

---

Continued Deposition of

**COPY**

Michael C. Ormsby

December 5, 2002

IN RE: RIVER PARK SQUARE

---

**CONDENSED TRANSCRIPT AND CONCORDANCE**

**PREPARED BY**

**STOREY & MILLER COURT REPORTERS**

**601 W. Riverside Avenue  
Suite 1030**

**Spokane WA 99201-0910**

**Phone: (509) 456-0122**

**Fax: (509) 456-0169**

1 about, no.  
 2 Q. (BY MR. LOWERY) You have no recollection of any such  
 3 discussion, is that correct?  
 4 MR. CRONIN: Objection to the form, asked and  
 5 answered.  
 6 A. Yeah, I had conversations with them. I can't  
 7 specifically tell you what was said, no.  
 8 Q. (BY MR. LOWERY) You can't generally tell me what was  
 9 said, correct?  
 10 MR. CRONIN: Objection to the form.  
 11 A. I can generally tell you that I was talking with at  
 12 least Mr. Zrust about coordinating the transfer of  
 13 funds at closing. That is all I can specifically say  
 14 that I talked with Mr. Zrust about during this time  
 15 frame.  
 16 Q. You have no recollection of telling anybody at the  
 17 trustee that the developer did not comply with the  
 18 developer's representations and warranties, right?  
 19 MR. CRONIN: Objection to the form,  
 20 argumentative.  
 21 A. I don't recall that I told them that, you're right.  
 22 Q. (BY MR. LOWERY) You don't have any recollection of  
 23 talking to anyone at U.S. Bank about the Foundation  
 24 waiving the contingencies that would allow it to not  
 25 close the purchase of the garage, correct?

335

1 MR. CRONIN: Objection to the form.  
 2 A. I have no recollection of such a conversation.  
 3 Q. (BY MR. LOWERY) Just so I'm clear, is it true you  
 4 don't have a recollection of any conversation with  
 5 anybody in the world with respect to the legal right  
 6 of the Foundation to not close the purchase of the  
 7 garage because the developer could not comply with  
 8 the developer's representations and warranties prior  
 9 to the garage sale closing?  
 10 A. I do recall having a conversation about this issue  
 11 with Mr. Thompson and Mr. McDevitt talking about that  
 12 amongst ourselves.  
 13 Q. Tell me the substance of those discussions?  
 14 A. Just generally that, and I can't tell you whether  
 15 this was one or more discussions, but just an  
 16 evaluation of the fact that the, that once the PDA  
 17 and City were apparently satisfied that we should  
 18 move forward and the developer had taken the position  
 19 there was no reason not to move forward, what should  
 20 we, what should we be doing?  
 21 Q. Did you discuss with these other people in your firm  
 22 the legal right of the Foundation to not close the  
 23 purchase of the garage because the developer couldn't  
 24 comply with its representations and warranties?  
 25 A. I don't recall that that issue was specifically

336

1 discussed, no.  
 2 Q. You understood at this period of time that neither  
 3 the PDA nor the City could instruct the Foundation to  
 4 purchase the garage and could not instruct the  
 5 Foundation not to purchase the garage?  
 6 A. Well, I would need to go back and look at the  
 7 purchase and sale agreement to be clear on  
 8 specifically what could or couldn't be done, but the  
 9 Foundation's feeling was that we were hoping to  
 10 facilitate this transaction and if the City and PDA  
 11 were prepared and willing to accept and operate the  
 12 facility, that we wanted to facilitate that for them.  
 13 Q. Yes, sir, but the decision as to whether to purchase  
 14 the garage or not was the Foundation's, not the PDA's  
 15 and not the City's, right?  
 16 A. Well, in the agreement between the Foundation and the  
 17 developer it would have been the Foundation that  
 18 would have communicated with the developer but I  
 19 would, I guess, Mr. Lowery, want to go back and look  
 20 at the agreement between the PDA and the City or,  
 21 excuse me, the PDA and the Foundation to identify  
 22 specifically what the legal rights were, we were  
 23 operating as though we wanted to try to accommodate  
 24 as a conduit borrower here the wishes of the entity  
 25 upon whom we were offering, acquiring the facility

337

1 and that was the PDA and City.  
 2 Q. You understood that when the developer was saying we  
 3 want you to go forward with the purchase, that their  
 4 interests with respect to that purchase were directly  
 5 adverse to your client's interest, correct?  
 6 MR. CRONIN: Objection to the form.  
 7 A. Their interests were different.  
 8 Q. (BY MR. LOWERY) Well, they were directly adverse,  
 9 were they not?  
 10 A. Well, I am not sure how you define adverse, they were  
 11 different. The developer wanted 26 million and  
 12 wanted our client to take the facility.  
 13 Q. You weren't relying on the developer to perform your  
 14 legal analysis or judgment as to whether or not the  
 15 Foundation should go forward with the purchase or  
 16 not, because you knew that they were adverse to you  
 17 on that subject, right?  
 18 A. Well, I'm not using the word adverse but their  
 19 interests were different.  
 20 Q. And because their interests were different, you  
 21 didn't rely on them for your legal analysis of  
 22 whether or not the Foundation should purchase the  
 23 garage, correct?  
 24 A. No, we certainly considered their point of view, but  
 25 we didn't rely on it.

338