

ROBERT DALE vs VIERA EAST CDD
Meeting on 01/08/2020

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VIERA EAST COMMUNITY DEVELOPMENT DISTRICT
CLOSED ATTORNEY-CLIENT SESSION
ROBERT DALE v. VIERA EAST CDD

January 8, 2020

MULTI-PURPOSE ROOM
FAITH LUTHERAN CHURCH
5550 Faith Drive
Viera, Florida 32955

Margaret Eddy Sheffield, Court Reporter
Notary Public, State of Florida at Large

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MEETING ATTENDEES

BOARD MEMBERS PRESENT

Paul McCarthy, Chair

David Bedwell, Vice Chair

William "Bill" Oakley, Secretary

Melinda Thomsen, Assistant Secretary

Jo Walsh, Treasurer

District Manager Jason Stowe

Outside Counsel Jack C. McElroy

1 VIERA, FLORIDA; January 8, 2020

2 WHEREUPON:

3 MR. McCARTHY: We are now going into the
4 attorney-client session to discuss litigation
5 titled Robert Dale versus Viera East Community
6 Development District. Case number
7 2019-CA-041770. It is estimated the
8 attorney-client session will last 30 minutes.

9 Those in the session will be Paul
10 McCarthy, Dave Bedwell, William Oakley, Jo
11 Walsh, Melinda Thomsen, Jason Showe and Jack
12 McElroy and a court reporter pursuant to Section
13 286.011(8) of Florida Statutes. All others
14 shall be excluded.

15 Upon conclusion of the attorney-client
16 session we shall reopen the public hearing and I
17 shall announce that termination of the
18 attorney-client session.

19 MR. SHOWE: All right. We are going into
20 the shade meeting.

21 MR. McCARTHY: We have to ask you to both
22 leave now.

23 Thank you for your attendance, guys.

24 (Whereupon, members of the public left the
25 meeting room and the closed attorney-client

1 session proceeded, as follows:)

2 MR. McCARTHY: Okay. The floor is yours,
3 Jack.

4 MR. McELROY: Thank you.

5 Good afternoon, everyone. As you know, I'm
6 Jack McElroy. We've just entered into an
7 attorney-client session also known as a shade
8 session as this meeting takes place out of the
9 sunshine and is meant to provide you and the
10 litigation team the ability to discuss in
11 private litigation matters.

12 There are a few things that need to be
13 taken very seriously and make sure that you
14 understand.

15 Number one, what is said in this room has
16 to remain in this room. Meaning that you cannot
17 disclose the discussions that are being had in
18 this private session with anyone not now in this
19 private session.

20 As to you board members, you're still
21 subject to the sunshine law and cannot discuss
22 with one another anything we're talking about
23 today once this meeting is concluded.

24 Number two, this private session must
25 remain on topic and be limited to our discussion

1 of settlement negotiations and litigation
2 strategy related to -- and related to litigation
3 expenditures.

4 You cannot take any formal action in this
5 meeting. Rather, once the session concludes,
6 any formal action will need to be taken when we
7 get back on the record.

8 This is an opportunity to communicate your
9 thoughts with one another and with your counsel
10 and for us to discuss with you strategy
11 questions and items as to how we handle this
12 litigation.

13 Please note that everything that's being
14 said is being taken down by the court reporter
15 who's sitting over there. She's transcribing
16 everything. That document will ultimately be
17 made available at the conclusion of this
18 litigation to anyone that does a public records
19 request for it.

20 So while we're in -- now in private session
21 please note that at some point what is said
22 could be read by parties not in this room
23 including the Plaintiffs in the action.

24 Does anyone have any questions on those
25 points?

1 BOARD MEMBERS: (No response.)

2 MR. McELROY: All right.

3 All right. So everyone was -- or everyone
4 but David were -- were at the hearing yesterday.
5 You saw what happened.

6 The -- the judge; even though he granted
7 the motion to continue, even though he noted
8 that the motion to continue was not timely as to
9 their deadline for responding to the motion for
10 summary judgment, he also indicated that he
11 didn't know what they were going to be able to
12 do in the 30 days that he gave them to be able
13 to challenge the decision.

14 Because as he said, his -- he said his
15 hands were tied, that he didn't have -- that his
16 discretion was limited, that there had to be --
17 the decision of the -- of the board had to be
18 arbitrary in order for him to overturn it.

19 He did -- he did misspeak at one point
20 where he said he thought it was arbitrary. But
21 it was very evident from everything he said
22 around, before that and after that, that he did
23 not think it was arbitrary, that he did think
24 that you had competent, substantial evidence to
25 support your decision.

1 So we can anticipate hopefully that on the
2 -- on February 7th when the new hearing comes
3 around that -- that he will be ruling in our
4 favor on the summary judgment.

5 But he did give them an opportunity even
6 though they had missed their deadline to file,
7 you know, responsive papers to the summary
8 judgment, any controverting evidence that should
9 have been filed at least two business days prior
10 to the summary judgment hearing.

