

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
JAMIE NEIKIRK

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 6th 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.

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that the deposition may be taken at this time, 1:48 p.m., October 6, 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APPEARANCES

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
Mr. Howard Furl
Ms. Janet Esposito

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

CROSS EXAMINATION BY MR. COMSTOCK, JR. - PAGE 5
OBJECTIONS AND MOTIONS: NONE
EXHIBITS INTRODUCED: NONE

5

1 WHEREUPON,
2 JAMIE NEIKIRK,
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 Jamie Neikirk.
12 Q Okay. And Ms. Neikirk, have you ever
13 had -- have you ever given a deposition before?
14 A No.
15 Q Okay. I'm sure you've had the
16 opportunity to talk to your counsel, but for every witness
17 I depose I just put the ground rules on the record; okay?
18 The first is, I'll ask you to give all your answers out
19 loud because the court reporter can't take a down a nod of
20 the head, even though that's how most people will express
21 themselves at one point or another during regular
22 conversation. Likewise, many witnesses will say uh-huh or
23 huh-uh as we're talking back and forth to mean yes or no.
24 The only problem is when any of us go to read that back

6

1 it's hard to tell what uh-huh means on the record, so
2 either Attorney Finamore or I will ask you to clarify
3 yourself if you -- if you answer in that manner.
4 My job today is to get facts, to find out as much
5 information as you know or to find out what you don't know
6 about the history of the fire district in Windham Village
7 and Township.
8 If I ask you a question that you don't understand,
9 just let me know. That's fine. I don't -- I want you to
10 be very comfortable with every question that I ask you.
11 That way we're -- there's no misunderstanding as to what
12 it is that I'm asking or what answer you're providing.
13 If you don't know an answer to a question, because
14 you don't recall or you just don't have the facts, tell me
15 you don't know or you don't recall. That's fine, too. My
16 basic premise or my rule for every question is that if you
17 answer the question, I'm going to assume that you
18 understood it, and that you had some factual basis upon
19 which to base your answer.
20 I don't know how long your deposition is going to
21 take. I don't expect it to be very long, but if at any
22 time you need to take a break, whether it's to use the
23 restroom, whether it's to get a drink, whether it's to
24 talk to your counsel, just tell me, and we'll stop.

7

1 That's not a problem at all; okay? So you have that you
2 have that -- you have that control over the timing of the
3 deposition.
4 I remind every witness that -- that it's important
5 that you give me truthful and accurate answers to the best
6 of your ability at all times, and many times there's -- I
7 work with examinations under oath, but this is a
8 deposition in accordance with a court proceeding, so you
9 understand you're under oath in that capacity as a -- as a
10 government official and your individual capacity as it
11 relates to your testimony; correct?
12 A Correct.
13 Q All right. Ms. Neikirk, what I'm going
14 to start off with is just some general background
15 information about you; okay?
16 A Okay.
17 Q And then we'll get into your duties and
18 responsibilities as the fiscal officer of the township.
19 If you would, if you could give me your date of birth,
20 please?
21 A 4/6/53.
22 Q For those of us who aren't any good in
23 math, you're how old?
24 A I'm 55.

8

1 Q Okay. And where do you currently
2 reside?
3 A 9708 Windham-Parkman Road.
4 Q And that is what mailing address, town,
5 village?
6 A Windham.
7 Q Okay. Zip?
8 A 44288.
9 Q And how long have you lived at that
10 address?
11 A '91, '92, somewhere in there.
12 Q Since 1991 or 1992?
13 A Yes.
14 Q All right. Who -- who lives with you at
15 that address?
16 A My dog, Storm.
17 Q Okay. Anybody else?
18 A That's it.
19 Q All right. What is your -- well, let me
20 back up. Your educational history, where did you go to
21 school? Start of with high school.
22 A Windham High School.
23 Q Okay. Graduate?
24 A Yes.

9

1 Q What year?
2 A '71.
3 Q Tell me about any additional schooling,
4 education or training you had following graduation from
5 high school.
6 A No college --
7 Q okay.
8 A -- no. EMS.
9 Q And again, for somebody who might read
10 this record, when you say EMS, you're talking about
11 Emergency Medical Services?
12 A Yes.
13 Q And what is your background with that?
14 A I was just EMT and ran with the fire
15 department for a few years. That's really the only
16 schooling other than updated training, UAN training, stuff
17 like that, for the fiscal officer.
18 Q All right. Do you still have a current
19 EMT certification?
20 A No.
21 Q okay. How long ago did that expire;
22 more than ten years?
23 A More than ten years, yeah, let's go
24 there.

