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-- Depo - Donald Whiston

ORIGINAL

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Exhibits: 1-7

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

Superior Court

LOMBARDO ASSOCIATES, INC.,

Plaintiff,

vs.

Civil Action No. 07-0470

ALEXANDER B.C. MULHOLLAND, JR.,

PETER A. FOOTE, DONALD F. WHISTON,

JAMES W. FOLEY, PATRICK J. McNALLY,

EDWARD B. RAUSCHER and ELIZABETH A.

KILCOYNE, as Feoffees of the Grammar

School in Ipswich,

Defendants.

30(b)(6) DEPOSITION OF THE FEOFFEEES OF THE GRAMMAR

SCHOOL IN IPSWICH BY DONALD F. WHISTON

Wednesday, June 27, 2007, 10:03 a.m.

Hanify & King, P.C.

One Beacon Street, Boston, Massachusetts

----- Reporter: Patricia A. Bucko, RPR -----

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24

1 PROCEEDINGS - 10:03 a.m.

2 -----

3 DONALD F. WHISTON, sworn

4 -----

5 EXAMINATION

6 BY MR. FOLKMAN:

7 Q. Good morning, Mr. Whiston. My name is Ted
8 Folkman and I represent Lombardo Associates, Inc.

9 Before we get started, I would like to
10 ask if you have ever been deposed before.

11 A. Only once.

12 Q. Was that a long time ago?

13 A. A long time ago, yes.

14 Q. Let me give you a few refreshers that you
15 probably remember from the last time you had the
16 misfortune to do this.

17 A. Yes.

18 Q. Please try to not talk over me and I will
19 try not to talk over you so the court reporter could
20 make a good transcript.

21 Please answer verbally. Nods of the
22 head, shakes of the head, it's not going to show up
23 on the transcript.

24 If you don't understand a question that

1 I ask you, please ask me to rephrase it and I will.
2 If you don't ask me to do that I am going to assume
3 that you understand, okay?

4 A. Yes.

5 Q. And if you need to take a break at any
6 point, just let me know and we will take a break.
7 If there is a question on the table, I will ask you
8 to answer the question before we break, okay?

9 A. Yes.

10 Q. Okay, great.

11 MR. FOLKMAN: We have agreed that we
12 will stipulate that objections except with respect
13 to the form of the question and motions to strike
14 are reserved until trial, and that the witness will
15 have 30 days to read and sign. The notary is
16 waived. Is that okay?

17 MS. STEIN: Yes.

18 What will happen is that when we get the
19 transcript back, then you will have 30 days to
20 review it and make corrections if you think
21 something in there is not right or you were mistaken
22 or something needs to be corrected. So we will get
23 that to you.

24 MR. FOLKMAN: Okay.

1 Q. Would you state your full name and address,
2 please.

3 A. My name is Donald F. Whiston,
4 W-h-i-s-t-o-n. I live at 2 Jeffrey's Neck Road,
5 Ipswich, Mass. 01938.

6 Q. Is 2 Jeffrey's Neck Road on Little Neck?

7 A. No.

8 Q. Is it on Great Neck?

9 A. No. It's in Ipswich.

10 Q. Okay. The name of Jeffrey's Neck Road --

11 A. Well, Jeffrey's Neck Road is the road that
12 connects the town, in part, with Little Neck.

13 Q. Do you have any intention, now, of changing
14 your residence at any time in the next year or so?

15 A. No.

16 Q. How long have you been in Ipswich?

17 A. Since 1957.

18 Q. Can you tell me, please, in summary, your
19 education after high school?

20 A. I attended Phillips Exeter Academy. I
21 matriculated to Brown University. I had a 15-week
22 program at the Sloane School at MIT.

23 Q. Okay.

24 A. And that basically is my educational

1 process.

2 Q. Did you receive a degree from Brown?

3 A. Absolutely.

4 Q. And what was your degree in?

5 An AB. Majored in English and
6 economics.

7 Q. And was there a certificate or degree that
8 resulted from your attendance at the Sloane School?

9 A. No.

10 Q. It was a business course of study?

11 A. It was subsidized by State Street Bank
12 where I was employed.

13 Q. Okay. And it was a business course of
14 study? I thought I saw you nodding your head, but
15 you're going to have to say "yes" or "no".

16 A. Yes.

17 Q. It's a little artificial to be talking and
18 having it written down.

19 A. I will have to keep it in mind, even at my
20 age.

21 MS. STEIN: Answer out loud.

22 Q. You mentioned that you worked for State
23 Street Bank. Are you presently employed?

24 A. No.

1 Q. Are you retired?

2 A. Yes.

3 Q. And when did you retire?

4 A. 1990.

5 Q. Can you summarize, and if it's easier to go
6 more recent to less recent, or from the past to the
7 future, it doesn't matter to me, could you summarize
8 your business history?

9 A. By business employment?

10 Q. Yes.

11 A. Upon graduating from Brown I joined an
12 investment banking firm in New York City, P.W.
13 Brooks and Company.

14 I spent 15 years with that firm and
15 managed the Boston operation and office for that
16 firm until -- what year was it that I left there? I
17 spent 15 years there, and I started there in the
18 summer of 1951. I moved from P.W. Brooks in Boston
19 and became a partner of Burgess & Lief (phonetics),
20 which is New York Stock Exchange based here in
21 Boston. And I spent another 15 years there.

22 I was a partner at the P.W. Brooks. It
23 was a stock company, so I was a, I was a shareholder
24 and an allied member of the New York Stock Exchange

1 as well. Burgess & Lief was a partnership of which
2 I was one the partners, which I believe there were
3 seven when I was there.

4 I left there in 1975 to become the
5 marketing -- what would be the word? Not director,
6 but the marketing person for the State Street
7 Financial Services Group. It was the area of the
8 bank that dealt with New York brokers. Securities
9 Services Division was the name of it, and I was a
10 vice president there.

11 And during my tenure there I managed an
12 office subsidiary in New York City on Wall Street
13 for the time I was there, the five years. I went
14 there twice -- once a week every Monday, came back
15 every Tuesday night. And it was managed with 60 or
16 70 employees, but all involved in the securities
17 industry.

18 I was one of the group that formed what
19 is now the custody group, is world renowned. Is
20 second or first in size and custody and management
21 of mutual fund accounting practices in the world.

22 Q. I think we and lots of other law firms use
23 them for that purpose.

24 A. Oh, I know. Probably customers of mine.

1 So I left there at the request of a
2 partner, a friend of mine, who was also legal
3 counsel to Burgess & Lief when I was there, his name
4 was Goodhue, Charles Goodhue. He has since passed
5 away. He was a partner at Goodwin, Procter and
6 Hoar. Also was a director in the First National
7 Bank of Ipswich. And the board there convinced me
8 to become the president. And I ultimately served
9 there as the president, and I retired there as
10 president and chairman of the First National Bank of
11 Ipswich.

12 My wife was diagnosed with Parkinson's
13 and I retired a little bit earlier than I might
14 have.

15 Q. And that takes us up to 1990, okay.

16 Burgess & Lief was another investment
17 banking firm?

18 A. No. It wasn't so much in the investment
19 banking business as P.W. Brooks was. It was a full
20 line brokerage firm here; it was at 53 State Street.

21 Q. Okay. In the course of your professional
22 experience with investment banks, brokerages, and I
23 guess retail banks, do you have any experience as a
24 trustee?

1 A. Trustee being?

2 Q. The trustee being the person responsible
3 for managing assets on behalf of beneficiaries.

4 A. I am a trustee on two or three different
5 trusts, yes.

6 Q. So you are familiar with, in general, the
7 duties and responsibilities of a trustee?

8 A. Well, I would say feoffees is a trustee.
9 It's the English word for trustee.

10 Q. Yes, we will get to the feoffees, but I'm
11 asking you --

12 A. Yes. I am a trustee of other charities, I
13 guess.

14 Q. Okay.

15 Now, and you say you are a feoffee of
16 the land --

17 A. Grammar School.

18 Q. Of the Grammar School in Ipswich, right?

19 A. Yes.

20 Q. How does one become a feoffee?

21 A. Well, I would have to say that if you
22 studied the trust, which was, which was actually
23 created in the year 1650, you would see a great
24 history of how people became feoffees.

1 And the trust, as I understand it, and I
2 believe it to be fact, that there are four feoffees
3 in perpetuity, and they, in turn, will find some
4 person to substitute for someone who has moved out
5 of the town of Ipswich, or who has elected not to
6 serve, and that person is the trustee for life.

7 Q. So, essentially, it's a self-perpetuating
8 body?

9 A. Yes, it is.

10 Q. And then as I understand it today, there
11 are also feoffees who hold office as feoffees
12 because of their membership on the board of
13 selectmen of the town; is that correct?

14 A. Yes. That is something that just happened
15 recently, yes.

16 Q. But you are one of the lifetime feoffees?

17 A. Yes.

18 Q. When did you become a feoffee?

19 A. As near as I can remember, it was 1972.

20 Q. And how did you become a feoffee?

21 A. I was elected by -- one person passed away,
22 I believe, and I was elected by the other three to
23 serve in that capacity.

24 Q. Have you held any special roles on the

1 feoffees, whether it's chairman or some other role?

2 A. Well, up until, up until the year I
3 retired, which was December of '04, I was the
4 chairman and I was the manager of the property, and
5 I was the treasurer. I being the oldest who had the
6 most time; the others being younger and employed,
7 and didn't have the time to devote to what became
8 pretty big business.

9 Q. Okay.

10 Let me make sure I understand what you
11 just said.

12 Did you hold those offices, chairman,
13 manager of the property, and treasurer from all
14 times between 1972 through 2004?

15 A. No, no, I didn't.

16 Q. So you were elected to those positions?

17 A. Ultimately when other people passed on, the
18 manager passed on, I became the manager.

19 Now, the manager, when I was there, was
20 quite elderly, and when he died I took his place; he
21 was the manager.

22 Q. Do you recall approximately when you became
23 the manager?

24 A. No. It has been 15 years, I would say, at

1 least.

2 Q. And when you say you held those offices
3 until you retired, you don't mean until you retired
4 from your outside employment, you mean until you
5 separately retired from those role on the feoffees,
6 correct?

7 A. Yes.

8 Q. And?

9 A. And that was done officially in December
10 '04.

11 Q. Is it fair to say that between 1990, when
12 you retired from your job at the First National Bank
13 of Ipswich and 2004, you devoted a substantial
14 amount of your time to your work with the feoffees?

15 A. Too much of my time.

16 Q. Okay.

17 Is there a division of labor among the
18 feoffees?

19 A. Being?

20 Q. One feoffee takes a responsibility for one
21 particular area; another feoffee takes a
22 responsibility for another area?

23 A. Yes, as of my retirement that changed. And
24 a manager was voted on at the annual meeting, or at

1 a meeting. A new treasurer was appointed and a
2 new -- well, maybe not new, but a confirmed -- a
3 manager was appointed; a chairman was appointed and
4 a treasurer was appointed at that time.

5 Q. Okay.

6 So if I understand you, prior to 2004,
7 you held all or many of the reins in your hands,
8 correct?

9 A. That's correct.

10 Q. After 2004, the tasks that you no longer
11 were going to do were divided amongst --

12 A. That is correct.

13 Q. And in 2004, who was elected to be the
14 chairman?

15 A. Chairman was elected, elected was Alex
16 Mulholland.

17 Q. And who was elected to be manager?

18 A. Foley, James Foley, Peter Foote.

19 Q. And he was elected --

20 A. Peter Foote.

21 Q. -- to be the treasurer?

22 A. Yes.

23 Q. I understand you could anticipate my
24 questions, and that is fair, but let me --

1 MS. STEIN: Let him totally ask his
2 question before you answer.

3 A. I'm getting it.

4 MS. STEIN: That way you get a clean
5 transcript.

6 Q. It is artificial, and you feel foolish to
7 wait, but --

8 A. Well, I am not accustomed to it.

9 Q. You said earlier that feoffee is
10 essentially the old English word for trustee; is
11 that correct?

12 A. Yes.

13 Q. What do you understand the nature of a
14 feoffee's responsibilities to be?

15 A. Well, it's -- the first thing that, the
16 primary responsibility is to the beneficiary.

17 Q. And in this case the beneficiary is the
18 Ipswich public school, correct?

19 A. Correct.

20 Q. So you understood that you were responsible
21 to manage the assets in the trust, and I'm going to
22 call it a trust, if that is okay, for the benefit of
23 the schools, correct?

24 A. Correct.

1 Q. Did you understand that you had the
2 responsibility to be informed about the feoffees'
3 business?

4 A. Meaning?

5 Q. Well, as a feoffee, did you feel an
6 obligation to know what was going on with the
7 feoffees' business; what was going on in terms of
8 receipt of income, expenditure of money,
9 relationships with the tenants, et cetera?

10 A. Oh, absolutely.

11 Q. And if you felt that responsibility, is it
12 fair to say that you, you took it to heart and
13 actually did inform yourself about those matters?

14 A. Absolutely.

15 Q. And was that true even after you resigned
16 from the offices we just discussed, in 2004?

17 A. I am not as active now. From that day on I
18 put myself in a retirement mode. I still am very
19 much knowledgeable about what is going on, that I
20 can assure you.

21 Q. And you feel an obligation to continue to
22 be knowledgeable?

23 A. I do, yes.

24 Q. If you felt that either you no longer

1 wanted to keep up with the feoffees' affairs, or you
2 no longer were able to, would it be appropriate, in
3 your view, no longer to be a feoffee?

4 A. Under certain conditions, yes.

5 Q. I mean, you wouldn't stay on the feoffees
6 if you felt you couldn't carry out the
7 responsibilities of a feoffee?

8 A. That is correct.

9 Q. Let me ask you to describe, in general, the
10 property at Little Neck. And by that I mean, what
11 sort of community is it; what sort of structures are
12 there; who lives there?

13 A. Well, it's a, it's a, it's considered a
14 single lot, 31 more or less acres. And on the
15 property are 167 homes. 24 of those homes are year-
16 round residences that were grandfathered in through
17 previous feoffees' approval. The remaining 143
18 homes are seasonal homes. And those people are
19 restricted from living there for the first three
20 months of the year, January through March.

21 They can go there and use the house
22 overnight, but they cannot have that as their
23 primary residence.

24 Q. Okay.

1 When you say they are restricted from
2 living there, I take it that the feoffees' position
3 is that these folks, all of the 167 tenants, are
4 essentially tenants at will. Do you know what that
5 term means?

6 A. Yes, I do.

7 Q. And is it in fact the feoffees' position
8 that they are tenants at will?

9 A. It is.

10 Q. So when you say the 140 odd tenants who are
11 not year-round residents are restricted from being
12 year-round residents, do you mean that is just a
13 condition that the feoffees impose as part of the
14 tenancy at will?

15 A. Yes.

16 Q. And I understand there is litigation about
17 this, but as of today, is there some document,
18 formal or informal, that tenants have signed,
19 evidencing their tenancy; a lease or something of
20 that nature?

21 A. I would say, yes.

22 Q. And those leases contain the terms of the
23 tenancies?

24 A. There aren't any leases, per se. There are

1 leases, now, under what we are trying to do, but
2 there are no leases. I believe there's 30 leases;
3 is that fair to say?

4 MS. STEIN: I think there is one more
5 signed recently. A small percentage, just to
6 clarify, have signed a lease. The rest are tenants
7 at will. So we have leases and tenants.

8 Q. I used the term "lease," probably
9 inexactly. Are there any documents that lay out the
10 obligations of the tenants at will, that those
11 tenants at will have signed or agreed to?

12 A. Well, there are documents that they have
13 signed when they purchase their property, that they
14 will abide by the rules and regulations of the
15 feoffees, which are substantial in number.

16 Q. Okay.

17 A. Of how they live there and what
18 responsibilities they have for the property in
19 maintaining it for the feoffees.

20 Q. Okay.

21 A. I don't know how -- I don't know -- phrase
22 the question again. I don't quite, I'm not quite
23 sure what, where I am going with this.

24 Q. My question was, whether there were any

1 documents that the tenants have signed or agreed to,
2 that, essentially, contain the terms that the
3 feoffees have imposed on the tenancies at will? So
4 for example, is there something written down,
5 something that says, "You may not live here year
6 round"?

7 A. Well, there are documents -- they are
8 buying personal property. They don't own the land.
9 The only thing they own is the house they have on
10 the land. And they sign a document that states that
11 they understand the rules and regulations. It's a
12 legal document and it's usually prepared by lawyers.
13 Some are a little bit different than others,
14 depending on which lawyer is doing the transfer.

15 And they agree and sign the fact that
16 they will pay the real estate taxes; they will pay
17 the rent, and any other expenses that may be put on
18 them for improvements to the property, that, as we
19 see fit as feoffees.

20 Q. And then presumably the feoffees, in some
21 way, communicate to the tenants what the rules and
22 regulations that they are expected to follow are?

23 A. They are, they receive the updated rules
24 and regulations on balance, every July 1st, which is

1 the beginning of our fiscal year.

2 Q. And that takes the form of some sort of
3 manual or handbook?

4 A. Yes. It's just a three- or four-page
5 printed little thing. And they are supposed to be
6 used for tenants that might rent the places.

7 Q. So others -- I see, okay.

8 I understand that the feoffees are
9 involved in litigation against the tenants. And by
10 that I don't, I don't know whether it's all the
11 tenants or some of the tenants.

12 Can you tell me, briefly, what that
13 litigation is about?

14 A. Well, it would be to get a legal opinion
15 that they are tenants at will.

16 Q. Excuse me. That they aren't?

17 A. They are tenants at will.

18 Q. That is something that the feoffees would
19 like to have happened?

20 MS. STEIN: If I could clarify, just to
21 the form of the question. You said that the, the
22 feoffees had brought litigation against the tenants.

23 MR. FOLKMAN: No, I didn't mean to say
24 there is litigation between them. I understand that

1 the tenants are -- right.

2 Q. So what is it that the Plaintiffs are
3 asking for?

4 MS. STEIN: That's better. What do the
5 tenants want?

6 A. The tenants don't want to pay rent; they
7 don't want to pay taxes.

8 Q. Do they want some sort --

9 A. And they want some sort of protection, and
10 we believe, under the trust, that they are tenants
11 at will. They don't believe that, and that is the
12 basis of the suit.

13 Q. You know that the litigation that we are
14 here today for involves the wastewater treatment
15 solution on Little Neck?

16 A. Yes, I do. Yes, I do.

17 Q. To what extent are the tenants angry with
18 or upset with the feoffees about the cost of that
19 project?

20 A. Well, I don't think they understand it at
21 all, so we -- I don't know how to answer that one.

22 MS. STEIN: Maybe, if we can clarify, I
23 don't think that he can necessarily speak on behalf
24 of what all the tenants think.

1 Q. To the extent that he knows.

2 MS. STEIN: I just mean, there are 140
3 some tenants and they have different opinions and
4 thoughts and --

5 MR. FOLKMAN: That's fine. And my
6 suggestion, I understand if you need to clarify
7 things, but the question is unclear.

8 A. I would like you to ask it again, so maybe
9 I could clarify a little bit.

10 Q. Sure.

11 Are there tenants that you know are
12 upset or angry with the feoffees, about the cost of
13 the wastewater project?

14 A. I would have to say "yes" to that.

15 Q. Is Tom Allen one of those?

16 A. Yes, I would say so.

17 Q. Is William Gottlieb one of those?

18 A. Very much so.

19 Q. Are there others that you can name?

20 A. No, I don't know anybody specific. And the
21 reason that you used those two names is that
22 Gottlieb is the self-appointed legal counsel to the
23 legal committee. And Tom Allen has served or is
24 serving as the chairman of the Little Neck Residents

1 Association, homeowner's association.

2 Q. Is it your testimony that aside from those
3 two that we have just discussed, you don't know of
4 any other tenants that are upset or angry?

5 A. I'm sure there are many others, but I
6 don't.

7 Q. Do you know the tenants or any of them, in
8 a sort of a social capacity? Are you friends with
9 any of them?

10 A. I'm friends with a lot of them, including
11 Tom Allen.

12 Q. Okay.

13 And leaving Mr. Allen aside, those
14 tenants that you are friendly with, have they
15 expressed to you any anger, disappointment,
16 upsetness with the feoffees?

17 A. No, they have not.

18 Q. Okay.

19 Do you believe that the cost of the
20 wastewater project is a factor at all in the
21 tenants' lawsuit against the feoffees?

22 A. Well, it's basically not a subject that we
23 discuss with them. It has nothing to do with the
24 leases that we are trying to put together.

1 Q. Okay, I'm not sure I understood.

2 MR. FOLKMAN: Could you read the answer
3 back, please.

4 (Read back.)

5 Q. So I understand that it is not a subject
6 that the feoffees have discussed with the tenants.
7 My question is, do you believe that from the tenants
8 point of view, the wastewater project costs are a
9 factor in their lawsuit against you and the other
10 feoffees?

11 MS. STEIN: Objection to the form.

12 Q. That's okay, you could answer.

13 MS. STEIN: You can answer.

14 MR. FOLKMAN: Your lawyer will sometimes
15 say "objection" and you can answer unless she tells
16 you not to.

17 A. The question again?

18 MR. FOLKMAN: Could you read back the
19 question?

20 (Read back.)

21 A. They may think it is, but it isn't.

22 Q. Okay. What I am asking you is what you
23 think that they think, if that makes sense?

24 A. Yes, yes.

1 Q. And why do you think that?

2 A. Well, I don't think they have enough
3 information to make a determination of the, of what
4 the wastewater project is all about.

5 Q. Is it fair to say that you think that if
6 they were fully informed about the wastewater
7 project and what it entailed and what it has done,
8 that they wouldn't be angry with the feoffees about
9 the cost of the project?

10 A. They were brought into meetings on a
11 monthly basis represented by Tom Allen and Pio
12 Lombardo and the feoffees at their weekly meetings,
13 while the construction and everything was going on.
14 They knew exactly what was going on there.

15 MR. FOLKMAN: Okay. Could you read back
16 the question?

17 Q. Your answer was helpful, but I'm not sure
18 you responded to the question I asked, so let me ask
19 the reporter to read it back.

20 (Read back.)

21 MS. STEIN: I am going to object to the
22 form of that question as well.

23 You could answer, if you can.

24 A. I think that it has been a center of

1 discussion among the people living there that it is
2 a major issue. The feoffees don't believe it's a
3 major issue of the costs or any part thereof with
4 the situation that their thoughts are all about.

5 Q. Okay, let me try one more time to see if I
6 could get at what I want to get at. I understand
7 you are trying to understand what I am trying to get
8 at.

