

COPY

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

3 KEY CLUB ASSOCIATES, )  
4 LIMITED PARTNERSHIP, )  
5 et al., )  
6 Plaintiffs, )  
7 vs. ) Case No. 91-1573-Civ-T-17B  
8 EDWIN H. BIRON, et al., )  
9 Defendants. )

10 DEPOSITION OF CARLETON M. STEWART

11 TAKEN BY: PLAINTIFFS HEREIN

12 BEFORE: DEBRA L. FINEHOUT, RPR-CM  
13 Court Reporter  
Notary Public  
State of Florida at Large

14 PLACE: 240 Pineapple Avenue S  
Sarasota, Florida

15 DATE: Tuesday, February 25, 1992  
16 Commencing at 2:00 p.m.

17 APPEARANCES: JIM D. SYPRETT, Esquire &  
18 DONALD J. HARRELL, Esquire  
Syprett, Meshad, Resnick &  
19 Lieb  
1390 Main Street, Suite 1100  
20 Sarasota, Florida 34236  
Appearing on behalf of the  
21 Plaintiffs

22 STEVEN J. CHASE, Esquire  
240 Pineapple Avenue South  
23 Sarasota, Florida 34236  
Appearing on behalf of the  
24 Defendant Town of Longboat Key

25 APPEARANCES CONTINUED ON PAGE 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES: JOHN P. HARLEE, III, Esquire  
Harlee & Porges  
1205 Manatee Avenue West  
Bradenton, Florida  
Appearing on behalf of the  
Defendants Biron, et al.

Also Present: Mr. Shane Eagan, Mr. Tom Rasmussen



1 WHEREUPON,

2

CARLETON M. STEWART

3

was adduced as the deponent herein, and after being

4

duly sworn was questioned and stated as follows:

5

DIRECT EXAMINATION

6

BY MR. SYPRETT:

7

Q Would you state your name, please, sir?

8

A Carleton Merrill Stewart.

9

Q Where do you live, sir?

10

A 3581 Bayou Circle, Longboat Key.

11

Q Where is that located on the key, sir?

12

A In the Harbourside area of the PD.

13

Q How long have you lived there?

14

A Almost 11 years.

15

Q You were a town commissioner during what

16

period, sir?

17

A 1984, March to 1990, six years, to March.

18

Q And you held what seat, what district?

19

A At large.

20

Q Who replaced you on the commission?

21

A Right now I don't remember who did. Was it

22

Al Green?

23

Q Wolverton?

24

A No, no. It may have gone -- I don't know if

25

it was Al Green. It might have been.

1 Q Al Green sat at large and Woody Wolverton is  
2 an at large seat.

3 A Well, I think it's Al Green. I can't swear  
4 to it but I think it was Al Green.

5 Q Why did you not run for re-election in '90?

6 A I tried for several years to put a limit --  
7 get a limitation through for three terms of two years  
8 each was enough. I failed to get it through but I  
9 lived up to it myself.

10 Q If you would, sir, start with your high  
11 school level of education and just tell me what your  
12 educational background is?

13 A High school, San Mateo, California.  
14 Stanford University for three years and I skipped my  
15 senior year and went to the Harvard Graduate School of  
16 Business Administration and in 1943 I got a degree  
17 there, a graduate degree of industrial administrator.  
18 IA it's called, in 1943. After the war in 1947, June,  
19 I went back for one semester and received an MBA.

20 Q That was in what year, sir?

21 A In '47.

22 Q What was an industrial administrator degree?

23 A The school was closing and they gave  
24 everyone who had finished three <sup>SEMESTERS</sup> ~~years~~ that degree  
25 signed by the president of Harvard University. Now,

1 what was it. It was <sup>A</sup>three year and a half of Harvard  
2 Business School. Some of the fellows didn't come  
3 back. They either got killed or something happened to  
4 them during the war.

5 Q Just briefly outline for me your adult  
6 employment career, what you've been engaged in?

7 A 29 years with Citibank.

8 Q Retiring when?

9 A It's 1947 plus 29 years, whatever that is.

10 Q '76?

11 A Right, yeah.

12 Q When you retired in '76 where did you go?

13 A That was at the age of 55. Then I became  
14 chairman of the board and chief executive officer of  
15 the American Security Bank in Washington DC for five  
16 years.

17 Q Where were you located with Citibank when  
18 you retired, what city?

19 A London.

20 Q Had you moved around a number of different  
21 places?

22 A Yes, many.

23 Q And your position with Citibank when you  
24 retired was what?

25 A The title was senior vice president but then

1 the job was senior officer for the U.K. and northern  
2 Europe.

3 Q And your job duties and responsibilities  
4 were essentially what, sir?

5 A Supervising all of the Citibank's activities  
6 in that area.

7 Q Is there a logical way to break down a bank  
8 officer's job between the business management aspect  
9 of banking versus say the lending aspect of it or did  
10 you --

11 A I did both.

12 Q -- Involve yourself in both?

13 A My credit limit was the highest outside of  
14 the United States. I could make loans on my own of  
15 \$125,000,000.00 at that time but I was also the  
16 business supervisor and everything else.

17 Q Okay. How long were you with American  
18 Security Bank in DC?

19 A Five years.

20 Q In what capacity with them?

21 A Chairman of the board and chief executive  
22 officer, CEO.

23 Q You retired there in '81?

24 A '80. I think it was '80, '81, whatever it  
25 comes to.

1 Q And when you retired from that job?

2 A I came to Longboat Key, right.

3 Q Had you maintained a residence on Longboat  
4 Key before moving here?

5 A No.

6 Q You became a permanent resident --

7 A Yes.

8 Q -- At that time?

9 A Yes.

10 Q Did you engage in any business activities  
11 after moving to Longboat Key?

12 A I was the director and then later chairman  
13 of the board of the International Bank of Miami which  
14 is a non-executive post.

15 Q What were your duties?

16 A In other words, I wasn't full time.

17 Q What were your duties?

18 A Well, chairing the board meetings.

19 Q You didn't have a day-to-day function?

20 A No, only occasionally when some crisis  
21 erupted. Then I would stay down there for a week or  
22 something but normally not, no.

23 Q Okay. While filling that position you were  
24 living on Longboat Key?

25 A Yes.



1 Q And what period of time did that cover?

2 A Well, I have to make a little guess here but  
3 let's say '82 to '86.

4 Q So there was an overlap when you were  
5 filling that duty down there and also being a  
6 commissioner?

7 A Yeah.

8 Q Would you give me your date of birth, sir?

9 A February 17, 1921.

10 Q Social security number?

11 A I don't know. 545-20-2404. I think that's  
12 right. I have to call up the picture in my mind.

13 Q Are you married?

14 A Yes.

15 Q Your wife's name?

16 A Kathryn, K-a-t-h-r-y-n.

17 Q Are you a member of the Longboat Key Club?

18 A No.

19 Q Are you a golfer?

20 A No, no longer.

21 Q Are you a tennis player?

22 A No.

23 Q Have you at any point in time been a member  
24 of the Longboat Key Club since you moved to Longboat  
25 Key?

1 A No.

2 Q Are you a member of any local country club?

3 A Sarasota Yacht Club but that's all, no  
4 country club.

5 Q You've got a boat over there?

6 A No longer. I've sold it.

7 Q When you lived up north, were you ever a  
8 member of any country club or golf club?

9 A Burning Tree Club, Washington DC.

10 Q Was that an equity club?

11 A No.

12 Q Was that through your employment or did you  
13 go out and actively join yourself individually?

14 A Well, it's a combination I suppose.

15 Q It was available through your employer?

16 A Well, not automatically, no. You are taken  
17 in as an individual. Only the president of the United  
18 States gets into that club automatically and each  
19 president except Carter has been a member. So the  
20 company paid for my costs but you had to get in as an  
21 individual.

22 Q Okay. Were you a golfer up there?

23 A Yes.

24 MR. SYPRETT: Off the record.

25 (A discussion was held off the record.)

1 Q Did you hold any other offices on Longboat  
2 Key other than town commission?

3 A Prior to the town commission I was on the  
4 code enforcement <sup>BOARD</sup> for over two years.

5 Q That was an appointed position?

6 A Yes, appointed by the town commission.

7 Q Okay. Do you recall what prompted your  
8 decision to run for the town commission?

9 A Well, I know that a number of people called  
10 me and knew I had been on the code enforcement board  
11 and they were trying to get candidates and I got  
12 suckered in.

13 Q During your tenure on the board, do you  
14 recall in 1989 there came a period of time when Arvida  
15 sent notice to the town commission that they had sold,  
16 or entered a contract for the sale of the club?

17 A Right.

18 Q Do you recall that that occurred  
19 approximately August 29, 1989 with the contract date  
20 being August 28, 1989?

21 A I don't recall the exact dates but that  
22 approximate time, yes.

23 Q Okay. Do you recall that in the summer of  
24 1988 that Bob Wilhelm of Arvida had had a meeting with  
25 the town in which he had indicated that Arvida had the

1 club for sale or it was available on the market?

2 A Right.

3 Q At that point in time do you recollect that  
4 there was some study and work done or some  
5 conversation that transpired about what the city might  
6 do or the town might do since it had a right of first  
7 refusal in the event that that option became  
8 available?

9 A Yes.

10 Q And would you tell us what you recall about  
11 the nature of those discussions at that time?

12 A I don't know if it was at that time or later  
13 but we had a special attorney, Van Voris. You have to  
14 tell me whether it's the right time or not but we were  
15 using him both to clarify the resolutions and to  
16 consider options, and the main thing I remember about  
17 that period is that he recommended a recreational tax  
18 district more than once and so that was one option as  
19 to how to acquire it because we were talking about  
20 means of acquiring it under the first refusal.

21 Q Do you recall that as a product of those  
22 efforts that summer, and that is an excellent memory  
23 because this is about, according to my recollection,  
24 when that was occurring, too.

25 Do you recall that the primary method for

1 exercising the right of first refusal or the number  
2 one most favored option was the rec. district to that  
3 point in time according to a memorandum that was the  
4 product of those discussions?

5 A Certainly it was my favorite but there were  
6 other things I think proposed around the same time.

7 Q Do you recall what any of those other things  
8 were?

9 A One was to assign the right of first  
10 refusal, which I thought was kind of silly and then  
11 the second one was -- yes, to assign it to some group  
12 that might go ahead -- in fact, Wilhelm had said that  
13 he wanted the club members to have it. I recall that,  
14 so that would be an equity situation that Wilhelm  
15 suggested. Another one was for the town to buy it by  
16 itself. I don't recall any others right now. Maybe  
17 there were others.

18 Q Okay. Do you recall that sometime, I think  
19 it was in 1988, it may have been very early 1989, that  
20 there was some discussion that was raised either  
21 because Arvida had taken a club on the east coast of  
22 Florida and turned it into an equity membership club,  
23 or that Bob Wilhelm said something at one meeting  
24 about the potential of Arvida turning the Longboat Key  
25 Club into equity club?

1           Do you recall there was a discussion that  
2 transpired as a result of that amongst commissioners  
3 and some legal opinions requested?

4           A     I don't really remember that but it fits so  
5 I wouldn't doubt it.

6           Q     Okay. There will be some stuff that I will  
7 get into in a few minutes in questions that I'll be  
8 asking you that indicates that during all of the  
9 events that transpired in the fall of 1989, you pulled  
10 out some of those old resolutions in which -- strike  
11 that -- not old resolutions, but old memoranda of law  
12 from either the attorneys or memos between  
13 commissioners?

14          A     I had a file this thick at that time.  
15 (indicating)

16          Q     Which indicated that essentially the  
17 opinions in 1988 and early 1989 was that if Arvida  
18 attempted to create an equity club, that that would  
19 violate not only the terms of the resolutions but the  
20 spirits of the resolutions?

21          A     I remember that was my view, no doubt based  
22 on what had happened during the period.

23          Q     Whether or not that view was shared by  
24 others, do you have any recollection?

25          A     No, I know for sure it was not shared.

1           Q     Just for a point of clarification. Were you  
2 the only one that held that view or was it a view that  
3 was distributed amongst --

4           A     No, I'm sure there was more than myself but  
5 I don't know that we ever voted on it. So I can't say  
6 the majority was on one side or the other but I wasn't  
7 the only one, no.

8           Q     Now, with that as somewhat of a background,  
9 do you recall when it first came to your attention  
10 that Arvida had entered the contract for the sale of  
11 the club facilities to Key Club?

12          A     No, I don't. If you've got something to  
13 show me.

14               MR. SYPRETT: We are going to take one of  
15 those little breaks here for just a second  
16 here.

17               (A recess was taken.)

18          Q     The contract date was August 28, the  
19 notification to begin the 120-day right of first  
20 refusal, which the town held, was served on August the  
21 29th?

22          A     Right.

23          Q     And Hart Wurzburg had indicated that he had  
24 been in Europe during August, got back in early  
25 September and before going to Europe had had the

1 foresight to schedule a special workshop for September  
2 the 11th, so that that was the first workshop or town  
3 meeting following notification concerning the  
4 contract?

5 A His foresight, by the way, was because  
6 that's when you start the budget business.

7 Q It didn't require a lot of original thought  
8 process?

9 A Every year we had that set up a month or so  
10 in advance.

11 Q Okay.

12 A He's a nice fellow, though.

13 Q So do you recall having any conversations or  
14 receiving any memorandum from anyone concerning the  
15 sale of the club or how the town might go about  
16 assigning its first right of refusal before that  
17 meeting?

18 A I really don't recall anything about that  
19 period.

20 Q You don't recall anything about that period?

21 A I mean about that point you are making, did  
22 I get notice before that date. I really don't recall  
23 whether I did or not. I have no recollection that I  
24 did.

25 Q Okay.



1                   (A one-page document was marked as  
2                   Exhibit 57 for identification.)

3                   Q     I am going to hand you a document that I  
4                   will mark as Exhibit 57 and ask if you would look that  
5                   over for just a moment.

6                   A     By the way, these I just happened to find.  
7                   The big file I dumped last year and then when I got  
8                   this subpoena, I went through a whole bunch of other  
9                   things and found these pieces. That's all.  
10                  (indicating)

11                  Q     Have you had a chance to look at Exhibit  
12                  Number 57?

13                  A     Yeah.

14                  Q     First, I would like to refer you to the  
15                  handwriting at the bottom and ask you if you can tell  
16                  me when you wrote this memo?

17                  A     Well, it says right here that I wrote it in  
18                  early 1988. Apparently in '89 that was my best  
19                  recollection. It's one of a collection. I wrote a  
20                  lot of these things to understand issues myself.

21                  Q     And at the time you authored this you didn't  
22                  distribute it?

23                  A     No.

24                  Q     This was to yourself?

25                  A     No, but back in 8-29-89 I was ready to give

1 it to all the commissioners.

2 Q And did you, in fact, distribute it on that  
3 date?

4 A Yes.

5 Q Did you distribute it in response to having  
6 received notice that the contract had been signed?

7 A I don't know.

8 Q If it was not that, do you recall what else  
9 might have prompted your delivery of that on that  
10 date?

11 A Well, we had a succession of incidents with  
12 Arvida's running the club, changing the membership  
13 application form that they had to sign every year. We  
14 also had some difficulties with their Inn-On-The-Beach  
15 hotel guests. So there was a succession of this type  
16 of thing going on for quite a long time.

17 Q There had not been any meetings in August;  
18 is that correct?

19 A We used to have them in August but I'm  
20 pretty sure by '89 we did not.

21 Q So if I'm understanding your answer, it's  
22 just essentially you don't know whether this was  
23 distributed in response to receiving the notice that  
24 the contract had been signed or whether it was  
25 distributed for some other reason or purpose?

1           A     Well, I know -- no, I don't know for sure  
2     about that but I do know we had these things going on  
3     for more than a year.

4           Q     You reference Morway Picket at the bottom.  
5     "The legal views of Morway Picket should be given  
6     careful consideration." Can you tell me how long you  
7     had known Mr. Picket and whether or not you had called  
8     upon him for opinions concerning --

9           A     Well, he was a voting citizen that had  
10    supported my election several times and I knew of him  
11    as a land lawyer from New York. He was specializing  
12    in land laws and I don't know that I solicited but he  
13    volunteered, if you put it the other way around, his  
14    opinions like a lot of other citizens did and I was  
15    impressed with his background.

