



In the Matter Of:

JILL MANN

vs

LAS BRISAS PACIFICAS, INC., et al.

KENT BERCHIOLLI

January 30, 2025

Case No: 24CU015304N

CERTIFIED COPY

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

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JILL MANN, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LAS BRISAS PACIFICAS, INC., a )  
 California mutual benefit common )  
 interest development corporation; )  
 and DOES 1-20, inclusive, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 AND RELATED CROSS-ACTIONS. )  
 )

No. 24CU015304N



ZOOM VIDEOCONFERENCE DEPOSITION OF KENT BERCHIOLLI

Taken before YVONNE WHITEFIELD, CSR

California Certificate No. 5556

January 30, 2025

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1 ZOOM VIDEOCONFERENCE DEPOSITION OF KENT BERCHIOLLI

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Also present: Jill Mann; Cathi Berchiolli; Robyn

24

Richardson-Hibner; Bill Katz; Sally Lee

25

1 KENT BERCHIOLLI,  
2 sworn as a witness,  
3 testified as follows:  
4

5  
6 EXAMINATION

7 THE COURT REPORTER: My name is Yvonne  
8 Whitefield. I am a California Certified Shorthand  
9 Reporter. My CSR license number is 5556.

10 BY MR. ALEXANDER:

11 Q. Good morning, Mr. Berchiolli. My name is Vasko  
12 Alexander. I'm counsel for plaintiff, Jill Mann, in the  
13 Mann versus Las Brisas HOA matter. I have introduced  
14 myself off the record.

15 Is it okay if I call you Kent moving forward?

16 A. Yes. Kent? Okay.

17 Q. Is it okay if everyone called you Kent?

18 A. Yes.

19 Q. You can refer to me as my first name, Vasko.  
20 That will make it easier for everyone.

21 Are you represented by counsel today, Kent?

22 A. I'm sorry. Am I what?

23 Q. Are you being represented by counsel today?

24 A. No. I don't think so, no. No. Nobody here that  
25 will prep me or talk to me.

1 Q. Off the record you indicated you might be a  
2 little bit hard of hearing. Can you explain to us what  
3 condition you have and how well your hearing is?

4 A. You want my history of my time here or you want  
5 how I feel now?

6 Q. No, no. You indicated that you have hearing  
7 issues.

8 A. Yes. I have my -- I have a bone spur in my right  
9 ear that's blocked my hearing and a little bit of my  
10 balance. I had it for quite a few years and it hasn't  
11 gotten better. I do have hearing aids that are provided  
12 by the VA. Unfortunately right now, my right hearing aid  
13 wasn't functioning properly, so it's out for repair and I  
14 haven't gotten it back yet.

15 So I'm operating on one hearing aid on my left  
16 side. I hear pretty good out of my left side, but my  
17 right side, sometimes I don't understand the question, but  
18 be patient and I'll ask you to repeat it.

19 Q. I appreciate that. And I will try to speak  
20 slowly and clearly to the best of my ability. If you have  
21 any issue understanding the question or hearing it, let me  
22 know. We're going to repeat it or I might ask Yvonne, our  
23 court reporter, to read back the question and we'll move  
24 from there.

25 A. Okay.

1 Q. Are you okay with being able to read whatever is  
2 on the computer screen in front of you?

3 A. Yes. I can read.

4 Q. Okay. Great. I'm going to be sharing some  
5 documents with everyone today which we're going to mark as  
6 exhibits, and I believe Mr. Combs is also going to be  
7 doing that.

8 And what we're going to do is we're going to  
9 present those documents on the screen and try to make them  
10 as legible as possible for you. If you have any issue  
11 with that, let us know. We'll find a solution. But we're  
12 going to get through the deposition in a matter that's  
13 comfortable for you and for everybody else as well.

14 Does that sound fair?

15 A. Yes. I've written over the time this has taken  
16 place. I have written a lot. My file is about two inches  
17 thick. So I may not totally recognize it right away, but  
18 I'm sure if you're reading it from the Breeze or from some  
19 other publication, that's correct.

20 Q. Now, have you had your deposition taken before?

21 A. Have I had my --

22 Q. Your deposition. Have you been deposed before?

23 A. No.

24 Q. This is your first time?

25 A. Yes.

1 Q. And what we like to do is provide what we call  
2 admonitions at the beginning of the deposition. We have  
3 already done some of those with respect to your hearing  
4 and your eyesight.

5 But you were sworn as if you're sworn in court.  
6 So we expect for you to tell the truth and be truthful in  
7 all your responses today --

8 A. Of course.

9 Q. -- as if you're testifying in court. Now, of  
10 course, the setting is a little more casual. And what I  
11 will say is if you need to take a break, let us know.  
12 This is not a marathon, you know. It's not a sprint.  
13 It's none of that.

14 It's a conversation between all of us and if you  
15 need to take a break, just let me know. We're going to  
16 pause for five, ten minutes and proceed after that. My  
17 only request is that we finish whatever response you were  
18 giving or answer the question that's pending before we  
19 take a break, okay?

20 A. Okay.

21 Q. Other than that, you know, if you need to step  
22 out, no problem. We're also looking for, as I said, the  
23 truth of your statements and what you believe to be the  
24 truth. To that extent, I don't want you to guess. So if  
25 you have a guess, we don't want to hear about that.

1           But if you have an estimate of a fact, that's  
2 okay. So it's okay to estimate things; not okay to make  
3 guesses. And you understand the difference between a  
4 guess and an estimate, correct?

5           A. Yes.

6           Q. Okay. Great. So far you've done great with  
7 waiting for me to complete my question before providing a  
8 response. And it's important to keep that practice  
9 between all of us so that we have a clean record.

10           Our court reporter, Yvonne, is taking down every  
11 word that is being said. And it makes her job a lot  
12 easier if we extend each other the professional courtesy  
13 of waiting for the other person to finish before  
14 responding even if you anticipate the question and know  
15 what the answer is going to be already.

16           So I appreciate that. And I think that's a fair  
17 way to proceed. Would you agree with me?

18           A. I understand that.

19           Q. You understand that. Okay. Great.

20           Our court reporter cannot take down body  
21 responses. Only verbal responses are being recorded. So  
22 if you have a response, please make it a verbal response.  
23 Sound good?

24           A. Yeah. Verbal. I understand that.

25           Q. Okay. One last thing, are you under the

1 influence of any substance that may impair your ability to  
2 provide us with your best deposition testimony today?

3 A. No, I'm not.

4 Q. Okay. Great. For the record, can you please  
5 provide us with your full name?

6 A. I'm sorry. Say that again.

7 Q. Can you please provide us your full name for the  
8 record?

9 A. Kent Berchiolli.

10 Q. And how do you spell your last name?

11 A. B, as in boy, E-R-C-H-I-O-L-L-I.

12 Q. And Kent, where do you currently reside?

13 A. Right now I reside here in Las Brisas, unit 34.

14 Q. Your full address, please.

15 A. 2010 West San Marcos Boulevard, unit 34, San  
16 Marcos, California 92078.

17 Q. And does anybody else reside with you at that  
18 address?

19 A. My wife, yes. Cathi.

20 Q. She shares your last name?

21 A. Berchiolli.

22 Q. And how long have you lived at your current  
23 residence?

24 A. In the present residence since 2007. June of  
25 2007 is when I moved in.

1 Q. And has that been continuous?

2 A. I'm sorry. Say that again.

3 Q. Have you continually lived at that residence  
4 since 2007?

5 A. Yes.

6 Q. Have you ever rented out the residence to anybody  
7 else?

8 A. No.

9 Q. Prior to 2007, what was your residence?

10 A. I lived in Carlsbad for 30 years. You want that  
11 address?

12 Q. No. That's okay. The city is enough. I  
13 appreciate it.

14 Now, let's get into your formal education a  
15 little bit. What is the highest formal education you have  
16 obtained?

17 A. I'm sorry. Say that again.

18 Q. With respect to your education background --

19 A. Yes.

20 Q. -- formal education, what is the highest degree  
21 you have obtained?

22 A. I have an AA degree from New York University, two  
23 years of college. I probably have gone the equivalent of  
24 four years, but I never pursued my -- to get my Bachelor.

25 Q. And what year did you obtain that?

1 A. I graduated in '57, 1957.

2 Q. And after you graduated from New York in 1957,  
3 what was your next occupation?

4 A. I was admitted into flight training with the  
5 Marine Corps, Pensacola, Florida. I got my wings after 18  
6 months. I was a fighter pilot with the Marine Corps for  
7 about 12 years. 1967 is when I left the military.

8 Q. Was that an honorable discharge?

9 A. Was it what?

10 Q. What kind of discharge did you receive from the  
11 military?

12 A. An honorary discharge.

13 Q. And after 1967, what was your next occupation?

14 A. I was a landscape contractor, a licensed  
15 landscape contractor in California from '67 until about  
16 '72. The company was Saddleback Valley Landscape Company.  
17 I was the owner. After that, I decided to get into the  
18 wholesale nursery division of the nursery.

19 And I applied and it was accepted by a company  
20 called Select Nursery, one of the largest in the United  
21 States. And I was customer service for about six months.  
22 And then I went on the road as an outside salesman for  
23 maybe 10 years or 12 years.

24 I was a very successful salesman, ameliorated all  
25 the salesmen. So they promoted me at the end of that

1 time. I was a sales manager. The company in the meantime  
2 was sold to Amfac Nurseries, which was a large corporation  
3 out of Hawaii. I stayed on and I was sales manager.

4 And then that company was bought by a company --  
5 a person, a lawyer, called Flynn Rainbow Nurseries. Don  
6 Flynn was his name. And I stayed on as a sales manager  
7 for a couple years. Then I became general manager as  
8 well.

9 Q. What year was that when you became general  
10 manager?

11 A. I would say probably 1990, '92.

12 Q. And when you became general manager, what were  
13 your duties as a general manager there?

14 A. Well, Flynn Rainbow Nurseries turned out was a  
15 large wholesale nursery, one of the largest in the  
16 country. We shipped plants nationwide to a lot of  
17 different customers. I had about 20 salesmen that worked  
18 for me. The company was about 600 people employed.

19 And so this was not a small company. We averaged  
20 about \$20 million a year and I pretty much ran the sales  
21 department. I had an accountant, but I also ran the  
22 administrative details as well as production.

23 So I'm well-qualified in the wholesale nursery  
24 and selling to landscapers and people like Home Depot and  
25 Lowe's and companies like that.

1 Q. When you would sell to landscapers and Home Depot  
2 and Lowe's and some of the customers you just identified,  
3 would they approach you with questions regarding the types  
4 of soil that they might be trying to plant in, or what  
5 kind of issues would they raise to you?

6 A. Are you talking about the time I was a  
7 landscaper?

8 Q. Yes.

9 A. I was operating out of, let's see -- city of San  
10 Juan Capistrano was where I lived and my office was there  
11 in my house. I had a lot of workers working for me. Most  
12 of them ironically were Marines out of El Toro, Marine  
13 Corps, Air Station El Toro. And I got to know them and I  
14 liked their work ethic, so they were my employees.

15 I did okay except that I realized that the real  
16 money was in the wholesale end of the business. So that's  
17 why I made my switch in 19 -- about 1972, I made my  
18 switch.

19 Q. And when you made the switch and you were selling  
20 nursery products to your customers such as Lowe's and Home  
21 Depot and landscapers, did you ever have to sell nursery  
22 products that you knew were going to be applied to a  
23 slope?

24 A. Oh, yeah. We had -- our main nursery location  
25 was in Rainbow, California. We had about 265 acres and

1 there was a lot of slopes on it because we were on the  
2 foot of a mountain.

3 And so the grading of the slopes was done while I  
4 was there. Mostly when I was a sales rep. And then a lot  
5 of the plants -- we laid the slopes, so we could put more  
6 plants on them. This was not -- I don't know how familiar  
7 you are with wholesale nurseries, but this was a big one.  
8 Probably in the top ten of the country.

9 Q. Okay. From your experience, what is the purpose  
10 of planting vegetation on slopes?

11 A. Well, I think I know about slopes. I wouldn't  
12 say I was an expert or a geologist, but I certainly had a  
13 lot of experience with the slopes. We got a lot of rain  
14 in Rainbow and slopes were always a concern that they were  
15 going to hold, which they did.

16 So I do have -- I can look at a slope and pretty  
17 much tell if it's stable or not.

18 Q. Based off of what?

19 A. I'm sorry?

20 Q. How would you be able to look at a slope and  
21 determine if it's stable?

22 A. Well, what kind of vegetation is on it, what is  
23 the gradient of the slope, particularly the portion where  
24 it ends to make sure that rainfall will flow and drain  
25 from the slope.

1 Q. Okay. Are there any particular plants that you  
2 would avoid planting on a slope?

3 A. Well, there's quite a few different plants.  
4 Mostly plants that you put on a slope need to be drought  
5 tolerant so you don't have to water them that much. And  
6 ground covers are okay, but the trouble with ground covers  
7 is they don't always last.

8 And so shrubs and ground covers is usually a  
9 combination. The ground covers sometimes can be flowering  
10 to make it more attractive, but we really weren't  
11 interested in that while we were in the nursery business.

12 Q. From your experience, if a slope does not have  
13 any vegetation on it, would that slope be more or less  
14 stable than one with vegetation on it?

15 A. I'm not sure of what your question was. If I  
16 look at a slope -- well, the first time I arrived here and  
17 met Jill, she had asked me to look at the watering and --  
18 our sprinkler system was overwatering a little bit. So I  
19 had Green Horizon, who is a landscaper maintenance people  
20 who worked for me, I had them move the sprinklers so that  
21 her patio wouldn't get too wet.

22 Sometimes when there's wind blowing, you can't  
23 help it, but in this case we could adjust it.

24 Q. Okay. We'll get to that in a minute.

25 But my question was a little broader than that.

1 From your experience with landscaping and being in the  
2 wholesale nursery business, if you were to look at a slope  
3 that did not have any vegetation on it, what would be your  
4 opinion of that slope?

5 A. If I looked at a slope and it didn't look stable?

6 Q. No. If it had no vegetation on it.

7 A. I'm sorry. Say that again.

8 Q. If the slope was barren and had no vegetation at  
9 all, what would be your opinion of such a slope?

10 A. I would be concerned about it. I would worry  
11 that it wouldn't run. You know, sprinklers that water  
12 plants sometimes will water a slope as well. So  
13 sprinklers break. So I would be concerned about a slope  
14 that had no plants on it, yes. I would be.

15 Q. Now, you established your work experience up to  
16 1982. What did you do after 1982 when you became a  
17 general manager that year?

18 A. Well, I was a salesman -- after my six months as  
19 customer service, I was given a territory and I was fairly  
20 successful in selling. So I stayed with that because the  
21 money was good.

22 And then if you're a good salesman, usually  
23 people, management starts looking at you to be a manager  
24 and they offered me a manager's job, sales manager's job.  
25 And so I took it. I was a sales manager for a number of

1 years.

2           And then when Flynn Rainbow -- when Don Flynn  
3 bought Flynn Rainbow, he had no knowledge of nursery. So  
4 he surrounded himself with people like myself and others  
5 who had background in that so we could help him. And so  
6 because of that, he gave us ownership in the company as  
7 well.

8           All of us had ownership in the company. There  
9 was about three of us. We were on the board of directors.  
10 I became the general manager as well as being responsible  
11 mostly for sales. But because the general manager kind of  
12 runs things, I became knowledgeable in the production and  
13 in the administration as well.

14         Q.    And was in 1992 when that happened?

15         A.    Yeah. About '92, yes. Yeah, '92, '93, like  
16 that.

17         Q.    For how long afterwards did you hold that  
18 position?

19         A.    I held it until it was sold. We ended up  
20 selling. The owner wanted to sell to a larger nursery  
21 called Hines Nursery in 1999 or 2000, right around then.  
22 And Hines knew of me and they wanted me to stay on. So I  
23 stayed on as a regional sales manager for Hines.

24                It was a bigger company than ours. I stayed with  
25 them for about three years. And then I was -- I didn't

1 think they were giving me enough responsibility, so I got  
2 out. I resigned, kind of retired for a couple years, then  
3 realized I missed it. So I joined several other  
4 companies. One was Village Nurseries and the other one  
5 was Miramar Wholesale Nursery. And I was sales manager  
6 with them or regional sales manager with Village.

7 And then I was reaching the age of about 75 or 74  
8 and decided it was time for me to retire and I did.

9 Q. So final retirement, what year was that?

10 A. What year was that?

11 Q. Yeah.

12 A. I wish I could remember exactly when it was. I  
13 would say probably mid-'70s, '74. I mean -- I'm sorry.  
14 My age was 74. Probably I resigned 2000 -- about when I  
15 moved in here.

16 Q. So roughly around 2006, 2007?

17 A. Yeah. Yeah. I think I did work with the Village  
18 Nurseries for longer than that. I remember telling the  
19 owner that did he know how old I was and he said, I do.  
20 And I said, Well, I think it's time for me to step down.

21 So I did and I was in my 70s at the time.

22 Q. Okay. But you didn't really retire, did you?

23 A. No, I didn't. When we moved in here, 2007, I was  
24 interested in the board, but I did not do anything for  
25 about a year. And then I joined -- ran for the board and

1 was elected and I was a secretary for about a year and a  
2 half, two years.

3 And then the president wanted to resign. So  
4 Bonnie Jackson, she quit and I took over as president.  
5 And I was the president of the board from 2011 to 2017, at  
6 which time I was reelected. And I wanted to continue  
7 being president, but Las Brisas has a policy where the  
8 directors decide who is going to be president, and they  
9 wanted a change.

10 So I resigned because I wasn't happy with the  
11 change. I was going to be secretary again. And so I  
12 resigned and stayed that way for four years, from 2018 to  
13 2021. I didn't do anything. I wasn't on the board and I  
14 wasn't in landscaping.

15 During the first eight years, I was in charge of  
16 the architectural committee and I was in charge of the  
17 landscape committee. I was committee chairperson.

18 Q. Let me just clarify that. Between 2011 and 2017,  
19 you were the president of the board, correct?

20 A. I was president of the board, yes.

21 Q. And you were also the chairman of the  
22 architectural design committee during that time period?

23 A. I'm sorry?

24 Q. Between 2011 and 2017, were you also the chairman  
25 for the architectural design committee?

1 A. Yes. And also for -- landscape chairperson as  
2 well.

3 Q. And that, again, is between 2011 and 2017,  
4 correct?

5 A. Yes, yes.

6 Q. Okay. So let's break this down a little bit.  
7 Your duties as president, can you describe what your  
8 duties of president for the HOA board were?

9 A. As president, I ran the meetings. I was involved  
10 in a lot of areas. It's funny. The pool regulations that  
11 are posted at the pool, I'm the one who had them written  
12 and had a community to approve them. So I was a very  
13 involved president. I was in a lot of things. Mostly the  
14 landscape because I was familiar with landscaping.

15 Of course, the architectural because the fellow  
16 who was architectural, Don Allen, he asked me if I would  
17 take it over and, of course, I did.

18 Q. So Don Allen was the chairman of the  
19 architectural design committee prior to your involvement?

20 A. He was the architectural committee chairperson  
21 for nine years, and I took it over, I think, in 2010 while  
22 I was on the board.

23 Q. Who else was part of the HOA board between 2011  
24 and 2017?

25 A. Who else was on the board?

1 Q. Yes.

2 A. Well, several guys and several women. Some of  
3 them still live here; some of them don't. We have five  
4 members total. They pretty much stayed with me. A few of  
5 them changed. One was a pool expert and I needed him to  
6 keep the pool going. He stayed with me for a while and  
7 then he quit and I had to find somebody else that would  
8 work on it.

9 Q. And who was that? Do you recall his name?

10 A. John McJunkin was the pool guy for several years  
11 and he was on the board as well.

12 Q. Do you recall anybody else who was on the board  
13 when you were the president?

14 A. Let me see if I can remember. There was quite a  
15 few. Let me think for a second. I can't always remember  
16 the names, you know -- I can't always remember the names,  
17 but Mike Danilovic was on the board; Frank Helmlinger was  
18 on the board; Dick DeRosa was on the board at different  
19 times. Some of them were on for two years, four years,  
20 six years.

21 And so they kept changing.

22 Q. Do you recall if Sandra Camuchi was on the board?

23 A. Sandra Camuchi was on the board, but she wasn't  
24 the original treasurer. The original treasurer when I was  
25 on board was a fellow named Jim Konugres. He was the

1 treasurer. He was excellent and then he decided to resign  
2 and she ran and became the president -- became the  
3 treasurer, the treasurer.

4 Q. How about Robin Hidner?

5 A. Robin -- I forget when Robin moved in, but I  
6 remember her partner. He moved in first and then she  
7 became part of it. Robin wasn't connected with the  
8 community as far as being on the board or a committee  
9 during the time I was president, no.

10 Q. Okay. Thank you for that.

11 A. I think she became president after I resigned.

12 Q. Okay. And that was in 2017?

13 A. No, no. She became president much later than  
14 that. I would say 2017 -- I was president again in the  
15 year 2022. And then I resigned at the end of a year. And  
16 I think shortly after that -- I don't know exactly when --  
17 she ran and became a member of the board.