9 A. Yes, I am, because it is an issue.

10 Q. My question is, you said you think the
11 tenants are informed about the project; is that
12 right?

13 A. Yes, I said that, I think they are
14 uninformed about the project as to its costs.

15 Q. My question is, if they were fully informed
16 about the costs, to your satisfaction, do you think
17 they would still be angry or upset with the feoffees
18 about its costs?

19 A. Yes, I do.

20 Q. You do?

21 A. Yes.

22 MR. FOLKMAN: I'm going to ask the
23 reporter to mark a document as Exhibit 1.

24 (Marked, Exhibit 1, Defendants' Answers

1 to Plaintiff's First Set of Interrogatories.)

2 Q. I'm going to show you Exhibit 1, Mr.
3 Whiston, and ask you if you can identify it for me.
4 And when I say, identify a document, basically what
5 I'm asking you is do you recognize it and could you
6 tell me what it is?

7 A. Yes. It's a document that I just signed.

8 Q. It's the feoffees' Answers to
9 Interrogatories, correct?

10 A. Yes. The interrogatories, the Defendants'
11 Answers to the Plaintiff's First Set of
12 Interrogatories.

13 Q. Okay. Please keep it in front of you. I
14 am going to ask you some questions about it.

15 You see on Page 5 that you have signed
16 it under the pains and penalties of perjury? I'm
17 looking at Page 5 now.

18 A. Oh, Page 5?

19 MS. STEIN: Yes, your signature.

20 A. Yes, I see that.

21 Q. Do you have personal knowledge of all of
22 the feoffees' answers to these interrogatories?

23 A. I don't think that I -- see, I have never
24 seen any of these.

1 MS. STEIN: Could we go off the record
2 for just a second?

3 MR. FOLKMAN: Yes.

4 (Off the record.)

5 MR. FOLKMAN: Can you read it back,
6 please.

7 (Read back.)

8 Q. And maybe I could make that a little
9 clearer, Mr. Whiston.

10 All of the information that the feoffees
11 have provided in this document, is that information
12 that you know, of your own personal knowledge?

13 A. Well, some of it is; some of it isn't.

14 Q. Okay, which of it is not?

15 A. I understand what the case is, but I do not
16 understand, nor am I familiar with answers to Number
17 4.

18 I have no information on Interrogatory
19 Number 5.

20 Q. Okay. Number 6? You mean to say you have
21 no information about Number 6?

22 A. (Indication).

23 Q. And I see you have shaken your head "no,"
24 but if you could say, "yes" or "no".

1 A. Yes. What was the question?

2 Q. The question is, do you have any personal
3 knowledge of the answers that the feoffees have
4 given in Number 6?

5 A. No.

6 Q. How about Number 7?

7 A. No on Number 7.

8 Q. How about Number 3?

9 A. I have no information on Number 3.

10 Q. And I won't ask you about 1 and 2, because
11 those are strictly lawyers' answers.

12 Can you tell me what you did to --

13 MS. STEIN: Could we just take a recess
14 for a second?

15 MR. FOLKMAN: Yes.

16 MS. STEIN: Let's talk.

17 (Off the record.)

18 MS. STEIN: He would like to clarify his
19 previous answers in that I think Mr. Whiston thought
20 you meant the exact wording on the page.

21 Q. Okay, let me ask you, when I asked you
22 whether you had personal knowledge of the feoffees'
23 answers, is there something you would like to
24 clarify about your previous answers?

1 A. Yes, I misunderstood the questions.

2 Q. Want me to ask them again?

3 A. I am familiar with these answers.

4 Q. All of them?

5 A. Yes.

6 Q. Did you consult with anybody in, aside from
7 your lawyers? I don't want you to tell me anything
8 that went on between you and your lawyers, but did
9 you consult with any other feoffees or other people,
10 in preparing these answers?

11 A. No, I did not.

12 Q. So you --

13 A. No, I did not.

14 Q. Did your lawyers physically draft these for
15 your signature? In other words, did they, after
16 discussions with you, which I don't want you to tell
17 me about, did they present you with the document?

18 MS. STEIN: I am going to object to the
19 form of the question.

20 Q. You can answer.

21 A. Yes.

22 Q. Let me ask you to look on Page 3 and over
23 to Page 4, at Transfer Number 6. This is an
24 interrogatory that asks the feoffees to identify

1 each person likely to have discoverable information
2 that the feoffees may use to support claims or
3 defenses in the litigation.

4 And I would like to direct your
5 attention to, in the answer, Items 14 through 17.
6 Are you with me?

7 A. Yes.

8 Q. Who is Carol Lonergan, and it's
9 L-o-n-e-r-g-a-n.

10 A. Well, she is a tenant; lives at Little
11 Neck.

12 Q. And why is she included on this list?

13 A. I have no clue.

14 Q. Do you have any information about things
15 that she might know, that the feoffees might use to
16 support their claims or defenses in this case? And
17 I see your attorney is pointing at something there?

18 MS. STEIN: I am identifying the person.

19 MR. FOLKMAN: Okay.

20 A. Yes, the person. I can't quite get, I
21 can't quite get -- I was surprised when I saw this
22 list with the peoples' names on it, let's put it
23 this way. These are contractors. Hunter is the
24 bank. And the bank -- the bank representative,

1 where he clears all of the bills that Pio has sent
2 to us to make sure that his engineers say they are
3 legitimate bills and should be paid or not paid.

4 Q. I understand. My question is, what
5 information does Carol Lonergan have?

6 A. I have no idea, other than as an
7 observation. I have no clue what she is talking
8 about or might even be thinking.

9 Q. And do you know why she is on this list?

10 A. No, other than she is one of the Plaintiffs
11 in the big case.

12 MS. STEIN: Yes.

13 I think his answer is limited to what it
14 says on the paper.

15 Q. My preference, and in fact my insistence is
16 that we not have lawyer/client conversation, while
17 we are answering, okay?

18 MS. STEIN: Sure.

19 Q. In other words, you don't know why she is
20 on that list?

21 A. (Indication).

22 Q. And you are shaking your head "no," but you
23 have to say "no".

24 A. No, I do not know why she is on that list,

1 and I do not know why Dianne Kaine is on that list,
2 I must say.

3 Q. And is the same true for Mary Johnson and
4 Charles Huntley?

5 A. I would have to say yes.

6 Q. And do you know who would know that?

7 A. No, I don't, I do not know who would know
8 that. I can tell you that these people are
9 neighbors.

10 Q. Of each other?

11 A. Yes.

12 Q. On a particular part of Little Neck?

13 A. Just on the main part of Little Neck.

14 Q. Is it on a part of Little Neck that is near
15 to any of the wastewater facilities?

16 A. No.

17 Q. I'm sorry?

18 A. No.

19 Q. Are these people, to your knowledge, who
20 have complained about any aspect of the wastewater
21 project?

22 A. The question didn't --

23 Q. Would you read it back, please?

24 (Read back.)

1 A. I have never heard any complaints.

2 Q. Okay. And although you are the person who
3 signed this document, you don't know anything about
4 why these people are there, or who suggested that
5 they ought to be on the list?

6 A. Well, I have -- I do believe, that they
7 were chosen to be on a list. Because there are 140
8 people down there, and they watched this whole
9 project, and it was a massive project.

10 Q. But you don't know why these four?

11 A. I don't know.

12 Q. And you don't know who would know that?

13 A. I don't know. Maybe one of the other
14 feoffees might, but I don't know.

15 Q. Okay, fair enough.

16 Why is Tom Allen not on the list?

17 A. I haven't a clue.

18 Q. And why is Mr. Gottlieb not on the list; do
19 you know?

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

21 Q. Okay.

22 Let me change subjects now. I would
23 like to get into the wastewater project a little
24 bit.

1 Can you tell me, in general, what was
2 the reason the feoffees decided or felt they had to
3 embark on the wastewater project?

4 A. Simple answer. We were mandated in a
5 consent agreement with the DEP, based on the fact
6 that we are one lot, and we were in violation of the
7 disposal of water way beyond the 15,000 gallons a
8 day.

9 Q. For a single lot?

10 A. For a single lot.

11 Q. In fact, you are the, I believe, the person
12 who, on behalf of the feoffees, signed the consent
13 order; is that right?

14 A. That is correct.

15 Q. And my understanding is that prior to the
16 wastewater project, the houses on Little Neck
17 generally used septic systems that were for
18 individual --

19 A. Correct.

20 Q. I don't want to say individual properties,
21 but individual houses?

22 A. Title 5.

23 Q. Yes, Title 5.

24 How did the feoffees come to decide to

1 hire Lombardo Associates?

2 A. Lombardo Associates was recommended to us
3 by our in-house engineer who worked for us.

4 Q. And what was that person's name?

5 A. His name was Graham, Lawrence Graham.

6 Q. Graham, G-r-a --

7 A. Graham, G-r-a-h-a-m, Larry Graham. I don't
8 know if his name is Lawrence or not. But he is an
9 engineer who has done a lot of work for us on Little
10 Neck over many years.

11 Q. And when he recommended, that is when Mr.
12 Graham recommended that the feoffees hire Lombardo
13 Associates, what did he tell you about either
14 Lombardo Associates or Pio Lombardo himself?

15 A. I don't believe he ever had any connection
16 or did a project with him. The feoffees felt that,
17 in discussing this project with Graham, that Graham
18 was not capable of the project, nor did he want the
19 project, because it was a little bit beyond his
20 scope, and he recommended Pio Lombardo in many ways,
21 because the DEP held Pio in very highest esteem, and
22 it made it easier for us to deal with the DEP. And
23 that was the basis for hiring him.

24 Q. Okay.

1 MR. FOLKMAN: Off the record for a
2 second.

3 (Off the record.)

4 MR. FOLKMAN: Okay. On the record.

5 While we were off the record, we were
6 discussing, Mr. Whiston, which matters the feoffees
7 are designating you as their witness for answering
8 on behalf of the collective bodies of the feoffees.

9 And so the record is clear, those items
10 are the following: Number 7 in my schedule, which
11 is the method the feoffees used for calculating the
12 rents the tenants were to pay in every year from
13 2004 to the present, including without limitation
14 the relationship between the amounts the tenants
15 were to pay and the amounts of Lombardo's estimated
16 or actual invoices to the feoffees, and the amounts
17 of the other costs associated with the project. And
18 then the following two topics on which you were
19 designated only through December 31st, 2004. Those
20 are, first, a description by category of the
21 documents that the feoffees now have or once had in
22 their possession, custody or control, that are
23 responsive to Lombardo's first and second requests
24 for the production of documents. And second, the

1 feoffees' document retention policy, okay?

2 A. Uh-huh.

3 Q. And would you say, "yes" or "no", rather
4 than "uh-huh"?

5 A. Yes, yes, yes.

6 Q. I know it's difficult to -- okay.

7 MR. FOLKMAN: Do you find mind if I hang
8 on to this?

9 MS. STEIN: It's my only copy, so as
10 long as I don't forget to take it with me.

11 MR. FOLKMAN: I'm not going to mark it
12 up.

13 MS. STEIN: We are back on the record?

14 MR. FOLKMAN: We are back on the record,
15 and we have been on the record.

16 MS. STEIN: Oh, okay.

17 MR. FOLKMAN: Which I hope is okay.

18 Q. Do you have any understanding as to why the
19 DEP held Pio Lombardo in high regard?

20 A. No.

21 Q. Let me ask you about the project in
22 overview.

23 My understanding is that it involved a
24 couple of what I'll call systems; the collection

1 system and the holding tank system being the two
2 first-level, big picture kind of systems. Is that
3 your understanding?

4 A. No, no, no, it isn't. The first, the
5 consent order, the original consent order mandated
6 that we put in individual tight tanks for all the
7 Title 5s, and that we put in a drip system for all
8 of the year-round residents. Both were
9 unsatisfactory. Basically, they wouldn't work.

10 Q. Now, when you contracted with Mr. Lombardo,
11 that contract was formed before it was determined
12 that those two approaches were unsatisfactory,
13 correct?

14 A. Before I -- give me that question again.

15 MR. FOLKMAN: Could you read that back,
16 please.

17 (Read back.)

18 A. I would have to say yes.

19 Q. And is it your understanding that the two,
20 the two approaches you discussed, the individual
21 tight tanks and the drip system, if they had been
22 satisfactory, would have been less expensive than
23 the system that was ultimately installed?

24 A. Yes.

1 Q. Do you know approximately what order of
2 magnitude the difference in price would have been?

3 A. Based on what we would have done with them,
4 and based on what would have been done, what we have
5 now?

6 Q. Based on -- my question is, do you know,
7 approximately, how much more expensive the system
8 you installed was, as compared with the individual
9 tight tank slash drip system that was contemplated
10 in the original consent order?

11 A. Much less, but not operable.

12 Q. Was it millions of dollars less?

13 A. See, I don't think, I don't, I don't think
14 that any numbers were ever associated with it. We
15 had to spend a lot of time analyzing the costs of
16 tight tanks, and it's a wide area.

17 Q. Okay.

18 A. And also we were in dispute with the DEP on
19 a drip system, which we couldn't get any information
20 that it was in existence anyplace else but the State
21 of Minnesota. And so consequently, first of all, it
22 wasn't adaptable to Little Neck, because it required
23 a lot of use of land. And those two projects that
24 the DEP wanted to do motivated not only the

1 residents, but the feoffees, to look for alternative
2 ways of doing it.

3 Q. Okay.

4 So is it your testimony that you don't
5 know whether it was millions of dollars more
6 expensive to do the project, than ultimately you
7 did, as compared with the projects that the original
8 order had contemplated?

9 A. Oh, no, I don't have any numbers on that.

10 MR. FOLKMAN: Okay, I am going to ask
11 the reporter to mark this as Exhibit 2.

12 (Marked, Exhibit 2, letter dated
13 9/30/04.)

14 Q. Mr. Whiston, I'm going to show you what has
15 been marked as Exhibit 2, and ask you if you can
16 recognize it?

17 A. Well, I recognize it. It has my signature
18 on it. I recognize it.

19 Q. What do you recognize it to be?

20 A. I recognize it to be the contract that I
21 signed to fulfill what was, what the options were
22 here (indication).

23 Q. Now, this is the contract --

24 A. For the work. I got a lot of these from

1 Pio.

2 Q. Okay. I guess my -- you recollect this to
3 be the contract as between the feoffees and Lombardo
4 Associates?

5 A. Yes, I do.

6 Q. Did the feoffees hire Mr. Lombardo in
7 approximately September of 2004? Did they hire him
8 earlier?

9 A. I don't know that. I don't remember. It
10 seems to me -- I don't know when we did it. I have
11 no clue. It went on for so long that -- this one
12 took five years to get to this probably, this part
13 of the project.

14 Q. Okay. Let me ask you to just look quickly
15 at two things on the first page of Exhibit 2. The
16 first is the date of the letter, September 30th,
17 2004, and the second is the first line of the text
18 of the letter which refers to a, MA DEP June 28th,
19 2004 meeting directive, and ask you whether those
20 two dates refresh your recollection as to
21 approximately when you hired Lombardo Associates?

22 A. What's the other one I'm supposed to be
23 looking for?

24 Q. You're looking at September 30th, 2004, at

1 the top of a letter, and then in the text of the
2 letter, the reference to the June 28th, 2004
3 meeting. And I should say, if you don't remember,
4 that is fine, too.

5 A. I don't, I don't connect any dates with
6 anything; it's a blur with me.

7 Q. Okay, fair enough.

8 Can you be, can you at least get within
9 a year of when you think the feoffees hired Mr.
10 Lombardo, I'm sorry, Lombardo Associates?

11 A. I really can't.

12 Q. Okay. Now, as the project was finally
13 built, so in other words, not the project that was
14 contemplated by the original consent order, but the
15 project that was actually built and exists today, am
16 I correct in thinking that it essentially has two
17 systems, the collection system and the holding tank
18 system?

19 A. Yes.

20 Q. And what do you understand the collection
21 system's purpose to be; what does it do?

22 A. Well, it collects all the effluent from all
23 the houses. It's a process that, in some cases, has
24 to be pumped from one location to another, because

1 it's a gravity flow system, basically.

2 Q. And then once, once the effluent is
3 collected, it passes by one means or the other to
4 the holding tank, correct?

5 A. Correct.

6 Q. And the holding tank is located?

7 A. On the ball grounds, on the ball field.

8 Q. And once the waste, the effluent comes to
9 the holding tank, my understanding is that it is
10 periodically trucked from Little Neck to a site in
11 Ipswich; is that correct?

12 A. Correct.

13 Q. And about how often does that happen; how
14 often do the trucks come?

15 A. See, that is beyond -- the project wasn't
16 even completed when I retired. The project hadn't
17 been completed when I retired. The reason we didn't
18 go the route with the tight tanks was the fact that
19 we would have as many as 15 tanks coming in a day,
20 coming in and going out of there.

21 Q. And that was unacceptable?

22 A. That was unacceptable. So I would think, I
23 guess now, and I don't know, I would say that
24 currently two days a week they are there. And how

1 many runs they make, I don't know.

2 Q. Okay.

3 Does the system include an MIS
4 component? Do you know what MIS means?

5 A. Yes.

6 Q. What does MIS mean to you?

7 A. Management information system.

8 Q. And it's my understanding that the MIS
9 system of the wastewater project, essentially,
10 allows the owners, the feoffees, to track water in
11 and water out. Is that, in broad strokes, that is
12 correct?

13 A. Yes.

14 Q. And what alternatives did the feoffees
15 consider to the project as built? I mean, you
16 already mentioned two which are the individual tight
17 tanks and the drip system. Were there others that
18 were considered?

19 A. Yes.

20 Q. And what were those?

21 A. They were made up of what is known as a
22 direct drilling system. The major problem with this
23 whole project is, what do you do with the
24 wastewater. And we spent a lot of time boring, to

1 see if we could get rid of the wastewater.

2 That's why the dates don't mean a lot to
3 me, because we spent so many months trying to find
4 out what we could do with wastewater. Even went off
5 the neck to another property on Great Neck to see if
6 it would accept the water, the ground. The problem
7 is there, that this is a drumlin. Now, if you go to
8 college and take geology, you will know a drumlin
9 was left over after the years of the freeze, and
10 it's basically made up of clay. This is a very
11 difficult project to do, because of the type of soil
12 that Pio Lombardo had to deal with.

13 Q. Okay.

14 Was there any consideration given to
15 connecting to the public sewers, to the Town of
16 Ipswich?

17 A. There was, and that is the direct drill
18 system.

19 Q. And the town did not allow that ultimately?

20 A. No, the town did not allow it. Because
21 they have a lot of -- you can't extend a current
22 sewer system in Ipswich over 500 feet.

23 Q. Okay.

24 I want to turn to another topic now,

1 which is the financing of the project.

2 Did Ipswich Cooperative Bank make
3 available to the feoffees approximately \$6.4 million
4 in financing for the project?

5 A. Yes.

6 Q. Aside from that, and the exact number, I
7 believe, is \$6,483,000; is that your understanding?

8 A. My understanding.

9 Q. Was there additional financing that the
10 feoffees obtained for the project?

11 A. Meaning another institution loaned us
12 money?

13 Q. Another loan, any other lender?

14 A. No.

15 Q. What were the other sources of funds for
16 the project? And by that I mean, you had the money
17 available from the bank. I presume you also used
18 rents, correct?

19 A. We had an assessment to do preliminary
20 studies with Graham, that amounted to \$100,000.

21 Q. Oh, okay. So you assessed the tenants,
22 correct?

23 A. A thousand dollars apiece.

24 Q. Okay.

1 And were any of their rents applied to
2 the project?

3 A. No.

4 Q. Okay.

5 A. That, that assessment, it was understood
6 that that assessment would be given as a credit to
7 the residents that actually spent, gave the thousand
8 dollars to us separate.

9 That would then be rolled into the final
10 loan.

11 Q. Okay.

12 A. Now, whether it's been rolled into the 66
13 million now, I don't know, but Pio had nothing to do
14 with that.

15 We had a lot of work to do to satisfy
16 the DEP.

17 Q. Sure.

18 At some later point, there was also a
19 betterment assessed against --

20 A. That would be the betterment.

21 Q. That's the same?

22 A. The same thing.

23 Q. And were there later assessments? In other
24 words, once the project, or at a certain stage, were

1 the tenants informed that each house was going to be
2 responsible for an additional assessment?

3 A. I don't, I don't remember that to be the
4 case, no.

5 Q. So your testimony is that to the best of
6 your knowledge, the two sources of funding for the
7 wastewater project were one, the \$6.4 million from
8 the bank, and two, the hundred thousand dollar
9 assessment from --

10 A. Whatever. Whatever that, whatever the
11 total amount was. Not everybody ponied up the
12 money.

13 Q. Okay. But your best memory now is that it
14 was about \$100,000?

15 A. Yes. I'm going on the basis of Graham's
16 invoices.

17 Q. Okay.

18 How much of the financing, the 6.483
19 million and whatever the assessment was, how much of
20 it was actually used in the course of the project;
21 was it exhausted?

22 A. I'm not sure what is left. I think there
23 are some contingency funds available. The project
24 is not completed.

1 Q. Is that retainage and the like?

2 A. Retainage. What do you mean by
3 "retainage"?

4 Q. By "retainage" I mean an amount that an
5 owner in a construction project holds back or
6 retains, pending completion of the project. And
7 then after substantial completion of the project or
8 some other time the owner agrees, the amount is
9 released?

10 A. I would have to say in Pio's way of doing
11 business, these were contingencies that he built
12 into everything that he did.

13 Ultimately, some were used and some were
14 not.

15 Q. So in other words, Pio assumed that costs
16 might exceed what was budgeted, and he built those
17 into the budget?

18 A. Yes.

19 Q. And the funds that would have been used to
20 cover additional unanticipated expenses, but that
21 hadn't been spent, remained somewhere?

22 A. Yes.

23 Q. And would that be in the feoffees' bank
24 accounts, or is that your relationship with the

1 bank, a line of credit; how does that work?

2 A. Well, I never got involved with the line of
3 credit, because that was after me.

4 Q. Okay.

5 A. But I would have to say it was a
6 construction type loan.

7 Q. Okay.

8 A. And no bills were paid until the engineers,
9 the engineering firm that the residents hired,
10 independent of Pio, was the same engineering firm
11 that was used as a consultant to the bank.

12 Q. And you mean Weston and Samson, correct?

13 A. Weston and Samson.

14 Q. So it's your understanding, you were
15 anticipating where I was going, it was your
16 understanding that Ipswich Cooperative Bank hired
17 Weston and Samson to consult with it?

18 A. Absolutely.

19 Q. And did you understand that the
20 consultant's job was to advise the bank as to
21 whether or not to make payments to the feoffees,
22 which would then be paid to Lombardo Associates?

