

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
DONALD MILLER

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 21st Day of November, 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.

COPY

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, 11:19 a.m., November 19, 2008, in the offices of Atty. Mark S. Finamore, 258 Seneca Avenue N.E., 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

On behalf of Plaintiffs:
David C. Comstock, Jr., Attorney at Law
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Youngstown, Ohio 44503

On behalf of Defendant, Windham Township Board of Trustees:
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On behalf of Defendant, Janet Esposito:
Theresa Scahill, Attorney at Law
466 S. Chestnut Street
Ravenna, Ohio 44266

Also Present:
Mr. Cecil James Moore
Mr. Dann Timmons

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7 OBJECTIONS AND MOTIONS: NONE

10 EXHIBITS INTRODUCED: NONE

1 WHEREUPON,
 2 DONALD 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, JR.
 10 Q Could you please state your full name?
 11 A Donald George Miller.
 12 Q And I understand you go by Don; is that
 13 correct?
 14 A That's right.
 15 Q All right. Don, my name is David
 16 Comstock, Jr. I go by the nickname Chip, so you may refer
 17 to me by my nickname throughout this deposition.
 18 MR. FINAMORE: That's not what the
 19 lawyers call him.
 20 Q You said before we began that you've
 21 never given a deposition before?
 22 A No.
 23 Q So I'm just going to give you some very
 24 basic ground rules that I give to every witness. The

1 to be very long, but I don't want you to have to sit here
 2 saying I really need a break and not being able to take
 3 one. And then finally I remind all witnesses that it's
 4 important that you give me truthful and accurate answers
 5 at all times. Do you understand all my instructions?
 6 A Yes.
 7 Q Okay. Don, what I'm going to do is just
 8 basically run some -- some basic background information
 9 about you, and then I'm just going to ask you questions
 10 about the fire department during the period that you were
 11 there and what you can tell me about its operation. To
 12 begin with, what's your current residence address?
 13 A 9598 East Center Street, Windham, Ohio.
 14 Q And the zip?
 15 A 44288.
 16 Q And is that within Windham Village?
 17 A Yes.
 18 Q How long have you lived at that address?
 19 A Since 1950. No, 1970 -- 1967, I think
 20 it was.
 21 Q Okay. Marital status?
 22 A Married.
 23 Q Any children?
 24 A Two.

1 court reporter can only take down a verbal response, so if
 2 you have a tendency to nod your head yes or no, I'll make
 3 sure -- I'll remind you to say yes or no so she knows what
 4 your answer is. The witnesses will sometimes say uh-huh
 5 or huh-uh, meaning yes or no because that's how we talk,
 6 and if you do that, I'll remind you to say yes or no, just
 7 so the record's clear.
 8 If I ask you a question that you don't understand,
 9 let me know, and I'll try to rephrase or repeat my
 10 question so you are comfortable with what it is I'm asking
 11 you. The questions aren't going to be very difficult, but
 12 again, I want you to understand what it is I'm asking you.
 13 If you don't know an answer, that's fine. A lot of these
 14 events may have occurred a long time ago, so just tell me
 15 you don't know or you don't recall, and we'll move on to
 16 the next question.
 17 Make sure that you wait until I finish my question
 18 before you answer. Likewise, I'll try to wait until you
 19 finish your answer before I ask the next question. That
 20 way we're not talking on top of each other and our lovely
 21 court reporter doesn't try to kill me afterwards.
 22 If you need to take a break for any reason, just tell
 23 me and we'll stop, whether it's to use the restroom,
 24 stretch your legs or whatever. I don't think it's going

1 Q Anybody still live at home?
 2 A No.
 3 Q Educational history, where did you go to
 4 high school?
 5 A Windham.
 6 Q And graduate?
 7 A Yes.
 8 Q What year?
 9 A '56.
 10 Q Any other education or schooling after
 11 high school?
 12 A Just Kent State fire classes and T & I.
 13 Q Okay. Give me an idea of your -- brief
 14 overview of your employment history.
 15 A Well, I retired as a carpenter. I was
 16 fire chief for I don't know how many years.
 17 Q Well, I'll tell you what. I'm going to
 18 get into your fire department history.
 19 A Okay.
 20 Q Let's just talk about that what I call
 21 puts food on the table, you know, what -- the sources of
 22 income, what you did.
 23 A I worked the Ravenna Arsenal for -- I
 24 think 14 years, the fire department there. And they

