

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

-----X  
:  
:  
CARL BROWN, :  
:  
Plaintiff, :  
:  
v. : Case No. 51-11  
:  
AMERICANA FINMARK CONDOMINIUM, : OZAH No. 13-03  
:  
Defendant. :  
:  
-----X

A hearing in the above-entitled matter was held on  
March 19, 2013, commencing at 9:49 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
20850 before:

Lynn A. Robeson  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Respondent:

Matthew S. Tidball, Esq.

Law Offices of Anthony D. Dwyer

1954 Greenspring Drive, Suite 435

Timonium, Maryland 21093

Witnesses: Direct

Gary Martin Simon 38, 60, 99

Roy Dickinson 102

Jose Contreras 117

E X H I B I T S

Exhibit No. Marked/Received

1 Exhibit Posted on the CCOC website 4 4

3 American Finmark Condominium Fee, 4 4

Covenants and Bylaws

48 Year-to-Date Ledger for 2010 10 15

49 Year-to-Date Ledger for 2008 11

50 Year-to-Date Ledger for 2007 12

through 2010

51 12/28/11 E-mail from Mr. Simon to 12

to Mr. Brown

52 1/1/11 to 8/1/11 Account Inquiry 14 15

P R O C E E D I N G S

1 MS. ROBESON: I'm calling the case of CCOC 51-11,
2 Brown v. Americana Finmark. As a preliminary matter, I
3 would like to admit Exhibit 1 into the record, which is the
4 exhibit that's posted on the CCOC website. I believe we've
5 all seen it before.

6 MR. BROWN: Uh-huh.

7 MS. ROBESON: Are there any objections?

8 MR. BROWN: No objection.

9 MR. TIDBALL: No.

10 MS. ROBESON: Okay. And then the other thing,
11 other preliminary matter I have is I have a copy of these
12 Americana Finmark Condominium fee, covenants and bylaws.
13 These are marked as Exhibit 3. Does anyone have an
14 objection to these coming into the record?

15 MR. BROWN: No objection.

16 MS. ROBESON: Okay. Hearing no objection, both
17 exhibits are admitted.

18 (Exhibit Nos. 1 and 3 were
19 marked and admitted for
20 identification.)

21 MS. ROBESON: All right. Earlier at the pre-
22 hearing conference, we indicated that we were going to start
23 with the discovery, outstanding discovery matters. And I
24 understand that there still are some outstanding discovery
25

1 matters and do you have any other, well, first can you
2 identify yourselves for the record, beginning with Mr.
3 Brown?

4 MR. BROWN: Yes. The outstanding items are in my
5 production of documents, which is, I guess you probably have
6 a copy of that?

7 MS. ROBESON: Yes, I do.

8 MR. BROWN: Those are the outstanding, those are
9 the outstanding items.

10 MS. ROBESON: Okay. Can you just summarize them
11 for the record?

12 MR. BROWN: Okay. Let me see if I've got them.

13 MS. ROBESON: Well, I went through yesterday.

14 Tell me if I have incorrectly -- correct me if I'm wrong.

15 MR. BROWN: Okay.

16 MS. ROBESON: All right. It says, what I hear you
17 saying is the year-to-date books and the prepaid and
18 delinquency report are unavailable for inspection.

19 MR. BROWN: Uh-huh.

20 MS. ROBESON: That you want year-to-date ledgers
21 rather than monthly ledgers --

22 MR. BROWN: Uh-huh.

23 MS. ROBESON: Is that correct?

24 MR. BROWN: That's correct.

25 MS. ROBESON: You wish electronically stored

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1 expense information rather than hard copies because the  
2 organization of the expense records does not match those of  
3 the ledgers and books?  
4 MR. BROWN: That's correct.  
5 MS. ROBESON: You say that the Association  
6 acknowledges that year-to-date ledgers exist, but will not  
7 produce them?  
8 MR. BROWN: That's correct and I can show that.  
9 MS. ROBESON: Okay. Just a minute. And you also  
10 state that you don't think privacy is an issue under the  
11 bylaws because Article 9, Section 4 requires the Board of  
12 Directors to post a list of members who are delinquent?  
13 MR. BROWN: Uh-huh.  
14 MS. ROBESON: And Article 15, Section 2 is  
15 intended to produce operational transparency to the Board's  
16 operations and to aid the Association in properly adopting a  
17 budget, is that a fair summary --  
18 MR. BROWN: That's --  
19 MS. ROBESON: -- of what you're saying?  
20 MR. BROWN: That's exactly right.  
21 MS. ROBESON: Okay. Do you have any witnesses  
22 with you today or are you, you're relying on Mr. Simon  
23 and --  
24 MR. BROWN: All the witnesses I have were  
25 subpoenaed and they are here today.

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1 MS. ROBESON: Okay. Let me do this.  
2 MR. BROWN: Okay.  
3 MS. ROBESON: Do you plan to testify today on your  
4 own behalf?  
5 MR. BROWN: To testify?  
6 MS. ROBESON: Well, let me do this. Let me swear  
7 you in just so we don't --  
8 MR. BROWN: Okay.  
9 MS. ROBESON: -- cross the line. Please raise  
10 your right hand.  
11 (Witness sworn.)  
12 MS. ROBESON: Okay. Now -- is there anything you,  
13 else you wish to add to my summary of your discovery, your  
14 motion to compel?  
15 MR. BROWN: Yes, I do. Yes, I do.  
16 MS. ROBESON: Okay. What would you like to add?  
17 MR. BROWN: Okay. One of the things I would like  
18 to add is that to show that the items that I am requesting  
19 by production of documents are standard things that the  
20 Association use on a regular basis. Those -- the things I'm  
21 asking for are not unusual, but they are products of day-to-  
22 day business.  
23 MS. ROBESON: Now the things, what I see  
24 outstanding here, and correct me if I'm wrong, I see  
25 outstanding year-to-date ledgers?

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1 MR. BROWN: Yes. And --  
2 MS. ROBESON: And the other thing is the prepaid  
3 and delinquency report?  
4 MR. BROWN: And the, and the electronic, or the  
5 expense records.  
6 MS. ROBESON: So it's the year-to-date ledgers --  
7 MR. BROWN: The year-to-date ledgers, the expense  
8 records that are in --  
9 MS. ROBESON: The electronic --  
10 MR. BROWN: They're electronically stored.  
11 MS. ROBESON: Okay. And then --  
12 MR. BROWN: And the delinquent report.  
13 MS. ROBESON: Okay.  
14 MR. BROWN: And they're admitted, the delinquent  
15 report is --  
16 MS. ROBESON: Well, don't tell me what they've  
17 admitted, just -- so, and does the year-to-date ledger  
18 exist? Does a year-to-date ledger exist?  
19 MR. BROWN: Yes, I have some examples that I have  
20 brought in and if I can just pass them on to you. I have  
21 quite a few examples that I've had in the past that they use  
22 them all the time.  
23 MS. ROBESON: From Americana Finmark?  
24 MR. BROWN: From Americana Finmark, that's  
25 correct. Okay. May I pass some to you and --

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1 MS. ROBESON: Well, we all have to have, if you  
2 want them in the record --  
3 MR. BROWN: Okay.  
4 MS. ROBESON: -- why don't you bring them, you can  
5 show them for a few minutes --  
6 MR. BROWN: Okay.  
7 MS. ROBESON: -- to --  
8 MR. BROWN: There's one with, from --  
9 MS. ROBESON: Just a second. Let's do this.  
10 Let's go off -- you share them.  
11 MR. BROWN: Okay.  
12 MS. ROBESON: We're going to go off the record for  
13 five minutes --  
14 MR. BROWN: Okay.  
15 MS. ROBESON: -- and I want you to share them all  
16 with Mr. Tidball. Mr. Tidball --  
17 MR. BROWN: Okay.  
18 MS. ROBESON: -- have you seen these, did he share  
19 them with you in advance?  
20 MR. TIDBALL: No.  
21 MS. ROBESON: Okay. We're going to go off the  
22 record --  
23 MR. BROWN: Okay.  
24 MS. ROBESON: -- for 5 minutes. You share them  
25 with Mr. Tidball so he understands what you're talking

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1 about.  
2 MR. BROWN: Okay.  
3 MR. TIDBALL: Okay.  
4 (Whereupon, at 9:56 a.m. a brief recess was  
5 taken.)  
6 MS. ROBESON: Okay. We're back on the record.  
7 All right. Mr. Brown?  
8 MR. BROWN: Uh-huh.  
9 MS. ROBESON: Do you still wish, do you wish to  
10 put those into evidence?  
11 MR. BROWN: Yes, I do.  
12 MS. ROBESON: Then you need to bring them up here  
13 so I can mark them. And, Mr. Tidball, do you have any  
14 objections to them coming into evidence?  
15 MR. TIDBALL: No.  
16 MS. ROBESON: Okay. Excuse me. And what is this?  
17 MR. BROWN: This is the general manager's year-to-  
18 date, as you can see, it's from '01 to '12. So --  
19 MS. ROBESON: Okay. So I'm just marking this as  
20 Exhibit 48, general ledger for 2010.  
21 (Exhibit No. 48 was marked for  
22 identification.)  
23 MS. BROWN: Right.  
24 MS. ROBESON: Or year-to-date ledger?  
25 MR. BROWN: Right, because you can see it's from

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1 '12, you can see the marks on it.  
2 MS. ROBESON: Okay. What marks?  
3 MR. BROWN: You can see right here, you can see  
4 some --  
5 MS. ROBESON: Where did you get this?  
6 MR. BROWN: January -- I got this from here, from  
7 CMI.  
8 MS. ROBESON: Okay.  
9 MR. BROWN: This is --  
10 MS. ROBESON: CMI is the management company?  
11 MR. BROWN: CMI is the management company.  
12 MS. ROBESON: Okay.  
13 MR. BROWN: And I want to give you one more  
14 because just to show you that it's been done not only in  
15 '10, but it was done, I got one for '08.  
16 MS. ROBESON: Okay. So this is year-to-date -- 49  
17 will be year-to-date general ledger for 2008.  
18 MR. BROWN: Right.  
19 (Exhibit No. 49 was marked for  
20 identification.)  
21 MR. BROWN: And I just -- one more for that just  
22 to make sure that we, and this one, they told me that this  
23 is from 2007 to 2010. So they can do this any time they  
24 want to.  
25 MS. ROBESON: Okay. So Exhibit 50 will be general

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1 ledger 2007 through 2010.  
2 (Exhibit No. 50 was marked for  
3 identification.)  
4 MS. ROBESON: Okay.  
5 MR. BROWN: Okay. Now that's enough of that. The  
6 one other thing, this I want to submit. This is from the  
7 property manager, Mr. Simon, who is here today, which he  
8 stated that they had that in the 66 pages and he had it  
9 available for me, but he didn't have it available for me  
10 after we, after the pre-hearing. When I went back for the  
11 pre-hearing, after the pre-hearing --  
12 MR. TIDBALL: I'm going to object to the testimony  
13 at this point.  
14 MS. ROBESON: Okay. Let's just mark it as an  
15 exhibit --  
16 MR. BROWN: Okay.  
17 MS. ROBESON: -- so it's 51.  
18 MR. BROWN: Okay. And that's from his own words.  
19 MS. ROBESON: 51 and this is 12/28/11 e-mail from  
20 Mr. Simon to Mr. Brown.  
21 MR. BROWN: That's correct.  
22 (Exhibit No. 51 was marked for  
23 identification.)  
24 MR. TIDBALL: What is the date?  
25 MS. ROBESON: I'm sorry?

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1 MR. TIDBALL: What was the date?  
2 MS. ROBESON: 12/28/11. Okay. Is that all?  
3 MR. BROWN: No. So that's all for the general  
4 ledger. Now I have some things that the Court, the  
5 electronic stored data. That's the other thing --  
6 MS. ROBESON: Okay.  
7 MR. BROWN: -- that I was looking for and just to  
8 show you that they keep that also, it wasn't available to  
9 me.  
10 MR. TIDBALL: I'm objecting again to the  
11 testimony. Can we just mark the exhibits --  
12 MS. ROBESON: Yes. Let's just mark the exhibits.  
13 MR. TIDBALL: -- rather than argue with the  
14 merits?  
15 MS. ROBESON: Yes. All we're doing now is getting  
16 these into the record.  
17 MR. BROWN: That's right.  
18 MS. ROBESON: If you have to tell them, you have  
19 to tell why you're introducing them later.  
20 MR. BROWN: Okay.  
21 MS. ROBESON: All right?  
22 MR. BROWN: Okay. Now I'd like to, I don't think  
23 I have to do them all, but let me just do one. Here's an  
24 example of, will you look at --  
25 MS. ROBESON: No. Just -- okay. Describe what

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1 this document is.  
2 MR. BROWN: What this document is is they have an  
3 online system that they can look at standard records,  
4 standard electronic records of expense records that I asked  
5 for.  
6 MR. TIDBALL: I believe it's called --  
7 MS. ROBESON: Just a second. Just leave the, you  
8 asked for, out.  
9 MR. BROWN: Okay. Okay. This is electronic-  
10 stored information that they can query on that and look at  
11 these electronic-stored information.  
12 MS. ROBESON: So 52 will be --  
13 MR. BROWN: It's proof of electronic-stored  
14 information.  
15 MS. ROBESON: Okay. Just note, okay, this is a  
16 building maintenance note. It's an account inquiry --  
17 MR. BROWN: That's right.  
18 MS. ROBESON: -- dated, no, 1/1, 2011 to 8/1,  
19 2011, account inquiry.  
20 MR. BROWN: Right.  
21 (Exhibit No. 52 was marked for  
22 identification.)  
23 MR. BROWN: Right, that produced scanned invoices.  
24 MS. ROBESON: Okay.  
25 MR. BROWN: Okay. And I think you have this, so I

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1 don't have to --  
2 MS. ROBESON: What is that?  
3 MR. BROWN: -- hand this over, I just have to tell  
4 you what this is. This is the, my --  
5 MS. ROBESON: Oh, that, yes, I do have that.  
6 MR. BROWN: And what is one that I highlighted  
7 here, it says each month's statement is --  
8 MS. ROBESON: No, you're not testifying now.  
9 MR. BROWN: Okay. Okay.  
10 MS. ROBESON: So you go back.  
11 MR. BROWN: Okay.  
12 MS. ROBESON: No, don't read it.  
13 MR. BROWN: So you have that?  
14 MS. ROBESON: Yes, I have it. So you go back.  
15 MR. BROWN: Okay.  
16 MS. ROBESON: Mr. Tidball, do you have any  
17 objections to Exhibits 48 and 52 coming into the record?  
18 MR. TIDBALL: No objection.  
19 MS. ROBESON: All right.  
20 (Exhibits 48 and 58 were  
21 admitted into evidence.)  
22 MS. ROBESON: Is there anything else you want to  
23 introduce into the record? Now you need to give, you can  
24 keep those for your own reference --  
25 MR. BROWN: Uh-huh.

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1 MS. ROBESON: -- but they're going to have to stay  
2 here.  
3 MR. BROWN: Okay.  
4 MS. ROBESON: So, okay?  
5 MR. BROWN: Okay.  
6 MS. ROBESON: And when you talk, you have to tell  
7 me which number exhibit you're talking about, okay?  
8 MR. BROWN: Okay. I didn't write down those  
9 numbers, so I --  
10 MS. ROBESON: Okay. I marked, they should be  
11 marked.  
12 MR. BROWN: Oh, you gave them back to me?  
13 MS. ROBESON: Yes. Oh, no, I --  
14 MR. BROWN: Oh, okay. 50 --  
15 MS. ROBESON: -- have them here.  
16 MR. BROWN: Okay.  
17 MS. ROBESON: I'm sorry.  
18 MR. BROWN: Okay. Yeah.  
19 MS. ROBESON: Okay. Now don't refer to anything  
20 else, just those.  
21 MR. BROWN: Okay.  
22 MS. ROBESON: All right. Now what would you like  
23 to say about the right, you not getting the records?  
24 MR. BROWN: I went as you directed, or after the  
25 pre-hearing conference. I thought that after leaving the

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1 pre-hearing conference that the only issues in the pre-  
2 hearing conference was that I would be able to see the, my  
3 request for production of documents and I would have to pay  
4 for them. I thought those were the issues that were decided  
5 in the pre-hearing conference, that I would pay for them,  
6 that they would be available and I would pay for them.  
7 So, because we had an issue before that, the  
8 reason why we had some issues is because they had the year-  
9 to-date ledgers, but they wouldn't show them to me unless I  
10 paid for them. So I had an issue with that because I  
11 couldn't expect them --  
12 MS. ROBESON: Okay. Please don't, in the  
13 background, please don't do that because it's distracting.  
14 MR. BROWN: Okay.  
15 MS. ROBESON: Okay. Go ahead.  
16 MR. BROWN: Okay. So I couldn't, I couldn't --  
17 MS. ROBESON: You're saying they had the year-to-  
18 date ledgers?  
19 MR. BROWN: They have them because I just, yes.  
20 MS. ROBESON: But they wanted you to pay for them?  
21 MR. BROWN: They wanted me, they had them taped up  
22 so I couldn't inspect them. That was before the pre-hearing  
23 conference.  
24 MS. ROBESON: Okay.  
25 MR. BROWN: So they had them taped up and he

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1 wanted me to pay for them before I saw them. And so I had  
2 an issue with that. So I had an issue that I want to see  
3 and inspect to see what I had before I paid for them because  
4 I might want to pay for a couple of sheets, I might not want  
5 the whole, the entire report.  
6 MS. ROBESON: Yes.  
7 MR. BROWN: So that was an issue. That's why we  
8 had to come to before you --  
9 MS. ROBESON: Yes, I understand.  
10 MR. BROWN: -- because I couldn't do that. And  
11 the other issue was that they thought that I just didn't  
12 want to pay for them at all, you know, and then --  
13 MS. ROBESON: Yes, I understand.  
14 MR. BROWN: -- you brought that to our attention,  
15 said, Mr. Brown, you do have to pay for some of the copies  
16 and so you all go back, schedule this inspection again and  
17 so that's what we did. So we went back and rescheduled it.  
18 I went back out there. So then I didn't even see the year-  
19 to-date information that I saw in the beginning. They  
20 didn't produce that. And what I presented to you as these  
21 exhibits is to show that they had these things for years  
22 back in 2008. So they've had these year-to-date ledgers.  
23 These are not --  
24 MS. ROBESON: What did you see when you went back?  
25 MR. BROWN: So when I went out there, I saw a

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1 bunch of invoices in a box, a hard copy somewhere off on the  
2 side that didn't match up with anything that I, with the  
3 ledgers. There was no tie-in to the invoices to the  
4 ledgers. The ledgers had some information on there in terms  
5 of --  
6 MS. ROBESON: So you did see some ledgers?  
7 MR. BROWN: I didn't see any -- I saw the monthly  
8 ledgers. There were some monthly ledgers, but I didn't see  
9 the --  
10 MS. ROBESON: For 2012?  
11 MR. BROWN: For 2012, yes. I saw those, but I  
12 asked for the year-to-date because the year-to-date has the,  
13 the -- the year-to-date matched the budget which is annual  
14 budget. So the annual budget has all these items added up  
15 and you have a bottom line and I want the year-to-date to  
16 correspond to that. So the monthly, for me to bring in all  
17 the monthlies and add them up myself, then I would have to,  
18 then I'm putting myself and adding up the numbers and they  
19 kept questioning my numbers, whether I'm adding them up  
20 correctly. So I knew that the year-to-date --  
21 MS. ROBESON: Okay.  
22 MR. BROWN: -- which they had, and they told me  
23 that I, they was available when we left the pre-hearing  
24 conference.  
25 MS. ROBESON: That the year-to-dates were