23 A. Yes.

24 Q. Okay. Let me ask you to refer back to

1 Exhibit 2.

2 Are you familiar with the terms of the
3 contract between the feoffees and Lombardo
4 Associates?

5 A. Am I --

6 Q. Familiar with the terms of the contract
7 between the feoffees and Lombardo Associates?

8 A. Terms being what?

9 Q. What's in Exhibit 2?

10 A. As this is, as this has been scope of work
11 of the contract, yes, I did understand it.

12 Q. Okay.

13 A. I understand it very well.

14 Q. Okay, let me ask you to look back at
15 Exhibit 1 for a second, which is the answers to
16 interrogatories, and I am going to -- do you have
17 those in front of you? I am going to direct your
18 attention to Page 3, the answer to Interrogatory
19 Number 6, Item 3. The question that is being
20 answered here is, "Who has information that the
21 feoffees may use, and what is the subject of the
22 information?" And the answer given is that "Donald
23 F. Whiston," you, "has information about some of the
24 contracts related to the project and the

1 relationship between the feoffees and the
2 Plaintiff"; is that right?

3 A. That is true, right.

4 Q. So are you, perhaps, even the person at the
5 feoffees who knows about the relationship between
6 Lombardo and the feoffees?

7 A. Yes.

8 Q. Okay.

9 Now, returning to Exhibit 2, which is
10 the contract.

11 A. Right.

12 Q. Is there anything in the contract, as far
13 as you understand it or you understand the
14 relationship between Lombardo Associates and the
15 feoffees, that makes the approval of Ipswich Bank,
16 or Weston and Samson, a condition precedent to
17 payments to Lombardo Associates? Is that a clear
18 question? It might have been a little convoluted,
19 so let me try again.

20 A. Yes.

21 Q. You told me about that you understand that
22 Weston & Sampson's job was to advise or consult with
23 the bank as to whether it should pay money to the
24 feoffees, to be paid to Pio Lombardo, correct?

1 A. Right, right, right. That was the demands
2 put on the project by the bank before they would
3 lend any money to us, the two banks.

4 Q. What's the second bank?

5 A. The Newburyport Savings.

6 Q. Okay.

7 So let's go back a second, because first
8 you've told me, I think, that the two sources of
9 funding that you were aware of, were the 6.8
10 million from Ipswich Cooperative Bank, and the
11 \$100,000 --

12 A. Yes. I didn't understand your question,
13 but the answer to that question, in line with that,
14 would be it would be a participating loan with
15 another bank.

16 Q. I see.

17 A. And the head, lead bank would be the
18 Ipswich Cooperative Bank.

19 Q. And then they sold the participation
20 interest to --

21 A. I assume so. I have been in banks before,
22 and I know how it works, but I don't know what the
23 relationship was.

24 Q. Okay, fair enough. But as far as the

1 feoffees were concerned, the lenders were Ipswich
2 Cooperative?

3 A. Absolutely.

4 Q. Now, in Exhibit 2, the contract between the
5 feoffees and Lombardo Associates, is there any term
6 of that contract, or any term of the relationship
7 that you know of, that made the feoffees' obligation
8 to pay Lombardo Associates for work performed,
9 contingent on Ipswich Cooperative Bank's approval of
10 the amount, or the propriety of the payment?

11 A. I had nothing to do with it.

12 Q. I'm sorry?

13 A. I had nothing to do with -- the bank would
14 never get anything until we actually agreed that the
15 work had been done and that we were willing to pay
16 for it.

17 And there is a period, obviously, which
18 is under question here, and that's why I am here and
19 I wasn't privy to it, but I know what it was all
20 about, because there were a lot of projects --
21 problems with the project.

22 Q. Okay.

23 So if I understand you correctly, the
24 feoffees would first agree with Lombardo Associates

1 that the payment, the request for payment was
2 correct, and that the payment ought to be made?

3 A. That is correct.

4 Q. And then at that point, Weston & Sampson
5 would --

6 A. Approve the, would approve that particular
7 portion. If you, if you look at all the bills that
8 had to be paid in one of these exhibits, the
9 monthly, I mean, one after another, and all of these
10 types of things which were -- I have a file at home
11 and I can't wait to get rid of.

12 Q. I'm sure.

13 A. But basically, it comes down to -- really
14 what it comes down to is that 90 percent of the
15 bills that were presented to us by Pio, whether they
16 were questioned by me or not, were submitted to the
17 bank for payment. And they interpreted the work was
18 done, and they paid them.

19 Q. If you and Lombardo Associates, by "you," I
20 mean the feoffees, had agreed that a bill ought to
21 be paid, and it had then gone to the bank and the
22 bank said, "No, we don't think it should be paid,"
23 is it your understanding that the feoffees,
24 nevertheless, would have been obligated to pay?

1 A. Absolutely. We would have taken their
2 advice, however, and for the reasons they didn't
3 think so. And more likely we would discuss it
4 before any check was made.

5 Q. Okay. So you might have taken a second
6 look, in other words?

7 A. Absolutely.

8 Q. But you agree with me, fundamentally, your
9 obligation to pay Lombardo Associates is not
10 dependent on whether the bank thought it ought to be
11 paid or not?

12 A. Yes.

13 Q. Okay, that's the point I am trying to make,
14 fair enough.

15 Do the feoffees keep cash on hand in any
16 significant amount?

17 A. Not really, no.

18 Q. Okay.

19 A. They, the business is run as a cash
20 business, and the balance in the checking account is
21 really just for operating expenses that we need.

22 Q. Okay.

23 A. Any monies over and above that is escrowed
24 into an account to pay the real estate taxes and to

1 pay other bills that we have. We did have reserve
2 accounts for various capital improvements we wanted
3 to make over the years.

4 Q. Okay. And that is the source of the money,
5 then, that goes to the schools?

6 A. The formulas that -- we charge reasonable
7 rents on fair market value of the property, the
8 land. And that, that rent is determined by, by
9 evaluations by independent realtors and so forth,
10 real estate companies.

11 The expenses are paid for on a cash
12 basis for bills submitted, and after expenses,
13 what's left over, the school committee expects to
14 have. So we should zero out, for instance, June
15 30th, every year.

16 Q. And you make an annual payment to the
17 schools?

18 A. Make an annual payment to the school.

19 Q. And in the course of the year, presumably,
20 the cash is building up in the account, such that at
21 the end of the year it will be available, right?

22 A. That is correct. And it might be available
23 at times when they had something special they needed
24 or wanted to do, we have always accommodated the

1 schools on that basis.

2 Q. So I guess my question earlier as to
3 whether the feoffees kept cash on hand might not
4 have been clear. There is a bank account somewhere
5 that has money that is being saved up to go to the
6 schools at the end of the year?

7 A. Oh, yes. It's in a separate account or CD;
8 it's invested. Any surplus money that we don't need
9 for everyday use.

10 Q. Is invested?

11 A. Is filled into that.

12 Q. Okay. And once it's invested, is it still
13 available to the feoffees? So for example, if there
14 was some sort of hurricane or some major expense,
15 would the money, essentially, already have been
16 given to the schools just by having been invested,
17 or is it still available to the feoffees for their
18 uses if something comes up?

19 A. Well, that's a pretty broad question in
20 light of what has just happened to us. But in
21 answer to you, about once the money has been given
22 to the school, it's gone.

23 Q. And that happens on June 30th, when you --

24 A. Sometime during that period of time.

1 Generally, the program always was the
2 annual meeting of the feoffees of the grammar
3 school, which was a public meeting, was generally in
4 January or February, and by that time we would know
5 where we were at.

6 The real estate taxes -- this is a
7 complicated thing.

8 Q. Yes?

9 A. We are talking about.

10 Q. Yes, yes.

11 A. The real estate taxes are collected in
12 conjunction with the rents.

13 Q. Okay.

14 A. That is put aside, because four times a
15 year we have to pay the real estate taxes, which we
16 have received from each of the tenants, plus the
17 real estate taxes that are imposed upon us for
18 common grounds, docks, buildings.

19 Q. Et cetera?

20 A. Et cetera.

21 Q. Okay.

22 MR. FOLKMAN: I'm going to ask the
23 reporter to mark this as Exhibit 3, I think.

24 (Marked, Exhibit 3, e-mail dated

1 2/3/06.)

2 Q. I am first going to represent to you that
3 this is a document that your lawyers have provided
4 to me and told me has, I believe, comes from the
5 files of the feoffees.

6 Have you ever seen this document before?

7 A. February '06?

8 Q. Right.

9 A. I have never seen this.

10 Q. This appears to be an e-mail from Mr.
11 Hunter, who said, who you said worked with the bank.

12 A. He is the lending officer at the bank.

13 Q. To Mr. Mulholland and Donald, is it
14 Greenough?

15 A. Don Greenough is our attorney.

16 Q. And "our," the feoffees?

17 A. Feoffees. The attorney for the feoffees.

18 Q. Did you ever speak to Mr. Mulholland or Mr.
19 Greenough about the matters discussed in Exhibit 3?

20 MS. STEIN: I am going to object to
21 asking about conversations he had with Mr. Greenough
22 who is an attorney to the feoffees.

23 MR. FOLKMAN: That's fine.

24 Q. So did you ever discuss this with Mr.

1 Mulholland?

2 A. I am going to discuss it?

3 Q. Did you ever discuss it with Mr.

4 Mulholland?

5 A. If I -- I wasn't even in this part of the
6 country.

7 Q. Okay.

8 By that you mean, you were traveling in
9 February of '06?

10 A. Yes.

11 MS. STEIN: Could I just clarify, when
12 you say "this," you mean this e-mail in particular
13 or the subject of the e-mail?

14 MR. FOLKMAN: Subject of the e-mail.

15 Q. So my question, so it's clear, did you ever
16 discuss, not the e-mail itself but the substance of
17 what it said, with Mr. Mulholland?

18 A. No.

19 Q. How about with the other feoffees?

20 A. No.

21 Q. It appears to me that what Mr. Hunter is
22 expressing in this e-mail is what he regards as
23 excessive engineering bills relating to the project,
24 correct?

1 A. Uh-huh, yes. It would be very clear.

2 Q. And engineering bills, meaning the bills of
3 Lombardo Associates?

4 A. Absolutely.

5 Q. Were you aware, at all, in the period of
6 about February of 2006, that the bank believed that
7 some of the engineering bills were excessive?

8 A. No.

9 Q. I understand that the feoffees' position is
10 that all of the bills, Lombardo Associates' bills,
11 up to the summer of 2006, were proper and were in
12 fact paid, correct?

13 A. I understood that, yes.

14 Q. And so the feoffees don't take the position
15 that the bills in February of '06 were excessive or
16 shouldn't have been paid?

17 A. I can't answer that, no, I don't know.

18 Q. You don't know whether the feoffees ever
19 took that position?

20 MS. STEIN: Object to the form of the
21 question.

22 MR. FOLKMAN: Okay, why don't I try the
23 question again. Make sure it's clear.

24 Q. Am I correct that the feoffees have never

1 taken the position that Mr. Lombardo's, rather
2 Lombardo Associates' bills from the period of about
3 2006 and prior, were somehow excessive or shouldn't
4 have been paid?

5 A. I think there was always times when it was
6 questionable.

7 Q. But, ultimately, the feoffees were
8 satisfied, right?

9 A. Ultimately, because basically it would be
10 me questioning them prior to '04. And I had spoken
11 to Pio about things that I observed that I didn't
12 feel it was necessary to charge us for that.

13 Q. Okay.

14 A. And in some cases Pio reversed the
15 situation and said, "Okay."

16 Q. But ultimately, all of the bills prior to
17 the summer of 2006 were resolved and paid --

18 A. Evidently.

19 Q. -- to your satisfaction?

20 A. To my satisfaction, because I wasn't
21 involved in this at all (indication).

22 Q. So your satisfaction at least up to the end
23 of 2004, right?

24 A. Exactly, right. But this is '06. This is

1 when Mulholland, who is a licensed engineer, who
2 could understand the way things worked, took over.
3 He was the chairman.

4 Q. And he -- Okay.

5 A. And he was the one, he and Foley were the
6 ones that were really running the place down there.

7 Q. Okay.

8 But you understand, don't you, that the
9 feoffees eventually paid Mr. Lombardo's charges for
10 this period?

11 A. As far as I know. I do not know.

12 Q. And it's certainly not something you would
13 have countenanced if you didn't believe the bill
14 should have been paid, right?

15 A. I mean, if Hunter was writing that letter
16 to "Dear Don," I would have a lot of information to
17 say that, you know, Hunter, you know, basically I
18 don't believe that, all that. I don't know how they
19 resolved it. I have no clue how they resolved it.

20 Q. But you're sure, but my question is, in
21 your view the --

22 A. It seemed likely that we never withheld
23 anything from Pio. We may have had him rewrite how
24 it was to be, not in that particular type of bill,

1 and say, hey, wait a minute, what is it for, and get
2 an answer, that some portion of this should have
3 been paid. I don't know that, but I mean, that's
4 not illogical to do.

5 Q. Sure.

6 And based on what you told me earlier,
7 the very beginning, about the responsibilities of a
8 feoffee, certainly none of the feoffees would have
9 agreed to pay bills that they didn't think should
10 have been paid, right?

11 A. That is correct.

12 MR. FOLKMAN: I am going to ask the
13 reporter to mark this as Exhibit 4.

14 (Marked, Exhibit 4, e-mail dated
15 7/7/06.)

16 Q. I'm going to show you, Mr. Whiston, what
17 has been marked as Exhibit 4, and ask you if you
18 recognize it.

19 A. I have never seen it before.

20 Q. Okay.

21 It appears to be an e-mail from Mr.
22 Hunter to Mr. Mulholland, cc'd to Mr. Greenough.
23 And I will represent to you that it's a document
24 that your lawyers have provided to me, and I believe

1 comes from, it appears to come from Mr. Greenough's
2 files, based on the e-mail header.

3 Let's just start with some, getting some
4 names out of the way. RJV, my understanding, is the
5 contractor that was primarily responsible for the
6 collection system; is that right?

7 A. Yes.

8 Q. And Waterline was the company primarily
9 responsible for the holding tank?

10 A. Installation of that, yes, the tank, yes.

11 Q. Right. What is the loan escrow account
12 referred to in the first line of the e-mail, if you
13 know?

14 A. I don't know. It obviously, if you use
15 what an escrow account is, it's an escrow for
16 something, but I don't know what.

17 Q. Is it possible that the bank was holding
18 money and was only going to pay it out of the escrow
19 once it received invoices or other documents that
20 persuaded it that the money ought to be paid?

21 A. Possibly.

22 Q. Okay. Who would know that?

23 A. Hunter would know it.

24 Q. Is there anybody at the feoffees who you

1 think would know that?

2 A. I don't think so. I don't know, but I
3 don't think so.

4 Q. Okay. Let me direct your attention to one,
5 two, three, four, five, six, the seventh line of the
6 body of the e-mail, okay?

7 A. Yes.

8 Q. And I'm looking at the sentence that reads,
9 "Note that we have not paid Pio's latest bill or
10 paid any of the bills associated with the May storm
11 expenses," period. And then in parentheses,
12 "(including Clark's bill for emergency pumping. We
13 have no money in the budget for these expenses."

14 A. Correct.

15 Q. And there is actually no close parentheses.
16 The reporter has the document, so obviously could
17 figure it out herself.

18 What is that sentence talking about; do
19 you know.

20 A. Of course.

21 Q. First of all, the May storm was the flood
22 in May of 2006; is that correct?

23 A. That is correct.

24 Q. Now, when Mr. Hunter writes, "Note that we

1 have not paid Pio's latest bill," do you know what
2 he is talking about?

3 A. No, I really don't. I know that, I know
4 that a lot of the discussion, a lot of things were
5 happening at that particular time.

6 Q. What sorts of things?

7 A. There was some question as to whether the
8 system, as it was engineered, could handle any kind
9 of a thing like that.

10 Q. Like the storm event?

11 A. (Indication).

12 Q. You're nodding your head "yes," but you
13 have to say.

14 A. Yes.

15 Q. What other things were going on at that
16 time?

17 A. Well, I mean, obviously the system didn't
18 work.

19 Q. Because it hadn't responded, in your view,
20 adequately to the storm, okay.

21 A. It didn't work.

22 Q. Was there anything else going on at that
23 time?

24 A. No, I don't think so.

1 Q. Okay.

2 Do you have any understanding as to why
3 Ipswich Cooperative Bank did not pay Pio's latest
4 bill, as reflected in the e-mail?

5 A. No. I don't even know what the bill was
6 for. I have no idea.

7 Q. Do you know what he means, by "he means,"
8 Mr. Hunter, when he writes, "We have no money in the
9 budget for these expenses"?

10 A. You know, for the emergency situation.

11 Q. Well, I guess my question is, do you know
12 what "these expenses" mean, what they are referring
13 to?

14 A. No, I don't really know.

15 Q. Obviously, Mr. Hunter would know what he
16 meant. Is there anybody at the feoffees who would
17 know?

18 A. Well, I would think Donald Mulholland would
19 certainly know and certainly Donald Greenough would
20 know, because Donald Greenough is a director of the
21 Ipswich Cooperative Bank, so that's why he is
22 basically in the burn.

23 Q. Did Greenough arrange for the financing
24 through his relationship with the bank?

1 MS. STEIN: I am going to object, where
2 Don represents the feoffees.

3 I am going to instruct you not to answer
4 questions about communications you had with Don.

5 Q. No, I am not asking about communications
6 between you and Don regarding legal advice, I just
7 want to know whether you know Don obtained the
8 financing from the bank.

9 A. I do not.

10 Q. Did the feoffees stop paying Pio's bills
11 because the bank in some way stopped paying the
12 feoffees?

13 A. No, I would say, no.

14 Q. Did the feoffees stop paying Pio's bills
15 because the bank ran out of money on the 6
16 million?

17 A. I would say no.

18 Q. And you understand that the feoffees
19 stopped paying Mr. Lombardo sometime in 2006,
20 correct?

21 A. Correct.

22 Q. And you previously testified that you
23 retired, in your word, from your managerial
24 responsibilities with the feoffees in 2004. And

1 with respect to certain of my questions, you had
2 said that you weren't fully informed or as informed
3 as the managers were, of things that happened after
4 that retirement, correct?

5 A. Yes.

6 Q. How is it that you know that the feoffees
7 did not stop paying Pio because either the bank ran
8 out of money or the bank stopped paying the
9 feoffees?

10 A. How did I know that?

11 Q. How did you know that?

12 A. Well, first of all, this, this memo here,
13 this exhibit here, this memo, whatever it is, I know
14 nothing about the numbers on that situation.

15 Q. Sure. Would you like some water?

16 A. No, I have some. I haven't bothered to
17 drink it yet.

18 Q. You could go ahead; I'm listening.

19 A. I am still a feoffee, and I will continue
20 to be a feoffee until I resign. And I expect that
21 the other feoffees would communicate to me what's
22 going on.

23 Q. And so this is just one of the matters that
24 you were generally informed about?

1 A. I have been involved with pretty much
2 everything there is, because I am the so-called
3 guru. I know more about the place than anybody
4 else. And I have to say that Pio and I got along
5 very well. I think very highly of Pio, even though
6 we did have our differences.

7 Q. Sure.

8 A. And that's normal in a project the size of
9 this.

10 Q. Okay, sure.

11 So just to summarize, then, you don't
12 know why Mr. Hunter writes in July 2006, that the
13 bank had not paid Pio's latest bill?

14 A. No, wait a minute, now. You said July.
15 Where does July -- oh, July of '06.

16 Q. Is there a confusion about the date? Do
17 you need to --

18 A. Yes, there is a confusion about the dates,
19 because I got them mixed up with February.

20 Q. Okay. So why don't you read through the
21 e-mail again, and we will start with it, okay?

22 A. '06 was last summer, wasn't it?

23 Q. Okay.

24 A. I guess I would have to say that I do, I am

1 familiar why they didn't pay Pio in the summer of
2 '06.

3 Q. Okay. And when you say -- before I get to
4 the substance of why that is, when you say, "They
5 did not pay Pio," my understanding was that the bank
6 paid you and you paid Pio; is that not right? Did
7 the bank pay Pio directly?

8 A. Oh, no, no, no. We paid, all the bills are
9 paid by the treasurer.

10 Q. So when we say absolutely that the bank
11 didn't pay Pio, what you mean is that the bank
12 didn't pay you so you could pay Pio?

13 A. Yes.

14 Q. So with that in mind, why did you
15 understand that the bank didn't pay Pio's latest
16 bill in July of '06?

17 A. I didn't see the bills. I do believe there
18 was a question as to one, why would the bills, why
19 would they have been created. And specifically,
20 what was done.

21 And the reason that it's questionable to
22 us feoffees, was that nothing can be done from June
23 1st to after Labor Day down there. And we, the
24 feoffees, probably are, didn't pay them because we

1 didn't feel there was anything to warrant the bills
2 that he sent us.

3 Q. Okay. So is it your --

4 A. That's the dispute.

5 Q. So is it your testimony, then, that it was
6 not the bank's decision not to pay Pio's bill, but
7 it was the feoffees' position?

8 A. Absolutely.

9 Q. Even in July of 2006?

10 A. That is the period we are discussing.

11 Obviously he has been paid up through
12 then.

13 Q. And the reason, just to summarize why the
14 feoffees did not pay Pio's bill in July of 2006, was
15 that they did not believe, given that work was not
16 being done on Littleneck, in their view, that the
17 amount of work that had been done justified the
18 bill?

19 That's part of it. The other part of it
20 is that the system wasn't working. The MIS system
21 wasn't working, but we had other consultants in
22 there trying to straighten it out. I'm not sure
23 that it has been complete, and I think that for him
24 to send us bills, and we don't see any conclusive

1 work being done down there, that it was
2 questionable. It was questionable is really what it
3 is.

4 Q. Okay.

5 Did you understand -- well, first of
6 all, was the reason why work was not being done in
7 Little Neck in the summer is that the feoffees and
8 the tenants didn't want work being done in the
9 summer?

10 A. It's one of the rules and regulations. - You
11 know, they pay a lot of money to live there. They
12 don't want to have someone pounding a hammer and
13 building a porch next door.

14 Q. So the feoffees instructed Lombardo not to
15 bring heavy equipment on the --

16 A. Yes, he knew that. This is the end of the
17 project. The project is done; he never worked down
18 there. He would be able to do certain things with
19 contractors and so forth, outside the realm of
20 having equipment down there.

21 Q. Do you know the name Kevin McElihney?

22 A. Yes, I do.

23 Q. Who is Kevin McElihney?

24 A. Yes. I only know him by name, but I

1 believe he worked for Pio.

