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THE COURT: Okay, thank you all again.  
Ready to go?

MR.MARIANI: Good afternoon, Your Honor.  
While the jury is out of the room, I need to file  
an ore tenus motion for mistrial based on the  
discussion before lunch in respect of the  
evidence, you might remember we filed after the  
summary judgment motions on the other counts,  
appeals, the colloquy before lunch shows just how  
extraordinarily prejudiced our side is from this  
hypersensitive delineation of specific exhibits  
or documents and the fraud claims having -- on  
appeal, being on appeal. This is a specific  
example of what we were trying to talk about  
during our motion to stay pending resolution of  
the appeal.

So for those and other reasons we ask the  
Court to consider a mistrial so we won't be  
prejudiced further going forward.

THE COURT: Okay, the motion is denied.  
Bring in the jury, please.

THE BAILIFF: The jury is entering.

(Whereupon the jury entered the courtroom  
and the following proceedings were had:)

01:16:19  
01:35:25  
01:35:50  
01:36:15  
01:36:30  
01:37:01

1 THE COURT: Bring in the witness, please. 01:37:07

2 All right. Welcome back ladies and  
3 gentlemen. We're going to get the witness,  
4 Mr. Florio back and we will proceed right away.

5 Thank you again for your continued service and 01:37:22  
6 sacrifice and we appreciate the attention you've  
7 paid to the trial thus far. Thank you so much.

8 Mr. Florio, you understand you still remain  
9 under oath, sir?

10 THE WITNESS: Yes, yes. 01:37:52

11 THE COURT: Very well, thank you. Have a  
12 seat.

13 You may proceed, Mr. Hutchison.

14 MR. HUTCHISON: Thank you, Your Honor.

15 May I approach the witness, Your Honor? 01:38:09

16 THE COURT: Yes.

17 BY MR. HUTCHISON:

18 Q. Mr. Florio, I'm going to hand you the FD  
19 parties' Exhibit 595. Please take a look at that.  
20 I'm only concerned with the top two emails, they are 01:38:19  
21 the only two that you're copied on. Do you see that?  
22 Take your time.

23 A. Yeah.

24 Q. That was your email address back in November  
25 of 2007? 01:38:38

1 A. Yes, that's my Subway address. 01:38:40

2 Q. And those emails appear to be in the same or  
3 substantially the same condition as they were back  
4 then?

5 A. I would -- yes, I guess. 01:38:52

6 MR. HUTCHISON: Your Honor, at this time  
7 we'd move for the admission of Exhibit 595.

8 THE COURT: All right. Admitted as earlier  
9 indicated, over objection.

10 (Whereupon a document/item was marked in 01:39:05  
11 evidence as Defendant's Exhibit 595\.)

12 BY MR. HUTCHISON:

13 Q. Mr. Florio, I just want to take you to --

14 MR. HUTCHISON: Can we ask someone from  
15 their side to get the IT guy and I'll continue 01:39:24  
16 while they're doing that.

17 Q. Mr. Florio, you see the second email from  
18 the top dated November 8th, 2007 from Dave Worroll?

19 A. Yeah, yes.

20 Q. And you see where Dave Worroll writes, "I'm 01:39:39  
21 just following up to see where we are on the Destiny  
22 project in regards to the ongoing funding. Last I  
23 heard was that Fred had requested" -- and you see the  
24 second point -- "a budget going forward"?

25 A. Yes. 01:39:57

1 Q. Do you see that? 01:39:57

2 A. Yes.

3 Q. And Mr. Worroll, you know, is working on  
4 behalf of Fred DeLuca, correct?

5 A. Correct. 01:40:07

6 Q. And then Tom San Giacomo responds in the top  
7 email. Do you see that?

8 A. Yes.

9 Q. Dated November 8th, 2007?

10 A. Yes. 01:40:17

11 Q. And you're copied, correct?

12 A. Yes.

13 Q. And it says, "Hello Dave, nice to hear from  
14 you and hope all is well with you."  
15 Do you see that? 01:40:23

16 A. Yes.

17 Q. Next line. "Yes, this info is gathered, but  
18 is being sliced and diced by AVP 3 before submitting  
19 or sitting with Fred DeLuca."  
20 Do you see that? 01:40:36

21 A. Yes.

22 Q. And AVP 3 is Anthony Pugliese, correct?

23 A. Correct.

24 Q. And you understood Fred DL to be Fred  
25 DeLuca? 01:40:45

ROUGH DRAFT TRANSCRIPT

1 A. Correct. 01:40:46

2 Q. You don't know if Fred DeLuca received a  
3 proposed budget for 2008 prior to the date of this  
4 email, November 7th -- November 8th, 2007, correct?

5 A. I couldn't tell you whether or not it was 01:40:57  
6 before this date. I know that he did receive a budget  
7 that they were trying to work out and they were going  
8 back and forth.

9 Q. You do not know if Fred DeLuca received a  
10 proposed budget for 2008 prior to November 2007, do  
11 you? 01:41:12

12 A. I'm not sure.

13 Q. And you do not know the dates when Fred  
14 DeLuca first received a proposed budget for 2008,  
15 correct? 01:41:31

16 A. No, but it seems to me that the slice and  
17 dice statement here was that they had it and they were  
18 working on -- going back and forth with it.

19 Q. Well, I don't want you to guess, but I will  
20 tell you this, it says it is being gathered and sliced 01:41:43  
21 and diced by AVP 3, right, by Anthony Pugliese, before  
22 submitting to Fred DeLuca, correct?

23 A. That's what it says.

24 Q. Right. And you don't know if Fred DeLuca  
25 received -- you don't know when Fred DeLuca received 01:41:56

1 the proposed budget for 2008, do you? 01:41:58

2 MR. GARY: I'm going to object, Your Honor,  
3 already asked and answered.

4 THE COURT: Overruled.

5 A. What I'm saying is that, my recollection 01:42:06  
6 tells me that there was a budget given to Fred when he  
7 requested it, okay, and they were working on going  
8 back and forth and the fact that Anthony -- it says  
9 here that Anthony was working on it, leads me to  
10 believe that it had been submitted, there was 01:42:24  
11 questions about it and they were going back and forth  
12 on it.

13 Q. But that's not my question, sir.

14 A. Okay.

15 Q. My question is simple. 01:42:32

16 A. Yeah, I know.

17 Q. Do you know the date that Fred DeLuca first  
18 received the proposed budget for 2008?

19 A. No.

20 MR. GARY: I'm going to object, already 01:42:38  
21 asked and answered.

22 THE COURT: He's answered it now, overruled.

23 MR. HUTCHISON: I missed the answer.

24 THE COURT: He said no.

25

1 BY MR. HUTCHISON:

01:42:52

2 Q. Now, you had testified earlier that come the  
3 summer of 2007 you had lost faith in Fred DeLuca; is  
4 that accurate?

5 A. The summer of -- well, yeah, it was after  
6 July, it was more like August.

01:43:00

7 Q. And that's because Tom San Giacomo had  
8 gotten married in July in Italy and you went to that  
9 wedding, correct?

10 A. Correct.

01:43:16

11 Q. And Al Quentel was at the wedding. You  
12 mentioned the lawyer earlier, Al Quentel was at that  
13 wedding, correct?

14 A. Correct.

15 Q. And Anthony Pugliese was at the wedding?

01:43:22

16 A. Correct.

17 Q. Fred DeLuca did not go to that wedding?

18 A. He did not.

19 Q. Now, you know that -- you were talking about  
20 a bonus. Fred DeLuca agreed to put in a five percent  
21 bonus of any profits that would be obtained from the  
22 project if, in fact, profits were obtained. You know  
23 Fred DeLuca agreed to do a five percent bonus?

01:43:31

24 A. I do. The original agreement upon  
25 purchasing was ten percent.

01:43:50

1 Q. But my question is, you know Fred DeLuca  
2 agreed to a five percent, correct?

01:43:52

3 A. No.

4 MR. HUTCHISON: This is a similar issue, I  
5 just need to approach for a minute with counsel.

01:44:04

6 THE COURT: Okay.

7 (Whereupon counsel for the respective  
8 parties approached the bench and the following  
9 proceedings were had outside the presence of the  
10 jury:)

01:44:11

11 MR. HUTCHISON: Because Mr. Florio is not in  
12 the above emails after the first one, I just  
13 wanted to redact -- I don't think there should be  
14 a problem, but given the problem with redactions  
15 I wanted to make sure.

01:44:38

16 THE COURT: Which is the one you want to  
17 introduce?

18 MR. HUTCHISON: The one you have --

19 THE COURT: At the bottom?

20 MR. HUTCHISON: Just the bottom email.

01:45:01

21 THE COURT: Does that go to the next page?

22 MR. HUTCHISON: Yeah, starts on the next  
23 page. It's been passed between San Giacomo,  
24 Quentel and Pugliese. He wouldn't get that, so  
25 obviously can't admit it with the top emails.

01:45:11



1 THE COURT: Okay. Mr. Mariani, response. 01:45:49

2 MR.MARIANI: Like I said, it's a  
3 completeness argument. The exhibit is what it  
4 is.

5 THE COURT: You have no objection to the 01:46:06  
6 remaining part of the document coming in, is that  
7 okay with you?

8 MR. HUTCHISON: I'll read the whole thing,  
9 that's fine.

10 THE COURT: Okay, that's fine. So introduce 01:46:13  
11 the whole thing. That's Exhibit 400, A1.  
12 Exhibit 400, FD Exhibit 400 is going to be  
13 admitted without objection in its entirety.

14 (Whereupon the following proceedings were  
15 had within the presence of the jury:) 01:46:27

16 THE COURT: All right. You may proceed.  
17 Thank you.

18 (Whereupon a document/item was marked in  
19 evidence as Defendant's Exhibit 400.)

20 MR. HUTCHISON: May I approach the witness, 01:46:37  
21 Your Honor?

22 THE COURT: Yes, you may.

23 MR. HUTCHISON: I'm going to hand you  
24 Exhibit 400, Mr. Florio, and direct your  
25 attention to the bottom email, please, from Fred 01:46:47

1 DeLuca dated August 6, 2007. 01:46:50

2 Judge, I'm sorry, this was admitted?

3 THE COURT: Yes.

4 BY MR. HUTCHISON:

5 Q. You see that email? Did you read it? 01:47:07

6 A. I didn't know if you asked me a question.

7 Sorry.

8 Q. Do you see the email on the bottom?

9 A. Yes.

10 Q. And you're copied on that email? 01:47:49

11 A. Yes.

12 Q. And it's sent to, among others, Anthony  
13 Pugliese and you and Tom San Giacomo, correct?

14 A. Yes.

15 Q. And Fred DeLuca wrote in that email. Do you  
16 see that? 01:48:04

17 A. Yes.

18 Q. "Hi David, at the end of June I thought the  
19 first five percent of the plan was all set and that  
20 everything was agreed upon. Since then I haven't  
21 discussed this with anyone. Because what you received  
22 last week has changed substantially from the June  
23 discussions, it would be best to wait until I return  
24 from Europe in three weeks for me and Anthony to  
25 discuss this and try to come to an agreement. Don't 01:48:29

1 spend any more time on this nor any legal fees until  
2 Anthony and I agree on a plan."

01:48:31

3 Do you see that?

4 A. Yes.

5 Q. And then he writes, "Hi Anthony, if you wish  
6 today we can go forward with the five percent program  
7 that was set up in June. We can then meet in a month  
8 to discuss the other five percent. Alternatively, we  
9 can discuss the entire ten percent a month from now.  
10 Just let me know what you want to do."

01:48:38

01:48:54

11 Did I read that correctly?

12 A. Yes.

13 Q. That date, June -- the date that email was  
14 sent was August 2007, correct?

15 A. Correct.

01:49:04

16 Q. Fred DeLuca had agreed to a five percent  
17 bonus plan in June, according to that email, correct?

18 A. Fred DeLuca proposed to change the plan from  
19 ten to five.

20 Q. And he agreed to a five percent bonus plan,  
21 correct?

01:49:15

22 A. Yeah, he altered the agreed plan from  
23 ten percent. He wanted to make it five percent.

24 Q. And according to Mr. DeLuca's email, at  
25 least he wrote that the agreement was five percent in

01:49:26

1 June, correct?

01:49:28

2 A. Again, I don't know how much clearer I could  
3 be, he wanted to change the plan and that's what this  
4 says, that he wanted to do that. The original plan  
5 was ten and he said well, I'll make it five.

01:49:38

6 Q. And my original question to you was Fred  
7 DeLuca agreed to a five percent bonus plan, correct?

8 A. Apparently.

9 Q. Now, David Friedman was hired in 2007,  
10 correct?

01:49:51

11 A. Very, very, very end of 2007.

12 Q. And you understood that David Friedman was  
13 going to oversee Fred's personal investments, correct?

14 A. He was originally hired to organize Fred's  
15 personal investments in what they were going to call a  
16 Family Office.

01:50:09

17 Q. And later in late 2008, Bobby Ray, a  
18 gentleman by the name of Bobby, with the last name of  
19 Ray, R-A-Y, was hired also to assist David Friedman,  
20 correct?

01:50:26

21 A. Correct.

22 Q. And you didn't get along with David Friedman  
23 and Bobby Ray, correct?

24 A. No, that's inaccurate.

25 Q. Well, did you tell me that you thought that

01:50:34

1 they had no real expertise in what they were doing? 01:50:35

2 A. That's true.

3 Q. And that you weren't particularly fond of  
4 Bobby Ray, isn't that true?

5 A. I thought Bobby Ray was incompetent. 01:50:44

6 Q. And you thought that Bobby Ray and David  
7 Friedman weren't particularly good in the jobs that  
8 they had; is that accurate?

9 A. The tasks that they were given, they had no  
10 expertise in performing. 01:51:00

11 Q. And you knew Bobby Ray and David Friedman  
12 did not want to work with you, correct?

13 A. I was told that much later.

14 Q. And you were told that Bobby Ray and David  
15 Friedman had work to do, but they didn't want to work  
16 with you, correct? 01:51:24

17 A. Yes.

18 Q. Now, with respect to Bobby Ray in early  
19 2009, you were asked by Bobby Ray to identify some  
20 vendors. Wasn't Bobby Ray working with Randy Johnson  
21 on preparing a budget for LCOC? 01:51:52

22 A. Bobby Ray had nothing to do with organizing  
23 the budget. Bobby Ray was tasked by David to start to  
24 organize so they could get their hands around the  
25 Destiny project and what it was about. Bobby Ray had 01:52:09

1 nothing to do with a budget.

01:52:13

2 Q. Did you know that Bobby Ray was working on a  
3 budget with Randy Johnson?

4 A. No.

5 Q. Did Bobby Ray call you and ask you to  
6 identify some vendors for him?

01:52:23

7 A. Yes, he did.

8 Q. When Bobby Ray first started doing anything  
9 with respect to the Yeehaw Junction property, Bobby  
10 Ray would call you for questions, correct, call you  
11 and ask you questions?

01:52:36

12 A. Yes.

13 Q. And Bobby Ray called and asked you about a  
14 number of vendors that he couldn't identify or didn't  
15 know what they were doing. Do you remember that?

01:52:48

16 A. I remember Bobby Ray sending me a list of  
17 vendors and asking me to identify whether or not these  
18 vendors had long-term contracts, that Fred was  
19 thinking about taking the project over, was discussing  
20 it with Randy Johnson and asked me whether or not  
21 these particular vendors had long-term contracts or  
22 not.

01:53:05

23 Q. And do you remember he asked to you classify  
24 the vendors, whether they were doing entitlement work  
25 or lobbying up in Tallahassee?

01:53:17

1 A. Yes, he did. 01:53:19

2 Q. And he gave you that list of vendors and you  
3 sat down with Anthony Pugliese, correct?

4 A. I first sat down with Randy Johnson to  
5 clarify one end of it and the other end was clarified  
6 by Anthony. 01:53:33

7 Q. And you went over with Anthony companies  
8 such as Auman & Associates, correct?

9 A. Just from the point of view of is this  
10 company -- I was given five choices, if there was a  
11 vendor, where would he be placed, would it be  
12 development, would it be -- any one of the five,  
13 engineering, and so I sat with Anthony and I gave him  
14 the five numbers and he gave me a number back. 01:53:45

15 Q. And you sat down with Anthony and you  
16 discussed, for example Auman & Associates, correct? 01:54:11

17 A. I don't remember that particular one.

18 Q. And do you remember discussing Creative  
19 Solutions Environmental?

20 A. No. 01:54:25

21 MR. HUTCHISON: Can I have Exhibit 391,  
22 please.

23 Q. While we're looking for it, you testified  
24 earlier that there came a point that you were to look  
25 at the capital contributions made by FD Destiny and 01:55:46

1 AVP Destiny in the beginning of the project. Do you  
2 recall referencing that?

01:55:52

3 A. No.

4 Q. Well, did there come a time you determined  
5 that Anthony Pugliese was \$5 million short in his  
6 capital contribution?

01:56:00

7 A. Yes.

8 Q. And you figured that out, you went over that  
9 calculation with Anthony, correct?

10 A. I think that it was Joe Reamer that I went  
11 over it with.

01:56:12

12 Q. Okay. Do you remember telling me in your  
13 deposition that it was Anthony Pugliese?

14 A. Well, it was one -- probably both of them  
15 really.

01:56:22

16 Q. And do you remember that Anthony Pugliese  
17 agreed with your calculation?

18 A. Yes.

19 Q. That his capital contribution was \$5 million  
20 short?

01:56:33

21 A. Yes.

22 Q. And as of the time you left -- you left the  
23 Yeehaw Junction property, LCOC in approximately May  
24 2009, correct?

25 A. Yes, May 31st.

01:56:44



1 Q. And at the time you left in May 2009 the  
2 \$5 million shortage of capital contribution had not  
3 been made up by Anthony Pugliese to the best of your  
4 knowledge, correct?

01:56:45

5 A. Correct.

01:56:57

6 Q. Now, I want to be clear. You know that Fred  
7 DeLuca filed his lawsuit September 2009, correct?

8 A. Okay, yes.

9 Q. And that after that, after September 2009  
10 neither AVP Destiny nor FD Destiny funded Land Company  
11 of Osceola County, correct?

01:57:31

12 A. From what I recollect -- I wasn't there  
13 anymore, so I was, I guess told that maybe that it  
14 wasn't. I don't know.

15 Q. Well, you knew that LCOC had no money?

01:57:47

16 A. Well, I wasn't sure of that.

17 Q. But you knew that in the summer and fall of  
18 2009 Fred DeLuca was interviewing people with respect  
19 to what was going on at Yeehaw Junction?