11 He gave them that opportunity. And we can
12 anticipate that they will file an affidavit in
13 opposition. They may -- they may obtain an
14 expert witness. Although I'm not -- since the
15 case law is really clear that competing expert
16 witnesses is irrelevant; that as long as you
17 have competent, substantial evidence, that's
18 what matters.

19 I'm not sure why they would want to waste
20 their money hiring an expert witness. But he
21 will have an affidavit. And that affidavit we
22 anticipate will attack some of the datapoints in
23 -- that was relied upon by Dr. Fishkind for his
24 -- for his analysis as to the amount per square
25 footage.

1 Now, I have talked to Dr. Fishkind about
2 that. And he -- he did tell me that there were
3 14 properties that were in his -- his backup
4 data, that he had as not -- not in the CDD that
5 were actually in the CDD. But he assures me
6 that it makes no difference on the final
7 numbers.

8 And, in fact, he had additional sale --
9 sales data that came in after that's he --
10 that's now available that he's able to look at
11 and -- and has been able to reach the conclusion
12 that the dollar amount per square foot for the
13 CDD and properties is actually even higher. The
14 difference is even higher than what he had
15 before.

16 So what we will do since we know for a fact
17 based on -- I'm not sure how she pronounces it;
18 DeVry or DeVree. How does she pronounce her
19 name? Does anyone know?

20 BOARD MEMBERS: (No response.)

21 MR. McELROY: We know from her letter --

22 MS. WALSH: Uh-huh.

23 MR. McELROY: (Cont'd.) That -- that
24 everyone's seen what the --

25 MS. WALSH: And her spreadsheet.

1 MR. McELROY: And the spreadsheet. What
2 the attack is going to be.

3 And so Dr. Fishkind has that, as well. So
4 he will address those items in an affidavit we
5 will file in support of our motion for summary
6 judgment so that when they file those things we
7 will have something to -- to contest what
8 they're filing with.

9 And -- and in addition, that -- that is
10 just one -- one thing that you relied upon in
11 reaching your decision. There were other --
12 there were other pieces of evidence that support
13 the finding of the appropriate allocation that
14 you also relied upon in reaching your decision.
15 If any of those things is -- is good enough to
16 rely on then your decision should stand. And
17 we'll certainly make that point with the judge.

18 Now, in the meantime, that's what's -- that
19 is what's happening with the Dale case. We'll
20 have that hearing on -- on February 7th. If the
21 judge does not grant summary judgment at that
22 time then the next step in that case would be to
23 take it to trial.

24 MS. WALSH: Uh-huh.

25 MR. McELROY: And one of the things that

1 we're talking -- that we're considering doing
2 now is trying to get it on a trial docket right
3 now and try to get it on an expedited trial
4 docket.

5 And the judge did also indicate that at the
6 hearing; that even though his calendar may show
7 he's not available, at times he can work with us
8 on -- on availability. And he knows the
9 importance of this. He knows the -- that this
10 case needs to be expedited. Well aware of
11 that.

12 So we were happy -- I think we can say we
13 were happy with everything that the judge said
14 yesterday other than when he said that the
15 motion for continuance was granted.

16 Does anybody have -- before I go on to the
17 next part of the discussion on Dale does anybody
18 have any questions about what happened yesterday
19 and what we're doing next in the litigation?

20 MR. BEDWELL: I just want to know what's
21 going to happen February 7th. Are you going to
22 be -- present summary judgment first?

23 MR. McELROY: Yes.

24 MR. BEDWELL: Will -- does the Plaintiff be
25 able to put something and they can present it?

1 MR. McELROY: Well, they have -- they have
2 until -- their deadline has been reset --

3 MR. BEDWELL: Yeah.

4 MR. McELROY: (Cont'd.) To file contrary
5 papers.

6 So they now have a deadline that is two
7 full business days prior to February 7th in
8 which to file their papers. We have to file
9 anything -- anything else that we want to file
10 in support which will be Dr. Fishkind's
11 affidavit has to be filed at least 20 -- 20 days
12 -- not business days --

13 MR. BEDWELL: Yeah.

14 MR. McELROY: (Cont'd.) Prior to the
15 hearing.

16 And we will -- we will file that affidavit.
17 We -- at the hearing itself. Because it's
18 our motion we get to go first.

19 MR. BEDWELL: Okay.

20 MR. McELROY: He got to go first the other
21 day because it was his motion to continue.

22 MS. WALSH: To continue.

23 MR. McELROY: So we'll go -- I will get to
24 -- and I will be there. I'll argue it.

25 MR. BEDWELL: Okay.

1 MR. McELROY: And I -- and I'll get to go
2 first. And then he gets to say something. And
3 then I'll get to go last, too.

4 MR. BEDWELL: Oh.

5 MR. McELROY: Because this judge lets you
6 go last --

7 MS. WALSH: Rebut.

8 MR. McELROY: (Cont'd.) If it's your
9 motion.

10 All right. Any other questions about the
11 litigation -- I mean -- or strategy in the
12 litigation and what we're doing in that case or
13 what happened at the hearing?

