, but there's some changes to it,
18 because where it says "Addendum 5" at the center and
19 the bottom, I never put that there. So there's
20 something not right about this document.

21 I don't know if Karen took and redid it, but
22 usually she puts her documentation below it. So I
23 don't have an answer for you.

24 Q In December of 2007 were you privy to any

1 discussions about increasing the purchase price under
2 the Land Purchase Agreement by \$100,000 payable in
3 water rights?

4 A Yes.

5 Q Tell the Court what you remember about that
6 negotiation.

7 A Caniglia wanted to go back into escrow. Same
8 story, if you want to go into escrow and be current,
9 then we need some nonrefundable. He didn't have
10 nonrefundable cash but he had an acquaintance of some
11 sort-- I don't know what their relationship was.

12 THE COURT: A what of some sort?

13 THE WITNESS: Acquaintance.

14 THE COURT: Thank you.

15 THE WITNESS: And he put up the water rights that
16 valued the \$100,000. And that's what was entered
17 into-- through escrow and disbursed to Dr. Iliescu, and
18 originally 6 percent of that to me, but it shouldn't
19 have been, so I gave that 6 percent back to
20 Dr. Iliescu.

21 BY MR. HOY:

22 Q Can you explain that? Why did you receive
23 water rights and then--

24 A The standard split was when he gets money, I

1 get money. The title company knew that. Everybody
2 knew that. So if he gets paid, I get paid. When he
3 got paid that, it was an assumption that I would get
4 paid the 6 percent. That wasn't his and my agreement.
5 So when I received it, I gave it back to them.

6 Q All right. How much total money did you
7 receive based on money that Dr. Iliescu received for
8 the nonrefundable deposits on the land between Court
9 and Island Street?

10 MR. PEREOS: Objection; relevancy.

11 THE COURT: What's the relevance of that, Mr. Hoy?

12 MR. HOY: Withdrawn, Your Honor.

13 BY MR. HOY:

14 Q Please turn to Exhibit 74.

15 MR. HOY: Not in evidence, Your Honor.

16 THE COURT: Mr. Johnson, if I could just get a
17 clarification from you. So the deal falls apart in
18 July. He, Mr. Caniglia, comes back to you then in
19 December of 2007 and says in essence we want to start
20 the escrow all over again or get the escrow process
21 back on track, shall we say. And your response to that
22 is give me some-- give me on behalf of Dr. Iliescu and
23 his wife some nonrefundable money to start this process
24 all over again or to reinitiate the process?

1 THE WITNESS: Correct.

2 THE COURT: Thank you. Go ahead.

3 Exhibit what were we on? 73 did you say?

4 MR. HOY: 74. This is not this evidence.

5 THE COURT: Okay.

6 BY MR. HOY:

7 Q Mr. Johnson, do you recognize Exhibit No. 74 as
8 coming from your computer, a printout from your
9 computer?

10 A I don't recognize it as coming out of my
11 computer. It appears to have come across a fax,
12 because there's a fax date on it. I do recognize--
13 Well, I do and I don't. I recognize two of the
14 notations as my handwriting, but the other is not my
15 handwriting.

16 Q Which notations do you recognize as your own?

17 A "\$3,000,000 in account," which is stated on the
18 left-hand side. And at the bottom, "When does
19 40,000--" I'm sorry. "When does 40 million fund?"

20 Q And that notation, "When does \$40 million
21 fund?" what does that refer to?

22 A I don't remember.

23 Q At the very bottom of the page it says,
24 "Tuesday, March 25th, 2008. AOL: RKJ4702." Do you

1 recognize that notation?

2 A That would-- Okay. That would be off of my
3 computer. So I think you're right there. But then the
4 top one was off of whoever sent it to me. I was
5 looking at the top.

6 Q Fair enough.

7 In March of 2008 were there ongoing discussions
8 about a new deal or reviving the old deal to sell
9 Dr. and Mrs. Iliescu's land to Caniglia?

10 A Yes.

11 Q Can you please describe the negotiations that
12 were taking place in March of 2008?

13 THE COURT: Just to go back one step, the December
14 deal then, the \$100,000 in water rights, that just
15 resulted in nothing other than the \$100,000 in water
16 rights going to Dr. and Mrs. Iliescu; is that correct?

17 THE WITNESS: Correct. They defaulted again.

18 BY MR. HOY:

19 Q So tell us what you remember about the
20 negotiations in March of 2008.

21 A I'm not remembering what it was about and it's
22 not on my crib sheet. I know we've had discussions--
23 Caniglia would call me every other day, two, three
24 times a week, then not for a week and then more again.

1 And so we had ongoing discussions like, "Do you
2 have the money?" And he was telling me different
3 sources that he was getting the money from. Naybohood
4 (phonetic) was the name of one group I remember right
5 off the top. There was Meacham (phonetic) Bank which
6 he actually signed the-- sent to me a one pager where
7 theoretically they had signed off on it. But none of
8 that came to fruition. It was all a dream.

9 THE COURT: So did that all continue during the
10 multiple attempts at escrow, it would fall through and
11 Mr. Caniglia would call you back and attempt to
12 negotiate some additional way to reopen the escrow?

13 THE WITNESS: He wanted this project to go. I'll
14 give him that. He wanted it to go. And we got to the
15 point where if you want it to go, put up the money so
16 that we don't have to worry about it, and if you put up
17 the money, you're going to lose the money, hoping that
18 then we would only have a real escrow to be dealing
19 with.

20 THE COURT: And your thought really is-- And
21 correct me if I'm wrong, Mr. Johnson. Your thought all
22 along, as you've previously expressed, is Dr. and
23 Mrs. Iliescu want to sell the property, you just want
24 the money for the property? Is that-- When you're

1 saying put up the money, you're not talking about the
2 160 or eventually the \$180 million that's the estimated
3 cost of the buildings, you're just saying, Show me the
4 money, to borrow the phrase from the movie.

5 THE WITNESS: Show me the money for the land, yes.

6 THE COURT: For the dirt. Okay. Go ahead.

7 THE WITNESS: Not that there weren't discussions
8 that they were getting other money, but that was what--
9 the only thing we were concerned about.

10 BY MR. HOY:

11 Q Would you please turn to Exhibit No. 75.

12 Do you recognize Exhibit 75 as an e-mail that came
13 from your computer and was sent to you by Sam Caniglia?

14 A Yes. Um-hum.

15 Q Did you have a methodology for saving your
16 e-mails for business purposes?

17 A Other than throwing them in the file, that was
18 it.

19 Addendum 6 was a discretionary addendum and never
20 took place, if I remember right, so nothing was ever
21 signed one way or the other. It was in negotiations.

22 Q And the negotiation for Addendum No. 6 was to
23 increase the purchase price to Dr. and Mrs. Iliescu by
24 a million dollars?

1 A It was to increase the price. I'm looking for
2 the million dollars. But yes.

3 THE COURT: In May of 2008?

4 BY MR. HOY:

5 Q And that was May of 2008?

6 A Yes.

7 MR. HOY: Offer Exhibit 75.

8 THE COURT: Any objection, Mr. Pereos?

9 MR. PEREOS: May I ask a foundational question?

10 THE COURT: Certainly.

11 VOIR DIRE EXAMINATION

12 BY MR. PEREOS:

13 Q Was this generated by your computer?

14 A It was printed off my computer.

15 Q It was printed off?

16 A Yes.

17 MR. PEREOS: No objection.

18 THE WITNESS: At least I'm assuming it is, because
19 I think it postmarked it down at the bottom.

20 THE COURT: So that Tuesday, May 20th, 2008 AOL:

21 RKJ--

22 MR. PEREOS: Wait a minute. Are we on 75 or 74?

23 MR. HOY: 75. I did not offer 74.

24 MR. PEREOS: Oh. Because what you're reading from

1 was 74. Oh, I see. It's also on 75. My apologies,
2 Your Honor.

3 THE COURT: That's just a stamping or a
4 computer-generated indication from your computer that
5 you recognize, is that accurate, Mr. Johnson?

6 THE WITNESS: Yeah. The only reason I'm saying
7 that is RKJ4702 is my-- What do you call it? --my
8 number for AOL.

9 THE COURT: Okay. So you do recognize Exhibit No.
10 75 as something that you've received or that you did
11 receive--

12 THE WITNESS: Well, I am telling you I don't
13 remember. If there hadn't been any identifying marks
14 or here, I would probably be testifying I don't
15 remember ever seeing this before. But based on that, I
16 have to say it looks like he sent it to me on the top
17 and it looks like I received it on the bottom.

18 THE COURT: And it's been stipulated to by
19 Mr. Pereos, so Exhibit No. 75 is admitted.

20 (Exhibit 75 was admitted.)

21 DIRECT EXAMINATION (Resumed)

22 BY MR. HOY:

23 Q Mr. Johnson, you know, don't you, that on
24 November 15th, 2006, the Reno City Council granted the

1 application for a tentative map and special use permit
2 for Dr. and Mrs. Iliescu's land?

3 A What was the date you gave? I mean, they did
4 it twice.

5 Q November 15th, 2006. The planning commission
6 was October--

7 A October 15th, 2006, yes.

8 Q Okay. And--

9 THE COURT: That was the planning commission?

10 THE WITNESS: That was the city council hearing
11 where they approved the entitlement.

12 BY MR. HOY:

13 Q And the process, Mr. Johnson, is that the
14 planning commission rules first and then the city
15 council either upholds or overturns the decision of the
16 planning commission; is that right?

17 A That's the way it was at that time. I believe
18 now they've shortcut that somehow, but yes.

19 Q Okay. And did Dr. and Mrs. Iliescu apply to
20 the city to extend the time within which to file the
21 final map at some point after November 15th of 2006?

22 A I'm trying to go back to dates again. We had
23 an extension and then we had another extension. So
24 there was two extensions.

1 Q Right.

2 A If this was the first one, then the answer is
3 yes.

4 Q Okay. And turn to Exhibit No. 49, please.

5 This is an October 9th, 2008 application by or on
6 behalf of Dr. and Mrs. Iliescu to extend the filing
7 deadline by two years. And my question to you is, do
8 you recall ever having any discussions with Dr. and
9 Mrs. Iliescu, or Mrs. Iliescu, about the desirability
10 of seeking an extension of time to file the final map?

11 A I would have discussed it with them. I did
12 discuss it with them. I know Caniglia wanted to
13 extend. And he told me that the architects wanted to
14 extend to the point that they would or did, I'm not
15 sure if they did, pay for the extension.

16 Q It's true, isn't it, that nobody could apply
17 for the extension without Dr. and Mrs. Iliescu agreeing
18 to that?

19 A Right.

20 Q And did you give Dr. and Mrs. Iliescu any
21 counsel about whether it's a good idea to file the
22 application to extend or not?

23 A No. Actually his counsel gave him counsel,
24 because I remember at first I'm saying no and then

1 changing saying, you know, it's really not going to
2 hurt anything, go ahead.

3 MR. HOY: I have no more questions. Thank you.

4 THE COURT: So just before I let you have
5 cross-examination, Mr. Pereos, Mr. Johnson, it's your
6 understanding that the Iliescus' consent was required
7 for the extension, but it was the designer and the
8 architect who really were pushing for the extension?

9 THE WITNESS: Absolutely.

10 THE COURT: And in the end, Dr. and Mrs. Iliescu
11 simply acquiesced because there was no harm in filing
12 the application; is that accurate?

13 THE WITNESS: Yes, that's accurate.

14 THE COURT: Thank you.

15 Go ahead. Mr. Pereos, cross-examination.

16 CROSS-EXAMINATION

17 BY MR. PEREOS:

18 Q When did you get the realization that the
19 acquisition money for the land was going to be taken
20 out of a construction loan or a development loan to
21 develop the property?

22 Do you understand my question?

23 A Well, if I understand right, you're saying they
24 were getting more money and using part of the money

1 for--

2 Q For the land acquisition.

3 A --for the land acquisition.

4 Q When did that come about? When did you come
5 about recognizing that?

6 A I don't remember.

7 THE COURT: By "they," you mean BSC?

8 MR. PEREOS: Excuse me?

9 THE COURT: By "they," Mr. Pereos, you mean BSC?

10 MR. PEREOS: BSC, yes.

11 BY MR. PEREOS:

12 Q Initially that was not contemplated under the
13 agreement, was it?

14 A No, it wasn't. That's why you confused me when
15 you were saying that.

16 Q In other words, as the deal evolved, okay, it
17 got to the point where they wanted to draw down the
18 acquisition money for the land out of the loan that
19 they were going to take down for the development of the
20 land?

21 A Okay.

22 Q Is that correct?

23 A Yes.

24 Q You commented that Addendum No. 3, being the

1 addendum to the purchase agreement, was initially
2 drafted-- the early generations were drafted by Judy
3 Otto and then later Karen Dennison finalized the
4 earlier-- finalized Addendum No. 3. Do you remember
5 that?

6 A I think-- I hope what I testified to was that I
7 drafted it, Judy Otto reviewed and Karen Dennison
8 finalized.

9 Q Okay.

10 THE COURT: Mr. Pereos, I hate to do this to you.
11 Can I just take a step back?

12 Mr. Johnson, basically you testified a moment ago,
13 as the deal evolved it became clear to you that BSC
14 wanted to use a development loan to purchase the land.
15 Initially was it your understanding that BSC would have
16 the money to purchase the land and then get a loan to
17 develop the property at some later time, they're not--

18 THE WITNESS: They're not tied together.

19 THE COURT: But eventually you realized that it
20 actually--

21 THE WITNESS: --was being tied together. But,
22 yeah, it was always paid for separate. To me the land
23 purchase was never contingent on the loan for the
24 property-- or for the building I mean.

1 THE COURT: Thank you.

2 BY MR. PEREOS:

3 Q All right. Let me-- I want to stay with that
4 point just for one or two more questions. So you would
5 agree with me that your mindset as the realtor for John
6 Iliescu was that they were going to acquire the land,
7 okay, and then go off and get their development loan?
8 And by "development loan," I don't care if they're
9 developing just the ground or they're going to develop
10 the whole project or whatever. I'm using that in a
11 generic sense.

12 A Yes.

13 Q Is that correct?

14 A That's correct.

15 Q Now, if that was your mindset, would you not
16 agree with me that that would have also been John
17 Iliescu's mindset based upon the communications you had
18 with John Iliescu?

19 A Absolutely.

20 Q Did Mr. Iliescu, John Iliescu, ever indicate to
21 you, No, no, I think what they're going to do is pull
22 the money out of the development loan to take down the
23 land and become the owner of the land?

24 A Never had any discussion like that.

1 Q In fact, when they showed you-- when Mr. Hoy
2 showed you the double escrow papers with regard to the
3 land acquisition going from a purchase price of
4 7.5 million to \$28 million, does your experience tell
5 you whether or not that is something that has commonly
6 occurred when you're submitting your application to the
7 lender as to what the cost of the land is?

8 MR. HOY: Objection, Your Honor as to the numbers
9 stated in the question. It wasn't 28 million.

10 MR. PEREOS: All right. A little higher number,
11 five times the number, six times the number, whatever.
12 That number is not important to me.

13 THE COURT: Do you recall approximately what the
14 number differences were between the purchase price for
15 Mr. Iliescu and then the subsequent purchase from BSC
16 to Wingfield?

17 THE WITNESS: It was significant.

18 THE COURT: Now, what was your question?

19 BY MR. PEREOS:

20 Q My question is, in your experience have you
21 seen whether or not that's a method used when you're
22 submitting an application to a lender as to what your
23 land cost was for purposes of developing the project?

24 A Yeah, you're valuating it as if it was

1 developed compared to raw land that wasn't developed
2 and, therefore, undeveloped it's worth a lot less money
3 than if it were developed.

4 Q In other words, so when the developer, BSC or
5 Consolidated or whoever winds up being the developer,
6 Decal, Wingfield Towers, Inc., whatever their name is,
7 when they submit their application to a lender for a
8 loan, they'll basically put in land value, 26,
9 20 million, whatever the number is, and then give
10 supporting papers to show that that's what they paid
11 for it; isn't that correct?

12 A Yes.

13 Q That is common in the industry; is it not?

14 A It is common.

15 Q Whether or not it's fair or moral or accurate
16 is a different story.

17 A Um-hum.

18 Q I'm not here to comment on that aspect.

19 You had commented that you attended several
20 meetings to be distinguished from hearings, okay, with
21 city officials regarding the advancement of this
22 project. Do you remember that?

23 A Yes, although it was a couple in my case. They
24 had several. I attended a couple.

1 Q Okay. That's good enough. Was John Iliescu
2 present at any of those meetings?

3 A I don't remember him being there.

4 Q Was Steppan ever present at any of those
5 meetings?

6 A I don't remember him being there.

7 Q In fact, were you present at the presentation
8 to the planning commission for the approval of the
9 project?

10 A Yes.

11 Q Was Mr. Steppan there?

12 A I don't remember him, but I wouldn't have
13 recognized him anyhow, because I didn't know what he
14 looked like.

15 Q Okay. Were you present at the presentation to
16 the Reno City Council for the approval of this project?

17 A Yes.

18 Q Was Mr. Steppan there?

19 A I believe so, because I think that's when we--
20 when it was approved. I'm not sure. I think so. I
21 think so, because we celebrated afterwards, and I think
22 he was at the celebration.

23 Q Okay.

24 A But that's what I'm not sure of.

1 Q Okay. And when you're talking about the
2 celebration, during the discovery we learned about a
3 meeting that occurred after the approval that occurred
4 at the Tap Room.

5 A Okay.

6 Q Is that what you mean by the celebration?

7 A That's what I'm referring to.

8 Q Because the Court will hear evidence about the
9 Tap Room. That's T-a-p Room.

10 A Okay.

11 Q Okay. Now, do you remember if that was after
12 the recording of the lien?

13 THE COURT: Don't you have to lay some foundation
14 that he knows when the lien was--

15 MR. PEREOS: Okay. I'll do that. I'll do that.

16 BY MR. PEREOS:

17 Q How did you first come about learning about the
18 mechanic's lien that was recorded, the first mechanic's
19 lien that was recorded by Steppan? How did you come
20 about learning about it?

21 A You said something about the first. I didn't
22 even know there was more than one. I got a call from
23 Maryann Infantino at First Centennial Title and she had
24 received it. I don't know why she received it. But we

1 immediately then called Dr. Iliescu and told him.

2 Q And when you had your conversation with
3 Dr. Iliescu, was that the first conversation that you
4 had regarding the mechanic's lien?