11

1 Q Of police?
2 A Yes.
3 Q And when you retired, who was your --
4 who was your -- who was the police chief? I say when you
5 retired. When you left -- when you left the Windham
6 Village?
7 A Milford Higgins.
8 Q How long was Milford Higgins your
9 immediate supervisor? What was the period of time in
10 which you served underneath him, approximately?
11 A A lot of chiefs. Maybe the last three
12 or four years.
13 Q What was the reason you left the Village
14 of Windham and went to Garrettsville PD?
15 A Pay.
16 Q Okay. What was the pay difference or
17 what was your salary -- what was your hourly rate to the
18 new hourly rate, do you remember?
19 A It was like a five, six thousand dollars
20 a year increase.
21 Q And when you retired -- are you
22 presently in the PERS system?
23 A Yes.
24 Q Okay. And I shouldn't say in the

10

1 Q Okay. All right. If you would, give me
2 an idea of your employment history after you graduated
3 from high school in '71. Just kind of give me an overview
4 of what you've done.
5 A From 1976 to 1998 I worked at Windham
6 Police Department. From 1998 to 2005 I worked at
7 Garrettsville Police Department. In September of '05 I
8 retired.
9 Q You were at Windham, and that's the
10 Village of Windham, Police Department?
11 A Yes.
12 Q Okay. And you were at the Village
13 Police Department for 22 years?
14 A Yes.
15 Q And what was your duties at the Police
16 Department?
17 A I was dispatch supervisor.
18 Q And then when you went to Garrettsville,
19 what were your duties there?
20 A Dispatch supervisor.
21 Q As a dispatch supervisor at the Village
22 of Windham Police Department, who did you report to, at
23 least at the time you retired?
24 A The chief.

12

1 system; your retirement is from PERS?
2 A Yes.
3 Q You are presently the fiscal officer of
4 Windham Township?
5 A Yes.
6 Q And how long have you been the fiscal
7 officer?
8 A 2000.
9 Q That is an elected position?
10 A Yes.
11 Q Have you held any other jobs other than
12 the fiscal officer of Windham Township and the others
13 we've previously discussed? Any other outside employment?
14 A No.
15 Q Okay. As the fiscal officer of Windham
16 Township, what are your duties?
17 A I take care of the finances.
18 Q Give me an idea of your -- when you say
19 taking care of the finances -- what is it that you -- that
20 you specifically do? What are some of the day-to-day
21 operations or week-to-week operations that you perform?
22 A I take in checks, budgets,
23 appropriations, pay the bills, do payroll.
24 Q Who was the fiscal officer or clerk, as

1 I think it was called back there, township clerk before
 2 you --
 3 A Suzanne Viebranz.
 4 Q Can you spell the last name for me?
 5 A V-I-E-B-R-A-N-Z.
 6 Q And do you know how long Susan was the
 7 clerk or fiscal officer, approximately?
 8 A Twenty-four years.
 9 Q Did she retire from that position, or
 10 did you beat her in an election?
 11 A She retired.
 12 Q As part of your job duties, do you
 13 set -- are you responsible for enacting any township
 14 policies?
 15 A No.
 16 Q Do you enact -- well, I'm going to use
 17 one specifically, like a purchase order policy; do you
 18 require that, or is that something the township trustees
 19 have adopted?
 20 A That's state mandated.
 21 Q Okay. Are there any policies other than
 22 those mandated by the state that you have independently
 23 enacted in the township?
 24 A Not they -- we follow the state

1 residence. Then as they're audited, they're moved to the
 2 town hall.
 3 Q And then after the audit is complete, do
 4 they then remain at the town hall?
 5 A Yes.
 6 Q And they don't get -- they don't come
 7 back to your residence?
 8 A No, no, there are some records that come
 9 back, stuff that I use on a day -- you know, that I would
 10 need, audit or stuff like that, you know.
 11 Q Okay. The day-to-day financial
 12 information?
 13 A Explain what --
 14 Q Okay. Let me ask a different question.
 15 We're here specifically about the fire department?
 16 A Uh-huh.
 17 Q Where would fire department records be
 18 maintained?
 19 A At my house.
 20 Q And what type of records relating to the
 21 fire department do you have at your house?
 22 A I have the levy information, the levies
 23 that they've passed through the years, that folder's
 24 there. Just, yeah, I mean, that's basically -- all the

