

IPSWICH 7428.0
- Depo - Peter Foote

Reporting

October 31, 2011

William H. Sheehan, III, Esq.
MacLean Holloway, et al
8 Essex Center
Peabody, MA 01960

Re: Mulholland vs. A.G. of Massachusetts
Deposition of Peter Foote

Dear Attorney Sheehan,

Enclosed please find your copy of the deposition of Peter Foote taken October 21, 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 pages to Stephen M. Perry, Esq. at the address noted on the appearance page of the transcript.

If you have any questions regarding this matter, please do not hesitate to contact our office at 617-451-8900.

Sincerely,

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cc: Stephen M. Perry, Esq.

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32596FR

Stephen M. Perry
Casner & Edwards
303 Congress Street
Boston, MA 02210

Phone:

Fax:

Witness: Peter Foote, pp 1-112**Case:** Mulholland vs. Attorney General of MA**Venue:****Case #:****Date:** 10/21/2011**Start Time:** 10:00 AM**End Time:** 12:23 PM**Reporter:** *Cynthia Craig**Claim #:****File #:**

28912FR

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VOLUME: I

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EXHIBITS: 1-2

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT

ALEXANDER B.C. MULHOLLAND, JR.,

et al,

Plaintiffs,

Docket No.

vs.

ES09 E0094QC

ATTORNEY GENERAL OF THE

COMMONWEALTH OF MASSACHUSETTS, et

al,

Defendants.

DEPOSITION of PETER FOOTE

October 21, 2011

10:02 a.m. - 12:23 p.m.

Casner & Edwards, LLP

303 Congress Street

Boston, Massachusetts

Court Reporter: Cynthia F. Stutz

1 APPEARANCES:

2
3 WILLIAM H. SHEEHAN, III, ESQ.

4 MacLean Holloway Doherty Ardiff & Morse, P.C.

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8 on behalf of the Plaintiffs

9
10
11 STEPHEN M. PERRY, ESQ.

12 Casner & Edwards LLP

13 303 Congress Street

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16 on behalf of the Defendant School Committee of
17 the Town of Ipswich and Richard Korb,
18 Superintendent

I N D E X

EXAMINATION OF:

PAGE

Peter Foote

(By Mr. Perry)

4

EXHIBITS:

DESCRIPTION

PAGE

Exhibit 1 Meeting Minutes dated 10/30/05 89

Exhibit 2 Meeting Minutes dated 2/28/07 95

*ALL EXHIBITS RETAINED BY ATTORNEY PERRY

Peter Foote

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1 P R O C E E D I N G S

2 IT IS HEREBY STIPULATED AND AGREED BY
3 AND BETWEEN COUNSEL that the reading and signing of the
4 deposition by the deponent shall be done within
5 30 days; that the notarization of the signature and
6 the filing of the deposition be waived; and that all
7 objections, except as to form, and motions to strike be
8 reserved for the time of trial.

9 * * * *

10 Whereupon:

11 PETER FOOTE,
12 having been satisfactorily identified and duly sworn by
13 the Notary Public, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. PERRY:

17 Q. Would you please state your name?

18 A. Peter Foote.

19 Q. What's your residential address?

20 A. 401 Colonial Drive.

21 Q. Is that in Ipswich?

22 A. Yup, Unit Number 50.

23 Q. What kind of -- Is that an apartment, a condo?

24 A. Condo.

1 Q. Who do you live there with?
2 A. My wife.
3 Q. How long have you been married?
4 A. Forty -- I got to be careful with this one.
5 44.
6 Q. Years?
7 A. Yeah.
8 Q. And do you have children?
9 A. Two -- One.
10 Q. He's probably grown?
11 A. Huh?
12 Q. He's grown?
13 A. She, yeah. Two grandchildren.
14 Q. Okay. How long have you lived in Ipswich?
15 A. All my life.
16 Q. You were born there?
17 A. Yup.
18 Q. What's your date of birth?
19 A. 3/6/41.
20 Q. Did you go to Ipswich High School?
21 A. Yes.
22 Q. What year did you graduate?
23 A. '58.
24 Q. Did any of the other Feoffees go to Ipswich

Peter Foote

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1 High School?

2 A. I'm not sure. I think they might have, but
3 I'm not sure.

4 Q. Not when you were there?

5 A. Oh, no.

6 Q. Jim Foley, I guess, is a good bit younger than
7 you are?

8 A. Yes.

9 Q. Did you review anything before testifying
10 today?

11 A. Yes, my past transcript.

12 Q. You looked at the transcript of the
13 deposition?

14 A. Yeah, right.

15 Q. That Todd and Weld took of you in the superior
16 court litigation with the tenants?

17 A. I believe, yeah.

18 Q. You have never owned on Little Neck, have you?

19 A. No.

20 Q. Have you ever stayed there?

21 A. Yes.

22 Q. On what occasions have you stayed at Little
23 Neck?

24 A. I was building a home on Great Neck and I

1 needed the place to stay and I stayed at two places,
2 one on River Road and one on Middle Road, each one for
3 about two months, so probably a total of four.

4 Q. Okay. When did you build on Great Neck?

5 A. 19 -- not 19. Would be 2000, somewhere around
6 2000. I'm not sure what the date is.

7 Q. Do you own on Great Neck now?

8 A. No.

9 Q. So how long have you lived at Colonial Drive?

10 A. Ten or eleven years. Went from there to
11 Colonial Drive.

12 Q. All right. But you said that you had been
13 building on Great Neck roughly around 2000 and that's
14 eleven years ago.

15 A. Yeah.

16 Q. So did you in fact build a house and live on
17 Great Neck for a period?

18 A. Yeah, about five years.

19 Q. So did you live on Great Neck until
20 approximately 2005?

21 A. Yeah, I'm not sure of those dates.

22 Q. Okay.

23 A. I mean, I don't think about those things.

24 Q. Were you a Feoffee when you were building at

Peter Foote

8

1 Great Neck?

2 A. Yes.

3 Q. Have you figured out what date you became a
4 Feoffee?

5 A. Seventeen years ago.

6 Q. All right. Because you were uncertain in the
7 superior court deposition.

8 A. I know.

9 Q. But it was seventeen years ago?

10 A. Yeah.

11 Q. So it's 2011, so that sounds like 1994?

12 A. Yeah.

13 Q. Thank you. When you built on Great Neck did
14 you buy an empty lot there?

15 A. No. It was an existing home which I added a
16 second floor to and, you know, it was almost a rebuild,
17 really.

18 Q. Why did you decide after that to move out?

19 A. Too expensive to live there.

20 Q. How did you -- Whose cottage did you stay in
21 for two months on River Road and two months on Middle
22 Road?

23 A. River Road was Jim Foley's place and Middle
24 Road was a guy from Wakefield. I forget his name.

1 Q. Were you there in the summer months or either
2 of them or was this off-season?

3 A. Yeah, I would say summer months, yeah.

4 Q. Were you renting on Middle Road or was he
5 allowing you to stay as a favor?

6 A. I was renting.

7 Q. And on River Road were you renting?

8 A. No.

9 Q. That was a favor from Jim Foley?

10 A. Yeah.

11 Q. Apart from those four months of -- And your
12 wife lived there, too, I take it?

13 A. Yes.

14 Q. Apart from those four months of staying on
15 Little Neck have you stayed over at Little Neck?

16 A. No.

17 Q. You told me you went to high school, graduated
18 in 1959, right?

19 A. Eight.

20 Q. '58. Ever served in the armed services?

21 A. Yes.

22 Q. When?

23 A. '58 to '61.

24 Q. Sounds like good timing. No war going on,

Peter Foote

10

1 right?

2 A. Cold war.

3 Q. Yeah. Which branch?

4 A. U.S. Army.

5 Q. And honorably discharged?

6 A. Yes.

7 Q. Could you tell me what you did next? I know
8 you went to Community College at one point.

9 A. Yeah.

10 Q. Was that the next thing you did?

11 A. Yes.

12 Q. Was that North --

13 A. Northern Essex.

14 Q. Northern Essex Community College for
15 two years?

16 A. Two years, yes.

17 Q. Did that result in any kind of degree or
18 certificate?

19 A. Yes.

20 Q. What was it?

21 A. Associate in Science or Arts. I forget which
22 one it was.

23 Q. What was your course work leading up to that
24 Associate degree, general?

1 A. General yeah.

2 Q. Just general course work?

3 A. Yeah. There was languages, there was
4 mathematics, there was, you know, just stuff you
5 normally get in the first two years anywhere you go.

6 Q. I'd seen in your testimony that you at some
7 point attended Northeastern?

8 A. Yes.

9 Q. Do you know when it was that you attended
10 Northeastern?

11 A. Graduated in '71.

12 Q. So you finished at Northern Essex, what, in
13 the early sixties, right?

14 A. '63.

15 Q. What did you do between 1963 and the time you
16 enrolled at Northeastern?

17 A. Worked.

18 Q. What did you do for work?

19 A. Security investigations with Pinkerton and
20 from there I went to Mitre Corporation in Bedford,
21 government Air Force contractor.

22 Q. M-i-t-r-e?

23 A. M-i-t-r-e.

24 Q. Okay. And --

Peter Foote

12

1 A. And from there I went to -- You want me to
2 tell you where I went from there?

3 Q. Sure.

4 A. From there I went to the Ipswich Police.

5 Q. Right. And did you enroll full time at
6 Northeastern or were you going part time or nights?
7 What were you doing?

8 A. Part time nights, days, whatever is part time.

9 Q. And where were you working when you were going
10 to Northeastern?

11 A. I was working at Mitre and I was working the
12 police.

13 Q. When you went to Northeastern did you get
14 credit for the Associates work you had done?

15 A. Yes.

16 Q. So it was really a two year type program
17 except for you were doing it part time?

18 A. Right.

19 Q. So it took a little longer, I assume?

20 A. Yeah.

21 Q. What was your major at Northeastern?

22 A. Now they call it criminal justice.

23 Q. Right. What did they call it at the time?

24 A. Law enforcement.

1 Q. So is that course work focused on matters that
2 pertain to criminal justice and law enforcement?

3 A. Yes.

4 Q. Did you take any course work at Northeastern
5 that you can recall that was not germane to criminal
6 justice or law enforcement?

7 A. I went a short time for a Master's in Public
8 Administration.

9 Q. At Northeastern?

10 A. Yeah.

11 Q. And you took some courses toward that, you're
12 saying?

13 A. Yes.

14 Q. You didn't finish that, it sounds like?

15 A. No.

16 Q. How many courses did you take?

17 A. I'm not sure. It was about probably four,
18 maybe four courses.

19 Q. Do you recall what courses those were?

20 A. Public administration. I don't know. It's a
21 long time ago.

22 Q. All right. And at some point did you get in
23 some further schooling?

24 A. Yes.

Peter Foote

14

1 Q. When was that?

2 A. Went to Anna Maria College and got a Master's
3 in Arts in criminal justice and that had to be around
4 the year 2000, somewhere in there.

5 Q. How long a program would that be if you did it
6 full time?

7 A. Two years, probably.

8 Q. And how long did you work on it, longer than
9 that because you were going part time?

10 A. No, I think I about in it about two years.

11 Q. What courses did you take at Anna Maria to get
12 your Master's in criminal justice, and you said arts in
13 criminal justice?

14 A. Yeah.

15 Q. It's a Master of Arts in criminal justice?

16 A. Yeah.

17 Q. Was that largely criminal justice courses?

18 A. Yeah, more or less, yeah.

19 Q. Are there any courses you can recall that went
20 outside of criminal justice?

21 A. No.

22 Q. And by taking, getting that degree did that
23 make you eligible for increase in your pay as a police
24 officer?

1 A. Yes.

2 (Telephone ringing.)

3 MR. SHEEHAN: Off the record.

4 (Discussion off the record.)

5 Q. I think you said that you got your Master's in
6 around 2000?

7 A. Yeah, about there, yeah.

8 Q. Okay. And you had told me that you became a
9 police officer in the Town of Ipswich after you worked
10 at Mitre?

11 A. Yes.

12 Q. What year did you start as an Ipswich police
13 officer?

14 A. Reserve '65, full time '67.

15 Q. Does one have to go to a police academy to do
16 that or the criminal justice degree is enough?

17 A. No, you have to, state law requires you to go
18 to police academy.

19 Q. So you did that?

20 A. Yes.

21 Q. And when did you do that? Sometime before you
22 became a police officer, right?

23 A. No, no. Mine, I worked for two years before
24 they sent me, so probably around '71.

Peter Foote

16

1 Q. Okay. Have you had any other schooling other
2 than what you have told me about?

3 A. I've had numerous courses in the line of my
4 career, you know.

5 Q. That's your formal education what you have
6 told me about, right?

7 A. Yeah, college stuff. The rest of it's all,
8 you know, state mandated this, state mandate that. You
9 have to go to school and update yourself on criminal
10 law and things like that, you know.

11 Q. Required training for police officers so they
12 can tell you about changes in the Miranda warning or
13 search and seizure law, right?

14 A. Yeah. Bad decision, Miranda.

15 Q. Now, at some point you rose to the position of
16 deputy chief?

17 A. Yes.

18 Q. When did that happen?

19 A. 1990 -- 1998, I think it was.

20 Q. And what was your progression through the
21 Ipswich police force starting out as a rank, just a, I
22 assume a --

23 A. Patrolman.

24 Q. Patrolman, and you ended up as deputy?

1 A. Patrolman, sergeant, staff sergeant, deputy
2 chief.

3 Q. Do you know when you became staff sergeant?

4 A. Probably around 1980, somewhere in that area.

5 Q. At the time you became a Feoffee were you
6 staff sergeant in the Ipswich police, '94?

7 A. I don't remember that.

8 Q. Well, you said you became deputy chief in '98?

9 A. Yeah.

10 Q. And before you were deputy chief you were
11 staff sergeant?

12 A. Right.

13 Q. For a number of years, you said?

14 A. Yeah.

15 Q. So to the best of your recollection were you a
16 staff sergeant in 1994 when you became a Feoffee?

17 A. I don't know. I don't remember.

18 Q. Okay. But you weren't yet deputy chief?

19 A. No.

20 Q. Correct?

21 A. Yeah.

22 Q. And you were no longer just a patrolman?

23 A. True.

24 Q. So you were some form of sergeant?

Peter Foote

18

1 A. Right.

2 Q. How many police officers are there or were
3 there in the Ipswich police when you were deputy chief?

4 A. Full time, 25.

5 Q. And that included you and the chief?

6 A. Yes.

7 Q. I know this is a public record, so I'm going
8 to ask it. What kind of salary were you receiving as a
9 deputy chief?

10 A. When I retired?

11 Q. Yeah, sure.

12 A. Approximately, excluding any overtime or extra
13 jobs and stuff, I was about 72 to 74,000.

14 Q. And as far as the overtime, when you're a
15 deputy chief what type of overtime are you eligible
16 for?

17 A. Whatever they, special projects, things like
18 that. In the regular scheme of things I did not get
19 overtime because I was management.

20 Q. Right.

21 A. But there was sometimes that they would pay me
22 for that because they were special projects.

23 Q. If it was special project or police detail
24 you'd get paid?

1 A. Police detail is different. That's private
2 money from a contractor that goes to the town and the
3 town pays you, but it's nothing to do with overtime.

4 Q. All right. Now, with regard to police duty,
5 what you said is different, does everybody get paid the
6 same rate regardless of their position in the
7 department?

8 A. By rank they do, yeah.

9 Q. What I meant was --

10 A. I mean, there's --

11 Q. Let me do complete my questions.

12 A. Go ahead.

13 Q. I didn't pose the question right. Suppose
14 somebody needs a police detail down at the high school
15 or something, but it's private, right?

16 A. Yeah.

17 Q. For a party.

18 A. Yeah.

19 Q. And they get and certain people go. Is the
20 rate the same whether the person who shows up is the
21 deputy chief or just the patrolman?

22 A. I don't know what it is now, because I've been
23 out of there for a few years, but when I was there it
24 was the same rate for everybody.

1 Q. Yeah, okay. That's what I would expect,
2 because the person paying for it --

3 A. It's not that way everyplace. It's by the
4 guy's rank.

5 Q. But in Ipswich at the time you were there
6 there was a rate that was paid for the police detail?

7 A. Right.

8 Q. And it would be paid no matter who showed up,
9 whether it was a deputy chief or it was a patrolman?

10 A. Right.

11 Q. And in your deposition you said that rate at
12 the time you had been doing it, you testified, was \$48
13 an hour?

14 MR. SHEEHAN: Objection.

15 A. Yeah, I think it was tied to the sergeant's
16 rate. They negotiated that with the town
17 administration and they set it, used to be a set rate
18 and then they set it to the sergeant's rate, whatever
19 it was.

20 Q. Okay. What were your responsibilities as a
21 staff sergeant in the Ipswich police?

22 A. More or less the same as a deputy chief. It's
23 a long story, but the short of it is that they made the
24 chief at the time the commissioner of public safety.

1 In other words, he ran both departments, fire and
2 police. So they needed somebody to run the police end
3 of it and that's what I did. Then they thought that
4 that position that I was performing as required a
5 higher rank and that's how I became a deputy chief.

6 Q. Okay. When was it that you were effectively,
7 as you have described it, running the department even
8 though you had a title of staff sergeant?

9 A. From the time I was staff sergeant on.

10 Q. And how many years in total do you believe
11 that you ran the department before you retired?

12 A. I was what they call the chief executive
13 officer, but whatever I told you before on when I made
14 staff sergeant, that's what the position was for.

15 Q. Right.

16 A. It's like the second in command.

17 Q. Yeah. But you were a little uncertain about
18 it, so I want to get your best estimate as to when you
19 had achieved that rank where you were second in
20 command. I understand you retired in, what, 200 --

21 A. '6.

22 Q. '6?

23 A. Yeah.

24 Q. You said you began in, what, 1969?

Peter Foote

22

1 A. '67 I started.

2 Q. '67?

3 A. Full time.

4 Q. All right. So given that you were in the
5 department for a total of close to 40 years, right?

6 A. 42.

7 Q. Okay, 42. So maybe you retired in 2008?

8 A. No. My reserve time counted.

9 Q. So you're saying 1965 reserve through 2006?

10 A. Right.

11 Q. Or so. Given that time frame, when is it that
12 you think you became staff sergeant and were running
13 the department?

14 A. I don't think of those dates like that, you
15 know.

16 Q. Well, let's see. You have a daughter, right?

17 A. Yes.

18 Q. How old is she?

19 A. She's 39.

20 Q. Maybe you can think about when you became
21 staff sergeant in relation to when your daughter moved
22 out of home or anything like that.

23 A. I think I made sergeant when I'd been on
24 ten years, so that would make it '77. I'd say '80,

1 '81.

2 Q. So, you were effectively running this
3 department from the eighties?

4 A. Yeah, yeah, that's approximate.

5 Q. All right. And when you were running the
6 Ipswich Police Department what duties did you have?

7 A. Personnel, budget, investigations, court
8 prosecutor, discipline.

9 Q. What was the budgeting process in place at
10 that time?

11 A. What it takes to run the department in the
12 course of a year.

13 Q. Who prepared the budget?

14 A. The chief would prepare the budget and I would
15 go to the budget hearings with him before the town
16 fathers and finance committee and the rest of them and
17 put forth the case to justify what we were requesting.

18 Q. So you weren't the one preparing the budget?

19 A. No.

20 Q. Did you ever, were you ever the one preparing
21 the budget?

22 A. No.

23 Q. Who had the final say on personnel matters
24 between you and the chief?

Peter Foote

24

1 A. Chief.

2 Q. Did the police department have any assets that
3 you had to manage?

4 A. Such as?

5 Q. Did it own anything that you had to -- Did it
6 own any real estate that you had to preside over?

7 A. No.

8 Q. Did it, did you have to deal with any
9 investments for the police department?

10 A. No.

11 Q. Who had the authority within the police
12 department to assign people for police details?

13 A. That was determined by who was on duty at the
14 time and it was usually a patrolman that it would, you
15 know, it would go to him if he was in the station,
16 fine. If he wasn't, called him in. And on occasion I
17 did it, but mostly it was done by patrolmen in the
18 back.

19 Q. I just want to make sure we're talking about
20 the same thing. We're talking about not who performs
21 the detail, but who assigns somebody to it, right, is
22 that --

23 A. Well, somebody requests a detail, somebody has
24 got to call somebody to ask if they want to work the

1 detail.

2 Q. Right. I just want to make sure we're
3 speaking the same language. So I think what you were
4 telling me was if a request came in for a detail, that
5 request might go in to somebody who was just a
6 patrolman at the station and that patrolman would have
7 to find somebody to do it?

8 A. Right.

9 Q. Wasn't doing a police detail considered kind
10 of a perk? People wanted to do it?

11 A. Well, nobody worked them without wanting to
12 work in the first place. So, I mean, you know.

13 Q. Right. But if you had a police detail
14 available, would you have potentially more people
15 wanting to do it than openings for the police detail?

16 A. Never had any trouble filling them, no.

17 Q. Right. So it was something that people were
18 eager to do, because it was a good way of making money?

19 A. Yeah.

20 Q. And wasn't perhaps as difficult as certain
21 other kinds of police work, right?

22 A. It could be, depending what you're doing.

23 Q. Yeah, okay. You retired in what year, you
24 said?

1 A. I think I said 2006.

2 Q. And after you retired, I know that in your
3 last deposition in the superior court litigation you
4 mentioned that you were doing police details?

5 A. Yes.

6 Q. How does that work once you have retired, how
7 do you remain eligible for that?

8 A. It's up to the administration. They decide,
9 you know, can a retired person work or is he not going
10 to work. And in the case the administration changed
11 and a new person said that they could work. So when I
12 found that out, I went down. He said, Sure. They put
13 me right on.

14 Q. Are you still doing that kind of work?

15 A. No.

16 Q. Why not?

17 A. I can't stand for eight, ten hours a day
18 without a break.

19 Q. Physical limitations?

20 A. Yeah, I'd like to see anybody do it in the
21 dead of the winter and the hot of the summer, you know.
22 It's not as easy as everybody thinks it is.

23 Q. I imagine. Apart from being a Feoffee and
24 working for the Town of Ipswich as a police officer,

1 police sergeant and deputy chief, have you served on
2 any boards or associations or charities or anything
3 like that?

4 A. I know I'm on the public safety committee for
5 buildings, you know. They want to justify building a
6 new fire station, police station. I'm on that
7 committee appointed by the town manager. And Feoffee,
8 I'm on the board of Feoffees. I can't recall anything
9 else.

10 Q. Okay.

11 A. There's been various ones over the years, but
12 I don't remember.

13 Q. Town related?

14 A. Yeah.

15 Q. Bodies that you served on?

16 A. Yeah.

17 Q. Because you were the deputy chief?

18 A. Yeah. Well, I guess I was familiar with the
19 operations that they wanted me on them, so --

20 Q. Okay. Are you the first member of your family
21 to be a Feoffee?

22 A. Yes.

23 Q. Have you ever had any relatives living or
24 owning -- Let me strike that. It's not well put.

1 Have you had any relatives who owned
2 cottages at Little Neck?

3 A. No.

4 Q. How did you come to be appointed as a Feoffee
5 in or around 1994?

6 A. I was friendly with one guy who got off, he
7 moved out of state, and we had talked about a Feoffee
8 position and then I was friendly with Jim, Jim Foley
9 and I inquired of him. I said what are they going to
10 do? He said they're going to put in a new guy. And he
11 said, Why, are you interested? And I said, Yeah, I'll
12 do it. And some time went by and the next thing I
13 know, he called up and said you have been appointed and
14 that was it.

15 Q. Who was the name of the person who had been a
16 Feoffee and moved out of state?

17 A. George Hayes.

18 Q. He was a lawyer?

19 A. He was clerk magistrate of the Ipswich
20 district court also.

21 Q. And you were the police prosecutor?

22 A. Right.

23 Q. So that meant that he was effectively serving
24 as the judge and you were serving as the prosecutor,

1 right?

2 A. Not at the time I was serving as a prosecutor.
3 I didn't really get into that until I was staff
4 sergeant.

5 Q. So you don't think you were a staff sergeant
6 when you became a Feoffee?

7 A. I don't know. I know we went over this
8 before. I can't -- You know, you pin me down to a
9 date. I can't give it to you. I don't know.

10 Q. Are there records that would show it?

11 A. I don't know. What did I say it was, '94 or
12 '80 --

13 Q. This is a problem. You have said two very
14 different things in a way or you implied two different
15 things. You have said on the one hand that you feel
16 like you were the running the department from 1980,
17 which is fourteen years before you became a Feoffee,
18 but when I asked you if you were a staff sergeant when
19 you became a Feoffee, you were not sure and you said
20 you didn't know. And you have also just said that you
21 didn't think you were the police prosecutor when George
22 Hayes was the clerk magistrate. So that's why I'm --
23 I'm not trying to pin you down, but I'm just trying to
24 get your most accurate testimony.

1 A. Well, I can only give you what I know.

2 MR. PERRY: Off the record.

3 (Discussion off the record.)

4 Q. In order to save time, why don't I request
5 that after the deposition is concluded, why don't you
6 research with Mr. Sheehan when it was you became staff
7 sergeant and then just provide that to me and maybe put
8 it in as a correction to the deposition transcript.

9 A. That would be good.

10 Q. Okay. Because that will save some -- Then
11 we'll know. Okay.

12 In any event, you knew and were friendly
13 with George Hayes at the time?

14 A. Right.

15 Q. And you had talked to him about being a
16 Feoffee?

17 A. Yes.

18 Q. All right.

19 A. About it, not me becoming one, but just about
20 it.

21 Q. About his being a Feoffee?

22 A. Yeah.

23 Q. And how long had you known George Hayes?

24 A. Oh, pretty much all my life. His parents and

1 my parents were friends.