1 closed the facility down. I had to leave there, go back
 2 to construction. I worked construction all my life.
 3 Q Okay. When did they close the arsenal,
 4 what year?
 5 A I don't know.
 6 Q Okay. Then you said -- so after -- you
 7 did 14 years in the arsenal providing fire protection and
 8 then went back to construction doing carpentry work?
 9 A As a carpenter.
 10 Q And are you still doing that now?
 11 A No; I retired.
 12 Q When did you retire doing the carpentry
 13 work? You can give me an approximate time.
 14 A Probably 2000.
 15 Q Okay. Since 2000 have you been retired
 16 then?
 17 A Yes.
 18 Q Okay. Now, I want to talk for the
 19 reason you're here is about the Windham Fire Department.
 20 When you first -- when did you first become affiliated
 21 with the fire department?
 22 A 1958, I believe.
 23 Q And I know that you -- your last -- when
 24 did you -- when were you last affiliated with the fire

1 Q Can --
 2 A Some --
 3 Q Can you give me a guesstimate as to how
 4 many years you served as the chief?
 5 A Close to 25.
 6 Q Okay. During the period you were chief,
 7 were appointments to the department always done the same
 8 way?
 9 A Uh-huh.
 10 Q That's yes?
 11 A Yes.
 12 Q Okay. Tell me, what is the process for
 13 appointing a firefighter to the department?
 14 A Well, the prospect or the person that
 15 wanted to join the department would come to the
 16 department, put an application in, he would apply to us.
 17 We would vote on him as a body. Then we would give our
 18 recommendations to council. Village council would okay it
 19 or decline it, whatever. Most of the time they would go
 20 with our recommendation.
 21 Q And then the person -- there would be --
 22 at village council there would be a formal motion, then,
 23 to appoint or not appoint that firefighter?
 24 A Right.

1 department, what year?
 2 A Let's see. Last affiliated with the
 3 fire department?
 4 Q Yeah.
 5 A I still belong.
 6 Q Okay. Are you an active member?
 7 A Yes.
 8 Q Still respond to calls?
 9 A Uh-huh.
 10 Q That's yes?
 11 A Yes.
 12 Q Okay. What is your present title?
 13 A Firefighter.
 14 Q And you were -- other than firefighter,
 15 what ranks have you held?
 16 A Captain, assistant chief and chief.
 17 Q You were chief of the department from
 18 what period of time to what period of time?
 19 A I don't know.
 20 Q Okay. When did you step down as the
 21 chief? Can you give me that approximate date or year?
 22 A Two years ago.
 23 Q Okay. So approximately 2006?
 24 A 2006.

1 Q If village council said no --
 2 A Uh-huh.
 3 Q -- gave the thumbs down, would the
 4 person be appointed?
 5 A No. Well, you know, I don't know. It
 6 was never done. It was never said.
 7 Q Okay.
 8 A But I would say no because they were
 9 whatever.
 10 Q To your knowledge, as an active
 11 firefighter with the department, is the appointment
 12 process still the same?
 13 A Pretty much in the last few years now
 14 we've started checking background checks. I would say
 15 probably maybe the last ten years.
 16 Q But other than the background checks, is
 17 that process still the same today?
 18 A As far as I know. I don't know how they
 19 do it. You know, I don't know if they recommend it to
 20 council now or not.
 21 Q Okay. But during your period it was?
 22 A Yes.
 23 Q During your period as chief --
 24 A Right.

1 Q -- that's how it was done? With respect
 2 to -- by the way, how many -- how many -- give me an
 3 approximate; I'm not asking you for an exact number,
 4 approximately how many firefighters on the department?
 5 A Right now?
 6 Q Yeah.
 7 A I don't know, maybe 15, 20.
 8 Q When you were chief, you know, in
 9 that -- at the end of the period back around 2006, was it
 10 about the same number?
 11 A I would say probably. We've had as high
 12 as 40, but now it's declined.
 13 MR. FINAMORE: Seems to be the trend
 14 everywhere, doesn't it?
 15 THE WITNESS: I'm sure.
 16 MR. COMSTOCK, JR.: More requirements --
 17 MR. FINAMORE: Yeah. It's tough.
 18 MR. COMSTOCK, JR.: -- to become a
 19 firefighter.
 20 Q How did -- how did the department -- how
 21 does it address promotions? You know, you -- you talked
 22 about other than chief, position of captain, position of
 23 assistant chief, are there any ranks other than those two,
 24 and chief?