1 policies. If they change resolutions or something, the
 2 board does that.
 3 Q Does the -- does the township have a
 4 records retention policy?
 5 A Yes, I believe they do.
 6 Q Do you know if the records retention
 7 policy is posted anywhere in the township?
 8 A Not to my knowledge.
 9 Q Is there a public records request policy
 10 in the township?
 11 A Yes.
 12 Q Is that posted, do you know?
 13 A It's on the website, which is currently
 14 unoperating right now, but it is on there, and there is a
 15 copy of it up in the office at the -- if anybody would
 16 like to see it, during a meeting, it is available.
 17 Q Okay. Do you have -- I know, as you've
 18 indicated to me you're retired, do you have regular -- any
 19 type of regular office hours at the township hall other
 20 than during meeting times?
 21 A No. The office is at my house.
 22 Q Okay. And where are the records of the
 23 township maintained; what physical location?
 24 A There are current records at my

1 vehicle information, personnel files.
 2 Q Okay. What I have is the fire
 3 department information you have in your -- I'm going to
 4 just use the word custody and control --
 5 A Uh-huh.
 6 Q -- would be relating to the fire
 7 department, is levy information, vehicle information and
 8 personnel files. Anything else?
 9 A Old correspondence, just old documents
 10 that have -- that were in the files when I got them.
 11 Q I mean, there's -- one of the issues
 12 that has come up from time to time is -- relates to the
 13 creation of the fire district. I understand that there
 14 was a search at one point in time for documents relating
 15 to the creation of the Windham Fire District looking for
 16 the resolution, et cetera. Have you ever personally
 17 looked for such documents?
 18 A Just through what I've had at the files.
 19 Q Right.
 20 A Yeah, at the house.
 21 Q Right.
 22 A No, have I went to the town hall and
 23 searched, do you mean? No.
 24 Q I guess my question is, have you ever

1 looked for documents relating to the creation of the fire
2 district, and I understand your answer to be, yes, you
3 have, but only those documents that are at your house?

4 A Yes --

5 Q Okay.

6 A -- and on the Internet.

7 Q Okay.

8 A Yes, I have researched there myself,
9 yes.

10 Q Were you able to find any documents at
11 all?

12 A Yes.

13 Q Okay. What documents did you find
14 relating to the creation of the fire district?

15 A We did find the first levy ballot from
16 1965 where the levy was put on for the large equipment.

17 Q Anything else?

18 A I'm trying to think what else we did
19 find. We found the minutes from the township meeting and
20 the minutes from the village where they obviously, you
21 know, made the decision to create the district to purchase
22 equipment. It doesn't specifically say like a resolution,
23 but there is some content that would say that they were
24 doing something to create the district.

1 that you found information relating to the first levy in
2 1965. When do you believe, based upon any documents that
3 you have seen, that the fire district was originally
4 created?

5 A I believe it was created in 1965.

6 Q And is it your understanding that
7 the -- that the fire district, when created in 1965, was
8 also a taxing district? It was created to levy a tax upon
9 the residents in Windham?

10 A Yes.

11 Q Okay. And when we talk about the
12 residents in Windham in 1965, the tax would have applied
13 to both the township and the village; correct?

14 A Correct.

15 Q Because in 1965 the village was part of
16 the township?

17 A Correct.

18 Q What is your understanding in 1965 as to
19 the relationship between the village and the township as
20 it related to the operation of a fire department, if any?
21 And I'm asking you your opinion based upon your review of
22 the documents.

23 A My personal opinion?

24 Q Yes.

1 Q At one point there was a -- there was a
2 discussion with representatives of the village -- I'm
3 sorry -- with representatives of the township, and -- and
4 counsel about the lack of an original resolution, that it
5 could not be found; are you familiar with that?