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1 available?  
2 MR. BROWN: The year-to-date they told me they had  
3 because that was part of my production of documents. That  
4 was my request. If they didn't have that, I understand  
5 under 10(b) they would have had to bring that up, that they  
6 are not available. And no one said that they weren't  
7 available under 10(b).  
8 MS. ROBESON: Okay.  
9 MR. BROWN: Okay? So I assumed that they were  
10 available, so I said, fine. I went out to the inspection  
11 and they weren't there.  
12 MS. ROBESON: All right.  
13 MR. BROWN: Okay? So that was the year-to-date.  
14 MS. ROBESON: Yes.  
15 MR. BROWN: The year-to-date --  
16 MS. ROBESON: I understand.  
17 MR. BROWN: -- the ledgers, okay? Now the other  
18 thing was, is that I found that they had expense records,  
19 okay, that I needed and it was electronically stored expense  
20 records. And what I requested in my production of documents  
21 that they be organized by accounts just like our budget, you  
22 know --  
23 MS. ROBESON: Right. So your budget is itemized  
24 by accounts. Are the account budget categories like  
25 maintenance or --

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1 MR. BROWN: Right. That's correct. It might be  
2 maintenance. Well, it could be things like trees. It could  
3 be --  
4 MS. ROBESON: Okay.  
5 MR. BROWN: -- general maintenance. They have  
6 quite a few account numbers that they put them in,  
7 electricity, utilities.  
8 MS. ROBESON: And you say that they have the, they  
9 have these electronically stored?  
10 MR. BROWN: Right. And they said that in, when I  
11 did the interrogatories, they said that, yes, we do have  
12 them and I know they have them because I also have this  
13 query that you saw by account number that you could go in by  
14 account numbers. Say you wanted to find out what we spent  
15 on roofs, for an example, you could go in there and they  
16 could give you by check number, they could list those  
17 scanned-in files. They are online. They are part of the  
18 system that we pay for ourselves. They had ONUS pay for it,  
19 that system.  
20 MS. ROBESON: Yes. What system is this? Is this  
21 an account system that's online?  
22 MR. BROWN: It's an inquiry system that they can  
23 go into --  
24 MS. ROBESON: Who can?  
25 MR. BROWN: The CMI, the property manager, also

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1 the site manager because I got it from the site manager, the  
2 lady that runs the site on site. So she can get, she, it is  
3 available to her because that's what I entered in as  
4 exhibits into --  
5 MS. ROBESON: So you can put in a query for  
6 different accounts?  
7 MR. BROWN: For an account number. It will bring  
8 up those scanned-in files they have out there. That's the  
9 only way you can get them because they're not in the books,  
10 but it will bring up all the scanned-in files.  
11 MS. ROBESON: Okay.  
12 MR. BROWN: It will tell you --  
13 MS. ROBESON: You mean the line, the actual checks  
14 and things like that?  
15 MR. BROWN: That's right. They can go in --  
16 MS. ROBESON: Well, what was in the box?  
17 MR. BROWN: What was in the box?  
18 MS. ROBESON: What was in the box?  
19 MR. BROWN: It would be the purchase order number,  
20 the invoices, that's part of the file, the scanned-in file.  
21 It could be one sheet of paper. It could be five sheets of  
22 paper. But it's under something called a check number and  
23 the check number is also in the, in the ledger, okay?  
24 MS. ROBESON: Okay.  
25 MR. BROWN: The check -- that's how they tie it

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1 together, okay? So you can go in by account number which is  
2 in the ledger and the ledger has all these check numbers  
3 which that is irrelevant to a person that's doing the  
4 budget, the check numbers, but that's in the ledger. So you  
5 have all these check numbers.  
6 MS. ROBESON: So you're saying to use the hard  
7 copies, the paper expense, the paper records of expenses,  
8 you have to go through this box and match the check number  
9 to the --  
10 MR. BROWN: I couldn't even do that.  
11 MS. ROBESON: -- account?  
12 MR. BROWN: You can't do that with the, with the,  
13 with the hard copy. We can do that with the electronic  
14 copy. That's why I wanted electronic files because I say at  
15 least I can match the check number to, and find the file  
16 that I need. I can't do that in the hard copy and the hard  
17 copy he has --  
18 MS. ROBESON: Okay.  
19 MR. BROWN: -- based on their --  
20 MS. ROBESON: What is the hard copy, though?  
21 MR. BROWN: The hard copy has got the, is the  
22 vendors by alphabetical order. It's just by vendors.  
23 MS. ROBESON: So they, you're saying the year-to-  
24 date ledger --  
25 MR. BROWN: Right.

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1 MS. ROBESON: -- doesn't have individual expenses,  
2 it just has line item expenses by vendor?  
3 MR. BROWN: By vendor. They have only the vendor  
4 name in there and the expense. It's almost like you're  
5 going to Sears and you bought 12 items and they put Sears on  
6 all 12 of them. For you to identify what you bought, you  
7 could have bought a tie, you could have bought --  
8 MS. ROBESON: Now what about the monthly ledgers?  
9 MR. BROWN: They are the same way. They're the  
10 same as the year-to-date, but the year-to-date, at least you  
11 have all of them in one spot and they're added up and you  
12 can at least --  
13 MS. ROBESON: But you -- okay.  
14 MR. BROWN: -- you can look at the bottom line and  
15 compare it to the budget because, you know, they have added  
16 up all of them in that year. But if you look at them  
17 monthly, that's almost useless. You can't do anything with  
18 a monthly ledger in terms of trying to establish a budget.  
19 MS. ROBESON: Well, you could go and add up the --  
20 MR. BROWN: But if I added them all up, then that  
21 means that I'm doing some, I'm entering the system myself  
22 and I could make a mistake. What I needed to do is to have  
23 the system to produce for me the item --  
24 MS. ROBESON: Well, anybody can check addition.  
25 MR. BROWN: Yeah, but even if I did that, I'm

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1 still missing the detail items, you know, it's still got  
2 Sears on it, you know? It's got Sears as a company.  
3 MS. ROBESON: And what gives you the detailed  
4 items?  
5 MR. BROWN: What?  
6 MS. ROBESON: What gives you the detailed items?  
7 MR. BROWN: What gives me the detail?  
8 MS. ROBESON: Yes.  
9 MR. BROWN: What I have to do is to go to this  
10 electronic file, these invoices, or they have some  
11 invoices --  
12 MS. ROBESON: The account inquiry?  
13 MR. BROWN: Yeah, I have to go into that and maybe  
14 look at it that way or --  
15 MS. ROBESON: Do you have an example of that in 48  
16 through those exhibits that we marked?  
17 MR. BROWN: That where I can see the --  
18 MS. ROBESON: Where you see the detail of what  
19 each expense is?  
20 MR. BROWN: Let me -- what I presented to you was  
21 say I had three invoices. They're identified as three  
22 invoices when the inquiry comes up, when you fill out an  
23 inquiry, you see, they know that you have three invoices.  
24 And so then you would have to also click again to expand it  
25 to see the scanned filed. Are you following what I'm

1 saying? They'll just give you a list. They won't -- it  
2 doesn't show you the information in the invoice. It just  
3 shows you that you've got an invoice A, B, C, 1, 2, 3  
4 invoice, 4, 5, 6 invoice, 7, 8, 9, you know, these are  
5 the --

6 MS. ROBESON: So how do you get to see the actual  
7 invoices?

8 MR. BROWN: So you can click, there's a way you  
9 can click. You know, then you can click on the invoice that  
10 you want and then it will show you the scanned information  
11 which might be four or five pages. It could be an invoice.  
12 It could be a purchase order number. It's just all expense  
13 records or whatever the guy that came out --

14 MS. ROBESON: So you're saying that none of the  
15 paper documents provided for inspection had that level of  
16 detail?

17 MR. BROWN: That's right. You would never know  
18 what you bought by looking at any of the reports. You would  
19 have to always go to the scanned-in files.

20 MS. ROBESON: Okay. Now I understand that. Now  
21 what about the prepaid, the other thing you say you're  
22 missing is the prepaid and delinquency report?

23 MR. BROWN: Oh, the prepaid delinquency report,  
24 yeah. In that, and the reason why I asked for that was that  
25 there was a line item put in our budget that says that the

1 owners had to pay for something called a bad debt.

2 MS. ROBESON: Right.

3 MR. BROWN: Okay. So I looked at the bad debt and  
4 I said, well, if we're going to pay for it, I would like to  
5 see where, what are we paying for? What is it that we're  
6 paying for? It wasn't that I needed to see everything, I  
7 just wanted to see what that bad debt was. But it just  
8 happened to be on the delinquency report. If it's going to  
9 be on any report, if someone that was delinquent and they  
10 were so delinquent that it became a bad debt, okay? And I  
11 just wanted to see evidence of that and I thought I had a  
12 right to see evidence of what --

13 MS. ROBESON: Well, you wanted to see -- what  
14 exactly did you want to see?

15 MR. BROWN: I wanted to see was there actually a  
16 bad debt and I wanted to see the amount it was and what it  
17 was if, in fact, that they were going to put that big amount  
18 on our budget.

19 MS. ROBESON: And how would you determine what a  
20 bad debt is? I mean what kind of record --

21 MR. BROWN: Well, they had to decide it.

22 MS. ROBESON: Did you want to know how much each  
23 account was behind?

24 MR. BROWN: No. No. See, if an account was  
25 behind, that wasn't their definition of bad debt. Their

1 definition of a bad debt was that they wrote it off, that it  
2 was so bad that I guess the person went Chapter 7 or Chapter  
3 5, chapter, I guess one of the chapters, that they went  
4 bankrupt, okay?

5 MS. ROBESON: Yes.

6 MR. BROWN: Okay. Not that they was late, but  
7 that it was to an extent that --

8 MS. ROBESON: Right.

9 MR. BROWN: -- they had to write it off.

10 MS. ROBESON: Right. And that is --

11 MR. BROWN: And they called it a bad --

12 MS. ROBESON: -- typical in accounting.

13 MR. BROWN: Right.

14 MS. ROBESON: So what is it that you wanted to  
15 see?

16 MR. BROWN: So I wanted to see evidence of that,  
17 like I would want to see evidence of anything else that we  
18 have in an expense that we've put in the budget. So I said,  
19 well, if we have someone that was that bad that we wrote it  
20 off, do we have evidence of that or are you just putting  
21 that in the budget? See, we don't have, we didn't have that  
22 ledger or anything to show us that line item. We didn't  
23 have anything to show of that. So I said, well, where is  
24 that? And someone told me it was something even they  
25 couldn't report. I said, may I see the delinquent report?

1 And they said, no, you can't see the delinquent report,  
2 okay, yet I'm paying for the bad debt.

3 MS. ROBESON: Well, there are some Federal  
4 regulations. Okay. Well, let's --

5 MR. BROWN: Okay.

6 MS. ROBESON: Let's go through what else you're --

7 MR. BROWN: So the three things are that, first of  
8 all, is that the ledger.

9 MS. ROBESON: And then we have the electronically  
10 stored expense information?

11 MR. BROWN: Right. And your position is that the  
12 only way you can see that is through the computer database?

13 MS. ROBESON: They can very easily -- the way the  
14 system is constructed now --

15 MS. ROBESON: This system?

16 MR. BROWN: That's, their system.

17 MS. ROBESON: The computer --

18 MR. BROWN: Their --

19 MS. ROBESON: No.

20 MR. BROWN: Their computer system.

21 MS. ROBESON: The computer system?

22 MR. BROWN: Their computer system --

23 MS. ROBESON: Okay.

24 MR. BROWN: -- right. That system is online and  
25 it is a day-to-day process that they can use. It's not like

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1 it's anything that they have to do specially for me. They  
2 keep that for their day-to-day operation, those  
3 electronic --  
4 MS. ROBESON: And it's your position that's the  
5 only way you can see what the funds were actually expended  
6 on?  
7 MR. BROWN: To tie that to the budget and to tie  
8 that to --  
9 MS. ROBESON: No, no, no. In any of the paper  
10 documents were you able to find out what the money actually  
11 was spent on? Say there were three Sears accounts --  
12 MR. BROWN: Right.  
13 MS. ROBESON: -- could you find out from the paper  
14 copies whether you bought, they bought a tie at one or a  
15 tool from the paper records?  
16 MR. BROWN: The paper -- maybe I could and maybe I  
17 couldn't. I could very easily see --  
18 MS. ROBESON: Did you look?  
19 MR. BROWN: Yes, I looked because, you know, I've  
20 been up there to -- I've tried that method because I've been  
21 up there to inspect records quite a few times. And it's  
22 very difficult because sometimes I might see all of the  
23 stuff in the paper and sometimes I might not. Now you can  
24 imagine you got a box of invoices, so now you've got to look  
25 at a report and check that. You don't have anything unique,

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1 you just have Sears and you like have a lot of Sears records  
2 or you could have a lot of K-mart records. So that's very  
3 difficult. And then they've got, you don't know if they're,  
4 if the price on the Sears records matches up with that on  
5 the ledger. You know, you would have to cross-check, you  
6 know, the price also.  
7 MS. ROBESON: Right.  
8 MR. BROWN: And one other thing is, that's a  
9 problem with that, sometimes a vendor may perform services  
10 or cross account, you know? They might do something, they  
11 might plant a tree, but then they might sell us a pump or  
12 something. So they might go into various accounts. So now  
13 you've got a check number that's under one account. It  
14 can't be under one account because that check number could  
15 have paid for things from three or four different accounts.  
16 So the system is, in my estimation, is really, it's a poor  
17 system. It's not a one-to-one where you can look at an  
18 account, look at each expense under that account irrelevant  
19 of the check number or whether you paid cash for it or  
20 whether you paid a check or whether you paid a credit card,  
21 what difference does it make how you paid for it? What  
22 we're interested in in the budget is that to look at the  
23 items to know what those items are so we have some feeling  
24 of what the inventory might be because you might buy --  
25 MS. ROBESON: Well, that level of detail isn't

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1 usually in a budget.  
2 MR. BROWN: That's correct. So the way we, the  
3 way we would want to do that at some point in time, we want  
4 to be able to go back. You know, if we, if I'm buying  
5 anything, I want to go back. I might want to look and  
6 verify just how many -- what did we buy in these items? I  
7 don't want it in the budget, I just want it in the -- I want  
8 it in the books because that's what the bylaws say.  
9 MS. ROBESON: So how would you get that?  
10 MR. BROWN: Because the bylaws, because they can  
11 put it in -- there's something in the ledger, in the general  
12 ledger that calls description.  
13 MS. ROBESON: So you say, you're saying they  
14 should change their records system?  
15 MR. BROWN: Where this says description in the  
16 ledger, it doesn't have to --  
17 MS. ROBESON: They should have a more detailed --  
18 MR. BROWN: They could put just above, a light,  
19 that we knew we bought a light, but we bought lumber or  
20 whatever we bought so we will know what -- if we're going to  
21 budget the thing, we know what we're budgeting and we know  
22 what we're buying. We don't know what we're buying. No  
23 one -- I'm the only one that have any idea of what we're  
24 buying as far as the owners because some of the owners  
25 haven't even looked at some of those records.

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1 MS. ROBESON: Yes, but how do you know what  
2 they're buying?  
3 MR. BROWN: Because what I did, I went and I  
4 looked at some of the invoices just to see some of the  
5 information, but that's a common thing, you know, to try to  
6 do that. So what you would want to do, what the bylaw says  
7 is that it doesn't have to be in the ledger. You can call  
8 it anything you want. We just want it in the books. We  
9 want the details in the books with the price, you know, how  
10 much you paid for it and what you bought in the books.  
11 MS. ROBESON: So you're saying -- okay, what  
12 you're saying is that their budget should be broken down,  
13 each expense should be broken down into individual items  
14 like --  
15 MR. BROWN: Oh, no, no, I'm not saying that. What  
16 I am saying is that leave the budget like it is --  
17 MS. ROBESON: Yes.  
18 MR. BROWN: -- you know, it's based on account  
19 numbers.  
20 MS. ROBESON: You're saying that --  
21 MR. BROWN: But you --  
22 MS. ROBESON: Go ahead.  
23 MR. BROWN: All right. So it's based on account  
24 numbers. So that makes it easier for us because, you know,  
25 we have a budget and we have an account 1, 2, 3, 4, 5,

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1 that's for electricity; 2, 3, 4, 5, 6, that's for trees.  
2 Something else is for the roof. That's fine with the  
3 budget. I want to be able to take that account number and  
4 look in the books, which the bylaw says that we're supposed  
5 to have this in detail in the books --  
6 MS. ROBESON: Right.  
7 MR. BROWN: -- if you bought some trees --  
8 MS. ROBESON: I did see that.  
9 MR. BROWN: Yes, right. Whatever you do, so if,  
10 in fact, that I have to go back and say, oh, this time it  
11 looks like we spent twice as much for trees than we did the  
12 last time, I want to be able to go to the books and verify  
13 did you put anything else in here other than trees, but I  
14 don't want it in the budget. I want to be able to verify  
15 it.  
16 MS. ROBESON: So you want them to have a method of  
17 looking at in detail, item-by-item, at the expense records?  
18 MR. BROWN: At the expense records like the bylaw  
19 says and it says --  
20 MS. ROBESON: Well, the bylaw says they have to  
21 keep records of expenses. The bylaws --  
22 MR. BROWN: In detail.  
23 MS. ROBESON: -- don't say -- yes, but the bylaws  
24 don't say they have to have a computer system that  
25 corresponds with the budget.

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1 MR. BROWN: Right. It doesn't have to correspond  
2 with the budget. It just has to be in detail so that  
3 people, we know what we're buying. That's all we want to  
4 do.  
5 MS. ROBESON: And you're saying you couldn't see  
6 this detail why?  
7 MR. BROWN: Because I can't, I cannot look at  
8 anything to tell me in the system because if you can see  
9 right now the reason why we --  
10 MS. ROBESON: In the electronic system?  
11 MR. BROWN: Well, if I -- the electronic system  
12 right now does not have the details and the amount added up  
13 in the same books if you follow what I'm saying.  
14 MS. ROBESON: No, I don't.  
15 MR. BROWN: It's almost like if you go to Giant  
16 and somebody tells you over here that you went to Giant and  
17 you have Giant all the way down all the items and you pay --  
18 MS. ROBESON: And what system is this supposed to  
19 be in? You're saying it's by vendor, is that what you're  
20 saying?  
21 MR. BROWN: I'm saying, yes, that the ledger it  
22 has the vendor name in it and that's it.  
23 MS. ROBESON: So you want it broken down by  
24 category of expense or account --  
25 MR. BROWN: Right. Well --

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1 MS. ROBESON: -- rather than vendor?  
2 MR. BROWN: Right. If I bought 12 things --  
3 MS. ROBESON: Yes.  
4 MR. BROWN: -- I don't want to see Sears on that  
5 12 times.  
6 MS. ROBESON: Yes.  
7 MR. BROWN: I say, okay, I don't -- I'm not  
8 concerned where I bought it. I don't care where I bought it  
9 if I'm doing the budget. I want to know what did I buy from  
10 Sears and what account is it going in because I'm trying to  
11 budget this thing, okay? Sears has got every kind of thing  
12 that you want. You can buy anything at Sears or K-mart.  
13 Why, what good is that to me to look at a report that's got  
14 Sears 20 times?  
15 MS. ROBESON: So you're looking almost for, well,  
16 not a performance or management audit, but you're -- okay.  
17 I think I understand.  
18 MR. BROWN: Right.  
19 MS. ROBESON: Is there anything else you'd like to  
20 say?  
21 MR. BROWN: No. No, no, unless you have some  
22 other questions for it.  
23 MS. ROBESON: You're looking for a convenient way  
24 to access the efficiency of the organization?  
25 MR. BROWN: Of the budget. We're talking about a

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1 budget now.  
2 MS. ROBESON: Well, okay.  
3 MR. BROWN: That's right. We're talking about the  
4 budget. That's why I'm here because I'm saying either we  
5 have a proper budget or we have an improper budget.  
6 MS. ROBESON: And how -- okay. Well, that's the  
7 merits. Mr. Tidball, do you want to respond to the -- I'm  
8 sure you do -- do you want, it's your time to respond to Mr.  
9 Brown's discovery arguments.  
10 MR. TIDBALL: First, let me say, I think Mr. Simon  
11 is going to be the best one to testify --  
12 MS. ROBESON: Okay.  
13 MR. TIDBALL: -- about what is there, how it's  
14 accessed.  
15 MS. ROBESON: Then let's --  
16 MR. TIDBALL: Whether they're part of the regular  
17 reports. I will say, though, to start before I call him  
18 that Mr. Brown has access to everything that the internal,  
19 not the internal auditors, the external auditors have for  
20 the end of the year. So they go through the same paper  
21 boxes that he has to go through and they verify that the  
22 checks that have been paid through the association, there,  
23 in fact, is an invoice for that. So they are capable of  
24 doing this and I'm --  
25 MS. ROBESON: So they do a financial audit?

