

STATE OF OHIO)
PORTAGE COUNTY) SS: IN THE COURT OF COMMON PLEAS

CASE NO. 07 CV 1774

VILLAGE OF WINDHAM, ET AL.)
Plaintiffs)
VS.)
WINDHAM TOWNSHIP, ET AL.)
Defendants)
DEPOSITION
OF
BRIAN K. MILLER

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 15th Day of October, 2008, pursuant to Agreement and at the time and place therein specified, to be used pursuant to the Rules of Civil Procedure or by agreement of counsel in the above cause of action, pending in the Court of Common Pleas, within and for the County of Portage, State of Ohio.

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STIPULATIONS

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It is stipulated and agreed by and between counsel for the parties hereto that the deposition may be taken at this time, 1:41 p.m., October 15, 2008, in the offices of Atty. Mark S. Finamore, 258 Seneca Avenue N.E., 9 Warren, Ohio.
It is further stipulated and agreed by and between counsel that the deposition may be taken in shorthand by Gina M. Allen, a Notary Public within and for the State of Ohio, and may be by her transcribed with the use of computer-assisted transcription; that the witness' signature to the finished transcript of his\her deposition may be and is hereby waived by agreement of the parties; and that the deposition may be thereupon used on behalf of the parties in the aforesaid cause of action as fully and to the same extent as if written in the presence of the witness and subscribed by the witness in the presence of the Notary Public.

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APPEARANCES

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On Behalf of Plaintiffs:
David C. Comstock, Jr., Attorney at Law
Comstock, Springer & Wilson
100 Federal Plaza East
Suite 926
Youngstown, Ohio 44503
On Behalf of Defendant, Windham Township Board of Trustees:
Mark S. Finamore, Attorney at Law
258 Seneca Avenue N.E.
Warren, Ohio 44481
On Behalf of Defendant, Janet Esposito:
Theresa Scahill, Attorney at Law
466 S. Chestnut Street
Ravenna, Ohio 44266
Also Present:
Mayor Robert Donham
Mr. Cecil James Moore
Mr. Dann Timmons

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CROSS EXAMINATION BY MR. COMSTOCK, JR. - PAGE 5
OBJECTIONS AND MOTIONS: NONE
PLAINTIFF'S EXHIBITS INTRODUCED:
EXHIBIT 1 - PAGE 17
(REPORTER'S NOTE: PLAINTIFF'S EXHIBITS WERE RETAINED BY ATTY. DAVID C. COMSTOCK, JR.)

1 WHEREUPON,
 2 BRIAN K. MILLER,
 3 of lawful age, being by me first duly
 4 sworn to testify the truth, the whole
 5 truth, and nothing but the truth, as
 6 hereinafter certified, deposes and
 7 says as follows:

8 CROSS EXAMINATION:

9 BY MR. COMSTOCK

10 Q Please state your full name.
 11 A Brian Keith Miller.
 12 Q Mr. Miller, my name is David Comstock.
 13 I go by the nickname Chip. As you know, I've been
 14 retained by the Village of Windham to represent it in
 15 connection with a lawsuit that's been filed against the
 16 township. Have you ever given your deposition before?
 17 A No, I haven't.
 18 Q Okay. Well, as I said, I'm going to try
 19 to make this relatively painless, but I do have some rules
 20 that I give to every witness, even if your own counsel's
 21 gone over them with you. I want to reiterate them on the
 22 record. First, make sure that only one of us talks at the
 23 same time. You answer, I'll wait until I ask the next
 24 question. Wait until I finish my question before you

1 I remind every witness -- oh, if you don't know -- if
 2 you don't know the answer to a question, tell me you don't
 3 know. I don't want you to guess. If you guess, and you
 4 guess wrong, it's hard to tell whether you were being
 5 deceptive or trying to intentionally lie or just were
 6 deceptive, so we avoid that by just telling me you don't
 7 know the answer to a question. Again, I'm not going to
 8 expect you, nor will your counsel expect you to know
 9 everything.

