

IPSWICH

- Depo - Alexander Mulholland

7428.0

# Reporting

October 18, 2011

William H. Sheehan, III, Esq.  
MacLean Holloway Doherty Ardoff & Morse  
8 Essex Center Drive  
Peabody, MA 01960

Re: Mulholland vs. Attorney General of Massachusetts  
Deposition of Alexander Mulholland, Jr.

Dear Attorney Sheehan,

Enclosed please find your copy of the deposition of Alexander Mulholland, Jr. taken October 11, 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.

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

Sincerely,

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cc: Stephen M. Perry, Esq.

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32488FR

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Casner & Edwards  
303 Congress Street  
Boston, MA 02210

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**Witness:** Alexander Mulholland, pp 1-202**Case:** Mulholland vs. Attorney General of MA**Venue:****Case #:****Date:** 10/11/2011**Start Time:** 10:00 AM**End Time:** 3:52 PM**Reporter:** \*Cynthia Craig**Claim #:****File #:**

28881FR

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT  
NO. ES09E0094QC

\_\_\_\_\_  
ALEXANDER B.C. MULHOLLAND, JR,  
et als., as they are THE FEOFFEES  
OF THE GRAMMAR SCHOOL IN THE  
TOWN OF IPSWICH

Plaintiffs,

v.

ATTORNEY GENERAL of the  
Commonwealth of Massachusetts;  
IPSWICH SCHOOL COMMITTEE;  
and RICHARD KORB, as he is  
Superintendent of Schools in the  
Town of Ipswich

Defendants  
\_\_\_\_\_

**NOTICE OF TAKING DEPOSITION**

TO: William H. Sheehan, Esq.  
MacLean, Holloway, Doherty, Ardiffe & Morse, P.C.  
8 Essex Center Drive  
Peabody, MA 01960

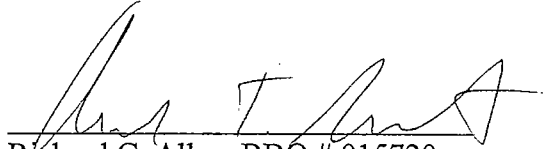
Johanna Soris, Esq.  
Commonwealth of Massachusetts  
Office of the Attorney General  
Public Charities Division  
One Ashburton Place  
Boston, MA 02108

PLEASE TAKE NOTICE that on October 5, 2011 at 10:00 a.m., Counsel for Defendant, Ipswich School Committee will take the deposition of **Alexander Mulholland**, 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

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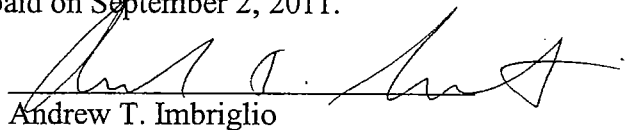
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[imbriglio@casneredwards.com](mailto:imbriglio@casneredwards.com)

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

VOLUME: I

PAGES: 1-202

EXHIBITS: 0

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT

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ALEXANDER B.C. MULHOLLAND,

JR., et al

Plaintiffs,

Docket No.

vs.

ATTORNEY GENERAL of the

ES09E0094QC

Commonwealth of Massachusetts,

et al,

Defendants.

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DEPOSITION OF

ALEXANDER BRIMNER CLARK MULHOLLAND, JR.

October 11, 2011

10:07 a.m. - 3:52 p.m.

Casner & Edwards, LLP

303 Congress Street

Boston, Massachusetts

Court Reporter: Cynthia F. Stutz

1 APPEARANCES:

2  
3 WILLIAM H. SHEEHAN, III, ESQ.

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

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7 978-774-7123

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9 on behalf of the Plaintiffs, Feoffees of

10 the Grammar School of Ipswich and the

11 Town of Ipswich

12  
13 STEPHEN M. PERRY, ESQ.

14 Casner & Edwards, LLP

15 303 Congress Street

16 Boston, Massachusetts 02210

17 617-426-5900

18 perry@casneredwards.com

19 on behalf of the Defendants, School

20 Committee of the Town of Ipswich and

21 Richard Korb, Superintendant

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I N D E X

EXAMINATION OF:	PAGE
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Alexander Mulholland	
(By Mr. Perry)	4

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P R O C E E D I N G S

IT IS HEREBY STIPULATED AND AGREED  
BY AND BETWEEN COUNSEL that the reading and signing  
of the deposition by the deponent shall be done  
within thirty days the filing of the deposition be  
waived; and that all objections, except as to form,  
and motions to strike be reserved for the time of  
trial.

\* \* \* \*

Whereupon:

ALEXANDER BRIMNER CLARK MULHOLLAND, JR.,  
having been satisfactorily identified and duly sworn  
by the Notary Public, was examined and testified as  
follows:

DIRECT EXAMINATION

BY MR. PERRY:

Q. Could you state your name, please?

A. Alexander Brimner Clark Mulholland, Jr.

Q. What was --

A. B-r-i-m-n-e-r.

Q. Jr.?

A. Right.

Q. Is your father living?

A. No, no.

1 Q. What is your residential address?

2 A. It is 4762 Darling Hill Road, East Burke.

3 Q. East?

4 A. E-a-s-t Burke, B-u-r-k-e, Vermont 05832.

5 Q. Do you also own any residences in  
6 Massachusetts?

7 A. Yes.

8 Q. Where, please?

9 A. 44 Plover, P-l-o-v-e-r Hill Road, Ipswich,  
10 I'm sorry.

11 Q. And that's?

12 A. In Massachusetts.

13 Q. That's in Great Neck?

14 A. Great Neck, yes.

15 Q. And do you own any other residences?

16 A. No.

17 Q. Are you currently living full time in  
18 Vermont?

19 A. No.

20 Q. Do you divide your time between Vermont  
21 and Ipswich?

22 A. Yes.

23 Q. And how do you divide your time?

24 A. Probably 80% of the time is in Ipswich,

1 20% of the time is in Vermont. Ski season.

2 Q. Who do you reside at those places with?

3 A. My wife, Judith.

4 Q. Okay. Your children, do you have  
5 children?

6 A. Yes, I do. I have two children.

7 Q. They're grown?

8 A. They're grown. They're in their forties.

9 Q. Which leads me to ask you, what is your  
10 date of birth?

11 A. 11/10/1942.

12 Q. Big one. Have you ever owned a residence  
13 on Little Neck?

14 A. No.

15 Q. Have you ever stayed there?

16 A. Yes.

17 Q. Under what circumstances did you stay on  
18 Little Neck?

19 A. I was loaned a cottage by my uncle.

20 Q. Who is your uncle?

21 A. Harry E. Munro.

22 Q. How do you spell Munro?

23 A. M-u-n-r-o.

24 Q. And is he living?



1           A.    No, deceased.

2           Q.    What was the address of the cottage that  
3 he owned?

4           A.    I don't know.

5           Q.    Which road was it on?

6           A.    It was on River Road.

7           Q.    River Road?

8           A.    River Road up near the pier.

9           Q.    During the time you have been a Feoffee  
10 have any members of your family, any relatives other  
11 than Harry Munro owned any of the cottages?

12          A.    No.

13          Q.    During what period of time did Harry Munro  
14 own a cottage at Little Neck?

15          A.    I don't know when it began. It was, it  
16 started out belonging to his wife's aunt and she  
17 passed away. I guess she inherited it. All I know  
18 is I was a little boy then, probably six. So you  
19 can guess when they were down there. I'm going to  
20 be 69, so probably 63 years would be a rough guess.

21          Q.    So your uncle and aunt inherited this  
22 cottage in around the late forties?

23          A.    Yeah, yes.

24          Q.    And continued to own it until when?

Alexander B. C. Mulholland, Jr.

8

1 A. Until his wife was deceased, who passed  
2 away after him.

3 Q. And then what happened to the cottage?

4 A. It was sold to, to an individual party.  
5 Nobody in Ipswich.

6 Q. Sold to a third party?

7 A. Yeah.

8 Q. When did the, when did the cottage get  
9 sold, approximately?

10 A. I don't remember exactly when my aunt  
11 passed away. Actually, it was sold before she  
12 passed away because she went into assisted living.  
13 It, it was probably around 1985.

14 Q. Quite a long time ago?

15 A. Quite a long time ago, yes.

16 Q. What's your educational background?

17 A. B.A. in physics and mathematics from  
18 Northeastern University.

19 Q. When did you obtain that?

20 A. 1965. Some study towards a Master's  
21 degree, which I stopped.

22 Q. Where did you do that?

23 A. Northeastern, as well.

24 Q. Have you ever served in the armed

1 services?

2 A. No, I haven't.

3 Q. Could you describe for me what your  
4 occupational history has been after graduating from  
5 Northeastern?

6 A. Sure. In 1966 my father passed away  
7 suddenly and I took over a business that he had  
8 started in the forties, which was basically what you  
9 call an excavating business, excavation for homes or  
10 industrial buildings, water lines, sewer lines,  
11 things like that, which I worked at while I was in  
12 high school and a little in college and so I didn't  
13 feel uncomfortable taking it over. My intent was to  
14 help my mother dispose of the business. I wound up  
15 staying there ten years.

16 Q. You stayed there ten years?

17 A. Yeah, before I disposed of the business.

18 Q. So the first ten years after --

19 A. Yeah.

20 Q. College from roughly '65 to --

21 A. Yeah, '66 to probably '76.

22 MR. SHEEHAN: Off the record for a  
23 minute.

24 (Discussion off the record.)

Alexander B. C. Mulholland, Jr.

10

1 Q. From roughly 1966 to 1976 you were working  
2 in what had been your father's excavation business,  
3 right?

4 A. Uh-hum, yes.

5 Q. And then it was sold?

6 A. Yes.

7 Q. Okay. What did you do after that?

8 A. I went to work for Sanders Associates in  
9 Nashua, New Hampshire for two years.

10 Q. What is that?

11 A. Sanders Associates built electronic  
12 warfare systems for the government.

13 Q. What did you do after Sanders Associates?

14 A. After Sanders Associates I worked one year  
15 for Raytheon Semiconductor in Boston. They were  
16 located in California, the main plant.

17 Q. What did you do next?

18 A. I went to work for Advanced Micro Devices.

19 Q. The chip company?

20 A. Yeah.

21 Q. That's the major competitor to Intel?

22 A. Absolutely.

23 Q. How long were you at Advanced Micro  
24 Devices?

1           A.     Twenty years.

2           Q.     From?

3           A.     Let's see, I believe it was late '79 for  
4 about twenty years.

5           Q.     Could you very briefly sketch your history  
6 there as far as what your position was when you  
7 began and what it ended up being when you left?

8           A.     Sure, sure. I went to work, position was  
9 a district sales manager, which was really more  
10 salesman than anything else. I became regional  
11 sales manager in charge of some of the people in the  
12 office and then I became director of sales for  
13 digital equipment worldwide. And my last position  
14 was senior regional sales manager in the Boston  
15 office.

16          Q.     What were the circumstances of your  
17 leaving Advanced Micro Devices?

18          A.     The largest piece of business that I had,  
19 they decided not to represent themselves directly  
20 with a direct sales force and gave it to a rep is  
21 what they did. So that took a \$30 million chunk out  
22 of probably \$40 million of my business and they kind  
23 of left me with -- I didn't know where I'm going to  
24 go and what I'm going to do and I wound up

12

1 resigning.

2 Q. What did you do next?

3 A. I, I didn't do anything for a little  
4 while, a year. Well, during the period after  
5 Advanced Micro Devices I looked into real estate. I  
6 got licensed in Massachusetts. I worked for a local  
7 realtor. That was about a period of two years  
8 total, after which I decided I didn't like real  
9 estate. It seemed natural living in the town all  
10 your life. So I went looking to see what was  
11 available in semiconductor business. Spoke to a  
12 couple of friends and they told me about an  
13 opportunity with Taiwan Semi Conductor and a brand  
14 new business is what it was and they wound up hiring  
15 me.

16 Q. How long did you work for Taiwan Semi  
17 Conductors?

18 A. Four years.

19 Q. What was your position when you left?

20 A. Account manager.

21 Q. Have you been employed since then?

22 A. I worked part time for Ipswich Outboard.

23 Q. Ipswich?

24 A. Ipswich Outboard was the name of the

1 company.

2 Q. And what did you do there?

3 A. I was really I'd call it a technician,  
4 partly a mechanic. Partly I installed marine  
5 electronics or repaired things like that that were  
6 simple.

7 Q. Anything after that?

8 A. No. You're getting up to current time.  
9 That was probably two years ago I stopped doing  
10 that. And since then I've been trying to figure out  
11 how to reinvent myself again. I actually, actually,  
12 I invested some money in a little company, really,  
13 an individual to start a competitive business to  
14 this and I'll probably wind up -- The only reason  
15 why I really invested a small amount of money is  
16 that I'd like some work, you know, and he said,  
17 Sure. I said, I just want to get you started.

18 Q. What real estate company or individual  
19 were you affiliated with when you got your license?

20 A. Century 21 Ipswich Bay Associates.

21 Q. Who's the principal of that office?

22 A. Dorothy Levesque.

23 Q. How do you spell Levesque?

24 A. I think it's L-e-v-e-s-q-u-e.

1 Q. How many people worked in that office as  
2 sales people or brokers at the time you were  
3 affiliated with Century 21 Ipswich?

4 A. Six.

5 Q. Including yourself?

6 A. Yes.

7 Q. And what years were you with that real  
8 estate agency?

9 A. I can't remember what the years were, to  
10 be honest with you. I'd have to sit down and figure  
11 it out.

12 Q. Sometime in the early 2000's? I think you  
13 said you left -- Let's see. You said you left  
14 Advanced Micro Devices after two years in the late  
15 nineties?

16 A. Yeah, yeah, early 2000.

17 Q. Early 2000's?

18 A. Yeah.

19 Q. Dorothy Levesque, is she somebody who's  
20 had a lot of involvement with sales of Little Neck  
21 cottages?

22 A. I would say yes.

23 Q. Who were the leading real estate brokers  
24 for purchases and sales of the Little Neck cottages?



1           A.     She was.

2           Q.     When you were working at that office did  
3 you get involved in the purchases or sales of any of  
4 the cottages?

5           A.     I remember showing one. I don't remember  
6 whether or not the sale went through through me or  
7 not. The person did buy it. I don't remember going  
8 to the closing.

9           Q.     Which cottage was that?

10          A.     It probably was -- Well, if you go up the  
11 hill from the ball field, it would be the first  
12 street on your left, house right in front of you  
13 that was on the corner of that road and Hilltop  
14 Road.

15          Q.     Is that Middle Street?

16          A.     No, no. Hilltop goes up over the top of  
17 the road. I guess it's Hilltop, Hilltop.

18          Q.     Hilltop goes up past the ball field?

19          A.     Yeah. And roads go down over to the left,  
20 typically, and I don't know what the name of that  
21 road was. They used to be numbered 1, 2, 3, 4, 5.

22          Q.     Did you get a commission for that sale?

23          A.     No.

24          Q.     Did you ever have a discussion with Ms.

1 Levesque about rentals at Little Neck?

2 A. No.

3 Q. Is it fair to say that you were at least  
4 generally familiar when you were a real estate  
5 broker with the prices at which cottages were being  
6 sold at Little Neck?

7 A. Some awareness, yeah.

8 Q. But you had an awareness about the sale  
9 prices of cottages at Little Neck both before and  
10 after you were a real estate broker?

11 A. Some after. I didn't tend to track it.

12 Q. When did you become a Feoffee, somewhere  
13 around 1978?

14 A. It's when I went to work for Raytheon. If  
15 you dated that time, that's when it was.

16 Q. Sometime before 1979?

17 A. Yes, so, yeah, '78 was a reasonable date.

18 Q. When you were appointed as a Feoffee who  
19 were the other life Feoffees?

20 A. Jerome Richardson, Donald Whiston. I  
21 think it was George Hayes.

22 Q. What is Mr. Whiston's background  
23 professionally?

24 A. In his earliest years he was a stockbroker

1 or partner in Burgess and Leith in Boston. While he  
2 lived across the street I didn't pay a lot of  
3 attention. I know at some time he went to work for  
4 State Street Bank running an organization there and  
5 then I believe he came from there to the First  
6 National Bank of Ipswich as president.

7 Q. When did Mr. Whiston become president of  
8 the First National Bank of Ipswich, to the best of  
9 your recollection? Just give me an estimation, and  
10 understanding you may be wrong.

11 MR. SHEEHAN: But don't guess. If  
12 you don't know, you don't know. If you can give him  
13 an estimate, please do so.

14 A. Well, my estimate, okay, would be around  
15 1985.

16 Q. We won't hold you to it, okay?

17 A. I borrowed money from him in 1988, so I  
18 know he was there then. And he was there a little  
19 bit before that, so that's the reason.

20 Q. Okay. You said Jerome Richardson was one  
21 of the life Feoffees. What was Mr. Richardson's  
22 background?

23 A. All that I know is he was a wool broker,  
24 wool as in lamb wool broker.

1 Q. And you said the other one was Mr. George  
2 Hayes?

3 A. Yes.

4 Q. What was his professional background?

5 A. A lawyer.

6 Q. Where did he practice law?

7 A. He took over his father's law firm and it  
8 was in Ipswich, Mass.

9 Q. What discussions did you have with any of  
10 the other life Feoffees before they appointed you  
11 and you agreed to an appointment as a Feoffee?

12 A. Very little, other than casual  
13 conversation with my uncle because he was a Feoffee.

14 Q. So your uncle had been a Feoffee?

15 A. Yes.

16 Q. Which uncle was that?

17 A. Harry E. Munro.

18 Q. The uncle that had owned a cottage had  
19 been a Feoffee?

20 A. Uh-hum, yes.

21 Q. And what period of time was your uncle a  
22 Feoffee?

23 A. I don't know. I couldn't guess.

24 Q. And what conversations did you have with

1 your uncle about becoming a Feoffee, about your  
2 becoming a Feoffee?

3 A. Just, he thought my background was, you  
4 know, could contribute something to it in terms of,  
5 you know, what I knew about the land and my family  
6 had leased land close to Little Neck. If there were  
7 any difficulties, you know, mechanical difficulties  
8 in water, sewer, things like that, I have  
9 familiarity with it. They also -- He also thought  
10 that I would be a good person to take care of a lot  
11 of the issues around the pier with regard to kids  
12 and things like that.

13 Q. Who were you replacing as a Feoffee?

14 A. Him.

15 Q. So --

16 A. He resigned.

17 Q. So what happened was the Feoffees had been  
18 Mr. Richardson, Mr. Hayes, Mr. Whiston and your  
19 uncle, Mr. Munro?

20 A. Yes.

21 Q. Who was also a cottage owner?

22 A. Yes.

23 Q. And then he resigned and the other three  
24 appointed you?

1           A.     Yes.

2           Q.     You mentioned that part of the background  
3 that would allow you to contribute was that your  
4 family had leased land. Was that land in Great Neck  
5 or elsewhere?

6           A.     Great Neck, just Great Neck.

7           Q.     Was there a period that Great Neck was  
8 land lease before it became fee ownership?

9           A.     Yes, it was, until, I think, the mid-  
10 fifties.

11          Q.     Who had owned -- Was it the Proprietors of  
12 Great Neck had owned it?

13          A.     Yes.

14          Q.     And how did that get converted from leased  
15 land to fee ownership?

16          A.     Sale of the lots. I guess the directors  
17 decided they could make more money if they sold the  
18 land rather than lease the land. I think it's as  
19 simple as that.

20          Q.     Do the directors still exist at this time  
21 or is it, it's all owned in fee simple?

22          A.     What's left is owned as fee simple. The,  
23 all those directors deceased. That would have been  
24 my father and his four sisters. And since, it's

1    been taken over by myself and my cousins, just moved  
2    down a generation in the family. And we've been  
3    trying to, basically, dispose of it. We sold a  
4    significant piece to the Town of Ipswich for open  
5    space.

6           Q.    Okay. So when Great Neck was owned in  
7    corporate form that was owned within a corporation  
8    controlled by your family, right?

9           A.    Yes.

10          Q.    Okay. And so they then just sold it off  
11   for profit?

12          A.    Yeah, yes.

13          Q.    Some of the land wasn't sold at that time  
14   and stayed in the corporation?

15          A.    Yes.

16          Q.    Still in your family's control, but the  
17   next generation?

18          A.    Yes.

19          Q.    When those lots at Great Neck were sold  
20   was each lot individually sold to a purchaser?

21          A.    Yes.

22          Q.    And was each lot sold at what was  
23   considered to be a fair market value?

24          A.    Yes.

1 Q. For that lot?

2 A. Yes.

3 Q. Were there cottages or houses on the lots?

4 A. Yes.

5 Q. And so the individuals -- Were the sales  
6 made mostly to those who had owned those cottages?

7 A. I believe, yes.

8 Q. Were there situations where the sales were  
9 made to parties other than those who owned the  
10 cottages?

11 A. It could have been, but I'm not aware of  
12 any of those details.

13 Q. Do you know what kind of rents were being  
14 paid at Great Neck?

15 A. Pardon?

16 Q. What kind of rents were being assessed  
17 there or was this too long ago?

18 A. I don't ever remember hearing the number.

19 Q. Okay.

20 A. Or a number.

21 Q. How would you compare Great Neck to Little  
22 Neck in terms of desirability of the location?

23 A. I would say Great Neck was considerably  
24 more desirable because of the space around cottages.



1 Even the oldest lots, which were the smallest, they  
2 were 80 by 80. They probably meant to look  
3 something like Little Neck. And then the town, as  
4 they passed zoning, they kept increasing the sizes  
5 until now it's three acres. And having, just having  
6 more space around your property, from my point of  
7 view, is good. The time that I spent at Little Neck  
8 I did not like because everybody was on top of  
9 everybody.

10 Q. Is there more of a community feel at  
11 Little Neck than Great Neck?

12 A. Yes.

13 Q. So it's a different experience?

14 A. Yes.

15 Q. When did the utilities at Little Neck get  
16 placed underground?

17 A. I believe it was the 1930's, WPA days that  
18 there was WPA personnel that dug the trenches that  
19 buried the electric cables and so on. Somebody  
20 found a document that showed the agreement that they  
21 got labor to do that.

22 Q. So that's one kind of thing that's kind of  
23 notable about Little Neck, that there's no wires  
24 leading into any of the cottages and that really

1 compared to Great Neck, it's a nice amenity,  
2 wouldn't you agree?

3 A. It is a nice amenity.

4 Q. And that's existed really the whole time?

5 A. Basically, yes.

6 Q. Was was the name -- You said George Hayes  
7 was in a law firm in Ipswich?

8 A. Uh-hum. (Witness nodding head up and  
9 down.)

10 Q. What was the name of his firm? Just law  
11 office?

12 A. I think he just went under his own name.

13 Q. What was your understanding before you  
14 became a Feoffee of what your obligations and role  
15 would be as you became one?

16 A. My understanding, the duties and  
17 obligations would probably be pretty minimal, was to  
18 attend an annual meeting of --

19 Q. Of the Feoffees?

20 A. Of the Feoffees. Occasionally a  
21 discussion may come up about somebody doing work on  
22 their home. It was a time when there really weren't  
23 any problems down there.

24 Q. What was your understanding when you

1 became a Feoffee about what the purpose of the trust  
2 was? Did you understand that a Feoffee was a term  
3 for trustee?

4 A. Yeah, yes, oh, yeah.

5 Q. And did you understand who the beneficiary  
6 of the trust was?

7 A. Yes.

8 Q. What was your understanding?

9 A. That it was the schools of Ipswich.

10 Q. And did you have discussions with any of  
11 the other Feoffees on becoming a Feoffee concerning  
12 what the goal was in terms of providing money to the  
13 Town of Ipswich for the schools?

14 A. No.

15 Q. Was there any effort made in at the time  
16 you were joining as a Feoffee to maximize the amount  
17 for the schools?

18 A. Not that I'm aware of.

19 Q. What kind of rent was being charged when  
20 you became a Feoffee?

21 A. I can't remember that, to be honest.

22 Q. But it was low?

23 A. It was low, it was very low.

24 Q. Did you have any discussions with any of

1 the other Feoffees about why the rent was kept low?

2 A. No.

3 Q. Did you have an understanding as to why  
4 the rent was so low?

5 A. Without discussion, my personal  
6 understanding was it was probably similar to other  
7 rents of summer cottages in other similar areas,  
8 like a rental on Great Neck or Conomo Point in Essex  
9 or something like that.

10 Q. Did Jerome Richardson have a cottage at  
11 Little Neck?

12 A. No.

13 Q. Did anybody in his family?

14 A. No, not that I know of.

15 Q. What about Don Whiston?

16 A. His father did.

17 Q. What happened, how long was his father a  
18 tenant at Little Neck?

19 A. A long time. He was one of those that  
20 went way back, I believe.

21 Q. But he must have died quite a while ago?

22 A. He did. My understanding was he left it  
23 to his son, Don, and his sister. I don't believe  
24 they really wanted it. They gave it back to the

1 father is what my understanding is, and the father  
2 sold it.

3 Q. So your understanding is that that cottage  
4 was sold during the lifetime of Don Whiston's  
5 father?

6 A. Yes, that's what I, that's what I  
7 understand.

8 Q. Has anybody else in Don Whiston's family  
9 been a cottage owner?

10 A. Yes, he has, yes.

11 Q. Who else?

12 A. Daughter.

13 Q. What's his daughter's name?

14 A. Kim.

15 Q. What's her last name?

16 A. I don't know. Her husband's name is  
17 David. I don't know their last name.

18 Q. Kim and David?

19 A. Yes.

20 Q. Do they still own a cottage?

21 A. Yes, they do.

22 Q. Do you know which one?

23 A. Yes, I do. It's on Cliff Road.

24 Q. Anybody else in Mr. Whiston's family who,

1 to your knowledge, owned a cottage?

2 A. No.

3 Q. Did George Hayes own a cottage?

4 A. No.

5 Q. Did anybody in his family?

6 A. No.

7 Q. I understand that at one point you were  
8 chairman of the Feoffees?

9 A. Yes.

10 Q. And I think you testified previously that  
11 you were paid something like \$5,000 for that role a  
12 year?

13 A. Not the correct amount.

14 Q. What's the correct amount?

15 A. Correct amount was \$1,000 a month.

16 Q. Okay. I apologize.

17 A. No.

18 Q. I may have gotten it wrong. I was going  
19 from memory. So you were paid \$1,000 a month while  
20 you were the chair?

21 A. Yes.

22 Q. How long were you the chair?

23 A. I'm still the chair. I don't know when  
24 it's -- It started at the beginning of the sewer

1 project.

2 Q. You have been the chair from the beginning  
3 of the sewer project?

4 A. Yes.

5 Q. Sometime in the mid 2000's?

6 A. Yes.

7 Q. Through the present?

8 A. Yes.

9 Q. So during that time you have received  
10 \$1,000 a month?

11 A. Not all the time.

12 Q. Apart from receiving up to \$1,000 per  
13 month, have you received any other compensation?

14 A. No.

15 Q. From being a Feoffee?

16 MR. SHEEHAN: Alex. You have to  
17 wait until he's through with the question.

18 THE WITNESS: I'm sorry.

19 MR. PERRY: Off the record.

20 (Discussion off the record.)

21 Q. So there were some changes in the  
22 composition of the Feoffees after you joined in 1978  
23 between then and the present, correct?

24 A. Yes.

1 Q. And currently the Feoffees are you and Mr.  
2 Whiston and Peter Foote and Jim Foley?

3 A. That's correct.

4 Q. Have there been any other changes of  
5 Feoffees other than replacing Mr. Richardson and Mr.  
6 Hayes and having Mr. Foley and Mr. Foote come on  
7 board?

8 A. No.

9 Q. So one of those two, Foote or Foley  
10 replaced Richardson and the other replaced Hayes?

11 A. Yes.

12 Q. Which of the Feoffees resigned or ceased  
13 to be a Feoffee first as between Mr. Richardson and  
14 Mr. Hayes or did it happen close in time?

15 A. I just don't remember. It would only be a  
16 guess. I don't remember.

17 Q. Sometime after you joined, Mr. Richardson  
18 ceased to be a Feoffee at some point?

19 A. Yes.

20 Q. Did he resign or did something else  
21 happen?

22 A. I believe he resigned.

23 Q. At some point after you joined Mr. Hayes  
24 ceased to be a Feoffee. Do you recall --



1 A. Yes.

2 Q. What led to that event?

3 A. He moved permanently out of state.

4 Q. Okay. And you have no memory of whether  
5 Mr. Hayes moved before Mr. Richardson resigned or  
6 Mr. Richardson resigned before Mr. Hayes moved,  
7 right?

8 A. No, I don't recall.

9 Q. When did the two of them cease to be  
10 Feoffees, roughly?

11 A. Richardson and Hayes?

12 Q. Yes.

13 A. Richardson, I don't know. I really don't  
14 know. Mr. Hayes was, I'm thinking about how old he  
15 was when he moved and how old he was when he died.  
16 That's 22 years ago, so what's that, 2001? No.

17 Q. What's the year he died, 22 years ago?

18 A. No, let me think. No. It will be  
19 24 years ago. He's been dead two years.

20 Q. Okay.

21 A. He's been dead two years.

22 Q. He's been dead two years and based on your  
23 estimate of his age, there was 22 years before that  
24 that he ceased to be a Feoffee?

Alexander B. C. Mulholland, Jr.

32

1 A. He turned 50 years old and that's when he  
2 left was when he turned 50.

3 Q. So he ceased to be a Feoffee by your  
4 calculation somewhere around 1987?

5 A. '9, I think, closer. 24 from 2003.

6 Q. Well, he died two years ago?

7 A. Yes.

8 Q. That would be 2009?

9 A. And he would have been, he would have been  
10 72.

11 Q. Right.

12 A. If he was alive now, he'd be 74.

13 Q. So take back 22 years?

14 A. So go back to 22 years. I think that must  
15 have been --

16 Q. It's '87?

17 A. '87, okay.

18 Q. Who came on first between Foote and Foley?

19 A. I believe it was Mr. Foote.

20 Q. And how much time passed between Mr. Foote  
21 becoming a Feoffee and Mr. Foley becoming a Feoffee?

22 A. I don't remember.

23 Q. So you and Mr. Whiston and one other  
24 Feoffee voted to install Mr. Foote as a Feoffee,

1 right?

2 A. Yes.

3 Q. And that was to replace either Hayes or?

4 A. I think it was Richardson.

5 Q. You think it was Richardson, okay. So  
6 your best memory is that Richardson left first  
7 before Hayes?

8 A. Yes.

9 Q. Sometime before 1987?

10 A. Yes.

11 Q. What was Mr. Foote's occupational  
12 background?

13 A. He was a police officer, sergeant.

14 Q. In what town?

15 A. Ipswich. I don't know his educational  
16 background, but he was a police officer and I  
17 believe he was a police officer in military prior.

18 Q. What was your thinking as to why Mr.  
19 Foote, who was a police sergeant in Ipswich, would  
20 be an appropriate person to serve as a Feoffee?

21 A. Well, at least one of the reasons was that  
22 regarding security, we had difficulty keeping  
23 undesirable people out of there on weekends in times  
24 when there may be a party and his nature, personal

1 nature was a strong personality.

2 Q. Was he put in charge of security when he  
3 became a Feoffee?

4 A. No.

5 Q. Did he personally go out to Little Neck to  
6 stand at the entrance and try to keep order?

7 A. Not that I know of.

8 Q. Where did Mr. Foote reside?

9 A. Ipswich.

10 Q. Did he ever have an interest in any of the  
11 cottages?

12 A. No.

13 Q. Did any of his family members?

14 A. No.

15 Q. Did Mr. Foote's background as a police  
16 officer in fact -- Strike that.

17 In what way did Mr. Foote carry out  
18 this function of improving security, if at all?

19 MR. SHEEHAN: Objection. You may  
20 answer.

21 THE WITNESS: Hum?

22 MR. SHEEHAN: You may answer.

23 Q. Let me rephrase the question, okay?

24 A. Okay.

1           Q.    Did Mr. Foote do anything after becoming a  
2   Feoffee to improve the security of Little Neck with  
3   respect to the parties you have described?

4           A.    I would say it was minimal.

5           Q.    During the time you have been a Feoffee  
6   has Little Neck always been officially closed to the  
7   public?

8           A.    Yes.

9           Q.    And what is the rule as to the public,  
10   members of the public going up to Little Neck and  
11   being on its roads?

12          A.    They're not supposed to be.

13          Q.    There's no, the property's not marked with  
14   a No Trespassing sign, correct?

15          A.    I don't believe so.

16          Q.    It's got Private Property signs?

17          A.    Yes, yeah.

18          Q.    If you were a resident of Little Neck are  
19   you allowed to traipse around on other people's lots  
20   or is each person, is that part of what they lease  
21   is the right to the exclusive use of the lot, if you  
22   know?

23          A.    They're allowed to go outside what they  
24   might perceive as their lot.

1           Q.    Can they, can somebody -- Would it be  
2   considered a violation of the rights of one of your  
3   neighbors if you just simply walked across their,  
4   quote, "front lawn"?

5           A.    No.

6           Q.    Have the Feoffees ever enforced the  
7   private nature of the property to prevent visitors  
8   from going up to Little Neck?

9           A.    Yes.

10          Q.    How have the Feoffees enforced that?

11          A.    Police detail at the gate.

12          Q.    During the peak seasons?

13          A.    Yes.

14          Q.    And what would the police at the gate do?

15          A.    Originally they had a clip board of all  
16   the residents and telephone numbers. And if  
17   somebody came along and said, I'm going to Mr.  
18   Sheehan's house tonight to visit, he would call and  
19   say, Are you expecting Mr. Sheehan? Say yes, go  
20   ahead in. I don't know who Mr. Sheehan is, out.

21          Q.    I think you have indicated that to the  
22   best of your recollection Mr. Richardson left before  
23   Mr. Hayes and was replaced by Mr. Foote.

24          A.    Yes.

1           Q.    And not too long after that, Mr. Hayes  
2 left and was replaced by Mr. Foley?

3           A.    Yes.

4           Q.    So if that is correct, the vote to appoint  
5 Mr. Foley as a Feoffee was made by you and Don  
6 Whiston and Peter Foote?

7           A.    Yes.

8           Q.    Do you recall whose idea it was to make  
9 Mr. Foley a Feoffee?

10          A.    Mr. Whiston.

11          Q.    And what was his reasoning?

12          A.    A lengthy experience of knowing the people  
13 down there, with his parents having owned a place  
14 down there. He grew up as a little boy down there.

15          Q.    What you're saying is Jim Foley's parents  
16 had owned a cottage?

17          A.    Yes.

18          Q.    Jim had grown up there as a little boy?

19          A.    Yes.

20          Q.    Summers or year round?

21          A.    Just summers.

22          Q.    And the cottage that you're talking about  
23 continued to be in Jim Foley's family while he was a  
24 Feoffee up until around 2001, correct?

1           A.    I don't know the date. But it continued,  
2 continued to be in his family until his father died  
3 and I don't know, I believe they kept it for a year  
4 or two and then he sold it.

5           Q.    And when Mr. Foote was made a Feoffee,  
6 whose idea was that?

7           A.    It was proposed by Mr. Whiston.

8           Q.    Mr. Whiston really took a leadership role  
9 with the Feoffees?

10          A.    Yes, he did.

11          Q.    Was he chair throughout the period?

12          A.    Yes, yes, he was chair.

13          Q.    Until you became chair?

14          A.    Until I became chair.

15          Q.    In mid 2000's?

16          A.    Yes.

17          Q.    Mr. Foley at some point was a selectman in  
18 the Town of Ipswich?

19          A.    Yes.

20          Q.    Was he, was that a position he was elected  
21 to before or after he became a Feoffee?

22          A.    I believe after.

23          Q.    What was Mr. Foley's occupational  
24 background?



1           A.     The only detail that I know is that he was  
2 a police officer.

3           Q.     In what town?

4           A.     Wenham, Mass.

5           Q.     Wenham and not Hamilton, Wenham?

6           A.     Wenham. Thought of, it's almost one and  
7 the same and I'm just trying to think of the  
8 building. No, it's Wenham.

9           Q.     All right. What was the reasoning for  
10 making Mr. Foley, as a police officer in the Town of  
11 Wenham -- Maybe you already told me this -- Strike  
12 that.

13                     You already told me the reason for  
14 Mr. Foley becoming a Feoffee was because he was a  
15 known person who had grown up in Little Neck and his  
16 family owned a cottage there, right?

17          A.     Yes.

18          Q.     So at the time he became a Feoffee two of  
19 the life Feoffees had family members owning  
20 cottages, right?

21          A.     No. When he owned the cottage Mr. Whiston  
22 did not own the cottage.

23          Q.     Did his daughter?

24          A.     His daughter, I'm sorry, yes, his daughter

40

1 did.

2 Q. So at the time Mr. Foley became a Feoffee  
3 there was a cottage in Mr. Foley's family and there  
4 was a cottage in Mr. Whiston's family, to your  
5 knowledge?

6 A. I need to correct that. I don't believe  
7 his daughter owned it then. His daughter hasn't  
8 owned it that long.

9 Q. Okay.

10 A. And I can't tell you when she bought it.

11 Q. All right, fair enough.

12 A. But I'm positive they weren't concurrent.

13 Q. Okay. You have lived in Ipswich all your  
14 life?

15 A. Yes.

16 Q. The other three Feoffees, are they all  
17 life-long residents of Ipswich?

18 A. No, not Mr. Foley.

19 Q. Where --

20 A. Peter Foote is. Don Whiston, no. He grew  
21 up in Stoneham.

22 Q. Okay. At the time that you were, at the  
23 time that Mr. Foley became -- Strike that.

24 Was Mr. Whiston a long-time resident

1 of Ipswich during the time he was serving as a  
2 Feoffee?

3 A. Yes, yes.

4 Q. Were you a life-long resident of Ipswich?

5 A. Yes.

6 Q. Foote was?

7 A. A life-long resident.

8 Q. A life-long resident. And during what  
9 period of time did Mr. Foley reside in Ipswich, if  
10 at all?

11 A. He does reside in Ipswich and I don't know  
12 when he bought his home in Ipswich.

13 Q. But it was before he became a selectman?

14 A. Yes, you had to be.

15 Q. Yes. And he also grew up there in  
16 summers?

17 A. Yes.

18 Q. What percentage of the cottage owners  
19 would you say are from Ipswich?

20 A. I'd hate to even guess at a number. I  
21 only know that it's very small.

22 Q. It's a percentage that's been declining  
23 over the years as cottages have been sold?

24 A. No. I think it's always been small.

1 Q. Okay. And you say it's a very small  
2 percentage, but you can't hazard a guess as to what  
3 that percentage is?

4 A. I'm just thinking of people that I know  
5 and the percentage would be, could be as low as 2%,  
6 3%. Very low.

7 Q. Have you, during the time you have been a  
8 Feoffee, have you had any close personal friends who  
9 own cottages?

10 A. No.

11 Q. And you have a personal acquaintance with,  
12 do you have a personal acquaintance with any of the  
13 cottage owners?

14 A. No.

15 Q. How about the other Feoffees, to your  
16 knowledge, do any of the other life Feoffees have  
17 personal, close personal friendships with any  
18 cottage owners?

19 A. I would say no, but the qualification  
20 there, Mr. Whiston had been there as a young man a  
21 long time.

22 Q. Right.

23 A. And people, because of his respective  
24 jobs, I think, looked to him and communicated with

1 him. I would not call them close friends.

2 Q. Are you familiar with an individual named  
3 Don Greenough?

4 A. Yes.

5 Q. Has he at various times served as counsel  
6 to the Feoffees?

7 A. Yes.

8 Q. When did he first start to serve as the  
9 Feoffees' lawyer?

10 A. When George Hayes moved to, moved out of  
11 town permanently.

12 Q. Who selected Don Greenough to be the  
13 lawyer?

14 A. All the Feoffees agreed upon that based on  
15 the fact that he came from the same office and  
16 occasionally handled some of the documents for Mr.  
17 Hayes.

18 Q. You say Mr. Greenough came from the same  
19 office?

20 A. Uh-hum. (Witness nodding head up and  
21 down.)

22 Q. So he had been affiliated in his practice,  
23 to your understanding, with Mr. Hayes?

24 A. Had he been have affiliated, you said?

1 Q. I don't know what you meant by he came  
2 from the same office.

3 A. He worked in the same office. His  
4 expertise was not the same.

5 Q. Were they in business together, Mr. Hayes  
6 and Mr. Greenough? Did they have a partnership?

7 A. No. I know that he hired Mr. Greenough  
8 when he was a young man is all I know, only because  
9 I heard the story.

10 Q. Okay. So Mr. Hayes was a lawyer in  
11 Ipswich and he had hired Mr. Greenough to work for  
12 him?

13 A. Yes.

14 Q. And Mr. Greenough had then started doing  
15 work for the Feoffees while Mr. Hayes was still a  
16 Feoffee, as you said that he came and did paperwork?

17 A. Well, he could have. I can't say that  
18 definitively. He certainly could have in a small  
19 office like that.

20 Q. Was Mr. Hayes performing legal work for  
21 the Feoffees?

22 A. Not, not paid legal work. He may as an  
23 attorney look over documents or something like that.

24 Q. Was Mr. Greenough performing paid legal

1 work for the Feoffees when Mr. Greenough worked for  
2 Mr. Hayes?

3 A. No.

4 Q. What was Mr. Greenough's area of  
5 specialty, as you understood it?

6 A. His area of specialty was really trusts  
7 and trusts, wills, things of that nature. He was  
8 not a trial attorney. He occasionally represented  
9 landowners in the town before various boards. So he  
10 had a good working knowledge of the town boards,  
11 which made him a more valuable person in that sense.  
12 Mr. Hayes had done the same thing. He had been on  
13 various boards.

14 Q. How long did Mr. Greenough continue to  
15 provide legal services to the Feoffees?

16 A. Well, it stopped when Mr. Sheehan took  
17 over and Mr. Sheehan took over because of the  
18 lawsuit with the tenants.

19 Q. Right.

20 A. And you'd have to look up the date of the  
21 lawsuit. Mr. Greenough said, I'm not a trial  
22 attorney. We need more expertise. I happened to  
23 have known Mr. Sheehan from another legal issue and  
24 I was very pleased with the idea of having him.

1 Q. That brings me back to another issue I  
2 wanted to ask you about. So apart from being on the  
3 board of the Feoffees, what other trusts, boards,  
4 associations have you served on?

5 A. For the Town of Ipswich just two, the  
6 School Building Needs Committee. I'd be hard  
7 pressed to give you the dates.

8 Q. That's okay.

9 A. And Industrial Development Committee.

10 Q. Okay. Outside of the town?

11 A. No, in the town.

12 Q. Apart from serving on town boards what  
13 other boards, trusts and charities have you served  
14 for?

15 A. None that I recall.

16 Q. Have you served on any other, have you  
17 served with any other groups or boards that have  
18 been subject to oversight by the Attorney General's  
19 office?

20 A. No.

21 Q. You mentioned that there had been a legal  
22 issue before that Mr. Sheehan was involved in.  
23 Without telling me anything confidential, what was  
24 the nature of that legal issue?



1           A.     It was a person, one of my cousins in our  
2 family, proprietors of Great Neck that -- The issue  
3 is complicated, but anyway, she decided -- I believe  
4 she sued the corporation or sued us.

5           Q.     A family squabble?

6           A.     Family squabble.

7           Q.     Over how that organization was being run  
8 and who was getting money and that kind of thing?

9           A.     Yeah, exactly.

10          Q.     And that went to court?

11          A.     No.

12          Q.     It was just --

13          A.     It was settled out of court.

14          Q.     Was it actually a lawsuit or just some  
15 sort of correspondence about her being disgruntled?

16          A.     I can't remember. I think of it as a  
17 lawsuit, but it may not have been.

18          Q.     Okay. When did that happen?

19          A.     It was quite a while ago. Trying to think  
20 of something I can pin it to. I believe it was  
21 sometime in the 1980's.

22          Q.     Quite a while?

23          A.     Yeah.

24          Q.     So you have never served, for example, on

1 the board of any hospitals or anything like that?

2 A. No.

3 Q. Did you ever use Mr. Greenough yourself as  
4 an attorney?

5 A. Yes.

6 Q. What types of things?

7 A. Trusts, will, living will.

8 Q. You mentioned Mr. Whiston serving as  
9 president of the First National Bank of Ipswich and  
10 you forgive me for not remembering which bank is  
11 which up there, but which is the bank in Ipswich  
12 that's done most of the financing of the cottages?

13 A. It's now called the Institution for  
14 Savings. It used to be the Ipswich Cooperative  
15 Bank.

16 Q. And that's a separate bank?

17 A. That's a separate bank entirely.

18 Q. Did the Feoffees ever do any business with  
19 the First National Bank of Ipswich?

20 A. Yes.

21 Q. What business did they do with the First  
22 National Bank of Ipswich?

23 A. Well, for one thing, I believe we had a  
24 checking account there and then Mr. Whiston, if he

1 had money to hold for the schools or for a project  
2 or something like that, he divided it up amongst the  
3 banks so he wasn't favoring any one bank. He tried  
4 to be very careful about that.

5 Q. Was any money ever borrowed by the  
6 Feoffees from the First National Bank of Ipswich?

7 A. I believe so, but I can't give the  
8 details.

9 Q. The large loans that were made in  
10 connection with the sewers, the wastewater facility,  
11 was that First National Bank of Ipswich or was that  
12 a different bank?

13 A. They were going to participate and  
14 ultimately couldn't, in the final analysis. They  
15 were going to participate with the Ipswich  
16 Cooperative Bank and when they couldn't participate,  
17 we asked the cooperative bank, who was very willing,  
18 to find another partner.

19 Q. Do you know Dan Clasby?

20 A. Yes.

21 Q. Has he played a role for the Feoffees?

22 A. Yes.

23 Q. What role has he played?

24 A. He's audited the books and provided the

1 financial statements as required annually that we  
2 submit to the town.

