

VOLUME II
EXHIBITS 500-547

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT NO.
1582CV00213

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

Plaintiffs,

vs.

FLIGHTLEVEL NORWOOD, LLC;
EAC REALTY TRUST II; and
PETER EICHLEAY,

Defendants.

DEPOSITION of MARK RYAN

Wednesday, July 18, 2018 - 9:18 a.m.

Held at: Pierce Mandell, P.C.

11 Beacon Street

Boston, Massachusetts 02108

Kimberley J. Bouzan, CSR No. 153017	
Real Time Court Reporting	
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1 (Exhibit No. 517 marked for
2 identification.)
3 BY MR. FEE:
4 Q. 517 appears to be an e-mail from Mr. Fox
5 to Mr. Moss dated February 5, 2014. Did Mr. Moss
6 forward this to you?
7 A. I don't recall.
8 Q. Was it your understanding that in
9 February of 2014, Mr. Fox, BEH's attorney, was
10 communicating with Mr. Moss regarding BEH's
11 request for leased space at the airport on which
12 to conduct commercial fueling operations?
13 A. Repeat that, please.
14 Q. Sure. Was it your understanding that in
15 February of 2014, Mr. Fox, who is BEH's attorney,
16 was communicating with town counsel, Brandon
17 Moss, regarding BEH's request to lease space from
18 the NAC on which to conduct commercial fueling
19 operations?
20 A. According to this e-mail, yes.
21 Q. Did you discuss that request with
22 Mr. Moss?
23 A. I don't recall.
24

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1 (Exhibit No. 518 marked for
2 identification.)
3 BY MR. FEE:
4 Q. Have you seen 518 before?
5 A. Yes, I have.
6 Q. Did you receive it in or about
7 February 12, 2014?
8 A. Yes.
9 Q. And did you ask Mr. Moss to provide you
10 and the airport commission with an analysis
11 regarding BEH's request to conduct fixed-based
12 operator business at Norwood Memorial Airport?
13 A. We requested Brandon Moss to do a legal
14 review of correspondence from BEH. Yes.
15 Q. Why was that?
16 A. I do not recall.
17 MR. SIMMS: Objection. Go ahead.
18 BY MR. FEE:
19 Q. Well, on the top of the second page, he
20 says "BEH has raised the specter of Grant
21 Assurance 23 ("Exclusive Rights") in support of
22 its request for ramp space."
23 Do you see that?
24 A. I do.

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1 Q. And is that the reason that this was
2 referred to town counsel for his opinion?
3 A. I don't recall.
4 Q. Okay. Now, there's a discussion
5 throughout this regarding the legalities of the
6 exclusive use doctrine. And I would turn your
7 attention to Mr. Moss' inclusions on the final
8 page where he says, and I quote:
9 "Absent demonstration that no other
10 available and suitable site for an FBO exists at
11 the airport, BEH cannot demonstrate an exclusive
12 right was conferred," and he cites a case.
13 He continues "BEH has also not
14 demonstrated that NAC will preclude all available
15 sites for development of its full-scale FBO," and
16 then he cites a case.
17 And then he says "If the NAC provides BEH
18 with an opportunity for space on the airport for
19 its proposed full-scale FBO at a future time, BEH
20 should be unable to demonstrate an exclusive
21 right was conferred upon the existing FBO at the
22 airport."
23 Do you see that?
24 A. I do.

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1 Q. And did you discuss this with the airport
2 commission? This sentence that I just read.
3 A. I don't recall.
4 Q. Did you discuss it with Mr. Maguire?
5 A. I do not recall.
6 Q. Was it your understanding that if the NAC
7 offered BEH some amount of space that it would
8 insulate itself from potential liability for a
9 grant assurance violation?
10 A. No.
11 Q. Did the NAC proceed in dealing with BEH
12 with the knowledge that an exclusive use
13 violation could be asserted if it did not offer
14 them space?
15 A. No.
16 Q. Did you consider at all, in evaluating
17 BEH's request for space to conduct commercial
18 operations at the airport, the prior
19 determination by the FAA in the Boston Air
20 Charter case?
21 A. Repeat that.
22 Q. Did you consider at all, in evaluating
23 BEH's request for leased space to conduct
24 commercial fueling operations, the FAA's prior

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1 determination in the Boston Air Charter, Part 16
2 Complaint?
3 A. I don't recall.
4 Q. Were you aware, when you were considering
5 BEH's FBO request and -- FBO application and
6 request for space to lease, of the corrective
7 action plan that had been agreed to with the FAA
8 in connection with the Boston Air Charter, Part
9 16 Complaint?
10 A. Yes.
11 Q. Okay. And what was your understanding of
12 what that corrective action plan required of the
13 NAC?
14 A. One of them being no long-term leases on
15 land that doesn't have building improvements on
16 it or large investment on it, tie-down areas
17 specifically, and a maximum of a five-year term
18 for the lease. No long-term leases.
19 Q. And there was also a requirement that all
20 leases contain a recapture clause; right?
21 A. That I don't know.
22 Q. So the date of this is -- the date of
23 Exhibit 518 is February 12, 2014. What action,
24 if any, did the NAC take in response to

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1 Mr. Moss' memorandum? Do you recall?
2 A. I do not recall.
3 (Exhibit No. 519 marked for
4 identification.)
5 BY MR. FEE:
6 Q. 519 is a letter from Mr. Maguire to
7 Mr. Donovan dated March 17, 2014. Have you seen
8 that before?
9 A. Yes.
10 Q. And this contains the first lease offer
11 to BEH from the NAC. Correct?
12 A. Correct.
13 Q. And it's for an 83-by-83-foot space on
14 the west apron. Correct?
15 A. Correct.
16 Q. And what, if any, discussion did the NAC
17 engage in in determining the size of the parcel
18 to be offered on the west apron?
19 A. The discussion was since BEH did not have
20 the ability to fuel its aircraft on its
21 leasehold, there was an area determined that --
22 that they were unable to use. We replicated that
23 on the west apron so BEH could fuel its aircraft
24 there.

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1 Q. Was it your understanding, in March of
2 2014, that BEH was seeking to self-fuel?
3 A. I don't recall.
4 Q. Well, we've talked about a variety of
5 prior exhibits where I asked you whether or not
6 you were aware of the fact that BEH was
7 requesting space for the purpose of conducting
8 commercial fueling operations; right?
9 A. Correct.
10 Q. And you answered "yes" to those
11 questions. Correct?
12 MR. SIMMS: Objection. Go ahead.
13 A. Correct.
14 BY MR. FEE:
15 Q. And commercial fueling operations means
16 selling fuel to other people; right?
17 A. Correct.
18 Q. So was it your understanding, when the
19 NAC made the offer contained in the March 17,
20 2014, correspondence, that it was offering BEH
21 leased space on which to conduct commercial
22 fueling operations where it would sell fuel to
23 other people -- other entities?
24 A. I don't recall at that time if it was

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1 commercial or self. I mean, there were so many
2 dates, but it was an area for them to fuel
3 because they couldn't fuel on their leasehold.
4 MR. SIMMS: Can I just point out
5 something in the cover letter?
6 MR. FEE: Sure.
7 A. Excuse me. Correct.
8 BY MR. FEE:
9 Q. So your counsel has just pointed you to
10 the second paragraph of the March 17, 2014,
11 letter where it talks about a fixed-based
12 operator. Does that refresh your recollection as
13 to whether or not the commission was offering
14 space to BEH on March 17, 2014, on which to sell
15 fuel to others?
16 A. Correct.
17 Q. Okay. And I'm not sure I understand your
18 prior answer about the investigation or analysis
19 that the NAC did in determining the size of the
20 parcel to be offered. You said that you were
21 trying to -- you used the word "replicate."
22 Can you explain that to me? What you
23 mean by replicating space.
24 A. The area to the east of BEH's hangar was

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1 not available to them because there was the lease
2 and easement litigation between FlightLevel and
3 BEH. So we elected to help out BEH by offering
4 them that leased area so they could use their
5 fueling system.

6 Q. And you were aware that BEH was desirous
7 of a much larger parcel to lease from the
8 airport. Correct?

9 A. We were told any part or all of the west
10 apron by BEH's attorney.

11 Q. Okay. Isn't it fair to say that at the
12 April 2014 meeting Mr. Fox advised you that the
13 size of the parcel offered was not sufficient to
14 conduct a safe FBO operation?

15 A. Correct.

16 Q. Okay. And you were aware of prior
17 letters from the commission, signed by Mr. Wynn,
18 in which he opined that he thought 25,000 square
19 feet was not sufficient to conduct a safe FBO
20 operation in referencing the DC3 ramp. Correct?

21 MR. HARTZELL: Objection.

22 MR. SIMMS: Objection. Go ahead.

23 A. It's 15,000 square feet not 25,000, the
24 DC3. And I'm aware of that letter, yes.

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1 BY MR. FEE:

2 Q. And did you agree with that letter or
3 not?

4 A. That a full-sized FBO could not function
5 solely on DC3. Meaning, building, fueling
6 station, parking aircraft could not all fit on
7 that 15,000 square feet.

8 Q. You agreed with that?

9 A. Yes.

10 Q. And now, we talked earlier about your
11 testimony in the deposition that you thought that
12 BEH never accepted the lease offer that has been
13 marked as Exhibit 519. And then you -- and then
14 there were some facts that were caveats to that
15 response.

16 So I just want to show you Exhibit 350
17 which appears to be a letter from Mr. Fox to
18 Mr. Moss dated May 13, 2014. Have you seen this
19 before?

20 A. Yes.

21 Q. Let me rephrase that. Have you seen this
22 before?

23 A. Yes, I have.

24 Q. And did you receive this letter on or

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1 about May 13, 2014?

2 A. Yes.

3 Q. Okay. So you were aware that BEH had
4 communicated its -- after the meeting in April of
5 2014, BEH communicated its assent in writing to
6 the terms of the lease contained in
7 Exhibit 519. Correct?

8 A. Correct.

9 Q. Okay. And at that meeting, there was a
10 motion made to withdraw the first lease offer.
11 Correct?

12 A. The first lease offer was taken off the
13 table. Yes.

14 Q. Right. Okay.

15 (Exhibit No. 520 marked for
16 identification.)

17 BY MR. FEE:

18 Q. I'm showing you a document that's been
19 marked as Exhibit 520. It appears to be an
20 e-mail dated March 12, 2014, to Mr. Maguire from
21 Mr. Donovan. Have you seen this before?

22 A. I don't recall.

23 Q. Okay. The first line in the e-mail says
24 that "Since 2010 I have requested access to land

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1 and space available here at Norwood Airport. In
2 accordance with that open request, I make a
3 request for negotiations of the lease of Lots A,
4 B, C at Norwood Airport."

5 Do you see that?

6 A. I do.

7 Q. So is it safe to infer that as of
8 March 12, 2014, you were aware of BEH's request
9 to lease Lots A, B, and C?

10 A. Per this e-mail, yes.

11 Q. Okay. Did you consider that request?

12 A. I don't recall.

13 Q. Do you know if it was discussed in any
14 public meeting?

15 A. I don't recall.

16 Q. Okay.

17 (Exhibit No. 521 marked for
18 identification.)

19 BY MR. FEE:

20 Q. Exhibit 521 are the meeting minutes from
21 the March 12, 2014, meeting. The correspondence
22 list does not appear to include a copy of
23 Mr. Donovan's e-mail that was marked as
24 Exhibit 520, and there doesn't seem to be any

1 discussion regarding Mr. -- I'm sorry -- BEH's
2 request to lease Lots A, B, and C. Is that fair
3 to say?

4 A. It appears that e-mail is one hour after
5 this airport commission meeting.

6 Q. Right. Good point. Okay.

7 In the executive session minutes -- let
8 me go back.

9 Were you aware of BEH's desire to lease
10 any and all space it could get from the NAC in or
11 about March of 2014?

12 A. I don't recall that.

13 Q. Okay. Do you know if BEH had sent
14 correspondence to Mr. Maguire or the airport
15 commission requesting space to lease from the
16 airport for conducting commercial fueling
17 operations?

18 A. I don't recall.

19 Q. I'm going to show you documents that have
20 been marked as Exhibits 514, 515, 516, and 517.
21 I'll ask you the question again. Were you aware,
22 prior to the March 2014 meeting, that BEH was
23 requesting to lease space at Norwood Airport for
24 the purposes of conducting commercial fueling

1 operations?

2 A. Per these e-mails, they were looking for
3 additional space.

4 Q. Okay.

5 A. Correct.

6 Q. And so back to 521. At the meeting that
7 was held on March 12, 2014, there was no
8 discussion regarding BEH's request to lease
9 space. Correct?

10 MR. HARTZELL: Objection.

11 BY MR. FEE:

12 Q. Strike that.

13 Under "New Business" on page 3 -- page 4
14 of the document, there's a discussion regarding
15 the west apron and Mr. Fox requesting all or part
16 of the west apron. Do you see that?

17 A. I do.

18 Q. And then in the executive session, the
19 NAC voted to extend, on a long-term basis, the
20 lease for Lot 5 and on a shorter term basis, the
21 leases for Lots A, B, and C; is that correct?

22 A. Correct.

23 Q. Okay. And that was done without any
24 public notice. Correct?

1 MR. HARTZELL: Objection.

2 A. Lot 5 was an extension of an existing
3 lease because they're going to be doing some
4 improvements on it as well as Lot 6.

5 BY MR. FEE:

6 Q. My question, though, was whether or not
7 the actions taken in executive session on
8 March 12, 2014, were done with any public notice.

9 A. I don't recall.

10 Q. Well, the document that you have in front
11 of you contains the agenda, which is the -- I'm
12 sorry -- the official notice of the meeting and
13 then the agenda is also the second page of the
14 document.

15 So does that refresh your recollection as
16 to whether any public notice whatsoever was given
17 with respect to the NAC's decision, at executive
18 session in March 2014, to extend the leases of
19 FlightLevel on Lots 5, A, B, and C?

20 A. It was not listed in the meeting agenda.

21 Q. Are you aware of any other public notice
22 that might have been given regarding that action
23 taken by the board or the commission?

24 A. I do not.

1 Q. Okay. Now, did Mr. Hues have some
2 questions for you regarding that action? The
3 vote in executive session on March of 2014 to
4 extend those leases without public notice.

5 MR. HARTZELL: Objection.

6 A. I don't believe Mr. Hues was on the
7 commission.

8 BY MR. FEE:

9 Q. Okay.

10 (Exhibit No. 522 marked for
11 identification.)

12 BY MR. FEE:

13 Q. I'm showing you a document that's been
14 marked as 522. Mr. Hues may not have been on the
15 commission at the time of the March vote, but I'm
16 showing you a document that appears to be an
17 e-mail from him to you dated October 8, 2014.
18 Have you seen this before?

19 A. Yes.

20 Q. Okay. And he appears to be discussing a
21 meeting that occurred on October 8th where the
22 leases were formally signed. Do you recall that?

23 A. Yes.

24 Q. Okay. So in the first sentence of

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1 Mr. Hues' e-mail he says "I want to ask you again
2 why we did not RFP the south ramp."
3 Do you see that?
4 A. I do.
5 Q. And what does the south ramp include?
6 Does the south ramp include Lots 5, 6, and 7 or
7 A, B, and C?
8 A. I would say A, B, C.
9 Q. And so he's asking why there was no RFP
10 for that; right?
11 A. Correct.
12 Q. And in your response you say "Oulton, we
13 did not RFP the south ramp because it was already
14 leased to a tenant, and the NAC voted to extend
15 the lease once it expires. I supported the
16 extension because they have been an excellent
17 tenant."
18 Do you see that?
19 A. I do.
20 Q. And is that an accurate description of
21 the reason that the NAC -- or why you, as a
22 member of the NAC, voted to extend the leases for
23 FlightLevel without considering an RFP process?
24 A. Yes.

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1 Q. Okay. And was it your belief, as a
2 member of the commission, that if someone was or
3 an entity was an excellent tenant, an RFP process
4 was not necessary for the decision to extend
5 their lease?
6 MR. HARTZELL: Objection.
7 MR. SIMMS: Objection.
8 A. At that time I did not think an RFP was
9 necessary.
10 BY MR. FEE:
11 Q. But you knew, did you not, that BEH was
12 requesting ramp space at the airport.
13 A. From those e-mails, correct.
14 Q. Okay. And I'm trying to understand,
15 given that knowledge that there was another
16 entity seeking leased space, why you determined
17 that an RFP for the south ramp was not necessary.
18 A. FlightLevel was a good tenant there and,
19 you know, as stated here, my support was because
20 they're an excellent tenant.
21 Q. And we discussed this before. The BAC --
22 the determination of the FAA in the Boston Air
23 Charter's Part 16 Complaint led to a corrective
24 action plan. Correct?

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1 A. Correct.
2 Q. And part of that corrective action plan
3 required the NAC to refrain from entering into
4 long-term leases that would cause one party to
5 have control over a majority of the
6 publicly-funded or federally-funded ramps at the
7 airport. Correct?
8 A. To have control over an area for an
9 extended period. Correct.
10 Q. And so part of the corrective action plan
11 that the NAC agreed to was to refrain from
12 entering into such long-term leases. Correct?
13 A. Correct.
14 Q. Yet at the March 2014 meeting, in
15 executive session, the commission voted to extend
16 the Lot 5 lease until 2047 or 2050. Correct?
17 A. Correct.
18 Q. And again, you have to help me
19 understand. Given the fact that you knew the
20 corrective action plan required you to refrain
21 from entering into long-term leases, why did the
22 commission vote to extend the lease on Lot 5
23 through 2050?
24 MR. SIMMS: Objection. Go ahead.

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1 A. Much like BEH, where we supported their
2 long-term lease so they could fund their
3 project -- I believe it was 31 years -- FAA
4 supported or felt that there was reason to offer
5 long-term leases if there's substantial
6 investment in a lease area.
7 Lot 5 was one of those where hangers were
8 being proposed on 5 and part of 6. A sizable
9 investment. And based on how we proceeded with
10 BEH, we proceeded in the same direction with
11 extending the lease for FlightLevel on 5 and 6.
12 BY MR. FEE:
13 Q. Okay.
14 (Exhibit No. 523 marked for
15 identification.)
16 BY MR. FEE:
17 Q. Have the lease extensions for Lots 5, 6,
18 7, A, B, and C been signed?
19 A. I do not recall.
20 Q. Okay. Exhibit 523 is the amended
21 corrective action plan that I've been referring
22 to, and it's a letter to you from the FAA dated
23 January 15, 2009. Have you seen this before?
24 A. Yes.

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1 Q. And you were familiar with it at or about
2 the time that you -- I'm sorry -- that the
3 commission voted in March of 2014 to extend the
4 FlightLevel leases for Lots A, B, C, 5, 6 and 7.
5 Correct?

6 MR. SIMMS: One second. Can you read
7 that back?

8 MR. FEE: Sure.

9 BY MR. FEE:

10 Q. You were familiar -- I'll restate it.
11 Were you familiar with the terms of
12 Exhibit 523 when the commission voted in March of
13 2014 to extend the leases for FlightLevel on Lots
14 5, 6, 7, A, B, and C?

15 MR. SIMMS: Objection. Go ahead.

16 MR. HARTZELL: Objection.

17 A. Yes.

18 BY MR. FEE:

19 Q. And turning your attention to page 2, in
20 the first full paragraph that begins "We have no
21 objection" -- do you see that?

22 A. Yes.

23 Q. Okay. In this paragraph -- and I'll let
24 you read it to yourself -- the FAA talks about

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1 including a recapture clause in all leases. Do
2 you see that?

3 A. Yes.

4 Q. Okay. And did, in fact, the NAC utilize
5 recapture clauses in all its leases and lease
6 extensions following the issuance of Exhibit 523
7 in January 15, 2009?

8 MR. HARTZELL: Objection.

9 A. I don't recall.

10 BY MR. FEE:

11 Q. I asked you before if you know what a
12 recapture clause is -- right -- and you said no.

13 A. That's correct.

14 Q. Are you familiar with the language in a
15 lease that allows the sponsor to take the space
16 back in the event another FBO presents an
17 application? Are you familiar with that concept?

18 A. The concept of taking back the land. I'm
19 not sure if the FBO was part of it but --

20 Q. Okay. Well, let me just -- let's read
21 this paragraph together then. And I've read the
22 first -- let me read the whole paragraph. It
23 says:

24 "We have no objection to the NAC using a

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1 five-year term as the basis for its short-term
2 standard ground lease; however, we do not see a
3 provision in the lease that permits the airport
4 to recapture the common use ramps and
5 redistribute the space in the event new
6 fixed-base operators establish businesses on the
7 airport.

8 "Based on provisions in the lease, a new
9 operator would have to wait five years before
10 ramp space could be made available. Adding a
11 provision in the lease that permits the airport
12 to redistribute common use ramp space, based on
13 the needs of the airport, would be an appropriate
14 means to address that issue.

15 "FBO operators would still have
16 preferential right to use ramp space immediately
17 in front and adjacent to their FBO facilities."

18 Did I read that correctly?

19 A. Yes.

20 Q. Does that refresh your recollection as to
21 what a recapture clause --

22 A. Yes.

23 Q. -- accomplishes?

24 And so do you know if leases for --

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1 existing leases for FlightLevel space in March of
2 2012 contained such recapture clauses?

3 MR. SIMMS: March of 2014?

4 MR. FEE: March 2014. Sorry. Thank you.

5 A. I do not recall.

6 BY MR. FEE:

7 Q. Do you know if the leases that have been
8 executed -- the lease extensions that have been
9 executed for Lots 5, 6, 7, A, B, and C contain
10 recapture clauses?

11 A. I don't recall.

12 (Exhibit No. 524 marked for
13 identification.)

14 BY MR. FEE:

15 Q. Exhibit 524 is a letter dated
16 February 12, 2015, from Mr. Moss to
17 Mr. McCulloch. Have you seen this before?

18 A. Yes.

19 Q. Okay. And this is the second lease offer
20 from the NAC to BEH. Correct?

21 A. Correct.

22 Q. Okay. And it is for a larger space on
23 the west apron equal to 11,786 square feet.

24 Correct?

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1 A. Correct.

2 Q. And this letter reflects a vote that was

3 taken by the NAC on February 11, 2015. Correct?

4 A. Correct.

5 Q. And the lease offer contains three

6 conditions set forth on the first page of the

7 letter. BEH has 15 days to accept; BEH has 30

8 days to provide NAC with financial information,

9 and the detailed financial information must be

10 approved by the NAC. Do you see that on page 1?

11 A. Yes.

12 Q. And the detailed financial information

13 being requested by Mr. Moss in this letter is

14 detailed on Exhibit B to the letter, which is the

15 last page. Correct?

16 A. Correct.

17 Q. Okay. And there's no mention of any

18 fueling plan or personal guarantee or anything;

19 right? There's no mention of a fueling plan or a

20 personal guarantee in this condition. Correct?

21 A. No. It looks for a personal guarantee.

22 Q. I'm sorry. My mistake.

23 There's no mention of a fueling plan in

24 the condition. Correct?

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1 A. Not in the lease offer. No.

2 Q. Now, these financial documents that are

3 being requested from BEH in February 12, 2015,

4 were these recited in the minimum standards?

5 A. I don't recall.

6 Q. Okay. I asked you if there was any

7 requirement of a fueling plan in there, and you

8 said no. I just wanted to go back to the first

9 lease offer. Were there any conditions or the

10 first lease offer that you recall?

11 A. I do not recall.

12 Q. Okay. I want to talk about the insurance

13 requirements for a bit. Let me show you what's

14 been marked as 489 to the Maguire depo. It

15 appears to be an e-mail -- or a letter from

16 Mr. Maguire to Mr. Donovan dated January 22,

17 2014. Have you ever seen this one before?

18 A. I do not recall.

19 Q. The language on the bottom is broken by a

20 box that says "In answer to the other items

21 listed in your January 15th e-mail," and then it

22 has a series of bullet points.

23 The second bullet point says:

24 "Regarding your interest in a

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1 full-service FBO commercial permit, as stated in

2 the NAC's January 15th public meeting a number of

3 years ago, BEH filed its initial commercial

4 permit application that included a business plan.

5 "Given your company's interest in growing

6 its operation beyond that which was outlined in

7 the original plan, to a full-service FBO, the NAC

8 would like you to update said plan to support the

9 changing interest of your company.

10 "Per the Norwood Airport minimum

11 standards, and without getting into an

12 unnecessary documentation exercise on your part,

13 as a suggestion, these updates, under one cover,

14 might include" -- and then it lists six items.

15 Correct?

16 A. Correct.

17 Q. And is it fair to say that as of January

18 2014, these six items were the universe of

19 financial disclosure that the airport commission

20 was looking for -- looking to BEH to provide in

21 support of its FBO application?

22 A. Correct.

23 MR. FEE: I'm sorry. Did you want to

24 object?

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1 MR. HARTZELL: No. Go ahead.

2 BY MR. FEE:

3 Q. Item 6 has a footnote on it. It says

4 "insurance" and then "footnote." And then down

5 below it says:

6 "Per the airport minimum standards, a

7 fuel storage dispensing operator must carry a

8 minimum of \$5 million in liability insurance

9 listing, as additionally insured, the Town of

10 Norwood, Norwood Airport Commission, and Norwood

11 Airport Management."

12 Do you see that?

13 A. Yes.

14 Q. Did I read it correctly?

15 A. Yes.

16 Q. So as of January 2014, the commission was

17 requiring BEH to comply with the minimum

18 standards with respect to insurance in order to

19 support its FBO permit application. Correct?

20 A. Yes.

21 Q. No mention of spill insurance or any --

22 or insurance commensurate with FlightLevel's.

23 Correct?

24 A. No.

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James A. Toomey
Katherine A. Hesse
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Brian P. Fox
Lauren C. Galvin
Tami L. Fay
Kier B. Wachterhauser
Sarah A. Catigiani

Ann M. O'Neill, Sr. Counsel

Please respond to Quincy

February 12, 2014

VIA HAND DELIVERY
AND EMAIL (rmaguire@norwoodma.gov)

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

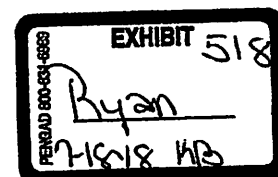
Re: *Boston Executive Helicopters, LLC*

Dear Mr. Maguire:

You requested legal review of correspondence from Boston Executive Helicopters, LLC ("BEH"), which seeks to conduct a fixed base operator ("FBO") business at Norwood Memorial Airport ("Airport"). Specifically, BEH seeks additional ramp space at the Airport in connection with its proposed FBO business.

A. Facts

I understand that BEH is currently constructing a hangar and has separately stated its intent to operate a fuel farm on its leasehold. The fuel farm requires a final inspection by the Norwood Fire Department, which will occur at a future, appropriate time. BEH has requested ramp areas to accommodate transient pilots seeking to park and receive servicing by BEH, including fuel and services.



MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
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BEH has raised the specter of Grant Assurance 23 ("Exclusive Rights") in support of its request for ramp space, by identifying existing leases for: Revised Lots 6 and 7 (leased to FlightLevel Norwood LLC); Lots W, X and Y (leased to FlightLevel Norwood LLC); Lot Z (leased to FlightLevel Norwood LLC); Ramps A, B & C (leased to FlightLevel Norwood LLC); the West Apron (operated by the NAC); and the DC-3 Ramp (leased to Papa Whiskey 1, LLC, in joint ownership with FlightLevel Norwood LLC). BEH did not submit a response to the request for proposals that the Norwood Airport Commission ("NAC") issued for the DC-3 Ramp, which was restricted in use to aircraft tie-downs.

In its correspondence, BEH has specifically requested the north ramp areas of the Airport, unspecified other areas, and/or the West Apron, the latter of which is operated by the NAC. BEH has requested the West Apron for a "preferential lease," consisting of the entire ramp for aircraft parking and for ramp services and fueling. BEH separately requested a preferential, but not exclusive, use of an area for transient pilots to whom it seeks to sell fuel and service. BEH also separately requested use of common areas for aircraft fueling operations, specifically the two (2) helipad areas and the tie-down area adjacent to Taxiway B.

Alternatively, it appears that BEH seeks a reallocation or sharing of space used by FlightLevel Norwood LLC, by citing provisions in certain existing leases. In that regard, BEH cites: Paragraph 32 from the lease for Lots 6 and 7, which addresses exclusive rights; Paragraph XXX from the lease for Lots A, B & C, which addresses compliance with federal and state requirements; and Paragraph XXXI from the lease for Lots A, B & C, which addresses reserved rights by the NAC.

BEH has not currently obtained all of the required approvals for a full-service FBO commercial permit for the Airport. During the January 15, 2014 NAC meeting, it was noted that the business plan accompanying BEH's initial commercial permit application did not address all considerations attendant to permitting of a full-service FBO. Accordingly, consistent with the Airport's Minimum Standards, the NAC requested that BEH provide: financial statements; trade references; copies of professional licenses or certificates specific to personnel training for fuel storage/dispensing; an inventory of auxiliary equipment to support the servicing of aircraft; proposed fueling location(s) on the Airport, including the prospect of fueling on the Airport's West Apron; and insurance.

BEH was also reminded about the outstanding issues for a full-service FBO commercial permit in an email dated January 22, 2014. To date, I understand that BEH has not provided all of the information that the NAC requested.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
February 12, 2014
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B. Analysis

Federal statutes and Federal Aviation Administration ("FAA") Grant Assurance 23 address exclusive rights. See 49 U.S.C. § 40103(e); 49 U.S.C. § 47107(a)(4). An "exclusive right" is defined as "[a] power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right." FAA Advisory Circular 150/5190-6 at Appendix 1.1.f. (January 4, 2007). "An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means." Id.

Grant Assurance 23 provides that the sponsor of a federally-obligated airport "will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public It further agrees that it will not either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities." An airport sponsor may prohibit an on-airport aeronautical activity on the basis of safety and efficiency. See FAA Advisory Circular 150/5190-6 at 1.3.a.1 (January 4, 2007). Additionally, there is no exclusive right if: (1) "[i]t would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and" (2) "[i]f allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport." Grant Assurance 23.