2 Q. He was another long-time Ipswich person?

3 A. Right.

4 Q. And his father was a Feoffee?

5 A. His father was an attorney and he was a
6 Feoffee. And my father was a doctor, medical doctor,
7 and he was friendly with him. They were, you know,
8 they were friends over the years and that's how -- You
9 know, we used to go down their house when we were kids
10 and socialize and so forth.

11 Q. Did Mr. Hayes, did he ever have a place on
12 Little Neck?

13 A. No, not to my knowledge, anyway. I don't
14 think so.

15 Q. And you said that you were friendly with Jim
16 Foley?

17 A. Yes.

18 Q. How did you know Jim Foley?

19 A. He used to be a Wenham police officer.

20 Q. Right.

21 A. Neighboring town.

22 Q. Right.

23 A. And through the police department.

24 Q. How long had you known Jim Foley?

Peter Foote

32

1 A. 20 years, 25 years, something like that.

2 Q. From -- My question wasn't very good. Do you
3 mean you now have known him for 20, 25 years or when
4 you became a Feoffee you had already known him 20 or 25
5 years?

6 A. When I became a Feoffee I had already known
7 him for 20, 25 years. Yeah, it could be right.

8 Q. Did you, before you became a Feoffee had you
9 ever socialized with Jim Foley?

10 A. Such as? Did I go out with him?

11 Q. Yes.

12 A. No.

13 Q. What kind of occasions would you see him?

14 A. On the street, at the station.

15 Q. He lived in Ipswich?

16 A. Yes, he did.

17 Q. So you knew him as a fellow Ipswich resident
18 who was a police officer?

19 A. In a neighboring town, right.

20 Q. And you also knew him from running into him in
21 a work context?

22 A. Yes.

23 Q. Did you know Alex Mulholland before he became
24 a Feoffee?

1 A. Yes.

2 Q. How long have you known Alex?

3 A. Not very well, but I knew of him. He knew of
4 me and he went to a private school instead of high
5 school and I was in high school, so we didn't, you
6 know -- It was sometime after that. I knew his family.
7 And then from being a Feoffee I knew him.

8 Q. Right. Before you became a Feoffee did you
9 know Don Whiston?

10 A. I knew him. I wasn't friendly with him. I
11 knew him because he was the president of the bank and I
12 knew who he was. So actually, from the time I was a
13 Feoffee is when I got to really know him.

14 Q. When you became a Feoffee in 1994 were the,
15 you were one of the life Feoffees?

16 A. Yes.

17 Q. And there were four of you?

18 A. Yes.

19 Q. Were any of the selectmen functioning as
20 Feoffees back in 1994?

21 A. They were, they were, what do you call it,
22 selectmen Feoffees, but did they come to meetings, is
23 that a question? Did they come to meetings?

24 Q. Did they participate in the affairs of the

1 Feoffees back in 1994?

2 A. Once a year at the annual meeting.

3 Q. And what was the extent of their participation
4 at the annual meeting?

5 A. Well, sometimes one would show up, sometimes
6 three would show up. And we always, as a matter of
7 the, what do you call it, the meeting, the annual
8 meeting, the agenda would always call for an election
9 of officers at the annual meeting. And the selectman
10 Feoffee would be the one to make the motion. He was
11 always given that opportunity.

12 MR. PERRY: Can we go off the record a
13 second?

14 (Discussion off the record.)

15 Q. So when you were appointed, you were one of
16 the four Feoffees and Jim Foley was another, right?

17 A. Yes.

18 Q. And two of you had backgrounds in law
19 enforcement?

20 A. Yes.

21 Q. Did you feel it was appropriate for two of the
22 four life Feoffees on this land trust to have a law
23 enforcement background?

24 A. I, I don't see how to answer that. I didn't

1 see anything wrong with it.

2 Q. Why did you want to be a Feoffee?

3 A. Why?

4 Q. Yeah.

5 A. Because I'm sort of a history person. I'm
6 interested in historical facts and this was the full of
7 history, this thing. It was the oldest living trust in
8 the United States today, land trust. And I thought
9 getting on that would be a feather in my cap, so to
10 speak, and especially where I enjoy history.

11 Q. Okay. Now, apart from your being interested
12 in history, did you feel you had any qualifications
13 that made you suitable to be the trustee of this trust
14 that held real estate for the benefit of the schools?

15 A. Yes.

16 Q. Okay. What were those?

17 A. My education.

18 Q. Now, Mr. Whiston's in his eighties, right?

19 A. Yes.

20 Q. So at some point he'll probably cease to serve
21 as a Feoffee in the future, true?

22 A. Same for any of us.

23 Q. Right. So if there were a vacancy in the
24 Feoffees, who would you appoint?

1 A. I haven't thought of it.

2 Q. What do you consider to be the qualifications
3 you would look for to appoint someone to be a Feoffee
4 should a vacancy arise?

5 A. Someone who's well known in the community,
6 with a good reputation and an education and experience
7 in business and on a high level of management,
8 something like that.

9 Q. When you became a Feoffee what did you
10 understand your duties to be?

11 A. To be on the board and be involved in the
12 administration of Little Neck, the property down there.

13 Q. Do you know what the term fiduciary duty
14 means?

15 A. Yes.

16 Q. What do you understand that term to mean?

17 A. Well, it's our fiduciary duty to provide money
18 to the schools from what we take in if we have the
19 money available.

20 Q. And do you have any further understanding of
21 what a fiduciary duty is?

22 A. As far as the Feoffees, no, that's just what I
23 said.

24 Q. Did you ever have an understanding as a

1 Feoffee of what your duty was with respect to setting
2 rents that would be paid by the tenants?

3 A. I didn't set rents. The, the issue came up in
4 the past way back when this thing first started and we
5 hired a professional land appraisal firm called
6 LandVest. And they in turn did all the work about what
7 would be a fair rent based on the times and that's what
8 we as Feoffees relied on.

9 MR. PERRY: Can I see my question for a
10 second?

11 Q. Thank you for that, but let me just make sure
12 you understood what I was asking you.

13 A. Okay.

14 Q. Did you have an understanding, when you joined
15 the Feoffees, as to what the duty of you and your
16 fellow Feoffees was with respect to determining the
17 rent to be paid by the tenants?

18 A. When I first got on?

19 Q. Yes.

20 A. I didn't have a real grasp of it, no. I was
21 informed later on, but I wasn't at that time.

22 Q. At the time you joined the Feoffees in 1994
23 LandVest wasn't doing any work for the Feoffees, right?

24 A. No.

1 Q. Correct?

2 A. Right.

3 Q. Okay. How was rent being set at that time?

4 A. I had no idea. Somebody else administered
5 that. It was before my time.

6 Q. Well, from 1994 to 1997 before LandVest became
7 involved how were rents set during your first three
8 years as a Feoffee?

9 A. I don't know.

10 Q. And during those first three years as a
11 Feoffee did you have an understanding that rent was
12 supposed to be set at a market rate?

13 A. During those first three years?

14 Q. Yes.

15 A. I didn't have an understanding. I assumed
16 that's the way it went, yes.

17 Q. Okay. Do you know whether the rent that has
18 been charged to tenants during the time you have been a
19 Feoffee starting in 1994 and through 2006, was at fair
20 market rates?

21 A. We relied on LandVest and they supplied the
22 rates.

23 Q. Do you know whether rent was at fair market
24 amounts between 1994 and 2006?

1 A. I assume they were, because they came from
2 that professional firm.

3 Q. Okay. Now, you mentioned this firm LandVest.
4 Who made the decision to use LandVest as a consultant
5 to the Feoffees?

6 A. It was the, at the time it was, what do you
7 call it, Don Whiston was the chairman and he was
8 working with the attorney at the time, Donald
9 Greenough. And at that time I just went to the
10 meetings and but this was all discussed, you know, and
11 decided upon before I got there. But LandVest was
12 their recommendations were put forth and they were
13 accepted.

14 Q. Before LandVest was retained did you
15 personally do anything to look into the qualifications
16 of the people who would be doing the work?

17 A. No.

18 Q. After LandVest was retained it issued some
19 reports, right?

20 A. Yes.

21 Q. And did you -- How carefully did you read
22 those reports?

23 A. I read them, I looked at them.

24 Q. You looked at them, right?

1 A. Yeah.

2 Q. But you didn't scrutinize them, did you?

3 A. I can't give you verbatim what it said.

4 Q. At the time when you looked at them you didn't
5 try to scrutinize them, did you?

6 A. No. It was more familiarization of them.

7 Q. Would you say that it was beyond your ability
8 to know whether LandVest was doing its work properly or
9 not?

10 A. It wasn't beyond my ability, but I mean, I
11 didn't concern myself with that, because you hire
12 people in different fields to perform the function
13 you're looking for. These people were highly rated, so
14 we approved them.

15 Q. You took it as a given that LandVest had done
16 its work properly?

17 A. Yes.

18 Q. And you didn't try to understand its
19 methodology, did you?

20 A. No.

21 Q. And you didn't know if there were any flaws in
22 the methods they were using, correct?

23 A. I'm not aware of any flaws, no.

24 Q. You do know that there have been other

1 appraisals by other firms that have come to different
2 conclusions than LandVest's, right?

3 A. I know there was other appraisals taken, yeah.

4 Q. Do you know whether, and do some of those
5 appraisals come out at different figures, do you know?

6 A. I believe they did. I don't know what --

7 Q. Have you read them?

8 A. No, not all of them, no.

9 Q. Do you know which of the appraisals is correct
10 and which one is incorrect, in your opinion?

11 A. I believe that ours was.

12 Q. Why do you have that belief?

13 A. Because it was backed up by the company we
14 hired. Somebody else gives you an appraisal, you
15 didn't hire them. Why should I be concerned with that?

16 Q. So you assume that the appraiser that the
17 Feoffees hired is correct and that any appraisers hired
18 by other people are incorrect?

19 A. No, I'm not saying are incorrect, but I'm just
20 not familiar with them.

21 Q. You haven't tried to familiarize yourself with
22 those?

23 A. No, no.

24 Q. Do you tell me what your understanding is of

1 how LandVest arrived at a value of Little Neck?

2 A. I'm sure they had criteria. I'm not sure what
3 they were, but I'm sure they had criteria to establish
4 a fair market value, things like that.

5 Q. As part of the settlement agreement -- Let me
6 see if we have the same understanding how the
7 settlement agreement works. Is it your understanding
8 that as part of the settlement agreement, the Feoffees
9 will be converting the land and cottages to condominium
10 form?

11 A. That is, that is what we're -- The upcoming
12 court trial is going to be all about whether we can
13 sell it or not.

14 Q. That's true. So let me clarify my question.
15 Under the settlement agreement with the tenants, if the
16 court were to approve the sale, am I correct that what
17 would happen is that the Feoffees would obtain title to
18 the cottages and convert the cottages and land to
19 condominium form?

20 A. I believe that to be correct.

21 Q. And then the Feoffees would sell individual
22 lots to individual tenants, correct?

23 A. Yes.

24 MR. SHEEHAN: Objection.

1 Q. Let me, in view of the question, they would
2 sell individual condominium units to individual
3 tenants, right?

4 A. Yes.

5 Q. And each purchaser, each tenant who purchased
6 a condominium unit would have the exclusive use of the
7 lot that is shown on the maps of the lots of Little
8 Neck, each condominium buyer would have exclusive use
9 of his or her lot, right?

10 A. Yes.

11 Q. Do you think that each tenant should pay to
12 the Feoffees the fair market value of the condominium
13 unit that he or she is buying?

14 MR. SHEEHAN: Objection.

15 Q. You can answer.

16 THE WITNESS: You want me to answer?

17 MR. SHEEHAN: Oh, yeah. Answer the
18 question the best you can, yeah.

19 A. Please rephrase that question.

20 Q. Do you think it would be appropriate for each
21 of the tenants who is going to be buying one of these
22 condominium units to pay the fair market value of the
23 condominium unit that he or she is buying?

24 MR. SHEEHAN: Objection.

1 A. Yes.

2 Q. Is it your understanding that that is
3 accomplished by the settlement?

4 A. I believe it is. I don't know, you know. I
5 defer to my counsel on those questions.

6 Q. How long have there been discussions among the
7 Feoffees about the possibility of selling the real
8 estate at Little Neck to the tenants?

9 A. How long?

10 Q. Yeah.

11 A. Years, years.

12 Q. And that's a subject that came up well before
13 the litigation, right?

14 A. I believe so, yeah.

15 Q. And you said you were somewhat of a historian,
16 right?

17 A. Yes.

18 Q. And this was the oldest land trust in the
19 country, is that right?

20 A. Yes, active land trust.

21 Q. And were you aware of any restrictions that
22 had historically been imposed on selling the real
23 estate?

24 A. Yes.

1 Q. Tell me about that.

2 A. Charter says it shall not be sold and that's
3 why we're going to court to seek permission to do that
4 through the probate court.

5 Q. As a historian you valued this prohibition
6 against sale, didn't you?

7 A. I value anything that's historic until I see
8 something else that might be better.

9 Q. So during these discussions that were taking
10 place before the litigation about the sale you were
11 opposed, weren't you?

12 A. I wouldn't say I was opposed. I, you know, I
13 had a question, probably.

14 Q. When you testified in your deposition in
15 2008 -- I think it's 2008, right?

16 A. Yeah, somewhere back then.

17 Q. When you testified in your deposition in the
18 tenant litigation you said you opposed the sale, right?

19 A. I don't remember that, sorry.

20 Q. And at that time you felt that the charter
21 that said there could be no sale should be upheld,
22 right?

23 A. No. We're going to court in December, as you
24 well know, and if they allow us to sell it, I think

1 it's in the best interest of the town to do that as far
2 as money and revenues coming in to the schools.

3 Q. Suppose the court were not to approve --
4 Strike that. I'll get to this later.

5 When these discussions took place
6 historically about selling Little Neck in the years
7 before there was any litigation, say in the early
8 2000's, how did the various life Feoffees line up on
9 that issue?

10 A. Well, I think it was just discussed. I don't
11 think we lined up at all. It was discussed that, you
12 know, pros and cons. And at that time of the early
13 years I'm just sitting on the board listening and
14 trying to learn something and be convinced one way or
15 the other.

16 Q. Who was in favor of a sale in those early days
17 and who was against it?

18 A. I remember Don Whiston being one of them.

19 Q. In favor?

20 A. Yeah, in favor of sale.

21 Q. And the other Feoffees?

22 A. I don't remember the early days whether they
23 all came down on the same side of the issue or not.

24 Q. During the time that you were a Feoffee did

1 any of your fellow Feoffees own property at Little
2 Neck?

3 A. During my time, Foley did, I think, yeah.

4 Q. In fact, you stayed at his cottage?

5 A. Right.

6 Q. During the time you were a Feoffee?

7 A. Right.

8 Q. And did anybody in Don Whiston's family own a
9 cottage while you were a Feoffee?

10 A. They do now.

11 Q. He has a daughter there now?

12 A. Right.

13 Q. And didn't he have his parents there when you
14 first became a Feoffee?

15 A. No, they were gone.

16 Q. They were gone?

17 A. Yeah, that house was gone, yeah.

18 Q. Did you think it was a conflict of interest
19 for Jim Foley to own a cottage while he was serving as
20 a Feoffee?

21 A. No.

22 MR. SHEEHAN: Objection.

23 Q. Why not?

24 A. There was nothing written down that said he

1 couldn't.

2 Q. So you thought that was appropriate?

3 A. Didn't see any problem with it.

4 Q. And do you see any issues with Don Whiston
5 serving as a Feoffee at a time when his daughter is a
6 cottage owner?

7 A. No, I don't.

8 Q. Why is that?

9 A. I just don't see anything wrong with it.

10 Q. So when Jim Foley was serving as a Feoffee and
11 a cottage owner, does that mean he was both involved in
12 setting the rents and paying them?

13 MR. SHEEHAN: Objection.

14 A. I don't know, I don't know what he was doing.

15 Q. During the time that you have been a Feoffee
16 have there been discussions, for example, with town
17 bodies about changing the governance of the trust?

18 A. Yes.

19 Q. How long have those discussions been going on?

20 A. Year or two.

21 Q. Do you recall discussions even earlier than
22 that?

23 A. No.

24 Q. Have the Feoffees among themselves discussed

1 whether some, whether those governance changes should
2 be made?

3 A. It was discussed, yeah.

4 Q. And which of the Feoffees have you talked to
5 about that?

6 A. All of them.

7 Q. Is it fair to say that some of the Feoffees
8 are more receptive to changes in the governance than
9 others?

10 MR. SHEEHAN: And Peter, before you
11 answer that question, feel free to answer the question
12 with respect to conversations you have had with those
13 other Feoffees as long as they were not with me. Any
14 conversations that you had with other Feoffees in my
15 presence when we were talking about issues related to
16 the litigation, those are privileged and I don't want
17 you to testify as to those. But if you had
18 conversations with the Feoffees outside of my presence
19 on that issue, by all means, answer the question.

20 A. Yes. Well, the question was had we had
21 conversation about it.

22 Q. Yes.

23 A. Yes.

24 Q. Okay. And so you can exclude conversations

1 that Mr. Sheehan was at, but could you tell me which of
2 the Feoffees you have had conversations with about this
3 issue without Mr. Sheehan?

4 A. All of them.

5 Q. Okay.

6 A. I shouldn't say all of them. The four lifes.

7 Q. Yeah, all of the life Feoffees?

8 A. Yeah.

9 Q. And are there some of the Feoffees, life
10 Feoffees who, based on those conversations, are more
11 receptive to the idea of changing the governance of the
12 trust?

13 A. If you, if you -- I think you have to be more
14 direct in what you mean by that before I can answer
15 that.

16 Q. All right. Well, tell me what you have
17 discussed -- Tell me what Mr. Mulholland has said to
18 you about potentially making any changes in the
19 governance of the trust?

20 A. Well, they've all, we've all had discussions
21 about it. It's all been about whether we want to do
22 this or not. And I'll tell you right now, we don't
23 want to change the trust.

24 Q. So my question to you is are there any of the

1 Feoffees who have indicated to you that they would be
2 amenable to changing the trust?

3 A. Yes, there have some been some discussions
4 along that line, yes.

5 Q. Okay. Which of the Feoffees have related to
6 you in your private conversations that they would
7 personally be amenable to changing the trust?

8 A. Under certain conditions.

9 Q. Okay, under certain conditions.

10 A. Would be Mulholland and Whiston.

11 Q. And what conditions would they want to see to
12 change the trust?

13 A. There was talk of indemnification.

14 MR. SHEEHAN: Well, hold on. This is,
15 these are settlement discussions. I'm not going to let
16 you go there.

17 THE WITNESS: Okay, good.

18 MR. SHEEHAN: That's not right.

19 THE WITNESS: All right.

20 MR. PERRY: Off the record.

21 (Discussion off the record.)

22 Q. I understand that the Feoffees, if they were
23 going to agree to certain changes in governance, might
24 have a concern with how they are treated and make sure

1 they are treated fairly. But what I'm trying to ask
2 you about is discussions you have had with other
3 Feoffees about the appropriateness of making changes to
4 the trust, assuming that the right conditions were
5 present. Have any of the Feoffees told you that they
6 think it would be better for the town if the trust
7 governance was changed?

8 A. No.

9 Q. Why do you oppose changing the governance of
10 the trust?

11 A. I think it's not legal. I think you have no
12 standing.

13 Q. Okay. And what do you mean by that?

14 A. We are a private trust. I'm not an attorney,
15 but I got some knowledge of the law and how things work
16 and I just don't see how public can tell private what
17 to do.

18 Q. Now, is the trust, to your understanding, a
19 public charity?

20 A. We have, we have, what do you call it, filed
21 reports with the Attorney General.

22 Q. Is it your understanding that the trust for
23 the benefit of the schools is a public charity?

24 A. My auditor, our auditor has file reports with

1 the Attorney General's office.

2 Q. And does that lead you to believe that the
3 trust is a public charity?

4 A. No.

5 Q. So you don't think it is a public charity?

6 A. We have a superior court judge who says we're
7 private.

8 Q. Do you know what is meant by the term public
9 charity? Well, strike that.

10 Is the trust regulated by the Attorney
11 General's office?

12 A. No. It's a reporting requirement that we
13 fulfill.

14 Q. Do you know whether the Attorney General's
15 office has any authority over the conduct of charities
16 in Massachusetts?

17 A. I would think they do, yeah.

18 Q. Do you know whether that authority extends to
19 the Feoffees?

20 A. Specifically, no, I don't know.

21 Q. Now, you are in front of the court asking it
22 to alter the terms of the trust to allow a sale of the
23 property, correct?

24 A. That is one of the issues we're going to be

1 doing in December, yes.

2 Q. But you're saying that the court wouldn't have
3 the authority to institute -- Strike that.

4 There's pretty much no rules in place
5 regarding the governance of this trust, are there?

6 A. Rules?

7 Q. With regard to the governance of the trust,
8 the legislation that was passed does specify how
9 trustees are appointed, right, how Feoffees are
10 appointed?

11 A. Now?

12 Q. Yes.

13 A. Not the post.

14 Q. The existing.

15 A. Trust, okay.

16 Q. The existing trust through the legislation
17 passed a couple hundred years ago.

18 A. All right. There is a mechanism in place,
19 yeah.

20 Q. And is it your understanding that the probate
21 court would not be able to change that mechanism if
22 appropriate?

23 A. The judge in that court could decide that. I
24 believe they have the authority to go any way they want

1 to go based on evidence, but --

2 Q. All right. So other than the fact that you
3 said that, other than your opinion that it's not legal
4 to change it because you're a private trust, any other
5 reasons why you don't think the governance of the trust
6 should be changed?

7 A. I have reasons, yes.

8 Q. What are those?

9 THE WITNESS: May I answer?

10 MR. SHEEHAN: Sure.

11 A. I believe it to be a power grab by the town
12 that they can appoint their own people and control the
13 money.

14 Q. And you think that would be inappropriate?

15 A. I most certainly do.

16 Q. And you think it's better that the Feoffees
17 consisting of a majority of life Feoffees have the
18 power?

19 A. Yes.

20 Q. Do you think you're more qualified than the
21 town to choose the next life Feoffee?

22 A. Most definitely.

23 Q. And why is that?

24 A. Because I know what it entails.

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1 Q. And what does it entail?

2 A. I know what the Feoffees do and I know what I
3 do specifically and I don't think anybody in the town
4 has a clue what goes on to make those decisions.

5 Q. What kind of person would be needed to do what
6 you do?

7 A. Well, do you know what I do?

8 Q. Can you tell me? What do you do?

9 A. I'm the treasurer, I'm the manager of Little
10 Neck and I'm a board member also.

11 Q. Okay. And do you feel you have training and
12 skills that make you suitable to be treasurer?

13 A. Yes.

14 Q. And what training and skills are those?

15 A. Just, I know mathematics to a degree. That's
16 all. There's no magic to it, but there's a lot of
17 administrative problems involved with it.

18 Q. And do you think it's a good idea that
19 Feoffees should serve for life?

20 A. I've seen no logical definitive reason as to
21 oppose that.

22 Q. Do you believe the trustees should be
23 accountable to the town for the results of their
24 management of the trust?

1 A. I believe our fiduciary responsibility is to
2 give money to the schools when we have the money to
3 give them, which we have over the years.

4 Q. Do the Feoffees have a duty to maximize the
5 money available for the schools?

6 A. If we can.

7 Q. And have the Feoffees during the time you have
8 been a Feoffee done that, maximize the money available
9 for the schools?

10 A. Yes.

11 Q. So you see no problems with how the trust has
12 been administered since 1994?

13 A. No, I don't. And I might add, no one has told
14 us any reason.

15 MR. SHEEHAN: Off the record.

16 (Discussion off the record.)

17 Q. During the time you have been a Feoffee have
18 you been paid for your services?

19 A. I get paid as the treasurer and I get paid as
20 the, what do you call it, the manager.

21 Q. When did you begin to get paid?

22 A. When I assumed the position.

23 Q. Do you mean when you assumed those positions
24 replacing Mr. Whiston?

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1 A. Right.

2 Q. In those capacities?

3 A. Right.

4 Q. And was that a number of years ago?

5 A. Yes.

6 Q. What has been the pay you have received from
7 that time to the present?

8 A. Started out as a monthly stipend as treasurer,
9 I believe it to be 1,015 a month. Now it's 1,500 a
10 month. And the manager was, when I took it over was at
11 the time a forty hour position, which I was asked if I
12 would take the position due to the vacancy in the
13 manager's job and I said I would take it and I could do
14 it for twenty hours a week. So I took it for
15 twenty hours a week at \$25 an hour.

16 Q. That's \$500 a week?

17 A. Yes.

18 Q. Who did you succeed as manager?

19 A. Mr. Foley.

20 Q. What was Mr. Foley getting paid?

21 A. He was getting paid for forty hours a week.

22 Q. I take it from your testimony that you felt
23 that the work that Mr. Foley was doing you could do in
24 twenty hours a week?

1 A. Yes.

2 Q. So were there discussions among the Feoffees
3 about whether Mr. Foley was spending too much time at
4 the Feoffees' expense?

5 A. There were, there were some discussions.

6 Q. I mean, that was your personal opinion that he
7 was logging too many hours, right?

8 A. There was time -- There were times when the
9 sewer, what do you call it, the sewer system was being
10 put in that he was needed down there on almost a full
11 time basis.

12 Q. Right.

13 A. But as things evolved and that wound down, the
14 answer was no.

15 Q. Let me see if I can just summarize this.
16 There was a lengthy period of time when Mr. Foley was
17 being paid essentially at the rate of what, \$1,000 a
18 week?

19 A. Yes.

20 Q. You thought that was justified for part of the
21 time, but certainly not for the entire time that he was
22 being paid that amount?