3 Q. How long has Mr. Clasby provided services  
4 to the Feoffees?

5 A. I don't know. I can't remember his  
6 predecessor even.

7 Q. How old is Mr. Clasby, would you say?

8 A. Fifty.

9 Q. Does he actually, does he do audits of --

10 A. Yes.

11 Q. How long has he been auditing the books  
12 and records of the Feoffees?

13 A. I don't know the number of years.

14 Q. Who selected Mr. Clasby to be the  
15 accountant for the Feoffees?

16 A. It was through a recommendation, largely,  
17 and agreed to by the Feoffees.

18 Q. Who recommended him?

19 A. Hum?

20 Q. Who made the recommendation?

21 A. I'm guessing, but fairly positive it was  
22 Mr. Greenough.

23 Q. Now, out at Little Neck, apart from the  
24 cottages, there's various improvements that have

1     been made to the land, correct?

2           A.     Uh-hum.   (Witness nodding head up and  
3     down.)

4           Q.     So could you tell me what those -- Let me  
5     list some things and see if we get a list of what  
6     those improvements are.

7           A.     Sure.

8           Q.     There's roads there?

9           A.     Yes.

10          Q.     Community center?

11          A.     Community center, yes.

12          Q.     A ball field?

13          A.     Yes.

14          Q.     There's a private beach?

15          A.     Yes, but that's natural, not created.

16          Q.     Right.   There's a wastewater system?

17          A.     Yes.

18          Q.     There's these underground utilities?

19          A.     Yes.

20          Q.     Is there cable for cable television?

21          A.     Yes.

22          Q.     Is there town water?

23          A.     Yes.

24          Q.     How long has there been town water, a long

1 time?

2 A. Say, twenty years, good guess.

3 Q. Who paid for that?

4 A. I'm not sure. I'm not sure whether there  
5 was an assessment made to the people out there  
6 because it was a public safety issue to be able to  
7 have fire hydrants on the property and it also  
8 allowed them to come to their cottage and turn the  
9 water on and turn the water off when they left  
10 because they weren't year round residents.

11 Q. Apart from what I've listed, so we have  
12 roads, community center, ball field, wastewater  
13 system, underground utilities, any other  
14 improvements?

15 A. Replacement of the dock after the blizzard  
16 of '78. On River Road up near the dock there was a  
17 lot of rock put on that face to try and mitigate  
18 erosion, I should say. In the 1950's there was a  
19 significant job done out on the steep front part of  
20 the hill on the quarter over towards Crane's Beach.  
21 If you are looking out to sea and you looked at the  
22 middle of the hill, and all the way around to the  
23 right was all done with a stone riprap by a  
24 professional contractor, you know, because it

1 required cranes to lift stone in. You can't see it  
2 now because it's covered with brush, but I've seen  
3 pictures -- Well, I saw it when it was done, but I  
4 have occasionally come across a picture that showed  
5 the bare stone before things grew in. That was a  
6 rather significant job.

7 Q. All right. When did the roads get  
8 constructed, if you know?

9 A. I don't know.

10 Q. Are these roads entirely the private  
11 responsibility of the Feoffees at this time?

12 A. Yes.

13 Q. The town doesn't do anything for that  
14 roads?

15 A. No.

16 Q. Is there waste pick-up in Little Neck?

17 A. Yes.

18 Q. Does the town provide that as a town  
19 service?

20 A. Yes.

21 Q. Do the trucks go right up to the houses?

22 A. Yes, in the sense they go down the  
23 streets.

24 Q. Right, as opposed to --

1 A. Yeah, a centralized area, yeah.

2 Q. Who maintains the ball field?

3 A. We do, the Feoffees do.

4 Q. How do you do that?

5 A. We hire a landscape contractor to mow that  
6 area and mow around our office.

7 Q. With regard to the wastewater system, I  
8 understand there's a limited liability company that  
9 was formed?

10 A. Yes.

11 Q. Was the name of that company, LN  
12 something?

13 A. Little Neck Wastewater? I'm not sure. It  
14 was kind of a transparent organization in the sense  
15 that money came in, money went out and I'm not -- I  
16 honestly don't know why it was formed.

17 Q. I was going to ask you whose idea was it  
18 to form that organization?

19 A. Don Greenough's.

20 Q. And you don't have an understanding of  
21 what the reasons are for it?

22 A. No, I really don't.

23 Q. Is it a for profit company?

24 A. No.



1           Q.    Well, what I mean by that, Mr. Mulholland,  
2 I don't mean does it make money. I mean, was it  
3 formed as an LLC, was it formed -- It wasn't formed  
4 as a non-profit, right? It was formed as a regular  
5 --

6           A.    Yes.

7           Q.    LLC?

8           A.    Yes.

9           Q.    Does it file tax returns?

10          A.    I don't know.

11          Q.    Who are the -- So if it's a limited  
12 liability company, that means that the owners are  
13 called members, okay?

14          A.    Uh-hum. (Witness nodding head up and  
15 down.)

16          Q.    Do you know who the members are of the  
17 LLC?

18          A.    I believe it was the four life Feoffees.

19          Q.    Do you get some kind of tax reporting  
20 every year related to that company?

21          A.    No.

22          Q.    For your personal tax returns?

23          A.    No.

24          Q.    And so what you're saying, it's your

1 understanding that the LLC takes money in every year  
2 from fees and pays out an equal amount?

3 A. Yes.

4 Q. Is that exact or is it more or less equal?

5 A. It's more or less equal.

6 Q. Who does the books for the Little Neck  
7 wastewater?

8 A. Peter Foote.

9 Q. Not Clasby?

10 A. Oh, I'm sorry. With regard to things like  
11 that, as an accountant, yes, Clasby.

12 Q. Peter Foote keeps the books, but does  
13 Clasby review them?

14 A. Oh, yes. Peter Foote collects the money.

15 Q. Does the LLC own anything?

16 A. Not that I'm aware of.

17 Q. So the LLC does not own the wastewater  
18 system?

19 A. No.

20 Q. It's simply -- What does it do?

21 A. I don't believe I can explain that to you.  
22 But in, since it didn't have any significant role  
23 and I don't know why we formed it, at the suggestion  
24 of Mr. Clasby that we just combine the two, because

1 they worked hand in hand and report them as one. So  
2 it doesn't, my understanding is it doesn't really  
3 exist any more.

4 Q. You're familiar with the cottages out at  
5 Little Neck?

6 A. Reasonably. I don't know whose is whose,  
7 but yeah, I drive around there.

8 Q. What percentage of the cottages would you  
9 say have full basement?

10 A. 10 to 15%.

11 Q. And what percentage of the cottages would  
12 you say are heated? How many have any kind of  
13 heating system?

14 A. Suitable for year-round living?

15 Q. Well --

16 A. Has some kind of heating?

17 Q. Yeah.

18 A. I'd say they all do.

19 Q. Let's break that down. Are there cottages  
20 that have oil heat?

21 A. Yes.

22 Q. How many of them would you estimate have  
23 heat through deliveries to an oil tank and a  
24 furnace?

1           A.    I don't know. And it would be very  
2 difficult to guess, because I've almost never seen  
3 an oil truck out there.

4           Q.    And for those that do have oil heat, where  
5 would the tanks be?

6           A.    They should be abutting their house.

7           Q.    Outside?

8           A.    Outside. Well, no, they could be inside,  
9 I guess, and still be in code.

10          Q.    So is it your understanding that most of  
11 the cottages do not have oil heat or you don't know?

12          A.    I don't know.

13          Q.    What other forms of heat are you aware of  
14 that are used at Little Neck?

15          A.    LP gas, propane.

16          Q.    And are those done with an exterior  
17 propane tank?

18          A.    Yes.

19          Q.    Have you seen such tanks out at the  
20 cottages?

21          A.    I've seen tanks.

22          Q.    What other forms of heat do the cottages  
23 use?

24          A.    None that I'm aware of, with one possible

1     exception, a little wood in a fireplace.

2             Q.     What about electric heat?

3             A.     I don't know.

4             Q.     Could be?

5             A.     Could be.

6             Q.     Now, you said that you think virtually all  
7     of them have some form of heat?

8             A.     Yes.

9             Q.     And then you started to answer a question  
10    about what form of heat that would be suitable for  
11    the winter. Do you know the answer to that?

12            A.     No, I really don't.

13            Q.     And that would raise questions of both  
14    heat and insulation, correct?

15            A.     Yes.

16            Q.     Under the proposed sale of the cottages to  
17    the tenants and lessees, they're not going to be  
18    restricted to seasonal use?

19            A.     That's my understanding, yes.

20            Q.     Is it your expectation that as a result,  
21    steps will be taken in the cottages to, in many  
22    cases, improve the insulation and upgrade the heat?

23            A.     I'm sure some of that will happen. I  
24    don't know what, I wouldn't dare guess to what

1 degree.

2 Q. For example, Little Neck might in the  
3 context of a sale, be attractive to empty nesters as  
4 a retirement home, right?

5 MR. SHEEHAN: Objection. You may  
6 answer.

7 A. Yes.

8 Q. Do you know, currently there's  
9 approximately 167 cottages?

10 A. Yes.

11 Q. Is it exactly 167?

12 A. I believe so.

13 Q. How long has that been the number or how  
14 has that number changed in your lifetime?

15 MR. SHEEHAN: Objection. Just one  
16 question. You put two questions.

17 Q. Why don't you answer whichever one you  
18 want. I want to know what the --

19 A. I don't believe there's been any change --  
20 I have to take that back. There's, I believe, been  
21 two removed during my tenure.

22 Q. As a Feoffee?

23 A. As a Feoffee.

24 Q. So during the time you have been a Feoffee

1 it's always been around 167?

2 A. Yes.

3 Q. Before you were a Feoffee was it also 167?

4 A. It may have been 169, only because I'm  
5 aware of two that are gone.

6 Q. How far back have there been in the range  
7 of 167 plus or minus cottages at Little Neck, to  
8 your knowledge?

9 A. I don't know. I can only say that when I  
10 was very young and lived on Great Neck in the  
11 summertime, that Little Neck always at a distance  
12 looked the same.

13 Q. Okay. So that was back in the forties?

14 A. Yes.

15 Q. Do you have any sense of how old the  
16 cottages are?

17 A. No. They vary greatly.

18 Q. Some are new?

19 A. Some are new.

20 Q. How old are the older ones?

21 A. I don't know. I only know that by looking  
22 at them, they're quite old summer cottage.

23 Q. Is it --

24 A. Turn of the century, I guess.

1 Q. The best of your understanding is that  
2 they got built, some of them, in the early twentieth  
3 century, right?

4 A. Yes.

5 Q. Are you aware that there was a recent  
6 foreclosure sale out at Little Neck?

7 A. Yes.

8 Q. And which property was that?

9 A. I can't tell you specifically, but I was  
10 there.

11 Q. You were there. Do you know who bought  
12 it?

13 A. I can't remember his name. I only know he  
14 has, I believe, two other places down there.

15 Q. And the person who bought it, was it your  
16 understanding that he was planning to knock down the  
17 improvements and rebuild?

18 A. No, no.

19 Q. What is your understanding as to what his  
20 intent is?

21 A. Allow his daughter to live there.

22 Q. After you became a Feoffee in the late  
23 seventies could you describe what your role  
24 entailed? I think you have told me already what you



1 expected it to be, so if you could just summarize  
2 for me what your role as a Feoffee entailed since  
3 you became a Feoffee in 1978. And if you want, we  
4 could break that down into two periods, between 1978  
5 and the mid 2000's when you became chairman what was  
6 your role? In other words, until you became  
7 chairman what was your role as a Feoffee?

8 A. It was very minimal. It was discussions  
9 with Don Whiston or meetings with Don Whiston and  
10 the rest of the Feoffees. Usually it was regarding  
11 somebody's house, an addition, whether it was to be  
12 approved or not. There really weren't any other  
13 difficulties that I got involved with. And when I  
14 became -- Well, somewhere along there I became vice  
15 chairman and the only time I acted as chairman was  
16 once when Don forgot a meeting. And when I became  
17 chairman, I became chairman really at the beginning  
18 of the sewer project and that was because Don was  
19 very uncomfortable with it, was also getting older  
20 and he thought I would be much better suited to take  
21 that over. So I agreed to do it.

22 Q. I'll come to your tenure as chairman, but  
23 you have now answered what your role was?

24 A. Yeah.

1 Q. Up to that point?

2 A. Yeah.

3 Q. Which you have described as fairly  
4 minimal?

5 A. Yeah, yes.

6 MR. SHEEHAN: Steve, is this a good  
7 time to take a break?

8 MR. PERRY: Yeah, either that or  
9 within a couple seconds.

10 MR. SHEEHAN: Okay.

11 MR. PERRY: Let me just -- Let's  
12 take a break.

13 (Brief recess 11:33 to 11:40 a.m.)

14 Q. At the time you became a Feoffee did you  
15 review any documents about the Feoffees? Did you  
16 review the will that set them up, anything like  
17 that?

18 A. No.

19 Q. Did you know when you joined the Feoffees  
20 that there were supposed to be seven of them?

21 A. Yes.

22 Q. How did you find that out?

23 A. I was just told what the makeup was  
24 supposed to be.

1 Q. And that makeup, to your understanding,  
2 consisted of what?

3 A. Four life Feoffees and the four senior  
4 members of the board of selectmen.

5 Q. Did you say four? You meant three?

6 A. Four life members.

7 Q. Did he say three selectmen?

8 MR. SHEEHAN: Four.

9 A. What I meant to say, four life members,  
10 three senior members of the board of selectmen. Did  
11 I say four? I'm sorry, I misspoke.

12 Q. Right. No problem. Did the three senior  
13 members of the board of selectmen in fact  
14 participate in the affairs of the Feoffees between  
15 the time you joined and the time that you became  
16 chairman?

17 A. Not day to day.

18 Q. Did they participate at all between 1978  
19 and the year 2000?

20 A. Only at the annual meeting.

21 Q. How did they participate at the annual  
22 meeting?

23 A. It was, it was probably just a little  
24 discussion. They didn't really contribute anything.

1           Q.    Did the three senior selectmen in fact go  
2 to the annual meetings of the Feoffees between 1978  
3 and 2000?

4           A.    Not all the time. At least one did.  
5 Usually two. It could be three. I think they  
6 looked at it casually.

7           Q.    Did you -- You're currently aware that  
8 there's a provision in the will under which the  
9 Feoffees were established that says that Little Neck  
10 should not be sold?

11          A.    Yes.

12          Q.    When did you first learn that there was  
13 any kind of restriction in a will on the sale of  
14 Little Neck?

15          A.    Significant time ago. I mean, not last  
16 year, not ten years, you know.

17          Q.    You have known that?

18          A.    I basically know that, yeah.

19          Q.    How did you become aware of that  
20 restriction?

21          A.    Pardon?

22          Q.    How did you become aware that there was  
23 such a restriction?

24          A.    Discussing it with other Feoffees.

1           Q.    What other Feoffees did you discuss it  
2   with?

3           A.    Well, Jerome, probably my uncle, Harry  
4   Munro.

5           Q.    And you told me that the Feoffees have an  
6   annual meeting every year after you became a  
7   Feoffee, right?

8           A.    Yes.

9           Q.    Were there other regular meetings of the  
10   Feoffees in between the annual meetings between 1978  
11   and 2000?

12          A.    No.

13          Q.    You said you would also have issues that  
14   came up from time to time about an addition or the  
15   like?

16          A.    Yes.

17          Q.    Would those be handled at meetings or  
18   would those be handled some other way?

19          A.    Some other way.

20          Q.    So really, there were just, at the time  
21   there was only one meeting a year?

22          A.    Yes.

23          Q.    Were minutes kept of those meetings?

24          A.    Yes.

1 Q. Were minutes keep of those meetings each  
2 and every year?

3 A. Yes.

4 Q. Who kept the minutes?

5 A. The secretary, who gave them to the  
6 chairman.

7 Q. Who served as secretary during the years  
8 you were a Feoffee?

9 A. George Hayes was the secretary.

10 Q. After he left?

11 A. I think Jim Foley was the secretary.  
12 Peter Foote was a secretary. I can't give you the  
13 years. Peter Foote still is.

14 Q. Who kept the financial records of the  
15 Feoffees after you joined?

16 A. Can you clarify what you mean by financial  
17 records?

18 Q. The Feoffees were taking in rents during  
19 the time you were a Feoffee?

20 A. Uh-hum. (Witness nodding head up and  
21 down.)

22 Q. And they were incurring expenses?

23 A. Uh-hum. (Witness nodding head up and  
24 down.)

1           Q.    So there needed to be books and records of  
2   the Feoffees showing what was coming in and what was  
3   going out, right?

4           A.    Yes.

5           Q.    Who kept those books and records?

6           A.    Day to day, Peter Foote.

7           Q.    After Peter Foote became a Feoffee he kept  
8   the day to day financial records?

9           A.    No. Clarification. After he became a  
10   Feoffee, Donald Whiston was still chairman, manager,  
11   treasurer, and so he had those financial, he had  
12   those records.

13          Q.    So when you joined, it was Donald Whiston  
14   who was keeping the books and records of the  
15   Feoffees?

16          A.    Yes.

17          Q.    And at some point he ceased to do so and  
18   Peter Foote began to do so?

19          A.    Yes.

20          Q.    And when was that, roughly?

21          A.    Ten years ago, approximately.

22          Q.    Part of the records that have been  
23   produced to us in this case include bills of sale  
24   when cottages are transferred. Was it the practice

1 of the Feoffees to require that in the case of every  
2 transfer of ownership of a cottage the Feoffees be  
3 informed?

4 A. Could you repeat that? I just didn't hear  
5 you at the end.

6 Q. Did the Feoffees have an understanding  
7 with the tenants that the Feoffees were to be  
8 informed of any transfer of ownership of a cottage?

9 A. I believed that that was the case.

10 Q. And in fact, you told us that there were  
11 lists of cottage owners?

12 A. Yes.

13 Q. And the lease details?

14 A. Yes.

15 Q. So it was important --

16 A. Yes.

17 Q. That the Feoffees know who the cottage  
18 owners were? Let me finish the question before you  
19 answer.

20 MR. SHEEHAN: You can not speak  
21 while Steve is asking the question. I know you  
22 wanted to be helpful, but it's --

23 Q. It was important that the Feoffees be  
24 aware of who the cottage owners were?



1           A.     Yes.

2           Q.     And the cottage owners needed to cooperate  
3     in that, because otherwise, for example, they might  
4     not be able to enter the premises if there were a  
5     police detail there?

6           A.     Yes.

7           Q.     Some of the bills of sale show prices for  
8     the cottages and others show consideration of \$1.  
9     Are you aware, are you familiar with that?

10          A.     No, I'm not familiar with that.

11          Q.     And in some of the cases of the \$1  
12     transfers, these are presumably inter-family  
13     transfers from, to a trust or something like that?

14          A.     I would assume that's probably the case.

15          Q.     But there seem to be some others where it  
16     just says a dollar and the consideration and it  
17     seems to be third parties. Are there any records  
18     that would show what was actually paid for the sale  
19     of a cottage if the only record, if the record on  
20     the bill of sale says a dollar?

21          A.     I don't believe so.

22          Q.     Could you tell me what records the  
23     Feoffees currently have and how far back they go?

24          A.     The records that are kept day to day are

1 the collection of the rents, the collection of the  
2 taxes, the collection of the wastewater fee. I  
3 think that's pretty much it.

4 Q. Well, you keep the bills of sale?

5 A. Yeah.

6 Q. What about expenditures?

7 A. Well, yes, I'm sorry.

8 Q. The records of expenditure?

9 A. Yes.

10 Q. How far back do those go?

11 A. I don't know.

12 Q. Are the records kept at this time on a  
13 computer, QuickBooks, or something like that?

14 A. Yes.

15 Q. By Mr. Foote?

16 A. Yes.

17 Q. Does he use QuickBooks?

18 A. Yes.

19 Q. How long have the records of Little Neck  
20 been kept on, in a computerized fashion?

21 A. My estimate, three to four years.

22 Q. Before that were they kept by hand?

23 A. By hand.

24 Q. Are there records of the -- Are the

1 minutes kept?

2 A. Yes.

3 Q. How far back do the minutes go?

4 A. I don't know. I would expect forever to  
5 the beginning.

6 Q. Who has those records?

7 A. I believe most of the records are in Bill  
8 Sheehan's possession.

9 Q. Who had them before Mr. Sheehan got them?

10 A. Donald Whiston.

11 Q. What was your understanding when you  
12 joined the Feoffees concerning the tax status of the  
13 Feoffees, if you had one?

14 A. My understanding, it was basically a tax  
15 exempt charitable trust going to, proceeds going to  
16 the Town of Ipswich schools.

17 Q. Did it ever come to your attention as a  
18 Feoffee that perhaps the Feoffees hadn't done  
19 everything that needed to be done to insure that  
20 they had that tax status?

21 MR. SHEEHAN: Objection. You may  
22 answer.

23 A. Yes, but I don't know the details.

24 Q. When did you first become aware that there

1 could be such an issue?

2 A. Ten years ago, approximately.

3 Q. Has there been any change in the manner in  
4 which the Feoffees have conducted themselves in  
5 connection with meeting any reporting requirements?

6 A. Yes.

7 Q. What changes have taken place?

8 A. There's a form, I believe, that needs to  
9 be filed with the state regarding a charitable  
10 organization. I don't know the form number, but I  
11 know that it was, it has been filed and past records  
12 have been filed.

13 Q. When did the Feoffees begin filing the  
14 annual form that's required to be filed with the  
15 Attorney General's office?

16 A. Again, my best guess would be five years  
17 ago.

18 Q. And you say when those forms were filed,  
19 they also filed some past --

20 A. Yes.

21 Q. Year forms?

22 A. That's my understanding, yes.

23 Q. Who served as the accountant for the  
24 Feoffees when those filings were made?

1           A.     Dan Clasby.

2           Q.     Who served as the accountant for the  
3     Feoffees more than five years ago when the filings  
4     were not being made?

5           A.     I really can't remember.

6           Q.     Was it also Dan Clasby?

7           A.     I don't know who preceded Dan Clasby.

8           Q.     How long has Dan Clasby been doing this  
9     work?

10          A.     I can't -- I don't know.

11          Q.     Did any information ever come to your  
12     attention indicating that Dan Clasby had had any  
13     professional issues?

14          A.     No.

15          Q.     You're not aware of him ever having  
16     received any sanctions by any organizations?

17          A.     Not that I'm aware of.

18          Q.     Do the Feoffees have to file federal  
19     income tax returns?

20          A.     I don't believe so, no.

21          Q.     And it doesn't file?

22          A.     No.

23          Q.     Could you give me a history, please, of  
24     how the rents being charged have changed over the

1 time that you have been a Feoffee?

2 A. Well, I'll give you the best summary that  
3 I can. In the earliest days the rents were, I  
4 thought, comparable to other rents for summer  
5 cottages in the area. I never tried to validate it,  
6 but that was my opinion. And basically, that stayed  
7 at that level until, until real estate really began  
8 to increase in value and we got pressure from, the  
9 particular person was Mr. Weatherall. I don't know  
10 whether he was on the school committee at the time  
11 or not, to get up to current market rents.

12 Q. And this was occurring in the late  
13 nineties?

14 A. Probably, yeah.

15 Q. And at the time that you were being  
16 pressured to increase rents were they in the range  
17 of 600, \$800 a year?

18 A. I think so, yeah, yes.

19 Q. Okay. If you could continue then, please?

20 A. We agreed that we should try and get to  
21 market value. We had no qualms about trying to do  
22 that, so we enlisted LandVest for some professional  
23 guidance about land values, rent prices and things  
24 like that. And they provided us with various data

1 points. And we looked at where we wanted to go,  
2 which was, I think, to probably a 5,000 level and  
3 from where we were and spread it over five years.  
4 In which case, Mr. Weatherall and perhaps his  
5 associates were pleased that we took that action.  
6 It was also the same time that we had run-away  
7 inflation in the housing market.

8 We very quickly realized when we got  
9 to the end of the five years we weren't going to be  
10 where we thought we were going to be and we weren't  
11 sure what to do about it other than consult with  
12 LandVest again.

13 Q. Right. And what happened with regard to  
14 rents after you got to the end of the five years,  
15 which I believe was in around 2003?

16 A. Well, I can't, I can't give you the exact  
17 timing of events, but based on recommendations from  
18 LandVest as to what rents could be, that we could be  
19 charging as much as 9,000 or \$10,000 a year, and but  
20 they qualified that and said given the uncertainty  
21 of the DEP issue, which was very significant, that  
22 we should charge less until that was entirely  
23 resolved. And I think we kept the rents basically  
24 where they were for that time and then tried to deal

1 more with the DEP issues. The landowners were aware  
2 somehow they were going to have to contribute to  
3 that, so --

4 Q. I'm sorry?

5 A. No.

6 Q. Who was aware they had to contribute?

7 A. The landowner or, I'm sorry.

8 Q. The cottage owner?

9 A. The tenants.

10 Q. The tenants?

11 A. Yeah.

12 Q. And cottage owners?

13 A. Yes, and cottage owners.

14 Q. Understood that they were going to have to  
15 contribute toward the cost of constructing the  
16 wastewater facility that benefited them?

17 A. Yes, yes.

18 Q. Go ahead.

19 A. With the cost being now fixed, that in the  
20 ground, we consulted with LandVest and looked at the  
21 fact that we could be charging, say, \$10,000 a year.  
22 I don't think that's the number we used. I think it  
23 was 9 something. In which case we got, basically, a  
24 revolution.



1 Q. Right.

2 A. They weren't going to pay. And we also  
3 had offered them a lease and they just, they just  
4 balked at everything, basically.

5 Q. Who were you using as your lawyer for  
6 purposes of negotiating or determining the terms of  
7 that lease? Who drafted it?

8 A. Donald Greenough.

9 Q. And that pretty much sums up what the  
10 history of the rents has been?

11 A. I think so, yeah.

12 Q. And during, during the pendency of the  
13 litigation the tenants were paying for seasonal  
14 occupancy of roughly \$5,200 a year and putting some  
15 additional money in escrow?

16 A. Yes.

17 Q. And year round occupancy being \$6,000 and  
18 putting some money in escrow?

19 A. Yes.

20 Q. And that was those who refused to sign  
21 leases?

22 A. Yes.

23 Q. And those who signed leases were paying  
24 \$9,700 for seasonal use?

1 A. Yes.

2 Q. Or \$10,800 per year for year round?

3 A. Yes.

4 Q. Has there been any change made to any of  
5 the rents being charged to the lessees or are we  
6 still at 9,700 and 10,800?

7 A. No, no.

8 Q. No changes?

9 A. I'm certain that they're still the same  
10 right now.

11 Q. Have any of the lessees been told that  
12 they're going to face a rent increase prior to the  
13 resolution of the case that we have right now?

14 A. They have not been told, but they have  
15 asked.

16 Q. And there's different forms of leases out  
17 there, right?

18 A. Well, no, I think there's only -- Well,  
19 there's really two.

20 Q. Okay. So there's one from 2006?

21 A. A real lease.

22 Q. Right.

23 A. And now there's tenants at will.

24 Q. But the leases that have actually been

1 signed, were you aware that there was more than one  
2 form of lease depending on when they were signed?

3 A. No, not really.

4 Q. Is there any intent to raise the rents  
5 under the existing leases while the probate court  
6 litigation is going on?

7 A. No.

8 Q. And you have received inquiries about that  
9 from lessees?

10 A. Yes.

11 Q. Who's received those inquiries, you?

12 A. Yes.

13 Q. What have you said?

14 A. Minimal amount. That we'd like to see the  
15 court case resolved first.

16 Q. Yeah.

17 A. Their concern was the lease apparently  
18 says that there could be a significant increase.  
19 Could be.

20 Q. Right.

21 A. Okay. There isn't a guarantee that that's  
22 going to happen. The lease also, to encourage them  
23 to sign the lease, has an out clause.

24 Q. Right.

1           A.    If they want to get out of the lease, you  
2 know, which made it more palatable to sign the  
3 lease.

4           Q.    Right. Have rents always been charged to  
5 tenants during the period that you have been a  
6 Feoffee?

7           A.    Yes.

8           Q.    And were they always paid on an every six  
9 month basis?

10          A.    I don't know.

11          Q.    Was that the practice in recent history?

12          A.    I thought, based on now, calling this  
13 recent history is that they were paid quarterly.

14          Q.    Okay. At the time prior to the litigation  
15 with the tenants were they paying quarterly or every  
16 six months?

17          A.    I don't remember.

18          Q.    One or the other?

19          A.    Yeah, yes.

20          Q.    How were those rents set? Were the rents  
21 set every year?

22          A.    Historically, yes.

23          Q.    And when you became a Feoffee, the rents  
24 were at a certain amount?

1 A. Yeah.

2 Q. Fairly small, few hundred dollars a year,  
3 right?

4 A. When I became a Feoffee, yeah, right.

5 Q. Were the rents reviewed every year at a  
6 meeting or were they just left in place for years?

7 A. They were reviewed at a meeting.

8 Q. The annual meeting?

9 A. Sometimes prior to the annual meeting.

10 Q. Did each year's minutes reflect what the  
11 rent would be for the coming year?

12 A. Yes.

13 Q. Was it a calendar year or some kind of  
14 fiscal year?

15 A. Fiscal year, I believe.

16 Q. The rents would run from, would be set for  
17 a period from July 1 through June 30?

18 A. Yes, I believe that's correct.

19 Q. And you talked about a process of trying  
20 to raise the rents over a five year period. Do you  
21 recall that that five year period was from 1998 to  
22 2003?

23 A. It sounds correct, yeah, yes.

24 Q. And you had become aware by no later than

1 1998 that the rents that were being charged were  
2 well below what fair market rent would be?

3 A. Yes.

4 Q. And you were aware that they had, for some  
5 period of time before 1998, been below fair market  
6 value?

7 A. Yes.

8 Q. But you can't put an exact date on how  
9 long the rents have been below fair market value?

10 A. No.

11 Q. Sometime at least in the nineties?

12 A. Yes.

13 Q. What did you consider fair market rent to  
14 mean?

15 A. When we were looking to accomplish that  
16 I'm not sure I looked at it the way that I've looked  
17 at it in most recent years, which was more of a  
18 return of investment type of look at the property.  
19 Relied heavily on recommendation and documentation  
20 from LandVest with regard to things like that.

21 Q. Are you familiar generally with the value  
22 of the cottage improvements at Little Neck?

23 A. In general.

24 Q. Do you have a sense of what it would cost

1 to build improvements to replicate those cottages?  
2 In other words, the replacement cost of those  
3 cottages, do you have a sense of that?

4 A. On the average, I'd say 300,000, 350,000  
5 to replicate them.

6 Q. Do you have a sense of what the value of  
7 the improvements is from the standpoint of  
8 replacement cost less depreciation?

9 A. No, other than that I would think that  
10 depreciation would be basically zero at this time  
11 for a lot of them.

12 Q. For the new ones? For the newer ones, you  
13 mean?

14 A. No, not for the newer ones, for the old  
15 ones.

16 Q. You're saying the depreciation wouldn't be  
17 zero, you're saying that the value would be fully  
18 depreciated?

19 A. Right.

20 Q. Have you ever looked at the assessment for  
21 the improvements?

22 A. Occasionally, yes.

23 Q. And those assessments are based on some  
24 notion of replacement cost less depreciation?

1           A.    I don't know, because the assessment is  
2 done by the town.

3           Q.    Were you, did you become aware during the  
4 time you have been a Feoffee that cottages were  
5 selling for more than the value of the cottages  
6 themselves?

7           A.    Yes.

8           Q.    When did you become aware of that?

9           A.    I believe fifteen or twenty years ago.

10          Q.    And was it your understanding that if  
11 tenants were charged a fair market rent, the  
12 cottages would then be expected to sell for an  
13 amount closer to their actual value?

14                   MR. SHEEHAN:  Objection.  You may  
15 answer.

16          A.    Would you repeat that again?

17          Q.    Did you understand that there should be a  
18 relationship between the rent on the one hand and  
19 what the cottages sell for on the other?

20                   MR. SHEEHAN:  Note my objection.  Go  
21 ahead.

22                   THE WITNESS:  Pardon?

23                   MR. SHEEHAN:  I'm just objecting for  
24 the record, but go ahead.



1           A.    I'm just thinking.  No, I would say.

2           Q.    Other things equal, if you start raising  
3 the rent that the tenants have to pay, doesn't that  
4 tend to have an effect of lowering what people would  
5 pay for the right to occupy, to own a cottage?

6                   MR. SHEEHAN:  Objection.

7           A.    In general, yes.

8           Q.    So when you saw cottages selling for  
9 substantially more than the cottages themselves were  
10 worth, did that indicate that there might be room to  
11 raise the rent?

12                   MR. SHEEHAN:  Objection.

13          A.    No.

14          Q.    You mentioned that a consultant was  
15 retained to assist the Feoffees with regard to these  
16 issues of rent?

17          A.    Yes.

18          Q.    And you said it was a company called  
19 LandVest?

20          A.    LandVest.

21          Q.    Who made the, who selected LandVest to be  
22 the consultant?

23          A.    It was recommended by Donald Greenough.

24          Q.    What did you do as a Feoffee to determine

1 whether the consultant from LandVest was, had the  
2 best qualifications to take on that role?

3 A. I guess I looked at it from a reputation  
4 point of view. They're a respected company with  
5 regard to land sales, assessments, things like that.

6 Q. Do you know whether any of the individuals  
7 at LandVest are qualified? Do you know anything  
8 about the qualifications they have to appraise real  
9 property?

10 A. No.

11 Q. Was there a particular individual at  
12 LandVest that you worked with?

13 A. Yes.

14 Q. Who was that? Jim Monahan?

15 A. Yes.

16 Q. I don't want to embarrass you.

17 A. That's okay.

18 Q. No, I mean, you know, obviously, I'm sure  
19 if I gave you enough time you'd come up with a name.

20 A. Yes.

21 Q. Jim Monahan was the one that was mostly  
22 working on this assignment?

23 A. Yes.

24 Q. I saw a report by a fellow by the name of

1 Slater Anderson. Do you know who that is?

2 A. No.

3 Q. Do you know anything about Jim Monahan's  
4 credentials as an appraiser?

5 A. No.

6 Q. Did you read his reports and try to  
7 understand his methodology?

8 A. Yes.

9 Q. When did you do that?

10 A. Soon after the report was presented to us.

11 Q. And so you read the report that he did in  
12 1998 and subsequent reports over the years?

13 A. Yes.

14 Q. And did you in fact understand his  
15 methodology?

16 A. I felt reasonably well that I did.

17 Q. How did Mr Monahan determine what the fair  
18 market value of lots at Little Neck was?

19 A. I don't really remember how he did it.

20 Q. Let's take his most recent appraisal, the  
21 one he did in 2010. And you may recall that he went  
22 through a process where he set values for each lot  
23 and then did an analysis of what a third party would  
24 pay to buy the land in bulk and sell them off to

1 tenants, right? Do you remember that?

2 A. Yes.

3 Q. I want to start with the first part of  
4 that, which is how Mr Monahan went about trying to  
5 determine what the individual lot values was. Do  
6 you have an understanding of what he did?

7 A. No, I don't.

8 Q. Did you read his report?

9 A. Yes.

10 Q. Are you aware that there's been sales of  
11 cottages at Little Neck over the past five years?

12 A. Yes.

13 Q. And do you know what kinds of prices the  
14 cottages sold at at Little Neck over the past  
15 five years?

16 A. It varied. Some were very high in  
17 relation to the market and some were probably very  
18 low. I believe those were two auctioned places.

19 Q. So there were sales of the cottages  
20 themselves?

21 A. Yeah.

22 Q. That ranged from something below 200,000  
23 to in excess of 500,000?

24 A. Close to 500,000, if not in excess, yeah.

1           Q.    Did you think that those sales of cottages  
2           could tell you what the land underneath the cottages  
3           was worth?

4           A.    No.

5           Q.    Why not?

6           A.    Because with the demographics changed and  
7           wealthy people coming into the picture, some people  
8           will pay in excess of fair market value to get what  
9           they want or what they think they want, which skews  
10          that kind of thinking.  So I think it's dangerous to  
11          just rely on the price paid as a way to determine  
12          real value.  If they paid \$500,000 for a cottage  
13          that probably is worth less than 100,000 as a  
14          building, has no basement or anything else, they're  
15          buying it for another reason.  They want to be close  
16          to the water.  Maybe they can see the water.  In one  
17          case, they couldn't -- Well, they could see the  
18          water a little bit.

19          Q.    And they still paid --

20          A.    And the question was why, why would you  
21          pay that?  So using that to determine values is, to  
22          say the least, extremely difficult.

23          Q.    Right.  Well, let me add an additional  
24          difficulty to the problem.  When people bought

1 cottages in the past five years for these amounts,  
2 they were also required to sign leases with the  
3 Feoffees, weren't they?

4 A. Uh-hum. (Witness nodding head up and  
5 down.)

6 Q. And these leases said they'd have to pay  
7 9,700 a year for seasonal use or 10,800 for year  
8 reasoned?

9 A. Yes.

10 Q. Is that all correct?

11 A. Yes.

12 Q. So when people were paying \$500,000 for a  
13 cottage worth under \$100,000, they were also  
14 agreeing to pay rent in addition to that of 9,700 a  
15 year, right?

16 A. Yes.

17 Q. And that would be additional value that  
18 goes to the land, wouldn't it?

19 MR. SHEEHAN: Objection.

20 A. I don't know that I would qualify it quite  
21 that way.

22 Q. Well, in other words, the amount that they  
23 paid for the cottage in excess of the cottage's  
24 value doesn't tell you the full picture of what the

1 land is worth, right?

2 A. Yes.

3 Q. Because they're also going to have to pay  
4 rent?

5 A. Yes.

6 Q. So you'd have to capture what that rental  
7 is worth and add it, capitalize it in some way to  
8 get a value, wouldn't you?

9 MR. SHEEHAN: Objection.

10 A. I believe so, but I never looked at it  
11 that way.

12 Q. And do you know why -- You don't know what  
13 the methodology Mr. Monahan used was in that regard,  
14 do you?

15 A. No, I don't.

16 Q. You were relying on him being an expert?

17 A. Yes.

18 Q. Were you aware that Mr. Monahan in fact  
19 based his values at Little Neck in his most recent  
20 appraisal on these sales that took place over the  
21 past five or six years?

22 A. I'm not aware of that.

23 Q. Prior to 1998 when Mr. Weatherall was  
24 getting involved and perhaps he was -- Let me

1 withdraw that. I don't know exactly when he was  
2 getting involved, but --

3 Prior to 1998 when there was a  
4 determined effort to raise the rents to get them  
5 toward fair market value, had there been any  
6 disagreement before that among the Feoffees as to  
7 what the rent should be?

8 A. I would have to say no.

9 Q. And after 1998 do you recall any internal  
10 dissent among the Feoffees concerning what the rent  
11 should be?

12 A. No, because we were relying on expert data  
13 and we didn't disagree with it.

14 Q. Were there any, was it publicly announced  
15 at any time to the tenants that rents were going to  
16 be moved toward fair market value?

17 A. The only time I remember it being talked  
18 about going to fair market value was when we  
19 determined it was going to go up over a period of  
20 five years to fair market value and then,  
21 unfortunately, in five years it got terribly skewed.

22 Q. Right, but in 1998 when the Feoffees  
23 decided that they were going to move the rent to, so  
24 that in 2003 tenants were paying what the fair



1 market value had been determined to be in 1998, was  
2 that announced to the tenants?

3 A. I don't believe so.

4 Q. When was an announcement made to the  
5 tenants that rents were going up over a five year  
6 period, if you recall?

7 A. I don't recall.

8 Q. It wasn't kept secret, right?

9 A. No.

10 Q. So those tenants who bought their cottages  
11 after 1998 knew that the good old days of low rents  
12 were not going to be in existence any more, right?

13 A. Yes.

14 Q. Did Mr. Whiston have any, did he express  
15 any concerns or objections to raising the rents at  
16 Little Neck so that they would reach fair market  
17 value?

18 A. No.

19 Q. Did Mr. Whiston ever, did you ever hear  
20 Mr. Whiston say that rents at Little Neck were going  
21 to be kept low so that they'd just basically covered  
22 operating costs?

23 A. No, I never heard that. I never heard him  
24 say that.

1 Q. Are you aware of some of the statements  
2 that have been attributed to him by tenant leaders?

3 A. By tenant, pardon?

4 Q. The tenant leaders.

5 A. Tenant leaders. Yes.

6 Q. For example -- How are you aware of those  
7 statements that have been attributed to him?

8 A. I guess I'm aware through statements  
9 they've made differentiating fair market rent with  
10 the term fair rent, which they're differentiating  
11 and I wouldn't. I --

12 Q. Well, for example, the other day we had  
13 depositions on separate days of DiSalvo and Gottlieb  
14 and they gave some extensive testimony about various  
15 conversations they say they had had with Mr.  
16 Whiston. Have you heard about those conversations  
17 before they testified about them?

18 A. No, no.

19 Q. So I presume you may have heard about that  
20 from Mr. Sheehan?

21 A. No.

22 Q. After the testimony, but --

23 A. Yeah, he, yes.

24 Q. So you hadn't heard about those particular

1 claims before then?

2 A. No.

3 Q. And you don't know personally what Mr.  
4 Whiston may have said to tenants at any given  
5 meeting?

6 A. No.

7 Q. During the time that you were a Feoffee  
8 was he authorized to make promises on behalf of the  
9 Feoffees about what rents would be in the future?

10 A. No.

11 Q. And that wasn't within the purview of the  
12 chairman's role, was it?

13 A. No, that should be the entire board.

14 Q. And the practice was that the rents would  
15 be determined each year?

16 A. Yes.

17 Q. You mention that Mr. Weatherall had a  
18 concern about the rent levels, right?

19 A. Uh-hum. (Witness nodding head up and  
20 down.)

21 Q. Yes?

22 A. Yes.

23 Q. Did anybody else outside of the Feoffees  
24 express concerns that the rents were too low?

1           A.    I think when it was first brought up it  
2 was Mr. Weatherall and Mr. Traverso together.

3           Q.    Was Mr. Traverso a public official when he  
4 first raised these concerns?

5           A.    I do not remember.

6           Q.    At some point he began to serve on the  
7 school committee?

8           A.    Yes, he did.

9           Q.    And at some point there was a town report  
10 concerning the Feoffees, do you remember that?

11          A.    No.

12          Q.    You have never --

13          A.    Excuse me.

14          Q.    Yes, go ahead.

15          A.    I'm wrong in what I just said, because  
16 when you said town report, I was thinking of the  
17 town report that comes out every spring. It was not  
18 in there. Yes, there was a report generated that  
19 looked at the Feoffees, the structure, and various  
20 things that we did and so on. Yeah, I'm aware of  
21 that report, yes, I am.

22          Q.    Has there been any time since 1990 that  
23 you're aware of when in fact the tenants have paid  
24 fair market rent for their real estate at Little

1 Neck?

2 A. Not in my opinion.

3 Q. When was the wastewater system completed  
4 such that tenants could hook up to it?

5 A. I'm hard pressed to give you the date, you  
6 know, the actual date.

7 Q. Sometime prior to the litigation?

8 A. Yes.

9 Q. Prior to?

10 A. I believe so.

11 Q. Before you sent the --

12 A. Yes.

13 Q. Leases to the tenants?

14 A. Yes.

15 Q. And said you should sign them?

16 A. Yes.

17 MR. SHEEHAN: Alex, wait until the  
18 question is complete.

19 Q. And was it completed sometime soon before  
20 these new rents were set and the leases were sent  
21 out to the tenants?

22 A. I believe so.

23 Q. In order for a tenant to take advantage of  
24 a wastewater system, they had to be connected to it,

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1 right?

2 A. Yes.

3 Q. And was that part of the wastewater  
4 project, to connect each of the tenants?

5 A. Yes.

6 Q. Was any consideration given to requiring  
7 the tenants to sign a document taking responsibility  
8 for payments in order to be hooked up to the  
9 wastewater system?

10 A. I don't believe so.

11 Q. Was that a mistake, in retrospect, not to  
12 have done that?

13 MR. SHEEHAN: Objection.

14 A. Since this is the first time anybody has  
15 ever said that, I would say probably, yes.

16 Q. Because you could have at that time said,  
17 Look, if you want to be part of the wastewater  
18 system, we need to have your commitment to pay for  
19 it in some fashion, either through rent or a special  
20 charge, right?

21 A. Yes.

22 Q. And of course, you couldn't continue them  
23 to, you wouldn't have been allowed to let them just  
24 keep on discharging water into their cesspools if

1 they didn't sign, right?

2 A. Yes.

3 Q. But if you didn't allow them to occupy  
4 with an illegal system, you could have put that  
5 choice to them, either sign or else, right?

6 A. Possibly. Because we had the DEP looking  
7 over us to clean up the entire area. So --

8 Q. Right.

9 A. I'm not sure the DEP -- I'm just thinking  
10 a little bit out loud, which I'm not supposed to.  
11 The DEP insisted that we clean up the entire area,  
12 not just part of it.

13 Q. Right.

14 A. So I think differentiating, as you  
15 suggested, may have been impossible.

16 Q. Unless the arrangement with the DEP was  
17 that those that weren't hooked up wouldn't be  
18 allowed to occupy, and therefore there would be no  
19 issue?

20 A. Yes.

21 Q. But you weren't expecting the tenants to  
22 rebel?

23 A. No.

24 Q. You thought the relationships were good?

1 A. Yes.

2 Q. How much of the problem do you attribute  
3 to individuals who asserted leadership for the  
4 tenants?

5 MR. SHEEHAN: Objection.

6 A. Would you ask that again, please?

7 Q. Well, when you assess the situation in  
8 your own mind, do you believe that the rebellion  
9 that took place was largely festered by a few  
10 disgruntled individuals?

11 A. Yes.

12 Q. And who are those, is that Mr. Gottlieb,  
13 Mr. DiSalvo?

14 A. Yes.

15 Q. When the Feoffees set rents at the rate of  
16 9,700 seasonal and 10,800 year round were you  
17 satisfied that these were fair market value rents?

