

EXHIBIT 1

Transcript of the Proceedings

Becky Cholewka

March 6, 2024

Power Ranch v. Woodcrest

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

POWER RANCH COMMUNITY)	
ASSOCIATION, an Arizona)	
non-profit corporation,)	Case Number:
)	
Plaintiff,)	CV2023-000397
)	
v.)	
)	
WOODCREST EAST, LLC, an Arizona)	
limited liability company;)	
VILLAGE EAST CONDOMINIUM, an)	
Arizona non-profit corporation;)	
KDL INVESTMENTS, LLC, an Arizona)	
limited liability company,)	
)	
Defendants.)	
)	
_____)	
(And related counterclaims.))	
_____)	

VIDEO-RECORDED DEPOSITION OF BECKY CHOLEWKA
(30(b)(6) representative of Power Ranch Community Assn.)

Phoenix, Arizona
Wednesday, March 6, 2024
10:01 a.m.

Reported by:

MELISSA GONSALVES, RMR, CRR
Arizona Certified Reporter No. 50070

1 THE DEPOSITION OF BECKY CHOLEWKA, 30(b)(6)
2 representative of Power Ranch Community Association, was
3 taken pursuant to Notice, on Wednesday, March 6, 2024, at
4 10:01 a.m., at the DESSAULES LAW GROUP, 7243 North 16th
5 Street, Phoenix, Arizona, before MELISSA GONSALVES, RMR,
6 CRR, an Arizona Certified Reporter, Certificate No. 50070.

7

8 APPEARANCES OF COUNSEL:

9 Representing the Plaintiff Power Ranch Community
10 Association:

10

11 Kyle Von Johnson, Esq.
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13 1400 East Southern Avenue
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15 Tempe, Arizona 85282
16 (800) 743-9324
17 Kyle.VonJohnson@carpenterhazlewood.com

14

15 Also Present: Marcus Martinez
16 Matthew Dominy

15

16

17 Representing the Defendants Woodcrest East LLC:

17

18 F. Robert Connelly, Esq.
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20 7243 North 16th Street
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20

21

22 VIDEOGRAPHER:

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23 (The deposition was video-recorded by F. Robert Connelly)

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I N D E X

EXAMINATION		PAGE
BECKY CHOLEWKA,		
By Mr. Connelly -----		4

E X H I B I T S

DEPOSITION	DESCRIPTION	PAGE
Exhibit 1	Declaration of Condominium and CC&Rs for Woodcrest Village (East) (83 pages) Woodcrest East 260-342 --	15
Exhibit 2	Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power Ranch (73 pages) Power1-Power73 -----	21

1 Phoenix, Arizona;

2 Wednesday, March 6, 2024; 10:01 a.m.

3 * * * * *

4 D E P O S I T I O N P R O C E E D I N G S

5 (Becky Cholewka was duly sworn.)

6 MR. VON JOHNSON: Can I state an objection on the
7 record before we start?

8 MR. CONNELLY: Sure.

9 MR. VON JOHNSON: I just want to note an
10 objection for the record to the recording of the
11 deposition. I think having Counsel recording the
12 deposition is in violation of Rule 30(c)(1) and Rule
13 30(b)(5)(B). I just wanted to get that objection noted
14 for the record.

15 MR. CONNELLY: Okay.

16 MR. VON JOHNSON: It's your deposition.

17 BECKY CHOLEWKA,
18 called as a witness herein, having been first duly sworn,
19 was examined and testified as follows:

20 EXAMINATION

21 BY MR. CONNELLY:

22 Q. Okay. Good morning, ma'am.

23 Can you state your name for the record,
24 please?

25 A. Yes, Becky Cholewka.

1 Q. How do you spell that, ma'am?

2 A. B-e-c-k-y C-h-o-l-e-w-k-a.

3 Q. Okay. Have you ever been deposed before?

4 A. No.

5 Q. All right. I'm going to go over some ground
6 rules regarding depositions that we need to follow in
7 order to have an effective deposition:

8 The first is it's important that we not talk
9 over one another so that the court reporter can prepare a
10 clean copy of our discussion that we're going to have
11 today.

12 It's important that we not respond with
13 uh-huh or huh-uh or other natural communication styles
14 that humans have. If you do respond that way, I'm going
15 to ask you to clarify. I'm not trying to be rude. I'm
16 just trying to make sure that the record is correct and
17 accurate.

18 If you don't understand one of my questions,
19 please feel free to let me know, and I will rephrase it.

20 If you need to take a break for any reason
21 at all, please let me know, and we can accommodate that.
22 I would just ask that you answer the question that's
23 pending before you take a break.

24 Your attorney may have explained this to
25 you, but he may provide objections to my questions, and,

1 generally speaking, you still have to answer them, except
2 for in areas such as attorney-client privilege and that
3 sort of thing. He's just trying to make a record of
4 objections to my questions.

5 So, is there any medical condition which
6 might prohibit or minimize your ability to recall events
7 that we're here to talk about today?

8 A. No.

9 Q. Okay. And you are here pursuant to a Rule
10 30(b)(6) deposition, which sought out persons most
11 knowledgeable with regards to various categories of
12 information; is that correct?

13 A. Correct.

14 Q. Okay. And I'm going to hand you a copy of the
15 Notice of Deposition. Have you seen that document before?

16 A. Yes, I have.

17 Q. I'm not going to mark it as an exhibit, but could
18 you tell me with specificity which of the categories of
19 information sought you are responding to?

20 A. All of them except for -- I believe it was 9 and
21 15.

22 Q. Okay. All right. Thank you very much.

23 A. Uh-huh.

24 Q. And could you provide us with a thumbnail sketch
25 of your educational history?

1 A. Yes. I have a bachelor's degree in political
2 science. I have a master's degree in public
3 administration, and I have a juris doctorate.

4 Q. Okay. Are you an attorney?

5 A. Yes, I am.

6 Q. Okay. And you are actively in practice?

7 A. Yes.

8 Q. In what respect?

9 A. Estate planning and probate.

10 Q. Okay. Okay.

11 And what firm are you affiliated with?

12 A. My own: Cholewka Law.

13 Q. Okay. And then is that your principal
14 employment, with Cholewka Law?

15 A. Yes.

16 Q. Okay. What did you do to prepare for today's
17 deposition?

18 A. I looked at some of our HOA documents. I had
19 discussions to refresh my recollection on a few items with
20 Matt and our community managers, and I had discussion with
21 the attorney.

22 Q. Who is Matt?

23 A. Matt Dominy is the other person who will be a
24 witness here today.

25 Q. Okay. Gotcha.

1 What position do you hold with regard to
2 Power Ranch?

3 A. I served on the board in the summer of 2016 to
4 February of 2020, and then again February 2022 to present.

5 Q. And what position do you presently hold?

6 A. Secretary and board of director.

7 Q. And how long have you held that position?

8 A. Secretary has been a year. Board position since
9 my reelection.

10 Q. Okay. Did you have any other positions before
11 you were secretary?

12 A. I don't believe I was ever an officer before.

13 Q. Okay. Okay.

14 And who is the current president of the
15 Power Ranch Association?

16 A. Currently no one because we just had elections,
17 so that president went off. He did not rerun, so we will
18 be holding officer elections at the end of March.

19 Q. And who presently is the vice president with
20 regard to Power Ranch Community Association?

21 A. Same. That person did not rerun, so we do not
22 currently have a vice president position.

23 Q. Are there any other officers, other than
24 yourself, who are presently in holding positions with
25 regard to Power Ranch Community Association?

1 A. Yes, Matt Dominy, who is our treasurer.

2 Q. Okay. Okay. Power Ranch is a master homeowners
3 association with an umbrella under which there are a
4 number of sub-associations; is that correct?

5 A. Correct.

6 MR. VON JOHNSON: Objection; form.

7 BY MR. CONNELLY:

8 Q. Do you know how many --

9 He might provide objections. You still can
10 answer the question unless he instructs you not to.

11 Do you know how many sub-associations there
12 are?

13 MR. VON JOHNSON: Objection; form.

14 THE WITNESS: I believe there are three. One in
15 The Knolls -- well, there's three apartments, so they
16 would each have their own -- be considered their own
17 sub-association, I would believe.

18 Woodcrest East and West would be considered
19 their own sub-associations once developed, and The Knolls
20 condo has a sub-association.

21 BY MR. CONNELLY:

22 Q. So how many would that be, then?

23 A. Three apartments, three condos, so total of six.

24 Q. Okay. With regard to the apartments, what are
25 they called?

1 A. Painted Trails, Sky View Ranch, and the third one
2 I can't recall off the top of my head.

3 Q. Okay. And do you know how long they have been in
4 existence within Power Ranch?

5 A. Since the beginning.

6 Q. Okay.

7 A. They were platted that way.

8 Q. And the beginning was approximately 20-plus years
9 ago; right?

10 A. The -- 1999, I believe, is when it started.

11 Q. Okay. All right. And what information --

12 Do you have information as you sit here
13 today with regard to how those apartments were approved
14 for inclusion into Power Ranch?