23 MR. SHEEHAN: Objection.

24 Q. Is that fair? You can answer. He's just

1 preserving his --

2 MR. SHEEHAN: My objection. You can
3 answer.

4 A. Give me that one again.

5 MR. PERRY: Could you read back my
6 question, please?

7 (Question read back by the reporter.)

8 MR. SHEEHAN: Note my objection.

9 A. Did I think he was being paid more than what
10 he was -- Is that the question?

11 Q. Yes.

12 A. Yes, I believe.

13 Q. And you felt that for some of the period he
14 was being paid too much?

15 A. Yes.

16 Q. And you said you could do the same work for
17 half the amount?

18 A. When I was asked to take the position over,
19 yes.

20 Q. Let me just cover payments to other Feoffees.
21 So Mr. Foley you have, I think, covered that he had
22 been getting \$1,000 a week for some period of time,
23 right, when he was managing the property?

24 A. Right.

1 Q. After he ceased to be manager and you became
2 manager has he received any payments?

3 A. I think he, there was a little time at the
4 beginning of my take over of the position where he
5 would come down and familiarize me with the job, so to
6 speak.

7 Q. Right.

8 A. And he got some minimal payments there and
9 that was the end of it.

10 Q. Okay. And is Mr. Whiston getting any payments
11 at this time?

12 A. No.

13 Q. And Mr. Mulholland was getting some payments
14 at the time when he was chairman, is that right?

15 A. When he first took over as chairman, I believe
16 he was, yes.

17 Q. Who's chairman now?

18 A. Mr. Mulholland.

19 Q. So he's still perhaps getting those payments?

20 A. No.

21 Q. No longer?

22 A. No.

23 Q. Are you currently doing the management work
24 for Little Neck?

1 A. Yes.

2 Q. And how long have you been able to manage
3 Little Neck at the rate of \$20,000 a year?

4 MR. SHEEHAN: Objection.

5 A. I think I've been down there, I don't know,
6 two years now.

7 Q. Let me, that's a bad question, I'm sorry.

8 A. Okay.

9 Q. You have been doing, you have managed Little
10 Neck over the past two years?

11 A. I don't know exactly how long, but it's been
12 about two years.

13 Q. And you haven't used any outside management
14 company during that period?

15 A. No.

16 Q. During the period you have been managing
17 Little Neck, I assume that it's busier during the,
18 perhaps during the summer than it is during the off
19 season, right?

20 A. Yes and no.

21 Q. But in any event, the way it works is you just
22 fill a straight twenty hours a week and it all averages
23 out, right?

24 A. On occasions there are times when I would have

1 to work one or two hours over that, but, I mean, most
2 of the time it's twenty hours.

3 Q. So if you're getting \$500 a week, that's
4 26,000 a year, right?

5 A. Yeah.

6 Q. For that part of it?

7 A. Like, when I used to go to Florida for a
8 month, I didn't pay myself for that. So that was, we
9 deduct those four weeks or whatever time I was away,
10 you know.

11 Q. So suppose there was no sale of the property
12 and the Feoffees were to hire you to continue to manage
13 the property. What would be the amount that you'd need
14 to be paid to do that? Would it be around 25, 26,000 a
15 year?

16 A. Whatever I'm getting now.

17 Q. Yeah.

18 A. Yeah.

19 Q. And then in addition, that doesn't include
20 your work as treasurer, right?

21 A. No. Treasurer is different.

22 Q. And what do you do as treasurer beyond what
23 you do as manager?

24 A. As treasurer I have to receive all the checks

1 that come in on a monthly basis or actually a daily
2 basis for the rents, the taxes.

3 Q. Right.

4 A. And the vendors that we have to perform
5 certain duties out there, like repair this or fix that
6 or, you know, all those people have to be paid,
7 landscaping, sewer, maintenance, sewer. Any problems
8 of that, and we have the people come in and fix them.
9 Those bills have to be paid. And I maintain this
10 through a QuickBooks program on the computer and
11 everything is in the computer. And manage the, what do
12 you call it, the bank account for the Feoffees. And
13 what else? I don't know.

14 Q. So I just want to get on the record how you're
15 dividing the management work from the treasurer work.

16 A. Management is like the nuts and bolts down
17 there at the scene.

18 Q. Tell me what that entails?

19 A. The phone would ring and somebody has got a
20 problem, I've got to act on it. Or, you know, the
21 computer is there. It tells me whether the system is
22 operating, whether it's malfunctioning or functioning,
23 how well it's functioning, you know, and I have to stay
24 on top of that. Alarms go off if something goes wrong.

1 I have to respond and fix them, whatever is the
2 problem.

3 Q. Are you physically located at Little Neck for
4 this job?

5 A. Yeah, 37 Bay Road.

6 Q. And that's some kind of headquarters building?

7 A. Yes, what they call the MIS building.

8 Q. How many hours a week do you spend there?

9 A. About twenty hours a week.

10 Q. And do you also do the bookkeeping while
11 you're there?

12 A. Only if I bring my stuff with me in case
13 somebody inquires. And it's very, it's not a big deal
14 every day, but I've spent at least two hours a day at
15 home entering stuff, paying bills, things like that.

16 Q. And you get 1,500 a month?

17 A. Yeah.

18 Q. So that's 18,000 a year, right?

19 A. Yeah.

20 Q. For that?

21 A. Yeah.

22 Q. So the total you're getting is in the range of
23 44,000 a year for doing the, essentially, the
24 bookkeeping and the management, right?

1 A. Right.

2 Q. And that would be a fair amount that the trust
3 can expect to spend in the future if the court doesn't
4 approve the sale for the bookkeeping and the management
5 function, correct?

6 A. Yes.

7 Q. Before you were a Feoffee had you ever done a
8 paid police detail at Little Neck?

9 A. Yes.

10 Q. And after you were a Feoffee were there paid
11 police details at Little Neck, not by you, just
12 generally?

13 A. Yes.

14 Q. How often -- During the time you have been a
15 Feoffee what was the practice with regard to how
16 frequently there would be a paid police detail at
17 Little Neck?

18 A. During the summer months it's every weekend.

19 Q. What hours?

20 A. Three, four hours in the daytime and
21 eight hours on the nights, like Friday, Saturday
22 nights.

23 Q. So how many hours total in a weekend?

24 A. 8, 16, 20, 24 probably.

1 Q. So there would be 24 hours per weekend for how
2 many weeks?

3 A. From Memorial to Labor Day, so whatever that
4 comes out to be. And then if you have a holiday, that
5 increases the coverage.

6 Q. Somewhere between 12 to 14 weeks, right?

7 A. Yeah, about that.

8 Q. And then also holidays like July 4th?

9 A. Yeah, some. If you got a Monday holiday, then
10 that necessitates somebody on a Sunday night to be
11 there and maybe even on the daytime of the Monday. But
12 those aren't that many, but they do happen.

13 Q. How often did you serve as the police detail
14 person at Little Neck?

15 A. Not too often, because in my position as the
16 deputy chief details didn't come to me on a rotating
17 basis like they did to the regular people. They came
18 to me when nobody else would take it, then they'd say
19 do you want to work? And I'd say if I wanted it, I'd
20 say yes. So I wasn't there like every Friday or every
21 Saturday or every Sunday. I wasn't there. It was
22 sporadic.

23 Q. So it was your police colleagues who got most
24 of the police details?

1 A. Oh, yeah, sure.

2 Q. Did people like getting those details?

3 A. Yeah.

4 Q. Are those considered plum jobs?

5 A. Well, they're considered a detail and it's
6 extra money and that's what they do it for.

7 Q. And the police person would stand down by the
8 pillars at the entrance to Little Neck and check people
9 going in?

10 A. Yeah.

11 Q. Now, in your experience you have seen gated
12 communities and the like in other places, haven't you?

13 A. Yes.

14 Q. And have you noticed that in downtown Boston
15 some of the condominium complexes have security people,
16 right?

17 A. Yes.

18 Q. Have you noticed that they typically are
19 staffed by security guards?

20 A. Yes.

21 Q. What is the reasoning for using a police
22 detail at Little Neck rather than hiring a security
23 guard type person to do it?

24 A. Security guards have no authority.

1 Q. Are they less expensive?

2 A. Yes.

3 Q. And in your experience aren't other places
4 that are attempting to keep members of the public out
5 able to use security guards?

6 A. Whatever they want to do. That's not us.

7 Q. So you don't think it would be a reasonable
8 cost savings to use security guards at substantially
9 less than \$20 an hour rather than police details at \$48
10 an hour or higher?

11 A. You have a person that's a police officer,
12 when he puts his hand up to stop, he has the authority
13 to stop. And he has the authority to arrest if you go
14 by them. He can forbid you to go in there. He's also
15 trained in CPR and first aid and firearms and
16 everything else that security guards are not.

17 Q. Have the Feoffees ever attempted to provide
18 these services through a security firm to see whether
19 that worked out?

20 A. No.

21 Q. You said you'd known Jim Foley a long time
22 before he became a Feoffee?

23 A. Yes.

24 Q. Is he a personal friend of yours at this

1 point?

2 A. He's an acquaintance.

3 Q. Did you see any conflict of interest in your
4 part of serving as a Feoffee when other Feoffees held
5 cottages?

6 A. Did I see any what?

7 Q. Let me rephrase that. I've asked you earlier
8 whether you saw it as a conflict of interest that other
9 Feoffees own cottages and you said no.

10 A. Right.

11 Q. Whether Jim Foley owned a cottage, right?

12 MR. SHEEHAN: Objection.

13 Q. Did it pose any difficulty for you that when
14 you were making decisions affecting the cottage owners
15 you knew that Mr. Foley owned a cottage?

16 MR. SHEEHAN: Objection.

17 A. It didn't, didn't faze me, no.

18 Q. And has it affected, do you find it a problem
19 at all for you that when you're making decisions
20 concerning the cottage owners, you know that Mr.
21 Whiston has a daughter who's a cottage owner?

22 MR. SHEEHAN: Objection.

23 A. Doesn't bother me.

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

1 (Brief recess.)

2 Q. When you first became a Feoffee in 1994 you
3 went to annual meetings of the Feoffees?

4 A. Yes.

5 Q. Did you do anything else during those years as
6 a Feoffee?

7 A. During the early years there was only like one
8 meeting a year and that was the annual meeting.

9 Q. Do you know how much is being charged in rent
10 right now to those people who have signed leases?

11 A. Yes.

12 Q. What are the amounts?

13 A. For a seasonal it's 2,425 per quarter and for
14 a full time it's \$2,700 per quarter.

15 Q. All right. And that comes out to, if you
16 multiply those by four, we get 9,700 and 10,800, right?

17 A. Right.

18 Q. So that would be the annual rents?

19 A. Right.

20 Q. How long has it -- Strike that.

21 When the tenants, when the tenants pay
22 their rent or use and occupancy charges, do they do
23 that quarterly?

24 A. The tenants pay monthly.

1 Q. Monthly?

2 A. Yeah.

3 Q. Before the litigation with they, do you know
4 on what period they were being billed and paying rent?

5 A. As far as I can remember, it's always been by
6 the month for the tenants.

7 Q. But you weren't handling it, were you, back
8 then?

9 A. No. Mr. Whiston was doing it all.

10 Q. Do you consider the rents of 9,700 and 10,800
11 being charged to the lessees to be fair?

12 A. Yes.

13 Q. Are those the rents you think tenants should
14 have been paying, too?

15 A. I believe so, yes.

16 Q. And if you were, if the current tenants were
17 unwilling to pay those rents, do you think there would
18 be any difficulty in finding other people who wanted to
19 move into Little Neck and pay those rents?

20 MR. SHEEHAN: Objection.

21 A. Do I think there would be any difficulty?

22 Q. Right.

23 A. In finding people?

24 Q. Right.

1 A. In my opinion only.

2 Q. Right.

3 A. I don't think there would be a problem.

4 Q. You think the market can support those rents,
5 right?

6 A. Fair market value, right.

7 Q. There may be some tenants who have difficulty
8 affording them, is that true?

9 A. It could be true, yeah.

10 Q. But you think if that were true, you think
11 there would be other people who would have the means
12 and the willingness to pay those rents?

13 A. Yes.

14 Q. The Feoffees have never in fact collected from
15 all the cottage owners rents on the order of 9,700 a
16 year for seasonal use, right?

17 A. They have not collected it?

18 Q. From the cottage owners generally. I can see
19 you don't understand my question, so let me back up.
20 Prior to the litigation tenants were paying something
21 around 5,000 a year in rent?

22 A. That's probably true.

23 Q. All right. And they refused to pay the
24 imposed rent increases 9,700 a year for seasonal use,

1 right?

2 MR. SHEEHAN: Objection.

3 Q. They refused to agree to that rent, is that
4 true?

5 A. I believe so, yeah.

6 Q. If the Feoffees were able to collect from all
7 of the cottage owners the amount that you consider to
8 be a fair rent for the property, is there any reason
9 that you wouldn't be able to continue with the ongoing
10 rental of Little Neck in a profitable way?

11 A. A lot of things are entering into that. I
12 mean, ongoing lawsuits, expenses. If that all went
13 away, that would be money that would be taken in and
14 money we could give to the schools.

15 Q. Yeah. So what I'm asking you is if the
16 litigation were to be resolved and the Feoffees were to
17 collect fair market rent, would it be viable to
18 continue to rent Little Neck?

19 A. Would it be viable to continue to rent it, in
20 other words, the sale wouldn't be a sale?

21 Q. Yes.

22 A. It would be viable, I would think.

23 MR. PERRY: Off the record.

24 (Discussion off the record.)

1 Q. And do you know of any reason why the Feoffees
2 wouldn't be able to collect market rents after the
3 litigation is resolved?

4 A. Well, that's a speculative question. I don't,
5 I can't answer that.

6 Q. Well, what reason would there be that the
7 Feoffees would be unable to collect market rents for
8 its real estate after the litigation is resolved?

9 A. I have no knowledge of that, what that might
10 be.

11 Q. Have you familiarized yourself with the claims
12 that the tenants made against the Feoffees in the
13 litigation?

14 A. Somewhat.

15 Q. Did you evaluate those claims?

16 MR. SHEEHAN: When you're answering that
17 question, Peter, I don't want you to take into account
18 conversations that you and I have had or that I have
19 had with Feoffees. If you have made an independent
20 evaluation without the advice of legal counsel as to
21 the claims, feel free to answer.

22 MR. PERRY: Let me withdraw the
23 question, because I don't really want an answer in a
24 way that I can't understand what he's answering.

1 Q. You said you have somewhat evaluated the
2 claim. Okay. Let me ask you this question.

3 MR. SHEEHAN: Object to the form. I
4 don't think he said he evaluated it. I think he said
5 he's familiar with the claim.

6 MR. PERRY: Right, right.

7 Q. You said you somewhat familiarized yourself
8 with the claims. I stand corrected. Are you aware of
9 any valid claims being made by the tenants against the
10 Feoffees?

11 MR. SHEEHAN: Same cautionary
12 instruction.

13 A. No.

14 Q. Do you expect to prevail if the litigation
15 continues, the superior court litigation? Do you
16 expect to prevail in the superior court litigation
17 against the tenants if it were to go back to superior
18 court?

19 A. Yes.

20 Q. In that litigation or in connection with that
21 litigation is it your understanding that the Feoffees
22 have a claim for use and occupancy payments from the
23 tenants?

24 A. Yes.

1 Q. And is it your understanding that if the
2 Feoffees were to prevail in the superior court
3 litigation, there would be several million dollars in
4 back rent that could be collected from the tenants?

5 A. I'm aware of an escrow that's being held.

6 Q. Right.

7 A. Which was a compromise part of the, what do
8 you call it, the suit -- stipulation -- Is that what it
9 is, a stipulation?

10 Q. Right. You know that there's some money being
11 held in escrow under that stipulation, right?

12 A. Yes.

13 Q. Now, the tenants stopped paying into the
14 escrow account when the settlement agreement was
15 signed, is that right?

16 A. Yes.

17 Q. But the Feoffees would still want to collect
18 additional use and occupancy charges from the tenants
19 for the period after the settlement agreement if the
20 court were to reject the sale, right?

21 A. I can't answer that question, because it's, it
22 was an agreement made.

23 Q. I think what you're saying is that you don't
24 know whether the agreement allows that or not?

1 A. Right.

2 Q. But if the agreement allowed additional rent
3 to be collected in the superior court for the period
4 from January 2010 to the present, and you, the Feoffees
5 would of course want to do that, right?

6 A. If it allowed it.

7 Q. So if the superior court litigation were to
8 continue, you have told me that you're aware that the
9 Feoffees have a potential right to recover a
10 substantial amount of additional rent, right?

11 A. I believe that's, yeah.

12 Q. All right. Were there any financial claims
13 that the tenants were making against the Feoffees for
14 money that you were concerned about?

15 A. No.

16 Q. Now, with regard to the wastewater system that
17 got built, at the time it was being constructed was it
18 your intent that the tenants would pay for the costs of
19 the construction?

20 A. At the time it was being built?

21 Q. Yes.

22 A. Were they going to pay for it?

23 Q. Yes, were you expecting that they would pay
24 for it?

1 A. Yes.

2 Q. And that was communicated regularly by the
3 Feoffees to the tenants, wasn't it, the expectation
4 that the tenants would be paying for it?

5 A. I don't know about that regularly
6 communicated, I don't know.

7 Q. Did you understand that the wastewater system
8 was being built in a sense as an accommodation to the
9 tenants because they didn't want to put in the tight
10 tanks?

11 MR. SHEEHAN: Objection.

12 A. It was, it was a -- The reason it was done --
13 Well, it ultimately was done with the collection being
14 under the ball field in big tanks.

15 Q. Right.

16 A. As opposed to individual tight tanks.

17 Q. Right.

18 A. Because there was a public safety issue with
19 trucks running up and down all those hills. It was a
20 public safety issue.

21 Q. But the tenants had vigorously opposed the
22 installation of individual tight tanks at their own
23 expense in favor of this large, the large holding tanks
24 under the ball field?

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1 A. They objected to it, yes.

2 Q. They objected to the tight tanks?

3 A. To the individual tight tanks, yeah.

4 Q. Yes. I'll move on to a different subject.

5 Are you aware of some situations out at Little Neck
6 where individuals bought cottages and then largely
7 demolished them and put something new up? That's
8 happened, right?

9 A. Yes.

10 Q. What's the most recent time that you can think
11 of when that happened?

12 A. There's one that's just finished up.
13 Actually, there's still some stuff going on on King's
14 Way with a tear down and a build up.

15 Q. Okay. Who sold that unit and who bought it?

16 A. Addison is the owner. Who -- I don't remember
17 who the seller was.

18 Q. Do you remember the address?

19 A. I think it's 11 King's Way.

20 Q. Do you know when that cottage transferred
21 hands?

22 A. About a year ago.

23 Q. Do you remember the price at which it sold?

24 A. No.

1 Q. And what kind of a lot is 11 King's Way?

2 A. A standard lot. They're all pretty much the
3 same.

4 Q. Yeah, but some of them have better views than
5 others, right?

6 A. Oh, yeah. Well, actually, everybody's got a
7 view. I mean, it's hard to believe. You're sitting
8 here in Boston thinking about it, but I'm telling you
9 from being down there, everybody's got a view.

10 Q. Even the interior lots have a view?

11 A. Yeah, they have a view, yeah.

12 Q. It's a desirable place to live?

13 A. I think so.

14 Q. Do you think it has some amenities that, even
15 though it's dense, do you see some amenities there that
16 are superior to where you built at Great Neck?

17 A. Yes.

18 Q. And tell me some of those.

19 A. They have a private beach.

20 Q. Private beach at Little Neck?

21 A. Right.

22 Q. What about the underground utilities?

23 A. It's all up underground utilities.

24 Q. How does that affect the atmosphere and the

1 views?

2 A. Well, you don't have any light poles.

3 Q. Up at Great Neck there's some horrendous
4 looking utilities all over the place, right, wouldn't
5 you say?

6 MR. SHEEHAN: Objection.

7 A. Well, there are, what do you call it,
8 utilities all over the place, but Little Neck it's not
9 true.

10 Q. Great Neck, I mean, wouldn't you say that the
11 utility lines are somewhat unsightly?

12 A. Yeah, I would, yeah.

13 Q. There's a large water tower there?

14 A. Yes.

15 Q. And Little Neck is pristine, isn't it?

16 A. I think so.

17 Q. So even though it's dense, it's very popular?

18 A. Yeah. They have their own, what do you call
19 it, recreation for the kids on the property, which
20 other places don't. The beach. They have a big pier
21 that they can dock their boats near there and fish if
22 they want to. So there's a lot of things that, a
23 community center, you know.

24 Q. Yeah. Apart from the tear down at 11 King's

1 Way, can you think of some other tear downs that have
2 been done?

3 A. Renovations I'm aware of.

4 Q. Right, but any more tear downs?

5 A. Actually --

6 Q. Because tear downs are --

7 A. During my tenure.

8 Q. Right.

9 A. I'm only aware of one. That's the Addison
10 house.

11 Q. Okay.

12 A. There were other ones torn down and built up,
13 but I wasn't there then.

14 Q. So the only recent one that you are aware of
15 was at 11 King's Way, which was maybe a year ago?

16 A. Yeah.

17 Q. And we'll find the record, I think. And you
18 were telling me that everybody's got a view. Can you
19 tell me what kind of parcel 11 King's Way as far as
20 whether it's interior or first row?

21 A. Well, Little Neck's a hill.

22 Q. Right.

23 A. And then there's the one side is the Ipswich
24 River.

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1 Q. Right.

2 A. The other side is the bay.

3 Q. Right.

4 A. Ipswich Bay.

5 Q. Right.

6 A. And they're on the river side and their view
7 is of the river and Crane's Beach. That's across the
8 river.

9 Q. Right.

10 A. And they have a view of that and a view of the
11 river. Actually, you got one, two, they got two views,
12 two side views there. Most everybody does, like I say,
13 you know, maybe looking at the cove, maybe looking at
14 the river, and maybe looking at Crane's Beach or Plum
15 Island, but somebody got a, somebody got a view.

16 Q. Do you know this person Addison?

17 A. I'm somewhat familiar with him, yeah.

18 Q. Just from what his coming to you for, to talk
19 about the rebuilding?

20 A. Yeah.

21 Q. And where is Mr. Addison from?

22 A. I want to say Winchester, but I'm not sure.

23 Q. And is he planning to, as far as you know,
24 does he have a family?

1 A. I don't know what their family situation is.

2 Q. Did he have to enter into a lease when he
3 bought the cottage?

4 A. Yes.

5 Q. I'll move on to a different subject. In your
6 prior deposition I saw that you alluded to some
7 litigation that apparently took place with the
8 professional engineering firm that had been involved
9 with the wastewater plant?

10 A. Yes.

11 Q. So that firm was Lombardo Associates?

12 A. Yes.

13 Q. Tell me what happened. I don't know anything
14 about this litigation. What was the litigation?

15 A. I don't know if it was litigation, but an
16 issue came up that we had spent too much money on the
17 sewer system and we were being criticized by certain
18 factions that a lot of money was spent that shouldn't
19 have been spent. So in order to counteract that, we
20 hired a forensic engineer who came in and examined the
21 thing from top to bottom, papers, books, whatever. And
22 he, in his professional opinion, said that the job was
23 done within the parameters of low, high, was done in
24 the middle of what it would cost. In other words, he

1 said there was no indication of wrongdoing on the part
2 of the engineers charging more than they should have
3 charged.

4 Q. When I read your transcript it was reading as
5 though there actually was some kind of a case brought
6 by Lombardo to get their fees.

7 A. Yeah. That, I think that was -- I think we --
8 I wasn't involved in it at the time, but I think they,
9 what do you call it, they held back some money that was
10 due him.

11 Q. The Feoffees didn't pay Lombardo?

12 A. Some of it, I guess toward the end. And once
13 the report came out and said he was, he did it right,
14 then they released it.

15 Q. So when the monies were being withheld by the
16 Feoffees and you hired this forensic engineer were you
17 hoping to find out that everything was fine or were you
18 hoping to support the claim that no money had to be
19 paid?

20 A. We wanted to find out exactly what was going
21 on as far as the allegations, were they true or not.
22 So it came out that nothing was wrong.

23 Q. Okay. Who was your lawyer in connection with
24 that effort?

1 A. I think it was Greenough at the time. I think
2 it was Greenough. Bill might have been involved in
3 that, too. I don't know.

4 Q. And was there --

5 A. It was two years ago.

6 Q. Was there a court case brought by Lombardo for
7 his fees?

8 A. I'm not sure.

9 MR. PERRY: Off the record.

10 (Discussion off the record.)

11 Q. And the report was that the fees were fair or
12 proper and the amount was paid, right?

13 A. Right.

14 Q. With regard to the entity that was set up with
15 regard to the wastewater plant, this LNWS?

16 A. Right.

17 Q. Which is I guess an LLC?

18 A. Yeah, I guess it is.

19 Q. Do you have any understanding of why that was
20 set up other than the fact that Mr. Greenough suggested
21 that you do so?

22 A. Not really. I know they wanted to break it
23 out as a separate thing.

24 Q. Was that because of some kind of concern about

1 liability issues, perhaps?

2 A. Could be. I'm not sure. I never really
3 concerned myself with it. I just operated it, that's
4 all.

5 Q. Did LNWS ever pay any compensation to any of
6 the individuals who serve as life Feoffees?

7 A. No.

8 Q. So none of the compensation to Mr. Foley was
9 run through in LNWS?

10 A. No.

11 Q. Correct?

12 A. Correct, yeah.

13 Q. Do you remember when, that some notices went
14 out to the tenants in June 2006 in which they were told
15 that their tenancies at will were ending?