18 A. Yes, at the time.

19 Q. Have you changed your mind?

20 A. No. The problem is how do you determine  
21 the rent as time goes on? What do you tie it to?

22 Q. Right.

23 A. As an index.

24 Q. So you're saying that they were



1 appropriate for 2006 when they were imposed?

2 A. Yes, yes.

3 Q. By the way, you would agree that the fair  
4 market rent for lots at Little Neck technically  
5 varies pretty markedly between lots?

6 A. Yes.

7 Q. And yet, the rents have been charged  
8 historically on a flat basis for all tenants?

9 A. Yes.

10 Q. And is it fair to say that that's because  
11 tenants have strongly advocated for that kind of  
12 uniformity?

13 A. Yes, actually.

14 Q. And even now, in some of the new leases  
15 there's some stratification built into the rents, is  
16 that right?

17 A. I'm not sure.

18 Q. But if you were to stratify the rents  
19 based on fair market value of the underlying lots,  
20 the stratification would be quite severe, wouldn't  
21 it?

22 MR. SHEEHAN: Objection.

23 Q. I can --

24 A. Yes.

1 Q. It wouldn't be just a matter of Tenant A  
2 pays 8% more than Tenant B. There would be a pretty  
3 large difference, right?

4 MR. SHEEHAN: Objection.

5 A. That, yes, that's what I would say.

6 Q. And again, the reason that that hasn't  
7 been done historically is because of the tenants'  
8 expressed desire, at least the majority of them, to  
9 have the rents be fairly flat?

10 A. Yes.

11 Q. Among all of the tenants?

12 A. Yes, that's our understanding.

13 Q. Now, if the Feoffees were able to collect  
14 and the tenants were paying rents at what you  
15 described as fair market rates at least as of 2006,  
16 would there be any problem with operating Little  
17 Neck in a manner that was profitable and allowed  
18 substantial sums to go to the schools?

19 MR. SHEEHAN: Objection.

20 A. No, nothing that's obvious.

21 Q. And you would --

22 A. At this point in time.

23 Q. And you would expect the rents, as you  
24 have described, to actually increase over time,

1 wouldn't you?

2 A. Possibly. I would have always up until a  
3 year or so ago and then I'm not sure any more where  
4 the values of things are going.

5 Q. Well, if there's increases generally in  
6 the cost of living and inflation, you'd expect the  
7 rents to keep up with that, wouldn't you?

8 A. Yes, in general.

9 Q. And then you may or may not have  
10 additional appreciation on top of inflation,  
11 depending on the market for oceanfront land, right?

12 A. Yes.

13 Q. So the existing investment in Little Neck  
14 on a long-term basis you would expect to at least  
15 keep up with inflation, wouldn't you, on the basis  
16 of rents?

17 MR. SHEEHAN: Objection.

18 A. Yes.

19 Q. Under the proposed sale of Little Neck,  
20 the tenants will be allowed to use their cottages on  
21 a year round basis, right?

22 A. That's my understanding, yes.

23 Q. If you were trying to compare a rental  
24 analysis to a sale analysis, would it be fair to

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1 look at year round rental for all of the properties,  
2 as well?

3 MR. SHEEHAN: Objection.

4 A. I don't know.

5 MR. PERRY: Let's go off the record  
6 a second.

7 (Discussion off the record.)

8 (Lunch recess 12:37 to 1:30 p.m.)

9  
10  
11  
12  
13 AFTERNOON SESSION

14 Q. You had testified earlier that at Great  
15 Neck where you had been part of the corporation that  
16 owned the property, ultimately those lots were sold  
17 off lot by lot?

18 A. Uh-hum. (Witness nodding head up and  
19 down.)

20 Q. To either those who owned the cottages or  
21 others, right?

22 A. Yes.

23 Q. And in each of those instances your family  
24 company attempted to sell the land for a fair market

1 value?

2 A. Yes.

3 Q. In fact, you said that the purpose of  
4 changing the ownership was to maximize revenues,  
5 right?

6 A. That's a misunderstanding. Changing  
7 ownership?

8 Q. At Great Neck.

9 A. Selling property?

10 Q. Yes.

11 A. Yes, selling it, yes.

12 Q. Yes, that's what I meant. Have you  
13 reviewed various appraisals that have been performed  
14 at Little Neck by different companies that have been  
15 involved for different parties?

16 A. No.

17 Q. You have looked at the LandVest  
18 appraisals?

19 A. Yes.

20 Q. Did you read the appraisal that Collier,  
21 Meredith and Grew did?

22 A. No.

23 Q. Did you review the appraisal done by  
24 Peterson LaChance?

1 A. No.

2 Q. For the tenants?

3 A. No.

4 Q. Have you reviewed the appraisal done by  
5 Steve Foster of Lincoln Properties?

6 A. No.

7 Q. In the appraisal done by LandVest in 2010  
8 do you recall that it was a two-part process, as  
9 we've previously discussed, in which he valued the  
10 individual lots, came to an aggregate figure, but  
11 then did a discounted cash flow analysis, do you  
12 recall that?

13 A. No, I don't really recall it.

14 Q. Do you have an understanding of what that  
15 methodology was where?

16 A. Yes, I've heard of it before, yeah, yes.

17 Q. In your own words what do you understand  
18 that methodology to be?

19 A. Well, I only say that because on a piece  
20 of land that we owned, he, a large piece of land,  
21 LandVest appraised it by agreement between us and  
22 the town and he wanted to discount the value because  
23 it was a large acreage not subdivided, so on. And  
24 he just said that was standard operating practice.

1 We didn't accept it, but -- So, yeah, I'm not  
2 familiar with that, but I am sort of familiar with  
3 what you're saying.

4 Q. All right. Well, do you have an  
5 understanding that there's a difference between the  
6 value that LandVest says is the fair market value of  
7 the property as a whole compared to the value of  
8 each individual lot when you add them up?

9 A. Yeah, I have some understanding of that,  
10 certainly.

11 Q. And what is the price of the sale to the  
12 tenants based upon? Is it based upon what the  
13 individual lots the tenants are getting or is it  
14 based upon the land viewed in the aggregate?

15 A. I don't know what the original basis was  
16 to start coming up with that value.

17 Q. At the end of the sales transaction with  
18 the tenants if it were to be approved, each tenant  
19 will end up owning an individual lot, correct?

20 A. Yes, as a condo lot.

21 MR. SHEEHAN: Note my objection.

22 Q. As part of a condominium?

23 A. Yeah.

24 Q. They'll own a cottage and they'll have

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1 rights to use the common areas with others?

2 MR. SHEEHAN: Objection.

3 Q. Is that right?

4 A. I would assume.

5 Q. Do you believe that each individual tenant  
6 should have to pay to the Feoffees the fair market  
7 value of the individual lot being purchased?

8 MR. SHEEHAN: Objection.

9 A. No, no.

10 Q. And why not?

11 A. Well, we negotiated a value separately  
12 than that kind of methodology.

13 Q. And under the value you negotiated are the  
14 tenants on average paying for their individual lots  
15 a fair market value figure for that lot?

16 MR. SHEEHAN: Objection.

17 A. I don't know.

18 Q. Have you, are you aware that according to  
19 the various appraisals the value of the individual  
20 lots when aggregated comes to something between, in  
21 the range of 38 to 42 million?

22 A. I'm trying to think of how to answer. I  
23 guess I'm aware of the number. I don't think it has  
24 any validity.



1           Q.    And why do those numbers of 38 to 42  
2 million as the value of the individual lots  
3 aggregated have no validity?

4           A.    Because that's with it all subdivided and  
5 a condo creation.

6           Q.    Right.

7           A.    That isn't what's being sold.

8           Q.    Now, if the sale goes through at a price  
9 of, stated price of \$29 million before one accounts  
10 for any rebates and so forth, the tenants will  
11 receive at the end of the day subdivided condominium  
12 type units, right?

13                   MR. SHEEHAN:  Objection.

14           A.    Yes, I believe so.

15           Q.    So at the end of the sale process what  
16 will be the aggregate value of all the lots that the  
17 tenants own?

18                   MR. SHEEHAN:  Objection.

19           A.    Well, it should be 29 million minus  
20 whatever the other things that are taken away, debt,  
21 costs of surveying, things like that.

22           Q.    Well, once the transaction takes place a  
23 tenant would be able to sell his condominium unit,  
24 both the interest in the land and the interest in

1 the cottage at fair market value, right?

2 MR. SHEEHAN: Objection.

3 A. Uh-hum. (Witness nodding head up and  
4 down.)

5 Q. Do you have an understanding of what those  
6 fair market values will look like immediately after  
7 the sale?

8 A. No, I don't.

9 Q. If you add up all the fair market values  
10 of the condominium units immediately after the sale  
11 will they be closer to 40 million or 29 million?

12 A. I don't know.

13 Q. Do you think that's a relevant question to  
14 ask?

15 A. Relevant for you, yes.

16 Q. Not relevant for you?

17 A. Well, I don't know what the market will  
18 determine.

19 Q. If in fact the value of all the  
20 condominium units when you add them up after the  
21 sale is in the range of 40 million, do you still  
22 think that a sale at the stated price of 29 million  
23 is a fair deal for the Feoffees?

24 MR. SHEEHAN: Objection.

1           A.    Yes, yes, I do.

2           Q.    Why is that?

3           A.    Well, we have a situation where 80% of the  
4 tenants down there basically refuse to pay the rent  
5 that we set out, sued us and -- Let's see, I think  
6 I'm getting off track.

7                       Actually, I'm not sure how to  
8 rationalize it. I'm not sure I want to sit here and  
9 think about it and try and give it to you. I may  
10 try and answer it later as I think about it while  
11 you're talking.

12          Q.    All right. You mention that the tenants  
13 had sued you, sued the Feoffees?

14          A.    Uh-hum. (Witness nodding head up and  
15 down.)

16          Q.    Yes?

17          A.    Yes.

18          Q.    Was it your understanding that any of the  
19 tenants were seeking to go after you, after your  
20 personal assets?

21          A.    The legal documents said that. I don't  
22 really believe that's the case.

23          Q.    Did the Feoffees ever have any insurance  
24 to protect them against claims made against the

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1 Feoffees?

2 A. No.

3 Q. Were you concerned about potential  
4 personal liability from the tenants' lawsuit?

5 A. No.

6 Q. Why not?

7 A. Well, the relationship between the  
8 Feoffees and the tenants was, you might say, a kind  
9 of benign relationship over the long period. It was  
10 only at this end that the sewer and the substantial  
11 increase in rent that, you know, tension was  
12 created, and not only tension with us, but tension  
13 amongst the people down there. So the quiet place  
14 that existed that you'd never worry about has  
15 changed. It has.

16 Q. Right. So --

17 A. As I said, the demographics have changed.

18 Q. So I guess what I'm asking is why wouldn't  
19 you have been concerned, then, with the demographics  
20 changing and having been sued in this lawsuit, with  
21 possible potential personal liability?

22 MR. SHEEHAN: Objection.

23 A. I don't think we expected to be sued. And  
24 obviously, when we were sued, any insurance wouldn't

1 cover the suit anyway.

2 Q. So let me clarify the question I'm asking  
3 you. Once you were sued --

4 A. Yes.

5 Q. Not having any insurance --

6 A. Yes.

7 Q. Was that a concern to you, that you might  
8 be personally liable?

9 A. I'm trying to figure out how to answer.  
10 The answer is no, on some other suit in the future,  
11 although it has crossed our mind.

12 Q. I really meant on the --

13 A. Existing?

14 Q. On the existing lawsuit after it was filed  
15 against you, did that concern you that tenants were  
16 making claims that you understood to be against you,  
17 personally?

18 A. Well, yes, sure.

19 Q. Okay. And why were you concerned?

20 A. The possibility was that we could be  
21 individually liable.

22 Q. Is part of the settlement with the  
23 tenants, if approved by the court, that you deal  
24 with that personal liability by getting any claims

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1 released?

2 A. I believe so, yes.

3 Q. Is that part of the reason why you entered  
4 into the settlement?

5 A. No.

6 Q. You mentioned in your testimony that  
7 you're not aware of any period of time since the  
8 nineties when the tenants have paid an amount that  
9 you believe to be a fair market rent, do you recall  
10 testifying to that?

11 A. Yes.

12 Q. If the settlement agreement is approved  
13 will the Feoffees end up collecting fair market  
14 rents for the period from 2007 through the date of  
15 sale?

16 A. Not in addition to the 29 million. The 29  
17 million, I believe, includes that.

18 Q. Right. So if we're referring to it as the  
19 \$29 million purchase price, then there's a few  
20 million dollars in rents that will not have been  
21 collected at what you think is fair market value,  
22 right?

23 MR. SHEEHAN: Objection.

24 Q. Or you could call it \$26,000,000 purchase

1 price and say you're collecting the rents, is that  
2 basically right?

3 A. I look at it that it really is a  
4 \$26,000,000 sale that was agreed upon twice by the  
5 school committee and that the differential  
6 accommodates back rent and things like that.

7 Q. Back rent and the rebates to the lessees?

8 A. Yeah, yes.

9 Q. Things along that -- and things like that?

10 A. Yes.

11 Q. Will you agree with me that since there's  
12 been no history of collecting fair market rents from  
13 the tenants at Little Neck, we have no history  
14 showing what contributions can be made to the  
15 schools based on the collection of fair market  
16 rents?

17 MR. SHEEHAN: Objection.

18 A. Would you please repeat that?

19 Q. You have testified that there's no history  
20 of having collected fair market rents by the  
21 Feoffees that you know of, correct?

22 A. Yes.

23 Q. By the same token, therefore, there's no  
24 history of contributions to the schools based on the

1 collection of fair market rents, right?

2 A. Well, yes.

3 Q. Which of the lots at Little Neck do you  
4 think are the most valuable ones?

5 A. My opinion is the one, are the ones out on  
6 the bluff that look out onto Ipswich Bay.

7 Q. Are those on River Street, do you know?

8 A. Some are on Cliff Road and some are on, I  
9 believe that piece of road is River Road.

10 Q. River Road. And will you agree that the  
11 value of those individual lots on River Road and  
12 Cliff Road are substantially higher than \$200,000  
13 each?

14 MR. SHEEHAN: Objection.

15 A. My estimate is that they would be.

16 Q. They may be worth on a stand alone basis  
17 400,000 or 500,000 or more?

18 A. I've seen people pay that kind of money  
19 for small pieces of land, but they seem to have no  
20 regard for what they're buying -- I mean, what  
21 they're paying. I mean, if you got tens of millions  
22 of dollars in the bank and you decide you want that  
23 piece of land, then you got to pay whatever it is.

24 Q. And fair market value is whatever somebody



1 is willing to pay to own the property in question,  
2 right?

3 A. That's right.

4 Q. So in the case of the lots on River Road  
5 and Cliff Road, would you agree that the fair market  
6 value of those lots is very substantially higher  
7 than the amount to be paid for them under the  
8 settlement agreement?

9 MR. SHEEHAN: Objection.

10 A. I'm just thinking about the settlement  
11 agreement itself. Well, you're taking pieces out of  
12 the aggregate settlement agreement. Do I think  
13 those are worth more as separated like that where  
14 they'd be able to be sold? Yes.

15 Q. Well, once the transaction, if the  
16 transaction were approved, the owners of those lots  
17 could turn around and sell them the next day, right?

18 MR. SHEEHAN: Objection.

19 Q. Well, if the transaction were approved and  
20 the condominium were formed and the sales under the  
21 settlement agreement to the tenants take place,  
22 right?

23 A. Uh-hum. (Witness nodding head up and  
24 down.)

1 Q. As soon as those sales take place, the  
2 unit owners would be able to turn around and sell  
3 the lots the next day, right?

4 MR. SHEEHAN: Objection.

5 A. I believe so.

6 Q. And in the case of those who are buying at  
7 River Road and Cliff Road, they could immediately  
8 derive substantial profits?

9 A. That's possible, yes.

10 Q. Well, I want to ask you about this issue  
11 of whether we should be looking at the value of the  
12 property in the aggregate versus the value of  
13 individual lots. The transaction under the  
14 settlement agreement calls for a conversion to  
15 condominiums and then virtually all of the cottage  
16 owners have agreed to buy individual lots, right, is  
17 that correct?

18 A. Yes.

19 Q. There's not going to be any sell-off over  
20 a period of years, right?

21 A. No.

22 Q. In fact, instead, what will happen is that  
23 after the condominium is formed, shortly thereafter  
24 virtually all of the lots will be owned by current

1 cottage owners, right?

2 A. I believe so, yeah.

3 Q. So why wouldn't it be appropriate in  
4 looking at the price to be paid to evaluate what  
5 each individual lot owner will get in terms of his  
6 own lot and adding those up together for the sale  
7 price?

8 A. Well, that isn't how it's being sold.  
9 It's being sold in its entirety, willing buyer,  
10 willing seller.

11 Q. So you're pricing the entire property on  
12 what some hypothetical third party would pay for the  
13 right to come in, buy the entire property and over a  
14 period of years sell it off to the tenants, right?

15 A. I think that's correct, yeah.

16 Q. And why is that a better way to value it  
17 when the tenants are all going to end up with 167  
18 individual units the day after the sale?

19 A. Well, the valuation was, you know, based  
20 on -- the valuation that we have is based on the  
21 appraisals that were done and the methodologies  
22 used, all of which I can't give you, most of which  
23 are very close.

24 Q. You tell me you had become chair around

1 the time the wastewater system problems were  
2 accelerating, right?

3 A. Yes.

4 Q. And that was in the 2000's?

5 A. Yes.

6 Q. Could you explain what your role was with  
7 regard to the wastewater system project, addressing  
8 those problems?

9 A. Well, the role will certainly widely vary  
10 from meeting with the DEP and/or their  
11 representatives in the field, to reviewing the  
12 development of the construction drawings and how  
13 this could be done, especially with regard to the  
14 other underground utilities that were there, and  
15 finally, the bidding process and then the  
16 construction, which I spent a great deal of time  
17 over there.

18 Q. So the beginning of the process was that  
19 there were meetings with DEP?

20 A. Yes.

21 Q. Can you give me a rough time frame of when  
22 these meetings were occurring?

23 A. The first of the meetings began with Don  
24 Whiston, so I can't tell you that. I can't tell you

1 the beginning of when DEP stepped in. I only know  
2 that it got to a point where they said fix it or  
3 close it.

4 Q. Okay. And am I correct that the  
5 underlying problem was that people were disposing of  
6 their waste to, essentially, cesspools?

7 A. Probably. Well, certainly not Title V  
8 compliant systems.

9 Q. Right. And people didn't have even septic  
10 tanks, right? They simply had, they discharged into  
11 the ground, weren't they?

12 A. Could be. I don't know. I can't really  
13 answer that. It's probably very widely varied what  
14 they were using.

15 Q. Regardless what they were using, the  
16 conclusion by DEP was that there was waste from  
17 Little Neck ending up in rivers and so forth, right?

18 A. Yes.

19 Q. And they wanted that to stop?

20 A. Yes.

21 Q. And they said this can't go on, it must  
22 stop?

23 A. Yes.

24 Q. So then there were meetings with DEP about

1 how to resolve the issue?

2 A. Yes.

3 Q. Some of which Don Whiston attended and  
4 later in the process you were involved in?

5 A. Yes.

6 Q. At some point there was a first agreement  
7 with DEP for the installation of tight tanks by the  
8 tenants, is that right?

9 A. Yes.

10 Q. Were you part of that agreement?

11 A. No.

12 Q. Is that Don Whiston?

13 A. I'd say yes.

14 Q. And the tenants have complained that that  
15 was all done without their involvement. Do you know  
16 if that's true or not?

17 A. I don't know.

18 Q. Have you heard that complaint?

19 A. No, I haven't heard it as a complaint, no.

20 Q. Okay. When the agreement was made that  
21 tight tanks would have to be installed, whose  
22 obligation was it going to be to install the tight  
23 tanks? Was that going to be the cottage  
24 owners' obligation?

1           A.     That would basically be the cottage owner.

2           Q.     Everybody understood that, as far as you  
3 know?

4           A.     As far as I know, yes.

5           Q.     Did you receive feedback from the tenants,  
6 the cottage owners that they did not like this tight  
7 tank solution?

8           A.     Yes.

9           Q.     And who communicated that feedback to you?

10          A.     There were several people. Some were  
11 communicated -- I can't recite who they were. Some  
12 was recited to me and some to the other Feoffees,  
13 and discussion ensued with the engineer with regard  
14 to that.

15          Q.     Was there an engineer who you were using  
16 at that time?

17          A.     I believe P.L. Lombardo was involved at  
18 that time, yes.

19          Q.     How did that engineer get selected,  
20 Lombardo?

21          A.     He got selected by recommendations for his  
22 qualifications to work out septic systems in unusual  
23 situations.

24          Q.     And who made the recommendation?

1 A. I don't remember.

2 Q. Was Don Greenough involved in that  
3 recommendation?

4 A. I don't believe so.

5 Q. What were the complaints that you heard  
6 voiced by, directly or indirectly, by tenants  
7 concerning the proposed tight tank solution?

8 A. The concern was a public safety concern.  
9 It was in regard to the, basically, the random need  
10 to pump the tanks and in an environment which  
11 typically had a large number of children, that that  
12 would be a safety issue.

13 Q. So you'd have safety issues with the  
14 pumping, right, that was a tenant concern?

15 A. Yes, in the context of pumping it out of  
16 the tank, yes.

17 Q. Were there issues about the smelliness of  
18 the pumping?

19 A. That wasn't brought up, that I remember.

20 Q. And just the idea of having these septic  
21 tanks going up and down the streets periodically?

22 A. Yes.

23 Q. What were your reaction to these  
24 complaints? Did you think it was reasonable to try



1 to find another solution?

2 A. Yes.

3 Q. Was there an understanding with the  
4 tenants as to whether the alternative solution might  
5 cost more money?

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

7 Q. All right. So after -- What happened  
8 after this agreement was reached with DEP for the  
9 installation of tight tanks and the tenants gave  
10 feedback saying they didn't want to do it?

11 A. We went back to the DEP with the idea of a  
12 collection system.

13 Q. Was there also some attempt in between to  
14 try to do a sewer hook-up?

15 A. Yes. You mean to the municipal sewer?

16 Q. Yes.

17 A. Yes.

18 Q. And what was the outcome of that?

19 A. That was very negative by the town.

20 Q. Because it would have involved town cost?

21 A. No. Because it would have passed in front  
22 of some people who just didn't want it to go there  
23 and were very, very vocal.

24 Q. Which part of town would it have passed

1 by, Great Neck?

2 A. Passed by Great Neck, out of Eagle Hill,  
3 Island Park.

4 Q. Was the issue having the sewer pass by  
5 those places or was it having trenches dug and sewer  
6 installed?

7 A. I'm not sure, because the objections  
8 weren't valid. It was a pressure main. You can't  
9 tie into a pressure main. Nobody was trying to  
10 assess an abutter for a pressure main going by. But  
11 people seemed to think that if it's called sewer  
12 going by, I'm going to have to tie into it. You  
13 can't.

14 Q. So it was passing by places that didn't  
15 themselves have town sewer?

16 A. That's right.

17 Q. And people there were under the impression  
18 that if the sewer were going by their houses, they  
19 would be forced in the future to hook up into it?

20 A. There was a lot of people that had that  
21 opinion. It felt like the general opinion kind of  
22 category.

23 Q. Who was going to pay for this sewer line  
24 if it was going to be put in?

1           A.     That would have been the Feoffees.

2           Q.     And what would the cost of the sewer  
3 solution have been compared to some of these other  
4 solutions?

5           A.     I don't remember.

6           Q.     Do you know if the tenants had to pay for  
7 the tight tanks under that solution, but the  
8 Feoffees were going to pay for a sewer solution, why  
9 would they do that?

10          A.     We expected to get the money out of the  
11 tenants either by assessment or if assessment became  
12 something that wasn't legally acceptable, by  
13 charging the appropriate rent.

14          Q.     Did you have, did you investigate whether  
15 assessment was a legal way to do it?

16          A.     Yes, yes.

17          Q.     Did you assess whether, did you determine  
18 whether an assessment was a lawful way to recover  
19 for the cost of the wastewater system?

20          A.     We determined that it may not be and we  
21 didn't need to have a not be.

22          Q.     When did you learn that you might not be  
23 able to recover the cost of the wastewater system  
24 through an assessment?

1 A. Sometime during the construction period.

2 Q. So no effort was made to make a  
3 determination as to how the cost would be recovered  
4 before you started construction?

5 A. We intended to do it by betterment or --

6 Q. Okay. When did construction start? Was  
7 it 2004? Do you know the date?

8 A. I don't. I would have said 2003, but it  
9 may be 2004.

10 Q. It may be 2003, as well.

11 A. Yeah.

12 Q. So before construction started in or  
13 around 2003, at the time construction started in or  
14 around 2003 your expectation was that there would be  
15 an assessment to tenants in the form of betterment?

16 A. Yes.

17 Q. And what was your basis for that  
18 assumption? Was that something that was discussed  
19 among the Feoffees?

20 A. Yes.

21 Q. Was it discussed with any professionals?

22 A. Our attorney at the time.

23 Q. That was?

24 A. Don Greenough.

1           Q.    And after you had discussed it internally  
2           and consulted with Mr. Greenough, your plan was to  
3           recapture the sum through betterment?

4           A.    Originally, yes.

5           Q.    And the betterment would be that you would  
6           simply charge the tenants pro rata their share of  
7           whatever was spent?

8           A.    Yes.

9           Q.    And they would either pay it all in a lump  
10          sum or perhaps over time?

11          A.    Yes.

12          Q.    When did the idea of recapturing these  
13          payments to a betterment get changed? Sometime  
14          during construction?

15          A.    Sometime during construction, yes.

16          Q.    Before the lawsuit?

17          A.    Yes.

18          Q.    And what brought about -- When did -- Was  
19          that because sometime during the construction you  
20          learned that you might not be able to charge the  
21          tenants through a betterment?

22          A.    Yes.

23          Q.    And did you learn that -- Did you again  
24          have advice of counsel in arriving at that

1 conclusion?

2 A. Yes.

3 Q. And what counsel did you have advice from?

4 A. I believe it was Don Greenough.

5 Q. And Mr. Greenough had done some further  
6 work on the issue?

7 A. Bill may have been just getting involved  
8 at that point. I don't remember.

9 Q. Bill Sheehan, you mean?

10 A. Yes.

11 Q. Had the tenants communicated at some time  
12 between the decision to try to do it by way of a  
13 betterment and the determination that you couldn't  
14 do that, had the tenants communicated on this issue?

15 A. No.

16 Q. So once you thought that you might have a  
17 problem recapturing the money through betterment,  
18 the plan was to try to recapture it through rent?

19 A. Yes.

20 Q. But that was not necessarily as good a  
21 solution, true?

22 A. Say that again, please?

23 Q. Capturing it through rent was not  
24 necessarily as good a solution as capturing it

1 through betterment, right?

2 A. That's true.

3 Q. Because to capture it through rent you had  
4 to have a rent that was within fair market, perhaps?

5 A. Yes.

6 Q. Or perceived that way?

7 A. Yes.

8 Q. Whereas the history of the improvement was  
9 that the tenants were going to have to put in tight  
10 tanks at their own expense unless you did something  
11 for them, right?

12 A. Yes.

13 Q. And if you had reached agreement with the  
14 tenants ahead of time that they would pay for it,  
15 you would have been in a better position?

16 A. Yes.

17 Q. And that was a mistake that was made in  
18 retrospect, true?

19 A. Yes.

20 Q. The tenants complain that the cost of the  
21 wastewater system kept going up?

22 A. Yes.

23 Q. And I've looked at some reports from  
24 Lombardo and it looks like the project costs did

1 keep going up, right? Is that fair to say that they  
2 did go up repeatedly?

3 A. Yes.

4 Q. Could you explain what happened?

5 A. We investigated different ways to dispose  
6 of the sewerage. One was to pump it along the road,  
7 the route we just talked about to the sewerage  
8 treatment plant. The second one was the  
9 consideration of tunnelling under the river and  
10 going to a different point where we would go into  
11 the gravity system at the end of Newmarch Street.

12 Now, I have to admit, I'm not  
13 current on directional drilling technology. I am  
14 very knowledgeable about the soils down in the area  
15 and I couldn't imagine having a problem with  
16 drilling something a distance that it would go, if  
17 you got in trouble under the river, we've got to  
18 incur involving engineers and everybody all over us.  
19 I felt very uncomfortable. That investigation I  
20 wanted stopped. It cost money to investigate it,  
21 okay? Every investigation costs money.

22 And the tenants wanted to have the  
23 sewer pick-up out at the gate and not near the ball  
24 field. And we investigated that, which required



1 test boring, the DEP, the conservation commission  
2 getting involved and all that design effort costs  
3 money. Tried several other things in terms of  
4 picking up the sewerage with turn-arounds up near  
5 the ball field. None of it, in my opinion, made  
6 sense.

7                   And what we finally basically got  
8 agreement on, I guess from the DEP, is that if we  
9 pick it up at the ball field with appropriate  
10 precautions, that the vehicles should have two  
11 people in them, one a driver and one to watch out  
12 for pedestrians and that's the way it's been ever  
13 since. And in hindsight -- Well, DEP was obviously  
14 concerned about public safety.

15           Q.    Yeah.

16           A.    As a state board.

17           Q.    So --

18           A.    So I think if you took the tight tanks to  
19 a, to its fruition, I think that you're looking at a  
20 public safety issue. We felt it was. The tenants  
21 felt it was. I think an administrative organization  
22 would feel the same way. It got designed that way.

23           Q.    Okay. So I think what you're saying is,  
24 one, given as much attention is being paid to how

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1 these delivery trucks were going to get the sewerage  
2 out of Little Neck, certainly you even in hindsight  
3 think that having a bunch of septic trucks there at  
4 Little Neck would have been a problem?

5 A. Yes.

6 Q. Okay. But what I was asking you was about  
7 how the costs escalated for this project, and I just  
8 want to go back over some of what you told me and  
9 then ask some follow-up.

10 A. Sure.

11 Q. Okay. You said that a major issue for  
12 this project was if you had some kind of a -- Strike  
13 that.

14 What got built was some kind of  
15 centralized holding tank, right?

16 A. Yes.

17 Q. And so how large is that holding tank?

18 A. There's four holding tanks total of, I  
19 think, 130,000 gallons.

20 Q. And the technology is that you hooked up  
21 individual cottages so that their sewage would flow  
22 into these holding tanks?

23 A. Yes.

24 Q. And then as the tanks come full, somebody

1 comes in and --

2 A. Yes.

3 Q. What, pumps out these tanks?

4 A. Pumps them out, right.

5 Q. To a truck that holds sewage?

6 A. Right.

7 Q. And drive them all out.

8 MR. SHEEHAN: Wait for a question.

9 Q. Do all four tanks get emptied at once or  
10 one at a time?

11 A. I don't recall.

12 Q. So a major issue with the design of this  
13 centralized holding tank is one there was a big  
14 issue about where the holding tanks would go, right?

15 A. There was an issue, but -- There was an  
16 issue.

17 Q. You felt the best solution was under the  
18 ball field?

19 A. I think it was the only solution.

20 Q. But when the Feoffees were proposing that  
21 the tanks go under the ball field, there was  
22 opposition from some people, true?

23 A. I believe so, but I don't recall anything  
24 serious.

1 Q. And so as a result, you had to go and  
2 investigate whether you could have the holding tanks  
3 out at the entry gate, you said?

4 A. No. I said that the sewer pick-up, a line  
5 coming from the tanks going out to the gate, they  
6 could pick the sewerage up at the gate rather than  
7 out by the ball field.

8 Q. So the holding tanks would be there  
9 anyway?

10 A. They'd be there anyway.

11 Q. But you could have a pipe that would take  
12 the sewerage?

13 A. Yes.

14 Q. Somewhere else for the pick-up?

15 A. Yes.

16 Q. Ultimately, that wasn't done?

17 A. Yes.

18 Q. Ultimately, the pick-ups were at the ball  
19 field?

20 A. That's right.

21 Q. Okay. But it costs money to investigate  
22 the installation of the pipe elsewhere?

23 A. Yes.

24 Q. But there was also consideration given to

1 not having the sewerage picked up at Little Neck at  
2 all, but tunnelling it somewhere?

3 A. Yes.

4 Q. Either by putting it on lines that might  
5 run where the sewerage lines would have gone?

6 A. Yes.

7 Q. Or by having it go under the river?

8 A. Yes.

9 Q. And it costs money to investigate those?

10 A. Yes.

11 Q. And there was also some controversy about  
12 how the sewerage could be picked up at Little Neck  
13 at the ball field without causing public safety  
14 problems?

15 A. Yes.

16 Q. Those, the items you have just mentioned  
17 are not the reason why this project went from an  
18 initial budget of a few million to \$7 million, are  
19 they?

20 A. Well, it was, I don't think it was ever  
21 just a few million dollars. I think that's a  
22 misstatement. It was more than that.

23 Q. What was the original budget for this  
24 project?

1           A.    I don't recall what it was, to be honest  
2 with you.

3           Q.    It was lower than it ended up being?

4           A.    Yes.

5           Q.    Do you know how much lower?

6           A.    No.

7           Q.    What were the reasons why the original  
8 costs went up so much?

9           A.    I believe the increase in costs were more  
10 due to engineering than construction.

11          Q.    Meaning figuring out the design?

12          A.    Yes.  There were several design iterations  
13 to the end of the project.

14          Q.    Well, was Lombardo required to submit any  
15 kind of a bid for the work?

16          A.    No, not at that point.

17          Q.    Was there any competition, was there any  
18 competitive bidding process by which Lombardo got  
19 the work?

20          A.    Not that I remember.

21          Q.    Did you ever see the contract with  
22 Lombardo?  Was there a contract?

23          A.    Yes.  I don't remember looking at it in  
24 detail.

1           Q.    Who among the Feoffees took charge of  
2 negotiating the arrangement with Lombardo or is was  
3 it --

4           A.    It started with Don Whiston.

5           Q.    Was a contract -- Who executed the  
6 contract between the Feoffees and Lombardo?

7           A.    The original contract was probably  
8 executed by Don Whiston. Some of the subsequent  
9 contracts were authorized by me where we  
10 investigated different things.

11          Q.    Yeah.

12          A.    And that's when I became concerned that we  
13 were just spending money that shouldn't be spent.

14          Q.    When you had these contractual  
15 arrangements with Lombardo were you getting the work  
16 done on a fixed fee basis or was it some kind of  
17 cost plus basis or some other arrangement?

18          A.    No. It was really, I'd have to say it was  
19 more like cost plus, because he admitted in order to  
20 meet the requirements of the DEP, the timing of the  
21 DEP, that he would have to subcontract out some of  
22 the design work.

23          Q.    You didn't have a fixed price from  
24 Lombardo for the work?

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1 A. I don't believe so.

2 Q. And in addition, he was subcontracting out  
3 some of the design work?

4 A. Yes.

5 Q. Do you know who he subcontracted the  
6 design work to?

7 A. I do not.

8 Q. Was there a competitive bidding process  
9 for those subcontracts?

10 A. I don't know.

11 Q. Do you know how much of the overall  
12 payments that were made for the wastewater system  
13 were for engineering and how much were for  
14 construction?

15 A. I don't know. I never looked at the  
16 total, total numbers. I never broke the numbers  
17 down.

18 Q. Eventually a design was agreed upon,  
19 right?

20 A. Yes.

21 Q. And approved by DEP?

22 A. Yes.

23 Q. And was it at that point that the  
24 construction process started?



1           A.    At that point we had to put it out to bid.

2           Q.    Okay.  So there was a bidding process for  
3 the construction work?

4           A.    Yes, there was.

5           Q.    Who coordinated that?

6           A.    He did.

7           Q.    Lombardo?

8           A.    Yes.

9           Q.    And did anybody from the Feoffees oversee  
10 that bidding process?

11          A.    Oversaw the replies to it.

12          Q.    Who was selected as a result of the  
13 bidding process?

14          A.    Strangely, I can't remember their name.

15          Q.    Was it one firm, a contracting firm?

16          A.    Yes.

17          Q.    What kind of firm would that be that does  
18 this kind of work?

19          A.    The expert excavating contractor who was  
20 highly experienced in sewer work from the Boston  
21 area.

22          Q.    Was that company that got the contract the  
23 lowest bidder?

24          A.    Yes.

1 Q. Do you know was that a fixed price  
2 contract?

3 A. I believe most of it was fixed. There may  
4 have been materials in there that were, say, brought  
5 in per cubic yard. I mean, that's typically the way  
6 contracts like that go.

7 Q. Did the construction contract end up  
8 costing a lot more than was expected when the bid  
9 came in?

10 A. I didn't think so. I didn't go through  
11 the whole review process.

12 Q. Did anybody?

13 A. I don't know.

14 Q. Who among the Feoffees is most  
15 knowledgeable about the costs of the wastewater  
16 project?

17 A. Well, the one who was chairman at the end  
18 was Jim Foley. Jim was very analytical. He may  
19 very well have some of that information.

20 Q. Have you heard the tenants make  
21 allegations that the wastewater project was  
22 mismanaged?

23 A. No.

24 Q. Are you aware of any allegations that the

1 wastewater project cost more than it should have?

2 A. Yes.

3 Q. And that's an allegation the tenants make  
4 in their lawsuit, right?

5 A. Uh-hum, yes.

6 Q. And don't they claim that it was  
7 mismanaged?

8 A. I didn't see that in there, but it may say  
9 that.

10 Q. Do you believe there's any merit in that  
11 allegation?

12 A. No.

13 Q. When you mentioned certain costs that you  
14 feel were incurred that should not have been because  
15 it was just wasting money, who was forcing those  
16 alternatives to be addressed?

17 A. The tenants down there.

18 Q. When you were first -- strike that.

19 Move to a different subject. During  
20 the time you were a Feoffee was there discussion  
21 from time to time about the possibility of one day  
22 selling Little Neck to the tenants?

23 A. Yes.

24 Q. And what's the first you recall of any

1 such discussion?

2 A. It's probably at least fifteen years ago,  
3 fifteen to twenty years ago.

4 Q. Who brought up the idea, to your  
5 recollection?

6 A. The tenants brought up the idea -- No. I  
7 was just trying to think of one key person who was  
8 wealthy and had, in that sense had something behind  
9 him if you're speaking about money, that he knew  
10 what he was talking about. The problem was that  
11 they didn't, they never came up with the kind of  
12 money that we would have even considered.

13 Q. Now, at the time that the tenants were  
14 talking about a sale of Little Neck was there  
15 anything standing in the way of continuing to rent  
16 it?

17 A. No.

18 Q. Were there any Feoffees who wanted to  
19 pursue the idea of selling Little Neck even though  
20 nothing stood in the way of continuing to rent it?

21 A. It was widely discussed amongst the life  
22 Feoffees. There were different thoughts, some very  
23 strong in terms of opposition, some were positive  
24 about it and felt it was the proper thing to do. I

1 personally had mixed feelings.

2 Q. All right. Well, there were four life  
3 Feoffees during the 1990's, right?

4 A. Uh-hum, yes.

5 Q. And those are the same four life Feoffees  
6 that are currently serving?

7 A. Yes.

8 Q. So would you tell me where each of the  
9 four life Feoffees stood in the earlier days in the  
10 1990's on this subject of a possible sale of Little  
11 Neck?

12 A. I can give you my best estimate.

13 Q. Yes.

14 A. The one who was most positive to sell it  
15 was Don Whiston. The one that was most opposed was,  
16 I believe, Peter Foote. I honestly can't remember  
17 how Jim Foley felt, although I don't think he was  
18 particularly in favor of it. And in general, I was  
19 not in favor of it, but I was willing to look at the  
20 various ramifications of doing something like that  
21 and given that it didn't seem to have any serious  
22 merit in the beginning.

23 Q. And what was Don Whiston's reasoning for  
24 strongly favoring a sale at a time when it was

1 feasible to continue renting?

2 A. Don't remember.

3 Q. Was there ever any discussion among the  
4 Feoffees after you joined in 1978 and before the mid  
5 2000 range when the wastewater system was built  
6 about entering into long-term leases with the  
7 tenants?

8 A. There was discussion. I can't give you  
9 much detail.

10 Q. Was there any --

11 A. And that was because the tenants would  
12 like to have had that.

13 Q. And was there a reason why the Feoffees  
14 didn't want to have that?

15 A. Not that I recall.

16 Q. At the time the wastewater system was  
17 built was there, was it necessary to borrow money  
18 for the trust because of the expense?

19 A. Yes.

20 Q. How much was borrowed?

21 A. What I recall originally it was about  
22 \$5.3 million.

23 Q. Was that the final figure or did it go up?

24 A. I believe it went up a little from that,

1 but I don't recall what the final figure was.

2 Q. Did you even, at some point, lend money to  
3 the Feoffees?

4 A. Yes, I did.

5 Q. How much did you lend?

6 A. \$1 million.

7 Q. And you had a million dollars available to  
8 you that you could --

9 A. I had assets that I could mortgage.

10 Q. So you mortgaged some assets for \$1  
11 million, provided that money to the Feoffees and  
12 then required that the Feoffees repay you the?

13 A. When they, actually, when they got their  
14 loan. See, they didn't have their loan. The  
15 contractor wasn't getting paid. The work would have  
16 stopped and DEP would have been very unhappy.

17 Q. It was somewhat of a bridge loan, then?

18 A. Yes.

19 Q. And when you got paid back did you get  
20 made whole for any interest you had incurred?

21 A. No. Just passed through, basically. No,  
22 I got nothing out of it.

23 Q. Right. In other words, you were made  
24 whole?

1           A.     Yeah, I was made whole.

2           Q.     So whatever interest you paid you got paid  
3 back by the Feoffees?

4           A.     Yes, yes.

5           Q.     But you didn't make any profit?

6           A.     No.

7           Q.     Okay. When the Feoffees were trying to  
8 get bank financing did they learn that it would be  
9 easier and cheaper to do so if it had, if there were  
10 leases in effect with the tenants that could be  
11 pledged?

12          A.     I don't remember that playing into it. It  
13 probably would be true, but I don't remember having  
14 any of that discussion.

15          Q.     And it could be true today, as well, that  
16 if you had sufficient leases, long-term leases with  
17 tenants, that's something that could be pledged to a  
18 bank to obtain financing at perhaps lower cost than  
19 you would otherwise pay?

20          A.     I believe so.

21          Q.     Have there been any attempts to determine  
22 what financing might be available to the Feoffees if  
23 there's no sale to replace the current debt that's  
24 at a fairly high rate of interest?



1           A.    Yes.

2           Q.    And tell me what has been done in that  
3 regard?

4           A.    Well, the only bank that had interest was  
5 the Cambridge Savings Bank and we worked with them.  
6 They had favorable interest rate. The problem  
7 became that they wanted an agreement from all the  
8 tenants that they would basically pledge their  
9 rental income to the bank the same way it was done  
10 for the Institution for Savings. That wasn't done  
11 on an individual basis. We pledged it. We pledged  
12 the income. Cambridge Savings Bank did not want it  
13 done that way. They really wanted a deed. That  
14 would be their first request, needless to say. So  
15 we asked if they would do it similarly to the bank  
16 loan we had. They considered it and I believe their  
17 attorneys said we need a little bit more than what  
18 Institution for Savings has. It was one of those  
19 things that would be impossible to get.

20          Q.    And the tenants wouldn't, at that stage  
21 the tenants weren't going to give you what was  
22 needed by the bank?

23          A.    I think getting 167 people to agree to all  
24 of that would probably be a monumental task.

1 Q. Now, how many leases do you have at  
2 present?

3 A. Around thirty.

4 Q. And those thirty leases are all at  
5 payments of at least 9,700 per year?

6 A. Yes.

7 Q. Did you make any efforts to see whether  
8 the bank would accept pledges of those amounts that  
9 were being paid under the lease as a security?

10 A. I don't know.

11 MR. PERRY: I need to take a break  
12 for a few minutes.

13 (Brief recess 2:32 - 2:45 p.m.)

14 Q. I want to talk to you for a few moments  
15 about the litigation with the tenants that occurred.  
16 We've discussed it briefly. Am I correct that in  
17 2006, after the Feoffees had sent out notices to the  
18 tenants that they were, that tenancies were being  
19 terminated, that the tenants filed suit?

20 A. I think that's correct, yes.

21 Q. And just to back up a little bit, am I  
22 correct that the Feoffees developed a lease that  
23 they wanted all the tenants to sign?

24 A. Yes.

1 Q. They sent out to the tenants a notice of  
2 termination of the at-will tenancies, right?

3 A. Yes.

4 Q. Along with the lease that they wanted  
5 tenants to consider, right?

6 A. Yes.

7 Q. And in response, many tenants not only  
8 declined to sign these leases, but didn't they also  
9 stop paying taxes?

10 A. There was problem collecting money. I  
11 don't remember whether it was taxes or rent. There  
12 were a few deadbeats anyway.

13 Q. So when tenants stop paying either rent or  
14 taxes, as the case may be, the Feoffees went further  
15 and sent notices to quit to those tenants, correct?

16 A. I believe so, if we're thinking of the  
17 same thing.

18 Q. And after that happened, the tenants  
19 filed, two of the tenants filed a lawsuit against  
20 the Feoffees, correct?

21 A. Yes.

22 Q. Which they claimed was a class action?

23 A. I don't think it ever got qualified as a  
24 class action.

1 Q. Right. It was just brought by the two  
2 tenants as purported representatives of a class?

3 A. I think you're correct.

4 Q. And you became educated a little bit on  
5 class actions, correct?

6 A. Yes.

7 Q. And you were aware that there were serious  
8 issues as to whether this case could properly be a  
9 class action, because there was not commonality  
10 among all the tenants with regard to their claims,  
11 true?

12 A. Yes.

13 Q. Because tenants were claiming in the  
14 purported class action there were allegations about  
15 representations that had been made by the Feoffees  
16 concerning rent, right?

17 A. I don't remember reading through the  
18 document.

19 Q. But you knew there was a serious issue as  
20 to whether this even was a valid case to become a  
21 class action, right?

22 A. Yes.

23 Q. And that was never brought before the  
24 court, because the case got resolved without that

1 issue being addressed?