"The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation." See FAA Advisory Circular 150/5190-6 at 2 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.6, 8.9.b (September 30, 2009). Thus, the mere fact that FlightLevel Norwood LLC operates an FBO on the Airport is not dispositive of the exclusive rights analysis. The fact that current leases with FlightLevel Norwood LLC reference compliance with federal and state obligations and disclaim conferring exclusive rights is significant in considering that no exclusive rights exist. See JetAway Aviation, LLC v. Board of County Commissioners, Montrose County, Colorado, FAA Docket No. 16-06-01 (November 6, 2006) (Director's Determination).

"What is an exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider." FAA Advisory Circular 150/5190-6 at 2 (January 4, 2007) (emphasis added); FAA Airport Compliance Manual Order 5190.6B at 8.9.b (September 30, 2009). "However, the airport sponsor cannot as a matter of convenience choose to have only one FBO provide services at the airport regardless of the circumstances at the airport." FAA Advisory Circular 150/5190-6 at 2

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
February 12, 2014
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(January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.b (September 30, 2009).

The FAA also contemplates that a single enterprise may expand as necessary, even as it potentially occupies all available space on an airport. FAA Advisory Circular 150/5190-6 at 3 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.d (September 30, 2009). This potential for expansion by the single enterprise does not allow an airport sponsor to "unreasonably exclude[] a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fail[] to provide an opportunity for qualified applicants to be an aeronautical service provider." FAA Advisory Circular 150/5190-6 at 3 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.d (September 30, 2009).

Accordingly, compliance with an airport's minimum standards is part of the exclusive rights analysis. See Tulloch v. City of Harlingen, Texas, FAA Docket No. 16-05-07 (August 21, 2006) (Director's Determination) (recognizing that another FBO would be accepted if it satisfied the applicable minimum standards); Ricks v. Millington Municipal Airport Authority, FAA Docket No. 16-98-19 (July 1, 1999) (Director's Determination) (recognizing complainant's failure to submit required financial information for evaluation of FBO leasehold application and therefore no exclusive right was conferred); U.S. Aerospace, Inc. v. Millington Municipal Airport Authority Millington, Tennessee, FAA Docket No. 16-98-06 (October 20, 1998) (Director's Determination). Indeed, as noted in FAA Advisory Circular 150/5190-6, which is quoted above, the exclusive rights analysis focuses on the impact on "other qualified parties" and also considers whether just cause exists for an airport sponsor's action.

For example, in U.S. Aerospace, the complainant contested delays in the processing of its request for a leasehold expansion and change to general FBO status as a violation of Grant Assurance 23 and the federal prohibitions on exclusive rights. FAA Docket No. 16-98-06 (October 20, 1998) (Director's Determination). However, the FAA rejected the exclusive rights argument in U.S. Aerospace, because the applicant did not provide requested and required financial information, such as a recent audited financial statement. As the FAA recognized, "[i]t is prudent for an airport operator to seek more information when a tenant is proposing to substantially alter the nature of its operations than when it is proposing only an increase in the size of its leasehold." Because the airport sponsor had the right and responsibility to assess the proposed tenancy and the requisite information was not provided, there was no exclusive rights violation in U.S. Aerospace.

Here, the status of BEH's full-service FBO commercial permit is unresolved, because BEH has not submitted information required to determine compliance with the Airport's Minimum Standards. This issue of compliance with Minimum Standards is significant given the

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
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scale of BEH's proposed FBO business. Accordingly, BEH's attempt to raise an exclusive rights argument is premature.

Even if BEH were to be a qualified party for a full-scale FBO, the exclusive rights analysis considers whether the NAC is willing to render the Airport available for its proposed FBO business. See FAA Airport Compliance Manual Order 5190.6B at 8.6 (September 30, 2009). The NAC is not required to accept BEH's "most convenient or 'preferred' or 'logical' parcel on the airport for" its proposed uses. See JetAway Aviation, Inc. v. Montrose County, Colorado, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination). "[I]dentification' of parcels for FBO-use is not necessarily relevant to an allegation of the granting of an exclusive right." Id.

Nor is an airport sponsor required to render a parcel available to a potential aeronautical business at any cost. See Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 2, 2000) (Director's Determination) (noting a lack of information from the complainant about whether a parcel was best used for FBO purposes, as opposed to an existing valid aeronautical support purpose). This consideration is relevant given BEH's suggestion that the NAC should interrupt existing lease rights with FlightLevel Norwood LLC.

Rather, the most appropriate use of airport space is relevant to determining the accommodation for a potential aeronautical business, such as an FBO. See id. Such considerations include the efficient operation of an airport and safety. See id. (considering efficiency in light of reconfiguration of airport layout for a more efficient operation with contiguous uses); Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, FAA Docket No. 16-06-09 (November 28, 2007) (Final Decision and Order) (denying exclusive rights claim where complainants would compromise safety and undermine utility of airport through operation on priority use area).

A sponsor offering an area on the airport premises, even if not the preferred alternative for a proposed business, may defeat an exclusive rights claim. See Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 30, 2001) (Final Agency Decision and Order); Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 2, 2000) (Director's Determination). Accordingly, if and when BEH demonstrates compliance with the Airport's Minimum Standards, the NAC may consider revisiting an appropriate accommodation for space at the Airport, consistent with BEH's proposed use.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
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Absent demonstration that no other available and suitable site for an FBO exists at the Airport, BEH cannot demonstrate an exclusive right was conferred. See JetAway Aviation, Inc. v. Montrose County, Colorado, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination). BEH also has not demonstrated that the NAC will preclude all available sites for development of its full-scale FBO. See Tulloch v. City of Harlingen, Texas, FAA Docket No. 16-05-07 (August 21, 2006) (Director's Determination) (considering availability of sites in rejection of Grant Assurance 23 claim). If the NAC provides BEH with an opportunity for space on the Airport for its proposed full-scale FBO at a future time, BEH should be unable to demonstrate an exclusive right was conferred upon the existing FBO at the Airport.

I hope this information is useful. Please let us know if we can be of any further assistance.

Very truly yours,


Brandon H. Moss

/bhm

cc: Norwood Airport Commission (via hand delivery and email)
John P. Flynn, Esquire

773001v1



Norwood Memorial Airport
Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

BY E-MAIL AND HAND DELIVERY

March 17, 2014

Boston Executive Helicopters
Attn: Chris Donovan, President
125 Access Road
Norwood, MA 02062

RE: West Apron Lease Offer

Dear Chris:

Following your request, the Norwood Airport Commission (NAC) is now prepared to extend a lease offer to your company, *Boston Executive Helicopters* (BEH). Please see attached the board's offer. This includes an *Exhibit A*. The area shaded in yellow on the *Exhibit A* depicts the property in question, which is 6,889 square feet on the northeast corner of the Norwood Airport's west apron.

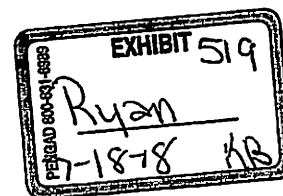
Use of the leased premises shall be conditioned on BEH holding all necessary permits, licenses, certificates and approvals (as applicable) to operate as a fixed-base operator on the Norwood Airport (Section IV).

Please advise at your earliest convenience. Thank you.

Sincerely,

Russ Maguire, Manager
Norwood Memorial Airport

CC: *Norwood Airport Commission, Norwood Town Counsel*



Norwood Memorial Airport Standard Ground Lease, Short-Term: West Apron

This Lease Agreement ("Lease" or "Agreement") is made the 1st day of May 2014 by and between the Norwood Airport Commission (NAC) ("Lessor" as defined below or "NAC") and *Boston Executive Helicopters, LLC* ("Lessee", as defined below).

Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts General Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062.

Lessee: *Boston Executive Helicopters, LLC*, having its usual place of business at Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel of impervious, asphalt-covered land containing approximately six thousand eight hundred eighty nine (6,889) square feet of land (commonly referred to as the "West Apron") and shown on a plan attached hereto as *Exhibit A*, which is fully incorporated herein and made a part hereof, situated on the Norwood Memorial Airport (also referred to as the "Airport") in Norwood, Massachusetts ("Leased Premises"). Contained outside and east of this parcel of land constituting the West Apron and west of the north-south taxi-lane centerline, is part of a taxi-lane object-free area (commonly referred to as a "TOFA"), also shown on said *Exhibit A*. Contained outside and north of this parcel of land constituting the West Apron and south of the Gate 3 taxi-lane centerline, is part of a TOFA, also shown on said *Exhibit A*. Neither the north-south taxi-lane TOFA, nor the Gate 3 taxi-lane TOFA are part of the leased premises.

The Leased Premises are marked "West Apron" on said *Exhibit A* plan.

II. **TERM:** Subject to earlier termination as hereunder provided, this Lease is for one (1) term of five (5) years, commencing on the 1st day of June 2014 and ending on the 31st day of May 2019 ("Term").

III. **RENT:** The rent that the Lessee will pay to the Lessor shall be paid in twelve (12) equal monthly installments of three hundred fifty four dollars (\$354). The first (1st) payment hereunder shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made no later than the first (1st) day of each month thereafter, during the Term thereof.

For each successive year of this Lease, the rent will increase by two percent (2%) from the preceding year.

XXXIV. **JURISDICTION.** Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal courts of Massachusetts or the state courts in Norfolk County, Massachusetts, and the parties hereby consent to the personal jurisdiction and venue of such courts.

XXXV. **ENTIRE AGREEMENT.** This Lease represents the entire agreement between the parties hereto with respect to the matter covered herein. No other agreement, representations, warranties, proposals, oral or written, shall be deemed to bind the parties.

XXXVI. **CAPTIONS.** All captions in this Lease are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this Lease.

IN WITNESS WHEREOF, the parties hereto have duly affixed their hand and seal as of the day and year first above written.

LESSOR: NORWOOD AIRPORT COMMISSION, acting on behalf of the Town of Norwood

Printed Name:

Approved by Counsel _____

Printed Name:

Printed Name:

Printed Name:

Printed Name:

LESSEE:

Name:

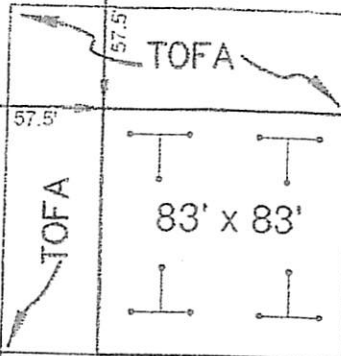
Title:

Name:

Title:

NORTH/SOUTH
TAXILANE

GATE 3 TAXI LANE



WEST APRON

LOT
WEST APRON

AREA
6,889 sq. ft.

NORWOOD MEMORIAL AIRPORT
LEASE PLAN
WEST APRON
MARCH 12, 2014
SCALE: 1' = 60'

Request for space, lease hold of Lots A,B,C at Norwood Airport

1 message

Christopher Donovan <christopherdonovan1@gmail.com>

To: "Russ Maguire, A.A.E. ,ACE" <maguire@norwoodma.gov>

Cc: Joshua Fox <jfox@mf-law.com>, David Bennett <dbennett@dlbaviation.com>

Bcc: Lawrence Gelb <gbaron45@gmail.com>, Paul Ouellette <paul.m.ouellette@gmail.com>, Robert Silva <robsilva302@gmail.com>

Wed, Mar 12, 2014 at 1:10 PM

Russ,

Since 2010 I have requested access to land and space available here at Norwood Airport. In accordance with that open request I make a request for negotiations for the lease of Lots A,B,C at Norwood Airport.

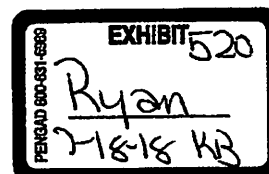
As this lease is coming due in October of 2014 I would like to discuss BEH leasing this property. I would also once again continue my open request for any available property, land or lease hold at Norwood Airport.

I am available to clarify this request or answer any questions. Please also inform the Members of the Norwood Airport Commission.

With regards,
Christopher

Christopher R. Donovan
President, Boston Executive Helicopters
781-603-6186
www.Bostonexecutivehelicopters.com

Boston executive Helicopters will beat any legitimate estimate when the estimate is in a Turbine powered helicopter in an executive configuration. We want your business. Bring us your quotes. All quotes are subject to change based on known or unknown conditions. All flights are subject to cancellation for weather, maintenance or Temporary Flight Restrictions (TFR) which may be in effect with short notice. All flights conducted in VFR weather conditions. All flight times, departure times and arrival times can vary due to WX, ATC and/or other factors beyond our control. The Pilot in command is the ultimate authority regarding all flight operations, routes, etc. All flights must be paid in advance unless credit terms are arranged & approved by Boston Executive helicopters. BEH assumes no responsibility for consequential damages caused by delays.





RECEIVED

TOWN OF NORWOOD
RECEIVED

2014 MAR -7 P 12:11

NORWOOD AIRPORT COMMISSION

Thomas J. Wynne, *Chairman*
Mark P. Ryan, *Vice Chairman*
Kevin J. Shaughnessy, *Clerk*
Leslie W. LeBlanc
Martin E. Odstreche

NORWOOD AIRPORT COMMISSION

NOTICE IS HEREBY GIVEN THAT A PUBLIC MEETING OF THE NORWOOD AIRPORT COMMISSION WILL BE HELD:

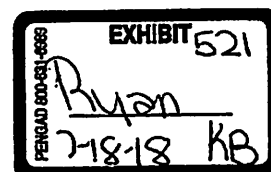
DATE: Wednesday, March 12, 2014

TIME: 12 p.m.

PLACE: Norwood Airport Commission Meeting Room
125 Access Road
Norwood, MA 02062

TENTATIVE AGENDA ITEM:

- AIP projects
- *Boston Executive Helicopters'* construction update
- *Boston Executive Helicopters'* full-service fixed base operator interest
- Review of prior meeting minutes
- Airport Manager's report





The TOWN OF NORWOOD

Commonwealth of Massachusetts

NORWOOD AIRPORT COMMISSION

Thomas J. Wynne, *Chairman*
Mark P. Ryan, *Vice Chairman*
Kevin J. Shaughnessy, *Clerk*
Leslie W. LeBlanc
Martin E. Odstrchel

MEETING AGENDA

March 12, 2014

12 p.m. in the Norwood Airport Commission Meeting Room

1. **APPOINTMENTS**
 - AIP project update, Jeff Adler
 - *Boston Executive Helicopters* (BEH), update on fuel farm/hangar, Chris Donovan
 - *Flight Level Norwood*, update on capital projects, Mike DeLaria
2. **MINUTES**
 - January 15, 2014 regular business meeting
 - February 12, 2014 regular business meeting
 - February 12, 2014 executive session
3. **AIRPORT MANAGER'S REPORT**
4. **OLD BUSINESS**
5. **NEW BUSINESS**
 - *Boston Executive Helicopters* (BEH), full service fixed-base operator interest
 - CY 2014 aircraft tie-down leases
6. **CORRESPONDENCE**
 - 2/20/14 ltr. from attorney R. Lizza, representing *I.W. Harding*, to Norwood Town Counsel

**AIRPORT COMMISSION MEETING
REGULAR BUSINESS MEETING
March 12, 2014**

In Attendance: Commissioners Tom Wynne, Chairman, Martin Odstrchel, Mark Ryan, Kevin Shaughnessy. Airport Manager, Russ Maguire, Assistant Manager, Mark Raymond.

Meeting Called to Order: 12:00PM

APPOINTMENTS

- * AIP project update: Jeff Adler
Mr. Adler was unable to attend.
- * Boston Executive Helicopters (BEH), update on fuel farm/hangar: Chris Donovan
Construction is ongoing. Sprinkler, water lines, and sewer next to be installed.
Projected end date approximately 60-75 days.
- * Flight Level Norwood, update on capital projects: Mike DeLaria
Waiting for leases. Leases to be discussed in Executive Session at the end of this regular meeting.

MINUTES

- * January 15, 2014 regular business meeting
On a motion by Mr. Odstrchel and seconded by Mr. Ryan, the Commission voted 3/0 to accept the January 15, 2014 meeting minutes.
- * February 12, 2014 regular business meeting
On a motion by Mr. Ryan and seconded by Mr. Shaughnessy, the Commission voted 3/0 to accept the February 12, 2014 meeting minutes
- * February 12, 2014 executive session
On a motion by Mr. Ryan and seconded by Mr. Odstrchel, the Commission voted 3/0 to accept the February 12, 2014 Executive Session meeting minutes.

AIRPORT MANAGER'S REPORT

Airport Accident: February 22, 2014, pilot of Cessna 182 lost control of aircraft on touchdown, propeller contacted runway. The disabled aircraft settled at the intersection of runway 17 and taxiway C. Flight operations were suspended for approximately 2 hours. The Norwood Fire Department, FAA Operations Center and National Transportation Safety Board, and MassDOT were all notified.

Snow Removal: On 2/24, the Airport Manager attended the Special Town Meeting that included an article to appropriate additional funding for emergency snow removal at the airport. This article passed.

— Informational Updates —

2013 Annual Report - Attachments A-B of Managers Report

Air Traffic - February 2014 air traffic report - Attachments C-D of Managers Report

Potential for scenes for another movie to be filmed at Norwood Airport.

Mr. Shaughnessy suggested that the film production company give a donation to a group such as Circle of Hope for the use of the airport.

On a motion by Mr. Shaughnessy and seconded by Mr. Odstrchel, the Commission voted 3/0 to accept the Managers Report.

**AIRPORT COMMISSION MEETING
REGULAR BUSINESS MEETING
March 12, 2014**

-2-

OLD BUSINESS

NEW BUSINESS

- * Boston Executive Helicopters (BEH), full service fixed-base operator interest
Joshua Foxx, Representative of Rollins, Rollins & Foxx.

Seeking clarity on BEH's ability to fuel on town controlled and approved helipads

West apron: Joshua Foxx, representing BEH, requests all or part of the west apron area of the airport.
The request for the west ramp will be discussed in Executive Session at the end of this meeting.

- * CY 2014 aircraft tie-down leases

Gregory Quinn

Allen Small

On a motion by Mr. Shaughnessy and seconded by Mr. Ryan, the Commission voted 3/0 to accept the tie-down leases.

CORRESPONDENCE

- * 2/20/14 Letter from attorney R. Lizza, representing I.W. Harding, to Norwood Town Counsel .

On a motion by Mr. Ryan and seconded by Mr. Shaughnessy, the Commission voted: Mr. Shaughnessy, Yes, Mr. Odstrchel, Yes, Mr. Ryan, Yes, Mr. Wynne, Yes to proceed to Executive Session

Meeting Adjourned for Executive Session: 12:23pm

Meeting Adjourned for Regular Business Meeting: 12:44pm

**AIRPORT COMMISSION MEETING
EXECUTIVE SESSION
March 12, 2014**

Flight Level:

Flight Level is requesting, from the Norwood Airport Commission, a letter of Intent to extend leases for the purpose of amortizing their future airport investments.

On a motion by Mr. Shaughnessy and seconded by Mr. Odstrchel, the Commission voted 3/0 to extend Leases on:

Lot 5: until the year 2047 or until 2050, with a further explanation from Flight Level.

Lot 6 & 7: The Commission will revisit when Flight Level has approved funding

Lots A, B, C: Extend lease for 5 years.

Boston Executive Helicopters

NAC needs financial and insurance information from BEH

Boston Executive Helicopters is requesting a decision on the lease of the West Apron.

On a motion by Mr. Odstrchel and seconded by Mr. Ryan, the Commission voted 3/0 to offer to Boston Executive Helicopter a 83 x 83 area of the West Apron for the term of a 5 year lease beginning June 1, 2014. This is conditional upon BEH receiving all approvals and permits necessary for operation.

On a motion by Mr. Ryan and seconded by Mr. Shaughnessy, the Commission voted: Mr. Ryan, Yes, Mr. Shaughnessy, Yes, Mr. Odstrchel, Yes, Mr. Wynne, Yes., to close Executive Session and return to the regular business meeting.

MEETING ADJOURNED: 12:43pm

From: "Oulton Hues Jr." <ojhues@gmail.com>
To: "Mark Ryan" <mryan@norwoodma.gov>
Cc: "Thomas J Wynne" <tomwynnere@norwoodlight.com>
Sent: Wednesday, October 8, 2014 4:25:34 PM
Subject: Today's meeting

Dear Mark,

After the meeting today and my questions I wanted to again ask you, why did we not RFP the South ramp? Why are we now doing things differently for one group of possible users?

I have been on the Commission since March and do not recall discussing the South ramp lease or voting to approve this lease? Could you please provide me a copy of the new South ramp lease? A review of the NorwoodAirport Commission meeting minutes does not show the discussion or approval of this lease?

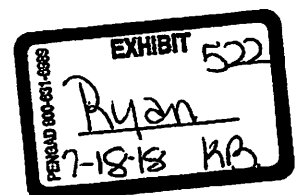
Why are you selectively approving some leases for Town owned property without any consideration for the open requests for the FBO who wants to do business at the Airport. Why are you using the RFP process to punish the clear requester for leased property and behind the scenes approving leases for property?

Why did you not follow the agenda today and discuss ALL my concerns in executive session as was the agenda? Why did you allow the questions to be cut off after you stated we would go through ALL the questions?

As you are well aware YOU signed a questionable lease (At best) and did all the permitting and survey work for some of the property in question. With the potential for inappropriate activity and possible violations of Federal Law with regard to the Grant Assurances do you believe it wise to have you "Investigating" these situations?

In closing I am appalled as to why you would not support the public right to ask any question they would feel appropriate and follow both the spirit and intent of the open meeting laws. Hopefully Chairman Wynne will address these issues and concerns at the next Norwood Airport Commission meeting.

Thank you,
Oulton Hues Jr.



From: Mark Ryan <mryan@norwoodma.gov>
Date: October 8, 2014 at 5:03:31 PM EDT
To: "Oulton Hues Jr." <ojhues@gmail.com>, Les LeBlanc <aerial172@aol.com>, Lee Hutchens <lhutch6@verizon.net>, Russ Maguire <rmaquire@norwoodma.gov>, Mike Sheehan <msheehan8@gmail.com>, Kevin Shaughnessy <kevin@norwoodlight.com>, Marty Odstrchel <mogolfpro@comcast.net>, Paul Shaughnessy <captps@aol.com>
Cc: Thomas J Wynne <tomwynnere@norwoodlight.com>
Subject: Re: Today's meeting

Oulton

We did not RFP the south ramp because it was already leased to a tenant and the NAC voted to extend the lease once it expires. I supported the extension because they have been an excellent tenant. Russ Maguire can send you the minutes of that meeting. Keep in mind, BEH asked for consideration AFTER that vote was taken.

1. I believe this is incorrect. You have multiple requests for available space from BEH and others going back to 2010?
2. You also stated today the lease was approved 3 months ago?
3. In a meeting you and others stated you would give "preference" to Flight Level on all leases and consideration. This is a direct violation of the FAA grant assurances and Federal Law. This tape was mistakenly "erased" after copies were requested. I am certain many who attended the meeting can submit sworn statements to the statements by you and others? Statements which show favoritism and discrimination when dealing with businesses?
4. BEH requested consideration for Lot's A,B,C before the expiration of the lease? Let's ask them?
5. BEH briefed you and the NAC in 2012 on their plans to rebuild the hanger and operate at Norwood Airport as an FBO. They advised you and the NAC of this same fact in 2010? Clearly they were building a beautiful facility and their plans were fully known to you and the Commission. You have an obligation to treat everyone the same, fair and unbiased treatment.

You and the Commission were found in violation of Federal Law and Grant assurances by the FAA. As part of that complaint you were ordered to cease the awarding of long term leases which grant one party control over the ramps and aprons at Norwood Airport. You submitted a corrective action plan that stated you would cease the awarding of long term leases and submitted a sample 5 years lease as proof of compliance.

If you are simply going to use the 5 year lease and continue to renew it you have violated your own corrective action plan. This action shows you are not following your own corrective action plan and simply playing games with renewing the fake 5 year lease? You are awarding a long term lease and simply calling it a 5 year lease? The lease had no provisions for renewal or right of refusal?

What is an excellent tenant and does this excellent tenant status allow you to pick and choose who you will lease available space?

If as you state you want to maximize the return for the town and create a fair and honest system why did you not RFP the south ramp? Is this an award for being an excellent tenant at the expense of other potential businesses and the Town of Norwood? You have an obligation and fiduciary duty to be fair and impartial in dealing with all requests and leases.

Does the Airport RFP any other items, services or areas? Engineering? Snow Plowing? Landscaping? Why not?

The new south ramp lease will be available to the entire NAC once Town Counsel has added items Russ talked about today (i.e. jet wash, etc.)

You cut off discussion today about the \$5000 "West Ramp Study" we had Jeff do. This was a red herring and not a real study? My questions to Jeff are relevant and need answers. We have plenty of ramp space and suddenly Russ and you are concerned with false concerns that magically do not affect any other ramps or aprons here at Norwood. The West ramp is just as large as the other ramp space at Norwood and you have no concerns about "jet wash".

You are deliberately using the process to punish and exclude BEH and everyone knows this.

Not sure what you mean "Why are you" using the RFP process - The meeting I attended today had an 8-0 vote in favor of that route.

Speaking at the NAC meetings is useless. Either Mike cites "Roberts rules" or you simply bully everyone and restrict any conversation!

Why "Did I not follow the agenda"? I followed the agenda that was in front of me and the rest of the NAC. Your concerns did not meet the criteria for discussing in executive session. I allowed them to stop because a motion was made, seconded and an 8-0 vote approving Russ Maguire and you sitting down. I was certainly prepared to go through the entire letter point by point. If you where so inclined to air it out, say so. Don't wait now until after the meeting.

Your statement that I signed a questionable lease is your opinion. I believe otherwise.

Regarding me doing the survey work and permitting, I am very proud of the work our Engineering Department did taking an area that was a dumping ground for years, designing it, getting permits for it, securing funding for it, managing the construction of it and finally negotiating a lease that nets the Town of Norwood nearly \$40,000 per year. The Town's investment - \$60,000. Sounds like a good plan to me.

The berm you built with Town funds goes around the entire area and if your plan is correct is around private property? Is it permissible to use Town funds to improve private property? Read the documents you so easily ignore in the packet I sent to Tom Vick. You have 75 trucks (According to the meeting minutes) parked on Airport property you wanted to collect excise tax on? Property you say we are unsure of and do not know who owns it? Property you claim is not

town owned land? Property you improved and then changed a lease to allow use of airport property for non aviation use without any approval. Russ said we are "all set" according to the FAA? Jeff says he spoke with FAA and although he has nothing in writing he uses the opinion of someone to set policy and restrictions.

I ask for written confirmation and guidance on airport business from our contractor and you ignore and accept statements as facts.

Finally, not sure what you are appalled at - I was inclined to support Mr. Shaughnessy's recommendation. With questions from others, let's take a step back and see how other Boards handle it. Oh yes, that too was an 8-0 vote. If you didn't like that motion, then don't vote in favor of it.

Hope that helps

Mark

What would help is a fair and unbiased Commission who truly cared for everyone equally. Ask yourself this question Mark? If Tom Wynne did nothing why did he apologize and why did he state he threw something and you stated nothing happened?

You can make up the facts as they go along but sooner or later this is going to catch up with you and the Commission.

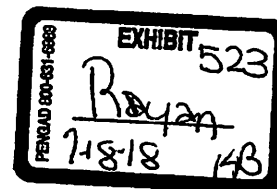
U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

JAN 15 2009

Mark P. Ryan, Vice Chairman
Norwood Airport Commission
Post Office Box 40
Norwood, MA 02062



**RE: Boston Air Charter v. Norwood Airport Commission,
FAA Docket 16-07-03
Amended Corrective Action Plan, October 23, 2008**

Dear Mr. Ryan

Thank you for your October 23, 2008 amended corrective action plan required by the Director's Determination in FAA Docket 16-07-03 and affirmed in the FAA's Final Decision and Order. We appreciate the Norwood Airport Commission's (NAC) efforts to address the issues raised in the FAA's Final Decision and Order. The NAC's intention to conduct an appraisal and acquire the easement combined with the development of a model easement indicates the Airport's recognition of the problem.

We concur with your decision not to accept Boston Metropolitan Airport's offer. Boston Metropolitan Airport's offer, granting a utility easement in return for fuel flowage fee receipts from all aeronautical service providers using the easement, may jeopardize the Town's rights and powers and the Airport's financial self-sustainability.

Unfortunately, the corrective action plan fails to address the following concerns:

- Part One: *"The Town has provided or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations."*
- Part Four: *"That the Town has, or will, regain the airport's rights and powers to access the "1,000-foot strip" to provide power to the airport's ramps for airport tenants."*

While the plan describes the process the NAC must employ to gain access to the property, it does not address how the Airport will provide access to aeronautical service providers. A key piece of an acceptable corrective plan will be the description of how the Airport will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations.

Your letter indicated that the Commission does not have an appropriation in the current fiscal year Town budget for the appraisal and acquisition of this easement. FAA's Final Order and Decision is very clear, it requires the Town, the airport sponsor, to correct these deficiencies and bring the Airport in compliance with its grant assurances.

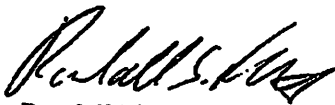
The FAA's Final Order and Decision also requires:

- Part Two: *"The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport"*.
- Part Three: *The Town will put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps"*.

We have no objection to the NAC using a five year term as the basis for its short-term standard ground lease. However, we do not see a provision in the lease that permits the Airport to recapture the common use ramps and redistribute the space in the event new fixed base operators establish businesses on the Airport. Based on provisions in the lease, a new operator would have to wait five years before ramp space could be made available. Adding a provision in the lease that permits the Airport to redistribute common use ramp space based on the needs of the Airport would be an appropriate means to address this issue. FBO operators would still have a preferential right to use ramp space immediately in front and adjacent to their FBO facilities.

Please submit the necessary changes to your lease form. In addition, please submit a revised corrective action plan to my office identifying a reasonable timetable to comply with the requirements of Part one and four and that also includes the date when funds will be made available for the necessary corrective action. Please direct all future correspondence to my attention

We look forward to reviewing your new submission.