15 A. That was under --

16 MR. VON JOHNSON: Objection; form.

17 THE REPORTER: I'm sorry. I didn't get your
18 answer.

19 THE WITNESS: He objected first, so I stopped,
20 so...

21 MR. VON JOHNSON: Objection; form.

22 THE WITNESS: That was under declarant control,
23 so I have no knowledge of what their process was.

24 BY MR. CONNELLY:

25 Q. With regard to any of the apartment complexes?

1 A. They were all created prior to it being turned
2 over to the homeowners association.

3 Q. Okay. Do you know how many units are in any of
4 the apartment complexes?

5 A. No, I do not.

6 Q. Do you know if -- well, strike that.

7 Then there are three condominium
8 associations?

9 A. Correct.

10 Q. And what are they called?

11 A. I don't know a formal name. One is in The
12 Knolls, and then I would refer to Woodcrest East and
13 Woodcrest West.

14 Q. As condominium complexes within the Power Ranch;
15 true?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: Are you saying: are those the
18 three?

19 BY MR. CONNELLY:

20 Q. Yes.

21 A. Yes.

22 Q. The three condominium units within Power Ranch is
23 The Knolls and then Woodcrest East and West?

24 A. Correct.

25 Q. Okay. As you sit here today, do you know whether

1 owners of condominiums in The Knolls are able to rent out
2 their units to lessees?

3 MR. VON JOHNSON: Objection; form.

4 THE WITNESS: Yes, individual homeowners are
5 allowed under our documents to lease.

6 BY MR. CONNELLY:

7 Q. When you say "our documents," what are you
8 referring to?

9 A. Our CC&Rs.

10 Q. The CC&Rs permit condominium units to be leased;
11 that's correct?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: Yes.

14 BY MR. CONNELLY:

15 Q. With regard to all of the sub-associations within
16 Power Ranch?

17 A. So, yes, our individual units that are owned are
18 allowed to be leased. Our apartments have in our CC&Rs a
19 leasing definition.

20 Q. Okay. Ma'am, take us through the first category
21 in the 30(b)(6) Notice of Deposition we've issued to you
22 regarding the deliberations and decisions concerning the
23 refusal to grant the approval and recording of the
24 Woodcrest Declaration.

25 A. The board actually never approved or denied that.

1 It wasn't formally presented to the board.

2 Q. Okay. How do you mean?

3 A. I mean, there were discussions that one was going
4 to be presented. There were discussions with our
5 management team and the developer that there was a concern
6 that they were building apartments because of the previous
7 things that had gone on to make sure that that was listed
8 in their documents. That was never presented to the
9 board. A week later it was just presented to the Town.

10 Q. Okay. Your suggestion is there was never a
11 declaration that was submitted to Power Ranch from
12 Woodcrest?

13 A. To the board. It was never up for board approval
14 or denial as an agenda item.

15 Q. Okay. But you're aware of declarations that have
16 been submitted to Power Ranch in the past; right?

17 A. Yes. There was ongoing -- it sounds -- ongoing
18 discussions, I think, and drafts, perhaps, that went by
19 our management team.

20 Q. Okay. And you've seen the current Woodcrest East
21 draft or declaration, which has been submitted to the
22 city; correct?

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: I don't know if I've actually read
25 what was submitted to the city. I don't recall seeing

1 that.

2 BY MR. CONNELLY:

3 Q. Are you aware that there was a Woodcrest East
4 Declaration dating back 20 years, approximately, to 2005?

5 A. If you're talking about the HDR 1 and HDR 2 --

6 Q. Right.

7 A. Is that what you are referring to?

8 Q. Yeah. Yeah, it is.

9 A. Okay. I have read the HDR 1 and HDR 2. That
10 was, again, under declarant control. When all of the
11 condos were set up, that was prior to the Power Ranch
12 board doing anything with them.

13 Q. Okay. Are you aware that -- we've seen evidence
14 that indicates that the Woodcrest East Declaration was
15 approved but for one section relating to the right to
16 lease apartments?

17 MR. VON JOHNSON: Objection; form.

18 BY MR. CONNELLY:

19 Q. Or the right to lease condominiums, excuse me.

20 A. Do you have a time frame of what you're talking
21 about? Because I wasn't on the board during certain
22 times, so maybe you're referencing a time frame I wasn't
23 on the board.

24 Q. Okay. There's what we call a 2022 Declaration.
25 Are you familiar with that?

1 A. So, what time frame? I came on the board in
2 early spring of 2022.

3 Q. Right. Right.

4 So are you familiar with the 2022
5 Declaration?

6 A. So, again, if you had something for me to look
7 at, I would maybe know what you're talking about --

8 Q. Okay.

9 A. -- but.

10 (Exhibit 1 marked for identification.)

11 BY MR. CONNELLY:

12 Q. I'm showing you what's been marked as Exhibit 1
13 to your deposition.

14 Have you seen this document before?

15 A. I don't know if I've seen this in its entirety
16 before, no.

17 Q. Please feel free to look through it, and let me
18 know when you are done.

19 A. Is there any specific thing -- this is 50 pages.
20 Is there a specific item you need me to look at?

21 Q. No, just to -- you said you didn't think that you
22 had seen it before, so I'd like you to review it and see
23 if your review corroborates that point.

24 A. Yeah, similar to our CC&R document, but I don't
25 believe I've seen this entire document, no.

1 Q. Okay. Do you know what portions of it you have
2 seen?

3 A. Well, I'm on page 17, I don't know if I've
4 seen --

5 Q. Any of it?

6 A. Huh-uh.

7 Q. True statement? You don't know if you've seen
8 anything of this document?

9 A. That is a true statement.

10 Q. Okay. All right. So our contention is -- and
11 you may not have been on the board for this -- but that
12 this Woodcrest Declaration was submitted, and all of it
13 was approved with the exception of one section relating to
14 the potential to lease units. Are you aware of that?

15 MR. VON JOHNSON: Objection; form.

16 THE WITNESS: When I was on the board we never
17 approved this.

18 BY MR. CONNELLY:

19 Q. Okay.

20 A. To my knowledge.

21 Q. All right. Was it submitted for approval?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: It may have been submitted to
24 management, but I don't believe it was submitted in this
25 form to the board to be voted on while I was on the board.

1 BY MR. CONNELLY:

2 Q. When you say "submitted to management," what do
3 you mean?

4 A. We have a management company.

5 Q. Okay. And so this may have been submitted to a
6 management company, but it did not reach the board of
7 directors' level for approval or disapproval; is that your
8 testimony?

9 MR. VON JOHNSON: Objection; form.

10 THE WITNESS: To my knowledge -- sorry, to my
11 knowledge, it -- this entire document did not come before
12 me to be voted on in this form.

13 BY MR. CONNELLY:

14 Q. Okay. And you don't have any knowledge as you
15 sit here today on why that may or may not have been?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: Well, we only vote on things that
18 come before us, so.

19 BY MR. CONNELLY:

20 Q. Right.

21 My question is, do you know why it may not
22 have come before you?

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: I don't know what other people
25 think or when things do or don't come before the board.

1 So if they thought that things still needed to get worked
2 out before it was presented to the board, you'd have
3 to -- I don't know somebody else's knowledge.

4 BY MR. CONNELLY:

5 Q. Okay. You know that we're involved in this
6 litigation; right?

7 A. Yes, I do.

8 Q. And part of the litigation involves the approval
9 of this Declaration; right?

10 A. Uh-huh.

11 Q. Right? Yes?

12 A. Correct.

13 MR. VON JOHNSON: Objection; form.

14 BY MR. CONNELLY:

15 Q. As a component of that, you've never sat down
16 with other members of the board to confirm or deny the
17 allegations in the complaint and the counterclaim with
18 regard to whether this was approved or not?

19 MR. VON JOHNSON: Objection; form.

20 THE WITNESS: We've had board discussions that we
21 did not understand why the argument from your side was
22 that we were not being reasonable in withholding, when it
23 was never before the board to be voted on to begin with.

24 BY MR. CONNELLY:

25 Q. And in making that assessment, you never inquired

1 as to why it was never before the board?

2 MR. VON JOHNSON: Objection; form.

3 THE WITNESS: I think the discussion was they
4 were requesting change of use, and we wanted assurances
5 there wasn't going to be change of use, and, therefore, it
6 wasn't ready to be presented to the board. Change of use
7 had already previously been denied by a previous board.