5 A Yes.

6 Q Now, at that conversation did you get a sense,
7 an impression, as to whether or not Dr. Iliescu ever
8 heard of Mark Steppan?

9 A No, I don't think he knew who he was.

10 Q So your sense and impression was he never even
11 knew of the existence of Mark Steppan before receiving
12 the lien or before you discussed the lien?

13 A As best I know, that's the fact.

14 Q Now, you indicated that your first recognition
15 of Mr. Steppan would have been on or around early
16 October 2006. And I believe you said October 4th, so I
17 was just being generous.

18 A Yes. Or wait a second. That's the planning
19 commission. It would be September 15th was the
20 entitlement hearing.

21 THE COURT: So the first time-- your testimony is
22 the first time you knew of Mr. Steppan was what day?

23 THE WITNESS: It would have been, to the best of my
24 knowledge, at the city council meeting that night when

1 we celebrated.

2 THE COURT: And that was--

3 THE WITNESS: That was September 15th.

4 THE COURT: Okay.

5 BY MR. PEREOS:

6 Q 2006?

7 A Yeah. Now, I'm going to tell you, I've got in
8 here first time I knew of architect-- I have it on
9 September 4th here, so I really don't know the right
10 answer obviously.

11 THE COURT: Would it be fair to say-- is it
12 accurate to say your testimony is that somewhere
13 between the months of September and October of 2006 was
14 when you first became aware of Mr. Steppan?

15 THE WITNESS: Between October and November, yes, it
16 would be fair.

17 MR. PEREOS: Approach the witness?

18 THE COURT: Yes.

19 BY MR. PEREOS:

20 Q Do you have Exhibit 1 in front of you by any
21 chance? I don't know how many books you've got.

22 Can you identify for the record what Exhibit 1 is?

23 A Notice and Claim of Lien.

24 Q And why don't you tell the Court what the date

1 of the signature is on the lien.

2 A Signed by Gayle Kern on the 7th day of
3 November, 2006.

4 Q Let me direct your attention-- let me go to
5 Exhibit 36. Tell me when you're there.

6 A I'm there.

7 Q I want you to flip through. I think you'll
8 find it on the third page from the front, second or
9 third, fourth page from the front. You'll see the
10 owner's affidavit. Do you see that?

11 A Yes.

12 Q What's the date of the owner's affidavit?

13 A January 31st, 2006.

14 Q Okay. Now, what I want you to do is I want you
15 to go to Exhibit 37.

16 A Okay.

17 Q Okay. About third or fourth page from the
18 front there will be another owner's affidavit. Please
19 look for it.

20 A There is.

21 Q Okay. Date of that?

22 A January 31st, 2006.

23 Q Do you have any personal knowledge or know
24 whether or not the owner's affidavits on Exhibit 36 and

1 37 are exactly the same in the sense that there are not
2 two separate owner's affidavits signed on January 31st?

3 A I don't know.

4 Q You don't know. Now I want you to go to
5 Exhibit 35.

6 THE COURT: Mr. Pereos, you were going a little bit
7 quick for me there. So the point you were making is--
8 or that you just made is Exhibit 36--

9 MR. PEREOS: And 37.

10 THE COURT: --the owner's affidavit, which is Bates
11 stamped page 2522 and 2533, is the same as the owner's
12 affidavit or at least appears to be similar to the
13 owner's affidavits that are Bates stamped 2104 and
14 2105. Is that accurate?

15 MR. PEREOS: That's correct. That's right.

16 THE COURT: No. Stop. Yep. 2105. Okay. I'm not
17 taking that as that they are accurate, it's just-- or
18 they are identical, it's just that you're drawing
19 attention to the fact that those two appear to be the
20 same.

21 MR. HOY: I would stipulate that they're identical.

22 THE COURT: Okay. Hold on a second.

23 MR. PEREOS: I won't go anywhere, I promise.

24 THE COURT: I'm just making a note here.

1 Go ahead, Mr. Pereos. Thank you.

2 BY MR. PEREOS:

3 Q I direct your attention to Exhibit 35. Are you
4 there?

5 A 35, yes.

6 Q And I want you to flip through about two or
7 three pages from the front. You'll see an owner's
8 affidavit.

9 A I do.

10 Q And that is signed by Mr. Iliescu, John
11 Iliescu?

12 A It is.

13 Q Dated January 17th?

14 A Correct.

15 Q Is that correct?

16 Now, if I understand you correctly, one of those
17 owner's affidavits you were instrumental in causing the
18 signature of John Iliescu thereon?

19 A Yes. I was trying to line up a time when he
20 and Wood Rodgers would meet to sign it, yes.

21 Q Okay. Because I'll tell you, we only have two,
22 signed on January 31st and January 17th. One of those
23 you were instrumental in causing the signature thereon?

24 A Okay.

1 Q Okay. Now, your best recollection is that when
2 that owner's affidavit was signed, okay, it was signed
3 at-- I believe you said at-- was it a meeting
4 somewhere?

5 A Yeah. For some reason, I'm thinking-- I don't
6 even know why we were there. I may be confused, but I
7 was thinking it was at the building department that we
8 met, maybe because Wood Rodgers was there. I don't
9 know. I'm trying to guess now. But as I recall it,
10 they came in with an affidavit for the doctor to sign
11 and allow it to move forward. And everybody was
12 scrambling because it was down to the eleventh hour to
13 get it in.

14 Q And it was signed in your presence?

15 A Yes.

16 Q And more likely than not it was signed by
17 someone from Wood Rodgers?

18 A They brought it. I don't know about them
19 signing it.

20 Q Do you remember if it was Mr. David Snelgrove?

21 A If you asked me who I thought it was, that's
22 who I would have said, but I'm not a hundred percent
23 accurate on that.

24 Q Now, the reason for that-- Let's help the

1 Judge. Wood Rodgers were the planning people--

2 A Correct.

3 Q --that were instrumental in causing many of
4 these applications that needed to be filed with the
5 City of Reno?

6 A Correct.

7 Q Okay. Two of those applications required an
8 application for a special use permit and then the other
9 application was for a tentative map or a map approval,
10 subdivision map approval, correct?

11 A Correct.

12 Q All right. Wood Rodgers were the primary point
13 people doing that work?

14 A Correct.

15 Q Is that correct?

16 A That's right.

17 Q David Snelgrove worked with Wood Rodgers?

18 A He was employed by them. He was a member of
19 the firm.

20 Q And he was the lead person handling this
21 project for Wood Rodgers, was he not?

22 Let me ask you this-- Let me rephrase.

23 Did you ever deal with anybody else at Wood Rodgers
24 other than David Snelgrove with regard to substantive

1 issues on any of these applications I just referenced?

2 A No.

3 Q When you were-- when you observed the owner's
4 affidavit being signed, was it in a booklet form or was
5 it simply an individual page with a request that
6 Mr. Iliescu sign the owner's affidavit?

7 A It was individual pages.

8 Q Individual page.

9 THE COURT: And you don't recall if Mr. Snelgrove
10 provided that or somebody else from Wood Rodgers? You
11 just have no independent recollection of where those
12 individual pages came from?

13 THE WITNESS: I don't remember who brought it.

14 THE COURT: Thank you. I appreciate your candor,
15 sir.

16 BY MR. PEREOS:

17 Q All right. Let me run through a little bit of
18 the chronology of the facts quickly so I can put things
19 in context for the Court. I recognize that you and I--
20 well, you've lived with this thing for ten plus years,
21 okay, and I've learned from other people.

22 A buy/sell agreement goes into place with regard to
23 Consolidated who's basically Sam Caniglia, correct?

24 A Correct.

1 Q Under the terms of the buy/sell agreement, the
2 initial invitation was that John Iliescu was to receive
3 \$6.8 million plus a penthouse unit. That's what the
4 initial invitation was in that letter of July of '05.

5 A The initial discussions were that price, but
6 that's not the finalized.

7 Q Got it. Got it. The deal eventually changes
8 to the point where he's to receive \$7.5 million with a
9 credit back to the seller for any penthouse that he
10 elects to take?

11 A Correct.

12 Q Is that correct?

13 A Correct.

14 Q Now, at that time it's contemplated albeit that
15 John Iliescu is going to work with an architect with
16 regard to the floor layout of the penthouse?

17 A When it gets to that stage, yes.

18 Q Okay. Which, by the way, it never got there,
19 did it?

20 A Right. No.

21 Q All right. Then what happens is the deal goes
22 forward, okay, and there's a condition in the deal that
23 there has to be entitlements secured before the escrow
24 closes, the land escrow closes?

1 A Yes.

2 Q Everything so far correct?

3 A Okay.

4 Q All right. So they get their entitlements but
5 they can't get their funding to close?

6 A Correct.

7 Q Am I correct?

8 A Correct.

9 Q All right. So during this process you're
10 learning that whoever the developer is going to be, I
11 don't care if it's BSC, Decal, Consolidated, they need
12 their funding to close the deal?

13 A Correct.

14 Q All right. So they come forward and they want
15 extensions to put the deal out so that they can close,
16 correct?

17 A Correct.

18 Q During the period of time that-- And this goes
19 on for several years, these extensions, do they not,
20 these negotiations?

21 A Yes.

22 Q Because initially-- Okay. They got their
23 entitlements in the latter part of '06, did they not?

24 A Correct.

1 Q All right. So, I mean, they get their first
2 extension, they still don't get their funding, correct?

3 A Correct.

4 Q So then they facilitate and get a second
5 extension hoping to get funding by the time of the
6 second extension?

7 A Correct.

8 Q Okay. Second extension comes and goes, still
9 can't close the deal, correct?

10 A Correct.

11 Q And then the deal finally comes-- well,
12 eventually-- earlier on it came out of contract? Do
13 you understand what I mean by "out of contract"?

14 A Yeah, it was no longer active, it was just
15 sitting there.

16 Q But even know it's out of contract, John
17 Iliescu is still willing to work with them because it
18 serves his agenda, he wants the deal to close also?

19 A Right.

20 Q Isn't that correct?

21 A Right.

22 Q It serves everybody's agenda, does it not?

23 A Except for the frustration we went through,
24 yes.

1 Q Except for the frustration. So he's willing to
2 work. And when he works with them, he's also willing
3 to give them credits for their extension money against
4 the purchase price?

5 A Right.

6 Q Is he not?

7 A Correct.

8 Q At no time did John Iliescu ever collect
9 extension money that was not going to be credited back
10 against the purchase price; isn't that correct?

11 A I think that's true.

12 Q So he's willing to work with them, willing to
13 give them extensions, let them go off and find their
14 money to put the deal together. Okay. Doesn't happen,
15 correct?

16 A Correct.

17 Q Okay. Now, in the meantime, you come to learn
18 from the escrow officer that there's been a mechanic's
19 lien put in the file of record?

20 A Correct.

21 Q Okay. Now, you're not taking-- "you" being you
22 and John Iliescu are not taking any adversary position
23 on this mechanic's lien, are you, you're just taking a
24 neutral position, it's not your issue at this point in

1 time?

2 A We just wanted to know what it was, because we
3 had no idea.

4 Q You had no idea. But you're not advancing a
5 position as to whether it's good or it's bad?

6 A No. We don't know what it is.

7 Q You're saying, You take care of it, developer,
8 it's your particular issue?

9 A That's correct.

10 Q In fact, one of the addendums actually
11 discusses the fact that John Iliescu had no knowledge
12 of any of these engagements, particularly the architect
13 engagement, that precipitated the mechanic's lien?

14 A That's correct.

15 Q That's Addendum No. 6, I think, if memory
16 serves me correctly.

17 A I put that in because I had had enough of it.

18 Q Albeit, that's after the mechanic's lien?

19 A Yes.

20 Q So it is somewhat self-serving to some degree?

21 A It was.

22 Q That's fine. We'll acknowledge that.

23 In the meantime, the developers also sign an
24 indemnity agreement saying to John Iliescu, Look, we

1 acknowledge you don't know anything about what's going
2 on, we're going to indemnify you for this lien?

3 A Correct.

4 Q Am I correct?

5 Then unbeknownst to everybody else, okay, it turns
6 out that at least one of the developers goes BK,
7 bankrupt; is that fair?

8 A Fair.

9 Q Okay. And then some of the principals go
10 bankrupt--

11 A Correct.

12 Q --of the developers?

13 A Correct.

14 Q Okay. So the only one really left anymore is
15 John Schleining? How do you pronounce it?

16 A Schleining.

17 Q Schleining is left and Sam Caniglia is left
18 that didn't go BK; is that correct?

19 A To the best of my knowledge, yeah.

20 Q To the best of my knowledge, too, from looking
21 at the documents. That's an overview.

22 MR. PEREOS: That's all I've got.

23 THE COURT: Redirect--

24 MR. HOY: Thank you, Your Honor.

1 THE COURT: --based on cross-examination.

2 REDIRECT EXAMINATION

3 BY MR. HOY:

4 Q Mr. Johnson, you were asked a question about
5 your mindset being Dr. Iliescu's mindset. Was that
6 true with respect to every issue that arose on the
7 property between Court and Island there? I mean, what
8 did you mean by that?

9 A I don't remember using the word mindset, so I'm
10 not sure what you're referring to.

11 Q Sure. Counsel used the word mindset and said
12 your mindset was Dr. Iliescu's mindset and vice versa,
13 and you agreed with that. So what did mean by that?

14 A Right, in the context. Okay. Context is
15 everything to me. Basically whenever something came
16 down, whether it was a discussion of the lien,
17 discussion of nonrefundable monies, et cetera, we may
18 agree on some stuff, some stuff we didn't agree on, but
19 it was irrelevant. My mindset was to be his mindset.

20 In other words, whatever he decided, that's what I
21 was there to perform and get done as long as it was
22 legal. And that's what I did. So I kept him informed
23 and he gave me direction, i.e., through himself or
24 through Hale Lane who was supposedly helping him. And

1 that's where it went. So that's what I mean by
2 mindset. I never did something that he didn't want to
3 do knowingly-- I never knowingly did anything that he
4 didn't want.

5 Q And you maintained the file for this land, for
6 this project, so that Dr. Iliescu didn't have to?

7 A It turned out that way. I mean, just by habit
8 I tend to keep stuff. And I'm not sure what he does,
9 but I keep so that I have it. That's the answer. So
10 how much of the stuff he kept or didn't keep, I
11 couldn't even begin to tell you. I know I kept
12 everything he and I did.

13 Q There were times when the title company would
14 call you instead of calling Dr. Iliescu directly with
15 respect to new developments-- Well, that's a bad term.
16 --new things happening with his land?

17 A Well, it did happen at times, i.e., the lien,
18 she called first, but that was a courtesy on her part
19 to say, "Do you know what's going on? Because I don't
20 know what's going on."

21 And the answer was, "I don't either. Let's get
22 ahold of doc and find out."

23 Q Okay. And did you get ahold of Dr. Iliescu to
24 talk about the lien?

1 A I can guarantee you within 24 hours, if not 24
2 minutes. It was as soon as I could.

3 Q And how did he respond when he heard there was
4 a lien?

5 A He had the same reaction that Maryann had when
6 I asked her, first of all, How could they even lien
7 him? There's nothing there to lien. I'm not involved
8 in this.

9 Q All right. And did Dr. Iliescu ever remark
10 that he had actually received a formal service of the
11 lien?

12 A I don't know if he did or not.

13 Q All right. Now, you mentioned-- or actually
14 counsel was talking about this issue and I think you
15 were agreeing with him. When he was talking to you
16 about this double escrow and the difference between the
17 price that BSC investors, whatever it's called, was
18 going to pay Dr. Iliescu versus the money that
19 Wingfield Towers, LLC was going to pay BSC, in your
20 experience do development entitlements enhance the
21 value of a parcel of commercial property?

22 A Generically the answer is yes.

23 Q So it's fair, isn't it, that after the city
24 council approved the tentative map on November 15,

1 2006, the real value of the land and the entitlements
2 together was worth more than the land was worth without
3 entitlements a year earlier?

4 A I don't necessarily agree with that. They had
5 the entitlement to move forward on certain terms and
6 conditions, but those terms and conditions weren't in
7 total the-- something that they could forward and sell
8 to somebody else, i.e., the architect's plans, they
9 couldn't sell those, they didn't own them. So there's
10 different pieces of it that wouldn't be able to be
11 transferred.

12 I don't see the value until you get past the
13 approval for-- building approval with all the
14 contingencies satisfied, because there were numerous
15 conditions that was put on.

16 Q But the special use permit did in fact enable a
17 developer to do a hillside development, for example?

18 A Correct.

19 Q And the special use permit did entitle a
20 developer to build a hundred or more condominium units
21 on that parcel; true?

22 A At that time. As it went down further, they
23 started losing that. The last tentative gave them the
24 right for one year. But if you applied for the same

1 thing today, there's no way-- you could get probably
2 half of it, something in that area. So it's half of
3 what it used to be.

4 Q You made an important point about the-- A
5 subsequent owner of this property couldn't necessarily
6 advance based on the tentative permit-- I'm sorry, the
7 tentative map that had been approved by the city
8 because a subsequent owner may or may not have the
9 right to use the architectural drawings?

10 A I used that as one example, yeah. There's
11 also-- I mean, there's studies, there's phase 1s, phase
12 2s. I was trying to grasp at a straw. Those are
13 probably better examples. And they're only good for
14 the person that ordered them. Anybody else comes in,
15 they have to get their own.

16 Q And so the point that I think you hit on is
17 that the architect's drawings, the architect's design
18 documents, are actually part and parcel of the special
19 use permit and the tentative map, right?

20 A No, I'm saying they're not.

21 MR. PEREOS: Objection; lack of foundation.

22 THE COURT: The answer will be stricken and not
23 considered.

24 Can you lay some more foundation?

1 MR. HOY: Sure.

2 THE COURT: Mr. Hoy.

3 BY MR. HOY:

4 Q If I understand your testimony, the City of
5 Reno approved a tentative map for land owned by Dr. and
6 Mrs. Iliescu. The tentative map is based on the
7 drawings by the architect, right?

8 A Okay.

9 THE COURT: Well, not "okay." Is that accurate?

10 THE WITNESS: I'm not sure if it is. I don't know
11 that it isn't. Okay.

12 THE COURT: Well, I think--

13 THE WITNESS: I mean, you've got the--

14 THE COURT: Mr. Johnson, hold on a second. Stop.

15 Your testimony is not to be based on speculation or
16 guess, it's based on what you do or do not know. And
17 so if Mr. Hoy or Mr. Pereos suggests something to you
18 that you either have no personal knowledge of or you
19 don't know to be true, I don't want you to just say
20 "okay" as if that is your understanding as well.

