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COMMONWEALTH OF MASSACHUSETTS

* * * REGULAR MEETING * * *

OSGOOD LANDING
1600 OSGOOD STREET
NORTH ANDOVER, MASSACHUSETTS
SEPTEMBER 14, 2010
6:50 p.m. - 8:55 p.m.

Kristen M. Edwards
Court Reporter

**Meeting
September 14, 2010**

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APPEARANCES:

Board of Managers:

Sean O'Connell

Theresa Poore

John Campbell

In Attendance:

Ed Lapointe, CPA

Dan Braese, Esq.

**Meeting
September 14, 2010**

Page 3

1 MR. O'CONNELL: Hello. Thank you
2 for coming. We can call the meeting to order. We
3 have, again, a court reporter so please speak up.
4 If you do have any questions or anything to say,
5 please stand up, state your name and your unit
6 number so it can be recorded. We will try to
7 stick to that.

8 And, basically, we called this
9 meeting, the board, to inform the membership of
10 the forensic audit that we had done in January.
11 It was completed in June, and we mailed out some
12 notices. We also walked around and gave the
13 actual reports. If anybody doesn't have a report,
14 there is a box on the table where Todd is. You
15 are more than welcome to grab another copy if you
16 didn't bring yours.

17 Basically, if anybody is unaware,
18 during 2004, 2007, we had an association board
19 member that was misappropriating funds and we had
20 to remove that person and recreate the books. And
21 from that recreation of the books, we had Mr. Ed
22 Lapointe, a CPA, do a forensic audit and here is
23 the report. So, I guess if anybody has any

**Meeting
September 14, 2010**

Page 4

1 questions, and we have approximately \$4,500 that
2 is still missing. This X board member did pay
3 back a substantial amount. She paid about 20,000
4 back. The \$4,500 --

5 SPEAKER: Mr. President, a point of
6 order. I don't believe we have a quorum. I
7 request a quorum vote, please.

8 MR. O'CONNELL: Can we have a quorum
9 called by what, what unit number?

10 SPEAKER: I am working on that.

11 MR. O'CONNELL: Yes. He is double-
12 checking his numbers. I don't believe we will end
13 up having a quorum, so, unfortunately, this will
14 be more of informational.

15 SPEAKER: Are you being recorded?

16 MR. O'CONNELL: What's that?

17 SPEAKER: Are you being recorded?

18 MR. O'CONNELL: I am.

19 SPEAKER: That will be available to
20 all the unit owners?

21 MR. O'CONNELL: Absolutely. It
22 usually takes about two months.

23 SPEAKER: I don't want to interrupt

**Meeting
September 14, 2010**

Page 5

1 you, Sean, but you said if anybody has any
2 questions, should I wait until you are done with
3 your information?

4 MR. O'CONNELL: Yes, you can hold
5 on.

6 SPEAKER: I have questions.

7 MR. O'CONNELL: I am sure you do.

8 This will be pretty much an
9 informational meeting unless by some means we have
10 about 30 more people come in here and we have a
11 quorum and then we can possibly change what we've
12 already said down a couple of years ago.

13 By all means, Mr. Brouder, if you
14 have a question, please stand up, state your unit
15 number and shoot.

16 SPEAKER: My question is to Mr.
17 Lapointe. This is George Brouder, Unit No. 66.

18 Mr. Lapointe, do you have a copy of
19 the agreement between you and the board of
20 Managers to find the scope of the audit?

21 MR. LAPOINTE: I have made an
22 engagement agreement with the firm with your
23 association, yes.

**Meeting
September 14, 2010**

Page 6

1 SPEAKER: Does that scope exclude
2 the items, such as number six, you failed to do an
3 audit of account's receivable?

4 MR. LAPOINTE: No. It doesn't say
5 anything specific as to the balance sheet
6 components of your company.

7 SPEAKER: So that was left out by
8 the board of Managers and yourself.

9 MR. LAPOINTE: It wasn't a type of
10 audit. There was a gap set of financial
11 statements that were audited with not of the
12 opinion.

13 SPEAKER: You are aware that the
14 account's receivable of this association are still
15 in disarray for those years. Numerous collection
16 letters were sent out to a number of unit owners
17 in error that were never collected.

18 MR. LAPOINTE: I was made aware of
19 that by some of the anonymous phone calls that
20 were made to me.

21 SPEAKER: And you decided not to
22 audit the account's receivable.

23 MR. LAPOINTE: We took a look at the

**Meeting
September 14, 2010**

Page 7

1 work of John Michod and we globally, as my report
2 indicates, we globally captured the revenue that
3 would have been obtained from the units based on
4 the three types.

5 SPEAKER: Mr. Lapointe, Mr. Michod
6 did a compilation and not an audit.

7 MR. LAPOINTE: That's true.

8 SPEAKER: You stand behind every
9 number in that compilation.

10 MR. LAPOINTE: It's a compilation.

11 SPEAKER: Is that correct?

12 MR. LAPOINTE: Yes. He didn't issue
13 any opinion and neither did we relative to that.
14 We had taken his compiled data, tied it to the
15 bank records and moved on with it. Felt
16 comfortable with what we had.

17 SPEAKER: On page eight of your
18 audit you state, "No audit fee, legal fee or other
19 costs incurred by the association due to the fraud
20 are included in the questioned cost."

21 Those costs are very substantial.
22 \$27,000 were removed from a reserve account
23 illegally. There was \$20,000 spent on the

**Meeting
September 14, 2010**

Page 8

1 compilation by Mr. Michod. There is about \$17,000
2 worth of interest for the five years in question.
3 The amount that he just referred to and you have
4 in your audit aren't even close. By my
5 calculation, which may not be correct, I can
6 detail a claim of \$80,000 against the embezzler
7 and I will be glad to list them all.

8 MR. O'CONNELL: No thank you. Hold
9 on there and let me go through a few things on the
10 audit and then I am sure we will give some people,
11 other people some opportunity if they have
12 questions.

13 SPEAKER: I only have one more so
14 let me finish.

15 We did not consider it part of our
16 engagement that audit to be by Mr. Lapointe to
17 determine if a transfer is made to or from any
18 reserve account required appropriate authorization
19 under Massachusetts state or association
20 regulations. That is quite important. It's a
21 \$27,000 discrepancy.

22 MR. LAPOINTE: We saw the transfers.
23 And if you look at the report, you will see the

**Meeting
September 14, 2010**

Page 9

1 transfers.

2 SPEAKER: No. Your report does not
3 state where it went.

4 MR. LAPOINTE: Yes, it does.

5 SPEAKER: It doesn't say where it
6 was spent.

7 MR. LAPOINTE: Well, it wouldn't.
8 Our goal was did it go into an account within the
9 association? The answer was yes. Was it used for
10 what we believe are organizational expenses? To
11 the extent, yes, they did.

12 SPEAKER: That is why I am
13 questioning your audit. This is very important.
14 It's \$27,000 that we unit owners demand back. Not
15 my problem.

16 MR. LAPOINTE: The money --

17 SPEAKER: It was illegally removed.

18 MR. O'CONNELL: John?

19 MR. BRAESE: Let's go ahead through
20 the review and the information here. And if at
21 the end if people have questions about specifics,
22 let's do it that way.

23 SPEAKER: I'm sorry, Sean, go ahead.

**Meeting
September 14, 2010**

Page 10

1 MR. O'CONNELL: Thank you.

2 SPEAKER: Sean --

3 MR. O'CONNELL: Well, hold on. We
4 will try to get through this and --

5 SPEAKER: While it's tape-recorded,
6 I just want to ask a point that is clarifying.

7 Barbara Statute at 114.

8 Mr. Lapointe, can you explain or
9 rather just clarify the extent of your forensic
10 services? Because it's my understanding your
11 forensic services were not to identify whether
12 Mass General Laws were upheld in terms of proper
13 transfers by a condo association. Your forensic
14 services had a different focus that would not
15 cover that; is that correct?

16 MR. LAPOINTE: Our financial
17 services were financially related. So, we heard
18 and saw the transfers that you are all referring
19 to and walked them through your system and found
20 them to be used within the accounts of the
21 association. We felt that any position taken
22 about whether or not they were legal or not would
23 be your legal counsel who would take the position.

**Meeting
September 14, 2010**

Page 11

1 We are not lawyers. Everyone has
2 been made aware of that. If that is an issue that
3 I hear you all saying, you know, I will gladly
4 take that information to the insurance auditors
5 who will probably arrive at the scene at some
6 point and ask them to take a position on that.
7 But the money was a financial related audit.

8 SPEAKER: Which is different from
9 the extra size Mr. Brouder might be touching upon.

10 MR. LAPOINTE: Mr. Brouder is
11 talking more about a gap generally accepting the
12 county principals financial statement audit of a
13 balance sheet of a company and its related income
14 and expense components. We did not do that in
15 terms of offering an audit opinion about whether
16 they were in compliance with gap or not.

17 Our efforts were did the money come
18 in that should have come in based on the facts and
19 evidence we were given and did it go out to
20 support an expenditure of the organization or not
21 and can we wrap our arms around it in terms of
22 controlling it from a global perspective. That
23 was it.

**Meeting
September 14, 2010**

Page 12

1 SPEAKER: So forensic versus gap.

2 MR. LAPOINTE: Yes. Even in a gap
3 situation, in a gap situation if you run into a
4 case where there may be a violation of law, legal
5 counsel is brought in at that time. No auditor
6 will take a position on that.

7 MR. O'CONNELL: Thank you, Ed.

8 Basically, from my layman's point of
9 view looking at what we have done, it was
10 basically to see why this treasurer, this person,
11 what she did with the accounts, what she paid.
12 She took checks and said they were for one thing
13 and paid something else. Yes. Most of his work
14 was not done on our bylaws, on Mass. state laws.
15 It was basically to see where our money was going,
16 you know. There was very few minutes for that
17 time period of board meetings. There was very few
18 records of was this approved.

19 As for the transfers, we saw the
20 same paperwork that showed, yes, maybe illegally
21 or against our rules money came out of the reserve
22 account and went into the operating account. That
23 had nothing to do with his audit. It did show

**Meeting
September 14, 2010**

Page 13

1 that that money went from one account of ours to
2 another account. Was it to boost the operating
3 budget that wasn't passed by us? Maybe, possibly,
4 probably. Hold on, Leslie.

5 So, basically, you know, a lot of
6 people did a lot of work of, you know, going
7 through a pile of junk, recreating it and then Ed
8 took over and did what he had to do. And we found
9 out exactly where checks were going and definitely
10 found a lot of discrepancies and also got some
11 money back. The previous board got some money
12 back from this person, and we are going to try to
13 do our best to regain hopefully every single
14 penny.

15 Go head, Leslie.

16 SPEAKER: Leslie Hilton, 143
17 Farwood.

18 Is there something in the laws,
19 bylaws or master deed that there has to be a vote
20 for a certain amount of moneys to be taken from
21 one fund and put into a reserve fund or before
22 moneys can be taken out of the reserve fund and
23 unless it's an emergency that those moneys have to

**Meeting
September 14, 2010**

Page 14

1 be accounted for and has to be a meeting of the
2 board?

3 MR. O'CONNELL: Absolutely.

4 SPEAKER: Also, Mr. Lapointe, I
5 noticed in your notes where somehow somewhere
6 somebody came up with Quick Book notes and we were
7 notified about a year ago, I think Mr. Qwan, if I
8 recollect, that the secretary at the time had
9 deleted the Quick Books so I am just wondering how
10 they appeared all of a sudden in 2009.

11 MR. O'CONNELL: Your first question,
12 there is procedures about reserve funds, not for
13 the deposits to the reserve fund but there is
14 stipulations on taking money out, yes, unless it's
15 deemed an emergency by your board, like it has
16 been twice since I have been on the board. Yes.
17 We are supposed to call a special meeting.

18 SPEAKER: Sean, not to interrupt you
19 again. George Brouder, No. 66.

20 The bylaw is very specific. It
21 takes a two-third vote of all unit owners of the
22 128 unit owners to take a dollar out of the
23 reserve account. In a five month period, there

**Meeting
September 14, 2010**

Page 15

1 were two withdrawals, \$15,000 and \$12,000. And I
2 will state again that Mr. Lapointe said they went
3 into the operating expenses. He didn't say where
4 they came out of the operating expenses. Sorry.

5 MR. O'CONNELL: I believe the report
6 said it came out of the reserve account and went
7 into the operating account. So, yes, it's a
8 possibility that more than likely was it a
9 withdrawal that was wrong, probably. But then,
10 again, there is no minutes of any meeting that we
11 have from that time period so very well we could
12 have had a meeting that had a vote. But that was
13 not part of Mr. Lapointe's job. That was not in
14 his scope of work.