2 Q. Do you know in what capacity?

3 A. I don't know.

4 Q. Do you know how senior was he in Pio's
5 organization?

6 A. I don't believe he was in Pio's
7 organization, per se. I believe he was a consultant
8 to Pio.

9 Q. And do you know the name of David VanHoven?

10 A. No, that one doesn't ring a bell with me.

11 Q. Do you know whether Lombardo Associates
12 assigned Mr. Lombardo or anyone else to be on-site
13 in July of 2006?

14 A. I don't know. It's conceivable that it
15 could be, but if it was, nothing was getting done.

16 Q. Okay. So in other words, you didn't see
17 tangible work being done?

18 A. Well, I wouldn't anyway.

19 Q. Or the feoffees --

20 A. I would have to say no, there was no
21 tangible work.

22 Q. And do the feoffees know whether it was
23 people from Lombardo Associates, whether it was
24 employees or associates to Lombardo Associates,

1 on-site in the summer of 2006?

2 A. I don't know that. I would think they
3 would have had to have been, because the thing
4 wasn't working.

5 Q. Okay. And do you have any sense of what
6 the charge for Lombardo Associates' personnel's time
7 was in 2006?

8 A. I have no clue.

9 Q. So you don't know the hourly rates, for
10 example?

11 A. No.

12 Q. Do you know anything about the industry
13 practice as to assigning a senior person to be in
14 the field, versus, say, assigning two junior people
15 being in the field?

16 A. I don't know what the practice is.

17 Q. Do you know who in the feoffees would know
18 that?

19 A. I would have to say if anybody understood,
20 it would be Mulholland.

21 Q. And that's because he is an engineer
22 himself?

23 A. Yes. He did construction; he did sewer
24 lines. He has been in the business. Not now, but

1 he has been.

2 Q. Okay. My understanding is that the project
3 was extended for a total of about 16 months over
4 what was originally budgeted. Is that consistent
5 with your understanding?

6 A. It probably was, because of a lot of other
7 things that the DEP was requesting that Pio had to
8 take care of.

9 Q. And is it fair to expect that Lombardo
10 Associates would have personnel on-site during the
11 course of the project?

12 A. I would expect someone was on there running
13 the project. Pio was down there a lot.

14 Q. And had the feoffees, had the feoffees
15 tried to figure out what the cost, in terms of
16 Lombardo Associates' personnel time was, on account
17 of the 16 months of delay?

18 A. I -- you mention 16 months' delay. I don't
19 even know of it.

20 Q. Whatever the delay was.

21 A. Whatever it was, if there was a delay, we
22 never questioned Pio's use of his personnel or what
23 he paid them. I mean, that relationship was clean.

24 Q. Okay.

1 So I guess my question is, is it
2 possible that the reason that there were charges
3 during the summer of 2006, was on account of labor
4 costs, personnel, people who were on-site; do you
5 know that?

6 A. No, I don't know that. I can't -- how
7 could they be on-site doing anything? What would
8 they be doing?

9 Q. Do you have any idea what they were doing?

10 A. I have no clue why they would be there,
11 because the ball field which is covered over by
12 grass, is the ball field where the kids have their
13 baseball and all of that, and it's a summer colony.

14 Q. Would any of the feoffees know why Lombardo
15 Associates might have personnel on-site in the
16 summer of 2006?

17 A. I think they could have personnel on-site
18 from Waterline, as an example.

19 I think they could have some person on
20 there who is trying to straighten out the billing
21 process. We still haven't gotten that figured out
22 yet. The readings aren't coming clean.

23 Okay. And so, yes, there could be
24 someone on, but I don't think it was someone who was

1 drawing up the reports I was getting from Pio every
2 month, and all the same kinds of diagrams and
3 pictures and budgets and all that stuff.

4 Q. Okay.

5 A. I may be a banker, but I don't have time
6 for that.

7 Q. Okay. So who at the feoffees would be the
8 most knowledgeable about the following issues: who
9 Pio had on-site in 2006, in the summer, and why they
10 were there?

11 A. Oh, I would have to expect it -- Foley, the
12 manager, would certainly know. He spends his time
13 down there right now.

14 Q. Okay, let's talk about Foley a little bit.
15 What are his qualifications to manage the project,
16 so far as you know?

17 A. They are no more than yours would be. I
18 mean, it takes common sense to manage it. He has
19 been the chairman of the board of selectmen in
20 Ipswich. He is very good with budgets. He's a
21 municipal individual who understands municipal you
22 know, accounting and so forth.

23 Q. So he is a long time figure in Ipswich?

24 A. Yes. He is not very old, but he is a long

1 time figure in Ipswich.

2 Q. Okay. Is he an engineer?

3 A. No.

4 Q. Does he have any computer MIS experience?

5 A. No. Basically it has bothered us because
6 we have to go outside, and he will go outside.

7 Q. He is the manager at this time?

8 A. Yes, he is the manager.

9 Q. And he was manager back in 2006; is that
10 right?

11 A. Last summer he was, yes. He is being paid
12 by us a fairly decent wage.

13 Q. How much is he being paid?

14 A. Just an hourly wage, but it varies, because
15 he is responsible because we can't get the necessary
16 readings. Our tenants are asking us when are they
17 going to get a bill for water.

18 Q. Okay. How much is he paid per hour?

19 A. \$25 per hour.

20 Q. And approximately how many hours a week is
21 he working on that?

22 A. We don't know that. Supposedly 25 hours a
23 week, and we don't believe it. But we are not
24 paying him less than he puts in, let's put it that

1 way. That is a subject that I don't think needs to
2 go here. The fact of the matter is you asked me a
3 question, and I am giving you an answer. He does
4 know who was there and who isn't there.

5 Q. That's fair enough.

6 A. So if he's off-site with that engineer, how
7 do we know he isn't sitting at his desk down there?

8 Q. Let me ask you now, is there a dispute with
9 Foley and the other feoffees as to the amount of
10 work he is doing?

11 A. Yes.

12 Q. And the feoffees contend he claims to have
13 done work that he hadn't in fact done?

14 A. Yes. I would have to say, yes, that is our
15 problem.

16 Q. And why do you think that? Why do the
17 feoffees think that?

18 A. Because we are not getting any answers to
19 the questions.

20 Q. Okay. And so the feoffees have stopped
21 paying him?

22 A. They haven't stopped paying him today, but
23 it will be done shortly.

24 There was a lot of crucial, crucial

1 things there. This is material stuff we are talking
2 about.

3 Q. Do all of the feoffees, other than Foley
4 himself, take the view that Foley has not been doing
5 what he said he was going to be doing?

6 MS. STEIN: Object to the form.

7 Q. You could answer.

8 MS. STEIN: You could answer it if you
9 can.

10 A. What was the question?

11 Q. Do all the feoffees, other than Foley
12 himself, share the view that Foley has not been
13 working --

14 A. When you say "all of the feoffees"?

15 Q. Except for Foley himself.

16 A. What feoffees are you referring to, all
17 seven of us?

18 Q. Yes. I guess Mr. Mulholland, Mr. Foote,
19 you, Mr. McNally, Mr. Rauscher and Miss Kilcoyne.

20 A. Honestly that, the three select people on
21 it, are not aware of any of this. They have not
22 been on long enough to even understand what a sewer
23 system is.

24 Q. Okay, so let's stick with the four

1 lifetimers?

2 A. The four of us, yes, the three of us,
3 definitely know what's going on.

4 MS. STEIN: Could we take a recess for a
5 minute, please.

6 MR. FOLKMAN: Yes, sure.

7 (Off the record.)

8 Q. Before the break we were talking about Mr.
9 Foley.

10 A. Yes, yes, we were.

11 Q. Does Mr. Foley have any responsibility for
12 determining the cause of the holding tank leak
13 problem that I understand exists now?

14 A. Does he have any responsibility?

15 Q. For helping to determine the cause of that.

16 A. Well, he has been actively working with it
17 for some time.

18 Q. Because he's the manager?

19 A. Yes.

20 Q. And does he have responsibility for
21 determining whether or not Lombardo Associates'
22 invoices from, that involve work in the period of
23 the summer of 2006, ought to be paid?

24 A. I have no clue; I don't know.

1 Q. Do the three of the lifetime feoffees,
2 excluding Mr. Foley, believe that Mr. Foley has the
3 qualifications necessary to handle the, the process
4 of investigating the holding tank problem?

5 A. I don't, I don't -- give me that question
6 again.

7 MR. FOLKMAN: Could you read it back?

8 (Read back.)

9 A. The answer is no.

10 Q. Why do you think that?

11 A. I just think it's too complicated for him
12 to understand it.

13 Q. Is that because he is not an engineer?

14 A. I don't think necessarily that's the case,
15 no.

16 Q. So why is it that --

17 A. Well, I mean, if you have an automobile and
18 it's not running, and basically you don't know how
19 to fix it, so basically you've got a problem,
20 haven't you? Well, you got tight tanks. I mean,
21 the holding tanks don't seem to work.

22 He does know how to, to alleviate a
23 problem, mechanically, to get him to the next level.
24 Because the tanks, for some reason, whatever the

1 reason is, I don't know, but they don't really work.

2 MR. FOLKMAN: Okay, can I have that
3 answer read back, please.

4 (Read back.)

5 Q. Okay, I didn't understand part of what you
6 said. He does know how to alleviate the problem
7 mechanically to get it to the next level. What does
8 that mean? You're talking about car mechanics,
9 or -- I am just confused.

10 A. I don't know how deep I have to go. Even
11 I, as a banker, knows what the problem is.

12 Q. So what is the problem?

13 A. It doesn't take much of a -- water gets
14 into the tanks. Water gets into the tanks. And
15 when water gets into the tanks, you've got to pay to
16 get it out.

17 Okay. Now the reason why, the reason
18 that this is the problem is that the rainstorms we
19 get, and we don't have ground that absorbs anything,
20 it has to run off. And when it runs off, where does
21 it go? It goes into a path of least resistance,
22 which is the trenches that the engineers put down in
23 the roads to collect, with the pipes, to collect all
24 the residue from all the houses.

1 So what happens is, the tanks are
2 sitting in stone, and when the stone, when all the
3 water from the Neck, and it's a drumlin, it's like
4 this (indication), and when all the water gets down
5 to the ball field, it comes high enough so that it
6 goes into the tanks. Now, he knows what the problem
7 is.

8 Q. "He" being Foley?

9 A. And I do, and so do the other feoffees; we
10 understand what the problem is.

11 Q. Okay.

12 A. Now the question is, why does this happen?

13 Q. Yes.

14 A. Now, when you have groundwater building up
15 and it gets to a certain point, now it goes into the
16 tanks. These are big tanks. And that's what
17 happened in the storm, the original May storm. I
18 mean, they pumped and pumped. Trucks were going
19 back and forth there, just getting the water out of
20 the tanks.

21 Q. Yes.

22 A. Because it was a flaw in either the design,
23 in the engineering, or somewhere there was a flaw.

24 Q. So --

1 A. And so what happens when the water builds
2 up, even in a heavy rainstorm for a day or two, then
3 he has the ability to throw a switch and set a pump
4 going to drain the water from underneath the tanks.

5 Q. "He" being Foley?

6 A. "He" being Foley.

7 Q. So one of Foley's jobs is when there is a
8 lot of precipitation, is to essentially turn on a
9 pump that reduces or lowers the grounds level,
10 correct?

11 A. Yes, but that is a problem, that is a
12 problem, that where does the water go.

13 Q. Once it's pumped, you mean?

14 A. Yes. Once it's pumped out, where does it
15 go?

16 Q. I understand what you are saying. The
17 reason we got onto this topic was that I had asked
18 you why you thought Foley was not qualified to
19 manage the process of determining what was wrong
20 with the tanks.

21 A. Oh, I think that he understands what's
22 wrong; so do I. I could take Foley's job. I
23 understand how it works.

24 Q. Okay.

1 A. And I understand the methods by which he
2 could correct it.

3 Q. Okay.

4 A. But when you are dealing with water that is
5 coming out of the ground and it's going into the
6 river, then you get involved with the conservation,
7 don't you?

8 Q. You mean the environmental laws?

9 A. The environmental. Jesus, one thing leads
10 to another.

11 Q. All right. Let me ask you, which I am
12 going to ask the reporter to mark, I think, as
13 Exhibit 5, and just to give you a road map, we are
14 sort of going to be changing gears now, okay?

15 (Marked, Exhibit 5, e-mail dated
16 2/24/06.)

17 Q. I'm going to show you what has been marked
18 as Exhibit 5, Mr. Whiston, and ask you if you
19 recognize it?

20 A. It's interesting when you see these
21 documents, that my name doesn't appear on any of
22 these, on any of these e-mails or whatever they are.

23 What is he talking about?

24 Q. My question to you is, do you recognize the

1 document?

2 A. No.

3 Q. Okay. Take a look at Page 2, please. I am
4 going to represent to you that this is a document
5 that your lawyers provided to me, and it appears,
6 based on the, the e-mail, having come from Mr.
7 Greenough's files.

8 You see at the bottom of the page,
9 "Respectively, Tom Allen."

10 A. Bottom of the page?

11 Q. Bottom of the Page 2.

12 A. Oh, I see, yes.

13 Q. See where I am?

14 A. Yes.

15 Q. Okay. So it appears to me, and tell me if
16 you agree this is reasonable, that from about the
17 middle of Page 1 to the end of the document, is an
18 e-mail from Mr. Allen to Mr. Mulholland. Does that
19 look right to you?

20 A. Okay. So that this is -- okay, all right.

21 Q. You see where I am? Does that look like
22 what this document is, the beginning where it says,
23 "Forwarded message down"?

24 A. Yes. So this is -- okay, well, let me read

1 it, because I have never seen it.

2 Q. Sure.

3 Have you had a chance to read that?

4 A. Yes, I have read it.

5 Q. Okay. It seems to me this is an e-mail
6 from Mr. Allen to Mr. Mulholland, essentially
7 complaining about the fact that the estimated cost
8 of the sewer system, capital costs, more or less
9 doubled between 2004 and 2006; is that fair?

10 A. That is what it says.

11 Q. And Mr. Allen, we know from earlier in the
12 deposition, is one of the two tenant activists, so
13 to speak, correct?

14 A. Yes.

15 Q. Okay.

16 Above the e-mail from Mr. Allen there is
17 an e-mail, what appears to be an e-mail from Alex
18 Mulholland to Pio that says, "We'll probably need to
19 be able to defend this at the annual meeting on
20 Tuesday."

21 A. Right.

22 Q. Is that right?

23 A. I guess so, yes, it's there.

24 Q. Now, what annual meeting is this referring

1 to? Is this the annual meeting of the feoffees?

2 A. That's correct.

3 Q. And were you at that meeting?

4 A. This is '06. I've got to keep thinking
5 about that. I would say, no, I was not at that
6 meeting.

7 Q. Okay.

8 Do you know whether the feoffees
9 prepared some sort of response to justify the
10 increase in cost?

11 A. I don't know. That was -- no, I don't know
12 that, no, I don't.

13 Q. Okay. Who would know that?

14 A. No one.

15 Q. I'm sorry?

16 A. No one would know if the feoffees prepared
17 a response.

18 I don't know; let's put it that way.

19 Q. But one of the other feoffees might, you
20 just can't say which?

21 A. This is so ludicrous, you know,
22 unbelievable.

23 MS. STEIN: If you don't know the answer
24 to a question....

1 THE WITNESS: I know the answer, but I
2 don't know how to answer, because I don't know who
3 got the thing in the first place.

4 MS. STEIN: If you don't know just say
5 you don't know.

6 Q. If you don't know --

7 A. I don't know. I don't know. I don't know.

8 Q. At any other time, aside from this annual
9 meeting that is referred in to in the e-mail, did
10 the feoffees attempt to justify to any of the
11 tenants, the increased cost of the project?

12 A. I would say -- at any other time did they
13 try to justify it?

14 Q. As far as you know.

15 A. As far as I know, I don't think we ever
16 bothered to try to justify it. We knew \$22,000
17 didn't represent anything more than what a tight
18 tank was going to cost, and that is the basis for
19 that 22,000. Couldn't do the project for, you know,
20 22,000 a person.

21 Q. Okay. Now, sometime in 2006, I think
22 actually the late summer of 2006, the tenants
23 threatened to stop paying real estate taxes, and to
24 stop paying for the containment system.

1 Did that threat ever get carried out?

2 A. Give me the question again. I'm trying to
3 get to know why you need that information.

4 MR. FOLKMAN: Could you read it back?

5 (Read back.)

6 A. In part, yes.

7 Q. Okay. So some tenants withheld taxes and
8 their assessed costs of the system, right?

9 MS. STEIN: Object to the form of the
10 question.

11 Q. You can answer.

12 A. What?

13 MS. STEIN: You could answer it.

14 A. They refused to pay the real estate taxes
15 and refused to pay the rent. It had nothing to do
16 with the sewer system.

17 Q. Okay. So no tenant refused to pay whatever
18 you were assessing them for, the wastewater system?

19 A. We didn't even know what we were going to
20 be doing then.

21 Q. So at that point, you hadn't begun to
22 assess them; is that right?

23 A. They -- no, they have never been assessed
24 for any of the cost of the sewer system.

1 Q. Okay, aside from the \$100,000 betterment
2 that we discussed earlier?

3 A. Yes, but that was paid the pre-engineering.
4 It was supposedly to wrap up into the loan, and may
5 be in the loan, as I told you before.

6 Q. I understand.

7 How many of the tenants, roughly, was it
8 a lot of tenants, new tenants, withheld money?

9 A. I would say a lot of them did.

10 Q. Of course the feoffees, as the owners of
11 property, were still obligated to pay the taxes,
12 right?

13 A. Absolutely.

14 Q. Did the -- I don't know what to call it,
15 the rent strike, the withholding of money, crimp the
16 feoffees' operating budget?

17 A. Absolutely.

18 Q. Seriously?

19 A. No, not seriously, because we had prepared
20 for it.

21 Q. Did it affect --

22 A. But no income. We had to take it from
23 other reserves that we had.

24 Q. Did it affect your ability to make payments

1 to vendors, to contractors, et cetera?

2 A. No.

3 Q. Is the fact that tenants withheld money
4 from you, feoffees, at all related to the failure of
5 the feoffees to pay Mr. Lombardo's invoices?

6 A. You've got to say that again.

7 MR. FOLKMAN: Could you repeat it,
8 please.

9 (Read back.)

10 A. No, not to my knowledge.

11 Q. Okay.

12 MR. FOLKMAN: Give me a minute. These
13 papers have gotten a little jumbled.

14 Q. Who is Natalie Miller?

15 A. I have no knowledge.

16 Q. Excuse me?

17 A. I don't know. I have never heard the name
18 before.

19 Q. You don't know if you have ever spoken to
20 anybody by that name?

21 A. What's the name?

22 Q. Natalie Miller.

23 A. Who is she?

24 Q. Well, she is a reporter for the Ipswich

1 Chronicle.

2 A. Well, I never talked to the press.

3 Q. Okay, let me show you what I am going to
4 have the reporter mark as Exhibit 6.

5 MR. FOLKMAN: I think we are at 6; is
6 that right?

7 THE REPORTER: Yes.

8 MR. FOLKMAN:

9 (Marked, Exhibit 6, photocopy of a
10 newspaper article.)

11 Q. I'm showing you what has been marked as
12 Exhibit 6, Mr. Whiston, and I ask you if you could
13 recognize it?

14 A. I don't -- well, I probably read it in the
15 Chronicle.

16 Q. You read the Chronicle regularly?

17 A. Hardly. Nothing in it.

18 I have been crucified so much by the
19 newspaper here in the last five years. For what, I
20 don't know. It took me a day in Boston.

21 Q. Have you had a chance to read that?

22 A. I'm reading it now.

23 Q. Oh, I'm sorry, I thought you looked up.

24 A. I'm reading it now. I'm reading it now. I

1 don't quite understand it, but I'm reading it.

2 But....

3 Well, what do you want me to say? What
4 is the question?

5 Q. My question is, do you recognize it; have
6 you ever read it?

7 A. Obviously, I am reading something that was
8 in the paper. It doesn't mean that I believe it. I
9 do recognize that that was in the newspaper.

10 Q. Okay. I'm going to read just a couple of
11 sentences from it. "Long time feoffee, Donald
12 Whiston, said that what Lombardo is suing for is the
13 remaining balance on the over \$7 million project.
14 He said that the feoffees were paying off the cost
15 of the project, but had to stop payments due to the
16 other lawsuits on the table.

17 It's not a problem," said Whiston, "but
18 in light of everything else that is going on, it is
19 a problem." He also said the 297,445 may not even
20 be the right balance, but it is probably close. "It
21 has to be worked out," he said.

22 First of all, are you quoted on the
23 article?

24 A. Well, I don't know what the question was

1 that she asked me. I never, ever, ever, said that
2 the project was a \$7 million project, because I
3 don't know what it is even today.

4 Q. Okay.

5 A. So what you read is what I get all the time
6 reading the newspaper, in particular the Ipswich
7 Chronicle. They just misquote you on numbers and
8 everything else.

9 Q. You believe you were misquoted?

10 A. I believe I was misquoted. Yes, I would
11 believe I was misquoted. I recognize the \$297,000
12 bill. I recognize that.

13 Q. What do you mean you recognize it?

14 A. I know this is what the suit is all, this
15 is what you are here, that is what I am here for,
16 isn't it?

17 Q. Well, my question is -- well, let me ask
18 you a more specific question. You are quoted as
19 saying that the feoffees were paying off the cost of
20 the project, but had to stop payments due to the
21 other lawsuits on the table.

22 A. That is not correct.

23 Q. You never said that?

24 A. I told you just in the questioning before,

1 that we never failed to pay the costs of any of the
2 projects that Pio had put together. Pio's bills had
3 been paid.

4 Q. My question is, is that you never said,
5 your testimony is that you never said to Natalie
6 Miller, that the feoffees had been paying off the
7 costs of the project, but they had to stop payments,
8 due to other lawsuits on the table?

9 A. What does that really mean? It means that
10 we have paid our bills from day one. We have been
11 paying off the cost of the project. I don't think
12 there is anything wrong with that.

13 Q. Did you have to stop payments due to other
14 lawsuits on the table?

15 A. No, we did not.

16 Q. Did you ever say that you did to Natalie
17 Miller?

18 A. I don't know what I said to Natalie Miller.

19 Q. Okay, I'm just trying to get -- basically
20 what I'm trying to get at is whether you are
21 correctly quoted here. In other words --

22 A. I would say I am incorrectly quoted on the
23 whole thing, but I don't know what the context of
24 the questions were.

1 Q. So do you know-- let's be very specific.
2 Do you know whether you said to Natalie Miller that
3 the feoffees had to stop payments, due to the other
4 lawsuits on the table?

5 A. No, I do not know that.

6 Q. Okay. Are you testifying that you did not
7 say it or are testifying that you simply don't
8 recall saying it?

9 A. I don't recall saying it.

10 Q. Is it your testimony that you may have said
11 it but you just don't recall?

12 A. Yes, I would say that would be true.

13 Q. Okay.

14 Let me ask you about another quote. You
15 are quoted saying, "\$297,445 may not even be the
16 right balance, but it is probably close." Did you
17 say that?