6 A Yes.

7 Q All right. In response to the inability
8 of either the township trustees or the fiscal officer to
9 find a resolution, it was suggested that one of the
10 trustees or one -- an individual who was a trustee at the
11 time the district was created provide an affidavit. Have
12 you ever found or have you ever seen the affidavit from
13 the trustee, one of the trustees, who created the fire
14 district to begin with?

15 A Yes, there is a letter in there.

16 Q Okay. And did you -- by any chance, did
17 you bring that letter with you today?

18 A No.

19 Q Okay. Can you make that available to
20 your counsel?

21 A Sure.

22 Q Okay.

23 A Yes.

24 Q You reference that there was a first --

1 A That they created the district because
2 neither could financially have a fire department on their
3 own. You know, they -- and this was a way to help support
4 a fire department where they could buy equipment, and they
5 did it basically as a gentlemen's type agreement obviously
6 or whatever, for whatever reason, to work together. I
7 think that was their full purpose was to make a working
8 fire department.

9 Q And what is your understanding from
10 review of the documents as to who owned and had
11 responsibility for the operation of the fire department in
12 1965?

13 A Who took care of it?

14 Q Yeah. Who was responsible?

15 A I think they both -- they both were very
16 joint --

17 Q Okay.

18 A -- you know, from everything I could
19 read, it was more or less a joint endeavor, and they
20 jointly worked together to make it work.

21 Q Have you reviewed or seen any statements
22 where the fire -- where the township indicated back in
23 1965 or any time during the 1970s that it did not have its
24 own fire department?

1 A I -- yeah, there is something that says
 2 that.
 3 Q Okay.
 4 A I don't know exactly where I read
 5 that --
 6 Q Okay.
 7 A -- but it does say that somewhere.
 8 Q All right. Have you seen any documents
 9 from your review of the township records or the fire
 10 district records where there were any actions by the
 11 township trustees that would independently create its own
 12 fire department, a township or fire district department,
 13 separate and apart from the 1965 resolution?
 14 A No.
 15 Q How is the -- how is the compensation of
 16 the fiscal officer determined?
 17 A State.
 18 Q And what is the formula that -- when you
 19 say the state determines it, what is your understanding
 20 of --
 21 A The budget, your total budget.
 22 Q Okay.
 23 A It's based on your budget.
 24 Q All right. So what I understand your

1 have like a lot, or like an application or anything, but
 2 the fire chief has duplicated whatever he's had and given
 3 to me, so --
 4 Q When did the fire chief duplicate those
 5 records and provide those to you?
 6 A When I took over payroll in 2001.
 7 Q And you said you've been the clerk since
 8 2000?
 9 A Yes.
 10 Q In 2000, how was payroll made to the
 11 firefighters?
 12 A The village clerk did payroll. I don't
 13 know how she did it.
 14 Q Okay. But she -- up until 2001 the
 15 village paid the payroll of the firefighters, and then in
 16 2001 the township took over payroll?
 17 A Uh-huh.
 18 Q Yes?
 19 A Yes.
 20 Q Okay.
 21 A Sorry.
 22 Q What -- what led to that change?
 23 A Basically I just -- the way it was being
 24 done was they would -- she would make payroll and then

1 answer to be that the salary of the township fiscal
 2 officer is determined based upon the total overall budget
 3 of the township?
 4 A Yes.
 5 Q Okay. For determining your salary, do
 6 you include the tax revenue generated by the fire district
 7 tax?
 8 A Yes.
 9 Q Do you, as fiscal officer, pay any money
 10 into the State Volunteer Firefighters Dependence Fund?
 11 A Yes.
 12 Q Okay. How long has the township been
 13 doing that?
 14 A As long as I've been clerk.
 15 Q Do you know if -- do you have any
 16 knowledge as to whether or not the village ever paid the
 17 volunteer Firefighters Dependence Fund -- fund
 18 requirement?
 19 A I would have no idea.
 20 Q Okay. What type of personnel records do
 21 you maintain in your office relating to the firefighters?
 22 A Right now I have their like emergency
 23 contact records, you know, copy of their driver's license,
 24 their alien forms, that type of thing. I really don't

1 bill the township.
 2 Q Okay. When we say she, I want the
 3 record --
 4 A Rachel was the village clerk.
 5 Q Okay.
 6 A would do payroll. She would bill -- in
 7 turn bill the township.
 8 Q Okay.
 9 A And then we would for our calls, because
 10 it used to be the village would pay for the village calls,
 11 the township would pay for the township calls. So they
 12 would bill me.
 13 Q Okay.
 14 A And Rachel, at times, didn't get the
 15 stuff -- the billing to us in an adequate amount of time,
 16 you know, so I'm encumbering monies, so I just went and
 17 asked her, do you want me to take this over and do it?
 18 She said, yes. And I did.
 19 Q Other than the discussions you had with
 20 Rachel regarding the change in payroll --
 21 A Uh-huh.
 22 Q -- to your knowledge, was there any
 23 other action taken by either the village or the township
 24 with respect to that change?

