

Volume II
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Exhibits 415A-499

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

NORFOLK, SS.

SUPERIOR COURT
NO. 1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC;
MII AVIATION SERVICES, LLC, AND
HB HOLDINGS, INC.,
Plaintiffs,

v.

FLIGHTLEVEL NORWOOD, LLC;
EAC REALTY TRUST II; AND
PETER EICHLEAY,
Defendants.

DEPOSITION OF FRANCIS "RUSS" MAGUIRE, III

TAKEN JUNE 25, 2018

AT THE LAW OFFICES OF

PIERCE MANDELL, P.C.

11 BEACON STREET, SUITE 800

BOSTON, MASSACHUSETTS

Reporter: Raymond F. Catuogno, Jr.

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- 1 A. Yes.
 2 Q. When?
 3 A. It had come up at one or several
 4 Airport Commission meetings.
 5 Q. When?
 6 A. I don't recall.
 7 Q. And what did BEH or Mr. Donovan say
 8 to you to lead you to believe that he was
 9 interested in doing self-fueling?
 10 A. Either commercial self-fueling or
 11 self-fueling of his own aircraft?
 12 Q. Correct.
 13 A. Mr. Donovan actually said that his
 14 interest was in self-fueling, fueling his own
 15 aircraft, and then he amended that statement to
 16 include some other aircraft. It was very vague
 17 about what aircraft other than his own.
 18 Q. Well, is it fair to say that when
 19 you have an FBO you are doing commercial fueling
 20 of other people's aircraft?
 21 A. Yes.
 22 Q. Okay. So once Mr. Donovan and BEH
 23 informed you of his intention to have an FBO,
 24 would it be clear to you that he intended to

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- 1 asking for a particular conversation?
 2 Q. No. I'm asking in general.
 3 A. He did -- I recall conversations in
 4 2012.
 5 Q. And what did he tell you about the
 6 nature of his building on Lot F?
 7 A. He wanted to put up a hangar and a
 8 fueling station.
 9 Q. And what did he tell you about the
 10 size of the building?
 11 A. I don't recall the dimensions in
 12 2012.
 13 Q. Did he disclose to you that the
 14 building he was intending to build on Lot F was
 15 larger than the preexisting building?
 16 A. I do recall a comment to that
 17 effect.
 18 Q. Do you recall when that was?
 19 A. I don't.
 20 Q. Did you have any concerns about
 21 that?
 22 A. I had concerns.
 23 Q. What concerns?
 24 A. I had concerns that the lot would

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- 1 commercially fuel and not self-fuel?
 2 A. His comments to the board were
 3 vague.
 4 Q. Vague. So at what point did it
 5 become clear to you that Mr. -- and I asked you
 6 this before, that Mr. Donovan intended to have
 7 an FBO?
 8 A. Well, Mr. Donovan told us he wanted
 9 to have an FBO before he had the ability to have
 10 an FBO in 2010 or 2011.
 11 Q. So in 2010 or 2011, Mr. Donovan
 12 communicated his intention to commercially
 13 self-fuel on the airport to you and the airport
 14 commissioners; is that correct?
 15 A. That is correct.
 16 Q. And over the course of the next
 17 several years, you contend that he made vague
 18 assertions regarding the nature of his fueling
 19 operations; is that fair to say?
 20 A. That's fair.
 21 Q. Do you recall, in 2012, discussions
 22 with Mr. Donovan regarding where and how he
 23 would construct a building on Lot F?
 24 A. I'm not exactly sure. Are you

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- 1 not be big enough for both the hangar and the
 2 fuel farm and his intention of fueling aircraft.
 3 Q. Did you communicate that to him?
 4 A. I believe we did.
 5 Q. In what form?
 6 A. I believe that was in a letter.
 7 Q. In a letter, okay. Did you
 8 communicate it to him in a meeting?
 9 A. I believe that was communicated to
 10 him in one or several meetings.
 11 MR. FEE: I'm going to mark
 12 this as the next exhibit.
 13 (Exhibit 416A, Norwood Airport Commission
 14 Regular Business Meeting Minutes, March
 15 14, 2012, marked for identification)
 16 Q. (By Mr. Fee) Exhibit 416 are
 17 meeting minutes from March 14, 2012. On Page 2,
 18 third paragraph, "The project Mr. Donovan will
 19 be doing will expand the existing building back
 20 twenty feet." Is that consistent with your
 21 recollection of what Mr. Donovan communicated to
 22 you and the Commission regarding the amount by
 23 which the building would increase over the
 24 preexisting footprint?

<p style="text-align: right;">225</p> <p>1 A. I do have a recollection of this.</p> <p>2 Q. There is nothing in these minutes</p> <p>3 that indicate your voicing any concerns</p> <p>4 regarding that extension of the building; is</p> <p>5 that right?</p> <p>6 A. I don't see anything here in the</p> <p>7 minutes.</p> <p>8 Q. If you did have concerns, you would</p> <p>9 have communicated them to him in writing; is</p> <p>10 that right?</p> <p>11 MR. SIMMS: Objection, form.</p> <p>12 Go ahead.</p> <p>13 A. Not necessarily.</p> <p>14 Q. Well, you did say earlier that you</p> <p>15 thought that you wrote him a letter; is that</p> <p>16 right?</p> <p>17 A. I believe we did write him a</p> <p>18 letter, or I wrote him a letter.</p> <p>19 Q. Do you know when that was?</p> <p>20 A. In December.</p> <p>21 Q. December of 2012?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall having conversations</p> <p>24 with Mr. Donovan regarding the method by which</p>	<p style="text-align: right;">227</p> <p>1 the document marked as Exhibit 417, Mr. Donovan</p> <p>2 has responded to you in an e-mail dated December</p> <p>3 12, 2012. Third paragraph from the bottom, he</p> <p>4 states, "Both self-fueling and self-service</p> <p>5 fueling would be rare as we would be buying</p> <p>6 trucks and plan on serving the entire airport.</p> <p>7 I will also use the fuel system to self-fuel my</p> <p>8 aircraft myself. Self-service fueling is</p> <p>9 routine now throughout the United States as well</p> <p>10 as here in Massachusetts." Did I read that</p> <p>11 correctly?</p> <p>12 A. Yes.</p> <p>13 Q. So is it fair to say you had an</p> <p>14 understanding in December of 2012, that</p> <p>15 Mr. Donovan intended to use mobile fuelers to</p> <p>16 service aircraft throughout the airport as well</p> <p>17 as to do self-fueling of his own aircraft at the</p> <p>18 site?</p> <p>19 MR. SIMMS: Objection to form.</p> <p>20 Go ahead.</p> <p>21 A. I think that is fair to say.</p> <p>22 MR. FEE: Okay. I'm going to</p> <p>23 mark this as the next exhibit.</p> <p>24 (Exhibit 418A, Board of Selectmen Meeting</p>
<p style="text-align: right;">226</p> <p>1 he intended to provide fueling services at the</p> <p>2 airport in or around this time, December of</p> <p>3 2012?</p> <p>4 A. I don't recall whether it was in</p> <p>5 December or not.</p> <p>6 Q. But you recall having discussions</p> <p>7 with him regarding his plans for fueling; is</p> <p>8 that correct?</p> <p>9 A. I recall having discussions.</p> <p>10 Q. And he told you, did he not, he</p> <p>11 intended to have mobile fuelers to take on fuel</p> <p>12 at the fueling station, and then go to different</p> <p>13 parts of the airport to provide that fuel to</p> <p>14 customers, right?</p> <p>15 A. That particular mode of fuel</p> <p>16 delivery was articulated later.</p> <p>17 MR. FEE: I'm going to mark</p> <p>18 this as the next exhibit.</p> <p>19 (Exhibit 417A, E-mail dated December 12,</p> <p>20 2012, marked for identification)</p> <p>21 Q. (By Mr. Fee) Later. How much</p> <p>22 later?</p> <p>23 A. I don't recall the exact --</p> <p>24 Q. Turning your attention to Page 2 of</p>	<p style="text-align: right;">228</p> <p>1 Minutes dated January 22, 2013, marked for</p> <p>2 identification)</p> <p>3 Q. (By Mr. Fee) 418 are meeting</p> <p>4 minutes from the Board of Selectmen meeting of</p> <p>5 January 22, 2013. And the middle paragraph is</p> <p>6 highlighted and says, "7:30 p.m. - P.H. Boston</p> <p>7 Executive Helicopters, Inc." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. The next paragraph -- I'm sorry,</p> <p>10 were you present at this meeting?</p> <p>11 A. I don't recall being at this</p> <p>12 meeting. I may have been.</p> <p>13 Q. The second -- I'm sorry, in the</p> <p>14 first paragraph in the middle, it says, "Present</p> <p>15 were James Hilliard, Esq. representing Boston</p> <p>16 Executive Helicopters and Chris Donovan,</p> <p>17 president of Boston Executive Helicopters, and</p> <p>18 Russ Maguire, airport manager"?</p> <p>19 A. Yes.</p> <p>20 Q. Does that refresh your recollection</p> <p>21 as to whether you were present?</p> <p>22 A. Yes.</p> <p>23 Q. Now, the next paragraph down, the</p> <p>24 last two sentences -- I'm sorry -- yes, the last</p>

<p style="text-align: right;">229</p> <p>1 sentences says, "Selectman Howard inquired if 2 they intend to self-fuel to others or just for 3 him. Mr. Donovan said both." Do you see that? 4 A. Yes. 5 Q. So is it fair to say, in or about 6 January of 2013, you were aware that Mr. Donovan 7 intended to sell fuel and self-fuel as part of 8 his redevelopment of Lot F? 9 A. Yes. 10 Q. And you're aware that he intended 11 to use mobile fuelers to deliver fuel throughout 12 the airport, correct? 13 A. Yes. 14 Q. Okay. Now, we have talked a lot 15 about fueling setbacks at the airport, right? 16 A. Yes. 17 Q. And is it your understanding that 18 there are certain NFPA standards that apply at 19 the airport? 20 A. Yes. 21 Q. Okay. And do they apply -- how do 22 they apply? 23 MR. SIMMS: Objection. Go 24 ahead.</p>	<p style="text-align: right;">231</p> <p>1 A. I have concerns about NFPA 2 standards for all the operators in the airport, 3 not just BEH, so I would just -- I didn't 4 necessarily have a particular concern for BEH, 5 but, yes, I have concern that aircraft are going 6 to be fueled too close to the hangars. 7 Q. If Mr. Donovan was telling you he 8 was not going to fuel aircraft next to the 9 hangars, instead fuel aircraft on the ramps 10 using the mobile fuelers, what's the nature of 11 your objection to that? 12 MR. SIMMS: Objection. Go 13 ahead. 14 A. I don't necessarily have an 15 objection to that. 16 Q. Okay. So it's okay -- there's no 17 violation of an NFPA standard if Mr. Donovan 18 does not fuel aircraft adjacent to his hangar; 19 is that fair to say? 20 A. That's fair to say. 21 Q. Okay. Do you know that NFPA 22 standards are not applicable in Massachusetts 23 after the recent revisions to the fire code? 24 A. Could you be more specific on that?</p>
<p style="text-align: right;">230</p> <p>1 A. In particular? 2 Q. Yes. 3 A. With regard to aircraft fueling? 4 Q. Correct. 5 A. The fuel port of an aircraft can be 6 only within twenty-five feet of a hangar unless 7 there is some type of cooling unit, and then 8 it's a fifty-foot setback from the airport. 9 Q. And that applies to the placing of 10 a fuel nozzle into an aircraft receptacle, 11 correct? 12 A. Correct. 13 Q. That does not apply to sticking a 14 fuel nozzle into a mobile fueler; is that 15 correct? 16 A. Correct. 17 Q. Now, if you were aware of the fact 18 that Mr. Donovan intended to use mobile fuelers 19 to service the airport as part of his FBO, did 20 you have any concerns in 2012 regarding 21 compliance with NFPA standards? 22 MR. SIMMS: Could you read 23 that back? 24 (Question read by reporter)</p>	<p style="text-align: right;">232</p> <p>1 Q. Sure. Did you know that NFPA Code 2 407 was deleted from the Massachusetts Fire Code 3 in 2015? 4 A. It's still reflected in our 5 general. 6 Q. Understood, but I'm asking you a 7 different question. Did you know that NFPA 407 8 was deleted from the fire code in Massachusetts 9 in 2015? 10 A. I don't recall. 11 Q. So you believe that NFPA 407 was 12 somehow enacted as a regulation at the airport? 13 MR. SIMMS: Objection. 14 A. It's reflected in the general 15 regulations of the Norwood Airport. 16 Q. How is it reflected in the general 17 regulations? 18 A. It's included in the general 19 regulations. 20 Q. When was it included? 21 A. I would say 2008. 22 Q. There was a revision to the general 23 regulations? 24 A. 2008 was the last revision of the</p>

<p style="text-align: right;">273</p> <p>1 ahead.</p> <p>2 A. I don't believe that's the reason</p> <p>3 that the Airport Commission required a scaled</p> <p>4 drawing. Among other reasons, the Airport</p> <p>5 Commission is interested in making sure that BEH</p> <p>6 has the real estate and their rights and powers</p> <p>7 to take delivery of fuel to the fuel farm.</p> <p>8 Q. Right. And you will recall Lisa</p> <p>9 Lesperance's e-mail to you in which she stated</p> <p>10 that she believed all the fueling deliveries</p> <p>11 would be outside of the OFA, right?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 Q. (By Mr. Fee) Did you have any</p> <p>14 reason to believe --</p> <p>15 A. This was prior to the land dispute</p> <p>16 in court.</p> <p>17 Q. The land dispute in court has</p> <p>18 nothing do with the fuel deliveries to a tank</p> <p>19 farm that are adjacent to the taxiway, not the</p> <p>20 space between Lots F and G, correct?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 MR. SIMMS: Objection. Go</p> <p>23 ahead.</p> <p>24 A. Can you restate that?</p>	<p style="text-align: right;">275</p> <p>1 disputed land that's in Land Court so they can</p> <p>2 take fuel deliveries east of their hangar.</p> <p>3 Q. Okay. The fuel deliveries that BEH</p> <p>4 intended to take would not occur on the east</p> <p>5 portion of the hangar but rather on that portion</p> <p>6 of the hangar that faces the taxiway. Would you</p> <p>7 agree with me?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 MR. SIMMS: Objection. Go</p> <p>10 ahead.</p> <p>11 A. That was not the agreement at the</p> <p>12 FAA meeting.</p> <p>13 Q. Did any subsequent information</p> <p>14 become available to you at which point you could</p> <p>15 determine where BEH was going take fuel</p> <p>16 deliveries?</p> <p>17 MR. SIMMS: Objection. Go</p> <p>18 ahead.</p> <p>19 A. My understanding was at the FAA</p> <p>20 meeting that BEH agreed to take fuel deliveries</p> <p>21 outside the object-free area east of its hangar.</p> <p>22 Q. East of its hangar?</p> <p>23 A. East of its hangar.</p> <p>24 Q. What was the basis of that belief?</p>
<p style="text-align: right;">274</p> <p>1 Q. Sure. I'm trying to understand</p> <p>2 what concerns the NAC had at this time, and you</p> <p>3 mentioned fuel deliveries. I think we have</p> <p>4 established that fuel deliveries will take place</p> <p>5 outside the OFA, according to the FAA. Do you</p> <p>6 agree with me?</p> <p>7 MR. SIMMS: Objection.</p> <p>8 A. Correct.</p> <p>9 Q. And you will agree with me --</p> <p>10 because I think you said this before -- that BEH</p> <p>11 explicitly agreed not to conduct fueling</p> <p>12 operations in the space east of its hangar,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And yet, the NAC requires a scaled,</p> <p>16 professionally prepared stamp engineering</p> <p>17 drawing confirming those prior representations.</p> <p>18 Is that what you're saying?</p> <p>19 MR. SIMMS: Objection.</p> <p>20 MR. HARTZELL: Objection. Go</p> <p>21 ahead.</p> <p>22 A. The Airport Commission is requiring</p> <p>23 a scaled stamped drawing that shows that BEH has</p> <p>24 rights and powers to the land beyond the</p>	<p style="text-align: right;">276</p> <p>1 A. I believe that Mr. Donovan had said</p> <p>2 that he would take his deliveries on the east</p> <p>3 side of the hangar.</p> <p>4 Q. Do you know -- strike that.</p> <p>5 Mr. McCulloch goes on to say, "We</p> <p>6 will meet the NAC standard of twenty-five-foot</p> <p>7 setback for aircraft fueling and ask that the</p> <p>8 NAC inform us of any other standards they are</p> <p>9 referencing. We currently meet all known NFPA</p> <p>10 and Norwood Fire Department standards as well as</p> <p>11 FAA standards." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you agree with that at that</p> <p>14 time?</p> <p>15 A. I can't say whether I agreed or</p> <p>16 didn't agree. BEH was not taking any fuel</p> <p>17 deliveries even though Attorney McCulloch says</p> <p>18 that -- implies that that's underway.</p> <p>19 Q. I previously showed you a document</p> <p>20 marked as Exhibit 429. What did do you with</p> <p>21 that when you received it?</p> <p>22 A. I don't recall exactly what I did</p> <p>23 with this document. All documents that are</p> <p>24 addressed to the Commission are included in the</p>