20 A. What date was that?

01:58:04

21 Q. The summer and the fall of 2009.

22 A. Yeah, that's correct.

23 Q. You know he interviewed Bobby Masters?

24 A. Yes.

25 Q. You knew he interviewed Dale Whidden?

01:58:15

1 A. Dale Liddon -- Lindon?

01:58:20

2 Q. No, Whidden, the land planner.

3 A. Bob Whidden.

4 Q. Bob Whidden, I'm sorry.

5 A. Yes.

01:58:27

6 Q. You knew Fred interviewed Bob Whidden?

7 A. Yeah, he had met these fellows before.

8 Q. But you know he interviewed them in the fall  
9 of 2009?

10 A. He did meetings with them, for them to give  
11 him an update of what they thought of the property.

01:58:32

12 Q. And you know that Fred went to Osceola  
13 County and met with some of the representatives of  
14 Osceola County?

15 A. Yes, he did.

01:58:41

16 Q. And you know that Fred hired a consultant to  
17 determine what to do with the Yeehaw Junction  
18 property?

19 A. I don't know -- remember hiring anybody. I  
20 know that he was looking at hiring some people.

01:58:50

21 Q. But you did know that Fred was doing some  
22 investigation with respect to Yeehaw Junction?

23 A. In his spare time Fred was looking into what  
24 he thought he might want to do going ahead.

25 Q. We talked about the Rohde contract earlier.

01:59:11

1 You know that sometime in 2010 there had to be a cash  
2 payment to the Rohdes for about two or \$3 million.  
3 Did you know that?

01:59:14

4 A. Yes.

5 Q. And you knew that at that point in time LCOC  
6 had no money to make that payment?

01:59:22

7 A. I did not know that.

8 Q. Now, with respect to -- and you finally  
9 resigned in March of 2012, correct?

10 A. April.

02:00:00

11 Q. April 2012?

12 A. Yes.

13 Q. And you hadn't worked on the Yeehaw Junction  
14 property since May 2009, correct?

15 A. I had not worked with Anthony in regard to  
16 the project. I did work with Fred somewhat on the  
17 project along with Carolyn Bolton and the two fellows  
18 that you're talking about, Bobby Ray and David  
19 Friedman.

02:00:08

20 Q. Well, but you knew that LCOC was essentially  
21 shut down after September of 2009?

02:00:26

22 A. I didn't know that. I was under the  
23 impression that when Fred took over the management  
24 that the project was going forward and he was getting  
25 his hands wrapped around what it was. I didn't think

02:00:39

1 for one second that there was not enough money to go  
2 ahead and continue to work the project.

02:00:43

3 Q. But you didn't work on any entitlement --  
4 getting the -- you didn't see anything being done in  
5 the way of getting entitlements after 2009, correct?

02:00:55

6 A. No, that's not true.

7 Q. What did you see being done?

8 A. I saw Fred, he asked me if I would go up and  
9 introduce him, rekindle a relationship with Bob  
10 Whidden and meet some of the people, the commissioners  
11 and he assured everybody that I know, that I put him  
12 in touch with, that they were going to get paid and  
13 the project was going to go forward.

02:01:09

14 Q. But that was in the fall of 2009, correct?

15 A. That was right after, you know, in '09.

02:01:23

16 After he asked me not to communicate or have any  
17 personal -- not even courtesy phone calls, he came to  
18 me around July and he asked me to have -- you know, to  
19 attend some meetings with him.

20 Q. But my question to you, sir, is after  
21 2009 --

02:01:40

22 A. Yes.

23 Q. -- Fred DeLuca wasn't seeking titles for the  
24 property as best that you know, correct?

25 A. When I left in 2009 Fred had all the

02:01:50

1 intentions, in my conversations with him and the  
2 people was to go forward and to see at what pace to go  
3 forward. There was no communication whatsoever that  
4 he was not gonna try and go forward.

02:01:51

5 The question was with who he was going to go  
6 forward.

02:02:06

7 Q. My question is, after December 2009 or  
8 January 2010 do you have any personal knowledge that  
9 Fred DeLuca through LCOC was trying to obtain  
10 entitlements?

02:02:22

11 A. I was told that he was.

12 Q. Did you participate at all?

13 A. Until I retired I had some communication  
14 with some of the consultants that were there, whoever  
15 would call me. I was sent in October by Fred to try  
16 and rekindle communication with Anthony Pugliese.

02:02:31

17 Q. Well, you know that no consultants were paid  
18 after 2009, correct?

19 A. I found out later on. I was on many  
20 conference calls with Fred and the consultants, him  
21 guaranteeing the people that they were going to get  
22 paid when he took over.

02:02:55

23 Q. My question to you is, you know no  
24 consultants were paid after 2009?

25 A. I don't know that.

02:03:04

1 Q. All right. Let me show you Exhibit 361. 02:03:06

2 MR. HUTCHISON: May I approach the witness,  
3 Your Honor?

4 THE COURT: Thank you.

5 Q. It's an email to you and Joe Reamer from 02:03:16  
6 Robert Ray, copying David Friedman, dated April 12th,  
7 2009. Do you see that?

8 A. Yes.

9 Q. Does that email appear to be in the same or  
10 substantially same condition? 02:03:33

11 A. Yes.

12 Q. And it says --

13 MR.MARIANI: No objection, Your Honor.

14 THE COURT: Okay, thank you, Mr. Mariani.

15 MR. HUTCHISON: Obviously, Judge, we'd move 02:03:42  
16 for the admission of 361.

17 THE COURT: All right. Thank you.

18 Q. It says, "Fred, as we discussed on Friday I  
19 have some questions on payments to vendors that I  
20 could not find in the budget. These vendors were not 02:03:53  
21 mentioned specifically in the budget. Therefore, I do  
22 not have any information as to what scope of work they  
23 are performing."

24 Do you see that?

25 A. Yes. 02:04:04

1 Q. And this is the list that you were referring 02:04:05  
2 to earlier that you received?

3 A. Yes.

4 Q. And it goes on to say: "The list attached  
5 consists of about 68 vendors, with about 35 vendors 02:04:13  
6 comprising the majority of the charges highlighted in  
7 yellow."

8 Do you see that?

9 A. Yes.

10 Q. And he was asking you for a couple of 02:04:26  
11 things. One was an explanation as to what their scope  
12 of work is; two, if there was a contract in place; and  
13 then three is the time frame of the scope.

14 Do you see that?

15 A. Yes. 02:04:36

16 Q. He also wrote. "One of the key things we  
17 were working on with Randy" -- and Randy is Randy  
18 Johnson?

19 A. Correct.

20 Q. And Tania is Tania Tachetta, who worked for 02:04:45  
21 Randy Johnson?

22 A. Correct.

23 Q. "On what was designating major  
24 accomplishments." Do you see that?

25 A. Yes. 02:04:55

1 Q. And then he gave you categories. One would  
2 be for comprehensive plan amendment. Do you see that?

02:04:55

3 A. Yes.

4 Q. One was the master developments of regional  
5 impact or DRIs, do you see that?

02:05:02

6 A. Yes.

7 Q. And one was incremental developments of  
8 regional impact. Do you see that?

9 A. Yes.

10 Q. And he provided you this list. Is this the  
11 list that you went over with Anthony Pugliese?

02:05:11

12 A. Yes, it looks to be.

13 Q. Okay. And that list consists of companies  
14 such as Auman & Associates. Do you see that?

15 A. Yes.

02:05:23

16 Q. Creative Solutions Environmental. Do you  
17 see that?

18 A. Yes.

19 Q. Levy Stern?

20 A. Yes.

02:05:29

21 Q. Consolidated Transport?

22 A. Yes.

23 Q. AEC Environmental?

24 A. Yes.

25 Q. Black Walker & Associates?

02:05:42



1 A. Yes.

02:05:44

2 Q. Did you discuss those with Anthony Pugliese?

3 A. First I discussed this list with Randy  
4 Johnson and I was tasked as you can tell by the email  
5 to find out first and foremost whether or not they had  
6 a contract and if it was a written contract, to go  
7 forward. I was told by Bobby Ray that this was the  
8 practice -- if I was trying to make a decision on  
9 everyone going forward, what people he was obligated  
10 to.

02:05:54

02:06:13

11 So the first thing that I did is I sat with  
12 Randy Johnson, I said there's a \$2500, anybody that we  
13 spent more than \$2500 with, tell me if they have  
14 contracts, yes or no.

15 On my copy of this I then marked, I put in  
16 two more columns, A, was there a contract, yes or no.

02:06:27

17 The second column that I put in was a column  
18 that had a number identified that corresponded with  
19 the first four numbers on the first page that you're  
20 talking about. If they were working on the  
21 comprehensive plan I put one. If they were an honor,  
22 I put two.

02:06:47

23 The first bit of information on whether or  
24 not they had a contract was given to me by Randy  
25 Johnson, and the second bit of information on how I

02:07:03

1 should classify these people was given to me by  
2 Anthony Pugliese.

02:07:04

3 Q. With respect to how they classified people,  
4 Auman and -- Creative Solutions Environmental, did  
5 Anthony Pugliese tell you that this is a company that  
6 he created along with his in-house lawyer Doug  
7 Merrick, and that he billed LCOC for services that  
8 weren't rendered?

02:07:22

9 A. No.

10 Q. With respect to Levy, Stern and Associates,  
11 did Anthony Pugliese tell you that this was a fake  
12 company that he created?

02:07:27

13 A. No.

14 Q. Did he tell you that he billed LCOC for  
15 services that Levy, Stern and Associates didn't do or  
16 perform for LCOC?

02:07:38

17 A. No.

18 Q. Did he tell you that he had approved fake  
19 invoices and had Creative Solutions Environmental and  
20 Levy Stern pay money from LCOC?

02:07:48

21 A. No.

22 Q. Did he tell you that Consolidated Transport  
23 Consultants or AEC Environmental were companies that  
24 he created along with his in-house counsel Doug  
25 Merrick?

02:08:01

1 A. No. 02:08:02

2 Q. Did he tell you that he had created fake  
3 invoices and approved those invoices for payment by  
4 LCOC?

5 A. No. 02:08:09

6 Q. Did he tell you that Joe Reamer wrote checks  
7 to those fake companies and deposited it in bank  
8 accounts that Anthony Pugliese and Joe Reamer  
9 controlled?

10 A. No. 02:08:17

11 Q. Did he tell you that he created Black Walker  
12 and Associates?

13 A. No.

14 Q. A fake company.

15 Did he tell you that he approved invoices  
16 for Black Walker And Associates and had LCOC pay? 02:08:26

17 A. No.

18 Q. Did he tell you that Auman & Associates did  
19 audio and visual work at his house and he paid them  
20 money out of LCOC's funds? 02:08:39

21 A. No.

22 Q. You never told Anthony Pugliese to create  
23 invoices for companies that did not provide services  
24 to LCOC and submit them for payment by LCOC, did you?

25 A. No. 02:08:56

1 Q. Never told him to do that, did you? 02:08:56

2 A. No.

3 Q. Never authorized him to pay invoices --  
4 strike that.

5 Never authorized Anthony Pugliese to have 02:09:04  
6 LCOC pay invoices for work that LCOC did not receive,  
7 did you?

8 A. No.

9 Q. Is that an accurate statement?

10 A. Yes. 02:09:14

11 Q. And you didn't know that in addition to  
12 money that LCOC paid directly to Meril Stumberger  
13 \$10,000 a month showed up in LCOC's accounting records  
14 as payments to Meril Stumberger, but the money  
15 actually went to the Pugliese Company. You didn't  
16 know that, did you? 02:09:31

17 A. No.

18 Q. Anthony Pugliese never told you about that?

19 A. I knew that Meril was getting paid.

20 Q. That wasn't my question. There's an entry 02:09:44  
21 in LCOC's QuickBooks for Meril Stumberger, but when  
22 you pull the check, the \$10,000 check each month, it  
23 went to the Pugliese Company. You were never aware of  
24 that, correct?

25 A. No. 02:09:58

1 Q. Is that correct? 02:09:58

2 A. I was never aware of that.

3 Q. And nobody ever told you about that?

4 A. No.

5 Q. Anthony Pugliese did not tell you about  
6 that? 02:10:02

7 A. No.

8 Q. You said earlier that you had told Anthony  
9 Pugliese to put money aside, do you remember that?

10 A. Correct. 02:10:18

11 Q. You don't know if any expenses of LCOC were  
12 paid with that money that was put aside after  
13 May 2009?

14 A. I didn't understand that.

15 Q. So after May 2009, right, you don't know if  
16 any of LCOC's expenses were paid using the money that  
17 Anthony Pugliese set aside, correct? 02:10:29

18 A. I don't know. I'm a little confused. Once  
19 I told Anthony --

20 Q. I'll rephrase it for you. 02:10:53

21 MR. GARY: He was making a statement.

22 THE COURT: Would you like the question  
23 rephrased or would you like to try to answer?

24 A. Well, I'd like to see if I can help him  
25 answer it. 02:11:02

1           When I spoke to Anthony Pugliese about  
2 setting aside money in the form to make sure that when  
3 these commitments came due that we would pay the  
4 people, after that, end of that conversation it was  
5 ended. I was assured that he said he was taking care  
6 of it and he was preparing to do that.

02:11:03

02:11:15

7           How he did it was none of my concern. I was  
8 more concerned in the name and the reputation of the  
9 project and my name that these people would have money  
10 set aside and be paid. That was my only concern.

02:11:30

11           I did not have any idea on how he set it  
12 aside. I took his word for it that it was being taken  
13 care of and I didn't have to concern myself with it,  
14 so as usual if I'm told not to concern myself, I  
15 don't.

02:11:45

16           Q. I'm asking you about your personal  
17 knowledge, Mr. Florio, right. You do not know that --  
18 if any of LCOC's expenses were paid after May 2009  
19 with the money that Anthony Pugliese set aside. You  
20 have no personal knowledge of that, correct?

02:11:59

21           A. I don't know for sure how they were paid.

22           Q. That's right. And you have no knowledge  
23 whether any expenses were paid with the money Anthony  
24 Pugliese set aside, do you?

25           A. I have no personal knowledge of where the

02:12:13

1 money came from.

02:12:14

2 Q. Or where it went, correct?

3 A. I was told that money was being put aside.  
4 Apparently, if these guys got paid, they got paid from  
5 somewhere. So if it wasn't the money put aside or  
6 not, I have no way knowing.

02:12:26

7 Q. And that's what I want to make clear. You  
8 have no personal knowledge --

9 A. Right.

10 Q. -- of whether any money that Anthony  
11 Pugliese took from LCOC was, in fact, used to pay  
12 LCOC's expenses?

02:12:34

13 A. No, I don't have any personal knowledge. By  
14 that time I was gone.

15 Q. When Fred DeLuca told you that Anthony  
16 Pugliese had stole from the project, you disagreed  
17 with Fred DeLuca, didn't you?

02:13:01

18 A. Yes, I did.

19 Q. And that was the point of contention that  
20 you referenced in your direct examination with  
21 Mr. Gary, correct?

02:13:11

22 A. Correct.

23 Q. Mr. DeLuca said that Anthony Pugliese stole  
24 and you said no, he didn't?

25 A. Correct.

02:13:20

1 MR. HUTCHISON: Judge, can I have a  
2 five-minute break, because I want to wrap up. I  
3 think I'm almost done, if not done. I just want  
4 to confer.

5 THE COURT: Yeah, take -- you mean five  
6 seconds? Five minutes is a very, very long time.

7 MR. HUTCHISON: I'll be quick as I can, Your  
8 Honor.

9 THE COURT: Okay.

10 BY MR. HUTCHISON:

11 Q. Mr. Florio, you know that Mr. Ray started  
12 looking at Land Company of Osceola County's finances  
13 in about January of 2009?

14 A. That could be.

15 Q. And by that time you had been there since  
16 August of 2005, right?

17 A. Yes.

18 Q. And by May of 2009 you know that Fred DeLuca  
19 concluded that Anthony Pugliese was stealing from the  
20 project?

21 A. I don't think he concluded that by that  
22 time.

23 Q. Well, you know he suspected it, correct?

24 A. I know that he suspected it.

25 Q. And that was based on Bobby Ray's



1 investigation?

02:15:36

2 A. I imagine it was.

3 MR. HUTCHISON: I have no more questions,

4 Your Honor.

5 THE COURT: Thank you, Mr. Hutchison.

02:15:42

6 Mr. Gary, redirect, sir.

7 MR. GARY: Please the Court.

8 REDIRECT EXAMINATION

9 BY MR. GARY:

10 Q. Sir, in response to one of the questions  
11 that was just propounded to you, you said all I know  
12 is that the guys got paid. Do you remember that?

02:16:09

13 A. Uh-huh, yes.

14 Q. What guys were you talking about?

15 MR. HUTCHISON: Objection, foundation, no  
16 personal knowledge.

02:16:21

17 THE COURT: Overruled. I believe that's  
18 what he's trying to get to.

19 Go ahead, sir.

20 A. While I was there everybody that asked and  
21 requested to get paid, I was pretty much assured that  
22 they were paid, up to the time when I left and the  
23 time that they were performing their duties.

02:16:32

24 Q. They got paid when Fred DeLuca was out and  
25 about and couldn't be found, Anthony Pugliese got them

02:16:54

ROUGH DRAFT TRANSCRIPT

1 paid, didn't he?

02:17:02

2 MR. HUTCHISON: Objection, leading.

3 THE COURT: Sustained.

4 Q. How did these people get paid?

5 A. Any time it became a question on whether or  
6 not they got paid, if they needed to be paid, if the  
7 money wasn't -- if they were waiting for money from  
8 Connecticut, Anthony would go to his pocket and pay  
9 the people that needed to be paid.

02:17:10

10 Q. You know that for a fact?

02:17:24

11 A. I know that for a fact.

12 Q. Now, in reference to the discussion about  
13 the five percent that was promised or that Fred DeLuca  
14 agreed to, did he agree to pay you one percent?

15 A. There were times that he -- there had to be  
16 a formal agreement over the ten percent and at some  
17 point he told Anthony that Anthony would be in charge  
18 of who would get the money, because Anthony was  
19 working with the people and Anthony would have sole  
20 discretion on who was entitled to get a bonus out of  
21 that ten percent.

02:17:48

22 At first my name was suggested by Anthony,  
23 it was denied. I understand that I was getting paid  
24 by Fred and that was more than enough. At that time  
25 Anthony went back to Fred and we had a conversation

02:18:07

02:18:26

1 well, if Tom San Giacomo who is Anthony's right-hand  
2 in this project is getting a bonus, why shouldn't  
3 Florio. Fred said let me think about it. He came  
4 back a couple weeks later and said yes, Florio should  
5 be included.