2 A. Yes.

3 Q. Now, in this lawsuit you have described  
4 earlier in your testimony that certain claims were  
5 being made against you and the other life Feoffees  
6 that you understood to be directed personally  
7 against you, potentially?

8 A. I think I misspoke on that, that it was  
9 only against the Feoffees and not against  
10 individuals.

11 Q. But your understanding was that you could  
12 have exposure, correct?

13 A. I thought at the time I did.

14 Q. Yes, okay. I mean, an argument can be  
15 made that the way the lawsuit was crafted that  
16 they'd only named you in your capacity as a Feoffee,  
17 right?

18 A. Yes.

19 Q. But you weren't sure that that protected  
20 you at the time, were you?

21 A. No, but I believe that it's just suing us  
22 as Feoffees and not as individuals.

23 Q. Were there any claims being asserted  
24 against the Feoffees by the tenants that you thought

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1 had any merit?

2 A. No.

3 Q. Were there any claims asserted by the  
4 tenants against the Feoffees that you were  
5 particularly concerned with that you might lose?

6 A. I don't think so, other than to say that  
7 the final decision lies with the court and what the  
8 court does may not be what we think is common sense.

9 Q. Right. Was it your view that if the case  
10 was tried or litigated, that the Feoffees were very  
11 likely to prevail?

12 A. I don't know.

13 Q. What was your view?

14 A. My view, I think we were likely to  
15 prevail.

16 Q. In that litigation was it the Feoffees'  
17 expectation that they could prevail in recovering a  
18 fair rent, fair market rent from the tenants  
19 consistent with the amount being paid by lessees?

20 MR. SHEEHAN: Objection to form.

21 A. No.

22 Q. Was it your understanding in the  
23 litigation that one of the issues would be whether  
24 the tenants had to pay a fair amount for use and

1 occupancy of the premises?

2 A. Yes.

3 Q. All right. And how did you understand  
4 that issue would be resolved?

5 A. By the court.

6 Q. And were you expecting to recover on that  
7 claim against the tenants?

8 A. Once again, we don't know what the judge  
9 would have said. I mean, my logic would have said  
10 yes, but --

11 Q. You thought it was a valid claim for the  
12 rent, right?

13 A. Yes.

14 Q. And you had the benefit of several  
15 appraisals that said that the rent charges were  
16 appropriate, right?

17 A. Yes.

18 Q. And had you seen the tenants' own  
19 appraisal in that regard?

20 A. No.

21 Q. Were you aware that the tenants' appraisal  
22 ultimately characterized the rent being charged to  
23 the lessees as fair?

24 MR. SHEEHAN: Objection.

1           A.     No.

2           Q.     Were there any, were the tenants, did they  
3 have damage claims that you were able to identify  
4 where they could plausibly recover damages?

5           A.     Not that I remember, no.

6           Q.     Okay. But the Feoffees had potential  
7 claims against the tenants for these use and  
8 occupancy charges, right?

9           A.     Yes.

10          Q.     So you felt that the likelihood was that  
11 if the case were litigated, that the Feoffees would  
12 be recovering millions of dollars from the tenants  
13 and not vice versa?

14          A.     Yes, except, I don't know -- I think  
15 millions of dollars might be a very over-eager  
16 estimate.

17          Q.     Well, the amount that was in the escrow  
18 account to make up for the difference between the  
19 amounts the tenants were paying and the amounts they  
20 would have paid at lease rates came to millions of  
21 dollars?

22          A.     Came to \$1 million.

23          Q.     Just one?

24          A.     Roughly, one million.



1           Q.    How many tenants were there versus  
2   lessees?

3           A.    Now?

4           Q.    Sure.

5           A.    Well, there's around thirty lessees and  
6   take that away from 167, you get the rest.

7           Q.    And were there fewer or more lessees at  
8   the time the lawsuit was filed?

9           A.    There were fewer.

10          Q.    So there's always been at least 137  
11   tenants during the period the litigation's been  
12   going on?

13          A.    Yeah.

14          Q.    Yes, that's the lowest amount?

15                   MR. SHEEHAN:  Objection to form.

16          A.    I would say that is accurate.

17          Q.    All right.  The lessees were paying  
18   something like \$4,500 per year more on rent than the  
19   tenants?

20          A.    Yes, approximately.

21          Q.    If you multiply \$4,500 a year times 137  
22   tenants, you agree that that comes out to  
23   approximately 600,000 a year?

24          A.    Yes, I guess, maybe.

1 Q. And these amounts are being sought from  
2 the tenants for the period beginning July 1, 2007,  
3 right, under the arrangements with the tenants?

4 A. I'm not sure what the date is.

5 Q. Do you -- I'm not asking these questions  
6 to get at your personal finances, but part of -- You  
7 have at times had to worry about investing cash  
8 yourself, haven't you?

9 A. Yes, over the years.

10 Q. And you have at least some assets now that  
11 you invest, right?

12 A. Uh-hum. (Witness nodding head up and  
13 down.)

14 Q. Yes?

15 A. Yes.

16 Q. Would you characterize the current  
17 investment climate as difficult?

18 A. Yes.

19 Q. If the property is sold at Little Neck is  
20 it your understanding that this would yield, after  
21 pay-out of indebtedness of around \$22 million?

22 A. I believe that's about right.

23 Q. And if the Feoffees were to proceed with a  
24 sale and obtain net proceeds of \$22 million, then

1 that would have to be invested in some manner to  
2 generate income for the beneficiaries, right?

3 A. That's right.

4 Q. And would you agree with the concept that  
5 if the \$22 million were invested, it would be  
6 absolutely imperative to maintain the corpus?

7 A. Maintain the -- Say that again, please?

8 Q. The corpus, the principal.

9 A. Yes.

10 Q. And in maintaining the corpus or the  
11 principal, would you agree that you would need to  
12 maintain it for not just a nominal amount of \$22  
13 million, but you would need to make sure that kept  
14 up with inflation?

15 A. I certainly would like to see that.

16 Q. I mean, you understand that if you had \$22  
17 million in principal and you paid out all the income  
18 and kept it at \$22 million, that over time that \$22  
19 million would become effectively worthless if you  
20 waited long enough, right?

21 A. Uh-hum. (Witness nodding head up and  
22 down.)

23 MR. SHEEHAN: Objection.

24 Q. In 500 years \$22 million might not buy you

1 a cup of coffee, right?

2 MR. SHEEHAN: Objection.

3 A. Right.

4 Q. So you agree with the concept that any  
5 kind of funding policy for the school committee  
6 would have to be based on distributing only income  
7 that was in excess of cost of living increases,  
8 right?

9 A. With, you know, expert guidance, yes.

10 Q. Now, there was an affidavit that you gave  
11 in connection with the motion for summary judgment  
12 in this case, do you recall?

13 A. Uh-hum. (Witness nodding head up and  
14 down.)

15 Q. That you signed an affidavit?

16 A. Yes.

17 Q. And it referred to, it had a statement --  
18 I don't want to characterize it, but it was -- Well,  
19 I'll partly quote. It said, "So long as a net rate  
20 of return on assets is equal to or greater than 5%  
21 of the \$22 million," there would be a return of at  
22 least \$1 million per year, all right? Do you  
23 remember saying something like that?

24 A. Vaguely. I can't, but go ahead.

1           Q.    But in order to, if we're trying to  
2 maintain the corpus, then you would have to have a  
3 rate of return of 5% per year over and above  
4 inflation, right?

5                   MR. SHEEHAN:  Objection.

6           Q.    To distribute \$1 million per year?

7           A.    With your reasoning, yes.

8           Q.    And you're not aware today of any  
9 investments that can safely generate a return of 5%  
10 a year over and above the cost of living, are you?

11          A.    Yes.

12          Q.    You are.  What investments are those?

13          A.    The endowment fund of Dartmouth returned  
14 18% last year.

15          Q.    Does that mean that you as a Feoffee could  
16 safely get returns of 5% every year over and above  
17 inflation?

18          A.    No, can't guarantee that.

19          Q.    I'm asking whether there's any investments  
20 that you know of that can safely and without risk  
21 insure a 5% return over inflation?

22          A.    Not, no, not that I am aware of.

23          Q.    Do you know what a TIP is, the Treasury  
24 Inflation Protected bonds?

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1           A.    Yeah -- I'm not really that familiar with  
2 them, no.

3           Q.    Do you understand that they're a form of  
4 security where at the end of the period of time, you  
5 get back your principal plus inflation?

6           A.    Actually, no, I wasn't aware of those  
7 bonds.

8           Q.    Do you have any idea of what they're  
9 trading at now or what the rate of return is above  
10 inflation?

11                   MR. SHEEHAN:  Objection.

12          A.    I don't know.

13          Q.    Would it surprise you if it was very  
14 substantially below 5%?

15                   MR. SHEEHAN:  Objection.

16          A.    No.

17          Q.    Do you agree with me that one can not get  
18 a return of 5% per year each and every year over and  
19 above inflation without undertaking a great deal of  
20 risk?

21                   MR. SHEEHAN:  Objection.

22          Q.    Or you don't know?

23          A.    No, you know, I don't know.  I'm -- I  
24 don't have expertise in that area.

1 Q. All right. You don't wish to be  
2 understood as an expert on what kind of return one  
3 could get --

4 A. No.

5 Q. -- from 22 million if one were invested?

6 A. No, no.

7 Q. Correct?

8 A. Yes.

9 Q. Have you yourself done any kind of  
10 analysis as to what would be better for the  
11 beneficiary financially in terms of a sale versus a  
12 rental scenario?

13 A. No, not a detailed financial. The, some  
14 of the issues have been different than financial.  
15 The risk of tenant landlord relationship.

16 Q. Right. Are you familiar with the costs  
17 that the Feoffees would be expected to incur if the  
18 property were to be continued to be rented on a  
19 long-term basis or is there another Feoffee who's  
20 better able to testify to that?

21 A. It's probably somebody else who would be  
22 better able to testify to that.

23 Q. Before --

24 A. The -- Well, I'm sorry. I'll let you go.

1 Q. Let me ask you a question.

2 A. I'll let you go. I'm sorry.

3 Q. Before there was the litigation issue with  
4 the tenants how much did the Feoffees spend annually  
5 on legal fees?

6 A. I honestly don't remember, because in  
7 earlier years I think it was very minimal.

8 Q. And what would you budget now for legal  
9 fees if you didn't have litigation with the tenants  
10 going on, if that case were resolved?

11 A. I honestly don't know.

12 Q. You would not expect it to be particularly  
13 high, would you?

14 A. I would not expect it to be, unless some  
15 type of litigation came up.

16 Q. Do you know what the expected life of the  
17 wastewater system is?

18 A. No, I don't.

19 Q. The system consists principally of piping  
20 and holding tanks?

21 A. Yes, pumping stations, two pumping  
22 stations.

23 Q. And most of the expense associated with  
24 the installation of this system you have described



1 as engineering, right?

2 A. Say that again?

3 MR. SHEEHAN: Objection.

4 Q. A very large component of the cost of the  
5 system was engineering, you said?

6 A. Yes.

7 Q. Was that most of the cost?

8 A. No.

9 Q. It was part of the cost?

10 A. It was part of the cost, yeah.

11 Q. What kind of pipes were put in?

12 A. They were a, I believe they were a PVC.

13 Q. And the PVC pipes have a very long life  
14 expectancy?

15 A. Life expectancy.

16 MR. SHEEHAN: Objection.

17 Q. They're not something that's expected to  
18 fail in fifty years, are they?

19 A. No.

20 Q. They are something that's expected to be  
21 good for an indefinite period of time?

22 MR. SHEEHAN: Objection.

23 A. I would say the manufacturer would  
24 probably suggest that.

1 Q. Which parts of the system, to your  
2 understanding, have a shorter life expectancy than,  
3 say, the PVC pipes?

4 A. There are four pumps in the system, two in  
5 each pump well and it's probably indeterminate what  
6 their life expectancy is. I would expect at least  
7 twenty years, probably longer if they're properly  
8 maintained, which we attempt to do.

9 Q. So the pumps are something that you would  
10 expect to have to replace from time to time over a  
11 lengthy period of years?

12 A. Yes, over a significant period of years.

13 Q. The holding tanks are made of what?

14 A. I believe fiberglass.

15 Q. And those are -- Are those underground?

16 A. Those are underground.

17 Q. So they're intended to last how long,  
18 indefinitely?

19 MR. SHEEHAN: Objection.

20 A. Yeah. A long period of time. I have  
21 never heard a life expectancy on those.

22 Q. But you didn't put these fiberglass tanks  
23 in the ground to hold sewerage with the expectation  
24 that you would have to replace them in fifty years,

1 would you?

2 A. No.

3 Q. So nothing lasts forever, but these are  
4 expected to last a very long time, right?

5 A. Yes.

6 Q. So is there any part of this system that  
7 you're expecting to have to replace during your  
8 lifetime other than the pumps?

9 A. No.

10 Q. And where are the pumps located?

11 A. One is on River Road in that parking lot  
12 down there that's near the beach.

13 Q. Near the Pavilion Beach?

14 A. No, on the other side of the hill.

15 Q. Near the private beach?

16 A. Yeah, yes.

17 Q. That's the one on River Road, you mean?

18 A. Yes.

19 Q. So that's one.

20 A. That's one. The other one is just as you  
21 come through the gate, it would be just up that hill  
22 a few yards and on the left.

23 Q. Okay. There's two locations for the  
24 pumps?

1           A.     There's two locations, everything else is  
2 gravity.

3           Q.     And how many pumps are there, four?

4           A.     There's four.

5           Q.     Two at each place?

6           A.     Yeah.

7           Q.     Are they below ground?

8           A.     Yes.

9           Q.     How does one access them to repair or  
10 replace them?

11          A.     Manholes, large manholes.

12          Q.     How expensive were the pumps?

13          A.     I don't know those particular pumps. I  
14 would hazard a safe guess at probably a couple  
15 thousand.

16                   MR. SHEEHAN: If you don't know,  
17 don't guess, don't guess.

18                   THE WITNESS: Okay.

19                   MR. SHEEHAN: You can give an  
20 estimate if you have an estimate if you have a basis  
21 for it.

22          Q.     Give me a ballpark.

23                   MR. SHEEHAN: Wait a minute, wait a  
24 minute.

1           Q.    Let me ask a question so he can object.  
2   Don't answer until I'm done.  Are you able to give  
3   me just a rough ballpark estimate of what the cost  
4   of these pumps is?

5           A.    A couple of thousand dollars, \$2,000.

6           Q.    And it could be more, but we're not  
7   talking about \$50,000?

8           A.    No.

9           Q.    So the expense associated with repairing  
10   the pumps is not a particularly large one?

11          A.    No.

12          Q.    So is there any need, in your view, to  
13   reserve money for the repair or replacement of the  
14   wastewater system?

15          A.    No.

16          Q.    Now, what other -- I'm trying to get a  
17   sense of the other ongoing expenses that you  
18   anticipate incurring other than the indebtedness if  
19   the property is not sold.  So we have, there could  
20   be some professional fees, legal and accounting,  
21   right?

22          A.    Uh-hum.  (Witness nodding head up and  
23   down.)

24                   MR. SHEEHAN:  You have to answer yes

1 for her.

2 A. I'm sorry, yes.

3 Q. There's whatever the cost might get paid  
4 for managing the property?

5 A. Yes.

6 Q. The Feoffees were paying taxes on certain  
7 real estate that the Feoffees owned, common areas?

8 A. Yes.

9 Q. Hadn't been in the practice of passing  
10 that along to the tenants, correct?

11 A. Yes.

12 Q. There's a line item on the document I'm  
13 looking at for utilities. Do you know what utility  
14 expenses the Feoffees incurred that's not reimbursed  
15 by tenants?

16 A. It would be mostly electrical. Should be  
17 all electrical for the wastewater system, the  
18 office, community center, which would be minimal.

19 Q. So the charge of electricity for the  
20 wastewater system isn't included, that's not being  
21 passed along to the tenants as part of their --

22 A. Part of the rent.

23 Q. Part of the rent, it's not part of the  
24 water usage charges?

1           A.    I, I --

2           Q.    You don't know?

3           A.    I really don't know.  I think there's  
4 another answer to that, but rather than speculate, I  
5 don't know.

6           Q.    Peter Foote would be a good person on  
7 that, right?

8           A.    Yes, absolutely.

9           Q.    To understand the revenues from the  
10 wastewater system versus expenses and having that  
11 line up?

12          A.    Yes, sir.

13          Q.    I mean, in principle, it would make sense  
14 to have the wastewater fee cover all of the direct  
15 expenses associated with the wastewater system,  
16 wouldn't it?

17          A.    As you have been talking, I think it does,  
18 but Peter is the one to ask that question of.

19          Q.    Okay.  What about repairs and maintenance?  
20 What repairs and maintenance are the Feoffees  
21 responsible for apart from erosion -- we'll get to  
22 that -- under a rental scenario?

23          A.    Well, first you have the wastewater  
24 system.

1 Q. Right. Well, that's covered hopefully by  
2 the wastewater fees, right?

3 A. Yeah, okay, but -- Yes, yes, that's the  
4 right answer.

5 Q. You have roads?

6 A. You have roads.

7 Q. What do the Feoffees do for the roads?

8 A. Lately we haven't had to do much.

9 Q. What do you do in terms of plowing, given  
10 that there's only twelve or whatever the number is  
11 year round residents?

12 A. It's all plowed for public safety, I mean,  
13 for fire.

14 Q. So the Feoffees provide the plowing  
15 through a contractor?

16 A. I think the town actually does that.

17 Q. The town does it?

18 A. Yes.

19 Q. So there's no plowing expense associated  
20 with the rental of Little Neck?

21 A. No, not that I'm aware of.

22 Q. The town does it for public safety  
23 reasons?

24 A. Yes.



1 Q. And but the road, if there were potholes,  
2 that would be the responsibility of the Feoffees?

3 A. Feoffees.

4 Q. When I saw the roads at Little Neck, they  
5 looked like they were in unbelievable condition. Do  
6 you agree with that?

7 A. I agree with that.

8 Q. How long have the roads been in that  
9 condition?

10 A. Since we put in the wastewater system.

11 Q. Because you repaved at that time?

12 A. We repaved.

13 Q. And has there been very little need to  
14 maintain the roads after that?

15 A. Yes.

16 Q. Is there some reason why the roads at  
17 Little Neck don't develop kind of potholes from ice  
18 melting and freezing that other roads get?

19 A. Lack of traffic would be my best estimate  
20 during times when roads do break up, spring.

21 Q. There's exceedingly little traffic at  
22 Little Neck in the winter, I would imagine, right?

23 A. Yes.

24 Q. So at some point you'd expect there to be

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1 a line item for road maintenance, but at this time  
2 it's pretty --

3 A. Yes.

4 Q. -- minor, correct?

5 A. Yes.

6 Q. And apart from that, there's some kind of  
7 landscaping expense that goes --

8 A. Yes.

9 Q. -- into Little Neck?

10 A. Uh-hum, yes.

11 Q. Which would probably be under the repairs  
12 and maintenance category, right?

13 A. I would assume, yes.

14 Q. What landscaping do the Feoffees take  
15 responsibility for other than the ball field?

16 A. Since we own all the land, we take  
17 responsibility for trimming trees as needed.

18 Q. Throughout the area?

19 A. Throughout the area. Sometimes, it's  
20 often public safety. Things begin to die.

21 Q. Who does the landscaping?

22 A. The mowing of the grass, I believe, is  
23 done by a little company called On the Side. And  
24 the last tree person, because there have been

1 others, has been -- it's another small company from  
2 Ipswich. I recommended them only because I knew  
3 that they were very reasonable in their fees.

4 Q. Do you know what you spend on landscaping  
5 and mowing in the year?

6 A. No, I don't.

7 Q. Who would have that information?

8 A. Peter.

9 Q. Okay. What kind of insurance do the  
10 Feoffees pay for? Liability insurance?

11 A. I don't know. Is that an item there?

12 Q. Yeah.

13 A. I don't know.

14 Q. And there's an item on this list for  
15 police details. That would be on weekends during  
16 the summer?

17 A. Yes.

18 Q. Is that historically when there's a police  
19 detail?

20 A. Yes.

21 Q. There's an office expense item. Do you  
22 know what that is?

23 A. Well, there's general supplies. There's  
24 been some computer problems where somebody has had

1 to come in and straighten out a computer that's tied  
2 into the wastewater system, which can be managed  
3 from the office.

4 Q. How much are the Feoffees paying now for  
5 the management of the property through payments to  
6 one of the Feoffees, do you know?

7 A. It should be somewhere a little in excess  
8 of \$40,000.

9 Q. And who does that go to?

10 A. Peter Foote.

11 Q. And how is it determined that Peter Foote  
12 would be paid that amount of money to manage the  
13 land?

14 A. He was or he is, I believe, paid a fee for  
15 doing all the bookkeeping and QuickBooks kind of  
16 things and the other is \$25 an hour for his time  
17 spent in the office, which he begins the day going  
18 over the entire property, looking for any kind of  
19 violations by builders, and makes them get  
20 appropriate permits so people can't just do anything  
21 they want, followed by spending time in the office  
22 where he both receives and does the initial  
23 bookkeeping, manual bookkeeping. People come in and  
24 say, I think I paid. Well, look right here. You

1     paid in July, but you owe now.

2             Q.     Where's the office?

3             A.     The office is right opposite the ball  
4     field.

5             Q.     So Mr. Foote drives in there every day and  
6     goes to work, basically?

7             A.     Yes, he does.

8             Q.     And he must be pretty well acquainted with  
9     the tenants at this point?

10            A.     Reasonably well. Better than I am.

11            Q.     So is there any part of the  
12     responsibilities at -- Strike that.

13                    What about erosion, that's an  
14     expense that the Feoffees have to address from time  
15     to time?

16            A.     Yes.

17            Q.     First, why is it that the Feoffees have a  
18     responsibility to be concerned with erosion?

19            A.     If a massive piece of the hill begins to  
20     slide into the ocean, I think that falls in the  
21     category of keeping up the property.

22            Q.     Well, if a piece of the hill fell into the  
23     ocean and it didn't have a cottage on it, would the  
24     Feoffees be mandated to deal with it?

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1 A. We could be.

2 Q. Is there -- I mean, strictly speaking the  
3 Feoffees don't have an obligation to preserve Little  
4 Neck in exactly the condition that it's --

5 A. No.

6 Q. -- been in, correct?

7 A. Yes.

8 Q. They need to make sure that the investment  
9 stays safe, right?

10 A. Yes.

11 Q. So whether to address erosion would depend  
12 on what the nature of the erosion was and what area  
13 it affected, right?

14 A. Yes. It too could fall under the issue of  
15 public safety.

16 Q. So was there some particular erosion that  
17 took place at Little Neck that the Feoffees think  
18 needs to be addressed?

19 A. Yes.

20 Q. What's the erosion that took place that  
21 needs to be addressed?

22 A. It is the piece of Little Neck on the  
23 front of the hill towards Ipswich Bay from where  
24 that riprap was placed in the 1950's all the way

1 around to Pavilion Beach.

2 Q. What was done to determine how to remedy  
3 that?

4 A. An engineer was hired with that expertise  
5 to look at it and determined what we'd have to do.

6 Q. Who hired the engineer?

7 A. I'm trying to think who actually -- I  
8 think Peter hired the engineer because he had done  
9 work for us before.

10 Q. And what was the result of the engineer's  
11 report?

12 A. That we'd probably have \$1 million in  
13 expenses in order to repair that and put it into a  
14 safe and stable condition.

15 Q. Did he indicate when that work would need  
16 to be done?

17 A. Should be done fairly soon.

18 Q. Apart from reserving for this, what you  
19 call \$1 million for the erosion, is there any  
20 specific need to reserve at Little Neck for any  
21 infrastructure repairs that you're aware of?

22 A. Not at this time. We --

23 Q. If the property is not sold, do the  
24 Feoffees intend to address the erosion issue?

1 A. Yes.

2 Q. And that would be done over the, in the  
3 next couple of years?

4 A. Yes.

5 Q. Do you have, did you have any indication  
6 in the report how rapidly this problem is  
7 progressing?

8 A. I haven't actually read the report. I  
9 saw, I just got a summary of the report.

10 Q. Who did you get that from?

11 A. I'm trying to think who gave it to me the  
12 summary. It may have been Bill. A document like  
13 that I think resides with Bill.

14 Q. Bill Sheehan?

15 A. Yeah, yes, sir.

16 Q. Are you aware of any reason why it would  
17 not be feasible, if a sale is not approved, to  
18 continue with the rental of the property?

19 A. Simple answer is no.

20 Q. And if the property were continued to be  
21 rented, do you think the Feoffees would be able to  
22 fulfill the original charitable intent of benefiting  
23 the Ipswich schools?

24 A. I don't know, only because the court maybe



1 determine what the rental will be allowed.

2 Q. Provided that the property can be rented  
3 at fair market value, then you believe that the  
4 charitable intent can be fulfilled, correct?

5 A. Yes.

6 Q. When the Feoffees have their meetings who  
7 is invited to attend?

8 A. It's open to the public. I believe all  
9 the selectmen are invited to attend, as well as the  
10 school committee. Most often it might be one or two  
11 members of the school committee, historically, and  
12 the superintendent of schools.

13 Q. Have the Feoffees ever conducted meetings  
14 in private?

15 A. Yes.

16 Q. Do the Feoffees still conduct meetings in  
17 private?

18 A. Yes.

19 Q. And you're referring to the annual meeting  
20 as being open to the public?

21 A. Yes.

22 Q. But there's no requirement that all the  
23 business of the Feoffees be conducted at public  
24 meetings, is there?

1 A. No.

2 Q. At least under your construction of the  
3 law?

4 A. Yes.

5 Q. Because that's been an issue that's been  
6 raised by tenants?

7 A. Yes, that's correct.

8 Q. Where does that stand, this issue of  
9 whether the Feoffees are supposed to comply with  
10 public meeting laws?

11 A. I believe there was a judge who rendered  
12 an opinion that we were private and didn't need to  
13 have public meetings other than the annual meeting.

14 Q. Was that decision by the judge, was that  
15 in a criminal case that was brought for the --

16 A. I don't know.

17 Q. But it was not the superior court  
18 litigation?

19 A. No.

20 Q. It was a separate proceeding, right?

21 A. I believe so, yes.

22 Q. Are you aware of any meetings among the  
23 four life Feoffees to conduct business at Little  
24 Neck to which selectmen were not invited?

1           A.    Not since our last annual meeting.

2           Q.    Right. But historically, selectmen were  
3 not invited to the meeting of life Feoffees, were  
4 they?

5           A.    That's correct, because the life Feoffees  
6 were the Committee on Affairs to run Little Neck and  
7 they were not part of that.

8           Q.    So there was a Committee on Affairs?

9           A.    Uh-hum. (Witness nodding head up and  
10 down.)

11          Q.    Explain to me what the Committee on  
12 Affairs was?

13          A.    Committee on Affairs, wherever the term  
14 came from, was just a committee to manage Little  
15 Neck.

16          Q.    And how long did it exist?

17          A.    As long as I am aware.

18          Q.    During the time you have been a Feoffee  
19 there was always a committee called the Committee on  
20 Affairs?

21          A.    Yes.

22          Q.    And that Committee on Affairs always  
23 consisted of just the life Feoffees?

24          A.    Yes.

1 Q. And the life Feoffees would meet as the  
2 members of the Committee on Affairs to make various  
3 decisions concerning Little Neck?

4 A. Yes.

5 Q. Without the input of the selectmen?

6 A. Yes.

7 Q. Now, with regard to the selection of  
8 individuals to serve as Feoffees, am I correct that  
9 you replaced your uncle?

10 A. Right, uh-hum, yes.

11 MR. SHEEHAN: You have to answer yes  
12 or no.

13 THE WITNESS: I'm sorry.

14 Q. And the lawyer that was on the board that  
15 was Mr.?

16 A. Hayes.

17 Q. He replaced his father?

18 A. Yes, he did.

19 Q. Do you think that the current Feoffees are  
20 particularly qualified to choose their successors?

21 A. To do this successfully, is that what you  
22 said?

23 Q. No, no. Under the way the trust works at  
24 present the life Feoffees, when one of the Feoffees

1 resigns, the other life Feoffees choose the departed  
2 member's successor, right?

3 A. Yes.

4 Q. Do you think that's a peculiarly good way  
5 of choosing Feoffees?

6 A. I don't really have an opinion on that  
7 that I can render.

8 Q. There's been some alternatives advanced by  
9 the school committee that says that the, instead of  
10 life Feoffees, there should be Feoffees who were  
11 appointed by and accountable to public bodies in  
12 Ipswich, right?

13 A. Uh-hum, yes.

14 Q. Are you aware of that?

15 A. Yes.

16 Q. Don't you think that's a good idea?

17 A. Basically, yes.

18 Q. And if we had that kind of a system, for  
19 example, we probably wouldn't have a situation where  
20 -- Strike that.

21 Do you think that it's desirable to  
22 have Feoffees that don't have any personal interest  
23 in Little Neck, right?

24 A. Uh-hum. (Witness nodding head up and

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1 down.)

2 Q. Yes?

3 A. I think so, yes.

4 Q. And historically, and this isn't meant to  
5 be casting aspersions at anybody, but there have  
6 been Feoffees who have had family members renting  
7 cottages, right?

8 A. Yes.

9 Q. And that does make them trying to answer  
10 to two different masters, doesn't it?

11 MR. SHEEHAN: Objection.

12 A. No, I don't believe so.

13 Q. You think that's a good situation?

14 A. I think it's an acceptable situation if  
15 the person is a morally sound individual.

16 Q. Do you agree with me that even if the  
17 Feoffees were to raise the rent higher than the  
18 current amounts the lessees are paying, there would  
19 be people out there with money who would be willing  
20 to pay it?

21 MR. SHEEHAN: Objection.

22 A. I would say unlikely.

23 Q. Do you think there's some people out there  
24 who would pay just about anything to get to Little

1 Neck?

2 MR. SHEEHAN: Objection.

3 A. I think it's unlikely.

4 Q. What do you think would be the ideal  
5 qualifications for a Feoffee if there were going to  
6 be ongoing rental of property?

7 A. It's a little hard to summarize. I think  
8 they should have some business background, not  
9 necessarily legal -- No offense. If they were going  
10 to be managing, assuming that it's property to be  
11 managed --

12 Q. Right.

13 A. Somebody who had experience in that area  
14 would obviously be, I think, good. I mean, the  
15 obvious things are sound character and good  
16 recommendations would come into it, or should go  
17 into it.

18 Q. So would you agree that you'd want to see  
19 business acumen?

20 A. Yes.

21 Q. Financial acumen?

22 A. I think that's appropriate.

23 Q. Real estate knowledge is helpful?

24 A. I think that's helpful.

1 Q. Being of sound character?

2 A. Absolutely.

3 Q. And do you think there should be any kind  
4 of ability to have people move on when they've  
5 gotten to be -- Is there such a thing as being too  
6 old to be a Feoffee? Let me withdraw that.

7 Under the current arrangement  
8 there's no age limit for the Feoffees?

9 A. That's correct.

10 Q. Is that a good thing?

11 A. I'm not sure, to be honest.

12 Q. There's no mechanism now, if people fade  
13 with age, for them to be changed, right?

14 A. No.

15 MR. SHEEHAN: Objection.

16 Q. Correct?

17 A. Not that I know of, no.

18 Q. I mean, other than going to court, having  
19 a petition filed?

20 A. Yes, yes.

21 Q. Will you agree with me that, and again,  
22 this isn't meant to cast aspersions on the current  
23 Feoffees, but if you were trying to find the people  
24 who were most peculiarly fit to be Feoffees, you



1 wouldn't necessarily come up with the current board?

2 MR. SHEEHAN: Objection.

3 A. I don't know. Different people have  
4 different abilities and I think to summarily answer  
5 that is a little difficult.

6 Q. Do you personally see anything wrong with  
7 the school committee's proposal to change the  
8 governance of the trust?

9 A. As a general answer, no.

10 Q. But under the current rules, for example,  
11 if you thought it was a good idea to change and if  
12 you wanted to resign, it wouldn't actually  
13 accomplish that objective, because it would be the  
14 remaining Feoffees that would choose your successor,  
15 right?

16 A. That's true.

17 Q. And in fact, if there's even one Feoffee  
18 who thinks that the current system is a good one, it  
19 doesn't do any good if the other three all resign,  
20 correct?

21 MR. SHEEHAN: Objection.

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

23 MR. PERRY: Okay. Let's go off the  
24 record.

1 (Discussion off the record.)

2 MR. PERRY: I have one more area  
3 that I need to ask you about that I can think of  
4 right now.

5 A. Okay.

6 Q. Maybe two, actually. I forgot this page.  
7 Okay. When the concept of proposed sale of Little  
8 Neck was seriously discussed did you at some point  
9 have occasion to attend the meeting with the school  
10 committee on that subject?

11 A. No, I did not.

12 Q. Who handled the discussions with the  
13 school committee about a proposed sale?

14 A. It was initially Mr. Sheehan and Jim  
15 Foley.

16 Q. Did Mr. Foley attend the meetings that Mr.  
17 Sheehan went to about the proposed sale?

18 A. I believe he attended one. I'm not sure  
19 about the second one.

20 Q. Was the message to the school committee  
21 that Mr. Sheehan was authorized to deliver that the  
22 proposed sale was a good deal for the schools?

23 A. I honestly don't know what he said.

24 Q. Right.

1           A.    I think he was looking for concurrence  
2           that they would go along with the sale, which they  
3           did.

4           Q.    At the time that the school committee,  
5           according to your testimony, went along with the  
6           sale, what appraisals are you aware that had been  
7           done to support the idea that this was a good  
8           opportunity?

9           A.    I don't remember beyond LandVest what  
10          appraisals were in at that time.

11          Q.    And you're not aware of any appraisals  
12          that were available to the school committee in 2009  
13          and earlier other than the LandVest appraisals,  
14          correct?

15          A.    I don't know.

16          Q.    Do you disagree with the work that was  
17          done by Collier, Meredith and Grew?

18                   MR. SHEEHAN:  Objection.  He didn't  
19          read it.

20          Q.    You didn't read it, so you don't have an  
21          opinion on that?

22          A.    No.

23          Q.    Who among the Feoffees would be  
24          knowledgeable about the process that was followed

1 with respect to providing the tenants with notices  
2 to terminate their tenancy and notices to quit when  
3 they didn't pay their taxes? Was that also Peter  
4 Foote or Jim Foley?

5 A. Trying to think of who was chairman at the  
6 time.

7 Q. Were you chairman in 2006 when the lawsuit  
8 was filed?

9 A. I honestly can't remember. They blend  
10 together.

11 Q. Are you familiar with there being a  
12 reduction in the rate being charged for the  
13 wastewater system on a per gallon of water basis?

14 A. Yes.

15 Q. And at some point the rate was nine and a  
16 half cents and it went down to what, six and a half  
17 cents?

18 A. Or seven, but yes, it did go down.

19 Q. What were the events that led to the  
20 reduction in the amount being charged to tenants in  
21 connection with their water usage?

22 A. I honestly don't know what precipitated it  
23 other than the town agreeing to it, to the utilities  
24 department agreeing to it being a reasonable fee.

1           Q.    Did you review any documents before  
2    testifying today?

3           A.    Yes.

4           Q.    What did you review?

5           A.    2008 deposition.

6           Q.    And am I correct that you were asked  
7    questions in 2008 about whether you thought Little  
8    Neck should be sold?

9           A.    Yes.

10          Q.    And do you recall that you testified at  
11   that time that you did not think it should be sold?

12          A.    Yes.

13          Q.    Because it's a good investment?

14          A.    Yes, I saw that.

15          Q.    Has there been anything that's happened  
16   since 2008, other than reading LandVest appraisals,  
17   that's changed your mind on that front?

18          A.    Well, I certainly have changed my opinion,  
19   yeah.

20          Q.    Do you still think Little Neck a good  
21   investment?

22          A.    I think it's too vague a question.

23          Q.    And what are the reasons you changed your  
24   opinion between July 8th, 2008 when you testified

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1 that Little Neck should not be sold because it's a  
2 good investment and your signing a settlement  
3 agreement in January -- December 2009 to sell Little  
4 Neck?

5 A. Well, it's multifaceted answer. One, I  
6 can see seriously increased aggravation trying to  
7 manage the property. People so close together, that  
8 they complained about the littlest thing, and now  
9 because they had the money, they would sue and maybe  
10 even do something like try to name the Feoffees,  
11 which they haven't been able to do. But  
12 nonetheless, you know, a couple little old ladies  
13 decide to go at it with lawyers and, you know,  
14 there's more of it. And it's like nobody needs to  
15 deal with that kind of aggravation and/or associated  
16 cost that, you know, that you can't document as  
17 normal operating expense.

18 I guess the other thing is in trying  
19 to settle the superior court case, we went through  
20 various iterations of negotiation, including a judge  
21 who acted as a mediator and who, when he completed  
22 it, was quite discouraged that we're probably going  
23 to get nowhere with solving this problem. And so we  
24 looked at what other possibilities that were out

1    there and one was the possibility of selling it.  
2    And the question is whether that would be something  
3    good or not. My opinion changed to it probably  
4    would be good, because there were management issues  
5    that seemed to be cropping up that said managing  
6    this is going to get to be a bigger job. And in  
7    fact, when we priced professional management, it was  
8    a lot more money than what we're paying now. And  
9    that probably didn't -- It still left you with if  
10   there's a problem, call the lawyer. If I don't  
11   understand, call a Feoffee, you know, because they  
12   don't know the people. They could do the paperwork,  
13   all the rote things.

14                   So we got 80% of the people who are  
15   opposed to paying rent, paying the rent that we want  
16   to charge, which we thought was fair, and it seemed  
17   like there had to be another way to try and solve  
18   that problem, which ultimately, after several  
19   iterations, you know, came to where it is today.

20           Q.    Okay, thank you. I had a question about  
21   the mediation and settlement discussions that took  
22   place. Was there a point where you thought that the  
23   negotiations had been successful in getting the  
24   tenants to agree upon a new lease, but then they

1 changed their lawyers?

2 A. Yes.

3 Q. Tell me about that, please.

4 A. Well, I can only tell you summarily that  
5 we were pleased that our attorney returned with,  
6 They've agreed to something. I can't tell you  
7 exactly what it was. In which case, the group  
8 immediately fired their attorneys, hired a new law  
9 firm. That wasn't a very good sign either.

10 Q. So the old lawyers were the Masterman  
11 people, Beth O'Neill and Jim Masterson, right?

12 A. Yes.

13 Q. And they had worked something out with  
14 Bill Sheehan?

15 A. It had to have been.

16 Q. Was that at mediation or just separately,  
17 as you understand it, if you recall?

18 A. No, it was separate. It wasn't through  
19 mediation. The mediation basically failed.

20 Q. So Bill Sheehan reported back to the  
21 clients that he understood that there had been an  
22 agreement in principle of some sort reached, right?

23 A. Yes.

24 Q. But then when the lawyers tried to take



1 that back to the entire membership, there was some  
2 sort of uprising and membership didn't go along with  
3 it?

4 MR. SHEEHAN: Objection.

5 A. That's my understanding.

6 Q. Was this tentative agreement that was  
7 reached acceptable to the tenant leaders, DiSalvo  
8 and Gottlieb, as you understand it?

9 A. I do not know. I do not know.

10 Q. You would have thought that they would  
11 have had to have blessed it?

12 MR. SHEEHAN: Objection.

13 A. I would think so.

14 Q. And then the new lawyers came in and that  
15 was Todd and Weld?

16 A. Yes.

17 Q. And did Todd and Weld indicate that they  
18 were unwilling to negotiate a lease or what  
19 happened?

20 A. I can't remember what happened initially  
21 with Todd and Weld. I remember we had a meeting  
22 with Todd and Weld in Bill's office and we didn't  
23 really accomplish anything. We were miles apart.

24 Q. Did you ever get a second opinion from any

Alexander B. C. Mulholland, Jr.

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1 lawyers about the litigation other than Mr. Sheehan?

2 A. No, not that I'm aware of.

3 MR. PERRY: Okay. I've left you a  
4 few minutes, Bill.

5 MR. SHEEHAN: I have no questions.

6 (Whereupon, at 3:52 o'clock p.m.,  
7 the deposition was concluded.)  
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C E R T I F I C A T E

I, ALEXANDER MULHOLLAND, do hereby  
certify under the pains and penalties of perjury  
that I have read the foregoing transcript of my  
testimony given on October 11, 2011, and I further  
certify that said transcript is a true and accurate  
record of said testimony (with the exception of the  
following corrections listed below):

Page	Line	Correction/Reason
------	------	-------------------


Dated at \_\_\_\_\_, this \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
ALEXANDER MULHOLLAND

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS


COUNTY OF SUFFOLK

I, CYNTHIA F. STUTZ, Certified Shorthand Reporter and Notary Public duly commissioned and qualified in and for the Commonwealth of Massachusetts, do hereby certify:

That the witness whose testimony is hereinbefore set forth, was duly sworn by me and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2011.

  
CYNTHIA F. STUTZ, Notary Public

My Notary expires August 17, 2012

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1 **VOLUME: I**  
2 **PAGES: 1-202**  
3 **EXHIBITS: 0**  
4 **COMMONWEALTH OF MASSACHUSETTS**  
5 **ESSEX, SS. PROBATE & FAMILY COURT**  
6  
7 **ALEXANDER B.C. MULHOLLAND,**  
8 **JR., et al**  
9 **Plaintiffs, Docket No.**  
10 **vs.**  
11 **ATTORNEY GENERAL of the ES09E0094QC**  
12 **Commonwealth of Massachusetts,**  
13 **et al,**  
14 **Defendants.**  
15  
16  
17 **DEPOSITION OF**  
18 **ALEXANDER BRIMNER CLARK MULHOLLAND, JR.**  
19 **October 11, 2011**  
20 **10:07 a.m. - 3:52 p.m.**  
21 **Casner & Edwards, LLP**  
22 **303 Congress Street**  
23 **Boston, Massachusetts**  
24 **Court Reporter: Cynthia F. Stutz**

Page 2

1 **APPEARANCES:**  
2  
3 **WILLIAM H. SHEEHAN, III, ESQ.**  
4 **MacLean Holloway Doherty Ardiffe & Morse, P.C.**  
5 **8 Essex Center Drive**  
6 **Peabody, Massachusetts 01960**  
7 **978-774-7123**  
8 **wsheehan@mhdp.com**  
9 **on behalf of the Plaintiffs, Feoffees of**  
10 **the Grammar School of Ipswich and the**  
11 **Town of Ipswich**  
12  
13 **STEPHEN M. PERRY, ESQ.**  
14 **Casner & Edwards, LLP**  
15 **303 Congress Street**  
16 **Boston, Massachusetts 02210**  
17 **617-426-5900**  
18 **perry@casneredwards.com**  
19 **on behalf of the Defendants, School**  
20 **Committee of the Town of Ipswich and**  
21 **Richard Korb, Superintendant**  
22  
23  
24

Page 3

1 **I N D E X**  
2 **EXAMINATION OF: PAGE**  
3  
4 **Alexander Mulholland**  
5 **(By Mr. Perry) 4**  
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8 **EXHIBITS: DESCRIPTION PAGE**  
9  
10 **N O N E**  
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Page 4

1 **PROCEEDINGS**  
2 **IT IS HEREBY STIPULATED AND AGREED**  
3 **BY AND BETWEEN COUNSEL that the reading and signing**  
4 **of the deposition by the deponent shall be done**  
5 **within thirty days the filing of the deposition be**  
6 **waived; and that all objections, except as to form,**  
7 **and motions to strike be reserved for the time of**  
8 **trial.**  
9 **\* \* \* \***  
10 **Whereupon:**  
11 **ALEXANDER BRIMNER CLARK MULHOLLAND, JR.,**  
12 **having been satisfactorily identified and duly sworn**  
13 **by the Notary Public, was examined and testified as**  
14 **follows:**  
15 **DIRECT EXAMINATION**  
16 **BY MR. PERRY:**  
17 **Q. Could you state your name, please?**  
18 **A. Alexander Brimner Clark Mulholland, Jr.**  
19 **Q. What was --**  
20 **A. B-r-i-m-n-e-r.**  
21 **Q. Jr.?**  
22 **A. Right.**  
23 **Q. Is your father living?**  
24 **A. No, no.**

Page 5

1 Q. What is your residential address?  
2 A. **It is 4762 Darling Hill Road, East Burke.**  
3 Q. East?  
4 A. **E-a-s-t Burke, B-u-r-k-e, Vermont 05832.**  
5 Q. Do you also own any residences in  
6 Massachusetts?  
7 A. **Yes.**  
8 Q. Where, please?  
9 A. **44 Plover, P-l-o-v-e-r Hill Road, Ipswich,**  
10 **I'm sorry.**  
11 Q. And that's?  
12 A. **In Massachusetts.**  
13 Q. That's in Great Neck?  
14 A. **Great Neck, yes.**  
15 Q. And do you own any other residences?  
16 A. **No.**  
17 Q. Are you currently living full time in  
18 Vermont?  
19 A. **No.**  
20 Q. Do you divide your time between Vermont  
21 and Ipswich?  
22 A. **Yes.**  
23 Q. And how do you divide your time?  
24 A. **Probably 80% of the time is in Ipswich,**

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1 **20% of the time is in Vermont. Ski season.**  
2 Q. Who do you reside at those places with?  
3 A. **My wife, Judith.**  
4 Q. Okay. Your children, do you have  
5 children?  
6 A. **Yes, I do. I have two children.**  
7 Q. They're grown?  
8 A. **They're grown. They're in their forties.**  
9 Q. Which leads me to ask you, what is your  
10 date of birth?  
11 A. **11/10/1942.**  
12 Q. Big one. Have you ever owned a residence  
13 on Little Neck?  
14 A. **No.**  
15 Q. Have you ever stayed there?  
16 A. **Yes.**  
17 Q. Under what circumstances did you stay on  
18 Little Neck?  
19 A. **I was loaned a cottage by my uncle.**  
20 Q. Who is your uncle?  
21 A. **Harry E. Munro.**  
22 Q. How do you spell Munro?  
23 A. **M-u-n-r-o.**  
24 Q. And is he living?