21 They're suggesting to you, Do you know this fact?
22 And if you don't know it, then they can't, in my
23 opinion, ask a follow-up question unless you know the
24 predicate fact.

1 So why don't we step back. Mr. Hoy, you can ask
2 the question again. And then, Mr. Johnson, if you can
3 acknowledge whether or not you have that personal
4 knowledge.

5 BY MR. HOY:

6 Q Mr. Johnson, can you turn to Exhibit 38,
7 please.

8 MR. HOY: Exhibit 38, Your Honor, is the Revised
9 Tentative Map dated May 15th, 2006.

10 BY MR. HOY:

11 Q Mr. Johnson, do you know whether or not this
12 Exhibit 38 is the tentative map that was approved by
13 the city council on November 15th, 2006?

14 A I don't know if it was or not other than it is
15 written that it was on the bottom of it.

16 THE COURT: But do you have-- assuming that you
17 don't see that written on the bottom, Mr. Johnson--

18 THE WITNESS: I wouldn't know if that's the map
19 that was done or not, because I never was there to look
20 at it originally.

21 THE COURT: Next question.

22 BY MR. HOY:

23 Q Generally, in your experience, if a tentative
24 map is based on the work product from a design

1 professional, is it your view that subsequent owners
2 cannot use the tentative map unless they go get
3 permission from the designers who created the design?

4 A That is my understanding.

5 Q All right. Thank you.

6 THE COURT: Do you have any recross--

7 I'm sorry. Are you finished, Mr. Hoy?

8 MR. HOY: Just one more line.

9 THE COURT: That's fine. When you said, "Thank
10 you," I just thought that that was the conclusion. Go
11 ahead.

12 BY MR. HOY:

13 Q You testified on cross to the effect that the--
14 when you found out about the lien, you and Dr. Iliescu
15 believed that the lien was the developer's problem. Do
16 you remember that testimony?

17 A Um-hum.

18 Q Yes?

19 A I don't think it was said exactly that way, but
20 I do agree with that statement.

21 Q And then there was an indemnity agreement that
22 was signed by the developers and some of the
23 individuals affiliated with the developer to protect
24 Dr. and Mrs. Iliescu against this mechanic's lien;

1 true?

2 A True, through Hale Lane.

3 Q Did you participate in any discussions with
4 Dr. Iliescu or Hale Lane or anybody else that led to
5 that indemnity agreement?

6 A Well, when the lien was received and we found
7 out about it and what have you-- Maryann Infantino's
8 husband is a contractor, by coincidence. I asked her
9 how they could even lien something that he had no
10 knowledge of. And then I was told that, yes, it can be
11 done maybe.

12 She told me it couldn't be done. I'm sorry. Let
13 me back up here. She said it couldn't be done. And
14 then later I was told that some place there was a court
15 case where, yeah, maybe it could be done. So I don't
16 know the answer to it.

17 In the industry the people I asked here would all
18 tell you that, no, you have to have a pre-lien notice.
19 So that's what I believed and still believe should be
20 the case today, but I understand there may be a
21 loophole in that.

22 Q And did you have any specific discussions with
23 Dr. Iliescu about this indemnity agreement?

24 A Not that I recall other than to tell him that I

1 talked with Hale Lane about it.

2 Q Did you have any role in drafting the indemnity
3 agreement?

4 A I don't recall having had one. If I saw it and
5 read it, I would tell you more certainly. Is there a
6 document here? Is it in these?

7 Q Have you had any discussions with Dr. Iliescu
8 about enforcing the indemnity agreement?

9 A No.

10 MR. HOY: Nothing further. Thank you.

11 THE COURT: Mr. Pereos, do you have any recross
12 based on the redirect?

13 MR. PEREOS: And I'll say no if you do a recess.

14 THE COURT: Well, I don't know that I'm being Monty
15 Hall today, but I'm giving you the opportunity to ask
16 recross questions.

17 MR. PEREOS: No, that's fine, Your Honor. I have
18 nothing further.

19 THE COURT: Mr. Johnson, you may step down. We're
20 about ten minutes before your required--

21 THE WITNESS: Thank you.

22 THE COURT: And please leave Exhibit No. 4 there
23 with the other exhibits.

24 THE WITNESS: Okay.

1 THE COURT: And safe travels to you, sir.

2 THE WITNESS: Thank you very much for your
3 cooperation.

4 THE COURT: As Mr. Pereos has noted, we've been now
5 here for almost three hours this morning going over the
6 testimony. I think it's appropriate to give my staff
7 and the parties the opportunity to take a break. It's
8 approximately 25 minutes, if the clock on the wall is
9 correct, after 11:00.

10 Would the parties be willing to break now for the
11 morning and return at 1 o'clock and begin testimony
12 with the next witness at 1 p.m.?

13 On behalf of the plaintiffs, Mr. Hoy.

14 MR. HOY: Yes, Your Honor.

15 THE COURT: And, Mr. Pereos--

16 MR. PEREOS: If it helps Mr. Hoy in lining up his
17 witnesses, that's okay with me.

18 THE COURT: Normally, like I said, we'll start at
19 1:15, but we didn't take a break and so I'm just trying
20 to keep us on track as much as possible.

21 Court will be in recess until 1:00 p.m.

22 (The lunch recess was taken at 11:25 a.m.)

23 --o0o--

24 RENO, NEVADA; MONDAY, DECEMBER 9, 2013; 1:00 P.M.

1 --o0o--

2 THE COURT: I almost said will counsel stipulate to
3 the presence of the jury, but that would just be me, so
4 I'm here. Mr. Hoy is present, as is Mr. Steppan.
5 Dr. Iliescu and Mrs. Iliescu are present, as is
6 Mr. Pereos.

7 Mr. Hoy, your next witness, please.

8 MR. HOY: Plaintiff calls Brad Van Woert.

9 THE CLERK: Raise your right hand.

10 (The Clerk administered the oath
11 to the prospective witness.)

12 KENNETH BRADLEY VAN WOERT, III,
13 having been called as a witness herein,
14 being first duly sworn, was examined
and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HOY:

17 Q Good afternoon. Will you please give us your
18 full legal name for the record.

19 A Kenneth Bradley Van Woert, III.

20 Q Mr. Van Woert, what is your profession or
21 occupation?

22 A I'm an architect.

23 THE COURT: Can you spell your last name for me,
24 please.

1 THE WITNESS: It's capital V-a-n, capital
2 W-o-e-r-t.

3 THE COURT: Thank you, sir.

4 BY MR. HOY:

5 Q Mr. Van Woert, can you please tell the Court
6 about your educational background after high school.

7 A Yes. I have a bachelor of architecture degree
8 from the University of Oregon. I received that in
9 1972.

10 Q All right. And have you ever been registered
11 as an architect in any jurisdiction?

12 A Yes. I am currently registered in three
13 states, in this state, Nevada, and in Oregon and in
14 California.

15 Q How long have you been registered in the state
16 of Nevada?

17 A Since 1976.

18 Q Do you have the designation NCARB, N-C-A-R-B?

19 A Yes, I do.

20 Q Can you please explain to the Court what that
21 means.

22 A It is a board that certifies your registration
23 in the state of Nevada and it also states that you've
24 met all the requirements for each of the states that I

1 am registered to practice architecture in. It also
2 allows you reciprocity rights to other states to
3 practice architecture.

4 Q Have you ever heard the acronym AIA?

5 A Yes.

6 Q What is AIA?

7 A The American Institute of Architects.

8 Q Are you a member of the AIA?

9 A Yes, I am.

10 Q Are you a member of any local chapters of the
11 AIA?

12 A Yes, I am a member of the AIA Northern Nevada
13 chapter.

14 Q Have you received any professional awards for
15 your work as an architect?

16 A Yes. In 2009 I was the-- personally I was the
17 recipient of the AIA Nevada Silver Medal Award which is
18 a statewide honor given to individuals for service in
19 the profession. And in 2011, our firm, Van Woert
20 Bigotti Architects, was bestowed from the same
21 organization the firm award.

22 Q And have you personally received any awards for
23 actually designing projects as opposed to giving
24 service to the organization?

1 A Yes, our firm, awards for design of particular
2 buildings, we have received many awards. In
3 particular, the computer animated visual effects
4 building at the Desert Research Institute got an honor
5 award from the state AIA. We received awards for Holy
6 Cross Catholic Church, for the health sciences building
7 at the University of Nevada Medical School, and others.

8 Q Do you serve on any boards for the University
9 of Nevada?

10 A Not at this time, but I'm a past member of both
11 the advisory boards of the College of Engineering at
12 UNR and the College of Arts and Sciences at UNR.

13 Q How long have you actually been practicing
14 architecture in Nevada?

15 A Since my graduation in 1972. I started work in
16 Reno for the firm of Casazza, Peetz and Associates. I
17 received my license during that tenure there. And then
18 I went to work for the firm of Sheehan Haase Architects
19 of which I became a partner of that firm in 1980.

20 Q And Hasse is spelled H-a-s-s-e?

21 A H-a-a-s-e.

22 Q Okay. Thank you.

23 Are you familiar with the term schematic design?

24 A Yes, I am.

1 Q Are you familiar with the term programming as
2 it relates to architecture?

3 A Yes.

4 Q Are you familiar with the term design
5 development as it relates to architecture?

6 A Yes.

7 Q Are you familiar with the term construction
8 drawings and technical specifications?

9 A Yes.

10 Q Can you please give the Court an overview of
11 the different phases of design that typically go into a
12 commercial project.

13 A I'll do my best. Basically--

14 THE COURT: One moment, Mr. Van Woert.

15 Mr. Pereos, do you have any objection to him
16 testifying in a narrative?

17 MR. PEREOS: No, that's okay.

18 THE COURT: Go ahead. You can just-- in a general
19 sense just tell me the answer to the question.

20 THE WITNESS: I'll try to do this as quickly as I
21 can.

22 THE COURT: That's okay.

23 THE WITNESS: The design process for the design of
24 any building is a process basically broken down into

1 these four to five stages from initial beginning until
2 its end. The schematic design-- The programming phase
3 is the initial set of meetings that determines the
4 scope and size and aptitude of what the project will be
5 as it goes forward. Whether it be a small project or a
6 large project, the process is the same throughout.

7 Once those parameters for the design of the square
8 footages and such are established and the actual
9 program developed for the project, you go into the
10 schematic design phase which is by far the key phase of
11 any design project where it's the marriage between not
12 only the technical aspects of what this project will
13 look like by the experiential ideas that go forth to
14 make the building what it is.

15 Once that character is established, you then go
16 into the design development phase which starts to
17 delineate what the technical aspects of the project
18 are, building materials, how those materials go
19 together, and the initial explorations of how it will
20 be structurally built mechanically and electrically
21 supported as well.

22 Once there's agreement on that stage, you go into
23 the contract document stage which is the production of
24 all-- what we call the working drawings which are, I

1 guess, in lay terms the blueprints and the
2 specifications that go forth to establish the final
3 costs and the documents that are used for the
4 construction of the project.

5 The bidding and award phase is when the contractor
6 establishes either a cost for that or establishes a bid
7 price for that project.

8 And then the contract administration phase is the
9 monitoring of the construction process from beginning
10 to end.

11 THE COURT: Is the bidding phase part of the
12 contract document stage?

13 THE WITNESS: They're usually separate.

14 THE COURT: Okay. So you had said four. And so as
15 I was writing making notes to myself, we got up to six.
16 So the contract document stage is basically the
17 blueprint stage where you're making, as I understand
18 it, the actual documents that will be used to construct
19 the building, what people commonly refer to as the
20 blueprints; is that right?

21 THE WITNESS: That's correct.

22 THE COURT: And then what comes after the contract
23 document stage?

24 THE WITNESS: The bidding and award phase. If this

1 was a traditional design, bid, build, delivery method
2 for the project, they would go out, in quotes, on the
3 street and a number of qualified contractors would bid
4 on the project. An award would be given to the most
5 responsible bid and then the construction would happen
6 thereafter.

7 THE COURT: So at the bidding and award phase,
8 that's where you're in essence establishing who the
9 general contractor is going to be?

10 THE WITNESS: That's correct.

11 THE COURT: You don't need to lean into the
12 microphone. I can hear you fine, Mr. Van Woert.

13 And then after the building and award phase, did
14 you then say that the-- then there's just basically a
15 monitoring phase?

16 THE WITNESS: It's called contract administration.

17 THE COURT: Okay.

18 THE WITNESS: There are questions in the field that
19 arise during the course of construction, there are
20 responses for information, and the architect and its
21 consultants are a party to that process.

22 THE COURT: So the programming phase is where the
23 scope, size, aptitude of the project will be designed,
24 basically what type of project we're doing. The

1 schematic phase is the integration of the experience
2 itself and how the building is going to look. The
3 design and development phase is what-- as I wrote it
4 down as I was listening to you, what physically will be
5 needed to construct this building, you know, the
6 materials and things of that nature. The contract
7 document stage is where the blueprints are made and the
8 documents that are actually created that will be used
9 to build the building.

10 The bidding and award phase we've just discussed.
11 And then the contract administration phase which is
12 kind of like a follow-up or an answering any questions
13 kind of phase in layman's terms; would that be
14 appropriate?

15 THE WITNESS: Yes.

16 THE COURT: Did I get all those right?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 THE WITNESS: Very good.

20 THE COURT: I guess I can be an architect. Thank
21 you very much.

22 Go ahead, Mr. Hoy. I apologize.

23 I wasn't trying to minimize your experience, sir.

24

1 MR. HOY: Thank you, Your Honor.

2 BY MR. HOY:

3 Q Mr. Van Woert, have you had to apply the
4 schematic design definitions in your practice over the
5 years?

6 A Yes.

7 Q Can you explain to us how that would come up in
8 your practice.

9 A On nearly every project that has gone through
10 our office in our practice, we have taken the project,
11 large or small, through each one of these five to six
12 phases. And whether it be a school, which we've done
13 like the last 23 elementary schools in Washoe County,
14 that same process of developing the program of what
15 goes into that particular project, the development of
16 what the experience will be and what the building's
17 image will be is done during that schematic phase and
18 then onward through each and every one.

19 Q And is the basic concept of a schematic design
20 different for a hotel versus an office building versus
21 some other form of commercial project?

22 A In my opinion the process is identical
23 regardless of the size of the project.

24 Q And regardless of the type of project?

1 A Correct.

2 Q Have you been hired to do any work for this
3 litigation?

4 A Yes.

5 Q What have you been hired to do?

6 A I have been hired to review the schematic phase
7 documents that were presented for this project to
8 determine if they meet the level and the completeness
9 for being a schematic package submittal.

10 Q And what did you do-- Did you look at any
11 documents as part of your study?

12 A Yes, I did.

13 Q What documents did you look at generally?

14 A There were a series of exhibits that were
15 presented. The package basically included site plans,
16 floor plans, building sections, exterior elevations, 3D
17 renderings, solar studies and a computer animated
18 fly-through of the project, et cetera.

19 Q All right. And did you form any opinions based
20 on your study?

21 A Yes. It was my opinion that the design and
22 technical documents that were produced by Mark Steppan
23 and Fisher-Friedman meet or exceed the standards of a
24 schematic design phase package for a project like this.

1 MR. HOY: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. HOY:

4 Q Mr. Van Woert, I ask you to take a look at
5 Exhibit No. 6 at page--

6 Let me back up. Most of the pages in our exhibits
7 have what we call Bates numbers in the lower right-hand
8 corner and they identify the party who produced the
9 document in discovery and then the page number so that
10 we have a unique number on everything.

11 I would like to ask you to turn to page Steppan
12 7513 and take a look at Article 2.4. This is the
13 master-- what I call the master agreement between Mark
14 Steppan and BSC Financial, LLC for a project that
15 became known as Wingfield Towers.

16 First of all, are you familiar with the AIA B141
17 document?

18 A Yes.

19 Q Can you please explain to the Court what an AIA
20 document B141 is.

21 A It is a form of agreement between an owner and
22 an architect. And it is a document provided by the
23 American Institute of Architects.

24 Q Is it a standard form that is typical for

1 commercial projects?

2 A Yes, it is.

3 Q So under Article 2.4, Design Services, we see
4 schematic design documents, design development
5 documents, construction documents and construction
6 procurement services. Do those descriptions of the
7 various forms of documents line up with the categories
8 of design work that you testified about earlier?

9 A Yes.

10 Q And in this case we never reached design
11 development, so we're going to be just focused on
12 schematic design documents.

13 THE COURT: Are you on 7513?

14 MR. HOY: Yes, Your Honor.

15 THE COURT: Thank you. Go ahead.

16 MR. HOY: It's Section 2.4.2 is the definition of
17 schematic design documents.

18 THE COURT: Thank you.

19 BY MR. HOY:

20 Q And just so we have this in the record,
21 Mr. Van Woert, I'm just going to read this, this
22 definition, to you.

23 "The architect shall provide schematic design
24 documents based on the mutually agreed upon program

1 schedule and budget for the costs of the work. The
2 documents shall establish the conceptual design of
3 the project demonstrating the scale and relationship
4 of the project components. The schematic design
5 documents shall include a conceptual site plan, if
6 appropriate, and preliminary building plans, sections
7 and elevations. At the architect's option, the
8 schematic design documents may include study models,
9 perspective sketches, electronic modeling or
10 combinations of these media. Preliminary selections
11 of major building systems and construction materials
12 shall be noted on the drawings or described in writing."

13 Let me start at the end. Based on the-- Let me
14 back up.

15 Do you know a term called instruments of service?

16 A Yes.

17 Q What does that term mean to you as an
18 architect?

19 A It is basically the product that is put forth
20 to the level that is agreed upon for each one of these
21 packages that go forth in any project.

22 Q All right. In copyright law we talk about
23 fixing ideas in a tangible medium. Is that what an
24 instrument of services is, just a tangible medium?

1 A I like that. Yes, it is.

2 Q Based on the schematic design documents that
3 you've reviewed, could you determine the basic
4 construction of the building-- the buildings?

5 A Yes.

6 Q And what is the basic construction of the
7 buildings?

8 A It was basically a structural concrete frame
9 with a glass curtain wall surrounding it.

10 Q Okay. And could you tell from the schematic
11 design documents that you reviewed that there was some
12 structural engineering done in order to determine
13 column spacing, floor thicknesses and that sort of
14 thing?

15 A Yes. On the floor plans all the column layouts
16 were shown. And in the building sections, which cuts
17 through the building itself, all the structural
18 elements were noted as well.