14 MR. BEDWELL: No. I'm fine.

15 MS. WALSH: Is -- would Fishkind be able to
16 update current information in a separate letter
17 in this?

18 MR. McELROY: He's going to do that in an
19 affidavit.

20 MS. WALSH: Okay.

21 MR. McELROY: That's going to be included
22 in the affidavit. He's going to say yes there
23 were some -- you know, that it's been pointed
24 out that there were homes in the CDD --

25 MS. WALSH: Discrepancies. Right.

1 MR. McELROY: (Cont'd.) That were -- were
2 indicated in my -- in my backup data were not in
3 the CDD.

4 That is correct. But it doesn't make a
5 difference and here's why.

6 And in addition --

7 MS. WALSH: Right. So he'll be --

8 MR. McELROY: (Cont'd.) I've done this --

9 MS. WALSH: (Cont'd.) Able to put all of
10 that.

11 MR. McELROY: I've updated the study and
12 the numbers are even better.

13 MS. WALSH: Right.

14 MR. OAKLEY: So it'll be filed 20 days
15 before?

16 MR. McELROY: That'll be filed at least 20
17 days before.

18 Okay? And then if there are no further
19 questions about that litigation --

20 MR. McCARTHY: I do.

21 In terms of the summary judgment will the
22 judge rule in favor of that potentially at this
23 7th meeting?

24 MR. McELROY: I think that the chances are
25 pretty good based on what he said.

1 MS. WALSH: Uh-huh.

2 MR. McELROY: I think if he -- you know,
3 what he has to find in order not to grant the
4 summary judgment, he has to find that there is a
5 material issue of fact as to whether or not your
6 decision was -- was based on an arbitrary
7 basis.

8 If he finds that there's any substantial,
9 competent evidence in the record that you could
10 have relied upon to reach your decision then I
11 believe he's going to grant your summary
12 judgment.

13 That's what he indicated -- that's, you
14 know, what he said. He said: My hands are
15 tied. I don't have much discretion in this
16 matter.

17 He understood that that's right. That's
18 what the Florida Supreme Court said -- has said
19 time after time after time. And he understands
20 that.

21 Now, granted, the first thing I said was
22 material issue of fact. So, you know, if they
23 throw a bunch of stuff up on the wall and he
24 thinks: Okay. I -- I still tend to agree that
25 the -- the board had substantial, competent

1 evidence to support their decision but they've
2 raised enough to raise a material issue of fact,
3 this case needs to go to trial.

4 And if it goes to trial it'll be a -- it'll
5 be a battle of experts. But you still -- if
6 it's a battle of experts you still according to
7 the Florida Supreme Court should win.

8 So that's where we -- that's where we
9 stand. But we want to get it, you know, done as
10 expeditiously as possible so you can get these
11 bonds issued and all the -- you know, while the
12 bond market is still relatively low.

13 MR. McCARTHY: So if the judge rules in
14 favor of the summary judgment what alternative
15 would they have to --

16 MR. McELROY: They could file an appeal.

17 MR. McCARTHY: Okay. File an appeal.

18 MR. McELROY: They file an appeal with the
19 Fifth DCA.

20 MR. McCARTHY: Explain that for us, please.

21 MR. McELROY: All right. So they have --
22 they -- they will have 30 days in which to file
23 a notice of appeal.

24 MS. WALSH: Uh-huh.

25 MR. McELROY: And they will then -- if --

1 one -- if they -- once they file an appeal we'll
2 -- we will try to have that appeal put on a --
3 on a fast-track basis. But then they could --
4 they can -- you know, we have a briefing
5 schedule. And you have -- after that, you know,
6 that briefing schedule you could have oral
7 argument.

8 And then the Court can take a while to
9 enter its decision. Or the Court could enter,
10 you know, what's known as a per curiam affirmed
11 which is -- which they can do without -- and
12 they could not grant oral argument if they
13 wanted to and they can do a PCA, per curiam
14 affirmed, that they don't even issue an opinion.
15 They issue those pretty quickly.

16 So if they file an appeal with the Fifth
17 DCA it's going to be -- I would say it would be
18 delayed at least another five or six months.
19 Could be delayed as long as a year.

20 MR. BEDWELL: Where is the appeals court
21 at?

22 MR. McELROY: Daytona.

23 MR. BEDWELL: Daytona?

24 MR. McELROY: Yes.

25 MR. OAKLEY: Jack, one thing that -- from

1 all of the reading that I've gotten, especially
2 this last one from Mr. Dale, he's talking about
3 this is going to take a long time.

4 And I can see this running right into the
5 election. And that's their ultimate goal.

6 MS. WALSH: That's what I think, too.

7 MR. McELROY: Okay. Well --

8 MR. OAKLEY: And then they got three board
9 members that say: Look, we're going to just
10 close the case.

11 MR. McELROY: If -- if they have ...

12 I'm hesitating here because I want to make
13 sure that I don't go off key on what we can talk
14 about in this session as far as litigation.