Randall Fiertz
Director, of Airport Compliance
and Field Operations

Copies to:

Mr. Matthew Watsky, Esquire
Attorney at Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
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Tami L. Fay
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Sarah A. Catignani
Lena-Kate Ahern
Felicia S. Vasudevan

Ann M. O'Neill, Senior Counsel

Please respond to Quincy

February 12, 2015

VIA FIRST CLASS MAIL
AND EMAIL (tmcculloch@hinshawlaw.com)

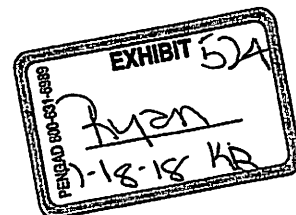
Timothy I. McCulloch, Esquire
Hinshaw & Culbertson LLP
3200 North Central Avenue
Suite 800
Phoenix, AZ 85012-2428

Re: *Boston Executive Helicopters, LLC*

Dear Attorney McCulloch:

I presume that your representation of Boston Executive Helicopters, LLC ("BEH") includes lease matters. If it does not, please advise accordingly.

At its February 11, 2015 meeting, the Norwood Airport Commission ("NAC") voted to conditionally offer a lease for a portion of the West Apron, designated as so-called "Parcel A," to BEH. A copy of this lease is enclosed in Tab A. Please note that this lease offer is subject to three (3) conditions: (1) BEH has fifteen (15) days to accept the lease offer; (2) BEH has thirty (30) days from accepting the lease offer to provide the NAC with detailed financial information; and (3) the detailed financial information submitted by BEH is approved by the NAC. The lease offer will be considered revoked, and therefore deemed null and void, if any of these conditions is not met.



MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Timothy I. McCulloch, Esquire
Hinshaw & Culbertson LLP
February 12, 2015
Page 2

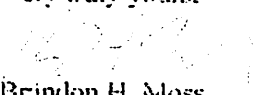
For over a year, the NAC has requested that BEH provide a business plan and detailed financial information consistent with BEH's stated intention of operating a commercial fixed-base operator ("FBO") business at the Norwood Memorial Airport ("NMA"). To date, the detailed financial information has not been received by the NAC.

The detailed financial information requested by the NAC is consistent with the NMA Minimum Standards, which were issued in accordance with Federal Aviation Administration Advisory Circular 150/5190-7. Moreover, given the nature of its proposed FBO operation, including the commercial sale of aviation fuel to the public, the NAC has an obligation to protect the interests of airport patrons and the public, as well as discouraging substandard and/or unsafe would-be service providers. See NMA Minimum Standards at 2.

For your convenience, I have enclosed a copy of the detailed financial information requested by the NAC in Tab B. A copy of the requested detailed financial information was previously provided to Christopher Donovan. It is the NAC's expectation that the information your client provides will be kept confidential, except to the extent that disclosure is required by law. See M.G.L. c. 4, § 7(26).

At your earliest convenience, please confirm your representation of BEH for lease matters and, if so, as to your client's intentions. Thank you for your courtesy in this matter.

Very truly yours,


Brandon H. Moss

:bhm

Enclosures

cc: Norwood Airport Commission (via first class mail)
Russ Maguire, A.A.E., ACE, Airport Manager (via first class mail and email)

TAB A

Norwood Memorial Airport Standard Ground Lease, Short-Term: West Apron, Parcel A

This Lease Agreement ("Lease" or "Agreement") is made the ___ day of February 2015 by and between the Norwood Airport Commission (NAC) ("Lessor" as defined below or "NAC") and *Boston Executive Helicopters, LLC* ("Lessee", as defined below).

Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts General Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062.

Lessee: *Boston Executive Helicopters, LLC*, having its usual place of business at Norwood Memorial Airport, 209 Access Road, Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel (referred to as Parcel A) of impervious, asphalt-covered land containing approximately eleven thousand seven hundred eighty six (11,786±) square feet of land (commonly referred to as the "West Apron, Parcel A") and shown as "West Apron Leased A" on a plan attached hereto as *Exhibit A*, which is fully incorporated herein and made a part hereof, situated on the Norwood Memorial Airport (also referred to as the "Airport") in Norwood, Massachusetts ("Leased Premises"). Contained outside and east of the Leased Premises and West Apron and west of the north-south taxi-lane centerline, is part of a taxi-lane object-free area (commonly referred to as a "TOFA"), also shown on said *Exhibit A*. Contained outside and north of the Leased Premises and West Apron and south of the Gate 3 taxi-lane centerline, is part of a TOFA, also shown on said *Exhibit A*. Neither the north-south taxi-lane TOFA, nor the Gate 3 taxi-lane TOFA are part of the Leased Premises.

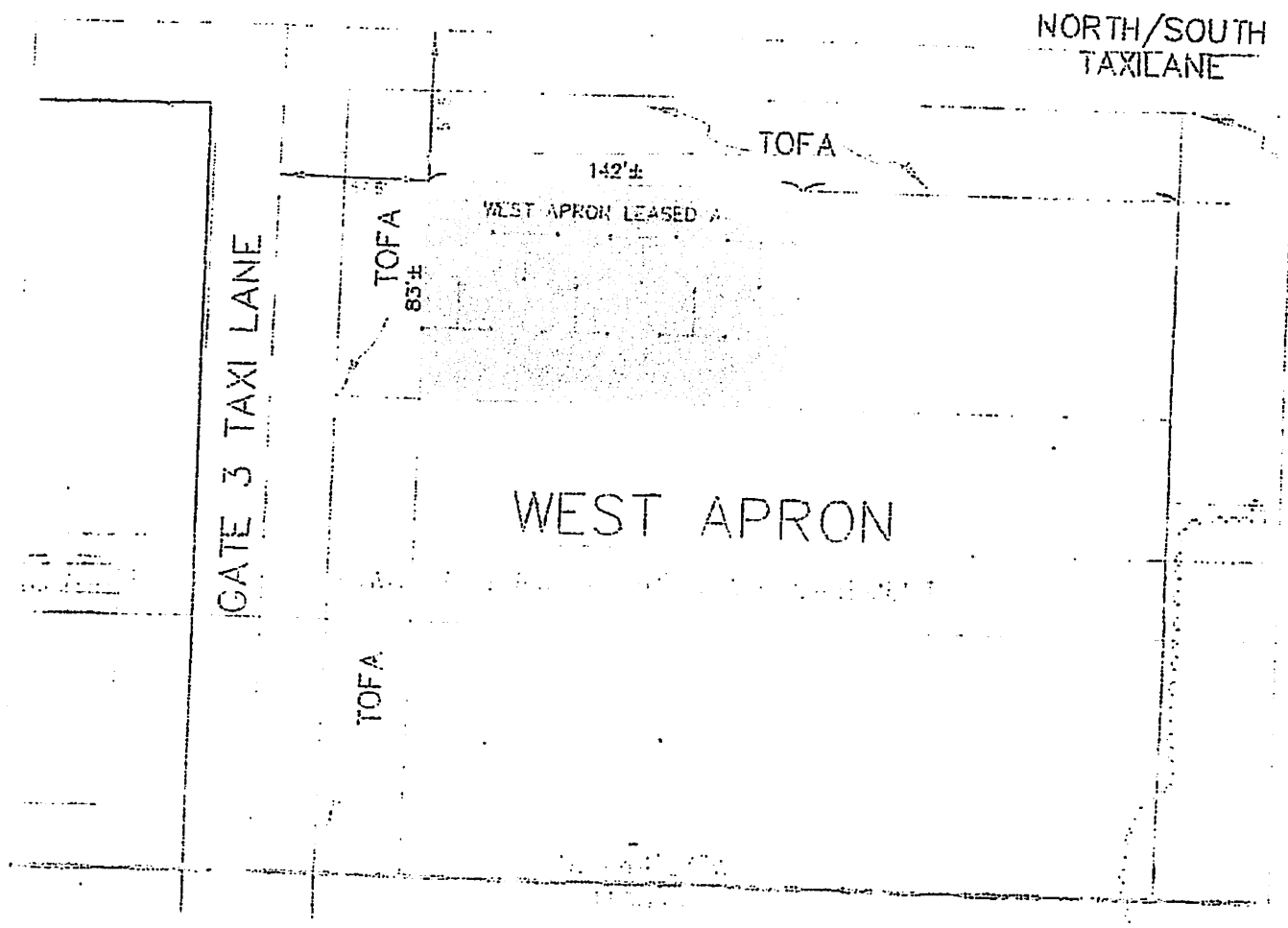
II. **TERM:** Subject to earlier termination as hereunder provided, this Lease is for one (1) term of five (5) years, commencing on the 1st day of March 2015 and ending on the 29th day of February 2020 ("Term").

III. **RENT:** The rent that the Lessee will pay to the Lessor shall be paid in twelve (12) equal monthly installments of Four Hundred Sixty Two and 00/100 Dollars (\$462.00). The first (1st) payment hereunder shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made no later than the first (1st) day of each month thereafter, during the Term thereof.

For each successive year of this Lease, the rent will increase by two percent (2%) from the preceding year.

The Lessee further agrees to pay the Lessor finance charges of one-and-a-half percent (1½%) per month (eighteen percent (18%) annual percentage rate) on all rent(s) and

N/A
400.2



LOT	AREA
WEST APRON LEASED A	11,796 sq. ft.

NORWOOD MEMORIAL AIRPORT
LEASE PLAN
WEST APRON PARCEL A
FEBRUARY 1, 2015
SCALE: 1" = 60'

NAC
400.2

TAB B

:
:
:
:
:
:

Financial information from the guarantor:

3 months business bank statements

Balance sheet

Income statement

Cash flow statement - Cash on hand - Financial reserves

Personal guaranty and Credit report -- All individuals

Dunn and Bradstreet Corporation credit report

Certificate of good standing

Proof of Insurance

VOLUME II
EXHIBITS 500-547

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT NO.
1582CV00213

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

Plaintiffs,

vs.

FLIGHTLEVEL NORWOOD, LLC;
EAC REALTY TRUST II; and
PETER EICHLEAY,

Defendants.

DEPOSITION of MARK RYAN

Wednesday, July 18, 2018 - 9:18 a.m.

Held at: Pierce Mandell, P.C.

11 Beacon Street

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
13th Fl, Suite 1330	508-767-1157
Springfield, MA 01144	

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1 A. Correct.
2 Q. Okay. And Mr. Maguire does not respond.
3 Because on June 5, Mr. Donovan sends him another
4 e-mail saying "I want to ask what my insurance
5 requirements are for FBO." Do you see that?
6 A. I do.
7 Q. Okay. And then on June 5th there's a
8 long e-mail, and on June 7th, Mr. Maguire
9 responds saying your e-mail has been received.
10 I'll get back to you. Do you see that?
11 A. I do.
12 Q. And on June 9th, which is the following
13 page, Mr. Donovan says to Mr. Maguire, "When are
14 you going to get back to me?"
15 Do you see that -- strike that.
16 On June 9th the e-mail says "Mr. Maguire,
17 could you please advise us as to insurance
18 requirements for BEH as outlined in my previous
19 e-mail?"
20 Do you see that?
21 A. Yes.
22 Q. Okay. And again, no response. So on
23 August 14th, Mr. Donovan writes to you. Do you
24 see that?

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1 A. Yes.
2 Q. He's asking for assistance and
3 clarification regarding BEH's FBO permit
4 insurance requirements. Correct?
5 A. Yes.
6 Q. Did you respond to this?
7 A. Yes.
8 Q. On August 14th; right?
9 A. Yes.
10 Q. And you said "I have received your e-mail
11 and will get back to you."
12 A. Yes.
13 Q. Did either you or Mr. Maguire ever get
14 back to Mr. Donovan regarding an explanation of
15 what the NAC was requiring from him in support of
16 BEH's FBO permit application with respect to
17 insurance?
18 A. I did not.
19 Q. Do you know if Mr. Maguire did?
20 A. That I don't know. I don't know.
21 (Exhibit No. 529 marked for
22 identification.)
23 BY MR. FEE:
24 Q. Mr. Ryan, Exhibit 529 is an e-mail from

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1 you to Mr. Maguire, cc to Mr. Sheehan,
2 May 27, 2016. Have you seen this before?
3 A. Yes.
4 Q. Okay. Did you send it?
5 A. Yes.
6 Q. Okay. Do you know why you sent it?
7 MR. SIMMS: Objection. Go ahead.
8 BY MR. FEE:
9 Q. You know, the attachment to this is
10 wrong. This should be a single page. The
11 attachments have nothing to do with the first --
12 sorry.
13 MR. SIMMS: I was just kind of wondering,
14 as I read this, how they all tied together.
15 MR. FEE: No. They are separate and
16 distinct.
17 BY MR. FEE:
18 Q. So 529. Do you know why you sent it?
19 MR. SIMMS: Same objection.
20 A. I do not know why this -- what prompted
21 this e-mail.
22 BY MR. FEE:
23 Q. Okay. First line. It says "Mike Sheehan
24 and I would like you to draft a letter to the BOS

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1 on our behalf regarding BEH."
2 Did I read that correctly?
3 A. Yes.
4 Q. Is it common for you and Mr. Sheehan to
5 collaborate and instruct the airport manager in
6 the absence of a full board meeting?
7 A. We would bounce something off each other
8 if need be.
9 Q. Okay. The second sentence says "We are
10 all sure that BOS have not read any of the
11 documents that support our position but rely on
12 the lies told them by BEH and other ill-informed
13 BEH supporters."
14 Did I read that correctly?
15 A. Correct.
16 Q. Now, first of all, did you believe that
17 BEH was lying to the board of selectmen at this
18 point in time? In May of 2016.
19 MR. SIMMS: Objection.
20 A. Not directly lying to the board of
21 selectmen.
22 BY MR. FEE:
23 Q. Well, what information was being conveyed
24 by BEH or BEH's ill-informed supporters that you

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1 wanted to counter?
2 MR. SIMMS: Objection. Go ahead.
3 I'll have a standing objection to
4 questions about this document or what I
5 anticipate to be the line of questioning about
6 this document.
7 MR. FEE: Okay.
8 MR. SIMMS: Go ahead. You can answer,
9 Mark.
10 A. So the airport commission had worked to
11 try to help BEH in many ways. But there was
12 nothing but people thinking that we were the
13 problem down there, and I wanted them to
14 understand what was actually going on down there
15 to the selectmen.
16 BY MR. FEE:
17 Q. Okay. So the next paragraph says, and I
18 quote:
19 "This letter will be lengthy but will
20 need to be -- need to be to chronicle the road
21 they have traveled with them highlighting our
22 efforts to protect the town while working with
23 BEH and listing each and every effort that BEH
24 has made to not move forward their litigious

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1 behavior from day one and their blatant disregard
2 for compliance to airport regulations and
3 aggressive, combative attitude, i.e., hovering
4 helicopter on taxiway, plowing in FlightLevel
5 fuel farm, vandalizing FlightLevel property,
6 combative calls to Mary Walsh and Jeff Adler,
7 etc."
8 Did I read that correctly?
9 A. Yes.
10 Q. So as of May 27, 2016, was it your belief
11 that BEH was exhibiting a blatant disregard for
12 compliance with airport regulations?
13 A. In the past, they had. Yes.
14 Q. And was it your belief that they -- that
15 BEH was exhibiting an aggressive and combative
16 attitude?
17 A. In the past they have.
18 Q. Okay. And was it your belief that BEH
19 had plowed in the FlightLevel fuel farm?
20 A. That was my belief.
21 Q. And that was based on information
22 provided to you by FlightLevel. Correct?
23 A. Correct.
24 Q. And did you believe that BEH had

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1 vandalized FlightLevel property?
2 A. That was my belief.
3 Q. And do you know specifically how BEH
4 vandalized FlightLevel property?
5 A. Tipping over their barriers.
6 Q. Okay. And that information was provided
7 to you by FlightLevel. Correct?
8 A. FlightLevel and a police report.
9 Q. We looked at the police report earlier,
10 and it said that there was no definitive
11 identification of the individuals that allegedly
12 tipped over the barriers; is that right?
13 A. Correct.
14 Q. Okay. So nonetheless, you attribute the
15 vandalism of the barriers to BEH,
16 notwithstanding that the police report did not
17 identify BEH employees and no criminal charges
18 were issued. Correct?
19 MR. SIMMS: Objection.
20 A. The police report said there were
21 individuals going in and out of the BEH hangar,
22 but it didn't identify who the exact personnel
23 were.
24

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1 BY MR. FEE:
2 Q. Yes. So nonetheless, you attributed this
3 vandalism to BEH.
4 A. Yes.
5 Q. Okay. And did you believe that BEH had
6 made combative calls to Mary Walsh and Jeff
7 Adler?
8 A. Yes.
9 Q. And who had told you about that?
10 A. The airport manager, Russ Maguire.
11 Q. Okay. So in each and every instance
12 that's cited for this behavior, it was based on
13 information that had been provided to you by
14 others. Correct?
15 MR. HARTZELL: Objection.
16 A. By others and evidence. Yes.
17 BY MR. FEE:
18 Q. And was it your belief that BEH was not
19 working with the commission?
20 MR. SIMMS: Objection. Go ahead.
21 Could you be more specific?
22 THE WITNESS: Yes, please.
23 MR. HARTZELL: Objection.
24 MR. FEE: Well, I was using it in the

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1 colloquial term.
2 BY MR. FEE:
3 Q. Was it your belief that BEH was being
4 obstructive in its dealing with the commission?
5 A. It was my belief that BEH was not working
6 along with us to move this along. Yes.
7 Q. Okay. And it was your belief that BEH
8 was litigious. Correct?
9 A. Yes.
10 Q. And it was your belief that BEH was
11 saying things to the board of selectmen that you
12 thought were untrue?
13 A. I'm not sure if it was to the board of
14 selectmen, but it was a lot of information that
15 was out there that I'm sure they are aware of.
16 Q. You mean in the press?
17 A. Just --
18 MR. SIMMS: Objection. Go ahead.
19 A. Could be anywhere.
20 BY MR. FEE:
21 Q. Well, you were aware that both BEH and
22 members of the commission were writing letters to
23 the editor at this time. Correct?
24 MR. SIMMS: Objection.

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1 BY MR. FEE:
2 Q. Of the Norwood newspaper.
3 MR. SIMMS: Seems to be clearly
4 information that you're now seeking from the
5 witness to use in the federal case.
6 MR. FEE: I'm asking him about this
7 document. I'm trying to get him to describe to
8 me what his understanding was regarding BEH's
9 aggressive/combatative attitude. We have a right
10 to probe on that.
11 It may slightly overlap with issues in
12 the federal case. You can move to strike, but
13 I'm entitled to ask him this question.
14 BY MR. FEE:
15 Q. So were you aware of the fact, at this
16 time, that both BEH and members of the commission
17 were writing letters to the Norwood paper
18 criticizing each other?
19 A. I don't recall the dates, but there were
20 letters.
21 Q. Okay. And so the noncooperative attitude
22 of BEH was of concern to you, was it not?
23 A. Yes.
24 Q. And so you asked Mr. Maguire to write a

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1 letter to the selectmen telling your side of the
2 story. The NAC's side of the story. Is that
3 fair to say?
4 MR. HARTZELL: Objection.
5 A. Correct.
6 BY MR. FEE:
7 Q. Okay. Now, the next sentence says:
8 "We did a similar letter after BAC did
9 their final stunt that highlighted how BAC was
10 not a good partner and we were ceasing further
11 negotiations with them."
12 Do you see that?
13 A. Yes.
14 Q. Okay. So had you had similar problems
15 with BAC regarding a combative attitude or
16 noncooperative attitude from an airport tenant?
17 A. Yes. BAC was not a good tenant, and we
18 wanted to highlight to the selectmen why we don't
19 think further negotiations were necessary.
20 Q. Further negotiation with BAC.
21 A. Correct.
22 Q. Okay. And what had BAC done?
23 A. It's spelled out in the letter to the
24 selectmen.

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1 Q. Okay.
2 (Exhibit No. 530 marked for
3 identification.)
4 BY MR. FEE:
5 Q. 530 are the meeting minutes of March 13,
6 2007. You were on the commission at this time.
7 Correct?
8 A. Yes.
9 Q. Okay. Second page, three-quarters of the
10 way down it says:
11 "BAC filed a complaint with FAA that the
12 Town of Norwood has not violated its obligation
13 under assurance 23 'Exclusive Rights.'"
14 I think that may be a double negative --
15 I know that's impossible these days. So does
16 that refresh your recollection as to the conduct
17 of BAC that caused you and the NAC to want to
18 write a letter to the board of selectmen in 2007?
19 A. No.
20 Q. The letter that was written to the board
21 of selectmen in 2007, that you referenced in
22 Exhibit 529, was not due to the fact that BAC had
23 filed a Part -- filed a complaint with the FAA?
24 A. No.

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1 Q. It was due to the fact that they were a
2 difficult tenant?
3 A. Numerous instances, yes.
4 Q. Okay.
5 (Exhibit No. 531 marked for
6 identification.)
7 BY MR. FEE:
8 Q. 531 are minutes. I understand they're
9 stamped draft, but this was all that was able to
10 be provided by the -- Norwood in response to a
11 public records request.
12 It appears to be for the Norwood Airport
13 Commission regular business meeting, April 2007.
14 You were on the commission at that time.
15 Correct?
16 A. Yes.
17 Q. So just skipping to the second page. In
18 the middle of the page it says:
19 "Motion made by Mark Ryan and seconded by
20 Mr. Judge to direct the manager to work with town
21 counsel to draft a letter for the chairman's
22 signature telling BAC to cease all discussions,
23 studies, etc., of operating a fuel facility on
24 this airport."

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1 Do you see that?
2 A. Yes.
3 Q. And then it says:
4 "Discussion of the Motion. This decision
5 is based on their past behavior. Mr. Barca
6 stated the implication was that Mr. Bishop was
7 unqualified to operate a fuel facility and he
8 disagrees with that. Mr. Ryan clarified that the
9 company, BAC, is not qualified.
10 "BAC has consistently not worked with the
11 commission or the manager over the past several
12 years. Mr. Corbett pointed out that at the last
13 Commission meeting he got a letter from
14 Mr. Bishop stating BAC was going to operate
15 trucks."
16 Did I read that correctly?
17 A. You did.
18 Q. So what happened in April 2007 was that
19 BAC was seeking an FBO. Correct?
20 A. I don't know if that's -- an FBO is being
21 looked at. I don't recall that.
22 Q. Well, in the text of the motion, which
23 you made -- first of all, do you agree that this
24 is an accurate transcription of what happened at

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1 the meeting on April 2007?
2 A. I don't recall.
3 Q. Okay. So in the motion -- according to
4 the minutes, the motion says that you want to
5 direct town counsel to draft a letter telling the
6 BAC to cease all discussions, studies, etc., of
7 operating a fuel facility on the airport; right?
8 A. Correct.
9 Q. Okay. So in order to operate a fuel
10 facility, do you need an FBO permit?
11 A. No.
12 Q. What other permit can you have in order
13 to operate a fueling facility on the airport?
14 A. Self-fueling.
15 Q. So what kind of permit would be required
16 for self-fueling?
17 A. I believe it's a 135 is what it's called,
18 but it's a commercial permit.
19 Q. It's your understanding that a commercial
20 135 permit would allow self-fueling on the
21 airport?
22 A. Self.
23 Q. Self-fueling on the airport.
24 A. Uh-hmm.

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1 Q. So he's seeking a fuel permit. Correct?
2 He's seeking a permit to conduct fueling
3 operations on the airport. Correct?
4 A. Correct.
5 Q. And your motion is to cease all
6 discussions with him regarding that permit
7 application. Correct?
8 A. Correct.
9 Q. Okay. And the reason for that motion is
10 that he had been combative and noncooperative and
11 hadn't worked with the commission. Correct?
12 A. There are other issues going on. Yes.
13 Q. Okay. But this motion to table all
14 discussion with BAC was approved. Correct?
15 A. Yes.
16 Q. And was Mr. Bishop's fuel facility
17 application ever granted by the commission?
18 A. Mr. Bishop and BAC for some time had a
19 fuel truck that was fueling his planes on the
20 DC3 ramp. And Russ Maguire, at the time, was not
21 airport manager. He was away. And when he came
22 back, he listed a number of issues why that
23 should not be allowed.
24 You know, part of it was the fire

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1 department's concerns. Part of it was
2 Mr. Maguire's concerns. And we told them to stop
3 fueling.

4 Q. Okay. But in April of 2007, you told him
5 that you weren't going to consider his fuel
6 facility application. Correct?

7 A. Does it say that?

8 Q. It says that the motion was voted three
9 to one in favor, and the motion was to draft --
10 for town counsel to draft a letter, for the
11 chairman's signature, telling BAC to cease all
12 discussions, studies, etc., of operating a fuel
13 facility on this airport.

14 A. Correct.

15 Q. Okay. So after that motion was voted,
16 did the commission ever revisit Mr. Bishop's
17 application to operate a fuel facility?

18 A. I don't recall.

19 Q. Okay. The reason that you made this
20 motion was you believed BAC was not qualified for
21 this permit. Correct?

22 A. Correct.

23 Q. And the reason stated in the minutes --
24 or the reason that you felt BAC was not qualified

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1 was because it had consistently not worked with
2 the commission. Is that fair to say?

3 A. Correct.

4 Q. So in your mind in 2007, it was a
5 legitimate reason to deny a permit application if
6 the applicant was not cooperative.

7 MR. SIMMS: Objection. Go ahead.

8 A. No.

9 BY MR. FEE:

10 Q. Changing topics. With respect to the
11 permitting associated with BEH's fuel facility,
12 you were on the commission throughout the whole
13 time period where that was discussed and
14 considered. Correct?

15 A. Correct.

16 Q. Okay.

17 (Exhibit No. 532 marked for
18 identification.)

19 BY MR. FEE:

20 Q. Exhibit 532 are the regular meeting
21 minutes for December 13, 2012, and three-quarters
22 of the way down, there's a motion made by
23 yourself and seconded by Mr. Shaughnessy. And
24 the commission voted 3-0 to send a letter to the

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1 board of selectmen to approve the design of
2 the -- BEH's new building, fuel tank, and
3 grounds; is that correct?

4 A. Correct.

5 Q. And that was subject to various
6 subsequent approvals. Correct?

7 A. Correct.

8 Q. And that included a building permit from
9 the building inspector, fire department approval,
10 conservation commission order of conditions, a
11 fueling permit from the board of selectmen, etc.
12 Correct?

13 A. Correct.

14 Q. And you communicated this information to
15 the board of selectmen at some point?

16 A. I don't recall.

17 Q. Exhibit 404 to the Butters' deposition --
18 I'm sorry. Let me give you this one.

19 This is a letter from Mr. Maguire to the
20 board regarding BEH's application for a fuel
21 storage license. Do you see that?

22 A. Yes.

23 Q. Okay. And the letter states that the
24 approval from the commission -- the Commission's

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1 approval requires compliance with eight criteria
2 noted in a 12/12/12 memo from you. Do you see
3 that?

4 A. Yes.

5 Q. Okay. And flipping this document, 404,
6 to the third page, the memo dated December 12,
7 2012, from you, appears to have eight conditions
8 governing the construction/installation of the
9 UST. Is that correct?

10 A. For the site plan requirements.

11 Q. Okay. And in addition, the letter states
12 that the airport commission wants BEH to comply
13 with all taxi lane object-free area restrictions
14 that apply to the siting of BEH's fueling
15 equipment. Do you see that?

16 A. I do.

17 Q. Is it your understanding that BEH's
18 fueling equipment complies with all taxi lane
19 object-free area restrictions?

20 A. I do not know that.

21 Q. Do you know that all of BEH's fueling
22 equipment is underground? The tanks are
23 underground.

24 A. Yes.



Michael Sheehan <msheehan8@gmail.com>

BEH

1 message

Mark Ryan <mryan@norwoodma.gov>

To: mmaquire@norwoodma.gov

Cc: Mike Sheehan <msheehan8@gmail.com>

Fri, May 27, 2016 at 1:20 PM

Russ

Mike Sheehan and I would like you to draft a letter to the BOS on our behalf regarding BEH.

We are all sure the BOS have not read any of the documents that support our position but rely on the lies told them by BEH and other ill informed BEH supporters.

This letter will be lengthy but will need to be to chronicle the road we have travelled with them highlighting our efforts to protect the Town while working with BEH and, listing each and every effort that BEH has made to not move toward, their litigious behavior from Day 1 and their blatant disregard for compliance to airport regulations and aggressive/combatative attitude (i.e. Hovering helicopter on taxiway, plowing in Flightlevel fuel farm, vandalizing Flightlevel property, combative calls to Mary Walsh and Jeff Adler, etc).

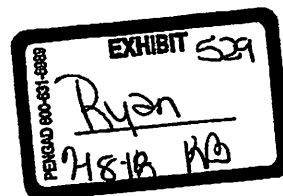
We did a similar letter after BAC did their final stunt that highlighted how BAC was not a good partner and we were ceasing further negotiations with them.

This will take some doing but it would need to be submitted before Brandon and John Davis meet with the BOS.

Thanks Russ

Ps - any news from Tom Mahoney?

Sent from my iPhone



APPROVED

4/1/07

**Norwood Airport Commission
Regular Business Meeting
March 13, 2007**

Present: Bryan Corbett, Mark Ryan, Thomas Judge, Les LeBlanc
Russ Maguire
Absent: Joseph Barca

Quorum being present, the meeting was called to order by the Chairman at 5:02 PM

Edwards and Kelcey

David Graham gave an update

Congratulated the Manager on his contribution to On The Hill Day
In regard to the EAC invoice matter, the second invoice has been paid by E and K and the matter is now closed.
Master Plan is being wrapped up – 4 or 5 changes have been incorporated and it should be sent to the FAA in mid to late April

Chairman asked whether land acquisition had been addressed in the Master Plan. And it has.

Mr. Ryan clarified – CIP has been changed slightly and Steve will check with Mike Garrity and Bill Richardson on this and report back to Commission.

Discussion of the Economic Impact Study

Mr. Graham advised the Commission to write to MAC asking them to do an update on the study.

Mr. Ryan requested an update of the existing study and asked Manager to draft a letter to MAC encouraging them to do another study. The study comes in handy when NAC is looking for funding but the existing one is getting old now.

SRE Building

Steve Flechia updated NAC.

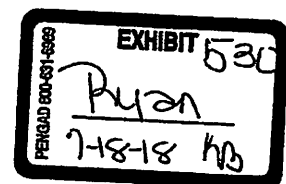
Pictures are now available in draft and were presented to NAC
Design will be completed this week

3/21 out for advertisement

4/11 filed subbid

4/25 general bid

4/26 letter will be ready to have grant signed 5/1



Chairman signed contract for engineering agreements between E and K and NAC

Minutes

Change paragraph 2 last page spelling of contractor name
Motion made by Mr. Ryan and seconded by Mr. Judge to accept the minutes with the one recommended change Voted 3-0

Old Business

BAC draft lease has been approved by Town Counsel but now BAC's attorney sent another letter asking for several changes.

