

# **EXHIBIT A**

**In the Matter of:**

*Varxity Development Corp.*

vs

***Town of Payson***

*30(b)(6) Town of Payson -Troy Smith*

*February 3, 2022*

**Varxity Development Corp. vs  
Town of Payson**

**30(b)(6) Town of Payson -Troy Smith**

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Varxity Development Corp., a	)	
Canadian corporation,	)	Case No.
	)	2:21-cv-01216-SPL
Plaintiff,	)	
	)	
vs.	)	
	)	
Town of Payson, an Arizona	)	
municipal corporation,	)	
	)	
Defendant.	)	

---

30(b)(6) DEPOSITION OF TOWN OF PAYSON  
(TROY SMITH)  
(via videoconference)

February 3, 2022  
9:37 a.m.  
Payson, Arizona

Reported by:  
Jennifer Honn, RPR  
Certified Reporter  
Arizona CR No. 50885

Prepared for:  
THE COURT

(Original)

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

## I N D E X

WITNESS PAGE

TROY SMITH

Examination by Mr. Edwards 4

I N D E X  
I N D E X T O E X H I B I T S

Description Page

Exhibit 7 Notice of Rule 30(b)(6) Deposition 14  
of Troy Smith  
(4 pages)Exhibit 8 Letter to Tom Morrissey from Lane Moore 20  
January 6, 2020  
VDC-00090Exhibit 9 Letter to Lane Moore from Aaron Arnson 24  
February 6, 2020  
VDC-00091 -92Exhibit 10 Payson Roundup article 26  
March 19, 2021  
VDC-00234 -236Exhibit 11 Town of Payson Town Council Meeting 29  
Minutes of the Regular Meeting  
May 13, 2021  
(12 pages)Exhibit 12 Town of Payson Town Council Meeting 45  
Minutes of the Regular Meeting  
August 12, 2021  
VDC-00218 -233Exhibit 13 Compilation Exhibit 53  
TOP00001 -126

1           30(b)(6) DEPOSITION OF TOWN OF PAYSON  
2                   (TROY SMITH)  
3                   (via videoconference)

4           The deposition of TROY SMITH was taken on  
5 February 3, 2022, commencing at 9:37 a.m., via  
6 videoconference, the witness appearing from Payson,  
7 Arizona, before JENNIFER HONN, a Certified Reporter,  
8 Certificate No. 50885, for the State of Arizona.

9                               \* \* \* \* \*

10 APPEARANCES:

11 For Plaintiff:

12 FR LAW GROUP PLLC  
13   Richie J. Edwards, Esq.  
14   4745 North 7th Street  
15   Suite 310  
16   Phoenix, Arizona 85014  
17   Redwards@frlawgroup.com

18 For Defendant Town of Payson:

19 SIMS MACKIN, LTD.  
20   Kristin M. Mackin, Esq.  
21   3101 North Central Avenue  
22   Suite 870  
23   Phoenix, Arizona 85012  
24   kmackin@simsmackin.com

25 Also present:

Tim Williams

1 Q. Correct.

2 A. No.

3 Q. Okay. Has the RCEA or the MHA Foundation  
4 presented any rough outline of what the community center  
5 project might include? And I'm talking particularly about  
6 a pool, pickleball courts, that sort of thing?

7 A. Yes.

8 Q. Okay. As you sit here, do you recall what their  
9 suggestions for the project included as far as those  
10 things go?

11 A. So when the Town began discussions with the RCEA,  
12 they were contemplating building a senior center, and some  
13 of these elements may have been in what they were thinking  
14 about for a senior center.

15 Since the Town has entered into these  
16 discussions, it has been more me providing suggestions  
17 based on my experience about what sort of things the  
18 facility might offer that the community would like.

19 Q. Okay. And have your suggestions included  
20 pickleball courts?

21 A. No. I did not suggest pickleball courts.

22 Q. Okay.

23 A. I'm not that old.

24 Q. Hey, I enjoy pickleball every now and then.

25 Have -- so you mentioned an indoor pool. Has

1 Q. To your knowledge, did the town council consider  
2 the impact of propositions 401 and 402 on the proposed  
3 project with the RCEA?

4 A. I don't know if council members individually  
5 considered it. I certainly looked at it as part of my  
6 analysis, yes.