18 Q. Okay. And was Bill Katz a member of the board  
19 while you were president?

20 A. No. Bill Katz was not a member of the board  
21 while I was president, no. 2011, 2017 he wasn't on the  
22 board. And 2022, he wasn't on the board. He was the  
23 president part of the time from 2018 to 2021.

24 And he told me that he didn't want to run again,  
25 so I was concerned about who was going to be the

1 president. He was a little concerned as well. So I said,  
2 Well, maybe I'll run again and I did and was elected. And  
3 I stayed on for 2022. In January of 2023, I resigned  
4 partly because my hearing was deteriorating and I was  
5 having trouble hearing questions at board meetings. That,  
6 plus I had a dispute with them on reserves as well.

7 Q. Okay. What was the dispute you had regarding the  
8 reserves?

9 A. I'm sorry?

10 Q. You just mentioned that you had a dispute with  
11 the board regarding the reserves. What was the dispute?

12 A. My dispute raised about the fact that they were  
13 thinking of installing solar paneling in the clubhouse and  
14 the pool and I was concerned because we hadn't set a  
15 reserve for this topic.

16 And I didn't like taking reserves from other  
17 areas and using it for this. So I had a dispute about  
18 that that bothered me, but I think primarily it was  
19 because of my hearing was deteriorating. You know, I  
20 thought well, maybe one year is enough. So I resigned.

21 Q. Okay. We'll get to that.

22 A. I resigned in January of '23.

23 Q. I appreciate that clarification. We'll get to  
24 the reserves in a little bit. But before we get there, I  
25 want to ask you within your scope as the architect design

1 committee chair, what were your duties there?

2 A. As the architectural?

3 Q. Yes. Architectural design committee chair, what  
4 were your duties?

5 A. In the architectural, we had rules and  
6 regulations written, which was written by the community,  
7 and changed frequently by a majority of the community  
8 vote.

9 So I had to be very acquainted with that. So if  
10 somebody wanted to work on a project at their house and it  
11 was a hardline type project, in other words, a patio  
12 cover, a wall, a patio floor, something hardline versus  
13 landscaping, they had to apply to me -- there was a form  
14 we had -- and get permission. And they would do a drawing  
15 or a discussion or I would meet with them and go to their  
16 house and check it out.

17 And then I would either approve it or disapprove  
18 it. Most of the time we approved it with maybe some  
19 changes. And I did that for nine years. So I was --  
20 that's one of the busiest committees that there is because  
21 you're constantly involved with something. The  
22 landscaping, I was landscaping chairperson for eleven  
23 years. That's also busy.

24 We had Green Horizons as the maintenance company.  
25 The first guy that worked there was a guy named Jaime.

1 Then Jaime quit Green Horizons and there was a new one  
2 called Luis Trinidad, so I worked with him.

3 In both cases, both of those gentlemen had a head  
4 over them, which was Santos. Santos Cruz was in charge of  
5 them and was a manager for Green Horizons. So I've been  
6 familiar with him all during that time and I understand  
7 he's still the manager.

8 Q. Okay. Let me just go back for a couple of  
9 statements you made. You made a distinction with respect  
10 to the architectural design committee between hardline  
11 applications and landscape applications. And you  
12 described to me the process for the hardline applications.

13 Is it fair to say that the hardline applications  
14 deal with the actual residence of the homeowner versus any  
15 landscaping that homeowner may have?

16 A. Well, the landscaping we were -- Green Horizons  
17 (verbatim) was the employee that worked for Green  
18 Horizons. But when he was on site working, I pretty much  
19 would meet with him in the morning, go over what he was  
20 going to do that day and make adjustments to it if I  
21 thought something was a priority.

22 Otherwise, he would go about his business and do  
23 well. And then he answered to Santos Cruz, who I was very  
24 familiar with in talking with and would call him quite  
25 frequently.

1           And so the homeowners got involved when we were  
2 working on the slope behind their house or below their  
3 house. Usually I would talk to them and let them know  
4 that we're going to do something. Then we would go about  
5 and do it whether it be adjustments to the sprinklers or  
6 planting of plants.

7           I had a program called slope performance and plan  
8 replacement. That was one of my terms that I used when we  
9 were working on slopes.

10          Q. When you were working on slopes, did you ask the  
11 owners' permission in order to do anything to the slopes  
12 anywhere in the Las Brisas HOA?

13          A. No, I didn't ask their permission, but I also  
14 kept them informed as to what I was doing so that,  
15 obviously, they're going to be staring at the slope while  
16 they live there and I wanted to make sure they were  
17 comfortable with what was happening.

18                 So I communicated with them, but did I get their  
19 permission? No.

20          Q. Okay. Is it your understanding at Las Brisas HOA  
21 there are two types of slopes? One owned by the HOA and  
22 one privately owned. Is that your understanding?

23          A. Yes. It was -- when I first joined the  
24 community, there was about four or five people that were  
25 pretty much running things. They weren't on the board,

1 but they did a lot of work. Dominic Londino, Jim  
2 Konugres, Don Allen, Dick Caldwell, who still lives here,  
3 they did a lot of the work.

4 They did the repair work. We had a lot of  
5 volunteer people do work like that.

6 Q. Let me pause you there for a second. What kind  
7 of repair work are you referring to?

8 A. It could be sprinkler adjustments; it could be  
9 painting of, like, the fences around the pool area,  
10 painting of the walls at the entrance to the clubhouse,  
11 the entrance to the community. Anything that came up. I  
12 mean, if there was a pool problem, usually one of those  
13 people were involved helping me work out the solutions  
14 and then we would proceed with it.

15 When I joined the committee, it was made very,  
16 very definitely to me that the slopes was the  
17 responsibility of the community and that my job was to  
18 make sure that Green Horizons did their job correctly and  
19 that the sprinklers were working properly.

20 A lot of the --

21 Q. When you say the slopes were the responsibility  
22 of the community, you're referring to the HOA, correct?

23 A. No. I know about the slopes that are common area  
24 slopes. The big slope behind the clubhouse, the ravine,  
25 those slopes are owned by everyone in the community.

1 I'm talking about mostly the other slopes.  
2 There's 94 slopes in this community. We have a lot of  
3 slopes. And we had a sprinkler system that crossed  
4 property lines. In other words, when the owner put in the  
5 sprinkler system, he did not just put one for this home  
6 and one for this home. If you want to turn on the  
7 sprinklers, probably it would water several homes, several  
8 slopes.

9 And so -- and the sprinkler system always needed  
10 some repair. They were getting old, valves would break,  
11 animals would fool around with the heads. So they had to  
12 be repaired. So a lot of the problems that would grow,  
13 would come up would be sprinkler related.

14 There wasn't too many problems with slope  
15 problems, with slopes breaking down because they were  
16 covered with ground cover and some shrubs. So if there  
17 was damage to a slope, it usually related to a sprinkler  
18 malfunctioning, like a pressure line leaking and the water  
19 would run down the slope causing a runoff of the soil,  
20 maybe some plants would go with it.

21 In one case --

22 Q. Let me pause you there for a second. Who would  
23 pay for those repairs?

24 A. All repairs were paid by the community. We  
25 never, ever asked anybody to pay anything for repair of a

1 slope.

2 Q. And there was no differentiation between whether  
3 it's a private slope or one owned by the community,  
4 correct?

5 A. No. In my mind and in the mind of the community,  
6 at least the people I knew, the slopes were to be  
7 maintained and controlled by the community.

8 My job was to make sure that they looked good,  
9 they were functioning properly, that the sprinklers were  
10 working. And it did not matter whether it was a community  
11 slope or a slope behind a house.

12 Q. Okay. So when you say maintain the slopes, what  
13 is included in your definition of maintenance of slopes?

14 A. Replacing plants maybe that needed replacement,  
15 filling in bare spots; sprinkler coverage, making sure  
16 that the sprinklers covered properly and that they didn't  
17 overwater the patio of the homeowner below.

18 It was pretty much a constant job maintaining  
19 that.

20 Q. Did maintenance include drainage of the slopes?

21 A. Doing what?

22 Q. Drainage, how the slopes drained.

23 A. Well, to a degree it did, of course, because  
24 usually that would relate to a sprinkler problem. In  
25 other words, there was a leaking sprinkler and the water

1 was running too heavy in an area or slope was not being  
2 covered properly.

3 So drainage came into it. But all of the homes  
4 usually had a wall behind the home and the sprinklers --  
5 sometimes there was a drainage system that operated in  
6 connection with the wall; sometimes the water just -- when  
7 it was a heavy rain, just ran over the wall.

8 And the homeowner's job, the way I used to  
9 explain it to them, was if the water goes beyond the wall  
10 or beyond the slope, it's your job to make sure that that  
11 water drains in a way that will not go under your house  
12 and would drain out to the front street.

13 So all of the homes had drain pipes that were in  
14 the curbs that usually drained the home. Very important.

15 Q. But if the water was on the other side of the  
16 wall where the slope is, that water is the HOA's  
17 responsibility, correct?

18 A. That's the way I knew it, yes.

19 Q. And who supplies the water to the sprinkler  
20 system?

21 A. Who supplies it?

22 Q. Correct.

23 A. The Vallecitos Water Company.

24 Q. And who pays for the water?

25 A. The community pays for it.

1 Q. Does the community, or at least when you were  
2 president and involved in the architectural and the  
3 landscape committee, did the community control the amount  
4 of water that was introduced to the slopes through the  
5 sprinklers?

6 A. Well, usually myself and Green Horizons talking  
7 to each other, we pretty much controlled when we should  
8 water and how much we should water, how long we should  
9 have the sprinklers on.

10 Usually Vallecitos, maybe during droughts, would  
11 tell us, You're only allowed to water twice a week or  
12 three times a week. And we tried very hard to stay within  
13 that guideline.

14 It was always an issue. Water kept getting more  
15 expensive. So it was always an issue overwatering or  
16 using too much water. And sometimes there would be a leak  
17 because we had -- a little bit down in the ravine. They  
18 were hard to find, the leaks. So those leaks would drain  
19 water and we would spend more money on the water than we  
20 should.

21 But usually Green Horizons was excellent on it.  
22 There was a committee that worked for Green Horizons who  
23 handled -- not a committee. It was a section of Green  
24 Horizons that handled sprinkler problems. And if it was a  
25 small problem like a breakage of a head, usually our

1 maintenance guy, Luis Trinidad, would take care of it. If  
2 it was more involved with pressure lines or adding lines,  
3 then usually I would get ahold of Santos and Santos would  
4 get ahold of the sprinkler division of Green Horizons and  
5 they would repair it.

6 Q. Okay.

7 A. And we would pay for it.

8 Q. Yeah. The HOA would pay for it?

9 A. We paid for all sprinkler problems.

10 Q. And who paid for the vegetation that was on the  
11 slopes -- that is on the slopes?

12 A. All of it was paid for by us, by Las Brisas.  
13 Most of the time when I was president or in charge --  
14 eleven years I was in charge of landscaping. I pretty  
15 much ordered the plants. Sometimes I even picked them up  
16 in my car if it was a small job. Sometimes I had them  
17 delivered. All of our plants -- most of our plants were  
18 bought from a company called Devil Mountain Nursery. We  
19 had an account with them and I was able to charge the  
20 bill.

21 And then I would tell Green Horizons, like, I  
22 needed 37 -- I want to plant some plants up there because  
23 there was some bare spots. I would show them the area and  
24 I would tell them how many plants I was getting and when  
25 to be there and to make sure the day I wanted them to do

1 it, he was available to do it.

2 If it was a big job and I needed an extra man, I  
3 would go to Santos and ask for an extra man and I would  
4 get board approval before I did that. Usually Trinidad.  
5 Luis Trinidad worked five days a week. And during the  
6 summer months, from spring, March to October, we had an  
7 extra man once a day -- one day a week that would help  
8 him.

9 So I tried to schedule plantings on that one day  
10 he was available so it would be done quicker -- quickly  
11 and it would be two people.

12 Q. Now, you mentioned Green Horizons several times.  
13 Were there any other landscape vendors that were retained  
14 by Las Brisas HOA during your time as the president?

15 A. In the early days when I was president, sometimes  
16 -- like, for instance, on the main road coming into the  
17 community, there used to be some big pine trees on the  
18 east side of the ravine -- no -- yes, on the east side of  
19 the ravine. And we took them out because they were  
20 dropping needles all over the place and requiring too much  
21 maintenance.

22 I then got board approval to replace them with  
23 different trees. And when the job was that big, usually I  
24 would tell Green Horizons that I'm going to do this and  
25 I'm going to hire a different firm to do it because we

1 don't have enough people -- you don't have enough people  
2 to do it and you don't have any equipment to do it.

3           So I would hire a landscape contractor to do it  
4 or a gardener to do it and they would do it. All of this  
5 would have to be submitted to the board ahead of time,  
6 approved by the board, the expenditures. I would estimate  
7 what they were. I would buy the plants from the nursery I  
8 wanted to buy them from. Because of my nursery  
9 background, I had contact with a lot of nurseries. I knew  
10 who grew things. I knew where the best place was to buy  
11 plants and the cheapest and the best.

12           And so -- but that portion of my work I was very  
13 qualified.

14           Q. Were the homeowners permitted to modify or change  
15 any of the plants that were planted on the slopes?

16           A. No. Maybe as time went on and there was a person  
17 that had an uphill slope behind her. They would kind of  
18 push me into letting them plant a few flowers along the  
19 edge of the wall for visual effects, for their benefit.

20           Usually depending on the amount and what they  
21 planted, I would let them do that.

22           Q. Let me pause you there. Let me pause you there.

23           A. Usually it was about a foot from the wall.

24           Q. Okay. I appreciate that. Under every instance  
25 from your experience, a homeowner would have to ask

1 permission prior to planting anything on the slopes; is  
2 that correct?

3 A. Absolutely. Absolutely. They weren't allowed to  
4 touch anything that was planted on the slope. They  
5 obviously could complain about it. Then I was very quick  
6 to listen to them and try to satisfy their concern. And  
7 in most cases, I was able to; in some cases, not.

8 Q. Were homeowners permitted to turn off sprinklers?

9 A. No. They had no control on sprinklers.

10 Q. Whether they're adding water or removing from the  
11 sprinklers, they had no control over it; is that correct?

12 A. Sprinklers that were on the slopes were  
13 controlled by -- well, it was Green Horizons, by us, Las  
14 Brisas. We had -- I guess sometime in the past they were  
15 put in and they were getting old. So sometimes there was  
16 adjustments that had to be made. Some would complain that  
17 the sprinklers were going over the wall and wetting their  
18 patio. So I would address that immediately and take care  
19 of it.

20 As a matter of fact, I think that Jill was one of  
21 the ones that did complain about that and I took care of  
22 it.

23 Q. We'll get to that in a little bit.

24 But were homeowners permitted to install drains  
25 on the slopes?

1           A.    People would talk about the wall, the wall would  
2 be flaking. And they would say it's because it's too much  
3 water coming over the slope. So we would adjust that.

4           But, no. Anything that happened from the wall up  
5 the slope or from the wall behind the slope would pretty  
6 much be up to the community.

7           Q.    Up to the HOA, correct?

8           A.    Yes. We didn't put in -- we didn't -- at least I  
9 never put in a system like a French drain in anybody's  
10 yard. I understand it was done in the home that Jill  
11 owns, but I never did that and I don't think I would do  
12 it.

13          Q.    I understand that. We'll get to Jill's specific  
14 home in a little bit.

15                But just generally, it's your experience both as  
16 an HOA board president and as a member of the HOA that the  
17 homeowners cannot change anything on the slopes without  
18 prior permission from the HOA; is that right?

19          A.    That's right. With the exception of that area  
20 that I described, like one foot maybe, they weren't  
21 allowed -- they really weren't allowed to even climb up on  
22 slopes because I didn't want them to get hurt and I didn't  
23 want them to destroy any vegetation while they climbed up.

24                The slopes were the responsibility of the  
25 community. Every expense connected with the slope was

1 paid for by the HOA.

2 Q. And how far back in time does that practice go,  
3 from your knowledge?

4 A. When I got here, the people that I had mentioned  
5 earlier who were very heavily involved in volunteering,  
6 they pretty much let me know how that works, that the  
7 slopes are your responsibility, the community's  
8 responsibility and the HOA's responsibility rather.

9 So I continued that practice. I think it's been  
10 going on for 35 years.

11 Q. If there were any damages observed with respect  
12 to the slopes, would the HOA address those damages?

13 A. Absolutely, yeah.

14 Q. How would the HOA address those damages?

15 A. Well, sometimes Luis, the maintenance guy, we got  
16 into a routine that at 7:00, the first thing he would do  
17 is drive around the community and look for leaks in the  
18 sprinkler system, maybe broken pressure lines.

19 You could see that by water running in the curb  
20 or water coming out the drain. And it would be brought to  
21 my attention. They had to have my approval to spend money  
22 on the sprinkler system. I would get -- have them get me  
23 an estimate of what it would cost. And then if it was a  
24 minor thing like a head change, the board would never even  
25 know about it. We would just do it. It had to be done.

1           If it was severe like a broken pressure line and  
2 the cost would be -- the cost would require the sprinkler  
3 division to work on it, I would get an estimate for what  
4 the cost would be and I would get the treasurer's  
5 approval. And then the treasurer would get the board's  
6 approval if it was significant.

7           Sometimes minor things, you don't get everybody  
8 involved. It's just so minor, like changing a sprinkler  
9 head, that type of thing.

10          Q.    What money would be used for those slope repairs?

11          A.    I'm sorry?

12          Q.    Let me ask the question a little differently.

13                How would the HOA pay for those slope repairs?

14          A.    Well, in the case of buying the plants, when I  
15 bought them from Devil Mountain, we had a charge account.  
16 So Devil Mountain would bill the HOA and the HOA would pay  
17 the bill.

18                Sometimes in the early days I would buy the  
19 plants and I would submit the bill to the treasurer and I  
20 would say, you know, this has been pre-approved by the  
21 board, here is the bill. And they would -- maybe two to  
22 three weeks later I would get a check.

23          Q.    My question was a little more specific than that.  
24 I appreciate that background.

25                But my question was, whenever anything was broken

1 on the slopes, whether it's the sprinkler system or any  
2 sort of planting that needs to be replaced, how would --  
3 what money would the HOA use to pay for that?

4 A. I would either observe the leak myself or I would  
5 be told about the leak by Green Horizons. We would  
6 determine how it was going to be fixed and how much it  
7 would cost. We would get an estimate. That estimate  
8 would be given to the treasurer.

9 The treasurer then would decide is that treasurer  
10 required to get board approval or was it minor in nature,  
11 and it had to be taken care of pretty quickly.

12 The bills with Green Horizons -- Green Horizons  
13 would submit the bills to the HOA. The bills usually  
14 didn't come to me at that point. They would go strictly  
15 to the HOA. The planting, if it was a charge at the  
16 nursery, it would be billed to the HOA. If it was -- in  
17 the early days of me buying the plants, I would pay for  
18 them and I would then submit the bill to the treasurer.

19 The time span was usually two to three weeks, I  
20 would get a check.

21 Q. Okay. Did you ever observe the HOA use reserve  
22 funds, money from the reserve funds, to pay for repairs  
23 related to the slopes?

24 A. Sometimes if it was significant enough, reserves  
25 would have to be considered. In the early days, the

1 treasurer we had, Jim Konugres, when I was president in  
2 most cases -- I think Sandra took over at the end of that  
3 -- Jim was very, very particular about the reserves.  
4 Reserves were sacred. You didn't touch them unless it was  
5 an emergency and when you would have to take a reserve  
6 from a different topic and move it over to pay for the  
7 repairs, like if we were going to do a major swimming pool  
8 repair and there wasn't enough to do it, so the board then  
9 would decide what they were going to do.

10           If it was significant enough in cost, we would  
11 get the community majority vote approval before we did it.

12           Q. Did that practice of treating the reserves as  
13 sacred change after there was a change in treasurers?

14           A. It definitely changed after 2017. 2018 to 2021,  
15 it changed in my mind even though I had nothing to do with  
16 it significantly. They seemed to be able to use one  
17 reserve to move over to another area so they could get  
18 that project done. It was done quite frequently.

19           For that reason, I thought I wasn't comfortable  
20 with the reserve situation.

21           Q. Did you ever observe reserves after 2017 being  
22 used for slope repairs anywhere on the properties?

23           A. Oh, I'm sure it was. Like, when we did the tree  
24 planting on the east side of the ravine, there usually was  
25 reserves for that. And we tried very hard to stay within

1 reserves.

2 Jim Konugres was actually a pain in the ass  
3 telling me, You got to stay within the reserves. So I got  
4 in my mind that I had to -- when we had to break that  
5 reserve, like when we did the roads or something big like  
6 that or we found out, like, for instance, the sewer was  
7 our responsibility, the sewers we thought Vallecitos was  
8 in charge, but we were in charge of many so we had to  
9 scope them, we had no reserves for sewers because we  
10 thought it was somebody else's responsibility.

11 So in that case, yes, we had all the reserves.  
12 This was considered in my mind an emergency that needed to  
13 be taken care of, we needed to know the conditions of the  
14 sewers. And so we took reserves out of other areas to get  
15 it done. And then at that point going forward, we started  
16 a reserve program which included sewers.

17 Q. Okay. Is it fair to say that if the HOA  
18 perceived a repair that is under their responsibility,  
19 there are instances where the reserve money was used for  
20 those repairs; is that an accurate statement?

