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Depo - William Gottlieb

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Monday, October 03, 2011

Invoice #

32305FR

Stephen M. Perry
Casner & Edwards
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Boston, MA 02210

Phone:

Fax:

Witness: William Gottlieb, pp 1-100**Case:** Mulholland vs. Attorney General of MA**Venue:****Case #:****Date:** 9/26/2011**Start Time:** 10:00 AM**End Time:** 1:10 PM**Reporter:** Doris Jones**Claim #:****File #:**

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Reporting

October 3, 2011

Tyler E. Chapman, Esq.
Todd & Weld
28 State Street
Boston, MA 02109

Re: Mulholland vs. Attorney General of Massachusetts
Deposition of William A. Gottlieb

Dear Attorney Chapman,

Enclosed please find your copy of the deposition of William A. Gottlieb. taken September 26, 2011 in the above-reference matter. Kindly have the witness read the transcript, noting any corrections on the errata/signature sheet enclosed herewith. No corrections should be made on the transcript itself.

Once this has been completed, please return the executed signature page to Stephen M. Perry, Esq. at the address noted on the appearance page of the transcript. A copy should also be provided to any other counsel present.

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

Sincerely,

Jones Reporting Company

cc: All Counsel

VOL. I

PAGES 1-100

EXHIBITS: 1

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Probate & Family Court

Civil Action No. ES09E0094QC

- - - - -

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

Plaintiffs,

vs.

ATTORNEY GENERAL OF THE

COMMONWEALTH OF MASSACHUSETTS, et al.

Defendants.

- - - - -

DEPOSITION OF WILLIAM A. GOTTLIEB

September 26, 2011

10:05 a.m. to 1:10 p.m.

CASNER & EDWARDS, LLP

303 Congress Street

Boston, Massachusetts 02210

Court Reporter: Doris M. Jones, CSR/RPR

1 APPEARANCES:

2
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4 MORSE, P.C.

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

18
19 TODD & WELD, LLP

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24 For the Witness

I N D E X

Deposition of:	Page
WILLIAM A. GOTTLIEB	
By Mr. Perry	4

E X H I B I T S

Exhibit 1	Lease of Richard Betz Trust	80
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*Original exhibits retained by Mr. Perry

William A. Gottlieb

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

2 MR. PERRY: Same stipulations as last
3 time, you'll have an opportunity to sign and we'll
4 waive the notarization.

5 WILLIAM A. GOTTLIEB,
6 having been first satisfactorily identified by the
7 production of his Massachusetts driver's license and
8 duly sworn by the Notary Public, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PERRY:

12 Q. Would you state your name please.

13 A. William Gottlieb.

14 Q. What's your primary residential address?

15 A. I live on Beacon Street in Boston.

16 Q. What is the address?

17 A. 144 Beacon Street.

18 Q. Do you own or rent there?

19 A. I own.

20 Q. Is it a condo?

21 A. Condo.

22 Q. Who do you reside there with?

23 A. My wife Roberta, my daughter Olivia when
24 she's not in college, and we are now periodically

1 visited by my other daughter, Alexandra, who lives
2 in New York City.

3 Q. Alexandria?

4 A. Alexandra.

5 Q. Alexandra. She is older?

6 A. She is.

7 Q. What is Roberta's last name?

8 A. Crowley, C-R-O-W-L-E-Y, Gottlieb. No
9 hyphen.

10 Q. Do you own any other homes?

11 A. I own a home on Little Neck in Ipswich.
12 Ever hear of it?

13 Q. Yes. Is that the only other home you own?

14 A. Yes.

15 Q. What's the address in Little Neck?

16 A. 14 Middle Road.

17 Q. How many bedrooms is that structure?

18 A. Two.

19 Q. What's the square footage?

20 A. I don't know.

21 Q. Do you know the approximate square footage?

22 A. It's probably around 1700 square feet but
23 I'm just guessing.

24 Q. Has that always been a two-bedroom since

1 you've owned it?

2 A. Yes.

3 Q. Could you please describe the exterior of
4 your cottage.

5 A. It's a modified saltbox style. The bedrooms
6 are upstairs. The downstairs is living room, dining
7 room, sort of a big open floor plan. Kitchen,
8 bathroom.

9 Q. How many bathrooms?

10 A. One and a half. Half upstairs.

11 Q. Half upstairs and full down?

12 A. Correct.

13 Q. How does that layout compare to the layout
14 of your Boston condo?

15 A. The interior is the same. We made some
16 cosmetic improvements but the physical layout is the
17 same.

18 Q. Have you made any substantial improvements
19 to the cottage since you've owned it?

20 A. We added a deck with a pergola in the rear
21 of the structure and we did some work to shore up
22 the foundation. But most of it was simply cosmetic.

23 Q. What's your occupation, please?

24 A. I'm an attorney.

1 Q. Would you tell me please your educational
2 background.

3 A. Starting in college?

4 Q. That would be fine, thanks.

5 A. I went to Boston University, graduated in
6 1977. I went to the University of Miami School of
7 Law, graduated in 1980.

8 Q. What's been your occupation since graduating
9 from law school?

10 A. Numerous positions. Do you want me to run
11 through them for you?

12 Q. Please. First, are you a member of the
13 Massachusetts Bar?

14 A. Yes.

15 Q. How long have you been a member of the
16 Massachusetts Bar?

17 A. Since 1980.

18 Q. If you would just summarize your positions
19 as a lawyer after graduating from law school.

20 A. The first job was at a law firm called
21 Ravech, Aronson & Schuman, personal injury work.

22 Q. Were you doing personal injury or workers
23 comp?

24 A. Personal injury litigation.

1 Next position was as an assistant state
2 attorney in Dade County, Florida.

3 Q. Are you a member of the Florida Bar?

4 A. Yes. Then returned to Boston and worked at
5 the Suffolk County District Attorney's office.

6 Q. What year?

7 A. 1985. Two years there. Then four years as
8 an Assistant Attorney General.

9 Q. Which division?

10 A. Criminal. Then I went to a law firm called
11 Tucker, Biegel and Spizialli.

12 Q. Could you spell that for the court reporter
13 please?

14 A. T-U-C-K-E-R, B-I-E-G-E-L, and Spizialli is
15 S-P-I-Z-I-A-L-L-I.

16 Q. How long were you there?

17 A. Almost four years.

18 Q. What kind of practice did you have there?

19 A. That was a firm that specialized in Mass.
20 tort defense work. We also represented the Amtrak
21 and we did litigation, other litigation. Medical
22 malpractice defense work and various other types of
23 work.

24 Q. Is it fair to say that was an insurance

1 defense firm?

2 A. No, we were Owens-Corning's national counsel
3 in the asbestos litigation.

4 Q. That's the Mass. tort part of the practice?

5 A. Correct.

6 Q. You said you were there four years. When
7 did you leave?

8 A. I think 1995.

9 Q. Could you continue.

10 A. Then I went to John Hancock and I've been
11 there for 16 years.

12 Q. What jobs have you held at John Hancock?

13 A. I've been in the corporate law department
14 and in the litigation division.

15 Q. How long have you been in the litigation
16 division?

17 A. Probably 13 of those 16 years. But I did
18 litigation when I was in corporate too.

19 Q. What kinds of litigation are you doing for
20 John Hancock?

21 A. Well, it's varied over time. But when we
22 started I handled almost all of the company's class
23 action litigation, other significant litigation that
24 the company faced.

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1 More recently I've been aligned with
2 certain business clients so I've been doing the
3 litigation that relates to the company's mutual
4 funds and variable annuities. For 16 years I've
5 handled all of the company's market conduct
6 examinations. Up until a few years ago I handled
7 all of the company's various legal -- legal work
8 associated with its various sponsorships. And then
9 a potpourri of other things.

10 Q. Your title there?

11 A. Assistant vice president and senior counsel.

12 Q. How long have you held that title?

13 A. Well, I've had the senior counsel for
14 probably 15 years. The assistant vice president was
15 a Manulife designation that came into effect in 2004
16 when they acquired John Hancock.

17 Q. What company acquired John Hancock?

18 A. Manulife Financial. It's a Canadian
19 company.

20 Q. Does your wife work as well?

21 A. She does.

22 Q. What's her occupation?

23 A. She works as a pharmacist at Tufts Medical
24 Center. She teaches a course at Mass. College of

1 Pharmacy and she works as a real estate broker for
2 Coldwell Banker.

3 Q. That seems like a full plate. How does she
4 allocate her time between those?

5 A. As best she can.

6 Q. What percentage of her time is devoted,
7 would you say, to the real estate brokerage work?

8 MR. CHAPMAN: Objection.

9 A. Up until recently probably about 20 percent.
10 But she's recently switched over to Coldwell from
11 Hammond and she's devoting more of her time to that.

12 Q. Which office does she work out of?

13 A. The Back Bay office.

14 Q. She had been working for Sol Hammond's
15 company before she went over to Coldwell Banker?

16 A. From Hammond to Coldwell.

17 Q. Also in Boston?

18 A. Yes.

19 Q. What's your date of birth?

20 A. 1/9/55.

21 Q. When did you buy your cottage in Little
22 Neck?

23 A. 1993.

24 Q. How did you come to buy that cottage?

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1 A. We had some friends that owned a cottage
2 there that we met when our oldest children were born
3 at the Beth Israel Hospital. They invited us up as
4 guests on a number of occasions, so over the course
5 of a couple of years we had been their guests at
6 their home and we became very enamored of Little
7 Neck and we decided to look into purchasing a
8 cottage there ourselves.

9 Q. Are your friends still at Little Neck?

10 A. They are.

11 Q. Who are the friends you are referring to?

12 A. Koris. Dr. Mark Koris and his wife
13 Francine.

14 Q. Could you spell the last name for the
15 reporter?

16 A. K-O-R-I-S.

17 Q. Is he a medical doctor?

18 A. An orthopedic surgeon.

19 Q. Where do they live at Little Neck?

20 A. They live at number 2 Cliff Road.

21 Q. How did you go about trying to purchase a
22 cottage at Little Neck?

23 A. Well, when my wife and I made the decision
24 to engage in that process she spoke with a real

1 estate broker to find out what homes might be
2 available for sale. And she went up to Little Neck
3 to look at the various properties that were for
4 sale. And the one that she liked the best was the
5 one that we ended up purchasing.

6 Q. Before you purchased did you speak to
7 Dr. Koris about the financial arrangement at Little
8 Neck?

9 A. No.

10 Q. Did you speak to him about the rent that was
11 being charged?

12 A. No.

13 Q. Who was the broker you used for your
14 purchase?

15 A. I believe it was Dorothy Levesque.

16 Q. How do you spell Levesque?

17 A. I believe it is L-E-V-E-S-Q-U-E.

18 Q. Did they have buyer's agents back in 1993,
19 if you recall?

20 A. What do you mean by that?

21 Q. Your wife is in real estate so you are
22 familiar with the concept of buyer's agents and
23 seller's agents, are you not?

24 A. Yes. The home -- Dorothy Levesque had that

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1 listing but she also had either other listings or
2 she made arrangements to gain us access to see those
3 homes through the brokers that had the listings. I
4 didn't personally go up and look at it at that time.
5 So we didn't have a buyer's agent, if that's the
6 crux of your question.

7 Q. And the one you purchased was actually
8 Dorothy Levesque's listing, you believe?

9 A. Yes.

10 Q. You personally had no conversation with her
11 -- strike that.

12 Did you have any conversation with
13 Dorothy Levesque about financial arrangements at
14 Little Neck?

15 A. Not that I can recall.

16 Q. Did you rely on any such conversations that
17 your wife had?

18 A. Yes.

19 Q. What conversations that your wife had with
20 Dorothy Levesque did she relate to you?

21 A. Well, when she came back from her site
22 visit, that was the first that I learned that Little
23 Neck was set up in a shall we say unique manner.
24 And it was at that time that I learned that only the

1 house was for sale and that the land on which the
2 house sat was owned by a trust and that we would be
3 tenants of the landowner.

4 Q. Anything further that you learned from your
5 wife?

6 A. I learned about the house that she had seen.
7 She brought me the listing. And I found out what
8 the purchase price was, you know, the asking price,
9 and some of the details. I think she had brought a
10 video camera and took a video of what the house
11 looked like. And she explained what the other
12 houses were like in comparison and why she liked
13 that house the best.

14 Q. Did she tell you what the then current
15 rental for the land was?

16 A. Yes.

17 Q. And what did she tell you about rent?

18 A. She told me that the annual rent on that
19 home, it being a year-round cottage, she told me
20 that there was a finite number of year-round homes
21 and coincidentally this was one of them. That the
22 seasonal rent was 600 and that the rent for the
23 cottage that we were interested in was 800.

24 Q. Did she tell you anything based on her

1 discussions with the broker about the legal terms of
2 the tenancy?

3 A. There was more than one conversation that
4 Roberta had with Dottie Levesque. So the first
5 conversation that I had with Roberta, that was
6 pretty much the extent, as I can recall, of what she
7 conveyed to me.

8 Q. Prior to making the purchase did you
9 yourself try to look into any of the issues
10 concerning rent and future rent?

11 A. I did. One of the things that Roberta did
12 tell me was that Dottie Levesque had recommended
13 that we speak with Don Whiston, who was the head of
14 this trust that we had learned about. So I was
15 given his contact information and I had a couple
16 conversations with Don Whiston.

17 Q. Did you have those in person or by phone?

18 A. By phone.

19 Q. Did you keep any notes of your
20 conversations?

21 A. I did.

22 Q. Were those handwritten or typed?

23 A. Handwritten.

24 Q. When was the last time you reviewed those

1 notes?

2 A. I looked for those notes prior to our filing
3 suit in the Superior Court and I could not locate
4 the notes.

5 Q. So you don't at present have any notes of
6 that conversation?

7 A. Correct.

8 Q. What you have is only your memory of the
9 conversation?

10 A. I don't have a writing that corroborates my
11 memory, if that's what you mean, yes.

12 Q. Was anybody present but you when you had the
13 phone conversations?

14 A. Not that I can recall.

15 Q. You said you had two such conversations?

16 A. Correct.

17 Q. Before I ask about it, Don Whiston was one
18 of the Feoffees when you talked to him?

19 A. It was represented to me that he was the
20 head of that organization.

21 Q. Who represented that to you? Dottie
22 Levesque?

23 A. Dottie Levesque told my wife that and gave
24 her Don Whiston's name and phone number to give to

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18

1 me.

2 Q. Did you do any checking to see in fact what
3 the makeup of the Feoffees was or what their legal
4 standing was?

5 A. No.

6 Q. Did you from time to time after you spoke to
7 Don Whiston and bought the house see him around at
8 Little Neck?

9 A. Yes.

10 Q. Did he have family there?

11 A. No. Did he have family there?

12 Q. Yes.

13 A. No.

14 Q. Did he have relatives living there?

15 A. Not at that time.

16 Q. Had he at some time?

17 A. Subsequently his daughter, it is my
18 understanding, and his daughter's husband purchased
19 a cottage on Little Neck but that was many years
20 later.

21 Q. Could you tell me please to the best of your
22 recollection what you said to Don Whiston and what
23 he said to you in the first telephone conversation
24 you had with him prior to purchasing your cottage at

1 Little Neck?

2 A. Well, as an attorney I was concerned about
3 this arrangement. We were going to be spending a
4 considerable sum of money and I wanted to make sure
5 that we weren't putting that money at risk because
6 it was substantial for us.

7 So I -- as it turns out, I was
8 discussing this topic with my family in advance of
9 the first conversation and my brother mentioned that
10 he went to college with and was good friends with
11 Don Whiston's son Mark. So when I called Don
12 Whiston I explained who I was and the reason for my
13 call. And he was very convivial and kind.

14 I asked him if I could review the lease
15 that I'd be called upon to sign and I was advised by
16 Don that there was no lease. And he assured me that
17 there was no need for a lease, that things out on
18 Little Neck had been the way that they were at that
19 time for a very long time and he assured me that it
20 would be that way into the future.

21 I asked him about the rent. He told me
22 what I'd been told previously by Roberta through
23 Dottie Levesque, that there were two rents, one rent
24 for seasonal cottages and one rent for year-round

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20

1 cottages. He explained that the seasonal cottages
2 were 600, the year-round cottages were 800. I asked
3 him how long those rents had been in place at those
4 levels and he mentioned that they hadn't changed in
5 a number of years, that they had no present
6 intention to raise the rent.

7 I asked him about the history of rent on
8 Little Neck and Don explained that the rent
9 increases -- that the rents were modest and that the
10 rental increases were infrequent. But when they did
11 go up, they went up in very small increments. And
12 he gave me an example a 25 or \$50 increase. I was
13 concerned that the rents could accelerate and he
14 reassured me that they hadn't in the past and they
15 wouldn't in the future.

16 I asked him about the taxes because I
17 had learned through Roberta that we would, in
18 addition to the rent, have to pay the tax, real
19 estate tax, and Don confirmed that that was correct,
20 that it was -- the rental amount. We paid the
21 Feoffees the real estate tax and the Feoffees paid
22 the town since they were the property owner.

23 I asked him what about the real estate
24 tax on the house that we owned. And he said that

1 they collected that on behalf of the town.

2 I can't remember if it was in the first
3 or the second conversation but I asked him about
4 improvements to the cottage, what we would be
5 allowed to do, what we might not be allowed to do.
6 And Don explained than the Feoffees had to approve
7 any exterior renovations to the home and that
8 generally speaking they couldn't interfere with any
9 neighbor's site line of the water. But he
10 encouraged me to make whatever reasonable
11 improvements we wanted to make and he said that the
12 improvements increased the value of the homes and
13 thus the taxes, which were an important financial
14 component of the monies that went to the beneficiary
15 of the trust, which I learned were the Ipswich
16 public schools, the happier the Feoffees were.

17 And in general terms I think that was
18 the contents of that first conversation.

19 Q. Could you tell me what you said, he said in
20 the second conversation that you had with Don
21 Whiston before you bought your cottage at Little
22 Neck?

23 A. Well, in the interim we decided to go ahead
24 and put in an offer. We learned to our dismay that

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22

1 there was another couple that had apparently been
2 promised some sort of a right of first refusal,
3 which we hadn't been advised about. I called Don
4 back about that. The sellers were being represented
5 by an attorney that Dottie Levesque advised me was
6 the Feoffees' attorney, Don Greenough. So I called
7 Don back after we were involved in this process and
8 told him the conundrum of the fact that we were
9 concerned that we might lose out on the house to
10 these other buyers. And Don said that he would talk
11 to Greenough and apparently that conversation
12 subsequently occurred. And as I understand it,
13 those other buyers were told that their offer was
14 defective because it added conditions that were
15 inconsistent with the right of first refusal and we
16 were told that the cottage was ours for a mere
17 \$172,000.

18 I did in that second conversation with
19 Don go over some of the same issues that we had
20 talked about during the first conversation because I
21 remained nervous that since there were no writings
22 that, you know, we could be putting our money at
23 risk and that we might not have the security that
24 might otherwise come with a purchase in fee simple.

1 And Don said you don't have to worry, he
2 says there's only been one person who was ever
3 evicted from Little Neck and that was for some
4 over-the-top conduct. But over the couple of
5 hundred years they had been renting cottages no one
6 had ever had a problem, the houses transferred
7 without issue and there were no security concerns.

8 So reassured by Don, we ultimately went
9 forward and closed on the cottage.

10 Q. What year was your cottage built?

11 A. Don't have a clue.

12 Q. Have you ever tried to determine at all its
13 age?

14 A. I was interested and I looked at old
15 photographs. It was always there but I don't know
16 when it got there.

17 Q. At least how old is your cottage?

18 A. I'm going to guess it's at least 75 years.

19 Q. When you moved in what kind of electrical
20 service did your cottage have?

21 A. Circuit breaker copper wiring.

22 Q. Did it have the old-fashioned --

23 A. Knob and tube?

24 Q. Yes.

1 A. No.

2 Q. So an updated electrical system?

3 A. It had been updated at some point in time.

4 Q. Have you seen photos of your house that
5 indicate that it's been around for a certain number
6 of years?

7 A. I've seen some old photographs, some of them
8 I don't know the date of. It's been there-- in
9 talking to neighbors and what not, it's been there
10 for at least 50 or 60 years. I just don't know.

11 Q. I was pressing you on this because you said
12 as a guess it's been there at least 75 years. I'd
13 like to know without guessing how long it's been
14 there.

15 A. I don't know.

16 Q. You've seen evidence that it's at least 50
17 years old?

18 A. Yes.

19 Q. And you think it's older than that?

20 A. I'm just guessing at that point.

21 Q. What kind of system did the cottage that you
22 bought have for disposal of wastewater?

23 A. When we bought it?

24 Q. Yes.

1 A. It had cesspool.

2 Q. How long did it continue to be serviced by a
3 cesspool?

4 A. Right up until it was disconnected in favor
5 of the wonderful wastewater system that the Feoffees
6 installed.

7 MR. CHAPMAN: Off the record.

8 (Discussion off the record.)

9 BY MR. PERRY:

10 Q. You've used a couple of adjectives in your
11 testimony and for the record I would like you to
12 indicate what you meant by them.

13 A. I did not mean that it was truly wonderful.

14 Q. Let me ask you a question.

15 Earlier you referred to having bought
16 your cottage for a mere 172,000.

17 A. That was the ultimate purchase price.

18 Q. When you said "mere" did you mean that you
19 thought you were getting a good buy or were you
20 using that in some sort of an ironic sense?

21 A. I guess I was being facetious so I apologize
22 for that. It was a substantial amount of money for
23 us.

24 Q. Just now you referred to the Feoffees having

1 built a, quote, wonderful, unquote, wastewater
2 system. Were you being sarcastic in that?

3 A. I was.

4 Q. What did you mean by that? You don't think
5 it's a good system?

6 A. I think the wastewater system was
7 overpriced. There was a sordid history and there
8 continue to be problems with it.

9 Q. Have you paid anything for the installation
10 of the wastewater system?

11 A. Yes.

12 Q. What have you paid for it?

13 A. Zero dollars directly but the wastewater
14 system was a crucial component of the deterioration
15 of our relationship with the Feoffees and begat to
16 some extent the litigation. And so I've certainly
17 spent money on the litigation and I devoted time and
18 effort to that litigation, so this payment is
19 partially financial and partially visceral and
20 emotional.

21 Q. You've paid zero dollars to the Feoffees as
22 reimbursement for the installation of the system,
23 true?

24 MR. CHAPMAN: Objection.

1 A. For the installation, yes. I pay for
2 maintenance on a monthly basis.

3 Q. Would you describe the physical elements of
4 the cesspool system that serviced the house when you
5 bought it?

6 A. Well, I checked into the septic issue prior
7 to buying. And in fact had an inspector come out
8 and inspect the system to see if it was functioning
9 adequately and compliant with existing law. As the
10 former chief of the Environmental Strike Force at
11 the Attorney General's office I had some familiarity
12 with septic and my parents' cottage on Cape Cod had
13 a septic system that had to be replaced and it was
14 extraordinarily expensive so I went to the trouble
15 of having an inspector come out as part of the due
16 diligence process. But I also had somebody inspect
17 the house, a typical home inspector. So we had a
18 grandfathered functioning compliant cesspool.

19 Q. My question I think was could you describe
20 the physical elements of the cesspool that was
21 servicing the house.

22 A. Well, the cesspool was located between our
23 house and our neighbor's, the Hardys, probably
24 halfway. And I actually wasn't there when he opened

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1 up the ground to look at it so I can't tell you what
2 it looked like.

3 Q. Were there pipes that went from your house
4 to the location of the cesspool?

5 A. Yes, the main drain out of the house went
6 from the house to the cesspool.

7 Q. Was that part of what you bought when you
8 bought your cottage, those pipes?

9 A. I didn't think of that.

10 Q. Do you know now?

11 A. What do you mean?

12 Q. Were you the owner of the cesspool system?

13 A. Yes.

14 Q. Why was it you were having the cesspool
15 inspected?

16 A. I just explained that I wanted to make sure
17 that the waste system functioned because that's an
18 important part of buying the house. If the thing
19 wasn't functioning well we could have a big,
20 expensive problem.

21 Q. You were concerned about having to pay money
22 to repair the system if it wasn't working?

23 A. Right.

24 Q. You understood it would be your

1 responsibility to do that?

2 A. That was my understanding.

3 Q. Did Title 5, as we now know it, exist when
4 you bought the property?

5 A. Yes.

6 Q. Did it include at that cesspool requirement
7 at that time for residential properties?

8 A. My understanding was that this was a
9 grandfathered system that didn't need to be
10 compliant with current standards as if you were
11 installing a new system; that Little Neck had many
12 such systems and that they were grandfathered in.

13 Q. Did there come a time when you learned that
14 things had changed such that your cesspool was no
15 longer compliant with environmental law?

16 A. No.

17 Q. Could you tell me what happened, as you
18 understand it, such that it was required that there
19 be upgrades to cesspools at Little Neck?

20 A. I came to learn that the Department of
21 Environmental Protection had apparently taken the
22 position that the Ipswich River was being harmed by
23 effluent that at least in part derived from Little
24 Neck. And I learned after the Feoffees had signed a

1 consent order with the DEP, that we were being
2 called upon to install tight tanks. Some cottages,
3 including mine, were going to be required to put in
4 what they described to be a drip system, which is a
5 modified septic leach field.

6 Q. When did these events occur in relation to
7 when you purchased the property? Are you talking
8 several years later?

9 A. We bought in '93 and I think that the issue
10 first came up in about 2000.

11 Q. Is it your understanding that the DEP had
12 jurisdiction over both the landowner and the cottage
13 owners with regard to problems with discharge of
14 effluent?

15 A. I don't know.

16 Q. Did you mean to be implying by your
17 testimony that you feel that the entry into a
18 consent order with DEP was ill-advised?

19 A. Yes.

20 Q. What's the basis for your statement that it
21 was ill-advised?

22 A. First of all, the Feoffees didn't involve or
23 advise the homeowners at all that the DEP had an
24 issue and that this dialogue and negotiation was

1 going on between the DEP, the Feoffees and their
2 counsel.

3 Q. Apart from the issue of not notifying the
4 homeowners ahead of time about entering into the
5 consent order, do you feel that it was substantively
6 ill-advised?

7 A. I do.

8 Q. Why is that?

9 A. Tight tanks are generally believed to be the
10 solution of last resort. When there's no other
11 possible alternative to deal with waste, you use a
12 tight tank. The deficiencies of tight tanks are
13 that they are closed systems; they can only hold so
14 much. And the concept of having 160-something tight
15 tanks all around Little Neck filling up at various
16 times of the day or night, that when you reach a
17 certain level you can't put any more in and you have
18 to have a pumpout truck come. I don't know if you
19 have ever seen pumpout trucks but they are hideous,
20 smelly, noisy. Little Neck is a nice place that
21 people have a limited amount of time at and they
22 want to enjoy it, entertain their family, friends
23 and guests. And the thought of cranking up a grille
24 and having cocktails out on the deck only to have

1 your neighbor's tight tank have to be emptied out,
2 you know, is an unattractive, inappropriate
3 resolution, particularly when there were other
4 alternatives.