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1 MR. TIDBALL: Correct, every year. And those are  
2 the same documents --  
3 MS. ROBESON: Just a second. Not yet.  
4 MR. TIDBALL: -- that Mr. Brown has access to.  
5 And so while he might not find it convenient, it is clearly  
6 there to be accessed and that is all we're required to do.  
7 So other than that, I call Mr. Simon to testify about the  
8 specifics.  
9 MS. ROBESON: All right. Mr. Simon, can you  
10 please come forward? You can sit over there by that little  
11 bump that is our microphone.  
12 MR. BROWN: May I make one quick statement?  
13 MS. ROBESON: No.  
14 MR. BROWN: Okay.  
15 MR. ROBESON: Please raise your right hand.  
16 (Witness sworn.)  
17 MS. ROBESON: Okay. Please be seated. Go ahead,  
18 Mr. Tidball.  
19 MR. TIDBALL: Mr. Simon, can you state your full  
20 name for the record?  
21 MR. SIMON: Gary Martin Simon.  
22 MR. TIDBALL: And your business address?  
23 MR. SIMON: 3414 Morningwood Drive, Olney,  
24 Maryland 20832.  
25 MR. TIDBALL: Who do you work for?

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1 MR. SIMON: Comsource Management, Incorporated.  
2 MR. TIDBALL: Do they also go by CMI?  
3 MR. SIMON: No longer but, yes, previously.  
4 MR. TIDBALL: What's your job title?  
5 MR. SIMON: Operations manager.  
6 MR. TIDBALL: How long have you worked there?  
7 MR. SIMON: Eight years.  
8 MR. TIDBALL: How long have you been in that job  
9 title?  
10 MR. SIMON: A little over 14 months.  
11 MR. TIDBALL: And what do you do, what are you job  
12 duties?  
13 MR. SIMON: Specifically I manage the operations  
14 of the company. I oversee the property managers on their  
15 daily affairs, supervise all of their interactions with  
16 their clients and then more specifically I have a small  
17 subset of homeowner's association and condominiums that I  
18 manage directly.  
19 MR. TIDBALL: Okay. Is Americana Finmark one of  
20 those?  
21 MR. SIMON: It is.  
22 MR. TIDBALL: And what's your educational  
23 background?  
24 MR. SIMON: I have an English degree, excuse me,  
25 English degree from the University of Connecticut.

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1 MR. TIDBALL: And what about certificates or  
2 professional honors in the field of property management?  
3 MR. SIMON: A CMCA, a certified manager of  
4 community associations; AMS, association management  
5 specialist; and in spring 2014 I am a PCAM, professional  
6 community association management designate, expectation of  
7 finishing that. That's the highest level of certification  
8 in our industry.  
9 MR. TIDBALL: Does part of job, does that include  
10 keeping business records for the condominium associations?  
11 MR. SIMON: It does.  
12 MR. TIDBALL: What do those records generally  
13 consist of?  
14 MR. SIMON: The business records of the  
15 association are everything that they do, to include their  
16 financial records on a daily, monthly and annual basis, as  
17 well as contracts of the association, audit records of the  
18 association, insurance policies, every record of the  
19 business.  
20 MR. TIDBALL: So you are a property manager for  
21 Americana Finmark Group and you're familiar with all those  
22 records you just described?  
23 MR. SIMON: That's correct.  
24 MR. TIDBALL: All right. You heard Mr. Brown's  
25 testimony today concerning the year-to-date ledgers.

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1 MR. SIMON: I have.  
2 MR. TIDBALL: All right. What are those and how  
3 are they prepared?  
4 MR. SIMON: It's a difficult question for me to  
5 answer because year-to-date seems to have different  
6 definitions for different people. Year-to-date is a matter  
7 of statement. A year-to-date statement, for instance, the  
8 November 2012 income statement has that month's closed  
9 performance records on it, so November financial period is  
10 indicated, as well as the year-to-date expenses in each one  
11 of those same line items. So every month it has that on  
12 there.  
13 A year-to-date general ledger is an unusual  
14 document to produce. A general ledger is generally  
15 something that is produced for each individual financial  
16 period and if you take them for each individual financial  
17 period, say in December, you have year-to-date figures. But  
18 if you take one giant report and tabulate the entire thing,  
19 it's not a normal business record of the association that's  
20 specially run.  
21 MR. TIDBALL: Mr. Brown has produced examples of  
22 what he calls year-to-date ledgers. How are those produced  
23 to him?  
24 MR. SIMON: Those were specifically requested by  
25 Mr. Brown, some before I even took over managing Americana

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1 Finmark. We have, at times, as an association, tried to  
2 accommodate Mr. Brown by having our CFO, our chief financial  
3 officer, run those reports out of the normal course of  
4 business to try to help Mr. Brown. The association has  
5 stopped running those reports out of the normal course  
6 because it's become a nuisance.  
7 MR. TIDBALL: All right. And you heard him  
8 testify that earlier in 2012 a 66-page or so document called  
9 the year-to-date ledger by him was produced, but he never  
10 had a chance to look at it. Were you involved with that?  
11 MR. SIMON: That's correct.  
12 MR. TIDBALL: And what happened to that ledger?  
13 MR. SIMON: It was made very clear to Mr. Brown  
14 that a year-to-date general ledger, in other words, a  
15 general ledger run from January 1 of the year, and I forget  
16 the month that this occurred in in 2012, but whatever month  
17 it was, we would run the ledger up to that point, up to that  
18 particular closed financial period. It was made very clear  
19 that that was not a normal business record of the  
20 association. If you wanted it, he would pay, I believe we  
21 told him 25 cents a page. I believe the thing came down to  
22 \$16 or something like that. I don't remember the exact  
23 details. Mr. Brown refused to pay for it, therefore, I  
24 refused to give it to him. And, in fact, I do believe I  
25 then asked him to leave my office, that we weren't going to

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1 continue to have the conversation.  
2 MS. ROBESON: Okay. Let's get this straight. The  
3 general ledger --  
4 MR. SIMON: Uh-huh.  
5 MS. ROBESON: What is, okay, let's go back to the  
6 monthly --  
7 MR. SIMON: Sure.  
8 MS. ROBESON: -- budget.  
9 MR. SIMON: Sure.  
10 MS. ROBESON: You say every time a financial  
11 period in a month closes that you run a monthly ledger?  
12 MR. SIMON: Correct.  
13 MS. ROBESON: What does that contain?  
14 MR. SIMON: I'm sorry. Okay. So what we do is  
15 every month we produce a set of financial statements for  
16 each community.  
17 MS. ROBESON: And is it just income versus  
18 expenses or is it broken down further?  
19 MR. SIMON: It's broken down to every bit of  
20 detail you want. We produce a balance sheet. We produce an  
21 income statement. We produce a cash disbursement report.  
22 We produce a delinquency report. All of this is for the  
23 respective monthly period. We produce a general ledger that  
24 is organized not alphabetically by vendor, but by individual  
25 expense code, numerically ordered from the 1,000 series to

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1 the 8,000 series. That is the financial packet for --  
2 MS. ROBESON: And just --  
3 MR. SIMON: -- for every month.  
4 MS. ROBESON: Just for the record, the expense  
5 codes are for specific kinds of expenses?  
6 MR. SIMON: That's correct, landscaping, it has  
7 its own expense code. Building maintenance has its own.  
8 Roof repair has its own. Each one has a very specific  
9 number.  
10 MS. ROBESON: Okay. How and -- okay, I'm sorry,  
11 keep going.  
12 MR. SIMON: That's the, those are the monthly  
13 financial statements that is printed every month for a board  
14 of directors. So in January of 2013, we received all of  
15 that from January 1, we actually closed books on January  
16 30th. So your statements were titled January 30, 2013. It  
17 showed every bit of money that was received by the  
18 association in that period, deposited into appropriate  
19 accounts whether it was assessment income, whether it was  
20 antenna rental, whether it was club room income. All of  
21 that is detailed on the income statement, the same as  
22 expenses for the period, whether it was administrative  
23 expenses further broken down into legal, postage and  
24 printing, all of those types of things. That is done in the  
25 monthly column on the income statement.

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1 Then further then on the other side of the income  
2 statement have year-to-date, which in January would be the  
3 exact same thing because it's only one month. However, that  
4 occurs every month. So in February, we close books on the  
5 27th.  
6 MS. ROBESON: So you have a, on the monthly  
7 statement, you have a year-to-date summary as well?  
8 MR. SIMON: That's correct.  
9 MS. ROBESON: Is it in the level of detail that  
10 the monthlies are?  
11 MR. SIMON: It's in the exact same level of detail  
12 and categorization. In other words, the income statement is  
13 organized income at top, expense on the bottom and it's  
14 organized from one to 10,000 or one to 80,000 if you look  
15 numerically in account number. So you can very easily  
16 sequentially go down there in numerical order by account  
17 code. And it goes straight across. Roof maintenance is  
18 58620.  
19 MS. ROBESON: Okay.  
20 MR. SIMON: But you go and you see it monthly,  
21 right across, do you see it?  
22 MS. ROBESON: And how long is the -- how long is  
23 the typical, well, I guess it depends. Well, no, it  
24 wouldn't depend. How long would a monthly ledger with a  
25 year-to-date summary be, how many pages?

1 MR. SIMON: A monthly ledger, that varies by  
2 property. Americana Finmark's general ledger per month is  
3 roughly 12 to 17 pages. That's on a monthly basis, so I  
4 multiply that by 12. If you had a 12-month ledger, you  
5 could have a 240-page document.

6 MS. ROBESON: But are the, but I thought you said  
7 the monthly ledgers include a summary year-to-date ledger?

8 MR. SIMON: The income statement --

9 MS. ROBESON: Oh, but not the --

10 MR. SIMON: -- summarizes. We're, I can't, I  
11 can't, I won't interject opinion. A general ledger is in  
12 layman's terms a checkbook register. If you look at an  
13 association's general ledger, it is exactly what you wrote  
14 each check for. The income statement is the number portion  
15 of your checkbook. It shows in each category what was spent  
16 in that financial period. And --

17 MS. ROBESON: In each item code or they --

18 MR. SIMON: In each item code.

19 MS. ROBESON: -- or a more general category?

20 MR. SIMON: No, it's in each item code. So if you  
21 spent \$400 on plumbing, in the plumbing line item code on  
22 the income statement it's going to say \$400 plumbing  
23 repairs. If you go to the general ledger under plumbing  
24 repair, 58620, you will see exactly what made up that \$400.  
25 It may have been one check for one repair. It may have been

1 seven checks for seven different small services that totaled  
2 the \$400. But they're all listed in the general ledger  
3 under one account code all of the vendors that were paid  
4 under that account code.

5 MS. ROBESON: Okay.

6 MR. SIMON: So you have to take both statements --  
7 if you're trying to do an actual financial review, you can't  
8 look at one or the other you have to use them both  
9 concurrently.

10 MS. ROBESON: You have to reconcile them?

11 MR. SIMON: That's correct. There's no way to get  
12 around that.

13 MS. ROBESON: Okay. I'm sorry, Mr. Tidball, I  
14 interrupted you.

15 MR. TIDBALL: There was no interruption. How  
16 would Mr. Brown, if you wanted to, then verify the invoice  
17 to what is shown on the ledger of the income statement?

18 MR. SIMON: The invoices are stored in paper copy  
19 as well as electronic copy in different methods. The  
20 electronic copies are intended for our staff to put them in  
21 one place and categorize them. But each electronic record  
22 that you can click on to view on a computer screen is  
23 created by scanning the original invoice into that same  
24 computer system. Those are not put in a box, they are put  
25 in an accordion folder alphabetically by vendor.

1 So if Apple's Plumbing performed the same \$400  
2 plumbing service, his plumbing invoice is put under the  
3 letter A. It has, that hard copy is, the first page is the  
4 actual check that was written, it's a copy of the check,  
5 check number, amount, the whole thing. The next page is the  
6 invoice from the vendor. If there's any back-up to that  
7 invoice, the plumber's report, that's also attached. If  
8 it's a contractual service, if it's the pool contract, the  
9 first payment I authorized for the year, I attach the  
10 contract to it so that when the auditor goes through the  
11 file, they can see I'm making a payment that's appropriate  
12 to the contracted service amount. All of that is attached  
13 to one invoice.

14 When you go to the general ledger, you look in the  
15 financial period and you see that Apple Plumbing was paid  
16 \$400 on invoice number, check number, all of this is in the  
17 general ledger. You would then simply go to A, pull Apple  
18 Plumbing's invoice, make sure you've got the right invoice  
19 number, the right check number. I found it. It is done  
20 alphabetically as opposed to account code and by date for a  
21 reason. If I just took the check that was written on  
22 January 1 at 9:00 a.m. and I just kept stacking them until  
23 the check that was written December 31 at 5:00 p.m. and I  
24 handed that to an auditor and said check my financial  
25 records, it would triple the price because there would be no

1 way for them to efficiently go through that.

2 MR. TIDBALL: Just to be clear, when Mr. Brown was  
3 talking about the account number on the general ledger, the  
4 name of the account is also next to that?

5 MR. SIMON: That's correct.

6 MR. TIDBALL: Okay.

7 MS. ROBESON: When you say name of account, are  
8 you talking about item code or like maintenance or are you  
9 talking about vendor?

10 MR. SIMON: Let me change that answer because I'm  
11 not sure without looking at it. I look at them so often.  
12 If you're going down the general ledger portion of the  
13 statements, again, 58620 is plumbing maintenance. It may  
14 not say on the general ledger 58620 plumbing maintenance,  
15 but it will say that on the income statement, 58620 plumbing  
16 maintenance. I'm not sure if in text on the general ledger  
17 those same words are there because it's limited in space.

18 MS. ROBESON: But when you produce a monthly  
19 ledger, it would have both, right?

20 MR. SIMON: I'm not sure if the text appears on  
21 the monthly ledger is what I'm saying.

22 MS. ROBESON: Oh.

23 MR. SIMON: The number is there. It goes down the  
24 left. If I had one, I could actually look.

25 MS. ROBESON: No, it's --

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1 MR. SIMON: But it goes down on the left-hand  
2 side, each account number is there. So let's just start  
3 with 1,000, 40,000 assessments. Then it indents.  
4 MS. ROBESON: Right.  
5 MR. SIMON: And then you'll have the entries,  
6 debits and credits.  
7 MS. ROBESON: Right.  
8 MR. SIMON: Then it goes to 41,000, utility.  
9 MS. ROBESON: Okay.  
10 MR. SIMON: It does the same thing. Then it goes  
11 down to expenses. So 50900 is miscellaneous administrative.  
12 MS. ROBESON: So are these --  
13 MR. SIMON: But on the ledger --  
14 MS. ROBESON: -- standard --  
15 MR. SIMON: -- it may not say that.  
16 MS. ROBESON: -- codes for --  
17 MR. SIMON: For every account that we manage,  
18 every association uses the -- they don't all use the same  
19 codes, but if they do, they're the same number. 50900 is  
20 miscellaneous administrative expenses for every association  
21 I manage.  
22 MS. ROBESON: Okay. All right.  
23 MR. TIDBALL: Mr. Brown also testified about the  
24 delinquency reports. Has he ever had an opportunity to  
25 review those before in some format?

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1 MR. SIMON: He has.  
2 MR. TIDBALL: And what --  
3 MS. ROBESON: And what, what was the --  
4 MR. TIDBALL: -- what format was that?  
5 MS. ROBESON: -- format?  
6 MR. SIMON: The format was the exact same format  
7 of delinquency report that the board reviews on the monthly  
8 basis, simply the names and addresses and anything that  
9 could identify the unit owner to the balance was redacted.  
10 MR. TIDBALL: Okay.  
11 MS. ROBESON: And when do you consider bad debt  
12 bad debt? When does it get listed, I guess?  
13 MR. SIMON: Bad debt does not get listed unless  
14 the board physically must move to write off a bankruptcy.  
15 Bad debt is another misnomer and it is something else that  
16 is mis-categorized by people. Bad debt is something that  
17 the board and their auditors work on and it's an  
18 expectation. In other words, if you look on a budget and  
19 you see that the association budgets for \$5,000 in bad debt  
20 in a fiscal year, that number is derived by taking a look at  
21 your delinquencies, seeing how much is generally 90 days or  
22 more old and what percentage of that do you find possibly to  
23 be uncollectible and may have to write off in any finite  
24 financial period. In other words, you are saying I may have  
25 to write off a bankruptcy of \$5,000 in 2013, therefore, I

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1 better have an expense line item budged in case I must do  
2 so.  
3 If you don't have a bankruptcy that you have to  
4 write-off, you don't code anything to that expense. So the  
5 only tie to bad debt in a delinquency report is it is used  
6 in some way, shape or form to help make your best business  
7 practice estimate of what is the potential of loss in any  
8 financial period. I believe the association has written off  
9 maybe two delinquencies in the last four or five years. So  
10 bad debt is not just a number. The board has to physically  
11 make a conscious decision and it's based on the total  
12 recommendation sadly filed Chapter 7, you are no longer  
13 legally able to pursue that \$3,000. You have to write it  
14 off. You can't just take it off your books and not show it,  
15 so what showed is a bad debt expense. It's the only time  
16 that line item comes into play. It's not a marginal or --  
17 MR. TIDBALL: Mr. Brown introduced Exhibit 52, I  
18 believe it was, which was an electronic account inquiry and  
19 you had a chance to review that just before --  
20 MR. SIMON: I did.  
21 MR. TIDBALL: -- we started today. What is that  
22 and where did it come from?  
23 MR. SIMON: That's actually a screen capture, if  
24 you will. I was originally led to believe I gave Mr. Brown  
25 that, which obviously I did not, and then I guess I later

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1 heard where it came from. All that is is, again, each  
2 expense has a particular code. Plumbing is, again, 58620.  
3 Well, that screen capture is whatever date period you ask it  
4 to run, I can say please pull up an Americana Finmark books  
5 expense line item 58620 for January through August.  
6 Everything that's been coded, debit or credit, will pop up  
7 on my screen. That's whatever, that's your, that's  
8 basically your ledger for that account. If I did it for any  
9 monthly period, that's what the board is getting on a  
10 monthly basis, everything that's been put into that.  
11 You can click on each individual check that was  
12 written out of that account and print the invoice. That is  
13 the exact same hard copy invoice that is filed as I said  
14 earlier. All you are looking at is the items that were  
15 posted to that expense or income code that you've asked it  
16 to print up and that is exactly what the income statement  
17 and the ledger shows.  
18 MR. TIDBALL: Is that some kind of proprietary  
19 software that's used?  
20 MR. SIMON: It's our computer system and it's our  
21 software system and accounting system known as Jenark. We  
22 don't even let the auditors explore the books that way. We  
23 give them paper copies. If something accidentally were to  
24 happen and all of a sudden -- things would not get lost,  
25 they're backed up, but it would create too much work for our

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1 accounting staff to recreate the accurate records. So  
2 everything that is there electronically is there redundantly  
3 in paper. So, again, we don't even have the auditors  
4 fishing through the electronic system.  
5 MR. TIDBALL: Do you have access to that  
6 particular system?  
7 MR. SIMON: Absolutely not. In fact, there's  
8 varying access to even employees of Comsource. I have  
9 higher level access than the general manager would simply  
10 because I have certain job functions that I would need to be  
11 able to accomplish, but we don't even give all of our staff  
12 full access to that system.  
13 MR. TIDBALL: You mentioned that auditors come in.  
14 How often does that happen?  
15 MR. SIMON: Almost every day of the year there's  
16 an auditor from some independent firm in our office doing an  
17 audit on the books of some client of ours.  
18 MR. TIDBALL: Well, how often does it happen for  
19 Americana Finmark?  
20 MR. SIMON: Annually.  
21 MS. ROBESON: When you say client, is that an  
22 owner?  
23 MR. SIMON: Association. I'm sorry, no, an  
24 association.  
25 MS. ROBESON: An association?