Motion by Mr. Judge and second by Mr. LeBlanc to forward the BAC's attorney letter to Town Counsel Voted 4-0 in favor

1. Section II, Term
Letter asked for a 20 year tie down lease which is not acceptable
2. Section IV – Use of Premises
Mobile fuel storage is not OK under current airport regulations
Section XXIII – Abandonment of Premises
If the land is vacant and NAC has a special event – we have the right to use it and also we will have the right to entry such as easements.
3. Section VI Assignments, Mortgages or Sub Leases
NAC and Manager need an updated list of all their aircraft.

Motion made by Mr. Ryan and seconded by Mr. LeBlanc to refer this letter and the entire lease to Town Counsel Voted: 4-0 in favor

BAC filed a complaint with FAA that the Town of Norwood has not violated its obligation under assurance 23 "Exclusive rights"

Mr. Bishay requested a copy of the FAA correspondence
Manager commented that according to Town Counsel if NAC receives a written request then they can release a copy of the letter.

New Business

Solicitation is out for engineering consultants. Bids are due at the beginning of April. RFP due on 4/5. Interviews will be held in May and a decision will be made in June

Correspondence

In regard to EAC request to have the Conservation Commission fees waived, Mr. Bishay requested copies of NAC letter to Selectmen and the Selectmen's letter to the Conservation Commission.

The final E and K payment has been made to EAC and the matter is settled.

Flowage fees

In November of 2003 NAC asked Len Carroll if they would raise the flowage fee from 4 cents to 10 cents per gallon and the response from Mr. Carroll was yes.

The Manager has since researched other airports regarding flowage fees. The matter was tabled at the last meeting until today. The average fee seemed to be 6 cents per gallon

Motion made by Mr. Ryan and seconded by Mr. LeBlanc to raise the flowage fee from 4 cents per gallon to 6 cents per gallon on Avgas and Jet A fuel, effective as of June 1, 2007. Voted: 4-0 in favor.

Mr. Bishay stated for the record that EAC pays 8 cents total – 4 cents to the Town and 4 cents to BMA and going to 6 cents to the Town is too much. He claimed EAC does a monthly market analysis which shows that EAC is well below the average of all the retail airports as far as pricing.

Mr. Ryan's commented that NAC is considering the fact that BMA is charging EAC 4 cents.

Mr. Bishay claimed that EAC gives discounts to all heavy users and the asking price applies only to small users

Mr. Bishay stated for the record that EAC will be responding with official documentation

A bill of lading will be required each month effective immediately.

Mr. Bishay requested formal notification regarding the vote to increase the fee so he can make a formal response.

Motion by Mr. Ryan and seconded by Mr. LeBlanc to adjourn 5:55 PM
Voted 4-0 in favor

suggested that Mr. Bishay try to negotiate with BMA to alleviate the hardship.

Chairman – the NAC budget was cut significantly and the funds must be generated somehow. Also, the flowage fee has not been raised in quite some time.

Mr. Bishay made some alternative suggestions to the Commission concerning increasing revenue.

Chairman Corbett offered to Mr. Bishay the option of paying a yearly guaranteed amount – whether he pumps it or not.

Mr. Bishay continued to make suggestions to the Commission of things to do instead of increasing the fuel flowage.

Mark Ryan – The Commission has been reasonable in considering the flowage increase – but Mr. Bishay must remember that the 4 cents paid by EAC to BMA is not a consideration for the NAC and will not be taken into account as it is strictly between EAC and BMA.

The Chairman spoke about the letter from Bahig – pointing out that the increase has been being discussed for three years. NAC has a business to run. Chairman notified the group that he intended to close this discussion.

Mr. Bishay continued to plead with the Chairman not to increase the fuel flowage fee.

Chairman declared the discussion closed.

Motion made by Mark Ryan and seconded by to reaffirm the decision at last months meeting to increase the fuel flowage fee by 2 cents /gallon. Voted; 3-1 in favor. Mr. Barca against

New Business

Discusssion of Vegetation Management

Scheduling of Engineering Interviews for next month

Motion made by Mr. Barca and seconded by Mr. Ryan to approve the two new tie down contracts presented to the Commission by the Manager. Voted 4-0

Chairman has been reappointed by the Board of Selectmen for three years.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff

vs.

FRANCIS T. MAGUIRE, ET AL.,

Defendants

DEPOSITION of THOMAS J. WYNNE

Wednesday, June 20, 2018

9:19 a.m.

Held at: Norwood Town Hall

566 Washington Street

Norwood, Massachusetts

Megan M. Castro, RPR, Court Reporter

Real Time Reporting, Inc.

One Monarch Place
1414 Main Street
Suite 1330
Springfield, MA 01144

9 Hammond Street
Worcester, MA 01610
508-767-1157

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1 provided the exact amounts that were being
2 requested for base rent, in accordance with this
3 sublease?
4 A. No.
5 Q. Did you know what the amount being
6 charged the sublessee were, at the time that you
7 voted on August 6, 2010?
8 A. I can't recall.
9 Q. Do you know if you read the lease before
10 you executed the consent document that has been
11 marked as Exhibit 379?
12 A. Do I recall whether or not I read it? I
13 don't. As a matter of practice, I did my -- I
14 believe I would have read it. But you know, pick
15 it up on any given day and reading it thoroughly,
16 I couldn't tell you what day, month, year that
17 happened.
18 Q. Okay. That is fine.
19 Now, in 2010 -- sorry.
20 You were on the Commission in 2010;
21 correct?
22 A. Yes.
23 Q. And at or about that time, Boston
24 Executive Helicopters began operations on the

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1 airport; is that correct?
2 A. I don't know when they began operations.
3 Q. Do you recall, at any time -- at any
4 point in time, Boston Executive Helicopters
5 communicating to you or the Commission its desire
6 to become an FBO?
7 A. Not in 2010.
8 Q. Do you know when they communicated that?
9 A. No.
10 Q. Do you recall, at any time, Boston
11 Executive Helicopters communicating to you or the
12 Commission its desire to lease space in addition
13 to the hangar that they occupied at lot F?
14 A. No.
15 Q. You don't recall?
16 A. No.
17 Q. Do you recall, at any time, Mr. Maguire,
18 who was the airport manager, advising you or
19 members of the Commission that it was important
20 for the Commission to try and find leased space
21 for Mr. Donovan?
22 A. No.
23 Q. How important was it, in 2010 -- between
24 2010 and 2013, for the Airport Commission, that

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1 Mr. Donovan be allowed to lease space in order to
2 conduct an FBO?
3 MR. SIMMS: Objection to form.
4 Go ahead.
5 MR. HARTZELL: Objection.
6 A. Say that again.
7 BY MR. FEE:
8 Q. Yes. How important was it to the
9 Commission to enable Boston Executive Helicopters
10 to lease space in order to conduct an FBO? I am
11 talking, between 2010 and 2013.
12 MR. SIMMS: Same objection.
13 You can answer, Tom.
14 MR. HARTZELL: Objection.
15 A. I don't have an answer to that, for that
16 question.
17 BY MR. FEE:
18 Q. You can't tell me how important it was?
19 MR. SIMMS: Same objection.
20 MR. HARTZELL: Objection.
21 BY MR. FEE:
22 Q. I am going to show you what has been
23 marked today as Exhibit 369, but it was also
24 previously marked as 338 to the Shaughnessy

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1 deposition.
2 Mr. Hartzell asked you about the
3 penultimate paragraph, but I want to ask you
4 about the final paragraph, where it says, "To
5 remain in compliance with federal standards, I
6 would therefore ask the NAC to consider any
7 applicable lease opportunities moving forward."
8 Do you see that?
9 A. Yes.
10 Q. So is it fair to say that in or about
11 June of 2013, the airport manager advised the NAC
12 that it was advisable to find lease opportunities
13 for BEH at the airport?
14 MR. HARTZELL: Objection.
15 A. No.
16 BY MR. FEE:
17 Q. Okay. Well, would you agree with me that
18 Mr. Maguire says, in the final paragraph of this
19 email -- sorry -- this memorandum, that he is
20 advising the NAC to look at all of available
21 lease opportunities for BEH?
22 A. Yes.
23 Q. So what, if anything, did the Commission
24 do in response to its receipt of this memo that

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1 has been marked as Exhibit 338 to the Shaughnessy
2 deposition?
3 A. I am speaking for Tom Wynne, not the
4 Commission.
5 Q. Understood.
6 A. I was aware, at this point, that
7 Mr. Donovan/BEH would like space, if it were
8 there.
9 Q. Right.
10 A. There was limited space available.
11 Q. Okay.
12 A. You know, that would help him out. Let
13 me put it that way.
14 Q. Do you know what space was available in
15 or about 2013?
16 A. The cap ramp, as we call it.
17 Q. Yes.
18 A. And that was the only --
19 Q. Was the DC-3 ramp available?
20 A. It may have been. I am not so sure.
21 Q. What about the west ramp?
22 A. The west ramp, no.
23 Q. Why not?
24 A. The airport was renting it out. We

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1 controlled the tie downs there.
2 Q. Were you familiar with the corrective
3 action plan that was issued by the FAA in
4 connection with the Boston Air Charters part 16
5 complaint in 2008?
6 MR. SIMMS: Wait. You need a timeframe.
7 Can you read that back? Because I think you
8 said, Mike, "were you familiar." I need to know
9 when you are talking about.
10 MR. FEE: Okay. I can rephrase.
11 BY MR. FEE:
12 Q. In 2013, were you familiar with the
13 corrective action plan that had been issued by
14 the FAA in connection with Boston Air Charters
15 part 16 complaint?
16 A. In 2013, I would have been familiar with
17 it.
18 Q. And as you sit here today, do you have
19 any recollection of what the corrective action
20 plan said?
21 A. No.
22 Q. Do you have a general recollection that
23 the corrective action plan required the airport
24 to lease space so as not to allow a single user

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1 to occupy a majority of the federally funded
2 ramps?
3 MR. HARTZELL: Objection.
4 BY MR. FEE:
5 Q. Do you know that?
6 A. Not without going back and reading the
7 document. It is nothing that I have committed to
8 memory.
9 Q. As you sit here today, do you have any
10 understanding of what requirements the corrective
11 action plan issued by the FAA in the Boston Air
12 Charters part 16 complaint placed on the NAC?
13 A. No.
14 Q. When you evaluated Mr. Maguire's
15 memorandum that has been marked as Exhibit 369
16 and 338, did you consider any requirements
17 imposed by the FAA on the Norwood Airport
18 Commission as a result of the corrective action
19 plan?
20 MR. HARTZELL: Objection.
21 A. I can't respond to that.
22 BY MR. FEE:
23 Q. Why not?
24 A. I don't have any recollection of it. We

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1 are going back to 2013. You know.
2 Q. So you don't know whether, in evaluating
3 Exhibit 338, you considered the corrective action
4 plan?
5 A. Correct.
6 MR. FEE: Off the record.
7 (Discussion off the record.)
8 BY MR. FEE:
9 Q. At or about this time in 2013, you were
10 aware that BEH wanted to become an FBO; correct?
11 A. Yes.
12 Q. And you were aware that BEH wanted to
13 lease space at the airport; correct?
14 A. Yes.
15 Q. Did FlightLevel voice any objections to
16 you or the Commission regarding BEH's FBO
17 aspirations?
18 A. Not that I am aware of.
19 Q. Let me show you what has been marked as
20 Exhibit 381.
21 (Handing Exhibit 381 to the witness.)
22 Q. It appears to be a letter to the Airport
23 Commission from Mr. Eichleay. And I would just
24 turn your attention to page 2, third paragraph.

Kevin J. Shaughnessy
July 13, 2017

K Shaughnessy

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 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 commission meetings?

2 A. I suppose, yes.

3 Q. And do you speak to him in the context of

4 executive session at commission meetings?

5 A. Yes.

6 Q. And do you speak to him outside the

7 context of meetings?

8 A. Yes.

9 Q. Okay. And is that discussion that you

10 have with him in the form of e-mail or telephone

11 calls?

12 A. Both.

13 Q. Okay. And do you confer with Mr. Moss

14 for the purposes of discussing issues relevant to

15 BEH?

16 A. The e-mails would be -- when they were

17 looking for e-mails. I would have to say yes.

18 Q. Okay. Does Mr. Moss attend all of the

19 Norwood Airport Commission meetings?

20 A. No.

21 Q. Does he attend most of them?

22 A. I'd say -- I don't know.

23 Q. Between 2014 and 2015, when consideration

24 of BEH's Part 13 and Part 16 Complaint were

Page 31

1 predominant, would you say that Mr. Moss attended

2 most NAC meetings?

3 A. I really don't remember.

4 Q. Do you know if Mr. Moss was an active

5 participant in the commission's deliberations

6 regarding BEH in 2014 and 2015?

7 A. Yes.

8 Q. You were on the board, were you not, when

9 the -- I'm sorry -- the commission when Boston

10 Air Charters filed a Part 16 Complaint with the

11 FAA; were you not?

12 A. Yes.

13 Q. Okay. And what do you remember about

14 that? Do you remember anything about the

15 substance of it?

16 A. No.

17 Q. I'll show you a document that's been

18 marked as Exhibit 4. Have you ever seen that

19 before?

20 A. I don't remember.

21 Q. Okay. So if I just turn your attention

22 to the third page of it. Down the bottom of the

23 first page which -- I'm sorry -- the third page

24 which is entitled "Directors Determination," it

Page 32

1 says -- I'm sorry -- next page. Page 4 of this

2 document, top of the page, first bullet.

3 It talks about whether the Town of

4 Norwood granted an exclusive right to Eastern Air

5 Center to operate a fueling facility and sell

6 general aviation and jet fuel to the public and,

7 in the process, ceding control of the only power

8 source to operate a fueling facility on the

9 airport ramps to Eastern Air Center and Boston

10 Metropolitan Airport, Inc. Do you see that?

11 A. In context it says Boston Air Charter

12 versus the Norwood Airport Commission?

13 Q. Correct.

14 A. What was the question again?

15 Q. Does this refresh your recollection as to

16 the substance of the FAA determination regarding

17 Boston Air Charter's Part 16 Complaint?

18 A. No.

19 Q. So you still don't have any recollection

20 about the substance of that Part 16 Complaint?

21 A. No.

22 Q. Do you know what the result of that Part

23 16 Complaint was?

24 A. The one that's still ongoing?

Page 33

1 Q. No. I'm talking right now about Boston

2 Air Charter's 2008 Part 16 Complaint.

3 A. I don't remember.

4 Q. Okay. Do you recall whether the FAA

5 issued a determination or rulings regarding

6 Boston Air Charter's Part 16 Complaint?

7 A. No.

8 Q. Okay. Do you recall participating in any

9 way in the drafting of a corrective action plan

10 as a result of the Boston Air Charter Part 16

11 Complaint?

12 A. Nope.

13 Q. Is your answer no?

14 A. I would say in any way -- I recall that

15 there was a complaint, but I recall that we had

16 to respond to it. I don't remember the

17 specifics.

18 Q. Okay. I'll show you a document that's

19 been marked Exhibit 36. Tell me if you've seen

20 that before.

21 Exhibit 36 appears to be a letter from

22 Mr. Maguire to the FAA dated January 27, 2010.

23 Have you ever seen this before?

24 A. I'm reading it now. I don't remember.

Page 34

1 Q. Okay. Drawing your attention to the
2 third bullet point where it says -- and it's
3 talking about steps that the Norwood Airport
4 Commission has taken in response to the Part 16
5 Complaint.

6 And the third bullet point says "End the
7 practice of awarding long-term leases of
8 federally funded ramps that have the effect of
9 granting one party control over the majority of
10 the ramps on the airport."

11 Did I read that correctly?

12 A. Yes.

13 Q. Is it your belief or your understanding
14 that after the issuance of the Part 16 ruling in
15 2010 and the FAA's subsequent direction to the
16 NAC that the commission was required to end the
17 practice of awarding long-term leases that would
18 have the effect of granting one party exclusive
19 control over a majority of the federally funded
20 ramps at the airport?

21 MR. SIMMS: Objection. Go ahead.

22 A. You'd have to ask that again.

23 BY MR. FEE:

24 Q. Well, I just read you bullet three --

Page 35

1 A. I remember that.

2 Q. -- which appears to be a directive from
3 the FAA. Would you agree with me on that?

4 A. I heard that. I just want you to ask the
5 question again.

6 Q. Okay. Well, I'm trying to break it down
7 because it was long and I understand that it was
8 convoluted. So I'm going to break it down a
9 little bit.

10 I read you bullet three.

11 A. Um-hum.

12 Q. And my question is: Do you believe that
13 this directive from the FAA was binding on the
14 commission?

15 A. Yes.

16 Q. Okay. And what, if anything, did the
17 commission do to effectuate this directive from
18 the FAA?

19 A. I don't recall.

20 Q. Did it do anything?

21 A. I don't remember.

22 Q. Okay. Do you know who -- would you agree
23 with me that FlightLevel has control over a
24 majority of the ramps at the airport?

Page 36

1 A. Yes.

2 Q. Okay. And that's been for quite some
3 time. Correct?

4 A. I don't know.

5 Q. Well, for the entire time that you've
6 been a member of the commission, FlightLevel has
7 been in control over a majority of the federally
8 funded ramps at the airport. Is that fair to
9 say?

10 A. I think so.

11 Q. Is there any reason to doubt that in your
12 mind?

13 MR. SIMMS: Objection. You can answer.

14 A. I don't -- in my mind, I know that there
15 were two entities and -- so I'm not quite sure
16 when it split up. When they took over some of
17 the other ramps. Eastern Wiggins and Eastern Air
18 Charter. I'm not sure when that all took place.

19 One went out of business. And then, I
20 think, it would be FlightLevel's company that
21 took over --

22 Q. Right. So --

23 A. -- spaces.

24 Q. So FlightLevel took over --

Page 37

1 A. And I'm not sure about lease times and,
2 you know, effectual -- when they would expire.
3 Because some of the leases are long term.

4 Q. Right. But since you've been at the
5 airport, FlightLevel has been the only FBO.
6 Correct?

7 A. Yes.

8 Q. And FlightLevel or Papa Whisky have
9 leasehold interests over a majority of the
10 federally funded ramps at the airport. Correct?

11 A. I believe so.

12 Q. And that's been the case since
13 FlightLevel arrived at the airport. Correct?
14 Because it came -- it assumed all of the leases
15 of its predecessor, Wiggins.

16 A. What I'm saying is that I think
17 FlightLevel came roughly about the same time as
18 me.

19 Q. Okay. Fair enough.

20 At some point did you become aware of the
21 fact that Boston Air Charters was interested in
22 leasing space at the airport?

23 A. Yes.

24 Q. And Boston Air Charters began as -- with



U.S. Department
of Transportation
Federal Aviation
Administration

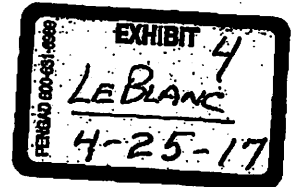
Office of Airport Safety and
Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 14 2008

APR 11 2008

Mr. Matthew Watsky, Esquire
Attorney at Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026



Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Dear Messrs. Watsky and Lehane:

FAA Docket Number 16-07-03

Enclosed is a copy of the Director's Determination in the above-captioned formal complaint under 14 C.F.R Part 16.

We find that the Town of Norwood, Massachusetts, is in violation of Title 49 United States Code §§ 40103(e) and 47107(a)(1) and *General Written Assurances* on Exclusive Rights, Economic Nondiscrimination, and Preserving Rights and Powers.

The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA, will lead to suspension of future grant applications for AIP discretionary grants.

Sincerely,

J.R. White for
Kelvin Solco
Acting Director, Office of Airport
Safety and Standards

Enclosure

CERTIFICATE OF SERVICE

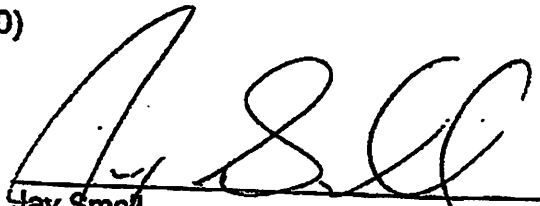
I HEREBY CERTIFY that on, April 11, 2008, I placed in the United States mail (first class, postage paid) a true copy of the foregoing document addressed to:

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Matthew Watsky, Esquire
Eastbrook Executive Park
30 Eastbrook Road
Suite 301
Dedham, MA 02026

FAA Part 16 Airport Proceedings Docket
Federal Aviation Administration (AGC-610)
800 Independence Avenue, S.W.
Washington, D.C. 20591

A handwritten signature in black ink, appearing to read "Jay Small", written over a horizontal line.

Jay Small
FAA, Airports Division

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

BOSTON AIR CHARTER

COMPLAINANT

V.

**NORWOOD AIRPORT COMMISSION
NORWOOD, MASSACHUSETTS**

RESPONDENT

Docket No. 16-07-03

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.

Boston Air Charter (Complainant/BAC) has filed a formal complaint pursuant to Title 14 CFR Part 16 against the Town of Norwood (Respondent/Town) owner, sponsor and operator of Norwood Memorial Airport (Airport), Norwood, Massachusetts. Complainant alleges that the Respondent is engaged in economic discrimination and has granted a fixed-base operator¹ an exclusive right in violation of Title 49 United States Code (U.S.C.) §§47107(a) and 40103(e) and the respective FAA Grant Assurances, 22 *Economic Nondiscrimination* and 23, *Exclusive Rights*.

Complainant, a Part 135 operator² on the Airport, identifies the issues to be resolved as:

- Whether the Town of Norwood, as the property owner, discriminated against the Complainant by failing to provide access to permit the installation of electric utilities for the Complainant to operate a fueling facility for its personal use at Norwood Memorial Airport. Complainant alleges such an action constitutes unreasonable denial of access and unjust discrimination in violation of Title 49 U.S.C. § 47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

¹ A fixed-base operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, etc. to the public. [FAA Order 5190.6A, Appendix 5]

² A Part 135 operator holds an Air Carrier Certificate and provides passenger service as a commuter or on-demand service

Pages 1-117
Exhibits 106-108

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 KEVIN J. SHAUGHNESSY

TAKEN MARCH 19, 2018

AT THE LAW OFFICES OF

LeCLAIR RYAN

ONE INTERNATIONAL PLACE, 11TH FLOOR

BOSTON, MASSACHUSETTS

Reporter: Raymond F. Catuogno, Jr.

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1 MR. HARTZELL: Back on the
2 record.

3 Q. (By Mr. Hartzell) Mr. Shaughnessy,
4 I have just a couple of follow-up questions.

5 When we were talking earlier about
6 these, I think, three different lease offers and
7 maybe a fourth to Boston Executive Helicopters
8 from Norwood Airport Commission, were any of
9 those lease offers subject to an RFP?

10 A. No.

11 Q. And during the entire time that you
12 had been on the Norwood Airport Commission, have
13 you or anybody on the Norwood Airport Commission
14 taken any orders or instructions from Peter
15 Eichleay or anybody representing FlightLevel
16 when it comes to governance of the airport?

17 A. No.

18 MR. HARTZELL: That's all that
19 I have. Thank you.

20 EXAMINATION BY MR. FEE:

21 Q. Good afternoon, Mr. Shaughnessy.

22 A. Good afternoon, Attorney Fee.

23 Q. I want to ask you a few questions
24 about some of the matters that Mr. Hartzell took

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1 A. There was a corrective action plan.

2 Q. Are you familiar with it?

3 A. Not really.

4 Q. Do you recall -- and if you don't
5 just let me know, but do you recall that part of
6 its direction to the NAC was that the FAA
7 require the NAC to take actions that would cause
8 a majority of the federally-funded ramp space
9 not to be controlled by one party?

10 A. I don't remember that specifically.
11 One of the issues was long-term leases, I
12 believe.

13 Q. And one of the issues was that the
14 FAA directed the NAC to refrain from entering
15 into long-term leases such that it would result
16 in one party having control over a majority of
17 the federally-funded ramps at the airport,
18 correct?

19 A. I don't know what their reason was.
20 I tend to think they wanted approval of
21 long-term leases or reasons for long-term
22 leases.

23 Q. Did the corrective action plan also
24 require the NAC to add provisions to existing

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1 up with you. And as an initial matter, I wanted
2 to ask you a question about Exhibit 81 that
3 Mr. Hartzell showed you. And they're the
4 meeting minutes from the April 9, 2014, meeting.
5 Mr. Hartzell asked you a question about whether
6 100,000 square feet was available on the airport
7 at the time that that demand by BEH had been
8 made. Do you recall that discussion?

9 A. I do.

10 Q. And you said there's -- 100,000 was
11 not available on the airport; is that right?

12 A. I probably did say that. I think
13 what I meant to say was that the west apron was
14 considerably less.

15 Q. And the west apron is about 80,000?

16 A. I don't think it's that much, but
17 it's in the seventies, I think.

18 Q. And were you on the Commission when
19 the Boston Air Charter Part 16 Complaint was
20 adjudicated by the FAA?

21 A. Yes.

22 Q. And are you familiar with the
23 corrective action plan issued by the FAA in
24 connection with that?

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1 leases that would enable them to recapture space
2 subject to lease if another FBO became viable or
3 wanted to lease space?

4 A. I don't recall.

5 Q. You don't remember that?

6 A. No.

7 Q. Okay. Do you know if the current
8 leases that were executed -- I'm sorry, that
9 were drafted and prepared for FlightLevel on
10 Lots 5, 6, 7, A, B, and C contained a provision
11 that would enable the NAC to claw back space if
12 an FBO became viable at the airport or a second
13 FBO permit granted?

14 A. I don't recall the specifics of
15 those leases.

16 Q. Mr. Hartzell asked you several
17 questions about the business plan and you
18 said -- which was marked as Exhibit 84. And one
19 of the things you said was that you had some
20 general concerns about the business plan. You
21 said you had some general concerns about it?

22 A. I don't want to say "concerns". I
23 had some additional information that I thought
24 should be included.

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1 Q. And that additional information was
2 of a financial nature?

3 A. Yes.

4 Q. Okay. And you and I have talked
5 about the rules and regulations and minimum
6 standards at length in another proceeding. Do
7 you recall that?

8 A. I remember that coming up, yes.

9 Q. And do you believe -- or did you
10 believe, when you were reviewing the business
11 plan marked as Exhibit 84, that in order to be
12 granted an FBO permit FlightLevel -- I'm sorry,
13 BEH needed to demonstrate that a second FBO was
14 necessary at the airport?

15 A. Could you repeat that?

16 Q. Yes. When you were reviewing the
17 business plan marked as Exhibit 84, were you
18 under the impression that it was incumbent upon
19 BEH to demonstrate that a second FBO was
20 necessary at the airport?

21 A. I don't think that was the case.

22 Q. So in your reviewing the documents
23 and BEH's FBO request in general, you were not
24 under the impression that it was required to

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1 demonstrate the need for a second FBO?

2 A. Correct.

3 Q. Okay. And the financial
4 information that you were thinking should be
5 added to the business plan, how did you or --
6 how did you define that additional financial
7 information?

8 A. I don't believe it's additional,
9 it's the same financial information that I have
10 been asking for, the financial statements -- the
11 three basic financial statements that any
12 business would have readily available.

13 Q. And did you -- is that information
14 defined anywhere in the minimum standards?

15 A. Well, not that I recall, but they
16 are called minimum standards for a reason. They
17 are the minimum standards. And I believe that
18 we have the ability to ask for more than that.

19 Q. And that was not really my
20 question. My question was -- let me ask you the
21 question again. All the financial information
22 that you requested from BEH, was it defined
23 anywhere in the minimum standards? And the
24 answer can be yes or no.

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1 A. It's no.

2 Q. Now, you said -- when we were
3 talking about Exhibit 82, I believe I heard you
4 say that you wanted to understand that BEH was
5 financially viable and demonstrates its capacity
6 to run an FBO. Did I hear your testimony
7 correctly?

8 A. That sounds about right.

9 Q. Okay. And so that financial
10 viability is something that you believed it was
11 incumbent upon BEH to demonstrate before an FBO
12 could be approved?

13 A. I wanted to know who we were doing
14 business with, what they -- in general what they
15 are doing now.

16 Q. And at that time Mr. Donovan and
17 BEH had been doing business on the airport since
18 2010, correct?

19 A. I believe they have a business on
20 the airport -- or they have a hangar on the
21 airport.

22 Q. You knew they were operating on the
23 airport under a commercial permit since 2010,
24 right?

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1 A. The answer to that is yes. Could I
2 expound on that?

3 Q. Sure.

4 A. I have no idea what they do. I
5 never see much going on there. That's why I
6 asked, one of the reasons I wanted to know what
7 did they do.

8 Q. Okay. But you knew that they
9 operated on the airport, correct?

10 A. I know they have a hangar on the
11 airport.

12 Q. You were part of the process
13 whereby the lease for Lot F -- or the sublease
14 for Lot F was assigned to and assumed by BEH,
15 right?

16 A. BEH took over the space that was
17 Swift Aviation and they rebuilt the hangar.

18 Q. And part of that assignment and
19 assumption of the lease, quite a bit of
20 information was submitted to the NAC, was it
21 not?

22 MR. HARTZELL: Objection.

23 A. I don't recall specifically what
24 they submitted.

Volume 2
Pages 201-330
Exhibits 330-369

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff

vs.

FRANCIS T. MAGUIRE, ET AL.,

Defendants

DEPOSITION of KEVIN J. SHAUGHNESSY

Wednesday, May 30, 2018

9:42 a.m.

Held at: Pierce & Mandell, P.C.

11 Beacon Street

Boston, Massachusetts

Megan M. Castro, RPR, Court Reporter

Real Time Reporting, Inc.

