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— Depo — Mark DiSalvo —

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Thursday, September 29, 2011

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32275FR

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Witness: Mark DiSalvo, pp 1-160**Case:** Mulholland vs. Attorney General of MA**Venue:****Case #:****Date:** 9/22/2011**Start Time:** 11:00 AM**End Time:** 4:20 PM**Reporter:** Doris Jones**Claim #:****File #:**

28721FR

Item	Description	Each	Quan	Total
O	Original Transcript	\$3.50	160	\$560.00
CTCA	Condensed Transcript/Media Package	\$0.00	1	\$0.00
Sub Total				\$560.00
Payments				\$0.00
Balance Due				\$560.00

Fed. I.D. # 86-1100261

1% interest accrued monthly on all balances over 30 days.

VOL. I

PAGES 1-160

EXHIBITS: 1-3

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Probate & Family Court

Civil Action No. ES09E0094QC

- - - - -

ALEXANDER B.C. MULHOLLAND, JR, et al.,

Plaintiffs,

vs.

ATTORNEY GENERAL of the

Commonwealth of Massachusetts, et al.

Defendants.

- - - - -

DEPOSITION OF MARK S. DiSALVO

September 22, 2011

11:05 a.m. to 4:20 p.m.

CASNER & EDWARDS, LLP

303 Congress Street

Boston, Massachusetts 02210

Court Reporter: Doris M. Jones, CSR/RPR

APPEARANCES:

MacLEAN, HOLLOWAY, DOHERTY, ARDIFF &
MORSE, P.C.

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For the Defendants School Committee of Ipswich
and Richard Korb, Superintendent.

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For the Witness

I N D E X

Deposition of: Page

MARK S. DiSALVO

By Mr. Perry 4

E X H I B I T S

Exhibit 1 Document from Feoffees 101

Exhibit 2 April 18, 2008 Lease 115

Exhibit 3 Letter dated June 27, 2006 with
Attached lease and rules and
Regulations 117

*Original exhibits retained by Mr. Perry

P R O C E E D I N G S

MR. PERRY: The witness will have the right to read and sign the transcript. We will waive the requirement it be in front of a notary. We will reserve all objections, except those going to the form of the question, and reserve motions to strike until time of trial.

MR. SHEEHAN: That's fine.

MARK S. DiSALVO,
having been first satisfactorily identified by the production of his Massachusetts driver's license and duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PERRY:

Q. Would you state your name.

A. Mark S., Sebastian, DiSalvo.

Q. What is your residential address?

A. 1011 Great Pond Road, three words, North Andover, Massachusetts 01845.

Q. Who do you reside there with?

A. I reside there with my spouse, my daughter and my brother-in-law at the moment.

1 Q. How old is your daughter?

2 A. My daughter is 14.

3 Q. Do you own any additional homes?

4 A. I do.

5 Q. What additional homes do you own?

6 A. I own property at the address 20 Hilltop
7 Road in Ipswich, Massachusetts, commonly known as
8 Little Neck.

9 Q. Do you know what lot number that is?

10 A. No idea. It's readily available in the
11 documents.

12 Q. Is that an interior lot or an exterior?
13 Where is it located?

14 A. I don't know what those terms mean.

15 Q. Are there other cottages between you and
16 the water?

17 A. There are.

18 Q. How long have you lived at the property in
19 North Andover?

20 A. I believe we purchased the property in
21 1986.

22 Q. How long have you owned -- is it a cottage
23 you own in Little Neck?

24 A. That's correct.

1 Q. How long have you owned the cottage in
2 Little Neck?

3 A. I purchased the property I believe in
4 1995.

5 Q. Who did you buy it from?

6 A. I bought it from the previous owner,
7 Mr. James Garvey, G-A-R-V-E-Y.

8 Q. What was it that you were purchasing from
9 Mr. Garvey?

10 A. I purchased the home and certain
11 appurtenances to the home. And as I understood it,
12 the right to reside at Little Neck.

13 Q. The appurtenances you purchased consisted
14 of what, a septic system? What was it?

15 A. The appurtenances include some personal
16 property that was inside the home and some marine-
17 oriented equipment that was no longer going to be
18 used by him.

19 Q. What was the purchase price that you paid?

20 A. My recollection is that it was \$110,000.

21 Q. What's your date of birth?

22 A. December 12th, 1954.

23 MR. CHAPMAN: You mean '64.

24 THE WITNESS: Thank you very much.

1 A. 1954.

2 Q. Would you give me your educational
3 background, please.

4 A. I have a bachelor's degree from the
5 University of Massachusetts in Boston in political
6 studies ~~and economics~~.

7 Q. Did you say in Boston?

8 A. In Boston, yes.

9 Q. In --

10 A. Political studies and economics.

11 Q. Was that a double major?

12 A. No.

13 Q. That was considered a single degree at
14 that time?

15 A. Yes. And I have several professional
16 designations that were earned, including something
17 called a CPC that is specific to my industry and
18 also CTA, commodity trading adviser.

19 Q. What is a CPC?

20 A. A CPC is a professional consulting
21 engagement in the human resources area designation.
22 And CTA is a certified trading, commodities trading
23 adviser given by the CFTC, Commodity Futures Trading
24 Commission.

1 Q. Have you had any formal education beyond
2 your bachelor's degree from U. Mass.-Boston?

3 A. No.

4 Q. Could you summarize for me what your
5 occupational history has been after graduating?

6 A. After graduating I started a business and
7 that entity was providing consulting work for zero
8 stage companies and also providing some political
9 consulting for zero stage companies. I then went to
10 work for a commodities entity.

11 Q. What year?

12 A. That probably would have been '78 or
13 thereabouts. I did that for several years, reopened
14 an entity called Hall -- I'm sorry, I went to a
15 company called Fairfield Whitney here in Boston, and
16 worked as the technical director of Fairfield
17 Whitney until 1984.

18 In 1984 or '85 I started a company
19 called HBD. It was my firm and we did classic zero
20 stage capital raising and consulting work for
21 entrepreneurs. That ran until 2001. However, in
22 1994 I was first engaged via HBD and then as an
23 employee for a company called Euromoney
24 Institutional Investor, PLC, which is a large

1 British electronics media publisher and events
2 organization. And I worked as a division chief
3 executive and provided various other consulting
4 responsibilities for ^Ethe II, Euromoney colloquially.

5 Q. During what period of time did you serve
6 as a division chief executive?

7 A. From 1994 to 2001.

8 Q. So the company that you were working for
9 was called what?

10 A. The division was called Lingua Franca,
11 L-I-N-G-U-A, F-R-A-N-C-A, Inc.

12 Q. And that was a subsidiary of --

13 A. Of Euromoney Institutional Investor.

14 Q. Is Euromoney Institutional Investor?

15 A. Yes. Euromoney is all one word, PLC.

16 Q. That was a British company?

17 A. Yes.

18 Q. Is that company privately owned?

19 A. It's a publicly-listed corporation.

20 Q. You were chief executive in a subsidiary
21 of a publicly-listed company?

22 A. That's correct.

23 Q. And as part of the regulatory environment
24 was your compensation publicly reported?

10

1 A. Not to my knowledge. I don't think I made
2 the top-tier list of compensation requirements under
3 FTSE rules.

4 Q. But you did well there?

5 A. I did well enough apparently.

6 Q. What happened occupationally after you
7 ceased to work in 2001 as CEO of Lingua Franca,
8 Inc.?

9 A. In 2001 I purchased Lingua Franca in a
10 management buyout from Euromoney Institutional
11 Investor.

12 Q. What was the amount that was paid for the
13 company?

14 A. I don't recollect it.

15 Q. Approximately.

16 A. It was maybe \$28,000 in cash, a future
17 royalty if earned, and the assumption of debt.

18 Q. And what happened to Lingua Franca, Inc.
19 after that?

20 A. Lingua Franca, Inc. was apparently closed
21 down by Euromoney Institutional Investor, I presume.

22 Q. What happened to the entity you bought?

23 A. Oh, thank you. It was reincorporated. I
24 took the brand.

1 Q. I see. So it was an asset sale?

2 A. It was an asset sale.

3 Q. And you took the brand and reincorporated
4 it as --

5 A. As Sema4, S-E-M-A, number 4, comma Inc.,
6 d/b/a Semaphore, S-E-M-A-P-H-OR-E.

7 Q. Tell me about your experiences with
8 Semaphore, please.

9 A. Semaphore, we started on December 6, 2001.
10 Semaphore does two things: We do diligence on
11 transactions for the venture capital and private
12 equity industry, in addition to more classic
13 corporate M&A support.

14 And secondly, we have a practice
15 that is called the Funds-Under-Management;
16 funds-hyphen-under-hyphen-management. In that
17 business we take over troubled venture and private
18 equity funds.

19 Q. Are you still involved with Semaphore,
20 Inc.?

21 A. Yes.

22 Q. From 2001 to the present has that been
23 your primary occupation?

24 A. That's correct. It's ~~by~~ my sole

12

1 occupation.

2 Q. What is your title with Semaphore, Inc.?

3 A. President and CEO.

4 Q. Has Semaphore, Inc. had any employees
5 since 2001?

6 A. Yes.

7 Q. How many?

8 A. Hundreds.

9 Q. Is it a successful company?

10 A. Yes.

11 Q. And you are the CEO and also you're an
12 owner?

13 A. I am the sole owner of the entity.

14 Q. So you're the sole owner and CEO of a
15 successful company that employs hundreds of
16 individuals and engages in due diligence
17 professionally?

18 MR. CHAPMAN: Objection. Go ahead.

19 A. I didn't say that. You asked whether
20 there have been employees and I said there have been
21 hundreds.

22 Q. How many employees do you have now?

23 A. We have half a dozen employees and another
24 30 de facto full-time relationships.

1 Q. Are those individuals who work for the
2 company on an independent contractor basis?

3 A. That's correct.

4 Q. On an as-needed basis to carry out
5 assignments?

6 A. That's correct.

7 Q. Are you familiar with a group known as the
8 Little Neck Legal Action Committee?

9 A. I am.

10 Q. Did I get the name right?

11 A. Little Neck Legal Action Committee is
12 accurate.

13 Q. Is that a legal entity, as you understand
14 it?

15 A. It's an unincorporated association of
16 like-minded individuals.

17 Q. Do individuals who are members of the
18 Legal Action Committee have to sign any documents to
19 become members?

20 A. Initially all members have done so.

21 Q. Are there bylaws of the organization?

22 A. There are none.

23 Q. You say initially members had done so?

24 A. Yes.

14

1 Q. Has that changed as new members have come
2 in?

3 A. There have been no new members, to my
4 knowledge.

5 Q. And is the document that the members sign
6 all the same for everybody?

7 A. Yes.

8 Q. Tell me, please, as best you can, what the
9 document says.

10 A. In effect --

11 MR. CHAPMAN: Let him get all the
12 words out of his mouth before you start speaking.

13 THE WITNESS: Sorry.

14 A. It in effect says that we're like-minded
15 individuals, that they agreed to pay for costs of
16 the organization, didn't expect any return for or
17 from the initial fee that was charged, and the
18 initial fee that was charged was for the benefit of
19 legal expenses.

20 Q. Are there any provisions in the documents
21 the members are required to sign concerning
22 decisionmaking or majority rule or anything like
23 that?

24 A. No.

1 Q. Has there been established any majority
2 rule or other provision for decisions to be made by
3 the organization?

4 A. By practice.

5 Q. And what has the practice been?

6 A. The practice has been that the membership
7 has allowed the committee, which is made up of five
8 members, and principally its co-founders, myself and
9 William Gottlieb, to act in their interests.

10 Q. So, you were one of the two founders of
11 this committee?

12 A. Yes.

13 Q. When did it get founded?

14 A. 2005 is my recollection. It could have
15 been in the fall of 2004.

16 Q. How was the -- strike that.

17 What would you call this five-person
18 committee that you referred to?

19 A. The Little Neck Legal Action Committee.

20 Q. How many members are there in the Little
21 Neck Legal Action Committee?

22 A. There are -- initially there were 141
23 like-minded individuals representing 141 properties.

24 Q. Okay. So, there's roughly 141 members of

16

1 the Little Neck Legal Action Committee and then
2 there's an executive committee of some sort of five
3 people?

4 MR. SHEEHAN: Objection.

5 BY MR. PERRY:

6 Q. Just help me with some language to
7 distinguish the five-person committee you referred
8 to from the whole committee that people are members
9 of?

10 A. My own characterization is that the
11 five-member committee is the Little Neck Legal
12 Action Committee with the active responsibility of
13 protecting the interests of its members totalling--
14 at least initially representing 141 properties.

15 Q. Who have agreed to help finance the
16 actions taken by the five-member committee?

17 A. That's correct.

18 Q. Were you one of the five members of the
19 committee?

20 A. Yes.

21 Q. Was Mr. Gottlieb?

22 A. Yes.

23 Q. Who are the other members?

24 A. A gentleman by the name of David Rocco.

1 Q. Spelled?

2 A. R-O-C-C-O.

3 Another gentleman by the name of
4 Michael O'Brien, O-apostrophe-B-R-I-E-N. And a
5 third person by the name of Joyce Lyons, L-Y-O-N-S.

6 Q. Have there ever been any other members of
7 this committee that you are referring to?

8 A. No.

9 Q. Are each of those three individuals still
10 members of this five-member committee?

11 A. Yes.

12 Q. What is the address at Little Neck of
13 Mr. Gottlieb?

14 A. Other than Middle Road I have no idea.

15 Q. Where does Mr. Rocco live? At Little
16 Neck, I meant. Let me strike that.

17 What cottage at Little Neck does
18 Mr. Rocco own?

19 A. I'm blanking on the name of the street.

20 MR. CHAPMAN: If you have a map he
21 can probably...

22 A. Plum Sound Road.

23 Q. 28.

24 David Rocco?

18

1 A. Plum Sound Road.

2 Q. Michael O'Brien owns a cottage at 35
3 Hilltop?

4 A. Hilltop Road.

5 Q. Joyce Lyons is also on Plum Sound?

6 A. Yes.

7 Q. Now you described your occupational
8 background. And Mr. Gottlieb is an attorney, is he
9 not?

10 A. Yes.

11 Q. To your knowledge what is Mr. Rocco's
12 professional background?

13 A. Mr. Rocco acts as a consultant in Homeland
14 Security and emergency services.

15 Q. What about Mr. O'Brien?

16 A. Mr. O'Brien owns a small company doing
17 school fundraising.

18 Q. What is the name of the company?

19 A. I have no idea.

20 Q. Do you know what Ms. Lyons' occupation is?

21 A. Dr. Lyons is an international consultant
22 around I believe health and economic development
23 issues in principally Third World nations.

24 Q. Would you characterize all of the members

1 of the committee as professionally successful
2 individuals?

3 A. I would.

4 Q. What was the role of the Little Neck Legal
5 Action Committee in the filing of a lawsuit in the
6 names of William Lonergan and Diane Whitney-Wallace
7 on behalf of themselves and others?

8 A. It was the agent responsible for
9 recommending, securing and acting on the execution
10 of that complaint.

11 Q. So it had a significant role in that
12 complaint?

13 A. Yes.

14 Q. Including a review of the allegations?

15 A. Yes.

16 Q. Did the committee help to procure the
17 individuals who would serve as the named purported
18 class representatives?

19 A. It did.

20 Q. Why was it decided to have individuals
21 other than those who are on the committee themselves
22 serve as the named plaintiffs?

23 MR. CHAPMAN: I'm going to object.
24 Unfortunately this gets into the area of

1 attorney/client. I was not part of the discussions
2 but that would have been discussions with counsel
3 when that decision was made.

4 MR. PERRY: That's possible. Let me
5 ask a couple questions and try to be yes or no with
6 these so we can see if we have a problem with
7 privilege.

8 BY MR. PERRY:

9 Q. First, you have an understanding, yes or
10 no, as to what the reasons were for using other
11 individuals to serve as the class representatives?

12 A. Yes.

13 Q. Did you have discussions outside of the
14 presence of counsel with other members of the
15 committee in which you discussed reasons for
16 utilizing these other individuals?

17 A. Please repeat the last part of your
18 question.

19 Q. Did you have discussions outside of the
20 presence of -- First of all, when I talk about
21 counsel I'm not referring to Mr. Gottlieb for the
22 moment in his capacity as a member of the committee.

23 Has Bill Gottlieb ever been your
24 lawyer?

1 A. I consider him counsel relative to this
2 matter.

3 MR. PERRY: Tyler, is that the
4 position you take on this, that Bill Gottlieb is
5 acting as counsel?

6 MR. CHAPMAN: Yes. With respect to
7 the lawsuit he certainly has played a role as de
8 facto in-house counsel of the committee.

9 BY MR. PERRY:

10 Q. You said you do have an understanding of
11 reasons why these class representatives were chosen
12 instead, for example, of you serving yourself?

13 A. Yes.

14 Q. Where did you derive that understanding
15 from?

16 A. In discussions with counsel.

17 Q. Which counsel are you referring to?

18 A. Mr. Gottlieb, Mr. Tully, Ms. O'Neal.

19 Q. That particular O'Neill --

20 A. It's Mary.

21 Q. Mary Beth O'Neal?

22 A. Yes.

23 Q. Her name is Mary O'Neal and she goes by
24 Beth?

1 A. Mary Beth.

2 MR. PERRY: That's

3 O-apostrophe-N-E-A-L.

4 BY MR. PERRY:

5 Q. Do you know what William Lonergan does
6 professionally?

7 A. He's a retired State Police member. I
8 believe he was a ranking officer; I don't recollect
9 the rank.

10 Q. Do you know what Diane Whitney-Wallace has
11 done professionally?

12 A. She is an entrepreneur and either manages
13 or owns a laundry and security business with her
14 husband. Commercial laundry.

15 Q. You told me that you bought property at
16 Little Neck sometime in you believe to be 1995,
17 right?

18 A. Yes, I think that's it. I haven't looked
19 at the docs for a hundred years.

20 Q. What documents do you have that would tell
21 you when you bought it?

22 A. I have a small closing package.

23 Q. What does that closing package consist of?

24 A. Bill of sale, financing documents,

1 representations from the Feoffees and closing
2 counsel.

3 Q. I guess I didn't understand the last part
4 of your answer. I understand that the closing
5 documents include a bill of sale, right?

6 A. (Witness nodded.)

7 Q. Is that right?

8 A. Yes.

9 Q. They include financing documents?

10 A. Yes.

11 Q. You said they include representations from
12 the Feoffees?

13 A. Yes.

14 Q. And then you said something about closing
15 counsel. That's the part I didn't understand.

16 A. And other information provided by closing
17 counsel. Probably his bill of sale, among other
18 things it.

19 Q. What document are you referring to that
20 consists of representations from the Feoffees?

21 MR. CHAPMAN:

22 A. That which was provided to me by the
23 Feoffees, likely in the person of Mr. Whiston, and
24 my own contemporaneous notes detailing my

1 conversations with Mr. Whiston.

2 Q. So with regard to the portion of that
3 which you say was provided to you, I want to
4 distinguish between your notes and something the
5 Feoffees gave you. Okay?

6 A. Okay.

7 Q. Are you saying -- and you think both of
8 these are in your closing file?

9 A. They are in a packet with all the closing
10 terms relative to the purchase of my home.

11 Q. Did you provide these to counsel in
12 connection with the lawsuit that was filed?

13 A. Most, if not all, of the documents.

14 Q. When was the last time you reviewed the
15 notes that you took or the information that
16 Mr. Whiston gave you?

17 A. In 2005, perhaps 2006, before the lawsuit
18 was filed.

19 Q. What was the nature of the information
20 that you got from Mr. Whiston, the written
21 information that he gave you?

22 A. It would consist, if my memory is
23 accurate, of general conditions and rules, if we can
24 call them colloquially, of Little Neck.

1 Q. So it didn't include any information about
2 future rents?

3 (Pause.)

4 BY MR. PERRY:

5 Q. It did not include any information about
6 future rents, for example, did it?

7 A. That it did not include.

8 Q. And these contemporaneous notes that you
9 have, tell me to the best of your recollection what
10 those consist of.

11 A. They would detail my conversations with
12 Mr. Whiston.

13 Q. What is your recollection of what
14 Mr. Whiston said to you and what you said to
15 Mr. Whiston?

16 A. I would query him about the conditions of
17 Little Neck, my responsibilities as an owner, the
18 responsibilities of the Feoffees to me as an owner;
19 general questions of life and dealings, how to, with
20 the Feoffees, among other things.

21 Q. Now, are you talking about conversations
22 you had before your purchase or are you talking
23 about conversations you had both before and after?

24 A. Before my purchase.

1 Q. Did you have any discussions with
2 Mr. Whiston about your rental obligations?

3 A. Yes.

4 Q. And when did you have those conversations?

5 A. Prior to the purchase of my home.

6 Q. Where were you when you had those
7 conversations?

8 A. Sitting on what is now the side front step
9 of -- side porch front step of my home on Little
10 Neck.

11 Q. Who was present besides you and
12 Mr. Whiston?

13 A. My wife, Patricia M. Melvin, would have
14 been present for part, not all of the conversations.

15 Q. And tell me please what she said to you --
16 strike that.

17 Tell me what Mr. Whiston said to you
18 and what you said to him on the subject of rents.

19 A. The principal conversation determining
20 whether or not I was going to buy the property was
21 about the question of rent and future obligations.
22 Mr. Whiston related to me several things. Among
23 them were that the rents would, quote-unquote, his
24 words, always be reasonable and that--

1 (Pause.)

2 A. -- and that the rents would equate to the
3 operating expenses of Little Neck on an annual
4 basis. And that is how it had been for decades upon
5 decades and for a hundred percent of his term as a
6 Feoffee.

7 At that time I took his
8 representation upon good faith as he was I believe
9 both chairman of the board of Feoffees and was
10 designated as manager of Little Neck.

11 Q. So you understood that Mr. Whiston's
12 intent with respect to rentals was as you described
13 it?

14 A. And more.

15 Q. Well, did you understand Mr. Whiston to be
16 telling you what his intent was with respect to
17 rentals?

18 A. He was telling me both intent and fact.
19 And telling me to rely upon the practice and
20 history.

21 Q. Did you have your own counsel in this
22 transaction?

23 A. I did not.

24 Q. Did you procure any written agreement to

1 limit in perpetuity the rent that you paid?

2 A. No.

3 Q. Why not?

4 A. Because I accepted the representation made
5 by Mr. Whiston, who went on more explicably to
6 relate the history of Little Neck, a wonderfully
7 fascinating conversation as I recollect it, where he
8 characterized what the purpose of the trust was and
9 that the Feoffees sometime prior to his involvement
10 had made a judgment to allow buildings to be put on
11 Little Neck and that at the time of the general
12 inclusion of property taxes in the town of Ipswich
13 that the Feoffees made a specific and concerted
14 judgment to allow the continued development of
15 Little Neck so that homes and the attendant property
16 taxes generated by those homes would constitute the
17 principal gift by the Feoffees to the town. And he
18 was quite proud of the fact that at least at that
19 time Little Neck was the largest single taxpaying
20 entity in the town of Ipswich.

21 By the way, I heard also Mr. Whiston
22 relate those exact things in a public circumstance
23 to the community of Little Neck in the periodic
24 times where he would discuss these matters. But

1 that was post my purchase.

2 Q. Have you told me your full recollection of
3 what Mr. Whiston said to you before your purchase on
4 the subject of rent?

5 A. It would be difficult to be characterize
6 that as my full recollection. Other principal
7 things that he related, as I remember, were that the
8 Feoffees had the responsibility for the care and
9 upkeep of the property, that the limitation on the
10 ability to live on the property other than the
11 designated really summer months was something that
12 they were particularly keen about; that although I
13 requested a designation as a quote-unquote
14 year-round home that it was denied and he said there
15 was a fixed number, I believe it is 24, of so-called
16 year-round homes on Little Neck.

17 We had further discussions, minor in
18 nature, about why that was the case. My
19 recollection is that principally it was around
20 public health matters and he was very, very keen to
21 note that there would be a significant penalty for
22 not following the rules relative to living on Little
23 Neck outside of the times that I was allowed as a
24 so-called summer resident.

1 Also, he was clear to point out --
2 he was funnily and quite clear to point out that he
3 hoped that I would improve my cottage and after all,
4 it would create more money for the town of Ipswich.
5 And he cautioned very clearly that any improvement
6 to the cottage, particularly as it related to
7 outside and site-line-oriented improvements needed
8 to be cleared by the Feoffees. And he was keen to
9 point to a neighboring cottage where the Feoffees
10 apparently in court won a judgment to require that a
11 portion of an improved home be torn down because it
12 impeded someone else's view.

13 We went on to talk -- most of our
14 time was talking about rent and what it would be in
15 the future. And I characterized that we in effect
16 had a license to live on Little Neck and he didn't
17 disagree. That although the rents were set annually
18 that there was no termination or end date to our
19 tenancy.

20 Q. He told you rents would be set annually?

21 A. Rents were generally set annually. He
22 didn't say they were set annually.

23 Q. What was the rent at the time you bought?

24 A. It's hard for me to recollect. I think it

1 was around 800 bucks.

2 Q. What was the assessed value of the cottage
3 you bought compared to your purchase price?

4 A. I don't know that I ever checked. I can
5 tell you currently.

6 Q. No. What kind of cottage did you buy?
7 How many bedrooms did it have?

8 A. There are five bedrooms with walls made of
9 cardboard. I call it my cardboard home.

10 Q. What improvements have you done since you
11 bought it?

12 A. I've improved the basement, digging it
13 out, pouring new floors; electrical and plumbing;
14 cosmetic work; an outdoor shower; stairs, roofing;
15 kitchen improvements; bathroom improvements as well.

16 Q. Do you know what the cost of those
17 improvements collectively has been?

18 A. I wouldn't hazard a guess.

19 Q. No estimate?

20 A. I've never totaled it.

21 Q. Since the time that you bought your
22 cottage at Little Neck have you rented it out to
23 others?

24 A. The first year I rented it for the season.

1 That's all.

2 Q. You've never rented it since?

3 A. That's correct.

4 Q. Did you have any discussions with any of
5 the Feoffees other than Mr. Whiston before you
6 bought?

7 A. No.

8 Q. How old -- do you know how old Mr. Whiston
9 is now, approximately?

10 A. I don't know.

11 Q. Do you know how old he was approximately
12 then?

13 A. I don't know.

14 Q. Older than you?

15 A. He's older than me.

16 Q. Substantially older than you?

17 A. That's a loaded term. He's of another
18 generation.

19 Q. A generation older than you?

20 A. I think that would be an accurate
21 depiction.

22 Q. Before you bought did you obtain any
23 information about the succession of the Feoffees?

24 A. Yes.

1 Q. What information did you have about
2 succession of Feoffees?

3 A. I learned it from Mr. Whiston in his
4 valuable history lesson and I learned it from
5 speaking to what became neighbors at Little Neck, in
6 addition to conversation with Mr. Garvey.

7 Q. What was your information about the manner
8 in which successors would be chosen?

9 A. My understanding at the time is that they
10 were a self-perpetuating body and I only knew them
11 to be a body of four at that time.

12 Q. So you were not aware that the Feoffees
13 included three selectmen?

14 A. I was not.

15 Q. You did know that the composition of the
16 Feoffees could change?

17 A. Only as a matter of the personalities, the
18 gentlemen who held the seat.

19 Q. You did know that the four individuals
20 that you thought were the Feoffees, they could
21 change, they could resign, they could be removed,
22 they could die?

23 A. I thought I just said that.

24 Q. Yes.

1 You were describing for me a public
2 statement that you say was made by Mr. Whiston?

3 A. Yes.

4 Q. Could you tell me when this public
5 statement was made?

6 A. During times where he was invited and/or
7 invited himself, I don't know which is accurate, to
8 community meetings that were held by an entity
9 called the Little Neck Association.

10 Q. Were these meetings in the first years
11 after you moved in?

12 A. They were throughout the period. They
13 certainly ended -- they certainly were not post the
14 filing of our complaint.

15 Q. Well, at some point you became aware, did
16 you not, that the Feoffees -- did you become aware
17 in the years after you purchased that there was some
18 concern on the part of people in the town that the
19 Feoffees weren't paying adequate amounts to the
20 schools?

21 MR. SHEEHAN: Objection.

22 A. Yes.

23 Q. How did you become aware of that?

24 A. I read it. And Mr. Whiston told us as a

1 community.

2 Q. And --

3 A. And he provided the reasons for that.

4 Q. The reasons for what?

5 A. The reasons for the objections of the
6 community from his perspective.

7 Q. Did something happen with regard to rents
8 in around 1998?

9 A. Rents began to escalate in that time
10 period.

11 Q. And did the Feoffees also in 1998 make any
12 announcements about what their intent was with
13 regard to rents that were different from the way it
14 had been before?

15 A. They did.

16 Q. What did they say in around 1998 on that
17 subject?

18 A. That there was significant pressure by the
19 town in the person of the school committee but
20 caused by the finance committee of the community
21 because of what was related as financial pressures
22 of the community, meaning the town of Ipswich, its
23 budget pressures, to increase the occasional gift
24 that the Feoffees provided in whatever excess of

1 revenue they had from the operations and maintenance
2 of the property. And this over and above the
3 property taxes that were paid.

4 Q. Did Mr. Whiston indicate that the Feoffees
5 would be charging in the future fair market rent?

6 A. Mr. Whiston indicated that they would seek
7 to secure the fair market rent but there was never a
8 characterization as to how that would be calculated,
9 determined or assessed.

10 Q. But he did tell the tenants in 1998 that
11 the intent was to phase in the collection of fair
12 market rents?

13 A. Yes. Allow me to amend that. He did tell
14 the community that there would be a phasing of
15 increased rents. We never had a characterization as
16 to what a fair market rent was.

17 Q. I understand that you had no definition of
18 what a fair market rent was, correct?

19 A. That's correct.

20 Q. The Feoffees said that they wanted to
21 determine what the fair market rent was and collect
22 it. Is that true?

23 MR. CHAPMAN: Objection. Go ahead.

24 A. I don't recollect a specific statement

1 where there was a characterization that they would
2 determine the fair market rent. I don't know at the
3 time of the communication whether they knew what
4 that, quote-unquote, fair market rent was. But that
5 it was their intent to attempt to secure it, because
6 of the exterior budget pressures put upon the
7 Feoffees.

8 Q. Now when Mr. Whiston -- I'm sorry, were
9 you present when he made these statements?

10 A. At a community meeting, yes.

11 Q. When Mr. Whiston made statements in 1998
12 to the effect that the Feoffees were going to
13 institute the collection of fair market rent did you
14 feel that that was in any way a breach of any
15 promises that had been made to you?

16 A. Yes.

17 Q. Did you file any claims on account of that
18 between that date and the present?

19 A. Yes.

20 Q. You personally?

21 A. In concert with my colleagues.

22 Q. Apart from the action that was filed in
23 December of 2006, are you aware of any actions that
24 were filed on your behalf or by you on account of

1 the representations that you say were made to you
2 before your purchase in 1995?

3 A. Objections were raised and --

4 Q. I'm just asking you about whether any
5 lawsuits were filed.

6 A. Thank you. No.

7 Q. There was a lawsuit filed in or about
8 December 2006, correct?

9 A. Yes.

10 Q. The lawsuit states -- by the way, you saw
11 the lawsuit before it was filed and approved it,
12 right?

13 A. Yes.

14 Q. And it states, "Plaintiffs have always
15 been and remain willing to pay a fair rent for the
16 use and occupancy of the lots in Little Neck upon
17 which their homes have been built." That is a true
18 statement?

19 A. Yes.

20 Q. And that's true as to you?

21 A. Yes.

22 Q. And when you say you're willing to pay a
23 fair rent, does that mean you're willing to pay a
24 fair market rent?

1 A. No --

2 MR. CHAPMAN: Objection. Just to be
3 clear --

4 MR. PERRY: I'm going to rephrase
5 it.

6 MR. CHAPMAN: Go ahead.

7 BY MR. PERRY:

8 Q. You said you agree with the statement I
9 read. Let me ask you a followup.

10 Does that mean that you're willing
11 to pay or were willing to pay prior to the
12 settlement of the lawsuit concerning the proposed
13 sale of Little Neck, a fair market rent for the
14 premises?

15 A. No. It means I was willing to pay a fair
16 rent because I considered the word "market" to be a
17 loaded term.

18 Q. Were you willing at the time this class
19 action was filed to pay a rent that would reflect
20 what a disinterested tenant coming to Little Neck
21 would be willing to pay for the property?

22 A. No.

23 Q. Why not?

24 A. Because other terms of my living

1 arrangement and tenancy would need to be reflected
2 in that number.

3 Q. And what are those other terms?

4 A. Among them would be the exclusion of my
5 responsibility to pay property taxes. On the land,
6 I might add.

7 Q. Are you familiar with how real estate in
8 general is assessed?

9 A. Yes.

10 Q. And you understand that when -- let's just
11 take the normal ownership of property that consists
12 of real estate and improvements, all right?

13 A. (Witness nodded.)

14 Q. Are you with me?

15 A. Yes.

16 Q. You understand that the assessment would
17 be broken down into an allocation toward the real
18 estate and an allocation toward the improvements,
19 right?

20 A. Yes.

21 Q. What's your understanding of how an
22 assessor would value the improvements?

23 MR. CHAPMAN: Well, I'm going to
24 object. I'm not going to instruct him not to answer

1 but I do think you're asking him for an expert
2 opinion.

3 MR. PERRY: I'm not trying to get
4 expert testimony.

5 BY MR. PERRY:

6 Q. I'm just trying to procure your
7 understanding so I can go back and talk about the
8 fair rent issue.

9 MR. CHAPMAN: You are asking him for
10 his understanding of how his property would be
11 assessed.

12 MR. PERRY: Right now I was in a
13 hypothetical of a normal property consisting of a
14 lot under common ownership.

15 MR. CHAPMAN: That's the basis of my
16 objection.

17 A. The answer is yes, I'm reasonably
18 familiar, both experiencing it as a homeowner, a
19 tenant, experiencing it as a tenant, experiencing it
20 as a public official.

21 Q. Is it your understanding that in the
22 normal context of a value put on a parcel including
23 improvements based upon, among other things,
24 comparing it to what other properties that were

1 similar have sold for?

2 A. I'm aware assessors have wide latitude in
3 determining what they consider to be a fair assessed
4 value.

5 Q. Once an assessed value is set, is it
6 allocated to the real estate and the improvements,
7 as you understand it?

8 MR. SHEEHAN: Objection.

9 A. In the circumstance of a home where
10 there's common ownership of both the land and the
11 home itself, then the land is provided -- check
12 that.

13 The improvement of the property
14 itself provides additional value to the land upon
15 which it sits in a circumstance where there is a
16 common ownership.

17 Q. Did you understand that the value of the
18 improvements in that situation is generally
19 considered to be the replacement cost of those
20 improvements less reasonable depreciation?

21 A. That is accurate. As well as it is
22 accurate that a calculation can be made exclusively
23 on comparables relative to comparable sales and that
24 assessors have very, very wide-ranging authority in

1 order to be able to set what they consider to be the
2 highest value.

3 Q. Now, when we were talking about fair rent
4 and fair market rent, your point, I assume, is that
5 when one calculates the amount of rent that is fair
6 it needs to be taken into account that the tenant is
7 paying property taxes or any special assessments
8 that they're paying?

9 A. Among other reasons, yes.

10 Q. So that if you were going to base it on a
11 comparable lot, to be based on another lot where
12 those same situations applied?

13 A. Among others, yes.

14 Q. You're not quarrelling with the concept of
15 paying fair market rent as long as the fair market
16 rent is an apples to apples fair market rent that
17 understands that you're paying property taxes?

18 MR. CHAPMAN: Objection.

19 A. I did not object to paying a fair rent
20 based on the common characteristics utilizing the
21 unique circumstances that existed on Little Neck and
22 exist to this day in addition to the metrics that
23 might be offered relative to things as wide as
24 comparables to discounted cash flows to other

1 values.

2 Q. You're familiar with the concept in the
3 commercial real estate world of triple net leases?

4 A. Yes.

5 Q. In a triple net lease the tenant pays the
6 property taxes, the insurance and various other
7 costs, correct?

8 A. Yes.

9 Q. It's possible then to determine, on a
10 triple net basis to determine what a fair market
11 rent is, right?

12 A. Between two parties.

13 Q. Or an appraiser can come in and give an
14 opinion on what a fair market rent basis is on a
15 triple net basis for a commercial building, correct?

16 A. Yes.

17 Q. And you know that that happens all the
18 time, right?

19 A. Yes.

20 Q. And in the same way, if we had a property
21 at Little Neck on which a tenant was paying taxes,
22 somebody could come up with a fair market value
23 analysis of what fair rent is with the understanding
24 the tenant will be paying the taxes, right?

1 MR. CHAPMAN: Objection.

2 A. Hypothetically one might be able to do so.

3 Q. The question is if somebody could
4 determine what a fair market rent is for the cottage
5 given the understanding that the tenant is paying
6 taxes and may be responsible for other assessments,
7 would you be prepared to pay that fair market rent?

8 MR. CHAPMAN: Objection.

9 BY MR. PERRY:

10 Q. Or were you?

11 A. I would be more inclined to do so
12 considering other factors, such as the limited time
13 in which one, at least at that time, had the
14 capacity to be able to enjoy the property.

15 Q. You think that when somebody is
16 calculating fair market rent you need to take into
17 account who is responsible for paying the property
18 taxes, right?

19 A. Yes.

20 Q. They need to take into account if there
21 are going to be any special charges to the tenants
22 associated with the property?

23 A. Yes.

24 Q. They need to take into account what the

1 tenants' rights are with respect to improving the
2 building, with limitations?

3 A. Yes.

4 Q. And they need to take into account whether
5 the tenant has a right to occupy for 12 months or
6 only a lesser period of time?

7 A. Yes.

8 Q. But given those constraints, you did not
9 at the time this lawsuit was filed have an objection
10 to paying a fair market rent that was calculated in
11 accordance with those understandings?

12 MR. CHAPMAN: Objection.

13 A. I only object to your use of the word
14 "market." I was willing, as it was written, to pay
15 a fair rent.

16 Q. How do you define a fair rent?

17 A. A fair rent would be the consideration of
18 all of those things that you determined, that you
19 related, in addition to a recognition of the very
20 unique circumstances that existed on Little Neck at
21 that moment and to this day.

22 Q. Now, how would those unique circumstances
23 influence the fair rent?

24 A. Most particularly tied around the fact

1 that I and my colleagues and neighbors own the
2 property that's sitting on vacant land that other
3 than having my property that I've paid for and
4 improved and cared for and protected, the vacant
5 land would have little, if any, value in and of
6 itself.

7 Q. Somebody could prior to -- strike that.

8 In the period of time we're talking
9 about, back in the 2000s, if somebody wanted to
10 build a brand new house at Little Neck they could
11 buy an existing cottage, raze it and rebuild it,
12 consistent with whatever limitations applied with
13 respect to the footprint or height, correct?

14 MR. CHAPMAN: Objection.

15 A. Yes.

16 Q. Are you saying that you think that the --
17 My understanding is that under the current zoning
18 there may be issues with building improvements on
19 any of the vacant lots. Is that your understanding?

20 A. It is.

21 Q. And you're saying you think the rents
22 should be adjusted in some way because the cottages
23 that exist at Little Neck were built before zoning?

24 A. I'm not capable of answering that

1 question.

2 The --

3 MR. CHAPMAN: Just wait. He hasn't
4 asked a question.

5 THE WITNESS: I'm sorry.

6 BY MR. PERRY:

7 Q. Prior to purchasing the property had you
8 seen any documents relating to the trust that owned
9 the land?

10 A. I did.

11 Q. What did you see?

12 A. I had given to me some representation of
13 at least part of the documents creating this trust
14 back in 1640 or thereabouts.

15 Q. Who gave you those?

16 A. I believe Mr. Garvey did. And I believe
17 that Mr. Greenough did. Mr. Greenough is an
18 attorney who I later discovered worked for the
19 Feoffees.

20 Q. Did you have any dealings with
21 Mr. Greenough in your purchase?

22 A. I did.

23 Q. What was his role when you purchased your
24 cottage?

1 A. He was the closing attorney, I guess we
2 can characterize him as.

3 Q. Who did he represent at the closing?

4 A. I have come to understand that he
5 represented the Feoffees.

6 Q. Was he the bank attorney?

7 A. And the bank attorney.

8 Q. At the closing he was representing the
9 bank, wasn't he?

10 A. And the Feoffees.

11 Q. Did anybody tell you ever between that day
12 and today that he represented the Feoffees at that
13 closing?

14 A. Only his course of conduct told me that.

15 Q. The closing was a closing of a sale
16 between Mr. Garvey and you that was being financed
17 by a bank?

18 A. That's correct.

19 Q. And Mr. Greenough held himself out at that
20 closing as being the bank attorney?

21 A. Yes.

22 Q. And you now know that he from time to time
23 gave legal advice to the Feoffees?

24 A. I now know that. He did not relate, as I

1 believe it is his obligation to do so, that he had
2 that relationship with the Feoffees.

3 Q. Well, he didn't represent you in the
4 transaction, did he?

5 A. He didn't.

6 Q. So you don't know whether he told the bank
7 that he had a relationship with the Feoffees, do
8 you?

9 MR. CHAPMAN: Objection.

10 A. I presume upon all the evidence that the
11 bank was aware of that.

12 Q. His obligation was to tell his clients of
13 any conflicts, right?

14 MR. CHAPMAN: Objection.

15 A. I don't know what his obligation is. I
16 just know what fairness in equity is.

17 Q. You think Mr. Greenough had an obligation
18 to you, a nonclient, to tell you of his role with
19 the Feoffees?

20 MR. CHAPMAN: Objection.

21 A. As a principal party, I do.

22 Q. Even though he wasn't representing you?

23 A. Yes.

24 Q. How would that have affected things had

1 Mr. Greenough told you in this transaction he was
2 representing the bank but that he had also done work
3 for the Feoffees?

4 MR. CHAPMAN: Objection. Go ahead.

5 A. It likely would have been the impetus for
6 me to secure my own counsel.

7 Q. Why is that?

8 A. Because I've been involved in business
9 with too many non-arm's-length transactions and it
10 would have rung an immediate alarm to me.

11 Q. But you knew you didn't have counsel in
12 this transaction at all?

13 A. That's correct.

14 Q. And you knew Mr. Greenough wasn't
15 representing you in this transaction?

16 A. That's correct.

17 Q. And you knew that the Feoffees had legal
18 counsel presumably but you didn't know who?

19 A. That's correct.

20 Q. What difference did it make to you that
21 the bank attorney was somebody who had provided
22 advice over the years to the Feoffees?

23 A. Because I was -- notwithstanding what was
24 said, it would have raised an alarm to me that a

1 principal party at interest, the Feoffees, with whom
2 I had had specific conversation, also happened to
3 represent the entity that was assisting in
4 financing.

5 Q. Well, the Feoffees didn't represent that
6 entity, did they?

7 A. Which entity?

8 Q. I'm sorry, I didn't follow that answer.

9 You had discussions with the
10 Feoffees?

11 A. Yes.

12 MR. SHEEHAN: Objection.

13 BY MR. PERRY:

14 Q. You had gotten a loan from a bank?

15 A. Yes.

16 Q. What bank?

17 A. Ipswich Cooperative Bank I believe.

18 Q. You're now saying that --

19 A. To whom --

20 MR. CHAPMAN: Wait.

21 BY MR. PERRY:

22 Q. You're now saying that it would have
23 raised a red flag had you known that the lawyer who
24 represented Ipswich Cooperative Bank at the closing

1 had also done legal work for the Feoffees?