1 chief, or do you have more than one since you said --
 2 A We have two.
 3 Q Okay.
 4 A First and second assistant chief.
 5 Q And then one chief?
 6 A Uh-huh.
 7 Q Yes? So there are eight officers?
 8 A Uh-huh.
 9 Q Yes?
 10 A Yes.
 11 Q How -- how are the -- how are the
 12 captains designated, and by that I mean, how do they
 13 obtain that rank?
 14 A At the annual meeting, and I -- I
 15 believe it's every -- every year, the captains and
 16 assistant chiefs are voted on by the body.
 17 Q How is the chief of the department --
 18 how does the chief of the department obtain his -- his
 19 position?
 20 A That's an appointed position, and I
 21 believe -- I was appointed by council, and I don't know, I
 22 think the new chief was appointed by council, but I'm not
 23 sure.
 24 Q Okay. Well, focusing simply by you can

1 A I have two lieutenants. Those were
 2 appointed. Those are appointed by the chief.
 3 Q Okay.
 4 A It's a maintenance lieutenant --
 5 Q Okay.
 6 A -- and EMS.
 7 Q Okay. So two lieutenants, one
 8 maintenance, one EMS. Then the next rank above
 9 lieutenants?
 10 A Would be captains.
 11 Q How many captains?
 12 A I think there's three.
 13 Q Okay. And do they have specific
 14 responsibilities such as EMS or maintenance?
 15 A Training.
 16 Q All three responsible for training,
 17 or --
 18 A They -- they conduct the trainings.
 19 Q Okay.
 20 A The first assistant chief designates
 21 what's to be trained on --
 22 Q Okay.
 23 A -- any particular night.
 24 Q Do you have -- is there one assistant

1 state with certainty that you were appointed by council?
 2 A Yes.
 3 Q Okay. And were you sworn in by the
 4 mayor then?
 5 A Yes.
 6 Q While I'm on the subject of personnel,
 7 at least -- well, during your period when you were the
 8 chief, were -- were the firefighters paid for their
 9 response to calls?
 10 A Yes.
 11 Q And on what basis were they paid,
 12 hourly, per call?
 13 A They were paid hour, a call --
 14 Q Okay.
 15 A -- was whatever it was, I don't know,
 16 five, six dollars. I'm not sure -- I'm not sure of the
 17 amount.
 18 Q Okay.
 19 A But they were paid per call.
 20 Q Okay.
 21 A If there was a call that lasted more
 22 than an hour, then they were paid hourly. And during
 23 grass fire season, or whenever if you get two, three, four
 24 calls an hour, that was separate calls.

1 Q Okay. And in my department the guys get
2 paid per call, and back in September we had a storm, and
3 in three hours they had forty-six calls.
4 A Yeah.
5 MR. FINAMORE: That's better than paid
6 by the hour. Sometimes there's the short end of the stick
7 on that and sometimes it's a good thing, right, chief?
8 MR. COMSTOCK, JR.: All balances out.
9 Q Okay. My understanding is that the
10 paychecks originally came from the village for the
11 firefighters; is that -- when you first were chief?
12 A Yeah, the township clerk --
13 Q Well, that's --
14 A I mean the village clerk --
15 Q Paid?
16 A -- paid our pay.
17 Q Did that change at some point?
18 A Yes.
19 Q Do you remember the circumstances?
20 A I don't remember the -- I don't remember
21 the circumstances, and I don't remember the time.
22 Q When the fire department needs a new
23 engine, new -- you know, I know it doesn't happen often,
24 if nothing else because of cost, but when that -- when