1 A No.

2 Q Okay. Was it just an agreement between
3 the two fiscal officers, so to speak?

4 A Yes.

5 Q All right. During your period of
6 serving as the fiscal officer of the township, have there
7 been any other changes in how things have been done with
8 respect to the fire department in terms of whether it's
9 record keeping, payroll, anything else during your --
10 again, during your service?

11 A Yeah, I think, you know, we do things,
12 you know, it operates a lot smoother. We're not, you
13 know, doing billing. You know, they're not paying part of
14 the bills, and I'm not paying part of the bills. The
15 district pays everything now. The district pays payroll.
16 The district pays everything, so everything is centered
17 into one place, and everything's accountable from one
18 place, so I think it's done better that way because now
19 you can actually -- there's documentation of everything
20 that's done with the district finances.

21 Q Okay. There would have been
22 documentation as to everything before in terms of bills
23 received on behalf of the district. The issue, I guess --
24 the main difference now is that the district's paying 100

1 Q Okay. To your knowledge, was there --
2 same question I asked you before. Other than the
3 agreement with the fiscal officers, was there ever any
4 change in official policy, either enacted by village
5 council or by the township trustees, to your knowledge, to
6 also facilitate those changes in the payment as you've
7 described to me?

8 A No.

9 Q Okay. The village withdrew from the
10 township in approximately 1993. You were working for the
11 village at the time; correct?

12 A Yes.

13 Q Do you recall any discussions that
14 occurred at the village while you were working there
15 regarding that issue?

16 A No.

17 Q Presently all billing generated from
18 emergency medical service calls is done by the township
19 through an independent service that the township has
20 retained; is that right?

21 A Yes.

22 Q How -- what happens -- well, what
23 happens to the money? How -- what is the current
24 arrangement? I'm not going to hold you to the fine lines,

1 percent of the bill as opposed to 50 percent or some other
2 percentage, so you're able to account for the whole bill
3 and the whole payment; correct?

4 A Yes.

5 Q Before you had to rely on the village
6 paying a portion of that bill, and what I understand from
7 you is there was times when the village would get behind
8 on their share; is that a fair statement?

9 A That would be a fair statement.

10 Q Okay. And so one of the things -- I
11 understand the -- the reason why these changes have taken
12 place, I think you've explained that to me. Was
13 there -- did these other changes, and I don't know that we
14 got into them other than the fact that I think -- let me
15 start over.

16 I think what you're telling me is that in addition to
17 payroll you have assumed responsibility for payment of all
18 expenses; would that be a fair statement?

19 A That's correct.

20 Q Okay. Was that also an agreement with
21 the fiscal officer of the village, or did that come about
22 some other way?

23 A No, that was an agreement as well. I --
24 yeah, between fiscal officers I would assume.

1 because I know there's a separate written agreement to
2 that, but if you could just generally explain to me what
3 happens with respect to billing presently?

4 A The billing -- all the billing goes
5 to -- the money comes to the township.

6 Q Okay.

7 A I receipt it.

8 Q Okay.

9 A I send documentation to Life Force
10 Management who is the billing company. At the end of each
11 month she sends me a report. We balance to make sure
12 we're both on the same page, and --

13 Q Let me -- I'm going to back up just so
14 I'm clear. A person calls for emergency medical service
15 and the fire department transports the patient to a
16 hospital?