8 BY MR. CONNELLY:

9 Q. Do you know what the change of use was?

10 A. To have it be apartments, not a condo.

11 Q. Okay. Can you expound on that a little more?

12 Because this is a declaration with regard to a condo
13 community, and Woodcrest East -- and Woodcrest Village
14 East does not intend to be an apartment community. You
15 are aware of that?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: I'm not aware of that. That is not
18 my understanding of what we have dealt with in the past,
19 that they had requested previously to turn this into
20 apartments.

21 BY MR. CONNELLY:

22 Q. Well --

23 A. Which needs board approval, and we did not
24 approve that.

25 Q. Okay. Are you suggesting that's the change that

1 the board may have been looking for with regard to the
2 Declaration?

3 MR. VON JOHNSON: Objection; form.

4 THE WITNESS: It didn't come before the board, so
5 we didn't approve or deny it or a portion of it because
6 the whole entire thing did not come up for us to approve
7 or deny.

8 BY MR. CONNELLY:

9 Q. As you sit here today, do you know whether you
10 could approve or deny this document that is sitting in
11 front of you now?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: I have not read it, so I would not
14 approve anything I had not head.

15 BY MR. CONNELLY:

16 Q. And so I take it you can't provide any testimony
17 regarding the other information sought in category 1, such
18 as who deliberated on decision-making, et cetera?

19 A. Decision-making in regards to what?

20 Q. Decision-making in regard to whether to approve
21 or deny certain portions of the document that is in front
22 of you now.

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: Can you rephrase the question? I'm
25 not following what you're trying to ask.

1 BY MR. CONNELLY:

2 Q. Okay. All right.

3 So you don't know -- you aren't aware of any
4 deliberations in connection with approving or denying the
5 Woodcrest East Declaration?

6 A. In this form, we did not deliberate, no.

7 Q. Is there an earlier form in which you
8 deliberated?

9 A. If this document was presented at a different
10 time and place to another board, I'm not sure.

11 Q. Okay. You don't know; true statement?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: Yes; true statement.

14 BY MR. CONNELLY:

15 Q. And so any --

16 I'll withdraw that.

17 (Exhibit 2 marked for identification.)

18 BY MR. CONNELLY:

19 Q. I'm showing you what's been marked as Exhibit 2
20 to your deposition, ma'am.

21 Can you describe what that is?

22 A. This is the Power Ranch -- what I refer to as
23 CC&Rs.

24 Q. Sort of the Master Declaration for the Power
25 Ranch Community?

1 A. Correct.

2 Q. Okay. And you'll agree with me that that
3 document does allow the leasing of condominium units
4 within the Power Ranch Community?

5 MR. VON JOHNSON: Objection; form.

6 THE WITNESS: Yes, in our documents the
7 definition of lease in 1.32 is in regards to apartments, I
8 believe.

9 BY MR. CONNELLY:

10 Q. My question was a little bit different: The
11 leasing of condominiums is not prohibited with regard to
12 this document; correct?

13 A. That is correct.

14 Q. In fact, owners can lease out condominiums to
15 tenants in the Power Ranch Community?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: Correct.

18 BY MR. CONNELLY:

19 Q. Okay. In fact, 1.32, which you mentioned doesn't
20 limit it to apartments or anything like that, it permits
21 for condominium leases; true statement?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: 1.32 does not mention condominiums.

24 BY MR. CONNELLY:

25 Q. But it's not limited to apartments, though; true

1 statement?

2 A. This is just a definition of what a lease is
3 within the document, so I'm not understanding your
4 question.

5 Q. Okay. Well, I'll just revert back.

6 The document doesn't prohibit the leasing of
7 condominium units within the Power Ranch Community; true
8 statement?

9 A. Correct.

10 MR. VON JOHNSON: Objection; form.

11 BY MR. CONNELLY:

12 Q. As you sit here today, ma'am, were you involved
13 in any component or aspect of the preparation of this
14 document?

15 A. No, this was under declarant control.

16 Q. Okay. Are you aware of any effort that has been
17 undertaken historically to amend the document wherein you
18 were involved in any such effort?

19 A. Not that I'm aware of.

20 Q. Okay. So, as you sit here today, you can't
21 provide any firsthand testimony regarding deliberations or
22 meetings or votes with regard to any certain policies or
23 rules specific to this document?

24 A. No, that was prior to board involvement.

25 Q. Okay. Can you speak to me as a member of the

1 Power Ranch board with regard to the Master Association's
2 deliberations, decisions, and processes regarding the
3 granting or denial of leasing rights within Power Ranch?

4 MR. VON JOHNSON: Objection; form.

5 THE WITNESS: No, that was under declarant
6 control. This is prior to board involvement.

7 BY MR. CONNELLY:

8 Q. And you're not aware of any efforts, since you've
9 been on the board of directors, to amend any rules or
10 regulations in the Master Declaration regarding the issue
11 of leasing condominiums?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: No.

14 BY MR. CONNELLY:

15 Q. Can you speak to me with regard to your tenure on
16 the board of directors, ma'am, about the Master
17 Association's deliberations and decisions concerning
18 approval of governing documents for apartments within the
19 Power Ranch Community?

20 MR. VON JOHNSON: Objection; form.

21 THE WITNESS: That has never come before the
22 board. That was all done prior to the board being
23 involved.

24 BY MR. CONNELLY:

25 Q. You mean declarant control?

1 A. Declarant control.

2 Q. Okay. Can you take me through step by step the
3 approval of condominium units within Power Ranch, how the
4 process goes from the prospective of Power Ranch?

5 MR. VON JOHNSON: Objection; form.

6 THE WITNESS: That was prior to the board
7 that condominiums and apartments were established under
8 declarant control, so that those are not discussions that
9 have happened.

10 BY MR. CONNELLY:

11 Q. Can you speak to me about the processes regarding
12 granting or denial of leasing rights within the Power
13 Ranch Community?

14 A. Again, that was under declarant control. We have
15 not changed any leasing or tried to change the CC&Rs as to
16 any leasing requirements, other than there was a rental
17 policy. It wasn't part of the CC&Rs. We had a policy
18 regarding rentals and more in relation to nuisance laws
19 and fines regarding nuisance.

20 Q. Okay. Those policies haven't been applied to
21 Woodcrest, to your knowledge; correct?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: They apply to anyone within Power
24 Ranch.

25 //

1 BY MR. CONNELLY:

2 Q. They haven't been enforced with regard to
3 Woodcrest?

4 A. Well, nobody lives there --

5 Q. Right.

6 A. -- so we can't enforce the nuisance when nobody
7 lives there.

8 Q. Okay. With regard to how assessments are
9 calculated within the Power Ranch Community, basically the
10 number of lots divided by the number of memberships
11 attributable to the assessable property; is that correct?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: I know how it is -- I don't know if
14 the legal definition is, but it's each individual lot pays
15 its own assessment. Apartments pay 25 percent per its
16 number of units.

17 BY MR. CONNELLY:

18 Q. Okay. And each dwelling unit is a lot; correct?
19 Under the rules and definitions of the Master Declaration?

20 MR. VON JOHNSON: Objection; form.

21 THE WITNESS: There is a definition of dwelling
22 units, so I'm assuming that a dwelling -- each dwelling
23 unit pays its own assessment, yes.

24 BY MR. CONNELLY:

25 Q. And under 1.34 a lot is, generally speaking, an

1 area of real property within the property designated as a
2 lot, which may be used as a single-family, residential use
3 or cluster residential use; correct?

4 A. Correct.

5 Q. And any condo unit within the property may be a
6 lot when it's being used as residential use; correct?

7 MR. VON JOHNSON: Objection; form.

8 THE WITNESS: Per the definition of 1.34, yes.

9 BY MR. CONNELLY:

10 Q. Okay. And there's no designation of definitions
11 prohibiting rentals of condominium units; correct?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: Correct.

14 BY MR. CONNELLY:

15 Q. And you'd agree with me that Woodcrest fits the
16 definitions in Section 1.34 as it consists of 120 condo
17 units within the Power Ranch Community limited to
18 residential use; correct?

19 MR. VON JOHNSON: Objection; form.

20 THE WITNESS: Say that one more time?

21 BY MR. CONNELLY:

22 Q. Sure.

23 You'll agree with me that Woodcrest fits the
24 definition in section 1.34 as it consists of 120 condo
25 units within the Power Ranch Community limited to

1 residential use?

2 MR. VON JOHNSON: Objection; form.

3 THE WITNESS: Yes, if it acts as a condominium.

4 BY MR. CONNELLY:

5 Q. Okay. How could it not act as a condominium?

6 A. Well --

7 MR. VON JOHNSON: Objection; form.

8 THE WITNESS: -- to me, the condo definition is,
9 it's one owner who controls all of the units within the
10 property. A condo is one or more individuals who own
11 individual lots.