21 A. Yes. Reserves -- sometimes if it was a small  
22 item, I'm not sure how it was taken care of. But if it  
23 was a single item and fell under a reserve, the reserve  
24 was, I think, used in most cases.

25 I pretty much left it up to the treasurer as to

1 where the money was going to come from. My concern was  
2 how much it was going to cost and do we have money to do  
3 it. Then if it was significant like maybe over \$5,000, we  
4 sometimes would get a community vote because it was  
5 expensive.

6 A couple of items that fall under that category  
7 of the sewers, when we repaired the roads, when we changed  
8 the pool -- the pool depth used to be -- started at three  
9 feet and went to seven feet deep -- we decided it would be  
10 much better to have it five foot all the way. So we  
11 changed the pool depth so that five foot was the deepest  
12 so people would exercise standing on the ground and use  
13 the whole pool rather than have to stay -- use half the  
14 pool.

15 Q. Okay. We've been going for about an hour. So  
16 let's take a ten-minute break. Let's come back at 11:20.  
17 Is that good, Craig?

18 MR. COMBS: That's fine with me.

19 MR. ALEXANDER: Okay. We'll resume shortly.  
20 We're off record.

21 (Recess taken from 11:07 a.m. until 11:21 a.m.)

22 BY MR. ALEXANDER:

23 Q. Kent, we're back on the record. You understand  
24 you're still under oath, correct?

25 A. I'm sorry. Ask that again.

1 Q. You understand you're still under oath? You  
2 understand you're still testifying under oath?

3 A. Yes. I am under oath. I realize that.

4 Q. Yeah. We're back on the record.

5 Do you have an understanding that at some point,  
6 some homeowners asked permission to take control of their  
7 slopes from the HOA?

8 A. Not to take control, but there was always, I wish  
9 we had a shade tree here or a particular tree on a slope,  
10 it would be better if they didn't prune it as much so they  
11 get privacy, things like that, or is there any chance I  
12 can get more color on my slope. That may be a question.

13 Usually I tried to take care of the person that  
14 lived there. My code, so to speak, was to make everybody  
15 happy that lived there and that this community is a good  
16 place to live for all of us and was.

17 Q. Is it still? Is it still a good place to live?

18 A. I'm sorry?

19 Q. Is the community still a good place to live?

20 A. I think all this slope friction has arisen. I  
21 would say, generally speaking, the people that don't have  
22 slopes are still happy; the people that have slope  
23 responsibility aren't quite as happy.

24 And so I think that this is an item that is  
25 affecting the value of homes and it's affecting the resale

1 value and needs to be worked on a little bit better.

2 That's my opinion.

3 Q. Understood. Yeah. And I asked just for your  
4 opinion.

5 Let's get into Jill Mann's slope and the issue  
6 that brings us together today. Do you have an  
7 understanding that in 2019, a French drain was installed  
8 at unit 139?

9 A. That's an interesting topic because when this  
10 recent runoff occurred, I called the treasurer and she  
11 said to me, Oh, that's where it happened before. And I  
12 said, What are you talking about, because I had no  
13 knowledge that it ever happened. There was no visual  
14 knowledge either.

15 I talked to Jill and Jill was not aware of it  
16 happening in 2019 as well. And I thought that this was an  
17 important issue because it might have been a warning of  
18 problems on that slope.

19 Q. Let me stop you right there for a second. When  
20 you say that it had happened before, what is the "it" that  
21 you were referring to?

22 A. That there was a runoff, a small runoff on the  
23 slope pretty much in the same area that this one occurred,  
24 which would have been an indication to me, if I was in  
25 charge at that time -- and I wasn't -- that I would take a

1 look at it. And the first thing you would do, of course,  
2 is repair any damage that was done and then I would  
3 probably plant some plants in that area to try to hold the  
4 slope in place.

5 I don't think I would have recommended putting in  
6 a French drain only because I just didn't do those things.  
7 I didn't put drainage on the slopes. The water would  
8 either -- either the homeowner would arrange how the water  
9 was going to flow and I would always tell them, you know,  
10 keep it away from your house and run it out to the front  
11 of your yard. That's the primary thing.

12 So in 2019 when the French drain was put in by  
13 the community and probably paid for by the community as  
14 well, I wouldn't have been a part of that.

15 Q. Okay. You understand there was a slope failure  
16 at 139 in 2023, correct?

17 A. Yes.

18 Q. Do you know roughly what month in 2023 that  
19 happened?

20 A. I would say April. March or April.

21 Q. Okay. But by March or April of 2023, you were no  
22 longer involved with the board; is that correct?

23 A. I had no responsibility -- well, I still had the  
24 responsibility as the landscape maintenance man. I asked  
25 somebody on the board if I can stay on or would I be

1 willing to stay on, and I said yes, I would. I think they  
2 were happy that I was staying on.

3 Q. And how long into 2023 did you stay on as the  
4 landscape chairman?

5 A. Until I finished landscaping Jill's backyard,  
6 which I think was May, June of this year -- last year,  
7 '24.

8 Q. Okay. So you remained in your position as  
9 landscape committee chairman through June of 2024,  
10 correct?

11 A. Yes. Give or take a month, yes. Roughly,  
12 though.

13 Q. Okay. And how did you first hear about the slope  
14 failure at unit 139?

15 A. It was kind of interesting because I was at the  
16 clubhouse and I was walking out of the clubhouse and I  
17 looked over in that direction and there was two people  
18 putting a black canvas on her slope. So I yelled at them,  
19 What are you guys doing? And they said to come on over.  
20 So I drove over.

21 And they said there was a leak here and we have a  
22 geologist that told us to put this cover on and that was  
23 all news to me. I wasn't involved in it. I was surprised  
24 that the board moves in that direction without talking to  
25 me first or at least notifying me first of what was

1 happening.

2 Q. Why was that a surprise to you?

3 A. Yes.

4 Q. Why was that a surprise to you that the board was  
5 moving --

6 A. My experience being in charge of the landscaping  
7 and being in charge of the landscaping at that time, I  
8 think I would be notified right away by either the  
9 homeowner or by somebody who noticed it, that there was a  
10 problem on the slope. And, of course, I would then go  
11 over and look at it and decide how bad it is and what  
12 would it take to take care of it.

13 Sometimes that notification would come from Green  
14 Horizons; sometimes the homeowner; sometimes my own visual  
15 looking at it, you know.

16 Q. And do you recall how long after the slope  
17 failure you found out about it?

18 A. I think the next day or same day, maybe.  
19 Probably the next day.

20 Q. Okay. So fair to say within a 48-hour period?

21 A. Yeah. But remember, I found out by seeing people  
22 on the slope putting a black tarp over it. And that would  
23 have been a no-no, what are you doing on that slope, you  
24 know; you don't put tarps on a slope without my approval.

25 But then I could see what the problem was. They

1 said a geologist has instructed us to put this on the  
2 slope. So there I was. I was a spectator on what was  
3 going on.

4 Q. What was the condition of the slope when you  
5 observed it first? In other words -- well, what was the  
6 condition of the slope at the point where it failed?

7 A. Before the damage to the slope, Jill had asked  
8 me, Come over to our house and look at the sprinklers,  
9 that they were overshooting and hitting our patio. So  
10 that's the first time I went into her backyard while she  
11 was here and I met her.

12 And I looked at the slope and the slope looked  
13 pretty good to me. It was covered. I could see after  
14 turning on the sprinklers -- I had turned on the  
15 sprinklers and we could see there was a problem. So I  
16 think initially we adjusted the sprinklers so they  
17 wouldn't hit the patio.

18 But then she called again shortly thereafter and  
19 said it's still happening and can we move the sprinklers  
20 up the hill a little bit. And that is a normal thing for  
21 us to do because water runs downhill, so you don't have to  
22 have the sprinklers at the very edge of the wall.

23 So we moved it up and I think we corrected the  
24 problem.

25 Q. And who paid for that repair to the sprinkler

1 location?

2 A. We did, the community did, the HOA did.

3 Q. Do you recall whether there were rain events  
4 between January and March of 2023?

5 A. It was a rainy season. I thought it rained  
6 during the rainy season and I was surprised that the rain  
7 continued for quite a while. I think even in '24 there  
8 was a lot of rain and the slope was covered with the black  
9 tarp.

10 Green Horizons made sure they were covered. And  
11 I would make sure that they did get it covered.

12 Q. That was after the slope had failed?

13 A. Yeah. That was after the slope damage, yeah.

14 Q. Was there an instruction to Green Horizons to  
15 turn off the sprinklers during the rainy season in 2023?

16 A. To do what to the sprinklers?

17 Q. To turn them off.

18 A. Oh, yes, yeah. I was told to put the tarp on and  
19 we decided how large that area should be that was covered  
20 with the tarp. And then we were told that the sprinklers  
21 should be -- obviously, you're not going to water the  
22 tarp, so we would turn the sprinklers off and they  
23 adjusted the sprinkler system so that the rest of the area  
24 and surrounding areas would be watered, but not the tarp  
25 area.

1 Q. But, again, that's after the slope had failed,  
2 correct?

3 A. Yes.

4 Q. Now, prior to the slope failure, my understanding  
5 is that there was rain between January and March of 2023,  
6 correct?

7 A. It was what?

8 Q. Rain. It was raining.

9 A. Oh, yes. Sure. Of course.

10 Q. Yeah. Was Green Horizons instructed by the HOA  
11 in January through March of 2023 to reduce or eliminate  
12 the water that's coming out of the sprinklers at the slope  
13 behind 139?

14 A. Now you're talking about before the slope ran?

15 Q. Correct. Yes.

16 A. No. The only thing -- we were called not by the  
17 HOA, but we were called by Jill. I came over there. I  
18 met her and twice we adjusted the sprinklers. The first  
19 time we adjusted the heads and the second time we moved  
20 the sprinklers up the hill a little bit, but they were  
21 left on.

22 The slope to me looked good. I thought her  
23 backyard looked very good.

24 Q. Okay. Okay. I appreciate that clarification.

25 Let's do this. Let's see how this is going to

1 work out. I'm going to mark Exhibit No. 1.

2 A. Are you asking me a question?

3 Q. Not yet. Not yet. Okay. Can you see my screen?

4 A. Very, very -- actually, I have macular  
5 degeneration in my left eye. It's almost totally blind.  
6 So my right eye is fine, but unfortunately my left eye  
7 gets involved.

8 I cannot read what's on the screen.

9 Q. Okay. I'll do this. Just for the record, I'm  
10 marking Exhibit 1, which is Bates stamped LBF 1941 through  
11 1944.

12 And Craig, I have shared this in the chat. Can  
13 you confirm that you can open it?

14 MR. COMBS: I got it, yes.

15 MR. ALEXANDER: Thank you.

16 BY MR. ALEXANDER:

17 Q. Kent, let's see if we could read through some of  
18 this and be able to mark these exhibits and ask you  
19 questions about them.

20 (Deposition Exhibit No. 1 was marked for  
21 identification.)

22 BY MR. ALEXANDER:

23 Q. Can you see this language?

24 A. I'm sorry. I can't. I read a lot, but when I  
25 read I have to labor to read the words, but I do. And

1 so --

2 Q. Why don't we do this: Can we go off the record  
3 for five minutes just so we could potentially resolve this  
4 mechanics issue here?

5 A. Can I ask you something?

6 Q. Yeah.

7 A. Are you trying to have me verify what was  
8 written?

9 Q. That's part of it. Let's hop off the record and  
10 we'll get back on and resolve this.

11 (Discussion off the record.)

12 BY MR. ALEXANDER:

13 Q. Kent, we're back on the record. You understand  
14 you're still under oath, correct?

15 A. I can read what's on the screen.

16 Q. Great. What I have as Exhibit 1, I'm looking at  
17 LBF 1943. And this is an e-mail from Glenn Wargo dated  
18 April 28, 2023. Do you see that, Kent?

19 A. Yes.

20 Q. Who is Glenn Wargo?

21 A. He took over as president after I resigned.

22 Q. He writes, "To all of you." And the second  
23 paragraph, second sentence, "Kent in copy called and  
24 advised of the problem which he believes is critical,  
25 especially if there is rain."

1 Do you see that language?

2 A. Yes. I can see it.

3 Q. First off, do you know if he's referring to you  
4 or some other Kent?

5 A. He says, "Kent in copy called and advised of a  
6 problem which he believes is critical, especially if there  
7 is rain. He says we should get a soil engineer out as  
8 soon as possible to check it out and advise remediation.  
9 Thank you."

10 Q. Is he referring to you in that e-mail?

11 A. Did I agree with that?

12 Q. No, no. Is he referring to you as Kent in that  
13 e-mail? In other words, did you call Glenn at some point  
14 and advise him of the problem which you believe is  
15 critical?

16 A. I'm not sure I called Glenn. When I resigned as  
17 president, the lady who was vice-president tried very hard  
18 to be the president but had trouble at a meeting. So  
19 everything was in flux.

20 I think the first meeting was pretty much  
21 conducted by Sandra Comouche because she could speak in  
22 front of the group. And then somehow, some way, the board  
23 decided that Glenn would be president or Glenn wanted to  
24 be president, so he took over. That's what I know about  
25 it.

1 I did not -- I was not the one that contacted a  
2 geologist.

3 Q. I understand that. My question is a little more  
4 narrow than that, and it's whether or not you had talked  
5 to Glenn about the slope failure on or about April 28th of  
6 2023.

7 A. I'm sure at some point I did talk to him, but he  
8 wasn't here. So it would have had to have been by e-mail.  
9 I'm not surprised if there's something in writing saying I  
10 did talk to him, but I know Glenn very well.

11 So it wouldn't be out of line for me to call him  
12 and give him my opinion. I just don't remember doing it.

13 Q. Okay. He memorialized a phone call and he states  
14 that you represented and you believe the problem is  
15 critical, especially if there is rain.

16 Is that an accurate summary of what you believe  
17 the problem to be?

18 A. Yeah. But, you know, when I look at the slope  
19 and with it being covered, I could see that it was a  
20 fairly significant drain problem. It's the worst that  
21 this community has ever had. In 35 years, we just did not  
22 have anything like that.

23 So my first concern was the houses above, are  
24 they stable. And I noticed that there was a lot of bare  
25 spots up on the upper slope of 131 and 132, which was

1 above her, above Jill.

2 And so my main concern was those people, are  
3 those slopes stable, is that house stable up above. So I  
4 put in a request to plant those upper slopes and I was  
5 turned down saying that they wanted to wait until the  
6 geologist submitted his report to see if that was part of  
7 the repair that was required.

8 So those slopes were not planted by me at that  
9 time.

10 Q. Okay. Do you still believe that the slope  
11 failure was a critical problem at the time?

12 A. Well, it was critical from the nature -- it never  
13 happened to this community before, that I'm aware of. And  
14 so the critical nature is wow, that's a lot of dirt that  
15 moved down.

16 And so, yeah, I think -- I didn't know what it  
17 was or what was causing it, but I wouldn't call it  
18 critical myself, but I would say it required attention  
19 right away.

20 Q. If we go to the first page of Exhibit 1, which is  
21 LBF 1941, we have an e-mail from Sandra Comouche dated  
22 Friday, April 28, 2023. And your e-mail address is  
23 included as a cc.

24 Do you see that?

25 A. Yes. I see that.

1 Q. And it is cathiberchiolli@gmail.com. Is that an  
2 e-mail address that you use?

3 A. Yes. I did get that e-mail. I wasn't surprised  
4 that there was money for the slopes in the reserves.  
5 There should have been. There always has been in the  
6 past.

7 So when I called Sandra at some point, I said  
8 \$98,000, that's a good size money and she said it's not  
9 there anymore.

10 Q. Let's stop there.

11 A. I was annoyed by that.

12 Q. We'll get to that point in a second. But what  
13 she writes, Sandra Comouche, is "Once we have a  
14 comprehensive analysis of the slope, we can proceed with  
15 repairs. Reserves for fences and slopes has \$98,000 in  
16 it. So money is available. May not be liquid as some of  
17 it is in CD's."

18 Do you see that language?

19 A. I can see that and I can read it. And I remember  
20 that.

21 Q. Were reserves made for slope repairs when you  
22 were president?

23 A. When I was president, there was money. The  
24 reserves were, like I say, very organized and very solid.  
25 And there was money for slopes. Whether it was written

1 like slope repair or slope damage, I'm not sure how it was  
2 written, but there was money which allowed me to repair  
3 slopes, minor repairs on slopes.

4 And if it was major, then I would get board  
5 approval and community approval.

6 Q. But reserve money was --

7 A. Having reserves for the slope was not anything  
8 new to me. I always thought we should have it and did  
9 have it.

10 Q. So when Sandra Comouche sent this e-mail to you  
11 or you were included as cc in it, this was no surprise,  
12 correct?

13 A. It was no surprise that there's money there. I  
14 was surprised maybe at the amount of it, \$98,000, which is  
15 probably more than usual for slopes, but there was always  
16 money available for repairs to slopes; replanting areas,  
17 fixing sprinkler system and so on down the line.

18 Q. Did the HOA ever pursue an individual homeowner  
19 to recover any cost for payment to slope repairs that were  
20 made by the HOA?

21 A. Never have we ever asked or got money from a  
22 resident to do anything in connection to the slopes. It  
23 never happened.

24 Q. I'm going to mark next in order Exhibit 2.

25 ///

1 (Deposition Exhibit No. 2 was marked for  
2 identification.)

3 BY MR. ALEXANDER:

4 Q. That's Bates stamped LBF 2061.

5 Can you read that, the text on your screen, Kent?  
6 I'm going to walk you through it. It's an e-mail dated  
7 May 2nd, 2023 from Sandra Comouche. Do you see that?

8 A. Yes. I see that.

9 Q. You were not included in that e-mail. However,  
10 she writes, "I also propose that I be the board's  
11 designated contact person, coordinating with Bill Katz,  
12 Kent Berchiolli and Green Horizons. I also suggest we  
13 forward to Jill Mann a copy of this initial GeoTek report.  
14 Best regards, Paul Elsesser."

15 Do you see that?

16 A. Yes. I can read it. I was very surprised that I  
17 was not the point man for the slopes. In the past,  
18 anything to do with slopes while I was landscape  
19 chairperson was at least organized by me or handled by me  
20 or recommendation by me, originated to the board.

21 Bill Katz was in charge. If I remember right, he  
22 was in charge of the front gate and Bill was also in  
23 charge of the pool. Paul Elsesser was in charge of the  
24 landscape -- the finance committee. Both of them really  
25 had nothing to do with landscapes and slopes, which was my

1 job and my background.

2 Q. And I should clarify. It appears that Sandra  
3 Comouche is forwarding an e-mail from Paul Elsesser dated  
4 May 2nd, 2023.

5 Do you agree with that clarification?

6 A. I can read it.

7 Q. That's okay. I'll move on.

8 Were you contacted by Sandra Comouche or Paul  
9 Elsesser after May 2nd in order to coordinate with you  
10 regarding the slope failure?

11 A. This is Sandra's e-mail and I guess I got a copy  
12 of it.

13 Q. Well, you were not included in that e-mail, but  
14 they do reference you. And my question is, did Paul  
15 Elsesser contact you regarding the slope failure at 139?

16 A. I want to say this correctly. Paul Elsesser is a  
17 very good man. He's very conscientious and very detail  
18 minded. And he always tried to keep me involved going  
19 forward as to whether to leave the tarp on, take the tarp  
20 off or as to the proposal that GeoTek was going to submit.

21 It took GeoTek over two months to make that  
22 report, by the way.

23 Q. My question was, did Paul Elsesser contact you  
24 after May 2nd of 2023 to discuss the slope failure with  
25 you?

1           A.    I talked to Elsesser a number of times.  I would  
2 say that he tried to communicate with me as much as  
3 possible.

4           Q.    Did he ever tell you or convey that the board did  
5 not want him to communicate with you?

6           A.    Not to contact me?

7           Q.    Correct.

8           A.    No, not that I'm aware of.  As I said before, one  
9 of the first things I wanted to do as GeoTek was putting  
10 together their proposal, I wanted to fix the area on the  
11 high slope below unit 131 and 132.  There was bare spots  
12 and I thought we ought to plant that right away.  And I  
13 put that request in.

14                   I was told by Paul and Sandra that we're going to  
15 wait until the report comes out to see if that's part of  
16 the repair that needs to be done.  So they didn't want to  
17 do anything.

18                   There was also a star pine tree that was leaning  
19 about 20 degrees and it was a big star pine.  It was going  
20 to fall eventually.  So I wanted to cut that down at the  
21 base, leave the roots in the ground, which finally was  
22 approved, but many months later.

23           Q.    Was that on the slope behind 139?

24           A.    Yes.  My thought on the slope was her slope --  
25 Jill's slope is huge.  It starts from a wall and works up.

1 Because it's on a cul-de-sac type of arrangement, it  
2 covers quite a few homes up above. 131 is definitely  
3 involved, a little bit of 132; 133 -- the numbers go down.  
4 132, 131, 130, 129. I don't think it goes to 128.

5 Q. I'm going to mark next in order Exhibit 3. And  
6 that's Bates number LBF 2062 through 2063. It's an e-mail  
7 chain and we have an e-mail from Paul Elsesser on May 1st,  
8 2023.

9 (Deposition Exhibit No. 3 was marked for  
10 identification.)

