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

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| <p style="text-align: right;">5</p> <p>1 S T I P U L A T I O N S</p> <p>2 It is hereby stipulated and</p> <p>3 agreed by and between counsel for the</p> <p>4 respective parties that the deposition</p> <p>5 will be read and signed under the pains</p> <p>6 and penalties of perjury. It is also</p> <p>7 stipulated that the notarization will be</p> <p>8 waived.</p> <p>9 Failure to sign transcript</p> <p>10 within thirty (30) days will deem the</p> <p>11 signature waived.</p> <p>12 It is further stipulated and</p> <p>13 agreed that all objections, except as to</p> <p>14 form, and motions to strike are reserved</p> <p>15 until the time of trial.</p> <p>16 * * *</p> <p>17 FRANCIS T. MAGUIRE, III,</p> <p>18 a witness called by counsel for the</p> <p>19 Plaintiff, upon receipt of driver's</p> <p>20 license, being first duly sworn, was</p> <p>21 examined and testified as follows:</p> <p>22 (Exhibit No. 92, Renote of</p> <p>23 Deposition, marked for identification.)</p> <p>24 D I R E C T E X A M I N A T I O N</p> | <p style="text-align: right;">7</p> <p>1 that before?</p> <p>2 A. I don't recall seeing this particular</p> <p>3 document, no.</p> <p>4 Q. But it is your understanding that you're</p> <p>5 here to give deposition testimony today,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And have you given a deposition before?</p> <p>9 A. Yes.</p> <p>10 Q. In what context?</p> <p>11 A. This was for a lawsuit. I was the</p> <p>12 defendant in the lawsuit filed by</p> <p>13 a tenant on the Norwood Airport.</p> <p>14 Q. So you're familiar with the process</p> <p>15 of a deposition?</p> <p>16 A. Yes.</p> <p>17 Q. And you've attended depositions in</p> <p>18 this case previously, have you not?</p> <p>19 A. Yes.</p> <p>20 Q. So you know that the stenographer is</p> <p>21 taking down everything that we're saying,</p> <p>22 so that it's important that we each allow</p> <p>23 each other to finish sentences before</p> <p>24 answering, so that the record is clear.</p> |
| <p style="text-align: right;">6</p> <p>1 B Y M R. F E E:</p> <p>2 Q. Good morning, Mr. Maguire.</p> <p>3 A. Good morning.</p> <p>4 Q. My name is Michael Fee. I'm an attorney.</p> <p>5 I represent Boston Executive Helicopters</p> <p>6 in a matter that's pending in the United</p> <p>7 District Court for the District of</p> <p>8 Massachusetts. Are you here to give</p> <p>9 your deposition today?</p> <p>10 A. Yes.</p> <p>11 Q. And are you represented by Mr. Simms?</p> <p>12 A. Yes.</p> <p>13 M R. F E E: And before we get</p> <p>14 started, standard stipulations that we've</p> <p>15 been using throughout the depositions.</p> <p>16 Is that okay?</p> <p>17 M R. S I M M S: Okay.</p> <p>18 M R. F E E: The standard</p> <p>19 stipulations that we've been utilizing</p> <p>20 throughout the depositions will remain</p> <p>21 in effect. That's all we need to say</p> <p>22 on the record for that.</p> <p>23 Q. Let me show you a document that's been</p> <p>24 marked as Exhibit No. 92. Have you seen</p> | <p style="text-align: right;">8</p> <p>1 A. Yes.</p> <p>2 Q. And you understand that at some point</p> <p>3 your counsel may object, and unless he</p> <p>4 instructs you not to answer, you can</p> <p>5 answer the question that's been posed.</p> <p>6 A. Yes.</p> <p>7 Q. And if you have any questions or if you</p> <p>8 don't understand any question that I ask,</p> <p>9 just let me know and I will rephrase it,</p> <p>10 so you do understand it and it's in a</p> <p>11 form that you understand it.</p> <p>12 A. Yes.</p> <p>13 Q. Finally, if you have any issues in</p> <p>14 terms of the comfort level in the</p> <p>15 room, if you need me to adjust the</p> <p>16 air-conditioning, get a glass of</p> <p>17 water or talk to your counsel, just</p> <p>18 let me know and we can take a break</p> <p>19 at anytime.</p> <p>20 A. Okay.</p> <p>21 Q. Can you briefly describe for me your</p> <p>22 educational background?</p> <p>23 A. I have an Associate's Degree in Applied</p> <p>24 Science with an emphasis in aviation</p> |

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| <p style="text-align: right;">9</p> <p>1 technology from the University of Alaska, 2 Fairbanks. I have a Bachelor's Degree 3 in Journalism from the University 4 of Missouri. I have a Master of 5 Aeronautical Science Degree with a 6 specializing in aviation and aerospace 7 management from Embry-Riddle Aeronautical 8 University. I have a Master of Fine 9 Arts Degree in Creative Writing with 10 a concentration in fiction from Pine 11 Manor College in Massachusetts. 12 I had a number of professional 13 certifications and accreditations 14 specific to airport management as 15 well. 16 Q. What are those, if you can -- 17 A. I'm an accredited airport executive 18 with the American Association of Airport 19 Executives. I'm an airport certified 20 employee with the American Association 21 of Airport Executives as well. I've 22 taken a number of certification type 23 workshops with the American Association 24 of Airport Executives.</p> | <p style="text-align: right;">11</p> <p>1 at Norwood Memorial Airport? 2 A. I was working in a postgraduate 3 internship unpaid after I had graduated 4 from Embry-Riddle. I started the 5 post-grad internship, I believe, in 6 September of 1995 and I became the 7 full-time airport manager in December 8 of 1995. 9 Q. As the full-time airport manager has 10 your job duties and responsibilities 11 remained relatively constant during 12 your tenure? 13 A. I would say that the responsibilities 14 have grown appreciably since July of 15 1999, because it was at that point 16 that I was no longer the contract 17 airport manager, but I became the 18 Town of Norwood's first municipal 19 airport manager. So I assumed duties 20 and responsibilities that I would not 21 have otherwise had under the contract 22 from 1995 to July of '99. 23 Q. And so from '95 to '99 you were a 24 contract employee or an independent</p> |
| <p style="text-align: right;">10</p> <p>1 Q. And what was your last degree? 2 A. My last degree was Master of Fine 3 Arts at Pine Manor. 4 Q. And when did you get that? 5 A. January of 2016. 6 Q. When was your first aeronautical job? 7 A. My first aeronautical job would have 8 been with the U.S. Army aviation branch 9 in 1987 once I was awarded my wings. 10 Q. And what were your years -- you served 11 in the Army? 12 A. I did. 13 Q. And what were your years of service? 14 A. I had 13 years in total. I was on active 15 duty from 1986 to 1991. I had a break 16 in service from 1991 until 1998 and then 17 I went active National Guard until -- I 18 want to say it was 2006 I went inactive, 19 I believe. 20 Q. And is that where you learned to fly? 21 A. Yes. 22 Q. And you're currently a licensed pilot? 23 A. I'm currently a licensed pilot. 24 Q. And when did you first start working</p> | <p style="text-align: right;">12</p> <p>1 contractor? 2 A. Correct. I was working for a private 3 company that was under contract with 4 the Norwood Airport Commission. 5 Q. And prior to 1995 had the Norwood Airport 6 Commission engaged its airport manager 7 on a contract basis, an independent 8 contractor basis as well? 9 A. That was my understanding. It was 10 always a contract up until July of 1999. 11 Q. In 1999 the Norwood Airport Commission 12 decided to make the airport manager 13 position a full-time employee position 14 for the Town of Norwood? 15 A. Correct. 16 Q. And do you know the reason why they 17 did that? 18 A. One of the reasons was that the Boston 19 Metropolitan Airport Corporation, which 20 had the contract, the airport management 21 contract, and has a long-term lease on 22 the Norwood Airport was asking for 23 more money. They wanted essentially 24 a management fee that they had not</p> |

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| <p style="text-align: right;">13</p> <p>1 asked for prior to the summer of 1999. 2 They were deriving revenue up to that 3 point on tie downs and then the long-term 4 lease hold that they still hold. 5 Q. So it made sense in '99 to convert 6 that position to a full-time employee? 7 A. Correct. 8 Q. So I'm going to show you a document 9 that's been marked as Exhibit 54 to 10 the Caroll deposition. And if you 11 could take a look at it and let me 12 know if you have seen that before? 13 A. Yes, I've seen this document. 14 Q. And is this the description of your 15 job responsibilities in 1999? 16 A. I don't believe so. I believe that this 17 job description was revised. I don't 18 know the exact date, but sometime after 19 2005 when I returned from active duty 20 to my job. 21 Q. And was this the first time that the 22 airport manager position had been -- 23 the duties and responsibilities had 24 been memorialized in such a document,</p> | <p style="text-align: right;">15</p> <p>1 of '99. I was activated in November of 2 2003 and was on active duty until July 3 of 2005. 4 Q. And who managed the airport in your 5 absence? 6 A. They hired a contract airport manager, 7 who was a retired airport manager 8 from Plymouth, a gentleman by the 9 name of Warren Smith. 10 Q. November of 2003 to approximately 11 November 2005? 12 A. Correct. 13 Q. And then you've been full-time ever 14 since July 2005? 15 A. Yes. 16 Q. And does this document, which was 17 marked as Exhibit No. 54 to the Caroll 18 deposition, represent your current 19 job duties and responsibilities? 20 A. Yes. 21 Q. Now, you would agree with me, would 22 you not, that there is a broad range 23 of responsibilities here, correct? 24 A. There are.</p> |
| <p style="text-align: right;">14</p> <p>1 to your knowledge? 2 A. I believe there was an earlier draft 3 of the job description from which this 4 was drafted. 5 Q. I'm sorry. You said it was approximately 6 2005? 7 A. I want to say -- well, I returned from 8 active duty and I was active in late 2003 9 to July of 2005. When I returned to work 10 in 2005, not long after that a new HR 11 director took over and there was also 12 a -- many of the job descriptions and 13 salary classifications in the town 14 were under review, including mine and 15 I believe that this latest draft had 16 an earlier iteration, earlier job 17 description. 18 Q. Okay. Just so I understand, you say 19 you returned from active duty in 2005. 20 Approximately how long had you been away 21 from the airport from 1999 to 2005? 22 Was it the entire period? 23 A. No, no, I was activated. I took over 24 as the municipal airport manager in July</p> | <p style="text-align: right;">16</p> <p>1 Q. And is it fair to say that your 2 responsible for the overall operation 3 of the airport? 4 A. I would say that's correct. 5 Q. And in that role do you find yourself 6 in a position where you are enforcing 7 rules of the airport? 8 A. Yes. 9 Q. And do you find yourself in a position 10 where you create policies for the 11 airport? 12 A. I don't create policy for the airport. 13 I implement the policies through the 14 rules, the regulations of the Town of 15 Norwood, the Norwood Airport Commission. 16 So I'm basically -- in a sense I'm 17 compliance officer for the regulations 18 that are put forward by the airport 19 commission, the local airport 20 regulations, the state aeronautical 21 regulations indirectly and also directly 22 the federal aviation regulations. 23 Q. You reference the general regulations 24 of the Norwood Airport and I'm going</p> |

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| <p style="text-align: right;">17</p> <p>1 to show you a document that's been 2 previously marked as Exhibit 2 to the 3 LeBlanc deposition. Give me a second 4 to take a look at that. So what I have 5 shown you is Exhibit 2 to the LeBlanc 6 deposition. I assume you're familiar 7 with these? 8 A. Yes. 9 Q. And is it your understanding that 10 this document was approved in or 11 about October of 2008? 12 A. Yes, that's correct. 13 Q. And is this, to your knowledge, the 14 current set of general regulations 15 applicable to the Norwood Memorial 16 Airport? 17 A. It appears to be the set of regulations 18 that was approved in 2008. 19 Q. And this is the set of regulations that 20 you utilize now? 21 A. It is with the exception of -- there 22 was an addendum letter that was sent 23 to the Massachusetts Department of 24 Transportation Aeronautics Division,</p> | <p style="text-align: right;">19</p> <p>1 Q. And you said that you're not so much 2 a policy maker. Is it fair to say 3 that the Norwood Airport Commission 4 is the entity that dictates policy at 5 the airport? 6 A. Yes. 7 Q. How many airport employees are there? 8 A. There are two, myself and an assistant. 9 Q. And who's the assistant? 10 A. Mark Raymond. 11 Q. And what does Mr. Raymond do? 12 A. His job description has a heavy emphasis 13 on airfield maintenance and operations, 14 although he does assist in some 15 administrative functions as well. 16 Q. Is it fair to say that you are primarily 17 responsible for the administrative 18 functions? 19 A. I believe that's safe to say. Yes, I 20 agree. 21 Q. And so now back to the regulations 22 and I draw your attention to the 23 provision regarding lease and sublease 24 requirements. Can you describe for me</p> |
| <p style="text-align: right;">18</p> <p>1 I don't recall the date, modifying the 2 fuel setback based on a reference to the 3 National Fire Protection Standards and 4 this was sent to the then administrator, 5 Chris Willenborg. 6 Q. And do you have any idea when that 7 addendum was enacted? 8 A. I don't. I don't recall the date. 9 It was after 2008. I just don't 10 recall the date. 11 Q. Any other changes or modifications to 12 the regulations that you're aware of? 13 A. No. 14 Q. So if I could turn your attention to 15 page 14, in the middle of the page 16 Roman Numeral VI talks about lease 17 and sublease requirements. Do you see 18 that? 19 A. Yes. 20 Q. Let me take it a step back. You said 21 that you're responsible for rules 22 enforcement and regulations enforcement 23 at the airport, correct? 24 A. Yes.</p> | <p style="text-align: right;">20</p> <p>1 what, if any, involvement the airport 2 manager has in approving lease or 3 sublease requirements at the airport? 4 A. I have no approval authority on the 5 leases or subleases. That's under the 6 jurisdiction of the airport commission. 7 Q. What does the airport commission do 8 with respect to the approval of leases 9 and subleases? 10 A. These go before the board and the 11 commission decides as a body whether 12 to execute a lease. Leading up to that 13 they're very involved in the crafting 14 of the lease, the terms of the lease, 15 restrictions in the lease. And we 16 obviously have a very active cooperation, 17 coordination with the town counsel on 18 all our leases. So the town counsel 19 is very much involved. And then 20 ultimately again the airport commission 21 would either approve or not approve a 22 lease or sublease and would execute the 23 document, you know, if it were approved. 24 Q. And just so I'm clear, does the town</p> |

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| <p style="text-align: right;">21</p> <p>1 or the airport commission control 2 the entire airport property? 3 A. Yes, that's correct. 4 Q. And are there portions of the airport 5 property that are subject to long-term 6 leases? 7 A. There is the long-term lease that I 8 had talked about earlier to the Boston 9 Metropolitan Airport Corporation that 10 was signed in 1967 and it's an 80-year 11 lease. There are parts of the municipal 12 property that are actually under 13 some control by the Federal Aviation 14 Administration, even though the town 15 owns the land. We've leased portions of 16 the airport to the FAA for the operation 17 of the control tower. 18 And then other long-term leases 19 would include FlightLevel and then the 20 sublease extensions that go with the BMA 21 property to BEH and FlightLevel, among 22 other tenants. 23 Q. Just so I understand, the town owns 24 the land and controls the land, but</p> | <p style="text-align: right;">23</p> <p>1 Q. And is that pursuant to any authority? 2 Is it part of the regulations? I mean, 3 what is the basis for the airport 4 commission exercising that discretionary 5 approval authority over subleases? 6 A. In the long-term lease the BMA lease 7 with the airport commission, it's a 8 very short document. I believe it's 9 only four pages. There are some 10 requirements in that long-term lease 11 that must be met that the airport 12 commission is beholden to. This would 13 involve the subleases and whether or not 14 the fact that they have to be reviewed 15 by FAA and MassDOT. As far as anything 16 beyond that, I'm not sure I understand 17 what you're looking for. 18 Q. I can rephrase. And so is it your 19 understanding that by virtue of the 20 fact that land exists at an airport 21 that the lease and sublease arrangements 22 that take place are subject to review 23 by the airport commission, the FAA and 24 MassDOT? Is that a fair summary of your</p> |
| <p style="text-align: right;">22</p> <p>1 it's subject to the BMA long-term 2 80-year lease? 3 A. There is a section of the property that 4 is the BMA long-term lease. 5 Q. Is that the 1300-square foot strip? 6 A. That's the 1100-by-300 foot strip. 7 Q. The 1100-by-300 square foot strip? 8 A. Yes. 9 Q. And that's tied up for quite sometime 10 and there is the FAA property or portion 11 of the property that is controlled by 12 the FAA. And then the airport commission 13 controls all or owns all of the rest 14 and subject to leases or subleases? 15 A. Correct. The town owns the land. The 16 airport commission acts as an agent 17 for the town. 18 Q. And notwithstanding the fact that one 19 entity may be leasing a portion of the 20 airport property, the airport commission 21 exercises discretion and authority over 22 any proposed subleases of that property, 23 is that correct? 24 A. I would say that's correct.</p> | <p style="text-align: right;">24</p> <p>1 testimony? 2 A. On the 1100-by-300 foot strip there 3 is a requirement obviously for the 4 airport commission to consider the 5 sublease and also a requirement for 6 both the FAA and MassDOT to review 7 any subleases. 8 Q. On the 1100 -- 9 A. On the 1100-by-300 foot strip. Beyond 10 the 1100-by-300 foot strip the leases 11 have to be considered by the airport 12 commission. 13 Q. And the FAA and DOT don't have any 14 review of that? 15 A. My understanding is, no. 16 Q. So describe for me generally the process 17 that the airport commission goes through 18 when it's reviewing and approving lease 19 or sublease requests? 20 A. Well, any requests go before the board. 21 They're deliberated in open session, 22 whether it's an extension or the 23 commission is interested in advertising 24 or considering a parcel of land. It</p> |

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| <p style="text-align: right;">25</p> <p>1 really would depend, though, on whether 2 it's a lease or a sublease or what 3 exactly, you know, is being brought 4 before the board. 5 Q. But the general practice of the 6 commission is to conduct these 7 deliberations in open session, is 8 that fair to say? 9 A. Yes. 10 Q. And back now to the regulations and 11 drawing your attention to that provision 12 in Roman Numeral VI B where it states, 13 It will be mutually agreed, and I'm 14 at the bottom of page 14, It will be 15 mutually agreed: 1. That no right 16 or privilege has been granted which 17 would serve to prevent any person, 18 firm or corporation operating aircraft 19 on the airport from performing any 20 services on its own aircraft with its 21 own regular employees, including but 22 not limited to maintenance and repair 23 that it may choose to perform. Did I 24 read that correctly?</p> | <p style="text-align: right;">27</p> <p>1 A. I would say yes. 2 Q. And would you consider it to be prudent 3 on the part of the commission to be 4 cognizant of these regulations when 5 making determinations regarding approval 6 requests for leases and subleases? 7 A. Yes. 8 Q. The other part of this document I wanted 9 to talk to you about is the minimum 10 standards and just turning your attention 11 to page 35. I'm sorry. Let's start 12 at 30. And the minimum standards are 13 described as Attachment A. Do you see 14 that? 15 A. Yes. 16 Q. And it says it's in accordance with an 17 FAA advisory circular, correct? 18 A. Yes. 19 Q. So are these minimum standards something 20 that was developed or were they 21 by the airport commission or were they 22 dictated by the FAA? 23 A. My understanding is that the FAA strongly 24 endorses minimum standards. That the</p> |
| <p style="text-align: right;">26</p> <p>1 A. Yes. 2 Q. And then just the next page it says, 3 No. 2, Nothing in the lease shall be 4 construed to grant or authorize the 5 granting of an exclusive right. Did 6 I read that correctly? 7 A. Yes. 8 Q. And then right beyond that it says 9 3, That no lessee will be given more 10 favorable terms for providing the same 11 public service than any other lessee. 12 Did I read that correctly? 13 A. Yes. 14 Q. Do you consider these provisions of 15 the regulations to be binding on the 16 airport commission when it's considering 17 lease or sublease approval requests? 18 A. I would say that the commission would 19 certainly defer to its own regulations 20 certainly. 21 Q. But would you consider these regulations 22 to be binding on the commission? 23 MR. SIMMS: Objection. You 24 can answer.</p> | <p style="text-align: right;">28</p> <p>1 development of the minimum standards, 2 these minimum standards, predates my 3 employment at Norwood Airport. There 4 was some preamble that was included 5 after I took over my employment, but 6 much of the document is actually specific 7 to the individual classes of business 8 and requirement. That was actually 9 already in place, but certainly some 10 of the preamble, the general policy, 11 the economic nondiscrimination, I 12 believe some of the definitions were 13 added after the fact. And this was 14 reviewed by town counsel as it was 15 being redrafted to make sure that we 16 were adhering to the advisory circular. 17 Q. And was this document promulgated 18 in or about October of 2008 when the 19 general regulations were revised? 20 A. Again, much of this document was already, 21 particularly to the back of the document, 22 the individual classes, the commercial 23 activities minimum standards, much of 24 that section was already in place prior</p> |

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| <p style="text-align: right;">29</p> <p>1 to 2008.</p> <p>2 Q. And just so I understand your testimony,</p> <p>3 as I understand what you have just said,</p> <p>4 that the Attachment A Norwood Airport</p> <p>5 minimum standards is based on the FAA</p> <p>6 advisory circular, but some portions</p> <p>7 of it have been adapted to specifically</p> <p>8 address Norwood Airport issues, is that</p> <p>9 fair to say?</p> <p>10 A. I think that's fair to say.</p> <p>11 Q. And some version of the Norwood Airport</p> <p>12 minimum standards existed prior to the</p> <p>13 revision of the general regulations in</p> <p>14 October 2008, correct?</p> <p>15 A. Yes.</p> <p>16 Q. But Attachment A was revised with the</p> <p>17 assistance of town counsel and made</p> <p>18 part of this entire revision process</p> <p>19 in October of 2008. Is that your</p> <p>20 understanding?</p> <p>21 A. I'm not sure whether it was 2008.</p> <p>22 I don't recall the exact date, but</p> <p>23 I believe it was about the same</p> <p>24 timeframe.</p> | <p style="text-align: right;">31</p> <p>1 A. Yes.</p> <p>2 Q. Is that a provision that was dictated</p> <p>3 by the FAA circular or is that something</p> <p>4 that was unique to the Norwood drafting</p> <p>5 process?</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you consider the airport commission</p> <p>8 to be bound by that language?</p> <p>9 MR. SIMMS: Objection to form.</p> <p>10 Go ahead.</p> <p>11 A. I'm not sure what the airport commission</p> <p>12 feels that its bound to. But I know</p> <p>13 that the minimum standards are regularly</p> <p>14 discussed and how they're applied to the</p> <p>15 businesses. In public meetings certainly</p> <p>16 we often elude to the minimum standards.</p> <p>17 And the document has been before the</p> <p>18 commission for a number of years for</p> <p>19 various reasons.</p> <p>20 Q. I'm just trying to understand whether</p> <p>21 the commission considers the information</p> <p>22 contained in the minimum standards to be</p> <p>23 aspirational or binding. And do you know</p> <p>24 what I mean by the difference in those</p> |
| <p style="text-align: right;">30</p> <p>1 Q. Okay. So the Attachment A, Norwood</p> <p>2 Airport minimum standards, have they</p> <p>3 been in effect since October of 2008,</p> <p>4 as far as you know?</p> <p>5 A. As far as I know, yes.</p> <p>6 Q. And have there been any changes, or</p> <p>7 modifications, or additions, or deletions</p> <p>8 to the minimum standards since 2008</p> <p>9 that you're aware of?</p> <p>10 A. I don't recall.</p> <p>11 Q. And you said that some portions of this</p> <p>12 are dictated by FAA policy and some are</p> <p>13 unique to Norwood. Can I just draw your</p> <p>14 attention to Roman Numeral II, Economic</p> <p>15 Nondiscrimination. And that provision</p> <p>16 reads, Each aeronautical activity</p> <p>17 commercially permitted by the Norwood</p> <p>18 Airport Commission shall be subject to</p> <p>19 the same rates, fees and other charges</p> <p>20 as are uniformly applicable to all other</p> <p>21 such operators making the same or similar</p> <p>22 uses of the airport in utilizing the same</p> <p>23 or similar facilities. Did I read that</p> <p>24 correctly?</p> | <p style="text-align: right;">32</p> <p>1 two?</p> <p>2 A. I don't know what they consider the</p> <p>3 document to be, to be quite honest.</p> <p>4 I just don't know.</p> <p>5 MR. SIMMS: You've answered</p> <p>6 the question. If you don't know, you</p> <p>7 don't know.</p> <p>8 Q. You don't know what the NAC considers</p> <p>9 the minimum standards to be, whether</p> <p>10 aspirational or binding?</p> <p>11 A. I don't.</p> <p>12 Q. And what do you consider them to be?</p> <p>13 A. I consider the minimum standards to</p> <p>14 be a document that should be referenced.</p> <p>15 Q. And followed?</p> <p>16 A. If at all possible, yes.</p> <p>17 Q. And so I don't mean to play word</p> <p>18 games with you, but I'm just trying to</p> <p>19 understand whether there are situations</p> <p>20 where the minimum standards provide</p> <p>21 guidance that can be deviated from,</p> <p>22 or hard and fast rules that should not</p> <p>23 be deviated from, or merely a guideline</p> <p>24 that can be followed or not followed</p> |