02:18:29

02:18:42

6 But like I said in my original statement  
7 about this agreement, there's 17 different proposals  
8 back and forth, back and forth and I can tell you I  
9 was in it on numerous times, I was taken out, I was  
10 put in, I was taken out, and every time that  
11 occurred -- the last I heard was when I was in Italy,  
12 that I was back in.

02:19:00

13 So was it ever formalized, was it ever in  
14 writing, did it ever come about, no, it did not.

15 Q. Did Anthony Pugliese want to do it for you?

02:19:23

16 MR. HUTCHISON: Objection, relevance,  
17 speculation.

18 THE COURT: Sustained.

19 Q. What was Anthony Pugliese's take on this?

20 MR. HUTCHISON: Objection, relevance and  
21 speculation, Your Honor, and asked and answered  
22 to some degree.

02:19:34

23 THE COURT: I'm just not sure of the  
24 relevance, so I'll sustain the objection.

25 Q. Now, let me ask you this. With respect to

02:19:45

1 you assuring everyone that they would get paid and -- 02:19:54  
2 I'm sorry, that Fred DeLuca assured everyone that they  
3 would get paid and the project was going forward --  
4 you remember that discussion?

5 A. Yes. 02:20:13

6 Q. Did the project go forward?

7 A. Fred was in the middle of doing --  
8 reorganizing and he said that it was going forward and  
9 I was told -- I did tell and many times on conference  
10 calls with him, I told people that as soon as we 02:20:28  
11 ironed out the process in which we were going to go  
12 forward, that they would be paid.

13 Q. And Fred DeLuca told that you too, right?

14 A. Fred was actually part of the conversations.

15 Q. Did it go forward, did he live up to that? 02:20:42

16 A. No. He did do some investigation. He did  
17 have some communication with some people, but people  
18 that weren't very -- other than Bob Whidden and a  
19 couple of other commissioners I don't know that he  
20 talked to any of the other experts. 02:21:03

21 Q. So he promised to people he was going  
22 forward with it and that they would get paid. Did  
23 they get paid?

24 MR. HUTCHISON: Objection, asked and  
25 answered and foundation. 02:21:13

1 THE COURT: Sustained as to asked and  
2 answered.

02:21:15

3 MR. GARY: Your Honor, you said he already  
4 answered whether or the people got paid or not.

5 THE COURT: He did. In certain instances  
6 Mr. Pugliese took the money out of his own  
7 pocket.

02:21:29

8 MR. GARY: I'm not talking about that time.  
9 I'm talking about when Mr. Fred DeLuca took over  
10 in managing the business.

02:21:39

11 THE COURT: All right. You may answer the  
12 question now. Thank you for that clarification.

13 Q. After he took over and promised people going  
14 forward they would get paid, did they get paid?

15 A. I do not think so.

02:21:51

16 Q. And why do you say that?

17 A. Because just other communications that I've  
18 had with people, them telling me that, you know --  
19 keep on calling my home, calling me and asking me  
20 could I help them, what's happening, could I help them  
21 and trying to make me be the guy in between them.

02:22:03

22 Q. Could Fred DeLuca have paid these people?

23 A. Certainly.

24 MR. HUTCHISON: Objection, relevance and  
25 speculation.

02:22:16

1 THE COURT: Do you have any firsthand  
2 knowledge of any of this stuff, sir, in terms of  
3 what went on after you left the project?

4 THE WITNESS: Well, only from the fact that  
5 I was getting phone calls from all of the people.

6 THE COURT: So that would be hearsay. So  
7 that would be sustained then.

8 Q. Now, so with respect to an agreement being  
9 signed -- even though he gave his permission to do  
10 five percent, did you ever see an agreement that had  
11 Fred DeLuca's signature on it?

12 A. No.

13 Q. With the people that he had promised?

14 A. No.

15 Q. Did he ever follow through on that?

16 A. No.

17 Q. When you got told that Fred would do  
18 one percent for you, was that changed?

19 A. That was all part of that final agreement  
20 when Fred -- while we were in Italy Fred said he  
21 wanted to renegotiate with Anthony, that Florio was in  
22 for one percent, but the agreement had to be changed  
23 to five percent instead of ten percent.

24 Q. Now, in spite of Mr. DeLuca's request for a  
25 budget, was it your testimony that a budget was

1 provided to Mr. DeLuca, even though he didn't fund for  
2 five months?

02:24:05

3 MR. HUTCHISON: Objection as to leading.

4 THE COURT: When are you speaking about,  
5 Mr. Gary? What's the time frame you're looking  
6 at?

02:24:19

7 MR. GARY: From 2007 up -- 2007, starting in  
8 September, Your Honor, up until January 2008.

9 THE COURT: Okay, overruled.

10 A. I remember that the budget for 2007 was  
11 given to Fred. We went back and forth on a couple of  
12 items on the budget. Eventually the budget was  
13 prepared in a way that he accepted it and he said, but  
14 he -- but being that it was December he said he  
15 wouldn't start funding until he had an '08 budget.

02:24:42

02:25:05

16 Q. Was that justified?

17 MR. HUTCHISON: Objection, calls for a legal  
18 conclusion.

19 THE COURT: Sustained.

20 Q. Based on your observation of what was needed  
21 to keep the project going, what was being paid?

02:25:16

22 MR. HUTCHISON: Same objection, Your Honor.

23 THE COURT: Overruled. You can answer the  
24 question just on your observations.

25 A. As I said earlier, we put in a 2007 budget,

02:25:30

1 I thought that everything was going to go ahead and go  
2 forward. At the same time when we sent that in then  
3 he said oh, can I have a 2008 budget. We had a whole  
4 bunch of problems creating that kind of budget because  
5 we had just switched from going from a Rural Land  
6 Stewardship to a comprehensive plan. The county was  
7 tying us up. We didn't have clear clarification of  
8 what they were going to require to go forward. The  
9 State had something to say about that. So we were  
10 tied in knots and we told them that we would get him  
11 the '08, but it's just going to take a little longer  
12 because we have to wait for these people and the  
13 vendors and the State and the county to respond.

02:25:35

02:25:48

02:26:04

14 As soon as we did accomplish that which took  
15 us a couple of months, and are you going to fund now,  
16 well, I'd like to see a five-year budget, and a  
17 ten-year budget and a 20-year budget and this is right  
18 around the time when I was just getting ready to throw  
19 my hands up in the air.

02:26:16

20 So there was nothing that the company was  
21 doing. There was nothing that the company could do to  
22 satisfy this, what I considered to be a delay tactic  
23 on just funding.

02:26:31

24 Q. Delay tactic by whom?

25 A. By Fred.

02:26:48



1 MR. HUTCHISON: Objection, asked and  
2 answered.

02:26:49

3 THE COURT: Overruled.

4 Okay. Any questions from the jury?

5 Okay, thank you very much, sir, for your  
6 time. Please watch your step as you come down  
7 from the witness stand. There are stairs there.  
8 And we need the exhibits back.

02:26:54

9 Okay, thank you.

10 (Witness excused.)

02:27:04

11 Next witness, please.

12 MR.MARIANI: Your Honor, we call Bobby  
13 Masters.

14 THE COURT: All right, Bobby Masters,  
15 please, deputy.

02:27:17

16 MR. HUTCHISON: Your Honor, 361 was moved  
17 into evidence, correct?

18 THE COURT: Okay, thank you. 361 has been  
19 admitted into evidence according to our deputy  
20 clerk.

02:27:59

21 (Whereupon a document/item was marked in  
22 evidence as Defendant's Exhibit 361.)

23 Good afternoon, sir, if you would step  
24 forward and please take the oath.

25 Thereupon:

02:28:14

1 ROBERT MASTERS

02:28:14

2 was called as a witness and having been first duly  
3 sworn, was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: Thank you. Follow the deputy's  
6 directions. Please watch your step, there are  
7 stairs there.

02:28:21

8 When the witness is seated, Mr. Mariani, you  
9 may proceed.

10 MR.MARIANI: Thank you, Your Honor.

02:28:28

11 DIRECT EXAMINATION

12 BY MR. MARIANI:

13 Q. Good afternoon, Mr. Masters. Would you  
14 please give us you your full name and residence  
15 address?

02:28:38

16 A. Robert F. Masters, 7900 Flip Flop Lane,  
17 Wilmington, North Carolina 28409.

18 Q. And sir, what business are you in?

19 A. Real estate sales and development.

20 Q. How long have you been in real estate sales  
21 and development?

02:28:55

22 A. Over 30 years.

23 Q. Do you have any accreditations or licenses?

24 A. I'm an active member of the South Carolina  
25 bar.

02:29:14

ROUGH DRAFT TRANSCRIPT

1 Q. Meaning the legal bar? 02:29:15

2 A. The legal bar, but not a practicing  
3 attorney. Haven't been for years.

4 Q. You have a law degree?

5 A. I do. 02:29:22

6 Q. Do you keep up on your continuing legal  
7 education courses?

8 A. I do.

9 Q. Are you a graduate of college, I assume?

10 A. Yes, sir. 02:29:31

11 Q. And where did you go to school?

12 A. University of South Carolina.

13 Q. And what was your study there?

14 A. I had a degree in accounting.

15 Q. Do you work for a company or do you work for  
16 yourself now? 02:29:42

17 A. I work for a company.

18 Q. Which company?

19 A. St. James Plantation. The actual technical  
20 name of the company is Reserve Development Company,  
21 LLC. 02:29:49

22 Q. In your 30 years of experience in the field  
23 have you worked for different companies other than St.  
24 James?

25 A. Yes, I have. 02:30:00

1 Q. Could you give us that history, please. 02:30:02

2 A. Wild Dunes Development Corporation, I worked  
3 for various iterations of the Ginn Company, worked for  
4 myself and my brother, the Masters Company, and then  
5 now, St. James Plantation and then I did some 02:30:20  
6 consulting as well for different groups.

7 Q. You mentioned the Ginn Company. Could you  
8 explain what that is or was?

9 A. It was beginning in like '98, it was a real  
10 estate sales and development company that focused on 02:30:37  
11 large residential resort master planned communities in  
12 Florida and throughout the various locations in the  
13 United States and basically buying land, finding land,  
14 entitling land, raising financing, doing the sales and  
15 marketing, doing the building and construction of the 02:30:57  
16 infrastructure and various amenities.

17 Q. How many years were you with the Ginn  
18 Company?

19 A. I worked -- started in about March of 1998  
20 through November of 2008. 02:31:12

21 Q. When you were with the Ginn Company did you  
22 have a title?

23 A. Yes; executive vice president and COO.

24 Q. What does COO mean?

25 A. Chief operating officer. 02:31:28

1 Q. How many employees worked under your  
2 supervision as the COO of the Ginn Company?

02:31:30

3 A. At one time we were just under 3,000  
4 employees.

5 Q. Are you familiar with a project called  
6 Hammock Beach?

02:31:46

7 A. Yes.

8 Q. What's your familiarity with that project?

9 A. That was a project that the Ginn Company in  
10 partnership with a private equity fund did land  
11 acquisition and development, sold residential resort  
12 lots, condominiums, ran a hospitality component that  
13 rented out condos, a club component for private club  
14 memberships.

02:31:57

15 Q. Where is that project located?

02:32:19

16 A. Palm Coast, Florida.

17 Q. When was that completed?

18 A. The first phases, generally around 2004,  
19 2003, 2004 and I believe they're still doing some work  
20 there now, on later phases of it.

02:32:34

21 Q. Do you know the approximate acreage of that  
22 project?

23 A. Cumulatively it was over 2,000.

24 Q. Are you familiar with a project Bella  
25 Collina?

02:32:48

1 A. Yes.

02:32:51

2 Q. What's your familiarity of that project?

3 A. That was another project done with the Ginn  
4 Company and a private equity group. It's a piece of  
5 property in Montverde, Florida, which is outside of  
6 Orlando, more like Apopka. Once again we went out,  
7 bought the land, planned it and titled it, developed  
8 it, sold it and built it.

02:33:02

9 Q. Approximately how large?

10 A. That was again around 2,000 acres.

02:33:12

11 Q. Are you familiar with a project called  
12 Reunion?

13 A. Yes, I am.

14 Q. What's your familiarity?

15 A. Same thing, it was a Ginn project with a  
16 private equity partner outside -- near Disney, you  
17 know, outside of Orlando. And again, that was  
18 a little over 2,000 acres and it was a multi-use  
19 mixed-use project that actually had some commercial,  
20 it had a hospitality component single family  
21 residential, multi-family residential and the club  
22 amenities.

02:33:22

02:33:39

23 Q. Are you familiar with a project Quail West?

24 A. Yes.

25 Q. And where is that located?

02:33:49

1 A. That's located in Naples, Florida.

02:33:51

2 Q. What's your familiarity with that project?

3 A. That was a project, once again with the Ginn  
4 companies and related parties. Quail West was an  
5 existing project, existing club that we came in and  
6 bought some of their undeveloped parcels and  
7 reorganized the club. And sold and marketed what we  
8 did.

02:34:00

9 Q. Are you familiar with a project known as  
10 RiverTowne?

02:34:15

11 A. RiverTowne, yes, sir. It's in Mount  
12 Pleasant, South Carolina, which is a bedroom community  
13 of Charleston, South Carolina. And once again, that  
14 was a large master planned community that the Ginn  
15 companies did and that again, I think it was a little  
16 under 2,000 acres. We had a golf course and various  
17 amenities and that was all single family lots.

02:34:28

18 Q. Are you familiar with a project known as  
19 Battle Mountain?

20 A. Yes, that was --

02:34:45

21 Q. And were you involved with that?

22 A. Yes, that was land outside of Vail,  
23 Colorado. The acreage was over 2,000, I think almost  
24 3,000. It was basically a mountain outside of Vail  
25 and that was a project that we bought the land,

02:35:04

1 involved in planning and zoning and entitlements, and  
2 unfortunately the real estate crash hit before we did  
3 any building on it.

02:35:08

4 Q. Do you have personal experience in the  
5 entitlement process?

02:35:18

6 A. Yes, I do.

7 Q. In what states?

8 A. North Carolina, South Carolina, Florida,  
9 Bahamas, Colorado, Vermont.

10 Q. What were the years that you worked for the  
11 Ginn Company?

02:35:41

12 A. It was, I'd say about the beginning of '98  
13 through November of 2008.

14 Q. And what did you do before that for income?

15 A. I did consulting work and worked, the first  
16 major project I did consulting for was a project  
17 called Scotch Hall Plantation which was up outside of  
18 Eaton, North Carolina, on the northeast coast of North  
19 Carolina, did that for about a year and a half and  
20 then actually did a consulting project for the owners  
21 of St. James Plantation. And after the consulting,  
22 they offered me the position of general manager to  
23 come there and be in charge of the project.

02:35:54

02:36:11

24 Q. In the year 2009 did you do any consulting  
25 in respect to the Destiny project?

02:36:27



1 A. Yes, I did. 02:36:28

2 Q. Would you describe that generally, please.

3 A. Yes. I was contacted by the Destiny group,  
4 also the Land Company through a common contact, a  
5 gentleman named Dale Lindon who was doing consulting 02:36:40  
6 for the Destiny group, if I would have any interest in  
7 coming down and taking a look at what they were doing  
8 and they were looking for someone who could step in  
9 and help with the development process. Also, even  
10 more specifically, help with some financing 02:36:54  
11 alternatives about, you know, raising money for  
12 infrastructure and things like that. So I came down  
13 and met with them and ended up taking a consulting  
14 assignment.

15 Q. With whom did you meet when you first were 02:37:05  
16 approached?

17 A. I met with Dale Lindon, Randy Johnson,  
18 Anthony Pugliese and Freddy Florio.

19 Q. Did there come a time where an arrangement  
20 was made where you did work? 02:37:21

21 A. Yes, that was the beginning. I think it was  
22 around March of 2009, I believe it was, or February.  
23 Can't recall specifically.

24 Q. What did you understand your duties and  
25 responsibilities to be for the Destiny project? 02:37:33

1           A.     I was to come in, they were hard at work on  
2 the entitlement process and going through the State of  
3 Florida Department of Consumer Affairs, which has  
4 oversight over large developments in various counties  
5 throughout the State. Depending upon the population  
6 in the county, there's certain thresholds that kicks  
7 it up to the Department of Consumer Affairs, so they  
8 were working on that. I think they were just looking  
9 to have -- from getting to a point in time where they  
10 could believe that they would be ready to go with some  
11 entitlements and just wanted some extra help to go  
12 push it through to make it more of a realty to  
13 actually start planning the various phases and  
14 actually making something happen on the land to be  
15 able to get -- attract other investors, other groups  
16 that had been looking at Destiny as a location for  
17 possible business ventures.

18                 So just kind of taking it up to the next  
19 level from an actual development standpoint and then  
20 as well figuring out the bits and pieces of, you know,  
21 financing, you know, where's the money coming from for  
22 the infrastructure because we really don't want to put  
23 anymore capital in. Can we do a community development  
24 district, which is a mechanism in the State of Florida  
25 authorized by statute that allows counties to

1 authorize private landowners to issue bonds to  
2 construct infrastructure for properties and in turn,  
3 those bonds are paid off through a portion of a  
4 property tax on that property over a 30-year period, I  
5 believe it is.

02:38:51

02:39:05

6 So that was an option, trying to meet with  
7 some private equity groups, much as we did business  
8 with when I was at Ginn to try to raise capital for  
9 that, and, you know, basically development work, you  
10 know, meeting with engineers, meeting with planners,  
11 talking to builders, just trying to get it really  
12 moving.

02:39:18

13 Q. You mentioned the Department of Community  
14 Affairs. Is that a State or was that a State level  
15 agency?

02:39:34

16 A. It was.

17 Q. And do you know whether that agency still  
18 exists in the State of Florida?

19 MR. HUTCHISON: Objection, relevance.

20 THE COURT: Overruled.

02:39:42

21 A. To my knowledge, I believe when Governor  
22 Scott took office, he and the administration and the  
23 legislature, I believe did away with the Department of  
24 Consumer Affairs as it relates to the land  
25 development.

02:39:57

1 Q. So let me ask what did you actually do -- 02:40:02  
2 first of all, you were a consultant, you were not an  
3 employee; is that right?

4 A. That's correct.

5 Q. So did you have a title? 02:40:09

6 A. Not really, no.

7 Q. So on a day-to-day basis, what did you do?

8 A. My days involved -- it was a lot of phone  
9 calls, a lot of meetings with the various consultants  
10 and groups that we had, architects, engineers, 02:40:23  
11 planners, attorneys, meeting with government  
12 officials, working on a plan, working on budgets and  
13 numbers, business planning, working on some more  
14 detailed long-range business plans, that type of work.

15 Q. Had you heard of the actual property that 02:40:45  
16 was going to comprise the Destiny project before you  
17 joined the team?