1 that does happen, what was the process that the department
2 would go to look at a new vehicle during the period you
3 were chief?
4 A We would pick a truck crew, decide what
5 we needed on the truck, and take it to the township,
6 present our proposal to the township.
7 MR. FINAMORE: Was that for a Pierce
8 truck, chief?
9 THE WITNESS: Pardon me?
10 MR. FINAMORE: Was that for a Pierce
11 truck?
12 THE WITNESS: No.
13 MR. FINAMORE: There was a time where
14 they were the only ones actually bidding on things. We
15 had some trouble with --
16 MR. COMSTOCK, JR.: I'll tell you why.
17 THE WITNESS: We did a lot with Warren
18 Fire Equipment. They didn't sell Pierce.
19 MR. COMSTOCK, JR.: That was Finley's?
20 MR. FINAMORE: Yeah, Finley.
21 THE WITNESS: Well --
22 MR. FINAMORE: Sutphen?
23 THE WITNESS: Finley Fire sold the
24 Pierce, yeah.

1 MR. COMSTOCK, JR.: And yeah, and the
2 one was a Sutphen.
3 THE WITNESS: Oh, yeah, we got a
4 Sutphen.
5 MR. FINAMORE: Do they still make
6 LaFrance's?
7 MR. COMSTOCK, JR.: Off and on.
8 MR. FINAMORE: Because Warren still has
9 those.
10 THE WITNESS: We got a tanker from
11 Sutphen; all the baffles fell out of it.
12 Q Why -- you know, payroll is initially
13 coming from the village, and we know there was a change to
14 the township and the circumstances were unclear to you.
15 The equipment or the apparatus was reviewed, I assume
16 bid -- approved and bid by the township as opposed to the
17 village; is that -- is that what happened?
18 A I don't know if there was -- if it was a
19 cooperation between the two, if they got together, talked
20 about it or not.
21 Q Okay.
22 A That I don't know. But I know that the
23 township did the advertising.
24 Q Okay. Okay. Did you -- when you would

1 put together, you know, they have the truck committee, and
2 they would -- they would come up with what they needed on
3 the vehicle, and they would put together that proposal,
4 was that ever given to the village for review, or was it
5 just given directly to the township?
6 A I believe we just gave it to the
7 township. Now, this is large equipment?
8 Q Right.
9 MR. FINAMORE: Yeah.
10 Q I'm talking about -- we're talking about
11 engines.
12 A Engines, okay.
13 Q Was there any specific reason why it was
14 given to the township as opposed to the village that you
15 know of?
16 A Only because of the money. The tax --
17 the tax money, I think, went to the township.
18 Q Now, you made a -- you made a
19 distinction from smaller equipment, you know, say an ax,
20 or, you know, single air pack or something else. Was that
21 different? Was there a different process for the
22 purchases of the small stuff?
23 A As well as I remember, and I don't know
24 when it got way late or whatever, I would make out two

1 sets of requests, one to the township and one to the
 2 village with my -- what I needed --
 3 Q Okay.
 4 A -- what I needed for equipment.
 5 Q Okay.
 6 A And the township always bought it,
 7 billed the village. I think as well as I remember, I
 8 think they used to bill the village for half of the cost
 9 of the small equipment. They would do the initial buying,
 10 and bill the township or bill the village.
 11 Q Okay. When you say they, the township?
 12 A The township, right; uh-huh.
 13 Q Okay.
 14 A And I -- there again, I don't know if
 15 it's still that way or not. I --
 16 Q I'm more interested just during the
 17 period the 25 years you were chief. What's -- what
 18 happened since you were chief, we'll -- we'll just assume
 19 you don't know anything during that period?
 20 A Well, see, as -- as I -- the latter part
 21 of my --
 22 MR. FINAMORE: Tenure?
 23 A -- involvement there it kind of
 24 declined, too, and there again, I don't know --

1 Q When you said it declined, you're saying
 2 your involvement declined, or what declined?
 3 A What declined? The village was low on
 4 money at one time. Their funds were -- they went so far
 5 as to turn out every other street light. They went so far
 6 as to one patrolman on duty at one time. Their funds were
 7 low. The township said we will do this and take over and
 8 buy this rather than let the fire department do without,
 9 we'll do -- we'll take care of this. And then when they
 10 caught up, they were supposed to reimburse or pay back or
 11 whatever. But there again, I -- I don't know whatever
 12 happened. I wasn't in on that.
 13 Q The financial end wasn't so much your
 14 deal with the fire department as much as the operations, I
 15 assume?
 16 A Right.
 17 Q Okay.
 18 A We did our requesting to the township
 19 and village, and they ironed it out themselves.
 20 Q Okay. When -- when apparatus -- getting
 21 back to the engines, when the apparatus would be
 22 purchased, how were the titles placed?
 23 A I don't know.
 24 Q You don't know whose name the titles