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| <p style="text-align: right;">33</p> <p>1 depending on the discretionary function 2 of the NAC. Can you help me understand 3 that? 4 MR. SIMMS: In this witness's 5 opinion? 6 MR. FEE: Correct. 7 MR. SIMMS: You can answer. 8 A. In my opinion, I believe that the airport 9 commission tries very hard to honor the 10 minimum standards and create the level 11 playing field in the business environment 12 at the airport that this document aspires 13 the commission to strive for. 14 Q. But in certain circumstances the NAC 15 is authorized to deviate from these 16 standards, is that correct? Is that 17 your understanding? 18 A. I don't know whether they are authorized 19 to deviate from them. 20 Q. Do they deviate from them? 21 MR. SIMMS: Objection. Go 22 ahead. 23 A. In my opinion, I don't feel that they 24 deviate from them.</p> | <p style="text-align: right;">35</p> <p>1 A. Yes. 2 Q. And are these the minimum standards 3 that are applicable to a permit request 4 for an FBO? 5 A. Yes. 6 Q. Are there any other minimum standards 7 in Attachment A that are applicable 8 to a permitting request for an FBO? 9 A. No. 10 Q. I want to ask you now about a document 11 that's been marked as Exhibit 3. Now 12 I'm showing you a document that was 13 marked as Exhibit 3 to Mr. LeBlanc's 14 deposition. It appears to be a document 15 entitled Assurances Airport Sponsors. 16 Have you seen this before? 17 A. Yes. 18 Q. And what is it? 19 A. It's the FAA grant assurances. 20 Q. Can you describe, in general terms, 21 what FAA grant assurances are? 22 A. In order for the Norwood Airport 23 Commission to receive a grant from 24 the Federal Aviation Administration</p> |
| <p style="text-align: right;">34</p> <p>1 Q. Are there circumstances or criteria 2 that you, as an airport manager, 3 would consider to be just rational 4 for deviating from the minimum 5 standards? 6 MR. SIMMS: Objection. Go 7 ahead. 8 A. No, I don't. I believe that the minimum 9 standards should be -- I cannot think 10 of a situation where we shouldn't use 11 the document literally. 12 Q. And is it also your belief that the 13 document should be or the minimum 14 standard should be uniformly applied 15 to all persons operating at the airport? 16 A. I believe that's a fair statement. 17 Q. Now I want to draw your attention to 18 page 35 and down the bottom of the 19 page subparagraph E, Fuel Storage and 20 Dispensing. 21 A. Yes. 22 Q. And then it provides a series of 11 23 requirements on page 35 and 36. Do 24 you see that?</p> | <p style="text-align: right;">36</p> <p>1 they need to abide by the grant assurances 2 that the federal agency has put forth. 3 And my understanding is that it's a 4 document that the FAA wants the airport 5 authority to adhere to to ensure that 6 the airport meet certain conditions 7 and continues to operate in a certain 8 fashion. 9 Q. And is it your understanding that 10 the federal funds that are provided 11 to the airport are dependent on the 12 NAC's adherence to these federal 13 grant assurances? 14 A. Yes. 15 Q. And what would be the consequences 16 of the NAC's failure to adhere to 17 the grant assurances? 18 MR. SIMMS: Objection. Go 19 ahead, if you know. 20 A. The FAA would have the option then 21 to decide whether or not to cut off 22 federal funding. 23 Q. And so do you consider the federal 24 assurance -- the obligations contained</p> |

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| <p style="text-align: right;">37</p> <p>1 in Exhibit 3 to be binding on the 2 airport? 3 A. I do. 4 Q. And you would strive to adhere to 5 these at all times, correct? 6 A. Yes. 7 MR. SIMMS: Let Mike finish 8 the question and take a moment and then 9 answer the question. 10 Q. Are there any instances that you can 11 think of that would justify the NAC 12 deviating from the guidelines set 13 forth in the federal grant assurances? 14 MR. SIMMS: Objection. Go 15 ahead. 16 A. Can you restate that question? 17 Q. Are there any situations that you can 18 think of that would justify the NAC 19 deviating from the guidelines set 20 forth in the federal grant assurances? 21 MR. SIMMS: Objection. You 22 have to take a moment. Let me object, 23 if I'm going to object, then answer 24 the question. Objection.</p> | <p style="text-align: right;">39</p> <p>1 public. For purchases of this paragraph 2 the providing of the services at an 3 airport by a single fixed based operator 4 shall not be construed as an exclusive 5 right if both of the following applied, 6 and these are the exceptions. A. It 7 would be unreasonably costly, burdensome 8 or impractical for more than one fixed 9 based operator to provide such services. 10 Let's focus on that. 11 A. Okay. 12 Q. In your experience at Norwood Airport 13 do you consider that the presence 14 of two fixed based operators would 15 be unreasonably costly, burdensome 16 or impractical? 17 MR. SIMMS: Objection. 18 You can answer. 19 A. This is my opinion. I think it makes 20 it more difficult on a small airport 21 like Norwood for two full service FBOs 22 to make a profit over a long period of 23 time. When I first took the job, there 24 were two FBOs. And ultimately it turned</p> |
| <p style="text-align: right;">38</p> <p>1 A. I cannot. 2 Q. And now turning your attention to 3 page 10, paragraph 22 entitled 4 Economic Nondiscrimination. Have 5 you seen that before? 6 A. Yes. 7 Q. It sets forth paragraphs A through 8 I regarding the federal grant 9 assurance rules governing economic 10 nondiscrimination, does it not? 11 A. Yes. 12 Q. You consider these to be binding on 13 the commission, correct? 14 A. Yes. 15 Q. And also paragraph 23 on the next 16 page, page 12, talks about exclusive 17 rights. Do you see that? 18 A. Yes. 19 Q. I want to talk a little bit about this. 20 The first paragraph of paragraph 23 21 says, It will permit no exclusive 22 right for the use of the airport by 23 any person providing or intending to 24 provide aeronautical services to the</p> | <p style="text-align: right;">40</p> <p>1 out that one of the FBOs opted to leave. 2 So based on experience, I believe it's 3 more difficult. I don't believe it's 4 impossible for two FBOs to survive on 5 that airport, but I do think it would 6 be more challenging because of the 7 volume of business. 8 Q. And do you know the volume of fuel 9 currently sold by FlightLevel? 10 A. I want to say -- I don't have perfect 11 recall. I would say it's probably 12 500,000 gallons or 500,000 gallons 13 a year. 14 Q. So you said it would be more difficult 15 for two FBOs to make a profit. Is that 16 of concern to the airport manager or 17 the airport commission that FBOs are 18 profitable? 19 MR. SIMMS: Well, objection 20 to the extent it's two questions. 21 Q. I can break it down. Why is that of 22 concern to you? 23 A. Personally I like to see the business 24 survive. I'd like to see all the</p> |

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| <p style="text-align: right;">41</p> <p>1 businesses that have permits on the 2 airport profit and do well. 3 Q. And because you think it would be 4 difficult for two FBOs to make a 5 profit, is that a reason to restrict 6 the application of a second FBO? 7 MR. SIMMS: Objection. Go 8 ahead. 9 A. I don't believe it -- can you restate 10 that? 11 Q. Sure. If it's your belief that it 12 would be difficult for two FBOs to 13 exist profitably at Norwood Airport, 14 is that a valid justification in 15 your mind to deny an FBO permit from 16 a second applicant? 17 MR. SIMMS: Objection. Go 18 ahead. 19 A. I don't believe it's a valid 20 justification and I don't believe 21 it was a rationale that has ever 22 been used at the Norwood Airport. 23 MR. SIMMS: You've answered 24 the question.</p> | <p style="text-align: right;">43</p> <p>1 described it, do you believe it's 2 incumbent upon the airport commission 3 to make certain that a second FBO 4 applicant is capable of surviving? 5 MR. SIMMS: Objection. 6 Go ahead. 7 Q. In other words, given this challenge 8 that you're talking about, do you 9 believe it's incumbent upon the airport 10 commission to deviate from the minimum 11 standards in order to ensure that a 12 second FBO applicant is ready, willing 13 and able to succeed? 14 MR. SIMMS: Objection. 15 Go ahead. 16 A. I believe it's the responsibility of 17 the airport commission to, whenever 18 possible, encourage the competition 19 within reason. 20 Q. And are there circumstances where 21 encouraging competition would be 22 unreasonable? 23 MR. SIMMS: Objection. 24 Go ahead.</p> |
| <p style="text-align: right;">42</p> <p>1 Q. But, in your opinion, it would not 2 be unreasonably costly, burdensome 3 or impractical for more than one fixed 4 based operator to provide FBO services 5 at Norwood, is that fair to say? 6 MR. SIMMS: Objection. 7 Go ahead. 8 A. I don't believe that -- I believe 9 that two FBOs could survive at the 10 airport. I don't think it would be 11 unnecessarily or unreasonably costly, 12 but it would depend on the cost structure 13 of the FBO. And one FBO might have a 14 higher cost structure than the other. 15 I do believe it's possible to have more 16 than one FBO on the Norwood Airport. 17 But it may take some exceptional 18 management for both FBOs, because I 19 do believe it would be more difficult, 20 but certainly not -- certainly doable, 21 certainly something that could -- 22 two FBOs could exist, but it would be 23 challenging. 24 Q. And due to that challenge, as you</p> | <p style="text-align: right;">44</p> <p>1 MR. FEE: I'm trying to get 2 at what he means by within reason. 3 MR. SIMMS: There's a lot of 4 opinion questions based on hypotheticals 5 to a fact witness. I didn't say beyond 6 the scope. You can answer the question. 7 A. Could you restate the question? 8 Q. Sure. You said that it's incumbent 9 upon the airport commission to encourage 10 competition within reason. What do 11 you mean by "within reason"? 12 MR. SIMMS: Same objection. 13 A. I believe, within reason, it would be, 14 does the applicant meet the minimum 15 standards. 16 Q. And when you say minimum standards, you 17 mean those minimum standards promulgated 18 in Exhibit A to the regulations that were 19 marked as Exhibit 2 that we discussed a 20 minute ago, correct? 21 A. Yes. 22 Q. Let me show you now Exhibit 16 to the 23 Bishop deposition. I'm showing you a 24 document that was marked as Exhibit</p> |

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| <p style="text-align: right;">45</p> <p>1 No. 16 to the Bishop deposition. Have 2 you seen that before? 3 A. I don't recall. 4 Q. Is it your understanding that in addition 5 to federal grant assurances there are 6 also state grant assurances promulgated 7 by MassDOT? 8 A. Yes. 9 Q. Having said that, does that refresh your 10 recollection as to what this document is, 11 Exhibit 16? 12 A. It refreshes my recollection in spirit, 13 but this particular document I don't 14 recall whether I saw it or not. 15 Q. So this is not a document that you look 16 at regularly? 17 A. This is a document that goes before the 18 airport commission for its signature in 19 order to receive state grant money. I 20 just don't recall seeing this particular 21 set of grant assurances. 22 Q. And are there multiple sets of grant 23 assurances that are promulgated by 24 MassDOT at any given time?</p> | <p style="text-align: right;">47</p> <p>1 this document, that's been marked as 2 Exhibit 16, does not represent the DOT 3 grant assurances that were in effect 4 in 2013? 5 A. I have no reason to believe that this 6 is not the document that was signed 7 and in place in 2013. 8 Q. And now turning your attention to 9 paragraph K, it's entitled Economic 10 Nondiscrimination. Do you see that? 11 A. Yes. 12 Q. And similarly with respect to your 13 answer regarding the scope of the 14 federal grant assurances, do you 15 believe that the provisions of this 16 state grant assurance to be binding 17 on the airport commission? 18 MR. SIMMS: Objection. 19 Go ahead. 20 A. Yes. 21 Q. And paragraph K 4 says, The airport 22 commission and the board of selectmen 23 of the town shall not exercise or grant 24 any exclusive right or privilege which</p> |
| <p style="text-align: right;">46</p> <p>1 A. My understanding is that there is 2 one set of grant assurances, although 3 along with the FAA grant assurances 4 the document itself seems to change 5 over time. 6 Q. Does the document that has been marked 7 as Exhibit 16 appear to be the DOT grant 8 assurances that are in effect at present? 9 A. Yes. 10 Q. And I'll turn your attention to the 11 last page document that appears to be 12 countersigned by Mr. Wynne on behalf 13 of the airport commission and Mr. Claska 14 on behalf of the board of selectmen. 15 Do you see that? 16 A. Yes. 17 Q. And it's dated 2013, correct? 18 A. Yes. 19 Q. And so having looked at that, does this 20 refresh your recollection as to whether 21 or not these standards may have been in 22 effect in 2013? 23 A. It doesn't refresh my recollection. 24 Q. Do you have any reason to believe that</p> | <p style="text-align: right;">48</p> <p>1 operates to prevent any person, firm or 2 corporation from providing the same or 3 similar service at the airport. Did I 4 read that correctly? 5 A. Yes. 6 Q. And what does that mean to you, that 7 sentence? 8 MR. SIMMS: Objection. Go 9 ahead. 10 A. I believe it means that the airport 11 commission, the board of selectmen and 12 the town should encourage competition 13 whenever possible. 14 Q. Now, we've looked at the general 15 creations, the federal grant assurances 16 and the MassDOT grant assurances. 17 Are there any other documents that 18 you consider to be guiding principles 19 for operations at Norwood Airport? 20 A. There are many. 21 Q. Can you tell me a few of them? 22 A. The 150 series advisory circulars 23 certainly. 24 Q. Those are FAA documents?</p> |

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| <p style="text-align: right;">49</p> <p>1 A. Yes.</p> <p>2 Q. And those address operational issues?</p> <p>3 A. They address everything from engineering</p> <p>4 standards to operations issues to</p> <p>5 emergencies, the outfitting of vehicles,</p> <p>6 really the full spectrum of operations</p> <p>7 and management. And obviously there</p> <p>8 are federal aviation regulations as well,</p> <p>9 the state aeronautical regulations.</p> <p>10 Q. Is it fair to say that these regulations</p> <p>11 speak to aeronautical operations at</p> <p>12 the airport as opposed to the business</p> <p>13 issues that we've been discussing?</p> <p>14 A. Certainly these advisory circulars</p> <p>15 address the aeronautical operation</p> <p>16 of the airport.</p> <p>17 Q. Are there documents, other than the</p> <p>18 federal grant assurances, the state</p> <p>19 grant assurances and the regulations</p> <p>20 that address or give guidance regarding</p> <p>21 the business operations of the airport?</p> <p>22 A. I can't recall anything right now that</p> <p>23 would speak to that.</p> <p>24 MR. FEE: Can we mark these as</p> | <p style="text-align: right;">51</p> <p>1 at Fort Benning, asked me about various</p> <p>2 passages in the draft, but, again, a very</p> <p>3 nominal role in this. I was much more</p> <p>4 actively involved in this phase.</p> <p>5 Q. In Phase 2?</p> <p>6 A. Yes.</p> <p>7 Q. Have there been any other updates or</p> <p>8 modifications to this master plan since</p> <p>9 2007?</p> <p>10 A. Not the master plan itself, no.</p> <p>11 Q. And are there other documents that give</p> <p>12 guidance regarding a global planning</p> <p>13 process for the airport?</p> <p>14 A. There is an airport layout plan drawing</p> <p>15 that has been updated, I believe, several</p> <p>16 times.</p> <p>17 Q. And when was that last updated, the</p> <p>18 airport layout plan?</p> <p>19 A. I can't recall the exact date.</p> <p>20 Q. Was it recent?</p> <p>21 A. It was perhaps two or three years ago.</p> <p>22 Q. And what does the airport layout plan</p> <p>23 drawing show?</p> <p>24 A. It depicts the areas of the airport in</p> |
| <p style="text-align: right;">50</p> <p>1 Exhibit No. 93 and 94. I don't have</p> <p>2 copies of this.</p> <p>3 (Exhibit No. 93, Norwood</p> <p>4 Memorial Airport Master Plan Update</p> <p>5 Phase 1, Final Report November 22, 2004,</p> <p>6 marked for identification.)</p> <p>7 (Exhibit No. 94, Master Plan</p> <p>8 Update Final/Phase 2, March 2007, marked</p> <p>9 for identification.)</p> <p>10 Q. Mr. Maguire, I'm showing you documents</p> <p>11 that have been marked as Exhibit No. 93</p> <p>12 and 94. They appear to be the Norwood</p> <p>13 Memorial Airport Master Plan Update</p> <p>14 Phase 1 and Phase 2 dated March -- I'm</p> <p>15 sorry, November 2004 and March 2007,</p> <p>16 respectfully. Have you seen these</p> <p>17 documents before?</p> <p>18 A. Yes.</p> <p>19 Q. Did you play any role in the preparation</p> <p>20 of these documents?</p> <p>21 A. I played a very minor role in the</p> <p>22 preparation of the Phase 1, because I</p> <p>23 was on active duty. The airport manager</p> <p>24 at the time did put some calls into me</p> | <p style="text-align: right;">52</p> <p>1 a schematic form showing the airport</p> <p>2 and how the land is dedicated for use.</p> <p>3 Q. And back to the master plan for a minute,</p> <p>4 was the preparation of the master plan</p> <p>5 a comprehensive planning process, in your</p> <p>6 opinion?</p> <p>7 A. Yes.</p> <p>8 Q. And did it take into account all of the</p> <p>9 pertinent factors affecting the airport</p> <p>10 at the time that it was created in 2007?</p> <p>11 A. Yes.</p> <p>12 Q. And you said that you played a prominent</p> <p>13 role in the preparation of the 2007</p> <p>14 update, is that fair to say?</p> <p>15 A. Yes, more the 2007 document and a very</p> <p>16 nominal role in the 2004.</p> <p>17 Q. And is it your understanding that the</p> <p>18 master plan gives guidance to the airport</p> <p>19 commission and the airport manager in</p> <p>20 addressing issues that may arise in the</p> <p>21 day-to-day operations of the airport?</p> <p>22 A. It gives guidance to the airport</p> <p>23 commission and the airport manager</p> <p>24 for many things, obviously planning</p> |

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| <p style="text-align: right;">53</p> <p>1 and identifying existing conditions 2 and future needs. So there is some 3 forecasting that's involved, but it 4 is a guidance document. 5 Q. And, to your knowledge, was the airport 6 master plan reviewed or approved by the 7 board of selectmen? 8 A. To the best of my recollection, this was 9 never reviewed by the board of selectmen. 10 Q. And the master plan talks about various 11 growth scenarios. Do you recall that? 12 A. In a general sense I do recall. 13 Q. One of the headings or topics addressed 14 in the update was scenarios for low 15 growth, medium growth and high growth. 16 Do you recall that structure? 17 A. Again, generally, I recall it. It's 18 been a few years since I've gone through 19 this document. 20 Q. I'm not going to try and question you 21 on it. I'm just wondering what your 22 impression is since 2007, whether the 23 airport has pursued a low growth, medium 24 growth or high growth trajectory?</p> | <p style="text-align: right;">55</p> <p>1 operations or you're looking at number 2 of businesses. 3 Q. Well, pick any criteria that you want. 4 MR. SIMMS: Same objection. 5 Q. I'm just trying to understand what 6 changes, if any, you have observed 7 since the drafting of the master plan 8 in the operations of the airport. Has 9 it remained relatively stable? Has there 10 been significant growth in certain areas? 11 Has there been stagnation or reversal 12 in certain business areas? I'm not going 13 to belabor this, but I'm interested in 14 your impressions of what happened over 15 the last ten years. 16 A. I don't have perfect recall on what the 17 business environment was ten years ago. 18 But, in a general sense, the number of 19 businesses on the airport in the last 20 five to ten years has not changed 21 dramatically. The airport still -- 22 the airport commission has been issuing 23 anywhere from 10 to 12 commercial permits 24 a year not to include the corporate</p> |
| <p style="text-align: right;">54</p> <p>1 A. In my opinion, the airport commission 2 gives -- and I give some deference 3 to the master plan, which helps 4 to organize our thoughts for the 5 capital planning, but certainly the 6 master plan is not a document, especially 7 as it -- you know, it's ten years old 8 now and some things have changed. 9 Some of the needs that were 10 identified in the 2007 plan are not 11 needs as perceived by either the -- 12 certainly by me. Again, this has been 13 a document that we've used as much for 14 capital, laying out our five-year capital 15 plan, but it's not the only document we 16 use. 17 Q. Let me just rephrase my question. Since 18 2007, in your opinion, has the airport 19 experienced a low, medium or high rate 20 of growth? 21 MR. SIMMS: Objection. Go 22 ahead. 23 A. I'm not sure what the measure is for 24 growth, whether you're looking at</p> | <p style="text-align: right;">56</p> <p>1 activity. I don't see much of a change 2 there. There has been some change 3 in the total operations, which is not 4 surprising. It seems to be a general 5 industry trend. 6 The mix of aircraft has 7 changed in the last ten years, which 8 seem to be -- although we're doing 9 fewer operations, the operations tend 10 to be more corporate charter, cabin 11 class aircraft, and I think there has 12 been an uptick in helicopter activity 13 in that time. 14 Q. And how about fuel sales, you said 15 that you thought that the FBO at 16 Norwood did approximately four or 17 \$500,000 in fuel sales last year, 18 I believe? 19 A. Yeah. Again, I don't have perfect 20 recall on that. It's just a general 21 -- I just don't have those numbers 22 before me. 23 Q. I'm not trying to hold you to any 24 specific number, but if you have any</p> |

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| <p style="text-align: right;">57</p> <p>1 recollection of how that number has 2 changed or remained the same over 3 the past ten years, do you have an 4 understanding of that? 5 A. I don't recall. 6 Q. Mr. Maguire, I'm going to switch gears 7 with you a little bit and talk about 8 your interactions with the commission 9 and the commissioners. As I understand 10 your testimony earlier, you're the 11 compliance and enforcement officer 12 at the airport and the commissioners 13 are the policymaking decision makers 14 at the airport, is that fair to say? 15 A. Yes. 16 Q. And you interact with them regularly, 17 do you not? 18 A. I interact regularly with the chairman 19 and sometimes with various members 20 of the board that have questions. 21 Q. And in terms of your interactions with 22 the commissioners, you have a monthly 23 meeting, correct? 24 A. Yes.</p> | <p style="text-align: right;">59</p> <p>1 just for ease of reference, can we 2 call one the public agenda and one 3 the commissioner's agenda? Is that 4 a fair distinction? 5 A. Yeah. It's a posting for the public 6 and the agenda is derived from the 7 posting itself. 8 MR. FEE: Just let me mark 9 this and just so we're clear about what 10 we're talking about. 11 (Exhibit No. 95, Supplemental 12 Request For Production of Documents, 13 marked for identification.) 14 Q. And so, Mr. Maguire, I'm showing you a 15 document that's been marked as Exhibit 16 No. 95 and I just want to draw your 17 attention to Exhibit A, which starts 18 on page 7. 19 A. Yes. 20 Q. And so Exhibit A on page 7 appears to 21 be a Norwood Airport Commission agenda 22 dated March 11, 2015. It bears a stamp 23 of the town clerk on the right-hand side 24 saying March 9th, 10:55 a.m. Do you see</p> |
| <p style="text-align: right;">58</p> <p>1 Q. And that's a publicly noticed meeting, 2 correct? 3 A. Yes. 4 Q. And for those meetings do you prepare 5 documents? 6 A. Yes. 7 Q. And do those documents include agendas? 8 A. Yes. 9 Q. And is it fair to say that you prepare 10 various forms of agendas? 11 A. You might have to restate that. I'm 12 not exactly sure what you mean by 13 various forms. 14 Q. Do you prepare one set of agendas for 15 publication and one set of agendas 16 for the commissioners? 17 A. I put together an agenda for the 18 commission and for the public I put 19 together a posting that is disseminated 20 through the town clerk's office and 21 through e-mail. And this is a posting 22 as well as the agenda that are assembled 23 after review by the commission. 24 Q. In terms of preparing the agendas and</p> | <p style="text-align: right;">60</p> <p>1 that? 2 A. Yes. 3 Q. And then if you turn to Exhibit B, 4 which appears to be agenda, also 5 for the March 11, 2015 meeting, that 6 contains different information in a 7 more detail format. Is that fair to 8 say? 9 A. Yes. 10 Q. So just for ease of reference, is it 11 fair to say that Exhibit A is the agenda 12 that you prepare for posting and public 13 dissemination, and Exhibit B is the 14 agenda that you provide to the 15 commissioners prior to a meeting? 16 A. Yes. 17 Q. Now, so for ease of reference I'm going 18 to call Exhibit A the public and Exhibit 19 B the commissioner's agenda. Okay? 20 A. Yes. 21 Q. And is it your practice to make public 22 the commissioner's agenda in any form 23 or fashion? 24 A. Can you say --</p> |

