

1 CAUSE NO. DC-07-12490
2 DOUBLE DIAMOND, INC.,) IN THE DISTRICT COURT
3 WHITE BLUFF PROPERTY)
4 OWNERS ASSOCIATION, INC.,)
5 Plaintiffs,)
6 VS.) DALLAS COUNTY, TEXAS
7 DANIEL SATURN,)
8 Defendant.) 68TH JUDICIAL DISTRICT
9

10 *****

11 ORAL DEPOSITION OF
12 ROBERT MICHAEL WARD
13 FEBRUARY 25, 2009
14 VOLUME 1 OF 1

15 *****

16 ORAL DEPOSITION OF ROBERT MICHAEL WARD,
17 produced as a witness at the instance of the defendant,
18 and duly sworn, was taken in the above-styled and
19 numbered cause on the 25th of February, 2009, from 9:10
20 a.m. to 10:50 a.m., before Detta D. Corona, CSR, CRR,
21 RMR, in and for the State of Texas, reported by machine
22 shorthand, at the law offices of Winstead, P.C., 5400
23 Renaissance Tower, 1201 Elm Street, Dallas, Texas,
24 pursuant to the Texas Rules of Civil Procedure and the
25 provisions stated on the record or attached hereto.

□

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ALSO PRESENT:

Mr. Daniel Saturn

□

3

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A G R E E M E N T S

DEPOSITION OF: ROBERT MICHAEL WARD

DATE: FEBRUARY 25, 2009

CAUSE NO. DC-07-12490

THIS DEPOSITION SHALL BE TAKEN PURSUANT TO:

(X) Notice

- 8 () Agreement
- () Court Order
- 9 () Subpoena
- (X) Rules of Civil Procedure

10

ORIGINAL TO:

11

- () Witness
- 12 () Witness's attorney
- (X) Producing attorney (Mr. Jay J. Madrid)
- 13 () Signature waived

14

NUMBER OF DAYS FOR SIGNATURE:

15

- (X) 20 days (Due March 26, 2009)
- 16 () 30 days
- () other:

17

MISCELLANEOUS:

- 19 () Any objection made by one party good for
- all parties.
- 20
- (X) An unsigned copy may be used at any trial,
- 21 hearing, or arbitration proceeding.

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7

1

P R O C E E D I N G S

2

ROBERT MICHAEL WARD,

3 having been first duly sworn, testified as follows:

4

EXAMINATION

5 BY MR. MALOUF:

6 Q. Please state your name for the record.

7 A. Robert Michael Ward.

8 Q. Mr. Ward, where do you reside?

9 A. 3716 Miramar.

10 Q. Is that here in Dallas?

11 A. Yes.

12 Q. And, Mr. Ward, by whom are you employed?

13 A. I'm employed by National Resort Management,

14 Inc.

15 (Exhibit 1 marked.)

16 Q. (BY MR. MALOUF) Mr. Ward, let me hand you

17 what's been marked as Exhibit Number 1 to your deposition
18 and ask you if you can identify that for me, please, sir.

19 A. These are bylaws of the White Bluff Property
20 Owners Association.

21 Q. And are you a homeowner in White Bluff?

22 A. Yes.

23 Q. And is the home you own currently occupied?

24 A. I don't know what you mean by "currently." You
25 mean right this moment?

□

8

1 Q. Does somebody live there?

2 A. Not full-time.

3 Q. Who lives there part-time?

4 A. My family.

5 Q. Okay. When was the last time that home was
6 used?

7 A. Last week.

8 Q. Okay. And who used it?

9 A. I did.

10 Q. Do you play golf, Mr. Ward?

11 A. Yes.

12 Q. Have you ever played golf at White Bluff?

13 A. Yes.

14 (Exhibit 2 marked.)

15 Q. (BY MR. MALOUF) Let me hand you what's been
16 marked as Exhibit Number 2 to your deposition, ask you if
17 you would identify that for me, please, sir.

18 A. These are the covenants and restrictions for
19 White Bluff 22 [sic] subdivision.

20 Q. All right.

21 (Exhibit 3 marked.)

22 Q. (BY MR. MALOUF) And Exhibit Number 3.

23 A. (Witness examines document.)

24 Q. What is Exhibit 3?

25 A. Excuse me. I didn't hear.

1 Q. What is Exhibit Number 3?

2 A. It is the consent of the directors of the white
3 Bluff property owners association.

4 (Exhibit 19 marked.)

5 Q. (BY MR. MALOUF) Okay. Your counsel this
6 morning handed me what I have marked as Exhibit
7 Number 19 -- I'm sorry. This is the first page of it;
8 let me give you both pages. I'll staple it for you.

9 Tell me if you would, please, sir, what that
10 is -- let me tell you why I ask. If you look at Exhibit
11 Number 3, there's some handwriting that says, "There is a
12 copy with the last two signatures on it somewhere." Do
13 you see that language on Exhibit 3?

14 A. I do.

15 Q. Do you know whose writing that is?

16 A. No.

17 Q. And I assume, without knowing, that that was
18 placed there with a sticky note because if you'll note on
19 Exhibit 3, Mr. Cunningham -- or Mr. Willingham's
20 signature line has been blocked; do you see that?

21 A. I do see that.

22 Q. Okay. And I just want to make sure that --
23 does that sound logical? In other words, that whoever
24 copied Exhibit Number 3 covered Mr. Willingham's
25 signature block with a little -- with a sticky note that

10

1 says, "There is a copy with the last two signatures on it
2 somewhere"?

3 A. I don't know that --

4 MR. MADRID: Objection, form. Go ahead
5 and answer.

6 A. I don't know if that happened or not.

7 Q. (BY MR. MALOUF) Okay. Well, do you know if

8 Mr. Willingham's signature block shown on Exhibit 19 on
9 the first page and then his signature on the second page
10 were added at sometime after the other five signature
11 blocks were there?

12 A. No, I don't know that.

13 Q. Okay. Thank you.

14 (Exhibit 4 marked.)

15 Q. (BY MR. MALOUF) And identify if you would,
16 please, sir, Exhibit Number 4.

17 A. This is a property owner -- a letter sent to
18 the property owners.

19 Q. Okay. Who wrote that letter?

20 A. I believe I wrote this letter.

21 Q. Okay. Did you sign it at the bottom on the
22 last page --

23 A. I did.

24 Q. All right.

25 MR. MADRID: Please make sure you let him

□

11

1 finish his question.

2 (Exhibit 5 marked.)

3 Q. (BY MR. MALOUF) And I'll hand you what's been
4 marked as Exhibit Number 5, and I will represent to you
5 that Exhibits 5 through 18 that we'll talk about
6 represent printouts from a database, Secretary of State
7 of Texas.

8 Tell me if you would, please, sir, what or who
9 is Double Diamond, Inc.

10 A. Double Diamond, Inc., is a Texas corporation.

11 Q. And who owns the shares in Double Diamond,
12 Inc.?

13 A. I believe that I own 93 percent of those
14 shares.

15 Q. And do you have an idea of who might or does
16 own the other 7 percent?

17 A. I believe it would be the ESOP employee stock
18 ownership program.

19 Q. All right.

20 (Exhibit 6 marked.)

21 Q. (BY MR. MALOUF) And Exhibit Number 6 is a
22 printout identifying a White Bluff Property Owners
23 Association, Inc. It indicates that it is a domestic
24 nonprofit corporation, meaning Texas; and its formation
25 date -- original filing date, I'm sorry, was May 29th,

12

1 1990.

2 Is that the white Bluff Property Owners'
3 Association for which we have the bylaws marked as
4 Exhibit 1?

5 A. Yes.

6 (Exhibit 7 marked.)