15 SPEAKER: Somebody gave him a 2009
16 Quick Book account or something.

17 Did you get something like that, Mr.
18 Lapointe?

19 MR. LAPOINTE: We were asking
20 throughout the entire engagement did a Quick Book
21 system exist and the answer was no. But we bought
22 the software application -- I believe it was in
23 '06 -- application of Quick Books with the intent

**Meeting
September 14, 2010**

Page 16

1 of loading it onto a computer for the purposes of
2 getting your treasurer to use it. When I met with
3 Peter Qwan on a private interview, that was
4 discussed at that time and he did say he would get
5 it to me. He did get to me. It was late March.
6 We were able to restore it.

7 The beauty of Quick Books is it has
8 an audit trail that you can no longer turn on and
9 off, so we were able to look at that. It's a very
10 skeleton thing. The only thing was there was a
11 chart of events, as I recall, and there was some
12 transactions that appeared as though somebody was
13 just trying to learn how to use it but very
14 minimal at best.

15 SPEAKER: So you were able to
16 retrieve the memory?

17 MR. LAPOINTE: Yes, it wasn't easy.
18 It wasn't easy, but we were able to do it.

19 SPEAKER: I am having something
20 simple done right now as far as the technology
21 company retrieving data. Another thing is when
22 you were doing the Sovereign bank accounts, I
23 think there were three separate accounts that came

**Meeting
September 14, 2010**

Page 17

1 to my attention. Did you run across some unit
2 owners who were not on the old board whose name
3 showed up on the Sovereign bank account over in
4 North Andover?

5 MR. LAPOINTE: The name appeared in
6 what way, as check signers?

7 SPEAKER: Coming up as their name
8 being along with maybe possibly Peter. I am not
9 sure their name showing up, their name was added
10 onto the account after Donna had left and maybe
11 helping reconstruct books before other things went
12 on. But I am looking to see if you ran across any
13 other unit owners' names because the police had
14 told us, most definitely told us and I know told
15 Mr. Qwan that nobody in the association who is not
16 a member of the board, the old board, name should
17 have any contact with the old records. So it has
18 come to my attention that there is a unit owner
19 whose name was over at Sovereign and I would like
20 you to maybe research that. I know they gave you
21 a hard time and I have the three account numbers
22 and you probably do too.

23 MR. O'CONNELL: Leslie, can we keep

**Meeting
September 14, 2010**

Page 18

1 it to a question, a direct question?

2 SPEAKER: Sure. That's fine. I'd
3 really like you to research that.

4 MR. LAPOINTE: Just to be clear, are
5 you talking about the period of time when the
6 transition was occurring in August of '07?

7 SPEAKER: August 2007. I'm sorry,
8 George Brouder.

9 SPEAKER: It might go to the winter
10 of 2007, the beginning of 2008 when everything
11 happened.

12 MR. LAPOINTE: Well, when you say
13 everything happened beginning of '08, the incident
14 date was in August of '07.

15 SPEAKER: Right. So October, I
16 believe October 1st the old was reserved over 66
17 and two thirds and so I am going into the winter
18 maybe January, February of '08 where there was a
19 name added that was a unit owner.

20 MR. O'CONNELL: His report didn't
21 have anything to do with 2008.

22 MR. LAPOINTE: It ended really in
23 August of '07.

**Meeting
September 14, 2010**

Page 19

1 MR. O'CONNELL: August '07 is the
2 end of his report, and that was the end of that.

3 SPEAKER: That can be looked in by
4 someone else. Thank you very much for your time.

5 MR. O'CONNELL: Thank you.

6 Again, we had a meeting in '07 when
7 it was one, I believe of three meetings that we
8 had. One was to remove the old board and three
9 volunteers, myself, Katie and Todd were
10 volunteered to step in and, I guess take over.
11 But we also had a meeting a month or two after
12 that and we had a vote of the membership to
13 basically when we have the findings of the
14 misappropriated funds that the motion -- I would
15 like to make the motion at this to pursue -- that
16 we pursue to recover as much money as possible for
17 as long as it is possible pursuant to legal advice
18 from counsel.

19 So, basically, the membership at
20 that time voted in favor of the board presently at
21 that time to pretty much get Michod to recreate
22 the books, have an audit done and then at that
23 point go after the missing money. And that is

**Meeting
September 14, 2010**

Page 20

1 exactly what we plan to do.

2 We were hoping tonight to have at
3 least a quorum so if somebody wanted to possibly
4 change that against our advice we could possibly
5 do that. But due to the fact there is no quorum,
6 this is more informational and I hope everybody is
7 comfortable with us possibly working on
8 retrieving all of our money back. That is
9 definitely the road we plan on going down.

10 We just wanted to release the report
11 to the membership and inform you of the steps we
12 have been taking. We are already at the finishing
13 of the audit. We know what is missing. The
14 person that misappropriated the funds knows what
15 is missing and we are working or we will be
16 working tomorrow, starting tomorrow on retrieving
17 all of those funds.

18 Go ahead, Leslie.

19 SPEAKER: George Brouder. One more
20 time. Sorry.

21 You had failed to mention a single
22 number, Sean. How much are you trying to
23 retrieve?

**Meeting
September 14, 2010**

Page 21

1 MR. O'CONNELL: I believe the number
2 is an approximate number because there is a
3 stipulation in our, I believe bylaws or master
4 deed that any unit fees that are late, missing,
5 not paid by this person, there is an annual
6 18 percent fee that is tacked on. It's very
7 minimal. I think she was missing about 2,600
8 around that for a period of about a year or so.

9 That is not confirmed yet, but that
10 would add a couple of hundred bucks onto the
11 little less than 5,000 that she owes. But there
12 is also the question of Michod, his audit or his
13 compilation was \$26,000 and Mr. Lapointe was
14 \$22,000, so that adds up to on top of Dan Braese's
15 cost of \$2,000 approximately \$50,000 that we are
16 looking at to recover.

17 SPEAKER: So you are going to try to
18 recover that money?

19 MR. O'CONNELL: Absolutely.
20 Go ahead, Leslie.

21 SPEAKER: Are you going after her or
22 are you going after the insurance company?

23 MR. O'CONNELL: I would prefer to go

**Meeting
September 14, 2010**

Page 22

1 after her. As you know, if we go the insurance
2 route, we are all going to pay higher premiums.

3 SPEAKER: We've heard that before.
4 That is why we are paying premiums is for
5 insurance. If not, you bring the insurance
6 company before the insurance examiner -- Leslie
7 Hilton, 143 -- to the State of Massachusetts and
8 you let them explain why they are renigging on the
9 insurance policy.

10 Is that something you are going to
11 do, Attorney Braese? I don't mean to put you on
12 the spot. We kind of had this discussion.

13 MR. BRAESE: I get put on the spot
14 for a living.

15 To get the final answer over here
16 regarding the insurance, let me go over briefly
17 how the claims are going to be made against these
18 people now that we have an idea of what the amount
19 is.

20 There is two prongs you can do in
21 this type of thing. There is a criminal prong and
22 a civil prong. The criminal prong I have had
23 extensive discussion with various people regarding

**Meeting
September 14, 2010**

Page 23

1 that and I get different opinions but it's not
2 going to get you any money back. It will get her
3 potentially in trouble with the law, but that is
4 not necessarily going to get you to where you have
5 to go. So really the important one, the more
6 important one is the civil prong.

7 The easiest way to do this is what
8 we will do is we will send her with a full list of
9 expenses including what she does not have back
10 from the original \$25,000, which they've already,
11 by the way, made an offer to settle with that, so
12 really what we are talking about is the expenses.
13 And we will negotiate back and forth.

14 The reason why we will negotiate
15 with her specifically originally is because any
16 claim against the insurance, whether it be a
17 lawsuit or whether it be this type of thing,
18 drives the insurance premiums up. When your
19 insurance premiums are driven up, your condo fees
20 are driven up. My goal is to keep your condo fees
21 as low as it can by not having your insurance go
22 up.

23 That's the road we are going to

**Meeting
September 14, 2010**

Page 24

1 pursue until this board decides that that road is
2 exhausted. In other words, they are not getting
3 enough money back for the cost. Whatever they
4 decide is where we are going to go, but that is
5 going to be the goal. And if it turns out in the
6 end that the board decides we are going to make an
7 insurance claim for the rest of it or a portion of
8 it or whatever it is, we will make that insurance
9 claim.

10 SPEAKER: Because at the time, she
11 claims she had \$80,000 allegedly in the bank so
12 she might claim she has nothing now.

13 MR. BRAESE: You know, the
14 question -- she hasn't made that claim but
15 certainly not to me. The question that what she
16 has as assets is irrelevant and so you can't look
17 at a defendant and say, well, they have a certain
18 amount of assets unless they are a corporation.
19 They have a certain amount of assets, because they
20 can necessarily hide those assets so that is an
21 irrelevant question. The question is what she
22 will be willing to settle for and what this board
23 will be willing to settle for. That's the

**Meeting
September 14, 2010**

Page 25

1 important question.

2 SPEAKER: Well, you can tell her for
3 me --

4 MR. BRAESE: I'm not going to tell
5 her anything for you.

6 SPEAKER: Sean, you can tell her or
7 whoever. You are pretty good.

8 MR. O'CONNELL: You can do it
9 yourself.

10 SPEAKER: That there are going to be
11 lots of civil lawsuits going on if she doesn't
12 cough up the money, because I know what she told
13 me in my kitchen. She told me there were
14 kickbacks from other board members. There were
15 kickbacks from venders.

16 MR. O'CONNELL: We don't want to get
17 into accusations.

18 SPEAKER: I am not through. She has
19 80 grand in the bank so either she is going to
20 cough up the money or there is going to be more
21 than one civil lawsuit over at Lawrence Superior
22 Court and you can tell her that for me.

23 MR. BRAESE: And that's fine. There

**Meeting
September 14, 2010**

Page 26

1 are lawsuits at Lawrence Superior Court everyday.

2 SPEAKER: That's fine. And there is
3 going to be more, because I know other unit owners
4 that are going to be suing her.

5 MR. BRAESE: Absolutely. Everyone
6 who wants to sue her is absolutely free to sue her
7 at any time you'd like to spend the money to
8 initiate the lawsuit.

9 SPEAKER: Thank you for your time.

10 SPEAKER: It took this board three
11 years to initiate any action at all.

12 MR. BRAESE: That's not true.

13 SPEAKER: It is true.

14 MR. BRAESE: Well, it's true in your
15 opinion but it's not true in the Board's opinion.

16 SPEAKER: Well, please enlighten me.

17 MR. BRAESE: We have been doing the
18 audit. We have been talking to her attorney. One
19 of the problems -- and I will go over this and I
20 know I said this before at previous meetings --
21 one of the problems in suing somebody is that you
22 have to know what you are suing them for. And if
23 you do not know what you are suing them for and

**Meeting
September 14, 2010**

Page 27

1 what the final costs are, there is almost no point
2 in going after them because it's an open-ended
3 thing. You don't get anything out of open-ended
4 things other than doing what we have been doing,
5 which is waiting for the final number to come in.

6 There is material dispute between
7 members of this association and members of the
8 board on what that number is still to this day.
9 It's the subject of a lawsuit and, so, that
10 question has to be resolved. And, I believe it
11 has been resolved now by the forensic audit and by
12 the addition of the costs to do that forensic
13 audit.

14 Now, the other part of this just to
15 let you know and I'm just trying to get the point
16 in here, when Sean talks about the \$50,000, there
17 are components to the \$50,000. There is the
18 forensic audit. There is the compilation audit.
19 Now, the compilation audit was putting the books
20 back together again. The question will be in any
21 action against her is what portion of that
22 compilation audit is a result of her negligence.

23 And when I say that, what I mean by

1 that is what part of that did she cause and what
2 part of that was caused by the fact that the books
3 were in the condition they were in before her.
4 And that is something we will address as we go
5 along.

6 SPEAKER: Couple of points. I
7 counter what you said. The audit was not
8 initiated until January of 2010. I would like you
9 further to talk about the statute of limitations.

10 MR. BRAESE: Well, the statute of
11 limitations, as you know, tells when the knowledge
12 is of what the damages are so --

13 SPEAKER: Another important point.
14 Never use the words "audit" and "compilation"
15 together. Compilation is not an audit.

16 MR. BRAESE: But you're asking me
17 the question of the statute of limitations, and
18 what I am telling you is the statute of
19 limitations tolls when damages are known. And,
20 so, in my opinion, the three year statute of
21 limitation tolls as of tonight. The board has
22 three years from here on in to bring a lawsuit
23 against her if they so choose or an insurance

**Meeting
September 14, 2010**

Page 29

1 company does. Because as of tonight, damages are
2 fully known.