10 Finally, this is a court proceeding. You're under
 11 oath. I remind every witness of that fact, and, you know,
 12 I expect you to give me truthful and honest answers at all
 13 times subject to all those rules in Ohio related to
 14 perjury. Understand all my instructions?

15 A Yes.
 16 Q All right. Mr. Miller, how old are you?
 17 A Thirty-nine.
 18 Q Okay. And current marital status?
 19 A Yes, I'm married.
 20 Q Okay. Kids?
 21 A No.
 22 Q Give me an idea of your educational
 23 history. Where did you go to high school?
 24 A I graduated from Windham High School in

1 answer. The court reporter can't take down both of us
 2 talking at the same time. The court reporter can't take
 3 down a nod of the head, so you have to give your answers
 4 verbally. If I catch you nodding your head I'm going to
 5 say is that yes or no. Witnesses will also say uh-huh or
 6 huh-uh, meaning yes or no; that's how we talk in everyday
 7 conversation. One of us will probably fall into that
 8 habit, and either the court reporter, your counsel or I
 9 will correct us to make sure that the record's clear to
 10 say yes or no.

11 If I ask you a question that you don't understand
 12 just because it's a dumb question, or, you know, it just
 13 doesn't come out of my mouth right, just tell me you don't
 14 understand what it is that I'm asking you, and I'll try to
 15 reask my question phrasing it so you are comfortable with
 16 what it is that I'm asking you.

17 If you need to take a break for any reason, whether
 18 it's to use the restroom, stretch, get a breath of fresh
 19 air or talk to your counsel, tell me that you want a
 20 break, and we'll stop; that is not a problem. I don't
 21 think this is going to be that long, but I'll stop at at
 22 least one point and talk to my clients, who are here, and
 23 just to make sure I'm doing everything I'm supposed to,
 24 and again, if you need to do the same, you let me know.

1 1987.

2 Q All right. Any additional schooling,
 3 education, training following high school?

4 A Yes, I graduated from Kent State
 5 University.

6 Q Okay. Type of degree?

7 A I believe it was a BS degree.

8 Q Okay. And your major?

9 A I created my own program.

10 Q Which was?

11 A Business and education.

12 Q Okay. After your degree from Kent
 13 State, any other schooling, education, training?

14 A Ohio Township Association. I'm the
 15 leadership -- graduated from the Leadership Academy.

16 Q Okay. Any other schooling?

17 A I attended Hiram College. I attended
 18 Mount Union College.

19 Q And what did you take when you attended
 20 Hiram and Mount Union?

21 A Various classes.

22 Q I mean in a particular field is what I
 23 was getting to.

24 A I was in the early stages. Then I

9

1 finished up at Kent State.

2 Q Okay. All right. Other than the

3 schooling we've talked about, any other schooling,

4 education, training?

5 A Not that I can think of.

6 Q All right. Give me an idea of your

7 employment history.

8 A Well, we -- we have -- I'm the president

9 of Miller Sand & Gravel Corporation, and I also own my own

10 personal business, which is Miller Service & Supply

11 Company. I'm also a president of Rec Sales & Material

12 Corporation.

13 Q Okay. Let's go back. You're president

14 of Miller Sand & Gravel. How long have you been

15 affiliated with Miller Sand & Gravel?

16 A Well, since I was eighteen.

17 Q Okay. Family business?

18 A Yes, for over 60 years in Windham

19 Township.

20 Q And what does Miller Sand & Gravel do?

21 A Sand and gravel.

22 Q I mean, is it a supplier of raw

23 materials?

24 A Yes.

10

1 Q Okay. Do any on the -- on construction

2 site work, or is it just delivery? I mean, what -- I'm

3 trying to get an idea of the scope of the business.

4 A Well, we supply sands and gravels to

5 various entities.

6 Q Okay.

7 A As far as -- and also retail --

8 Q Okay.

9 A -- to residential housing --

10 Q Okay.

11 A -- needs.

12 Q And then the next -- by the way, how

13 many employees does Miller Sand & Gravel have?