7 Q. (BY MR. MALOUF) And Exhibit Number 7
8 identifies an entity by the name of the Inn at White
9 Bluff, Inc. What is that entity?

10 A. That is an entity that is -- owns the Inn at
11 White Bluff.

12 Q. That's the hotel down there?

13 A. Yes.

14 Q. And who owns the stock in the Inn at White
15 Bluff, Inc.?

16 A. I believe the stock is owned in the same manner
17 that I outlined a moment ago.

18 (Exhibit 8 marked.)

19 Q. (BY MR. MALOUF) And Exhibit Number 8
20 identifies the lighthouse dining company. Can you tell
21 me what The Lighthouse Dining Company is?

22 A. It owns The Lighthouse Restaurant at White
23 Bluff.

24 Q. And what is the stock ownership of that entity?

25 A. I believe it's the same.

1 Q. As the other two?

2 A. Yes.

3 Q. Ninety-three percent is owned by you? And this
4 is not a memory test. To your recollection you own about
5 93 percent and the employee option program owns about
6 7 percent?

7 A. That's correct.

8 (Exhibit 9 marked.)

9 Q. (BY MR. MALOUF) And Exhibit Number 9
10 identifies an entity by the name of the white Bluff Yacht
11 Club, Inc. Can you tell me what that is?

12 A. That is a company that owns, as far as you can
13 own, the marina operation.

14 Q. And what is the stock ownership of that entity?

15 A. It's the same as the others, I believe.

16 (Exhibit 10 marked.)

17 Q. (BY MR. MALOUF) And, again, this is not a
18 memory test and we can check the stock registers if we
19 need to; but the white Bluff 19th Hole identified on
20 Exhibit Number 10, what is that?

21 A. That's the 19th Hole for the old course golf
22 course, I believe.

23 Q. And what is --

24 A. It could be for the new course.

25 Q. And what is -- what is the 19th Hole?

1 A. It's just a grill -- bar and grill operation.

2 Q. And what is the stock ownership of that
3 entity --

4 A. It would be --

5 Q. -- to the best of your recollection?

6 A. It would be the same, to the best of my
7 recollection, that I mentioned earlier.

8 (Exhibit 11 marked.)

9 Q. (BY MR. MALOUF) Okay. And the white Bluff
10 Marina, Inc., identified in Exhibit Number 11, what is
11 that entity?

12 A. I don't know. I testified that the yacht club
13 owned the marina, and then here's one that says marina.
14 This may be the Marina Market.

15 Q. Marina Market --

16 A. Which is a store at the marina.

17 Q. And the stock ownership in this entity, to the
18 best of your recollection?

19 A. Is the same as I mentioned earlier.

20 (Exhibit 12 marked.)

21 Q. (BY MR. MALOUF) And what is the white Bluff
22 Realty Company?

23 A. That's a company involved in marketing real
24 estate at white Bluff.

25 Q. Are you a licensed real estate broker?

□

15

1 A. No.

2 Q. Who owns the stock in white Bluff Realty
3 Company?

4 A. I'm not sure.

5 (Exhibit 13 marked.)

6 Q. (BY MR. MALOUF) And white Bluff Golf, Inc.,
7 reflected on Exhibit Number 13, what is that entity?

8 A. That would be a company that owns one of the
9 golf courses. I don't know which; it may own both.

10 Q. And the stock ownership in that corporation?

11 A. Would be the same.

12 (Exhibit 14 marked.)

13 Q. (BY MR. MALOUF) And the white Bluff Club
14 Corporation shown in Exhibit 14, what is that entity?

15 A. I don't remember.

16 (Exhibit 15 marked.)

17 Q. (BY MR. MALOUF) And the Diamond Golf, Inc.,
18 shown in Exhibit 15, what is that entity?

19 A. That entity, I believe, is an entity that
20 purchases premiums for our marketing efforts.

21 Q. Okay. What -- what does that mean?

22 A. Means they purchase the things that we give
23 away to, you know, either after people purchase or to
24 entice them to come down and purchase.

25 Q. And the stock ownership of that entity?

16

1 A. I think would be the same.

2 (Exhibit 16 marked.)

3 Q. (BY MR. MALOUF) And the National Resort
4 Management Corporation or Corp. shown in Exhibit 16, what
5 is that entity?

6 A. That's the company that I work for, and all of
7 the employees of the different corporations basically
8 work for this company.

9 (Exhibit 17 marked.)

10 Q. (BY MR. MALOUF) And the Double Diamond
11 Properties Construction Company, what is that?

12 A. Can't remember.

13 (Exhibit 18 marked.)

14 Q. (BY MR. MALOUF) And the Double Diamond
15 Utilities Company or Co., what is that reflected on
16 Exhibit 18?

17 A. That is a company that owns utility operations
18 at the various subdivisions.

19 Q. Including White Bluff?

20 A. Yes.

21 Q. Approximately how many homes are there in the
22 White Bluff?

23 A. I think there are around 700.

24 Q. Mr. Ward, how many operations does Double
25 Diamond or its related entities currently have in the

1 State of Texas --

2 MR. MADRID: Objection, form.

3 Q. (BY MR. MALOUF) By that, I mean resort.

4 MR. MADRID: Pardon me. Objection, form.

5 Go ahead.

6 A. Resorts, we have White Bluff, The Cliffs, and
7 Rock Creek.

8 Q. (BY MR. MALOUF) And how many homes are -- you
9 said you believe there are approximately 700 homes in
10 white Bluff?

11 A. Yes.

12 Q. How many lots are there on which homes could be
13 built?

14 A. Around 6,000, maybe a few more.

15 Q. And how many lots have been sold?

16 A. Basically all of the lots have been sold.

17 Q. How many homes -- on an annualized basis,
18 approximately how many homes are being constructed at
19 white Bluff on the approximately 5,300 vacant lots?

20 A. Sixty or so per year, up until this year; and I
21 think it's dropped off this year.

22 Q. All right. And at The Cliffs how many homes
23 are there approximately?

24 A. I don't know.

25 Q. How many lots approximately?

1 A. 2,500.

2 Q. And at Rock Creek how many homes approximately?

3 A. Two that I know of.

4 Q. And how many lots?

5 A. I don't know. It's a new subdivision.

6 Q. And where is it located?

7 A. On Texoma.

8 Q. What is the Eagle Rock Resort?

9 A. That's a resort in Pennsylvania.

10 Q. Does it have a subdivision similar to these
11 others that we've been discussing in terms of people
12 purchasing lots and building homes?

13 A. Yes.

14 Q. And what is The Retreat?

15 A. That is a subdivision close to Cleburne that
16 we've developed.

17 Q. Does it have a golf course?

18 A. Yes.

19 Q. It would not, however, be considered a resort?

20 A. No.

21 Q. When Double Diamond or it's related or
22 affiliated entities created White Bluff, was it
23 contemplated that Double Diamond or related entities
24 would provide services to the homeowners?

25 A. If you would define "services," I could

□

19

1 probably answer that better.

2 Q. Okay. Let me give you an example. From which
3 entity does or do the homeowners in White Bluff receive
4 their electric bills?

5 A. That would be the electric company.

6 Q. Okay. Water?

7 A. That would be Double Diamond Utilities.

8 Q. And where does Double Diamond Utility get the
9 water that it provides, or does it provide the water?

10 A. It does provide the water.

11 Q. And where does it acquire that water?

12 A. Ground well.

13 Q. So you have a pumping station of some kind that
14 treats the water and delivers it to the homeowners?

15 A. Yes.

16 Q. And how does Double Diamond Utilities determine

17 what it's going to charge for that?

18 A. We make a determination and have it approved by
19 TCEQ.

20 Q. What other services do Double -- does Double
21 Diamond or its affiliates provide to the homeowners at
22 White Bluff?