12 BY MR. CONNELLY:

13 Q. Okay. Take me through that with a little bit
14 more detail. I'm not sure I follow you.

15 MR. VON JOHNSON: Objection.

16 THE WITNESS: So, in an apartment complex, for
17 example, the people who reside in the apartment cannot run
18 for the board, be on a committee. They are -- the
19 apartments control the same, they have 300 units, they
20 control 300 votes.

21 In a condominium association, individual
22 owners own. They have one vote. They can be a member of
23 the board. They can be a member of a committee.

24 BY MR. CONNELLY:

25 Q. You'll agree with me that in Woodcrest East,

1 there are owners of -- there could be owners of units who
2 can be on a board; correct?

3 MR. VON JOHNSON: Objection; form.

4 THE WITNESS: It's like a hypothetical because
5 there's no owners.

6 Say that one more time.

7 BY MR. CONNELLY:

8 Q. All right.

9 There's 120 units --

10 A. Yes.

11 Q. -- within Woodcrest East; right?

12 A. Correct.

13 Q. Each unit receives one right to vote; correct?

14 A. Correct.

15 Q. Okay. And the owner or owners of the unit have a
16 right to be on the board; correct?

17 A. Correct.

18 MR. VON JOHNSON: Objection; form.

19 BY MR. CONNELLY:

20 Q. Let's turn to page 7, 1.45. There are rental
21 apartments. Do you see that, a definition for that?

22 A. Yes.

23 Q. Okay. "Rental apartments..." in 1.45 "shall mean
24 four or more dwelling units within a building under single
25 ownership, each of which is designated (sic) and utilized

1 otherwise than as a hotel or on some other transient
2 basis, for rental or leased residential purposes to
3 non-owners on a non-cooperative basis."

4 Did I read that correctly?

5 A. Yes.

6 Q. Okay. Rental apartments is -- would be different
7 than apartment development under the definitions; correct?

8 MR. VON JOHNSON: Objection; form.

9 THE WITNESS: I'd have to see if there's a
10 definition for apartment development. That's in 1.3. So
11 there's a separate definition, yes.

12 BY MR. CONNELLY:

13 Q. Right.

14 And so you'll agree with me?

15 A. That there's a separate definition?

16 MR. VON JOHNSON: Objection; form.

17 BY MR. CONNELLY:

18 Q. Right.

19 And that the two are not necessarily one and
20 the same.

21 MR. VON JOHNSON: Objection; form.

22 THE WITNESS: Yes, there are two definitions. I
23 will agree with you that there are two definitions.

24 BY MR. CONNELLY:

25 Q. Okay. And apartment developments -- apartment

1 development use requires approval of Power Ranch; correct?

2 MR. VON JOHNSON: Objection; form.

3 THE WITNESS: I don't remember the language
4 specifically unless you can point me to it. I think it's
5 under HDR 1 and HDR 2.

6 BY MR. CONNELLY:

7 Q. All right.

8 A. Or it might be in the CC&Rs. I just don't know
9 where to look for it.

10 BY MR. CONNELLY:

11 Q. All right. You'll agree with me that Power Ranch
12 could have referenced apartment developments in Section
13 1.45, but did not; right?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: I'm sure they could have.

16 BY MR. CONNELLY:

17 Q. Right.

18 But they did not; right?

19 MR. VON JOHNSON: Objection; form.

20 THE WITNESS: So you are saying is the word
21 apartment development embedded in 1.45; is that your
22 question?

23 BY MR. CONNELLY:

24 Q. That's correct.

25 A. No, the word apartment development is not

1 included in the definition for rental apartments.

2 Q. An apartment development requires a site plan
3 that must be approved by the Town and the Design Review
4 Committee for Power Ranch. Would you agree with me there?

5 MR. VON JOHNSON: Objection; form.

6 THE WITNESS: Under the definition, yes, it does
7 state the site plan approved by the Town and Design Review
8 Committee.

9 BY MR. CONNELLY:

10 Q. And you'll agree with me that there's no site
11 plan or tract generated by Woodcrest East which indicates
12 that this is an apartment development?

13 MR. VON JOHNSON: Objection; form.

14 THE WITNESS: I don't know every document that's
15 been submitted in this case.

16 BY MR. CONNELLY:

17 Q. Sure.

18 A. I know there's thousands, so I don't think I can
19 testify one way or the other as to that.

20 Q. Okay. How about this: As you sit here today, you
21 are not aware of any?

22 A. That they have submitted anything saying that
23 they are going to designate something as an apartment?

24 Q. Apartment development.

25 MR. VON JOHNSON: Objection; form.

1 THE WITNESS: That is a term you use, so I don't
2 know the specifics of what would be considered apartment
3 development or apartment use or whatever, so I'm -- I do
4 not know if there is a document out there that exists that
5 says that word or a different word.

6 BY MR. CONNELLY:

7 Q. You are not aware of any as you sit here today
8 that you can point me to?

9 MR. VON JOHNSON: Objection; form.

10 THE WITNESS: I have seen documents that say they
11 want to use these for apartments, but I'm not sure if it
12 said apartment department or apartment -- whatever the
13 definition is that you are referring to.

14 BY MR. CONNELLY:

15 Q. Okay. And under Rule 1.45 that we just looked
16 at, there is nothing in the rule which prohibits the
17 rental of condominiums; correct?

18 MR. VON JOHNSON: Objection; form.

19 THE WITNESS: No, 1.45 does not reference the
20 word condominiums.

21 BY MR. CONNELLY:

22 Q. And as we've already discussed, there is nothing
23 in the entire Power Ranch Declaration which prohibits the
24 rental of condo units; correct?

25 MR. VON JOHNSON: Objection; form.

1 THE WITNESS: Correct.

2 BY MR. CONNELLY:

3 Q. The leasing of condominiums does not require the
4 approval of Power Ranch; correct?

5 MR. VON JOHNSON: Objection; form.

6 THE WITNESS: Correct.

7 MR. CONNELLY: Kyle, I want to know the basis for
8 -- you've been offering a number of objections.

9 Is there -- am I going outside the
10 boundaries of the 30(b)(6)? What's the basis for these
11 objections?

12 MR. VON JOHNSON: That one wasn't a scope
13 objection. It was mostly a leading-and-vague objection.

14 MR. CONNELLY: Oh, okay.

15 BY MR. CONNELLY:

16 Q. Turning your attention to page 4 of Exhibit 2,
17 ma'am.

18 Under Section 1.16, Condominium Development:
19 A "'Condominium Development' shall mean a condominium
20 established under the laws of the State of Arizona which
21 is limited by a Tract Declaration to residential use."

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. Okay. And Woodcrest East is limited by a tract
25 declaration to residential use; correct?

1 A. Correct.

2 Q. The tract declaration does not indicate an
3 apartment development; correct?

4 MR. VON JOHNSON: Objection; form.

5 THE WITNESS: The 2005 Tract Development
6 specifically says it is not an apartment, it is a
7 condominium.

8 BY MR. CONNELLY:

9 Q. Right.

10 1.17: A "'Condominium Unit' shall mean a
11 unit, together with any appurtenant interest in all common
12 elements, within a condominium which is created under
13 Arizona law."

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. That's, generally speaking, the definition for a
17 condominium unit within the Power Ranch Community; true
18 statement?

19 MR. VON JOHNSON: Objection; form.

20 THE WITNESS: There is a second sentence in there
21 that says, "Such term shall not include a Rental Apartment
22 in an Apartment Development."

23 BY MR. CONNELLY:

24 Q. And you are not contending that Woodcrest East is
25 an apartment development, are you?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: I think they have requested as such
3 to this community, and it has been denied.

4 BY MR. CONNELLY:

5 Q. Okay. So you are not contending that Woodcrest
6 East is an apartment development, are you?

7 MR. VON JOHNSON: Objection; form.

8 THE WITNESS: I think their intention is to
9 create apartments.

10 BY MR. CONNELLY:

11 Q. Okay.

12 A. Based on what they have shared with us.

13 Q. Third time.

14 You are not contending that Woodcrest East
15 is an apartment development, are you?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: On paper it is listed as a
18 condominium. I think they are trying to act like an
19 apartment.

20 BY MR. CONNELLY:

21 Q. You mentioned earlier that you can't tell what
22 people are trying to do --

23 A. Uh-huh.

24 Q. -- based on their thoughts or their intentions?

25 A. Uh-huh.

1 Q. The documents that you've seen --

2 A. Uh-huh.

3 Q. -- indicate that Woodcrest East is not acting as
4 an apartment development under the definitions of this
5 Master Declaration; true statement?

6 MR. VON JOHNSON: Objection; form.

7 THE WITNESS: Well, again, you are parsing
8 legal-technical words that I am unfamiliar with.

9 But from a board member's perspective, we,
10 as laymen, think a condominium unit is going to be units
11 that are going to be for sale for other individuals to
12 own.