<p style="text-align: right;">277</p> <p>1 upcoming meeting packets. 2 MR. FEE: I'm going to mark 3 this as the next exhibit. 4 (Exhibit 432, E-mail dated June 20, 2013, 5 marked for identification) 6 Q. (By Mr. Fee) 432 is an e-mail from 7 you to Mr. Carol and Greeley. Mr. Carol is town 8 manager and Mr. Greeley is fire department 9 chief, right? 10 A. Yes. 11 Q. It appears to indicate that you 12 copied 429 to Mr. Carol and Mr. Greeley; is that 13 right? 14 A. I'm not sure that is what is being 15 forwarded. 16 Q. It says, "Attachments FlightLevel 17 letter 6/20/2013"? 18 A. Yes. That is 9/23/2015. 19 Q. Maybe I'm referencing the wrong 20 letter. Okay. We'll get back to that one. 21 Do you know if you forwarded this 22 letter? 23 MR. SIMMS: Exhibit 429? 24 A. I don't know.</p>	<p style="text-align: right;">279</p> <p>1 A. I don't recall whether it was the 2 brand. 3 Q. It was general procedures regarding 4 fuel handling, correct? 5 A. I believe so. 6 Q. It didn't have any specific 7 information regarding where fuel was being 8 delivered or dispensed, did it? 9 A. I don't recall. 10 Q. Do you know when FlightLevel 11 submitted its fueling procedures to the NAC? 12 A. I don't know. 13 MR. FEE: I'm going to mark 14 this as the next exhibit. 15 (Exhibit 434, E-mail dated April 25, 2013, 16 marked for identification) 17 Q. (By Mr. Fee) Exhibit 434 is an 18 e-mail to you from Mr. Donovan dated April of 19 2013. Have you seen this one before? 20 A. I have a recollection of it. 21 Q. Do you know if you received it? 22 MR. SIMMS: Ever or on or 23 about the date? 24 MR. FEE: On or about the</p>
<p style="text-align: right;">278</p> <p>1 Q. Exhibit 429, right. I will circle 2 back to that. 3 MR. FEE: I'm going to mark 4 this as the next exhibit. 5 (Exhibit 433, E-mail dated July 15, 2013, 6 marked for identification) 7 Q. (By Mr. Fee) Exhibit 433 is an 8 e-mail from Mr. Donovan to you dated July 15, 9 2013 asking for a copy of the fueling procedure 10 that were in effect at the airport. Do you see 11 that? 12 A. Yes. 13 Q. Did you provide him with copies of 14 fueling procedures that were in effect at the 15 airport? 16 A. I believe I did. 17 Q. What fueling procedures were in 18 effect at the airport in July of 2013? 19 A. FlightLevel's fueling procedures. 20 They had a procedures manual. 21 Q. And FlightLevel's fueling 22 procedures consisted of a manual that was 23 produced by its brand; is that fair to say? 24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">280</p> <p>1 date. 2 A. I believe I received it. 3 Q. Did you respond to it? 4 A. I don't know. 5 Q. Was it your practice to respond to 6 every e-mail from Mr. Donovan? 7 A. I have not responded to every 8 e-mail from Mr. Donovan. 9 MR. FEE: I'm going to mark 10 this as the next exhibit. 11 (Exhibit 435, Letter dated June 20, 2013, 12 marked for identification) 13 MR. FEE: We're going to take 14 a five-minute break, please. Off the 15 record. 16 (A recess was taken from 10:59 to 11:04) 17 Q. (By Mr. Fee) Showing you Exhibit 18 435, have you seen that before? 19 A. Yes. 20 Q. Did you respond to it? 21 A. I don't recall. 22 Q. Did you receive it at or about the 23 time that its dated? 24 A. I don't know.</p>

<p style="text-align: right;">281</p> <p>1 Q. I'm showing you a document 2 previously marked as Exhibit 46 from the 3 Burlingham deposition. It appears to be a 4 letter to you from Mr. Eichleay dated June 20, 5 2013. Have you seen that before? 6 A. I do recall it. 7 Q. Is that the document that you 8 forwarded to the town manager and the fire chief 9 in or about June of 2013 by e-mail that has been 10 marked as Exhibit 432? 11 A. I can't say with 100 percent 12 accuracy. 13 Q. Well, the "Re" line of your e-mail 14 says FlightLevel June 20, 2013? 15 A. Right. 16 Q. Does that refresh your recollection 17 as to whether the document marked as Burlingham 18 46 was forwarded to the town manager and the 19 fire chief by you? 20 A. I'm just not sure whether this was 21 the same letter. 22 Q. Okay. Well, it's fair to say in or 23 about June 20 you forwarded a letter to town 24 manager and fire chief; is that right?</p>	<p style="text-align: right;">283</p> <p>1 A. I don't recall. 2 MR. FEE: I'm going to mark 3 this as the next exhibit. 4 (Exhibit 436, E-mail dated July 15, 2013, 5 marked for identification) 6 Q. (By Mr. Fee) 436 is an e-mail from 7 Mr. Donovan to you dated July 15, 2013, has 8 attached to it a Commercial Permit Application. 9 And on Page 2, it states that Mr. Donovan -- I'm 10 sorry, BEH wishes to conduct line services. Do 11 you see that? 12 A. Yes. 13 Q. So is what is attached to Exhibit 14 436 an FBO application? 15 A. It does not appear to be. 16 Q. Why not? 17 A. Because they have not checked the 18 full-service FBO operator line at the top. 19 Q. Well, is there a check for that? 20 A. Well, they have had no problem in 21 subsequent applications letting us know that 22 they were looking for a full-service FBO permit. 23 Q. Well, line services means fuel 24 delivery, correct?</p>
<p style="text-align: right;">282</p> <p>1 A. Yes. 2 Q. What role did the town manager have 3 in airport operations in June of 2013? 4 A. I don't recall how John was 5 involved in 2013. 6 Q. Do you recall the reason that you 7 would forward to him correspondence from 8 FlightLevel? 9 A. I don't recall. 10 Q. Did you routinely forward 11 correspondence from FlightLevel to the town 12 manager? 13 A. No. 14 Q. Was the town manager involved in 15 any way in any discussions between BEH and 16 FlightLevel regarding resolution of disputes at 17 the airport? 18 A. Not that I'm aware. 19 Q. Okay. At any time? 20 A. Again, not that I'm aware of. 21 Q. Do you know when BEH submitted its 22 formal FBO application for the first time? 23 A. The first commercial permit? 24 Q. For FBO.</p>	<p style="text-align: right;">284</p> <p>1 A. Not necessarily. 2 Q. What else does it mean? 3 A. Ground handling. 4 Q. You did not construe the document 5 attached to Exhibit 436 as an FBO application? 6 A. Not by the checking of the line 7 services, no. 8 Q. Okay. Well, didn't you 9 subsequently inform BEH that the FBO application 10 was going to be rejected because, in your 11 opinion, BEH had not met prerequisites? 12 A. Can you restate that, please? 13 Q. Sure. I'm trying to refresh your 14 recollection as to when BEH first applied for an 15 FBO. And you said that you didn't know, so I 16 have shown you a document marked as Exhibit 436. 17 BEH contends it's an FBO application. You say 18 it's not, right? 19 MR. SIMMS: Objection. Go 20 ahead. 21 Q. (By Mr. Fee) By showing you this 22 document, does it refresh your recollection as 23 to when BEH first applied for an FBO? 24 A. No, this doesn't.</p>

<p style="text-align: right;">285</p> <p>1 Q. Okay. And you don't believe that 2 the document that is annexed as Pages 2 and 3 is 3 an FBO application? 4 A. This does not appear to indicate an 5 interest in an FBO, as it currently is 6 presented. 7 MR. FEE: Okay. I'm going to 8 mark this as the next exhibit. 9 (Exhibit 437, Letter dated September 24, 10 2013, marked for identification) 11 Q. (By Mr. Fee) Exhibit 437 is a 12 letter to you from Mr. Eichleay dated September 13 24, 2013. Have you seen this before? 14 A. Yes. 15 Q. And what did you do with it? 16 A. I don't recall. 17 Q. Did you receive it on or about 18 September 24, 2013? 19 A. I don't recall when I received it. 20 Q. Did you give it to the airport 21 commissioners? 22 A. It was addressed to the Airport 23 Commission, so I would assume it was forwarded 24 to the Airport Commission.</p>	<p style="text-align: right;">287</p> <p>1 ramps which were the subject of FlightLevel 2 leases? 3 MR. SIMMS: Objection to the 4 form. Go ahead. 5 MR. HARTZELL: Objection. 6 A. Could you restate that. 7 Q. Sure. Had FlightLevel expressed 8 any objections or concerns to you at or about 9 this time regarding BEH's ability to conduct 10 fueling operations on AIP ramps that were 11 subject to FlightLevel leases? 12 MR. HARTZELL: Objection. 13 MR. SIMMS: Same objection. 14 Go ahead. 15 A. I don't recall. 16 Q. Do you recall at any time 17 discussing with any member of FlightLevel its 18 objection to BEH or anybody conducting fueling 19 operations on ramps that were the subject of its 20 leases? 21 A. I have a vague recollection. 22 Q. With whom did you discuss that 23 issue? 24 A. I don't recall who at FlightLevel.</p>
<p style="text-align: right;">286</p> <p>1 Q. Did you send it to the town manager 2 or fire chief? 3 A. I don't know. 4 Q. FlightLevel is talking in this 5 letter about its concerns for its leasehold, 6 correct? 7 A. Yes. 8 Q. Did you construe that to mean a 9 concern regarding activities in the areas 10 between Lots F and G or on some other part of 11 the airport? 12 MR. HARTZELL: Objection. 13 A. I can't tell from this letter where 14 in particular FlightLevel is referring. 15 Q. Okay. Was it your understanding -- 16 it was certainly your understanding at this time 17 that FlightLevel had voiced concerns regarding 18 activities that occurred between Lots -- or 19 BEH's proposed fueling activities between Lots F 20 and G, correct? 21 A. I believe so at that time. 22 Q. Had FlightLevel expressed any 23 concerns to you, or objections, regarding BEH's 24 ability to conduct fueling operations on AIP</p>	<p style="text-align: right;">288</p> <p>1 Q. Would it have been Peter Eichleay? 2 MR. SIMMS: Objection to the 3 form. Go ahead. 4 A. I don't recall. 5 Q. How about Nick Burlingham? 6 A. I don't recall. 7 Q. So is it fair to say that 8 FlightLevel's position with respect to ramps on 9 the airport is that it has the right to exert 10 exclusive control and no other FBO would have 11 the ability to fuel on its ramps? 12 MR. HARTZELL: Objection. 13 MR. SIMMS: Could you read it 14 back? 15 MR. FEE: I will restate it. 16 Q. (By Mr. Fee) In your recollection 17 of these discussions with FlightLevel personnel, 18 is it a fair characterization of their position 19 that they would object to any other FBO provider 20 having access to their ramps for the purpose of 21 providing fuel? 22 MR. SIMMS: Objection. Go 23 ahead. 24 MR. HARTZELL: Objection.</p>

<p style="text-align: right;">289</p> <p>1 A. I don't know if I can answer that.</p> <p>2 I know in the past that has been a concern of</p> <p>3 fuel providers at the airport.</p> <p>4 Q. Sure. And what is your position on</p> <p>5 that?</p> <p>6 MR. SIMMS: Objection. Go</p> <p>7 ahead.</p> <p>8 A. My position is -- and I have asked</p> <p>9 both FAA and MassDOT that question and have not</p> <p>10 gotten a clear answer from either agency.</p> <p>11 Q. Well, you have taken positions</p> <p>12 about it in the past with respect to Boston Air</p> <p>13 Charter, correct?</p> <p>14 MR. SIMMS: Objection. Go</p> <p>15 ahead.</p> <p>16 A. I don't recall taking a position</p> <p>17 with the Boston Air Charter. Boston Air Charter</p> <p>18 did not provide fuel dispensing on the airport.</p> <p>19 MR. FEE: I'm going to mark</p> <p>20 this as the next exhibit.</p> <p>21 (Exhibit 438, Executive Session 422,</p> <p>22 marked for identification)</p> <p>23 Q. (By Mr. Fee) Exhibit 438 is</p> <p>24 executive session minutes apparently approved on</p>	<p style="text-align: right;">291</p> <p>1 answer because --</p> <p>2 Q. I'm asking if it refreshes your</p> <p>3 recollection as to whether or not you took a</p> <p>4 position regarding whether or not one FBO had</p> <p>5 the right to exclude another fuel provider from</p> <p>6 an AIP-leased ramp?</p> <p>7 A. Again, Boston Air Charter is not an</p> <p>8 FBO, so I would really need the full context of</p> <p>9 this unredacted. And I would need to know in</p> <p>10 context --</p> <p>11 Q. I would love to provide you a</p> <p>12 unredacted version of that, but unfortunately I</p> <p>13 cannot do it. Based on the language that you</p> <p>14 see there, does it refresh your recollection as</p> <p>15 to whether or not the issue came up in the past</p> <p>16 regarding whether or not an FBO has the right to</p> <p>17 exclude another fuel provider from an AIP ramp?</p> <p>18 MR. HARTZELL: Objection.</p> <p>19 A. It was discussed.</p> <p>20 Q. In the context of BAC?</p> <p>21 A. Within the context of BAC.</p> <p>22 Q. How about within FlightLevel and</p> <p>23 BEH? Was that ever discussed in a commission</p> <p>24 meeting?</p>
<p style="text-align: right;">290</p> <p>1 February 24, 2010. It's unclear from reading</p> <p>2 this document what date the executive session</p> <p>3 happened. But the first paragraph under the</p> <p>4 black redaction on the top of the page states,</p> <p>5 "The manager sports the regulations that the</p> <p>6 leaseholder does not have an exclusive right to</p> <p>7 the land in regard to other services on the</p> <p>8 airport that are commercially permitted, so if</p> <p>9 FlightLevel were called in to supply fuel,</p> <p>10 Boston Air Charter had no right to prevent them</p> <p>11 and vice versa." Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Does that refresh your recollection</p> <p>14 as to whether or not you had previously taken a</p> <p>15 position with respect to an FBO's ability to</p> <p>16 exclude another FBO from providing fueling</p> <p>17 services on an AIP ramp?</p> <p>18 A. This is a little misleading.</p> <p>19 Boston Air Charter was not an FBO.</p> <p>20 Q. But Boston Air Charter was</p> <p>21 attempting to become an FBO, was it not?</p> <p>22 A. When was this meeting?</p> <p>23 Q. It's hard to tell.</p> <p>24 A. I cannot give you a definitive</p>	<p style="text-align: right;">292</p> <p>1 A. I don't recall.</p> <p>2 Q. And you have a vague recollection</p> <p>3 of having some discussion with some</p> <p>4 representative of FlightLevel regarding its</p> <p>5 position on that issue, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And their position is that -- your</p> <p>8 recollection of that issue -- of their position</p> <p>9 is that they have the right to exclude another</p> <p>10 FBO from fueling on their AIP ramps; is that</p> <p>11 fair to say?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. Yes.</p> <p>14 MR. FEE: I'm going to mark</p> <p>15 this as the next exhibit.</p> <p>16 (Exhibit 439, Letter dated January 27,</p> <p>17 2014, marked for identification)</p> <p>18 Q. (By Mr. Fee) Exhibit 439 is a</p> <p>19 letter from Mr. Donovan to you dated January</p> <p>20 2014, which he asks for a preferential lease of</p> <p>21 the west apron and requests clarification</p> <p>22 regarding the use of common areas at the</p> <p>23 airport. Do you see that?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">293</p> <p>1 Q. Did you receive that?</p> <p>2 A. Yes.</p> <p>3 Q. Did you respond to it?</p> <p>4 A. I don't recall.</p> <p>5 MR. FEE: I'm going to mark</p> <p>6 this as the next exhibit.</p> <p>7 (Exhibit 440, E-mail dated February 9,</p> <p>8 2014, marked for identification)</p> <p>9 Q. (By Mr. Fee) 440 is an e-mail from</p> <p>10 you to Mr. Donovan February 9, 2014. Does this</p> <p>11 refresh your recollection as to whether you</p> <p>12 responded to Exhibit 439?</p> <p>13 A. No.</p> <p>14 MR. FEE: I'm going to mark</p> <p>15 this as the next exhibit.</p> <p>16 (Exhibit 441, E-mail dated February 10,</p> <p>17 2014, marked for identification)</p> <p>18 Q. (By Mr. Fee) 441 is an e-mail from</p> <p>19 you to Mr. Donovan responding to an e-mail from</p> <p>20 him in which he says, "Please advise if there</p> <p>21 are prohibited areas." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you respond to that?</p> <p>24 A. I don't recall.</p>	<p style="text-align: right;">295</p> <p>1 A. That is not explicitly stated in</p> <p>2 this e-mail.</p> <p>3 Q. What is explicitly stated is that</p> <p>4 BEH would be allowed to fuel on land under town</p> <p>5 control; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. So in March of 2014, what land was</p> <p>8 under town control?</p> <p>9 A. The west apron and the helicopter</p> <p>10 parking pads.</p> <p>11 Q. And the DC3 ramp, right?</p> <p>12 A. I'm not sure whether the DC3 ramp</p> <p>13 was on there or not. It could have been. I</p> <p>14 just don't recall.</p> <p>15 Q. So does this reflect a change in</p> <p>16 your thinking from 2010 where you seem to</p> <p>17 express a support for multiple FBOs or multiple</p> <p>18 fuel providers being allowed access to ramp</p> <p>19 space leased by another party?</p> <p>20 MR. SIMMS: Objection.</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. As I stated earlier, the Boston Air</p> <p>23 Charter was not a full-service FBO. They were</p> <p>24 not selling -- they were not permitted by the</p>
<p style="text-align: right;">294</p> <p>1 MR. FEE: I'm going to mark</p> <p>2 this as the next exhibit.</p> <p>3 (Exhibit 442, E-mail dated March 11, 2014,</p> <p>4 marked for identification)</p> <p>5 Q. (By Mr. Fee) 442 is an e-mail from</p> <p>6 you to Mr. Donovan dated March 11, 2014. Second</p> <p>7 paragraph, you state, "As for fueling on the</p> <p>8 airport, pending approval of your fuel farm by</p> <p>9 all parties, the Airport Commission has advised</p> <p>10 me that your company would be welcome to fuel on</p> <p>11 all approved land on the airport under direct</p> <p>12 town control. This would include the helicopter</p> <p>13 parking areas, located both north and south on</p> <p>14 the airport. You'd also be allowed to fuel on</p> <p>15 any leasehold with the town, pending approval by</p> <p>16 the board." Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. Does that reflect a determination</p> <p>19 by the board that a BEH FBO would not be allowed</p> <p>20 to provide fuel on ramps leased by FlightLevel?</p> <p>21 MR. HARTZELL: Can you read</p> <p>22 that back, please?</p> <p>23 (Question read by reporter)</p> <p>24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">296</p> <p>1 Norwood Airport Commission to commercially</p> <p>2 service aircraft with fuel.</p> <p>3 Q. Has it always been your position,</p> <p>4 in the instance of two FBOs or two fuel</p> <p>5 providers, that they would only be allowed to</p> <p>6 fuel on ramps that they controlled and not on</p> <p>7 ramps that may have been controlled by another</p> <p>8 FBO?</p> <p>9 A. Are you asking me if it's my</p> <p>10 position?</p> <p>11 Q. Yes.</p> <p>12 A. Has it always been my position?</p> <p>13 Q. Right.</p> <p>14 MR. SIMMS: Objection. Go</p> <p>15 ahead.</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 A. I already stated my position.</p> <p>18 Q. Well, did you have a feeling about</p> <p>19 it?</p> <p>20 MR. SIMMS: Objection. Did</p> <p>21 you say did you or do you?</p> <p>22 Q. (By Mr. Fee) Do you have a feeling</p> <p>23 about it?</p> <p>24 MR. SIMMS: Objection. Go</p>