23 A. Sewer service.

24 Q. Anything else?

25 A. Well, food service I would probably count under

20

1 service.

2 Q. Food service in what form?

3 A. Two restaurants.

4 Q. All right. Golf?

5 A. I don't know if I would call that a service or
6 not. I mean, that's an activity.

7 Q. All right. So let me -- let me change my
8 question then to include services and activities. We've
9 got water, sewer, food service, golf, what else?

10 A. Liquor, we have bars, liquor, beer, and wine.
11 We have pro shops with retail operations.

12 Q. Spa?

13 A. We have a spa.

14 Q. There's a hotel there, the Inn, correct?

15 A. There is a lodging facility.

16 Q. You have condominiums? I think 25 or 30?

17 A. We -- we -- rental unit --

18 Q. Right.

19 A. -- condominiums, yes.

20 Q. What about streets?

21 A. They're maintained by the property owners
22 association.

23 Q. Okay. And, again, this is not a memory test;
24 but anything else you can think of besides water, sewer,
25 food service, golf, bars, pro shops, retail, spa, hotel

1 and condominiums at Double Diamond?

2 A. Marina.

3 Q. Marina?

4 A. And we also have retail at the Ship Store which
5 is a convenience store.

6 Q. Mr. Ward, in January of 2004 how many directors
7 were there of the White Bluff Property Owners
8 Association?

9 A. I believe six.

10 Q. And how many of those directors voted to
11 approve the consent reflected as Exhibit 3?

12 A. All six.

13 Q. Which of those directors, if any, at the time
14 were employed by or were receiving any compensation from
15 Double Diamond or its affiliates?

16 A. That would be Fred Curran, Randy Gracy, and me.

17 Q. Are you generally familiar with the duties of a
18 director of a nonprofit homeowners' association?

19 A. I would have to answer that no, because I'm not
20 familiar with all of them. I couldn't list them out.

21 Q. You're aware of the Texas law prohibiting a
22 vote by what are referred to as interested directors?

23 MR. MADRID: Objection, form --

24 A. No.

25 MR. MADRID: -- go ahead.

1 Q. (BY MR. MALOUF) You've never heard of it?

2 A. No.

3 Q. Do you serve on the board of directors for any
4 other homeowners' associations and developments of Double
5 Diamond?

6 A. Yes.

7 Q. Which ones?

8 A. White Bluff -- well, The Cliffs, The Retreat,
9 and I don't believe there is a board at Rock Creek yet.
10 It's new.

11 Q. So The Cliffs and The Retreat. What about
12 Eagle Rock?

13 A. I do. I thought you meant in Texas.

14 Q. Okay. I'm sorry.

15 A. I'm sorry, yeah.

16 Q. Sorry. How many developments has Double
17 Diamond done which have homeowners' associations, total
18 nationwide?

19 A. I can't tell you exactly.

20 Q. Approximately.

21 A. Approximately 18, 15.

22 Q. And do you serve on the board of directors of
23 any of the others besides The Cliffs, Eagle Rock,
24 The Retreat and White Bluff?

25 A. No.

□

23

1 Q. Does Double Diamond have any facilities,
2 for-profit facilities, at any of its developments except
3 for White Bluff?

4 MR. MADRID: Objection, form.

5 A. Yes.

6 Q. (BY MR. MALOUF) Which ones?

7 A. The -- The Cliffs and The Retreat and Eagle
8 Rock.

9 Q. At the new facility Rock Creek at Texoma, does
10 Double Diamond have plans to provide services and --
11 for-profit services and activities?

12 A. Yes.

13 Q. And what kind of for-profit services and
14 activities does Double Diamond intend to provide there?

15 A. Much the same as White Bluff.

16 Q. Mr. Ward, looking at Exhibit Number 4, your

17 letter of January 7th of 2004, to whom was this letter
18 sent?

19 A. I believe it was sent to the existing owners at
20 white Bluff.

21 Q. So the owners of lots or the owners of homes?

22 A. Both.

23 Q. Okay. And looking under "Hospitality at white
24 Bluff" on the second page, is each owner or was each
25 owner assessed the hundred dollar charge for hospitality

24

1 at white Bluff, each of the 6,000?

2 A. I don't know if assessed is the right word. We
3 did start the hospitality program, and they received a
4 bill for a hundred dollars.

5 Q. Okay. So if all of them paid that, that would
6 have generated something on the order of \$600,000?

7 A. Yes.

8 Q. And were they assessed that charge whether or
9 not they ever used the facilities for which the charge
10 was assessed?

11 A. I don't know if that's a proper
12 characterization. They were assessed that, and they had
13 the opportunity to use the \$150 worth of credit. Whether
14 they used it or not was at their discretion.

15 Q. And does that strike you as at all fraudulent
16 or deceptive?

17 A. No.

18 MR. MADRID: Objection, form.

19 Q. (BY MR. MALOUF) Have you or has Double
20 Diamond -- I'm sorry.

21 Have the property owners' associations at
22 The Cliffs been assessed -- what kind of charge -- what
23 would you call that? what kind of charge would you call
24 that?

25 A. They're hospitality credits.

1 Q. Okay. Have the owners at The Cliffs been
2 assessed a charge for hospitality credits?

3 A. No.

4 Q. How about the owners at Eagle Rock?

5 A. No.

6 Q. How about the owners at The Retreat?

7 A. No.

8 Q. Are there any Double Diamond developed
9 subdivisions or properties where a hospitality
10 assessment -- hospitality credit has been assessed,
11 except for white Bluff?

12 A. Well, again, I just -- the assessed, I don't
13 know if that's accurate or not. The board passed and
14 approved this charge, and it has -- that has taken place
15 at white Bluff and not at any other developments.

16 Q. Okay. And who or what entities or individuals
17 are the beneficiaries of that --

18 MR. MADRID: Objection, form.

19 Q. (BY MR. MALOUF) -- credit?

20 MR. MADRID: Pardon me. Objection, form.

21 A. Well, I believe the property owners are, and
22 the hospitality operation is -- receives the money.

23 Q. (BY MR. MALOUF) Okay. And the hospitality
24 operation is Double Diamond?

25 A. I wouldn't say it is Double Diamond. I would

1 say that those facilities who serve -- that serve the
2 property owners are owned by Double Diamond, yeah.

3 Q. well, Double Diamond presumably is in it for a
4 profit?

5 A. Presumably, yes.

6 Q. All right. Has it made a profit at white
7 Bluff?

8 A. No.

9 Q. On operations?

10 A. No.

11 Q. What has been its annual loss since 2004?

12 MR. MADRID: Objection, form.

13 A. It's over -- it's six digits every year, but I
14 don't know exactly. Other people can speak to that
15 better. I don't have it in my memory.

16 Q. (BY MR. MALOUF) Why -- why was this charge or
17 why did the board pass this resolution to make this
18 charge?

19 A. We passed the resolution due to the fact that
20 the hospitality operation was bleeding so much red ink,
21 losing so much money, that they were going to be forced
22 to shut down.

23 Q. Well, whose problem is that, though?

24 A. I'm --

25 MR. MADRID: Objection, form.

□

27

1 A. Can I finish answering my -- that question that
2 you asked before?

3 Q. (BY MR. MALOUF) I'm -- I think I understood
4 the answer, but my question --

5 A. I'm not done with my answer.

6 Q. Well --

7 MR. MADRID: Go ahead and finish --

8 Q. (BY MR. MALOUF) -- I'll withdraw the question.

9 MR. MADRID: -- your answer.

10 THE WITNESS: Okay. Okay.

11 Q. (BY MR. MALOUF) My question to you, though,
12 was -- back up.

13 Does Double Diamond have any debt obligations
14 on either its -- first, does Double Diamond own property
15 in or around White Bluffs?