3 SPEAKER: This is not a meeting, Mr.
4 Braese, but would like to ask all of the unit
5 owners here how they feel about the Board of
6 Managers making the decision without you, without
7 counting a lot of the legal costs that we have
8 incurred and it's informal. How do you feel about
9 that? Do you feel you should have a say in this
10 settlement?

11 MR. BRAESE: And if we had a quorum,
12 that was one of the questions that was on the
13 agenda are directions from you folks.

14 SPEAKER: Do you believe we should
15 prosecute her criminally? If we prosecuted her
16 criminally, that evidence can be used in a civil
17 case as well; isn't that correct, Mr. Braese?

18 MR. BRAESE: Well, my opinion is you
19 wouldn't get far in a criminal lawsuit.

20 SPEAKER: Can you give me a section
21 of the law you are referring to?

22 MR. BRAESE: I don't have to. I can
23 talk to a magistrate. I can talk to a judge. I

1 can tell you, Mr. Brouder, I am an attorney. I do
2 this for a living so I can tell you from a
3 criminal standpoint. Like I said before, it's
4 larceny over \$250 and the crime takes place at the
5 time the larceny happens. But if you read the
6 statute, it says the intent to permanently deprive
7 the money.

8 The problem that you have in a
9 criminal standpoint is that she is not permanently
10 deprived the money, because she is paying the
11 money back. And that is the reaction you will get
12 from a clerk magistrate and judge.

13 So from a criminal standpoint,
14 anybody can walk down to Haverhill District Court
15 and fill out a criminal complaint against anybody
16 and go in and you just get in front of the clerk
17 magistrate and he will make the decision there and
18 that is how that works. If everybody in here says
19 we should do that, the board should do that, then
20 absolutely.

21 SPEAKER: I respect your opinion.
22 But I also have two lawyers who have a different
23 opinion.

1 MR. BRAESE: Yes, absolutely. I can
2 count 30,000 lawyers in Massachusetts with
3 different opinions.

4 SPEAKER: Unit 114, Barbara Stash.

5 Attorney Braese, can you clarify
6 when you were talking about the statute running
7 out? I am getting confused. Are you referring to
8 a civil statute or criminal?

9 MR. BRAESE: It's a civil statute
10 and the way civil statute works is it doesn't --
11 civil statutes have a certain -- statute of
12 limitations has a certain amount of time where you
13 have to bring an action.

14 In this case it would potentially be
15 a contract action, because she violated the
16 fiduciary duty as a treasurer. The statute -- so
17 you only have a certain amount of time to bring
18 that claim. And that if you don't bring it within
19 that time frame, after that you are barred from
20 bringing the claim.

21 The way they define the tolling the
22 statute is when the damages are known not when the
23 action occurs because you may never find out about

**Meeting
September 14, 2010**

Page 32

1 the action for another four or five years. But in
2 this case, it's when the damages are known that
3 there are actually damages. We now know there are
4 damages, and the statute runs from that. We have
5 a, you know, an amount of damages too, so we're
6 well within the statute.

7 SPEAKER: So it runs three years
8 from tonight?

9 MR. BRAESE: My opinion, if I had an
10 opinion is it would be three years from tonight.
11 Somebody else might make an argument it would be
12 three years from the time the audit was completed
13 a couple of months ago. So irrespective of which
14 way you go, you are still well within -- well,
15 we'll be done with this by the time we get to the
16 end of this.

17 MR. O'CONNELL: Go ahead.

18 SPEAKER: Unit 67.

19 I was the one that saw a discrepancy
20 in this annual report. I took it over to Mr.
21 Brouder and it was just a mishmash and we
22 requested another report, which again was a
23 mishmash. And we then asked -- it was

**Meeting
September 14, 2010**

Page 33

1 Mr. Brouder, myself, Mr. Taleo from Building E,
2 Mr. Bercelone from Building B, myself and Mr. and
3 Mrs. Brouder and we went to a meeting of the board
4 and I had asked the question to Mr. Qwan did you
5 not have any checks and balances in place? He
6 said, "No, we just trusted her." And, of course,
7 that was a big mistake.

8 The day that we -- the first time we
9 were supposed to go was sometime in August to look
10 at the books. She called Mr. Qwan in the evening
11 and admitted that there had been a diversion of
12 the funds in which she was responsible.

13 In the afternoon, the following
14 afternoon, we went out and she told us that -- she
15 had confessed. And I am not using her name,
16 because I don't want to be quoted as such. But at
17 the time, she said to myself in Mrs. Brouder's
18 presence and mine you are going to be mad at me
19 and not all of us. We started to walk home
20 because the books were not going to be shown and
21 we had to deal with it at a later date. She said,
22 "Well, I have \$80,000 in the bank."

23 And I really, really find that

1 strange that Mr. Brouder came up with the sum of
2 80,000. You know, it's a very strange
3 coincidence. I didn't know really what she was
4 talking about. I said, "We are not going to be
5 mad at you." And she said, "You will when you
6 find out what I did." And that is when she said
7 that she had 80,000 in the bank in front of Mrs.
8 Brouder and myself.

9 So my feeling is that I don't
10 think -- and we have had a lot of expenses then --
11 but the unreimbursed question cost of 4,500.81, I
12 don't think that is accurate. In the first place,
13 since the very beginning, Mr. Brouder was given --
14 he did a short compilation. Ms. Stash did a
15 compilation and many of the books and checks were
16 missing because she had a flood in her basement.
17 I don't know how we are ever going to find the
18 truth.

19 MR. BRAESE: Can I interrupt you for
20 a second? Is that a question to the amount that
21 was missing or the cost to recreate everything?

22 SPEAKER: It says unreimbursed
23 question cost. Now we are up to 50,000.

**Meeting
September 14, 2010**

Page 35

1 MR. BRAESE: Well, the 50,000 is
2 what she has not paid back plus the cost to find
3 out what she has not paid back.

4 SPEAKER: The point I am trying to
5 make is many of the books were lost. And, in
6 fact, Sean brought up that we had two meetings to
7 remove the board in the file and the second one
8 both Mr. Argana, Sean and Todd volunteered to
9 become members of the board, a voluntary board
10 and -- I have lost my train of thought. Holy
11 Moses.

12 MR. O'CONNELL: Basically, the
13 28,000 that says there is questionable costs, you
14 are saying that it shouldn't be 28. It should be
15 80. Is that where you are going?

16 SPEAKER: I am saying that I find
17 that to be an odd coincidence that this woman said
18 to me I have \$80,000 in the bank and then, you
19 know, I think there were three checks involved
20 that she did some reimbursement.

21 MR. BRAESE: That's in Ed's
22 department.

23 SPEAKER: A lot of the books, the

**Meeting
September 14, 2010**

Page 36

1 paperwork is gone, is gone in the flood in the
2 basement.

3 MR. O'CONNELL: Most of the
4 paperwork is not gone. The original paperwork is
5 gone. Ed can attest that he went to the bank and
6 got all the checks pretty much, all the paperwork
7 from every account.

8 MR. LAPOINTE: There were several
9 people who played that effort. I believe BJ was a
10 big part of that too. I know Mr. Michod was as
11 well. I can assure you that every record that we
12 have we were able to say here is what the bank
13 received for the deposits and checks. We have
14 copies of the canceled checks front and back. We
15 looked at every endorsement, questioned venders
16 about the endorsements because of some parallel
17 coincidence to another signature.

18 SPEAKER: Well, I am just saying.
19 I'm not making an accusation. I find it to be an
20 odd coincidence that that same amount has been,
21 you know, repeated. And I know many things were
22 missing, and I know the clerk at the time of the
23 previous board. I saw her working on her computer

**Meeting
September 14, 2010**

Page 37

1 diligently at the first meeting, and then I was
2 told there were not any notes.

3 MR. O'CONNELL: The bottom line is
4 if there is a discrepancy on how much she took or
5 how much was misappropriated is Ed's job was to
6 find out what checks said they were for our
7 insurance and they actually went to her. We can't
8 make an accusation without evidence to say
9 possibly she got a kickback, you know. Possibly
10 some of the money that was legit signed for by a
11 contractor could have come back her. We cannot
12 say this.

13 SPEAKER: We don't know this.

14 MR. LAPOINTE: Plus, Dan, correct me
15 if I am wrong, the way I've always seen it work is
16 when you pursue somebody in the civil court for
17 the action that there is discovery of bank records
18 and things of that sort. And at that time, there
19 will be an explanation required with where did
20 this deposit come from because you can very easily
21 have kickbacks or things going on out there. The
22 world is a crazy place as we all know.

23 SPEAKER: I agree. But the second

**Meeting
September 14, 2010**

Page 38

1 part that I would like to present is, you know, I
2 am now retired. I have worked hard for every
3 single dime that I have earned, and I have always
4 paid my condo fee faithfully. Many of these unit
5 owners, I am the only original owner left from
6 1970 and it's been paid.

7 For the years that this certain
8 person was the treasurer, a lot of condo fees were
9 not paid and it's unconscionable that this money
10 was missing. Maybe because it's I am an honest
11 person. I just have difficulty understanding it.
12 And, you know, you greet her and there is a smile
13 and this and that. And I really am very nervous.

14 And I really have a big, big
15 question mark with that second, first and second
16 meeting, the first meeting, the first one of two
17 when the clerk at that time was continuously
18 typing on her laptop and then I was approached by
19 a board member's wife because I took notes at that
20 meeting would I share my notes and I said, "No, I
21 am not a clerk. I took those notes."

22 MR. O'CONNELL: Can we try to keep
23 it to a question? I don't want to be rude and I

**Meeting
September 14, 2010**

Page 39

1 know everybody likes to vent in these meetings.
2 But, please, if it doesn't pertain to a question
3 --

4 SPEAKER: I would wish that
5 something positive would come out of this.

6 MR. O'CONNELL: I think there is
7 positive --

8 SPEAKER: This treasurer took from
9 all of us and some of them have gone and died and
10 gone to heaven.

11 SPEAKER: They might be the other
12 place. I am sorry.

13 SPEAKER: Excuse me, Sean.

14 MR. O'CONNELL: Yes, go head, BJ.

15 SPEAKER: Since this is being
16 recorded, I would like to correct the record.
17 Unit owner 114, Barbara Stash, CPA, currently
18 certified in the Commonwealth of Massachusetts.

19 I did not perform a compilation of
20 the books and records for this association as was
21 commented on by Marie. That correction needs to
22 be made.

23 SPEAKER: That is what I had heard.

**Meeting
September 14, 2010**

Page 40

1 You know, I might be wrong on that. That is what
2 I was told.

3 SPEAKER: That needs to be
4 corrected, because unintentionally you may be
5 using the wrong terminology. But since I am
6 currently a licensed CPA, I was a currently
7 licensed CPA at the time.

8 MR. O'CONNELL: Ladies.

9 SPEAKER: I apologize for that.

10 SPEAKER: This is being recorded.
11 It's a legal record.

12 SPEAKER: No kidding. That is why I
13 am here.

14 MR. O'CONNELL: Order, please.

15 SPEAKER: Excuse me, Sean. I would
16 like to back up Ms. Ribbon because I was told --

17 MR. O'CONNELL: We can't allow
18 hearsay. If somebody heard something in
19 somebody's kitchen or in the parking lot, please,
20 it's hearsay. Third party conversations don't --

21 SPEAKER: You hadn't heard what she
22 had to say.

23 SPEAKER: BJ, were you or were you

**Meeting
September 14, 2010**

Page 41

1 not given some of the records by Mr. Qwan? Don't
2 you lie.

3 SPEAKER: Let me know when you are
4 finished speaking and I will answer.

5 SPEAKER: Allegedly I was told not
6 only by Mr. Qwan but by yourself --

7 MR. O'CONNELL: Leslie, Leslie.

8 SPEAKER: It's being recorded.

9 MR. O'CONNELL: You're out of order.
10 Please sit down. This is not court. You are not
11 going to get it out over my loud voice.

12 SPEAKER: Excuse me. I am not
13 through.

14 MR. O'CONNELL: You guys can go out
15 in the parking lot for this.

16 Please, Leslie.

17
18 (Off record discussion)

19
20 MR. O'CONNELL: Back on the record.

21 MR. CAMPBELL: I just want to state,
22 and I think I speak for the board, first of all,
23 we know this is your money, all of this stuff.

**Meeting
September 14, 2010**

Page 42

1 MR. O'CONNELL: It's our money.

2 MR. CAMPBELL: All of us as condo
3 owners we understand. It's from our pocket too.
4 It's from yours. Our intent is to get as much
5 money back as possible. If we can get everything,
6 then fine. Wherever it is, however much it is and
7 if we go to file a civil case and we get the
8 discovery, if there is more money there, then we
9 will go for everything possible we can. Because
10 the money was taken from all of us, and we know
11 some of you have a fixed income. No one here I am
12 assuming is rich, you know. And the cost will be
13 coming back to us if we don't do this. That is
14 our intent as the board. That is what I want to
15 do. I am assuming that is what every board member
16 wants to do. We want to do it because it's your
17 money and it's all of us together.