19 Q Okay. Now, somewhere in this contract there's
20 a reference that the mechanical systems may be done on
21 a design build basis. Can you please explain to the
22 Court what a design build would be with respect to
23 mechanical systems.

24 A Yes. Once a contractor is selected, you can

1 bring on board a mechanical subcontractor that would
2 actually do the work, but he would have with him an
3 engineering firm or engineering capability in his
4 office so that not only would this mechanical
5 subcontractor provide the actual construction of the
6 mechanical system, he would provide the design as well.

7 Q Okay. So for a local example, Gardner
8 Engineering would be a mechanical subcontractor that
9 had engineers in house?

10 A That's correct.

11 Q All right. Aside from that did you see
12 anything in the schematic design documents indicating
13 that there was some preliminary design of the heating
14 and air conditioning and ventilation systems for the
15 Wingfield Towers project?

16 A Yes. And I don't know what exhibit it was, but
17 there was a note by a-- I think it was C&B Mechanical
18 Consulting that had talked about the system that would
19 be used for the project.

20 Q And could you identify for the Court who the
21 structural engineer was who was involved in this
22 schematic design?

23 A I believe his name was Ron Klemencic who did
24 some preliminary studies on what the structural system

1 should be.

2 MR. HOY: And for the record, Klemencic is spelled
3 K-l-e-m-e-n-c-i-c, I believe.

4 THE WITNESS: Yes.

5 BY MR. HOY:

6 Q All right. This Section 2.4.2.1 says that the
7 schematic design documents shall include a conceptual
8 site plan, if appropriate. Did you see a conceptual
9 site plan anywhere in the schematic design documents
10 created by Steppan and Fisher-Friedman?

11 A Yes, there was one provided.

12 Q Okay. Did you see any preliminary building
13 plans?

14 A Yes.

15 Q Did you see any sections?

16 A Yes.

17 Q Did you see elevations?

18 A Yes.

19 Q Did the documents that you reviewed establish
20 the conceptual design of the project illustrating the
21 scale and relationship of the project components?

22 A Yes, it did.

23 Q Can you please elaborate a little bit on that
24 phrase, "illustrating the scale and relationship of the

1 project components." What does that mean to you as an
2 architect?

3 A Yeah. In this case, this is a building that
4 was designed in context so that there was an
5 environment around it. So this was just not a-- the
6 drawings that showed the building itself, it showed its
7 contextual relationship in and around it so that all
8 the vehicular and pedestrian scale and proportions were
9 noted with actual renderings and 3D modeling. And
10 there was actually a physical model that was done that
11 showed all the existing buildings around it.

12 So the package was very complete in showing not
13 only the technical aspects of what the building would
14 be, but, as I mentioned before, the experience of what
15 it would be like to be in and around this building.

16 Q I would like to ask you to turn to Exhibit No.
17 7, please. And if you could turn to-- it's page
18 Steppan 7521, and Section 1.5. This is an addendum
19 that modifies Exhibit No. 6. And it modifies the term
20 schematic design to include the City of Reno
21 entitlements process.

22 Now, did you verify whether or not the City of Reno
23 granted entitlements based upon the schematic design
24 prepared by Steppan and Fisher-Friedman?

1 A I'm not sure, no.

2 Q All right. Below that it says, "The
3 definitions--" And it's referring to schematic design,
4 design development, construction documents and
5 construction administration. It says, "The definitions
6 can be found in the American Institute of Architects
7 Handbook of Professional Practice, Volume 2, Sections
8 3.6, Design Services, 3.7, Design Parameters, 3.8,
9 Design Documentation, Exhibit 3.9, Construction-Related
10 Services."

11 Did you in the course of doing your work for this
12 case go back and review that AIA Handbook of
13 Professional Practice and those definitions that are
14 referenced there?

15 A Yes, I did.

16 Q And did you satisfy yourself that those
17 definitions were satisfied at least with respect to
18 schematic design for the Wingfield Towers project?

19 A Yes, I did.

20 Q Now, is there any overlap between schematic
21 design and design development?

22 A The entire design process is an endless fluid
23 process. So I guess the short answer would be yes.

24 But you usually come to the end of one phase and get an

1 understanding with all the other professionals involved
2 and your client and get agreements before you go on to
3 the next.

4 THE COURT: There might be some flow from the
5 schematic design phase into the design development
6 phase but there would be no flow from the schematic
7 design phase into, say, construction documents, because
8 there's something in between the two of them? Does
9 that make sense?

10 THE WITNESS: Could you repeat that? Between the
11 schematic phase--

12 THE COURT: As they're listed, there's the
13 schematic design phase, the design development phase
14 and then the construction documents phase. You're
15 saying you kind of flow from one into the next one, but
16 you're not overlapping, you know, from one into three
17 and into four, are you?

18 THE WITNESS: That's correct. We're not
19 hopscotching from one to the other.

20 THE COURT: Nothing gets done without the schematic
21 design phase being completed or in the process of
22 completion?

23 THE WITNESS: That's correct.

24 THE COURT: You move to the next phase; is that

1 right?

2 THE WITNESS: That's right.

3 THE COURT: Okay.

4 BY MR. HOY:

5 Q And the design elements that are in the
6 schematic design phase are carried forth into the
7 design development phase, right?

8 A Correct.

9 Q And then carried forth even further into the
10 construction documents?

11 A That's right.

12 Q If the definition of design development
13 requires a thing that is not set forth in the
14 definition of the schematic design, does that tell you
15 that the thing that's mentioned in design development
16 is not part of schematic design?

17 A Yes.

18 Q All right. I ask you to turn to Exhibit No.
19 37. This is the-- Mr. Van Woert, if you could take a
20 moment to very quickly go through this exhibit, and
21 don't look at every page necessarily, but just tell me
22 whether or not this exhibit includes any of the
23 documents that you reviewed and relied upon to reach
24 your opinion for this case.

1 A Yes, I did review this document.

2 Q Would you turn to Exhibit 38, please. Exhibit

3 38 is a revised tentative map dated May 15th, 2006.

4 Did you-- do you rely upon Exhibit 38 in part for your
5 opinions offered in this case?

6 A Yes.

7 Q Can you please describe how Exhibit 38 ties
8 into your opinions in the case. What does Exhibit 38
9 tell us about the schematic design for the Wingfield
10 Towers?

11 A I'm not too sure where you're going with this,
12 but I-- this is the package that went forth to the city
13 which basically qualifies as a schematic design phase
14 package, but it does talk about the site
15 characteristics, the scope of the project, how the
16 project would be constructed and all the parameters
17 such as heights and widths and description of floor
18 plans are all included in this package.

19 THE COURT: And by "this package," you're just
20 talking about Exhibit 38?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. HOY:

24 Q I ask you to turn to Exhibit 39.

1 THE COURT: So I don't really think he answered the
2 question, though.

3 Mr. Van Woert, is Exhibit 38 something that you
4 would use in coming to the conclusion that the SD phase
5 had been completed?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 BY MR. HOY:

9 Q Can you please turn to Exhibit 39.

10 A Yes.

11 Q And the first page of Exhibit 39 is entitled
12 Site Plan. Does this first page, this site plan, have
13 any bearing on your opinion that the schematic design
14 phase was complete for the Wingfield Towers project?

15 A Yes. This is a site plan of the project which
16 would be a basic requirement of the schematic phase.
17 And it's illustrative as well. So we're talking about
18 not only the technical aspects of it but the
19 experiential aspects of the design.

20 Q And the next page is numbered Steppan 7930 and
21 it's entitled East Elevation. Does this document bear
22 upon your opinion that the schematic design phase was
23 complete?

24 A Yes, it does.

1 Q Can you please explain why.

2 A It is-- as a requirement for the schematic
3 design page-- phase, you would produce exterior
4 elevations of what the building would look like and
5 what its character would be, and this is an
6 illustration that shows that.

7 Q The next page, Steppan 7391, does this east
8 elevation/section bear on your opinion that the
9 schematic design phase was complete?

10 A Yes. This is another exterior elevation that
11 shows the character of the building as well as the
12 combined section through the building that shows how
13 the parking would work in relationship with the
14 building.

15 Q The next page, 7392, north elevation, does this
16 page bear on your opinion?

17 A Yes, it does. It is in keeping with the other
18 drawings provided.

19 Q The next sheet is 7393. Does this north
20 elevation bear on your opinion?

21 A Yes, it does. It shows the building in its
22 elevation but also in context with the other buildings
23 that are around it.

24 Q Can you please explain-- please elaborate on

1 that. What are the other buildings that are around it?

2 A There's a-- it looks to me that there's a tower
3 sitting in front of this building with the new project
4 behind it.

5 Q So that's that Park Tower on the corner of
6 Arlington and Island?

7 A Yes.

8 MR. PEREOS: Objection; leading and suggestive.

9 THE COURT: I'm familiar with the area that we're
10 talking about. I'll sustain the objection. But I'll
11 let both parties know, I've worked in this area for 22
12 years now, so I'm pretty familiar with where we're
13 talking about.

14 BY MR. HOY:

15 Q All right. The next sheet is 7394. Does this
16 sheet bear on your opinion?

17 A Yes, it does, as before.

18 Q The next sheet is 7395, west elevation. Does
19 this bear on your opinion?

20 A Yes, it does.

21 Q And can you please explain why.

22 A It has the same characteristics as the other
23 drawings that are required for schematic design phase
24 submittal.

1 Q The next sheet is 7396, west elevation. And
2 then the page after that is another west elevation with
3 a section of the garage. Do those both bear on your
4 opinions in the case?

5 A Yes, in the same way as before. 7396 shows the
6 building in its context as well.

7 THE COURT: Can I ask a question of clarification?
8 In looking at these documents, is it contemplated that
9 the gray large house that is there, is that something
10 that Mr. Iliescu owns? I think that Mr. Horn's office
11 is located in there. But as I'm looking at the west
12 elevation, I'm just trying to think where that big
13 house that's right there on the corner is.

14 It might be that I'm just not thinking exactly of
15 where it would be located. Because you go south on
16 Arlington, if you look left, there's the Arlington
17 Towers that is depicted here in 7396. And then after
18 that, as you turn on Court Street, there's a gray
19 house-like building there. Is that somewhere here or I
20 am just missing it or was it contemplated that that
21 would be taken down as part of the project?

22 MR. HOY: I believe Your Honor misspoke. This is
23 not the Arlington Towers.

24 THE COURT: I know this building that we're talking

1 about right here. It's not the Arlington Towers,
2 you're right. It's this multicolored apartment
3 building. I know where Mr. Iliescu's-- Mr. Iliescu's
4 business, I believe, is depicted as the smaller
5 building in 7393 on the left. Is that correct?

6 And then the building to the right is the apartment
7 structure that's there. Then up behind that somewhere
8 is this gray house that I'm-- this gray building I'm
9 talking about. I was just wondering where it was, or
10 if it was not part of-- or if it's going to be
11 demolished as part of this construction, if you know.

12 MR. HOY: I can't answer that, Your Honor.

13 THE WITNESS: Your Honor, if you go to 7395, the
14 gray house would be in the foreground and it's not
15 shown in this. So if you go to the site plan, which is
16 7389, that image that you're looking at is taken right
17 at the edge of the existing structure which is Park
18 Tower, I believe, and then cuts through to where the
19 colored landscape would be. The gray building is in
20 the front of that.

21 THE COURT: I understand.

22 THE WITNESS: So you can see the way they made
23 their drawing depicting the new project and not the--
24 so that in that realm, the Park Tower would show as a

1 contextual element, but the gray house would not,
2 because it's in the foreground.

3 THE COURT: I appreciate that, Mr. Van Woert. And
4 that's true, it would be in the--

5 THE WITNESS: That triangular piece-- Excuse me.
6 --is part of where the gray house is.

7 THE COURT: I just wanted to make sure as I was
8 looking at those that I wasn't all of a sudden thinking
9 about the wrong piece of property, because I was pretty
10 confident I knew what we were talking about. But it
11 would be in that triangle area there on Flint, Island--
12 Not Flint. Excuse me. --Court, Arlington and Island
13 in that triangular area that would be-- What would
14 that be? --west.

15 THE WITNESS: West.

16 THE COURT: Go ahead. I apologize for interrupting
17 your questions, Mr. Hoy.

18 MR. HOY: Thank you.

19 May I approach the witness?

20 THE COURT: You may.

21 BY MR. HOY:

22 Q Please turn to Exhibit 40.

23 MR. PEREOS: What exhibit did you say?

24 MR. HOY: Four zero.

1 BY MR. HOY:

2 Q Mr. Van Woert, I'm asking you to take a look at
3 Exhibit No. 40 which is in evidence. It's the printout
4 of a PowerPoint presentation. Did you review a
5 PowerPoint presentation for the Wingfield Towers
6 project as part of your workup for this case?

7 A Yes, I did.

8 Q Unfortunately, these pages are not numbered, so
9 we'll just go through them-- not all of them. Let's
10 look at a picture-- it's actually a photograph called
11 Looking Northeast from McCarran Boulevard at Caughlin
12 Parkway. Do you find that page?

13 A Yes.

14 Q And I promise I won't go backwards as we go
15 through this. We're only going forward.

16 Does this photograph bear upon your opinion that
17 the schematic design phase was completed for the
18 Wingfield Towers project?

19 A Yes, it does.

20 Q Can you please explain why.

21 A Part of the schematic phase, as I was talking
22 about before, was that not only is this a study of what
23 the building looks like but how it sits in its
24 environment. And this is a drawing with the new

1 project superimposed into the landscape to show you how
2 it fits in with the rest of the skyline in the city.

3 And it can be used as a study to understand what the
4 impacts of this project will be upon its completion.

5 Q I would like to ask you to move forward to a
6 sheet that's got some-- I don't know what it's made out
7 of, plastic or foam or something.

8 A Yes.

9 Q Are you with me?

10 A Yes, I am.

11 Q Can you please-- Does this photograph of
12 modeling bear upon your opinion that the schematic
13 design phase was complete for Wingfield Towers?

14 A Yes, it does.

15 Q Can you please explain why.

16 A It does much the same as that photo montage did
17 on the last image, but this puts the building in its
18 urban context in relationship with all the buildings
19 that are downtown and in and around the city.

20 THE COURT: And it's the taller building in the
21 upper right-hand corner, the taller two buildings
22 there; is that right?

23 THE WITNESS: Yes.

24 THE COURT: Just so I'm clear, it's that?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 MR. HOY: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. HOY:

6 Q Mr. Van Woert, can you please find page-- I
7 apologize. Mine is in black and white.

8 THE COURT: Can I see what you're looking at,
9 Mr. Hoy?

10 MR. HOY: Yes, Your Honor. I apologize to the
11 Court. I should have just put this on a projector.

12 THE COURT: Mr. Van Woert, it's actually one page
13 before that last page you were looking at, not after.

14 THE WITNESS: Okay. We went backwards.

15 BY MR. HOY:

16 Q Can you explain to the Court what this document
17 is and how it was prepared?

18 A This looks like an aerial photograph in which
19 drawings or blacked-out images have been overlaid of
20 all the buildings in this area.

21 Q And does this sheet show the proposed Wingfield
22 Towers?

23 A As I see it, it does not, unless I'm on the
24 wrong drawing.

1 THE COURT: The one I'm looking at-- I certainly am
2 not offering evidence, but I would tend to agree with
3 Mr. Van Woert, if--

4 I actually have a laser pointer. I don't know if
5 it would help.

6 This area right here, this is the courthouse where
7 we are right now. This is the justice court and the
8 District Attorney's Office, the Mills Lane Justice
9 Center. Here's the church right here. This building,
10 I believe, is Dr. Iliescu's office and that building is
11 the current apartment complex. And then on the corner
12 right there is the grayish house that I was talking
13 about. Am I in the right spot?

14 THE WITNESS: Judge, I just found it. There are
15 two drawings. So there's-- the drawing before the
16 image we were looking at is like in the existing
17 context. And then further on there's that same drawing
18 with the Wingfield Towers project superimposed.

19 BY MR. HOY:

20 Q So I didn't go backwards, did I?

21 A You did not. Apologies.

22 THE COURT: One moment.

23 THE WITNESS: It's probably about 20 pages forward.

24 THE COURT: I don't have my fingers right on it,

1 Mr. Hoy, but go ahead. I assume that it's there.

2 Oh, here it is. I've got it.

3 BY MR. HOY:

4 Q So this Exhibit 40 contains more of the same
5 style of renderings and elevations and floor plans that
6 we've already looked at in the prior exhibits, true?

7 A Yes, true.

8 Q And those all have the same bearing on your
9 opinion that the schematic design phase was completed
10 for the Wingfield Towers project?

11 A Yes, they do.

12 Q Now, this Exhibit 40 also includes a shadow
13 study starting with June 21st, hourly shading sequence.
14 Did you look at the shadow study at all as part of your
15 preparation for your testimony?

16 A Yes, I did.

17 Q And can you explain to the Court whether or not
18 the shadow study bears on your opinion that the
19 schematic design phase was complete?

20 A Yes, it does. It bears in the sense that,
21 again, the schematic design phase studies the
22 relationship of the actual building in its context.
23 And in this case it showed where the shadows would fall
24 in any given time of day and any season.

1 Q Now, you also mentioned a video fly-through.

2 And I'm not going to show that right now. But can you
3 please explain to the Court how the video fly-through
4 bears upon your opinions.

5 THE COURT: Is that 41?

6 MR. HOY: That will be 42, I believe, Your Honor,
7 the video.

8 THE COURT: Okay. Go ahead.

9 MR. HOY: It's not in the book, Mr. Van Woert.

10 THE WITNESS: Let me work on it.

11 Yes, I did watch the video and studied it. And
12 it's indicative of a project of this nature to have a
13 fly-through that shows, again, the experience and the
14 scale and relationships to the building in its context.
15 It showed people and vehicles and things of that nature
16 and the scale of proportion of the actual building
17 itself.

18 MR. HOY: Thank you, Mr. Van Woert.

19 No more questions at this time.

20 THE COURT: One moment, Mr. Pereos.
21 Go ahead.

22 MR. PEREOS: Thank you, Your Honor.

23 May I approach the witness?

24 THE COURT: You may.

1 CROSS-EXAMINATION

2 BY MR. PEREOS:

3 Q Good afternoon, Mr. Van Woert. How are you?

4 A Good afternoon. Fine. And you?

5 Q I'm okay so far. Nobody is picking on me too
6 bad.

7 MR. PEREOS: I need clarification. Are you going
8 to make some disk or DVD available of the video
9 fly-through in the exhibit book?