One Monarch Place
1414 Main Street
Suite 1330
Springfield, MA 01144

9 Hammond Street
Worcester, MA 01610
508-767-1157

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1 for identification.)
2 BY MR. FEE:
3 Q. Mr. Shaughnessy, Exhibit 342 is a letter
4 dated June 5, 2014, to Mr. Maguire from the FAA.
5 It references a part 13 complaint filed by Boston
6 Executive Helicopters. Do you see that?
7 A. I do.
8 Q. Does that refresh your recollection as to
9 when a part 13 complaint was filled by BEH with
10 the FAA?
11 A. The letter is dated June 5th. It seems
12 like that is -- I don't specifically remember it,
13 but three or four years ago sounds about right.
14 Q. Do you have any reason to doubt that --
15 A. No.
16 Q. -- in or about June of 2014 BEH filed a
17 part 13 complaint?
18 A. No reason to doubt that.
19 Q. We talked about the DC-3 ramp. Do you
20 have any recollection of Mr. Donovan or BEH
21 expressing to the NAC his desire or its desire to
22 lease portions of lots A, B and C at the airport?
23 A. No.
24 (Exhibit 343, Email dated 3-13-14, marked

Page 267

1 for identification.)
2 BY MR. FEE:
3 Q. 343 is an email from -- an email chain
4 between Mr. Donovan, Mr. Moss, Mr. Maguire. And
5 on the second page, the initial email from
6 Mr. Donovan to Mr. Maguire states, "Since 2010, I
7 have requested access to land and space available
8 here at Norwood Airport. In accordance with that
9 open request" --
10 A. Sorry?
11 Q. Page 2, top of the page.
12 "In accordance with that open request, I
13 made a request for negotiations for the lease of
14 lots A, B, and C at Norwood Airport. As this
15 lease is coming due in October 2014, I would like
16 to discuss BEH leasing this property."
17 Do you see that?
18 A. I do.
19 Q. Does that refresh your recollection as to
20 whether or not -- as to when BEH expressed
21 interest to the commission regarding leasing the
22 portions of the A, B, C ramps?
23 A. No.
24 Q. The page 1, at the top, Mr. Maguire

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1 responds to Mr. Donovan and says, "Chris, Your
2 message has been received and the Norwood Airport
3 Commission is being made aware of your interest."
4 Do you see that?
5 A. I do.
6 Q. Do you have any reason to doubt that the
7 Norwood Airport Commission was made aware of
8 BEH's desire to lease lots A, B, and C in or
9 about May -- sorry -- March of 2014?
10 A. I don't remember.
11 Q. I think my question was, do you have any
12 reason to doubt that?
13 A. I don't remember being made aware of it.
14 (Exhibit 344, Norwood Airport Commission
15 meeting minutes dated 4-9-14, marked for
16 identification.)
17 BY MR. FEE:
18 Q. 344 are the minutes of the April 9, 2014
19 meeting at which you were present.
20 (Witness viewing Exhibit 344.)
21 Q. On the last page, it lists
22 correspondence. It says at the top of the page,
23 "3-12-14, an email from Chris Donovan to airport
24 manager regarding negotiations for the lease of

Page 269

1 lots A, B, and C."
2 Do you see that?
3 A. I do.
4 Q. Does that notation on these minutes
5 indicate that a copy of that letter would have
6 been provided to you?
7 A. I would think it would have -- I don't
8 remember.
9 Q. So do you recall any discussion at the
10 April 9, 2014 meeting regarding BEH's desire to
11 lease lots A, B, and C?
12 A. No.
13 Q. What happened with respect to the lease
14 of lots A, B, and C?
15 A. I don't specifically remember.
16 (Exhibit 345, Norwood Airport Commission
17 executive session meeting minutes dated
18 4-9-14, marked for identification.)
19 BY MR. FEE:
20 Q. 345 are the minutes from executive
21 session of the meeting on April 9, 2014. You may
22 recall that we just looked at the minutes from
23 the regular public session.
24 A. Um-hmm.

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1 Q. The executive session -- sorry. Give me
2 a minute.
3 (Pause.)
4 Q. Sorry. I don't have a question about
5 that.
6 (Exhibit 346, Letter dated 4-15-14, marked
7 for identification.)
8 MR. FEE: Off the record.
9 (Recess taken at 11:03 a.m.)
10 (Recess ended at 11:13 a.m.)
11 BY MR. FEE:
12 Q. We were talking about the A, B, C lease,
13 and I asked you what happened, and you said that
14 you didn't remember.
15 But I am showing you a document that has
16 been marked as Exhibit 346. It appears to be a
17 letter to Mr. Eichleay from Mr. Maguire, dated
18 April 15, 2014, in which he states, "In a meeting
19 held April 9th, the Norwood Airport Commission
20 discussed your January 22, 2014 letter."
21 I am sorry. Let me skip down to lots A,
22 B, and C. He states, "The NAC voted to offer
23 FlightLevel an additional five-year lease for
24 lots A, B, and C. The current lease expires on

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1 October 31, 2014."
2 Do you see that?
3 A. Yes.
4 Q. Does that refresh your recollection as to
5 what action the NAC took with respect to the A,
6 B, C -- the expiring A, B, C leases in or about
7 April of 2014?
8 A. I don't remember, but I can see what
9 happened.
10 Q. So is it your recollection that, in fact,
11 the NAC -- or NAC voted to extend FlightLevel
12 leases on lots A, B, and C, notwithstanding its
13 knowledge of BEH's interest in lots A, B and C?
14 A. Could you ask that again?
15 Q. Sure. We talked earlier about some
16 correspondence in which Mr. Donovan of BEH had
17 written to the NAC and requested the opportunity
18 to negotiate leases for lots A, B, and C; right?
19 A. I said I didn't remember it, but okay.
20 Q. But we looked at that correspondence;
21 correct?
22 A. Yes.
23 Q. You acknowledged that, in fact, you had
24 no reason to doubt that the NAC had received that

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1 correspondence from Mr. Donovan expressing
2 interest in leasing the A, B, C lots; correct?
3 A. I don't remember if I said that I -- that
4 the commission or the manager received it, but I
5 believe that, at some point, we would have.
6 Q. So I am not going to go back, because I
7 think we discussed that already and it is on the
8 record.
9 But now I am asking you, as I put in
10 front of you Exhibit 346, is it your
11 understanding that, notwithstanding the NAC's
12 knowledge regarding BEH's interest in A, B, C,
13 you, nonetheless, went ahead and did an extension
14 of the A, B, C leases with FlightLevel in April
15 of 2014? Correct?
16 MR. SIMMS: Objection.
17 You can answer.
18 A. You are asking me -- I think you are
19 asking me if I remember that someone had -- that
20 BEH had requested to lease, which I don't
21 remember. I don't remember this specifically,
22 but I see that the current lease to FlightLevel
23 was extended.
24 BY MR. FEE:

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1 Q. Okay. Do you recall any discussion,
2 whatsoever, regarding the fact that -- when you
3 were voting to extend to leases to FlightLevel
4 for lots A, B, and C that BEH had expressed an
5 interest in becoming a lessee for those parcels?
6 A. No, I don't remember that.
7 Q. Do you remember discussing, at the
8 April 2014 meeting, the fact that FlightLevel had
9 been a --
10 MR. FEE: Strike that.
11 BY MR. FEE:
12 Q. Do you recall discussing at the
13 April 2014 letter your opinion regarding
14 preferential treatment to be given to FlightLevel
15 as a result of its investment in the airport?
16 MR. HARTZELL: Objection.
17 A. No.
18 BY MR. FEE:
19 Q. Do you recall, at any time, expressing in
20 a Norwood Airport Commission meeting, the notion
21 that FlightLevel should be given preferential
22 treatment in leasing due to the fact that it had
23 a large investment in the airport?
24 MR. SIMMS: Objection.

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1 A. No.

2 MR. SIMMS: Just let me note my

3 objection.

4 THE WITNESS: Sorry.

5 MR. SIMMS: I think this entire line of

6 inquiry is outside the scope of the pleadings in

7 this case.

8 MR. FEE: I beg to differ.

9 MR. SIMMS: Okay.

10 (Exhibit 347, Email dated 5-3-14, marked for

11 identification.)

12 BY MR. FEE:

13 Q. 347 appears to be an email from

14 Mr. Maguire -- from Mr. Donovan to Mr. Maguire.

15 Have you ever seen this before?

16 (Witness viewing Exhibit 347.)

17 A. I don't remember.

18 Q. It appears to be dated May 3, 2014. And

19 in the initial email, Mr. Donovan says to

20 Mr. Maguire, number 1, "Has the lease for lots A,

21 B, and C been re-leased to FlightLevel?"

22 Do you see that?

23 A. So under number 1?

24 Q. Yes.

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1 A. Yes, okay.

2 Q. Is it fair to say that Mr. Donovan is

3 asking Mr. Maguire whether or not the A, B, C

4 lots were leased to FlightLevel? Correct?

5 A. Yes.

6 Q. Down below, Mr. Maguire says, "No."

7 Do you see that?

8 A. I don't. The font is quite a bit

9 smaller.

10 Q. Yes.

11 A. "Chris, Regarding your questions: 1,

12 No."

13 So I assume he is answering number 1, no.

14 Q. Do you know why Mr. Maguire told

15 Mr. Donovan in May of 2014 that lots A, B, and C

16 had not been re-leased to FlightLevel?

17 A. I don't know.

18 Q. Do you know when the leases --the A, B, C

19 lot leases were ultimately signed with

20 FlightLevel?

21 A. No.

22 (Exhibit 348, Norwood Airport Commission

23 meeting minutes dated 1-14-15, marked for

24 identification.)

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1 BY MR. FEE:

2 Q. 348 appears to be the meeting minutes

3 from the January 14, 2015 meeting. On the second

4 page, under "Correspondence," the second note,

5 says, "Standard ground lease, short-term, lots A,

6 B, C. All commission members signed the lease."

7 Do you see that?

8 A. Yes.

9 Q. Does that refresh your recollection as to

10 when FlightLevel and the NAC executed leases for

11 the A, B, C lots?

12 A. I don't remember it.

13 Q. Do you have any reason to doubt the

14 accuracy of the information contained in

15 Exhibit 348?

16 A. No.

17 Q. We talked at your last deposition about

18 various lease offers that were made by the NAC to

19 BEH. Do you recall that?

20 A. In general terms.

21 Q. As I recall, your testimony was that

22 there were several different offers that were

23 made; correct?

24 A. Yes.

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1 Q. And your testimony was that for -- your

2 recollection was that all of them were rejected

3 by BEH; is that right?

4 A. I don't remember my testimony, exactly,

5 but we have never come to an agreement, totally.

6 Q. Okay. And is that because the offers

7 were rejected by BEH or because they were

8 withdrawn by the NAC?

9 A. I don't specifically remember.

10 (Exhibit 349, Letter dated 3-17-14, marked

11 for identification.)

12 BY MR. FEE:

13 Q. 349 is a letter to Mr. Donovan from

14 Mr. Maguire dated March 17, 2014. It appears to

15 be an offer of a lease for 6,889 square feet on

16 the west ramp.

17 Do you see that?

18 A. Yes.

19 Q. And attached to the letter is a draft

20 lease and attached to the draft lease is a

21 schematic showing the area proposed to be leased.

22 Do you see that?

23 A. I don't see the schematic.

24 Q. It is on the last page.

Volume II
Pages 208-455
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.

<p style="text-align: right;">217</p> <p>1 RUSS MAGUIRE, Deponent, having produced 2 satisfactory identification by means of 3 Massachusetts Driver's License, was duly sworn, 4 deposes and states as follows: 5 (Deposition resumed at 9:41 a.m.) 6 EXAMINATION BY MR. FEE: 7 Q. Good morning. 8 A. Good morning. 9 Q. Do you recall when BEH first 10 communicated to you or Norwood Airport 11 Commission its intention to become an FBO? 12 A. I don't recall the exact date. 13 Q. Can you recall approximately? 14 A. Yes. 15 Q. Was it approximately 2010? 16 A. It was 2010 or 2011. I don't 17 recall. 18 Q. Now, can you describe or can you 19 define for me the term self-fueling? 20 A. Self-fueling as commercial 21 self-fueling or self-fueling of your own 22 aircraft? 23 Q. Why don't you tell me the 24 difference between the two?</p>	<p style="text-align: right;">219</p> <p>1 MR. FEE: Let's mark this as 2 Exhibit 415A. 3 (Exhibit 415A, Letter dated September 16, 4 2014, marked for identification) 5 Q. (By Mr. Fee) I'm showing you a 6 letter that's from you to the Norwood Board of 7 Selectmen dated September 16, 2014. And I'm 8 just drawing your attention to the bottom of 9 Page 1. It says, "Self-fueling means." Do you 10 see that? 11 A. Yes. 12 Q. Is this, in your mind, a valid 13 definition of commercial self-fueling that you 14 have described in footnote one on Exhibit 415? 15 A. This is actually not commercial 16 self-fueling, this is self-fueling of your own 17 aircraft. 18 Q. Okay, so this is different from 19 commercial self-fueling? 20 A. Correct. 21 Q. And why were you describing 22 self-fueling of one's own aircraft in this 23 letter of September 16, 2014 to the selectmen, 24 do you recall?</p>
<p style="text-align: right;">218</p> <p>1 A. Self-fueling would be fueling your 2 own aircraft. Commercial self-fueling would be 3 having a fueling station in which -- which is 4 set up in a manner that allows the pilot to 5 actually taxi up and fuel the aircraft, but this 6 is not a fueling station that is exclusively 7 owned by the aircraft owner. 8 Q. Okay. 9 A. It could be a third party that 10 actually owns the fueling station. 11 Q. Okay. So the self-fueling cabinet 12 that is between Lots F and G is a commercial 13 self-fueling cabinet; is that correct? 14 A. I'm not sure I understand. 15 Q. FlightLevel is a self-fueling 16 cabinet that exists between Lots F and G. I 17 believe it's on H. It's no longer in use, but 18 at one time it was in use on the airport. Are 19 you familiar with that? 20 A. Yes. 21 Q. Is that commercial self-fueling 22 cabinet? 23 A. My understanding is that it was 24 used as a commercial self-fueling cabinet.</p>	<p style="text-align: right;">220</p> <p>1 A. As I recall, there was a reference 2 in the Olten Hues complaint about the use of 3 self-fueling -- self-fueling on the airport. 4 This is in reference to the land-use-compliance 5 inspection that had been conducted a month or 6 two earlier by the FAA. 7 Q. And in this letter you opine that 8 you were unaware of anyone that did self-fueling 9 on the airport; is that correct? 10 A. Self-fueling of commercial 11 self-fueling, that's correct, yes. That had 12 ended. 13 Q. And does anyone do commercial 14 self-fueling now? 15 A. Not to the best of my knowledge. 16 Q. Does anyone do self-service fueling 17 now? 18 A. Not to the best of my knowledge. 19 Q. Okay. At any time did BEH lead you 20 or the commission to believe that it intended to 21 do self-fueling of either type, commercial or 22 self-fueling? 23 MR. SIMMS: Objection, form. 24 You can answer.</p>

<p style="text-align: right;">221</p> <p>1 A. Yes.</p> <p>2 Q. When?</p> <p>3 A. It had come up at one or several</p> <p>4 Airport Commission meetings.</p> <p>5 Q. When?</p> <p>6 A. I don't recall.</p> <p>7 Q. And what did BEH or Mr. Donovan say</p> <p>8 to you to lead you to believe that he was</p> <p>9 interested in doing self-fueling?</p> <p>10 A. Either commercial self-fueling or</p> <p>11 self-fueling of his own aircraft?</p> <p>12 Q. Correct.</p> <p>13 A. Mr. Donovan actually said that his</p> <p>14 interest was in self-fueling, fueling his own</p> <p>15 aircraft, and then he amended that statement to</p> <p>16 include some other aircraft. It was very vague</p> <p>17 about what aircraft other than his own.</p> <p>18 Q. Well, is it fair to say that when</p> <p>19 you have an FBO you are doing commercial fueling</p> <p>20 of other people's aircraft?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So once Mr. Donovan and BEH</p> <p>23 informed you of his intention to have an FBO,</p> <p>24 would it be clear to you that he intended to</p>	<p style="text-align: right;">223</p> <p>1 asking for a particular conversation?</p> <p>2 Q. No. I'm asking in general.</p> <p>3 A. He did -- I recall conversations in</p> <p>4 2012.</p> <p>5 Q. And what did he tell you about the</p> <p>6 nature of his building on Lot F?</p> <p>7 A. He wanted to put up a hangar and a</p> <p>8 fueling station.</p> <p>9 Q. And what did he tell you about the</p> <p>10 size of the building?</p> <p>11 A. I don't recall the dimensions in</p> <p>12 2012.</p> <p>13 Q. Did he disclose to you that the</p> <p>14 building he was intending to build on Lot F was</p> <p>15 larger than the preexisting building?</p> <p>16 A. I do recall a comment to that</p> <p>17 effect.</p> <p>18 Q. Do you recall when that was?</p> <p>19 A. I don't.</p> <p>20 Q. Did you have any concerns about</p> <p>21 that?</p> <p>22 A. I had concerns.</p> <p>23 Q. What concerns?</p> <p>24 A. I had concerns that the lot would</p>
<p style="text-align: right;">222</p> <p>1 commercially fuel and not self-fuel?</p> <p>2 A. His comments to the board were</p> <p>3 vague.</p> <p>4 Q. Vague. So at what point did it</p> <p>5 become clear to you that Mr. -- and I asked you</p> <p>6 this before, that Mr. Donovan intended to have</p> <p>7 an FBO?</p> <p>8 A. Well, Mr. Donovan told us he wanted</p> <p>9 to have an FBO before he had the ability to have</p> <p>10 an FBO in 2010 or 2011.</p> <p>11 Q. So in 2010 or 2011, Mr. Donovan</p> <p>12 communicated his intention to commercially</p> <p>13 self-fuel on the airport to you and the airport</p> <p>14 commissioners; is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And over the course of the next</p> <p>17 several years, you contend that he made vague</p> <p>18 assertions regarding the nature of his fueling</p> <p>19 operations; is that fair to say?</p> <p>20 A. That's fair.</p> <p>21 Q. Do you recall, in 2012, discussions</p> <p>22 with Mr. Donovan regarding where and how he</p> <p>23 would construct a building on Lot F?</p> <p>24 A. I'm not exactly sure. Are you</p>	<p style="text-align: right;">224</p> <p>1 not be big enough for both the hangar and the</p> <p>2 fuel farm and his intention of fueling aircraft.</p> <p>3 Q. Did you communicate that to him?</p> <p>4 A. I believe we did.</p> <p>5 Q. In what form?</p> <p>6 A. I believe that was in a letter.</p> <p>7 Q. In a letter, okay. Did you</p> <p>8 communicate it to him in a meeting?</p> <p>9 A. I believe that was communicated to</p> <p>10 him in one or several meetings.</p> <p>11 MR. FEE: I'm going to mark</p> <p>12 this as the next exhibit.</p> <p>13 (Exhibit 416A, Norwood Airport Commission</p> <p>14 Regular Business Meeting Minutes, March</p> <p>15 14, 2012, marked for identification)</p> <p>16 Q. (By Mr. Fee) Exhibit 416 are</p> <p>17 meeting minutes from March 14, 2012. On Page 2,</p> <p>18 third paragraph, "The project Mr. Donovan will</p> <p>19 be doing will expand the existing building back</p> <p>20 twenty feet." Is that consistent with your</p> <p>21 recollection of what Mr. Donovan communicated to</p> <p>22 you and the Commission regarding the amount by</p> <p>23 which the building would increase over the</p> <p>24 preexisting footprint?</p>

<p style="text-align: right;">425</p> <p>1 Q. And we talked about the fact that</p> <p>2 you recommended the NAC should look for</p> <p>3 leasehold opportunities for BEH in order to</p> <p>4 allow it to become an FBO, right?</p> <p>5 A. Yes. I was saying there was not</p> <p>6 enough land, correct, on Lot F.</p> <p>7 Q. And so in order to have more land,</p> <p>8 BEH would have to enter into a lease agreement</p> <p>9 with the NAC, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that's what everybody was</p> <p>12 working towards, a lease agreement that was part</p> <p>13 and parcel of an FBO approval?</p> <p>14 A. Correct.</p> <p>15 Q. In other words, BEH was not going</p> <p>16 to seek to lease more land unless it was going</p> <p>17 to expand its operations to include FBO or other</p> <p>18 aeronautical activities, correct?</p> <p>19 MR. SIMMS: Objection.</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 A. Restate.</p> <p>22 Q. Sure. The whole purpose of BEH</p> <p>23 asking for more space is so that it could</p> <p>24 conduct an FBO, correct?</p>	<p style="text-align: right;">427</p> <p>1 are as low as five cents a square foot, are they</p> <p>2 not?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. I don't believe so.</p> <p>5 Q. I'm sorry, eight cents a square</p> <p>6 foot; is that right?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 A. I'm not sure what you're looking</p> <p>9 at. This appears to be -- I thought the Lot 7</p> <p>10 was higher than that, actually.</p> <p>11 Q. Okay. But it's fair to say that at</p> <p>12 least on some leases for FlightLevel at the</p> <p>13 airport the lease per square foot cost is as low</p> <p>14 as eight cents a square foot; is that right?</p> <p>15 MR. HARTZELL: Objection.</p> <p>16 A. That does change and that's been</p> <p>17 adjusted to bring it up to more comparable rates</p> <p>18 in the industry.</p> <p>19 Q. Understood. But I'm asking you in</p> <p>20 general. Is it fair to say that at present some</p> <p>21 of the lease rates at the airport are as low as</p> <p>22 eight cents a square foot?</p> <p>23 MR. SIMMS: Objection.</p> <p>24 A. That lease was executed, I believe.</p>
<p style="text-align: right;">426</p> <p>1 MR. SIMMS: Objection. Go</p> <p>2 ahead.</p> <p>3 A. I'm assuming that is what their</p> <p>4 intent was.</p> <p>5 Q. So we started on this discussion</p> <p>6 when you said you weren't sure if the</p> <p>7 unlimited -- I'm sorry, the personal guarantee</p> <p>8 was with respect to the lease or the FBO. And</p> <p>9 I'm wondering how you distinguish those two</p> <p>10 relationships in terms of the requirements</p> <p>11 needed to be provided by the applicant. Can</p> <p>12 you?</p> <p>13 MR. SIMMS: Objection. Go</p> <p>14 ahead.</p> <p>15 MR. HARTZELL: Objection.</p> <p>16 A. I'm not sure how to answer that.</p> <p>17 Q. Okay. We talked before about the</p> <p>18 lease obligations that would incur on an annual</p> <p>19 basis as a result of having agreement with the</p> <p>20 Norwood Airport Commission, and you said that</p> <p>21 you thought it was approximately forty cents a</p> <p>22 square foot on average?</p> <p>23 A. On average.</p> <p>24 Q. And some of the FlightLevel leases</p>	<p style="text-align: right;">428</p> <p>1 It was revised in 2001. There is an amended and</p> <p>2 restated lease. Clearly, what was the lease</p> <p>3 rate in 2001 has changed dramatically and that's</p> <p>4 been adjusted on the new lease documents to be</p> <p>5 more in keeping with the market.</p> <p>6 Q. But this says -- I'm directing you</p> <p>7 to Page 3 of 8 on the second amendment and</p> <p>8 restated lease marked as Exhibit 383. And under</p> <p>9 Lot 7, it states that from 12/31/19 -- I'm</p> <p>10 sorry, from the effective date of the lease</p> <p>11 through 12/31/19, the rental rate for Lot 7 is</p> <p>12 eight cents a square foot; is that correct or</p> <p>13 not?</p> <p>14 MR. HARTZELL: Objection.</p> <p>15 A. That is correct.</p> <p>16 Q. Okay.</p> <p>17 A. Again, in light of the executed</p> <p>18 date of that lease, I'm not sure how that is</p> <p>19 comparable to market rate.</p> <p>20 Q. Understood. I'm not asking you</p> <p>21 what the market rate is. I'm trying to get a</p> <p>22 handle on what the potential annual fees are</p> <p>23 associated with renting space at the airport.</p> <p>24 You said earlier you thought the average was</p>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,
Plaintiff

vs.

FRANCIS T. MAGUIRE, ET AL.,
Defendants

DEPOSITION of PAUL L. BUTTERS

Wednesday, June 20, 2018

12:29 a.m.

Held at: Norwood Town Hall

566 Washington Street

Norwood, Massachusetts

Megan M. Castro, RPR, Court Reporter

Real Time Reporting, Inc.

One Monarch Place
1414 Main Street
Suite 1330
Springfield, MA 01144

9 Hammond Street
Worcester, MA 01610
508-767-1157

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1 application says, December 13, 2012. And then
2 down below, it says, license, January 23, 2013.
3 A. Yes. Okay. I see those two dates.
4 Q. So is this the VIF license that you were
5 referring to?
6 A. Yes.
7 Q. And is it your understanding that it was
8 issued in or about January --
9 A. I believe it was issued conditionally,
10 January 23rd. That is the date on it. 2013.
11 But it wasn't actually released until, probably,
12 subsequent to May 12th, something like that,
13 of 2015, when the tank farm was finally
14 completed.
15 Q. Understood. Now it says -- references
16 down the bottom on "Restrictions, if any." And
17 it says, "Criteria established by Mark Ryan and
18 the Airport Commission (attached)."
19 A. Which I believe they were referring to
20 some document that you previously --
21 Q. Are they referring to the criteria that
22 are attached as a memo to Exhibit 404?
23 A. Well, again, I can't speak for the Board
24 of Selectmen. I wasn't present at the meeting.

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1 But I would -- I am not supposed to assume
2 anything, either.
3 Q. Okay. Obviously, you have been listening
4 to Karis, which is good.
5 A. No.
6 MS. NORTH: It is okay.
7 BY MR. FEE:
8 Q. I am not asking you--
9 A. I have been listening to her, but I am
10 answering your question. I think a reasonable
11 person would draw that conclusion.
12 Q. I am just asking you what you know.
13 Because this document doesn't have those criteria
14 attached, I am just wondering.
15 A. If you get right down to it, the only
16 thing I know is you are sitting there and I am
17 sitting here. I don't even know what your name
18 is.
19 Q. I am Mike.
20 A. Well, I know, but I haven't seen any ID
21 from you, so I don't even know if that is really
22 you. So a lot of things are speculation.
23 Q. No doubt.
24 (Exhibit 408, Letter dated 1-25-13, marked

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1 for identification.)
2 BY MR. FEE:
3 Q. 408 is a document that appears to be a
4 letter to Mr. Hilliard from the Board of
5 Selectmen dated January 25, 2013. Have you ever
6 seen that before?
7 (Witness viewing 408.)
8 A. Most likely I have, because this would
9 have been part of what was in the file for BEH.
10 All of this correspondence -- you can see it went
11 CC to acting chief Ron Maggio, who was the one
12 that signed off on the VIF license, because we
13 were in between chiefs, and Tony Greeley, who was
14 a fire prevention officer. So that goes into a
15 file down there, which is in the office that I am
16 occupying right now.
17 Q. This was part of your file; is that
18 right?
19 A. It is not my file. It is the Town's, the
20 Town of Norwood. It is public information.
21 Q. Part of the Town. So this is part of the
22 Town of Norwood's fire department's file on this
23 issue?
24 A. Yes.

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1 (Exhibit 409, Email dated 4-22-13, marked
2 for identification.)
3 BY MR. FEE:
4 Q. 409 is an email from Russ Maguire to
5 Tony Greeley, and then there is a forward to you,
6 at the top.
7 A. Yes.
8 Q. And the email below, Russ Maguire asks a
9 question regarding the application of NFPA 407,
10 and the chief refers to you to help answer the
11 question.
12 A. Yes.
13 Q. And this is in or about April of 2013;
14 right?
15 (Witness viewing Exhibit 409.)
16 A. That is what is stated.
17 Q. Is this your -- when you first became
18 involved in BEH?
19 A. What is it dated? This is around about
20 the time. I am saying April. I don't know the
21 exact date.
22 Q. At that time, did the NFPA 407 apply to
23 operations at the airport?
24 A. Well, here is how I will answer that

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1 question.
2 In the Commonwealth of Massachusetts,
3 under the fire prevention regulations, no fire
4 department has any jurisdiction or authority over
5 fueling or refueling of aircraft at an airport.
6 And in that section, which Massachusetts deleted
7 in its entirety when they adopted the new fire
8 code, it references 407, which is an NFPA
9 standard. But since the section that has to do
10 with aircraft fuelling and refueling was deleted
11 by the Commonwealth when they adopted their new
12 fire code in 2015, 407 is nonapplicable. So it
13 is a reference. It is a good practice to follow,
14 but it is not the law.
15 Q. And but is it fair to say that, at the
16 time, and this is 2013, NFPA 407 did apply to the
17 airport?
18 A. No.
19 Q. It didn't?
20 A. No.
21 Q. Tell me what NFPA 407 means to you.
22 A. It is a set of standards -- are you
23 familiar with the NFPA.
24 Q. I am. I am asking what it means to you,

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1 though.
2 A. It is a set of safe practices and
3 guidelines for the fueling and refueling of
4 aircraft at an airport.
5 Q. And it is currently --
6 A. Aircraft refueling.
7 Q. So it is best practices?
8 MR. HARTZELL: Objection.
9 Go ahead. You can answer.
10 A. You can put it that way. That is one way
11 of putting it.
12 BY MR. FEE:
13 Q. But it is not binding?
14 MS. NORTH: Objection.
15 You can answer.
16 MR. HARTZELL: Objection.
17 THE WITNESS: I can answer?
18 MS. NORTH: Yes.
19 A. It is not -- I have -- as a fire
20 prevention officer, I have no authority to say
21 that you have to follow NFPA 407, because it is
22 not the law. So it might be binding to some
23 other entity, but not as far as the fire
24 department is concerned.