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1 A. **No, deceased.**  
2 Q. What was the address of the cottage that  
3 he owned?  
4 A. **I don't know.**  
5 Q. Which road was it on?  
6 A. **It was on River Road.**  
7 Q. River Road?  
8 A. **River Road up near the pier.**  
9 Q. During the time you have been a Feoffee  
10 have any members of your family, any relatives other  
11 than Harry Munro owned any of the cottages?  
12 A. **No.**  
13 Q. During what period of time did Harry Munro  
14 own a cottage at Little Neck?  
15 A. **I don't know when it began. It was, it**  
16 **started out belonging to his wife's aunt and she**  
17 **passed away. I guess she inherited it. All I know**  
18 **is I was a little boy then, probably six. So you**  
19 **can guess when they were down there. I'm going to**  
20 **be 69, so probably 63 years would be a rough guess.**  
21 Q. So your uncle and aunt inherited this  
22 cottage in around the late forties?  
23 A. **Yeah, yes.**  
24 Q. And continued to own it until when?

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1 A. **Until his wife was deceased, who passed**  
2 **away after him.**  
3 Q. And then what happened to the cottage?  
4 A. **It was sold to, to an individual party.**  
5 **Nobody in Ipswich.**  
6 Q. Sold to a third party?  
7 A. **Yeah.**  
8 Q. When did the, when did the cottage get  
9 sold, approximately?  
10 A. **I don't remember exactly when my aunt**  
11 **passed away. Actually, it was sold before she**  
12 **passed away because she went into assisted living.**  
13 **It, it was probably around 1985.**  
14 Q. Quite a long time ago?  
15 A. **Quite a long time ago, yes.**  
16 Q. What's your educational background?  
17 A. **B.A. in physics and mathematics from**  
18 **Northeastern University.**  
19 Q. When did you obtain that?  
20 A. **1965. Some study towards a Master's**  
21 **degree, which I stopped.**  
22 Q. Where did you do that?  
23 A. **Northeastern, as well.**  
24 Q. Have you ever served in the armed

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1 services?  
2 **A. No, I haven't.**  
3 Q. Could you describe for me what your  
4 occupational history has been after graduating from  
5 Northeastern?  
6 **A. Sure. In 1966 my father passed away**  
7 **suddenly and I took over a business that he had**  
8 **started in the forties, which was basically what you**  
9 **call an excavating business, excavation for homes or**  
10 **industrial buildings, water lines, sewer lines,**  
11 **things like that, which I worked at while I was in**  
12 **high school and a little in college and so I didn't**  
13 **feel uncomfortable taking it over. My intent was to**  
14 **help my mother dispose of the business. I wound up**  
15 **staying there ten years.**  
16 Q. You stayed there ten years?  
17 **A. Yeah, before I disposed of the business.**  
18 Q. So the first ten years after --  
19 **A. Yeah.**  
20 Q. College from roughly '65 to --  
21 **A. Yeah, '66 to probably '76.**  
22 **MR. SHEEHAN: Off the record for a**  
23 **minute.**  
24 **(Discussion off the record.)**

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1 Q. From roughly 1966 to 1976 you were working  
2 in what had been your father's excavation business,  
3 right?  
4 **A. Uh-hum, yes.**  
5 Q. And then it was sold?  
6 **A. Yes.**  
7 Q. Okay. What did you do after that?  
8 **A. I went to work for Sanders Associates in**  
9 **Nashua, New Hampshire for two years.**  
10 Q. What is that?  
11 **A. Sanders Associates built electronic**  
12 **warfare systems for the government.**  
13 Q. What did you do after Sanders Associates?  
14 **A. After Sanders Associates I worked one year**  
15 **for Raytheon Semiconductor in Boston. They were**  
16 **located in California, the main plant.**  
17 Q. What did you do next?  
18 **A. I went to work for Advanced Micro Devices.**  
19 Q. The chip company?  
20 **A. Yeah.**  
21 Q. That's the major competitor to Intel?  
22 **A. Absolutely.**  
23 Q. How long were you at Advanced Micro  
24 Devices?

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1 **A. Twenty years.**  
2 Q. From?  
3 **A. Let's see, I believe it was late '79 for**  
4 **about twenty years.**  
5 Q. Could you very briefly sketch your history  
6 there as far as what your position was when you  
7 began and what it ended up being when you left?  
8 **A. Sure, sure. I went to work, position was**  
9 **a district sales manager, which was really more**  
10 **salesman than anything else. I became regional**  
11 **sales manager in charge of some of the people in the**  
12 **office and then I became director of sales for**  
13 **digital equipment worldwide. And my last position**  
14 **was senior regional sales manager in the Boston**  
15 **office.**  
16 Q. What were the circumstances of your  
17 leaving Advanced Micro Devices?  
18 **A. The largest piece of business that I had,**  
19 **they decided not to represent themselves directly**  
20 **with a direct sales force and gave it to a rep is**  
21 **what they did. So that took a \$30 million chunk out**  
22 **of probably \$40 million of my business and they kind**  
23 **of left me with -- I didn't know where I'm going to**  
24 **go and what I'm going to do and I wound up**

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1 **resigning.**  
2 Q. What did you do next?  
3 **A. I, I didn't do anything for a little**  
4 **while, a year. Well, during the period after**  
5 **Advanced Micro Devices I looked into real estate. I**  
6 **got licensed in Massachusetts. I worked for a local**  
7 **realtor. That was about a period of two years**  
8 **total, after which I decided I didn't like real**  
9 **estate. It seemed natural living in the town all**  
10 **your life. So I went looking to see what was**  
11 **available in semiconductor business. Spoke to a**  
12 **couple of friends and they told me about an**  
13 **opportunity with Taiwan Semi Conductor and a brand**  
14 **new business is what it was and they wound up hiring**  
15 **me.**  
16 Q. How long did you work for Taiwan Semi  
17 Conductors?  
18 **A. Four years.**  
19 Q. What was your position when you left?  
20 **A. Account manager.**  
21 Q. Have you been employed since then?  
22 **A. I worked part time for Ipswich Outboard.**  
23 Q. Ipswich?  
24 **A. Ipswich Outboard was the name of the**

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1 company.  
2 Q. And what did you do there?  
3 A. I was really I'd call it a technician,  
4 partly a mechanic. Partly I installed marine  
5 electronics or repaired things like that that were  
6 simple.  
7 Q. Anything after that?  
8 A. No. You're getting up to current time.  
9 That was probably two years ago I stopped doing  
10 that. And since then I've been trying to figure out  
11 how to reinvent myself again. I actually, actually,  
12 I invested some money in a little company, really,  
13 an individual to start a competitive business to  
14 this and I'll probably wind up -- The only reason  
15 why I really invested a small amount of money is  
16 that I'd like some work, you know, and he said,  
17 Sure. I said, I just want to get you started.  
18 Q. What real estate company or individual  
19 were you affiliated with when you got your license?  
20 A. Century 21 Ipswich Bay Associates.  
21 Q. Who's the principal of that office?  
22 A. Dorothy Levesque.  
23 Q. How do you spell Levesque?  
24 A. I think it's L-e-v-e-s-q-u-e.

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1 Q. How many people worked in that office as  
2 sales people or brokers at the time you were  
3 affiliated with Century 21 Ipswich?  
4 A. Six.  
5 Q. Including yourself?  
6 A. Yes.  
7 Q. And what years were you with that real  
8 estate agency?  
9 A. I can't remember what the years were, to  
10 be honest with you. I'd have to sit down and figure  
11 it out.  
12 Q. Sometime in the early 2000's? I think you  
13 said you left -- Let's see. You said you left  
14 Advanced Micro Devices after two years in the late  
15 nineties?  
16 A. Yeah, yeah, early 2000.  
17 Q. Early 2000's?  
18 A. Yeah.  
19 Q. Dorothy Levesque, is she somebody who's  
20 had a lot of involvement with sales of Little Neck  
21 cottages?  
22 A. I would say yes.  
23 Q. Who were the leading real estate brokers  
24 for purchases and sales of the Little Neck cottages?

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1 A. She was.  
2 Q. When you were working at that office did  
3 you get involved in the purchases or sales of any of  
4 the cottages?  
5 A. I remember showing one. I don't remember  
6 whether or not the sale went through through me or  
7 not. The person did buy it. I don't remember going  
8 to the closing.  
9 Q. Which cottage was that?  
10 A. It probably was -- Well, if you go up the  
11 hill from the ball field, it would be the first  
12 street on your left, house right in front of you  
13 that was on the corner of that road and Hilltop  
14 Road.  
15 Q. Is that Middle Street?  
16 A. No, no. Hilltop goes up over the top of  
17 the road. I guess it's Hilltop, Hilltop.  
18 Q. Hilltop goes up past the ball field?  
19 A. Yeah. And roads go down over to the left,  
20 typically, and I don't know what the name of that  
21 road was. They used to be numbered 1, 2, 3, 4, 5.  
22 Q. Did you get a commission for that sale?  
23 A. No.  
24 Q. Did you ever have a discussion with Ms.

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1 Levesque about rentals at Little Neck?  
2 A. No.  
3 Q. Is it fair to say that you were at least  
4 generally familiar when you were a real estate  
5 broker with the prices at which cottages were being  
6 sold at Little Neck?  
7 A. Some awareness, yeah.  
8 Q. But you had an awareness about the sale  
9 prices of cottages at Little Neck both before and  
10 after you were a real estate broker?  
11 A. Some after. I didn't tend to track it.  
12 Q. When did you become a Feoffee, somewhere  
13 around 1978?  
14 A. It's when I went to work for Raytheon. If  
15 you dated that time, that's when it was.  
16 Q. Sometime before 1979?  
17 A. Yes, so, yeah, '78 was a reasonable date.  
18 Q. When you were appointed as a Feoffee who  
19 were the other life Feoffees?  
20 A. Jerome Richardson, Donald Whiston. I  
21 think it was George Hayes.  
22 Q. What is Mr. Whiston's background  
23 professionally?  
24 A. In his earliest years he was a stockbroker



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1 or partner in Burgess and Leith in Boston. While he  
2 lived across the street I didn't pay a lot of  
3 attention. I know at some time he went to work for  
4 State Street Bank running an organization there and  
5 then I believe he came from there to the First  
6 National Bank of Ipswich as president.  
7 Q. When did Mr. Whiston become president of  
8 the First National Bank of Ipswich, to the best of  
9 your recollection? Just give me an estimation, and  
10 understanding you may be wrong.  
11 MR. SHEEHAN: But don't guess. If  
12 you don't know, you don't know. If you can give him  
13 an estimate, please do so.  
14 A. Well, my estimate, okay, would be around  
15 1985.  
16 Q. We won't hold you to it, okay?  
17 A. I borrowed money from him in 1988, so I  
18 know he was there then. And he was there a little  
19 bit before that, so that's the reason.  
20 Q. Okay. You said Jerome Richardson was one  
21 of the life Feoffees. What was Mr. Richardson's  
22 background?  
23 A. All that I know is he was a wool broker,  
24 wool as in lamb wool broker.

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1 Q. And you said the other one was Mr. George  
2 Hayes?  
3 A. Yes.  
4 Q. What was his professional background?  
5 A. A lawyer.  
6 Q. Where did he practice law?  
7 A. He took over his father's law firm and it  
8 was in Ipswich, Mass.  
9 Q. What discussions did you have with any of  
10 the other life Feoffees before they appointed you  
11 and you agreed to an appointment as a Feoffee?  
12 A. Very little, other than casual  
13 conversation with my uncle because he was a Feoffee.  
14 Q. So your uncle had been a Feoffee?  
15 A. Yes.  
16 Q. Which uncle was that?  
17 A. Harry E. Munro.  
18 Q. The uncle that had owned a cottage had  
19 been a Feoffee?  
20 A. Uh-hum, yes.  
21 Q. And what period of time was your uncle a  
22 Feoffee?  
23 A. I don't know. I couldn't guess.  
24 Q. And what conversations did you have with

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1 your uncle about becoming a Feoffee, about your  
2 becoming a Feoffee?  
3 A. Just, he thought my background was, you  
4 know, could contribute something to it in terms of,  
5 you know, what I knew about the land and my family  
6 had leased land close to Little Neck. If there were  
7 any difficulties, you know, mechanical difficulties  
8 in water, sewer, things like that, I have  
9 familiarity with it. They also -- He also thought  
10 that I would be a good person to take care of a lot  
11 of the issues around the pier with regard to kids  
12 and things like that.  
13 Q. Who were you replacing as a Feoffee?  
14 A. Him.  
15 Q. So --  
16 A. He resigned.  
17 Q. So what happened was the Feoffees had been  
18 Mr. Richardson, Mr. Hayes, Mr. Whiston and your  
19 uncle, Mr. Munro?  
20 A. Yes.  
21 Q. Who was also a cottage owner?  
22 A. Yes.  
23 Q. And then he resigned and the other three  
24 appointed you?

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1 A. Yes.  
2 Q. You mentioned that part of the background  
3 that would allow you to contribute was that your  
4 family had leased land. Was that land in Great Neck  
5 or elsewhere?  
6 A. Great Neck, just Great Neck.  
7 Q. Was there a period that Great Neck was  
8 land lease before it became fee ownership?  
9 A. Yes, it was, until, I think, the mid-  
10 fifties.  
11 Q. Who had owned -- Was it the Proprietors of  
12 Great Neck had owned it?  
13 A. Yes.  
14 Q. And how did that get converted from leased  
15 land to fee ownership?  
16 A. Sale of the lots. I guess the directors  
17 decided they could make more money if they sold the  
18 land rather than lease the land. I think it's as  
19 simple as that.  
20 Q. Do the directors still exist at this time  
21 or is it, it's all owned in fee simple?  
22 A. What's left is owned as fee simple. The,  
23 all those directors deceased. That would have been  
24 my father and his four sisters. And since, it's

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1 been taken over by myself and my cousins, just moved  
2 down a generation in the family. And we've been  
3 trying to, basically, dispose of it. We sold a  
4 significant piece to the Town of Ipswich for open  
5 space.  
6 Q. Okay. So when Great Neck was owned in  
7 corporate form that was owned within a corporation  
8 controlled by your family, right?  
9 A. Yes.  
10 Q. Okay. And so they then just sold it off  
11 for profit?  
12 A. Yeah, yes.  
13 Q. Some of the land wasn't sold at that time  
14 and stayed in the corporation?  
15 A. Yes.  
16 Q. Still in your family's control, but the  
17 next generation?  
18 A. Yes.  
19 Q. When those lots at Great Neck were sold  
20 was each lot individually sold to a purchaser?  
21 A. Yes.  
22 Q. And was each lot sold at what was  
23 considered to be a fair market value?  
24 A. Yes.

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1 Q. For that lot?  
2 A. Yes.  
3 Q. Were there cottages or houses on the lots?  
4 A. Yes.  
5 Q. And so the individuals -- Were the sales  
6 made mostly to those who had owned those cottages?  
7 A. I believe, yes.  
8 Q. Were there situations where the sales were  
9 made to parties other than those who owned the  
10 cottages?  
11 A. It could have been, but I'm not aware of  
12 any of those details.  
13 Q. Do you know what kind of rents were being  
14 paid at Great Neck?  
15 A. Pardon?  
16 Q. What kind of rents were being assessed  
17 there or was this too long ago?  
18 A. I don't ever remember hearing the number.  
19 Q. Okay.  
20 A. Or a number.  
21 Q. How would you compare Great Neck to Little  
22 Neck in terms of desirability of the location?  
23 A. I would say Great Neck was considerably  
24 more desirable because of the space around cottages.

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1 Even the oldest lots, which were the smallest, they  
2 were 80 by 80. They probably meant to look  
3 something like Little Neck. And then the town, as  
4 they passed zoning, they kept increasing the sizes  
5 until now it's three acres. And having, just having  
6 more space around your property, from my point of  
7 view, is good. The time that I spent at Little Neck  
8 I did not like because everybody was on top of  
9 everybody.  
10 Q. Is there more of a community feel at  
11 Little Neck than Great Neck?  
12 A. Yes.  
13 Q. So it's a different experience?  
14 A. Yes.  
15 Q. When did the utilities at Little Neck get  
16 placed underground?  
17 A. I believe it was the 1930's, WPA days that  
18 there was WPA personnel that dug the trenches that  
19 buried the electric cables and so on. Somebody  
20 found a document that showed the agreement that they  
21 got labor to do that.  
22 Q. So that's one kind of thing that's kind of  
23 notable about Little Neck, that there's no wires  
24 leading into any of the cottages and that really

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1 compared to Great Neck, it's a nice amenity,  
2 wouldn't you agree?  
3 A. It is a nice amenity.  
4 Q. And that's existed really the whole time?  
5 A. Basically, yes.  
6 Q. Was was the name -- You said George Hayes  
7 was in a law firm in Ipswich?  
8 A. Uh-hum. (Witness nodding head up and  
9 down.)  
10 Q. What was the name of his firm? Just law  
11 office?  
12 A. I think he just went under his own name.  
13 Q. What was your understanding before you  
14 became a Feoffee of what your obligations and role  
15 would be as you became one?  
16 A. My understanding, the duties and  
17 obligations would probably be pretty minimal, was to  
18 attend an annual meeting of --  
19 Q. Of the Feoffees?  
20 A. Of the Feoffees. Occasionally a  
21 discussion may come up about somebody doing work on  
22 their home. It was a time when there really weren't  
23 any problems down there.  
24 Q. What was your understanding when you

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1 became a Feoffee about what the purpose of the trust  
2 was? Did you understand that a Feoffee was a term  
3 for trustee?  
4 **A. Yeah, yes, oh, yeah.**  
5 Q. And did you understand who the beneficiary  
6 of the trust was?  
7 **A. Yes.**  
8 Q. What was your understanding?  
9 **A. That it was the schools of Ipswich.**  
10 Q. And did you have discussions with any of  
11 the other Feoffees on becoming a Feoffee concerning  
12 what the goal was in terms of providing money to the  
13 Town of Ipswich for the schools?  
14 **A. No.**  
15 Q. Was there any effort made in at the time  
16 you were joining as a Feoffee to maximize the amount  
17 for the schools?  
18 **A. Not that I'm aware of.**  
19 Q. What kind of rent was being charged when  
20 you became a Feoffee?  
21 **A. I can't remember that, to be honest.**  
22 Q. But it was low?  
23 **A. It was low, it was very low.**  
24 Q. Did you have any discussions with any of

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1 the other Feoffees about why the rent was kept low?  
2 **A. No.**  
3 Q. Did you have an understanding as to why  
4 the rent was so low?  
5 **A. Without discussion, my personal**  
6 **understanding was it was probably similar to other**  
7 **rents of summer cottages in other similar areas,**  
8 **like a rental on Great Neck or Conomo Point in Essex**  
9 **or something like that.**  
10 Q. Did Jerome Richardson have a cottage at  
11 Little Neck?  
12 **A. No.**  
13 Q. Did anybody in his family?  
14 **A. No, not that I know of.**  
15 Q. What about Don Whiston?  
16 **A. His father did.**  
17 Q. What happened, how long was his father a  
18 tenant at Little Neck?  
19 **A. A long time. He was one of those that**  
20 **went way back, I believe.**  
21 Q. But he must have died quite a while ago?  
22 **A. He did. My understanding was he left it**  
23 **to his son, Don, and his sister. I don't believe**  
24 **they really wanted it. They gave it back to the**

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1 **father is what my understanding is, and the father**  
2 **sold it.**  
3 Q. So your understanding is that that cottage  
4 was sold during the lifetime of Don Whiston's  
5 father?  
6 **A. Yes, that's what I, that's what I**  
7 **understand.**  
8 Q. Has anybody else in Don Whiston's family  
9 been a cottage owner?  
10 **A. Yes, he has, yes.**  
11 Q. Who else?  
12 **A. Daughter.**  
13 Q. What's his daughter's name?  
14 **A. Kim.**  
15 Q. What's her last name?  
16 **A. I don't know. Her husband's name is**  
17 **David. I don't know their last name.**  
18 Q. Kim and David?  
19 **A. Yes.**  
20 Q. Do they still own a cottage?  
21 **A. Yes, they do.**  
22 Q. Do you know which one?  
23 **A. Yes, I do. It's on Cliff Road.**  
24 Q. Anybody else in Mr. Whiston's family who,

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1 to your knowledge, owned a cottage?  
2 **A. No.**  
3 Q. Did George Hayes own a cottage?  
4 **A. No.**  
5 Q. Did anybody in his family?  
6 **A. No.**  
7 Q. I understand that at one point you were  
8 chairman of the Feoffees?  
9 **A. Yes.**  
10 Q. And I think you testified previously that  
11 you were paid something like \$5,000 for that role a  
12 year?  
13 **A. Not the correct amount.**  
14 Q. What's the correct amount?  
15 **A. Correct amount was \$1,000 a month.**  
16 Q. Okay. I apologize.  
17 **A. No.**  
18 Q. I may have gotten it wrong. I was going  
19 from memory. So you were paid \$1,000 a month while  
20 you were the chair?  
21 **A. Yes.**  
22 Q. How long were you the chair?  
23 **A. I'm still the chair. I don't know when**  
24 **it's -- It started at the beginning of the sewer**

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1 **project.**  
2 Q. You have been the chair from the beginning  
3 of the sewer project?  
4 **A. Yes.**  
5 Q. Sometime in the mid 2000's?  
6 **A. Yes.**  
7 Q. Through the present?  
8 **A. Yes.**  
9 Q. So during that time you have received  
10 \$1,000 a month?  
11 **A. Not all the time.**  
12 Q. Apart from receiving up to \$1,000 per  
13 month, have you received any other compensation?  
14 **A. No.**  
15 Q. From being a Feoffee?  
16 **MR. SHEEHAN:** Alex. You have to  
17 wait until he's through with the question.  
18 **THE WITNESS:** I'm sorry.  
19 **MR. PERRY:** Off the record.  
20 (Discussion off the record.)  
21 Q. So there were some changes in the  
22 composition of the Feoffees after you joined in 1978  
23 between then and the present, correct?  
24 **A. Yes.**

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1 Q. And currently the Feoffees are you and Mr.  
2 Whiston and Peter Foote and Jim Foley?  
3 **A. That's correct.**  
4 Q. Have there been any other changes of  
5 Feoffees other than replacing Mr. Richardson and Mr.  
6 Hayes and having Mr. Foley and Mr. Foote come on  
7 board?  
8 **A. No.**  
9 Q. So one of those two, Foote or Foley  
10 replaced Richardson and the other replaced Hayes?  
11 **A. Yes.**  
12 Q. Which of the Feoffees resigned or ceased  
13 to be a Feoffee first as between Mr. Richardson and  
14 Mr. Hayes or did it happen close in time?  
15 **A. I just don't remember. It would only be a**  
16 **guess. I don't remember.**  
17 Q. Sometime after you joined, Mr. Richardson  
18 ceased to be a Feoffee at some point?  
19 **A. Yes.**  
20 Q. Did he resign or did something else  
21 happen?  
22 **A. I believe he resigned.**  
23 Q. At some point after you joined Mr. Hayes  
24 ceased to be a Feoffee. Do you recall --

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1 **A. Yes.**  
2 Q. What led to that event?  
3 **A. He moved permanently out of state.**  
4 Q. Okay. And you have no memory of whether  
5 Mr. Hayes moved before Mr. Richardson resigned or  
6 Mr. Richardson resigned before Mr. Hayes moved,  
7 right?  
8 **A. No, I don't recall.**  
9 Q. When did the two of them cease to be  
10 Feoffees, roughly?  
11 **A. Richardson and Hayes?**  
12 Q. Yes.  
13 **A. Richardson, I don't know. I really don't**  
14 **know. Mr. Hayes was, I'm thinking about how old he**  
15 **was when he moved and how old he was when he died.**  
16 **That's 22 years ago, so what's that, 2001? No.**  
17 Q. What's the year he died, 22 years ago?  
18 **A. No, let me think. No. It will be**  
19 **24 years ago. He's been dead two years.**  
20 Q. Okay.  
21 **A. He's been dead two years.**  
22 Q. He's been dead two years and based on your  
23 estimate of his age, there was 22 years before that  
24 that he ceased to be a Feoffee?

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1 **A. He turned 50 years old and that's when he**  
2 **left was when he turned 50.**  
3 Q. So he ceased to be a Feoffee by your  
4 calculation somewhere around 1987?  
5 **A. '9, I think, closer. 24 from 2003.**  
6 Q. Well, he died two years ago?  
7 **A. Yes.**  
8 Q. That would be 2009?  
9 **A. And he would have been, he would have been**  
10 **72.**  
11 Q. Right.  
12 **A. If he was alive now, he'd be 74.**  
13 Q. So take back 22 years?  
14 **A. So go back to 22 years. I think that must**  
15 **have been --**  
16 Q. It's '87?  
17 **A. '87, okay.**  
18 Q. Who came on first between Foote and Foley?  
19 **A. I believe it was Mr. Foote.**  
20 Q. And how much time passed between Mr. Foote  
21 becoming a Feoffee and Mr. Foley becoming a Feoffee?  
22 **A. I don't remember.**  
23 Q. So you and Mr. Whiston and one other  
24 Feoffee voted to install Mr. Foote as a Feoffee,

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1 right?  
2 **A. Yes.**  
3 Q. And that was to replace either Hayes or?  
4 **A. I think it was Richardson.**  
5 Q. You think it was Richardson, okay. So  
6 your best memory is that Richardson left first  
7 before Hayes?  
8 **A. Yes.**  
9 Q. Sometime before 1987?  
10 **A. Yes.**  
11 Q. What was Mr. Foote's occupational  
12 background?  
13 **A. He was a police officer, sergeant.**  
14 Q. In what town?  
15 **A. Ipswich. I don't know his educational**  
16 **background, but he was a police officer and I**  
17 **believe he was a police officer in military prior.**  
18 Q. What was your thinking as to why Mr.  
19 Foote, who was a police sergeant in Ipswich, would  
20 be an appropriate person to serve as a Feoffee?  
21 **A. Well, at least one of the reasons was that**  
22 **regarding security, we had difficulty keeping**  
23 **undesirable people out of there on weekends in times**  
24 **when there may be a party and his nature, personal**

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1 **nature was a strong personality.**  
2 Q. Was he put in charge of security when he  
3 became a Feoffee?  
4 **A. No.**  
5 Q. Did he personally go out to Little Neck to  
6 stand at the entrance and try to keep order?  
7 **A. Not that I know of.**  
8 Q. Where did Mr. Foote reside?  
9 **A. Ipswich.**  
10 Q. Did he ever have an interest in any of the  
11 cottages?  
12 **A. No.**  
13 Q. Did any of his family members?  
14 **A. No.**  
15 Q. Did Mr. Foote's background as a police  
16 officer in fact -- Strike that.  
17 In what way did Mr. Foote carry out  
18 this function of improving security, if at all?  
19 **MR. SHEEHAN:** Objection. You may  
20 answer.  
21 **THE WITNESS:** Hum?  
22 **MR. SHEEHAN:** You may answer.  
23 Q. Let me rephrase the question, okay?  
24 **A. Okay.**

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1 Q. Did Mr. Foote do anything after becoming a  
2 Feoffee to improve the security of Little Neck with  
3 respect to the parties you have described?  
4 **A. I would say it was minimal.**  
5 Q. During the time you have been a Feoffee  
6 has Little Neck always been officially closed to the  
7 public?  
8 **A. Yes.**  
9 Q. And what is the rule as to the public,  
10 members of the public going up to Little Neck and  
11 being on its roads?  
12 **A. They're not supposed to be.**  
13 Q. There's no, the property's not marked with  
14 a No Trespassing sign, correct?  
15 **A. I don't believe so.**  
16 Q. It's got Private Property signs?  
17 **A. Yes, yeah.**  
18 Q. If you were a resident of Little Neck are  
19 you allowed to traipse around on other people's lots  
20 or is each person, is that part of what they lease  
21 is the right to the exclusive use of the lot, if you  
22 know?  
23 **A. They're allowed to go outside what they**  
24 **might perceive as their lot.**

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1 Q. Can they, can somebody -- Would it be  
2 considered a violation of the rights of one of your  
3 neighbors if you just simply walked across their,  
4 quote, "front lawn"?  
5 **A. No.**  
6 Q. Have the Feoffees ever enforced the  
7 private nature of the property to prevent visitors  
8 from going up to Little Neck?  
9 **A. Yes.**  
10 Q. How have the Feoffees enforced that?  
11 **A. Police detail at the gate.**  
12 Q. During the peak seasons?  
13 **A. Yes.**  
14 Q. And what would the police at the gate do?  
15 **A. Originally they had a clip board of all**  
16 **the residents and telephone numbers. And if**  
17 **somebody came along and said, I'm going to Mr.**  
18 **Sheehan's house tonight to visit, he would call and**  
19 **say, Are you expecting Mr. Sheehan? Say yes, go**  
20 **ahead in. I don't know who Mr. Sheehan is, out.**  
21 Q. I think you have indicated that to the  
22 best of your recollection Mr. Richardson left before  
23 Mr. Hayes and was replaced by Mr. Foote.  
24 **A. Yes.**

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1 Q. And not too long after that, Mr. Hayes  
2 left and was replaced by Mr. Foley?  
3 A. Yes.  
4 Q. So if that is correct, the vote to appoint  
5 Mr. Foley as a Feoffee was made by you and Don  
6 Whiston and Peter Foote?  
7 A. Yes.  
8 Q. Do you recall whose idea it was to make  
9 Mr. Foley a Feoffee?  
10 A. Mr. Whiston.  
11 Q. And what was his reasoning?  
12 A. A lengthy experience of knowing the people  
13 down there, with his parents having owned a place  
14 down there. He grew up as a little boy down there.  
15 Q. What you're saying is Jim Foley's parents  
16 had owned a cottage?  
17 A. Yes.  
18 Q. Jim had grown up there as a little boy?  
19 A. Yes.  
20 Q. Summers or year round?  
21 A. Just summers.  
22 Q. And the cottage that you're talking about  
23 continued to be in Jim Foley's family while he was a  
24 Feoffee up until around 2001, correct?

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1 A. I don't know the date. But it continued,  
2 continued to be in his family until his father died  
3 and I don't know, I believe they kept it for a year  
4 or two and then he sold it.  
5 Q. And when Mr. Foote was made a Feoffee,  
6 whose idea was that?  
7 A. It was proposed by Mr. Whiston.  
8 Q. Mr. Whiston really took a leadership role  
9 with the Feoffees?  
10 A. Yes, he did.  
11 Q. Was he chair throughout the period?  
12 A. Yes, yes, he was chair.  
13 Q. Until you became chair?  
14 A. Until I became chair.  
15 Q. In mid 2000's?  
16 A. Yes.  
17 Q. Mr. Foley at some point was a selectman in  
18 the Town of Ipswich?  
19 A. Yes.  
20 Q. Was he, was that a position he was elected  
21 to before or after he became a Feoffee?  
22 A. I believe after.  
23 Q. What was Mr. Foley's occupational  
24 background?

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1 A. The only detail that I know is that he was  
2 a police officer.  
3 Q. In what town?  
4 A. Wenham, Mass.  
5 Q. Wenham and not Hamilton, Wenham?  
6 A. Wenham. Thought of, it's almost one and  
7 the same and I'm just trying to think of the  
8 building. No, it's Wenham.  
9 Q. All right. What was the reasoning for  
10 making Mr. Foley, as a police officer in the Town of  
11 Wenham -- Maybe you already told me this -- Strike  
12 that.  
13 You already told me the reason for  
14 Mr. Foley becoming a Feoffee was because he was a  
15 known person who had grown up in Little Neck and his  
16 family owned a cottage there, right?  
17 A. Yes.  
18 Q. So at the time he became a Feoffee two of  
19 the life Feoffees had family members owning  
20 cottages, right?  
21 A. No. When he owned the cottage Mr. Whiston  
22 did not own the cottage.  
23 Q. Did his daughter?  
24 A. His daughter, I'm sorry, yes, his daughter

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1 did.  
2 Q. So at the time Mr. Foley became a Feoffee  
3 there was a cottage in Mr. Foley's family and there  
4 was a cottage in Mr. Whiston's family, to your  
5 knowledge?  
6 A. I need to correct that. I don't believe  
7 his daughter owned it then. His daughter hasn't  
8 owned it that long.  
9 Q. Okay.  
10 A. And I can't tell you when she bought it.  
11 Q. All right, fair enough.  
12 A. But I'm positive they weren't concurrent.  
13 Q. Okay. You have lived in Ipswich all your  
14 life?  
15 A. Yes.  
16 Q. The other three Feoffees, are they all  
17 life-long residents of Ipswich?  
18 A. No, not Mr. Foley.  
19 Q. Where --  
20 A. Peter Foote is. Don Whiston, no. He grew  
21 up in Stoneham.  
22 Q. Okay. At the time that you were, at the  
23 time that Mr. Foley became -- Strike that.  
24 Was Mr. Whiston a long-time resident

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1 of Ipswich during the time he was serving as a  
2 Feoffee?  
3 **A. Yes, yes.**  
4 Q. Were you a life-long resident of Ipswich?  
5 **A. Yes.**  
6 Q. Foote was?  
7 **A. A life-long resident.**  
8 Q. A life-long resident. And during what  
9 period of time did Mr. Foley reside in Ipswich, if  
10 at all?  
11 **A. He does reside in Ipswich and I don't know**  
12 **when he bought his home in Ipswich.**  
13 Q. But it was before he became a selectman?  
14 **A. Yes, you had to be.**  
15 Q. Yes. And he also grew up there in  
16 summers?  
17 **A. Yes.**  
18 Q. What percentage of the cottage owners  
19 would you say are from Ipswich?  
20 **A. I'd hate to even guess at a number. I**  
21 **only know that it's very small.**  
22 Q. It's a percentage that's been declining  
23 over the years as cottages have been sold?  
24 **A. No. I think it's always been small.**

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1 Q. Okay. And you say it's a very small  
2 percentage, but you can't hazard a guess as to what  
3 that percentage is?  
4 **A. I'm just thinking of people that I know**  
5 **and the percentage would be, could be as low as 2%,**  
6 **3%. Very low.**  
7 Q. Have you, during the time you have been a  
8 Feoffee, have you had any close personal friends who  
9 own cottages?  
10 **A. No.**  
11 Q. And you have a personal acquaintance with,  
12 do you have a personal acquaintance with any of the  
13 cottage owners?  
14 **A. No.**  
15 Q. How about the other Feoffees, to your  
16 knowledge, do any of the other life Feoffees have  
17 personal, close personal friendships with any  
18 cottage owners?  
19 **A. I would say no, but the qualification**  
20 **there, Mr. Whiston had been there as a young man a**  
21 **long time.**  
22 Q. Right.  
23 **A. And people, because of his respective**  
24 **jobs, I think, looked to him and communicated with**

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1 **him. I would not call them close friends.**  
2 Q. Are you familiar with an individual named  
3 Don Greenough?  
4 **A. Yes.**  
5 Q. Has he at various times served as counsel  
6 to the Feoffees?  
7 **A. Yes.**  
8 Q. When did he first start to serve as the  
9 Feoffees' lawyer?  
10 **A. When George Hayes moved to, moved out of**  
11 **town permanently.**  
12 Q. Who selected Don Greenough to be the  
13 lawyer?  
14 **A. All the Feoffees agreed upon that based on**  
15 **the fact that he came from the same office and**  
16 **occasionally handled some of the documents for Mr.**  
17 **Hayes.**  
18 Q. You say Mr. Greenough came from the same  
19 office?  
20 **A. Uh-hum. (Witness nodding head up and**  
21 **down.)**  
22 Q. So he had been affiliated in his practice,  
23 to your understanding, with Mr. Hayes?  
24 **A. Had he been have affiliated, you said?**

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1 Q. I don't know what you meant by he came  
2 from the same office.  
3 **A. He worked in the same office. His**  
4 **expertise was not the same.**  
5 Q. Were they in business together, Mr. Hayes  
6 and Mr. Greenough? Did they have a partnership?  
7 **A. No. I know that he hired Mr. Greenough**  
8 **when he was a young man is all I know, only because**  
9 **I heard the story.**  
10 Q. Okay. So Mr. Hayes was a lawyer in  
11 Ipswich and he had hired Mr. Greenough to work for  
12 him?  
13 **A. Yes.**  
14 Q. And Mr. Greenough had then started doing  
15 work for the Feoffees while Mr. Hayes was still a  
16 Feoffee, as you said that he came and did paperwork?  
17 **A. Well, he could have. I can't say that**  
18 **definitively. He certainly could have in a small**  
19 **office like that.**  
20 Q. Was Mr. Hayes performing legal work for  
21 the Feoffees?  
22 **A. Not, not paid legal work. He may as an**  
23 **attorney look over documents or something like that.**  
24 Q. Was Mr. Greenough performing paid legal

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1 work for the Feoffees when Mr. Greenough worked for  
2 Mr. Hayes?  
3 **A. No.**  
4 Q. What was Mr. Greenough's area of  
5 specialty, as you understood it?  
6 **A. His area of specialty was really trusts**  
7 **and trusts, wills, things of that nature. He was**  
8 **not a trial attorney. He occasionally represented**  
9 **landowners in the town before various boards. So he**  
10 **had a good working knowledge of the town boards,**  
11 **which made him a more valuable person in that sense.**  
12 **Mr. Hayes had done the same thing. He had been on**  
13 **various boards.**  
14 Q. How long did Mr. Greenough continue to  
15 provide legal services to the Feoffees?  
16 **A. Well, it stopped when Mr. Sheehan took**  
17 **over and Mr. Sheehan took over because of the**  
18 **lawsuit with the tenants.**  
19 Q. Right.  
20 **A. And you'd have to look up the date of the**  
21 **lawsuit. Mr. Greenough said, I'm not a trial**  
22 **attorney. We need more expertise. I happened to**  
23 **have known Mr. Sheehan from another legal issue and**  
24 **I was very pleased with the idea of having him.**

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1 Q. That brings me back to another issue I  
2 wanted to ask you about. So apart from being on the  
3 board of the Feoffees, what other trusts, boards,  
4 associations have you served on?  
5 **A. For the Town of Ipswich just two, the**  
6 **School Building Needs Committee. I'd be hard**  
7 **pressed to give you the dates.**  
8 Q. That's okay.  
9 **A. And Industrial Development Committee.**  
10 Q. Okay. Outside of the town?  
11 **A. No, in the town.**  
12 Q. Apart from serving on town boards what  
13 other boards, trusts and charities have you served  
14 for?  
15 **A. None that I recall.**  
16 Q. Have you served on any other, have you  
17 served with any other groups or boards that have  
18 been subject to oversight by the Attorney General's  
19 office?  
20 **A. No.**  
21 Q. You mentioned that there had been a legal  
22 issue before that Mr. Sheehan was involved in.  
23 Without telling me anything confidential, what was  
24 the nature of that legal issue?

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1 **A. It was a person, one of my cousins in our**  
2 **family, proprietors of Great Neck that -- The issue**  
3 **is complicated, but anyway, she decided -- I believe**  
4 **she sued the corporation or sued us.**  
5 Q. A family squabble?  
6 **A. Family squabble.**  
7 Q. Over how that organization was being run  
8 and who was getting money and that kind of thing?  
9 **A. Yeah, exactly.**  
10 Q. And that went to court?  
11 **A. No.**  
12 Q. It was just --  
13 **A. It was settled out of court.**  
14 Q. Was it actually a lawsuit or just some  
15 sort of correspondence about her being disgruntled?  
16 **A. I can't remember. I think of it as a**  
17 **lawsuit, but it may not have been.**  
18 Q. Okay. When did that happen?  
19 **A. It was quite a while ago. Trying to think**  
20 **of something I can pin it to. I believe it was**  
21 **sometime in the 1980's.**  
22 Q. Quite a while?  
23 **A. Yeah.**  
24 Q. So you have never served, for example, on

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1 the board of any hospitals or anything like that?  
2 **A. No.**  
3 Q. Did you ever use Mr. Greenough yourself as  
4 an attorney?  
5 **A. Yes.**  
6 Q. What types of things?  
7 **A. Trusts, will, living will.**  
8 Q. You mentioned Mr. Whiston serving as  
9 president of the First National Bank of Ipswich and  
10 you forgive me for not remembering which bank is  
11 which up there, but which is the bank in Ipswich  
12 that's done most of the financing of the cottages?  
13 **A. It's now called the Institution for**  
14 **Savings. It used to be the Ipswich Cooperative**  
15 **Bank.**  
16 Q. And that's a separate bank?  
17 **A. That's a separate bank entirely.**  
18 Q. Did the Feoffees ever do any business with  
19 the First National Bank of Ipswich?  
20 **A. Yes.**  
21 Q. What business did they do with the First  
22 National Bank of Ipswich?  
23 **A. Well, for one thing, I believe we had a**  
24 **checking account there and then Mr. Whiston, if he**



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1 had money to hold for the schools or for a project  
2 or something like that, he divided it up amongst the  
3 banks so he wasn't favoring any one bank. He tried  
4 to be very careful about that.  
5 Q. Was any money ever borrowed by the  
6 Feoffees from the First National Bank of Ipswich?  
7 A. I believe so, but I can't give the  
8 details.  
9 Q. The large loans that were made in  
10 connection with the sewers, the wastewater facility,  
11 was that First National Bank of Ipswich or was that  
12 a different bank?  
13 A. They were going to participate and  
14 ultimately couldn't, in the final analysis. They  
15 were going to participate with the Ipswich  
16 Cooperative Bank and when they couldn't participate,  
17 we asked the cooperative bank, who was very willing,  
18 to find another partner.  
19 Q. Do you know Dan Clasby?  
20 A. Yes.  
21 Q. Has he played a role for the Feoffees?  
22 A. Yes.  
23 Q. What role has he played?  
24 A. He's audited the books and provided the

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1 financial statements as required annually that we  
2 submit to the town.  
3 Q. How long has Mr. Clasby provided services  
4 to the Feoffees?  
5 A. I don't know. I can't remember his  
6 predecessor even.  
7 Q. How old is Mr. Clasby, would you say?  
8 A. Fifty.  
9 Q. Does he actually, does he do audits of --  
10 A. Yes.  
11 Q. How long has he been auditing the books  
12 and records of the Feoffees?  
13 A. I don't know the number of years.  
14 Q. Who selected Mr. Clasby to be the  
15 accountant for the Feoffees?  
16 A. It was through a recommendation, largely,  
17 and agreed to by the Feoffees.  
18 Q. Who recommended him?  
19 A. Hum?  
20 Q. Who made the recommendation?  
21 A. I'm guessing, but fairly positive it was  
22 Mr. Greenough.  
23 Q. Now, out at Little Neck, apart from the  
24 cottages, there's various improvements that have

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1 been made to the land, correct?  
2 A. Uh-hum. (Witness nodding head up and  
3 down.)  
4 Q. So could you tell me what those -- Let me  
5 list some things and see if we get a list of what  
6 those improvements are.  
7 A. Sure.  
8 Q. There's roads there?  
9 A. Yes.  
10 Q. Community center?  
11 A. Community center, yes.  
12 Q. A ball field?  
13 A. Yes.  
14 Q. There's a private beach?  
15 A. Yes, but that's natural, not created.  
16 Q. Right. There's a wastewater system?  
17 A. Yes.  
18 Q. There's these underground utilities?  
19 A. Yes.  
20 Q. Is there cable for cable television?  
21 A. Yes.  
22 Q. Is there town water?  
23 A. Yes.  
24 Q. How long has there been town water, a long

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1 time?  
2 A. Say, twenty years, good guess.  
3 Q. Who paid for that?  
4 A. I'm not sure. I'm not sure whether there  
5 was an assessment made to the people out there  
6 because it was a public safety issue to be able to  
7 have fire hydrants on the property and it also  
8 allowed them to come to their cottage and turn the  
9 water on and turn the water off when they left  
10 because they weren't year round residents.  
11 Q. Apart from what I've listed, so we have  
12 roads, community center, ball field, wastewater  
13 system, underground utilities, any other  
14 improvements?  
15 A. Replacement of the dock after the blizzard  
16 of '78. On River Road up near the dock there was a  
17 lot of rock put on that face to try and mitigate  
18 erosion, I should say. In the 1950's there was a  
19 significant job done out on the steep front part of  
20 the hill on the quarter over towards Crane's Beach.  
21 If you are looking out to sea and you looked at the  
22 middle of the hill, and all the way around to the  
23 right was all done with a stone riprap by a  
24 professional contractor, you know, because it

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1 required cranes to lift stone in. You can't see it  
2 now because it's covered with brush, but I've seen  
3 pictures -- Well, I saw it when it was done, but I  
4 have occasionally come across a picture that showed  
5 the bare stone before things grew in. That was a  
6 rather significant job.  
7 Q. All right. When did the roads get  
8 constructed, if you know?  
9 A. I don't know.  
10 Q. Are these roads entirely the private  
11 responsibility of the Feoffees at this time?  
12 A. Yes.  
13 Q. The town doesn't do anything for that  
14 roads?  
15 A. No.  
16 Q. Is there waste pick-up in Little Neck?  
17 A. Yes.  
18 Q. Does the town provide that as a town  
19 service?  
20 A. Yes.  
21 Q. Do the trucks go right up to the houses?  
22 A. Yes, in the sense they go down the  
23 streets.  
24 Q. Right, as opposed to --

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1 A. Yeah, a centralized area, yeah.  
2 Q. Who maintains the ball field?  
3 A. We do, the Feoffees do.  
4 Q. How do you do that?  
5 A. We hire a landscape contractor to mow that  
6 area and mow around our office.  
7 Q. With regard to the wastewater system, I  
8 understand there's a limited liability company that  
9 was formed?  
10 A. Yes.  
11 Q. Was the name of that company, LN  
12 something?  
13 A. Little Neck Wastewater? I'm not sure. It  
14 was kind of a transparent organization in the sense  
15 that money came in, money went out and I'm not -- I  
16 honestly don't know why it was formed.  
17 Q. I was going to ask you whose idea was it  
18 to form that organization?  
19 A. Don Greenough's.  
20 Q. And you don't have an understanding of  
21 what the reasons are for it?  
22 A. No, I really don't.  
23 Q. Is it a for profit company?  
24 A. No.