16 MR. MADRID: Objection, form.

17 A. Okay. Am I going to get to finish my answer on
18 the first question before you ask me another one?

19 Q. (BY MR. MALOUF) I withdrew the question, sir.

20 A. Then you asked another one.

21 Q. Well, let's --

22 MR. MADRID: I'll have an opportunity to
23 expand.

24 A. Okay. Well, I was curious. I mean, I was
25 trying to answer the question, you interrupted me, and

28

1 then you asked me another question.

2 Q. (BY MR. MALOUF) Well, when you go to law
3 school, Mr. Ward, and get a license and I'm in a
4 deposition, you can ask --

5 MR. MADRID: Okay. We're going to take a
6 break, y'all.

7 A. Well, I can ask, can't I? I'm not allowed to
8 ask?

9 Q. (BY MR. MALOUF) You can direct questions to
10 your counsel.

11 MR. MADRID: We're going to take a break.

12 THE WITNESS: Okay.

13 MR. MADRID: Let's take a break.

14 (Break taken from 9:41 a.m. to 9:42 a.m.)

15 Q. (BY MR. MALOUF) Mr. Ward, as I understand it,
16 what you refer to as a hospitality credit, is nothing
17 more than an assessment -- is the food and beverage fee
18 included on the statement of -- financial statements of
19 the property owners' association?

20 MR. MADRID: Objection, form.

21 A. I didn't understand that question. I'm sorry.

22 Q. (BY MR. MALOUF) Is the food and beverage fee
23 included on the financial statements of the property
24 owners' association?

25 A. Is the -- I don't understand the question. I'm

1 sorry.

2 Q. What part don't you understand?

3 A. You said is the food and beverage included on
4 the financial statement.

5 Q. Food and beverage fee.

6 A. Oh, fee?

7 Q. Yes, sir.

8 A. No.

9 Q. As I understand it, it's a straight
10 pass-through to Double Diamond?

11 A. I'm not sure about that.

12 Q. In any event, when did Double Diamond commence
13 its for-profit operations at White Bluff?

14 A. Shortly after the development opened.

15 Q. And when was that?

16 A. That would have been in ninety -- '92? '92 --
17 '92 or three is when the -- I think the golf course
18 opened, the first nine of the golf course.

19 Q. And since that time has Double Diamond ever
20 made a profit on its operations at White Bluff?

21 A. No. No, not in the hospitality effort.

22 Q. What caused it then in 2004 -- how did it come
23 about that the property owners' association board of
24 directors was asked to consider assessing a food and
25 beverage fee or hospitality credit charge? How did that

1 come about?

2 MR. MADRID: Objection, form.

3 A. Actually the general manager, Fred Molson,
4 recommended it to the board.

5 Q. (BY MR. MALOUF) who's the general manager of
6 what?

7 A. He's the general manager of White Bluff.

8 Q. And on what grounds or theory did the board of
9 directors conclude that it had the authority to assess
10 this charge?

11 A. We consulted with our attorneys, and -- and
12 visited among ourselves, talked at length about the
13 benefits of it versus the cost, and decided that we had
14 the authority to -- to do it, and it was the right thing
15 to do for the property owners.

16 Q. Well, how could subsidizing Double Diamond's
17 losses be the right thing to do for the property owners?

18 MR. MADRID: Objection, form. Go ahead.

19 A. It was the right thing to do because in
20 previous years, the real estate operation had made a
21 profit, and Double Diamond had just accepted all of its
22 losses that we took in the hospitality side. And then we
23 were -- Double Diamond was forced with the -- really the
24 only option they had was to either do this or close those
25 operations which would have very negatively affected the

□

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1 owner's value and the owner's use of the development.

2 Q. (BY MR. MALOUF) Well, did you not -- did
3 Double Diamond not plan to make a profit when it put this
4 subdivision together?

5 A. Oh, yeah.

6 Q. And why didn't it make a profit?

7 A. Do -- it wasn't -- you talking about the
8 hospitality side?

9 Q. Yes, sir.

10 A. There -- there just wasn't enough volume.
11 We're -- we're good operators. The hospitality side,
12 we're good operators and -- but there wasn't -- wasn't
13 enough sales volume.

14 Q. And --

15 A. And maybe we could have been better operators,
16 but I think we were -- we're a good operator. We're in a

17 remote location and we may have, you know -- may have --
18 the plan may not have been the greatest, but it was -- it
19 was primarily the hospitality efforts were for the use of
20 the property owners primarily.

21 Q. What percentage of the use of the golf course,
22 for example, is attributable to property owners versus
23 nonproperty owners?

24 A. It's mostly property owners, but I can't give
25 you the percentages. There are people in the, you know,

32

1 organization that can.

2 Q. How about the hospitality -- food and beverage
3 side?

4 A. I think it'd be the same thing.

5 Q. Does Double Diamond or any of its related or
6 affiliated entities own any real estate in or around
7 White Bluff?

8 A. Yes.

9 Q. What real estate do these entities or does this
10 entity own?

11 A. The entities like we have listed here in the
12 exhibits on the real estate and underneath the related
13 real estate.

14 Q. So that would be the Inn?

15 A. Yes.

16 Q. The condominiums?

17 A. Yes.

18 Q. Is Lake Whitney a Corps of Engineer lake?

19 A. Not really.

20 Q. Can you own property on the shoreline?

21 A. Well, yeah, you can own property on -- yes.

22 Excuse me. You can own property on the shoreline, but
23 that -- you're going to have to define shoreline. You --
24 you may accidentally own right to the water's edge, but
25 you're not allowed to put in boat docks and that kind of

1 thing.

2 Q. Does Double Diamond or a related entity own the
3 property on which the marina is located?

4 A. No. That's a concession. It's a lease.

5 Q. Okay. And from who or from what entity do you
6 lease that --

7 A. You lease it from the Corps of Engineers and --
8 but it's -- and the Brazos River Authority's involved in
9 there too.

10 Q. And what is the term of that lease in years?

11 A. I can't remember. It's a long-term lease.

12 Q. And what about the real estate on which the
13 golf course is located?

14 A. Double Diamond or the company that's related
15 owns that.

16 Q. And any other property besides -- again that
17 you can think of besides the hotel, the condominiums, the
18 marina, and the golf course?

19 A. Yes.

20 Q. What other property?

21 A. The property where the sales office is located.
22 There are some undeveloped tracts around, probably three
23 hundred and some odd acres of undeveloped land. And some
24 of those are adjoining. They're not in White Bluff.
25 They could be in White Bluff due to the fact we could

1 include them but right now they're not.

2 Q. Have there ever been any -- has any of that
3 real estate ever been pledged as collateral on any debt
4 obligations?

5 MR. MADRID: Objection, form.

6 A. Sure. Yes.

7 Q. (BY MR. MALOUF) Is any of that property

8 currently pledged as collateral on any debt obligations?

9 A. No.

10 Q. So it's at this point free and clear?

11 A. Yes.

12 Q. When was the debt on which any of this property
13 was used as collateral, when was that debt discharged
14 finally?

15 A. I --

16 MR. MADRID: Objection, form.

17 A. A long time ago, I don't know exactly.

18 Q. (BY MR. MALOUF) So the operational costs for
19 Double Diamond or its affiliates as to the hospitality
20 side at white Bluff does not include debt service?

21 A. No.

22 Q. Is the hospitality operation at white Bluff --
23 does that operation or any part of it pay any fees or
24 upstream any fees to any other Double Diamond entity?

25 A. Repeat the first part of that. I'm sorry.

□

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1 Q. Does -- does the hospitality operation at white
2 Bluff upstream any payments or fees to other Double
3 Diamond entities?