2 A. It would have raised a red flag to me.

3 Q. Why would that have raised a red flag?

4 A. Because of the proximity of interests.

5 And it would have made me uncomfortable at that
6 moment and would, I'll repeat, would have caused me
7 to go slower. Mr. Greenough made representations to
8 me that I now recognize were in the interests of the
9 Feoffees and not the financial institution.

10 Q. What did he tell you?

11 A. He encouraged me to sign documents and the
12 like that were solely to the benefit of his client.
13 Not the banking institution but the Feoffees.

14 Q. What documents did you sign that you're
15 referring to?

16 A. Documents around my responsibilities and
17 obligations as an owner.

18 Q. So you told me earlier that you had a
19 closing packet?

20 A. Yes.

21 Q. Are these documents that you signed in the
22 packet?

23 A. I presume they are.

24 Q. What responsibilities as an owner did you

1 sign onto that you are now upset with?

2 A. My answer is in the context of whether I
3 would have sought outside counsel knowing that
4 Mr. Greenough also represented the Feoffees and not
5 just the bank. So I would have questioned --

6 Q. No, no, my question --

7 A. Would you allow me, sir?

8 Q. I just want to ask you the question.

9 What did you sign that you're now
10 concerned about having signed?

11 A. Every document.

12 Q. What did those documents say that you
13 wished you hadn't signed?

14 A. I didn't say that I wished that I didn't
15 sign them. I said at that time if I were aware that
16 Mr. Greenough represented the Feoffees I would have
17 likely secured my own counsel, the outcome of which,
18 if I had done so, I do not know.

19 Q. Yes, we agree on that.

20 The question I'm asking you is tell
21 me what was in the documents that Mr. Greenough
22 recommended, you say, that you sign?

23 A. An agreement relative to the rules of
24 Little Neck.

1 Q. Are you of the understanding today that in
2 order to buy the property you needed to sign certain
3 documents?

4 A. Mm-hmm.

5 Q. Yes?

6 MR. CHAPMAN: Say yes or no.

7 A. Yes.

8 Q. And so these were presented to you at the
9 closing as documents you needed to sign to make your
10 purchase?

11 A. Yes.

12 Q. And you were unrepresented at that
13 closing?

14 A. Yes.

15 Q. And you knew that Mr. Greenough was there
16 representing the bank but didn't know that he also
17 had a relationship with the Feoffees?

18 A. That's correct.

19 Q. Is there anything in those agreements
20 relevant to your obligation to pay rent?

21 A. I've not reviewed the documents since
22 2004, 2005, as I said earlier, but I believe that
23 that's correct.

24 Q. That --

1 A. That there is something in the documents
2 relative to paying rent.

3 MR. PERRY: Off the record.

4 (Recess taken.)

5 BY MR. PERRY:

6 Q. At any time before the lawsuit was filed
7 in Superior Court did you come to the understanding
8 that there was a legal obligation on the part of the
9 Feoffees to collect a fair rent for the benefit of
10 the schools of Ipswich?

11 A. No.

12 Q. Do you have that understanding now, that
13 the Feoffees had such an obligation?

14 A. I don't to this day.

15 Q. Is there a reason -- Do you believe that
16 the Feoffees have such an obligation?

17 A. No.

18 Q. Why is that?

19 A. Because I believe that an obligation as
20 defined by the school committee or the finance
21 committee is my proviso; not that I believe that
22 they are in fact collecting a fair rent given the
23 conditions and circumstances that exist on Little
24 Neck and that -- and given the representations made

1 to me and I believe the community and by the general
2 course of conduct of the Feoffees over the course of
3 many, many, many decades.

4 Q. You and I could agree or disagree on what
5 a fair rent is, right?

6 A. We could.

7 Q. My question to you is whether you have
8 ever been of the understanding that the Feoffees
9 have a legal obligation to collect a fair rent for
10 the benefit of the schools?

11 A. I don't have an understanding of that. I
12 know the Feoffees have an obligation to run the
13 trust and I know that they have the goal of
14 providing compensation to the community. And I
15 believe that they fulfill that goal as described to
16 me by Mr. Whiston and to the community relative to
17 the garnishment of property taxes.

18 Q. So it's your position that because the
19 cottage owners paid property taxes it would be
20 legally okay for the Feoffees to collect less than a
21 fair rent for the property?

22 MR. CHAPMAN: Objection.

23 A. I don't have the capacity to make that
24 judgment. I'll let somebody in ^athe black robe do

58

1 that.

2 (Pause.)

3 A. I'm really keen to know what you're
4 crossing out, Steve as, just as a matter of
5 circumstance.

6 (Discussion off the record.)

7 BY MR. PERRY:

8 Q. You've described your own experiences
9 talking to Don Whiston about rentals at Little Neck
10 before purchasing. Do you know anybody else who had
11 conversations with Don Whiston about rentals before
12 purchasing?

13 A. I know some.

14 Q. Tell me who you know.

15 A. I believe I recollect that Mr. Gottlieb
16 did. I don't know that I've had the specific
17 conversation with others. I can only testify to
18 Mr. Gottlieb. That's all.

19 Q. Did Mr. Gottlieb purchase before you or
20 after you?

21 A. I think he purchased before me. But I'm
22 not certain.

23 Q. Do you know how many of the cottages
24 turned over approximately in terms of owners after

1 you came to Little Neck?

2 A. No.

3 Q. Is there someplace where one can get
4 records of the sales of the cottages? Are they
5 recorded anywhere?

6 A. Other than the Feoffees own roster, I
7 don't know where that might be provided. Perhaps in
8 the assessor's office.

9 MR. SHEEHAN: Off the record.

10 (Discussion off the record.)

11 BY MR. PERRY:

12 Q. We've talked about a few conversations
13 involving Mr. Whiston. One, you recounted your
14 conversations with him before the sale, right?

15 A. Yes.

16 Q. Second, you've told me about some
17 communications he made about rent that were at the
18 Little Neck Association, right?

19 A. That's plural. It wasn't one event.

20 Q. Right.

21 And third, you testified about his
22 communicating the intent to charge higher rent in
23 response to concerns raised by the town in around
24 1998, right?

1 A. Yes.

2 Q. Now, after Mr. Whiston announced the
3 intent to raise rent with the goal of fair market
4 rent expressed around 1998, were there any other
5 conversations in which the trustees or Feoffees that
6 you're aware of gave any assurances about rent?

7 A. Yes.

8 Q. Tell me how many such communications
9 you're aware of.

10 A. In near every visit by Mr. Whiston to the
11 Little Neck Association's general annual meeting,
12 which happens either at the beginning of the summer
13 season or the end of the summer season, when he was
14 invited those three, four, perhaps more times he
15 would relate always I'm looking out for your
16 interests; he would relate always that there are
17 significant pressures on the Feoffees, that we know
18 things might look different going forward but we
19 want to take care of you. It was an almost paternal
20 relationship and most people on Little Neck gave
21 Don, as he was known, that respect because he in
22 fact up to a certain point exhibited that paternal
23 confidence and protection of the Little Neck
24 residents, fulfilling what we had known, what we had

1 experienced and what was told to us all along were
2 the common practices of continuing as they had for
3 decade upon decade.

4 Q. Did you have any conversations or hear any
5 statements about or made concerning rent by Peter
6 Foote?

7 A. Prior to 2006, no.

8 Q. What statements did you hear him make
9 after 2006?

10 A. They were only in connection with
11 negotiations with the Feoffees.

12 Q. Did you have any conversations or hear any
13 statements made by Alex Mulholland about rent?

14 A. I'm less certain about that.

15 Q. Can you recall any?

16 A. I cannot recall any at this moment.

17 Q. Did you hear any statements made by Jim
18 Foley concerning rent?

19 A. Yes.

20 Q. How many statements?

21 A. They would have been generally in either
22 one-on-one conversations or in the context of
23 conversations that we had with the Feoffees, Jim as
24 their representative, prior to the filing of the

1 complaint and in what I believe is the one time that
2 Jim spoke to the community at large.

3 Q. And what do you recall Mr. Foley saying in
4 these conversations or statements?

5 A. They were sharper in tone, less
6 paternalistic. Very much more businesslike in what
7 was communicated with -- I'll stop there.

8 Q. You did not get any assurances from
9 Mr. Foley about rent, did you?

10 A. I don't recollect Jim relating anything to
11 the community other than the then current Feoffee
12 party line. Which, by the way, every communication
13 that we got from Mr. Whiston we considered to be the
14 then Feoffee party line. He was Mr. Feoffee.

15 Q. Did any of the Feoffees ever reside, to
16 your knowledge, or own a cottage at Little Neck?

17 A. I know that Mr. Foley's family had a
18 cottage on Little Neck. I don't know whether he had
19 interest in that cottage in later years. And he is
20 the sole Feoffee that I know actually resided on
21 Little Neck. I believe Mr. Whiston has family
22 members. He may or may not have a principal
23 interest in a cottage on Little Neck.

24 Q. With regard to Mr. Foley, which members of

1 his family -- Do you know the identity of the people
2 you're talking about?

3 A. I believe it was his parents and that he
4 grew up on Little Neck. And I don't know whether he
5 took a financial interest in the property in his
6 adult years.

7 Q. Do you know what his parents' names were?

8 A. I have no idea.

9 Q. And Mr. Whiston, can you tell me what
10 family connections you are aware of that he had?

11 A. I believe it's Mr. Whiston's daughter and
12 son-in-law. I think the name is Pickul,
13 P-I-C-K-U-L, is my recollection of the spelling of
14 their name.

15 Q. That would be David and Kimberly Pickul?

16 A. Yes. Cliff Road.

17 Q. 8 Cliff Road?

18 A. Yes, same people.

19 Q. You told me your address at Little Neck
20 was --

21 A. 20 Hilltop Road.

22 Q. At the time you bought your unit were you
23 responsible for making any payments other than the
24 rent and property taxes?

1 A. No. To whom?

2 Q. To the Feoffees?

3 A. I was responsible for making other
4 payments, yes. But to the Feoffees I paid what's
5 characterized as rent and I forwarded my,
6 quote-unquote, fair share of property taxes, in
7 addition to which I paid personal property taxes to
8 the town directly. I paid my property taxes on the
9 real estate to the town directly.

10 Q. Well, you paid your real estate taxes on
11 the improvements to the town directly and paid for
12 the real estate to the Feoffees, right?

13 MR. SHEEHAN: Objection.

14 A. No. I paid property taxes for the land to
15 the Feoffees, my, quote-unquote, share of that. I
16 paid property taxes for the value of the property
17 sitting on that land.

18 Q. The improvements?

19 A. Okay. I call it my home. And I paid a
20 personal property tax on the contents of that home.
21 In addition to which I had operational -- full
22 operational responsibility, including insurance
23 coverage, including water bills, electrical bills
24 and every other -- all maintenance responsibilities.

1 Q. At the time you bought, what type of waste
2 discharge system did you have?

3 A. I had a cistern.

4 Q. What is that?

5 A. A cistern is -- this cistern was a beehive
6 nest of bricks that collected waste and effluent was
7 dissipated through the ground.

8 Q. At some point did that change?

9 A. It did.

10 Q. When did your waste system change?

11 A. Post 2000. I don't know the exact date
12 that it changed but the prospect of it changing was
13 in the year 2000.

14 Q. Tell me what happened.

15 A. What happened was the Feoffees signed a
16 consent order with I believe it's now known as DEQE,
17 maybe it's now known as DEP.

18 Q. It used to be DEQE; it's now DEP.

19 A. Thank you very much.

20 With DEP or DEQE at that time, I
21 don't know when the title change happened. And that
22 consent order detailed responsibility for changing
23 how waste was removed from Little Neck.

24 Q. There was a progression of what happened

1 with respect to the plan for addressing the waste
2 problem, right?

3 A. Yes. As I recollect, the Feoffees signed
4 the consent order, the knowledge of which was
5 withheld or at least not revealed to Little Neck
6 residents nor were the conversations that were
7 apparently taking place that led up to the agreement
8 on the consent order shared with Little Neck
9 residents.

10 And the Feoffees related that each
11 individual at Little Neck would have the
12 responsibility of securing either a tight tank if we
13 were seasonal residents or a drip system if they
14 happened to be year-round residents.

15 Q. Did you take steps to get a tight tank?

16 A. I did not.

17 Q. Did you understand what the cost of a
18 tight tank would be?

19 A. It was related initially that the cost
20 would be in or around \$10,000. And there was
21 immediate objection. And the drip system was
22 somewhere in the 20s. 26, if my memory is correct.

23 And there was immediate objection to
24 two things. Number one, the responsibility of the

1 homeowners to provide sanitary waste removal; and
2 number two, the cost.

3 And let me add C to that and I
4 apologize. The presence of tight tanks and waste
5 trucks pumping out waste in 140-plus homes was
6 objectionable to seasonal residents and year-round
7 residents in kind.

8 Q. At the time that these discussions were
9 happening was the Little Neck action committee yet
10 in existence?

11 A. Little Neck Legal Action Committee was
12 not.

13 Q. Was there any group representing the
14 tenants in these discussions?

15 A. There was a group of tenants who were
16 charged with trying to speak in a single voice or at
17 least in some way represent the tenants at large
18 around the discussions of how the Feoffees should be
19 responsible for wastewater removal.

20 Q. Who were the group of tenants who were
21 charged by the tenants with representing them on
22 this issue?

23 A. They were a group of individuals who were
24 elected by those who chose to participate in an

1 election in what was called I believe -- there was a
2 Little Neck Feoffee committee which later morphed
3 into something called Little Neck Homeowners, Inc.
4 or Little Neck Homeowners Association, Inc., one of
5 those two. And that was a more formal incorporated
6 entity.

7 Q. Who were the individuals who were charged
8 with this role of speaking as a single voice on
9 behalf of the tenants concerning the waste issue?

10 A. I can recollect some of the names.
11 Principally Richard Doherty, D-O-H-E-R-T-Y, who is a
12 wastewater engineer. Robert Dever, D-E-V-E-R, who
13 was a former mayor of Woburn and professionally was
14 an airline pilot. Thomas Allen, who is retired. He
15 was a contracts officer and program manager for
16 Raytheon, if I recollect, upon his retirement.

17 There were other individuals who
18 came and went from either or both of these
19 committees and I don't recollect when one was
20 superseded by the other. But those are the three
21 principals.

22 Q. Did you ever play a role on that
23 committee?

24 A. I played no formal role with that

1 committee.

2 Q. Did you have an informal role?

3 A. I tried to have a role of influence.

4 Q. So you communicated with those committee
5 members to voice your views?

6 A. I did.

7 Q. Did Mr. Gottlieb have a role with that
8 committee?

9 A. He did not in a formal manner.

10 Q. Did he have the same informal role that
11 you had?

12 A. He tried to influence in the manner that I
13 did.

14 Q. Were you and Mr. Gottlieb friends at that
15 time?

16 A. I had never met the gentleman.

17 Q. When did you first get to know him?

18 A. I first met him in 2004.

19 Q. You say you tried to influence these
20 individuals, as did Gottlieb. Were you in agreement
21 or disagreement with the position they were taking
22 on behalf of the tenants?

23 A. There were two committees, as I recollect.
24 And one committee had principally this wastewater

1 responsibility with the three gentlemen whom I
2 related. There was another committee, whose name I
3 don't recollect, who had some interface with the
4 Feoffees representing the community at large. At
5 one point one morphed into the other. But it at
6 that time had a very different responsibility. The
7 first committee had a responsibility upon the
8 invitation of Mr. Whiston.

9 Q. For input concerning how to deal with the
10 wastewater problem?

11 A. No.

12 Q. Okay. Tell me.

13 A. For input on the prospect of purchasing
14 the property from the Feoffees. Mr. Whiston noted
15 at one of these community meetings that it was
16 always his belief, in his paternalistic interest,
17 that the highest and best use of the land and the
18 best outcome for the community, meaning Ipswich at
19 large, was for the tenants to purchase the property
20 and that the Feoffees become an income trust rather
21 than a real estate trust.

22 It was at one of these general
23 meetings where he invited the prospect of the
24 purchase of the property. It was at that time that

1 I first got to know Mr. Gottlieb.

2 Q. We'll be breaking soon but let me go back
3 over something and make sure I understand it.

4 I had been asking you about the
5 committee that was formed to speak for the tenants
6 in one voice about how to address the wastewater
7 problem and you told me there was such a committee
8 and you identified some people that sounded like
9 they were on that committee, which included Richard
10 Doherty, who was a wastewater engineer; Robert
11 Dever, who was a former mayor and pilot; and Thomas
12 Allen, among others. Which committee were those
13 people members of?

14 A. They were definitely members of the Little
15 Neck Homeowners Association, Inc. Well, I don't
16 know the entity. But there was this prior committee
17 that then morphed into that committee.

18 Q. You said there were two committees and one
19 of them, you said, was a committee that grew out of
20 an invitation from Don Whiston to have discussions
21 about purchasing?

22 A. Yes.

23 Q. Let's put that aside. I want to focus for
24 now on this wastewater committee, okay?

1 A. Now, I know the identities of other
2 individuals who were involved in that.

3 Q. In the wastewater?

4 A. Yes.

5 Q. I was asking you what your role had been.

6 A. Yes. These are --

7 MR. CHAPMAN: Let him finish.

8 BY MR. PERRY:

9 Q. Did you play an informal role of trying to
10 influence the decisionmaking of the committee that
11 was charged with addressing the wastewater problem?

12 A. I did.

13 Q. And I asked you, I'm going to repeat now
14 to make sure we're on the same page, would you say
15 you were generally in agreement or disagreement with
16 the decisionmaking that was made by the committee
17 charged with addressing wastewater for the tenants?

18 MR. CHAPMAN: At the time?

19 BY MR. PERRY:

20 Q. At that time.

21 A. These were intertwined issues and I was in
22 general disagreement with the process and approach
23 that the committee was taking.

24 Q. Will you please explain to me what

1 approach the committee was taking as contrasted with
2 the approach that you felt was the appropriate one
3 at that time.

4 A. These again were intertwined issues so I
5 have to address them in order to fully fulfill my
6 oath. Both issues, the invitation by Mr. Whiston to
7 purchase the property and the wastewater.

8 The invitation by Mr. Whiston came
9 at a time when there was both the pressure to
10 increase rents and return to the community outside
11 of property taxes in addition to the Feoffees now
12 having the obligation to fulfill their commitment to
13 the regulatory authorities around the wastewater
14 problem that existed on Little Neck.

15 The invitation twinned the need for
16 more money and the benefits of an investment trust
17 versus a real estate trust. And the potential of
18 getting the Feoffees out of the obligation of
19 planning, modelling, designing, building, operating
20 and paying for a wastewater solution.

21 Q. The question to you was could you please
22 summarize the approach that was being taken by the
23 group charged with addressing wastewater for the
24 tenants as contrasted to your approach. Let's break

1 it down.

2 Could you tell me what the approach
3 taken by the group charged with addressing the
4 wastewater problem was.

5 A. I'm incapable of breaking the conversation
6 into discrete pieces but I'll try to be as
7 responsive as I possibly can be.

8 This intractable problem that the
9 Feoffees had offered an opportunity at their
10 invitation to the homeowners. The committees, later
11 incorporated, took the invitation and recognizing
12 that we would have the responsibility, the
13 homeowners if in fact we had the opportunity to buy
14 the property would have the responsibility for
15 curing the wastewater problem, and they made an
16 offer in effect for the land. I disagreed with the
17 manner in which and the dollar amount of the offer
18 that they made.

19 Q. Why?

20 A. Because I thought it was too low and would
21 prove to be a nonstarter in serious conversation
22 with the Feoffees and would not secure a solution to
23 the two problems that the Feoffees had.

24 Q. Do you remember the amount that was being

1 offered?

2 A. Yes.

3 Q. How much?

4 A. It was three million dollars.

5 MR. PERRY: Let's take a break.

6 (Lunch recess taken)

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AFTERNOON SESSION

BY MR. PERRY:

Q. You were explaining before lunch that there was a disagreement about the amount offered as a proposed buyout price at that time.

A. Yes.

Q. I want to turn to the wastewater system and the recommendations that were being made by the group that had been charged on that issue as to how, apart from a sale, the wastewater problem should be addressed?

A. I didn't quibble with the technical recommendations, or suggestions more accurately, that were made by the Little Neck Homeowners Association relative to waste water. They were bringing forward three interests: One, we don't want tight tanks because of the three other points that I had made before: A, cost; B, the vehicular traffic of pumpout; and C -- I can't recollect. Maybe you can help me here.

Q. You raised an issue about whether they should be the responsibility of the homeowners.

A. Oh, and the responsibility for payment, thank you, is three.

1 So I didn't have a quibble about
2 their capacity and the manner in which they were
3 bringing that message and I wasn't troubled by the
4 committee's recommendation of looking at other means
5 of doing so.

6 Q. You said they were bringing three
7 interests forward and one was no tight tanks?

8 A. That's correct.

9 Q. What's two and three?

10 A. Two and three as we noted. One, no tight
11 tanks; two, no traffic because of the tight tanks;
12 and three, the cost.

13 Q. I think what you were starting to do was
14 give me a three-part answer, one of which was no
15 tight tanks that had subparts A, B and C and then
16 give me two or three?

17 A. No, it was one comment with two subparts
18 then.

19 Q. What was being explored as an alternative
20 to tight tanks at that time?

21 A. There were two things principally, as I
22 recollect. One is a central collection system. The
23 second was a direct piping specific from Little Neck
24 to the wastewater treatment plant. And as a subset

1 of that would be collection system with later sewer
2 improvements sponsored by the town of Ipswich that
3 would cover Little Neck and Great Neck and the area
4 nearby.

5 Q. The first alternative that you've
6 identified would be some type of central collection
7 system and that's ultimately what got done, right?

8 A. Generally, yes.

9 Q. I understand generally what that
10 alternative is. Let me understand what the third
11 alternative is. You said that could involve direct
12 piping from Little Neck to the wastewater treatment
13 plant. And you said there was a subcategory?

14 A. Having a central collection system and/or
15 a piping system. But it would go to a
16 yet-to-be-built sewer system in Ipswich that would
17 service Little Neck, Great Neck ~~and even burns~~.

18 Q. In other words, if you did have a central
19 collection system there were two alternatives. One
20 was to have a central collection system that also
21 involved treatment?

22 A. No.

23 Q. And second, to have one that would just
24 funnel it on to the wastewater treatment plant.

1 A. The latter is more accurate, that it would
2 be a way station, if you will, for funneling through
3 a sewer system or going directly -- skirting a sewer
4 system for Great Neck and Little Neck but a direct
5 effluent, outflow pipe to the wastewater treatment
6 plant.

7 Q. How did that differ, if at all, from what
8 was built?

9 A. The latter, having a direct conduit to the
10 wastewater treatment plant, would be the tie-in of
11 all individual homes to an outflow pipe that would
12 have gone through various marshlands directly to the
13 wastewater treatment plant.

14 Q. What I'm asking is what actually did get
15 built?

16 A. What got built was a central collection
17 system with the capacity to at some future time
18 connect to a town-sponsored sewer system.

19 Q. What happens now with respect to the waste
20 that's collected?

21 A. The waste that's collected goes from
22 individual homes into a central collection site
23 which is located under the ball field at Little
24 Neck. It's pumped from various sources that get it

1 to that point. And that's then collected on a
2 periodic basis as needed by truck, via truck to the
3 wastewater treatment plant.

4 Q. So the alternative would be instead of
5 transporting the waste from the collection system by
6 truck, there was an alternative under consideration
7 that would involve it being piped from that
8 collection system?

9 A. That was one of them, yes.

10 Q. And that's still a potential that would be
11 done?

12 A. It's an unlikely possibility that it would
13 happen because of environmental concerns in terms of
14 traversing marshland and other sensitive sites, so I
15 understand.

16 Q. What was your basis for asserting or
17 believing that it would not be your responsibility
18 as a cottage owner to install a tight tank at your
19 own expense if that were a solution agreed upon?

20 A. Because I believe my landlord had the
21 responsibility to provide me sanitary conditions in
22 which I could enjoy -- have the quiet enjoyment of
23 my home.

24 Q. But the landlord was only renting you the

1 land, am I right?

2 A. The landlord was renting me the land.

3 Q. You had bought the house?

4 A. That's correct.

5 Q. And you described a cistern that you had
6 at your house?

7 A. (Witness nodded.)

8 Q. When you bought it?

9 A. Yes.

10 Q. Did you have to undergo any kind of
11 environmental requirements when you bought the
12 cottage as to the sufficiency of your wastewater
13 disposal system?

14 A. Not at the time I purchased the cottage.

15 Q. That's because at the time the statute
16 that regulated those matters didn't exist then?

17 A. I don't know the reason.

18 Q. Are you familiar with something called
19 Title 5?

20 A. Yes.

21 Q. Was Title 5 in effect when you bought?

22 A. I don't know. Subsequent to that there
23 was a testing of my cistern and it's my
24 understanding that my system tested adequately.

1 Q. Did all of the tenants at the time of
2 these events when the DEP was requiring a change
3 have a system similar to yours or did some have a
4 more advanced device to yours?

5 A. The great preponderance had systems
6 similar to mine. Some few number, I don't recollect
7 exactly, under 16 is in my head for some reason,
8 maybe under a dozen, had so-called Title 5-compliant
9 systems.

10 Q. The Feoffees had taken the position that
11 in order to comply with the DEP requirements all
12 tenants were going to have to install tight tanks?

13 A. That's the position they took.

14 Q. Or drip systems if they were year-round?

15 A. (Witness nodded.)

16 Q. At their own expense, right?

17 A. That's the position they took.

18 Q. And the tenants preferred, apart from cost
19 issues and apart from who paid for it, the tenants
20 preferred a different solution?

21 A. Generally, yes.

22 Q. Are you aware of any discussions between
23 representatives of the tenants and the Feoffees or
24 their representatives about who would pay for the

1 installation of the wastewater facility that
2 ultimately got built?

3 A. I'm not aware of any discussion where the
4 tenants committed to any financial responsibility.
5 Not on my behalf.

6 Q. Now, in the complaint that was filed that
7 you had reviewed and approved it states "Plaintiffs
8 have also been and remain willing to take a fair and
9 equitable share of the reasonable and legitimate
10 cost of the wastewater system"?

11 A. Yes.

12 Q. That was in fact your position?

13 A. I later came to that position ~~it~~.

14 Q. And at the time you came to the position
15 that you were prepared to pay a fair and equitable
16 share of the reasonable and legitimate costs of the
17 wastewater system, what was your understanding of
18 what the fair and equitable share of those costs
19 amounted to?

20 A. I understood it was one of general
21 reasonableness and the initial representation made
22 to us was that such a system would cost each party
23 in the neighborhood of 22 or \$23,000; that it would
24 be considered a benefit. And in my view, I believed

1 that it should be ratcheted into the rent as an
2 obligation of the Feoffees to provide so-called
3 sanitary conditions.

4 Q. Let me put that a different way. You had
5 no problem with the concept that in setting the fair
6 rent for the real estate one could take into account
7 the improvements that had been constructed that
8 would allow for the sanitary disposal of wastewater?

9 A. That some portion of it was entirely
10 appropriate.

11 Q. In other words, what one might be willing
12 to pay to rent real estate where you had to install
13 your own septic system would differ from what one
14 would fairly and reasonably pay for real estate that
15 has improvements under which your wastewater would
16 be carried away for you, right?

17 A. In terms of the conditions of the moment
18 at that time in Little Neck, the answer to that
19 question is yes.

20 Q. And so if we were looking today at fair
21 market rent of the real estate, you would not
22 disagree with the concept that part of what the
23 cottage owners are getting or having leased to them
24 includes the ability to dispose of their waste?

1 MR. CHAPMAN: Objection.

2 A. At the moment that's accurate.

3 Q. And I understand that the tenants also
4 have to pay certain usage charges but those are
5 actually -- those don't relate to the cost of
6 installing the system; those are for the ongoing
7 operation of it. Am I right?

8 A. We pay two separate charges, one for the
9 disposal of the effluent that's specific to our
10 cottage. That's based on water usage coming in, it
11 doesn't measure effluent leaving the home. And
12 secondly, we pay a monthly operations fee for the
13 system.

14 Q. Do you have any issues as to whether those
15 particular fees are reasonable in relation to the
16 costs they're intended to pay down?

17 A. I don't have any knowledge about the
18 operation fee. It's \$40 a month. I've not reviewed
19 the specific operation costs and the like.

20 Would you repeat the question.

21 Q. I'm trying to find --

22 MR. CHAPMAN: I'd like to ask for a
23 specific repeat the of the question.

24 (Record read.)

1 A. The second part of my answer is that I do
2 not believe that the costs are reasonable relative
3 to the construction of the wastewater system. In
4 fact, I consider them to be wholly inappropriate.

5 Q. I think you're answering a question I
6 didn't ask you so let me clarify.

7 I understand that there was a large
8 amount of money spent for the construction of the
9 wastewater system. Is it your understanding that
10 was some 6 million dollars?

11 A. It's closer to 7.2 or 7.4, not including
12 interest expenses.

13 Q. And you described for me two types of
14 expenses that the tenants are currently paying?

15 A. Yes.

16 Q. A \$40 a month fee and also usage fee based
17 on the actual usage to defray the cost of disposing
18 of the wastewater by truck as you describe?

19 A. If your question is specific to that, then
20 I also have an objection to the reasonableness,
21 relative reasonableness of the cost of effluent
22 trucking.

23 Q. Just wait for me.

24 A. Okay.

1 Q. It's easier if you don't get too far ahead
2 of me.

3 A. Okay.

4 Q. Under the current arrangement you
5 described the tenants are not in fact paying fees
6 associated with the cost of construction, correct?

7 A. I believe we are.

8 Q. What fees are you paying, if any, that you
9 understand to be a way of paying down the 7.4
10 million dollars?

11 A. I consider it part of my rent payment --

12 Q. I understand. I'm not asking about rent
13 right now.

14 MR. CHAPMAN: He needs to answer the
15 question that you're asking.

16 BY MR. PERRY:

17 Q. I'm just -- I want to break this down.
18 We've already addressed that one can set the rent
19 and take into account the fact that when you flush
20 the toilet there's a place for the waste to go,
21 right?

22 A. (Witness nodded.)

23 Q. And whether somebody properly or
24 improperly spent 7.4 million dollars for that

1 benefit is sort of beside the point for the moment,
2 okay?

3 A. Okay.

4 Q. I'm asking you now about fees you pay
5 other than for rent.

6 A. (Witness nodded.)

7 Q. And you told me about two fees?

8 A. (Witness nodded.)

9 Q. Right?

10 A. (Witness nodded.) Yes.

11 Q. And I didn't understand either of the fees
12 that you described to be fees that are intended to
13 reduce the 7.4 million dollars it's reimbursement
14 for?

15 A. I don't understand.

16 Q. Am I right that these fees you pay are
17 intended to be fees that will simply break even on
18 current costs of operating the system?

19 A. I don't know whether they are intended to
20 break even but they are specific to the operation of
21 the system.

22 Q. They are not in any way supposed to be the
23 way that we're paying for the installation of the
24 system, right?

1 A. Yes.

2 Q. And you don't have any quarrel at all with
3 the idea that tenants would pay for the ongoing
4 costs of that system, correct, if they're paying the
5 right amount?

6 A. The ongoing cost of the operation of that
7 system?

8 Q. Yes.

9 A. I don't have an objection to paying a fair
10 and reasonable amount for the discharge of my waste.

11 Q. Now you raised an issue about whether the
12 Feoffees have --

13 A. If I might--

14 Q. -- entered into a fair contract for the
15 trucking disposal?

16 A. Thank you. Yes. I had an objection upon
17 the initial agreement that the Feoffees made for
18 trucking. Effluent trucking.

19 Q. Because you felt that they were paying too
20 much?

21 A. I felt that they had not done proper
22 diligence. I didn't see evidence that there was any
23 competitive bidding process, I saw little in the way
24 of making a concerted effort in order to take the

1 tenants' interests at heart. And in fact, believed,
2 later proven to be accurate, that the fees being
3 charged us at that time were wildly inflated.

4 Q. And these were fees that were being
5 charged by a trucking company to the Feoffees and
6 passed on to you?

7 A. Yes.

8 Q. What was the name of the trucking company?

9 A. I don't know.

10 Q. You say they were wildly inflated. Tell
11 me what you mean in dollars and cents.

12 A. They were in effect about 10 cents a
13 gallon. Every gallon of intake into the home was
14 presumed to be of discharge, of which I paid 10
15 cents or thereabouts per gallon. It's that that I
16 objected to.

17 Q. Have you ever multiplied out the total
18 amount-- strike that.

19 What was the basis upon which the
20 trucking company was charging the Feoffees?

21 A. I don't know the basis upon which the
22 trucking company was charging the Feoffees. I don't
23 know how they calculated their rate.

24 Q. Do you have any information to indicate

1 that the trucking company overcharged the Feoffees
2 to carry away the waste?

3 A. I have no indication. I just know that
4 they were charging the Feoffees too much, which was
5 passed on to me and my neighbors.

6 Q. You're not saying, are you, that the
7 trucking company was charging the Feoffees on the
8 same basis that the Feoffees were charging you?

9 A. The trucking companies charged the
10 Feoffees X amount. The Feoffees added a per-gallon
11 fee to that for the cost of what was accepted at the
12 water treatment plant. And that in total was billed
13 to the tenants, the homeowners, and that number was
14 in and about 10 cents a gallon.

15 Q. Let me see if I understand some things
16 about this arrangement.

17 The trucking company would go to the
18 collection center and take truckloads of wastewater
19 to the treatment plant, right?

20 A. Yes.

21 Q. And you don't know what their arrangement
22 was with the Feoffees as to how they charged for
23 that, correct?

24 A. I do. It was published and revealed to

1 us.

2 Q. They were charging by the truckload,
3 weren't they?

4 A. No, they were charging by the gallon.

5 Q. They were charging by the gallon that they
6 transported, weren't they?

7 A. Let me amend that. I don't know whether
8 they were charging by the gallon they transported.
9 I know that the Feoffees paid by the gallon that was
10 released at the site to the wastewater treatment
11 plant. I don't know what the metric was in which
12 the Feoffees paid the trucking company. I don't
13 know whether they paid a presumed number going in,
14 that is the total water use on the island as
15 measured, or whether they paid exclusively as to
16 what was taken out of the system.

17 Q. Do you have any reason to believe the
18 Feoffees weren't paying the trucking company based
19 on what was taken out of the system?

20 A. I don't have a knowledge. A specific
21 knowledge.

22 Q. Am I correct that there was no way for the
23 Feoffees to measure how much effluent was flowing
24 out of each cottage?

1 A. That's not accurate.

2 Q. What would be the manner of determining
3 how much wastewater was flowing out of each cottage?

4 A. It has been related to me that there are
5 such measurement systems.

6 Q. But there's none that have been installed,
7 correct?

8 A. That's correct.

9 Q. So the Feoffees, having been faced with
10 the cost they needed to allocate among the cottages,
11 has elected to allocate it based on water in versus
12 water out?

13 A. That's correct.

14 Q. And the end result of that is the Feoffees
15 are collecting the same amount of money they're
16 paying out in a way that's not exactly in accordance
17 with actual usage. Is that right?

18 A. No. It seems that they are allocating it
19 according to usage, at least as measured by that
20 which is used going into the home, but not knowing
21 what in fact is being discharged. The difference
22 being two: For example, if one chooses to wash
23 one's car, water the lawn or flowers and the like.
24 In addition to which, I don't know what happened --

1 whether there was an allocation, I don't believe
2 that there was, for any other liquid that somehow,
3 we think for reasons of construction mistakes, that
4 ended up in the collection system. I don't believe
5 those were allocated, I hope they were not allocated
6 to the homeowners.

7 Q. You've told me you don't know the
8 arrangement upon which the Feoffees paid the
9 trucking company, true?

10 A. I don't know the metrics in which they
11 paid the trucking company. I just know that they
12 were related and having seen -- having represented
13 to me what that contract was, that it was in effect
14 on a per-gallon basis that was passed on to the
15 tenants.

16 Q. Per gallon transported by the truck
17 company?

18 A. No, I paid --

19 Q. Not what you paid. The Feoffees paid per
20 gallon for what was transported?

21 A. I believe that's accurate.

22 Q. They didn't pay per gallon on what went to
23 the tenants?

24 A. I believe that's accurate.

1 Q. And they might not have been paying the
2 same amount per gallon for transportation as what
3 you were being charged for what was going in the
4 home?

5 A. Repeat please.

6 Q. The cost that the Feoffees paid per gallon
7 for transported effluent wasn't necessarily the same
8 as the cost per gallon that they charged you for
9 water going into the home?

10 A. They didn't charge me for water going into
11 the home; the town charges for that. The Feoffees
12 calculated my share, my allocated share of the
13 effluent cost based on the water usage going into
14 the home.

15 Q. Right. At a certain rate?

16 A. Yes.

17 Q. Close to 10 cents a gallon, you told me?

18 A. Yes.

19 Q. Do you recall if the Feoffees were paying
20 10 cents a gallon for what was transported or some
21 other number?

22 A. They were paying a number short of that
23 because they were also paying at the wastewater
24 treatment site a specific per-gallon number, of

1 which I believe I only paid that number plus the
2 number of gallons that actually came into my home
3 and that totalled up to about 10 cents.

4 Q. Do you understand that one possibility is
5 that the Feoffees were paying an appropriate amount
6 to transport the effluent and were then seeking to
7 allocate it among the, tenants and not having a
8 measurement of what went out, were using as a proxy
9 what went in?

10 A. Let me answer partially. I agree except
11 that I'll differ on the notion of the reasonableness
12 of the charge from the first contract with the
13 initial trucking company.

14 Q. Was that contract then altered?

15 A. It was rebid sometime later with the
16 assistance of principally Mr. Richard Doherty. And
17 there was, as evidenced by the result, more
18 diligence, a better purchasing and bidding system,
19 which equated in a better price which was
20 essentially half of what the Feoffees had paid
21 prior.

22 Q. After that adjustment was made, what
23 amount have the Feoffees been charging for usage?

24 A. I think it's about 6 cents. It might have

1 been 6 and a half. I don't necessarily recollect.

2 Q. When was that change made?

3 A. 2008 or 2009.

4 Q. How much do you currently pay per year for
5 that charge roughly?

6 A. I don't pay the bills at home. I pay
7 about -- I'm only there eight or nine weeks a year.
8 Probably 600 bucks a season for water in. So a
9 number equating that prior to 2008 for effluent out
10 and a number less than that today.

11 Q. So, as a result of this contract with the
12 trucking company that you're referring to, you
13 believe you may have paid a few hundred dollars
14 extra per year than you might otherwise have paid if
15 the contract had been better?

16 A. I paid a few hundred dollars more; the
17 community paid tens of thousands of dollars more.

18 MR. CHAPMAN: Can we take a quick
19 break?

20 (Discussion off the record.)

21 (Recess taken.)

22 BY MR. PERRY:

23 Q. Do you remember the history of rent that
24 you paid as a tenant?

1 A. Generally.

2 Q. Tell me generally what the history was.

3 A. 6 or \$800 initially. 6, it rose to 8 and
4 then went to 12.

5 Q. 1200 a year?

6 A. Yes. And then from 12 it went to 24, 25.

7 Q. Hundred per year?

8 A. Yes. Then to 3600 per year and then to
9 5,000 per year. And this in a six-year period, or
10 thereabouts.

11 Q. And the \$5,000 that you paid per year
12 started somewhere around 2004?

13 A. 2005 I think.

14 Q. And typically those years went from July
15 1?

16 A. No. Actually I think they were calendar
17 year oriented.

18 Q. That's okay.

19 A. I forget.

20 Q. It's not important.

21 A. Well, it has bearing later on relative to
22 when notice to quit was given us and whether that
23 was appropriate and I just don't recollect the
24 starting month.

1 Q. What have you paid in rent since 20005?

2 A. Well, in 2005 I paid a use and occupancy
3 charge. Check that. That's from 2006 I paid a use
4 and occupancy charge that was equal to the rent that
5 was paid at that time.

6 Q. Was it \$5500 a year?

7 A. \$5,000 a year for seasonal and \$5500 a
8 year for the so-called year-round residences.

9 Q. And you've been paying that same \$5,000 a
10 year ever since as use and occupancy charges?

11 A. Yes. Under the terms of a stipulation.

12 Q. And under the terms of that stipulation is
13 there an opportunity to -- is there a claim
14 preserved that that's too much or is that an amount
15 that's conceded?

16 MR. CHAPMAN: Objection.

17 A. It's recognized that it is due and
18 appropriate only in the context of the other
19 benefits and protections that were afforded in the
20 stipulation and in the general context of the
21 Superior Court lawsuit that was ongoing at that
22 time.

23 Q. Is it your contention that you've never
24 paid any rent that's higher than a fair rent?

1 A. I believe that I have paid a rent higher
2 than a fair rent in the past.

3 Q. When did you first pay a rent higher than
4 a fair rent?

5 A. I believe I did so when the rent moved
6 outside of the representations made to me by
7 Mr. Whiston that the rent shall be only by and large
8 the cost of operation of Little Neck.

9 Q. When did that first happen, that you paid
10 a rent higher than what you thought was a fair rent
11 as you just defined it?

12 A. Probably as soon as I heard the warning
13 signs as expressed by Mr. Whiston that his
14 representation to me was being amended because of
15 the needs and desires of the Ipswich school
16 committee and its finance committee. Ipswich's
17 finance committee, not the school's finance
18 committee.

19 Q. This occurred in 1998?

20 A. In that time going forward. Now I don't
21 want to suggest to you that I didn't believe that
22 paying 800 or \$1200 a year was unfair. It was just
23 different, but comfortable, than what Mr. Whiston
24 had represented to me and the representations that

1 were made upon my buying the cottage.

2 MR. PERRY: Let me mark this
3 document, a communication that has been produced to
4 us.

5 (Exhibit 1 marked
6 for identification.)

7 BY MR. PERRY:

8 Q. I've marked as Exhibit 1 a document that
9 isn't actually dated from the Feoffees and
10 apparently signed by Don Whiston that has been
11 produced to us as part of the discovery process by
12 counsel for the Feoffees. I'd like to ask you
13 whether this is a communication you received while
14 you were a tenant.

15 A. I don't specifically recommend receiving
16 this communication but I have little doubt that I
17 did.

18 Q. You said recommend but you meant
19 recollect?

20 A. Recollect, yes.

21 Q. And this communication was one that was
22 sent out to the cottage owners sometime before July
23 1, 2000, correct?

24 A. It appears that way. There's no date on

1 it but it relates to things that are taking effect
2 post July 1st.

3 Q. And this communication refers to annual
4 rent for the 2000 to 2001 season at a rate of \$1,750
5 for seasonal tenants such as yourself; is that
6 right?

7 A. That's what it says.

8 Q. When you received this communication did
9 you think that that was a fair rent to be charged at
10 that time?

11 MR. CHAPMAN: Well, I'm sorry but I
12 think he said he doesn't remember receiving this.
13 He probably recalls that the rent went to that level
14 at some point.