14 A Two presently.

15 Q Any independent contractors that you

16 use?

17 A My father-in-law.

18 Q Okay.

19 MR. FINAMORE: Fred Flintstone doesn't

20 work there?

21 A Keep it small, keep it all.

22 Q Next you talk about Miller Service &

23 supply?

24 A Uh-huh.

11

1 Q And what is the nature of that business?

2 A That's a service and supply of mowing

3 and plowing service that I do.

4 Q And your position with that company?

5 A President.

6 Q And how long has that company been in

7 business?

8 A For over ten years, roughly.

9 Q Number of employees?

10 A Two. Actually one, myself and a

11 part-time.

12 Q Okay. And last we had Rec Sales &

13 Materials.

14 A Rec, R-E-C.

15 Q Okay. And what is that type of

16 business?

17 A It's a land holding company, reclamation

18 company.

19 Q And are you -- does that -- does that

20 company presently have any assets? In other words, are

21 you in the process of reclaiming land now?

22 A We presently own a lot of the land

23 that's in the process of -- a lot of it's in railroad

24 ballast and railroad lines and stuff for -- for like bike

12

1 trails and stuff of that nature; in the process, yes.

2 Q How long has that company been in

3 business?

4 A Since 19, I believe, 92.

5 Q And president -- you are president?

6 A Yes.

7 Q How long have you been a township

8 trustee?

9 A I believe this is my seventh year.

10 Q Were you elected to a first full term of

11 four years?

12 A No, at first I finished out -- I was

13 elected for a two-year term.

14 Q Do you know whose term you completed?

15 A I completed a gentleman by the name of

16 Carl Griswold, Shorty Griswold.

17 Q Okay. You did a two-year term, and then

18 you were elected to a full four-year --

19 A Yes.

20 Q -- term? And then have you been up for

21 a second election then, or, I mean, a --

22 A I just was reelected last year for

23 the -- for my third term.

24 Q So did your -- your second full term of

1 four years commence in 2008?
 2 A No. It would have commenced in -- yeah,
 3 I guess it would have because I just started -- yes.
 4 Q Okay.
 5 A Yes, yes, yes.
 6 Q Re-elected November of 2007, starting
 7 January of 2008, and your terms --
 8 A Yes.
 9 Q -- would be 2008, 2009, 2010, 2011?
 10 A It completes in 2011, yes; yes.
 11 MR. FINAMORE: You're not going to ask
 12 him about the loopholes in Issue 6, are you?
 13 (Discussion off the record)
 14 Q Have you ever served as a chairman of
 15 the board of trustees?
 16 A No, I haven't. Mr. Timmons has always
 17 been the chairman as long as I've been the trustee.
 18 Q Well, we are here today as you well know
 19 regarding the dispute over the fire department. What
 20 involvement have you had with the fire department, if any,
 21 outside of your official duties as a trustee?
 22 A I'm not sure I understand the question.
 23 Q Fine. Do you have -- do you have any
 24 interaction with the fire department outside of your --

1 your official duties?
 2 A If they'd happen to come when there's a
 3 fire, yeah.
 4 Q Some -- there are trustees, for example,
 5 that --
 6 A I'm not a fireman.
 7 Q Okay. There are trustees who are
 8 firemen or serve as official members or honorary members
 9 of associations and so forth and so on?
 10 A I'm not a fireman. I'm just a supporter
 11 of the firemen.
 12 Q Okay. I'm going to keep narrowing.
 13 We'll narrow ranges of questions down; all right? The
 14 question I have asked the people who have been deposed
 15 earlier, that one of the first important questions is,
 16 what is your personal understanding -- and let me back up
 17 for a second. A lot of questions I'm going to ask is only
 18 about your understanding. You may not have knowledge of
 19 facts. Some of them are going to be -- happened long
 20 before your term, so most of the questions I'm going to
 21 ask you is about what you know or what is your
 22 understanding; okay?
 23 So having said that, what is your understanding of
 24 when the township fire district began?