11 BY MR. ALEXANDER:

12 Q. Do you see that e-mail?

13 A. Yeah. Part of it is blocked out, but I can read  
14 it.

15 Q. I will scroll down to the portion that I want to  
16 ask you questions about. He writes, "Kent has brought up  
17 concerns for the houses on top of the slope."

18 Do you see that language?

19 A. Yes.

20 Q. Is that the same concern that you expressed  
21 earlier when you stated that the slope was jeopardizing  
22 the houses above or potentially jeopardizing?

23 A. I was concerned for both of those houses up on  
24 top, particularly 131. Judith had just moved into the  
25 house, so I stopped by and talked to her to tell her not

1 to worry, that we're going to take care of whatever there  
2 is. And I spent a little time with her.

3 She was a very nervous type person at that time,  
4 just moving in and everything. So I thought the planting  
5 of the upper slope was very important. And I told Paul  
6 that. There was also a geologist who was visiting her and  
7 he asked me if he could go down and look at the slope.  
8 His name was Brian -- I think his name was Brian Woods.  
9 Brian Woods.

10 Q. Do you recall what company Brian Woods was  
11 affiliated with?

12 A. Do I recall what?

13 Q. What company Brian Woods worked for?

14 A. Well, he was retired from a company. I don't  
15 recall the name, but he gave me a lot of information, some  
16 of which I can't find. There was an e-mail that indicated  
17 how this thing should be fixed and it wasn't really a  
18 complicated problem; that we should remove some of the  
19 dirt that's in the hole and replace it with crushed rock  
20 and soil and compact it and everything should be fine.

21 So he gave me a feeling of comfort that we had  
22 this thing under control and that's what we were going to  
23 do.

24 So the planting of the upper slope became even  
25 more of a problem for me. I wanted to get that done.

1 Q. We already talked about the Exhibit 3 e-mail  
2 dated May 2nd, 2023 from Glenn Wargo. And you are cc'd in  
3 that e-mail. Do you see that?

4 A. Yes.

5 Q. He states, "Let us go ahead repairing/remediating  
6 the hill/slope."

7 Do you see that language?

8 A. "Green Horizons covered the slope behind 139 to  
9 protect it from rain" -- I was quite involved with Green  
10 Horizons giving instructions to put the tarp down, take  
11 the tarp off, put the tarp up. We ended up leaving the  
12 tarp in place for quite a while before the repairs  
13 started.

14 Q. When you received this e-mail dated May 2nd, 2023  
15 from Glenn and him stating, "Let us go ahead  
16 repairing/remediating the hill/slope," did anybody from  
17 the board contact you to state Jill should be paying for  
18 the slope repairs?

19 A. I don't see that part in here. I guess maybe the  
20 screen has to move up.

21 Q. No. My question is, at the time when Glenn  
22 suggested or, in this case, authorized for the HOA to  
23 proceed with repairing the slope, at that time, in early  
24 May of 2023, did anybody from the board contact you to  
25 state Jill should be the one paying for the remediation?

1           A.     Well, I'm not sure how the contact took place. I  
2 did find out that the board was saying that slopes are  
3 deeded -- the slopes are deeded to different people that  
4 live here and that they are responsible for slopes. It  
5 came as a complete surprise to me because although I would  
6 guess that the slopes did belong to somebody, either the  
7 person above or person below -- turned out the person  
8 below -- but for them to be responsible for slope repair  
9 was absolutely foreign to me.

10                     I never heard that before.

11           Q.     I'm going to mark next in order Exhibit 4.

12                     (Deposition Exhibit No. 4 was marked for  
13 identification.)

14 BY MR. ALEXANDER:

15           Q.     It's Bates stamped LBF 2404 through 2506. And I  
16 will bring your attention to an e-mail that you penned on  
17 July 15, 2023. And the title of that e-mail is "Difficult  
18 decisions, tough job."

19                     Do you see that?

20           A.     Yeah. Now I can.

21           Q.     Do you recall writing this e-mail on July 15,  
22 2023?

23           A.     Yes and no. I don't remember this one particular  
24 one, but I have a stack of repairs about two inches thick  
25 of e-mail that I sent concerning Jill and concerning the

1 slope.

2 Q. And those are e-mails that you sent to the board,  
3 correct?

4 A. And usually the board was involved. Everybody on  
5 the board would get it.

6 Q. You just referred to e-mails and a file that was  
7 two inches thick that you sent to the board, correct?

8 A. Yes.

9 Q. Now you write on Exhibit 4, "I have been on the  
10 board for twelve years and president for eight years. I  
11 have always taken my responsibilities very seriously."

12 Do you see that language?

13 A. Yes.

14 Q. You continue, "Many decisions that must be made  
15 including landscaping, sewers, fences and gates, pool,  
16 clubhouse, security and architectural matters occur on a  
17 regular basis. The board can receive advice on all  
18 subjects, but ultimately the decision is theirs, subject  
19 only to the voting process of the community."

20 Do you see that language?

21 A. Yeah. I can see it. It's moving, but I can see  
22 it.

23 Q. Okay. With respect to the landscaping and the  
24 fences and any architectural matters, is it still your  
25 opinion that it's ultimately up to the board to make the

1 decisions impacting those aspects of the HOA?

2 A. Did I write this e-mail?

3 Q. You did, yes.

4 A. Okay. If I wrote it, then it's correct. The  
5 board has a large responsibility for what takes place in  
6 the community. But the board sometimes needs the majority  
7 of the board or, in some cases, needs to go to a vote with  
8 the community to get a majority to proceed with it. Like  
9 when we did the roads, we had to have the community behind  
10 us. It was very expensive. I forget the amount.

11 When we did the patio cover around the clubhouse,  
12 Sandra and I signed the contract, but I was the point man  
13 to ensure that it was done right.

14 Q. How much was that contract?

15 A. The patio?

16 Q. Yeah.

17 A. Well, \$35,000 was the contract and there was some  
18 extra electrical work. I remember distinctly they said  
19 the extra electrical work is going to cost \$5,000. And I  
20 said I'm not going to pay that; a lot of it should have  
21 been included. So we ended up settling for \$500 and  
22 that's what they paid me.

23 Q. You continue in your e-mail writing, "If you have  
24 a slope rising behind your house, that slope is deeded  
25 legally to the homeowner, but historically the total

1 maintenance is the responsibility of the HOA."

2 Is that consistent with what you have testified  
3 concerning the slope maintenance at the Las Brisas HOA?

4 A. I'm not sure what you just said. However, I'll  
5 say this: That I have the deeds to all the homes. I know  
6 who legally owns the slope and who doesn't. But  
7 responsibility for maintenance of that slope including the  
8 sprinklers, the plantings is the responsibility -- I  
9 always thought was the responsibility of the HOA and has  
10 been that way for 35 years.

11 Q. Let me ask you, with respect to pest control on  
12 slopes, who has the responsibility for pest control?

13 A. Plant control?

14 Q. No. Pest, P-E-S-T.

15 A. Plant control -- plants you're talking about?

16 Q. No. Not plants. Animals, vermin.

17 A. Drainage?

18 Q. No.

19 A. Well, the drainage -- because we control the  
20 sprinklers and we have no control over the rain, however,  
21 if there is a runoff on a slope -- and there very seldom  
22 was -- but if there was a runoff, it was usually very  
23 minor and it was brought to my attention or I observed it  
24 myself and I would get Green Horizons to fix it.

25 If it required sprinkler adjustments, they did

1 it. If it required us buying plants, I would buy the  
2 plants and I would give it to them to install them and I  
3 would check that it's done right.

4 So if you include that in drainage, yes, we had a  
5 responsibility to make sure the slope drained properly; in  
6 other words, there wasn't dirt running down the slope when  
7 it rained or when the sprinklers were on. But the wall  
8 itself on the bottom of the slope was the responsibility  
9 of the homeowner to maintain that wall.

10 Q. How about with respect to any animals on the  
11 slope?

12 A. Animals?

13 Q. Yeah. What I asked for was pests, like gophers,  
14 for example.

15 A. I didn't like to see any animals on the slope,  
16 dogs or something else like that, if that's what you're  
17 talking about. We have possums and we have raccoons and  
18 we also have coyotes.

19 Sometimes we would blame a sprinkler damage to an  
20 animal, but it was just a guess. It didn't matter. We  
21 would repair it anyway.

22 Q. Did any of the slopes have gophers on them?

23 A. Oh, yes. Gophers was a big deal. I was  
24 responsible for the gophers. When it was brought to my  
25 attention, we had a contract. I think initially it was

1 Lloyd's, then it became a different company. But I would  
2 work with them on rat traps and gopher eradication.

3 Gophers were a constant problem.

4 Q. Were gophers a problem at the slope at 139?

5 A. I don't remember it being brought to my attention  
6 that there was gopher action there. I wouldn't be  
7 surprised if there was, particularly higher up, because  
8 gophers were a constant irritant, a constant problem and  
9 they had to be addressed. It was a full-time job.

10 Q. Who paid for gopher control?

11 A. All the repair was paid by the HOA. We had a  
12 contract with the company and sometimes there was  
13 additions that needed to be done over and above the  
14 contract that I would get board approval. And then we  
15 would proceed.

16 But sometimes the action was so small. The  
17 gophers had to be eradicated, so we took care of it. If  
18 it required extra traps be placed, rat traps, I would  
19 authorize it because it had to be done and then I would  
20 let the board know that we had to add extra traps.

21 Q. From your experience just being a homeowner at  
22 Las Brisas, are gophers still a problem in the community?

23 A. Oh, yes.

24 Q. You further write in this e-mail in Exhibit 4,  
25 "Although" -- I'll highlight it for you here -- "Although

1 many common area slopes are owned by a particular property  
2 owner, solutions to slope maintenance should remain in  
3 control of the landscape maintenance group subject to  
4 approval of the board. "

5 A. That looks like something I wrote.

6 Q. Yeah. It's part of your e-mail. Why are you  
7 recommending the maintenance should remain in control of  
8 the landscape maintenance group?

9 A. Because we never asked a homeowner to pay for  
10 anything on the slope. And my job was to eradicate the  
11 gophers as best as possible. Sometimes a homeowner would  
12 bring to my attention that there was gophers. I would go  
13 over there, I would look at it, I would agree with it and  
14 then I would contact the company that we had a contract  
15 with and schedule a time when he would come on out.

16 And I would tell them that this unit has gophers  
17 on the slope and they need to be addressed. And he would  
18 do it. And that's the way my routine went with the  
19 gophers.

20 Q. I understand. Slope maintenance does not only  
21 include the gophers, right? It's everything we've been  
22 discussing? It's watering the slopes, correct?

23 A. Absolutely.

24 Q. Planting the slopes, correct?

25 A. Everything to do with the slopes was HOA

1 controlled. And what emphasized that was the fact that  
2 sprinklers crossed property lines. When they were put in,  
3 sprinklers crossed property lines. So somebody would say  
4 to me, Can you check the coverage of your sprinklers? I  
5 would have to turn them on and they would water maybe  
6 seven homes while we checked that one particular home.

7 It's just the way the system is set up. It was  
8 put in that way.

9 Q. Okay. Now you further write, "The landscape  
10 chairperson head nor property owner participated in any  
11 decision concerning the damage to unit 139 slope."

12 How did you come about developing that knowledge  
13 in order to put it in your e-mail?

14 A. I'm not sure if you just asked me a question or  
15 not.

16 Q. You wrote that the landscape chairperson head and  
17 the property owner, which is Jill Mann in this case, they  
18 were not involved in the decision concerning the damage to  
19 the unit at 139 slope, correct?

20 A. Part of that sentence is blocked out.  
21 "Chairperson head nor property owner participated in any  
22 decision concerning unit 139 slope" -- "nor the selection  
23 of a geologist to analyze the damage." I had nothing to  
24 do with selecting the geologist. It was done by either  
25 Bill Katz or Paul.

1 I was surprised because the contract was \$10,000  
2 and I thought that not only did it require board approval,  
3 which they probably got, but it bordered on requiring  
4 community approval for sending that amount of money,  
5 because that was a significant amount of money and it  
6 should require three estimates, which was pretty much  
7 religiously done.

8 Q. Did the board invite Jill Mann to participate in  
9 the decision-making related to the damage of her slope?

10 A. No. Jill Mann was not involved. Should have  
11 been involved with it, should have been contacted. There  
12 should have been some conversation with her. Whether she  
13 owned the slope or not, it did affect her so my policy was  
14 to keep everybody at peace and let them know what's going  
15 on.

16 But she was not involved in the geologist,  
17 selection of it or any part of it, and neither was I.

18 Q. In other words, the HOA board, as far as you're  
19 concerned, completely ignored you and Jill Mann; is that  
20 correct?

21 A. Neither one of us were involved. Is that what  
22 you're asking?

23 Q. That's essentially what I'm asking, yeah.

24 A. Okay.

25 Q. You write on April 28, 2023, "I received an

1 e-mail from Sandra Comouche, our treasurer, stating that  
2 our reserves have over \$98,000 for fences and slope repair  
3 work that can be used for unit 139 if needed. Per Sandra,  
4 for some reason this money is now not available."

5 Do you see that language?

6 A. I remember the \$98,000.

7 Q. Is that the same \$98,000 that you and I were  
8 talking about earlier which was Exhibit 1?

9 A. Was Jill aware of the \$98,000?

10 Q. No.

11 A. I probably talked to her about it. I can't  
12 remember.

13 Q. My question is, is that the same e-mail that we  
14 were referring to in Exhibit 1? And I can pull up Exhibit  
15 1 if you like.

16 A. Say that again, please.

17 Q. Sure. You're stating in your e-mail here that  
18 you received an e-mail from Sandra Comouche, the  
19 treasurer, representing there's \$98,000 for fences and  
20 slope repair work that could be used as needed. And then  
21 you reflect that for some reason this money is not  
22 available anymore.

23 A. Yeah. I see it.

24 Q. Is that the same money that Sandra Comouche had  
25 represented to you before that would be used for slope

1 repair out of the reserves?

2 A. I don't know where she got the \$98,000 from.  
3 When I first received her e-mail, I thought \$98,000 should  
4 be able to be taken care of with that, but I'm not sure  
5 where she got it from. Obviously, she got it from some  
6 reserve. I'm sure that reserve was not for slope repair.  
7 It might have been for something else.

8 The board got into a bad habit, I think -- this  
9 is my opinion -- in taking reserves as a checking account  
10 where as long as it was enough reserves in your checking  
11 account, we can move the reserves around what needs to be  
12 done. This was a new theory for me. I was -- when I was  
13 president, reserves pretty much were left alone for the  
14 topic it was to cover and very seldom did we pull from a  
15 reserve. Occasionally, like for the pool or maybe for  
16 roads or maybe for the sewers.

17 But reserves are -- as far as I'm concerned, when  
18 reserves are stated in the beginning of the year with a  
19 professional, those reserves are left alone unless it was  
20 needed or there was an emergency. If there's an  
21 emergency, obviously, we take care of it.

22 I don't know if I answered your question or I  
23 just rambled on.

24 Q. You did. I appreciate it.

25 Then you write, "During May 2023, damage was

1 noted on the slope behind unit 139. At that time, many of  
2 the French drains installed were not operating correctly,  
3 which may have contributed to the incident that has  
4 occurred. During the following months, the board  
5 authorized cleaning up the French drains by the same board  
6 member that installed them to ensure that they are now  
7 working. This was done without the knowledge and  
8 permission of the homeowner."

9 A. Did you say with or without?

10 Q. Without.

11 A. I would say yes, that's true. It was actually --  
12 I think Jill was annoyed at it because she then  
13 investigated herself, talked to the previous homeowner all  
14 about the original French drain installation. And this  
15 was all new to her.

16 So the fact that the French drain was not working  
17 was a bothersome topic for her and the fact that the  
18 person who is responsible for having it installed was now  
19 back cleaning it out so it was working properly.

20 Q. My question is, who was that person?

21 A. Bill Katz.

22 Q. And how did you come to know that Bill Katz was  
23 the one who installed the French drains?

24 A. Well, I knew he -- Jill was complaining that he  
25 was in her backyard working on the French drain fixing

1 them. And then when Jill investigated with the previous  
2 homeowner, she found out the details and got pictures of  
3 the original French drains that were put in there while  
4 Bill Katz was president of the board.

5 So I found out then that the French drains were  
6 installed under his supervision. And he was now back  
7 cleaning them out to make sure they were working properly.

8 Q. Do you know if Bill Katz was physically cleaning  
9 them out or did he hire somebody to clean them out for  
10 him?

11 A. I think he cleaned them up. I don't know if he  
12 installed them. I doubt if he installed them, but I know  
13 for a fact that he was the one that cleaned them up, at  
14 least I believe so.

15 Q. Then you write, "Since the start of this problem,  
16 additional damage to slopes in that area has been reported  
17 and does require some form of repair work."

18 What additional damage to slopes has occurred?

19 A. 131 is draining -- oh, up above unit 131, it was  
20 questionable as to where the person at 131 -- where a  
21 slope ended and where Jill's began. I did go up and  
22 investigate that and part of her backyard drains into  
23 Jill's slope. It's just the way the house was put in, I  
24 guess.

25 And so I would say that -- I don't know -- maybe

1 eight or nine feet of her slope was right above Jill's  
2 slope. So it drained into Jill's slope. That was another  
3 reason I wanted to plant that slope below 131 so her house  
4 was stable, and we eventually did that.

5 Q. You then write, "For over 35 years, we have used  
6 one procedure in determining our planting selections for  
7 common area slopes. Now homeowners, anticipating your  
8 ruling, will be claiming the right to select what portion  
9 of the slope should be planted and what type of plants  
10 should be used. This will pose a major problem for the  
11 landscape maintenance crew."

12 How would that pose a problem for the landscape  
13 maintenance crew?

14 A. Well, if the homeowner was going to be in control  
15 of this slope, their demand might be for a certain type of  
16 plant, like a tree, they wanted privacy from the people  
17 above, and of course, the people above wanted their view  
18 protected. So that always posed a problem or it could  
19 have been a problem.

20 It just wasn't a workable solution to have the  
21 individuals maintain their own slopes. Number one, the  
22 sprinklers weren't installed that way and most of the  
23 people, like myself, were too old to climb the slopes. So  
24 I'm not sure how that would be accomplished other than  
25 each person hires their own landscape contractor and

1 decides what they want to put on their slope.

2 But unfortunately, that can affect the people on  
3 both sides or the people above.

4 Q. Then you write, "Reserve money has been set aside  
5 for emergency repair use. That is why we hire and pay a  
6 reserve study professional to ensure that the correct  
7 reserve money is available. The reserve money is not to  
8 be used to fund the personal choices of the board."

9 Do you still agree with that statement?

10 A. Yes. Yes, it was one of the reasons why I left  
11 the board because, obviously, I'm for solar paneling.  
12 Solar paneling has proven itself to be a worthwhile  
13 addition. We never refused a home request to have solar  
14 paneling put in.

15 But for the board to all the sudden save money --  
16 spend money on solar paneling that isn't in the reserves  
17 was a foreign -- was not the way I would have done it.  
18 And that plus my hearing and eyesight is the reason I  
19 resigned from the board.

20 Q. So solar paneling is at least one example that  
21 you could provide where the board used reserve money that  
22 was not for emergency use, correct?

23 A. Yes. I think what you said is the right thing,  
24 yes.

25 Q. Can you think of any other examples where the

1 board used reserve money that was not for emergencies?

2 A. Well, during the time from 2018 to 2021, it was  
3 the same time we had the Covid virus around. So the board  
4 meetings weren't well attended. Probably most of the time  
5 it was just the five people that met. I don't know. I  
6 never went to a board meeting after that.

7 But at that time I think there was an attitude  
8 that if the board wanted something to be done and reserve  
9 money wasn't sufficient for that topic to be done,  
10 reserves was accommodated or moved so that item can be  
11 done.

12 A good example would be the front gate and the  
13 front landscaping, which is one big item that was done,  
14 but I'm sure the reserves weren't sufficient to get that  
15 done.

16 Did I make sense to you?

17 Q. It did, yeah. It did. Let's go back to the  
18 first page of Exhibit 4, which is an e-mail from Jill Mann  
19 dated July 15, 2023. You and the board are included.

20 "Thank you, Kent, for your detailed e-mail. I  
21 very much appreciate the time you took to write this as  
22 well as the time that you have dedicated to this project.  
23 To all, I believe Kent's e-mail completely aligns with my  
24 earlier note to the board that the HOA is responsible for  
25 all the maintenance/repair to the easements in our

1 community."

2 Do you see that e-mail?

3 A. Yes, I do.

4 Q. Did anybody from the board contact you personally  
5 after your e-mail dated July 15 challenging your  
6 conclusions?

7 A. Most of my contact was with Paul. Paul evidently  
8 had been selected as the lead man in this project and  
9 usually it related to the black tarp, whether the black  
10 tarp should be on that area or off that area. If it was  
11 on the area, the plants underneath would die; if it was on  
12 that area when heavy rains came, there wouldn't be anymore  
13 slippage. So sometimes it was on again, off again.

14 But finally, we ended up with Paul's  
15 instructions. I had Green Horizons put it down. And  
16 after that point, probably we had conversations with Jill  
17 who would keep us up to date as to whether the tarp was  
18 blowing or whether the tarp wasn't quite covering. And we  
19 always answered that question. We always addressed that.