15 BY MR. PERRY:

16 Q. Did you think that a rent of \$1,760 for
17 the 2000-2001 season was a fair rent to be charged?

18 A. Let me respond that I would not
19 characterize it as a fair rent. It was again in the
20 context of what we were told the Feoffees needed to
21 do to create new monies outside of the real estate
22 taxes that were proffered by the homeowners and
23 produced by Little Neck in common to provide more
24 than the occasional gift that they gave the school

1 system. And my pique, if any, at that time was tied
2 just to this is going on a train, a track that's
3 very, very different than what I agreed. But I
4 would not characterize it again as an uncomfortable
5 number. It was one that I could afford and didn't
6 see particularly as penurious.

7 Q. You had bought your cottage in 1995, at
8 which time you said certain representations were
9 made to you, correct?

10 A. Yes.

11 Q. By the late '90s and certainly by 2000 you
12 knew that the Feoffees were no longer going to act
13 in a way that you believed to be consistent with
14 those representations, correct?

15 A. I was beginning to believe that that was
16 the case.

17 Q. All right. In fact, the Feoffees had
18 communicated to the tenants by no later than 2000
19 that they had been -- that they were utilizing
20 LandVest to make determinations of fair market value
21 rent, right?

22 A. Yes.

23 Q. And that they planned to phase in payment
24 of rent at the full fair market value?

1 MR. CHAPMAN: Objection.

2 A. However at no time did they share the
3 calculations or manner of how fair market rent was
4 characterized and the appraisal in any circumstance.
5 And as I said to you painfully earlier, I did not
6 object to a fair rent. I objected to someone else's
7 characterization of a fair market rent determined
8 unilaterally. I believed that I had a license, a
9 tenancy without an end date on it that meant that
10 the Feoffees needed to be bilateral rather than
11 unilateral in their determination of rent,
12 particularly if it was outside of the
13 representations made to me.

14 Q. Do you have an understanding of what a
15 bilateral process would look like if you and the
16 Feoffees were to sit down and agree?

17 A. There was always a belief that the
18 Feoffees were open individuals, an open body, most
19 particularly as represented by Mr. Whiston, and that
20 certain influential and longstanding members of the
21 Little Neck community who had longstanding
22 relationships with Mr. Whiston would have
23 conversations with each other and they would in turn
24 comfort us if Mr. Whiston didn't comfort us. And

1 this is also a time period where the community in
2 whole was beginning to feel uncomfortable and
3 started the creation of a Feoffee coordinating
4 committee, which later morphed essentially into the
5 Homeowners Association to represent us on two
6 issues, principally how to deal with the wastewater
7 issue and two, accept Mr. Whiston's invitation to
8 discuss purchasing the property.

9 Q. During the time that you were paying rent
10 and before you were paying what you describe as use
11 and occupancy charges, did you ever pay any rent
12 under protest?

13 A. Only so much as was represented by this
14 committee or committees to suggest that the Feoffees
15 were beginning to treat us unfairly. And I
16 expressed that to the community generally, to
17 Mr. Whiston personally, both privately and in front
18 of the community, in the periodic times where
19 Mr. Whiston would be in front of the community
20 relating what's going on in the moment within
21 Ipswich in general.

22 Q. When was it that you first publicly stated
23 that you felt that due to the rents that were being
24 charged that the Feoffees were treating the tenants

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1 unfairly?

2 A. Certainly in or near the first
3 announcement of the so-called fair rent issue when
4 it hit the nexus of the wastewater treatment needs
5 and restrictions on the Feoffees by authorities, the
6 DEP.

7 Q. If we look at Exhibit 1, you'll see in the
8 third paragraph that the Feoffees allude to a rent
9 increase schedule they had adopted two years
10 earlier, right?

11 (Pause.)

12 A. That's what it says.

13 Q. So before July 2000 you were concerned
14 about a plan that had been publicly announced by the
15 Feoffees to increase the rent to a hundred percent
16 of the fair value as determined by LandVest, right?

17 A. At the time it was suggested to us the
18 rent would increase it was not related to me, by
19 recollection, that LandVest was the determiner, only
20 that an appraisal was made and repeated requests to
21 share the information was denied by the Feoffees.

22 Q. But by 2000 you knew that LandVest was
23 involved?

24 A. I don't recollect if LandVest -- if I knew

1 that LandVest was involved by 2000 other than
2 reading this document right now. But at that time
3 presuming I saw this document, and I presume that I
4 did, then I became certainly aware at that time.

5 Q. And in addition, by July 2000 you were
6 aware that the Feoffees were requiring the tenants
7 to install tight tanks?

8 A. Yes.

9 Q. Which was the second half of the issue I
10 raised?

11 A. Yes.

12 Q. Right?

13 A. Yes.

14 Q. So certainly before July 2000 you were
15 upset with the Feoffees because you felt they were
16 not observing promises that had been made to you
17 when you bought your home in 1995?

18 A. Concern is a more appropriate word.
19 There's no real demonstrable upset.

20 Q. You were concerned because you said you
21 had relied on things that the Feoffees had told you
22 or that Mr. Whiston had told you, right?

23 A. They were synonymous to me.

24 Q. You had relied on things Mr. Whiston had

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1 told you, right?

2 A. Yes.

3 Q. And by July 2000 you knew that Mr. Whiston
4 no longer intended to conform his actions to those
5 that you understood he would when you bought your
6 property?

7 A. Not only not conform with the
8 representations made to me but to digress from the
9 practice and general conduct that the Feoffees had
10 demonstrated to every member of our community
11 throughout the period of my homeownership and for
12 decades prior.

13 Q. Thank you.

14 A. You're welcome.

15 Q. At some point after the lawsuit was filed
16 was there a mediation process?

17 A. There were several mediation processes.
18 There were bilateral negotiations between what was
19 then ~~LNLAC~~ formed in 2005 and post --

20 LNLAC MR. CHAPMAN: He's just asking a yes
21 or no question.

22 BY MR. PERRY:

23 Q. Go ahead and finish your answer.

24 A. Okay. And then post the filing of the

1 lawsuit there was a formal mediation, as generally
2 recognized the meaning of that word, with an outside
3 independent professional.

4 Q. Who was that mediator?

5 A. A former Superior Court judge. His name
6 was Adams. I think the gentleman's name was
7 Charles.

8 Q. Sam?

9 A. Sam. Thank you. There it is, Sam.

10 Q. Who participated in the mediation on
11 behalf of the tenants?

12 A. Principally myself and Mr. Gottlieb, as
13 has been the case generally in all discussions.
14 Other members of our committee participated and we
15 did invite members of the still then existing Little
16 Neck Homeowners Association to participate in some
17 anyway of our formal mediation proceedings.

18 Q. Was there -- after the mediation had
19 ended, did you communicate with other members of
20 LYNLAC or members in the larger sense concerning the
21 outcome?

22 A. Yes.

23 Q. Was there at some point a settlement
24 proposal that you were endorsing that did not come

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1 to fruition?

2 A. A settlement proposal for a lease of land?

3 Q. Yes.

4 MR. CHAPMAN: This is just a yes or
5 no question.

6 A. Yes. There were many settlement
7 proposals.

8 Q. What I'm trying to find out for the moment
9 is I've been told that as a result of a mediation
10 there was some kind of tentative agreement reached
11 than involved leases. I just want to follow up on
12 that and find out a little bit more about it without
13 getting into the discussions at the mediation per
14 se.

15 MR. CHAPMAN: Just to be clear, you
16 asked him whether it was something he endorsed?

17 MR. PERRY: That's not essential to
18 my question.

19 MR. CHAPMAN: Okay.

20 BY MR. PERRY:

21 Q. Are you aware of a time when there was
22 some belief there might be a meeting of the minds
23 around an ongoing lease arrangement?

24 A. Yes, there was.

1 Q. Tell me about that please.

2 MR. CHAPMAN: I want to be clear
3 without waiving any confidential settlement. If--

4 MR. PERRY: I'm trying to avoid
5 asking about the mediation discussions.

6 BY MR. PERRY:

7 Q. Among other things, the lease seemed to
8 have changed in reality and I just want to find out
9 what the history is here. Tell me about some kind
10 of aborted settlement around a new lease.

11 MR. SHEEHAN: Objection to form.

12 A. There was never a bona fide or prospective
13 settlement that I would consider to be bona -- bona
14 fide isn't the right word.

15 There was never a binding
16 settlement. There was no prospect of settlement as
17 a result of the mediation session.

18 Q. That's fine.

19 A. Post that there were -- there was a summer
20 of conversations not including counsel between the
21 Feoffees and LYNLAC and I did personally believe
22 that we were very close to an agreement, so much so
23 that I related that to my colleagues at LYNLAC, this
24 is the committee now, the smaller committee. And

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1 believed that I had the assent of the Feoffees
2 assigned to commit to those discussions.

3 Q. Before we follow up on what happened with
4 that proposal, could you tell me what the terms
5 would have been.

6 A. I haven't looked at these documents since
7 the time that they took place but generally --

8 MR. CHAPMAN: Again, this is without
9 waiving any confidentiality I'm going to let him
10 testify.

11 Go ahead.

12 A. There was agreement between myself
13 representing LYNLAC, Mr. William Devlin, who was
14 then a new member of the Little Neck Homeowners
15 Association whom we invited to participate most
16 particularly because of Mr. Devlin's professional
17 skills, mostly having to do with capital finance,
18 James Foley representing the Feoffees, and Elizabeth
19 Kilcoyne, selectwoman and Feoffee. And it was my
20 belief that over a series of summer conversations,
21 all face to face, that we had a general agreement;
22 that I represented I could deliver my committee
23 members and my community and Ms. Kilcoyne and
24 Mr. Foley I believe represented that they could do

1 the same.

2 Q. So I was asking you what the terms of that
3 were, as best you recall.

4 A. Generally, as best as I recall them, there
5 was an agreement to set a rent somewhere around
6 \$6500 -- I'm speaking seasonally now -- to set a
7 specific means in which every three years it could
8 be raised -- not required to be raised but could be
9 raised by a CPI calculation. And we went so far as
10 to determine which specific CPI calculation as
11 determined by the Federal Reserve. And that's the
12 principal terms.

13 Excuse me. And that the period
14 would be either 20 or 21 years and that there would
15 be no differentiation between rent other than
16 seasonal and year-round.

17 Q. That is, all cottages would pay the same
18 rent regardless of whether they had superior or
19 inferior locations?

20 A. That's correct, as I recollect.

21 Q. Did this proposed agreement include any
22 provisions for the payment of wastewater charges to
23 account for the expenses the Feoffees had born in
24 installing the system?

1 A. I believe that the rent was inclusive of
2 the so-called construction costs of the wastewater
3 system. The proposed rent.

4 Q. Under this proposed rent there would also
5 be payment by the tenants of taxes on both the land
6 and the property?

7 A. That's correct. In addition to which
8 there's one other principal part of the then
9 agreement, prospective agreement, and that was that
10 there would be collective actions to recommend the
11 purchase of property to the community, try to effect
12 that, and that under any circumstance there would be
13 a right of first refusal by the tenants.

14 Q. What happened to this proposed settlement?

15 A. Ms. Kilcoyne was the first person who told
16 me that she could not deliver the Feoffees to that
17 agreement. And then there were attempts to rework
18 the agreement using it as a base line. At times
19 also including counsel. And they failed.

20 Q. When was the decision made to change
21 counsel from individuals at the Masterman firm to
22 Todd & Weld?

23 MR. CHAPMAN: This is just when. Do
24 you remember a time?

1 A. I don't remember the exact date except
2 that it was the failed mediation with Judge Adams.

3 Q. When you say counsel was involved in
4 trying to refine this agreement you were trying to
5 reach, which counsel was involved?

6 A. Current counsel for both parties.

7 Q. Was Mr. Sheehan involved in representing
8 the Feoffees from the beginning of the litigation,
9 as far as you know?

10 A. From the beginning of the litigation the
11 answer is yes.

12 Q. Are you familiar with the most recent form
13 of lease that has been used between the Feoffees and
14 the tenants?

15 A. Certain tenants. Those who chose to sign
16 a lease, you mean?

17 Q. Let me show you a representative lease.

18 MR. PERRY: This can be marked as
19 Exhibit 2.

20 (Exhibit 2 marked
21 for identification.)

22 BY MR. PERRY:

23 Q. I've marked as Exhibit 2 a lease dated
24 April 18, 2008 signed for the Feoffees by James

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1 Foley; signed for the tenants by Kerrie Schau^{d,b}
2 S-C-H-A-U-~~D~~^B

3 I'll represent this lease materially
4 differs from some earlier leases that the Feoffees
5 were proposing. For example, in 2006. Are you
6 familiar with this form of document?

7 A. I'm not specifically familiar with this
8 document. I've never seen this document before.
9 I'm generally familiar with a progressive change in
10 the terms that the Feoffees offered leaseholders
11 over the course of time.

12 Q. What in your understanding led to the
13 change between the lease that -- strike that.

14 Am I correct that you were offered
15 in 2006 the opportunity to sign a lease that looked
16 different from the one I've just put in front of
17 you?

18 (Pause.)

19 BY MR. PERRY:

20 Q. Would it help you if I gave you a copy of
21 it?

22 A. Yes, it would.

23 MR. PERRY: Let's mark as Exhibit 3
24 a letter dated June 27, 2006 that has attached to it

1 a form of lease as well as the Little Neck rules and
2 regulations at that time. And I believe these were
3 all part of the same package sent to tenants but I
4 don't vouch for the regulation part.

5 (Exhibit 3 marked
6 for identification.)

7 BY MR. PERRY:

8 Q. Now do you recall getting a package from
9 the Feoffees, a copy of which has been marked as
10 Exhibit 3 to your deposition?

11 A. Yes.

12 Q. And did that package include a cover memo
13 such as the first page of Exhibit 3?

14 A. Yes.

15 Q. And it included a form lease such as the
16 lease that appears in this document?

17 A. Yes.

18 Q. Do you know whether the regulations were
19 also part of it?

20 A. I don't recollect specifically.

21 Q. If you look at the lease that was sent by
22 the Feoffees along with this cover letter, would you
23 agree with me that it's not the same terms as
24 Exhibit 2 that I showed you?

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1 A. I haven't had the opportunity to review
2 either of them in depth. I'm just looking at the
3 annual rent and Exhibit A on document 2, which is
4 clearly different.

5 Q. Especially the manner in which rent will
6 be set after the first three years?

7 A. That's correct.

8 Q. And also this later exhibit, Exhibit 3,
9 has provisions in it for some variation in rent
10 based on the classification of a lot in a category
11 of 1 through 5, true?

12 MR. SHEEHAN: Objection to form.

13 A. I recollect that that was included in
14 this. If you can point me to a specific page number
15 that would be great.

16 Q. Exhibit A.

17 A. This is document 3?

18 Q. Exhibit 2?

19 A. Exhibit 2. Exhibit A, it clearly does.

20 Q. And that was not, to your recollection,
21 part of the 2006 proposed lease that you received in
22 2006, right?

23 A. That's correct.

24 Q. What do you know about the events that led

1 the Feoffees to revise the lease from what's shown
2 in Exhibit 3 to that which is shown in Exhibit 2?

3 A. I can only make a presumption. I have no
4 direct knowledge.

5 Q. You're not aware of any negotiations of
6 the form of lease?

7 A. I didn't participate in any negotiation
8 that was purported to be in any way something that
9 would be proffered to existing leaseholders because
10 I didn't represent leaseholders. I represented only
11 those folks who followed with their wallets and
12 minds Mr. Gottlieb and I in our action against the
13 Feoffees.

14 Q. After the lawsuit was filed there were
15 some cottages that were sold, right?

16 A. Yes.

17 Q. Are you generally aware when sales are
18 taking place?

19 A. Yes.

20 Q. In what manner do you learn of a sale?

21 A. A comment by neighbors.

22 Q. Word of mouth?

23 A. Yes.

24 Q. Did you become aware that the Feoffees

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1 were not allowing cottages -- strike that.

2 Do you know whether Feoffees were
3 allowing cottages to be sold after the lawsuit was
4 filed if the buyers were not agreeing to sign a
5 lease?

6 A. I only know that the Feoffees would not
7 allow new buyers to enjoy their property, therefore
8 in effect not buy the home, unless they signed a
9 lease as part -- they agreed to design a lease as
10 part of the purchase.

11 Q. So it's your understanding, based on what
12 you just told me, that every time a cottage was sold
13 at Little Neck after 2006 -- strike that.

14 Is it your understanding that for
15 each sale of a cottage at Little Neck from 2007 on
16 the buyers, to be able to make use of the purchase,
17 had to sign a lease?

18 A. No.

19 Q. Why not?

20 A. Because upon signing of the settlement
21 agreement there was a differential in terms of that
22 opportunity.

23 Q. So was it your understanding that from
24 January of 2007 through and including December of

1 2009 all of the buyers of cottages were required to
2 sign leases?

3 A. It is my belief that that was accurate.

4 Q. During that time is it your understanding
5 that there were a number of cottage sales?

6 A. Yes.

7 Q. And that people were willing to pay for
8 the cottages and sign the leases that the Feoffees
9 were demanding?

10 A. Some few number of people were willing to
11 do so.

12 Q. And they signed a lease similar to Exhibit
13 2 here?

14 A. I have no reason to disbelieve otherwise
15 but I have to caution and emphasize there was a
16 very, very limited number of people. Some of those
17 sales were within families, as I recollect.

18 Q. Have there been any sales, to your
19 knowledge, of any cottages after the execution of
20 the settlement agreement between the Feoffees and
21 the tenants?

22 A. Yes, there have.

23 Q. What sales are you aware of?

24 A. There have been two foreclosure sales,

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1 there have been transactions between families, one
2 family member purchasing from another family member,
3 however closely or not closely related, and there
4 have been a couple of isolated arm's length
5 transactions to a non-related party.

6 MR. PERRY: Off the record.

7 (Discussion off the record.)

8 BY MR. PERRY:

9 Q. Did you attend any of the foreclosure
10 sales?

11 A. I attended one.

12 Q. For what purpose?

13 A. To observe.

14 Q. When was that?

15 A. I don't recollect the date. I think it
16 was 2010, in late summer. But I'm not entirely
17 certain.

18 Q. Had the party that was foreclosed upon
19 signed a purchase and sale agreement for their unit,
20 for the property?

21 A. The party that was foreclosed on signed a
22 purchase and sale agreement with the Feoffees?

23 Q. Yes.

24 A. I don't imagine they signed a P&S with the

1 Feoffees. I would imagine they would sign a bill of
2 sale with whoever the prior owner was.

3 Q. Maybe we closed in the night here.

4 There was a cottage owner whose
5 cottage was foreclosed upon?

6 A. Yes.

7 Q. Do you remember the name of that person?

8 A. It was Mr. Anthony. I believe it was
9 Michael.

10 Q. The foreclosure took place after the
11 settlement agreement, right?

12 A. I believe that's accurate.

13 Q. Did Mr. Michael agree --

14 A. Mr. Anthony.

15 Q. Michael Anthony?

16 A. Yes.

17 Q. Did Mr. Anthony agree with the Feoffees as
18 part of the settlement to buy his cottage before he
19 lost it to foreclosure?

20 A. I have no idea.

21 Q. Who bought his cottage?

22 A. I don't know.

23 Q. What was the price at auction?

24 A. I don't recollect.

1 Q. Do you have any recollection of it?

2 A. I have a recollection of the process and
3 the bids. I believe the bank bought -- or the owner
4 of the mortgage bought the property initially for
5 whatever its reserve bid was but I don't recollect
6 the specific number.

7 Q. Who ended up buying the property?

8 A. I don't know the party.

9 Q. How much did the party who ultimately
10 bought it pay for it?

11 A. I don't know the answer to that.

12 Q. Do you know what the outcome of the other
13 foreclosure sale was?

14 A. It was more recent.

15 Q. What happened in that more recent
16 foreclosure sale?

17 A. A gentleman on Little Neck purchased the
18 property for what I was told was a \$180,000 bid.

19 Q. So he purchased the cottage?

20 A. The cottage.

21 Q. For \$180,000?

22 A. (Witness nodded.)

23 Q. At foreclosure?

24 A. Apparently a quite nice home.

1 Q. Do you know the address?

2 A. I think it's Kings Way. I don't know the
3 specific address.

4 Q. You said that you are aware of a couple of
5 isolated transactions that have taken place since
6 the settlement agreement. Which transactions are
7 you aware of?

8 A. Some kind of a family transaction among
9 the Wilkie family. There was a transaction with the
10 Gresik home. I think it's G-R-E-S-I-K. That was
11 more an arm's length, non-family transaction to my
12 recollection.

13 Q. For how much?

14 A. I don't know the answer.

15 Q. Any others?

16 A. That's all I can recollect at the moment.

17 Q. Has it been the position of the Little
18 Neck Legal Action Committee that if there were to be
19 a solution that involved leasing the property as you
20 discussed you were negotiating, that all rents
21 should be the same for all lots?

22 MR. SHEEHAN: Objection.

23 A. During the period of time in which we were
24 concentrating exclusively on a lease, I need to tell

1 you that I have always believed that a sale would be
2 the ultimate conclusion. But while I had the
3 responsibility of exclusively trying to come to a
4 fair rent and other lease terms, it was in our
5 general interest a community to try to act in the
6 same general customary manner and practices that had
7 been exhibited on the island for all those decades,
8 that were represented by the Feoffees to all of us
9 for all those decades, and that included the
10 nondifferentiation of rent other than seasonal
11 versus year-round.

12 Q. The answer to my question is yes, you were
13 an advocate for uniform rent for all seasonal lots?

14 MR. CHAPMAN: Him personally?

15 BY MR. PERRY:

16 Q. You personally were advocating that?

17 A. Yes.

18 Q. And you were advocating that on behalf of
19 the tenants?

20 A. My fellow homeowners, yes.

21 Q. And that was what you thought the tenants
22 wanted?

23 A. Yes.

24 Q. And that was based on a discussion with

1 the tenants?

2 A. Yes.

3 Q. You do realize that some of the lots on
4 which the cottages sit are more valuable than other
5 of the lots?

6 MR. CHAPMAN: Objection.

7 A. I do realize that some have better views.
8 As a question of value, I'll leave that to someone
9 else more qualified to determine.

10 Q. So you realize that a disinterested third
11 party who wanted to buy at Little Neck would be
12 willing to pay more for lots with superior views as
13 opposed to lots with inferior views?

14 MR. SHEEHAN: Objection.

15 MR. CHAPMAN: Objection.

16 A. Few people are buying anything at Little
17 Neck at the moment, no matter its view. But for
18 those who do, then it's a fair conclusion that the
19 determination of price would be influenced by where
20 the property sits.

21 Q. The actual settlement agreement has some
22 gradation of prices to be paid by owners based on
23 where their property sits?

24 A. It does.

1 Q. Do you have a view to whether those
2 variations in price being charged under the
3 settlement agreement are in proportion to the
4 variations on the intrinsic value of the lot on
5 which the property sits?

6 MR. SHEEHAN: Objection.

7 MR. CHAPMAN: Objection.

8 A. Specifically to the intrinsic values,
9 that's not how the determination was made to set up
10 a variable pricing scheme.

11 Q. I'm sure. Do you have a view to whether
12 the pricing scheme that was set up was in fact in
13 proportion to the gradation of the property value of
14 the lots?

15 MR. SHEEHAN: Objection.

16 MR. CHAPMAN: Objection.

17 A. In part.

18 Q. What does that mean?

19 A. In part it is set up by the gradations by
20 perceived value and view, if you will.

21 Q. And in part it is not?

22 A. That's correct.

23 Q. Is it fair to say that the individuals who
24 own the most valuable lots are getting the best deal

1 in this settlement agreement?

2 MR. SHEEHAN: Objection.

3 MR. CHAPMAN: Objection.

4 A. I don't agree that that's the case.

5 Q. Why not?

6 A. Because we as community members have set a
7 value that we think is fair for our enjoyment of the
8 entire island.

9 Q. How did you set it?

10 A. We're trying to be true to the past
11 history and course of conduct that had been
12 exhibited by all of us and tried to represent and
13 keep a community in whole rather than in part. And
14 we in effect decided to allocate on essentially
15 fifty-fifty basis. It's actually skewed marginally
16 49-51, but essentially a fifty-fifty basis; that 50
17 percent of the cost would be allocated on an equal
18 basis, 167 divided by that proportion. And that the
19 remainder would be allocated based on the then
20 variations -- we didn't agree with the number but we
21 didn't have a problem with the variation --
22 gradations but the variations of the value of each
23 lot set by the assessor.

24 Q. Have any of the tenants who own some of

1 the lots having relatively inferior views complained
2 about the fairness of that arrangement?

3 MR. SHEEHAN: Objection.

4 A. None have done so to me nor expressed it
5 in a community meeting.

6 Q. Has anybody complained to you about the
7 price being charged under the settlement?

8 A. Many people.

9 Q. Can you identify any?

10 A. I could but I'm not going to. I can tell
11 you that they complained that the price is too high.

12 Q. Was it your contention at the time that
13 the Superior Court lawsuit was filed, which you
14 approved of, that you had sustained any out of
15 pocket damages as a result of wrongful conduct on
16 the part of the Feoffees?

17 MR. CHAPMAN: Objection.

18 A. As alleged in the complaint, the answer to
19 that would be yes.

20 Q. What out of pocket damages do you
21 personally claim you had sustained before the
22 lawsuit was filed in December 2006?

23 A. I suggested --

24 MR. CHAPMAN: Just let him finish

1 the question.

2 A. I suggested, and you are welcome to read
3 the claims, things like the inappropriate notice
4 relative to rents as they increased, one. A second
5 would be the assessments of taxes. A third --

6 Q. Let me make sure we're on the same page.

7 I'm able to read the complaint about
8 what the grievances are but I want to make sure I'm
9 asking you and you're answering what relief you were
10 looking for in terms of having money paid to you.
11 Were you looking for money to be paid to you by the
12 Feoffees at the time this lawsuit was filed?

13 MR. CHAPMAN: Objection.

14 BY MR. PERRY:

15 Q. Was it your contention that the Feoffees
16 owed you money in the form of damages because they
17 had done you wrong?

18 A. As noted --

19 MR. CHAPMAN: I object. Go ahead.

20 A. As noted in the complaint, yes.

21 Q. Just make sure as you answer my question
22 you tell me with as much specificity as possible
23 what damages you claim you are entitled to recover.
24 In other words, what money should be paid back to

1 you should you prevail in that lawsuit?

2 A. As I previously related at minimum those
3 increases in rent were not properly noticed,
4 therefore not due.

5 Q. So you want back rent that you voluntarily
6 paid because it you weren't properly notified of the
7 increase?

8 A. As suggested by the lawsuit.

9 Q. That's one category.

10 A. The second is real estate taxes paid.

11 Q. You want to --

12 A. For the land.

13 Q. Why is that?

14 A. Counsel so advised --

15 Q. I'm asking why do you claim you are
16 entitled to get back taxes you paid on the land?

17 A. Because counsel --

18 MR. CHAPMAN: Wait.

19 BY MR. PERRY:

20 Q. When you moved in, you knew you were going
21 to pay the taxes, right?

22 A. Yes.

23 Q. And you paid them?

24 A. Yes.

1 Q. And now you're saying in 2006 you want the
2 taxes back?

3 A. Yes.

4 Q. Why is that?

5 A. Because counsel told me --

6 MR. CHAPMAN: Just say based on
7 counsel's advice maybe.

8 BY MR. PERRY:

9 Q. Do you have any understanding apart from
10 what your counsel told you as to why you should get
11 back taxes on the land that you agreed to pay and
12 voluntarily made?

13 A. I have no other independent knowledge.

14 Q. Anything else besides getting back rent
15 that you voluntarily paid and taxes that you
16 voluntarily paid?

17 A. For other members of my community?

18 Q. I'm talking about you?

19 A. I need to relate this, however. That
20 there was an inappropriate assessment that was paid,
21 a minimum of a thousand dollars I believe, for
22 wastewater costs, for design and other interests and
23 some zero few number of us, myself and Mr. Gottlieb
24 included, refused to pay such assessments. But for

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1 the rest of my neighbors and colleagues, I believe
2 that was an inappropriate charge.

3 Q. You are referring now to the payments that
4 are scheduled in Exhibit H to the settlement
5 agreement of wastewater assessment fees that the
6 Feoffees assessed to tenants and which some tenants
7 or most tenants paid but you did not?

8 A. Yes.

9 Q. So your claim is that the people who paid
10 those should get them back because the claim is that
11 somehow it was not lawful for the Feoffees to
12 request payment of those amounts?

13 A. Yes.

14 Q. Why wasn't it lawful for the Feoffees to
15 request payments?

16 A. They didn't have the authority to do so, I
17 believe.

18 Q. No authority.

19 Any other money damages that you
20 claim were incurred?

21 A. Given time to review the complaint I would
22 be happy to relate others. Or if you would allow me
23 to just refer to -- make reference to the complaint,
24 then you'll know.

1 MR. CHAPMAN: You are asking if the
2 tenants win? Because you're just --

3 BY MR. PERRY:

4 Q. I understand that one of the positions
5 that the tenants take is that if they were to be
6 evicted they would have the right to have their
7 cottages purchased, right?

8 A. Yes.

9 Q. Anything else as you sit here today where
10 you think you've been damaged in the form of out of
11 pocket losses you've suffered because of something
12 that the Feoffees have done to you?

13 A. Other than as stated in the complaint, I'm
14 not able to relate any at this time.

15 Q. Do you want to read the complaint and tell
16 me if there's any other out of pocket loss that you
17 had?

18 A. We can spend a half hour and I'll review
19 the complaint.

20 MR. CHAPMAN: Off the record.

21 (Discussion off the record.)

22 (Pause.)

23 A. The Feoffees I believe may have the
24 responsibility of paying one hundred percent of any

1 rent or other payment made because they acted
2 outside of their constitutional -- check that -- of
3 their lawful formation in that they did not invite
4 the participation of the three eldest selectmen
5 during this period.

6 Q. If I understand that argument correctly,
7 what you are saying is that the Feoffees were a
8 seven-person body; that four of them, which is a
9 majority, acted without the other three and
10 therefore you should have right to live there
11 rent-free.

12 A. I didn't say that. I said that in the
13 event that we won that that would not be an
14 unwarranted damage because of their unlawful
15 actions. Assuming a court agrees.

16 Q. Okay.

17 A. In addition to which, that proportion of
18 rent that might have been spent on their unjust
19 enrichment, meaning the Feoffees' unjust enrichment,
20 taking fees for their job that I believe were far in
21 excess of what might have been warranted, and/or any
22 other expenses that were not appropriately related
23 to their obligations to me as a homeowner. For
24 instance, I paid through my rent the cost of defense

1 of a case against the siting of the pumpout station,
2 for instance. An independent action by a single
3 homeowner against the Feoffees about the siting of
4 the pump-out station.

5 Q. That the Feoffees had to pay out of the
6 trust?

7 A. Yes.

8 Q. And what are you saying was inappropriate
9 about that?

10 A. It was not an expense relative to the
11 entire island; that any cost of that should have
12 been in excess of revenue expense rather than an
13 expense paid by the rent in toto. In addition to
14 which I would add that the egregious costs of the
15 construction of the wastewater site and any
16 proportion of my rent that contributed to the cost
17 over and above that which it should have been might
18 quite properly be returned to me.

19 Q. Have you actually -- you've never paid any
20 special charges for that construction, have you?

21 A. I've paid for it, as I've described
22 earlier, as part of my rent and/or use and
23 occupancy.

24 Q. And the rent that you've paid was \$600 up

1 to \$5,000 per year?

2 A. That's correct.

3 Q. And you want that back as too much? You
4 think that's too much that you paid?

5 A. I didn't say that.

6 Q. Do you think any part of that rent that
7 you paid, \$600 that went to \$5,000, it was more than
8 a fair rent for you to pay?

9 A. The context of the lawsuit is that some or
10 all of that rent might in fact be due back to me as
11 a damage. I did not characterize that some of those
12 rents were not fair rent.

13 Q. Were any of them unfair?

14 A. Yes.

15 Q. Which part?

16 A. At minimum the parts at the \$5,000 level,
17 specifically because of the representations made to
18 me that my rent ad infinitum would be exclusively
19 related to the cost and operations of the island and
20 that any gift to the school department was
21 incidentally used for enrichment purposes; and that
22 the trust, the responsibilities of the trust were
23 being fulfilled by the Feoffees' allowance of having
24 homes built on the land so that real estate taxes

1 could be assessed and paid. And both the Feoffees
2 and we, as a tenant, homeowner, consider that to be
3 integral to the payments made to the town under the
4 conditions of the trust.

5 Q. So you think that the statements that were
6 made to you on your porch by Don Whiston in 1995
7 before you bought the property were binding in
8 perpetuity on the Feoffees and prevented the rent
9 from ever being charged at the fair market rate?

10 A. That in conjunction with the fair
11 practices exhibited for prior decades and following
12 that, the answer is yes.

13 Q. Following that for two or three years?

14 A. Should be following that ad infinitum but
15 not less than those subsequent years.

16 Q. What kind of view do you have from your
17 home?

18 A. Not much. I have an impeded view from
19 part of my back deck of Plum Island and part of
20 Ipswich bay, impeded by rooftops and trees and the
21 like. And I have a tiny slice of a view of Fox
22 Creek from the side deck where Mr. Whiston and I
23 enjoyed our initial conversation.

24 Q. Do you have an opinion of what your

1 property would be worth to somebody who owned both
2 the land and the real estate as part of a
3 condominium?

4 MR. SHEEHAN: Objection.

5 A. I don't. I do know that I believe that
6 the land value should be less than that which I have
7 agreed to pay under the settlement agreement. And
8 my home is in and of itself not worth very much.
9 Well, it's -- in and of itself it has limited value
10 but because of either the license, imputed license
11 that I have under the current arrangement and that
12 which I bought to enjoy tenancy there for as long as
13 I wished, and/or if married to the land would
14 obviously increase the total value. Over time.

15 Q. What do you think is the fair land value
16 of the land on which your cottage is located?

17 MR. SHEEHAN: Objection.

18 MR. CHAPMAN: Objection.

19 A. Somewhere closer to a hundred thousand
20 dollars than the 160-plus that is my obligation.

21 Q. How do you arrive on that hundred thousand
22 dollars value that you place on your land?

23 A. Part of it on calculation of what I
24 believe to be the reasonable appraised value of the

1 land, which is 22 million dollars or so.

2 Q. Well, are you aware that each of the
3 appraisers who performed appraisals, also as part of
4 that appraisal process, valued the individual lots
5 as though individually owned?

6 A. I do.

7 Q. What kind of range of values did those
8 appraisers place on your lot as an
9 individually-owned lot?

10 MR. CHAPMAN: Objection.

11 MR. SHEEHAN: Objection.

12 A. I don't recollect them specifically.

13 Q. Was it higher or lower than a hundred
14 dollars?

15 A. Higher.

16 Q. Higher or higher than \$160,000?

17 A. Some lower and in one isolated case
18 higher.

19 Q. Who was lower than the \$160,000 for the
20 value of your lot?

21 A. It's my recollection, recognizing the
22 totality of the value.

23 Q. Do you understand how those values were
24 reached?

1 MR. CHAPMAN: Objection.

2 A. Somewhat.

3 Q. Do you understand that the valuation
4 process was to take the retail fair market value of
5 each lot as though owned as a condominium and not
6 aggregate it?

7 A. Then help me. Educate me please.

8 Q. What they did was they assumed that
9 somebody would buy these lots for a lump sum, earn a
10 fairly hefty rate of return each year while they
11 sold them out and eventually sell them off for those
12 lot values?

13 MR. SHEEHAN: Objection.

14 A. Yes.

15 Q. So you can't take the number that results
16 from that process; divide by 167 and say that's the
17 value of the individual lot. Do you understand?

18 A. I understand. What I'm trying to relate
19 to you is that I believe that I am paying a premium
20 for my lot as part of the settlement agreement.

21 Q. All right.

22 A. The amount of that premium may be at
23 issue.

24 Q. And you realize that Mr. Lachance, who

1 performed a valuation for the tenants, has concluded
2 that your lot will be worth more than \$160,000 upon
3 purchase?

4 MR. SHEEHAN: Objection.

5 MR. CHAPMAN: Objection.

6 A. He concluded, is my understanding, that in
7 aggregate the land, to pick a specific number, was
8 at \$26,500,000, which if I divide by the 167 is
9 lower than my \$160,000-plus price. And further,
10 that he is suggesting that other lots with better
11 views have higher values. Mine would not be
12 characterized as a premium lot and therefore that's
13 why I'm suggesting, not knowing the number, that
14 it's some number south of the \$160,000 plus or minus
15 that I have agreed to pay.

16 Q. I'm afraid I may not have let you finish
17 your answer about damages.

18 You have told me about your
19 contention that the amount you paid for real estate
20 taxes should be paid back to you. Are there any
21 other amounts you are looking to have paid back to
22 you as part of the Superior Court lawsuit?

23 A. None that I recollect at the moment.

24 Q. Now, it was your understanding in the

1 Superior Court lawsuit that one of the issues
2 tenants raised for resolution was what the fair
3 market rent was that should be assessed against
4 them?

5 A. Please repeat.

6 Q. Do you understand that one of the issues
7 the tenants raised in the lawsuit was a request that
8 the court determine the fair rent or fair market
9 rent that can be charged?

10 A. Yes, there was a request that the court
11 determine the fair rent.

12 Q. So one possible outcome in the lawsuit,
13 you understand, is that the tenants could be found
14 to owe additional amounts for use and occupancy
15 beyond what they have paid?

16 A. That's a hypothetical circumstance.

17 Q. Is that something that you understand to
18 be an issue that a court is to resolve if the case
19 is not settled?

20 A. It will have a conclusion in the Superior
21 Court if the case is not settled and it will be
22 whatever it'll be.

23 Q. You mentioned a number of committees that
24 exist. So if you have the Little Neck Legal Action

1 Committee, does that committee maintain minutes?

2 A. It does not.

3 Q. Does it have records?

4 A. Some records, yes.

5 Q. Tell me what records it has.

6 A. It has communications to our members, it
7 has all of the records that have been created around
8 the lawsuit and the subsequent settlement
9 discussions. And it has financial records around
10 the contributions of our members and bills and
11 expenses and the like.

12 Q. What form of communications was used to
13 notify members?

14 A. Periodically myself and Mr. Gottlieb would
15 write communications to our members updating them as
16 to what is ongoing at the moment or what ought to
17 interest them, providing them with any materials
18 that we thought were necessary and appropriate.

19 MR. PERRY: Off the record.

20 (Discussion off the record.)

21 BY MR. PERRY:

22 Q. You had mentioned in your testimony this
23 morning that you had some notes that pertained to
24 your conversation in 1995 with Don Whiston?

1 A. Or whatever the date was that I purchased
2 the home, yes.

3 Q. Right. I'm using 1995 because you think
4 that's when you purchased, right?

5 A. (Witness nodded.)

6 Q. When did you write those notes?

7 A. At the time of the conversation. And
8 transcribed them generally immediately thereafter.
9 And I thought that they were important enough for me
10 to memorialize them.

11 Q. When you were out talking on the porch,
12 were you writing down as he spoke?

13 A. Yeah, at times.

14 Q. I just want to draw a picture of this.
15 You are out on the porch, Mr. Whiston is giving you
16 the history and telling you the information, right?

17 A. Yes.

18 Q. What do you have in your hands?

19 A. I have a piece of paper and a pen.

20 Q. So he sees as you are writing down as he's
21 talking?

22 A. I presume. He's not blind.

23 Q. And you are writing down notes of what
24 he's telling you, right?

1 A. Yes.

2 Q. One page? Two pages?

3 A. The notes themselves I don't recollect.
4 And me memorializing them, collecting them, it's
5 probably just a single typewritten page now.

6 Q. Well, do you still have the handwritten
7 pages?

8 A. I don't know. I'll have to look.

9 Q. You don't know if you have the handwritten
10 page but you know that you have a typed page?

11 A. Yeah.

12 Q. When did you type the typed page?

13 A. Certainly within hours or no longer than a
14 day after than specific conversation, the principal
15 conversation that I had with Mr. Whiston.

16 Q. What did you use to type your notes?

17 A. A computer.

18 Q. What kind of computer?

19 A. I have no idea.

20 MR. CHAPMAN: Do your best to
21 remember.

22 BY MR. PERRY:

23 Q. Back in the day that you're talking about
24 did you --

1 A. A laptop.

2 Q. You owned a laptop?

3 A. Yes.

4 Q. And you were at that time living in North
5 Andover?

6 A. That's correct.

7 Q. So I think what you're telling me is that
8 you went home and at some point after going home
9 with your handwritten notes you decided to type it
10 into your laptop?

11 A. I may have done it at home, I may have
12 done it at my office.

13 Q. Where was your office?

14 A. At that time at 800 Turnpike Street in
15 North Andover. I don't believe that I did it at
16 Little Neck.

17 It's important to note that
18 Mr. Garvey and I had a very close relationship and
19 he actually allowed me to rent the home even before
20 I owned it. So at the time that Don and I had the
21 conversation I had not yet closed on the transaction
22 but had the free use of the home. You know, Jim
23 would say the door's not locked, go in and do
24 whatever you need, invite anyone if you want, go

1 take a look at whatever's necessary.

2 Q. You had a handwritten piece of paper. You
3 tell me you typed that.

4 A. Yes.

5 Q. What did you do with the handwritten paper
6 after that?

7 A. I either discarded it or included it in
8 the packet. I don't recollect.

9 MR. PERRY: I might want to see the
10 original, not a copy as you probably should have
11 custody of the original not just a copy. I'd like
12 to see what it looks like.

13 BY MR. PERRY:

14 Q. Then on this typed note part of it --

15 A. It's saved in a file somewhere in a
16 server.

17 Q. What server?

18 A. Certainly my office server.

19 Q. What office is that?

20 A. My company, Semaphore.

21 Q. Which you've owned since 2001?

22 A. Yes. But I ran it as a division CEO for
23 Euromoney Institutional Investors since '94.

24 Q. So if we were to go on that computer and

150

1 look at this document, it would have a created date?

2 A. Assuming that -- yes, it would have a
3 created date, assuming that it wasn't on a laptop
4 and then e-mailed to myself and then placed on the
5 server.

6 MR. CHAPMAN: All right. We're
7 going to look for the documents and we can produce
8 it to you.

9 MR. PERRY: When you produce the
10 document, we may have at some point want to --

11 MR. CHAPMAN: I don't want to get
12 into electronic discovery.

13 Stop talking about it. We're going
14 do look for it.

15 MR. PERRY: Thank you.

16 MR. CHAPMAN: I wasn't telling you
17 to stop talking about it. I was telling him.

18 MR. PERRY: Any electronic evidence
19 that goes with it should be preserved.

20 MR. CHAPMAN: We're not going to
21 alter anything.

22 BY MR. PERRY:

23 Q. I understand that you probably have
24 replaced your computer since 1995?

1 A. Several times.

2 Q. I understand the impact that could have on
3 any date stamping.

4 Do you know if Mr. Gottlieb has
5 notes?

6 A. I don't.

7 MR. PERRY: Let's take a five-minute
8 break and see what else we have.

9 (Recess taken.)