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1 Q. Well, what I mean by that, Mr. Mulholland,  
2 I don't mean does it make money. I mean, was it  
3 formed as an LLC, was it formed -- It wasn't formed  
4 as a non-profit, right? It was formed as a regular  
5 --  
6 A. Yes.  
7 Q. LLC?  
8 A. Yes.  
9 Q. Does it file tax returns?  
10 A. I don't know.  
11 Q. Who are the -- So if it's a limited  
12 liability company, that means that the owners are  
13 called members, okay?  
14 A. Uh-hum. (Witness nodding head up and  
15 down.)  
16 Q. Do you know who the members are of the  
17 LLC?  
18 A. I believe it was the four life Feoffees.  
19 Q. Do you get some kind of tax reporting  
20 every year related to that company?  
21 A. No.  
22 Q. For your personal tax returns?  
23 A. No.  
24 Q. And so what you're saying, it's your

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1 understanding that the LLC takes money in every year  
2 from fees and pays out an equal amount?  
3 A. Yes.  
4 Q. Is that exact or is it more or less equal?  
5 A. It's more or less equal.  
6 Q. Who does the books for the Little Neck  
7 wastewater?  
8 A. Peter Foote.  
9 Q. Not Clasby?  
10 A. Oh, I'm sorry. With regard to things like  
11 that, as an accountant, yes, Clasby.  
12 Q. Peter Foote keeps the books, but does  
13 Clasby review them?  
14 A. Oh, yes. Peter Foote collects the money.  
15 Q. Does the LLC own anything?  
16 A. Not that I'm aware of.  
17 Q. So the LLC does not own the wastewater  
18 system?  
19 A. No.  
20 Q. It's simply -- What does it do?  
21 A. I don't believe I can explain that to you.  
22 But in, since it didn't have any significant role  
23 and I don't know why we formed it, at the suggestion  
24 of Mr. Clasby that we just combine the two, because

1 they worked hand in hand and report them as one. So  
2 it doesn't, my understanding is it doesn't really  
3 exist any more.  
4 Q. You're familiar with the cottages out at  
5 Little Neck?  
6 A. Reasonably. I don't know whose is whose,  
7 but yeah, I drive around there.  
8 Q. What percentage of the cottages would you  
9 say have full basement?  
10 A. 10 to 15%.  
11 Q. And what percentage of the cottages would  
12 you say are heated? How many have any kind of  
13 heating system?  
14 A. Suitable for year-round living?  
15 Q. Well --  
16 A. Has some kind of heating?  
17 Q. Yeah.  
18 A. I'd say they all do.  
19 Q. Let's break that down. Are there cottages  
20 that have oil heat?  
21 A. Yes.  
22 Q. How many of them would you estimate have  
23 heat through deliveries to an oil tank and a  
24 furnace?

1 A. I don't know. And it would be very  
2 difficult to guess, because I've almost never seen  
3 an oil truck out there.  
4 Q. And for those that do have oil heat, where  
5 would the tanks be?  
6 A. They should be abutting their house.  
7 Q. Outside?  
8 A. Outside. Well, no, they could be inside,  
9 I guess, and still be in code.  
10 Q. So is it your understanding that most of  
11 the cottages do not have oil heat or you don't know?  
12 A. I don't know.  
13 Q. What other forms of heat are you aware of  
14 that are used at Little Neck?  
15 A. LP gas, propane.  
16 Q. And are those done with an exterior  
17 propane tank?  
18 A. Yes.  
19 Q. Have you seen such tanks out at the  
20 cottages?  
21 A. I've seen tanks.  
22 Q. What other forms of heat do the cottages  
23 use?  
24 A. None that I'm aware of, with one possible

1 exception, a little wood in a fireplace.  
2 Q. What about electric heat?  
3 A. I don't know.  
4 Q. Could be?  
5 A. Could be.  
6 Q. Now, you said that you think virtually all  
7 of them have some form of heat?  
8 A. Yes.  
9 Q. And then you started to answer a question  
10 about what form of heat that would be suitable for  
11 the winter. Do you know the answer to that?  
12 A. No, I really don't.  
13 Q. And that would raise questions of both  
14 heat and insulation, correct?  
15 A. Yes.  
16 Q. Under the proposed sale of the cottages to  
17 the tenants and lessees, they're not going to be  
18 restricted to seasonal use?  
19 A. That's my understanding, yes.  
20 Q. Is it your expectation that as a result,  
21 steps will be taken in the cottages to, in many  
22 cases, improve the insulation and upgrade the heat?  
23 A. I'm sure some of that will happen. I  
24 don't know what, I wouldn't dare guess to what

1 degree.  
2 Q. For example, Little Neck might in the  
3 context of a sale, be attractive to empty nesters as  
4 a retirement home, right?  
5 MR. SHEEHAN: Objection. You may  
6 answer.  
7 A. Yes.  
8 Q. Do you know, currently there's  
9 approximately 167 cottages?  
10 A. Yes.  
11 Q. Is it exactly 167?  
12 A. I believe so.  
13 Q. How long has that been the number or how  
14 has that number changed in your lifetime?  
15 MR. SHEEHAN: Objection. Just one  
16 question. You put two questions.  
17 Q. Why don't you answer whichever one you  
18 want. I want to know what the --  
19 A. I don't believe there's been any change --  
20 I have to take that back. There's, I believe, been  
21 two removed during my tenure.  
22 Q. As a Feoffee?  
23 A. As a Feoffee.  
24 Q. So during the time you have been a Feoffee

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1 it's always been around 167?  
2 **A. Yes.**  
3 Q. Before you were a Feoffee was it also 167?  
4 **A. It may have been 169, only because I'm**  
5 **aware of two that are gone.**  
6 Q. How far back have there been in the range  
7 of 167 plus or minus cottages at Little Neck, to  
8 your knowledge?  
9 **A. I don't know. I can only say that when I**  
10 **was very young and lived on Great Neck in the**  
11 **summertime, that Little Neck always at a distance**  
12 **looked the same.**  
13 Q. Okay. So that was back in the forties?  
14 **A. Yes.**  
15 Q. Do you have any sense of how old the  
16 cottages are?  
17 **A. No. They vary greatly.**  
18 Q. Some are new?  
19 **A. Some are new.**  
20 Q. How old are the older ones?  
21 **A. I don't know. I only know that by looking**  
22 **at them, they're quite old summer cottage.**  
23 Q. Is it --  
24 **A. Turn of the century, I guess.**

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1 Q. The best of your understanding is that  
2 they got built, some of them, in the early twentieth  
3 century, right?  
4 **A. Yes.**  
5 Q. Are you aware that there was a recent  
6 foreclosure sale out at Little Neck?  
7 **A. Yes.**  
8 Q. And which property was that?  
9 **A. I can't tell you specifically, but I was**  
10 **there.**  
11 Q. You were there. Do you know who bought  
12 it?  
13 **A. I can't remember his name. I only know he**  
14 **has, I believe, two other places down there.**  
15 Q. And the person who bought it, was it your  
16 understanding that he was planning to knock down the  
17 improvements and rebuild?  
18 **A. No, no.**  
19 Q. What is your understanding as to what his  
20 intent is?  
21 **A. Allow his daughter to live there.**  
22 Q. After you became a Feoffee in the late  
23 seventies could you describe what your role  
24 entailed? I think you have told me already what you

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1 expected it to be, so if you could just summarize  
2 for me what your role as a Feoffee entailed since  
3 you became a Feoffee in 1978. And if you want, we  
4 could break that down into two periods, between 1978  
5 and the mid 2000's when you became chairman what was  
6 your role? In other words, until you became  
7 chairman what was your role as a Feoffee?  
8 **A. It was very minimal. It was discussions**  
9 **with Don Whiston or meetings with Don Whiston and**  
10 **the rest of the Feoffees. Usually it was regarding**  
11 **somebody's house, an addition, whether it was to be**  
12 **approved or not. There really weren't any other**  
13 **difficulties that I got involved with. And when I**  
14 **became -- Well, somewhere along there I became vice**  
15 **chairman and the only time I acted as chairman was**  
16 **once when Don forgot a meeting. And when I became**  
17 **chairman, I became chairman really at the beginning**  
18 **of the sewer project and that was because Don was**  
19 **very uncomfortable with it, was also getting older**  
20 **and he thought I would be much better suited to take**  
21 **that over. So I agreed to do it.**  
22 Q. I'll come to your tenure as chairman, but  
23 you have now answered what your role was?  
24 **A. Yeah.**

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1 Q. Up to that point?  
2 **A. Yeah.**  
3 Q. Which you have described as fairly  
4 minimal?  
5 **A. Yeah, yes.**  
6 **MR. SHEEHAN:** Steve, is this a good  
7 time to take a break?  
8 **MR. PERRY:** Yeah, either that or  
9 within a couple seconds.  
10 **MR. SHEEHAN:** Okay.  
11 **MR. PERRY:** Let me just -- Let's  
12 take a break.  
13 (Brief recess 11:33 to 11:40 a.m.)  
14 Q. At the time you became a Feoffee did you  
15 review any documents about the Feoffees? Did you  
16 review the will that set them up, anything like  
17 that?  
18 **A. No.**  
19 Q. Did you know when you joined the Feoffees  
20 that there were supposed to be seven of them?  
21 **A. Yes.**  
22 Q. How did you find that out?  
23 **A. I was just told what the makeup was**  
24 **supposed to be.**

<p style="text-align: right;">Page 65</p> <p>1 Q. And that makeup, to your understanding, 2 consisted of what? 3 <b>A. Four life Feoffees and the four senior</b> 4 <b>members of the board of selectmen.</b> 5 Q. Did you say four? You meant three? 6 <b>A. Four life members.</b> 7 Q. Did he say three selectmen? 8 <b>MR. SHEEHAN: Four.</b> 9 <b>A. What I meant to say, four life members,</b> 10 <b>three senior members of the board of selectmen. Did</b> 11 <b>I say four? I'm sorry, I misspoke.</b> 12 Q. Right. No problem. Did the three senior 13 members of the board of selectmen in fact 14 participate in the affairs of the Feoffees between 15 the time you joined and the time that you became 16 chairman? 17 <b>A. Not day to day.</b> 18 Q. Did they participate at all between 1978 19 and the year 2000? 20 <b>A. Only at the annual meeting.</b> 21 Q. How did they participate at the annual 22 meeting? 23 <b>A. It was, it was probably just a little</b> 24 <b>discussion. They didn't really contribute anything.</b></p>	<p style="text-align: right;">Page 67</p> <p>1 Q. What other Feoffees did you discuss it 2 with? 3 <b>A. Well, Jerome, probably my uncle, Harry</b> 4 <b>Munro.</b> 5 Q. And you told me that the Feoffees have an 6 annual meeting every year after you became a 7 Feoffee, right? 8 <b>A. Yes.</b> 9 Q. Were there other regular meetings of the 10 Feoffees in between the annual meetings between 1978 11 and 2000? 12 <b>A. No.</b> 13 Q. You said you would also have issues that 14 came up from time to time about an addition or the 15 like? 16 <b>A. Yes.</b> 17 Q. Would those be handled at meetings or 18 would those be handled some other way? 19 <b>A. Some other way.</b> 20 Q. So really, there were just, at the time 21 there was only one meeting a year? 22 <b>A. Yes.</b> 23 Q. Were minutes kept of those meetings? 24 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 66</p> <p>1 Q. Did the three senior selectmen in fact go 2 to the annual meetings of the Feoffees between 1978 3 and 2000? 4 <b>A. Not all the time. At least one did.</b> 5 <b>Usually two. It could be three. I think they</b> 6 <b>looked at it casually.</b> 7 Q. Did you -- You're currently aware that 8 there's a provision in the will under which the 9 Feoffees were established that says that Little Neck 10 should not be sold? 11 <b>A. Yes.</b> 12 Q. When did you first learn that there was 13 any kind of restriction in a will on the sale of 14 Little Neck? 15 <b>A. Significant time ago. I mean, not last</b> 16 <b>year, not ten years, you know.</b> 17 Q. You have known that? 18 <b>A. I basically know that, yeah.</b> 19 Q. How did you become aware of that 20 restriction? 21 <b>A. Pardon?</b> 22 Q. How did you become aware that there was 23 such a restriction? 24 <b>A. Discussing it with other Feoffees.</b></p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Were minutes keep of those meetings each 2 and every year? 3 <b>A. Yes.</b> 4 Q. Who kept the minutes? 5 <b>A. The secretary, who gave them to the</b> 6 <b>chairman.</b> 7 Q. Who served as secretary during the years 8 you were a Feoffee? 9 <b>A. George Hayes was the secretary.</b> 10 Q. After he left? 11 <b>A. I think Jim Foley was the secretary.</b> 12 <b>Peter Foote was a secretary. I can't give you the</b> 13 <b>years. Peter Foote still is.</b> 14 Q. Who kept the financial records of the 15 Feoffees after you joined? 16 <b>A. Can you clarify what you mean by financial</b> 17 <b>records?</b> 18 Q. The Feoffees were taking in rents during 19 the time you were a Feoffee? 20 <b>A. Uh-hum. (Witness nodding head up and</b> 21 <b>down.)</b> 22 Q. And they were incurring expenses? 23 <b>A. Uh-hum. (Witness nodding head up and</b> 24 <b>down.)</b></p>

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1 Q. So there needed to be books and records of  
2 the Feoffees showing what was coming in and what was  
3 going out, right?  
4 **A. Yes.**  
5 Q. Who kept those books and records?  
6 **A. Day to day, Peter Foote.**  
7 Q. After Peter Foote became a Feoffee he kept  
8 the day to day financial records?  
9 **A. No. Clarification. After he became a**  
10 **Feoffee, Donald Whiston was still chairman, manager,**  
11 **treasurer, and so he had those financial, he had**  
12 **those records.**  
13 Q. So when you joined, it was Donald Whiston  
14 who was keeping the books and records of the  
15 Feoffees?  
16 **A. Yes.**  
17 Q. And at some point he ceased to do so and  
18 Peter Foote began to do so?  
19 **A. Yes.**  
20 Q. And when was that, roughly?  
21 **A. Ten years ago, approximately.**  
22 Q. Part of the records that have been  
23 produced to us in this case include bills of sale  
24 when cottages are transferred. Was it the practice

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1 of the Feoffees to require that in the case of every  
2 transfer of ownership of a cottage the Feoffees be  
3 informed?  
4 **A. Could you repeat that? I just didn't hear**  
5 **you at the end.**  
6 Q. Did the Feoffees have an understanding  
7 with the tenants that the Feoffees were to be  
8 informed of any transfer of ownership of a cottage?  
9 **A. I believed that that was the case.**  
10 Q. And in fact, you told us that there were  
11 lists of cottage owners?  
12 **A. Yes.**  
13 Q. And the lease details?  
14 **A. Yes.**  
15 Q. So it was important --  
16 **A. Yes.**  
17 Q. That the Feoffees know who the cottage  
18 owners were? Let me finish the question before you  
19 answer.  
20 **MR. SHEEHAN:** You can not speak  
21 while Steve is asking the question. I know you  
22 wanted to be helpful, but it's --  
23 Q. It was important that the Feoffees be  
24 aware of who the cottage owners were?

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1 **A. Yes.**  
2 Q. And the cottage owners needed to cooperate  
3 in that, because otherwise, for example, they might  
4 not be able to enter the premises if there were a  
5 police detail there?  
6 **A. Yes.**  
7 Q. Some of the bills of sale show prices for  
8 the cottages and others show consideration of \$1.  
9 Are you aware, are you familiar with that?  
10 **A. No, I'm not familiar with that.**  
11 Q. And in some of the cases of the \$1  
12 transfers, these are presumably inter-family  
13 transfers from, to a trust or something like that?  
14 **A. I would assume that's probably the case.**  
15 Q. But there seem to be some others where it  
16 just says a dollar and the consideration and it  
17 seems to be third parties. Are there any records  
18 that would show what was actually paid for the sale  
19 of a cottage if the only record, if the record on  
20 the bill of sale says a dollar?  
21 **A. I don't believe so.**  
22 Q. Could you tell me what records the  
23 Feoffees currently have and how far back they go?  
24 **A. The records that are kept day to day are**

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1 **the collection of the rents, the collection of the**  
2 **taxes, the collection of the wastewater fee. I**  
3 **think that's pretty much it.**  
4 Q. Well, you keep the bills of sale?  
5 **A. Yeah.**  
6 Q. What about expenditures?  
7 **A. Well, yes, I'm sorry.**  
8 Q. The records of expenditure?  
9 **A. Yes.**  
10 Q. How far back do those go?  
11 **A. I don't know.**  
12 Q. Are the records kept at this time on a  
13 computer, QuickBooks, or something like that?  
14 **A. Yes.**  
15 Q. By Mr. Foote?  
16 **A. Yes.**  
17 Q. Does he use QuickBooks?  
18 **A. Yes.**  
19 Q. How long have the records of Little Neck  
20 been kept on, in a computerized fashion?  
21 **A. My estimate, three to four years.**  
22 Q. Before that were they kept by hand?  
23 **A. By hand.**  
24 Q. Are there records of the -- Are the

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1 minutes kept?

2 **A. Yes.**

3 Q. How far back do the minutes go?

4 **A. I don't know. I would expect forever to**

5 **the beginning.**

6 Q. Who has those records?

7 **A. I believe most of the records are in Bill**

8 **Sheehan's possession.**

9 Q. Who had them before Mr. Sheehan got them?

10 **A. Donald Whiston.**

11 Q. What was your understanding when you

12 joined the Feoffees concerning the tax status of the

13 Feoffees, if you had one?

14 **A. My understanding, it was basically a tax**

15 **exempt charitable trust going to, proceeds going to**

16 **the Town of Ipswich schools.**

17 Q. Did it ever come to your attention as a

18 Feoffee that perhaps the Feoffees hadn't done

19 everything that needed to be done to insure that

20 they had that tax status?

21 **MR. SHEEHAN:** Objection. You may

22 answer.

23 **A. Yes, but I don't know the details.**

24 Q. When did you first become aware that there

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1 could be such an issue?

2 **A. Ten years ago, approximately.**

3 Q. Has there been any change in the manner in

4 which the Feoffees have conducted themselves in

5 connection with meeting any reporting requirements?

6 **A. Yes.**

7 Q. What changes have taken place?

8 **A. There's a form, I believe, that needs to**

9 **be filed with the state regarding a charitable**

10 **organization. I don't know the form number, but I**

11 **know that it was, it has been filed and past records**

12 **have been filed.**

13 Q. When did the Feoffees begin filing the

14 annual form that's required to be filed with the

15 Attorney General's office?

16 **A. Again, my best guess would be five years**

17 **ago.**

18 Q. And you say when those forms were filed,

19 they also filed some past --

20 **A. Yes.**

21 Q. Year forms?

22 **A. That's my understanding, yes.**

23 Q. Who served as the accountant for the

24 Feoffees when those filings were made?

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1 **A. Dan Clasby.**

2 Q. Who served as the accountant for the

3 Feoffees more than five years ago when the filings

4 were not being made?

5 **A. I really can't remember.**

6 Q. Was it also Dan Clasby?

7 **A. I don't know who preceded Dan Clasby.**

8 Q. How long has Dan Clasby been doing this

9 work?

10 **A. I can't -- I don't know.**

11 Q. Did any information ever come to your

12 attention indicating that Dan Clasby had had any

13 professional issues?

14 **A. No.**

15 Q. You're not aware of him ever having

16 received any sanctions by any organizations?

17 **A. Not that I'm aware of.**

18 Q. Do the Feoffees have to file federal

19 income tax returns?

20 **A. I don't believe so, no.**

21 Q. And it doesn't file?

22 **A. No.**

23 Q. Could you give me a history, please, of

24 how the rents being charged have changed over the

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1 time that you have been a Feoffee?

2 **A. Well, I'll give you the best summary that**

3 **I can. In the earliest days the rents were, I**

4 **thought, comparable to other rents for summer**

5 **cottages in the area. I never tried to validate it,**

6 **but that was my opinion. And basically, that stayed**

7 **at that level until, until real estate really began**

8 **to increase in value and we got pressure from, the**

9 **particular person was Mr. Weatherall. I don't know**

10 **whether he was on the school committee at the time**

11 **or not, to get up to current market rents.**

12 Q. And this was occurring in the late

13 nineties?

14 **A. Probably, yeah.**

15 Q. And at the time that you were being

16 pressured to increase rents were they in the range

17 of 600, \$800 a year?

18 **A. I think so, yeah, yes.**

19 Q. Okay. If you could continue then, please?

20 **A. We agreed that we should try and get to**

21 **market value. We had no qualms about trying to do**

22 **that, so we enlisted LandVest for some professional**

23 **guidance about land values, rent prices and things**

24 **like that. And they provided us with various data**

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1 points. And we looked at where we wanted to go,  
2 which was, I think, to probably a 5,000 level and  
3 from where we were and spread it over five years.  
4 In which case, Mr. Weatherall and perhaps his  
5 associates were pleased that we took that action.  
6 It was also the same time that we had run-away  
7 inflation in the housing market.

8 We very quickly realized when we got  
9 to the end of the five years we weren't going to be  
10 where we thought we were going to be and we weren't  
11 sure what to do about it other than consult with  
12 LandVest again.

13 Q. Right. And what happened with regard to  
14 rents after you got to the end of the five years,  
15 which I believe was in around 2003?

16 A. Well, I can't, I can't give you the exact  
17 timing of events, but based on recommendations from  
18 LandVest as to what rents could be, that we could be  
19 charging as much as 9,000 or \$10,000 a year, and but  
20 they qualified that and said given the uncertainty  
21 of the DEP issue, which was very significant, that  
22 we should charge less until that was entirely  
23 resolved. And I think we kept the rents basically  
24 where they were for that time and then tried to deal

1 Q. Right.

2 A. They weren't going to pay. And we also  
3 had offered them a lease and they just, they just  
4 balked at everything, basically.

5 Q. Who were you using as your lawyer for  
6 purposes of negotiating or determining the terms of  
7 that lease? Who drafted it?

8 A. Donald Greenough.

9 Q. And that pretty much sums up what the  
10 history of the rents has been?

11 A. I think so, yeah.

12 Q. And during, during the pendency of the  
13 litigation the tenants were paying for seasonal  
14 occupancy of roughly \$5,200 a year and putting some  
15 additional money in escrow?

16 A. Yes.

17 Q. And year round occupancy being \$6,000 and  
18 putting some money in escrow?

19 A. Yes.

20 Q. And that was those who refused to sign  
21 leases?

22 A. Yes.

23 Q. And those who signed leases were paying  
24 \$9,700 for seasonal use?

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1 more with the DEP issues. The landowners were aware  
2 somehow they were going to have to contribute to  
3 that, so --

4 Q. I'm sorry?

5 A. No.

6 Q. Who was aware they had to contribute?

7 A. The landowner or, I'm sorry.

8 Q. The cottage owner?

9 A. The tenants.

10 Q. The tenants?

11 A. Yeah.

12 Q. And cottage owners?

13 A. Yes, and cottage owners.

14 Q. Understood that they were going to have to  
15 contribute toward the cost of constructing the  
16 wastewater facility that benefited them?

17 A. Yes, yes.

18 Q. Go ahead.

19 A. With the cost being now fixed, that in the  
20 ground, we consulted with LandVest and looked at the  
21 fact that we could be charging, say, \$10,000 a year.  
22 I don't think that's the number we used. I think it  
23 was 9 something. In which case we got, basically, a  
24 revolution.

1 A. Yes.

2 Q. Or \$10,800 per year for year round?

3 A. Yes.

4 Q. Has there been any change made to any of  
5 the rents being charged to the lessees or are we  
6 still at 9,700 and 10,800?

7 A. No, no.

8 Q. No changes?

9 A. I'm certain that they're still the same  
10 right now.

11 Q. Have any of the lessees been told that  
12 they're going to face a rent increase prior to the  
13 resolution of the case that we have right now?

14 A. They have not been told, but they have  
15 asked.

16 Q. And there's different forms of leases out  
17 there, right?

18 A. Well, no, I think there's only -- Well,  
19 there's really two.

20 Q. Okay. So there's one from 2006?

21 A. A real lease.

22 Q. Right.

23 A. And now there's tenants at will.

24 Q. But the leases that have actually been



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1 signed, were you aware that there was more than one  
2 form of lease depending on when they were signed?  
3 **A. No, not really.**  
4 Q. Is there any intent to raise the rents  
5 under the existing leases while the probate court  
6 litigation is going on?  
7 **A. No.**  
8 Q. And you have received inquiries about that  
9 from lessees?  
10 **A. Yes.**  
11 Q. Who's received those inquiries, you?  
12 **A. Yes.**  
13 Q. What have you said?  
14 **A. Minimal amount. That we'd like to see the**  
15 **court case resolved first.**  
16 Q. Yeah.  
17 **A. Their concern was the lease apparently**  
18 **says that there could be a significant increase.**  
19 **Could be.**  
20 Q. Right.  
21 **A. Okay. There isn't a guarantee that that's**  
22 **going to happen. The lease also, to encourage them**  
23 **to sign the lease, has an out clause.**  
24 Q. Right.

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1 **A. If they want to get out of the lease, you**  
2 **know, which made it more palatable to sign the**  
3 **lease.**  
4 Q. Right. Have rents always been charged to  
5 tenants during the period that you have been a  
6 Feoffee?  
7 **A. Yes.**  
8 Q. And were they always paid on an every six  
9 month basis?  
10 **A. I don't know.**  
11 Q. Was that the practice in recent history?  
12 **A. I thought, based on now, calling this**  
13 **recent history is that they were paid quarterly.**  
14 Q. Okay. At the time prior to the litigation  
15 with the tenants were they paying quarterly or every  
16 six months?  
17 **A. I don't remember.**  
18 Q. One or the other?  
19 **A. Yeah, yes.**  
20 Q. How were those rents set? Were the rents  
21 set every year?  
22 **A. Historically, yes.**  
23 Q. And when you became a Feoffee, the rents  
24 were at a certain amount?

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1 **A. Yeah.**  
2 Q. Fairly small, few hundred dollars a year,  
3 right?  
4 **A. When I became a Feoffee, yeah, right.**  
5 Q. Were the rents reviewed every year at a  
6 meeting or were they just left in place for years?  
7 **A. They were reviewed at a meeting.**  
8 Q. The annual meeting?  
9 **A. Sometimes prior to the annual meeting.**  
10 Q. Did each year's minutes reflect what the  
11 rent would be for the coming year?  
12 **A. Yes.**  
13 Q. Was it a calendar year or some kind of  
14 fiscal year?  
15 **A. Fiscal year, I believe.**  
16 Q. The rents would run from, would be set for  
17 a period from July 1 through June 30?  
18 **A. Yes, I believe that's correct.**  
19 Q. And you talked about a process of trying  
20 to raise the rents over a five year period. Do you  
21 recall that that five year period was from 1998 to  
22 2003?  
23 **A. It sounds correct, yeah, yes.**  
24 Q. And you had become aware by no later than

Page 84

1 1998 that the rents that were being charged were  
2 well below what fair market rent would be?  
3 **A. Yes.**  
4 Q. And you were aware that they had, for some  
5 period of time before 1998, been below fair market  
6 value?  
7 **A. Yes.**  
8 Q. But you can't put an exact date on how  
9 long the rents have been below fair market value?  
10 **A. No.**  
11 Q. Sometime at least in the nineties?  
12 **A. Yes.**  
13 Q. What did you consider fair market rent to  
14 mean?  
15 **A. When we were looking to accomplish that**  
16 **I'm not sure I looked at it the way that I've looked**  
17 **at it in most recent years, which was more of a**  
18 **return of investment type of look at the property.**  
19 **Relied heavily on recommendation and documentation**  
20 **from LandVest with regard to things like that.**  
21 Q. Are you familiar generally with the value  
22 of the cottage improvements at Little Neck?  
23 **A. In general.**  
24 Q. Do you have a sense of what it would cost

Page 85

1 to build improvements to replicate those cottages?  
2 In other words, the replacement cost of those  
3 cottages, do you have a sense of that?  
4 **A. On the average, I'd say 300,000, 350,000**  
5 **to replicate them.**  
6 Q. Do you have a sense of what the value of  
7 the improvements is from the standpoint of  
8 replacement cost less depreciation?  
9 **A. No, other than that I would think that**  
10 **depreciation would be basically zero at this time**  
11 **for a lot of them.**  
12 Q. For the new ones? For the newer ones, you  
13 mean?  
14 **A. No, not for the newer ones, for the old**  
15 **ones.**  
16 Q. You're saying the depreciation wouldn't be  
17 zero, you're saying that the value would be fully  
18 depreciated?  
19 **A. Right.**  
20 Q. Have you ever looked at the assessment for  
21 the improvements?  
22 **A. Occasionally, yes.**  
23 Q. And those assessments are based on some  
24 notion of replacement cost less depreciation?

Page 86

1 **A. I don't know, because the assessment is**  
2 **done by the town.**  
3 Q. Were you, did you become aware during the  
4 time you have been a Feoffee that cottages were  
5 selling for more than the value of the cottages  
6 themselves?  
7 **A. Yes.**  
8 Q. When did you become aware of that?  
9 **A. I believe fifteen or twenty years ago.**  
10 Q. And was it your understanding that if  
11 tenants were charged a fair market rent, the  
12 cottages would then be expected to sell for an  
13 amount closer to their actual value?  
14 **MR. SHEEHAN:** Objection. You may  
15 answer.  
16 **A. Would you repeat that again?**  
17 Q. Did you understand that there should be a  
18 relationship between the rent on the one hand and  
19 what the cottages sell for on the other?  
20 **MR. SHEEHAN:** Note my objection. Go  
21 ahead.  
22 **THE WITNESS:** Pardon?  
23 **MR. SHEEHAN:** I'm just objecting for  
24 the record, but go ahead.

Page 87

1 **A. I'm just thinking. No, I would say.**  
2 Q. Other things equal, if you start raising  
3 the rent that the tenants have to pay, doesn't that  
4 tend to have an effect of lowering what people would  
5 pay for the right to occupy, to own a cottage?  
6 **MR. SHEEHAN:** Objection.  
7 **A. In general, yes.**  
8 Q. So when you saw cottages selling for  
9 substantially more than the cottages themselves were  
10 worth, did that indicate that there might be room to  
11 raise the rent?  
12 **MR. SHEEHAN:** Objection.  
13 **A. No.**  
14 Q. You mentioned that a consultant was  
15 retained to assist the Feoffees with regard to these  
16 issues of rent?  
17 **A. Yes.**  
18 Q. And you said it was a company called  
19 LandVest?  
20 **A. LandVest.**  
21 Q. Who made the, who selected LandVest to be  
22 the consultant?  
23 **A. It was recommended by Donald Greenough.**  
24 Q. What did you do as a Feoffee to determine

Page 88

1 whether the consultant from LandVest was, had the  
2 best qualifications to take on that role?  
3 **A. I guess I looked at it from a reputation**  
4 **point of view. They're a respected company with**  
5 **regard to land sales, assessments, things like that.**  
6 Q. Do you know whether any of the individuals  
7 at LandVest are qualified? Do you know anything  
8 about the qualifications they have to appraise real  
9 property?  
10 **A. No.**  
11 Q. Was there a particular individual at  
12 LandVest that you worked with?  
13 **A. Yes.**  
14 Q. Who was that? Jim Monahan?  
15 **A. Yes.**  
16 Q. I don't want to embarrass you.  
17 **A. That's okay.**  
18 Q. No, I mean, you know, obviously, I'm sure  
19 if I gave you enough time you'd come up with a name.  
20 **A. Yes.**  
21 Q. Jim Monahan was the one that was mostly  
22 working on this assignment?  
23 **A. Yes.**  
24 Q. I saw a report by a fellow by the name of

Page 89

1 Slater Anderson. Do you know who that is?  
2 **A. No.**  
3 Q. Do you know anything about Jim Monahan's  
4 credentials as an appraiser?  
5 **A. No.**  
6 Q. Did you read his reports and try to  
7 understand his methodology?  
8 **A. Yes.**  
9 Q. When did you do that?  
10 **A. Soon after the report was presented to us.**  
11 Q. And so you read the report that he did in  
12 1998 and subsequent reports over the years?  
13 **A. Yes.**  
14 Q. And did you in fact understand his  
15 methodology?  
16 **A. I felt reasonably well that I did.**  
17 Q. How did Mr Monahan determine what the fair  
18 market value of lots at Little Neck was?  
19 **A. I don't really remember how he did it.**  
20 Q. Let's take his most recent appraisal, the  
21 one he did in 2010. And you may recall that he went  
22 through a process where he set values for each lot  
23 and then did an analysis of what a third party would  
24 pay to buy the land in bulk and sell them off to

Page 90

1 tenants, right? Do you remember that?  
2 **A. Yes.**  
3 Q. I want to start with the first part of  
4 that, which is how Mr Monahan went about trying to  
5 determine what the individual lot values was. Do  
6 you have an understanding of what he did?  
7 **A. No, I don't.**  
8 Q. Did you read his report?  
9 **A. Yes.**  
10 Q. Are you aware that there's been sales of  
11 cottages at Little Neck over the past five years?  
12 **A. Yes.**  
13 Q. And do you know what kinds of prices the  
14 cottages sold at at Little Neck over the past  
15 five years?  
16 **A. It varied. Some were very high in**  
17 **relation to the market and some were probably very**  
18 **low. I believe those were two auctioned places.**  
19 Q. So there were sales of the cottages  
20 themselves?  
21 **A. Yeah.**  
22 Q. That ranged from something below 200,000  
23 to in excess of 500,000?  
24 **A. Close to 500,000, if not in excess, yeah.**

Page 91

1 Q. Did you think that those sales of cottages  
2 could tell you what the land underneath the cottages  
3 was worth?  
4 **A. No.**  
5 Q. Why not?  
6 **A. Because with the demographics changed and**  
7 **wealthy people coming into the picture, some people**  
8 **will pay in excess of fair market value to get what**  
9 **they want or what they think they want, which skews**  
10 **that kind of thinking. So I think it's dangerous to**  
11 **just rely on the price paid as a way to determine**  
12 **real value. If they paid \$500,000 for a cottage**  
13 **that probably is worth less than 100,000 as a**  
14 **building, has no basement or anything else, they're**  
15 **buying it for another reason. They want to be close**  
16 **to the water. Maybe they can see the water. In one**  
17 **case, they couldn't -- Well, they could see the**  
18 **water a little bit.**  
19 Q. And they still paid --  
20 **A. And the question was why, why would you**  
21 **pay that? So using that to determine values is, to**  
22 **say the least, extremely difficult.**  
23 Q. Right. Well, let me add an additional  
24 difficulty to the problem. When people bought

Page 92

1 cottages in the past five years for these amounts,  
2 they were also required to sign leases with the  
3 Feoffees, weren't they?  
4 **A. Uh-hum. (Witness nodding head up and**  
5 **down.)**  
6 Q. And these leases said they'd have to pay  
7 9,700 a year for seasonal use or 10,800 for year  
8 reasoned?  
9 **A. Yes.**  
10 Q. Is that all correct?  
11 **A. Yes.**  
12 Q. So when people were paying \$500,000 for a  
13 cottage worth under \$100,000, they were also  
14 agreeing to pay rent in addition to that of 9,700 a  
15 year, right?  
16 **A. Yes.**  
17 Q. And that would be additional value that  
18 goes to the land, wouldn't it?  
19 **MR. SHEEHAN: Objection.**  
20 **A. I don't know that I would qualify it quite**  
21 **that way.**  
22 Q. Well, in other words, the amount that they  
23 paid for the cottage in excess of the cottage's  
24 value doesn't tell you the full picture of what the

Page 93

1 land is worth, right?

2 **A. Yes.**

3 Q. Because they're also going to have to pay

4 rent?

5 **A. Yes.**

6 Q. So you'd have to capture what that rental

7 is worth and add it, capitalize it in some way to

8 get a value, wouldn't you?

9 **MR. SHEEHAN: Objection.**

10 **A. I believe so, but I never looked at it**

11 **that way.**

12 Q. And do you know why -- You don't know what

13 the methodology Mr. Monahan used was in that regard,

14 do you?

15 **A. No, I don't.**

16 Q. You were relying on him being an expert?

17 **A. Yes.**

18 Q. Were you aware that Mr. Monahan in fact

19 based his values at Little Neck in his most recent

20 appraisal on these sales that took place over the

21 past five or six years?

22 **A. I'm not aware of that.**

23 Q. Prior to 1998 when Mr. Weatherall was

24 getting involved and perhaps he was -- Let me

Page 94

1 withdraw that. I don't know exactly when he was

2 getting involved, but --

3 Prior to 1998 when there was a

4 determined effort to raise the rents to get them

5 toward fair market value, had there been any

6 disagreement before that among the Feoffees as to

7 what the rent should be?

8 **A. I would have to say no.**

9 Q. And after 1998 do you recall any internal

10 dissent among the Feoffees concerning what the rent

11 should be?

12 **A. No, because we were relying on expert data**

13 **and we didn't disagree with it.**

14 Q. Were there any, was it publicly announced

15 at any time to the tenants that rents were going to

16 be moved toward fair market value?

17 **A. The only time I remember it being talked**

18 **about going to fair market value was when we**

19 **determined it was going to go up over a period of**

20 **five years to fair market value and then,**

21 **unfortunately, in five years it got terribly skewed.**

22 Q. Right, but in 1998 when the Feoffees

23 decided that they were going to move the rent to, so

24 that in 2003 tenants were paying what the fair

Page 95

1 market value had been determined to be in 1998, was

2 that announced to the tenants?

3 **A. I don't believe so.**

4 Q. When was an announcement made to the

5 tenants that rents were going up over a five year

6 period, if you recall?

7 **A. I don't recall.**

8 Q. It wasn't kept secret, right?

9 **A. No.**

10 Q. So those tenants who bought their cottages

11 after 1998 knew that the good old days of low rents

12 were not going to be in existence any more, right?

13 **A. Yes.**

14 Q. Did Mr. Whiston have any, did he express

15 any concerns or objections to raising the rents at

16 Little Neck so that they would reach fair market

17 value?

18 **A. No.**

19 Q. Did Mr. Whiston ever, did you ever hear

20 Mr. Whiston say that rents at Little Neck were going

21 to be kept low so that they'd just basically covered

22 operating costs?

23 **A. No, I never heard that. I never heard him**

24 **say that.**

Page 96

1 Q. Are you aware of some of the statements

2 that have been attributed to him by tenant leaders?

3 **A. By tenant, pardon?**

4 Q. The tenant leaders.

5 **A. Tenant leaders. Yes.**

6 Q. For example -- How are you aware of those

7 statements that have been attributed to him?

8 **A. I guess I'm aware through statements**

9 **they've made differentiating fair market rent with**

10 **the term fair rent, which they're differentiating**

11 **and I wouldn't. I --**

12 Q. Well, for example, the other day we had

13 depositions on separate days of DiSalvo and Gottlieb

14 and they gave some extensive testimony about various

15 conversations they say they had had with Mr.

16 Whiston. Have you heard about those conversations

17 before they testified about them?

18 **A. No, no.**

19 Q. So I presume you may have heard about that

20 from Mr. Sheehan?

21 **A. No.**

22 Q. After the testimony, but --

23 **A. Yeah, he, yes.**

24 Q. So you hadn't heard about those particular

Page 97

1 claims before then?

2 **A. No.**

3 Q. And you don't know personally what Mr.

4 Whiston may have said to tenants at any given

5 meeting?

6 **A. No.**

7 Q. During the time that you were a Feoffee

8 was he authorized to make promises on behalf of the

9 Feoffees about what rents would be in the future?

10 **A. No.**

11 Q. And that wasn't within the purview of the

12 chairman's role, was it?

13 **A. No, that should be the entire board.**

14 Q. And the practice was that the rents would

15 be determined each year?

16 **A. Yes.**

17 Q. You mention that Mr. Weatherall had a

18 concern about the rent levels, right?

19 **A. Uh-hum. (Witness nodding head up and**

20 **down.)**

21 Q. Yes?

22 **A. Yes.**

23 Q. Did anybody else outside of the Feoffees

24 express concerns that the rents were too low?

Page 98

1 **A. I think when it was first brought up it**

2 **was Mr. Weatherall and Mr. Traverso together.**

3 Q. Was Mr. Traverso a public official when he

4 first raised these concerns?

5 **A. I do not remember.**

6 Q. At some point he began to serve on the

7 school committee?

8 **A. Yes, he did.**

9 Q. And at some point there was a town report

10 concerning the Feoffees, do you remember that?

11 **A. No.**

12 Q. You have never --

13 **A. Excuse me.**

14 Q. Yes, go ahead.

15 **A. I'm wrong in what I just said, because**

16 **when you said town report, I was thinking of the**

17 **town report that comes out every spring. It was not**

18 **in there. Yes, there was a report generated that**

19 **looked at the Feoffees, the structure, and various**

20 **things that we did and so on. Yeah, I'm aware of**

21 **that report, yes, I am.**

22 Q. Has there been any time since 1990 that

23 you're aware of when in fact the tenants have paid

24 fair market rent for their real estate at Little

Page 99

1 Neck?

2 **A. Not in my opinion.**

3 Q. When was the wastewater system completed

4 such that tenants could hook up to it?

5 **A. I'm hard pressed to give you the date, you**

6 **know, the actual date.**

7 Q. Sometime prior to the litigation?

8 **A. Yes.**

9 Q. Prior to?

10 **A. I believe so.**

11 Q. Before you sent the --

12 **A. Yes.**

13 Q. Leases to the tenants?

14 **A. Yes.**

15 Q. And said you should sign them?

16 **A. Yes.**

17 **MR. SHEEHAN:** Alex, wait until the

18 question is complete.

19 Q. And was it completed sometime soon before

20 these new rents were set and the leases were sent

21 out to the tenants?

22 **A. I believe so.**

23 Q. In order for a tenant to take advantage of

24 a wastewater system, they had to be connected to it,

Page 100

1 right?

2 **A. Yes.**

3 Q. And was that part of the wastewater

4 project, to connect each of the tenants?

5 **A. Yes.**

6 Q. Was any consideration given to requiring

7 the tenants to sign a document taking responsibility

8 for payments in order to be hooked up to the

9 wastewater system?

10 **A. I don't believe so.**

11 Q. Was that a mistake, in retrospect, not to

12 have done that?

13 **MR. SHEEHAN:** Objection.

14 **A. Since this is the first time anybody has**

15 **ever said that, I would say probably, yes.**

16 Q. Because you could have at that time said,

17 Look, if you want to be part of the wastewater

18 system, we need to have your commitment to pay for

19 it in some fashion, either through rent or a special

20 charge, right?

21 **A. Yes.**

22 Q. And of course, you couldn't continue them

23 to, you wouldn't have been allowed to let them just

24 keep on discharging water into their cesspools if

Page 101

1 they didn't sign, right?  
2 **A. Yes.**  
3 Q. But if you didn't allow them to occupy  
4 with an illegal system, you could have put that  
5 choice to them, either sign or else, right?  
6 **A. Possibly. Because we had the DEP looking**  
7 **over us to clean up the entire area. So --**  
8 Q. Right.  
9 **A. I'm not sure the DEP -- I'm just thinking**  
10 **a little bit out loud, which I'm not supposed to.**  
11 **The DEP insisted that we clean up the entire area,**  
12 **not just part of it.**  
13 Q. Right.  
14 **A. So I think differentiating, as you**  
15 **suggested, may have been impossible.**  
16 Q. Unless the arrangement with the DEP was  
17 that those that weren't hooked up wouldn't be  
18 allowed to occupy, and therefore there would be no  
19 issue?  
20 **A. Yes.**  
21 Q. But you weren't expecting the tenants to  
22 rebel?  
23 **A. No.**  
24 Q. You thought the relationships were good?

Page 102

1 **A. Yes.**  
2 Q. How much of the problem do you attribute  
3 to individuals who asserted leadership for the  
4 tenants?  
5 **MR. SHEEHAN: Objection.**  
6 **A. Would you ask that again, please?**  
7 Q. Well, when you assess the situation in  
8 your own mind, do you believe that the rebellion  
9 that took place was largely festered by a few  
10 disgruntled individuals?  
11 **A. Yes.**  
12 Q. And who are those, is that Mr. Gottlieb,  
13 Mr. DiSalvo?  
14 **A. Yes.**  
15 Q. When the Feoffees set rents at the rate of  
16 9,700 seasonal and 10,800 year round were you  
17 satisfied that these were fair market value rents?  
18 **A. Yes, at the time.**  
19 Q. Have you changed your mind?  
20 **A. No. The problem is how do you determine**  
21 **the rent as time goes on? What do you tie it to?**  
22 Q. Right.  
23 **A. As an index.**  
24 Q. So you're saying that they were

Page 103

1 appropriate for 2006 when they were imposed?  
2 **A. Yes, yes.**  
3 Q. By the way, you would agree that the fair  
4 market rent for lots at Little Neck technically  
5 varies pretty markedly between lots?  
6 **A. Yes.**  
7 Q. And yet, the rents have been charged  
8 historically on a flat basis for all tenants?  
9 **A. Yes.**  
10 Q. And is it fair to say that that's because  
11 tenants have strongly advocated for that kind of  
12 uniformity?  
13 **A. Yes, actually.**  
14 Q. And even now, in some of the new leases  
15 there's some stratification built into the rents, is  
16 that right?  
17 **A. I'm not sure.**  
18 Q. But if you were to stratify the rents  
19 based on fair market value of the underlying lots,  
20 the stratification would be quite severe, wouldn't  
21 it?  
22 **MR. SHEEHAN: Objection.**  
23 Q. I can --  
24 **A. Yes.**

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1 Q. It wouldn't be just a matter of Tenant A  
2 pays 8% more than Tenant B. There would be a pretty  
3 large difference, right?  
4 **MR. SHEEHAN: Objection.**  
5 **A. That, yes, that's what I would say.**  
6 Q. And again, the reason that that hasn't  
7 been done historically is because of the tenants'  
8 expressed desire, at least the majority of them, to  
9 have the rents be fairly flat?  
10 **A. Yes.**  
11 Q. Among all of the tenants?  
12 **A. Yes, that's our understanding.**  
13 Q. Now, if the Feoffees were able to collect  
14 and the tenants were paying rents at what you  
15 described as fair market rates at least as of 2006,  
16 would there be any problem with operating Little  
17 Neck in a manner that was profitable and allowed  
18 substantial sums to go to the schools?  
19 **MR. SHEEHAN: Objection.**  
20 **A. No, nothing that's obvious.**  
21 Q. And you would --  
22 **A. At this point in time.**  
23 Q. And you would expect the rents, as you  
24 have described, to actually increase over time,

Page 105

1 wouldn't you?