18 SPEAKER: It's all of us is right.

19 May I say one more thing?

20 MR. O'CONNELL: Absolutely.

21 SPEAKER: Marie Griffin from Unit

22 67.

23 And, you know, I didn't

**Meeting
September 14, 2010**

Page 43

1 unintentionally but, Ms. Stash, I saw those
2 records that were in a big fire box and these
3 papers all over the floor. The same ones that
4 Mr. Qwan had taken to Mr. Brouder.

5 MR. O'CONNELL: Marie, can we please
6 not go back to what is between you girls?

7 SPEAKER: That's all I want to say
8 is that they were seen.

9 MR. O'CONNELL: You girls will argue
10 all night.

11 SPEAKER: Because this is being
12 recorded, now I will answer Leslie Hilton's
13 question and I will tell you the facts.

14 When I found out there was a fraud
15 going on -- BJ Stash, CPA, Unit 114 -- I contacted
16 Peter Qwan and I said, "Under the guides of my
17 license and my free time, at no cost I will help
18 try to pull books and records together." And when
19 I say books and records, I'm not talking about
20 financial statements. I am talking about
21 invoices, bank statements, checks, what have you,
22 so I offered to pull this together to save the
23 association money. That is all I did.

1 And Peter Qwan gave me records that
2 I put in my living room floor. I gathered them
3 slowly and I pulled together the bank statements
4 that were given to Katie along with all the other
5 records, who became the new voluntary president,
6 and then the same binders were given to Michod and
7 I don't know whoever else.

8 But as a licensed professional, I
9 offered to help this association from an ethical
10 perspective and from no other perspective. There
11 was no personal gain. I don't know what you are
12 talking about in terms of shredding checks because
13 anything that was done by me was done from a
14 professional and an ethical perspective to save
15 this business money and to move the fraud forward,
16 the forensic audit forward. That is it.

17 MR. O'CONNELL: Point taken.

18 Katie?

19 SPEAKER: Unit 138. I can confirm
20 what Leslie just said. She did not perform a
21 compilation. She basically physically --

22 SPEAKER: BJ.

23 SPEAKER: I'm sorry, BJ. She did

1 not perform a compilation. She did put the file
2 that she was given into folders and basically
3 sorted them and labeled them. She did not render
4 any opinion. She did not perform any compilations
5 to my knowledge.

6 MR. O'CONNELL: She helped us out.
7 What's the big deal? There was a 15 minute
8 argument about somebody helping us out.

9 SPEAKER: I don't know if the
10 history is doing anything for us. But I will
11 state I am the one who discovered the
12 embezzlement. Not anyone else in this
13 association. And, number two, I did a compilation
14 which included reconciling 30 months of bank
15 statements in 2005, six and a portion of 2007. We
16 sorted all of the records.

17 Mr. Qwan then passed them on to BJ,
18 to Ivana and we have no idea what happened to
19 those records between four unauthorized people
20 holding them. I had them myself for a week before
21 he came back to get them, and I can say I didn't
22 do anything with them. I have done an audit and I
23 did 2005 in great detail and will state this to

**Meeting
September 14, 2010**

Page 46

1 the point.

2 The amount the association collected
3 seemed appropriate. That is in the monthly condo
4 fees. The amount and the expenditures were right
5 in line with the budget for that year, yet,
6 \$27,000 was moved into that account and I'll say
7 that I still don't know where it went. And to
8 make it easier, I have come up with \$80,000. But
9 if you are saying you're going after 75, I don't
10 have a problem if that is what you're going after.

11 MR. O'CONNELL: We can only go by
12 what the report, you know. Our report says right
13 now there is only \$4,500. That is the missing
14 money.

15 SPEAKER: Your report is lacking.
16 Just read the scope of the audit. He doesn't care
17 if it was illegal. He doesn't care if it broke
18 the bylaws. Well, that's very important to us and
19 we have a legal basis to collect money such as
20 Michod. His fee is collectible, and that is not
21 in his audit report.

22 What would you say if you were
23 called to the stand in a civil case against the

**Meeting
September 14, 2010**

Page 47

1 treasurer, you stand at 28,000 is all she owes us?

2 MR. LAPOINTE: No, no, I wouldn't.

3 Let me make it clear. It talks about the damages
4 that are unfunded as well as there are my fees,
5 other fees, legal fees and so forth. Generally
6 what I see happening in a case like this, the
7 association prepares a letter of claim to an
8 insurance company. That is the direction you are
9 going to. And at that time, they identify all the
10 costs including recruiting, which Sean made
11 reference to before.

12 But for the record, it's not that I
13 don't care about this and that that you were
14 referring to earlier. It was just out of the
15 purview of what we were doing. Some of that is
16 legal related, which they will be dealing with.

17 SPEAKER: Unit 132.

18 I worked for an insurance company up
19 until recently. I am just curious if they denied
20 the claim and if so --

21 MR. O'CONNELL: They have not.

22 SPEAKER: Because, you know, there
23 is an intentional going on here and I am wondering

**Meeting
September 14, 2010**

Page 48

1 about their argument. Most insurance companies
2 are going to be that there was an intent to
3 deprive. I know they are going to come up with an
4 argument like that.

5 MR. O'CONNELL: We hope at the end
6 of the day not to go through the insurance at all.

7 SPEAKER: And I understand why.

8 MR. O'CONNELL: At the end of the
9 day if we do not like the number that the
10 treasurer wants to settle on, then we go through
11 the civil litigation procedure and try to get
12 every single penny back.

13 SPEAKER: They are going to want
14 their money back. What they are going to do is
15 they are going to give an argument.

16 MR. O'CONNELL: There was an
17 original claim placed with the insurance company.
18 It was closed out, because our findings were not
19 complete at the time. That does not prevent us
20 from reopening that claim and putting in an
21 insurance claim for say we had to either settle or
22 lost the litigation and didn't collect 100 percent
23 of the money we could possibly put in a claim on

**Meeting
September 14, 2010**

Page 49

1 our insurance for the difference if that is
2 something.

3 SPEAKER: I understand why we
4 wouldn't want to do it. It's good to know.

5 MR. O'CONNELL: We have gone down
6 that road. We've definitely looked at that. It's
7 obviously not our number one.

8 SPEAKER: I would agree with you to
9 go the other way myself. I think the insurance
10 company would give you a real hard time, us a hard
11 time.

12 MR. O'CONNELL: They always do.

13 SPEAKER: I know. I worked for one
14 for 22 years.

15 SPEAKER: Allison Colby, Unit 112.

16 The question I have is: Who
17 determines what is accepted as the amount? Is
18 that a board decision or is that a unit decision?
19 How does that get made?

20 MR. O'CONNELL: As it was worded in
21 2007, it's a board issue. We hope to keep it that
22 way. As of this meeting, it's not going to change
23 because we don't have a quorum. But, yes,

**Meeting
September 14, 2010**

Page 50

1 negotiation wise with like Dan, our attorney, the
2 association attorney, to negotiate with that other
3 party and come to a number. If we don't like the
4 number, if the number is too low, go civilly and
5 try to get, you know, as much money as possible.

6 Do we have a solid number in the
7 back of our head? As of right now, no. We are
8 pretty aggressive. At first I wanted every penny.
9 If I think I can get every penny, then we will try
10 to get every penny. If it's a low ball money, I
11 don't know. No, I don't think so. Again, I don't
12 think it's that bright to broadcast our hand and
13 say, hey, here is our number, you know. Because
14 this is public record, and it is what it is.

15 SPEAKER: The question was: Is that
16 a decision --

17 MR. O'CONNELL: With the board, yes.

18 SPEAKER: With the board and the
19 attorney. It's not made with the condo
20 association as a whole?

21 MR. O'CONNELL: Yes, by the board.

22 SPEAKER: Unit 138.

23 Dan, correct me if I am wrong, the

**Meeting
September 14, 2010**

Page 51

1 board acts on behalf of the association according
2 to 183A so the board has the right to litigate on
3 behalf of the association and the party to the
4 lawsuit on behalf of the association. The actual
5 meeting of the board -- sorry, not of the board.
6 The actual meeting of the association members
7 cannot be sued, so if the association is sued the
8 board is sued. If the association decides to sue,
9 the board actually sues.

10 MR. O'CONNELL: Thank you.

11 SPEAKER: Silvia Nistate, 149.

12 I am really terribly disappointed at
13 the turnout we have here tonight. I find it
14 impossible to believe that there wasn't more
15 interest in being here.

16 So my question is: If this is what
17 it is now on the first night of this so called
18 expose, whatever you want to call it, and when
19 people thought they were going to come to vote and
20 decision, what can we expect if we meet again? I
21 mean, is this going to happen every month, two
22 months?

23 MR. O'CONNELL: We went a little

**Meeting
September 14, 2010**

Page 52

1 above normal and beyond what we normally do into
2 sending out the notices. I know myself and John
3 physically walked around the neighborhoods and
4 knocked on doors and handed out the audit report
5 by hand to I'd say say 30 percent of the people
6 here. Building G and H, I think I handed out
7 four. That is how many people. I don't know if
8 there were people home that didn't answer the
9 door. There were people in the car that waited
10 for me to go past their door and then went into
11 the house. I had a smile on my face. I wasn't
12 snarling at anybody.

13 SPEAKER: What about the people who
14 are renters? Did this go to the owners as well?

15 MR. O'CONNELL: All mailings go to
16 the owners. We did mail out the notice of the
17 meeting, and I believe in the notice it had the
18 purpose of the meeting. That does go to the
19 owners.

20 SPEAKER: What are your plans for
21 the next session?

22 MR. O'CONNELL: I can't drag people
23 here. Other than having fireworks and food, I

**Meeting
September 14, 2010**

Page 53

1 don't think --

2 SPEAKER: If we can't get a quorum,
3 how are we ever going to finish this thing?

4 MR. O'CONNELL: It's easy. We don't
5 need a quorum to finish it. We had a quorum in
6 2007 that said we have the board. We want the
7 board to pursue to get our money back pretty much
8 by any means necessary according to legal counsel,
9 and that is what we are going to do. If we don't
10 have a quorum, then we can't change much. That is
11 why in 2007 we changed the budget and board
12 elections to 30 percent because we know we never
13 get more than 30, otherwise, we'd never pass a
14 budget.

15 It's a possibility of people pulling
16 their neighbors and get a bunch of proxies for
17 their next annual meeting or special meeting that
18 we can possibly change -- I would love to change
19 that vote rule to a majority of the people that
20 show up. Because if the country ever ran on
21 something by the voters that show up, nobody would
22 ever get elected. Everybody would be at a
23 standstill because nobody shows up.

**Meeting
September 14, 2010**

Page 54

1 Just to give anybody who doesn't
2 know an idea of how interested people are, people
3 stole money from us in 2007 and we barely had our
4 66, 67 percent there. We had about 72 and we had
5 a heck of a lot of proxies, so there were not
6 actually a lot of people who showed up for that
7 meeting. And there was people stealing your money
8 and still people did not show up for that meeting.

9 We did have 72 percent of change
10 stuff but barely. That was I don't want to say
11 catastrophic but that was probably the worse case
12 scenario to drum up support for a meeting or
13 interest in a meeting and we barely had 50 people.
14 It was probably 50 people at that meeting.

15 Go ahead, Todd.

16 SPEAKER: Because you are talking
17 about future meetings, we had the discussion in
18 the past about how we wanted to pursue, so we
19 actually called this meeting now that we had hard
20 numbers and evidence so that we can present it to
21 you and have kind of a final decision if there was
22 any change by the membership to change direction.

23 Since enough people haven't showed

**Meeting
September 14, 2010**

Page 55

1 up, we are not going to change direction. So
2 stated earlier, starting essentially tomorrow we
3 will start with all the proceedings of trying to
4 get all the moneys that we can because we already
5 have the direction we are going to be heading in.
6 It was just in case to get the information to the
7 association and make sure that everyone was
8 satisfied with the direction we were heading.

9 SPEAKER: So you are saying there
10 won't be a vote of what people want to do or not
11 to do.

12 SPEAKER: In the meeting that Sean
13 has referenced, we had a vote but nobody had any
14 dollar figures to put to what we were actually
15 looking for. Tonight we have those numbers so
16 that we can talk a little more intelligently about
17 what we are actually looking to get.

18 MR. O'CONNELL: Go ahead, Marie.

19 SPEAKER: I would just like to
20 ask -- Marie Griffin, Unit 67.

21 Todd, I would like to know how many
22 people are here and of the people here how many
23 collectively proxies did we bring and what that

**Meeting
September 14, 2010**

Page 56

1 amount is?