18 A. Yes.

19 Q. And how is it you heard of the property?

20 A. I was still at Ginn at the time and I 02:40:55  
21 believe the Latt Maxcy company were the landowners of  
22 that tract in Yeehaw Junction and they decided they  
23 wanted to sell it and so they enlisted a gentleman  
24 named Dean Saunders, who has a real estate company in  
25 Lakeland, I believe it is, and he does a lot of work 02:41:16

1 with large acreage and farms and ranches and things  
2 like that. And they got his help to come and to put  
3 together a bid process to see how they could sell the  
4 property, and so at Ginn I received one of the  
5 packages that was being circulated at that time.

02:41:19

02:41:32

6 Q. Can you explain what the bid process  
7 entails?

8 A. Well, they could be a bit different. I  
9 can't remember the exact details of this, but  
10 basically the individual or company that's managing  
11 the process goes out and solicits groups or companies,  
12 trying to create interest in the property in reaching  
13 up to a deadline period where interested groups  
14 actually submit bids on the property.

02:41:46

15 Q. Were you aware at the time what was paid  
16 when the LCOC -- excuse me, when Mr. Pugliese signed a  
17 contract to purchase the property?

02:42:06

18 A. No, I wasn't.

19 Q. When did you become aware if you ever did,  
20 of what the cost was --

02:42:21

21 A. Yeah, after I came down and started doing  
22 consulting.

23 Q. I see. Then I'll not continue that.

24 When you joined the team were you aware of  
25 any of the other experts or attorneys who were

02:42:41

1 involved in the Destiny team? 02:42:43

2 A. Well, yes. I mean, they assembled quite a  
3 team and they had -- Bob Whidden was a land planner  
4 with years of experience out of Osceola County where  
5 the property was located. He had done the planning 02:42:54  
6 and design for a lot of major projects in Osceola  
7 County and had a good working relationship with the  
8 government there.

9 There was a large multinational land  
10 planning group called ARUP, I believe it was. 02:43:09  
11 A-R-U-P, this huge global firm and they were involved  
12 in helping do the planning. They had done communities  
13 that were envisioned like this before, so that was a  
14 big group that was involved.

15 We had -- there were transportation 02:43:25  
16 consultants involved, a gentleman named Scott Leftwich  
17 out of Orlando who's a traffic engineer. I can't  
18 remember the gentleman's name that was working in --  
19 who had environmental groups working on various  
20 environmental issues, doing surveys of wildlife and 02:43:43  
21 wetlands and things like that; a couple of different  
22 law firms that were involved helping through the  
23 entitlement process. It was quite a list of very  
24 reputable, incredible people involved, which is one of  
25 the reasons why I agreed to do it. Because I said if 02:44:00

1 they're spending this kind of money with these people,  
2 I know they're not cheap, so it must be something  
3 that's a real deal.

02:44:05

4 Q. Do you know the name Al Quentel?

5 A. Yes.

02:44:17

6 Q. Who is Al Quentel?

7 A. He was a lawyer at, I believe Greenberg. I  
8 can't remember. He was a land use lawyer of quite a  
9 reputation in the State of Florida, particularly South  
10 Florida. I believe he's passed away now.

02:44:33

11 Q. With respect of your responsibilities, how  
12 often or how many days a week were you involved in  
13 working for the Destiny project?

14 A. Five days a week, Monday through Friday.

15 Q. Where did you spend that time -- or excuse  
16 me, how did you spend that time and where did you  
17 spend it?

02:44:51

18 A. I spent that time, I described the  
19 activities, you know, earlier that I was involved in.  
20 It was in meetings with consultants and land planners  
21 and budgeting and financing and attorneys. The  
22 majority of the time was in the Pugliese Company  
23 offices, where the rest of the Destiny team was in  
24 Delray Beach; made trips to the site, went up to  
25 Osceola County, meeting with Osceola County officials,

02:45:03

02:45:22

1 some of the consultants were up in the Orlando area,  
2 to taking trips and meeting with them; meeting with  
3 the power company, you know, water management people,  
4 just that type of thing.

02:45:25

5 Q. While you were working as a consultant for  
6 the Destiny project, where was your home residence?

02:45:38

7 A. St. Augustine beach, Florida.

8 Q. So when you worked five days a week, if you  
9 were in Delray Beach for five days a week, did you  
10 stay in a hotel?

02:45:55

11 A. No, there was -- Mr. Pugliese owned a  
12 condominium in a building right across the is the from  
13 his office and myself and Dale Lindon who was also  
14 working with the project we stayed there during the  
15 week while we were working.

02:46:10

16 Q. And where was Dale's home town?

17 A. Orlando.

18 Q. So after you began with the Destiny team,  
19 did you learn the purchase price per acre of the  
20 property?

02:46:24

21 A. Yes.

22 Q. And what had Mr. Pugliese promised to pay  
23 and what did he pay?

24 A. If I recall correctly I think it was around  
25 \$10,000 an acre.

02:46:35



1 Q. Would it refresh your recollection if I said 02:46:37  
2 it was \$5,000?

3 A. \$5,000 an acre, excuse me, yeah.

4 Q. In your experience with the Ginn Company,  
5 would you consider that a reasonable price per acre 02:46:52  
6 for the land Maxcy parcel?

7 MR. HUTCHISON: Objection, Your Honor, not  
8 being an expert in this case.

9 THE COURT: Sustained.

10 Q. In your daily responsibilities for Destiny, 02:47:17  
11 did you work directly or interact directly with  
12 Mr. Pugliese?

13 A. Yes, I did.

14 Q. In what ways?

15 A. He was involved in a lot of the meetings 02:47:25  
16 that we had. His office was obviously there in the  
17 same location where I was and the rest of the team and  
18 he was involved in various conference calls, went on  
19 various trips with us as well, basically daily  
20 meetings with us on projects, talking strategy. So it 02:47:42  
21 was pretty much every day.

22 Q. In respect of the way he conducted his  
23 responsibilities on the project, did you find anything  
24 about what he did lacking?

25 A. Not from my standpoint. 02:48:01

1 Q. Did you interface at all with the officials  
2 in Osceola County?

02:48:08

3 A. Yes.

4 Q. In what ways?

5 A. Primarily with the planning director,  
6 working through how the property was going to be  
7 permitted an entitled. Going back a bit before I  
8 arrived, working with Destiny the information I gained  
9 as I went back through looking through what had gone  
10 on, there was a permit process that they were  
11 originally advised to follow to do with Rural Land  
12 Stewardship Act and about midstream after several  
13 years of working on that process, basically the State,  
14 the government agencies changed their minds about that  
15 process. There was a change in the administration  
16 from governor bush to Governor Crist, change in the  
17 head of the department of consumer affairs. It was  
18 a little bit different philosophy as far as  
19 development goes.

02:48:14

02:48:37

02:48:57

20 So there was a knew strategy that he used in  
21 Osceola County to take the lead on enacting a county  
22 ordinance which would enable a development of this  
23 kind in the rural areas of Osceola County and it was  
24 called a new city overlay. So we worked with Osceola  
25 County and their officials, working with our plan --

02:49:11

02:49:31

1 and this new city overlay wasn't just going to be  
2 specifically for Destiny, it was going to be an  
3 ordinance for the county as a whole, which Destiny  
4 would fall under.

02:49:34

5 So conversations with the county and meeting  
6 with various county officials to garner support and  
7 try to get their input on how that process would work  
8 and you know tend of the day Osceola County was the  
9 one who actually made the submit to the department of  
10 consumer affairs for the new city overlay.

02:49:44

11 Obviously we were involved anytime and  
12 helped them with all the work, but it was a county  
13 initiative so we had a lot of interaction with the  
14 county.

02:50:01

15 Q. Is the name Jeff Jones familiar to you?

02:50:13

16 A. Yeah, he was at the time the planning  
17 director for Osceola County.

18 Q. Did you meet with Mr. Jones on these issues  
19 you just described?

20 A. Yes.

02:50:26

21 Q. Did you meet with other officials at the  
22 county level?

23 A. Yes, met with the different commissioners at  
24 the time, county, to various meetings talking rough  
25 the process and how this would work. As I said if

02:50:39

1 Osceola County wasn't in favor of trying to do  
2 something like this, it would have been dead at the  
3 time, but fortunately they put their support behind it  
4 and sort of carried the torch.

5 Q. You said pearl someone had recommended purge  
6 suing the Rural Land Stewardship Act?

7 A. Correct.

8 Q. Who were you referring to that made that  
9 recommendation?

10 MR. HUTCHISON: Objection, foundation, Your  
11 Honor. He wasn't even there at that time.

12 THE COURT: Do you know that of your own  
13 personal knowledge, sir.

14 A. I can't remember the name of the individual.

15 THE COURT: Okay. That pretty much takes  
16 care of it. Objection will be overrule. Go  
17 ahead, sir.

18 Q. Tell us what office that individual worked  
19 in?

20 A. I think it would have come from the  
21 Department of Community Affairs.

22 MR. HUTCHISON: Objection.

23 THE COURT: Again only if you know. If you  
24 don't mind. We want to get your personal  
25 knowledge and not speculate.

1 THE WITNESS: Okay, yes, sir. 02:51:42

2 THE COURT: Thank you very much. Next  
3 question, please.

4 BY MR.MARIANI:

5 Q. How do you know or what is it you rely on to 02:51:55  
6 say that Osceola County was interested in the  
7 development of Destiny?

8 A. From conversations with various county  
9 officials, as I mentioned previously, and the fact  
10 that they made this a submit to DCA which took their 02:52:12  
11 submit and support.

12 Q. Can I explain that submit?

13 A. As I explained earlier the permitting  
14 process that was going on at that time required a  
15 change in the what's called the comprehensive plan of 02:52:30  
16 Osceola County, which would allow the type of  
17 developments like Destiny. So the county had to take  
18 the initiative to actually own act county ordinances,  
19 which would allow these type of developments to take  
20 place. 02:52:49

21 The county at the time and still to this  
22 day, were looking for a way to try to plan and what  
23 they could do with all the rural property they had and  
24 how that was going to be developed and whatnot. So  
25 they believed that the new city overlay was good way 02:53:03

1 to go.

02:53:05

2           You know, it would have allowed Destiny to  
3 move forward under the plans we had created. So that  
4 this was a county supported initiative. They were the  
5 actual permittee with DCA and not us as a private land  
6 owner. So this was one government entity requesting  
7 permission from another government entity to be able  
8 to do some of these new development and new city  
9 overlays.

02:53:17

10           Q. When you came to consult on the Destiny  
11 project did you review the work that had been done  
12 previous to your arrival?

02:53:43

13           A. The Yes, I did. I basically, once I got  
14 there I started looking through everything that had  
15 been done to the best I could find and trying to  
16 educate myself as quickly as possible to what was  
17 going on.

02:53:53

18           Q. Did you go back all the way to the purchase  
19 of the property to review what had been done from that  
20 time in terms of work or ideas or strategies?

02:54:05

21           A. Probably not all the way back to the  
22 purchase, but shortly thereafter. I think the main  
23 plan that was in place at the time was the work that  
24 was done by the group I mentioned earlier called ARUP.  
25 They were the big land planning if I were and they had

02:54:21

1 prepared sort of a very what they call a bubble plan  
2 in the business which is looking at a big piece of  
3 land and looking at various sections of that land and  
4 trying to identify land uses whether this would be a  
5 commercial area, a single family residential area,  
6 multi-family residential area, entertainment district,  
7 parks, trails, that sort of very high level global  
8 master planning of a big parcel of land.

02:54:24

02:54:38

9 That was sort of the basis that I started  
10 from when I got there.

02:54:53

11 Q. So how would you describe that to the jury,  
12 simply what parts of that plan that made up the  
13 Destiny bubble as you call it?

14 A. Well, ace just mentioned, it consisted of  
15 various areas that were designated to be a commercial  
16 area, like a main street type of situation what would  
17 normally be thought of as subdivisions which would be  
18 single family residential areas, it had parks designed  
19 night, the streets and sidewalks. It had open air,  
20 common area space, town squares, those type of things.  
21 It had some material areas for office, medical care.  
22 Hit areas designated for schools, it had some light  
23 manufacturing areas, I had retail areas.

02:55:06

02:55:26

24 So pretty much what you would find in a self  
25 contained community, there was sections of this plan

02:55:42

1 developed to do that, so that it would be fairly self  
2 contained. You know, the old cliché saying at the  
3 time was live, work and play where everything would be  
4 located right in that one community when it was built  
5 out.

02:55:46

02:56:00

6 THE COURT: Let me know when it would be a  
7 good time to take a break, please.

8 MR.MARIANI: We can do it right now, Your  
9 Honor.

10 THE COURT: Thank you. So we'll go ahead  
11 and take our afternoon break at this time, folks.

02:56:06

12 Thank you again for your continued service and  
13 sacrifice and we'll meet up again please at ten  
14 after three. Ten after three and we thank you  
15 our courtroom personnel our court reporter, court  
16 deputy. Please do not speak about the case or  
17 allow anybody to speak about it with you. Please  
18 do not do any type of research do not send or  
19 accept any messages in any way that have to do  
20 with your jury service or any of the person or  
21 issues involved in the case.

02:56:20

02:56:41

22 Thank you again. We'll see you back at  
23 3:10.

24 (Whereupon a recess was taken.)

25 THE COURT: All right we've advised

03:12:56



1 maintenance about the heat of the room, so 03:12:57  
2 hopefully they'll have somebody up here soon.

3 All right deputy if you'd kindly summon the  
4 jury. Is the witness here?

5 Mr. Master that's the you'd kindly retake 03:13:11  
6 the stand, please. You understand you're still  
7 under oath.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Very well, step forward. Please  
10 again watch your step there are stairs there. 03:13:21

11 THE BAILIFF: The jury is entering.

12 (Whereupon the jury entered the courtroom  
13 and the following proceedings were had:).

14 THE COURT: Welcome back ladies and  
15 gentlemen. Again, thank you very, very much for 03:13:58  
16 your continued service and sacrifice. Please  
17 take a seat and we'll continue with the direct  
18 examination of Mr. Masts. Mr. Mariani please.

19 MR.MARIANI: Thank you, Your Honor.

20 BY MR.MARIANI: 03:14:12

21 Q. Mr. Masters, have you visited the property  
22 in Osceola County that was to become the Destiny town?

23 A. Yes, I did, while I was doing any consulting  
24 work during that period of time.

25 Q. And were you aware that there are wetlands 03:14:28

1 on portions of the property? 03:14:32

2 A. Yes.

3 Q. Did you see the existence of those wetlands  
4 as being major problem with going forward with the  
5 development of Destiny? 03:14:45

6 MR. HUTCHISON: Objection again, Your Honor,  
7 this is not an expert witness.

8 THE COURT: Well, based upon his training  
9 and experience in the development field, I think  
10 he can answer the question. But again not as an  
11 expert, solely based on his experience. 03:14:59

12 A. In my experience, particularly in Florida, I  
13 can't remember a piece of property that I worked on  
14 that didn't have the existence of wetlands. Florida  
15 is a wed state and generally large parcels of land  
16 have some sort of wetlands on them and this is just a  
17 part of the planning process of how you work around  
18 them and oftentimes use them as a feature of the  
19 property. You know, believe it or not people will pay  
20 more money for a lot that's on a wetland than a lot  
21 that backs up to a park or another house, in my  
22 experience. 03:15:17

23 So it's just part of the process in the  
24 State of Florida. I don't think it would be hard to  
25 find land in the State that doesn't have some presence 03:15:35  
03:15:47

1 of wetlands and it's just part of the planning process 03:15:50  
2 of how you work around it and how you plan the land.

3 Q. So while you were working with other people  
4 on the Destiny team, again was the existence of the  
5 wetlands, was that an inhibiting factor about going 03:16:04  
6 forward with the design?

7 A. No by the time I got there they had already  
8 worked with the maps, the areas that could be  
9 developed the areas that couldn't be, the  
10 identification of various species they had to take 03:16:22  
11 into consideration. So what you did, do you what you  
12 have and you build your plan around that and  
13 incorporate wetlands where you can.

14 Also even if you have wetlands there's  
15 various permit processes with the U.S. Army Corps of 03:16:36  
16 Engineers and the wildlife management and the Florida  
17 stormwater management groups that you can actually  
18 develop some wetlands. You have to get a fill permit,  
19 and that's just a part of the process as well. So  
20 it's really nothing out of the ordinary and they had 03:16:57  
21 pretty much identified all of that when I got there so  
22 we knew what land we had and what we were trying to  
23 do.

24 Q. Do you consider wetlands in Florida  
25 development projects a matter of course? 03:17:07

1 A. Everyone I've worked on that some component  
2 of wetlands on it, yes.

03:17:10

3 Q. Are you familiar with the word mitigation as  
4 it relates to wetlands?

5 A. Yes.

03:17:21

6 Q. What's your understanding of mitigation as  
7 it relates to wetlands?

8 A. Well, I mentioned in my previous  
9 conversation, that there are processes whereby you can  
10 get permits to develop wetlands. Often time what's  
11 that requires is if you were going to take away a  
12 wetland, you have to mitigate the taking of that  
13 wetland. Therefore that's where the word mitigation  
14 comes from.

03:17:32

15 So if you have a piece of property that has,  
16 you know, couple hundred, 300 acres of wetlands on it  
17 and you want to develop a part of that you may have to  
18 go do enhancements to some of the other wetlands you  
19 have to make that wetlands that are there good  
20 wetlands.

03:17:48

03:18:01

21 Also there are areas in the state and land  
22 in the state that are actually called wetland  
23 mitigation banks, where individuals and groups have  
24 bought property that are deemed worthy of preservation  
25 and by putting that land into preservation, they gain

03:18:16

1 what's called a wetland mitigation credits and those 03:18:21  
2 credits are then available for either land owners to  
3 use to swap off if they got a wetland, you  
4 have to pay money and buy credits from another wetland  
5 area. 03:18:36

6 So the overall goal so to maintain a balance  
7 of wetlands throughout the State and there's various  
8 degrees of wetlands. There's good wetlands and some  
9 you would say why is this wet, there's no water on it.  
10 So the State I think and the federal government, 03:18:49  
11 wetlands, it's a major component of development and a  
12 lot of smart people work on it and I think that trying  
13 to maintain and make wetlands better is just a part of  
14 the process, and that's where this mitigation bank  
15 comes along. 03:19:06

16 In a project such as Destiny there was an  
17 opportunity there to take some of those wetlands,  
18 acreage that was there and turn into a mitigation  
19 bank where we could actually sell credits to  
20 developers on other pieces of property. 03:19:19

21 Q. While you were consulting on the Destiny  
22 project, did the Department of Community Affairs at  
23 the State level did it issue its staff report in  
24 response to the application made by Destiny?