4 A. No.

5 Q. So its operations -- operational budget include
6 actual operating expenses, generally speaking?

7 A. Yes.

8 Q. And does not include any fees for obligations
9 to other Double Diamond entities for activities not
10 directly associated with white Bluff?

11 A. No.

12 Q. Do you know approximately what the 2008
13 operating loss was for the hospitality operation at white
14 Bluff?

15 A. Seems to me it was around 280,000; and I
16 believe that's before depreciation.

17 Q. And that's --
18 A. I'm sure that's before depreciation.
19 Q. And that -- that loss is after the fee?
20 A. Yes.
21 Q. All right. In other words, all-in, all-done,
22 you're at 300,000 --
23 A. All-in, all-done, my recollection around
24 280,000.
25 Q. Okay. Would you agree with me that the

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1 hospitality operation at White Bluff does not fall under
2 the definition of common areas as included in the
3 homeowners' association agreement?

4 MR. MADRID: Objection, form.

5 A. I wouldn't agree with you on that. I could
6 study it and let you know; but at this point, I wouldn't
7 necessarily -- wouldn't agree.

8 Q. (BY MR. MALOUF) Let me ask you to take a look
9 at Exhibit Number 1.

10 A. (Witness complies.)

11 Q. And if you look on Page 2 under subsection "D"?

12 A. (Witness complies.)

13 Q. And the first couple of lines read, "Common
14 properties shall mean and refer to any and all areas of
15 land within the properties" --

16 A. You better help me find section --

17 Q. Oh, I'm sorry.

18 A. These are numbered 3.

19 Q. Right there.

20 A. Oh, "D" on the second page, okay.

21 Q. Sorry, sir.

22 Says, "Common properties shall mean and refer
23 to any and all areas of land within the properties which
24 are known, described, or designated as" -- and then it
25 gives you a list. Do you see that language?

1 A. I do.

2 Q. Okay. Are any of the hospitality -- is any of
3 the hospitality-related real estate that we've just
4 discussed subdivided as part of the white Bluff
5 subdivision?

6 A. I think they are part of the white Bluff
7 subdivision, but I don't know about what -- if
8 necessarily they're subdivided.

9 Q. Okay. If --

10 A. I don't know that that's necessary under
11 development --

12 Q. If you look on page --

13 A. -- rules.

14 Q. If you look on Page 1, under Article Two,
15 subsection "B" --

16 MR. MADRID: "B" as in boy?

17 MR. MALOUF: "B" as in boy, correct.

18 MR. MADRID: Okay.

19 Q. (BY MR. MALOUF) Says, "Properties shall mean
20 and refer to the land and premises located in Hill
21 County, State of Texas, subdivided as the, quote, white
22 Bluff subdivisions" --

23 A. Uh-huh.

24 Q. -- do you see that?

25 A. I do.

1 Q. -- "and any additions and contiguous
2 subdivisions thereto as may hereafter be brought within
3 the jurisdiction of the association of the board of
4 directors." Do you see that language?

5 A. Yes.

6 Q. I think we can probably agree that the real
7 estate that we've been discussing that constitutes the

8 hospitality operations of Double Diamond are not, quote,
9 within the jurisdiction of the association by the board
10 of directors; do you agree with that?

11 MR. MADRID: Objection, form.

12 A. I don't necessarily agree with that. I think
13 the definition of subdivided would -- would be a legal
14 term. And I think that the golf course and all those
15 facilities are a part of White Bluff.

16 Q. (BY MR. MALOUF) Do you consider Double
17 Diamond's for-profit operations at White Bluff to be
18 within the jurisdiction of the association?

19 MR. MADRID: Objection, form.

20 A. Certainly in some areas I do, yes.

21 Q. (BY MR. MALOUF) What areas?

22 A. Well, rules and regulations with regard to
23 conduct, for example, in -- at any of the facilities.

24 Q. Is there any written agreement or document
25 which vests in the association board of directors'

□

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1 authority to exercise any control over or jurisdiction
2 over Double Diamond for-profit operations at White Bluff?

3 A. Well, I believe it's listed right here, looks
4 like, with bicycle trails and marina and golf courses and
5 tennis courts and recreational facilities.

6 Q. You're talking about on Page 2?

7 A. Yes, "D." They -- the board does -- does make
8 rules and regulations with regard to the conduct in the
9 common areas.

10 Q. Did -- did double --

11 A. And --

12 Q. I'm sorry?

13 A. I'm sorry.

14 Q. Did Double Diamond -- has Double Diamond, to
15 your knowledge, ever agreed contractually to vest in the
16 board of directors of the homeowners' association

17 jurisdiction over Double Diamond for-profit hospitality
18 operations?

19 MR. MADRID: Objection, form.

20 Q. (BY MR. MALOUF) To your knowledge.

21 A. I don't know that we have or haven't.

22 Q. Okay.

23 A. I think that's a legal question.

24 Q. Okay. Was each of the six members of the
25 board of directors on January 7th, 2004 -- sorry. Poorly

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1 worded. Was there a meeting on January 7th, 2004?

2 A. I don't remember.

3 Q. The reason I ask is if you look at Exhibit 3,
4 it doesn't say whether this was done at a meeting, but it
5 says it was done unanimously on January 7th, 2004; do you
6 see that language?

7 A. What Exhibit was that?

8 Q. It's Exhibit Number 3 or Exhibit 19.

9 A. This one?

10 Q. Either one's fine.

11 A. Okay.

12 MR. MADRID: Here's Exhibit 3.

13 THE WITNESS: Okay.

14 MR. MADRID: Hold on a second.

15 A. No, that's 4. This is it?

16 Q. (BY MR. MALOUF) Yes, sir.

17 A. Okay.

18 Q. I'm trying to find out how was it or what
19 happened on January 7th of 2004?

20 A. I can't remember that that was the exact date
21 that that occurred.

22 Q. Okay.

23 A. I am assuming that the person that drafted this
24 which would probably have been the secretary is accurate
25 on that as far as that date. But we had a board meeting

1 and a vote and voted to pass the hospitality credits.

2 Q. And you think it was on or about January 7th?

3 A. Yes.

4 Q. And, again, not a memory test.

5 A. Yeah.

6 Q. And you said all six people were present and
7 voted unanimously to approve the hospitality credit
8 program?

9 A. Yes.

10 Q. Look if you would, please, sir, at Exhibit
11 Number 1, the Bylaws, under Article Eight, on
12 Page DD 0083.

13 A. (Witness examines documents.)

14 Q. You see that?

15 A. Which -- I see Article Eight, which --

16 Q. Go to Section 5.

17 A. Okay.

18 Q. And it says, "A majority of the directors shall
19 constitute a quorum for the transaction of business and
20 the act of the majority of the directors present in
21 person or by proxy at a meeting at which a quorum is
22 present shall be the act of the board of directors,
23 unless a greater number is required by the articles of
24 incorporation or declaration." Do you see that language?

25 A. I do.

1 Q. And at this meeting then which occurred as you
2 recall on or about January 7th, 2004, there was a quorum
3 present because all six directors were there, correct?

4 A. As I recall, yes.

5 Q. But a majority of disinterested directors did
6 not approve the hospitality fee program or the
7 hospitality credit program because three of the six were

8 interested directors, correct?

9 MR. MADRID: Objection, form. If you
10 understand.

11 A. I don't --

12 Q. (BY MR. MALOUF) Well, three of the six
13 directors were employed by Double Diamond or its
14 affiliates, correct?

15 A. Yes, that's correct.

16 Q. So that leaves us with three of the six who
17 were not employed by Double Diamond or its affiliates,
18 correct?

19 A. Yes.

20 Q. And a majority of six -- I'm sorry, what number
21 would it take for there to be a majority if you have six
22 people present?