16          Q     This particular memorandum that we're  
17    looking at that's been marked Exhibit 57, does it  
18    express your personal opinions?

19          A     Yes, this is all mine because I had written  
20    this for myself.

21          Q     And the personal opinions expressed in this  
22    may or may not be the opinions of other commissioners  
23    or attorneys who represent the town?

24          A     Right.

25          Q     It was your opinion based upon your reading

1 of the resolutions that the town had the right from  
2 the resolutions to determine club rules to either be  
3 appropriate or not appropriate?

4 A Yes.

5 Q It was your opinion that in paragraph number  
6 5 where you said; "clubs not to be operated primarily  
7 as commercial enterprise meant not to operate at a  
8 deficit but not to operate to maximize income and  
9 profit for the owner"?

10 A Yes. I mean that's what I believe.

11 Q Help me out on what you mean there.

12 A Well, the papers that I just gave you happen  
13 to hit that point. Let me see if I can find it  
14 somewhere in there.

15 Q This is an extra set? (indicating)

16 A Yes. That's for you. I thought it was in  
17 here.

18 MR. SYPRETT: Let's just go ahead and  
19 mark that as Exhibit Number 58.

20 (A two-page document was marked as  
21 Exhibit 58 for identification.)

22 Q Okay. I've just marked as Exhibit Number 58  
23 a document that has a date on it of 1-9-91 and has an  
24 attached page to it that appears to be a letter from  
25 Mr. Kunian dated September 6, 1977 and you referenced

1 this memorandum in response to my question?

2 A Right, and it says here that "going back in  
3 history, Arvida forecast operating losses for the  
4 initial years and asked for approval for off-key  
5 memberships." This is my summary. "This was approved  
6 with the requirement the club not be primarily  
7 commercial; that is, break even or modestly  
8 profitable" and then I referred down to a star where  
9 commercial use is defined in the Longboat Key zoning  
10 code as "an activity involving the purchase and sale  
11 or exchange of goods, commodities or services carried  
12 out primarily for the purpose of gaining a profit."  
13 The resolutions, as I recall, used the term not  
14 primarily commercial.

15 Q If you recall that term said not primarily  
16 commercial -- shall not primarily --

17 A In any case, I'm not saying I'm a lawyer but  
18 this is what I believed. Otherwise, I wouldn't have  
19 written it.

20 Q Okay. All I wanted to be sure of is that  
21 you were referring to the first subparagraph under  
22 Section 2.3.A which reads something to the effect that  
23 Arvida shall operate the clubs -- strike that -- the  
24 club facilities shall be operated as a private club  
25 and not primarily operated as a commercial enterprise

1 open to the general public. Is that the section of  
2 the resolutions?

3 A That's the section. I don't know if those  
4 are the right words but that's the section, yes.

5 Q Exhibit 58 was your creation?

6 A Yes, sir.

7 Q You authored it?

8 A Right.

9 Q It states your opinion?

10 A Right.

11 Q Whether it's anybody else's opinions or not  
12 you don't know?

13 A Exactly.

14 Q Did you rely upon Morway Picket for any of  
15 those opinions in that letter?

16 A He's the one that told me about this history  
17 and he didn't provide this, I don't think but somebody  
18 near him provided this old letter of 1977 to explain  
19 why the town itself didn't take the offer of Arvida to  
20 take the deed to this property. The town turned it  
21 down.

22 Arvida wanted so badly to get their density  
23 moved. See, there was a plat with little blocks over  
24 where the golf course is. It was supposed to be  
25 streets and they wanted it all moved over to the beach

1 and they offered this land to the town, I'm told and  
2 was ready to deed it over if they could get permission  
3 to move the density along the beach instead of being  
4 platted out into blocks.

5 Q And the town said no?

6 A Yeah, and I put in here in the last  
7 paragraph of what you marked as an exhibit in my memo;  
8 "I presume the golf course land was not deeded to the  
9 town in order to avoid the operating responsibilities  
10 and the public purpose complications that would  
11 arise," but then I say refer to Albert Faulhaber.  
12 That's where I got it from.

13 Q "Mr. Morway Picket and Mr. Faulhaber could  
14 confirm or clarify"?

15 A Yeah.

16 Q They are the persons that were the source of  
17 that information?

18 A That background information plus the fact  
19 they gave me this letter.

20 Q Does Albert Faulhaber still live out there?

21 A I believe he still lives in -- what do they  
22 call it -- it's a big tower. I'll think of it later  
23 but it's right along the beach. It's the old building  
24 that's been two buildings. I can't remember the name  
25 right now, and Picket is dead but as far as I know,

1 Faulhaber is still alive.

2 Q So now taking you back to Exhibit 57 now  
3 where you made the statement, "not to operate at a  
4 deficit but not to operate to maximize income and  
5 profit for owner" did you have some number in mind,  
6 some percentage of profits, some return on investment  
7 or anything like that?

8 A No. That was discussed. We had to first  
9 try and find out what was Arvida getting and we could  
10 never get good numbers from them and the commission  
11 would never as a majority vote to require those  
12 numbers. So I did not have any, no.

13 Q All right. Did you formulate in your mind  
14 any sort of number that you thought was consistent  
15 with your interpretation of the resolution?

16 A No.

17 Q Did you consider that the resolution simply  
18 meant that the commercial enterprise activity should  
19 not be open to the general public and should not be  
20 the primary operation? Did you consider that that  
21 essentially was what that sentence meant rather than  
22 going to some level of profit?

23 A No, because the way it originated was Arvida  
24 said we are going to lose money and we would like not  
25 to lose money during this initial period. Will you



1 help us out. The whole thing didn't start for that.  
2 It started to help Arvida.

3 Q Who told you that that was the way it  
4 originated? That was Mr. Faulhaber and Mr. Pickett?

5 A No. I went back in the old minutes. It  
6 wasn't Wilhelm. It was his predecessor. Slater,  
7 Segal or something like that, and I found one of the  
8 minutes way back in 1976 or something like that. I  
9 spent many hours going through those old records and  
10 that's what they said was the objective.

11 Q All right. So you circulated this on or  
12 about August 29, 1989. Do you recall your purpose in  
13 circulating this memorandum?

14 A I'm sure it was a continuation of June and  
15 July. We were having a great deal of difficulty on  
16 the commission itself.

17 Q With what?

18 A In trying to solve the problems which had  
19 arisen with Arvida.

20 Q What problems?

21 A And Mr. Van Voris. I mentioned it a moment  
22 ago but I'll try and repeat them, use of the club by  
23 outsiders, use by any member of the Arvida  
24 organization whether they came from New York or  
25 wherever they were from, charity events. Free tickets

1 given away at charity events would allow people to  
2 come back and play any time they wanted in the  
3 calendar year.

4 Q Is it your recollection --

5 A And on and on.

6 Q Is it your recollection that this discussion  
7 was going on in the summer of '89 rather than the  
8 summer of '88 or '87?

9 A It had been going on for a couple of years.

10 MR. SYPRETT: Could you pull out Exhibit  
11 29. Let's go to 23 first.

12 Q I would like for you to look at what's been  
13 marked Exhibit 23, which is a memorandum that was  
14 circulated by Commissioner Brown, and ask you if you  
15 recall receiving that at or about that time?

16 A Well, I don't really remember this  
17 particular one because there were so many other ideas  
18 but I'm sure I got it and dismissed it very quickly.

19 Q Why would you have dismissed it very  
20 quickly?

21 A My understanding of the resolutions, which  
22 are the zoning laws and attached to the deeds to the  
23 land and so on, are that these recreational facilities  
24 were required by the town codes.

25 Arvida said; can we congregate recreational

1 facilities and form a club and not have to build in  
2 Harbourside and Bayou and various places separate  
3 swimming pools, tennis courts and all that. We will  
4 provide centralized recreation for all property  
5 owners.

6 If I'm correct, that is right and I feel I'm  
7 correct, then there is no way that those property  
8 owners and succeeding owners could be protected if you  
9 had an equity club because they would not be allowed  
10 automatically to become a member unless they were  
11 willing to pay extra and buy into it.

12 Arvida would not have been allowed to build  
13 and sell lots and so forth in these areas if the  
14 recreational facilities were not available to the  
15 residents, the owners of those pieces of land. I mean  
16 do I make sense? At least is it understandable what  
17 I'm saying?

18 Q Sure. It was your opinion it didn't matter  
19 whether it was Arvida trying to create an equity club  
20 or some not-for-profit corporation formed by a group  
21 members, an equity club was not permissible by  
22 anybody, in your opinion?

23 A Right, and we also received legal advice  
24 from Mr. Van Voris.

25 Q To that effect?

1           A       Actually the way he worded it, he said you  
2 could have an equity club but in effect it wouldn't be  
3 one. I mean they could issue shares and all but you  
4 would have to let everybody in who wasn't even an  
5 equity member. It was kind of ridiculous.

6           Q       Had that opinion been issued earlier that  
7 you're making reference to there or was that one of  
8 his --

9           A       I'm sure that was later.

10          Q       The only opinion he had rendered as it  
11 related to an equity club up to that point was when  
12 the issue was raised about the possibility of Arvida  
13 doing an equity club and his opinion at that point had  
14 been that that would violate the resolution. Do you  
15 recall that?

16          A       I don't recall it but that's fine.

17          Q       Now, if we go to Exhibit Number 29 for just  
18 a moment.

19          A       I've never seen this before.

20          Q       Did you make a telephone call to Helen and  
21 have the conversation with Helen that Helen reflects  
22 in this memorandum?

23          A       That far back, it's hard to know. It sticks  
24 in my mind that I went by and Al Cox wasn't available  
25 and I talked to her but I think I called at the

1 office. I don't think it was a telephone call but I'm  
2 not sure but I think I went in and Cox wasn't there.

3 So I'm trying to reconstruct reading this.  
4 I would have said that -- first of all, not only a  
5 banking background but I was for six years the  
6 chairman of the investment and finance committee for  
7 the town and so I would have said, I'm sure, with this  
8 \$23,000,000.00, I would like to remind Mr. Cox that he  
9 should investigate to make sure that this money isn't  
10 drug money or there is some other problem behind it.

11 I do recall also that -- I don't know if Cox  
12 called me or she called me later. I wouldn't have  
13 said F.B.I. because I wouldn't know who would do it  
14 but anyway, that's probably her idea; that he had an  
15 investigation made. This was sometime later and  
16 whatever it was, it was satisfactory. There was no  
17 problem. It was a prudent source of funds.

18 Q Would you have made the statement to her  
19 quote; "he feels there is a possibility that black  
20 money is involved" and asked that you have Chief  
21 McCammon make an inquiry?

22 A It doesn't fit. It just doesn't fit. It  
23 was to remind him of his duties as <sup>TOWN MANAGER</sup> ~~chairman~~ of this  
24 <sup>TOWN</sup> ~~committee~~. I was reminding him that he should  
25 investigate. So I wouldn't have to come to that

1 conclusion. Obviously not.

2 Q Did you have any knowledge that was unique  
3 or particular as to any of the owners of the entity  
4 that were involved in the partnership that were going  
5 to purchase this club to cause you to think that they  
6 were anything other than totally legitimate?

7 A Of course not, no. There had been plenty in  
8 the newspaper about laundering money. I was chairman  
9 of the International Bank of Miami and we had to  
10 report every \$10,000.00 of cash money and we would  
11 have all kinds of drug guys around checking on us.

12 So I was very conscious of being in Florida  
13 that there was an awful lot of money floating around  
14 that's unaccountable money, and so that was -- it was  
15 a general situation and when somebody says, I've got  
16 \$23,000,000.00 to pluck down, I said; I remind you you  
17 better investigate and make sure the source of this  
18 money and I think that, to the best of my knowledge --  
19 I had forgotten about all of this.

20 Q At that point in time were you aware of the  
21 fact that most of the 23 or \$22,000,000.00 that was  
22 going to be plunked down was financing?

23 A No, I wasn't aware of it at all but I don't  
24 think that makes much difference.

25 Q You are suggesting to me that you would not

1 have suggested to her that it was your feeling that  
2 there's a possibility that there was black money? It  
3 would have simply been a suggestion --

4 A I may have said, let's make sure it isn't.  
5 I could have said something like that.

6 Q Did you give her the observation that you  
7 felt since they owned hotels and an aviation company  
8 they had freedom to move things around?

9 A I don't recall that. I mean I really just  
10 don't recall that. I read that. I saw that.

11 Q Is there an implication in this memorandum  
12 that's different than what the content of your  
13 conversation would have been to her?

14 A Well, let me read it again.

15 Q I see an implication in this and I'm just  
16 trying to confirm that you didn't originate the  
17 implication that apparently came out of her  
18 typewritten rather than out of your mouth?

19 A Well, I suppose, yeah, if you want to try to  
20 tie it together with hotels, an aviation company, all  
21 that, that you might draw such an implication. No,  
22 that was not my intent.

23 It was so routine that I didn't do anything  
24 further about it until a week or two later when Cox  
25 told me everything had checked out.

1 Q Cox did come back to you?

2 A Yeah.

3 Q And tell you he had made inquiry?

4 A Yes.

5 Q Did he have the inquiry made through the  
6 police department?

7 A I don't know. I may have known at the time.  
8 I don't recall.

9 Q Is it your belief that it would be  
10 reasonably prudent to check out any prospective  
11 buyers?

12 A For that amount of money coming to Longboat  
13 Key, that was my feeling.

14 Q Would you feel that it would be prudent to  
15 check out any prospective buyers whether they were  
16 coming from someplace other than Longboat Key versus a  
17 prospective buyer living on Longboat Key?

18 A No, because we had enough problems on  
19 Longboat Key. We had drug people ~~where~~ we caught.

20 Q Sir?

21 A We caught drug people on Longboat Key in a  
22 sailboat bringing these in. I wouldn't say Longboat  
23 Key people are better than anyone else.

24 Q If you had prospective purchasers for this  
25 club, whether they were on Longboat Key or whether



1 they were from someplace else, it would be prudent in  
2 your opinion to check out the sources of their funds  
3 and their financial responsibility?

4 A As a banker, I would check customers out  
5 before I lend them 23,000,000 and so on.

6 Q Would you consider it to be imprudent to  
7 suggest supporting -- would you consider it to be  
8 imprudent to support a group of people in the  
9 acquisition of something like this club without even  
10 knowing who they were?

11 A Yes, certainly. I hope I understood what  
12 you've just said. No matter who came in with that  
13 amount of money, it would be imprudent in my view for  
14 the town not to know who they were and have some kind  
15 of references. Is that what you are asking?

16 Q That's what I asked.

17 A Okay.

18 Q Did you have any conversations with any  
19 commissioners concerning the town exercising its right  
20 of first refusal and how they would prefer that it be  
21 exercised?

22 A You mean at the meetings?

23 MR. CHASE: What time frame?

24 Q Other than what is contained on the records  
25 at the various meetings in September, October,

1 November and December?

2 A I didn't talk to commissioners about  
3 anything outside of meetings. I've already been  
4 charged once and I was very careful. I was absolved,  
5 by the way, by the state attorney but nevertheless,  
6 having had that once, I was very careful.

7 Q Did you have any conversations with Mr. Cox  
8 concerning the position of other commissioners?

9 A Not to my recollection.

10 Q Did you have any conversations with either  
11 Mr. Van Voris or Mr. Christiansen concerning the other  
12 commissioners' positions?

13 A No. Anything I did with Van Voris, I tried  
14 to put in writing because I really didn't see him  
15 except at meetings.

16 Q Who was the primary contact on the  
17 commission with Mr. Van Voris?

18 A That was Bud Hughes, H-u-g-h-e-s. Walter is  
19 his first name.

20 Q And after he left who was it?

21 A I don't know. Brown. I think it was Chuck  
22 Brown?

23 MR. CHASE: Chuck Brown.

24 Q And after Chuck left was it Hart Wurzburg  
25 then or do you know?

1           A     I don't. Didn't I leave at the same time as  
2 Brown?

3           Q     I don't know.

4           A     I believe so.

5           Q     During the fall of 1989, do you recall?

6           A     Brown was still on the commission at that  
7 time.

8           Q     Chuck Brown left the commission in April of  
9 '89?

10          A     Okay.

11          Q     So during the summer of 1989 --

12          A     I wasn't the one, anyway. I know I wasn't.

13          Q     During the summer and fall was it Hart  
14 Wurzburg during that time?

15          A     I don't know.

16          Q     Do you recall if it was Hart Wurzburg that  
17 made the motion to retain John Van Voris to guide the  
18 commission through its response to this sale?