25 A. Yes. It made its response actually to 03:19:39

1 Osceola County who was --

03:19:43

2 Q. Or to the county, excuse me?

3 A. They sent a response to Osceola County.

4 Q. And what's the title of that staff report  
5 response?

03:19:53

6 A. It's called an ORC report. It's not the  
7 ORCs in the Lord of the rings. It's called  
8 objections, reservations and comments.

9 Q. ORC?

10 A. ORC, yeah.

03:20:06

11 Q. Is it observations, recommendations and  
12 comments?

13 A. Correct.

14 Q. So did you review that report that came from  
15 the staff of the DCA to the county?

03:20:18

16 A. I did.

17 Q. What was your view.

18 That response at that particular time? Let  
19 me ask specifically, was that a denial of the  
20 application

03:20:32

21 A. No it was not.

22 Q. So how do you describe what its that you  
23 were is?

24 A. The purpose was the county made their  
25 submission to the State to the Department of Community

03:20:44

1 Affairs said this is what we'd like to do, you have a 03:20:47  
2 right for oversight here, you have need to take a look  
3 at it and make your comments, where are we right,  
4 where are we wrong and basically the Department of  
5 Community Affairs and their staff and other State 03:21:00  
6 agencies look at it and give back comments, reasons  
7 why they don't like it, reasons why they like some of  
8 it; comments about why don't you look at changing  
9 this, changing that.

10 It's basically a start of that permitting 03:21:14  
11 process whereby you then -- and quite frankly at the  
12 point in time as I mentioned earlier, the Department  
13 of Community Affairs although they have guidelines and  
14 regulations, a lot of times it's the policies and  
15 procedures are driven by the person in charge of the 03:21:30  
16 department. Politics are involved and different  
17 individuals and different heads of DCA in the past  
18 have had different ideas about development.

19 The government that was head of the DCA at  
20 this particular time was quite publicly -- I mean, he 03:21:44  
21 was not the friendliest to developers in the State.  
22 In fact, I think you might say he wasn't anti  
23 development, but he sure wasn't pro development and  
24 not just Destiny. Pretty much throughout the state  
25 pretty much public and private land owners had similar 03:22:03

1 type of issues.

03:22:07

2           So we weren't surprised what came back given  
3 some comments we had gotten from the State in our  
4 talks previously and they took an interpretation of  
5 various sections of their guidelines and came back  
6 with these comments.

03:22:16

7           Q.    And that was sometime in the middle part of  
8 or was it in the middle part of 2009?

9           A.    It was -- I can't remember the specific  
10 date, but it was April of 2009.

03:22:31

11          Q.    So what was the strategy in terms of  
12 responding to that document, if indeed a response was  
13 to be made?

14          A.    Well, actually their report is basically an  
15 open door to this is how we see things, consider what  
16 we're saying. Let's get back together and try to work  
17 through it.

03:22:48

18                In fact, I think mike McDaniel who was a  
19 staff member at DCA who wrote the supporting memo for  
20 the ORC report actually stated in his report that this  
21 is not the end of a process this is the beginning.

03:23:01

22                So they invite negotiation, they invite  
23 solutions to their concerns and so it's a big  
24 responsibility about the State had and the DCA had and  
25 they want to make sure all concerns are addressed so

03:23:20



1 that's what you do you sit down and work your way  
2 through it.

03:23:23

3 Q. Who was identified as the people in the  
4 Destiny project who would draft a response to that  
5 report, that staff report?

03:23:37

6 A. We had a team that I mentioned earlier. One  
7 of them was an attorney, Reggie Bouthillier, very  
8 experienced land use lawyer. We had Bob Whidden as  
9 land planner, we had our engineers, we had the whole  
10 team of folks that pertained to them and come back  
11 with responses and it wasn't going to be anything real  
12 quick. You'd sit there and meet with them and address  
13 the concerns and try to work your way through to where  
14 you could have both sides, the County, the State and  
15 us as the land owner, that would be workable.

03:23:57

03:24:14

16 Q. Is there a time period with which the  
17 response has to be submit?

18 A. The DCA has to respond within a certain  
19 amount of time you make the request and I can't  
20 remember the specific dates, but we well to respond  
21 back to DCA and I can't remember the timelines.

03:24:32

22 Q. There's been a suggestion by others that the  
23 Destiny project was in the middle of nowhere. Do you  
24 believe it was in the middle of nowhere?

25 MR. HUTCHISON: Objection to form comment by

03:24:57

1 counsel and leading.

03:24:59

2 THE COURT: I agree with the preface.

3 Please restate the question.

4 Q. Where was the Destiny project located

5 specifically?

03:25:08

6 A. Yeehaw Junction, Florida, which is about an  
7 hour south of Orlando on the intersection of the  
8 Florida Turnpike and I can't remember the highway  
9 number, I believe a four lane highway that went across  
10 the State.

03:25:21

11 So every place in Florida at one time or  
12 another was in the middle of nowhere and for you folks  
13 who have lived here for any length of time the middle  
14 of nowhere quickly becomes somewhere.

15 Q. The location did you see that as an  
16 impediment or a positive value of the property?

03:25:36

17 MR. HUTCHISON: Objection again opinion,  
18 Your Honor.

19 MR.MARIANI: May I respond, Your Honor?

20 THE COURT: Briefly.

03:25:48

21 MR.MARIANI: A group of significant  
22 consultants on this project have opinions about  
23 why they were working on it. They're not just  
24 there doing work. They're there because of their  
25 expertise and the location and their view of the

03:26:03

1 viability of the project is relevant to every 03:26:07  
2 decision that's been made by the managers or by  
3 Mr. Pugliese in terms of the claims.

4 THE COURT: Well, on this question I'll  
5 allow him to answer, but with the same caveat as 03:26:20  
6 I said before. It's based on his experience, but  
7 not as an expert opinion.

8 MR.MARIANI: Thank you, Your Honor.

9 THE COURT: You can respond.

10 A. Based on my experience, the actual location 03:26:30  
11 was what made Destiny attractive from the standpoint  
12 of looking down the road in the future. It had good  
13 transportation routes. You had the Florida Turnpike  
14 going right by it. At that time there was a lot of  
15 talk about the bullet train and what not that may go 03:26:48  
16 through the state. It also had the east-west artery  
17 that west from coast to coast. So it was actually  
18 Yeehaw Junction was called the junction because it  
19 was. So it had pretty good transportation in and  
20 throughout the area as opposed to going up and down 03:27:03  
21 the Turnpike on other pieces of property and it really  
22 wasn't that far outside of Orlando when you look at  
23 the aerials and look at the pictures of it. Florida  
24 although in 2009, 2010 with the recession, you know,  
25 the population growth slowed somewhat, but nowadays 03:27:22

1 they're still coming down here in droves and people  
2 are still moving to Florida and there's not any land  
3 on the coast. It's pretty much taken. So Florida the  
4 growth of Florida is going to be inland in the  
5 interior central sections, and so that's why, that  
6 area and Destiny in particular was a good place to put  
7 a stake in the ground.

03:27:27

03:27:38

8 Q. Did you personally spend any time on issues  
9 relating to power, getting electricity and power to  
10 the site, sewer consideration, water plant  
11 considerations?

03:27:57

12 A. Yes I did.

13 Q. And what did you do in those three regards?

14 A. As far as electricity, Destiny is actually  
15 located in the territory controlled by the electric  
16 co-op so it's the co-op that has the franchise for  
17 that area. It's a co-op, they buy their power from at  
18 that time in this area, Florida Power & Light and we  
19 met with the electric coop folks as well as the FPL  
20 folks and how it would be serviced down the road and  
21 FPL had a major transmission line not far from the  
22 property that the property would stay in the piece  
23 river coop district, but they could be able to tap  
24 into that line to provide power to the project.

03:28:13

03:28:38

25 Q. And in respect of sewer issues, what did you

03:28:53

1 do?

03:28:55

2           A.     Sire, obviously there was no public sewer  
3 out in that area, but as often happens in a lot of  
4 projects like this you build your own sewer plant so  
5 that's a fairly common thing and what you did, you  
6 have your own sewer system and then as the area around  
7 you grows what generally happens is a county or some  
8 type of sanitary district will then take control of  
9 the system at some point in time and then it would  
10 become a true public utility system; system thing for  
11 the water.

03:29:06

03:29:22

12                     You get permitted with well,s to have your  
13 own water treatment plants and in time would be  
14 absorbed by generally a public entity.

15           Q.     Back to power for a moment. Were you  
16 involved in any analysis of whether to use and how to  
17 use solar power for the Destiny project?

03:29:34

18           A.     I wasn't specifically involved in that  
19 personally, but we had other people on the people that  
20 were looking at that. At this point in time there was  
21 a proposed bill going through the Florida legislature  
22 that would provide all electricity providers to  
23 provide so much of their power through environmental  
24 time sources; solar, wind, whatever, biomass, those  
25 time type things to try to get away from coal burning

03:29:50

03:30:12

1 and hydroelectric.

03:30:15

2 So utilities were very interested in trying  
3 to find areas that they could put to formula on and  
4 meet the requirement and generate the power and time  
5 on the line. So those were discussions that were  
6 being had.

03:30:27

7 Q. So when was the last time you did Destiny  
8 work?

9 A. I believe it was towards tend of  
10 August 2009, maybe the first of September, somewhere  
11 around that timeframe.

03:30:39

12 Q. And what caused you to stop?

13 A. The funds stopped.

14 Q. Were you being paid?

15 A. I had been paid. I didn't get paid  
16 everything, for all of my time there.

03:30:51

17 THE COURT: Can you give me a timeframe  
18 please, sir, that you said to the jury.

19 THE WITNESS: I started there the end of  
20 February, finished up the end of August.

03:31:06

21 THE COURT: End of February.

22 THE WITNESS: End of February 2009 till end  
23 of August 2009.

24 THE COURT: Thank you.

25

1 BY MR.MARIANI:

03:31:19

2 Q. How much were you owed at the ends of  
3 August 2009?

4 A. \$43,000.

5 Q. Did you ever speak with Mr. Fred DeLuca  
6 about the money that was owed to you?

03:31:27

7 A. I did.

8 Q. When did you do that?

9 A. I believe it was right at the beginning of  
10 2010 I think it was. I met with Mr. DeLuca at his  
11 home in Fort Lauderdale, myself and Dale Lindon and  
12 Mr. Florio was there.

03:31:36

13 Q. What did Mr. DeLuca tell you about being  
14 paid?

15 A. He informed me that he had some issues with  
16 some of the things that had gone on with Destiny and  
17 he was looking into them and they would eventually get  
18 worked out one way or the other and I would be paid  
19 what I was owed.

03:31:55

20 Q. Did he tell you he would pay you?

03:32:06

21 A. Yes.

22 Q. Did he pay you?

23 A. No.

24 MR.MARIANI: I have no further questions.

25 Thank you Mr. Masters.

03:32:13

1 THE COURT: Thank you Mr. Mariani.

03:32:15

2 Mr. Hutchison.

3 CROSS EXAMINATION

4 BY MR. HUTCHISON:

5 Q. Good afternoon Mr. Masters?

03:32:34

6 A. Good afternoon.

7 Q. We never met before. My name is Rick

8 Hutchison.

9 You didn't all the participate in any of the  
10 prepurchase due diligence of the Yeehaw Junction -- on  
11 the 27,000 acres as opposed to the Rohde 14,000 -- you  
12 didn't participate at all in any of the prepurchase  
13 due diligence, correct?

03:32:43

14 A. No, I did not.

15 Q. And that would be you didn't even start  
16 working for the Yeehaw Junction property until 2009?

03:32:56

17 A. Correct.

18 Q. And you had nothing to do with researching  
19 the Rohde property, the 14,000 that were under option?

20 A. No, I did not.

03:33:12

21 Q. And you understood that the Rohde contract  
22 was an option contract?

23 A. I don't want to proffer a legal opinion. I  
24 think it was more than an option. It was an actual  
25 contract.

03:33:24



1 Q. You knew that there was money due in 2010? 03:33:26

2 A. I can't remember the exact dates, but there  
3 were some obligations in that contract as opposed to a  
4 true option, right.

5 Q. And if the money wasn't paid then the 03:33:35  
6 contract was over, terminated?

7 A. Or extended or renegotiated whatever, yes,  
8 sir.

9 Q. Now, and with respect to the operating  
10 agreement, you're familiar with a limited liability  
11 companies, correct? 03:33:50

12 A. I am.

13 Q. And you know Land Company of Osceola County  
14 was a limited liability company?

15 A. Yes. 03:33:59

16 Q. And you know that it had --

17 MR.MARIANI: Objection, Your Honor, outside  
18 the scope.

19 THE COURT: Overruled.

20 Q. You know it had two motion for summary 03:34:05  
21 judgments, one was AVP Destiny and one was FD Destiny  
22 LLC?

23 A. I didn't really know that at the time I  
24 start consulting with them. I later learned that.

25 Q. Because you never read the operating 03:34:15

1 agreement, correct?

03:34:16

2 A. No, I did not.

3 Q. So you're not familiar with the funding  
4 obligations of FD Destiny, are you?

5 A. No.

03:34:24

6 Q. And you're not familiar with what the  
7 funding obligations were for AVP Destiny, correct?

8 A. Correct.

9 Q. And with regard to the finances of the  
10 project or how bills were paid, that wasn't something  
11 that was one of your response bills, was it?

03:34:36

12 A. No it wasn't.

13 Q. So I didn't review invoices from vendors and  
14 had nothing to do with paying those vendors?

15 A. The ones I had direct interaction with I  
16 would approve those.

03:34:51

17 Q. Approve those, but you had nothing to do  
18 with the payment of them?

19 A. Correct.

20 Q. And you had nothing to do with preparation  
21 of monthly capital calls, correct?

03:34:59

22 A. No, I did not.

23 Q. Now, you mentioned that you had worked there  
24 until August of 2009, correct?

25 A. Yes, sir.

03:35:10

1 Q. And in July, June, July, August did you  
2 speak with Mr. Pugliese?

03:35:10

3 A. Yes, I spoke to him pretty much every day  
4 during that time period.

5 Q. And you were getting paid what \$25,000 a  
6 month?

03:35:19

7 A. Correct.

8 Q. And they owed you for almost two months?

9 A. Correct.

10 Q. Did Mr. Pugliese tell you that he had taken  
11 almost \$2.9 million or almost \$3 million of LCOC's  
12 money and that he could pay you?

03:35:26

13 A. No he did not.

14 Q. Did Anthony Pugliese tell you that he had  
15 LCOC's money set aside somewhere and he could pay you  
16 the money that was owed?

03:35:39

17 A. No he said the same thing that Mr. DeLuca  
18 said, when they get everything sorted out, that we  
19 would be paid.

20 Q. Mr. Pugliese told you that there was a  
21 dispute between the members and when everything was  
22 sorted out they would then see that you would get  
23 paid, something like that?

03:35:50

24 A. Well, I had the conversation I mentioned  
25 previously with Mr. DeLuca when he mentioned

03:36:01

1 specifically I would get paid. I understand when my  
2 time at Destiny came to an end as everybody else's,  
3 that the funding source that had been at that time  
4 Mr. DeLuca, he decided to stop funding and obviously  
5 with no money to pay us, I wasn't going to stay there  
6 and not get paid.

7 Q. Two questions. You didn't know that AVP  
8 Destiny was paying 25 percent of the expenses and FD  
9 Destiny paying 75 percent of the expenses?

10 MR.MARIANI: Objection, Your Honor, Counsel  
11 testifying.

12 THE COURT: He's permitted to ask leading  
13 questions on cross examination. And I think it's  
14 a fair question, so the objection is overruled.

15 Q. Did you know --

16 A. I didn't understand the workings between the  
17 two partners of how it got funded. I did know that  
18 Mr. DeLuca was contributing a large portion to it.

19 Q. Did you know that Mr. Pugliese lease's was  
20 paying 25 percent?

21 A. I knew they were paying something, but I  
22 didn't know the exact percentages.

23 Q. So going back to 2009 did Mr. Pugliese tell  
24 you that he had almost \$3 million of LCOC's money and  
25 he had money set aside to pay expenses of the

1 contractors and the vendors?

03:37:07

2 A. No he didn't tell me that.

3 Q. Did he tell you he had any money that, he  
4 had taken money -- did Mr. Pugliese tell you will he  
5 had taken money from LCOC to pay expenses?

03:37:20

6 A. No. That he had taken money from land  
7 company? No he never said that.

8 Q. And he did tell you he had taken money to  
9 pay expenses of Land Company of Osceola County?

10 A. No.

03:37:33

11 Q. Now, you had mentioned -- now, Randier  
12 Johnson was there for your first couple of months that  
13 you were there?

14 A. Yeah I can't remember exactly when he left.  
15 It was probably the first three or four months or so.

03:37:58

16 Q. And you understand that Randy Johnson was a  
17 politician. He was in the State legislature, the  
18 Florida State layings layer?

19 A. I knew he had been.

20 Q. And he was not a land developer you  
21 understood that?

03:38:09

22 A. I wasn't familiar with his past.

23 Q. Did you understand that Randy Johnson's role  
24 was to lead the lobbying effort in Tallahassee and  
25 Osceola County to try to get these entitlements?

03:38:20

1           A.     I knew that was one of his big roles was to  
2 work with the State agencies and the contacts he had  
3 up in Tallahassee to get the permits through.

03:38:23

4           Q.     And you talked about ARUP drew up a plan, do  
5 you remember talking about that on direct?

03:38:35

6           A.     Yes.

7           Q.     And that was on paper?

8           A.     Correct.

9           Q.     No roads were being built on the  
10 27,000 acres?

03:38:43

11          A.     Crack.

12          Q.     No construction was being done?

13          A.     No there was some farming being done, cattle  
14 ranching.

15          Q.     But no building of houses or commercial  
16 space was being done, correct?

03:38:51

17          A.     Correct.

18          Q.     So the plan you talk about is a bubble plan  
19 is on paper, correct?

20          A.     That's how all plans start, yes.

03:39:02

21                 MR. HUTCHISON:  Can I have Exhibit 612,  
22 please.

23                 Your Honor, may I approach?  May I approach  
24 the witness as well.

25                 THE COURT:  Did you show opposing counsel.

03:39:51

1 MR. HUTCHISON: Y gave him a copy.

03:39:53

2 THE COURT: Okay, thank you. I really can't  
3 see what's going on, but you're not posting these  
4 until we have had a chance to discuss them.

5 MR. HUTCHISON: No they're not posted.

03:40:05

6 THE COURT: Okay, that's fine. Like I said  
7 I'm usually the last to know.

8 MR. HUTCHISON: I'm just going to ask a  
9 couple of questions and we'll address that issue.

10 Q. This is an email dated March 23rd, 2009 do  
11 you see that?

03:40:15

12 A. I do.

13 Q. And it's to you as well as others, correct,  
14 do you see that?

15 A. Yes.

03:40:22

16 MR. HUTCHISON: Judge at this time I'm going  
17 to move for the admission of 612. It is without  
18 objection on their observe list.