1 were put in there?
 2 A I don't think I ever saw a title.
 3 Q Okay. When the -- when you purchased
 4 vehicles, were -- you know, let me ask you. During the
 5 period you were chief, do you remember what you bought,
 6 what engines?
 7 A I can't tell you dates.
 8 Q No, I'm not going to ask you dates.
 9 A We bought an FMC pumper.
 10 Q Okay.
 11 A 750-gallon -- no, 500-gallon, 750 pump.
 12 MR. FINAMORE: That's a Ford, chief?
 13 THE WITNESS: That's a Ford.
 14 MR. FINAMORE: Ford Motor Corporation.
 15 A Right. The FMC. Then I think after
 16 that we bought a tanker from Sutphen, a 3,000-gallon
 17 tanker. Then we bought another FMC. It was a Ford also.
 18 Q Okay. Uh-huh.
 19 A Then after that we bought a -- Warren
 20 Fire Equipment. I'm trying to think what the name of it
 21 is. It's a 2,500-gallon pumper tanker.
 22 Q I'm trying to think what Warren was
 23 selling.
 24 A It's the one down in Pennsylvania.

1 MR. FINAMORE: Which company makes them
 2 in Pennsylvania?
 3 Q Not American LaFrance?
 4 A Oh, no.
 5 Q Right. Because they're --
 6 MR. FINAMORE: I know what he's talking
 7 about. I don't know what --
 8 A It's a big truck, a midshift mounted
 9 pump.
 10 Q 2,500-gallon?
 11 A It's a 2,500-gallon.
 12 Q With a midshift?
 13 A With a midshift top-mounted console.
 14 Q 2,500 engine tanker. And anything else
 15 that you bought?
 16 A We bought an ambulance. Well, we bought
 17 an ambulance, but we also bought that van.
 18 Q That's the one we were talking about?
 19 A Yeah, right, the one that's pictured
 20 there.
 21 Q The -- the -- the reason I'm asking you
 22 about the engines, other than curiosity, is in the
 23 purchase of any of those vehicles that we've just
 24 identified, the van, the ambulance, the two FMC pumps and

1 the two tankers, were any vehicles traded in?
 2 A No.
 3 Q Okay. Were they -- were the vehicles
 4 that were being replaced just sold?
 5 A I think so, yeah. We bought numerous --
 6 well, numerous -- three or four old police cruisers, state
 7 patrol, four utility vehicles, chief cars, whatever you
 8 want to call them.
 9 Q To your knowledge, who placed the
 10 insurance on the vehicles, if you know?
 11 A I think probably the township, but I'm
 12 not sure. I don't know because I think Eller Horse
 13 (phonetic spelling) had the insurance for them in
 14 Garrettsville, but I don't know.
 15 Q Okay. Again, I just -- if you don't
 16 know, that's fine. I'm not going to expect you to know
 17 everything. Did I read that the department had got a Fire
 18 Act grant to purchase one of the vehicles; is that -- do
 19 you recall?
 20 A We got -- yeah. The tanker, I believe.
 21 Is it the tanker?
 22 Q Okay.
 23 A Oh, you know another one we bought? We
 24 did by an E-One. A used E-One.

1 Q Okay.
 2 A A book of standard operating procedures.
 3 Q Okay. Of the SOPs, did you ever have
 4 those approved by either the township or the village?
 5 A I don't think so. I don't know.
 6 Q Outside of the operating procedures, I
 7 also think about more of an administrative procedure that
 8 might be something like a no drinking policy, sexual
 9 harassment policy, payroll policies, I'm trying to think,
 10 but, you know, deal more with personnel, not what -- what
 11 you do at an emergency scene or something to do with
 12 training, but just a personnel policy, did you have any of
 13 those separate from your operating procedures, or, you
 14 know, that were --
 15 A Yes.
 16 Q And my same question, were any of those
 17 policies or procedures reviewed or approved by either the
 18 township or the village?
 19 A No. I say no. I really don't -- I
 20 don't remember presenting it to them.
 21 Q Okay. That's all we're asking, what you
 22 remember and what you don't, so that's fine. Does the
 23 department, to your knowledge, currently do mask fit
 24 testing?