1 A I believe it was sometime in 1965.
 2 Q Okay. And what do you base your
 3 understanding or your knowledge upon?
 4 A Partly what I had heard and understood
 5 as the way things were --
 6 Q Okay.
 7 A -- when I came in to office.
 8 Q What is your -- okay. What is your
 9 understanding of whether the original district was a --
 10 was it a township district? Was it a joint fire district?
 11 Do you know the nature of the district, I guess, is what
 12 I'm asking?
 13 A I've always known it to be the Windham
 14 Township Fire District.
 15 Q You know that the Windham Township Fire
 16 District collects a tax?
 17 A Well, the auditor collects the tax.
 18 Q Okay. Do you receive tax money from the
 19 auditor?
 20 A Correct.
 21 Q Okay.
 22 A Yes; sorry.
 23 Q What is your understanding as to when
 24 the fire department was first formed that serves Windham

1 Township and/or Village?
 2 A I believe that in order to pass a tax it
 3 had to go through the township 'cause it couldn't -- it
 4 couldn't be levied any other way at that time in Ohio law.
 5 Q Okay. Well, my question is -- I
 6 understand there's a tax, and a tax has been in place for
 7 a long time. Do you know whether or not the fire
 8 department was actually in business and formed prior to
 9 the creation of the -- or the passage of the tax or not?
 10 A Well, being that the township was
 11 established in 1811, I imagine there had to be some way
 12 that those gentlemen had to bucket brigade or something --
 13 Q Well --
 14 A -- prior to 1965.
 15 Q -- do you have any knowledge --
 16 A Well --
 17 Q -- one way or another what they did
 18 before 1965?
 19 A I guess no.
 20 Q Okay. In the complaint that I filed
 21 with the Court, okay, I made a number of allegations, and
 22 I attached a number of documents to the complaint. Have
 23 you had the opportunity to review the complaint?
 24 A Partly.

1 Q Okay. Have you reviewed the exhibits
2 that were attached to it?

3 A Well, I did, but I lent it out to one of
4 the other trustees, and I didn't get it back.

5 Q Okay. All right.

6 A Honestly.

7 Q That's fine. In the number of
8 documents -- well, a number of documents were attached,
9 and I'm just going to start off with Exhibit A to the
10 Complaint, which we previously marked as Plaintiff's
11 Exhibit 1 for deposition purposes, it says that the party
12 of the first part, and that refers to the village, has no
13 legally organized fire department under the statute as
14 opposed to the -- I'm sorry -- the party of the first
15 part, meaning the township, has no fire department, and is
16 contracting for fire protection purposes with the village.
17 And there were a number of documents that stated that
18 through the 1980s.

19 Before today, do you have any recollection of ever
20 reviewing any of those documents?

21 A I do, but I couldn't tell you any
22 specifics.

23 Q Okay. If I were to ask you to tell me
24 how the township created its own fire district outside of

1 the passage of a tax levy, okay; outside of a passage of a
2 tax levy I'm asking you to tell me how did the Windham
3 Township create its own fire district? What could you
4 tell me?

5 A I believe there in early '64, '65 what I
6 have read was they solicited, I believe, I'm not exactly
7 sure what department, but Bricker & Eckler, one of the
8 largest attorney firms in all of Ohio helped them to
9 establish it, or Bickler & Eckler. I believe that's
10 correct.

11 Q The firm is Bricker & Eckler.

12 A Bricker & Eckler, I'm sorry.

13 Q Have you read the opinion that was
14 issued to the township?

15 A I don't recall.

16 Q If I were to tell you that that --

17 A Too much details.

18 Q If I were to tell you that that opinion
19 basically states that there could be a legally created
20 fire district, even though the articles or the resolution
21 could not be found, and that the way to affirm it would be
22 through obtaining an affidavit from a trustee who was
23 present when the district was created, would you have any
24 reason to dispute my representation of that letter to you?

1 A Show me the letter, I guess, if you have
2 it.

3 Q I might.

4 MR. FINAMORE: What he's asking you
5 though, Brian --

6 THE WITNESS: I'm not sure if I answered
7 it.

8 MR. FINAMORE: He's asking you, do you
9 have any reason to believe that what he's telling you is
10 not true? Do you have any reason to believe that?