5 Q. So just to clarify, your objection isn't to
6 the concept that something needed to be done to
7 resolve a wastewater problem but rather the
8 resolution that was being endorsed at the time?

9 A. Correct.

10 Q. And concurred that something had to be done
11 but you feel there were some other alternatives that
12 were better, right?

13 A. Yes, that is correct.

14 Q. What were those other alternatives that in
15 your view would have been better?

16 A. Running a sewer line down to Little Neck
17 would have been the best solution. I'm accepting as
18 a given that it's correct that Little Neck was in
19 fact the source of elevated levels in the Ipswich
20 River that have been tested. I never got to see the
21 empirical evidence but assuming that that's correct,
22 absent extending the sewer line, a more centralized
23 collection system made more sense. Particularly if
24 the sewer was extended at a subsequent time, you

1 would already have had the piping done and it would
2 have been set up to be connected, to be taken --
3 instead of going into the tanks it could be sent out
4 to the wastewater treatment facility.

5 Q. And some solution along those lines was
6 implemented by the Feoffees, correct?

7 A. Subsequently, yes.

8 Q. You had indicated that when you bought the
9 property you acquired with it the existing cesspool
10 system, right?

11 A. Correct.

12 Q. And that you understood it was your
13 responsibility to maintain it, to ensure that it was
14 compliant with the law, right?

15 A. Yes.

16 Q. The tight tank solution was one that
17 individual cottage owners would be required to
18 implement, correct?

19 A. The Feoffees, when they first announced it,
20 ordered us to install tight tanks. And again, some
21 people would have to put in this drip system. So we
22 were not asked, we were ordered to do it. And given
23 a time line to do it. And the manner of imposing
24 that obligation was very authoritarian and

1 autocratic.

2 Q. You in fact as a cottage owner would have no
3 obligation to upgrade the cesspool at all if you
4 ceased using the structure, correct?

5 A. I'm sorry, I didn't understand that.

6 Q. You, as a cottage owner in 2000 at the time
7 when the DEP was objecting to the wastewater
8 disposal system, would have no obligation to upgrade
9 the system if you simply stopped using the house; is
10 that correct?

11 A. No, I don't think that is correct because we
12 were ordered to do it regardless of how often or how
13 little we used our home.

14 Q. But you understand as a cottage owner your
15 -- your family was flushing the toilet, right?

16 A. If it's yellow let it mellow; if it's brown
17 flush it down.

18 Q. So you were causing waste to be sent through
19 this system in your house, right?

20 A. Yes.

21 Q. And regardless of what the Feoffees did, the
22 DEP had the ability to come to you as the owner of
23 this house and say put in a tight tank, didn't it?

24 MR. CHAPMAN: Objection.

1 A. Probably.

2 Q. And the Feoffees were under no obligation to
3 install a centralized system, were they?

4 MR. CHAPMAN: Objection.

5 BY MR. CHAPMAN:

6 Q. Under your arrangements with the Feoffees?

7 A. The Feoffees signed a consent order that
8 mandated that a certain number of cottages would
9 have tight tanks and a certain number of cottages
10 would have a drip system. In order to comply with
11 that order they turned around and ordered us to do
12 the implementation.

13 Q. You've objected to that consent order. I'm
14 asking you if the consent order had never been
15 signed do you agree that the DEP would have the
16 ability to come to you as a cottage owner and
17 require you to upgrade your system?

18 MR. CHAPMAN: Objection.

19 A. I don't know the answer to that. I do know
20 that one can disagree with the DEP in the event that
21 one feels that an order is inappropriate. And there
22 are -- I mean, that didn't happen, A; and B, if it
23 did happen simply their saying it doesn't
24 necessarily make it so.

1 Q. Are you aware of various situations after
2 you purchased where the DEP sent enforcement notices
3 directly to cottage owners instructing them to make
4 repairs?

5 A. After I purchased my cottage?

6 Q. Yes.

7 A. I don't have any such knowledge.

8 Q. You've never seen documents indicating that
9 that occurred?

10 A. I haven't, no.

11 Q. Under your arrangements as a tenant with the
12 Feoffees did you have any agreement on the part the
13 of the Feoffees to install a centralized waste
14 system as far as upgrading the septic system was
15 concerned?

16 A. Did I personally?

17 Q. Yes.

18 A. No.

19 Q. Are you aware of any tenant who had such an
20 agreement?

21 A. No.

22 Q. Would you agree that the installation of the
23 central wastewater system that the Feoffees paid for
24 benefited you by sparing you the expense of

1 upgrading your septic system?

2 A. I don't really understand that question.

3 Could you repeat it or rephrase it?

4 Q. The alternatives that existed for solving
5 DEP issues at the time included tight tanks or drip
6 systems as you described, right? That's one
7 possibility?

8 A. Yes.

9 Q. Some kind of sewer hookup?

10 A. Correct.

11 Q. Or a centralized system, right?

12 A. That's another alternative.

13 Q. Are you aware of any others?

14 A. You could have Title 5-compliant septic
15 system in certain areas of the Neck. I don't know
16 if the Neck would support 167 such systems given the
17 nature of the soil.

18 Q. And of the alternatives we discussed, the
19 one where tight tanks are installed or drip systems
20 would impose a cost on the tenants, correct?

21 A. It would have been imposed by the Feoffees.

22 Q. The tenants simply would have paid for those
23 upgrades themselves, right?

24 A. They would have been compelled to pay for

1 those upgrades themselves.

2 Q. And rightly so?

3 A. That's your opinion.

4 Q. Did you understand when you purchased the
5 cottage that you would have a legal status of a
6 tenant at will?

7 MR. CHAPMAN: Objection.

8 A. Yes.

9 Q. Did you sign a document that so indicated?

10 A. I signed a bill of sale and then a notice
11 that went to the Feoffees. I attempted to negotiate
12 the terms of those documents with Mr. Greenough, who
13 as I stated before was the attorney for the
14 Feoffees, but he advised me that they were standard
15 documents that were non-negotiable and he wouldn't
16 change a word.

17 Q. Did either of those documents say that you
18 would be occupying as a tenant at will?

19 A. I believe so.

20 Q. Have you rented your cottage to other people
21 at any time after purchasing it?

22 A. No.

23 Q. Do you know what comparable cottages rent
24 for at this time?

1 A. No.

2 Q. Is there a particular broker on the North
3 Shore who handles a lot of the cottage rentals?

4 A. I really don't know how the rentals are
5 handled.

6 Q. How many of the cottage owners rent their
7 cottages for summer use?

8 A. I have no idea.

9 Q. Do you have a sense?

10 A. I don't. I know some do but I don't know.

11 Q. Are there any rules against renting cottages
12 for seasonal use?

13 A. There are rules and regulations that the
14 Feoffees purport to enforce upon the tenants and
15 when they have subtenants they're asked I believe to
16 post the rules and regulations in the cottage and
17 they're expected to then conform to the rules that
18 govern the balance of the homeowners.

19 Q. But the homeowners themselves haven't
20 adopted any restrictions on owners renting cottages
21 out to others, have they?

22 A. Not that I know of.

23 Q. During what periods of the year do you
24 reside at Little Neck?

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1 A. Currently?

2 Q. Historically through the present.

3 A. When my children were young my wife and kids
4 would move up to Little Neck in June after they got
5 out of school and stay through Labor Day weekend.
6 We would then utilize the cottage on weekends when
7 the weather permitted. We kept the house open
8 year-round for the first five or six years but we
9 really weren't getting a lot of use out of it and I
10 was always concerned about the pipes breaking so we
11 began to shut the cottage down in October, which is
12 how we handle it now.

13 Now that my children are older, we are
14 up there certainly weekends in the summer and
15 vacations are spent there, you know, but we're not
16 getting a dramatic level of use out of it lately.

17 Q. When do you open it back up?

18 A. In May usually.

19 Q. Do you spend any time at the cottage
20 typically in October and May?

21 A. No, because for the last seven or eight
22 years we've shut the cottage down in October and
23 don't open it back up until May and there's no heat,
24 there's no plumbing.

1 Q. You've never tried to rent it to a winter
2 tenant?

3 A. I don't like having strangers in my home so
4 I'm adverse to tenants. And there have also been
5 some horror stories of people who had tenants and
6 couldn't get rid of them or they did damage. I
7 don't want any part of that.

8 Q. The Feoffees have had problems with tenants,
9 haven't they? I withdraw the question.

10 MR. CHAPMAN: Could we take a break.

11 (Recess taken.)

12 BY MR. PERRY:

13 Q. Before you purchased your property at Little
14 Neck did you have any legal representation in that
15 matter?

16 A. No.

17 Q. And you indicated that the sellers were
18 represented by Donald Greenough?

19 A. Correct.

20 Q. You also indicated in the course of your
21 discussions with Mr. Greenough he revealed to you
22 that he was counsel to the Feoffees?

23 A. I had been told that before I spoke with
24 Mr. Greenough.

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1 Q. And he acknowledged the same when you were
2 talking to him about the forms?

3 A. Yes.

4 Q. Do you know what your cottage or your
5 cottage and the lot it's on are currently assessed
6 at?

7 A. I do.

8 Q. Tell me what the assessments are.

9 A. The structure is assessed for 130,000 and
10 the land is assessed at 195.

11 Q. Do you know how the structure -- before
12 that, how has the assessment of the improvements
13 changed over time since you bought the property?

14 MR. SHEEHAN: Object to the form.

15 A. It's gone up and down.

16 Q. What was the highest that the structure has
17 been assessed for?

18 A. I'm not sure.

19 Q. You indicated that before you purchased the
20 property you were aware that the Feoffees held the
21 real estate in trust for the benefit of the Ipswich
22 schools?

23 A. I learned that, yes.

24 Q. Prior to purchasing?

1 A. Yes.

2 Q. You're an attorney; you've told us that?

3 A. Correct.

4 Q. And as an attorney are you familiar with the
5 fiduciary duty that trustees owe to a beneficiary?

6 A. Generally.

7 Q. Did you understand that the Feoffees owed a
8 fiduciary duty to the beneficiary of the trust,
9 namely the Ipswich schools?

10 MR. CHAPMAN: Objection.

11 A. I presume that to be the case.

12 Q. Did you understand that fiduciary duty
13 imposed an obligation on the Feoffees to collect
14 fair and reasonable rents for the benefit of the
15 schools?

16 A. Well, I discussed that topic with Don in one
17 of our conversations and he explained that the rents
18 that were collected were adequate to provide an
19 annual gift to the Ipswich public schools; that he,
20 as the chairman of the Feoffees, and the
21 superintendent of the schools would meet annually
22 and the superintendent would designate a specific
23 thing that the schools wanted the Feoffees to fund.
24 And Don explained that it was always something

1 reasonable and that the rents that were collected
2 were adequate to fund that annual gift. And it was
3 always designated for a particular thing, whether it
4 was a language lab improvement or something along
5 those lines.

6 And this was part of Don's reassuring me
7 that the expectations of the beneficiary in terms of
8 rent over a long period of time, established after a
9 long period of time, were reasonable. And that the
10 place ran -- it needed to have enough money to do
11 their maintenance and have enough to make this
12 annual gift to the schools.

13 My fear was that there might be some
14 precipitous rent increase down the road and since
15 there wasn't a lease that would control the amount
16 of the rent, what protection did we have. And he
17 cited this long historical practice to reassure me.
18 And I was so reassured.

19 Q. Was the manner in which the trust was
20 functioning consistent with your understanding of
21 the fiduciary duty that a trustee owes to a
22 beneficiary?

23 MR. CHAPMAN: Objection.

24 A. They can be complicated arrangements and as

1 long as the beneficiary and the trustees are of one
2 mind as to how things are going to function, I don't
3 think you have a problem.

4 Q. And apart from the conversations you've
5 described with Mr. Whiston, did you have any
6 assurance that the beneficiaries and the trustees
7 would continue to be of one mind on how the trust
8 was functioning?

9 A. I had the reassurance that there was this
10 long past practice that he had every reason to
11 believe would continue unchanged into the future.
12 He also spoke, if I didn't mention it before, that
13 everyone understood that it wasn't just the annual
14 gift that the Feoffees gave to the schools but that
15 the real estate taxes that were collected by the
16 Feoffees and paid to the town, the school system,
17 through the normal budgetary process, got 60 to 65
18 percent of that.

19 So he told me specifically that Little
20 Neck had for many years been the number one taxpayer
21 in the town of Ipswich and that it was the taxes
22 plus the gift and those monies that flowed to the
23 town as a result of the rentals on Little Neck that
24 were considered a part of the overall picture.

1 Q. If a Probate Court were not to approve of
2 the settlement agreement that's been entered into
3 with respect to Little Neck, is it your position
4 that the Feoffees would not have the right to charge
5 you a fair market rent for the real estate that your
6 cottage sits on?

7 MR. CHAPMAN: Objection.

8 A. If the Probate Court declines to grant the
9 complaint for deviation that has been filed and does
10 not authorize the sale, the creation of a
11 condominium and the sale of condominium units and
12 having explored other purchase options, this being
13 the last viable option from our perspective, the
14 Superior Court litigation, which is presently
15 stayed, the stay would be lifted and the litigation
16 would continue. Ultimately the superior court would
17 determine the declaratory and injunctive relief that
18 we sought in that complaint as well as the issue of
19 damages.

20 Q. My question is if you were in that scenario
21 where the Probate Court declines to approve the sale
22 and the parties are potentially back in Superior
23 Court, is it your position that the Feoffees are not
24 entitled to assess a fair market rent for the real

1 estate that you're occupying?

2 MR. CHAPMAN: Objection.

3 A. Well, a stipulation was entered into between
4 the parties that defines the amount of rents that
5 will be paid through an appeal of the Superior Court
6 litigation. So it is that agreement that would
7 control for purposes of the Little Neck Legal Action
8 Committee members.

9 Q. I thought the -- strike that.

10 The stipulation that you're referring to
11 requires that certain amounts be paid in use and
12 occupancy and certain amounts be placed into escrow,
13 right?

14 A. It did. And subsequently it was modified so
15 that we no longer pay any escrow. We just pay the
16 rental amount, seasonal or year round, at designated
17 numbers.

18 Q. And if the Probate Court were to disapprove
19 the sale, then what happens?

20 A. Then the stay in the Superior Court would be
21 lifted, that litigation would continue, and the
22 stipulation would still control.

23 Q. But that stipulation doesn't -- what would
24 happen to the escrow account at that point?

1 A. The escrow account would be recreated --

2 Q. Reactivated?

3 A. Reactivated. And the monies Mr. Sheehan is
4 currently holding in his firm's trust account would
5 be deposited back to put the escrow account in the
6 form and condition it was in at the time it was paid
7 over to Mr. Sheehan's office as deposits on the
8 purchase.

9 Q. Would additional amounts have to be paid in
10 to the escrow accounts pending the resolution of the
11 Superior Court case?

12 A. I don't think so.

13 Q. I wanted to ask you really, is it your
14 position in that litigation that the Feoffees are
15 not entitled to charge a fair market rent for the
16 real estate?

17 MR. SHEEHAN: Objection.

18 A. How would you define fair market rent?

19 Q. I would define fair market rent as the rent
20 that would be paid by a disinterested third party
21 for use of the real estate in an arm's length
22 transaction with the Feoffees.

23 A. That's a very convoluted issue and I don't
24 necessarily subscribe to your definition. You have

1 a situation where somebody like myself spends a
2 considerable sum of money, and others have paid far
3 more, to buy a structure. They buy that structure
4 in the expectation that their tenancy is going to
5 continue to require them to pay what was a sum of
6 money that had been -- if you look at the historical
7 rents over time, if you go back, and I've charted
8 them out over the last 25 years, prior to the
9 litigation being initiated, you know, the rent would
10 stay the same for five or six years and then it
11 would go up \$50. There was an expectation that the
12 rents would continue to increase in those
13 increments, not tagged to some artificial fair
14 market rent that somebody presumes to be more
15 appropriate, introducing concepts of return on
16 investment and the like that clouded the issue and
17 begat the dispute when the rent was increased in
18 dramatic percentages completely inconsistent with
19 past practice.

20 Q. Have you ever determined the fair market
21 value of the structure that you own based on
22 concepts such as replacement cost less depreciation?

23 A. No.

24 Q. Do you know whether when you bought the

1 property you paid more for it than its replacement
2 cost less depreciation?

3 A. Well, I paid 172,000. I know what it was
4 assessed for. I know what cottages were selling for
5 generally.

6 Q. What was it assessed for and what were
7 cottages selling for?

8 A. I think it was assessed for -- at the time I
9 bought it, I'm not a hundred percent sure but it was
10 probably 130 to 150, something in that range.

11 Cottages were selling for at or about what I was
12 paying. Some of that one could assign to the
13 presumption based on past practice that when you
14 bought a house the Feoffees would accept you as a
15 new tenant and you would have all the rights and
16 benefits of the tenants who have lived there and
17 owned homes within their families for generations,
18 including the use of the common areas.

19 Q. When did you first realize that the Feoffees
20 were not going to -- withdrawn.

21 When did you first realize that the rent
22 increases you were experiencing were not consistent
23 with your understanding of what Mr. Whiston had said
24 to you before you purchased?

1 A. I can't recall the year but the first
2 significant rent increase that was inconsistent with
3 the past practice of small incremental increases.

4 Q. Do you recall in or about 1998 the Feoffees
5 announcing a program of increasing the rents over a
6 period of five or six years?

7 A. I recall the event but no, I don't know the
8 specific date as I sit here.

9 Q. And when the Feoffees announced that they
10 would increase the rent over the next five or six
11 years did you feel that was inconsistent with what
12 you had been told by Mr. Whiston?

13 MR. SHEEHAN: Objection.

14 A. Yes.

15 Q. Did you say anything to anybody about that
16 inconsistency at that time?

17 A. Yeah. I mean, everyone was talking about
18 it. There was a discussion amongst Little Neckers.
19 I did periodically speak with Don Whiston and I
20 continue to do so to this day. I've always been
21 very free in expressing my opinions to Don and
22 although we, you know, agree to disagree on many
23 topics, we do have discourse on these things. I've
24 written to him and I've talked to him during those

1 periods of time.

2 Q. After the Feoffees announced that they
3 intended to increase rents to the fair market value,
4 did cottages continue to sell for more than the
5 value of the improvements themselves?

6 A. What the Feoffees announced was that the
7 rents were going to be increased and they justified
8 that increase on some appraisal that they indicated
9 that they had performed. But they refused to
10 provide the homeowners with a copy of that
11 appraisal. So we didn't really know what the basis
12 was. And the increases ultimately got substantially
13 larger and were divorced from any concept of some
14 rational measure.

15 The rents -- they leaped up in large
16 percentages that had nothing to do with some
17 presumed rate of increased value and it was very
18 troubling because we could never get substantive
19 dialogue with the Feoffees on this topic. It was
20 just imposed by fiat and proclamation.

21 Q. After these precipitous rent increases that
22 you're referring to, the cottages continued to sell
23 for more than what appeared to be the value of the
24 improvements themselves?

1 A. There was a period of time where I would say
2 that the sale of cottages continued uninterrupted.
3 I don't know what the thought process was with
4 buyers and whether or not buyers truly had an
5 understanding of what they were buying into. I did
6 hear from people later on that they didn't really
7 realize because they didn't get full disclosure from
8 the seller or broker that was involved the crisis
9 that was brewing, things that were happening.

10 But at some point in time the word got
11 out or things rose to a level where brokers had to
12 reveal the problems with septic, the problems with
13 -- you know, the relationship with the Feoffees, the
14 issues of the lease. And at some point in time
15 sales all but stopped.

16 Q. So there haven't been sales in the last five
17 years for more than the value of the improvements?

18 A. Well, my understanding is that there have
19 been some transfers of ownership but they've all
20 been sort of idiosyncratic that have some other
21 justification for somebody taking on that risk.

22 Q. Such as?

23 A. I'll give you an example. Joe Terisi's
24 brother Michael wanted to buy a cottage on Little

1 Neck because his brother had one and loved it and
2 was raising his family there. And he wanted to not
3 only buy but have the cottage immediately next to
4 his. So when that cottage went on the market, even
5 though other cottages had been on the market
6 untouched for more than two or three years, he was a
7 wealthy guy who had a high-paying job and he decided
8 to buy it notwithstanding the risks and he signed a
9 lease as was required.

10 Q. You told us a little bit about the issues
11 with the water system and the implementation of a
12 central waste collection facility. Did you have any
13 involvement in the discussions about those
14 alternative solutions to the wastewater problem?

15 A. With whom?

16 Q. Tell me what your involvement was with
17 respect to issues that arose concerning the
18 installation of a wastewater collection facility.

19 MR. SHEEHAN: Objection.

20 A. The original consent order, which required
21 the installation of tight tanks, was stayed when it
22 appeared that there was some hope that the town
23 would extend the sewer to Great Neck and Little
24 Neck. So there was a reprieve, if you will, where

1 the tight tanks didn't have to be installed and the
2 drip systems, which were more expensive.

3 It was finally concluded, fortunately
4 not after one had been installed, that they wouldn't
5 work and that that would have been a giant waste of
6 money that would have required a tight tank after
7 putting in a failed drip system.

8 The Feoffees subsequently entered into a
9 new or revised consent order that required the
10 installation of this centralized system; however,
11 the homeowners were given little, if any, input into
12 that consent order, the negotiation of it, the
13 drafting of it, the terms of it. Nor the management
14 and oversight of it.

15 We were simply told that we were going
16 to have to pay our proportionate share, 167 divided
17 into the total cost.. I didn't have any direct
18 involvement with the Feoffees on this issue other
19 than to complain that our rights weren't being
20 appropriately considered by the Feoffees; that we
21 weren't being given a seat at the table on such an
22 important issue. I certainly never agreed to pay
23 any percentage or sum certain associated with it.

24 Q. Did you have any involvement in the

1 discussions with the Feoffees about the installation
2 of the wastewater system?

3 A. Only to complain to Don how wrong it was
4 what they were trying to do. I mean, ultimately the
5 cost of the septic system ballooned from what the
6 Feoffees had originally indicated would be
7 20-something thousand per -- I'm sorry. That
8 everyone's one-167th share would be 20,000 and it
9 kept going up until it ended up being 43,000, more
10 than twice what had been estimated at the beginning
11 by the Feoffees. It went from a 3-point-something
12 million dollar project to 7.2 with no explanation,
13 with no justification.

14 And the bank that the Feoffees borrowed
15 from to finance the money to pay for it insisted on
16 a lease because they wanted to make sure that there
17 was this written document that guaranteed the stream
18 of income so that the Feoffees could pay them the
19 principal and interest and pay off the loan. And
20 that's why the Feoffees first sought to impose a
21 lease that begat the crisis that resulted in part in
22 litigation.

23 Q. Did you receive any mailings from the
24 Feoffees or any of their representatives or

1 contractors concerning the ongoing work being done
2 on the wastewater system?

3 A. Yes, we would periodically either get a memo
4 from the Feoffees or something from the engineer,
5 Lombardo.

6 Q. Lombardo would send out monthly reports on
7 the status?

8 A. Not monthly.

9 Q. Reports went out to all tenants?

10 A. I presume that periodically all tenants
11 received something from the Feoffees or from
12 Lombardo. I can't speak to what it was or the
13 frequency as I sit here today.

14 Q. If the centralized wastewater system had not
15 been installed would you have been able to sell your
16 cottage with the cesspool?

17 MR. CHAPMAN: Objection.

18 A. What period of time are we talking about?

19 Q. 2000-2006?

20 A. Yes, I could have. The buyer would have had
21 to have been informed about all the various issues
22 and knowing all that was going on I would have been
23 free to sell it. I don't think there would have
24 been a legal prohibition by the DEP or otherwise.

1 Q. There wouldn't have to be -- the Title 5
2 requirements hadn't changed to require an upgrade?

3 A. My understanding was that I had a
4 grandfathered system and that as a result I was fine
5 with what I had.

6 Q. Even on a sale?

7 A. Even on a sale. My selling would be no
8 different than my buying.

9 Q. Have you seen the latest form of lease that
10 the Feoffees are using?

11 A. I believe I have.

12 Q. The one from 2008 that bases future rents on
13 assessed values?

14 MR. CHAPMAN: Objection.

15 A. I'm not sure.

16 Q. How many forms of lease have you seen since
17 the lawsuit was filed?

18 A. The first and second iterations. There was
19 a lease that originally had a rent that was in the
20 5,000, \$5500 range I believe. I'm sorry, the first
21 lease that we were presented with, and I'd have to
22 see it but I'm just going from memory, I haven't
23 seen it in a long time. The first lease had a
24 defined rent term for only three years.

1 Q. Right.

2 A. And thereafter if we had signed that lease
3 we would have contractually obligated ourselves to
4 pay whatever rents the Feoffees deemed to be
5 appropriate.

6 Q. And the second iteration you're referring to
7 provided what?

8 A. I believe it was the second iteration that
9 included a contractual obligation to pay one-167th
10 of the cost of the wastewater system. And in fact
11 they circulated, either with it or independent of
12 it, with a revised set of rules and regulations that
13 had a provision added that if you don't pay what you
14 owe on wastewater then they could evict you and take
15 your property.

16 Q. What was the rent under that second
17 iteration?

18 A. I can't state with certainty what the rents
19 were but either that lease or the subsequent lease,
20 instead of having the contractual obligation to
21 simply pay your one-167th share, they came up with
22 this concept of additional rent. And the additional
23 rent was the amount paid out over time for that
24 wastewater system.

1 And so you had the rent, then you had
2 the additional rent, and the combination of the two
3 was, you know, what you had to pay on an annual
4 basis. And that way under the lease the homeowners
5 were paying not only an increased amount for rent
6 but paying for a hundred percent of the 7.2 million
7 dollar wastewater system.

8 Q. Have you seen a form of lease that based the
9 rents after the first three years on assessments?

10 A. I saw a lease that contemplated putting all
11 the cottages in tiers, a departure from the
12 longstanding practice of charging one rent for a
13 seasonal cottage and one rent for a year-round
14 cottage; instead, coming up with this concept of a
15 bucket based on how big your lot is and other
16 factors. And I saw a lease that contemplated the
17 Feoffees designating unilaterally what bucket your
18 cottage was in and you'd have to pay the rent that
19 was based I believe on a formula that may have
20 included a rate of return on the assessed values of
21 the homes.

22 Q. Did you object to the concept of putting
23 cottages in tiers based on their location, view,
24 etcetera?

1 A. I did.

2 MR. CHAPMAN: Objection.

3 BY MR. PERRY:

4 Q. Why is that?

5 A. Because for 200 years it had been a flat
6 rate rent that was -- seasonal was X, year-round was
7 Y. And no one objected to it and it didn't pit
8 neighbor against neighbor as to why am I in category
9 one when Bob is in category two and making it petty
10 and unpleasant pitting neighbor against neighbor and
11 having to rely on some third party, whether it was
12 the Feoffees or something else, determining the
13 bucket that you were in.