16 A. Yeah, there were notices sent out, yeah.

17 Q. And they were also offered an opportunity to
18 sign a lease, correct?

19 A. Yes.

20 Q. Had there been negotiations for quite a long
21 time with the tenants about what those leases would
22 look like?

23 A. There were negotiations, I know.

24 Q. And it was before that, right?

1 A. I'm not sure. I mean, I didn't get involved
2 in leases.

3 Q. Let me show you -- The reason I asked, let me
4 mark as Exhibit 1 to your deposition some meeting
5 minutes that I think you prepared.

6 (Foote Exhibit 1 marked for
7 identification.)

8 Q. Let me show you Exhibit 1 and I ask you if
9 that is a copy of meeting minutes that you were
10 involved in, that you prepared yourself?

11 (Document handed to the witness.)

12 A. Yes, it looks like something I prepared, yes.

13 Q. All right. And I'll remind you that the date
14 that the ultimate notices to quit are dated that went
15 to the tenants was June 28th, 2006, quite a bit later.
16 Are you with me?

17 A. Yeah, I'm just looking.

18 Q. You understand this is October 2005, right?

19 A. Right, right.

20 Q. But do you recall that the notices to
21 terminate the tenancy, those went out more than
22 six months later in 2006, right?

23 A. That's possible. I'm not sure, 100% sure.

24 Q. In this meeting minute there's a reference to

1 Mr. Gottlieb said they'd hired a top notch litigator
2 law firm and that they will litigate over the proposed
3 leases if the Feoffees don't change the terms. Do you
4 see that in the last part of your minutes?

5 A. I see that, yes.

6 Q. And just to put this in context, do you recall
7 that the superior court litigation didn't start until
8 December 2006?

9 A. I'm not sure of the date, but that's possibly
10 correct.

11 Q. I mean, if you would accept that for the
12 moment.

13 A. All right.

14 Q. And I'll represent to you that the notices to
15 terminate the tenancies went out in June 2006 and that
16 the litigation was filed the end of 2006, okay? So was
17 this October 2005 meeting the first time you had heard
18 a threat of litigation from any of the tenant leaders?

19 A. I'm not sure if it was the first time or not.
20 I can't -- I don't know.

21 Q. Were there negotiations with the tenants in
22 attempt to agree upon lease terms between October 2005
23 and June 2006 when the tenants were provided with
24 notices that their tenancies were being terminated?

1 A. Were there negotiations?

2 Q. Were there negotiations with the tenants in
3 that period?

4 A. Not with me.

5 Q. Okay. Who was handling this for the Feoffees?

6 A. I can't recall if it -- Probably the
7 attorneys, the attorneys involved.

8 Q. Did you have any dealings yourself with Mr.
9 Gottlieb?

10 A. Back then, no.

11 Q. What did you think when he was threatening to
12 bring the litigation against the Feoffees?

13 A. I didn't think much of it.

14 Q. Why not?

15 A. Some people are, you know, throw threats
16 around for the sake of throwing threats around. You
17 know, I'm just not, not affected by that stuff.

18 Q. Ultimately, the tenants brought a lawsuit,
19 right?

20 A. That's true.

21 Q. And you read it?

22 A. I familiarized myself with it. I can't quote
23 it chapter and verse to you.

24 Q. No. How did you get served with it?

1 A. I think from the attorneys.

2 Q. Okay. Did you read in the lawsuit language
3 that said that certain claims were only made against
4 the life Feoffees and not against the selectmen?

5 A. I don't remember that.

6 Q. Have you had any discussions with Mr.
7 Mulholland about any concerns he had with having his
8 personal assets be at risk?

9 A. Have I with him?

10 Q. Yes.

11 A. About that?

12 Q. Yes.

13 A. Really know, no.

14 Q. Have you had any discussions with any of the
15 Feoffees outside of the presence of Mr. Sheehan about
16 concerns that they had that the tenants might come
17 after personal assets of the Feoffees?

18 A. I think there was some talk about it, but I
19 mean, collectively we're all object of the lawsuit,
20 Feoffees collectively are, not individually.

21 Q. But what talk was there about your personal
22 assets being potentially at risk?

23 A. I don't remember any talk about it myself.

24 Q. Right.

1 A. Because I was assured that it was not the
2 case. If the other guys had something to say, I don't
3 know, I'm not aware of it.

4 Q. Did you hear any of the other Feoffees say
5 something about it? Because I think you just told me
6 you did.

7 A. Yeah.

8 Q. What did you hear?

9 A. That they sometime, that they might be worried
10 about they're going to be sued individually, but you
11 know, they were assured that it wasn't that way.
12 Counsel advised us that.

13 Q. Well, counsel --

14 MR. SHEEHAN: Please don't, please don't
15 get into issues, Steve. I'm going to ask you --

16 Q. Let me try this. After you had consulted with
17 counsel you were comfortable that the suit was not
18 structured in such a way as to put your assets at risk,
19 is that right?

20 A. Yes.

21 Q. But other Feoffees didn't seem so comfortable
22 with it, right?

23 A. I think they all did after a while.

24 Q. Who were the ones that were concerned about

1 this issue?

2 A. I, I'm not 100% sure. I don't really want to
3 say.

4 Q. To the best of your recollection who were the
5 Feoffees that who you thought were concerned about that
6 issue?

7 A. I think Mr. Mulholland was. I think -- I
8 really can't be sure on anybody else. I think he was
9 the only one that was worried about it.

10 Q. Were the two Feoffees with the most assets Mr.
11 Mulholland and Mr. Whiston?

12 A. That could be. And I don't know what they
13 have, but that could be true.

14 Q. I mean, your general understanding would be
15 that they may have some family money?

16 A. Yeah, yeah.

17 Q. After the, after the tenants were told that
18 their tenancies were going to end if they didn't sign
19 the leases, did any of them stop making payments that
20 they were required to make to the Feoffees, like taxes?

21 A. No. I mean, stuff doesn't come in on a
22 regular basis like it's supposed to. Some people pay
23 on time, some people are late, but, I mean, nobody said
24 to me, I'm not going to pay you because of this or

1 that, you know.

2 Q. You don't remember that happening before the
3 stipulation was entered into?

4 A. I don't think so.

5 Q. How long have you been treasurer?

6 A. Since Mr. Whiston stepped down, so that was --
7 I don't know. It was a few years back. You have got
8 that somewhere.

9 MR. PERRY: Let me mark as Exhibit 2
10 some meeting minutes.

11 (Foote Exhibit 2 marked for
12 identification.)

13 Q. Are those a copy of a meeting minute that you
14 prepared?

15 (Document handed to the witness.)

16 A. I see what it is, but I'm not sure if it's
17 something I generated or not. It could be. It says
18 treasurer report, but I mean, I can't say 100% sure
19 that somebody else didn't do that.

20 Q. This is, if it helps, this was part of an
21 exhibit to your prior deposition where Mr. Sheehan had
22 come to the deposition, I think, with the meeting
23 minutes and they were all attached as one exhibit,
24 so --

1 A. Then maybe it was, but like I say --

2 Q. If you look down at this report, it states
3 that they were delinquent taxes owed of \$23,000 from
4 2006.

5 A. Yeah.

6 Q. That's not a normal amount of delinquency,
7 right?

8 A. Not now, no.

9 Q. Wasn't that because some of the tenants were
10 refusing to pay even the taxes in view of the issues
11 that had arisen with the Feoffees?

12 A. If anybody, if anybody does not pay their
13 taxes or their rent on time --

14 Q. Right.

15 A. I am on the phone and I'm calling them up to
16 find out why. And a lot of times they just forget and
17 I get it the next couple of days.

18 Q. Do you remember sending out a series of
19 notices to quit in the fall of 2006 because people were
20 refusing to pay taxes?

21 A. I don't send out notices to quit.

22 Q. Do you recall having the attorney do that?

23 A. The attorney would send out some, yeah,
24 notices to quit.

1 Q. Did you ever personally do an evaluation as to
2 whether the schools would be better off financially
3 under a sale situation versus a continued rental at
4 market rents?

5 A. Did I do an evaluation?

6 Q. Yes.

7 A. No.

8 Q. Do you know if anybody else did?

9 A. I think it's been discussed and I think --

10 Q. Outside of discussions with counsel are you
11 aware of anybody who's done an evaluation of that for
12 the Feoffees?

13 A. No.

14 Q. Under the settlement agreement with the
15 tenants do the Feoffees get to collect the rents that
16 are alleged to be owed by the tenants over and above
17 the roughly 5,000 a year that they were paying?

18 A. I'm not quite sure I know what you mean.

19 Q. I think we agreed that the tenants were, have
20 been paying substantially less for use and occupancy
21 than the \$9,700 a year for seasonal use or \$10,800 a
22 year for year round use that the Feoffees are trying to
23 collect, right?

24 A. Yes.

1 Q. And then they were making some payments into
2 of the difference into escrow?

3 A. Yes.

4 Q. Under the settlement agreement those escrow
5 funds are effectively given back to the tenants to use
6 as a down payment on their purchase, right?

7 A. I believe so, yes.

8 Q. All right. And therefore, as part of the
9 settlement, the Feoffees are not collecting any
10 additional rent from those tenants, right?

11 MR. SHEEHAN: Objection.

12 A. Are they making escrow payments now? No.

13 Q. Well, do you know what the purchase price is
14 for the property?

15 A. There's been two or three discussed.

16 Q. Do you know what the current one is under the
17 agreement, do you recall?

18 A. Yes.

19 Q. What's it?

20 A. 29.1.

21 Q. And this purchase price of 29.1 million, that
22 includes the escrow amount, right?

23 MR. SHEEHAN: Objection.

24 A. I don't know what it includes. I think it's

1 what they're paying collectively for the land.

2 Q. Do you know if the Feoffees are giving any
3 money back to the leaseholders, the lessees as part of
4 this sale?

5 A. If the sale goes through?

6 Q. Yes.

7 A. I believe they're going to be getting some
8 money back.

9 Q. All right. So do you consider the real
10 purchase price to be \$29 million or in your mind do you
11 think it's a lower figure because of rebates and so
12 forth that the Feoffees are provided?

13 MR. SHEEHAN: Objection.

14 A. I don't want to get into that, because all I
15 know about is the 29.1. The other stuff will surface
16 when it happens, if it happens.

17 Q. When the Feoffees collect that 29.1 million
18 for the sale of the property, do they also get to
19 collect the rent that they claim is owed by the
20 tenants?

21 A. I don't know.

22 Q. And of this \$29.1 million that the Feoffees
23 collect, do they have to give back some \$800,000 to the
24 lessees?

1 MR. SHEEHAN: Objection.

2 A. I don't know that, sir.

3 Q. Okay. And who's paying for the cost of the
4 condominium declaration under the settlement agreement?

5 A. I don't know.

6 Q. Do you know how much that cost will be?

7 A. No.

8 Q. Before the problems arose with the tenants
9 that led to the litigation and putting aside the whole
10 wastewater system project, has there been much need for
11 lawyers on the part of the Feoffees?

12 A. Since when?

13 Q. Well, did the Feoffees traditionally spend
14 significant amounts on lawyers before the litigation
15 occurred?

16 A. No.

17 Q. And if there were no litigation, how much
18 money on a continued rental basis would have to be
19 spent, do you think, on lawyers?

20 A. If --

21 MR. SHEEHAN: Objection.

22 Q. What's your best estimate of a legal budget if
23 you didn't have the litigation?

24 A. I would say as needed.

1 Q. And what would you budget for that as
2 treasurer?

3 A. Probably set aside enough just to, you know,
4 because, I mean, you don't know how these things go.

5 Q. Right.

6 A. They might be over quickly. They might be
7 long in duration. You might have a small amount in
8 there just to be able to call them up and be able to
9 pay them and if it goes to something else, you have
10 another meeting and you decide, you know.

11 Q. So you really can't give a figure for an
12 appropriate amount to set aside for a legal budget if
13 there were no litigation?

14 A. Right now, no. I'm sure I could if I could
15 really sit down and analyze it, but right now, no.

16 Q. Would you look at historically what had been
17 spent before the litigation arose to arrive at a
18 number?

19 A. Well, there was no suit going on. It's going
20 to skew everything the other way.

21 Q. Okay. How many suits have there been that
22 you're aware of since you have been a Feoffee?

23 A. Two, I believe.

24 Q. And what are those?

1 A. That's the one we're going to superior, what
2 do you call it, not superior --

3 Q. Probate.

4 A. Probate court, that one there, and the one
5 that's pending against us from the tenants, superior
6 court.

7 Q. Do the Feoffees incur any annual costs outside
8 of your fees for the repair and maintenance of the
9 properties?

10 A. Oh, yeah.

11 Q. And what are the items that it has to repair
12 and maintain?

13 A. The sewer system.

14 Q. Okay. Anything else?

15 A. The building service for the sewer usage.

16 Q. So really, things that relate to the
17 wastewater system, right?

18 A. That's so far is what I've said, yeah. You
19 got landscaping, which is not, and you got roads and
20 utilities and things like that.

21 Q. And were you imposing a fee on the tenants of,
22 wasn't there a \$40 a month fee at some point that was
23 intended to cover that?

24 A. Operation and maintenance, yeah, O & M.

1 Q. Is that being charged now?

2 A. Yes.

3 Q. Who pays it?

4 A. The tenants.

5 Q. Do the lessees also pay it?

6 A. No. Well, they pay a higher rent because they
7 have the -- They pay higher than the tenants, so it's
8 probably figured in there.

9 Q. Are there any office expenses incurred by the
10 Feoffees?

11 A. Yes.

12 Q. What are the office expenses?

13 A. Postage, telephone, paper, computer, lights,
14 things like that, you know.

15 Q. You had provided an estimate at your prior
16 deposition of cost of around 70 to \$100,000 a year to
17 run Little Neck, do you remember that?

18 A. I don't remember that, but I do remember I
19 provided that information before.

20 Q. And do you think that's a fair estimate of the
21 cost of running Little Neck on an annual basis?

22 A. No, not now.

23 Q. Okay. Why not?

24 A. Because we have a lot of other expenses. We

1 have probably \$1.1 million of revenue coming in every
2 year and we have about \$800,000 something in expenses
3 every year.

4 Q. Right. But you're including the pay down of
5 the loan, right?

6 A. Pay down the loan.

7 Q. And you're including litigation expenses of
8 your attorney?

9 A. Litigation expenses, yeah.

10 Q. Are the Feoffees currently realizing some
11 gain? Are they taking in more than they're spending?

12 A. Somebody else from the outside looking in
13 would probably say yeah, you're taking -- But as a guy
14 that does it every day, you know, I have to meet a
15 certain goal to pay my bills and there's times when
16 that deadline's coming that I don't have it. And yet,
17 I've always been able to do it.

18 Q. Do the Feoffees have money in the bank at this
19 time?

20 A. Yeah, I maintain the bank account, yeah.

21 Q. What's the available cash to the Feoffees
22 right now?

23 A. About 127,000. And I've got 150,000 coming
24 up.

1 Q. That you have to pay?

2 A. That I have to pay.

3 Q. To whom?

4 A. 150,000 to the bank and 120 something to the
5 town for taxes. November 1st.

6 Q. What about your attorney?

7 A. The attorney gets paid, too, sure.

8 Q. Is there a retainer being held?

9 A. It was a cash thing at one time and then it
10 became an advance of a sum of money which he would draw
11 on, yeah.

12 Q. How much was that?

13 A. The last one, I think, was, I think it was
14 \$100,000.

15 Q. You mentioned an escrow account?

16 A. You did.

17 Q. We both did.

18 A. No, go ahead.

19 Q. Do you know how much is in it?

20 A. No, not exactly. I've been told it's about a
21 million, something in there.

22 Q. Is it a million and a half or is it a million?

23 A. I don't know. Somewhere around a million, I
24 think.

1 MR. PERRY: Can we go off the record?

2 (Discussion off the record.)

3 Q. In your deposition in the superior court
4 litigation you were asked about whether any of the
5 Feoffees, whether the Feoffees had directors and
6 officers liability insurance. Do you recall that, that
7 you were asked?

8 A. No.

9 Q. Well, you were. And you said something to the
10 effect that, generally, no, there wasn't any, but you
11 said that Jim Foley had some insurance. Do you recall
12 that at all?

13 A. I remember it was talked about, but I never
14 saw a document.

15 Q. Has any part of Jim Foley's defense in this
16 matter been paid by insurance?

17 A. Defense in this matter?

18 Q. Is there an insurance company paying for, is
19 an insurance company helping to pay Jim Foley's legal
20 costs in this case?

21 A. I'm not aware that he's -- Are you saying
22 there's a suit against him that's Feoffee related? If
23 there is, I'm not aware of it.

24 Q. Well, just the superior court case. I didn't

1 understand this testimony you gave about Jim Foley
2 possibly having some form of insurance that might be
3 applicable. What is your full understanding about
4 that?

5 A. I'm not sure that he has any. I'm not sure
6 that he has any.

7 Q. There was some talk that he might have some
8 kind of insurance that might provide him with some sort
9 of coverage?

10 A. He said at one time that he was going to get
11 some kind of insurance, and but I never saw a document.
12 So I can't say that he's got it or doesn't have it.

13 Q. But as far as you know, there's no insurance
14 company helping to fund the Feoffees' defense in the
15 superior court case, right?

16 A. I have no knowledge of that.

17 Q. As far as you know, the Feoffees are paying
18 those bills?

19 A. Right.

20 Q. There's a meeting minute that says that Mr.
21 Foley had been offered a new position with the Caldwell
22 Trust. What's the Caldwell Trust?

23 A. The Caldwell Nursing Home is, had a trust, I
24 guess, and that part of their thing, and he supposedly

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1 was going to head up some kind of a fund-raising thing
2 to build a new facility and it never happened.

3 Q. Were any of the other Feoffees involved in any
4 way with the Caldwell Trust?

5 A. No.

6 Q. Were there any, did any issues arise regarding
7 the Caldwell Trust with the Attorney General's office?

8 A. To my knowledge, no.

9 Q. Mr. Foley has been charged with some crime in
10 connection with matters relating to training classes,
11 right?

12 A. (Witness nodding head up and down.)

13 MR. SHEEHAN: You have to answer yes or
14 no, Peter.

15 A. Yes.

16 MR. SHEEHAN: I saw you nodding.

17 Thanks.

18 Q. And when did that happen?

19 A. Jeeze.

20 Q. That is, do you know how long that's been
21 pending, that case?

22 A. I think it's been two or three years, I think.

23 Q. Were there any discussions among the Feoffees
24 about whether Mr. Foley should resign in view of those

1 charges?

2 MR. SHEEHAN: And I'm going to instruct
3 you, Peter, no discussions in my presence.

4 MR. PERRY: Right.

5 MR. SHEEHAN: Anything other than that
6 you can answer.

7 A. No.

8 Q. And is the position of the Feoffees to wait
9 and see what happens in the outcome of that case to
10 decide how to approach it?

11 A. Yes.

12 Q. The Feoffees don't, even if the other life
13 Feoffees wanted to remove somebody, that's not
14 something they can do, correct?

15 A. I see nothing in the charter that allows it.

16 Q. Right. Were you ever in favor of seeing Mr.
17 Foley step down as a Feoffee?

18 A. I can't answer that because of talk with
19 counsel.

20 Q. Well, I don't want you to tell me anything
21 that you -- I don't want you to discuss with me your
22 communications with Mr. Sheehan or discussions you have
23 had. My question was was it your personal opinion at
24 any time that it would be best for the trust if Mr.

Peter Foote

110

1 Foamily stepped down?

2 A. My personal opinion?

3 Q. Yeah.

4 A. Yes.

5 Q. Did you ever, outside of the presence of Mr.
6 Sheehan, express that to Mr. Foley?

7 A. No.

8 Q. Have you ever had any close personal friends
9 who were cottage owners?

10 A. No.

11 MR. PERRY: All right. That's all I
12 have. Thank you.

13 MR. SHEEHAN: Okay. I have no
14 questions.

15 (Whereupon, at 12:23 o'clock p.m.,
16 the deposition was concluded.)

17

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CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

I, CYNTHIA F. STUTZ, Certified Shorthand Reporter and Notary Public duly commissioned and qualified in and for the Commonwealth of Massachusetts, do hereby certify:

That the witness whose testimony is hereinbefore set forth, was duly sworn by me and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of October, 2011.



CYNTHIA F. STUTZ, Notary Public

My Notary expires August 17, 2012

ORIGINAL

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1 **VOLUME: I**
2 **PAGES: 1-112**
3 **EXHIBITS: 1-2**
4 **COMMONWEALTH OF MASSACHUSETTS**
5 **ESSEX, SS. SUPERIOR COURT**
6
7 **ALEXANDER B.C. MULHOLLAND, JR.,**
8 **et al,**
9 **Plaintiffs, Docket No.**
10 **vs. ES09 E0094QC**
11 **ATTORNEY GENERAL OF THE**
12 **COMMONWEALTH OF MASSACHUSETTS, et**
13 **al,**
14 **Defendants.**
15
16
17 **DEPOSITION of PETER FOOTE**
18 **October 21, 2011**
19 **10:02 a.m. - 12:23 p.m.**
20 **Casner & Edwards, LLP**
21 **303 Congress Street**
22 **Boston, Massachusetts**
23
24 **Court Reporter: Cynthia F. Stutz**

Page 2

1 **APPEARANCES:**
2
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4 **MacLean Holloway Doherty Ardiffe & Morse, P.C.**
5 **8 Essex Center Drive**
6 **Peabody, Massachusetts 01960**
7 **978-774-7123 wsheehan@mhdpc.com**
8 **on behalf of the Plaintiffs**
9
10
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12 **Casner & Edwards LLP**
13 **303 Congress Street**
14 **Boston, Massachusetts 02210**
15 **617-26-5900 perry@casneredwards.com**
16 **on behalf of the Defendant School Committee of**
17 **the Town of Ipswich and Richard Korb,**
18 **Superintendent**
19
20
21
22
23
24

Page 3

1 **I N D E X**
2 **EXAMINATION OF: PAGE**
3
4 **Peter Foote**
5 **(By Mr. Perry) 4**
6
7
8
9 **EXHIBITS: DESCRIPTION PAGE**
10
11 **Exhibit 1 Meeting Minutes dated 10/30/05 89**
12 **Exhibit 2 Meeting Minutes dated 2/28/07 95**
13
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22
23
24 ***ALL EXHIBITS RETAINED BY ATTORNEY PERRY**

Page 4

1 **PROCEEDINGS**
2 **IT IS HEREBY STIPULATED AND AGREED BY**
3 **AND BETWEEN COUNSEL that the reading and signing of the**
4 **deposition by the deponent shall be done within**
5 **30 days; that the notarization of the signature and**
6 **the filing of the deposition be waived; and that all**
7 **objections, except as to form, and motions to strike be**
8 **reserved for the time of trial.**
9 *** * * ***
10 **Whereupon:**
11 **PETER FOOTE,**
12 **having been satisfactorily identified and duly sworn by**
13 **the Notary Public, was examined and testified as**
14 **follows:**
15 **DIRECT EXAMINATION**
16 **BY MR. PERRY:**
17 **Q. Would you please state your name?**
18 **A. Peter Foote.**
19 **Q. What's your residential address?**
20 **A. 401 Colonial Drive.**
21 **Q. Is that in Ipswich?**
22 **A. Yup, Unit Number 50.**
23 **Q. What kind of -- Is that an apartment, a condo?**
24 **A. Condo.**

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1 Q. Who do you live there with?
2 A. **My wife.**
3 Q. How long have you been married?
4 A. **Forty -- I got to be careful with this one.**
5 **44.**
6 Q. Years?
7 A. **Yeah.**
8 Q. And do you have children?
9 A. **Two -- One.**
10 Q. He's probably grown?
11 A. **Huh?**
12 Q. He's grown?
13 A. **She, yeah. Two grandchildren.**
14 Q. Okay. How long have you lived in Ipswich?
15 A. **All my life.**
16 Q. You were born there?
17 A. **Yup.**
18 Q. What's your date of birth?
19 A. **3/6/41.**
20 Q. Did you go to Ipswich High School?
21 A. **Yes.**
22 Q. What year did you graduate?
23 A. **'58.**
24 Q. Did any of the other Feoffees go to Ipswich

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1 High School?
2 A. **I'm not sure. I think they might have, but**
3 **I'm not sure.**
4 Q. Not when you were there?
5 A. **Oh, no.**
6 Q. Jim Foley, I guess, is a good bit younger than
7 you are?
8 A. **Yes.**
9 Q. Did you review anything before testifying
10 today?
11 A. **Yes, my past transcript.**
12 Q. You looked at the transcript of the
13 deposition?
14 A. **Yeah, right.**
15 Q. That Todd and Weld took of you in the superior
16 court litigation with the tenants?
17 A. **I believe, yeah.**
18 Q. You have never owned on Little Neck, have you?
19 A. **No.**
20 Q. Have you ever stayed there?
21 A. **Yes.**
22 Q. On what occasions have you stayed at Little
23 Neck?
24 A. **I was building a home on Great Neck and I**

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1 **needed the place to stay and I stayed at two places,**
2 **one on River Road and one on Middle Road, each one for**
3 **about two months, so probably a total of four.**
4 Q. Okay. When did you build on Great Neck?
5 A. **19 -- not 19. Would be 2000, somewhere around**
6 **2000. I'm not sure what the date is.**
7 Q. Do you own on Great Neck now?
8 A. **No.**
9 Q. So how long have you lived at Colonial Drive?
10 A. **Ten or eleven years. Went from there to**
11 **Colonial Drive.**
12 Q. All right. But you said that you had been
13 building on Great Neck roughly around 2000 and that's
14 eleven years ago.
15 A. **Yeah.**
16 Q. So did you in fact build a house and live on
17 Great Neck for a period?
18 A. **Yeah, about five years.**
19 Q. So did you live on Great Neck until
20 approximately 2005?
21 A. **Yeah, I'm not sure of those dates.**
22 Q. Okay.
23 A. **I mean, I don't think about those things.**
24 Q. Were you a Feoffee when you were building at

Page 8

1 Great Neck?
2 A. **Yes.**
3 Q. Have you figured out what date you became a
4 Feoffee?
5 A. **Seventeen years ago.**
6 Q. All right. Because you were uncertain in the
7 superior court deposition.
8 A. **I know.**
9 Q. But it was seventeen years ago?
10 A. **Yeah.**
11 Q. So it's 2011, so that sounds like 1994?
12 A. **Yeah.**
13 Q. Thank you. When you built on Great Neck did
14 you buy an empty lot there?
15 A. **No. It was an existing home which I added a**
16 **second floor to and, you know, it was almost a rebuild,**
17 **really.**
18 Q. Why did you decide after that to move out?
19 A. **Too expensive to live there.**
20 Q. How did you -- Whose cottage did you stay in
21 for two months on River Road and two months on Middle
22 Road?
23 A. **River Road was Jim Foley's place and Middle**
24 **Road was a guy from Wakefield. I forget his name.**

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1 Q. Were you there in the summer months or either
2 of them or was this off-season?
3 A. **Yeah, I would say summer months, yeah.**
4 Q. Were you renting on Middle Road or was he
5 allowing you to stay as a favor?
6 A. **I was renting.**
7 Q. And on River Road were you renting?
8 A. **No.**
9 Q. That was a favor from Jim Foley?
10 A. **Yeah.**
11 Q. Apart from those four months of -- And your
12 wife lived there, too, I take it?
13 A. **Yes.**
14 Q. Apart from those four months of staying on
15 Little Neck have you stayed over at Little Neck?
16 A. **No.**
17 Q. You told me you went to high school, graduated
18 in 1959, right?
19 A. **Eight.**
20 Q. '58. Ever served in the armed services?
21 A. **Yes.**
22 Q. When?
23 A. **'58 to '61.**
24 Q. Sounds like good timing. No war going on,

Page 10

1 right?
2 A. **Cold war.**
3 Q. Yeah. Which branch?
4 A. **U.S. Army.**
5 Q. And honorably discharged?
6 A. **Yes.**
7 Q. Could you tell me what you did next? I know
8 you went to Community College at one point.
9 A. **Yeah.**
10 Q. Was that the next thing you did?
11 A. **Yes.**
12 Q. Was that North --
13 A. **Northern Essex.**
14 Q. Northern Essex Community College for
15 two years?
16 A. **Two years, yes.**
17 Q. Did that result in any kind of degree or
18 certificate?
19 A. **Yes.**
20 Q. What was it?
21 A. **Associate in Science or Arts. I forget which**
22 **one it was.**
23 Q. What was your course work leading up to that
24 Associate degree, general?