20 Jill was excellent to work with.

21 Q. And I appreciate that, but I have a specific  
22 question. And the question is, after you e-mailed the  
23 board your opinions on who is responsible for the  
24 maintenance and the costs related to the slope, which is  
25 Exhibit 4, your e-mail of July 15, after that e-mail did

1 anybody from the board contact you to challenge any  
2 portion of your e-mail?

3 A. Well, Paul had always said that if you can show  
4 me in writing in the CC&R's, then I'll change my viewpoint  
5 on it, but for right now that slope belongs to Jill, so  
6 Jill is responsible for that slope.

7 And so by that time, I had gotten all of the  
8 deeds, so I reminded Paul, Paul, are you aware of the  
9 slope behind your house is yours that leads down to the  
10 street? And he said, No, I don't think so. And I said,  
11 Well, it is; it is your slope, so those trees on the slope  
12 behind your house are your responsibility under your  
13 thinking.

14 It was a fine idea --

15 Q. Let me stop you right there. How did Paul  
16 respond when you pointed out to him that under his  
17 thinking, those trees belong to him and are his  
18 responsibility?

19 A. Well, initially he said no, that slope does not  
20 belong to him, but it turned out that it does and all the  
21 trees on the slope behind those houses that leads to San  
22 Marcos Boulevard is owned by the homeowner that lives  
23 above them.

24 And those trees have been maintained by the  
25 community including tree pruning, which I was responsible

1 for for many years --

2 Q. So in other words, what you're testifying to is  
3 that even Paul Elsesser who challenged your conclusions in  
4 your e-mail, even he did not know where his own property  
5 is, correct?

6 A. Well, at that point, yes. I think he finally  
7 found out it was. The only reason I knew is I had gotten  
8 copies of the deed from the assessor's office.

9 Q. I'm going to mark next in order Exhibit 5.  
10 (Deposition Exhibit No. 5 was marked for  
11 identification.)

12 BY MR. ALEXANDER:

13 Q. Exhibit 5 consists actually of two documents.  
14 The first one is LBF 2517 through 2523. And the second is  
15 a letter from the Wasserman firm that is attached as an  
16 exhibit to that Bates range. And that letter is Bates  
17 stamped LBF 2515 through 2516.

18 So Exhibit 5 consists of an e-mail chain that has  
19 as an attachment to it a letter from the Wasserman firm.  
20 And I'm going to direct your attention to the e-mail chain  
21 first.

22 I'll turn your attention to LBF 2519. It  
23 actually starts at 2518. This is an e-mail from  
24 john@compasspropertymanagement.com dated July 18, 2023.  
25 And it's addressed to Sandra Comouche.

1 By the way, do you know who John is here?

2 A. I read the first paragraph.

3 Q. Okay.

4 A. Is this an e-mail from John to Sandra?

5 Q. It is, yes. Who is John, by the way? Do you  
6 know?

7 A. John is the contact person for Compass that we  
8 used to do business. When there is a problem that  
9 requires administrative help, John is the guy we call. I  
10 like John. John was very capable and he lived close to  
11 us, so it wasn't hard to get him -- make him available.

12 Q. In other words, John is with Compass Management  
13 Company, and Compass Management Company is the property  
14 management company for Las Brisas HOA; is that right?

15 A. He worked for Compass. I don't know how many  
16 employees they had, but he was our contact man when there  
17 was a problem that we had that required Compass to be  
18 involved.

19 Remember, Compass or anybody like Compass is  
20 contracted on a yearly basis. So each year the contract  
21 should be renewed, which they did while I was there. And  
22 John was our contact man. He attended all the meetings,  
23 even the special meeting when we required it.

24 Q. Okay. I'm going to turn our attention to the  
25 first e-mail in the chain, which is dated July 13. It

1 starts at LBF 2522. And it's from John Moore.

2 And he writes, "Board, attached is a draft of the  
3 letter that legal counsel has crafted to send to all Las  
4 Brisas Pacificas homeowners regarding the legal opinion  
5 they provided to the board on the slope slippage at unit  
6 139. Please review it carefully and let me know if you  
7 wish to alter the document in any way. As you know, time  
8 is of the essence given the legal decision has already  
9 been communicated to unit 139's owner and we would like to  
10 get this information into the homeowner's hands before  
11 next week general meeting if possible."

12 My question to you is, when you were president of  
13 the board, did the board ever alter legal opinions of  
14 counsel?

15 A. When I was president, the biggest thing that  
16 required legal help was when the condominium apartments  
17 were being built on the west side. We did the business  
18 with two attorneys; one who was recommended by Web  
19 Management; the other one was an individual that we became  
20 aware of to give us legal opinions on drainage from those  
21 properties onto our property. And we weren't happy about  
22 them going in, so we did have legal help on that.

23 While I was president, that's the only time I  
24 think we used legal assistance. Maybe when a homeowner  
25 was complaining to me, because I was the architectural

1 chairperson, they would complain about the height of the  
2 fence or if a fence was put on their property versus their  
3 own property, little things like that that had to be  
4 reconciled by me.

5 And usually I was quick to confront them, talk to  
6 them, appease them, if possible, and solve the situation  
7 so that it didn't require an attorney or both parties were  
8 happy with the results.

9 Q. I appreciate that. But my question is, when you  
10 were involved with the board, during the time you were  
11 involved with the board -- and it sounds like it was only  
12 one time where you had to involve counsel -- did the board  
13 alter counsel's legal opinion? Did it edit counsel's  
14 legal opinion at that time?

15 A. I believe my memory serves me right that when  
16 they hired counsel, I'm not sure how that was done -- it  
17 was probably done by a recommendation from Compass -- I  
18 was not on the board.

19 Q. Okay.

20 A. Remember, I resigned, I think, January 21st,  
21 23rd, something like that. So I wasn't involved with the  
22 counsel. The counsel was involved after the damage  
23 occurred.

24 Q. Is it your experience that if you hire legal  
25 counsel, you will not alter legal counsel's opinion to

1 suit your own objectives?

2 A. Say that last part.

3 Q. Is it your opinion or is it your experience -- is  
4 it your experience that when you retained legal counsel,  
5 you would not alter counsel's legal opinion to suit your  
6 own objectives?

7 MR. COMBS: Objection; vague and ambiguous as to  
8 whether he's hiring counsel for himself or whether he's  
9 hiring counsel for the HOA. If you could, please clarify  
10 that.

11 MR. ALEXANDER: Well, either/or.

12 THE WITNESS: When I was president, if the board  
13 decided -- we decided -- all five of us decided to get  
14 legal counsel, the first thing we would do is contact Webb  
15 Management, who is our administrative people. And Webb  
16 would recommend somebody they had a relationship with and  
17 was comfortable with. I think his name was Kane. And we  
18 used Kane quite a bit to work out little disputes.

19 Again, a lot of it had to do with the homeowners  
20 -- the apartments being built to the east of us -- to the  
21 west of us. A few times it was because I couldn't seem to  
22 settle a dispute between two property owners on morals.  
23 Sometimes Webb Management -- like, I remember I was  
24 concerned about the ravine slippage. The ravine was  
25 slipping because homes on the west, they were showing

1 signs of slippage. So contact --

2 BY MR. ALEXANDER:

3 Q. Okay. Let's focus back on Exhibit 5 here. I'm  
4 going to read the portion from John. He writes to Sandra.  
5 "Also, reading back through the letter, I noticed  
6 something which I think should be amended. I spoke with  
7 Paul and he agreed. In paragraph five, it states you were  
8 urged to monitor your slopes and take any mitigation  
9 measures that may be necessary to avoid soil movement or  
10 other damage. I don't think you want to give homeowners  
11 carte blanche to any mitigation measures without approval  
12 from the architectural committee who currently has control  
13 over any changes to grade and drainage on a homeowner's  
14 property. Your ARC guidelines regarding grade and  
15 drainage states the ARC will closely review all such  
16 improvements and will require modifications and a decision  
17 to the existing drainage system. So I believe that a  
18 caveat should be included in the sentence in that letter  
19 perhaps adding 'with architectural committee approval'  
20 right after 'take any mitigation measures that may be  
21 necessary'."

22 Do you agree with John's language that the ARC  
23 should monitor any modifications and decisions to existing  
24 drain systems?

25 A. Let me say this. When I was architectural

1 chairperson for nine years, my policy was that if it was a  
2 hardline problem like a wall, a structure of some type, I  
3 was involved. The architectural chairperson at that time  
4 didn't have much responsibility concerning the level  
5 ground around a person's house. That was their property.  
6 Unless the plant that they planted was going to be a  
7 problem for the neighbors, I was not involved. I was  
8 involved when neighbors complained about something. I  
9 usually addressed that with both people.

10           The slopes -- they were not involved in any  
11 discussion for the slopes. I don't remember being the  
12 architectural guideline person that there was a dispute  
13 between, plus I was both the landscape and architectural.  
14 So I would work out any dispute, but I would think that  
15 their jobs are separate.

16           The landscape one would be responsible for the  
17 slopes; the architectural would be responsible for hard  
18 lines on the flat areas around the home and screens and  
19 changes -- not the inside of the house, but anything that  
20 affected the outside of the house, like the paint color,  
21 if they changed their door, what color is it going to be,  
22 that type of thing.

23           Q. Thank you. Then Sandra Comouche on July 18, the  
24 same day, responds to John, "Take out the last paragraph  
25 completely. Add the statement about the ARC approval

1 regarding the grade and drainage responsibilities."

2 Do you see that language?

3 MR. COMBS: Yeah. I'm going to object to the  
4 introduction of this exhibit. It is referring to a draft  
5 letter from my office to the board that was sent under the  
6 attorney-client privilege and it's not proper for you to  
7 examine a non-board member or anybody with respect to this  
8 document.

9 In fact, I'm going to object to this document  
10 being introduced in evidence in any way, shape or form.  
11 They're discussing a draft letter from the attorney and  
12 because they're discussing that letter, they're referring  
13 to a letter which had not been approved for publication to  
14 the members.

15 MR. ALEXANDER: Well, are these all board members  
16 here?

17 MR. COMBS: Yes, they are board members. They  
18 were all board members at the time or they were the  
19 managing agent for the association, which is included in  
20 the attorney-client privilege.

21 MR. ALEXANDER: Okay. I'm not going to ask  
22 anymore questions with respect to the e-mail chain and I  
23 will on record state that Exhibit 5 is going to be only  
24 the e-mail chain consisting of LBF 2517 through 2523, and  
25 you and I can meet and confer further after the deposition

1 on whether or not this should be included as evidence.

2           However, I'm going to mark Exhibit 6 as the  
3 attached letter that was the final product here.

4           MR. COMBS: Agreed.

5 BY MR. ALEXANDER:

6           Q. And Exhibit 6 is LBF 2515 through LBF 2516.

7                   (Deposition Exhibit No. 6 was marked for  
8 identification.)

9 BY MR. ALEXANDER:

10           Q. And this is a letter that was sent first class  
11 mail to all members of Las Brisas Pacificas Community HOA  
12 membership.

13                   Kent, do you recall receiving this letter dated  
14 July 19?

15           A. I think I did. I think all the homeowners got  
16 this letter, I believe. And the one thing that bothered  
17 me was the secrecy that was required when discussing this  
18 either at a board meeting or even Jill asking the question  
19 whether the attorneys said I cannot talk to you.

20                   So it was like -- that was a foreign thing to me.  
21 I'm someone that likes communication and I like everyone  
22 to know what's going on. So this no discussion was  
23 allowed was not a good thing for the community.

24                   There was a lot of resentment from the community  
25 on it. We were all homeowners and all owners of the Las

1 Brisas Pacificas and, yet, weren't allowed to discuss  
2 these items.

3 Q. Part of this Exhibit 6 is a statement that's  
4 underlined. "There is no evidence to suggest that any  
5 other slope is in imminent danger of similar damage.  
6 However, there is no easy way to assign such probability.  
7 You are urged to monitor your slopes and, with written  
8 approval by the Las Brisas Pacificas architectural  
9 committee, take any mitigation measures that may be  
10 necessary to avoid soil movement or other damage."

11 Do you see that language?

12 A. I'm reading that. During my reign as president,  
13 the architect --

14 MR. COMBS: Hold on, Mr. Berchiolli. He just  
15 asked you if you saw the language. He'll have another  
16 question for you.

17 THE WITNESS: Go ahead. Ask the question.

18 BY MR. ALEXANDER:

19 Q. Do you see the language on Exhibit 6 that I just  
20 read?

21 A. Well, was I worried about --

22 MR. COMBS: Objection; nonresponsive. He just  
23 asked you whether you saw the language. Yes or no?

24 THE WITNESS: Are you asking me do I agree with  
25 what is said or did I ever see this before?

1 BY MR. ALEXANDER:

2 Q. Just whether or not you're able to read the  
3 language in Exhibit 6 that I just read.

4 A. You're asking me do I agree with it?

5 Q. No. Just whether or not you read it.

6 A. Yeah. I can read it.

7 Q. Okay. As of July 19, 2023, is it your  
8 understanding that any mitigation measures that are to be  
9 done on a homeowner's private slope should be approved by  
10 the Las Brisas Pacificas architectural committee? Is that  
11 your understanding after reading this letter?

12 A. During my reign as president, the architectural  
13 chairperson had nothing to do with the slopes. Obviously,  
14 if there was a structure bill on the slopes, then maybe  
15 the architectural chairperson would be involved.

16 But their responsibility was for the flat area  
17 around the residence and anything physically hard lines, I  
18 call it, was architectural guidelines. The landscaping  
19 was the responsibility of the landscape chairperson,  
20 including in -- and definitely including the slope.

21 Q. Okay. I'm going to mark next in order Exhibit 7.

22 THE COURT REPORTER: Counsel, do you mind if we  
23 take a break?

24 MR. ALEXANDER: Absolutely. Off the record.

25 (Lunch recess taken from 12:54 p.m. until

1 1:21 p.m.)

2 BY MR. ALEXANDER:

3 Q. Let's go back on the record. Kent, you  
4 understand you're still under oath?

5 A. Are you asking me am I ready to go?

6 Q. Yeah, yeah.

7 A. Yes, I'm ready.

8 Q. And you understand you're still under oath?  
9 Kent?

10 A. Are you asking me to read what's on the screen?

11 Q. No. I'm asking if you understand that you're  
12 still under oath?

13 A. Okay. Yes, I realize that.

14 Q. Let's mark the next exhibit in order, 7.

15 (Deposition Exhibit No. 7 was marked for  
16 identification.)

17 BY MR. ALEXANDER:

18 Q. Exhibit 7 is going to be Bates number LBF 2534  
19 through 2535. It's a series of e-mails. One of them is  
20 dated July 23rd, 2023 and it is from you, Kent. Do you  
21 see that?

22 A. Yeah. I can see it.

23 Q. Okay. This is an e-mail -- did you write this  
24 e-mail?

25 A. I don't think I did, or did I?

1 Q. It says from Cathi and Kent Berchiolli.

2 A. Then I wrote it.

3 Q. Okay. And it reads, "Board of directors. After  
4 receiving the legal opinion of the board of directors'  
5 attorney dated July 19, 2023, and if the board accepts  
6 this position, this poses a radical change of what has  
7 been the precedence of this community for over 35 years.  
8 The architectural guidelines only pertained to structural  
9 changes to the exterior of the home and the lot and  
10 certainly did not include landscaping, maintenance and  
11 repair of the slopes."

12 Do you see that language?

13 A. I can read that and I believe I always believed  
14 that to be true.

15 Q. So you're challenging the letter that was  
16 circulated on July 19, 2023, which is Exhibit 6; is that  
17 right?

18 A. I'm sorry. I didn't understand what you said.

19 Q. Strike the prior question, actually.

20 Why did you write this e-mail to the board?

21 A. Are you asking me why did I write it?

22 Q. Correct.

23 A. I'm not sure of what you're asking. If you're  
24 asking did we write that, if it's from Kent and Cathi  
25 Berchiolli, I wrote it.

1 Q. But what was the purpose? Why did you feel like  
2 you have to write an e-mail to the board following the  
3 letter to the attorney's office?

4 A. I guess because there was talk going around in  
5 the community that the damage to the slope needs to be  
6 repaired by the homeowner and that was foreign to my way  
7 of thinking.

8 So I was laying out the reasons why the slope  
9 should be left in the control of the HOA.

10 Q. And is that why you wrote, "The role of the  
11 landscape committee could be changed erratically if the  
12 homeowner has the final say as to how their slope, which  
13 is deeded to them, is maintained, then Green Horizons and  
14 the landscape committee have very limited authority in how  
15 the slope is planted, watered and maintained"?

16 A. I think that would be a true statement and a true  
17 concern I had.

18 Q. Did you express this concern to anyone other than  
19 to the board members at that time?

20 A. No. I don't think so. I think it was just -- if  
21 it was an e-mail and it was addressed to the board, that's  
22 the only people that got it.

23 Q. Let's mark next in order Exhibit 8.

24 (Deposition Exhibit No. 8 was marked for  
25 identification.)

1 BY MR. ALEXANDER:

2 Q. Exhibit 8 is LBF 2537 through 2538. And this is  
3 a continuation of the chain of e-mails from Exhibit 7.

4 There's an e-mail dated July 23rd, 2023 from  
5 Bonnie M. Do you see that Bonnie M here?

6 A. Are you saying that the more knowledge I have,  
7 the more problems there will be? Is that what they're  
8 saying?

9 Q. I'm just asking, do you see the e-mail from  
10 Bonnie M? My question is, who is Bonnie M, if you know?

11 A. I don't think -- I wasn't addressed on this  
12 e-mail, was I?

13 Q. You were not, but do you know who Bonnie M is?

14 A. Okay. I think the whole gist of this thing is  
15 they knew how I felt about the slopes because that's what  
16 we've done for 35 years. So this would be a radical  
17 change if we moved in the other direction.

18 Q. Okay. Do you have an understanding of who Bonnie  
19 is?

20 A. "I think the more he knows, the more he will use  
21 against the board."

22 MR. COMBS: Objection; unresponsive.

23 THE WITNESS: I'm not sure what we're talking  
24 about there.

25 MR. COMBS: Just listen to the question and

1 answer the question, Mr. Berchiolli.

2 THE WITNESS: Okay.

3 BY MR. ALEXANDER:

4 Q. It's just a simple, who is Bonnie? What is her  
5 role, if any?

6 A. I don't understand unless you're asking who is  
7 Bonnie.

8 Q. That's exactly what I'm asking, yeah.

9 A. Bonnie was a member of the board.

10 Q. Okay. Do you know what her position was at that  
11 time?

12 A. I think probably secretary or maybe at large.

13 Q. Okay. Then we have an e-mail still on Exhibit 8  
14 from Sandra Comouche dated 7, 2023 -- July 23rd of 2023.  
15 She writes, "We have to come up with a very clear  
16 statement about the community responsible concerning the  
17 slope. To maintain continuity in the community, the HOA  
18 is responsible for the irrigation lines and planting of  
19 the slopes to a depth of four inches. The drainage and  
20 substrate is the owner's responsibility."

21 Is it your experience from being on the landscape  
22 committee that the HOA is responsible for irrigation lines  
23 and planting of the slopes to a depth of four inches?

24 A. I can read that. I don't know where the four  
25 inches came from. Sometimes we plant plants that go

1 deeper than four inches. Even the landscape lines are  
2 deeper than four inches.

3 Q. What do you mean by the landscape lines?

4 A. I mean the sprinkler lines. The sprinkler lines  
5 go deeper than four inches. A lot of the plants we plant  
6 are deeper than four inches. Four inches is just the top  
7 layer of the soil.

8 Ground cover would maybe cover four inches, but  
9 anything else, any shrub that we planted would go -- any  
10 gallon would go lower than four inches. I don't know what  
11 the term four inches came from.

12 Q. Okay. So it's your experience being on the HOA  
13 board that the HOA was maintaining the slopes at a depth  
14 deeper than four inches?

15 A. Yes. I would think so. I mean -- yes. Four  
16 inches -- the term four inches means nothing to me.

17 Q. Why do you say that?

18 A. Because I never think of the slopes as being only  
19 four inches thick. I mean, any hole we dig is going to be  
20 deeper than four inches.

21 Q. Let's mark next in order Exhibit 9.

22 (Deposition Exhibit No. 9 was marked for  
23 identification.)

24 BY MR. ALEXANDER:

25 Q. Exhibit 9 is Bates stamped LBF 2541. It's an

1 e-mail dated July 25th, 2023 from Paul Elsesser to you,  
2 Kent Berchiolli, correct?

3 A. Yes. I can read it.

4 Q. Is that e-mail from Paul to you?

5 A. Paul sent that to me, I think, because I was  
6 concerned about --

7 MR. COMBS: Objection. He just -- excuse me,  
8 Mr. Berchiolli. He just asked you a yes-or-no question.

9 THE WITNESS: And your question is, can I read  
10 this?

11 BY MR. ALEXANDER:

12 Q. No. I'll get to that. That's going to be my  
13 next question.

14 But as a base of what we call foundation, was  
15 that e-mail from Paul to you?

16 A. Yes.

17 Q. Okay. And he writes, "Kent, we want Green  
18 Horizons to continue as they have been doing and  
19 appreciate your efforts on behalf of the community as  
20 chairman of the landscaping committee and want you to  
21 continue. I hope that clears things up for you. Best  
22 regards, Paul Elsesser."