10 BY MR. PERRY:

11 Q. Two things you mentioned after the break,
12 that when you were giving your job history earlier
13 you inadvertently left off a company you worked at
14 for two years that was a successor to another
15 company, right?

16 A. That's right.

17 Q. That was a long time ago?

18 A. Yes, back in the '80s.

19 Q. Second, you mentioned that upon further
20 reflection you incorrectly testified that your tax
21 bills for the property taxes are broken out
22 separately or paid separately between the land and
23 the property. In fact you pay the entire bill
24 bundled?

1 A. That's correct. I pay that to the
2 Feoffees upon them billing me for my portion of the
3 land tax and that portion of the specific home real
4 estate tax.

5 Q. Okay. Now, you did not sign the lease
6 that the Feoffees proposed that you sign as part of
7 Exhibit 3?

8 A. No, I did not.

9 Q. Did you subsequently receive a notice to
10 quit?

11 A. Co-terminusly there was a notice to quit
12 and leases, as I recollect, that were sent to me on
13 the 26th, 27th of June in 2006.

14 Q. Well, the June 2006 letter told you that
15 if you didn't sign, your tenancy would cease as of
16 January 31, 2007; is that right?

17 A. Yes.

18 Q. And then you did not sign the lease and
19 you continued to stay in the property after January
20 31, 2007?

21 A. That's correct.

22 Q. Seasonally, that is.

23 A. Yes. And to go further back, this is
24 refreshing a memory as to what the annual period is

1 of the lease and I didn't recollect whether it was
2 January or July. In effect, July 1st, or
3 colloquially the start of the summer. This purports
4 it to be calendar year but in actuality it's July
5 through the following June.

6 Q. Well, when you say this purports it to be
7 calendar year, where are you reading?

8 A. Tenancy at will through January 31st.

9 Q. 2007?

10 A. Yes.

11 Q. How often did you pay rent to the
12 Feoffees? Was it quarterly? Or would your wife
13 know that?

14 A. It was quarterly and then it was changed
15 to a monthly use and occupancy fee.

16 Q. During the time that you were occupying it
17 as a tenant before the use and occupancy period you
18 paid quarterly rent?

19 A. That's correct.

20 Q. And you received a notice in June of 2006,
21 that was more than three months before the end of
22 your -- strike that.

23 Do you know when the Feoffees set
24 the rent for 2006, do you know whether they set it

1 for the calendar year or had they agreed to maintain
2 that rent through -- I withdraw the question.

3 The last rent that was set by the
4 Feoffees that you voluntarily paid was for the
5 period ending June 30th, 2006, right?

6 A. I believe that's correct.

7 Q. And they didn't notify you -- and then on
8 June 27th, 2006 they notified you that they were
9 going to increase the rent?

10 A. That's correct.

11 Q. And they gave you more than three months'
12 notice of the rent increase?

13 A. I don't see the three months' notice.
14 They were expecting the rent to be paid for the
15 period July 1st going forward at the then higher
16 rate. So I don't see the notice.

17 Q. Subsequently was there an extension of the
18 time to sign a lease?

19 A. After a 93A demand letter was sent there
20 was an extension of the time.

21 Q. All right. What happened after you
22 rejected the lease and continued to occupy the
23 premises?

24 A. There was an extraordinary amount of

1 turmoil at that time. Many of those folks on Little
2 Neck who came to believe and trust in the Feoffees
3 significantly changed their opinion. Mr. Gottlieb
4 and I ratcheted our independent effort to try to
5 take control of the situation and we were urging our
6 neighbors to not sign the lease, to take stronger
7 actions than heretofore that they had.

8 We had related to them, our
9 neighbors, that the Feoffees had never had anyone
10 say no to them before, that we always acquiesced to
11 rental increases or other demands, the largest
12 proportion of us, and that this was the time period
13 to do otherwise. And quite formally then some 141
14 people representing 141 homes followed with their
15 hearts and minds and wallets the judgment that
16 Mr. Gottlieb and I had made.

17 Q. Did the Feoffees ever do anything to
18 attempt to evict you from your premises?

19 A. Yes.

20 Q. What did they do?

21 A. They sent notices to quit.

22 Q. When did they send the notices to quit?

23 A. In that same time period in June I believe
24 of 2006. And they continually threatened in

1 conversations, either directly with the Feoffees or
2 through counsel, that evictions would commence; that
3 Mr. Femino, who was then attorney for the Feoffees
4 dealing with that specific issue, was both preparing
5 and noticing people that eviction would commence if
6 we didn't sign the lease.

7 Broadly there was a very small
8 minority of people who felt at such significant risk
9 that they chose to sign a lease that we thought
10 penurious and wholly inappropriate. And as we
11 characterized to our members and to all others, that
12 nobody in any kind of a thinking mind would have
13 signed the lease as presented. And we attempted in
14 good faith both prior to and afterwards to establish
15 a fairer lease arrangement.

16 I could go on and characterize my
17 opinion for the next half hour if you would like.

18 MR. CHAPMAN: Just wait.

19 BY MR. PERRY:

20 Q. So you received a notice to quit, a
21 lawsuit was filed in December 2006. Was any action
22 taken after you filed the lawsuit to evict you?

23 A. I don't recollect if it was after the
24 lawsuit because soon thereafter we negotiated a

1 stipulation and that governed the parties'
2 activities from that point forward. But it was a
3 very mutually I'm sure tense time as demonstrated by
4 the interaction between the Feoffees and LYNLAC
5 immediately post the receipt of this proposed lease.

6 Q. Do you know what lawyer was involved in
7 drafting this lease?

8 A. I don't.

9 Q. Do you know who the real estate counsel
10 was at that time to the Feoffees?

11 A. I know that Mr. Femino was involved and I
12 don't recollect if Mr. Sheehan was.

13 Q. What about Mr. Greenough?

14 A. Mr. Greenough was certainly involved up
15 until the point that I believe Mr. Sheehan came on
16 board.

17 MR. PERRY: Thank you. I don't have
18 anything further for you.

19 MR. SHEEHAN: I have no questions.

20 MR. PERRY: I do want to reserve the
21 ability to get those documents.

22 MR. CHAPMAN: Yes. The other thing
23 I wanted to mention on the record is to the degree
24 Mr. DiSalvo was testifying about settlement

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1 discussions, that's without waiving our right to
2 claim that may be inadmissible if it comes to that
3 in trial.

4 MR. PERRY: I understand that's
5 subject to any applicable rules of substantive
6 testimony concerning such things as compromise
7 negotiations.

8 (The deposition was concluded at
9 4:20 p.m.)

E R R A T A S H E E T

I, MARK S. DiSALVO, do hereby certify under the pains and penalties of perjury that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction/Reason
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[illegible]

MARK S. DiSALVO

CERTIFICATE

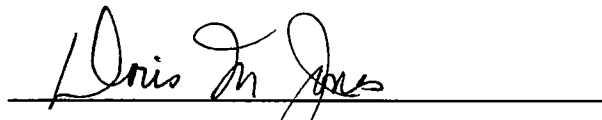
Commonwealth of Massachusetts

Suffolk, ss.

I, Doris M. Jones, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that MARK S. DiSALVO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this 29th day of September, 2011.



Doris M. Jones, CSR/RPR

My commission expires:

May 19, 2017

ORIGINAL

Reporting

September 29, 2011

Tyler E. Chapman, Esq.
Todd & Weld
28 State Street
Boston, Massachusetts 02109

Re: Mulholland vs. Attorney General of MA
Deposition of Mark S. DiSalvo

Dear Attorney Chapman,

Enclosed please find your copy of the deposition of Mark S. DiSalvo taken September 22, 2011 in the above-reference matter. Kindly have the witness read the transcript, noting any corrections on the errata/signature sheet enclosed herewith. No corrections should be made on the transcript itself.

Once this has been completed, please return the executed signature page to Stephen M. Perry, Esq. at the address noted on the appearance page of the transcript. A copy should also be provided to any other counsel present.

If you have any questions regarding this matter, please do not hesitate to contact our office at 617-451-8900.

Sincerely,

Jones Reporting Company

cc: All Counsel

TODD & WELD LLP

ATTORNEYS AT LAW
28 STATE STREET
BOSTON, MASSACHUSETTS 02109

TELEPHONE: (617) 720-2626
FACSIMILE: (617) 227-5777
www.toddweld.com

December 1, 2011

William H. Sheehan, Esquire
Maclean Holloway Doherty Ardiff &
Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960

Stephen M. Perry, Esquire
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210

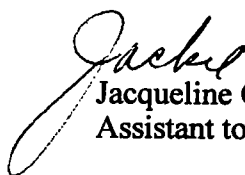
Re: William M. Lonergan, et al. v. James W. Foley, et al.
Essex Superior Court C.A. No. 067-02328D

Dear Counsel:

Enclosed are copies of the errata sheets/signature pages to the transcript the deposition of Mark S. DiSalvo taken on September 22 2011.

Thank you very much.

Sincerely,



Jacqueline Crowley
Assistant to Tyler E. Chapman

TEC:jc
Enclosures

E R R A T A S H E E T Page 1

I, MARK S. DiSALVO, do hereby certify
 under the pains and penalties of perjury that I have
 read the foregoing transcript of my testimony, and
 further certify that it is a true and accurate
 record of my testimony (with the exception of the
 corrections listed below):

Page	Line	Correction/Reason
✓ 7	6	Eliminate "And Economic", My Missrecollection
✓ 9	4	Eliminate "He" - I said "E", Refuted by husband
✓ 11	24	Eliminate "By" - Refuted by husband
26	14	Mr. [Ganguly was] also present - I was not given opportunity to so state
✓ 57	24	Eliminate "The", should be "A", I still testified w/ Refuted by husband
✓ 78	17	Eliminate "And even books" - non-judicial Refused, Refuted by husband
✓ 83	13	Eliminate "it", I still testified w/ Refuted by husband
✓ 108	19	Eliminate "Y" in LVLAE, should be "LWLAE", Refuted by husband
→ 109	20	"Ibid" - There are several other such references
✓ 116	2	Eliminate "D", should be "B" - Refuted by husband

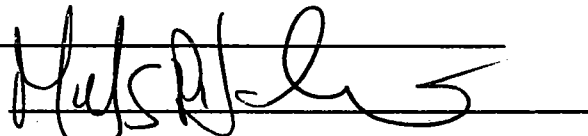

 MARK S. DiSALVO

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ERRATA SHEET Page 2

I, MARK S. DiSALVO, do hereby certify
under the pains and penalties of perjury that I have
read the foregoing transcript of my testimony, and
further certify that it is a true and accurate
record of my testimony (with the exception of the
corrections listed below):

Page	Line	Correction/Reason
<u>120</u>	<u>9</u>	<u>Eliminate "de", Should Read "Sign", Reporter Husband</u>
<u>126</u>	<u>5</u>	<u>Insert "as", should Read "As A Community", Reporter Husband</u>
<u>133</u>	<u>23</u>	<u>Eliminate "2mo", Reporter Husband & I Misspoke</u>
<u>156</u>	<u>10</u>	<u>Eliminate "penurious" and insert "Pernicious", Misspoke</u>
_____	_____	_____
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MARK S. DiSALVO

FEOFFEEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts 01938

To: LITTLE NECK COTTAGE OWNERS

Try as we may, the Feoffees can't remember a time during which we have had so many important issues before us. By this letter we wish to bring you up to date on a number of matters.

Enclosed you will find our updated Rules and Regulations, which will take effect on July 1st, 2000. The significant changes are in Section 3 (septic systems) and Section 9.5 (private use of the Community House). We recommend that a copy of the Rules and Regulations be posted in every cottage.

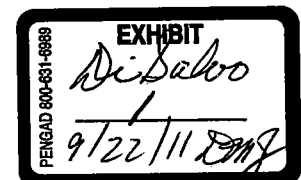
We would also like to remind you that the annual rents for the 2000-2001 season will be \$1,760 (seasonal) and \$1,980 (year-round). The rent is 55% of the fair market rental as determined by LandVest, Inc., in its appraisal of April 15, 1997. Despite the significant increase in the local real estate market during the past three years, we plan to follow the rent increase schedule adopted two years ago, without any further adjustment until 2004.

Water meter replacements are also scheduled for this summer and fall but a firm schedule has not yet been established by the Town.

As you know, our civil engineering consultant, H.L. Graham Associates, Inc., of Ipswich, is continuing its work relative to the upgrade of all septic systems at Little Neck as required by the Massachusetts Department of Environmental Protection ("DEP") under the Clean Waters Act and Title 5.

Through the DEP and the consultant, plans and designs are in progress for the first of three phases for the upgrades. We anticipate installation of the Phase One systems this fall as mandated by the DEP. Systems scheduled for upgrade this fall are identified on Exhibit A. The plans and designs in progress may require additional field work so you may see the consultant on site and it may need some additional information from you as well as access to your cottage.

Each cottage owner listed on Exhibit A may expect to receive, in the near future, a contract for pumping and servicing of the tight tank to be installed this fall. A cottage owner may execute this contract with D.F. Clark, Inc., or may use another service contractor on the Feoffees' approved list with whom to execute a similar contract. In any case, you must provide our consultant with a copy of an executed contract by July 15th, 2000. DEP requires this document with the plans and application for its approval.



Many of you have expressed concern about the DEP mandate and the much discussed possibility of extending the sewer line to Little Neck. Our attorneys have inserted in the following language in the draft Consent Order with DEP to address this issue:

The parties acknowledge that the Town of Ipswich is conducting a feasibility study to extend sewerage to the Great Neck section of Ipswich. This may be extended to Little Neck. The Department also acknowledges that it does not intend to require Little Neck residents to pay for the upgrade of septic systems and also require payment for individual tie-ins to sewer.

In the event that the Town of Ipswich, by vote of Town Meeting, Board of Selectmen or Board of Water and Sewer Commissioners, votes to consider to authorize the extension of sewerage to any portion of Great Neck or Little Neck during the term of this Order, the Department and the Feoffees shall suspend the upgrade requirements for those systems included in this Order which have not been completely installed and modify the timetables in this Order. If the Department determines that sewerage tie-ins to Little Neck will be commenced within five years or less, the upgrade requirements contained in this Order shall be suspended and shall be terminated at the time of the completion of the tie-ins. For purposes of this re-opener, the Town Meeting vote to conduct the sewer extension feasibility study in FY2000 does not trigger the suspension of the upgrade requirements for individual septic systems.

We trust this update is helpful for your understanding of the work in progress at Little Neck. We thank all of the cottage owners for your continued cooperation in these matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald F. Whiston". The signature is fluid and cursive, with a long horizontal stroke at the end.

DONALD F. WHISTON

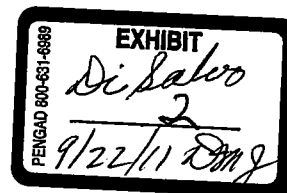
FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

LITTLE NECK LEASE - SEASONAL

This Agreement made this 18TH day of APRIL, 2008, by and between the FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH (the "Landlord"), whose mailing address is P.O. Box 166, Ipswich, Massachusetts 01938, and Kerri McDonald Schaub, whose address is 194 Main Street, Wenham, MA 01984, (the "Tenant").

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. LEASED PREMISES. Subject to the terms and conditions contained herein the Landlord leases to the Tenant Lot #144, being a certain parcel of land located in Ipswich, Massachusetts, at Little Neck, also being identified as Parcel 144 on Ipswich Assessor Map 24C (the "Lot"). The street address for the Lot is 24 Plum Sound Road.
2. USE. The Lot shall be used only between April 1st to December 31st of each year for the existing single-family seasonal private dwelling and any existing ancillary structures. The Lot may also be used by the Tenant for one additional week per year during the month of February or March, upon ten (10) days advance notice to the Landlord. The lot may also be used for such additional time as the Landlord, in its sole discretion, may permit in writing following a written request from the Tenant.
3. TERM. This lease shall be for a term of twenty (20) years commencing at 12:01 a.m. EDT on the first day of July 1st, 2007 (the "Commencement Date") and ending at 11:59 p.m. EDT on the thirtieth day of June, 2027 (the "Term").
4. ANNUAL RENT. The Tenant shall pay the Landlord annual rent in the amounts set forth in Exhibit A attached hereto and incorporated herein by reference. The annual rent shall be payable in advance and due in equal quarterly installments on July 1st, October 1st, January 1st, and April 1st of each fiscal year, subject to the provisions of Exhibit A. Rent shall be paid to the Landlord at P.O. Box 166, Ipswich, Massachusetts 01938.
5. LATE FEES. Any rent not paid on the date the rent is due shall be assessed a late fee of twelve (12) percent per annum for each month or portion thereof that the rent is late.



6. TAXES. The Tenant shall pay all municipal real estate taxes assessed on the Lot and the buildings erected thereon. The Landlord shall use all reasonable efforts, working in conjunction with Little Neck tenants, to secure a direct, individual real estate tax bill for the Tenant from the Town of Ipswich. At such time, the Tenant shall pay the tax bill timely. Until such time, the Tenant shall pay additional rent to the Landlord in the amount of the real estate taxes attributable to the Lot and the buildings thereon, payable within fifteen (15) days from date of invoice from the Landlord. Landlord agrees to invoice the Tenant as many times per year as the Town of Ipswich invoices the Landlord for real estate taxes, which invoice shall be in the amount billed by the Town to the Landlord. The Landlord shall be under no obligation to seek an abatement of real estate taxes. The Tenant shall have the right to prosecute an application for abatement of taxes in the name of the Landlord or Tenant, provided, however, that the expenses of prosecuting such application shall be borne by the Tenant. At the Tenant's request, Landlord shall furnish the Tenant with all data and information in the Landlord's possession reasonably necessary for Tenant's application. If the Landlord shall receive any abatement or refund of said taxes for any tax year for which the Tenant shall have paid to the Landlord all taxes due, the Tenant shall be entitled to receive from the Landlord the amount of such abatement or refund.

7. UTILITIES.

- (a) Water and Electric. The Tenant shall be responsible for payments of water and electric service charges to the Town of Ipswich.
- (b) Waste Water Disposal. The Tenant's dwelling shall be connected to the common waste water system operated by the Landlord or its designee. The Tenant shall pay all disposal fees (including pumping, hauling, "tipping" and any other fees and costs charged to Landlord or its designee by the person or entity with whom Landlord or its designee contracts for such disposal, and without mark-up or surcharge by Landlord or its designee) charged for the disposal of waste water from the Tenant's dwelling, based upon metered water use, to the Landlord or its designee, within fifteen (15) days from date of invoice.
- (c) Other Utilities. The Tenant shall provide such other utilities to their lot at their own expense.

8. PERMITS AND LICENSES. It is understood and agreed that the Tenant shall obtain all necessary certificates, permits and other approvals required by any federal, state and local authorities necessary to undertake any repair, renovations or improvements to or to occupy said Lot or building or structure erected thereon.

9. TENANT'S RIGHTS UPON EXPIRATION OF TERM.

- (a) This Lease does not grant to the Tenant any right to extend the term of this Lease or any right to renew the Lease. The Landlord shall provide a right of first refusal to the Tenant to enter into a new lease for the Lot prior to the expiration of the Term. At least one hundred eighty (180) days prior to the expiration of the Term, the Landlord shall provide the Tenant with the form and substance of lease which the Landlord has then adopted. The new lease shall include the rent and other charges for the full term thereof and shall be for a term of not less than twenty (20) years.
- (b) The right of first refusal described in Paragraph 9(a) shall be included in all subsequent leases between the Landlord and the Tenant or Tenant's assignees; provided, however, the term of any such subsequent lease may be ten years or more. Landlord warrants that, for the period July 1, 2027 to June 30, 2047, the terms of a new lease will include, without deviation, the language of Paragraphs 2, 7, 11, 13-17, 19, 23, 25 and 26, and that the annual rent during that period shall be calculated in the same manner as the annual rent is to be calculated for fiscal years 2013 through 2027; provided, however, (1) that the Landlord may provide that the annual rent will be adjusted every two years and not every three years; (2) that the Landlord may change any language of the above-identified paragraphs if required by law or court order; and (3) that the Landlord may increase the amount in Paragraph 23(f) to up to Forty Thousand (\$40,000) Dollars.
- (c) The Tenant shall have sixty (60) days to notify the Landlord whether it wishes to enter into the new lease upon the proposed terms. If the Tenant exercises its right of final refusal, the new lease shall be executed by the parties at least thirty (30) days prior to the expiration of the Term and the new lease shall be effective immediately upon the expiration of the Term.

10. INDEMNIFICATION. During the Term, the Tenant, subject to the provisions contained herein, agrees to indemnify, defend and save the Landlord harmless against and from any and all claims, damages, costs, expenses (including the Landlord's reasonable attorney's fees) fines, penalties and other liabilities of any and every kind and nature, to any person or property, arising out of Tenant's use and occupancy of the Lot, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Substance on or about the Lot to the extent the Tenant caused any such environmental occurrence, but there shall be no

indemnity for any claim caused by the Landlord's negligence or intentional misconduct, or those of its agents, servants or employees. If any claim or proceeding arising under the preceding sentence is brought, naming the Landlord as a party by reason of any such claim or proceeding, and the claim, proceeding, damage, loss or liability is not caused by the negligent acts or intentional misconduct of the Landlord, its agents, servants or employees, Tenant, at its own cost and expense, upon written notice from the Landlord, agrees to undertake forthwith to defend such action or proceeding and hold the Landlord harmless and indemnify the Landlord against any liability thereon which may be asserted or imposed.

For the purposes of this Section, "Hazardous Substance" shall mean waste, substance or other material which may be dangerous to health or the environment, including, without limitation, all "hazardous wastes", "hazardous materials", "hazardous substances", "toxic substances", and "oil", as defined in and/or regulated under the Resources Conservation and Recovery Act of 1976, as amended, and/or any other federal, state or local law, regulation or by-law.

11. QUIET ENJOYMENT: The Landlord covenants that the Tenant, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Lot, subject, however, to rights of others to pass on foot or by vehicle over those paths and driveways which have historically been so used generally by tenants at Little Neck.
12. BREACH OF CONDITION. This Lease is made on condition that if Tenant should neglect or fail to pay the rent, the waste water disposal charges payable to Landlord or its designee, or the real estate taxes assessed on said property in accordance with G.L. c. 59, §2B, all as required in this Lease, and said neglect or failure continues for fifteen (15) days from the due date of such payment, the Landlord may terminate this Lease in accordance with and subject to the provisions of G.L. c. 186, §11. If the Tenant shall neglect or fail to perform or observe any of the terms of any federal, state or local law, by-law or regulation or the Rules and Regulations promulgated by the Landlord, and after receipt by the Tenant of written notice by the Landlord, the Tenant fails to commence to cure within sixty (60) days of such notice, or thereafter fails to diligently prosecute said cure to completion, or if the leasehold hereby created shall be taken on execution, or by other process of law, and such execution or other process is not satisfied or discharged within thirty (30) days thereafter or prior to a sale under said execution or other process which ever first occurs, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed (and if such person is not discharged within ninety (90) days thereafter) to take charge of all or any part of the Tenant's property by a Court of competent jurisdiction, or if a petition is

filed by the Tenant under any bankruptcy law for relief or composition of its debts, or if the Tenant is declared bankrupt or if a mortgagee forecloses and/or takes possession of the chattel then, and in any of said cases, the Landlord may terminate this Lease upon written notice to the Tenant. Upon termination of this Lease for any reason under this paragraph, the disposition of the Tenant's improvements shall be governed by paragraph 14 below. Notwithstanding the termination of this Lease, the Tenant shall remain liable for (a) all rent and other amounts due under this Lease through the date of termination and (b) following termination, if the Tenant remains in possession of the Lot under paragraph 14 or otherwise, the Tenant shall be liable for a use and occupancy charge equal to the rent that would otherwise be due together with all other amounts due under the Lease through the date the Tenant delivers possession to the Landlord. The Tenant shall, in addition, be liable for all costs and expenses incurred by the Landlord occasioned by an event of default, including but not limited to reasonable attorneys' fees and other costs of collection, summary process and the exercise of any right or remedy permitted to the Landlord.

13. **TENANT'S TERMINATION OF LEASE.** The Tenant may terminate this Lease upon one hundred twenty (120) days' written notice to the Landlord. Upon such termination, the disposition of the Tenant's improvements shall be governed by paragraph 14 below.
14. **SALE OR REMOVAL OF TENANT'S DWELLING AND STRUCTURES.**
 - (a) Upon the expiration of the Term or the earlier termination of the Lease, the Tenant shall be permitted the opportunity, for up to twelve (12) months subsequent to the expiration of the Term or the earlier termination of the Lease ("Sale/Removal Period"), to use diligent efforts to sell the Tenant's dwelling, structures and other improvements located on the Lot or remove same at the Tenant's expense. Failure of the Tenant to sell or to remove the Tenant's dwelling, structures and other improvements shall result in the dwelling, structures and other improvements becoming the property of the Landlord at the end of the twelve-month period. The Tenant shall pay the Landlord for use and occupancy an amount equal to the rent and other amounts due to the Landlord under this Lease during the period through the date of sale, removal or turn over to the Landlord of the dwelling, structures and other improvements on the Lot and such payments shall be due at the times as previously provided in the Lease. If the Term has expired prior to, or expires during, the Sale/Removal Period, the amounts to be paid for use and occupancy through the date of sale, removal or turnover to the Landlord shall be equal to the rent and other amounts being paid by

the other tenants of Little Neck to the Landlord under leases then in effect.

- (b) If the Tenant fails to pay such use and occupancy charges within thirty (30) days from the due date of said payment, the Sale/Removal Period shall terminate and the dwelling, structures and other improvements on the Lot shall become the property of the Landlord; provided, however, within ten (10) days of a written request of the Tenant for permission to make monthly payments as described herein in lieu of the periodic payments of use and occupancy required by Paragraph 14(a) of this Lease, the Landlord shall permit the Tenant to make, in lieu of the periodic payments of use and occupancy otherwise due under the Lease, monthly payments on the first day of each month during the Sale/Removal Period of \$650, together with payments of real estate taxes and utilities as set forth in this Lease. If the Tenant fails to make all such payments timely, the Sale/Removal Period shall terminate and the dwelling, structures and other improvements on the Lot shall become the property of the Landlord. If the Tenant makes all such payments timely, the difference between the use and occupancy due and the monthly payments made shall be paid to the Landlord from the proceeds of sale and such payment shall be a condition of an assignment of the Lease to the purchaser of the dwelling, structures and improvements.
- (c) In the event the Tenant elects to remove the dwelling, structures and other improvements, the Tenant shall remove same in their entirety and shall leave the Lot free of all personalty and oil and hazardous substances as defined in Paragraph 10 of this Lease. The lot shall be left by the Tenant with a grade and in a condition as if the Lot had never been improved; provided, however, the existing foundation may be left "as is" at the Tenant's election. The Tenant shall pay all costs associated with disconnection of the dwelling from all utility services. The Tenant shall remain liable for all rent, use and occupancy and other amounts due up through the date of removal, which date shall be defined as the date the Lot is in the condition described above following the removal of all personalty, oil and hazardous substances. To secure payment to the Landlord, the Tenant, prior to beginning removal, shall provide to the Landlord a security interest in the Tenant's dwelling, structures and other improvements in such form as the Landlord may reasonably require, which security interest shall be promptly released upon full payment to the Landlord and full performance of the Tenant's obligations hereunder. No removal activities shall be commenced prior to the Tenant's providing to the Landlord an insurance policy providing liability coverage in an amount not less than \$1,000,000

for property damage or personal injury incurred in connection with such removal and naming the Landlord as an additional insured.

- (d) The Tenant shall be liable for the Landlord's reasonable costs of collection and of enforcement of Tenant's obligations hereunder, including reasonable attorney's fees.

15. **ASSIGNMENT OR SUBLEASE.** This Lease may be assigned or transferred or bequeathed by the Tenant, with written notice to the Landlord to a spouse, child, grandchild, sibling, niece or nephew of the Tenant (a "Relative") or to a trust, limited liability company, corporation or other legal entity owned or controlled by the Tenant or Relative(s). Subject to the Landlord's approval, which shall not be unreasonably denied or delayed, this Lease may be assigned to an individual/entity purchasing the Tenant's dwelling and any ancillary structures located on the Lot ("Tenant's Improvements"), during the Term or the Sale/Removal Period. The Landlord agrees to provide the Tenant with a response to the Tenant's request for approval of an assignment, within twenty-one (21) days of the Tenant's request and, if denied, the reasons for the same, in order to facilitate the sale of the Tenant's Improvements, so long as Tenant provides to the Landlord a financial statement of the proposed assignee setting forth the assets, liabilities, and amounts and sources of annual income of the proposed assignee in a form similar to that required by institutional lenders in conjunction with a loan application. If the Landlord undertakes to conduct a background check on the proposed assignee, the Landlord shall do so in compliance with applicable laws and regulations. In the event of the sale of the Tenant's Improvements, the purchaser shall have the election of assuming this Lease or entering into a new twenty-year lease with the Landlord in the form and substance which the Landlord has then adopted. The Landlord agrees to provide the Tenant and the Tenant's prospective purchaser the form of lease within seven (7) days of the Tenant's request in order to facilitate the sale of the Tenant's Improvements. The Tenant may sublease the Lot and Tenant's Improvements to an unrelated party for a term not to exceed one hundred twenty (120) days per year upon notice to, but without the requirement of the assent of, the Landlord. The Tenant shall not enter into any other sublease agreement. The Tenant shall promptly notify the Landlord of any sublease or assignment.
16. **COMMON AMENITIES.** In addition to the exclusive use and occupancy of the Lot as described in Paragraph 11 above, the Tenant shall have the exclusive right, in common with other Little Neck tenants, to use the beaches, playgrounds, baseball field, dock, community center and other common amenities as currently provided by the Landlord for the enjoyment of the residents of Little Neck, subject to unavailability from time to time due to the making of repairs and improvements as necessary

in the discretion of the Landlord. The Landlord shall provide reasonable security at the entrance to Little Neck during peak weekends and holidays to limit access to the Tenant and other Little Neck tenants, and a reasonable number of Tenant's invited guests.

17. **RIGHT OF FIRST REFUSAL TO PURCHASE.** The Tenant acknowledges that the Landlord does not possess the legal authority or power to sell the Lot during the term of this Lease. However, if at any time during the Term, the Landlord shall receive from any person a Bona Fide Offer (as defined below) to purchase the Lot, and shall have the desire and authority to sell the Lot pursuant to such Bona Fide Offer, the Landlord shall give written notice of the same to the Tenant, together with a copy of the Bona Fide Offer. A "Bona Fide Offer" shall mean an offer in writing setting forth all relevant terms and conditions of the proposed purchase from an offeror who is ready, willing and able to consummate the purchase. Upon the Tenant's receipt of such notice, the Tenant shall then have the right and option to purchase the Lot at the purchase price and upon the other terms set forth in the Bona Fide Offer, and as soon as practicable thereafter to consummate the transaction, provided only that the Tenant exercises such right and option by written notice to the Landlord within 60 days after the Tenant's receipt of the notice of the Bona Fide Offer. If the Tenant does not, for any reason, exercise the Tenant's option to purchase the Lot as provided above, then the Landlord shall have the right to sell the Lot at the purchase price and upon the terms set forth in the Bona Fide Offer. If the Tenant shall not exercise the Tenant's option to purchase the Lot with respect to any Bona Fide Offer, and if the transaction contemplated at the purchase price and upon the terms set forth in the Bona Fide Offer does not close, the Tenant's right of first refusal shall once again take effect with respect to such Bona Fide Offer and with respect to any subsequent Bona Fide Offer.
18. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated by like notice) and shall be deemed received as of the earlier of five days after the date of the postmark or actual receipt hereof.

the Landlord: Feoffees of the Grammar School
 P.O. Box 166
 Ipswich, MA 01938

Tenant: (To the Name and Address Shown
 In the First Paragraph on the First
 Page of This Lease)

19. NOTICE OF LEASE. Upon the written request of the Tenant, the Landlord agrees to execute a Notice of Lease pursuant to Massachusetts General Laws Chapter 183, Section 4, to be recorded at the Essex South District Registry of Deeds at the Tenant's expense and a copy of said Notice of Lease as recorded shall be returned to the Landlord by the Tenant.
20. BINDING EFFECT. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties thereof.
21. RIGHT OF ENTRY: Tenant agrees that the Landlord, the Landlord's agents and other representatives, shall have the right, without abatement of rent, to enter into and upon the Lot, or any part thereof, upon reasonable notice (except in the event of an emergency) for the purposes of examining the same to ensure compliance with the terms of the Lease, to make such repairs to the Lot as may be necessary for the safety and preservation thereof, or to make repairs off the Lot as to which the Lot provides access; provided, however, that such repairs (unless of an emergency nature) shall be made so as to cause a minimum of interference with the Tenant's use of the Lot.
22. TENANT'S COVENANTS. The Tenant covenants for the Term of this Lease as follows:
 - (a) To pay when due, all rent, taxes and waste water disposal fees at the time and in the manner required as provided in this Lease.
 - (b) At the expiration or earlier termination of this Lease to yield up peaceably to the Landlord the Lot in good order, repair and condition and unencumbered, subject to the provisions of Paragraph 14 of this Lease.
 - (c) To indemnify and defend and hold the Landlord harmless from and against any mechanics' or other liens arising out of the making of any alterations, repairs, additions or improvements by the Tenant. All such work by the Tenant shall be done in accordance with all requirements of law, including all governmental regulations, in a good workmanlike manner, and with materials of good quality.
 - (d) To comply with all local, state and federal statutes, laws, rules, codes, regulations, permits, licenses, certificates and court orders, whether or not in effect as of the commencement of the Term.
 - (e) That the Tenant will not make or suffer any waste or any unlawful, improper or offensive use of the said premises.
 - (f) That the Tenant shall not erect, alter, change, reconstruct or modify any building on the Lot, or use any building for any purpose other than as a single family dwelling or an accessory structure. Prior to any construction, reconstruction, alteration, changes or modifications, as aforesaid, the Tenant must submit to the Landlord

three complete sets of plans, to scale, that clearly delineate all such proposed work. All work must be performed in accordance with said plans. No work can be started until the Landlord approves the plans. No exterior construction work on any building shall be conducted or carried on between June 1st through September 30th, inclusive, in each year in order to preserve the peaceful enjoyment of the area for Little Neck tenants. The Tenant acknowledges that no reconstruction, addition to or modification of an existing structure on the Lot shall alter or unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. In no event shall this provision apply to renovations which take place solely in the interior of a dwelling or structure and which do not increase the footprint or height of the dwelling or structure.

- (g) That the Tenant shall (i) keep the grass cut upon the Lot and will not allow grass and other vegetation to grow in such a manner as to become a fire hazard to any building upon the Lot or any adjacent lots and (ii) trim trees and bushes upon the Lot so as not to unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. No tree trimming or removal shall be undertaken without permission from the Landlord.
- (h) The Tenant hereby further covenants and agrees to comply with the Rules and Regulations duly promulgated by the Landlord, as they may be amended from time to time. Notwithstanding the foregoing, said Rules and Regulations shall not be contrary to the terms and provisions of this Lease.
- (i) The Tenant shall not drill, dig or construct any wells on the Lot.
- (j) The Tenant shall pay all costs of enforcement, including reasonable attorney's fees incurred by Landlord, in the event of Tenant's breach of one or more of the covenants contained in this paragraph.

23. **LANDLORD'S COVENANTS.** The Landlord covenants for the Term of this Lease, as follows:

- (a) The Landlord shall enforce the obligation of all tenants of Little Neck to keep trees and bushes trimmed so as not to unreasonably interfere with the Tenant's water views from the Tenant's dwelling existing as of the Commencement Date.
- (b) The Landlord shall enforce the obligations of all tenants of Little Neck set forth in Paragraph 22(f) of this Lease.
- (c) Notwithstanding anything to the contrary contained in this Lease, in the event of the damage by casualty or destruction, subsequent to the Commencement Date, of the whole or any part of the Tenant's dwelling, the Landlord shall permit the Tenant to rebuild the

Tenant's dwelling to the same size, configuration and location as exists of the Commencement Date, with and subject to all necessary government approvals.

- (d) The Landlord shall not impose new Rules and Regulations without at least sixty (60) days' written notice to the Tenant and without conducting a meeting with interested Tenants to discuss the proposed new Rule or Regulation.
- (e) The Landlord shall consent to a mortgage or other security interest in the Tenant's improvements (dwelling, accessory structures, etc.) as may be sought by the Tenant; provided, however, that no such consent need be given to an interest which would adversely affect the rights of the Landlord under the Lease in the event of a breach or default by the Tenant.
- (f) Except in the case of an emergency, the Landlord shall not enter into (1) a contract or agreement for the disposal of waste water or (2) a contract or agreement for a capital improvement for an amount in excess of Twenty Five Thousand (\$25,000) Dollars without at least sixty (60) days written notice to the Tenant and without conducting a meeting with interested tenants to discuss the proposed contract or agreement.
- (g) The Landlord represents and warrants that it is the owner of Little Neck. The Tenant acknowledges that the District Attorney for the Eastern District has opined that the Landlord is a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§23A – 23C, with which opinion the Landlord disagrees and which opinion the Landlord has challenged in court. In the same court action, the Landlord has sought a declaration that it is not a governmental body for purposes of the Uniform Procurement Act, G.L. c. 30B. The Tenant acknowledges that, in the event it is determined that G.L. c. 30B applies to the Landlord, this Lease could be declared null and void. In that event, the Tenant hereby releases the Landlord from any and all claims or damages arising out of or relating to this Lease being so nullified. In the event of such a nullification, the parties hereto agree that the Tenant shall be a tenant at will with rent due and payable quarter-annually on the first day of April, July, October and January in an amount equal to the rent and taxes set forth in Paragraphs 4 and 6 of this Lease with the Tenant obligated to pay the utility expenses in the amount and at the times set forth in Paragraph 7 of this Lease.
- (h) Notwithstanding the Landlord's position that it is not a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§ 23A-23C, the Landlord agrees henceforth to conduct its meetings in accordance with the Open Meeting Law. Nothing in this subparagraph or in this Lease may be construed as an agreement or admission by the Landlord that it is a governmental body for purposes of the Open Meeting Law, the Uniform Procurement Act

or any other federal, state or local statute, ordinance, rule or regulation.

24. SUBORDINATION. Subject to the Tenant's receipt of a reasonable subordination and nondisturbance agreement, this Lease, and all rights of the Tenant hereunder, are and shall be subject and subordinate in all respects to all mortgages given by the Landlord which may now or hereafter affect Little Neck ("Superior Mortgages"), to each and every advance made or hereafter to be made under the Superior Mortgages, and to all renewals, modifications, replacements and extensions of the Superior Mortgages. In confirmation of such subordination, the Tenant shall timely execute and deliver any instrument, in recordable form, if required, to the holder of any Superior Mortgages or any of their respective successors in interest as may be requested to evidence such subordination.
25. COMPLETE AGREEMENT. This Lease contains all the agreements, promises and understandings between the Landlord and the Tenant and no oral agreements, promises or understandings shall be binding upon either the Landlord or the Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Lease shall be void and ineffective unless made in writing and signed by the parties hereto.
26. LAW GOVERNING. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts.

[Signatures to Follow on Next Page]

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

Feoffees of the Grammar School
In the Town of Ipswich, Landlord
By:

James W. Foley
Its: _____

Tenant(s)

Kerri E. Schaub

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 18TH day of APRIL, 2008, before me, the undersigned notary public, personally appeared KERRI McDONALD SCHAUB, Tenant(s), proved to me through satisfactory evidence of identification, which was a MASS. DRIVER LICENSE, to be the person whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

[Signature]
NOTARY PUBLIC

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 22nd day of April, 2008, before me, the undersigned notary public, personally appeared James Foley proved to me through satisfactory evidence of identification, which was a Personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Feoffees of the Grammar School in the Town of Ipswich.

Ann Marie Cornacchia
NOTARY PUBLIC

My commission expires:



EXHIBIT A

ANNUAL RENT

1. (a) July 1, 2007 - June 30, 2008 \$9,700
- (b) In the event this Lease is executed after July 1, 2007, all rent due under the Lease for fiscal year 2008 in excess of payments received for the period beginning July 1, 2007 shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.
- (c) July 1, 2008 - June 30, 2009 \$9,700
- (d) July 1, 2009 - June 30, 2010 \$9,700
- (e) July 1, 2010 - June 30, 2011 \$9,700
- (f) July 1, 2011 - June 30, 2012 \$9,700

2. For the three-year period commencing on July 1, 2012, the annual rent (that is, the rent for the period from July 1, 2012 through June 30, 2013 [Fiscal Year 2013], and for each of the two subsequent fiscal years) shall be determined as follows:

(a) The 167 improved lots offered by the Landlord for rent at Little Neck ("the 167 improved lots") shall be placed in five classes as follows:

Class I: Lots 37, 56, 91, 105, 113, 129.

Class II: Lots 38, 39, 40, 41, 41A, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 57, 70, 71, 72, 75, 76, 77, 80, 81, 82, 84, 85, 86, 87, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 101A, 102, 102A, 103, 104, 106, 112, 114, 115, 116, 116A, 117, 118, 118A, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 138, 139, 140, 141, 142, 143, 144, 145, 146, 149, 150, 151, 152, 153, 154, 161, 162.

Class III: Lots 8, 13, 24, 25, 26, 28, 29, 31, 32, 33, 34, 35, 42, 54, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 79, 83, 107, 110, 111, 131, 132, 135, 136, 137, 147, 155, 156, 160, 163.

Class IV: Lots 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 108, 109, 133, 134, 157, 158, 159, 164, 165, 166, 167, 169, 171, 172, 173.

Class V: Lots 10, 148, 168, 170.

(b) The annual rent for Lots in Class II shall equal the total assessed value as of January 1, 2012 of the 167 improved lots, multiplied by .05 and divided by 167, all so as to charge annual rent to tenants of Lots in Class II in an amount equal to five (5%) percent of the average assessed value of the 167 improved lots.

(c) The annual rent for tenants of Lots in Class I shall be ninety-eight (98%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class I shall pay rent in an amount equal to four and nine-tenths (4.9%) percent of the average assessed value of the 167 improved lots.

(d) The annual rent for tenants of Lots in Class III shall be one hundred two (102%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class III shall pay rent in an amount equal to five and one-tenth (5.1%) percent of the average assessed value of the 167 improved lots.

(e) The annual rent for tenants of Lots in Class IV shall be one hundred six (106%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class IV shall pay rent in an amount equal to five and three-tenths (5.3%) percent of the average assessed value of the 167 improved lots.

(f) The annual rent for tenants of Lots in Class V shall be one hundred eight (108%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class V shall pay rent in an amount equal to five and four-tenths (5.4%) percent of the average assessed value of the 167 improved lots.

(g) The rent shall thereafter be recalculated every third year in the same manner based on the assessed value of the 167 improved lots as of January 1 immediately prior to the fiscal year in which the recalculation is being performed. The annual rent will be recalculated in each of fiscal years 2016, 2019, 2022, and 2025.

(h) MINIMUM ANNUAL RENT - Notwithstanding any of the above and any of the language set forth below in Paragraph 4, in no event shall the annual rent for any fiscal year for any tenant of any Lot in Classes II, III, IV or V be less than \$9,700 and for any tenant in Class I be less than \$9,506.