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| <p style="text-align: right;">61</p> <p>1 Q. Is it your practice to make public the 2 commissioner's agenda in any form or 3 fashion? 4 A. Yes. 5 Q. And how is that made public? 6 A. This agenda is again posted. 7 Q. I'm sorry, I didn't mean to interrupt. 8 I apologize. Please go ahead. I 9 am focusing now on Exhibit B, the 10 commissioner's agenda. And my question 11 was, is this made public in any form 12 or fashion? 13 A. No. This is a document that is included 14 in the airport commission meeting packet. 15 Q. And it contains other supporting 16 materials, correct? 17 A. Yes. 18 Q. And is it fair to say that at each 19 commission meeting, prior to the meeting, 20 you provide the commissioner's meeting 21 agenda and the supporting materials to 22 each commissioner? Is that fair to say? 23 A. Yes. 24 Q. And those materials are not posted on</p> | <p style="text-align: right;">63</p> <p>1 just more definition in the actual 2 meeting agenda page. And there's 3 correspondence that, you know, sometimes, 4 as is the case with this March 11, 5 2015 meeting, there is quite a bit of 6 correspondence. So in the posting in 7 Exhibit A we're providing the public 8 with advanced notice of the items 9 that we expect to address and then 10 as we get closer to the meeting, these 11 correspondence items often are last 12 minute items. The agenda document 13 is just more detailed. 14 Q. And is the commissioner's agenda made 15 available in response to public records 16 requests? 17 A. My understanding is -- my opinion is 18 that this would be eligible for a public 19 records request. This would be an item 20 that could be made available as a public 21 document. 22 Q. So the commissioner's agenda that's 23 Exhibit B to Exhibit 95 you believe is 24 a public document that should be produced</p> |
| <p style="text-align: right;">62</p> <p>1 the town website, are they? 2 MR. SIMMS: You mean the 3 identical? 4 Q. The commissioner's agenda and the 5 material supporting it, are they 6 ever posted on the town's website? 7 A. The agenda items are posted, which 8 reflect the agenda document that the 9 commission has. 10 Q. And just so we're clear, the public 11 agenda that is marked as Exhibit A, 12 the example of which is marked as 13 Exhibit A to Exhibit 95, is posted 14 on the town website and made available 15 to the public, correct? 16 A. Yes. 17 Q. And the agenda that's Exhibit B to 18 Exhibit 95 and the supporting materials 19 that accompany this agenda are not made 20 available to the public, is that fair 21 to say? 22 A. That's fair to say. 23 Q. And what's the reason for that? 24 A. There is no particular reason. It's</p> | <p style="text-align: right;">64</p> <p>1 in response to a public records request, 2 is that fair to say? 3 MR. SIMMS: Objection. Go 4 ahead. 5 A. I would say yes. 6 Q. Are you the public records officer 7 for the Norwood Airport Commission? 8 A. The records officer for the town 9 is the town clerk and for the -- 10 a custodian for the airport is me. 11 Q. And do you provide copies of the 12 commissioner's agenda and the 13 supporting materials to the 14 town clerk on a regular basis? 15 A. I do not. 16 Q. When the town clerk receives a public 17 records request, does he or she then 18 contact you to provide documents that 19 are responsive to that public records 20 request? 21 MR. SIMMS: Relating to 22 the airport? 23 MR. FEE: Yes. 24 A. Yes.</p> |

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| <p style="text-align: right;">65</p> <p>1 Q. And when a public records request 2 is made for agendas without specifying 3 whether it's a public agenda or a 4 commissioner's agenda, is it your 5 practice to provide copies of the 6 more detailed commissioner's agenda 7 in response to a public records request? 8 A. It would be something that I would 9 handle in a public records request. 10 I don't recall getting that particular 11 public records request per se for the 12 actual agenda sheet. 13 Q. And you don't recall ever getting a 14 public records request for the specific 15 commissioner's agenda that is marked 16 as -- an example of which is marked 17 as Exhibit B to Exhibit 95, is that 18 your testimony? 19 A. I don't recall. 20 Q. Does the commissioner's agenda marked 21 as Exhibit B to Exhibit 95 routinely 22 include information that might be 23 dealt with in executive session? 24 A. It does not routinely have that</p> | <p style="text-align: right;">67</p> <p>1 Q. Correct? 2 MR. SIMMS: Same objection. 3 A. Yes. 4 Q. Now, you said you have routine 5 discussions with the chairman, is 6 that fair to say? 7 A. That's correct. 8 Q. And in those discussions normally do 9 you formulate the agenda? 10 A. The agenda is formulated by the chairman. 11 And as we get closer to the tentative 12 meeting date, I ask him what he would 13 like on the agenda and he shares that 14 information with me. And sometimes the 15 agenda items are fine-tuned as we get 16 closer to that date. And correspondence 17 comes either to my office or the 18 commission's attention. I'll ask the 19 commission chairman if he would like 20 that included in the agenda and in the 21 packets. And so the compilation of 22 the packet and the crafting of the 23 agenda is really, because it's the 24 airport commission's meeting, the</p> |
| <p style="text-align: right;">66</p> <p>1 correspondence, but it can. 2 Q. And it does at times? 3 A. Yes. 4 Q. Turn now to Exhibit C. It appears to 5 be a document entitled Manager's Report 6 dated April 1, 2014. Do you see that? 7 A. Yes. 8 Q. And do you routinely prepare a manager's 9 report for the commission meetings? 10 A. Yes. 11 Q. Do you routinely include that document 12 together with the commissioner's agenda 13 in the packages that are delivered to 14 the commissioners prior to each meeting? 15 A. Yes. 16 Q. And do you consider the manager's report 17 a public record? 18 A. Yes. 19 Q. And were you to receive a public records 20 request from the town clerk regarding 21 manager's reports, you would then, of 22 course, produce them, correct? 23 MR. SIMMS: Objection. Go 24 ahead.</p> | <p style="text-align: right;">68</p> <p>1 chairman's prerogative on behalf of 2 the board to decide the actual agenda. 3 Q. So Mr. Ryan determines what items are 4 placed on the agenda? 5 A. Yes. 6 Q. How long has Mr. Ryan been chairman? 7 A. I don't recall. 8 Q. Are there any instances where -- 9 strike that. Who do you report to? 10 A. I report to the commission. 11 Q. And do you serve on a contractual basis? 12 Do you have an employment agreement 13 with the commission or the town, or 14 do you serve on a month-to-month or 15 employee-at-will basis? 16 A. There is no contract. 17 Q. So do you consider Mr. Ryan to be 18 the person to whom you report? 19 A. Yes. 20 Q. And you said that Mr. Ryan sets the 21 agenda items. Is there anybody else 22 that has input as to what is on any 23 particular agenda? 24 A. I don't know for sure who on the</p> |

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| <p style="text-align: right;">69</p> <p>1 commission he's speaking with throughout 2 the month, but he is the person I deal 3 with, generally speaking, most directly. 4 Q. How often do you meet with Mr. Ryan? 5 A. He and I could meet once or twice a 6 day. We could either converse by phone, 7 more generally, or in person. It could 8 be once, twice a day. We may not talk 9 for two or three days, four days. 10 Q. Do you consider him a very hands-on 11 manager of the airport commission? 12 A. I think Mr. Ryan is a very active 13 manager of the commission. 14 Q. So when you're conducting airport 15 business, what e-mail address do you 16 use? 17 A. It's rmaguire@norwoodma.gov. 18 Q. Do you use any other e-mail addresses 19 for conducting airport business? 20 A. No. 21 Q. Never used your personal? 22 A. No. 23 Q. Do you ever have communications with 24 Mr. Ryan or other airport commissioners</p> | <p style="text-align: right;">71</p> <p>1 that the FAA drew as a result, correct? 2 A. Yes. 3 Q. And turning your attention to page 2, 4 the bullets at the bottom of page 2 5 continuing into page 3. It's fair to 6 paraphrase that as determination by 7 the FAA that the airport commission 8 was in violation of various federal 9 regulations related to federal grant 10 assurances, is that fair to say? 11 A. Yes. 12 Q. And one of those was economic 13 nondiscrimination by virtue of the 14 fact that, according to the FAA, the 15 airport commission denied Boston Air 16 Charter reasonable use and access to 17 the airport on reasonable terms for 18 the purpose of conducting a commercial 19 aeronautical activity and the town's 20 actions in this regard constitute an 21 unreasonable denial of access and unjust 22 economic discrimination. Did I read 23 that correctly, the second bullet? 24 A. Yes.</p> |
| <p style="text-align: right;">70</p> <p>1 on your personal e-mail? 2 A. No. 3 Q. I'm showing you a document that's 4 been marked as Exhibit 4 to the 5 LeBlanc deposition. This appears 6 to be a document dated April 11, 2008 7 from the FAA to Mr. Matthew Watsky, 8 amongst others. Have you seen this 9 before? 10 A. Yes. 11 Q. Is it your understanding that this 12 is the cover letter to a director's 13 determination issued by the FAA 14 regarding Boston Air Charter? 15 A. Yes. 16 Q. And were you managing the airport 17 at the time that this document was 18 issued? 19 A. Yes. 20 Q. So you're familiar with the allegations 21 that were made in the Part 16 Complaint 22 lodged by Boston Air Charter, correct? 23 A. Yes. 24 Q. And you're familiar with the conclusions</p> | <p style="text-align: right;">72</p> <p>1 Q. So this is a lengthy document. I'm not 2 going to have you go through it all. 3 I just also want to draw your attention 4 to page 27. At the bottom of the page 5 the FAA sites order 5190.6A and states, 6 The prime obligation of the owner 7 of a federal assisted airport is to 8 operate it for the use and benefit of 9 the public. While the owner is not 10 required to construct hangars and 11 terminal facilities, it has an obligation 12 to make available suitable areas and 13 space on reasonable terms to those who 14 are willing and otherwise qualified to 15 offer flight services to the public. 16 A willingness by the tenant to lease 17 space and invest in the facilities 18 required by reasonable standards shall 19 be construed as establishing the need 20 of the public for the services proposed 21 to be offered. Did I read that 22 correctly? 23 A. Yes. 24 Q. And I assume that you read this document</p> |

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| <p style="text-align: right;">73</p> <p>1 in or about 2008, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And did you consider the airport to be</p> <p>4 bound by the determination of the FAA?</p> <p>5 MR. SIMMS: Objection to</p> <p>6 form and beyond the scope. We have</p> <p>7 a standing objection.</p> <p>8 A. Can you restate that, please?</p> <p>9 Q. When you read this, do you today</p> <p>10 believe that the airport is bound by</p> <p>11 the determination of the FAA that is</p> <p>12 set forth in the LeBlanc Exhibit 4?</p> <p>13 MR. SIMMS: Same objection.</p> <p>14 A. Yes.</p> <p>15 Q. And so you would agree, would you</p> <p>16 not, with the FAA's citation to</p> <p>17 order 5190.6A that the airport has</p> <p>18 an obligation to make available</p> <p>19 suitable areas in space on reasonable</p> <p>20 terms to those who are willing or</p> <p>21 otherwise qualified to offer flight</p> <p>22 services, right?</p> <p>23 MR. SIMMS: Same objection.</p> <p>24 You can answer.</p> | <p style="text-align: right;">75</p> <p>1 A. Yes.</p> <p>2 Q. Did you draft it in its entirety?</p> <p>3 A. I did not draft it in its entirety.</p> <p>4 I believe my recollection is that</p> <p>5 there was some involvement by town</p> <p>6 counsel.</p> <p>7 Q. And drawing your attention now to</p> <p>8 the second page where there's some</p> <p>9 underlying language. It states,</p> <p>10 and I'm reading in the middle of the</p> <p>11 paragraph, During a May 2014, 2008</p> <p>12 public meeting the NAC voted to both</p> <p>13 formalize and further on a broader</p> <p>14 basis the actions the NAC had taken</p> <p>15 on Lots A, B, C by affirming a shorter</p> <p>16 term leasing policy for all land it</p> <p>17 leases at the airport. Did I read</p> <p>18 that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. At the time that this letter was written</p> <p>21 was it the NAC's attention to affectively</p> <p>22 comply with the FAA determination to</p> <p>23 engage in shorter term leasing policies</p> <p>24 at the airport?</p> |
| <p style="text-align: right;">74</p> <p>1 A. Yes.</p> <p>2 Q. Now, what happened in response to the</p> <p>3 FAA determination that's been marked</p> <p>4 as Exhibit 4, do you know? What was</p> <p>5 the process that followed?</p> <p>6 MR. SIMMS: Beyond the scope.</p> <p>7 Go ahead.</p> <p>8 A. There was -- the airport authority was</p> <p>9 required to craft a corrective action</p> <p>10 plan that was satisfactory to the FAA.</p> <p>11 Q. And did you do that?</p> <p>12 A. Yes.</p> <p>13 Q. And so I'm showing you a document</p> <p>14 that's been -- it's Exhibit 5.</p> <p>15 A. These are a little out of order. I'm</p> <p>16 not sure exactly where it is.</p> <p>17 Q. I'm drawing your attention to a document</p> <p>18 that was marked as Exhibit 5 to the</p> <p>19 LeBlanc deposition. It appears to</p> <p>20 be a letter dated May 16, 2008 signed</p> <p>21 by Mr. Corbett. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And did you have any hand in drafting</p> <p>24 this document?</p> | <p style="text-align: right;">76</p> <p>1 MR. SIMMS: Objection. Go</p> <p>2 ahead.</p> <p>3 A. Yes.</p> <p>4 Q. And, to your knowledge, did the NAC</p> <p>5 follow its representation to the FAA</p> <p>6 that it would engage in a shorter term</p> <p>7 leasing policy with respect to property</p> <p>8 at the airport?</p> <p>9 MR. SIMMS: Same objections.</p> <p>10 You can answer.</p> <p>11 A. The airport commission began to use a</p> <p>12 standard lease contract that was for</p> <p>13 a shorter duration.</p> <p>14 Q. On all properties?</p> <p>15 MR. SIMMS: Same objections.</p> <p>16 Go ahead.</p> <p>17 A. I don't recall whether it was for all</p> <p>18 properties.</p> <p>19 Q. And was this policy formally enacted</p> <p>20 as described in the letter in 2008,</p> <p>21 May 14 of 2008?</p> <p>22 A. The short-term leasing policy, again,</p> <p>23 was in effect and the commission did</p> <p>24 use a shorter lease term, although after</p> |

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| <p style="text-align: right;">77</p> <p>1 2008, when Boston Executive Helicopters 2 was seeking to assume a sublease with 3 a sublease extension, that that was 4 for a much longer period of time. And 5 there was concern by the commission that, 6 you know, by supporting a long sublease 7 extension it would violate the corrective 8 action plan that we put before the FAA 9 in 2008. There was a concern about that. 10 So the airport commission was trying to 11 support BEH in its sublease extension 12 and also abide by the corrective action 13 plan. And so it was trying to support 14 both the corrective action plan and the 15 business interests of Boston Executive 16 Helicopters. 17 Q. It sounds like mutually exclusive goals, 18 is that fair to say? 19 MR. SIMMS: Objection. Go 20 ahead. 21 A. As we came to understand from FAA, 22 there were situations in which longer 23 lease term were acceptable based on 24 the amount of investment. In BEH's</p> | <p style="text-align: right;">79</p> <p>1 A. Right. 2 Q. And one was for BEH and one was for 3 FlightLevel. And did you say in both 4 instances the FAA approved of those 5 actions? 6 A. The FAA doesn't approve the leases. 7 They did review them. They did have 8 input on the BEH sublease extension 9 interest. There was a fair amount 10 of involvement by FAA on that and 11 that was where we got the guidance 12 to go beyond the short-term leasing 13 policy that was in the corrective 14 action plan. 15 Q. And was that guidance in writing? 16 A. I believe it was in writing in an 17 e-mail from FAA. 18 Q. And who at the FAA did you consult 19 with respect to the BEH extension? 20 A. The gentleman's name was Barry Hammer. 21 Q. And who did you consult with respect 22 to the FlightLevel extension? 23 A. The gentleman's name was Todd Fridenberg. 24 Q. And you say that in each instance you</p> |
| <p style="text-align: right;">78</p> <p>1 case there was going to be substantial 2 investment in the construction of a 3 hangar and fuel farms. So the FAA 4 did support a longer lease term. 5 Q. So you sought FAA guidance with respect 6 to the decision on whether or not to 7 approve a longer lease term for BEH? 8 A. Yes. 9 Q. And were there other instances between 10 2008 and the present where you or 11 the NAC, Norwood Airport Commission, 12 approved longer term leases? 13 A. We had a similar situation come before 14 us through FlightLevel. On their Lot 5 15 they were seeking a longer sublease and 16 so we followed the same procedure, which 17 was dictated really by the BMA lease, 18 long-term lease, which was that we had 19 to have the FAA and MassDOT review the 20 sublease and certainly the term, the 21 longer term. 22 Q. You described two instances in which you 23 deviated from the corrective action plan 24 and granted long-term lease approvals.</p> | <p style="text-align: right;">80</p> <p>1 believe that the FAA provided approval 2 of a deviation from the corrective action 3 planning, is that your understanding? 4 A. I don't recall the exact wording from 5 FAA, but I do recall that the commission 6 was concerned about the short-term 7 leasing policy in 2008 and whether or 8 not we would remain in compliance by 9 supporting BEH and its interest in 10 seeking the long sublease extension, 11 longer certainly than what was defined 12 in the shorter term leasing policy of 13 the corrective action plan. 14 Q. I'm showing you a document that's been 15 marked as Exhibit No. 35 to the Wynne 16 deposition. This document appears to 17 be a letter to you dated October 6, 2008 18 from Darth Shaffer, the FAA. Have you 19 seen this before? 20 A. I have some recollection of it. It's 21 been a few years. 22 Q. The first bullet point at the bottom 23 of the page -- well, did you understand 24 this to be a comment letter regarding</p> |

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| <p style="text-align: right;">81</p> <p>1 your proposed corrective action plan?</p> <p>2 MR. SIMMS: Beyond the scope.</p> <p>3 You can answer.</p> <p>4 A. Yes.</p> <p>5 Q. And at the bottom of the page it says</p> <p>6 fairly bluntly, The town has ended</p> <p>7 or will end the practice of awarding</p> <p>8 long-term leases of federally funded</p> <p>9 ramps that have the effect of granting</p> <p>10 one party control over the majority of</p> <p>11 the ramps on the airport. Did I read</p> <p>12 that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. And so at any point did you receive</p> <p>15 any communication from the FAA in form</p> <p>16 or substance that authorized deviation</p> <p>17 from that particular language in the</p> <p>18 October 6, 2008 letter from Mr. Shaffer?</p> <p>19 MR. SIMMS: Same objection.</p> <p>20 Go ahead.</p> <p>21 A. I believe we received an e-mail or a</p> <p>22 set of e-mails from Mr. Hammer, who was</p> <p>23 the then compliance officer for FAA New</p> <p>24 England region, that gave the airport</p> | <p style="text-align: right;">83</p> <p>1 effect of granting one party control</p> <p>2 over the majority of the ramps on the</p> <p>3 airport.</p> <p>4 A. Right.</p> <p>5 Q. And that situation is not applicable</p> <p>6 to BEH, is it?</p> <p>7 MR. SIMMS: Objection to form.</p> <p>8 Go ahead.</p> <p>9 A. No.</p> <p>10 Q. But it would be applicable to</p> <p>11 FlightLevel, correct?</p> <p>12 MR. SIMMS: Same objection.</p> <p>13 Q. Let me ask it a different way. Does</p> <p>14 FlightLevel have a control over a</p> <p>15 majority of the ramps on the airport?</p> <p>16 A. Yes.</p> <p>17 Q. And so shifting your attention now to</p> <p>18 any guidance, or correspondence, or</p> <p>19 memoranda or anything that you got from</p> <p>20 the FAA regarding granting a long-term</p> <p>21 lease to FlightLevel, did you receive any</p> <p>22 communication that waived this provision</p> <p>23 in the October 6, 2008 comment to your</p> <p>24 corrective action plan?</p> |
| <p style="text-align: right;">82</p> <p>1 commission some latitude to award a</p> <p>2 longer-term lease to Boston Executive</p> <p>3 Helicopters based on the amount of</p> <p>4 investment that Boston Executive</p> <p>5 Helicopters was planning to make in</p> <p>6 the property.</p> <p>7 Q. Well, correct me if I'm wrong, but that</p> <p>8 approval would not have had the effect</p> <p>9 of granting one party control over a</p> <p>10 majority of the ramps on the airport,</p> <p>11 would it?</p> <p>12 MR. SIMMS: Objection to</p> <p>13 form and beyond the scope.</p> <p>14 A. Can you restate that?</p> <p>15 Q. Sure. I asked you whether in form or</p> <p>16 substance the FAA had ever advised you</p> <p>17 that deviation from the requirement in</p> <p>18 the bullet that I read at the bottom</p> <p>19 of the letter dated October 6 would be</p> <p>20 appropriate and you referenced an e-mail</p> <p>21 from the FAA regarding BEH. And if</p> <p>22 you read the language that I quoted</p> <p>23 originally, it talks about granting</p> <p>24 long-term leases that would have the</p> | <p style="text-align: right;">84</p> <p>1 MR. SIMMS: Beyond the scope.</p> <p>2 Go ahead.</p> <p>3 A. There was nothing that we received from</p> <p>4 FAA that waived the requirement that the</p> <p>5 town, certainly within reason, give any</p> <p>6 kind of one party control.</p> <p>7 Q. You became aware at some point, did you</p> <p>8 not, that BEH was interested in leasing</p> <p>9 more space at the airport, so it could</p> <p>10 become an FBO, correct?</p> <p>11 A. Yes.</p> <p>12 Q. When was that?</p> <p>13 A. I don't recall the exact date.</p> <p>14 Q. Let me show you a document, Exhibit 6.</p> <p>15 I'm showing you a document that's been</p> <p>16 marked as Exhibit 6. It appears to</p> <p>17 be a letter from BEH to Mr. Ryan dated</p> <p>18 September 1, 2010. Have you seen that</p> <p>19 before?</p> <p>20 A. Yes.</p> <p>21 Q. Does that refresh your recollection as</p> <p>22 to when you first learned that BEH was</p> <p>23 requesting space to lease at the airport?</p> <p>24 A. Yes.</p> |

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| <p style="text-align: right;">85</p> <p>1 Q. And so that was in or about the fall of 2 2010, correct? 3 A. Yes. 4 Q. To your knowledge, between 2010 and 2014 5 did various parcels at the airport become 6 available for lease? 7 A. I don't recall the exact date when 8 the DC3 ramp became available, but 9 it may have been sometime around 2014. 10 Q. Any other parcels? 11 A. Again, I don't recall the exact date, 12 but -- I don't recall the exact date, 13 but Lots A, B, C may have become 14 available. 15 Q. And how about 5, 6 and 7? 16 A. I don't know. I don't recall them 17 becoming available. 18 Q. Well, do you recall that FlightLevel's 19 leases on Lots 5, 6 and 7 expired some 20 time between 2000 and 2015? 21 A. I don't recall the exact dates on those 22 leases. 23 Q. Do you recall that they expired and that 24 the commission voted to extend them?</p> | <p style="text-align: right;">87</p> <p>1 correct? 2 A. Yes. 3 Q. And any reason to doubt that you were 4 aware of that information in or about 5 March of 2014? 6 A. That's fair to say. 7 Q. And so did you have any conversations or 8 communications with Mr. Donovan regarding 9 BEH's desire to lease Lots A, B and C? 10 A. Beyond the e-mail here? 11 Q. Yes. 12 A. I don't recall. 13 Q. Well, in or about 2014 do you recall 14 whether you had regular discussions with 15 Mr. Donovan regarding his desire to lease 16 additional space or to become an FBO? 17 A. I don't recall having any conversations 18 with him. 19 Q. On this topic or in general? 20 A. In 2014 or -- 21 Q. Okay. I show you a document that's 22 been marked as Exhibit 40. Have you 23 seen that before? 24 A. Yes.</p> |
| <p style="text-align: right;">86</p> <p>1 A. I do recall the vote to extend them, yes. 2 Q. And I'll refresh your recollection on 3 the timing of that. So just circling 4 back to my original question, is it your 5 recollection between 2010 and 2014 the 6 DC3 ramp, Lots A, B and C and Lots 5, 6 7 and 7 all had leases that were either 8 expiring or some circumstances where 9 those properties became available for 10 lease? Is that fair to say? 11 A. Yes. 12 Q. I'm showing you now a document that's 13 been marked as Exhibit 7 to the LeBlanc 14 deposition. It appears to be an e-mail 15 from Mr. Donovan to you dated March 12, 16 2014. Have you seen that before? 17 A. Yes. 18 Q. And so is it fair to say that in or about 19 2014 Mr. Donovan, on behalf of BEH, made 20 clear to you and the Norwood Airport 21 Commission his desire to lease Lots A, 22 B and C? 23 A. Yes. 24 Q. And this was in or about March of 2014,</p> | <p style="text-align: right;">88</p> <p>1 Q. What is it? 2 A. This is a letter from FlightLevel 3 to the Norwood Airport Commission 4 referencing lease extension request. 5 Q. Is it fair to say that the subject 6 matter of this lease extension request 7 includes Lots 5, 6, 7, A, B and C? 8 A. Yes. 9 Q. And so you're aware of the fact that 10 in November of 2014 that FlightLevel 11 was seeking extensions on its leases 12 for those referenced lots, correct? 13 A. In November of 2014? 14 MR. SIMMS: I think you meant 15 January of '14. 16 Q. I'm sorry, my apology, January of 2014. 17 A. Yes. 18 Q. And this preceded the e-mail from Mr. 19 Donovan in March of 2014 where he was 20 asking for access or the ability to 21 lease Lots A, B and C, correct? 22 A. Yes. 23 Q. And so in or around this time, first 24 quarter of 2014, you are aware and I</p> |