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1 MR. FEE: Please mark this as the next
2 exhibit.
3 A. It could be --
4 MR. FEE: Wait, wait. She has to take
5 down everything you say.
6 (Exhibit 410, Massachusetts 427 CMR: Board
7 of Fire Prevention Regulations, marked for
8 identification.)
9 BY MR. FEE:
10 Q. You mentioned earlier, that 407 was
11 deleted from the fire code in 2015.
12 A. No, that not what I said.
13 Q. I am going to show you a document that
14 has been marked as Exhibit 410. It appears to be
15 the CMR 527, regarding fire prevention
16 regulations.
17 (Handing 410 to the witness.)
18 Q. Have you seen this before, or are you
19 familiar with it?
20 (Witness viewing 410.)
21 A. Massachusetts amendments.
22 (Pause.)
23 A. This is the administrate -- I believe
24 what is this is -- and it is marked unofficial,

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1 so it is not an official document of the
2 Commonwealth of Massachusetts. So.
3 Q. I am just asking if you have seen this
4 before.
5 A. I don't think I have, because it is an
6 unofficial document, and I have the fire
7 prevention regulations, which were the ones
8 promulgated, which took effect and have effective
9 law. So this is whatever, you know.
10 Q. Well, you said --
11 A. I would say, no, I haven't seen this
12 before, no.
13 Q. Let me ask you this.
14 You said earlier -- and I thought I heard
15 you say that when Massachusetts adopted or
16 amended the fire code in 2015, that it deleted
17 NFPA 407. Did I misunderstand you?
18 A. You have got it substantially correct.
19 They deleted the section that had to do with
20 aircraft refueling. And within that section, it
21 references 407. So they didn't delete 407,
22 specifically; they deleted the whole body of
23 language that had to -- if they accepted that
24 section, then 407 would have the force of law, as

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1 far as the fire prevention regulations, which are
2 the regulations I enforce.
3 Q. I am going to turn your attention, and I
4 know you haven't seen this before, on Exhibit 410
5 to the second page, which appears to be page 161
6 of this unofficial Massachusetts amendments to
7 the NFPA 2015, and draw your attention to the
8 provision that says "42.10 through 42.10.5.22.
9 Delete."
10 Do you see that?
11 A. I see what you are pointing to.
12 Q. Do you know what that refers to?
13 A. Well, I believe that I know what it is
14 referring to, but this is an unofficial document.
15 And I believe I know what it is not referring to.
16 Q. Okay. I am just going to show you
17 another document and we will see if we can't get
18 some clarity on this.
19 A. I am very clear. You are the one that is
20 not clear. I don't mean to be --
21 Q. Time out. I am just trying to
22 understand. I am not trying to argue with you.
23 A. I can explain it to you in plain English,
24 without all of this paperwork going back and

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1 forth.
2 Q. Okay. Why don't you explain it to me?
3 A. This, what you are pointing to here, has
4 to do with refueling. But it has to do with
5 motor vehicles. It is not -- it doesn't have to
6 do with aircraft.
7 Q. Can I show you --
8 A. Is that where you are going with that?
9 Q. No, it is not. But can I show you
10 another document?
11 A. Yes, you can.
12 (Exhibit 411, 2015 Fire Code, pages 1-282
13 through 1-289, marked for identification.)
14 A. Sorry. I shouldn't have said that.
15 MR. FEE: Off the record.
16 (Discussion off the record.)
17 BY MR. FEE:
18 Q. So I have shown you 411.
19 (Handing 411 to the witness.)
20 A. So what is it you are asking me about
21 here?
22 Q. I am showing you 411, which I
23 think -- and correct me if I'm wrong -- was the
24 fire code provisions governing aircraft fueling,

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1 and it begins at 42.10?
2 A. But, again, this has been deleted. This
3 doesn't apply in Massachusetts.
4 Q. That is what I am trying to get to.
5 Okay?
6 A. Yes, yes. So I am answering your
7 question.
8 Q. So this is -- what I have shown you
9 is 411.
10 A. Whatever section -- and I believe it
11 is 42 within that.
12 Whatever section that has to do with
13 aircraft fueling/refueling -- and you can call
14 the state fire marshal's office if you don't
15 believe me, the code compliance people. It
16 doesn't apply.
17 Q. Excellent. That is all I need to know.
18 A. It doesn't apply.
19 Q. That is all I need to know.
20 A. As far as the fire code. I am not saying
21 it doesn't apply with some other entity,
22 possibly. It doesn't apply -- I can't enforce a
23 provision that wasn't enacted by -- into law by
24 the Commonwealth. So it was stricken.

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1 Q. Right.
2 A. In the previous edition, there was
3 nothing in there. So we don't have any say over
4 it.
5 Q. Right.
6 A. We can throw our two cents' worth in, but
7 it doesn't -- it is non -- I want to go off, but
8 I am not going to. I want to add something, but
9 I am not going to add it.
10 MS. NORTH: Just answer his questions.
11 A. Yes.
12 BY MR. FEE:
13 Q. I am not trying to make this overly
14 complicated. All I am trying to understand is
15 whether, after 2015, the prior provisions
16 included in the NFPA regarding airport fueling
17 are applicable or binding in Massachusetts?
18 A. In 2013, they were nonapplicable. In
19 2014, they weren't. When they went to a new fire
20 code, they weren't applicable. So throughout
21 your whole process, they were not. There was no
22 section that allowed us to enforce or have any
23 say, so to speak, in -- we, the fire
24 department -- in aircraft fueling.

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1 Q. Okay.
2 A. Within that section that was brought over
3 in the new fire code, that was deleted.
4 I can explain the -- when Massachusetts
5 went to a new fire code in 2015, they took what
6 was called NFPA 1, which was a big book. It is
7 called a model fire code, which, any jurisdiction
8 in the Commonwealth, if they didn't have a fire
9 code or in some other -- anyplace in the country,
10 they could -- instead of reinventing the wheel,
11 they can just enact this book.
12 Well, it covers everything, including,
13 say, the sale of -- retail sale of fireworks.
14 Well, it is illegal in Massachusetts. So when
15 they brought that new code in, you can't have a
16 section that regulates fireworks, because it
17 illegal. So it is stricken.
18 Q. Right.
19 A. So for whatever reason, in the
20 Commonwealth, they don't want the fire
21 department -- "they," the people that write these
22 things -- involved in aircraft fueling, probably
23 because they have got Logan Airport, Barnes out
24 in Westfield, you have got military. There is

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1 maybe a higher authority that is going to
2 regulate that. So they probably don't want to
3 have these people butting heads.
4 So it was all stricken. And how many
5 towns have airports? So I don't know the
6 reasoning behind why they struck it from the
7 language, but it was. So it doesn't apply.
8 Q. So now, the airport --
9 A. But if you took that book and looked at
10 it right now, you would see that section in
11 there, because the NFPA didn't want those pages
12 ripped out, because it is proprietary and they
13 don't want their code sliced and diced.
14 But unless you have the Massachusetts
15 amendment section and you reference that, you
16 will see certain sections of 42 deleted in its
17 entirety. So you have to have the two books, to
18 navigate back and forth. That is how it works.
19 Q. So long story short, the fire department
20 doesn't regulate airport fueling?
21 MR. HARTZELL: Objection.
22 Go ahead.
23 A. Well, that is not exactly half of it,
24 because there is a VIF license.

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1 BY MR. FEE:
2 Q. Right.
3 A. And then you are supposed to have a
4 permit for the fuel. And on the permit for the
5 fuel, which you guys don't have, the fire
6 department, under the law, is authorized to put
7 reasonable conditions and restrictions, just as
8 the Board of Selectmen did, for your VIF.
9 So I would say -- not in a roundabout.
10 It is not backhanded.
11 But, so we could, via that permit, put
12 some reasonable restrictions, in that manner.
13 Q. Yes.
14 A. It would be well within the authority of
15 the fire chief to do that.
16 Q. Right. But just to give you --
17 A. So yes and no.
18 Q. But to give you an example, though, the
19 fire department isn't going to regulate how the
20 fuel is dispensed into an aircraft or how the
21 fuel is dispensed into a mobile fueler that then
22 transports it to --
23 A. No, we never have.
24 Oh, mobile fuel? Are you going to go

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1 there next?
2 Q. I am just trying to find -- just trying
3 to understand your testimony. So I think I do.
4 A. Okay.
5 (Exhibit 412, Email dated 4-24-13, marked
6 for identification.)
7 BY MR. FEE
8 Q. One of the emails that you shared with us
9 is an exchange that you had with Russ, where he
10 asked you about NFPA 407 and you told him what
11 the setbacks were?
12 A. Because I must have looked at that online
13 and told him what the setbacks were, yes.
14 Q. Right. But that is --
15 A. But that is just -- he could have looked
16 at 407; I could look at it. But I can't enforce
17 it, but I told him what was in that document.
18 Q. Understood.
19 (Exhibit 413, Email dated 6-28-13, marked
20 for identification.)
21 BY MR. FEE:
22 Q. Here is another email that you shared
23 with us. It appears to be an email from you to
24 Mr. Maguire saying, "Hi, Russ. I would like to

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1 (Recess taken at 1:17 p.m.)
2 (Recess ended at 1:25 p.m.)
3 MR. FEE: Back on the record.
4 BY MR. FEE:
5 Q. So after your discussion with the fire
6 chief, you changed the conditions on 415, to what
7 is presently on 416; is that right?
8 A. Yes. Certain things were deleted and
9 certain things were -- the top three things were
10 left. So the other stuff went away.
11 Q. Okay. Did I hear you testify earlier
12 that you thought that fuel had been delivered to
13 BEH, or did I misunderstand?
14 A. Yes. It was delivered to test the
15 Veeder-Root system, so a small amount was.
16 Q. Okay. Do you know when that was?
17 A. It would have been, probably, in May
18 of 2015, when the Veeder-Root system was ready to
19 be tested. I think that was the only
20 way -- well, that was the way it was tested, by
21 putting a small amount of fuel in the tanks, to
22 make sure there was no leaks.
23 Q. Okay. Did you ever review a fueling plan
24 for BEH, as part of your --

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1 A. No, sir.
2 Q. Did you ever review a fueling plan for
3 FlightLevel?
4 A. No.
5 Q. Do you know what the primary fire access
6 is at the airport, which gate?
7 A. We use both gates 1, 2, and 3, depending
8 upon the situation.
9 Q. Is one primary or not?
10 A. Gate 1 is primarily used for med flight.
11 But gate 3 -- it depends where the incident is on
12 the airport. So they are all -- all are used,
13 and it is good to have multiple access points, in
14 case one of those gates is down, it doesn't work
15 for some reason. So it depends on the situation,
16 where the reported emergency is. Sometimes we
17 are directed by the tower which gate would be the
18 best gate to use, to get in there.
19 (Exhibit 417, Email dated 2-12-14, marked
20 for identification.)
21 BY MR. FEE:
22 Q. This is an email that you shared with us,
23 dated February 12, 2014, in an exchange between
24 you and Mr. Maguire.

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1 One of the things that he asks you is
2 whether or not you reviewed the fueling plan, and
3 you said that you didn't. Is that correct?
4 A. Let me read this, first.
5 Q. Sure, sure, take your time.
6 (Witness viewing 417.)
7 A. So he is asking Russ --
8 Q. Let me do it this way. I am sorry to
9 interrupt.
10 A. Yes.
11 Q. In the second paragraph, Russ says to
12 you, "As part of the NAC's permit process under
13 the airport's minimum standards, the board
14 requires that the applicant's fueling plan be
15 approved by both my office and the Norwood fire
16 department."
17 "So my first question, has BEH provided
18 you with a copy of their plan yet? BEH has
19 already provided me with a copy."
20 Did I read that correctly?
21 A. Yes, I am reading the same thing that you
22 are reading, yes.
23 Q. So my question is, did you review a
24 fueling plan for BEH?

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1 A. None was submitted. None was ever
2 submitted.
3 Q. Did you request?
4 A. No.
5 Q. Is it part of the Norwood fire
6 department's review process to review fueling
7 plans?
8 A. In this situation, no.
9 Q. Okay. Down below, in the second-to-last
10 paragraph, he says, "Finally, BEH has expressed
11 an interest in having mobile fuel trucks as part
12 of their operation. Do the mobile fuelers need
13 to be inspected by Norwood fire?"
14 Did I read that correctly?
15 A. Yes.
16 Q. And are mobile fuelers inspected by
17 Norwood fire department?
18 A. It depends.
19 Q. On what?
20 A. It depends on two things. First, if the,
21 what you are calling a mobile fueller, if it is
22 registered, if it is a registered vehicle. And
23 secondly, if it is transporting combustibles, not
24 flammables.

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<p>1 So in the case of both -- well, we never 2 got around to BEH -- in FlightLevel, there is no 3 requirement that the fire department inspect 4 those mobile fuelers, because they are not 5 registered for over-the-road travel and they 6 don't carry -- and/or they are not transporting 7 combustible liquids; they are transporting 8 flammable liquids.</p> <p>9 So if -- I am not supposed to add stuff. 10 <u>So if BEH has a truck parked down there.</u> 11 <u>So as long as that never leaves the yard and it</u> 12 <u>is not transporting combustibles, only</u> 13 <u>flammables, we have no authority over it.</u></p> <p>14 Q. Okay. So in BEH's case, I think their 15 mobile fueler does leave the airport. So that 16 would cause it to be inspectable by the 17 department?</p> <p>18 A. No. Because if it is carrying combustible 19 liquids, yes. If it were carrying flammables, 20 no. And if you were to ask me the next question, 21 well, who would inspect it, I am not sure. I 22 don't know if that is a federal DOT inspection 23 process or a state. But it doesn't come under 24 the fire prevention regulations.</p>	<p>1 by the fire department; is that correct?</p> <p>2 A. Yes, both Chief Greeley and myself were 3 down there on that date, and that was when the 4 Veeder-Root system was tested and everything was 5 done. So we were both there. And I communicated 6 to the Board that it was okay, at that time, to 7 release the VIF license to the applicant, so they 8 could actually put fuel in the tanks.</p> <p>9 Q. So as of this point in time, did the 10 Norwood fire department have any concerns 11 regarding BEH's ability to safely dispense fuel 12 at the airport?</p> <p>13 A. No. 14 (Exhibit 419, Selectmen's Meeting, 15 Additional Agenda, dated 5-19-15, marked for 16 identification.)</p> <p>17 BY MR. FEE:</p> <p>18 Q. So this is a document that has been 19 marked as 419. It appears to be Selectmen's 20 meeting minutes from a meeting that occurred on 21 May 19, 2015. I just want to turn your attention 22 to page 4.</p> <p>23 A. Page 4.</p> <p>24 Q. So under "unfinished business," it says,</p>
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<p>1 Q. Is av gas and jet fuel combustible or 2 flammable?</p> <p>3 A. Flammable.</p> <p>4 Q. It is flammable?</p> <p>5 A. It depends upon the flash point, is what 6 determines whether it is a combustible or a 7 flammable liquid.</p> <p>8 Q. So, but av gas and jet fuel are both 9 combustible?</p> <p>10 A. No. They are flammable.</p> <p>11 Q. They there flammable?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Thank you. 14 (Exhibit 418, Email dated 5-14-15, marked 15 for identification.)</p> <p>16 BY MR. FEE:</p> <p>17 Q. This is an email that you shared with us, 18 from you to Fran Jessoe. Do you know who 19 Fran Jessoe is?</p> <p>20 A. She is the administrative assistant to 21 the Board of Selectmen.</p> <p>22 Q. Okay. So you are reporting, in this 23 email on May 14, 2015, that the facility is 24 complete and the final approval has been granted</p>	<p>1 "Lieutenant Paul Butters, fire prevention 2 officer, NFD."</p> <p>3 Do you see that?</p> <p>4 A. By both chief Greeley and myself, meaning 5 me, yes.</p> <p>6 Q. Did you appear at this meeting?</p> <p>7 A. No.</p> <p>8 Q. You didn't? Okay. 9 So they just listed your name because you 10 had given a report or given your email to --</p> <p>11 A. I am the contact person, really, for any 12 of this kind of stuff down at the fire station. 13 So I communicate a lot with the Board of 14 Selectmen on VIF licenses, in general. And I 15 sent that communication up via an email to Fran, 16 letting them know we are all set on that.</p> <p>17 Q. Right. So the email that we previously 18 marked as 418?</p> <p>19 A. Yes.</p> <p>20 Q. You weren't present at this meeting?</p> <p>21 A. No, I wasn't. No. 22 (Exhibit 420, Certificate of Registration 23 dated 3-18-16, marked for identification.)</p> <p>24 BY MR. FEE:</p>

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1 Q. 420 is another document from your file.
2 Can you tell me what this is, if you know?
3 (Witness viewing Exhibit 420.)
4 A. Let's see. This is their -- the license,
5 I believe, that was released to them. And they
6 are calling it a registration, but it is the VIF.
7 Q. This is the VIF license?
8 A. Yes. I believe this is, yes. This is
9 license number S0077, up in the top corner. So
10 this is their VIF license.
11 Q. This includes the criteria established by
12 Mr. Ryan, that we previously marked as
13 Exhibit 40- --
14 A. Yes.
15 Q. Hang on just a second.
16 Previously marked as Exhibit 404; is that
17 right?
18 A. On the back, yes. That is what it
19 appears to be, yes.
20 Q. Now, I don't want to --
21 A. I think I already know what you are going
22 to ask.
23 MS. NORTH: Let him ask it.
24 BY MR. FEE:

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1 Q. There is eight provisions on the final
2 VIF license, and there were three on the one that
3 was ultimately -- I guess, preliminarily issued
4 by you previously. So I am wondering --
5 A. Well, there was, I think, six or seven
6 that were initially on my permit to install the
7 tanks, and then a bunch of them went away.
8 Q. So I am just wondering why the change
9 between the seven and the three and now back to
10 eight. Do you have any insight as to why these
11 additional --
12 A. Wasn't this -- when they applied back in
13 December, this was -- what it is date on that?
14 December.
15 Those were, I think, attached to the
16 original application, VIF application. Not the
17 application; the preliminary approval. So they
18 just stayed with it. The conditions that were
19 with the application and what was approved stayed
20 with the final VIF license that was issued. They
21 didn't go away.
22 Q. Okay. And again, I am not trying to --
23 A. Like mine did.
24 Q. Just trying to understand how this

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1 evolved. Because in 415, you had your original
2 conditions that were attached to the VIF license?
3 A. No. Excuse me.
4 Q. Sorry. What?
5 A. They were attached to installing the
6 underground tanks, not the VIF license.
7 Q. Thank you. Thank you. I am sorry to be
8 thick.
9 But so there is no relationship between
10 the conditions that were attached to the
11 underground storage tank license and the VIF
12 license. They are totally separate, is what you
13 are saying. Is that right?
14 A. No. Because I put these conditions,
15 here, on the permit to install the tanks. So
16 there is a relationship. But I added additional
17 things as I became -- like the TOFA, you know,
18 which -- well --
19 Q. Understood.
20 A. Okay. I want to say something else, but
21 I am not going to say it.
22 Q. If it would help me understand something
23 that I am not understanding, then please, by all
24 means, let me know.

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1 MS. NORTH: That is okay. He is not
2 volunteering information. He is only answering
3 questions.
4 (Exhibit 421, Letter dated 5-26-15, marked
5 for identification.)
6 BY MR. FEE:
7 Q. 421 is a letter from Ryan, the airport
8 commissioner, to Boston Executive Helicopters.
9 Have you ever seen this before?
10 (Witness viewing 421.)
11 A. Yes, I believe that I have, and I think
12 this is in the file down at the -- in the fire
13 prevention office for BEH, their VIF site file
14 there.
15 Q. So at this time, May of 2015, would the
16 fire department have any concerns regarding BEH's
17 ability to safely dispense fuel at the airport?
18 MR. HARTZELL: Objection.
19 A. No.
20 MS. NORTH: You can answer.
21 MR. HARTZELL: You can answer.
22 A. I will speak for myself when I say that I
23 didn't.
24 MR. FEE: Okay.

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1 (Exhibit 422, Lot G Fueling Restriction
2 Plan, marked for identification.)
3 BY MR. FEE:
4 Q. 422 is what purports to be FlightLevel's
5 fueling plan. Have you ever seen this before?
6 (Witness viewing 422.)
7 A. No. No.
8 (Exhibit 423, Application for Standard
9 Permit dated 4-5-16, marked for
10 identification.)
11 BY MR. FEE:
12 Q. 423 is FlightLevel's -- why don't you
13 tell me what 423 is?
14 (Witness viewing 423.)
15 A. This is the permit that is required in
16 addition to their VIF license. And this had an
17 expiration of April 30, 2017, but that has
18 been -- there is another one in existence, that
19 is in effect right now. So they have a current
20 permit, in addition to the license, which is what
21 is required under fire prevention regulations of
22 the Commonwealth of Massachusetts.
23 Q. This applies to their underground storage
24 tanks; is that right?

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1 A. This applies to the storage of fuel,
2 because of the amount of fuel.
3 Q. Is there any reason that there are no
4 conditions on this permit?
5 A. Well, there are.
6 Q. Where are they?
7 A. The bottom. It says, "restrictions."
8 All the way down the bottom of the permit.
9 Q. I see that.
10 A. "Per 527 CMR 1.00; and 310 CMR 80.00."
11 Q. Okay. Are those the same conditions that
12 you put on the BEH permit?
13 A. No.
14 Q. Why are they different?
15 A. Because this is an existing fuel facility
16 that has been there for probably 25 years, and
17 this was a facility that was in the process of
18 being constructed. Two different animals.
19 Q. Okay. Thanks for explaining that.
20 A. Yes.
21 (Exhibit 424, Letter dated 11-1-16, marked
22 for identification.)
23 BY MR. FEE:
24 Q. I am showing you a document that has been

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1 marked as 424. It appears to be a letter from
2 Mr. Maguire to BEH, dated November 1, 2016, and
3 just want to draw your attention to the third
4 numbered paragraph, where it says, "BEH must
5 submit an updated fueling plan in the form of a
6 scale drawing prepared by a professional engineer
7 registered with the Commonwealth of Massachusetts
8 with fire protection setbacks acceptable to the
9 fire chief and meeting FAA standards."
10 Do you see that?
11 A. Yes, I do.
12 Q. So just help me understand. At this
13 time, did the fire chief review fire protection
14 setbacks?
15 A. I am not the fire chief.
16 Q. I am asking if you know whether the
17 fire --
18 A. I don't --
19 MS. NORTH: Let him finish his question.
20 MR. FEE: Let me rephrase.
21 BY MR. FEE:
22 Q. Does the fire department review fire
23 protection setbacks at the airport?
24 A. This is directed to the fire chief.

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1 Q. Understood.
2 You are a member of the fire department?
3 A. Yes, I am.
4 Q. Does the fire department review fire
5 protection setbacks at the airport?
6 A. I don't.
7 Q. Does the chief?
8 A. You would have to ask the chief.
9 Q. Is there any written policy that the fire
10 department maintains regarding the standards or
11 criteria that it utilizes to evaluate permit
12 requests from the airport?
13 A. Say that again.
14 Q. Are there any written policies or
15 procedures maintained by the Norwood fire
16 department that constitute --
17 A. Our policies and procedures
18 are 527 CMR 1.00, which is a Commonwealth of
19 Massachusetts comprehensive fire safety code.
20 Q. Anything else?
21 A. We can't do anything that is contrary to
22 that. We can't establish a lower standard than
23 the law. With regard to any permit, we can put
24 reasonable conditions and restrictions on any

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Pages 201-330
Exhibits 330-369

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,
Plaintiff

vs.

FRANCIS T. MAGUIRE, ET AL.,
Defendants

DEPOSITION of KEVIN J. SHAUGHNESSY

Wednesday, May 30, 2018

9:42 a.m.

Held at: Pierce & Mandell, P.C.

11 Beacon Street

Boston, Massachusetts

Megan M. Castro, RPR, Court Reporter

Real Time Reporting, Inc.

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1414 Main Street
Suite 1330
Springfield, MA 01144

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Worcester, MA 01610
508-767-1157

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1 PROCEEDINGS
2 - - -
3 KEVIN J. SHAUGHNESSY, first having been
4 satisfactorily identified by the production of
5 his driver's license and duly sworn by the Notary
6 Public, testified under oath as follows in answer
7 to examination by MR. FEE:
8 - - -
9 Q. Good morning, Mr. Shaughnessy.
10 A. Good morning, Mr. Fee -- Attorney Fee.
11 Q. Thanks for coming back. I appreciate
12 your coming to finish the second half of your
13 deposition.
14 I know that you were previously sworn and
15 I did have an opportunity ask you some questions
16 previously.
17 MR. FEE: Is there anything else that we
18 need to discuss with counsel before we begin
19 this.
20 MR. HARTZELL: Only that I have a hearing
21 that I have to leave for.
22 MR. FEE: At 12:30, I understand that.
23 MR. HARTZELL: All right.
24 MR. SIMMS: Same stipulations?

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1 MR. FEE: Same stipulations.
2 I will proceed with alacrity, given
3 Mr. Hartzell's time constraints.
4 BY MR. FEE:
5 Q. Mr. Shaughnessy, I just want to ask you a
6 couple questions about some of the things you
7 said in your last deposition. And I want to
8 begin, first of all, discussing the regulations
9 at the Norwood Airport, as well as the minimum
10 standards. Are you familiar with the regulations
11 and the minimum standards?
12 A. Somewhat.
13 Q. I am going to show you what has been
14 previously marked as Exhibit 190.
15 (Handing document to the witness.)
16 Q. And I ask you if you recognize that
17 document.
18 (Witness viewing document.)
19 A. I think I have seen it before.
20 Q. And in what context have you seen it
21 before?
22 A. I couldn't honestly say I have seen it
23 before.
24 Q. Sorry. I didn't mean to interrupt.

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1 Please.
2 MR. SIMMS: Are you done with your
3 answer? Then you are done with your answer.
4 BY MR. FEE:
5 Q. Are you done with your answer?
6 A. Yes.
7 Q. Do you regularly look at the Norwood
8 Memorial Airport general regulations or minimum
9 standards in the course of your duties as an
10 airport commissioner?
11 A. Could you define "regularly"?
12 Q. Yes. Do you look at them at all?
13 A. I have looked at them.
14 Q. And would you say that you have looked at
15 them more than five times?
16 A. No.
17 Q. So is it fair to say that normally you
18 rely on others on the airport commission or the
19 airport manager to inform you as to what is
20 actually contained in the airport regulations?
21 A. Yes.
22 Q. Under what circumstances would you refer
23 to the airport regulations? Do you recall any
24 point in time when you did that?

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1 MR. SIMMS: Objection to form.
2 You can answer.
3 A. I don't recall.
4 BY MR. FEE:
5 Q. Well, do you believe that the airport
6 regulations govern the conduct of the airport
7 commission?
8 MR. HARTZELL: Objection. Same
9 objection.
10 You can answer.
11 A. Can you define "conduct"?
12 BY MR. FEE:
13 Q. Sure. Do you believe that the airport
14 regulations are binding on the airport
15 commission?
16 MR. HARTZELL: Objection.
17 A. I believe they are a guideline.
18 BY MR. FEE:
19 Q. They are a guideline?
20 A. Um-hmm.
21 Q. Do you know -- sorry.
22 Do you believe that there are any other
23 guidelines that are applicable to your job as
24 airport commissioner?

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1 A. Yes.

2 Q. What other guidelines are there?

3 A. There are federal guidelines, state

4 guidelines.

5 Q. But in terms of local documents that

6 govern what you do as an airport commissioner, is

7 there any other document, other than the airport

8 regulations?

9 A. That is a tough question, because the

10 town -- there are building codes and all kinds of

11 regulations that the town has, so.

12 Q. So the local zoning codes and building

13 codes are applicable to what happens at the

14 airport; is that right?

15 A. Yes.

16 Q. But in terms of what you do as an airport

17 commissioner in reviewing activities, commercial

18 activities at the airport, is there any other

19 municipal document or guideline that you refer to

20 when discharging your duties as an airport

21 commissioner?

22 A. So you are aware that if someone was

23 building something, that those guidelines would

24 be applicable on the airport as well.

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1 Q. Right.

2 A. That is what I just said.

3 Q. So there is building codes and zoning

4 codes and then there is these airport regulations

5 that you would refer to; is that correct?

6 A. Yes.

7 Q. So do you know whether the airport

8 regulations define what constitutes a commercial

9 activity?

10 A. No.

11 Q. Do you know if the airport regulations

12 define what constitutes an FBO?

13 A. No.

14 Q. Do you know what an FBO is?

15 A. Yes.

16 Q. What is your definition of an FBO?

17 A. A fixed base operator that provides

18 services such as line services, fuelling,

19 repairing, aircraft, that type of thing.

20 Q. And do the regulations describe what is

21 necessary in order to be approved as an FBO?

22 A. I believe that we have -- they may have

23 some guidelines.

24 Q. Okay. Can you turn your attention now to

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1 page 13 of the general regulations and I will

2 help you get there.

3 (Pause.)

4 Q. What is page 12, sir?

5 Page 12 talks about commercial

6 aeronautical operations. Do you see that?

7 A. There is a heading under Roman

8 numeral III that says "commercial aeronautical

9 operations."

10 MR. HARTZELL: What page are you on?

11 MR. FEE: I was on page 12.

12 MR. HARTZELL: Oh, there is multiple

13 different pages here.

14 MR. FEE: Yes, it is a very complex

15 document. You might want to --

16 MR. HARTZELL: I might want to study it?

17 MR. FEE: You might want to spend some

18 time for it.

19 MR. HARTZELL: Thank you. We are still

20 not on the right page.

21 MR. FEE: Off the record.

22 (Discussion off the record.)

23 BY MR. FEE:

24 Q. Now I am on page 13. It says, "General

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1 requirements for commercial operations."

2 Do you see that?

3 A. Under Roman numeral V, "general

4 requirements, commercial operations"?

5 Q. Correct, yes. Do you see that?

6 A. I do.

7 Q. Do you believe that these general

8 requirements are applicable for all operators at

9 the airport?

10 A. Yes.

11 Q. And it would be applicable to any FBO

12 applicant as well, would it not, Roman numeral V,

13 general requirements for commercial operators?

14 A. I am going to read them, if you don't

15 mind.

16 Q. Sure, absolutely.

17 (Pause.)

18 (Witness viewing document.)

19 A. I read it. What was the question?

20 Sorry.

21 Q. The question was, was it your

22 understanding that these general requirements

23 apply to all FBO applicants?

24 A. Yes.

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1 Q. Turning your attention to page 31, now.
2 Page 31 is the definitions under Norwood
3 Airport minimum standards. And on page 31, there
4 appears to definition of FBO. Do you see that?
5 A. The middle of the name says a bold "FBO."
6 Q. Right. And the language after the bold
7 "FBO" says, "Shall mean a fixed based operator,
8 an airport-based organization which permitted
9 yearly and under a lease agreement with the
10 Norwood Airport commission provides aircraft
11 fueling services while engaging in a minimum of
12 one of the primary service areas included." And
13 then it lists four service areas.
14 Do you see that? Do you see where I am
15 reading?
16 A. I am reading it, yes.
17 Q. I just read the paragraph that I want to
18 talk to you about.
19 A. Yes. You mentioned the four things, so I
20 just thought you wanted me to read them.
21 Q. No, I don't. I want to ask you a
22 question about the first paragraph that I just
23 read.
24 A. Okay.