15 MR. OAKLEY: Okay.

16 MR. McELROY: I think that's still related
17 to litigation as to timing.

18 If that's their -- if that's their goal is
19 to delay it to the next election, if they want
20 to file an appeal, they can file an appeal and
21 they can delay -- they -- the election is when?
22 November?

23 MR. OAKLEY: Uh-huh.

24 MR. McELROY: All right. They could delay
25 it possibly to the election if they filed an

1 appeal.

2 It's also possible that we could get a
3 quick resolution of that appeal.

4 MR. OAKLEY: One other question that
5 somewhat directly relates to this but just would
6 like to know.

7 If we are ruled against --

8 MR. McELROY: Yes.

9 MR. OAKLEY: (Cont'd.) Does that mean the
10 CDD is not going to any longer issue bonds?

11 MR. McELROY: No. It doesn't mean that.

12 MR. OAKLEY: You'd just have to have a real
13 good reason why.

14 MR. McELROY: Well, I -- I think you do
15 have a real good reason why.

16 MR. OAKLEY: (Speaking simultaneously.)

17 MR. McELROY: And if you -- and if he -- if
18 he rules against you we can appeal.

19 MR. OAKLEY: Okay.

20 MR. McELROY: And -- and I think that you
21 -- I -- I feel comfortable that you have
22 substantial, competent evidence to support your
23 decision. So I believe that you -- you would
24 prevail in that appeal.

25 I mean if he rules against you -- let me

1 make sure I'm clear on this. If he rules
2 against you on the summary judgment, you can't
3 -- you don't get to appeal that.

4 Your -- your next step at that point is to
5 take the case to trial. If he rules against you
6 at a trial then you can appeal it. If he rules
7 against them -- because if he rules against you
8 at the summary judgment stage the case is not
9 over. It still goes to trial. If he rules in
10 our favor at the summary judgment stage, the
11 case is over. So they can then appeal it.

12 MR. OAKLEY: Got it.

13 MS. THOMSEN: Can --

14 MR. OAKLEY: Now, if they -- if they appeal
15 -- if they appeal it does it cost them filing
16 fees and all of that?

17 MR. McELROY: They'd have to pay a filing
18 fee. They'd have to pay their attorney to write
19 a brief.

20 We can -- we could seek, you know,
21 attorney's fees. We can say the appeal is
22 frivolous. And we could try -- see how -- based
23 on what the judge has to say we could attempt to
24 --

25 MR. OAKLEY: Seek our attorney's fees?

1 MR. McELROY: Yes. Claim -- claim for your
2 attorney's fees in that -- in that appeal. I
3 don't know how -- we'd have to see what the
4 judge's judgment looks like and -- and what they
5 say on their appeal before we have an idea of
6 what your chances are for recovery of appellate
7 attorney's fees.

8 But you have to basically be saying that
9 their appeal was frivolous. And that's a pretty
10 high standard to make.

11 MR. McCARTHY: Go ahead, Melinda.

12 MS. THOMSEN: No. That's okay.

13 MR. McCARTHY: David?

14 MR. BEDWELL: Nothing.

15 MR. McCARTHY: So potentially this could go
16 on for seven months.

17 MR. McELROY: It could go on seven months
18 or longer.

19 MR. McCARTHY: Okay.

20 MR. McELROY: There is that -- certainly
21 that potential.

22 MR. McCARTHY: Okay.

23 MR. McELROY: The next thing I want to talk
24 about is the possibility of settling the case
25 and whether there's any appetite for that and

1 what we would -- what that would look like;
2 settlement -- you know, settlement negotiations
3 with them.

4 One thing that, you know, is -- is a
5 possibility -- I don't think you can -- I don't
6 think that you can change -- you can offer to
7 change the apportionment. In fact, I know you
8 can't offer to do that because that would
9 require a whole new public hearing and other
10 evidence as to what proper apportionment was.

11 And you already have evidence as to what
12 the proper apportionment is. So that would open
13 a big can of worms. And that's really not --
14 that's really not an option to you.

15 The only really -- the option that I can
16 see open to you on settlement negotiations is an
17 option to decrease the amount of the bond, the
18 bonds that are being sold and thereby decrease
19 the amount that you're -- you're going to be
20 funding these improvements.

21 I know that the big line item with -- I've
22 seen -- it looks like the big -- one of the big,
23 hot items is -- or the hottest item is the
24 amount that's being spent on the clubhouse.

25 And so that's a, you know, possible area of

1 compromise where you could go in and you can say
2 instead of spending 2.9 on -- you know, just as
3 an example.

4 Instead of spending 2.9 on the clubhouse
5 we'll agree to only spend a million on the
6 clubhouse. And the 1.9; we won't seek that
7 additional funding. And we won't -- we won't
8 seek it under this 1992 bond validation. We
9 won't seek any -- any further funding under this
10 1992 validation.

11 Because -- and you're not giving up
12 anything really on that. Because the fact of
13 the matter is you -- it's my understanding that
14 you really -- there's not a bond market to go to
15 to sell, you know, something less than a couple
16 of million dollars in bonds.