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1 A. **General yeah.**
2 Q. Just general course work?
3 A. **Yeah. There was languages, there was**
4 **mathematics, there was, you know, just stuff you**
5 **normally get in the first two years anywhere you go.**
6 Q. I'd seen in your testimony that you at some
7 point attended Northeastern?
8 A. **Yes.**
9 Q. Do you know when it was that you attended
10 Northeastern?
11 A. **Graduated in '71.**
12 Q. So you finished at Northern Essex, what, in
13 the early sixties, right?
14 A. **'63.**
15 Q. What did you do between 1963 and the time you
16 enrolled at Northeastern?
17 A. **Worked.**
18 Q. What did you do for work?
19 A. **Security investigations with Pinkerton and**
20 **from there I went to Mitre Corporation in Bedford,**
21 **government Air Force contractor.**
22 Q. M-i-t-r-e?
23 A. **M-i-t-r-e.**
24 Q. Okay. And --

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1 A. **And from there I went to -- You want me to**
2 **tell you where I went from there?**
3 Q. Sure.
4 A. **From there I went to the Ipswich Police.**
5 Q. Right. And did you enroll full time at
6 Northeastern or were you going part time or nights?
7 What were you doing?
8 A. **Part time nights, days, whatever is part time.**
9 Q. And where were you working when you were going
10 to Northeastern?
11 A. **I was working at Mitre and I was working the**
12 **police.**
13 Q. When you went to Northeastern did you get
14 credit for the Associates work you had done?
15 A. **Yes.**
16 Q. So it was really a two year type program
17 except for you were doing it part time?
18 A. **Right.**
19 Q. So it took a little longer, I assume?
20 A. **Yeah.**
21 Q. What was your major at Northeastern?
22 A. **Now they call it criminal justice.**
23 Q. Right. What did they call it at the time?
24 A. **Law enforcement.**

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1 Q. So is that course work focused on matters that
2 pertain to criminal justice and law enforcement?
3 A. Yes.
4 Q. Did you take any course work at Northeastern
5 that you can recall that was not germane to criminal
6 justice or law enforcement?
7 A. I went a short time for a Master's in Public
8 Administration.
9 Q. At Northeastern?
10 A. Yeah.
11 Q. And you took some courses toward that, you're
12 saying?
13 A. Yes.
14 Q. You didn't finish that, it sounds like?
15 A. No.
16 Q. How many courses did you take?
17 A. I'm not sure. It was about probably four,
18 maybe four courses.
19 Q. Do you recall what courses those were?
20 A. Public administration. I don't know. It's a
21 long time ago.
22 Q. All right. And at some point did you get in
23 some further schooling?
24 A. Yes.

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1 Q. When was that?
2 A. Went to Anna Maria College and got a Master's
3 in Arts in criminal justice and that had to be around
4 the year 2000, somewhere in there.
5 Q. How long a program would that be if you did it
6 full time?
7 A. Two years, probably.
8 Q. And how long did you work on it, longer than
9 that because you were going part time?
10 A. No, I think I about in it about two years.
11 Q. What courses did you take at Anna Maria to get
12 your Master's in criminal justice, and you said arts in
13 criminal justice?
14 A. Yeah.
15 Q. It's a Master of Arts in criminal justice?
16 A. Yeah.
17 Q. Was that largely criminal justice courses?
18 A. Yeah, more or less, yeah.
19 Q. Are there any courses you can recall that went
20 outside of criminal justice?
21 A. No.
22 Q. And by taking, getting that degree did that
23 make you eligible for increase in your pay as a police
24 officer?

Page 15

1 A. Yes.
2 (Telephone ringing.)
3 MR. SHEEHAN: Off the record.
4 (Discussion off the record.)
5 Q. I think you said that you got your Master's in
6 around 2000?
7 A. Yeah, about there, yeah.
8 Q. Okay. And you had told me that you became a
9 police officer in the Town of Ipswich after you worked
10 at Mitre?
11 A. Yes.
12 Q. What year did you start as an Ipswich police
13 officer?
14 A. Reserve '65, full time '67.
15 Q. Does one have to go to a police academy to do
16 that or the criminal justice degree is enough?
17 A. No, you have to, state law requires you to go
18 to police academy.
19 Q. So you did that?
20 A. Yes.
21 Q. And when did you do that? Sometime before you
22 became a police officer, right?
23 A. No, no. Mine, I worked for two years before
24 they sent me, so probably around '71.

Page 16

1 Q. Okay. Have you had any other schooling other
2 than what you have told me about?
3 A. I've had numerous courses in the line of my
4 career, you know.
5 Q. That's your formal education what you have
6 told me about, right?
7 A. Yeah, college stuff. The rest of it's all,
8 you know, state mandated this, state mandate that. You
9 have to go to school and update yourself on criminal
10 law and things like that, you know.
11 Q. Required training for police officers so they
12 can tell you about changes in the Miranda warning or
13 search and seizure law, right?
14 A. Yeah. Bad decision, Miranda.
15 Q. Now, at some point you rose to the position of
16 deputy chief?
17 A. Yes.
18 Q. When did that happen?
19 A. 1990 -- 1998, I think it was.
20 Q. And what was your progression through the
21 Ipswich police force starting out as a rank, just a, I
22 assume a --
23 A. Patrolman.
24 Q. Patrolman, and you ended up as deputy?

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1 A. Patrolman, sergeant, staff sergeant, deputy
2 chief.
3 Q. Do you know when you became staff sergeant?
4 A. Probably around 1980, somewhere in that area.
5 Q. At the time you became a Feoffee were you
6 staff sergeant in the Ipswich police, '94?
7 A. I don't remember that.
8 Q. Well, you said you became deputy chief in '98?
9 A. Yeah.
10 Q. And before you were deputy chief you were
11 staff sergeant?
12 A. Right.
13 Q. For a number of years, you said?
14 A. Yeah.
15 Q. So to the best of your recollection were you a
16 staff sergeant in 1994 when you became a Feoffee?
17 A. I don't know. I don't remember.
18 Q. Okay. But you weren't yet deputy chief?
19 A. No.
20 Q. Correct?
21 A. Yeah.
22 Q. And you were no longer just a patrolman?
23 A. True.
24 Q. So you were some form of sergeant?

Page 18

1 A. Right.
2 Q. How many police officers are there or were
3 there in the Ipswich police when you were deputy chief?
4 A. Full time, 25.
5 Q. And that included you and the chief?
6 A. Yes.
7 Q. I know this is a public record, so I'm going
8 to ask it. What kind of salary were you receiving as a
9 deputy chief?
10 A. When I retired?
11 Q. Yeah, sure.
12 A. Approximately, excluding any overtime or extra
13 jobs and stuff, I was about 72 to 74,000.
14 Q. And as far as the overtime, when you're a
15 deputy chief what type of overtime are you eligible
16 for?
17 A. Whatever they, special projects, things like
18 that. In the regular scheme of things I did not get
19 overtime because I was management.
20 Q. Right.
21 A. But there was sometimes that they would pay me
22 for that because they were special projects.
23 Q. If it was special project or police detail
24 you'd get paid?

Page 19

1 A. Police detail is different. That's private
2 money from a contractor that goes to the town and the
3 town pays you, but it's nothing to do with overtime.
4 Q. All right. Now, with regard to police duty,
5 what you said is different, does everybody get paid the
6 same rate regardless of their position in the
7 department?
8 A. By rank they do, yeah.
9 Q. What I meant was --
10 A. I mean, there's --
11 Q. Let me do complete my questions.
12 A. Go ahead.
13 Q. I didn't pose the question right. Suppose
14 somebody needs a police detail down at the high school
15 or something, but it's private, right?
16 A. Yeah.
17 Q. For a party.
18 A. Yeah.
19 Q. And they get and certain people go. Is the
20 rate the same whether the person who shows up is the
21 deputy chief or just the patrolman?
22 A. I don't know what it is now, because I've been
23 out of there for a few years, but when I was there it
24 was the same rate for everybody.

Page 20

1 Q. Yeah, okay. That's what I would expect,
2 because the person paying for it --
3 A. It's not that way everyplace. It's by the
4 guy's rank.
5 Q. But in Ipswich at the time you were there
6 there was a rate that was paid for the police detail?
7 A. Right.
8 Q. And it would be paid no matter who showed up,
9 whether it was a deputy chief or it was a patrolman?
10 A. Right.
11 Q. And in your deposition you said that rate at
12 the time you had been doing it, you testified, was \$48
13 an hour?
14 MR. SHEEHAN: Objection.
15 A. Yeah, I think it was tied to the sergeant's
16 rate. They negotiated that with the town
17 administration and they set it, used to be a set rate
18 and then they set it to the sergeant's rate, whatever
19 it was.
20 Q. Okay. What were your responsibilities as a
21 staff sergeant in the Ipswich police?
22 A. More or less the same as a deputy chief. It's
23 a long story, but the short of it is that they made the
24 chief at the time the commissioner of public safety.

Page 21

Page 23

1 In other words, he ran both departments, fire and
2 police. So they needed somebody to run the police end
3 of it and that's what I did. Then they thought that
4 that position that I was performing as required a
5 higher rank and that's how I became a deputy chief.
6 Q. Okay. When was it that you were effectively,
7 as you have described it, running the department even
8 though you had a title of staff sergeant?
9 A. From the time I was staff sergeant on.
10 Q. And how many years in total do you believe
11 that you ran the department before you retired?
12 A. I was what they call the chief executive
13 officer, but whatever I told you before on when I made
14 staff sergeant, that's what the position was for.
15 Q. Right.
16 A. It's like the second in command.
17 Q. Yeah. But you were a little uncertain about
18 it, so I want to get your best estimate as to when you
19 had achieved that rank where you were second in
20 command. I understand you retired in, what, 200 --
21 A. '6.
22 Q. '6?
23 A. Yeah.
24 Q. You said you began in, what, 1969?

1 '81.
2 Q. So, you were effectively running this
3 department from the eighties?
4 A. Yeah, yeah, that's approximate.
5 Q. All right. And when you were running the
6 Ipswich Police Department what duties did you have?
7 A. Personnel, budget, investigations, court
8 prosecutor, discipline.
9 Q. What was the budgeting process in place at
10 that time?
11 A. What it takes to run the department in the
12 course of a year.
13 Q. Who prepared the budget?
14 A. The chief would prepare the budget and I would
15 go to the budget hearings with him before the town
16 fathers and finance committee and the rest of them and
17 put forth the case to justify what we were requesting.
18 Q. So you weren't the one preparing the budget?
19 A. No.
20 Q. Did you ever, were you ever the one preparing
21 the budget?
22 A. No.
23 Q. Who had the final say on personnel matters
24 between you and the chief?

Page 22

Page 24

1 A. '67 I started.
2 Q. '67?
3 A. Full time.
4 Q. All right. So given that you were in the
5 department for a total of close to 40 years, right?
6 A. 42.
7 Q. Okay, 42. So maybe you retired in 2008?
8 A. No. My reserve time counted.
9 Q. So you're saying 1965 reserve through 2006?
10 A. Right.
11 Q. Or so. Given that time frame, when is it that
12 you think you became staff sergeant and were running
13 the department?
14 A. I don't think of those dates like that, you
15 know.
16 Q. Well, let's see. You have a daughter, right?
17 A. Yes.
18 Q. How old is she?
19 A. She's 39.
20 Q. Maybe you can think about when you became
21 staff sergeant in relation to when your daughter moved
22 out of home or anything like that.
23 A. I think I made sergeant when I'd been on
24 ten years, so that would make it '77. I'd say '80,

1 A. Chief.
2 Q. Did the police department have any assets that
3 you had to manage?
4 A. Such as?
5 Q. Did it own anything that you had to -- Did it
6 own any real estate that you had to preside over?
7 A. No.
8 Q. Did it, did you have to deal with any
9 investments for the police department?
10 A. No.
11 Q. Who had the authority within the police
12 department to assign people for police details?
13 A. That was determined by who was on duty at the
14 time and it was usually a patrolman that it would, you
15 know, it would go to him if he was in the station,
16 fine. If he wasn't, called him in. And on occasion I
17 did it, but mostly it was done by patrolmen in the
18 back.
19 Q. I just want to make sure we're talking about
20 the same thing. We're talking about not who performs
21 the detail, but who assigns somebody to it, right, is
22 that --
23 A. Well, somebody requests a detail, somebody has
24 got to call somebody to ask if they want to work the

1 detail.
2 Q. Right. I just want to make sure we're
3 speaking the same language. So I think what you were
4 telling me was if a request came in for a detail, that
5 request might go in to somebody who was just a
6 patrolman at the station and that patrolman would have
7 to find somebody to do it?
8 A. Right.
9 Q. Wasn't doing a police detail considered kind
10 of a perk? People wanted to do it?
11 A. Well, nobody worked them without wanting to
12 work in the first place. So, I mean, you know.
13 Q. Right. But if you had a police detail
14 available, would you have potentially more people
15 wanting to do it than openings for the police detail?
16 A. Never had any trouble filling them, no.
17 Q. Right. So it was something that people were
18 eager to do, because it was a good way of making money?
19 A. Yeah.
20 Q. And wasn't perhaps as difficult as certain
21 other kinds of police work, right?
22 A. It could be, depending what you're doing.
23 Q. Yeah, okay. You retired in what year, you
24 said?

1 A. I think I said 2006.
2 Q. And after you retired, I know that in your
3 last deposition in the superior court litigation you
4 mentioned that you were doing police details?
5 A. Yes.
6 Q. How does that work once you have retired, how
7 do you remain eligible for that?
8 A. It's up to the administration. They decide,
9 you know, can a retired person work or is he not going
10 to work. And in the case the administration changed
11 and a new person said that they could work. So when I
12 found that out, I went down. He said, Sure. They put
13 me right on.
14 Q. Are you still doing that kind of work?
15 A. No.
16 Q. Why not?
17 A. I can't stand for eight, ten hours a day
18 without a break.
19 Q. Physical limitations?
20 A. Yeah, I'd like to see anybody do it in the
21 dead of the winter and the hot of the summer, you know.
22 It's not as easy as everybody thinks it is.
23 Q. I imagine. Apart from being a Feoffee and
24 working for the Town of Ipswich as a police officer,

1 police sergeant and deputy chief, have you served on
2 any boards or associations or charities or anything
3 like that?
4 A. I know I'm on the public safety committee for
5 buildings, you know. They want to justify building a
6 new fire station, police station. I'm on that
7 committee appointed by the town manager. And Feoffee,
8 I'm on the board of Feoffees. I can't recall anything
9 else.
10 Q. Okay.
11 A. There's been various ones over the years, but
12 I don't remember.
13 Q. Town related?
14 A. Yeah.
15 Q. Bodies that you served on?
16 A. Yeah.
17 Q. Because you were the deputy chief?
18 A. Yeah. Well, I guess I was familiar with the
19 operations that they wanted me on them, so --
20 Q. Okay. Are you the first member of your family
21 to be a Feoffee?
22 A. Yes.
23 Q. Have you ever had any relatives living or
24 owning -- Let me strike that. It's not well put.

1 Have you had any relatives who owned
2 cottages at Little Neck?
3 A. No.
4 Q. How did you come to be appointed as a Feoffee
5 in or around 1994?
6 A. I was friendly with one guy who got off, he
7 moved out of state, and we had talked about a Feoffee
8 position and then I was friendly with Jim, Jim Foley
9 and I inquired of him. I said what are they going to
10 do? He said they're going to put in a new guy. And he
11 said, Why, are you interested? And I said, Yeah, I'll
12 do it. And some time went by and the next thing I
13 know, he called up and said you have been appointed and
14 that was it.
15 Q. Who was the name of the person who had been a
16 Feoffee and moved out of state?
17 A. George Hayes.
18 Q. He was a lawyer?
19 A. He was clerk magistrate of the Ipswich
20 district court also.
21 Q. And you were the police prosecutor?
22 A. Right.
23 Q. So that meant that he was effectively serving
24 as the judge and you were serving as the prosecutor,

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1 right?
2 **A. Not at the time I was serving as a prosecutor.**
3 **I didn't really get into that until I was staff**
4 **sergeant.**
5 Q. So you don't think you were a staff sergeant
6 when you became a Feoffee?
7 **A. I don't know. I know we went over this**
8 **before. I can't -- You know, you pin me down to a**
9 **date. I can't give it to you. I don't know.**
10 Q. Are there records that would show it?
11 **A. I don't know. What did I say it was, '94 or**
12 **'80 --**
13 Q. This is a problem. You have said two very
14 different things in a way or you implied two different
15 things. You have said on the one hand that you feel
16 like you were the running the department from 1980,
17 which is fourteen years before you became a Feoffee,
18 but when I asked you if you were a staff sergeant when
19 you became a Feoffee, you were not sure and you said
20 you didn't know. And you have also just said that you
21 didn't think you were the police prosecutor when George
22 Hayes was the clerk magistrate. So that's why I'm --
23 I'm not trying to pin you down, but I'm just trying to
24 get your most accurate testimony.

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1 **A. Well, I can only give you what I know.**
2 **MR. PERRY:** Off the record.
3 (Discussion off the record.)
4 Q. In order to save time, why don't I request
5 that after the deposition is concluded, why don't you
6 research with Mr. Sheehan when it was you became staff
7 sergeant and then just provide that to me and maybe put
8 it in as a correction to the deposition transcript.
9 **A. That would be good.**
10 Q. Okay. Because that will save some -- Then
11 we'll know. Okay.
12 In any event, you knew and were friendly
13 with George Hayes at the time?
14 **A. Right.**
15 Q. And you had talked to him about being a
16 Feoffee?
17 **A. Yes.**
18 Q. All right.
19 **A. About it, not me becoming one, but just about**
20 **it.**
21 Q. About his being a Feoffee?
22 **A. Yeah.**
23 Q. And how long had you known George Hayes?
24 **A. Oh, pretty much all my life. His parents and**

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1 **my parents were friends.**
2 Q. He was another long-time Ipswich person?
3 **A. Right.**
4 Q. And his father was a Feoffee?
5 **A. His father was an attorney and he was a**
6 **Feoffee. And my father was a doctor, medical doctor,**
7 **and he was friendly with him. They were, you know,**
8 **they were friends over the years and that's how -- You**
9 **know, we used to go down their house when we were kids**
10 **and socialize and so forth.**
11 Q. Did Mr. Hayes, did he ever have a place on
12 Little Neck?
13 **A. No, not to my knowledge, anyway. I don't**
14 **think so.**
15 Q. And you said that you were friendly with Jim
16 Foley?
17 **A. Yes.**
18 Q. How did you know Jim Foley?
19 **A. He used to be a Wenham police officer.**
20 Q. Right.
21 **A. Neighboring town.**
22 Q. Right.
23 **A. And through the police department.**
24 Q. How long had you known Jim Foley?

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1 **A. 20 years, 25 years, something like that.**
2 Q. From -- My question wasn't very good. Do you
3 mean you now have known him for 20, 25 years or when
4 you became a Feoffee you had already known him 20 or 25
5 years?
6 **A. When I became a Feoffee I had already known**
7 **him for 20, 25 years. Yeah, it could be right.**
8 Q. Did you, before you became a Feoffee had you
9 ever socialized with Jim Foley?
10 **A. Such as? Did I go out with him?**
11 Q. Yes.
12 **A. No.**
13 Q. What kind of occasions would you see him?
14 **A. On the street, at the station.**
15 Q. He lived in Ipswich?
16 **A. Yes, he did.**
17 Q. So you knew him as a fellow Ipswich resident
18 who was a police officer?
19 **A. In a neighboring town, right.**
20 Q. And you also knew him from running into him in
21 a work context?
22 **A. Yes.**
23 Q. Did you know Alex Mulholland before he became
24 a Feoffee?

<p style="text-align: right;">Page 33</p> <p>1 A. Yes.</p> <p>2 Q. How long have you known Alex?</p> <p>3 A. Not very well, but I knew of him. He knew of</p> <p>4 me and he went to a private school instead of high</p> <p>5 school and I was in high school, so we didn't, you</p> <p>6 know -- It was sometime after that. I knew his family.</p> <p>7 And then from being a Feoffee I knew him.</p> <p>8 Q. Right. Before you became a Feoffee did you</p> <p>9 know Don Whiston?</p> <p>10 A. I knew him. I wasn't friendly with him. I</p> <p>11 knew him because he was the president of the bank and I</p> <p>12 knew who he was. So actually, from the time I was a</p> <p>13 Feoffee is when I got to really know him.</p> <p>14 Q. When you became a Feoffee in 1994 were the,</p> <p>15 you were one of the life Feoffees?</p> <p>16 A. Yes.</p> <p>17 Q. And there were four of you?</p> <p>18 A. Yes.</p> <p>19 Q. Were any of the selectmen functioning as</p> <p>20 Feoffees back in 1994?</p> <p>21 A. They were, they were, what do you call it,</p> <p>22 selectmen Feoffees, but did they come to meetings, is</p> <p>23 that a question? Did they come to meetings?</p> <p>24 Q. Did they participate in the affairs of the</p>	<p style="text-align: right;">Page 35</p> <p>1 see anything wrong with it.</p> <p>2 Q. Why did you want to be a Feoffee?</p> <p>3 A. Why?</p> <p>4 Q. Yeah.</p> <p>5 A. Because I'm sort of a history person. I'm</p> <p>6 interested in historical facts and this was the full of</p> <p>7 history, this thing. It was the oldest living trust in</p> <p>8 the United States today, land trust. And I thought</p> <p>9 getting on that would be a feather in my cap, so to</p> <p>10 speak, and especially where I enjoy history.</p> <p>11 Q. Okay. Now, apart from your being interested</p> <p>12 in history, did you feel you had any qualifications</p> <p>13 that made you suitable to be the trustee of this trust</p> <p>14 that held real estate for the benefit of the schools?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What were those?</p> <p>17 A. My education.</p> <p>18 Q. Now, Mr. Whiston's in his eighties, right?</p> <p>19 A. Yes.</p> <p>20 Q. So at some point he'll probably cease to serve</p> <p>21 as a Feoffee in the future, true?</p> <p>22 A. Same for any of us.</p> <p>23 Q. Right. So if there were a vacancy in the</p> <p>24 Feoffees, who would you appoint?</p>
<p style="text-align: right;">Page 34</p> <p>1 Feoffees back in 1994?</p> <p>2 A. Once a year at the annual meeting.</p> <p>3 Q. And what was the extent of their participation</p> <p>4 at the annual meeting?</p> <p>5 A. Well, sometimes one would show up, sometimes</p> <p>6 three would show up. And we always, as a matter of</p> <p>7 the, what do you call it, the meeting, the annual</p> <p>8 meeting, the agenda would always call for an election</p> <p>9 of officers at the annual meeting. And the selectman</p> <p>10 Feoffee would be the one to make the motion. He was</p> <p>11 always given that opportunity.</p> <p>12 MR. PERRY: Can we go off the record a</p> <p>13 second?</p> <p>14 (Discussion off the record.)</p> <p>15 Q. So when you were appointed, you were one of</p> <p>16 the four Feoffees and Jim Foley was another, right?</p> <p>17 A. Yes.</p> <p>18 Q. And two of you had backgrounds in law</p> <p>19 enforcement?</p> <p>20 A. Yes.</p> <p>21 Q. Did you feel it was appropriate for two of the</p> <p>22 four life Feoffees on this land trust to have a law</p> <p>23 enforcement background?</p> <p>24 A. I, I don't see how to answer that. I didn't</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I haven't thought of it.</p> <p>2 Q. What do you consider to be the qualifications</p> <p>3 you would look for to appoint someone to be a Feoffee</p> <p>4 should a vacancy arise?</p> <p>5 A. Someone who's well known in the community,</p> <p>6 with a good reputation and an education and experience</p> <p>7 in business and on a high level of management,</p> <p>8 something like that.</p> <p>9 Q. When you became a Feoffee what did you</p> <p>10 understand your duties to be?</p> <p>11 A. To be on the board and be involved in the</p> <p>12 administration of Little Neck, the property down there.</p> <p>13 Q. Do you know what the term fiduciary duty</p> <p>14 means?</p> <p>15 A. Yes.</p> <p>16 Q. What do you understand that term to mean?</p> <p>17 A. Well, it's our fiduciary duty to provide money</p> <p>18 to the schools from what we take in if we have the</p> <p>19 money available.</p> <p>20 Q. And do you have any further understanding of</p> <p>21 what a fiduciary duty is?</p> <p>22 A. As far as the Feoffees, no, that's just what I</p> <p>23 said.</p> <p>24 Q. Did you ever have an understanding as a</p>

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1 Feoffee of what your duty was with respect to setting
2 rents that would be paid by the tenants?
3 **A. I didn't set rents. The, the issue came up in**
4 **the past way back when this thing first started and we**
5 **hired a professional land appraisal firm called**
6 **LandVest. And they in turn did all the work about what**
7 **would be a fair rent based on the times and that's what**
8 **we as Feoffees relied on.**
9 **MR. PERRY:** Can I see my question for a
10 second?
11 Q. Thank you for that, but let me just make sure
12 you understood what I was asking you.
13 **A. Okay.**
14 Q. Did you have an understanding, when you joined
15 the Feoffees, as to what the duty of you and your
16 fellow Feoffees was with respect to determining the
17 rent to be paid by the tenants?
18 **A. When I first got on?**
19 Q. Yes.
20 **A. I didn't have a real grasp of it, no. I was**
21 **informed later on, but I wasn't at that time.**
22 Q. At the time you joined the Feoffees in 1994
23 LandVest wasn't doing any work for the Feoffees, right?
24 **A. No.**

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1 Q. Correct?
2 **A. Right.**
3 Q. Okay. How was rent being set at that time?
4 **A. I had no idea. Somebody else administered**
5 **that. It was before my time.**
6 Q. Well, from 1994 to 1997 before LandVest became
7 involved how were rents set during your first three
8 years as a Feoffee?
9 **A. I don't know.**
10 Q. And during those first three years as a
11 Feoffee did you have an understanding that rent was
12 supposed to be set at a market rate?
13 **A. During those first three years?**
14 Q. Yes.
15 **A. I didn't have an understanding. I assumed**
16 **that's the way it went, yes.**
17 Q. Okay. Do you know whether the rent that has
18 been charged to tenants during the time you have been a
19 Feoffee starting in 1994 and through 2006, was at fair
20 market rates?
21 **A. We relied on LandVest and they supplied the**
22 **rates.**
23 Q. Do you know whether rent was at fair market
24 amounts between 1994 and 2006?