11 A No, I do not. I have no reason to doubt
12 you.

13 Q Okay.

14 MR. FINAMORE: That's what he was really
15 asking you.

16 Q And before that, outside of any
17 correspondence from legal counsel, okay, or anything that
18 the firm of Bricker & Eckler may have done, do you have
19 any information or knowledge of any facts which suggest
20 that the township created its own fire department at any
21 time?

22 A Well, that's not for me to decide, I
23 guess.

24 Q Well, it may ultimately be for a court

1 to decide, but I'm trying to find out -- I'm trying to
2 find out what you know or don't know, and you may just
3 tell me, I don't know anything.

4 A I'm not sure. I don't -- I can't 100
5 percent -- I don't know.

6 Q Okay. At any time -- are you aware of
7 the township at any time appointing a fire chief pursuant
8 to Section 505.38 of the revised code?

9 A I know there's two different Ohio
10 Revised Codes. Now, I'm not sure, is that the one that
11 allows our township to be one of only four of the
12 establishment in the state that exists, a township fire
13 district; is that the -- is that the one you're asking
14 about?

15 Q No.

16 A Because there's two different Ohio
17 Revised Codes --

18 Q Okay.

19 A -- that establish -- I just --

20 MR. FINAMORE: No, no, no. Listen to --

21 THE WITNESS: Okay.

22 MR. FINAMORE: -- listen to what his
23 question is very carefully what he's asking you.

24 Q I'm going to --

21

1 A When I see -- I'll be honest, when I see
2 numbers, I know there's different codes.
3 MR. FINAMORE: He's going to eliminate
4 the number.
5 Q I'll make it simpler.
6 A Okay. Okay. Okay. Sorry.
7 Q Are you aware of any time during your
8 tenure as a trustee --
9 A Okay.
10 Q -- of the -- of the township appointing
11 a fire chief?
12 A Appointing?
13 Q Yep.
14 A Well, is appoint the same as approving?
15 Q No.
16 A Well, I guess without our appointing
17 them, no. I guess I don't.
18 Q Has -- during your town -- during your
19 tenure as trustee, has the township, to your -- your
20 knowledge, ever appointed firefighters to the fire
21 department?
22 A I know the village did something down
23 there.
24 MR. FINAMORE: Okay. Listen -- listen

23

1 A No, I didn't. What date are we talking,
2 sir?
3 Q I'm --
4 A Because if that was in November, was it
5 probably around the 13th or 15th of November of last year?
6 Q It was -- it would have been -- I mean,
7 late -- yes, late fall.
8 A Okay. I think it was -- I think that
9 all happened, and I was on vacation with my wife --
10 Q Timing is everything.
11 A -- in Hilton Head at that time when that
12 all blew up.
13 MR. FINAMORE: Perfect term, blew up.
14 MR. COMSTOCK, JR.: Yeah, it's an
15 arsenal.
16 A I go on the 13th of November.
17 Q All right. Are you aware of anybody on
18 behalf of the township, other than legal counsel or the
19 chair, who may have spoken to any of the federal
20 representatives on behalf of the township?
21 A No, I'm not.
22 Q Okay.
23 A Like I said, I was on vacation.
24 Q Do you have any responsibility with

22

1 to his question.
2 A Okay.
3 Q I'm just asking you about --
4 A No.
5 Q -- during your period as a township
6 trustee, has the township ever appointed a firefighter to
7 the fire department?
8 A No.
9 Q You did not personally have any
10 involvement in the creation of the ground lease between
11 the village and the township for the fire station; is that
12 right?
13 A No, I did not.
14 Q You're aware that the township -- I'm
15 sorry. You're aware that the village had some
16 conversation with the arsenal, the federal government,
17 regarding the provision of fire protection services for
18 the arsenal property?
19 A When are you talking?
20 Q In 2007 into 2008.
21 A Okay. Yes.
22 Q Okay. Did you ask anybody, whether from
23 the fire department or the -- or the township to speak to
24 anybody on your behalf at the federal government?