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1 MR. TIDBALL: Try not to talk over her.  
2 MS. ROBESON: That's okay.  
3 MR. TIDBALL: Okay. And is that through an  
4 external agency, auditor?  
5 MR. SIMON: Yes. Each board of -- each board  
6 evaluates proposals and selects their own auditing firm on  
7 the basis of merit and industry-accepted standards.  
8 MR. TIDBALL: All right. And the auditors have  
9 the same access that Mr. Brown has to these financial  
10 records?  
11 MR. SIMON: That's correct.  
12 MR. TIDBALL: Okay. Briefly, how is a budget  
13 prepared for Americana Finmark?  
14 MR. SIMON: Excuse me, a budget is prepared  
15 generally in June or July. We take the six months of the  
16 association's performance that year. I will provide the  
17 board a draft of 2000 -- if we're talking now, in June of  
18 2013, I'll give them their first draft for the 2014  
19 operating budget. I'll show them their year-to-date  
20 expenses in each of the aforementioned expense categories  
21 and the receipts and their income categories. I will do the  
22 best I can to extrapolate that over a 12-month period.  
23 Here's our expected year-end. I will also then have on that  
24 same spreadsheet the past three or four years so they can  
25 take a look at what they have historically done in each one

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1 of those line items and you will then begin to craft an  
2 operating budget for the following year.  
3 MR. TIDBALL: So I have it right, your budget that  
4 you draft is based upon what's happened historically with  
5 the association?  
6 MR. SIMON: That's correct. That is the most  
7 standard method of budgeting in associations.  
8 MR. TIDBALL: You do that in all your other  
9 associations as well?  
10 MR. SIMON: Almost every single one of them.  
11 MS. ROBESON: Is that an industry standard?  
12 MR. SIMON: Yes, that's a very strong budgetary  
13 standard for most industries. There is another method of  
14 budgeting that is very complicated. It requires a lot of  
15 oversight. It requires a lot of involvement and most  
16 volunteer boards would not wish to do that.  
17 MS. ROBESON: I think that one of Mr. Brown's  
18 complaints is, you know, how do you double -- if you use the  
19 historical trend method --  
20 MR. TIDBALL: Uh-huh.  
21 MS. ROBESON: -- how do you check the efficiency  
22 of, you know -- I think what he's kind of saying is he would  
23 like a performance audit and not just a financial audit or  
24 is, I guess my -- and I don't know if this affects the  
25 outcome, but how is that dealt with in the day-to-day, in

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1 the management of this?  
2 MR. SIMON: I guess that's, the easiest way to  
3 answer that question is if we see certain codes or certain  
4 categories of expenses that start to deviate from the norm,  
5 you, instead of investigating, say repairs, you start to  
6 look at what is the cause that in 2007 or 2008 plumbing was  
7 averaging \$6,000 annually. In 2009, '10 and '11, we've gone  
8 up 15,000, what is the cause? Is there a larger issue at  
9 hand that we need to address? Do we need to start a  
10 replacement program as opposed to a maintenance program?  
11 And those are two separate sides of the budget we're talking  
12 about --  
13 MS. ROBESON: Right.  
14 MR. SIMON: -- operating and reserve functions.  
15 But that's still a historical trend analysis of your budget.  
16 The only other way to create a budget like this would be  
17 what is known as the zero-based budget method.  
18 MS. ROBESON: Right.  
19 MR. SIMON: And that is the construction and  
20 deconstruction of every income and line item you have down  
21 to its very root components, did I replace wood trusses in  
22 the roof or did I put in two shingles? And, okay, if I did  
23 four wood trusses in 2007 and seven wood shingles for a  
24 total of \$1,000, I expect to spend \$1,100 in 2008 on eight  
25 trusses and 15 shingles. Now you do that for all 75 of your

1 budgetary line items and you no longer have a volunteer  
2 board. It's a very time-consuming and difficult method to  
3 budget and the historical trend, by looking at, I coded 17  
4 expenses to roof repair. The 17 expenses were, thus,  
5 they've been the same, 15 to 20, every year. I think we've  
6 got this licked. I think \$15,000 a year annual roof repair  
7 has shown over the last 10 years to be sufficient and it has  
8 done what we need to do. And it is by far the method used  
9 in 99 percent of homeowner's condominium associations  
10 throughout this country.

11 MS. ROBESON: Anything else, Mr. Tidball?

12 MR. TIDBALL: Just reviewing my notes if I could a  
13 second?

14 MS. ROBESON: That's fine. I have one more  
15 question while you do that. Can you describe for me, I  
16 think you said it, you said, well, describe for me what  
17 documents Mr. Brown has been presented with.

18 MR. SIMON: Mr. Brown has been presented with the  
19 same financial reports on a month-to-month basis for the  
20 entire fiscal period January 1, 2011 through December 31,  
21 2012. So that was a stack of monthly financials yay tall  
22 and their corresponding, respective invoices that were paid  
23 in every single one of those statements. He was also  
24 supplied --

25 MS. ROBESON: And when you say invoices, was it

1 the actual invoice?

2 MR. SIMON: Copies, the copies that I referenced  
3 with the check.

4 MS. ROBESON: I meant --

5 MR. SIMON: The check, the invoice --

6 MS. ROBESON: Are the check showing --

7 MR. SIMON: -- everything that I referenced  
8 earlier --

9 MS. ROBESON: Yes.

10 MR. SIMON: -- in the packet that we do. Each  
11 one, that's done, those accordion files I referenced earlier  
12 are done on an annual basis as well. So I have one for  
13 everything done in 2011. I have another alphabetical file  
14 for everything done in 2012. So both of those accordion  
15 files. I also have one for utilities. We keep those  
16 separate. All of that, excuse me, the same time, all of  
17 that for each financial period was for the January 1, '11,  
18 to December 31, '12, was made available. Further, the  
19 delinquent and prepaid redacted delinquent and prepaid  
20 reports were made available. Those were run cumulative.  
21 Those are done very simply. I have access to do that, so I  
22 gave them one for the year ending each of those financial  
23 periods, names redacted.

24 MS. ROBESON: And what was redacted out for the  
25 record?

1 MR. SIMON: The names of the delinquent parties  
2 and addresses, basically anything that could personally  
3 identify someone as being the delinquent owner.

4 MS. ROBESON: And can you explain why that is?

5 MR. SIMON: That's the Federal law for the Fair  
6 Collections Act.

7 MS. ROBESON: All right.

8 MR. TIDBALL: And that is all I have.

9 MS. ROBESON: All right. Mr. Brown, this is your  
10 time to ask questions of Mr. Simon --

11 MR. BROWN: Okay.

12 MS. ROBESON: -- based on his testimony.

13 MR. BROWN: Okay.

14 MS. ROBESON: Okay?

15 MR. BROWN: Mr. Simon --

16 MR. SIMON: Yes?

17 MR. BROWN: -- we have an expense on budget that  
18 called the general operating expense. Are you familiar with  
19 that expense?

20 MR. SIMON: I'm not familiar with an expense known  
21 as the general operating expense.

22 MR. BROWN: It's called, this is an account and it  
23 was instituted about a couple of years, two or three years  
24 ago, and it's called general operating expense and it has an  
25 account number on it just like utilities or anything else.

1 Are you familiar with that?

2 MR. SIMON: I'm familiar with the contribution to  
3 general operating fund expense, yes.

4 MR. BROWN: Okay. Why do we have a contribution  
5 to the general operating expense?

6 MR. SIMON: The general operating fund of an  
7 association is what is known as an operating excess. An  
8 auditor recommends that an association have 10 to 20 percent  
9 of their assessment level in what is known as the general  
10 operating fund for unbudgeted expenses, large amounts of  
11 snow removal, things that are not a reserve expense and need  
12 to be taken care of, yet you did not budget for.

13 Over time, Americana Finmark had a deficit in this  
14 particular area on its balance sheet. In other words, over  
15 the life of Americana Finmark, it has been borrowing from  
16 its reserve account to pay operating expenses. Therefore,  
17 the board of directors made a decision to contribute to that  
18 fund on an annual basis to make sure it had operating money  
19 available should contingent expenses arise.

20 MS. ROBESON: So it's almost like a supplemental  
21 appropriation?

22 MR. SIMON: In other words, if you budget for \$1.8  
23 million in expenses and you accidentally hit 2 million  
24 because of a bad snow, you have three options. You borrow  
25 from reserves, which is not a good thing if you don't intend

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1 to pay it back, you special assess your owners, or you have  
2 prepared for such an occasion by having a general operating  
3 fund of 10 to 20 percent of that excess, I'm sorry, of that  
4 assessment level. So if your assessment level is \$1.8  
5 million, 10 percent is 180,000; 20 percent is 360. You  
6 should by auditing standards in our industry be sitting on  
7 180,000 to \$360,000 of operating money should a contingency  
8 arise. If you have not, you can either decide that that's  
9 okay and hope for the best or you can make a conscious  
10 decision to, in essence, pay yourself over time to fund that  
11 until you get to a comfortable level.  
12 MR. BROWN: So am I correct if I said this. You  
13 said if there's a, if we have more expenses than we have  
14 income coming in, then the general operating expense would  
15 cover that, that's basically what it's there for. If you  
16 have more expenses than you have income coming in, right,  
17 and you have, rather than going into a reserve to pay for  
18 those expenses, we have what we call a general operating  
19 fund which is a supplement to the income, right, to cover  
20 expenses if we, if we got into a deficit, is that the way  
21 you explained that?  
22 MR. SIMON: Not quite.  
23 MR. BROWN: If we have more expenses, if we have,  
24 if we have income to pay for expenses, okay, if our income  
25 is equal to our expenses, then we wouldn't need a general

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1 operating fund, is that right?  
2 MR. SIMON: No.  
3 MR. BROWN: That's not?  
4 MR. SIMON: No, that's not correct.  
5 MR. BROWN: Okay. Explain that.  
6 MR. SIMON: Your general operating fund needs to  
7 be healthy enough that it is there to fund contingent  
8 operating expenses that were not expected in any particular  
9 financial period.  
10 MR. BROWN: Okay. So if they're unexpected, that  
11 means the expenses is higher than the income that we had  
12 coming in?  
13 MR. SIMON: Not necessarily.  
14 MR. BROWN: Well, we budget based on our income,  
15 right?  
16 MR. SIMON: Correct.  
17 MR. BROWN: That's correct. We budget based on  
18 our income and then that's to pay for the expenses. So if  
19 we can pay for the expenses, then we don't need a general  
20 operating fund, is that correct?  
21 MR. SIMON: In that one particular year or that  
22 one particular month?  
23 MR. BROWN: In that particular year or every year?  
24 MR. SIMON: Yes, that's correct.  
25 MR. BROWN: Or any year?

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1 MR. SIMON: That's correct. If you didn't --  
2 MR. BROWN: Or any year?  
3 MR. SIMON: -- if you met your income --  
4 MR. TIDBALL: Hold on. Don't talk over each  
5 other.  
6 MR. SIMON: If you met your income expense goal,  
7 you would not need to visit your general operating fund --  
8 MR. BROWN: That's right.  
9 MR. SIMON: -- in that particular period, that's  
10 correct.  
11 MR. BROWN: So we get back to my question. So the  
12 general operating fund is to supplement the income so that  
13 you don't have a deficit. The general operating fund is  
14 part of the income that's coming in so that you do not have  
15 a deficit?  
16 MR. SIMON: I don't know that I understand that.  
17 MR. BROWN: It pays the bills in case you --  
18 MS. ROBESON: I think -- just a second, Mr. Brown.  
19 I think what he's saying is that the contingency fund is, I  
20 think he's saying exactly what you said using generic terms.  
21 Is your question that it's a fund used for unexpected  
22 contingencies --  
23 MR. BROWN: That's --  
24 MS. ROBESON: -- that you don't otherwise have  
25 budgeted funds for?

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1 MR. BROWN: That's exactly right.  
2 MS. ROBESON: Now that doesn't mean you take --  
3 all right. I think he already testified that that is what  
4 the general operating fund is for.  
5 MR. BROWN: Okay. I just wanted to make sure that  
6 he said that. So now I want to go back to the bad debt,  
7 okay?  
8 MS. ROBESON: Well --  
9 MR. BROWN: That's why I wanted to go back to the  
10 bad debt.  
11 MS. ROBESON: -- in the form of a question you  
12 may.  
13 MR. BROWN: All right. I want --  
14 MS. ROBESON: No, please, no. Go ahead. Go  
15 ahead.  
16 MR. BROWN: So if we have a general operating  
17 fund --  
18 MR. SIMON: Uh-huh.  
19 MR. BROWN: -- that will cover the, a contingency  
20 that we might have to overspend that we might not have  
21 enough income to cover, then if it is also covered what we  
22 would call income from people that did not pay their condo  
23 fee, that's what the general operating fund is set up to do?  
24 So if it in any given year, say for an instance that we have  
25 a budget of 1.5 million, but we spent 1.6 million --

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1 MR. SIMON: Uh-huh.  
2 MR. BROWN: -- okay, so that one-tenth of a  
3 million would come out of the general operating fund, that's  
4 why we have a general operating fund to cover that just in  
5 case that either we overspend, there's some expenses come  
6 along that we were unaware of or that the income that we  
7 expected to come in from the condo fee was lower, meaning  
8 that we had a bad debt or someone didn't pay their condo  
9 fee, it would cover it either way because we could have a  
10 deficit --  
11 MS. ROBESON: Okay. Let me --  
12 MR. SIMON: I'm lost.  
13 MS. ROBESON: -- jump in here. I think what he's  
14 saying is why doesn't the general operating fund --  
15 MR. BROWN: Correct.  
16 MS. ROBESON: -- cover bad debt?  
17 MR. BROWN: Right. That's right. That's exactly  
18 right.  
19 MR. SIMON: If that's the question, theoretically  
20 it could. I wouldn't recommend that you just decide that I  
21 will allow for a percentage of bad debt as long as my  
22 general operating fund is healthy. It would be imprudent to  
23 not budget for reasonable expectation of loss on an annual  
24 basis and just assume that because I have a surplus, I will  
25 just spend a portion of that on an annual basis. That

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1 defeats the point of having a surplus.  
2 MR. BROWN: Okay. Mr. Simon --  
3 MS. ROBESON: So, just a minute, let me, let me  
4 just clarify, I think, what you're saying and that is if you  
5 have a reasonable expectation of debt, that's something that  
6 would be expensed in your normal budget process, correct --  
7 MR. SIMON: Correct.  
8 MS. ROBESON: -- because you know or you think  
9 it's very likely it may be coming, whereas the general  
10 operating expense is for those things that you don't know  
11 about or reasonably expect, is that --  
12 MR. SIMON: That's correct.  
13 MS. ROBESON: -- correct?  
14 MR. SIMON: That's correct. The most reasonable  
15 example is an association budgets \$30,000 for snow removal  
16 and you get two blizzards say five days apart like we  
17 received a few years ago --  
18 MS. ROBESON: Or if we, our --  
19 MR. SIMON: -- and all of a sudden --  
20 MS. ROBESON: -- Snowmagedon, see, I forget.  
21 MR. SIMON: Exactly. That, you're right,  
22 Snowmagedon, that's right. So a community that budgeted  
23 \$30,000 that year ended up spending 130.  
24 MS. ROBESON: Right.  
25 MR. SIMON: That's an example of an unanticipated

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1 expense.  
2 MS. ROBESON: So I think what he's saying is that  
3 if they file bankruptcy, and correct me if I'm wrong --  
4 MR. SIMON: Uh-huh.  
5 MS. ROBESON: Then that, and they know there's a  
6 high likelihood that they're not going to be able to collect  
7 on those fees, that's something you budget for and that the  
8 general operating fund is more something that you, just  
9 comes out of the blue in layman's terms and you can't budget  
10 for, is that, is that incorrect?  
11 MR. SIMON: No, that's very correct. It's very  
12 correct.  
13 MR. BROWN: And what I'm saying --  
14 MS. ROBESON: No, you ask him your question.  
15 MR. BROWN: Then what I'm saying, Mr. Simon, I  
16 know you --  
17 MS. ROBESON: No, you have to ask a question.  
18 MR. BROWN: You've been here one year. The,  
19 regardless, let me ask you this question, regardless of what  
20 the balance is, if at any given year that there is a  
21 deficit, regardless of whether you anticipated it or whether  
22 you didn't anticipate it, that deficit has to be paid, the  
23 bills have to be paid, is that correct?  
24 MR. SIMON: Correct.  
25 MR. BROWN: And those bills, that surplus bills,

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1 no matter how you just name it has to come out of the  
2 general operating -- that's the first place it comes out of  
3 because --  
4 MR. SIMON: Is that a question?  
5 MR. BROWN: -- is that correct?  
6 MR. SIMON: That's correct.  
7 MR. BROWN: That's where it comes out of?  
8 MR. SIMON: That's correct.  
9 MR. BROWN: So you can say whether you anticipate  
10 it or whether you didn't anticipate it, it's there for a  
11 deficit and it wasn't there, may I, if I can ask you this,  
12 do you remember when they installed this general operating  
13 expense?  
14 MR. SIMON: The day Americana Finmark was created  
15 as a condominium regime. We're not -- we're defining the  
16 general operating fund in very layman's terms. I can define  
17 it very technically to answer that question. The general  
18 operating fund is on an annual basis the association's  
19 income or loss. Very simply put, if an association is  
20 created on January 1, 1980, it has \$100,000 budget. It  
21 plans on bringing in \$100,000, it plans on spending  
22 \$100,000. One of three things can happen in that fiscal  
23 year. It can have a surplus, it can finish to the penny or  
24 it can have a deficit.  
25 On December 31, 1980, let's say this association

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1 had \$1,000 deficit. The general operating fund for that  
2 association defined as its excess or loss over time is  
3 negative \$1,000. In 1981, that same association under same  
4 budgeted parameters has \$1,000 surplus. At the end of 1981,  
5 that association's general operating fund is zero. It  
6 happens every year. That general operating fund is the  
7 excess or surplus operating cash that is generated by every  
8 year's annual budget. So then you are correct. If you have  
9 money in that account and the year 2013 yields a deficit,  
10 \$100,000 in the general operating fund, a \$10,000 fiscal  
11 year deficit yields at the end of the year a \$90,000 general  
12 operating fund.

13 You have a general operating fund. If that  
14 general operating fund is zero, that \$10,000 still needs to  
15 be paid. It comes out of your reserve fund.

16 MR. BROWN: Uh-huh.

17 MR. SIMON: Which is why you should have surplus  
18 operating cash between 10 to 20 percent of your assessment  
19 balance.

20 MS. ROBESON: So, wait. When you do an annual  
21 budget, do you appropriate based on historic deficits to  
22 have a 10 to 20 percent of the total budget in your general  
23 operating expense?

24 MR. SIMON: You don't normally appropriate paying  
25 money directly to that general operating fund. You

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1 generally have already achieved your comfort balance and at  
2 that point your association's responsible budgeting should  
3 yield a very close delta to your budgeted bottom line.

4 MS. ROBESON: Yes.

5 MR. SIMON: You shouldn't ever --

6 MS. ROBESON: Need to go back --

7 MR. SIMON: -- exceed --

8 MS. ROBESON: -- and re-appropriate?

9 MR. SIMON: Correct. That is correct. And you  
10 should never really exceed or be too low on your budget and  
11 it should be a responsible budget. So if you've already  
12 achieved your 10 to 20 percent of the general operating  
13 fund, statistics say your annual income or deficit will just  
14 kind of bounce around a little bit. Americana Finmark was  
15 at a point where its bouncing was not going to supply enough  
16 money in its general operating fund to have that balance, so  
17 they had to physically start contributing to it as part of  
18 their budgetary process. So, in essence, it's just another  
19 expense on your budget. You just like paying the electric  
20 bill. You're paying yourself to pay back your old deficit.  
21 It's like borrowing from yourself to buy a car. Instead of  
22 financing it, I took 40 grand out of my retirement account,  
23 excuse me, but now I've got to pay it back --

24 MS. ROBESON: Right.

25 MR. SIMON: -- and probably make up the interest I

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1 lost. That's, in essence, what Americana Finmark is doing  
2 is accelerating getting to where they are.