17 MS. WALSH: Right.

18 MR. MCCARTHY: We've had conversations with
19 our general manager individually regarding
20 potential settlements.

21 Is this a time to discuss this or ...

22 MR. STOWE: I think it relates to --

23 MR. McELROY: Yes.

24 MR. STOWE: To directly what --

25 MR. McELROY: It -- it relates to -- it

1 relates to settlement. So it's something
2 certainly you can discuss at this time.

3 Do you want to -- do you want me to reach
4 out to the Plaintiff -- and I can't talk about
5 the other case. But I'm going to talk about
6 that next in the next shade session.

7 I don't know with these Plaintiffs if
8 that's going to resolve it. But even if it
9 doesn't just -- and we'll wait and we'll talk
10 about it in more detail in the next one.

11 If it settles it with the other Plaintiff
12 then, you know, like I said, I think you got a
13 -- I think you got a pretty good shot at -- at
14 summary judgment in this case.

15 So even if you don't settle this at least
16 if you get rid of the other -- get rid of the
17 other case.

18 MS. WALSH: Uh-huh.

19 MR. McELROY: And you're only dealing with
20 this case. And you win on summary judgment and
21 the Court says there's no material issue of fact
22 that you have a -- you know, that you have
23 substantial, competent evidence to support your
24 decision and they appeal that, then I do -- I do
25 think that I -- I could make a credible claim to

1 entitlement to attorney's fees.

2 We could send a 57.105 letter saying it's
3 been determined by the trial court that there is
4 no material issue of fact. We believe that any
5 appeal that you're doing is merely for the
6 purpose of delay and that your -- your -- the
7 appellate issues you've raised are frivolous
8 and, therefore, we demand that you withdraw it
9 or -- or, you know, face the possibility of
10 having to pay the attorney's fees that are
11 incurred.

12 MR. McCARTHY: All right. So at this --

13 MR. McELROY: Sometimes that scares
14 people.

15 MS. WALSH: Uh-huh.

16 MR. McELROY: That -- you know, they
17 understand -- sometimes --

18 MR. BEDWELL: Yeah.

19 MR. McELROY: (Cont'd.) They understand:
20 Hey, if I got -- if -- if I'm -- if I'm wrong on
21 this and I've got to pay to play that's going to
22 be it.

23 MR. BEDWELL: Because the Plaintiff's got
24 to play, not the lawyer.

25 MR. McELROY: That's right. Well, no.

1 It's both.

2 MR. BEDWELL: Both. Okay.

3 MR. McELROY: It's both. Both the
4 plaintiffs and the lawyer in a 57.105 motion.

5 MR. BEDWELL: Okay.

6 MR. McCARTHY: All right. I need some help
7 with this.

8 You know, I've discussed it with the
9 general manager, every other board member.
10 Would it be appropriate to go around the room
11 and give Jack an idea of what --

12 MR. STOWE: Yeah. I think -- I think
13 that's kind of what Jack is seeking at this
14 stage.

15 MR. McCARTHY: Okay.

16 MR. STOWE: Is some direction or at least
17 some consensus from the board -- if that's the
18 appropriate term -- of --

19 MR. McELROY: Yeah.

20 MR. STOWE: (Cont'd.) If this is an option
21 --

22 MR. McCARTHY: Let me -- let me -- let me
23 tell you how this works, by the way, before you
24 -- so you can -- so you can know how this is
25 going to play out.

1 If I reach out and -- to them and say:
2 Hey, do you want to discuss settlement? And
3 here's -- I can't settle with you on the
4 apportionment methodology. Can't do that.
5 That's not within the realm of possibility.

6 I could settle with you on the amount --
7 the total amount for the bonds that are going to
8 be issued because -- and I can, you know, settle
9 with you on the -- on that we're not going to --
10 we're going to only put X amount into the
11 clubhouse rather than Y amount.

12 I can -- we can discuss a settlement along
13 those -- those grounds. Then if we reach an
14 agreement -- if I reach an agreement with the
15 attorney on the other side -- and we can do this
16 one way.

17 I can do it by way of I can sit down with
18 them and have this discussion. I can have a
19 telephone conference with the attorney having
20 that discussion. We could have a member of the
21 board come with me to sit down with them and the
22 Plaintiffs. Just one member of the board. To
23 sit down with the Plaintiffs and discuss the
24 settlement.

25 We could have a mediation where there's a

1 mediator present. There, you know, it goes the
2 gambit of those. Whatever happens, though, once
3 that settlement is reached you then have to have
4 another hearing to approve that settlement.

5 It has to be -- you know, the board has to
6 vote on that settlement. So you'll have
7 whatever --

8 MR. OAKLEY: You mean an open hearing like
9 we've had with all the people?

10 MR. McELROY: Well, you can -- it doesn't
11 have to be -- I don't believe it has to be a
12 public hearing --

13 MR. OAKLEY: Okay.

14 MR. McELROY: (Cont'd.) If you reach that
15 settlement.

16 MR. STOWE: But it has to be in a public
17 meeting.

18 You have to have a --

19 Yeah. That's fine.

20 MR. McELROY: So you'll have a --

21 MS. THOMSEN: One of our --

22 MR. STOWE: Like a regular.

23 MR. McELROY: Yes.

24 MS. THOMSEN: Okay.

25 MR. McELROY: So then we'll have -- we

1 would have another hearing which you would have
2 -- you would -- you would vote on we're going to
3 settle and we're going to settle on these terms.