2 SPEAKER: I can tell you there is
3 34 percent of the membership and I am going to say
4 about half -- I can give you a number later on --
5 but close to half as proxies and then the rest who
6 is here.

7 SPEAKER: How many of us are here,
8 34?

9 SPEAKER: There is 34 percent of the
10 membership.

11 MR. O'CONNELL: Including the
12 proxies.

13 SPEAKER: Thank you very much.

14 MR. O'CONNELL: There area about 20
15 percent here.

16 You had a question?

17 SPEAKER: Yes. Susan Luvins, Unit
18 90.

19 Just to be clear, how much money are
20 we realistically going after?

21 MR. O'CONNELL: \$50,000 at least.
22 There is a question about an interest and PMA
23 might have small numbers under two grand of costs

1 associated with this but I don't think so.

2 SPEAKER: And is there any educated,
3 legal guess as to what percentage of money you
4 might be able to collect?

5 MR. BRAESE: No. I wish I could
6 give it to you, but I would be making it up. It's
7 going to ultimately be up to the board to make the
8 decision. What I have asked the board to do is
9 collectively come up with a decision on what the
10 bottom line number would be for them.

11 What that means is that when I go to
12 negotiate with the other attorney starting
13 tomorrow, I am going to tell him what we are
14 looking for. He is going to make a counteroffer.
15 I am going to take that counteroffer to the board.
16 They then make the decision on whether the
17 counteroffer is good or not. We go through this
18 process as we go along.

19 I don't know what the bottom line
20 number is. They haven't told me yet, and Sean
21 said this earlier. It's not something you really
22 want to disseminate out, you know, before
23 negotiations happen. So the question really comes

**Meeting
September 14, 2010**

Page 58

1 down to although you can't vote today because you
2 don't have a quorum, you can tell the board what
3 your feelings are regarding what you think they
4 should be doing, so it can't be something that
5 goes as part of the record.

6 But, you know, feel free to tell
7 them you want to go after a penny or you want to
8 go after every penny as long as it's financially
9 feasible for you. You don't want to go after
10 every penny. You tell them what you want to do.
11 Give them direction. It just can't be made
12 official. You are here. You showed up so let
13 them know what you want to do in pursuit of this
14 money, because we will be pursuing it.

15 I don't know what the end number
16 will be simply because we don't know what the
17 other side is going to bring up as defenses. I
18 have an idea. But we also don't know what the
19 bottom underlining number is that is acceptable to
20 you. Again, they represent you so let them know
21 what you think is an acceptable number
22 potentially. It won't be official, but you are
23 certainly welcome to do it.

**Meeting
September 14, 2010**

Page 59

1 MR. O'CONNELL: Hold on just a
2 second.

3 MR. CAMPBELL: Two quick questions.
4 Dan, first of all, ballpark figure,
5 if we end up going to court, what would it cost
6 legally in the neighborhood to do?

7 MR. BRAESE: Well, it's the type of
8 thing that if you do go to court you are going to
9 do it kind of a two prong thing where you are
10 going to go to court civilly but you are also
11 going to make a claim against the insurance, so
12 the insurance will probably segregate. As you
13 said earlier, segregation just means they are
14 going to pass on their costs to the defendants
15 upon them winning or losing the lawsuit but
16 hopefully winning.

17 I think from a legal perspective
18 it's a good case. It's a very good case. That
19 doesn't mean anything though because it's one of
20 these things where -- and I can tell you that I
21 have been in cases where I thought were good and
22 have lost. And I have been in cases where I
23 thought were the worst cases in the world and it

**Meeting
September 14, 2010**

Page 60

1 was a slam-dunk.

2 It's one of those things. That is
3 why you want to do it in a negotiated way. It's
4 the cheapest by far. They are showing willingness
5 to negotiate. I have already had discussions with
6 the attorney. So how far are they going to be
7 willing to negotiate? That I will find out
8 starting tomorrow. Again, it comes down to what
9 it is the board will accept.

10 You know, litigation is expensive.
11 Litigation attorney will ask for \$10,000 up front
12 as a retainer to start. And, again, you know, so
13 there are significant expenses involved in
14 litigation. Litigating is an expensive thing.
15 There is no guarantee in litigation you are going
16 to get it. So if you get an offer from them for
17 X, you have got to make the decision is it worth
18 going for Y because I have to spend money to get
19 to Y and what are my chances for getting there.

20 At this point it becomes less of a I
21 really want to make a point decision and more of a
22 business decision for you as a membership. How
23 much do you want to spend to get X? Do you want

**Meeting
September 14, 2010**

Page 61

1 to spend 20,000 to get 30,000? It's probably not
2 worth it. You want to spend 10,000 to get 50? It
3 might be worth it.

4 MR. O'CONNELL: What is the
5 likelihood to getting that money back that you
6 spend to litigate?

7 MR. BRAESE: In this country people
8 cover their legal fees. And unless there are
9 extenuating circumstances and there might be
10 extenuating circumstance but, again, you have to
11 convince a judge that there are circumstances that
12 would warrant those legal fees coming back to you.

13 MR. CAMPBELL: What about punitive
14 damages?

15 MR. BRAESE: Typically not in this
16 case.

17 SPEAKER: Peter, 127.

18 I wasn't expecting to have to vote
19 on anything because we did vote. We did make a
20 decision a couple of years ago throughout this.
21 As far as a settlement strategy is concerned, this
22 is my feeling. We have three kind of expenses.

23 One, we have the actual damages

**Meeting
September 14, 2010**

Page 62

1 which turns out to be \$5,000 and more. Basically,
2 it seems like that she kind of like freaked out
3 and said, okay, I am caught. I just want to make
4 everything right. Okay. Maybe you might be
5 correct. I don't know that. I wasn't crediting
6 your decisions about \$80,000 or anything like that
7 but then it's like looking at all this stuff that
8 is really obvious. Like the utilities seem to
9 make a whole. Like a lot of these other expenses
10 which adds up comes out to about \$5,000.

11 We should get that back. We should
12 get the fraud audit back. But the stuff of
13 getting the books together, you are saying how
14 much of that is because the books were in bad
15 shape and I would be okay if you got none of that
16 back. I would be satisfied if you got a quick
17 settlement for the \$5,000 plus the fraud. That is
18 my personal feeling. That is it.

19 MR. O'CONNELL: Thank you very much.
20 Katie?

21 SPEAKER: Unit 138.

22 I was going to ask, Dan, so under
23 American rule unless there is a specific statute

**Meeting
September 14, 2010**

Page 63

1 even if we win the case, we would not be able to
2 assign the attorney costs to the --

3 MR. BRAESE: You always ask for
4 them. It's part of any lawsuit, but you rarely
5 get them.

6 SPEAKER: Thank you.

7 MR. O'CONNELL: Leslie?

8 SPEAKER: 143 Farwood.

9 You tell her she either coughs up
10 the 50 grand, the 10 grand to you or else there
11 are other people here that have some dough that
12 will also be suing her civilly in court. Maybe
13 those certain people who will back off a little,
14 but I want to hear that 50 grand maybe by the end
15 of week. I am not kidding. You know who I mean.

16 MR. BRAESE: We will adequately
17 threaten.

18 SPEAKER: I want you to get in touch
19 with me, Sean, because if not I'm going to my
20 lawyer and I am suing her civilly too.

21 MR. BRAESE: Actually, if you want
22 to do that, I encourage you to do that. You have
23 the right to do it. Feel free.

**Meeting
September 14, 2010**

Page 64

1 MR. O'CONNELL: I was one of the
2 head torchlighters in 2007 who wanted to be as
3 aggressive as possible and ring her neck and --

4 SPEAKER: No, Sean, don't be
5 patronizing. Just go for the money. You have
6 been here how many years, Sean?

7 MR. O'CONNELL: It's been so long
8 that now it's starting to weaken my anger towards
9 this person but yes.

10 SPEAKER: I am in 66, George
11 Brouder.

12 I want to give you unit owners
13 another option. I am not bond by what they are
14 doing. I have filed a legal suit. I am suing
15 Donna Demers, the treasurer, for embezzlement. So
16 if any of you are interested and don't buy their
17 approach give me a call. I have details which
18 they didn't want to hear dollar for dollar that
19 will get the \$80,000 claim.

20 My lawyers -- Mr. Braese is free to
21 his opinion. He may be correct. They have a
22 totally different opinion including liens on her
23 property and numerous other collection methods.

**Meeting
September 14, 2010**

Page 65

1 And, further, she is in such deep goo that her
2 lawyer, Mr. Sullivan, is ready to do anything
3 because all she has now is the Fifth Amendment.
4 She is claiming I can't talk. So just another
5 option. We are not bound by what they do.

6 SPEAKER: It's a class action,
7 friendly free.

8 SPEAKER: You have another option.

9 MR. BRAESE: Individual members of
10 the association can do whatever they decide to do
11 depending on their deepness of their pockets. The
12 issue that we have or I have and the board has is
13 that they are dealing with your money and, so,
14 they have to do it the most cost efficient manner
15 and to not drive your fees up. If you happen to
16 have a pile of cash sitting in a bank account and
17 you want to spend it on a lawsuit, you are
18 absolutely free to do that.

19 SPEAKER: Thank you. I've got the
20 pile of cash. I am not poor, and I will be glad
21 if anybody is interested at no cost to you. Key
22 word. It's my money and not yours. All I can do
23 is the more people that join with me the better

**Meeting
September 14, 2010**

Page 66

1 the case.

2 SPEAKER: Want to spell your last
3 name and unit number please, Mr. Brouder?

4 SPEAKER: Number 66. Unfortunately,
5 here we go again. I don't live here. I own a
6 unit. I spend a couple of months a year in it,
7 and the rest of the year I don't rent it. It's
8 empty. I live in Florida so my unit is here for a
9 couple of months a year that I use it and after
10 that --

11 I am not a poor man. And,
12 unfortunately, this association prays on the unit
13 owners because most of the people have a limited
14 income, fixed income and they can't afford lawyers
15 and counter what is going on in this association.
16 I can, I am and I am doing it.

17 Unfortunately, the legal system in
18 this country is poor. Could take years for the
19 suit to be finally heard. We are going through
20 discovery. Soon we will be getting into other
21 aspects. I am just saying you have an option. If
22 you don't want to do it, it's okay with me. I am
23 going ahead anyway. Thank you.

**Meeting
September 14, 2010**

Page 67

1 MR. O'CONNELL: Just on behalf of
2 this board, I can let you know and I know Silvia
3 made a point of or Marie made a point of, you
4 know, unpaid fees for all those years. When we
5 took over in 2007, I believe when John Michod
6 finally came back with a rough number of how much
7 money was missing it was approximately, correct me
8 if I am wrong, like \$90,000 that wasn't paid to
9 us.

10 I think as of the last report, I
11 think it's 19, so in what, three years PMA along
12 with the board has gone from 19, I mean, 91 to 19.
13 So we are trying to recover money. It's our
14 money. Just like John stated, it's our money just
15 as much as it's yours. We are trying to run this
16 as transparent and honest as possible. That is
17 what it is.

18 SPEAKER: Unit 112.

19 When you are talking about the
20 \$90,000, is that with the erroneous amount?

21 MR. O'CONNELL: No, no, \$90,000
22 amount --

23 SPEAKER: Because they said we

**Meeting
September 14, 2010**

Page 68

1 hadn't paid it or whatever and we had. I want to
2 know what that \$90,000 you are talking about.

3 MR. O'CONNELL: The \$90,000 was
4 delinquent condo fees.

5 SPEAKER: Legitimately delinquent
6 condo fees.

7 SPEAKER: Yes.

8 MR. O'CONNELL: It's a good
9 question. I think --

10 SPEAKER: Because I have checks to
11 prove that I'm not delinquent.

12 MR. O'CONNELL: I got one too. And
13 I am on the board without knowing that those were
14 going out. I got one, looked at it and started
15 yelling at my wife who pays the bills? What
16 happened? You didn't pay the bill?

17 SPEAKER: Unit 138.

18 Dan, could you please describe to
19 the association members the probability of success
20 of suing the treasurer individually?

21 MR. BRAESE: Individually, an
22 individual member suing?

23 SPEAKER: Well, as an individual

1 member suing the embezzler directly.

2 MR. BRAESE: I'd rather not, if you
3 don't mind. I can tell you the board can do it.
4 The question whether individuals can do it as
5 fiduciaries of the board they can't. If they can
6 do it as derivatives of the board, probably not.
7 Those are all technical terms, but it's difficult
8 as a derivative.