<p style="text-align: right;">297</p> <p>1 ahead.</p> <p>2 A. I have solicited input from both</p> <p>3 FAA and MassDOT and have gotten very vague</p> <p>4 direction on it.</p> <p>5 Q. Well, is it your belief that the</p> <p>6 provision of AIP funding for ramps requires</p> <p>7 airports to maintain the activities on those</p> <p>8 ramps in a nonexclusive way so as not to violate</p> <p>9 grant assurances?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 MR. SIMMS: Objection. Go</p> <p>12 ahead.</p> <p>13 A. I think that's a liberal inference</p> <p>14 of the grant obligations.</p> <p>15 Q. Is there any definitive guidance on</p> <p>16 this issue from the FAA?</p> <p>17 A. If there is, it hasn't been shared</p> <p>18 with me.</p> <p>19 Q. Are you familiar with the FAA's</p> <p>20 operating procedures manual?</p> <p>21 A. The 5190 6B.</p> <p>22 Q. Hang on. Let me make sure I get</p> <p>23 this correct.</p> <p>24 5190 6B, are you familiar with</p>	<p style="text-align: right;">299</p> <p>1 required to provide multiple FBOs with access to</p> <p>2 each other's AIP ramps?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. The 5190 compliance manual grants</p> <p>5 assurances to the airport authority by the FAA.</p> <p>6 My understanding of it is that it doesn't</p> <p>7 explicitly address the proprietary interest of</p> <p>8 the individual businesses that hold competitors,</p> <p>9 if you will.</p> <p>10 MR. FEE: I'm going to mark</p> <p>11 this as the next exhibit.</p> <p>12 (Exhibit 443, Undated Letter, marked for</p> <p>13 identification)</p> <p>14 Q. (By Mr. Fee) Exhibit 443 is a</p> <p>15 letter to you from Mr. Donovan. It's undated,</p> <p>16 but it appears to respond to your e-mail that</p> <p>17 was marked as Exhibit 442. And I just draw your</p> <p>18 attention to the second paragraph that</p> <p>19 references your letter of March 11. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if you received this</p> <p>23 document that has been marked as Exhibit 443?</p> <p>24 A. I believe I received it.</p>
<p style="text-align: right;">298</p> <p>1 that?</p> <p>2 A. It's a very stout document.</p> <p>3 Q. It is.</p> <p>4 A. And you have what appears to be an</p> <p>5 excerpt of that?</p> <p>6 Q. I do, but are you familiar with</p> <p>7 that document?</p> <p>8 A. I am.</p> <p>9 Q. And it has a variety of chapters</p> <p>10 regarding various issues involving FAA authority</p> <p>11 over airports, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And one of those chapters is -- one</p> <p>14 of those chapters concerns exclusive rights,</p> <p>15 correct?</p> <p>16 A. I believe so.</p> <p>17 Q. And one of those chapters includes</p> <p>18 unjust discrimination between aeronautical</p> <p>19 users, correct?</p> <p>20 A. Yes.</p> <p>21 Q. So other than those -- other than</p> <p>22 the 5190 6B, is there any other FAA materials</p> <p>23 that you're familiar with that might give</p> <p>24 guidance on whether or not an airport sponsor is</p>	<p style="text-align: right;">300</p> <p>1 Q. Okay. Did you respond to it?</p> <p>2 A. I don't recall.</p> <p>3 Q. Was it your understanding that</p> <p>4 pursuant to this document Mr. Donovan was</p> <p>5 reiterating his desire to lease the west apron</p> <p>6 as well as other lots on the airport?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And so you understood in or</p> <p>9 about March of 2014 that Mr. Donovan was</p> <p>10 requesting space not only on the west apron but</p> <p>11 also to be considered for space on Lots -- Ramp</p> <p>12 Areas A, B, C, 8, 9, and 10; is that fair to</p> <p>13 say?</p> <p>14 A. Yes.</p> <p>15 Q. And you knew, did you not, in March</p> <p>16 of 2014, that the current lease on areas -- I'm</p> <p>17 sorry, Lots A, B, C was due to expire in October</p> <p>18 of 2014; is that correct?</p> <p>19 A. I don't recall when Lots A, B, C</p> <p>20 lease expired.</p> <p>21 Q. It says at the bottom of the page</p> <p>22 that the current lease on Ramp Areas A, B, C,</p> <p>23 expires in October of 2014 and those are</p> <p>24 available for reassignment by the commission at</p>

<p style="text-align: right;">301</p> <p>1 that time. Did you believe that to be a true 2 statement when you read it in March of 2014? 3 MR. HARTZELL: Objection. 4 A. Restate that, please. 5 Q. Yes. It says at the bottom of 6 Exhibit 443 that the current lease on Ramp Areas 7 A, B, C expired in October of 2014. Did you 8 understand that to be a true statement when you 9 read it in March of 2014? 10 MR. HARTZELL: Objection. 11 A. I don't recall whether I determined 12 it was a true statement or not. 13 Q. Did you do any investigation to 14 determine whether it was accurate? 15 A. I don't recall. That was four 16 years ago. 17 Q. Did you understand in or about 18 March of 2014 that BEH was actively requesting 19 to lease space from the airport? 20 A. I was aware of that. 21 Q. And what, if anything, did you do 22 to investigate options for lease of space to 23 BEH? 24 A. I don't recall what I did four</p>	<p style="text-align: right;">303</p> <p>1 marked for identification) 2 Q. (By Mr. Fee) 444 is an e-mail from 3 Mr. Donovan to you and your response dated July 4 1, 2014. Mr. Donovan's e-mail reiterates his 5 request to lease space and asks to be put on the 6 agenda to discuss his FBO approval. Do you see 7 that? 8 A. Yes. 9 Q. And did you receive this in or 10 about July of 2014? 11 A. Yes. 12 Q. And this is at or about the same 13 time that a pending Part 13 Complaint had been 14 filed by BEH; is that correct? 15 A. I don't remember exactly when they 16 filed the Part 13, but based on his e-mail it 17 appears to be so. 18 Q. And during this time, did -- is it 19 fair to say that the commission halted 20 discussion of any lease approvals or FBO 21 approvals for BEH? 22 MR. SIMMS: Objection. Go 23 ahead. 24 MR. HARTZELL: Objection.</p>
<p style="text-align: right;">302</p> <p>1 years ago. 2 Q. Did you do anything? 3 A. I don't recall. 4 Q. Well, it's fair to say that you had 5 previously advised the Airport Commission that 6 you thought it was important to find lease space 7 for BEH, correct? 8 A. Based on that memo, yes. 9 Q. And was the subject of finding 10 lease space for BEH discussed at all at Airport 11 Commission meetings? 12 A. I don't know whether it was 13 discussed in open meeting or executive session. 14 I know that they received these e-mails and 15 letters from BEH. 16 Q. And you're not sure whether they 17 were discussed or responded to; is that fair to 18 say? 19 MR. SIMMS: Objection. Go 20 ahead. 21 A. Again, I don't recall. 22 MR. FEE: I'm going to mark 23 this as the next exhibit. 24 (Exhibit 444, E-mail dated July 1, 2014,</p>	<p style="text-align: right;">304</p> <p>1 A. There was a meeting in which they 2 tabled the lease FBO. 3 Q. And that was June of 2014, correct? 4 A. I believe so. 5 Q. And that was in response to the 6 filing of the Part 13 Complaint; is that 7 correct? 8 A. I believe it had to do with the 9 fact that the Part 13 had been filed and the 10 commission had not had an opportunity to read 11 it. 12 Q. And that tabling remained in effect 13 for a period of at least nine months; is that 14 correct? 15 A. I'm not sure whether I can say yes 16 or no on that. They did continue to entertain 17 BEH's progress updates and continued to discuss 18 it at public meeting. 19 MR. FEE: I'm going to mark 20 this as the next exhibit. 21 (Exhibit 445, Letter dated July 10, 2014, 22 marked for identification) 23 Q. (By Mr. Fee) I have a couple 24 questions about Exhibit 445, which is a document</p>

<p style="text-align: right;">305</p> <p>1 previously marked but I just -- I apologize for 2 remarking it. 3 This appears to be a letter dated 4 July 10, 2014 to the FAA from Tom Wynne. Have 5 you seen this before? 6 A. Yes. 7 Q. Did you draft it? 8 A. I drafted part of it, yes. 9 Q. The style seems to be very 10 reminiscent of other documents that you drafted, 11 so I inferred, perhaps, that you had a hand in 12 it. I have just a couple questions about this. 13 On the third page at the bottom you 14 say or Mr. Wynne says -- or the letter says, 15 "Since 2010, on behalf of his company, 16 Mr. Donovan has charged a number of broad 17 acquisitions against the Norwood Airport 18 Commission all of which were devoid of facts or 19 legal merit." Do you see that? 20 A. Yes. 21 Q. Are you referring to formal 22 complaints or lawsuits or investigations? What 23 are you referring to in this sentence? 24 MR. SIMMS: Which paragraph</p>	<p style="text-align: right;">307</p> <p>1 Q. Okay. Now, I'm turning your 2 attention to -- the top of the page is cut 3 off -- the top of Page 10. 4 A. These are not numbered. 5 Q. Let me help you. 6 MR. SIMMS: Attachment U, that 7 heading? 8 MR. FEE: Yes. 9 Q. (By Mr. Fee) Now, in this document 10 you say -- first full paragraph in the middle of 11 the page, last sentence says, "Norwood Airport 12 management already had on file a fueling plan 13 from FlightLevel." 14 A. Mm-hmm. 15 Q. So again, this document is dated 16 July 20, 2014. Is this letter describing the 17 general fueling procedures that we discussed 18 earlier or is there some other FlightLevel 19 fueling plan on file with the NAC at this time, 20 July of 2014? 21 A. I believe this was the fuel 22 procedures manual. 23 Q. Okay. But nothing specific about 24 where fuel was dispensed or taken from or</p>
<p style="text-align: right;">306</p> <p>1 are we? 2 MR. FEE: Bottom of Page 3, 3 since 2010. 4 A. BEH had actually filed a letter 5 through its attorney that it was being unfairly 6 discriminated against by not being allowed to 7 land on a taxilane, which no other helicopter 8 was allowed to land on, so that was -- that is 9 one that comes to mind. 10 Q. But I'm trying to determine whether 11 or not these broad accusations, which you say 12 are devoid of factual or legal merit, were 13 complaints filed with an adjudicatory bodies or 14 were they just letters back and forth between 15 BEH and its attorneys and the NAC and its 16 attorneys regarding airport operations? 17 A. I believe it was letters from his 18 attorneys, e-mails, which he made those 19 acquisitions. 20 Q. And you believe that any 21 accusations of discrimination against 22 Mr. Donovan and BEH in July of 2014 had no 23 merit; is that fair to say? 24 A. I believe that to be true.</p>	<p style="text-align: right;">308</p> <p>1 compliance with TOFA or any of that? 2 A. No, a schematic plan. 3 Q. Right, okay. 4 MR. FEE: I'm going to mark 5 this as the next exhibit. 6 (Exhibit 446, E-mail dated July 3, 2014, 7 marked for identification) 8 Q. (By Mr. Fee) 446 is an e-mail from 9 Mr. Fox to Mr. Moss dated July 3, 2014 in which 10 Mr. Fox states, "If the Airport Commission 11 continues to refuse to timely consider BEH's 12 request for FBO approval and for reasonable 13 amount of April/ramp space to conduct its 14 operations, since BEH's fuel farm will be 15 operational in the very near future, I will be 16 recommending to BEH that it file a Part 16 17 Complaint." Do you see that? 18 A. Yes. 19 Q. And did you see this document in or 20 about July of 2014? 21 A. I don't believe I've ever seen this 22 document. 23 Q. Okay. So was it communicated to 24 you in any way that BEH's requests for space and</p>

<p style="text-align: right;">309</p> <p>1 FBO approval were not being timely addressed by 2 the Norwood Airport Commission? 3 MR. SIMMS: Could you read 4 that back. 5 MR. FEE: Let me restate it. 6 Q. (By Mr. Fee) Was it your opinion 7 in or about July of 2014 that BEH's requests for 8 FBO approval or leased space were not being 9 timely addressed by the NAC? 10 MR. SIMMS: Objection. Go 11 ahead. 12 A. As I recall, 2014, there were 13 outstanding financial documents from BEH to the 14 Airport Commission. And I don't believe that 15 BEH's fuel farm received a final inspection 16 until about a year later after this, so that's 17 what I recall of that time period. 18 Q. Do you recall discussions at NAC 19 meetings during this time period, July, August, 20 September 2014, where BEH requested to discuss 21 its FBO or lease requests? 22 A. I don't recall. 23 Q. Okay. But you were present at all 24 NAC meetings, correct?</p>	<p style="text-align: right;">311</p> <p>1 FBO was not going to be considered until further 2 notice? 3 A. Yes. 4 Q. Okay. Now, do you recall what 5 boxes were checked on Mr. Donovan's fiscal year 6 2015 Commercial Permit Application that led you 7 to believe that it was an FBO application? 8 A. Without having the application in 9 front of me, I don't know. I'm assuming it was 10 the first paragraph. 11 Q. Okay. I'm showing you a document 12 that has been previously marked as Exhibit 65 to 13 the Burlingham deposition. It appears to be a 14 letter from Mr. Eichleay to the Airport 15 Commission dated January 2015. Have you seen 16 this before? 17 A. I believe so. 18 Q. So did you look at it in or about 19 January of 2015? 20 A. That I don't know. 21 Q. Is it fair to say that at or about 22 this time FlightLevel was expressing to the NAC 23 its desire that BEH not become an FBO? 24 MR. SIMMS: Objection. Go</p>
<p style="text-align: right;">310</p> <p>1 A. Most. 2 Q. During this time period BEH's FBO 3 application was tabled, right? 4 A. It was tabled with monthly updates. 5 MR. FEE: I'm going to mark 6 this as the next exhibit. 7 (Exhibit 447, E-mail dated July 30, 2014, 8 marked for identification) 9 MR. FEE: Off the record. 10 (A recess was taken from 11:45 to 11:52) 11 MR. FEE: Back on the record. 12 Q. (By Mr. Fee) Showing you a 13 document marked as Exhibit 447, it appears to be 14 an e-mail exchange between you and Mr. Donovan 15 at the bottom. And you say, "Chris, I'll pass 16 this on to the Airport Commission. By the way, 17 I have your FY2015 Commercial Permit 18 Application. However, your application 19 indicates your interest in being an FBO. This, 20 as you know, has been tabled by the Airport 21 Commission for now." Do you see that? 22 A. Yes. 23 Q. So is it fair to say that was your 24 communication to Mr. Donovan indicating that the</p>	<p style="text-align: right;">312</p> <p>1 ahead. 2 MR. HARTZELL: Objection. 3 A. I can't speak for BEH, other than 4 what is in the -- 5 MR. SIMMS: You mean for 6 FlightLevel? 7 A. Excuse me, FlightLevel. -- except 8 for what is in the letter. 9 Q. The second page talks about the 10 exclusive right -- I'm sorry, the single FBO 11 exception. Are you familiar with that? 12 A. Generally, yes. 13 Q. And generally what is your 14 understanding of what the single FBO exception 15 is? 16 A. There's certain conditions in which 17 an airport authority can retain one FBO to the 18 exclusion of competition under certain 19 conditions. 20 Q. Is it fair to say that FlightLevel 21 was asserting to the NAC at or about this time 22 that it should investigate utilizing the single 23 FBO exception? 24 MR. SIMMS: Objection. Go</p>

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1 November 1, 2009, marked for
2 identification)

3 Q. (By Mr. Fee) I show you one more.
4 I'm not sure where I got Exhibit 462, but it
5 appears to be a list of FlightLevel leases as of
6 2009. Could you take look at that and confirm
7 whether or not you think that is accurate? And
8 I'm not asking for the details of the leases but
9 just the premises and the parties.