4 So you have -- you're not -- whatever you
5 tell me today that's not -- you're not stuck
6 with that. I just need to know that I have
7 authority to go talk to them. And I need to
8 have an idea of how much you're willing to knock
9 off say the clubhouse, for instance.

10 MR. McCARTHY: Okay. I'll start first.

11 Based on the conversations I've had with
12 our general manager, we are -- I am willing to
13 reduce the debt on the clubhouse by two million
14 dollars.

15 MR. McELROY: Okay.

16 MR. McCARTHY: I believe it was 2-7, Jason?

17 MR. McELROY: I think it was 2-9.

18 MR. STOWE: It's 2-9.

19 MS. THOMSEN: So down to 900,000?

20 MR. McCARTHY: Down to 900,000.

21 And let's go around the room.

22 David?

23 MR. BEDWELL: I'm not reducing anything
24 because I don't think they'll settle. I don't
25 think two million's going to make a difference.

1 I don't know what their bottom line is.
2 Wouldn't know until you got -- this would be
3 done after the summary judgment?

4 MR. McELROY: No. This would be -- this
5 would be done --

6 MR. BEDWELL: Before --

7 MR. McELROY: (Cont'd.) Before the summary
8 judgment.

9 MR. BEDWELL: Okay.

10 MR. McELROY: This would be done before the
11 summary --

12 MS. THOMSEN: In the next few weeks.

13 MR. McELROY: Now, keep in mind, too, that,
14 you know, if it's in mediation, it's
15 confidential, your settlement negotiations, you
16 can maintain confidentiality of your settlement
17 negotiations if you want.

18 But you can also -- you can also let people
19 know if you want to make a -- if I make a
20 settlement offer there's nothing to stop you
21 from letting people know what that settlement
22 offer is.

23 MR. BEDWELL: Yeah. Okay. I just -- I
24 just -- I just got a feeling that 2.9 million or
25 two is not going to make them happy based on the

1 reading of E-mails and --

2 MR. McELROY: Uh-huh.

3 MR. BEDWELL: (Cont'd.) And this -- this
4 -- how it gets so vocal. Because their
5 assessment was going to go down.

6 So I assume they want it to go to zero.
7 That's what I think. I mean that's the way I
8 read it.

9 MR. McELROY: But --

10 MR. BEDWELL: But if you guys --

11 I'll go along if you guys -- two million
12 down to 900,000. That's fine. But I don't
13 think --

14 MR. McCARTHY: Melinda, you're next.

15 MS. THOMSEN: I would agree with what Paul
16 said. 900, a million. I don't -- it doesn't
17 matter to me.

18 I do think the clubhouse needs
19 improvements. But I -- I totally agree that
20 that has been a stumbling block on a lot of
21 people who seem reasonable. They aren't -- so
22 we're chopping off the negativity a little bit
23 with this.

24 It -- it's a positive -- it's a positive
25 step I believe. And the fact is, though, that

1 when you go to them we're not -- we don't hurt
2 ourselves by doing this or by offering this.

3 MR. McELROY: No.

4 MS. THOMSEN: It -- it's -- it's just a
5 trial run we're trying to do.

6 MR. McELROY: Yeah.

7 MS. THOMSEN: And if it doesn't get done we
8 just go back to the normal --

9 MR. BEDWELL: Okay.

10 MS. THOMSEN: (Cont'd.) Process. The
11 affidavits still have to be in there.

12 MR. McELROY: That's right.

13 MS. THOMSEN: And you're planning on
14 getting that --

15 MR. McELROY: Yes.

16 MS. THOMSEN: (Cont'd.) Within the 20
17 days.

18 And so -- so that ... you -- but you could
19 be processing this within the -- and if they did
20 say yes then do we go back to summary judgment
21 --

22 MR. McELROY: No.

23 MS. THOMSEN: (Cont'd.) On that trial
24 date?

25 MR. McELROY: No.

1 If they say yes, if we reach an agreement
2 and you vote and you -- you approve the
3 agreement, then no, that case will -- that case
4 will be settled.

5 Now, just so you know and -- and everybody
6 knows, my -- my philosophy on settlement
7 negotiations is that a case is never over 'til
8 it's over. I will -- I go full steam ahead on
9 litigation. Even -- I can -- I can have
10 settlement negotiations on the side.

11 MS. THOMSEN: Yeah.

12 MR. McELROY: But I go full speed ahead
13 with litigation until that case is settled.

14 MR. BEDWELL: Okay. That's good.

15 MR. McCARTHY: Bill.

16 MR. OAKLEY: So since you're our lawyer
17 what do you feel? Which way would be to the
18 best interests of the members of the CDD?

19 MR. McELROY: You have -- the best
20 interests of the members of the CDD in my
21 opinion is to resolve litigation if you can
22 resolve it.