3 MS. ROBESON: Okay. Mr. Brown.

4 MR. BROWN: So let me finish this and I want to  
5 finish this about the bad debt.

6 MR. SIMON: Sure.

7 MR. BROWN: So what we are saying, if you tell me  
8 if I'm right or wrong on this, if we have more income that's  
9 coming in and we have expenses, over time each year we will  
10 increase our general operating fund by definition, right?

11 MR. SIMON: That's a correct statement.

12 MR. BROWN: Okay. That's one thing. So we're  
13 going to increase it that way. We also increase it because  
14 we contribute how much money each year by \$25,000 a year, is  
15 that correct?

16 MR. SIMON: I think you're generally, but I'm not  
17 looking at the budget, but I think it's roughly correct.

18 MR. BROWN: No, but I'm saying about something  
19 like that?

20 MR. SIMON: I think that's roughly correct right  
21 now.

22 MR. BROWN: So we make a contribution to it and if  
23 we spend less than our income, so that's two ways to  
24 increase the general operating fund, is that correct?

25 MR. SIMON: That's a very correct statement.

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1 MR. BROWN: Okay. Okay. Now we -- what do you  
2 think the amount of our general operating fund today?

3 MR. SIMON: What do I think it is?

4 MR. BROWN: Just off the top of your head, what is  
5 your best estimate?

6 MS. ROBESON: In terms of --

7 MR. SIMON: I don't have a --

8 MS. ROBESON: -- amount?

9 MR. BROWN: Yeah. Yeah.

10 MR. SIMON: If I looked at, if I looked at the  
11 February 27th balance sheet, I would answer that question  
12 exactly. Otherwise, I'm not going to answer that  
13 question --

14 MR. BROWN: Okay.

15 MR. SIMON: -- because I don't know.

16 MR. BROWN: Well, okay. So let me just end this  
17 with the bad debt on this. So if we have a surplus in our  
18 general operating fund, okay, then we do not need to expense  
19 a bad debt because the debt has already been paid, is that  
20 correct?

21 MR. SIMON: No, it's not. It's not correct at  
22 all.

23 MS. ROBESON: Why don't you explain?

24 MR. SIMON: As I said earlier, the general  
25 operating fund, let me rephrase my answer, that is to me,

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1 that is your opinion that you don't need to budget for bad  
2 debt because you have what is becoming a healthy general  
3 operating fund. And as a professional in my industry, I  
4 would advise the board if they suggested the same to me that  
5 they are making an unwise business decision, that you should  
6 not just use your surplus to write off bad debt. If you  
7 have an anticipated expense, a prudent organization budgets  
8 for it on an annual basis whether it's a dollar, whether  
9 it's a million dollars. If you know you're going to very  
10 possibly spend it, you would be wise to set aside funds for  
11 it, not use your contingency funds. If I have children and  
12 they want to go to college, it would be wise for me to set  
13 money aside to pay for their college, not take it out of my  
14 retirement and hope for the best.

15 MR. BROWN: This is not a retirement fund, is it?  
16 A general operating fund is not a retirement fund. It is a,  
17 it's our --

18 MS. ROBESON: Okay. I need a question.

19 MR. BROWN: I'm pretty much finished with that,  
20 but I think that we made the point that bad debt --

21 MS. ROBESON: No, you have to ask him a question.

22 MR. BROWN: Okay. Ask the question. The point is  
23 is that bad debt can be paid through the general operating  
24 fund and it does not have to be expended. It might not be  
25 prudent, but it can be paid through the general operating

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1 fund, is that correct?

2 MR. SIMON: If the, the question is can it be --

3 MR. BROWN: That's right.

4 MR. SIMON: -- legally?

5 MR. BROWN: That's right.

6 MR. SIMON: Yes.

7 MR. BROWN: If we have enough money? Okay. Now  
8 let me ask you something I want to go onto --

9 MR. SIMON: Sure.

10 MR. BROWN: -- about the budget.

11 MR. SIMON: Excuse me.

12 MR. BROWN: You, I think you testified that you  
13 use historical trend method in establishing a budget, is  
14 that correct?

15 MR. SIMON: That's correct.

16 MR. BROWN: Now in order to establish a trend, you  
17 have to first establish that that's an accurate trend, you  
18 have to have some accuracy at some point in time, is that  
19 correct, in order to -- otherwise you're establishing, if I  
20 may, you're establishing a bad trend. What I'm basically  
21 saying, at some point in time you have to have some accurate  
22 data to start the trend, is that correct?

23 MR. SIMON: I guess.

24 MR. BROWN: Okay. And by having the accurate  
25 data, in order to have the accurate data, in order to have

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1 the accurate data of what you're spending, you have to have  
2 detailed information in the books, is that correct?

3 MR. SIMON: I would not generally say that that's  
4 correct, no.

5 MR. BROWN: Where are you going to get the  
6 information to get the accurate information to start the  
7 trend?

8 MR. SIMON: In the first place, I would get the  
9 information would be in the income statements of each  
10 financial period.

11 MR. BROWN: But how do you start the trend, how do  
12 you know what you paid for?

13 MR. SIMON: If I look at an income statement, if I  
14 look at an expense category, again, I will use plumbing, if I  
15 I use an expense category, plumbing repair, and I look at  
16 the last 10 years and I know that over 10 years I have spend  
17 2,000, 2,000, 2,000, 3,000, 3,000, 3,000, 4,000, 5,000,  
18 3,000, 2,000, I can look at that and I can do a couple  
19 things. I can average it. I can use mean. I can use  
20 median. But I really don't care if in that 3,000 it was 27  
21 flappers, one toilet handle and a plunger. I don't care.  
22 It's not relevant.

23 What is relevant is that each year I have on  
24 average spent \$3,000 on plumbing repairs in that association  
25 and it would be very prudent to match that trend this year

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1 barring any knowledge that we have a major replacement  
2 project coming up that might actually reduce my maintenance  
3 expenses because I'm putting in new.

4 MR. BROWN: Well, let me ask you this question.  
5 Is there any way that you, in which your system as it is now  
6 to determine inventory? And what I mean by inventory,  
7 inventory of goods and of services meaning that -- I'll let  
8 you answer that.

9 MR. SIMON: I'm not --

10 MR. BROWN: Is there any way to tell inventory if  
11 I needed to know inventory in order to budget for the next  
12 year, would inventory have any bearing on my budget --

13 MR. SIMON: You'd have to --

14 MR. BROWN: -- on my inventory?

15 MR. SIMON: You would have to better define  
16 inventory because to me --

17 MS. ROBESON: Yes, it's not a retail --

18 MR. BROWN: Inventory --

19 MR. SIMON: -- to me inventory is --

20 MS. ROBESON: -- business.

21 MR. BROWN: Let me explain what I mean by  
22 inventory.

23 MR. SIMON: Sure. Please.

24 MR. BROWN: If you were buying light bulbs for the  
25 place or you were buying toiletries or you were buying

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1 anything for the condominium --  
2 MR. SIMON: Sure. Okay.  
3 MR. BROWN: -- okay, and you might, either one you  
4 might buy in bulk. You might get some discount and you  
5 might buy in bulk, but you wouldn't expect the next year to  
6 do the same thing because if you have the inventory, you  
7 bought inventory, it would have a bearing on the budget  
8 because you might not have as much the next year, is that  
9 correct?  
10 MR. SIMON: Okay. I understand what you're asking  
11 me and, no, that's not correct.  
12 MR. BROWN: Okay.  
13 MR. SIMON: It's not correct.  
14 MR. BROWN: Explain it for me.  
15 MR. SIMON: The inventory that you refer to is  
16 purchased on an annual basis based on the anticipated needs  
17 for each year's service projects requests various needs. It  
18 is not inventory such as something that Home Depot would buy  
19 so that they always have 700 bulbs on their shelves. In  
20 other words, we may budget for \$500 in light bulbs on an  
21 annual basis because we know we're going to go through them.  
22 It is not relevant for me to know if the engineer has seven  
23 on the shelf or 15.  
24 MS. ROBESON: Well, let me ask you something. If  
25 you buy 100 light bulbs in 2000 and 2001 you still have 98

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1 of them --  
2 MR. SIMON: Uh-huh.  
3 MS. ROBESON: -- so you don't have any light bulb  
4 expense in 2008. Wouldn't your averaging over a series of  
5 years pick up that trend?  
6 MR. SIMON: Absolutely, or become a one-year  
7 aberration.  
8 MR. BROWN: So based on the system today, if you  
9 bought 100 light bulbs and you had 98 left, you might buy  
10 100 again based on the historical trend because you said we  
11 might need 100 light bulbs every year because you had the  
12 100, you don't know that you have 98 left based on the way  
13 it's situated today because you don't know the detail, you  
14 know the historical trend, you knew, you bought 100 light  
15 bulbs in year one. So you're assuming that based on the  
16 historical trend if you don't see the details that you're  
17 going to buy 100 light bulbs in the second year and the  
18 third year and the fourth year and every year and then you  
19 have 98 left over in all those years, wouldn't that be the  
20 case?  
21 MR. SIMON: That's not even close to what I said.  
22 MR. BROWN: I think that's the example that was  
23 made.  
24 MS. ROBESON: No.  
25 MR. SIMON: No.

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1 MR. BROWN: Suppose you had 98 --  
2 MR. SIMON: No, I would --  
3 MS. ROBESON: That's not what I said.  
4 MR. SIMON; I would budget for a reasonable  
5 expense, but if I had 98 left over, I certainly wouldn't go  
6 out and buy 100 more just so I had more to spare.  
7 MR. BROWN: But if you, but if the proposed  
8 budget, and I've been in the budget committee, if we don't  
9 see, know that we have this 98 that's left over because we  
10 don't see the detail, so we just know it's a historical  
11 trend, we just said this place takes 100 bulbs that we need  
12 to buy each year, right, then I'm going to budget for 100.  
13 That's the problem that we have without going into details.  
14 May I ask you another -- give you another example?  
15 MS. ROBESON: No. He hasn't answered.  
16 MR. BROWN: Okay.  
17 MS. ROBESON: Now I am going to say something, Mr.  
18 Brown --  
19 MR. BROWN: Okay.  
20 MS. ROBESON: -- because -- okay. Let me ask you  
21 something --  
22 MR. SIMON: Yes, ma'am.  
23 MS. ROBESON: -- Mr. Simon. If you spent \$100 on  
24 100 light bulbs in year one --  
25 MR. SIMON: Uh-huh.

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1 MS. ROBESON: -- this is taking you back to law  
2 school exam, if you spent \$100 on 100 light bulbs in year  
3 one and you still have those 100 light bulbs in year two,  
4 you wouldn't have any year two expenses to show up in the,  
5 to report, correct?  
6 MR. SIMON: No expenses, correct.  
7 MS. ROBESON: So when you budget, would you take  
8 into account the fact -- when you do a budget, do you take  
9 into the account -- I think his question is do you take into  
10 account the fact that there were no actual expenses on light  
11 bulbs in year two?  
12 MR. SIMON: Yes, we do.  
13 MS. ROBESON: So what he's saying, what I hear him  
14 saying is that they do take that, they base their projected  
15 budget on prior years' actual expenses, is that incorrect?  
16 MR. SIMON: No, it's not incorrect. It's always  
17 more, it's generally more heavily weighted to the most  
18 recent year's expenses. It is, yes, based on historical  
19 trends, but if you notice a trend closer to present day, up  
20 or down, you make educated responses to your budgetary  
21 process as such.  
22 MS. ROBESON: So if you spent no money on light,  
23 say you spent \$100 in year one on light bulbs, but you spent  
24 no money on light bulbs in year two --  
25 MR. SIMON: Uh-huh.

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1 MS. ROBESON: -- and year three, what would your  
2 budget, what would you budget for light bulbs?  
3 MR. SIMON: In that example, I would probably  
4 recommend to the board that they reduce their budget from  
5 100 to \$75. I might not necessarily do the actual median  
6 math --  
7 MS. ROBESON: Right.  
8 MR. SIMON: -- but I would do some kind of  
9 reaction in that time frame and expense records.  
10 MS. ROBESON: Because it's based on what you  
11 actually spent?  
12 MR. SIMON: That's correct.  
13 MR. BROWN: So using --  
14 MR. TIDBALL: Let me --  
15 MR. BROWN: -- using that same example, using that  
16 same example that you had the 98 light bulbs, but we don't  
17 have anything that's called light bulbs, you know, in the  
18 account. It's not called light bulbs. It's called general  
19 expenses. So this time it's not light bulbs that you did  
20 100 of, it might be screws, but whatever, it could be,  
21 because it's called general maintenance, it could be light  
22 bulbs, it could be anything, even though you're not spending  
23 so much for light bulbs this time, but now you're doing it  
24 on screws, but you really don't know what's in that account  
25 until you see the details. That's the point that I'm

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1 getting. We --  
2 MS. ROBESON: Okay. I think you've made your  
3 point.  
4 MR. BROWN: Right.  
5 MS. ROBESON: I don't necessarily agree with it  
6 because I think you need the overall, you need the actual  
7 expenditures. But whether -- I understand what you're  
8 saying.  
9 MR. BROWN: Right. Yeah.  
10 MS. ROBESON: You want to get into the detail of  
11 how many screws versus how many light bulbs.  
12 MR. BROWN: What I would like to do in the budget,  
13 I would like to at some point in time if I needed to, if I  
14 needed to, and I might not need to, I might not feel I need  
15 to do that in year two, but if I felt like I needed to, I  
16 want to be able to go by what the bylaws say and look at the  
17 books and see did I, what did I spend light bulbs? Did I  
18 spend for screws?  
19 MS. ROBESON: Yeah, but you can look at the books.  
20 MR. BROWN: No, but it's not in the books. See,  
21 because the books only tells you the vendor name. It  
22 doesn't tell you --  
23 MS. ROBESON: No, that's not true, Mr. Brown.  
24 MR. BROWN: Yes, it --  
25 MS. ROBESON: He said there's an invoice attached

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1 to every payment.  
2 MR. BROWN: But the invoices are not in the books.  
3 MS. ROBESON: Well, you can go to the expense  
4 records.  
5 MR. BROWN: But you can't go to the expense  
6 records because you got a vendor, you don't have a tie-in to  
7 the expense records. You don't have, you don't have the --  
8 MS. ROBESON: Okay.  
9 Mr. BROWN: -- addition.  
10 MS. ROBESON: What I'm getting at is, okay, I'm  
11 not going to argue with you.  
12 MR. BROWN: Okay.  
13 MS. ROBESON: Do you have any more questions for  
14 Mr. Simon?  
15 MR. BROWN: I, well, I think, I think that --  
16 MS. ROBESON: I think you've established -- you  
17 don't have to ask any more questions about screws or versus  
18 light bulbs.  
19 MR. BROWN: Okay. I --  
20 MS. ROBESON: So I do, I do understand your point  
21 on that.  
22 MR. BROWN: Okay. What I'd like to get back to,  
23 and I just want to kind of finish this on, just on  
24 discovery, just talking about discovery because this is what  
25 we were supposed --

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1 MS. ROBESON: Well, we've gone beyond it, but if  
2 you --  
3 MR. BROWN: Yes, yes. I just have, yeah, not too  
4 much more on that.  
5 MS. ROBESON: Okay.  
6 MR. BROWN: I just want to --  
7 MS. ROBESON: Go ahead.  
8 MR. BROWN: -- establish this and I just want to  
9 ask a question. We had a pre-hearing conference that we  
10 kind of pretty much established and got instructions for  
11 what we were supposed to do when we left the pre-hearing  
12 conference. We're talking about the budget now, but just  
13 discovery, just discovery, and I think that you testified  
14 that you can't produce the year-to-date any time you want.  
15 It's not a normal, general business thing, but you can  
16 produce it as accessible and you can produce it and you have  
17 produced it and it was produced before you came aboard,  
18 okay, to me, year-to-date ledger, and you said you had it  
19 available for me, but I didn't pay for it.  
20 MR. TIDBALL: I object.  
21 MR. BROWN: My question to you, my question now  
22 is --  
23 MS. ROBESON: Wait. Mr. Brown --  
24 MR. BROWN: Uh-huh.  
25 MS. ROBESON: -- he objected. What's your

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1 objection?

2 MR. TIDBALL: He's asking multiple questions and

3 making multiple assumptions.

4 MR. BROWN: Okay. Okay.

5 MR. TIDBALL: If you can break it down a little

6 bit?

7 MR. BROWN: Let me ask a question then. Why

8 wasn't the year-to-date measure available to me after the

9 pre-conference hearing, when we left the pre-conference

10 hearing? Why was that not available to me again?

11 MR. SIMON: Your definition of a year-to-date

12 ledger was not printed because it is not a normal kept

13 business record of the association.

14 MR. BROWN: Okay. May I ask this question? Did

15 you, had you produced that for me prior to the pre-

16 conference hearing?

17 MR. SIMON: At certain times, yes.

18 MR. BROWN: And was that a part of my request for

19 production of documents?

20 MR. SIMON: You requested the business records of

21 the association as I read the subpoena, if you want to call

22 it that. The business records as maintained by the

23 association to include the financial records for the years

24 2011 and 2012, which I supplied and allowed you to review.

25 MR. BROWN: That's right. And I requested that.

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1 When we left, was that your understanding when you left the

2 pre-conference hearing that you would produce what was in my

3 production, my request for production of documents?

4 MS. ROBESON: Okay. It doesn't matter what his

5 understanding was. It was what my understanding was.

6 MR. BROWN: Okay. Well, and --

7 MS. ROBESON: My understanding was not that he was

8 going to accede to a particular request, but that he was

9 going to provide access to the records.

10 MR. BROWN: But I thought he was already doing

11 that, so we didn't have an issue with that. He was already

12 providing access to some of the records.

13 MS. ROBESON: So your question is why did he do it

14 before and not later?

15 MR. BROWN: Why, my question would be if the year-

16 to-date documents are accessible to him, and that's part of

17 that, they have done this over the years and I've seen it

18 over the years and I've proven that by my exhibits, that

19 they --

20 MS. ROBESON: Yes.

21 MR. BROWN: -- have done that over the years --

22 MS. ROBESON: Periodically.

23 MR. BROWN: -- why wasn't that available to me --

24 MS. ROBESON: And I think he answered that.

25 MR. BROWN: And what was that?

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1 MS. ROBESON: He answered you that they were not

2 part of the, they were not kept as part of the normal course

3 of business.

4 MR. BROWN: Well --

5 MS. ROBESON: So you may not like his answer --

6 MR. BROWN: Okay.

7 MS. ROBESON: -- but that was, is that your

8 answer?

9 MR. SIMON: That's correct.

10 MS. ROBESON: So you may not like his answer, but

11 that he did answer the question.

12 MR. BROWN: All right. Okay. And I'm saying that

13 there's a part of it because --

14 MS. ROBESON: But that's, this is not --

15 MR. BROWN: Okay. Okay.

16 MS. ROBESON: -- your time --

17 MR. BROWN: All right.

18 MS. ROBESON: -- to --

19 MR. BROWN: All right.

20 MS. ROBESON: This is a time to ask questions.

21 MR. BROWN: Okay. I'll ask him one other

22 question. The electronically stored invoices, is that a

23 part of your normal business practice?

24 MR. SIMON: It is a normal part of our business

25 practice to make an electronic duplicative copy --

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1 MR. BROWN: Okay.

2 MR. SIMON: -- of every paper invoice in the

3 office, yes.

4 MR. BROWN: And I asked for those, why were those

5 not revealed?