10 A. It appears to be accurate.

11 Q. Okay. You're aware, are you not,
12 of the FAA's ruling in the BAC case that
13 directed the Airport Commission to refrain from
14 the practice of awarding long-term leases of
15 federally-funded ramps that have the effect of
16 granting one-party control over the majority of
17 the ramps at the airport?

18 MR. HARTZELL: Objection.

19 A. Yes.

20 Q. And that was subject of not only a
21 FAA determination in the BAC case but also a
22 series of correspondence and communications
23 between you and the FAA regarding the corrective
24 action plan; is that right?

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1 A. Yes.

2 Q. And at some point you confirmed --
3 I'm sorry, at some point the FAA confirmed that
4 the Airport Commission had taken sufficient
5 steps to ensure that it ended the policy of
6 entering into long-term leases that had the
7 effect of granting one party long-term control
8 over AIP ramps; is that correct?

9 MR. HARTZELL: Objection.

10 A. Yes.

11 Q. Was that in or about 2010?

12 A. I believe so, yes.

13 Q. Okay. Now, at some point
14 FlightLevel approached the Norwood Airport
15 Commission and described for it their plans to
16 perform a ramp-improvement project; is that
17 correct?

18 A. Could you be specific? Which ramp?

19 Q. Are you familiar with what

20 FlightLevel describes as Cap Ramp Rejuvenation
21 and Hangar Complex Construction Project?

22 A. Yes.

23 Q. At some point FlightLevel disclosed
24 or informed the Airport Commission of its

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1 intention to pursue that project; is that
2 correct?

3 A. Yes.

4 Q. That was in or about 2014?

5 A. I believe so, yes.

6 MR. FEE: I'm going to mark
7 this as the next exhibit.
8 (Exhibit 463, Letter dated January 22,
9 2014, marked for identification)

10 Q. (By Mr. Fee) This appears to be a
11 letter from Mr. Eichleay to you dated January
12 22, 2014. Was this the first time that
13 FlightLevel disclosed to you -- or formally
14 disclosed to you the Cap Ramp Rejuvenation and
15 Hangar Complex Construction Project?

16 A. I don't recall if it was the first
17 time.

18 Q. But as part of this project, did
19 you understand, in January of 2014, that
20 FlightLevel was asking you to extend its
21 existing leases?

22 A. Yes.

23 Q. And those existing leases were for
24 Lots 5, 6, 7, A, B, and C, correct?

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1 A. Yes.

2 Q. Now, at the time the lease for Lots
3 A, B, and C was about to expire, is that
4 correct, at the time of Exhibit 463?

5 A. Yes.

6 MR. FEE: Okay. I'm going to
7 mark this as the next exhibit.
8 (Exhibit 464, Norwood Memorial Airport
9 Standard Ground Lease, Short-Term: Lots
10 A, B, and C, marked for identification)

11 Q. (By Mr. Fee) 464 appears to be the
12 A, B, C lease in effect -- or I'm sorry
13 effective as of October 2009. Do you recognize
14 it?

15 A. Yes.

16 Q. And on Page 10 there is a provision
17 at the top where the lessor reserves the right
18 to recapture the common-use ramps at the
19 airport. Do you see that?

20 A. Page 10?

21 Q. Yes. First full paragraph, "Lessor
22 also reserves the right to recapture the
23 common-use ramps at the airport..." Do you see
24 that?

<p style="text-align: right;">377</p> <p>1 A. Yes.</p> <p>2 Q. Now, was this language added to</p> <p>3 Airport Commission leases as a result of the FAA</p> <p>4 determination in the BAC case?</p> <p>5 A. Yes.</p> <p>6 Q. And do you interpret this language</p> <p>7 to allow the Airport Commission to recapture</p> <p>8 space if it determines it is necessary to</p> <p>9 redistribute ramps to other users at the</p> <p>10 airport?</p> <p>11 MR. SIMMS: Objection.</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. Just based on its literal reading</p> <p>14 of that excerpt, yes.</p> <p>15 Q. So in or about 2014, it's your</p> <p>16 understanding that the Airport Commission had</p> <p>17 the ability to tell FlightLevel that it needed</p> <p>18 to recapture the space that was subject to the</p> <p>19 A, B, C lease and redistribute it to other</p> <p>20 users, is that fair to say?</p> <p>21 MR. SIMMS: Could you read</p> <p>22 that back?</p> <p>23 (Question read by reporter)</p> <p>24 MR. FEE: I misspoke. What I</p>	<p style="text-align: right;">379</p> <p>1 Q. Did you forward it to the Norwood</p> <p>2 Airport Commissioners?</p> <p>3 A. I believe I did.</p> <p>4 Q. Did you have a discussion with</p> <p>5 Mr. Eichleay or anyone from FlightLevel</p> <p>6 regarding this request?</p> <p>7 A. I don't recall having a discussion.</p> <p>8 Q. What did you do about this request?</p> <p>9 How did you respond?</p> <p>10 A. I don't recall whether I responded</p> <p>11 or whether I forwarded the e-mail to the</p> <p>12 commission and left it to the commission to</p> <p>13 respond or not respond. I just don't recall.</p> <p>14 MR. FEE: Okay. I'm going to</p> <p>15 mark this as the next exhibit.</p> <p>16 (Exhibit 466, Norwood Airport Commission</p> <p>17 Meeting Minutes, March 12, 2014, marked</p> <p>18 for identification)</p> <p>19 Q. (By Mr. Fee) Now, I'm showing you</p> <p>20 a document that has been marked as Exhibit 466.</p> <p>21 It appears to be the airport meeting minutes</p> <p>22 from March 12, which is the meeting that most</p> <p>23 closely followed Mr. Eichleay's e-mail that was</p> <p>24 marked as Exhibit 465. I don't see</p>
<p style="text-align: right;">378</p> <p>1 meant to say was that the NAC had the</p> <p>2 ability to tell FlightLevel that it was</p> <p>3 going to recapture the space and</p> <p>4 distribute it to other users.</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 Q. (By Mr. Fee) Is it your</p> <p>7 understanding that the NAC had that power</p> <p>8 pursuant to this lease provision?</p> <p>9 MR. HARTZELL: Objection.</p> <p>10 MR. SIMMS: Objection. Go</p> <p>11 ahead.</p> <p>12 A. Yes, based on this lease.</p> <p>13 MR. FEE: Okay. I'm going to</p> <p>14 mark this as the next exhibit.</p> <p>15 (Exhibit 465, E-mail dated March 5, 2014,</p> <p>16 marked for identification)</p> <p>17 Q. (By Mr. Fee) Mr. Maguire, 465 is</p> <p>18 Mr. Eichleay's e-mail to you of March 5, 2014</p> <p>19 where he asks you for a letter of intent</p> <p>20 indicating a mutual desire to extend leases. Do</p> <p>21 you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall receiving this?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">380</p> <p>1 Mr. Eichleay's e-mail marked as 465 present on</p> <p>2 the meeting agenda. Did you provide it to the</p> <p>3 commissioners?</p> <p>4 MR. SIMMS: Asked and</p> <p>5 answered. Go ahead.</p> <p>6 A. I believe I answered that already.</p> <p>7 I don't recall whether I sent it to them. I may</p> <p>8 have. I just don't recall.</p> <p>9 Q. Do you recall if it was discussed</p> <p>10 that Mr. Eichleay's request for a letter of</p> <p>11 intent was discussed at the March 2014 Norwood</p> <p>12 Airport Commission meeting?</p> <p>13 A. I don't recall.</p> <p>14 MR. FEE: I'm going to mark</p> <p>15 this as the next exhibit.</p> <p>16 (Exhibit 467, Airport Commission Meeting</p> <p>17 Regular Business Meeting, March 12, 2014,</p> <p>18 marked for identification)</p> <p>19 Q. (By Mr. Fee) I would just</p> <p>20 represent to you that 467, which are the meeting</p> <p>21 minutes from March 12, 2014, do not appear to</p> <p>22 reflect any discussion regarding Mr. Eichleay's</p> <p>23 request for a letter of intent that was marked</p> <p>24 as Exhibit 465. Do you recall if it was</p>

<p style="text-align: right;">381</p> <p>1 discussed at all during the regular meeting of 2 March 12?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. I don't recall.</p> <p>5 Q. So it was not on the agenda and not 6 discussed in regular session; is that fair to 7 say?</p> <p>8 MR. SIMMS: Objection.</p> <p>9 MR. HARTZELL: Objection.</p> <p>10 A. Yes.</p> <p>11 MR. FEE: I'm going to mark 12 this as the next exhibit. 13 (Exhibit 468, Airport Commission Meeting 14 Executive Session dated March 12, 2014, 15 marked for identification)</p> <p>16 Q. (By Mr. Fee) So 468 are the 17 executive minutes. And it appears to say, in 18 the second paragraph, "Upon motion by 19 Mr. Shaughnessy and seconded by Mr. Odstrechel, 20 the Commission voted 3/0 to extend the leases 21 on: Lot 5: Until the year 2047 or until 2050 22 with a further explanation from FlightLevel. 23 Lot 6&7: The Commission will revisit when 24 FlightLevel has approved funding. And Lots A,</p>	<p style="text-align: right;">383</p> <p>1 MR. FEE: I'm going to mark 2 this as the next exhibit. 3 (Exhibit 469, E-mail dated March 13, 2014, 4 marked for identification)</p> <p>5 Q. (By Mr. Fee) 469 is an e-mail from 6 Mr. Fox to Mr. Moss in which Mr. Fox says or 7 reiterates BEH's ongoing request for Lots A, B, 8 C. And this is an e-mail dated March 12, 2014 9 and this e-mail chain was ultimately forwarded 10 to you on the same day. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So you knew, when the commission 13 voted on March 12 to extend the leases on Lots 14 5, 6, 7 and A, B and C, that these are 15 exactly -- that BEH was also requesting this 16 space, correct?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. Yes.</p> <p>19 Q. And did you have any discussion 20 whatsoever with the commissioners informing them 21 that the leases that they were voting to extend 22 in executive session were for property that a 23 potential FBO applicant was seeking lease rights 24 along?</p>
<p style="text-align: right;">382</p> <p>1 B, C: Extend lease for five years." Did I read 2 that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. So is it fair to say that in 5 response to Mr. Eichleay's request of March 5 at 6 the next scheduled Airport Commission meeting, 7 without any notice to the public, the commission 8 acted affirmatively to grant the requested 9 extensions to FlightLevel for Lots 5, 6, 7, A, 10 B, and C?</p> <p>11 MR. SIMMS: Objection.</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. Yes.</p> <p>14 Q. Why did the commission act without 15 any notice to the public regarding its decision 16 to extend the leases for FlightLevel, if you 17 know?</p> <p>18 MR. HARTZELL: Objection.</p> <p>19 A. I don't recall the reason.</p> <p>20 Q. This occurred at a time when you 21 and the commission knew that Mr. Donovan was 22 requesting space not only on the west ramp but 23 on Lots A, B and C; is that fair to say?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">384</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 A. I don't recall having a 3 conversation with the Norwood Airport Commission 4 about this.</p> <p>5 Q. Did you think it was important? 6 MR. SIMMS: Objection. Go 7 ahead.</p> <p>8 A. I don't know what I thought at the 9 time.</p> <p>10 MR. FEE: I'm going to mark 11 this as the next exhibit. 12 (Exhibit 470, Norwood Airport Commission 13 Meeting Agenda dated April 9, 2014, marked 14 for identification)</p> <p>15 Q. (By Mr. Fee) Exhibit 470 is the 16 agenda and -- or the two agendas for the April 17 9, 2014 meeting. Did you prepare this?</p> <p>18 A. Yes.</p> <p>19 MR. FEE: I'm going to mark 20 this as the next exhibit. 21 (Exhibit 471, Airport Commission Meeting 22 Regular Business Meeting Minutes, April 9, 23 2014, marked for identification)</p> <p>24 Q. (By Mr. Fee) So 471 are the</p>

<p style="text-align: right;">385</p> <p>1 regular business meeting minutes for April 9, 2 2014. And there doesn't seem to be any 3 discussion regarding any of FlightLevel's lease 4 extension requests, but there is a reference to 5 the correspondence of 3/12/14 from Mr. Donovan 6 regarding his request for Lots A, B and C. Do 7 you see that on Page 3?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see that the commission 10 adjourned to go into executive session at 1:07? 11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall being present at that 14 executive session?</p> <p>15 A. I clearly was at the meeting. I 16 don't recall exactly what the executive session 17 was.</p> <p>18 Q. Okay. I'm going to refresh your 19 memory. Showing you what has been marked as 20 Exhibit 345 to the Shaughnessy deposition, that 21 appears to be a discussion about the Lot 5 cap 22 ramp. And then with respect to the Lots 6 and 23 7, "On a motion by Mr. Shaughnessy and seconded 24 by Mr. Ryan, the commission 4/0 to extend the</p>	<p style="text-align: right;">387</p> <p>1 reminding them of their obligations under 2 corrective action plan, to refrain from taking 3 actions that would cause one party to have 4 control over a majority of AIP-funded ramps?</p> <p>5 A. I don't recall having that 6 discussion with the commission.</p> <p>7 Q. Was there -- strike that.</p> <p>8 MR. FEE: I'm going to mark 9 this as the next exhibit. 10 (Exhibit 472, Letter dated April 15, 2014, 11 marked for identification)</p> <p>12 Q. (By Mr. Fee) Exhibit 472 is a 13 letter you wrote to Mr. Eichleay on April 15, 14 2014. Is that your signature?</p> <p>15 A. Yes.</p> <p>16 Q. And you inform Mr. Eichleay that 17 the commission has voted to offer FlightLevel an 18 additional five-year lease on A, B, C, that the 19 NAC is receptive to approving and extended 20 sublease on Lot 5 to 2047, and that the NAC is 21 receptive to extending Lots 6 and 7 to 2050. Do 22 you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Was that an accurate summary of the</p>
<p style="text-align: right;">386</p> <p>1 lease to 2050 on the section outside of the 2 1,100-foot strip contingent on construction 3 commencing no later than December 31, 2017." 4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Did they take that vote in 7 executive session on April 9, 2014?</p> <p>8 A. I believe they did.</p> <p>9 Q. Okay. And so my question is: 10 Again, why did the commission act in executive 11 session without any public notice regarding 12 FlightLevel's lease extensions in April of 2014?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. I can't answer for the commission.</p> <p>15 Q. Did you have any discussion -- or 16 did you participate in any discussion in the 17 executive session regarding the fact that 18 FlightLevel -- that lease extensions were being 19 granted to FlightLevel for property that was 20 being requested by BEH?</p> <p>21 A. I don't recall having that 22 discussion.</p> <p>23 Q. Did you have any discussions with 24 the commission members in or about April 2014</p>	<p style="text-align: right;">388</p> <p>1 votes that were taken at the April 9 executive 2 session?</p> <p>3 A. I believe it was.</p> <p>4 MR. FEE: Okay. I'm going to 5 mark this as the next agreement. 6 (Exhibit 473, E-mail dated May 3, 2014, 7 marked for identification)</p> <p>8 Q. (By Mr. Fee) A couple days later 9 Mr. Donovan writes you an e-mail on May 3 10 regarding Lots A, B, C. And he asks you, has 11 the lease for Lots A, B, C been released to 12 FlightLevel and you say no. Is that right?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And is there some reason 15 that you did not want to disclose to Mr. Donovan 16 the actions that had been taken in executive 17 session on April 9 and March 12?</p> <p>18 MR. SIMMS: Objection.</p> <p>19 MR. HARTZELL: Objection.</p> <p>20 MR. SIMMS: This exact line of 21 questioning was asked in the federal case. 22 MR. FEE: It's relevant here, 23 too.</p> <p>24 MR. SIMMS: That is your</p>