7 Q. Okay. As part of your analysis in looking at it,  
8 do you believe that those two propositions will have an  
9 impact on the new proposed project?

10 A. They do not.

11 Q. Okay. And, again, based on your understanding,  
12 can you tell me or explain to me why you don't believe  
13 they will have an impact?

14 A. Well, I think you start with the understanding I  
15 have -- and, again, this is a public presentation that our  
16 town attorney made, so I'm perfectly fine sharing with you  
17 what I've learned there.

18 Q. Okay.

19 A. To the town council related to 401 and 402, but  
20 not related to this project. Okay?

21 Q. Okay.

22 A. 401 and 402, in our town attorney's opinion, are  
23 unconstitutional, and they do not apply to the Town  
24 government. They should not have been authorized to have  
25 been on the ballot because the citizens did not have the

1 authority as provided by Arizona state statute or by the  
2 constitution of Arizona to have been referred to the  
3 ballot in the first place.

4 Q. Okay.

5 A. The Town had made purchases of more than a  
6 million dollars, and we have not turned those purchases  
7 over by referendum to the community. So the case -- the  
8 example case of that is the purchase of two fire trucks --  
9 actually, it was a lease agreement for two fire trucks.

10 But the amount certainly would have kicked in the  
11 intention behind 401 and 402.

12 Q. Okay.

13 A. And the Town did not follow those.

14 Q. Okay.

15 A. So that sort of sets the course for what the  
16 Town's opinion is about 401 and 402 from the standpoint of  
17 the town attorney.

18 I would say individual council members may have  
19 been differing opinions about the legality of those  
20 referred measures.

21 Q. Okay.

22 A. So, specifically, answering your question with  
23 respect to this development, there is not a provision in  
24 401 or 402 that, if they were valid measures, would apply  
25 to this project.



# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Varxity Development Corp., )  
a Canadian corporation, )  
 )  
Plaintiff, ) No. 2:21-CV-01216-SPL  
 )  
v. )  
 )  
Town of Payson, an Arizona )  
municipal corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

VIDEOCONFERENCE DEPOSITION OF  
LANE MOORE

Zoom Meeting ID: 864 8363 1533  
December 14, 2022  
12:57 p.m.

Prepared By:

Annette Satterlee, RPR-CRC  
Certified Reporter  
Arizona Certificate #50179  
Registered Reporting Firm R1012

JD REPORTING, INC.  
Certified Reporters  
1934 East Camelback Road  
Suite 120 - No. 428  
Phoenix, Arizona 85016  
jdri@jdreporting.co

Deposition of Lane Moore, December 14, 2022

## 1 I N D E X

2 WITNESS: PAGE

3 LANE MOORE

4 Examination by Ms. Mackin 5  
5 Examination by Mr. Edwards 103

6 \* \* \*

## 7 EXHIBITS

8 EXHIBIT: DESCRIPTION MARKED IDENTIFIED

9 1 Complaint 104 19

10 2 Meeting Notes, December 4, 2017, 104 27  
11 of Community Center Partners, LLC12 3 Resolution 3065 104 33  
(TOP00001 - 00027)13 4 Invoice from CCP to Town of Payson 104 49  
14 and Varxity, March 16 through  
(TOP0086)15 5 Email chain, April 9-10, 2018, 104 50  
16 between Lane Moore and Ron  
17 Chambless  
(VDC-00498 - 00500)18 6 Email dated July 22, 2018, from 104 53  
19 Lane Moore to Craig Swartwood  
(TOP00157)20 7 Resolution 3106 104 54  
21 (TOP00043 - 00054)22 8 Email chain, October 3-4, 2018, 104 57  
23 between Lane Moore and LaRon Garrett  
(TOP00123 - 00126)24 9 Resolution 3132 104 61  
(TOP00059 - 00064)