13 A developer keeping units to lease is not
14 what I would call a condominium unit under our documents.

15 BY MR. CONNELLY:

16 Q. Under your documents, the Tract Declaration and
17 other documents have indicated that this is a condominium
18 unit; correct?

19 MR. VON JOHNSON: Objection; form.

20 THE WITNESS: Correct.

21 BY MR. CONNELLY:

22 Q. That's why you said that on paper they are a
23 condominium unit; correct?

24 A. Correct.

25 Q. Okay. And we've discussed the definition of an

1 apartment development during today's deposition now, have
2 we not?

3 A. Yes, we have.

4 MR. VON JOHNSON: Objection; form.

5 BY MR. CONNELLY:

6 Q. You would agree with me that at least on paper,
7 Woodcrest East satisfies the provisions of Section 1.16 as
8 a condominium development?

9 MR. VON JOHNSON: Objection; form.

10 BY MR. CONNELLY:

11 Q. True statement?

12 A. So long as the attorneys say so, yes.

13 Q. Okay. Turning your attention to 1.3, Woodcrest
14 East received approval by the Design Review Committee at
15 Power Ranch to be a condominium community; correct?

16 A. That was declarant control, so that was prior to
17 the board.

18 BY MR. CONNELLY:

19 Q. My statement is correct?

20 MR. VON JOHNSON: Objection; form.

21 THE WITNESS: So can you -- are you asking a
22 question? Or are you making a statement and you want me
23 to answer your statement? I just don't understand.

24 BY MR. CONNELLY:

25 Q. Either way.

1 I'll ask it again: Woodcrest received
2 approval by the Design Review Committee for Power Ranch to
3 be a condominium community; true statement?

4 MR. VON JOHNSON: Objection; form.

5 THE WITNESS: I would say it's not true because I
6 would think it's under declarant control to be a condo, so
7 that had nothing to do with the Design Review Committee.

8 BY MR. CONNELLY:

9 Q. You don't know of any interaction between
10 Woodcrest and the Design Review Committee in relation to
11 the approval of the Declaration?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: You're going to have to restate
14 that because I don't understand the question at all.

15 BY MR. CONNELLY:

16 Q. Okay. Are you aware of Woodcrest receiving
17 approval as a condominium community by the Design Review
18 Committee for Power Ranch?

19 MR. VON JOHNSON: Objection; form.

20 BY MR. CONNELLY:

21 Q. I'm just asking if you are aware of it.

22 A. Design Review doesn't approve whether it's a
23 condo or an apartment, so I'm having a hard time
24 understanding your question.

25 Q. Okay.

1 A. Design Review does things like design, color
2 scheme, elevation, not whether -- what the use of
3 something is for. The use was determined by declarant.

4 Q. All right. The fact that there are rental
5 apartments in an apartment development -- I'll withdraw
6 that.

7 There can be rental apartments within Power
8 Ranch that are not part of an apartment development; true
9 statement?

10 A. There can be rental apartments within Power
11 Ranch that are not --

12 Can you restate -- can you say that again?

13 Q. That are not part of an apartment development?

14 A. I would have to defer to my counsel to see if
15 that's a legal description.

16 Q. Okay.

17 A. I don't know.

18 Q. You don't know? All right.

19 And, again, there are condos which are being
20 rented out in Power Ranch as we sit here today?

21 A. Correct.

22 MR. VON JOHNSON: Objection; form.

23 BY MR. CONNELLY:

24 Q. As you sit here today, do you have any firsthand
25 information regarding the process or the persons

1 responsible for approval of a sub-association governing
2 the documents?

3 MR. VON JOHNSON: Objection; form.

4 THE WITNESS: No, that was declarant control. I
5 do not have any information.

6 BY MR. CONNELLY:

7 Q. Okay. But for the 2022 Declaration, which is
8 Exhibit 1, you are unfamiliar with that document; right?

9 MR. VON JOHNSON: Objection; form.

10 THE WITNESS: Which document are you referring
11 to?

12 BY MR. CONNELLY:

13 Q. Exhibit 1.

14 A. Correct.

15 Q. Okay. How long have the apartment communities
16 existed in Power Ranch? Generally speaking.

17 A. Prior to 2010, I would think that they were all
18 built out, but I'm unsure of the timeline.

19 Q. And the individual who approved those apartments
20 are -- was in the declarant-control period?

21 A. Correct.

22 Q. I believe you'd have the same answer with regard
23 to deliberations and decisions concerning approval of the
24 governing documents for the condominiums within Power
25 Ranch?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: Correct. Those would have been
3 under declarant control except for --

4 BY MR. CONNELLY:

5 Q. Exhibit 1?

6 A. Correct.

7 Q. Do you know who the individual would be who may
8 have communicated with city or county officials on behalf
9 of Power Ranch regarding condominiums within Power Ranch?

10 MR. VON JOHNSON: Objection; form.

11 THE WITNESS: Was that one of the ones that I
12 didn't know about, Kyle?

13 MR. CONNELLY: He can't answer.

14 THE WITNESS: Oh.

15 I don't know who would have talked to the
16 city or Town.

17 BY MR. CONNELLY:

18 Q. Okay.

19 A. Besides our counsel.

20 Q. And your suggestion is Exhibit 1 may have been
21 submitted to the property management for Power Ranch; you
22 don't know?

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: I would assume it was at least
25 submitted to counsel, and perhaps management, but I don't

1 know that for sure.

2 (The reporter clarified.)

3 BY MR. CONNELLY:

4 Q. Are you aware of any meeting minutes, which may
5 exist, that relate to a 2022 Declaration from Woodcrest?

6 MR. VON JOHNSON: Objection; form.

7 THE WITNESS: I'm sure there are minutes because
8 I remember discussing that they submitted these directly
9 to the Town instead of to us, meaning the board.

10 BY MR. CONNELLY:

11 Q. Okay. So you are aware that they were submitted
12 to the Town, but you contend that they were not submitted
13 to the board?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: Not for approval or denial;
16 correct.

17 BY MR. CONNELLY:

18 Q. Okay. With regard to category 11 of the 30(b)(6)
19 Notice of Deposition, "Complaints received or enforcement
20 actions taken related to the leasing of units within the
21 master HOA and any of the sub-associations," we have
22 touched on this a bit.

23 You've indicated there is a policy out there
24 with regard to nuisance issues; correct?

25 A. Correct.

1 Q. Can you take me through the process of how -- how
2 complaints are received and enforced in the Power Ranch
3 Community?

4 A. Yes, typically a homeowner will call the office
5 to complain about a nuisance.

6 Q. Like a loud neighbor or something?

7 A. Parking violations or noise late at night or
8 lighting on all night or things like that.

9 Q. And then what happens?

10 A. From a management perspective, I don't actually
11 know the entire process. But typically there is a -- in
12 our nuisance policy, there is a warning that can go out,
13 like a first-letter warning that goes out to whoever is
14 alleged to have the nuisance. If it's not addressed, or
15 if there is an additional violation, then there can be now
16 a first fine. If there's additional violations, there can
17 be a second fine, and they escalate in amount.

18 Q. Have you ever engaged in any enforcement actions
19 with regard to the leasing of units within Power Ranch?

20 MR. VON JOHNSON: Objection; form.

21 THE WITNESS: In regards to leasing, I'm not
22 aware of anything. In regards to nuisance, yes.

23 BY MR. CONNELLY:

24 Q. Other than this litigation, I believe this is an
25 effort to limit leasing; correct?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: That's how you are classifying it.

3 It's not how I would.

4 BY MR. CONNELLY:

5 Q. How would you classify it?

6 MR. VON JOHNSON: Objection; form.

7 THE WITNESS: I believe that it is a request for
8 a change of use so that it is no longer a condo scheme,
9 but an apartment scheme where you have one owner who is
10 leasing units.

11 BY MR. CONNELLY:

12 Q. That forms the basis of your lawsuit?

13 MR. VON JOHNSON: Objection; form.

14 THE WITNESS: You'd have to go to counsel, as far
15 as all of this stuff that is within litigation. I'm -- I
16 can't speak as to that as an attorney in this matter.

17 BY MR. CONNELLY:

18 Q. So the only objection of the board of directors
19 that generated this litigation is that Woodcrest East
20 didn't submit a request for change of use from condominium
21 to apartment?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: There's multiple parts to this
24 litigation. Part of it is that the Declaration was
25 submitted to the Town without our approval, prior

1 approval, as well as an injunction against leasing units.

2 BY MR. CONNELLY:

3 Q. Right.

4 And so we've come full circle. This is an
5 enforcement action to prohibit leasing of units within the
6 Power Ranch Community; correct?