23 Do you remember receiving that e-mail?

24 A. Yes.

25 Q. And the title of the e-mail is "Your inquiry."

1 Do you see that?

2 A. The title of the e-mail was -- I'm not sure what  
3 you're asking me. I'm sorry.

4 Q. The e-mail is titled, "Your inquiry," correct?

5 A. I still don't understand what you're asking. Are  
6 you asking did I get that? Yes, I got it.

7 Q. Okay. What were you inquiring of Paul Elsesser  
8 that prompted him to respond with this e-mail to you?

9 A. What was Paul's response?

10 Q. No. What were you inquiring of Paul?

11 A. I think I was concerned with what my job was  
12 going forward, like tomorrow and the next day. I was  
13 complaining about the board needs to be clearer as to what  
14 my responsibilities are because I can let Green Horizons  
15 know what their responsibility is.

16 So Paul was saying on behalf of the community, we  
17 want you to continue. In other words, keep doing what  
18 you've been doing until we tell you otherwise. I assume  
19 that's it.

20 Q. Did you ever respond to this e-mail, if you  
21 remember?

22 A. No. I don't think I did respond to it. It was  
23 clear to me what it meant.

24 Q. What did it mean to you? Is it just what you  
25 testified right now, that you're going to continue as the

1 landscaping committee chair?

2 A. I guess I said yes, I would.

3 Q. Did you question the decision for the board to  
4 continue using Green Horizons to have them do as they have  
5 been doing, as Paul Elsesser states it?

6 A. I don't think I answered the e-mail. I just  
7 understood the e-mail. I think maybe the next time I saw  
8 him I said -- I would say something like thanks for the  
9 e-mail. But I did not send anything back in writing to  
10 him. I just continued doing my job.

11 Maybe I can add one thing. All during the time  
12 this incident occurred until it finally was repaired,  
13 there was other parts of the community that required slope  
14 repair and plant replacement. And that was continued on a  
15 regular basis.

16 Each time I needed money, I would submit a  
17 request to the board and the board would either approve it  
18 or disapprove it.

19 Q. Okay. I'm going to mark next in order Exhibit  
20 10. Give me one second.

21 (Deposition Exhibit No. 10 was marked for  
22 identification.)

23 BY MR. ALEXANDER:

24 Q. Exhibit 10 is not Bates stamped. It is an e-mail  
25 chain that begins August 1st, 2023 from Kent Berchiolli

1 and ends August 1st, 2023 with Glenn Wargo responding.

2 Two-page document.

3 Kent, I will turn your attention to your original  
4 e-mail dated August 1st, 2023. Do you recall writing this  
5 e-mail to the board?

6 A. I'm sure I did.

7 Q. But as you sit here right now, do you recall  
8 writing it? Why don't you take a minute and read through  
9 this e-mail and let me know when you're ready to discuss  
10 it.

11 A. You want me to read the City of San Marcos; is  
12 that the paragraph?

13 Q. Let me try to walk you through it. Let's go with  
14 the first paragraph. "My purpose is not necessarily to  
15 benefit unit 139's homeowner, but really to lay out facts  
16 that would hinder the completion of GeoTek's findings and  
17 repair suggestions."

18 Do you see that language? It's the first  
19 paragraph here.

20 A. The one that says the completion of GeoTek's  
21 findings and repair suggestions?

22 Q. Yeah. Where you write, "My purpose is not  
23 necessarily to benefit 139's homeowner."

24 A. When I got the report -- I don't know if this  
25 answers your question -- when I got the report from

1 GeoTek, I got a copy of it, I thought it was very  
2 complicated and the repair work was so involved that I  
3 didn't think anybody would assume the job to do it.

4 And so I don't know what I thought about  
5 additional damage. I don't know.

6 Q. Okay. Let me try to get some clarification based  
7 off of what you just said.

8 Were you concerned that GeoTek's scope of work is  
9 not appropriate for fixing the slope?

10 A. Was I concerned that GeoTek's report would not  
11 fix the slope? Is that what you're asking me?

12 Q. Yes.

13 A. No. I assume if GeoTek said it had to be done  
14 that way, then that would fix the slope. However, I  
15 thought it was a very complicated fixing of what was --  
16 what I was told by Brian Woods is not a big deal.

17 So I thought it was an overdo of the repair.

18 Q. In paragraph six you write, "The cost of this  
19 repair, as laid out in the report, will well exceed the  
20 homeowner's ability to perform and possibly the community  
21 as well."

22 Do you see that language?

23 A. Yeah.

24 Q. How did you come about with the opinion the  
25 community would not be able to pay for GeoTek's scope of

1 repair?

2 A. His report included excavation of the entire  
3 area, which would require equipment that would be very  
4 difficult to get on the slope, either through her property  
5 or from the property up above.

6 And I thought it was more than what was necessary  
7 to get the slope filled. And so the cost would be  
8 prohibitive both whether the homeowner paid for it or the  
9 community paid for it. And I think I was right because  
10 they ended up with people who shoveled fixing it, which is  
11 not what GeoTek had wanted in the beginning.

12 Q. At paragraph seven you write, "There are over 90  
13 slopes in this community that are deeded to a homeowner  
14 and have been repaired, maintained, weeded, planted and  
15 watered for about 35 years with no cost to the homeowner."

16 Do you still agree with that statement?

17 A. Yes. I do agree with it.

18 MR. ALEXANDER: I have no further questions at  
19 this time. Actually, I have a couple here.

20 BY MR. ALEXANDER:

21 Q. Do you know who Bill Mack is of unit 67?

22 A. Bill Mack?

23 Q. Yes.

24 A. Yes. Bill Mack owns the home -- I forget the  
25 number. 67, I think. A while back, this is the only

1 major thing that I can remember, was a pressure line broke  
2 in the middle of the night and the water ran down the  
3 slope and under his house.

4           So we addressed the breakage, got it fixed, but  
5 he said I'm going to have to go under the house and try to  
6 fix it. I'll do it myself, he said. And we ended up --  
7 the board ended up working out some kind of a payment to  
8 him. I think it was \$600 or \$700 that was given to him to  
9 help in the cost for him to clean the area under his  
10 house.

11           So the board paid for at least part of the  
12 problem.

13       Q.   Where was that pressure line located?

14       A.   I'm sorry?

15       Q.   Where was that pressure line located?

16       A.   It was probably -- I'm going to guess, but  
17 probably 2016, something like that.

18       Q.   No. I don't want you to guess. And my question  
19 was not with respect to the timeframe.

20           My question is, the pressure line that broke,  
21 where was it located? Was it on the slope?

22       A.   The breakage?

23       Q.   Yes.

24       A.   Yes. It was on the slope.

25       Q.   Was the pressure line the same as a sprinkler?

1 A. Yes. The pressure line -- yes, the pressure line  
2 was installed by somebody and it broke. So that was on  
3 the slope. So the damage it caused, to my way of  
4 thinking, the HOA was responsible to get it either  
5 repaired or to pay somebody to do it.

6 In this case, he wanted to do it. So we ended up  
7 giving him a check to help offset the cost. And he agreed  
8 to it.

9 Q. Was the pressure line part of the sprinkler  
10 system on the slope?

11 A. Yes. The pressure line was on the slope.  
12 There's a lot of pressure lines. A pressure line simply  
13 means that there's water in it all the time with the  
14 pressure from the balancing afforded of the water  
15 district.

16 When they break, it's like you turned on the  
17 faucet and nobody has turned it off.

18 Q. When the board wrote Bill Mack a check, was  
19 that -- to your knowledge, did that come out of the  
20 reserves or some other account?

21 A. I'm not sure where it came from. I would assume  
22 it came from a reserve.

23 Q. And approximately what year was this?

24 A. Again, I'm guessing at this, but I would say  
25 2016, 2017, something like that.

1 Q. Well, is that a guess where you have absolutely  
2 no idea or are you estimating when that took place?

3 A. It's a guess on my part. It was during the time  
4 that I was president.

5 Q. Okay. So somewhere between 2011 and 2019,  
6 correct?

7 A. Yes.

8 Q. With that, I have no further questions at this  
9 time.

10 MR. COMBS: Very well. I have some questions. I  
11 don't think we need to take a break. We just got back  
12 from one, but if anybody needs to, we can. Okay. Then  
13 let's go forward.

14 Can you enable my ability to share?

15 MR. ALEXANDER: Let me stop sharing my screen.

16 EXAMINATION

17 BY MR. COMBS:

18 Q. Mr. Berchiolli, do you understand that I'm the  
19 attorney for Las Brisas Pacificas, Inc.?

20 A. Yes, I know that.

21 Q. And I may refer to Las Brisas Pacificas, Inc. as  
22 the association or the HOA in my questions. Will you  
23 understand what I'm talking about?

24 A. Yes.

25 Q. Okay. Thank you. Now, I notice that the name on

1 your Zoom says Jill. Are you at Jill Mann's house right  
2 now?

3 A. Why am I here at Jill's house?

4 Q. Are you at Jill's house?

5 A. Yes.

6 Q. Is Jill in the room with you?

7 A. Yes.

8 Q. Where is Jill with respect to where you are?

9 A. She's about eight feet away from me at the other  
10 end of the table.

11 Q. How did it come about that you arranged to have  
12 your deposition taken at Jill's house?

13 A. Well, originally my wife thought she could do it  
14 and then the other day she had concerns about it, concerns  
15 that maybe she was not capable of doing it. So I asked  
16 Jill about it.

17 And Jill said, That's not a problem; we can use  
18 my computer; I've done it quite frequently. So it was  
19 simply a matter of my wife not wanting to do it or not  
20 wanting to try to do it and Jill was capable of doing it.  
21 That's why I'm here.

22 Q. Have you been to Jill's house before?

23 A. What?

24 Q. Have you been to Jill's house before?

25 A. I've been in the house before, if that's what you

1 mean, yes.

2 Q. How many times, approximately?

3 A. Maybe four or five times. I don't know.

4 Q. Is there anybody else in the room besides you and  
5 Jill Mann?

6 A. My wife, Cathi.

7 Q. What is your relationship with Jill Mann? Do you  
8 consider her a friend?

9 A. I consider her a homeowner like the other 169  
10 homeowners.

11 MR. ALEXANDER: Objection; nonresponsive.

12 BY MR. COMBS:

13 Q. Do you consider Jill Mann a friend? Yes or no?

14 A. I would consider her a friend, sure.

15 Q. Do you support Jill Mann's lawsuit against the  
16 HOA?

17 MR. ALEXANDER: Vague as to "support." Do you  
18 mean financial support? It's a vague question.

19 BY MR. COMBS:

20 Q. Go ahead and answer if you understand the  
21 question.

22 A. Ask the question again.

23 Q. Do you support Jill Mann's lawsuit against the  
24 HOA?

25 MR. ALEXANDER: Same objection.

1 THE WITNESS: I agree with the reason why it's  
2 being done.

3 BY MR. COMBS:

4 Q. Do you hope that Jill Mann wins her lawsuit  
5 against the HOA?

6 A. I want to say yes, but I don't want to hurt the  
7 HOA.

8 Q. Why do you support Jill Mann's lawsuit against  
9 the HOA?

10 A. Because for the HOA to continue being the place  
11 it is and as a nice community to live in, I think it's the  
12 only solution going forward.

13 Q. And what solution do you think that is?

14 A. That the community continue to maintain the  
15 slopes as they've done for the last 35 years.

16 Q. Are your responses today intended to support  
17 Jill's case against the HOA?

18 MR. ALEXANDER: Harassing, vague, badgering the  
19 witness.

20 THE WITNESS: I'm sorry. Say that again.

21 MR. COMBS: Can you repeat the question to him,  
22 please?

23 (Requested portion read by the reporter.)

24 MR. ALEXANDER: Same objections. This is  
25 harassing the witness.

1 THE WITNESS: I support the reason for it.

2 BY MR. COMBS:

3 Q. But you intend for your testimony to support  
4 Jill's case against the HOA; isn't that correct?

5 MR. ALEXANDER: Counsel, this line of questioning  
6 is not appropriate. Harassing the witness. He provided  
7 his responses to questions that you did not object to.  
8 Now you're badgering him.

9 BY MR. COMBS:

10 Q. You heard the objection of Jill Mann's counsel?

11 A. Yes.

12 Q. I'm going to have the court reporter read the  
13 question back to you and I would like you to answer it.

14 (Requested portion read by the reporter.)

15 THE WITNESS: I think the question isn't a simple  
16 yes or no. I agree with the fact that the community has  
17 to continue the way it's been operating with the HOA  
18 responsible for the slopes.

19 Her lawsuit -- if her lawsuit is required to get  
20 that done, then yes, I support it.

21 BY MR. COMBS:

22 Q. You mentioned that you obtained an AA degree from  
23 New York University. In what area did you get your  
24 degree?

25 A. At the time, I was interested in becoming a pilot

1 so I specialized in aircraft operations. A two-year  
2 college degree was required to get into the flight program  
3 and that's why I did it.

4 Q. Do you have any formal engineering training of  
5 any kind?

6 A. I qualified to be a licensed landscape contractor  
7 in California. If that gives me some knowledge of  
8 engineering -- I don't think of it as that way, but there  
9 is qualifications required and I met them. And I passed  
10 the test and got my license.

11 So...

12 Q. Objection; nonresponsive.

13 Do you have any formal engineering training?

14 A. No.

15 Q. Do you have any formal training in geology?

16 A. No.

17 Q. Do you have any formal training in any of the  
18 natural sciences?

19 MR. ALEXANDER: Vague as to any of the natural  
20 sciences.

21 BY MR. COMBS:

22 Q. We can go through them. Do you have any formal  
23 training in chemistry?

24 A. In what?

25 Q. Chemistry.

1 A. I took it in college.

2 Q. Beyond classes in college, do you have any other  
3 formal training in chemistry?

4 A. No.

5 Q. Do you have any formal training in physics?

6 A. Well, I started out as a customer service rep and  
7 I rose up to become the general manager of the company. I  
8 guess that had -- I had to have the knowledge to do that.

9 Q. In the study of physics? How did that apply to  
10 the study of physics?

11 A. The fact that the nursery was located on 265  
12 acres with slopes, I had to be sure that the slopes were  
13 solid, that the plants weren't going to run down when it  
14 rained. That's on-the-job experience, I guess.

15 Q. Do you have any formal training in the study of  
16 surveying?

17 A. No.

18 Q. Do you have any formal training in the study of  
19 law?

20 A. Other than taking some courses.

21 Q. What courses did you take that were pertinent to  
22 the study of law?

23 A. Business law and other related real estate. I  
24 mean, I went to -- I was in the habit of taking night  
25 courses at different colleges while I was working. If

1 that's training, I think most of my training has been  
2 on-the-job training, you know. 40 years in the business  
3 you retain something.

4 Q. I'm asking about formal training. You said you  
5 took some classes, some law classes. What law classes did  
6 you take?

7 A. You talk about formal training like the only  
8 formal training is if you go to school. I think of it  
9 otherwise. Formal training can be on-the-job training.

10 Q. That's not what I'm asking you. I'm asking about  
11 formal training in a school setting. Let's narrow it down  
12 to that. What formal training in a school setting do you  
13 have in the study of law?

14 A. Other than taking some courses at junior  
15 colleges, different junior colleges, the answer is no.

16 Q. Have you ever taken any classes or courses that  
17 have to do with HOA board training?

18 A. No.

19 Q. Okay. What background, if any, do you have in  
20 soils engineering?

21 A. I don't have any courses in that.

22 Q. Okay. You were a landscape licensed contractor.  
23 From what year to what year did you hold an active  
24 landscape license?

25 A. If my memory serves me right, it is from '67 to

1 '72. Then I let it expire.

2 Q. What do you understand the scope of a landscape  
3 contractor's license to include?

4 A. It includes a lot of things. It includes the  
5 knowledge of plants; knowledge of drainage -- drainage is  
6 a big part; knowledge of maintenance; knowledge of insect  
7 control, pest control; knowledge of fungus control; the  
8 ability to contract with somebody.

9 Q. Do you have any licenses as pertains to  
10 arboriculture? Do you know what arboriculture is?

11 MR. ALEXANDER: Can you spell that and use it in  
12 a sentence?

13 THE WITNESS: No. When I was in high school, I  
14 worked for a nursery, a big nursery on Long Island that  
15 did landscaping and I was involved in that.

16 But I was a young guy. It was just part of the  
17 training. I got experienced in that. And when I got my  
18 license, I ran the company.

19 BY MR. COMBS:

20 Q. Okay. Objection; you're launching into a  
21 narrative, sir.

22 Do you know what arboriculture is?

23 A. What?

24 Q. Arboriculture.

25 A. Horticulture?

1 Q. I'll spell it for you. A-R-B-O-R-I culture,  
2 arboriculture.

3 A. That's trees?

4 Q. Correct.

5 A. I know diseases when I see it, if that's what you  
6 mean. I know about sizes of trees and rooting habits of  
7 trees, that type of thing.

8 Q. Do you have any certifications or license as it  
9 pertains to maintenance of trees?

10 A. I have no license in the maintenance of trees,  
11 no.

12 Q. Have you read the CC&Rs for Las Brisas Pacificas?

13 A. Many, many times.

14 Q. Are you aware of any recorded amendments to those  
15 CCRs?

16 A. No.

17 Q. Do you agree that the CC&Rs govern the obligation  
18 of the association and the owners as it pertains to  
19 property within the Las Brisas Pacificas project?

20 A. I think of the CC&Rs as a document that was  
21 required by the owner of the property so we could get the  
22 place declared a senior community. There are rules and  
23 regulations that were written by the community and changed  
24 several times, and that includes the architectural  
25 guidelines. That's only part of it.

1 Q. Objection; nonresponsive.

2 I'm asking you about the CC&Rs that were  
3 recorded. I'm not asking about rules and regulations that  
4 have been enacted by the board of directors.

5 A. Ask the question again.

6 Q. I'm talking about the recorded CC&Rs. Do you  
7 know which document I'm talking about?

8 A. Yes.

9 Q. Okay. Do you agree that the CC&Rs govern the  
10 obligations of the association and the owners as it  
11 pertains to property within the Las Brisas Pacificas  
12 project?

13 MR. ALEXANDER: That calls for a legal  
14 conclusion.

15 THE WITNESS: I think the question doesn't --  
16 it's too vague. It's not direct enough. It tells us why  
17 we are a senior community, what we have to do to retain  
18 senior community, the position. It doesn't tell us about  
19 noise. It doesn't tell us about clotheslines; it doesn't  
20 tell us about speeding limits.

21 It's only part of the governing document that we  
22 go by.

23 BY MR. COMBS:

24 Q. Okay. You said that you read the CC&Rs many  
25 times.

1 A. I'm sorry. Say that again.

2 Q. You testified earlier that you had read the CC&Rs  
3 many times. Do you understand that the CC&Rs impose  
4 certain obligations on the association and the owners with  
5 respect to property within the Las Brisas project? Yes or  
6 no?

7 MR. ALEXANDER: Vague, misstates prior testimony.

8 THE WITNESS: Yes, but only partially.

9 BY MR. COMBS:

10 Q. Do you believe that the board of directors has  
11 the right to take any action that is outside the authority  
12 granted to them in the CC&Rs?

13 MR. ALEXANDER: Calls for a legal conclusion,  
14 vague to any action.

15 THE WITNESS: Ask the question again.

16 MR. COMBS: Can you repeat the question for him,  
17 Madam Court Reporter?

18 (Requested portion read by the reporter.)

19 THE WITNESS: Do they have the right to do  
20 something that's in contradiction of the CC&Rs, is that  
21 what you're asking me?

22 MR. COMBS: Can you read the question for him  
23 again, please?

24 (Requested portion read by the reporter.)

25 MR. ALEXANDER: Same objection.

1 THE WITNESS: No, they don't have that right.

2 BY MR. COMBS:

3 Q. Okay. I'm going to now share my screen.

4 A. Are you asking me another question?

5 Q. Sorry. I'm going to share my screen. I just  
6 want to make sure I share the right one. Okay. Do you  
7 see the CC&Rs right now (indicating)?

8 A. Yes.

9 Q. Okay. So do you see it moving right now?

10 A. I see some writing on there, but I don't think I  
11 can read it.

12 Q. I don't think I'm sharing the right thing. I'm  
13 going to stop here. Now do you see this document  
14 (indicating)?

15 A. Yes.

16 Q. And you've seen that before, right? This is the  
17 CC&Rs?

18 A. Yes.

19 Q. You read them many times?

20 A. Yes. I referred to them many times, yes.

21 Q. I understand. I want to scroll down to the  
22 definition of "common area."

23 MR. ALEXANDER: Are you marking that as an  
24 exhibit?

25 MR. COMBS: Yes. We're on Exhibit 11?

1 MR. ALEXANDER: That's correct.

2 MR. COMBS: Let's mark the CC&Rs as Exhibit 11.

3 (Deposition Exhibit No. 11 was marked for  
4 identification.)