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| <p style="text-align: right;">89</p> <p>1 assume that you communicated this to 2 the NAC that both FlightLevel and BEH 3 were interested in leasing Lots A, B 4 and C, is that correct? 5 A. Again, I don't recall my communications, 6 other than anything that was captioned 7 in writing. I don't recall what was 8 said. I can only assume and I don't 9 want to assume. 10 Q. How about just as you sit here today, and 11 I'm asking you only about your knowledge 12 and not what you communicated to the NAC. 13 But it's fair to say that in the first 14 quarter of 2014 you were aware that both 15 FlightLevel and BEH -- 16 A. Right. 17 Q. -- sought leases for Lots A, B and C, 18 correct? 19 A. Right, correct. 20 Q. And you were aware, were you not, of 21 the provision in the FAA letter that 22 we discussed earlier regarding the 23 obligation of the commission to refrain 24 from granting long-term leases that would</p> | <p style="text-align: right;">91</p> <p>1 sure we're clear. 2 MR. FEE: Yeah. 3 A. Again, to recall what I was aware of 4 in 2014, I -- 5 Q. Well, let me ask you something. You 6 said you saw this. 7 A. Yes. 8 Q. And you were aware that both BEH and 9 FlightLevel were seeking space at Lots 10 A, B and C. My question now is, were 11 you aware of any change in the FAA's 12 position articulated in its October 6, 13 2008 letter regarding the obligation of 14 the commission to refrain from giving 15 one party control over the federally 16 funded ramps? 17 A. I wasn't aware of any change to the 18 FAA's position. 19 Q. So what, if anything, did you do to 20 manage the fact that two providers at 21 the airport each had an interest in 22 Lots A, B and C? 23 A. What did I do personally? 24 Q. Right.</p> |
| <p style="text-align: right;">90</p> <p>1 have the effect of giving control over 2 a majority of the federally funded ramps 3 of the airport to one party, correct? 4 MR. SIMMS: Can you read that 5 back, please. 6 (Previous question was read 7 back by the stenographer.) 8 MR. FEE: Withdrawn. 9 Q. And at or about this time you were aware 10 of the FAA's position articulated in 11 Exhibit 35 that the airport commission 12 should refrain from awarding long-term 13 leases that would have the effect of 14 granting one party control over the 15 majority of ramps on the airport, 16 correct? 17 MR. SIMMS: Objection. Go 18 ahead, if you remember that specifically 19 in 2014. 20 MR. FEE: I'm not asking him -- 21 I'm asking was he aware. 22 MR. SIMMS: In 2014? 23 MR. FEE: Correct. 24 MR. SIMMS: I want to make</p> | <p style="text-align: right;">92</p> <p>1 A. The decision on the lease was the 2 commission's. 3 Q. And what did you do to communicate 4 that issue to the commission? 5 A. I don't recall doing anything. 6 Q. And do you recall communicating to 7 the commission the fact that both 8 FlightLevel and BEH were interested 9 in leasing Lots A, B and C? 10 A. Again, I don't recall my communications 11 to the commission in 2014, unless it 12 was captured in writing? 13 Q. I'm showing you a document that's been 14 marked as Exhibit No. 8 to the LeBlanc 15 deposition. And it appears to be the 16 agenda for the March 12, 2014 meeting 17 and then attached are the executive 18 session minutes on page 2, second 19 paragraph. It says, On motion by 20 Mr. Shaughnessy and seconded by 21 Mr. Ostrchel the commission voted 3 0 22 to extend the leases on Lots A, B and 23 C, extend the lease for five years. 24 Do you see that?</p> |

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| <p style="text-align: right;">93</p> <p>1 A. Yes.</p> <p>2 Q. And is it your understanding that in or</p> <p>3 about May of 2014 the commission voted</p> <p>4 to extend the leases as requested by</p> <p>5 FlightLevel on Lots A, B and C?</p> <p>6 A. March -- I think you said May.</p> <p>7 Q. I'm sorry, March 2014.</p> <p>8 A. Could you restate that, please?</p> <p>9 Q. Sure. Is it your understanding in or</p> <p>10 about March 2014 the commission voted</p> <p>11 to extend the leases on the Lots A, B</p> <p>12 and C as requested by FlightLevel?</p> <p>13 A. Yes.</p> <p>14 Q. And this was done in executive session,</p> <p>15 correct?</p> <p>16 A. I don't recall the meeting.</p> <p>17 Q. I'm directing your attention to the</p> <p>18 executive session minutes. Do you</p> <p>19 make the minutes?</p> <p>20 A. I don't make the minutes.</p> <p>21 Q. Is it your understanding that items that</p> <p>22 are reflected in the executive session</p> <p>23 minutes are generally memorializing</p> <p>24 activity that took place in executive</p> | <p style="text-align: right;">95</p> <p>1 MR. SIMMS: Did you say who</p> <p>2 determines?</p> <p>3 Q. Who determines what votes are taken in</p> <p>4 executive session?</p> <p>5 A. It would be the commission that would</p> <p>6 determine. And, again, it would depend</p> <p>7 on whether town council were privy to</p> <p>8 the executive session conversation.</p> <p>9 Q. But generally the chair determines</p> <p>10 what's taken up in executive session</p> <p>11 and what isn't, is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. So based on Exhibit 8, is it your</p> <p>14 understanding that the commission voted</p> <p>15 to extend FlightLevel's lease on A, B</p> <p>16 and C on March 12th, 2014?</p> <p>17 A. Yes.</p> <p>18 Q. Now, did you communicate that in any</p> <p>19 way to BEH?</p> <p>20 A. I don't recall.</p> <p>21 Q. Now, sir, I'm showing you a document</p> <p>22 that's been marked Exhibit 9 to the</p> <p>23 LeBlanc deposition. It appears to be</p> <p>24 an e-mail from Mr. Donovan to you dated</p> |
| <p style="text-align: right;">94</p> <p>1 session?</p> <p>2 A. Yes.</p> <p>3 Q. Is it the practice of the commission</p> <p>4 to vote on lease extension requests</p> <p>5 in executive session?</p> <p>6 A. I don't have a recall of all the leases</p> <p>7 that they've approved in the time that</p> <p>8 I've been there.</p> <p>9 Q. Do you have any sense of whether or not</p> <p>10 it's their practice to address lease</p> <p>11 approval votes in executive session?</p> <p>12 A. Again, I don't recall where all the</p> <p>13 leases -- I'm not sure how to answer</p> <p>14 that, because I'm not -- I don't have</p> <p>15 the recollection I probably need to</p> <p>16 give you an accurate answer on that.</p> <p>17 Q. Fair enough. Do you know why the</p> <p>18 airport commission elected to act</p> <p>19 in executive session to approve the</p> <p>20 FlightLevel request to extend the</p> <p>21 leases on Lots A, B and C?</p> <p>22 A. I don't.</p> <p>23 Q. Who determines what is enacted or what</p> <p>24 votes are taken in executive session?</p> | <p style="text-align: right;">96</p> <p>1 May 3, 2014. Have you seen this before?</p> <p>2 A. Yes.</p> <p>3 Q. And Mr. Donovan says to you in the second</p> <p>4 paragraph, At the last Norwood Airport</p> <p>5 Commission meeting Mr. Ryan and Mr.</p> <p>6 Shaughnessy made it clear they would</p> <p>7 be giving preferential treatment to</p> <p>8 FlightLevel who, as you know, is</p> <p>9 currently leasing approximately 600,000</p> <p>10 square feet of space at the airport.</p> <p>11 They also indicated that although the</p> <p>12 lease was not yet up, that they had</p> <p>13 leased the parcel again to FlightLevel.</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Is that an accurate statement?</p> <p>17 A. I don't believe it is an accurate</p> <p>18 statement.</p> <p>19 Q. And why not?</p> <p>20 A. I don't recall those comments about</p> <p>21 giving FlightLevel preferential</p> <p>22 treatment.</p> <p>23 Q. And do you recall at any time any</p> <p>24 commissioner stating to you, either</p> |

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| <p style="text-align: right;">97</p> <p>1 in open session, executive session 2 or privately, that they believed that 3 FlightLevel should be given preferential 4 treatment by virtue of its investment 5 at the airport? 6 A. No. 7 Q. Never? 8 A. No. 9 Q. And going down to the next paragraph 10 Mr. Donovan asks you, Can you please tell 11 me the following? Number 1: Has the 12 lease for Lots A, B and C been released 13 to FlightLevel? No. 2: If the lease 14 has been released, what are the terms 15 and conditions of the new lease? Could 16 I obtain a copy of the new lease, please? 17 And three, Will FlightLevel be given 18 preference for all leases and operations 19 at Norwood Airport by the Norwood Airport 20 Commission as they have stated in public 21 meetings? Did I read that correctly? 22 A. Yes. 23 Q. And down below your response to No. 1 24 is, Has the lease for Lots A, B and C</p> | <p style="text-align: right;">99</p> <p>1 and answered. Go ahead. 2 A. My recall of my response was a literal 3 answer to his question, whether it had 4 been released to FlightLevel. 5 Q. But you would agree, would you not, 6 that your responses were opaque? 7 A. Not intentionally, but literal. 8 Q. And did you feel that there was some 9 reason that you should be less than 10 transparent with Mr. Donovan regarding 11 his inquiry as to whether Lots A, B and 12 C had been released to FlightLevel? 13 MR. SIMMS: Objection to the 14 form. Go ahead. 15 A. Again, this was a vote taken in executive 16 session and that executive session 17 minutes were confidential at the time. 18 Q. And was there some strain in your 19 relationship with Mr. Donovan at or 20 about this time when your communication 21 with him was clipped? 22 A. My communication with Mr. Donovan has 23 been clipped for a number of years. 24 Q. Why?</p> |
| <p style="text-align: right;">98</p> <p>1 been released to FlightLevel and you 2 say, No, right, is that correct? 3 A. I believe it was correct. 4 Q. Why? 5 A. Because the lease term at the time of 6 this writing -- the new lease term had 7 not taken affect. It had not officially 8 in -- the new lease had not been executed 9 and the new lease was not in place. 10 Q. But you knew at this time that Mr. 11 Donovan was seeking to lease Lots A, 12 B and C, correct? 13 A. Yes. 14 Q. And you knew that the commission had 15 taken a vote to lease Lots A, B and C 16 to FlightLevel, right? 17 A. In executive session, yes. 18 Q. And so when he asked you point blank 19 whether the lease for Lots A, B and C 20 has been granted to FlightLevel, you say, 21 No. Is that because it was in executive 22 session or because you thought that he 23 was not entitled to the information? 24 MR. SIMMS: Objection. Asked</p> | <p style="text-align: right;">100</p> <p>1 A. Because soon after he received his 2 first commercial permit in 2010, through 3 the e-mail he started making a lot 4 of accusations and very caustic comments, 5 very legally charged comments and it 6 required me to give pause and make sure 7 that my responses were accurate and 8 often this required me to talk to town 9 counsel. 10 Q. Did you talk to town counsel before 11 you responded to this e-mail? 12 A. I don't recall. 13 Q. You say that the communication became 14 strained or clipped beginning in 2010, 15 is that right? 16 A. I would say that at some point in late 17 2010. 18 Q. And in response to what particular 19 incident did that relationship start 20 to deteriorate? 21 A. There was legal correspondence 22 from Boston Executive Helicopters' 23 representatives starting in, I believe, 24 2010.</p> |

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| <p style="text-align: right;">101</p> <p>1 Q. About what?</p> <p>2 A. I don't recall all of the events,</p> <p>3 but one particular event was landing.</p> <p>4 Mr. Donovan was either landing or taking</p> <p>5 off on the Gate 2 Taxi Lane, which is</p> <p>6 not an approved operating area on the</p> <p>7 airport, and I had asked him not to do</p> <p>8 that.</p> <p>9 Q. And he responded sharply?</p> <p>10 A. He responded through his attorneys.</p> <p>11 Q. And what did that correspondence lead</p> <p>12 to?</p> <p>13 MR. SIMMS: Objection. Go</p> <p>14 ahead.</p> <p>15 A. That correspondence led to a response</p> <p>16 letter from the town's lawyers.</p> <p>17 Q. Did you feel that it was inappropriate</p> <p>18 for Mr. Donovan to respond to your</p> <p>19 request in a formal legal fashion?</p> <p>20 MR. SIMMS: Objection. Beyond</p> <p>21 the scope. Go ahead.</p> <p>22 A. I didn't think it was necessarily</p> <p>23 inappropriate, but it did change the</p> <p>24 complex of the business relationship.</p> | <p style="text-align: right;">103</p> <p>1 MR. SIMMS: Using them, someone</p> <p>2 other than Chris?</p> <p>3 MR. FEE: BEH. Well, he used</p> <p>4 the word them.</p> <p>5 A. I found it more challenging to deal with</p> <p>6 BEH without having our legal counsel in</p> <p>7 the loop.</p> <p>8 Q. And that was different from other</p> <p>9 relationships that you had at the</p> <p>10 airport, is that fair to say?</p> <p>11 MR. SIMMS: Objection. Go</p> <p>12 ahead.</p> <p>13 A. Not true.</p> <p>14 Q. I'm sorry. Go ahead.</p> <p>15 A. We've had other relationships with other</p> <p>16 businesses, the airport commission and</p> <p>17 myself, with other businesses that were</p> <p>18 equally challenging at times.</p> <p>19 Q. Was it your understanding or your belief</p> <p>20 that BEH was unnecessarily litigious or</p> <p>21 adversarial?</p> <p>22 MR. SIMMS: Back in 2010?</p> <p>23 MR. FEE: Yeah, I'm talking</p> <p>24 about any time from 2010 to the present.</p> |
| <p style="text-align: right;">102</p> <p>1 Q. And would you describe it as</p> <p>2 deteriorating from that point?</p> <p>3 A. I would not use the word deteriorating,</p> <p>4 but it did alter the complexion of the</p> <p>5 relationship.</p> <p>6 Q. But prior to that time you had been</p> <p>7 friendly with Mr. Donovan, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you had known each other socially?</p> <p>10 A. Yes.</p> <p>11 Q. You had served in the military together,</p> <p>12 had you not?</p> <p>13 A. Yes.</p> <p>14 Q. And is it your testimony that in response</p> <p>15 to the one incident where you believed</p> <p>16 him to be landing improperly, that as a</p> <p>17 result of that incident communications</p> <p>18 became strained and the business</p> <p>19 relationship changed?</p> <p>20 A. There were a number of situations. That</p> <p>21 was one of the events soon after they</p> <p>22 received their first permit.</p> <p>23 Q. And did you find them difficult to deal</p> <p>24 with?</p> | <p style="text-align: right;">104</p> <p>1 MR. SIMMS: Objection. Go</p> <p>2 ahead.</p> <p>3 A. I can only say that they have been --</p> <p>4 the correspondence of Mr. Donovan's</p> <p>5 through e-mail has been very legally</p> <p>6 charged since late 2010. And so to</p> <p>7 some extent it has been litigious.</p> <p>8 Q. And do you find that unnecessary?</p> <p>9 MR. SIMMS: Objection. Go</p> <p>10 ahead.</p> <p>11 A. I found it counterproductive.</p> <p>12 Q. And it takes up more time than other</p> <p>13 interactions that you have with other</p> <p>14 vendors at the airport, right?</p> <p>15 MR. SIMMS: Same objection.</p> <p>16 Go ahead.</p> <p>17 A. It takes up time, time that could be</p> <p>18 committed to more productive ends,</p> <p>19 but it's part of the job.</p> <p>20 Q. Did you feel that there was any merit</p> <p>21 at any time to any of these legally</p> <p>22 charged correspondences that you were</p> <p>23 receiving from BEH or its attorneys?</p> <p>24 A. Can you be specific about which --</p> |

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| <p style="text-align: right;">105</p> <p>1 Q. Well, you're being general, so I'm 2 following suit. 3 A. Right. 4 Q. We can talk about specific instances, 5 but I'm asking more about your general 6 impression. 7 A. Any general impression I have is vetted 8 through town counsel. I don't make 9 decisions that even remotely are legally 10 charged without referencing town counsel 11 and the airport commission. 12 Q. A moment ago we discussed the airport 13 commission meeting minutes for March 14 12th and that was Exhibit 8 to the 15 LeBlanc deposition. I'm showing you 16 now Exhibit 43 to the Wynne deposition, 17 which appears to be the executive session 18 minutes for April 9, 2014. Have you 19 ever seen these before? 20 A. Yes. 21 Q. And is it your understanding that on or 22 about April 9, 2014 the commission voted 23 to extend FlightLevel leases on Lots 5, 24 6 and 7?</p> | <p style="text-align: right;">107</p> <p>1 there was a rebuttal letter or not. 2 Q. Do you recall this executive session on 3 April 9th? 4 A. I don't recall with full clarity, but I 5 recall in a general sense the meeting. 6 Q. You were present? 7 A. Yes. 8 Q. And you'll note that the meeting took 9 a grand total of nine minutes, right? 10 A. Yes. 11 Q. And do you recall if there was any 12 significant discussion regarding this 13 decision to extend long-term lease 14 rights on Lots 5, 6 and 7 to FlightLevel? 15 A. I don't recall the particulars of the 16 conversation. 17 Q. I'm showing you a document that's 18 been marked as Exhibit 44 to the Wynne 19 deposition. It appears to be a letter 20 from you to Mr. Eichleay dated April 15, 21 2014. Have you seen this before? 22 A. Yes. 23 Q. Did you send it? 24 A. Yes, I did.</p> |
| <p style="text-align: right;">106</p> <p>1 A. Yes. 2 Q. And those lease extensions were through 3 2047 and 2050, respectfully, were they 4 not? 5 A. Yes. 6 Q. And would you consider them to be 7 long-term leases? 8 A. Yes. 9 Q. And did you receive any particular 10 guidance from the FAA in form or 11 substance, which can be construed as 12 a waiver of the requirements set forth 13 in their 2008 letter directing the 14 commission not to enter into long-term 15 leases that would have the effect of 16 giving one party control over a majority 17 of the federally funded ramps at the 18 airport? 19 MR. SIMMS: Objection. 20 Beyond the scope. Go ahead. 21 A. I don't recall if and whether the -- 22 if the FAA ever responded. There was 23 a letter that was sent to the FAA on 24 these leases, but I don't recall whether</p> | <p style="text-align: right;">108</p> <p>1 Q. And in this letter it's fair to say 2 that you advised Mr. Eichleay of the 3 commission's decision to extend long-term 4 lease rights to FlightLevel for Lots A, 5 B, C, 5, 6 and 7, is that fair to say? 6 A. Yes. 7 Q. And do you know when the formal lease 8 documents were executed with respect 9 to these lease extensions? 10 A. I don't recall. 11 Q. Did you play any role in the negotiation 12 of the lease extensions? 13 A. No. 14 Q. Is it fair to say that the commission 15 voted to extend the leases prior to 16 negotiation of any of the lease terms? 17 A. I don't recall. 18 Q. Well, can you look at a letter and see 19 if you can answer my question? 20 A. This does not refresh my recollection. 21 Q. It does not refresh your recollection as 22 to whether the vote to extend the leases 23 preceded any negotiation of the lease 24 terms, is that fair to say? Is that</p> |

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| <p style="text-align: right;">109</p> <p>1 your testimony?</p> <p>2 A. Yes.</p> <p>3 MR. FEE: And the stenographer</p> <p>4 informs me that it's time for lunch.</p> <p>5 (Lunch Break.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p style="text-align: right;">111</p> <p>1 Q. Yes. Let me rephrase. Did you speak</p> <p>2 to the commissioners about this?</p> <p>3 A. Yes.</p> <p>4 Q. And did you speak with Mr. Ryan</p> <p>5 individually?</p> <p>6 A. I don't recall whether I spoke with</p> <p>7 him individually.</p> <p>8 MR. SIMMS: That's your answer.</p> <p>9 A. Yeah, I don't recall whether I spoke with</p> <p>10 him individually.</p> <p>11 Q. Did you speak with town counsel?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall speaking to any</p> <p>14 commissioners about the filing of</p> <p>15 the Part 13 Complaint?</p> <p>16 A. I don't recall.</p> <p>17 Q. So it's your testimony that you have</p> <p>18 no recollection that you discussed the</p> <p>19 Part 13 Complaint with any commissioner,</p> <p>20 the chairman or town counsel, is that</p> <p>21 fair to say?</p> <p>22 A. Yes.</p> <p>23 Q. And at some point did the filing of</p> <p>24 the Part 13 Complaint come up before</p> |
| <p style="text-align: right;">110</p> <p>1 AFTERNOON SESSION</p> <p>2 FRANCIS T. MAGUIRE, III, Resumed</p> <p>3 DIRECT EXAMINATION, Continued</p> <p>4 BY MR. FEE:</p> <p>5 Q. Let's start a new line of questioning</p> <p>6 and I'm going to take you to LeBlanc 10.</p> <p>7 I'm showing you a document that's been</p> <p>8 marked as Exhibit 10. It appears to be</p> <p>9 a letter dated June 5, 2014 from Mary</p> <p>10 Walsh at the FAA to you. Have you seen</p> <p>11 this before?</p> <p>12 A. Yes.</p> <p>13 Q. And is it your understanding that this</p> <p>14 represented the notification to the</p> <p>15 Norwood Airport Commission that a</p> <p>16 Part 13 Complaint had been filed?</p> <p>17 A. Yes.</p> <p>18 Q. And you're familiar with Part 13</p> <p>19 Complaints?</p> <p>20 A. Yes.</p> <p>21 Q. And what, if anything, did you do in</p> <p>22 reaction to the filing of the Part 13</p> <p>23 Complaint?</p> <p>24 A. Did I personally do?</p> | <p style="text-align: right;">112</p> <p>1 the commissioners in open session or</p> <p>2 executive session?</p> <p>3 A. Yes.</p> <p>4 Q. And when was that?</p> <p>5 A. It was at the June 2014 meeting.</p> <p>6 Q. Do you recall in any way participating</p> <p>7 in the drafting of a response to the</p> <p>8 Part 13 Complaint?</p> <p>9 A. I don't recall the actual response.</p> <p>10 Q. Let me show you Exhibit 12 to the LeBlanc</p> <p>11 deposition. Have you seen that before?</p> <p>12 A. Yes.</p> <p>13 Q. And what is that?</p> <p>14 A. This is the response to the Part 13</p> <p>15 Complaint.</p> <p>16 Q. Did you draft that?</p> <p>17 A. I drafted parts of the complaint.</p> <p>18 Q. Parts of the response?</p> <p>19 A. Yes, parts of the response.</p> <p>20 Q. And do you recall what parts you drafted?</p> <p>21 A. No.</p> <p>22 Q. Do you recall who else participated in</p> <p>23 the drafting?</p> <p>24 A. I recall town counsel being involved in</p> |