6 MR. SIMON: You do not have access to our computer

7 systems or our servers. You have access to the hard copies

8 of the records.

9 MS. ROBESON: So that's his answer.

10 MR. BROWN: That's his answer. Okay. And may I

11 ask you this question? Why would -- in your opinion that

12 the owners of Americana Finmark are paying for you to store

13 their documents, why would that not be accessible, why would

14 they not be accessible to their records? Why would they not

15 be able to see their records?

16 MR. SIMON: They are able to see their records.

17 MR. BROWN: Why not the electronically stored

18 records?

19 MS. ROBESON: I think he --

20 MR. BROWN: I'm asking why would they not be, why

21 would they not be, why would they not be accessible to the

22 owner?

23 MR. TIDBALL: Objection. Asked and answered.

24 MS. ROBESON: He did ask it, or he did answer it,

25 Mr. Brown. He said that they can't afford to allow people

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1 who do not deal day-to-day with the database to use the  
2 database because if someone made a mistake while scrolling  
3 through the electronic files, they couldn't fix it, is -- or  
4 something to that effect. But he did answer it's in the  
5 record.  
6 MR. BROWN: Okay. May I ask one more, just on  
7 that, on that note? If, in fact, that an owner came to you  
8 and they don't want to use the system, to break the system,  
9 but asked you to provide the electronic data, electronic-  
10 stored files, not that they're going to use or break the  
11 system, why are those records not available for them for you  
12 to provide them for you to provide them for them?  
13 MR. SIMON: The association's record, business  
14 records are available to any owner of the association.  
15 MR. BROWN: That, so why weren't they  
16 electronically-stored records not available?  
17 MR. SIMON: The association's business records are  
18 available to any owner of the association. Law does not  
19 mandate how we make those available. It doesn't mandate  
20 what portions of our office or the association's business  
21 records are available. It mandates that we make the  
22 business records of the association available to the owners.  
23 MS. ROBESON: Well, all business records are open  
24 unless protected by law.  
25 MR. BROWN: That's right.

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1 MS. ROBESON: But is there a practical reason that  
2 you don't perform searches every, electronic searches every  
3 time a person, an owner comes and asks you for an electronic  
4 search?  
5 MR. SIMON: Generally speaking, when someone comes  
6 and wants to see something from the association, it's a very  
7 specific request. I would like to see the 2012 landscape  
8 contract for Association B. I don't make that person come  
9 to my office. I e-mail it to them. One is I want to see  
10 the association's records, there is no way I can just say  
11 here's my computer system, have at it, because it opens up  
12 the access to things that they're not able to see.  
13 So if you come to me and say I would like to see  
14 the invoices in plumbing for 2012, and you're not -- I  
15 really don't mean to say this -- you're not doing this to me  
16 every month to where I'm almost becoming your record puller,  
17 I will e-mail you that --  
18 MS. ROBESON: So is --  
19 MR. SIMON: -- to satisfy your need.  
20 MS. ROBESON: -- it's a staff burden?  
21 MR. SIMON: Thank you. Thank you. Absolutely.  
22 MS. ROBESON: Okay. Is that your, is that what  
23 you wanted to know, Mr. Brown?  
24 MR. BROWN: You're telling me that there's a  
25 burden for --

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1 MS. ROBESON: Mr. Brown --  
2 MR. BROWN: No, I'm asking --  
3 MS. ROBESON: -- he just answered it.  
4 MR. BROWN: I don't understand it.  
5 MS. ROBESON: He said -- that's what he said.  
6 MR. BROWN: Said what? What did he say?  
7 MS. ROBESON: That it's burdensome, that it's a  
8 staff, it's a lot of, well, is it a lot of staff time?  
9 MR. SIMON: It ties up -- no, I don't put my staff  
10 through it. I make all of these arrangements. It is a  
11 significant amount of time taken from my day and from what I  
12 do and I do not charge the association for it. But it is a  
13 significant amount of time.  
14 MR. BROWN: Let me ask, let me just finalize this  
15 on this. You have a system that look at the scanned-in  
16 brackets and you can sign onto the system and look at the  
17 scanned-in brackets. As you were saying, that you might be  
18 able to look at anything if you allow people to sign onto  
19 the system, they might break the system and you might not  
20 allow that. But the scanned-in records are those files out  
21 there, is that correct? They are files out, just like a  
22 word file, is that correct?  
23 MR. SIMON: Yes, they have, they have a respective  
24 image file somewhere else on our site --  
25 MR. BROWN: That's right.

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1 MR. SIMON: -- yes.  
2 MR. BROWN: Is that, is it barely inaccessible to  
3 you to copy a couple of files like you would copy Word files  
4 to something for someone that would want that? Would that  
5 be, would that be cumbersome for you or would that be, as  
6 you might say, a burden to you to do that?  
7 MR. SIMON: Yeah. I think, I think my answer  
8 earlier was if someone had a very specific subset of needs  
9 on a non-recurring or routine basis, we would try to  
10 accommodate them as best they can. In other words, I'd like  
11 to see these seven documents. I'd probably just go ahead  
12 and find them and e-mail them to them. When it comes  
13 down --  
14 MS. ROBESON: Let him finish.  
15 MR. SIMON: -- when it comes down to a mass  
16 production of a myriad of financial documents, especially  
17 one that covers an entire financial period, I am going to  
18 insist that the owner come in, review them as we have them  
19 for public dissemination and anything they want they may  
20 copy and take with them at legally mandated, reasonable copy  
21 charges. But in no way, shape or form am I going to make a  
22 disk of Americana Finmark's image drive and just mail that  
23 to somebody unless I'm being fired and I'm turning it over  
24 to the new management agent, in which case they will get  
25 that.

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1 MR. BROWN: So to finalize this --  
2 MS. ROBESON: No.  
3 MR. BROWN: To finalize it --  
4 MS. ROBESON: What more do you want to ask?  
5 MR. BROWN: The only thing that I want to say is  
6 that there is no tie-in to having the books, the books,  
7 whatever you said that, the books that would have detailed  
8 records or the amount and the identification of the  
9 expenditures, there's no books that have that, what books  
10 that someone could get without going through the electronic  
11 stored records to do all these burden things that you're  
12 saying, that they can't come up with a set of books that  
13 they could request from you that would have the detailed  
14 records of the expenditures. You don't have that, is that  
15 correct?  
16 MR. SIMON: That is absolutely incorrect.  
17 MR. BROWN: Will you please name the books?  
18 MR. SIMON: The association's books --  
19 MR. BROWN: Name the books.  
20 MR. SIMON: -- books --  
21 MS. ROBESON: Stop, Mr. Brown.  
22 MR. SIMON: I'm trying --  
23 MS. ROBESON: I don't, you don't have to repeat a  
24 question.  
25 MR. BROWN: Okay. Okay.

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1 MR. SIMON: Books of an association, books, at  
2 least in my limited financial knowledge, is a generic term.  
3 Books means the records of the association. This is how I  
4 take books. So books could mean an actual book, a book that  
5 I have found to have income statement, general ledger,  
6 balance sheet, expense report, check disbursement, that  
7 could be a book. But also books of the association contain  
8 the paper records, the checks, the invoices. All of that,  
9 whether you put it in one binder and call it a traditional  
10 book, or whether you have a general ledger in one place and  
11 those respective back-up invoices in another, these all make  
12 up the financial records of the association, otherwise known  
13 as the books. That is the only way I can answer that.  
14 MS. ROBESON: I think I understand your point, Mr.  
15 Brown.  
16 MR. BROWN: Okay.  
17 MS. ROBESON: Your point is it's not, it's your  
18 feeling that it's not an easy thing to do to piece together  
19 the budget and with the individual expenses, correct?  
20 MR. BROWN: That's correct. That's one thing.  
21 MS. ROBESON: Okay. Now you don't need to ask any  
22 more questions about that because I really do get the point.  
23 MR. BROWN: Okay. Okay. Thank you.  
24 MS. ROBESON: Anything else?  
25 MR. BROWN: Let's see --

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1 MS. ROBESON: Now you also did, because we still  
2 have --  
3 MR. BROWN: That's right. Yeah.  
4 MS. ROBESON: -- two more witnesses.  
5 MR. BROWN: Okay.  
6 MS. ROBESON: So --  
7 MR. BROWN: Okay. Let me just ask one other thing  
8 and that is, is that the detailed records for Americana  
9 Finmark --  
10 MS. ROBESON: Well, now when you say detailed  
11 records, are you talking about expense records?  
12 MR. BROWN: Well, the detailed records, yeah. To  
13 show --  
14 MS. ROBESON: I don't know what you're talking  
15 about when you just say records.  
16 MR. BROWN: When I say detailed, it means --  
17 MS. ROBESON: You mean --  
18 MR. BROWN: -- the identification --  
19 MS. ROBESON: -- the expense records?  
20 MR. BROWN: -- that knows, yeah, the expense  
21 records, right. That what is required for the auditor and  
22 what's required for the budget is two different things, is  
23 that correct?  
24 MR. SIMON: No, not correct.  
25 MR. BROWN: Are you telling me that the auditors

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1 just look for the same thing that the budget preparation  
2 people are looking for?  
3 MR. SIMON: In not so many words. They're not  
4 necessarily looking at it from the same purpose, but they're  
5 looking at the exact same information.  
6 MR. BROWN: They are looking at the same  
7 information, but they're looking at it from different  
8 vantage points, that's basically what you're saying?  
9 MR. SIMON: Uh-huh.  
10 MR. BROWN: Okay. So, therefore, if they are  
11 looking at it from different vantage points, they have  
12 different purposes for looking at it. One is, if I may, if  
13 you may answer this question, the auditors are making sure,  
14 they are making sure about the checks. They are concerned  
15 about the checks, right? In effect, the checks, what is  
16 spent, what is drawn from the bank and what is gone from the  
17 bank and what is put in the bank, the auditors are more  
18 concerned with that type of thing, is that correct?  
19 MR. SIMON: I mean I guess. That's a very  
20 simplistic way of putting it, but okay.  
21 MR. BROWN: I'm just trying to make it as simple  
22 as I can.  
23 MR. SIMON: That's fine.  
24 MR. BROWN: That's what they want to make sure  
25 that --

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1 MS. ROBESON: Okay. He said yes. Go ahead.  
2 MR. BROWN: Okay. All right. And the budget  
3 people are not interested in what's going back to the bank  
4 and whatever. What they're doing is trying to project --  
5 MS. ROBESON: Are you asking a question?  
6 MR. BROWN: Yes. What I'm asking him, are they,  
7 they, what is the budget they are trying to do different  
8 from what the, what the auditors are trying to do?  
9 MR. SIMON: That's correct. The establishment of  
10 a budget is a completely separate process --  
11 MR. BROWN: Right.  
12 MR. SIMON: -- than from a financial audit or  
13 review, yes.  
14 MR. BROWN: Okay.  
15 MR. SIMON: They are separate processes.  
16 MR. BROWN: Okay. So the bottom line, and I'm  
17 going to finish it with you, the bottom line is, is that I  
18 had a production, my request for production of documents and  
19 you're saying that you did not match that for what my  
20 request for production of documents?  
21 MR. TIDBALL: Objection. This has been asked and  
22 answered. It's also off-topic.  
23 MS. ROBESON: It --  
24 MR. TIDBALL: You've already asked this question  
25 and he's already answered it.

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1 MS. ROBESON: I sustain it. We're not going  
2 there.  
3 MR. BROWN: Okay. Okay.  
4 MS. ROBESON: He's already said it.  
5 MR. BROWN: Okay. He doesn't. Okay. All right.  
6 MS. ROBESON: He doesn't.  
7 MR. BROWN: Okay. So I'm finished with him.  
8 MS. ROBESON: You don't like his answer.  
9 MR. BROWN: Okay. I'm finished with him.  
10 MS. ROBESON: Okay. Redirect?  
11 MR. TIDBALL: Just one question. Just because you  
12 budget something, does that mean you have to spend the money  
13 on it?  
14 MR. SIMON: No.  
15 MR. TIDBALL: And that's it.  
16 MS. ROBESON: That's it? Okay. Now I'm having  
17 Mr. Tidball call the witnesses, but as I understand it, your  
18 witnesses are the same people. So I'm allowing you to  
19 cross-examine them, which gives you an advantage, all right?  
20 MR. BROWN: Uh-huh.  
21 MS. ROBESON: All right. Mr. Tidball, do you have  
22 another witness?  
23 MR. TIDBALL: I called Mr. Simon initially just to  
24 discuss the discovery. I realize we went into --  
25 MS. ROBESON: Right.

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1 MR. TIDBALL: -- areas other than that. But, no,  
2 I didn't intend to call any other witnesses.  
3 MS. ROBESON: Okay. Well, as far as the discovery  
4 motions --  
5 MR. BROWN: Uh-huh.  
6 MS. ROBESON: -- I am going to deny your motion to  
7 compel because there is no law that requires the condo  
8 association to generate, physically generate reports. They  
9 may have the data electronically, but there's no requirement  
10 that they provide them if they don't keep them in the normal  
11 course of business, okay? I'm not arguing now. Because I'm  
12 denying your discovery motion --  
13 MR. BROWN: Uh-huh.  
14 MS. ROBESON: -- I am going to deny your request  
15 for continuance and we can proceed. I think we've covered  
16 Mr. Simon's testimony on both the substance and discovery,  
17 so we can proceed with the other substantive, excuse me, the  
18 other substantive witnesses. All right, Mr. Tidball, how  
19 many witnesses do we have? I see two people back there, but  
20 I thought only one was coming.  
21 MR. TIDBALL: Yes, Your Honor. Mr. Contreras is  
22 here.  
23 MS. ROBESON: Oh, he is here?  
24 MR. TIDBALL: He was able, his work schedule  
25 cleared up, so he was able to come.

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1 MS. ROBESON: Okay. Whomever you wish to call  
2 first.  
3 MR. TIDBALL: I don't intend to call any other  
4 witnesses.  
5 MS. ROBESON: Okay. Mr. --  
6 MR. BROWN: Okay.  
7 MS. ROBESON: -- Brown, you may call -- you have  
8 three choices. You can testify yourself --  
9 MR. BROWN: Uh-huh.  
10 MS. ROBESON: -- in any order I mean.  
11 MR. BROWN: Okay.  
12 MS. ROBESON: You can testify yourself and you can  
13 testify yourself and call Mr. Contreras or, I'm sorry, I  
14 forgot the other --  
15 MR. TIDBALL: Mr. Dickinson.  
16 MS. ROBESON: -- Mr. Roy Dickinson. Okay.  
17 MR. BROWN: Mr. Dickinson.  
18 MS. ROBESON: Okay. Mr. Brown, you can do that in  
19 any order you wish.  
20 MR. BROWN: I hadn't expected to do this, but I  
21 guess I have no choice because I thought discovery would  
22 rule in my favor, but let me call on Mr. Dickinson first.  
23 This is going to be pretty short, I think.  
24 MS. ROBESON: Okay.  
25 MR. SIMON: May I step down?

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1 MS. ROBESON: Yes, please.  
2 MR. SIMON: Thank you.  
3 (Witness excused.)  
4 MS. ROBESON: Mr. Dickinson, please come here and  
5 raise your right hand.  
6 (Witness sworn.)  
7 MS. ROBESON: All right. Proceed, Mr. Brown. Now  
8 if I may, while, before we start, can I get Exhibits 48  
9 through 52, I think, 48 through 52 back --  
10 MR. TIDBALL: 48, yeah.  
11 MS. ROBESON: -- so I have custody?  
12 MR. BROWN: I have one other now that I know that  
13 I have to, that --  
14 MS. ROBESON: That's fine. You can --  
15 MR. BROWN: Yeah, I want to submit some more.  
16 MS. ROBESON: Okay. That's fine.  
17 MR. BROWN: Let's see, what did I have? I think  
18 you wrote a number on the bottom of one of them. Which one  
19 do you need?  
20 MS. ROBESON: 48 through 52.  
21 MR. BROWN: Yeah, you put 52 on that.  
22 MS. ROBESON: Okay.  
23 MR. BROWN: I mean you put 48 on it. What did she  
24 have, what did you have as 48?  
25 MS. ROBESON: I have, excuse me, I have 48, year-

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1 to-date general ledger for 2010.  
2 MR. BROWN: 10/10? 1/1 --  
3 MS. ROBESON: No, year-to-date general ledger. I  
4 think it's -- or let me see --  
5 MR. BROWN: I have, I have --  
6 MS. ROBESON: No, it's got -- I wrote the numbers.  
7 Look --  
8 MR. BROWN: You wrote the numbers on it?  
9 MS. ROBESON: Yes.  
10 MR. BROWN: Okay.  
11 MS. ROBESON: So any one that has a number is --  
12 MR. BROWN: Okay. Here it is.  
13 MS. ROBESON: I tell you what, let's take a 10-  
14 minute recess. I need those back before we do anything  
15 else. So you go through your documents over there and we'll  
16 take a 10-minute recess. Mr. Dickinson, you're still,  
17 sorry, this is taking longer than I expected.  
18 (Whereupon, at 11:57 a.m. a brief recess was  
19 taken.)  
20 MS. ROBESON: All right. We're back on the  
21 record. Have you found the exhibits?  
22 MR. BROWN: Yeah, are those the only two that you  
23 needed?  
24 MS. ROBESON: No, I need 49 and 51.  
25 MR. TIDBALL: The 2008, the year-to-date, that's

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1 49?  
2 MR. BROWN: What was --  
3 MS. ROBESON: 49 is 2008, year-to-date general  
4 ledger.  
5 MR. BROWN: Oh, I know where that is.  
6 MS. ROBESON: And --  
7 MR. BROWN: I can find that for you. What was the  
8 general ledger, 2008?  
9 MR. TIDBALL: It's one of these --  
10 MS. ROBESON: Yes, and then --  
11 MR. BROWN: Okay.  
12 MS. ROBESON: -- 51 is the 12/28/11 e-mail from  
13 Mr. Simon to Mr. Brown.  
14 MR. BROWN: Oh, okay. I have that, but I don't  
15 know if you put a number on it. I can give it to you either  
16 way.  
17 MS. ROBESON: I thought it was attached to  
18 something?  
19 MR. BROWN: Let me just look, let me just look --  
20 MR. TIDBALL: Is there anything in here I haven't  
21 seen yet?  
22 MR. BROWN: No.  
23 MR. TIDBALL: Mr. Simon, these ledgers?  
24 MR. BROWN: I've got that. You need one more, is  
25 that correct?

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1 MS. ROBESON: I need two more. I need 49, I'll  
2 see what I have. I need 49 and 51. Okay. All right. How  
3 long do you think it's going to take Mr. --  
4 MR. BROWN: This is going to be very short for me  
5 because I didn't think I was going to be in the hearing,  
6 so --  
7 MS. ROBESON: Well, I remember specifically  
8 sending you an e-mail stating that this was a possibility  
9 that could occur.  
10 MR. BROWN: Yeah.  
11 MS. ROBESON: So, okay, let's proceed. I don't  
12 want, let's --  
13 MR. BROWN: Okay. So I have --  
14 MS. ROBESON: See if we can get through this, but  
15 you can't leave until we get those two exhibits back.  
16 MR. BROWN: Okay. Okay. I'm sorry, submit this  
17 one. This is a worksheet and you can keep that one. So  
18 we'll make sure --  
19 MS. ROBESON: Okay. So this will be 53 and this  
20 is called AF Planning Worksheet?  
21 MR. BROWN: Yeah.  
22 MR. TIDBALL: I have copies.  
23 MR. BROWN: That's the same thing. I made copies.  
24 MS. ROBESON: You didn't show them to Mr. Tidball?  
25 MR. BROWN: He has, he has a copy.