9 MR. O'CONNELL: I would like to
10 actually answer your question. I think the
11 original report that we got was \$90,000. Whether
12 that was part of that might have been some of
13 those missed -- in other words, Michod went out
14 and wasn't sure of certain records and that was
15 maybe the first report.

16 But, basically, every month it went
17 down because we have a collection attorney and it
18 went down from 90 to 70. And I don't know right
19 off the top of my head. It's three years ago.
20 But I don't recall a big jump in saying, okay, it
21 went from 90 to 60 just because that was a false
22 amount.

23 SPEAKER: Congratulations.

**Meeting
September 14, 2010**

Page 70

1 SPEAKER: There was also a period of
2 time when the amount was reducing as a result of
3 people actually answering that letter asking
4 people to send in the checks for unknown amount.
5 So as the checks were coming in, the total went
6 down. I think at a certain point and to reach 45
7 came and, I think 45 was the number from which we
8 actually started to have to actually collect.
9 But, again, I think it's 45 or 42 because there
10 was a period where we were just receiving proofs
11 of payment. And once it was done, we started
12 collecting but I am not certain.

13 There were certain association
14 members who upon being served the actual
15 collection letter started contacting us to set the
16 amount so we started receiving the payments with
17 the percentages and so forth. But then again it
18 was a period of time where we mostly received
19 proofs of payment, and then we started actually
20 receiving the actual one.

21 MR. O'CONNELL: Thank you.

22 SPEAKER: Kathy Taylor, 118.

23 In regards to the individual

**Meeting
September 14, 2010**

Page 71

1 lawsuits that people are speaking of, is there any
2 possibility that cost to the association as a
3 group would result in those?

4 MR. BRAESE: No, they are individual
5 lawsuits.

6 SPEAKER: Just want to make sure.

7 MR. O'CONNELL: Unless you are suing
8 the board and then costs do go up. If you sue the
9 board obviously the insurance gets involved if
10 it's an insurance issue and insurance has to
11 provide attorneys and costs go up from the
12 insurance point of view. If they look at it and
13 say all right, we have had to represent this
14 association three, four, five, six times and that
15 is not a real number. But, you know, their costs
16 go up and our costs go up. But it's everybody's
17 right to do what they feel is something they want
18 to do.

19 SPEAKER: I am just not sure if I
20 heard you correctly. As a negotiation there is
21 usually a high, low and target. If the board will
22 decide what is accepted as a lower offer
23 representing us or would there be a meeting?

**Meeting
September 14, 2010**

Page 72

1 MR. O'CONNELL: It would be us, the
2 board. We haven't sat down and discussed the hard
3 number but I think we are pretty close on an idea.
4 We haven't even discussed the numbers but we are
5 all pretty close on wanting pretty much every dime
6 was the word of at least three of us that said,
7 yes, every dime. It's been like that. And some
8 of us feel like every dime plus criminal charges.
9 You know, it is what it is.

10 There is a number of 50. I don't
11 see us settling for anything like 30, 35, no. But
12 I feel like obviously there may be, you know,
13 shared responsibility with the recreation of the
14 books but we don't feel that way. We feel it was
15 her responsibility to take care of the books.
16 Yes. Maybe the former board didn't watch her,
17 didn't have checks and balances but we feel that
18 was her job. That was her responsibility because
19 the checks and balances were not there. She took
20 it upon herself to --

21 SPEAKER: Take our money.

22 MR. O'CONNELL: So, that's my
23 personal opinion. We are pretty close on the

1 board. There is not one of us on the board that
2 is way off from the other or rest of us.

3 Go ahead, BJ.

4 SPEAKER: Unit 114, BJ Stash.

5 Mr. Lapointe, I would like to ask
6 you a question regarding your forensic work.

7 Do you recall your starting point in
8 '04 where the records from the prior treasurer in
9 which shape they were handwritten, they were not
10 on the computer, were they good numbers in a whole
11 scheme of things for you to start with?

12 MR. LAPOINTE: Yes. We did go to
13 the accounting firm who had prepared the work at
14 that time and reviewed all their records. They
15 gave us a complete copy of their work product and
16 using that was when we discovered, and I think you
17 all somewhere along the line I had seen some
18 evidence of this, where there was an error made in
19 terms of the timing of reporting deposits into the
20 account and at first we thought that that might be
21 missing money. There was a case where the bank
22 had more money than the books. It was just
23 something that was lagging in terms of reporting.

1 But in terms of looking at the
2 report that they received on a monthly basis, all
3 of them were manual. Again, it's before the time
4 3/31/04 is before the time we were looking. It
5 looked in pretty decent shape. It would have been
6 nice for any if they were automated, but I realize
7 that they weren't. It appears the work that they
8 had done in terms to try to tie up global amounts
9 were there except they should have picked up that
10 money.

11 SPEAKER: What I meant was not the
12 CPA that the association hired or the board hired.
13 We had a former treasurer, and she was an older
14 lady. She used to do the records by hand, and
15 they were relatively meticulous. And I was just
16 wondering if that was a good starting point for
17 you?

18 MR. LAPOINTE: Yes, it was.

19 SPEAKER: They were somewhat
20 reliable?

21 MR. LAPOINTE: Yes.

22 MR. O'CONNELL: Marie, you had a
23 question?

**Meeting
September 14, 2010**

Page 75

1 SPEAKER: Marie Griffin, Unit 67.

2 I would just like to have the
3 opportunity to have one more meeting and we can
4 work like heck to get proxies from other people
5 and have those count and have us vote as to what
6 that minimum amount that we are willing to settle
7 for. You know, in all honesty, I really think the
8 unit owners should be involved. It is our money.
9 It's your money too, but it encompasses all of us.
10 I think if we worked hard and everybody that is in
11 this room if you went to your neighbors and asked
12 would they sign their proxies over to you, I think
13 you'd end up with a lot more proxies because I
14 have seen it happen before.

15 MR. O'CONNELL: If we got proxies
16 back to the board, it would stay the same. We
17 feel like this is the right way to go. I know he
18 stated his opinion. Please state your opinion on
19 how you would like the board to go. And like Dan
20 said, it won't be on record or something we will
21 be held to but we will have an idea of what the
22 membership --

23 MS. POORE: Theresa Poore, 479.

**Meeting
September 14, 2010**

Page 76

1 There are also costs that go along
2 with having the meeting. We have to rent the
3 room. We have to pay these two guys. We have to
4 pay this woman over here. We have to pay PMA. I
5 mean, these are all substantial costs when you
6 come down to things. There was a vote taken in
7 '07. You guys have voted us in as a board. You
8 trust our, I am assuming you trust our opinion
9 because you voted us in. Speak now and we will
10 take that into consideration. But in order to
11 keep costs down for the board --

12 MR. O'CONNELL: For everybody.

13 MS. POORE: I'm sorry, not the
14 board. The association. In order to keep costs
15 down for the association. I am assuming this room
16 isn't cheap. I am assuming -- you know.

17 MR. BRAESE: The bottom line of the
18 settlement is that the defendant, potential
19 defendant is a member of the association so she
20 will have access to that and that is something
21 that does not help the association.

22 SPEAKER: A clarification of mine
23 from earlier. Basically, it assumed that she had

**Meeting
September 14, 2010**

Page 77

1 the cash she would give it to us right then and
2 there. And what I mean is there is no sort of,
3 like, delays in payments or anything like that and
4 that they would agree immediately and that is it.
5 There is no fuss about it. Like, if she wants to
6 drag it out and handle it that is my statement and
7 it was sort of a minimum. I think we should go to
8 get to be made whole.

9 MR. O'CONNELL: Just a comment to
10 Theresa's point.

11 You know our opinion. We would love
12 to hear your opinion and there is an annual
13 meeting every year to remove us and volunteer
14 yourself. If someone stands up and you like their
15 opinion, then by all means if you would like to
16 have that person. It might be too late at that
17 point, because I hope this proceeding goes fast.

18 Yes. I would like it to be as quick
19 as possible but no if they came back with a low
20 ball number just to save time and aggravation.
21 It's been three years. I want my money. Sorry.
22 And with all due respect to your opinion, that is
23 how I feel. That is my opinion and that is the

**Meeting
September 14, 2010**

Page 78

1 way -- I am only one fourth of the board, but that
2 is how I feel. That is how I am going to approach
3 this negotiation.

4 SPEAKER: Right. I was just
5 concerned about, like, if they had, like, they
6 don't have, like, the money but they knew how to,
7 like, drag things out forever and make it really
8 expensive for us to collect. That is sort of what
9 I meant by a matter of strategy. That is what you
10 spoke about, like, a business making a cost effect
11 and getting the maximum amount of money.

12 MR. O'CONNELL: Absolutely. If Dan
13 goes at the end of the day at this point, you
14 know, we are going to have to go to litigation and
15 it's going to cost you X and he had the whole
16 conversation about, you know, do you want to spend
17 20 to get 34 or do you want to spend 20 to get 70,
18 we will cross that road when we come to it.

19 Do we feel we have to do that? I
20 don't want to just turn around and say we will
21 fold and just take a settlement. But, you know,
22 if it gets to be a point of it's not worth the
23 time, money and aggravation to go, then we will

**Meeting
September 14, 2010**

Page 79

1 have to cross that bridge when we get to it.

2 SPEAKER: I'm assuming that you are
3 negotiating.

4 MR. O'CONNELL: Absolutely.

5 SPEAKER: I'm not saying offer that
6 and be done with it.

7 MR. O'CONNELL: Okay. Katie?

8 SPEAKER: Unit 138.

9 I would actually suggest to Marie to
10 suggest a figure you would like to see. I
11 personally would like to see no less than 40 and
12 target 75. Whether it's doable or not sure. If
13 those are the correct numbers, it's up to you.
14 But I would like to see no less than 40 but try to
15 get as much as possible.

16 MR. O'CONNELL: I can't see it going
17 over the 50, correct?

18 MR. BRAESE: You never know.

19 MR. O'CONNELL: It's what is
20 missing.

21 SPEAKER: Did you charge her
22 interest for three years, John?

23 MR. BRAESE: You can start at any

**Meeting
September 14, 2010**

Page 80

1 number. It doesn't necessarily have to be a
2 justifiable number. If I am on the other side, I
3 am asking you to justify fairly quickly.

4 MR. O'CONNELL: That is why we hire
5 this guy.

6 SPEAKER: Unit 66, George Brouder.
7 You didn't answer my question. Are
8 you charging her the interest from 2005 to 2010?

9 MR. O'CONNELL: When we work all the
10 numbers together, the number in that 4,500, that
11 is not in there.

12 SPEAKER: I know it's not. I am
13 asking you how much is included in your number for
14 interest?

15 MR. O'CONNELL: My number at the end
16 of the day, no. The \$50,000 that interest number
17 is not in there. We stated that from the
18 beginning.

19 SPEAKER: So she had free use of our
20 money for five years?

21 MR. CAMPBELL: We understand that.
22 That is our approach is to get as much as that
23 back and if we go after the interest.

**Meeting
September 14, 2010**

Page 81

1 SPEAKER: If you don't include it
2 in, if you don't ask for it, you certainly are not
3 going to get it.

4 MR. CAMPBELL: Nothing has been
5 asked yet. That is why we now know what has
6 actually been taken just in raw numbers. It
7 doesn't include the interest.

8 SPEAKER: And just to add one more
9 item that I haven't heard. I tried very hard to
10 do compilations in effect doing her job. She
11 spent \$4300.23 in doing so. I believe that should
12 be recovered. I would also note that John Michod
13 charged \$26,000 for a compilation. Rosen Bill
14 charged \$4,300.

15 MR. O'CONNELL: Leslie?

16 SPEAKER: Leslie Hilton, 143.

17 I would accept nothing under \$50,000
18 plus interest or I am going to torture her with my
19 legal attorney. I am telling you that you can
20 repeat it to her. I don't care, Attorney Braese.
21 You have free rein. I don't care if it's
22 documented or not. I will go to Scottie and I
23 will bring her to the court and I will have my own

**Meeting
September 14, 2010**

Page 82

1 legal case against her civilly so either she is
2 going to cough up the 50 grand plus interest and
3 believe me, she has it. Because when her husband
4 died, she told me the whole sob story she was left
5 all this money. Kids bought her a dog. I felt
6 bad for her. I thought she was coming to my house
7 to tell me she was dying. Not she had been
8 stealing. Long story short she has the doe.
9 Nothing under 50 grand or I am going after her and
10 you tell her that.

11 MR. O'CONNELL: Point taken. Thank
12 you.

13 SPEAKER: Thank you.

14 MR. O'CONNELL: Sir?

15 SPEAKER: Unit No. 95, John
16 McDonald.

17 I've never been involved in a
18 litigation in my whole life. I'm really not that
19 type of a person. But if you have another meeting
20 when you hash out all of your options, you can set
21 up a form like we have on this. That way every
22 unit owner either absentee or living would get it
23 either hand-deliver, mail or whatever and they'd

**Meeting
September 14, 2010**

Page 83

1 have to sign it and pick which choice they liked
2 and then you can get it back. And if there was a
3 tie, you can have another one and that way you get
4 a quorum.