19          A     The minutes must show but I don't remember.

20          Q     Did you have any conversations with Mr.  
21 Morway Picket that you can recall during September of  
22 1989?

23          A     I can't remember the date. I had numerous  
24 conversations with him. He would come by my house and  
25 bring another document.

1 Q Concerning this particular subject matter?

2 A Well, he would be giving them, yes, not the  
3 buying of it particularly but the meaning of the  
4 original resolutions, all the history of it and his  
5 legal views. This had been going on for two or three  
6 years.

7 Q Did there come a point in time when you  
8 recommended that he contact Hart Wurzburg?

9 A I think -- I don't remember that but I do  
10 remember that he knew Hart Wurzburg and had meetings.  
11 Hart would sometimes say something about him.

12 Q Can you recall having any conversations with  
13 Morway Picket concerning his opinions as to what the  
14 town could do to exercise the right of first refusal  
15 or whether the town could prevent the sale of the golf  
16 club from Arvida to Key Club?

17 A No, I don't recall ever talking to Morway on  
18 that subject. Morway's thing was for me the history  
19 and the resolutions and land laws. Now, if there is  
20 was something I've just forgotten.

21 Q I would like to show you a copy of Exhibit  
22 Number 3, which is a letter by A. Hart Wurzburg dated  
23 September 27, 1989 to John Van Voris, and ask you if  
24 you received a copy of that letter at or about the  
25 time it was written?

1           A     I don't remember seeing this one.

2           Q     I'll give you a moment to read it. There  
3 was a workshop meeting.

4           A     No, I've never seen this.

5           Q     There was a workshop meeting on September  
6 the 11th at which it was decided to retain John Van  
7 Voris. There was an instruction given to each of the  
8 commissioners to prepare your questions, submit them  
9 to Al Cox, who in turn would give them to Scott  
10 Christiansen, who would in turn send them up to John  
11 Van Voris. On September the 12th, there was a meeting  
12 at which a vote was taken on that and that was  
13 authorized.

14                     Then there was a meeting on September the  
15 21st at which inquiry was made as to whether the  
16 questions had been sent and Scott Christiansen said  
17 yes, he had collected the questions and they had been  
18 sent to John Van Voris for a response. Do you recall  
19 it being set up in that fashion?

20           A     I don't recall. Was I there? You've seen  
21 the minutes. I haven't. If I was there, I don't  
22 recall it but I mean it doesn't sound wrong but I just  
23 don't remember it.

24           Q     Would that have been a normal or standard  
25 method of handling communication to John Van Voris?

1           A     Not particularly because we had many  
2 different ways.

3           Q     At either of those meetings, do you recall  
4 any vote being taken by the town commission to  
5 authorize the mayor to write a letter to John Van  
6 Voris to have him, or to inquire of him, quote; "it  
7 would be great if there was something we could do to  
8 delay or kill the sale of the golf course" close  
9 quote?

10                   Was there ever a vote by the commission  
11 authorizing him to make such a request of John Van  
12 Voris?

13                   MR. CHASE: Object to the form of the  
14 question to the extent it presumes that such a  
15 vote or authorization was necessary. You can  
16 go ahead and answer it.

17           Q     I made no presumptions whether it was  
18 necessary or not. I just want to know if you, as a  
19 commissioner, ever voted to have a question submitted  
20 to your town attorney?

21           A     I'm trying to go back to those details. I  
22 know there was some discussion about delaying to get  
23 more time. We were getting short of time but I don't  
24 remember whether we ever voted on that or not.

25           Q     Well, this is 30 days into it. This is

1 right at the beginning.

2 A Well, but time was only 100 and some odd  
3 days.

4 Q 120 days?

5 A That's all we had to mobilize enough  
6 information and possibly enough money. We had bond  
7 people we were talking to. Could we finance it. So  
8 the time factor was quite short.

9 Q As a commissioner, did you ever vote to  
10 request an opinion from your attorney as to how you  
11 could kill the sale of the golf course between Arvida  
12 and Key Club?

13 A I do not recall any such thing.

14 Q Do you recall any such discussion at any  
15 commission meeting where it was discussed whether or  
16 not to extend authority to the mayor on September the  
17 27th, 1989 to write such a letter requesting the town  
18 attorney to determine whether or not there was a way  
19 to kill the sale of the golf course?

20 A To instruct the town attorney was normally  
21 done by a recognition of consensus not by voting, I  
22 know that and I know that we talked about, is there  
23 some way that this thing doesn't have to go through so  
24 quickly but I do not know -- the word kill doesn't  
25 sound right to me.

1           Q     Would you, as a commissioner, have felt it  
2 proper to try to kill the sale between Arvida and Key  
3 Club?

4           A     To kill the sale by itself, the answer would  
5 be no. To make something happen that would allow the  
6 town in some fashion, whether it was a direct  
7 purchase, the right of first refusal or a recreational  
8 district, to allow the town to get it instead of  
9 Shannon. If you use kill in that sense, yes.

10          Q     Opinions from the town attorney as to how  
11 the town could exercise its first right of refusal  
12 would be totally appropriate because the town had the  
13 right to step in with the first right of refusal? You  
14 are saying that would be totally appropriate?

15          A     Yes.

16          Q     What I'm talking about is calling upon the  
17 town attorney not to tell you how to exercise the  
18 first right of refusal but to tell you how you might  
19 kill the sale between those two parties whether you  
20 exercised the right of first refusal or not. Would  
21 that be appropriate?

22               MR. CHASE: Object to the form of the  
23 question to the extent it appears to be a  
24 mischaracterization.

25               MR. SYPRETT: It's not a reference to



1           this letter at all.

2           MR. CHASE: Thank you for the  
3           clarification.

4           Q     Would that be appropriate? Now, that's what  
5           I think that letter says.

6           A     I have to have some framework to give you an  
7           answer and so I have to go back in my own mind in my  
8           job as a commissioner.

9           Q     Let me just ask you this generic question  
10          then and you tell me whether you can answer or not.  
11          As a town commissioner on behalf of a town, do you  
12          think it would be appropriate for you to write the  
13          town attorney in this situation and ask the town  
14          attorney if he could figure out a way that you could  
15          kill a contract of sale between two private parties  
16          involving a piece of property that you felt was  
17          significant to the town?

18          MR. CHASE: Same objection as to form  
19          being vague and ambiguous. In what context?  
20          In the context of exercising the right of  
21          first refusal or in the abstract?

22          MR. SYPRETT: No, sir.

23          MR. CHASE: The witness has said --

24          Q     I am not talking about you taking any  
25          affirmative action on behalf of the town. I'm talking

1 about an act that says kill a contract, end a  
2 contract, prevent a contract of sale from occurring  
3 between two parties?

4 A If you are giving me a narrow question  
5 within narrow boundaries, the answer is no.

6 Q No what?

7 A I would not do that. It would not be right  
8 by itself.

9 Q Why would it not be right?

10 A But that's a very narrow thing that had no  
11 relation to reality. Reality was that the town had  
12 wanted to work on options right to the bitter end. I  
13 was there, and right to the last day we were trying to  
14 get an option. So nothing like that could be taken as  
15 a narrow thing. It had to be in the context of the  
16 entire situation.

17 Q I would ask you in this letter, do you see  
18 anything in the cover letter whereby A. Hart Wurzburg  
19 says on the front page, how can we exercise our right  
20 of first refusal? Do you see any request for advice  
21 for how we can exercise our right of first refusal?

22 A I see two things in here.

23 Q First answer that question for me and you  
24 can give me any observation you want.

25 A I see nothing written to that effect.

1 Q Thank you, sir.

2 A Now, I do see two things, one the date.

3 Q Yes, sir.

4 A And secondly, the reference to Morway  
5 Picket.

6 Q Yes, sir.

7 A This was during the period when the town was  
8 exercising -- trying to exercise various options to  
9 find out what they were. We happened to have a  
10 commission at that time that could never get together  
11 and so nothing was ever done up until the very end  
12 when the time limit ran out but the commission never  
13 in a positive way was able to vote on any one of those  
14 or approve any one of them.

15 I was disgusted, but in that context then I  
16 say I don't see anything wrong with it but taking it  
17 as narrowly as your question was then it's wrong.

18 Q Do you see anything in this cover letter  
19 that asks him to give advice as to what affirmative  
20 action for acquisition of the club facilities by the  
21 town he would recommend?

22 A You are talking about a not-for-profit  
23 corporation. I presume that has something to do with  
24 what you were asking me just now.

25 Q Anything else?

1           A     Well, letters from Morway Picket -- I  
2 haven't even read this thing but usually Morway  
3 Picket's letters were positive. They would say what  
4 could be done under the situations that you now face.

5           Q     Okay. In September of 1989, did you know  
6 who David L. Wallace was?

7           A     In September, no. I know from that period  
8 who he was. No, before that I never heard of him.  
9 Somebody said he was a newcomer.

10          Q     In September of 1989, did you know there was  
11 a group of members forming what later became known as  
12 the Equity Group for purpose of creating a  
13 not-for-profit corporation?

14          A     Wallace -- I don't know who was behind him  
15 but Wallace called one meeting, I remember and it was  
16 held somewhere up around town hall in some room, not  
17 in town hall.

18                 Maybe it was the Arvida building, something  
19 like that, and my neighbors asked me to go and listen  
20 to him. So I listened to him and I know I told my  
21 neighbors to forget it. He's crazy. I really said  
22 that about him because his views were so against mine  
23 and then I never saw the man again.

24          Q     Do you recall specifically when that was?

25          A     I would guess September, I don't know,

1 something like that.

2 Q Was Brad Hagerman at that meeting?

3 A I think he was.

4 Q Did Brad Hagerman ask you to attend that  
5 meeting?

6 A I don't recall. There were others there, too  
7 from my neighborhood. He might have. I don't know.

8 Q Did the town commission ever authorize the  
9 mayor to send copies of his communication with the  
10 town's attorney to David L. Wallace?

11 MR. CHASE: Object to form.

12 A This you mean? (indicating)

13 Q Yes.

14 A I never heard of any such thing.

15 Q Can you based upon your experience --

16 A In fact, I never saw that myself.

17 Q Based upon your experience as a  
18 commissioner, would you carbon copy some private  
19 group's personal attorney on a letter communication  
20 between yourself and the town attorney seeking advice  
21 as to town action?

22 MR. CHASE: Object to the form of the  
23 question, overly broad, vague and ambiguous.  
24 It does not detail the specifics to the  
25 situation. To the extent you can answer go

1 ahead.

2 A I think this is quite common. This is a  
3 public document. It's on Town of Longboat Key, <sup>LETTERHEAD.</sup> It's  
4 in the files. The newspaper can read it. Anybody can  
5 read it.

6 Q Yes, sir. There's a difference between a  
7 document being public and in the files of the Town of  
8 Longboat Key and you, as a commissioner, sending a  
9 carbon copy to that entity. Do you see a distinction  
10 there or not?

11 A I see a distinction but I think it's done  
12 all the time. If somebody asked me to propose  
13 something and I agreed with it, you know, to build a  
14 new street or whatever it was, if I wrote a letter or  
15 a memo, I would send them a copy of it, sure.

16 Q Do you see that that letter is asking for  
17 advice that would benefit the group that David L.  
18 Wallace represents if he gets a positive answer?

19 A I suppose so if he gets a positive answer.

20 Q Do you see that that letter would be a  
21 detriment to the interests of Key Club if he gets a  
22 positive answer to it?

23 A He is asking for legal means to do  
24 something.

25 Q Yes, sir. To delay or kill the contract

1 with Key Club which is the buyer. If that were  
2 successful, would that be to the detriment of Key  
3 Club, in your opinion?

4 A If Key Club was unable to achieve their  
5 objectives, of course.

6 Q Do you think it is appropriate to send a  
7 copy of that letter to the attorney for the Equity  
8 Group and not send a copy of it to the attorneys for  
9 Key Club or to Key Club?

10 A I'm afraid that -- see, I was on the  
11 commission for six years and we were much more  
12 informal than you are suggesting. These sort of  
13 things happened all the time, really.

14 Q You think it is then appropriate?

15 A I would not have done it but --

16 Q You would not have done it?

17 A Personally.

18 Q Why not?

19 A People have different ideas. That's all but  
20 I've seen this sort of thing done many times.

21 Q Do you think it is appropriate for the mayor  
22 of the Town of Longboat Key to give preferential  
23 treatment to one private entity over another private  
24 entity as it relates to the same subject matter?

25 MR. CHASE: Object to the form of the

1 question in that it presumes that there was  
2 preferential treatment given. There is no  
3 showing that there was --

4 MR. SYPRETT: I consider sending a carbon  
5 copy of the letter preferential treatment.

6 MR. CHASE: I don't consider it to be  
7 preferential treatment. So we can't agree on  
8 that. So my objection still stands.

9 MR. HARLLEE: Object on the grounds it's  
10 been asked and answered three times in the  
11 last five minutes.

12 Q Now, would you answer the question, sir?

13 A Listening to all this, specifically again  
14 the question?

15 Q Do you consider sending a carbon copy of  
16 this letter as preferential treatment to the party who  
17 receives it?

18 A I'm afraid the answer is no and I'll tell  
19 you why. If Wallace had asked, what are you going to  
20 do, can I have a copy of it, it would be the normal  
21 routine thing to say sure, you can have a copy of it.

22 If the Shannon people had asked, it would be  
23 routine to give one. Anybody who asks for a public  
24 document, there's no problem and I wouldn't really  
25 make much out of this letter. Really as a



1 commissioner, I wouldn't.

2 Q Do you consider it to be preferential  
3 treatment to send it to David L. Wallace and not send  
4 it to the Key Club group? Yes or no.

5 A If David Wallace asked for it, of course  
6 not. I would say it's not preferential.

7 Q If he did not ask for it?

8 A If he did not ask for it, it's a favor.

9 Q Do you think it is appropriate for the mayor  
10 of the Town of Longboat Key to be granting favors to  
11 one private entity to the detriment of another private  
12 entity?

13 MR. CHASE: We've just changed  
14 preferential treatment to favor. It's  
15 becoming argumentative and I understand what  
16 you're trying to accomplish but I don't see  
17 where this witness's personal opinions have  
18 any bearing on anything, with all due respect  
19 to the witness.

20 Q So now you can answer the question. He's  
21 made his objection.

22 A Well, if I was in that position, all I can  
23 tell you is that the normal way I would operate is I  
24 would not have sent it in the first place. Now, to  
25 judge whether he's right or wrong or the other mayors

1 over a time were right or wrong, I don't see how I can  
2 judge if they're right or wrong.

3 Q Do you recall when you first saw this  
4 letter?

5 A Just now. It was never circulated that I  
6 know of. It wasn't in my file that I threw out last  
7 year.

8 Q Thank you. Was it normal standard operating  
9 procedure for Mr. Cox's office to distribute letters  
10 from one commissioner to the other commissioners so  
11 the other commissioners would be aware of the fact  
12 that it occurred?

13 A At his discretion. If he thought it was  
14 important or useful or needed or whatnot.

15 Q If he was given a direction to do it by the  
16 commissioner, he would do it?

17 A Yeah.

18 Q If he wasn't given a direction, it was in  
19 his discretion?

20 A On mine I have had hundreds practically over  
21 the six years where I put full distribution down in  
22 the corner and it would automatically go to everybody.

23 Q And if you didn't put full distribution, it  
24 may or may not?

25 A Right.

1 Q Do you know what Hart Wurzburg's  
2 relationship was with David L. Wallace?

3 A No.

4 Q Do you know why David L. Wallace was on his  
5 mailing list?

6 A No idea.

7 Q Do you know what information Hart Wurzburg  
8 was giving to David L. Wallace through this period of  
9 time?

10 A No, other than what you just showed me.

11 Q Do you know what Hart Wurzburg's  
12 relationship was with the Equity Group?

13 MR. CHASE: Can we define the Equity  
14 Group? We have for other witnesses. I don't  
15 think we have for this witness as of this  
16 point in time.

17 Q Are you familiar with a group that was  
18 formed that assumed the name Equity Group?

19 A I know from the newspaper accounts that Jim  
20 Biron and others that I didn't know, never knew their  
21 names of who they were.