5 BY MR. COMBS:

6 Q. Do you see, sir, this definition of "common  
7 area"?

8 A. I can read that, yes.

9 Q. Okay. Have you read that definition before?

10 A. I read the CC&Rs many times.

11 Q. Okay. Have you read this definition before?

12 A. I'm sure I have.

13 Q. Okay. Take a moment and read it and let me know  
14 when you're done.

15 A. I understand what it's saying.

16 Q. Okay. What does it say?

17 A. Well, it says that it limits what is called a  
18 common area, but I need to add this and that is that I  
19 don't necessarily think of the slopes as common area. I  
20 think of it --

21 Q. I'm not asking about the slopes. I'm asking if  
22 you understand this definition?

23 A. Yes, I understand what it is saying.

24 Q. So common area is, "All real property and  
25 improvements including personal property located thereon

1 within the property which is owned by the association for  
2 the common use and enjoyment of the lot owners."

3 Do you understand that?

4 A. Yes.

5 Q. Let's scroll down to the definition of  
6 "residential lot." Okay. Do you see this definition of  
7 residential lot? Take a moment and read that.

8 A. I can read that.

9 Q. Okay. Do you know what tract map No. 265 is?

10 A. I think that's either the ravine or where the  
11 clubhouse is.

12 Q. Have you ever reviewed tract map No. 265?

13 A. Is that the tract number of where the clubhouse  
14 and the swimming pool is or is that the ravine?

15 Q. I'm asking you whether you have read it or not.  
16 If you don't know, that's okay. I'm going to mark it as  
17 an exhibit and we'll take a look at it.

18 A. I have read it. If it's in the CC&Rs, I have  
19 read it.

20 MR. COMBS: So Vasco, were you just dropping  
21 these into the chat or how were you uploading?

22 MR. ALEXANDER: I was, yes.

23 MR. COMBS: Okay. Here is Exhibit 11, which is  
24 the CC&Rs. And next I'm going to drop in what we will  
25 mark as Exhibit 12, which is tract map 265.

1 (Deposition Exhibit No. 12 was marked for  
2 identification.)

3 MR. ALEXANDER: Craig, just mechanical, I'm going  
4 to e-mail Yvonne, the court reporter, Exhibits 1 through  
5 10 and cc you. If you could do me a favor and e-mail your  
6 exhibits, likewise.

7 MR. COMBS: I'll do that after I'm done here.

8 BY MR. COMBS:

9 Q. Okay. Can you see this map here, Mr. Berchiolli?

10 A. I can see the writing, yes.

11 Q. Okay. Do you see where it says San Marcos tract  
12 No. 265 is at the top?

13 A. I can see that, yes.

14 Q. Okay. And do you recall ever having seen this  
15 map before?

16 A. It looks familiar to me.

17 Q. Do you have any specific recollection of seeing  
18 this map before?

19 A. I'm sure I have looked at it. If you correct me,  
20 I'll understand, but I think it's the tract where the  
21 clubhouse and the swimming pool is.

22 Q. Okay. Do you see the --

23 A. 170, 172 -- I don't know -- where is 165?

24 Q. Let's see if we can find 165. Is 165 a common  
25 area lot? I see it goes 163, 164 and then --

1 A. You're talking about the homeowners?

2 Q. This is a legal description of the Las Brisas  
3 Pacificas project that is referenced in the CC&Rs. Do you  
4 understand that? This is tract map 265.

5 A. Yes. I have seen this map before. I used it a  
6 lot.

7 Q. Okay. So you have seen it. You can see lot  
8 layouts and you understand this represents the lots within  
9 Las Brisas Pacificas?

10 A. Yes.

11 Q. There's an entrance.

12 A. Yes.

13 Q. And do you understand that these numbered lots  
14 here are residential lots with the exception of common  
15 area?

16 A. I understand that 165 now is the map of the whole  
17 tract.

18 Q. Well, it's 265.

19 A. 265, I mean.

20 Q. Okay. And you understand that Ms. Mann's lot is  
21 No. 139; is that correct?

22 A. Yes.

23 Q. Okay. Do you see 139 here?

24 A. Yes.

25 Q. And you can understand how that is her lot;

1 that's the shape of her lot?

2 A. I can see that that's the lot, 139, yes.

3 Q. Okay. And you see it's bounded by 138, 140, 127,  
4 128, 131 and 132?

5 A. Yes.

6 MR. ALEXANDER: Objection.

7 MR. COMBS: 131, 128, 127.

8 BY MR. COMBS:

9 Q. And you understand those are also privately owned  
10 residential lots, correct?

11 A. Yes.

12 Q. Okay. Can you identify on this lot any common  
13 area?

14 A. I consider the slopes to be -- I consider the  
15 slopes to be maintained like a common area.

16 Q. Is there any legally described common area that  
17 adjoins lot 139?

18 MR. ALEXANDER: Calls for a legal conclusion.  
19 The document speaks for itself.

20 THE WITNESS: It does not show on the deed.

21 BY MR. COMBS:

22 Q. Okay. Lot 171, do you see that to the southwest  
23 of lot 139?

24 A. What was the lot number? 171?

25 Q. 171, yeah. Do you see that there?

1 A. That's the street.

2 Q. Correct. Are the streets owned by Las Brisas  
3 Pacificas or are they owned by the County, do you know?

4 A. They're owned by Las Brisas Pacificas.

5 Q. Okay. So that's a common area lot, isn't it?

6 A. Yes.

7 Q. But 137 is not a common area lot, is it?

8 A. I treat the slope as part of a common area.

9 Q. It's a yes or no. Is 137 a common area lot? Yes  
10 or no?

11 A. No.

12 MR. ALEXANDER: That's badgering the witness.

13 MR. COMBS: No, he did not answer me.

14 BY MR. COMBS:

15 Q. Is lot 138 a common area lot? Yes or no?

16 MR. ALEXANDER: Calls for an expert opinion.

17 THE WITNESS: I can't answer that question  
18 because you're leaving out the slope.

19 BY MR. COMBS:

20 Q. So you can't answer the question?

21 A. No.

22 Q. You don't know, do you?

23 A. I know. I know for 35 years that lot 139 has a  
24 slope that is -- that has been maintained by the HOA, paid  
25 for by the HOA in all aspects of maintenance. And then

1 she has a level area where she lives and she's responsible  
2 for that.

3 Q. But does the association have a legal interest in  
4 the real property located on 139?

5 MR. ALEXANDER: Calls for a legal conclusion;  
6 calls for expert opinion.

7 BY MR. COMBS:

8 Q. Does the association have a recorded interest in  
9 lot 139, do you know?

10 MR. ALEXANDER: Calls for speculation.

11 BY MR. COMBS:

12 Q. Are you going to answer the question?

13 A. I don't understand your question.

14 Q. You contend that part of lot 139 is common area,  
15 do you not?

16 A. I consider it a slope.

17 Q. I understand you consider it a slope. Do you  
18 consider it to be common area? Yes or no?

19 A. I consider the slope from a maintenance  
20 standpoint as common area.

21 Q. Okay. Would you agree that the definition of  
22 common area in the CC&Rs governs what is common area and  
23 what is not common area? Do you agree with that?

24 MR. ALEXANDER: Calls for a legal conclusion.  
25 The document speaks for itself.

1 THE WITNESS: I believe a lot of things. I  
2 believe that the CC&Rs is a poorly written document that  
3 was originated by the owner to get the approval to be  
4 called a senior community. I'm sure when he sold 139 for  
5 the very first time, the question may have been asked what  
6 do I do with that slope. And his answer would have been  
7 you don't do anything, we maintain that slope.

8 BY MR. COMBS:

9 Q. Objection; nonresponsive.

10 Ms. Court Reporter, will you please read back the  
11 question? And Mr. Berchiolli, you're required to answer  
12 the question.

13 MR. ALEXANDER: To the best of your knowledge.

14 (Requested portion read by the reporter.)

15 MR. ALEXANDER: Same objections. Calls for a  
16 legal conclusion. The document speaks for itself.

17 THE WITNESS: For the years that I lived in the  
18 community, I followed --

19 MR. COMBS: Objection; nonresponsive.

20 BY MR. COMBS:

21 Q. It's a yes-or-no question, Mr. Berchiolli. Do  
22 you need the court reporter to read it back again?

23 A. No. She doesn't have to read it back. I  
24 understand the question.

25 Q. Okay. Then please answer it.

1 A. Say the question one more time.

2 (Requested portion read by the reporter.)

3 MR. ALEXANDER: Same objections.

4 THE WITNESS: Yes, I agree with that.

5 BY MR. COMBS:

6 Q. Very well. According to the definition of common  
7 area in the CC&Rs, where on lot 139 is there any common  
8 area?

9 A. No, there is no common area.

10 Q. Now, I want to refer you to allegations made in  
11 Ms. Mann's Complaint. And let's attach the Complaint --  
12 you know, we're going to still look at the exhibits that  
13 have already been introduced now. Okay. Let's pull up  
14 Exhibit 4.

15 Can you see Exhibit 4 in front of you, sir?

16 Mr. Berchiolli, do you see it?

17 A. Yeah, I see it.

18 Q. Okay. All right. So in Exhibit 4 you wrote,  
19 "Many common area slopes are owned by a particular area."  
20 Well, if the definition of "common area" is property that  
21 is owned by the association, how can an owner own any  
22 common area?

23 MR. ALEXANDER: Calls for a legal conclusion,  
24 calls for speculation.

25 THE WITNESS: I'm not sure what paragraph you're

1 reading.

2 BY MR. COMBS:

3 Q. Okay. Let me find it. Okay. Right here  
4 (indicating). Do you see this? It says, "Although many  
5 common area slopes are owned by a particular property  
6 owner." Do you see where you wrote that?

7 A. The first part of my screen has blocked that out.

8 Q. Okay. What if I scroll down a little bit, can  
9 you see it now? It's in this paragraph (indicating).  
10 Okay. The first paragraph says "considerations for  
11 property views." Do you see that paragraph?

12 A. I don't see the beginning.

13 Q. Okay. What do you see on your screen right now?

14 A. I see 35 years has placed a responsibility --

15 Q. Go down -- not the paragraph below that, but the  
16 next paragraph.

17 A. The first part of it is blocked out.

18 Q. Can you see "considerations for property views"?  
19 Do you see that now?

20 A. I don't know. I don't see that.

21 Q. What do you see on your screen right now?

22 A. The first paragraph that I could read totally is  
23 where it says, "The landscape chairperson head nor  
24 property owner participation" --

25 Q. I'll scroll down. I want you to find the

1 paragraph that starts with "considerations."

2 A. I see it. "Consideration for property views."

3 Q. Read the second sentence of that paragraph.

4 A. "Although many common area slopes are owned by a  
5 particular property owner, solutions and maintenance  
6 should remain in control of the landscape maintenance  
7 group subject to approval of the board."

8 Q. Previously you had agreed with me that the  
9 definition of common area in the CC&Rs governs the legal  
10 determination of ownership of property in the Las Brisas  
11 project.

12 So I want to ask you, how can a common area  
13 slope, which is by definition owned by the association, be  
14 also owned by a particular property owner? That can't  
15 happen, can it?

16 MR. ALEXANDER: Misstates testimony and compound,  
17 argumentative.

18 THE WITNESS: Are you asking me a question?

19 BY MR. COMBS:

20 Q. Yeah. I'll rephrase it.

21 Can an individual property owner own common area  
22 in your mind?

23 MR. ALEXANDER: Vague.

24 THE WITNESS: I find it difficult to answer that  
25 question.

1 BY MR. COMBS:

2 Q. Well, you have written here, "Many common area  
3 slopes are owned by a particular property owner." That's  
4 not possible, is it, Mr. Berchiolli?

5 MR. ALEXANDER: Argumentative.

6 THE WITNESS: It's not possible if you talk of  
7 the slopes as common area. It is possible if you talk, as  
8 I stated, as a slope.

9 BY MR. COMBS:

10 Q. Okay. But there's no common area slope that is  
11 owned by a particular property owner, is there?

12 A. There's only two common areas that are owned by  
13 the community and that is the one with the clubhouse and  
14 ravine -- and swimming pool is and that lawn area and the  
15 ravine and the roads. Those are the only ones that belong  
16 to the community.

17 Q. Thank you. So what did you mean when you wrote,  
18 "Although many common area slopes are owned by a  
19 particular property owner"?

20 A. I wish that I had said "slopes" instead of  
21 "common area."

22 Q. Okay. So that was an error when you said that?  
23 There are no common area slopes that are owned by a  
24 particular owner; would that be accurate?

25 A. I guess if you look at the -- what is written in

1 the CC&Rs, the answer is no.

2 Q. Okay. I want you to look at the paragraph that  
3 starts, "During May 2023." Can you see that on your  
4 screen?

5 A. No. "Since the start" -- no, I'm not sure what  
6 paragraph you --

7 Q. Okay. Yeah. It's right above "since the start."  
8 Okay. Do you see now? It starts, "During May 2023."

9 A. "During May 2023, damage was noted on the slope  
10 unit behind 139." Is that the one?

11 Q. Yeah. First of all, you reference unit 139.  
12 Now, typically the term "unit" is used in connection with  
13 condominiums. Do you believe that Las Brisas is a  
14 condominium project?

15 A. Ask that again.

16 Q. You use the term "unit 139" and you refer to unit  
17 131 and you refer to the residential lots as units in your  
18 e-mail.

19 Now, I understand you're a layperson, but I'm  
20 trying to understand because the term "unit" is generally  
21 used in connection with condominium projects.

22 Do you believe Las Brisas Pacificas to be a  
23 condominium project?

24 A. "Units" is probably the wrong term. It is lots.  
25 But I just get in the habit of calling it unit.

1 Q. When you say "unit," what you mean is lot or  
2 residential lot; is that fair to say?

3 A. Yes.

4 Q. Go ahead and take a moment to read that paragraph  
5 and let me know when you're done.

6 A. The one "During May 2023"?

7 Q. Yes, sir.

8 A. "Damage was noted on the slope behind unit 139.  
9 At that time, many of the French drains installed were not  
10 operating correctly, which may have contributed to the  
11 incident that occurred. During the following months, the  
12 board" --

13 Q. Let me stop you right there. Did you have the  
14 opinion of any professional to tell you that the French  
15 drains contributed to the incident?

16 MR. ALEXANDER: Vague.

17 THE WITNESS: That's why I said "may."

18 BY MR. COMBS:

19 Q. So the question is, did you have the opinion or  
20 consultation of any professional engineer or geologist or  
21 licensed contractor to tell you that the installation of  
22 the French drain may have contributed to the incident that  
23 occurred or is that your own opinion?

24 A. It's my own opinion because they weren't working  
25 at the time of this incident.

1 Q. But it's your opinion? You did not consult with  
2 an expert or any qualified or licensed person to come up  
3 with this opinion, did you?

4 A. Other than my own common sense.

5 Q. So it's your own opinion only, correct?

6 A. My opinion includes the fact that they were not  
7 working properly at the time of the incident.

8 Q. I just want to be clear it's your opinion only;  
9 you did not consult with any expert to help you come to  
10 this conclusion, did you?

11 A. No, no.

12 Q. So the answer was no, just for the record? The  
13 answer was no, correct?

14 MR. ALEXANDER: That calls for a double negative.

15 MR. COMBS: It calls for a what?

16 MR. ALEXANDER: You'll confuse the record. You  
17 asked him in a negative. If he says no, it will be --  
18 it's your question. Go ahead.

19 MR. COMBS: Madam Court Reporter, could you read  
20 back his answer to my question?

21 (Requested portion read by the reporter.)

22 BY MR. COMBS:

23 Q. Now, you were not involved with the installation  
24 of the French drains on lot 139, were you?

25 A. No.

1 Q. And the installation of the French drains on lot  
2 139 occurred before Jill Mann took ownership of lot 139;  
3 isn't that correct?

4 A. Yes.

5 Q. So neither you nor Jill Mann have any direct  
6 knowledge about the installation of the French drains on  
7 lot 139, do you?

8 MR. ALEXANDER: Calls for speculation as to Jill  
9 Mann.

10 THE WITNESS: Jill has some knowledge because she  
11 talked to the owner of the lot when the French drains were  
12 put in.

13 BY MR. COMBS:

14 Q. Okay. But she wasn't there when the French  
15 drains were put in?

16 A. No.

17 MR. ALEXANDER: Calls for speculation.

18 BY MR. COMBS:

19 Q. She wasn't there when the contract to put in the  
20 French drains, if any existed, was signed?

21 MR. ALEXANDER: Same objection.

22 THE WITNESS: If that's a question for me, say it  
23 again.

24 BY MR. COMBS:

25 Q. You know what? Strike that.

1           You were not involved with the selection of the  
2 methods or means of putting in the French drain on lot  
3 139; is that correct?

4           A.    No.  I had no position on the board nor in  
5 landscaping.

6           Q.    Is it your belief or understanding that the CC&Rs  
7 required the association to maintain any portion of the  
8 slopes that are located on separate interest residential  
9 lots?

10          A.    The CC&Rs don't, but the rules and regulations  
11 do.

12          Q.    So you agree that the CC&Rs don't require the  
13 association to maintain private slopes; is that true?

14          A.    It's not stated that way, no.

15          Q.    Is it your belief that the CC&Rs permit the  
16 association to maintain any portion of the private slopes  
17 located on separate interest residential lots?

18          A.    Unfortunately, the CC&Rs don't cover everything  
19 to do with Las Brisas Pacificas.

20          Q.    Okay.  Objection; nonresponsive.

21                Court Reporter, please read back the question so  
22 he can answer.

23                (Requested portion read by the reporter.)

24                THE WITNESS:  I understand what you're saying.  I  
25 have a hard time answering that, but the answer is no.

1 BY MR. COMBS:

2 Q. Is it your belief that the CC&Rs permit the  
3 association to pay for repairs on any portion of private  
4 slopes located on separate interest residential lots?

5 MR. ALEXANDER: Calls for a legal conclusion,  
6 vague.

7 BY MR. COMBS:

8 Q. You can answer the question if you understand it.  
9 If you don't, we can have the court reporter read it back  
10 for you.

11 A. No, I understand the question. The CC&Rs does  
12 not. However, it's not complete.

13 Q. If the CC&Rs do not permit the association to pay  
14 for the repairs on private slopes, then under what  
15 authority do you believe the association has the  
16 obligation to pay for repairs on a private slope?

17 A. The history of Las Brisas going back 35 years  
18 where the practice was to do it.

19 Q. Are you aware of any slope failure of the  
20 magnitude that occurred on lot 139 in 2023 prior to 2023?

21 A. No.

22 Q. Would you say that the slope failure which  
23 occurred on lot 139 was an unprecedented event within Las  
24 Brisas Pacificas?

25 MR. ALEXANDER: Vague.

1 THE WITNESS: It was the first event of that  
2 size.

3 MR. COMBS: I'm going to mark as Exhibit 13.  
4 (Deposition Exhibit No. 13 was marked for  
5 identification.)

6 BY MR. COMBS:

7 Q. I'll drop that into the chat. Okay. Do you see  
8 that document, sir?

9 A. Yes.

10 Q. It's entitled "Landscape committee chairperson."  
11 The Bates stamp number at the bottom is LBF 002595. Do  
12 you see this document?

13 A. I'm sure I wrote it.

14 Q. Okay. The first sentence it says, "A critical  
15 corner in our common area slopes exists in the western  
16 section of Las Brisas Pacificas. This slope includes  
17 lower level units 138 and 139."

18 Now, based upon the discussion that we just had,  
19 do you still contend that those are common area slopes?  
20 Yes or no?

21 A. I consider them slopes that have been maintained  
22 by the community for 35 years.

23 Q. Objection; nonresponsive.

24 Court Reporter, please read back the question so  
25 Mr. Berchiolli can answer it.

1 (Requested portion read by the reporter.)

2 THE WITNESS: I consider them slopes that are  
3 maintained by the community.

4 BY MR. COMBS:

5 Q. Nonresponsive.

6 I need you to answer the question that's posed to  
7 you and it's a yes-or-no question. So Ms. Court Reporter,  
8 will you please read it back for the witness?

9 (Requested portion read by the reporter.)

10 THE WITNESS: No.

11 MR. COMBS: Let's go off the record for five  
12 minutes, if you don't mind. I'm going to pull together a  
13 couple more exhibits. I shouldn't be that much longer.

14 Is that okay with you, Counsel?

15 MR. ALEXANDER: That's fine. Yeah.

16 MR. COMBS: Let's come back at 2:45. Is that  
17 enough time for everybody?

18 (Recess taken from 2:39 p.m. until 2:48 p.m.)

19 BY MR. COMBS:

20 Q. I'm going to drop into the chat the Complaint.  
21 I'm not going to mark this as an exhibit. It's just too  
22 bulky. We already have the CC&Rs.

23 Mr. Berchiolli, can you see that?

24 A. Yes.

25 Q. Do you understand this is the Complaint that Jill

1 Mann filed against the HOA?

2 A. Okay.

3 Q. I'll scroll down to paragraph 42. What can you  
4 see on your screen?

5 A. I see it.

6 Q. But what number paragraph? It seems like what  
7 you see and what I see are a little different.

8 A. "On June 25th."

9 Q. Perfect. Okay. So it says, "On June 25th, 2023,  
10 the chairman of association's landscape committee, Kent  
11 Berchiolli, in an e-mail to the association," and then it  
12 goes on and there are several subparagraphs here.

13 I want to draw your attention to subparagraph B.  
14 Do you see that?

15 A. Yeah.

16 Q. I got it outlined.

17 A. I'm having trouble reading it, but I can see it.

18 Q. I can zoom in. Does that help?

19 A. Okay. Yes.

20 Q. Take a moment and read that. Is there a  
21 landscape maintenance group at Las Brisas?

22 A. Las Brisas maintenance group? There's a  
23 committee, a landscape committee.

24 Q. So when you refer to landscape maintenance group,  
25 do you intend to refer to the landscape maintenance

1 committee?