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| <p style="text-align: right;">113</p> <p>1 drafting.</p> <p>2 Q. Anybody else?</p> <p>3 A. I recall Mr. Wynne having some</p> <p>4 involvement in the drafting.</p> <p>5 Q. And he, in fact, signed it, is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. To your knowledge, did the commission</p> <p>9 decide to take any action with respect</p> <p>10 to BEH as a result of the filing of this</p> <p>11 Part 13 Complaint, other than respond?</p> <p>12 A. I don't recall, without the actual</p> <p>13 minutes, seeing the minutes.</p> <p>14 Q. So anything that the commission would</p> <p>15 have done in response to the filing of</p> <p>16 the Part 13 Complaint would be reflected</p> <p>17 in meeting minutes, is that fair to say?</p> <p>18 MR. SIMMS: Objection to form.</p> <p>19 Go ahead.</p> <p>20 A. Yes.</p> <p>21 Q. And you don't recall any discussions,</p> <p>22 outside of any open meeting session,</p> <p>23 regarding the filing of Part 13</p> <p>24 Complaint?</p> | <p style="text-align: right;">115</p> <p>1 motion to table the matter based on</p> <p>2 a complaint letter received by the</p> <p>3 commission, but not yet read and</p> <p>4 discussed. Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Were you present at this meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Your understanding is that Mr. Sheehan</p> <p>9 was referring to the filing of the</p> <p>10 Part 13 Complaint, which has been</p> <p>11 marked as Exhibit 10?</p> <p>12 A. Yes.</p> <p>13 Q. And was it your understanding that an</p> <p>14 FBO request and a lease request were</p> <p>15 pending before the board from BEH at</p> <p>16 the time of the June 11th, 2014 meeting?</p> <p>17 A. Based on the header in the minutes, it's</p> <p>18 my understanding.</p> <p>19 Q. And so is it your understanding</p> <p>20 that in response to the filing of</p> <p>21 Exhibit 10 Mr. Sheehan moved that all</p> <p>22 consideration of BEH's lease request</p> <p>23 and FBO request be tabled, is that</p> <p>24 fair to say?</p> |
| <p style="text-align: right;">114</p> <p>1 A. No.</p> <p>2 Q. I'm showing you a document that's</p> <p>3 been marked as Exhibit 11 to the</p> <p>4 LeBlanc deposition. It appears to</p> <p>5 be meeting minutes from June 11th.</p> <p>6 Have you seen that before?</p> <p>7 A. This copy is marked draft, Counsel.</p> <p>8 Q. I understand that.</p> <p>9 A. It appears to be similar to the final</p> <p>10 draft that was approved.</p> <p>11 Q. My question is, have you seen the</p> <p>12 document before?</p> <p>13 A. Yes.</p> <p>14 Q. And notwithstanding the fact that it's</p> <p>15 marked draft, do you think it fairly</p> <p>16 summarizes the gist of the discussion</p> <p>17 that took place in the June 11th regular</p> <p>18 business meeting? Just to save time</p> <p>19 I'm focusing on the bottom of the page.</p> <p>20 A. Here?</p> <p>21 Q. Right, exactly.</p> <p>22 A. Yes.</p> <p>23 Q. Now, the meeting minutes appear to</p> <p>24 reflect that Mr. Sheehan requested a</p> | <p style="text-align: right;">116</p> <p>1 MR. SIMMS: His understanding</p> <p>2 of why the motion was made?</p> <p>3 Q. Is it your understanding that as a result</p> <p>4 of the filing of the Part 13 Complaint,</p> <p>5 that's been marked as Exhibit 10,</p> <p>6 that Mr. Sheehan moved to table all</p> <p>7 consideration of any pending permitting</p> <p>8 or lease requests from BEH? Is that</p> <p>9 fair to say?</p> <p>10 MR. SIMMS: Note my objection.</p> <p>11 You can answer.</p> <p>12 A. Yes.</p> <p>13 Q. And was there any discussion regarding</p> <p>14 the reason for tabling the -- any</p> <p>15 consideration of BEH's FBO or lease</p> <p>16 request in the meeting of June 11,</p> <p>17 2014?</p> <p>18 A. I recall the discussion about the</p> <p>19 complaint and the fact that not all</p> <p>20 commissioners had an opportunity to</p> <p>21 read it.</p> <p>22 Q. Well, if the notes are accurate, it</p> <p>23 says Mr. Sheehan made the motion, because</p> <p>24 of the filing of the letter that had</p> |

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| <p style="text-align: right;">117</p> <p>1 been received, but not yet read and 2 discussed, is that fair to say? 3 A. Yes. 4 Q. And so it's your understanding that at 5 the June 11th meeting, and is it fair to 6 assume that he's referring to the Part 13 7 Complaint when he says the letter in this 8 motion? 9 A. Yes. 10 Q. So was it your understanding that some 11 or all of the commissioners had not yet 12 seen the Part 13 Complaint at the time 13 they took this vote? 14 A. That was my understanding. 15 Q. And you had seen it? 16 A. I had. 17 Q. And had Mr. Ryan seen it? 18 A. I don't know. 19 Q. Had Mr. Wynne seen it? 20 A. I don't recall. I don't recall who 21 actually had seen it from the commission. 22 Q. So is it fair to say that as of June 11, 23 2014 BEH's application for a FBO was 24 tabled by the commission?</p> | <p style="text-align: right;">119</p> <p>1 FBO application was tabled on June 2 11th and you agreed with me? 3 A. Uh-huh. 4 Q. And my question was, at some point did 5 it become un-tabled? You can answer 6 that yes or no. 7 MR. SIMMS: Or you don't know, 8 or you don't recall. 9 A. I guess I have to say I don't know. 10 Q. You don't know whether it was un-tabled. 11 You just described a process whereby 12 consideration and dialogue took place, 13 right? 14 A. Well, I guess what was confusing at the 15 time and remains confusing for me is 16 the use of the word tabled and un-tabled. 17 Q. Right. 18 A. The commission continued to consider 19 and engage in the reporting by BEH of 20 the progress of its business toward the 21 requirements of becoming a full service 22 fixed based operator at the airport. 23 Q. Did that begin happening at the next 24 meeting?</p> |
| <p style="text-align: right;">118</p> <p>1 A. Based on the minutes, yes. 2 Q. And at some point did it become 3 un-tabled? 4 A. The commission continued to have Mr. 5 Donovan report to them on the progress 6 of the FBO permit and the facility, 7 the construction of the facility. 8 There were regular updates on his 9 company's progress, but there were 10 some pending documents as well that 11 the commission was -- 12 Q. I'm sorry, go ahead. 13 A. There were some pending documents that 14 the commission had required of his 15 company and they had yet to be produced. 16 There was an ongoing line of communication 17 and a reporting and an updating of the 18 development of the BEH infrastructure, 19 its business and the kind of status 20 updates of the various documents 21 that the commission was waiting on. 22 Q. And my question was, based on the 23 minutes of the June 11, 2014 meeting, 24 it appears that consideration of BEH's</p> | <p style="text-align: right;">120</p> <p>1 A. Well, they continued. I don't recall 2 whether it continued at the July meeting 3 or subsequent. I know it happened 4 at subsequent meetings where BEH was 5 reporting its updates and the commission 6 would request updates particular to the 7 documents they were looking for and the 8 final inspection of the fuel farm. So 9 the word tabled is a little confusing 10 to me, because I guess it infers that 11 the commission had stopped the process 12 of deliberating, but their actions were 13 such that they were actively involved 14 in seeking the documents that they 15 were looking for and getting, you 16 know, updates on the progress. 17 Q. And so when did that start to happen? 18 A. When did -- 19 Q. When did this process that you just 20 described begin to happen? And let 21 me just digress for a minute. I was 22 at the meeting yesterday. Tabled is 23 a procedure that the commission uses 24 often to describe action that it wants</p> |

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| <p style="text-align: right;">121</p> <p>1 to defer.</p> <p>2 A. Right.</p> <p>3 Q. And so it's not uncommon for that</p> <p>4 phrase to be used by this commission.</p> <p>5 A. Right.</p> <p>6 Q. And if there's a vote taken to table</p> <p>7 something, is it your understanding</p> <p>8 that at some point there's a formal</p> <p>9 vote to reconsider something or does</p> <p>10 it just come up in the normal course</p> <p>11 of business that it's back on the table?</p> <p>12 That's what I'm trying to understand.</p> <p>13 A. As I recall, it never appeared to be</p> <p>14 un-tabled.</p> <p>15 Q. And was there ever a formal vote or</p> <p>16 communication to BEH informing them</p> <p>17 that this vote that had been taken on</p> <p>18 June 11, 2014 was no longer operative?</p> <p>19 A. Operative in the sense?</p> <p>20 Q. That the NAC was deferring action on</p> <p>21 their FBO request.</p> <p>22 A. I don't recall a letter going to BEH.</p> <p>23 Q. But it's your recollection at some point</p> <p>24 the NAC began reconsidering that request?</p> | <p style="text-align: right;">123</p> <p>1 A. Yes, it's the type of document that,</p> <p>2 based on my management practice, I</p> <p>3 would put before the commission and</p> <p>4 let them deal with.</p> <p>5 Q. Now, the first page talks about TOFA</p> <p>6 and fueling setbacks and obstructions</p> <p>7 in Gate 3 Taxi Lane. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And was this the first time that</p> <p>10 these issues had been raised with the</p> <p>11 commission, first time complaints like</p> <p>12 this had been made to the commission?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you recall ever, prior to June 20,</p> <p>15 2013, receiving any complaints regarding</p> <p>16 BEH's operations that violated TOFA or</p> <p>17 fuelling setback or Gate 3 Taxi Lane</p> <p>18 obstructions?</p> <p>19 A. I don't recall.</p> <p>20 Q. So turning to page 2, and I'm going to</p> <p>21 read from the fourth paragraph down</p> <p>22 slowly. This is Mr. Eichleay speaking.</p> <p>23 It goes without saying that BEH's entry</p> <p>24 into the fuel business would severely</p> |
| <p style="text-align: right;">122</p> <p>1 A. Yes.</p> <p>2 Q. And you're not sure when that was?</p> <p>3 A. I'm not sure when that was.</p> <p>4 Q. Now, you were aware, were you not,</p> <p>5 FlightLevel was adamantly opposed to</p> <p>6 BEH's application to become an FBO?</p> <p>7 A. Yes.</p> <p>8 Q. And when did you first learn of that</p> <p>9 adamant opposition?</p> <p>10 A. I don't recall.</p> <p>11 Q. I'm showing you Exhibit 18. It appears</p> <p>12 to be a letter to you from Peter Eichleay</p> <p>13 dated June 20th, 2013. If you just</p> <p>14 scan that and let me know if you think</p> <p>15 you have seen it before.</p> <p>16 A. Yes.</p> <p>17 Q. Have you seen it before?</p> <p>18 A. Yes.</p> <p>19 Q. Did you receive it on or about the 20th</p> <p>20 of June 2013?</p> <p>21 A. I don't recall.</p> <p>22 Q. Is this the kind of document that you</p> <p>23 would enclose with the materials attached</p> <p>24 to a commissioner's agenda and pack it?</p> | <p style="text-align: right;">124</p> <p>1 undermine, not only our own fuel business</p> <p>2 and planned capital improvement projects,</p> <p>3 but also our aircraft maintenance and</p> <p>4 real estate business as well. Fuel</p> <p>5 is our life blood and consistent with</p> <p>6 industry standard it largely subsidizes</p> <p>7 both those other segments, segments</p> <p>8 which in our humble opinion are critical</p> <p>9 service offerings for the local flying</p> <p>10 public. Greatly diminished fuel sales</p> <p>11 would certainly compromise our ability</p> <p>12 to keep the maintenance shop open. We're</p> <p>13 currently the only shop on the field.</p> <p>14 And if even greater concern continue to</p> <p>15 bear the expense of the hundreds of</p> <p>16 thousands of dollars we pay annually to</p> <p>17 the town and BMA through our land leases.</p> <p>18 Considering that BEH's lease payments</p> <p>19 will be going exclusively to BMA, the</p> <p>20 town could only stand to lose by granting</p> <p>21 BEH commercial fueling privileges. Did</p> <p>22 I read that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Did you share that concern?</p> |

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| <p style="text-align: right;">125</p> <p>1 A. Did I share that concern?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. You weren't worried about FlightLevel's</p> <p>5 ability to continue its business</p> <p>6 profitably?</p> <p>7 A. What I took from this letter was that it</p> <p>8 was a letter written by a business owner,</p> <p>9 who was advocating, as he should, on</p> <p>10 behalf of his business in the same manner</p> <p>11 that a letter from BEH would advocate on</p> <p>12 behalf of BEH. And while we're sensitive</p> <p>13 to anything that negatively impacts or</p> <p>14 potentially could negatively impact a</p> <p>15 particular business in the airport, my</p> <p>16 feeling is that the airport commission</p> <p>17 and the airport manager are there to</p> <p>18 promote the competition where we can</p> <p>19 within reason and with reasonable</p> <p>20 expectations.</p> <p>21 Q. Did members of the commission, to your</p> <p>22 knowledge, ever discuss this point that</p> <p>23 FlightLevel would be damaged in its</p> <p>24 estimation by the granting of an FBO</p> | <p style="text-align: right;">127</p> <p>1 A. I don't recall, not to say that I didn't</p> <p>2 receive it, but I don't recall receiving</p> <p>3 it.</p> <p>4 Q. Was it consistent with the communications</p> <p>5 that you were receiving from Mr. Eichleay</p> <p>6 regarding FBO status for BEH?</p> <p>7 A. In my opinion, it was consistent, but,</p> <p>8 again, my practice was to put it before</p> <p>9 the commission.</p> <p>10 Q. Right. But in the first instance</p> <p>11 correspondence from Eichleay was</p> <p>12 coming to you, correct?</p> <p>13 MR. SIMMS: Just yes or no.</p> <p>14 MR. FEE: He doesn't have</p> <p>15 to answer yes or no.</p> <p>16 MR. SIMMS: I understand that.</p> <p>17 MR. FEE: Well, you're</p> <p>18 directing him.</p> <p>19 A. The correspondence --</p> <p>20 MR. SIMMS: Only one of you are</p> <p>21 taking this deposition.</p> <p>22 MR. FEE: Let's all play nice</p> <p>23 in the sandbox.</p> <p>24 A. The correspondence to the commission was,</p> |
| <p style="text-align: right;">126</p> <p>1 to BEH?</p> <p>2 A. I don't recall.</p> <p>3 Q. Did Eichleay continue to advocate this</p> <p>4 position on behalf of FlightLevel after</p> <p>5 June 20th, 2013?</p> <p>6 A. I don't recall whether he shared that</p> <p>7 with me and the commission or not after</p> <p>8 the 13th in this type of an open letter.</p> <p>9 Q. Let me show you a document that's been</p> <p>10 marked as Exhibit 72 to the Eichleay</p> <p>11 deposition. See if that refreshes</p> <p>12 your recollection as to whether or</p> <p>13 not Mr. Eichleay continued to advocate</p> <p>14 his position that FBO status should be</p> <p>15 denied to BEH?</p> <p>16 MR. FEE: And for the record,</p> <p>17 Exhibit 72 is a letter dated September</p> <p>18 of 2013 from you to Mr. Eichleay.</p> <p>19 MR. SIMMS: Can you read back</p> <p>20 the last question?</p> <p>21 (The previous question was</p> <p>22 read back by the stenographer.)</p> <p>23 A. It doesn't refresh my recollection.</p> <p>24 Q. Do you recall receiving Exhibit 72?</p> | <p style="text-align: right;">128</p> <p>1 more often than not, coming through me</p> <p>2 directly, not to say that there were</p> <p>3 articles that all went to me first.</p> <p>4 And then when Mr. Eichleay -- and I</p> <p>5 always required that they put it in</p> <p>6 writing and I told them I would put</p> <p>7 it before the commission.</p> <p>8 Q. And that's what you did with Exhibit 72?</p> <p>9 A. I don't recall this. I just don't recall</p> <p>10 it. That's not to say -- I just don't</p> <p>11 remember it.</p> <p>12 Q. Let me show you what's been marked as</p> <p>13 Exhibit 74. It appears to be a letter</p> <p>14 from Mr. Eichleay to chairman of the</p> <p>15 board of selectmen dated January 20,</p> <p>16 2015. Have you ever seen that before?</p> <p>17 A. I don't recall seeing this.</p> <p>18 Q. Were you familiar with an effort by</p> <p>19 the selectmen to involve Mr. Caroll</p> <p>20 and Mr. Hillyard in discussions to try</p> <p>21 and resolve outstanding disagreements</p> <p>22 between the NAC and BEH?</p> <p>23 A. Yes.</p> <p>24 Q. And did you participate in any way in</p> |

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| <p style="text-align: right;">129</p> <p>1 that effort?</p> <p>2 A. No.</p> <p>3 Q. Did you attend any meetings in which</p> <p>4 Mr. Hillyard and Mr. Carroll tried to</p> <p>5 renegotiate a resolution?</p> <p>6 A. No. It was told to me by either the</p> <p>7 commission or Mr. Carroll that I was</p> <p>8 not going to be a participate in the</p> <p>9 negotiations. I was in the building.</p> <p>10 I was in my office when the negotiations</p> <p>11 took place in the meeting room behind</p> <p>12 closed doors.</p> <p>13 Q. Was it your understanding Mr. Hillyard</p> <p>14 and Mr. Carroll met three or four times?</p> <p>15 A. I don't recall three or four times.</p> <p>16 Q. And did you have conversations with</p> <p>17 Mr. Carroll regarding the results of</p> <p>18 his discussions with Mr. Hillyard?</p> <p>19 A. I don't recall.</p> <p>20 Q. I will represent to you that during the</p> <p>21 deposition of Mr. Carroll he stated that</p> <p>22 he had conversations with you regarding</p> <p>23 the substance of those negotiations.</p> <p>24 Would that be inconsistent with your</p> | <p style="text-align: right;">131</p> <p>1 Q. Do you recall what you did in response</p> <p>2 to seeing this for the first time?</p> <p>3 A. The commission had to respond to the</p> <p>4 complaint and I helped the commission</p> <p>5 to draft a response with town counsel</p> <p>6 and the airport commission.</p> <p>7 Q. Did you speak to Mr. Ryan about the fact</p> <p>8 that a Part 16 Complaint had been filed</p> <p>9 outside of open session?</p> <p>10 A. I don't recall a specific conversation</p> <p>11 where I told him.</p> <p>12 Q. Other than the commissioners and town</p> <p>13 counsel, did you speak to anybody else</p> <p>14 regarding the filing of the Part 16</p> <p>15 Complaint in or about March of 2015?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall discussing the Part 16</p> <p>18 Complaint with Mr. Willenborg?</p> <p>19 (Exhibit No. 96, E-Mail,</p> <p>20 marked for identification.)</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you recall discussing it with</p> <p>23 Ms. Clay?</p> <p>24 A. Ms. Clay?</p> |
| <p style="text-align: right;">130</p> <p>1 recollection?</p> <p>2 A. That doesn't refresh my recollection</p> <p>3 that I had a conversation with him.</p> <p>4 Q. And do you recall a discussion where</p> <p>5 Mr. Carroll informed you of a proposed</p> <p>6 resolution of pending matters between</p> <p>7 BEH and the NAC and you directed him</p> <p>8 to reject that proposed resolution?</p> <p>9 A. I don't recall that conversation.</p> <p>10 Q. Now, at some point a Part 16 Complaint</p> <p>11 was filed, was it not?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall when that was?</p> <p>14 A. I don't recall the exact date.</p> <p>15 Q. Let me show you a document that's been</p> <p>16 marked at Exhibit 32 to the Bishop</p> <p>17 deposition. It appears to be a letter</p> <p>18 from BEH's attorneys dated March 11,</p> <p>19 2015. Have you seen that before?</p> <p>20 A. Yes.</p> <p>21 Q. And did you see it in or about March</p> <p>22 of 2015 for the first time?</p> <p>23 A. I don't recall when I saw it for the</p> <p>24 first time.</p> | <p style="text-align: right;">132</p> <p>1 Q. I'm sorry, Tracy Clay.</p> <p>2 A. I've had one conversation with Tracy</p> <p>3 Clay in all the years that I've known</p> <p>4 him and it was not about that.</p> <p>5 Q. And let me show you a document that's</p> <p>6 been marked as Exhibit 96. It appears</p> <p>7 to be an e-mail from Chris Willenborg to</p> <p>8 you dated April 15, 2015 asking for a</p> <p>9 meeting to discuss the recently filed</p> <p>10 Part 16 Complaint at which Tracy Clay</p> <p>11 and Mr. Willenborg offered to come to</p> <p>12 Norwood to speak to you. Does that</p> <p>13 refresh your recollection as to whether</p> <p>14 or not you spoke to these people about</p> <p>15 the Part 16 Complaint?</p> <p>16 A. No, it does not refresh my recollection.</p> <p>17 I only recall having one conversation</p> <p>18 with Mr. Clay and it was when he was</p> <p>19 climbing into a MassDOT helicopter.</p> <p>20 That's that only one I recall.</p> <p>21 Q. What about Mr. Willenborg?</p> <p>22 A. It's not to say that I didn't have a</p> <p>23 conversation with him. I just don't</p> <p>24 recall it.</p> |

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| <p style="text-align: right;">133</p> <p>1 Q. We were talking earlier about Exhibit 2 2 and you said that you thought that there 3 had been some recent amendments or 4 modifications to the regulations. 5 A. My recollection is there was only one. 6 It had to do with the national fire 7 setback, which we modified from 8 50 feet to 25 feet, based on the 9 national standard. 10 Q. And did you take part in the process 11 of revising these regulations? 12 A. I did. 13 Q. And was that recently? 14 A. The most recent revision? 15 Q. Yes. 16 A. Yes. 17 Q. June of 2017, right? 18 A. Of which regulations are we talking 19 about? 20 Q. Minimum standards. 21 A. Oh, the minimum standards. 22 Q. Yes. 23 A. Yes, I did take part. 24 MR. FEE: Can you mark that</p> | <p style="text-align: right;">135</p> <p>1 A. I don't recall, but this certainly 2 wasn't a revision four days ago. 3 Q. Well, there may be some discrepancy on 4 that date. Ignore the date on the top. 5 Can you look at the document and tell 6 me if this represents your understanding 7 of the most recent revisions to the 8 minimum standards? 9 A. These appear to be the most current, 10 yeah. 11 Q. So I'm going to direct your attention on 12 the first page to the second paragraph. 13 And the last sentence in the 2008 14 version, second paragraph last sentence 15 reads, For the public interest the 16 application of minimum standards 17 also discourages substandard would 18 be enterprises from operating on the 19 airport - thereby protecting established 20 aeronautical activities and the airport 21 patrons. Did I read that portion 22 correctly? 23 A. On this portion? 24 Q. On the 2008 version.</p> |
| <p style="text-align: right;">134</p> <p>1 exhibit. 2 (Exhibit No. 97, Norwood 3 Airport Minimum Standards, marked 4 for identification.) 5 Q. The stenographer has handed you a 6 document that's been marked as Exhibit 7 No. 97. It appears to be a document 8 Norwood Airport Minimum Standards and on 9 the top it has the handwritten notation 10 new 6/12/2017. Can you just take a 11 look and confirm for me whether or not 12 these are the revisions to the minimum 13 standards that you just described? 14 A. Actually I may have made a mistake. 15 I was actually thinking back on the 16 national fire protection amendment. We 17 are talking 6/12/17 on these standards, 18 which would have been four days ago. 19 Q. 6/12/17. 20 A. There was no revision. 21 Q. There was no revision? 22 A. No. 23 Q. When was the last revision to the 24 minimum standards?</p> | <p style="text-align: right;">136</p> <p>1 A. Yes. 2 Q. Now on the most recent version it reads, 3 For the public interest the application 4 of minimum standards also discourages 5 substandard would be commercial 6 enterprises from operating on the airport 7 and leaves out the phrase, quote, Thereby 8 protecting established aeronautical 9 activities and the airport patrons, is 10 that correct? 11 A. As it's written, yes. 12 Q. So why did the airport commission elect 13 to excise that language from the minimum 14 standards? 15 A. I don't know. 16 Q. Did you participate in this? 17 A. I don't recall. 18 Q. Do you recall any discussion? 19 A. I don't recall a change. I just don't 20 recall it. 21 Q. The next paragraph in the new policy, 22 paragraph 3, says, The requirement 23 to meet Norwood Airport's minimum 24 standards applies only to commercial</p> |

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| <p style="text-align: right;">137</p> <p>1 enterprises located within the physical 2 boundaries of the Norwood Airport or 3 to commercial enterprises located along 4 the abutting access road within the 5 corresponding north/south boundary points 6 of Norwood Airport. Did I read that 7 correctly? 8 A. Yes. 9 Q. And that's not in the 2008 version, 10 right? 11 A. It doesn't appear to be. I guess I'm 12 going to have to defer back to an earlier 13 statement. I'm not sure where this 14 version came from. 15 Q. I will represent to you that this 16 version is what's on the website, on 17 the airport's website at the present 18 time? 19 A. Okay. 20 Q. So I assume that from that fact it's the 21 operative current language. I just don't 22 know when it was enacted and you can't 23 tell me when it was enacted, but it's 24 sometime subsequent to 2008, I'm</p> | <p style="text-align: right;">139</p> <p>1 prior to 2008. This is not the first 2 time I've seen it, which is why I'm a 3 little confused that it's not in here. 4 Q. Okay. But it's your understanding that 5 it's, at present, part of the minimum 6 standards, that language, paragraph 3, 7 is that right? 8 A. Yes. 9 Q. Now at some point we discussed the 10 fact whether it was un-tabled or 11 something else. The commission began 12 to talk to BEH about considering various 13 documentation that was necessary for 14 consideration of its FBO permit, right? 15 A. It was an ongoing dialogue. 16 Q. As you sit here today, do you know, 17 after the matter was un-tabled, do you 18 know what documentation the commission 19 was asking BEH to supply? 20 A. Can you give me the date that you're 21 referring to? 22 Q. Well, it was tabled in June of 2014. 23 So I'm wondering what your recollection 24 is at or about that time, whenever the</p> |
| <p style="text-align: right;">138</p> <p>1 assuming, is that fair to say? 2 A. I think that's fair to say. 3 Q. And so my question is, the third 4 paragraph of the new standards, that's 5 been marked as Exhibit 97, was added 6 at some point. And my question is, do 7 you have any information as to why? 8 MR. SIMMS: Beyond the scope. 9 Go ahead. 10 A. To give you a complete answer on this, 11 and, again, this may just be, because 12 I'm seeing this for the first time. My 13 recollection of the minimum standards 14 was that the minimum standards applied 15 to and the -- this reference had to 16 do with the ability to physically base 17 on the airport and also to -- because 18 of the finite -- the land constraints 19 inside the fence to give the ability to 20 still seek a commercial permit without 21 being on the airport proper, but within 22 the physical and north/south boundaries. 23 So I've seen this before and possibly an 24 earlier iteration of minimum standards</p> | <p style="text-align: right;">140</p> <p>1 commission started to reconsider that 2 application, what specific documentation 3 they were asking for? 4 A. They were looking for financial 5 information and the business plan that 6 had already submitted. They did not 7 find it satisfactory and they were 8 looking for a revised business plan. 9 Q. And do you know why the business plan 10 was unsatisfactory? 11 A. That was a determination by the 12 commission. I believe they gave a 13 number of reasons. I just don't 14 recall the full list. 15 Q. Let's just talk about the business 16 plan for a minute. I'm showing you 17 what has been marked Exhibit 13. It 18 appears to be a document dated July 9, 19 2014. Have you seen this before? 20 A. Is this the revised plan? I'm not sure. 21 Q. I know that there are various iterations 22 of it and I'm not sure if this was the 23 final or not, but I just want you to 24 take a look at it and look at the date.</p> |