22 Q Do you know what Hart Wurzburg's  
23 relationship was with those members of the Equity  
24 Group that you were aware of?

25 A No.

1           Q     Just as a bit of history, and I'll give it  
2 to you so you can orient yourself. There was a  
3 meeting October the 2nd of 1989. It was a regular  
4 meeting. Bob Hulderman appeared before that meeting  
5 and advised the commission that there was a committee  
6 to buy the club that was being formed that was going  
7 to form a not-for-profit corporation and sell equity  
8 memberships. Do you recall him appearing before the  
9 commission in connection with that matter?

10           A     Now that you say Hulderman, I recall him. I  
11 hadn't remembered it until you mentioned his name, Bob  
12 Hulderman. He's a former commissioner.

13           Q     You knew Bob Hulderman?

14           A     Yes.

15           Q     Do you know what relationship, if any,  
16 existed between Hart Wurzburg and Bob Hulderman?

17           A     No. See, honestly, I really never talked to  
18 other commissioners outside about any business outside  
19 of the meeting.

20           Q     Okay. Included in my question will be  
21 relationships that you observed from actions as well  
22 as the spoken word?

23           A     Okay. No, I know of <sup>NONE</sup> known whatsoever on  
24 this score.

25           Q     On Tuesday, October the 10, 1989 a special

1 workshop was held at which four options were presented  
2 by John Van Voris. One option was for the town do  
3 nothing. The next option was a general revenue bond  
4 which would make the courses very public. The next  
5 option was the rec. district and the next option was a  
6 declaratory judgment for assignment of the right of  
7 first refusal to an equity group?

8 A The date you said?

9 Q Was October 10.

10 A Okay.

11 Q Bob Hulderman and Jim Biron were present at  
12 that time. Mr. Hagerman was there. What is his first  
13 name?

14 A Bob -- no, Brad, B-r-a-d.

15 Q Brad Hagerman was there. Do you recall that  
16 there was a meeting that transpired where Hart  
17 Wurzburg commissioned Brad Hagerman to conduct a  
18 survey as to whether or not a special rec. district  
19 would be favored by the people --

20 A Right.

21 Q -- Who lived in the PD and GPD?

22 A Yes.

23 Q That was I think a direction that was given  
24 that essentially would be moving in the direction of  
25 the rec. district which is what you strongly favored?

1           A     I remember that, yes. I remember things I  
2 was in favor of and reject others.

3           Q     Do you recall at these early meetings there  
4 being a suggestion about the town exercising the right  
5 of first refusal and then turning around and selling  
6 Harbourside to a private equity club?

7           A     Yes, I do.

8           Q     And your reaction to that was what, sir?

9           A     Very much against it. Wasn't that in  
10 something? I know I was very much against it.

11          Q     That was in that early memorandum from Jim.

12          A     Yeah.

13          Q     That's what you just read a moment ago and  
14 you were very much against that. Why?

15          A     The reason I gave before; that that would be  
16 taking away the recreational facilities that were  
17 intended for the property owners.

18          Q     And were these recreational facilities in  
19 your view also intended for the residents of Longboat  
20 Key?

21          A     Up to 20 percent.

22          Q     Or at least 20 percent?

23          A     Yeah. I should put it other way. If there  
24 was a gap, they could go over but the priority, 80  
25 percent for the property owners and residents of the

1 PUDs.

2 Q Would you agree with me that the resolutions  
3 say that at least 20 percent of the memberships shall  
4 always be available for nonresidents of the PD or GPD?

5 A I wouldn't doubt that.

6 Q And that's what you are referring to?

7 A Do you know why that was put in, by the way?  
8 So many members of Country Club Shores already were  
9 there. It was a political move.

10 Q That was what you were referring to when you  
11 were referring to for the benefit of the residents of  
12 the town?

13 A Yeah.

14 Q Do you recall that after that presentation,  
15 the only action taken at that special workshop on  
16 10-10 was a consensus that requested Brad Hagerman to  
17 do the survey of the residents?

18 A Yes.

19 Q Then the next thing was 10-16-89, which is  
20 the special workshop and I think you have the minutes  
21 of that meeting?

22 A Yes.

23 Q How do you happen to have the minutes of  
24 that meeting?

25 A I had put them in a separate file. I

1 mentioned this to Mr. Chase a little earlier. My  
2 house is listed for sale. It has been for several  
3 months. So I am going through all the folders and  
4 dumping things. I started in December and after  
5 having dumped the big one, I found this in another  
6 file with some other things I had with the commission  
7 and letters I had written to people and things like  
8 that.

9 Q Did you have any documents in your file that  
10 you dumped other than what are contained in the town's  
11 file?

12 A To the best of my knowledge, no.

13 Q Did you have --

14 A I may have had a few memos that I wrote for  
15 myself just like I did this one that later was  
16 released.

17 Q Can you tell me approximately when it was  
18 you threw your personal file out?

19 A December.

20 Q Of '91?

21 A Around Christmas.

22 Q Did you make any listing of what was  
23 contained in that?

24 A I just took it and dumped it in the trash.  
25 I kept the binder.



1 Q Did you keep any copies out of the --

2 A No, no.

3 Q Did you check with anybody before destroying  
4 it?

5 A No. I destroyed a lot of other files, too  
6 at that time. That just happened to be one of them.

7 Q You have a pink lining besides the first  
8 paragraph?

9 A Uh-huh.

10 Q Is there any particular reason why you did  
11 it?

12 A Should availability. This is what I have  
13 always for several years based my standing on.

14 Q Now, let me ask you something right here.  
15 What you have are copies of the special meeting that  
16 occurred at 4:30 p.m.?

17 A Right.

18 Q Did you keep a copy of the special workshop  
19 that started at like two in the afternoon?

20 A No.

21 Q Do you recall the events of the special  
22 workshop when Brad Hagerman reported the results of  
23 his survey?

24 A Yeah, they kind of pooh-poohed it.

25 Q Who pooh-poohed it?

1           A     The other commissioners.

2           Q     Hart Wurzburg?

3           A     He may have been one of them but I remember  
4 on the commission -- there's seven there. It's hard  
5 to remember who said what but we didn't get anywhere  
6 when he came back with it. They sort of took the  
7 point of view that it wasn't a good survey.

8           Q     And instead of relying upon his survey, do  
9 you recall that Hart Wurzburg then called upon the  
10 audience to give him their reaction?

11          A     I had forgotten. Yes, I remember that now.

12          Q     Do you recall who was present in the  
13 audience out there?

14          A     I think it was a big -- probably a big  
15 crowd. I don't remember who was there.

16          Q     Do you recall that it was Biron Equity  
17 Group, Hulderman, Biron, David Wallace and that group?

18          A     I don't doubt it but I don't remember.

19               MR. CHASE: I'll belatedly object to the  
20 characterization of those people in attendance  
21 to be that group. I assume that there were  
22 more than just those individuals.

23          Q     Do you recall having a feeling at that  
24 meeting that there had been sort of a prearrangement  
25 of the people who were in the audience and any sort of

1 preorchestration of discounting the work done by  
2 Hagerman which supported the rec. district and the  
3 vocal opposition from the people in the crowd?

4 A Well, I hadn't thought of it from that point  
5 of view, but I do know that in my six years anybody  
6 who was concerned on any subject felt they had every  
7 right to pick up the phone and call me or call any  
8 commissioner.

9 So I wouldn't doubt at all that the ones you  
10 called the group may well have called some of the  
11 commissioners. They did not call me. I guess they  
12 knew my stand. So they may well have called other  
13 commissioners and discussed it.

14 Q Did you review the survey that was done by  
15 Brad Hagerman?

16 A Yes.

17 Q Did you see anything wrong with it?

18 A No. It was a short period of time. If he  
19 had another week or two -- he brought the questions to  
20 me and I had gone over them with him because I'm a  
21 neighbor and so as a neighbor, I went over and gave  
22 them back and if he had had a little more time, it  
23 would have been better.

24 Q He surveyed 170 different people on  
25 Islandside?

1           A     That was pretty good in that length of time.

2           Q     That was more people than were present in  
3 the audience?

4           A     Yes. I'm sorry. I should have said it out  
5 loud.

6           Q     Did you have any reason to suspect the  
7 accuracy of the survey that Brad Hagerman did?

8           A     No, but I did realize that 170 or something  
9 was still a minority. It wasn't anywhere near a  
10 majority.

11          Q     Do you recognize that most surveys are based  
12 on surveying a minority of the subjects?

13          A     I'm sure if I could listen to the tape again  
14 or if you could listen to it, I must have said a  
15 number of things in support of the survey in the open  
16 meeting.

17          Q     Did you have any reason to believe that the  
18 survey was conducted in any fashion weighted towards  
19 just talking to people who would be in favor of the  
20 rec. district versus talking to people who would be in  
21 favor of the Equity Group?

22          A     I presume there's probably a bias built into  
23 the questions because Brad Hagerman was in favor of  
24 the rec. district.

25          Q     But the selection to whom it was presented?

1           A     No, they called whoever they could reach.

2           Q     Did you see any reason based upon what you  
3 observed about the survey for Hart Wurzburg to totally  
4 discount it?

5           A     I would not say he totally discounted it. I  
6 used the term pooh-poohed. In other words, he came up  
7 with things that he thought superseded it in  
8 importance and in that sense it was put down.

9           Q     Do you recall him coming up with anything  
10 that he felt superseded it in importance other than a  
11 voice vote from the people in the audience?

12          A     Well, there was a question of financing and  
13 supposedly, with the people in the audience, what they  
14 were after, they could provide -- they were assuring  
15 the commission they could provide the financing  
16 whereas the recreational one would require the  
17 property owners in the PUD to be a guarantor of any  
18 bond issue. So I think that's sort of the thing that  
19 came out to put the survey down.

20                 He didn't say the survey is no damn good.  
21 There were things against the recreational business.  
22 He wrapped it up into the merits of it, I would say  
23 the merits of recreational versus other alternatives.

24          Q     And the merits he wrapped it around was  
25 what, sir?

1           A     Finance was the biggest one, that nobody --

2           Q     That's your recollection?

3           A     Yeah, because we had already gotten some  
4 kickbacks. One commissioner there at that time was  
5 Marie Dreyfus.

6           MR. CHASE: When you say kickbacks, I get  
7 very nervous when a public official says  
8 kickbacks.

9           A     Not that kind of kickback, but she, as a  
10 commissioner, also lived near me and she was very  
11 vocal at the meeting about how she didn't want to have  
12 to guarantee any bonds. So it was that kind of a  
13 discussion that went on.

14          Q     If you were going to go with a special  
15 recreation district, you had to have a referendum; is  
16 that correct?

17          A     Yes, just to authorize the referendum is  
18 what we had to do.

19          Q     And the two referendums you had to have, you  
20 had to have one where the registered voters voted as  
21 to whether or not to set up the rec. district and then  
22 you had to have the property owners vote whether or  
23 not to issue revenue bonds?

24          A     Right.

25          Q     Because they were going to have to guarantee

1       them?

2           A     Right.

3           Q     And that was going to require about 60 days  
4     in order to set up the referendum?

5           A     I have forgotten the dates.

6           Q     Do you recall at that meeting that Hart  
7     Wurzburg had Pat Arends or someone to check when that  
8     could be set up and the date was determined to be  
9     December 5?

10          A     I don't remember that, really.

11          Q     All right. Do you recall that the vote on  
12     that date essentially was made from the perspective  
13     that if we go with the Equity Group, we will not have  
14     time to go back and do the rec. district; if we go  
15     with the rec. district then the equity group, if the  
16     rec. district doesn't pass, may not have time to do  
17     what they want to do?

18          A     Again, I don't recall that but I don't deny  
19     it.

20          Q     Do you recall having the feeling at the time  
21     that the vote took place on October the 16th, that  
22     when the rec. district was voted down on that date in  
23     favor of seeking a declaratory judgment as to whether  
24     or not the right of first refusal could be assigned to  
25     the Equity Group, that that killed the rec. district?

1 A Yes, that was the end of it. That was it.

2 Q And was the rec. district killed at that  
3 meeting because of the desire to go forward with the  
4 Equity Group and assignment to them?

5 MR. CHASE: In his perception?

6 Q Based on your perception of what happened  
7 there?

8 A Well, I'm trying to go back and I don't  
9 think that's completely right. I think that --

10 Q Tell me --

11 A There was still the alternative of doing  
12 nothing. There was still the alternative of the town  
13 stepping in and buying it as a town. All those things  
14 came up in discussion.

15 So it wasn't -- I did not feel that it was  
16 isolated on a final decision to go equity, no because  
17 the other options were still there to do nothing.

18 The fact is I saw this, when I found it the  
19 other day when I got your subpoena, where I put  
20 somewhere in here "if no referendum were held then he  
21 trusted Shannon more than anyone else." That was from  
22 me, Stewart.

23 Q Say that again.

24 A Stewart is talking on page 3 of the <sup>MINUTES.</sup> notes.

25 Q Yes.



1           A     So I did not think -- my perception at that  
2 time was not that, no, that equity was in and rec. was  
3 out. Rec. was out, yes but the other three were all  
4 still in.

5           Q     Okay. So the rec. district is out. Doing  
6 nothing, having some sort of general revenue bond  
7 issue or going with the Equity Group --

8           A     Those three were still in.

9           Q     Okay. Shannon Hotel Group didn't have  
10 anything to do with the vote that was going that  
11 direction on your rec. district; did it?

12          A     Not that I know of.

13          Q     At any time during the fall, did you receive  
14 an invitation to meet with the Equity Group at any  
15 location to discuss what their concepts were?

16          A     Never. I think Biron knew enough from what  
17 I had done in open meetings so I would not be included  
18 in such a group.

19          Q     At the time that this vote took place on  
20 10-16-1989 to pursue a declaratory judgment to  
21 determine whether or not the right of first refusal  
22 could be assigned to the Equity Group, did you know  
23 who the Equity Group was?

24          A     I knew of Biron. That's the only name.

25          Q     You didn't know who else formed this equity

1 group that was going to form this corporate entity?

2 A No.

3 Q Did the other commissioners know?

4 A I don't know.

5 Q Did anybody say anything at the meetings to  
6 indicate to you that they did know?

7 A No. The only thing that was ever said was  
8 the group was composed of members of the club and it  
9 bothered me that some of them probably would turn out  
10 to be off-key members not even property owners.

11 Q Did it raise a question in your mind as to  
12 how these commissioners could vote to get into  
13 litigation or pursue litigation to determine if you  
14 could assign the right of first refusal to this group  
15 without even knowing who composed the group?

16 A Well, I did not know but maybe they knew. I  
17 didn't know.

18 Q If they didn't know, would that surprise you  
19 or bother you?

20 A Well, if they were members of the club, I  
21 wouldn't be too surprised, no. They probably -- I  
22 knew one name, Biron, and it could well be from the  
23 newspaper -- and Bob Hulderman showing up. I didn't  
24 know about Bob Hulderman until he came there but it  
25 was those kind of people. When you live on Longboat

1 Key, it's not a big problem.

2 Q So, in your opinion, it wouldn't matter who  
3 the people were that were creating the equity group as  
4 long as they were members of the club?

5 A To get an opinion, I'm saying it wouldn't  
6 worry me. That didn't mean that was going to happen.

7 Q Well, the vote was for them to pursue the  
8 filing of a declaratory judgment, which meant you were  
9 going to litigation -- the town was going to  
10 litigation expense to determine if they could assign  
11 this first right of refusal to this group of people.

12 Now, do you think it was appropriate or  
13 inappropriate to vote to do that without even knowing  
14 who the group of people were?

15 A Well, the record did not show who the people  
16 were. I'm assuming I'm sure at the time they were  
17 members -- a group of members of the club. That's  
18 quite a big group to have that much backing for  
19 financing and so on. I would not have worried about  
20 it. They're already screened before they live on  
21 Longboat, before they live in the PUD. Everybody is  
22 quite well screened beforehand.

23 Q Who does that screening?

24 A Well, for instance, where I live, our  
25 association. Anybody that moves in my house when I

1 sell it has to turn in a financial statement and have  
2 bank references and all kinds of stuff or you can't  
3 buy the land.