23 A. Four.

24 MR. MALOUF: All right. Let's take a
25 break.

□

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1 (Break taken from 10:01 a.m. to
2 10:14 a.m.)

3 Q. (BY MR. MALOUF) Mr. Ward, has Double Diamond
4 ever repurchased or received or accepted back any lots
5 that it had previously sold at White Bluffs?

6 A. We have repurchased lots, yes.

7 Q. Okay. Tell me the circumstances under which
8 that has occurred.

9 A. I -- I couldn't sit here, I don't think, and
10 say in every case why we did that. We have done it to --
11 to make a profit. We bought lots back that we thought we
12 could sell for more.

13 Q. Did you or did Double Diamond in December
14 of 2008 purchase or repurchase lots that it had
15 previously sold?

16 A. I don't recall.

17 Q. Any kind of foreclosure purchases or
18 acquisitions by Double Diamond?

19 A. Well, foreclosure, I don't -- I don't
20 understand foreclosure acquisition as being a term. We
21 have done foreclosures.

22 Q. Did Double Diamond to your knowledge purchase
23 any lots in November or December -- repurchase any lots
24 in November or December --

25 A. Not that I recall.

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1 Q. -- of 2008?

2 A. Sorry. Not that I recall.

3 Q. Okay. Tell me what National Recreational
4 Properties of Texas is. What is that?

5 A. NRPI, correct?

6 Q. NRPT.

7 A. Okay. I'm not sure about that. I know NRPI.

8 Q. What is that?

9 A. It's a California company that purchases resort
10 real estate and sells it.

11 Q. Has NRPI ever purchased any lots at White
12 Bluff?

13 A. Yes.

14 Q. How many?

15 A. I don't know exactly.

16 Q. Approximately how many?

17 A. I believe they purchased over a thousand.

18 Q. And of that number, how many did they -- and as
19 I understand it then, they were basically buying the lots
20 from Double Diamond and then reselling them?

21 A. No.

22 Q. What were they doing?

23 A. Basically they were buying the lots from owners
24 and reselling them. They did buy lots from Double
25 Diamond also.

1 Q. How many lots did they buy from Double Diamond?

2 A. I think 500.

3 Q. And of that 500 -- and then was it their
4 intention as you understood it to resell those lots?

5 A. Yes.

6 Q. And did they resell them?

7 A. They resold many of them, yes.

8 Q. Approximately how many?

9 A. I think the -- I don't know. I know that they
10 didn't sell around 500 that they had left -- they have
11 500 left.

12 Q. And what has happened with those lots?

13 A. Nothing.

14 Q. Do they still own them?

15 A. They do as far as I know.

16 Q. Has White Bluff -- has the number of homes
17 constructed on lots at White Bluff been in line with
18 projections that Double Diamond undertook at the time
19 that it decided to move forward with this development?

20 A. We didn't really make projections about the
21 numbers of homes to be built.

22 Q. Have you ever -- has Double Diamond to your
23 knowledge ever undertaken any projections with regards
24 to the number of homes it believed would be built at
25 White Bluffs over any given period of time?

1 A. Not to my recollection other than year to year
2 possibly.

3 Q. When White -- when Double Diamond undertook --
4 I -- did Double Diamond perform financial modelling in
5 advance of deciding to move forward with this project?

6 A. Sure. Yes.

7 Q. Did the modeling include the cash flow -- did

8 it include cash flow projections for the hospitality
9 business that we've been discussing?

10 A. Not really.

11 Q. why not?

12 A. The -- it included expenses for constructing
13 the amenities or the -- or the hospitality efforts. But
14 it really -- we didn't model the income from those
15 operations. We weren't experienced enough to do that,
16 actually.

17 Q. So as I understand it, you believe that Double
18 Diamond would have created or prepared financial modeling
19 which would have included the expenses associated with
20 construction of the hospitality operation but did not
21 undertake to model the income?

22 A. We didn't initially, no.

23 Q. And have you since --

24 A. We do budgets now, yes.

25 Q. All right. How many home -- sorry.

□

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1 Is it safe to say that as currently
2 constituted, this project will never be cash flow
3 positive for -- I'm sorry -- the hospitality side will
4 never be cash flow positive?

5 MR. MADRID: Objection, form.

6 A. I'm -- I'm going to have to ask you to repeat
7 the first part to campus it. Did you "as"?

8 Q. (BY MR. MALOUF) Currently constituted.

9 A. And by that you mean?

10 Q. With the way it's currently being operated with
11 the current level of hospitality credit fees assessed,
12 it's just never going to be profitable?

13 A. I wouldn't agree.

14 Q. Okay. why not?

15 A. well, we are in the process of making changes
16 with regard to the hospitality effort.

17 Q. What changes?
18 A. Well, we're expanding the marina, and we think
19 that that will help sales.
20 Q. Sales of --
21 A. Help sales on the hospitality side.
22 Q. Okay.
23 A. And we are rebuilding the -- the restaurant --
24 I mean the hotel that burned. We think that will help.
25 Q. Was the loss associated with the hotel -- was

48

1 the property damage resulting from the fire a covered
2 loss under any insurance policies?
3 A. Yes.
4 Q. How about business interruption, did you have
5 insurance for that?
6 A. We did.
7 Q. And has that coverage been -- has -- have you
8 filed a business-interruption claim?
9 A. We have.
10 Q. And has that claim been paid?
11 A. Partially paid.
12 Q. Okay. How large was the claim?
13 A. I don't know.
14 Q. Estimate -- can you give me an estimate?
15 A. I -- the accountants can speak to that better
16 than I can.
17 Q. And would --
18 A. I couldn't give you an estimate because there
19 were a lot of numbers talked about and I don't know what
20 was actually filed.
21 Q. To the extent that the loss, either property
22 damage or business interruption loss, is not covered,
23 Double Diamond will have to -- will end up paying that
24 amount, correct? To the extent there's no coverage?
25 A. Right.

1 Q. At this stage in the process, have you
2 determined whether or not there's sufficient coverage for
3 property damage and business interruption to cover the
4 losses associated with the fire?

5 A. I couldn't answer that question.

6 Q. You said earlier that the decision that was
7 made to assess a food and beverage charge on or about
8 January 7th, 2004, was undertaken with the -- with the
9 advice of counsel?

10 A. Well, if -- once again, I don't call it an
11 assessment. It was -- it's a program. And the property
12 owners are billed on it; but, yes, we consulted counsel.

13 Q. Okay. And I don't want to ask you what counsel
14 told you, but I would ask that you identify the attorneys
15 or attorney or attorneys with whom you consulted.

16 A. Do you want me to identify?

17 Q. Yes, sir.

18 A. Jeff Smith, Mike Skahan.

19 Q. And who are they with?

20 A. They're with Double Diamond. They also
21 represent the association. Jeff Smith does.

22 Q. So attorneys that represent Double Diamond told
23 the board of directors for a nonprofit that they also
24 represent that it was okay for that board to pass a
25 resolution assessing a fee which benefits Double Diamond?

1 MR. MADRID: Objection, form.

2 A. Well, they are paid --

3 MR. MADRID: Objection, form.

4 A. They are paid -- I'll answer part of that and
5 the rest of it I'm going to have to have you repeat. But
6 they're paid by Double Diamond, but when they're asked
7 to -- they do the same thing I do. When they're asked to

8 give an opinion with regard to the association or make a
9 decision with regard to the association, they're
10 considering the association's request and interest.

11 Q. (BY MR. MALOUF) Well --

12 MR. MADRID: We are not waiving any
13 attorney/client privilege, by the way, based on what --
14 this dialogue here. Go ahead.