25

Deposition of Lane Moore, December 14, 2022

EXHIBITS				
EXHIBIT:	DESCRIPTION	MARKED	IDENTIFIED	
10	Letter dated Nov. 14, 2018 to Hector Figueroa from Kenny Evans (TOP00102)	104	62	
11	Email string, September 24, 2019, Greg Eagleburger/Lee Ploszaj/Lane Moore	104	70	
12	Letter dated January 6, 2020, to Tom Morrissey from Lane Moore (TOP00103)	104	71	
13	Payson Roundup article, March 19, 2021 (VDC-00234 - 00236)	104	79	
PREVIOUSLY MARKED EXHIBITS				
(None.)				
REQUESTS TO PRODUCE DOCUMENTS				
(None.)				
INSTRUCTIONS NOT TO ANSWER				
(None.)				
RECESSES				PAGE
21	Recess taken from 2:06 to 2:12 p.m.			48
22	Recess taken from 3:17 to 3:27 p.m.			88

Deposition of Lane Moore, December 14, 2022

1 VIDEOCONFERENCE DEPOSITION OF LANE MOORE  
2 commenced at 12:57 p.m. on Wednesday, December 14, 2022,  
3 with all parties appearing remotely via Zoom before  
4 Annette Satterlee, RPR, CRC, Arizona Certified Reporter,  
5 Certificate #50179, pursuant to the Rules of Civil  
6 Procedure, appearing remotely via Zoom.

7  
8 APPEARANCES

9 FOR PLAINTIFF:

10 FR LAW GROUP, PLLC  
11 BY: Richie J. Edwards, Esq.  
12 4745 North 7th Street, Suite 310  
13 Phoenix, Arizona 85014  
14 602.566.7425  
15 redwards@frlawgroup.com

16 FOR DEFENDANT:

17 SIMS MACKIN, LTD.  
18 BY: Kristin M. Mackin, Esq.  
19 3101 North Central Avenue, Suite 870  
20 Phoenix, Arizona 85012  
21 602.772.5505  
22 kmackin@sismackin.com  
23  
24  
25

Deposition of Lane Moore, December 14, 2022

1 LANE MOORE,  
2 called as a witness herein, having been first duly sworn  
3 by the Reporter, was examined and testified via Zoom  
4 videoconference as follows:

5

6 EXAMINATION

7 BY MS. MACKIN:

8 Q. Hi, Mr. Moore. You probably are familiar with  
9 who I am. My name is Kristin Mackin with the law firm of  
10 Sims Mackin, and I represent the Town in this matter. So  
11 I appreciate you taking the time this afternoon to appear  
12 for this deposition. I will try to get us out of here by  
13 4:00.

14 So I just kind of wanted to start with some  
15 basics. Have you ever been deposed before?

16 A. No, I have not.

17 Q. Okay. So there's just a few ground rules that  
18 I'm sure that your attorney has gone over with you, but I  
19 just want to make sure that we get them on the record.

20 The court reporter, as you know, is taking down  
21 everything that we are saying, and so it's important that  
22 only one of us speak at a time. So please wait for me to  
23 finish my question before you answer, and I will do my  
24 best to wait for you to finish your answer -- or question  
25 as it may be -- before I speak. Does that sound fair?

Deposition of Lane Moore, December 14, 2022

1           And there is another section under here,  
2 Section 6, Acknowledgments and Commitments. Subsection F  
3 talks about the goals of the parties. It says the  
4 fundamental goal -- a fundamental goal of VDC and the  
5 Town is to reduce the time and cost required for the  
6 design and construction of the project and obtain best  
7 value within the scope and intended expectations of VDC  
8 and Town.

9           Do you think the Town is in breach of this  
10 section of the agreement?

11           A.     During the phase where CCP was gathering  
12 information, they were -- I think they, they provided the  
13 information. But I think, since then, I would say that  
14 time has been a major issue, yes.

15           Q.     Okay. So can you give me some time concept to  
16 the "since then" statement that you just -- that you just  
17 made about since -- since when has the Town not been  
18 acting in accordance with its timeliness requirements of  
19 this agreement in your opinion?

20           A.     Ever since the Town voted in a new mayor and  
21 the two propositions. The project has, has stalled, or  
22 stopped immediately after that, even from the -- the old  
23 mayor was unwilling to make any further decisions on the  
24 project once that occurred.

25           Q.     And in your opinion does this agreement -- this

1 Tri-Party Agreement require all of the parties to move  
2 forward with the project?

3 A. My understanding was, throughout the thing, is  
4 if any one party wanted to not move forward that they  
5 would be breaching this contract and would -- are  
6 required to repay the other side, yes.