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1 **A. I assume they were, because they came from**
2 **that professional firm.**
3 Q. Okay. Now, you mentioned this firm LandVest.
4 Who made the decision to use LandVest as a consultant
5 to the Feoffees?
6 **A. It was the, at the time it was, what do you**
7 **call it, Don Whiston was the chairman and he was**
8 **working with the attorney at the time, Donald**
9 **Greenough. And at that time I just went to the**
10 **meetings and but this was all discussed, you know, and**
11 **decided upon before I got there. But LandVest was**
12 **their recommendations were put forth and they were**
13 **accepted.**
14 Q. Before LandVest was retained did you
15 personally do anything to look into the qualifications
16 of the people who would be doing the work?
17 **A. No.**
18 Q. After LandVest was retained it issued some
19 reports, right?
20 **A. Yes.**
21 Q. And did you -- How carefully did you read
22 those reports?
23 **A. I read them, I looked at them.**
24 Q. You looked at them, right?

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1 **A. Yeah.**
2 Q. But you didn't scrutinize them, did you?
3 **A. I can't give you verbatim what it said.**
4 Q. At the time when you looked at them you didn't
5 try to scrutinize them, did you?
6 **A. No. It was more familiarization of them.**
7 Q. Would you say that it was beyond your ability
8 to know whether LandVest was doing its work properly or
9 not?
10 **A. It wasn't beyond my ability, but I mean, I**
11 **didn't concern myself with that, because you hire**
12 **people in different fields to perform the function**
13 **you're looking for. These people were highly rated, so**
14 **we approved them.**
15 Q. You took it as a given that LandVest had done
16 its work properly?
17 **A. Yes.**
18 Q. And you didn't try to understand its
19 methodology, did you?
20 **A. No.**
21 Q. And you didn't know if there were any flaws in
22 the methods they were using, correct?
23 **A. I'm not aware of any flaws, no.**
24 Q. You do know that there have been other

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1 appraisals by other firms that have come to different
2 conclusions than LandVest's, right?
3 **A. I know there was other appraisals taken, yeah.**
4 Q. Do you know whether, and do some of those
5 appraisals come out at different figures, do you know?
6 **A. I believe they did. I don't know what --**
7 Q. Have you read them?
8 **A. No, not all of them, no.**
9 Q. Do you know which of the appraisals is correct
10 and which one is incorrect, in your opinion?
11 **A. I believe that ours was.**
12 Q. Why do you have that belief?
13 **A. Because it was backed up by the company we**
14 **hired. Somebody else gives you an appraisal, you**
15 **didn't hire them. Why should I be concerned with that?**
16 Q. So you assume that the appraiser that the
17 Feoffees hired is correct and that any appraisers hired
18 by other people are incorrect?
19 **A. No, I'm not saying are incorrect, but I'm just**
20 **not familiar with them.**
21 Q. You haven't tried to familiarize yourself with
22 those?
23 **A. No, no.**
24 Q. Do you tell me what your understanding is of

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1 how LandVest arrived at a value of Little Neck?
2 **A. I'm sure they had criteria. I'm not sure what**
3 **they were, but I'm sure they had criteria to establish**
4 **a fair market value, things like that.**
5 Q. As part of the settlement agreement -- Let me
6 see if we have the same understanding how the
7 settlement agreement works. Is it your understanding
8 that as part of the settlement agreement, the Feoffees
9 will be converting the land and cottages to condominium
10 form?
11 **A. That is, that is what we're -- The upcoming**
12 **court trial is going to be all about whether we can**
13 **sell it or not.**
14 Q. That's true. So let me clarify my question.
15 Under the settlement agreement with the tenants, if the
16 court were to approve the sale, am I correct that what
17 would happen is that the Feoffees would obtain title to
18 the cottages and convert the cottages and land to
19 condominium form?
20 **A. I believe that to be correct.**
21 Q. And then the Feoffees would sell individual
22 lots to individual tenants, correct?
23 **A. Yes.**
24 **MR. SHEEHAN: Objection.**

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1 Q. Let me, in view of the question, they would
2 sell individual condominium units to individual
3 tenants, right?
4 **A. Yes.**
5 Q. And each purchaser, each tenant who purchased
6 a condominium unit would have the exclusive use of the
7 lot that is shown on the maps of the lots of Little
8 Neck, each condominium buyer would have exclusive use
9 of his or her lot, right?
10 **A. Yes.**
11 Q. Do you think that each tenant should pay to
12 the Feoffees the fair market value of the condominium
13 unit that he or she is buying?
14 **MR. SHEEHAN: Objection.**
15 Q. You can answer.
16 **THE WITNESS: You want me to answer?**
17 **MR. SHEEHAN: Oh, yeah. Answer the**
18 **question the best you can, yeah.**
19 **A. Please rephrase that question.**
20 Q. Do you think it would be appropriate for each
21 of the tenants who is going to be buying one of these
22 condominium units to pay the fair market value of the
23 condominium unit that he or she is buying?
24 **MR. SHEEHAN: Objection.**

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1 **A. Yes.**
2 Q. Is it your understanding that that is
3 accomplished by the settlement?
4 **A. I believe it is. I don't know, you know. I**
5 **defer to my counsel on those questions.**
6 Q. How long have there been discussions among the
7 Feoffees about the possibility of selling the real
8 estate at Little Neck to the tenants?
9 **A. How long?**
10 Q. Yeah.
11 **A. Years, years.**
12 Q. And that's a subject that came up well before
13 the litigation, right?
14 **A. I believe so, yeah.**
15 Q. And you said you were somewhat of a historian,
16 right?
17 **A. Yes.**
18 Q. And this was the oldest land trust in the
19 country, is that right?
20 **A. Yes, active land trust.**
21 Q. And were you aware of any restrictions that
22 had historically been imposed on selling the real
23 estate?
24 **A. Yes.**

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1 Q. Tell me about that.
2 **A. Charter says it shall not be sold and that's**
3 **why we're going to court to seek permission to do that**
4 **through the probate court.**
5 Q. As a historian you valued this prohibition
6 against sale, didn't you?
7 **A. I value anything that's historic until I see**
8 **something else that might be better.**
9 Q. So during these discussions that were taking
10 place before the litigation about the sale you were
11 opposed, weren't you?
12 **A. I wouldn't say I was opposed. I, you know, I**
13 **had a question, probably.**
14 Q. When you testified in your deposition in
15 2008 -- I think it's 2008, right?
16 **A. Yeah, somewhere back then.**
17 Q. When you testified in your deposition in the
18 tenant litigation you said you opposed the sale, right?
19 **A. I don't remember that, sorry.**
20 Q. And at that time you felt that the charter
21 that said there could be no sale should be upheld,
22 right?
23 **A. No. We're going to court in December, as you**
24 **well know, and if they allow us to sell it, I think**

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1 **it's in the best interest of the town to do that as far**
2 **as money and revenues coming in to the schools.**
3 Q. Suppose the court were not to approve --
4 Strike that. I'll get to this later.
5 When these discussions took place
6 historically about selling Little Neck in the years
7 before there was any litigation, say in the early
8 2000's, how did the various life Feoffees line up on
9 that issue?
10 **A. Well, I think it was just discussed. I don't**
11 **think we lined up at all. It was discussed that, you**
12 **know, pros and cons. And at that time of the early**
13 **years I'm just sitting on the board listening and**
14 **trying to learn something and be convinced one way or**
15 **the other.**
16 Q. Who was in favor of a sale in those early days
17 and who was against it?
18 **A. I remember Don Whiston being one of them.**
19 Q. In favor?
20 **A. Yeah, in favor of sale.**
21 Q. And the other Feoffees?
22 **A. I don't remember the early days whether they**
23 **all came down on the same side of the issue or not.**
24 Q. During the time that you were a Feoffee did

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1 any of your fellow Feoffees own property at Little
2 Neck?
3 **A. During my time, Foley did, I think, yeah.**
4 Q. In fact, you stayed at his cottage?
5 **A. Right.**
6 Q. During the time you were a Feoffee?
7 **A. Right.**
8 Q. And did anybody in Don Whiston's family own a
9 cottage while you were a Feoffee?
10 **A. They do now.**
11 Q. He has a daughter there now?
12 **A. Right.**
13 Q. And didn't he have his parents there when you
14 first became a Feoffee?
15 **A. No, they were gone.**
16 Q. They were gone?
17 **A. Yeah, that house was gone, yeah.**
18 Q. Did you think it was a conflict of interest
19 for Jim Foley to own a cottage while he was serving as
20 a Feoffee?
21 **A. No.**
22 **MR. SHEEHAN: Objection.**
23 Q. Why not?
24 **A. There was nothing written down that said he**

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1 **couldn't.**
2 Q. So you thought that was appropriate?
3 **A. Didn't see any problem with it.**
4 Q. And do you see any issues with Don Whiston
5 serving as a Feoffee at a time when his daughter is a
6 cottage owner?
7 **A. No, I don't.**
8 Q. Why is that?
9 **A. I just don't see anything wrong with it.**
10 Q. So when Jim Foley was serving as a Feoffee and
11 a cottage owner, does that mean he was both involved in
12 setting the rents and paying them?
13 **MR. SHEEHAN: Objection.**
14 **A. I don't know, I don't know what he was doing.**
15 Q. During the time that you have been a Feoffee
16 have there been discussions, for example, with town
17 bodies about changing the governance of the trust?
18 **A. Yes.**
19 Q. How long have those discussions been going on?
20 **A. Year or two.**
21 Q. Do you recall discussions even earlier than
22 that?
23 **A. No.**
24 Q. Have the Feoffees among themselves discussed

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1 whether some, whether those governance changes should
2 be made?
3 **A. It was discussed, yeah.**
4 Q. And which of the Feoffees have you talked to
5 about that?
6 **A. All of them.**
7 Q. Is it fair to say that some of the Feoffees
8 are more receptive to changes in the governance than
9 others?
10 **MR. SHEEHAN:** And Peter, before you
11 answer that question, feel free to answer the question
12 with respect to conversations you have had with those
13 other Feoffees as long as they were not with me. Any
14 conversations that you had with other Feoffees in my
15 presence when we were talking about issues related to
16 the litigation, those are privileged and I don't want
17 you to testify as to those. But if you had
18 conversations with the Feoffees outside of my presence
19 on that issue, by all means, answer the question.
20 **A. Yes. Well, the question was had we had**
21 **conversation about it.**
22 Q. Yes.
23 **A. Yes.**
24 Q. Okay. And so you can exclude conversations

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1 that Mr. Sheehan was at, but could you tell me which of
2 the Feoffees you have had conversations with about this
3 issue without Mr. Sheehan?
4 **A. All of them.**
5 Q. Okay.
6 **A. I shouldn't say all of them. The four lifes.**
7 Q. Yeah, all of the life Feoffees?
8 **A. Yeah.**
9 Q. And are there some of the Feoffees, life
10 Feoffees who, based on those conversations, are more
11 receptive to the idea of changing the governance of the
12 trust?
13 **A. If you, if you -- I think you have to be more**
14 **direct in what you mean by that before I can answer**
15 **that.**
16 Q. All right. Well, tell me what you have
17 discussed -- Tell me what Mr. Mulholland has said to
18 you about potentially making any changes in the
19 governance of the trust?
20 **A. Well, they've all, we've all had discussions**
21 **about it. It's all been about whether we want to do**
22 **this or not. And I'll tell you right now, we don't**
23 **want to change the trust.**
24 Q. So my question to you is are there any of the

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1 Feoffees who have indicated to you that they would be
2 amenable to changing the trust?
3 **A. Yes, there have been some discussions**
4 **along that line, yes.**
5 Q. Okay. Which of the Feoffees have related to
6 you in your private conversations that they would
7 personally be amenable to changing the trust?
8 **A. Under certain conditions.**
9 Q. Okay, under certain conditions.
10 **A. Would be Mulholland and Whiston.**
11 Q. And what conditions would they want to see to
12 change the trust?
13 **A. There was talk of indemnification.**
14 **MR. SHEEHAN:** Well, hold on. This is,
15 these are settlement discussions. I'm not going to let
16 you go there.
17 **THE WITNESS:** Okay, good.
18 **MR. SHEEHAN:** That's not right.
19 **THE WITNESS:** All right.
20 **MR. PERRY:** Off the record.
21 (Discussion off the record.)
22 Q. I understand that the Feoffees, if they were
23 going to agree to certain changes in governance, might
24 have a concern with how they are treated and make sure

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1 they are treated fairly. But what I'm trying to ask
2 you about is discussions you have had with other
3 Feoffees about the appropriateness of making changes to
4 the trust, assuming that the right conditions were
5 present. Have any of the Feoffees told you that they
6 think it would be better for the town if the trust
7 governance was changed?
8 **A. No.**
9 Q. Why do you oppose changing the governance of
10 the trust?
11 **A. I think it's not legal. I think you have no**
12 **standing.**
13 Q. Okay. And what do you mean by that?
14 **A. We are a private trust. I'm not an attorney,**
15 **but I got some knowledge of the law and how things work**
16 **and I just don't see how public can tell private what**
17 **to do.**
18 Q. Now, is the trust, to your understanding, a
19 public charity?
20 **A. We have, we have, what do you call it, filed**
21 **reports with the Attorney General.**
22 Q. Is it your understanding that the trust for
23 the benefit of the schools is a public charity?
24 **A. My auditor, our auditor has file reports with**

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1 the Attorney General's office.
2 Q. And does that lead you to believe that the
3 trust is a public charity?
4 A. No.
5 Q. So you don't think it is a public charity?
6 A. We have a superior court judge who says we're
7 private.
8 Q. Do you know what is meant by the term public
9 charity? Well, strike that.
10 Is the trust regulated by the Attorney
11 General's office?
12 A. No. It's a reporting requirement that we
13 fulfill.
14 Q. Do you know whether the Attorney General's
15 office has any authority over the conduct of charities
16 in Massachusetts?
17 A. I would think they do, yeah.
18 Q. Do you know whether that authority extends to
19 the Feoffees?
20 A. Specifically, no, I don't know.
21 Q. Now, you are in front of the court asking it
22 to alter the terms of the trust to allow a sale of the
23 property, correct?
24 A. That is one of the issues we're going to be

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1 doing in December, yes.
2 Q. But you're saying that the court wouldn't have
3 the authority to institute -- Strike that.
4 There's pretty much no rules in place
5 regarding the governance of this trust, are there?
6 A. Rules?
7 Q. With regard to the governance of the trust,
8 the legislation that was passed does specify how
9 trustees are appointed, right, how Feoffees are
10 appointed?
11 A. Now?
12 Q. Yes.
13 A. Not the post.
14 Q. The existing.
15 A. Trust, okay.
16 Q. The existing trust through the legislation
17 passed a couple hundred years ago.
18 A. All right. There is a mechanism in place,
19 yeah.
20 Q. And is it your understanding that the probate
21 court would not be able to change that mechanism if
22 appropriate?
23 A. The judge in that court could decide that. I
24 believe they have the authority to go any way they want

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1 to go based on evidence, but --
2 Q. All right. So other than the fact that you
3 said that, other than your opinion that it's not legal
4 to change it because you're a private trust, any other
5 reasons why you don't think the governance of the trust
6 should be changed?
7 A. I have reasons, yes.
8 Q. What are those?
9 THE WITNESS: May I answer?
10 MR. SHEEHAN: Sure.
11 A. I believe it to be a power grab by the town
12 that they can appoint their own people and control the
13 money.
14 Q. And you think that would be inappropriate?
15 A. I most certainly do.
16 Q. And you think it's better that the Feoffees
17 consisting of a majority of life Feoffees have the
18 power?
19 A. Yes.
20 Q. Do you think you're more qualified than the
21 town to choose the next life Feoffee?
22 A. Most definitely.
23 Q. And why is that?
24 A. Because I know what it entails.

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1 Q. And what does it entail?
2 A. I know what the Feoffees do and I know what I
3 do specifically and I don't think anybody in the town
4 has a clue what goes on to make those decisions.
5 Q. What kind of person would be needed to do what
6 you do?
7 A. Well, do you know what I do?
8 Q. Can you tell me? What do you do?
9 A. I'm the treasurer, I'm the manager of Little
10 Neck and I'm a board member also.
11 Q. Okay. And do you feel you have training and
12 skills that make you suitable to be treasurer?
13 A. Yes.
14 Q. And what training and skills are those?
15 A. Just, I know mathematics to a degree. That's
16 all. There's no magic to it, but there's a lot of
17 administrative problems involved with it.
18 Q. And do you think it's a good idea that
19 Feoffees should serve for life?
20 A. I've seen no logical definitive reason as to
21 oppose that.
22 Q. Do you believe the trustees should be
23 accountable to the town for the results of their
24 management of the trust?

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1 **A. I believe our fiduciary responsibility is to**
2 **give money to the schools when we have the money to**
3 **give them, which we have over the years.**
4 Q. Do the Feoffees have a duty to maximize the
5 money available for the schools?
6 **A. If we can.**
7 Q. And have the Feoffees during the time you have
8 been a Feoffee done that, maximize the money available
9 for the schools?
10 **A. Yes.**
11 Q. So you see no problems with how the trust has
12 been administered since 1994?
13 **A. No, I don't. And I might add, no one has told**
14 **us any reason.**
15 **MR. SHEEHAN:** Off the record.
16 (Discussion off the record.)
17 Q. During the time you have been a Feoffee have
18 you been paid for your services?
19 **A. I get paid as the treasurer and I get paid as**
20 **the, what do you call it, the manager.**
21 Q. When did you begin to get paid?
22 **A. When I assumed the position.**
23 Q. Do you mean when you assumed those positions
24 replacing Mr. Whiston?

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1 **A. Right.**
2 Q. In those capacities?
3 **A. Right.**
4 Q. And was that a number of years ago?
5 **A. Yes.**
6 Q. What has been the pay you have received from
7 that time to the present?
8 **A. Started out as a monthly stipend as treasurer,**
9 **I believe it to be 1,015 a month. Now it's 1,500 a**
10 **month. And the manager was, when I took it over was at**
11 **the time a forty hour position, which I was asked if I**
12 **would take the position due to the vacancy in the**
13 **manager's job and I said I would take it and I could do**
14 **it for twenty hours a week. So I took it for**
15 **twenty hours a week at \$25 an hour.**
16 Q. That's \$500 a week?
17 **A. Yes.**
18 Q. Who did you succeed as manager?
19 **A. Mr. Foley.**
20 Q. What was Mr. Foley getting paid?
21 **A. He was getting paid for forty hours a week.**
22 Q. I take it from your testimony that you felt
23 that the work that Mr. Foley was doing you could do in
24 twenty hours a week?

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1 **A. Yes.**
2 Q. So were there discussions among the Feoffees
3 about whether Mr. Foley was spending too much time at
4 the Feoffees' expense?
5 **A. There were, there were some discussions.**
6 Q. I mean, that was your personal opinion that he
7 was logging too many hours, right?
8 **A. There was time -- There were times when the**
9 **sewer, what do you call it, the sewer system was being**
10 **put in that he was needed down there on almost a full**
11 **time basis.**
12 Q. Right.
13 **A. But as things evolved and that wound down, the**
14 **answer was no.**
15 Q. Let me see if I can just summarize this.
16 There was a lengthy period of time when Mr. Foley was
17 being paid essentially at the rate of what, \$1,000 a
18 week?
19 **A. Yes.**
20 Q. You thought that was justified for part of the
21 time, but certainly not for the entire time that he was
22 being paid that amount?
23 **MR. SHEEHAN:** Objection.
24 Q. Is that fair? You can answer. He's just

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1 preserving his --
2 **MR. SHEEHAN:** My objection. You can
3 answer.
4 **A. Give me that one again.**
5 **MR. PERRY:** Could you read back my
6 question, please?
7 (Question read back by the reporter.)
8 **MR. SHEEHAN:** Note my objection.
9 **A. Did I think he was being paid more than what**
10 **he was -- Is that the question?**
11 Q. Yes.
12 **A. Yes, I believe.**
13 Q. And you felt that for some of the period he
14 was being paid too much?
15 **A. Yes.**
16 Q. And you said you could do the same work for
17 half the amount?
18 **A. When I was asked to take the position over,**
19 **yes.**
20 Q. Let me just cover payments to other Feoffees.
21 So Mr. Foley you have, I think, covered that he had
22 been getting \$1,000 a week for some period of time,
23 right, when he was managing the property?
24 **A. Right.**

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1 Q. After he ceased to be manager and you became
2 manager has he received any payments?
3 **A. I think he, there was a little time at the**
4 **beginning of my take over of the position where he**
5 **would come down and familiarize me with the job, so to**
6 **speak.**
7 Q. Right.
8 **A. And he got some minimal payments there and**
9 **that was the end of it.**
10 Q. Okay. And is Mr. Whiston getting any payments
11 at this time?
12 **A. No.**
13 Q. And Mr. Mulholland was getting some payments
14 at the time when he was chairman, is that right?
15 **A. When he first took over as chairman, I believe**
16 **he was, yes.**
17 Q. Who's chairman now?
18 **A. Mr. Mulholland.**
19 Q. So he's still perhaps getting those payments?
20 **A. No.**
21 Q. No longer?
22 **A. No.**
23 Q. Are you currently doing the management work
24 for Little Neck?