19 THE COURT: Any objection, Mr. Mariani.

20 MR. MARIANI: No, Your Honor.

03:40:35

21 THE COURT: So stipulated it will be  
22 admitted 612 out of turn, FD parties 612 without  
23 objection. You may proceed.

24 (Whereupon a document/item was marked in  
25 evidence as Defendant's Exhibit 612.)

03:40:46

1 BY MR. HUTCHISON:

03:40:48

2 Q. I'm going to go over the first email with  
3 you, sir?

4 A. Okay.

5 Q. And it's to Randy and Bobby, that would be  
6 to Randy Johnson and to you, Bobby Masters?

03:40:51

7 A. Appears to be.

8 Q. And Barry worked for Bob Whidden?

9 A. I can't remember.

10 Q. And in fact, this is signed by Bob Whidden?

03:41:04

11 A. Yes, it is.

12 Q. Please review the stamped maps before I  
13 forward these to anybody else.." Do you see that?

14 A. I do.

15 Q. He says." There are several development  
16 footprint impacts indicated for wildlife species that  
17 will prove difficult to mitigate." Do you see that?

03:41:15

18 A. Yes. I do.

19 Q. He says a degree of anytime gauges is shown  
20 on the maps and the species legend shown there on?

03:41:29

21 A. I do.

22 Q. Please note the presence of caracara.

23 CARACARA?

24 A. Yes, sir.

25 Q. Which is a protected bird species, right?

03:41:41



1 A. That's correct.

03:41:48

2 Q. If you look at the map on the second page,  
3 and blow up the legend at the bottom, it has, which  
4 you can see, on the Rohde property, right, the  
5 14,000 acres, according to the ARUP footprint,  
6 remember you were talker being the ARUP footprint,  
7 according to the ARUP footprint you needed 7,000 acres  
8 on the Rohde property?

03:42:06

9 A. That's what it says.

10 Q. There was only 6,242 available. Do you see  
11 that? So you had what deficit of 806 acres. Do you  
12 see that?

03:42:21

13 A. I see the chart you're showing, yes.

14 Q. And according to Mr. Whidden there wasn't  
15 enough developable land to use the appropriate  
16 footprint. Is that what Mr. Whidden is telling you  
17 new this email?

03:42:34

18 A. I don't know. You'd have to ask him. I  
19 think from my interpretation of receiving this email  
20 is if we take exactly what ARUP did and super impose  
21 some of the species areas and some of the areas we  
22 have to work around, their exact plan is not going to  
23 work so we have to make modifications. That's really  
24 not that unusual.

03:42:45

25 Q. And with regard to the Pugliese portion

03:43:00

1 there was according to the ARUP plan there was a 03:43:02  
2 definite and you understood the Pugliese portion to be  
3 if 27,000 acres?

4 A. Right.

5 Q. And there was a deficit of 1554 acres, 03:43:09  
6 correct?

7 A. Based on that chart.

8 Q. So flaw a total for the ARUP plan at least  
9 as designed in March of 2009 wasn't going to fit on  
10 the land available? 03:43:22

11 A. If that's what you're saying. I mean, I'm  
12 reading what Bob Whidden is saying and he's saying we  
13 have to make some adjustments there's some problem  
14 areas we have to work with and that's really not that  
15 unusual. That's why you did a bubble plan before you 03:43:39  
16 spend a lot of money so, you know, you've got the work  
17 around it.

18 Q. Now, you had mentioned -- you were told  
19 Anthony Pugliese told you he was going to be the mast  
20 developer of this project, correct? 03:43:54

21 A. Correct.

22 Q. You're understanding was that Anthony  
23 Pugliese was going to be the master developer?

24 A. Well, it was Land Company of Osceola County  
25 not Mr. Pugliese personally. 03:44:10

1 Q. That would have meant that Anthony Pugliese  
2 would have had to put in infrastructure?

03:44:12

3 A. Well, not necessarily. I mean, oftentimes  
4 you can have what's called a master developer buys it  
5 gets it rezoned gets it entitled gets the land use  
6 changes and sells off the parcels to other individual.  
7 So you can do it under a scenario where you don't put  
8 any infrastructure in. Other scenarios where you do  
9 similar permitting an entitlement and then put some  
10 what we would call spine road type of infrastructure  
11 in and then sell parcels off of that.

03:44:25

03:44:40

12 So there's various ways to do it.

13 Q. Well, were you told that they were going to  
14 build it, LCOC was going to build infrastructure on  
15 the property. Was that your understanding?

03:44:55

16 A. I think it was all going to be market  
17 driven. I mean, you had to develop the plan and  
18 decide what the uses were and what the market was at  
19 the time and determine who your buyers of the land  
20 might be and then you make the decisions accordingly.

03:45:07

21 Q. Did anybody ever tell you the that the than  
22 was just to get entitlements and then sell the land?

23 A. If it made economic sense at that time to do  
24 that, yes.

25 Q. Did anybody tell you that? I want to know what

03:45:20

1 your understanding of the plan was. Was it your  
2 understanding of the plan that they would get  
3 entitlements and then sell it?

03:45:23

4 A. I don't think we specifically -- I didn't  
5 have that specific conversation with anyone. My goal  
6 and my job was to go get a plan done and permitted and  
7 entitle and have approved land uses and get through  
8 that step and move on from there.

03:45:31

9 Q. Once the entitlements were obtained you  
10 didn't know what the plan would be. Your goal was to  
11 just try to get the entitlements?

03:45:48

12 A. That's the first step in the process.

13 Q. And you testified to the jury that earlier  
14 that you needed to -- the Osceola County submitted  
15 something called a new city overlay?

03:46:01

16 A. Correct.

17 Q. And that's basically an amendment to the  
18 county's Osceola County's comprehensive plan, correct?

19 A. Correct.

20 Q. And then once that step would have been  
21 obtained then there would have to be DRI or  
22 development of regional impacts. They would have had  
23 to be prepared and apply and approved, right?

03:46:11

24 A. Correct there would have been other  
25 permitting after that, yes.

03:46:25

1 Q. And when you got there the new city overlay  
2 had been submitted to the Department of Community  
3 Affairs not consumer affairs?

03:46:27

4 A. Yes.

5 Q. Submitted to the Department of Community  
6 Affairs?

03:46:39

7 A. Correct.

8 Q. And ultimately the Department of Community  
9 Affairs did not approve the new city overlay and issue  
10 an ORC. You referred to the ORC on your direct?

03:46:50

11 A. Correct.

12 Q. It stands for objections, recommendations  
13 and comments, right, not observations?

14 A. I don't know exactly what it is, but yes,  
15 something like that.

03:47:04

16 Q. And you read the ORC or the objections  
17 report?

18 A. I did.

19 Q. Let me show you a copy of that. Can I have  
20 Exhibit 314, please. And the head of the -- the head  
21 of the department of Department of Community Affairs  
22 was a gentleman named Tom Pelham, PELHAM?

03:47:15

23 A. Yes.

24 MR. HUTCHISON: May I approach the witness.

25 THE COURT: You may.

03:47:39

1 Q. Take a look at that, sir, and tell fuss  
2 that's a copy of the ORC or the objections report and  
3 recommendations that you had testified about on direct  
4 examination?

03:47:43

5 A. It appears to be.

03:47:51

6 Q. And you'll see that's made out the Osceola  
7 county, correct?

8 A. Correct.

9 Q. And that's because Osceola county is who  
10 submitted the new city overlay to the Department of  
11 Community Affairs, correct?

03:48:02

12 A. That's correct.

13 Q. I'm going to show you, go over some parts of  
14 that with you. Carl, can I have Bates Number 573.

15 MR. HUTCHISON: Your Honor, I'm sorry, move  
16 for the admission of the FD parties 314. They  
17 did not object.

03:48:34

18 MR.MARIANI: No objection.

19 THE COURT: So stipulated, thank you.

20 MR. HUTCHISON: Sorry, Your Honor.

03:48:46

21 THE COURT: Number again, please.

22 THE CLERK: 314.

23 THE COURT: 314 admitted without objection.

24 Okay, gentlemen you may proceed.

25

1 (Whereupon a document/item was marked in  
2 evidence as Defendant's Exhibit 314.)

03:48:54

3 Q. Turn to the line that's 18573.

4 A. Got it.

5 Q. It's under Osceola County, you see that, the  
6 amendment new city overlay. Do you see that?

03:49:13

7 A. I do.

8 Q. If you go down to the third sentence  
9 starring with." As detailed below."

10 A. Yes.

03:49:26

11 Q. It says." As detailed below, however, the  
12 need for a threshold amount of 100,000 units to  
13 accomplish the county's goal has not been  
14 demonstrated, nor has convincing evidence been  
15 included showing that the goal cannot be more readily  
16 met within the Urban Land Boundary. Did I read that  
17 correctly?

03:49:38

18 A. You read it correctly.

19 Q. And the Urban Land Boundary was located up  
20 in north Osceola County about 4050 miles from the  
21 Yeehaw Junction?

03:49:51

22 A. I can't remember the location.

23 Q. About 40, 50 miles?

24 A. I don't know the distance.

25 Q. Assume you knew the distance at one time,

03:50:02

1 correct? 03:50:04

2 A. I'm sure I did at one time. It was up  
3 closer to Orlando, yes.

4 Q. And next sentence says." Furthermore the  
5 proposal would allow an undefined number of new  
6 cities, each containing 100,000 dwelling units.  
7 Inadequate data -- next sentence, inadequate data and  
8 analysis has been provided, demonstrating a need for  
9 additional 100,000 unit new city in Osceola County,  
10 let alone multiple new cities.." 03:50:13  
03:50:35

11 Do you see that?

12 A. I do.

13 Q. Because this Osceola County was asking for  
14 new cities outside the urban growth boundary plus when  
15 they already had inside if Urban Land Boundary,  
16 correct? 03:50:47

17 A. Correct.

18 Q. The next sentence starts." Moreover, during  
19 2008 with the approval of an expended Urban Land  
20 Boundary -- I'm sorry, moreover, given Florida's past  
21 experiences with proposals of this magnitude,  
22 resultant sprawl, public facility shortfalls and  
23 environmental degradation, a premium must be placed on  
24 clear directions, assurances.

25 Potential future developments, do you see 03:51:20



1 that 03:51:23

2 A. I do.

3 Q. The first sentence, the Department of  
4 Community Affairs said." As an alternative, the  
5 department recommends the county consider a well  
6 structured allowance of clustering of existing rural  
7 densities." 03:51:29

8 Now, with respect to the Destiny property,  
9 it was zoned one unit per five acres?

10 A. I believe that's correct. 03:51:42

11 Q. So it had about approximately 5,000 units  
12 could be put on it?

13 A. That sounds right.

14 Q. And at that time in 2009, LCOC was seeking  
15 about 100,000 units? 03:51:51

16 A. It was way up there, 70,000, 80,000. I  
17 can't remember the exact number.

18 Q. A lot more than it was zoned for?

19 A. Correct.

20 Q. So what the department of Community affairs  
21 was recommending, you would take the whole 5,000 off  
22 the 27,000 acres and cluster them together, right, in  
23 one corner and submit that and see if they would then  
24 evaluate that on its own, correct?

25 A. I don't think it was specific to the Destiny 03:52:19

1 property. It was wherever they would do these new  
2 cities they wanted to approach -- their initial  
3 response was as their previous responses had been with  
4 rural land, we will let you take the density that's on  
5 say a thousand acres and concentrate that density on a  
6 hundred of it and leave the rest of it undeveloped.

03:52:21

03:52:34

7 So it's clustering is what it's called and  
8 that's what they were trying to push for.

9 Q. But even then they weren't approving the  
10 cluster they were saying you should apply with the  
11 cluster?

03:52:50

12 A. Paws that was the recommendation after this  
13 initial report.

14 Q. Then it said." Such an approach would crate  
15 an efficient and less disruptive settlement pattern  
16 than the proposal now being considered and it would  
17 allow the continue to continue focusing and promoting  
18 economic growth diversification and redevelopment.  
19 Did I read that correctly?

03:53:04

20 A. You read it correctly.

03:53:19

21 Q. On the next page do you stay title 92 rat  
22 resource protection?

23 A. I do.

24 Q. And down under paragraph B if you look at  
25 the second sentence it starts with however.."

03:53:28

1 However, this standard fails to address natural  
2 resource suitability."

03:53:35

3 And the standard is la the county was  
4 submitting that's the referral to the standard,  
5 correct?

03:53:44

6 A. Assume. So it's been a while.

7 Q. This asked fails to address natural resource  
8 suit bill and the Florida fish and whiled life  
9 conservation commission has indicated the area around  
10 Yeehaw Junction and all of southern Osceola County  
11 provide important has been bit for a variety of whiled  
12 life including federally and state listed spy says.  
13 Did I read that right?

03:53:57

14 A. You read that right.

15 Q. And then with the Bates Number ending in  
16 8585 under the heading." Need.." You knew that the  
17 Department of Community Affairs was requiring LCOC as  
18 well as anybody who wanted to obtain more entitles to  
19 show need, correct?

03:54:10

20 A. There was -- that was one of the policies  
21 that they put in place during Mr. Pelham's tenure I  
22 believe. He strictly interpreted that and heretofore  
23 generally that the State of Florida had been somewhat  
24 allowing the mark tote determine need and I think  
25 Mr. Pelham and if policies in place at that point in

03:54:33

03:54:52

1 time they were trying to get a hold on growth and 33  
2 wanted to have some type of need demonstration before  
3 they would sign off on it, so all of these issues and  
4 objections and what not that they raise were all irons  
5 that were going to have to be dealt with and  
6 addressed, and you know it's akin to, you know, you  
7 obviously ask for a lot more than you need when you're  
8 dealing with governmental agencies. You know, you're  
9 not going to get everything you ask for. So you set  
10 the bar high and they're going to come back with their  
11 objections under and you worked towards a mutual  
12 agreement that satisfies everybody.

03:54:55

03:55:09

03:55:23

13 That's the process that generally goes as  
14 far as land development.

15 Q. And you understood that symptom Pelham was  
16 pointed by the governor, correct?

03:55:36

17 A. Correct.

18 Q. I mean, the Department of Community Affairs  
19 that's a cabinet position?

20 A. Correct.

03:55:43

21 Q. And Tom Pelham sat on the Charlie Crist's  
22 cabinet?

23 A. Correct.

24 Q. And he was appointed by Charlie Crist?

25 A. Correct.

03:55:53

1 Q. So let's read what they write about need in 03:55:53  
2 that last paragraph on that page starring with Firth  
3 more. You there?

4 Furthermore this proposal is inconsistent  
5 with the county's Urban Land Boundary strategy which 03:56:04  
6 was adopted last year and the intended to provide a  
7 clear separation between rural/agricultural areas and  
8 the urban area. The UGB -- and you understood the URB  
9 to stand for Urban Land Boundary?

10 A. Correct. 03:56:21

11 Q. And read along with in to make sure I read  
12 this correctly. The Urban Land Boundary was designed  
13 to accommodate the county's population growth through  
14 the year 2025.

15 Do you see that? 03:56:30

16 A. I do.

17 Q. And at the same time Foster the conditions  
18 to support economic diversification, reinvestment and  
19 the efficient use of urban services. Did I read that  
20 correctly? 03:56:42

21 A. Efficient provision of urban services, not  
22 use of urban services.

23 Q. Provision of. The next page, B, objection.  
24 Do you see that?

25 A. I do. 03:56:56

1 Q. Third sentence starting with moreover. It 03:56:58  
2 says." Moreover this policy could result in an  
3 unlimited number of new cities. This policy meaning  
4 what was submitted by the county correct?

5 A. Correct. 03:57:12

6 Q. Could result in an unlimited number of new  
7 cities each approved for 100,000 and is all based on a  
8 scenario forecast justification of need. Do you see  
9 that?

10 A. I do. 03:57:21

11 Q. It goes on to say, ." Not only would that  
12 allow development greatly in excess of need, but it  
13 could allow a scattered pattern of development greatly  
14 in excess of need which would be energy inefficient,  
15 increase greenhouse gas emissions, tax revenues and 03:57:40  
16 result in urban sprawl?

17 A. Correct.

18 Q. Reggie Bouthillier was hired on to assist?

19 A. He was.

20 Q. And prior to the new city overlay, you knew 03:58:00  
21 that LCOC had traveled under the rack for a couple of  
22 years and spent a couple of years trying to move under  
23 the Rural Land Stewardship Act and then changed  
24 strategies to the Department of Community Affairs?

25 A. Yes. 03:58:20

1 Q. You hired Reggie because he was one of the 03:58:20  
2 best lawyers in the field?

3 A. I had worked with him in the past and we had  
4 a good working relationship.

5 Q. And just to talk about the ORC one more 03:58:28  
6 minute. You understood that the Department of  
7 Community Affairs had to sign off on any plan that the  
8 county submitted, correct?

9 A. Correct.

10 Q. And the Florida fish and wildlife commission 03:58:38  
11 evaluated it separately, they had a sign off, correct?

12 A. They had various agencies.

13 Q. And the South Florida Water Management  
14 district had to?

15 A. As well. 03:58:51

16 Q. And the St. Johns water management district  
17 also had to, correct?

18 A. Correct.

19 Q. And the Florida department of environmental  
20 protection they had to sign off? 03:59:00

21 A. Typical for any large scale development.

22 Q. And the Department of Transportation had to  
23 sign off?

24 A. Once again they always do.

25 Q. The department of education? 03:59:11

1 A. Yes.

03:59:13

2 Q. And the Army Corps of Engineers which is  
3 also a federal agency?

4 A. You would have something enforceable, but  
5 they would see have to unless you went into the  
6 Wednesday lands you wouldn't be getting any permitting  
7 from them.

03:59:24

8 Q. But the wetlands had never been delineated  
9 on this property?

10 A. I think they had general ideas from aerials  
11 and whatnot that they actually paid a surveyor a to go  
12 out and put stakes at the ground that's when you're  
13 ready to spend some money when you feel like you got a  
14 deal going.

03:59:33

15 Q. So like I said at this point in time thereto  
16 had not been a final did I Lynn rages of wetlands?

03:59:46

17 A. Correct.

18 Q. And delineation means scoping out where the  
19 wetlands are?

20 A. Surveyors actually go out in the field with  
21 a wetland consultant and environmental consultant and  
22 they actually mark on the grounder where they think  
23 what areas they think are wetlands and what areas they  
24 think are uplands.