18 A. I probably did.

19 Q. And what did you mean by it?

20 A. I meant that I did not have an up-to-date
21 number.

22 Q. Okay.

23 A. I don't know where she got the number,
24 because I didn't have the number.

1 Q. Okay.

2 A. But it does sound like it was reasonable,
3 let's but it put it that way.

4 Q. "Reasonable" meaning that is the amount the
5 feoffees owed to Mr. Lombardo or Lombardo
6 Associates?

7 A. I imagine I would recognize it as being
8 bills that weren't paid. That's what we are talking
9 about. This 297 is what we are paying, what we are
10 talking about right here today, aren't we?

11 Q. Well, let's stick with my questions.

12 You're quoted as saying, quote, "It's
13 not a problem, but in light of everything else that
14 is going on, it is a problem." Is that a true
15 quote?

16 A. Everything is a problem. Yes, it is a
17 problem. Yes, it is a problem. Everything is a
18 problem down there.

19 Q. My question is, is that a correct quote?

20 A. Probably is, yes.

21 Q. And did you mean by that, that Lombardo,
22 the feoffees would like to pay Lombardo, but they
23 can't, because of what is going on with the tenants?

24 A. Well, I suppose that would be

1 interpretation.

2 Q. Is that a correct interpretation?

3 A. I would have to say no, because there never
4 was a time where we never, ever were not going to
5 pay Lombardo. Even previous to this we questioned
6 some of his bills. We always agreed to pay him.

7 Q. Okay. And my question is, as of March
8 2007, and this article is dated March 2nd, 2007, so
9 I assume that you spoke with Miss Miller sometime
10 just prior to that -- by the way, you don't recall
11 speaking with her, right?

12 A. I do not.

13 Q. Okay. So as of approximately March 2007,
14 did the feoffees believe that they owed \$297,445?

15 A. I don't know that I said that.

16 Q. I'm asking you now whether you -- at the
17 time, the feoffees believed that?

18 A. March of 2000 --

19 MS. STEIN: Object to the form of the
20 question.

21 A. What?

22 MS. STEIN: You can answer it.

23 Q. Let me restate the question. Did the
24 feoffees believe in March of 2007, that they owed

1 Lombardo Associates 229,445 or thereabouts?

2 A. I don't remember. The problem I have here
3 is that in March of 2007, I don't even know how I
4 even talked to her, because I was in Florida. My
5 wife was in the hospital down there, March and
6 April. So I don't even know what, where -- I know
7 she couldn't find me in Florida, even though they
8 have my numbers down there.

9 So I don't know. I don't even remember
10 this.

11 Q. Okay. Well, my question is, was it the
12 case in February 2007 that the feoffees believed
13 that they owed approximately \$297,000?

14 MS. STEIN: Object to the form.

15 A. I probably said that.

16 MS. STEIN: You could answer.

17 A. I probably said that, but I don't remember
18 saying that.

19 Q. I understand. My question now is not
20 whether or not you said it, my question is, is it
21 the case that the feoffees actually believed,
22 regardless of what you said to the reporter, did the
23 feoffees in 2007, February of 2007 or thereabouts,
24 actually believe that they owed Lombardo Associates

1 297,000?

2 A. Some part of that, yes.

3 Q. Not the whole thing?

4 A. Not the whole thing. Maybe. I don't know
5 that, I don't know what the actual number was. It
6 could have been 297; it could have been 267, it
7 could have been 307, I don't know.

8 Q. But somewhere in the general area?

9 A. General area was probably a discussed
10 number.

11 Q. Okay.

12 A. In previous conversations, and I might have
13 done it on the telephone with one of the other
14 feoffees.

15 Q. Okay.

16 When -- let's see if I could finish with
17 this.

18 Okay, so I have asked these questions
19 before, but I want to make sure, rather than have
20 the reporter read everything back, that I have it
21 right.

22 Your testimony is that you never said
23 that there was an over \$7 million project, right?

24 A. No, because it couldn't be \$7 million. It

1 would have to be 6,349,000.

2 Q. So your testimony is that you didn't say
3 it?

4 A. Yes, I didn't say it. If I did, she
5 interpreted it as being just a round number and it
6 sounded better, because I didn't know; I still
7 don't.

8 Q. And it's your testimony that you may have
9 said that the feoffees had been paying off the cost
10 of the project, but had to stop payments due to the
11 other lawsuits on the table; you just don't remember
12 whether you said it or not?

13 A. I may have said it. It would be a normal
14 response to a question, "Are you paying your bills?"

15 "Well, no." We were trying to digest
16 what we had to pay, plus the fact at that time is
17 when we had to come up with -- not only did we have
18 to come up with, you know, our expenses for
19 amortizing the loan, we also had to pay the tax,
20 real estate taxes.

21 Q. Sure.

22 You understand, by the way, that by
23 March of 2007, the feoffees had already been sued by
24 Lombardo Associates, right?

1 A. What.

2 Q. Had already been sued by Lombardo
3 Associates?

4 A. I guess so. I don't know that. What I
5 read in the papers. I probably didn't know that.

6 Q. You were anticipating my question again.
7 Were you aware of the lawsuit when it was filed, in
8 other words, when it was received by the feoffees?

9 A. I'm not aware of that.

10 Q. How did you become aware of that?

11 A. I probably -- either one of the others told
12 me.

13 Q. Okay.

14 A. But I, I, I might have read it here.

15 Q. Okay. Do you have a specific recollection
16 of who might have told you or when that might have
17 been?

18 A. No, I don't, I don't have a clue.

19 Q. Okay.

20 Just to finish with this document, it's
21 your testimony that you may have said that the
22 \$297,445 may not be the right balance, but it's
23 probably close; you just don't remember whether you
24 said that?

1 A. I don't remember that, but that makes
2 sense, doesn't it, if you didn't know, it might be
3 close?

4 I knew it was a bill that was due.

5 Q. Okay, great.

6 Now, let me ask you to flip back to
7 Exhibit 1, please, which is the answers to
8 interrogatories, and take a look, please.

9 A. (Witness complies.)

10 Q. To the answer to Number 7, which appears at
11 the bottom of Page 4.

12 A. (Witness complies.)

13 Q. And just to summarize what Number 4 is
14 asking. Excuse me, Number 7 is asking. It's asking
15 you to identify people that the feoffees have made
16 statements to concerning amounts owed to Lombardo
17 under the contract, among other things; are you with
18 me?

19 A. Yes. I'm reading it.

20 I have to say I don't remember. I have
21 never spoken to anybody other than, you know,
22 tenants, obviously, but journalists, we already know
23 that.

24 Q. Okay.

1 A. But I have never spoken to anybody else
2 about this particular case at all.

3 Q. Okay.

4 A. I was disappointed.

5 Q. Excuse me?

6 A. I was disappointed, disappointed that Pio
7 would get us to this point.

8 Q. My question is, the reason why the Natalie
9 Miller article that we just looked at doesn't appear
10 in Number 7, is that simply because you don't recall
11 speaking --

12 A. Absolutely. I don't, honestly don't
13 recall.

14 Q. Did you speak with any other journalists?

15 A. No.

16 Q. As far as you know did any of the other
17 feoffees?

18 A. I don't know; I can't speak for them. I
19 mean, basically we didn't speak. We have a rule,
20 you don't speak to anybody, anybody about anything
21 that is going on, because we have litigation.

22 Q. Okay, sure.

23 And the reason there are no
24 communications indicated in the answer to Number 7,

1 regarding statements made to the tenants --

2 A. Right.

3 Q. -- is that, as you have already testified,
4 I think the feoffees made no efforts to inform the
5 tenants about the reasons for the cost increases; is
6 that a fair statement of what you said earlier?

7 A. I would have to say, yes. I don't --

8 MS. STEIN: I am going to object to the
9 form of the question.

10 MR. FOLKMAN: Okay.

11 Q. You could answer. I think your answer is
12 "yes," is that right?

13 MR. FOLKMAN: Do you want to read back
14 the question and have it one more time?

15 (Read back.)

16 THE WITNESS: Yes.

17 Q. Okay.

18 Now, what about the school? Was the
19 school interested in knowing, and by "the school," I
20 mean the school committee, were they interested in
21 knowing why there had been cost overruns?

22 A. Not to my knowledge.

23 Q. Wouldn't that have affected the amount that
24 the feoffees would have been able to give to the

1 school each year?

2 A. Yes, it would affect them very much. But I
3 was not the person who spoke to them about those
4 kind of things.

5 Q. Okay. Who would that have been?

6 A. I think probably the only person it could
7 have been would have been our attorney.

8 Q. Mr. Greenough?

9 A. Yes.

10 Q. Okay.

11 Do you know any of the members of the
12 school committee?

13 A. Of course. You can't all live in a little
14 town and not know them. No, I know them all.

15 Q. You never spoke to them about this?

16 A. No, no. They would be the last people I
17 would talk to.

18 Q. Okay, let's stick with Exhibit 1 for a
19 moment, and I would like to turn your attention to
20 Answer Number 3, Interrogatory Number 3, which
21 appears on Page 2 of the exhibit.

22 Let me ask you to just read over what
23 the question is, and then what the answer was, okay?

24 A. (Witness complies.)

1 So what's the question? I mean --

2 Q. I just wanted you to take a moment and read
3 those over. Have you done that?

4 A. I know nothing about any of it.

5 Q. Okay. I just want to make sure you have
6 had a chance to read it.

7 A. I just read the question and read the
8 answer, I didn't make the answer, no.

9 Q. My question is, to you is, just did you
10 read them?

11 A. Yes. I am just reading them now.

12 Q. I understand that even though you are the
13 person who signed the interrogatories, you are
14 saying you have no personal knowledge of the answer;
15 is that right?

16 A. No.

17 Q. As I understand what the answer says, the
18 feoffees have not yet determined who, if anyone, is
19 at fault for the leaking holding tanks; is that
20 correct?

21 A. I guess that is probably correct. I don't
22 know that, but that is what it says here.

23 Q. And that's the best of your understanding?

24 A. Yes.

1 Q. No one has told you that anybody has been
2 blamed, right?

3 A. Right.

4 Q. And is it also your understanding that the
5 feoffees don't know whether Lombardo Associates,
6 Inc. acted negligently somehow with respect to the
7 holding tanks?

8 A. I don't know that.

9 Q. Okay. So as far as you know, nobody has
10 ever said that to you, right?

11 A. Nope.

12 Q. So just so I understand the feoffees'
13 position here, one of the reasons that the feoffees
14 have not paid Mr. Lombardo's, I mean, Lombardo
15 Associates' bills, is that there is a problem with
16 the holding tanks, correct or not --

17 A. I think this is the answer to it right
18 there. That paragraph is the answer to it
19 (indication).

20 Q. That's fine. I'm asking you now for your
21 understanding?

22 A. My understanding is no different than what
23 this says. I don't really know.

24 I know what the problem is. I know the

1 MIS system, the billing system isn't working,
2 because I listen to that all the time.

3 Q. And is that one of the reasons that the
4 feoffees have not paid Mr. Lombardo's bill?

5 A. Yes. I would have to say yes.

6 Q. And the feoffees have taken that position,
7 even though we have just discussed the feoffees, so
8 far as you have determined the -- Lombardo
9 Associates did not do anything wrong, correct?

10 A. I would say.

11 Q. And it's your view, or that the feoffees'
12 view, that it is appropriate not to pay bills, based
13 on a suspicion that somebody may have done something
14 wrong, without determining that that was in fact the
15 case; is that correct?

16 A. Yes.

17 Q. What have the feoffees done to determine
18 whether water lines are responsible for the leaks?

19 A. I have no information.

20 Q. You don't know anything about that?

21 A. No.

22 Q. Do you know whether the feoffees have
23 approached Waterlines' surety?

24 A. I don't know that.

1 Q. Do you know whether the feoffees have
2 approached Waterlines liability insurer?

3 A. No, I don't know that either.

4 Q. Now, the tanks have leaked before; is that
5 correct?

6 MS. STEIN: Objection to the form.

7 A. Yes, in that big flood they leaked. That's
8 when we had our first problem.

9 Q. And it's my understanding that at the time
10 of the earlier leak, there were some television
11 tests done. In other words, a television camera was
12 put down in a tank; do you know, do you understand
13 that?

14 A. Yes.

15 Q. And that that test was able to determine
16 that there was missing sealant, essentially; is that
17 your understanding?

18 A. I don't know what was missing, but they
19 were leaking so something was missing.

20 Q. And eventually Waterline fixed the problem;
21 is that right?

22 A. I understand that they fixed the problem on
23 one of the four tanks.

24 Q. Okay.

1 And is it your understanding that the
2 first time the tanks leaked was a waterline issue?
3 In other words, a contractor issue, not a design
4 issue?

5 A. Not a what?

6 Q. Not a design issue.

7 A. I don't know that.

8 Q. You don't know that, okay.

9 Do you know whether, since the leaks
10 have started again, any television testing has been
11 done?

12 A. I'm not sure.

13 Q. Do you know whether any other testing has
14 been done to determine the cause?

15 A. I think other testing has been done.

16 Q. What testing is that?

17 A. Testing the tanks such as 1 and 4 four, as
18 an example.

19 Q. And do you know anything about how those
20 tests have been done?

21 A. You mean physically? They would have been
22 done pretty much the same way, number one.

23 Q. With the television cameras?

24 A. I guess, yes. I don't know how they do it.

1 I'm not there when they do it.

2 Q. Do you know what the result of those tests
3 were?

4 A. No, I do not.

5 Q. Why is it that you don't know that? Isn't
6 that a topic that --

7 A. What, why wouldn't I know what?

8 Q. If the tests, for example, revealed that
9 Waterline was at fault, or that Lombardo Associates
10 were at fault, wouldn't that be something that would
11 be of interest to the feoffees, at least to the
12 lifetime feoffees?

13 A. Maybe to the other feoffees, but I am not
14 an active feoffee here. I don't get in all this
15 business. I get in on it because I go to meetings
16 and so forth.

17 Q. It never was discussed at meetings?

18 A. It was discussed at meetings. Obviously, I
19 don't sit there blank. But the point is, yes, if a
20 test is being done, I assume if there is a
21 correction to be made, it's going to be made.

22 Q. Okay.

23 A. And whether that has been done and whether
24 it's a design problem or whether it's wrong tanks or

1 whatever it was, I have no clue. I am not an
2 engineer and I don't have any idea. I know what the
3 problem is, because the people are complaining.

4 Q. Okay. You mentioned feoffee meetings that
5 you attend, right?

6 A. No. We have meetings.

7 Q. Sure.

8 A. Yes, we have public meetings.

9 Q. And at this meeting has this testing that
10 we have been discussing been talked about?

11 A. I guess so; I don't know. There are a lot
12 of subjects that are discussed. More important ones
13 than that maybe, or not something that is current.

14 Q. Are there minutes made of these meetings?

15 A. As a general rule, yes, there are minutes
16 made of the meetings.

17 Q. They are public?

18 A. They are public meetings.

19 Q. And anything that is discussed in those
20 meetings presumably would be reflected in those
21 minutes; is that right?

22 A. I would expect so. We approve minutes and
23 so I guess someone writes them. So even executive
24 session minutes have to be made available to the

1 public.

2 MR. FOLKMAN: Okay, I am going to ask,
3 Robin, to have copies of -- which I don't think I
4 have yet, but you tell me if you think I am wrong,
5 of minutes of feoffees' meetings that discuss
6 holding tank problems.

7 MS. STEIN: I think as far as executive
8 session meetings, we have already objected to
9 privileged meetings with counsel relative to
10 litigation matters. I will look into public
11 meetings, what there is, but as far as executive
12 session goes, I believe we already made objection
13 to.

14 A. I would have to say that that issue has
15 never been brought up in a public meeting.

16 MS. STEIN: I believe they are
17 privileged communication with counsel, relative to
18 litigation.

19 MR. FOLKMAN: Okay. I will think about
20 that. I don't know, I don't have a response to that
21 now.

22 MS. STEIN: I believe you asked for that
23 in your first production, and I presented an
24 objection.

1 MR. FOLKMAN: I'm sure you are right, I
2 just haven't thought through that objection yet.

3 MS. STEIN: Sure.

4 Q. Do you know whether any of the other
5 feoffees have formed an opinion as to who is at
6 fault with regard to the holding tanks?

7 A. No, I don't know.

8 Q. Do you know whether Mr. Foley has?

9 A. I can't speak for Mr. Foley.

10 Q. Okay. Have you ever seen the holding tank
11 specifications?

12 A. No, I have not seen them.

13 MR. FOLKMAN: I am going to ask the
14 reporter to mark this document as Exhibit 7.

15 (Marked, Exhibit 7, Section 02690:
16 Single walled FRP tanks for non-potable water use.)

17 Q. So I take it from your answer to my last
18 question, that you have never seen this document?

19 A. No. If I have, it would just have, it
20 would be one of several things I might have looked
21 at and I figured if, if it was -- I know nothing
22 about the materials or anything about it.

23 Q. Do you have any understanding at all as to
24 whether Mr. Lombardo's, rather Lombardo Associates'

1 specifications, specify that the tanks are to be
2 watertight; is that something that you know anything
3 about?

4 A. That they are supposed to be watertight?

5 Q. Yes.

6 A. Good question. I don't know why -- why
7 wouldn't they be watertight?

8 Q. Well, my question to you is, do you have
9 any understanding as to whether Mr., or rather
10 Lombardo Associates' specifications, required that
11 the tanks be watertight?

12 A. Well, it says here they should be
13 (indication).

14 Q. And obviously they ought to be, yes?

15 A. Obviously the engineer has to be person who
16 knows they will be, because they are selecting the
17 tank.

18 Q. Do you have any, do the feoffees have any
19 reason to believe that the tanks themselves, that is
20 the manufacturer of the tanks, is somehow faulty?

21 A. I don't go there. I don't know anything
22 about it. Obviously they are faulty.

23 Q. The who, of the feoffees, would know that,
24 if anybody?

1 A. I don't think anybody would. I think Pio
2 is the only one who would know.

3 Q. Okay. Do you have any knowledge at all
4 about vacuum testing that was done on the tanks
5 prior to their entry into use?

6 A. No.

7 Q. Is there anybody among the feoffees who
8 would know about it?

9 A. I doubt it.

10 Q. Excuse me?

11 A. I doubt it.

12 Q. Now, with regard to the most recent tank
13 leak situation, because I understand that there was
14 one sometime ago, right?

15 With regard to the most recent tank
16 leak, when did you, the feoffees, realize that the
17 tanks were leaking?

18 A. Recently?

19 Q. This most recent time, yes?

20 A. When the water table moved up to the point
21 where the pump would come in, I presume.

22 Q. And approximately when was that?

23 A. I don't know.

24 Q. Was it in 2007?

1 A. Oh, yes, yes, just a few weeks ago.

2 Q. Okay. So it's a relatively recent problem,
3 right?

4 A. On another tank.

5 Q. Right. You mean by "another tank," you
6 mean a tank other than the tank that leaked back in
7 the storm of 2006, right?

8 A. Yes.

9 Q. Okay.

10 A. And it's also, for your knowledge, it's Mr.
11 Allen's driveway.

12 Q. Oh, that's poetic justice.

13 A. No wonder he has an interest.

14 Q. So it's fair to say that you would, the
15 feoffees would not have had any reason to withhold
16 payments from Lombardo Associates on account of this
17 most recent tank leak, until a few weeks ago,
18 because the tank leak didn't occur until a few weeks
19 ago, right?

20 A. Obviously, the correction on one -- the
21 other three tanks had the same three connections, I
22 would assume, and when it starts to leak, you look
23 at the other three and you discover that all or one
24 of them is leaking.

1 Q. Right.

2 So when the feoffees didn't pay Lombardo
3 Associates' bills back in the summer of 2006, it
4 wasn't because of a tank leak problem, right?

5 A. Well, if you are using the current one, no,
6 it wasn't. It had nothing to do with the one that
7 happened last week; it had to do with previous. I
8 mean, the billing period of time was in the summer
9 when we basically had the big storm in May of that
10 year, didn't we?

11 Q. Okay, but the tank leak was corrected,
12 right, in 2006?

13 A. Yes. Evidently. I don't know that it was
14 corrected in 2006. I guess it might have been.

15 Q. As far as you know?

16 A. Yes.

17 Q. It was fixed.

18 So the point I'm getting at is, to the
19 extent that I understand there is obviously some
20 delay between when an invoice is received and when
21 it is paid.

22 A. Right.

23 Q. But leaving that aside, the reason you
24 weren't paying Lombardo's invoices as they came due

1 in this summer 2006, was not because of a tank leak,
2 right? It's a new explanation just from a few weeks
3 ago; is that right?

4 A. I would say no. I don't know that.

5 Q. You don't know?

6 A. I don't know whether that was the reason
7 they didn't pay them.

8 Q. Okay. What about the MIS problems that you
9 have mentioned a couple of times?

10 A. All I know about the MIS problems is that
11 the computer isn't -- we have to manually read, get
12 the readings. And it would seem to me that an MIS
13 system would be doing all of that for us. And as I
14 understand it, whatever they had to do with it
15 doesn't work.

16 Now, we didn't get involved in it. It
17 was something that Pio, evidently, arranged to have
18 this company do these kind of things for billing.

19 Q. Now, Lombardo Associates was issued a stop
20 work order some time ago, right?

21 A. I don't know that. I guess I know it only
22 because we have refused to pay his bills. But you
23 are effectively saying something, probably there was
24 a stop order. I don't know what that means. I

1 don't know anything about who issued it and who said
2 it and so forth.

3 Q. You understand that Lombardo Associates has
4 no additional, is not performing additional work for
5 the feoffees?

6 A. That is correct, yes. So that is a stop
7 order.

8 Q. My question is, who is now, what contractor
9 or what person is now trying to get the MIS system
10 to work?

11 A. I don't know that. I assume that it's
12 Foley that is trying to make it work.

13 Q. Do you know whether Mr. Foley has the
14 knowledge or qualifications necessary to operate the
15 system?

16 A. I would have to think that anybody,
17 including my five-year old grandson, could probably
18 operate this thing by pushing the right buttons. I
19 don't know.

20 Q. Okay. But whatever the case, Mr. Foley has
21 not been able to get in to work?

22 A. He has had to do it by patching things
23 together to get it done, and it's very critical for
24 us to get paid.

1 Q. Have you asked someone from the outside,
2 other than Mr. Foley, to look at this?

3 A. I understand that Mr. Foley has had
4 consultants in there who are technical people on MIS
5 systems, to help him.

6 Now, whether or not that is ongoing, or
7 whether that is, that's over with, I don't know.

8 Q. And do you know when he first brought
9 consultants in to help him?

10 A. I don't know, but it had to be more recent.
11 It's recently, because we are getting critical now,
12 because people are wondering how much their water
13 bill is going to be.