23 MR. OAKLEY: Okay.

24 MR. McELROY: On a reasonable basis.

25 Because, as you know, I'm not cheap. And,

1 you know, litigation --

2 MR. OAKLEY: We know.

3 MR. McELROY: Litigation goes on. And it's
4 -- it's -- it's an expensive process.

5 So if you can -- if you can resolve it on a
6 reasonable basis and cut off that litigation
7 expenditure that's in the best interests of the
8 community.

9 And the same goes for the Plaintiffs. If
10 they can -- if they can cut off litigation and
11 settle on a reasonable basis that -- it's --
12 that's the best thing for the members of the
13 community. And they're members of the
14 community.

15 And they're -- you know, they think they
16 have all this public support. I'm curious as to
17 how much public support they would have if
18 people know you made a reasonable settlement
19 offer and they said no.

20 MS. THOMSEN: I like that.

21 MR. OAKLEY: Just to let the other board
22 members know, I've been working on -- I've shown
23 the drawings to Tim.

24 I've got the whole clubhouse redesigned
25 with the existing walls, increasing the size of

1 the kitchen, leaving the pro shop the same size
2 it is. Given Tim the increase in the offices.

3 And I'm in favor of trying to litigate.
4 You know, trying to settle for the -- for the
5 900,000. Because I think you could probably do
6 that design for 900,000.

7 And I will share those drawings with the
8 board members when Jason feels that it's
9 appropriate.

10 MR. McCARTHY: Jo?

11 MS. WALSH: Well, I feel that we have no
12 problem as far as getting our case through on
13 the 7th.

14 But if they do appeal then can we make an
15 offer after that?

16 MR. McELROY: Yes. I mean you --

17 MS. WALSH: Okay.

18 MR. McELROY: You could wait -- you could
19 wait and make the offer then.

20 MS. WALSH: I'm just --

21 MR. McELROY: You can make a different
22 offer. You can always -- you can make
23 settlement offers at any time.

24 MS. WALSH: I mean I don't know. I mean I
25 will go along with the rest of the board if they

1 want to bring it down -- bring down the
2 clubhouse from 2.9 to .9.

3 I just -- I just hate to limit ourselves.
4 Because you never know what's going to come up
5 when -- when you're in the middle of a
6 construction project.

7 So I think we're cutting ourselves a little
8 short. But if it's the number that you think
9 would be the most appetizing --

10 MR. McELROY: Well --

11 MS. WALSH: (Cont'd.) If you had to go
12 into a negotiation, then I -- I would follow
13 suit with it.

14 MR. McELROY: Okay. And I don't have to --
15 and I -- I'm not going to start off with that
16 number.

17 Okay?

18 MR. MCCARTHY: So based on --

19 MR. McELROY: And the other thing you need
20 to keep -- one other thing you need to keep in
21 mind, though, is as it involves the attorney's
22 fees that the attorney's fees; you need to have
23 room to have those attorney's fees paid through
24 this bond issuance, too.

25 Because my understanding is you don't have

1 it in your budget otherwise.

2 MS. WALSH: Uh-huh.

3 MR. McELROY: Right?

4 MR. STOWE: We would have to make some
5 severe cuts.

6 MR. McELROY: So you need to -- you need to
7 keep that in mind that you need to have room for
8 that.

9 MR. McCARTHY: All right. So basically the
10 board is giving you the authority to make a
11 decision when you're going to do it and -- for
12 the two million dollars.

13 MR. McELROY: Okay. Up to two million.

14 MR. BEDWELL: Up to two million.

15 MR. OAKLEY: Does this negotiations that
16 you're having with the Plaintiff; are those all
17 confidential?

18 MR. McELROY: There is --

19 MR. OAKLEY: Or are they going to be
20 broadcast by a next-door neighbor to: Hey,
21 we've got them to the table. Blah, blah, blah.

22 MR. McELROY: Yeah. That -- I think you
23 can anticipate they're going to -- you're going
24 to -- they're going to broadcast this. You can
25 certainly anticipate that.

1 MS. WALSH: And --

2 MS. THOMSEN: And that could be on our
3 benefit --

4 MR. McELROY: That's right.

5 MS. THOMSEN: (Cont'd.) As well.

6 MR. McELROY: That's right.

7 MS. THOMSEN: It means that we're
8 listening.

9 MR. McELROY: Yeah.

10 MS. THOMSEN: And that we are at least
11 trying to make an effort. If we're off the wall
12 on the -- the clubhouse is their bugaboo.

13 MR. McELROY: Yes. I think that -- I think
14 that can play to your advantage.

15 Now, as far as the confidentiality,
16 certainly settlement negotiations as far as
17 they're related to litigation are confidential.
18 They're not -- they're not relevant.

19 The law on that is clear; that you can't --
20 you can't -- and if -- if you're involved in
21 litigation you can't go into court and say to
22 the judge: Well, I must be right because they
23 offered me to cut this by a million dollars or
24 one million five or two million. So I must be
25 right.