7 Q. So if we move down to Section H, this section  
8 states:

9 At the end of the predevelopment activities,  
10 should the parties approve and accept the development  
11 program created by the process described herein, CCP will  
12 then directly be appointed as the master developer for  
13 the project by the parties to fully develop and build and  
14 manage the entire development program accepted by the  
15 parties under a separate master development agreement to  
16 be negotiated during the predevelopment period, which  
17 shall include the fully negotiated incentives  
18 contemplated in Exhibit E attached hereto.

19 Did I read that correctly?

20 A. Yes.

21 Q. And in that statement it contemplates that the  
22 parties may enter into a separate agreement, master  
23 development agreement, that will be negotiated in the  
24 future. Is that accurate?

25 A. No. It -- my understanding --



Deposition of Lane Moore, December 14, 2022

1 MR. EDWARDS: Lane, just --

2 I just want to, for the record, note that in  
3 that paragraph, the may language, Kristin, isn't present  
4 there that you just quoted or based your question on.

5 Just with that, I guess objection, Lane, you  
6 can go ahead. I'm sorry for the interruption.

7 THE WITNESS: No, and that's what I was  
8 going to say. I don't see may. It says they will  
9 directly be appointed as the master developer.

10 So my understanding was is if both parties  
11 approved it, town council approved it, I approved it,  
12 then they were going to be appointed master developer and  
13 the project was going to move forward.

14 BY MS. MACKIN:

15 Q. And what does it mean in your opinion when it  
16 says under a separate master development agreement to be  
17 negotiated during the predevelopment period?

18 A. Well, I think that's where they would then  
19 start to -- CCP would then need to set up the, the  
20 development agreement with the Town to start building  
21 these facilities. So -- it said they were going to be  
22 directly appointed the master developer. Now they needed  
23 to finalize that agreement for that directly appointed  
24 position.

25 Q. So if the parties hadn't negotiated the terms

Deposition of Lane Moore, December 14, 2022

1 they looked at the plan. But they've been through that  
2 process, so there would be somebody on council privy to  
3 that information.

4 Q. So because someone might be the same -- some  
5 council member might be the same, now, as was when Rumsey  
6 Park master plan was adopted, then any community center  
7 the Town built would be in violation of the Tri-Party  
8 Agreement in your opinion?

9 A. I would think if it has elements to that, yes.  
10 Then I would.

11 Q. So even if it didn't have any ice rink; is that  
12 correct?

13 A. Yeah. That was part of it, yep. But that's  
14 only one -- that was only one piece of it.

15 Q. And if it didn't have any pool, it would still  
16 be a breach of the Tri-Party Agreement?

17 A. We didn't have a pool in our rec center.

18 Q. And so any community center would be a breach  
19 of the Tri-Party Agreement.

20 A. In elements, yes. Yeah. I -- since they're  
21 considering our, our contract still open, I would -- I  
22 would think yes.

23 Q. And in the notice of claim -- it's the same in  
24 the complaint -- you allege the Town -- one element of  
25 damages you claim in this case is that the Town owes the

Deposition of Lane Moore, December 14, 2022

1 breakup fee plus eight percent per year of interest; is  
2 that correct?

3 A. Yeah. That was what was stated in the -- in  
4 the Tri-Party Agreement.

5 Q. What was not clear to me was from when that  
6 interest begins to accrue. Can you explain when you  
7 think -- from when you think the interest begins to  
8 accrue?

9 A. That's a good question. But -- yeah, I don't  
10 know when that -- probably once the master plan was  
11 adopted by the town council, I would think.

12 Q. So it --

13 A. Or once it was delivered? I -- yeah. I --

14 Q. So if the Town didn't enter into any  
15 discussions with MHA or RCEA until March of 2021, the  
16 interest would still backdate to the adoption of the  
17 Rumsey Park master plan?

18 A. That -- that's what -- that's how I would  
19 interpret it.

20 Q. So in your opinion is there anything Varxity  
21 can do that would require it to pay the breakup fee to  
22 the Town? Or is it just that the Town at this point is  
23 the only one who would owe --

24 A. No. I would think if the Town said they were  
25 willing to go forward tomorrow and we couldn't deliver

Deposition of Lane Moore, December 14, 2022

1 incentives?