14 Q. How do you think fair rents should be
15 determined in a long-term lease?

16 MR. SHEEHAN: Objection.

17 A. A long-term lease for Little Neck?

18 Q. Yes.

19 MR. CHAPMAN: Objection.

20 A. Consistent with the prior practice of small
21 periodic increases.

22 Q. Who would decide those small periodic
23 increases?

24 A. Well, it would be nice if the Feoffees

1 worked with the homeowners to set the rent. But
2 absent that, it would be their decision, guided by
3 past practice and the expectations that people had
4 based on that past practice.

5 Q. You were one of the architects of the
6 lawsuit that got filed by William Lonergan and Diane
7 Whitney-Wallace on behalf of themselves and others,
8 correct?

9 MR. CHAPMAN: Objection.

10 A. Architect?

11 Q. Were you one of the individuals that caused
12 that lawsuit to be filed?

13 MR. CHAPMAN: Objection.

14 A. I was one of the founding members of the
15 Little Neck Legal Action Committee that represented
16 the interests of the homeowners and who retained
17 counsel. And I worked with counsel and participated
18 in the drafting and what ultimately became that
19 filed lawsuit, yeah.

20 Q. Did you participate in the recruitment of
21 the individuals who served as the plaintiffs?

22 A. Yes.

23 Q. You personally went and talked to them about
24 it?

1 A. Yes.

2 Q. Did they receive any kind of compensation
3 for serving?

4 A. No.

5 Q. You mentioned that if the Probate Court does
6 not approve the sale then the matter could or would
7 return to Superior Court, right?

8 A. Presumably.

9 Q. And that part of what would be decided in
10 that case would be the issue of damages, correct?

11 A. Yes.

12 Q. Is it your understanding that part of the
13 issue that would be decided in the Superior Court
14 case would be what the fair rent is and has been for
15 Little Neck?

16 A. That might be a component part of what the
17 court ultimately decides vis-a-vis the declaratory
18 relief that's sought in this complaint.

19 Q. Is it your intention that any of the rent
20 that was paid before 2006 by tenants should be
21 returned as damages to those tenants?

22 A. Yes.

23 Q. And what is the basis for than contention?

24 A. As is asserted in the complaint, it is the

1 homeowners' position that the Feoffees were
2 unlawfully constituted during the period of time at
3 issue in that they were not in compliance with a
4 controlling statute that mandated that the Feoffees
5 would be made up of not only the four lifetime
6 members but the three senior selectmen in the town
7 of Ipswich.

8 It is our position that the Feoffees
9 intentionally excluded the three senior selectmen
10 and that the three senior selectmen knowingly failed
11 to fulfill their duties and responsibilities under
12 that statute. So you had an unlawfully constituted
13 body that was making decisions on rent, taxes,
14 year-round versus seasonal ownership, everything
15 associated with the rental of lots on Little Neck.

16 Q. Could you explain to me why if the Feoffees
17 conducted meetings unlawfully without the selectmen
18 that would entitle the tenants to get back the rent
19 they paid for the occupancy of the real estate?

20 A. Because they were not duly constituted and
21 were not functioning as the statute required it.
22 It's not supposed to be four lifetime Feoffees.
23 It's supposed to be the four lifetime Feoffees and
24 the three senior selectmen. And for the Feoffees to

1 ignore that requirement and to meet and make
2 decisions when the selectmen didn't have notice of
3 and weren't allowed to participate in it, everything
4 that they did was unlawful.

5 Q. And therefore the tenants would be allowed
6 to occupy the real estate rent-free?

7 A. Possibly. We'd be seeking compensatory and
8 punitive damages for their arbitrary and capricious
9 conduct.

10 Q. By damages, do you mean statutory --

11 A. Exemplary damages under 93A, double or
12 treble, plus punitives to punish.

13 Q. Plus punitives?

14 A. Yes.

15 Q. Massachusetts doesn't have a plus punitives
16 other than 93A, does it?

17 A. We're seeking whatever punitive damages we
18 can get.

19 Q. Did you ever advise any of the Feoffees to
20 whom you had spoken as to what your intent was with
21 respect to pursuing them individually as opposed to
22 limiting your recovery to what came out of the
23 trust?

24 MR. CHAPMAN: Objection.

1 A. I didn't have any such conversations.

2 Q. What is your understanding of -- what is
3 your intent in that regard? Were you seeking in
4 that complaint to be pursuing any of the Feoffees in
5 their individual capacity or only in their capacity
6 as trustees?

7 MR. CHAPMAN: Objection.

8 A. I defer to counsel on that.

9 Q. You've never yourself had a discussion with
10 Don Whiston in which you have threatened personal
11 liability?

12 MR. SHEEHAN: Objection.

13 A. No, I have not.

14 Q. Or any of the other Feoffees?

15 A. No.

16 Q. Not in the context of a mediation?

17 MR. SHEEHAN: Objection.

18 MR. CHAPMAN: Objection.

19 A. At the mediation counsel did most of the
20 talking. I don't recall saying that.

21 Q. I'm not saying you did.

22 MR. CHAPMAN: Can we do another break
23 either now or soon?

24 MR. PERRY: Soon, yes.

1 MR. CHAPMAN: Okay.

2 BY MR. CHAPMAN:

3 Q. Apart from your theory that rents should
4 return to the Feoffees -- apart from your theory
5 that rents should be returned to the tenants by the
6 Feoffees because they should have been a
7 seven-member organization but functioned as a
8 four-member organization, do you have any other
9 contention that the Feoffees owed the tenants
10 damages?

11 A. Well, the damages would include the return
12 of rents, the return of taxes, the return of the
13 wastewater assessment to those that paid it.

14 Q. And those were payments that varied between
15 \$500 and a thousand dollars per tenant?

16 A. What was requested, what was ordered was a
17 thousand dollars. The Feoffees indicated that it
18 would be the first of two \$1,000 assessments. For
19 those that elected to do so, because of the
20 financial hardship associated with the payment of a
21 thousand dollars in full I believe that the Feoffees
22 allowed them to pay it in two \$500 installments.

23 Q. You are looking for the return of rents,
24 return of taxes and return of wastewater payments

1 that were made. Any other damages?

2 A. The wastewater maintenance charge, which was
3 \$40 a month, plus interest plus attorney's fees
4 generally.

5 Q. What's the theory for returning the \$40 per
6 month and the maintenance charge?

7 A. Because we never agreed to pay \$40 or any
8 other sum of money to maintain the system that the
9 Feoffees built. We never were provided with any
10 justification for why 40 times 12 times 167 was an
11 appropriate figure. It was just another mandate by
12 the Feoffees without explanation or justification.

13 Q. So we've put on one side of the ledger what
14 you're claiming for damages --

15 A. I'm not done yet.

16 Q. Go ahead.

17 A. In addition to that, we were compelled to
18 pay a wastewater disposal charge that was based on a
19 certain sum of money per gallon of water coming into
20 the cottage as read off the meter maintained by the
21 Ipswich Department of Water and Sewer. The first
22 contract that the Feoffees entered into for a
23 contractor to provide that service required I
24 believe 9 cents per gallon. The homeowners believed

1 that that wasn't genuinely bid out on the open
2 market and they could have done much better and if
3 they were obliged to pay anything at all for the
4 disposal of 100 percent of the water that comes into
5 the cottage as opposed to some measure of the water
6 that comes out of the cottage, it should have been a
7 lesser amount.

8 And in fact the Feoffees subsequently,
9 under a lot of pressure from various homeowners, did
10 bid it out in a more meaningful competitive way and
11 got a substantially better price.

12 Q. What's the price now?

13 A. 6 cents a gallon.

14 Q. Do you feel that that amount also should not
15 be paid by the homeowners?

16 A. Certainly not the differential.

17 Q. The difference between the 6 and the 9
18 cents?

19 A. Yes.

20 Q. So that would be 3 cents per gallon?

21 A. I'm not conceding --

22 Q. For what period of years?

23 A. From its inception to now.

24 Q. Well, when did you start paying the 6 cents

1 versus the 9 cents?

2 A. As I say, I'm not necessarily conceding that
3 we should pay for the disposal of the water.

4 Q. You're not conceding that the tenants should
5 bear the cost of disposing of the wastewater that
6 comes from the cottages that they use?

7 A. Correct.

8 Q. So you've listed items of potential damage
9 in the lawsuit: The term of rent that was paid by
10 the tenants, the return of taxes that were paid by
11 the tenants, the return of wastewater payments in
12 the range of \$5,000 that may have been paid by some
13 of the tenants at the Feoffees request, the return
14 of \$40 per month that was paid by tenants as a
15 wastewater maintenance charge and the sum or all of
16 the wastewater disposal charges that were assessed
17 in connection with the alleged cost of removal of
18 wastewater from the centralized plant, right?

19 A. I did mention all those things.

20 Q. Anything else?

21 A. Conceivably there's lost sale opportunities.
22 People have been unable to sell their cottages
23 because of the problems that resulted. No one wants
24 to touch these houses now. So you've got financial

1 damages that affect certain homeowners as a result
2 of their not being able to sell. And other
3 financial harm in order just to pay all these
4 various charges that they're obliged to pay.

5 The rent, even under the stipulation, is
6 significantly more than what it had been previously
7 and there were people, you know, who are of very
8 limited means that live there, it's a blue collar
9 community, and the rents skyrocketed from the 6 to
10 \$800 range that was there when I first bought in '93
11 up to the 5,000, 5500 that's required under the
12 stipulation. That's been a significant burden to
13 many of the homeowners up there. Plus the increased
14 taxes. That's the second issue.

15 Q. You've now told me about your damage claims
16 that the tenants have in the litigation?

17 A. There may be others. Those are the ones I
18 can recall.

19 Q. On the other side of the ledger, the request
20 for declaratory relief includes a potential
21 determination by the court of a fair amount to be
22 paid by the tenants for use and occupancy by the
23 tenants?

24 A. I didn't understand.

1 Q. There's a request for declaratory relief to
2 be determined by the court for the fair amount to be
3 paid by the tenants for the use and occupancy of the
4 tenants from the time the case was filed until its
5 conclusion, right?

6 A. It might.

7 Q. And the court could conclude that the amount
8 that's due is substantially in excess of the amount
9 that's being paid, right?

10 MR. CHAPMAN: Objection.

11 A. It's possible.

12 Q. You described the Little Neck community as a
13 blue collar community. What do you mean by it's a
14 blue collar community?

15 (Recess taken.)

16 BY MR. PERRY:

17 Q. I started to ask you before we took the
18 break what you meant when you said Little Neck is a
19 blue collar community?

20 A. What I meant by that is it's a mixture of
21 people who predominantly have nonprofessional jobs,
22 sort of middle class -- low to middle class economic
23 bracket. Of course over time, like any area,
24 there's been some gentrification where there's a

1 spattering of doctors and lawyers and Indian chiefs.
2 But it's predominantly people who have what are
3 traditionally considered blue collar type jobs.

4 Q. Have you done any kind of calculation of the
5 number of blue collar tenants versus the number of
6 white collar tenants?

7 A. No, this is just my subjective opinion.

8 Q. For example, the Little Neck Action
9 Committee consists of all white collar tenants,
10 doesn't it?

11 MR. CHAPMAN: Objection.

12 A. I don't know. That's an interesting
13 question. I formed the group and I sought out
14 people that had particular skills so the group is a
15 skewed -- it's not a representative sample of Little
16 Neck as a whole.

17 Q. Do you have any information on the
18 occupation of the 167 cottage owners?

19 A. Just what I know from living amongst them.

20 Q. Anecdotal. Is there any publication that
21 would list the occupation of the Little Neck
22 tenants?

23 A. Not that I know of.

24 Q. For example, a census listing wouldn't

1 include Little Neck because it's not a primary
2 residence?

3 A. I don't know.

4 Q. Does your membership information with regard
5 to the homeowners you've been involved with give you
6 any occupation for any of the tenants?

7 A. No.

8 Q. The 167 tenants other than the lessees are
9 all listed as defendants ultimately with respect to
10 the counterclaim filed in the Superior Court claim,
11 correct?

12 A. I think the lessees were listed also. Those
13 were the homeowners at the time that the
14 counterclaim was filed.

15 Q. Have you had any conversations with Don
16 Whiston after buying the cottage that you rely upon
17 in support of your claims in the Superior Court
18 litigation?

19 A. Yeah. I mean, I did have conversations with
20 Don with respect-- he indicated that they were being
21 tremendously pressured by the school committee to
22 depart from past practice and to charge more. And
23 instead of giving an annual specific bequest for a
24 specific purpose, giving more money without

1 restriction; that the school committee was looking
2 to shore up its failing finances through increased
3 monies out of Little Neck.

4 Q. When did you have those conversations?

5 A. I can't give you a specific date.

6 MR. CHAPMAN: You've got to let him
7 finish the question.

8 BY MR. PERRY:

9 Q. When in relation to buying the cottage did
10 you have those conversations?

11 A. After.

12 Q. Was it a few years after?

13 A. It was after the rent started to go up in
14 dramatic increments.

15 Q. What was the first dramatic rent increase
16 you recall?

17 A. Something in the vicinity of 17 or \$1800 for
18 a seasonal cottage I think it was.

19 Q. And you're referring now to the seasonal
20 cottage rental, not the increase?

21 A. Correct.

22 Q. So when rents for a seasonal cottage went to
23 \$1700, that's an event you associate with rents have
24 been increased substantially?

1 A. I think that that was the first increase
2 that people generally considered to be over the top
3 substantial.

4 Q. Okay. Did you speak with any Feoffees
5 besides Don Whiston before you bought your cottage?

6 A. No.

7 Q. Have you spoken with any Feoffees other than
8 Don Whiston about issues relevant to the Superior
9 Court litigation?

10 A. I've had conversations with all of the
11 Feoffees since that time that touch on the issues
12 attendant to the lawsuit. We've been in many
13 negotiation sessions where we freely exchanged ideas
14 and positions.

15 Q. Apart from any settlement negotiations you
16 had with the Feoffees, have any of the Feoffees
17 other than Don Whiston made statements to you that
18 you consider to be relevant to any of the issues in
19 the Superior Court litigation?

20 A. Yeah. Jim Foley and I had a couple
21 exchanges. There was an incident that occurred
22 after we received notification just before the 4th
23 of July holiday that our tenancies had been
24 terminated and that if we didn't sign the lease that

1 had been provided to us we would be evicted. And we
2 could take houses with us but if we left them
3 behind, which of course we would have to, they would
4 be considered abandoned and become the property of
5 the Feoffees. I had an exchange with Mr. Foley
6 where tempers flared and certain things were said
7 back and forth.

8 Q. Did he say anything in that conversation
9 that you consider relevant to this litigation? For
10 example, you had testified to an admission he made.

11 MR. CHAPMAN: Objection.

12 A. It wasn't an admission so much as an
13 attitude. I went down to the office that the
14 Feoffees maintain and confronted Mr. Foley about the
15 callous and unfeeling aspect of sending out such a
16 notification to all the Little Neck homeowners on
17 the eve of the 4th of July holiday, which is an
18 important event up there. And, you know,
19 questioning how he could in good conscience be part
20 of an effort to do that.

21 And admittedly I was loud and probably
22 too aggressive and he replied in kind. But he said
23 something to the effect of, you know, it's too
24 fucking bad and if you don't like it, move.

1 Q. Prior to filing the lawsuit -- strike it.

2 Prior to the filing by Mr. Lonergan and
3 Ms. Whitney-Wallace of the lawsuit were you prepared
4 to sign a long-term lease that provided for you to
5 pay fair market value rent as determined from time
6 to time by a qualified third party appraiser?

7 MR. SHEEHAN: Objection.

8 A. After we received this notice we did hire
9 counsel, Masterman, Culbert & Tully, and we
10 attempted to enter into some sort of a dialogue with
11 the Feoffees and their counsel to negotiate the
12 terms of a lease. We never were able to agree on a
13 number of substantial terms of that lease, including
14 rent, how it would even be determined, what it would
15 start at and when there would be increases.

16 So those negotiations didn't result in
17 any acceptable resolution and ultimately we felt
18 that we were put in a position where we had to file
19 suit in order to, you know, defend the interests of
20 our group.

21 Q. So my question to you is prior to filing the
22 lawsuit you would have been willing to sign a
23 long-term lease with respect to rents but the rents
24 would be determined at fair market value based on a

1 third party appraisal?

2 MR. CHAPMAN: Objection.

3 A. No, we never reached an agreement such as
4 that.

5 Q. Would you be willing to sign such a lease
6 now, assuming the sale were not approved?

7 MR. CHAPMAN: Objection.

8 A. That's so hypothetical. In the event that
9 we're unable to buy the property?

10 Q. Yes.

11 A. We would be left with no alternative but to
12 -- if we were to negotiate a resolution it would
13 have to be in the context of the lease. But we'd be
14 back in the situation we were before we filed the
15 lawsuit, trying to reach terms that would be
16 agreeable to the homeowners. And now that's even
17 more complicated by the involvement of the finance
18 committee and the control that they're exerting over
19 the school committee.

20 You know, how likely it is that we could
21 reach an agreement on the term and amount and how
22 the wastewater would be treated, I'm skeptical.

23 MR. PERRY: Can you hold on a minute.

24 (Discussion off the record.)

1 (Recess taken.)

2 MR. PERRY: Would you mark this as the
3 next exhibit.

4 (Exhibit 1 marked
5 for identification.)

6 BY MR. PERRY:

7 Q. Mr. Gottlieb, I've given you a lease that's
8 between the Feoffees and somebody name Richard Betz,
9 trustee of the Richard Betz Trust. Do you happen to
10 know who Mr. Betz is?

11 A. Yes, I do.

12 Q. Could you tell me who that is?

13 A. He's a gentleman who's been at Little Neck
14 for a very long time. He owns two cottages I
15 believe and I think his son lives in one. He's a
16 lovely gentleman in his 80s who wrote a book about
17 Little Neck.

18 Q. The copy I've given you of this lease has
19 been signed by Mr. Betz and we don't seem to have a
20 signature on this one of the Feoffees but I'd like
21 you to disregard that fact for the moment. We have
22 other leases that Mr. Sheehan has produced that are
23 in similar form to this that do have Feoffee
24 signatures. Okay?

1 A. Yep.

2 Q. First of all, have you seen this form of
3 lease before with respect to, for example, Exhibit A
4 setting forth annual rents and a process for
5 increasing them?

6 A. Yes, I have seen the form of this lease
7 before. This was a lease that was offered to people
8 who had already signed a lease in 2006 and they
9 weren't required to sign this but they could if they
10 wanted to. And some percentage that's unknown to me
11 of the lessees did in fact replace that '06 lease
12 with an '08 lease.

13 Q. In addition, is it your understanding that
14 individuals who purchased cottages after the lawsuit
15 was filed were asked to sign this lease if that
16 purchase took place after this document was
17 developed?

18 A. I don't know that for a fact, which lease
19 they were called upon to sign. But it would not
20 surprise me if it were the '08 lease.

21 Q. Have you ever reviewed this document? The
22 form, not this particular one from Mr. Betz.

23 A. I believe I have, yes.

24 Q. This document states on page 1 that the

1 annual rent would be according to Exhibit A,
2 correct?

3 A. It says that.

4 Q. And on page 2 it calls for payments on
5 account of taxes by the tenant, right?

6 A. Yes.

7 Q. Under paragraph 7 it makes the tenant
8 responsible for paying water and electric, right?

9 A. Yes. Their individual water and electric
10 service.

11 Q. Under 7B it requires a tenant to pay the
12 disposal fees for disposal of wastewater, right?

13 A. Yes.

14 Q. And that would refer to the 6 cents a gallon
15 charge?

16 A. However it might fluctuate.

17 Q. And then it says the tenant shall provide
18 any other utilities at their own expense, correct?

19 A. Yes.

20 Q. And then going to Exhibit A, that sets forth
21 the annual rent, right?

22 A. It has a specific amount through 2012, yes.

23 Q. And it has this adjustment based on the tier
24 in paragraph 2 whereby people pay somewhere between

1 98 percent and 108 percent of what would otherwise
2 be the rent; is that right?

3 MR. SHEEHAN: Objection to the form.

4 A. That appears to be the formula.

5 Q. And in addition it has provisions for how
6 rent is to be determined after the first --

7 A. Just to be clear. I'm sorry. It's not just
8 the percentage. There's also -- on the back end of
9 each of those things -- no, I'm sorry. A percentage
10 of the average assessed value of the 167 approved
11 lots.

12 Q. And that would appear to be in proportion to
13 those percentages, right?

14 A. I haven't done the math but that's the way
15 it appears.

16 Q. There was some rounding, right?

17 A. Perhaps.

18 Q. So, under this particular lease that the
19 Feoffees entered into in 2008 there is a provision
20 for a fixed rent for three years and a method to
21 increase it thereafter, right? I should say there's
22 a method for the calculation of rents for the first
23 three years and a method for adjusting it thereafter
24 based on assessed values?

1 A. No. It seems there's a fixed amount through
2 June of 2012 and after that there's a formula.

3 Q. Right. That's based on assessed values of
4 the 167 lots collectively, right?

5 A. I'm still not certain how the percentage of
6 average assessed value interrelates to the
7 mathematical formula of 98 percent, 102 percent, 106
8 percent, 108 percent of the tenants in class 2 as
9 defined here.

10 And then there's this minimum annual
11 rent. So that even if the assessed value went down
12 it's not going to be any less than a certain amount.
13 So I'm not sure how that interrelates either. This
14 isn't a lease that I was ever called upon to study
15 or sign. I just know it's not one I would sign or
16 recommend to our members to sign.

17 Q. Well, that's really the question I wanted to
18 ask you. Would you have signed a lease that was in
19 this form prior to the lawsuit being filed in 2006?

20 MR. CHAPMAN: Objection.

21 A. No.

22 Q. Would you be prepared, if the matter were
23 returned to Superior Court after disapproval of
24 sale, to sign a lease in this form?

1 A. No.

2 Q. Do you regard this lease as an improvement
3 over the one you were presented in 2006?

4 MR. CHAPMAN: Objection.

5 A. I haven't studied it recently enough to make
6 a judgment like that. You know, just when -- the
7 2006 lease, I didn't think anything could be worse
8 than that. But then they came out with another
9 version that had the differential between the
10 initial rent that they wanted to get and the amount
11 that represented a hundred cents on the dollar of
12 the 7.2 million dollar wastewater system. So it
13 just kept getting worse.

14 Also, we are negotiating over a manner
15 to extend the lease beyond the 21-year statutory
16 limitation to make it a genuinely long-term lease.
17 This term is only 20 years. 20 years I can testify
18 goes by before you know it. And we didn't feel that
19 that was an adequate length either, 20 years.

20 But anyway, I haven't read through this
21 whole thing so I can't make at this point in time
22 any further judgments about it.

23 Q. I think you had indicated that there were
24 some negotiations with the Feoffees before the

1 lawsuit was filed?

2 A. The other thing I'll say, just to go back a
3 second because I think it would be inappropriate to
4 not mention the fact that we think that Little Neck,
5 the improved lots upon which this formula would have
6 been based and would be based in the future, that
7 the assessed value of the improved lots are grossly
8 inflated and any rent formula based on the assessed
9 value, for example the board of assessors reduced
10 the combined value of Little Neck by 6.1 million
11 dollars last year and we don't think that that went
12 nearly far enough. It was grossly over-assessed.
13 And this was an issue during negotiations. Any
14 formula based on assessed value was unacceptable to
15 the homeowners given the history of assessments in
16 Little Neck.

17 Q. And that's true even if there's a right to
18 have abatements taken into account?

19 A. Up until recently the Feoffees had not
20 advanced abatement application for Little Neck even
21 though we thought that there was certainly a
22 legitimate basis to do so. Given the fact that the
23 school committee received 60 to 65 percent of the
24 monies that were collected in real estate taxes, it

1 put the Feoffees in a difficult position in seeking
2 to abate and reduce that amount up until last year
3 when the appellate tax board specifically held in
4 the context of an appeal from the denial of an
5 abatement by a homeowner on Little Neck that in fact
6 the Little Neck homeowners did have standing to
7 pursue abatements. Up until then they were denied
8 as a matter of course by the assessor.

9 Q. Have you ever sought an abatement?

10 A. I did this year.

11 Q. And what happened?

12 A. It was denied.

13 Q. And do you have a right to appeal that?

14 A. I believe I do.

15 Q. Have you done that?

16 A. I haven't done it yet.

17 Q. Do you intend to?

18 A. I do.

19 Q. What's the assessment that you're appealing
20 from?

21 A. I sought an abatement of the value of the
22 lot on which my house sits.

23 Q. What was the lot valued at?

24 A. 198 and change.

1 Q. And what do you claim it should be valued
2 at?

3 A. I've suggested two alternate valuations.
4 One is the amount that the seller has agreed to
5 charge me for the purchase of my condominium unit in
6 the event that the sale takes place, which is
7 166,000 and change. Since I already own the house,
8 my position is that the marrying of the home to the
9 land in the form of a condominium unit deed is the
10 fair market value of my lot as the assessors define
11 them.

12 In the alternative, I suggested that
13 they should look at the appraisals that have been
14 done and come to some determination, whether it be
15 an average or some weighted formula and then abate
16 Little Neck as a whole, the assessed value of the
17 real estate on Little Neck as a whole and let the
18 Feoffees apportion it accordingly.

19 Q. Did you see an appraisal of your individual
20 lot in any of the appraisals that were done by
21 Colliers, Meredith & Grew or by LandVest or by
22 Steven Foster for the school committee?

23 A. I'm not sure.

24 Q. The Peterson Lachance appraisal didn't

1 include specifically what tiers any given lot fell
2 in, did it?

3 A. Not that I can recall.

4 Q. Do you recall what the range of individual
5 lot values was in the Peterson Lachance appraisal?

6 MR. CHAPMAN: Objection.

7 A. No.

8 Q. Now you said that you would not have agreed
9 to enter into a lease in the form of Exhibit 1
10 before the lawsuit was filed. And I started to ask
11 you about the negotiations that you had with the
12 Feoffees before the lawsuit was filed. Did you make
13 clear what your position was at that time with
14 regard to a lease?

15 A. There was a change of views between the
16 parties, the adverse parties on the topic of the
17 lease. Unfortunately we weren't able to reach any
18 consensus and that's when a sale as an alternative
19 to a lease was discussed. And we pursued a number
20 of options that would involve a transfer of
21 ownership.

22 Q. Were you prepared at any time in 2006 to
23 sign a lease that required you to pay rent in the
24 amount of \$10,800 a year for year-round use of your

1 cottage?

2 A. In 2006 the lease that was presented to us

3 --

4 Q. I'm asking you a different question. I'm
5 sorry to interrupt you. I'm aware of what the lease
6 said you were presented with and I'm not asking you
7 about that. I'm asking you whether you were
8 prepared to sign any lease in 2006 that set the rent
9 for the first three years at the rate of \$10,800 for
10 year-round use with adjustments that could go up but
11 not down in future years?