<p style="text-align: right;">389</p> <p>1 belief. I read the Complaint and I read 2 the counterclaim before coming over here 3 today. 4 MR. FEE: I don't want to 5 waste my time debating the nuances of my 6 strategy with you. 7 MR. SIMMS: I'm not debating. 8 I made an objection. 9 MR. FEE: So you can instruct 10 him not to answer or stand down. 11 MR. SIMMS: I'm not 12 instructing not to answer. I'm going to 13 move to strike the testimony if you 14 attempt to use it in the federal case. 15 MR. FEE: Fair enough. 16 Q. (By Mr. Fee) Is there some reason 17 that you failed to decline to inform Mr. Donovan 18 the actions taken by the NAC in the executive 19 session on April 9 and March 12 regarding the 20 leases for A, B, C? 21 MR. SIMMS: Same objection. 22 A. The lease for Lots A, B, C had not 23 been released yet. This was a May e-mail and 24 the releasing would come after that.</p>	<p style="text-align: right;">391</p> <p>1 with the answer. I was trying to be as accurate 2 as I could be with it. I found that's the best 3 course of action in answering BEH. 4 MR. FEE: Okay. I'm going to 5 mark this as the next exhibit. 6 (Exhibit 474, Letter dated October 24, 7 2014, marked for identification) 8 Q. (By Mr. Fee) In October of 2014, 9 Mr. Eichleay writes to Mr. Willenborg and says 10 that FlightLevel's requests to release Lot 5 and 11 parts of 6 and 7 have been approved by the FAA. 12 Do you remember that? 13 A. I vaguely remember it, yes. 14 Q. Okay. And that turned out to be 15 not correct, right? 16 A. That is correct. 17 Q. Okay. And do you know why 18 Mr. Eichleay told the DOT that he had been -- 19 that he had received approval from the FAA 20 regarding the extension of leases for Lots 5, 6, 21 and 7? 22 A. I can't speak for Mr. Eichleay. It 23 was not an accurate statement. 24 Q. Right. But you informed him of</p>
<p style="text-align: right;">390</p> <p>1 Q. But is it fair to say that you knew 2 that Mr. Donovan had been asking you repeatedly 3 for a negotiation with the NAC regarding lease 4 of A, B, C? Did you know that? 5 A. He had been asking, yes. 6 Q. And so when he asked you whether or 7 not it had been released to FlightLevel, you 8 took a technical approach in your answer to that 9 question, correct? 10 MR. SIMMS: Objection. 11 MR. HARTZELL: Objection. 12 A. I took a lawyer's literal approach 13 and I answered it literally, which was that on 14 May 3, 2014 Lots A, B, C had not been released 15 to FlightLevel. 16 Q. Okay. And what was the reason that 17 you took that literal approach? 18 MR. SIMMS: Objection. 19 MR. HARTZELL: Objection. 20 Q. (By Mr. Fee) Wouldn't it have been 21 fair to say, hey, Chris, Lots A, B, and C are no 22 longer available, stop wasting your time? 23 MR. HARTZELL: Objection. 24 A. I was not trying to be difficult</p>	<p style="text-align: right;">392</p> <p>1 that, did you not? 2 A. I believe I did. 3 MR. FEE: I'm going to mark 4 this as the next exhibit. 5 (Exhibit 475, E-mail dated November 13, 6 2014, marked for identification) 7 Q. (By Mr. Fee) Exhibit 475 is your 8 e-mail to Mr. Eichleay dated 10/24/14. Telling 9 him of your conversation with Chris Willenborg 10 of DOT, correct? 11 A. Yes. 12 Q. And what was the purpose of your 13 informing Mr. Eichleay of this conversation with 14 Mr. Willenborg? 15 A. I wanted Mr. Eichleay to know that 16 he was in error. 17 Q. Okay. And what did Mr. Eichleay 18 say? 19 A. I don't recall what he said. 20 MR. FEE: Okay. I'm going to 21 mark this as the next exhibit. 22 (Exhibit 476, Letter dated March 19, 2015, 23 marked for identification) 24 Q. (By Mr. Fee) 476 is the FAA's</p>

<p style="text-align: right;">393</p> <p>1 response to Mr. Eichleay's letter requesting 2 approval of the lease extensions? 3 A. Mm-hmm. 4 Q. And the FAA informed Mr. Eichleay 5 that due to the Part 16 investigation they were 6 not inclined to approve anything at that time. 7 Do you recall that? 8 A. Yes. I don't believe it was an 9 approval that was required. It was a reveal. 10 Q. So the FAA declined to review the 11 lease extensions that had been voted by the 12 board -- by the commission; is that correct? 13 MR. HARTZELL: Objection. 14 A. Per the letter from FAA, it says 15 the FAA is unable to provide any further 16 information. 17 Q. Right. But meanwhile, the leases 18 have not yet been executed, correct? 19 A. Can I see the other exhibit? 20 Q. Sure. What do you need? 21 A. This is March of 2015 and -- 22 Q. I have not shown you any leases 23 yet. 24 A. Right. I'm not sure when they were</p>	<p style="text-align: right;">395</p> <p>1 This letter marked as 477 is dated 2 March 27, 2015. Did you receive it? 3 A. We did receive that letter. 4 Q. And in it it says -- it references 5 the correspondence that has been -- that 6 FlightLevel has had with the FAA, and then at 7 the bottom it says, "We sincerely believe this 8 project is in the best interest of the airport 9 and town. Any help or guidance the NAC can 10 provide would be greatly appreciated." Do you 11 see that? 12 A. Yes. 13 Q. What did you do in response to 14 receipt of this letter from Mr. Eichleay? 15 A. I don't recall doing anything. 16 Q. Okay. Did you bring it to the 17 attention of the Airport Commission? 18 A. I would have gone -- it's addressed 19 to the Airport Commission, so it would have 20 been. 21 MR. FEE: I'm going to mark 22 this as the next exhibit. 23 (Exhibit 478, Letter dated April 28, 2015, 24 marked for identification)</p>
<p style="text-align: right;">394</p> <p>1 actually executed. That's what I'm trying to 2 get at. 3 Q. Okay. I'll show them to you in a 4 minute. But in March of 2015, Mr. Eichleay is 5 advised by the FAA that they are not going to do 6 a review. Did you get a copy of this? 7 A. We did get a copy of that. 8 Q. And from the FAA or from 9 Mr. Eichleay? 10 A. I believe from Mr. Friedenber from 11 FAA. 12 MR. FEE: Okay. I'm going to 13 mark this as the next exhibit. 14 (Exhibit 477, Letter dated March 27, 2015, 15 marked for identification) 16 Q. (By Mr. Fee) So in response to the 17 FAA's refusal to review the lease extension 18 requests, Mr. Eichleay wrote to the Airport 19 Commission, did he not? 20 MR. SIMMS: Objection. 21 A. I'm not able to determine from this 22 that there was -- I correct myself. 23 Q. Let me ask you a different 24 question.</p>	<p style="text-align: right;">396</p> <p>1 Q. (By Mr. Fee) You said that you 2 didn't recall doing anything in response to the 3 letter that Mr. Eichleay wrote to the Norwood 4 Airport Commission in March of 2015. But 478 5 appears to be a letter from you to the FAA that 6 is directly on point. Does this refresh your 7 recollection as to whether or not you did 8 anything? 9 A. Yes. 10 Q. And so you wrote a letter to the 11 FAA on FlightLevel's behalf; is that correct? 12 A. Yes. 13 Q. Okay. And you wanted -- you asked 14 if they would approve the lease extensions; is 15 that correct? 16 A. Well, not approve it, but they 17 needed to be reviewed by FAA, yes. 18 Q. And the final paragraph of your 19 letter you said, "If the FAA feels we should not 20 move forward to approve the sublease extension, 21 please let me know prior to the May 13th 22 meeting," right? 23 A. Yes. 24 Q. And what, if anything, did the FAA</p>

<p style="text-align: right;">397</p> <p>1 do in response to your letter of April 28? Did 2 they respond?</p> <p>3 A. I don't recall the FAA responding. 4 MR. FEE: I'm going to mark 5 this as the next exhibit. 6 (Exhibit 479, Letter dated May 11, 2015, 7 marked for identification)</p> <p>8 Q. (By Mr. Fee) 479 is a letter from 9 the FAA to you dated May 11, 2015 and appears to 10 respond to Exhibit 478. Did you receive this?</p> <p>11 A. Yes.</p> <p>12 Q. The FAA says that it takes no 13 position on whether the airport commission 14 should or could take action on FlightLevel's 15 request without reviewing the sublease 16 extensions by MassDOT or FAA. If the Norwood 17 Airport Commission acts, it does so on its own 18 initiative and at its own risk. Do you see 19 that?</p> <p>20 A. Yes.</p> <p>21 Q. What does that mean to you, if the 22 Norwood Airport Commission enters into lease 23 extensions with FlightLevel, it acts at its own 24 risk? What does that mean?</p>	<p style="text-align: right;">399</p> <p>1 the FAA and MassDOT and neither regulatory 2 agency has elected to interpose the objection. 3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is it fair to say that the Lot 5 6 BMA sublease extension was never reviewed by the 7 FAA or MassDOT?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. I believe that is safe to say.</p> <p>10 MR. FEE: Okay. I'm going to 11 mark this as the next exhibit. 12 (Exhibit 481, Airport Commission Meeting 13 Regular Business Meeting Minutes, October 14 19, 2015, marked for identification)</p> <p>15 Q. (By Mr. Fee) 481 are the business 16 minutes from October 19, 2016. And on Page 2, 17 under new business, it discusses FlightLevel 18 leases Lots 5, 6, 7. And the discussion and the 19 motion is to approve the lease extensions with 20 certain requirements. And with respect to Lot 21 5, the NAC requested that "FlightLevel provides 22 a personal guarantee or letter of credit, 23 provide adequate spill insurance, and provide a 24 site plan, which include a fuel site plan</p>
<p style="text-align: right;">398</p> <p>1 MR. SIMMS: Objection. 2 MR. HARTZELL: Objection.</p> <p>3 A. I'm not sure I can interpret what 4 the FAA means by that without kind of an 5 extrapolation of that.</p> <p>6 Q. What action, if any, did the 7 Airport Commission take in response to the FAA's 8 letter?</p> <p>9 A. I don't recall.</p> <p>10 MR. FEE: I'm going to mark 11 this as the next exhibit. 12 (Exhibit 480, FlightLevel Norwood, LLC 13 Lease Extension Request, marked for 14 identification)</p> <p>15 Q. (By Mr. Fee) 480 appears to be a 16 PowerPoint presentation from FlightLevel to the 17 NAC dated October of 2016. Have you seen this 18 before?</p> <p>19 A. Yes.</p> <p>20 Q. And on Page 3, in addressing the 21 various conditions that had been made by the NAC 22 in connection with this leasing activity, 23 FlightLevel asserts that the Lot 5 BMA sublease 24 extension has been presented to and reviewed by</p>	<p style="text-align: right;">400</p> <p>1 stamped and licensed by an engineer or 2 surveyor." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Was this the first time that 5 FlightLevel had been requested to provide any of 6 this type of information in connection with any 7 of its leases with the airport?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. As I recall, FlightLevel already 10 had spill insurance at the airport.</p> <p>11 Q. How is spill insurance different 12 from general liability insurance for a fuel 13 provider?</p> <p>14 A. It's an itemized notation on 15 certificate that shows it as additionally 16 covered.</p> <p>17 Q. What peril does spill insurance 18 cover that is not covered by regular general 19 liability insurance for a fuel provider?</p> <p>20 MR. SIMMS: Objection. Go 21 ahead.</p> <p>22 A. I'm not an insurance expert, but it 23 gives a comfort level to the Town of Norwood 24 that that general liability coverage actually</p>

<p style="text-align: right;">401</p> <p>1 includes the spilling of fuel.</p> <p>2 Q. Okay. But is it your understanding</p> <p>3 that a normal general liability policy for a</p> <p>4 fuel provider does not cover spill peril?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 Q. (By Mr. Fee) I know you're not an</p> <p>7 expert in insurance. Neither am I. I'm just</p> <p>8 trying to understand the difference between a</p> <p>9 regular CGL for a fuel provider and spill</p> <p>10 insurance. What is the difference?</p> <p>11 MR. SIMMS: You just asked him</p> <p>12 that.</p> <p>13 MR. FEE: I'm still trying to</p> <p>14 understand it. So if you could answer</p> <p>15 again, please, I would appreciate it.</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 A. Again, I'm not an expert, but</p> <p>18 having it itemized on the Certificate of</p> <p>19 Insurance gives a comfort level to the airport</p> <p>20 authority that that is a coverage item.</p> <p>21 Q. But you can't specify to me what</p> <p>22 the difference is between the two types of</p> <p>23 coverage, as you sit here today?</p> <p>24 MR. SIMMS: Objection.</p>	<p style="text-align: right;">403</p> <p>1 7 executed at this meeting, do you know?</p> <p>2 A. I don't know.</p> <p>3 Q. And it talks about a presentation</p> <p>4 on a fueling plan. Do you see that? It's under</p> <p>5 old business, "Nick Burlingham gave a</p> <p>6 presentation on the fueling plan"?</p> <p>7 A. Yes.</p> <p>8 Q. Did FlightLevel give you a written</p> <p>9 document at that time?</p> <p>10 A. There was a document that I</p> <p>11 received either that night or not -- I don't</p> <p>12 believe it was that long after.</p> <p>13 Q. Was that a scaled drawing signed by</p> <p>14 an engineer?</p> <p>15 A. I believe it was.</p> <p>16 Q. And that was on April of 2017; is</p> <p>17 that fair to say?</p> <p>18 A. I believe so.</p> <p>19 MR. SIMMS: Do you mean</p> <p>20 February of '17?</p> <p>21 MR. FEE: I'm sorry, February</p> <p>22 of 2017. I'm going to mark this as the</p> <p>23 next exhibit.</p> <p>24 (Exhibit 483, Letter dated February 20,</p>
<p style="text-align: right;">402</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 A. I think I answered that.</p> <p>3 MR. SIMMS: If you can't, you</p> <p>4 can't.</p> <p>5 A. I can't answer it.</p> <p>6 Q. You can't answer because you don't</p> <p>7 know the specific difference between spill</p> <p>8 coverage and regular CGL coverage for a fuel</p> <p>9 provider; is that fair to say?</p> <p>10 MR. SIMMS: Third time.</p> <p>11 MR. HARTZELL: Objection.</p> <p>12 A. General liability may include it.</p> <p>13 But if it's not notated on a certificate, in my</p> <p>14 mind and the mind of the commission, I believe,</p> <p>15 it's an area of concern.</p> <p>16 MR. FEE: Okay. I'm going to</p> <p>17 mark this as the next exhibit.</p> <p>18 (Exhibit 482, Airport Commission Meeting</p> <p>19 Regular Business Meeting Minutes, February</p> <p>20 15, 2017, marked for identification)</p> <p>21 Q. (By Mr. Fee) 482 are the meeting</p> <p>22 minutes from February 15, 2017. Under old</p> <p>23 business, it talks about Lots 6 and 7 leases to</p> <p>24 sign for FlightLevel. Were the leases for 6 and</p>	<p style="text-align: right;">404</p> <p>1 2017, marked for identification)</p> <p>2 MR. SIMMS: And approved in</p> <p>3 April of '17. No big deal. Let's move</p> <p>4 along.</p> <p>5 Q. (By Mr. Fee) 483, are those the</p> <p>6 leases that were signed for Lots 5, 6, and 7?</p> <p>7 A. I believe these are the documents.</p> <p>8 Q. And do these leases contain the</p> <p>9 same recapture language we talked about earlier</p> <p>10 with respect to the A, B, C leases? If you</p> <p>11 don't know off the top of your head, I'm not</p> <p>12 asking you to confirm it. Just say you don't</p> <p>13 know.</p> <p>14 A. I don't know.</p> <p>15 Q. This document was previously marked</p> <p>16 as Exhibit 207 in the Eichleay deposition. It</p> <p>17 appears to be the FlightLevel Commercial Permit</p> <p>18 Application for 2007. Have you seen that</p> <p>19 before?</p> <p>20 A. I believe so.</p> <p>21 Q. In 2017, Mr. Donovan sent you a</p> <p>22 public records request in response to certain</p> <p>23 testimony regarding Mr. Ryan's recollection that</p> <p>24 FlightLevel provided additional financial</p>

Pages 1-95
Exhibits 34-52

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE)
HELICOPTERS, LLC,)
Plaintiff,)
)
v.)
)
FRANCIS T. MAGUIRE, ET AL.,)
Defendants.)

DEPOSITION OF THOMAS WYNNE

TAKEN APRIL 28, 2017

AT THE LAW OFFICES OF

PIERCE MANDELL, P.C.

11 BEACON STREET

BOSTON, MASSACHUSETTS

Reporter: Raymond F. Catuogno, Jr.