7 MR. VON JOHNSON: Objection; form.

8 THE WITNESS: If that's how you're going to
9 phrase it, yes, it would be considered, I guess, a
10 prohibition to lease.

11 BY MR. CONNELLY:

12 Q. And why is Woodcrest East being singled out for a
13 prohibition on leasing units?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: I don't think they are being
16 singled out. Those are your words, not mine.

17 As a board member, there is a difference to
18 the board, layman board members, who see one owner lease
19 120 units versus one owner who, our understanding, was
20 going to be selling 120 units. Therefore class A and
21 class B membership could at some point be to the
22 homeowners, not one owner having 120 votes, but having
23 individual owners who would have individual votes.

24 BY MR. CONNELLY:

25 Q. Okay.

1 A. And could act as board members and committee
2 members and not a transient community like an apartment
3 community.

4 BY MR. CONNELLY:

5 Q. So it sounds like there is an objection to the
6 fact that one owner would hold a number of votes?

7 MR. VON JOHNSON: Objection; form.

8 THE WITNESS: That would be part of our board
9 discussion and deliberation, that as we have seen in
10 recent elections, one owner of multiple units dilutes the
11 vote of individual homeowners.

12 BY MR. CONNELLY:

13 Q. So that's a concern that you have with regard to
14 Woodcrest East?

15 A. That is one of them, yes.

16 Q. What are the other ones?

17 A. Transient nature of multiple units in one
18 neighborhood, 100 percent of units in a neighborhood who
19 are now leased units versus homeownership; lack of pride
20 in homeownership; lack of ability of residents to serve on
21 committees and boards. Those were all discussed at the
22 board table.

23 Q. But there are three apartment complexes within
24 Woodcrest -- within the Power Ranch Community; correct?

25 A. That is correct.

1 Q. Okay. And so they are not being treated that
2 way. There's no concern about lack of pride of ownership
3 with regard to those communities; right?

4 MR. VON JOHNSON: Objection; form.

5 THE WITNESS: I would disagree.

6 I live next to one of the apartments, and
7 there is, I would say, lack of pride in ownership in some
8 of those apartments; yes, I would.

9 BY MR. CONNELLY:

10 Q. Okay. So that's a concern that you have, which
11 compelled you to raise concerns with regard to Woodcrest
12 East having another apartment community in the Community?

13 MR. VON JOHNSON: Objection; form.

14 THE WITNESS: The board discussion was we liked
15 the balance of already having three condos, three
16 apartments, not to increase the apartment usage to
17 maintain that balance, especially because Woodcrest East
18 and West were -- out of the six sub-associations, they
19 were the only ones that were surrounded by other
20 single-use residents. They don't abut to any commercial
21 properties.

22 BY MR. CONNELLY:

23 Q. So we have talked about diluting the number of
24 votes with regard to the Power Ranch Community.

25 "Transient nature," what do you mean by

1 that?

2 A. When you have people who are leasing, they
3 typically aren't long-term leases. They are six months, a
4 year, two years. There's more -- transient means constant
5 flow of in and out, versus having a homeowner who lives
6 there for 10 years.

7 Q. Okay. And then pride of ownership, you mentioned
8 that; correct?

9 A. Uh-huh; correct.

10 Q. And then what are the other concerns that the
11 board has?

12 A. Being able to have members who would be vested in
13 their community that they owned in to act as committee
14 people, to run for the board, to be involved.

15 Typically when you have transient
16 communities, those don't happen. They couldn't, under our
17 documents, run for the board, for example. They wouldn't
18 be a homeowner.

19 Q. Okay. Do you see how that may be viewed as
20 treating Woodcrest Village East different from other
21 communities within the Power Ranch Community?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: No, I do not.

24 BY MR. CONNELLY:

25 Q. Why not?

1 A. Because I don't believe the intent under the
2 Declaration -- how I and the board interpreted the
3 documents, was that this was supposed to be controlled
4 after build-out by one person.

5 BY MR. CONNELLY:

6 Q. I'm not sure what you mean by that.

7 A. So when they build the 120 units --

8 Q. Right.

9 A. -- that it would continue to be owned by one
10 person and leased out.

11 It was our understanding it would be
12 developed to be sold as individual units, not leased as
13 units.

14 Q. Okay.

15 A. It literally makes no sense, but I'll let you ask
16 the questions.

17 Q. What makes no sense?

18 A. Our documents refer to things like when something
19 is sold, we get a capital improvement fee. There's
20 financial reasons why we would want it to be individually
21 owned versus owned by one person and then leased. We
22 would never be entitled, then, to our capital improvement
23 fee on turnover.

24 Q. Well, you would agree with me that on page 4 of
25 the Master Declaration, Exhibit 2, 1.16, "'Condominium

1 development' shall mean a condominium established under
2 the laws of the State of Arizona which is limited by a
3 Tract Declaration to residential use," that is the
4 definition of a condominium development at Power Ranch;
5 correct?

6 A. Correct.

7 Q. And the Tract Declaration with regard to
8 Woodcrest Village East is for residential use; correct?

9 MR. VON JOHNSON: Objection; form.

10 THE WITNESS: Without seeing that document I
11 can't read that, but, yes, it --

12 BY MR. CONNELLY:

13 Q. Okay. And the Tract Declaration indicates that
14 it is going to be a condominium development; true
15 statement?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: The HDR 1 and HDR 2, yes.

18 BY MR. CONNELLY:

19 Q. And Exhibit 1 --

20 A. Per the title, condominium.

21 Q. Right, right, right.

22 You don't -- you can't point me to anything
23 within the laws of the State of Arizona which might
24 suggest that isn't a condominium development under the
25 applicable laws, can you?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: No.

3 BY MR. CONNELLY:

4 Q. Okay. "1.17: 'Condominium Unit' shall mean a
5 unit, together with any appurtenant interest in all common
6 elements...."

7 I've already reviewed that. The next
8 sentence is: "Such term shall not include a rental
9 apartment in an apartment development."

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. So this is specifically delineating that
13 there are rental apartments that are in an apartment
14 development; right?

15 A. Yes. They are two separate things.

16 Q. Two separate things.

17 So there can be rental apartments which are
18 not part of an apartment development in Power Ranch;
19 correct?

20 MR. VON JOHNSON: Objection; form.

21 THE WITNESS: That, I don't understand, so I
22 don't know. I would have to defer to counsel on how that
23 legal term works.

24 BY MR. CONNELLY:

25 Q. You would have to defer to counsel with regard to

1 category 12 of the 30(b)(6) Notice of Deposition, what
2 efforts Power Ranch undertook regarding the "understanding
3 and interpretation of relevant laws and regulations"
4 concerning leasing?

5 A. What relevant laws and -- I mean, you're --

6 Q. Well, there's the Condominium Act in the Arizona
7 statutes, and there's a reference to Arizona law in 1.16
8 which I just --

9 A. So can you rephrase your question to be specific?
10 I don't understand. You said all the laws. I don't
11 understand what you're referencing.

12 So can you restate your question?

13 Q. Sure.

14 Section 12 of the Rule 30(b)(6) deposition
15 notice includes a category of information: "The Master
16 Homeowners Association's understanding and interpretation
17 of relevant laws and regulations, including any legal
18 advice they have received relating to leasing policies."

19 A. Well, legal advice is privileged, so I can't
20 discuss anything regarding our communications with
21 counsel.

22 BY MR. CONNELLY:

23 Q. I understand that.

24 What about the Master Homeowners
25 Association's understanding and interpretation of relevant

1 laws and regulations?

2 A. What specific law are you asking me to say that
3 we deliberated on to determine what our understanding of
4 it is?

5 Q. Well, are you familiar with, for example, A.R.S.
6 33-1803, definition of -- the Arizona Condominium Act
7 defines a condominium as a parcel of "real estate,
8 portions of which are designated for separate ownership
9 and the remainder of which is designated for common
10 ownership solely by the owners of the separate portions,"
11 for example?

12 MR. VON JOHNSON: Objection; form.

13 THE WITNESS: I don't remember having specific
14 board deliberations about that specific statute, no.

15 BY MR. CONNELLY:

16 Q. Okay. Do you, as you sit here today, recall
17 having a board meeting with regard to any specific
18 statutes?

19 A. I'm sure we have had board meetings where we had
20 referenced statutes but did not go through the legal
21 analysis ourselves of what it would mean or not mean as
22 far as we defer to counsel on legal argument.

23 Q. Are you familiar with the Arizona Condominium Act
24 as you sit here today?

25 MR. VON JOHNSON: Objection; form.

1 THE WITNESS: I know that it exists; yes, I do.

2 BY MR. CONNELLY:

3 Q. Are you familiar with the provisions of it?

4 A. I have not read the entire act; no, I have not.

5 Q. As you sit here today, you have no basis by which

6 to indicate that Woodcrest Village East is out of

7 compliance with the Arizona Condominium Act; correct?