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1 Q. Would you agree with me that the minimum
2 standards require that an FBO, approved by the
3 Norwood Airport Commission, must have a lease
4 agreement with the Norwood Airport Commission?
5 A. No.
6 Q. You do not believe that an FBO has to
7 have a lease agreement with the airport
8 commission; is that correct?
9 A. That's correct.
10 Q. Why?
11 A. The -- I can think of an instance, now,
12 where we would be willing to have an FBO where
13 they have a lease agreement with -- we don't
14 control all of the space on the airport.
15 Q. Understood. But the language that I just
16 read says that a fixed based operator is an
17 "airport-based operation which is permitted
18 yearly and under a lease agreement with the
19 Norwood Airport."
20 What does that language mean to you?
21 MR. SIMMS: Objection.
22 Go ahead.
23 A. You asked me the question and I answered
24 it. I don't know what to tell you other than

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1 your question was, do I think you need to have a
2 lease --
3 BY MR. FEE:
4 Q. No. My question was, do you believe that
5 the minimum standards require that an FBO
6 operator have a lease agreement with the Norwood
7 Airport?
8 A. No.
9 Q. What circumstances under which -- what
10 circumstances were you thinking about that an FBO
11 would not have a lease with the Norwood Airport?
12 A. They could have a lease with Boston
13 Metropolitan Airport, which controls quite a bit,
14 still, of the airport. So it would be
15 really -- instead of with, it would be in the
16 Norwood Airport.
17 Q. Okay. But would you agree that an FBO
18 needs a lease of some sort of space, in order to
19 operate?
20 A. Yes, of course.
21 Q. Do you have an idea of how much space an
22 FBO needs in order to operate safely?
23 MR. SIMMS: Objection. Beyond the scope.
24 Go ahead.

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1 A. You would have to really be -- there is
2 these different things that are listed here and
3 it depends on what they are doing. But the
4 question was, do I have an idea of how much space
5 they need, no.
6 BY MR. FEE:
7 Q. How about, how much space does an FBO
8 need to sell fuel?
9 MR. SIMMS: Same objection.
10 You can answer.
11 A. I wouldn't know.
12 BY MR. FEE:
13 Q. Who would know?
14 A. Who would know?
15 Q. Yes. At the airport, who would know?
16 A. You would have it be more specific,
17 because it depends on where they are, what they
18 are doing, you know. I don't even know if -- you
19 know, if someone is going to look to fuel
20 directly where the fuel tanks are would be
21 different than someone who is mobile fueling. I
22 think that that is subjective. Who would know, I
23 guess the person that is in charge of the airport
24 would know.

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1 Q. That would be Russ Maguire?
2 A. Yes.
3 Q. I guess, if I am understanding your
4 testimony, you are saying that an FBO can be a
5 varied type of operation. And therefore, the
6 amount of space necessary to safely conduct an
7 FBO depends on what being proposed.
8 Is that a fair characterization of your
9 testimony?
10 A. Could you repeat that?
11 MR. SIMMS: Objection.
12 BY MR. FEE:
13 Q. Sure. As I understand your testimony,
14 you said that an FBO can be a varied type of
15 operation with various types of activities. And
16 therefore, the amount of space necessary to
17 safely conduct those activities depends on the
18 nature of the FBO. Is that a fair
19 characterization of your testimony?
20 A. I don't think so. I answered questions,
21 so I would say, no.
22 Q. Turning your attention to page 32. Down
23 below, it says, "Additional requirements, initial
24 application."

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1 Do you see that?
2 A. I do, under Roman numeral V.
3 Q. Right. And under that heading, it lists
4 various financial documents and I will read them
5 for you. Current financial statement, proof of
6 minimum of three months operating expenses,
7 two-year business plan for the proposed
8 operation, previous history of payment, three
9 credit references, tax identification number, tax
10 resale number, copy of any and all pertinent
11 certificates and licenses relative to the
12 proposed operation.
13 Did I read that correctly?
14 A. Honestly, Mike I wasn't following along,
15 but I believe you read it correctly.
16 Q. So is it your belief that the minimum
17 standards require these financial documents from
18 an initial FBO applicant?
19 A. I am not sure if the minimum standards
20 list all of these.
21 Q. I am reading from the minimum standards,
22 which begins on page 30 of the document that we
23 are looking at.
24 A. Okay. Then I -- could you ask it again?

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1 Q. Sure. You would agree with me that the
2 items that I read on page 32, Roman numeral V,
3 are the financial documents that are to be
4 requested from an initial FBO applicant pursuant
5 to the minimum standards. Is that fair to say?
6 A. No.
7 Q. Did I read it incorrectly?
8 A. I think the first time you asked me,
9 would these be the minimum standards? And then
10 you just asked me -- I think what you are asking
11 me, is that all we could ask for.
12 Q. No, that is not what I asked.
13 MR. SIMMS: Listen to the question.
14 Answer what he asks you.
15 THE WITNESS: Okay.
16 MR. SIMMS: That is not what he asked
17 you. He didn't ask you if that is all you can
18 ask for.
19 Mike, can you state the question again?
20 MR. FEE: Sure.
21 BY MR. FEE:
22 Q. Would you agree that the items listed in
23 Roman numeral V on page 32 are the financial
24 documents required of an initial FBO applicant?

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1 A. These are -- yes, these are part of the
2 minimum standards, some of the things we would
3 ask for.
4 Q. Is there any other financial document
5 listed anywhere in the minimum standards, that
6 you are aware of?
7 A. Not that I am aware of.
8 Q. So I think you and I have talked about
9 this before. But it is your belief that the
10 minimum standards are minimum and that the NAC is
11 entitled to ask for additional documentation,
12 over and above the minimum standards; is that
13 right?
14 A. Yes.
15 Q. And can you remind me what the basis is
16 for your belief that the NAC is entitled to ask
17 for documents over and above the minimum
18 standards?
19 MR. SIMMS: Objection. This was asked in
20 day one by both counsel.
21 Go ahead.
22 A. Well, first of all, we had a member of
23 the Massachusetts DOT on our airport who told us
24 that we should -- that is one of the things we

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1 should be asking for.
2 BY MR. FEE:
3 Q. Who is that?
4 A. I can't remember. But I remember, you
5 know, being there and him saying that these are
6 some of the things you should ask for. And that
7 prompted me to do a little research on my own.
8 I think this has been covered before.
9 Q. I remember.
10 A. I looked at -- typically, it is general
11 aviation airports of this size go out for an RFP
12 for these type of FBO services. If you look at
13 those, these are the requirements. In some
14 cases, it would be a little bit even more complex
15 than what we asked for. But typically, the
16 financial statements that I have asked for, all
17 along, were in every one that I saw.
18 Q. When you say, typically airports put out
19 RFPs for FBO services -- is that what you said?
20 A. That is what I saw.
21 Q. But that wasn't the case here; there was
22 with no RFP for FBO services put out of the
23 Norwood Airport Commission. Correct?
24 MR. HARTZELL: Objection.

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1 A. Correct.
2 BY MR. FEE:
3 Q. So let me show you what has been marked
4 as Exhibit 207.
5 (Handing document to the witness.)
6 (Witness viewing document.)
7 Q. Which appears to be FlightLevel's
8 2007-2008 commercial permit application. And you
9 were on the commission when FlightLevel applied
10 initially as an FBO; correct?
11 A. I believe I was on the airport commission
12 at this time, but I am not sure.
13 Q. Do you recall anything about reviewing
14 FlightLevel's FBO application?
15 A. No.
16 Q. Do you recall reviewing what has been
17 marked as Exhibit 208, in connection with
18 FlightLevel's initial FBO application in 2008?
19 (Handing document to the witness.)
20 (Witness viewing document.)
21 A. Sorry. This says, Eastern Air Center.
22 What is the question?
23 Q. Right. This is a document that has been
24 marked as Exhibit 208 to the Eichleay deposition.

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1 The first page is a cover letter from Eastern Air
2 Center, Race and Smith. And then the document
3 that follows it -- sorry. My mistake. Let's do
4 this.
5 MR. HARTZELL: Separate them?
6 MR. FEE: Just take off the first page.
7 Stepping back, I am showing you an exhibit that
8 has been marked as Exhibit 105.
9 Actually, do you know what? This is a
10 prior. This is the federal case, this copy.
11 So let's mark that as the next exhibit.
12 The next exhibit number is 330.
13 (Exhibit 330, FlightLevel, LLC,
14 Introduction, dated December 2007, marked
15 for identification.)
16 BY MR. FEE:
17 Q. Just make sure that I have got the right
18 one.
19 Mr. Shaughnessy, I am showing you what
20 has been marked as Exhibit 330. It appears to be
21 a document -- a multi-page document dated
22 December 2007 entitled, "FlightLevel LLC
23 introduction."
24 Do you remember reviewing this in

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1 connection with FlightLevel's application as an
2 FBO in 2008?
3 A. No.
4 Q. Do you have any recollection, whatsoever,
5 of any of the documentation provided by
6 FlightLevel when it first applied to be an FBO
7 applicant in 2008?
8 A. No.
9 MR. HARTZELL: Sorry. I did not hear the
10 last question. Would you mind just reading it
11 back?
12 (Prior testimony was then read back.)
13 BY MR. FEE:
14 Q. At some point in time during your tenure
15 as an airport commissioner, did you become aware
16 of Boston Executive Helicopter's desire to
17 acquire or lease land at the airport?
18 A. Yes.
19 Q. When was that?
20 A. I don't know.
21 (Exhibit 331, Letter dated 9-1-10, marked
22 for identification.)
23 BY MR. FEE:
24 Q. Exhibit 331 appears to be a letter dated

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1 A. I don't remember.
2 (Exhibit 337, Email dated 9-24-12, marked
3 for identification.)
4 BY MR. FEE:
5 Q. 337 is an email, and I am beginning in
6 the middle of the page. It appears to be from
7 Mr. Donovan to Mr. Maguire, September 24, 2012.
8 And the subject matter is, "DC-3 ramp or any
9 other available lease space OWD."
10 "OWD" refers to the Norwood Memorial
11 Airport; correct?
12 A. Yes.
13 Q. And the first paragraph of that email
14 says, "I just wanted to check in and see if the
15 DC-3 ramp will become available now that the BAC
16 situation is resolved."
17 Do you see that?
18 A. Down at the bottom here?
19 Q. Yes.
20 A. Yes.
21 Q. He also says, "I want to inquire if any
22 other Town-owned lease ramp or property is
23 available or will become available in the next
24 five years, so we can plan for potential lease."

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1 Do you see that?
2 A. Yes.
3 Q. And were you, as a commissioner, made
4 aware of the fact, in September of 2012, that BEH
5 was seeking additional leased space at Norwood
6 Airport?
7 A. I don't remember.
8 Q. If you were informed, would it be
9 something that would be reflected in the meeting
10 minutes?
11 A. I don't know.
12 Q. Do you recall any discussion, whatsoever,
13 regarding -- at any time, regarding Mr. Donovan
14 or BEH's interest in leasing the DC-3 ramp?
15 A. I can't remember anything specific.
16 Q. Do you recall any discussions at any
17 Norwood Airport Commission meeting in 2012
18 or 2013, where the commission discussed the
19 interest expressed by BEH in acquiring any space
20 at Norwood Airport?
21 A. I don't remember.
22 Q. Do you recall, any time, Mr. Maguire
23 speaking at a Norwood Airport Commission meeting
24 in which he informed the commissioners that it

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1 was advisable for the commission to find leased
2 space for BEH?
3 MR. SIMMS: Just so I am clear, Mike, it
4 is the same two-year period?
5 MR. FEE: Yes.
6 MR. SIMMS: Okay.
7 A. I don't remember.
8 (Exhibit 338, Memo dated 6-17-13, marked for
9 identification.)
10 BY MR. FEE:
11 Q. 338 is an email -- sorry -- a memo to the
12 Norwood Airport Commission dated June 17, 2013,
13 from Mr. Maguire. I draw your attention to the
14 bottom paragraph, where he states, and I quote,
15 "To remain in compliance with federal standards,
16 I would therefore ask the NAC to consider any
17 applicable lease opportunities moving forward."
18 Do you see that?
19 A. Yes.
20 Q. Does that refresh your recollection as to
21 any recommendations that Mr. Maguire made in 2013
22 regarding providing leased space to BEH?
23 A. No.
24 Q. Do you have any recollection, whatsoever,

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1 of any discussions in 2013 whereby the importance
2 or the advisability of providing BEH with leased
3 space was discussed?
4 A. No.
5 Q. Do you have any recollection regarding
6 the RFP for the DC-3 ramp?
7 A. Just in general, Mike, I couldn't tell
8 you when.
9 Q. Was it your understanding that the RFP
10 for the DC-3 ramp allowed commercial activity?
11 A. I don't remember
12 (Exhibit 339, Addendum #1 dated 12-28-13,
13 marked for identification.)
14 BY MR. FEE:
15 Q. 339 is the entire RFP for the DC-3 ramp.
16 But the first three documents -- first three
17 pages are an addendum dated January 28, 2013,
18 prepared by John Carroll's office.
19 Have you seen this document before?
20 (Witness viewing Exhibit 339.)
21 A. I don't remember.
22 Q. Do you remember the fact that the Norwood
23 Airport Commission issued an RFP for lease of the
24 DC-3 ramp?

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1 A. Yes.
2 Q. That was in or about January of 2013;
3 correct?
4 A. It says that here.
5 Q. Well, do you have any reason to doubt
6 that the Norwood Airport Commission put out an
7 RFP for the DC-3 ramp in or about January
8 of 2013?
9 A. No.
10 Q. My question earlier was, do you know
11 whether the RFP allowed for commercial activity
12 on the DC-3 ramp?
13 A. I don't remember.
14 Q. Turning your attention to the first page,
15 answer number 1, where it states, "The successful
16 proposer may also park aircraft owned and/or
17 leased by the successful proposer and operated by
18 the successful proposer."
19 Do you see that?
20 A. Yes.
21 Q. So was it your understanding that an FBO
22 could be conducted on the DC-3 ramp pursuant to
23 the parameters set forth in the DC-3 ramp RFP?
24 A. Could you repeat that one?

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1 Q. Sure. Is it your understanding that an
2 FBO activity could be conducted on the DC-3 ramp,
3 given the parameters imposed by the DC-3 ramp
4 RFP?
5 A. I don't remember. So is your question,
6 do I think, reading it now, what I think?
7 Q. Yes.
8 MR. SIMMS: Well, wait. Have you formed
9 an opinion, as we sit here today, about that
10 particular issue?
11 A. No.
12 MR. SIMMS: Then you are not required to
13 form an opinion, as we sit here today, to speak
14 about that issue.
15 BY MR. FEE:
16 Q. Do you have an opinion as to whether or
17 not the RFP for the DC-3 ramp allowed an FBO
18 activity?
19 A. No.
20 Q. Do you know whether the RFP for the DC-3
21 ramp allowed for commercial activity?
22 A. No.
23 Q. Do you recall any controversy regarding
24 the DC-3 ramp bidding?

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1 A. I don't want to say, controversy, no.
2 Q. Do you recall any disagreements?
3 A. No.
4 Q. Do you recall any correspondence from
5 Mr. Donovan or any discussion at any NAC meeting
6 regarding his dissatisfaction with the DC-3 ramp
7 RFP?
8 A. I don't.
9 (Exhibit 340, Letter dated 3-14-13, marked
10 for identification.)
11 BY MR. FEE:
12 Q. I have shown you Exhibit 340, which
13 appears to be a letter from Mr. Donovan from
14 Chairman Tom Wynne in March 14, 2013.
15 The first paragraph -- sorry -- the first
16 page states, "This letter is in response to your
17 email dated Sunday, February 24, 2013, in
18 connection with the Request For Proposals that
19 the Town of Norwood issued for the so-called DC-3
20 apron at the Norwood Memorial Airport."
21 Does that refresh your recollection as to
22 whether or not you saw any correspondence
23 regarding BEH's complaints about the DC-3 ramp
24 bidding process?

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1 A. No.
2 Q. Did you -- have you seen this letter
3 before, what has been marked as Exhibit 340?
4 A. I believe so.
5 Q. Did you see it at or about the time it
6 was sent?
7 A. I don't remember.
8 Q. Did you play any part or role in the
9 preparation of this letter?
10 A. I don't remember.
11 Q. Turning your attention to the third page,
12 first full paragraph at the top, there is a
13 citation to an FAA grant assurance in a case, and
14 then Mr. Wynne states, and I quote, "Although you
15 seemingly assert that the DC-3 apron should be
16 considered for use by a fixed-based operator, the
17 DC-3 is approximately 15,295 plus or minus square
18 feet" --
19 A. Sorry, Mike. Where are you? I thought
20 you said page 3.
21 Q. You are missing a page. Your copy is
22 missing a page, Mr. Shaughnessy.
23 (Pause.)
24 Q. Here you go. I misspoke. It is the

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1 fourth page.
2 And I was reading from the first full
3 paragraph on the top of the fourth page. In the
4 middle of the paragraph, Mr. Wynne says, and I
5 quote, "Although you seemingly assert that the
6 DC-3 apron should be considered for use by a
7 fixed-base operator, the DC-3 apron is
8 approximately 15,295 square feet in area. This
9 relatively limited size of the DC-3 apron
10 restricts its utility as a site for a full-scale
11 FBO, given paramount safety and efficiency
12 concerns, along with the overarching concerns for
13 the future development of the airport property."
14 Did I read that correctly?
15 A. Yes.
16 Q. So is it fair to say that the position of
17 the Norwood Airport Commission in March of 2013
18 was that a minimum of 15,000 square
19 feet -- sorry -- that an area of 15,000 square
20 feet, plus or minus, is too small to conduct an
21 FBO operation?
22 MR. SIMMS: Objection.
23 Go ahead.
24 A. No.

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1 BY MR. FEE:
2 Q. Well, tell me how I am reading that
3 incorrectly, then.
4 MR. SIMMS: Objection.
5 Go ahead.
6 BY MR. FEE:
7 Q. Go ahead.
8 A. Full-scale FBO.
9 Q. Right. What is the difference?
10 A. It would be providing all of the services
11 that were listed, that you showed me before.
12 Q. Okay. Let me amend my question, then.
13 Perhaps I was imprecise.
14 Is it fair to say the position of the
15 Norwood Airport Commission in March of 2013 was
16 that an area of 15,295 square feet was not
17 sufficient to support a full-scale FBO?
18 MR. SIMMS: Objection.
19 Go ahead.
20 A. No.
21 BY MR. FEE:
22 Q. That was not the position of the airport
23 commission?
24 A. This letter is from Mr. Wynne.

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1 Q. Was Mr. Wynne the chairman of the airport
2 commission at this time?
3 A. I don't remember.
4 Q. Well, it says at the last page,
5 "Thomas J. Wynne, Chairman, Norwood Airport
6 Commission."
7 A. Okay.
8 Q. So again, is it fair to say that in March
9 of 2013, the Norwood Airport Commission's
10 position was that an area of 15,295 square feet
11 was not sufficient to support a full-scale FBO?
12 MR. HARTZELL: Objection.
13 MR. SIMMS: Same objection.
14 A. No.
15 BY MR. FEE:
16 Q. Why not?
17 A. This was -- something like this, I would
18 imagine, would be voted on. This is an opinion
19 of the chairman.
20 Q. Okay. So as you sit here today, you say
21 that you don't recall participating in this
22 letter; is that right?
23 A. That's correct.
24 Q. And were you consulted before this letter

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1 was sent?
2 A. I don't remember.
3 Q. And you are not aware that the positions
4 here were voted by the airport commission; is
5 that fair to say?
6 A. Yes, that is fair to say.
7 Q. Okay. And yet, the chairman of the
8 airport commission wrote a letter to BEH making
9 certain factual statements; is that fair to say?
10 A. I don't know about factual, but he wrote
11 this letter here.
12 Q. Right. So this contained certain facts
13 and arguments; right?
14 A. Yes.
15 Q. Is it your position that Mr. Wynne was
16 speaking for himself and not on behalf of the
17 airport commission when he wrote this letter and
18 sent it in March of 2017?
19 A. I don't believe he was speaking for me.
20 Q. My question is whether he was speaking
21 for the airport commission.
22 MR. SIMMS: If you have an opinion, one
23 way or the other.
24 A. I don't know.

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1 BY MR. FEE:
2 Q. Do you have an opinion as to what amount
3 of space is sufficient to safely operate a
4 full-scale FBO?
5 MR. HARTZELL: Objection.
6 A. No.
7 BY MR. FEE:
8 Q. Upon whom would you rely for that
9 judgment?
10 A. I think we would take it on a
11 case-by-case basis.
12 Q. Is it your belief that any communications
13 from the Norwood Airport Commission must be the
14 subject of a vote in order to be valid?
15 A. I don't know. I mean, can you give me a
16 specific example?
17 Q. I am trying to understand your position
18 with respect to Exhibit 340. It is written by
19 the chairman and directed to Mr. Donovan. And
20 yet, you seem -- your testimony seems to be that
21 you didn't know about it and you didn't vote on
22 it and, therefore, it doesn't speak for you and
23 you are not sure if it speaks for the commission.
24 So I am wondering, is this an isolated

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1 example of that, or do you believe that all
2 communications that come from the commission are
3 somehow invalid, unless they are the subject of a
4 vote?
5 MR. SIMMS: Objection to form.
6 You can answer.
7 A. I don't believe that. I don't believe
8 all communications are -- could you ask that
9 again? I am not sure what you are saying.
10 BY MR. FEE:
11 Q. That is fine. I am trying to understand
12 your testimony as to why you think that this
13 particular document, number 340, didn't speak for
14 the commission.
15 A. Okay.
16 Q. So do you want to explain that to me?
17 A. To me, I don't remember it. But I don't
18 necessarily agree with it. And if something was
19 to be an absolute, I think we would vote on it,
20 unless we voted to allow someone to deal with it.
21 The airport manager is in charge of the
22 airport. I assume that we work very closely -- I
23 have never been the chairman or the vice
24 chairman, but I assume they work very closely.

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1 Like I said, I would take things on a
2 case-by-case basis.
3 You pointed to something very specific
4 that I obviously don't agree with, because we
5 have offered less area than that and we have
6 already said you can be an FBO. So you know, I
7 wouldn't agree with what is written in that
8 letter.
9 Q. Um-hmm. So from your perspective, the
10 importance of taking a vote as a commission is an
11 important factor in determining whether the
12 action is valid. Is that fair to say?
13 MR. SIMMS: Objection.
14 Go ahead.
15 A. Sometimes.
16 BY MR. FEE:
17 Q. How do you differentiate between when you
18 need a vote and when you don't need a vote?
19 MR. SIMMS: Same objection.
20 A. I think when something comes before the
21 commission, like this happened in this case, we
22 have tried to deal with it on a case-by-case
23 basis. A response like that does not have my
24 name on it. It has the -- you know, it would be

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1 the same as, you know, Russ speaking for the
2 commission in certain instances, but not in every
3 instance.
4 BY MR. FEE:
5 Q. And how is someone dealing with Russ to
6 know whether or not he is speaking for the
7 commission or not?
8 MR. SIMMS: Objection.
9 Go ahead.
10 A. I don't know. They would have to come
11 back, if they had an issue, and they typically
12 do, and we would talk about it in one of our
13 meetings.
14 BY MR. FEE:
15 Q. Is it your belief that a letter from
16 Mr. Maguire is not a valid action of the
17 commission unless it is the subject of a vote?
18 A. Mr. Maguire is usually directed by the
19 commission.
20 Q. But my question is different.
21 Is it your understanding that
22 communication from Mr. Maguire is not necessarily
23 valid, unless it is the subject of a vote?
24 MR. SIMMS: Objection.

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<p>1 MR. HARTZELL: Objection.</p> <p>2 MR. SIMMS: Go ahead.</p> <p>3 A. No.</p> <p>4 BY MR. FEE:</p> <p>5 Q. <u>It is on a case-by-case basis, is what</u></p> <p>6 <u>you are saying?</u></p> <p>7 A. <u>I was really just referring specifically</u></p> <p>8 <u>to that letter.</u></p> <p>9 (Exhibit 341, Letter dated 1-22-14, marked</p> <p>10 for identification.)</p> <p>11 BY MR. FEE:</p> <p>12 Q. 341 is a letter from Mr. Maguire to</p> <p>13 Mr. Donovan dated January 22, 2014. And at the</p> <p>14 bottom of the page, the bullet says, "Regarding</p> <p>15 your interest in a full service FBO commercial</p> <p>16 permit as stated in the NAC January 15th public</p> <p>17 meeting. A number of years ago, BEH filed its</p> <p>18 initial commercial permit application that</p> <p>19 included a business plan. Given your company's</p> <p>20 interest in growing its operation beyond that</p> <p>21 which was outlined in the original plan to a full</p> <p>22 service FBO, the NAC would like you to update</p> <p>23 said plan to support the changing interests of</p> <p>24 your company. Per the Norwood Airport minimum</p>	<p>1 I have seen this before.</p> <p>2 Q. As of January 22, 2014, these are the</p> <p>3 documents that were being requested by the NAC;</p> <p>4 correct? I am referring to the numbered items on</p> <p>5 page 2 of Exhibit 341.</p> <p>6 A. You are asking me, again, that these</p> <p>7 items are requested in the letter?</p> <p>8 Q. Yes.</p> <p>9 A. There are six items requested in the</p> <p>10 letter.</p> <p>11 Q. Right.</p> <p>12 I am asking you this question because a</p> <p>13 minute ago we had a discussion regarding what may</p> <p>14 or may not be a valid communication from a member</p> <p>15 of the Norwood Airport Commission or the airport</p> <p>16 manager, and you seemed to suggest that on a</p> <p>17 case-by-case basis, sometimes communication from</p> <p>18 Mr. Maguire might not necessarily be a binding</p> <p>19 statement on the commission. So that is why I am</p> <p>20 asking you this question.</p> <p>21 As of January 22, 2014, do you believe</p> <p>22 that the airport commission was requesting the</p> <p>23 items listed on page 2 of Exhibit 341?</p> <p>24 A. I believe these were some of the items we</p>
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<p>1 standards and without getting into an unnecessary</p> <p>2 documentation exercise on your part, as a</p> <p>3 suggestion, these updates, under one cover, might</p> <p>4 include the following." And then it lists a</p> <p>5 variety of financial information.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. First of all, do you have any reason to</p> <p>9 doubt that this letter was sent by Mr. Maguire to</p> <p>10 Mr. Donovan in or about January of 2014?</p> <p>11 A. No.</p> <p>12 Q. And do you recall a meeting on</p> <p>13 January 15th of 2014, where Mr. -- sorry -- BEH's</p> <p>14 interest in being a full service FBO was</p> <p>15 discussed?</p> <p>16 A. No.</p> <p>17 Q. Do you believe that the information that</p> <p>18 appears on page 2 was a valid communication from</p> <p>19 the Norwood Airport Commission to Mr. Donovan,</p> <p>20 describing what financial information the</p> <p>21 commission required in support of an FBO</p> <p>22 application?</p> <p>23 A. I believe these are some of the things</p> <p>24 that we requested, subsequently to this letter.</p>	<p>1 were requesting.</p> <p>2 Q. Do you believe that there were other</p> <p>3 items that were being requested in January 2014?</p> <p>4 A. I don't remember.</p> <p>5 Q. So you would agree with me, would you</p> <p>6 not, given the context of this letter, that in</p> <p>7 January of 2014, the NAC was aware of BEH's</p> <p>8 desire to become a full service FBO? Is that</p> <p>9 correct?</p> <p>10 A. I don't remember, but that is what this</p> <p>11 letter seems to state.</p> <p>12 Q. You, personally, have no recollection of</p> <p>13 that?</p> <p>14 A. Not in the specific timeframe.</p> <p>15 Q. So in 2014, do you recall BEH's filing of</p> <p>16 a part 13 complaint with the FAA?</p> <p>17 A. No. I do remember a part 13 complaint</p> <p>18 was filed. I specifically remember that.</p> <p>19 Q. But you don't remember when?</p> <p>20 A. I will take your word, if there is</p> <p>21 something --</p> <p>22 Q. I can refresh your recollection.</p> <p>23 A. Okay.</p> <p>24 (Exhibit 342, Letter dated 6-5-14, marked</p>

VOLUME II
EXHIBITS 500-547

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT NO.
1582CV00213

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

Plaintiffs,

vs.

FLIGHTLEVEL NORWOOD, LLC;
EAC REALTY TRUST II; and
PETER EICHLEAY,

Defendants.

DEPOSITION of MARK RYAN

Wednesday, July 18, 2018 - 9:18 a.m.

Held at: Pierce Mandell, P.C.