03:59:57

25 Q. And that hasn't been done yet?

04:00:12



1 A. Not from an in the field formal survey. 04:00:14

2 Q. You mention to do Mr. Mariani that water and  
3 sewer were being looked into. Flew contract on a  
4 sewer plant, was there?

5 A. A contract? 04:00:27

6 Q. There was no final plans for a sewer plant?

7 A. No it would depend on the size of your first  
8 phase and what your requirements were.

9 Q. And there was no final plans on how water  
10 was going to get to the property, correct? 04:00:36

11 A. It would deal with wells on the property  
12 that you would operate your own system.

13 Q. Right, but you had to get permission you had  
14 to get approvals?

15 A. That was all part of the process. 04:00:48

16 Q. None of that was done?

17 A. No.

18 Q. And he asked you about utilities it was  
19 never real determined what was needed. That had never  
20 didn't determined while you were working for LCOC? 04:00:58

21 A. Correct. There again this would be a  
22 phase-in plan depending on what the needs were, they  
23 were provided.

24 Q. And the builder would have to pay for that?

25 A. Whoever is the user would be, yeah. 04:01:10

1 Sometimes it depends on the amount of usage the powers  
2 companies would pay it themselves.

04:01:13

3 Q. Who's Ken Metcalf?

4 A. Ken Metcalf worked for Greenberg Traurig and  
5 he was -- he's not an attorney, but he is a planning  
6 consultant that was in house with Greenberg Traurig  
7 law firm.

04:01:24

8 Q. Was he a lobbyist for Greenberg Traurig?

9 A. I don't think so.

10 Q. And you worked with Ken Metcalf or did you  
11 bring Ken Metcalf on?

04:01:37

12 A. No he worked with Reggie Bouthillier. Ken  
13 worked for Reggie.

14 Q. Very good.

15 MR. HUTCHISON: May I approach the witness.

04:01:52

16 THE COURT: Yes, sir, thank you.

17 MR. HUTCHISON: Let me show you FD parties  
18 Exhibit 614. It's an email from Ken Metcalf to  
19 Bobby Masters, Anthony Pugliese, Bob Whidden and  
20 others.

04:02:07

21 I'm gonna move for the admission of 614  
22 without objection.

23 THE COURT: So stipulated thank you  
24 Mr. Mariani. It will be admitted then as FD  
25 parties 614 without objection. You may proceed.

04:02:26

1 (Whereupon a document/item was marked in  
2 evidence as Defendant's Exhibit 614.)

04:02:30

3 Q. You would have received this email an or  
4 around June 3rd, 2009?

5 A. Yes.

04:02:35

6 Q. That would have been after the Department of  
7 Community Affairs issued its objections report and  
8 observations, the document we just went over?

9 A. Uh-huh.

10 THE COURT: Is that yes.

04:02:44

11 THE WITNESS: Yes, sir.

12 Q. If you look in the first paragraph, you said  
13 that mike was it McDonald' who worked for the  
14 Department of Community Affairs?

15 A. McDaniel.

04:02:56

16 Q. He works for the Department of Community  
17 Affairs, correct?

18 A. Correct, he D I don't know if he still does.  
19 He doesn't because there's not one.

20 Q. I'm going to take you to the second sentence  
21 of Mr. Metcalf's email, Exhibit 614. Do you have  
22 that?

04:03:04

23 A. Uh-huh. Mike.

24 Q. Mike advised that the department would not  
25 entertain any type of amendment that would allow

04:03:18

1 more than simply clustering our present entitlement at 04:03:21  
2 one unit per five acres. Do you see that?

3 A. I do.

4 Q. Mr. Metcalf goes on the right, he also  
5 advised that they were unwilling to spend any time in 04:03:30  
6 reviewing or negotiating on alternative proposals.  
7 They're willing only to negotiate on an amendment that  
8 would cluster the entitlement N short, their position  
9 is that welcome accept their offer or if we proceed  
10 with a planned amendment that authorize mowers 04:03:52  
11 entitlement, they will find it not in compliance.

12 Do you see that?

13 A. I do.

14 Q. According to Mr. Metcalf, Mike McDaniels of  
15 the Department of Community Affairs was telling them 04:04:03  
16 cluster your existing 5,000 or so units, but they  
17 can't going to negotiate. Is that what Mr. Metcalf  
18 told you?

19 A. There what the email says that McDaniel was  
20 telling them that in meeting with Pelham, who was the 04:04:16  
21 head of DCA at the time who I already stated was  
22 pretty much antidevelopment he was trying to draw a  
23 line in the sand and basically taking a stuff stance  
24 and saying you can only do it my way or no other way.

25 Well, this is a political process and 04:04:32

1 there's other forces at play as well, and so -- and 04:04:34  
2 there's time involved as well too. If you waited a  
3 little bit later there isn't a DCA any more. There  
4 was so much controversy telling the county what's they  
5 could do and couldn't do with their lands that I think 04:04:47  
6 a couple of reasons why Governor Scott did away with  
7 it. It was political hard ball is what it was.

8 Q. I was concerned with what was going on in  
9 2009. You didn't have a crystal ball, right. You  
10 didn't know Rick Scott was going to be elected 04:05:02  
11 governor?

12 A. There were a lot of people having problems  
13 with Rick Pelham.

14 Q. But you didn't know what the future would  
15 hold? 04:05:11

16 A. No.

17 Q. So let's look at 2009 and see what  
18 Mr. Metcalf writes in the second paragraph in the  
19 second sentence.

20 " They essentially reiterated all of their 04:05:18  
21 points from the ORC -- and the ORC is the document we  
22 just went over, the right?

23 A. Uh-huh.

24 Q. " And did not give any consideration to the  
25 economic issues. They maintain that the NCO -- and 04:05:28

1 NCO is the new city overlay that was submitted? 04:05:32

2 A. Uh-huh.

3 Q. Is inconsistent with the UGB strategy and  
4 that's the Urban Land Boundary, correct?

5 A. Uh-huh. 04:05:43

6 THE COURT: Again, help our court reporter,  
7 thank you.

8 THE WITNESS: Yes, sir.

9 Q. And they believe the URB is over allocated  
10 and that the NCO would to increase densities -- time 04:05:51  
11 out -- over allocate and that the NCO would undermine  
12 the strategy of attempting to increase densities and  
13 attract jobs to the Urban Land Boundary. Did I read  
14 that correctly?

15 A. You read that correctly. 04:06:08

16 Q. And the last paragraph, the last sentence he  
17 writes -- and Mr. Metcalf worked for whom?

18 A. Reggie Bouthillier.

19 Q. At Greenberg?

20 A. Correct. 04:06:20

21 Q. So Mr. Metcalf was also an employee of  
22 Greenberg Traurig?

23 A. He was.

24 Q. I do not believe the department will support  
25 any amendment that makes reference to a new city or 04:06:28

1 multiple amendments to phase in a new city. Did I  
2 read that correctly?

04:06:32

3 A. You read it correctly.

4 Q. And Jeff Jones he worked for Osceola county,  
5 correct?

04:06:40

6 A. Correct.

7 Q. In the next paragraph and the last sentence  
8 on that page, he writes:. "Jeff indicated to me he  
9 does not want to present the NCO on June 15th for  
10 adoption without taking the additional time consider  
11 other options. He does not want to pressure the board  
12 to act that quickly in face of the department's  
13 opposition.

04:06:53

14 Do you see that?

15 A. Correct.

04:07:04

16 Q. One of the options would have been toking  
17 for ahead and file a lawsuit against the Department of  
18 Community Affairs or to accept the Department of  
19 Community Affairs objections, correct?

20 A. Well, there were other opinions as well as.

04:07:22

21 Q. Well, let's read what Mr. Metcalf has to  
22 say. In the second paragraph on the second page, you  
23 still on the second page, it starts out with Jeff?

24 A. Right.

25 Q. He writes: It afears that the best course

04:07:33

1 of action would be to combine the NCO and the  
2 conceptual master plan as wasn't consolidated  
3 amendment. In this way if the amendment goes the  
4 hearing we litigate once and we have a final decision  
5 on the project."

04:07:36

04:07:48

6 A. That's what it says.

7 Q. That's what Mr. Metcalf wrote?

8 A. Uh-huh, yes.

9 Q. You have to say yes because she didn't get  
10 an uh-huh or a nod of the head, thank you.

04:07:58

11 I want to take you to a memo by  
12 Mr. Bouthillier, Exhibit 946. Reggie Bouthillier  
13 worked for green Traurig as well, correct?

14 A. Correct.

15 Q. And you had worked with him on other  
16 projects at the Ginn corporation.

04:08:18

17 MR. HUTCHISON: May I approach.

18 THE COURT: Yes, sir.

19 MR. HUTCHISON: And may I approach the  
20 witness.

04:08:27

21 THE COURT: Thank you.

22 MR. HUTCHISON: May I approach the witness.

23 THE COURT: Yes.

24 BY MR. HUTCHISON:

25 Q. Let me show you FD parties Exhibit 946, a

04:08:31



1 memo from Mr. Bouthillier. Do you see that?

04:08:33

2 A. I do.

3 MR. HUTCHISON: I move for the introduction  
4 of this. There was no objection.

5 MR. MARIANI: No objection.

04:08:47

6 THE COURT: It will be admitted without  
7 objection. This it will be FD Exhibit 946.

8 (Whereupon a document/item was marked in  
9 evidence as Defendant's Exhibit 946.)

10 Q. It's do you?

04:08:54

11 A. It is.

12 Q. Dated its also copied to Anthony Pugliese?

13 A. Yes.

14 Q. Fred DeLuca, Fred Florio, and I rob bins and  
15 Bob Basehart. Do you see that?

04:09:12

16 A. I do.

17 Q. And you see on the first paying where he  
18 talks about the can September all the master plan in  
19 the reline, the subject man line?

20 A. Yes.

04:09:24

21 Q. And that abbreviation for master plan is  
22 CMP?

23 A. Yes.

24 Q. If you turn page two of the document, Bates  
25 Number ending in 1959. You see the paragraph strategy

04:09:38

1 to avoid litigating twice. Do you see that, section  
2 one?

04:09:45

3 A. Yes.

4 Q. If you go to the second sentence of that, it  
5 says." The county is also the applicant as opposed to  
6 land company of Osceola County and you had testified  
7 to that. Land Company of Osceola County did not  
8 submit the new city overlay?

04:09:52

9 A. Correct.

10 Q. It was actually the county of Osceola,  
11 right?

04:10:04

12 A. Right.

13 Q. So the new city overlay not only had one  
14 potential city which would have been Destiny, but in  
15 theory it would have been multiple cities?

04:10:16

16 A. Yes.

17 Q. The next sense says initially while this was  
18 void in a positive point is complicated this initial  
19 strategy evidenced by the recent events following last  
20 in's meeting with the DCA and the county."

04:10:34

21 And what was happening is the DCA or at  
22 least Tallahassee was including NCO as a Destiny only  
23 amendment as opposed to a county amendment?

24 MR. HOFFMAN: Counsel testifying, objection.

25 THE COURT: It's a leading question. This

04:10:51

1 witness is suited for that purpose and certainly  
2 has the ability if there is something that is  
3 incorrect with regard to the nature of the  
4 question or the information that's contained in  
5 the leading question, to certainly correct that.

04:10:53

04:11:06

6 So the objection is over rude.

7 A. The new city overred is lay applied to  
8 Osceola County, not just to Destiny, yes.

9 Q. And you understood that the DCA was kind of  
10 calling it the Destiny amendment. Did you understand  
11 that, yes or no?

04:11:19

12 A. Destiny was a part of it and Destiny was the  
13 impetus for the county doing it.

14 Q. It goes on to say this is further  
15 complicated by the following factors. Litigation with  
16 the DCA is highly improbable absent a major concession  
17 do you see that?

04:11:34

18 A. I see that.

19 Q. It goes to say the primary objective should  
20 be to avoid the pending NCO which was the new city  
21 overlay?

04:11:45

22 A. Correct.

23 Q. And the NPO which was the comparative master  
24 plan?

25 A. Correct.

04:11:53

1 Q. Separately, (IE twice) and resolving the 04:11:54  
2 comprehensive plan aspect of Destiny prior a potential  
3 effective date what is the HDCA, prior to January 4th,  
4 2011 is what he's saying, correct?

5 A. Correct. 04:12:09

6 Q. He goes on to say the major challenge is  
7 that the NCO the schedule for final adoption in 2009  
8 and the comprehensive plan amendment hadn't even been  
9 prepared for filing, correct?

10 A. Correct. There was a timing issue. You 04:12:23  
11 know, the county if they went forward with their  
12 issue, we were basically trying to figure out a  
13 strategy to respond to DCA's comments and there were  
14 several different ways to go. What this CMP Was was  
15 to get a portion of Destiny approved and then over 04:12:40  
16 time incorporate other areas in hoping that the  
17 political climates change and the DCA's attitude on  
18 growth changes and you work it through over time.

19 So that was one of the options we talked  
20 about. 04:12:55

21 Q. And all of these options you're talking  
22 about, do you do a financial analysis on any one of  
23 them?

24 A. We would have done them all. That was not  
25 part of it because some made sense and others 04:13:02

1 wouldn't.

04:13:04

2 Q. But at this point, sir, in July 2009 you  
3 hadn't done a financial analysis on each one of these  
4 options that Reggie Bouthillier discussed, correct?

5 A. That's what we were discussing.

04:13:15

6 Q. But it wasn't done?

7 A. Not at that particular time.

8 Q. Now, I'll take you to page eight, Bates  
9 Number ending in 8399, under the DCA meetings. Tell  
10 me when you're there, sir?

04:13:29

11 A. What page.

12 Q. The Bates Number being 8399, whichever you  
13 prefer. Still in the same exhibit which is FD's  
14 exhibit. First sentence as a result of the prior  
15 meeting between the DCA and the county last month, the  
16 county has elevated its concerns regarding Destiny's  
17 ability to demonstrate the viability of the clean tech  
18 cluster and related commitments from respective  
19 companies. Do you see that?

04:13:45

20 A. I do.

04:14:01

21 Q. And you understood that to be the clean tech  
22 was this whole sustainable city, correct?

23 A. Correct T county was wanting to see and  
24 learn about interest Destiny had from third parties  
25 who were interested in coming and developing and

04:14:14

1 building facilities there.

04:14:17

2 Q. And you understood that no company was going  
3 to give a commitment unless there were entitlements,  
4 correct?

5 A. It goes hand in hand so it was a process  
6 that goes on parallel lines, but obviously someone is  
7 not going to come down and build a unbuilding unless  
8 they can do it.

04:14:25

9 Q. They're not going to want to build a plant  
10 there if they don't have a permit to do it?

04:14:38

11 A. Correct.

12 Q. Then turn to the Bates Number ending in 8404  
13 and I'll move this along, where it says issue four,  
14 the allocations for phase one. Do you see that?

15 A. Right.

04:14:52

16 Q. So he's now talking about doing this in  
17 phases, right?

18 A. Correct.

19 Q. Kind of like something what you write and  
20 option one clustering from just LCOC. So he's only  
21 talking about LCOC not even Rohde at this point,  
22 correct?

04:14:59

23 A. Right.

24 Q. And he says it allows up to about 450 units  
25 and it would not require negotiation with roted. So

04:15:10

1 you could get out of the Rohde contract and just do  
2 phase one at this point, correct, what's Reggie  
3 Bouthillier is saying in his third bullet point?

04:15:13

4 A. There he's saying if you did the cluster  
5 what could phase one be 450 units.

04:15:25

6 Q. And then go down to the recommendation on  
7 the same page?

8 A. Uh-huh.

9 Q. Option one, that's the one we just discussed  
10 is the preferred option. Although it provides fewer  
11 initial entitlements, we would have a better chance of  
12 negotiating option one with the DCA.

04:15:36

13 Do you see that?

14 A. I do.

15 Q. " In addition we can expect DCA to seek  
16 conservation easement or other future development  
17 restrictions over the remainder of the parcel over  
18 which the entitlements are derived. Do you see what  
19 he's saying?

04:15:49

20 A. I do.

04:16:05

21 Q. Can I have 613, please. Judge, this was.

22 May I approach the witness, Your Honor?

23 THE COURT: Yes you may.

24 Q. I'm going to show you FD parties  
25 Exhibit 613. And I move for the admission of 613,

04:16:56

1 Your Honor. That also was not objected to?

04:17:00

2 THE COURT: All right.

3 MR. HUTCHISON: No objection.

4 THE COURT: So stipulated thank you.

5 (Whereupon a document/item was marked in  
6 evidence as Defendant's Exhibit 613.)

04:17:06

7 Q. Do you recognize that map?

8 A. I can't specifically remember it, but I know  
9 we had various maps prepared.

10 Q. And you understand that what they were  
11 saying is you would take the 5,000 acres from the  
12 whole parcel -- this is the 27,000 acres cluster them  
13 in somewhere where there were uplands because the gray  
14 was wetlands, cluster them where there was uplands and  
15 then Reggie Bouthillier is saying the State would try  
16 to negotiate a conservation easement over the  
17 remaining parcel?

04:17:17

04:17:34

18 A. That's what his memo appears. You have to  
19 remember we can go through these specific plans, but  
20 we were trying to discovery now, options for the  
21 property and strategies to work with the State and the  
22 county. That is what the development business S none  
23 of this is unusual. I've dealt with issues like this  
24 on pretty much every project I worked on. So this is  
25 just the development business.

04:17:52

04:18:05



1 Q. But that's what Mr. Bouthillier says? 04:18:06

2 A. He's our attorney. Our attorney is an  
3 advisor and a counselor. We get advice and counsel  
4 from many experts. He's just one. At the end of the  
5 day the people putting the money up make the final 04:18:18  
6 decision and are the strategy gifts. An expert  
7 development doesn't just rely on what attorneys,  
8 engineers and land planners tell them what to do with  
9 their property. They take all that information in and  
10 through their experience and through market conditions 04:18:34  
11 of the day, use all that information to try to make  
12 decision that's make market sense and make financial  
13 sense, and that's the process that we were in.

14 Q. Mr. Masters, my question was simple?

15 A. So was my answer. 04:18:46

16 THE COURT: sir.

17 Q. I don't want to argue with you --

18 THE COURT: Both sides, I know it's warm,  
19 we're doing our best to get the motor apparently  
20 taken care of. The motor wish the AC, but again, 04:18:57  
21 counsel knows well, the rule near this courtroom  
22 is no extraneous comments. It's a question and  
23 answer session so if both of you would kindly  
24 uphold that, we will get through this a lot  
25 kicker and a lot more efficiently. 04:19:18

1 THE WITNESS: Yes, Your Honor. I apologize. 04:19:23

2 Q. Last page of the memorandum from  
3 Mr. Bouthillier. Do you still have that in front of  
4 you, sir, page 13. FD parties Exhibit 946.