3. In the event that the assessed value has not been set by the Assessors before the beginning of any fiscal year in which a rent recalculation is being performed, the Tenant shall make quarterly payments based on the previous fiscal year's annual rent until that value has been set, following which quarterly payments will be adjusted as necessary to reflect the actual annual rent for the fiscal year. For example, if no assessed value for fiscal year 2013 was set by the Assessors prior to July 1, 2012, quarterly installments of rent for fiscal year 2013 will be \$2,425 based on the rent for fiscal year 2012 as set forth above until the assessed value for fiscal year 2013 is set. If, on December 15, 2012, the Assessors set the assessed value for fiscal year 2013 such that the annual rent for a tenant is \$10,000, the tenant will pay quarterly installments on January 1, 2013 and April 1, 2013, of \$2,575 each.

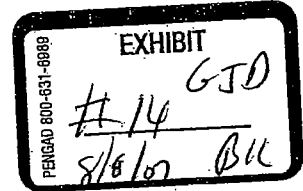
4. The parties hereto contemplate that the Tenant and other tenants of the Landlord may seek real estate tax abatements for the lots they are leasing from the Landlord for one or more fiscal years in which a rent recalculation is being made pursuant to Paragraph 2 (a "Rent Recalculation Fiscal Year"). The parties hereto understand that the abatement procedure may result in an increase or decrease in the total assessed value of the 167 improved lots offered for rent by the Landlord. In the event the total assessed value of the 167 improved lots for a Rent Recalculation Fiscal Year increases or decreases by an amount such that the annual rent calculation is altered by more than \$100, the difference in annual rent for the Rent Recalculation Fiscal Year and the two fiscal years following same, shall be added to or subtracted from, as the case may be, the annual rent for the next Rent Recalculation Fiscal Year and the two years following same, the increase or decrease being spread equally among the twelve payments in said three-year period.

5. The annual rent set forth herein does not include the Tenant's payments described in Paragraphs 6 and 7 of the Lease.

6. The Tenant may deduct from the first rent payment hereunder an amount equal to the amount, if any, paid by the Tenant to the Landlord prior to July 1, 2005 in response to the Landlord's request for a payment related to the waste water disposal system.

FEOFFEES OF THE GRAMMAR SCHOOL
P.O. Box 166
Ipswich, Massachusetts 01938

June 27th, 2006



TO: Little Neck Cottage Owners

Enclosed please find two (2) copies of the proposed Little Neck Lease for your Lot for the period of July 1, 2006, through June 30, 2026.


By separate letter from our attorney, Leonard F. Femino, you have been notified that your existing tenancy at will for the Lot has been terminated as of January 31, 2007, and he has provided instructions as to the payment due for your continued use of the Lot through the end of this year.

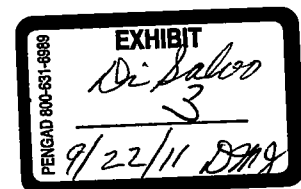
If you are interested in surrendering your tenancy at will and establishing a new leasehold for your Lot at this time, please sign both copies of the Lease on Page 9, in the presence of a Notary Public, and return them in the enclosed envelope together with the first quarterly payment of rent due under the Lease to be received by the Feoffees on or before August 1st, 2006. We will then sign the Lease and return one original to you together with the tax bill for your Lot for the first quarter of FY2007. You will then have fourteen (14) days to forward your check to the Feoffees for payment of the tax bill.

We are hopeful that the Tax Collector will issue tax bills directly to the tenants beginning in FY2008. After that has been implemented you will be paying the rent to the Feoffees, the monthly sewer charge for actual use to LNWS, and the quarterly tax bill to the Town of Ipswich.

Our offer to lease the Lot to you pursuant to the terms of the proposed Lease will expire on August 1st. If you are not interested in establishing a new leasehold, we will, of course, honor your tenancy at will through January 31st, 2007, in accordance with Attorney Femino's letter.

Sincerely yours,


ALEXANDER B.C. MULHOLLAND, JR.,
Chairman



FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

LITTLE NECK LEASE - SEASONAL

This Agreement made this _____ day of _____, 2006, by and between the FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH (the "Landlord"), whose mailing address is P.O. Box 166, Ipswich, Massachusetts 01938, and GERALD J. DONOVAN, whose address is 89 Pineswamp Road, Ipswich, MA 01938, (the "Tenant").

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. LEASED PREMISES. Subject to the terms and conditions contained herein the Landlord leases to the Tenant Lot # 120, being a certain parcel of land located in Ipswich, Massachusetts, at Little Neck, also being identified as Parcel 120 on Ipswich Assessor Map 24C (the "Lot"). The street address for the Lot is 30 King's Way.
2. USE. The Lot shall be used only between April 1st to December 31st of each year for the existing single-family seasonal private dwelling and any existing ancillary structures.
3. TERM. This lease shall be for a term of twenty (20) years commencing at 12:01 a.m. EDT on the first day of July 1st, 2006 (the "Commencement Date") and ending at 11:59 p.m. EDT on the thirtieth day of June, 2026 (the "Term").
4. ANNUAL RENT. The Tenant shall pay the Landlord annual rent at the initial rate of \$9,700.00 per year. The rent shall be due quarterly and payable in advance beginning on the 1st day of July, 2006. The rent shall be adjusted from time to time as described in Exhibit A attached hereto. Rent shall be paid to the Landlord at P.O. Box 166, Ipswich, Massachusetts 01938.
5. LATE FEES. Any rent not paid on the date the rent is due shall be assessed a late fee of fourteen (14) percent per annum for each month or portion thereof that the rent is late.
6. TAXES. The Tenant shall pay all municipal real estate taxes assessed on the Lot and the buildings erected thereon. The Landlord shall use all

reasonable efforts, working in conjunction with Little Neck tenants, to secure a direct, individual real estate tax bill for the Tenant from the Town of Ipswich. Until such time, the Tenant shall pay additional rent to the Landlord in the amount of the real estate taxes attributable to the Lot and the buildings thereon. The Landlord, upon written request of the Tenant duly made, shall make and prosecute applications for abatement of taxes. If, however, the Landlord fails to commence or thereafter diligently continue the prosecution of applications for abatement of taxes within fifteen (15) days of the Tenant's written request to so prosecute, then the Tenant shall have the right to prosecute said applications for abatement of taxes in the name of the Landlord or Tenant, provided, however, that the expenses of prosecuting such applications shall be borne by the Tenant. At the Tenant's request, Landlord shall furnish the Tenant with all data and information in the Landlord's possession necessary for Tenant's application. If the Landlord shall receive any abatement or refund of said taxes for any tax year for which the Tenant shall have paid to the Landlord any amount for said taxes, the Tenant shall be entitled to receive from the Landlord the amount thereof, less, however, the expenses (including reasonable attorney's fees) of the Landlord incurred in obtaining such abatement.

7. UTILITIES.

- (a) Water and Electric. The Tenant shall be responsible for payments of water and electric service charges to the Town of Ipswich.
- (b) Sewer. The Tenant's dwelling shall be connected to the common sewer system operated by LNWS, LLC. The Tenant shall promptly pay all fees charged for the Tenant's use of the sewer system, based upon metered water use, to LNWS, LLC,
- (c) Other Utilities. The Tenant shall provide such other utilities to their lot at their own expense.

8. PERMITS AND LICENSES. It is understood and agreed that the Tenant shall obtain all necessary certificates, permits and other approvals required by any federal, state and local authorities necessary to undertake any repair, renovations or improvements to or to occupy said Lot or building or structure erected thereon.

9. RENEWAL OF LEASE. This Lease does not grant to the Tenant any right to extend the term of the Lease or any right to renew the Lease. The Landlord agrees to provide a right of first refusal to the Tenant to enter into a new Lease for the Lot prior to the expiration of the Term. At least one hundred twenty (120) days prior to the expiration of the Term, the Landlord shall provide the Tenant with the form of the Lease which the Landlord has then adopted. The new lease shall include the anticipated rent and other charges as then calculated by the Landlord and imposed on

similar leaseholds. The Tenant shall have sixty (60) days to notify the Landlord whether it wishes to enter into the new lease upon the proposed terms. If the Tenant exercises its right of first refusal, the new lease shall be executed by the parties at least thirty (30) days prior to the expiration of the Term and the new lease shall be effective immediately upon the expiration of the Term.

10. INDEMNIFICATION. During the Term, the Tenant, subject to the provisions contained herein, agrees to indemnify, defend and save the Landlord harmless against and from any and all claims, damages, costs, expenses (including the Landlord's reasonable attorney's fees) fines, penalties and other liabilities of any and every kind and nature, to any person or property on the premises arising out of Tenant's use and occupancy of the Lot, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substance on or about the Lot to the extent the Tenant caused any such environmental occurrence, but there shall be no indemnity for any claim caused by the Landlord's negligence. If any claim or proceeding arising under the preceding sentence is brought, naming the Landlord as a party by reason of any such claim or proceeding, and the claim, proceeding, damage, loss or liability is not caused by the negligent acts of the Landlord, its agent, servants or employees, Tenant, at its own cost and expense, upon written notice from the Landlord, agrees to undertake forthwith to defend such action or proceeding and hold the Landlord harmless and indemnify the Landlord against any liability thereon which may be asserted or imposed.

For the purposes of this Section, "Hazardous Substance" shall mean waste, substance or other material which may be dangerous to health or the environment, including, without limitation, all "hazardous wastes", "hazardous materials", "hazardous substances", "toxic substances", and "oil", as defined in and/or regulated under the Resources Conservation and Recovery Act of 1976, as amended, and/or any other federal, state or local law, regulation or by-law.

11. QUIET ENJOYMENT. The Landlord covenants that the Tenant, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Lot.
12. BREACH OF CONDITION. This Lease is made on condition that if Tenant should neglect or fail to pay the rent due hereunder or the sewer use charges payable to LNWS, LLC, within fifteen (15) days after the rent is due, or if the Tenant shall neglect or fail to pay real estate taxes assessed on said property in accordance with G.L. c. 59, §2B, or if the Tenant shall neglect or fail to perform or observe any of the terms of any

federal, state or local law, by-law or regulation or the Rules and Regulations promulgated by the Landlord, and after receipt by the Tenant of such notice the Tenant fails to commence to cure within said sixty (60) days or thereafter fails to diligently prosecute said cure to completion or if the leasehold hereby created shall be taken on execution, or by other process of law, and such execution or other process is not satisfied or discharged within thirty (30) days thereafter or prior to a sale under said execution or other process which ever first occurs, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed (and if such person is not discharged within ninety (90) days thereafter) to take charge of all or any part of the Tenant's property by a Court of competent jurisdiction, or if a petition is filed by the Tenant under any bankruptcy law for relief or composition of its debts, or if the Tenant is declared bankrupt or if a mortgagee forecloses and/or takes possession of the chattel then, and in any of said cases, the Landlord lawfully may immediately or at anytime thereafter and without demand or notice enter upon the Lot or any part thereof in the name of the whole and repossess the same, including all fixtures therein and/or annexed thereto, as of the Landlord's former estate and expel the Tenant and those claiming through or under the Tenant and remove its effects without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or proceeding breach of covenants, and upon such entry, may terminate this Lease; and the Tenant covenants in case of such termination to pay and be liable for, on the days originally fixed for the payment thereof, amounts equal to the several installments of rent and other charges reserved as would under the terms of this Lease become due if this Lease had not been terminated or if the Landlord has not entered or reentered as aforesaid, and the Tenant covenants to pay and be liable for all losses and damages suffered by reason of such termination, including, but not limited to, the reasonable costs of legal counsel retained by the Landlord and all expenses of the Landlord for enforcement hereunder.

13. TENANT'S TERMINATION OF LEASE. The Tenant may terminate this Lease upon 60 days' written notice to the Landlord.
14. ASSIGNMENT OF LEASE AGREEMENT. This Agreement may not be assigned or transferred by the Tenant without the written consent of the Landlord except that the Lease may be assigned to a spouse, child, grandchild, sibling, niece or nephew of the Tenant (a "Relative") to a trust, limited liability company, corporation or other legal entity owned or controlled by the Tenant or a Relative. The Tenant may sub-lease the Lot to an unrelated party for terms not to exceed one hundred twenty (120) days upon notice to, but without the requirement of the assent of, the

Landlord. A purchaser of the Tenant's dwelling shall not be permitted to assume this Lease but shall be required to execute a new lease for the Lot with the Landlord for a term of twenty (20) years in the form of lease then adopted by the Landlord for similar leaseholds with the annual rent for the first three years of the term to be set at the then current annual rent for new leaseholds as most recently determined by the Landlord.

15. COMMON AMENITIES. In addition to the exclusive use and occupancy of the Lot, the Tenant shall have the exclusive right, in common with other Little Neck tenants, to use the beaches, playgrounds, baseball field, dock, community center and other common amenities as currently provided by the Landlord for the enjoyment of the residents of Little Neck. The Landlord shall provide reasonable security at the entrance to Little Neck during peak weekends and holidays to limit access to the Tenant and other Little Neck tenants.
16. RIGHT OF FIRST REFUSAL. The Tenant acknowledges that the Landlord does not possess the legal authority or power to sell the Lot during the term of this Lease. However, if at any time during the Term, the Landlord shall receive from any person a Bona Fide Offer (as defined below) to purchase the Lot, and shall have the desire and authority to sell the Lot pursuant to such Bona Fide Offer, the Landlord shall give written notice of the same to the Tenant, together with a copy of the Bona Fide Offer. A "Bona Fide Offer" shall mean an offer in writing setting forth all relevant terms and conditions of the proposed purchase from an offeror who is ready, willing and able to consummate the purchase. Upon the Tenant's receipt of such notice, the Tenant shall then have the right and option to purchase the Lot at the purchase price and upon the other terms set forth in the Bona Fide Offer, and as soon as practicable thereafter to consummate the transaction, provided only that the Tenant exercises such right and option by written notice to the Landlord within 60 days after the Tenant's receipt of the notice of the Bona Fide Offer. If the Tenant should not, for any reason, exercise the Tenant's option to purchase the Lot as provided above, then the Landlord shall have the right to sell the Lot at the purchase price and upon the terms set forth in the Bona Fide Offer. If the Tenant shall not exercise the Tenant's option to purchase the Lot with respect to any Bona Fide Offer, and if the transaction contemplated at the purchase price and upon the terms set forth in the Bona Fide Offer, the Tenant's right of first refusal shall once again take effect with respect to such Bona Fide Offer and with respect to any subsequent Bona Fide Offer.

17. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated by like notice) and shall be deemed received as of the earlier date five days after the date of the postmark or actual receipt hereof.

the Landlord: Feoffees of the Grammar School
P.O. Box 166
Ipswich, MA 01938

Tenant: _____

18. NOTICE OF LEASE. Upon the written request of the Tenant, the Landlord agrees to execute a Notice of Lease pursuant to Massachusetts General Laws Chapter 183, Section 4, to be recorded at the Essex South District Registry of Deeds at the Tenant's expense and a copy of said Notice of Lease as recorded shall be returned to the Landlord by the Tenant.
19. BINDING EFFECT. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties thereof.
20. RIGHT OF ENTRY: Tenant agrees that the Landlord, the Landlord's agents and other representatives, shall have the right, without abatement of rent, to enter into and upon the Lot, or any part thereof, upon reasonable notice (except in the event of an emergency) for the purpose of examining the same to ensure compliance with the terms of the Lease, to make such repairs to the Lot as may be necessary for the safety and preservation thereof, provided however that such repairs (unless of an emergency nature) shall be made so as to cause a minimum of interference with the Tenant's use of the Lot.
21. TENANT'S COVENANTS. The Tenant covenants for the Term as follows:
- (a) To pay when due, all rent, taxes and sewer use fees at the time and in the manner required as provided in this Lease.
 - (b) At the expiration or earlier termination of this Lease to yield up peaceably to the Landlord the Lot in good order, repair and condition and unencumbered.
 - (c) At the expiration or earlier termination of the Lease the Tenant shall thereafter be required to remove from the Lot, within six months, any dwelling, structures and other improvements located on the Lot, at the Tenant's expense. Failure of the Tenant to remove the

Tenant's dwelling, structures and other improvements shall result in the dwelling, structures and other improvements becoming the property of the Landlord. The Tenant shall pay the Landlord the rent and other amounts due to the Landlord and LNWS, LLC, under this Lease during the period through the date of removal or forfeiture of the dwelling, structures and other improvements on the Lot. In the event the Tenant removes or forfeits the dwelling, structures and other improvements, the Tenant shall remain liable for all such amounts due and shall, in addition, be liable for the Landlord's reasonable costs of collection, including reasonable attorney's fees.

- (d) To indemnify and hold the Landlord harmless against any mechanics' or other liens arising out of the making of any alterations, repairs, additions or improvements by the Tenant. All such work by the Tenant shall be done in accordance with all requirements of law, including all governmental regulations in a good workmanlike manner, and with materials of good quality.
- (e) To comply with all local, state and federal permits, licenses or certificates.
- (f) That the Tenant will not make or suffer any waste or any unlawful, improper or offensive use of the said premises.
- (g) That the Tenant shall not erect, alter, change, reconstruct or modify any building on the Lot, or use any building for any purpose other than as a single family dwelling or an accessory structure. Prior to any construction, reconstruction, alteration, changes or modifications, as aforesaid, the Tenant must submit, to the Landlord, three complete sets of plans, to scale, that clearly delineate all such proposed work. All work must be performed in accordance with said plans. No work can be started until the Landlord approves the plans. No exterior construction work on any building shall be conducted or carried on between June 1st through September 30th, inclusive, in each year in order to preserve the peaceful enjoyment of the area for Little Neck tenants. The Tenant acknowledges that no reconstruction, addition to or modification of an existing structure on the Lot shall alter or unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date.
- (h) That the Tenant shall (i) keep the grass cut upon the Lot and will not allow grass and other vegetation to grow in such a manner as to become a fire hazard to any building upon the Lot or any adjacent lots and (ii) trim trees and bushes upon the Lot so as not to unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date.
- (i) The Tenant hereby further covenants and agrees to comply with the Rules and Regulations duly promulgated by the Landlord, as

they may be amended from time to time. Notwithstanding the foregoing, said Rules and Regulations shall not be contrary to the terms and provisions of this Lease.

- (j) The Tenant shall not drill, dig or construct any wells on the Lot.

22. LANDLORD'S COVENANTS. The Landlord covenants for the Term of this Lease, as follows:

- (a) The Landlord shall enforce the obligation of all tenants of Little Neck to keep trees and bushes trimmed so as not to unreasonably interfere with the Tenant's water views from the Tenant's dwelling existing as of the Commencement Date.
- (b) Notwithstanding anything to the contrary contained in this Lease, in the event of the damage by casualty or destruction, subsequent to the Commencement Date, of the whole or any part of the Tenant's dwelling, the Landlord shall permit the Tenant to rebuild the Tenant's dwelling to the same size, configuration and location as exists of the Commencement Date, with and subject to all necessary government approvals.
- (c) The Landlord shall not impose new Rules and Regulations without at least 60 days' written notice to the Tenant.
- (d) The Landlord shall consent to a mortgage or other security interest in the Tenant's improvements (dwelling, accessory structures, etc.) as may be sought by the Tenant.
- (e) That the Landlord represents and warrants that it is the owner of Little Neck in fee simple, and that it has the authority to enter into this Lease pursuant to Chapter 5, Section 1, of the Province Laws of 1765-66, as made perpetual by Chapter 54 of The Acts of 1786, and that upon doing so, the Tenant shall have all rights and benefits as provided in this Lease.

23. SUBORDINATION. Subject to the Tenant's receipt of a reasonable subordination and nondisturbance agreement, this Lease, and all rights of the Tenant hereunder, are and shall be subject and subordinate in all respects to all mortgages given by the Landlord which may now or hereafter affect Little Neck ("Superior Mortgages"), to each and every advance made or hereafter to be made under the Superior Mortgages, and to all renewals, modifications, replacements and extensions of the Superior Mortgages. In confirmation of such subordination, the Tenant shall timely execute and deliver any instrument, in recordable form, if required, to the holder of any Superior Mortgages or any of their respective successors in interest as may be requested to evidence such subordination.

24. COMPLETE AGREEMENT. This Lease contains all the agreements, promises and understandings between the Landlord and the Tenant and no oral agreements, promises or understandings shall be binding upon either the Landlord or the Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Lease shall be void and ineffective unless made in writing and signed by the parties hereto.
25. LAW GOVERNING. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts.

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

Feoffees of the Grammar School
In the Town of Ipswich, Landlord
By:

Its: _____

Tenant(s)

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, Tenant(s), proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

NOTARY PUBLIC

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Feoffees of the Grammar School in the Town of Ipswich.

NOTARY PUBLIC

EXHIBIT A

RENT PAYMENTS

A.1. The annual rent for the first three (3) years of the Term, due to the Landlord shall be as follows, payable in advance in quarterly installments during the term of this Lease:

<u>Year</u>	<u>Annual Rent</u>	<u>Installment</u>
7/1/06 – 6/30/07	\$9,700.00	\$2,425.00
7/1/07 – 6/30/08	\$9,700.00	\$2,425.00
7/1/08 – 6/30/09	\$9,700.00	\$2,425.00

A.2. The annual rent for the Lot shall be adjusted every three (3) years.

A.3. Beginning on July 1, 2009, each residential lot at Little Neck will be assigned to one of not more than ten (10) classes to be established by the Landlord for the purpose of more accurately basing the annual rent on the relative values of the lots. On or before June 30, 2008, the Landlord shall provide the Tenant with a schedule identifying each of the lots by parcel number, street address and rental class. On or before December 31, 2008, the Landlord shall notify the Tenant in writing of the annual rent for the Lot to be due to the Landlord for the period of July 1, 2009, through June 30, 2012. The annual rent shall be determined in the sole discretion of the Landlord after taking into account (a) the fair value of the Lots as to which the Landlord shall receive advice from appropriate professionals, (b) the operating costs of Little Neck and (c) the charitable purposes of the Landlord.

A.4. The annual rent for July 1, 2012, through June 30, 2015, shall be determined in the sole discretion of the Landlord after taking into account (a) the fair value of the Lot as to which the Landlord shall receive advice from appropriate professionals, (b) the operating costs of Little Neck and (c) the charitable purposes of the Landlord. The Tenant shall be notified in writing of any change in the annual rent at least ninety (90) days prior to the effective date of such change.

A.5. For each subsequent three-year period of the Term, the annual rent shall be adjusted in the manner described in Paragraph A.4, above.

A.6. The rent described in this Exhibit A does not include the Tenant's payments described in Sections 6 or 7 of the Lease.

LITTLE NECK RULES AND REGULATIONS

Effective July 1st, 2006 – June 30th, 2007

For the safety, welfare and peaceful enjoyment of the residents of Little Neck, the Feoffees of The Grammar School in the Town of Ipswich have issued the following rules and regulations and other pertinent information.

All cottage owners are responsible for the knowledge of the following material, both for themselves and for their guests and tenants. It is strongly recommended that a copy be posted inside each cottage.

1. SEASONAL OCCUPANCY. Only twenty four (24) cottages may be used as year-round residences. All other cottages are for occupancy between April 1st and December 31st. This rule reaffirms the required acknowledgment signed at the time of the transfer of a cottage as to whether a cottage is year-round or seasonal. Due to the significant health, safety and liability risks which would arise in the event of the illegitimate winter occupancy of a seasonal cottage, in addition to all other remedies that may be available to the Feoffees under the Lease, the Feoffees impose a penalty of \$1,000.00 for each week between January 1st and March 31st that a seasonal cottage is occupied for residential purposes, whether by the owner or by a tenant. Such penalty shall be due within seven (7) days of the owner's receipt of written notice from the Feoffees of such violation.

2. ADDITIONS TO COTTAGES. No addition to a cottage may be made until the cottage owner provides the Feoffees with three (3) sets of plans, to scale, providing detailed information to accurately describe the size and location of the proposed addition and demonstrate that the work will not materially affect the views of any other cottage owner. No work may be started without the written consent of the Feoffees and a building permit from the Building Inspector of the Town of Ipswich. Failure to follow the foregoing procedure may result in legal action and require the demolition of any unauthorized construction. All costs of the Feoffees' action, including attorney's fees, shall be paid by an owner who breached this regulation.

3. SEWER SYSTEM. All cottage owners shall comply with the Rules and Regulations established by LNWS, LLC, and promptly pay all invoices for use of the sewer system.

4. MOTOR VEHICLES.

- 4.1 The Feoffees voted in 1998 that the Ipswich Police be able to enter and enforce all traffic rules and regulations on Little Neck. This includes the operation of unregistered motor vehicles, such as golf carts, mopeds, motor scooters, go-carts, etc.
- 4.2. The motor vehicle speed limit is 10 miles per hour. An offender will be given one written warning by the Feoffees. A second offense will result in the banning of such driver's motor vehicle from Little Neck for thirty (30) days.
- 4.3. Unregistered motor vehicles and trailers are prohibited.
- 4.4. Areas posted as "No Parking" will be strictly monitored and vehicles in violation of parking restrictions will be towed.

5. TREES. No trees may be planted that will grow above the height of any ordinary shrub. Any complaint that the Feoffees receive about tall trees obscuring another cottage owner's view will be investigated and the owner of the cottage on the lot on which the tree is located will be notified to promptly trim or remove the obstruction.

6. ANIMALS. Dog owners must properly control their animals so that their neighbors are not annoyed. Dog owners must clean up for their dogs and properly dispose of the waste. Please remember that Ipswich has a "Leash Law" and the Town's Animal Officer enforces the law. For the peaceful enjoyment of the residents, the Feoffees reserve the right to limit the number of dogs or cats in a particular cottage and to require the removal of any disruptive animals.

7. NOISY PARTIES. As complaints have been received regarding noisy parties, owners are advised unless parties are properly supervised by parents or by other persons involved, the Ipswich Police Department will be called.

8. CONDITION OF COTTAGES. Each cottage owner shall keep his or her cottage and yard in a good state of preservation and cleanliness.

9. IDENTIFICATION OF COTTAGES. Each cottage owner shall identify his or her cottage with a street number visible from the street as required by the Town of Ipswich for E-911 emergency services.

10. STORAGE OF BOATS. Boats shall not be stored within ten feet of the edge of the road pavement.

11. PEACEFUL ENJOYMENT.

- 11.1. No person shall make or permit any offensive activity or disturbing noises in a cottage or permit anything to be done therein which will interfere with the rights, comfort or convenience of other cottage owners.
- 11.2. No person shall use a radio, television or other such device in a cottage between the hours of 11 p.m. and the following 9 a.m., if it would disturb or annoy other persons.
- 11.3. **Outside fires are prohibited.**
- 11.4. Alcoholic beverages are not allowed on any community facilities, including the beach, dock, ballfield, playground and roads.
- 11.5. A cottage owner wishing to use the community house for a private party must schedule the event with the Feoffees at least ten (10) days in advance and provide information as to the nature of the event, the expected number of guests, and evidence of acceptable liability insurance and police protection.

12. WATER AND ELECTRIC. The water and electric services are supplied by the Town. The digging of a trench requires the prior written approval of the Feoffees. Approval is also required prior to the installation of underground utilities.

13. TRASH COLLECTION. Questions or complaints regarding trash collection should be forwarded to the Town of Ipswich, Department of Public Works.

14. INSURANCE. Each cottage owner shall maintain, at his or her expense, comprehensive liability insurance in companies qualified to do business in Massachusetts, which shall insure the cottage owner as well as the Feoffees, against all claims for injuries to persons (including death) occurring in or about the owner's leasehold, in the amount of at least \$100,000.00 in the event of injury or death of one person, in the amount of at least \$300,000.00 for any one accident, and against all claims for damage to or loss of property occurring in or about the leasehold in the amount of at least Fifty thousand (\$50,000.00) Dollars. Prior to the transfer of a cottage, the proposed new owner must furnish the Feoffees with a certificate of such insurance as a condition of the Feoffees' approval of the transfer of the leasehold. Each such policy shall be non-cancelable with respect to the Feoffees' interest without at least ten (10) days' prior written notice to the Feoffees. The Feoffees will not approve transfers of cottages until the purchaser or transferee provides evidence of the above coverage.

VOL. I

PAGES 1-160

EXHIBITS: 1-3

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Probate & Family Court

Civil Action No. ES09E0094QC

- - - - -

ALEXANDER B.C. MULHOLLAND, JR, et al.,

Plaintiffs,

vs.

ATTORNEY GENERAL of the

Commonwealth of Massachusetts, et al.

Defendants.

- - - - -

DEPOSITION OF MARK S. DiSALVO

September 22, 2011

11:05 a.m. to 4:20 p.m.

CASNER & EDWARDS, LLP

303 Congress Street

Boston, Massachusetts 02210

Court Reporter: Doris M. Jones, CSR/RPR

Page 2

1 APPEARANCES:

2

3 MacLEAN, HOLLOWAY, DOHERTY, ARDIFF &
4 MORSE, P.C.
5 By William H. Sheehan III, Esq.
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7 Peabody, MA 01960
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9 For the Plaintiffs

10

11 CASNER & EDWARDS, LLP
12 By Stephen M. Perry, Esq.
13 303 Congress Street
14 Boston, MA 02210
15 617.426.5900 sperry@casneredwards.com
16 For the Defendants School Committee of Ipswich
17 and Richard Korb, Superintendent.

18

19 TODD & WELD, LLP
20 By Tyler E. Chapman, Esq.
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22 Boston, MA 02109
23 617.720.2626 tchapman@toddweld.com
24 For the Witness

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23	*Original exhibits retained by Mr. Perry	
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1 PROCEEDINGS

2

3 **MR. PERRY:** The witness will have
4 the right to read and sign the transcript. We will
5 waive the requirement it be in front of a notary.
6 We will reserve all objections, except those going
7 to the form of the question, and reserve motions to
8 strike until time of trial.
9 **MR. SHEEHAN:** That's fine.
10 **MARK S. DiSALVO,**
11 having been first satisfactorily identified by the
12 production of his Massachusetts driver's license and
13 duly sworn by the Notary Public, was examined and
14 testified as follows:
15 **DIRECT EXAMINATION**
16 **BY MR. PERRY:**
17 Q. Would you state your name.
18 A. **Mark S., Sebastian, DiSalvo.**
19 Q. What is your residential address?
20 A. **1011 Great Pond Road, three words, North**
21 **Andover, Massachusetts 01845.**
22 Q. Who do you reside there with?
23 A. **I reside there with my spouse, my daughter**
24 **and my brother-in-law at the moment.**

Page 5

1 Q. How old is your daughter?
2 A. **My daughter is 14.**
3 Q. Do you own any additional homes?
4 A. **I do.**
5 Q. What additional homes do you own?
6 A. **I own property at the address 20 Hilltop**
7 **Road in Ipswich, Massachusetts, commonly known as**
8 **Little Neck.**
9 Q. Do you know what lot number that is?
10 A. **No idea. It's readily available in the**
11 **documents.**
12 Q. Is that an interior lot or an exterior?
13 Where is it located?
14 A. **I don't know what those terms mean.**
15 Q. Are there other cottages between you and
16 the water?
17 A. **There are.**
18 Q. How long have you lived at the property in
19 North Andover?
20 A. **I believe we purchased the property in**
21 **1986.**
22 Q. How long have you owned -- is it a cottage
23 you own in Little Neck?
24 A. **That's correct.**

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1 Q. How long have you owned the cottage in
2 Little Neck?
3 **A. I purchased the property I believe in**
4 **1995.**
5 Q. Who did you buy it from?
6 **A. I bought it from the previous owner,**
7 **Mr. James Garvey, G-A-R-V-E-Y.**
8 Q. What was it that you were purchasing from
9 Mr. Garvey?
10 **A. I purchased the home and certain**
11 **appurtenances to the home. And as I understood it,**
12 **the right to reside at Little Neck.**
13 Q. The appurtenances you purchased consisted
14 of what, a septic system? What was it?
15 **A. The appurtenances include some personal**
16 **property that was inside the home and some marine-**
17 **oriented equipment that was no longer going to be**
18 **used by him.**
19 Q. What was the purchase price that you paid?
20 **A. My recollection is that it was \$110,000.**
21 Q. What's your date of birth?
22 **A. December 12th, 1954.**
23 **MR. CHAPMAN:** You mean '64.
24 **THE WITNESS:** Thank you very much.

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1 **A. 1954.**
2 Q. Would you give me your educational
3 background, please.
4 **A. I have a bachelor's degree from the**
5 **University of Massachusetts in Boston in political**
6 **studies and economics.**
7 Q. Did you say in Boston?
8 **A. In Boston, yes.**
9 Q. In --
10 **A. Political studies and economics.**
11 Q. Was that a double major?
12 **A. No.**
13 Q. That was considered a single degree at
14 that time?
15 **A. Yes. And I have several professional**
16 **designations that were earned, including something**
17 **called a CPC that is specific to my industry and**
18 **also CTA, commodity trading adviser.**
19 Q. What is a CPC?
20 **A. A CPC is a professional consulting**
21 **engagement in the human resources area designation.**
22 **And CTA is a certified trading, commodities trading**
23 **adviser given by the CFTC, Commodity Futures Trading**
24 **Commission.**

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1 Q. Have you had any formal education beyond
2 your bachelor's degree from U. Mass.-Boston?
3 **A. No.**
4 Q. Could you summarize for me what your
5 occupational history has been after graduating?
6 **A. After graduating I started a business and**
7 **that entity was providing consulting work for zero**
8 **stage companies and also providing some political**
9 **consulting for zero stage companies. I then went to**
10 **work for a commodities entity.**
11 Q. What year?
12 **A. That probably would have been '78 or**
13 **thereabouts. I did that for several years, reopened**
14 **an entity called Hall -- I'm sorry, I went to a**
15 **company called Fairfield Whitney here in Boston, and**
16 **worked as the technical director of Fairfield**
17 **Whitney until 1984.**
18 **In 1984 or '85 I started a company**
19 **called HBD. It was my firm and we did classic zero**
20 **stage capital raising and consulting work for**
21 **entrepreneurs. That ran until 2001. However, in**
22 **1994 I was first engaged via HBD and then as an**
23 **employee for a company called Euromoney**
24 **Institutional Investor, PLC, which is a large**

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1 **British electronics media publisher and events**
2 **organization. And I worked as a division chief**
3 **executive and provided various other consulting**
4 **responsibilities for the II, Euromoney colloquially.**
5 Q. During what period of time did you serve
6 as a division chief executive?
7 **A. From 1994 to 2001.**
8 Q. So the company that you were working for
9 was called what?
10 **A. The division was called Lingua Franca,**
11 **L-I-N-G-U-A, F-R-A-N-C-A, Inc.**
12 Q. And that was a subsidiary of --
13 **A. Of Euromoney Institutional Investor.**
14 Q. Is Euromoney Institutional Investor?
15 **A. Yes. Euromoney is all one word, PLC.**
16 Q. That was a British company?
17 **A. Yes.**
18 Q. Is that company privately owned?
19 **A. It's a publicly-listed corporation.**
20 Q. You were chief executive in a subsidiary
21 of a publicly-listed company?
22 **A. That's correct.**
23 Q. And as part of the regulatory environment
24 was your compensation publicly reported?

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1 **A. Not to my knowledge. I don't think I made**
2 **the top-tier list of compensation requirements under**
3 **FTSE rules.**
4 Q. But you did well there?
5 **A. I did well enough apparently.**
6 Q. What happened occupationally after you
7 ceased to work in 2001 as CEO of Lingua Franca,
8 Inc.?
9 **A. In 2001 I purchased Lingua Franca in a**
10 **management buyout from Euromoney Institutional**
11 **Investor.**
12 Q. What was the amount that was paid for the
13 company?
14 **A. I don't recollect it.**
15 Q. Approximately.
16 **A. It was maybe \$28,000 in cash, a future**
17 **royalty if earned, and the assumption of debt.**
18 Q. And what happened to Lingua Franca, Inc.
19 after that?
20 **A. Lingua Franca, Inc. was apparently closed**
21 **down by Euromoney Institutional Investor, I presume.**
22 Q. What happened to the entity you bought?
23 **A. Oh, thank you. It was reincorporated. I**
24 **took the brand.**

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1 Q. I see. So it was an asset sale?
2 **A. It was an asset sale.**
3 Q. And you took the brand and reincorporated
4 it as --
5 **A. As Sema4, S-E-M-A, number 4, comma Inc.,**
6 **d/b/a Semaphore, S-E-M-A-P-H-OR-E.**
7 Q. Tell me about your experiences with
8 Semaphore, please.
9 **A. Semaphore, we started on December 6, 2001.**
10 **Semaphore does two things: We do diligence on**
11 **transactions for the venture capital and private**
12 **equity industry, in addition to more classic**
13 **corporate M&A support.**
14 **And secondly, we have a practice**
15 **that is called the Funds-Under-Management;**
16 **funds-hyphen-under-hyphen-management. In that**
17 **business we take over troubled venture and private**
18 **equity funds.**
19 Q. Are you still involved with Semaphore,
20 Inc.?
21 **A. Yes.**
22 Q. From 2001 to the present has that been
23 your primary occupation?
24 **A. That's correct. It's by my sole**

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1 **occupation.**
2 Q. What is your title with Semaphore, Inc.?
3 **A. President and CEO.**
4 Q. Has Semaphore, Inc. had any employees
5 since 2001?
6 **A. Yes.**
7 Q. How many?
8 **A. Hundreds.**
9 Q. Is it a successful company?
10 **A. Yes.**
11 Q. And you are the CEO and also you're an
12 owner?
13 **A. I am the sole owner of the entity.**
14 Q. So you're the sole owner and CEO of a
15 successful company that employs hundreds of
16 individuals and engages in due diligence
17 professionally?
18 **MR. CHAPMAN: Objection. Go ahead.**
19 **A. I didn't say that. You asked whether**
20 **there have been employees and I said there have been**
21 **hundreds.**
22 Q. How many employees do you have now?
23 **A. We have half a dozen employees and another**
24 **30 de facto full-time relationships.**

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1 Q. Are those individuals who work for the
2 company on an independent contractor basis?
3 **A. That's correct.**
4 Q. On an as-needed basis to carry out
5 assignments?
6 **A. That's correct.**
7 Q. Are you familiar with a group known as the
8 Little Neck Legal Action Committee?
9 **A. I am.**
10 Q. Did I get the name right?
11 **A. Little Neck Legal Action Committee is**
12 **accurate.**
13 Q. Is that a legal entity, as you understand
14 it?
15 **A. It's an unincorporated association of**
16 **like-minded individuals.**
17 Q. Do individuals who are members of the
18 Legal Action Committee have to sign any documents to
19 become members?
20 **A. Initially all members have done so.**
21 Q. Are there bylaws of the organization?
22 **A. There are none.**
23 Q. You say initially members had done so?
24 **A. Yes.**

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1 Q. Has that changed as new members have come
2 in?
3 **A. There have been no new members, to my**
4 **knowledge.**
5 Q. And is the document that the members sign
6 all the same for everybody?
7 **A. Yes.**
8 Q. Tell me, please, as best you can, what the
9 document says.
10 **A. In effect --**
11 **MR. CHAPMAN:** Let him get all the
12 words out of his mouth before you start speaking.
13 **THE WITNESS:** Sorry.
14 **A. It in effect says that we're like-minded**
15 **individuals, that they agreed to pay for costs of**
16 **the organization, didn't expect any return for or**
17 **from the initial fee that was charged, and the**
18 **initial fee that was charged was for the benefit of**
19 **legal expenses.**
20 Q. Are there any provisions in the documents
21 the members are required to sign concerning
22 decisionmaking or majority rule or anything like
23 that?
24 **A. No.**

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1 Q. Has there been established any majority
2 rule or other provision for decisions to be made by
3 the organization?
4 **A. By practice.**
5 Q. And what has the practice been?
6 **A. The practice has been that the membership**
7 **has allowed the committee, which is made up of five**
8 **members, and principally its co-founders, myself and**
9 **William Gottlieb, to act in their interests.**
10 Q. So, you were one of the two founders of
11 this committee?
12 **A. Yes.**
13 Q. When did it get founded?
14 **A. 2005 is my recollection. It could have**
15 **been in the fall of 2004.**
16 Q. How was the -- strike that.
17 What would you call this five-person
18 committee that you referred to?
19 **A. The Little Neck Legal Action Committee.**
20 Q. How many members are there in the Little
21 Neck Legal Action Committee?
22 **A. There are -- initially there were 141**
23 **like-minded individuals representing 141 properties.**
24 Q. Okay. So, there's roughly 141 members of

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1 the Little Neck Legal Action Committee and then
2 there's an executive committee of some sort of five
3 people?
4 **MR. SHEEHAN:** Objection.
5 **BY MR. PERRY:**
6 Q. Just help me with some language to
7 distinguish the five-person committee you referred
8 to from the whole committee that people are members
9 of?
10 **A. My own characterization is that the**
11 **five-member committee is the Little Neck Legal**
12 **Action Committee with the active responsibility of**
13 **protecting the interests of its members totalling--**
14 **at least initially representing 141 properties.**
15 Q. Who have agreed to help finance the
16 actions taken by the five-member committee?
17 **A. That's correct.**
18 Q. Were you one of the five members of the
19 committee?
20 **A. Yes.**
21 Q. Was Mr. Gottlieb?
22 **A. Yes.**
23 Q. Who are the other members?
24 **A. A gentleman by the name of David Rocco.**

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1 Q. Spelled?
2 **A. R-O-C-C-O.**
3 **Another gentleman by the name of**
4 **Michael O'Brien, O-apostrophe-B-R-I-E-N. And a**
5 **third person by the name of Joyce Lyons, L-Y-O-N-S.**
6 Q. Have there ever been any other members of
7 this committee that you are referring to?
8 **A. No.**
9 Q. Are each of those three individuals still
10 members of this five-member committee?
11 **A. Yes.**
12 Q. What is the address at Little Neck of
13 Mr. Gottlieb?
14 **A. Other than Middle Road I have no idea.**
15 Q. Where does Mr. Rocco live? At Little
16 Neck, I meant. Let me strike that.
17 What cottage at Little Neck does
18 Mr. Rocco own?
19 **A. I'm blanking on the name of the street.**
20 **MR. CHAPMAN:** If you have a map he
21 can probably...
22 **A. Plum Sound Road.**
23 Q. 28.
24 David Rocco?