1 MR. FINAMORE: Chip, explain that to us
 2 for those of us who don't know what that is.
 3 MR. COMSTOCK, JR.: It's literally a
 4 brand. It's like Sutphen or Pierce. It's
 5 E-O-N-E?
 6 A KME. KME's the tanker we bought.
 7 MR. COMSTOCK, JR.: E-Ones and KME are
 8 very similar in terms of their style. E-One is made in
 9 Florida.
 10 A And that was an International. The KME
 11 was an International. And the E-One was custom, but it
 12 was used.
 13 Q I was asking about the Fire Act grant
 14 because I was curious as to if a grant was made when you
 15 were there, who --
 16 A No.
 17 Q Okay. Does the fire department have
 18 various policies and procedures in terms of operations,
 19 for example, what vehicles respond to auto accidents or
 20 what vehicles respond to structural fires, or, you know,
 21 how people are supposed to use SCBA?
 22 A Uh-huh.
 23 Q They do?
 24 A Yeah, they had SOPs when I was there.

1 A By that what do you mean?
 2 Q Where there's a -- you put a mask, a
 3 SCBA mask on a person's face and check to see if they have
 4 a seal, a good seal, I mean, not just doing it out in the
 5 bay, if there's any kind of formal procedure where they
 6 test that?
 7 A Not to my knowledge.
 8 Q Okay. Does the department have EVOC
 9 training, emergency vehicles operations course training?
 10 A No, I don't think.
 11 Q When firefighters first come on the
 12 department, do they get a physical exam?
 13 A They did because we used to go to -- and
 14 that part I don't know now.
 15 Q Okay. Who did the department use, a
 16 particular doctor?
 17 A Dr. -- local doctor, Pane.
 18 Q To your knowledge, is there any type of
 19 annual medical certification for those people who have to
 20 use SCBAs, do you know if they do any type of annual
 21 check?
 22 A I don't know.
 23 Q Okay.
 24 MR. FINAMORE: Is that a self-contained

1 breathing apparatus?

2 MR. COMSTOCK, JR.: Yes.

3 MR. FINAMORE: Since I hang around with
4 a lot of military friends, I'm getting good at acronyms.

5 MR. COMSTOCK, JR.: That's like lawyer
6 speak. We tend to use things and assume that everybody
7 else knows what we're talking about.

8 Q EMS billing, how was the billing -- at
9 the time you left as chief, how was the EMS billing done,
10 you know, when you transport a patient with your squad?

11 A As well as I remember, when I left as
12 chief there was no billing.

13 Q Had there been discussions regarding
14 billing?

15 A Not a lot. I -- I always felt that that
16 was an extracurricular activity, but since -- since that
17 time, it's all changed, you know, and I don't know.

18 It's --

19 MR. FINAMORE: Not for the better?

20 A Well, price-wise. I mean, you got to
21 justify it, or you got to pay for it somehow.

22 Q Were you involved in the -- the bidding
23 or the documents relating to the construction of the fire
24 station in 1984?

1 A It was kind of a one-sided agreement,
2 but, yeah, we would respond to their request if they -- if
3 they needed us --

4 Q Okay.

5 A -- we would respond. On the same token,
6 a mutual aid agreement. If we needed them, they would
7 respond.

8 Q Okay. And you were actually serving
9 in on both departments?

10 A Right.

11 Q Can you recall any time when actually
12 either you had to respond to the arsenal as the Windham
13 department or whether the arsenal responded to Windham?

14 A We responded, I believe, two times. We
15 had Building 813 right by Route 5, I think, that burned in
16 the arsenal. And not only were we called, there was other
17 departments called, too. And then a large grass fire.
18 Windham responded.

19 Q What is your understanding as to when
20 the fire department first formed?

21 A First formed?

22 Q Yep, first began operating.

23 A I think it was like 1928, but I'm not
24 sure of that. I think that's what's on the --

1 A No. If I had been it would have been
2 built different than that.

3 Q And as it relates to the financing of
4 the building today, everything from utilities, insurance
5 and that, was that somebody else's concern other than the
6 fire chief's during the period you were the fire chief?