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1 MR. TIDBALL: You just handed it to me one second  
2 ago.  
3 MS. ROBESON: Mr. Brown, do you have any more  
4 exhibits?  
5 MR. BROWN: No, no, just this one.  
6 MR. TIDBALL: What page one more time?  
7 MR. BROWN: You can have it.  
8 MR. TIDBALL: This is a copy?  
9 MR. BROWN: No, she has it, she has his copy.  
10 MR. TIDBALL: Do you have the same copy?  
11 MR. BROWN: Yeah, well, make sure if you want to,  
12 yeah.  
13 MS. ROBESON: Well, I'm not going to sit here and  
14 make sure it's the same copy. So what I'm going to do is --  
15 what other exhibits do you have?  
16 MR. BROWN: Just this one. Just this --  
17 MS. ROBESON: No, let me see that one. That too  
18 you mean, or is this another page of this?  
19 MR. BROWN: No, that's the same thing. I just  
20 made a copy.  
21 MS. ROBESON: Okay. I'm going to go make a copy  
22 of this.  
23 MR. BROWN: Okay.  
24 MS. ROBESON: In the meantime, you look --  
25 MR. BROWN: I'll try to find the copy.

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1 MS. ROBESON: -- I'll be right back. If you have  
2 any other exhibits, I want you to share them right now with  
3 Mr. Tidball.  
4 MR. BROWN: Okay.  
5 MS. ROBESON: Okay. We'll do that later. Let's  
6 get going. Mr. Brown, you had questions for Mr. Dickinson.  
7 Mr. Dickinson --  
8 MR. BROWN: Okay. So --  
9 MS. ROBESON: -- you're still under oath. Now I  
10 really want those numbered copies back, okay?  
11 MR. BROWN: I will, because I got to have them.  
12 If you put them in there, I haven't been out to -- I just --  
13 MS. ROBESON: Okay. Could you give the copies to  
14 Mr. Tidball and Mr. Brown? All right, Mr. Brown.  
15 MR. BROWN: Now, Mr. Dickinson, would you please,  
16 well, I'll wait until she brings -- are you familiar with  
17 this AF planning worksheet?  
18 MR. DICKINSON: I don't recall it. I'm not sure.  
19 MR. BROWN: Do you --  
20 MR. TIDBALL: Objection. He's answered the  
21 question.  
22 MR. BROWN: You don't recall?  
23 MR. DICKINSON: I'm not positive.  
24 MR. BROWN: Did you, do you, have you ever served  
25 on a committee with me prior to being on the board of

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1 directors?  
2 MR. DICKINSON: Yeah.  
3 MR. BROWN: Were you named to that committee?  
4 MR. DICKINSON: It was the facilities planning  
5 committee.  
6 MR. BROWN: Okay. In that committee, did I bring  
7 up some issues that we should have more detail in planning  
8 our budget and made some assignments to each member of that  
9 committee to help me put some information on a spreadsheet,  
10 do you remember that?  
11 MR. DICKINSON: As I recall, it was more in not  
12 the budget, but looking at planning future expenditures --  
13 MR. BROWN: Uh-huh.  
14 MR. DICKINSON: -- to see what we had done in the  
15 past to kind of look at specific expenditures in specific  
16 areas to be able to say this is what we've done.  
17 MR. BROWN: Okay. Did you assist me in filling  
18 out some spreadsheets going to invoices and taking the  
19 actual identification, the description of what was paid for  
20 in any expenditures and put them on spreadsheets?  
21 MR. DICKINSON: Yes, I did.  
22 MR. BROWN: Okay. And did you participate in  
23 that?  
24 MR. DICKINSON: Well, yeah, I assisted with the  
25 permitting.

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1 MR. BROWN: Yeah. But did you actually create  
2 some spreadsheets yourself?  
3 MR. DICKINSON: Yeah, and this looks like one I  
4 created.  
5 MR. BROWN: That's right.  
6 MR. DICKINSON: Is that what you're --  
7 MR. BROWN: That's right.  
8 MR. DICKINSON: But I don't know that to be true.  
9 It looks like the one I submitted.  
10 MR. BROWN: You did.  
11 MR. DICKINSON: Okay.  
12 MR. BROWN: So I, so you participated in creating  
13 some spreadsheets for --  
14 MR. DICKINSON: In this particular --  
15 MR. BROWN: -- that's right in this particular  
16 case. And you're looking at the headers. It looks like it  
17 could have been -- it looks like it could have been the one  
18 that you produced?  
19 MR. DICKINSON: It does, based on my memory it  
20 does look that way, yes.  
21 MR. BROWN: Okay. That you did?  
22 MR. DICKINSON: I believe that's --  
23 MR. BROWN: That's right.  
24 MR. DICKINSON: -- possible.  
25 MR. BROWN: And so in creating this spreadsheet,

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1 you, what you did, if I may ask you, that you went and took  
2 information from what documents to put on this spreadsheet?  
3 What did you use to create this spreadsheet?  
4 MR. DICKINSON: I think this generally came off of  
5 checks and invoices.  
6 MR. BROWN: Invoices? That's right.  
7 MR. DICKINSON: Uh-huh.  
8 MR. BROWN: So why did you think that in your  
9 opinion that you needed to take this off the very invoice to  
10 put on the spreadsheet? Why did you think that this was  
11 necessary again?  
12 MR. DICKINSON: I thought we were looking at prior  
13 expenditures to try to get a sense of what major issues  
14 would be in the future.  
15 MR. BROWN: All right. So in your estimation we  
16 didn't have that information anywhere else?  
17 MR. DICKINSON: I had no idea.  
18 MR. BROWN: You had no idea?  
19 MR. DICKINSON: Correct.  
20 MR. BROWN: So, but you helped create this, you  
21 thought that this was significant to do? You thought --  
22 MR. DICKINSON: We had this information given to  
23 us that, I believe, Leslie Saville, who was the chair of the  
24 committee had obtained and we broke it down into four or  
25 five segments that I recall and went back and put together

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1 the spreadsheets.  
2 MR. BROWN: Do you remember how many other people  
3 participated in that --  
4 MR. DICKINSON: Three or four.  
5 MR. BROWN: -- or do you remember if it was any of  
6 them?  
7 MR. DICKINSON: Three or four people.  
8 MR. BROWN: Three or four of us asking, all right,  
9 that's correct.  
10 MR. DICKINSON: Uh-uh.  
11 MR. BROWN: So do you think in your estimation  
12 that this would help in budgeting, something like this, do  
13 you think that this would assist us --  
14 MR. TIDBALL: Objection.  
15 MR. BROWN: -- in budgeting?  
16 MR. TIDBALL: Objection.  
17 MS. ROBESON: Well, just a second. Basis?  
18 MR. TIDBALL: He's asking for opinions from a lay  
19 witness. He can ask factual questions related to this  
20 document.  
21 MR. BROWN: Well, we never know what's factual.  
22 We have to know what's in his mind or what he thinks.  
23 MS. ROBESON: You can --  
24 MR. BROWN: I'm asking him a question.  
25 MS. ROBESON: No, you can testify what you think

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1 later.  
2 MR. BROWN: Yes, Your Honor.  
3 MS. ROBESON: All right?  
4 MR. BROWN: Yes. Okay. Let's see. So what do  
5 you think?  
6 MS. ROBESON: No, no, you can't ask Mr. Dickinson.  
7 You can testify what you think.  
8 MR. BROWN: No, I'm asking him what he thinks.  
9 MS. ROBESON: I know, but that's what I'm saying  
10 you can't do.  
11 MR. BROWN: Oh. Okay.  
12 MS. ROBESON: Okay?  
13 MR. BROWN: Okay. All right. Okay. So, but you  
14 thought this was an important assignment and endeavor?  
15 MR. TIDBALL: Objection.  
16 MS. ROBESON: Yes. Sustained.  
17 MR. BROWN: Okay. Okay. All right. Okay. If  
18 you did participate in this --  
19 MR. TIDBALL: Objection. Asked and answered.  
20 MR. BROWN: Huh?  
21 MR. TIDBALL: Asked and answered.  
22 MS. ROBESON: He already said he did.  
23 MR. BROWN: He participated?  
24 MS. ROBESON: Correct.  
25 MR. BROWN: Okay. I just have off from that, just

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1 have a few other questions to ask you. We have a budget  
2 item in our budget for reserves, is that correct? We have,  
3 we have, we --  
4 MR. DICKINSON: Yes.  
5 MR. BROWN: -- reserves as a budget item --  
6 MR. DICKINSON: Correct, it is.  
7 MR. BROWN: Where do we get the information to put  
8 into budget to determine what the reserves ought to be?  
9 MR. DICKINSON: We have a reserve study done.  
10 MR. BROWN: We have a reserve study done. And  
11 what did you look at in that reserve study to transfer to  
12 the budget, what did you look at in that to transfer to the  
13 budget?  
14 MR. DICKINSON: The person doing the study does a  
15 projection of what future costs will be to replace the  
16 various component parts of the property and then writes it  
17 down and says basically this is what we recommend as your  
18 annual contribution to fund this amount.  
19 MR. BROWN: Okay. And you take that annual  
20 recommendation of contributions from the reserve study  
21 analyst and put that in the budget, is that correct?  
22 MR. DICKINSON: That's what we recommend.  
23 MR. BROWN: That's what you recommend?  
24 MR. DICKINSON: Yes.  
25 MR. BROWN: And then you, but you would include

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1 that in the budget?  
2 MR. DICKINSON: I believe that is included in the  
3 budget in the amount asked for, yes.  
4 MR. DICKINSON: Okay. The amount asked for. When  
5 the reserve study came out the first time, did you have --  
6 how many reserve studies did you have in this particular  
7 calendar year? How many reports was in this particular  
8 year?  
9 MR. TIDBALL: What calendar year?  
10 MR. BROWN: On the reserve study that was asked  
11 for?  
12 MR. TIDBALL: For what time period?  
13 MR. BROWN: Huh?  
14 MR. TIDBALL: What time period are you talking  
15 about?  
16 MR. BROWN: Just this current year, this current,  
17 in --  
18 MS. ROBESON: Fiscal year?  
19 MR. BROWN: In --  
20 MS. ROBESON: Fiscal year?  
21 MR. BROWN: In 2012, I'm sorry, 2012.  
22 MR. DICKINSON: And what is your question again?  
23 MR. BROWN: In 2012 --  
24 MR. DICKINSON: Yes.  
25 MS. ROBESON: Do you have a calendar year, fiscal

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1 year, or do you have --  
2 MR. DICKINSON: Yes, we do.  
3 MS. ROBESON: Okay.  
4 MR. BROWN: Yes.  
5 MS. ROBESON: So 2012?  
6 MR. BROWN: 2012, the original study had come out,  
7 the first reserve study that came out, did you put that  
8 recommendation in the budget?  
9 MR. DICKINSON: I think we got a draft copy of  
10 reserve and we went through it and there were questions  
11 raised by members of the board of directors, by the  
12 facilities chair who also consulted with some of the people  
13 on her committee and items that weren't included and items  
14 that were included that we maybe didn't think were -- you  
15 know, just a series of questions were raised, went back, the  
16 details were looked at, there were some adjustments made and  
17 then a second and final report was issued.  
18 MR. BROWN: Did you hold a meeting after you  
19 received that report that you hold a meeting with the  
20 reserve analyst?  
21 MR. DICKINSON: I don't know if it was before or  
22 after, I don't remember.  
23 MR. BROWN: You don't remember?  
24 MR. DICKINSON: Well, it was before or after we  
25 had a meeting. I don't remember whether it was before or

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1 after, yes.  
2 MR. BROWN: Was there a meeting that included the  
3 board that was an open meeting with the reserve analyst?  
4 MR. DICKINSON: There was a meeting. I don't  
5 remember the detail of it.  
6 MR. BROWN: There was a meeting, but was it an  
7 open meeting?  
8 MR. DICKINSON: I don't remember.  
9 MS. ROBESON: He just said he doesn't remember.  
10 MR. DICKINSON: -- the detail of it.  
11 MR. BROWN: Okay. You don't remember if it was an  
12 open meeting?  
13 MR. DICKINSON: I don't -- I didn't look to see if  
14 you were there. You should tell me before.  
15 MR. BROWN: Did you, did you, did you know if  
16 there is a meeting held and it is not open that the  
17 information that came, that comes from the meeting is not  
18 able to be used, do you know that as a fact?  
19 MR. DICKINSON: No, I don't.  
20 MR. BROWN: And you don't know whether this  
21 meeting was open or not?  
22 MS. ROBESON: He already said that, Mr. Brown.  
23 MR. DICKINSON: I don't remember.  
24 MS. ROBESON: Please, Mr. Brown, please.  
25 MR. BROWN: All right. Okay. So that's all I

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1 have for him.  
2 MS. ROBESON: Okay. Any redirect?  
3 MR. TIDBALL: Nothing.  
4 MS. ROBESON: Okay. Thank you, Mr. Dickinson.  
5 MR. DICKINSON: Thank you.  
6 (Witness excused.)  
7 MS. ROBESON: And I guess your last witness is Mr.  
8 Contreras?  
9 MR. BROWN: I wasn't prepared for him, but I guess  
10 I would like to ask him a few questions.  
11 MS. ROBESON: Okay. Mr. Contreras, do you want to  
12 have a seat please? Please raise your right hand.  
13 (Witness sworn.)  
14 MR. BROWN: I just have a few questions for you.  
15 You conducted the budget meetings, is that correct?  
16 MR. CONTRERAS: I've conducted budget meetings for  
17 the 2012 and 2013 fiscal year planning.  
18 MR. BROWN: Fiscal year planning. And do you  
19 consider --  
20 MS. ROBESON: Well, wait.  
21 MR. BROWN: Do you --  
22 MS. ROBESON: Can you state your name and address  
23 for the record?  
24 MR. CONTRERAS: Sure. My name is Jose Manuel  
25 Contreras. I live at 9900 Georgia Avenue, Apartment 301,

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1 Silver Spring, Maryland 20902.  
2 MS. ROBESON: Okay. I forgot they weren't Mr.  
3 Tidball's witnesses. And, Mr. Dickinson, do you mind  
4 stating your name and address for the record?  
5 MR. DICKINSON: My name is Roy W. Dickinson. I  
6 also reside at 9900 Georgia Avenue, Unit P-9, Silver Spring,  
7 Maryland 20902.  
8 MS. ROBESON: Thank you. I am sorry to  
9 interrupt --  
10 MR. BROWN: Okay.  
11 MS. ROBESON: -- Mr. Brown. Go ahead.  
12 MR. BROWN: During those meetings, do you remember  
13 whether Carl Brown participated in the budget meetings?  
14 MR. CONTRERAS: You've been in meetings to my  
15 recollection for fiscal year 2013, fiscal year 2012, fiscal  
16 year 2011 and --  
17 MR. BROWN: Okay. Thank you.  
18 MR. CONTRERAS: Not all of the meetings, but most.  
19 MR. BROWN: Okay. The material that you provided  
20 in the budget meetings, what is the opening material that  
21 you provide for the committee when we're establishing a  
22 budget, what material do we have that we, when you're  
23 working the meeting, yeah.  
24 MR. CONTRERAS: For which meetings because we have  
25 different materials?

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1 MR. BROWN: For the, let's say for either one of  
2 them. You can --  
3 MS. ROBESON: Wait, I'm confused.  
4 MR. BROWN: For 2012.  
5 MS. ROBESON: Well, just a second, because I'm  
6 talking. Mr. Contreras --  
7 MR. CONTRERAS: Uh-huh.  
8 MS. ROBESON: -- when you say budget committee, is  
9 that a sub-committee of the board of directors?  
10 MR. CONTRERAS: That is correct.  
11 MS. ROBESON: And they're all board of directors,  
12 but they form this sub-committee?  
13 MR. CONTRERAS: The sub-committee is also open to  
14 owners. And, in particular, the budget committee is open to  
15 any and all owners that are in good standing.  
16 MS. ROBESON: Okay. And is Mr. Brown on the  
17 committee?  
18 MR. CONTRERAS: He has attended as an owner, so we  
19 have admitted him as an owner/member of the sub-committee.  
20 MS. ROBESON: Okay. You can continue your  
21 questioning.  
22 MR. BROWN: What material did you provide us at  
23 the opening meeting for 2012?  
24 MR. CONTRERAS: So in, I mention which meeting  
25 because we provide different materials in different

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1 meetings. I the first meeting what is provided is the  
2 material that Mr. Simon alluded to that is provided to us  
3 which includes a draft budget, a narrative for each line  
4 item that provides information whether it's discussing  
5 historical trends or also notes any particular things that  
6 may be relevant that may impact our projection such as  
7 legislation that may have passed that has increased cost.  
8 It may also include communications such as increase in  
9 utility fees that we may want to, and the rates which we may  
10 want to factor in in our estimations, things of that nature  
11 are what's listed in those narratives.  
12 MS. ROBESON: And then let me, before you go on,  
13 how many -- when do these budget meetings start, in the last  
14 quarter of the prior fiscal year or --  
15 MR. CONTRERAS: They typically start actually in  
16 the third quarter, usually in the beginning of the third  
17 quarter, so we usually receive in June a, the first draft  
18 budget --  
19 MS. ROBESON: Okay.  
20 MR. CONTRERAS: -- and so a meeting is called in  
21 July, August at the latest.  
22 MS. ROBESON: Okay. And then how many meetings do  
23 you generally have?  
24 MR. CONTRERAS: It is, so we will have the initial  
25 meeting. We may have a series one, two, three additional

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1 meetings to refine the budget and then there is a, the  
2 proposed budget is mailed out to all the owners 30 days  
3 prior to the board meeting in which we will vote on that  
4 budget.  
5 MS. ROBESON: You actually adopt the budget?  
6 MR. CONTRERAS: Correct.  
7 MS. ROBESON: Okay. I just needed that  
8 background. Go ahead.  
9 MR. BROWN: Thank you. So the material that's  
10 provided is a budget, that's what you, it's actually a  
11 budget, there's no supporting information, but a budget, is  
12 that correct that you would get from Mr. Simon?  
13 MR. CONTRERAS: That is not correct.  
14 MR. BROWN: Okay. But the numbers, you do get a  
15 budget, a recommended budget from him?  
16 MR. CONTRERAS: That is one of the items we  
17 received, yes.  
18 MR. BROWN: One of the items that you received?  
19 So your, so what would your job be after you get that budget  
20 from him, from Mr. Simon, what is, what do you do from  
21 there?  
22 MR. CONTRERAS: So my responsibility is to  
23 correlate those recommendations with my understanding of the  
24 budget, so as treasurer I receive monthly reports. I then  
25 go through those monthly reports, financial reports and if

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1 there's any questions that I have based on the narrative,  
2 based on the proposed budget, I have a dialogue with Mr.  
3 Simon back and forth. I may ask questions that I may have  
4 heard through things in the news, inputs from other owners.  
5 I also personally, since I've taken on the position of  
6 treasurer, I've maintained a spreadsheet going back to 2005,  
7 I believe. So while we receive a 3-year historical trend, I  
8 actually have a trend that goes back from 2005 until present  
9 where I have been tracking the expenses and looking at the  
10 historical trends sort of like what Mr. Simon had alluded  
11 to, what are our, what years are we in the black, what years  
12 are we in the red in terms of our year-end balance and so  
13 forth. And based off of those factors, reserve studies,  
14 conversations we've had with the engineering staff at the  
15 property and so forth, we present any and all information at  
16 these meetings and we have a dialogue with the owners and we  
17 discuss what we feel these expenses are, why -- we actually  
18 invite Mr. Simon to at least one, if not more, of those  
19 meetings to be there to answer any questions on the proposed  
20 budget. And, like I said, we then have our, what we believe  
21 is the budget that we want to propose and then, or vote on  
22 and then ratify at a subsequent board meeting.

23 MR. BROWN: So does the other members of the  
24 committee have access to the same information you have going  
25 into adopting the budget?