10 MR. HOY: We gave the DVDs to the clerk.

11 THE CLERK: Yes, Your Honor, I have them.

12 THE COURT: Have they been admitted?

13 MR. HOY: Yes.

14 THE COURT: Then I'll view them before I make any
15 determination.

16 MR. PEREOS: Do you have a duplicate for me?

17 MR. HOY: I thought we delivered those to your
18 office, but I can certainly--

19 MR. PEREOS: Could you see that I get a copy?

20 MR. HOY: Yes.

21 MR. PEREOS: Okay. Thank you.

22 If I may continue.

23 THE COURT: Go ahead.

24 /////

1 BY MR. PEREOS:

2 Q Exactly what was the nature of your assignment?

3 A To review the documents that were submitted for
4 the project and to determine whether that package that
5 I reviewed met the requirements for a schematic design
6 phase package.

7 Q Met the requirements of a schematic design
8 phase generically or as it relates to this contract?

9 A Both.

10 Q Both. So did you look at the AIA contract to
11 see what was mandated or defined as the schematic
12 design phase?

13 A Yes, I did.

14 Q So you would agree with me that the schematic
15 design phase also included securing the entitlements?

16 A No.

17 Q No? Why not? Because it's not in the
18 agreement?

19 A No. It was in the agreement, but it was not
20 part of the schematic design phase.

21 Q What you're saying--

22 A The two are separate and apart from one
23 another.

24 Q So if I would advance the position that the

1 schematic design phase included securing the
2 entitlements as part of its definition, you would
3 disagree?

4 A Well, I don't think it matters.

5 Q That's not my question. I'm asking you whether
6 or not you would agree with the concept that as these
7 parties reached an agreement on the B141 agreement
8 marked Exhibit 6 that the schematic design phase
9 included the entitlements.

10 A No.

11 Q Did not?

12 A I think I said they were separate and apart.

13 Q Okay. So your definition in fulfilling your
14 assignment did not include looking at what was
15 submitted for the entitlements to see if they were part
16 of the schematic design completion phase of the
17 contract?

18 A No, I looked at the entitlement package.

19 Q Oh, you did look at the entitlement package.

20 Now, in that regard, did you look at Exhibit 34?

21 Excuse me. 35. Let me-- Do you have-- I got it
22 committed to memory. You don't. My apologies on that.

23 Do you have 35 in front of you?

24 A No.

1 Q Okay. Now, I am going to jump around a little
2 bit with these big books, so you can put them on the
3 floor if you need to get them out of the way.

4 Why don't you open up to 35. Tell me when you're
5 there.

6 A I'm there.

7 Q Did you look at Exhibit 35?

8 A Yes.

9 Q Okay. And Exhibit 35 is dated when?

10 A The date on the cover is January 17th, 2006.

11 Q Okay. And what was contemplated-- Oh, I'm
12 sorry. The date on the cover. Okay. And what is
13 Exhibit 35?

14 A It is a special use permit application.

15 Q Okay. And who prepared the special use permit
16 application?

17 A I don't know. It doesn't say. I believe in
18 another document it said Wood Rodgers.

19 Q And Wood Rodgers, what's the nature of their
20 business in Reno? They're located in Reno, too, are
21 they not?

22 A They're large. I think they have an office
23 here, yes.

24 Q What's the nature of their business?

1 A They're civil engineers and planners, I
2 believe.

3 Q And by "planners," we mean somebody who
4 advances a position before the various planning
5 commissions of the governmental entities; would you
6 agree with that?

7 A Yes.

8 Q Okay. All right. Now, in connection with
9 Exhibit 35, what was contemplated to be approved for
10 the planning?

11 MR. HOY: Objection; vague.

12 THE COURT: Can you rephrase the question,
13 Mr. Pereos? I'm not sure I understood it.

14 MR. PEREOS: I'll rephrase it.

15 BY MR. PEREOS:

16 Q Looking at Exhibit 35, why don't you direct
17 your attention to Bate number page 2372.

18 A Okay.

19 Q What's contemplated for approval for submission
20 to planning?

21 A Would you like me to quote the project
22 description?

23 Q Yeah, why don't you read project description.

24 A It says, "Two mixed-use towers containing

1 retail, office, health club and 390 units of
2 residential space."

3 Q Okay. Do you know if that number went upward
4 later on from 390?

5 A I don't know.

6 Q You don't know. Okay. Did you look at Exhibit
7 36?

8 A Yes.

9 Q And the date on that?

10 A February 7th, 2006.

11 Q And the author-- I'm sorry. I didn't mean to
12 cut you off.

13 A Prepared by Wood Rodgers.

14 Q Okay. And I cut you off. I didn't mean to cut
15 you off-- Sorry. --on that thing.

16 Okay. And let's go to Bate number page 2525. Does
17 that tell you what was contemplated on that report?

18 A It says, "Project description: Two mixed-use
19 towers containing retail, office, health club and 394
20 units of residential space."

21 Q Okay. Let's go to 37, Exhibit 37. Do you have
22 that?

23 A Yes.

24 MR. PEREOS: The Court's indulgence.

1 THE COURT: Page 2107.

2 MR. PEREOS: Thank you.

3 BY MR. PEREOS:

4 Q And 37 is what document?

5 A Tentative Map and Special Use Permit
6 Application.

7 Q And why don't we go to page 2107. And what's
8 the project description there?

9 A "Two mixed-use towers containing retail,
10 office, health club and 499 units of residential
11 space."

12 Q Okay. So the project goes from 394 to 499
13 units, condominium units, correct?

14 A Yes.

15 Q The plans that you looked at, okay, were they
16 the two stories, one at 40 and the other at 28?

17 A I don't know.

18 Q Okay. All right. Well, let's go about doing
19 it this way. You referenced Exhibit 38 in your direct
20 testimony as to whether or not you had seen that
21 document to assure yourself that there was compliance
22 with the schematic design. Do you remember that
23 testimony?

24 A Yes.

1 Q Okay. Do you have 38 in front of you?

2 A Yes.

3 Q Let me get there.

4 Recognizing that each of these pages usually have a
5 Bate number at the lower right-hand corner, do you see
6 that Bate number, for instance, lower right-hand
7 corner?

8 A Yes.

9 Q Okay. 38. Who drafted the first page-- I
10 want to make sure you and I are looking at the same
11 document. --that has Bate number Steppan 2744? Who is
12 the designer?

13 A I'm not following you.

14 Q Okay.

15 MR. PEREOS: May I approach the witness?

16 THE COURT: You may.

17 MR. PEREOS: Thank you.

18 BY MR. PEREOS:

19 Q Okay. Here we go. Mine is lower right-hand
20 corner; yours is upper right-hand corner. Here's the
21 Bate number. Okay?

22 A Yes.

23 Q Now, what I'm asking you is, who is indicated
24 as being the person who prepared that diagram on

1 Exhibit 38?

2 A It doesn't say, though it's carrying a Wood
3 Rodgers' title block.

4 Q Okay. That's fine. Okay. Will you take a
5 look at Exhibit 38 and tell me in Exhibit 38 what
6 documents contain a title block of Fisher-Friedman
7 Associates or Steppan, Mark Steppan?

8 A I don't understand the question.

9 Q Sure. You told me that the title block on the
10 first page of Exhibit 38, which is Steppan 2344, has
11 Wood Rodgers on it.

12 A Yes.

13 Q Correct?

14 A Yes.

15 Q What about the next page? What's on the title
16 block?

17 A They all say Wood Rodgers.

18 Q They're all Wood Rodgers' title block?

19 A Yes.

20 Q Now, what of those documents, Exhibit 38, were
21 prepared by Mark Steppan, which one of those pages?

22 A I don't know. They just-- these drawings carry
23 the Wood Rodgers' title block.

24 Q Did you make any inquiry as to whether or not

1 Mark Steppan prepared any of these pages on Exhibit 38
2 to substantiate your testimony that they fell within
3 the schematic design work that was done by Mark
4 Steppan?

5 A You must have misinterpreted my comment.

6 Q Go ahead.

7 A I'm talking about the design of this project
8 was done by Mark Steppan, Fisher-Friedman. And if this
9 is a drafting exercise by Wood Rodgers, the design was
10 provided by Mark Steppan, Fisher-Friedman. The drawing
11 was probably drafted by or prepared by Wood Rodgers for
12 this particular exhibit.

13 Q Okay. All right. Fine.

14 So when you were rendering an opinion as to the
15 fact that Mr. Steppan completed the schematic design
16 aspect of the design work for this contract, you are
17 not including anything that was in Exhibit 38 then?

18 A Yes, I am.

19 Q You are?

20 A Yes, because the design of the building which
21 is put forth in these drafted documents were prepared
22 by Mark Steppan, Fisher-Friedman. The product is
23 theirs.

24 Q Now, can you tell me what pages are in Exhibit

1 38 that so reflect that?

2 A I think every one of them.

3 Q Every one of them?

4 A Has the design that was created by Mark
5 Steppan, Fisher-Friedman on every single page, the
6 floor plans and-- I think you're being confused as to
7 what the design is versus what drafter produced these
8 drawings.

9 Q Okay. I think I'm going to connect with you in
10 a second.

11 Are you telling me that some of the design work on
12 these pages were superimposed from work that was done
13 by Mr. Steppan?

14 A I don't know that.

15 Q You don't know it. Okay. So are you telling
16 me that some of the design work appearing on these
17 pages were also design work that you've seen on work
18 product from Mark Steppan?

19 A Yes.

20 Q That's what you're telling me?

21 A Yes.

22 Q Okay. Now, did you assure yourself that that
23 work product that you looked at that was put onto these
24 pages of Exhibit 38 came from Mark Steppan?

1 A Yes.

2 Q Or Fisher-Friedman. And how did you assure
3 yourself?

4 A The design is the same at its schematic level
5 which is the character and the overall scale and
6 relationship to its context are reflected in all these
7 exhibits prepared by Mark Steppan and Fisher-Friedman.

8 Q So what you're saying is that you looked at
9 what you considered to be original source documents for
10 those designs, the purposes of which is to see whether
11 or not that same type of design appears in the
12 documents on Exhibit 38?

13 THE COURT: Don't answer the question yet, sir.

14 Mr. Hoy, do you have an objection?

15 MR. HOY: No objection to the question, Your Honor.
16 May I ask that counsel not walk behind me during his
17 examination.

18 THE COURT: I understand.

19 MR. HOY: I'm not walking behind his table.

20 THE COURT: I understand.

21 Mr. Pereos, I know you're a pacer, so if you could
22 pace back and forth possibly behind your client or in
23 front of someone, but it is kind of off-putting to have
24 somebody walking around behind you.

1 MR. PEREOS: Sorry. I apologize.

2 THE COURT: If you could accommodate counsel in
3 doing that. Thank you. Go ahead. Why don't you
4 rephrase the question and ask the question again.

5 BY MR. PEREOS:

6 Q So we're on the same page, what you're telling
7 me is that you looked at original source documents that
8 educated you as to what the design was by Mr. Steppan--
9 And by "Mr. Steppan" I also mean Fisher-Friedman. --to
10 assure yourself that they were the same type of design
11 that appears on Exhibit 38?

12 A Yes.

13 Q That's what you're telling me. And those
14 documents that you saw, were they on a CD or were they
15 actually hard copies?

16 A Both.

17 Q Now, in that regard, let's go back to Exhibit
18 37.

19 Now, in your career as an architect, I assume
20 you've advanced projects through the entitlement stages
21 of a governmental agency in the state of Nevada, for
22 instance.

23 A Yes.

24 Q Okay. Now, would you agree with me that this

1 particular project needed a special use permit and a
2 tentative map approval?

3 A I did not do that research for this particular
4 project.

5 Q Okay. So you didn't look into that issue?

6 A No, I did not.

7 Q Okay. All right. Well, notwithstanding that
8 fact, would you agree with me that Exhibit 37 is the
9 application for tentative map and special use permit as
10 it relates to this project?

11 A Yes.

12 Q Okay. Now, I previously brought to your
13 attention that Exhibit 37 is now asking for 499 units,
14 condominium units, to be distinguished from Exhibit 35
15 and 36.

16 A Yes.

17 Q Okay. Now, having said that, what I would like
18 you to do is if you can go to-- Let's start with Bate
19 number page Steppan 2133. Tell me when you're there.

20 THE COURT: It's in Exhibit 37.

21 THE WITNESS: Okay. It's blank.

22 BY MR. PEREOS:

23 Q Okay. Now, let's go to page 2134, east
24 elevation section. Do you see that?

1 A Yes.

2 Q Okay. Now, does it have a legend as to when
3 that page was prepared or when that drawing was
4 prepared? Lower right-hand corner.

5 A I don't see any.

6 Q Well, what does the date 1/6/2006 mean at the
7 lower right-hand corner?

8 A You're going to-- Oh, there it is. I see it.
9 Yeah, that would be January 6th, 2006.

10 Q Is that the legend that that drawing was
11 prepared?

12 A I don't know when the drawing was prepared, but
13 this sheet shows that January 6th, 2006 date on it,
14 yes.

15 Q Well, let's go back and let's do some-- You
16 would agree with me that architects in their-- as the
17 phrase instruments of service, work product are being
18 used, that they may prepare several different
19 generations of a page, such as a page in the building
20 plans showing an elevation or the floor layout, and
21 that those different generations change based upon the
22 input between the owner and the architect?

23 A Yes.

24 Q And when those changes are made and those pages

1 are made, they're usually identified with a date on the
2 page reflecting what date is on that particular page?

3 A Is that a question?

4 Q That's a question.

5 A Yes.

6 Q Okay. All right. So, in other words, we don't
7 know how many generations there are of this particular
8 page here that's dated 1/6/2006, but we know we're at
9 least looking at the page that was prepared on
10 January 6th, 2006, as it relates to page Steppan 2134;
11 isn't that correct?

12 A I don't know when the drawing was prepared, but
13 this sheet has the January 6th, 2006 date on it.

14 Q Okay. And that would usually mean-- Now, we
15 don't know if there's a drawing after that or if there
16 were drawings before that, we just simply don't know at
17 this point in time?

18 A Yes.

19 Q Unless you happen to know, because I don't
20 know.

21 All right. Now, how many stories to that building?

22 A I don't know.

23 Q Well, how about on the left-hand side, is there
24 a legend there on the left-hand side that tells you how

1 many floors there are going to be before you get to the
2 roof?

3 A Twenty-eight.

4 Q Twenty-eight. Let's go to the east elevation
5 of the next building which is on Steppan 2135. Tell me
6 when you're there.

7 A Yes.

8 Q Okay. How many stories to that building?

9 A Forty.

10 Q Forty. Okay. So let's go to the west
11 elevation of Steppan 2136, your next page. How many
12 stories on that?

13 A Forty.

14 Q All right. So would you agree with me that as
15 it relates to the application that constitutes Exhibit
16 37 for 499 units, we're looking at a building-- two
17 buildings, one of which is going to be 28, the other of
18 which is going to be 40 high, 40 floors and 28 floors?

19 A Yes.

20 Q Let me direct your attention now--

21 Oh, by the way, before I get you off of that
22 document, 37, who's listed as the architect, the person
23 to contact regarding application?

24 A Can you direct me to where--

1 Q Sure. Page 2521.

2 MR. HOY: Object to the question on the grounds
3 that it's compound.

4 MR. PEREOS: Well, I'll rephrase it.

5 THE COURT: Hold on a second also, Mr. Pereos.
6 There is no 2521 in Exhibit 37.

7 MR. PEREOS: Excuse me. I'm so sorry. My
8 apologies.

9 THE COURT: So why don't you just rephrase the
10 whole question.

11 MR. PEREOS: I will. I'll rephrase it.

12 BY MR. PEREOS:

13 Q Let's direct your attention to page, on Exhibit
14 37, 2103. Tell me when you're there.

15 A Okay.

16 Q And who's the person to contact?

17 A Fisher-Friedman Associates.

18 Q Do you know if Fisher-Friedman and Associates
19 or a Nathan Ogle, so listed thereon, are licensed in
20 the state of Nevada?

21 A Yes.

22 Q You do know. Are they licensed?

23 A I don't know.

24 Q Oh, you don't know if they're licensed?

1 A I didn't know if that was the question. I do
2 know the firm Fisher-Friedman and I know the contact
3 Nathan Ogle.

4 Q Okay. But you don't know if they're licensed
5 in Nevada?

6 A I do not.

7 Q You didn't make any inquiry, did you?

8 A I did not.

9 Q Okay. Now, let's go back to where I left off
10 at Exhibit 36.

11 A Okay.

12 Q Let's go to Bate number page 2521. Who's the
13 person to contact?

14 A Fisher-Friedman Associates, Nathan Ogle.

15 Q Okay. And while we're at it, since we're on
16 that thought, let's go to Exhibit 35 and go to page
17 2371.

18 A Okay.

19 Q Person to contact is who?

20 A Same, Fisher-Friedman, Nathan Ogle.

21 Q Okay. And by the way, on each of those pages,
22 you can flip through them, but would you agree with me
23 that the property owner was listed as John and Sonnia
24 Iliescu?

1 A Yes.

2 Q On every one of those three pages that--

3 MR. HOY: I would stipulate to that.

4 MR. PEREOS: Okay. That's fine.

5 BY MR. PEREOS:

6 Q Counsel is saying he agrees that's on there, so
7 you don't have to flip through each of the pages.

8 Now, let's go back to 36. On Exhibit 36, which is
9 also the application, you might recall it was for 394
10 units. It's on the page Steppan 2525.

11 A I'm there.

12 Q Okay. You're there. Do you see the number of
13 units, number of lots, 394?

14 A Yes.

15 Q Okay. So is it fair to surmise that this might
16 have been an earlier generation of the application?

17 A I don't know that.

18 Q Okay. That's fine. If you don't know, you
19 don't know.

20 But my interest is this. Why don't we direct our
21 attention to Steppan page 2550 in that application.

22 A Okay.

23 Q What's the size of the buildings, number of
24 floors?

1 A Twenty-eight and 40.

2 Q Twenty-eight and 40. Same number of floors as
3 when we had 499 units; is that correct?

4 A Yes.

5 Q And what is the date on the legend for that
6 drawing, for instance, the south elevation?

7 A January 1st-- Excuse me. January 17th, 2006.

8 Q Okay. And the next couple of pages, do they
9 also have that same date--

10 A Yes.

11 Q --when we're looking at the elevations?

12 So for 394 units we're showing a drawing of 1/17/06
13 with two buildings, one at 40 and the other at 28,
14 correct?

15 A Yes.

16 Q And remember I covered the legend with you on
17 the later application for 499 units and it had a
18 drawing date on the legend of January 6th to be
19 distinguished from January 17th?