7 A Was the what now? Say it again.

8 Q I understand, you know, that with
9 respect to the fire station, put the engines in there, you
10 put your gear where you need to put the gear, make sure
11 the place is clean and all of that stuff. But also with
12 respect to the operation of a fire station, you have
13 certain financial things that have to be taken care of
14 such as insurance, payment of utilities, et cetera. Did
15 you have anything to do with the financial aspects of the
16 station during the period you were chief?

17 A No.

18 Q Back, I think, in the '80s, the fire
19 department had a mutual aid agreement with the arsenal; is
20 that correct?

21 A Uh-huh.

22 Q What was it -- do you know anything
23 about that agreement, what was the nature of the agreement
24 between the arsenal and the fire department?

1 Q Have you ever gone back and looked at
2 any of the operating agreements back from the '60s or
3 '70s?

4 A No.

5 Q Okay. Are you aware of anything that
6 was ever done by the township or the township fire
7 district to create its own fire department?

8 A No.

9 Q Okay. The village's position has been
10 that as it relates to the fire department, the operation
11 of the men, that this is a village fire department, okay,
12 that contracts with the township and the township fire
13 district for the provision of services, and that the
14 township collects the taxes and pays money into the
15 department to provide for the operation of the department
16 and the men, the purchase of the equipment.

17 Do you have anything that -- any facts, any things
18 that you could tell me that would suggest that the
19 township fire district operates the fire department?

20 A When I first started, they -- well, if
21 we make a township call, that was billed to the township.
22 If it was -- you know, and if it was a village call,
23 inside the village limits, then the village paid for it,
24 but if it was a mutual aid call, that was a township call.

1 And that's -- that's the separation that I know.

2 Q Okay.

3 A But that's -- I don't know how they
4 operated the thing. I -- you know, whether it was a
5 township fire department or a village fire department.

6 Q Okay.

7 A If it could just -- you know, I said,
8 why can't it just be Windham Fire Department --

9 MR. FINAMORE: Here here.

10 A -- you know, and take -- take all the
11 politics out of it.

12 Q In fact, I was aware at one point I
13 think you wrote a letter to the paper basically saying
14 that -- try to take the politics out of it.

15 A I don't know. Maybe I did.

16 Q But again, just -- I'm not trying to
17 beat a dead horse, but again, it's important for me to
18 understand whether or not you're aware of the township,
19 during your period of chief for 25 years, of the township
20 ever doing anything that would have created, or the fire
21 district having done anything that would have created what
22 I call an independent fire department, separate and apart
23 from a village department?

24 A Well, I don't know what you mean about

1 MR. TIMMONS: Right.

2 Q Okay. Having been reminded that it was
3 2002, does that sound accurate, approximately six years
4 ago?

5 A Yeah, time flies when you're having fun.

6 MR. FINAMORE: Yeah, thanks for making
7 him feel old, Dann.

8 Q Who was your -- for the record, who was
9 your successor; who followed you?

10 A Clair Simpson.

11 Q Is Clair still the chief today?

12 A Yes.

13 MR. COMSTOCK, JR.: Jim, do we need to
14 step out, or are we fine?

15 MR. MOORE: Yeah, one question.

16 (A recess was taken)

17 Q Just some final questions that I wanted
18 to talk about is during the period of time that you were
19 the chief, were you -- do you have a recollection of being
20 appointed to the Firefighters Dependents Fund board?

21 A Yes.

22 Q Okay. Were the other appointments, the
23 other people who served on that board, representatives of
24 the department; correct? There was at least one other

1 an independent fire department.

2 Q Right.

3 A But as far as I can -- they've always
4 told me it was a fire district.

5 Q Okay.

6 A Not a true fire district as they would
7 say, but it was grandfathered under something, I don't
8 know.

9 Q Okay. Who -- when you say they?

10 A The township trustees, the fellows that
11 was there when I first started.

12 Q Okay. Did -- did the -- did the
13 village -- anybody from the village ever tell you that
14 similar thing that was --

15 A It was a fire district?

16 Q Yeah.

17 A Not to my knowledge.

18 Q Okay.

19 MR. COMSTOCK, JR.: You're --

20 MR. FINAMORE: No, I think you got all
21 the -- everything we needed. Dann, do you have any?

22 MR. TIMMONS: Well, just as a matter of
23 clarity, Don stepped down in 2002, not 2006.

24 MR. MILLER: Was it 2002?

1 from the department?