4 Q Was that always the rule out there?

5 A Yeah.

6 Q So everybody was screened by somebody?

7 A Well, the property owners are screened.  
8 Now, I believe the golf course has a different -- I  
9 don't know what their screening system is but I think  
10 they have a screening system.

11 Q The bottom line is it didn't bother you and  
12 the other commissioners that you didn't know who this  
13 group was just as long as they were members?

14 A That was sufficient for that period. I  
15 really was -- I don't know that I focused on this  
16 point at all. You are asking me now and I'm trying to  
17 think of how I may have felt.

18 Q You voted against doing the survey of the  
19 residents?

20 A I did and I was pissed off that I lost.

21 Q Why do you think you lost?

22 A Well, the vote was against me. I lost a lot  
23 of times out there.

24 Q There was a count that you came out on the  
25 short end of the stick. Why do you think the count

1 was such that you came out on the short end of the  
2 stick that day?

3 A Partly because I failed to convince people  
4 in the key -- I mean in the club area, Bay Isles  
5 particularly, that the guarantee they had to give for  
6 the bond wasn't dangerous at all. We figured out that  
7 on a year's payment installment that it would come --  
8 for Mrs. Dreyfus I think it was \$350.00 or \$400.00 if  
9 she had to pay it herself.

10 Q Based upon the conversation that took place  
11 at this meeting, were you able to form an opinion as  
12 to whether or not the commissioners who voted in favor  
13 of the declaratory judgment action knew who the Equity  
14 Group was that was forming the not-for-profit  
15 corporation?

16 MR. CHASE: Jim, you asked that four or  
17 five times.

18 A I really don't know.

19 MR. SYPRETT: Let's put it this way. I  
20 am incredulous that that could be the  
21 circumstance so I continue to go back to it.

22 MR. CHASE: I'm incredulous about a lot  
23 of things in life.

24 MR. SYPRETT: I'm incredulous that a  
25 commission would vote to do something with a

1 group they don't know who's in it.

2 A They knew where they came from.

3 Q Which might have been on the key or off the  
4 key?

5 A Yeah, but the majority -- as far as I know,  
6 the majority of the members live on the key.

7 Q As far as you know?

8 A Well, we used to get lists occasionally.

9 Q In your old banking background, would you,  
10 sitting on board of directors at a bank, ever have  
11 voted to enter a business transaction with a group of  
12 people that you didn't know, that were just described  
13 as the people who live on Longboat Key?

14 MR. CHASE: Object to the form of the  
15 question to the extent that somehow you're  
16 attempting to make an analogy between --

17 MR. SYPRETT: He can answer it and  
18 neither one of us will probably ever be able  
19 to use it but I'm curious as to how he would  
20 have handled this as a banker.

21 A I think there's a great difference in  
22 lending \$125,000,000.00 to somebody as I used to and  
23 getting a legal opinion. So I can't connect the two  
24 in that sense but I know -- to your direct question, I  
25 would say no, I would want to know before I lent them

1 that money.

2 Q And this vote you-all took that day wasn't  
3 to get a legal opinion. It was to go to court to get  
4 a declaratory judgment from a judge?

5 A Did I vote for that?

6 Q No, you voted against it.

7 A Once I lose -- I was opposed to the whole  
8 thing, anyway.

9 Q I'm incredulous that you are so defensive of  
10 people voting in favor of doing something

11 A I've sat there for six years. See, that  
12 wasn't unusual.

13 Q Really?

14 A No, that would not have been unusual.

15 Q Do you recall receiving Exhibit Number 30,  
16 which was a letter sent by David L. Wallace to all the  
17 property owners out there?

18 A I have no recollection of ever seeing this  
19 and if I did get it, I would probably have thrown it  
20 in the wastebasket. I have no recollection of ever  
21 seeing it.

22 Q Do you recall receiving a copy of that  
23 notice of a special meeting called for October 30.

24 MR. HARLEE: Is that an exhibit?

25 MR. SYPRETT: Exhibit Number 50.

1           A     I don't remember it.

2           Q     All right. Do you recall going to the  
3 meeting of October 30, 1989 and the first motion that  
4 was made at that meeting was to rescind the action  
5 that had been taken on the 16th and the purpose of  
6 that meeting was to deal with the subject matter of  
7 simply assigning the right of first refusal to the  
8 Equity Group rather than going to court?

9           A     I honestly -- if I could read the minutes,  
10 that would bring it back but I don't remember that  
11 that step in this progress. I would presume that if I  
12 was at the meeting that I kept the same position.

13          Q     I hate to have to take the time for that but  
14 that's an important enough meeting that you if you  
15 can't recall it, I am going to need to let you sit and  
16 read it.

17                   MR. CHASE: I have it here. I believe  
18 it's a special meeting of October 30. For the  
19 record, it's Exhibit 31.

20          A     Is there any page that I should look at or  
21 do you want me to read the whole thing?

22                   (A recess was taken.)

23          Q     Have you had the opportunity to read through  
24 a portion of the minutes of that meeting?

25          A     Yeah.



1 Q Does that meeting --

2 A Two and a half pages, yeah.

3 Q Do those minutes bring back a recollection  
4 as to that meeting?

5 A Very faintly but yes.

6 Q Do you recall that essentially the direction  
7 took a very pointed turn at that meeting?

8 A Uh-huh.

9 Q What was your reaction to that meeting?

10 A Well, I'm sure I was relieved to have the  
11 original motion cancelled. It had been my view all  
12 along that when we got down to actually assigning --  
13 I'm sure it was my view at that time that we wouldn't  
14 do so because the property owners would not be  
15 protected.

16 What Mr. Wallace and whoever it was was  
17 proposing was to have two kinds of members. You would  
18 have regular members and you would have equity members  
19 and they had all different things. It destroyed the  
20 reason for anybody to want to buy into the club.

21 In other words, if you could play and be a  
22 regular member, why would you want to buy into it and  
23 own it. It wouldn't fly, and later on, as I recall,  
24 that did come out, some period after this date, that  
25 what they were talking about satisfying everybody was

1 not doable. So I then was relieved to have this  
2 declaration judgment stopped. I was relieved at that.

3 Q Were you approached by any persons of the  
4 Equity Group before this meeting to give you any  
5 information as to what their concept was and what they  
6 intended to do and how they intended to do it?

7 A No. They did it all at the meetings but no,  
8 I never had any outside -- I did read it in the  
9 newspapers occasionally and I know I sent one -- I  
10 think probably a handwritten note to Jim Biron one  
11 time and told him he was off base.

12 Q When did you do that?

13 A I don't recall but it was during that period  
14 sometime. See, Jim Biron had taken a course from me.  
15 I was a power squadron instructor in advanced piloting  
16 and he was one of my students. That's how I happen to  
17 know him and so I sent him a note one day and I said;  
18 "from what I read in the Observer, you are off base  
19 trying to push this thing for members." I said this  
20 before.

21 Q Did you at any point in time on breaks at  
22 any of these meetings in October ever observe a  
23 conversation going on between Hart Wurzburg or any of  
24 the commission members and the Equity Group people?

25 A No.

1 Q Did you note that in these minutes that for  
2 the first time the Equity Group people have been  
3 identified in minutes at a commission meeting; that  
4 is, the group that's forming the not-for-profit  
5 corporation? Did you see their names here?

6 A No. Well, I didn't. Where?

7 Q Page 3.

8 MR. CHASE: I don't think he read that  
9 far.

10 A I didn't get that far.

11 Q All right. Was that the first time that you  
12 became aware that that's who the Equity Group was?

13 A I guess I was there so I must have heard  
14 this but I didn't remember this.

15 Q At any time before hearing it at that  
16 meeting you didn't know who they were; did you?

17 A No.

18 Q Do you know --

19 A I knew Biron.

20 Q Right, and you knew Hulderman?

21 A Well, Hulderman, he came to the meeting.

22 Q But except for Biron and Hulderman, did you  
23 know anybody else?

24 A Well, I know some of these people, Tac  
25 Riter, Willingham Smith, Harry Nitzberg but I didn't

1 know they were in that group.

2 Q Did you know they were part of that group?

3 A No.

4 Q Do you know whether or not Hart Wurzburg  
5 knew that?

6 A No, I don't know.

7 Q Do you recall him making any statements at  
8 the meetings that he did know that?

9 A No.

10 Q Do you recall him making any statements at  
11 the meetings that indicated to you that he had  
12 knowledge essentially about how this was being  
13 structured and what was going on before it was  
14 disclosed at this meeting?

15 A I certainly don't recall anything.

16 Q Do you recall observing him in conversation  
17 with any of these persons either before, during or  
18 after the meeting? When I say during the meeting, I'm  
19 talking about breaks in the midst of it.

20 A I do not remember. I really don't, but if I  
21 had observed it, I wouldn't even have thought anything  
22 about it.

23 Q Did anyone at any point in time give you any  
24 information concerning contact between the Equity  
25 Group and Hart Wurzburg?

1           A     No.

2           Q     Did you at any point in time ever learn  
3 either from Hart Wurzburg or any other person why Hart  
4 Wurzburg was so strongly in favor of this Equity Group  
5 arrangement?

6           MR. CHASE: Object to the form of the  
7 question and the characterization of Hart  
8 Wurzburg strongly in favor of the Equity  
9 Group. You could answer it if you can.

10          A     No. All I know is that at the meetings when  
11 we had our discussion period amongst the commissioners  
12 Wurzburg was in favor of the equity until at the end  
13 when he was in favor of the town buying it.

14          Q     Which was after the vote had been taken by  
15 the commission that refused to do the assignment?

16          A     And then they refused the town to buy it,  
17 also.

18          Q     Do you recall that right up to the moment of  
19 the vote on whether to assign or not to assign that  
20 Hart Wurzburg advocated the assignment should take  
21 place?

22          A     I would have to read the rest but from  
23 everything I know, he would have advocated that as one  
24 of the commissioners, yes but I don't remember  
25 specifically.

1           Q     Did anyone ever give you, or did he ever  
2 give you any reason as to why?

3           A     No.

4           Q     I am going to hand you Exhibit Number 30,  
5 which was the letter sent out by David L. Wallace  
6 concerning the Equity Group, and I've highlighted on  
7 page 4 of the attachment his explanation of full  
8 equity members and limited memberships and ask you if  
9 that's the explanation of the membership problems that  
10 you felt would violate the resolutions if the Equity  
11 Group tried to go forward with this?

12          A     I've read the highlight. Again what is your  
13 question, sir?

14          Q     Was that what you were referring to earlier  
15 about the manner in which the existing club members  
16 would be disadvantaged by this propriety membership or  
17 this equity owned membership that in your opinion  
18 would violate the resolutions that what you were  
19 talking about earlier?

20          A     Well, this was -- we had -- this sort of  
21 thing developed over time. I don't know at what point  
22 in time this one -- whether this was the last one they  
23 came up with but it wasn't this way always.

24                 At one point they started out that the full  
25 equity membership and the regular membership not

1 limited would both have the same rights.

2 Then they came back and said, we've decided  
3 that we couldn't sell equity on that basis and I said,  
4 if you'll refer to the minutes, I told you that at the  
5 time and so then this was a later development, which  
6 again violates all the rules because you can't have  
7 two different classes of members.

8 Q Let me ask you in simple terms, does what  
9 you have read attached to Exhibit 30 in your opinion  
10 violate the resolutions?

11 A Yes.

12 Q Thank you, sir.

13 A I think I had something here about that.

14 (A one-page memorandum dated 10-23-89 was  
15 marked as Exhibit 59 for identification.)

16 Q I've just marked as Exhibit 59 your  
17 memorandum of October 23, 1989. Whose handwriting is  
18 that in the upper right-hand corner?

19 A I think it's somebody at town hall.

20 A I don't know if it was the town clerk. It's  
21 not mine but everything that is there indicates it's  
22 some member of the staff.

23 Q Can you read that well enough to tell me --  
24 it looks like carbon copy Stew?

25 A That's me, although she spelled Stu wrong.

1 It should be S-t-u and Chuck Brown, and what's ATC?

2 Q Al Cox?

3 A Yeah, Al Cox, that's right.

4 Q Okay. Why would she have a carbon copy to  
5 you since you were the author of it?

6 A It says Stu file. Doesn't that say file?

7 Q I see something that looks like f-i-l but  
8 who is that?

9 A Some file. I don't know what kind of a file  
10 they have there. It sounds to me as though that were  
11 to go into a file.

12 Q A file they keep on you?

13 A Something like that.

14 Q Does this bring back to your memory the fact  
15 that equity conversion had been discussed in previous  
16 years and that the opinion had been arrived at that  
17 equity conversion was not an allowable thing under the  
18 resolution?

19 A Let me read it. Yeah, this was back -- yes,  
20 it was brought up previously and this was a circulated  
21 letter then Mayor Fernald signed, as I recall, that  
22 went to all the club members.

23 Q Advising that equity conversion would  
24 violate the resolutions?

25 A Uh-huh.



1 Q And that was back in 1988?

2 A Yeah, January 26.

3 Q I thought it was in this memo but I don't  
4 see it right now, but the members sitting on the  
5 commission October 23, 1988 were five of the same  
6 people who had been sitting on the commission back in  
7 January of 1988?

8 A I wouldn't doubt it. You couldn't tell from  
9 day to day what they were going to do.

10 Q Then the last sentence in your memorandum  
11 says quote; claims for shareholder rights such as the  
12 one above lead to the conclusion that a change in the  
13 resolutions is expected, period, close quote. What  
14 caused you to put that statement in there?

15 A Well, the only thing I can think of now  
16 going back and reading it again is that my point was  
17 the equity club, no matter what they said, the way the  
18 resolutions were worded, they would not be able to  
19 confirm and have an equity club and therefore, the  
20 only way it could work was to go back and change the  
21 resolutions to allow an equity club, in other words,  
22 take away the rights of the property owners that they  
23 had in the original resolutions. That's what I think  
24 this means.

25 Q Had any persons on the commission made any

1 statements to that effect in your presence?

2 A No.

3 Q Had any persons connected with the Equity  
4 Group made any statements that they anticipated  
5 certain commissioners would vote in favor of doing  
6 that for their benefit?

7 A I don't think most people appreciated the  
8 fact that it would be necessary. This was my  
9 assertion and a lot of them didn't accept that.

10 Q Okay. Now, I would like to show you Hart  
11 Wurzburg's letter to Mr. Van Voris and Mr.  
12 Christiansen, which has been marked Exhibit Number 51.  
13 The letter is dated October 31. I will give you a  
14 moment to read that. That would have been the day  
15 after the meeting at which the direction was changed  
16 to make the assignment to the Equity Group?

17 A Okay.

18 Q Referring to this letter on the first page  
19 it says near the bottom; "understanding the options,  
20 please advise immediately what problems (conditions)  
21 you which solved for each situation."

22 Had the commission had at any meeting  
23 granted a consensus of opinion that the commission  
24 would be willing to amend, modify or change the  
25 resolutions in any fashion?

1           A     I don't recall that they ever did.

2           Q     Do you know why Mayor Wurzburg was  
3 suggesting that the commission would perhaps be  
4 willing to do that?

5                     MR. CHASE:  Where does it say --

6           A     Yeah, I was trying to see that because I  
7 don't think that's what they were doing.

8           Q     If you would go over to the last page, the  
9 final paragraph; "finally, is any changes in the town  
10 ordinances or resolutions required to make this  
11 transfer of the right of first refusal."

12                     What problems do you think they were  
13 referring to or he was referring to on the front page  
14 if he wasn't referring to changes in the resolutions?

15           A     Well, my recollection of a -- this is a  
16 general recollection of all the discussions there.  
17 They thought they could solve all the problems and  
18 particularly the one about recreational facilities  
19 being available to property owners and residents.

20                     They thought they could solve that legally  
21 within the resolutions and I was the one who said no,  
22 they are going to have to change it as you saw a  
23 moment ago.

24           Q     Who thought they could solve it?

25           A     About this first refusal.  He's talking only

1 about legally how do you transfer the right of first  
2 refusal. I think that's what he means here. I say  
3 that based on my recollections of the discussions.

4 Q This letter --

5 A In fact, this is a new subject.

6 Q This letter is directed to the attorneys?

7 A Yeah.

8 Q From Hart Wurzburg?

9 A And he's not an attorney.

10 Q And the letter says; "understanding the  
11 options, please advise immediately what problems you  
12 wish solved for each situation"?