20 A Yes.

21 Q In discussing the various phases of the
22 performance or the work assignments to the architect,
23 one of the first phases you talked about was
24 programming. Do you remember that?

1 A Yes.

2 Q Okay. Now, you would agree with me that
3 programming is not one of the services that's defined
4 in the AIA B141 contract? You can look at the
5 document, if you'd like. Look at Design Services,
6 Article 2.4, Exhibit 6. And it's Bate number page
7 7513.

8 A Programming is usually an extra service. It's
9 not in the basic services agreement in the 141.

10 Q So is there extra compensation to be paid for
11 the programming work?

12 A I don't know. Sometimes; sometimes not.

13 Q Do you know whether or not there was any extra
14 compensation that was charged by Mark Steppan for the
15 programming work?

16 A No, I don't. I just analyzed the schematic
17 design documents.

18 Q Okay. But you're basically saying, My
19 assignment was to analyze the documents to see if it
20 reached the schematic design phase of the work,
21 correct?

22 A No. I analyzed the drawings that were given to
23 me to see if they met the standard, both technically
24 and design-wise, to qualify as a schematic design

1 package.

2 Q Okay. But when I heard you discuss
3 programming, I thought I understand that what you were
4 trying to convey was a discussion with the owner, in
5 this case under the contract, as to what the parameters
6 of the project were supposed to be.

7 A That's correct.

8 Q That's correct. Okay. And by the way, okay,
9 the signatures on this contract, the AIA contract
10 marked Exhibit 6, does it include the owner?

11 A I didn't look.

12 Q Well, why don't you go ahead and take a look at
13 the first page and see who the parties to the contract
14 are.

15 A What exhibit is it?

16 Q It's Exhibit 6. I'm sorry.

17 A What exhibit, please?

18 Q I'm so sorry. Exhibit 6. Exhibit 6.

19 A What are you asking me to look at?

20 Q I'm asking you to discern who the owner is as
21 stated in that contract.

22 A Sam Caniglia.

23 Q Now, as you're testifying today, do you know
24 him to be the owner of the property?

1 A I don't know.

2 Q You don't know.

3 Now, if you look at Exhibit 6, page Steppan 7513--

4 A Okay.

5 Q Okay. --you'll see schematic design documents,

6 as you already referenced, and Section 2.4.2.1. I

7 believe you testified to that on direct.

8 A Yes.

9 Q Okay. Now, would you agree with me that when

10 they're talking about the schematic design documents

11 that were prepared by Mark Steppan, they're talking

12 about schematic design documents designed to facility

13 this particular project being 499 condominium units and

14 a mixed office space?

15 A I don't see a note where it describes how many

16 units--

17 Q Well, I'll help you out. I'll help you out.

18 Let's go to Exhibit 7.

19 A Okay.

20 Q Go to paragraph 1.1.2.1.

21 A Yes.

22 Q Now, does that help define what I just

23 mentioned, urban mixed use, highrise residential

24 development with approximately 499 living units?

1 A Yes.

2 Q Do you see that?

3 A But on Exhibit 6 the contract doesn't mention
4 how many--

5 Q How about if I would tell you that the evidence
6 will demonstrate that Exhibit 7 was an addendum to the
7 contract signed at the same time the contract was
8 signed?

9 Well, let's do it this way.

10 A Well, yeah.

11 Q Let me go about it this way. I want you to
12 assume for purposes of my questions that Exhibit 7
13 dated April 21st, 2006 is an addendum and part of the
14 contract marked Exhibit 6, the AIA contract. Okay?
15 You can assume that.

16 Now, having said that, would you agree with me that
17 the parties contemplated doing 499 units on this
18 project?

19 A At this particular time-- This is a little bit
20 out of my expertise for this particular case. I was
21 hired to determine the standard of quality used to
22 produce the schematic design package for this project.

23 Q I understand that.

24 A And I've done that. I don't understand the

1 nature of your questions in relationship to my
2 expertise.

3 Q Well, I'm asking you this question. Are you
4 unfamiliar with testifying as to what the terms of a
5 B141 contract provide?

6 A For my own projects, yes.

7 Q For your own projects you're uncomfortable or
8 you're only comfortable for your own projects?

9 A For my own projects I would be comfortable in
10 talking about the B141 contracts that I signed for my
11 projects.

12 Q Okay. So what you're telling this Court is
13 that since you were not involved in the negotiations
14 leading up to the signing of B141 or the preparation of
15 its addendum, you're not comfortable telling the Court
16 what's contemplated on this contract?

17 A Correct.

18 Q Is that correct?

19 A That's what I'm saying.

20 Q Okay. Well, let's go about it this way. As
21 you're testifying today, based upon your extensive
22 review of the schematic design documents, did you find
23 that the schematic design documents designed a project
24 that consisted of 499 condominium units?

1 A I did not count the number of units.

2 Q So you didn't look into that issue either?

3 A I did not.

4 Q So you don't know whether or not those
5 schematic design documents comply with a mandate of
6 showing 499 units, correct?

7 A Correct.

8 Q All right. Now, on the same page, and the same
9 thought, am I correct that you never observed or saw in
10 all of your work on your assignment what it was going
11 to cost to build this building? You never saw
12 projected costs prepared by anyone?

13 A I read the contract.

14 Q Okay. Now, you read the contract that
15 estimated the cost at 180 million or 160? What are we
16 talking about?

17 A I believe it was both.

18 Q Okay. So you did get a chance to see the
19 addendum that took the cost from 160 to 180?

20 A Yes. I read the contract and the addendum.

21 Q Okay. All right. So you would agree with me
22 then that that's what was contemplated by the parties,
23 that the cost of this project would be approximately
24 \$180 million?

1 A Yes.

2 Q Okay. Did you ever see any cost breakdowns or
3 anything corroborating that?

4 A No.

5 Q Why don't you take a look at paragraph 2.1.7.1
6 of Exhibit 6 on page 2 of the AIA contract.

7 THE COURT: What page are you on?

8 MR. PEREOS: Page 2, Exhibit 6, AIA contract.

9 BY MR. PEREOS:

10 Q Tell me when you're there.

11 A Yes.

12 Q Why don't you read into the record 2.1.7.1.
13 Read it into the record. Read it out loud.

14 MR. HOY: If I may, Your Honor. This exhibit has
15 two page 2s. There's a part one and a part two to this
16 document. And so I think Mr. Pereos is referring to
17 the part two portion of the exhibit.

18 THE COURT: Can you just give us a Bates stamp--

19 I'm sorry to speak over the top of you, Mr. Hoy.

20 Mr. Pereos, can you--

21 MR. PEREOS: Yeah, Bates stamp-- I didn't know
22 that there were two page 2s. But it's Bates stamp
23 number 7513.

24 THE COURT: Now, on page 7513, you're looking at

1 2.--

2 MR. PEREOS: --.1.7.1.

3 THE COURT: Got it.

4 MR. PEREOS: Got it.

5 BY MR. PEREOS:

6 Q Are you there, Mr. Van Woert?

7 A On page 2, right?

8 Q Yeah, Bate number page-- these pages--

9 A Yes.

10 Q 7513.

11 A "The owner or contractor shall provide cost,
12 planning, estimating and construction schedule
13 information during the design and construction of the
14 project."

15 Q Did you ever see that?

16 A In this particular instance? What are you
17 alluding to?

18 Q Did you ever see that in performing your
19 assignment as it relates to this particular project?

20 A No.

21 Q Okay. So do you have any idea what the cost of
22 the design was that was prepared by the architect as
23 you're testifying today?

24 A An estimated cost between 160 and 180 million.

1 Q Well, no, no. Okay. I understand. That might
2 be your opinion. But where did you get that from?

3 A It's in the contract.

4 Q Well, let me go about it this way,
5 Mr. Van Woert. The contract says that they looked at
6 an original estimate of 160 million and then they
7 amended it to 180 million. Isn't that what the
8 contract says?

9 A Yes.

10 Q Now, they weren't saying it's a spread of 160
11 to 180, they're saying it's 180, correct, estimate?

12 A Yes.

13 Q Okay. Now, when the owner starts putting a
14 number on the project, it's designed to tell the
15 architect as to where I want to go with my expenses
16 and your work of designing this project; is it not?

17 A It is not, no.

18 Q It's not? So let me ask you this question. Is
19 it your testimony that the architect would have an
20 unlimited license as to how much this project would
21 cost even though there was the stated phrase in there
22 that, okay, it's estimated that the project would cost
23 180 million?

24 A Well, there's no determining what the actual

1 cost would be until the project is completed through
2 all of its steps of design and then bid to a
3 contractor.

4 Q I'm not going to argue that point with you.
5 What you're basically saying is that, well, we won't
6 know what the final cost is going to be until the
7 project is completed so we know what the change orders
8 are, deletions, what have you, that's what you're
9 basically saying?

10 A Well, no. What I'm saying is you have to go
11 through the design process to determine what those
12 costs will be. And the first step is the schematic
13 design phase, which was completed.

14 Q Okay. And my question to you is, when an
15 architect is performing its schematic design phase,
16 does it not have to keep in mind that that owner is
17 estimating \$180 million for the construction costs?

18 A Yes. And I think that was probably done.

19 Q Did you cost it out to see whether or not this
20 project was going to cost \$180 million for a C of O?

21 A No. I was not involved in the project.

22 Q And you weren't given that assignment either,
23 were you?

24 A No.

1 Q Did you make any inquiries as to what the cost
2 is to put up a 40-story building that's concrete versus
3 steel, for instance?

4 THE COURT: Well, you need more information than
5 that. That building in downtown Manhattan might be
6 different than that building in Washoe County or
7 Des Moines, Iowa.

8 THE WITNESS: That's exactly right. It is an
9 endless process. And the first step in determining the
10 schematic design phase is to give a basis to understand
11 what the value will be. That's why you do it. And
12 that's why it's-- that's why it's completed, so you can
13 go to the next step to find out more detail, what the
14 actual materials will be and how they'll be implemented
15 on the job so that design consultants can start to put
16 together an estimated cost of construction.

17 THE COURT: But would it be fair to say based on
18 Mr. Pereos's line of questioning that even at the
19 schematic design phase the architect would have a
20 general idea of how much this is going to cost?
21 Mr. Steppan wouldn't prepare all these documents in a
22 vacuum and just say, I'm going to build all of this and
23 maybe it's 180, maybe it's 70 million, maybe it's
24 250 million, I don't know, but this is what I want it

1 to look like.

2 THE WITNESS: That's exactly right.

3 THE COURT: He would have some idea generally
4 about--

5 THE WITNESS: That's right. At this early stage
6 you would probably trend the costs of other projects
7 similar to this being built across the country or in
8 the west and it would serve as a marker to the
9 understanding that so much a square foot, so many units
10 at this quality of construction would probably cost
11 within this range. And at that point, it's a system in
12 the early preliminary phases that's accepted so you can
13 go on to the next phases to be more finite and to
14 understand what the actual costs will be.

15 THE COURT: And let's just say for the sake of
16 argument that the parties want to build this building
17 and they give all the description to Mr. Steppan about
18 what they want and they say, Oh, by the way, we want it
19 to be \$50 million. At some point would it be
20 reasonable for Mr. Steppan to say, I can't do it for
21 50 million bucks, that's just not going to work? Or at
22 the schematic design phase is it just, well, from the
23 architect's perspective, we'll see what we can do with
24 your budget or-- Describe that process for me.

1 THE WITNESS: Yeah. I think early on an initial
2 budget that was established, if the budget was
3 established first, this is how much money we have for
4 the project, the amount of units and the size of the
5 project would probably reflect that based on the
6 trending analyses that Mr. Steppan would get from other
7 contractors or other projects that he has worked on or
8 knows of in the particular area.

9 As you get more finite into the process, you can
10 start to understand what the real value of this
11 particular project will be. And at each phase then you
12 basically analyze that and make the appropriate changes
13 to either bring those costs down or to meet the actual
14 budgets and such.

15 THE COURT: And at the schematic design phase
16 you're not pricing out steel and labor and glass and--

17 THE WITNESS: That's correct.

18 THE COURT: --PVC and wire, you're just going on
19 basically what your general understanding is based on
20 your knowledge of the market and based on your
21 knowledge of what you're doing?

22 THE WITNESS: Absolutely.

23 THE COURT: Go ahead.

24 MR. PEREOS: Okay. Thank you.

1 BY MR. PEREOS:

2 Q All right. That's fine. But you would agree
3 with me that the number of 180 million comes within the
4 parameter of the assignment by the architect?

5 A I did not analyze that. But I would say yes.

6 Q I'm saying generically.

7 A Yes. Generically I say yes.

8 Q Okay. Fine. Now--

9 THE COURT: You didn't look at this and go, no way
10 a 180 million bucks?

11 THE WITNESS: I did not look at it in that regard
12 at this early phase, correct.

13 BY MR. PEREOS:

14 Q Now, would you also agree with me that in
15 addition to the performance of the work by the
16 architect in his design to stay within the parameters
17 of how much money it's going to cost to build this
18 project that there may be other factors that affect its
19 cost?

20 A Yes.

21 Q Okay. Let me give you a for instance. Are you
22 familiar with fast-track jobs?

23 A Yes.

24 Q Have you ever participated in a fast-track job?

1 A Yes.

2 Q Okay. Ever participated in a highrise fast
3 track?

4 A No.

5 Q Ever participated--

6 A Well--

7 Q Go ahead.

8 A No.

9 Q Okay. Ever participated in a fast track that's
10 a 24-hour-a-day work job?

11 A No.

12 Q Okay. Were any of your fast tracks more than
13 just one work cycle of eight hours?

14 A No.

15 Q Okay. So let me see-- I think I know where my
16 mind is versus your mind.

17 Have you ever participated in a fast track that
18 involved accelerated construction movement and
19 completion to be distinguished from designing as the
20 project is being built?

21 A Yes.

22 Q Does a fast-track job that involves accelerated
23 construction increase the cost?

24 A Not necessarily, no.

1 Q Did you take a look at the conditions that were
2 the subject of the tentative map approval to see
3 whether or not any of those conditions were too
4 onerous, that is, incapable of compliance without
5 substantial money being spent?

6 A No, I did not. I only looked at the drawings
7 and the package to determine whether they met the
8 standard of a schematic design phase.

9 Q Did you know whether or not any of those
10 conditions addressed FEMA, F-E-M-A, obligations in
11 terms of floodplains?

12 A No.

13 Q Do you know whether or not any of those
14 conditions addressed hydrology issues based upon how
15 deep you were going into the ground next to the river?

16 A No.

17 Q Okay. You don't know when the documents were
18 submitted to the City of Reno for entitlement approval,
19 do you?

20 A No.

21 Q You don't know that date.

22 If I were to tell you that the billing of Mark
23 Steppan commencing in May of 2006-- Well, let me go
24 about it this way. You didn't review any of the

1 billings of Mark Steppan, did you?

2 A I did not.

3 Q So you don't know what work Mark Steppan or
4 Fisher-Friedman did from May of 2006 to June of 2006,
5 do you?

6 A No.

7 Q You don't know what work they did from June of
8 2006 to July of 2006?

9 A No.

10 Q In fact, you don't know what work they did at
11 all prior to or after the submissions for approval for
12 the entitlements?

13 A No.

14 Q Okay. Did you know whether or not Mark Steppan
15 had any agreements that were distinguishable from the
16 fixed-fee agreements set forth in the compensation
17 schedule of Exhibit 6, any other agreements for
18 compensation?

19 A No.

20 Q You didn't make an inquiry or investigate that
21 issue, did you?

22 A No, I did not.

23 Q Do you know the amount of money that was
24 received by Fisher-Friedman and Mark Steppan--

1 A No.

2 Q --from anybody on this project? Okay.

3 You're not testifying as to whether or not there's
4 been a fee earned by Mark Steppan or Fisher-Friedman,
5 are you?

6 A No, I'm not.

7 Q You're just testifying as to whether or not the
8 work you saw complied with the schematic design phase?

9 A That's correct.

10 Q Okay. You commented earlier that the
11 architect-- Now, this might be my words. I'm
12 paraphrasing. --owns the intellectual property and the
13 instruments of service. Does that make sense to you,
14 what I just said?

15 A Yes.

16 Q Okay. Would you agree that the architect owns
17 those instruments of service?

18 A I do.

19 Q In fact, that work is not assignable or
20 transferable to anybody else without the architect's
21 approval; isn't that correct?

22 A Correct, unless stipulated elsewhere in a
23 contract or an agreement between--

24 Q Okay. That's fine.

1 Generally in the standard B141 contract, it's owned
2 by the architect and not transferable without his
3 consent?

4 A Yes.

5 Q I have nothing further. Thank you for your
6 time.

7 THE COURT: Mr. Hoy, redirect.

8 MR. HOY: Thank you, Your Honor. Nothing on
9 redirect.

10 EXAMINATION

11 BY THE COURT:

12 Q Let me ask you a question. And it's just
13 something that I was thinking about and the parties
14 didn't address.

15 Does it change your opinion that the schematic
16 design had been completed-- Strike that. Let me ask
17 the question a different way.

18 The fact that the project goes from 390 to 394 to
19 499, does that in any way change whether or not in your
20 opinion Mr. Steppan has completed his responsibilities
21 regarding the schematic design?

22 A No.

23 Q So if the owners or the property developer
24 would have come forward four months from then and said,

1 You know what, now I've thought about it, I want it to
2 be 475, does that mean the schematic design had not
3 been completed?

4 A No. I think it-- It would be my opinion that
5 the schematic design phase was completed at that
6 particular time and they wanted to make a program
7 change. Whether it be the same shell of the building
8 and the units are smaller so you could get more units
9 into it or whether there would be less units would be a
10 program change, and you would go back and revise that
11 completed schematic package so that you could go
12 forward in more detail to get it to the design
13 development phase.

14 Q And if you recall, based on your analysis of
15 the schematic design in this case, were the changes
16 that were made to the outside structure of the building
17 or were they made simply of how the interior of the
18 building was going to be allocated? Do you understand
19 the question?

20 A Yes, I do.

21 Q If you were to look at the building, either
22 way, would it look the same way, there just might be
23 more or fewer condominiums inside? Is that accurate?

24 A That's accurate. The drawings show that it's a

1 28-, I think, and a 40-story tower. And in each of
2 these iterations it seemed like that did not change.
3 It was the number of units per floor probably that did
4 change that increased or decreased the amount of units,
5 though it looks to me that the square footage and the
6 actual image of the building did not change.