5 MR. O'CONNELL: The problem with
6 negotiations nothing is ever final until --

7 SPEAKER: No. Once you go through
8 the negotiation and it determines this is the
9 route we should go, let's submit it to all the
10 unit owners and then go from there. That way you
11 will get a quorum.

12 MR. O'CONNELL: Thank you.

13 In the back.

14 SPEAKER: Kathy Taylor, 118.

15 Like it's been stated many times, we
16 voted to let the board pursue this matter, I
17 believe in 2007. Since we don't have a quorum and
18 we can't change that, I propose that we proceed as
19 voted and move on because we can go around and
20 around and around for hours and we can't change
21 anything. And, I think we just have to pursue
22 this in the most cost effective manner. Try to
23 get as much money without spending and just move

**Meeting
September 14, 2010**

Page 84

1 on. As a unit association, I am not saying any
2 individual steps, but as an association, I think
3 we have to move on.

4 MR. O'CONNELL: I agree partially
5 but I think this is great to have, you know,
6 individuals be able to stand up and voice their
7 opinion. We are going to listen to a few more
8 people state what they would like to see done and
9 exactly, move on.

10 Go ahead, ma'am.

11 SPEAKER: Debra Washington, Unit 83.

12 I want to state very clearly that I
13 have utter faith in this elective board that we
14 have here today and I back up any of your
15 decisions 100 percent because I know you are
16 fighting for the best you can do for all of us.

17 MR. O'CONNELL: Thank you very much.

18 Does anybody have anything else to
19 add?

20 SPEAKER: Oh, yeah. Sean, you
21 asked. I don't know if it's Attorney Braese,
22 Michod or Mr. Lapointe, I was told when she
23 resigned and we had the new board that IRS was

**Meeting
September 14, 2010**

Page 85

1 notified and they were going to be told all the
2 figures were wrong starting back to what was it,
3 2004, 5? Did you ever hear back from the IRS and
4 were all those figures correct?

5 MR. O'CONNELL: The figures were not
6 corrected.

7 SPEAKER: Wait a minute. The old
8 board was getting paid and you people are doing it
9 voluntarily, which I really respect you because
10 you didn't know what you were getting into. But
11 long story short, was that ever corrected with
12 IRS? Was everything straightened out?

13 MR. BRAESE: I don't know.

14 MR. LAPOINTE: All I can say to you
15 is I saw the letter to the service. Because as
16 president or chairman of the board signing the
17 return obviously there are risks involved in doing
18 that. It didn't say that all the numbers from the
19 past were screwed up. It just indicated what had
20 happened to the association. I did see a copy in
21 my records of a return that was filed, but I don't
22 know if any amendments were taken place. I think
23 that was what John Michod questioned.

**Meeting
September 14, 2010**

Page 86

1 MR. O'CONNELL: I believe we filed
2 an amendment with John. I'm not exactly sure the
3 outcome of it.

4 SPEAKER: Katie, do you recall?

5 SPEAKER: I know that at least for
6 one year we filed an amendment. I know that I was
7 not notified on the fact that there was an
8 irregularity. I don't know whether we were
9 notified as all the duration for which we
10 suspected an irregularity occurred or what
11 happened to those federal tax returns.

12 I think, Peter, you actually filed
13 with IRS the notice of irregularity; is that
14 correct?

15 SPEAKER: Correct.

16 SPEAKER: Our board or this board I
17 don't think we filed notice of irregularity
18 already. I think one, I am not entirely sure, but
19 I think one tax return was corrected. I think it
20 was for 2007. But then again, I am not entirely
21 sure because PMA handles the finances.

22 SPEAKER: So Michod would have it
23 then. Thank you.

**Meeting
September 14, 2010**

Page 87

1 SPEAKER: George Brouder, Unit 66.

2 I don't want to try to speak for
3 her. But what I think what she is saying is in
4 those years, the board was being paid a fee, a
5 monthly fee to serve on the board. And we believe
6 since I also had a search of the records, there
7 were no 1099Ms filed so those board members did
8 not pay their taxes on the fees paid by the
9 association. If you don't file a 1099M, which you
10 are required to do, you can be liable even us for
11 not filing them. I believe that is what --

12 SPEAKER: That is where I started
13 off. I went a stray with the 1099 also.

14 MR. LAPOINTE: Ed Lapointe.

15 I saw no 1099 in the record that I
16 reviewed.

17 SPEAKER: Can you follow that threw
18 with Michod?

19 MR. O'CONNELL: Yes, I have it down
20 here.

21 SPEAKER: That is very important.

22 MR. O'CONNELL: I will e-mail Elaine
23 tonight.

**Meeting
September 14, 2010**

Page 88

1 MR. LAPOINTE: Just for the record
2 so the board members know, the fact you don't
3 receive a 1099 still means you need it as reported
4 income. So I don't know if, George, that, you
5 know, for sure whether they did or but clearly
6 they didn't have a document flow back from the
7 association.

8 SPEAKER: They still could have paid
9 their taxes. Just the documents I was told were
10 they never received a 1099.

11 MR. O'CONNELL: I think Ed's point
12 is the association probably paid money on it
13 because it was an expense where the actual member,
14 board member may not have paid their personal. I
15 am not sure. This may be either for Dan or Ed.

16 Us having this situation and having
17 an audit done, especially a fraud audit, would
18 that not cover us to say, well, at least they
19 spent this and I spent \$20,000 to uncover this and
20 then file the amendment of those years taxes?

21 MR. LAPOINTE: Tax year 2006 has
22 closed so you are dealing with seven, eight and
23 nine at this point. I urge you to file 1099s in

1 the future to your board members to make sure.
2 But the responsibility to declare the income is
3 really at the individual level. But the board,
4 the association could be charged with a penalty
5 per 1099 for failing to do so.

6 But the individuals who didn't
7 report the income, it's my understanding that
8 liability rest with them and not of the board.
9 That is the way I have seen it in practice. Our
10 IRS representative doesn't seem to be here, but
11 that is how I've seen it in practice. I would
12 urge you to comply with the law.

13 MR. O'CONNELL: Fine wise is there
14 like a set fine?

15 MR. LAPOINTE: I've seen it as \$50
16 for 1099 per year. No more than that.

17 SPEAKER: I would agree with that I
18 have seen it.

19 MR. O'CONNELL: Katie?

20 SPEAKER: Unit 138.

21 Now that we have done a forensic
22 audit, the question to Dan and to Ed, do we need
23 to actually perform reviews for those years for

**Meeting
September 14, 2010**

Page 90

1 183 in compliance? Because if we were to perform
2 reviews based on John Michod's compilation and
3 this forensic audit, would it be helpful to them
4 in any way as far as compliance with the law would
5 review even if possible to do?

6 MR. LAPOINTE: A review would be
7 possible to do, because all the data is readily
8 available now. I think it would be more to
9 satisfy any concerns that you all would have. It
10 would satisfy your requirement of the state law of
11 course. It would differ in the sense that you now
12 have a respective receivable due from the party
13 who has created the damage for you.

14 Now that the number has been
15 determined, the difficulty now becomes is
16 measuring the accrued interest by year by period
17 as well as the cost by year by period. But that
18 all goes into the form of receivable and now you
19 run into the issue of is it really a collectable
20 receivable or is it not? We've talked about
21 negotiating that number.

22 So, I think moving forward your
23 balance sheet, your latest balance sheet anyway,

**Meeting
September 14, 2010**

Page 91

1 should be picked. Your year end is March 31st,
2 right? Your year-end balance should be picked now
3 more of a known number or a receivable because it
4 is a material number to you that we are talking
5 about tonight. And if it were me, and it's just a
6 suggestion, I would probably restate my May 31st
7 review if that is out because you have the issue
8 of home improvements that were declared in the
9 process of what was taken and the association
10 doesn't have any of these home improvements. We
11 now all know they are not. But the tax returns
12 and the review reports indicate that that is
13 there, so that would be another reason to correct
14 if he hasn't already. I haven't seen the report.

15 SPEAKER: When you are referring to
16 correcting those reviews, which fiscal year are
17 you talking about?

18 MR. LAPOINTE: I am saying take it
19 as your last fiscal year unless somebody has a
20 burning desire to go back.

21 SPEAKER: We do have two fiscal
22 years already used up, so it's 2009 and 2008.
23 Would it be necessary or helpful to do the ones

**Meeting
September 14, 2010**

Page 92

1 for 2007, six, five, four or five, six, seven?

2 MR. LAPOINTE: I think the
3 difficulty you run back then too is this whole
4 receivable number you are talking about to try to
5 get it accurately measured by each year-end. So,
6 I think because of a lot of the uncertainty in
7 trying to take it year by year rather than the
8 three years as a one package, shall we say, you
9 run into some difficulty trying to be real perfect
10 at it.

11 But if you look at 3/31/10, which
12 was your last fiscal year-end and you restate your
13 balance sheet and statement of income to recognize
14 the damages that you incurred and probably accrue
15 the costs back into that year that were incurred,
16 I think that is what I would do in moving forward.
17 Because I don't know that you necessarily are
18 always going to go back and look at the past three
19 years for the purposes of reasonability other than
20 your major cost components such as snowplowing,
21 landscaping, et cetera. But just an opinion. You
22 asked.

23 SPEAKER: So, Sean, could we ask

**Meeting
September 14, 2010**

Page 93

1 John Michod to adjust our review for this past
2 fiscal year to reflect whatever findings are in
3 the forensic audit?

4 MR. LAPOINTE: Generally what he
5 would do, unless you had a lender that was asking
6 for every review report and we had knowledge that
7 it was an error like we do, he would pick that up
8 at the next 3/31 and show the restatement for the
9 3/31/10.

10 SPEAKER: So for the fiscal year
11 2010?

12 MR. LAPOINTE: Yes. That is a
13 common thing I see in practice. Sometimes lenders
14 are so involved in an operation including
15 something like this, which I know you have, that
16 they would require the restatement earlier rather
17 than later. It's really a judgement call that
18 would be made by the board and John Michod.

19 SPEAKER: George Brouder, 66.

20 I have a comment on Katie and Mr.
21 Lapointe. Chapter 183, Section 10A requires this
22 association to have complete, accurate and
23 maintain fully all the financial statements, which

**Meeting
September 14, 2010**

Page 94

1 include the account's receivable for a minimum of
2 seven years. So this association has not complied
3 with the law if they leave that, I am using my
4 term, mess there.

5 MR. LAPOINTE: So then in that
6 scenario, I would say you'd have to restate those
7 earlier years to be as accurate as possible.

8 SPEAKER: Dan?

9 MR. BRAESE: Same thing. It always
10 comes down to the cost, but that's the law. And
11 to comply with the law, you'd have to restate
12 those.

13 MR. O'CONNELL: Does anybody new
14 have anything else to add?

15 SPEAKER: I have a question. Mary
16 Sheehan, 158.

17 Is there anyway we can get a listing
18 of what the reserve account is?

19 MR. O'CONNELL: Absolutely. If you
20 do not have internet access, which I know a lot of
21 you do not, you can call PMA and you can ask for
22 any kind of financial --

23 SPEAKER: I think it's called

1 balance sheet if you are interested specifically
2 in the --

3 SPEAKER: I can't hear you.

4 SPEAKER: This document, if you are
5 interested in actual balance of reserve accounts,
6 the document would be called balance sheet and
7 those are prepared monthly.

8 SPEAKER: And their phone number is
9 978 --

10 SPEAKER: I've got that. Thanks.

11 MR. O'CONNELL: Thank you.

12 Anyone else new?

13 SPEAKER: I wanted to ask about that
14 question we clarified, because I didn't understand
15 it. Does she mean year-end numbers or does she
16 mean how we operate?

17 MR. O'CONNELL: Are you asking for
18 the monthly balance sheet or are you asking for
19 the year-end balance sheet?

20 SPEAKER: I would love monthly. I
21 would like to know really what went from where to
22 where.

23 MR. O'CONNELL: Basically, the

**Meeting
September 14, 2010**

Page 96

1 reserve account doesn't get touched very often.
2 When it does get touched, at least we have been
3 involved for three years and we have touched it
4 twice. We sent out notices both times. One was
5 for a water pipe that burst in the parking lot of
6 A and B and the other one was for a mold issue
7 with a unit just this year.

8 SPEAKER: I have been here since
9 '86. And every year prior to Donna taking over,
10 we used to put \$20,000 into the reserve account
11 and we never took anything out. I shouldn't say
12 never but just rarely. But now you were talking
13 about 27K came out of the reserve account into the
14 checking account. And, you know, what else
15 happened?