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1 **A. Yes.**
2 Q. And how long have you been able to manage
3 Little Neck at the rate of \$20,000 a year?
4 **MR. SHEEHAN: Objection.**
5 **A. I think I've been down there, I don't know,**
6 **two years now.**
7 Q. Let me, that's a bad question, I'm sorry.
8 **A. Okay.**
9 Q. You have been doing, you have managed Little
10 Neck over the past two years?
11 **A. I don't know exactly how long, but it's been**
12 **about two years.**
13 Q. And you haven't used any outside management
14 company during that period?
15 **A. No.**
16 Q. During the period you have been managing
17 Little Neck, I assume that it's busier during the,
18 perhaps during the summer than it is during the off
19 season, right?
20 **A. Yes and no.**
21 Q. But in any event, the way it works is you just
22 fill a straight twenty hours a week and it all averages
23 out, right?
24 **A. On occasions there are times when I would have**

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1 **to work one or two hours over that, but, I mean, most**
2 **of the time it's twenty hours.**
3 Q. So if you're getting \$500 a week, that's
4 26,000 a year, right?
5 **A. Yeah.**
6 Q. For that part of it?
7 **A. Like, when I used to go to Florida for a**
8 **month, I didn't pay myself for that. So that was, we**
9 **deduct those four weeks or whatever time I was away,**
10 **you know.**
11 Q. So suppose there was no sale of the property
12 and the Feoffees were to hire you to continue to manage
13 the property. What would be the amount that you'd need
14 to be paid to do that? Would it be around 25, 26,000 a
15 year?
16 **A. Whatever I'm getting now.**
17 Q. Yeah.
18 **A. Yeah.**
19 Q. And then in addition, that doesn't include
20 your work as treasurer, right?
21 **A. No. Treasurer is different.**
22 Q. And what do you do as treasurer beyond what
23 you do as manager?
24 **A. As treasurer I have to receive all the checks**

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1 **that come in on a monthly basis or actually a daily**
2 **basis for the rents, the taxes.**
3 Q. Right.
4 **A. And the vendors that we have to perform**
5 **certain duties out there, like repair this or fix that**
6 **or, you know, all those people have to be paid,**
7 **landscaping, sewer, maintenance, sewer. Any problems**
8 **of that, and we have the people come in and fix them.**
9 **Those bills have to be paid. And I maintain this**
10 **through a QuickBooks program on the computer and**
11 **everything is in the computer. And manage the, what do**
12 **you call it, the bank account for the Feoffees. And**
13 **what else? I don't know.**
14 Q. So I just want to get on the record how you're
15 dividing the management work from the treasurer work.
16 **A. Management is like the nuts and bolts down**
17 **there at the scene.**
18 Q. Tell me what that entails?
19 **A. The phone would ring and somebody has got a**
20 **problem, I've got to act on it. Or, you know, the**
21 **computer is there. It tells me whether the system is**
22 **operating, whether it's malfunctioning or functioning,**
23 **how well it's functioning, you know, and I have to stay**
24 **on top of that. Alarms go off if something goes wrong.**

1 **I have to respond and fix them, whatever is the**
2 **problem.**
3 Q. Are you physically located at Little Neck for
4 this job?
5 A. **Yeah, 37 Bay Road.**
6 Q. And that's some kind of headquarters building?
7 A. **Yes, what they call the MIS building.**
8 Q. How many hours a week do you spend there?
9 A. **About twenty hours a week.**
10 Q. And do you also do the bookkeeping while
11 you're there?
12 A. **Only if I bring my stuff with me in case**
13 **somebody inquires. And it's very, it's not a big deal**
14 **every day, but I've spent at least two hours a day at**
15 **home entering stuff, paying bills, things like that.**
16 Q. And you get 1,500 a month?
17 A. **Yeah.**
18 Q. So that's 18,000 a year, right?
19 A. **Yeah.**
20 Q. For that?
21 A. **Yeah.**
22 Q. So the total you're getting is in the range of
23 44,000 a year for doing the, essentially, the
24 bookkeeping and the management, right?

1 A. **Right.**
2 Q. And that would be a fair amount that the trust
3 can expect to spend in the future if the court doesn't
4 approve the sale for the bookkeeping and the management
5 function, correct?
6 A. **Yes.**
7 Q. Before you were a Feoffee had you ever done a
8 paid police detail at Little Neck?
9 A. **Yes.**
10 Q. And after you were a Feoffee were there paid
11 police details at Little Neck, not by you, just
12 generally?
13 A. **Yes.**
14 Q. How often -- During the time you have been a
15 Feoffee what was the practice with regard to how
16 frequently there would be a paid police detail at
17 Little Neck?
18 A. **During the summer months it's every weekend.**
19 Q. What hours?
20 A. **Three, four hours in the daytime and**
21 **eight hours on the nights, like Friday, Saturday**
22 **nights.**
23 Q. So how many hours total in a weekend?
24 A. **8, 16, 20, 24 probably.**

1 Q. So there would be 24 hours per weekend for how
2 many weeks?
3 A. **From Memorial to Labor Day, so whatever that**
4 **comes out to be. And then if you have a holiday, that**
5 **increases the coverage.**
6 Q. Somewhere between 12 to 14 weeks, right?
7 A. **Yeah, about that.**
8 Q. And then also holidays like July 4th?
9 A. **Yeah, some. If you got a Monday holiday, then**
10 **that necessitates somebody on a Sunday night to be**
11 **there and maybe even on the daytime of the Monday. But**
12 **those aren't that many, but they do happen.**
13 Q. How often did you serve as the police detail
14 person at Little Neck?
15 A. **Not too often, because in my position as the**
16 **deputy chief details didn't come to me on a rotating**
17 **basis like they did to the regular people. They came**
18 **to me when nobody else would take it, then they'd say**
19 **do you want to work? And I'd say if I wanted it, I'd**
20 **say yes. So I wasn't there like every Friday or every**
21 **Saturday or every Sunday. I wasn't there. It was**
22 **sporadic.**
23 Q. So it was your police colleagues who got most
24 of the police details?

1 A. **Oh, yeah, sure.**
2 Q. Did people like getting those details?
3 A. **Yeah.**
4 Q. Are those considered plum jobs?
5 A. **Well, they're considered a detail and it's**
6 **extra money and that's what they do it for.**
7 Q. And the police person would stand down by the
8 pillars at the entrance to Little Neck and check people
9 going in?
10 A. **Yeah.**
11 Q. Now, in your experience you have seen gated
12 communities and the like in other places, haven't you?
13 A. **Yes.**
14 Q. And have you noticed that in downtown Boston
15 some of the condominium complexes have security people,
16 right?
17 A. **Yes.**
18 Q. Have you noticed that they typically are
19 staffed by security guards?
20 A. **Yes.**
21 Q. What is the reasoning for using a police
22 detail at Little Neck rather than hiring a security
23 guard type person to do it?
24 A. **Security guards have no authority.**

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1 Q. Are they less expensive?
2 **A. Yes.**
3 Q. And in your experience aren't other places
4 that are attempting to keep members of the public out
5 able to use security guards?
6 **A. Whatever they want to do. That's not us.**
7 Q. So you don't think it would be a reasonable
8 cost savings to use security guards at substantially
9 less than \$20 an hour rather than police details at \$48
10 an hour or higher?
11 **A. You have a person that's a police officer,**
12 **when he puts his hand up to stop, he has the authority**
13 **to stop. And he has the authority to arrest if you go**
14 **by them. He can forbid you to go in there. He's also**
15 **trained in CPR and first aid and firearms and**
16 **everything else that security guards are not.**
17 Q. Have the Feoffees ever attempted to provide
18 these services through a security firm to see whether
19 that worked out?
20 **A. No.**
21 Q. You said you'd known Jim Foley a long time
22 before he became a Feoffee?
23 **A. Yes.**
24 Q. Is he a personal friend of yours at this

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1 point?
2 **A. He's an acquaintance.**
3 Q. Did you see any conflict of interest in your
4 part of serving as a Feoffee when other Feoffees held
5 cottages?
6 **A. Did I see any what?**
7 Q. Let me rephrase that. I've asked you earlier
8 whether you saw it as a conflict of interest that other
9 Feoffees own cottages and you said no.
10 **A. Right.**
11 Q. Whether Jim Foley owned a cottage, right?
12 **MR. SHEEHAN: Objection.**
13 Q. Did it pose any difficulty for you that when
14 you were making decisions affecting the cottage owners
15 you knew that Mr. Foley owned a cottage?
16 **MR. SHEEHAN: Objection.**
17 **A. It didn't, didn't faze me, no.**
18 Q. And has it affected, do you find it a problem
19 at all for you that when you're making decisions
20 concerning the cottage owners, you know that Mr.
21 Whiston has a daughter who's a cottage owner?
22 **MR. SHEEHAN: Objection.**
23 **A. Doesn't bother me.**
24 **MR. PERRY: Let's take a break.**

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1 (Brief recess.)
2 Q. When you first became a Feoffee in 1994 you
3 went to annual meetings of the Feoffees?
4 **A. Yes.**
5 Q. Did you do anything else during those years as
6 a Feoffee?
7 **A. During the early years there was only like one**
8 **meeting a year and that was the annual meeting.**
9 Q. Do you know how much is being charged in rent
10 right now to those people who have signed leases?
11 **A. Yes.**
12 Q. What are the amounts?
13 **A. For a seasonal it's 2,425 per quarter and for**
14 **a full time it's \$2,700 per quarter.**
15 Q. All right. And that comes out to, if you
16 multiply those by four, we get 9,700 and 10,800, right?
17 **A. Right.**
18 Q. So that would be the annual rents?
19 **A. Right.**
20 Q. How long has it -- Strike that.
21 When the tenants, when the tenants pay
22 their rent or use and occupancy charges, do they do
23 that quarterly?
24 **A. The tenants pay monthly.**

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1 Q. Monthly?
2 **A. Yeah.**
3 Q. Before the litigation with them, do you know
4 on what period they were being billed and paying rent?
5 **A. As far as I can remember, it's always been by**
6 **the month for the tenants.**
7 Q. But you weren't handling it, were you, back
8 then?
9 **A. No. Mr. Whiston was doing it all.**
10 Q. Do you consider the rents of 9,700 and 10,800
11 being charged to the lessees to be fair?
12 **A. Yes.**
13 Q. Are those the rents you think tenants should
14 have been paying, too?
15 **A. I believe so, yes.**
16 Q. And if you were, if the current tenants were
17 unwilling to pay those rents, do you think there would
18 be any difficulty in finding other people who wanted to
19 move into Little Neck and pay those rents?
20 **MR. SHEEHAN: Objection.**
21 **A. Do I think there would be any difficulty?**
22 Q. Right.
23 **A. In finding people?**
24 Q. Right.

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1 A. In my opinion only.
2 Q. Right.
3 A. I don't think there would be a problem.
4 Q. You think the market can support those rents,
5 right?
6 A. Fair market value, right.
7 Q. There may be some tenants who have difficulty
8 affording them, is that true?
9 A. It could be true, yeah.
10 Q. But you think if that were true, you think
11 there would be other people who would have the means
12 and the willingness to pay those rents?
13 A. Yes.
14 Q. The Feoffees have never in fact collected from
15 all the cottage owners rents on the order of 9,700 a
16 year for seasonal use, right?
17 A. They have not collected it?
18 Q. From the cottage owners generally. I can see
19 you don't understand my question, so let me back up.
20 Prior to the litigation tenants were paying something
21 around 5,000 a year in rent?
22 A. That's probably true.
23 Q. All right. And they refused to pay the
24 imposed rent increases 9,700 a year for seasonal use,

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1 right?
2 MR. SHEEHAN: Objection.
3 Q. They refused to agree to that rent, is that
4 true?
5 A. I believe so, yeah.
6 Q. If the Feoffees were able to collect from all
7 of the cottage owners the amount that you consider to
8 be a fair rent for the property, is there any reason
9 that you wouldn't be able to continue with the ongoing
10 rental of Little Neck in a profitable way?
11 A. A lot of things are entering into that. I
12 mean, ongoing lawsuits, expenses. If that all went
13 away, that would be money that would be taken in and
14 money we could give to the schools.
15 Q. Yeah. So what I'm asking you is if the
16 litigation were to be resolved and the Feoffees were to
17 collect fair market rent, would it be viable to
18 continue to rent Little Neck?
19 A. Would it be viable to continue to rent it, in
20 other words, the sale wouldn't be a sale?
21 Q. Yes.
22 A. It would be viable, I would think.
23 MR. PERRY: Off the record.
24 (Discussion off the record.)

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1 Q. And do you know of any reason why the Feoffees
2 wouldn't be able to collect market rents after the
3 litigation is resolved?
4 A. Well, that's a speculative question. I don't,
5 I can't answer that.
6 Q. Well, what reason would there be that the
7 Feoffees would be unable to collect market rents for
8 its real estate after the litigation is resolved?
9 A. I have no knowledge of that, what that might
10 be.
11 Q. Have you familiarized yourself with the claims
12 that the tenants made against the Feoffees in the
13 litigation?
14 A. Somewhat.
15 Q. Did you evaluate those claims?
16 MR. SHEEHAN: When you're answering that
17 question, Peter, I don't want you to take into account
18 conversations that you and I have had or that I have
19 had with Feoffees. If you have made an independent
20 evaluation without the advice of legal counsel as to
21 the claims, feel free to answer.
22 MR. PERRY: Let me withdraw the
23 question, because I don't really want an answer in a
24 way that I can't understand what he's answering.

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1 Q. You said you have somewhat evaluated the
2 claim. Okay. Let me ask you this question.
3 MR. SHEEHAN: Object to the form. I
4 don't think he said he evaluated it. I think he said
5 he's familiar with the claim.
6 MR. PERRY: Right, right.
7 Q. You said you somewhat familiarized yourself
8 with the claims. I stand corrected. Are you aware of
9 any valid claims being made by the tenants against the
10 Feoffees?
11 MR. SHEEHAN: Same cautionary
12 instruction.
13 A. No.
14 Q. Do you expect to prevail if the litigation
15 continues, the superior court litigation? Do you
16 expect to prevail in the superior court litigation
17 against the tenants if it were to go back to superior
18 court?
19 A. Yes.
20 Q. In that litigation or in connection with that
21 litigation is it your understanding that the Feoffees
22 have a claim for use and occupancy payments from the
23 tenants?
24 A. Yes.

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1 Q. And is it your understanding that if the
2 Feoffees were to prevail in the superior court
3 litigation, there would be several million dollars in
4 back rent that could be collected from the tenants?
5 **A. I'm aware of an escrow that's being held.**
6 Q. Right.
7 **A. Which was a compromise part of the, what do**
8 **you call it, the suit -- stipulation -- Is that what it**
9 **is, a stipulation?**
10 Q. Right. You know that there's some money being
11 held in escrow under that stipulation, right?
12 **A. Yes.**
13 Q. Now, the tenants stopped paying into the
14 escrow account when the settlement agreement was
15 signed, is that right?
16 **A. Yes.**
17 Q. But the Feoffees would still want to collect
18 additional use and occupancy charges from the tenants
19 for the period after the settlement agreement if the
20 court were to reject the sale, right?
21 **A. I can't answer that question, because it's, it**
22 **was an agreement made.**
23 Q. I think what you're saying is that you don't
24 know whether the agreement allows that or not?

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1 **A. Right.**
2 Q. But if the agreement allowed additional rent
3 to be collected in the superior court for the period
4 from January 2010 to the present, and you, the Feoffees
5 would of course want to do that, right?
6 **A. If it allowed it.**
7 Q. So if the superior court litigation were to
8 continue, you have told me that you're aware that the
9 Feoffees have a potential right to recover a
10 substantial amount of additional rent, right?
11 **A. I believe that's, yeah.**
12 Q. All right. Were there any financial claims
13 that the tenants were making against the Feoffees for
14 money that you were concerned about?
15 **A. No.**
16 Q. Now, with regard to the wastewater system that
17 got built, at the time it was being constructed was it
18 your intent that the tenants would pay for the costs of
19 the construction?
20 **A. At the time it was being built?**
21 Q. Yes.
22 **A. Were they going to pay for it?**
23 Q. Yes, were you expecting that they would pay
24 for it?

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1 **A. Yes.**
2 Q. And that was communicated regularly by the
3 Feoffees to the tenants, wasn't it, the expectation
4 that the tenants would be paying for it?
5 **A. I don't know about that regularly**
6 **communicated, I don't know.**
7 Q. Did you understand that the wastewater system
8 was being built in a sense as an accommodation to the
9 tenants because they didn't want to put in the tight
10 tanks?
11 **MR. SHEEHAN: Objection.**
12 **A. It was, it was a -- The reason it was done --**
13 **Well, it ultimately was done with the collection being**
14 **under the ball field in big tanks.**
15 Q. Right.
16 **A. As opposed to individual tight tanks.**
17 Q. Right.
18 **A. Because there was a public safety issue with**
19 **trucks running up and down all those hills. It was a**
20 **public safety issue.**
21 Q. But the tenants had vigorously opposed the
22 installation of individual tight tanks at their own
23 expense in favor of this large, the large holding tanks
24 under the ball field?

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1 **A. They objected to it, yes.**
2 Q. They objected to the tight tanks?
3 **A. To the individual tight tanks, yeah.**
4 Q. Yes. I'll move on to a different subject.
5 Are you aware of some situations out at Little Neck
6 where individuals bought cottages and then largely
7 demolished them and put something new up? That's
8 happened, right?
9 **A. Yes.**
10 Q. What's the most recent time that you can think
11 of when that happened?
12 **A. There's one that's just finished up.**
13 **Actually, there's still some stuff going on on King's**
14 **Way with a tear down and a build up.**
15 Q. Okay. Who sold that unit and who bought it?
16 **A. Addison is the owner. Who -- I don't remember**
17 **who the seller was.**
18 Q. Do you remember the address?
19 **A. I think it's 11 King's Way.**
20 Q. Do you know when that cottage transferred
21 hands?
22 **A. About a year ago.**
23 Q. Do you remember the price at which it sold?
24 **A. No.**

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1 Q. And what kind of a lot is 11 King's Way?
2 A. **A standard lot. They're all pretty much the**
3 **same.**
4 Q. Yeah, but some of them have better views than
5 others, right?
6 A. **Oh, yeah. Well, actually, everybody's got a**
7 **view. I mean, it's hard to believe. You're sitting**
8 **here in Boston thinking about it, but I'm telling you**
9 **from being down there, everybody's got a view.**
10 Q. Even the interior lots have a view?
11 A. **Yeah, they have a view, yeah.**
12 Q. It's a desirable place to live?
13 A. **I think so.**
14 Q. Do you think it has some amenities that, even
15 though it's dense, do you see some amenities there that
16 are superior to where you built at Great Neck?
17 A. **Yes.**
18 Q. And tell me some of those.
19 A. **They have a private beach.**
20 Q. Private beach at Little Neck?
21 A. **Right.**
22 Q. What about the underground utilities?
23 A. **It's all up underground utilities.**
24 Q. How does that affect the atmosphere and the

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1 views?
2 A. **Well, you don't have any light poles.**
3 Q. Up at Great Neck there's some horrendous
4 looking utilities all over the place, right, wouldn't
5 you say?
6 MR. SHEEHAN: Objection.
7 A. **Well, there are, what do you call it,**
8 **utilities all over the place, but Little Neck it's not**
9 **true.**
10 Q. Great Neck, I mean, wouldn't you say that the
11 utility lines are somewhat unsightly?
12 A. **Yeah, I would, yeah.**
13 Q. There's a large water tower there?
14 A. **Yes.**
15 Q. And Little Neck is pristine, isn't it?
16 A. **I think so.**
17 Q. So even though it's dense, it's very popular?
18 A. **Yeah. They have their own, what do you call**
19 **it, recreation for the kids on the property, which**
20 **other places don't. The beach. They have a big pier**
21 **that they can dock their boats near there and fish if**
22 **they want to. So there's a lot of things that, a**
23 **community center, you know.**
24 Q. Yeah. Apart from the tear down at 11 King's

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1 Way, can you think of some other tear downs that have
2 been done?
3 A. **Renovations I'm aware of.**
4 Q. Right, but any more tear downs?
5 A. **Actually --**
6 Q. Because tear downs are --
7 A. **During my tenure.**
8 Q. Right.
9 A. **I'm only aware of one. That's the Addison**
10 **house.**
11 Q. Okay.
12 A. **There were other ones torn down and built up,**
13 **but I wasn't there then.**
14 Q. So the only recent one that you are aware of
15 was at 11 King's Way, which was maybe a year ago?
16 A. **Yeah.**
17 Q. And we'll find the record, I think. And you
18 were telling me that everybody's got a view. Can you
19 tell me what kind of parcel 11 King's Way as far as
20 whether it's interior or first row?
21 A. **Well, Little Neck's a hill.**
22 Q. Right.
23 A. **And then there's the one side is the Ipswich**
24 **River.**

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1 Q. Right.
2 A. **The other side is the bay.**
3 Q. Right.
4 A. **Ipswich Bay.**
5 Q. Right.
6 A. **And they're on the river side and their view**
7 **is of the river and Crane's Beach. That's across the**
8 **river.**
9 Q. Right.
10 A. **And they have a view of that and a view of the**
11 **river. Actually, you got one, two, they got two views,**
12 **two side views there. Most everybody does, like I say,**
13 **you know, maybe looking at the cove, maybe looking at**
14 **the river, and maybe looking at Crane's Beach or Plum**
15 **Island, but somebody got a, somebody got a view.**
16 Q. Do you know this person Addison?
17 A. **I'm somewhat familiar with him, yeah.**
18 Q. Just from what his coming to you for, to talk
19 about the rebuilding?
20 A. **Yeah.**
21 Q. And where is Mr. Addison from?
22 A. **I want to say Winchester, but I'm not sure.**
23 Q. And is he planning to, as far as you know,
24 does he have a family?

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1 **A. I don't know what their family situation is.**
2 Q. Did he have to enter into a lease when he
3 bought the cottage?
4 **A. Yes.**
5 Q. I'll move on to a different subject. In your
6 prior deposition I saw that you alluded to some
7 litigation that apparently took place with the
8 professional engineering firm that had been involved
9 with the wastewater plant?
10 **A. Yes.**
11 Q. So that firm was Lombardo Associates?
12 **A. Yes.**
13 Q. Tell me what happened. I don't know anything
14 about this litigation. What was the litigation?
15 **A. I don't know if it was litigation, but an**
16 **issue came up that we had spent too much money on the**
17 **sewer system and we were being criticized by certain**
18 **factions that a lot of money was spent that shouldn't**
19 **have been spent. So in order to counteract that, we**
20 **hired a forensic engineer who came in and examined the**
21 **thing from top to bottom, papers, books, whatever. And**
22 **he, in his professional opinion, said that the job was**
23 **done within the parameters of low, high, was done in**
24 **the middle of what it would cost. In other words, he**

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1 **said there was no indication of wrongdoing on the part**
2 **of the engineers charging more than they should have**
3 **charged.**
4 Q. When I read your transcript it was reading as
5 though there actually was some kind of a case brought
6 by Lombardo to get their fees.
7 **A. Yeah. That, I think that was -- I think we --**
8 **I wasn't involved in it at the time, but I think they,**
9 **what do you call it, they held back some money that was**
10 **due him.**
11 Q. The Feoffees didn't pay Lombardo?
12 **A. Some of it, I guess toward the end. And once**
13 **the report came out and said he was, he did it right,**
14 **then they released it.**
15 Q. So when the monies were being withheld by the
16 Feoffees and you hired this forensic engineer were you
17 hoping to find out that everything was fine or were you
18 hoping to support the claim that no money had to be
19 paid?
20 **A. We wanted to find out exactly what was going**
21 **on as far as the allegations, were they true or not.**
22 **So it came out that nothing was wrong.**
23 Q. Okay. Who was your lawyer in connection with
24 that effort?

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1 **A. I think it was Greenough at the time. I think**
2 **it was Greenough. Bill might have been involved in**
3 **that, too. I don't know.**
4 Q. And was there --
5 **A. It was two years ago.**
6 Q. Was there a court case brought by Lombardo for
7 his fees?
8 **A. I'm not sure.**
9 **MR. PERRY:** Off the record.
10 (Discussion off the record.)
11 Q. And the report was that the fees were fair or
12 proper and the amount was paid, right?
13 **A. Right.**
14 Q. With regard to the entity that was set up with
15 regard to the wastewater plant, this LNWS?
16 **A. Right.**
17 Q. Which is I guess an LLC?
18 **A. Yeah, I guess it is.**
19 Q. Do you have any understanding of why that was
20 set up other than the fact that Mr. Greenough suggested
21 that you do so?
22 **A. Not really. I know they wanted to break it**
23 **out as a separate thing.**
24 Q. Was that because of some kind of concern about

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1 liability issues, perhaps?
2 **A. Could be. I'm not sure. I never really**
3 **concerned myself with it. I just operated it, that's**
4 **all.**
5 Q. Did LNWS ever pay any compensation to any of
6 the individuals who serve as life Feoffees?
7 **A. No.**
8 Q. So none of the compensation to Mr. Foley was
9 run through in LNWS?
10 **A. No.**
11 Q. Correct?
12 **A. Correct, yeah.**
13 Q. Do you remember when, that some notices went
14 out to the tenants in June 2006 in which they were told
15 that their tenancies at will were ending?
16 **A. Yeah, there were notices sent out, yeah.**
17 Q. And they were also offered an opportunity to
18 sign a lease, correct?
19 **A. Yes.**
20 Q. Had there been negotiations for quite a long
21 time with the tenants about what those leases would
22 look like?
23 **A. There were negotiations, I know.**
24 Q. And it was before that, right?

1 **A. I'm not sure. I mean, I didn't get involved**
2 **in leases.**
3 Q. Let me show you -- The reason I asked, let me
4 mark as Exhibit 1 to your deposition some meeting
5 minutes that I think you prepared.
6 (Foote Exhibit 1 marked for
7 identification.)
8 Q. Let me show you Exhibit 1 and I ask you if
9 that is a copy of meeting minutes that you were
10 involved in, that you prepared yourself?
11 (Document handed to the witness.)
12 **A. Yes, it looks like something I prepared, yes.**
13 Q. All right. And I'll remind you that the date
14 that the ultimate notices to quit are dated that went
15 to the tenants was June 28th, 2006, quite a bit later.
16 Are you with me?
17 **A. Yeah, I'm just looking.**
18 Q. You understand this is October 2005, right?
19 **A. Right, right.**
20 Q. But do you recall that the notices to
21 terminate the tenancy, those went out more than
22 six months later in 2006, right?
23 **A. That's possible. I'm not sure, 100% sure.**
24 Q. In this meeting minute there's a reference to

1 Mr. Gottlieb said they'd hired a top notch litigator
2 law firm and that they will litigate over the proposed
3 leases if the Feoffees don't change the terms. Do you
4 see that in the last part of your minutes?
5 **A. I see that, yes.**
6 Q. And just to put this in context, do you recall
7 that the superior court litigation didn't start until
8 December 2006?
9 **A. I'm not sure of the date, but that's possibly**
10 **correct.**
11 Q. I mean, if you would accept that for the
12 moment.
13 **A. All right.**
14 Q. And I'll represent to you that the notices to
15 terminate the tenancies went out in June 2006 and that
16 the litigation was filed the end of 2006, okay? So was
17 this October 2005 meeting the first time you had heard
18 a threat of litigation from any of the tenant leaders?
19 **A. I'm not sure if it was the first time or not.**
20 **I can't -- I don't know.**
21 Q. Were there negotiations with the tenants in
22 attempt to agree upon lease terms between October 2005
23 and June 2006 when the tenants were provided with
24 notices that their tenancies were being terminated?