<p style="text-align: right;">18</p> <p>1 You can answer.</p> <p>2 A. No.</p> <p>3 Q. Okay. I'm going to show you a</p> <p>4 document that has been marked as Exhibit 4 to</p> <p>5 the deposition of Mr. LeBlanc, and it -- there's</p> <p>6 a cover letter and then on the second page</p> <p>7 starts a document prepared by the FAA entitled</p> <p>8 Director's Determination. And I'll just ask --</p> <p>9 I'm not going to ask you to read the whole</p> <p>10 document, but I'm just wondering if that</p> <p>11 refreshes your recollection as to any of the</p> <p>12 facts and circumstances surrounding the Part 16</p> <p>13 Complaint filed against the Norwood Airport</p> <p>14 Commission by EAC back in 2008?</p> <p>15 MR. SIMMS: Same objection.</p> <p>16 Go ahead.</p> <p>17 A. EAC is Eastern Air Charter and this</p> <p>18 is Boston.</p> <p>19 Q. I'm sorry, I misspoke, BAC, Boston</p> <p>20 Air Charter, my apologies.</p> <p>21 A. I don't know what this complaint</p> <p>22 was about. There was a complaint through, I</p> <p>23 think, BAC, Boston Air Charter. Whether this is</p> <p>24 it or not, I don't know.</p>	<p style="text-align: right;">20</p> <p>1 memorialized in any way?</p> <p>2 A. I don't know.</p> <p>3 MR. FEE: Could I have this</p> <p>4 marked as Exhibit 35?</p> <p>5 (Exhibit 35, Letter from the FAA to Russ</p> <p>6 Maguire, dated October 6, 2008, marked for</p> <p>7 identification)</p> <p>8 Q. (Mr. Fee) I'm going to show you a</p> <p>9 document marked as Exhibit 35 and I'm going to</p> <p>10 read parts of it into the record. And you can</p> <p>11 correct me if I'm wrong, but this appears to be</p> <p>12 a letter dated October 6, 2008 from the FAA to</p> <p>13 Russ Maguire in his capacity as the airport</p> <p>14 manager. And the second paragraph states:</p> <p>15 "Specifically, the town must take the following</p> <p>16 corrective actions to comply with the final</p> <p>17 agency decision." And I'm going to skip down to</p> <p>18 the first -- to the second bullet point on the</p> <p>19 bottom of the page, where it says, "The town has</p> <p>20 ended or will end the practice of awarding</p> <p>21 long-term leases of federally funded ramps that</p> <p>22 have the effect of granting one-party control</p> <p>23 over the majority of ramps on the airport." And</p> <p>24 the second bullet point says, "The town will put</p>
<p style="text-align: right;">19</p> <p>1 Q. Do you recall generally what</p> <p>2 happened as a result of the complaint, the Part</p> <p>3 16 Complaint filed by Boston Air Charter?</p> <p>4 A. No.</p> <p>5 Q. I'm going to show you a document</p> <p>6 marked as Exhibit 5 to Mr. LeBlanc's deposition,</p> <p>7 dated May 16, 2008, and it appears to be a</p> <p>8 letter from the Airport Commission -- and it</p> <p>9 lists you as being a member of the Airport</p> <p>10 Commission at the time -- to the FAA. I just</p> <p>11 want to ask you if that refreshes your</p> <p>12 recollection of what occurred as a result of the</p> <p>13 Part 16 Complaint filed by BAC back in 2008?</p> <p>14 MR. SIMMS: Same objection.</p> <p>15 Go ahead, Tom.</p> <p>16 A. I don't remember specifically</p> <p>17 seeing this document. But from what parts of it</p> <p>18 I've read, I was aware of the FAA's concern with</p> <p>19 long-term leases.</p> <p>20 Q. Okay. And what, if anything, did</p> <p>21 the Airport Commission pledge to do as a result</p> <p>22 of the FAA's concern regarding long-term leases?</p> <p>23 A. We followed their directive.</p> <p>24 Q. Okay. And was that promise</p>	<p style="text-align: right;">21</p> <p>1 in place a short-term ramp leasing permit policy</p> <p>2 for the airport to assert more control of the</p> <p>3 federally funded ramps." Did I read that</p> <p>4 correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And was it your understanding in</p> <p>7 2008 -- and first of all, did you see this</p> <p>8 letter from the FAA back in 2008?</p> <p>9 A. I don't remember whether or not I</p> <p>10 saw the letter.</p> <p>11 Q. Well, is it fair to say that you</p> <p>12 were a member of the Commission at this time?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So was it your understanding</p> <p>15 at that time that the FAA was directing you to</p> <p>16 end the practice of awarding long-term leases on</p> <p>17 federally funded ramps?</p> <p>18 MR. SIMMS: Let me note the</p> <p>19 objection to beyond the scope. And I'll</p> <p>20 try to make this a standing objection to</p> <p>21 any questions going back to directives</p> <p>22 involving the FAA in 2008. Now you can</p> <p>23 answer the question.</p> <p>24 A. Okay. What was the question again?</p>

<p style="text-align: right;">22</p> <p>1 Q. Did you understand this letter to 2 represent the FAA's direction to the Norwood 3 Airport Commission to end the practice of 4 entering into long-term leases on federally 5 funded ramps? 6 A. Yes. 7 Q. Did you consider yourself to be 8 bound by that directive? 9 A. Yes. 10 Q. Did you similarly consider yourself 11 to be bound by the second directive, that the 12 town put short-term ramp leasing permit policies 13 in place so that it could assert more control 14 over the federally funded ramps? 15 A. Yes. 16 Q. And what, if anything, did the 17 board do to effectuate a short-term ramp leasing 18 permit policy? 19 A. Any leases that came before the 20 board that were in excess of five years became a 21 matter of discussion, I think. 22 Q. Was there any formal written policy 23 adopted? 24 A. I don't remember.</p>	<p style="text-align: right;">24</p> <p>1 A. Yes. 2 Q. "And establish a short-term ramp 3 leasing permit policy for the Airport to assert 4 more control of the federally funded ramps." 5 Did I read that correctly? 6 A. Yes. 7 Q. So as of 2010, the FAA considers 8 the Norwood Airport Commission to be in 9 compliance with its prior order, is that your 10 understanding? 11 A. Yes. 12 Q. Okay. And did the Airport 13 Commission consider the FAA's directive at that 14 point, a closed matter, or did it consider it to 15 be an ongoing obligation of the Airport 16 Commission to continue to act congruent with 17 those policies? 18 A. It would have been to pursue those 19 policies. 20 Q. So at some point did you, in your 21 capacity as the airport commissioner, come to 22 know that Boston Executive Helicopters was 23 seeking additional space at the airport? 24 A. Yes.</p>
<p style="text-align: right;">23</p> <p>1 Q. Okay. I'll retrieve that document 2 from you. Thank you, sir. 3 MR. FEE: Could I have this 4 marked as Exhibit 36? 5 (Exhibit 36, Letter from the FAA to Russ 6 Maguire, dated January 27, 2010, marked 7 for identification) 8 Q. (By Mr. Fee) Exhibit 36 is a 9 letter from the FAA to Mr. Maguire, dated 10 January 27, 2010. You were on the Norwood 11 Airport Commission at this time, correct? 12 A. What date? 13 Q. January 27, 2010. 14 A. Yes. 15 Q. Now, the second full paragraph 16 says, "Our review of the CAP, Corrective Action 17 Plan, indicates that the town has taken the 18 necessary and appropriate steps to comply with 19 the FAA order to" -- and I'm skipping down to 20 the third bullet -- "end the practice of 21 awarding long-term leases of federally funded 22 ramps that have the effect of granting one-party 23 control over the majority of the ramps on the 24 airport." Did I read that correctly?</p>	<p style="text-align: right;">25</p> <p>1 Q. When did you first learn of that? 2 A. I don't know. 3 Q. When did you first learn of Boston 4 Executive Helicopters' desire to become an FBO? 5 A. I don't know. 6 Q. Was it sometime in or about 2010? 7 A. I can't recall. 8 MR. FEE: Could I have this 9 marked as Exhibit 37? 10 (Exhibit 37, E-mail Chain between 11 Christopher Donovan and Russ Maguire, 12 beginning October 14, 2010, marked for 13 identification) 14 Q. (By Mr. Fee) I'm showing you a 15 document, Exhibit 37, that appears to be an 16 e-mail chain. And the first e-mail on the first 17 page is to Mr. Maguire from Mr. Donovan. And I 18 just want to skip -- actually, I'll read from 19 the first paragraph. "If possible, could you 20 present my plan and application for my interest 21 in the expansion of the commercial permit for 22 flight training and aircraft rental, as I have 23 previously discussed? I would like to move 24 forward in these areas and ask for the approval</p>

26

1 of my application expansion." Do you see that?

2 A. Yes.

3 Q. Now, it says in the next paragraph,
4 "I am also interested in the lease of the DC-3
5 ramp area and the other public ramp space
6 available." Did I read that correctly?

7 A. Yes.

8 Q. Does this refresh your recollection
9 as to when you may have first learned of Boston
10 Executive Helicopters' interest in leasing
11 additional space at the airport?

12 A. Yes.

13 Q. Was it in or about October of 2010?

14 A. Yes.

15 Q. Now, would Mr. Maguire have shared
16 e-mails like this with the commissioners?

17 A. Yes.

18 MR. SIMMS: Take a moment to
19 answer the question, so I can object. Go
20 ahead.

21 Q. Now, can you describe for me -- at
22 some point, did the DC-3 ramp area become
23 available for lease?

24 A. Yes.

27

1 Q. When was that?

2 A. I don't recall what date that was.

3 Q. Can you describe what process the
4 Commission went through in leasing that
5 property?

6 A. In the case of that ramp, we put it
7 out to bid.

8 Q. Okay. How come?

9 A. We didn't have any -- how do I say
10 this -- I guess we thought it was the prudent
11 way to go.

12 Q. Okay. Do you know how large the
13 DC-3 ramp is?

14 A. It's about -- I would say between
15 12 and 15,000 square feet.

16 Q. Okay. And in that bid process, did
17 the Commission put any restrictions on the use
18 to which the DC-3 ramp could be put?

19 A. Yes, I think it prohibited fueling
20 of aircraft there.

21 Q. And why?

22 A. Again, I'm working from memory, but
23 I think one of the primary reasons was that it
24 was abutting the taxiway, and it was just a very

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1 tight space.

2 Q. And did people bid or entities bid
3 on that DC-3 ramp space?

4 A. Yes.

5 Q. Who was the ultimate winner?

6 A. I don't recall the exact name of
7 the people who actually won it, were the
8 successful bidders.

9 Q. It wasn't Boston Executive
10 Helicopters, though, right?

11 A. Right.

12 Q. Did Boston Executive Helicopters
13 complain about the bid process?

14 A. I don't recall a complaint, no.

15 MR. FEE: Could I have this
16 marked as Exhibit 38?

17 (Exhibit 38, Letter from the Norwood
18 Airport Commission to Christopher Donovan,
19 dated March 14, 2013, marked for
20 identification)

21 Q. (By Mr. Fee) Sir, I'm showing you
22 a document marked as Exhibit 38, which appears
23 to be a letter dated March 14, 2013, to Mr.
24 Donovan. I'll direct your attention to the last

29

1 page. Is that your signature on the final page,
2 sir?

3 A. Yes.

4 Q. And did you write this document?

5 A. No.

6 Q. Who wrote it?

7 A. I don't know.

8 Q. Was it written by Mr. Maguire?

9 A. I don't know.

10 Q. Counsel?

11 A. I don't know.

12 Q. Do you recall who presented this to
13 you to sign?

14 A. No.

15 Q. Did you read it before you signed
16 it?

17 A. Yes.

18 Q. There's a couple of items in the
19 document that I'd like to discuss with you. On
20 the first page, the first paragraph A, talks
21 about the fact that BEH's asserted concerns were
22 untimely. And just to back up, to give this
23 some context, this is a letter that was written
24 by the Norwood Airport Commission in response to

<p style="text-align: right;">38</p> <p>1 Q. (By Mr. Fee) I show you what has 2 been marked as Exhibit 40, which appears to be a 3 letter from FlightLevel to the NAC dated January 4 22, 2014. And if I could turn your attention to 5 the second page, it discusses a request for 6 thirty-five year leases on Lots 5, 6, 7, A, B 7 and C; do you see that? 8 A. Mm-hmm. 9 Q. Does that refresh your recollection 10 as to when you learned -- 11 A. Yes. 12 Q. -- from FlightLevel that they were 13 interested in a long-term extension of their 14 leases? 15 A. Yes. 16 Q. So was it in about January of 2014? 17 A. Per this letter, yes. 18 MR. FEE: Could I have this 19 marked as Exhibit 41? 20 (Exhibit 41, E-mail from Peter Eichleay to 21 Russ Maguire, dated March 5, 2014, marked 22 for identification) 23 Q. (By Mr. Fee) I'm showing you a 24 document that has been marked as Exhibit 41. It</p>	<p style="text-align: right;">40</p> <p>1 Q. Why? 2 A. The premise they put forward as to 3 why they wanted to do it made sense, a logical 4 business decision. 5 Q. Even if the result of granting 6 long-term leases to FlightLevel would give them 7 control over a majority of the federally funded 8 ramp space, were you still in favor of it? 9 MR. SIMMS: Now I would 10 object. Go ahead. You can answer. 11 A. It wasn't a consideration. It 12 didn't enter into my thoughts on it. 13 Q. The consideration of whether or not 14 granting any long-term lease to FlightLevel 15 would end up giving them a control of the 16 majority of the federally funded ramp space did 17 not enter into your consideration of whether or 18 not to approve those lease requests; is that 19 correct? 20 A. Correct. 21 MR. FEE: Okay. Could I have 22 this marked as Exhibit 42? 23 (Exhibit 42, Agenda for Norwood Airport 24 Commission, dated April 9, 2014, marked</p>
<p style="text-align: right;">39</p> <p>1 appears to be an e-mail from Peter Eichleay, 2 president of FlightLevel, to Mr. Maguire, 3 requesting a letter of intent from the Airport 4 Commission indicating a mutual desire to extend 5 the leases; do you see that? 6 A. Mm-hmm. 7 Q. Is that consistent with your 8 recollection of what was going on in March of 9 2014 with respect to FlightLevel's request for 10 long-term leases? 11 A. My recollection is that they had 12 requested an extension to their leases to do 13 some forward planning. I don't remember seeing 14 this specific letter. 15 Q. Okay. Was there a discussion 16 amongst the board members regarding a desire to 17 accommodate FlightLevel's request for long-term 18 leases? 19 A. I would think so, but specifically, 20 I can't tell you. 21 Q. Were you in favor of granting 22 FlightLevel extensions to its leases that were 23 long-term? 24 A. Yes.</p>	<p style="text-align: right;">41</p> <p>1 for identification) 2 Q. (By Mr. Fee) Sir, I'm showing a 3 document marked as Exhibit 42, and it appears to 4 be an agenda for Norwood Airport Commission, 5 dated April 9, 2014. Were you still on the 6 board at this time? 7 A. I believe so. 8 Q. And it says, tentative agenda 9 items. And it lists several items, and then it 10 says executive session, right? 11 A. Yes. 12 Q. Was it the practice of the Airport 13 Commission to list specific topics that were to 14 be the subject of executive session? 15 A. No. 16 Q. How would the Commissioners know 17 what matters were to be discussed in executive 18 session? 19 A. The commissioners would have a 20 memory of it from a previous meeting or 21 meetings. 22 Q. But there was no notice to the 23 public or to the commissioners regarding what 24 topics would be discussed in executive session?</p>