13 A Yeah.

14 Q Who is supposed to be advised of what  
15 problems are to be solved if you know from reading  
16 that letter? Do you know?

17 A Well, it says advise me, the town manager  
18 and other town commissioners and David Wallace, the  
19 second paragraph.

20 Q "Please advise me, the town commissioners  
21 and David Wallace within the next 48 hours  
22 specifically what conditions you wish met"?

23 A Yeah, I think under these options how to  
24 operate.

25 Q What action could the town take in order to

1 solve those problems, the town commission?

2 A If there was any violation of the  
3 resolutions, they would then supposedly prohibit it  
4 and I really think this is what he was driving at.  
5 Within the terms of the resolutions, what conditions  
6 are necessary to be in compliance. Then later on he  
7 says first refusal. Now a new subject; please also  
8 advise me about first refusal.

9 I've sat with Hart Wurzburg time after time  
10 and I know a little more his method of communicating,  
11 his thinking processes and I'll bet you he'll tell you  
12 -- that's what he would tell you. That's my best  
13 guess.

14 Q On the first page he's talking about how to  
15 set up memberships and on the back pages he's talking  
16 about how to affect the transfer --

17 A Of the first refusal. That's what I would  
18 think about reading this.

19 Q Had you had any conversations at any  
20 commission meeting where the consensus of the  
21 commission had been that there was any willingness to  
22 amend town ordinances or the resolutions --

23 A None that I remember.

24 Q -- To effect a right, or to effect a  
25 transfer of the right of first refusal?

1           A     Oh, yeah, that had come -- that specific  
2 thing had come up, yes. There was nothing  
3 specifically that said we had that right in the  
4 resolutions.

5           Q     So had there been a consensus of the  
6 commission's opinion that there would be a willingness  
7 to amend the resolutions to allow that to occur?

8           A     I don't think so. I don't recall it but  
9 there were questions as to whether -- even if there  
10 had been a consensus, whether it could be done.

11          Q     Do you recall receiving a copy of this  
12 letter back in 1989?

13          A     Well, it says town commission so I probably  
14 got it but I don't remember.

15                   (A one-page document was marked as  
16 Exhibit 60 for identification.)

17          Q     Okay. Now, I would like to hand you  
18 Exhibit Number 60 and ask you if you were the author  
19 of that?

20          A     I sure agree with it. I surely agreed with  
21 it. Yeah, I'm sure I wrote that. I don't recall how  
22 I used it. I may have read it at a meeting.

23          Q     There was a special meeting on December 8,  
24 1989. Do you recall if you circulated this or read  
25 it?

1           A     I don't recall. I would think I probably  
2 passed it out and read it both.

3           Q     Okay. Does it express your opinions as of  
4 that date?

5           A     Yes, indeed.

6           Q     All right. At the next meeting on November  
7 the 10th the commission voted not to assign the first  
8 right of refusal?

9           A     I have forgotten but okay.

10           MR. HARLLEE: Can we go back? You said  
11 December with regard to Exhibit 60. I think  
12 it's November 8.

13           MR. SYPRETT: Okay. Thank you for  
14 pointing that out.

15           Q     As it relates to Exhibit Number 60, the  
16 exhibit should be referred to as a memorandum for a  
17 special meeting November 8, 1989 written by C.M.  
18 Stewart. Did you write that exhibit, sir?

19           A     Yes, I did.

20           Q     That did that properly express your opinions  
21 that you held on that date?

22           A     It certainly did.

23           Q     After the commission voted on November the  
24 10th, and you can accept that as the date on which  
25 this vote occurred, did you hear anymore action out of

1 the Equity Group thereafter?

2 A No.

3 Q Do you know what happened to them after  
4 that?

5 A No.

6 Q Do you know whether they were still  
7 attempting to acquire the club in any fashion?

8 A I'm trying to think. The only way I would  
9 is if it got out in the newspaper but I don't remember  
10 that.

11 Q Do you recall being advised by anybody  
12 whether or not they had contacted Key Club direct in a  
13 effort to acquire either one --

14 A No, I don't remember that.

15 Q -- Or both of the golf courses?

16 A I don't remember that at all, no.

17 Q Were they having any conversation that you  
18 can recall before the town commission during the  
19 period of time that the town was discussing a general  
20 revenue bond for the entire town?

21 A I don't remember.

22 Q Do you remember that Jim Biron appeared  
23 before the town commission on -- I think it was  
24 November the 23rd and advised that on behalf of the  
25 people that he represented they opposed the town doing



1 a general revenue bond because they felt it would  
2 adversely impact their property values in the PD?

3 A I really don't recall it but I don't doubt  
4 it.

5 Q Were you contacted by any persons connected  
6 with the original Equity Group during this period of  
7 time as to what actions, if any, they would like to  
8 see the commission take?

9 A No.

10 Q During this period of time, did anybody  
11 indicate to you whether or not Hart Wurzburg was  
12 having any contact with the Equity Group?

13 A No.

14 Q Do you recall that on December 12 the  
15 commission voted not to go forward with a general  
16 revenue bond issue throughout the entire town for  
17 purchase of the club facilities?

18 A I know the action was taken. I don't recall  
19 the date.

20 Q I think we can agree it was taken on  
21 December 12.

22 A Fine.

23 Q Just so you have a reference point.

24 A Okay.

25 Q Do you recall that on that same date Bob

1 Wilhelm from Arvida requested that the town waive its  
2 first right of refusal?

3 A I think I do, yeah.

4 Q So that his employees would have some  
5 present for Christmas and know they would have jobs?

6 A I believe we did so. Isn't that right?

7 Q Right. Do you recall Hart Wurzburg voting  
8 against doing so?

9 A No.

10 Q At that point in time, did you consider that  
11 there were any viable options open to the town for the  
12 town to exercise its right of first refusal?

13 A No. Once the commission had turned down the  
14 town buying it, I considered the only option left open  
15 was for the Shannon Group to take it.

16 Q During this fall throughout this period of  
17 time, did you have any unique information about the  
18 Shannon Group that indicated to you that they would  
19 not operate the club in the manner in which it had  
20 essentially been operated over the years or  
21 essentially in the manner that Arvida had been  
22 operating it?

23 A I had no information either way, no.

24 MR. CHASE: Can we clarify something in  
25 defense of the witness here, in fairness to

1 the witness here? The minutes of the special  
2 meeting of December 12, 1989 that I have does  
3 not reference Commissioner Stewart's  
4 attendance and it may be possible that he was  
5 out of town or something but we're working  
6 under the premise during the last series of  
7 questions that Commissioner Stewart was in  
8 attendance at the meetings.

9 A That's apparently why I say I don't remember  
10 any of it.

11 MR. SYPRETT: It's my recollection that  
12 yesterday we observed in the typed transcript  
13 he was there and in the minutes of the meeting  
14 he wasn't.

15 MR. CHASE: I thought that was a  
16 different commission meeting.

17 A Usually if there was a mistake like that,  
18 the minutes would have been corrected.

19 Q Let me ask you this question. Do you recall  
20 that at that meeting you got sufficiently upset at the  
21 vote that was being taken and the direction the  
22 meeting was going that you got up and walked out?

23 A Which meeting was this?

24 Q December 12?

25 A Does it say that?

1           Q     No, that's just recollection from someone  
2 who was in attendance.

3           A     I did walk out of a meeting one time but  
4 that meeting I think was when Edmundson was the  
5 chairman, or the mayor I mean. I don't recall other  
6 than once walking out, other than once in my six  
7 years.

8                     There had been occasions when the meetings  
9 had run on so long that you look over and nod at the  
10 mayor and get up and leave because you've got  
11 appointments to make or something like that.

12           Q     The transcript of the December -- Okay. On  
13 the afternoon -- maybe this will clarify it.

14                     On the afternoon of December 12, 1989 there  
15 was a special workshop that started at like 1:00.  
16 Then there was a special meeting scheduled for 4:00.  
17 The live transcript of the meeting -- the live  
18 transcript of the special workshop shows you speaking.

19           A     But not at the --

20           Q     Apparently when this was adjourned and the  
21 special meeting was thereafter called so that the vote  
22 could be taken on the consensus of opinion that had  
23 been arrived at in the special workshop, you left and  
24 said you would not be back for the meeting. Does that  
25 --

1           A     Well, that could well have happened. I may  
2 have had an appointment.

3           Q     You don't have any recollection?

4           A     I don't remember it, no. The only time I  
5 got annoyed and walked out -- I did that once -- I say  
6 was years earlier and I think I would have remembered  
7 if I was upset. I must have had some good reason.

8           Q     It was at the meeting that Bob Wilhelm made  
9 the presentation to request the town go ahead and  
10 waive its first right of refusal.

11           MR. CHASE: You mean at the meeting or  
12 workshop?

13           Q     So since you were in attendance at the  
14 meeting, you don't have any specific recollection?

15           A     No, I'm saying I don't remember any of this,  
16 really.

17           Q     As of that date, at the end of the workshop  
18 when the consensus of opinion was that the vote was  
19 going to be against going forward with the general  
20 revenue bond, was it your opinion at that time that  
21 the town had no feasible way to exercise its first  
22 right of refusal between that date and December 26  
23 when it would expire?

24           A     Right, yes.

25           Q     You didn't cast a vote because you left. I

1 would like to show you a letter by Mr. Christiansen to  
2 Mr. Dietz, which has been marked Exhibit Number 40,  
3 and ask you if you would read it, please, sir. Have  
4 you completed reading Exhibit Number 40?

5 A Yes.

6 Q Did you authorize the town attorney to send  
7 that letter?

8 MR. CHASE: Object to the form of the  
9 question to the extent it requires such  
10 authorization.

11 A Me?

12 Q Yes.

13 A You are suggesting that me personally --  
14 that I personally by myself?

15 Q Yes, sir.

16 A I can't imagine it.

17 Q Okay. No, you didn't?

18 A Well, I just thought you must have some  
19 reason to think so.

20 Q I'm just trying to find out who did and you  
21 are the third person I have eliminated if you say no.

22 A I think that there -- whether it was a  
23 workshop or whatnot, I believe this was discussed at a  
24 meeting and as so often occurred, if there was a  
25 general consensus at the meeting, the attorney would

1 be instructed and would proceed. That's what I think  
2 happened.

3 Q If you know, I would like for you to tell  
4 me. If you don't recall one way or the other, I would  
5 rather you just simply tell me. First off, did you  
6 individually authorize the attorney to send this?

7 A No.

8 Q Did you request Al Cox to have the attorney  
9 send it on this date?

10 A No.

11 Q Do you have specific recollection of a  
12 meeting on or about November 30, 1989 at which this  
13 was discussed and this was authorized to be done?

14 A I do not know the date but I know that we  
15 got the Van Voris letter and we discussed it and to  
16 me, that was exactly what we said to do. That's my  
17 recollection. Now, what day we did it or how we did  
18 it, I don't know.

19 Q You got the Van Voris letter?

20 A Wasn't there a Van Voris letter mentioned  
21 here? Well, anyway, there was a letter from Van Voris  
22 that gave the rationale for this. Van Voris' letter  
23 recommended that we do this and we discussed the Van  
24 Voris letter at a meeting and then Scott proceeded to  
25 do it.

1           Q     The reason I asked you the question is  
2 because I have reviewed the minutes of the meetings  
3 around this point in time and this subject matter is  
4 not discussed in any of the meetings immediately  
5 preceding this date.

6                     It says that this letter was written -- in  
7 the first paragraph it says quote; "in reviewing the  
8 August 28 agreement, the Town of Longboat Key has  
9 noted that under the provisions of Section 30."

10                    That agreement was reviewed the first week  
11 or the second week in September, 1989. What I'm  
12 looking for is who precipitated the mailing of this  
13 letter on this date? Do you know?

14                    MR. CHASE: I have no objection to the  
15 question but I do have objections to the  
16 attorney's characterization that he has  
17 reviewed the records and/or minutes  
18 surrounding the date of that exhibit and found  
19 no reference as to this letter or  
20 authorization of this letter or the topic or  
21 subject matter of this letter. My concern is  
22 I don't know whether that's factual or not,  
23 with all due respect to counsel.

24                    Q     If there was no conversation reflected in  
25 the minutes of any meetings preceding this date, do



1 you know who authorized it?

2 A I do not know but I believe that it was the  
3 commission as a whole that authorized it and it may  
4 have been in July, August. I don't know how much  
5 earlier, because I remember a letter from Van Voris or  
6 perhaps -- maybe it wasn't a letter. Maybe Van Voris  
7 came down and spoke to us. I don't really remember.

8 Q Do you recall that that may very well have  
9 happened either in March or April of 1990 preceding  
10 the filing of a lawsuit over this tee time issue?

11 A I don't know.

12 Q Okay. So if it does not appear in the  
13 minutes of any meeting that the commission through a  
14 consensus of opinion authorized the mailing of this  
15 letter on this particular date of November 30, 1989,  
16 then you don't know who precipitated the sending of it  
17 on that date?

18 A No, I don't.

19 Q Okay. Do you recall seeing the ad that's  
20 been marked Exhibit 2A in the newspaper on April the  
21 5th, 1990 in the Longboat Observer?

22 A I don't remember the ad but I remember this  
23 financial support part. I guess I must have seen the  
24 ad.

25 Q Did you go to that meeting at the Holiday

1 Inn?

2 A No.

3 Q Did you send them the financial support  
4 requested?

5 A I sent in a check to a trust fund. I don't  
6 remember how much it was but I sent a check to them.

7 Q They asked for \$250.00. Is that what your  
8 check was for?

9 A I don't know. It could have been. I just  
10 don't remember the amount.

11 Q Did you attend the meeting at which these  
12 matters were discussed?

13 A No, no, I didn't. I never go to those  
14 things.

15 Q Why did you send in a check?

16 A As a property owner.

17 Q Did you send in a check based upon what you  
18 read in the newspaper here in this article?

19 A I don't know. Frankly, I really don't. Let  
20 me read this and see if I can remember it.

21 Q Sure.

22 A Yes. I think it was -- what this says -- I  
23 think it was -- it was based on what I just read.  
24 Again that rings a bell once I read it.

25 Q Did you look at the names of the people

1 across the bottom?

2 A I just did.

3 Q Did any of those persons contact you and  
4 discuss the contents of this notice with you?

5 A No.

6 Q Did any of those persons solicit the funds  
7 from you personally?

8 A No.

9 Q You sent the funds in based upon what you  
10 read on this?

11 A Yes, and I never heard anything further.

12 Q Have you contributed to them only the one  
13 time?

14 A Once, once only, yeah.

15 Q Do you have any knowledge as to what the  
16 status of that lawsuit is right now?

17 A No, no. Then I followed it in the newspaper  
18 reports and once again, they were taking a tack that I  
19 thought was not going to work.

20 Q Why did you contribute to it?

21 A Well, as a property owner -- I was no longer  
22 a commissioner. I was a property owner. I would like  
23 to protect my property and know under what conditions  
24 Shannon is going to operate. Are they going to comply  
25 with my version that I've given here today of the

1 rules, and we weren't able to get an answer otherwise.

2 Q We who?

3 A We property owners.

4 Q Did you ever contact anybody at Shannon  
5 Group to learn from them what they intended to do with  
6 the operation of the club?

7 A No.

8 Q Did you ever contact them while you were  
9 sitting as a commissioner to learn that?

10 A No.

11 Q At any point in time before contributing to  
12 this group, did you ever contact them and make that  
13 inquiry?

14 A No.

15 Q Upon what did you base any belief that they  
16 would operate the club significantly or substantially  
17 differently than Arvida had?

18 A Well, just what it says there. When you  
19 invest \$23,000,000.00, you're supposedly going to try  
20 and make a profit out of it and pay back your  
21 23,000,000.

22 Arvida had no 23,000,000. I put in one of  
23 memos that they even paid cash, Arvida, for all the  
24 facilities they put in. When they would put nine more  
25 holes, they would write it off that year. They didn't

1 have any problem of a capital investment or a debt.

2 Now, someone comes along and has a big debt.  
3 They are going to have to change things. That's what  
4 this says and that's what I believed as a property  
5 owner.

6 Q And were you of the opinion they did or  
7 didn't have the right to do that as the new owner of  
8 the club?

9 A I believed in my own mind what I believed  
10 even when I was a commissioner, that the resolutions  
11 were the zoning laws. They were attached to the title  
12 deeds and they had to be complied with.