17 A Right.

18 Q There's then a run sheet that's
19 generated?

20 A Uh-huh.

21 Q Do you send out the bill, or does that
22 go to Life Force Management?

23 A Life Force.

24 Q Life Force --

1 A The run sheet gets -- the run sheet goes
2 to Life Force.
3 Q They send out a bill?
4 A Yes.
5 Q But the bill requires the money to come
6 to you?
7 A Yes.
8 Q You then deposit the money, and does
9 that go into a separate account?
10 A Yes, it goes into the district, but
11 there is a line item for EMS revenue, yes.
12 Q Okay. And the line item revenue -- the
13 line item revenue goes into, like you said, a separate
14 account. What happens to what money is taken out of that
15 account? Where does that money go?
16 A It goes all into operating.
17 Q Okay.
18 A And that pays for the operation of the
19 fire department. We pay payroll. We pay gas, electric,
20 phones, maintenance on the trucks, you know, the basic
21 operations. It's -- there's a 2191 fund. That is your
22 operating fund, so -- and the money goes there, and the
23 money goes out there.
24 Q okay. When it goes for phones, for

1 your salary, or is that just from tax revenue?
2 A No, it's based on the total budget.
3 Q Okay.
4 A If my budget is one million dollars, I'm
5 paid this much money, so when I do the budget, and I have
6 my final certificate of estimated resources, I know how
7 much money -- you know, what my budget, then that's how my
8 salary is based.
9 Q Do you include the 50 or \$60,000 as part
10 of your --
11 A Yes.
12 Q -- estimate?
13 A If it's in, yes. The township -- that
14 is part of the township funds. It is incurred, so, yes.
15 Q Okay. During the period that you have
16 been the fiscal officer, have there been any new tax
17 levies passed for fire protection?
18 A Just the renewals from the two
19 original --
20 Q No new --
21 A Nothing new.
22 Q No new; they have just been renewals?
23 A Or replacements.
24 Q When was the last levy that you can

1 example, does it pay 100 percent of the phone bill? Let
2 me back up. Is there a separating -- is there a separate
3 fund for the EMS billing that comes in versus fire, or is
4 it all combined into a general operating?
5 A It's a general operating.
6 Q Of the fire department?
7 A Yes.
8 Q All right. So there's no -- when the
9 EMS funds come in, I don't have a special EMS fund where
10 we pay out the EMS expenses and the EMS ambulance gas
11 versus the fire truck gas?
12 A No.
13 Q It's just one?
14 A Yes.
15 Q Okay. And we talked earlier -- well,
16 how much -- give me your best guesstimate, I'm not holding
17 you to dollars and cents, give me your best guesstimate as
18 to how much the ambulance service generates in revenue
19 annually.
20 A Between 50 and \$60,000 a year right now
21 is what we're doing.
22 Q Again, when it comes to the salary of
23 the fiscal officer, do you include that additional funds,
24 the 50 to 60,000 annually, as part of how you determine

1 recall that was passed as a renewal; how long ago?
2 A Well, we have one coming up next year,
3 so 2004.
4 Q Okay. Five-year levies?
5 A Five-year levies, yeah, so we have one
6 next year.
7 MR. COMSTOCK, JR.: If I could just take
8 a break for a second.
9 (A recess was taken)
10 Q A couple questions, and you'll be all
11 wrapped up here.
12 A Okay.
13 Q And I never say one more question
14 because it's never one more question. Lawyers can't do
15 that.
16 You referenced earlier a website, the township
17 website. Who's responsible for getting it up and running?
18 A Oh, we had a webmaster guy.
19 Q Okay.
20 A Or somebody we, you know, paid to take
21 care of our website. He passed away.
22 Q So it's --
23 A It's been down --
24 Q It's in limbo?

1 A Actually we just started with, you know,
2 a new company, and hopefully within the next week it
3 should be up and running again, so --

4 Q Okay. And it's my understanding that
5 the township minutes of meetings would be posted on the
6 website?

7 A Yes.

8 Q All right. Was there any other thing
9 that you would typically put on the website on a regular
10 basis?

11 A I put announcements, annual cleanups. I
12 think our, you know, policies. We have a tree arboretum
13 or something around town, and we have all the trees listed
14 and just odds and ends.

15 Q Back when I was interested in this, and
16 I'll tell you how far back this goes, I have Windham
17 Township, and I'll hand you -- this looks like the web
18 page I have in front of me. That sort of looks like one
19 of the minutes?

20 A Yeah.

21 Q Does that look just -- I mean, I printed
22 that off.

23 A Yeah. Is this my website? Yes.

24 Q Okay. And it has on it at the left-hand

1 the township other than you, as fiscal officer, attended
2 that seminar?