<p style="text-align: right;">42</p> <p>1 A. No, not to my best recollection.</p> <p>2 Q. Okay. Do you recall the meeting on</p> <p>3 April 9th?</p> <p>4 A. No.</p> <p>5 MR. FEE: Could I have this</p> <p>6 marked as Exhibit 43?</p> <p>7 (Exhibit 43, Minutes of the Executive</p> <p>8 Session held on April 9, 2014, marked for</p> <p>9 identification)</p> <p>10 Q. (By Mr. Fee) Exhibit 43 appears to</p> <p>11 be the Minutes of the Executive Session on April</p> <p>12 9th. Do you recall being present for this?</p> <p>13 A. No.</p> <p>14 Q. Would you agree with me that the</p> <p>15 Minutes appear to reflect the Airport</p> <p>16 Commission's approval of extending long-term</p> <p>17 leases to FlightLevel for Lots 5, 6 and 7?</p> <p>18 A. I don't recall if I was at this</p> <p>19 meeting at all.</p> <p>20 Q. Understood. But would you agree</p> <p>21 with me that the document appears to reflect the</p> <p>22 action of the Norwood Airport Commission to</p> <p>23 grant in favor of extending long-term leaseholds</p> <p>24 to FlightLevel for Lots 5, 6 and 7?</p>	<p style="text-align: right;">44</p> <p>1 Q. The question is, would you agree</p> <p>2 with me that this memorializes -- this reflects</p> <p>3 a memorialization of the vote taken by the board</p> <p>4 in executive session on April 9th to extend</p> <p>5 long-term leases to FlightLevel on Lots A, B, C,</p> <p>6 5, 6 and 7?</p> <p>7 MR. SIMMS: Same objection.</p> <p>8 You can answer.</p> <p>9 A. With approvals.</p> <p>10 Q. Right. What approvals?</p> <p>11 A. Mass DOT and the FAA.</p> <p>12 Q. Any other contingencies?</p> <p>13 A. No.</p> <p>14 Q. So where, if anywhere, were the</p> <p>15 terms of the leases discussed prior to the board</p> <p>16 voting in favor of renewing them?</p> <p>17 A. I don't remember that.</p> <p>18 Q. Do you recall if the board required</p> <p>19 any financial disclosure whatsoever from</p> <p>20 FlightLevel before it voted to extend these</p> <p>21 long-term leases?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you know if the board required</p> <p>24 any personal guarantee from the principal of</p>
<p style="text-align: right;">43</p> <p>1 A. Yes.</p> <p>2 MR. FEE: Could I have this</p> <p>3 marked as Exhibit 44?</p> <p>4 (Exhibit 44, Letter from Russ Maguire to</p> <p>5 Peter Eichleay of FlightLevel, dated May</p> <p>6 15, 2014, marked for identification)</p> <p>7 Q. (By Mr. Fee) Exhibit 44 appears to</p> <p>8 be a letter written by Russ Maguire to Peter</p> <p>9 Eichleay of FlightLevel, dated May 15, 2014.</p> <p>10 And it's entitled Letter of Intent, Lots A, B,</p> <p>11 C, 5, 6 and 7; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Would you agree with me that this</p> <p>14 represents a notice to FlightLevel that the</p> <p>15 board has acted consistent with the votes taken</p> <p>16 at the executive session on April 9, the Minutes</p> <p>17 we just reviewed?</p> <p>18 MR. SIMMS: Note my objection,</p> <p>19 which I meant to note earlier, to this</p> <p>20 line of questioning as beyond the scope.</p> <p>21 Q. Do you understand my question?</p> <p>22 A. I need to refer to this.</p> <p>23 Q. Sure.</p> <p>24 A. Okay. What was the question?</p>	<p style="text-align: right;">45</p> <p>1 FlightLevel in connection with its vote to</p> <p>2 extend these long-term leases?</p> <p>3 A. No.</p> <p>4 Q. No, it didn't or no, you don't</p> <p>5 know?</p> <p>6 A. No, I don't know.</p> <p>7 Q. Do you know if the board required</p> <p>8 any form of business plan?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know if it required any form</p> <p>11 of fueling plan?</p> <p>12 A. No, I don't know.</p> <p>13 Q. Do you know what disclosures, if</p> <p>14 any, were required from FlightLevel prior to the</p> <p>15 board voting in favor to extend long-term leases</p> <p>16 on lots A, B, C, 5, 6 and 7?</p> <p>17 MR. SIMMS: Same objection.</p> <p>18 Go ahead.</p> <p>19 A. I don't have a recollection of</p> <p>20 that.</p> <p>21 Q. Is it fair to say there were none?</p> <p>22 MR. SIMMS: Same objection.</p> <p>23 A. I don't know.</p> <p>24 Q. At this point in time, do you</p>

<p style="text-align: right;">46</p> <p>1 recall discussions before the board in which 2 several commissioners articulated a desire to 3 give FlightLevel preferential treatment, in 4 terms of the long-term leases awarded by the 5 Norwood Airport Commission? 6 A. No. 7 Q. You don't recall Mr. Shaughnessy 8 saying words to that effect? 9 A. No. 10 Q. Mr. Ryan? 11 A. No. 12 Q. Were you aware of the fact that the 13 meeting minutes for the April 9th meeting were 14 destroyed? 15 MR. SIMMS: You're making that 16 as an affirmative representation. 17 MR. FEE: I'm sorry, that was 18 a poorly phrased question. I'll get back 19 to you on that issue. 20 Q. Do you know who Deb Reddick is? 21 A. Yes. 22 Q. Who is she? 23 A. She was the stenographer that we 24 used for our meetings.</p>	<p style="text-align: right;">48</p> <p>1 Donovan to the State Ethics Committee, 2 dated May 1, 2014, marked for 3 identification) 4 Q. (By Mr. Fee) I'm showing you a 5 document dated May 1, 2014. It's a letter to 6 the State Ethics Commission from Mr. Donovan, 7 and it appears to be a transmittal letter in 8 which he is asserting ethics complaints against 9 Mr. Ryan and Mr. Shaughnessy; do you see that? 10 A. Yes. 11 Q. Were you aware in or about May of 12 2014 that Mr. Donovan had asserted ethics -- a 13 complaint to the State Ethics Commission 14 regarding activities by Mr. Ryan and Mr. 15 Shaughnessy? 16 MR. SIMMS: Objection. Beyond 17 the scope. 18 MR. FEE: It's most definitely 19 within the scope. 20 A. No. 21 Q. You have no knowledge of that? 22 A. No. 23 MR. FEE: Okay. Could I have 24 this marked as Exhibit 46?</p>
<p style="text-align: right;">47</p> <p>1 Q. To your knowledge, did Deb Reddick 2 do a competent job in recording the meetings? 3 A. Yes. 4 Q. And were there -- are you aware of 5 any time in which she was unable to record the 6 minutes of the meeting? 7 A. There was one instance, but the 8 details of it just -- I don't recall them, where 9 there was some difficulty. I don't recall 10 whether it was with a recording device that she 11 used or whatever. 12 Q. Do you recall if it was the April 13 9th meeting? 14 A. I don't. 15 Q. To your knowledge, is that the only 16 time that there was difficulty? 17 A. Again, I recall -- I remember there 18 was a difficulty with one of the meeting 19 minutes, and I think it had to do with the 20 recording device that she used. But that's -- I 21 just don't have any details on that, as to date. 22 MR. FEE: Could I have this 23 marked as Exhibit 45? 24 (Exhibit 45, Letter from Christopher</p>	<p style="text-align: right;">49</p> <p>1 (Exhibit 46, Regular Business Meeting 2 Minutes for May 14, 2104, marked for 3 identification) 4 Q. (By Mr. Fee) Sir, I'm showing you 5 Exhibit 46. It appears to be the Regular 6 Business Meeting Minutes for the Norwood Airport 7 Commission on May 14, 2014. 8 A. I have 2013. 9 Q. I'll represent to you that I 10 believe this to be a typographical error on the 11 top. And the reason that I believe that is 12 based on a variety of entries in the document 13 itself which identify 2014 as being the 14 operative time frame. But for purposes of our 15 discussion, I acknowledge that at the top it 16 says '13. I would -- I'm going to pose my 17 questions to you based on the assumption that 18 that is a typographical error. 19 MR. SIMMS: I believe it is a 20 typographical error. 21 MR. FEE: Okay. 22 Q. All right. So we discussed a 23 minute ago the April meeting in which the vote 24 was taken to extend the leases of FlightLevel.</p>

<p style="text-align: right;">50</p> <p>1 I'd like to turn your attention to page 2 of 2 this letter -- of these minutes, and at the top 3 the category of discussion is described as BEH 4 Lease/FBO Interest, Joshua Fox, Esquire. Do you 5 recall being at this meeting in May of 2014? 6 A. No. 7 Q. You're listed as an attendee. Does 8 that refresh your recollection? 9 A. I mean, if I'm listed as an 10 attendee, then I was in attendance. Do I 11 specifically remember being at the meeting, no. 12 Is this an actual copy of the meeting with no 13 header as to who attended? 14 Q. It says at the top, in attendance. 15 A. I see. Okay. 16 Q. It says, "Commissioner Wynne 17 welcomed and introduced the new members of the 18 NAC." So from that, I'm drawing the conclusion 19 that you were, in fact, there. 20 A. Okay. 21 Q. So the fourth full paragraph down, 22 it says, "Mr. Fox would like a copy of the 23 recording of the April 9, 2014 NAC meeting and 24 again reiterated that on behalf of BEH, he would</p>	<p style="text-align: right;">52</p> <p>1 MR. SIMMS: Note my objection. 2 Go ahead. 3 A. Okay. I was always pretty much of 4 the opinion that BEH was interested in self 5 fueling. At what point that changed to FBO and 6 so on and so forth, I don't recall. The number 7 6,889 square feet was basically a number we had 8 come up with, the commissioners, which pretty 9 much replicated the space that they would have 10 had, had they been able to fuel on the apron of 11 their new hangar. 12 Q. Okay. But you knew, did you not, 13 at that time, that the 6,889 was not sufficient 14 to conduct a safe FBO operation? 15 A. No, I did not. That's not my 16 recollection at all. 17 Q. You didn't know that? 18 A. No. 19 Q. Well, you testified earlier that 20 you thought 15,000 square feet was not a safe 21 amount of square footage to conduct an FBO 22 operation, right? 23 A. Yes. 24 Q. Okay. So why is this different?</p>
<p style="text-align: right;">51</p> <p>1 like to accept the 6,889 square foot proposal." 2 Do you see that? 3 A. Yes. 4 Q. And was it your understanding that 5 there was an outstanding proposal to BEH in May 6 of 2014? 7 A. There was a proposal on the west 8 ramp. I can't certify to the dates, but -- 9 Q. Okay. And that was for a portion 10 of the west ramp, correct? 11 A. Correct. 12 Q. And the title of this heading says 13 BEH Lease/FBO Interest, right? 14 A. Yes. 15 Q. So you were aware of the fact at 16 that time, were you not, that BEH desired to 17 conduct FBO operations, right? 18 A. Yes. 19 Q. Okay. And is there some reason -- 20 what reason -- as you sit here today, what 21 reason or rationale do you have for the offering 22 of 6,889 square feet of space? 23 A. My recollection of my rationale at 24 the time was --</p>	<p style="text-align: right;">53</p> <p>1 A. Better location, corner lot. 2 Q. So the location of the lot makes a 3 difference? 4 A. Yes. The maneuverability of an 5 aircraft just lends itself to -- planes were 6 being fueled there, even at that point. 7 Q. Okay. Just so I understand your 8 testimony, was it your understanding that in May 9 of 2014 when the Commission offered 6,889 square 10 feet of space, that that was sufficient to 11 conduct a safe FBO operation, yes or no? 12 MR. SIMMS: Well, you can't 13 instruct him yes or no, but you can answer 14 the question. 15 Q. If you can answer it yes or no, 16 that would be great. If you can't, feel free to 17 expound. 18 A. Yes. 19 Q. The sixth paragraph of these 20 minutes say, "Mr. Shaughnessy commented that he 21 would like to see from BEH a balance sheet, an 22 income state and a cash flow analysis. Mr. 23 Sheehan also proposed from BEH: business plan, 24 cash flow analysis, market analysis, 12 months</p>

K
Kevin J. Shaughnessy
July 13, 2017

Shaughnessy

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No.
1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff,

vs.

FRANCIS T. MAGUIRE, ET AL.,

Defendant.

DEPOSITION of KEVIN J. SHAUGHNESSY

Thursday, July 13, 2017 - 10:06 a.m.

Held at: Pierce & Mandell, P.C.

11 Beacon Street, Suite 800

Boston, Massachusetts 02108

Kimberley J. Bouzan, CSR No. 153017	
Real Time Court Reporting	
One Monarch Place	9 Hammond Street
1414 Main Street	Worcester, MA 01610
Suite 1330	508-767-1157
Springfield, MA 01144	

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1 a small operation and later applied to rebuild a
2 hanger that was destroyed by weather; is that
3 correct?
4 A. I think maybe you're mixing Boston Air
5 Charter with --
6 Q. No. I'm talking about -- did I say
7 Boston Air Charter? I'm sorry. I meant Boston
8 Executive --
9 MR. SIMMS: I was kind of wondering.
10 BY MR. FEE:
11 Q. My apologize. Boston Executive
12 Helicopters.
13 A. Do you want to ask the other question?
14 Q. Sure. Let me ask you again. So is it
15 your understanding that at some point Boston
16 Executive Helicopters began its operations at the
17 airport and then sought to expand by rebuilding a
18 hanger that had been destroyed by weather? Is
19 that your recollection?
20 A. I -- honestly, I don't know. I know that
21 they bought the -- or they negotiated with Swift
22 Aviation to rebuild the hanger.
23 Q. And do you know when this was?
24 A. I don't remember.

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1 Q. Okay. At some point thereafter, did you
2 become aware of the fact that FlightLevel was
3 interested in leasing additional ramp space at
4 the airport?
5 A. Yes.
6 Q. And when was that?
7 A. I don't remember.
8 Q. Okay. Showing you a document that's been
9 marked as Exhibit 6. It appears to be a letter
10 dated September 1, 2010, to the members of the
11 Norwood Airport Commission of which you are
12 listed as one. Have you seen that before?
13 A. I don't remember.
14 Q. Well, does looking at this document
15 refresh your recollection as to when Boston
16 Executive Helicopters first expressed its
17 interest to the Norwood Airport Commission in
18 leasing space or additional space at the airport?
19 A. It's dated September 1, 2010, so I don't
20 remember it.
21 Q. Is it consistent with your understanding
22 or your recollection that as far back as 2010
23 Boston Executive Helicopters was seeking to lease
24 ramp space at the airport?

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1 A. I don't remember this.
2 Q. Okay. I'm going to show you the next
3 document that's been marked as Exhibit 7. It
4 appears to be an e-mail to Mr. Maguire from
5 Mr. Donovan dated March 12, 2014.
6 I'm looking at Exhibit 7 now.
7 A. Okay.
8 Q. Have you seen this before?
9 A. I don't know.
10 Q. At any point did Mr. Maguire communicate
11 to you or any member of the commission regarding
12 BEH's desire -- stated desire to lease additional
13 ramp space at the airport?
14 MR. SIMMS: Can you read that one back,
15 please.
16 (Whereupon the prior question was read
17 back.)
18 A. At any point at all? Ever?
19 BY MR. FEE:
20 Q. Yes.
21 A. Well, we've been having ongoing
22 negotiations with them for years on space on the
23 west apron.
24 Q. When was the first time that Mr. Maguire

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1 informed you or any member of the commission that
2 BEH desired to lease additional space at the
3 airport?
4 A. I don't remember.
5 Q. You don't have any recollection of when
6 it first came up as an issue?
7 A. It's been years.
8 Q. Okay. I'm going to show you a document
9 that's been marked as Exhibit 8. This appears to
10 be -- it's a two-page document. It appears to be
11 the agenda for the March 12, 2014, meeting, and
12 then the second page is the executive session
13 meeting minutes. Have you seen this before?
14 A. I don't remember it, but I'm sure I have.
15 Q. Okay. Is it one of the documents --
16 A. We would have --
17 Q. I'm sorry. Go ahead.
18 A. We would have approved these minutes.
19 Q. Is this one of the documents that you
20 reviewed with your counsel prior to the
21 deposition?
22 A. I don't remember.
23 Q. Okay. On the first page of Exhibit 8 it
24 sets forth the agenda and it doesn't mention --

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1 I'm sorry. Let me show you the first page.
2 It doesn't mention anything about any
3 FlightLevel leases; does it?
4 A. The tentative agenda items?
5 Q. Correct.
6 A. What doesn't it mention?
7 Q. Anything about FlightLevel leases.
8 A. Correct. This particular thing does not
9 mention anything about FlightLevel leases.
10 Q. Okay. And on the second page in the
11 executive session meeting minutes, it states that
12 "On a motion made by Mr. Shaughnessy and seconded
13 by Mr. Odstrchel, the commission voted 3 to 0 to
14 extend leases on Lot 5, 6, 7, A, B, and C in
15 favor of FlightLevel." Correct?
16 A. In favor of FlightLevel?
17 Q. To lease to FlightLevel those lots.
18 A. Yes.
19 Q. Okay. And at this point in time were you
20 clerk of the commission?
21 A. I don't remember.
22 Q. At what point -- do you know when you
23 became clerk?
24 A. I don't remember.