15 Q. (BY MR. MALOUF) If Double Diamond loses money,
16 where does that money come from? Who has to pay it?

17 A. (No response.)

18 Q. Mike Ward? 97 percent of it?

19 A. No. No, I wouldn't say that.

20 Q. Well, who would you say pays it?

21 A. Well, if you lose it, it's already been paid.

22 Paid. I don't understand the concept you're
23 talking about. When we lose money out there at White
24 Bluff, nobody writes a check to cover it. It's gone.

25 Q. And where does the money come from before it's

□

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1 gone?

2 A. I don't understand that concept.

3 Q. You don't understand the concept of who absorbs
4 the loss?

5 A. Oh, we absorb the loss.

6 Q. Okay.

7 A. But we don't write checks.

8 Q. I understand.

9 A. That is to say, you know, here's your money to
10 fill you back up. That's not the way it works. We
11 definitely take Double Diamond from -- the losses from
12 the hospitality operation are melded into the losses or
13 gains of the company.

14 Q. And does it not strike you as -- it's -- I'm
15 sure it's obvious to you, Mr. Ward, that insofar as
16 Double Diamond can assess the property owners'

17 association for Double Diamond's operating expenses, then
18 Double Diamond's loss is reduced?

19 MR. MADRID: Objection, form.

20 A. Double Diamond did not assess the property
21 owners' association.

22 Q. (BY MR. MALOUF) Well, okay. Let me rephrase
23 the question then, Mr. Ward.

24 Insofar as the property owners can be assessed
25 fees which are then passed through to Double Diamond,

52

1 Double Diamond's losses are reduced?

2 MR. MADRID: Objection, form.

3 A. I'm going to not agree with that necessarily.
4 Our -- our losses may or may not be reduced, and I'm only
5 answering that due to the fact that you're talking about
6 the -- the credits. We could have reduced our losses
7 more by closing those operations down. We still are
8 taking losses and we're standing there operating.

9 Q. (BY MR. MALOUF) Well, I'm confident, Mr. Ward,
10 that Double Diamond modeled the net cash flow that it
11 expected to come from the food and beverage assessment.

12 A. It's not a food and beverage assessment --

13 MR. MADRID: Objection, form. I don't
14 think that was a question. It was a statement so....

15 Q. (BY MR. MALOUF) Did Double Diamond model the
16 financials associated with this charge?

17 A. Not really, no.

18 Q. As I understand it, if each lot owner pays --
19 oh, how many lots does Double Diamond currently own or
20 its affiliates own at White Bluffs?

21 A. 200.

22 Q. And you -- I think you had indicated earlier
23 that NRPI still owns about 500?

24 A. I believe they do, yes.

25 Q. So approximately 700, plus or minus, of the

1 lots out there are owned either by Double Diamond or
2 NPRI?

3 A. Yes.

4 Q. And does -- has NPRI on an annual basis paid
5 its hundred dollar per lot food and beverage assessment?

6 A. They do. They have.

7 Q. Okay.

8 A. They're behind right now.

9 Q. And how far behind are they?

10 A. I think they're two periods behind but I'm not
11 certain of that.

12 Q. And how long is a period?

13 A. Six months.

14 Q. Okay.

15 A. We bill every six months.

16 Q. And how about Double Diamond? Has it been
17 paying its hundred dollar per lot assessment?

18 A. They -- I think there's a multi-lot discount we
19 do take, yes, in accordance with that.

20 Q. Okay. And what's that discount if you know?

21 A. I don't know. I couldn't tell you.

22 Q. Are Double Diamond and NPRI the two largest lot
23 owners out there?

24 A. It's NRPI, I believe.

25 Q. NRPI, I'm sorry.

1 A. I would say yes.

2 Q. Who would be next?

3 A. I have no idea.

4 Q. Is there anyone that owns a hundred plus lots
5 that you know of?

6 A. Not that I know of, no.

7 Q. What percentage of the 950 -- if we've got

8 6,000 lots -- and -- sorry.

9 What is the current assessment for food and
10 beverage amount?

11 A. I can't remember.

12 Q. Is it \$200 per period?

13 A. It's around that.

14 Q. Okay.

15 A. \$200 per year, I believe.

16 Q. Okay. And --

17 A. But it's around that. I'm not testifying that
18 that's exactly what it is. I can't remember.

19 Q. And if my math is correct, then on the 200 lots
20 that Double Diamond owns, it's getting -- it's paying
21 about 40,000 minus some discount factor for multiple
22 lots; is that right?

23 A. I -- I don't know. I think I testified I don't
24 know exactly.

25 Q. And -- and for \$200 in payment, how much credit

□

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1 does the homeowner get?

2 A. 250, I believe.

3 Q. All right. And if Double Diamond is paying
4 about 40,000 -- I'm going to ask you a question here, Mr.
5 ward, and -- are you -- are you sure that Double Diamond
6 pays this food and beverage assessment for each lot that
7 it owns?

8 A. No. I said I'm not.

9 Q. Okay. Is it true that if -- that multi-lot
10 owners are only assessed one food and beverage charge?

11 A. That may be, yes.

12 Q. So on the 200 lots, it may be that Double
13 Diamond is only paying a food and beverage assessment on
14 one of those 200?

15 A. That could be, yeah.

16 Q. And is the same -- if that's correct, is the

17 same -- is it also correct as to NPRI?

18 A. NRPI.

19 Q. NRPI.

20 A. To my recollection NRPI agreed to not take the
21 discount, due to the fact that we were selling them
22 property and we wanted that as a part of the deal.

23 Q. So it's your recollection that NRPI is paying
24 the food and beverage assessment on each of the 500 lots?

25 A. There's a mix in there. Lots they bought from

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1 us I think they're paying on. But the lots that they
2 bought individually, I don't believe they are.

3 Q. And --

4 A. But they're not paying right now on any of
5 them. I think that they're -- have gone broke.

6 Q. And in 2008 how much was actually received by
7 the property owners' association on a food and beverage
8 assessment?

9 A. I don't know.

10 Q. Approximately?

11 A. I don't -- I don't know. I -- my accountants
12 can get that for you.

13 Q. Well, Mr. Ward, if you own 200 lots out there,
14 why aren't you paying 200 food and beverage assessments?

15 MR. MADRID: Objection, form.

16 A. 'Cause that's the way it was set up.

17 Q. (BY MR. MALOUF) Set up by who?

18 A. Set up by a --

19 Q. By you?

20 MR. MADRID: Objection, form. And,
21 please, let him finish his answer.

22 A. It was set up to match the way the -- as I
23 recall, the property owners' association sets up their
24 maintenance fees. Same way.

25 Q. (BY MR. MALOUF) What does that mean?

1 A. Well, that there's a multi-lot discount in both
2 areas.

3 Q. Well, but the fact is, that really benefits
4 those people that own a ton of lots, right? Like
5 Mike Ward's folks. You own 200 lots, you pay one
6 assessment, and everybody else who owns a lot or two lots
7 is paying their assessment?

8 MR. MADRID: Objection, form.

9 A. Well, I don't think that benefits me. I'm
10 still one person. Let's just take an owner that owns six
11 lots. I think that's the theory is that most -- that was
12 the theory. Most of the use of the facilities, damage to
13 the roads, whatever you want to call, is done by an
14 owner. And if one owner owns six lots, that amount of
15 use is diminished. And every owner gets the same
16 benefit.

17 Q. (BY MR. MALOUF) So here we are 17 --
18 approximately 17 years down the road and you still
19 haven't sold all the lots, right?

20 A. Oh, I wouldn't say that's true. I'd say we've
21 sold pretty much every lot out there.

22 Q. More than once in some instances, right?

23 A. In some cases, yes.

24 Q. All right.

25 A. Where we traded people or we had repossessions

1 or other things occurred.