13 Q Was there anything in the resolutions that  
14 prevented Arvida from selling the property?

15 A No.

16 Q Was there anything in the resolutions that  
17 dictated the price at which Arvida had to sell it?

18 A Not dictated it.

19 Q Was there anything in the resolutions that  
20 limited the price which they could offer that property  
21 for?

22 A I believe that the resolution stating that  
23 it was not to be primarily commercial leaves doubt  
24 that paying that much money will comply with that  
25 provision of the resolution. That's my personal view.

1 I'm not giving a legal opinion.

2 Q You went out of office in March of '90?

3 A Uh-huh.

4 Q You have to give me a verbal answer for her.  
5 Yes or no.

6 A Yes, yes.

7 Q At the time you contributed you were just a  
8 private citizen then?

9 A I didn't remember the date until I looked at  
10 this but obviously I was because that is -- that says  
11 April.

12 Q After leaving office have you had any  
13 conversations with any of these persons that formed a  
14 Course and Land Society --

15 A No.

16 Q -- Concerning how that organization came  
17 about?

18 A I told you that at some point I sent a note,  
19 I don't remember when, a handwritten note that I  
20 thought they should be filing for property owners not  
21 for members if they were going to do anything at all.  
22 That's the only thing that ever happened, to my old  
23 student. I told you that earlier.

24 Q Were you aware of the fact when you sent  
25 your money in that the purpose of this meeting was to

1 solicit funds to file suit before the scheduled  
2 closing of April 30, 1990?

3 A I don't think it says that in there; does  
4 it?

5 Q I don't know whether it says it in here or  
6 not but were you aware of --

7 A I knew nothing except what you find on that  
8 piece of paper.

9 Q As a banker --

10 A I didn't talk to anybody.

11 Q As a banker, were you aware of the fact that  
12 the filing of a lawsuit before the closing could have  
13 an impact upon the ability of the parties to go  
14 forward with the closing and the lender to  
15 participate?

16 A First of all, I did not know about the  
17 lawsuit and having no knowledge of it, I gave no  
18 consideration to that and I didn't know it was going  
19 to happen. What I read there is they were going to  
20 try to define what Shannon's obligations were and  
21 enforce them.

22 Q How did you think that meant they were going  
23 to try to define it?

24 A Continue with what Van Voris had been doing.

25 Q What?

1           A       Defining what the resolutions meant and that  
2 required going to court if it couldn't be done by  
3 agreement.

4           See, those memorandum of understandings,  
5 which again I didn't think were very good, they were  
6 done by discussing with Arvida, and then they'd say,  
7 okay, we understand one, two, three, four, five. I  
8 thought it was possible that that might be done and if  
9 that didn't, I'm sure I would have thought it would be  
10 legal but I didn't know about any dates.

11          Q       When did you learn that the Course and Land  
12 Society intended to file suit against Arvida before  
13 the closing?

14          A       I don't remember that I ever knew that. I  
15 have no recollection of that.

16          Q       Did you ever talk to any persons who went to  
17 the meeting --

18          A       No.

19          Q       -- That you did not go to?

20          A       No.

21          Q       You knew absolutely nothing about what they  
22 were going to do other than what's contained in this  
23 ad?

24          A       Yes.

25          Q       And you sent them \$250.00?



1 A Yes.

2 Q To do that, whatever it was?

3 A Peanuts, pretty cheap, if that would make  
4 something happen.

5 Q They made something happen.

6 A Well, I meant something that they say in  
7 here. I couldn't get anywhere when I was on the  
8 commission getting things defined. So I thought maybe  
9 this would do it.

10 Q Did you recognize that the Course and Land  
11 Society Organizing Committee were made up of the same  
12 people or had the same people in it that had been in  
13 the Equity Group for purposes of forming the  
14 not-for-profit corporation?

15 A Jim Biron is the same.

16 Q Bob Hulderman, Jim Biron, Willingham Smith?  
17 Did you notice that they were the same people?

18 A Well, I certainly knew that Biron was. I  
19 didn't pay much attention to the others but there is  
20 no question I knew Biron was the same.

21 Q Have you had any conversation with any of  
22 those persons concerning whether or not during the  
23 fall of 1989 they had any contact with Hart Wurzburg  
24 or any other commissioners concerning that  
25 commissioner's disposition to support their positions?

1           A       No, and the few that I did know, Harry  
2 Nitzberg and Willingham Smith, and -- well, those two  
3 anyway -- they live fairly close by. They were very  
4 annoyed at my stand about the equity. So we didn't  
5 really meet and talk at all. I never saw the guys  
6 except at a distance. I've been tossing one little  
7 bit of interest. Off the record.

8                   MR. SYPRETT: You can go off the record.

9                   (A discussion was held off the record.)

10                  MR. SYPRETT: No other questions.

11                  MR. HARLLEE: I've got a couple.

12                               CROSS-EXAMINATION

13                  BY MR. HARLLEE:

14                  Q       Mr. Stewart, I'm John Harllee and I  
15 represent Edwin J. Biron, Jim Biron and Robert  
16 O'Brien, Bob O'Brien and Henry H. Nitzberg, Harry  
17 Nitzberg and George S. Heller in this lawsuit. Do you  
18 know George S. Heller?

19                  A       No.

20                  Q       You never met him?

21                  A       I certainly didn't notice him.

22                  Q       To your knowledge, have you ever had any  
23 communications from Mr. Heller about anything?

24                  A       No.

25                  Q       Do you know Robert O'Brien?

1           A     No.

2           Q     Have you ever had any communications from  
3 Mr. O'Brien?

4           A     No.

5           Q     Okay. I believe you testified that you know  
6 Mr. Biron and Mr. Nitzberg?

7           A     Yeah. I've only said hello to Nitzberg but  
8 I've talked a lot to Biron because he was in my class.

9           Q     So have you ever had any communications  
10 about the issues that involved the Equity Group or the  
11 Longboat Key Club during the latter part of 1989 and  
12 early 1990 with Mr. Nitzberg?

13          A     Nitzberg, no.

14          Q     And if I understand it, outside of town  
15 commission workshops or actual meetings, you haven't  
16 had any communications from Mr. Biron; is that  
17 correct?

18          A     Well, the one thing I did say was I sent a  
19 note to him at one time from what I saw in the paper.

20          Q     But you didn't have any from him to you?

21          A     No.

22          Q     All right. Now, earlier you had testified  
23 something that the town was considering and there were  
24 a number of options on the table with regard to the  
25 Longboat Key Club after Arvida gave its notice in

1 August of '89. Could you just go through and  
2 summarize each one of those options as you remember  
3 them?

4 A Well, the first one was a recreational  
5 district which is provided for under the Florida  
6 statutes. You don't need details about that.

7 Q Just generally tell me.

8 A It would be owned by the club if they bought  
9 it. The club would be owned by the property owners in  
10 the two PUDs, one either jointly or the two  
11 separately. The financing would be done by revenue  
12 bonds and the last recourse would be to the owners, to  
13 the property owners, so there would be a secondary  
14 liability there.

15 In order to issue such bonds there has to be  
16 a minimal public purpose established and so,  
17 therefore, there would have to be some kind of  
18 provision such as late afternoon play for people who  
19 lived on the key. It wouldn't be that they would have  
20 the same rights but otherwise, you couldn't get your  
21 bond certified.

22 Q Okay. That was the option that you favored?

23 A Yes. The second option then was -- that I  
24 did not consider an option but the town thought it was  
25 an option, the members thought so, was an equity club

1 that current members -- this was first suggested by  
2 Mr. Wilhelm at a meeting -- that current members would  
3 have shares in the club. They would issue shares.  
4 They would then have to sell those shares, at least in  
5 this one they proposed, sell them back to the Equity  
6 Group and the group could reissue them to new people.  
7 No one could come in if there were no shares available  
8 in the kitty.

9 Then there was an attempt to have a second  
10 -- what I call a second class membership that they  
11 would not have all the rights, would not participate  
12 in the ownership in any way, wouldn't be able to play  
13 quite the same, and that to me was in violation of  
14 their resolutions. The third way was for the town --

15 Q Excuse me. Let me interrupt before you go  
16 to the third one now. When you say Mr. Wilhelm, you  
17 are speaking of Mr. Robert Wilhelm?

18 A Of Arvida. He said a number of times that  
19 he hoped that what he really wanted to happen when  
20 Arvida left was the members would buy the club.  
21 That's what he really hoped would happen.

22 Q All right, sir. What's the third option?

23 A The third one was for the town itself to buy  
24 it as a public golf course and then you really would  
25 have to have more of a public purpose behind it in

1 order to finance it with town funds, town borrowings.

2 On the other hand, it would not have to be  
3 open to people from the mainland. You could have  
4 restrictions. So that was a possibility, and the  
5 fourth one, of course, was for Shannon Group to buy  
6 it.

7 Q All right, sir. Now, I believe you  
8 mentioned that there was some reason to move fairly  
9 rapidly because there was a time limitation?

10 A Right.

11 Q Could you explain what your understanding  
12 was about this time limitation?

13 A The 120 days was -- I think that was in the  
14 resolutions. The right of first refusal would expire  
15 if the town did not take that right within 120 days.

16 Well, the problem that, of course, developed  
17 on any of these first three options, there would have  
18 to be financing and with the first two of them that I  
19 mentioned, it would have to be government bond  
20 financing where you have to go to court and an awful  
21 lot of time is necessary.

22 The equity financing might not have taken as  
23 long because that could be done privately. So it was  
24 primarily the financing, although it got complicated  
25 because we couldn't get the commission to get a

1 consensus for any of these options.

2 Q That's the political process, though; is  
3 that correct?

4 A Yeah, and we never managed that process. We  
5 ended up taking option four.

6 Q Which was the closing with the Shannon Group  
7 --

8 A Yeah.

9 Q -- With Arvida? When you speak of all these  
10 other three options, were you talking about both  
11 Harbourside and Islandside?

12 A Well, there was modifications at certain  
13 times of buying one or the other but in my mind it was  
14 buying both.

15 Q All right, sir. Do you know -- after the  
16 first three options that you described were exhausted,  
17 do you know of any events by anyone, either my clients  
18 or the Town of Longboat Key or any other people to  
19 prevent the Shannon Group from closing on the  
20 transaction with Arvida?

21 A No, I've never heard of any but I can't  
22 imagine why. There would be no profit in it. Why do  
23 it.

24 Q All right. Now, I would like to reference  
25 you to Exhibit 51 again, which is the October 31, 1989

1 letter from Mr. Wurzburg to Mr. Van Voris, and  
2 specifically page 2, the first paragraph.

3 I believe when Mr. Syprett was asking you  
4 some questions, he was trying to tie the next to the  
5 last paragraph on page 2 with the different options,  
6 but is the first paragraph consistent with what your  
7 understanding was that the town or whoever was going  
8 to work within the existing resolutions?

9 A That's my understanding. I had never seen  
10 this letter before but now that I've read it, that's  
11 the way I would understand it; that they thought they  
12 could comply with 80-20. All this has to do with the  
13 resolutions, that they could comply. I've also told  
14 you gratuitously, which I shouldn't do I guess, my own  
15 view was that they could never really take care of  
16 that availability of recreation.

17 Q But at least in your presence and at any  
18 meetings that you ever attended, there was never any  
19 discussion about modification of these two  
20 resolutions; was there?

21 A No, never.

22 Q Okay.

23 A The only thing that ever came up prior to  
24 that were these memorandums of understanding which did  
25 not modify the resolutions.



1 Q Now, you also mentioned something about the  
2 Shannon Group had to make money because they had  
3 \$23,000,000.00 invested. What did you mean by that?

4 A Well, the question I think at the time was,  
5 would things have to change because of the new  
6 ownership against what Arvida did and my point was  
7 that Arvida's investment was very minor. Their  
8 capital investment was already zilch because they  
9 wrote off everything. I'm talking about accounting  
10 records.

11 So they had to get a return on capital.  
12 Most businesses try to do that. They didn't have much  
13 capital there. They rented all of the equipment.  
14 They owned some buildings and for tax purposes, their  
15 tax assessment was very low but once you take the  
16 value from Arvida today to Shannon today, the  
17 23,000,000, from say 2,000,000 to 23 or something,  
18 you've got to change something. You've either got to  
19 get a lot more members or you've got to charge a lot  
20 more or do something in order to pay off.

21 Q Was that a concern of the town commission  
22 when it was investigating the first three options that  
23 you listed?

24 A How do you mean that?

25 Q The fact that the Shannon Group would be

1 coming in and paying 23,000,000 would necessarily  
2 increase the costs or have more members, et cetera?  
3 Was that a concern of the town commission when it was  
4 investigating those first three options that you gave  
5 us?

6 A Oh, yeah because a lot of times at these  
7 meetings it was said that if the recreational district  
8 or the town owned it or even if there could be an  
9 equity club, any of those three, it would not be to  
10 maximize profits. They just merely would have to take  
11 care of the costs involved. The profit element would  
12 disappear.

13 Q So in theory I suppose then it would make  
14 the club more financially accessible to people than it  
15 would be the other way?

16 A Right.

17 MR. HARLEE: I don't have any other  
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. SYPRETT:

21 Q Okay. He just asked you a question if  
22 Shannon bought it, it would be less financially  
23 accessible to the people than if the Equity Group  
24 bought it and you said yes, that's right?

25 MR. HARLEE: No, I didn't ask that.

1           Q     Mr. Harllee just asked you the question that  
2 if the club sold under either one of the first three  
3 options that you gave; that is, the rec. district, the  
4 general bond revenue from the town or to the equity  
5 club, that it would be more financially accessible to  
6 the members of the town than if Shannon bought it. Is  
7 that what you agreed with?

8           A     Yeah, and I thought I tried to put it in --

9           Q     Let me ask you some specific questions. If  
10 the Equity Group buys it, they're paying  
11 \$23,000,000.00 just like Shannon; are they not?

12          A     But they don't have to add a profit on top.  
13 That's what I wanted to say. That's my understanding.  
14 There's a difference.

15          Q     Had the Equity Group committed not to add  
16 any profit on top?

17          A     Equity groups are going to be taxed if they  
18 do and I don't think they were out to do that.

19          Q     How many dollars are you thinking about or  
20 talking in terms of if that were to occur?

21          A     Well, I do not know what the normal profit  
22 margin is on a golf course but if it's 15, 20, 30, 40  
23 percent, whatever it is, that is higher if it is run  
24 for profit, more costly.

25          Q     And that in some manner breaks down amongst

1 all the members of the club; is that right?

2 A The breaks down because all of the income  
3 comes from members of the club, yeah.

4 Q And if Shannon owns it, it would break down  
5 not only amongst the members of the club but the other  
6 commercial aspects of play involving the  
7 Inn-On-The-Beach guests; is that true?

8 MR. CHASE: Object to the form of the  
9 question, improper predicate.

10 Q If you know.

11 A I would say the Inn-On-The-Beach guests I  
12 think is peanuts. I don't think that's large at all.

13 Q Do you know that for a fact?

14 A That's my assumption.

15 Q Or your assumption?

16 A Out of general knowledge.

17 Q If Shannon buys the club, the people who are  
18 already members would not have to pay any new  
19 initiation fee. They would simply continue their  
20 membership by paying the annual dues; is that correct?

21 A I didn't know what they were doing.

22 Q Did you have any reason to believe that it  
23 would be anything other than that during the spring of  
24 1990 or the fall of 1989?

25 A I made the assumption -- the reason I sent

1 that check in, as I told you, is that they were going  
2 to have to somewhere on their P & L accounts increase  
3 revenues and I assumed that that meant they were going  
4 to probably increase the annual fee and perhaps  
5 considerably.

6 Q No, sir. That wasn't my question. Did you  
7 understand or have any reason to believe that the  
8 people who were already members were going to have to  
9 pay a new initiation fee --

10 A Not new.

11 Q -- To this club to join?

12 A No.

13 Q If the Equity Group bought it, everybody who  
14 was a member who wanted to become an equity member was  
15 going to have to pay at least \$18,000.00 to do so;  
16 wouldn't they?