11 Beacon Street

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
13th Fl, Suite 1330	508-767-1157
Springfield, MA 01144	

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1 Q. And there's an apparatus that is
2 aboveground. Correct?
3 A. Correct.
4 Q. Do you know if that is anywhere within
5 the TOFA?
6 A. Is what in the TOFA?
7 Q. The fueling apparatus that is
8 aboveground.
9 A. No.
10 Q. Is it not within the TOFA?
11 A. It is not within the TOFA.
12 Q. Okay. Now, I'm showing you Exhibit 405
13 to the Butters deposition, which is a letter
14 dated January 9, 2013, from the selectmen -- I'm
15 sorry -- to the selectmen from the fire chief
16 with respect to the BEH fuel tanks and the review
17 by the fire department.
18 And in the first bullet point he says
19 "The code/compliance review is complete and
20 approved."
21 Do you see that?
22 A. I do.
23 Q. Was it your understanding and the
24 Commission's understanding that as of

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1 January 9, 2013, BEH's fueling system had been
2 fully and completely reviewed and approved by the
3 fire department?
4 MR. HARTZELL: Objection.
5 A. The design?
6 BY MR. FEE:
7 Q. Correct.
8 A. As far as piping, tanks, dispensing
9 equipment, yes.
10 Q. Okay. And so the additional review by
11 the fire department would be in connection with
12 ensuring that it had been built according to
13 specification; is that correct?
14 A. Correct.
15 Q. Okay. Now, Butters 406 appear to be the
16 minutes of the selectmen's meeting that occurred
17 on January 22, 2013. I don't believe you were
18 present at this meeting, were you?
19 A. I don't recall.
20 Q. There's a notation in the center of the
21 page that says "7:30 p.m. - Boston Executive
22 Helicopters, Inc."
23 And then halfway down that paragraph it
24 says "Present were James Hilliard, Esquire,

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1 representing Boston Executive Helicopters, and
2 Chris Donovan, President of Boston Executive
3 Helicopters, and Russ Maguire, airport manager."
4 Do you see that?
5 A. Yes.
6 Q. Did you have a discussion with
7 Mr. Maguire regarding his attendance at the board
8 of selectmen's meeting on January 22, 2013?
9 A. I do not recall.
10 Q. Dropping down to the next paragraph, it
11 says, at the end of that paragraph, "Selectman
12 Howard inquired if they intend to sell fuel to
13 others or just for him. Mr. Donovan said both."
14 Do you see that?
15 A. No, I do not. Where is this?
16 Q. (Indicating.)
17 A. Oh, up here. I see that. Yes.
18 Q. So did Mr. Maguire relay to you this
19 information that had been provided to the
20 selectmen by Mr. Donovan that, in fact, he
21 intended to sell fuel as of January 22, 2013?
22 A. I don't recall that.
23 Q. Okay. Was it your understanding that
24 Mr. Donovan and BEH's application for a VIF

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1 license was not limited to self-fueling?
2 MR. SIMMS: Can you read that back,
3 please?
4 (Whereupon the prior question was read
5 back.)
6 A. My understanding was self-fueling at this
7 time.
8 BY MR. FEE:
9 Q. And that would be contrary to
10 Mr. Donovan's statement to the board of selectmen
11 on January 22nd, right?
12 A. Contrary to that statement. Yes.
13 Q. What was the basis for your understanding
14 that Mr. Donovan's -- I'm sorry -- BEH's
15 application for a fuel storage license was
16 limited to self-fueling?
17 A. Because it was presented to the airport
18 commission that BEH wanted the fueling to fuel
19 its own aircraft.
20 Q. And when was that communicated to the
21 airport commission?
22 A. At one of the presentations made by BEH.
23 (Exhibit No. 533 marked for
24 identification.)

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1 BY MR. FEE:
2 Q. Mr. Ryan, I'm showing you 533, which
3 appears to be an application for the license
4 dated December 13, 2012. It's previously marked
5 as Butters 407. It has now been remarked.
6 But does this say -- does that
7 application say in any way that the activities
8 will be limited to self-fueling?
9 A. This does not.
10 Q. Okay.
11 (Exhibit No. 534 marked for
12 identification.)
13 BY MR. FEE:
14 Q. I'm showing you what's been marked as
15 Exhibit 534. It appears to be a reprint of an
16 article that appeared in The Norwood Record on
17 January 24, 2013. The third paragraph says --
18 first of all, do you read The Norwood Record?
19 A. Occasionally.
20 Q. Do you make it a point of reading the
21 articles that are written about the airport
22 commission?
23 A. I would have. Yes.
24 Q. Do you recall perhaps reading this

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1 article dated January 24, 2013?
2 A. I don't recall that.
3 Q. The third paragraph says -- and it quotes
4 Hilliard, who is BEH's attorney:
5 "Representing Boston Executive
6 Helicopters at the public hearing, Attorney James
7 Hilliard said the business plans to install two
8 15,000-gallon fuel tanks at the site, adding that
9 the company plans to both operate on its own and
10 sell the aviation fuel."
11 Do you see that?
12 A. I do.
13 Q. And is that also inconsistent with your
14 understanding, in January of 2013, that
15 Mr. Donovan intended to both self-fuel and sell
16 fuel to others?
17 A. That was contrary to what I understood.
18 Yes.
19 Q. But you don't recall reading this in the
20 newspaper?
21 A. No, I do not.
22 Q. You don't recall any discussions with
23 Mr. Maguire about the selectmen's meeting where
24 Mr. Donovan declared his intention to sell fuel

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1 to others; right?
2 A. I don't recall that.
3 MR. HARTZELL: Can I just make a note
4 that the document that I was handed has four
5 pages, and three pages after the first page
6 appear to be duplicates of the first page. Is
7 this a one-page document or --
8 MR. FEE: This is a one-page document for
9 me.
10 So, once again, there's a ghost in the
11 machine at the copy center. So you can just rip
12 off the last four pages.
13 MR. HARTZELL: Last three pages.
14 MR. FEE: Last three pages.
15 (Exhibit No. 535 marked for
16 identification.)
17 BY MR. FEE:
18 Q. 545 appears to be a letter to
19 Mr. Hilliard from the board of selectmen on which
20 the Norwood Airport Commission is copied. Do you
21 see that?
22 A. I do.
23 Q. And it informs Mr. Hilliard that the
24 board of selectmen has taken action with respect

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1 to the permit request. Correct?
2 A. Correct.
3 Q. Okay. And then it includes a copy of the
4 license issued by the board of selectmen, as well
5 as the eight criteria established by Mark Ryan
6 and the airport commission. Correct?
7 A. Correct.
8 Q. Okay. And there are no other conditions
9 on this document that was issued by the board of
10 selectmen in or about January 25, 2013. Correct?
11 A. Correct.
12 Q. It doesn't say anything about TOFA or
13 anything like that; right?
14 MR. HARTZELL: Objection.
15 A. It does not.
16 BY MR. FEE:
17 Q. Okay.
18 (Exhibit No. 536 marked for
19 identification.)
20 BY MR. FEE:
21 Q. Now, just for the record, I'm going to
22 show you a document that's been marked as Exhibit
23 536. It was previously marked in the Butters
24 deposition as 414, but there was a sticky imprint

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1 on the top right-hand corner. So I'm now marking
2 a fuller version of Butters 414.

3 Also, on page 2 of Ryan 536, it was
4 previously marked as Butters 416.

5 Mr. Ryan, I'm showing you a document that
6 appears to be an application for a standard
7 permit and a permit. Have you seen this document
8 before?

9 A. No, I have not.

10 Q. At the bottom there's an asterisk that
11 says "List of conditions dated August 6, 2013,
12 remain in force for an indefinite term after
13 expiration of this permit."

14 Did I read that correctly?

15 A. Yes.

16 Q. And then on the following page, there's a
17 list of conditions. Do you see that?

18 A. I do.

19 Q. Do you know who drafted this list of
20 conditions?

21 A. I do not.

22 Q. Do you know if it was you?

23 A. No.

24 Q. Do you know if it was Mr. Maguire?

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1 A. That I don't know.

2 (Exhibit No. 537 marked for
3 identification.)

4 BY MR. FEE:

5 Q. Ryan 537. This document appears to be a
6 transcript of the board of selectmen's hearing on
7 5/19/15. I want to ask you a couple of questions
8 about it.

9 On the bottom of page 1, starting at line
10 20, the chairman introduces the topic of BEH and
11 says that:

12 "The Norwood Airport Commission, town
13 counsel has suggested the following working on
14 the VIF license for Boston Executive Helicopter.
15 The holder of the license may perform its own
16 self-fueling activities as authorized by Section
17 11.3 c of the Federal Aviation Administration
18 Compliance Manual" -- I'll skip the rest of the
19 citation.

20 "The holder of the license is not
21 permitted to exchange in or perform commercial
22 fueling activities, including the storage, sale,
23 and distribution of fuel to or for third parties
24 unless and until the holder of the license

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1 receives all applicable permits, licenses, and
2 other approvals for such commercial fueling
3 activities, including but not limited to a
4 fixed-base FBO permit from the NAC."

5 Did I read that correctly?

6 A. Yes. Correct.

7 Q. And so the suggestion being made to the
8 board of selectmen in May of 2015 came from the
9 Norwood Airport Commission. Correct?

10 A. Yes.

11 Q. And it was also drafted by -- or prepared
12 by town counsel?

13 A. Yes.

14 Q. And that was prepared by town counsel at
15 the airport commission's request. Correct?

16 A. Yes.

17 Q. Okay. So at line 10, it quotes you. And
18 after introducing yourself, you say:

19 "The application for the fuel facility by
20 Boston Executive Helicopter was for a
21 self-fueling operation and we fully support that
22 operation, and those conditions there say they
23 can only pump fuel to their aircraft."

24 Do you see that?

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1 A. Yes.

2 Q. And skipping down below to line 16, you
3 say:

4 "Their initial application was for
5 self-fueling, and that's all they're allowed to
6 do under the airport rules and regulations right
7 now."

8 Is that correct?

9 A. Correct.

10 Q. Now, we discussed previously the
11 application for a license as well as statements
12 made by Mr. Donovan declaring that his intention
13 was to both sell fuel and to self-fuel. Do you
14 recall that?

15 A. Yes.

16 Q. Okay. And yet on 5/19/2015 you're
17 representing to the board of selectmen that their
18 application was for self-fueling; is that
19 correct?

20 MR. SIMMS: Objection.

21 A. They were permitted at the airport to be
22 self-fueling only at the time.

23 BY MR. FEE:

24 Q. Right. Because they hadn't gotten an FBO

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1 yet.
2 A. Correct.
3 Q. And what was the purpose of the NAC
4 seeking to impose additional regulations on the
5 VIF license at this time?
6 MR. SIMMS: Objection. Assumes facts.
7 Go ahead.
8 A. We just wanted to make a clarification on
9 what was allowed down at the airport for fueling
10 at that time.
11 BY MR. FEE:
12 Q. Okay. But turning your attention to the
13 next page. On page 3, Selectman Abdella asks
14 you, "Does it say on the application
15 self-fueling," and you say, "Yes, it does."
16 Is that right?
17 A. Correct.
18 Q. Okay. Where on the application does it
19 say anything about self-fueling?
20 A. The application -- my understanding here
21 was when BEH made their presentation to the
22 Norwood Airport Commission, and it has nothing to
23 do with what was on this document here.
24 Q. You mean you weren't referring to

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1 Exhibit 533 when you told the board of selectmen
2 that the application states that it is for
3 self-fueling? You were referring to some other
4 document.
5 A. The representation to the airport
6 commission that this was for self-fueling, that
7 was our understanding.
8 Q. You're not sure when that representation
9 was made to the airport commission?
10 A. Early on in BEH's presentation of its
11 fuel facility.
12 Q. Was that in writing?
13 A. I do not recall that.
14 Q. Down at the bottom of page 3, line 25.
15 In response to Selectman Abdella's request about
16 the FBO application, you state:
17 "No. They've applied and were waiting on
18 one last requirement that's part of our rules and
19 regulations that everyone follows down there."
20 And Selectman Abdella says, "What is
21 that?"
22 You say, "That's their financial
23 statements."
24 And the chairman asks, "That's been going

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1 on for how long? A while?"
2 And Abdella says, "They haven't given you
3 financial statements for a year?"
4 And you say, "They have not."
5 Is that correct?
6 A. Correct.
7 Q. Okay. Now, was it your understanding, as
8 of 5/19/15, that BEH had not provided any
9 financial information to the NAC?
10 MR. HARTZELL: Objection.
11 A. They had.
12 BY MR. FEE:
13 Q. And what had they provided?
14 A. It was just a statement of some kind of
15 balance in some bank account.
16 Q. Okay. Had they also provided a business
17 plan?
18 A. At this time?
19 Q. Yes. Prior to May of 2015.
20 A. I believe so. Yes.
21 Q. And had they also provided copies of
22 their bank statements?
23 A. My recollection is there was one bank
24 statement. Yes.

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1 Q. And so skipping ahead now to page 8.
2 Selectmen Howard says, at line 10, "What I'm
3 getting at is it would seem like these people are
4 a good-sized company looking just to run their
5 business a little better with gasoline."
6 And you say, "And I agree. But like any
7 other good tenant or landlord, we want to see
8 their financial background that proves it."
9 And Howard says, "So if they provide
10 their financial statements, then they'd be all
11 set."
12 And you say, "We've told them that a
13 number of times. Absolutely."
14 Skipping down to line 20, Howard says,
15 "So it's more than just a financial statement?"
16 You say, "We've asked for three months'
17 bank statements. There are a couple of other
18 items that I can't -- come to mind but it's
19 pretty typical stuff."
20 Do you see that?
21 A. I do.
22 Q. Was it your understanding that all BEH
23 needed to do in February of -- I'm sorry -- May
24 of 2015 was provide a financial statement?

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1 A. They needed their financials taken care
2 of and, although I did not talk about it here, a
3 fueling plan.
4 Q. Yeah. You didn't mention that at all to
5 the board of selectmen. Correct?
6 A. I did not.
7 Q. So the board of selectmen declined to
8 include on the license the information that was
9 being suggested by town counsel and the
10 commission; is that correct?
11 A. That is correct.
12 Q. Okay. So on May 26, 2015, which is a
13 couple of days after the board of selectmen's
14 hearing, you write a letter to Mr. Donovan.
15 "Congratulations. You've been approved."
16 And I'm showing you a document that's
17 been marked as Exhibit 146.
18 MR. FEE: Actually, I'm
19 sorry. What was it?
20 MR. HARTZELL: This is Ryan 146.
21 MR. FEE: Sorry. Again, my apologies.
22 I'll mark this as the next one.
23 (Exhibit No. 538 marked for
24 identification.)

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1 BY MR. FEE:
2 Q. So you alert BEH that the selectmen have
3 approved the VIF license. And you go on in the
4 second paragraph to say:
5 "However, per the VIF license, BEH is not
6 permitted to engage in or perform commercial
7 fueling activities, including the storage, sale,
8 and distribution of fuel to or for third parties
9 unless and until BEH receives from the Norwood
10 Airport Commission a fixed-based operator
11 permit."
12 Did I read that correctly?
13 A. Yes.
14 Q. That's exactly the same language that the
15 board of selectmen declined to include on the
16 license at the meeting on May 19th. Correct?
17 MR. HARTZELL: Objection.
18 A. Correct.
19 BY MR. FEE:
20 Q. And what was the reason that you believed
21 it was necessary or appropriate to include that
22 language in a letter to BEH when the selectmen
23 had specifically declined to so condition the VIF
24 license?

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1 A. We wanted to just, as a clarification,
2 let BEH understand that they can sell fuel. And
3 until they receive an FBO from the airport
4 commission, they were not to sell fuel to third
5 parties.
6 Q. Okay. And do you recall -- was it your
7 understanding that all BEH needed to do in May of
8 2015 was provide some financial documents that
9 you discussed with the selectmen?
10 MR. HARTZELL: Objection.
11 MR. SIMMS: Asked and answered. Go
12 ahead.
13 A. That they had to submit their financial
14 records, was one of them. Yes.
15 BY MR. FEE:
16 Q. As I recall, you told the selectmen that
17 all they needed to do was submit a couple of
18 financial statements and they're all set; right?
19 MR. HARTZELL: Objection.
20 MR. SIMMS: Objection. Go ahead.
21 A. At the time we were trying to get
22 financial records from BEH and that was our focus
23 at that time. Trying to work that out with them.
24 And the selectmen did say we're waiting on the

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1 financials only, but we never took away the
2 requirement of a fueling plan.
3 BY MR. FEE:
4 Q. Okay. You just neglected to tell the
5 selectmen that. Is that --
6 A. Correct.
7 MR. SIMMS: Objection. Go ahead.
8 THE WITNESS: Sorry.
9 MR. HARTZELL: Can we take a two-minute
10 break?
11 MR. FEE: Sure.
12 (Recess taken at 2:39 p.m.)
13 (Deposition resumed at 2:48 p.m.)
14 BY MR. FEE:
15 Q. We discussed previously and briefly the
16 2007/2008 application of FlightLevel for a
17 commercial permit. And you were on the
18 commission at this time. Correct?
19 A. Yes.
20 Q. And we established, did we not, that the
21 document that's been marked as Exhibit 207, as
22 well as the document that has been marked as 208,
23 starting on the second page, is the sum and
24 substance of the documentation that was submitted

<p>1 Volume: 1 2 Pages: 1 to 256 3 Exhibits: 92 to 110 4 UNITED STATES DISTRICT COURT 5 FOR THE DISTRICT OF MASSACHUSETTS 6 C.A. No. 1:15-CV-13647-RGS 7 BOSTON EXECUTIVE HELICOPTERS, LLC, 8 Plaintiff 9 vs. 10 FRANCIS T. MAGUIRE, ET AL., 11 Defendants 12 DEPOSITION of FRANCIS T. MAGUIRE, III, 13 a witness called on behalf of the 14 Plaintiff, pursuant to the applicable 15 provisions of the Massachusetts Rules of 16 Civil Procedure, before Judith R. Sidel, 17 Certified Shorthand Reporter and Notary 18 Public, in and for the Commonwealth of 19 Massachusetts, at the Office of Pierce 20 & Mandell, P.C., 11 Beacon Street, 21 Boston, Massachusetts 02108, on Friday, 22 June 16, 2017, commencing at 10:00 a.m.</p> <p>23 ***** 24 SHEA COURT REPORTING SERVICES 15 COURT SQUARE, SUITE 920 BOSTON, MASSACHUSETTS 02108</p>	<p>1 INDEX 2 3 WITNESS DIRECT CROSS REDIRECT RECROSS 4 Francis Maguire 5 (By Mr. Fee) 5 251 6 (By Mr. McCulloch) 178 252 7 (By Mr. Simms) 234 8 9 EXHIBITS 10 NO. DESCRIPTION PAGE 11 92 Renote of Deposition 5 12 93 Norwood Memorial Airport Master 13 Plan Update Phase 1, Final Report 14 November 22, 2004 50 15 94 Master Plan Update Final/Phase 2, 16 March 2007 50 17 95 Supplemental Request For Production 18 of Documents 59 19 96 E-Mail 131 20 97 Norwood Airport Minimum Standards 134 21 98 Letter, Aviation Management 22 Consulting Group Dated 9/29/15 142 23 99 Norwood Memorial Airport Letter 24 Dated 9/25/15 146 100 Letter Dated 6/21/16 159 101 Letter Dated 6/13/16 161 102 Letter Dated 6/17/16 170 103 Letter Dated 11/1/16 175</p>
<p>1 APPEARANCES: 2 3 MICHAEL C. FEE, ESQUIRE 4 PIERCE & MANDELL, P.C. 5 11 Beacon Street, Suite 800 6 Boston, Massachusetts 02108-3002 7 On behalf of the Plaintiff 8 9 TIMOTHY McCULLOCH, ESQUIRE 10 DICKINSON WRIGHT PLLC 11 1850 North Central Avenue 12 Phoenix, Arizona 85004 13 On behalf of the Plaintiff 14 15 ADAM SIMMS, ESQUIRE 16 PIERCE, DAVIS & PERRITANO, LLP 17 10 Post Office Square 18 Boston, Massachusetts 02109 19 On behalf of the Defendants 20 21 ALSO PRESENT: 22 Christopher Donovan 23 24</p>	<p>1 NO. DESCRIPTION PAGE 2 104 Norwood Memorial Airport 2007/2008 3 Commercial Permit Application 186 4 5 105 FlightLevel, LLC Introduction 193 6 7 106 E-Mail 233 8 9 107 Norwood Airport Commission Meeting, 10 Regular Business Meeting Dated 11 2/13/13 238 12 13 108 Norwood Airport Commission Meeting, 14 Regular Business Meeting Dated 15 2/11/15 242 16 17 109 Agenda Dated Thursday, 18 June 15, 2017 248 19 20 110 Letter Dated 5/11/15 251 21 22 23 24</p>

<p>165</p> <p>1 plan drawing to include the court order. 2 I don't see that as -- 3 Q. I'm asking you a broader question. 4 And I directed your attention to the 5 third paragraph of page 2 of Exhibit 6 101, right. And I read you that 7 provision that says -- which town 8 counsel says, BEH's litigious and 9 adversarial nature confirms the 10 reasonableness of the NAC's imposing 11 requirements in connection with their 12 fixed based operator commercial permit. 13 I'm paraphrasing I know. That's the 14 gist of that paragraph in my mind. 15 A. Uh-huh. 16 Q. I want to know, did you agree with that 17 sentiment in June of 2016 that due to 18 BEH's litigious nature it was reasonable 19 and justified for the commission to 20 impose requirements above and beyond 21 the minimum standards in order to allow 22 their FBO permit? 23 A. Well, I think, again, you're clumping 24 all the requirements under -- there</p>	<p>167</p> <p>1 the airport commission is required 2 to protect the Town of Norwood and 3 to protect financial success of the 4 airport and also to make sure that 5 financial obligations are met by 6 businesses on the airport that have 7 leases. 8 Q. You mentioned that the commission 9 was concerned that this was a first 10 time FBO? 11 A. Yes. 12 Q. And as a result, there were concerns 13 regarding its ability to meet its 14 obligations, is that right? 15 A. Meet its obligations and to succeed. 16 Q. And to succeed was a concern because 17 of the existence of the other FBO? 18 A. To succeed, because at that time I 19 believe we were looking at a lease 20 with Boston Executive Helicopters 21 and there were going to be financial 22 obligations in the form of land lease 23 payments and fuel flowage payments. 24 Q. But you testified earlier that as of</p>
<p>166</p> <p>1 were different circumstances. I think 2 if you're talking about the letter of 3 credit or the guarantee, again, this 4 was a decision by the commission. 5 Q. Understood. I'm asking if you agreed 6 with the sentiments expressed by town 7 counsel in this letter? 8 A. I mean, the fact is that by 2016 the 9 commission was concerned about the 10 litigious nature and the legal charges. 11 They were also concerned about the 12 financial viability of a new company 13 on the airport that might not be able 14 to pay its bills. 15 Q. Well, with respect to the litigious 16 nature, what requirements could the 17 commission impose to guard against 18 continued litigiousness by BEH? 19 MR. SIMMS: Objection to form. 20 Go ahead. 21 A. I'm not sure that the commission 22 could guard against that per se. 23 BEH is certainly within its right to 24 file complaints, file lawsuits, but</p>	<p>168</p> <p>1 September of 2015 the commission 2 was satisfied that BEH could meet 3 its obligations, right? 4 A. They were satisfied with the report 5 that was given to them by the 6 third-party consultant regarding 7 the minimum standard requirement 8 to produce financial documents. 9 Q. You said that there was a concern 10 about its being a first time FBO, 11 correct? 12 A. (No response.) 13 Q. Now, were you at the airport when 14 FlightLevel became an FBO? 15 A. Yes. 16 Q. And was a personal guarantee required 17 of Mr. Eichleay? 18 A. I don't recall a personal guarantee 19 being required. 20 Q. Were there similar concerns regarding 21 the fact that a first time FBO was 22 coming to the airport? 23 A. The airport commission looked at 24 FlightLevel differently. FlightLevel</p>

<p style="text-align: right;">169</p> <p>1 <u>was acquiring the interest of Eastern</u> 2 <u>Air Center. They also were retaining</u> 3 <u>their senior management from Eastern</u> 4 <u>Air Center, which had a successful</u> 5 <u>operation. They were satisfied with</u> 6 <u>the expertise and the background</u> 7 <u>of the FlightLevel management team.</u> 8 Q. <u>FlightLevel management team was</u> 9 <u>led by a 26-year-old person, who</u> 10 <u>had never run an FBO, right?</u> 11 A. <u>But he was only one among a team.</u> 12 Q. <u>Can you just answer yes or no to</u> 13 <u>my question?</u> 14 A. <u>That is true in part, but, again, it</u> 15 <u>takes out of context the management</u> 16 <u>team, which was what was presented</u> 17 <u>to the airport commission.</u> 18 Q. <u>And so the management team was what</u> 19 <u>differentiated the treatment given to</u> 20 <u>FlightLevel when its FBO application</u> 21 <u>was considered versus the consideration</u> 22 <u>given BEH. Is that the difference?</u> 23 MR. SIMMS: That wasn't his 24 testimony. Go ahead.</p>	<p style="text-align: right;">171</p> <p>1 counsel in regard to the Part 16. It's 2 supplemental information to the office 3 of chief counsel in their deliberation 4 over the Part 16 Complaint. 5 Q. Did you play any role in preparing 6 this document? 7 A. No. 8 Q. And it's signed by Brandon Moss, is 9 it not? 10 A. Yes. 11 Q. And when I asked you previously regarding 12 generically references to town counsel, 13 is it fair to say that you were referring 14 to Mr. Moss in all instances or were 15 there other town counsel lawyers that 16 you would communicate with? 17 A. Primarily Brandon Moss. Occasionally I 18 work with another attorney, but Mr. Moss 19 is the one, more often than not, that I 20 work with. 21 Q. On this matter, the BEH? 22 A. Oh, specific to the Part 16, yeah, 23 I would say Mr. Moss exclusively. 24 Q. And so on the first page down the bottom</p>
<p style="text-align: right;">170</p> <p>1 A. <u>It is broad. FlightLevel had to produce</u> 2 <u>a business plan and financial information</u> 3 <u>and, you know, a statement or a set of</u> 4 <u>documents regarding the experience level</u> 5 <u>of the management team and that was</u> 6 <u>deemed satisfactory by the commission.</u> 7 (Off the record.) 8 (Back on record.) 9 Q. Mr. Maguire, I just have a couple of 10 more questions. 11 (Exhibit No. 102, Letter Dated 12 6/17/16, marked for identification.) 13 Q. Mr. Maguire, I'm showing you a document 14 that's been marked as Exhibit 102. It 15 appears to be a letter dated June 17, 16 2016 from Brandon Moss to the office 17 of the chief counsel at the FAA. I 18 understand there has been a lot of 19 lawyer letters. Can you take a look 20 at this and tell me if you recognize 21 it? 22 A. Yes. 23 Q. And what is it? 24 A. It's a letter to the office of chief</p>	<p style="text-align: right;">172</p> <p>1 Mr. Moss references a vote that was taken 2 at the June 15, 2016 meeting. And then 3 he goes on to describe that vote on the 4 following page. And to just quickly 5 paraphrase in the interest of time, he 6 lists four requirements for the issuance 7 of an FBO permit and they include an 8 irrevocable letter of credit, evidence 9 of insurance, a revised scaled fuelling 10 plan, the Norwood Airport Commission 11 execute a lease for A, B and C on the 12 West Apron and the parties, through 13 their respective attorneys, resolve the 14 outstanding legal matters between them. 15 Do you see that? 16 A. Yes. 17 Q. Was it your understanding that such 18 a vote took place on June 15, 2016? 19 A. As I recall, that vote took place. 20 Q. And so focusing on the last issue where 21 the commission voted to require that 22 the parties resolve all outstanding legal 23 matters between them as a prerequisite 24 to the issuance of the FBO permit, is</p>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:15-CV-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff

vs.

FRANCIS T. MAGUIRE, ET AL.,

Defendants

DEPOSITION of THOMAS J. WYNNE

Wednesday, June 20, 2018

9:19 a.m.

Held at: Norwood Town Hall

566 Washington Street

Norwood, Massachusetts

Megan M. Castro, RPR, Court Reporter

Real Time Reporting, Inc.

One Monarch Place
1414 Main Street
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1 that Mr. Maguire's April 30th email contained all
2 of the financial information that was being
3 requested in connection with this business plan
4 submission? Is that fair to say?
5 A. It contained the financial information.
6 Whether or not that was going to be all that we
7 would need, I can't answer. Again, Commission
8 meets, there is a review, there is questions,
9 correspondence, so.
10 Q. I am focusing specifically on what you
11 wanted to see in the business plan, because
12 Mr. Maguire's email is pretty specific.
13 MR. SIMMS: Again, wait for a question.
14 Just wait for a question.
15 MR. HARTZELL: Objection.
16 BY MR. FEE:
17 Q. I will ask you again.
18 Is it fair to say that as of June 2014,
19 the NAC communicated that the financial
20 information it wanted to see in the business plan
21 was outlined in Mr. Maguire's April 30th email?
22 MR. HARTZELL: Objection.
23 A. It was outlined as of that date.
24 BY MR. FEE:

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1 Q. Fair enough.
2 At some point, did BEH accept the lease
3 offer that was memorialized in Exhibit 382?
4 A. Yes.
5 Q. Do you know when that was?
6 A. I don't have the date, no.
7 Q. I am going to show you an exhibit that
8 has been marked as Exhibit 386.
9 (Handing Exhibit 386 to the witness.)
10 Q. Does that refresh your recollection as to
11 whether BEH communicated its agreement to accept
12 the lease offer that is previously marked as
13 Exhibit 382?
14 A. It refreshes my recollection, not the
15 specific dates.
16 Q. About May 13th of 2014, BEH communicated
17 its acceptance; is that right?
18 A. Yes.
19 Q. Okay. Now, do you know what, if
20 anything, the Commission did in response to BEH's
21 accepting the lease offer?
22 A. I would have to go back into notes to
23 respond to that.
24 Q. I am going to show you an exhibit that

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1 has been marked as Exhibit 387.
2 (Handing Exhibit 387 to the witness.)
3 Q. And first of all, these are the meeting
4 minutes from May 14, 2014, in which you were
5 present; is that correct?
6 (Witness viewing Exhibit 387.)
7 A. Yes.
8 Q. Okay. On page 2, third paragraph, the
9 minutes state that, "Commissioner Sheehan reread
10 April 9, 2014 regular meeting minutes that stated
11 BEH refused the offering at the April meeting.
12 Commission now needs to readdress this issue with
13 executive session."
14 Do you see that?
15 A. Yes.
16 Q. Do you recall going into an executive
17 session on May 14, 2014, to discuss BEH's lease
18 offer and acceptance?
19 A. Without a copy of the executive meeting
20 minutes, no.
21 Q. Let me show you an exhibit that has been
22 marked as Exhibit 388.
23 (Handing Exhibit 388 to the witness.)
24 Q. First of all, were you present at the

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1 executive session on May 14th?
2 A. Yes.
3 Q. In the middle of this document that has
4 been marked as Exhibit 388, it says, "Boston
5 Executive Helicopters refusal of lease offer,"
6 and the minutes reflect that, "On a motion by
7 Mr. Odstrchel and seconded by Mr. Ryan, the
8 Commission voted 8 to 0 to withhold making a
9 decision to reoffer a lease of 6,889 square feet
10 of the west apron until a scoping plan has been
11 completed and reviewed by the Commission. At
12 such time, it is proposed to offer an
13 undetermined number of years lease based on a new
14 RFP."
15 Do you see that?
16 A. Yes.
17 Q. So is it fair to say that, at that point
18 in time, the Commission had determined that it
19 was not going to lease 6,889 square feet of space
20 on the west apron to BEH?
21 MR. HARTZELL: Objection.
22 A. Yes.
23 BY MR. FEE:
24 Q. And do you know what the purpose of the