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1 **A. Plum Sound Road.**
2 Q. Michael O'Brien owns a cottage at 35
3 Hilltop?
4 **A. Hilltop Road.**
5 Q. Joyce Lyons is also on Plum Sound?
6 **A. Yes.**
7 Q. Now you described your occupational
8 background. And Mr. Gottlieb is an attorney, is he
9 not?
10 **A. Yes.**
11 Q. To your knowledge what is Mr. Rocco's
12 professional background?
13 **A. Mr. Rocco acts as a consultant in Homeland**
14 **Security and emergency services.**
15 Q. What about Mr. O'Brien?
16 **A. Mr. O'Brien owns a small company doing**
17 **school fundraising.**
18 Q. What is the name of the company?
19 **A. I have no idea.**
20 Q. Do you know what Ms. Lyons' occupation is?
21 **A. Dr. Lyons is an international consultant**
22 **around I believe health and economic development**
23 **issues in principally Third World nations.**
24 Q. Would you characterize all of the members

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1 of the committee as professionally successful
2 individuals?
3 **A. I would.**
4 Q. What was the role of the Little Neck Legal
5 Action Committee in the filing of a lawsuit in the
6 names of William Lonergan and Diane Whitney-Wallace
7 on behalf of themselves and others?
8 **A. It was the agent responsible for**
9 **recommending, securing and acting on the execution**
10 **of that complaint.**
11 Q. So it had a significant role in that
12 complaint?
13 **A. Yes.**
14 Q. Including a review of the allegations?
15 **A. Yes.**
16 Q. Did the committee help to procure the
17 individuals who would serve as the named purported
18 class representatives?
19 **A. It did.**
20 Q. Why was it decided to have individuals
21 other than those who are on the committee themselves
22 serve as the named plaintiffs?
23 **MR. CHAPMAN:** I'm going to object.
24 Unfortunately this gets into the area of

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1 attorney/client. I was not part of the discussions
2 but that would have been discussions with counsel
3 when that decision was made.
4 **MR. PERRY:** That's possible. Let me
5 ask a couple questions and try to be yes or no with
6 these so we can see if we have a problem with
7 privilege.
8 **BY MR. PERRY:**
9 Q. First, you have an understanding, yes or
10 no, as to what the reasons were for using other
11 individuals to serve as the class representatives?
12 **A. Yes.**
13 Q. Did you have discussions outside of the
14 presence of counsel with other members of the
15 committee in which you discussed reasons for
16 utilizing these other individuals?
17 **A. Please repeat the last part of your**
18 **question.**
19 Q. Did you have discussions outside of the
20 presence of -- First of all, when I talk about
21 counsel I'm not referring to Mr. Gottlieb for the
22 moment in his capacity as a member of the committee.
23 Has Bill Gottlieb ever been your
24 lawyer?

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1 **A. I consider him counsel relative to this**
2 **matter.**
3 **MR. PERRY:** Tyler, is that the
4 position you take on this, that Bill Gottlieb is
5 acting as counsel?
6 **MR. CHAPMAN:** Yes. With respect to
7 the lawsuit he certainly has played a role as de
8 facto in-house counsel of the committee.
9 **BY MR. PERRY:**
10 Q. You said you do have an understanding of
11 reasons why these class representatives were chosen
12 instead, for example, of you serving yourself?
13 **A. Yes.**
14 Q. Where did you derive that understanding
15 from?
16 **A. In discussions with counsel.**
17 Q. Which counsel are you referring to?
18 **A. Mr. Gottlieb, Mr. Tully, Ms. O'Neal.**
19 Q. That particular O'Neill --
20 **A. It's Mary.**
21 Q. Mary Beth O'Neal?
22 **A. Yes.**
23 Q. Her name is Mary O'Neal and she goes by
24 Beth?

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1 **A. Mary Beth.**
2 **MR. PERRY:** That's
3 O-apostrophe-N-E-A-L.
4 **BY MR. PERRY:**
5 Q. Do you know what William Lonergan does
6 professionally?
7 **A. He's a retired State Police member. I**
8 **believe he was a ranking officer; I don't recollect**
9 **the rank.**
10 Q. Do you know what Diane Whitney-Wallace has
11 done professionally?
12 **A. She is an entrepreneur and either manages**
13 **or owns a laundry and security business with her**
14 **husband. Commercial laundry.**
15 Q. You told me that you bought property at
16 Little Neck sometime in you believe to be 1995,
17 right?
18 **A. Yes, I think that's it. I haven't looked**
19 **at the docs for a hundred years.**
20 Q. What documents do you have that would tell
21 you when you bought it?
22 **A. I have a small closing package.**
23 Q. What does that closing package consist of?
24 **A. Bill of sale, financing documents,**

Page 23

1 **representations from the Feoffees and closing**
2 **counsel.**
3 Q. I guess I didn't understand the last part
4 of your answer. I understand that the closing
5 documents include a bill of sale, right?
6 **A. (Witness nodded.)**
7 Q. Is that right?
8 **A. Yes.**
9 Q. They include financing documents?
10 **A. Yes.**
11 Q. You said they include representations from
12 the Feoffees?
13 **A. Yes.**
14 Q. And then you said something about closing
15 counsel. That's the part I didn't understand.
16 **A. And other information provided by closing**
17 **counsel. Probably his bill of sale, among other**
18 **things it.**
19 Q. What document are you referring to that
20 consists of representations from the Feoffees?
21 **MR. CHAPMAN:**
22 **A. That which was provided to me by the**
23 **Feoffees, likely in the person of Mr. Whiston, and**
24 **my own contemporaneous notes detailing my**

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1 **conversations with Mr. Whiston.**
2 Q. So with regard to the portion of that
3 which you say was provided to you, I want to
4 distinguish between your notes and something the
5 Feoffees gave you. Okay?
6 **A. Okay.**
7 Q. Are you saying -- and you think both of
8 these are in your closing file?
9 **A. They are in a packet with all the closing**
10 **terms relative to the purchase of my home.**
11 Q. Did you provide these to counsel in
12 connection with the lawsuit that was filed?
13 **A. Most, if not all, of the documents.**
14 Q. When was the last time you reviewed the
15 notes that you took or the information that
16 Mr. Whiston gave you?
17 **A. In 2005, perhaps 2006, before the lawsuit**
18 **was filed.**
19 Q. What was the nature of the information
20 that you got from Mr. Whiston, the written
21 information that he gave you?
22 **A. It would consist, if my memory is**
23 **accurate, of general conditions and rules, if we can**
24 **call them colloquially, of Little Neck.**

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1 Q. So it didn't include any information about
2 future rents?
3 (Pause.)
4 **BY MR. PERRY:**
5 Q. It did not include any information about
6 future rents, for example, did it?
7 **A. That it did not include.**
8 Q. And these contemporaneous notes that you
9 have, tell me to the best of your recollection what
10 those consist of.
11 **A. They would detail my conversations with**
12 **Mr. Whiston.**
13 Q. What is your recollection of what
14 Mr. Whiston said to you and what you said to
15 Mr. Whiston?
16 **A. I would query him about the conditions of**
17 **Little Neck, my responsibilities as an owner, the**
18 **responsibilities of the Feoffees to me as an owner;**
19 **general questions of life and dealings, how to, with**
20 **the Feoffees, among other things.**
21 Q. Now, are you talking about conversations
22 you had before your purchase or are you talking
23 about conversations you had both before and after?
24 **A. Before my purchase.**

1 Q. Did you have any discussions with
2 Mr. Whiston about your rental obligations?
3 A. Yes.
4 Q. And when did you have those conversations?
5 A. Prior to the purchase of my home.
6 Q. Where were you when you had those
7 conversations?
8 A. Sitting on what is now the side front step
9 of -- side porch front step of my home on Little
10 Neck.
11 Q. Who was present besides you and
12 Mr. Whiston?
13 A. My wife, Patricia M. Melvin, would have
14 been present for part, not all of the conversations.
15 Q. And tell me please what she said to you --
16 strike that.
17 Tell me what Mr. Whiston said to you
18 and what you said to him on the subject of rents.
19 A. The principal conversation determining
20 whether or not I was going to buy the property was
21 about the question of rent and future obligations.
22 Mr. Whiston related to me several things. Among
23 them were that the rents would, quote-unquote, his
24 words, always be reasonable and that--

1 (Pause.)
2 A. -- and that the rents would equate to the
3 operating expenses of Little Neck on an annual
4 basis. And that is how it had been for decades upon
5 decades and for a hundred percent of his term as a
6 Feoffee.
7 At that time I took his
8 representation upon good faith as he was I believe
9 both chairman of the board of Feoffees and was
10 designated as manager of Little Neck.
11 Q. So you understood that Mr. Whiston's
12 intent with respect to rentals was as you described
13 it?
14 A. And more.
15 Q. Well, did you understand Mr. Whiston to be
16 telling you what his intent was with respect to
17 rentals?
18 A. He was telling me both intent and fact.
19 And telling me to rely upon the practice and
20 history.
21 Q. Did you have your own counsel in this
22 transaction?
23 A. I did not.
24 Q. Did you procure any written agreement to

1 limit in perpetuity the rent that you paid?
2 A. No.
3 Q. Why not?
4 A. Because I accepted the representation made
5 by Mr. Whiston, who went on more explicably to
6 relate the history of Little Neck, a wonderfully
7 fascinating conversation as I recollect it, where he
8 characterized what the purpose of the trust was and
9 that the Feoffees sometime prior to his involvement
10 had made a judgment to allow buildings to be put on
11 Little Neck and that at the time of the general
12 inclusion of property taxes in the town of Ipswich
13 that the Feoffees made a specific and concerted
14 judgment to allow the continued development of
15 Little Neck so that homes and the attendant property
16 taxes generated by those homes would constitute the
17 principal gift by the Feoffees to the town. And he
18 was quite proud of the fact that at least at that
19 time Little Neck was the largest single taxpaying
20 entity in the town of Ipswich.
21 By the way, I heard also Mr. Whiston
22 relate those exact things in a public circumstance
23 to the community of Little Neck in the periodic
24 times where he would discuss these matters. But

1 that was post my purchase.
2 Q. Have you told me your full recollection of
3 what Mr. Whiston said to you before your purchase on
4 the subject of rent?
5 A. It would be difficult to be characterize
6 that as my full recollection. Other principal
7 things that he related, as I remember, were that the
8 Feoffees had the responsibility for the care and
9 upkeep of the property, that the limitation on the
10 ability to live on the property other than the
11 designated really summer months was something that
12 they were particularly keen about; that although I
13 requested a designation as a quote-unquote
14 year-round home that it was denied and he said there
15 was a fixed number, I believe it is 24, of so-called
16 year-round homes on Little Neck.
17 We had further discussions, minor in
18 nature, about why that was the case. My
19 recollection is that principally it was around
20 public health matters and he was very, very keen to
21 note that there would be a significant penalty for
22 not following the rules relative to living on Little
23 Neck outside of the times that I was allowed as a
24 so-called summer resident.

1 Also, he was clear to point out --
2 he was funnily and quite clear to point out that he
3 hoped that I would improve my cottage and after all,
4 it would create more money for the town of Ipswich.
5 And he cautioned very clearly that any improvement
6 to the cottage, particularly as it related to
7 outside and site-line-oriented improvements needed
8 to be cleared by the Feoffees. And he was keen to
9 point to a neighboring cottage where the Feoffees
10 apparently in court won a judgment to require that a
11 portion of an improved home be torn down because it
12 impeded someone else's view.

13 We went on to talk -- most of our
14 time was talking about rent and what it would be in
15 the future. And I characterized that we in effect
16 had a license to live on Little Neck and he didn't
17 disagree. That although the rents were set annually
18 that there was no termination or end date to our
19 tenancy.

20 Q. He told you rents would be set annually?

21 A. Rents were generally set annually. He
22 didn't say they were set annually.

23 Q. What was the rent at the time you bought?

24 A. It's hard for me to recollect. I think it

1 That's all.

2 Q. You've never rented it since?

3 A. That's correct.

4 Q. Did you have any discussions with any of
5 the Feoffees other than Mr. Whiston before you
6 bought?

7 A. No.

8 Q. How old -- do you know how old Mr. Whiston
9 is now, approximately?

10 A. I don't know.

11 Q. Do you know how old he was approximately
12 then?

13 A. I don't know.

14 Q. Older than you?

15 A. He's older than me.

16 Q. Substantially older than you?

17 A. That's a loaded term. He's of another
18 generation.

19 Q. A generation older than you?

20 A. I think that would be an accurate
21 depiction.

22 Q. Before you bought did you obtain any
23 information about the succession of the Feoffees?

24 A. Yes.

1 was around 800 bucks.

2 Q. What was the assessed value of the cottage
3 you bought compared to your purchase price?

4 A. I don't know that I ever checked. I can
5 tell you currently.

6 Q. No. What kind of cottage did you buy?

7 How many bedrooms did it have?

8 A. There are five bedrooms with walls made of
9 cardboard. I call it my cardboard home.

10 Q. What improvements have you done since you
11 bought it?

12 A. I've improved the basement, digging it
13 out, pouring new floors; electrical and plumbing;
14 cosmetic work; an outdoor shower; stairs, roofing;
15 kitchen improvements; bathroom improvements as well.

16 Q. Do you know what the cost of those
17 improvements collectively has been?

18 A. I wouldn't hazard a guess.

19 Q. No estimate?

20 A. I've never totaled it.

21 Q. Since the time that you bought your
22 cottage at Little Neck have you rented it out to
23 others?

24 A. The first year I rented it for the season.

1 Q. What information did you have about
2 succession of Feoffees?

3 A. I learned it from Mr. Whiston in his
4 valuable history lesson and I learned it from
5 speaking to what became neighbors at Little Neck, in
6 addition to conversation with Mr. Garvey.

7 Q. What was your information about the manner
8 in which successors would be chosen?

9 A. My understanding at the time is that they
10 were a self-perpetuating body and I only knew them
11 to be a body of four at that time.

12 Q. So you were not aware that the Feoffees
13 included three selectmen?

14 A. I was not.

15 Q. You did know that the composition of the
16 Feoffees could change?

17 A. Only as a matter of the personalities, the
18 gentlemen who held the seat.

19 Q. You did know that the four individuals
20 that you thought were the Feoffees, they could
21 change, they could resign, they could be removed,
22 they could die?

23 A. I thought I just said that.

24 Q. Yes.

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1 You were describing for me a public
2 statement that you say was made by Mr. Whiston?
3 **A. Yes.**
4 **Q. Could you tell me when this public**
5 **statement was made?**
6 **A. During times where he was invited and/or**
7 **invited himself, I don't know which is accurate, to**
8 **community meetings that were held by an entity**
9 **called the Little Neck Association.**
10 **Q. Were these meetings in the first years**
11 **after you moved in?**
12 **A. They were throughout the period. They**
13 **certainly ended -- they certainly were not post the**
14 **filing of our complaint.**
15 **Q. Well, at some point you became aware, did**
16 **you not, that the Feoffees -- did you become aware**
17 **in the years after you purchased that there was some**
18 **concern on the part of people in the town that the**
19 **Feoffees weren't paying adequate amounts to the**
20 **schools?**
21 **MR. SHEEHAN: Objection.**
22 **A. Yes.**
23 **Q. How did you become aware of that?**
24 **A. I read it. And Mr. Whiston told us as a**

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1 **community.**
2 **Q. And --**
3 **A. And he provided the reasons for that.**
4 **Q. The reasons for what?**
5 **A. The reasons for the objections of the**
6 **community from his perspective.**
7 **Q. Did something happen with regard to rents**
8 **in around 1998?**
9 **A. Rents began to escalate in that time**
10 **period.**
11 **Q. And did the Feoffees also in 1998 make any**
12 **announcements about what their intent was with**
13 **regard to rents that were different from the way it**
14 **had been before?**
15 **A. They did.**
16 **Q. What did they say in around 1998 on that**
17 **subject?**
18 **A. That there was significant pressure by the**
19 **town in the person of the school committee but**
20 **caused by the finance committee of the community**
21 **because of what was related as financial pressures**
22 **of the community, meaning the town of Ipswich, its**
23 **budget pressures, to increase the occasional gift**
24 **that the Feoffees provided in whatever excess of**

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1 **revenue they had from the operations and maintenance**
2 **of the property. And this over and above the**
3 **property taxes that were paid.**
4 **Q. Did Mr. Whiston indicate that the Feoffees**
5 **would be charging in the future fair market rent?**
6 **A. Mr. Whiston indicated that they would seek**
7 **to secure the fair market rent but there was never a**
8 **characterization as to how that would be calculated,**
9 **determined or assessed.**
10 **Q. But he did tell the tenants in 1998 that**
11 **the intent was to phase in the collection of fair**
12 **market rents?**
13 **A. Yes. Allow me to amend that. He did tell**
14 **the community that there would be a phasing of**
15 **increased rents. We never had a characterization as**
16 **to what a fair market rent was.**
17 **Q. I understand that you had no definition of**
18 **what a fair market rent was, correct?**
19 **A. That's correct.**
20 **Q. The Feoffees said that they wanted to**
21 **determine what the fair market rent was and collect**
22 **it. Is that true?**
23 **MR. CHAPMAN: Objection. Go ahead.**
24 **A. I don't recollect a specific statement**

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1 **where there was a characterization that they would**
2 **determine the fair market rent. I don't know at the**
3 **time of the communication whether they knew what**
4 **that, quote-unquote, fair market rent was. But that**
5 **it was their intent to attempt to secure it, because**
6 **of the exterior budget pressures put upon the**
7 **Feoffees.**
8 **Q. Now when Mr. Whiston -- I'm sorry, were**
9 **you present when he made these statements?**
10 **A. At a community meeting, yes.**
11 **Q. When Mr. Whiston made statements in 1998**
12 **to the effect that the Feoffees were going to**
13 **institute the collection of fair market rent did you**
14 **feel that that was in any way a breach of any**
15 **promises that had been made to you?**
16 **A. Yes.**
17 **Q. Did you file any claims on account of that**
18 **between that date and the present?**
19 **A. Yes.**
20 **Q. You personally?**
21 **A. In concert with my colleagues.**
22 **Q. Apart from the action that was filed in**
23 **December of 2006, are you aware of any actions that**
24 **were filed on your behalf or by you on account of**

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1 the representations that you say were made to you
2 before your purchase in 1995?
3 **A. Objections were raised and --**
4 Q. I'm just asking you about whether any
5 lawsuits were filed.
6 **A. Thank you. No.**
7 Q. There was a lawsuit filed in or about
8 December 2006, correct?
9 **A. Yes.**
10 Q. The lawsuit states -- by the way, you saw
11 the lawsuit before it was filed and approved it,
12 right?
13 **A. Yes.**
14 Q. And it states, "Plaintiffs have always
15 been and remain willing to pay a fair rent for the
16 use and occupancy of the lots in Little Neck upon
17 which their homes have been built." That is a true
18 statement?
19 **A. Yes.**
20 Q. And that's true as to you?
21 **A. Yes.**
22 Q. And when you say you're willing to pay a
23 fair rent, does that mean you're willing to pay a
24 fair market rent?

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1 **A. No --**
2 **MR. CHAPMAN:** Objection. Just to be
3 clear --
4 **MR. PERRY:** I'm going to rephrase
5 it.
6 **MR. CHAPMAN:** Go ahead.
7 **BY MR. PERRY:**
8 Q. You said you agree with the statement I
9 read. Let me ask you a followup.
10 Does that mean that you're willing
11 to pay or were willing to pay prior to the
12 settlement of the lawsuit concerning the proposed
13 sale of Little Neck, a fair market rent for the
14 premises?
15 **A. No. It means I was willing to pay a fair**
16 **rent because I considered the word "market" to be a**
17 **loaded term.**
18 Q. Were you willing at the time this class
19 action was filed to pay a rent that would reflect
20 what a disinterested tenant coming to Little Neck
21 would be willing to pay for the property?
22 **A. No.**
23 Q. Why not?
24 **A. Because other terms of my living**

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1 **arrangement and tenancy would need to be reflected**
2 **in that number.**
3 Q. And what are those other terms?
4 **A. Among them would be the exclusion of my**
5 **responsibility to pay property taxes. On the land,**
6 **I might add.**
7 Q. Are you familiar with how real estate in
8 general is assessed?
9 **A. Yes.**
10 Q. And you understand that when -- let's just
11 take the normal ownership of property that consists
12 of real estate and improvements, all right?
13 **A. (Witness nodded.)**
14 Q. Are you with me?
15 **A. Yes.**
16 Q. You understand that the assessment would
17 be broken down into an allocation toward the real
18 estate and an allocation toward the improvements,
19 right?
20 **A. Yes.**
21 Q. What's your understanding of how an
22 assessor would value the improvements?
23 **MR. CHAPMAN:** Well, I'm going to
24 object. I'm not going to instruct him not to answer

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1 but I do think you're asking him for an expert
2 opinion.
3 **MR. PERRY:** I'm not trying to get
4 expert testimony.
5 **BY MR. PERRY:**
6 Q. I'm just trying to procure your
7 understanding so I can go back and talk about the
8 fair rent issue.
9 **MR. CHAPMAN:** You are asking him for
10 his understanding of how his property would be
11 assessed.
12 **MR. PERRY:** Right now I was in a
13 hypothetical of a normal property consisting of a
14 lot under common ownership.
15 **MR. CHAPMAN:** That's the basis of my
16 objection.
17 **A. The answer is yes, I'm reasonably**
18 **familiar, both experiencing it as a homeowner, a**
19 **tenant, experiencing it as a tenant, experiencing it**
20 **as a public official.**
21 Q. Is it your understanding that in the
22 normal context of a value put on a parcel including
23 improvements based upon, among other things,
24 comparing it to what other properties that were

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1 similar have sold for?
2 **A. I'm aware assessors have wide latitude in**
3 **determining what they consider to be a fair assessed**
4 **value.**
5 Q. Once an assessed value is set, is it
6 allocated to the real estate and the improvements,
7 as you understand it?
8 **MR. SHEEHAN: Objection.**
9 **A. In the circumstance of a home where**
10 **there's common ownership of both the land and the**
11 **home itself, then the land is provided -- check**
12 **that.**
13 **The improvement of the property**
14 **itself provides additional value to the land upon**
15 **which it sits in a circumstance where there is a**
16 **common ownership.**
17 Q. Did you understand that the value of the
18 improvements in that situation is generally
19 considered to be the replacement cost of those
20 improvements less reasonable depreciation?
21 **A. That is accurate. As well as it is**
22 **accurate that a calculation can be made exclusively**
23 **on comparables relative to comparable sales and that**
24 **assessors have very, very wide-ranging authority in**

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1 **order to be able to set what they consider to be the**
2 **highest value.**
3 Q. Now, when we were talking about fair rent
4 and fair market rent, your point, I assume, is that
5 when one calculates the amount of rent that is fair
6 it needs to be taken into account that the tenant is
7 paying property taxes or any special assessments
8 that they're paying?
9 **A. Among other reasons, yes.**
10 Q. So that if you were going to base it on a
11 comparable lot, to be based on another lot where
12 those same situations applied?
13 **A. Among others, yes.**
14 Q. You're not quarrelling with the concept of
15 paying fair market rent as long as the fair market
16 rent is an apples to apples fair market rent that
17 understands that you're paying property taxes?
18 **MR. CHAPMAN: Objection.**
19 **A. I did not object to paying a fair rent**
20 **based on the common characteristics utilizing the**
21 **unique circumstances that existed on Little Neck and**
22 **exist to this day in addition to the metrics that**
23 **might be offered relative to things as wide as**
24 **comparables to discounted cash flows to other**

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1 **values.**
2 Q. You're familiar with the concept in the
3 commercial real estate world of triple net leases?
4 **A. Yes.**
5 Q. In a triple net lease the tenant pays the
6 property taxes, the insurance and various other
7 costs, correct?
8 **A. Yes.**
9 Q. It's possible then to determine, on a
10 triple net basis to determine what a fair market
11 rent is, right?
12 **A. Between two parties.**
13 Q. Or an appraiser can come in and give an
14 opinion on what a fair market rent basis is on a
15 triple net basis for a commercial building, correct?
16 **A. Yes.**
17 Q. And you know that that happens all the
18 time, right?
19 **A. Yes.**
20 Q. And in the same way, if we had a property
21 at Little Neck on which a tenant was paying taxes,
22 somebody could come up with a fair market value
23 analysis of what fair rent is with the understanding
24 the tenant will be paying the taxes, right?

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1 **MR. CHAPMAN: Objection.**
2 **A. Hypothetically one might be able to do so.**
3 Q. The question is if somebody could
4 determine what a fair market rent is for the cottage
5 given the understanding that the tenant is paying
6 taxes and may be responsible for other assessments,
7 would you be prepared to pay that fair market rent?
8 **MR. CHAPMAN: Objection.**
9 **BY MR. PERRY:**
10 Q. Or were you?
11 **A. I would be more inclined to do so**
12 **considering other factors, such as the limited time**
13 **in which one, at least at that time, had the**
14 **capacity to be able to enjoy the property.**
15 Q. You think that when somebody is
16 calculating fair market rent you need to take into
17 account who is responsible for paying the property
18 taxes, right?
19 **A. Yes.**
20 Q. They need to take into account if there
21 are going to be any special charges to the tenants
22 associated with the property?
23 **A. Yes.**
24 Q. They need to take into account what the

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1 tenants' rights are with respect to improving the
2 building, with limitations?
3 **A. Yes.**
4 **Q.** And they need to take into account whether
5 the tenant has a right to occupy for 12 months or
6 only a lesser period of time?
7 **A. Yes.**
8 **Q.** But given those constraints, you did not
9 at the time this lawsuit was filed have an objection
10 to paying a fair market rent that was calculated in
11 accordance with those understandings?
12 **MR. CHAPMAN:** Objection.
13 **A. I only object to your use of the word**
14 **"market." I was willing, as it was written, to pay**
15 **a fair rent.**
16 **Q.** How do you define a fair rent?
17 **A. A fair rent would be the consideration of**
18 **all of those things that you determined, that you**
19 **related, in addition to a recognition of the very**
20 **unique circumstances that existed on Little Neck at**
21 **that moment and to this day.**
22 **Q.** Now, how would those unique circumstances
23 influence the fair rent?
24 **A. Most particularly tied around the fact**

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1 **that I and my colleagues and neighbors own the**
2 **property that's sitting on vacant land that other**
3 **than having my property that I've paid for and**
4 **improved and cared for and protected, the vacant**
5 **land would have little, if any, value in and of**
6 **itself.**
7 **Q.** Somebody could prior to -- strike that.
8 In the period of time we're talking
9 about, back in the 2000s, if somebody wanted to
10 build a brand new house at Little Neck they could
11 buy an existing cottage, raze it and rebuild it,
12 consistent with whatever limitations applied with
13 respect to the footprint or height, correct?
14 **MR. CHAPMAN:** Objection.
15 **A. Yes.**
16 **Q.** Are you saying that you think that the --
17 My understanding is that under the current zoning
18 there may be issues with building improvements on
19 any of the vacant lots. Is that your understanding?
20 **A. It is.**
21 **Q.** And you're saying you think the rents
22 should be adjusted in some way because the cottages
23 that exist at Little Neck were built before zoning?
24 **A. I'm not capable of answering that**

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1 **question.**
2 **The --**
3 **MR. CHAPMAN:** Just wait. He hasn't
4 asked a question.
5 **THE WITNESS:** I'm sorry.
6 **BY MR. PERRY:**
7 **Q.** Prior to purchasing the property had you
8 seen any documents relating to the trust that owned
9 the land?
10 **A. I did.**
11 **Q.** What did you see?
12 **A. I had given to me some representation of**
13 **at least part of the documents creating this trust**
14 **back in 1640 or thereabouts.**
15 **Q.** Who gave you those?
16 **A. I believe Mr. Garvey did. And I believe**
17 **that Mr. Greenough did. Mr. Greenough is an**
18 **attorney who I later discovered worked for the**
19 **Feoffees.**
20 **Q.** Did you have any dealings with
21 Mr. Greenough in your purchase?
22 **A. I did.**
23 **Q.** What was his role when you purchased your
24 cottage?

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1 **A. He was the closing attorney, I guess we**
2 **can characterize him as.**
3 **Q.** Who did he represent at the closing?
4 **A. I have come to understand that he**
5 **represented the Feoffees.**
6 **Q.** Was he the bank attorney?
7 **A. And the bank attorney.**
8 **Q.** At the closing he was representing the
9 bank, wasn't he?
10 **A. And the Feoffees.**
11 **Q.** Did anybody tell you ever between that day
12 and today that he represented the Feoffees at that
13 closing?
14 **A. Only his course of conduct told me that.**
15 **Q.** The closing was a closing of a sale
16 between Mr. Garvey and you that was being financed
17 by a bank?
18 **A. That's correct.**
19 **Q.** And Mr. Greenough held himself out at that
20 closing as being the bank attorney?
21 **A. Yes.**
22 **Q.** And you now know that he from time to time
23 gave legal advice to the Feoffees?
24 **A. I now know that. He did not relate, as I**

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1 **believe it is his obligation to do so, that he had**
2 **that relationship with the Feoffees.**
3 Q. Well, he didn't represent you in the
4 transaction, did he?
5 A. **He didn't.**
6 Q. So you don't know whether he told the bank
7 that he had a relationship with the Feoffees, do
8 you?
9 **MR. CHAPMAN: Objection.**
10 A. **I presume upon all the evidence that the**
11 **bank was aware of that.**
12 Q. His obligation was to tell his clients of
13 any conflicts, right?
14 **MR. CHAPMAN: Objection.**
15 A. **I don't know what his obligation is. I**
16 **just know what fairness in equity is.**
17 Q. You think Mr. Greenough had an obligation
18 to you, a nonclient, to tell you of his role with
19 the Feoffees?
20 **MR. CHAPMAN: Objection.**
21 A. **As a principal party, I do.**
22 Q. Even though he wasn't representing you?
23 A. **Yes.**
24 Q. How would that have affected things had

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1 Mr. Greenough told you in this transaction he was
2 representing the bank but that he had also done work
3 for the Feoffees?
4 **MR. CHAPMAN: Objection. Go ahead.**
5 A. **It likely would have been the impetus for**
6 **me to secure my own counsel.**
7 Q. Why is that?
8 A. **Because I've been involved in business**
9 **with too many non-arm's-length transactions and it**
10 **would have rung an immediate alarm to me.**
11 Q. But you knew you didn't have counsel in
12 this transaction at all?
13 A. **That's correct.**
14 Q. And you knew Mr. Greenough wasn't
15 representing you in this transaction?
16 A. **That's correct.**
17 Q. And you knew that the Feoffees had legal
18 counsel presumably but you didn't know who?
19 A. **That's correct.**
20 Q. What difference did it make to you that
21 the bank attorney was somebody who had provided
22 advice over the years to the Feoffees?
23 A. **Because I was -- notwithstanding what was**
24 **said, it would have raised an alarm to me that a**

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1 **principal party at interest, the Feoffees, with whom**
2 **I had had specific conversation, also happened to**
3 **represent the entity that was assisting in**
4 **financing.**
5 Q. Well, the Feoffees didn't represent that
6 entity, did they?
7 A. **Which entity?**
8 Q. I'm sorry, I didn't follow that answer.
9 You had discussions with the
10 Feoffees?
11 A. **Yes.**
12 **MR. SHEEHAN: Objection.**
13 **BY MR. PERRY:**
14 Q. You had gotten a loan from a bank?
15 A. **Yes.**
16 Q. What bank?
17 A. **Ipswich Cooperative Bank I believe.**
18 Q. You're now saying that --
19 A. **To whom --**
20 **MR. CHAPMAN: Wait.**
21 **BY MR. PERRY:**
22 Q. You're now saying that it would have
23 raised a red flag had you known that the lawyer who
24 represented Ipswich Cooperative Bank at the closing

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1 had also done legal work for the Feoffees?
2 A. **It would have raised a red flag to me.**
3 Q. Why would that have raised a red flag?
4 A. **Because of the proximity of interests.**
5 **And it would have made me uncomfortable at that**
6 **moment and would, I'll repeat, would have caused me**
7 **to go slower. Mr. Greenough made representations to**
8 **me that I now recognize were in the interests of the**
9 **Feoffees and not the financial institution.**
10 Q. What did he tell you?
11 A. **He encouraged me to sign documents and the**
12 **like that were solely to the benefit of his client.**
13 **Not the banking institution but the Feoffees.**
14 Q. What documents did you sign that you're
15 referring to?
16 A. **Documents around my responsibilities and**
17 **obligations as an owner.**
18 Q. So you told me earlier that you had a
19 closing packet?
20 A. **Yes.**
21 Q. Are these documents that you signed in the
22 packet?
23 A. **I presume they are.**
24 Q. What responsibilities as an owner did you

1 sign onto that you are now upset with?
2 **A. My answer is in the context of whether I**
3 **would have sought outside counsel knowing that**
4 **Mr. Greenough also represented the Feoffees and not**
5 **just the bank. So I would have questioned --**
6 Q. No, no, my question --
7 **A. Would you allow me, sir?**
8 Q. I just want to ask you the question.
9 What did you sign that you're now
10 concerned about having signed?
11 **A. Every document.**
12 Q. What did those documents say that you
13 wished you hadn't signed?
14 **A. I didn't say that I wished that I didn't**
15 **sign them. I said at that time if I were aware that**
16 **Mr. Greenough represented the Feoffees I would have**
17 **likely secured my own counsel, the outcome of which,**
18 **if I had done so, I do not know.**
19 Q. Yes, we agree on that.
20 The question I'm asking you is tell
21 me what was in the documents that Mr. Greenough
22 recommended, you say, that you sign?
23 **A. An agreement relative to the rules of**
24 **Little Neck.**

1 Q. Are you of the understanding today that in
2 order to buy the property you needed to sign certain
3 documents?
4 **A. Mm-hmm.**
5 Q. Yes?
6 **MR. CHAPMAN: Say yes or no.**
7 **A. Yes.**
8 Q. And so these were presented to you at the
9 closing as documents you needed to sign to make your
10 purchase?
11 **A. Yes.**
12 Q. And you were unrepresented at that
13 closing?
14 **A. Yes.**
15 Q. And you knew that Mr. Greenough was there
16 representing the bank but didn't know that he also
17 had a relationship with the Feoffees?
18 **A. That's correct.**
19 Q. Is there anything in those agreements
20 relevant to your obligation to pay rent?
21 **A. I've not reviewed the documents since**
22 **2004, 2005, as I said earlier, but I believe that**
23 **that's correct.**
24 Q. That --

1 **A. That there is something in the documents**
2 **relative to paying rent.**
3 **MR. PERRY: Off the record.**
4 (Recess taken.)
5 **BY MR. PERRY:**
6 Q. At any time before the lawsuit was filed
7 in Superior Court did you come to the understanding
8 that there was a legal obligation on the part of the
9 Feoffees to collect a fair rent for the benefit of
10 the schools of Ipswich?
11 **A. No.**
12 Q. Do you have that understanding now, that
13 the Feoffees had such an obligation?
14 **A. I don't to this day.**
15 Q. Is there a reason -- Do you believe that
16 the Feoffees have such an obligation?
17 **A. No.**
18 Q. Why is that?
19 **A. Because I believe that an obligation as**
20 **defined by the school committee or the finance**
21 **committee is my proviso; not that I believe that**
22 **they are in fact collecting a fair rent given the**
23 **conditions and circumstances that exist on Little**
24 **Neck and that -- and given the representations made**

1 **to me and I believe the community and by the general**
2 **course of conduct of the Feoffees over the course of**
3 **many, many, many decades.**
4 Q. You and I could agree or disagree on what
5 a fair rent is, right?
6 **A. We could.**
7 Q. My question to you is whether you have
8 ever been of the understanding that the Feoffees
9 have a legal obligation to collect a fair rent for
10 the benefit of the schools?
11 **A. I don't have an understanding of that. I**
12 **know the Feoffees have an obligation to run the**
13 **trust and I know that they have the goal of**
14 **providing compensation to the community. And I**
15 **believe that they fulfill that goal as described to**
16 **me by Mr. Whiston and to the community relative to**
17 **the garnishment of property taxes.**
18 Q. So it's your position that because the
19 cottage owners paid property taxes it would be
20 legally okay for the Feoffees to collect less than a
21 fair rent for the property?
22 **MR. CHAPMAN: Objection.**
23 **A. I don't have the capacity to make that**
24 **judgment. I'll let somebody in the black robe do**

1 that.
2 (Pause.)
3 A. I'm really keen to know what you're
4 crossing out, Steve as, just as a matter of
5 circumstance.
6 (Discussion off the record.)
7 BY MR. PERRY:
8 Q. You've described your own experiences
9 talking to Don Whiston about rentals at Little Neck
10 before purchasing. Do you know anybody else who had
11 conversations with Don Whiston about rentals before
12 purchasing?
13 A. I know some.
14 Q. Tell me who you know.
15 A. I believe I recollect that Mr. Gottlieb
16 did. I don't know that I've had the specific
17 conversation with others. I can only testify to
18 Mr. Gottlieb. That's all.
19 Q. Did Mr. Gottlieb purchase before you or
20 after you?
21 A. I think he purchased before me. But I'm
22 not certain.
23 Q. Do you know how many of the cottages
24 turned over approximately in terms of owners after

1 you came to Little Neck?
2 A. No.
3 Q. Is there someplace where one can get
4 records of the sales of the cottages? Are they
5 recorded anywhere?
6 A. Other than the Feoffees own roster, I
7 don't know where that might be provided. Perhaps in
8 the assessor's office.
9 MR. SHEEHAN: Off the record.
10 (Discussion off the record.)
11 BY MR. PERRY:
12 Q. We've talked about a few conversations
13 involving Mr. Whiston. One, you recounted your
14 conversations with him before the sale, right?
15 A. Yes.
16 Q. Second, you've told me about some
17 communications he made about rent that were at the
18 Little Neck Association, right?
19 A. That's plural. It wasn't one event.
20 Q. Right.
21 And third, you testified about his
22 communicating the intent to charge higher rent in
23 response to concerns raised by the town in around
24 1998, right?

1 A. Yes.
2 Q. Now, after Mr. Whiston announced the
3 intent to raise rent with the goal of fair market
4 rent expressed around 1998, were there any other
5 conversations in which the trustees or Feoffees that
6 you're aware of gave any assurances about rent?
7 A. Yes.
8 Q. Tell me how many such communications
9 you're aware of.
10 A. In near every visit by Mr. Whiston to the
11 Little Neck Association's general annual meeting,
12 which happens either at the beginning of the summer
13 season or the end of the summer season, when he was
14 invited those three, four, perhaps more times he
15 would relate always I'm looking out for your
16 interests; he would relate always that there are
17 significant pressures on the Feoffees, that we know
18 things might look different going forward but we
19 want to take care of you. It was an almost paternal
20 relationship and most people on Little Neck gave
21 Don, as he was known, that respect because he in
22 fact up to a certain point exhibited that paternal
23 confidence and protection of the Little Neck
24 residents, fulfilling what we had known, what we had

1 experienced and what was told to us all along were
2 the common practices of continuing as they had for
3 decade upon decade.
4 Q. Did you have any conversations or hear any
5 statements about or made concerning rent by Peter
6 Foote?
7 A. Prior to 2006, no.
8 Q. What statements did you hear him make
9 after 2006?
10 A. They were only in connection with
11 negotiations with the Feoffees.
12 Q. Did you have any conversations or hear any
13 statements made by Alex Mulholland about rent?
14 A. I'm less certain about that.
15 Q. Can you recall any?
16 A. I cannot recall any at this moment.
17 Q. Did you hear any statements made by Jim
18 Foley concerning rent?
19 A. Yes.
20 Q. How many statements?
21 A. They would have been generally in either
22 one-on-one conversations or in the context of
23 conversations that we had with the Feoffees, Jim as
24 their representative, prior to the filing of the

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1 complaint and in what I believe is the one time that
2 **Jim spoke to the community at large.**
3 Q. And what do you recall Mr. Foley saying in
4 these conversations or statements?
5 **A. They were sharper in tone, less**
6 **paternalistic. Very much more businesslike in what**
7 **was communicated with -- I'll stop there.**
8 Q. You did not get any assurances from
9 Mr. Foley about rent, did you?
10 **A. I don't recollect Jim relating anything to**
11 **the community other than the then current Feoffee**
12 **party line. Which, by the way, every communication**
13 **that we got from Mr. Whiston we considered to be the**
14 **then Feoffee party line. He was Mr. Feoffee.**
15 Q. Did any of the Feoffees ever reside, to
16 your knowledge, or own a cottage at Little Neck?
17 **A. I know that Mr. Foley's family had a**
18 **cottage on Little Neck. I don't know whether he had**
19 **interest in that cottage in later years. And he is**
20 **the sole Feoffee that I know actually resided on**
21 **Little Neck. I believe Mr. Whiston has family**
22 **members. He may or may not have a principal**
23 **interest in a cottage on Little Neck.**
24 Q. With regard to Mr. Foley, which members of

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1 his family -- Do you know the identity of the people
2 you're talking about?
3 **A. I believe it was his parents and that he**
4 **grew up on Little Neck. And I don't know whether he**
5 **took a financial interest in the property in his**
6 **adult years.**
7 Q. Do you know what his parents' names were?
8 **A. I have no idea.**
9 Q. And Mr. Whiston, can you tell me what
10 family connections you are aware of that he had?
11 **A. I believe it's Mr. Whiston's daughter and**
12 **son-in-law. I think the name is Pickul,**
13 **P-I-C-K-U-L, is my recollection of the spelling of**
14 **their name.**
15 Q. That would be David and Kimberly Pickul?
16 **A. Yes. Cliff Road.**
17 Q. 8 Cliff Road?
18 **A. Yes, same people.**
19 Q. You told me your address at Little Neck
20 was --
21 **A. 20 Hilltop Road.**
22 Q. At the time you bought your unit were you
23 responsible for making any payments other than the
24 rent and property taxes?

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1 **A. No. To whom?**
2 Q. To the Feoffees?
3 **A. I was responsible for making other**
4 **payments, yes. But to the Feoffees I paid what's**
5 **characterized as rent and I forwarded my,**
6 **quote-unquote, fair share of property taxes, in**
7 **addition to which I paid personal property taxes to**
8 **the town directly. I paid my property taxes on the**
9 **real estate to the town directly.**
10 Q. Well, you paid your real estate taxes on
11 the improvements to the town directly and paid for
12 the real estate to the Feoffees, right?
13 **MR. SHEEHAN: Objection.**
14 **A. No. I paid property taxes for the land to**
15 **the Feoffees, my, quote-unquote, share of that. I**
16 **paid property taxes for the value of the property**
17 **sitting on that land.**
18 Q. The improvements?
19 **A. Okay. I call it my home. And I paid a**
20 **personal property tax on the contents of that home.**
21 **In addition to which I had operational -- full**
22 **operational responsibility, including insurance**
23 **coverage, including water bills, electrical bills**
24 **and every other -- all maintenance responsibilities.**

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1 Q. At the time you bought, what type of waste
2 discharge system did you have?
3 **A. I had a cistern.**
4 Q. What is that?
5 **A. A cistern is -- this cistern was a beehive**
6 **nest of bricks that collected waste and effluent was**
7 **dissipated through the ground.**
8 Q. At some point did that change?
9 **A. It did.**
10 Q. When did your waste system change?
11 **A. Post 2000. I don't know the exact date**
12 **that it changed but the prospect of it changing was**
13 **in the year 2000.**
14 Q. Tell me what happened.
15 **A. What happened was the Feoffees signed a**
16 **consent order with I believe it's now known as DEQE,**
17 **maybe it's now known as DEP.**
18 Q. It used to be DEQE; it's now DEP.
19 **A. Thank you very much.**
20 **With DEP or DEQE at that time, I**
21 **don't know when the title change happened. And that**
22 **consent order detailed responsibility for changing**
23 **how waste was removed from Little Neck.**
24 Q. There was a progression of what happened

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1 with respect to the plan for addressing the waste
2 problem, right?