14 Q. So by "recently," do you mean a matter of
15 weeks?

16 A. Weeks or certainly months. Nobody lives
17 there during this -- now it's loaded.

18 Q. So as you were getting ready for the
19 summer, he brought in consultants?

20 A. Yes, I guess so.

21 Q. So far as you know?

22 A. Yes, so far as I know. That is part of the
23 things he is supposed to do.

24 Q. Yes. Do you know whether Weston & Sampson

1 was satisfied with Lombardo's design for the holding
2 tanks?

3 A. I know nothing about that.

4 Q. Do you know whether they ever reviewed the
5 design?

6 A. I don't, I can't answer that. I don't
7 know.

8 Q. Do you know whether Waterline has warranted
9 its work?

10 A. I only can assume they have.

11 Q. And do you know when that warranty expires?

12 A. I have no knowledge.

13 Q. You don't know whether it's a one-year
14 warranty, a two-year warranty?

15 A. (Indication).

16 Q. I'm sorry, you have to answer "yes" or
17 "no".

18 A. No, I don't.

19 Q. Okay.

20 Have the feoffees considered making a
21 claim against the warranty before it expires?

22 A. I don't know that either.

23 Q. So that hasn't been a topic of discussion
24 at any meeting you have attended?

1 A. No.

2 Q. Who, among the feoffees, would know that?

3 A. I don't know. I, I don't know who would
4 know that. I think if it had been a discussion at
5 anywhere, I would have known about it. My not
6 knowing about it is -- I don't think they would
7 ever, ever go into that kind of environment without
8 at least notifying me.

9 Q. Okay. I want to ask you about a man named
10 Chuck or Charles Costello. And just to put this in
11 context, your attorneys have made some objections in
12 the responses to interrogatories where I have asked
13 for identification of experts, and they have said,
14 you know, "We haven't identified anybody for trial."
15 And that's okay, but I would also represent to you
16 that your attorneys have hired Mr. Costello, or the
17 feoffees have hired Mr. Costello to do something.
18 So the question I want to ask you is, what have the
19 feoffees hired Mr. Costello to do?

20 MS. STEIN: I'm going to object.

21 MR. FOLKMAN: I'm not asking what Mr.
22 Costello's conclusions are, what work product he has
23 created, whatever, I just want to know what he was
24 hired to do. And I will tell you why, because there

1 there is law about so-called dual purpose experts,
2 which is to say, if you hire an expert to both serve
3 in litigation and also to do something else, the
4 scope of discovery may be broader than -- so I think
5 I am entitled to know why he was hired.

6 MS. STEIN: As an initial matter, I
7 don't agree with that, with your statement, and I am
8 going to instruct the witness not to respond to
9 questions related to Mr. Costello. But as an
10 initial matter, I think it would be appropriate to
11 even determine if this witness was involved in
12 hiring Mr. Costello.

13 MR. FOLKMAN: No, he may know why Mr.
14 Costello was hired, regardless of whether he was
15 involved.

16 So you are going to instruct him not to
17 answer the purposes for which Mr. Costello was
18 hired?

19 MS. STEIN: Yes.

20 MR. FOLKMAN: So we may have a fight
21 about that, but that's okay.

22 A. I have never talked to Mr. Costello.

23 Q. Have you ever seen any, without telling me
24 what it was in, have you ever seen a report or other

1 work product?

2 A. I never have seen any document or anything
3 having to do with Mr. Costello at all.

4 Q. Do you know whether Mr. Costello has
5 actually produced any documents?

6 A. I don't know that.

7 Q. Who would know that?

8 A. I don't know who would know that. I would
9 say somebody knows, but I don't know.

10 Q. Did the feoffees have a clerk of the works
11 or some other engineering type person on-site to
12 look at the tanks and try to figure out what the
13 problem is?

14 A. The only clerk of the works we ever had was
15 employed by Pio Lombardo.

16 Q. So it's fair to say there is no engineering
17 firm that the feoffees have hired to try to sort
18 this problem, the tank problem?

19 A. Not that I know.

20 Q. Okay.

21 Is there anybody that the feoffees have
22 hired who would be able to say one way or the other,
23 this tank problem is Waterline's fault; this tank's
24 problem is Lombardo's fault?

1 A. I wouldn't know that either.

2 Q. Who would know that?

3 A. I don't think anybody would know it,
4 because it has never been done. We have never asked
5 anybody to determine that.

6 Q. So you have never asked anybody to
7 determine who's at fault?

8 A. Who's at fault? It never came up. The
9 fact is it doesn't work.

10 Q. All right.

11 When did you first -- I want to change
12 topics now and talk about the summer of 2006 charges
13 that are in dispute.

14 When did the feoffees first begin to
15 think that they were being charged for work that
16 they shouldn't be charged for?

17 A. I don't know what that timeframe was.

18 Q. Was it about the time that the work was
19 done or that you received the invoices?

20 A. I don't know. I suppose it would have been
21 when they received the invoices and went back to
22 see, you know, what the so-called work order was to
23 justify the bill. And Peter Foote would be the one
24 who would be getting those bills.

1 Q. And that's because he was the treasurer?

2 A. He's the treasurer. Nobody else would get
3 them.

4 Q. When's the first time that the feoffees
5 told Lombardo Associates that they thought they had
6 been overcharged for work done in the summer of
7 2006?

8 A. I would not know that.

9 Q. Would Mr. Foote know that?

10 A. He could have. He could, I suppose.

11 Q. Okay. Who else might know that?

12 A. Alex would know that.

13 Q. Okay.

14 Do you know whether -- I understand that
15 you can't tell me sort of particularly when it was,
16 but do you know whether it would have been after
17 July of 2006?

18 A. I wouldn't know that.

19 Q. Okay.

20 A. See, the process is that the bill comes to
21 Peter Foote, but he doesn't sign the check.

22 Q. Who signs the check?

23 A. The chairman signs the check.

24 Q. So in this case Mr. Mulholland?

1 A. And he could have been the person, as an
2 example, in the process, the way we operate, that
3 would question the bill. He's the engineer.

4 Q. Yes, okay.

5 But you don't know anything about it?

6 A. Right.

7 Q. I don't want to waste a lot of time with
8 this. If I were to show you Lombardo invoices from
9 the relevant time period, would you be able to
10 identify charges that should not have been paid?

11 A. Probably not.

12 Q. I don't want to waste your time if you are
13 telling me you couldn't do it.

14 A. I probably couldn't do it. I couldn't even
15 understand the ones he submitted to me for years.

16 Q. Who would be able to do that?

17 A. Well, I suppose the guy that's paying the
18 bill.

19 Q. So that would be Mr. Mulholland?

20 A. Even when I was paying the bills and
21 signing the checks, I had questions whether Pio was
22 really playing the right game with me. I'm not
23 accusing him of anything, but on the other hand,
24 there were times when I questioned his expenses and

1 things of that nature.

2 Q. And do you know whether that happened with
3 respect to the September 2006 bills, that is whether
4 anybody ever went to Mr. Lombardo and said, you
5 know, "We question these charges"?

6 A. I would expect that they did.

7 Q. Would Mr. Mulholland?

8 A. I expect he would.

9 Q. Or Foley?

10 A. It would not have been Foley.

11 Q. Why is that?

12 A. He is not in that loop as far as bill
13 paying is concerned.

14 Q. But you don't know whether those
15 conversations took place?

16 A. No.

17 Q. Okay.

18 Do you know how the overall charges for
19 Lombardo Associates on the project compare, as a
20 percentage to the total project cost?

21 A. No, I don't know. I do know that it's
22 supposedly -- I guess in the trade a certain
23 percentage of the total cost of a project is
24 determined to be engineering fees.

1 Q. Okay.

2 A. And I don't know, I don't know, I don't
3 know what the number is, whether it's 20 percent or
4 25 percent, but I know there is a standard which we
5 held Pio to, and I'm sure he was well aware of what
6 he was being held to.

7 Q. Okay.

8 But you don't know whether, you don't
9 know what percentage of his costs, or rather what
10 percentage of the total project costs were
11 attributable to him?

12 A. No.

13 Q. And do you know whether, whatever, I
14 suppose you don't, since you don't know the answer
15 to that first question, but I will ask anyway, do
16 you know whether Lombardo Associates' charges were
17 within the industry standard?

18 A. I would have expected they would be,
19 because it was something we always understood to be.

20 Q. And it was your understanding that the
21 industry standard was sort of what was presumptively
22 reasonable?

23 A. I guess that would be right, yes.

24 Q. Let me ask you now about the first of the

1 topics that we read into the record at the very
2 beginning. These have been topics that you have
3 been designated to testify about on behalf of all
4 the feoffees, and I am going to read the first one
5 so it's clear in your mind.

6 "The methods the feoffees used for
7 calculating the amount of the rent the tenants were
8 to pay in every year from 2004 to the present,
9 including without limitation, the relationship
10 between the amounts the tenants were to pay and the
11 amounts of Lombardo's estimated or actual invoices
12 to the feoffees, and the amounts of the other costs
13 associated with the project." Which is a mouthful,
14 so if you would like to have that in front of you, I
15 would be happy to do that.

16 A. Well, it didn't enter into the way we
17 charged the rents.

18 Q. So let me, let me -- I think I understand
19 what your answer is going to be. Let me make sure.
20 Is it the case that the rents did not vary,
21 regardless of what Lombardo or any of the other
22 contractors charged for the project?

23 A. That had nothing to do with the rents.

24 The determination of the rents was based

1 on an issue where the rents for several years were
2 too low, and at an annual meeting, one of the
3 selectmen made a motion that we increase the rents
4 to the fair market value of the property. We should
5 get a return on our investment.

6 Q. Okay.

7 A. And that, that return was, those rents were
8 increased. It was to be done in a five-year period.

9 Q. Okay.

10 A. And it didn't happen in the five-year
11 period because the value of the property went up so
12 fast. We are still playing catch-up with it.

13 And the determination of what the, what
14 the people living there now are trying to work over
15 in their minds is that the rent is too high. And
16 all we are trying to do, because of our
17 responsibilities fiduciary to the school committee,
18 is to get the rent into a market rate. And it has
19 nothing to do with the cost of the sewer.

20 Q. I understand.

21 Did the sewer project, the wastewater
22 project, affect, whether increase or decrease, the
23 market --

24 A. It had nothing --

1 Q. Let me finish the question.

2 A. Yes.

3 Q. Did the sewer, once it was installed -- I
4 shouldn't say "sewer," the wastewater project,
5 affect the market value of the property?

6 A. I don't know. I would expect it probably
7 did, wouldn't it?

8 Q. It would probably have increased it,
9 wouldn't it?

10 A. I would think. I mean, normally when you
11 put sewer in your house you get betterments to pay
12 for it.

13 Q. So my question is, to the extent that rents
14 were based on fair market values, wouldn't the rents
15 be higher after the project than before the project,
16 because the project had been done?

17 A. Oh, no, no, I don't think that takes into
18 consideration. Because rents are going to go, rents
19 are going to go because of one, the location of the
20 property; the facilities that the property has. We
21 spent, we completely did the electrical; it's all
22 underground. Everything is underground. We just
23 completed that project before Pio. The problem of
24 trying to get them digging holes and putting in

1 electric lines. So the property has gone up in
2 value, because the property in every community along
3 the shore has gone up in price. And I think it
4 makes the property more valuable for the people
5 living there that they have a sewer.

6 Q. Right.

7 A. My property in Ipswich is better because
8 I'm on sewer, than it is in another part of Ipswich
9 that isn't on sewer.

10 Q. If I understand you correctly, you are
11 testifying that you don't believe the sewers
12 themselves was a major contributor to the market
13 value of the property?

14 A. I don't believe it had anything to do with
15 the market value.

16 Q. Did the feoffees ever say amongst
17 themselves, "We really need more money for this
18 property. We better raise the rent"?

19 A. It has nothing to do with it. We have
20 never said, "Because we are doing the project we've
21 got to raise the rents."

22 We are raising the rents because they
23 are too low. And they are too low, even at the
24 current rate. At \$9700 they are probably too low,

1 based on the value of the property.

2 Q. Okay. Let me turn now to Numbers 12 and
3 13, which is basically asking you about document
4 policies of the feoffees.

5 Do the feoffees keep files in an
6 organized way?

7 A. It depends on the word "organized".

8 Q. Okay. How do the feoffees keep their
9 files?

10 A. Well, files for what?

11 Q. For their general business records.

12 A. Well, what would they be?

13 Q. Is there a file cabinet somewhere, or file
14 room?

15 A. Yes, there is a file cabinet. I mean, when
16 I was a treasurer I had a file cabinet and I had
17 bank statements and I had those things, and I had
18 folders with documents that had been signed by the
19 people.

20 Q. Who is the person --

21 A. It does -- right now it would be in the
22 hands of Greenough, the lawyer. They are all in
23 this office.

24 Q. Okay. And if they were, if you wanted to

1 collect all the documents that the feoffees had
2 about a particular matter, would it be enough to go
3 to Mr. Greenough and say, "I want all the documents
4 on this matter" because he has them all, or was
5 there some other place to go?

6 A. There was no other place. There really
7 basically weren't any that made any sense that you
8 would need.

9 Q. So the feoffees don't, for example, keep
10 documents in their homes?

11 A. No, no, absolutely not. I had some because
12 I used my home as an office.

13 Q. Did any of the other feoffees use their
14 homes as their offices?

15 A. They never had a job to do it with.

16 Q. What did that mean?

17 A. The other, the feoffees didn't have any
18 responsibility up to December of '04.

19 Q. Okay. What about today?

20 A. Today they are in Greenough's office.

21 Q. And as far as you know, Mulholland, Foote,
22 and Foley don't have --

23 A. They have never had one, under any
24 circumstances. Because I turned over everything I

1 had to Greenough when I resigned.

2 Q. Okay. Do you know of any documents that
3 the feoffees have that are responsive to the
4 requests that I have passed on to your lawyers, that
5 have not yet been given to me?

6 A. No, I can't imagine -- I don't know what
7 you asked for, but I can't imagine that the lawyers
8 don't have access to it. And if it isn't the
9 lawyers, Peter Foote would be able to, or Greenough
10 would be able to supply you.

11 Q. So as far as you know, as the designee, as
12 the designees of the feoffees, with respect to Item
13 12 on the 30(b)(6) schedule, and that is a bunch of
14 lawyerese, but as far as you know?

15 MS. STEIN: Could I take a look at that,
16 because that is not my understanding of the
17 question? Let me just take a look.

18 On Number 12 you ask for a description
19 by category of the documents.

20 MR. FOLKMAN: Yes.

21 MS. STEIN: I would, I guess I would
22 object to the form of the question, and I don't
23 think it is consistent with what you are asking as
24 well, as far as the witness being a designee.

1 MR. FOLKMAN: Well, I mean, if your
2 objection is correct, then his testimony will just
3 be his testimony, correct?

4 MS. STEIN: Exactly.

5 Q. So as far as you know, every document I
6 requested now you have?

7 A. I assume so. I don't know what you have,
8 but whatever you asked for you have.

9 MR. FOLKMAN: Off the record.

10 (Off the record.)

11 MR. FOLKMAN: Can we go back on the
12 record.

13 Q. All right. So you, we all agree, I think,
14 that you have been designated to describe what
15 categories of documents the feoffees kept. Is that
16 fair?

17 MS. STEIN: Yes.

18 Q. So why don't you tell me what documents,
19 what kind of documents, broad sense, the feoffees
20 keep in their filing system?

21 A. Well, it would -- obviously they would keep
22 all of the documentation having to do with signing
23 of transfers of property.

24 Q. Yes.

1 A. I mean, that is probably the major file.

2 Q. Okay.

3 A. The other things that would be in there
4 would be the reports on the testing of the water
5 for, I mean, those kinds of things. The operational
6 things from day-to-day. But the files don't have
7 very much in them, other than the bills that were
8 created by people that were doing projects there:
9 trimming trees, cutting trees down, I mean, paving
10 roads, that's all part of the process.

11 Q. Are there correspondence files that are
12 kept, so for example, a file of all the
13 correspondence between the feoffees and the bank?

14 A. Oh, I guess so. I don't know that. I have
15 never been involved with that. You are showing me
16 things that I have never seen.

17 Q. What about correspondence between the
18 feoffees and various contractors such as Lombardo,
19 Waterline, et cetera?

20 A. To my knowledge, I would say that would be,
21 all be in the Greenough era.

22 Q. Okay. And what about documents concerning
23 communications between the feoffees and certain
24 other town players, whether that was the school

1 committee, conservation commission, et cetera?

2 A. That would all be done by Greenough, our
3 attorney.

4 Q. What about the document retention policy;
5 do you know what a document retention policy is?

6 A. No, we don't have one.

7 Q. There is not one?

8 A. Not one official one.

9 What I have described to you is what we
10 have.

11 Q. What was the practice of the feoffees in
12 the time -- I understand you are only designated up
13 through the end of 2004. What was the practice in
14 terms of retaining documents? And by that I mean,
15 not destroying files when they got old?

16 A. I don't think any of them -- some of the
17 files didn't -- they are so old that they are
18 historical, and those have all been turned over to
19 Greenough.

20 Q. So in other words, there was no practice of
21 destroying documents routinely?

22 A. No, absolutely not.

23 Q. And in fact, did any documents relating to
24 the project that we have been talking about today --

1 A. No, absolutely not. That would all be --
2 no, there would be nothing there that would be --
3 what you created is what is in the file right now.

4 Q. So nothing has been destroyed?

5 A. Nothing has been destroyed.

6 Q. Okay.

7 Let me take two minutes. We may be
8 done.

9 Are you going to have follow-up?

10 MS. STEIN: I think I am. Could we take
11 a break for a couple of minutes?

12 (Off the record.)

13 MR. FOLKMAN: I just have one follow-up.

14 MS. STEIN: Ted just wants to clarify
15 how the rents work.

16 Q. Let me ask. I think, in talking with your
17 lawyer, that I may not have either asked a clear
18 question or gotten a clear answer.

19 My recollection of your testimony is
20 that you said there were two sources of funds that
21 were used to pay contractors, Pio, et cetera, for
22 the project. One is the six point something million
23 dollars from the bank, and the other is the hundred
24 thousand dollar betterment.

1 And my recollection of your testimony is
2 that you said the rents were not used to pay for the
3 project, but I now understand from talking -- well,
4 why don't you tell me --

5 MS. STEIN: I think I confused you.

6 Could we go off the record for a second?

7 MR. FOLKMAN: Yes.

8 (Off the record.)

9 Q. Now I think I understand after an
10 off-the-record conversation, that the rents were
11 used in a sense, but only in the sense that they
12 were used as the source of funds to pay back the
13 bank; is that correct?

14 A. That is correct.

15 MR. FOLKMAN: I have no further
16 questions.

17 THE WITNESS: We have a monthly payment
18 every month to the bank and that comes out of the
19 rents. That \$100,000 was basically paid to Graham
20 way before Pio came onboard.

21 MR. FOLKMAN: Pre-engineering, I
22 understand.

23 (Time ended 1:19 p.m.)

24

1 CERTIFICATE OF COURT REPORTER

2 I, Patricia A. Bucko, Registered Merit
3 Reporter, do certify that the deposition of DONALD
4 F. WHISTON, in the matter of Lombardo v Mulholland,
5 etc., on 6/27/07, was stenographically recorded by
6 me; that the witness provided satisfactory evidence
7 of identification, as prescribed by Executive Order
8 455 (03-13) issued by the Governor of the
9 Commonwealth of Massachusetts, before being sworn by
10 me, a Notary Public in and for the Commonwealth of
11 Massachusetts; that the transcript produced by me is
12 a true and accurate record of the proceedings to the
13 best of my ability; that I am neither counsel for,
14 related to, nor employed by any of the parties to
15 the above action; and further that I am not a
16 relative or employee of any attorney or counsel
17 employed by the parties thereto, nor financially or
18 otherwise interested in the outcome of the action.

19
20 Patricia A. Bucko 7/6/07

21 Patricia A. Bucko, RMR
22
23
24

I N D E X**EXAMINATIONS**

DONALD F. WHISTON,

BY MR. FOLKMAN:

3

EXHIBITS MARKED

1, Defendants' Answers to Plaintiff's	27
First Set of Interrogatories	
2, letter dated 9/30/04	42
3, e-mail dated 2/3/06	61
4, e-mail dated 7/7/06	67
5, e-mail dated 2/24/06	91
6, photocopy of a newspaper article	99
7, Section 02690: Single walled FRP	122
tanks for non-potable water use	

Exhibits returned to Attorney Folkman.

WITNESS: DONALD F. WHISTON

CASE: Lombardo v Mulholland, etc.

SIGNATURE PAGE/ERRATA SHEET

PAGE	LINE	CHANGE OR CORRECTION AND REASON
------	------	---------------------------------

[illegible]

I have read the transcript of my deposition taken 6/27/07. Except for any corrections or changes noted above I hereby subscribe to the transcript as an accurate record of the statements made by me.

Signed under the pains and penalties of perjury.

DATE _____

Deponent, DONALD F. WHISTON

On this _____ day of _____, 200__, before me, the undersigned notary public, personally appeared DONALD F. WHISTON, who presented satisfactory evidence of identification, to wit, _____, and signed this document in my presence.

Notary Public in and for _____

My commission expires_____

Sent via UPS to counsel/witness on 7/6/07

DONALD F. WHISTON

SIGNATURE PAGE/ERRATA SHEET INFORMATION

For deposition taken on: 6/27/07

Lombardo v Mulholland, etc.

SIGNATURE INFORMATION FOR COUNSEL

The original signature page/errata sheet has been sent to Robin Stein, Esq. to obtain signature from the deponent. When complete, please send original to Theodore J. Folkman, Esq. A copy of any errata should be sent to each party of record present at the deposition.

WITNESS INSTRUCTIONS

After reading the transcript of your deposition, please note any change or correction and the reason on the errata/signature page. DO NOT make any notations on the transcript itself. If necessary, continue the format on a separate page.

PLEASE SIGN AND DATE the errata/signature page (before a notary if requested) and return it to your counsel.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 07-0470

LOMBARDO ASSOCIATES, INC.,)
Plaintiff,)
v.)
ALEXANDER B.C. MULHOLLAND, Jr.,)
PETER A FOOTE, DONALD F.)
WHISTON, JAMES W. FOLEY,)
PATRICK J. McNALLY, EDWARD B.)
RAUSCHER, and ELIZABETH A.)
KILCOYNE, as Feoffees of the Grammar)
School in Ipswich,)
Defendants.)