5 A. Where are you at. 04:19:41

6 Q. Page 13, sir. Right where we left off.  
7 Where Mr. Bouthillier writes -- tell me when  
8 you're there?

9 A. Okay.

10 Q. Under recommendation, do you see that? 04:19:55

11 A. I do.

12 Q. He says option one is the preferred option  
13 according to him, correct, on page 13?

14 A. Correct from a legal standpoint and ease of  
15 approval and that type of thing -- 04:20:07

16 Q. Just a minute, back to where you were?

17 MR.MARIANI: Your Honor, I'm going to ask  
18 counsel not to interrupt is the witness.

19 THE COURT: I agree. I thought I saw  
20 somebody perhaps stand up, but I thought perhaps  
21 that was the reason. 04:20:17

22 But yes you may finish his answer. Have you  
23 completed your answer, sir.

24 A. I can't quite remember the question, but I  
25 believe I have. 04:20:28

1 THE COURT: All right thank you.

04:20:29

2 Q. My question was according to Reggie  
3 Bouthillier he was recommending option one as the  
4 preferred option which was clustering the 5,000 units  
5 that were existing, correct?

04:20:38

6 A. What's he recommended from a purely legal  
7 standpoint and the ease of permitting and the least  
8 controversial path to take as far as the county and  
9 DCA goes with regards to permitting.

10 Q. And you had mentioned on direct a wetlands  
11 mitigation bank. There was no wetlands mitigation  
12 bank established for this property, correct?

04:20:52

13 A. Not yet, but they certainly had the  
14 potential to do so.

15 Q. Now, you had mentioned some other properties  
16 that you had worked on. This wasn't the largest  
17 property you worked on, correct?

04:21:05

18 A. Largest single property, yes.

19 Q. You had also mentioned the community  
20 development bonds. Remember that testimony during  
21 your direct?

04:21:18

22 A. CDD, community development districts, yes.

23 Q. You know that 2008 when the recession it had  
24 there was no market for community development bonds in  
25 2009, 2010, correct?

04:21:30

1 A. That's your opinion.

04:21:33

2 Q. Okay. Let me ask you this. You mentioned  
3 the project reunion in Osceola County. Remember  
4 mentioning that?

5 A. Yes, I do.

04:21:43

6 Q. Well, when you were at Ginn corporation you  
7 said you had seen the bid package or the bid that the  
8 real estate broker had sent out?

9 A. Yes.

10 Q. And you understand that they were initially  
11 sent the initial package that went out from the broker  
12 you could bid on parcels instead of the whole 27,000?

04:21:57

13 A. I can't remember the specifics. We were  
14 pretty much loaded up. So I didn't spend a lot of  
15 time looking at it. I just know it had come out.

04:22:13

16 Q. So you didn't know you could buy parcels of  
17 the 27,000?

18 A. No.

19 Q. The reunion in Osceola County, that again  
20 lost that project to foreclosure in 2010?

04:22:27

21 A. No.

22 Q. Ginn never lost that property in a  
23 bankruptcy proceeding?

24 A. No.

25 Q. Didn't lose it in a foreclosure proceeding?

04:22:36

1 A. No. 04:22:39

2 Q. What about Tesoro?

3 A. Tesoro filed bankruptcy.

4 Q. And Quail West in Collier County?

5 A. Quail West did, those were the only two. 04:22:46

6 Q. That filed bankruptcy. D Bella Colina file  
7 for bankruptcy?

8 A. No we sold every one of the lots in two  
9 years.

10 Q. And then didn't the Ginn corporation put it 04:22:56  
11 into bankruptcy?

12 A. No Ginn corporation never filed for  
13 bankruptcy.

14 Q. So Tesoro was filed in bankruptcy and Quail  
15 West in Collier County? 04:23:06

16 A. Correct.

17 Q. Fred DeLuca actually met with you, correct?

18 A. Yes.

19 Q. And that would have been approximately late  
20 2009? 04:23:25

21 A. Or early 2010. I can't quite remember.

22 Q. And he was asking you about your thoughts on  
23 the project, he was trying the find out what was  
24 happening on the project, correct?

25 A. Well, the meeting came about obviously 04:23:35

1 because Dale Lindon and I were both owed money so we  
2 wanted to meet with him and I think Fred at the time  
3 he and Anthony had disagreements about what to do and  
4 so he wanted our opinion on the property and you know  
5 what may be paths to take.

04:23:37

04:23:49

6 Q. Mr. Pugliese never paid Dale Lindon with the  
7 money he was owed?

8 A. Daily was owed some money as well.

9 Q. And Anthony Pugliese never paid it?

10 A. Not to my knowledge I don't.

04:24:03

11 Q. And you knew that Mr. DeLuca had gone up to  
12 Osceola County and spoke to some county  
13 representatives?

14 A. I didn't know that at the time.

15 Q. Did you know the Mr. DeLuca talked to some  
16 consultants?

04:24:13

17 A. After the fact. After that meeting.

18 Q. Did you learn it during that meeting?

19 A. I think it was after the meeting.

20 Q. With a call from Mr. Fred DeLuca or someone  
21 else?

04:24:24

22 A. No I believe it was from Bob Whidden or  
23 someone else that found out he was still doing some  
24 work for him.

25 Q. Bob Whidden was also consulting with

04:24:33

1 Mr. DeLuca?

04:24:34

2 A. Yes.

3 MR. HUTCHISON: Judge I think I'm just about  
4 done. May have 20 seconds.

5 THE COURT: Sure.

04:24:45

6 BY MR. HUTCHISON:

7 Q. When you asked Mr. DeLuca about getting  
8 paid, did he tell you that he had put money into a  
9 lawyer's trust account and he was waiting for Anthony  
10 to put up 25 percent?

04:25:11

11 A. No he just said when they get all this  
12 worked out he would see we got paid.

13 Q. When they got all -- meaning when him and  
14 Anthony Pugliese got things worked out?

15 MR.MARIANI: Objection calls for  
16 speculation.

04:25:21

17 A. I assume that's what he meant.

18 THE COURT: Hold on a minute. You maintain  
19 your objection.

20 MR.MARIANI: Yes, Your Honor.

04:25:27

21 THE COURT: The objection is sustained and  
22 the jury will disregard the response. You want  
23 to rephrase the question, urban growth boundary.

24 Q. When Mr. DeLuca said that to you did you  
25 understand that to mean that when Anthony Pugliese and

04:25:35

1 his companies get things resolved with Fred DeLuca and 04:25:40  
2 his companies then you would be paid?

3 A. He said that he had a list, it was about  
4 seven different individuals or companies that he was  
5 gonna make sure got paid and if we would just be 04:25:50  
6 patient.

7 MR. HUTCHISON: I have no more questions.

8 THE COURT: Very well, thank you. Redirect  
9 Mr. Mariani based on cross.

10 REDIRECT EXAMINATION 04:26:01

11 BY MR. MARIANI:

12 Q. I'll try to make this as brief as I can.

13 The Tom Pelham you referred to, he was gone  
14 when -- in other words he was out of office, taken out  
15 of office when Rick Scott became governor, correct? 04:26:18

16 A. That's correct.

17 Q. Okay. And the DCA was gone a short time  
18 after that; is that correct?

19 A. That's correct.

20 Q. It's your understanding that because of the 04:26:29  
21 unusually negative development or antidevelopment feel  
22 of Mr. Pelham he was gone and the DCA was defunct?

23 MR. HUTCHISON: Objection leading and asked  
24 and answered.

25 THE COURT: Sustained as to leading. 04:26:51

ROUGH DRAFT TRANSCRIPT



1 Q. So when you get memoranda from attorneys who 04:26:52  
2 are starting to say that this was his opinion and his  
3 staff member also, his opinion, are you supposed to  
4 give up and not attempt to develop after that, just  
5 pick up your ball and go home? Is that what you do? 04:27:09

6 MR. HUTCHISON: Objection to form, Your  
7 Honor.

8 THE COURT: Overruled.

9 A. No, as I mentioned earlier, the land  
10 development business is, it's fraught that obstacles 04:27:19  
11 all the way and every project I ever worked on if we  
12 listened to all of our different consultants and  
13 attorneys tell us well, it won't happen you can never  
14 do it, I'd have never had what.

15 You know, it's a process of give and take of 04:27:36  
16 working with the various state agencies and federal  
17 agencies and counties and municipalities, to try to  
18 take a piece of land and to put something on it and  
19 develop it into something that the public wants and  
20 the market wants and that's good for all of the 04:27:51  
21 interested parties an it's a give and take process an  
22 it always has been and I think it always will be.

23 I will say in today's environment it's a lot  
24 easier to do business and I mentioned earlier at the  
25 time in Florida in 2008 and 2009 with the current -- 04:28:05

1 with the regime, with the DCA, a lot of developers  
2 were getting their brains beat. There was a general  
3 feeling it was antigrowth coming from Tallahassee, and  
4 I think that's one of the reasons Governor Scott got  
5 elected and one of his first steps was to do away with  
6 the DCA and let counties take a bigger role in  
7 deciding how they wanted to develop their land.

04:28:10

04:28:24

8 MR. HUTCHISON: Objection calls for  
9 speculation and -- it is speculation.

10 THE COURT: Sustained up to the point where  
11 the developers are getting beat up would be  
12 permissible. Anything beyond that would be  
13 speculation and hence would be subject to being  
14 stricken and the jury is asked to busy disregard  
15 and ordered to disregard that expect last comment  
16 regarding Governor Scott and his electability.

04:28:39

04:28:53

17 You may proceed.

18 BY MR.MARIANI:

19 Q. Based on your view would you have continued  
20 would this project to get enhancements of greater  
21 densities than was being offered in the specific  
22 zoning if money had been available to continue to pay  
23 you.

04:29:06

24 A. Yes.

25 Q. And why would you have continued with it in

04:29:17

1 the face of all these memoranda in the face of all  
2 these lawyers?

04:29:21

3 A. As I state previously, there are obstacles.  
4 They're not roadblocks you get around. This was a  
5 good piece of property. I think we had a lot of  
6 interesting time even though it was a down market,  
7 nobody else was beginning a lot of projects and doing  
8 a lot of development work and Florida is Florida, it's  
9 a history of boom and budget and the cycle was going  
10 to come back up.

04:29:34

04:29:51

11 If you were the ready with the timeframe  
12 like today, in the last couple of years, if you had  
13 property available for development, for sale, you'd be  
14 in a pretty good position.

15 So yeah, I would have definitely continued  
16 ahead.

04:30:02

17 Q. Do you know of any other consultant who was  
18 working on the Destiny project that didn't feel that  
19 they would continue if money was available to pay  
20 their fees?

04:30:16

21 MR. HUTCHISON: Objection, foundation, calls  
22 for hearsay and speculation.

23 THE COURT: Can you repeat the question, do  
24 you know of any other consultant.

25 MR. MARIANI: I'll withdraw it.

04:30:25

1 THE COURT: Thanks.

04:30:26

2 Q. Did any of the other consultants ever tell  
3 you that they didn't believe in the viability of the  
4 Destiny project?

5 MR. HUTCHISON: Objection hearsay.

04:30:35

6 THE COURT: That would be a yes or no  
7 answer.

8 A. No.

9 Q. Would you please pick up Exhibit 314, if you  
10 still have it, sir. That's the ORC report, staff  
11 report. Do you see there's a two page letter that  
12 follows?

04:30:44

13 A. Yes.

14 Q. Dated April 17, 2009. Do you see that?

15 A. I see that.

04:31:09

16 Q. Could you turn to the second page above  
17 Mr. McDaniel's signature and read the first sentence  
18 of the last paragraph?

19 A. It says." This is the beginning and not the  
20 end of the process.

04:31:26

21 Q. What did you understand that to mean?

22 A. I understood that to mean that here's an  
23 invitation here's our responses let's sit down and see  
24 if we can work through it.

25 Q. Is that unusual. You've had other ORC

04:31:40

1 reports in the past is that essentially what happens? 04:31:44

2 MR. HUTCHISON: Objection Judge this is  
3 essentially expert opinion.

4 MR.MARIANI: Exactly.

5 THE COURT: Overruled. Based on your 04:31:50  
6 experience, is there some typicality to what  
7 transpired here, is basically the question. And  
8 again the jury is instructed only to limit it to  
9 this gentleman's experience and not as an expert.

10 A. In my years in the business I can say that 04:32:04  
11 I've never gone into a various government agency and  
12 given them a permit submit and asked them for  
13 something that they just came back and said okay  
14 you're approved. It's a part of the process whether  
15 it be at the State level, county level, the city level 04:32:18  
16 it's a trade off and the developers there their needs  
17 and you build something to make something. That's  
18 just part of the development business.

19 Q. Your answer to one of counsel's questions  
20 you used the phrase political hard ball as it relates 04:32:39  
21 to the ORC report. What did you mean by that?

22 A. I meant that Mr. Pelham was playing  
23 political hard ball. He was known, I knew him from  
24 his reactions, I had heard from other developers tell  
25 me about problems they were having. 04:32:59

1 MR. HUTCHISON: Objection calls for hearsay,  
2 Judge.

04:33:00

3 THE COURT: Sustained as to that. Just  
4 limit it to your observations relative to this  
5 particular project in conjunction with  
6 Mr. Pelham, please.

04:33:07

7 A. It was my belief that Mr. Pelham was making  
8 a statement and taking a stand against the development  
9 that he didn't approve. And he was using his office  
10 to do so.

04:33:23

11 Q. Did he also use the phrase drawing the line  
12 in the sand? Did you consider that a negotiating  
13 position by the DCA?

14 A. Yes.

15 Q. Last you mentioned there would be a number  
16 of other options than the ones that Mr. Bouthillier  
17 listed legally in his. What other options were you  
18 referring to?

04:33:42

19 A. Well, it goes along with doing a phase  
20 dollars development. You were -- there were options  
21 you could do. It would be a combination of options he  
22 outlined where you could take some of the density you  
23 have on the property transfer it to a first phase and  
24 actually get a project moving and able to approve the  
25 viability of it and make it a success and once you

04:33:56

04:34:09

1 were able to do that, if you were able to do that,  
2 then you could go back to the State and to the county  
3 and say hey guys we're making this happen. You said  
4 it would never happen. It's a dream it's never going  
5 to be a real project. Well, we've made it a real  
6 project given the entitlements we have now, let's sit  
7 down and talk about what we're going to do out here.

04:34:12

04:34:24

8           There were various options of using  
9 conservation easements and selling off property to  
10 people that would participate in those. There were a  
11 whole host of things we were talking about and  
12 brainstorming.

04:34:39

13           Q.    Lastly, have you been involved in  
14 developments of real estate even outside the United  
15 States?

04:34:50

16           A.    Yes.

17           Q.    And what locations?

18           MR. HUTCHISON:  Objection relevance, Your  
19 Honor, and beyond the scope of cross.

20           MR. MARIANI:  Breath of experience, Your  
21 Honor.

04:34:59

22           THE COURT:  I think it would be beyond the  
23 scope and I'm gone to grant -- I'm going to  
24 sustain the objection.  He did mention at least  
25 one country during his direct examination, but

04:35:12

1 not was asked during cross. 04:35:14

2 Q. Last question would relate to timing. There  
3 was a date in what counsel showed you that went out to  
4 2011. Do you remember that things would have had to  
5 be done by 2011? 04:35:30

6 Explain to us if you would that date,  
7 meaning 2011, relative to an ORC report you're dealing  
8 with in 2009? In other words is that too far in the  
9 future to use for purposes of strategy, how you might  
10 create your plan in respect of say a two year window 04:35:49  
11 from 2009?

12 MR. HUTCHISON: Objection, leading.

13 THE COURT: Sustained as to the second  
14 portion. Please rephrase the question.

15 Q. Explain to me about timing. You used the 04:36:03  
16 phrase timing in one of your answers relative to ORC  
17 report is my question.

18 A. Well, the timing was with the report  
19 obviously we can go back and forth rough the  
20 negotiations. We could have these different option. 04:36:16  
21 Timing of getting any permitting done through county  
22 even, you know, a two year period of time is like a  
23 day in our world. I mean nothing happens fast and you  
24 have to spent a lot of time and hard money and heart  
25 effort to get it. 04:36:33



1           So projects take years to come to fruition           04:36:34  
2 and that's why it's a tough business. You've got to  
3 have a lot of patience you've got to have a lot of  
4 money and you've got to have a lot good people working  
5 for you and it takes a long time.           04:36:47

6           MR.MARIANI: Thank you no further questions.

7           THE COURT: Thank you Mr. Mariani.

8           Any questions from the jury? Seeing no  
9 hands as yet, all right, sir, you're free to go.  
10 Please watch your step. Just hand those to the           04:36:59  
11 deputy.

12           Deputy if you could take those, just make  
13 sure our clerk has those. Thank you.

14           THE WITNESS: Thank you, Your Honor.

15           (Witness excused.           04:37:15

16           Unless there's something pressing that is  
17 only a few minutes, we'll close for the day.

18           MR.MARIANI: That's fine, Your Honor.

19           THE COURT: I'm told that the  
20 air-conditioning motor is bad, outside foyer in           04:37:27  
21 the ceiling area, must be replaced. They expect  
22 it to be several hours and there are maintenance  
23 people who work pretty much around the clock  
24 here, so I expect it to be taken care of well,  
25 before you're here tomorrow and why noted here           04:37:45

1 that they're checking to see if they have a 04:37:49  
2 replacement motor on hand.

3 So they'll either repair the existing or  
4 replace it, depending upon what they have.

5 Again, I'm hopeful that it is taken care of 04:38:00  
6 by tomorrow. I've come to the rationalization  
7 why better to be cool than it is to be warm.

8 In any event, we will see you tomorrow at  
9 9:15. 9:15 I'll what counsel to be set up by  
10 then. My morning looks relatively light, thank 04:38:23  
11 goodness. I'll start at 8:30, but my 8:45 motion  
12 calendar does not look too heavy I so I think we  
13 can get finished pretty close to then and we'll  
14 get started as soon as I finish up with the other  
15 matters that I have unrelated to this case. 04:38:42

16 So again thank you for your service and  
17 sacrifice. Please remember not to talk about the  
18 case to anyone including the closest of family  
19 members or friends, don't accept or send any  
20 messages regarding your jury service, do not do 04:38:55  
21 any investigation of any nature on your own,  
22 whether electronically or through more  
23 traditional means of looks and the like regarding  
24 any of the people or issues, terms or anything  
25 else having anything to do with the case. 04:39:09

1           Again thank you very much for your service,  
2           thanks to our court reporter and courtroom. See  
3           you tomorrow assembled at 9:15. Have a good  
4           evening. We're in recess. End end end end end

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