24

1 respect to the collection of money -- well, I'm sorry. Do
2 you have any responsibility for EMS billing or the
3 collection of money for the provision of EMS services?
4 A Responsibility?
5 Q Yes.
6 A Explain what you mean.
7 Q Well, the township has entered -- let me
8 make -- boil this down. The township has entered into
9 contracts with the billing service; is that right?
10 A Well, yes. And the village has signed
11 contract agreements as well.
12 Q Is there currently a contract in place
13 for the billing of EMS services?
14 A I do believe so, yes.
15 Q Do you know whether or not the village
16 has signed off on that current contract?
17 A I do not know.
18 Q To your knowledge, is the money that is
19 collected through the EMS billing placed into a separate
20 EMS billing fund?
21 A I don't believe it is.
22 Q Do you know whether there's any
23 requirement to do so under the Ohio Revised Code?
24 A I do not know.

1 Q Is the money that's -- that's collected
2 used for anything else other than the provision of EMS and
3 fire services?

4 A No, it is not. Unless you're
5 considering personnel expense.

6 Q Okay. Would the personnel expense be
7 only those personnel associated with a fire department?

8 A Yes.

9 Q Okay.

10 A There isn't any intermingling of funds,
11 if that's what you're wanting to know. If it's supposed
12 to go there, that's where it goes. Our clerk is excellent
13 at doing that, making sure she does the right thing.

14 Q But do you know whether or not she
15 has -- she has created a separate fund?

16 A I do not know.

17 Q Okay. When you first got -- when you
18 first became trustee, filled the position of your
19 predecessor, was there in place a contract between the
20 village and the township or the fire district for the
21 provision of fire protection services?

22 A I don't believe there was. Shortly
23 after we did that in an agreement, though.

24 Q Okay. During that period of time when

1 clerk, Mrs. Barrett, and she lost her job, and it was kind
2 of an ordeal in town that I recall. Even though she was a
3 voted position they kind of changed -- they did something
4 down there at some point right around 2000 where she lost
5 her job.

6 Q Okay.

7 A And I'm not exactly sure what all the
8 details were there, but it kind of held a vacuum or
9 created a problem.

10 Q Okay. If I were to tell you that at
11 least prior to the year 2000 that the village was
12 responsible for the day-to-day oversight of the fire
13 department, would you have any basis upon which to refute
14 that statement?

15 A I'm not sure.

16 Q Okay. Either you do or you don't, or
17 no, I mean, it's --

18 A Well, other than what I had heard.

19 Q Well, do you have any facts that would
20 suggest that prior to the year 2000 that the township had
21 any responsibility for the day-to-day oversight of the
22 fire department?

23 A Probably not. But I'd like to add that
24 in agreements that I saw later that the village was

1 there was not a contract when you first were appointed, to
2 your recollection, did the township do anything at that
3 time to run or operate or otherwise -- or oversee the
4 operation of the fire department?

5 A Well, you mean prior to that?

6 Q In -- during the period that you were
7 trustee and there was no contract, did the township do
8 anything to oversee the operation of the -- of the fire
9 department?

10 A Just as they had always had, as I
11 understand.

12 Q To your understanding there had been no
13 change in how it had been done when there was a contract
14 in the period when there was -- there wasn't a contract?

15 A Well, you asked me when I became
16 trustee.

17 Q Yeah.

18 A Prior to that, myself being trustee, I
19 believe the village had some hand in that, but they kind
20 of left the ball in our hands. They kind of dropped the
21 ball, to be honest.

22 Q Okay.

23 A At that time they had a clerk who got
24 fired or lost her job. I think it was a voted position,

1 supposed to operate and act in a businesslike manner, and
2 I'm not 100 percent sure that they did that.

3 Q Okay. Let's assume that the village
4 didn't act in a -- in an ongoing, you know, businesslike
5 manner; okay? I'll concede that for purposes of this
6 question. What did the village do, or, I'm sorry, what
7 did the township do to bring that breach of contract or
8 that allegation to the village's attention?