2 A. When we talked about them, again, they -- I  
3 don't think they were required to, but they -- when we  
4 had those negotiations, they brought up, These are what  
5 we can offer you. So my understanding is that would be  
6 available, and, and I didn't think they would change  
7 their mind on it.

8 Q. Okay.

9 A. Because they --

10 Q. So --

11 A. Again, they were trying to --

12 A better word -- I'm trying to think of a  
13 better word.

14 -- woo me to come be a part of this and provide  
15 financial commitment to it to help them to, to build this  
16 master plan and this overall project.

17 Q. So even though the agreement stated that  
18 Varxity and the Town would negotiate which incentives  
19 would be received, it's your opinion that the Town had to  
20 offer the incentives that were delineated in Exhibit E;  
21 is that correct?

22 A. They were the ones that brought it to me. I  
23 didn't ask for, for those; they brought the incentives to  
24 me.

25 So I just -- I, I would have presumed that they

Deposition of Lane Moore, December 14, 2022

1 were already negotiating at that point what incentives  
2 they were willing to offer.

3 Q. In subsection E, it says:

4 If, and when, financing is put in place to  
5 construct any element of the project as contemplated, and  
6 predevelopment costs are included in said project's  
7 budget, the amount paid by Town and Varxity in support of  
8 this agreement may be fully reimbursed from such funding.

9 This says if, and when, financing is put in  
10 place to construct any element, which indicates that  
11 there's a possibility that financing may not be put in  
12 place to construct any element of this project.

13 Is that your understanding?

14 A. My understanding is that when this project was  
15 to be fully funded that both parties would be reimbursed.

16 Q. Right. But this agreement states if, and when,  
17 the financing is put in place, then the project may be  
18 fully reimbursed. So what under this agreement requires  
19 the financing to be put in place and the project to be  
20 constructed?

21 A. And that was -- I guess that was more of a --  
22 of them saying that once they approved it, then we were  
23 moving forward.

24 Q. And did you review this agreement before it  
25 was -- before you signed it?

Deposition of Lane Moore, December 14, 2022

1 loss of revenue. I didn't -- I didn't take into account  
2 even some of the incentives for tax or, or anything like  
3 that.

4 Q. And if the Tri-Party Agreement was for the  
5 facilities, and the project went forward, how do you know  
6 that the -- that you could have found an adequate piece  
7 of property within the town to construct the academy and  
8 enrolled sufficient number of students and constructed it  
9 quickly enough, even in light of COVID, to justify those  
10 assumptions in your proposed damages spreadsheet?

11 A. Well, we had two or three other locations ready  
12 to go. It was just a matter of whether we were going to  
13 pay the asking price for that land. And in some cases,  
14 we weren't prepared to pay that for certain land. It's  
15 just based on servicing and getting those locations. But  
16 it wasn't the only pieces of land we had.

17 So I do believe that COVID would have got in  
18 the way of some of that. But based on our model and  
19 other existing academies that were up and running -- and,  
20 again, based on the personnel that we had lined up to  
21 come in -- our proforma model again at that time -- now,  
22 hindsight is 20/20. If we were to go back and I had to  
23 redo the proforma -- again, the proforma was based on no  
24 COVID.

25 Q. And the damage calculation that you submitted,

1 at least thus far, disregards COVID. So are you  
2 proposing to present another damage figure, or do you  
3 still believe that an average of \$2 million of profit a  
4 year is a reasonable damage estimate even in light of  
5 what has happened in the past several years?

6 A. The \$2 million is, is based on the annual  
7 profit. And I actually think that number would probably  
8 go up now based on what the tuition fee is at some of  
9 these schools.

10 Based on some of our examples -- I'll use IMG  
11 as an example. They're at close to 90 some thousand  
12 where we based our proforma on 60 some thousand. So,  
13 yeah, COVID would have got in the way in the overall  
14 number, but the actual proforma number now would probably  
15 be higher than \$2 million a year.

16 Q. But does that --

17 A. Again, I'm not saying that we wouldn't go back  
18 and readjust over that five-year period of what COVID had  
19 done. And I think we've done that in some of our  
20 negotiations to try and settle. So...

21 MS. MACKIN: Okay. I don't have any  
22 further questions.

23 Richie, do you have any follow-up?

24 MR. EDWARDS: I do. I just have one or  
25 two.