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| <p style="text-align: right;">141</p> <p>1 A. Okay.</p> <p>2 Q. And tell me whether you think that this</p> <p>3 was the document that they still had</p> <p>4 problems with or was this the document</p> <p>5 that ultimately satisfied the commission</p> <p>6 that the business plan was acceptable?</p> <p>7 A. This appears to be the revised plan.</p> <p>8 Q. So as you sit here today, you think</p> <p>9 that the document that's been marked</p> <p>10 as Exhibit 13 and dated July 9, 2014</p> <p>11 was the version of the business plan</p> <p>12 that the commission found acceptable,</p> <p>13 is that a fair statement?</p> <p>14 A. Yes.</p> <p>15 Q. And you mentioned that there they were</p> <p>16 also looking for financial information,</p> <p>17 is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if BEH submitted information</p> <p>20 that satisfied the commission regarding</p> <p>21 its financial capabilities?</p> <p>22 A. BEH had supplied financial information</p> <p>23 initially that the commission found</p> <p>24 unsatisfactory.</p> | <p style="text-align: right;">143</p> <p>1 reviewed it on or about September 29,</p> <p>2 2015?</p> <p>3 A. I don't recall the exact date that they</p> <p>4 would do that.</p> <p>5 Q. Is this the document that you believe</p> <p>6 satisfied the commission's requirement</p> <p>7 regarding the provision of financial</p> <p>8 information in connection with the</p> <p>9 FBO request by BEH?</p> <p>10 A. I believe this is the document.</p> <p>11 Q. And, in addition, did the commission</p> <p>12 at any point ask for a personal</p> <p>13 guarantee or a letter of credit?</p> <p>14 A. Yes, there was a requirement for</p> <p>15 either a letter of credit or a</p> <p>16 personal guarantee. That document</p> <p>17 went back and forth.</p> <p>18 Q. And was the commission's request</p> <p>19 for a personal guarantee or a letter</p> <p>20 of credit ever satisfied?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Was that demand or request withdrawn</p> <p>23 at any point?</p> <p>24 A. As I understand it, the requirement --</p> |
| <p style="text-align: right;">142</p> <p>1 Q. And I understand that. But my question</p> <p>2 is, at some point did BEH submit</p> <p>3 financial information that the commission</p> <p>4 found satisfactory?</p> <p>5 A. As I recall, the financial information</p> <p>6 was submitted ultimately through a</p> <p>7 third-party consultant and after reading</p> <p>8 the report, the letter from the</p> <p>9 third-party consultant, the commission</p> <p>10 was satisfied.</p> <p>11 Q. And do you know when that was?</p> <p>12 A. I don't recall.</p> <p>13 MR. FEE: Mark this.</p> <p>14 (Exhibit No. 98, Letter,</p> <p>15 Aviation Management Consulting</p> <p>16 Group Dated 9/29/15, marked for</p> <p>17 identification.)</p> <p>18 Q. I'm showing you a document that has</p> <p>19 been marked as Exhibit 98. Is this the</p> <p>20 report from the third-party consultant</p> <p>21 that you referred to in your immediate</p> <p>22 prior answer?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know if the commission</p> | <p style="text-align: right;">144</p> <p>1 it was no longer a requirement when the</p> <p>2 land lease offer was -- when BEH did not</p> <p>3 enter negotiations at the prescribed --</p> <p>4 prior to the prescribed deadline that</p> <p>5 the commission had set.</p> <p>6 Q. And just so I understand your testimony,</p> <p>7 there is an FBO permit request by BEH</p> <p>8 that is currently pending, is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the commission has voted to offer</p> <p>12 an FBO, but is subject to certain</p> <p>13 documentary requirements outstanding,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And that sole documentary requirement,</p> <p>17 as we sit here today, is a fueling plan,</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And no other documents are being</p> <p>21 requested by the commission at this</p> <p>22 point in time to satisfy the requirements</p> <p>23 for the issuance of an FBO, correct?</p> <p>24 A. That's correct. And that was stated at</p> |

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| <p style="text-align: right;">145</p> <p>1 yesterday's airport commission meeting.</p> <p>2 Q. Right, at which we were both present.</p> <p>3 A. Uh-huh.</p> <p>4 Q. My question is, at what point did the</p> <p>5 requirement of a personal guarantee or a</p> <p>6 letter of credit cease to be something</p> <p>7 that the commission wanted?</p> <p>8 A. When the time had past beyond the</p> <p>9 deadline that the commission had given</p> <p>10 BEH to enter lease negotiations, my</p> <p>11 understanding was that the letter of</p> <p>12 credit and/or the personal guarantee</p> <p>13 were aligned with the specific part</p> <p>14 of the offer, the land offer, not the</p> <p>15 permit offer.</p> <p>16 Q. And is that in writing anywhere?</p> <p>17 A. I don't know.</p> <p>18 Q. And what is the basis for your belief</p> <p>19 that the requirement of a personal</p> <p>20 guarantee or a letter of credit was</p> <p>21 tied to the lease portion of this?</p> <p>22 A. I recall that being stated at a</p> <p>23 commission meeting.</p> <p>24 Q. And when you say the lease portion of</p> | <p style="text-align: right;">147</p> <p>1 to weigh in on the request for a</p> <p>2 personal guarantee, right?</p> <p>3 A. Right.</p> <p>4 Q. And in this second paragraph you say --</p> <p>5 first of all, did you write this letter?</p> <p>6 A. I did with some help from town counsel.</p> <p>7 Q. In the second paragraph you say, In terms</p> <p>8 of the guarantee Norwood town counsel has</p> <p>9 weighed in believing there needs to be a</p> <p>10 guarantor with sufficient assets to stand</p> <p>11 in for the business obligations. And</p> <p>12 then there is a footnote and the footnote</p> <p>13 says, As noted these business obligations</p> <p>14 to the Town of Norwood include lease</p> <p>15 payments, fuel flowage fee payments</p> <p>16 and property damage. Did I read that</p> <p>17 directly?</p> <p>18 A. Yes.</p> <p>19 Q. So does that refresh your recollection</p> <p>20 regarding your prior testimony with</p> <p>21 respect to the requirement of a personal</p> <p>22 guarantee and what it was designed to</p> <p>23 cover?</p> <p>24 A. Again, my personal recollection was</p> |
| <p style="text-align: right;">146</p> <p>1 this application, you're referring</p> <p>2 to the West Apron?</p> <p>3 A. The West Apron, correct.</p> <p>4 (Exhibit No. 99, Norwood</p> <p>5 Memorial Airport Letter Dated 9/25/15,</p> <p>6 marked for identification.)</p> <p>7 Q. I'm showing you a document that's been</p> <p>8 marked as Exhibit 99. It appears to be</p> <p>9 a letter from you to Tracy Clay, general</p> <p>10 counsel at MassDOT, regarding a letter</p> <p>11 of guarantee for start-up FBO. Do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. Did you write this letter?</p> <p>15 A. Yes.</p> <p>16 Q. Did you write it on or about</p> <p>17 September 25, 2015?</p> <p>18 A. Yes.</p> <p>19 Q. Directing your attention to the second</p> <p>20 paragraph on the first page -- second</p> <p>21 paragraph, second page.</p> <p>22 A. Okay.</p> <p>23 Q. And to paraphrase up to this point,</p> <p>24 you're asking the DOT general counsel</p> | <p style="text-align: right;">148</p> <p>1 that the guarantee itself that was being</p> <p>2 sought and in lieu of that letter of</p> <p>3 credit the commission was looking for</p> <p>4 that as a guarantee on the lease,</p> <p>5 specific to the lease.</p> <p>6 Q. Well, that position is somewhat</p> <p>7 inconsistent with the language in the</p> <p>8 second paragraph of the second page,</p> <p>9 wouldn't you agree? You seem to describe</p> <p>10 a much more expansive obligation in that</p> <p>11 sentence, is that correct?</p> <p>12 A. Yeah. This is town counsel's wording</p> <p>13 and obviously there was some concern</p> <p>14 based on another business that had failed</p> <p>15 at another airport. And there was never,</p> <p>16 as I recall, any response to this letter,</p> <p>17 so we were left wondering.</p> <p>18 Q. And you said that you collaborated with</p> <p>19 town counsel on this letter?</p> <p>20 A. Right.</p> <p>21 Q. And did you have conversations with town</p> <p>22 counsel about this letter?</p> <p>23 A. Yes.</p> <p>24 Q. And what did you say to him and what did</p> |

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| <p style="text-align: right;">149</p> <p>1 he say to you?</p> <p>2 MR. SIMMS: Well, I'm going to</p> <p>3 object to that.</p> <p>4 MR. FEE: It's waived.</p> <p>5 MR. SIMMS: Why is it waived?</p> <p>6 MR. FEE: Third party.</p> <p>7 MR. SIMMS: Why is it waived?</p> <p>8 Just because some portion of a</p> <p>9 conversation ends up in a letter, even</p> <p>10 to a third party, doesn't mean there is</p> <p>11 a waiver.</p> <p>12 MR. FEE: I can ask him with</p> <p>13 respect to this particular language.</p> <p>14 MR. SIMMS: You can ask him</p> <p>15 about the language in the letter. That's</p> <p>16 an narrower question.</p> <p>17 MR. FEE: That's a good point.</p> <p>18 Q. Let me ask you what you said to town</p> <p>19 counsel and what he said to you regarding</p> <p>20 this particular paragraph regarding the</p> <p>21 guarantee obligations?</p> <p>22 A. I don't recall.</p> <p>23 Q. Which town counsel did you communicate</p> <p>24 with regarding this?</p> | <p style="text-align: right;">151</p> <p>1 it was -- I recall it being reviewed by</p> <p>2 town counsel for accuracy as I didn't</p> <p>3 want to misrepresent his position.</p> <p>4 Q. And his position was that a personal</p> <p>5 indemnity and a guarantee of all of</p> <p>6 the business's obligations was required</p> <p>7 for an FBO, right?</p> <p>8 A. That's based on the way it's written,</p> <p>9 yes.</p> <p>10 Q. Where is that in the minimum standards?</p> <p>11 A. It's not in the minimum standards. I</p> <p>12 thought you put something in front of</p> <p>13 me.</p> <p>14 Q. No, no. I'm just asking if, in your</p> <p>15 opinion, whether the requirement of</p> <p>16 a personal indemnity and guarantee</p> <p>17 as described in this letter to DOT</p> <p>18 is part of the minimum standards and</p> <p>19 you say it's not?</p> <p>20 A. It's not in the minimum standards.</p> <p>21 Q. And so did you have a discussion with</p> <p>22 town counsel as to why it was appropriate</p> <p>23 to ask for required documents that were</p> <p>24 not in the minimum standards?</p> |
| <p style="text-align: right;">150</p> <p>1 A. Brandon Moss.</p> <p>2 Q. At the final sentence in that paragraph</p> <p>3 it says, Finally town counsel believes</p> <p>4 it should be a personal indemnity and a</p> <p>5 guarantee of the business's obligations.</p> <p>6 And from the best practices standpoint</p> <p>7 the airport commission should have some</p> <p>8 proof that the guarantor indemnitor has</p> <p>9 the actual ability to stand in for --</p> <p>10 (Off the record.)</p> <p>11 (Back on the record.)</p> <p>12 Q. Last sentence in that paragraph reads,</p> <p>13 Finally town counsel believes it should</p> <p>14 be a personal indemnity and a guarantee</p> <p>15 of the business's obligations. And from</p> <p>16 a best practice's standpoint the airport</p> <p>17 commission should have some proof that</p> <p>18 the guarantor indemnitor has the</p> <p>19 actual ability to stand in for those</p> <p>20 obligations. Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And are those your words or town</p> <p>23 counsel's words?</p> <p>24 A. Well, the letter is written by me, but</p> | <p style="text-align: right;">152</p> <p>1 A. I don't recall having that conversation</p> <p>2 with town counsel.</p> <p>3 Q. And did town counsel ever tell you that</p> <p>4 the commission had the ability to request</p> <p>5 documents that were above and beyond the</p> <p>6 minimum standards?</p> <p>7 MR. SIMMS: Objection. It's</p> <p>8 attorney/client privilege. I don't see</p> <p>9 a waiver.</p> <p>10 MR. FEE: Are you going to</p> <p>11 instruct him not to answer or no?</p> <p>12 MR. SIMMS: Yes.</p> <p>13 MR. FEE: Are you going to</p> <p>14 instruct him not to answer all questions</p> <p>15 regarding -- because we talked about</p> <p>16 this a minute ago. I'm narrowing my</p> <p>17 questions to issues that are identified</p> <p>18 specifically in this paragraph. If my</p> <p>19 question was too broad, I'm happy to</p> <p>20 narrow it.</p> <p>21 MR. SIMMS: I thought the</p> <p>22 last question was too broad.</p> <p>23 Q. And when we took that brief break a</p> <p>24 minute ago, did you have a conversation</p> |

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| <p style="text-align: right;">153</p> <p>1 with your counsel about your response to 2 my questions regarding this paragraph? 3 A. No. 4 Q. And you didn't talk to him about the 5 question that was pending at the time 6 that we took that break? 7 A. No. 8 Q. Did town counsel tell you the basis 9 for his belief that a personal indemnity 10 and guarantee were an appropriate ask 11 for an FBO application in this context? 12 A. I don't believe -- I don't recall 13 him having that conversation with me. 14 Anything that we might have talked 15 about would have been put in the letter. 16 Q. And we talked earlier about the minimum 17 standards and you described them 18 as being solid guidelines that the 19 commission should endeavor to follow 20 whenever it can, right? 21 A. Yes. 22 Q. You would agree with me that the request 23 of the commission to ask for a personal 24 guarantee and indemnity from BEH was</p> | <p style="text-align: right;">155</p> <p>1 A. I recall Commissioner Sheehan talking 2 about the need for a personal guarantee 3 or a letter of credit as an assurance -- 4 some form of insurance to the town that 5 the financial obligations would be met. 6 Q. I understand that the ask was made. My 7 question was, was there any consideration 8 of the fact that the request was over 9 and above those standards set forth in 10 the minimum standards? 11 A. I don't know what consideration the 12 commission had beyond what it had 13 articulated in the meetings. 14 Q. Well, the commission took a position 15 that it was entitled to ask for 16 information and documentation that 17 was not part of the minimum standards, 18 correct? 19 A. Yes. 20 Q. Was there any discussion amongst the 21 commissioners as to their ability or 22 authority to do that? 23 A. I don't recall. 24 Q. Was there any discussion amongst the</p> |
| <p style="text-align: right;">154</p> <p>1 over and above the minimum standards, 2 correct? 3 MR. SIMMS: Objection. 4 Beyond the scope. Go ahead. 5 A. I would agree what they were asking 6 for was not in the minimum standards. 7 Q. What rationale, if any, was articulated 8 to you by anyone regarding the -- strike 9 that. What was the justification -- 10 sorry. What rationale did the commission 11 utilize in support of its request 12 for documents above and beyond the 13 minimum standards? 14 MR. SIMMS: Can you read 15 that back, because I got lost with 16 the prefaces. 17 Q. Let me try again. What justification, 18 if any, did the Norwood Airport 19 Commission have for requesting 20 documentation over and above what 21 was required in the minimum standards 22 from BEH? 23 MR. SIMMS: Beyond the scope. 24 You can answer.</p> | <p style="text-align: right;">156</p> <p>1 commissioners regarding the rationale 2 for them deviating from the minimum 3 standards? 4 A. Again, I believe it was Commissioner 5 Sheehan at one or several meetings 6 who felt that the financial obligations 7 needed to be -- there needed to be 8 some insurance and the commission 9 agreed to that. 10 Q. And what was the reason for wanting 11 more insurance from this applicant? 12 A. I don't recall what their -- you 13 know, beyond what I've just said. 14 Q. And was there a concern regarding the 15 financial capabilities of the applicant? 16 A. I think that would be -- well, that 17 would be a question for the commission. 18 They made the decision. 19 Q. Well, we looked earlier at the 20 third-party consulting report that 21 you stated the commission accepted on 22 or about September 29, 2015 as being 23 sufficient to attest to the financial 24 capabilities and wherewithal of the</p> |

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| <p style="text-align: right;">157</p> <p>1 applicant, right?</p> <p>2 A. Yes.</p> <p>3 Q. And yet thereafter there was continued</p> <p>4 request from the commission for</p> <p>5 guarantees and personal indemnity,</p> <p>6 correct?</p> <p>7 A. There were and the commission was clear</p> <p>8 about the fact that they were going to</p> <p>9 require the same thing of FlightLevel.</p> <p>10 Q. I'm not asking you about FlightLevel.</p> <p>11 I'm asking you what they asked of BEH.</p> <p>12 And you testified, as of September 29,</p> <p>13 2015, the commission was satisfied</p> <p>14 that BEH had the financial capabilities</p> <p>15 and wherewithal to perform as an FBO,</p> <p>16 correct?</p> <p>17 A. Based on the minimum standards, correct.</p> <p>18 Q. But then at or about the same time the</p> <p>19 commission is having you write a letter</p> <p>20 asking for guidance regarding whether or</p> <p>21 not you can ask for a personal guarantee</p> <p>22 and indemnity from DOT, right?</p> <p>23 A. Yes.</p> <p>24 Q. So it's clear, is it not, that it's not</p> | <p style="text-align: right;">159</p> <p>1 what was shared at the public meeting.</p> <p>2 (Exhibit No. 100, E-Mail Dated</p> <p>3 6/21/16, marked for identification.)</p> <p>4 Q. We've reached 100, the magic number.</p> <p>5 I'm going to show you a document that's</p> <p>6 been marked as Exhibit 100. It appears</p> <p>7 to be an e-mail from you to Jim Gordon</p> <p>8 dated June 21, 2016. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And did you send that?</p> <p>11 A. Yes.</p> <p>12 Q. Who's Jim Gordon?</p> <p>13 A. Jim Gordon is a congressional aide to</p> <p>14 Congressman Stephen Lynch.</p> <p>15 Q. And so in this e-mail you say, Norwood</p> <p>16 Town Counsel's Brandon Moss as well as</p> <p>17 our litigating Attorney John Davis are</p> <p>18 interested in holding a conference call</p> <p>19 with you this morning at 11 a.m. Would</p> <p>20 you be available at that time for perhaps</p> <p>21 a 10- or 15-minute talk? Did I read that</p> <p>22 correctly?</p> <p>23 A. Yes.</p> <p>24 Q. And did Mr. Gordon respond?</p> |
| <p style="text-align: right;">158</p> <p>1 just the financial wherewithal that</p> <p>2 the commission is worried about at</p> <p>3 this point in time, right?</p> <p>4 MR. SIMMS: Objection. Go</p> <p>5 ahead.</p> <p>6 A. I don't know. I mean, the commission</p> <p>7 is making decisions based on what the</p> <p>8 commission feels is in the best interest</p> <p>9 of the town.</p> <p>10 Q. I get that. You are sitting in the</p> <p>11 meetings and so you have a unique insight</p> <p>12 into what is being said in these meetings</p> <p>13 and what positions are being taken by the</p> <p>14 various commissioners. And I'm trying</p> <p>15 to understand if they've accepted the</p> <p>16 third-party consultant's representations</p> <p>17 regarding the financial capabilities</p> <p>18 of the applicant, why are they still</p> <p>19 insisting that a personal guarantee or</p> <p>20 indemnity be provided as a prerequisite</p> <p>21 for the issuance of an FBO? Do you</p> <p>22 have any insight into that?</p> <p>23 A. I don't have any insight into what</p> <p>24 the commission was thinking beyond</p> | <p style="text-align: right;">160</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you have a discussion with Mr.</p> <p>3 Gordon in response to this e-mail?</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall speaking with Brandon</p> <p>6 Moss and Attorney John Davis on or</p> <p>7 about June 21, 2016?</p> <p>8 A. I don't recall.</p> <p>9 Q. Who told you to send this e-mail?</p> <p>10 A. I don't recall.</p> <p>11 Q. Well, it says, Brandon Moss and John</p> <p>12 Davis are interested in holding a</p> <p>13 conference call. That doesn't refresh</p> <p>14 your recollection as to who told you</p> <p>15 to do this?</p> <p>16 A. It doesn't refresh my recollection,</p> <p>17 whether it was one or both. It could</p> <p>18 have been both. Based on my e-mail,</p> <p>19 it was at least one of them, but I don't</p> <p>20 recall the conversation that prompted</p> <p>21 the e-mail.</p> <p>22 Q. Well, what topic do you believe Attorney</p> <p>23 Davis and Attorney Moss wanted to discuss</p> <p>24 with Mr. Gordon?</p> |

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| <p style="text-align: right;">161</p> <p>1 A. Well, based on the header, I would say 2 the Part 16 Complaint. 3 Q. What about the Part 16 Complaint did 4 you want to discuss with an aide to 5 your congressman? 6 A. I don't know. 7 Q. You have no recollection whatsoever 8 of sending this e-mail? 9 A. No. 10 Q. You have no recollection of any 11 conversation with Mr. Gordon regarding 12 the subject matter of this e-mail? 13 A. No. 14 Q. You have no recollection of discussing 15 this e-mail with Mr. Moss or with 16 Mr. Davis, is that correct? 17 A. That's correct. 18 (Exhibit No. 101, Letter Dated 19 6/13/16, marked for identification.) 20 Q. I'm showing you a document that's 21 marked as Exhibit 101. It appears 22 to be a letter dated June 13, 2016. 23 Have you seen this before? 24 A. I have a vague recollection of it.</p> | <p style="text-align: right;">163</p> <p>1 I don't know. 2 Q. Well, this is written by Brandon Moss, 3 right? 4 A. Yes. 5 Q. He's town counsel. He's speaking on 6 behalf of the commission, is he not? 7 A. Yes. 8 Q. And he's saying that BEH is adversarial 9 and litigious. And as a result the NAC 10 -- it's reasonable for the NAC to impose 11 requirements on the fixed based operator 12 permit, right? 13 A. Based on these words, yes. 14 Q. And did you agree that in June of 2016 15 that the adversarial and litigious 16 nature of BEH justified imposing 17 requirements on BEH's FBO permit 18 application? 19 A. Imposing requirements, such as? I'm 20 having trouble with that requirements. 21 Q. As we discussed previously, there were 22 a variety of requirements that were 23 requested by the commission following 24 the un-tabling of the FBO application</p> |
| <p style="text-align: right;">162</p> <p>1 There is many, many filings, but I 2 have a recollection. 3 Q. I'm going to direct your attention 4 to the second page, third paragraph. 5 And it says, BEH's conduct in connection 6 with these three lawsuits reflects 7 BEH's litigious and adversarial nature 8 and the corresponding litigation risk 9 emanating from BEH. Moreover, BEH's 10 conduct only confirms the reasonableness 11 of the respondents' responses to BEH 12 as well as the reasonableness of the 13 requirements imposed by the respondents 14 in connection with the fixed based 15 operator commercial permit and lease 16 sought by BEH. Did I read that 17 correctly? 18 A. Yes. 19 Q. Does this correctly and accurately 20 reflect the feeling of the commission 21 at or about June 13, 2016 regarding 22 its requirements that it was imposing 23 on BEH's FBO permit application? 24 A. I don't know what the commission's --</p> | <p style="text-align: right;">164</p> <p>1 in June of 2014. 2 A. Right. 3 Q. They included personal guarantee, 4 spill insurance, a letter of credit, 5 a personal guarantee, spill insurance, 6 fuelling plan. Those were the 7 additional requirements that were 8 set forth by the commission after 9 un-tabling the FBO. Does that give 10 it context for you? 11 MR. SIMMS: Objection to 12 form. Go ahead. 13 A. The un-tabling of the FBO was 2014? 14 Q. Yes. 15 A. The initial fuel plan drawing 16 was submitted in 2013. It was 17 unsatisfactory, because it wasn't a 18 scaled drawing and it did not show 19 the court ordered -- the land that 20 was in dispute and ended up in the 21 court and it didn't show the court 22 order, which came after the fuel plan 23 drawing of 2013. So the commission 24 was looking for an updated scaled fuel</p> |

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| <p style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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> |