9 A I'm not sure.

10 Q Okay. There were clearly some changes
11 in the responsibilities between the township and the
12 village. Past testimony has suggested that that was done
13 informally by agreement between the township and village
14 clerks?

15 A Okay.

16 Q Are you aware of any facts that would
17 indicate that the village ever formally approved those
18 changes?

19 A Well, when they're firing the clerk, I
20 imagine there was some problems there that clerk might not
21 have felt free to do so.

22 Q Well, I guess --

23 A I don't know.

24 MR. FINAMORE: Listen -- listen --

1 listen to his question before you answer, Brian.

2 THE WITNESS: Okay. I'm sorry. Scratch
3 that part.

4 MR. FINAMORE: No, no. He wants you to
5 be responsive, and like he said before -- if you don't
6 mind me, Chip, just to clarify a minute. If you don't
7 know, it's better just to say you don't know rather than
8 to conjecture about what may have happened, could have
9 happened in the deal.

10 THE WITNESS: I got you.

11 MR. FINAMORE: Listen to his question
12 because he's asking very succinct, articulate questions,
13 and you either know them or you don't.

14 THE WITNESS: I got you.

15 Q And I think the question was, are you
16 aware of any facts that would indicate that the village
17 formally ratified the agreements that were somehow reached
18 between the clerks of the village and the township?

19 A No, I do not.

20 Q Okay. Are you aware that there is a
21 lease between the village and the township over the use of
22 the fire station?

23 A Yes, I am.

24 Q Do you know what the term of that lease

1 jointly owned?

2 A I don't believe -- are you talking about
3 fire station?

4 Q Fire equipment.

5 A Oh.

6 Q Vehicles, equipments, axes, hose.

7 MR. FINAMORE: Other than the property.

8 Q Other than the property?

9 A No.

10 Q Okay. You -- you indicated to me that
11 you thought that the -- that it was titled in the name of
12 the Windham Township Fire District?

13 A Yes.

14 Q Are you referring to the fire station,
15 or were you referring to the fire station, or were you
16 talking about equipment? I want to make sure I'm clear.

17 A I understand that the windham township
18 Fire Station is -- the building is titled to the Windham
19 Township Fire District, and I understand the equipment as
20 being titled as the windham township Fire District.

21 Q Have you actually reviewed the ground
22 lease to see whether that's true?

23 A A few years ago I did, yes.

24 Q Okay. During the period that you have

1 is?

2 A I believe it was 40 years.

3 Q All right. Do you understand that the
4 village has given notification to the township that the
5 lease will conclude at the end of 40 years?

6 A I thought it was 16 more years.

7 Q Well, at the conclusion of the 40-year
8 period.

9 A Yeah. I believe there's 16 more years
10 left.

11 Q Yeah, right. Has the township had any
12 discussion as to what it intends to do once the building
13 is no longer -- they no longer have use pursuant to the
14 lease?

15 A No.

16 Q Okay. Is it your understanding that the
17 fire equipment utilized by the village and township is
18 equally owned by both parties?

19 A No.

20 Q What is your understanding?

21 A That it's all titled to the Windham
22 Township Fire District.

23 Q Okay. At what point did the titles --
24 were you ever aware as to whether or not the property was

1 been trustee, has there been any new taxes imposed on the
2 township for fire protection purposes?

3 A No. We did attempt to pass a levy, but
4 I'm not sure how I say this.

5 MR. FINAMORE: The best you can.

6 THE WITNESS: Okay.

7 MR. FINAMORE: Explain it the best you
8 can.

9 A There was a lot of opposition to it from
10 village leadership.

11 Q Okay. Bottom line is, you put a levy on
12 the ballot; it did not pass?

13 A Only one for EMS extension. Yeah, there
14 was one EMS levy different than what we had operated for
15 years with.

16 Q Okay. Is -- is it your understanding
17 that the village is no longer part of the township?

18 A I believe in 1993 the village annexed
19 themselves out of our township, and they created under
20 Mayor Mike Archen (phonetic spelling), I believe it was at
21 the time, the Windham Western Reserve Township; is that
22 how it --

23 Q Okay.

24 MR. FINAMORE: Brian, if I could just

1 interrupt to help this one.