2 A. Where is it that I said -- I see. I may have  
3 been talking about myself and Green Horizons.

4 Q. Okay. So is the landscape maintenance group  
5 different than the landscape committee?

6 A. No. The landscape committee is a group of  
7 people, usually two or three, that meet once a month with  
8 Santos and discuss problems that need to be taken care of.

9 I'm not sure why I used the word "group." Maybe  
10 "group" is the wrong word.

11 Q. So for all purposes, landscape maintenance group  
12 and the landscape committee are the same thing? Yes or  
13 no?

14 A. I guess so, yes.

15 Q. Is there a reason why you believe there may be a  
16 difference between the landscape maintenance group and the  
17 landscape committee?

18 A. Well, the landscape group -- when you say the  
19 committee, you're not including Green Horizons.

20 Q. Okay. So is the landscape maintenance group an  
21 unofficial group that attends to the landscaping of Las  
22 Brisas or what is the landscape maintenance group?

23 A. Okay. It says --

24 MR. ALEXANDER: Asked and answered.

25 THE WITNESS: "Also, because of the difficulty of

1 maintaining continuity of plants and drainage, corrective  
2 problems have been assigned to the landscape maintenance  
3 group." I think I'm talking about myself, the committee  
4 and Green Horizons.

5 BY MR. COMBS:

6 Q. Okay. So the landscape maintenance group is a  
7 group that includes the landscape committee and includes  
8 yourself and includes Green Horizons; is that correct?

9 A. That's what I would consider the word "group" to  
10 mean.

11 Q. Does anybody else use the word or term landscape  
12 maintenance group within Las Brisas other than yourself,  
13 do you know?

14 MR. ALEXANDER: Calls for speculation, vague.  
15 Anyone else who?

16 THE WITNESS: I have no knowledge of that.

17 BY MR. COMBS:

18 Q. Okay. What is a corrective problem as you refer  
19 to here in paragraph B?

20 A. Bare spots on the landscaping, sprinkler breaks  
21 and gophers, those are probably the three things.

22 Q. Okay. Who assigned corrective problems to the  
23 landscape maintenance group?

24 A. I do.

25 Q. You did that on your own authority?

1           A.    I did that out of common sense and a routine that  
2 I followed for many years.

3           Q.    In what capacity did you have the authority to  
4 make that assignment?

5           A.    I was assigned and approved by the board to be in  
6 charge of the landscape -- the landscape lead person or  
7 chairperson.

8           Q.    Okay.  So is your authority as a landscape  
9 chairperson that you assigned corrective problems to the  
10 landscape maintenance group; is that correct?

11          A.    Yes, but sometimes the topic came up.  Maybe  
12 Green Horizons started it.  Green Horizons would say  
13 there's a leak on slope such-and-such.  Then I would react  
14 to that or sometimes I saw it.  Most of the ones I saw  
15 were slope plantings -- plantings of the slope more than  
16 the sprinklers.  The sprinklers had to be reported to me  
17 so that we could make sure we're going to fund the repair.

18          Q.    Who installed the irrigation lines throughout the  
19 Las Brisas community, do you know?

20                   MR. ALEXANDER:  Calls for speculation.

21                   THE WITNESS:  I'm not sure who did it, whether  
22 the owner did or whether the owner had somebody else do it  
23 or whether Green Horizons was involved at the time to do  
24 the installation.  I don't know who actually installed it.

25                   I know Green Horizons was very familiar with all

1 the lines. So they may have installed it, but I don't  
2 know that for a fact.

3 BY MR. COMBS:

4 Q. Is it your understanding that the developer of  
5 the community installed irrigation lines throughout Las  
6 Brisas Pacificas as part of the development of the  
7 project?

8 MR. ALEXANDER: Calls for speculation.

9 THE WITNESS: I would assume he did.

10 BY MR. COMBS:

11 Q. And on what basis would you make that assumption?

12 A. The fact that the slopes have to be watered. And  
13 so the only way to water the slopes is with the sprinkler  
14 line.

15 Q. You were elected to the board in 2018; isn't that  
16 correct?

17 A. 2012 -- I was elected to the board in 2009.

18 Q. And were you not also again elected in 2018?

19 A. No. 2018 is when -- I wasn't in charge of  
20 anything. I resigned at the end of 2017.

21 Q. Okay. So did you resign because you were not  
22 named president?

23 A. Yes. That was the main reason.

24 Q. Okay. Why was it so important for you to be  
25 president that you resigned when you were not named

1 president?

2 MR. ALEXANDER: Argumentative, badgering.

3 THE WITNESS: I guess ego comes into it,  
4 knowledge comes into it, experience, continuity of the  
5 projects. I wanted some control. I got most of the  
6 votes. Realistically, I should have been president, but  
7 their practice is they can change. I think the main  
8 reason why they changed is they wanted the -- the reserves  
9 were fat and they wanted to dig into them.

10 BY MR. COMBS:

11 Q. But you understand you would still have an equal  
12 vote on the board even if you were not the president, do  
13 you not?

14 A. Oh, yeah.

15 Q. But what is it that would enable you to guide the  
16 association in the direction you wanted if you were  
17 president as opposed to just being a board member with a  
18 vote?

19 MR. ALEXANDER: Asked and answered and  
20 argumentative. He's testified already to why he's not.

21 BY MR. COMBS:

22 Q. You can answer if you understand the question.

23 A. Say the question again.

24 Q. Okay. We'll strike that.

25 When you resigned from the board, isn't it true

1 that you refused to cooperate with the board in returning  
2 any of the materials that you had while you were  
3 president?

4 MR. ALEXANDER: Argumentative, harassing.

5 THE WITNESS: I don't know what you mean by  
6 "materials." What materials did I have?

7 BY MR. COMBS:

8 Q. I don't know. Did you have any materials as  
9 board president?

10 MR. ALEXANDER: Vague.

11 THE WITNESS: If you are president for, let's  
12 see, six or seven years, you want to continue. Could be  
13 ego was part of it. Other part of it, I think I could do  
14 more help to the community if I was president.

15 BY MR. COMBS:

16 Q. So it was at least due in part to your ego that  
17 you resigned from the board because you were not board  
18 president?

19 MR. ALEXANDER: Asked and answered, vague. This  
20 is harassing now. He's responded that he stepped down and  
21 he provided his reasons.

22 BY MR. COMBS:

23 Q. You can answer yes or no.

24 A. I had the right to stay on as secretary or resign  
25 and I chose to resign.

1 Q. Do you believe that you were qualified to opine  
2 on the stability of slopes within Las Brisas?

3 A. Say that again. What was that again?

4 MR. COMBS: Court Reporter, if you could please  
5 read back the question.

6 (Requested portion read by the reporter.)

7 THE WITNESS: Yes, I think I was.

8 BY MR. COMBS:

9 Q. And upon what knowledge or education are you  
10 qualified to opine on the stability of slopes within Las  
11 Brisas?

12 MR. ALEXANDER: Asked and answered.

13 THE WITNESS: 40 years being involved in the  
14 landscaping community and nursery.

15 BY MR. COMBS:

16 Q. What do you understand the purpose of the reserve  
17 account to be?

18 A. The reserve --

19 MR. ALEXANDER: Asked and answered.

20 MR. COMBS: I have not asked him that.

21 BY MR. COMBS:

22 Q. Go ahead and answer the question.

23 MR. ALEXANDER: The question was asked earlier in  
24 the deposition and he's already provided an answer.

25 MR. COMBS: If you could, read back the question

1 and have him answer it, please.

2 (Requested portion read by the reporter.)

3 THE WITNESS: The reserves -- we've been  
4 professional and we go over the areas that we have that  
5 may require maintenance, like the clubhouse, the slopes,  
6 the swimming pool. And we determine the life of that item  
7 and then how much money should be set aside for use to  
8 maintain it, whether it be an emergency or daily  
9 maintenance. Mostly, emergency.

10 So I always looked at the reserves as locked in  
11 that to pull one reserve and switch it for another reserve  
12 would only be done in the case of an emergency.

13 BY MR. COMBS:

14 Q. So you believe one of the primary purposes of  
15 reserve funds are for use in emergencies?

16 A. Yes.

17 Q. When you were on the board, during all of your  
18 time within your tenure on the board, did you help prepare  
19 budgets for the association?

20 A. I was involved.

21 Q. Isn't it one of the duties of the president of  
22 the HOA to review the budgets?

23 A. Yes. I was involved and I did approve the  
24 budget.

25 Q. Okay. During the terms when you were president

1 of the board, was there ever a line item in the operating  
2 budget to pay for the repair of private slopes?

3 A. No.

4 Q. At any time while you were board president, was  
5 there ever a line item in the reserve budget for the  
6 repair of private slopes?

7 A. No. There was a line item for repair of slopes,  
8 period, and for 35 years that's exactly what we did.

9 Q. You repaired slopes with reserve funds?

10 A. Yes.

11 Q. But earlier you had said that there had never  
12 been a failure of a slope that was equivalent to what  
13 happened on lot 139, right?

14 A. Yes.

15 Q. Okay. So was there any line item in either the  
16 operating budget or the reserve budget which was allocated  
17 to pay for the failure of slopes on private lots?

18 MR. ALEXANDER: Asked and answered.

19 THE WITNESS: There was a line item that allowed  
20 for repair and maintenance of the slopes.

21 BY MR. COMBS:

22 Q. And that is in the reserve fund, right?

23 A. Well, in the operating budget and also in the  
24 reserves.

25 Q. For the repair of slope failures, there's a line

1 item for that?

2 A. Not repair of slope failures. Repair of slopes.

3 Q. For private slopes as well as common area slopes?

4 A. For 35 years, we did.

5 Q. Okay. Was there anything in the budget which was  
6 allocated to the repair of the failure of private slopes?

7 A. No.

8 MR. ALEXANDER: Asked and answered.

9 BY MR. COMBS:

10 Q. If there is no allocation in the budget to repair  
11 private slopes, then how is the HOA supposed to pay for  
12 the repair of private slopes?

13 A. The slopes weren't considered private. They were  
14 considered maintenance maintained by the community for 35  
15 years. You can't deny that. You cannot change that.

16 Q. Let's separate out maintenance and repair. I  
17 understand it's your contention and it seems to be the  
18 general knowledge that the HOA maintained the landscaping  
19 on slopes throughout the community, both private and  
20 common area.

21 Now, I'm not talking about maintaining  
22 landscaping. I'm talking about the repair of a slope  
23 which has failed. Do you understand the distinction I'm  
24 making?

25 A. Yes. The only failure of a slope that I am aware

1 of is what happened here at Jill's house.

2 Q. Thank you. Hold on.

3 Where in the budget was that money for that  
4 repair to her slope supposed to come from in your opinion?

5 A. If it could be handled out of the operating  
6 income, operating expenses or it can be handled by the  
7 reserve for the slopes, that's where it will come from.  
8 If not, it will be considered an emergency and they would  
9 have to repair it. So it would come from another reserve.

10 Q. Now, earlier you had agreed that there is no  
11 authority in the CC&Rs for the association to make repairs  
12 to private slopes. So if there's no authority in the  
13 CC&Rs to make repairs to private slopes, would it be  
14 improper to pay for the repairs on private slopes?

15 MR. ALEXANDER: Misstates prior testimony,  
16 assumes facts not in evidence.

17 THE WITNESS: You cannot dismiss the fact that  
18 for 35 years it was the procedure that was done.

19 BY MR. COMBS:

20 Q. Again, I want to separate out maintaining  
21 landscaping, which we'll concede had occurred during that  
22 time period, and the repair of slope failure, okay? I  
23 want you to make that distinction when I'm asking this  
24 question. I'm not talking about repairs.

25 When I say repairs, I'm talking about repair to

1 slope failures, okay? I'll spell that out every time if I  
2 need to.

3           You already said and admitted that to your  
4 knowledge, what happened on lot 139 was unprecedented, it  
5 never happened before. So you can't say that the  
6 association had been doing it for 35 years prior if it had  
7 never happened before.

8           So if there's no authority in the CC&Rs for the  
9 association to make repairs to private slopes, then would  
10 it not be improper to fund the repair to a private slope?

11       A. I'm not sure you're making any sense to me.

12       Q. Okay. We'll leave it at that.

13       A. Slope damage --

14       Q. There's no question pending. There's no question  
15 pending. I'm going to bring up Exhibit 10 again. This  
16 was an exhibit introduced by Ms. Mann's attorney earlier.  
17 This is Exhibit 10.

18           Can you see that, sir (indicating)?

19       A. Yes.

20       Q. At the top it says -- this is an e-mail from you,  
21 correct, with these bullet points underneath?

22       A. Oh, yes.

23       Q. Can you see No. 8 there?

24       A. 8? Hold on. Yeah. Is that the one?

25       Q. Yeah. Take a moment to read that. Did you

1 consult with any expert before making this statement?

2 A. I met with a qualified landscape contractor with  
3 an impeccable reputation in the community.

4 Q. Okay. So is it your belief that a landscape  
5 contractor is the appropriate professional to make the  
6 repair necessary to the lot 139 slope?

7 A. When I showed it to him and he explained what he  
8 would do in combination with the other civil engineer I  
9 talked to, yes. The answer is yes.

10 Q. Who is the other civil engineer you talked to?

11 A. Brian Woods.

12 Q. And was he retained by the --

13 A. He was visiting with unit 131 the day after the  
14 incident and he asked permission to go down on the slope  
15 and look at it. And he came back and he said that's not a  
16 big thing; that can be filled; that can be emptied and  
17 filled with a combination of rock and soil and compacted.  
18 And the licensed landscape contractor concurred with that.

19 He also was adding a small wall because the slope  
20 -- the gradient of the slope at Jill's slope is much too  
21 high as it approaches the wall. Everyone who worked on  
22 it, including the person who put the wall in, the person  
23 who put in the French drain and the people that repaired  
24 this breakage, this slippage, they all didn't take any  
25 dirt away. They all piled dirt back on the slope.

1           And that is no good. Her slope is still what I  
2 consider a poor gradient for drainage.

3           Q. What you consider in your opinion, correct?

4           A. Yes. If I was the owner, I would be  
5 uncomfortable with it.

6           Q. Did Brian Woods ever give any written  
7 recommendations as to the repair of the slope?

8           A. He e-mailed me.

9           Q. Okay. Do you still have a copy of that e-mail?

10          A. I think I sent it to Vasko, but if not, I have  
11 it. I don't have it with me, but I have it.

12           MR. COMBS: Vasko, are you aware of this e-mail?

13           MR. ALEXANDER: I will represent that I'm not.

14 BY MR. COMBS:

15          Q. Mr. Berchiolli, what you'll need to do is find  
16 that e-mail and send it both to Vasko and I, or you can  
17 just send it to Vasko --

18           MR. ALEXANDER: I'm not his counsel. I was not  
19 responsible to any document category.

20           MR. COMBS: If I need to, I'll subpoena you. I  
21 don't want to -- I don't want to do that, but if you don't  
22 send it to me, I will.

23           THE WITNESS: I'm looking here through my  
24 paperwork and see if I -- but no, I didn't.

25 ///

1 BY MR. COMBS:

2 Q. You have gmail, right? Have you deleted any  
3 e-mails that are in any way related to the slope failure?

4 A. Are you asking me a question?

5 Q. I am. I'm asking have you deleted any e-mails  
6 that in any way pertain to lot 139?

7 A. Have I done what?

8 Q. Deleted?

9 A. Deleted? No.

10 Q. You're under a duty, you understand? That's  
11 evidence and you need to preserve that evidence. Please  
12 do not delete any e-mails or destroy any documents that in  
13 any way have anything to do with this issue. Do you  
14 understand that?

15 A. Yes. I understand it. The e-mail concerning  
16 Brian Woods I thought I sent an e-mail to Vasko along with  
17 the e-mail from Sandra on the \$98,000.

18 Q. Have you been sending Mr. Alexander  
19 communications? Have you been sending Mr. Vasko Alexander  
20 e-mails?

21 A. I don't know. I don't know who I sent it to. I  
22 know I sent it to the board. I have it and it's  
23 available. I can e-mail it to you if you want.

24 Q. Yes, please.

25 A. It's just an informal letter from him saying he

1 was glad he got to meet me and that I allowed him to go  
2 down and look at the slope. And then he just gave me  
3 really what GeoTek took two months to give me.

4 But he gave it to me in a couple of paragraphs.

5 Q. Okay. Do you have my e-mail address, sir?

6 A. I'm sure I have it or I'll get it.

7 Q. I can drop it in the chat here. Are you able to  
8 access that if I do that?

9 A. I will get it to you.

10 Q. I dropped it in the chat here. Certainly, Jill  
11 has my e-mail address.

12 One last thing on Exhibit 10.

13 MR. ALEXANDER: What is the date of that e-mail?

14 THE WITNESS: What?

15 BY MR. COMBS:

16 Q. The date.

17 A. I don't know. I think it's probably in April or  
18 May.

19 Q. Of which year? 2023?

20 A. Yeah, of '23. Shortly after the incident  
21 occurred. He looked at it. He was there visiting 131 the  
22 day after it happened. He asked me to go down and look at  
23 it. I said, Yes, you can. He went down and he looked at  
24 it. He came back and said that's not a big problem and he  
25 gave me his card. I don't know if I still have it.

1           But shortly thereafter, he e-mailed me his --  
2 what he e-mailed me. It's just a one-page thing that said  
3 the slope can be emptied and then refilled with a  
4 combination of rock and soil compacted and it should be  
5 fine.

6           Q. Please forward that to me and I'll send it on to  
7 Vasko.

8           MR. ALEXANDER: Counsel, I'm getting  
9 representations from my client that that e-mail might have  
10 been forwarded to my office through her directly. Give me  
11 a couple minutes here, okay?

12           MR. COMBS: Sure. I'm done with my examination.  
13 If you can find it in the next minute or so -- I don't  
14 want to hold this up. I've been informed by my client --  
15 was it Brian Woods or Ryan Woods?

16           THE WITNESS: Brian Woods. It was an e-mail to  
17 me, a short e-mail, and it said what he thought the  
18 solution was. He thought that GeoTek will come to the  
19 same conclusion, which I think they did. Only it got  
20 really involved to the tune of \$16,000, I might add.

21           MR. ALEXANDER: I'm going to be able to drop it  
22 in the chat in a second here. I just dropped what you're  
23 referring to.

24           THE WITNESS: I have it right here.

25 ///

1 BY MR. COMBS:

2 Q. I have it too, sir. Thank you, Vasko.

3 A. The title is, "Meeting to discuss slope,  
4 8-10-23."

5 Q. We have it and I have it in front of me and I  
6 read it.

7 Do you know if Mr. Brian Woods is a licensed  
8 engineer in the United States?

9 A. He said he was.

10 Q. But do you know whether he is or not?

11 A. No. I'm sure Judith would know.

12 Q. Who is Judith?

13 A. The owner of 131. I'm sure she would know how to  
14 get ahold of him. He gave me a card, but I can't seem to  
15 find it. Judith Preston is the owner of 131. He was  
16 there probably helping her move.

17 MR. ALEXANDER: I'm going to mark this as Exhibit  
18 14 so we have a clear record of it.

19 (Deposition Exhibit No. 14 was marked for  
20 identification.)

21 MR. COMBS: Okay. I have no further questions.

22 MR. ALEXANDER: I have no further questions  
23 either. Thank you, Kent. Appreciate your time today.

24 THE COURT REPORTER: Before I leave, I do need  
25 spellings, but Mr. Combs, do you need a transcript?

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MR. COMBS: Yes, please.

(Whereupon, the deposition concluded at  
3:22 p.m.)



CERTIFICATE

1  
2  
3  
4 I HEREBY CERTIFY that the foregoing deposition  
5 was taken by me pursuant to Notice; that I was then and  
6 there a Certified Court Reporter for the State of  
7 California, and by virtue thereof authorized to administer  
8 an oath; that the witness before testifying was duly sworn  
9 by me to testify to the whole truth and nothing but the  
10 truth; pursuant to request, notification was provided that  
11 the deposition is available for review and signature; that  
12 the questions propounded by counsel and the answers of the  
13 witness thereto were taken down by me in shorthand and  
14 thereafter transcribed through computer-aided  
15 transcription under my direction, and that the foregoing  
16 typewritten pages contain a full, true, and accurate  
17 transcript of all proceedings had upon the taking of said  
18 deposition, all done to the best of my skill and ability.

19 I FURTHER CERTIFY that I am in no way related to  
20 nor employed by any of the parties hereto, nor am I in any  
21 way interested in the outcome hereof.

22 DATED this 12th day of February, 2025.

23 Yvonne Whitefield

24 YVONNE WHITEFIELD, CSR  
25 Certified Court Reporter  
Certificate No. 5556

<u>Exhibits</u>	<b>\$5,000</b> 43:3 67:19	<b>133</b> 62:3	<b>1999</b> 18:21	<b>2024</b> 47:9
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<b>Exhibit 8</b> 2:24 96:23,24 97:2 98:13	<u>1</u>	<b>163</b> 123:25	<b>2007</b> 10:24,25 11:4,9 19:16,23	<b>24</b> 47:7 50:7
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