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| <p style="text-align: right;">169</p> <p>1 was acquiring the interest of Eastern 2 Air Center. They also were retaining 3 their senior management from Eastern 4 Air Center, which had a successful 5 operation. They were satisfied with 6 the expertise and the background 7 of the FlightLevel management team. 8 Q. FlightLevel management team was 9 led by a 26-year-old person, who 10 had never run an FBO, right? 11 A. But he was only one among a team. 12 Q. Can you just answer yes or no to 13 my question? 14 A. That is true in part, but, again, it 15 takes out of context the management 16 team, which was what was presented 17 to the airport commission. 18 Q. And so the management team was what 19 differentiated the treatment given to 20 FlightLevel when its FBO application 21 was considered versus the consideration 22 given BEH. Is that the difference? 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. It is broad. FlightLevel had to produce 2 a business plan and financial information 3 and, you know, a statement or a set of 4 documents regarding the experience level 5 of the management team and that was 6 deemed satisfactory by the commission. 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> |

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| <p style="text-align: right;">173</p> <p>1 that fair to say?</p> <p>2 A. At that time that's fair to say.</p> <p>3 Q. And was there any discussion that you</p> <p>4 recall at the June 15, 2016 meeting</p> <p>5 regarding the reason for including</p> <p>6 that requirement?</p> <p>7 A. I don't recall.</p> <p>8 Q. What was your understanding of what</p> <p>9 it meant that the parties resolve all</p> <p>10 outstanding legal matters between them?</p> <p>11 A. This was a decision by the commission.</p> <p>12 I don't have a full understanding</p> <p>13 what they meant by that. I can only</p> <p>14 speculate on what the commission meant.</p> <p>15 Q. I don't want you to speculate.</p> <p>16 A. I don't want to speculate either.</p> <p>17 Q. But at the time in June of 2016 there</p> <p>18 were a variety of pending litigation</p> <p>19 matters, were there not?</p> <p>20 A. There were.</p> <p>21 Q. There was a Part 16 proceeding?</p> <p>22 A. Right.</p> <p>23 Q. There was a couple of litigation matters</p> <p>24 pending in the Norfolk Superior Court?</p> | <p style="text-align: right;">175</p> <p>1 requirement that all legal matters</p> <p>2 be resolved, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know why they decided to</p> <p>5 do that?</p> <p>6 A. Again, I have no idea.</p> <p>7 Q. Were you privy to any conversations or</p> <p>8 meetings in which the requirement that</p> <p>9 the parties resolve all legal matters</p> <p>10 between them be removed as a requirement</p> <p>11 for the issuance of an FBO permit?</p> <p>12 A. I was not a party to that conversation.</p> <p>13 (Exhibit No. 103, Letter Dated</p> <p>14 11/1/16, marked for identification.)</p> <p>15 Q. I'm showing you a document that's been</p> <p>16 marked as Exhibit 103. It appears</p> <p>17 to be a letter from you to BEH dated</p> <p>18 November 1, 2016. Did you write this</p> <p>19 letter?</p> <p>20 A. Yes.</p> <p>21 Q. And you will note on the top paragraph</p> <p>22 of the second page it says, At the</p> <p>23 October 19, 2016 meeting the NAC did</p> <p>24 vote to strike the condition initially</p> |
| <p style="text-align: right;">174</p> <p>1 A. Yes.</p> <p>2 Q. There was a litigation matter pending</p> <p>3 in the United States District Court,</p> <p>4 which this deposition is part of that</p> <p>5 proceeding, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And all of those matters are ongoing</p> <p>8 in 2016, right?</p> <p>9 A. Yes.</p> <p>10 Q. And was it your understanding, based</p> <p>11 on that vote, that the commission was</p> <p>12 asking BEH to drop all of its lawsuits</p> <p>13 as a requirement for the issuance of</p> <p>14 the FBO and this is as of June of 2016?</p> <p>15 A. Again, I did not have a full understanding</p> <p>16 of what that meant. I was not party to</p> <p>17 any deliberation on that and I don't know</p> <p>18 what the commission meant by outstanding</p> <p>19 legal matters.</p> <p>20 Q. But you were present at the June 15th</p> <p>21 meeting?</p> <p>22 A. Yes.</p> <p>23 Q. And so at some point thereafter</p> <p>24 the commission voted to remove that</p> | <p style="text-align: right;">176</p> <p>1 approved at the June 15, 2016 meeting</p> <p>2 that there be a resolution of all legal</p> <p>3 matters between the NAC and BEH. That</p> <p>4 condition no longer exists. Did I read</p> <p>5 that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. And did you prepare this letter?</p> <p>8 A. I did, but, again, it was a letter that</p> <p>9 was vetted through town counsel. I'm</p> <p>10 not sure whether our litigating attorneys</p> <p>11 were involved in it directly, but it</p> <p>12 was drafted by me and reviewed by town</p> <p>13 counsel, at least.</p> <p>14 Q. And you will note that the language</p> <p>15 that I just read regarding striking</p> <p>16 the condition that all legal matters</p> <p>17 between the NAC and BEH be resolved</p> <p>18 is in boldface?</p> <p>19 A. Yes.</p> <p>20 Q. And what was the reason for your</p> <p>21 boldfacing that language?</p> <p>22 A. I don't recall and I'm not -- I don't</p> <p>23 recall whether I boldfaced it or whether</p> <p>24 it was boldfaced by town counsel.</p> |

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| <p style="text-align: right;">177</p> <p>1 Q. Well, obviously it was either your 2 intent or the town counsel's intent 3 to draw attention to this particular 4 provision, correct? 5 A. Yes. 6 Q. And because it was important for some 7 reason? 8 A. Yes. 9 Q. And more important than the other 10 language that surrounded it, correct? 11 MR. SIMMS: Objection. Go 12 ahead. 13 A. I'm not sure it was more important. 14 I would argue that all the conditions 15 that were set forth and reiterated 16 were considered important. 17 Q. Fair point and let me restate it. 18 You emphasize this for some reason. 19 I'm wondering if you can recall what 20 that reason was? 21 A. As I recall, the reason was, because 22 it was a change. 23 Q. Do you recall any discussions that 24 you had with anyone, including town</p> | <p style="text-align: right;">179</p> <p>1 BY MR. McCULLOCH: 2 Q. Mr. Maguire, my name is Timothy McCulloch. 3 I represent Boston Executive Helicopters 4 along with Mr. Fee, who has been so ably 5 conducting your deposition to this point. 6 I'm simply going to continue on his 7 questions. 8 A. Okay. 9 Q. And so there will be really no particular 10 change. One quick question that I did 11 have for you. Did you meet with counsel 12 to prepare for your deposition? 13 A. I did. 14 Q. And do you recall when that was? 15 A. It was a week from yesterday, because 16 we were initially planning to meet for 17 my deposition a week ago, so it was 18 the day prior that we met. 19 Q. So a week and a day? 20 A. A week and a day. 21 Q. For how long did you meet with him? 22 A. A few hours. 23 Q. A few, two, three, four, five? 24 A. I would say close to two hours.</p> |
| <p style="text-align: right;">178</p> <p>1 counsel, regarding the decision to 2 reverse the requirement discussed 3 in the top paragraph on page 2 of 4 Exhibit 103? 5 A. I was never brought into that discussion. 6 I was never part of the decision loop. 7 They never made me a party to the 8 conversation or any deliberation 9 privately. 10 Q. So you don't recall any conversations 11 you had with anyone regarding the 12 decision to remove the requirement 13 that all legal matters be resolved 14 between the parties as a prerequisite 15 to an issuance of an FBO permit? 16 A. I don't recall any conversation along 17 those lines. 18 MR. FEE: I don't have anything 19 further. Tim has some questions. If 20 you guys want to take a break, refresh 21 or whatever you want to do, or we can 22 slide right into the next. 23 MR. SIMMS: Let's continue on. 24 DIRECT-EXAMINATION, Continued</p> | <p style="text-align: right;">180</p> <p>1 Q. Was there anybody else in the room 2 when you were meeting with him? 3 A. No. 4 Q. Do you recall your testimony with respect 5 to the commission being satisfied upon 6 the initial application by the Norwood 7 Airport -- by FlightLevel to the Norwood 8 Airport Commission for the FBO? Do you 9 recall testifying that you felt that the 10 Norwood Airport Commission was satisfied 11 that FlightLevel met the criteria to 12 provide FBO services, correct? 13 A. Yes. 14 Q. And I just want to get a little bit 15 of terminology here correct. When the 16 FAA says minimum standards, what do you 17 understand the minimum standards to be? 18 Why do you have minimum standards? Why 19 does an airport have minimum standards? 20 MR. SIMMS: Objection. Beyond 21 the scope. Go ahead. 22 A. The minimum standards serve to protect 23 the general public. To ensure that there 24 is a certain level of service by the</p> |

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| <p style="text-align: right;">181</p> <p>1 provider. To ensure to the airport 2 authority, the sponsor, that the business 3 in question has the ability to perform 4 the services, has the expertise to 5 perform the services and can do so 6 in a way, you know, that truly serves 7 the public. 8 Q. Doesn't it also protect the airport 9 from charges of economic discrimination? 10 MR. SIMMS: What's the full 11 question? 12 Q. Does it also not protect the airport 13 from charges of economic discrimination? 14 A. The minimum standards? 15 Q. Correct. 16 MR. SIMMS: Same objection. 17 A. I'm not sure that directly it does that. 18 I think the minimum standards' purpose 19 primarily is to, on an individual basis, 20 on the individual applicant's, you know, 21 interest in operating on an airport, 22 it gives the airport authority the 23 opportunity to ensure that they have 24 the equipment, the manpower, the</p> | <p style="text-align: right;">183</p> <p>1 and what not. So everybody inside 2 the fence, if they have been properly 3 vetted with the minimum standards as the 4 baseline, are qualified and professional, 5 and that, collectively, helps, you know, 6 the airport community, the business 7 community. 8 Q. So from your perspective the minimum 9 standards are a floor for a business 10 being able to be vetted to be appropriate 11 there at the airport. It's a floor 12 standard. 13 A. The minimum standards are a minimum. 14 Those are the minimum standards, but 15 it gives the commission a baseline 16 and from that there is room for 17 some discretion, but it gives them 18 a baseline of expectations. 19 Q. You've kind of testified to that before. 20 I kind of want to get you out of here. 21 You said it gives a baseline with some 22 discretion to ask for more. What is 23 the source of that discretion? Where 24 does that discretion come from?</p> |
| <p style="text-align: right;">182</p> <p>1 expertise, the service capabilities. 2 Q. I mean, I understand what you're saying 3 with respect to protecting the public 4 and you and I can have a gentleman's 5 agreement that that's true it does 6 protect the public, because the airport 7 sets a level of criteria that an operator 8 must meet. But does it not always 9 protect the airport from charges of 10 economic discrimination, because if an 11 operator meets the minimum standards, 12 they're qualified to get the permit 13 and, therefore, it takes some of the 14 subjectivity out of the equation. Do 15 you not agree with that statement? 16 MR. SIMMS: Objection to 17 form. 18 A. I think it takes some -- it gives 19 the airport authority a baseline of 20 expectations and perhaps indirectly 21 helps the business community, because 22 the people at the airport has approved 23 -- are able to operate in a community 24 of other businesses and compete fairly</p> | <p style="text-align: right;">184</p> <p>1 A. Well, I think the grant assurances give 2 the airport authority some discretion 3 to, within reason, require that, 4 you know, a certain uniformity -- 5 there should be some uniformity of 6 expectations. It gives the airport 7 authority some ability within reason 8 to ask for what it needs to ask for. 9 Q. Where in the grant assurances does it 10 provide for an airport to ask for items 11 over and above what is required in the 12 minimum standards? Did you tell me which 13 grant assurances? Well, I'll go with 14 your memory right now, because you said 15 just in the grant assurances. 16 A. I don't have the grant assurances in 17 front of me, but I'm sure you do. There 18 is one particular grant assurance that 19 eludes to that. And there is also 20 a grant assurance that says that the 21 airport sponsor should be as financially 22 self-sustaining as possible. And part 23 of that is that the airport sponsor 24 has the ability to protect itself</p> |

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| <p style="text-align: right;">185</p> <p>1 and protect the town and properly 2 be indemnified by businesses. 3 Q. And in order for an airport to be 4 self-sustaining, shouldn't it foster 5 competition, so that more fuel is 6 pumped, more fuel flow fees, more 7 rent, things along that line? 8 A. And that eludes back to what I said 9 earlier that the grant -- there is 10 a grant assurance that speaks to the 11 fact that an airport sponsor has the 12 ability, you know, without undo burden 13 and with reasonableness to make fair 14 expectations uniformly. 15 Q. Do you think an open-end personal 16 guarantee is a fair expectation? 17 MR. SIMMS: Objection. Go 18 ahead. 19 A. I don't have a -- I don't know. 20 Q. You don't know? 21 A. I don't know. I haven't worked with 22 personal guarantees, so I don't know. 23 MR. McCULLOCH: Let's mark 24 this. We're at 104.</p> | <p style="text-align: right;">187</p> <p>1 Q. And BEH has put a commercial permit 2 application into NAC for a number of 3 years, is that correct, to be a full 4 service fixed based operator, correct? 5 A. I'm trying to recall when they actually 6 submitted their first full service FBO 7 application. I believe that was 2015. 8 Q. And do you see here the company name is 9 FlightLevel Norwood, LLC? Do you see 10 that? 11 A. Yes. 12 Q. Are you familiar with limited liability 13 companies? 14 A. Probably not as familiar as a lawyer 15 would be. 16 Q. But do you have familiarity as -- 17 A. Very general familiarity with them. 18 Q. You've been an airport manager for a 19 long period of time. Is this the first 20 time a limited liability company has 21 ever come to your airport and sought 22 a permit? 23 A. No. 24 Q. And does the term "limited liability</p> |
| <p style="text-align: right;">186</p> <p>1 (Exhibit No. 104, Norwood 2 Memorial Airport 2007/2008 Commercial 3 Permit Application, marked for 4 identification.) 5 Q. Have you ever seen this document before? 6 A. Yes. 7 Q. And what is this document? 8 A. This is the FY 2007/2008, calendar 9 2007/2008 Commercial Permit Application 10 for FlightLevel. 11 Q. And you can see on the front page it's 12 got checkmarks and under No. 1 it says, 13 Full service fixed based operator, 14 multiservice fixed based operator as 15 compared to SASO, which stands for a 16 Specialty Aeronautical Service Operator. 17 A. Specialized Aviation Service 18 Organization. 19 Q. So they're applying to be full service 20 fixed based operator, correct? 21 A. Yes. 22 Q. As BEH has been attempting to do for a 23 number of years? 24 A. Yes.</p> | <p style="text-align: right;">188</p> <p>1 company" suggest to you that perhaps 2 it is a company of limited liability? 3 MR. SIMMS: Objection to form. 4 Go ahead. 5 A. I would agree with that. 6 Q. Meaning that one has to look at the 7 company and one cannot go beyond the 8 company, correct? 9 A. Again, I'm not, you know, a business 10 law expert, but -- I'm not sure what 11 you're looking for. 12 Q. Well, how long had FlightLevel Norwood, 13 LLC been at the airport at the time of 14 this application? 15 A. I don't know the exact number of days, 16 but relatively short period of time 17 based on my memory. 18 Q. They just arrived, hadn't they? 19 A. I believe so. 20 Q. Had Peter Eichleay been at the airport 21 for a long time? 22 A. No. 23 Q. Did he have any sort of history with 24 respect to how he paid his bills or</p> |

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| <p style="text-align: right;">189</p> <p>1 investment in the airport at this 2 point in time? 3 A. Individually, no. 4 Q. So you didn't really know anything 5 about him, did you? 6 A. No. 7 Q. Did the airport commission know anything 8 about him? 9 A. I don't know. 10 Q. Let's go to the second page. Who's 11 Barbara Kassap. There's a name and 12 address of each person holding more than 13 10 percent in this company. And you 14 say it says Barbara Kassap. I think it's 15 Kassap. It's not all that well written. 16 In care of Kassap Investments, do you 17 see that? 18 A. Yes. 19 Q. And then it has an address out in 20 Pikesville, Maryland. Do you see that? 21 A. Uh-huh. 22 Q. Do you know who that is? 23 A. No. 24 Q. Have you met Barbara Kassap?</p> | <p style="text-align: right;">191</p> <p>1 A. I don't know. What do you think? 2 Q. I'm just asking you. You were the one 3 looking at this application. Wouldn't 4 you have wanted to know what the names 5 actually were on it? 6 MR. SIMMS: Objection. Go 7 ahead. 8 A. And the question is? 9 Q. Wouldn't you have wanted to make sure 10 that was a Monica Teplis? 11 A. Well, it looks like a Monica to me. I 12 would read it as Monica. 13 Q. Atlanta, Georgia, do you know Monica? 14 A. No. 15 Q. Why don't we go to the next FBO permit 16 info. What is that? 17 A. What is that? 18 Q. Yes. 19 A. That's information on their office space, 20 hangar space, fuel storage, car rental, 21 office. 22 Q. And do you see where it says Roman 23 Numeral VI unique? 24 A. Uh-huh.</p> |
| <p style="text-align: right;">190</p> <p>1 A. No. 2 Q. Do you know if the NAC required any 3 financial information from her? 4 A. I don't recall. 5 Q. Did she ever come to any of the meetings? 6 A. I don't recall. 7 Q. So as you sit here today, if Barbara 8 Kassap walked in the door, you would 9 have no idea who that is? 10 A. No. This was seven, eight, nine years 11 ago. 12 Q. Do you recall if at the time that 13 this application was made the airport 14 commission asked anything about her? 15 A. I don't recall. 16 Q. Maurice Helman, do you see that name? 17 A. I do. 18 Q. Again, Baltimore, Maryland. Do you know 19 Maurice Helman any better than you know 20 Barbara Kassap? 21 A. No. 22 Q. Do you think that's a Monica. That 23 handwriting is terrible. Do you think 24 it's Monica?</p> | <p style="text-align: right;">192</p> <p>1 Q. Car rental is typed. Arrival, departure 2 terminal typed. Aircraft management 3 future, do you see that? 4 A. Uh-huh. 5 Q. And what does that other thing say? I 6 think the first word is office. What's 7 the next one? 8 A. I can only guess. I think it's office 9 rental. 10 Q. That seems a little sloppy just to have 11 handwritten in there. 12 MR. SIMMS: Objection. Go 13 ahead. 14 Q. This is going to be the largest tenant 15 at your airport, isn't it? No history, 16 correct? 17 A. History of? 18 Q. Let me back up. At the time of 2008 19 this commercial permit application, 20 this full service fixed based operator 21 FlightLevel is going to be your largest 22 tenant, correct? 23 A. Yes. 24 Q. By far?</p> |

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| <p style="text-align: right;">193</p> <p>1 A. Right.</p> <p>2 Q. Substantially?</p> <p>3 A. Yes.</p> <p>4 Q. And they're just coming into the airport,</p> <p>5 brand new company, limited liability</p> <p>6 company, correct, first time appearing</p> <p>7 at your airport?</p> <p>8 A. Right.</p> <p>9 Q. And this is the kind of permit</p> <p>10 application you find acceptable?</p> <p>11 A. This is not the only thing that was</p> <p>12 submitted to the airport commission.</p> <p>13 Q. Isn't this --</p> <p>14 A. This is not the business plan and this</p> <p>15 is not the financial information.</p> <p>16 Q. We'll get to that. I'm asking, is</p> <p>17 this the permit application they filed?</p> <p>18 A. That is the permit application they</p> <p>19 filed.</p> <p>20 Q. For the largest tenant at the airport.</p> <p>21 MR. McCULLOCH: Exhibit 105.</p> <p>22 (Exhibit No. 105, FlightLevel,</p> <p>23 LLC Introduction, marked for</p> <p>24 identification.)</p> | <p style="text-align: right;">195</p> <p>1 Do you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Let's go to the third page. Discuss</p> <p>4 that FlightLevel is a well capitalized</p> <p>5 limited liability company. Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And do you know what the Norwood Airport</p> <p>9 Commission ever did to validate that</p> <p>10 statement?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did they look at bank records?</p> <p>13 A. I don't recall. That was ten years ago.</p> <p>14 Q. You just don't recall anything about</p> <p>15 this application process?</p> <p>16 A. Well, you asked me what the airport</p> <p>17 commission did. I don't know what</p> <p>18 the airport commission did.</p> <p>19 Q. Did you personally do any sort of</p> <p>20 investigation to see if FlightLevel</p> <p>21 was a well capitalized limited</p> <p>22 liability company?</p> <p>23 A. I don't recall.</p> <p>24 Q. Let's go to the next page. It says,</p> |
| <p style="text-align: right;">194</p> <p>1 Q. Have you ever seen this document before?</p> <p>2 A. Yes.</p> <p>3 Q. Is this the business plan and other</p> <p>4 part of the application you discussed</p> <p>5 previously?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see it's stamped confidential?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know if FlightLevel actually</p> <p>10 considered this confidential and not</p> <p>11 subject to a public record's request</p> <p>12 at the time it submitted this to the</p> <p>13 Norwood Airport Commission?</p> <p>14 A. I don't know.</p> <p>15 Q. Let's go to the second page. And we</p> <p>16 see the first part is A, who we are.</p> <p>17 Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. B, plans for growth at OWD. Can we agree</p> <p>20 OWD is the three letter identifier for</p> <p>21 Norwood Airport?</p> <p>22 A. Yes.</p> <p>23 Q. C is conclusion. D is contact. E is</p> <p>24 projected six-year P&L and business plan.</p> | <p style="text-align: right;">196</p> <p>1 Key personnel, Peter Eichleay, President</p> <p>2 and Founder. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. It talks about relevant past experience.</p> <p>5 First line, General and commercial</p> <p>6 aviation consultant and M&A advisor at</p> <p>7 Merge Global, Inc. What part of that</p> <p>8 -- and I'm just going to ask for your</p> <p>9 opinion here -- what part of that do</p> <p>10 you think prepares Mr. Eichleay to run</p> <p>11 a fixed based operator?</p> <p>12 MR. SIMMS: Objection to</p> <p>13 the form and beyond the scope.</p> <p>14 A. What part of that line or what part</p> <p>15 of the entire --</p> <p>16 Q. There is 1, 2, 3, 4, 5, 6 things that he</p> <p>17 lists. Which one of those do you think</p> <p>18 -- you previously testified that the</p> <p>19 key personnel at FlightLevel satisfied</p> <p>20 the Norwood Airport Commission. They</p> <p>21 would be competent to run this highly</p> <p>22 competitive business.</p> <p>23 A. Highly competitive?</p> <p>24 Q. To run a fixed based operator you said</p> |

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| <p style="text-align: right;">197</p> <p>1 needs qualified people --</p> <p>2 A. Right.</p> <p>3 Q. -- in order for the airport not to</p> <p>4 sustain any financial risk. You would</p> <p>5 agree that losing -- if FlightLevel</p> <p>6 were to close its doors tomorrow, would</p> <p>7 that be a large financial risk for the</p> <p>8 Norwood Airport?</p> <p>9 A. I would agree with that.</p> <p>10 Q. Did you believe that at the time that</p> <p>11 FlightLevel first came to the airport?</p> <p>12 MR. SIMMS: Same objections.</p> <p>13 A. Did I believe that it was a financial</p> <p>14 risk?</p> <p>15 Q. That it could be a financial risk if</p> <p>16 these folks coming into Norwood Airport</p> <p>17 didn't pan out, would that be a financial</p> <p>18 risk to the airport?</p> <p>19 MR. SIMMS: Same objection.</p> <p>20 A. Again, I don't recall what I was thinking</p> <p>21 ten years ago.</p> <p>22 Q. As you sit here today as an airport</p> <p>23 executive, wouldn't it seem at the time</p> <p>24 in 2007, if you would have looked at</p> | <p style="text-align: right;">199</p> <p>1 A. I don't think that there was any one</p> <p>2 person that the airport commission</p> <p>3 was relying on. One of the key</p> <p>4 personnel that's not on this list</p> <p>5 was the day-to-day general manager</p> <p>6 who had been at the airport for 40</p> <p>7 or 50 years in a management position.</p> <p>8 Q. Mike Dellaria?</p> <p>9 A. No, Glenn Carroll, so he's not even on</p> <p>10 this list. He was the general manager,</p> <p>11 who stayed on after FlightLevel bought</p> <p>12 out Eastern Air Center. So he was a</p> <p>13 key ingredient in this management team.</p> <p>14 Q. Why is he not listed on here?</p> <p>15 MR. SIMMS: Objection. Go</p> <p>16 ahead.</p> <p>17 A. I'm not sure why they didn't list him.</p> <p>18 That was a decision they made possibly,</p> <p>19 because they were talking about the</p> <p>20 financing of the company and I'm not</p> <p>21 sure Mr. Carroll was part of that.</p> <p>22 Q. How long did he remain with FlightLevel?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you know if he had a long-term</p> |
| <p style="text-align: right;">198</p> <p>1 this, would it have occurred to you that</p> <p>2 if these folks don't pan out, it's going</p> <p>3 to be bad for the airport? Do you think</p> <p>4 you would have had that thought?</p> <p>5 MR. SIMMS: Objection to the</p> <p>6 form. Go ahead.</p> <p>7 A. Again, I'm a little confused, because</p> <p>8 you're isolating the conversation on</p> <p>9 Peter Eichleay, but part of my earlier</p> <p>10 testimony had to do with the management</p> <p>11 team. So I guess what I'm confused by</p> <p>12 is you first asked me to select one of</p> <p>13 the six and then asked me whether, you</p> <p>14 know, ten years ago I thought that there</p> <p>15 was financial risk with Peter Eichleay</p> <p>16 being the president or him being part</p> <p>17 of the management team.</p> <p>18 Q. It says, Key personnel. Which one of</p> <p>19 the management team here do you think</p> <p>20 that Norwood Airport Commission relied</p> <p>21 on to believe that the management team</p> <p>22 was going to keep FlightLevel going?</p> <p>23 MR. SIMMS: Objection to form.</p> <p>24 Go ahead.</p> | <p style="text-align: right;">200</p> <p>1 contract with FlightLevel?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know if Norwood Airport Commission</p> <p>4 asked him?</p> <p>5 A. I don't recall, again ten years ago.</p> <p>6 Q. But none of these key personnel that</p> <p>7 are listed here, Peter Eichleay, Harry</p> <p>8 Kassap, Richard Ryan and Samer Najia,</p> <p>9 none of those people were people that</p> <p>10 Norwood Airport Commission -- none of</p> <p>11 them were part of that management team</p> <p>12 that you talked about earlier that the</p> <p>13 Norwood Airport Commission felt better</p> <p>14 that those folks were going to stay on?</p> <p>15 A. You might have to rephrase. I'm getting</p> <p>16 lost in that question.</p> <p>17 Q. Your previous testimony was it wasn't</p> <p>18 only the application.</p> <p>19 A. Right.</p> <p>20 Q. Nor does it seem to be this introduction.</p> <p>21 A. Right.</p> <p>22 Q. It seems to be the fact that Lynn Carroll</p> <p>23 -- did I say that right?</p> <p>24 A. Yes.</p> |