12 A. That was never presented to me.

13 Q. Were you prepared to sign such a document?

14 A. How could I consider signing a document that
15 was never presented to me?

16 Q. You said you would never recommend to anyone
17 in 2006 that they enter into a lease containing the
18 terms of Exhibit 1?

19 A. I can tell you we were never presented with
20 what you have marked as Exhibit 1. This was in 2008
21 and it was completely optional to the people it was
22 presented to.

23 Q. Unless it was also presented to those who
24 bought their units, right?

1 A. That's a handful of people. And they were
2 told that if you want to buy this house you have to
3 sign this lease. There were no options that were
4 given and there were no negotiations with the buyers
5 or the buyer's counsel. A condition of the sale is
6 that you will sign this lease.

7 Q. Just looking at this lease, what are your
8 objections to it?

9 MR. CHAPMAN: Objection.

10 A. I find the term objectionable, I find the
11 requirement that we pay the rent on the formula
12 objectionable, I find the -- I haven't looked
13 through here to see if there's a specific provision
14 that requires us to pay any percentage of the cost
15 of the wastewater system but if that's the case or
16 if it was built into the rent I would object to
17 that.

18 I object to the -- I've always said that
19 the homeowners, who own their homes, should receive
20 a tax bill directly from the assessor for the house
21 and that that should not be going to the Feoffees
22 and the Feoffees paying the town. We're the
23 homeowner and it's my view that the town is
24 obligated to send us the real estate tax bill

1 directly and we will pay them directly.

2 There are people who have questioned
3 whether or not we can appropriately deduct from our
4 income taxes what we pay in real estate taxes and by
5 sending the bill to the Feoffees rather than to the
6 homeowners it mitigates in favor of those that make
7 that type of an argument. It would probably be
8 easier to say what I don't object to, which is
9 virtually nothing.

10 Q. Well, what about -- you can see in Exhibit A
11 that the annual rent for this particular unit is
12 \$9700 and that's consistent with what's charged for
13 seasonal use, right?

14 A. That's the seasonal use rent.

15 Q. Do you object to the seasonal use rent of
16 \$9700 through 2012?

17 A. Yes.

18 Q. You would not recommend it to anybody that
19 they sign a lease containing that seasonal rent,
20 correct?

21 A. The lease as a whole I would not recommend
22 that our members sign. That would be my advice as
23 counsel to the committee. And I would of course
24 confer with our outside counsel. But why that

1 hypothetical is even relative I'm not sure. We have
2 a pending lawsuit, we have a pending deal. This
3 lease is not something that was offered to us and I
4 wouldn't sign it and I wouldn't recommend others
5 sign it.

6 MR. PERRY: I'll just check my notes.

7 (Pause.)

8 BY MR. PERRY:

9 Q. Are you still good friends with Dr. Mark
10 Koris?

11 A. Yes. Mark unfortunately had a significant
12 stroke the day of our mediation, December 13th of
13 2008, I believe. And he has some significant
14 impairment now. But yes, we're -- they're still
15 good friends and we see them socially. And I try to
16 take him out for golf cart rides and down to the
17 beach and we keep him involved.

18 Q. If there had been a tiered system in place
19 for the lots, would his lot be, as you understand
20 it, one of the better ones?

21 MR. CHAPMAN: Objection.

22 A. They're on the cliff looking out on the
23 Atlantic Ocean, Plum Island. I think that that row
24 was put in the highest tier.

1 Q. Right. Did you ever discuss with Dr. Koris
2 or his wife the issue of whether rents should be the
3 same or different for different classes of lots at
4 Little Neck?

5 A. Our members universally wanted to keep the
6 system the same, one standard seasonal, one standard
7 year-round rent. Even the people that had what one
8 might consider to be a less desirable location.

9 Q. Okay. And did you ever discuss the issue
10 specifically with Dr. Koris or his wife?

11 A. His wife is the legal owner of the cottage
12 and I probably did discuss did with them but I don't
13 have a specific recollection of a specific
14 conversation.

15 Q. Have you been involved in plans for the
16 homeowners association if the purchase is approved?

17 MR. SHEEHAN: Could you repeat this
18 question?

19 MR. PERRY: Let me reword it.

20 Q. Have you been involved in any of the
21 planning in connection with the condominium
22 association that would represent unit owners if the
23 property was sold?

24 A. Yes, but to a limited extent because we

1 didn't want to devote a tremendous amount of time
2 and energy to the condominium association unless and
3 until we had some degree of certainty that the sale
4 was going to be approved.

5 The Feoffees, for example, weren't going
6 to do the engineering until we got court approval.
7 We did put together a draft of the condominium
8 master deed and trust. We felt that that was
9 important but we really haven't had significant
10 exchange on the contents of those documents.

11 The committee has given some thought to
12 how we would be structured and the rules and
13 regulations that we would include as part of the
14 condominium documents, trying to preserve as best we
15 can the nature and character of the place.

16 Q. What are your thoughts on how the
17 condominium unit owners should be charged for their
18 disposal of wastewater if the sale took place?

19 A. Well, we remain hopeful that Little Neck
20 will ultimately do a sewer hookup. Absent that,
21 we're going to have to continue to use the system
22 that's in the ground.

23 Q. I'm asking what are your thoughts as to how
24 the condominium association will pass along disposal

1 costs to members under a condominium form of
2 ownership.

3 A. Well, we're hoping to maintain the same
4 pricing that the Feoffees are currently afforded by
5 the town. And for consistency sake we conceivably
6 could use the same measure I think more equitably if
7 we could put meters on that genuinely measures the
8 outflow into the system. That that might be a
9 fairer way rather than assuming that a hundred
10 percent of the water that comes in goes out through
11 the system, because people water their cars, water
12 their lawns, give the dog a bath. They take outside
13 showers that go out through the ground rather than
14 into the system. So we would definitely look at
15 that as an option.

16 Q. Because under the current system some
17 tenants may be paying too much and some too little
18 because of how they use the water?

19 A. True. And also unfortunately there are
20 problems with the system and groundwater infiltrates
21 into the system. So the Feoffees, to the extent
22 that the water the measurement of each homeowner is
23 off the meter, but they as the property owner have
24 to pay for the difference.

1 In other words, if you've got water
2 that's coming in, groundwater that's coming in it
3 still has to be pumped out and disposed of. They
4 can't charge the individual homeowners for that but
5 they end up eating the cost. If we were paying for
6 that because now it's a condominium and the
7 condominium association is responsible for all of
8 the pump-out charges, those problems need to be
9 addressed so that money isn't being spent needlessly
10 to treat groundwater that's getting into the system.

11 Q. You don't know what it would cost to install
12 devices that measured the outflow of sewage from
13 each house, do you?

14 A. I don't. I think they went with the easy
15 thing, which was the existing meters. And the
16 meters get read and you know month to month what's
17 coming in.

18 Q. And you don't know if the tenants would
19 desire to change that or maintain the status quo as
20 to a purchase?

21 A. The condominium association would take the
22 temperature of the homeowners but ultimately the
23 trustees would make a decision as to how it was
24 going to play.

William A. Gottlieb

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1 MR. PERRY: I think that's all I have.

2 Thank you.

3 THE WITNESS: You're welcome.

4 MR. SHEEHAN: I have no questions.

5 (The deposition was concluded at 1:10

6 p.m.)

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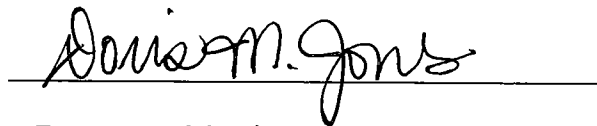
CERTIFICATE

Commonwealth of Massachusetts
Suffolk, ss.

I, Doris M. Jones, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, do hereby certify
that WILLIAM A. GOTTLIEB, the witness whose
deposition is hereinbefore set forth, was duly sworn
by me and that such deposition is a true record of
the testimony given by the witness.

I further certify that I am neither related to
or employed by any of the parties in or counsel to
this action, nor am I financially interested in the
outcome of this action.

In witness whereof, I have hereunto set my hand
this 3rd day of October, 2011.



Doris M. Jones, CSR/RPR

My commission expires:
May 19, 2017

ORIGINAL

VOL. I

PAGES 1-100

EXHIBITS: 1

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Probate & Family Court

Civil Action No. ES09E0094QC

- - - - -

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

Plaintiffs,

vs.

ATTORNEY GENERAL OF THE

COMMONWEALTH OF MASSACHUSETTS, et al.

Defendants.

- - - - -

DEPOSITION OF WILLIAM A. GOTTLIEB

September 26, 2011

10:05 a.m. to 1:10 p.m.

CASNER & EDWARDS, LLP

303 Congress Street

Boston, Massachusetts 02210

Court Reporter: Doris M. Jones, CSR/RPR

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1 PROCEEDINGS
2 **MR. PERRY:** Same stipulations as last
3 time, you'll have an opportunity to sign and we'll
4 waive the notarization.
5 **WILLIAM A. GOTTLIEB,**
6 having been first satisfactorily identified by the
7 production of his Massachusetts driver's license and
8 duly sworn by the Notary Public, was examined and
9 testified as follows:
10 **DIRECT EXAMINATION**
11 **BY MR. PERRY:**
12 Q. Would you state your name please.
13 A. **William Gottlieb.**
14 Q. What's your primary residential address?
15 A. **I live on Beacon Street in Boston.**
16 Q. What is the address?
17 A. **144 Beacon Street.**
18 Q. Do you own or rent there?
19 A. **I own.**
20 Q. Is it a condo?
21 A. **Condo.**
22 Q. Who do you reside there with?
23 A. **My wife Roberta, my daughter Olivia when**
24 **she's not in college, and we are now periodically**

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1 visited by my other daughter, Alexandra, who lives
2 in New York City.
3 Q. Alexandria?
4 A. Alexandra.
5 Q. Alexandra. She is older?
6 A. She is.
7 Q. What is Roberta's last name?
8 A. Crowley, C-R-O-W-L-E-Y, Gottlieb. No
9 hyphen.
10 Q. Do you own any other homes?
11 A. I own a home on Little Neck in Ipswich.
12 Ever hear of it?
13 Q. Yes. Is that the only other home you own?
14 A. Yes.
15 Q. What's the address in Little Neck?
16 A. 14 Middle Road.
17 Q. How many bedrooms is that structure?
18 A. Two.
19 Q. What's the square footage?
20 A. I don't know.
21 Q. Do you know the approximate square footage?
22 A. It's probably around 1700 square feet but
23 I'm just guessing.
24 Q. Has that always been a two-bedroom since

Page 6

1 you've owned it?
2 **A. Yes.**
3 Q. Could you please describe the exterior of
4 your cottage.
5 **A. It's a modified saltbox style. The bedrooms**
6 **are upstairs. The downstairs is living room, dining**
7 **room, sort of a big open floor plan. Kitchen,**
8 **bathroom.**
9 Q. How many bathrooms?
10 **A. One and a half. Half upstairs.**
11 Q. Half upstairs and full down?
12 **A. Correct.**
13 Q. How does that layout compare to the layout
14 of your Boston condo?
15 **A. The interior is the same. We made some**
16 **cosmetic improvements but the physical layout is the**
17 **same.**
18 Q. Have you made any substantial improvements
19 to the cottage since you've owned it?
20 **A. We added a deck with a pergola in the rear**
21 **of the structure and we did some work to shore up**
22 **the foundation. But most of it was simply cosmetic.**
23 Q. What's your occupation, please?
24 **A. I'm an attorney.**

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1 Q. Would you tell me please your educational
2 background.
3 **A. Starting in college?**
4 Q. That would be fine, thanks.
5 **A. I went to Boston University, graduated in**
6 **1977. I went to the University of Miami School of**
7 **Law, graduated in 1980.**
8 Q. What's been your occupation since graduating
9 from law school?
10 **A. Numerous positions. Do you want me to run**
11 **through them for you?**
12 Q. Please. First, are you a member of the
13 Massachusetts Bar?
14 **A. Yes.**
15 Q. How long have you been a member of the
16 Massachusetts Bar?
17 **A. Since 1980.**
18 Q. If you would just summarize your positions
19 as a lawyer after graduating from law school.
20 **A. The first job was at a law firm called**
21 **Ravech, Aronson & Schuman, personal injury work.**
22 Q. Were you doing personal injury or workers
23 comp?
24 **A. Personal injury litigation.**

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1 **Next position was as an assistant state**
2 **attorney in Dade County, Florida.**
3 Q. Are you a member of the Florida Bar?
4 **A. Yes. Then returned to Boston and worked at**
5 **the Suffolk County District Attorney's office.**
6 Q. What year?
7 **A. 1985. Two years there. Then four years as**
8 **an Assistant Attorney General.**
9 Q. Which division?
10 **A. Criminal. Then I went to a law firm called**
11 **Tucker, Biegel and Spiziali.**
12 Q. Could you spell that for the court reporter
13 please?
14 **A. T-U-C-K-E-R, B-I-E-G-E-L, and Spiziali is**
15 **S-P-I-Z-I-A-L-L-I.**
16 Q. How long were you there?
17 **A. Almost four years.**
18 Q. What kind of practice did you have there?
19 **A. That was a firm that specialized in Mass.**
20 **tort defense work. We also represented the Amtrak**
21 **and we did litigation, other litigation. Medical**
22 **malpractice defense work and various other types of**
23 **work.**
24 Q. Is it fair to say that was an insurance

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1 defense firm?
2 **A. No, we were Owens-Corning's national counsel**
3 **in the asbestos litigation.**
4 Q. That's the Mass. tort part of the practice?
5 **A. Correct.**
6 Q. You said you were there four years. When
7 did you leave?
8 **A. I think 1995.**
9 Q. Could you continue.
10 **A. Then I went to John Hancock and I've been**
11 **there for 16 years.**
12 Q. What jobs have you held at John Hancock?
13 **A. I've been in the corporate law department**
14 **and in the litigation division.**
15 Q. How long have you been in the litigation
16 division?
17 **A. Probably 13 of those 16 years. But I did**
18 **litigation when I was in corporate too.**
19 Q. What kinds of litigation are you doing for
20 John Hancock?
21 **A. Well, it's varied over time. But when we**
22 **started I handled almost all of the company's class**
23 **action litigation, other significant litigation that**
24 **the company faced.**

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1 More recently I've been aligned with
2 certain business clients so I've been doing the
3 litigation that relates to the company's mutual
4 funds and variable annuities. For 16 years I've
5 handled all of the company's market conduct
6 examinations. Up until a few years ago I handled
7 all of the company's various legal -- legal work
8 associated with its various sponsorships. And then
9 a potpourri of other things.
10 Q. Your title there?
11 A. Assistant vice president and senior counsel.
12 Q. How long have you held that title?
13 A. Well, I've had the senior counsel for
14 probably 15 years. The assistant vice president was
15 a Manulife designation that came into effect in 2004
16 when they acquired John Hancock.
17 Q. What company acquired John Hancock?
18 A. Manulife Financial. It's a Canadian
19 company.
20 Q. Does your wife work as well?
21 A. She does.
22 Q. What's her occupation?
23 A. She works as a pharmacist at Tufts Medical
24 Center. She teaches a course at Mass. College of

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1 Pharmacy and she works as a real estate broker for
2 Coldwell Banker.
3 Q. That seems like a full plate. How does she
4 allocate her time between those?
5 A. As best she can.
6 Q. What percentage of her time is devoted,
7 would you say, to the real estate brokerage work?
8 MR. CHAPMAN: Objection.
9 A. Up until recently probably about 20 percent.
10 But she's recently switched over to Coldwell from
11 Hammond and she's devoting more of her time to that.
12 Q. Which office does she work out of?
13 A. The Back Bay office.
14 Q. She had been working for Sol Hammond's
15 company before she went over to Coldwell Banker?
16 A. From Hammond to Coldwell.
17 Q. Also in Boston?
18 A. Yes.
19 Q. What's your date of birth?
20 A. 1/9/55.
21 Q. When did you buy your cottage in Little
22 Neck?
23 A. 1993.
24 Q. How did you come to buy that cottage?

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1 A. We had some friends that owned a cottage
2 there that we met when our oldest children were born
3 at the Beth Israel Hospital. They invited us up as
4 guests on a number of occasions, so over the course
5 of a couple of years we had been their guests at
6 their home and we became very enamored of Little
7 Neck and we decided to look into purchasing a
8 cottage there ourselves.
9 Q. Are your friends still at Little Neck?
10 A. They are.
11 Q. Who are the friends you are referring to?
12 A. Koris. Dr. Mark Koris and his wife
13 Francine.
14 Q. Could you spell the last name for the
15 reporter?
16 A. K-O-R-I-S.
17 Q. Is he a medical doctor?
18 A. An orthopedic surgeon.
19 Q. Where do they live at Little Neck?
20 A. They live at number 2 Cliff Road.
21 Q. How did you go about trying to purchase a
22 cottage at Little Neck?
23 A. Well, when my wife and I made the decision
24 to engage in that process she spoke with a real

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1 estate broker to find out what homes might be
2 available for sale. And she went up to Little Neck
3 to look at the various properties that were for
4 sale. And the one that she liked the best was the
5 one that we ended up purchasing.
6 Q. Before you purchased did you speak to
7 Dr. Koris about the financial arrangement at Little
8 Neck?
9 A. No.
10 Q. Did you speak to him about the rent that was
11 being charged?
12 A. No.
13 Q. Who was the broker you used for your
14 purchase?
15 A. I believe it was Dorothy Levesque.
16 Q. How do you spell Levesque?
17 A. I believe it is L-E-V-E-S-Q-U-E.
18 Q. Did they have buyer's agents back in 1993,
19 if you recall?
20 A. What do you mean by that?
21 Q. Your wife is in real estate so you are
22 familiar with the concept of buyer's agents and
23 seller's agents, are you not?
24 A. Yes. The home -- Dorothy Levesque had that

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1 listing but she also had either other listings or
2 she made arrangements to gain us access to see those
3 homes through the brokers that had the listings. I
4 didn't personally go up and look at it at that time.
5 So we didn't have a buyer's agent, if that's the
6 crux of your question.
7 Q. And the one you purchased was actually
8 Dorothy Levesque's listing, you believe?
9 A. Yes.
10 Q. You personally had no conversation with her
11 -- strike that.
12 Did you have any conversation with
13 Dorothy Levesque about financial arrangements at
14 Little Neck?
15 A. Not that I can recall.
16 Q. Did you rely on any such conversations that
17 your wife had?
18 A. Yes.
19 Q. What conversations that your wife had with
20 Dorothy Levesque did she relate to you?
21 A. Well, when she came back from her site
22 visit, that was the first that I learned that Little
23 Neck was set up in a shall we say unique manner.
24 And it was at that time that I learned that only the

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1 house was for sale and that the land on which the
2 house sat was owned by a trust and that we would be
3 tenants of the landowner.
4 Q. Anything further that you learned from your
5 wife?
6 A. I learned about the house that she had seen.
7 She brought me the listing. And I found out what
8 the purchase price was, you know, the asking price,
9 and some of the details. I think she had brought a
10 video camera and took a video of what the house
11 looked like. And she explained what the other
12 houses were like in comparison and why she liked
13 that house the best.
14 Q. Did she tell you what the then current
15 rental for the land was?
16 A. Yes.
17 Q. And what did she tell you about rent?
18 A. She told me that the annual rent on that
19 home, it being a year-round cottage, she told me
20 that there was a finite number of year-round homes
21 and coincidentally this was one of them. That the
22 seasonal rent was 600 and that the rent for the
23 cottage that we were interested in was 800.
24 Q. Did she tell you anything based on her

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1 discussions with the broker about the legal terms of
2 the tenancy?
3 A. There was more than one conversation that
4 Roberta had with Dottie Levesque. So the first
5 conversation that I had with Roberta, that was
6 pretty much the extent, as I can recall, of what she
7 conveyed to me.
8 Q. Prior to making the purchase did you
9 yourself try to look into any of the issues
10 concerning rent and future rent?
11 A. I did. One of the things that Roberta did
12 tell me was that Dottie Levesque had recommended
13 that we speak with Don Whiston, who was the head of
14 this trust that we had learned about. So I was
15 given his contact information and I had a couple
16 conversations with Don Whiston.
17 Q. Did you have those in person or by phone?
18 A. By phone.
19 Q. Did you keep any notes of your
20 conversations?
21 A. I did.
22 Q. Were those handwritten or typed?
23 A. Handwritten.
24 Q. When was the last time you reviewed those

Page 17

1 notes?
2 A. I looked for those notes prior to our filing
3 suit in the Superior Court and I could not locate
4 the notes.
5 Q. So you don't at present have any notes of
6 that conversation?
7 A. Correct.
8 Q. What you have is only your memory of the
9 conversation?
10 A. I don't have a writing that corroborates my
11 memory, if that's what you mean, yes.
12 Q. Was anybody present but you when you had the
13 phone conversations?
14 A. Not that I can recall.
15 Q. You said you had two such conversations?
16 A. Correct.
17 Q. Before I ask about it, Don Whiston was one
18 of the Feoffees when you talked to him?
19 A. It was represented to me that he was the
20 head of that organization.
21 Q. Who represented that to you? Dottie
22 Levesque?
23 A. Dottie Levesque told my wife that and gave
24 her Don Whiston's name and phone number to give to

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1 me.
2 Q. Did you do any checking to see in fact what
3 the makeup of the Feoffees was or what their legal
4 standing was?
5 A. No.
6 Q. Did you from time to time after you spoke to
7 Don Whiston and bought the house see him around at
8 Little Neck?
9 A. Yes.
10 Q. Did he have family there?
11 A. No. Did he have family there?
12 Q. Yes.
13 A. No.
14 Q. Did he have relatives living there?
15 A. Not at that time.
16 Q. Had he at some time?
17 A. Subsequently his daughter, it is my
18 understanding, and his daughter's husband purchased
19 a cottage on Little Neck but that was many years
20 later.
21 Q. Could you tell me please to the best of your
22 recollection what you said to Don Whiston and what
23 he said to you in the first telephone conversation
24 you had with him prior to purchasing your cottage at

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1 Little Neck?
2 A. Well, as an attorney I was concerned about
3 this arrangement. We were going to be spending a
4 considerable sum of money and I wanted to make sure
5 that we weren't putting that money at risk because
6 it was substantial for us.
7 So I -- as it turns out, I was
8 discussing this topic with my family in advance of
9 the first conversation and my brother mentioned that
10 he went to college with and was good friends with
11 Don Whiston's son Mark. So when I called Don
12 Whiston I explained who I was and the reason for my
13 call. And he was very convivial and kind.
14 I asked him if I could review the lease
15 that I'd be called upon to sign and I was advised by
16 Don that there was no lease. And he assured me that
17 there was no need for a lease, that things out on
18 Little Neck had been the way that they were at that
19 time for a very long time and he assured me that it
20 would be that way into the future.
21 I asked him about the rent. He told me
22 what I'd been told previously by Roberta through
23 Dottie Levesque, that there were two rents, one rent
24 for seasonal cottages and one rent for year-round

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1 cottages. He explained that the seasonal cottages
2 were 600, the year-round cottages were 800. I asked
3 him how long those rents had been in place at those
4 levels and he mentioned that they hadn't changed in
5 a number of years, that they had no present
6 intention to raise the rent.
7 I asked him about the history of rent on
8 Little Neck and Don explained that the rent
9 increases -- that the rents were modest and that the
10 rental increases were infrequent. But when they did
11 go up, they went up in very small increments. And
12 he gave me an example a 25 or \$50 increase. I was
13 concerned that the rents could accelerate and he
14 reassured me that they hadn't in the past and they
15 wouldn't in the future.
16 I asked him about the taxes because I
17 had learned through Roberta that we would, in
18 addition to the rent, have to pay the tax, real
19 estate tax, and Don confirmed that that was correct,
20 that it was -- the rental amount. We paid the
21 Feoffees the real estate tax and the Feoffees paid
22 the town since they were the property owner.
23 I asked him what about the real estate
24 tax on the house that we owned. And he said that

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1 they collected that on behalf of the town.
2 I can't remember if it was in the first
3 or the second conversation but I asked him about
4 improvements to the cottage, what we would be
5 allowed to do, what we might not be allowed to do.
6 And Don explained than the Feoffees had to approve
7 any exterior renovations to the home and that
8 generally speaking they couldn't interfere with any
9 neighbor's site line of the water. But he
10 encouraged me to make whatever reasonable
11 improvements we wanted to make and he said that the
12 improvements increased the value of the homes and
13 thus the taxes, which were an important financial
14 component of the monies that went to the beneficiary
15 of the trust, which I learned were the Ipswich
16 public schools, the happier the Feoffees were.
17 And in general terms I think that was
18 the contents of that first conversation.
19 Q. Could you tell me what you said, he said in
20 the second conversation that you had with Don
21 Whiston before you bought your cottage at Little
22 Neck?
23 A. Well, in the interim we decided to go ahead
24 and put in an offer. We learned to our dismay that

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1 there was another couple that had apparently been
2 promised some sort of a right of first refusal,
3 which we hadn't been advised about. I called Don
4 back about that. The sellers were being represented
5 by an attorney that Dottie Levesque advised me was
6 the Feoffees' attorney, Don Greenough. So I called
7 Don back after we were involved in this process and
8 told him the conundrum of the fact that we were
9 concerned that we might lose out on the house to
10 these other buyers. And Don said that he would talk
11 to Greenough and apparently that conversation
12 subsequently occurred. And as I understand it,
13 those other buyers were told that their offer was
14 defective because it added conditions that were
15 inconsistent with the right of first refusal and we
16 were told that the cottage was ours for a mere
17 \$172,000.

18 I did in that second conversation with
19 Don go over some of the same issues that we had
20 talked about during the first conversation because I
21 remained nervous that since there were no writings
22 that, you know, we could be putting our money at
23 risk and that we might not have the security that
24 might otherwise come with a purchase in fee simple.

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1 And Don said you don't have to worry, he
2 says there's only been one person who was ever
3 evicted from Little Neck and that was for some
4 over-the-top conduct. But over the couple of
5 hundred years they had been renting cottages no one
6 had ever had a problem, the houses transferred
7 without issue and there were no security concerns.
8 So reassured by Don, we ultimately went
9 forward and closed on the cottage.

10 Q. What year was your cottage built?

11 A. Don't have a clue.

12 Q. Have you ever tried to determine at all its
13 age?

14 A. I was interested and I looked at old
15 photographs. It was always there but I don't know
16 when it got there.

17 Q. At least how old is your cottage?

18 A. I'm going to guess it's at least 75 years.

19 Q. When you moved in what kind of electrical
20 service did your cottage have?

21 A. Circuit breaker copper wiring.

22 Q. Did it have the old-fashioned --

23 A. Knob and tube?

24 Q. Yes.

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1 A. No.

2 Q. So an updated electrical system?

3 A. It had been updated at some point in time.

4 Q. Have you seen photos of your house that
5 indicate that it's been around for a certain number
6 of years?

7 A. I've seen some old photographs, some of them
8 I don't know the date of. It's been there-- in
9 talking to neighbors and what not, it's been there
10 for at least 50 or 60 years. I just don't know.