16 MR. O'CONNELL: That was within the
17 '04, '07 year. I haven't seen that. But, I
18 believe it must have been for some kind of price
19 override of, you know, I don't know if it was
20 snowplowing or something that wasn't budgeted that
21 they didn't have money for.

22 SPEAKER: Or is it the money she
23 took out?

**Meeting
September 14, 2010**

Page 97

1 MR. O'CONNELL: No. It went into
2 from the reserve account to the operating account
3 and then was spent as operating money. It wasn't
4 27 out into the operating and then 27 out of the
5 operating in one big swoop.

6 SPEAKER: Because they were talking
7 about they were \$20,000 in arrears at one of the
8 meetings.

9 MR. O'CONNELL: I remember one year
10 and it might been one of my first years in '05
11 possibly that was a snow thing. '06 where, I
12 think it was LaPlume had some \$20,000 in excess
13 fee of his contract and think that must have been
14 one of the first meetings I went to because I
15 thought it was odd not knowing much about plowing
16 contracts but it seemed odd. I think it may have
17 been a \$30,000 contract would have a \$20,000
18 override on it extra expense.

19 SPEAKER: Is that an approximate out
20 of the system?

21 MR. O'CONNELL: Unfortunately, if
22 it's spent to a legitimate contractor and Ed
23 verifies that it was cashed by that contractor and

**Meeting
September 14, 2010**

Page 98

1 that contractor puts some money in a brown bag and
2 gives it to somebody, we have no proof.

3 SPEAKER: No. That's not what I am
4 talking about. In here it says that there was
5 \$26,000 but 28 --

6 MR. LAPOINTE: It's not the same.
7 The 27,000 that everyone keeps referring to was a
8 transfer of funds from the reserve account.

9 SPEAKER: Yes, I know. But it went
10 into the checking account.

11 MR. LAPOINTE: But it wasn't all in
12 the same time period.

13 SPEAKER: She spent the money over a
14 time period. I am just thinking that she was
15 short money so she took it out of the --

16 MR. LAPOINTE: It didn't happen
17 coincidentally like that. You are talking about a
18 three year window of time. So if you look at the
19 time line, you wouldn't find that.

20 SPEAKER: George Brouder, Unit 66.

21 That is incorrect. Money was taken
22 out in a five month period of time. There was two
23 withdrawals, \$12,000 and \$15,000, and it didn't go

**Meeting
September 14, 2010**

Page 99

1 to operating expenses. They went into the
2 checking account and from the checking account you
3 never identified one dollar from the 27,000 where
4 it specifically went. I audited 2005. The amount
5 of income we received was right in line with what
6 would be expected. The operating expenses in
7 total were just as budgeted. The \$27,000 would
8 have been on top of that. I keep asking you
9 questions. Can you identify one dollar of where
10 it went specifically?

11 MR. LAPOINTE: If you look at the
12 checking account, you will see the deposits going
13 in. You will see the disbursements going out.
14 It's part of the reconciliation process, and it's
15 a whole host of expenditures that nothing out of
16 the ordinary appeared to be any direct payments to
17 anything other than condo association fees or that
18 which we discovered.

19 SPEAKER: You are making my point.
20 \$27,000 extra is extraordinary. That is not --

21 MR. O'CONNELL: To Ed's point is his
22 job was to find out where that money came from the
23 reserve account and see where it went. It went

**Meeting
September 14, 2010**

Page 100

1 into a checking account, operating checking,
2 whatever we are calling it. It was spent on condo
3 stuff, whether those were partially in with
4 misappropriated expenditures but they were
5 expenditures. They were checks. They were to the
6 legitimate -- I haven't seen the actual date, the
7 actual money from that account myself but it's I
8 would assume spent on --

9 SPEAKER: Sean, I continue you
10 surmise. This is an audit. Audits are exact and
11 not I surmise it. It went into a checking account
12 and this --

13 MR. O'CONNELL: I'm not the auditor.

14 SPEAKER: It disappeared. Maybe it
15 was spent on property. Maybe it wasn't. You have
16 not identified it. I said I have looked at the
17 expense from the expenses this year and there is
18 no \$27,000 amount, so this is extraordinary. We
19 are not an AT&T. We are a small association.
20 When \$27,000 is moved, that is a major item.

21 MR. LAPOINTE: It is.

22 SPEAKER: I won't argue. That is my
23 point.

**Meeting
September 14, 2010**

Page 101

1 MR. O'CONNELL: To your point, Ed,
2 that 27 split up into two separate transfers.
3 That account that it went into --

4 SPEAKER: Five months.

5 MR. LAPOINTE: Very short period of
6 time.

7 MR. O'CONNELL: But the expenditures
8 that came out of that account were for condo
9 associated expenditures?

10 MR. LAPOINTE: Yes.

11 MR. O'CONNELL: Now, to his point,
12 his part of his scope was not to find out why they
13 took it out of the reserve account. It was more
14 to find out where it went after it left.

15 SPEAKER: Unit 114.

16 I wanted to ask since we are talking
17 about the roll going with the capital reserve
18 account going forward with whatever financial
19 statements we get at the annual meeting whether
20 it's the official review version or some other
21 version, can we have a supplemental detailed
22 schedule which is a kin to what this unit owner
23 was saying. It's more detail like we used to have

1 written in pen and ink and you can really see how
2 the money was spent as opposed to the current
3 version we got, which is really a lot higher
4 level.

5 So I am asking going forward in our
6 financials, can we have a detailed schedule that
7 rolls forward the capital reserve account? The
8 way we used to have it, which is pretty simple,
9 you can see how it's spent, et cetera, as opposed
10 to the financial statements.

11 MR. O'CONNELL: You mean the reserve
12 account which doesn't have very much activity. It
13 has monthly deposits. So what are you asking for,
14 a sheet that shows when the actual not withdrawals
15 but when the actual deposits went in? Is that
16 what you are asking?

17 SPEAKER: I'm not sure about the
18 activities. I just know from following up with
19 this other unit owner we used to get from the old
20 treasurer a detailed roll forward that was truly
21 easy to follow. When I had that in my mind and I
22 looked at the financials we got for somebody that
23 is not used to financials, it's so high level.

1 It's really not that easy to follow.

2 MR. O'CONNELL: John?

3 MR. CAMPBELL: Available every month
4 on the internet site are income statements and
5 expenses for reserve, for operating. It comes out
6 every month as an annual thing, I guess a summary
7 of everything that has taken place during the year
8 but these are specific down to interest reserve.
9 This comes out every month. It's available for
10 anyone to look at.

11 SPEAKER: I understand that, but you
12 have a roll for it. We haven't had a roll for it,
13 the capital reserve account since probably
14 3/31/04. We might have ones that were just given
15 to us that are very high level, but I am trying to
16 have it be put at a level where we can understand
17 it. Our business is small.

18 SPEAKER: Unit 138.

19 Within 120 days there was a review
20 performed which describes actually, I think the
21 reserve expenditures and it's also available on
22 the web site. Is it something you are looking for
23 something like that? Because there is a lot of

**Meeting
September 14, 2010**

Page 104

1 text describing the disbursements, I believe the
2 yearly review and those disbursements with respect
3 to the reserve account as well.

4 SPEAKER: I'll go back and look at
5 it. I just remember seeing something high level
6 and I think what this lady is referring to and I
7 know what I've seen is a little more detail. I am
8 not asking for a \$5,000 line item. That is how we
9 are functioning now. That's not what I'm asking
10 for. It's just a little bit more detail but not
11 anything extreme.

12 SPEAKER: Number 66, Brouder again,
13 Sean.

14 What we used to get in the old
15 detail, which I think BJ is referring to, is we
16 got a list of all our investments, what banks they
17 were in, was it a CD, was is a money-market, what
18 kind of interest rate we were earning and the
19 total of our investments. That is what we used to
20 get. Once you set it up, it's simple because CDs
21 don't mature every month or years, I think.

22 MR. O'CONNELL: There is a balance
23 sheet for all of our accounts. There is a page

**Meeting
September 14, 2010**

Page 105

1 for reserve account that says how much money is in
2 what account. And it actually tells you what kind
3 of account each amount is in what type of account,
4 money-market, savings. Because some of it is
5 liquid CDs. I think there are two or three
6 different CDs. The page is right here. It looks
7 like that.

8 SPEAKER: We are talking about where
9 is the CD. What are the interest rates? What are
10 the terms?

11 MR. O'CONNELL: It says terms, but
12 it does not say rates. Like three year CD at
13 River Bank \$46,000. One to two year CD at
14 Sovereign \$14,000. 60 month CD at Haverhill Bank
15 \$39. No, it doesn't say the actual --

16 SPEAKER: I understand what that is.
17 What I am talking about is if you are a
18 financially able unit owner you want to know when
19 that CD matures because it may be locked up for
20 2015.

21 MR. O'CONNELL: It says that too.
22 River Bank, 8/21/10. That is the one that just
23 came up. The Sovereign, 4/5/12. The Haverhill

**Meeting
September 14, 2010**

Page 106

1 Bank, 1/1/12. They are on there. The only thing
2 that is not on there is the interest rate.

3 SPEAKER: My question is
4 specifically that this association is
5 underperforming an interest income. It is putting
6 money in a bank that property management of
7 Andover finds convenient rather than seeking out
8 the interest rate which would maximize our income.

9 MR. O'CONNELL: That is actually not
10 true. The decisions from our investments if they
11 are not done before -- we've rolled them over
12 once, I think since we have been in there. We
13 haven't really shopped them around. That is true.
14 But, basically, it's us, the board, that turns
15 around and says all right, just roll it over. We
16 will get an e-mail from Elaine that says, "Hey,
17 this is maturing. What do you want to do?" It's
18 not hey, what do you want to do? By the way, I
19 know my uncle works at Haverhill. Do you want to
20 go there? We get a great rate at River Bank. Can
21 we go there? It's not that. We get an e-mail
22 that says, "Hey, that is maturing. What do you
23 want to do"?

**Meeting
September 14, 2010**

Page 107

1 SPEAKER: Please explain to me why
2 are money is at Brookline Bank earning nothing.

3 MR. O'CONNELL: Very small interest
4 rate. I am not sure, but we didn't shop around.

5 SPEAKER: You just told me you go
6 through this elaborate process.

7 MR. O'CONNELL: It ain't an
8 elaborate process. We get an e-mail that says --

9 SPEAKER: Sean, is that part of the
10 long covenant for the roof? Is that funding for
11 the roof?

12 SPEAKER: BJ, Chapter 183, Section
13 10 specifically states that the bank cannot
14 require the condominium asset --

15 MR. O'CONNELL: Hold on there. Is
16 no CD in Brookline Bank.

17 SPEAKER: That's the loan.

18 MR. O'CONNELL: He is talking about
19 investments.

20 SPEAKER: I'm talking about the
21 reserve account. We had \$300,000 in Brookline
22 Bank which was over 250 that the FDIC insured.
23 Until I brought it up, it was left there. We are

**Meeting
September 14, 2010**

Page 108

1 earning zilch interest. I am saying the Board of
2 Managers and I am specifically saying you are not
3 maximizing our investment income which is one of
4 your tasks.

5 SPEAKER: That money has been spent
6 on the roofs so it's no longer essentially there.

7 MS. POORE: If I can make
8 suggestion. It's almost 9:00. It's getting late.
9 People have to work tomorrow. If we can stick to
10 what we came to the meeting for, which is the
11 finish of the forensic audit and moving forward
12 with that.

13 SPEAKER: Excuse me, read your
14 August bulletin that you sent to us. Leslie
15 Hilton, 143. It says we will vote on any subject
16 at this meeting, and I will read it to you.

17 MR. O'CONNELL: Unfortunately,
18 Leslie, we can't vote on anything. Thank you.

19 SPEAKER: We will discuss any
20 subject we want if it's right in the notice.

21 SPEAKER: Unit 138. I move to
22 adjourn the meeting.

23 SPEAKER: Second, second, third,

**Meeting
September 14, 2010**

Page 109

1 118, second.

2 MR. O'CONNELL: All in favor?

3 MR. CAMPBELL: I.

4 MS. POORE: I.

5 MR. O'CONNELL: Thank you for

6 coming.

7

8 (Meeting adjourned at 8:55 p.m.)

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COMMONWEALTH OF MASSACHUSETTS

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I, KRISTEN M. EDWARDS, COURT REPORTER,
do hereby certify that the foregoing is a true and
accurate transcription of my stenographic notes,
to the best of my knowledge and ability.

WITNESS MY HAND, this 3rd day of
November, 2010.



Kristen M. Edwards

Kristen M. Edwards