1 Then the judge will look at them and say:
2 You know better than that. That's not -- that's
3 not admissible evidence. And the judge can
4 sanction them for saying that since he's the
5 trier of fact. But he certainly is not -- this
6 judge would not -- that wouldn't work to their
7 --

8 MS. WALSH: Uh-uh.

9 MR. McELROY: That would be a big mistake
10 if they did that --

11 MS. WALSH: Yeah.

12 MR. McELROY: (Cont'd.) With this Court.

13 MR. BEDWELL: How many Plaintiffs were
14 before?

15 MR. McELROY: Four Plaintiffs.

16 MR. BEDWELL: So he -- he'd have to get
17 agreement of the four Plaintiffs.

18 MR. McELROY: He'd have to get agreement
19 from the four Plaintiffs.

20 MR. BEDWELL: Okay.

21 MR. OAKLEY: I kind of agree with David on
22 one of the issues. I think their biggest
23 bugaboo was the apportionment issue, the way the
24 tax -- or was -- the bonds --

25 I mean I think that's their --

1 BOARD MEMBERS: (Speaking simultaneously.)

2 MR. McELROY: Yes.

3 MR. BEDWELL: I mean they're so vehement.

4 MS. THOMSEN: And we need to make that
5 clear.

6 MR. BEDWELL: You know?

7 MR. McELROY: Yeah.

8 MS. THOMSEN: You got to make that clear.

9 MR. BEDWELL: Go see. I hope you're right.

10 MR. McELROY: Well, you know, I -- I will
11 say this, too, because it relates to litigation.

12 I saw in their -- I saw in their summary
13 the Plaintiff put on social media as to what
14 happened at that hearing. It was -- it was
15 pretty misleading.

16 MS. WALSH: I got the impression the judge
17 was not impressed with the --

18 MR. McELROY: Yeah.

19 MS. WALSH: (Cont'd.) Gentleman.

20 MR. McELROY: It was -- it was -- was a
21 very misleading summary of what happened in that
22 hearing.

23 MS. WALSH: Okay.

24 MR. McELROY: It indicated that -- it also
25 indicated that we had not -- that he gave them a

1 motion for continuance because we had not given
2 them enough notice.

3 MR. McCARTHY: Right.

4 MR. McELROY: And that is not why he gave
5 them the continuance.

6 MR. BEDWELL: Well, maybe the judge will
7 read it.

8 MR. McELROY: Yeah.

9 MS. THOMSEN: I don't know if they do that.

10 MR. McELROY: All right. So that's --
11 anything else? I have --

12 MS. WALSH: Would they -- would they get,
13 also in this settlement are we going to give
14 them the 15 grand that they're asking for?

15 MR. McELROY: No.

16 MS. WALSH: Okay.

17 MR. McELROY: No.

18 MS. WALSH: Okay.

19 MR. McELROY: Are there any other questions
20 regarding --

21 MR. BEDWELL: No.

22 MR. McELROY: (Cont'd.) The settlement of
23 the Dale case?

24 MS. THOMSEN: Remind me what you said
25 earlier.

1 At what point can we demand attorney's
2 fees?

3 MR. McELROY: Well, we thought about doing
4 it in the -- in the case in chief right here.
5 We -- we reached the decision as the attorneys
6 that this was not -- we weren't at that point
7 yet.

8 That if we got summary judgment in this
9 case and they filed an appeal then we may be at
10 that point where we send what's known as a
11 Section 57.105 letter that says your -- it has
12 now been determined there are no material issues
13 of fact, therefore, any appeal that you're
14 filing on this we believe is frivolous.

15 And I can tell you that your chances of
16 getting those attorney's fees are still pretty
17 slim.

18 MS. THOMSEN: Uh-huh.

19 MR. McELROY: It's tough to get 57.105 fees
20 for an appeal. Very -- it's very tough.

21 MR. McELROY: Okay?

22 But you can -- you can demand them. And
23 it's something that has to go into their
24 calculation of whether or not they're going to
25 continue with the case.

1 Because if they -- if you're thinking:
2 Okay. Well, they can run up, you know, another
3 hundred grand in attorney's fees in the appeal
4 then do I want to take a chance of being on the
5 hook for that.

6 Maybe not.

7 MS. THOMSEN: Well, if they get us mad
8 enough.

9 MR. BEDWELL: Okay.

10 MS. THOMSEN: Really encouraged to go
11 ahead. Offer it.

12 MR. McELROY: Yes.

13 Okay. Anything else on the Dale case?

14 MR. McCARTHY: No. Onto the next one.

15 MR. McELROY: All right.

16 Well, we need to --

17 MR. SHOWE: We're closing the shade
18 session.

19 (Whereupon, the attorney-client session was
20 concluded.)

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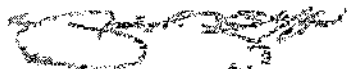
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CERTIFICATE OF REPORTER

I, Margaret Eddy Sheffield, Court Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that pages 3 through 42 is a true and correct record of my stenographic notes.

Dated this 17th day of January, 2020.



Margaret Eddy Sheffield, Court Reporter