1 **A. Were there negotiations?**
2 Q. Were there negotiations with the tenants in
3 that period?
4 **A. Not with me.**
5 Q. Okay. Who was handling this for the Feoffees?
6 **A. I can't recall if it -- Probably the**
7 **attorneys, the attorneys involved.**
8 Q. Did you have any dealings yourself with Mr.
9 Gottlieb?
10 **A. Back then, no.**
11 Q. What did you think when he was threatening to
12 bring the litigation against the Feoffees?
13 **A. I didn't think much of it.**
14 Q. Why not?
15 **A. Some people are, you know, throw threats**
16 **around for the sake of throwing threats around. You**
17 **know, I'm just not, not affected by that stuff.**
18 Q. Ultimately, the tenants brought a lawsuit,
19 right?
20 **A. That's true.**
21 Q. And you read it?
22 **A. I familiarized myself with it. I can't quote**
23 **it chapter and verse to you.**
24 Q. No. How did you get served with it?

1 **A. I think from the attorneys.**
2 Q. Okay. Did you read in the lawsuit language
3 that said that certain claims were only made against
4 the life Feoffees and not against the selectmen?
5 **A. I don't remember that.**
6 Q. Have you had any discussions with Mr.
7 Mulholland about any concerns he had with having his
8 personal assets be at risk?
9 **A. Have I with him?**
10 Q. Yes.
11 **A. About that?**
12 Q. Yes.
13 **A. Really know, no.**
14 Q. Have you had any discussions with any of the
15 Feoffees outside of the presence of Mr. Sheehan about
16 concerns that they had that the tenants might come
17 after personal assets of the Feoffees?
18 **A. I think there was some talk about it, but I**
19 **mean, collectively we're all object of the lawsuit,**
20 **Feoffees collectively are, not individually.**
21 Q. But what talk was there about your personal
22 assets being potentially at risk?
23 **A. I don't remember any talk about it myself.**
24 Q. Right.

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1 A. Because I was assured that it was not the
2 case. If the other guys had something to say, I don't
3 know, I'm not aware of it.
4 Q. Did you hear any of the other Feoffees say
5 something about it? Because I think you just told me
6 you did.
7 A. Yeah.
8 Q. What did you hear?
9 A. That they sometime, that they might be worried
10 about they're going to be sued individually, but you
11 know, they were assured that it wasn't that way.
12 Counsel advised us that.
13 Q. Well, counsel --
14 MR. SHEEHAN: Please don't, please don't
15 get into issues, Steve. I'm going to ask you --
16 Q. Let me try this. After you had consulted with
17 counsel you were comfortable that the suit was not
18 structured in such a way as to put your assets at risk,
19 is that right?
20 A. Yes.
21 Q. But other Feoffees didn't seem so comfortable
22 with it, right?
23 A. I think they all did after a while.
24 Q. Who were the ones that were concerned about

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1 this issue?
2 A. I, I'm not 100% sure. I don't really want to
3 say.
4 Q. To the best of your recollection who were the
5 Feoffees that who you thought were concerned about that
6 issue?
7 A. I think Mr. Mulholland was. I think -- I
8 really can't be sure on anybody else. I think he was
9 the only one that was worried about it.
10 Q. Were the two Feoffees with the most assets Mr.
11 Mulholland and Mr. Whiston?
12 A. That could be. And I don't know what they
13 have, but that could be true.
14 Q. I mean, your general understanding would be
15 that they may have some family money?
16 A. Yeah, yeah.
17 Q. After the, after the tenants were told that
18 their tenancies were going to end if they didn't sign
19 the leases, did any of them stop making payments that
20 they were required to make to the Feoffees, like taxes?
21 A. No. I mean, stuff doesn't come in on a
22 regular basis like it's supposed to. Some people pay
23 on time, some people are late, but, I mean, nobody said
24 to me, I'm not going to pay you because of this or

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1 that, you know.
2 Q. You don't remember that happening before the
3 stipulation was entered into?
4 A. I don't think so.
5 Q. How long have you been treasurer?
6 A. Since Mr. Whiston stepped down, so that was --
7 I don't know. It was a few years back. You have got
8 that somewhere.
9 MR. PERRY: Let me mark as Exhibit 2
10 some meeting minutes.
11 (Foote Exhibit 2 marked for
12 identification.)
13 Q. Are those a copy of a meeting minute that you
14 prepared?
15 (Document handed to the witness.)
16 A. I see what it is, but I'm not sure if it's
17 something I generated or not. It could be. It says
18 treasurer report, but I mean, I can't say 100% sure
19 that somebody else didn't do that.
20 Q. This is, if it helps, this was part of an
21 exhibit to your prior deposition where Mr. Sheehan had
22 come to the deposition, I think, with the meeting
23 minutes and they were all attached as one exhibit,
24 so --

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1 A. Then maybe it was, but like I say --
2 Q. If you look down at this report, it states
3 that they were delinquent taxes owed of \$23,000 from
4 2006.
5 A. Yeah.
6 Q. That's not a normal amount of delinquency,
7 right?
8 A. Not now, no.
9 Q. Wasn't that because some of the tenants were
10 refusing to pay even the taxes in view of the issues
11 that had arisen with the Feoffees?
12 A. If anybody, if anybody does not pay their
13 taxes or their rent on time --
14 Q. Right.
15 A. I am on the phone and I'm calling them up to
16 find out why. And a lot of times they just forget and
17 I get it the next couple of days.
18 Q. Do you remember sending out a series of
19 notices to quit in the fall of 2006 because people were
20 refusing to pay taxes?
21 A. I don't send out notices to quit.
22 Q. Do you recall having the attorney do that?
23 A. The attorney would send out some, yeah,
24 notices to quit.

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1 Q. Did you ever personally do an evaluation as to
2 whether the schools would be better off financially
3 under a sale situation versus a continued rental at
4 market rents?
5 **A. Did I do an evaluation?**
6 Q. Yes.
7 **A. No.**
8 Q. Do you know if anybody else did?
9 **A. I think it's been discussed and I think --**
10 Q. Outside of discussions with counsel are you
11 aware of anybody who's done an evaluation of that for
12 the Feoffees?
13 **A. No.**
14 Q. Under the settlement agreement with the
15 tenants do the Feoffees get to collect the rents that
16 are alleged to be owed by the tenants over and above
17 the roughly 5,000 a year that they were paying?
18 **A. I'm not quite sure I know what you mean.**
19 Q. I think we agreed that the tenants were, have
20 been paying substantially less for use and occupancy
21 than the \$9,700 a year for seasonal use or \$10,800 a
22 year for year round use that the Feoffees are trying to
23 collect, right?
24 **A. Yes.**

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1 Q. And then they were making some payments into
2 of the difference into escrow?
3 **A. Yes.**
4 Q. Under the settlement agreement those escrow
5 funds are effectively given back to the tenants to use
6 as a down payment on their purchase, right?
7 **A. I believe so, yes.**
8 Q. All right. And therefore, as part of the
9 settlement, the Feoffees are not collecting any
10 additional rent from those tenants, right?
11 **MR. SHEEHAN: Objection.**
12 **A. Are they making escrow payments now? No.**
13 Q. Well, do you know what the purchase price is
14 for the property?
15 **A. There's been two or three discussed.**
16 Q. Do you know what the current one is under the
17 agreement, do you recall?
18 **A. Yes.**
19 Q. What's it?
20 **A. 29.1.**
21 Q. And this purchase price of 29.1 million, that
22 includes the escrow amount, right?
23 **MR. SHEEHAN: Objection.**
24 **A. I don't know what it includes. I think it's**

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1 **what they're paying collectively for the land.**
2 Q. Do you know if the Feoffees are giving any
3 money back to the leaseholders, the lessees as part of
4 this sale?
5 **A. If the sale goes through?**
6 Q. Yes.
7 **A. I believe they're going to be getting some**
8 **money back.**
9 Q. All right. So do you consider the real
10 purchase price to be \$29 million or in your mind do you
11 think it's a lower figure because of rebates and so
12 forth that the Feoffees are provided?
13 **MR. SHEEHAN: Objection.**
14 **A. I don't want to get into that, because all I**
15 **know about is the 29.1. The other stuff will surface**
16 **when it happens, if it happens.**
17 Q. When the Feoffees collect that 29.1 million
18 for the sale of the property, do they also get to
19 collect the rent that they claim is owed by the
20 tenants?
21 **A. I don't know.**
22 Q. And of this \$29.1 million that the Feoffees
23 collect, do they have to give back some \$800,000 to the
24 lessees?

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1 **MR. SHEEHAN: Objection.**
2 **A. I don't know that, sir.**
3 Q. Okay. And who's paying for the cost of the
4 condominium declaration under the settlement agreement?
5 **A. I don't know.**
6 Q. Do you know how much that cost will be?
7 **A. No.**
8 Q. Before the problems arose with the tenants
9 that led to the litigation and putting aside the whole
10 wastewater system project, has there been much need for
11 lawyers on the part of the Feoffees?
12 **A. Since when?**
13 Q. Well, did the Feoffees traditionally spend
14 significant amounts on lawyers before the litigation
15 occurred?
16 **A. No.**
17 Q. And if there were no litigation, how much
18 money on a continued rental basis would have to be
19 spent, do you think, on lawyers?
20 **A. If --**
21 **MR. SHEEHAN: Objection.**
22 Q. What's your best estimate of a legal budget if
23 you didn't have the litigation?
24 **A. I would say as needed.**

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1 Q. And what would you budget for that as
2 treasurer?
3 A. **Probably set aside enough just to, you know,**
4 **because, I mean, you don't know how these things go.**
5 Q. Right.
6 A. **They might be over quickly. They might be**
7 **long in duration. You might have a small amount in**
8 **there just to be able to call them up and be able to**
9 **pay them and if it goes to something else, you have**
10 **another meeting and you decide, you know.**
11 Q. So you really can't give a figure for an
12 appropriate amount to set aside for a legal budget if
13 there were no litigation?
14 A. **Right now, no. I'm sure I could if I could**
15 **really sit down and analyze it, but right now, no.**
16 Q. Would you look at historically what had been
17 spent before the litigation arose to arrive at a
18 number?
19 A. **Well, there was no suit going on. It's going**
20 **to skew everything the other way.**
21 Q. Okay. How many suits have there been that
22 you're aware of since you have been a Feoffee?
23 A. **Two, I believe.**
24 Q. And what are those?

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1 A. **That's the one we're going to superior, what**
2 **do you call it, not superior --**
3 Q. Probate.
4 A. **Probate court, that one there, and the one**
5 **that's pending against us from the tenants, superior**
6 **court.**
7 Q. Do the Feoffees incur any annual costs outside
8 of your fees for the repair and maintenance of the
9 properties?
10 A. **Oh, yeah.**
11 Q. And what are the items that it has to repair
12 and maintain?
13 A. **The sewer system.**
14 Q. Okay. Anything else?
15 A. **The building service for the sewer usage.**
16 Q. So really, things that relate to the
17 wastewater system, right?
18 A. **That's so far is what I've said, yeah. You**
19 **got landscaping, which is not, and you got roads and**
20 **utilities and things like that.**
21 Q. And were you imposing a fee on the tenants of,
22 wasn't there a \$40 a month fee at some point that was
23 intended to cover that?
24 A. **Operation and maintenance, yeah, O & M.**

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1 Q. Is that being charged now?
2 A. **Yes.**
3 Q. Who pays it?
4 A. **The tenants.**
5 Q. Do the lessees also pay it?
6 A. **No. Well, they pay a higher rent because they**
7 **have the -- They pay higher than the tenants, so it's**
8 **probably figured in there.**
9 Q. Are there any office expenses incurred by the
10 Feoffees?
11 A. **Yes.**
12 Q. What are the office expenses?
13 A. **Postage, telephone, paper, computer, lights,**
14 **things like that, you know.**
15 Q. You had provided an estimate at your prior
16 deposition of cost of around 70 to \$100,000 a year to
17 run Little Neck, do you remember that?
18 A. **I don't remember that, but I do remember I**
19 **provided that information before.**
20 Q. And do you think that's a fair estimate of the
21 cost of running Little Neck on an annual basis?
22 A. **No, not now.**
23 Q. Okay. Why not?
24 A. **Because we have a lot of other expenses. We**

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1 have probably \$1.1 million of revenue coming in every
2 year and we have about \$800,000 something in expenses
3 every year.
4 Q. Right. But you're including the pay down of
5 the loan, right?
6 A. **Pay down the loan.**
7 Q. And you're including litigation expenses of
8 your attorney?
9 A. **Litigation expenses, yeah.**
10 Q. Are the Feoffees currently realizing some
11 gain? Are they taking in more than they're spending?
12 A. **Somebody else from the outside looking in**
13 **would probably say yeah, you're taking -- But as a guy**
14 **that does it every day, you know, I have to meet a**
15 **certain goal to pay my bills and there's times when**
16 **that deadline's coming that I don't have it. And yet,**
17 **I've always been able to do it.**
18 Q. Do the Feoffees have money in the bank at this
19 time?
20 A. **Yeah, I maintain the bank account, yeah.**
21 Q. What's the available cash to the Feoffees
22 right now?
23 A. **About 127,000. And I've got 150,000 coming**
24 **up.**

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1 Q. That you have to pay?
2 **A. That I have to pay.**
3 Q. To whom?
4 **A. 150,000 to the bank and 120 something to the**
5 **town for taxes. November 1st.**
6 Q. What about your attorney?
7 **A. The attorney gets paid, too, sure.**
8 Q. Is there a retainer being held?
9 **A. It was a cash thing at one time and then it**
10 **became an advance of a sum of money which he would draw**
11 **on, yeah.**
12 Q. How much was that?
13 **A. The last one, I think, was, I think it was**
14 **\$100,000.**
15 Q. You mentioned an escrow account?
16 **A. You did.**
17 Q. We both did.
18 **A. No, go ahead.**
19 Q. Do you know how much is in it?
20 **A. No, not exactly. I've been told it's about a**
21 **million, something in there.**
22 Q. Is it a million and a half or is it a million?
23 **A. I don't know. Somewhere around a million, I**
24 **think.**

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1 **MR. PERRY:** Can we go off the record?
2 (Discussion off the record.)
3 Q. In your deposition in the superior court
4 litigation you were asked about whether any of the
5 Feoffees, whether the Feoffees had directors and
6 officers liability insurance. Do you recall that, that
7 you were asked?
8 **A. No.**
9 Q. Well, you were. And you said something to the
10 effect that, generally, no, there wasn't any, but you
11 said that Jim Foley had some insurance. Do you recall
12 that at all?
13 **A. I remember it was talked about, but I never**
14 **saw a document.**
15 Q. Has any part of Jim Foley's defense in this
16 matter been paid by insurance?
17 **A. Defense in this matter?**
18 Q. Is there an insurance company paying for, is
19 an insurance company helping to pay Jim Foley's legal
20 costs in this case?
21 **A. I'm not aware that he's -- Are you saying**
22 **there's a suit against him that's Feoffee related? If**
23 **there is, I'm not aware of it.**
24 Q. Well, just the superior court case. I didn't

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1 understand this testimony you gave about Jim Foley
2 possibly having some form of insurance that might be
3 applicable. What is your full understanding about
4 that?
5 **A. I'm not sure that he has any. I'm not sure**
6 **that he has any.**
7 Q. There was some talk that he might have some
8 kind of insurance that might provide him with some sort
9 of coverage?
10 **A. He said at one time that he was going to get**
11 **some kind of insurance, and but I never saw a document.**
12 **So I can't say that he's got it or doesn't have it.**
13 Q. But as far as you know, there's no insurance
14 company helping to fund the Feoffees' defense in the
15 superior court case, right?
16 **A. I have no knowledge of that.**
17 Q. As far as you know, the Feoffees are paying
18 those bills?
19 **A. Right.**
20 Q. There's a meeting minute that says that Mr.
21 Foley had been offered a new position with the Caldwell
22 Trust. What's the Caldwell Trust?
23 **A. The Caldwell Nursing Home is, had a trust, I**
24 **guess, and that part of their thing, and he supposedly**

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1 **was going to head up some kind of a fund-raising thing**
2 **to build a new facility and it never happened.**
3 Q. Were any of the other Feoffees involved in any
4 way with the Caldwell Trust?
5 **A. No.**
6 Q. Were there any, did any issues arise regarding
7 the Caldwell Trust with the Attorney General's office?
8 **A. To my knowledge, no.**
9 Q. Mr. Foley has been charged with some crime in
10 connection with matters relating to training classes,
11 right?
12 **A. (Witness nodding head up and down.)**
13 **MR. SHEEHAN:** You have to answer yes or
14 no, Peter.
15 **A. Yes.**
16 **MR. SHEEHAN:** I saw you nodding.
17 Thanks.
18 Q. And when did that happen?
19 **A. Jeeze.**
20 Q. That is, do you know how long that's been
21 pending, that case?
22 **A. I think it's been two or three years, I think.**
23 Q. Were there any discussions among the Feoffees
24 about whether Mr. Foley should resign in view of those

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1 charges?
2 **MR. SHEEHAN:** And I'm going to instruct
3 you, Peter, no discussions in my presence.
4 **MR. PERRY:** Right.
5 **MR. SHEEHAN:** Anything other than that
6 you can answer.
7 **A. No.**
8 **Q.** And is the position of the Feoffees to wait
9 and see what happens in the outcome of that case to
10 decide how to approach it?
11 **A. Yes.**
12 **Q.** The Feoffees don't, even if the other life
13 Feoffees wanted to remove somebody, that's not
14 something they can do, correct?
15 **A. I see nothing in the charter that allows it.**
16 **Q.** Right. Were you ever in favor of seeing Mr.
17 Foley step down as a Feoffee?
18 **A. I can't answer that because of talk with**
19 **counsel.**
20 **Q.** Well, I don't want you to tell me anything
21 that you -- I don't want you to discuss with me your
22 communications with Mr. Sheehan or discussions you have
23 had. My question was was it your personal opinion at
24 any time that it would be best for the trust if Mr.

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1 Family stepped down?
2 **A. My personal opinion?**
3 **Q.** Yeah.
4 **A. Yes.**
5 **Q.** Did you ever, outside of the presence of Mr.
6 Sheehan, express that to Mr. Foley?
7 **A. No.**
8 **Q.** Have you ever had any close personal friends
9 who were cottage owners?
10 **A. No.**
11 **MR. PERRY:** All right. That's all I
12 have. Thank you.
13 **MR. SHEEHAN:** Okay. I have no
14 questions.
15 (Whereupon, at 12:23 o'clock p.m.,
16 the deposition was concluded.)
17
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1 **C E R T I F I C A T E**
2 **I, PETER FOOTE, do hereby certify under**
3 **the pains and penalties of perjury that I have read the**
4 **foregoing transcript of my testimony given on October**
5 **21, 2011, and I further certify that said transcript is**
6 **a true and accurate record of said testimony (with the**
7 **exception of the following corrections listed below):**
8 **Page Line Correction/Reason**
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 Dated at _____, this _____ day
19 of _____, 2011.
20
21
22
23 **PETER FOOTE**
24

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1 **CERTIFICATE**
2 **COMMONWEALTH OF MASSACHUSETTS**
3 **COUNTY OF SUFFOLK**
4 **I, CYNTHIA F. STUTZ, Certified Shorthand**
5 **Reporter and Notary Public duly commissioned and**
6 **qualified in and for the Commonwealth of Massachusetts,**
7 **do hereby certify:**
8 **That the witness whose testimony is**
9 **hereinbefore set forth, was duly sworn by me and that**
10 **such testimony is a true and accurate record of my**
11 **stenotype notes taken in the foregoing matter, to the**
12 **best of my knowledge, skill and ability.**
13 **I further certify that I am neither attorney**
14 **nor counsel for, nor related to or employed by any of**
15 **the parties to the action in which this deposition is**
16 **taken; and further that I am not a relative or employee**
17 **of any attorney or counsel employed by the parties**
18 **hereto or financially interested in the action.**
19 **IN WITNESS WHEREOF, I have hereunto set my**
20 **hand this 28th day of October, 2011.**
21
22 **CYNTHIA F. STUTZ, Notary Public**
23 **My Notary expires August 17, 2012**
24

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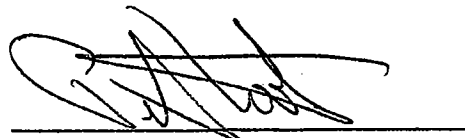
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C E R T I F I C A T E

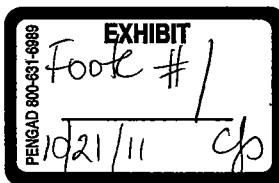
I, PETER FOOTE, do hereby certify under the pains and penalties of perjury that I have read the foregoing transcript of my testimony given on October 21, 2011, and I further certify that said transcript is a true and accurate record of said testimony (with the exception of the following corrections listed below):

Page	Line	Correction/Reason
105	4	# 59000.-
110	1	FOLEY
22	24	76
23	1	88
17	16	88
17	9	90

Dated at _____, this 3 day of NOV, 2011.



PETER FOOTE



Meeting with tenants 10-30-05 at VFW 1PM

Present were Foote, Foley, Mulholland, Whiston, Pio Lombardo, Dave VanHooven, Atty Greenough.

Mulholland called meeting to order and introduced Feoffees and Lombardo and VanHooven to meeting.

Mulholland announced agenda and rules of meeting.

Pio discussed power point presentation with meeting on wastewater project.

Yacubian wanted to know who decided location for pump out. Mulholland answered.

Ellen Perry wanted directional drill and to pursue trustees. Mulholland said trustees would not commit. Pio said there were other options i.e. Town running sewer line to Ln in 3-5 yrs.. Bob Varney wanted assurances that pump trucks would be shut off on LN.

Doherty stated that engineering costs were too high. Pio answered about all changes that were made pursuant to tenant's wishes which cost money.

Dever said the bills are too high. Carol Lonergan and Lalikos said essentially the same.

Diana Kane wanted to know about outside showers and metering, Pio answered.

Fred Kelly stated that there has been no communication from feoffees until now. It was answered that there would be more meetings in future. Rich Betts wanted to know costs included in \$6million project. Pio answered. John Fogarty wanted to cut 2nd man off sewer truck to cut costs. Pio answered that it was safety issue. Jerry Donovan wanted to know if ball field was approved as pump out. Pio answered. Hodgton and Dever wanted to know if engineering costs were included prior to '98. Pio answered.

Gottlieb complained that high costs were driving people out of LN. Atty Greenough discussed leases being proposed. Mark DiSalvo stated that there were grievances between The feoffees and tenants and hoped that meetings in future to resolve them and asked for good faith effort from feoffees, Greenough answered. Paula Siebert stated that Ln land is being devalued by town and sewer project. Also costs are nearing \$15000 per yr for 10 Weeks at LN.

Mulholland said future meetings would be held with LN homeowner assoc. In answer to question about the trust Whiston said he was against the revision of trust as was the feoffees. Another question was raised why the feoffees don't sell LN to tenants. Foley Answered as well as Mulholland and Pio.

Dever who says he is pres of homeowners assoc said the leases are onerous, rent too high, taxes too high, and to sell Ln to tenants.

Gottlieb said they had hired a top notch litigator law firm and that they will litigate over the proposed leases if feoffees don't change the terms.

Adjourned 330PM

Feoffees Meeting 2-28-07

Treasurer Report

From January 07 to present date----	Rents collected	\$63,974.00
	Taxes collected	23,237.96

	Total	\$ 87,211.96

Taxes paid to Town of Ipswich on February 1, 07 ----- \$ 147,424.35

Delinquent taxes from 06-----\$ 23,635.02

Delinquent taxes owed 2-1-07-----\$ 115,092.99

Delinquent rent owed from 06-----\$ 13,215.98

Delinquent rent owed 2-1-07 -----\$ 352,500.00



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et als., as they are THE FEOFFEES
OF THE GRAMMAR SCHOOL IN THE
TOWN OF IPSWICH

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts;
IPSWICH SCHOOL COMMITTEE;
and RICHARD KORB, as he is
Superintendent of Schools in the
Town of Ipswich

Defendants

NOTICE OF TAKING DEPOSITION

TO: William H. Sheehan, Esq.
MacLean, Holloway, Doherty, Ardiffe & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960

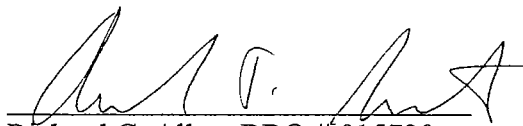
Johanna Soris, Esq.
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108

PLEASE TAKE NOTICE that on September 30, 2011 at 10:00 a.m., Counsel for Defendant, Ipswich School Committee will take the deposition of **Peter Foote**, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The deposition will take place at the offices of Casner & Edwards, LLP, 303 Congress St., Boston, MA 02210.

You are invited to attend and cross-examine. The deposition will continue from day to day until completed.

Respectfully submitted,

Ipswich School Committee
By its attorneys,

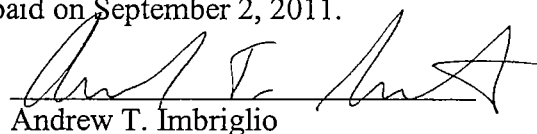


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Dated: September 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel for all parties by first class mail, postage pre-paid on September 2, 2011.


Andrew T. Imbriglio