11 Q. I was pressing you on this because you said
12 as a guess it's been there at least 75 years. I'd
13 like to know without guessing how long it's been
14 there.

15 A. I don't know.

16 Q. You've seen evidence that it's at least 50
17 years old?

18 A. Yes.

19 Q. And you think it's older than that?

20 A. I'm just guessing at that point.

21 Q. What kind of system did the cottage that you
22 bought have for disposal of wastewater?

23 A. When we bought it?

24 Q. Yes.

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1 A. It had cesspool.

2 Q. How long did it continue to be serviced by a
3 cesspool?

4 A. Right up until it was disconnected in favor
5 of the wonderful wastewater system that the Feoffees
6 installed.

7 MR. CHAPMAN: Off the record.

8 (Discussion off the record.)

9 BY MR. PERRY:

10 Q. You've used a couple of adjectives in your
11 testimony and for the record I would like you to
12 indicate what you meant by them.

13 A. I did not mean that it was truly wonderful.

14 Q. Let me ask you a question.

15 Earlier you referred to having bought
16 your cottage for a mere 172,000.

17 A. That was the ultimate purchase price.

18 Q. When you said "mere" did you mean that you
19 thought you were getting a good buy or were you
20 using that in some sort of an ironic sense?

21 A. I guess I was being facetious so I apologize
22 for that. It was a substantial amount of money for
23 us.

24 Q. Just now you referred to the Feoffees having

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1 built a, quote, wonderful, unquote, wastewater
2 system. Were you being sarcastic in that?
3 **A. I was.**
4 Q. What did you mean by that? You don't think
5 it's a good system?
6 **A. I think the wastewater system was**
7 **overpriced. There was a sordid history and there**
8 **continue to be problems with it.**
9 Q. Have you paid anything for the installation
10 of the wastewater system?
11 **A. Yes.**
12 Q. What have you paid for it?
13 **A. Zero dollars directly but the wastewater**
14 **system was a crucial component of the deterioration**
15 **of our relationship with the Feoffees and begat to**
16 **some extent the litigation. And so I've certainly**
17 **spent money on the litigation and I devoted time and**
18 **effort to that litigation, so this payment is**
19 **partially financial and partially visceral and**
20 **emotional.**
21 Q. You've paid zero dollars to the Feoffees as
22 reimbursement for the installation of the system,
23 true?
24 **MR. CHAPMAN: Objection.**

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1 **A. For the installation, yes. I pay for**
2 **maintenance on a monthly basis.**
3 Q. Would you describe the physical elements of
4 the cesspool system that serviced the house when you
5 bought it?
6 **A. Well, I checked into the septic issue prior**
7 **to buying. And in fact had an inspector come out**
8 **and inspect the system to see if it was functioning**
9 **adequately and compliant with existing law. As the**
10 **former chief of the Environmental Strike Force at**
11 **the Attorney General's office I had some familiarity**
12 **with septic and my parents' cottage on Cape Cod had**
13 **a septic system that had to be replaced and it was**
14 **extraordinarily expensive so I went to the trouble**
15 **of having an inspector come out as part of the due**
16 **diligence process. But I also had somebody inspect**
17 **the house, a typical home inspector. So we had a**
18 **grandfathered functioning compliant cesspool.**
19 Q. My question I think was could you describe
20 the physical elements of the cesspool that was
21 servicing the house.
22 **A. Well, the cesspool was located between our**
23 **house and our neighbor's, the Hardys, probably**
24 **halfway. And I actually wasn't there when he opened**

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1 **up the ground to look at it so I can't tell you what**
2 **it looked like.**
3 Q. Were there pipes that went from your house
4 to the location of the cesspool?
5 **A. Yes, the main drain out of the house went**
6 **from the house to the cesspool.**
7 Q. Was that part of what you bought when you
8 bought your cottage, those pipes?
9 **A. I didn't think of that.**
10 Q. Do you know now?
11 **A. What do you mean?**
12 Q. Were you the owner of the cesspool system?
13 **A. Yes.**
14 Q. Why was it you were having the cesspool
15 inspected?
16 **A. I just explained that I wanted to make sure**
17 **that the waste system functioned because that's an**
18 **important part of buying the house. If the thing**
19 **wasn't functioning well we could have a big,**
20 **expensive problem.**
21 Q. You were concerned about having to pay money
22 to repair the system if it wasn't working?
23 **A. Right.**
24 Q. You understood it would be your

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1 responsibility to do that?
2 **A. That was my understanding.**
3 Q. Did Title 5, as we now know it, exist when
4 you bought the property?
5 **A. Yes.**
6 Q. Did it include at that cesspool requirement
7 at that time for residential properties?
8 **A. My understanding was that this was a**
9 **grandfathered system that didn't need to be**
10 **compliant with current standards as if you were**
11 **installing a new system; that Little Neck had many**
12 **such systems and that they were grandfathered in.**
13 Q. Did there come a time when you learned that
14 things had changed such that your cesspool was no
15 longer compliant with environmental law?
16 **A. No.**
17 Q. Could you tell me what happened, as you
18 understand it, such that it was required that there
19 be upgrades to cesspools at Little Neck?
20 **A. I came to learn that the Department of**
21 **Environmental Protection had apparently taken the**
22 **position that the Ipswich River was being harmed by**
23 **effluent that at least in part derived from Little**
24 **Neck. And I learned after the Feoffees had signed a**

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1 consent order with the DEP, that we were being
2 called upon to install tight tanks. Some cottages,
3 including mine, were going to be required to put in
4 what they described to be a drip system, which is a
5 modified septic leach field.

6 Q. When did these events occur in relation to
7 when you purchased the property? Are you talking
8 several years later?

9 A. We bought in '93 and I think that the issue
10 first came up in about 2000.

11 Q. Is it your understanding that the DEP had
12 jurisdiction over both the landowner and the cottage
13 owners with regard to problems with discharge of
14 effluent?

15 A. I don't know.

16 Q. Did you mean to be implying by your
17 testimony that you feel that the entry into a
18 consent order with DEP was ill-advised?

19 A. Yes.

20 Q. What's the basis for your statement that it
21 was ill-advised?

22 A. First of all, the Feoffees didn't involve or
23 advise the homeowners at all that the DEP had an
24 issue and that this dialogue and negotiation was

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1 going on between the DEP, the Feoffees and their
2 counsel.

3 Q. Apart from the issue of not notifying the
4 homeowners ahead of time about entering into the
5 consent order, do you feel that it was substantively
6 ill-advised?

7 A. I do.

8 Q. Why is that?

9 A. Tight tanks are generally believed to be the
10 solution of last resort. When there's no other
11 possible alternative to deal with waste, you use a
12 tight tank. The deficiencies of tight tanks are
13 that they are closed systems; they can only hold so
14 much. And the concept of having 160-something tight
15 tanks all around Little Neck filling up at various
16 times of the day or night, that when you reach a
17 certain level you can't put any more in and you have
18 to have a pumpout truck come. I don't know if you
19 have ever seen pumpout trucks but they are hideous,
20 smelly, noisy. Little Neck is a nice place that
21 people have a limited amount of time at and they
22 want to enjoy it, entertain their family, friends
23 and guests. And the thought of cranking up a grille
24 and having cocktails out on the deck only to have

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1 your neighbor's tight tank have to be emptied out,
2 you know, is an unattractive, inappropriate
3 resolution, particularly when there were other
4 alternatives.

5 Q. So just to clarify, your objection isn't to
6 the concept that something needed to be done to
7 resolve a wastewater problem but rather the
8 resolution that was being endorsed at the time?

9 A. Correct.

10 Q. And concurred that something had to be done
11 but you feel there were some other alternatives that
12 were better, right?

13 A. Yes, that is correct.

14 Q. What were those other alternatives that in
15 your view would have been better?

16 A. Running a sewer line down to Little Neck
17 would have been the best solution. I'm accepting as
18 a given that it's correct that Little Neck was in
19 fact the source of elevated levels in the Ipswich
20 River that have been tested. I never got to see the
21 empirical evidence but assuming that that's correct,
22 absent extending the sewer line, a more centralized
23 collection system made more sense. Particularly if
24 the sewer was extended at a subsequent time, you

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1 would already have had the piping done and it would
2 have been set up to be connected, to be taken --
3 instead of going into the tanks it could be sent out
4 to the wastewater treatment facility.

5 Q. And some solution along those lines was
6 implemented by the Feoffees, correct?

7 A. Subsequently, yes.

8 Q. You had indicated that when you bought the
9 property you acquired with it the existing cesspool
10 system, right?

11 A. Correct.

12 Q. And that you understood it was your
13 responsibility to maintain it, to ensure that it was
14 compliant with the law, right?

15 A. Yes.

16 Q. The tight tank solution was one that
17 individual cottage owners would be required to
18 implement, correct?

19 A. The Feoffees, when they first announced it,
20 ordered us to install tight tanks. And again, some
21 people would have to put in this drip system. So we
22 were not asked, we were ordered to do it. And given
23 a time line to do it. And the manner of imposing
24 that obligation was very authoritarian and

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1 **autocratic.**
2 Q. You in fact as a cottage owner would have no
3 obligation to upgrade the cesspool at all if you
4 ceased using the structure, correct?
5 **A. I'm sorry, I didn't understand that.**
6 Q. You, as a cottage owner in 2000 at the time
7 when the DEP was objecting to the wastewater
8 disposal system, would have no obligation to upgrade
9 the system if you simply stopped using the house; is
10 that correct?
11 **A. No, I don't think that is correct because we**
12 **were ordered to do it regardless of how often or how**
13 **little we used our home.**
14 Q. But you understand as a cottage owner your
15 -- your family was flushing the toilet, right?
16 **A. If it's yellow let it mellow; if it's brown**
17 **flush it down.**
18 Q. So you were causing waste to be sent through
19 this system in your house, right?
20 **A. Yes.**
21 Q. And regardless of what the Feoffees did, the
22 DEP had the ability to come to you as the owner of
23 this house and say put in a tight tank, didn't it?
24 **MR. CHAPMAN:** Objection.

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1 **A. Probably.**
2 Q. And the Feoffees were under no obligation to
3 install a centralized system, were they?
4 **MR. CHAPMAN:** Objection.
5 **BY MR. CHAPMAN:**
6 Q. Under your arrangements with the Feoffees?
7 **A. The Feoffees signed a consent order that**
8 **mandated that a certain number of cottages would**
9 **have tight tanks and a certain number of cottages**
10 **would have a drip system. In order to comply with**
11 **that order they turned around and ordered us to do**
12 **the implementation.**
13 Q. You've objected to that consent order. I'm
14 asking you if the consent order had never been
15 signed do you agree that the DEP would have the
16 ability to come to you as a cottage owner and
17 require you to upgrade your system?
18 **MR. CHAPMAN:** Objection.
19 **A. I don't know the answer to that. I do know**
20 **that one can disagree with the DEP in the event that**
21 **one feels that an order is inappropriate. And there**
22 **are -- I mean, that didn't happen, A; and B, if it**
23 **did happen simply their saying it doesn't**
24 **necessarily make it so.**

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1 Q. Are you aware of various situations after
2 you purchased where the DEP sent enforcement notices
3 directly to cottage owners instructing them to make
4 repairs?
5 **A. After I purchased my cottage?**
6 Q. Yes.
7 **A. I don't have any such knowledge.**
8 Q. You've never seen documents indicating that
9 that occurred?
10 **A. I haven't, no.**
11 Q. Under your arrangements as a tenant with the
12 Feoffees did you have any agreement on the part the
13 of the Feoffees to install a centralized waste
14 system as far as upgrading the septic system was
15 concerned?
16 **A. Did I personally?**
17 Q. Yes.
18 **A. No.**
19 Q. Are you aware of any tenant who had such an
20 agreement?
21 **A. No.**
22 Q. Would you agree that the installation of the
23 central wastewater system that the Feoffees paid for
24 benefited you by sparing you the expense of

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1 upgrading your septic system?
2 **A. I don't really understand that question.**
3 **Could you repeat it or rephrase it?**
4 Q. The alternatives that existed for solving
5 DEP issues at the time included tight tanks or drip
6 systems as you described, right? That's one
7 possibility?
8 **A. Yes.**
9 Q. Some kind of sewer hookup?
10 **A. Correct.**
11 Q. Or a centralized system, right?
12 **A. That's another alternative.**
13 Q. Are you aware of any others?
14 **A. You could have Title 5-compliant septic**
15 **system in certain areas of the Neck. I don't know**
16 **if the Neck would support 167 such systems given the**
17 **nature of the soil.**
18 Q. And of the alternatives we discussed, the
19 one where tight tanks are installed or drip systems
20 would impose a cost on the tenants, correct?
21 **A. It would have been imposed by the Feoffees.**
22 Q. The tenants simply would have paid for those
23 upgrades themselves, right?
24 **A. They would have been compelled to pay for**

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1 those upgrades themselves.
2 Q. And rightly so?
3 A. **That's your opinion.**
4 Q. Did you understand when you purchased the
5 cottage that you would have a legal status of a
6 tenant at will?
7 **MR. CHAPMAN:** Objection.
8 A. **Yes.**
9 Q. Did you sign a document that so indicated?
10 A. **I signed a bill of sale and then a notice**
11 **that went to the Feoffees. I attempted to negotiate**
12 **the terms of those documents with Mr. Greenough, who**
13 **as I stated before was the attorney for the**
14 **Feoffees, but he advised me that they were standard**
15 **documents that were non-negotiable and he wouldn't**
16 **change a word.**
17 Q. Did either of those documents say that you
18 would be occupying as a tenant at will?
19 A. **I believe so.**
20 Q. Have you rented your cottage to other people
21 at any time after purchasing it?
22 A. **No.**
23 Q. Do you know what comparable cottages rent
24 for at this time?

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1 A. **No.**
2 Q. Is there a particular broker on the North
3 Shore who handles a lot of the cottage rentals?
4 A. **I really don't know how the rentals are**
5 **handled.**
6 Q. How many of the cottage owners rent their
7 cottages for summer use?
8 A. **I have no idea.**
9 Q. Do you have a sense?
10 A. **I don't. I know some do but I don't know.**
11 Q. Are there any rules against renting cottages
12 for seasonal use?
13 A. **There are rules and regulations that the**
14 **Feoffees purport to enforce upon the tenants and**
15 **when they have subtenants they're asked I believe to**
16 **post the rules and regulations in the cottage and**
17 **they're expected to then conform to the rules that**
18 **govern the balance of the homeowners.**
19 Q. But the homeowners themselves haven't
20 adopted any restrictions on owners renting cottages
21 out to others, have they?
22 A. **Not that I know of.**
23 Q. During what periods of the year do you
24 reside at Little Neck?

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1 A. **Currently?**
2 Q. Historically through the present.
3 A. **When my children were young my wife and kids**
4 **would move up to Little Neck in June after they got**
5 **out of school and stay through Labor Day weekend.**
6 **We would then utilize the cottage on weekends when**
7 **the weather permitted. We kept the house open**
8 **year-round for the first five or six years but we**
9 **really weren't getting a lot of use out of it and I**
10 **was always concerned about the pipes breaking so we**
11 **began to shut the cottage down in October, which is**
12 **how we handle it now.**
13 **Now that my children are older, we are**
14 **up there certainly weekends in the summer and**
15 **vacations are spent there, you know, but we're not**
16 **getting a dramatic level of use out of it lately.**
17 Q. When do you open it back up?
18 A. **In May usually.**
19 Q. Do you spend any time at the cottage
20 typically in October and May?
21 A. **No, because for the last seven or eight**
22 **years we've shut the cottage down in October and**
23 **don't open it back up until May and there's no heat,**
24 **there's no plumbing.**

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1 Q. You've never tried to rent it to a winter
2 tenant?
3 A. **I don't like having strangers in my home so**
4 **I'm adverse to tenants. And there have also been**
5 **some horror stories of people who had tenants and**
6 **couldn't get rid of them or they did damage. I**
7 **don't want any part of that.**
8 Q. The Feoffees have had problems with tenants,
9 haven't they? I withdraw the question.
10 **MR. CHAPMAN:** Could we take a break.
11 (Recess taken.)
12 **BY MR. PERRY:**
13 Q. Before you purchased your property at Little
14 Neck did you have any legal representation in that
15 matter?
16 A. **No.**
17 Q. And you indicated that the sellers were
18 represented by Donald Greenough?
19 A. **Correct.**
20 Q. You also indicated in the course of your
21 discussions with Mr. Greenough he revealed to you
22 that he was counsel to the Feoffees?
23 A. **I had been told that before I spoke with**
24 **Mr. Greenough.**

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1 Q. And he acknowledged the same when you were
2 talking to him about the forms?
3 A. Yes.
4 Q. Do you know what your cottage or your
5 cottage and the lot it's on are currently assessed
6 at?
7 A. I do.
8 Q. Tell me what the assessments are.
9 A. **The structure is assessed for 130,000 and**
10 **the land is assessed at 195.**
11 Q. Do you know how the structure -- before
12 that, how has the assessment of the improvements
13 changed over time since you bought the property?
14 **MR. SHEEHAN:** Object to the form.
15 A. **It's gone up and down.**
16 Q. What was the highest that the structure has
17 been assessed for?
18 A. **I'm not sure.**
19 Q. You indicated that before you purchased the
20 property you were aware that the Feoffees held the
21 real estate in trust for the benefit of the Ipswich
22 schools?
23 A. **I learned that, yes.**
24 Q. Prior to purchasing?

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1 A. Yes.
2 Q. You're an attorney; you've told us that?
3 A. Correct.
4 Q. And as an attorney are you familiar with the
5 fiduciary duty that trustees owe to a beneficiary?
6 A. Generally.
7 Q. Did you understand that the Feoffees owed a
8 fiduciary duty to the beneficiary of the trust,
9 namely the Ipswich schools?
10 **MR. CHAPMAN:** Objection.
11 A. **I presume that to be the case.**
12 Q. Did you understand that fiduciary duty
13 imposed an obligation on the Feoffees to collect
14 fair and reasonable rents for the benefit of the
15 schools?
16 A. **Well, I discussed that topic with Don in one**
17 **of our conversations and he explained that the rents**
18 **that were collected were adequate to provide an**
19 **annual gift to the Ipswich public schools; that he,**
20 **as the chairman of the Feoffees, and the**
21 **superintendent of the schools would meet annually**
22 **and the superintendent would designate a specific**
23 **thing that the schools wanted the Feoffees to fund.**
24 **And Don explained that it was always something**

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1 **reasonable and that the rents that were collected**
2 **were adequate to fund that annual gift. And it was**
3 **always designated for a particular thing, whether it**
4 **was a language lab improvement or something along**
5 **those lines.**
6 **And this was part of Don's reassuring me**
7 **that the expectations of the beneficiary in terms of**
8 **rent over a long period of time, established after a**
9 **long period of time, were reasonable. And that the**
10 **place ran -- it needed to have enough money to do**
11 **their maintenance and have enough to make this**
12 **annual gift to the schools.**
13 **My fear was that there might be some**
14 **precipitous rent increase down the road and since**
15 **there wasn't a lease that would control the amount**
16 **of the rent, what protection did we have. And he**
17 **cited this long historical practice to reassure me.**
18 **And I was so reassured.**
19 Q. Was the manner in which the trust was
20 functioning consistent with your understanding of
21 the fiduciary duty that a trustee owes to a
22 beneficiary?
23 **MR. CHAPMAN:** Objection.
24 A. **They can be complicated arrangements and as**

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1 **long as the beneficiary and the trustees are of one**
2 **mind as to how things are going to function, I don't**
3 **think you have a problem.**
4 Q. And apart from the conversations you've
5 described with Mr. Whiston, did you have any
6 assurance that the beneficiaries and the trustees
7 would continue to be of one mind on how the trust
8 was functioning?
9 A. **I had the reassurance that there was this**
10 **long past practice that he had every reason to**
11 **believe would continue unchanged into the future.**
12 **He also spoke, if I didn't mention it before, that**
13 **everyone understood that it wasn't just the annual**
14 **gift that the Feoffees gave to the schools but that**
15 **the real estate taxes that were collected by the**
16 **Feoffees and paid to the town, the school system,**
17 **through the normal budgetary process, got 60 to 65**
18 **percent of that.**
19 **So he told me specifically that Little**
20 **Neck had for many years been the number one taxpayer**
21 **in the town of Ipswich and that it was the taxes**
22 **plus the gift and those monies that flowed to the**
23 **town as a result of the rentals on Little Neck that**
24 **were considered a part of the overall picture.**

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1 Q. If a Probate Court were not to approve of
2 the settlement agreement that's been entered into
3 with respect to Little Neck, is it your position
4 that the Feoffees would not have the right to charge
5 you a fair market rent for the real estate that your
6 cottage sits on?

7 **MR. CHAPMAN:** Objection.

8 **A. If the Probate Court declines to grant the**
9 **complaint for deviation that has been filed and does**
10 **not authorize the sale, the creation of a**
11 **condominium and the sale of condominium units and**
12 **having explored other purchase options, this being**
13 **the last viable option from our perspective, the**
14 **Superior Court litigation, which is presently**
15 **stayed, the stay would be lifted and the litigation**
16 **would continue. Ultimately the superior court would**
17 **determine the declaratory and injunctive relief that**
18 **we sought in that complaint as well as the issue of**
19 **damages.**

20 Q. My question is if you were in that scenario
21 where the Probate Court declines to approve the sale
22 and the parties are potentially back in Superior
23 Court, is it your position that the Feoffees are not
24 entitled to assess a fair market rent for the real

1 **A. The escrow account would be recreated --**

2 Q. Reactivated?

3 **A. Reactivated. And the monies Mr. Sheehan is**
4 **currently holding in his firm's trust account would**
5 **be deposited back to put the escrow account in the**
6 **form and condition it was in at the time it was paid**
7 **over to Mr. Sheehan's office as deposits on the**
8 **purchase.**

9 Q. Would additional amounts have to be paid in
10 to the escrow accounts pending the resolution of the
11 Superior Court case?

12 **A. I don't think so.**

13 Q. I wanted to ask you really, is it your
14 position in that litigation that the Feoffees are
15 not entitled to charge a fair market rent for the
16 real estate?

17 **MR. SHEEHAN:** Objection.

18 **A. How would you define fair market rent?**

19 Q. I would define fair market rent as the rent
20 that would be paid by a disinterested third party
21 for use of the real estate in an arm's length
22 transaction with the Feoffees.

23 **A. That's a very convoluted issue and I don't**
24 **necessarily subscribe to your definition. You have**

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1 estate that you're occupying?

2 **MR. CHAPMAN:** Objection.

3 **A. Well, a stipulation was entered into between**
4 **the parties that defines the amount of rents that**
5 **will be paid through an appeal of the Superior Court**
6 **litigation. So it is that agreement that would**
7 **control for purposes of the Little Neck Legal Action**
8 **Committee members.**

9 Q. I thought the -- strike that.

10 The stipulation that you're referring to
11 requires that certain amounts be paid in use and
12 occupancy and certain amounts be placed into escrow,
13 right?

14 **A. It did. And subsequently it was modified so**
15 **that we no longer pay any escrow. We just pay the**
16 **rental amount, seasonal or year round, at designated**
17 **numbers.**

18 Q. And if the Probate Court were to disapprove
19 the sale, then what happens?

20 **A. Then the stay in the Superior Court would be**
21 **lifted, that litigation would continue, and the**
22 **stipulation would still control.**

23 Q. But that stipulation doesn't -- what would
24 happen to the escrow account at that point?

1 **a situation where somebody like myself spends a**
2 **considerable sum of money, and others have paid far**
3 **more, to buy a structure. They buy that structure**
4 **in the expectation that their tenancy is going to**
5 **continue to require them to pay what was a sum of**
6 **money that had been -- if you look at the historical**
7 **rents over time, if you go back, and I've charted**
8 **them out over the last 25 years, prior to the**
9 **litigation being initiated, you know, the rent would**
10 **stay the same for five or six years and then it**
11 **would go up \$50. There was an expectation that the**
12 **rents would continue to increase in those**
13 **increments, not tagged to some artificial fair**
14 **market rent that somebody presumes to be more**
15 **appropriate, introducing concepts of return on**
16 **investment and the like that clouded the issue and**
17 **begat the dispute when the rent was increased in**
18 **dramatic percentages completely inconsistent with**
19 **past practice.**

20 Q. Have you ever determined the fair market
21 value of the structure that you own based on
22 concepts such as replacement cost less depreciation?

23 **A. No.**

24 Q. Do you know whether when you bought the

1 property you paid more for it than its replacement
2 cost less depreciation?
3 **A. Well, I paid 172,000. I know what it was**
4 **assessed for. I know what cottages were selling for**
5 **generally.**
6 Q. What was it assessed for and what were
7 cottages selling for?
8 **A. I think it was assessed for -- at the time I**
9 **bought it, I'm not a hundred percent sure but it was**
10 **probably 130 to 150, something in that range.**
11 **Cottages were selling for at or about what I was**
12 **paying. Some of that one could assign to the**
13 **presumption based on past practice that when you**
14 **bought a house the Feoffees would accept you as a**
15 **new tenant and you would have all the rights and**
16 **benefits of the tenants who have lived there and**
17 **owned homes within their families for generations,**
18 **including the use of the common areas.**
19 Q. When did you first realize that the Feoffees
20 were not going to -- withdrawn.
21 When did you first realize that the rent
22 increases you were experiencing were not consistent
23 with your understanding of what Mr. Whiston had said
24 to you before you purchased?

1 **A. I can't recall the year but the first**
2 **significant rent increase that was inconsistent with**
3 **the past practice of small incremental increases.**
4 Q. Do you recall in or about 1998 the Feoffees
5 announcing a program of increasing the rents over a
6 period of five or six years?
7 **A. I recall the event but no, I don't know the**
8 **specific date as I sit here.**
9 Q. And when the Feoffees announced that they
10 would increase the rent over the next five or six
11 years did you feel that was inconsistent with what
12 you had been told by Mr. Whiston?
13 **MR. SHEEHAN: Objection.**
14 **A. Yes.**
15 Q. Did you say anything to anybody about that
16 inconsistency at that time?
17 **A. Yeah. I mean, everyone was talking about**
18 **it. There was a discussion amongst Little Neckers.**
19 **I did periodically speak with Don Whiston and I**
20 **continue to do so to this day. I've always been**
21 **very free in expressing my opinions to Don and**
22 **although we, you know, agree to disagree on many**
23 **topics, we do have discourse on these things. I've**
24 **written to him and I've talked to him during those**

1 **periods of time.**
2 Q. After the Feoffees announced that they
3 intended to increase rents to the fair market value,
4 did cottages continue to sell for more than the
5 value of the improvements themselves?
6 **A. What the Feoffees announced was that the**
7 **rents were going to be increased and they justified**
8 **that increase on some appraisal that they indicated**
9 **that they had performed. But they refused to**
10 **provide the homeowners with a copy of that**
11 **appraisal. So we didn't really know what the basis**
12 **was. And the increases ultimately got substantially**
13 **larger and were divorced from any concept of some**
14 **rational measure.**
15 **The rents -- they leaped up in large**
16 **percentages that had nothing to do with some**
17 **presumed rate of increased value and it was very**
18 **troubling because we could never get substantive**
19 **dialogue with the Feoffees on this topic. It was**
20 **just imposed by fiat and proclamation.**
21 Q. After these precipitous rent increases that
22 you're referring to, the cottages continued to sell
23 for more than what appeared to be the value of the
24 improvements themselves?