2 **A. Possibly. I would have always up until a**

3 **year or so ago and then I'm not sure any more where**

4 **the values of things are going.**

5 Q. Well, if there's increases generally in

6 the cost of living and inflation, you'd expect the

7 rents to keep up with that, wouldn't you?

8 **A. Yes, in general.**

9 Q. And then you may or may not have

10 additional appreciation on top of inflation,

11 depending on the market for oceanfront land, right?

12 **A. Yes.**

13 Q. So the existing investment in Little Neck

14 on a long-term basis you would expect to at least

15 keep up with inflation, wouldn't you, on the basis

16 of rents?

17 **MR. SHEEHAN: Objection.**

18 **A. Yes.**

19 Q. Under the proposed sale of Little Neck,

20 the tenants will be allowed to use their cottages on

21 a year round basis, right?

22 **A. That's my understanding, yes.**

23 Q. If you were trying to compare a rental

24 analysis to a sale analysis, would it be fair to

Page 106

1 look at year round rental for all of the properties,

2 as well?

3 **MR. SHEEHAN: Objection.**

4 **A. I don't know.**

5 **MR. PERRY: Let's go off the record**

6 **a second.**

7 (Discussion off the record.)

8 (Lunch recess 12:37 to 1:30 p.m.)

9

10

11

12

13 **AFTERNOON SESSION**

14 Q. You had testified earlier that at Great

15 Neck where you had been part of the corporation that

16 owned the property, ultimately those lots were sold

17 off lot by lot?

18 **A. Uh-hum. (Witness nodding head up and**

19 **down.)**

20 Q. To either those who owned the cottages or

21 others, right?

22 **A. Yes.**

23 Q. And in each of those instances your family

24 company attempted to sell the land for a fair market

Page 107

1 value?

2 **A. Yes.**

3 Q. In fact, you said that the purpose of

4 changing the ownership was to maximize revenues,

5 right?

6 **A. That's a misunderstanding. Changing**

7 **ownership?**

8 Q. At Great Neck.

9 **A. Selling property?**

10 Q. Yes.

11 **A. Yes, selling it, yes.**

12 Q. Yes, that's what I meant. Have you

13 reviewed various appraisals that have been performed

14 at Little Neck by different companies that have been

15 involved for different parties?

16 **A. No.**

17 Q. You have looked at the LandVest

18 appraisals?

19 **A. Yes.**

20 Q. Did you read the appraisal that Collier,

21 Meredith and Grew did?

22 **A. No.**

23 Q. Did you review the appraisal done by

24 Peterson LaChance?

Page 108

1 **A. No.**

2 Q. For the tenants?

3 **A. No.**

4 Q. Have you reviewed the appraisal done by

5 Steve Foster of Lincoln Properties?

6 **A. No.**

7 Q. In the appraisal done by LandVest in 2010

8 do you recall that it was a two-part process, as

9 we've previously discussed, in which he valued the

10 individual lots, came to an aggregate figure, but

11 then did a discounted cash flow analysis, do you

12 recall that?

13 **A. No, I don't really recall it.**

14 Q. Do you have an understanding of what that

15 methodology was where?

16 **A. Yes, I've heard of it before, yeah, yes.**

17 Q. In your own words what do you understand

18 that methodology to be?

19 **A. Well, I only say that because on a piece**

20 **of land that we owned, he, a large piece of land,**

21 **LandVest appraised it by agreement between us and**

22 **the town and he wanted to discount the value because**

23 **it was a large acreage not subdivided, so on. And**

24 **he just said that was standard operating practice.**

Page 109

1 **We didn't accept it, but -- So, yeah, I'm not**  
2 **familiar with that, but I am sort of familiar with**  
3 **what you're saying.**  
4 Q. All right. Well, do you have an  
5 understanding that there's a difference between the  
6 value that LandVest says is the fair market value of  
7 the property as a whole compared to the value of  
8 each individual lot when you add them up?  
9 **A. Yeah, I have some understanding of that,**  
10 **certainly.**  
11 Q. And what is the price of the sale to the  
12 tenants based upon? Is it based upon what the  
13 individual lots the tenants are getting or is it  
14 based upon the land viewed in the aggregate?  
15 **A. I don't know what the original basis was**  
16 **to start coming up with that value.**  
17 Q. At the end of the sales transaction with  
18 the tenants if it were to be approved, each tenant  
19 will end up owning an individual lot, correct?  
20 **A. Yes, as a condo lot.**  
21 **MR. SHEEHAN:** Note my objection.  
22 Q. As part of a condominium?  
23 **A. Yeah.**  
24 Q. They'll own a cottage and they'll have

Page 110

1 rights to use the common areas with others?  
2 **MR. SHEEHAN:** Objection.  
3 Q. Is that right?  
4 **A. I would assume.**  
5 Q. Do you believe that each individual tenant  
6 should have to pay to the Feoffees the fair market  
7 value of the individual lot being purchased?  
8 **MR. SHEEHAN:** Objection.  
9 **A. No, no.**  
10 Q. And why not?  
11 **A. Well, we negotiated a value separately**  
12 **than that kind of methodology.**  
13 Q. And under the value you negotiated are the  
14 tenants on average paying for their individual lots  
15 a fair market value figure for that lot?  
16 **MR. SHEEHAN:** Objection.  
17 **A. I don't know.**  
18 Q. Have you, are you aware that according to  
19 the various appraisals the value of the individual  
20 lots when aggregated comes to something between, in  
21 the range of 38 to 42 million?  
22 **A. I'm trying to think of how to answer. I**  
23 **guess I'm aware of the number. I don't think it has**  
24 **any validity.**

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1 Q. And why do those numbers of 38 to 42  
2 million as the value of the individual lots  
3 aggregated have no validity?  
4 **A. Because that's with it all subdivided and**  
5 **a condo creation.**  
6 Q. Right.  
7 **A. That isn't what's being sold.**  
8 Q. Now, if the sale goes through at a price  
9 of, stated price of \$29 million before one accounts  
10 for any rebates and so forth, the tenants will  
11 receive at the end of the day subdivided condominium  
12 type units, right?  
13 **MR. SHEEHAN:** Objection.  
14 **A. Yes, I believe so.**  
15 Q. So at the end of the sale process what  
16 will be the aggregate value of all the lots that the  
17 tenants own?  
18 **MR. SHEEHAN:** Objection.  
19 **A. Well, it should be 29 million minus**  
20 **whatever the other things that are taken away, debt,**  
21 **costs of surveying, things like that.**  
22 Q. Well, once the transaction takes place a  
23 tenant would be able to sell his condominium unit,  
24 both the interest in the land and the interest in

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1 the cottage at fair market value, right?  
2 **MR. SHEEHAN:** Objection.  
3 **A. Uh-hum. (Witness nodding head up and**  
4 **down.)**  
5 Q. Do you have an understanding of what those  
6 fair market values will look like immediately after  
7 the sale?  
8 **A. No, I don't.**  
9 Q. If you add up all the fair market values  
10 of the condominium units immediately after the sale  
11 will they be closer to 40 million or 29 million?  
12 **A. I don't know.**  
13 Q. Do you think that's a relevant question to  
14 ask?  
15 **A. Relevant for you, yes.**  
16 Q. Not relevant for you?  
17 **A. Well, I don't know what the market will**  
18 **determine.**  
19 Q. If in fact the value of all the  
20 condominium units when you add them up after the  
21 sale is in the range of 40 million, do you still  
22 think that a sale at the stated price of 29 million  
23 is a fair deal for the Feoffees?  
24 **MR. SHEEHAN:** Objection.



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1 A. Yes, yes, I do.  
2 Q. Why is that?  
3 A. Well, we have a situation where 80% of the  
4 tenants down there basically refuse to pay the rent  
5 that we set out, sued us and -- Let's see, I think  
6 I'm getting off track.  
7 Actually, I'm not sure how to  
8 rationalize it. I'm not sure I want to sit here and  
9 think about it and try and give it to you. I may  
10 try and answer it later as I think about it while  
11 you're talking.  
12 Q. All right. You mention that the tenants  
13 had sued you, sued the Feoffees?  
14 A. Uh-hum. (Witness nodding head up and  
15 down.)  
16 Q. Yes?  
17 A. Yes.  
18 Q. Was it your understanding that any of the  
19 tenants were seeking to go after you, after your  
20 personal assets?  
21 A. The legal documents said that. I don't  
22 really believe that's the case.  
23 Q. Did the Feoffees ever have any insurance  
24 to protect them against claims made against the

Page 114

1 Feoffees?  
2 A. No.  
3 Q. Were you concerned about potential  
4 personal liability from the tenants' lawsuit?  
5 A. No.  
6 Q. Why not?  
7 A. Well, the relationship between the  
8 Feoffees and the tenants was, you might say, a kind  
9 of benign relationship over the long period. It was  
10 only at this end that the sewer and the substantial  
11 increase in rent that, you know, tension was  
12 created, and not only tension with us, but tension  
13 amongst the people down there. So the quiet place  
14 that existed that you'd never worry about has  
15 changed. It has.  
16 Q. Right. So --  
17 A. As I said, the demographics have changed.  
18 Q. So I guess what I'm asking is why wouldn't  
19 you have been concerned, then, with the demographics  
20 changing and having been sued in this lawsuit, with  
21 possible potential personal liability?  
22 MR. SHEEHAN: Objection.  
23 A. I don't think we expected to be sued. And  
24 obviously, when we were sued, any insurance wouldn't

Page 115

1 cover the suit anyway.  
2 Q. So let me clarify the question I'm asking  
3 you. Once you were sued --  
4 A. Yes.  
5 Q. Not having any insurance --  
6 A. Yes.  
7 Q. Was that a concern to you, that you might  
8 be personally liable?  
9 A. I'm trying to figure out how to answer.  
10 The answer is no, on some other suit in the future,  
11 although it has crossed our mind.  
12 Q. I really meant on the --  
13 A. Existing?  
14 Q. On the existing lawsuit after it was filed  
15 against you, did that concern you that tenants were  
16 making claims that you understood to be against you,  
17 personally?  
18 A. Well, yes, sure.  
19 Q. Okay. And why were you concerned?  
20 A. The possibility was that we could be  
21 individually liable.  
22 Q. Is part of the settlement with the  
23 tenants, if approved by the court, that you deal  
24 with that personal liability by getting any claims

Page 116

1 released?  
2 A. I believe so, yes.  
3 Q. Is that part of the reason why you entered  
4 into the settlement?  
5 A. No.  
6 Q. You mentioned in your testimony that  
7 you're not aware of any period of time since the  
8 nineties when the tenants have paid an amount that  
9 you believe to be a fair market rent, do you recall  
10 testifying to that?  
11 A. Yes.  
12 Q. If the settlement agreement is approved  
13 will the Feoffees end up collecting fair market  
14 rents for the period from 2007 through the date of  
15 sale?  
16 A. Not in addition to the 29 million. The 29  
17 million, I believe, includes that.  
18 Q. Right. So if we're referring to it as the  
19 \$29 million purchase price, then there's a few  
20 million dollars in rents that will not have been  
21 collected at what you think is fair market value,  
22 right?  
23 MR. SHEEHAN: Objection.  
24 Q. Or you could call it \$26,000,000 purchase

Page 117

1 price and say you're collecting the rents, is that  
2 basically right?  
3 **A. I look at it that it really is a**  
4 **\$26,000,000 sale that was agreed upon twice by the**  
5 **school committee and that the differential**  
6 **accommodates back rent and things like that.**  
7 Q. Back rent and the rebates to the lessees?  
8 **A. Yeah, yes.**  
9 Q. Things along that -- and things like that?  
10 **A. Yes.**  
11 Q. Will you agree with me that since there's  
12 been no history of collecting fair market rents from  
13 the tenants at Little Neck, we have no history  
14 showing what contributions can be made to the  
15 schools based on the collection of fair market  
16 rents?  
17 **MR. SHEEHAN: Objection.**  
18 **A. Would you please repeat that?**  
19 Q. You have testified that there's no history  
20 of having collected fair market rents by the  
21 Feoffees that you know of, correct?  
22 **A. Yes.**  
23 Q. By the same token, therefore, there's no  
24 history of contributions to the schools based on the

Page 118

1 collection of fair market rents, right?  
2 **A. Well, yes.**  
3 Q. Which of the lots at Little Neck do you  
4 think are the most valuable ones?  
5 **A. My opinion is the one, are the ones out on**  
6 **the bluff that look out onto Ipswich Bay.**  
7 Q. Are those on River Street, do you know?  
8 **A. Some are on Cliff Road and some are on, I**  
9 **believe that piece of road is River Road.**  
10 Q. River Road. And will you agree that the  
11 value of those individual lots on River Road and  
12 Cliff Road are substantially higher than \$200,000  
13 each?  
14 **MR. SHEEHAN: Objection.**  
15 **A. My estimate is that they would be.**  
16 Q. They may be worth on a stand alone basis  
17 400,000 or 500,000 or more?  
18 **A. I've seen people pay that kind of money**  
19 **for small pieces of land, but they seem to have no**  
20 **regard for what they're buying -- I mean, what**  
21 **they're paying. I mean, if you got tens of millions**  
22 **of dollars in the bank and you decide you want that**  
23 **piece of land, then you got to pay whatever it is.**  
24 Q. And fair market value is whatever somebody

Page 119

1 is willing to pay to own the property in question,  
2 right?  
3 **A. That's right.**  
4 Q. So in the case of the lots on River Road  
5 and Cliff Road, would you agree that the fair market  
6 value of those lots is very substantially higher  
7 than the amount to be paid for them under the  
8 settlement agreement?  
9 **MR. SHEEHAN: Objection.**  
10 **A. I'm just thinking about the settlement**  
11 **agreement itself. Well, you're taking pieces out of**  
12 **the aggregate settlement agreement. Do I think**  
13 **those are worth more as separated like that where**  
14 **they'd be able to be sold? Yes.**  
15 Q. Well, once the transaction, if the  
16 transaction were approved, the owners of those lots  
17 could turn around and sell them the next day, right?  
18 **MR. SHEEHAN: Objection.**  
19 Q. Well, if the transaction were approved and  
20 the condominium were formed and the sales under the  
21 settlement agreement to the tenants take place,  
22 right?  
23 **A. Uh-hum. (Witness nodding head up and**  
24 **down.)**

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1 Q. As soon as those sales take place, the  
2 unit owners would be able to turn around and sell  
3 the lots the next day, right?  
4 **MR. SHEEHAN: Objection.**  
5 **A. I believe so.**  
6 Q. And in the case of those who are buying at  
7 River Road and Cliff Road, they could immediately  
8 derive substantial profits?  
9 **A. That's possible, yes.**  
10 Q. Well, I want to ask you about this issue  
11 of whether we should be looking at the value of the  
12 property in the aggregate versus the value of  
13 individual lots. The transaction under the  
14 settlement agreement calls for a conversion to  
15 condominiums and then virtually all of the cottage  
16 owners have agreed to buy individual lots, right, is  
17 that correct?  
18 **A. Yes.**  
19 Q. There's not going to be any sell-off over  
20 a period of years, right?  
21 **A. No.**  
22 Q. In fact, instead, what will happen is that  
23 after the condominium is formed, shortly thereafter  
24 virtually all of the lots will be owned by current

Page 121

1 cottage owners, right?

2 **A. I believe so, yeah.**

3 Q. So why wouldn't it be appropriate in

4 looking at the price to be paid to evaluate what

5 each individual lot owner will get in terms of his

6 own lot and adding those up together for the sale

7 price?

8 **A. Well, that isn't how it's being sold.**

9 **It's being sold in its entirety, willing buyer,**

10 **willing seller.**

11 Q. So you're pricing the entire property on

12 what some hypothetical third party would pay for the

13 right to come in, buy the entire property and over a

14 period of years sell it off to the tenants, right?

15 **A. I think that's correct, yeah.**

16 Q. And why is that a better way to value it

17 when the tenants are all going to end up with 167

18 individual units the day after the sale?

19 **A. Well, the valuation was, you know, based**

20 **on -- the valuation that we have is based on the**

21 **appraisals that were done and the methodologies**

22 **used, all of which I can't give you, most of which**

23 **are very close.**

24 Q. You tell me you had become chair around

Page 122

1 the time the wastewater system problems were

2 accelerating, right?

3 **A. Yes.**

4 Q. And that was in the 2000's?

5 **A. Yes.**

6 Q. Could you explain what your role was with

7 regard to the wastewater system project, addressing

8 those problems?

9 **A. Well, the role will certainly widely vary**

10 **from meeting with the DEP and/or their**

11 **representatives in the field, to reviewing the**

12 **development of the construction drawings and how**

13 **this could be done, especially with regard to the**

14 **other underground utilities that were there, and**

15 **finally, the bidding process and then the**

16 **construction, which I spent a great deal of time**

17 **over there.**

18 Q. So the beginning of the process was that

19 there were meetings with DEP?

20 **A. Yes.**

21 Q. Can you give me a rough time frame of when

22 these meetings were occurring?

23 **A. The first of the meetings began with Don**

24 **Whiston, so I can't tell you that. I can't tell you**

Page 123

1 **the beginning of when DEP stepped in. I only know**

2 **that it got to a point where they said fix it or**

3 **close it.**

4 Q. Okay. And am I correct that the

5 underlying problem was that people were disposing of

6 their waste to, essentially, cesspools?

7 **A. Probably. Well, certainly not Title V**

8 **compliant systems.**

9 Q. Right. And people didn't have even septic

10 tanks, right? They simply had, they discharged into

11 the ground, weren't they?

12 **A. Could be. I don't know. I can't really**

13 **answer that. It's probably very widely varied what**

14 **they were using.**

15 Q. Regardless what they were using, the

16 conclusion by DEP was that there was waste from

17 Little Neck ending up in rivers and so forth, right?

18 **A. Yes.**

19 Q. And they wanted that to stop?

20 **A. Yes.**

21 Q. And they said this can't go on, it must

22 stop?

23 **A. Yes.**

24 Q. So then there were meetings with DEP about

Page 124

1 how to resolve the issue?

2 **A. Yes.**

3 Q. Some of which Don Whiston attended and

4 later in the process you were involved in?

5 **A. Yes.**

6 Q. At some point there was a first agreement

7 with DEP for the installation of tight tanks by the

8 tenants, is that right?

9 **A. Yes.**

10 Q. Were you part of that agreement?

11 **A. No.**

12 Q. Is that Don Whiston?

13 **A. I'd say yes.**

14 Q. And the tenants have complained that that

15 was all done without their involvement. Do you know

16 if that's true or not?

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

18 Q. Have you heard that complaint?

19 **A. No, I haven't heard it as a complaint, no.**

20 Q. Okay. When the agreement was made that

21 tight tanks would have to be installed, whose

22 obligation was it going to be to install the tight

23 tanks? Was that going to be the cottage

24 owners' obligation?

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1 **A. That would basically be the cottage owner.**  
2 Q. Everybody understood that, as far as you  
3 know?  
4 **A. As far as I know, yes.**  
5 Q. Did you receive feedback from the tenants,  
6 the cottage owners that they did not like this tight  
7 tank solution?  
8 **A. Yes.**  
9 Q. And who communicated that feedback to you?  
10 **A. There were several people. Some were**  
11 **communicated -- I can't recite who they were. Some**  
12 **was recited to me and some to the other Feoffees,**  
13 **and discussion ensued with the engineer with regard**  
14 **to that.**  
15 Q. Was there an engineer who you were using  
16 at that time?  
17 **A. I believe P.L. Lombardo was involved at**  
18 **that time, yes.**  
19 Q. How did that engineer get selected,  
20 Lombardo?  
21 **A. He got selected by recommendations for his**  
22 **qualifications to work out septic systems in unusual**  
23 **situations.**  
24 Q. And who made the recommendation?

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1 **A. I don't remember.**  
2 Q. Was Don Greenough involved in that  
3 recommendation?  
4 **A. I don't believe so.**  
5 Q. What were the complaints that you heard  
6 voiced by, directly or indirectly, by tenants  
7 concerning the proposed tight tank solution?  
8 **A. The concern was a public safety concern.**  
9 **It was in regard to the, basically, the random need**  
10 **to pump the tanks and in an environment which**  
11 **typically had a large number of children, that that**  
12 **would be a safety issue.**  
13 Q. So you'd have safety issues with the  
14 pumping, right, that was a tenant concern?  
15 **A. Yes, in the context of pumping it out of**  
16 **the tank, yes.**  
17 Q. Were there issues about the smelliness of  
18 the pumping?  
19 **A. That wasn't brought up, that I remember.**  
20 Q. And just the idea of having these septic  
21 tanks going up and down the streets periodically?  
22 **A. Yes.**  
23 Q. What were your reaction to these  
24 complaints? Did you think it was reasonable to try

Page 127

1 to find another solution?  
2 **A. Yes.**  
3 Q. Was there an understanding with the  
4 tenants as to whether the alternative solution might  
5 cost more money?  
6 **A. I don't know. I don't remember.**  
7 Q. All right. So after -- What happened  
8 after this agreement was reached with DEP for the  
9 installation of tight tanks and the tenants gave  
10 feedback saying they didn't want to do it?  
11 **A. We went back to the DEP with the idea of a**  
12 **collection system.**  
13 Q. Was there also some attempt in between to  
14 try to do a sewer hook-up?  
15 **A. Yes. You mean to the municipal sewer?**  
16 Q. Yes.  
17 **A. Yes.**  
18 Q. And what was the outcome of that?  
19 **A. That was very negative by the town.**  
20 Q. Because it would have involved town cost?  
21 **A. No. Because it would have passed in front**  
22 **of some people who just didn't want it to go there**  
23 **and were very, very vocal.**  
24 Q. Which part of town would it have passed

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1 by, Great Neck?  
2 **A. Passed by Great Neck, out of Eagle Hill,**  
3 **Island Park.**  
4 Q. Was the issue having the sewer pass by  
5 those places or was it having trenches dug and sewer  
6 installed?  
7 **A. I'm not sure, because the objections**  
8 **weren't valid. It was a pressure main. You can't**  
9 **tie into a pressure main. Nobody was trying to**  
10 **assess an abutter for a pressure main going by. But**  
11 **people seemed to think that if it's called sewer**  
12 **going by, I'm going to have to tie into it. You**  
13 **can't.**  
14 Q. So it was passing by places that didn't  
15 themselves have town sewer?  
16 **A. That's right.**  
17 Q. And people there were under the impression  
18 that if the sewer were going by their houses, they  
19 would be forced in the future to hook up into it?  
20 **A. There was a lot of people that had that**  
21 **opinion. It felt like the general opinion kind of**  
22 **category.**  
23 Q. Who was going to pay for this sewer line  
24 if it was going to be put in?

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1 **A. That would have been the Feoffees.**  
2 Q. And what would the cost of the sewer  
3 solution have been compared to some of these other  
4 solutions?  
5 **A. I don't remember.**  
6 Q. Do you know if the tenants had to pay for  
7 the tight tanks under that solution, but the  
8 Feoffees were going to pay for a sewer solution, why  
9 would they do that?  
10 **A. We expected to get the money out of the**  
11 **tenants either by assessment or if assessment became**  
12 **something that wasn't legally acceptable, by**  
13 **charging the appropriate rent.**  
14 Q. Did you have, did you investigate whether  
15 assessment was a legal way to do it?  
16 **A. Yes, yes.**  
17 Q. Did you assess whether, did you determine  
18 whether an assessment was a lawful way to recover  
19 for the cost of the wastewater system?  
20 **A. We determined that it may not be and we**  
21 **didn't need to have a not be.**  
22 Q. When did you learn that you might not be  
23 able to recover the cost of the wastewater system  
24 through an assessment?

Page 130

1 **A. Sometime during the construction period.**  
2 Q. So no effort was made to make a  
3 determination as to how the cost would be recovered  
4 before you started construction?  
5 **A. We intended to do it by betterment or --**  
6 Q. Okay. When did construction start? Was  
7 it 2004? Do you know the date?  
8 **A. I don't. I would have said 2003, but it**  
9 **may be 2004.**  
10 Q. It may be 2003, as well.  
11 **A. Yeah.**  
12 Q. So before construction started in or  
13 around 2003, at the time construction started in or  
14 around 2003 your expectation was that there would be  
15 an assessment to tenants in the form of betterment?  
16 **A. Yes.**  
17 Q. And what was your basis for that  
18 assumption? Was that something that was discussed  
19 among the Feoffees?  
20 **A. Yes.**  
21 Q. Was it discussed with any professionals?  
22 **A. Our attorney at the time.**  
23 Q. That was?  
24 **A. Don Greenough.**

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1 Q. And after you had discussed it internally  
2 and consulted with Mr. Greenough, your plan was to  
3 recapture the sum through betterment?  
4 **A. Originally, yes.**  
5 Q. And the betterment would be that you would  
6 simply charge the tenants pro rata their share of  
7 whatever was spent?  
8 **A. Yes.**  
9 Q. And they would either pay it all in a lump  
10 sum or perhaps over time?  
11 **A. Yes.**  
12 Q. When did the idea of recapturing these  
13 payments to a betterment get changed? Sometime  
14 during construction?  
15 **A. Sometime during construction, yes.**  
16 Q. Before the lawsuit?  
17 **A. Yes.**  
18 Q. And what brought about -- When did -- Was  
19 that because sometime during the construction you  
20 learned that you might not be able to charge the  
21 tenants through a betterment?  
22 **A. Yes.**  
23 Q. And did you learn that -- Did you again  
24 have advice of counsel in arriving at that

Page 132

1 conclusion?  
2 **A. Yes.**  
3 Q. And what counsel did you have advice from?  
4 **A. I believe it was Don Greenough.**  
5 Q. And Mr. Greenough had done some further  
6 work on the issue?  
7 **A. Bill may have been just getting involved**  
8 **at that point. I don't remember.**  
9 Q. Bill Sheehan, you mean?  
10 **A. Yes.**  
11 Q. Had the tenants communicated at some time  
12 between the decision to try to do it by way of a  
13 betterment and the determination that you couldn't  
14 do that, had the tenants communicated on this issue?  
15 **A. No.**  
16 Q. So once you thought that you might have a  
17 problem recapturing the money through betterment,  
18 the plan was to try to recapture it through rent?  
19 **A. Yes.**  
20 Q. But that was not necessarily as good a  
21 solution, true?  
22 **A. Say that again, please?**  
23 Q. Capturing it through rent was not  
24 necessarily as good a solution as capturing it

Page 133

1 through betterment, right?

2 **A. That's true.**

3 Q. Because to capture it through rent you had

4 to have a rent that was within fair market, perhaps?

5 **A. Yes.**

6 Q. Or perceived that way?

7 **A. Yes.**

8 Q. Whereas the history of the improvement was

9 that the tenants were going to have to put in tight

10 tanks at their own expense unless you did something

11 for them, right?

12 **A. Yes.**

13 Q. And if you had reached agreement with the

14 tenants ahead of time that they would pay for it,

15 you would have been in a better position?

16 **A. Yes.**

17 Q. And that was a mistake that was made in

18 retrospect, true?

19 **A. Yes.**

20 Q. The tenants complain that the cost of the

21 wastewater system kept going up?

22 **A. Yes.**

23 Q. And I've looked at some reports from

24 Lombardo and it looks like the project costs did

Page 134

1 keep going up, right? Is that fair to say that they

2 did go up repeatedly?

3 **A. Yes.**

4 Q. Could you explain what happened?

5 **A. We investigated different ways to dispose**

6 **of the sewerage. One was to pump it along the road,**

7 **the route we just talked about to the sewerage**

8 **treatment plant. The second one was the**

9 **consideration of tunnelling under the river and**

10 **going to a different point where we would go into**

11 **the gravity system at the end of Newmarch Street.**

12 **Now, I have to admit, I'm not**

13 **current on directional drilling technology. I am**

14 **very knowledgeable about the soils down in the area**

15 **and I couldn't imagine having a problem with**

16 **drilling something a distance that it would go, if**

17 **you got in trouble under the river, we've got to**

18 **incur involving engineers and everybody all over us.**

19 **I felt very uncomfortable. That investigation I**

20 **wanted stopped. It cost money to investigate it,**

21 **okay? Every investigation costs money.**

22 **And the tenants wanted to have the**

23 **sewer pick-up out at the gate and not near the ball**

24 **field. And we investigated that, which required**

Page 135

1 **test boring, the DEP, the conservation commission**

2 **getting involved and all that design effort costs**

3 **money. Tried several other things in terms of**

4 **picking up the sewerage with turn-arounds up near**

5 **the ball field. None of it, in my opinion, made**

6 **sense.**

7 **And what we finally basically got**

8 **agreement on, I guess from the DEP, is that if we**

9 **pick it up at the ball field with appropriate**

10 **precautions, that the vehicles should have two**

11 **people in them, one a driver and one to watch out**

12 **for pedestrians and that's the way it's been ever**

13 **since. And in hindsight -- Well, DEP was obviously**

14 **concerned about public safety.**

15 Q. Yeah.

16 **A. As a state board.**

17 Q. So --

18 **A. So I think if you took the tight tanks to**

19 **a, to its fruition, I think that you're looking at a**

20 **public safety issue. We felt it was. The tenants**

21 **felt it was. I think an administrative organization**

22 **would feel the same way. It got designed that way.**

23 Q. Okay. So I think what you're saying is,

24 one, given as much attention is being paid to how

Page 136

1 these delivery trucks were going to get the sewerage

2 out of Little Neck, certainly you even in hindsight

3 think that having a bunch of septic trucks there at

4 Little Neck would have been a problem?

5 **A. Yes.**

6 Q. Okay. But what I was asking you was about

7 how the costs escalated for this project, and I just

8 want to go back over some of what you told me and

9 then ask some follow-up.

10 **A. Sure.**

11 Q. Okay. You said that a major issue for

12 this project was if you had some kind of a -- Strike

13 that.

14 What got built was some kind of

15 centralized holding tank, right?

16 **A. Yes.**

17 Q. And so how large is that holding tank?

18 **A. There's four holding tanks total of, I**

19 **think, 130,000 gallons.**

20 Q. And the technology is that you hooked up

21 individual cottages so that their sewage would flow

22 into these holding tanks?

23 **A. Yes.**

24 Q. And then as the tanks come full, somebody

Page 137

1 comes in and --  
2 **A. Yes.**  
3 Q. What, pumps out these tanks?  
4 **A. Pumps them out, right.**  
5 Q. To a truck that holds sewage?  
6 **A. Right.**  
7 Q. And drive them all out.  
8 **MR. SHEEHAN:** Wait for a question.  
9 Q. Do all four tanks get emptied at once or  
10 one at a time?  
11 **A. I don't recall.**  
12 Q. So a major issue with the design of this  
13 centralized holding tank is one there was a big  
14 issue about where the holding tanks would go, right?  
15 **A. There was an issue, but -- There was an**  
16 **issue.**  
17 Q. You felt the best solution was under the  
18 ball field?  
19 **A. I think it was the only solution.**  
20 Q. But when the Feoffees were proposing that  
21 the tanks go under the ball field, there was  
22 opposition from some people, true?  
23 **A. I believe so, but I don't recall anything**  
24 **serious.**

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1 Q. And so as a result, you had to go and  
2 investigate whether you could have the holding tanks  
3 out at the entry gate, you said?  
4 **A. No. I said that the sewer pick-up, a line**  
5 **coming from the tanks going out to the gate, they**  
6 **could pick the sewerage up at the gate rather than**  
7 **out by the ball field.**  
8 Q. So the holding tanks would be there  
9 anyway?  
10 **A. They'd be there anyway.**  
11 Q. But you could have a pipe that would take  
12 the sewerage?  
13 **A. Yes.**  
14 Q. Somewhere else for the pick-up?  
15 **A. Yes.**  
16 Q. Ultimately, that wasn't done?  
17 **A. Yes.**  
18 Q. Ultimately, the pick-ups were at the ball  
19 field?  
20 **A. That's right.**  
21 Q. Okay. But it costs money to investigate  
22 the installation of the pipe elsewhere?  
23 **A. Yes.**  
24 Q. But there was also consideration given to

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1 not having the sewerage picked up at Little Neck at  
2 all, but tunnelling it somewhere?  
3 **A. Yes.**  
4 Q. Either by putting it on lines that might  
5 run where the sewerage lines would have gone?  
6 **A. Yes.**  
7 Q. Or by having it go under the river?  
8 **A. Yes.**  
9 Q. And it costs money to investigate those?  
10 **A. Yes.**  
11 Q. And there was also some controversy about  
12 how the sewerage could be picked up at Little Neck  
13 at the ball field without causing public safety  
14 problems?  
15 **A. Yes.**  
16 Q. Those, the items you have just mentioned  
17 are not the reason why this project went from an  
18 initial budget of a few million to \$7 million, are  
19 they?  
20 **A. Well, it was, I don't think it was ever**  
21 **just a few million dollars. I think that's a**  
22 **misstatement. It was more than that.**  
23 Q. What was the original budget for this  
24 project?

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1 **A. I don't recall what it was, to be honest**  
2 **with you.**  
3 Q. It was lower than it ended up being?  
4 **A. Yes.**  
5 Q. Do you know how much lower?  
6 **A. No.**  
7 Q. What were the reasons why the original  
8 costs went up so much?  
9 **A. I believe the increase in costs were more**  
10 **due to engineering than construction.**  
11 Q. Meaning figuring out the design?  
12 **A. Yes. There were several design iterations**  
13 **to the end of the project.**  
14 Q. Well, was Lombardo required to submit any  
15 kind of a bid for the work?  
16 **A. No, not at that point.**  
17 Q. Was there any competition, was there any  
18 competitive bidding process by which Lombardo got  
19 the work?  
20 **A. Not that I remember.**  
21 Q. Did you ever see the contract with  
22 Lombardo? Was there a contract?  
23 **A. Yes. I don't remember looking at it in**  
24 **detail.**

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1 Q. Who among the Feoffees took charge of  
2 negotiating the arrangement with Lombardo or is was  
3 it --  
4 **A. It started with Don Whiston.**  
5 Q. Was a contract -- Who executed the  
6 contract between the Feoffees and Lombardo?  
7 **A. The original contract was probably**  
8 **executed by Don Whiston. Some of the subsequent**  
9 **contracts were authorized by me where we**  
10 **investigated different things.**  
11 Q. Yeah.  
12 **A. And that's when I became concerned that we**  
13 **were just spending money that shouldn't be spent.**  
14 Q. When you had these contractual  
15 arrangements with Lombardo were you getting the work  
16 done on a fixed fee basis or was it some kind of  
17 cost plus basis or some other arrangement?  
18 **A. No. It was really, I'd have to say it was**  
19 **more like cost plus, because he admitted in order to**  
20 **meet the requirements of the DEP, the timing of the**  
21 **DEP, that he would have to subcontract out some of**  
22 **the design work.**  
23 Q. You didn't have a fixed price from  
24 Lombardo for the work?

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1 **A. I don't believe so.**  
2 Q. And in addition, he was subcontracting out  
3 some of the design work?  
4 **A. Yes.**  
5 Q. Do you know who he subcontracted the  
6 design work to?  
7 **A. I do not.**  
8 Q. Was there a competitive bidding process  
9 for those subcontracts?  
10 **A. I don't know.**  
11 Q. Do you know how much of the overall  
12 payments that were made for the wastewater system  
13 were for engineering and how much were for  
14 construction?  
15 **A. I don't know. I never looked at the**  
16 **total, total numbers. I never broke the numbers**  
17 **down.**  
18 Q. Eventually a design was agreed upon,  
19 right?  
20 **A. Yes.**  
21 Q. And approved by DEP?  
22 **A. Yes.**  
23 Q. And was it at that point that the  
24 construction process started?

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1 **A. At that point we had to put it out to bid.**  
2 Q. Okay. So there was a bidding process for  
3 the construction work?  
4 **A. Yes, there was.**  
5 Q. Who coordinated that?  
6 **A. He did.**  
7 Q. Lombardo?  
8 **A. Yes.**  
9 Q. And did anybody from the Feoffees oversee  
10 that bidding process?  
11 **A. Oversaw the replies to it.**  
12 Q. Who was selected as a result of the  
13 bidding process?  
14 **A. Strangely, I can't remember their name.**  
15 Q. Was it one firm, a contracting firm?  
16 **A. Yes.**  
17 Q. What kind of firm would that be that does  
18 this kind of work?  
19 **A. The expert excavating contractor who was**  
20 **highly experienced in sewer work from the Boston**  
21 **area.**  
22 Q. Was that company that got the contract the  
23 lowest bidder?  
24 **A. Yes.**

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1 Q. Do you know was that a fixed price  
2 contract?  
3 **A. I believe most of it was fixed. There may**  
4 **have been materials in there that were, say, brought**  
5 **in per cubic yard. I mean, that's typically the way**  
6 **contracts like that go.**  
7 Q. Did the construction contract end up  
8 costing a lot more than was expected when the bid  
9 came in?  
10 **A. I didn't think so. I didn't go through**  
11 **the whole review process.**  
12 Q. Did anybody?  
13 **A. I don't know.**  
14 Q. Who among the Feoffees is most  
15 knowledgeable about the costs of the wastewater  
16 project?  
17 **A. Well, the one who was chairman at the end**  
18 **was Jim Foley. Jim was very analytical. He may**  
19 **very well have some of that information.**  
20 Q. Have you heard the tenants make  
21 allegations that the wastewater project was  
22 mismanaged?  
23 **A. No.**  
24 Q. Are you aware of any allegations that the



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1 wastewater project cost more than it should have?  
2 **A. Yes.**  
3 Q. And that's an allegation the tenants make  
4 in their lawsuit, right?  
5 **A. Uh-hum, yes.**  
6 Q. And don't they claim that it was  
7 mismanaged?  
8 **A. I didn't see that in there, but it may say**  
9 **that.**  
10 Q. Do you believe there's any merit in that  
11 allegation?  
12 **A. No.**  
13 Q. When you mentioned certain costs that you  
14 feel were incurred that should not have been because  
15 it was just wasting money, who was forcing those  
16 alternatives to be addressed?  
17 **A. The tenants down there.**  
18 Q. When you were first -- strike that.  
19 Move to a different subject. During  
20 the time you were a Feoffee was there discussion  
21 from time to time about the possibility of one day  
22 selling Little Neck to the tenants?  
23 **A. Yes.**  
24 Q. And what's the first you recall of any

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1 such discussion?  
2 **A. It's probably at least fifteen years ago,**  
3 **fifteen to twenty years ago.**  
4 Q. Who brought up the idea, to your  
5 recollection?  
6 **A. The tenants brought up the idea -- No. I**  
7 **was just trying to think of one key person who was**  
8 **wealthy and had, in that sense had something behind**  
9 **him if you're speaking about money, that he knew**  
10 **what he was talking about. The problem was that**  
11 **they didn't, they never came up with the kind of**  
12 **money that we would have even considered.**  
13 Q. Now, at the time that the tenants were  
14 talking about a sale of Little Neck was there  
15 anything standing in the way of continuing to rent  
16 it?  
17 **A. No.**  
18 Q. Were there any Feoffees who wanted to  
19 pursue the idea of selling Little Neck even though  
20 nothing stood in the way of continuing to rent it?  
21 **A. It was widely discussed amongst the life**  
22 **Feoffees. There were different thoughts, some very**  
23 **strong in terms of opposition, some were positive**  
24 **about it and felt it was the proper thing to do. I**

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1 **personally had mixed feelings.**  
2 Q. All right. Well, there were four life  
3 Feoffees during the 1990's, right?  
4 **A. Uh-hum, yes.**  
5 Q. And those are the same four life Feoffees  
6 that are currently serving?  
7 **A. Yes.**  
8 Q. So would you tell me where each of the  
9 four life Feoffees stood in the earlier days in the  
10 1990's on this subject of a possible sale of Little  
11 Neck?  
12 **A. I can give you my best estimate.**  
13 Q. Yes.  
14 **A. The one who was most positive to sell it**  
15 **was Don Whiston. The one that was most opposed was,**  
16 **I believe, Peter Foote. I honestly can't remember**  
17 **how Jim Foley felt, although I don't think he was**  
18 **particularly in favor of it. And in general, I was**  
19 **not in favor of it, but I was willing to look at the**  
20 **various ramifications of doing something like that**  
21 **and given that it didn't seem to have any serious**  
22 **merit in the beginning.**  
23 Q. And what was Don Whiston's reasoning for  
24 strongly favoring a sale at a time when it was

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1 feasible to continue renting?  
2 **A. Don't remember.**  
3 Q. Was there ever any discussion among the  
4 Feoffees after you joined in 1978 and before the mid  
5 2000 range when the wastewater system was built  
6 about entering into long-term leases with the  
7 tenants?  
8 **A. There was discussion. I can't give you**  
9 **much detail.**  
10 Q. Was there any --  
11 **A. And that was because the tenants would**  
12 **like to have had that.**  
13 Q. And was there a reason why the Feoffees  
14 didn't want to have that?  
15 **A. Not that I recall.**  
16 Q. At the time the wastewater system was  
17 built was there, was it necessary to borrow money  
18 for the trust because of the expense?  
19 **A. Yes.**  
20 Q. How much was borrowed?  
21 **A. What I recall originally it was about**  
22 **\$5.3 million.**  
23 Q. Was that the final figure or did it go up?  
24 **A. I believe it went up a little from that,**

1 but I don't recall what the final figure was.  
2 Q. Did you even, at some point, lend money to  
3 the Feoffees?  
4 A. Yes, I did.  
5 Q. How much did you lend?  
6 A. \$1 million.  
7 Q. And you had a million dollars available to  
8 you that you could --  
9 A. I had assets that I could mortgage.  
10 Q. So you mortgaged some assets for \$1  
11 million, provided that money to the Feoffees and  
12 then required that the Feoffees repay you the?  
13 A. When they, actually, when they got their  
14 loan. See, they didn't have their loan. The  
15 contractor wasn't getting paid. The work would have  
16 stopped and DEP would have been very unhappy.  
17 Q. It was somewhat of a bridge loan, then?  
18 A. Yes.  
19 Q. And when you got paid back did you get  
20 made whole for any interest you had incurred?  
21 A. No. Just passed through, basically. No,  
22 I got nothing out of it.  
23 Q. Right. In other words, you were made  
24 whole?

1 A. Yeah, I was made whole.  
2 Q. So whatever interest you paid you got paid  
3 back by the Feoffees?  
4 A. Yes, yes.  
5 Q. But you didn't make any profit?  
6 A. No.  
7 Q. Okay. When the Feoffees were trying to  
8 get bank financing did they learn that it would be  
9 easier and cheaper to do so if it had, if there were  
10 leases in effect with the tenants that could be  
11 pledged?  
12 A. I don't remember that playing into it. It  
13 probably would be true, but I don't remember having  
14 any of that discussion.  
15 Q. And it could be true today, as well, that  
16 if you had sufficient leases, long-term leases with  
17 tenants, that's something that could be pledged to a  
18 bank to obtain financing at perhaps lower cost than  
19 you would otherwise pay?  
20 A. I believe so.  
21 Q. Have there been any attempts to determine  
22 what financing might be available to the Feoffees if  
23 there's no sale to replace the current debt that's  
24 at a fairly high rate of interest?

1 A. Yes.  
2 Q. And tell me what has been done in that  
3 regard?  
4 A. Well, the only bank that had interest was  
5 the Cambridge Savings Bank and we worked with them.  
6 They had favorable interest rate. The problem  
7 became that they wanted an agreement from all the  
8 tenants that they would basically pledge their  
9 rental income to the bank the same way it was done  
10 for the Institution for Savings. That wasn't done  
11 on an individual basis. We pledged it. We pledged  
12 the income. Cambridge Savings Bank did not want it  
13 done that way. They really wanted a deed. That  
14 would be their first request, needless to say. So  
15 we asked if they would do it similarly to the bank  
16 loan we had. They considered it and I believe their  
17 attorneys said we need a little bit more than what  
18 Institution for Savings has. It was one of those  
19 things that would be impossible to get.  
20 Q. And the tenants wouldn't, at that stage  
21 the tenants weren't going to give you what was  
22 needed by the bank?  
23 A. I think getting 167 people to agree to all  
24 of that would probably be a monumental task.

1 Q. Now, how many leases do you have at  
2 present?  
3 A. Around thirty.  
4 Q. And those thirty leases are all at  
5 payments of at least 9,700 per year?  
6 A. Yes.  
7 Q. Did you make any efforts to see whether  
8 the bank would accept pledges of those amounts that  
9 were being paid under the lease as a security?  
10 A. I don't know.  
11 MR. PERRY: I need to take a break  
12 for a few minutes.  
13 (Brief recess 2:32 - 2:45 p.m.)  
14 Q. I want to talk to you for a few moments  
15 about the litigation with the tenants that occurred.  
16 We've discussed it briefly. Am I correct that in  
17 2006, after the Feoffees had sent out notices to the  
18 tenants that they were, that tenancies were being  
19 terminated, that the tenants filed suit?  
20 A. I think that's correct, yes.  
21 Q. And just to back up a little bit, am I  
22 correct that the Feoffees developed a lease that  
23 they wanted all the tenants to sign?  
24 A. Yes.