17 A That would be an investment that would  
18 increase in value and they would do it willingly.

19 Q How does that increase?

20 A I don't think the equity club member would  
21 have gone through, anyway.

22 Q If it did go through, they were going to  
23 have to pay \$18,000.00; were they not?

24 A Yeah, and apparently they signed up and were  
25 happy to do it.

1           Q     I am not asking whether they were happy to  
2 do it or not. We are talking about whether it was  
3 going to be more financially accessible to these  
4 people if the Equity Group bought it than if Shannon  
5 Group bought it. If the Equity Group bought it, it's  
6 going to cost each one of them \$18,000.00 to maintain  
7 their rights to play?

8           A     But the Equity Group also would allow this  
9 other kind of membership where they would not be  
10 charging all that.

11          Q     And that other kind of membership was going  
12 to be restricted so that they couldn't play on  
13 Harbourside unless they lived in Harbourside; is that  
14 correct?

15          A     I think that was what we saw there.

16          Q     And in fact, now those members can play on  
17 either side without paying any new initiation fee,  
18 isn't that correct, under Shannon?

19          A     But under the equity where they played had  
20 nothing to do with the finances. The finances would  
21 still be less. I think my answer was correct  
22 technically.

23          Q     What you are telling me is that you assumed  
24 that they would be paying more because Shannon would  
25 be making a profit because they are a private

1 enterprise --

2 A Yes.

3 Q -- For annual dues? These same members,  
4 however, would not be paying the front end \$18,000.00;  
5 is that correct?

6 A The secondary members' limited membership  
7 under equity would not be paying that, right.

8 Q And you make the assumption that the Equity  
9 Group would be able to manage the club and set up the  
10 management so that it would run as efficiently as the  
11 Shannon Group would be able to do so, that that would  
12 be the same for both of them?

13 A They said they would be hiring one of the  
14 big national firms that manages golf clubs. So I  
15 would assume that.

16 Q You are looking at --

17 A I'm still guessing equity.

18 Q You are looking at the investment being the  
19 same. You are looking at the expenses of operation  
20 being the same. Your only concern lay in the issue of  
21 profit margin?

22 A Right, and that's why in my memos I kept  
23 bringing it up, not primarily commercial.

24 Q Was there a direct monetary advantage in  
25 your opinion to the people in support of the Equity

1 Group if they were able to acquire this club?

2 A I'm sure that they thought so, that the  
3 equity shares would go up in value.

4 Q You just told me a few minutes ago in your  
5 opinion they would go up in value?

6 A Yeah.

7 Q I thought I heard you say that.

8 A I just said that now; didn't I?

9 Q Yes. Well, you said in their opinion, they  
10 would go up in value. That was also your opinion;  
11 wasn't it?

12 A Yeah. If they hold them long enough with  
13 inflation the way the government is run in Washington,  
14 it's bound to.

15 Q You were asked the question whether or not  
16 the Equity Group, to your knowledge, continued to try  
17 to acquire the club after the town commission voted  
18 not to assign its right.

19 MR. HARLEE: I didn't ask that question.

20 MR. SYPRETT: Do you want to tell me what  
21 your question was along those lines?

22 MR. HARLEE: I asked if he was aware of  
23 any efforts by the Equity Group to prevent the  
24 closing of the transaction.

25 A There's no profit to it. Why would they?



1 Q Okay. If it was financially to their  
2 advantage to buy it if they could get an assignment of  
3 the first right of refusal, why would it not be to  
4 their advantage to buy it if they could buy it from  
5 Shannon or anybody else?

6 A They couldn't get the right of first  
7 refusal. That was gone.

8 Q They could go direct to Shannon. Was there  
9 any reason why they wouldn't be able to buy it from  
10 Shannon if they talked Shannon into selling it?

11 A No.

12 Q Would there be any reason why it wouldn't be  
13 to their advantage to buy it if they could create a  
14 circumstance under which Shannon was willing to sell  
15 it to get out from under the circumstance?

16 A Well, that gets into such conjecture, it is  
17 hard for me to believe that that could happen. If you  
18 are writing a novel, yes, it could happen.

19 Q Tell me why then the filing of the lawsuit  
20 by this Equity Group that became known as the Course  
21 and Land Society before the closing date was such a  
22 significant factor?

23 MR. CHASE: Object to the form of the  
24 question. This witness said as far as he was  
25 concerned it was not a significant factor and

1 he had no idea as to whether the lawsuit was  
2 filed before or after and it never entered his  
3 mind. I don't know how he is going to answer  
4 that question.

5 A I wasn't going to use those words but I  
6 would say the same thing again. I don't know how that  
7 could be answered.

8 Q Did you share the view of some of the other  
9 commissioners that the potential enhancement and  
10 increase in value of this course over the next 10 to  
11 20 years could be double what was being paid for it?

12 A No, I didn't have any figure in mind. All I  
13 was concerned about was protecting the property owners  
14 so that they didn't lose in value. If there was not  
15 assured availability then the property owners were  
16 shafted right away.

17 Q Do you know what was motivating this Equity  
18 Group in their desire to purchase?

19 A They wanted a nice, little, exclusive club,  
20 limited membership. I heard -- well, I mentioned  
21 earlier Chuck Brown. He said that at the meetings  
22 basically.

23 Q They essentially wanted to play on  
24 Harbourside without having it open to other people on  
25 Longboat Key?

1           A     That's right. Nobody could come there  
2 except their friends, and I didn't mention this  
3 earlier but because it did not succeed,  
4 Ex-commissioner Brown sold his house and moved away.

5           Q     Chuck Brown?

6           A     Yeah, and found another place that had a  
7 golf course that he could put up with. Some people  
8 take these things very seriously.

9           Q     Do you recall when the town was talking  
10 about the bond issue, the general revenue bond issue  
11 at the tail end there?

12          A     Uh-huh.

13          Q     Do you recall that the general revenue bond  
14 was going to be for \$29,000,000.00 rather than  
15 \$22,000,000.00?

16          A     First of all, I think it was a general  
17 obligation not revenue. I don't remember the amount.

18          Q     Do you recall the issue was going to be  
19 29,000,000 rather than 22,000,000?

20          A     No, I don't recall that at all. I don't  
21 know why that would be. There must have been some  
22 reason if that was so but I don't know what it was.

23          Q     It's in the minutes of one of the meetings.  
24 Does it ring a bell for you that the bond issue that  
25 we are talking about had to be, I think it was at

1 least \$6,000,000.00 higher than the cost of the course  
2 to create a reserve fund as a part of the bonding  
3 requirement?

4 A No, I don't remember that but okay. I would  
5 have argued that if it had gone through. The general  
6 obligation from Longboat Key should rate pretty high  
7 without that.

8 Q But you do realize what was being discussed  
9 there was simply a bond secured by the revenue for the  
10 course and not the general taxing power of the town?

11 A Well, that's what I said. I thought it was  
12 a general obligation. I didn't know anything about it  
13 being a revenue for the town to buy it. The  
14 recreation district would be a revenue bond.

15 MR. SYPRETT: No other questions.

16 Thank you, sir.

17 (WHEREUPON, the right to read and sign  
18 was waived.)

19 (WHEREUPON, this deposition concluded  
20 at 5:00 p.m.)

21  
22  
23  
24  
25

1 STATE OF FLORIDA )  
2 COUNTY OF SARASOTA )

3 I, DEBRA L. FINEHOUT, Court Reporter, Notary  
4 Public, State of Florida at Large,

5 DO HEREBY CERTIFY that the foregoing  
6 deposition of CARLETON M. STEWART was taken before me  
7 at the time and place set forth in the caption  
8 thereof; that the deponent therein was by me duly  
9 sworn on oath, by stipulation of all attorneys, to  
10 testify the truth; that the proceedings of said  
11 deposition were stenographically reported by me; and  
12 that the foregoing pages numbered 1 through 124,  
13 inclusive, constitute a true and correct transcription  
14 of said proceedings as had.

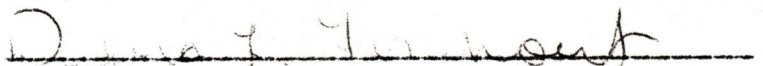
15 I FURTHER CERTIFY that I am not a relative  
16 or employee or attorney or counsel of any of the  
17 parties hereto, nor a relative or employee of such  
18 attorney or counsel, nor do I have any interest in the  
19 outcome or events of the action.

20 I further certify that the original and one  
21 copy has been delivered on this 13th day of March,  
22 1992, to Jim D. Syprett, Esquire, of Syprett, Meshad,  
23 Resnick & Lieb, 1390 Main Street, Suite 1100,  
24 Sarasota, Florida 34236 and a copy has been sent this  
25 same day to Attorney Chase.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BE IT FURTHER ADVISED THAT AFTER DELIVERY OF SAID ORIGINAL, ANY CHANGES, ALTERATIONS OR ADDITIONS MADE THERETO ARE NOT THE RESPONSIBILITY OF THIS REPORTER.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 11th day of March, 1992, at Sarasota, Sarasota County, Florida.



DEBRA L. FINEHOUT, Notary Public  
State of Florida at Large  
My commission expires April 30, 1994

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: APRIL 30, 1994.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

GENERAL: To be advised as to the absolute and the probable rights of the Town under the applicable resolutions.

SPECIFIC TOWN OBJECTIVES:

1. Club facilities to be for benefit of GPD and PD residents (80%) and other LBK residents (20%).
2. Assure continued adequacy and availability of club facilities for PUD owners and residents.
3. Property owners and residents of the GPD, PD and others in LBK to have vested rights for priority application for membership.
4. All development rights having been switched to beachfront property and other property available for development, club land to remain as private open space.
5. Clubs not to be operated primarily as commercial enterprises. (Not to operate at a deficit but not to operate to maximize income and profit for owner.)
6. Clubs not to be open to the general public or any segment of the general public.
7. Clubs to be operated as private membership clubs.
8. Club rules to be appropriate as judged by the Town.
9. Non-members to use club facilities only as guests of members
10. Separate the clubs as provided in the two resolutions. (Timing at Town discretion?)
11. Establish a means of enforcing the terms of the resolutions, particularly membership lists, waiting lists, preferences in starting times and use of tennis and golf facilities, etc.
12. Other objectives that may arise during a review by counsel.

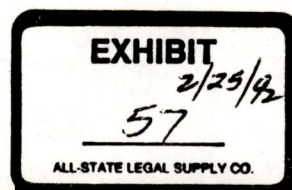
Exceptions to the above have and are permitted until the clubs are operating economically to full capacity as requested in Arvida's letter of July 22, 1980 specified by the P & Z Board as a basis for favorable recommendation to the Commission. Having received ample consideration by density shifting and development credit for recreational "facilities available to residents" and with the 99 year open space requirement and the restriction on commercial operations, the land per se has no value beyond the capital improvements not yet fully amortized. At the time Resolution 80-21 was being discussed Arvida noted that the restrictions being imposed on its title to club facilities were the equivalent of a conveyance of land.

In view of his experience in this field of law and his participation in the original resolution discussions, the legal views of Mr. Norway Pickett should be given careful consideration.

Incl. - Extract P & Z 11/27/87

Above - my "desk memo" written in early 1988.

CC FULL DISTRIBUTION 8/29/89



*C. Stewart*  
8/29/89

Memo

The question often arises as to why the LBK Club under the zoning resolutions was to be owned and operated by a corporation. My understanding of the historical events is as follows:

For vital commercial reasons ARVIDA needed permission to build on the beach the maximum number of high rise condo units. To achieve their objective the original negotiating proposal was to shift platted densities to the beach area and to donate club land to the Town (see September 6, 1977 letter).

ARVIDA was concerned that the Club be well managed as part of their marketing plan. They also wanted credit against required recreation facilities at each building site.

The Town wanted the previously platted land to remain "private" open space, i.e. no development permitted. Secondly, the Town wanted continued, assured availability of recreational facilities for owners and residents of the PUDs.

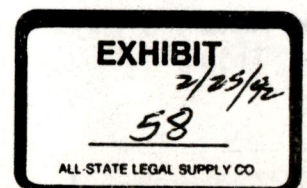
Agreement was reached that ARVIDA would own and operate the Club(s) with members from the GPD originally plus 20% as an allocation for other LBK residents, at that time largely current members from Country Club Shores. ARVIDA forecast operating losses for the initial years and asked approval for off-key memberships. This was approved with the requirement that the club not be primarily commercial - that is, break-even or modestly profitable.\* ARVIDA bookkeeping was on a cash basis so that there were no deferred capital improvements ever to be amortized during the period of their ownership.

I presume that the golf course land was not deeded to the Town in order to avoid the operating responsibilities and the public purpose complications that would arise. Mr. Morway Pickett and Mr. Albert Paulhaber could confirm or clarify.

CMS 11/19/91

\* LBK Zoning Code 158.006: "COMMERCIAL USE" An activity involving the purchase and sale or exchange of goods, commodities or services carried out primarily for the purpose of gaining a profit.

cc Mr. David P. Perrson  
Mr. Albert L. Green





23 October 1989

cc Stew Fil  
C.M. Stewart  
ATC

Memorandum:

LBK Club (s)

Exhibit A to Resolution 88-01 (and 88-02) states that the Town does not believe that the 1979/80/81 resolutions permit the accomplishment of an equity conversion.

On January 26, 1988 the Commission informed each member of the LBK Club as follows:


"The Town Commission believes the equity conversion of either club facility would violate both the wording and spirit of Resolution 80-21 and 81-13.....

...an equity conversion of the club facilities would raise serious questions regarding the assured availability of recreational facilities to PUD residents, which the Town Commission relied on when it authorized 50% reductions in the scope of recreational amenities constructed at each of the condominium facilities within the PUD's.....

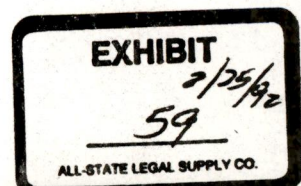
...the Commission has included a provision in the new right of first refusal which requires JMB to notify the Town at least sixty (60) days before initiating an equity conversion to allow the Commission sufficient time to initiate litigation to contest JMB's right to do so....."

On October 16, 1989 the representative of the equity conversion group stated that a share member could assure the buyer of his PUD property that club membership could be attached to the property in preference to any other PUD resident on a waiting list. This conformed to his circular letter of October 11, 1989 stating: "The structure of the club would be similar to the equity clubs most of us are familiar with." The Town Attorney expressed disagreement stating "the Town must mold whatever it did to fit the resolutions.

There is no documentary evidence that an equity club could or would comply with the resolutions. Claims for shareholder rights such as the one above lead to the conclusion that a change in the resolutions is expected.

  
C.M. Stewart  
Commissioner

cc Commissioners  
Full distribution



SPECIAL MEETING - 8 NOVEMBER 1989

As late as January of last year five of the present commissioners informed club members and town residents that "equity conversion of either club facility would violate both the wording and the spirit of Resolutions 80-21 and 81-13." Arvida, club members, developers and the public relied on that statement when making property investment decisions.

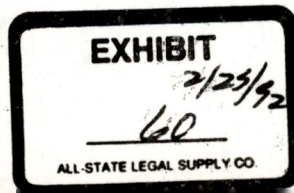
We are now reversing and propose assuring a court that the terms of this equity conversion honors the resolution requirement that property owners in the PUDs have an assured availability of recreational facilities. Special Counsel has said the proposed terms seem to comply but that only a court could make a determination.

The intent of the Town for many, many years has been that such facilities be available at a reasonable cost, the club not being operated primarily for profit. However a new factor has been added. These recreational facilities will only be available if the property owner becomes an investor. It is like a tie-in sale, you only keep your rights if you buy something else. This may be found by a court to be legal, but there is no doubt in my mind but that the spirit of the resolutions is being violated.

The same resolutions gave grandfather rights to over a thousand golf, tennis and social members who do not live in the PUDs. While Special Counsel suggested that residence on the key indicated financial capability to invest in an equity share, this is not so with some and others have life expectation and various personal situations to face. Use restrictions on limited memberships amount to a partial withdrawal of the grandfather rights pledged in the resolutions. This may be legal technically, but the spirit of the commitment is broken.

There has been comment from commissioners regarding personal benefit to be gained by equity conversion. I add my personal view: an equity conversion as proposed would most likely add value to my property. Converting only the Harbour-side facilities would probably add even more. So it would also be to my personal benefit to support a voluntary assignment of first refusal rights.

However, my personal standards require me when holding the office of town commissioner to vote against such action.



(C.M.Stewart)