1 **A. There was a period of time where I would say**
2 **that the sale of cottages continued uninterrupted.**
3 **I don't know what the thought process was with**
4 **buyers and whether or not buyers truly had an**
5 **understanding of what they were buying into. I did**
6 **hear from people later on that they didn't really**
7 **realize because they didn't get full disclosure from**
8 **the seller or broker that was involved the crisis**
9 **that was brewing, things that were happening.**
10 **But at some point in time the word got**
11 **out or things rose to a level where brokers had to**
12 **reveal the problems with septic, the problems with**
13 **-- you know, the relationship with the Feoffees, the**
14 **issues of the lease. And at some point in time**
15 **sales all but stopped.**
16 Q. So there haven't been sales in the last five
17 years for more than the value of the improvements?
18 **A. Well, my understanding is that there have**
19 **been some transfers of ownership but they've all**
20 **been sort of idiosyncratic that have some other**
21 **justification for somebody taking on that risk.**
22 Q. Such as?
23 **A. I'll give you an example. Joe Terisi's**
24 **brother Michael wanted to buy a cottage on Little**

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1 Neck because his brother had one and loved it and
2 was raising his family there. And he wanted to not
3 only buy but have the cottage immediately next to
4 his. So when that cottage went on the market, even
5 though other cottages had been on the market
6 untouched for more than two or three years, he was a
7 wealthy guy who had a high-paying job and he decided
8 to buy it notwithstanding the risks and he signed a
9 lease as was required.

10 Q. You told us a little bit about the issues
11 with the water system and the implementation of a
12 central waste collection facility. Did you have any
13 involvement in the discussions about those
14 alternative solutions to the wastewater problem?

15 A. With whom?

16 Q. Tell me what your involvement was with
17 respect to issues that arose concerning the
18 installation of a wastewater collection facility.

19 MR. SHEEHAN: Objection.

20 A. The original consent order, which required
21 the installation of tight tanks, was stayed when it
22 appeared that there was some hope that the town
23 would extend the sewer to Great Neck and Little
24 Neck. So there was a reprieve, if you will, where

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1 the tight tanks didn't have to be installed and the
2 drip systems, which were more expensive.

3 It was finally concluded, fortunately
4 not after one had been installed, that they wouldn't
5 work and that that would have been a giant waste of
6 money that would have required a tight tank after
7 putting in a failed drip system.

8 The Feoffees subsequently entered into a
9 new or revised consent order that required the
10 installation of this centralized system; however,
11 the homeowners were given little, if any, input into
12 that consent order, the negotiation of it, the
13 drafting of it, the terms of it. Nor the management
14 and oversight of it.

15 We were simply told that we were going
16 to have to pay our proportionate share, 167 divided
17 into the total cost.. I didn't have any direct
18 involvement with the Feoffees on this issue other
19 than to complain that our rights weren't being
20 appropriately considered by the Feoffees; that we
21 weren't being given a seat at the table on such an
22 important issue. I certainly never agreed to pay
23 any percentage or sum certain associated with it.

24 Q. Did you have any involvement in the

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1 discussions with the Feoffees about the installation
2 of the wastewater system?

3 A. Only to complain to Don how wrong it was
4 what they were trying to do. I mean, ultimately the
5 cost of the septic system ballooned from what the
6 Feoffees had originally indicated would be
7 20-something thousand per -- I'm sorry. That
8 everyone's one-167th share would be 20,000 and it
9 kept going up until it ended up being 43,000, more
10 than twice what had been estimated at the beginning
11 by the Feoffees. It went from a 3-point-something
12 million dollar project to 7.2 with no explanation,
13 with no justification.

14 And the bank that the Feoffees borrowed
15 from to finance the money to pay for it insisted on
16 a lease because they wanted to make sure that there
17 was this written document that guaranteed the stream
18 of income so that the Feoffees could pay them the
19 principal and interest and pay off the loan. And
20 that's why the Feoffees first sought to impose a
21 lease that begat the crisis that resulted in part in
22 litigation.

23 Q. Did you receive any mailings from the
24 Feoffees or any of their representatives or

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1 contractors concerning the ongoing work being done
2 on the wastewater system?

3 A. Yes, we would periodically either get a memo
4 from the Feoffees or something from the engineer,
5 Lombardo.

6 Q. Lombardo would send out monthly reports on
7 the status?

8 A. Not monthly.

9 Q. Reports went out to all tenants?

10 A. I presume that periodically all tenants
11 received something from the Feoffees or from
12 Lombardo. I can't speak to what it was or the
13 frequency as I sit here today.

14 Q. If the centralized wastewater system had not
15 been installed would you have been able to sell your
16 cottage with the cesspool?

17 MR. CHAPMAN: Objection.

18 A. What period of time are we talking about?

19 Q. 2000-2006?

20 A. Yes, I could have. The buyer would have had
21 to have been informed about all the various issues
22 and knowing all that was going on I would have been
23 free to sell it. I don't think there would have
24 been a legal prohibition by the DEP or otherwise.

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1 Q. There wouldn't have to be -- the Title 5
2 requirements hadn't changed to require an upgrade?
3 **A. My understanding was that I had a**
4 **grandfathered system and that as a result I was fine**
5 **with what I had.**
6 Q. Even on a sale?
7 **A. Even on a sale. My selling would be no**
8 **different than my buying.**
9 Q. Have you seen the latest form of lease that
10 the Feoffees are using?
11 **A. I believe I have.**
12 Q. The one from 2008 that bases future rents on
13 assessed values?
14 **MR. CHAPMAN: Objection.**
15 **A. I'm not sure.**
16 Q. How many forms of lease have you seen since
17 the lawsuit was filed?
18 **A. The first and second iterations. There was**
19 **a lease that originally had a rent that was in the**
20 **5,000, \$5500 range I believe. I'm sorry, the first**
21 **lease that we were presented with, and I'd have to**
22 **see it but I'm just going from memory, I haven't**
23 **seen it in a long time. The first lease had a**
24 **defined rent term for only three years.**

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1 Q. Right.
2 **A. And thereafter if we had signed that lease**
3 **we would have contractually obligated ourselves to**
4 **pay whatever rents the Feoffees deemed to be**
5 **appropriate.**
6 Q. And the second iteration you're referring to
7 provided what?
8 **A. I believe it was the second iteration that**
9 **included a contractual obligation to pay one-167th**
10 **of the cost of the wastewater system. And in fact**
11 **they circulated, either with it or independent of**
12 **it, with a revised set of rules and regulations that**
13 **had a provision added that if you don't pay what you**
14 **owe on wastewater then they could evict you and take**
15 **your property.**
16 Q. What was the rent under that second
17 iteration?
18 **A. I can't state with certainty what the rents**
19 **were but either that lease or the subsequent lease,**
20 **instead of having the contractual obligation to**
21 **simply pay your one-167th share, they came up with**
22 **this concept of additional rent. And the additional**
23 **rent was the amount paid out over time for that**
24 **wastewater system.**

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1 **And so you had the rent, then you had**
2 **the additional rent, and the combination of the two**
3 **was, you know, what you had to pay on an annual**
4 **basis. And that way under the lease the homeowners**
5 **were paying not only an increased amount for rent**
6 **but paying for a hundred percent of the 7.2 million**
7 **dollar wastewater system.**
8 Q. Have you seen a form of lease that based the
9 rents after the first three years on assessments?
10 **A. I saw a lease that contemplated putting all**
11 **the cottages in tiers, a departure from the**
12 **longstanding practice of charging one rent for a**
13 **seasonal cottage and one rent for a year-round**
14 **cottage; instead, coming up with this concept of a**
15 **bucket based on how big your lot is and other**
16 **factors. And I saw a lease that contemplated the**
17 **Feoffees designating unilaterally what bucket your**
18 **cottage was in and you'd have to pay the rent that**
19 **was based I believe on a formula that may have**
20 **included a rate of return on the assessed values of**
21 **the homes.**
22 Q. Did you object to the concept of putting
23 cottages in tiers based on their location, view,
24 etcetera?

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1 **A. I did.**
2 **MR. CHAPMAN: Objection.**
3 **BY MR. PERRY:**
4 Q. Why is that?
5 **A. Because for 200 years it had been a flat**
6 **rate rent that was -- seasonal was X, year-round was**
7 **Y. And no one objected to it and it didn't pit**
8 **neighbor against neighbor as to why am I in category**
9 **one when Bob is in category two and making it petty**
10 **and unpleasant pitting neighbor against neighbor and**
11 **having to rely on some third party, whether it was**
12 **the Feoffees or something else, determining the**
13 **bucket that you were in.**
14 Q. How do you think fair rents should be
15 determined in a long-term lease?
16 **MR. SHEEHAN: Objection.**
17 **A. A long-term lease for Little Neck?**
18 Q. Yes.
19 **MR. CHAPMAN: Objection.**
20 **A. Consistent with the prior practice of small**
21 **periodic increases.**
22 Q. Who would decide those small periodic
23 increases?
24 **A. Well, it would be nice if the Feoffees**

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1 worked with the homeowners to set the rent. But
2 absent that, it would be their decision, guided by
3 past practice and the expectations that people had
4 based on that past practice.

5 Q. You were one of the architects of the
6 lawsuit that got filed by William Lonergan and Diane
7 Whitney-Wallace on behalf of themselves and others,
8 correct?

9 MR. CHAPMAN: Objection.

10 A. Architect?

11 Q. Were you one of the individuals that caused
12 that lawsuit to be filed?

13 MR. CHAPMAN: Objection.

14 A. I was one of the founding members of the
15 Little Neck Legal Action Committee that represented
16 the interests of the homeowners and who retained
17 counsel. And I worked with counsel and participated
18 in the drafting and what ultimately became that
19 filed lawsuit, yeah.

20 Q. Did you participate in the recruitment of
21 the individuals who served as the plaintiffs?

22 A. Yes.

23 Q. You personally went and talked to them about
24 it?

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1 A. Yes.

2 Q. Did they receive any kind of compensation
3 for serving?

4 A. No.

5 Q. You mentioned that if the Probate Court does
6 not approve the sale then the matter could or would
7 return to Superior Court, right?

8 A. Presumably.

9 Q. And that part of what would be decided in
10 that case would be the issue of damages, correct?

11 A. Yes.

12 Q. Is it your understanding that part of the
13 issue that would be decided in the Superior Court
14 case would be what the fair rent is and has been for
15 Little Neck?

16 A. That might be a component part of what the
17 court ultimately decides vis-a-vis the declaratory
18 relief that's sought in this complaint.

19 Q. Is it your intention that any of the rent
20 that was paid before 2006 by tenants should be
21 returned as damages to those tenants?

22 A. Yes.

23 Q. And what is the basis for than contention?

24 A. As is asserted in the complaint, it is the

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1 homeowners' position that the Feoffees were
2 unlawfully constituted during the period of time at
3 issue in that they were not in compliance with a
4 controlling statute that mandated that the Feoffees
5 would be made up of not only the four lifetime
6 members but the three senior selectmen in the town
7 of Ipswich.

8 It is our position that the Feoffees
9 intentionally excluded the three senior selectmen
10 and that the three senior selectmen knowingly failed
11 to fulfill their duties and responsibilities under
12 that statute. So you had an unlawfully constituted
13 body that was making decisions on rent, taxes,
14 year-round versus seasonal ownership, everything
15 associated with the rental of lots on Little Neck.

16 Q. Could you explain to me why if the Feoffees
17 conducted meetings unlawfully without the selectmen
18 that would entitle the tenants to get back the rent
19 they paid for the occupancy of the real estate?

20 A. Because they were not duly constituted and
21 were not functioning as the statute required it.
22 It's not supposed to be four lifetime Feoffees.
23 It's supposed to be the four lifetime Feoffees and
24 the three senior selectmen. And for the Feoffees to

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1 ignore that requirement and to meet and make
2 decisions when the selectmen didn't have notice of
3 and weren't allowed to participate in it, everything
4 that they did was unlawful.

5 Q. And therefore the tenants would be allowed
6 to occupy the real estate rent-free?

7 A. Possibly. We'd be seeking compensatory and
8 punitive damages for their arbitrary and capricious
9 conduct.

10 Q. By damages, do you mean statutory --

11 A. Exemplary damages under 93A, double or
12 treble, plus punitives to punish.

13 Q. Plus punitives?

14 A. Yes.

15 Q. Massachusetts doesn't have a plus punitives
16 other than 93A, does it?

17 A. We're seeking whatever punitive damages we
18 can get.

19 Q. Did you ever advise any of the Feoffees to
20 whom you had spoken as to what your intent was with
21 respect to pursuing them individually as opposed to
22 limiting your recovery to what came out of the
23 trust?

24 MR. CHAPMAN: Objection.

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1 **A. I didn't have any such conversations.**
2 Q. What is your understanding of -- what is
3 your intent in that regard? Were you seeking in
4 that complaint to be pursuing any of the Feoffees in
5 their individual capacity or only in their capacity
6 as trustees?
7 **MR. CHAPMAN:** Objection.
8 **A. I defer to counsel on that.**
9 Q. You've never yourself had a discussion with
10 Don Whiston in which you have threatened personal
11 liability?
12 **MR. SHEEHAN:** Objection.
13 **A. No, I have not.**
14 Q. Or any of the other Feoffees?
15 **A. No.**
16 Q. Not in the context of a mediation?
17 **MR. SHEEHAN:** Objection.
18 **MR. CHAPMAN:** Objection.
19 **A. At the mediation counsel did most of the**
20 **talking. I don't recall saying that.**
21 Q. I'm not saying you did.
22 **MR. CHAPMAN:** Can we do another break
23 either now or soon?
24 **MR. PERRY:** Soon, yes.

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1 **MR. CHAPMAN:** Okay.
2 **BY MR. CHAPMAN:**
3 Q. Apart from your theory that rents should
4 return to the Feoffees -- apart from your theory
5 that rents should be returned to the tenants by the
6 Feoffees because they should have been a
7 seven-member organization but functioned as a
8 four-member organization, do you have any other
9 contention that the Feoffees owed the tenants
10 damages?
11 **A. Well, the damages would include the return**
12 **of rents, the return of taxes, the return of the**
13 **wastewater assessment to those that paid it.**
14 Q. And those were payments that varied between
15 \$500 and a thousand dollars per tenant?
16 **A. What was requested, what was ordered was a**
17 **thousand dollars. The Feoffees indicated that it**
18 **would be the first of two \$1,000 assessments. For**
19 **those that elected to do so, because of the**
20 **financial hardship associated with the payment of a**
21 **thousand dollars in full I believe that the Feoffees**
22 **allowed them to pay it in two \$500 installments.**
23 Q. You are looking for the return of rents,
24 return of taxes and return of wastewater payments

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1 that were made. Any other damages?
2 **A. The wastewater maintenance charge, which was**
3 **\$40 a month, plus interest plus attorney's fees**
4 **generally.**
5 Q. What's the theory for returning the \$40 per
6 month and the maintenance charge?
7 **A. Because we never agreed to pay \$40 or any**
8 **other sum of money to maintain the system that the**
9 **Feoffees built. We never were provided with any**
10 **justification for why 40 times 12 times 167 was an**
11 **appropriate figure. It was just another mandate by**
12 **the Feoffees without explanation or justification.**
13 Q. So we've put on one side of the ledger what
14 you're claiming for damages --
15 **A. I'm not done yet.**
16 Q. Go ahead.
17 **A. In addition to that, we were compelled to**
18 **pay a wastewater disposal charge that was based on a**
19 **certain sum of money per gallon of water coming into**
20 **the cottage as read off the meter maintained by the**
21 **Ipswich Department of Water and Sewer. The first**
22 **contract that the Feoffees entered into for a**
23 **contractor to provide that service required I**
24 **believe 9 cents per gallon. The homeowners believed**

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1 **that that wasn't genuinely bid out on the open**
2 **market and they could have done much better and if**
3 **they were obliged to pay anything at all for the**
4 **disposal of 100 percent of the water that comes into**
5 **the cottage as opposed to some measure of the water**
6 **that comes out of the cottage, it should have been a**
7 **lesser amount.**
8 **And in fact the Feoffees subsequently,**
9 **under a lot of pressure from various homeowners, did**
10 **bid it out in a more meaningful competitive way and**
11 **got a substantially better price.**
12 Q. What's the price now?
13 **A. 6 cents a gallon.**
14 Q. Do you feel that that amount also should not
15 be paid by the homeowners?
16 **A. Certainly not the differential.**
17 Q. The difference between the 6 and the 9
18 cents?
19 **A. Yes.**
20 Q. So that would be 3 cents per gallon?
21 **A. I'm not conceding --**
22 Q. For what period of years?
23 **A. From its inception to now.**
24 Q. Well, when did you start paying the 6 cents

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1 versus the 9 cents?
2 **A. As I say, I'm not necessarily conceding that**
3 **we should pay for the disposal of the water.**
4 Q. You're not conceding that the tenants should
5 bear the cost of disposing of the wastewater that
6 comes from the cottages that they use?
7 **A. Correct.**
8 Q. So you've listed items of potential damage
9 in the lawsuit: The term of rent that was paid by
10 the tenants, the return of taxes that were paid by
11 the tenants, the return of wastewater payments in
12 the range of \$5,000 that may have been paid by some
13 of the tenants at the Feoffees request, the return
14 of \$40 per month that was paid by tenants as a
15 wastewater maintenance charge and the sum or all of
16 the wastewater disposal charges that were assessed
17 in connection with the alleged cost of removal of
18 wastewater from the centralized plant, right?
19 **A. I did mention all those things.**
20 Q. Anything else?
21 **A. Conceivably there's lost sale opportunities.**
22 **People have been unable to sell their cottages**
23 **because of the problems that resulted. No one wants**
24 **to touch these houses now. So you've got financial**

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1 **damages that affect certain homeowners as a result**
2 **of their not being able to sell. And other**
3 **financial harm in order just to pay all these**
4 **various charges that they're obliged to pay.**
5 **The rent, even under the stipulation, is**
6 **significantly more than what it had been previously**
7 **and there were people, you know, who are of very**
8 **limited means that live there, it's a blue collar**
9 **community, and the rents skyrocketed from the 6 to**
10 **\$800 range that was there when I first bought in '93**
11 **up to the 5,000, 5500 that's required under the**
12 **stipulation. That's been a significant burden to**
13 **many of the homeowners up there. Plus the increased**
14 **taxes. That's the second issue.**
15 Q. You've now told me about your damage claims
16 that the tenants have in the litigation?
17 **A. There may be others. Those are the ones I**
18 **can recall.**
19 Q. On the other side of the ledger, the request
20 for declaratory relief includes a potential
21 determination by the court of a fair amount to be
22 paid by the tenants for use and occupancy by the
23 tenants?
24 **A. I didn't understand.**

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1 Q. There's a request for declaratory relief to
2 be determined by the court for the fair amount to be
3 paid by the tenants for the use and occupancy of the
4 tenants from the time the case was filed until its
5 conclusion, right?
6 **A. It might.**
7 Q. And the court could conclude that the amount
8 that's due is substantially in excess of the amount
9 that's being paid, right?
10 **MR. CHAPMAN: Objection.**
11 **A. It's possible.**
12 Q. You described the Little Neck community as a
13 blue collar community. What do you mean by it's a
14 blue collar community?
15 (Recess taken.)
16 **BY MR. PERRY:**
17 Q. I started to ask you before we took the
18 break what you meant when you said Little Neck is a
19 blue collar community?
20 **A. What I meant by that is it's a mixture of**
21 **people who predominantly have nonprofessional jobs,**
22 **sort of middle class -- low to middle class economic**
23 **bracket. Of course over time, like any area,**
24 **there's been some gentrification where there's a**

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1 **spattering of doctors and lawyers and Indian chiefs.**
2 **But it's predominantly people who have what are**
3 **traditionally considered blue collar type jobs.**
4 Q. Have you done any kind of calculation of the
5 number of blue collar tenants versus the number of
6 white collar tenants?
7 **A. No, this is just my subjective opinion.**
8 Q. For example, the Little Neck Action
9 Committee consists of all white collar tenants,
10 doesn't it?
11 **MR. CHAPMAN: Objection.**
12 **A. I don't know. That's an interesting**
13 **question. I formed the group and I sought out**
14 **people that had particular skills so the group is a**
15 **skewed -- it's not a representative sample of Little**
16 **Neck as a whole.**
17 Q. Do you have any information on the
18 occupation of the 167 cottage owners?
19 **A. Just what I know from living amongst them.**
20 Q. Anecdotal. Is there any publication that
21 would list the occupation of the Little Neck
22 tenants?
23 **A. Not that I know of.**
24 Q. For example, a census listing wouldn't

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1 include Little Neck because it's not a primary
2 residence?
3 **A. I don't know.**
4 Q. Does your membership information with regard
5 to the homeowners you've been involved with give you
6 any occupation for any of the tenants?
7 **A. No.**
8 Q. The 167 tenants other than the lessees are
9 all listed as defendants ultimately with respect to
10 the counterclaim filed in the Superior Court claim,
11 correct?
12 **A. I think the lessees were listed also. Those**
13 **were the homeowners at the time that the**
14 **counterclaim was filed.**
15 Q. Have you had any conversations with Don
16 Whiston after buying the cottage that you rely upon
17 in support of your claims in the Superior Court
18 litigation?
19 **A. Yeah. I mean, I did have conversations with**
20 **Don with respect-- he indicated that they were being**
21 **tremendously pressured by the school committee to**
22 **depart from past practice and to charge more. And**
23 **instead of giving an annual specific bequest for a**
24 **specific purpose, giving more money without**

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1 restriction; that the school committee was looking
2 to shore up its failing finances through increased
3 monies out of Little Neck.
4 Q. When did you have those conversations?
5 **A. I can't give you a specific date.**
6 **MR. CHAPMAN:** You've got to let him
7 finish the question.
8 **BY MR. PERRY:**
9 Q. When in relation to buying the cottage did
10 you have those conversations?
11 **A. After.**
12 Q. Was it a few years after?
13 **A. It was after the rent started to go up in**
14 **dramatic increments.**
15 Q. What was the first dramatic rent increase
16 you recall?
17 **A. Something in the vicinity of 17 or \$1800 for**
18 **a seasonal cottage I think it was.**
19 Q. And you're referring now to the seasonal
20 cottage rental, not the increase?
21 **A. Correct.**
22 Q. So when rents for a seasonal cottage went to
23 \$1700, that's an event you associate with rents have
24 been increased substantially?

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1 **A. I think that that was the first increase**
2 **that people generally considered to be over the top**
3 **substantial.**
4 Q. Okay. Did you speak with any Feoffees
5 besides Don Whiston before you bought your cottage?
6 **A. No.**
7 Q. Have you spoken with any Feoffees other than
8 Don Whiston about issues relevant to the Superior
9 Court litigation?
10 **A. I've had conversations with all of the**
11 **Feoffees since that time that touch on the issues**
12 **attendant to the lawsuit. We've been in many**
13 **negotiation sessions where we freely exchanged ideas**
14 **and positions.**
15 Q. Apart from any settlement negotiations you
16 had with the Feoffees, have any of the Feoffees
17 other than Don Whiston made statements to you that
18 you consider to be relevant to any of the issues in
19 the Superior Court litigation?
20 **A. Yeah. Jim Foley and I had a couple**
21 **exchanges. There was an incident that occurred**
22 **after we received notification just before the 4th**
23 **of July holiday that our tenancies had been**
24 **terminated and that if we didn't sign the lease that**

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1 had been provided to us we would be evicted. And we
2 could take houses with us but if we left them
3 behind, which of course we would have to, they would
4 be considered abandoned and become the property of
5 the Feoffees. I had an exchange with Mr. Foley
6 where tempers flared and certain things were said
7 back and forth.
8 Q. Did he say anything in that conversation
9 that you consider relevant to this litigation? For
10 example, you had testified to an admission he made.
11 **MR. CHAPMAN:** Objection.
12 **A. It wasn't an admission so much as an**
13 **attitude. I went down to the office that the**
14 **Feoffees maintain and confronted Mr. Foley about the**
15 **callous and unfeeling aspect of sending out such a**
16 **notification to all the Little Neck homeowners on**
17 **the eve of the 4th of July holiday, which is an**
18 **important event up there. And, you know,**
19 **questioning how he could in good conscience be part**
20 **of an effort to do that.**
21 **And admittedly I was loud and probably**
22 **too aggressive and he replied in kind. But he said**
23 **something to the effect of, you know, it's too**
24 **fucking bad and if you don't like it, move.**

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1 Q. Prior to filing the lawsuit -- strike it.
2 Prior to the filing by Mr. Lonergan and
3 Ms. Whitney-Wallace of the lawsuit were you prepared
4 to sign a long-term lease that provided for you to
5 pay fair market value rent as determined from time
6 to time by a qualified third party appraiser?
7 **MR. SHEEHAN:** Objection.
8 **A. After we received this notice we did hire**
9 **counsel, Masterman, Culbert & Tully, and we**
10 **attempted to enter into some sort of a dialogue with**
11 **the Feoffees and their counsel to negotiate the**
12 **terms of a lease. We never were able to agree on a**
13 **number of substantial terms of that lease, including**
14 **rent, how it would even be determined, what it would**
15 **start at and when there would be increases.**
16 **So those negotiations didn't result in**
17 **any acceptable resolution and ultimately we felt**
18 **that we were put in a position where we had to file**
19 **suit in order to, you know, defend the interests of**
20 **our group.**
21 Q. So my question to you is prior to filing the
22 lawsuit you would have been willing to sign a
23 long-term lease with respect to rents but the rents
24 would be determined at fair market value based on a

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1 third party appraisal?
2 **MR. CHAPMAN:** Objection.
3 **A. No, we never reached an agreement such as**
4 **that.**
5 Q. Would you be willing to sign such a lease
6 now, assuming the sale were not approved?
7 **MR. CHAPMAN:** Objection.
8 **A. That's so hypothetical. In the event that**
9 **we're unable to buy the property?**
10 Q. Yes.
11 **A. We would be left with no alternative but to**
12 **-- if we were to negotiate a resolution it would**
13 **have to be in the context of the lease. But we'd be**
14 **back in the situation we were before we filed the**
15 **lawsuit, trying to reach terms that would be**
16 **agreeable to the homeowners. And now that's even**
17 **more complicated by the involvement of the finance**
18 **committee and the control that they're exerting over**
19 **the school committee.**
20 **You know, how likely it is that we could**
21 **reach an agreement on the term and amount and how**
22 **the wastewater would be treated, I'm skeptical.**
23 **MR. PERRY:** Can you hold on a minute.
24 (Discussion off the record.)