3 A Howard, Brian and I all went together,
4 so I know the three of us did. Dann still has to go.

5 MR. FINAMORE: Too busy practicing law.

6 Q All right. You told me that you do have
7 some limited personnel records in your possession, what
8 the fire department made copies and provided to you. When
9 did you take over or when did you acquire those public
10 records, those personnel records?

11 A I started my own. There weren't any.

12 Q Okay.

13 A I got nothing from the village when I
14 took over, so I started making my own, had them fill out
15 new state, you know, W-2s, W-4 forms, those -- that kind
16 of stuff.

17 Q That would have been in 2000
18 approximately or sometime thereafter?

19 A Thereafter.

20 Q Okay. And you think it was in the year
21 2000 or was it 2001? Give me your best estimate as to
22 when you think you first did that.

23 A 2001.

24 Q And it was basically, from what I

1 column it says home, township trustee, township clerk,
2 about Windham, et cetera, et cetera, et cetera; correct?

3 A Correct.

4 Q All right. It has fire department?

5 A Uh-huh.

6 Q And I've checked the fire department
7 website for the township. I will tell you that I have
8 never seen anything under the fire department, under the
9 township website other than under construction or
10 information coming soon.

11 A Right.

12 Q To your knowledge, has the township
13 website ever included anything relating to the fire
14 department?

15 A No. I mean, I have pictures they gave
16 me, and they were really bad, and I told them to take new
17 pictures, and they never did, so that's why they're not on
18 there.

19 Q Okay. Fair enough. We talked -- I
20 asked you about a public records policy. You told me that
21 the township has such a policy, public records request
22 policy. Did you -- have you attended the state seminar?

23 A Yes.

24 Q To your knowledge, who else on behalf of

1 understand you telling me, was that you asked the village
2 for the fire department personnel records. You didn't get
3 anything, so you started creating your own personnel files
4 from what you could get from the -- and creating those in
5 part either from new documents you had the firefighters
6 fill out or from the limited records that were provided to
7 you by the fire chief?

8 A Yes, that's correct.

9 Q Do you have any recollection of either
10 the police chief Glenn, I think it's Barker --

11 A Yes.

12 Q -- or the Mayor Henkins --

13 A Yes.

14 Q -- asking you to perform any research
15 during your employment with the village to see if you
16 could find any records relating to the -- the village
17 joining a fire district or joining the fire district?

18 A Not that I recall, no. I don't think
19 Glenn would have done that.

20 Q Have you either received any
21 correspondence or reports from the state auditor or had
22 any conversations with the auditor relating to the
23 creation of a separate EMS fund?

24 A No.

1 MR. COMSTOCK, JR.: Gentlemen, anything
 2 else? Okay. At this point I don't have any further
 3 questions.
 4 MR. FINAMORE: Okay.
 5 MR. COMSTOCK, JR.: I will -- we did ask
 6 for documents --
 7 MR. FINAMORE: Yes.
 8 MR. COMSTOCK, JR.: -- which I
 9 understand that you are going to --
 10 MR. FINAMORE: Forthcoming.
 11 MR. COMSTOCK, JR.: -- research.
 12 Counsel has represented that he'll have either you or
 13 somebody on behalf of the township look to see what
 14 documents you are able to find. I'm just going to reserve
 15 the right if there's any questions that I might have
 16 regarding --
 17 MR. FINAMORE: Sure.
 18 MR. COMSTOCK, JR.: -- those documents
 19 just to ask a follow-up question, and if necessary I'll
 20 just submit it in writing to your counsel.
 21 MR. FINAMORE: Sure.
 22 MR. COMSTOCK, JR.: But other than that,
 23 I don't have any further questions at this point, so I
 24 thank you for your time.

1
 2
 3
 4
 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
 22
 23
 24

1 MR. FINAMORE: Thank you very much. Do
 2 you want to waive your signature? Remember the
 3 instructions I told you about waiving your signature?
 4 THE WITNESS: Yes.
 5 MR. FINAMORE: She'll waive her
 6 signature.
 7 SIGNATURE WAIVED
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

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 24th
 20 Day of October, 2008.
 21
 22
 23 Gina M. Allen, Notary Public
 24 My Commission Expires 08/01/11