7 Q And in my recollection-- This is my
8 recollection of reading one of the trial statements.
9 --it was simply that there were going to be more either
10 studio or one-bedroom units and fewer probably two- or
11 three-bedroom units and that's how you would come up
12 with a larger number of condominiums with the same
13 footprint and shell, so to speak? Does that make
14 sense?

15 A Exactly.

16 Q And does that change in any way whether or not
17 the schematic design portion of the project had been
18 completed?

19 A No.

20 THE COURT: Does either party have any questions
21 based on my questions?

22 MR. HOY: No, Your Honor.

23 MR. PEREOS: No, Your Honor.

24 THE COURT: Thank you. You may step down,

1 Mr. Van Woert. Thank you. It's been very interesting
2 to hear from you today.

3 THE WITNESS: Thank you.

4 THE COURT: Counsel, why don't we go at least for
5 another 15 or 20 minutes. I don't know how long your
6 next witness is going to be. But what we'll do is
7 we'll go until approximately 3 o'clock today and then
8 we'll take a 15-minute recess and then we'll come back.
9 And I didn't tell you this earlier today, but it's
10 normally my practice to end the day's testimony around
11 quarter of 5:00 just so that the court staff can pack
12 up for the day, you can have a moment to gather your
13 things and leave the building prior to 5 o'clock.

14 So if you've got your next witness, Mr. Hoy, why
15 don't you call your next witness.

16 MR. HOY: Thank you. May I step away?

17 THE COURT: Certainly.

18 MR. HOY: Plaintiff calls Rodney Friedman.

19 THE CLERK: Please raise your right hand.

20 (The Clerk administered the oath
21 to the prospective witness.)

22 THE CLERK: Just have a seat.

23 MR. HOY: Your Honor, Shirley Friedman has joined
24 us. She's not a witness in this case.

1 THE COURT: Thank you.

2 RODNEY FRIEDMAN,

3 having been called as a witness herein,
4 being first duly sworn, was examined
and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HOY:

7 Q Good afternoon, sir. Can you please give your
8 full name for the record.

9 A Rodney Friedman.

10 Q What is your business or profession?

11 A I'm an architect.

12 Q How long have you been an architect?

13 A I graduated from the College of Architecture in
14 1956 in Berkeley.

15 Q I was going to ask you about your education.
16 Let's move to that next. Did you receive a degree in
17 architecture?

18 A Yes.

19 Q Okay. What degree did you receive?

20 A Bachelor of arts, major, architecture.

21 Q And that was 1956?

22 A Correct.

23 Q From University of California?

24 A Berkeley.

1 Q All right. Have you received any other degrees
2 beyond the bachelor's degree?

3 A No.

4 Q Can you give us an overview of your work in the
5 architecture profession?

6 A Yes. Upon graduation I was employed at Welton
7 Becket and Associates in San Francisco.

8 THE COURT: Mr. Friedman, would you do me a favor.
9 There's probably a little button there on the
10 microphone. It's down in the lower portion, right
11 there by the court reporter. Up a little bit. Tap on
12 that for me.

13 There we go. All right. Now I can hear you a
14 little bit better. Go ahead. Why don't you start
15 again.

16 THE WITNESS: Upon graduation from the university I
17 went to work for Welton Becket and Associates in
18 San Francisco. They had about nine offices worldwide
19 and about 2,000 employees. The San Francisco office
20 had 50 employees. And I was hired as a project
21 designer. And I stayed there for six months, because I
22 had a commitment from ROTC to go into the Air Force.

23 So six months later we reported for duty at
24 Lackland Air Force Base. I spent the next three years

1 in the Air Force.

2 BY MR. HOY:

3 Q What kind of work did you do in the Air Force?

4 A After flight school we were stationed at
5 Rhein-Main Air Force Base, Germany, and I became the
6 deputy for engineering. I was the only architect in
7 that part of the European command. So we had
8 responsibility for Rhein-Main Air Force Base, the
9 military side. That was 1957. The military also ran
10 the civilian side.

11 So we were in charge of the entire Air Force base,
12 plus 18 off-base sites. I had 600 German employees,
13 plumbers, you know, carpenters, electricians, and then
14 an engineering office with a mechanical engineer,
15 German architects, and I directed all of their
16 activity.

17 My immediate was a major, but he was a World War II
18 vet and didn't have a professional degree. So at that
19 age of 24 years old I ran a large part of the Air Force
20 European theater.

21 Q And then after the military did you come back
22 to the United States?

23 A I came back to the United States and got
24 reemployed by Welton Becket and Associates in

1 San Francisco.

2 Q And did you change firms after that?

3 A Well, I stayed there until '64 when we formed
4 our own firm. But while I was at Becket, we designed--
5 every time a highrise building came into the office, I
6 was lucky enough to be assigned as the project designer
7 for the highrise building.

8 Q On how many highrise buildings have you been
9 the project architect?

10 A At least 30, all over the world.

11 Q When you say "all over the world," can you give
12 us the countries where you've designed highrise
13 buildings?

14 A North America, Mexico, Canada, Japan, China,
15 none in Europe, Mexico.

16 Q All right. Are you currently licensed in any
17 states?

18 A California.

19 Q Have you ever been licensed in other states?

20 A Yes.

21 Q What other states have you been licensed in?

22 A Oregon and New Jersey.

23 Q Now, you mentioned that you formed your own
24 firm right after you left Becket. What firm was that?

1 A Well, it became Fisher-Friedman and Associates.
2 My last projects at the Becket office were the Aetna
3 Life and Casualty building which is a 38-story highrise
4 on Market Street. And we were working on a 26-story
5 highrise building in Oakland and we had completed
6 schematic design. The Becket office and the client
7 couldn't agree on fee.

8 So to make a long story short, the client wanted me
9 to continue with the project. They paid Becket all the
10 fees for schematic design. The Becket firm gave my
11 partner and I, who was a former Becket employee, all
12 the information and we continued with the project. And
13 it's built. It's a successful project in Oakland.

14 And that's how I-- Later on we'll describe, that's
15 when I met Tony Iamesi who was the individual who hired
16 us to do the project here in Reno.

17 Q Let's talk about Fisher-Friedman Associates.
18 Who is the Fisher in Fisher-Friedman?

19 A That was my partner who retired in the year
20 2000. And he was also a-- he became the director of
21 design at the Becket office. And then before he left--
22 He left two years before I did in '62 and formed his
23 own-- formed his own firm. And then we became partners
24 in '64. And the reason we did is that we-- I convinced

1 our client, Perma-Built, who wanted to continue with
2 the building in Oakland to hire the two of us to finish
3 the building.

4 Q Did the Fisher-Friedman Associates firm ever
5 receive commendations for its designs?

6 A We've received more awards for excellence in
7 housing than any other firm in the country, published
8 in Architectural Record dozens and dozens of times,
9 more Record awards, more AIA awards, more Sunset
10 Magazine award, more AIA awards than any other firm in
11 the nation.

12 Q Now, you've used the term "AIA." And I see
13 that some architects have AIA behind their names. What
14 does that mean?

15 A That they're members of the American Institute
16 of Architects.

17 Q And behind your name it says FAIA. What does
18 that mean?

19 A That means I'm a fellow of the AIA. And that's
20 an honor given to architects who have contributed to
21 the profession or because of designs. So I was
22 selected because of our design excellence to be a
23 fellow of the AIA. And I hate to brag, but I was the
24 youngest fellow in the United States.

1 THE COURT: Are you still the youngest fellow in
2 the United States?

3 THE WITNESS: No.

4 THE COURT: Okay.

5 THE WITNESS: I was then, though. I had my 15
6 minutes of fame.

7 BY MR. HOY:

8 Q Now, we talked a little bit about your
9 education. Have you also been a teacher?

10 A Yes.

11 Q What subjects have you taught?

12 A I taught in the graduate school of architecture
13 at Berkeley in '76 and then '80, '81 and '82 in the
14 graduate school of business development at MIT. And I
15 lectured there for three years in the graduate school
16 of real estate development.

17 Q And what sorts of things did you teach in the
18 graduate school of architecture at Cal?

19 A Well, at Cal it was mainly urban planning and
20 residential design. I also taught at several seminars
21 put together by the World Housing Congress, once in
22 Dublin, Ireland and then again in Brisbane, Australia.
23 And then later on in Australia I lectured at all the
24 major universities in Australia from Brisbane to Perth.

1 Q On what topics did you lecture?

2 A Urban design and residential design.

3 Q And when you went to Ireland, what did you
4 lecture on there?

5 A Urban design and residential architecture. And
6 we had done projects in Holland and Belgium and Spain--
7 or in France. So for a short while we were-- we had a
8 real glow.

9 Q All right. And you mentioned that you were a
10 teacher at MIT in graduate school there. What topics
11 did you teach at MIT?

12 A Well, it was real estate development classes.
13 MIT at that time was the only school with a graduate
14 school in real estate development. And the dean was an
15 Australian architect who knew our work, so he invited
16 me to a class of about 30 students. Some of those
17 students later on became our clients.

18 It went right through from site evaluation to
19 feasibility studies, doing the-- you know, the debt
20 service studies and the recommendations for what kind
21 of structures and designs that would go on, so it went
22 from urban design all the way up through the completed
23 building designs, whether it was residential or whether
24 it was offices or institutional.

1 Q Are you still actively designing as an
2 architect now?

3 A I am doing a project-- There's eight
4 architects in my family, including Mark who is my
5 son-in-law. My son is an architect. My
6 daughter-in-law is an architect. She's the chairman of
7 the College of Architecture at USC. John has taught at
8 UCLA and USC. He's a Harvard grad. They're both
9 Harvard grads. He's a Rhodes Scholar. Our grandson
10 just graduated in architecture. My daughter-in-law's
11 father is the dean at IIT. So there's eight.
12 Hopefully one of the other grandkids will make it nine.

13 Q Are you completely retired now, sir, or are you
14 still designing?

15 A We're doing a-- my son and I are doing an
16 office building in Los Angeles together which I have
17 been asked to make a donation financially to as well.

18 Q Okay. Now, since you left the military have
19 you done any work besides acting as other folks'
20 architect?

21 A Well, 80 percent of our clients were
22 developers. We sat on our knees in their construction
23 departments, I remember early on in the early '60s,
24 when we were doing residential design and track houses.

1 We were doing houses for Perma-Built and for his major
2 competitor, American Housing Guild. And Danny who we
3 had done the building for in Oakland who is
4 Perma-Built-- He's got his own building firm now--
5 He's probably passed away. --in Las Vegas. He said,
6 "Rodney, if my house costs ten cents more than Mike's
7 houses across the street, we fail."

8 So we went into the drafting. They did their own
9 drafting. We did the design. And their construction
10 people gave us the ABCs on construction. So that's how
11 we got involved.

12 And then later on when we were doing residential
13 design for American Housing Guild, we were mainly doing
14 FHA 207 federally-assisted projects.

15 Q Maybe I can shorten this. Have you ever been a
16 principal in a development company?

17 A That's my next answer.

18 Q All right.

19 A So he asked us whether we knew anybody who
20 would want to invest in his projects. And Bob and I
21 both raised our hands. We invested and we learned the
22 ropes. And then later on we found out that we had more
23 financial resources than some of our clients, so we
24 developed our own projects. And we still own one in

1 Sacramento, 136 units. We own a 40-million-dollar
2 office building currently in San Francisco which we did
3 a rehab on. We've done about eight or nine other
4 projects, and they've always been successful.

5 Q So have you exhausted your experience as a
6 developer?

7 A No.

8 Q Real estate developer.

9 A No.

10 Q What other work have you done as a real estate
11 developer?

12 A Well, we're working on this office building
13 with my son, where he'll be owner occupant, in
14 Los Angeles.

15 Q Now, you mentioned that Fisher-Friedman
16 Associates has designed some highrise buildings in the
17 past.

18 A Correct.

19 Q Can you give us-- give the Court an overview of
20 the projects that Fisher-Friedman has designed over the
21 years.

22 A Well, the South Beach Village in San Francisco.
23 There's the Bayside Apartments in San Francisco.
24 There's the Avalon in San Francisco. There's the

1 graduate student apartments for UCSF in San Francisco.

2 There's a highrise resort hotel in Cancun, Mexico.

3 I did a master plan for the waterfront of Vancouver
4 for the provincial government of UBC, you know, British
5 Columbia. And there's 60 highrises there. We didn't
6 get a chance to be the architect, because we're yanks
7 and they don't hire yanks in Canada. So we had to sit
8 in the back row, back of the bus, while we designed the
9 project. But those guys were all good guys and we
10 always got paid.

11 They had a fee advantage, because they had to pay
12 us in U.S. dollars and at the time the Canadian dollar
13 was 80 cents. So it was a good reason. We also did
14 highrise projects in China, not Japan. We did some on
15 the Hudson River in New Jersey.

16 Q Okay. Has Fisher-Friedman Associates ever done
17 any work in Nevada?

18 A Yes.

19 Q What projects has Fisher-Friedman--

20 A Well, A number of them in Las Vegas, but here
21 locally you would know the Green Ranch. We did Green
22 Ranch years ago. And Mark worked on Green Ranch. And
23 we did the--

24 Have you ever been up to the border with Idaho? We

1 did in Jackpot the casino and the Horseshu Hotel.

2 THE COURT: I'm not familiar with that.

3 THE WITNESS: Then we did several residential
4 apartment projects in Las Vegas and did some design
5 studies for Danny, Perma-Built. You know, 40 years
6 after we had done the highrise for him we did some more
7 work for him.

8 BY MR. HOY:

9 Q And not talking about the Wingfield Towers
10 project on the river in Reno, how did Fisher-Friedman
11 Associates handle the licensing issues when it worked
12 in Nevada on those prior projects?

13 A Prior to Bob Fisher's retirement, he was a
14 licensee in Nevada. The work went out under his name
15 as the architect of record. After he retired, then
16 Mark did it. So we were licensed-- we were licensed in
17 Nevada under Mark's being the architect of record,
18 actually before we were retained to do Wingfield
19 Towers.

20 Q And you mentioned that Mr. Fisher had the
21 Nevada license. And so would Mr. Fisher then enter
22 into the contract and then Fisher-Friedman Associates
23 would be the design consultant?

24 A Yes. Fisher-Friedman had all the horsepower to

1 actually, you know, execute the project and Bob was the
2 architect of record, but he was my partner. Basically
3 in the office he did most of the administrative work
4 and I was in charge of the studio.

5 MR. HOY: This is a good breaking spot, Your Honor.

6 THE COURT: I think it is. If you've laid the
7 foundation for the witness's expert testimony, then we
8 can take a break now for approximately 15 minutes and
9 you can get into the substantive issues regarding his
10 testimony.

11 And so what we'll do now is take our afternoon
12 recess. It's approximately 3 o'clock, a couple minutes
13 after, and so we'll be in recess for 15 minutes.

14 (A recess was taken.)

15 THE COURT: Mr. Hoy, you may continue.

16 MR. HOY: Thank you.

17 BY MR. HOY:

18 Q Mr. Friedman, are you familiar with the project
19 in Reno, Nevada called the BSC Towers or Wingfield
20 Towers?

21 A Yes.

22 Q Can you please give the Court an overview of
23 what that project was.

24 A We were engaged to design a mixed-use project

1 on the property that adjoins the Truckee River.

2 Q And how many buildings were involved in the
3 project?

4 A In the designs that we proposed, it would be
5 two buildings so it could be divided into phases, if
6 necessary.

7 Q And how tall was the tallest building to be?

8 A It was 40 plus, 40 plus stories, if you counted
9 the garage, like 47. We would come up from the street
10 adjoining the Truckee River up to the top of the
11 building.

12 Q And how about the second building?

13 A About 27, 28.

14 Q And was this to be strictly residential use?

15 A No. It was always a mixed-use project. We had
16 retail and commercial on the lower floors, we had
17 offices on the lower floors, we had residential on the
18 upper floors. And there was discussion before the--
19 about converting some of the-- part of the second
20 building, the lower building, to hotels, because the
21 hotel wouldn't suffer from the view blockage of that
22 adjoining, you know, mid-rise building in front of it.

23 Q All right. I ask you to turn to Exhibit No. 9
24 in the binder before you. This is an October 25th,

1 2005 letter from Mark B. Steppan to Anthony Iamesi,
2 I-a-m-e-s-i. Do you know who Anthony Iamesi is?

3 A Yes.

4 Q How do you know Anthony Iamesi?

5 A Tony was the construction manager for our
6 project in Oakland in 1964. He was the representative
7 for Knickerbocker Construction. Perma-Built was a
8 client. So we spent about four years ago together
9 while the building was completing design and finishing
10 construction in about 1968.

11 Q Was that building in Oakland a highrise
12 building?

13 A Yeah, 26 stories, about 320 feet.

14 Q And was it steel construction as opposed to
15 reinforced concrete?

16 A Yes, it was steel. In those days steel frame
17 was done on the computers at MIT. It was the first
18 computer-designed steel frame in Western United States.

19 Q From 1964 to 1968 when the project-- when that
20 Oakland tower was being designed and built, has there
21 been a change in the technology to current times such
22 that more tall buildings are built out of reinforced
23 concrete?

24 A Prior to about-- I'm going to give you an

1 estimate. About 15 years ago the code started being
2 changed because there was a height limit on reinforced
3 concrete buildings for many, many years of 160 feet.
4 The proposed towers in Oakland were to be 300 feet, so
5 we couldn't have used concrete if we wanted to. Okay.
6 And the concrete structures in San Francisco are all
7 limited to 160 feet. You could put a steel penthouse
8 on top and fudge a little.

9 But in '64 with the advent of the computer, okay,
10 the structural engineers had a brand-new tool available
11 which was the computer. The computer that we ran the
12 structural design for on the Oakland building was
13 vacuum tubes and it was as large as this room. Today
14 you can do it on a laptop, an Apple laptop.

15 In that building we saved a quarter of a million
16 dollars on the steel frame, which was big money then,
17 because the building only cost 4.2 million.

18 Today the structural engineers with the aid of the
19 computers are designing the world's tallest building in
20 reinforced concrete. The Bruges and Abu Dhabi and a
21 number of these buildings in Asia, et cetera,
22 et cetera, 2,000-foot buildings in San Francisco,
23 they're all reinforced concrete. And the concrete in
24 those days was about 3,500 pounds. You can get

1 concrete up to 8,000 pounds, 10,000 pounds.

2 Q You're not talking about the actual weight of
3 the concrete, you're talking about the compressive
4 strength of the concrete?

5 A Correct, and the tensile strength. So right
6 now there's a new building that's being called The
7 Kingdom Building or The King Building in Saudi Arabia
8 that will go 3,000 feet out of structural concrete.