2 THE WITNESS: Okay.

3 MR. FINAMORE: You can just answer the
4 questions yes or no. You don't have to explain to them
5 all the dealings.

6 THE WITNESS: Okay.

7 MR. FINAMORE: And I think the short of
8 the question was, are you aware of the fact that Windham
9 village and the township are separated now?

10 THE WITNESS: Yes.

11 MR. FINAMORE: Okay. That's what I --

12 Q And based on that fact, if I lived in
13 the village, I could not vote for the township trustees
14 race, the Windham Township trustee --

15 A No.

16 Q -- right?

17 A Prior to that you could.

18 Q But how about now?

19 A Now you cannot.

20 Q Okay.

21 A And the township residents at any time
22 they could not vote for village residents at that -- at
23 any juncture.

24 Q Okay. Is it your understanding that the

1 Q During your tenure, have the Windham
2 township trustees ever taken any efforts to remove the
3 incorporated territory from the township fire district?

4 A I don't know.

5 MR. COMSTOCK, JR.: Let me talk to these
6 guys for a minute.

7 (A recess was taken)

8 MR. COMSTOCK, JR.: All right. Probably
9 much to your disappointment, I can tell you that I'm done
10 with any further questions, so you can explain signature.

11 MR. FINAMORE: Yeah, you read the
12 instructions that I gave you. You have a right to, if you
13 believe that the court reporter has taken down this
14 accurately, and it's not necessary for you to review it,
15 you can waive your signature, which is a customary thing
16 to do. Or you have a right, where she will type this up,
17 give it to you, and then you have a right on a separate
18 page to put any markings if you believe that she
19 incorrectly recorded an answer. It doesn't change what
20 she did, but there would be like an addendum to say that
21 you thought that maybe that was incorrect, so it's up to
22 you what you're comfortable with, but it is customary to
23 waive it.

24 THE WITNESS: She looks pretty honest.

1 tax, that the fire district tax is still being collected
2 from village residents?

3 A It is being taxed by -- both entities
4 are being taxed, township and village.

5 Q Okay. When the last levy was placed on
6 the ballot for EMS, you suggested to me that it was --
7 there was opposition by the village. Did the village
8 residents vote on that tax levy?

9 A Yes.

10 Q Okay. During your tenure -- well, to
11 your knowledge, has a joint fire district or joint fire
12 and ambulance district ever been created in Windham?

13 A The firemen wanted it to remain --

14 MR. FINAMORE: Okay. You've got to
15 answer the questions yes or no.

16 THE WITNESS: Okay.

17 MR. FINAMORE: Unless he asks you to
18 define. He's asking you a very direct question. Are you
19 aware of whether an EMS joint district was ever formed?

20 A No.

21 MR. FINAMORE: Okay.

22 Q Or a joint fire district has never been
23 formed either; correct?

24 A No.

1 MR. FINAMORE: Okay. I'll take that for
2 we will on the record waive the signature.

3 SIGNATURE WAIVED

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of all the testimony introduced and proceedings had in the taking of the testimony in the above-entitled matter, as shown by my stenotype notes taken by me at the time said testimony was taken.

Gina M. Allen
Registered Professional Reporter

1 STATE OF OHIO)
2 TRUMBULL COUNTY)

SS: NOTARY CERTIFICATE

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I, Gina M. Allen, Notary Public within the State and County aforesaid, duly commissioned and qualified, do hereby certify that the within-named deponent was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing testimony was written by me in stenotype in the presence of the witness; that by agreement of counsel, signature was waived.

I do further certify that I am not of counsel, attorney or relative to either party, or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio, this 28th Day of October, 2008.

Gina M. Allen, Notary Public
My Commission Expires 08/01/11