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1 MR. CONTRERAS: No.  
2 MR. BROWN: Okay. So you solely, and Mr. Simon,  
3 have the information that support the one sheet that you,  
4 that you share with the other members of the committee, it's  
5 pretty much finalized, there's no other sheets to support  
6 these numbers other than a proposed budget from Mr. Simon to  
7 you that you share with the committee, is that correct?  
8 MR. CONTRERAS: No.  
9 MR. BROWN: What else do you share with the  
10 committee other than that?  
11 MR. TIDBALL: Objection. He just answered this  
12 for several minutes.  
13 MR. BROWN: No. Well, but he just --  
14 MS. ROBESON: Well, I --  
15 MR. BROWN: Okay.  
16 MS. ROBESON: Are you talking about records?  
17 MR. BROWN: No. What I'm asking him is that  
18 anything that he gets that comes into the budget committee  
19 because the budget has not been adopted at that point,  
20 right, at the first meeting? So it's the information that  
21 you rely on, that all your decision on adopting the budget,  
22 is that shared with the rest of the members?  
23 MR. CONTRERAS: So I can clarify. So as  
24 treasurer, as an office of the board, I am privy to other  
25 documents that the general public is not allowed to see, the

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1 perfect example of that being the delinquency report and so,  
2 and again Federal law prevents some of that information from  
3 being shared with the general public, but as an officer of  
4 the board, I do have access to other documents. Whether  
5 they have relevance to the actual budget process is a  
6 different issue. But in terms of things that are relevant  
7 to the drafting of a budget, I will say that to my knowledge  
8 I have not denied any documents to the general ownership  
9 that I, that have not, that are, that are part of the budget  
10 process. Those have been produced. Reserve studies are  
11 open to everyone. The financial records are open to anyone.  
12 I've gone, in fiscal year 2012 and 2013 planning,  
13 I actually produced a, I produced a document where I have  
14 put all of the data that I had from 2005 to present into a  
15 20-page document that supplemented in great detail what Mr.  
16 Simon provided as his narrative. I then put my summary as  
17 treasurer after having studied all those documents and  
18 issued that to the ownership and that was one of the  
19 documents that we did have available for review during our  
20 budget meetings and also at the board meeting when we voted  
21 on it.

22 MR. BROWN: So you are testifying that you provide  
23 the committee with the same necessary input to the budget  
24 that you have seen, other than the delinquent report you  
25 said that that's the only one that you didn't provide, is

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1 that the only one?  
2 MR. CONTRERAS: That's the one to my knowledge  
3 that I have not produced that I have seen as treasurer. I  
4 have -- anything that has been, that has played a part in  
5 developing the budget process to my knowledge I have put it  
6 out there to the board, not to the board, I mean to the  
7 budget committee.  
8 MR. BROWN: Let me ask you something specific.  
9 MR. CONTRERAS: Sure.  
10 MR. BROWN: Did you provide the invoices that you  
11 looked at?  
12 MR. CONTRERAS: The invoices? If an owner wanted  
13 to review those, those were available and so in my opinion  
14 those were provided for review.  
15 MR. BROWN: So you're saying that they were  
16 available, but you didn't provide them if they were  
17 available?  
18 MR. CONTRERAS: I did not come with copies in hand  
19 all the time.  
20 MR. BROWN: So you did not have any copies in hand  
21 of the invoices that you, that you normally see?  
22 MS. ROBESON: What invoices?  
23 MR. BROWN: Okay.  
24 MS. ROBESON: What invoices?  
25 MR. BROWN: What now?

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1 MS. ROBESON: What invoices?  
2 MR. BROWN: He's, he testified earlier that in  
3 order for him to make his decision on the budget, he has  
4 access to documents and things that the rest of the members  
5 of the committee didn't have.  
6 MS. ROBESON: Well, you had the same access.  
7 MR. BROWN: Huh? That's, yeah. Is that the what?  
8 MS. ROBESON: Except for the delinquency report.  
9 MR. BROWN: But he just said he didn't have the  
10 invoices there either.  
11 MS. ROBESON: He said he didn't bring them to the  
12 meeting.  
13 MR. BROWN: He didn't, so they're not available to  
14 the people there at the budget committee meeting. That's  
15 just what I'm asking him. He didn't bring that either, he  
16 didn't bring the delinquency report, he didn't bring the  
17 invoices.  
18 MS. ROBESON: But, he -- okay, Mr. Brown, before  
19 you go in on this line, he's not required to.  
20 MR. BROWN: No, I'm just asking him that. I  
21 didn't ask him -- I'm --  
22 MS. ROBESON: I just don't want to spend --  
23 MR. BROWN: I know.  
24 MS. ROBESON: -- you know --  
25 MR. BROWN: I'm just trying to find --

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1 MS. ROBESON: -- the rest of the day on what he  
2 could have, you know, what legally is available to people,  
3 it's not relevant. He's not required to bring every invoice  
4 to an open meeting. What is required is that if somebody  
5 comes in to inspect invoices, that they be able to inspect  
6 them. That's what's required.  
7 MR. BROWN: Okay. Let me just -- and I don't need  
8 to go too much farther --  
9 MS. ROBESON: Okay.  
10 MR. BROWN: -- with this, but --  
11 MS. ROBESON: Well, let me ask, let me do this.  
12 MR. BROWN: Okay.  
13 MS. ROBESON: Mr. Contreras, is there, what  
14 documents do you base, are there documents that you base the  
15 budget on that the general ownership, with the exception of  
16 the delinquency report, that the general ownership does not  
17 see?  
18 MR. CONTRERAS: That I can recall, none.  
19 MS. ROBESON: Did you put our your own historical  
20 2005, you know, trends, did you make that available to the  
21 public?  
22 MR. CONTRERAS: For fiscal year 2012 planning, I  
23 published a 20-page document that included an analysis and  
24 recommendations for every major category and in some, and  
25 also the sub-line items that's 20 pages worth of charts,

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1 graphs, narratives and recommendations and Mr. Brown did  
2 receive a copy of that.  
3 MR. BROWN: Now let me finalize this. You, we  
4 have the budget and is there any other report that you have  
5 that, that's available to you that's not available to the  
6 committee in the, relevant to this, the budget? Are there  
7 any other things other than what we just, we just stated?  
8 MR. CONTRERAS: I believe I already answered that.  
9 MR. BROWN: Okay.  
10 MR. CONTRERAS: I don't have any reports that I  
11 only see that have relevance toward the budget.  
12 MR. BROWN: Uh-huh. And the final question is  
13 when we looked at the budget and we're trying to adopt this  
14 budget, the committee, and as you, did you find that there  
15 was a lot of questions of why we had certain numbers, some  
16 were maybe lower, some was higher, did you find that we had  
17 a lot of questions during the adoption of the budget?  
18 MR. CONTRERAS: Certainly. That's the intent of  
19 having these budget meetings which is to discuss and inform  
20 the community --  
21 MR. BROWN: Right.  
22 MR. CONTRERAS: -- of our budget proposal.  
23 MR. BROWN: Were you able to, from the information  
24 that you see over the months that the other people on the  
25 committee did not see, were you able to answer those

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1 questions or did we have to go back to Mr. Simon?  
2 MR. CONTRERAS: For some questions, I believe  
3 especially in the initial meetings, we would have to go back  
4 to Mr. Simon and ask for justifications and to understand in  
5 a little more detail his recommendations. I think that was  
6 part of the normal course of the budget process. As we got  
7 towards the latter part of the budget process, the community  
8 in general, those that attended the budget meetings, had a  
9 good sense of why we were budgeting to spend what we  
10 budgeted and there was no -- by the time we passed a budget,  
11 there were no questions. And I can say anecdotally that  
12 while there was maybe not 100 percent satisfaction with the  
13 budget, there definitely was an understanding as to why line  
14 items had to be what they were and they accepted that.  
15 MR. BROWN: Uh-huh. So with your knowledge and  
16 all the records that you see on a monthly basis prior to the  
17 budget, the invoices and everything else that you see, why  
18 wouldn't you have enough knowledge from what you see as  
19 treasurer to have an understanding of why we have these  
20 certain budget numbers without having to go back to Mr.  
21 Simon if he's giving you as treasurer, if you're receiving  
22 everything that he has, why would you have to go back to him  
23 to ask him? Why was there confusion in the budget is  
24 what --  
25 MR. TIDBALL: I'm going to object. He's presuming



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1 money was being allocated in the budget.  
2 MR. BROWN: Thank you. And I can finalize that.  
3 Fine, thank you very much, sir.  
4 MS. ROBESON: You don't --  
5 MR. BROWN: I'm done.  
6 R  
7 MS. ROBESON: So, okay, you can step down then.  
8 MR. CONTRERAS: Thank you.  
9 (Witness excused.)  
10 MS. ROBESON: All right. Mr. Brown --  
11 MR. BROWN: Yes. I can finalize, yes, my  
12 argument.  
13 MS. ROBESON: Okay. Go ahead. Now you can talk,  
14 yes.  
15 MR. BROWN: The reason, yeah, right. The reason  
16 why I submitted this claim is because I didn't see any way  
17 after looking at all the records to actually trace the  
18 expenditures to the budget, okay? That was the sole reason  
19 why I filed the complaint in the first place. And I thought  
20 that in order to -- you can adopt the budget naturally in  
21 two ways, you can improperly do it or you can properly do  
22 it. And I always thought that in any budget, whether it be  
23 a personal budget or any budget, that you would need to know  
24 your expenditures, okay, you're actual expenditures not so  
25 much as an account that where you know when you're buying

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1 information and I didn't think that all of this information  
2 needed to be in the budget. I didn't think the budget  
3 needed to be that detailed. I think the budget the way it  
4 is constructed looks fine in terms of the account, in terms  
5 of the balances for each account, the expenditures per  
6 account.  
7 But I thought it was very important to be able to  
8 trace that back as an owner that actually, the budget was  
9 actually a license to tax the owners because once the budget  
10 is adopted, the owners have to pay for the budget. So I  
11 wanted to trace back the expenditures and find them in some  
12 kind of books or somewhere, they correlate the books or like  
13 Mr. Simon said, books, we might not call them, but that's  
14 what the bylaws call them, the books. And they thought that  
15 whatever those books were, that it would be in detail enough  
16 that they thought it was important enough to put it in our  
17 bylaws.  
18 And so I went back looking for the books and I was  
19 looking for, what do we call this thing, the books? What is  
20 the source to the budget? So I went along and then I found  
21 out, oh, they put out something called ledgers because I  
22 didn't know they put out ledgers until someone gave me  
23 ledgers. They gave me ledgers in 2006 and somebody said, oh  
24 well, we don't do them year-to-date because we do them on a  
25 monthly basis, but yet I saw them and the only reason I

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1 asked for them is because I saw them. I saw year-to-date.  
2 I didn't ask for year-to-date 2006 ledger. I didn't ask for  
3 the ones that, in the exhibit of 2007. I didn't ask for  
4 those year-to-dates. Those are reports that was given to  
5 me. I didn't know whether you could produce them or not. I  
6 have no way of knowing what kind of computer software that  
7 the management company have. The only way that I get any  
8 knowledge is that I go in there and say I want to inspect  
9 some documents and they say, oh, here are the documents and  
10 I look at them. I said, oh, we produced that? Oh, this is  
11 called the ledger. This is called the delinquent report.  
12 Nothing says that we have to have a delinquent report. I  
13 got that from the knowledge of just inspecting the reports  
14 and the information we have.  
15 So what I asked after that, after I learned,  
16 started learning some of these reports that we had, I had  
17 tried to get some understanding of what was on these reports  
18 and what was the purpose of some of these reports. So then  
19 I, when I looked at them, I said, okay, that the one that  
20 they call the source of the budget they told me was the  
21 ledger. And I have had this because you can see that I had  
22 documents going back to 2006. I was just looking at them,  
23 not filing the complaint, but just trying to get a better  
24 understanding of what our expenditures are.  
25 So I looked at the ledger and I said, okay, the

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1 ledger is organized sort of like the budget. It's an  
2 account number. They have account numbers in the budget.  
3 They have account numbers in the ledger. And then they add  
4 up all these numbers and they give you a bottom line on the  
5 ledger and you can transfer that to the budget and that's  
6 all we have to have, that one line item. We don't have to  
7 have all of the details, but just the account number and  
8 that bottom line number. So, but when I looked at the  
9 ledger, I can't determine what we might call our inventory  
10 of work, of services, meaning that if we had someone to come  
11 out and repair something at a building on our community, I  
12 wouldn't have any idea would that person come out there and  
13 do the same thing 10 times? I wouldn't know that if I  
14 didn't see the details. The only thing I see is ABC Company  
15 came out here 10 times and they did something, but I don't  
16 know nothing of what they did.  
17 So I said, well, how can I get what ABC Company  
18 did, okay, because maybe they came out here and put some gas  
19 and charged us for that. Maybe it wasn't something that was  
20 supposed to be in that account. I wouldn't know that by  
21 just looking at ABC Company, okay, because they are spread  
22 all over the --  
23 MS. ROBESON: I understand.  
24 MR. BROWN: -- the information. So I said, okay,  
25 now where can I go to find out what is ABC Company? Well,



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1 MS. ROBESON: All right.  
2 MR. BROWN: And that's my question.  
3 MS. ROBESON: All right.  
4 MR. BROWN: And that's my answer. Thank you.  
5 MS. ROBESON: Thank you.  
6 MR. BROWN: Uh-huh.  
7 MS. ROBESON: Mr. Tidball?  
8 MR. TIDBALL: Very briefly, I think it's clear  
9 that the board is in compliance with the law which says they  
10 have to give access to Mr. Brown to the budgeting  
11 documentation. They've done that. He has access to it.  
12 His critique today is that it's not convenient to him to  
13 have to look at a general ledger and an income statement and  
14 then match that to a filing cabinet that has invoices which  
15 are ordered in alphabetical order. He doesn't want to do  
16 that process. He doesn't want to take his day and do that.  
17 He would rather Mr. Simon spend his day taking him through  
18 that, not once or twice, but there have been several visits  
19 Mr. Brown has made to the offices trying to do this. And so  
20 I think it's very clear that the board is in compliance with  
21 what they're required to do under the law.  
22 Secondly, I think that Mr. Brown has really  
23 brought this case, as I said, because it's not convenient to  
24 him. He wants access to these records and he wants free  
25 records. In fact, if you look through Exhibit 1, he

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1 continually harps on the fact that he's being charged for  
2 these copies and does not give up on the fact that he's not  
3 going to pay them. He then files this case. And what does  
4 he do in this case? He again files for discovery asking for  
5 these same documents and then he says I don't want to be  
6 charged for them. In fact, every chance he gets in his  
7 motions and responses he says you should waive these fees  
8 because they're not compliant with discovery. I think it's  
9 very clear what his mindset was going into this, is that he  
10 did not want to pay for these copies being made and a way to  
11 get around that, he thought it would be a loophole, would be  
12 to file this case and file discovery. And so I think that's  
13 his real motivation in this case.  
14 This isn't his first case against the condominium.  
15 I think this is his third case that I know about and he  
16 continues to bring these claims through and he continues to  
17 lose. I don't want to speak about what might happen today,  
18 but he's lost the two before this. And he's going to keep  
19 doing this and so I am asking today --  
20 MS. ROBESON: Well, that's not in evidence. I  
21 don't want to --  
22 MR. TIDBALL: Okay.  
23 MS. ROBESON: -- consider that in closing  
24 because --  
25 MR. TIDBALL: That's fine.

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1 MS. ROBESON: -- that's not in evidence.  
2 MR. TIDBALL: I agree. I agree. So I withdraw  
3 that.  
4 MS. ROBESON: Okay.  
5 MR. TIDBALL: But as far as with the merits of  
6 this case, as I think his motivation is clear, I'm asking  
7 for all attorney's fees and costs in defending this case and  
8 I think that is reasonable.  
9 MS. ROBESON: Okay. With that, I'm not going to  
10 close the record yet because we don't have Exhibits 49 and  
11 51.  
12 MR. BROWN: Uh-huh.  
13 MS. ROBESON: Mr. Brown, you are not to leave  
14 today until --  
15 MR. BROWN: Okay.  
16 MS. ROBESON: -- you find those exhibits. I'm  
17 going to send our administrative assistant in --  
18 MR. BROWN: Uh-huh.  
19 MS. ROBESON: -- to assist you in finding those  
20 exhibits.  
21 MR. BROWN: Okay.  
22 MS. ROBESON: If you can't find them today, I'm  
23 going to strike them from the record.  
24 MR. BROWN: Okay. Will do.  
25 MS. ROBESON: All right? So the record is not

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1 going to stay open beyond 5:00 today --  
2 MR. BROWN: Uh-huh.  
3 MS. ROBESON: -- but I'm going to leave it open in  
4 order to, for additional evidence. We do have to leave it  
5 open for 10 days to permit the transcript of the hearing to  
6 come in.  
7 MR. BROWN: Uh-huh.  
8 MS. ROBESON: So technically the record will be  
9 open to the end of the day solely to find Exhibits 49 and  
10 51.  
11 MR. BROWN: All right.  
12 MS. ROBESON: After that, it's only open to  
13 receive a copy of the transcript which takes 10 days. So  
14 according to this, the record should close on Friday, March  
15 29th. Let me make sure I got that -- yes, Friday, March  
16 29th. And it will remain open the rest of the day to try to  
17 find Exhibits 49 and 51.  
18 MR. BROWN: 49 and 51.  
19 MS. ROBESON: And if we can't, then I'm going to  
20 exclude them --  
21 MR. BROWN: Your Honor, we'll find them.  
22 MS. ROBESON: -- from the record. What happens  
23 after the 29th is I have 30 days to write a report and  
24 recommendation on this case to the CCOC who makes a final  
25 decision in the case --

1 MR. BROWN: Uh-huh.  
 2 MS. ROBESON: -- based on the testimony that takes  
 3 place here. There's no further argument or evidence  
 4 submitted, all right?  
 5 MR. BROWN: Uh-huh.  
 6 MS. ROBESON: And you will be notified by the CCOC  
 7 once they make their decision.  
 8 MR. BROWN: Uh-huh.  
 9 MS. ROBESON: All right?  
 10 MR. BROWN: Uh-huh.  
 11 MS. ROBESON: Anything else?  
 12 MR. BROWN: I just have one final word. I'm not  
 13 motivated to, to do anything but to understand our  
 14 expenditures so that we can adopt a proper budget. I  
 15 shouldn't be faulted if I'm, if I, if I choose to find a way  
 16 to not to pay for it, the discovery or paid for the  
 17 inspection. That's not, I --  
 18 MS. ROBESON: Okay. Well, let me just say this.  
 19 A, your motivations --  
 20 MR. BROWN: Uh-huh.  
 21 MS. ROBESON: -- I'm not taking into consideration  
 22 what your motivations are.  
 23 MR. BROWN: Okay. Thank you.  
 24 MS. ROBESON: My consideration is legally whether  
 25 you're entitled and whether to these, this, these records

1 you're requesting and whether the board properly adopted a  
 2 budget, okay?  
 3 MR. BROWN: Okay. Thanks.  
 4 MS. ROBESON: So those are the two --  
 5 MR. BROWN: Okay. Thank you.  
 6 MS. ROBESON: -- legal issues --  
 7 MR. BROWN: Okay.  
 8 MS. ROBESON: -- and you don't need to make any  
 9 further statements.  
 10 MR. BROWN: Okay. Thank you very much.  
 11 MS. ROBESON: Okay? Now you -- I'm going to  
 12 adjourn now. You stay here --  
 13 MR. BROWN: Okay.  
 14 MS. ROBESON: -- and I'm going to --  
 15 MR. BROWN: So that's 49 and 50?  
 16 MS. ROBESON: 49 and 51.  
 17 MR. BROWN: Okay. Okay.  
 18 MS. ROBESON: Thank you.  
 19 MR. BROWN: I know I have them here.  
 20 MS. ROBESON: No, I, okay. I'm not going to talk  
 21 to you further because the record is closed.  
 22 (Whereupon, at 1:14 p.m., the hearing was  
 23 concluded.)  
 24  
 25

## C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that  
 the attached pages represent an accurate transcript of the  
 electronic sound recording of the proceedings before the  
 Office of Zoning and Administrative Hearings for Montgomery  
 County in the matter of:

Carl Brown v. Americana Finmark Corporation

CCDC 51-11

OZAH No. 13-03

By:

Tracy Hahn, Transcriber

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<b>C</b>				
<p><b>Min-U-Script®</b></p>	<p><b>Deposition Services, Inc.</b></p>	<p><b>(3) Brown's - clarification</b></p>		

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