9 Q And just for comparison, the Wingfield Towers
10 projects proposed for Reno, how tall would that
11 building be?

12 A Well, if you don't count the steel section on
13 the very top, because we put a steel penthouse on it,
14 about 450 feet. And the same structural engineer that
15 we used, Ron Klemencic, has designed some of the
16 world's tallest buildings in Asia and San Francisco.
17 All you have to do is look him up on the internet and
18 you'll find his name.

19 And these people are so good, they can come into
20 your studio, look at your floor plans and lay out the
21 column and bay spacing and tell you the size of the
22 columns, the size of the beams, the size of the shear
23 walls, et cetera, et cetera.

24 In our building it was very, very important because

1 all that structure has to go down subterranean-- you
2 know, through the subterranean garage and the columns
3 have to be-- you can't transfer loads.

4 Q So when you say your building, you're talking
5 about the Reno project?

6 A The Wingfield Towers.

7 MR. HOY: I apologize for the diversion, Your
8 Honor.

9 BY MR. HOY:

10 Q Back to Exhibit No. 9. This is an
11 October 25th, 2005 letter to Anthony Iamesi from Mark
12 Steppan. Are you familiar with this exhibit?

13 A Yes. This is October 5th, isn't it?

14 Q 25th.

15 A 25th. Okay.

16 Q Was there a-- did you participate in a meeting
17 that led to this Exhibit No. 9 being drafted?

18 A Yes.

19 Q What meeting did you attend?

20 A Well, Sam Caniglia and Tony came into the
21 office to talk to us about the design of the Wingfield
22 Tower.

23 Q And did they tell you what the program for the
24 project would be at that time?

1 A They were still working on the program, but
2 they described it as a mixed-use project. And we were
3 not the first architects involved in the project. They
4 showed us a sketch that was done by a Portland
5 architect-- or an Oregon architect. I don't know if he
6 was in Portland or not. They asked my opinion. I
7 said, "Well, we won't-- we'll do something different."

8 Q So this was a meeting that was held at
9 Fisher-Friedman Associates?

10 A Yes, in our office in Emeryville.

11 Q And this Exhibit No. 9 is signed by Mark
12 Steppan.

13 A Correct.

14 Q Why is that?

15 A Well, by that time Bob Fisher had retired in
16 2000, so Mark was the second in command in our firm, so
17 he took it. You know, he was going to be designated as
18 the architect of record. So as architect of record, it
19 was under his signature block. And he was already
20 licensed in Nevada. He was our licensee in Nevada.

21 Q Okay. Now, under the compensation section on
22 the first page of Exhibit 9, it says, "The architect
23 shall perform the above-referenced services for a fee
24 of 5.75 percent of the total construction cost,

1 including contractor's profit and overhead."

2 Was that 5.75 percent number something that was
3 negotiated?

4 A Yes.

5 Q Can you please tell the Court how that
6 negotiation went.

7 A Our first proposal was for 6 percent. And then
8 the owners came back and said, well, the first
9 architect who was the Oregon architect had proposed a
10 fee of 5.75 percent. So we agreed to match his fee.

11 Q All right. And this provision in this letter
12 says, "The architect shall perform the above-referenced
13 services for a fee of 5.75 percent of the total
14 construction cost, including contractor's profit and
15 overhead."

16 Back in October of 2005 did you know what the total
17 construction costs would be?

18 A Well, we don't know exactly. You never know.
19 So when you're in this initiative stage, the owner gave
20 us an approximation of what they thought the building
21 was going to cost, so we-- for building purposes we put
22 that in the agreement. But if you read the
23 compensation portions of the agreement, it all catches
24 up when you finalize the real construction costs of the

1 building. There is no maximum on the fee.

2 Q All right. Attached to this letter dated--

3 A I take that back. The maximum on the fee would
4 be-- you know, would be designated by the real
5 construction costs of the building.

6 Q Okay. Attached to this October 25th, 2005
7 letter is a form AIA document B141-1997.

8 A Yes.

9 Q Is this the form of agreement that your firm
10 proposed to Mr. Iamesi for the Reno project?

11 A Correct.

12 Q Have you and your firm worked with the AIA B141
13 before?

14 A For about 50 years.

15 Q Okay. This is a fairly standard form of
16 agreement in the industry?

17 A Well, it's changed over the years. And I don't
18 know if they've changed the numbers, but we architects
19 don't have lawyers on our staffs, so we depend on the
20 AIA to give us guidance and we use their format.

21 There are several formats that we run into. One is
22 the AIA guidelines. If you work for the universities,
23 they have their own agreements and you can't negotiate
24 those. You can negotiate the fees a little bit. The

1 cities and counties have their own standard agreements.
2 So we usually go along with the prevailing
3 jurisdiction.

4 Q So the second sentence of the compensation
5 paragraph says, "The final architectural fee shall be
6 adjusted at the end of the project accordingly based
7 upon the final total construction cost."

8 Is that something that was specifically discussed
9 with Mr. Caniglia and Mr. Iamesi?

10 A Yes. That's the same format we used on the
11 building in 1964, so we continued with the same
12 process.

13 THE COURT: Mr. Hoy, maybe I'm not seeing it here
14 initially, but is there any discussion in this document
15 about a at this point 160-million-dollar cost?

16 MR. HOY: No, Your Honor.

17 THE COURT: Okay. Thank you.

18 Mr. Friedman, did you know that that was at least
19 one of the things that was being talked about was
20 160 million?

21 THE WITNESS: When we were engaged the owners put a
22 budget on for billing purposes, so we agreed to that.
23 But if you read the compensation clause, you realize
24 that it all catches up at the end.

1 THE COURT: Right. So was your understanding
2 160 million bucks at this point?

3 THE WITNESS: At the time we were engaged, yes.
4 Later on when we brought in our construction experts,
5 they raised it and then we adjusted it, as it went from
6 160 to 180.

7 THE COURT: But at this point it's your
8 understanding in essence that the budget is
9 \$160 million that's being anticipated subject to some
10 adjustments and reconsiderations?

11 THE WITNESS: I want to make a correction. It's
12 not a budget. It's a number for anticipated
13 construction costs--

14 THE COURT: Right.

15 THE WITNESS: --that you can use it as a reference
16 to bill against.

17 THE COURT: Your budget might be-- is something
18 entirely different.

19 THE WITNESS: The budget is adjusted during the
20 course of the design.

21 THE COURT: Okay. Go ahead.

22 THE WITNESS: Is that clear enough, Your Honor?

23 THE COURT: Yes, it is. Thank you.

24

1 BY MR. HOY:

2 Q Sir, if you could turn to page 2 of Exhibit 9.

3 A 2?

4 Q Page 2.

5 A Okay.

6 Q And it lists all of the various consultants
7 that will be retained at the owner's expense there.

8 And then it says, "Fees and reimbursable invoiced

9 amounts shall be billed on a monthly percentage basis.

10 All invoiced amounts not in dispute are due and payable

11 within 30 days from the date of the invoice. If the

12 client disputes any portion of an invoice," it should

13 read, "client agrees to inform FFA in writing of such

14 dispute within seven calendar days of receipt of this

15 invoice." "The invoice." I apologize.

16 A Correct.

17 Q Did the client for the Reno project ever

18 dispute any of the invoices sent by your firm?

19 A Yes.

20 Q Can you please explain to the Court what the

21 disputes were.

22 A Cal Bosma went through our billing and

23 fortunately for us discovered that we had under billed

24 them. Okay. And there was-- So when Cal came down to

1 visit us from Reno, he got together with our accounting
2 department. And there was a glitch in our computer
3 files, because we would enter hours and the hours
4 didn't get into the computer right. So we actually
5 billed for fewer hours than we had spent on the
6 project. So he helped us. You're under billing me,
7 your bill should be such and such.

8 Later on in the process, okay, they modified the
9 billing technique, because when the project moves
10 forward they wanted-- Because he had been in the Coast
11 Guard or he worked with the Coast Guard. He wanted us
12 to bill them in equal monthly installments so we
13 wouldn't have to guess at the percentage of completion.
14 And we agreed to that, because that was fair enough.

15 Q And that was a conversation that took place
16 after schematic design, though, wasn't it?

17 A Well, you know, you're testing my memory. I
18 don't know whether it occurred before we completed
19 schematic design or after schematic design, but--

20 THE COURT: Mr. Friedman--

21 THE WITNESS: --it seemed like a reasonable way to
22 do it.

23 THE COURT: Mr. Friedman, but the question was, was
24 there ever a complaint lodged with you consistent with

1 the-- or, excuse me, a dispute lodged with you that was
2 consistent with the dispute process that's laid out on
3 page 2?

4 THE WITNESS: No.

5 THE COURT: Because you had said yes, so that's why
6 I was--

7 THE WITNESS: I said yes, because the client
8 actually helped us. I mean, they could have. If he
9 hadn't been as savvy, he could have just paid the
10 smaller bill and we wouldn't have known the difference.
11 But he actually corrected us and helped us.

12 BY MR. HOY:

13 Q Did your client for the Reno project ever
14 complain that your bills were too high?

15 A No.

16 Q Please turn to Exhibit No. 6. Exhibit No. 6 is
17 a contract between Mark Steppan as the architect and
18 BSC Financial, LLC as the owner. Now, the owner in
19 this contract is not necessarily the owner of the land,
20 in this case it's the developer?

21 A Correct.

22 Q And it's dated-- it says agreement made as of
23 the 31st day of October of the year 2005. Do you know
24 how the October 31th, 2005 date was picked?

1 A Yeah. Most of this is handled by bookkeeping
2 and accounting, but it has to do with when the clients
3 came into the office and when we finally received the
4 final agreement documents from the owner's attorneys.
5 The owner's attorneys prepared the final agreement.

6 Q And by "owner's attorney," you're talking about
7 the Hale Lane law firm?

8 A Yeah.

9 Q Now, this Exhibit No. 6 purports to entitle the
10 architect to the same-- I'll call it fixed, it's really
11 not a fixed fee, but a fee based on percentage of the
12 estimated construction costs.

13 A Correct.

14 Q So it's the same mechanism as in that
15 October 25th, 2005 letter?

16 A Correct.

17 Q There's been a suggestion in the case that a
18 prudent developer wouldn't have signed such a contract,
19 that developers never sign-- never commit to the design
20 fee unless and until they have their entitlements
21 and/or their financing to go forth with the project.
22 Has that been your experience as an architect?

23 MR. PEREOS: Objection, Your Honor. We're getting
24 into opinion testimony, and I don't know that this

1 witness has been designated as an expert to render
2 opinions. He's only a factual witness that I know of.

3 THE COURT: Mr. Hoy.

4 MR. HOY: Mr. Friedman has not been designated as
5 an expert witness for this case. He is a percipient
6 witness, but he does have specialized knowledge.

7 THE COURT: That would make him an expert.

8 MR. HOY: That would make him an expert, but he's
9 not designated as a retained expert under the rules of
10 civil procedure.

11 THE COURT: Sustained. I'll sustain the objection.
12 If he hasn't been designated as an expert, I don't see
13 how the argument, but he's qualified as an expert,
14 therefore, he can testify as an expert-- I just don't
15 see how you can then not designate him as an expert if
16 you want to offer that kind of expert opinion.

17 I wasn't also sure about the form of the question.
18 I was trying to think about the-- which of the three
19 witnesses or two witnesses who have previously
20 testified offered that opinion. So why don't you ask a
21 different question.

22 MR. HOY: Certainly.

23 BY MR. HOY:

24 Q In this particular case the developer entity

1 actually signed Exhibit 6?

2 A Correct.

3 Q So the developer agency or entity with respect
4 to the Wingfield Towers project in Reno did actually
5 commit to pay a fee to your firm based on a percentage
6 of the estimated construction costs?

7 A Correct.

8 Q At the time-- do you know whether or not at the
9 time BSC Financial signed Exhibit No. 6 BSC Financial
10 had entitlements in place?

11 A They didn't.

12 Q Do you know at the time that BSC Financial
13 signed this Exhibit 6 that they had financing in place
14 to purchase the land from Dr. Iliescu?

15 A Well, let's elaborate on that a little bit. At
16 the time we were retained, there was a zoning statute
17 on the Iliescu property and the zoning that was current
18 at the time entitled the property owner to build a
19 project of this magnitude. Okay. But when we made the
20 application finally to do the project, it goes under
21 the planned development ordinances. Okay.

22 We discovered that there was an expiration date
23 that was very, very soon so that the entitlements and
24 the zoning would change to reduce the scope of the

1 project dramatically to about a quarter of its
2 permitted size.

3 Q All right. I think I understand.

4 A Is that-- is that clear?

5 THE COURT: Well, the question was, do you know at
6 the time that BSC Financial signed Exhibit 6 that they
7 had financing in place to purchase the land from
8 Dr. Iliescu? That was the question.

9 THE WITNESS: Well, I thought there was more to the
10 question.

11 THE COURT: No.

12 THE WITNESS: If that's the question, no, I didn't
13 know whether they had the financing in place to
14 purchase the property.

15 BY MR. HOY:

16 Q At the time that BSC Financial signed Exhibit 6
17 do you know whether or not BSC Financial had financing
18 in place to continue with the design and the
19 construction of the improvements on Dr. Iliescu's land?

20 A No.

21 Q In all of your years working as an architect
22 for developers, did you ever have developers sign
23 agreements for a fixed fee before the developer had
24 development entitlements for the construction?

1 A Yes.

2 Q How many times?

3 A A hundred.

4 Q In all of your years acting as an architect for
5 developers, did you ever have developers agree to a
6 fixed fee before the developer had financing to build
7 out the improvements that were being designed?

8 A I believe we did, but I wouldn't have known
9 whether they had financing or not.

10 Q Please turn to Exhibit No. 7. Exhibit No. 7 is
11 Addendum No. 1, Contractual Changes to AIA B141
12 Standard Agreement Between Owner and Architect. And
13 this purports to be signed by BSC Financial on
14 April 21st, 2006. What was going on in terms of
15 contract negotiations between October 31st, 2005 and
16 April 21st of 2006?

17 A Once we started the schematic design, we were
18 consulting with Turner Construction who was involved in
19 a building that's here in Nevada, in Reno, which is now
20 completed, and they looked at the progress drawings we
21 had and they said the building was going to cost more
22 than 160 million.

23 Q Okay. I beg your pardon. I wasn't-- I wasn't
24 clear with my question. Were there ongoing

1 negotiations over the form of the Exhibit 6 agreement
2 and the Exhibit 7 addendum while Fisher-Friedman and
3 Steppan began work on the project?

4 A Not on the form, no, not really.

5 Q Was there a review process with the Hale Lane
6 law firm?

7 A Yes.

8 Q Please turn to Exhibit No. 14.

9 THE COURT: So is it your testimony that they-- I
10 just want to understand what you were saying clearly,
11 Mr. Friedman. --that these negotiations were ongoing
12 while the project was moving forward?

13 THE WITNESS: Yes. But let me--

14 THE COURT: Was that your question, Mr. Hoy? Maybe
15 I misunderstood the question. But we've got Exhibit 6
16 and then we've got the addendum some six months later
17 as Exhibit 7. But during that period of time, the
18 project is moving forward in some way; is that correct?

19 THE WITNESS: Yes. Let me amplify a little bit for
20 you, Your Honor.

21 THE COURT: Okay. Go ahead.

22 THE WITNESS: When we found out there was a
23 deadline on the approval process, that the entitlements
24 enacted under the zoning ordinance, you know, wouldn't

1 just continue and there was an expiration date, we were
2 authorized by the owners to start work on an hourly
3 basis. In the meantime, attorneys being attorneys,
4 take their sweet old time, and we didn't get the final
5 draft of the agreement until later. If we had waited,
6 okay, like attorneys like to do, we would never have
7 finished the project in time, the entitlements would
8 have expired, we wouldn't be here.

9 THE COURT: So if the world were just to run on
10 architect time, everything would work perfectly, lawyer
11 time makes it all messed up?

12 THE WITNESS: Well, you said it, Your Honor.

13 THE COURT: I think you said it first.

14 THE WITNESS: I think I'm going to agree with you.

15 THE COURT: I'm just teasing you a little bit,
16 Mr. Friedman.

17 THE WITNESS: We have deadlines we have to meet.
18 When the city imposes these deadlines, we don't have
19 any choice.

20 THE COURT: Okay. Go ahead.

21 BY MR. HOY:

22 Q All right. I apologize for skipping around,
23 Mr. Friedman.

24 Can you please turn to Exhibit No. 14. This is a

1 November 15th, 2005 letter agreement signed by Mark
2 Steppan and Sam Caniglia. And you had mentioned in
3 your prior answer that the firm decided to proceed on
4 an hourly basis while the lawyers did their thing for
5 six months.

6 A Pretty much.

7 Q Okay. And is this Exhibit 14 the hourly-- the
8 letter authorizing you to proceed on an hourly basis
9 while the lawyers are dealing with the papers?

10 A Actually, you know, I just want to-- There was
11 a lot of cooperation between the law firm representing
12 the owners and us. It's just that they took a long
13 time. There was never really any dispute or haggling
14 over it. Once they made their proposals for the
15 revisions, it was easy to agree to the proposals. And
16 they follow-- pretty much follow-- overwhelming follow
17 the B141.

18 Q All right. The question that I want to ask is,
19 is this Exhibit 14 the written authority for work to
20 begin on an hourly basis before the parties actually
21 sign the fixed-fee agreement?

22 A Yes.

23 Q Now, if I refer to this Exhibit 14 as the
24 stopgap agreement, will you understand what I'm talking

1 about?

2 A I would like you to clarify it for me. I'm
3 getting kind of lost.

4 Q All right. So in October-- October 25th, 2005,
5 there's a proposal made to perform certain services in
6 exchange for a fee equal to 5.75 percent--

7 A Right.

8 Q --of the estimated construction costs?

9 A Correct.

10 Q In April of 2006 that deal is formalized with
11 Exhibit 6 and 7?

12 A Yes, I agree.

13 Q While those documents were being formalized,
14 Mark Steppan and Sam Caniglia signed this Exhibit 14
15 authorizing the work to proceed on an hourly basis?

16 A Correct.

17 THE COURT: And just so I understand, with the
18 expiration of the entitlements that you were talking
19 about before, you just needed to get the project
20 started so the entitlements-- Well, correct me if I'm
21 wrong. But do you need to get the project started so
22 the entitlements will be fixed and they won't expire?

23 THE WITNESS: It's more stringent than that. We
24 had to submit a list of documents that complied with