2 A You know, I think there was one from the
3 township, one from the village, a person from -- a citizen
4 and a firefighter.

5 Q Okay. Okay.

6 A I think. As well as I remember
7 that's --

8 Q Okay.

9 A -- that's the way it went.

10 Q Okay. Whatever the appointments were,
11 there was a list that has them each year when the
12 appointments were made, right; do you remember that coming
13 out --

14 A Yeah.

15 Q -- as a Firefighters Dependents Fund
16 board? As to the exact makeup of the board, would you
17 defer to those sheets as to who was on there? In other
18 words, rather than testing your memory, do you think the
19 sheets are more accurate or your memory?

20 A Oh, I'm sure the sheets are more
21 accurate, not my memory.

22 Q All right. Do you remember how each
23 person -- you've told me what the makeup was. Do you
24 remember how those persons were appointed? In other

1 words, I assume you were automatically there because you
 2 were chief. Do you remember how --
 3 A As well as -- I called them and
 4 appointed them, asked them if they'd serve on the board.
 5 Q Okay. You made the calls?
 6 A Uh-huh.
 7 Q All right. That's --
 8 MR. FINAMORE: And hopefully you never
 9 had to make any awards; right?
 10 THE WITNESS: No; no.
 11 MR. FINAMORE: Good.
 12 THE WITNESS: We had one person that had
 13 a coronary after, and I think his son, I believe it was
 14 his son or whatever was going to college, and I think we
 15 paid for that. We didn't pay for it, but they paid for
 16 it, like 18 years, something like that.
 17 MR. COMSTOCK, JR.: I don't have any
 18 other questions.
 19 MR. FINAMORE: Other than I've enjoyed
 20 visiting with the chief.
 21 MR. COMSTOCK, JR.: Chief, you have the
 22 right to read this transcript if it is typed up to make
 23 sure that the court reporter took down all your words
 24 accurately. I tell all my witnesses that I take their

1 statements from if you remember something and want to add
 2 it, or if you need to change an answer, you can do that,
 3 but you always subject yourself to further questioning as
 4 to why you changed your testimony or why you recalled
 5 something that you didn't today because of -- you know,
 6 for whatever reason.
 7 THE WITNESS: Stress.
 8 MR. COMSTOCK, JR.: Yeah. So you can
 9 tell the court reporter that you --
 10 MR. FINAMORE: Plenty of that to go
 11 around, Chief.
 12 MR. COMSTOCK, JR.: Assume she took down
 13 everything, you can waive the right, or you --
 14 THE WITNESS: I don't need to read it.
 15 MR. COMSTOCK, JR.: Okay. He'll waive.
 16 That's fine.
 17 SIGNATURE WAIVED
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 5 REPORTER'S CERTIFICATE
 6
 7 I HEREBY CERTIFY that the above and foregoing is a
 8 true and correct transcript of all the testimony
 9 introduced and proceedings had in the taking of the
 10 testimony in the above-entitled matter, as shown by my
 11 stenotype notes taken by me at the time said testimony was
 12 taken.
 13
 14
 15 Gina M. Allen
 16 Registered Professional Reporter
 17
 18
 19
 20
 21
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1 STATE OF OHIO)
 2 TRUMBULL COUNTY) SS: NOTARY CERTIFICATE
 3
 4 I, Gina M. Allen, Notary Public
 5 within the State and County aforesaid, duly commissioned
 6 and qualified, do hereby certify that the within-named
 7 deponent was by me first duly sworn to testify the truth,
 8 the whole truth, and nothing but the truth, and that the
 9 foregoing testimony was written by me in stenotype in the
 10 presence of the witness; that by agreement of counsel,
 11 signature was waived.
 12
 13 I do further certify that I am not of
 14 counsel, attorney or relative to either party, or
 15 otherwise interested in the event of this action or
 16 proceeding.
 17
 18 IN WITNESS WHEREOF, I have hereunto set
 19 my hand and seal of office at Youngstown, Ohio, this 29th
 20 Day of December, 2008.
 21
 22
 23 Gina M. Allen, Notary Public
 24 My Commission Expires 08/01/11