2 Q. Has Double Diamond ever had a lawsuit filed
3 against it by a purchaser who alleged that Double Diamond
4 misled the purchaser?

5 A. Probably have. I don't recall one.

6 MR. MADRID: You needn't speculate if you
7 don't know.

8 A. It seems to me we have. I shouldn't speculate.
9 It seems to me that we have, yeah.

10 Q. (BY MR. MALOUF) Mr. Ward, are there any
11 current plans to close down any of the Double Diamond
12 hospitality operations at White Bluff?

13 A. No. We do have plans to close the Ship Store
14 temporarily while we're working on the marina; but other
15 than that, there's certainly no plans to permanently
16 close anything.

17 Q. Why does Double Diamond continue to operate
18 these hospitality facilities after them having operated
19 unprofitably for 17 years?

20 A. We think that they will be profitable at some
21 time in the future and that that's a part of what is
22 keeping White Bluff nice.

23 Q. Looking at Exhibit Number 3, it appears to have
24 been executed on March the 28th of 2008. Can you tell me
25 why it was not executed at or about the time of the vote?

□

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1 A. Well, we did execute a letter. And as far as
2 that document that you're talking about, I don't know why
3 it wasn't executed at that time.

4 Q. And you believe that -- was this consent of the
5 board executed in response to this litigation?

6 A. It may have been.

7 Q. But you're -- a letter dated January 7th, 2004,
8 as you observed, was executed by each of the board
9 members?

10 A. Yes.

11 Q. Did they actually sign this letter or did
12 someone cut and paste their signatures into it?

13 A. I don't know.

14 Q. Did you have a secretary at the time in 2004?

15 A. Yes.

16 Q. Who would that have been?

17 A. An assistant. Her name is Shawna Shumake.
18 Q. Does she still work for you?
19 A. Yes.
20 Q. Would she have been the person to prepare this
21 letter?
22 A. I don't know.
23 Q. Who else might have prepared it?
24 MR. MADRID: Objection, form.
25 A. I don't know.

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1 Q. (BY MR. MALOUF) Do you still have your
2 calendar from January of 2004?
3 A. No.
4 Q. And I think you said you weren't sure whether
5 there was an actual formal meeting of the board?
6 A. Oh, no, I did not say that.
7 MR. MADRID: Objection, form.
8 A. There was a formal meeting, yeah.
9 Q. (BY MR. MALOUF) Okay. And where -- where are
10 the minutes of that meeting?
11 A. I think Fred Curran has the minutes.
12 Q. And do the minutes reflect this vote?
13 A. Yes, I believe they do. He can testify to
14 that.
15 Q. Okay. All right.
16 MR. MALOUF: Jay, I think I'm done. Give
17 me a couple of minutes --
18 MR. MADRID: Yeah, sure.
19 MR. MALOUF: -- to chat with Barbara.
20 MR. MADRID: Let's step out here a minute.
21 (Break taken from 10:39 a.m. to
22 10:49 a.m.)
23 Q. (BY MR. MALOUF) Mr. Ward, does Mr. Curran
24 still work for Double Diamond or one of its affiliates?
25 A. He works for National -- yes. Yes, he works

1 for National Resort Management.

2 Q. And how about Mr. Gracy?

3 A. Yes.

4 Q. Are there any other current directors of -- I'm
5 sorry.

6 who are the current directors of the white
7 Bluff Property Owners' Association?

8 A. Larry Groppe, George Collins, Clark
9 Willingham, Randy Gracy, Fred Curran, and myself.

10 Q. And which of those individuals own property at
11 white Bluff?

12 A. All of them except Randy Gracy.

13 MR. MALOUF: Okay. Mr. Ward, thank you
14 for your time, sir.

15 THE WITNESS: Thank you.

16 MR. MADRID: Okay. Thank you all.

17 (Deposition concluded at 10:50 a.m.)

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: ROBERT MICHAEL WARD

3 DATE OF DEPOSITION: FEBRUARY 25, 2009

4 PAGE LINE CHANGE REASON

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□

1 I, ROBERT MICHAEL WARD, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5 _____
6 ROBERT MICHAEL WARD

7
8 THE STATE OF _____)
9 COUNTY OF _____)

10
11 Before me, _____, on this
12 day personally appeared ROBERT MICHAEL WARD, known to me
13 (or proved to me under oath or through
14 _____) (description of identity
15 card or other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged

17 to me that they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 _____ day of _____, _____.

21

22

23

NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____
COMMISSION EXPIRES: _____

25

□

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CAUSE NO. DC-07-12490

2

DOUBLE DIAMOND, INC.,
WHITE BLUFF PROPERTY
3 OWNERS ASSOCIATION, INC.,

) IN THE DISTRICT COURT

4

Plaintiffs,

)

5

VS.

)

DALLAS COUNTY, TEXAS

6

7

DANIEL SATURN,

)

8

Defendant.

)

68TH JUDICIAL DISTRICT

9

10 *****

11

REPORTER'S CERTIFICATION

12

DEPOSITION OF ROBERT MICHAEL WARD

13

FEBRUARY 25, 2009

14

VOLUME 1 OF 1

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I, Detta D. Corona, CSR, CRR, RMR, and Notary

18

Public in and for the State of Texas, hereby certify to

19

the following:

20

That the witness, ROBERT MICHAEL WARD, was duly

21

sworn by the officer and that the transcript of the oral

22

deposition is a true record of the testimony given by the

23

witness;

24

That the deposition transcript was submitted on

25

March 6, 2009, to Mr. Jay J. Madrid, attorney for the

1 plaintiffs, for examination, signature and return to me
2 by March 26, 2009;

3 That the amount of time used by each party at
4 the deposition is as follows:

5 Mr. Malouf.....1 hour, 5 minutes

6
7 That pursuant to information given to the
8 deposition officer at the time said testimony was taken,
9 the following includes counsel for all parties of record:

10 FOR THE PLAINTIFFS:

11 MR. JAY J. MADRID
12 Winstead, P.C.
13 5400 Renaissance Tower
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15 Dallas, Texas 75270
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16 FOR THE DEFENDANT:

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21 AND

22 MS. BARBARA T. HALE
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24 14285 Midway Road, Suite 400
25 Addison, Texas 75001
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1 I further certify that I am neither counsel
2 for, related to, nor employed by any of the parties or
3 attorneys in the action in which this proceeding was
4 taken, and further that I am not financially or otherwise
5 interested in the outcome of the action.

6 Further certification requirements pursuant to
7 Rule 203 of TRCP will be certified to after they have

8 occurred.

9 Certified to by me this 5th of March, 2009.

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Detta D. Corona, CSR, CRR, RMR
CSR No. 2422; RPR No. 029078
Certification Expires 12/31/09
Notary Comm. Expires 08/20/10
CORONA COURT REPORTING
Firm Registration No. 282
3514 Armstrong Ave.
Dallas, Texas 75205-3921
214.528.7912 (Office)
214.528.1313 (Fax)

□

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to
3 the deposition officer on March 26, 2009;

4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was
7 delivered to Mr. Stephen F. Malouf, Custodial Attorney;

8 That \$_____ is the deposition officer's
9 charges to be paid by Mr. Stephen F. Malouf, the
10 Defendant, for preparing the original deposition
11 transcript and any copies of exhibits;

12 That the deposition was delivered in accordance
13 with Rule 203.3, and that a copy of this certificate was
14 served on all parties shown herein on and filed with the
15 Clerk.

16 Certified to by me this _____ day of

17 _____, 2009.

18

19

20 Detta D. Corona, CSR, CRR, RMR
21 CSR No. 2422; RPR No. 029078
22 Certification Expires 12/31/09
23 Notary Comm. Expires 08/20/10
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