8 MR. VON JOHNSON: Objection; form.

9 THE WITNESS: I would not know one way or the
10 other if they are or are not.

11 BY MR. CONNELLY:

12 Q. You mentioned before the prospect of potentially
13 losing funds if Woodcrest Village East is an apartment as
14 opposed to a condominium. Do you recall that?

15 A. Yes.

16 Q. Okay. Could you speak to that a little bit more?
17 What funds are you talking about?

18 A. We have a capital improvement fee that is
19 required when any individual unit is sold within Power
20 Ranch. It's currently \$2500 per sale.

21 Q. Okay. Any other financial incentives that Power
22 Ranch might have with regard to Woodcrest Village East?

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: There was -- in 2019, when I was on
25 the board, they came to us and requested a waiver when

1 they were purchasing to reduce the fee because they were
2 buying in bulk versus individual units and requested lower
3 assessments. So we did an agreement that said they needed
4 to pay 50 percent of the capital improvement fee at that
5 time, and then the remainder of the 50 percent of the
6 capital improvement fee at the time of sale of each
7 individual unit.

8 BY MR. CONNELLY:

9 Q. Okay. Other than capital improvement fees, any
10 other financial issues?

11 MR. VON JOHNSON: Objection; form.

12 THE WITNESS: In regards to what?

13 BY MR. CONNELLY:

14 Q. In regards to whether or not to permit the
15 leasing on Woodcrest Village East.

16 A. So, if there are -- if we lose out on the
17 opportunity to get the capital improvement fees, that's
18 obviously lost revenue. If it changes use of apartments,
19 that's a different scheme as far as they get 25 percent of
20 our assessed value versus 100 percent per unit.

21 Q. You indicated before that there was concern over
22 pride of use -- or pride of ownership, et cetera, with
23 regard to apartment communities.

24 Have you engaged in any formal studies with
25 regard to rental issues to bolster your -- you know, your

1 opinions with regard to that?

2 MR. VON JOHNSON: Objection; form.

3 THE WITNESS: Formal studies, no. We believed it
4 was reasonable.

5 BY MR. CONNELLY:

6 Q. Okay. When you say "we," who is we?

7 A. The board.

8 Q. Who were the members of the board at that time?

9 A. So, Gary Whelchel.

10 Q. How do you spell the last name?

11 A. W-e --

12 MR. DOMINY: W-h-e-

13 THE WITNESS: W-h-e? I don't know. W-h- --

14 MR. DOMINY: -- c-h-e-l.

15 MR. VON JOHNSON: You can't talk in the
16 deposition.

17 THE WITNESS: Oh, sorry. I don't know how
18 to pronounce -- he was trying to do it. I don't know how
19 to do it.

20 BY MR. CONNELLY:

21 Q. Okay. And who else?

22 A. Heather Parker was on the board. Myself.
23 Probably Steve Whitworth. That's four.

24 I'm trying to remember when people came on
25 and off the boards because I've served on multiple boards,

1 so.... This was 2022.

2 Joshua Pleasant; that's five.

3 2022, I don't remember who else -- what
4 years people came on and off in 2022 and '23.

5 Q. What were the circumstances with regard to these
6 discussions? Was it a board meeting?

7 A. Board meeting.

8 Q. Okay. How many board meetings did you have with
9 regard to these decisions you were talking about?

10 MR. VON JOHNSON: Objection; form.

11 THE WITNESS: I wouldn't recall.

12 BY MR. CONNELLY:

13 Q. What were the circumstances of the board meeting?
14 How did you know to make these discussions, if you say
15 that the Exhibit 1 hadn't been submitted to you or
16 presented to you?

17 MR. VON JOHNSON: Objection; form.

18 THE WITNESS: The only time we discuss anything
19 regarding potential litigated matters is in executive
20 session, so it would be whatever executive session minutes
21 mentioned Woodcrest.

22 BY MR. CONNELLY:

23 Q. Okay. My question is a little different: How
24 would you know that there was a potential dispute with
25 regard to leasing versus owning of units within Woodcrest?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: My guess is there was discussion
3 amongst board, counsel, and management, with emails or
4 conversations that had gone on between parties.

5 In 2020 or 2021, I did see notes that the
6 board did have something before them, and they denied
7 change of use. That was also in an executive session.

8 BY MR. CONNELLY:

9 Q. And you were not on the board then?

10 A. I was not on the board at that time. Like, those
11 were discussions that were brought up to get me up to
12 speed at board meetings as to what had previously gone on.

13 Q. So if I -- I think I hear you correctly, in 2021,
14 you're saying that Exhibit 1 may have been presented to
15 the board, and it was denied for change of use?

16 MR. VON JOHNSON: Objection; form.

17 THE WITNESS: Maybe; maybe not. I was not on the
18 board in 2021.

19 BY MR. CONNELLY:

20 Q. But from the documentation you just described to
21 me, that appears to be the case?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: Not necessarily. It might have
24 been something completely different. I don't know if it
25 was this document or if it was something else that was

1 presented previously.

2 BY MR. CONNELLY:

3 Q. By "this document," you're referencing Exhibit 1?

4 A. Correct.

5 Q. Okay. And there was an election, I think you
6 mentioned, before last week, regarding members of the
7 board?

8 A. We held an election, I think, February 22nd.

9 Q. Okay. And Woodcrest East's 120 votes were
10 invalidated; is that correct?

11 MR. VON JOHNSON: Objection; form.

12 THE WITNESS: I believe they were.

13 BY MR. CONNELLY:

14 Q. Okay. Do you know why that is?

15 MR. VON JOHNSON: Objection; form.

16 THE WITNESS: Because they were not current on
17 their assessments.

18 BY MR. CONNELLY:

19 Q. Are you aware of what was told to them in terms
20 of the assessments they must pay?

21 MR. VON JOHNSON: Objection; form.

22 THE WITNESS: No, I'm not.

23 BY MR. CONNELLY:

24 Q. Are you aware of the fact that they made such
25 payments?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: I have no knowledge that they had
3 made payments.

4 BY MR. CONNELLY:

5 Q. None at all?

6 MR. VON JOHNSON: Objection; form.

7 THE WITNESS: I don't know whether they have or
8 have not.

9 BY MR. CONNELLY:

10 Q. Okay. And so notwithstanding the fact that you
11 don't know whether or not they made payments to satisfy
12 any assessment arrearage, Power Ranch just went ahead and
13 invalidated the 120 votes anyway?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: That is --

16 BY MR. CONNELLY:

17 Q. What's your understanding?

18 A. My understanding is --

19 MR. VON JOHNSON: Objection; form.

20 (The reporter interrupted to clarify.)

21 (The record was read as follows:

22 "Q. Okay. And so notwithstanding the fact
23 that you don't know whether or not they made
24 payments to satisfy any assessment arrearage,
25 Power Ranch just went ahead and invalidated the

1 120 votes anyway?")

2 THE WITNESS: So, no, the management team, to my
3 knowledge, goes through a process once anyone votes to
4 ensure that they are current on assessments, not just
5 Woodcrest, but any vote that came in.

6 There were multiple votes that did not
7 count, both from Woodcrest and other people who voted that
8 were not current on their assessments.

9 BY MR. CONNELLY:

10 Q. Okay. And Woodcrest did make payment, but you're
11 not aware of that?

12 MR. VON JOHNSON: Objection; form.

13 BY MR. CONNELLY:

14 Q. Right?

15 A. You are making a statement.

16 I have no knowledge of whether they did or
17 did not.

18 Q. Okay. So we'll circle back, then, again.

19 Notwithstanding the fact that you don't know
20 whether or not they are current, you went ahead and
21 invalidated those votes?

22 MR. VON JOHNSON: Objection; form.

23 THE WITNESS: The management team went through
24 the process to see who was or was not current, and as of
25 that day they did not believe Woodcrest was current as to

1 their assessments. If that is the case, any vote that
2 came in that was not current as to the assessments, they
3 were invalidated.

4 BY MR. CONNELLY:

5 Q. And as you sit here today, you don't know why
6 they concluded that Woodcrest East was deficient with
7 regard to assessments?

8 MR. VON JOHNSON: Objection; form.

9 THE WITNESS: I do not see the books, so I do not
10 see checks that come in or out.

11 BY MR. CONNELLY:

12 Q. So you don't know?

13 MR. VON JOHNSON: Objection; form.

14 BY MR. CONNELLY:

15 Q. True statement?

16 A. True statement.

17 Q. You were on the board in 2022?

18 A. In -- I got sat in March of 2022.

19 Q. Okay. And you mentioned something, a discussion
20 with regard to a change of use from 2021?

21 MR. VON JOHNSON: Objection; form.

22 BY MR. CONNELLY:

23 Q. Possibly 2022; right?

24 A. When I was not on the board, so between 2020 and
25 2021.

1 Q. Okay. But this was submitted -- this Exhibit 1
2 was submitted in 2022, but you don't have any knowledge of
3 any decisions or consideration of the document; true
4 statement?