3 **A. Yes. As I recollect, the Feoffees signed**
4 **the consent order, the knowledge of which was**
5 **withheld or at least not revealed to Little Neck**
6 **residents nor were the conversations that were**
7 **apparently taking place that led up to the agreement**
8 **on the consent order shared with Little Neck**
9 **residents.**

10 **And the Feoffees related that each**
11 **individual at Little Neck would have the**
12 **responsibility of securing either a tight tank if we**
13 **were seasonal residents or a drip system if they**
14 **happened to be year-round residents.**

15 **Q. Did you take steps to get a tight tank?**

16 **A. I did not.**

17 **Q. Did you understand what the cost of a**
18 **tight tank would be?**

19 **A. It was related initially that the cost**
20 **would be in or around \$10,000. And there was**
21 **immediate objection. And the drip system was**
22 **somewhere in the 20s. 26, if my memory is correct.**
23 **And there was immediate objection to**
24 **two things. Number one, the responsibility of the**

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1 **homeowners to provide sanitary waste removal; and**
2 **number two, the cost.**

3 **And let me add C to that and I**
4 **apologize. The presence of tight tanks and waste**
5 **trucks pumping out waste in 140-plus homes was**
6 **objectionable to seasonal residents and year-round**
7 **residents in kind.**

8 **Q. At the time that these discussions were**
9 **happening was the Little Neck action committee yet**
10 **in existence?**

11 **A. Little Neck Legal Action Committee was**
12 **not.**

13 **Q. Was there any group representing the**
14 **tenants in these discussions?**

15 **A. There was a group of tenants who were**
16 **charged with trying to speak in a single voice or at**
17 **least in some way represent the tenants at large**
18 **around the discussions of how the Feoffees should be**
19 **responsible for wastewater removal.**

20 **Q. Who were the group of tenants who were**
21 **charged by the tenants with representing them on**
22 **this issue?**

23 **A. They were a group of individuals who were**
24 **elected by those who chose to participate in an**

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1 **election in what was called I believe -- there was a**
2 **Little Neck Feoffee committee which later morphed**
3 **into something called Little Neck Homeowners, Inc.**
4 **or Little Neck Homeowners Association, Inc., one of**
5 **those two. And that was a more formal incorporated**
6 **entity.**

7 **Q. Who were the individuals who were charged**
8 **with this role of speaking as a single voice on**
9 **behalf of the tenants concerning the waste issue?**

10 **A. I can recollect some of the names.**

11 **Principally Richard Doherty, D-O-H-E-R-T-Y, who is a**
12 **wastewater engineer. Robert Dever, D-E-V-E-R, who**
13 **was a former mayor of Woburn and professionally was**
14 **an airline pilot. Thomas Allen, who is retired. He**
15 **was a contracts officer and program manager for**
16 **Raytheon, if I recollect, upon his retirement.**

17 **There were other individuals who**
18 **came and went from either or both of these**
19 **committees and I don't recollect when one was**
20 **superseded by the other. But those are the three**
21 **principals.**

22 **Q. Did you ever play a role on that**
23 **committee?**

24 **A. I played no formal role with that**

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1 **committee.**

2 **Q. Did you have an informal role?**

3 **A. I tried to have a role of influence.**

4 **Q. So you communicated with those committee**
5 **members to voice your views?**

6 **A. I did.**

7 **Q. Did Mr. Gottlieb have a role with that**
8 **committee?**

9 **A. He did not in a formal manner.**

10 **Q. Did he have the same informal role that**
11 **you had?**

12 **A. He tried to influence in the manner that I**
13 **did.**

14 **Q. Were you and Mr. Gottlieb friends at that**
15 **time?**

16 **A. I had never met the gentleman.**

17 **Q. When did you first get to know him?**

18 **A. I first met him in 2004.**

19 **Q. You say you tried to influence these**
20 **individuals, as did Gottlieb. Were you in agreement**
21 **or disagreement with the position they were taking**
22 **on behalf of the tenants?**

23 **A. There were two committees, as I recollect.**
24 **And one committee had principally this wastewater**

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1 responsibility with the three gentlemen whom I
2 related. There was another committee, whose name I
3 don't recollect, who had some interface with the
4 Feoffees representing the community at large. At
5 one point one morphed into the other. But it at
6 that time had a very different responsibility. The
7 first committee had a responsibility upon the
8 invitation of Mr. Whiston.

9 Q. For input concerning how to deal with the
10 wastewater problem?

11 A. No.

12 Q. Okay. Tell me.

13 A. For input on the prospect of purchasing
14 the property from the Feoffees. Mr. Whiston noted
15 at one of these community meetings that it was
16 always his belief, in his paternalistic interest,
17 that the highest and best use of the land and the
18 best outcome for the community, meaning Ipswich at
19 large, was for the tenants to purchase the property
20 and that the Feoffees become an income trust rather
21 than a real estate trust.

22 It was at one of these general
23 meetings where he invited the prospect of the
24 purchase of the property. It was at that time that

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1 I first got to know Mr. Gottlieb.

2 Q. We'll be breaking soon but let me go back
3 over something and make sure I understand it.

4 I had been asking you about the
5 committee that was formed to speak for the tenants
6 in one voice about how to address the wastewater
7 problem and you told me there was such a committee
8 and you identified some people that sounded like
9 they were on that committee, which included Richard
10 Doherty, who was a wastewater engineer; Robert
11 Dever, who was a former mayor and pilot; and Thomas
12 Allen, among others. Which committee were those
13 people members of?

14 A. They were definitely members of the Little
15 Neck Homeowners Association, Inc. Well, I don't
16 know the entity. But there was this prior committee
17 that then morphed into that committee.

18 Q. You said there were two committees and one
19 of them, you said, was a committee that grew out of
20 an invitation from Don Whiston to have discussions
21 about purchasing?

22 A. Yes.

23 Q. Let's put that aside. I want to focus for
24 now on this wastewater committee, okay?

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1 A. Now, I know the identities of other
2 individuals who were involved in that.

3 Q. In the wastewater?

4 A. Yes.

5 Q. I was asking you what your role had been.

6 A. Yes. These are --

7 MR. CHAPMAN: Let him finish.

8 BY MR. PERRY:

9 Q. Did you play an informal role of trying to
10 influence the decisionmaking of the committee that
11 was charged with addressing the wastewater problem?

12 A. I did.

13 Q. And I asked you, I'm going to repeat now
14 to make sure we're on the same page, would you say
15 you were generally in agreement or disagreement with
16 the decisionmaking that was made by the committee
17 charged with addressing wastewater for the tenants?

18 MR. CHAPMAN: At the time?

19 BY MR. PERRY:

20 Q. At that time.

21 A. These were intertwined issues and I was in
22 general disagreement with the process and approach
23 that the committee was taking.

24 Q. Will you please explain to me what

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1 approach the committee was taking as contrasted with
2 the approach that you felt was the appropriate one
3 at that time.

4 A. These again were intertwined issues so I
5 have to address them in order to fully fulfill my
6 oath. Both issues, the invitation by Mr. Whiston to
7 purchase the property and the wastewater.

8 The invitation by Mr. Whiston came
9 at a time when there was both the pressure to
10 increase rents and return to the community outside
11 of property taxes in addition to the Feoffees now
12 having the obligation to fulfill their commitment to
13 the regulatory authorities around the wastewater
14 problem that existed on Little Neck.

15 The invitation twinned the need for
16 more money and the benefits of an investment trust
17 versus a real estate trust. And the potential of
18 getting the Feoffees out of the obligation of
19 planning, modelling, designing, building, operating
20 and paying for a wastewater solution.

21 Q. The question to you was could you please
22 summarize the approach that was being taken by the
23 group charged with addressing wastewater for the
24 tenants as contrasted to your approach. Let's break

<p style="text-align: right;">Page 74</p> <p>1 it down.</p> <p>2 Could you tell me what the approach</p> <p>3 taken by the group charged with addressing the</p> <p>4 wastewater problem was.</p> <p>5 A. I'm incapable of breaking the conversation</p> <p>6 into discrete pieces but I'll try to be as</p> <p>7 responsive as I possibly can be.</p> <p>8 This intractable problem that the</p> <p>9 Feoffees had offered an opportunity at their</p> <p>10 invitation to the homeowners. The committees, later</p> <p>11 incorporated, took the invitation and recognizing</p> <p>12 that we would have the responsibility, the</p> <p>13 homeowners if in fact we had the opportunity to buy</p> <p>14 the property would have the responsibility for</p> <p>15 curing the wastewater problem, and they made an</p> <p>16 offer in effect for the land. I disagreed with the</p> <p>17 manner in which and the dollar amount of the offer</p> <p>18 that they made.</p> <p>19 Q. Why?</p> <p>20 A. Because I thought it was too low and would</p> <p>21 prove to be a nonstarter in serious conversation</p> <p>22 with the Feoffees and would not secure a solution to</p> <p>23 the two problems that the Feoffees had.</p> <p>24 Q. Do you remember the amount that was being</p>	<p style="text-align: right;">Page 76</p> <p>1 AFTERNOON SESSION</p> <p>2 BY MR. PERRY:</p> <p>3 Q. You were explaining before lunch that</p> <p>4 there was a disagreement about the amount offered as</p> <p>5 a proposed buyout price at that time.</p> <p>6 A. Yes.</p> <p>7 Q. I want to turn to the wastewater system</p> <p>8 and the recommendations that were being made by the</p> <p>9 group that had been charged on that issue as to how,</p> <p>10 apart from a sale, the wastewater problem should be</p> <p>11 addressed?</p> <p>12 A. I didn't quibble with the technical</p> <p>13 recommendations, or suggestions more accurately,</p> <p>14 that were made by the Little Neck Homeowners</p> <p>15 Association relative to waste water. They were</p> <p>16 bringing forward three interests: One, we don't</p> <p>17 want tight tanks because of the three other points</p> <p>18 that I had made before: A, cost; B, the vehicular</p> <p>19 traffic of pumpout; and C -- I can't recollect.</p> <p>20 Maybe you can help me here.</p> <p>21 Q. You raised an issue about whether they</p> <p>22 should be the responsibility of the homeowners.</p> <p>23 A. Oh, and the responsibility for payment,</p> <p>24 thank you, is three.</p>
<p style="text-align: right;">Page 75</p> <p>1 offered?</p> <p>2 A. Yes.</p> <p>3 Q. How much?</p> <p>4 A. It was three million dollars.</p> <p>5 MR. PERRY: Let's take a break.</p> <p>6 (Lunch recess taken)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 77</p> <p>1 So I didn't have a quibble about</p> <p>2 their capacity and the manner in which they were</p> <p>3 bringing that message and I wasn't troubled by the</p> <p>4 committee's recommendation of looking at other means</p> <p>5 of doing so.</p> <p>6 Q. You said they were bringing three</p> <p>7 interests forward and one was no tight tanks?</p> <p>8 A. That's correct.</p> <p>9 Q. What's two and three?</p> <p>10 A. Two and three as we noted. One, no tight</p> <p>11 tanks; two, no traffic because of the tight tanks;</p> <p>12 and three, the cost.</p> <p>13 Q. I think what you were starting to do was</p> <p>14 give me a three-part answer, one of which was no</p> <p>15 tight tanks that had subparts A, B and C and then</p> <p>16 give me two or three?</p> <p>17 A. No, it was one comment with two subparts</p> <p>18 then.</p> <p>19 Q. What was being explored as an alternative</p> <p>20 to tight tanks at that time?</p> <p>21 A. There were two things principally, as I</p> <p>22 recollect. One is a central collection system. The</p> <p>23 second was a direct piping specific from Little Neck</p> <p>24 to the wastewater treatment plant. And as a subset</p>

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1 of that would be collection system with later sewer
2 improvements sponsored by the town of Ipswich that
3 would cover Little Neck and Great Neck and the area
4 nearby.

5 Q. The first alternative that you've
6 identified would be some type of central collection
7 system and that's ultimately what got done, right?

8 A. Generally, yes.

9 Q. I understand generally what that
10 alternative is. Let me understand what the third
11 alternative is. You said that could involve direct
12 piping from Little Neck to the wastewater treatment
13 plant. And you said there was a subcategory?

14 A. Having a central collection system and/or
15 a piping system. But it would go to a
16 yet-to-be-built sewer system in Ipswich that would
17 service Little Neck, Great Neck and even burns.

18 Q. In other words, if you did have a central
19 collection system there were two alternatives. One
20 was to have a central collection system that also
21 involved treatment?

22 A. No.

23 Q. And second, to have one that would just
24 funnel it on to the wastewater treatment plant.

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1 A. The latter is more accurate, that it would
2 be a way station, if you will, for funneling through
3 a sewer system or going directly -- skirting a sewer
4 system for Great Neck and Little Neck but a direct
5 effluent, outflow pipe to the wastewater treatment
6 plant.

7 Q. How did that differ, if at all, from what
8 was built?

9 A. The latter, having a direct conduit to the
10 wastewater treatment plant, would be the tie-in of
11 all individual homes to an outflow pipe that would
12 have gone through various marshlands directly to the
13 wastewater treatment plant.

14 Q. What I'm asking is what actually did get
15 built?

16 A. What got built was a central collection
17 system with the capacity to at some future time
18 connect to a town-sponsored sewer system.

19 Q. What happens now with respect to the waste
20 that's collected?

21 A. The waste that's collected goes from
22 individual homes into a central collection site
23 which is located under the ball field at Little
24 Neck. It's pumped from various sources that get it

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1 to that point. And that's then collected on a
2 periodic basis as needed by truck, via truck to the
3 wastewater treatment plant.

4 Q. So the alternative would be instead of
5 transporting the waste from the collection system by
6 truck, there was an alternative under consideration
7 that would involve it being piped from that
8 collection system?

9 A. That was one of them, yes.

10 Q. And that's still a potential that would be
11 done?

12 A. It's an unlikely possibility that it would
13 happen because of environmental concerns in terms of
14 traversing marshland and other sensitive sites, so I
15 understand.

16 Q. What was your basis for asserting or
17 believing that it would not be your responsibility
18 as a cottage owner to install a tight tank at your
19 own expense if that were a solution agreed upon?

20 A. Because I believe my landlord had the
21 responsibility to provide me sanitary conditions in
22 which I could enjoy -- have the quiet enjoyment of
23 my home.

24 Q. But the landlord was only renting you the

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1 land, am I right?

2 A. The landlord was renting me the land.

3 Q. You had bought the house?

4 A. That's correct.

5 Q. And you described a cistern that you had
6 at your house?

7 A. (Witness nodded.)

8 Q. When you bought it?

9 A. Yes.

10 Q. Did you have to undergo any kind of
11 environmental requirements when you bought the
12 cottage as to the sufficiency of your wastewater
13 disposal system?

14 A. Not at the time I purchased the cottage.

15 Q. That's because at the time the statute
16 that regulated those matters didn't exist then?

17 A. I don't know the reason.

18 Q. Are you familiar with something called
19 Title 5?

20 A. Yes.

21 Q. Was Title 5 in effect when you bought?

22 A. I don't know. Subsequent to that there
23 was a testing of my cistern and it's my
24 understanding that my system tested adequately.

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1 Q. Did all of the tenants at the time of
2 these events when the DEP was requiring a change
3 have a system similar to yours or did some have a
4 more advanced device to yours?
5 **A. The great preponderance had systems**
6 **similar to mine. Some few number, I don't recollect**
7 **exactly, under 16 is in my head for some reason,**
8 **maybe under a dozen, had so-called Title 5-compliant**
9 **systems.**
10 Q. The Feoffees had taken the position that
11 in order to comply with the DEP requirements all
12 tenants were going to have to install tight tanks?
13 **A. That's the position they took.**
14 Q. Or drip systems if they were year-round?
15 **A. (Witness nodded.)**
16 Q. At their own expense, right?
17 **A. That's the position they took.**
18 Q. And the tenants preferred, apart from cost
19 issues and apart from who paid for it, the tenants
20 preferred a different solution?
21 **A. Generally, yes.**
22 Q. Are you aware of any discussions between
23 representatives of the tenants and the Feoffees or
24 their representatives about who would pay for the

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1 installation of the wastewater facility that
2 ultimately got built?
3 **A. I'm not aware of any discussion where the**
4 **tenants committed to any financial responsibility.**
5 **Not on my behalf.**
6 Q. Now, in the complaint that was filed that
7 you had reviewed and approved it states "Plaintiffs
8 have also been and remain willing to take a fair and
9 equitable share of the reasonable and legitimate
10 cost of the wastewater system"?
11 **A. Yes.**
12 Q. That was in fact your position?
13 **A. I later came to that position it.**
14 Q. And at the time you came to the position
15 that you were prepared to pay a fair and equitable
16 share of the reasonable and legitimate costs of the
17 wastewater system, what was your understanding of
18 what the fair and equitable share of those costs
19 amounted to?
20 **A. I understood it was one of general**
21 **reasonableness and the initial representation made**
22 **to us was that such a system would cost each party**
23 **in the neighborhood of 22 or \$23,000; that it would**
24 **be considered a benefit. And in my view, I believed**

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1 **that it should be ratcheted into the rent as an**
2 **obligation of the Feoffees to provide so-called**
3 **sanitary conditions.**
4 Q. Let me put that a different way. You had
5 no problem with the concept that in setting the fair
6 rent for the real estate one could take into account
7 the improvements that had been constructed that
8 would allow for the sanitary disposal of wastewater?
9 **A. That some portion of it was entirely**
10 **appropriate.**
11 Q. In other words, what one might be willing
12 to pay to rent real estate where you had to install
13 your own septic system would differ from what one
14 would fairly and reasonably pay for real estate that
15 has improvements under which your wastewater would
16 be carried away for you, right?
17 **A. In terms of the conditions of the moment**
18 **at that time in Little Neck, the answer to that**
19 **question is yes.**
20 Q. And so if we were looking today at fair
21 market rent of the real estate, you would not
22 disagree with the concept that part of what the
23 cottage owners are getting or having leased to them
24 includes the ability to dispose of their waste?

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1 **MR. CHAPMAN: Objection.**
2 **A. At the moment that's accurate.**
3 Q. And I understand that the tenants also
4 have to pay certain usage charges but those are
5 actually -- those don't relate to the cost of
6 installing the system; those are for the ongoing
7 operation of it. Am I right?
8 **A. We pay two separate charges, one for the**
9 **disposal of the effluent that's specific to our**
10 **cottage. That's based on water usage coming in, it**
11 **doesn't measure effluent leaving the home. And**
12 **secondly, we pay a monthly operations fee for the**
13 **system.**
14 Q. Do you have any issues as to whether those
15 particular fees are reasonable in relation to the
16 costs they're intended to pay down?
17 **A. I don't have any knowledge about the**
18 **operation fee. It's \$40 a month. I've not reviewed**
19 **the specific operation costs and the like.**
20 **Would you repeat the question.**
21 Q. I'm trying to find --
22 **MR. CHAPMAN: I'd like to ask for a**
23 **specific repeat the of the question.**
24 **(Record read.)**

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1 **A. The second part of my answer is that I do**
2 **not believe that the costs are reasonable relative**
3 **to the construction of the wastewater system. In**
4 **fact, I consider them to be wholly inappropriate.**
5 Q. I think you're answering a question I
6 didn't ask you so let me clarify.
7 I understand that there was a large
8 amount of money spent for the construction of the
9 wastewater system. Is it your understanding that
10 was some 6 million dollars?
11 **A. It's closer to 7.2 or 7.4, not including**
12 **interest expenses.**
13 Q. And you described for me two types of
14 expenses that the tenants are currently paying?
15 **A. Yes.**
16 Q. A \$40 a month fee and also usage fee based
17 on the actual usage to defray the cost of disposing
18 of the wastewater by truck as you describe?
19 **A. If your question is specific to that, then**
20 **I also have an objection to the reasonableness,**
21 **relative reasonableness of the cost of effluent**
22 **trucking.**
23 Q. Just wait for me.
24 **A. Okay.**

1 benefit is sort of beside the point for the moment,
2 okay?
3 **A. Okay.**
4 Q. I'm asking you now about fees you pay
5 other than for rent.
6 **A. (Witness nodded.)**
7 Q. And you told me about two fees?
8 **A. (Witness nodded.)**
9 Q. Right?
10 **A. (Witness nodded.) Yes.**
11 Q. And I didn't understand either of the fees
12 that you described to be fees that are intended to
13 reduce the 7.4 million dollars it's reimbursement
14 for?
15 **A. I don't understand.**
16 Q. Am I right that these fees you pay are
17 intended to be fees that will simply break even on
18 current costs of operating the system?
19 **A. I don't know whether they are intended to**
20 **break even but they are specific to the operation of**
21 **the system.**
22 Q. They are not in any way supposed to be the
23 way that we're paying for the installation of the
24 system, right?

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1 Q. It's easier if you don't get too far ahead
2 of me.
3 **A. Okay.**
4 Q. Under the current arrangement you
5 described the tenants are not in fact paying fees
6 associated with the cost of construction, correct?
7 **A. I believe we are.**
8 Q. What fees are you paying, if any, that you
9 understand to be a way of paying down the 7.4
10 million dollars?
11 **A. I consider it part of my rent payment --**
12 Q. I understand. I'm not asking about rent
13 right now.
14 **MR. CHAPMAN:** He needs to answer the
15 question that you're asking.
16 **BY MR. PERRY:**
17 Q. I'm just -- I want to break this down.
18 We've already addressed that one can set the rent
19 and take into account the fact that when you flush
20 the toilet there's a place for the waste to go,
21 right?
22 **A. (Witness nodded.)**
23 Q. And whether somebody properly or
24 improperly spent 7.4 million dollars for that

1 **A. Yes.**
2 Q. And you don't have any quarrel at all with
3 the idea that tenants would pay for the ongoing
4 costs of that system, correct, if they're paying the
5 right amount?
6 **A. The ongoing cost of the operation of that**
7 **system?**
8 Q. Yes.
9 **A. I don't have an objection to paying a fair**
10 **and reasonable amount for the discharge of my waste.**
11 Q. Now you raised an issue about whether the
12 Feoffees have --
13 **A. If I might--**
14 Q. -- entered into a fair contract for the
15 trucking disposal?
16 **A. Thank you. Yes. I had an objection upon**
17 **the initial agreement that the Feoffees made for**
18 **trucking. Effluent trucking.**
19 Q. Because you felt that they were paying too
20 much?
21 **A. I felt that they had not done proper**
22 **diligence. I didn't see evidence that there was any**
23 **competitive bidding process, I saw little in the way**
24 **of making a concerted effort in order to take the**

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1 tenants' interests at heart. And in fact, believed,
2 later proven to be accurate, that the fees being
3 charged us at that time were wildly inflated.
4 Q. And these were fees that were being
5 charged by a trucking company to the Feoffees and
6 passed on to you?
7 A. Yes.
8 Q. What was the name of the trucking company?
9 A. I don't know.
10 Q. You say they were wildly inflated. Tell
11 me what you mean in dollars and cents.
12 A. They were in effect about 10 cents a
13 gallon. Every gallon of intake into the home was
14 presumed to be of discharge, of which I paid 10
15 cents or thereabouts per gallon. It's that that I
16 objected to.
17 Q. Have you ever multiplied out the total
18 amount-- strike that.
19 What was the basis upon which the
20 trucking company was charging the Feoffees?
21 A. I don't know the basis upon which the
22 trucking company was charging the Feoffees. I don't
23 know how they calculated their rate.
24 Q. Do you have any information to indicate

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1 that the trucking company overcharged the Feoffees
2 to carry away the waste?
3 A. I have no indication. I just know that
4 they were charging the Feoffees too much, which was
5 passed on to me and my neighbors.
6 Q. You're not saying, are you, that the
7 trucking company was charging the Feoffees on the
8 same basis that the Feoffees were charging you?
9 A. The trucking companies charged the
10 Feoffees X amount. The Feoffees added a per-gallon
11 fee to that for the cost of what was accepted at the
12 water treatment plant. And that in total was billed
13 to the tenants, the homeowners, and that number was
14 in and about 10 cents a gallon.
15 Q. Let me see if I understand some things
16 about this arrangement.
17 The trucking company would go to the
18 collection center and take truckloads of wastewater
19 to the treatment plant, right?
20 A. Yes.
21 Q. And you don't know what their arrangement
22 was with the Feoffees as to how they charged for
23 that, correct?
24 A. I do. It was published and revealed to

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1 us.
2 Q. They were charging by the truckload,
3 weren't they?
4 A. No, they were charging by the gallon.
5 Q. They were charging by the gallon that they
6 transported, weren't they?
7 A. Let me amend that. I don't know whether
8 they were charging by the gallon they transported.
9 I know that the Feoffees paid by the gallon that was
10 released at the site to the wastewater treatment
11 plant. I don't know what the metric was in which
12 the Feoffees paid the trucking company. I don't
13 know whether they paid a presumed number going in,
14 that is the total water use on the island as
15 measured, or whether they paid exclusively as to
16 what was taken out of the system.
17 Q. Do you have any reason to believe the
18 Feoffees weren't paying the trucking company based
19 on what was taken out of the system?
20 A. I don't have a knowledge. A specific
21 knowledge.
22 Q. Am I correct that there was no way for the
23 Feoffees to measure how much effluent was flowing
24 out of each cottage?

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1 A. That's not accurate.
2 Q. What would be the manner of determining
3 how much wastewater was flowing out of each cottage?
4 A. It has been related to me that there are
5 such measurement systems.
6 Q. But there's none that have been installed,
7 correct?
8 A. That's correct.
9 Q. So the Feoffees, having been faced with
10 the cost they needed to allocate among the cottages,
11 has elected to allocate it based on water in versus
12 water out?
13 A. That's correct.
14 Q. And the end result of that is the Feoffees
15 are collecting the same amount of money they're
16 paying out in a way that's not exactly in accordance
17 with actual usage. Is that right?
18 A. No. It seems that they are allocating it
19 according to usage, at least as measured by that
20 which is used going into the home, but not knowing
21 what in fact is being discharged. The difference
22 being two: For example, if one chooses to wash
23 one's car, water the lawn or flowers and the like.
24 In addition to which, I don't know what happened --

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1 whether there was an allocation, I don't believe
2 that there was, for any other liquid that somehow,
3 we think for reasons of construction mistakes, that
4 ended up in the collection system. I don't believe
5 those were allocated, I hope they were not allocated
6 to the homeowners.
7 Q. You've told me you don't know the
8 arrangement upon which the Feoffees paid the
9 trucking company, true?
10 A. I don't know the metrics in which they
11 paid the trucking company. I just know that they
12 were related and having seen -- having represented
13 to me what that contract was, that it was in effect
14 on a per-gallon basis that was passed on to the
15 tenants.
16 Q. Per gallon transported by the truck
17 company?
18 A. No, I paid --
19 Q. Not what you paid. The Feoffees paid per
20 gallon for what was transported?
21 A. I believe that's accurate.
22 Q. They didn't pay per gallon on what went to
23 the tenants?
24 A. I believe that's accurate.

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1 Q. And they might not have been paying the
2 same amount per gallon for transportation as what
3 you were being charged for what was going in the
4 home?
5 A. Repeat please.
6 Q. The cost that the Feoffees paid per gallon
7 for transported effluent wasn't necessarily the same
8 as the cost per gallon that they charged you for
9 water going into the home?
10 A. They didn't charge me for water going into
11 the home; the town charges for that. The Feoffees
12 calculated my share, my allocated share of the
13 effluent cost based on the water usage going into
14 the home.
15 Q. Right. At a certain rate?
16 A. Yes.
17 Q. Close to 10 cents a gallon, you told me?
18 A. Yes.
19 Q. Do you recall if the Feoffees were paying
20 10 cents a gallon for what was transported or some
21 other number?
22 A. They were paying a number short of that
23 because they were also paying at the wastewater
24 treatment site a specific per-gallon number, of

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1 which I believe I only paid that number plus the
2 number of gallons that actually came into my home
3 and that totalled up to about 10 cents.
4 Q. Do you understand that one possibility is
5 that the Feoffees were paying an appropriate amount
6 to transport the effluent and were then seeking to
7 allocate it among the, tenants and not having a
8 measurement of what went out, were using as a proxy
9 what went in?
10 A. Let me answer partially. I agree except
11 that I'll differ on the notion of the reasonableness
12 of the charge from the first contract with the
13 initial trucking company.
14 Q. Was that contract then altered?
15 A. It was rebid sometime later with the
16 assistance of principally Mr. Richard Doherty. And
17 there was, as evidenced by the result, more
18 diligence, a better purchasing and bidding system,
19 which equated in a better price which was
20 essentially half of what the Feoffees had paid
21 prior.
22 Q. After that adjustment was made, what
23 amount have the Feoffees been charging for usage?
24 A. I think it's about 6 cents. It might have

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1 been 6 and a half. I don't necessarily recollect.
2 Q. When was that change made?
3 A. 2008 or 2009.
4 Q. How much do you currently pay per year for
5 that charge roughly?
6 A. I don't pay the bills at home. I pay
7 about -- I'm only there eight or nine weeks a year.
8 Probably 600 bucks a season for water in. So a
9 number equating that prior to 2008 for effluent out
10 and a number less than that today.
11 Q. So, as a result of this contract with the
12 trucking company that you're referring to, you
13 believe you may have paid a few hundred dollars
14 extra per year than you might otherwise have paid if
15 the contract had been better?
16 A. I paid a few hundred dollars more; the
17 community paid tens of thousands of dollars more.
18 MR. CHAPMAN: Can we take a quick
19 break?
20 (Discussion off the record.)
21 (Recess taken.)
22 BY MR. PERRY:
23 Q. Do you remember the history of rent that
24 you paid as a tenant?

1 A. Generally.
2 Q. Tell me generally what the history was.
3 A. 6 or \$800 initially. 6, it rose to 8 and
4 then went to 12.
5 Q. 1200 a year?
6 A. Yes. And then from 12 it went to 24, 25.
7 Q. Hundred per year?
8 A. Yes. Then to 3600 per year and then to
9 5,000 per year. And this in a six-year period, or
10 thereabouts.
11 Q. And the \$5,000 that you paid per year
12 started somewhere around 2004?
13 A. 2005 I think.
14 Q. And typically those years went from July
15 1?
16 A. No. Actually I think they were calendar
17 year oriented.
18 Q. That's okay.
19 A. I forget.
20 Q. It's not important.
21 A. Well, it has bearing later on relative to
22 when notice to quit was given us and whether that
23 was appropriate and I just don't recollect the
24 starting month.

1 Q. What have you paid in rent since 20005?
2 A. Well, in 2005 I paid a use and occupancy
3 charge. Check that. That's from 2006 I paid a use
4 and occupancy charge that was equal to the rent that
5 was paid at that time.
6 Q. Was it \$5500 a year?
7 A. \$5,000 a year for seasonal and \$5500 a
8 year for the so-called year-round residences.
9 Q. And you've been paying that same \$5,000 a
10 year ever since as use and occupancy charges?
11 A. Yes. Under the terms of a stipulation.
12 Q. And under the terms of that stipulation is
13 there an opportunity to -- is there a claim
14 preserved that that's too much or is that an amount
15 that's conceded?
16 MR. CHAPMAN: Objection.
17 A. It's recognized that it is due and
18 appropriate only in the context of the other
19 benefits and protections that were afforded in the
20 stipulation and in the general context of the
21 Superior Court lawsuit that was ongoing at that
22 time.
23 Q. Is it your contention that you've never
24 paid any rent that's higher than a fair rent?

1 A. I believe that I have paid a rent higher
2 than a fair rent in the past.
3 Q. When did you first pay a rent higher than
4 a fair rent?
5 A. I believe I did so when the rent moved
6 outside of the representations made to me by
7 Mr. Whiston that the rent shall be only by and large
8 the cost of operation of Little Neck.
9 Q. When did that first happen, that you paid
10 a rent higher than what you thought was a fair rent
11 as you just defined it?
12 A. Probably as soon as I heard the warning
13 signs as expressed by Mr. Whiston that his
14 representation to me was being amended because of
15 the needs and desires of the Ipswich school
16 committee and its finance committee. Ipswich's
17 finance committee, not the school's finance
18 committee.
19 Q. This occurred in 1998?
20 A. In that time going forward. Now I don't
21 want to suggest to you that I didn't believe that
22 paying 800 or \$1200 a year was unfair. It was just
23 different, but comfortable, than what Mr. Whiston
24 had represented to me and the representations that

1 were made upon my buying the cottage.
2 MR. PERRY: Let me mark this
3 document, a communication that has been produced to
4 us.
5 (Exhibit 1 marked
6 for identification.)
7 BY MR. PERRY:
8 Q. I've marked as Exhibit 1 a document that
9 isn't actually dated from the Feoffees and
10 apparently signed by Don Whiston that has been
11 produced to us as part of the discovery process by
12 counsel for the Feoffees. I'd like to ask you
13 whether this is a communication you received while
14 you were a tenant.
15 A. I don't specifically recommend receiving
16 this communication but I have little doubt that I
17 did.
18 Q. You said recommend but you meant
19 recollect?
20 A. Recollect, yes.
21 Q. And this communication was one that was
22 sent out to the cottage owners sometime before July
23 1, 2000, correct?
24 A. It appears that way. There's no date on

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1 it but it relates to things that are taking effect
2 post July 1st.
3 Q. And this communication refers to annual
4 rent for the 2000 to 2001 season at a rate of \$1,750
5 for seasonal tenants such as yourself; is that
6 right?
7 A. That's what it says.
8 Q. When you received this communication did
9 you think that that was a fair rent to be charged at
10 that time?
11 MR. CHAPMAN: Well, I'm sorry but I
12 think he said he doesn't remember receiving this.
13 He probably recalls that the rent went to that level
14 at some point.
15 BY MR. PERRY:
16 Q. Did you think that a rent of \$1,760 for
17 the 2000-2001 season was a fair rent to be charged?
18 A. Let me respond that I would not
19 characterize it as a fair rent. It was again in the
20 context of what we were told the Feoffees needed to
21 do to create new monies outside of the real estate
22 taxes that were proffered by the homeowners and
23 produced by Little Neck in common to provide more
24 than the occasional gift that they gave the school

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1 system. And my pique, if any, at that time was tied
2 just to this is going on a train, a track that's
3 very, very different than what I agreed. But I
4 would not characterize it again as an uncomfortable
5 number. It was one that I could afford and didn't
6 see particularly as penurious.
7 Q. You had bought your cottage in 1995, at
8 which time you said certain representations were
9 made to you, correct?
10 A. Yes.
11 Q. By the late '90s and certainly by 2000 you
12 knew that the Feoffees were no longer going to act
13 in a way that you believed to be consistent with
14 those representations, correct?
15 A. I was beginning to believe that that was
16 the case.
17 Q. All right. In fact, the Feoffees had
18 communicated to the tenants by no later than 2000
19 that they had been -- that they were utilizing
20 LandVest to make determinations of fair market value
21 rent, right?
22 A. Yes.
23 Q. And that they planned to phase in payment
24 of rent at the full fair market value?

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1 MR. CHAPMAN: Objection.
2 A. However at no time did they share the
3 calculations or manner of how fair market rent was
4 characterized and the appraisal in any circumstance.
5 And as I said to you painfully earlier, I did not
6 object to a fair rent. I objected to someone else's
7 characterization of a fair market rent determined
8 unilaterally. I believed that I had a license, a
9 tenancy without an end date on it that meant that
10 the Feoffees needed to be bilateral rather than
11 unilateral in their determination of rent,
12 particularly if it was outside of the
13 representations made to me.
14 Q. Do you have an understanding of what a
15 bilateral process would look like if you and the
16 Feoffees were to sit down and agree?
17 A. There was always a belief that the
18 Feoffees were open individuals, an open body, most
19 particularly as represented by Mr. Whiston, and that
20 certain influential and longstanding members of the
21 Little Neck community who had longstanding
22 relationships with Mr. Whiston would have
23 conversations with each other and they would in turn
24 comfort us if Mr. Whiston didn't comfort us. And

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1 this is also a time period where the community in
2 whole was beginning to feel uncomfortable and
3 started the creation of a Feoffee coordinating
4 committee, which later morphed essentially into the
5 Homeowners Association to represent us on two
6 issues, principally how to deal with the wastewater
7 issue and two, accept Mr. Whiston's invitation to
8 discuss purchasing the property.
9 Q. During the time that you were paying rent
10 and before you were paying what you describe as use
11 and occupancy charges, did you ever pay any rent
12 under protest?
13 A. Only so much as was represented by this
14 committee or committees to suggest that the Feoffees
15 were beginning to treat us unfairly. And I
16 expressed that to the community generally, to
17 Mr. Whiston personally, both privately and in front
18 of the community, in the periodic times where
19 Mr. Whiston would be in front of the community
20 relating what's going on in the moment within
21 Ipswich in general.
22 Q. When was it that you first publicly stated
23 that you felt that due to the rents that were being
24 charged that the Feoffees were treating the tenants

1 unfairly?
2 **A. Certainly in or near the first**
3 **announcement of the so-called fair rent issue when**
4 **it hit the nexus of the wastewater treatment needs**
5 **and restrictions on the Feoffees by authorities, the**
6 **DEP.**
7 Q. If we look at Exhibit 1, you'll see in the
8 third paragraph that the Feoffees allude to a rent
9 increase schedule they had adopted two years
10 earlier, right?
11 (Pause.)
12 **A. That's what it says.**
13 Q. So before July 2000 you were concerned
14 about a plan that had been publicly announced by the
15 Feoffees to increase the rent to a hundred percent
16 of the fair value as determined by LandVest, right?
17 **A. At the time it was suggested to us the**
18 **rent would increase it was not related to me, by**
19 **recollection, that LandVest was the determiner, only**
20 **that an appraisal was made and repeated requests to**
21 **share the information was denied by the Feoffees.**
22 Q. But by 2000 you knew that LandVest was
23 involved?
24 **A. I don't recollect if LandVest -- if I knew**

1 **that LandVest was involved by 2000 other than**
2 **reading this document right now. But at that time**
3 **presuming I saw this document, and I presume that I**
4 **did, then I became certainly aware at that time.**
5 Q. And in addition, by July 2000 you were
6 aware that the Feoffees were requiring the tenants
7 to install tight tanks?
8 **A. Yes.**
9 Q. Which was the second half of the issue I
10 raised?
11 **A. Yes.**
12 Q. Right?
13 **A. Yes.**
14 Q. So certainly before July 2000 you were
15 upset with the Feoffees because you felt they were
16 not observing promises that had been made to you
17 when you bought your home in 1995?
18 **A. Concern is a more appropriate word.**
19 **There's no real demonstrable upset.**
20 Q. You were concerned because you said you
21 had relied on things that the Feoffees had told you
22 or that Mr. Whiston had told you, right?
23 **A. They were synonymous to me.**
24 Q. You had relied on things Mr. Whiston had

1 told you, right?
2 **A. Yes.**
3 Q. And by July 2000 you knew that Mr. Whiston
4 no longer intended to conform his actions to those
5 that you understood he would when you bought your
6 property?
7 **A. Not only not conform with the**
8 **representations made to me but to digress from the**
9 **practice and general conduct that the Feoffees had**
10 **demonstrated to every member of our community**
11 **throughout the period of my homeownership and for**
12 **decades prior.**
13 Q. Thank you.
14 **A. You're welcome.**
15 Q. At some point after the lawsuit was filed
16 was there a mediation process?
17 **A. There were several mediation processes.**
18 **There were bilateral negotiations between what was**
19 **then LYNLAC formed in 2005 and post --**
20 **MR. CHAPMAN:** He's just asking a yes
21 or no question.
22 **BY MR. PERRY:**
23 Q. Go ahead and finish your answer.
24 **A. Okay. And then post the filing of the**

1 lawsuit there was a formal mediation, as generally
2 recognized the meaning of that word, with an outside
3 independent professional.
4 Q. Who was that mediator?
5 **A. A former Superior Court judge. His name**
6 **was Adams. I think the gentleman's name was**
7 **Charles.**
8 Q. Sam?
9 **A. Sam. Thank you. There it is, Sam.**
10 Q. Who participated in the mediation on
11 behalf of the tenants?
12 **A. Principally myself and Mr. Gottlieb, as**
13 **has been the case generally in all discussions.**
14 **Other members of our committee participated and we**
15 **did invite members of the still then existing Little**
16 **Neck Homeowners Association to participate in some**
17 **anyway of our formal mediation proceedings.**
18 Q. Was there -- after the mediation had
19 ended, did you communicate with other members of
20 LYNLAC or members in the larger sense concerning the
21 outcome?
22 **A. Yes.**
23 Q. Was there at some point a settlement
24 proposal that you were endorsing that did not come

1 to fruition?
2 **A. A settlement proposal for a lease of land?**
3 Q. Yes.
4 **MR. CHAPMAN:** This is just a yes or
5 no question.
6 **A. Yes. There were many settlement**
7 **proposals.**
8 Q. What I'm trying to find out for the moment
9 is I've been told that as a result of a mediation
10 there was some kind of tentative agreement reached
11 than involved leases. I just want to follow up on
12 that and find out a little bit more about it without
13 getting into the discussions at the mediation per
14 se.
15 **MR. CHAPMAN:** Just to be clear, you
16 asked him whether it was something he endorsed?
17 **MR. PERRY:** That's not essential to
18 my question.
19 **MR. CHAPMAN:** Okay.
20 **BY MR. PERRY:**
21 Q. Are you aware of a time when there was
22 some belief there might be a meeting of the minds
23 around an ongoing lease arrangement?
24 **A. Yes, there was.**

1 **believed that I had the assent of the Feoffees**
2 **assigned to commit to those discussions.**
3 Q. Before we follow up on what happened with
4 that proposal, could you tell me what the terms
5 would have been.
6 **A. I haven't looked at these documents since**
7 **the time that they took place but generally --**
8 **MR. CHAPMAN:** Again, this is without
9 waiving any confidentiality I'm going to let him
10 testify.
11 Go ahead.
12 **A. There was agreement between myself**
13 **representing LYNLAC, Mr. William Devlin, who was**
14 **then a new member of the Little Neck Homeowners**
15 **Association whom we invited to participate most**
16 **particularly because of Mr. Devlin's professional**
17 **skills, mostly having to do with capital finance,**
18 **James Foley representing the Feoffees, and Elizabeth**
19 **Kilcoyne, selectwoman and Feoffee. And it was my**
20 **belief that over a series of summer conversations,**
21 **all face to face, that we had a general agreement;**
22 **that I represented I could deliver my committee**
23 **members and my community and Ms. Kilcoyne and**
24 **Mr. Foley I believe represented that they could do**

1 Q. Tell me about that please.
2 **MR. CHAPMAN:** I want to be clear
3 without waiving any confidential settlement. If--
4 **MR. PERRY:** I'm trying to avoid
5 asking about the mediation discussions.
6 **BY MR. PERRY:**
7 Q. Among other things, the lease seemed to
8 have changed in reality and I just want to find out
9 what the history is here. Tell me about some kind
10 of aborted settlement around a new lease.
11 **MR. SHEEHAN:** Objection to form.
12 **A. There was never a bona fide or prospective**
13 **settlement that I would consider to be bona -- bona**
14 **fide isn't the right word.**
15 **There was never a binding**
16 **settlement. There was no prospect of settlement as**
17 **a result of the mediation session.**
18 Q. That's fine.
19 **A. Post that there were -- there was a summer**
20 **of conversations not including counsel between the**
21 **Feoffees and LYNLAC and I did personally believe**
22 **that we were very close to an agreement, so much so**
23 **that I related that to my colleagues at LYNLAC, this**
24 **is the committee now, the smaller committee. And**

1 **the same.**
2 Q. So I was asking you what the terms of that
3 were, as best you recall.
4 **A. Generally, as best as I recall them, there**
5 **was an agreement to set a rent somewhere around**
6 **\$6500 -- I'm speaking seasonally now -- to set a**
7 **specific means in which every three years it could**
8 **be raised -- not required to be raised but could be**
9 **raised by a CPI calculation. And we went so far as**
10 **to determine which specific CPI calculation as**
11 **determined by the Federal Reserve. And that's the**
12 **principal terms.**
13 **Excuse me. And that the period**
14 **would be either 20 or 21 years and that there would**
15 **be no differentiation between rent other than**
16 **seasonal and year-round.**
17 Q. That is, all cottages would pay the same
18 rent regardless of whether they had superior or
19 inferior locations?
20 **A. That's correct, as I recollect.**
21 Q. Did this proposed agreement include any
22 provisions for the payment of wastewater charges to
23 account for the expenses the Feoffees had born in
24 installing the system?