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1 Q. Okay. So --
2 A. It says I was clerk on the minutes.
3 Q. Okay. So as --
4 A. Can I clarify?
5 Q. Sure.
6 A. You're asking me -- you asked me to read
7 the agenda items for the open meeting?
8 Q. Yes.
9 A. Okay. That was the open session?
10 Q. Correct. And there was no mention -- is
11 there a separate agenda for executive session?
12 A. Typically executive session is to
13 discuss, you know -- to discuss -- we don't have
14 an agenda typically.
15 Q. So there's no public notice issued by the
16 commission regarding the items that are to be
17 discussed in executive session; is that fair to
18 say?
19 A. Not that I'm aware of.
20 Q. And as clerk, what are your duties?
21 A. I -- typically, I don't really do
22 anything extra. I read what I'm supposed to
23 read.
24 Q. So it's not -- as clerk, it's not your

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1 responsibility to prepare meeting minutes or
2 agendas?
3 A. Russ is required to store the minutes.
4 My understanding is I read the minutes and then
5 Russ archives the minutes. That's really what
6 I --
7 Q. Who prepares the minutes?
8 A. The -- we call her a secretary. She's
9 the clerk. The person who takes the minutes when
10 we're at the meetings.
11 Q. And what's her name?
12 A. Sorry. I don't know.
13 Q. That's okay. Has it been the same person
14 for years?
15 A. No.
16 Q. And who was it in 2014?
17 A. I don't remember.
18 Q. Is it the same person that it is now?
19 A. No.
20 Q. Do you know when it changed?
21 A. No.
22 Q. When that transcriber changed?
23 A. No.
24 Q. So I take it from the minutes that you

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1 were present at this meeting on March 12, 2014;
2 is that fair to say?
3 A. Yes.
4 Q. Okay. And you made the motion to
5 authorize FlightLevel's extension of leases on
6 Lots 5, 6, 7, A, B, and C. Correct?
7 A. Could you repeat that?
8 Q. Sure. You made the motion to extend
9 FlightLevel's leases on Lots 5, 6, 7, A, B and C.
10 Correct?
11 A. Yes.
12 Q. Okay. Do you recall any discussion that
13 took place during the executive session regarding
14 the vote to extend FlightLevel's leases on Lots
15 5, 6, 7, A, B, and C?
16 A. No.
17 Q. Do you recall what, if any, materials you
18 may have reviewed in connection with the decision
19 to extend FlightLevel's leases on lots 5, 6, 7,
20 A, B, and C?
21 A. No.
22 Q. Do you know why the commission voted in
23 May of 2014 to extend FlightLevel's leases on
24 those six lots?

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1 A. I don't understand that. Why we did it?
2 Q. Yes. Do you have any understanding of
3 why the commission took this vote in May of 2014?
4 A. To confirm the lease with FlightLevel.
5 Q. Okay. And it was in response to
6 FlightLevel's request?
7 A. Yes.
8 Q. And was it made with -- was there any
9 discussion regarding the application of the FAA
10 ruling issued in 2010 regarding the commission's
11 obligation to refrain from granting long-term
12 leases to entities that would have control over a
13 majority of space on the federally funded ramps?
14 A. I don't recall.
15 Q. You don't recall discussing at all the
16 FAA --
17 A. I don't recall discussing it. I don't
18 recall the terms of the lease.
19 Q. Okay. Do you recall any discussions that
20 you may have had with Mr. Eichleay regarding his
21 desire for the commission to extend his leases on
22 the six lots in May of 2014?
23 A. Who?
24 Q. Eichleay. Peter Eichleay.

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1 A. No.
2 Q. Am I saying that incorrectly?
3 A. I just didn't catch --
4 Q. Okay.
5 A. Sorry.
6 Q. That's okay. Showing you a document
7 that's been marked as Exhibit 40. It appears to
8 be a letter dated January 22, 2014, to the
9 Norwood Airport Commission from Mr. Eichleay.
10 Have you ever seen that before?
11 A. I don't recall.
12 Q. Does it refresh your recollection in any
13 way regarding the reason that the commission took
14 the vote on May -- I'm sorry -- on March 12,
15 2014, that we've been discussing?
16 A. No.
17 Q. I'm going to turn your attention to
18 Exhibit 41. It appears to be an e-mail from Mr.
19 Eichleay to Mr. Maguire. And it says -- and it's
20 dated March 5, 2014.
21 It says "We are requesting a simple
22 letter of intent from the airport commission
23 indicating the mutual desire to extend our leases
24 such that we have the necessary term to amortize

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1 our upcoming airport investments." Did I read
2 that correctly?
3 A. Yes.
4 Q. So does this refresh your recollection as
5 to the reason why the commission voted as it did
6 on March 12, 2014, to extend the six leases for
7 FlightLevel?
8 A. No.
9 Q. Showing you an exhibit that's been marked
10 as Exhibit 44. It appears to be a letter from
11 Mr. Maguire to Mr. Eichleay dated April 15, 2014,
12 confirming the commission's decision to extend
13 the leases on Lots 5, 6, 7, A, B, and C. Have
14 you ever seen this before?
15 A. I don't remember.
16 Q. Does it refresh your recollection in any
17 way regarding the reason that the commission took
18 the March 12, 2014, vote to extend the
19 FlightLevel leases on the six lots?
20 A. No.
21 Q. At this point in time -- and I'm talking
22 specifically between March and April 2014 -- did
23 you have an opinion regarding the economic
24 viability of FlightLevel?

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1 A. I don't remember.
2 Q. Did you consider in any way the economic
3 situation at the airport and whether or not it
4 was a good thing for the airport to extend
5 FlightLevel's leases for a long-term basis?
6 A. I don't remember.
7 Q. You don't remember doing any kind of
8 analysis regarding the economic impact of
9 extending FlightLevel's leases on the airport?
10 A. I don't remember.
11 Q. Okay. The meeting minutes you said are
12 prepared by a stenographer and then reviewed by
13 the commissioners; is that correct?
14 A. Yes.
15 Q. Okay. And what level of detail do you
16 believe is appropriate for minutes of meetings?
17 MR. SIMMS: Objection. Beyond the scope
18 and beyond a layperson's testimony. Go ahead.
19 MR. FEE: It's a fair question.
20 BY MR. FEE:
21 Q. Go ahead.
22 MR. SIMMS: I'm just making the
23 objections.
24 A. I can say I believe the detail we've been

<p style="text-align: right;">Page 50</p> <p>1 doing is sufficient.</p> <p>2 BY MR. FEE:</p> <p>3 Q. And do you recall that the detail that's</p> <p>4 included in the minutes accurately reflects the</p> <p>5 discussions that take place at the meetings?</p> <p>6 A. Yes.</p> <p>7 Q. And do you think that was the case in</p> <p>8 2014 and 2015?</p> <p>9 A. I don't remember.</p> <p>10 Q. Okay. Well, I'm just trying to</p> <p>11 understand if there are things that are discussed</p> <p>12 in the meetings that aren't necessarily reflected</p> <p>13 in the minutes. Does that occur?</p> <p>14 A. We -- in general, we -- we're given the</p> <p>15 minutes before the -- the minutes of the</p> <p>16 meeting -- say we had a meeting last month.</p> <p>17 Before the next meeting, we'd be given the</p> <p>18 minutes to review. We look at them and if we</p> <p>19 have any issues with them or problems, we bring</p> <p>20 it up at the meeting and we ask for corrections.</p> <p>21 And then we table it until the next meeting.</p> <p>22 Q. Okay. And is it generally your practice</p> <p>23 to approve meeting minutes within several months</p> <p>24 of the meeting actually -- the meeting that the</p>	<p style="text-align: right;">Page 52</p> <p>1 ask you --</p> <p>2 I'm aware there's an instance where the</p> <p>3 recording failed. I'm not sure if it was</p> <p>4 specifically that date, but there was one time</p> <p>5 when the -- the woman didn't have the recording</p> <p>6 and it's -- it just kind of -- is that the</p> <p>7 instance you're talking about?</p> <p>8 Q. I'm talking about September 30, 2015.</p> <p>9 A. I couldn't recall that specifically.</p> <p>10 Q. So the one instance that you can recall,</p> <p>11 though, is an instance where the recording device</p> <p>12 failed. Is that your testimony?</p> <p>13 A. Yes.</p> <p>14 Q. And do you know when that was?</p> <p>15 A. I'm -- I don't.</p> <p>16 Q. Do you recall what happened at that</p> <p>17 meeting?</p> <p>18 A. I don't remember specifically when the</p> <p>19 meeting was.</p> <p>20 Q. Just so I understand your testimony. The</p> <p>21 minutes are transcribed by the stenographer,</p> <p>22 given to Russ. Russ gives them to the members of</p> <p>23 the commission prior to the next meeting. A</p> <p>24 discussion ensues and either they're voted on or</p>
<p style="text-align: right;">Page 51</p> <p>1 minutes are for?</p> <p>2 A. Typically.</p> <p>3 Q. Okay. And are there any instances where</p> <p>4 you can think that meeting minutes are not</p> <p>5 approved within a prompt timely basis?</p> <p>6 A. Yes.</p> <p>7 MR. SIMMS: Objection. Go ahead. You</p> <p>8 can answer.</p> <p>9 BY MR. FEE:</p> <p>10 Q. What example can you think of?</p> <p>11 A. Sometimes there will be corrections.</p> <p>12 Sometimes members who were there for the minutes</p> <p>13 aren't at the next meeting, and we'll typically</p> <p>14 wait for them to be there to approve.</p> <p>15 Q. Are you aware of any instances where</p> <p>16 meeting minutes have remained unapproved for an</p> <p>17 extended period of time?</p> <p>18 A. Can you describe "extended"?</p> <p>19 Q. More than a year.</p> <p>20 A. I'm not aware of that.</p> <p>21 Q. Do you know why there's never been any</p> <p>22 approved minutes for the September 30, 2015,</p> <p>23 meeting?</p> <p>24 A. This would have to be -- I think -- can I</p>	<p style="text-align: right;">Page 53</p> <p>1 tabled and generally approved within a couple of</p> <p>2 months. Is that the usual practice?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. At some point did you become aware</p> <p>5 of the fact that Boston Executive Helicopters had</p> <p>6 filed a Part 13 Complaint with the FAA?</p> <p>7 A. Yes.</p> <p>8 Q. When was that?</p> <p>9 A. I don't remember.</p> <p>10 Q. What's your understanding of what a Part</p> <p>11 13 Complaint is?</p> <p>12 A. I honestly don't remember when it was.</p> <p>13 Q. What's your understanding of what a Part</p> <p>14 13 Complaint is?</p> <p>15 A. I don't know.</p> <p>16 Q. You don't know what a Part 13 Complaint</p> <p>17 is?</p> <p>18 A. He went to the --</p> <p>19 Q. I'm sorry. I'm not asking specifically</p> <p>20 about the BEH complaint. I'm asking in general</p> <p>21 what you understand a Part 13 Complaint to be.</p> <p>22 A. He filed the complaint with the FAA. I</p> <p>23 believe that particular one was being treated</p> <p>24 unfairly or something like that.</p>

Peter W. Eichleay
May 31, 2017

Eichleay

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No.
1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff,

vs.

FRANCIS T. MAGUIRE, ET AL.,

Defendant.

DEPOSITION of PETER W. EICHLEAY

Wednesday, May 31, 2017 - 10:00 a.m.

Held at: Pierce & Mandell, P.C.

11 Beacon Street, Suite 800

Boston, Massachusetts 02108

Kimberley J. Bouzan, CSR #153017

REALTIME COURT REPORTING

One Monarch Place

1414 Main St.-Suite 1330

Springfield, MA 01144

9 Hammond Street

Worcester, MA 01610

508-767-1157

1 went out and measured and we didn't see this as
2 incriminating at all.
3 Q. Why is that?
4 A. Because it was outside the setback.
5 Q. Meaning is the airplane located outside
6 the setback?
7 A. The fueling vent.
8 Q. Vent.
9 A. Yeah. I thought you said bent as in
10 "bravo."
11 Q. And where is the fueling vent located in
12 the photograph? You can mark it with an X, if
13 you like.
14 A. I don't know where it is. I wasn't the
15 expert on -- it's a Bonanza.
16 Q. What's a Bonanza?
17 A. That's the kind of aircraft.
18 Q. Okay. So the vent is located on the
19 aircraft?
20 A. Correct.
21 Q. Okay.
22 A. Typically on the wing.
23 Q. Okay.
24 MR. FEE: I just need a couple of minutes

1 and I think we'll finish up.
2 (Recess taken at 2:53 p.m.)
3 (Deposition resumed at 3:00 p.m.)
4 (Exhibit No. 91 marked for
5 identification.)
6 BY MR. FEE:
7 Q. So Mr. Eichleay, I'm showing you a
8 document that's been marked as Exhibit 91. It
9 appears to be an article in the Norwood Record,
10 October 26, 2016. And about three-quarters down
11 the page, it's quoting you. It says -- well, the
12 article says:
13 (As read) "He also said FlightLevel has
14 met both conditions set forth by the commission.
15 Eichleay said the first condition was to begin
16 construction of the hangar complex by 2017. The
17 second condition was to have the sublease for Lot
18 5 reviewed by the FAA by 2017."
19 Did I read that correctly?
20 A. I can't vouch for the accuracy of that.
21 Q. I'm asking you if I read correctly.
22 A. Yes, you read it correctly.
23 Q. And my question is: Were you correctly
24 quoted?

1 A. I don't think so.
2 Q. Okay. And why were you incorrectly
3 quoted?
4 A. I'd have to see the video from the
5 commission meeting, but I'm just telling you I
6 don't think I said that exactly.
7 Q. And that's perfectly understandable.
8 MR. HARTZELL: Wouldn't be the first time
9 in recorded quotes -- alleged quotes in a
10 newspaper article.
11 BY MR. FEE:
12 Q. And okay. So you're not sure that that's
13 an accurate quote. But is it your understanding
14 that the leases were reviewed by the FAA or at
15 least for Lot 5?
16 A. No.
17 Q. At any time?
18 A. I don't know.
19 Q. Do you know if the FAA typically reviews
20 leases in this context?
21 MR. SIMMS: Objection. Go ahead.
22 A. I can tell you at our other airports we
23 operate, the -- I don't believe the FAA reviews.
24 BY MR. FEE:

1 Q. All right.
2 MR. FEE: I don't have any further
3 questions.
4 EXAMINATION
5 BY MR. SIMMS:
6 Q. Peter, do you know who the current
7 members are in the Norwood Board of Selectmen?
8 I thought you'd have that look of
9 exasperation.
10 A. I couldn't name them all.
11 Q. I'm going to name them for you. And my
12 question after is going to be the following: Are
13 you currently friendly on a personal level with
14 any members of the Norwood Board of Selectmen?
15 The members are as follows: William
16 Plasko, Helen Abdallah, Paul Bishop, Allan
17 Howard, Thomas Maloney.
18 A. No.
19 Q. Are you a personal friend of Mike Lyons?
20 A. No.
21 Q. Are you a personal friend of any former
22 member of the Norwood Board of Selectmen? Anyone
23 who served, let's say, within the last five
24 years?

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FlightLevel lobbies for three lease extensions

October 26, 2016 | By Christopher Roberson



FLIGHTLEVEL
AVIATION
Norwood, MA (KOWD)

The Airport Commission voted unanimously to acknowledge notification of extending the leases on lots 6 and 7 to 2047 and to extend the lease of Lot 5 to 2050.

During the Oct. 19 meeting, Peter Eichleay, president of FlightLevel Aviation, said lease extensions for the three lots would be necessary for FlightLevel to complete construction of its six-unit hangar complex.

"We're hoping to be completed within six to eight weeks," he said, adding that the construction will be done in a strategic manner. "All the material is going to arrive in stages."

The leases for lots 6 and 7 were originally set to expire in 2026.

Eichleay said the total size of the complex will be 20,385 square feet and will be funded by a \$2.5 million investment from FlightLevel.

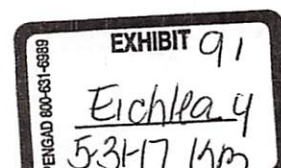
"This process started back in 2014," said Eichleay. "With the amount of money going into it, that's the impetus for the lease extension."

He also said FlightLevel has met both conditions set forth by the commission.

Eichleay said the first condition was to begin construction of the hangar complex by 2017. The second condition was to have the sublease for Lot 5 reviewed by the Federal Aviation Administration (FAA), also by 2017.

Eichleay said he is also planning to tear down and rebuild the T-hangars.

He told the commission that over the past two years, FlightLevel has invested more than \$3 million into improving the airport. With more projects in the works, Eichleay said he plans on investing another \$3 million by 2022.



Since Lot 6 will be used for fueling, Vice Chairman Michael Sheehan said the project's fueling plan would need to be approved by an engineer before it can be included in the overall site plan.

However, Sheehan had no other concerns.

"It's exciting, there's some really good things going on," he said.

Chairman Mark Ryan said the airport still offers "favorable lease rates" as there would only be a 2 percent increase from \$.47 to \$.56 per square foot by 2026.

In other news, Jeffrey Adler, senior project manager for Dubois and King, provided an update on the relocation of Taxiway A. He said the final paperwork was submitted through the Massachusetts Environmental Policy Act and expects to receive feedback by Nov. 23 and have the final certification issued by Dec. 5.

"That pretty much completes Phase One," said Adler. "It's a major hurdle, getting through that finally."

Once the final certification is granted, he said the permitting process can begin on the project itself. He also said a Notice of Intent will need to be filed as well.

Adler said the permitting process will last until the end of 2017; therefore, construction is expected to begin by the summer of 2018.

Airport Manager Russell Maguire said the FAA reconsidered and removed the Operational Agreement that was originally included in the Memorandum of Agreement. He said the Operational Agreement had stated that it was the town's responsibility to renovate the air traffic control tower.

"The concern was the town of Norwood would face unforeseen financial obligations to upgrade the air traffic control tower," said Maguire.

However, after further discussions with the FAA, Maguire said it was determined that the tower is owned by the Federal Government.

Maguire also said he intends to apply for an Airport Safety Management grant to fund new markings on the runways. He anticipates that project will begin by late spring or early summer of next year.

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Call **SUSAN YANDELL AT 781-769-1725**
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<http://www.norwoodrecord.com/22994/246024/a/flightlevel-lobbies-for-three-lease-extensions>