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

The Defendants in the above-captioned action hereby respond to the Plaintiff's First Set of Interrogatories as follows:

INTERROGATORY NO. 1

Identify every engineer, accountant, or other professional You hired or with whom You consulted for the purpose of evaluating Lombardo's services or charges, the justification for Lombardo's charges under the Contract, or the existence of any errors or omissions in the work Lombardo performed under the Contract.

ANSWER NO. 1

The Feoffees object to this interrogatory because it seeks information protected by the attorney-client privilege and the attorney work-product doctrine and seeks information outside the scope permitted by Mass.R.Civ.P.26. The request impermissibly seeks information as to the identity of a consultant whom, at present, the Feoffees do not intend to call as an expert witness at trial.

INTERROGATORY NO. 2

For each Person identified in Your response to Interrogatory No. 1, state the scope of the work You hired him or her to perform, including but not limited to whether the Person was required or expected to produce a written report of his or her findings.

D. Whiston
Exhibit No. 1
Date: 06/27/07
Reporter: P.A. Bucko

ANSWER NO. 2

The Feoffees object to this interrogatory because it seeks information protected by the attorney-client privilege and the attorney work-product doctrine and seeks information outside the scope permitted by Mass.R.Civ.P.26. The request impermissibly seeks discussions between the Feoffees and their consultant, who has not been determined to be an expert witness to testify at trial, all contrary to subsections (b)(3) and (b)(4) of said Rule 26.

INTERROGATORY NO. 3

If You contend that any of the itemized labor charges or expenses shown on the Invoices are excessive, unjustified, or otherwise improper, list each such charge and State the Basis for Your contention.

ANSWER NO. 3

As to the time period from May – December 2006, the Feoffees submit that Plaintiff's billing is excessive as the demand for services was far less than the amount of services billed and allegedly needed and worked. Ground water is infiltrating into the tight tanks. Further the computer system designed to read the tank levels is not working properly. The Feoffees are in the process of determining who, if anyone, is at fault. The Feoffees do not yet know if the Plaintiff acted negligently. Therefore, the Feoffees have not paid the total amount billed by the Plaintiff.

INTERROGATORY NO. 4

List the date and amount of each payment You made to Lombardo under the Contract.

ANSWER NO. 4

<u>PAYMENT</u>	<u>DATE</u>
\$80,818.49	8/14/04
\$18,190.03	8/14/04
\$37,723.53	9/16/04
\$9,356.14	10/15/04
\$54,723.98	11/10/04
\$128,134.54	11/10/04
\$123,954.79	12/18/04
\$128,487.95	1/26/05
\$143,169.68	3/21/05
\$138,583.26	3/21/05
\$114,085.50	4/22/05
\$82,563.95	8/15/05
\$78,282.36	7/7/05

PAYMENT

DATE

\$34,778.75	8/15/05
\$65,978.57	9/9/05
\$94,517.87	10/31/05
\$71,147.77	12/7/05
\$101,831.29	12/21/05
\$63,776.63	1/20/06
\$56,035.00	2/10/06
\$63,142.46	3/14/06
\$46,923.91	5/15/06
\$58,208.63	5/15/06

INTERROGATORY NO. 5

State the amount You believe You owe to Lombardo under the Contract (or the amount by which You believe You have overpaid), and State the Basis for Your belief.

ANSWER NO. 5

The Feoffees are still discovering this matter and have not yet made a determination as to the amounts owed under the Contract, if any. The Feoffees do not yet know if they owe the Plaintiff, if the Plaintiff owes them, or if the Feoffees will make a claim against the Plaintiff. The Feoffees further direct the Plaintiff to their Answer No. 3 herein.

INTERROGATORY NO. 6

Identify each Person likely to have discoverable information that You may use to support Your claims or defenses, and state the subjects of the information.

ANSWER NO. 6

1. James W. Foley- the project including contracts, system design and operation and work performed and billed.
2. Alexander B.C. Mulholland, Jr.-the project including contracts, system design and operation and work performed and billed.
3. Donald F. Whiston- the relationship between the Feoffees and the Plaintiff and some of the contracts related to the project.
4. Peter Foote- information regarding billing.
5. Pio Lombardo- the project including contracts, system design and operation and work performed and billed.

6. Larry Hunter- financial aspects of the project.
7. Ralph Dumke- system design and operation and amounts worked and billed.
8. David Cullerot- system design and operation and amounts worked and billed.
9. Joseph D. Shea- system design and operation and amounts worked and billed.
10. David Columbo- system design and operation and amounts worked and billed.
11. Constantino Ricci- system design and operation and amounts worked and billed.
12. Arthur J. Hurley III- system design and operation and amounts worked and billed.
13. Joseph A. Pacella- system design and operation and amounts worked and billed.
14. Carol Lonergan- a Little Neck tenant who observed construction of the project.
15. Diana Kaine- a Little Neck tenant who observed construction of the project.
16. Mary F. Johnson- a Little Neck tenant who observed construction of the project.
17. Charles Huntley- a Little Neck tenant who observed construction of the project.

The Feoffees further state that they are still discovering this matter and have not finished determining each person likely to have discoverable information and the subjects of the information that individuals will testify to.

INTERROGATORY NO. 7

Identify every Person, including but not limited to the Tenants, the Selectmen, and any journalist, to whom You have made statements orally or in writing concerning Lombardo's performance under the Contract, amounts owed to Lombardo under the Contract, or Lombardo's claims against You in this Action, and for each such Person, state the substance of Your statements.

ANSWER NO. 7

Defendants object to this request to the extent it seeks information protected by the doctrine of attorney client privilege and the attorney work product doctrine.

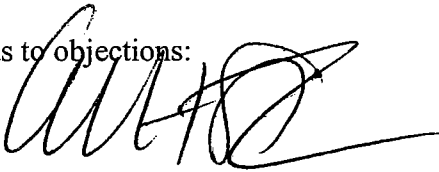
Without waiving this objection Defendants state that they do not believe they have made any non-privileged statements orally or in writing.

Signed under the pains and penalties of perjury this 27 day of June 2007.

Feoffees of the Grammar School in the
Town of Ipswich

By: Donald F Whiston
Donald F. Whiston

Signed as to objections:



William H. Sheehan III
BBO #457060
MacLean, Holloway, Doherty
Ardiff & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960
(978) 774-7123

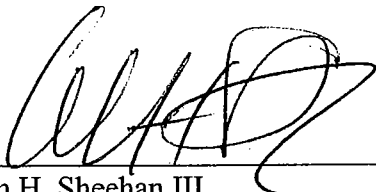
Dated: June 26, 2007

CERTIFICATE OF SERVICE

I, William H. Sheehan III, attorney for the Defendants hereby certify that I served a copy of the within Defendants' Answers to Plaintiff's First Set of Interrogatories by delivering the same via hand delivery, to the following attorney:

Theodore Folkman
Hanify & King, P.C.
One Beacon Street
Boston, MA 02108

Dated: Jun 27, 2007


William H. Sheehan III

4080
0.1

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

49 Edge Hill Road

Newton, Massachusetts 02467

(617) 964-2924

Fax: (617) 332-5477

E-mail: pio@LombardoAssociates.com

Web Site: www.LombardoAssociates.com

September 30, 2004

Feoffees of the Grammar School
c/o Mr. Donald Whiston
2 Jeffrey's Neck Road
Ipswich, MA 01938

Dear Feoffees

Re: Agreement – Engineering Services for
Sewer System & Holding Tank/Loading Station Implementation
Little Neck, Ipswich

Pursuant to our recent discussions and the MADEP June 28, 2004 meeting directive, following is our proposal for planning, design, construction engineering and start-up of:

- Little Neck Sewer System and Temporary Holding Tank & Sewage Transfer Station

With the following key date:

Sewer System and Temporary Holding Tank &
Sewage Transfer Station

Operational by June 1, 2005

SCOPE OF WORK

1.0: PROGRAM MANAGEMENT

Task 1.1 – Master Plan

LAI will develop a Master Plan, including conceptual engineering to establish project milestones, communication methods and project execution strategies for the sewerage of Little Neck, which will include the following components:

1. Road use & traffic control
2. Sewer Collection System
3. Holding Tank/Building

The Master Plan will include conceptual layouts for the proposed building and collection system. It will also include Contractor procurement, Construction and O&M cash flow projections and the engineering approach that can support financing programs, an identification of permitting requirements, revised implementation schedule, etc. As the project will be implemented on a fast-track basis, LAI will monitor and communicate changes and status for the project on a monthly basis to include status for all phases of design, construction and start up.

Task 1.2 – Engineering Plan

LAI will develop an Engineering Plan that will provide the Feoffees with options for layouts, pump locations, and operation/sewer choices, along with LAI's recommendation. The document

D. Whiston
Exhibit No. 2
Date: 06/27/07
Reporter: P.A. Bucko

will enable the Feoffees to select an option that will serve as the basis for the final design and will include the following components:

1. Road use & traffic control
2. Sewer Collection System
3. Holding tank/Building

LAI will use the daily water use data collected by the Ipswich Water Department to develop design conditions. LAI will consolidate, analyze, and interpret the water use records for each of the 167 properties on Little Neck to identify excess water users.

2.0: DESIGN SERVICES

Lombardo Associates, Inc. will prepare design packages for the improvements as presented in the Engineering Plan. It is expected that design packages will be prepared for:

1. Road use, traffic control & landscape issues
2. Holding Tank/Building
3. Sewer System
4. O&M of System

Task 2.1 Preliminary Design

Site plans for the proposed improvements will be prepared. A base map of existing and proposed utilities (i.e., electrical, water, cable, etc.) will be prepared. Field checks and measurements will be performed to confirm existing conditions of critical importance.

Utilizing the design criteria established in the Engineering Plan, preliminary design drawings for each of the project's components will be prepared to about a 30% complete design and submitted as preliminary design for Feoffee review and comment. The Preliminary Design will include site plans, plan view of the holding tank - pump station, section views, a draft control and instrumentation details, wastewater collection system and house connections. The holding tank will require structural drawings and detailed evaluation of subsurface conditions.

Preliminary design will also include draft technical specifications for the construction of the sewer – holding tank system.

Up to eight (8) sets of preliminary design documents will be provided to the Feoffees for review and comment.

Task 2.2 Permitting

Lombardo Associates, Inc. will assist the Feoffees with application for and procuring needed permits, identified in the Master Plan, associated with the project's implementation.

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

Task 2.3 Final Construction Documents

Upon receipt of comments on the Preliminary Design, Lombardo Associates, Inc. will prepare responses and meet, as appropriate, with the Feoffees to discuss the comments and determine what changes or additions will be made to develop and complete the Final Design - Construction Drawings and Specifications. Construction drawings and specifications will expand on the detail of the Preliminary Design to include sufficient detail to allow the Feoffees to request bids for the proposed improvements. The specifications will include bidding information, a final bid form, General and Special Conditions, a sample contract and other appropriate documents

Up to eight (8) sets of Construction Drawings and Specifications will be provided to the Feoffees for review and comment.

After Feoffee review and comment, appropriate revisions will be made. Up to five (5) sets of Construction Drawings and Specifications will be provided to the Feoffees for project review and filing.

3.0 SERVICES DURING CONSTRUCTION

Contractor procurement is a critical component and recommendations on the contractor selection process will be proposed after solicitation of contractor interest.

Task 3.1 Procure Contractor

Advertising, managing the bidding process and managing the bid review and bidder selection will be the responsibility of LAI. Up to twenty (20) sets will be provided for delivery to potential bidders.

Lombardo Associates, Inc. will hold a pre-bid meeting at a location determined with the Feoffees to respond to questions from potential bidders. LAI will prepare and transmit written responses to all technical questions received.

Lombardo Associates, Inc. will provide a review of bids received and provide a recommendation for contractor selection.

Depending upon the final contractor selection process, this will occur for up to three contracts.

Task 3.2 Construction Observation & Engineering

Lombardo Associates, Inc. will attend all construction progress meetings during the course of the work and will review payment requests. Lombardo Associates, Inc. will also provide responses to written questions submitted by the selected contractor during construction and will review all shop drawings submitted for compliance with the design intent.

Lombardo Associates, Inc. will provide full time on site observation services during construction of the planned improvements.

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

LAI's services will also include:

- Field observation
- Preparing contract addenda and change orders as necessary
- Shop Drawing Review
- Contractor payment review and recommendations for payment
- Preparation of a Plan of Operation at the 50% point of construction
- Preparation of Record Drawings

4.0 START-UP

Task 4.1 Start Up and Testing

Lombardo Associates, Inc. will provide on site engineering services during start up and testing of the improvements, consistent with the project needs and Feoffees' requests. Lombardo Associates, Inc. will also provide on call engineering services during this period.

Task 4.2 O&M Manual

Lombardo Associates, Inc. will prepare an O&M Manual for the designed improvements.

The O&M Manual will be provided in easy to use format to allow O&M Manual revisions resulting from modifications during the project

Task 4.3 Start-up Certification

LAI will provide support services for the project improvements certification and start-up. LAI will prepare a report outlining the information to be gathered during project certification. Based upon a review of the data, LAI shall provide certification that the improvements are operating as designed or if not what corrective actions are necessary.

Task 5.0 MADEP Report and ACO Support Services

LAI will also assist the Feoffees in addressing the continuing various requirements associated with compliance with the ACO.

SCOPE OF WORK ASSUMPTIONS

The following assumptions are part of this agreement and form a basis for the contract amount and schedule:

1. The existing topographic plan obtained from Larry Graham Associates, Inc. is sufficient as a base for the contract drawings.

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

SCHEDULE

Lombardo Associates, Inc. proposes to perform the Scope of Services described above on a best efforts basis with a projected completion date as stated below, which is based upon receipt of authorization to proceed by October 2, 2004. The actual completion dates will be dependent upon interim results and logistics of coordinating various parties.

The attached schedule shows the estimated timeline for the completion of design and construction of each component of the sewer – holding tank system. Fast tracking of the work and selection of contractor(s) will be initiated as soon as possible.

BUDGET & TERMS

Lombardo Associates, Inc. proposes to perform the above-described services on a time and expenses basis for an amount not to exceed Six-hundred-Fifty-Two-thousand-One-hundred-Seventy-Two dollars (\$655,172), which cannot be exceeded without written authorization from the Feoffees. Project Construction Cost was estimated by LAI to be \$2,918,000. Task Budgets are estimated as:

Task		Estimated Budget	
Task 1.1	Master Plan	\$	54,485
Task 1.2	Engineering Plan	\$	52,246
<i>Subtotal Task 1</i>		\$	106,731
Task 2.1	Preliminary Design (35%)	\$	45,656
Task 2.2	Permitting - use 90% Docs	\$	35,944
Task 2.3	Construction Documents	\$	169,896
<i>Subtotal Task 2</i>		\$	251,497
Task 3.1	Procure Contractor	\$	30,478
Task 3.2	Services During Construction	\$	218,263
<i>Subtotal Task 3</i>		\$	248,740
Task 4.1	Startup & Testing	\$	17,509
Task 4.2	O&M Manual	\$	14,725
Task 4.3	Startup Cert	\$	15,970
<i>Subtotal Task 4</i>		\$	48,204
Total		\$	655,172

LAI's fee schedule is:

Labor:

Classification	Hourly Rate
Principal	\$175
Senior Engineer	\$140
Project Engineer	\$115
Engineer	\$ 75
Senior Analyst- GIS Specialist	\$ 95
Senior Technician	\$ 60
Other Support Staff	\$ 50

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

LITTLE NECK SEWERING SCHEDULE

LITTLE NECK WASTEWATER MANAGEMENT SYSTEM																
PROGRAM SCHEDULE																
			Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov
ACTIVITY																
1 Sewer Collection System																
1.1	Design															
1.2	Request for Bids															
1.3	Bid Opening															
1.4	Bid Ealuation & Contractor Selection															
1.5	Construction															
2 Holding Tank/Building/Access Imp rovements																
2.1	Design															
2.2	Request for Bids															
2.3	Bid Opening															
2.4	Bid Ealuation & Contractor Selection															
2.5	Construction															

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

Expenses

Automobile travel	\$0.375/mile
Photocopies	\$0.10/page
Maps & Drawings	by size, complexity & use of color
Other Expenses	At Cost plus 8% Admin. Fee

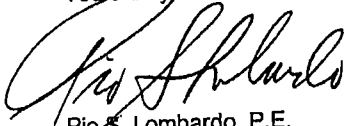
Monthly status reports on project activities will be issued along with budget status reports. The budget is an estimate and may need to be adjusted depending upon project developments.

LAI's services will be performed in accordance with the attached General Conditions-Form B and with the additional term that the Designs developed as a result of this activity are the property of Lombardo Associates, Inc. and their use on the Feoffees land, Little Neck, Ipswich can only occur with Lombardo Associates, Inc. as the Engineer of Record and lead engineer. LAI's services would be provided within professional engineering industry compensation standards.

Please indicate your concurrence with the terms of this agreement by signing in the space provided below and returning a copy of this Agreement to Lombardo Associates, Inc.

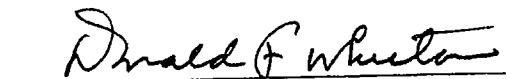
Lombardo Associates, Inc. (LAI) is interested in being of continued service to the Feoffees in a cost effective, high value-added manner. Thank you for consideration of our services. If you have any questions, please do not hesitate to contact me by telephone (617) 964-2924 or E-mail Pio@LombardoAssociates.com.

Yours truly



Pio S. Lombardo, P.E.
President

Acceptance and Authorization to Proceed:

 10/14/04
Authorized Agent Date
Feoffees of the Grammar School, Ipswich

cc: Mr. Peter Foote, Feoffee
Mr. James Foley, Feoffee
Mr. Alexander Mulholland, Feoffee
Selectman Ed Rauscher, Feoffee
Attorney Richard A. Nylan, Jr.
Attorney Don Greenough

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.

**Lombardo Associates, Inc.
GENERAL CONDITIONS-FORM B**

1.0 BILLING

- 1.1 Invoices will be issued every four weeks, payable upon receipt, unless otherwise agreed.
- 1.2 Interest of 1½ % per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the Client.
- 1.3 In the event that the Client requests termination of the work prior to completion of a report, Lombardo Associates, Inc. reserves the right to complete such analyses and records as are necessary to place its files in order and, where considered by it necessary to protect its professional reputation, to complete a report on the work performed to date. A termination charge to cover the cost thereof in an amount not to exceed 30% of all charges incurred up to the date of the stoppage of the work may, at the discretion of Lombardo Associates, Inc., be made.
- 1.4 Lombardo Associates, Inc. reserves the right to stop work should invoices not be paid within thirty days (30) days of the billing date.

2.0 WARRANTY AND LIABILITY

- 2.1 Lombardo Associates, Inc. warrants that its services are performed, within the limits prescribed by its Clients, in a manner consistent with that level of care and skill ordinarily exercised by members of the same professions currently practicing in the same locality under similar conditions. No other warranty or representation, either expressed or implied, is included in its proposals, contracts, or reports.
- 2.2 Lombardo Associates, Inc. has neither created nor contributed to the existence of any hazardous, radioactive, toxic or otherwise dangerous substance or condition at the site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. Accordingly, notwithstanding any other provision herein, the liability of Lombardo Associates, Inc., its employees, subcontractors and agents for any injury or loss arising from any such pre-existing or client generated dangerous substance or condition at or near the project site, shall not exceed one thousand dollars (\$1,000.).
- 2.3 Lombardo Associates, Inc., its employees, subcontractors, and agents shall not be liable for indirect or consequential damages, including without limitation loss of use and loss of profits.
- 2.4 In addition to the limitations provided in 2.2 and 2.3, and notwithstanding any other provision herein, the liability of Lombardo Associates, Inc., its employees, subcontractors, and agents shall be limited to injury or loss to the extent caused by the negligence of Lombardo Associates, Inc., its subcontractors, and/or agents hereunder, and the liability of Lombardo Associates, Inc. for injury or loss arising from (1) professional errors or omissions and/or (2) environmental impairment or pollution and/or (3) radiation, nuclear reaction, or radioactive substances or conditions that shall not exceed \$100,000.
- 2.5 The liability of Lombardo Associates, Inc., its employees, subcontractors, and agents for any other claim(s) of any kind shall not exceed \$500,000.
- 2.6 Increased liability limits may be negotiated upon the Client's written request, prior to commencement of services, and agreement to pay an additional fee.
- 2.7 The Client agrees to indemnify and hold harmless Lombardo Associates, Inc., its employees, subcontractors, and agents against and from any claim, liability, attorneys' fees or other defense costs incurred because of (i) injury or loss caused by the actions or omissions of the Client, its employers or its other agents, contractors, or subcontractors, or (ii) any third party claim arising from the performance of services hereunder by Lombardo Associates, Inc., its agents or subcontractors to the extent the liability and costs exceed the relevant amount of Lombardo Associates, Inc.'s liability specified in sections 2.2-2.6 above and does not result solely from the negligence or willful misconduct of Lombardo Associates, Inc., its agents or subcontractors.
- 2.8 In the event the Client makes a claim against Lombardo Associates, Inc., at law or otherwise, for any alleged error, omission or other act arising out of the performance of its professional services, and to the extent the Client fails to prove such claim, then the Client shall pay all costs, including attorney's fees, incurred by Lombardo Associates, Inc. in defending itself against the claim.
- 2.9 Client agrees to pay Lombardo Associates, Inc. for all labor and expenses associated with services provided by Lombardo Associates, Inc., regardless whether Client receives compensation from any of its customers or funding sources.

Environmental Engineers/Consultants

LOMBARDO ASSOCIATES, INC.



Print - Close Window

From: "Lawrence R. Hunter" <lhunter@ipswichcoopbank.com>
To: "Alex Mulholland Jr. (E-mail)" <a.mulholland@comcast.net>, "Donald M. Greenough (E-mail)" <ipswichlaw@yahoo.com>
Subject: Engineering Budget ✓
Date: Fri, 3 Feb 2006 11:50:44 -0500

Alex,

Yesterday Peter dropped off the latest bill for engineering. Please call me to discuss this and to set a date for a meeting regarding final costs and budget to complete project (please see last e-mail I sent you.) Please note that the hours billed for the last few months appear to be excessive, given the fact that engineering should have been completed long ago, and it is difficult to envision 400 + billable hours for oversight for the month of January alone. (same comment can be made for December and November) The invoice also shows another \$200,000 in "authorized" budget for engineering as of 1/18/06. This is not part of the budget reviewed by the bank prior to loan closing. Please note that we will be withholding payment for additional engineering (including the invoice in hand) until we receive satisfactory DETAILED explanations regarding current bills and why this item is over budget and the project is not complete.