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1 (Recess taken.)
2 **MR. PERRY:** Would you mark this as the
3 next exhibit.
4 (Exhibit 1 marked
5 for identification.)
6 **BY MR. PERRY:**
7 Q. Mr. Gottlieb, I've given you a lease that's
8 between the Feoffees and somebody name Richard Betz,
9 trustee of the Richard Betz Trust. Do you happen to
10 know who Mr. Betz is?
11 **A. Yes, I do.**
12 Q. Could you tell me who that is?
13 **A. He's a gentleman who's been at Little Neck**
14 **for a very long time. He owns two cottages I**
15 **believe and I think his son lives in one. He's a**
16 **lovely gentleman in his 80s who wrote a book about**
17 **Little Neck.**
18 Q. The copy I've given you of this lease has
19 been signed by Mr. Betz and we don't seem to have a
20 signature on this one of the Feoffees but I'd like
21 you to disregard that fact for the moment. We have
22 other leases that Mr. Sheehan has produced that are
23 in similar form to this that do have Feoffee
24 signatures. Okay?

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1 **A. Yep.**
2 Q. First of all, have you seen this form of
3 lease before with respect to, for example, Exhibit A
4 setting forth annual rents and a process for
5 increasing them?
6 **A. Yes, I have seen the form of this lease**
7 **before. This was a lease that was offered to people**
8 **who had already signed a lease in 2006 and they**
9 **weren't required to sign this but they could if they**
10 **wanted to. And some percentage that's unknown to me**
11 **of the lessees did in fact replace that '06 lease**
12 **with an '08 lease.**
13 Q. In addition, is it your understanding that
14 individuals who purchased cottages after the lawsuit
15 was filed were asked to sign this lease if that
16 purchase took place after this document was
17 developed?
18 **A. I don't know that for a fact, which lease**
19 **they were called upon to sign. But it would not**
20 **surprise me if it were the '08 lease.**
21 Q. Have you ever reviewed this document? The
22 form, not this particular one from Mr. Betz.
23 **A. I believe I have, yes.**
24 Q. This document states on page 1 that the

<p style="text-align: right;">Page 82</p> <p>1 annual rent would be according to Exhibit A, 2 correct? 3 A. It says that. 4 Q. And on page 2 it calls for payments on 5 account of taxes by the tenant, right? 6 A. Yes. 7 Q. Under paragraph 7 it makes the tenant 8 responsible for paying water and electric, right? 9 A. Yes. Their individual water and electric 10 service. 11 Q. Under 7B it requires a tenant to pay the 12 disposal fees for disposal of wastewater, right? 13 A. Yes. 14 Q. And that would refer to the 6 cents a gallon 15 charge? 16 A. However it might fluctuate. 17 Q. And then it says the tenant shall provide 18 any other utilities at their own expense, correct? 19 A. Yes. 20 Q. And then going to Exhibit A, that sets forth 21 the annual rent, right? 22 A. It has a specific amount through 2012, yes. 23 Q. And it has this adjustment based on the tier 24 in paragraph 2 whereby people pay somewhere between</p>	<p style="text-align: right;">Page 84</p> <p>1 A. No. It seems there's a fixed amount through 2 June of 2012 and after that there's a formula. 3 Q. Right. That's based on assessed values of 4 the 167 lots collectively, right? 5 A. I'm still not certain how the percentage of 6 average assessed value interrelates to the 7 mathematical formula of 98 percent, 102 percent, 106 8 percent, 108 percent of the tenants in class 2 as 9 defined here. 10 And then there's this minimum annual 11 rent. So that even if the assessed value went down 12 it's not going to be any less than a certain amount. 13 So I'm not sure how that interrelates either. This 14 isn't a lease that I was ever called upon to study 15 or sign. I just know it's not one I would sign or 16 recommend to our members to sign. 17 Q. Well, that's really the question I wanted to 18 ask you. Would you have signed a lease that was in 19 this form prior to the lawsuit being filed in 2006? 20 MR. CHAPMAN: Objection. 21 A. No. 22 Q. Would you be prepared, if the matter were 23 returned to Superior Court after disapproval of 24 sale, to sign a lease in this form?</p>
<p style="text-align: right;">Page 83</p> <p>1 98 percent and 108 percent of what would otherwise 2 be the rent; is that right? 3 MR. SHEEHAN: Objection to the form. 4 A. That appears to be the formula. 5 Q. And in addition it has provisions for how 6 rent is to be determined after the first -- 7 A. Just to be clear. I'm sorry. It's not just 8 the percentage. There's also -- on the back end of 9 each of those things -- no, I'm sorry. A percentage 10 of the average assessed value of the 167 approved 11 lots. 12 Q. And that would appear to be in proportion to 13 those percentages, right? 14 A. I haven't done the math but that's the way 15 it appears. 16 Q. There was some rounding, right? 17 A. Perhaps. 18 Q. So, under this particular lease that the 19 Feoffees entered into in 2008 there is a provision 20 for a fixed rent for three years and a method to 21 increase it thereafter, right? I should say there's 22 a method for the calculation of rents for the first 23 three years and a method for adjusting it thereafter 24 based on assessed values?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. No. 2 Q. Do you regard this lease as an improvement 3 over the one you were presented in 2006? 4 MR. CHAPMAN: Objection. 5 A. I haven't studied it recently enough to make 6 a judgment like that. You know, just when -- the 7 2006 lease, I didn't think anything could be worse 8 than that. But then they came out with another 9 version that had the differential between the 10 initial rent that they wanted to get and the amount 11 that represented a hundred cents on the dollar of 12 the 7.2 million dollar wastewater system. So it 13 just kept getting worse. 14 Also, we are negotiating over a manner 15 to extend the lease beyond the 21-year statutory 16 limitation to make it a genuinely long-term lease. 17 This term is only 20 years. 20 years I can testify 18 goes by before you know it. And we didn't feel that 19 that was an adequate length either, 20 years. 20 But anyway, I haven't read through this 21 whole thing so I can't make at this point in time 22 any further judgments about it. 23 Q. I think you had indicated that there were 24 some negotiations with the Feoffees before the</p>

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1 lawsuit was filed?
2 **A. The other thing I'll say, just to go back a**
3 **second because I think it would be inappropriate to**
4 **not mention the fact that we think that Little Neck,**
5 **the improved lots upon which this formula would have**
6 **been based and would be based in the future, that**
7 **the assessed value of the improved lots are grossly**
8 **inflated and any rent formula based on the assessed**
9 **value, for example the board of assessors reduced**
10 **the combined value of Little Neck by 6.1 million**
11 **dollars last year and we don't think that that went**
12 **nearly far enough. It was grossly over-assessed.**
13 **And this was an issue during negotiations. Any**
14 **formula based on assessed value was unacceptable to**
15 **the homeowners given the history of assessments in**
16 **Little Neck.**
17 Q. And that's true even if there's a right to
18 have abatements taken into account?
19 **A. Up until recently the Feoffees had not**
20 **advanced abatement application for Little Neck even**
21 **though we thought that there was certainly a**
22 **legitimate basis to do so. Given the fact that the**
23 **school committee received 60 to 65 percent of the**
24 **monies that were collected in real estate taxes, it**

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1 **put the Feoffees in a difficult position in seeking**
2 **to abate and reduce that amount up until last year**
3 **when the appellate tax board specifically held in**
4 **the context of an appeal from the denial of an**
5 **abatement by a homeowner on Little Neck that in fact**
6 **the Little Neck homeowners did have standing to**
7 **pursue abatements. Up until then they were denied**
8 **as a matter of course by the assessor.**
9 Q. Have you ever sought an abatement?
10 **A. I did this year.**
11 Q. And what happened?
12 **A. It was denied.**
13 Q. And do you have a right to appeal that?
14 **A. I believe I do.**
15 Q. Have you done that?
16 **A. I haven't done it yet.**
17 Q. Do you intend to?
18 **A. I do.**
19 Q. What's the assessment that you're appealing
20 from?
21 **A. I sought an abatement of the value of the**
22 **lot on which my house sits.**
23 Q. What was the lot valued at?
24 **A. 198 and change.**

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1 Q. And what do you claim it should be valued
2 at?
3 **A. I've suggested two alternate valuations.**
4 **One is the amount that the seller has agreed to**
5 **charge me for the purchase of my condominium unit in**
6 **the event that the sale takes place, which is**
7 **166,000 and change. Since I already own the house,**
8 **my position is that the marrying of the home to the**
9 **land in the form of a condominium unit deed is the**
10 **fair market value of my lot as the assessors define**
11 **them.**
12 **In the alternative, I suggested that**
13 **they should look at the appraisals that have been**
14 **done and come to some determination, whether it be**
15 **an average or some weighted formula and then abate**
16 **Little Neck as a whole, the assessed value of the**
17 **real estate on Little Neck as a whole and let the**
18 **Feoffees apportion it accordingly.**
19 Q. Did you see an appraisal of your individual
20 lot in any of the appraisals that were done by
21 Colliers, Meredith & Grew or by LandVest or by
22 Steven Foster for the school committee?
23 **A. I'm not sure.**
24 Q. The Peterson Lachance appraisal didn't

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1 include specifically what tiers any given lot fell
2 in, did it?
3 **A. Not that I can recall.**
4 Q. Do you recall what the range of individual
5 lot values was in the Peterson Lachance appraisal?
6 **MR. CHAPMAN: Objection.**
7 **A. No.**
8 Q. Now you said that you would not have agreed
9 to enter into a lease in the form of Exhibit 1
10 before the lawsuit was filed. And I started to ask
11 you about the negotiations that you had with the
12 Feoffees before the lawsuit was filed. Did you make
13 clear what your position was at that time with
14 regard to a lease?
15 **A. There was a change of views between the**
16 **parties, the adverse parties on the topic of the**
17 **lease. Unfortunately we weren't able to reach any**
18 **consensus and that's when a sale as an alternative**
19 **to a lease was discussed. And we pursued a number**
20 **of options that would involve a transfer of**
21 **ownership.**
22 Q. Were you prepared at any time in 2006 to
23 sign a lease that required you to pay rent in the
24 amount of \$10,800 a year for year-round use of your

1 cottage?
2 **A. In 2006 the lease that was presented to us**
3 --
4 Q. I'm asking you a different question. I'm
5 sorry to interrupt you. I'm aware of what the lease
6 said you were presented with and I'm not asking you
7 about that. I'm asking you whether you were
8 prepared to sign any lease in 2006 that set the rent
9 for the first three years at the rate of \$10,800 for
10 year-round use with adjustments that could go up but
11 not down in future years?
12 **A. That was never presented to me.**
13 Q. Were you prepared to sign such a document?
14 **A. How could I consider signing a document that**
15 **was never presented to me?**
16 Q. You said you would never recommend to anyone
17 in 2006 that they enter into a lease containing the
18 terms of Exhibit 1?
19 **A. I can tell you we were never presented with**
20 **what you have marked as Exhibit 1. This was in 2008**
21 **and it was completely optional to the people it was**
22 **presented to.**
23 Q. Unless it was also presented to those who
24 bought their units, right?

1 **A. That's a handful of people. And they were**
2 **told that if you want to buy this house you have to**
3 **sign this lease. There were no options that were**
4 **given and there were no negotiations with the buyers**
5 **or the buyer's counsel. A condition of the sale is**
6 **that you will sign this lease.**
7 Q. Just looking at this lease, what are your
8 objections to it?
9 **MR. CHAPMAN: Objection.**
10 **A. I find the term objectionable, I find the**
11 **requirement that we pay the rent on the formula**
12 **objectionable, I find the -- I haven't looked**
13 **through here to see if there's a specific provision**
14 **that requires us to pay any percentage of the cost**
15 **of the wastewater system but if that's the case or**
16 **if it was built into the rent I would object to**
17 **that.**
18 **I object to the -- I've always said that**
19 **the homeowners, who own their homes, should receive**
20 **a tax bill directly from the assessor for the house**
21 **and that that should not be going to the Feoffees**
22 **and the Feoffees paying the town. We're the**
23 **homeowner and it's my view that the town is**
24 **obligated to send us the real estate tax bill**

1 **directly and we will pay them directly.**
2 **There are people who have questioned**
3 **whether or not we can appropriately deduct from our**
4 **income taxes what we pay in real estate taxes and by**
5 **sending the bill to the Feoffees rather than to the**
6 **homeowners it mitigates in favor of those that make**
7 **that type of an argument. It would probably be**
8 **easier to say what I don't object to, which is**
9 **virtually nothing.**
10 Q. Well, what about -- you can see in Exhibit A
11 that the annual rent for this particular unit is
12 \$9700 and that's consistent with what's charged for
13 seasonal use, right?
14 **A. That's the seasonal use rent.**
15 Q. Do you object to the seasonal use rent of
16 \$9700 through 2012?
17 **A. Yes.**
18 Q. You would not recommend it to anybody that
19 they sign a lease containing that seasonal rent,
20 correct?
21 **A. The lease as a whole I would not recommend**
22 **that our members sign. That would be my advice as**
23 **counsel to the committee. And I would of course**
24 **confer with our outside counsel. But why that**

1 hypothetical is even relative I'm not sure. We have
2 a pending lawsuit, we have a pending deal. This
3 lease is not something that was offered to us and I
4 wouldn't sign it and I wouldn't recommend others
5 sign it.
6 **MR. PERRY: I'll just check my notes.**
7 (Pause.)
8 **BY MR. PERRY:**
9 Q. Are you still good friends with Dr. Mark
10 Koris?
11 **A. Yes. Mark unfortunately had a significant**
12 **stroke the day of our mediation, December 13th of**
13 **2008, I believe. And he has some significant**
14 **impairment now. But yes, we're -- they're still**
15 **good friends and we see them socially. And I try to**
16 **take him out for golf cart rides and down to the**
17 **beach and we keep him involved.**
18 Q. If there had been a tiered system in place
19 for the lots, would his lot be, as you understand
20 it, one of the better ones?
21 **MR. CHAPMAN: Objection.**
22 **A. They're on the cliff looking out on the**
23 **Atlantic Ocean, Plum Island. I think that that row**
24 **was put in the highest tier.**

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1 Q. Right. Did you ever discuss with Dr. Koris
2 or his wife the issue of whether rents should be the
3 same or different for different classes of lots at
4 Little Neck?
5 **A. Our members universally wanted to keep the**
6 **system the same, one standard seasonal, one standard**
7 **year-round rent. Even the people that had what one**
8 **might consider to be a less desirable location.**
9 Q. Okay. And did you ever discuss the issue
10 specifically with Dr. Koris or his wife?
11 **A. His wife is the legal owner of the cottage**
12 **and I probably did discuss did with them but I don't**
13 **have a specific recollection of a specific**
14 **conversation.**
15 Q. Have you been involved in plans for the
16 homeowners association if the purchase is approved?
17 **MR. SHEEHAN:** Could you repeat this
18 question?
19 **MR. PERRY:** Let me reword it.
20 Q. Have you been involved in any of the
21 planning in connection with the condominium
22 association that would represent unit owners if the
23 property was sold?
24 **A. Yes, but to a limited extent because we**

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1 didn't want to devote a tremendous amount of time
2 and energy to the condominium association unless and
3 until we had some degree of certainty that the sale
4 was going to be approved.
5 The Feoffees, for example, weren't going
6 to do the engineering until we got court approval.
7 We did put together a draft of the condominium
8 master deed and trust. We felt that that was
9 important but we really haven't had significant
10 exchange on the contents of those documents.
11 The committee has given some thought to
12 how we would be structured and the rules and
13 regulations that we would include as part of the
14 condominium documents, trying to preserve as best we
15 can the nature and character of the place.
16 Q. What are your thoughts on how the
17 condominium unit owners should be charged for their
18 disposal of wastewater if the sale took place?
19 **A. Well, we remain hopeful that Little Neck**
20 **will ultimately do a sewer hookup. Absent that,**
21 **we're going to have to continue to use the system**
22 **that's in the ground.**
23 Q. I'm asking what are your thoughts as to how
24 the condominium association will pass along disposal

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1 costs to members under a condominium form of
2 ownership.
3 **A. Well, we're hoping to maintain the same**
4 **pricing that the Feoffees are currently afforded by**
5 **the town. And for consistency sake we conceivably**
6 **could use the same measure I think more equitably if**
7 **we could put meters on that genuinely measures the**
8 **outflow into the system. That that might be a**
9 **fairer way rather than assuming that a hundred**
10 **percent of the water that comes in goes out through**
11 **the system, because people water their cars, water**
12 **their lawns, give the dog a bath. They take outside**
13 **showers that go out through the ground rather than**
14 **into the system. So we would definitely look at**
15 **that as an option.**
16 Q. Because under the current system some
17 tenants may be paying too much and some too little
18 because of how they use the water?
19 **A. True. And also unfortunately there are**
20 **problems with the system and groundwater infiltrates**
21 **into the system. So the Feoffees, to the extent**
22 **that the water the measurement of each homeowner is**
23 **off the meter, but they as the property owner have**
24 **to pay for the difference.**

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1 In other words, if you've got water
2 that's coming in, groundwater that's coming in it
3 still has to be pumped out and disposed of. They
4 can't charge the individual homeowners for that but
5 they end up eating the cost. If we were paying for
6 that because now it's a condominium and the
7 condominium association is responsible for all of
8 the pump-out charges, those problems need to be
9 addressed so that money isn't being spent needlessly
10 to treat groundwater that's getting into the system.
11 Q. You don't know what it would cost to install
12 devices that measured the outflow of sewage from
13 each house, do you?
14 **A. I don't. I think they went with the easy**
15 **thing, which was the existing meters. And the**
16 **meters get read and you know month to month what's**
17 **coming in.**
18 Q. And you don't know if the tenants would
19 desire to change that or maintain the status quo as
20 to a purchase?
21 **A. The condominium association would take the**
22 **temperature of the homeowners but ultimately the**
23 **trustees would make a decision as to how it was**
24 **going to play.**

1 **MR. PERRY:** I think that's all I have.
2 Thank you.
3 **THE WITNESS:** You're welcome.
4 **MR. SHEEHAN:** I have no questions.
5 (The deposition was concluded at 1:10
6 p.m.)
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1 **E R R A T A S H E E T**
2 **I, WILLIAM A. GOTTLIEB,** do hereby certify
3 under the pains and penalties of perjury that I have
4 read the foregoing transcript of my testimony, and
5 further certify that it is a true and accurate
6 record of my testimony (with the exception of the
7 corrections listed below):

8	Page	Line	Correction/Reason
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____

19
20 _____
21 **WILLIAM A. GOTTLIEB**
22
23
24

1 **CERTIFICATE**
2 Commonwealth of Massachusetts
3 Suffolk, ss.
4
5 **I, Doris M. Jones, Registered Professional**
6 Reporter and Notary Public in and for the
7 Commonwealth of Massachusetts, do hereby certify
8 that **WILLIAM A. GOTTLIEB**, the witness whose
9 deposition is hereinbefore set forth, was duly sworn
10 by me and that such deposition is a true record of
11 the testimony given by the witness.
12 **I further certify that I am neither related to**
13 or employed by any of the parties in or counsel to
14 this action, nor am I financially interested in the
15 outcome of this action.
16 **In witness whereof, I have hereunto set my hand**
17 this 3rd day of October, 2011.
18
19 _____
20 **Doris M. Jones, CSR/RPR**
21
22 My commission expires:
23 May 19, 2017
24

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November 18, 2011

William H. Sheehan, Esquire
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Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960

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Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210


Re: William M. Lonergan, et al. v. James W. Foley, et al.
Essex Superior Court C.A. No. 067-02328D

Dear Counsel:

Enclosed is a copy of the errata sheet/signature page to the transcript the deposition of William A. Gottlieb taken on September 26, 2011.

Thank you very much.

Sincerely,


Tyler E. Chapman

TEC/jc
Enclosure

ERRATA SHEET

I, WILLIAM A. GOTTLIEB, do hereby certify under the pains and penalties of perjury that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction/Reason
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~~Proven H. H. H. H.~~

WILLIAM A. GOTTLIEB

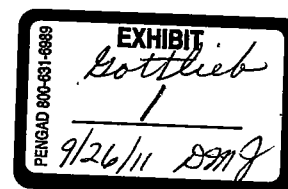
FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

LITTLE NECK LEASE - SEASONAL

This Agreement made this _____ day of _____, 2008, by and between the FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH (the "Landlord"), whose mailing address is P.O. Box 166, Ipswich, Massachusetts 01938, and Richard Betts, Trustee of the Richard Betts Trust, whose address is 20 Woods Road, Belmont, MA 02478, (the "Tenant").

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. **LEASED PREMISES.** Subject to the terms and conditions contained herein the Landlord leases to the Tenant Lot #152, being a certain parcel of land located in Ipswich, Massachusetts, at Little Neck, also being identified as Parcel 152 on Ipswich Assessor Map 24C (the "Lot"). The street address for the Lot is 15 Plum Sound Road.
2. **USE.** The Lot shall be used only between April 1st to December 31st of each year for the existing single-family seasonal private dwelling and any existing ancillary structures. The Lot may also be used by the Tenant for one additional week per year during the month of February or March, upon ten (10) days advance notice to the Landlord. The lot may also be used for such additional time as the Landlord, in its sole discretion, may permit in writing following a written request from the Tenant.
3. **TERM.** This lease shall be for a term of twenty (20) years commencing at 12:01 a.m. EDT on the first day of July 1st, 2007 (the "Commencement Date") and ending at 11:59 p.m. EDT on the thirtieth day of June, 2027 (the "Term").
4. **ANNUAL RENT.** The Tenant shall pay the Landlord annual rent in the amounts set forth in Exhibit A attached hereto and incorporated herein by reference. The annual rent shall be payable in advance and due in equal quarterly installments on July 1st, October 1st, January 1st, and April 1st of each fiscal year, subject to the provisions of Exhibit A. Rent shall be paid to the Landlord at P.O. Box 166, Ipswich, Massachusetts 01938.
5. **LATE FEES.** Any rent not paid on the date the rent is due shall be assessed a late fee of twelve (12) percent per annum for each month or portion thereof that the rent is late.



6. **TAXES.** The Tenant shall pay all municipal real estate taxes assessed on the Lot and the buildings erected thereon. The Landlord shall use all reasonable efforts, working in conjunction with Little Neck tenants, to secure a direct, individual real estate tax bill for the Tenant from the Town of Ipswich. At such time, the Tenant shall pay the tax bill timely. Until such time, the Tenant shall pay additional rent to the Landlord in the amount of the real estate taxes attributable to the Lot and the buildings thereon, payable within fifteen (15) days from date of invoice from the Landlord. Landlord agrees to invoice the Tenant as many times per year as the Town of Ipswich invoices the Landlord for real estate taxes, which invoice shall be in the amount billed by the Town to the Landlord. The Landlord shall be under no obligation to seek an abatement of real estate taxes. The Tenant shall have the right to prosecute an application for abatement of taxes in the name of the Landlord or Tenant, provided, however, that the expenses of prosecuting such application shall be borne by the Tenant. At the Tenant's request, Landlord shall furnish the Tenant with all data and information in the Landlord's possession reasonably necessary for Tenant's application. If the Landlord shall receive any abatement or refund of said taxes for any tax year for which the Tenant shall have paid to the Landlord all taxes due, the Tenant shall be entitled to receive from the Landlord the amount of such abatement or refund.
7. **UTILITIES.**
 - (a) Water and Electric. The Tenant shall be responsible for payments of water and electric service charges to the Town of Ipswich.
 - (b) Waste Water Disposal. The Tenant's dwelling shall be connected to the common waste water system operated by the Landlord or its designee. The Tenant shall pay all disposal fees (including pumping, hauling, "tipping" and any other fees and costs charged to Landlord or its designee by the person or entity with whom Landlord or its designee contracts for such disposal, and without mark-up or surcharge by Landlord or its designee) charged for the disposal of waste water from the Tenant's dwelling, based upon metered water use, to the Landlord or its designee, within fifteen (15) days from date of invoice.
 - (c) Other Utilities. The Tenant shall provide such other utilities to their lot at their own expense.
8. **PERMITS AND LICENSES.** It is understood and agreed that the Tenant shall obtain all necessary certificates, permits and other approvals required by any federal, state and local authorities necessary to undertake any repair, renovations or improvements to or to occupy said Lot or building or structure erected thereon.

9. TENANT'S RIGHTS UPON EXPIRATION OF TERM.

- (a) This Lease does not grant to the Tenant any right to extend the term of this Lease or any right to renew the Lease. The Landlord shall provide a right of first refusal to the Tenant to enter into a new lease for the Lot prior to the expiration of the Term. At least one hundred eighty (180) days prior to the expiration of the Term, the Landlord shall provide the Tenant with the form and substance of lease which the Landlord has then adopted. The new lease shall include the rent and other charges for the full term thereof and shall be for a term of not less than twenty (20) years.
- (b) The right of first refusal described in Paragraph 9(a) shall be included in all subsequent leases between the Landlord and the Tenant or Tenant's assignees; provided, however, the term of any such subsequent lease may be ten years or more. Landlord warrants that, for the period July 1, 2027 to June 30, 2047, the terms of a new lease will include, without deviation, the language of Paragraphs 2, 7, 11, 13-17, 19, 23, 25 and 26, and that the annual rent during that period shall be calculated in the same manner as the annual rent is to be calculated for fiscal years 2013 through 2027; provided, however, (1) that the Landlord may provide that the annual rent will be adjusted every two years and not every three years; (2) that the Landlord may change any language of the above-identified paragraphs if required by law or court order; and (3) that the Landlord may increase the amount in Paragraph 23(f) to up to Forty Thousand (\$40,000) Dollars.
- (c) The Tenant shall have sixty (60) days to notify the Landlord whether it wishes to enter into the new lease upon the proposed terms. If the Tenant exercises its right of final refusal, the new lease shall be executed by the parties at least thirty (30) days prior to the expiration of the Term and the new lease shall be effective immediately upon the expiration of the Term.

10. INDEMNIFICATION. During the Term, the Tenant, subject to the provisions contained herein, agrees to indemnify, defend and save the Landlord harmless against and from any and all claims, damages, costs, expenses (including the Landlord's reasonable attorney's fees) fines, penalties and other liabilities of any and every kind and nature, to any person or property, arising out of Tenant's use and occupancy of the Lot, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Substance on or about the Lot to the extent the Tenant caused any such environmental occurrence, but there shall be no

indemnity for any claim caused by the Landlord's negligence or intentional misconduct, or those of its agents, servants or employees. If any claim or proceeding arising under the preceding sentence is brought, naming the Landlord as a party by reason of any such claim or proceeding, and the claim, proceeding, damage, loss or liability is not caused by the negligent acts or intentional misconduct of the Landlord, its agents, servants or employees, Tenant, at its own cost and expense, upon written notice from the Landlord, agrees to undertake forthwith to defend such action or proceeding and hold the Landlord harmless and indemnify the Landlord against any liability thereon which may be asserted or imposed.