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1 Q. They sent out to the tenants a notice of  
2 termination of the at-will tenancies, right?  
3 **A. Yes.**  
4 Q. Along with the lease that they wanted  
5 tenants to consider, right?  
6 **A. Yes.**  
7 Q. And in response, many tenants not only  
8 declined to sign these leases, but didn't they also  
9 stop paying taxes?  
10 **A. There was problem collecting money. I**  
11 **don't remember whether it was taxes or rent. There**  
12 **were a few deadbeats anyway.**  
13 Q. So when tenants stop paying either rent or  
14 taxes, as the case may be, the Feoffees went further  
15 and sent notices to quit to those tenants, correct?  
16 **A. I believe so, if we're thinking of the**  
17 **same thing.**  
18 Q. And after that happened, the tenants  
19 filed, two of the tenants filed a lawsuit against  
20 the Feoffees, correct?  
21 **A. Yes.**  
22 Q. Which they claimed was a class action?  
23 **A. I don't think it ever got qualified as a**  
24 **class action.**

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1 Q. Right. It was just brought by the two  
2 tenants as purported representatives of a class?  
3 **A. I think you're correct.**  
4 Q. And you became educated a little bit on  
5 class actions, correct?  
6 **A. Yes.**  
7 Q. And you were aware that there were serious  
8 issues as to whether this case could properly be a  
9 class action, because there was not commonality  
10 among all the tenants with regard to their claims,  
11 true?  
12 **A. Yes.**  
13 Q. Because tenants were claiming in the  
14 purported class action there were allegations about  
15 representations that had been made by the Feoffees  
16 concerning rent, right?  
17 **A. I don't remember reading through the**  
18 **document.**  
19 Q. But you knew there was a serious issue as  
20 to whether this even was a valid case to become a  
21 class action, right?  
22 **A. Yes.**  
23 Q. And that was never brought before the  
24 court, because the case got resolved without that

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1 issue being addressed?  
2 **A. Yes.**  
3 Q. Now, in this lawsuit you have described  
4 earlier in your testimony that certain claims were  
5 being made against you and the other life Feoffees  
6 that you understood to be directed personally  
7 against you, potentially?  
8 **A. I think I misspoke on that, that it was**  
9 **only against the Feoffees and not against**  
10 **individuals.**  
11 Q. But your understanding was that you could  
12 have exposure, correct?  
13 **A. I thought at the time I did.**  
14 Q. Yes, okay. I mean, an argument can be  
15 made that the way the lawsuit was crafted that  
16 they'd only named you in your capacity as a Feoffee,  
17 right?  
18 **A. Yes.**  
19 Q. But you weren't sure that that protected  
20 you at the time, were you?  
21 **A. No, but I believe that it's just suing us**  
22 **as Feoffees and not as individuals.**  
23 Q. Were there any claims being asserted  
24 against the Feoffees by the tenants that you thought

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1 had any merit?  
2 **A. No.**  
3 Q. Were there any claims asserted by the  
4 tenants against the Feoffees that you were  
5 particularly concerned with that you might lose?  
6 **A. I don't think so, other than to say that**  
7 **the final decision lies with the court and what the**  
8 **court does may not be what we think is common sense.**  
9 Q. Right. Was it your view that if the case  
10 was tried or litigated, that the Feoffees were very  
11 likely to prevail?  
12 **A. I don't know.**  
13 Q. What was your view?  
14 **A. My view, I think we were likely to**  
15 **prevail.**  
16 Q. In that litigation was it the Feoffees'  
17 expectation that they could prevail in recovering a  
18 fair rent, fair market rent from the tenants  
19 consistent with the amount being paid by lessees?  
20 **MR. SHEEHAN: Objection to form.**  
21 **A. No.**  
22 Q. Was it your understanding in the  
23 litigation that one of the issues would be whether  
24 the tenants had to pay a fair amount for use and

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1 occupancy of the premises?  
2 **A. Yes.**  
3 Q. All right. And how did you understand  
4 that issue would be resolved?  
5 **A. By the court.**  
6 Q. And were you expecting to recover on that  
7 claim against the tenants?  
8 **A. Once again, we don't know what the judge**  
9 **would have said. I mean, my logic would have said**  
10 **yes, but --**  
11 Q. You thought it was a valid claim for the  
12 rent, right?  
13 **A. Yes.**  
14 Q. And you had the benefit of several  
15 appraisals that said that the rent charges were  
16 appropriate, right?  
17 **A. Yes.**  
18 Q. And had you seen the tenants' own  
19 appraisal in that regard?  
20 **A. No.**  
21 Q. Were you aware that the tenants' appraisal  
22 ultimately characterized the rent being charged to  
23 the lessees as fair?  
24 **MR. SHEEHAN: Objection.**

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1 **A. No.**  
2 Q. Were there any, were the tenants, did they  
3 have damage claims that you were able to identify  
4 where they could plausibly recover damages?  
5 **A. Not that I remember, no.**  
6 Q. Okay. But the Feoffees had potential  
7 claims against the tenants for these use and  
8 occupancy charges, right?  
9 **A. Yes.**  
10 Q. So you felt that the likelihood was that  
11 if the case were litigated, that the Feoffees would  
12 be recovering millions of dollars from the tenants  
13 and not vice versa?  
14 **A. Yes, except, I don't know -- I think**  
15 **millions of dollars might be a very over-eager**  
16 **estimate.**  
17 Q. Well, the amount that was in the escrow  
18 account to make up for the difference between the  
19 amounts the tenants were paying and the amounts they  
20 would have paid at lease rates came to millions of  
21 dollars?  
22 **A. Came to \$1 million.**  
23 Q. Just one?  
24 **A. Roughly, one million.**

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1 Q. How many tenants were there versus  
2 lessees?  
3 **A. Now?**  
4 Q. Sure.  
5 **A. Well, there's around thirty lessees and**  
6 **take that away from 167, you get the rest.**  
7 Q. And were there fewer or more lessees at  
8 the time the lawsuit was filed?  
9 **A. There were fewer.**  
10 Q. So there's always been at least 137  
11 tenants during the period the litigation's been  
12 going on?  
13 **A. Yeah.**  
14 Q. Yes, that's the lowest amount?  
15 **MR. SHEEHAN: Objection to form.**  
16 **A. I would say that is accurate.**  
17 Q. All right. The lessees were paying  
18 something like \$4,500 per year more on rent than the  
19 tenants?  
20 **A. Yes, approximately.**  
21 Q. If you multiply \$4,500 a year times 137  
22 tenants, you agree that that comes out to  
23 approximately 600,000 a year?  
24 **A. Yes, I guess, maybe.**

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1 Q. And these amounts are being sought from  
2 the tenants for the period beginning July 1, 2007,  
3 right, under the arrangements with the tenants?  
4 **A. I'm not sure what the date is.**  
5 Q. Do you -- I'm not asking these questions  
6 to get at your personal finances, but part of -- You  
7 have at times had to worry about investing cash  
8 yourself, haven't you?  
9 **A. Yes, over the years.**  
10 Q. And you have at least some assets now that  
11 you invest, right?  
12 **A. Uh-hum. (Witness nodding head up and**  
13 **down.)**  
14 Q. Yes?  
15 **A. Yes.**  
16 Q. Would you characterize the current  
17 investment climate as difficult?  
18 **A. Yes.**  
19 Q. If the property is sold at Little Neck is  
20 it your understanding that this would yield, after  
21 pay-out of indebtedness of around \$22 million?  
22 **A. I believe that's about right.**  
23 Q. And if the Feoffees were to proceed with a  
24 sale and obtain net proceeds of \$22 million, then

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1 that would have to be invested in some manner to  
2 generate income for the beneficiaries, right?  
3 **A. That's right.**  
4 Q. And would you agree with the concept that  
5 if the \$22 million were invested, it would be  
6 absolutely imperative to maintain the corpus?  
7 **A. Maintain the -- Say that again, please?**  
8 Q. The corpus, the principal.  
9 **A. Yes.**  
10 Q. And in maintaining the corpus or the  
11 principal, would you agree that you would need to  
12 maintain it for not just a nominal amount of \$22  
13 million, but you would need to make sure that kept  
14 up with inflation?  
15 **A. I certainly would like to see that.**  
16 Q. I mean, you understand that if you had \$22  
17 million in principal and you paid out all the income  
18 and kept it at \$22 million, that over time that \$22  
19 million would become effectively worthless if you  
20 waited long enough, right?  
21 **A. Uh-hum. (Witness nodding head up and**  
22 **down.)**  
23 **MR. SHEEHAN:** Objection.  
24 Q. In 500 years \$22 million might not buy you

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1 a cup of coffee, right?  
2 **MR. SHEEHAN:** Objection.  
3 **A. Right.**  
4 Q. So you agree with the concept that any  
5 kind of funding policy for the school committee  
6 would have to be based on distributing only income  
7 that was in excess of cost of living increases,  
8 right?  
9 **A. With, you know, expert guidance, yes.**  
10 Q. Now, there was an affidavit that you gave  
11 in connection with the motion for summary judgment  
12 in this case, do you recall?  
13 **A. Uh-hum. (Witness nodding head up and**  
14 **down.)**  
15 Q. That you signed an affidavit?  
16 **A. Yes.**  
17 Q. And it referred to, it had a statement --  
18 I don't want to characterize it, but it was -- Well,  
19 I'll partly quote. It said, "So long as a net rate  
20 of return on assets is equal to or greater than 5%  
21 of the \$22 million," there would be a return of at  
22 least \$1 million per year, all right? Do you  
23 remember saying something like that?  
24 **A. Vaguely. I can't, but go ahead.**

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1 Q. But in order to, if we're trying to  
2 maintain the corpus, then you would have to have a  
3 rate of return of 5% per year over and above  
4 inflation, right?  
5 **MR. SHEEHAN:** Objection.  
6 Q. To distribute \$1 million per year?  
7 **A. With your reasoning, yes.**  
8 Q. And you're not aware today of any  
9 investments that can safely generate a return of 5%  
10 a year over and above the cost of living, are you?  
11 **A. Yes.**  
12 Q. You are. What investments are those?  
13 **A. The endowment fund of Dartmouth returned**  
14 **18% last year.**  
15 Q. Does that mean that you as a Feoffee could  
16 safely get returns of 5% every year over and above  
17 inflation?  
18 **A. No, can't guarantee that.**  
19 Q. I'm asking whether there's any investments  
20 that you know of that can safely and without risk  
21 insure a 5% return over inflation?  
22 **A. Not, no, not that I am aware of.**  
23 Q. Do you know what a TIP is, the Treasury  
24 Inflation Protected bonds?

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1 **A. Yeah -- I'm not really that familiar with**  
2 **them, no.**  
3 Q. Do you understand that they're a form of  
4 security where at the end of the period of time, you  
5 get back your principal plus inflation?  
6 **A. Actually, no, I wasn't aware of those**  
7 **bonds.**  
8 Q. Do you have any idea of what they're  
9 trading at now or what the rate of return is above  
10 inflation?  
11 **MR. SHEEHAN:** Objection.  
12 **A. I don't know.**  
13 Q. Would it surprise you if it was very  
14 substantially below 5%?  
15 **MR. SHEEHAN:** Objection.  
16 **A. No.**  
17 Q. Do you agree with me that one can not get  
18 a return of 5% per year each and every year over and  
19 above inflation without undertaking a great deal of  
20 risk?  
21 **MR. SHEEHAN:** Objection.  
22 Q. Or you don't know?  
23 **A. No, you know, I don't know. I'm -- I**  
24 **don't have expertise in that area.**

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1 Q. All right. You don't wish to be  
2 understood as an expert on what kind of return one  
3 could get --  
4 A. No.  
5 Q. -- from 22 million if one were invested?  
6 A. No, no.  
7 Q. Correct?  
8 A. Yes.  
9 Q. Have you yourself done any kind of  
10 analysis as to what would be better for the  
11 beneficiary financially in terms of a sale versus a  
12 rental scenario?  
13 A. No, not a detailed financial. The, some  
14 of the issues have been different than financial.  
15 The risk of tenant landlord relationship.  
16 Q. Right. Are you familiar with the costs  
17 that the Feoffees would be expected to incur if the  
18 property were to be continued to be rented on a  
19 long-term basis or is there another Feoffee who's  
20 better able to testify to that?  
21 A. It's probably somebody else who would be  
22 better able to testify to that.  
23 Q. Before --  
24 A. The -- Well, I'm sorry. I'll let you go.

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1 Q. Let me ask you a question.  
2 A. I'll let you go. I'm sorry.  
3 Q. Before there was the litigation issue with  
4 the tenants how much did the Feoffees spend annually  
5 on legal fees?  
6 A. I honestly don't remember, because in  
7 earlier years I think it was very minimal.  
8 Q. And what would you budget now for legal  
9 fees if you didn't have litigation with the tenants  
10 going on, if that case were resolved?  
11 A. I honestly don't know.  
12 Q. You would not expect it to be particularly  
13 high, would you?  
14 A. I would not expect it to be, unless some  
15 type of litigation came up.  
16 Q. Do you know what the expected life of the  
17 wastewater system is?  
18 A. No, I don't.  
19 Q. The system consists principally of piping  
20 and holding tanks?  
21 A. Yes, pumping stations, two pumping  
22 stations.  
23 Q. And most of the expense associated with  
24 the installation of this system you have described

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1 as engineering, right?  
2 A. Say that again?  
3 MR. SHEEHAN: Objection.  
4 Q. A very large component of the cost of the  
5 system was engineering, you said?  
6 A. Yes.  
7 Q. Was that most of the cost?  
8 A. No.  
9 Q. It was part of the cost?  
10 A. It was part of the cost, yeah.  
11 Q. What kind of pipes were put in?  
12 A. They were a, I believe they were a PVC.  
13 Q. And the PVC pipes have a very long life  
14 expectancy?  
15 A. Life expectancy.  
16 MR. SHEEHAN: Objection.  
17 Q. They're not something that's expected to  
18 fail in fifty years, are they?  
19 A. No.  
20 Q. They are something that's expected to be  
21 good for an indefinite period of time?  
22 MR. SHEEHAN: Objection.  
23 A. I would say the manufacturer would  
24 probably suggest that.

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1 Q. Which parts of the system, to your  
2 understanding, have a shorter life expectancy than,  
3 say, the PVC pipes?  
4 A. There are four pumps in the system, two in  
5 each pump well and it's probably indeterminate what  
6 their life expectancy is. I would expect at least  
7 twenty years, probably longer if they're properly  
8 maintained, which we attempt to do.  
9 Q. So the pumps are something that you would  
10 expect to have to replace from time to time over a  
11 lengthy period of years?  
12 A. Yes, over a significant period of years.  
13 Q. The holding tanks are made of what?  
14 A. I believe fiberglass.  
15 Q. And those are -- Are those underground?  
16 A. Those are underground.  
17 Q. So they're intended to last how long,  
18 indefinitely?  
19 MR. SHEEHAN: Objection.  
20 A. Yeah. A long period of time. I have  
21 never heard a life expectancy on those.  
22 Q. But you didn't put these fiberglass tanks  
23 in the ground to hold sewerage with the expectation  
24 that you would have to replace them in fifty years,

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1 would you?  
2 **A. No.**  
3 Q. So nothing lasts forever, but these are  
4 expected to last a very long time, right?  
5 **A. Yes.**  
6 Q. So is there any part of this system that  
7 you're expecting to have to replace during your  
8 lifetime other than the pumps?  
9 **A. No.**  
10 Q. And where are the pumps located?  
11 **A. One is on River Road in that parking lot**  
12 **down there that's near the beach.**  
13 Q. Near the Pavilion Beach?  
14 **A. No, on the other side of the hill.**  
15 Q. Near the private beach?  
16 **A. Yeah, yes.**  
17 Q. That's the one on River Road, you mean?  
18 **A. Yes.**  
19 Q. So that's one.  
20 **A. That's one. The other one is just as you**  
21 **come through the gate, it would be just up that hill**  
22 **a few yards and on the left.**  
23 Q. Okay. There's two locations for the  
24 pumps?

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1 **A. There's two locations, everything else is**  
2 **gravity.**  
3 Q. And how many pumps are there, four?  
4 **A. There's four.**  
5 Q. Two at each place?  
6 **A. Yeah.**  
7 Q. Are they below ground?  
8 **A. Yes.**  
9 Q. How does one access them to repair or  
10 replace them?  
11 **A. Manholes, large manholes.**  
12 Q. How expensive were the pumps?  
13 **A. I don't know those particular pumps. I**  
14 **would hazard a safe guess at probably a couple**  
15 **thousand.**  
16 **MR. SHEEHAN:** If you don't know,  
17 don't guess, don't guess.  
18 **THE WITNESS:** Okay.  
19 **MR. SHEEHAN:** You can give an  
20 estimate if you have an estimate if you have a basis  
21 for it.  
22 Q. Give me a ballpark.  
23 **MR. SHEEHAN:** Wait a minute, wait a  
24 minute.

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1 Q. Let me ask a question so he can object.  
2 Don't answer until I'm done. Are you able to give  
3 me just a rough ballpark estimate of what the cost  
4 of these pumps is?  
5 **A. A couple of thousand dollars, \$2,000.**  
6 Q. And it could be more, but we're not  
7 talking about \$50,000?  
8 **A. No.**  
9 Q. So the expense associated with repairing  
10 the pumps is not a particularly large one?  
11 **A. No.**  
12 Q. So is there any need, in your view, to  
13 reserve money for the repair or replacement of the  
14 wastewater system?  
15 **A. No.**  
16 Q. Now, what other -- I'm trying to get a  
17 sense of the other ongoing expenses that you  
18 anticipate incurring other than the indebtedness if  
19 the property is not sold. So we have, there could  
20 be some professional fees, legal and accounting,  
21 right?  
22 **A. Uh-hum. (Witness nodding head up and**  
23 **down.)**  
24 **MR. SHEEHAN:** You have to answer yes

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1 for her.  
2 **A. I'm sorry, yes.**  
3 Q. There's whatever the cost might get paid  
4 for managing the property?  
5 **A. Yes.**  
6 Q. The Feoffees were paying taxes on certain  
7 real estate that the Feoffees owned, common areas?  
8 **A. Yes.**  
9 Q. Hadn't been in the practice of passing  
10 that along to the tenants, correct?  
11 **A. Yes.**  
12 Q. There's a line item on the document I'm  
13 looking at for utilities. Do you know what utility  
14 expenses the Feoffees incurred that's not reimbursed  
15 by tenants?  
16 **A. It would be mostly electrical. Should be**  
17 **all electrical for the wastewater system, the**  
18 **office, community center, which would be minimal.**  
19 Q. So the charge of electricity for the  
20 wastewater system isn't included, that's not being  
21 passed along to the tenants as part of their --  
22 **A. Part of the rent.**  
23 Q. Part of the rent, it's not part of the  
24 water usage charges?

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1 A. I, I --  
2 Q. You don't know?  
3 A. **I really don't know. I think there's**  
4 **another answer to that, but rather than speculate, I**  
5 **don't know.**  
6 Q. Peter Foote would be a good person on  
7 that, right?  
8 A. **Yes, absolutely.**  
9 Q. To understand the revenues from the  
10 wastewater system versus expenses and having that  
11 line up?  
12 A. **Yes, sir.**  
13 Q. I mean, in principle, it would make sense  
14 to have the wastewater fee cover all of the direct  
15 expenses associated with the wastewater system,  
16 wouldn't it?  
17 A. **As you have been talking, I think it does,**  
18 **but Peter is the one to ask that question of.**  
19 Q. Okay. What about repairs and maintenance?  
20 What repairs and maintenance are the Feoffees  
21 responsible for apart from erosion -- we'll get to  
22 that -- under a rental scenario?  
23 A. **Well, first you have the wastewater**  
24 **system.**

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1 Q. Right. Well, that's covered hopefully by  
2 the wastewater fees, right?  
3 A. **Yeah, okay, but -- Yes, yes, that's the**  
4 **right answer.**  
5 Q. You have roads?  
6 A. **You have roads.**  
7 Q. What do the Feoffees do for the roads?  
8 A. **Lately we haven't had to do much.**  
9 Q. What do you do in terms of plowing, given  
10 that there's only twelve or whatever the number is  
11 year round residents?  
12 A. **It's all plowed for public safety, I mean,**  
13 **for fire.**  
14 Q. So the Feoffees provide the plowing  
15 through a contractor?  
16 A. **I think the town actually does that.**  
17 Q. The town does it?  
18 A. **Yes.**  
19 Q. So there's no plowing expense associated  
20 with the rental of Little Neck?  
21 A. **No, not that I'm aware of.**  
22 Q. The town does it for public safety  
23 reasons?  
24 A. **Yes.**

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1 Q. And but the road, if there were potholes,  
2 that would be the responsibility of the Feoffees?  
3 A. **Feoffees.**  
4 Q. When I saw the roads at Little Neck, they  
5 looked like they were in unbelievable condition. Do  
6 you agree with that?  
7 A. **I agree with that.**  
8 Q. How long have the roads been in that  
9 condition?  
10 A. **Since we put in the wastewater system.**  
11 Q. Because you repaved at that time?  
12 A. **We repaved.**  
13 Q. And has there been very little need to  
14 maintain the roads after that?  
15 A. **Yes.**  
16 Q. Is there some reason why the roads at  
17 Little Neck don't develop kind of potholes from ice  
18 melting and freezing that other roads get?  
19 A. **Lack of traffic would be my best estimate**  
20 **during times when roads do break up, spring.**  
21 Q. There's exceedingly little traffic at  
22 Little Neck in the winter, I would imagine, right?  
23 A. **Yes.**  
24 Q. So at some point you'd expect there to be

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1 a line item for road maintenance, but at this time  
2 it's pretty --  
3 A. **Yes.**  
4 Q. -- minor, correct?  
5 A. **Yes.**  
6 Q. And apart from that, there's some kind of  
7 landscaping expense that goes --  
8 A. **Yes.**  
9 Q. -- into Little Neck?  
10 A. **Uh-hum, yes.**  
11 Q. Which would probably be under the repairs  
12 and maintenance category, right?  
13 A. **I would assume, yes.**  
14 Q. What landscaping do the Feoffees take  
15 responsibility for other than the ball field?  
16 A. **Since we own all the land, we take**  
17 **responsibility for trimming trees as needed.**  
18 Q. Throughout the area?  
19 A. **Throughout the area. Sometimes, it's**  
20 **often public safety. Things begin to die.**  
21 Q. Who does the landscaping?  
22 A. **The mowing of the grass, I believe, is**  
23 **done by a little company called On the Side. And**  
24 **the last tree person, because there have been**



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1 others, has been -- it's another small company from  
2 Ipswich. I recommended them only because I knew  
3 that they were very reasonable in their fees.  
4 Q. Do you know what you spend on landscaping  
5 and mowing in the year?  
6 A. No, I don't.  
7 Q. Who would have that information?  
8 A. Peter.  
9 Q. Okay. What kind of insurance do the  
10 Feoffees pay for? Liability insurance?  
11 A. I don't know. Is that an item there?  
12 Q. Yeah.  
13 A. I don't know.  
14 Q. And there's an item on this list for  
15 police details. That would be on weekends during  
16 the summer?  
17 A. Yes.  
18 Q. Is that historically when there's a police  
19 detail?  
20 A. Yes.  
21 Q. There's an office expense item. Do you  
22 know what that is?  
23 A. Well, there's general supplies. There's  
24 been some computer problems where somebody has had

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1 to come in and straighten out a computer that's tied  
2 into the wastewater system, which can be managed  
3 from the office.  
4 Q. How much are the Feoffees paying now for  
5 the management of the property through payments to  
6 one of the Feoffees, do you know?  
7 A. It should be somewhere a little in excess  
8 of \$40,000.  
9 Q. And who does that go to?  
10 A. Peter Foote.  
11 Q. And how is it determined that Peter Foote  
12 would be paid that amount of money to manage the  
13 land?  
14 A. He was or he is, I believe, paid a fee for  
15 doing all the bookkeeping and QuickBooks kind of  
16 things and the other is \$25 an hour for his time  
17 spent in the office, which he begins the day going  
18 over the entire property, looking for any kind of  
19 violations by builders, and makes them get  
20 appropriate permits so people can't just do anything  
21 they want, followed by spending time in the office  
22 where he both receives and does the initial  
23 bookkeeping, manual bookkeeping. People come in and  
24 say, I think I paid. Well, look right here. You

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1 paid in July, but you owe now.  
2 Q. Where's the office?  
3 A. The office is right opposite the ball  
4 field.  
5 Q. So Mr. Foote drives in there every day and  
6 goes to work, basically?  
7 A. Yes, he does.  
8 Q. And he must be pretty well acquainted with  
9 the tenants at this point?  
10 A. Reasonably well. Better than I am.  
11 Q. So is there any part of the  
12 responsibilities at -- Strike that.  
13 What about erosion, that's an  
14 expense that the Feoffees have to address from time  
15 to time?  
16 A. Yes.  
17 Q. First, why is it that the Feoffees have a  
18 responsibility to be concerned with erosion?  
19 A. If a massive piece of the hill begins to  
20 slide into the ocean, I think that falls in the  
21 category of keeping up the property.  
22 Q. Well, if a piece of the hill fell into the  
23 ocean and it didn't have a cottage on it, would the  
24 Feoffees be mandated to deal with it?

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1 A. We could be.  
2 Q. Is there -- I mean, strictly speaking the  
3 Feoffees don't have an obligation to preserve Little  
4 Neck in exactly the condition that it's --  
5 A. No.  
6 Q. -- been in, correct?  
7 A. Yes.  
8 Q. They need to make sure that the investment  
9 stays safe, right?  
10 A. Yes.  
11 Q. So whether to address erosion would depend  
12 on what the nature of the erosion was and what area  
13 it affected, right?  
14 A. Yes. It too could fall under the issue of  
15 public safety.  
16 Q. So was there some particular erosion that  
17 took place at Little Neck that the Feoffees think  
18 needs to be addressed?  
19 A. Yes.  
20 Q. What's the erosion that took place that  
21 needs to be addressed?  
22 A. It is the piece of Little Neck on the  
23 front of the hill towards Ipswich Bay from where  
24 that riprap was placed in the 1950's all the way

1 around to Pavilion Beach.  
2 Q. What was done to determine how to remedy  
3 that?  
4 A. An engineer was hired with that expertise  
5 to look at it and determined what we'd have to do.  
6 Q. Who hired the engineer?  
7 A. I'm trying to think who actually -- I  
8 think Peter hired the engineer because he had done  
9 work for us before.  
10 Q. And what was the result of the engineer's  
11 report?  
12 A. That we'd probably have \$1 million in  
13 expenses in order to repair that and put it into a  
14 safe and stable condition.  
15 Q. Did he indicate when that work would need  
16 to be done?  
17 A. Should be done fairly soon.  
18 Q. Apart from reserving for this, what you  
19 call \$1 million for the erosion, is there any  
20 specific need to reserve at Little Neck for any  
21 infrastructure repairs that you're aware of?  
22 A. Not at this time. We --  
23 Q. If the property is not sold, do the  
24 Feoffees intend to address the erosion issue?

1 determine what the rental will be allowed.  
2 Q. Provided that the property can be rented  
3 at fair market value, then you believe that the  
4 charitable intent can be fulfilled, correct?  
5 A. Yes.  
6 Q. When the Feoffees have their meetings who  
7 is invited to attend?  
8 A. It's open to the public. I believe all  
9 the selectmen are invited to attend, as well as the  
10 school committee. Most often it might be one or two  
11 members of the school committee, historically, and  
12 the superintendent of schools.  
13 Q. Have the Feoffees ever conducted meetings  
14 in private?  
15 A. Yes.  
16 Q. Do the Feoffees still conduct meetings in  
17 private?  
18 A. Yes.  
19 Q. And you're referring to the annual meeting  
20 as being open to the public?  
21 A. Yes.  
22 Q. But there's no requirement that all the  
23 business of the Feoffees be conducted at public  
24 meetings, is there?

1 A. Yes.  
2 Q. And that would be done over the, in the  
3 next couple of years?  
4 A. Yes.  
5 Q. Do you have, did you have any indication  
6 in the report how rapidly this problem is  
7 progressing?  
8 A. I haven't actually read the report. I  
9 saw, I just got a summary of the report.  
10 Q. Who did you get that from?  
11 A. I'm trying to think who gave it to me the  
12 summary. It may have been Bill. A document like  
13 that I think resides with Bill.  
14 Q. Bill Sheehan?  
15 A. Yeah, yes, sir.  
16 Q. Are you aware of any reason why it would  
17 not be feasible, if a sale is not approved, to  
18 continue with the rental of the property?  
19 A. Simple answer is no.  
20 Q. And if the property were continued to be  
21 rented, do you think the Feoffees would be able to  
22 fulfill the original charitable intent of benefiting  
23 the Ipswich schools?  
24 A. I don't know, only because the court maybe

1 A. No.  
2 Q. At least under your construction of the  
3 law?  
4 A. Yes.  
5 Q. Because that's been an issue that's been  
6 raised by tenants?  
7 A. Yes, that's correct.  
8 Q. Where does that stand, this issue of  
9 whether the Feoffees are supposed to comply with  
10 public meeting laws?  
11 A. I believe there was a judge who rendered  
12 an opinion that we were private and didn't need to  
13 have public meetings other than the annual meeting.  
14 Q. Was that decision by the judge, was that  
15 in a criminal case that was brought for the --  
16 A. I don't know.  
17 Q. But it was not the superior court  
18 litigation?  
19 A. No.  
20 Q. It was a separate proceeding, right?  
21 A. I believe so, yes.  
22 Q. Are you aware of any meetings among the  
23 four life Feoffees to conduct business at Little  
24 Neck to which selectmen were not invited?

<p style="text-align: right;">Page 185</p> <p>1 <b>A. Not since our last annual meeting.</b> 2 Q. Right. But historically, selectmen were 3 not invited to the meeting of life Feoffees, were 4 they? 5 <b>A. That's correct, because the life Feoffees</b> 6 <b>were the Committee on Affairs to run Little Neck and</b> 7 <b>they were not part of that.</b> 8 Q. So there was a Committee on Affairs? 9 <b>A. Uh-hum. (Witness nodding head up and</b> 10 <b>down.)</b> 11 Q. Explain to me what the Committee on 12 Affairs was? 13 <b>A. Committee on Affairs, wherever the term</b> 14 <b>came from, was just a committee to manage Little</b> 15 <b>Neck.</b> 16 Q. And how long did it exist? 17 <b>A. As long as I am aware.</b> 18 Q. During the time you have been a Feoffee 19 there was always a committee called the Committee on 20 Affairs? 21 <b>A. Yes.</b> 22 Q. And that Committee on Affairs always 23 consisted of just the life Feoffees? 24 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 187</p> <p>1 resigns, the other life Feoffees choose the departed 2 member's successor, right? 3 <b>A. Yes.</b> 4 Q. Do you think that's a peculiarly good way 5 of choosing Feoffees? 6 <b>A. I don't really have an opinion on that</b> 7 <b>that I can render.</b> 8 Q. There's been some alternatives advanced by 9 the school committee that says that the, instead of 10 life Feoffees, there should be Feoffees who were 11 appointed by and accountable to public bodies in 12 Ipswich, right? 13 <b>A. Uh-hum, yes.</b> 14 Q. Are you aware of that? 15 <b>A. Yes.</b> 16 Q. Don't you think that's a good idea? 17 <b>A. Basically, yes.</b> 18 Q. And if we had that kind of a system, for 19 example, we probably wouldn't have a situation where 20 -- Strike that. 21 Do you think that it's desirable to 22 have Feoffees that don't have any personal interest 23 in Little Neck, right? 24 <b>A. Uh-hum. (Witness nodding head up and</b></p>
<p style="text-align: right;">Page 186</p> <p>1 Q. And the life Feoffees would meet as the 2 members of the Committee on Affairs to make various 3 decisions concerning Little Neck? 4 <b>A. Yes.</b> 5 Q. Without the input of the selectmen? 6 <b>A. Yes.</b> 7 Q. Now, with regard to the selection of 8 individuals to serve as Feoffees, am I correct that 9 you replaced your uncle? 10 <b>A. Right, uh-hum, yes.</b> 11 <b>MR. SHEEHAN:</b> You have to answer yes 12 or no. 13 <b>THE WITNESS:</b> I'm sorry. 14 Q. And the lawyer that was on the board that 15 was Mr.? 16 <b>A. Hayes.</b> 17 Q. He replaced his father? 18 <b>A. Yes, he did.</b> 19 Q. Do you think that the current Feoffees are 20 particularly qualified to choose their successors? 21 <b>A. To do this successfully, is that what you</b> 22 <b>said?</b> 23 Q. No, no. Under the way the trust works at 24 present the life Feoffees, when one of the Feoffees</p>	<p style="text-align: right;">Page 188</p> <p>1 <b>down.)</b> 2 Q. Yes? 3 <b>A. I think so, yes.</b> 4 Q. And historically, and this isn't meant to 5 be casting aspersions at anybody, but there have 6 been Feoffees who have had family members renting 7 cottages, right? 8 <b>A. Yes.</b> 9 Q. And that does make them trying to answer 10 to two different masters, doesn't it? 11 <b>MR. SHEEHAN:</b> Objection. 12 <b>A. No, I don't believe so.</b> 13 Q. You think that's a good situation? 14 <b>A. I think it's an acceptable situation if</b> 15 <b>the person is a morally sound individual.</b> 16 Q. Do you agree with me that even if the 17 Feoffees were to raise the rent higher than the 18 current amounts the lessees are paying, there would 19 be people out there with money who would be willing 20 to pay it? 21 <b>MR. SHEEHAN:</b> Objection. 22 <b>A. I would say unlikely.</b> 23 Q. Do you think there's some people out there 24 who would pay just about anything to get to Little</p>

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1 Neck?  
2 **MR. SHEEHAN:** Objection.  
3 **A. I think it's unlikely.**  
4 Q. What do you think would be the ideal  
5 qualifications for a Feoffee if there were going to  
6 be ongoing rental of property?  
7 **A. It's a little hard to summarize. I think**  
8 **they should have some business background, not**  
9 **necessarily legal -- No offense. If they were going**  
10 **to be managing, assuming that it's property to be**  
11 **managed --**  
12 Q. Right.  
13 **A. Somebody who had experience in that area**  
14 **would obviously be, I think, good. I mean, the**  
15 **obvious things are sound character and good**  
16 **recommendations would come into it, or should go**  
17 **into it.**  
18 Q. So would you agree that you'd want to see  
19 business acumen?  
20 **A. Yes.**  
21 Q. Financial acumen?  
22 **A. I think that's appropriate.**  
23 Q. Real estate knowledge is helpful?  
24 **A. I think that's helpful.**

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1 Q. Being of sound character?  
2 **A. Absolutely.**  
3 Q. And do you think there should be any kind  
4 of ability to have people move on when they've  
5 gotten to be -- Is there such a thing as being too  
6 old to be a Feoffee? Let me withdraw that.  
7 Under the current arrangement  
8 there's no age limit for the Feoffees?  
9 **A. That's correct.**  
10 Q. Is that a good thing?  
11 **A. I'm not sure, to be honest.**  
12 Q. There's no mechanism now, if people fade  
13 with age, for them to be changed, right?  
14 **A. No.**  
15 **MR. SHEEHAN:** Objection.  
16 Q. Correct?  
17 **A. Not that I know of, no.**  
18 Q. I mean, other than going to court, having  
19 a petition filed?  
20 **A. Yes, yes.**  
21 Q. Will you agree with me that, and again,  
22 this isn't meant to cast aspersions on the current  
23 Feoffees, but if you were trying to find the people  
24 who were most peculiarly fit to be Feoffees, you

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1 wouldn't necessarily come up with the current board?  
2 **MR. SHEEHAN:** Objection.  
3 **A. I don't know. Different people have**  
4 **different abilities and I think to summarily answer**  
5 **that is a little difficult.**  
6 Q. Do you personally see anything wrong with  
7 the school committee's proposal to change the  
8 governance of the trust?  
9 **A. As a general answer, no.**  
10 Q. But under the current rules, for example,  
11 if you thought it was a good idea to change and if  
12 you wanted to resign, it wouldn't actually  
13 accomplish that objective, because it would be the  
14 remaining Feoffees that would choose your successor,  
15 right?  
16 **A. That's true.**  
17 Q. And in fact, if there's even one Feoffee  
18 who thinks that the current system is a good one, it  
19 doesn't do any good if the other three all resign,  
20 correct?  
21 **MR. SHEEHAN:** Objection.  
22 **A. I don't know the answer to that.**  
23 **MR. PERRY:** Okay. Let's go off the  
24 record.

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1 (Discussion off the record.)  
2 **MR. PERRY:** I have one more area  
3 that I need to ask you about that I can think of  
4 right now.  
5 **A. Okay.**  
6 Q. Maybe two, actually. I forgot this page.  
7 Okay. When the concept of proposed sale of Little  
8 Neck was seriously discussed did you at some point  
9 have occasion to attend the meeting with the school  
10 committee on that subject?  
11 **A. No, I did not.**  
12 Q. Who handled the discussions with the  
13 school committee about a proposed sale?  
14 **A. It was initially Mr. Sheehan and Jim**  
15 **Foley.**  
16 Q. Did Mr. Foley attend the meetings that Mr.  
17 Sheehan went to about the proposed sale?  
18 **A. I believe he attended one. I'm not sure**  
19 **about the second one.**  
20 Q. Was the message to the school committee  
21 that Mr. Sheehan was authorized to deliver that the  
22 proposed sale was a good deal for the schools?  
23 **A. I honestly don't know what he said.**  
24 Q. Right.

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1 **A. I think he was looking for concurrence**  
2 **that they would go along with the sale, which they**  
3 **did.**

4 Q. At the time that the school committee,  
5 according to your testimony, went along with the  
6 sale, what appraisals are you aware that had been  
7 done to support the idea that this was a good  
8 opportunity?

9 **A. I don't remember beyond LandVest what**  
10 **appraisals were in at that time.**

11 Q. And you're not aware of any appraisals  
12 that were available to the school committee in 2009  
13 and earlier other than the LandVest appraisals,  
14 correct?

15 **A. I don't know.**

16 Q. Do you disagree with the work that was  
17 done by Collier, Meredith and Grew?

18 **MR. SHEEHAN:** Objection. He didn't  
19 read it.

20 Q. You didn't read it, so you don't have an  
21 opinion on that?

22 **A. No.**

23 Q. Who among the Feoffees would be  
24 knowledgeable about the process that was followed

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1 with respect to providing the tenants with notices  
2 to terminate their tenancy and notices to quit when  
3 they didn't pay their taxes? Was that also Peter  
4 Foote or Jim Foley?

5 **A. Trying to think of who was chairman at the**  
6 **time.**

7 Q. Were you chairman in 2006 when the lawsuit  
8 was filed?

9 **A. I honestly can't remember. They blend**  
10 **together.**

11 Q. Are you familiar with there being a  
12 reduction in the rate being charged for the  
13 wastewater system on a per gallon of water basis?

14 **A. Yes.**

15 Q. And at some point the rate was nine and a  
16 half cents and it went down to what, six and a half  
17 cents?

18 **A. Or seven, but yes, it did go down.**

19 Q. What were the events that led to the  
20 reduction in the amount being charged to tenants in  
21 connection with their water usage?

22 **A. I honestly don't know what precipitated it**  
23 **other than the town agreeing to it, to the utilities**  
24 **department agreeing to it being a reasonable fee.**

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1 Q. Did you review any documents before  
2 testifying today?

3 **A. Yes.**

4 Q. What did you review?

5 **A. 2008 deposition.**

6 Q. And am I correct that you were asked  
7 questions in 2008 about whether you thought Little  
8 Neck should be sold?

9 **A. Yes.**

10 Q. And do you recall that you testified at  
11 that time that you did not think it should be sold?

12 **A. Yes.**

13 Q. Because it's a good investment?

14 **A. Yes, I saw that.**

15 Q. Has there been anything that's happened  
16 since 2008, other than reading LandVest appraisals,  
17 that's changed your mind on that front?

18 **A. Well, I certainly have changed my opinion,**  
19 **yeah.**

20 Q. Do you still think Little Neck a good  
21 investment?

22 **A. I think it's too vague a question.**

23 Q. And what are the reasons you changed your  
24 opinion between July 8th, 2008 when you testified

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1 that Little Neck should not be sold because it's a  
2 good investment and your signing a settlement  
3 agreement in January -- December 2009 to sell Little  
4 Neck?

5 **A. Well, it's multifaceted answer. One, I**  
6 **can see seriously increased aggravation trying to**  
7 **manage the property. People so close together, that**  
8 **they complained about the littlest thing, and now**  
9 **because they had the money, they would sue and maybe**  
10 **even do something like try to name the Feoffees,**  
11 **which they haven't been able to do. But**  
12 **nonetheless, you know, a couple little old ladies**  
13 **decide to go at it with lawyers and, you know,**  
14 **there's more of it. And it's like nobody needs to**  
15 **deal with that kind of aggravation and/or associated**  
16 **cost that, you know, that you can't document as**  
17 **normal operating expense.**

18 **I guess the other thing is in trying**  
19 **to settle the superior court case, we went through**  
20 **various iterations of negotiation, including a judge**  
21 **who acted as a mediator and who, when he completed**  
22 **it, was quite discouraged that we're probably going**  
23 **to get nowhere with solving this problem. And so we**  
24 **looked at what other possibilities that were out**

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1 there and one was the possibility of selling it.  
2 And the question is whether that would be something  
3 good or not. My opinion changed to it probably  
4 would be good, because there were management issues  
5 that seemed to be cropping up that said managing  
6 this is going to get to be a bigger job. And in  
7 fact, when we priced professional management, it was  
8 a lot more money than what we're paying now. And  
9 that probably didn't -- It still left you with if  
10 there's a problem, call the lawyer. If I don't  
11 understand, call a Feoffee, you know, because they  
12 don't know the people. They could do the paperwork,  
13 all the rote things.

14 So we got 80% of the people who are  
15 opposed to paying rent, paying the rent that we want  
16 to charge, which we thought was fair, and it seemed  
17 like there had to be another way to try and solve  
18 that problem, which ultimately, after several  
19 iterations, you know, came to where it is today.  
20 Q. Okay, thank you. I had a question about  
21 the mediation and settlement discussions that took  
22 place. Was there a point where you thought that the  
23 negotiations had been successful in getting the  
24 tenants to agree upon a new lease, but then they

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1 changed their lawyers?  
2 A. Yes.  
3 Q. Tell me about that, please.  
4 A. Well, I can only tell you summarily that  
5 we were pleased that our attorney returned with,  
6 They've agreed to something. I can't tell you  
7 exactly what it was. In which case, the group  
8 immediately fired their attorneys, hired a new law  
9 firm. That wasn't a very good sign either.  
10 Q. So the old lawyers were the Masterman  
11 people, Beth O'Neill and Jim Masterson, right?  
12 A. Yes.  
13 Q. And they had worked something out with  
14 Bill Sheehan?  
15 A. It had to have been.  
16 Q. Was that at mediation or just separately,  
17 as you understand it, if you recall?  
18 A. No, it was separate. It wasn't through  
19 mediation. The mediation basically failed.  
20 Q. So Bill Sheehan reported back to the  
21 clients that he understood that there had been an  
22 agreement in principle of some sort reached, right?  
23 A. Yes.  
24 Q. But then when the lawyers tried to take

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1 that back to the entire membership, there was some  
2 sort of uprising and membership didn't go along with  
3 it?  
4 MR. SHEEHAN: Objection.  
5 A. That's my understanding.  
6 Q. Was this tentative agreement that was  
7 reached acceptable to the tenant leaders, DiSalvo  
8 and Gottlieb, as you understand it?  
9 A. I do not know. I do not know.  
10 Q. You would have thought that they would  
11 have had to have blessed it?  
12 MR. SHEEHAN: Objection.  
13 A. I would think so.  
14 Q. And then the new lawyers came in and that  
15 was Todd and Weld?  
16 A. Yes.  
17 Q. And did Todd and Weld indicate that they  
18 were unwilling to negotiate a lease or what  
19 happened?  
20 A. I can't remember what happened initially  
21 with Todd and Weld. I remember we had a meeting  
22 with Todd and Weld in Bill's office and we didn't  
23 really accomplish anything. We were miles apart.  
24 Q. Did you ever get a second opinion from any

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1 lawyers about the litigation other than Mr. Sheehan?  
2 A. No, not that I'm aware of.  
3 MR. PERRY: Okay. I've left you a  
4 few minutes, Bill.  
5 MR. SHEEHAN: I have no questions.  
6 (Whereupon, at 3:52 o'clock p.m.,  
7 the deposition was concluded.)  
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1                   C E R T I F I C A T E  
2                   I, ALEXANDER MULHOLLAND, do hereby  
3 certify under the pains and penalties of perjury  
4 that I have read the foregoing transcript of my  
5 testimony given on October 11, 2011, and I further  
6 certify that said transcript is a true and accurate  
7 record of said testimony (with the exception of the  
8 following corrections listed below):  
9       Page       Line       Correction/Reason  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
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16 \_\_\_\_\_  
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18 \_\_\_\_\_  
19 Dated at \_\_\_\_\_, this \_\_\_\_\_  
20 day of \_\_\_\_\_, 2011.  
21  
22  
23 \_\_\_\_\_  
24                   ALEXANDER MULHOLLAND

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1                   C E R T I F I C A T E  
2       COMMONWEALTH OF MASSACHUSETTS  
3       COUNTY OF SUFFOLK  
4                   I, CYNTHIA F. STUTZ, Certified Shorthand  
5 Reporter and Notary Public duly commissioned and  
6 qualified in and for the Commonwealth of  
7 Massachusetts, do hereby certify:  
8                   That the witness whose testimony is  
9 hereinbefore set forth, was duly sworn by me and  
10 that such testimony is a true and accurate record of  
11 my stenotype notes taken in the foregoing matter, to  
12 the best of my knowledge, skill and ability.  
13                   I further certify that I am neither  
14 attorney nor counsel for, nor related to or employed  
15 by any of the parties to the action in which this  
16 deposition is taken; and further that I am not a  
17 relative or employee of any attorney or counsel  
18 employed by the parties hereto or financially  
19 interested in the action.  
20                   IN WITNESS WHEREOF, I have hereunto set  
21 my hand this 17th day of October, 2011.  
22  
23                   CYNTHIA F. STUTZ, Notary Public  
24                   My Notary expires August 17, 2012

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