5 MR. VON JOHNSON: Objection; form.

6 THE WITNESS: It did not come before -- it was
7 not on our board voting agenda, no.

8 BY MR. CONNELLY:

9 Q. Have you ever seen any documentation which
10 suggests that the board requested that Section 4.18 of the
11 2022 Declaration be modified?

12 MR. VON JOHNSON: Objection; form.

13 BY MR. CONNELLY:

14 Q. That is the leasing provision.

15 A. Can you restate your question, please?

16 MR. CONNELLY: Sure.

17 You can read it back.

18 (The record was read as follows:

19 "Q. Have you ever seen any documentation
20 which suggests that the board requested that
21 Section 4.18 of the 2022 Declaration be
22 modified?"

23 THE REPORTER: There was an objection and
24 continuation of the question:

25 "Q. That is the leasing provision.")

1 THE WITNESS: I don't think we had a formal vote
2 on that, no.

3 BY MR. CONNELLY:

4 Q. Do you remember the issue coming before the
5 board?

6 MR. VON JOHNSON: Objection; form.

7 THE WITNESS: It may have been discussed that we
8 were concerned that they were trying to use these as
9 apartments again. But I'm not sure of the timeline, if
10 this was at that time or not.

11 BY MR. CONNELLY:

12 Q. But you were on the board at the time when
13 Exhibit 1 was presented to the board for consideration?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: Again, this never came to the board
16 for a vote so I never saw this for -- to approve or deny
17 it.

18 BY MR. CONNELLY:

19 Q. I'm struggling to understand the answer to your
20 immediate last question, which was there may have been
21 discussion with regard to changing certain language within
22 this document.

23 A. Yes, as I have testified earlier, there were
24 communications between management team and counsel with
25 the other side, and they probably gave us information

1 about what those communications were, to say, Hey, we're
2 working on some issues that we're not -- we don't like
3 some of the language, or we're working on these issues
4 before it's presented to the board for approval or denial.

5 MR. CONNELLY: Shall we take a break briefly?

6 MR. VON JOHNSON: We can.

7 I know you've got two witnesses.

8 MR. CONNELLY: Right.

9 MR. VON JOHNSON: Are you planning to have --

10 THE REPORTER: Do you want to go off the record?

11 MR. CONNELLY: Sure. We can go off the record.

12 (Discussion off the record.)

13 (Recessed: 11:22 a.m. - 11:30 a.m.)

14 MR. CONNELLY: Back on the record.

15 BY MR. CONNELLY:

16 Q. Ma'am, we've already established that I can
17 go -- strike that.

18 What is the other condominium community in
19 Power Ranch called?

20 A. I don't know if it has an actual name. It's just
21 the condos within The Knolls.

22 Q. The Knolls. Yes, you mentioned that before.

23 So it's The Knolls, then the other two are
24 Woodcrest Village East and West; true statement?

25 A. Yes.

1 Q. So I can go into The Knolls -- I think we've
2 already established this -- and buy a condominium unit and
3 lease it out; correct?

4 MR. CONNELLY: Correct.

5 MR. VON JOHNSON: Objection; form.

6 BY MR. CONNELLY:

7 Q. I can go into The Knolls and buy two condominiums
8 and lease them out; correct?

9 A. Correct.

10 MR. VON JOHNSON: Objection; form.

11 BY MR. CONNELLY:

12 Q. I can go into The Knolls and purchase four
13 condominiums and lease them out; true statement?

14 MR. VON JOHNSON: Objection; form.

15 THE WITNESS: Yes.

16 BY MR. CONNELLY:

17 Q. Even within the same building; true statement?

18 A. I would assume so, yes.

19 Q. That doesn't change the nature of The Knolls from
20 a condominium unit to an apartment unit, does it?

21 MR. VON JOHNSON: Objection; form.

22 THE WITNESS: No, it does not.

23 BY MR. CONNELLY:

24 Q. I can go in and buy 12 units within a building
25 and lease them all; correct?

1 MR. VON JOHNSON: Objection; form.

2 THE WITNESS: I don't know if that changes under
3 our documents. I doubt it does, so I would assume that
4 answer is correct.

5 BY MR. CONNELLY:

6 Q. Okay. And that wouldn't change The Knolls from a
7 condominium unit to an apartment unit, would it?

8 A. I don't think so --

9 MR. VON JOHNSON: Objection; form.

10 THE WITNESS: -- no.

11 BY MR. CONNELLY:

12 Q. Under Section 4.4.1 (sic) of Exhibit 2, the Power
13 Ranch --

14 A. Do you have a page number?

15 Q. Yeah, I'm looking for that now. It's 24, I
16 believe.

17 It reads: "No portion of a Dwelling Unit but
18 for the entire Dwelling Unit on a Lot may be rented, and
19 then only to a Single Family Lessee from time to time by
20 the Owner, subject to the provisions of this Declaration,
21 the Power Ranch Rules, and the Design Guidelines."

22 Did I read that directly?

23 A. Yes.

24 Q. Okay. This provision permits the renting or the
25 leasing of units within the Wood- -- within the Power

1 Ranch Community; correct?

2 MR. VON JOHNSON: Objection.

3 THE WITNESS: For dwelling units, yes.

4 BY MR. CONNELLY:

5 Q. Right.

6 There's no definition for residential use in
7 the Master Declaration, is there?

8 A. I don't know. I'd have to look at the
9 definitions section.

10 Q. Okay.

11 A. There is a resident definition.

12 Q. Right.

13 A. There is a dwelling unit definition.

14 Q. But there is no residential use definition?

15 A. Not that I see, no.

16 Q. Okay. Are you familiar with Arizona Revised
17 Statute 33-1260.01(A) of the Condominium Act, which
18 provides that (reading:) A unit owner may use the unit
19 owner's condominium unit as a rental property unless
20 prohibited in the declaration and shall use it in
21 accordance with the declaration's rental time period
22 restrictions?

23 MR. VON JOHNSON: Objection; form.

24 THE WITNESS: If you're reading it, that's -- I'm
25 not aware of that statute, no.

1 BY MR. CONNELLY:

2 Q. Okay. And you'll agree with me that there are no
3 rental prohibitions in the Master Declaration?

4 MR. VON JOHNSON: Objection; form.

5 BY MR. CONNELLY:

6 Q. True statement?

7 A. There -- regarding condominiums?

8 Q. Right.

9 A. No.

10 MR. CONNELLY: That's all I have.

11 We can switch and --

12 MR. VON JOHNSON: Are we off the record?

13 MR. CONNELLY: We can go off the record.

14 (Discussion off the record.)

15 THE REPORTER: Mr. Von Johnson, does the witness
16 want to read and sign?

17 MR. VON JOHNSON: Yes, we'll read and sign.

18 (The deposition concluded at 11:36 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, declare under penalty of perjury, that I have read the foregoing transcript of the testimony taken on Wednesday, March 6, 2024, in the above-referenced matter, and that the foregoing is a true and correct transcript of my testimony contained therein, except for the changes, if any, noted on the attached errata sheet.

Executed this _____ day of _____,
20____.

BECKY CHOLEWKA

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REPORTER'S CERTIFICATE

I CERTIFY that the foregoing deposition was taken by me pursuant to Notice; that I was then and there a Certified Reporter for the State of Arizona, and by virtue thereof authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the truth; that the questions propounded by counsel and the answers of the witness thereto were taken down by me in shorthand and thereafter transcribed under my direction, and that the foregoing typewritten pages contain a full, true, and accurate transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability; that deposition review and signature was requested; that HERDER & ASSOCIATES, is designated to produce, distribute and invoice the transcript.

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

DATED at Phoenix, Arizona, this 12th day of March 2024.

Melissa Gonsalves, RMR, CRR
Arizona Certificate No. 50070

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FIRM CERTIFICATE

I CERTIFY that the foregoing deposition transcript was prepared by the reporter designated herein; that a digital copy of the reporter's transcript was submitted by the reporter to HERDER & ASSOCIATES for the purposes of preparing electronic and/or paper copies for the parties; that the transcripts have been prepared, distributed and invoiced pursuant to the order on file with HERDER & ASSOCIATES;

I FURTHER CERTIFY that the production and distribution of the transcripts comply with Arizona Code of Judicial Administration 7-206(J) (1) (g) (2).

DATED at Phoenix, Arizona, this _____ day of March 2024.

Designated Representative for
HERDER & ASSOCIATES
Firm Registration No. _____