<p style="text-align: right;">Page 114</p> <p>1 A. I believe that the rent was inclusive of 2 the so-called construction costs of the wastewater 3 system. The proposed rent. 4 Q. Under this proposed rent there would also 5 be payment by the tenants of taxes on both the land 6 and the property? 7 A. That's correct. In addition to which 8 there's one other principal part of the then 9 agreement, prospective agreement, and that was that 10 there would be collective actions to recommend the 11 purchase of property to the community, try to effect 12 that, and that under any circumstance there would be 13 a right of first refusal by the tenants. 14 Q. What happened to this proposed settlement? 15 A. Ms. Kilcoyne was the first person who told 16 me that she could not deliver the Feoffees to that 17 agreement. And then there were attempts to rework 18 the agreement using it as a base line. At times 19 also including counsel. And they failed. 20 Q. When was the decision made to change 21 counsel from individuals at the Masterman firm to 22 Todd & Weld? 23 MR. CHAPMAN: This is just when. Do 24 you remember a time?</p>	<p style="text-align: right;">Page 116</p> <p>1 Foley; signed for the tenants by Kerrie Schaud, 2 S-C-H-A-U-D. 3 I'll represent this lease materially 4 differs from some earlier leases that the Feoffees 5 were proposing. For example, in 2006. Are you 6 familiar with this form of document? 7 A. I'm not specifically familiar with this 8 document. I've never seen this document before. 9 I'm generally familiar with a progressive change in 10 the terms that the Feoffees offered leaseholders 11 over the course of time. 12 Q. What in your understanding led to the 13 change between the lease that -- strike that. 14 Am I correct that you were offered 15 in 2006 the opportunity to sign a lease that looked 16 different from the one I've just put in front of 17 you? 18 (Pause.) 19 BY MR. PERRY: 20 Q. Would it help you if I gave you a copy of 21 it? 22 A. Yes, it would. 23 MR. PERRY: Let's mark as Exhibit 3 24 a letter dated June 27, 2006 that has attached to it</p>
<p style="text-align: right;">Page 115</p> <p>1 A. I don't remember the exact date except 2 that it was the failed mediation with Judge Adams. 3 Q. When you say counsel was involved in 4 trying to refine this agreement you were trying to 5 reach, which counsel was involved? 6 A. Current counsel for both parties. 7 Q. Was Mr. Sheehan involved in representing 8 the Feoffees from the beginning of the litigation, 9 as far as you know? 10 A. From the beginning of the litigation the 11 answer is yes. 12 Q. Are you familiar with the most recent form 13 of lease that has been used between the Feoffees and 14 the tenants? 15 A. Certain tenants. Those who chose to sign 16 a lease, you mean? 17 Q. Let me show you a representative lease. 18 MR. PERRY: This can be marked as 19 Exhibit 2. 20 (Exhibit 2 marked 21 for identification.) 22 BY MR. PERRY: 23 Q. I've marked as Exhibit 2 a lease dated 24 April 18, 2008 signed for the Feoffees by James</p>	<p style="text-align: right;">Page 117</p> <p>1 a form of lease as well as the Little Neck rules and 2 regulations at that time. And I believe these were 3 all part of the same package sent to tenants but I 4 don't vouch for the regulation part. 5 (Exhibit 3 marked 6 for identification.) 7 BY MR. PERRY: 8 Q. Now do you recall getting a package from 9 the Feoffees, a copy of which has been marked as 10 Exhibit 3 to your deposition? 11 A. Yes. 12 Q. And did that package include a cover memo 13 such as the first page of Exhibit 3? 14 A. Yes. 15 Q. And it included a form lease such as the 16 lease that appears in this document? 17 A. Yes. 18 Q. Do you know whether the regulations were 19 also part of it? 20 A. I don't recollect specifically. 21 Q. If you look at the lease that was sent by 22 the Feoffees along with this cover letter, would you 23 agree with me that it's not the same terms as 24 Exhibit 2 that I showed you?</p>

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1 **A. I haven't had the opportunity to review**
2 **either of them in depth. I'm just looking at the**
3 **annual rent and Exhibit A on document 2, which is**
4 **clearly different.**

5 Q. Especially the manner in which rent will
6 be set after the first three years?

7 **A. That's correct.**

8 Q. And also this later exhibit, Exhibit 3,
9 has provisions in it for some variation in rent
10 based on the classification of a lot in a category
11 of 1 through 5, true?

12 **MR. SHEEHAN: Objection to form.**

13 **A. I recollect that that was included in**
14 **this. If you can point me to a specific page number**
15 **that would be great.**

16 Q. Exhibit A.

17 **A. This is document 3?**

18 Q. Exhibit 2?

19 **A. Exhibit 2. Exhibit A, it clearly does.**

20 Q. And that was not, to your recollection,
21 part of the 2006 proposed lease that you received in
22 2006, right?

23 **A. That's correct.**

24 Q. What do you know about the events that led

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1 were not allowing cottages -- strike that.

2 Do you know whether Feoffees were
3 allowing cottages to be sold after the lawsuit was
4 filed if the buyers were not agreeing to sign a
5 lease?

6 **A. I only know that the Feoffees would not**
7 **allow new buyers to enjoy their property, therefore**
8 **in effect not buy the home, unless they signed a**
9 **lease as part -- they agreed to design a lease as**
10 **part of the purchase.**

11 Q. So it's your understanding, based on what
12 you just told me, that every time a cottage was sold
13 at Little Neck after 2006 -- strike that.

14 Is it your understanding that for
15 each sale of a cottage at Little Neck from 2007 on
16 the buyers, to be able to make use of the purchase,
17 had to sign a lease?

18 **A. No.**

19 Q. Why not?

20 **A. Because upon signing of the settlement**
21 **agreement there was a differential in terms of that**
22 **opportunity.**

23 Q. So was it your understanding that from
24 January of 2007 through and including December of

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1 the Feoffees to revise the lease from what's shown
2 in Exhibit 3 to that which is shown in Exhibit 2?

3 **A. I can only make a presumption. I have no**
4 **direct knowledge.**

5 Q. You're not aware of any negotiations of
6 the form of lease?

7 **A. I didn't participate in any negotiation**
8 **that was purported to be in any way something that**
9 **would be proffered to existing leaseholders because**
10 **I didn't represent leaseholders. I represented only**
11 **those folks who followed with their wallets and**
12 **minds Mr. Gottlieb and I in our action against the**
13 **Feoffees.**

14 Q. After the lawsuit was filed there were
15 some cottages that were sold, right?

16 **A. Yes.**

17 Q. Are you generally aware when sales are
18 taking place?

19 **A. Yes.**

20 Q. In what manner do you learn of a sale?

21 **A. A comment by neighbors.**

22 Q. Word of mouth?

23 **A. Yes.**

24 Q. Did you become aware that the Feoffees

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1 2009 all of the buyers of cottages were required to
2 sign leases?

3 **A. It is my belief that that was accurate.**

4 Q. During that time is it your understanding
5 that there were a number of cottage sales?

6 **A. Yes.**

7 Q. And that people were willing to pay for
8 the cottages and sign the leases that the Feoffees
9 were demanding?

10 **A. Some few number of people were willing to**
11 **do so.**

12 Q. And they signed a lease similar to Exhibit
13 2 here?

14 **A. I have no reason to disbelieve otherwise**
15 **but I have to caution and emphasize there was a**
16 **very, very limited number of people. Some of those**
17 **sales were within families, as I recollect.**

18 Q. Have there been any sales, to your
19 knowledge, of any cottages after the execution of
20 the settlement agreement between the Feoffees and
21 the tenants?

22 **A. Yes, there have.**

23 Q. What sales are you aware of?

24 **A. There have been two foreclosure sales,**

1 there have been transactions between families, one
2 family member purchasing from another family member,
3 however closely or not closely related, and there
4 have been a couple of isolated arm's length
5 transactions to a non-related party.
6 **MR. PERRY:** Off the record.
7 (Discussion off the record.)
8 **BY MR. PERRY:**
9 Q. Did you attend any of the foreclosure
10 sales?
11 **A. I attended one.**
12 Q. For what purpose?
13 **A. To observe.**
14 Q. When was that?
15 **A. I don't recollect the date. I think it**
16 **was 2010, in late summer. But I'm not entirely**
17 **certain.**
18 Q. Had the party that was foreclosed upon
19 signed a purchase and sale agreement for their unit,
20 for the property?
21 **A. The party that was foreclosed on signed a**
22 **purchase and sale agreement with the Feoffees?**
23 Q. Yes.
24 **A. I don't imagine they signed a P&S with the**

1 **Feoffees. I would imagine they would sign a bill of**
2 **sale with whoever the prior owner was.**
3 Q. Maybe we closed in the night here.
4 There was a cottage owner whose
5 cottage was foreclosed upon?
6 **A. Yes.**
7 Q. Do you remember the name of that person?
8 **A. It was Mr. Anthony. I believe it was**
9 **Michael.**
10 Q. The foreclosure took place after the
11 settlement agreement, right?
12 **A. I believe that's accurate.**
13 Q. Did Mr. Michael agree --
14 **A. Mr. Anthony.**
15 Q. Michael Anthony?
16 **A. Yes.**
17 Q. Did Mr. Anthony agree with the Feoffees as
18 part of the settlement to buy his cottage before he
19 lost it to foreclosure?
20 **A. I have no idea.**
21 Q. Who bought his cottage?
22 **A. I don't know.**
23 Q. What was the price at auction?
24 **A. I don't recollect.**

1 Q. Do you have any recollection of it?
2 **A. I have a recollection of the process and**
3 **the bids. I believe the bank bought -- or the owner**
4 **of the mortgage bought the property initially for**
5 **whatever its reserve bid was but I don't recollect**
6 **the specific number.**
7 Q. Who ended up buying the property?
8 **A. I don't know the party.**
9 Q. How much did the party who ultimately
10 bought it pay for it?
11 **A. I don't know the answer to that.**
12 Q. Do you know what the outcome of the other
13 foreclosure sale was?
14 **A. It was more recent.**
15 Q. What happened in that more recent
16 foreclosure sale?
17 **A. A gentleman on Little Neck purchased the**
18 **property for what I was told was a \$180,000 bid.**
19 Q. So he purchased the cottage?
20 **A. The cottage.**
21 Q. For \$180,000?
22 **A. (Witness nodded.)**
23 Q. At foreclosure?
24 **A. Apparently a quite nice home.**

1 Q. Do you know the address?
2 **A. I think it's Kings Way. I don't know the**
3 **specific address.**
4 Q. You said that you are aware of a couple of
5 isolated transactions that have taken place since
6 the settlement agreement. Which transactions are
7 you aware of?
8 **A. Some kind of a family transaction among**
9 **the Wilkie family. There was a transaction with the**
10 **Gresik home. I think it's G-R-E-S-I-K. That was**
11 **more an arm's length, non-family transaction to my**
12 **recollection.**
13 Q. For how much?
14 **A. I don't know the answer.**
15 Q. Any others?
16 **A. That's all I can recollect at the moment.**
17 Q. Has it been the position of the Little
18 Neck Legal Action Committee that if there were to be
19 a solution that involved leasing the property as you
20 discussed you were negotiating, that all rents
21 should be the same for all lots?
22 **MR. SHEEHAN:** Objection.
23 **A. During the period of time in which we were**
24 **concentrating exclusively on a lease, I need to tell**

1 you that I have always believed that a sale would be
2 the ultimate conclusion. But while I had the
3 responsibility of exclusively trying to come to a
4 fair rent and other lease terms, it was in our
5 general interest a community to try to act in the
6 same general customary manner and practices that had
7 been exhibited on the island for all those decades,
8 that were represented by the Feoffees to all of us
9 for all those decades, and that included the
10 nondifferentiation of rent other than seasonal
11 versus year-round.

12 Q. The answer to my question is yes, you were
13 an advocate for uniform rent for all seasonal lots?

14 MR. CHAPMAN: Him personally?

15 BY MR. PERRY:

16 Q. You personally were advocating that?

17 A. Yes.

18 Q. And you were advocating that on behalf of
19 the tenants?

20 A. My fellow homeowners, yes.

21 Q. And that was what you thought the tenants
22 wanted?

23 A. Yes.

24 Q. And that was based on a discussion with

1 Q. Do you have a view to whether those
2 variations in price being charged under the
3 settlement agreement are in proportion to the
4 variations on the intrinsic value of the lot on
5 which the property sits?

6 MR. SHEEHAN: Objection.

7 MR. CHAPMAN: Objection.

8 A. Specifically to the intrinsic values,
9 that's not how the determination was made to set up
10 a variable pricing scheme.

11 Q. I'm sure. Do you have a view to whether
12 the pricing scheme that was set up was in fact in
13 proportion to the gradation of the property value of
14 the lots?

15 MR. SHEEHAN: Objection.

16 MR. CHAPMAN: Objection.

17 A. In part.

18 Q. What does that mean?

19 A. In part it is set up by the gradations by
20 perceived value and view, if you will.

21 Q. And in part it is not?

22 A. That's correct.

23 Q. Is it fair to say that the individuals who
24 own the most valuable lots are getting the best deal

1 the tenants?

2 A. Yes.

3 Q. You do realize that some of the lots on
4 which the cottages sit are more valuable than other
5 of the lots?

6 MR. CHAPMAN: Objection.

7 A. I do realize that some have better views.

8 As a question of value, I'll leave that to someone
9 else more qualified to determine.

10 Q. So you realize that a disinterested third
11 party who wanted to buy at Little Neck would be
12 willing to pay more for lots with superior views as
13 opposed to lots with inferior views?

14 MR. SHEEHAN: Objection.

15 MR. CHAPMAN: Objection.

16 A. Few people are buying anything at Little
17 Neck at the moment, no matter its view. But for
18 those who do, then it's a fair conclusion that the
19 determination of price would be influenced by where
20 the property sits.

21 Q. The actual settlement agreement has some
22 gradation of prices to be paid by owners based on
23 where their property sits?

24 A. It does.

1 in this settlement agreement?

2 MR. SHEEHAN: Objection.

3 MR. CHAPMAN: Objection.

4 A. I don't agree that that's the case.

5 Q. Why not?

6 A. Because we as community members have set a
7 value that we think is fair for our enjoyment of the
8 entire island.

9 Q. How did you set it?

10 A. We're trying to be true to the past
11 history and course of conduct that had been
12 exhibited by all of us and tried to represent and
13 keep a community in whole rather than in part. And
14 we in effect decided to allocate on essentially
15 fifty-fifty basis. It's actually skewed marginally
16 49-51, but essentially a fifty-fifty basis; that 50
17 percent of the cost would be allocated on an equal
18 basis, 167 divided by that proportion. And that the
19 remainder would be allocated based on the then
20 variations -- we didn't agree with the number but we
21 didn't have a problem with the variation --
22 gradations but the variations of the value of each
23 lot set by the assessor.

24 Q. Have any of the tenants who own some of

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1 the lots having relatively inferior views complained
2 about the fairness of that arrangement?
3 **MR. SHEEHAN:** Objection.
4 **A. None have done so to me nor expressed it**
5 **in a community meeting.**
6 **Q.** Has anybody complained to you about the
7 price being charged under the settlement?
8 **A. Many people.**
9 **Q.** Can you identify any?
10 **A. I could but I'm not going to. I can tell**
11 **you that they complained that the price is too high.**
12 **Q.** Was it your contention at the time that
13 the Superior Court lawsuit was filed, which you
14 approved of, that you had sustained any out of
15 pocket damages as a result of wrongful conduct on
16 the part of the Feoffees?
17 **MR. CHAPMAN:** Objection.
18 **A. As alleged in the complaint, the answer to**
19 **that would be yes.**
20 **Q.** What out of pocket damages do you
21 personally claim you had sustained before the
22 lawsuit was filed in December 2006?
23 **A. I suggested --**
24 **MR. CHAPMAN:** Just let him finish

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1 the question.
2 **A. I suggested, and you are welcome to read**
3 **the claims, things like the inappropriate notice**
4 **relative to rents as they increased, one. A second**
5 **would be the assessments of taxes. A third --**
6 **Q.** Let me make sure we're on the same page.
7 I'm able to read the complaint about
8 what the grievances are but I want to make sure I'm
9 asking you and you're answering what relief you were
10 looking for in terms of having money paid to you.
11 Were you looking for money to be paid to you by the
12 Feoffees at the time this lawsuit was filed?
13 **MR. CHAPMAN:** Objection.
14 **BY MR. PERRY:**
15 **Q.** Was it your contention that the Feoffees
16 owed you money in the form of damages because they
17 had done you wrong?
18 **A. As noted --**
19 **MR. CHAPMAN:** I object. Go ahead.
20 **A. As noted in the complaint, yes.**
21 **Q.** Just make sure as you answer my question
22 you tell me with as much specificity as possible
23 what damages you claim you are entitled to recover.
24 In other words, what money should be paid back to

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1 you should you prevail in that lawsuit?
2 **A. As I previously related at minimum those**
3 **increases in rent were not properly noticed,**
4 **therefore not due.**
5 **Q.** So you want back rent that you voluntarily
6 paid because it you weren't properly notified of the
7 increase?
8 **A. As suggested by the lawsuit.**
9 **Q.** That's one category.
10 **A. The second is real estate taxes paid.**
11 **Q.** You want to --
12 **A. For the land.**
13 **Q.** Why is that?
14 **A. Counsel so advised --**
15 **Q.** I'm asking why do you claim you are
16 entitled to get back taxes you paid on the land?
17 **A. Because counsel --**
18 **MR. CHAPMAN:** Wait.
19 **BY MR. PERRY:**
20 **Q.** When you moved in, you knew you were going
21 to pay the taxes, right?
22 **A. Yes.**
23 **Q.** And you paid them?
24 **A. Yes.**

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1 **Q.** And now you're saying in 2006 you want the
2 taxes back?
3 **A. Yes.**
4 **Q.** Why is that?
5 **A. Because counsel told me --**
6 **MR. CHAPMAN:** Just say based on
7 counsel's advice maybe.
8 **BY MR. PERRY:**
9 **Q.** Do you have any understanding apart from
10 what your counsel told you as to why you should get
11 back taxes on the land that you agreed to pay and
12 voluntarily made?
13 **A. I have no other independent knowledge.**
14 **Q.** Anything else besides getting back rent
15 that you voluntarily paid and taxes that you
16 voluntarily paid?
17 **A. For other members of my community?**
18 **Q.** I'm talking about you?
19 **A. I need to relate this, however. That**
20 **there was an inappropriate assessment that was paid,**
21 **a minimum of a thousand dollars I believe, for**
22 **wastewater costs, for design and other interests and**
23 **some zero few number of us, myself and Mr. Gottlieb**
24 **included, refused to pay such assessments. But for**

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1 the rest of my neighbors and colleagues, I believe
2 that was an inappropriate charge.
3 Q. You are referring now to the payments that
4 are scheduled in Exhibit H to the settlement
5 agreement of wastewater assessment fees that the
6 Feoffees assessed to tenants and which some tenants
7 or most tenants paid but you did not?
8 A. Yes.
9 Q. So your claim is that the people who paid
10 those should get them back because the claim is that
11 somehow it was not lawful for the Feoffees to
12 request payment of those amounts?
13 A. Yes.
14 Q. Why wasn't it lawful for the Feoffees to
15 request payments?
16 A. They didn't have the authority to do so, I
17 believe.
18 Q. No authority.
19 Any other money damages that you
20 claim were incurred?
21 A. Given time to review the complaint I would
22 be happy to relate others. Or if you would allow me
23 to just refer to -- make reference to the complaint,
24 then you'll know.

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1 MR. CHAPMAN: You are asking if the
2 tenants win? Because you're just --
3 BY MR. PERRY:
4 Q. I understand that one of the positions
5 that the tenants take is that if they were to be
6 evicted they would have the right to have their
7 cottages purchased, right?
8 A. Yes.
9 Q. Anything else as you sit here today where
10 you think you've been damaged in the form of out of
11 pocket losses you've suffered because of something
12 that the Feoffees have done to you?
13 A. Other than as stated in the complaint, I'm
14 not able to relate any at this time.
15 Q. Do you want to read the complaint and tell
16 me if there's any other out of pocket loss that you
17 had?
18 A. We can spend a half hour and I'll review
19 the complaint.
20 MR. CHAPMAN: Off the record.
21 (Discussion off the record.)
22 (Pause.)
23 A. The Feoffees I believe may have the
24 responsibility of paying one hundred percent of any

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1 rent or other payment made because they acted
2 outside of their constitutional -- check that -- of
3 their lawful formation in that they did not invite
4 the participation of the three eldest selectmen
5 during this period.
6 Q. If I understand that argument correctly,
7 what you are saying is that the Feoffees were a
8 seven-person body; that four of them, which is a
9 majority, acted without the other three and
10 therefore you should have right to live there
11 rent-free.
12 A. I didn't say that. I said that in the
13 event that we won that that would not be an
14 unwarranted damage because of their unlawful
15 actions. Assuming a court agrees.
16 Q. Okay.
17 A. In addition to which, that proportion of
18 rent that might have been spent on their unjust
19 enrichment, meaning the Feoffees' unjust enrichment,
20 taking fees for their job that I believe were far in
21 excess of what might have been warranted, and/or any
22 other expenses that were not appropriately related
23 to their obligations to me as a homeowner. For
24 instance, I paid through my rent the cost of defense

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1 of a case against the siting of the pumpout station,
2 for instance. An independent action by a single
3 homeowner against the Feoffees about the siting of
4 the pump-out station.
5 Q. That the Feoffees had to pay out of the
6 trust?
7 A. Yes.
8 Q. And what are you saying was inappropriate
9 about that?
10 A. It was not an expense relative to the
11 entire island; that any cost of that should have
12 been in excess of revenue expense rather than an
13 expense paid by the rent in toto. In addition to
14 which I would add that the egregious costs of the
15 construction of the wastewater site and any
16 proportion of my rent that contributed to the cost
17 over and above that which it should have been might
18 quite properly be returned to me.
19 Q. Have you actually -- you've never paid any
20 special charges for that construction, have you?
21 A. I've paid for it, as I've described
22 earlier, as part of my rent and/or use and
23 occupancy.
24 Q. And the rent that you've paid was \$600 up

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1 to \$5,000 per year?
2 **A. That's correct.**
3 Q. And you want that back as too much? You
4 think that's too much that you paid?
5 **A. I didn't say that.**
6 Q. Do you think any part of that rent that
7 you paid, \$600 that went to \$5,000, it was more than
8 a fair rent for you to pay?
9 **A. The context of the lawsuit is that some or**
10 **all of that rent might in fact be due back to me as**
11 **a damage. I did not characterize that some of those**
12 **rents were not fair rent.**
13 Q. Were any of them unfair?
14 **A. Yes.**
15 Q. Which part?
16 **A. At minimum the parts at the \$5,000 level,**
17 **specifically because of the representations made to**
18 **me that my rent ad infinitum would be exclusively**
19 **related to the cost and operations of the island and**
20 **that any gift to the school department was**
21 **incidentally used for enrichment purposes; and that**
22 **the trust, the responsibilities of the trust were**
23 **being fulfilled by the Feoffees' allowance of having**
24 **homes built on the land so that real estate taxes**

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1 **could be assessed and paid. And both the Feoffees**
2 **and we, as a tenant, homeowner, consider that to be**
3 **integral to the payments made to the town under the**
4 **conditions of the trust.**
5 Q. So you think that the statements that were
6 made to you on your porch by Don Whiston in 1995
7 before you bought the property were binding in
8 perpetuity on the Feoffees and prevented the rent
9 from ever being charged at the fair market rate?
10 **A. That in conjunction with the fair**
11 **practices exhibited for prior decades and following**
12 **that, the answer is yes.**
13 Q. Following that for two or three years?
14 **A. Should be following that ad infinitum but**
15 **not less than those subsequent years.**
16 Q. What kind of view do you have from your
17 home?
18 **A. Not much. I have an impeded view from**
19 **part of my back deck of Plum Island and part of**
20 **Ipswich bay, impeded by rooftops and trees and the**
21 **like. And I have a tiny slice of a view of Fox**
22 **Creek from the side deck where Mr. Whiston and I**
23 **enjoyed our initial conversation.**
24 Q. Do you have an opinion of what your

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1 property would be worth to somebody who owned both
2 the land and the real estate as part of a
3 condominium?
4 **MR. SHEEHAN: Objection.**
5 **A. I don't. I do know that I believe that**
6 **the land value should be less than that which I have**
7 **agreed to pay under the settlement agreement. And**
8 **my home is in and of itself not worth very much.**
9 **Well, it's -- in and of itself it has limited value**
10 **but because of either the license, imputed license**
11 **that I have under the current arrangement and that**
12 **which I bought to enjoy tenancy there for as long as**
13 **I wished, and/or if married to the land would**
14 **obviously increase the total value. Over time.**
15 Q. What do you think is the fair land value
16 of the land on which your cottage is located?
17 **MR. SHEEHAN: Objection.**
18 **MR. CHAPMAN: Objection.**
19 **A. Somewhere closer to a hundred thousand**
20 **dollars than the 160-plus that is my obligation.**
21 Q. How do you arrive on that hundred thousand
22 dollars value that you place on your land?
23 **A. Part of it on calculation of what I**
24 **believe to be the reasonable appraised value of the**

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1 **land, which is 22 million dollars or so.**
2 Q. Well, are you aware that each of the
3 appraisers who performed appraisals, also as part of
4 that appraisal process, valued the individual lots
5 as though individually owned?
6 **A. I do.**
7 Q. What kind of range of values did those
8 appraisers place on your lot as an
9 individually-owned lot?
10 **MR. CHAPMAN: Objection.**
11 **MR. SHEEHAN: Objection.**
12 **A. I don't recollect them specifically.**
13 Q. Was it higher or lower than a hundred
14 dollars?
15 **A. Higher.**
16 Q. Higher or higher than \$160,000?
17 **A. Some lower and in one isolated case**
18 **higher.**
19 Q. Who was lower than the \$160,000 for the
20 value of your lot?
21 **A. It's my recollection, recognizing the**
22 **totality of the value.**
23 Q. Do you understand how those values were
24 reached?

1 **MR. CHAPMAN:** Objection.
2 **A. Somewhat.**
3 Q. Do you understand that the valuation
4 process was to take the retail fair market value of
5 each lot as though owned as a condominium and not
6 aggregate it?
7 **A. Then help me. Educate me please.**
8 Q. What they did was they assumed that
9 somebody would buy these lots for a lump sum, earn a
10 fairly hefty rate of return each year while they
11 sold them out and eventually sell them off for those
12 lot values?
13 **MR. SHEEHAN:** Objection.
14 **A. Yes.**
15 Q. So you can't take the number that results
16 from that process; divide by 167 and say that's the
17 value of the individual lot. Do you understand?
18 **A. I understand. What I'm trying to relate**
19 **to you is that I believe that I am paying a premium**
20 **for my lot as part of the settlement agreement.**
21 Q. All right.
22 **A. The amount of that premium may be at**
23 **issue.**
24 Q. And you realize that Mr. Lachance, who

1 Superior Court lawsuit that one of the issues
2 tenants raised for resolution was what the fair
3 market rent was that should be assessed against
4 them?
5 **A. Please repeat.**
6 Q. Do you understand that one of the issues
7 the tenants raised in the lawsuit was a request that
8 the court determine the fair rent or fair market
9 rent that can be charged?
10 **A. Yes, there was a request that the court**
11 **determine the fair rent.**
12 Q. So one possible outcome in the lawsuit,
13 you understand, is that the tenants could be found
14 to owe additional amounts for use and occupancy
15 beyond what they have paid?
16 **A. That's a hypothetical circumstance.**
17 Q. Is that something that you understand to
18 be an issue that a court is to resolve if the case
19 is not settled?
20 **A. It will have a conclusion in the Superior**
21 **Court if the case is not settled and it will be**
22 **whatever it'll be.**
23 Q. You mentioned a number of committees that
24 exist. So if you have the Little Neck Legal Action

1 performed a valuation for the tenants, has concluded
2 that your lot will be worth more than \$160,000 upon
3 purchase?
4 **MR. SHEEHAN:** Objection.
5 **MR. CHAPMAN:** Objection.
6 **A. He concluded, is my understanding, that in**
7 **aggregate the land, to pick a specific number, was**
8 **at \$26,500,000, which if I divide by the 167 is**
9 **lower than my \$160,000-plus price. And further,**
10 **that he is suggesting that other lots with better**
11 **views have higher values. Mine would not be**
12 **characterized as a premium lot and therefore that's**
13 **why I'm suggesting, not knowing the number, that**
14 **it's some number south of the \$160,000 plus or minus**
15 **that I have agreed to pay.**
16 Q. I'm afraid I may not have let you finish
17 your answer about damages.
18 You have told me about your
19 contention that the amount you paid for real estate
20 taxes should be paid back to you. Are there any
21 other amounts you are looking to have paid back to
22 you as part of the Superior Court lawsuit?
23 **A. None that I recollect at the moment.**
24 Q. Now, it was your understanding in the

1 Committee, does that committee maintain minutes?
2 **A. It does not.**
3 Q. Does it have records?
4 **A. Some records, yes.**
5 Q. Tell me what records it has.
6 **A. It has communications to our members, it**
7 **has all of the records that have been created around**
8 **the lawsuit and the subsequent settlement**
9 **discussions. And it has financial records around**
10 **the contributions of our members and bills and**
11 **expenses and the like.**
12 Q. What form of communications was used to
13 notify members?
14 **A. Periodically myself and Mr. Gottlieb would**
15 **write communications to our members updating them as**
16 **to what is ongoing at the moment or what ought to**
17 **interest them, providing them with any materials**
18 **that we thought were necessary and appropriate.**
19 **MR. PERRY:** Off the record.
20 (Discussion off the record.)
21 **BY MR. PERRY:**
22 Q. You had mentioned in your testimony this
23 morning that you had some notes that pertained to
24 your conversation in 1995 with Don Whiston?

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1 **A. Or whatever the date was that I purchased**
2 **the home, yes.**
3 Q. Right. I'm using 1995 because you think
4 that's when you purchased, right?
5 **A. (Witness nodded.)**
6 Q. When did you write those notes?
7 **A. At the time of the conversation. And**
8 **transcribed them generally immediately thereafter.**
9 **And I thought that they were important enough for me**
10 **to memorialize them.**
11 Q. When you were out talking on the porch,
12 were you writing down as he spoke?
13 **A. Yeah, at times.**
14 Q. I just want to draw a picture of this.
15 You are out on the porch, Mr. Whiston is giving you
16 the history and telling you the information, right?
17 **A. Yes.**
18 Q. What do you have in your hands?
19 **A. I have a piece of paper and a pen.**
20 Q. So he sees as you are writing down as he's
21 talking?
22 **A. I presume. He's not blind.**
23 Q. And you are writing down notes of what
24 he's telling you, right?

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1 **A. Yes.**
2 Q. One page? Two pages?
3 **A. The notes themselves I don't recollect.**
4 **And me memorializing them, collecting them, it's**
5 **probably just a single typewritten page now.**
6 Q. Well, do you still have the handwritten
7 pages?
8 **A. I don't know. I'll have to look.**
9 Q. You don't know if you have the handwritten
10 page but you know that you have a typed page?
11 **A. Yeah.**
12 Q. When did you type the typed page?
13 **A. Certainly within hours or no longer than a**
14 **day after than specific conversation, the principal**
15 **conversation that I had with Mr. Whiston.**
16 Q. What did you use to type your notes?
17 **A. A computer.**
18 Q. What kind of computer?
19 **A. I have no idea.**
20 **MR. CHAPMAN: Do your best to**
21 **remember.**
22 **BY MR. PERRY:**
23 Q. Back in the day that you're talking about
24 did you --

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1 **A. A laptop.**
2 Q. You owned a laptop?
3 **A. Yes.**
4 Q. And you were at that time living in North
5 Andover?
6 **A. That's correct.**
7 Q. So I think what you're telling me is that
8 you went home and at some point after going home
9 with your handwritten notes you decided to type it
10 into your laptop?
11 **A. I may have done it at home, I may have**
12 **done it at my office.**
13 Q. Where was your office?
14 **A. At that time at 800 Turnpike Street in**
15 **North Andover. I don't believe that I did it at**
16 **Little Neck.**
17 **It's important to note that**
18 **Mr. Garvey and I had a very close relationship and**
19 **he actually allowed me to rent the home even before**
20 **I owned it. So at the time that Don and I had the**
21 **conversation I had not yet closed on the transaction**
22 **but had the free use of the home. You know, Jim**
23 **would say the door's not locked, go in and do**
24 **whatever you need, invite anyone if you want, go**

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1 **take a look at whatever's necessary.**
2 Q. You had a handwritten piece of paper. You
3 tell me you typed that.
4 **A. Yes.**
5 Q. What did you do with the handwritten paper
6 after that?
7 **A. I either discarded it or included it in**
8 **the packet. I don't recollect.**
9 **MR. PERRY: I might want to see the**
10 **original, not a copy as you probably should have**
11 **custody of the original not just a copy. I'd like**
12 **to see what it looks like.**
13 **BY MR. PERRY:**
14 Q. Then on this typed note part of it --
15 **A. It's saved in a file somewhere in a**
16 **server.**
17 Q. What server?
18 **A. Certainly my office server.**
19 Q. What office is that?
20 **A. My company, Semaphore.**
21 Q. Which you've owned since 2001?
22 **A. Yes. But I ran it as a division CEO for**
23 **Euromoney Institutional Investors since '94.**
24 Q. So if we were to go on that computer and

1 look at this document, it would have a created date?
2 **A. Assuming that -- yes, it would have a**
3 **created date, assuming that it wasn't on a laptop**
4 **and then e-mailed to myself and then placed on the**
5 **server.**

6 **MR. CHAPMAN:** All right. We're
7 going to look for the documents and we can produce
8 it to you.

9 **MR. PERRY:** When you produce the
10 document, we may have at some point want to --

11 **MR. CHAPMAN:** I don't want to get
12 into electronic discovery.

13 Stop talking about it. We're going
14 do look for it.

15 **MR. PERRY:** Thank you.

16 **MR. CHAPMAN:** I wasn't telling you
17 to stop talking about it. I was telling him.

18 **MR. PERRY:** Any electronic evidence
19 that goes with it should be preserved.

20 **MR. CHAPMAN:** We're not going to
21 alter anything.

22 **BY MR. PERRY:**

23 Q. I understand that you probably have
24 replaced your computer since 1995?

1 **A. That's correct. I pay that to the**
2 **Feoffees upon them billing me for my portion of the**
3 **land tax and that portion of the specific home real**
4 **estate tax.**

5 Q. Okay. Now, you did not sign the lease
6 that the Feoffees proposed that you sign as part of
7 Exhibit 3?

8 **A. No, I did not.**

9 Q. Did you subsequently receive a notice to
10 quit?

11 **A. Co-terminusly there was a notice to quit**
12 **and leases, as I recollect, that were sent to me on**
13 **the 26th, 27th of June in 2006.**

14 Q. Well, the June 2006 letter told you that
15 if you didn't sign, your tenancy would cease as of
16 January 31, 2007; is that right?

17 **A. Yes.**

18 Q. And then you did not sign the lease and
19 you continued to stay in the property after January
20 31, 2007?

21 **A. That's correct.**

22 Q. Seasonally, that is.

23 **A. Yes. And to go further back, this is**
24 **refreshing a memory as to what the annual period is**

1 **A. Several times.**

2 Q. I understand the impact that could have on
3 any date stamping.

4 Do you know if Mr. Gottlieb has
5 notes?

6 **A. I don't.**

7 **MR. PERRY:** Let's take a five-minute
8 break and see what else we have.

9 (Recess taken.)

10 **BY MR. PERRY:**

11 Q. Two things you mentioned after the break,
12 that when you were giving your job history earlier
13 you inadvertently left off a company you worked at
14 for two years that was a successor to another
15 company, right?

16 **A. That's right.**

17 Q. That was a long time ago?

18 **A. Yes, back in the '80s.**

19 Q. Second, you mentioned that upon further
20 reflection you incorrectly testified that your tax
21 bills for the property taxes are broken out
22 separately or paid separately between the land and
23 the property. In fact you pay the entire bill
24 bundled?

1 **of the lease and I didn't recollect whether it was**
2 **January or July. In effect, July 1st, or**
3 **colloquially the start of the summer. This purports**
4 **it to be calendar year but in actuality it's July**
5 **through the following June.**

6 Q. Well, when you say this purports it to be
7 calendar year, where are you reading?

8 **A. Tenancy at will through January 31st.**

9 Q. 2007?

10 **A. Yes.**

11 Q. How often did you pay rent to the
12 Feoffees? Was it quarterly? Or would your wife
13 know that?

14 **A. It was quarterly and then it was changed**
15 **to a monthly use and occupancy fee.**

16 Q. During the time that you were occupying it
17 as a tenant before the use and occupancy period you
18 paid quarterly rent?

19 **A. That's correct.**

20 Q. And you received a notice in June of 2006,
21 that was more than three months before the end of
22 your -- strike that.

23 Do you know when the Feoffees set
24 the rent for 2006, do you know whether they set it

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1 for the calendar year or had they agreed to maintain
2 that rent through -- I withdraw the question.
3 The last rent that was set by the
4 Feoffees that you voluntarily paid was for the
5 period ending June 30th, 2006, right?
6 **A. I believe that's correct.**
7 **Q.** And they didn't notify you -- and then on
8 June 27th, 2006 they notified you that they were
9 going to increase the rent?
10 **A. That's correct.**
11 **Q.** And they gave you more than three months'
12 notice of the rent increase?
13 **A. I don't see the three months' notice.**
14 They were expecting the rent to be paid for the
15 period July 1st going forward at the then higher
16 rate. So I don't see the notice.
17 **Q.** Subsequently was there an extension of the
18 time to sign a lease?
19 **A. After a 93A demand letter was sent there**
20 **was an extension of the time.**
21 **Q.** All right. What happened after you
22 rejected the lease and continued to occupy the
23 premises?
24 **A. There was an extraordinary amount of**

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1 turmoil at that time. Many of those folks on Little
2 Neck who came to believe and trust in the Feoffees
3 significantly changed their opinion. Mr. Gottlieb
4 and I ratcheted our independent effort to try to
5 take control of the situation and we were urging our
6 neighbors to not sign the lease, to take stronger
7 actions than heretofore that they had.
8 We had related to them, our
9 neighbors, that the Feoffees had never had anyone
10 say no to them before, that we always acquiesced to
11 rental increases or other demands, the largest
12 proportion of us, and that this was the time period
13 to do otherwise. And quite formally then some 141
14 people representing 141 homes followed with their
15 hearts and minds and wallets the judgment that
16 Mr. Gottlieb and I had made.
17 **Q.** Did the Feoffees ever do anything to
18 attempt to evict you from your premises?
19 **A. Yes.**
20 **Q.** What did they do?
21 **A. They sent notices to quit.**
22 **Q.** When did they send the notices to quit?
23 **A. In that same time period in June I believe**
24 **of 2006. And they continually threatened in**

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1 conversations, either directly with the Feoffees or
2 through counsel, that evictions would commence; that
3 Mr. Femino, who was then attorney for the Feoffees
4 dealing with that specific issue, was both preparing
5 and noticing people that eviction would commence if
6 we didn't sign the lease.
7 Broadly there was a very small
8 minority of people who felt at such significant risk
9 that they chose to sign a lease that we thought
10 penurious and wholly inappropriate. And as we
11 characterized to our members and to all others, that
12 nobody in any kind of a thinking mind would have
13 signed the lease as presented. And we attempted in
14 good faith both prior to and afterwards to establish
15 a fairer lease arrangement.
16 I could go on and characterize my
17 opinion for the next half hour if you would like.
18 **MR. CHAPMAN:** Just wait.
19 **BY MR. PERRY:**
20 **Q.** So you received a notice to quit, a
21 lawsuit was filed in December 2006. Was any action
22 taken after you filed the lawsuit to evict you?
23 **A. I don't recollect if it was after the**
24 **lawsuit because soon thereafter we negotiated a**

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1 stipulation and that governed the parties'
2 activities from that point forward. But it was a
3 very mutually I'm sure tense time as demonstrated by
4 the interaction between the Feoffees and LYNLAC
5 immediately post the receipt of this proposed lease.
6 **Q.** Do you know what lawyer was involved in
7 drafting this lease?
8 **A. I don't.**
9 **Q.** Do you know who the real estate counsel
10 was at that time to the Feoffees?
11 **A. I know that Mr. Femino was involved and I**
12 **don't recollect if Mr. Sheehan was.**
13 **Q.** What about Mr. Greenough?
14 **A. Mr. Greenough was certainly involved up**
15 **until the point that I believe Mr. Sheehan came on**
16 **board.**
17 **MR. PERRY:** Thank you. I don't have
18 anything further for you.
19 **MR. SHEEHAN:** I have no questions.
20 **MR. PERRY:** I do want to reserve the
21 ability to get those documents.
22 **MR. CHAPMAN:** Yes. The other thing
23 I wanted to mention on the record is to the degree
24 Mr. DiSalvo was testifying about settlement

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1 discussions, that's without waiving our right to
2 claim that may be inadmissible if it comes to that
3 in trial.

4 **MR. PERRY:** I understand that's
5 subject to any applicable rules of substantive
6 testimony concerning such things as compromise
7 negotiations.

8 (The deposition was concluded at
9 4:20 p.m.)
10
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1 CERTIFICATE

2 Commonwealth of Massachusetts
3 Suffolk, ss.
4

5 I, Doris M. Jones, Registered Professional
6 Reporter and Notary Public in and for the
7 Commonwealth of Massachusetts, do hereby certify
8 that MARK S. DiSALVO, the witness whose deposition
9 is hereinbefore set forth, was duly sworn by me and
10 that such deposition is a true record of the
11 testimony given by the witness.

12 I further certify that I am neither related to
13 or employed by any of the parties in or counsel to
14 this action, nor am I financially interested in the
15 outcome of this action.

16 In witness whereof, I have hereunto set my hand
17 this 29th day of September, 2011.
18

19 _____
20 Doris M. Jones, CSR/RPR
21

22 My commission expires:

23 May 19, 2017
24

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1 E R R A T A S H E E T

2 I, MARK S. DiSALVO, do hereby certify
3 under the pains and penalties of perjury that I have
4 read the foregoing transcript of my testimony, and
5 further certify that it is a true and accurate
6 record of my testimony (with the exception of the
7 corrections listed below):

8 Page Line Correction/Reason
9
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20 _____
21 MARK S. DiSALVO
22
23
24

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