For the purposes of this Section, "Hazardous Substance" shall mean waste, substance or other material which may be dangerous to health or the environment, including, without limitation, all "hazardous wastes", "hazardous materials", "hazardous substances", "toxic substances", and "oil", as defined in and/or regulated under the Resources Conservation and Recovery Act of 1976, as amended, and/or any other federal, state or local law, regulation or by-law.

11. **QUIET ENJOYMENT.** The Landlord covenants that the Tenant, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Lot, subject, however, to rights of others to pass on foot or by vehicle over those paths and driveways which have historically been so used generally by tenants at Little Neck.
12. **BREACH OF CONDITION.** This Lease is made on condition that if Tenant should neglect or fail to pay the rent, the waste water disposal charges payable to Landlord or its designee, or the real estate taxes assessed on said property in accordance with G.L. c. 59, §2B, all as required in this Lease, and said neglect or failure continues for fifteen (15) days from the due date of such payment, the Landlord may terminate this Lease in accordance with and subject to the provisions of G.L. c. 186, §11. If the Tenant shall neglect or fail to perform or observe any of the terms of any federal, state or local law, by-law or regulation or the Rules and Regulations promulgated by the Landlord, and after receipt by the Tenant of written notice by the Landlord, the Tenant fails to commence to cure within sixty (60) days of such notice, or thereafter fails to diligently prosecute said cure to completion, or if the leasehold hereby created shall be taken on execution, or by other process of law, and such execution or other process is not satisfied or discharged within thirty (30) days thereafter or prior to a sale under said execution or other process which ever first occurs, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed (and if such person is not discharged within ninety (90) days thereafter) to take charge of all or any part of the Tenant's property by a Court of competent jurisdiction, or if a petition is

filed by the Tenant under any bankruptcy law for relief or composition of its debts, or if the Tenant is declared bankrupt or if a mortgagee forecloses and/or takes possession of the chattel then, and in any of said cases, the Landlord may terminate this Lease upon written notice to the Tenant. Upon termination of this Lease for any reason under this paragraph, the disposition of the Tenant's improvements shall be governed by paragraph 14 below. Notwithstanding the termination of this Lease, the Tenant shall remain liable for (a) all rent and other amounts due under this Lease through the date of termination and (b) following termination, if the Tenant remains in possession of the Lot under paragraph 14 or otherwise, the Tenant shall be liable for a use and occupancy charge equal to the rent that would otherwise be due together with all other amounts due under the Lease through the date the Tenant delivers possession to the Landlord. The Tenant shall, in addition, be liable for all costs and expenses incurred by the Landlord occasioned by an event of default, including but not limited to reasonable attorneys' fees and other costs of collection, summary process and the exercise of any right or remedy permitted to the Landlord.

13. **TENANT'S TERMINATION OF LEASE.** The Tenant may terminate this Lease upon one hundred twenty (120) days' written notice to the Landlord. Upon such termination, the disposition of the Tenant's improvements shall be governed by paragraph 14 below.
14. **SALE OR REMOVAL OF TENANT'S DWELLING AND STRUCTURES.**
 - (a) Upon the expiration of the Term or the earlier termination of the Lease, the Tenant shall be permitted the opportunity, for up to twelve (12) months subsequent to the expiration of the Term or the earlier termination of the Lease ("Sale/Removal Period"), to use diligent efforts to sell the Tenant's dwelling, structures and other improvements located on the Lot or remove same at the Tenant's expense. Failure of the Tenant to sell or to remove the Tenant's dwelling, structures and other improvements shall result in the dwelling, structures and other improvements becoming the property of the Landlord at the end of the twelve-month period. The Tenant shall pay the Landlord for use and occupancy an amount equal to the rent and other amounts due to the Landlord under this Lease during the period through the date of sale, removal or turn over to the Landlord of the dwelling, structures and other improvements on the Lot and such payments shall be due at the times as previously provided in the Lease. If the Term has expired prior to, or expires during, the Sale/Removal Period, the amounts to be paid for use and occupancy through the date of sale, removal or turnover to the Landlord shall be equal to the rent and other amounts being paid by

the other tenants of Little Neck to the Landlord under leases then in effect.

- (b) If the Tenant fails to pay such use and occupancy charges within thirty (30) days from the due date of said payment, the Sale/Removal Period shall terminate and the dwelling, structures and other improvements on the Lot shall become the property of the Landlord; provided, however, within ten (10) days of a written request of the Tenant for permission to make monthly payments as described herein in lieu of the periodic payments of use and occupancy required by Paragraph 14(a) of this Lease, the Landlord shall permit the Tenant to make, in lieu of the periodic payments of use and occupancy otherwise due under the Lease, monthly payments on the first day of each month during the Sale/Removal Period of \$650, together with payments of real estate taxes and utilities as set forth in this Lease. If the Tenant fails to make all such payments timely, the Sale/Removal Period shall terminate and the dwelling, structures and other improvements on the Lot shall become the property of the Landlord. If the Tenant makes all such payments timely, the difference between the use and occupancy due and the monthly payments made shall be paid to the Landlord from the proceeds of sale and such payment shall be a condition of an assignment of the Lease to the purchaser of the dwelling, structures and improvements.
- (c) In the event the Tenant elects to remove the dwelling, structures and other improvements, the Tenant shall remove same in their entirety and shall leave the Lot free of all personalty and oil and hazardous substances as defined in Paragraph 10 of this Lease. The lot shall be left by the Tenant with a grade and in a condition as if the Lot had never been improved; provided, however, the existing foundation may be left "as is" at the Tenant's election. The Tenant shall pay all costs associated with disconnection of the dwelling from all utility services. The Tenant shall remain liable for all rent, use and occupancy and other amounts due up through the date of removal, which date shall be defined as the date the Lot is in the condition described above following the removal of all personalty, oil and hazardous substances. To secure payment to the Landlord, the Tenant, prior to beginning removal, shall provide to the Landlord a security interest in the Tenant's dwelling, structures and other improvements in such form as the Landlord may reasonably require, which security interest shall be promptly released upon full payment to the Landlord and full performance of the Tenant's obligations hereunder. No removal activities shall be commenced prior to the Tenant's providing to the Landlord an insurance policy providing liability coverage in an amount not less than \$1,000,000

for property damage or personal injury incurred in connection with such removal and naming the Landlord as an additional insured.

- (d) The Tenant shall be liable for the Landlord's reasonable costs of collection and of enforcement of Tenant's obligations hereunder, including reasonable attorney's fees.
15. **ASSIGNMENT OR SUBLEASE.** This Lease may be assigned or transferred or bequeathed by the Tenant, with written notice to the Landlord to a spouse, child, grandchild, sibling, niece or nephew of the Tenant (a "Relative") or to a trust, limited liability company, corporation or other legal entity owned or controlled by the Tenant or Relative(s). Subject to the Landlord's approval, which shall not be unreasonably denied or delayed, this Lease may be assigned to an individual/entity purchasing the Tenant's dwelling and any ancillary structures located on the Lot ("Tenant's Improvements"); during the Term or the Sale/Removal Period. The Landlord agrees to provide the Tenant with a response to the Tenant's request for approval of an assignment, within twenty-one (21) days of the Tenant's request and, if denied, the reasons for the same, in order to facilitate the sale of the Tenant's Improvements, so long as Tenant provides to the Landlord a financial statement of the proposed assignee setting forth the assets, liabilities, and amounts and sources of annual income of the proposed assignee in a form similar to that required by institutional lenders in conjunction with a loan application. If the Landlord undertakes to conduct a background check on the proposed assignee, the Landlord shall do so in compliance with applicable laws and regulations. In the event of the sale of the Tenant's Improvements, the purchaser shall have the election of assuming this Lease or entering into a new twenty-year lease with the Landlord in the form and substance which the Landlord has then adopted. The Landlord agrees to provide the Tenant and the Tenant's prospective purchaser the form of lease within seven (7) days of the Tenant's request in order to facilitate the sale of the Tenant's Improvements. The Tenant may sublease the Lot and Tenant's Improvements to an unrelated party for a term not to exceed one hundred twenty (120) days per year upon notice to, but without the requirement of the assent of, the Landlord. The Tenant shall not enter into any other sublease agreement. The Tenant shall promptly notify the Landlord of any sublease or assignment.
16. **COMMON AMENITIES.** In addition to the exclusive use and occupancy of the Lot as described in Paragraph 11 above, the Tenant shall have the exclusive right, in common with other Little Neck tenants, to use the beaches, playgrounds, baseball field, dock, community center and other common amenities as currently provided by the Landlord for the enjoyment of the residents of Little Neck, subject to unavailability from time to time due to the making of repairs and improvements as necessary

in the discretion of the Landlord. The Landlord shall provide reasonable security at the entrance to Little Neck during peak weekends and holidays to limit access to the Tenant and other Little Neck tenants, and a reasonable number of Tenant's invited guests.

17. **RIGHT OF FIRST REFUSAL TO PURCHASE.** The Tenant acknowledges that the Landlord does not possess the legal authority or power to sell the Lot during the term of this Lease. However, if at any time during the Term, the Landlord shall receive from any person a Bona Fide Offer (as defined below) to purchase the Lot, and shall have the desire and authority to sell the Lot pursuant to such Bona Fide Offer, the Landlord shall give written notice of the same to the Tenant, together with a copy of the Bona Fide Offer. A "Bona Fide Offer" shall mean an offer in writing setting forth all relevant terms and conditions of the proposed purchase from an offeror who is ready, willing and able to consummate the purchase. Upon the Tenant's receipt of such notice, the Tenant shall then have the right and option to purchase the Lot at the purchase price and upon the other terms set forth in the Bona Fide Offer, and as soon as practicable thereafter to consummate the transaction, provided only that the Tenant exercises such right and option by written notice to the Landlord within 60 days after the Tenant's receipt of the notice of the Bona Fide Offer. If the Tenant does not, for any reason, exercise the Tenant's option to purchase the Lot as provided above, then the Landlord shall have the right to sell the Lot at the purchase price and upon the terms set forth in the Bona Fide Offer. If the Tenant shall not exercise the Tenant's option to purchase the Lot with respect to any Bona Fide Offer, and if the transaction contemplated at the purchase price and upon the terms set forth in the Bona Fide Offer does not close, the Tenant's right of first refusal shall once again take effect with respect to such Bona Fide Offer and with respect to any subsequent Bona Fide Offer.
18. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated by like notice) and shall be deemed received as of the earlier of five days after the date of the postmark or actual receipt hereof.

the Landlord: Feoffees of the Grammar School
 P.O. Box 166
 Ipswich, MA 01938

Tenant: (To the Name and Address Shown
 In the First Paragraph on the First
 Page of This Lease)

19. NOTICE OF LEASE. Upon the written request of the Tenant, the Landlord agrees to execute a Notice of Lease pursuant to Massachusetts General Laws Chapter 183, Section 4, to be recorded at the Essex South District Registry of Deeds at the Tenant's expense and a copy of said Notice of Lease as recorded shall be returned to the Landlord by the Tenant.
20. BINDING EFFECT. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties thereof.
21. RIGHT OF ENTRY: Tenant agrees that the Landlord, the Landlord's agents and other representatives, shall have the right, without abatement of rent, to enter into and upon the Lot, or any part thereof, upon reasonable notice (except in the event of an emergency) for the purposes of examining the same to ensure compliance with the terms of the Lease, to make such repairs to the Lot as may be necessary for the safety and preservation thereof, or to make repairs off the Lot as to which the Lot provides access; provided, however, that such repairs (unless of an emergency nature) shall be made so as to cause a minimum of interference with the Tenant's use of the Lot.
22. TENANT'S COVENANTS. The Tenant covenants for the Term of this Lease as follows:
 - (a) To pay when due, all rent, taxes and waste water disposal fees at the time and in the manner required as provided in this Lease.
 - (b) At the expiration or earlier termination of this Lease to yield up peaceably to the Landlord the Lot in good order, repair and condition and unencumbered, subject to the provisions of Paragraph 14 of this Lease.
 - (c) To indemnify and defend and hold the Landlord harmless from and against any mechanics' or other liens arising out of the making of any alterations, repairs, additions or improvements by the Tenant. All such work by the Tenant shall be done in accordance with all requirements of law, including all governmental regulations, in a good workmanlike manner, and with materials of good quality.
 - (d) To comply with all local, state and federal statutes, laws, rules, codes, regulations, permits, licenses, certificates and court orders, whether or not in effect as of the commencement of the Term.
 - (e) That the Tenant will not make or suffer any waste or any unlawful, improper or offensive use of the said premises.
 - (f) That the Tenant shall not erect, alter, change, reconstruct or modify any building on the Lot, or use any building for any purpose other than as a single family dwelling or an accessory structure. Prior to any construction, reconstruction, alteration, changes or modifications, as aforesaid, the Tenant must submit to the Landlord

three complete sets of plans, to scale, that clearly delineate all such proposed work. All work must be performed in accordance with said plans. No work can be started until the Landlord approves the plans. No exterior construction work on any building shall be conducted or carried on between June 1st through September 30th, inclusive, in each year in order to preserve the peaceful enjoyment of the area for Little Neck tenants. The Tenant acknowledges that no reconstruction, addition to or modification of an existing structure on the Lot shall alter or unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. In no event shall this provision apply to renovations which take place solely in the interior of a dwelling or structure and which do not increase the footprint or height of the dwelling or structure.

- (g) That the Tenant shall (i) keep the grass cut upon the Lot and will not allow grass and other vegetation to grow in such a manner as to become a fire hazard to any building upon the Lot or any adjacent lots and (ii) trim trees and bushes upon the Lot so as not to unreasonably interfere with the water views from the dwelling of any other tenant at Little Neck existing as of the Commencement Date. No tree trimming or removal shall be undertaken without permission from the Landlord.
- (h) The Tenant hereby further covenants and agrees to comply with the Rules and Regulations duly promulgated by the Landlord, as they may be amended from time to time. Notwithstanding the foregoing, said Rules and Regulations shall not be contrary to the terms and provisions of this Lease.
- (i) The Tenant shall not drill, dig or construct any wells on the Lot.
- (j) The Tenant shall pay all costs of enforcement, including reasonable attorney's fees incurred by Landlord, in the event of Tenant's breach of one or more of the covenants contained in this paragraph.

23. **LANDLORD'S COVENANTS.** The Landlord covenants for the Term of this Lease, as follows:

- (a) The Landlord shall enforce the obligation of all tenants of Little Neck to keep trees and bushes trimmed so as not to unreasonably interfere with the Tenant's water views from the Tenant's dwelling existing as of the Commencement Date.
- (b) The Landlord shall enforce the obligations of all tenants of Little Neck set forth in Paragraph 22(f) of this Lease.
- (c) Notwithstanding anything to the contrary contained in this Lease, in the event of the damage by casualty or destruction, subsequent to the Commencement Date, of the whole or any part of the Tenant's dwelling, the Landlord shall permit the Tenant to rebuild the

Tenant's dwelling to the same size, configuration and location as exists of the Commencement Date, with and subject to all necessary government approvals.

- (d) The Landlord shall not impose new Rules and Regulations without at least sixty (60) days' written notice to the Tenant and without conducting a meeting with interested Tenants to discuss the proposed new Rule or Regulation.
- (e) The Landlord shall consent to a mortgage or other security interest in the Tenant's improvements (dwelling, accessory structures, etc.) as may be sought by the Tenant; provided, however, that no such consent need be given to an interest which would adversely affect the rights of the Landlord under the Lease in the event of a breach or default by the Tenant.
- (f) Except in the case of an emergency, the Landlord shall not enter into (1) a contract or agreement for the disposal of waste water or (2) a contract or agreement for a capital improvement for an amount in excess of Twenty Five Thousand (\$25,000) Dollars without at least sixty (60) days written notice to the Tenant and without conducting a meeting with interested tenants to discuss the proposed contract or agreement.
- (g) The Landlord represents and warrants that it is the owner of Little Neck. The Tenant acknowledges that the District Attorney for the Eastern District has opined that the Landlord is a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§23A-23C, with which opinion the Landlord disagrees and which opinion the Landlord has challenged in court. In the same court action, the Landlord has sought a declaration that it is not a governmental body for purposes of the Uniform Procurement Act, G.L. c. 30B. The Tenant acknowledges that, in the event it is determined that G.L. c. 30B applies to the Landlord, this Lease could be declared null and void. In that event, the Tenant hereby releases the Landlord from any and all claims or damages arising out of or relating to this Lease being so nullified. In the event of such a nullification, the parties hereto agree that the Tenant shall be a tenant at will with rent due and payable quarter-annually on the first day of April, July, October and January in an amount equal to the rent and taxes set forth in Paragraphs 4 and 6 of this Lease with the Tenant obligated to pay the utility expenses in the amount and at the times set forth in Paragraph 7 of this Lease.
- (h) Notwithstanding the Landlord's position that it is not a governmental body for purposes of the Open Meeting Law, G.L. c. 39, §§ 23A-23C, the Landlord agrees henceforth to conduct its meetings in accordance with the Open Meeting Law. Nothing in this subparagraph or in this Lease may be construed as an agreement or admission by the Landlord that it is a governmental body for purposes of the Open Meeting Law, the Uniform Procurement Act

or any other federal, state or local statute, ordinance, rule or regulation.

24. **SUBORDINATION.** Subject to the Tenant's receipt of a reasonable subordination and nondisturbance agreement, this Lease, and all rights of the Tenant hereunder, are and shall be subject and subordinate in all respects to all mortgages given by the Landlord which may now or hereafter affect Little Neck ("Superior Mortgages"), to each and every advance made or hereafter to be made under the Superior Mortgages, and to all renewals, modifications, replacements and extensions of the Superior Mortgages. In confirmation of such subordination, the Tenant shall timely execute and deliver any instrument, in recordable form, if required, to the holder of any Superior Mortgages or any of their respective successors in interest as may be requested to evidence such subordination.
25. **COMPLETE AGREEMENT.** This Lease contains all the agreements, promises and understandings between the Landlord and the Tenant and no oral agreements; promises or understandings shall be binding upon either the Landlord or the Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Lease shall be void and ineffective unless made in writing and signed by the parties hereto.
26. **LAW GOVERNING.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts.

[Signatures to Follow on Next Page]

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

Feoffees of the Grammar School
In the Town of Ipswich, Landlord
By:

Its: _____

Tenant(s)

Richard B. Betts

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

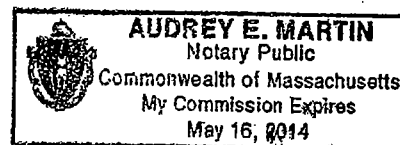
Essex, ss.

On this 12 day of APRIL, 2008, before me, the undersigned notary public, personally appeared RICHARD B. BETTS, Tenant(s), proved to me through satisfactory evidence of identification, which was a KNOWN + MASS. LICENSE, to be the person whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Audrey E. Martin

NOTARY PUBLIC

My commission expires:



COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was a _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Feoffees of the Grammar School in the Town of Ipswich.

NOTARY PUBLIC

My commission expires:

EXHIBIT A

ANNUAL RENT

1. (a) July 1, 2007 - June 30, 2008 \$9,700
- (b) In the event this Lease is executed after July 1, 2007, all rent due under the Lease for fiscal year 2008 in excess of payments received for the period beginning July 1, 2007 shall be paid within thirty (30) days of the date this Lease is executed by the Tenant.
- (c) July 1, 2008 - June 30, 2009 \$9,700
- (d) July 1, 2009 - June 30, 2010 \$9,700
- (e) July 1, 2010 - June 30, 2011 \$9,700
- (f) July 1, 2011 - June 30, 2012 \$9,700

2. For the three-year period commencing on July 1, 2012, the annual rent (that is, the rent for the period from July 1, 2012 through June 30, 2013 [Fiscal Year 2013], and for each of the two subsequent fiscal years) shall be determined as follows:

(a) The 167 improved lots offered by the Landlord for rent at Little Neck ("the 167 improved lots") shall be placed in five classes as follows:

Class I: Lots 37, 56, 91, 105, 113, 129.

Class II: Lots 38, 39, 40, 41, 41A, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 57, 70, 71, 72, 75, 76, 77, 80, 81, 82, 84, 85, 86, 87, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 101A, 102, 102A, 103, 104, 106, 112, 114, 115, 116, 116A, 117, 118, 118A, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 138, 139, 140, 141, 142, 143, 144, 145, 146, 149, 150, 151, 152, 153, 154, 161, 162.

Class III: Lots 8, 13, 24, 25, 26, 28, 29, 31, 32, 33, 34, 35, 42, 54, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 79, 83, 107, 110, 111, 131, 132, 135, 136, 137, 147, 155, 156, 160, 163.

Class IV: Lots 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 108, 109, 133, 134, 157, 158, 159, 164, 165, 166, 167, 169, 171, 172, 173.

Class V: Lots 10, 148, 168, 170.

(b) The annual rent for Lots in Class II shall equal the total assessed value as of January 1, 2012 of the 167 improved lots, multiplied by .05 and divided by 167, all so as to charge annual rent to tenants of Lots in Class II in an amount equal to five (5%) percent of the average assessed value of the 167 improved lots.

(c) The annual rent for tenants of Lots in Class I shall be ninety-eight (98%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class I shall pay rent in an amount equal to four and nine-tenths (4.9%) percent of the average assessed value of the 167 improved lots.

(d) The annual rent for tenants of Lots in Class III shall be one hundred two (102%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class III shall pay rent in an amount equal to five and one-tenth (5.1%) percent of the average assessed value of the 167 improved lots.

(e) The annual rent for tenants of Lots in Class IV shall be one hundred six (106%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class IV shall pay rent in an amount equal to five and three-tenths (5.3%) percent of the average assessed value of the 167 improved lots.

(f) The annual rent for tenants of Lots in Class V shall be one hundred eight (108%) percent of the annual rent for tenants of Lots in Class II, such that the tenants of Lots in Class V shall pay rent in an amount equal to five and four-tenths (5.4%) percent of the average assessed value of the 167 improved lots.

(g) The rent shall thereafter be recalculated every third year in the same manner based on the assessed value of the 167 improved lots as of January 1 immediately prior to the fiscal year in which the recalculation is being performed. The annual rent will be recalculated in each of fiscal years 2016, 2019, 2022, and 2025.

(h) MINIMUM ANNUAL RENT - Notwithstanding any of the above and any of the language set forth below in Paragraph 4, in no event shall the annual rent for any fiscal year for any tenant of any Lot in Classes II, III, IV or V be less than \$9,700 and for any tenant in Class I be less than \$9,506.

3. In the event that the assessed value has not been set by the Assessors before the beginning of any fiscal year in which a rent recalculation is being performed, the Tenant shall make quarterly payments based on the previous fiscal year's annual rent until that value has been set, following which quarterly payments will be adjusted as necessary to reflect the actual annual rent for the fiscal year. For example, if no assessed value for fiscal year 2013 was set by the Assessors prior to July 1, 2012, quarterly installments of rent for fiscal year 2013 will be \$2,425 based on the rent for fiscal year 2012 as set forth above until the assessed value for fiscal year 2013 is set. If, on December 15, 2012, the Assessors set the assessed value for fiscal year 2013 such that the annual rent for a tenant is \$10,000, the tenant will pay quarterly installments on January 1, 2013 and April 1, 2013, of \$2,575 each.

4. The parties hereto contemplate that the Tenant and other tenants of the Landlord may seek real estate tax abatements for the lots they are leasing from the Landlord for one or more fiscal years in which a rent recalculation is being made pursuant to Paragraph 2 (a "Rent Recalculation Fiscal Year"). The parties hereto understand that the abatement procedure may result in an increase or decrease in the total assessed value of the 167 improved lots offered for rent by the Landlord. In the event the total assessed value of the 167 improved lots for a Rent Recalculation Fiscal Year increases or decreases by an amount such that the annual rent calculation is altered by more than \$100, the difference in annual rent for the Rent Recalculation Fiscal Year and the two fiscal years following same, shall be added to or subtracted from, as the case may be, the annual rent for the next Rent Recalculation Fiscal Year and the two years following same, the increase or decrease being spread equally among the twelve payments in said three-year period.

5. The annual rent set forth herein does not include the Tenant's payments described in Paragraphs 6 and 7 of the Lease.

6. The Tenant may deduct from the first rent payment hereunder an amount equal to the amount, if any, paid by the Tenant to the Landlord prior to July 1, 2005 in response to the Landlord's request for a payment related to the waste water disposal system.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

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

DEPOSITION SUBPOENA

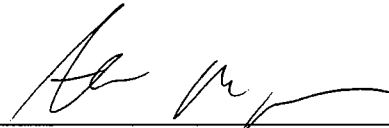
To: William Gottlieb
c/o Tyler E. Chapman, Esq.
Todd & Weld LLP
28 State Street
Boston, MA 02109

You are hereby commanded in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rules 30 and 45 of the Massachusetts Rules of Civil Procedure to appear and testify before a Notary Public of the Commonwealth, at the offices of Casner & Edwards, LLP, 303 Congress Street, Boston, Massachusetts, at **10:00 a.m. on September 26, 2011** as to your knowledge, at the taking of the deposition in the above-entitled action.

HEREOF FAIL NOT, as failure by any person without adequate cause to obey a subpoena served upon him may be deemed to be in contempt of the court in which the action is pending.

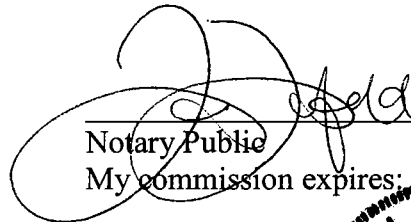
Respectfully submitted,

Ipswich School Committee
By its attorneys,



Richard C. Allen, BBO # 015720
Stephen M. Perry, BBO # 395955
Donna M. Brewer, BBO #545254
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
Phone: 617-426-5900
allen@casneredwards.com
perry@casneredwards.com
brewer@casneredwards.com

Dated: September 15, 2011



Notary Public
My commission expires:



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et als., as they are THE FEOFFFEES
OF THE GRAMMAR SCHOOL IN THE
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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

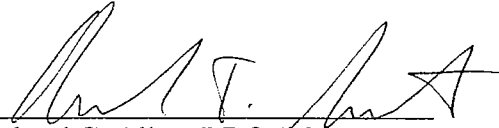
Johanna Soris, Esq.
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108

PLEASE TAKE NOTICE that on September 26, 2011 at 10:00 a.m., Counsel for Defendant, Ipswich School Committee will take the deposition of **William Gottlieb**, 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,

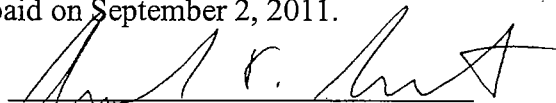


Richard C. Allen, BBO # 015720
Stephen M. Perry, BBO # 395955
Donna M. Brewer, BBO #545254
Andrew T. Imbriglio, BBO #676049
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
Phone: 617-426-5900
allen@casneredwards.com
perry@casneredwards.com
brewer@casneredwards.com
imbriglio@casneredwards.com

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