Lawrence R. Hunter, Vice President
Ipswich Co-Operative Bank
2 Depot Square
Ipswich, MA 01938-0032
(978) 356-3600

D. Whiston
Exhibit No. 3
Date: 06/27/07
Reporter: P.A. Bucko

FE0F000516

Don Greenough

From: "Lawrence R. Hunter" <lhunter@ipswichcoopbank.com>
To: "Alex Mulholland Jr. (E-mail)" <a.mulholland@comcast.net>
Cc: "Donald M. Greenough (E-mail)" <ipswichlaw@yahoo.com>
Sent: Friday, July 07, 2006 11:57 AM
Subject: Feoffees remaining funds

Alex,

FYI, the Feoffees have \$313,899.67 left in the loan escrow account. Per Waterline contract, \$161,772.96 remains to be billed, RJV remaining to be billed: \$129,170.07 for a total of \$290,943.03. Once those bills are paid, \$22,956.64 will remain in the account. We anticipate final inspection bills of between \$5,000 and \$10,000 from Weston & Sampson once Waterline and RJV are finished and seeking final payment, hence we have about \$13,000 left for final project expenses. Note that we have not paid Pio's latest bill, or paid any of the bills associated with the May storm expenses. (Including Clark's bill for emergency pumping. We have no money in the budget for these expenses. Debt service is paid through 7/7/06, Next payment due 8/7/06 for \$53,117.52. Please call me to schedule a meeting to discuss the project.

Larry

Lawrence R. Hunter, Vice President
Ipswich Co-Operative Bank
2 Depot Square
Ipswich, MA 01938-0032
(978) 356-3600

D. Whiston Exhibit No. 4 Date: 06/27/07 Reporter: P.A. Bucko

FEOF000521

7/10/2006

Don Greenough

From: "Pio Bus" <pio@lombardoassociates.com>
To: <a.mulholland@comcast.net>
Cc: "David VanHoven" <davidv@lombardoassociates.com>; "Pio Lombardo" <pio@lombardoassociates.com>; "Don Greenough" <donald.greenough@verizon.net>; "Peter Foote" <padofote@aol.com>; "Jim foley" <james.foley@town.ipswich.ma.us>
Sent: Friday, February 24, 2006 10:17 AM
Subject: Re: FW: Sewer Project Letter

Alex

We will have a drfat response for you for Monday

Pio

> We'll probably need to be able to defend this at the annual meeting on
> Tues.
> It would not supprise me if he is there and brings it up.
>
> Alex
>
> ----- Forwarded Message: -----
> From: Yepallen@aol.com
> To: a.mulholland@comcast.net
> Subject: Sewer Project Letter
> Date: Tue, 21 Feb 2006 16:02:53 +0000
>
>
>
>
>
> February 21, 2006
> 18 Bay Road
> Ipswich, MA 01938
>
> Mr. Alex Mulholland
> 44 Plover Hill Road
> Ipswich, MA 01938
>
> Alex,
>
> On August 04, 2004, the Capital cost for the Sewer System and holding
> tanks for Little Neck was estimated at \$22,100.00 per household. This
> included an allowance for connecting all properties to the system thus not
> requiring any additional cost to the property owners. The most recent cost
> per household is \$41,050.00 and possibly more. That is outrageous and
> setting aside any legal issues as to who is responsible for the cost, a
> detail explanation is required.
>

FEOF000286

D. Whiston
Exhibit No. 5
Date: 06/27/07
Reporter: P.A. Bucko

2/24/2006

> Part of the explanation may be the frequency of missed completion dates.
> In April 2005, the goal was to have a Sewer System operational by June 1,
> 2005. A revised outlook on May 5, 2005 targeted completion by December 30,
> 2005. Pending evaluation of alternate pump out locations requested by the
> Homeowners, an intermittent use pump out station was to be available
> at the ball field as a backup. The current outlook is for completion by
> February 15, 2006 another missed date.

>
> I attended the DEP site walk on February 7, 2006. This was in response to
> an appeal of the Conservation Commission's decision for the alternate
> pump out station by several Kings Way residents. The focus was to be on
> the economic impact of the decision relative to a ball field / Community
> Center vs. the Kings Way location. At this meeting, your Consultant
> presented a truck route to the ball field up Kings Way, which incensed the
> very people who was to be convinced the Kings Way location was the best
> choice for Little Neck. If that was a strategy, it was poorly conceived
> and backfired.

>
> At this same meeting, the cost of hauling a gallon of wastewater was 12
> cents a gallon. At the VFW meeting last October 30, 2005 the cost was 8.5
> cents per gallon. Which is correct or is this owinging it? My
> understanding a Contract was awarded to a local hauler (D.F.Clark ?). If
> so, since the Homeowners will be responsible for the cost I request a copy
> of the Contract along with all quotes received on this bid.

>
>
>
>
>
>
>
> Page 2 (cont.)

>
>
>
>
>
>
> Alex, when we were Project Managers at another time in our career and
> reporting to Executive Management, we were expected to explain any
> variances in schedule or cost. No less is expected on this Project. The
> burden placed on many Homeowners will be a drastic decision to hold or
> fold. We have been told if we cannot afford to hold then get out, an
> onerous option.

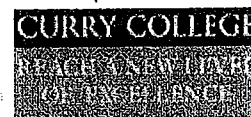
>
> I trust that you will respond to this communication. I acknowledge there
> are ongoing discussions between the Feoffee's Council and the
> Homeowners representatives however this should not preclude the
> forthcoming of information and explanations I have requested.

>
> Respectfully,

>
> Tom Allen

>
FEOF000287

2/24/2006



Sewer engineer sues Feoffees

By By Natalie Miller/natalie.miller@cnc.com
 Friday, March 02, 2007 - Updated: 12:58 PM EST

The Feoffees of the Grammar School have been sued by the engineering company they hired to design and build the wastewater system at Little Neck.

The landlords of the seaside community known as Little Neck are currently battling two lawsuits filed by homeowners.

This latest suit, filed by Lombardo Associates, claims the Feoffees have failed to pay \$297,445.50 in fees related to the construction on the septic system as of Jan. 16.

In the complaint, Lombardo states the Feoffees entered into a contract with Lombardo Associates on Sept. 30, 2004 to construct the state-mandated septic system on Little Neck. It further states that Lombardo fully performed its obligations under the contract and several amendments to the contract, but the Feoffees have failed to pay the amount due.

Lombardo Associates has filed for breach of contract, stating the Feoffees have failed to pay nine bills, dated from June 5, 2006 to Jan. 16, 2007.

The last bill, dated Jan. 16 is for \$15,723.33, and includes fees for labor and expenses related to the "planning, design, construction engineering and start up of Little Neck Sewer System and Temporary Holding Tank and Sewage Transfer Station. The fee also includes \$5,712.74 in interest for overdue bills.

When contacted by the *Chronicle* Tuesday, Feoffees attorney William Sheehan would not comment on the suit, but did say that he would be filing a response to the claim by the close of the week.

Longtime Feoffee Donald Whiston said what Lombardo is suing for is the remaining balance on the over \$7 million project. He said the Feoffees have been paying off the cost of the project, but had to stop payments due to the other lawsuits on the table.

"It's not a problem," said Whiston, "but in light of everything else that is going on it is a problem."

He also said the \$297,445 may not even be the right balance, but it's probably close.

"It has to be worked out," he said.

Lombardo's attorney John Hanify did not return calls.

<!--[if !supportEmptyParas]--> <!--[endif]-->

Tenant wars

The homeowners of Little Neck, who own their houses but rent the land from the Feoffees, have publicly expressed their concern of the management of the sewer project since the price tag grew from an estimated cost of \$3.8 million to \$7.2 million.

Gerald Donovan of Bay Road has filed a lawsuit appealing the Feoffees' decision to build a pump out station for the septic system on Kings Way.

The 146 residents that make up the Little Neck Legal Action Committee filed a lawsuit against the Feoffees last December after being mailed new leases with a rent hike residents say is unfair. They have refused to sign the new leases or to pay more than what they say is their fair share of the septic system, which they say was mismanaged by the Feoffees.

The Feoffees filed a countersuit and have sent eviction notices to those who have not paid the new rent.

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D. Whiston
 Exhibit No. 6
 Date: 06/27/07
 Reporter: P.A. Bucko

SECTION 02690: SINGLE WALLED FRP TANKS FOR NONPOTABLE WATER USE

1.0 GENERAL

1.1 Scope Of Work

- A. The Contractor shall install fiber reinforced plastic tanks of the capacity, dimensions and layout as shown on the design drawings. The Contractor shall install watertight seals, access risers, access covers, and all other necessary appurtenances conforming to the Contract Documents. Preparation of the components, excavation, dewatering, tank installation, installation of piping, watertightness and installation of all appurtenances shall be the responsibility of the Contractor. Lead time on ordering tanks can be in excess of 14 weeks. Contractor shall coordinate with Xerxes distributor to ensure that tanks are ordered in sufficient time to allow complete installation within the project schedule.

1.2 Materials

- A. Acceptable Manufacturers: Xerxes Corporation, Minneapolis, Minnesota
- B. Manufacturing Standards:
1. Manufacturer shall be able to provide documentation that the tank shell has been built to the applicable requirements of Underwriters Laboratories Standard UL 1316.
 2. Tank manufacturer shall be in the business of manufacturing tanks to UL 1316 standards.
- C. Materials:
1. Tank shall be manufactured of 100% resin and glass-fiber reinforcement, with no sand fillers and no exposed glass fibers. The raw materials used in this resin are listed as acceptable in FDA regulation Title 21CFR 177.2420 for repeated use in contact with food.

1.3 Submittals

- A. Comply with pertinent provisions of the General Conditions.
- B. Product data: Within 35 calendar days after the Contractor has received the Owner's Notice to Proceed, submit:
1. Manufacturer's recommended installation procedures which, when approved by the Engineer, will become the basis for accepting or rejecting actual installation procedures used on the work.

D. Whiston
Exhibit No. 7
Date: 06/27/07
Reporter: P.A. Bucko

2.0 PRODUCTS

2.1 Single-Wall Fiberglass Underground Tanks

WS01707

A. Installation of the tanks shall include, but not necessarily be limited to the following components:

1. Four (4) 30,000 gallon Xerxes FRP tanks
2. One (1) 2,000 gallon Xerxes FRP tank
3. 24 18" Xerxes Concrete Deadmen
4. Two (2) Xerxes 12" Concrete Deadmen
5. 40 Anchor Straps for 10' Diameter Tanks
6. Two (2) Anchor Straps for 6' diameter Tank

B. Product Storage Requirements:

1. Tank shall be vented to atmospheric pressure, as the tank is not designed as a pressure vessel.
2. Tank shall be designed for maximum product-storage temperature of 150° F.

C. Loading Conditions: Tank shall meet the following design criteria:

1. Vacuum Test: To verify structural integrity, each tank up through 10-foot diameter shall be vacuum tested by the manufacturer at the factory to 11.5 inches of mercury.
2. Surface Loads: Tank shall withstand surface H-20 axle loads when properly installed according to manufacturer's current installation instructions.
3. External Hydrostatic Pressure and Burial Depth: Tank shall be capable of being buried in ground with up to 15 feet of overburden, the hole fully flooded and a safety factor of 5:1 against general buckling.
4. Tank shall support accessory equipment-such as internal pump platforms, submersible pumps and ladders-as shown on tank drawings and when installed according to tank manufacturer's recommendations.

2.2 Accessories

A. Anchor Straps:

1. Straps shall be FRP anchor straps as supplied by tank manufacturer.

WS01708

2. Number and location of straps shall be shown on tank drawings and as required by the manufacturer to prevent movement of the tank when completely empty and fully submerged without overburden.

B. Access Openings:

1. FRP tanks shall have manways as shown on the drawings.
2. All manways are to be flanged and 28-inch-i.d., complete with UL-listed gaskets, bolts and covers.
3. Access opening risers shall be FRP.
4. Access openings and riser sections shall be subject to acceptance testing specified in this section.

C. Fittings:

1. All standard threaded fittings shall be constructed of carbon steel.
2. All standard threaded fittings shall be half-couplings, and of 2-inch, 4-inch or 6-inch diameter. Reducers are to be used for smaller sizes where shown and provided by contractor.
3. All NPT fittings shall withstand a minimum of 150 foot-pounds of torque and 1,000 foot-pounds of bending, both with a 2:1 safety factor.

3.0: Execution

A. Acceptance Testing:

1. Upon delivery of tanks, the tanks shall be vacuum testing in accordance with ASTM C1227. The empty tank shall be sealed, and a vacuum shall be applied to 2 in. of mercury. The vacuum test shall include the riser sections and all penetrations. The tank shall be approved if 90% of the vacuum is held for a minimum of 2 minutes. Vacuum testing shall be performed by the Contractor. Upon acceptance of the test, the Contractor shall take ownership of the tanks.

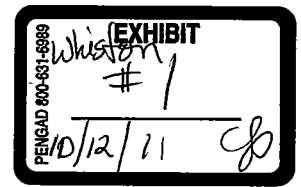
B. Testing and Installation:

1. Tank shall be installed according Xerxes Installation Manual and Operating Guidelines for Single Walled Fiberglass Underground Wastewater Tanks, latest edition.
2. Vacuum testing shall be performed at the direction of the Engineer following tank installation, in accordance with ASTM C 1227, as outlined above. All costs associated with vacuum testing and any work necessary to comply with this testing requirement are the responsibility of the Contractor.

WS01709

(END OF SECTION)

WS01710



FEOFFEEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts 01938

To: LITTLE NECK COTTAGE OWNERS

Try as we may, the Feoffees can't remember a time during which we have had so many important issues before us. By this letter we wish to bring you up to date on a number of matters.

Enclosed you will find our updated Rules and Regulations, which will take effect on July 1st, 2000. The significant changes are in Section 3 (septic systems) and Section 9.5 (private use of the Community House). We recommend that a copy of the Rules and Regulations be posted in every cottage.

We would also like to remind you that the annual rents for the 2000-2001 season will be \$1,760 (seasonal) and \$1,980 (year-round). The rent is 55% of the fair market rental as determined by LandVest, Inc., in its appraisal of April 15, 1997. Despite the significant increase in the local real estate market during the past three years, we plan to follow the rent increase schedule adopted two years ago, without any further adjustment until 2004.

Water meter replacements are also scheduled for this summer and fall but a firm schedule has not yet been established by the Town.

As you know, our civil engineering consultant, H.L. Graham Associates, Inc., of Ipswich, is continuing its work relative to the upgrade of all septic systems at Little Neck as required by the Massachusetts Department of Environmental Protection ("DEP") under the Clean Waters Act and Title 5.

Through the DEP and the consultant, plans and designs are in progress for the first of three phases for the upgrades. We anticipate installation of the Phase One systems this fall as mandated by the DEP. Systems scheduled for upgrade this fall are identified on Exhibit A. The plans and designs in progress may require additional field work so you may see the consultant on site and it may need some additional information from you as well as access to your cottage.

Each cottage owner listed on Exhibit A may expect to receive, in the near future, a contract for pumping and servicing of the tight tank to be installed this fall. A cottage owner may execute this contract with D.F. Clark, Inc., or may use another service contractor on the Feoffees' approved list with whom to execute a similar contract. In any case, you must provide our consultant with a copy of an executed contract by July 15th, 2000. DEP requires this document with the plans and application for its approval.


Many of you have expressed concern about the DEP mandate and the much discussed possibility of extending the sewer line to Little Neck. Our attorneys have inserted in the following language in the draft Consent Order with DEP to address this issue:

The parties acknowledge that the Town of Ipswich is conducting a feasibility study to extend sewerage to the Great Neck section of Ipswich. This may be extended to Little Neck. The Department also acknowledges that it does not intend to require Little Neck residents to pay for the upgrade of septic systems and also require payment for individual tie-ins to sewer.

In the event that the Town of Ipswich, by vote of Town Meeting, Board of Selectmen or Board of Water and Sewer Commissioners, votes to consider to authorize the extension of sewerage to any portion of Great Neck or Little Neck during the term of this Order, the Department and the Feoffees shall suspend the upgrade requirements for those systems included in this Order which have not been completely installed and modify the timetables in this Order. If the Department determines that sewerage tie-ins to Little Neck will be commenced within five years or less, the upgrade requirements contained in this Order shall be suspended and shall be terminated at the time of the completion of the tie-ins. For purposes of this re-opener, the Town Meeting vote to conduct the sewer extension feasibility study in FY2000 does not trigger the suspension of the upgrade requirements for individual septic systems.

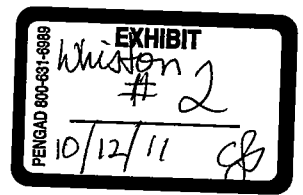
We trust this update is helpful for your understanding of the work in progress at Little Neck. We thank all of the cottage owners for your continued cooperation in these matters.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Donald F. Whiston", with a stylized flourish at the end.

DONALD F. WHISTON

FEOFFEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts 01938



May 12th, 1995

Little Neck Resident:

As you know, there has been a great deal of discussion and concern regarding the changes in the Massachusetts law referred to as "Title 5", which regulates on-site septic systems and cesspools. We wish to briefly remind you of your responsibility for your system as the owner of a cottage.

The Feoffees have no legal duties in connection with your system as Title 5 (310 CMR 15.002) places the obligation of the law on the owner of the residence serviced by the system. The law specifically includes a lessee within the class of "owner".

You should not be directly affected by the changes in the law until you sell your cottage, at which time the law requires that your system be inspected by a state-certified inspector. Transfers to a family trust or to a family member as a gift do not trigger the inspection requirement. If there is any evidence that your system has failed (as defined in the law), you will have one year to correct the problem in a manner approved by the town's Board of Health, based upon a plan submitted by an engineer of your choosing.

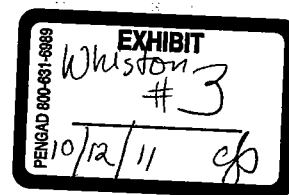
We hope that the low rate of turnover of cottages will avoid any excess of construction projects at any one time which might interfere with your enjoyment of Little Neck. We ask that if you plan to replace or make significant repairs to your system, that you notify the Feoffees at least seven days in advance.

If you have any questions, we suggest that you contact the Ipswich Health Inspector, Dominic Badalato (356-6605).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Donald F. Whiston".

Donald F. Whiston,
Chairman



FEOFFEES OF THE GRAMMAR SCHOOL
Ipswich, Massachusetts 01938

November 20th, 2001

Mr. Richard F. Doherty
Little Neck Homeowners, Inc.
3 Garden Lane
Wakefield, MA 01880

Dear Dick:

This letter is to confirm the agreement of the Feoffees to bring the purchase proposal, as described in your letter of July 3rd, 2001; to the Ipswich School Committee for review.

As I had indicated in my letter of August 28th, our willingness to bring your offer to the attention of the School Committee should not be misinterpreted as our acceptance of your offer and the price contained therein. Upon your acknowledgment of this letter and delivery of the deposit, payable to "Donald M. Greenough, Escrow Agent", we will immediately contact the School Committee to request that your proposal be placed on its agenda as soon as possible. Together with delivery of the deposit, please provide a tax identification number for your organization in order that the deposit may be placed in an interest-bearing account for your benefit.

As requested in your letter of October 30th, the Feoffees will undertake the actions necessary for the sale of the property to you at a price that is acceptable to the School Committee. It is highly unlikely that a sale could be consummated within one year as suggested in your letter. We believe that discussions with the School Committee and the completion and review of the additional appraisals of the property that will undoubtedly be required by the Town will take approximately six months. To provide sufficient time to negotiate the purchase price and other terms of the transaction as mentioned in your letter of July 3rd, we believe that an additional six months may be required.

At the conclusion of this process with the School Committee, if our price and terms are satisfactory to you, we would execute a Purchase and Sale Agreement for the property. Our obligations will be contingent upon the approval of the Agreement by the Office of the Attorney General and our delivery of the deed will be contingent upon authorization by a Special Act of the Massachusetts legislature.

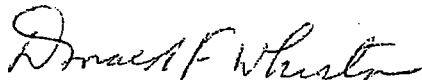
Given the above, we believe that a more realistic time frame for the completion of the transaction is thirty months. The legislation authorizing the sale will almost certainly include a restructuring of the governance of the Feoffees and guidelines for the distribution of the income generated from the sales proceeds for the exclusive use of the schools. The Feoffees have initiated discussion on those issues with the Town's review committee. We are confident that those issues will be resolved well in advance of a Purchase and Sale Agreement.

Therefore we propose that the deposit be held for thirty months. If we do not execute a Purchase and Sale Agreement within one year, the deposit and the accrued interest, will be returned to you. If we can reach an agreement, the deposit will remain in escrow and be returned to you if we fail to receive the necessary approvals at the state level.

If the above terms are satisfactory to you, please sign the enclosed duplicate copy of this letter and return it to me together with your deposit.

If you have any questions, please do not hesitate to contact with Don Greenough or myself.

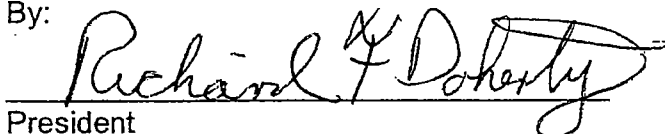
Sincerely,



DONALD F. WHISTON

LITTLE NECK HOMEOWNERS, INC.,

By:



President

Date: 12/19/01

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, Ardiff & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960

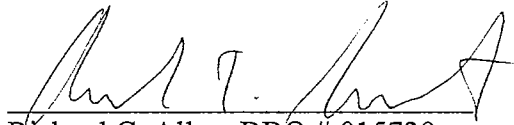
Johanna Soris, Esq.
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108

PLEASE TAKE NOTICE that on October 12, 2011 at 10:00 a.m., Counsel for Defendant, Ipswich School Committee will take the deposition of **Donald Whiston**, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The deposition will take place at the offices of Casner & Edwards, LLP, 303 Congress St., Boston, MA 02210.

You are invited to attend and cross-examine. The deposition will continue from day to day until completed.

Respectfully submitted,

Ipswich School Committee
By its attorneys,



Richard C. Allen, BBO # 015720

Stephen M. Perry, BBO # 395955

Donna M. Brewer, BBO #545254

Andrew T. Imbriglio, BBO #676049

CASNER & EDWARDS, LLP

303 Congress Street

Boston, MA 02210

Phone: 617-426-5900

allen@casneredwards.com

perry@casneredwards.com

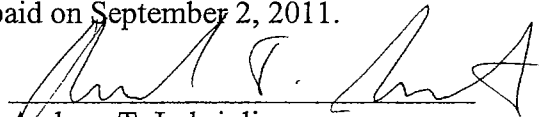
brewer@casneredwards.com

imbriglio@casneredwards.com

Dated: September 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel for all parties by first class mail, postage pre-paid on September 2, 2011.



Andrew T. Imbriglio