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| <p style="text-align: right;">201</p> <p>1 Q. -- was going to be general manager 2 of FlightLevel. 3 A. Right. 4 Q. And that's why the Norwood Airport 5 Commission felt comfortable with 6 FlightLevel coming into the operation. 7 Did I accurately summarize your 8 testimony? 9 A. I think, yes, you did, in part. The 10 management team -- 11 Q. Which part did I not? 12 A. Well, I'm trying to answer the question. 13 The management team that is reflected 14 in this document and the individual who 15 would be at the airport on a day-to-day 16 basis who had been at the airport as 17 a manager for many years, decades with 18 Wiggins Airways and then Eastern Air 19 Center running day-to-day management 20 operations and then finally FlightLevel, 21 I assume the commission felt comfortable. 22 Q. And he was just day-to-day operations. 23 Was he long-term objectives? 24 A. I don't know what all of his many</p> | <p style="text-align: right;">203</p> <p>1 A. No. 2 Q. What happened? 3 MR. SIMMS: Objection. Go 4 ahead. 5 A. Industrywide the VLJs never were as 6 popular as they were forecasted to be. 7 Q. And if we go to the next page, it talks 8 about approximately 60 percent of the VLJ 9 fleet will be used for Part 135 Air Taxi 10 operations. That didn't kind of pan out 11 either, did it? 12 MR. SIMMS: Objection. Go 13 ahead. 14 A. No. The industry changed. 15 Q. Go to the next page, page 10, again VLJ 16 stuff, right? 17 A. Yes. 18 Q. And page 11, VLJ stuff again, right? 19 A. Yes. 20 Q. Page 12 talks about fuel flow assessment 21 again projected on the prior VLJ stuff. 22 Do you agree? 23 MR. SIMMS: Same objections. 24 Go ahead.</p> |
| <p style="text-align: right;">202</p> <p>1 responsibilities were. 2 Q. Let's look at the next few pages here. 3 Here we talk about FlightLevel plans 4 to build a portfolio. Do you see that? 5 A. Yes. 6 Q. That doesn't suggest that FlightLevel 7 had a portfolio, does it? 8 MR. SIMMS: Objection. Go 9 ahead. 10 A. I don't know FlightLevel's thinking. 11 I'm reading it -- from a literal reading 12 of it I would agree. 13 Q. Let's go to the next page. According 14 to FAA and PMI media, the leading VLJ 15 forecasting agency. Do you know what 16 VLJ is? 17 A. I do. 18 Q. What is that? 19 A. Very light jet. 20 Q. And you can see they have an active 21 turbine forecast. Do you see it going 22 up like that? 23 A. Yes. 24 Q. It didn't quite pan out, did it?</p> | <p style="text-align: right;">204</p> <p>1 A. I'm not sure that this is tied directly 2 to the VLJ forecasting. I'm not seeing 3 it on this document. 4 Q. Well, you see they have a CAGR 7 percent 5 growth. Do you see that on there? 6 A. Well, here it is, yeah. 7 Q. And they did the same thing on the VLJ 8 to determine how the VLJ -- if you look 9 at page 8, and you see -- if you look 10 below, you see the forecast is again a 11 CAGR? 12 A. Right. 13 Q. It has an 8 percent. And if you look 14 at the note, it says, CAGR's compound 15 annual growth is for the U.S. fleet 16 only, VLJs and business jets. Do you 17 see that? 18 A. Yes. 19 Q. So then if we go to page 12 again, 20 that's CAGRs counting VLJs, is it not? 21 A. Can you refresh my memory on a CAGR 22 acronym? 23 Q. It stands, and it's actually down there, 24 compound annual growth?</p> |

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| <p style="text-align: right;">205</p> <p>1 A. Okay, got it.</p> <p>2 Q. Next page, VLJs again, right?</p> <p>3 A. Yes.</p> <p>4 Q. Conclusion, next page, that's the</p> <p>5 only word on that page, page 14,</p> <p>6 correct, the prior page, conclusion?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And page 15, and it talked about the</p> <p>9 middle paragraphs says -- well, first</p> <p>10 paragraph again talks about the VLJs.</p> <p>11 A. Yeah.</p> <p>12 Q. Second paragraph you'll see there they</p> <p>13 talk about pogo day jet linear air VLJ</p> <p>14 companies worth --</p> <p>15 A. Right.</p> <p>16 Q. And then we have a contact information.</p> <p>17 Is Mr. Eichleay the contact information</p> <p>18 in Norwood?</p> <p>19 A. The question again?</p> <p>20 Q. The contact information for Peter</p> <p>21 Eichleay, it's not even -- it's in</p> <p>22 D.C., isn't it?</p> <p>23 A. Apparently at that time.</p> <p>24 Q. And if we go back to Exhibit 104.</p> | <p style="text-align: right;">207</p> <p>1 P&L is?</p> <p>2 A. I do, but I'm having a -- it's a</p> <p>3 profit and loss, yeah.</p> <p>4 Q. And it's a projected profit and loss,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And this isn't an actual profit and loss,</p> <p>8 is it?</p> <p>9 A. Right.</p> <p>10 Q. And these two pages are the business</p> <p>11 plan apparently.</p> <p>12 A. These are the financials that they've</p> <p>13 produced, correct.</p> <p>14 Q. In order to become the dominant fixed</p> <p>15 based operator at the airport, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And here LeBlanc 13 is Boston Executive</p> <p>18 Helicopters' business plan?</p> <p>19 A. Revised business plan.</p> <p>20 Q. You could page through that.</p> <p>21 A. Uh-huh.</p> <p>22 Q. I could point you to all the distinctions</p> <p>23 between the two. But which would you say</p> <p>24 is the more robust business plan, if you</p> |
| <p style="text-align: right;">206</p> <p>1 A. Okay.</p> <p>2 Q. If I could just keep that page, but 104.</p> <p>3 See 104.</p> <p>4 A. Okay.</p> <p>5 Q. You will see that the application is</p> <p>6 actually for FlightLevel Norwood, LLC.</p> <p>7 Do you see that?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And then you see FlightLevel, LLC. Are</p> <p>10 you aware that those are two separate</p> <p>11 companies?</p> <p>12 MR. SIMMS: You say are you</p> <p>13 aware or were you aware?</p> <p>14 Q. Were you aware that they were two</p> <p>15 separate companies?</p> <p>16 A. I don't know. I don't recall what I</p> <p>17 was thinking ten years ago.</p> <p>18 Q. Are you aware, as you're sitting here</p> <p>19 today, that they are two separate</p> <p>20 companies?</p> <p>21 A. I'm not aware of that today.</p> <p>22 Q. Next page, that's E. That's FlightLevel</p> <p>23 Norwood, LLC projected six-year P&L</p> <p>24 business plan. Do you know what a</p> | <p style="text-align: right;">208</p> <p>1 were simply an objective observer looking</p> <p>2 at this, comparing that?</p> <p>3 MR. SIMMS: Objection. Go</p> <p>4 ahead.</p> <p>5 A. Well, to answer the question fully, that</p> <p>6 was what Boston Executive Helicopters</p> <p>7 was forced to ultimately produce when</p> <p>8 the initial plan, which was mostly a</p> <p>9 marketing piece without any empirical</p> <p>10 data, any kind of quantifiable data,</p> <p>11 were presented to the commission. They</p> <p>12 weren't satisfied with their initial</p> <p>13 business plan. This is what they</p> <p>14 ultimately got.</p> <p>15 Q. Could you point out the quantifiable</p> <p>16 empirical data out of here, please?</p> <p>17 MR. SIMMS: Objection.</p> <p>18 Q. That sounds like a marketing plan to me.</p> <p>19 A. I can point to the back and it was far</p> <p>20 and away more than what we got from BEH</p> <p>21 in the initial plan.</p> <p>22 Q. And based entirely on the VLJs.</p> <p>23 A. Which are also reflected, much of that</p> <p>24 industry data is also reflected in a</p> |

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| <p style="text-align: right;">209</p> <p>1 Norwood Airport Commission's 2007 master 2 plan, which was paid for with federal and 3 state tax dollars. We were going on what 4 was good information at the time, which 5 were projections on VLJs, which didn't 6 pan out for the industry, but FlightLevel 7 wasn't the only one that was wrong 8 about that. The whole industry was 9 wrong, including the FAA. 10 Q. You're under oath. Do you understand 11 that? 12 A. Yes. 13 Q. Do you understand that as you sit 14 here today, it would be as if you're 15 testifying in front of a jury. Do 16 you understand that? 17 A. Yes. 18 Q. Is it your testimony, as you sit here 19 today, that this is better than that? 20 MR. SIMMS: Objection. Go 21 ahead. 22 A. That revised version of an earlier plan 23 that was unsatisfactory is better than 24 that.</p> | <p style="text-align: right;">211</p> <p>1 Q. Six months? 2 A. I would say no. 3 Q. Three months? 4 A. I don't know. 5 Q. Less than three months? 6 A. I don't know. 7 Q. Less than six, though? 8 MR. SIMMS: Asked and answered. 9 Go ahead. 10 MR. McCULLOCH: He said six. 11 Q. Less than six? 12 MR. SIMMS: Same objection. 13 Go ahead. 14 A. Again, it's not perfect recall. You're 15 asking me about something that happened 16 ten years ago. 17 Q. But there wasn't much of a delay to get 18 FlightLevel up and running from the time 19 it purchased Eastern Air Service. Was 20 there much of a delay? 21 A. Can you define for me much of a delay? 22 Q. If Eastern Air Service had sold to 23 FlightLevel and there had been any sort 24 of delay so that FlightLevel couldn't</p> |
| <p style="text-align: right;">210</p> <p>1 Q. What's the date on this one again? 2 A. 2014. 3 Q. How soon after FlightLevel produced 4 this, did they get their permit? 5 A. I don't know. 6 Q. Weren't they in operation at least in 7 2008? 8 A. Yes. I would say 2008 was their first 9 full permit year. 10 Q. I can produce for you the meeting 11 minutes that show that they were approved 12 for operation within a month. Would 13 that meet your recollection? 14 MR. SIMMS: Objection to form. 15 A. Yeah, I would need to see that document 16 or whatever it is you have. 17 Q. Did it take three years from when they 18 produced this? 19 A. No. 20 Q. Did it take two years from when they 21 produced this? 22 A. No. 23 Q. Did it take one year? 24 A. No.</p> | <p style="text-align: right;">212</p> <p>1 have pumped fuel or accepted transient 2 air planes pulling up, I'm sure you 3 would have remembered that. 4 MR. SIMMS: There is no 5 question. What's the question? 6 Q. I'm sure you would remember if there 7 was a delay for the airport users to 8 get fuel or to utilize the airport. 9 MR. SIMMS: There is still 10 no question. You're making a statement 11 or assertion. What's the question? 12 Q. I'm sure you would remember if there was 13 a delay in obtaining fuelling services 14 ten years ago. 15 MR. SIMMS: Objection. Go 16 ahead. 17 A. I may or may not. I would tend to agree 18 with that. I'm not going to give you 19 an unqualified, yes, I would remember, 20 because there's much ten years ago that 21 I don't remember. 22 Q. If your users were unable to obtain fuel 23 for a month, do you think you would hear 24 about it?</p> |

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| <p style="text-align: right;">213</p> <p>1 A. Yes, I would agree with that. 2 Q. Pretty quickly? 3 A. I would agree with that. 4 Q. In ten years do you remember an 5 interruption of fuelling services? 6 MR. SIMMS: Objection. Go 7 ahead. 8 A. For any period of time or just -- 9 Q. For any period of time, barring a huge 10 snowfall and the trucks can't get out, 11 barring a nature cause. 12 MR. SIMMS: Same objection. 13 Go ahead. 14 A. I don't recall a major interruption. 15 Q. This is actually Eichleay 87. Have 16 you ever seen this document before? 17 A. Yes. 18 Q. When is the first time you saw this 19 document? 20 A. FlightLevel came in with a draft that 21 they were working on. Commission 22 required them to put together a fuel 23 plan drawing. They came into my office. 24 They wanted to see if they had a document</p> | <p style="text-align: right;">215</p> <p>1 Q. Are those mandatory? 2 A. I believe under our regulations they 3 become a compliance issue, yes. 4 Q. And outside of your regulations are 5 they mandatory? 6 MR. SIMMS: Objection. Go 7 ahead. 8 A. I don't know the answer to that question 9 fully. I don't want to speculate. 10 Q. By the way, when Mr. Fee asked you about 11 the various documents you reviewed in 12 order for guidance and compliance and 13 the like, I think you talked about the 14 150 series advisory circulars? 15 A. Uh-huh. 16 Q. But you also talked about the federal 17 air regulations. 18 A. The FARs? 19 Q. The FARs. 20 A. Right. 21 Q. And which CFR are you specifically 22 referencing? Do you know what I mean 23 by that? 24 MR. SIMMS: Objection. Go</p> |
| <p style="text-align: right;">214</p> <p>1 that needed more definition and they also 2 had questions about, on the second page, 3 some of the mark tie downs in these paint 4 markings here. 5 Q. You're always happy to help a tenant at 6 the airport come into compliance with 7 the Norwood Airport Commission request? 8 A. I try. 9 Q. You try hard? 10 A. I tried hard. 11 Q. And certainly you're there for 12 FlightLevel if they need you, as far 13 as coming into compliance with anything 14 at the Norwood Airport Commission? 15 A. I'm there for everybody. 16 Q. Are you there for BEH? 17 A. Yes. 18 Q. Let's look at page 1. Do you see those 19 red areas? 20 A. Yes. 21 Q. What are those? 22 A. Those are, I believe, the national fire 23 protection NFPA 25-foot setbacks on the 24 fuel.</p> | <p style="text-align: right;">216</p> <p>1 ahead. 2 A. Yes. Just a general reference to 3 Part 135 and Part 91 and the federal 4 aviation regulations, as I refer to 5 them, also have what used to be called 6 The Airman's Information Manual in the 7 back of it, which has got some useful 8 information to airport managers and 9 pilots. So I include the FARs and the 10 AIM as part of what I was referring to. 11 Q. Now strictly on the FARs, you said 135? 12 A. Right. 13 Q. You and I can agree that is for air 14 charter operators? 15 A. Right. 16 Q. Air charter carriers? 17 A. Right. 18 Q. Which 135 regulations are you empowered 19 to -- 20 A. I'm not empowered to enforce any of the 21 federal regulations, but I use it as 22 a reference as, more or less, just for 23 best management practices and just 24 to know what the federal aviation</p> |

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| <p style="text-align: right;">217</p> <p>1 regulations are requiring the pilots, 2 the operators to do. 3 Q. Are you involved in AAAE? 4 A. I am indirectly. I'm a current member. 5 Q. Have you ever been president or anything 6 like that? 7 A. No. 8 Q. And is there a regional AAAE? 9 A. There is. You can tell how involved 10 I am. It's the Northeast chapter. 11 Q. Can I assume you haven't been -- 12 A. I don't go to regular annual conferences, 13 no. I tend to stay -- I'm a little 14 bit more involved in the State Airport 15 Managers Association. 16 Q. And so what is your understanding about 17 what cannot occur in that 25-foot offset? 18 MR. SIMMS: Objection. Beyond 19 the scope. You can answer. 20 A. Any fuelling operations. 21 Q. Any fuelling operation? 22 A. I should qualify that by saying aircraft 23 fuelling. 24 Q. And if you look on this, do you know</p> | <p style="text-align: right;">219</p> <p>1 Q. It's right there. See that little box? 2 A. Yes. 3 Q. Does that box seem to represent where 4 the fuel cabinet is? 5 A. I would say yes. 6 Q. Is that within the 25 foot? 7 A. Yes. 8 Q. And is FlightLevel still using that? 9 A. No. 10 Q. When did they stop using it? 11 A. I don't have a recall on the date, 12 but they did send me a letter to that 13 effect that they had stopped using 14 the self-fuelling. 15 Q. Do you know where FlightLevel parks 16 its -- 17 A. It's fuel trucks? 18 Q. Yes. 19 A. I do. 20 Q. Where? 21 A. It's actually on the southeast corner of 22 Lot G. There's a containment pad that 23 was designed for them to park on in case 24 there was a release of fuel.</p> |
| <p style="text-align: right;">218</p> <p>1 where -- you know there's a self-fuelling 2 cabinet on the airport, correct? 3 A. Yes. 4 Q. Do you know where it is? 5 A. You're talking about the one at 6 FlightLevel? 7 Q. Yes. 8 A. Yes, it's on the south -- 9 Q. Outside of BEH is there another fuelling 10 cabinet? 11 A. Yes, there's FlightLevel fuelling cabinet 12 on the south end of the FlightLevel's Lot 13 G. 14 Q. And do you see there's like a little 15 blue circle? 16 A. Yes. 17 Q. I actually don't think that's quite 18 accurate. I actually think if you go to 19 the left of that, you see there is like 20 a little box there. They didn't really 21 design this for people who can't see 22 anymore. Do you see the little box? 23 It's pretty light. 24 A. You have to point that out.</p> | <p style="text-align: right;">220</p> <p>1 Q. And do you see the tracks for the trucks? 2 A. I'm not sure which one you're talking 3 about. 4 Q. I think this is where the trucks go. 5 A. Yes. 6 Q. And you also see where it says Lot B and 7 H licensed area. Do you know what that's 8 all about? 9 MR. SIMMS: Objection. Go 10 ahead. 11 A. I'm not sure. I don't know. 12 Q. So the tracks indicate where the trucks 13 go to drop off fuel, correct? 14 A. Yes. 15 Q. And Jet-A and 100 low led. Are you 16 familiar with the difference between 17 Jet-A and 100 low led? 18 MR. SIMMS: Objection. 19 A. You might have to be more specific, 20 Counsel, on that. There is a difference, 21 obviously. Are you looking for -- 22 MR. SIMMS: If you don't 23 understand, he'll repeat it. 24 THE WITNESS: Okay.</p> |

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| <p style="text-align: right;">221</p> <p>1 Q. Can the fuel be mixed, 100 low led and 2 Jet-A? 3 MR. SIMMS: Objection. 4 A. I don't believe this fuel can be mixed. 5 Q. And 100 low led is primarily for smaller 6 general aviation airplanes and Jet-A is 7 primarily for jets? 8 A. Correct. 9 Q. Do you know, does FlightLevel sell both 10 types of fuel? 11 A. Yes. 12 Q. And do you know where FlightLevel 13 offloads 100 low led? This area is the 14 fuel -- I'm trying to move along here. 15 Do you understand that area to be the 16 fuel farm? 17 A. Yes. 18 Q. And that being where FlightLevel stores 19 its fuel prior to putting it on trucks 20 and dispensing it into aircraft? 21 A. Yes. 22 Q. And trucks come in periodically, as 23 necessary, to offload fuel from the 24 trucks into the fuel farm?</p> | <p style="text-align: right;">223</p> <p>1 A. It is. And it was an area that was 2 approved many years ago by the fire 3 chief, the then fire chief, and we've 4 assumed that that was acceptable and 5 it was grandfathered. 6 Q. Tell me about TOFAs? 7 MR. SIMMS: Objection to form. 8 Go ahead. 9 A. It's a taxi lane object free area. 10 Q. Why have a TOFA? What's its reason 11 for its existence? 12 MR. SIMMS: Same objection. 13 A. And this is an FAA standard. It's not 14 mine, so I can only speculate on what 15 the FAA was seeking when they wrote 16 the TOFA standard. 17 MR. SIMMS: Well, don't 18 speculate. 19 A. I'm not going to speculate. 20 Q. Does the FAA implement TOFAs and decide 21 if they go on the airport or not, or 22 does the airport make that decision? 23 MR. SIMMS: Objection to form 24 and beyond the scope. Go ahead.</p> |
| <p style="text-align: right;">222</p> <p>1 A. Yes. 2 Q. And where do the jet fuel -- when 3 deliveries come in for jet fuel, do 4 you know where those jet fuel deliveries 5 park to put the fuel into the fuel farm? 6 A. There's an enclosure that they actually 7 drive into to do that. 8 Q. Approximately where the A is? 9 A. Correct. 10 Q. Do you know where the trucks come in 11 to drop the 100 low led fuel load into 12 the fuel farm? 13 A. My assumption was that they were coming 14 into the same enclosure. 15 Q. They're not. If you look at B, and I'll 16 represent to you that Peter Eichleay 17 testified that the 100 low led truck 18 actually parks in spot B. 19 A. Uh-huh. 20 Q. And do you see that square right there? 21 A. Yes. 22 Q. That is where the 100 low led trucks 23 are offloading fuel. Is that within 24 the 25-foot offset area?</p> | <p style="text-align: right;">224</p> <p>1 A. The airport is required to honor the 2 standards that often come with a grant 3 project. In this case the Gate 3 Taxi 4 Lane was constructed with federal and 5 state tax dollars and with that comes 6 the obligation to honor all the design 7 standards. 8 Q. And part of TOFA markings tell a pilot 9 that if he is on a taxiway with TOFA 10 markings, that he has wing tip clearance. 11 Do you agree with that? 12 A. The TOFA itself doesn't have markings. 13 The taxi lane has markings. 14 Q. Correct. But a TOFA marked taxi lane 15 tells a pilot, who is taxing down that 16 taxi lane with the TOFA markings on the 17 side, that he has wing tip clearance. 18 MR. SIMMS: Objection. Go 19 ahead. 20 A. I'm not -- perhaps it's the way the 21 question is being phrased. The markings 22 on the taxi lane are not -- 23 Q. Let me ask it this way. The markings on 24 a taxi lane tell a pilot that there are</p> |

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| <p style="text-align: right;">225</p> <p>1 TOFA -- that the taxiway has an object 2 free area. That's why the lines exist. 3 A. The lines exist to show the delineation 4 to show the limits of the taxi lane, but 5 it does not include the object free area. 6 If you went out to the gate free taxi 7 lane and measured from centerline to the 8 edge markings, it does not reflect the 9 57-and-a-half foot from centerline object 10 free area, which extends beyond the edge 11 markings per the standard that the FAA -- 12 Q. I guess what I'm trying to get at is why 13 mark a taxiway with the TOFA markings 14 versus not having the TOFA markings? 15 MR. SIMMS: Objection. 16 A. Again, I don't know if this is -- I'm 17 going to assume it's unintentional, 18 but the markings are the standard for 19 markings. The markings are not there 20 to show the object free area. The 21 markings are there to show the limits 22 of the taxi lane. 23 Q. And to inform the pilot that this is 24 a taxiway that is going to have object --</p> | <p style="text-align: right;">227</p> <p>1 design standard of the FAA. 2 Q. If the markings were removed, what 3 would happen? 4 MR. SIMMS: Objection to form. 5 Objection, because it's a hypothetical 6 question and beyond the scope. Go ahead. 7 A. Can you restate that? 8 Q. What if the yellow lines, what if they 9 were just covered up, what would happen? 10 MR. SIMMS: Same objections. 11 A. I think the town would be -- and it's 12 speculation on my part. It would be 13 removing a design standard and the town 14 would have greater risk exposure and I 15 think it would be more dangerous for 16 the pilots, who are trying to navigate 17 down a taxi lane at night without great 18 lighting and no references on the ground. 19 Q. Is this a taxi lane or a taxiway? 20 A. This is a taxi lane. 21 Q. Let's go to the second page. Do you 22 see the green area? 23 A. Yes. 24 Q. What is that?</p> |
| <p style="text-align: right;">226</p> <p>1 it's going to be object free to a 2 specific level passed the taxiway 3 markings? 4 MR. SIMMS: Objection. Go 5 ahead. 6 A. I don't agree with that. I don't agree 7 with that, because in this case you've 8 got markings to standard and you have 9 an object free area that is really 10 nonstandard because of some existing 11 condition -- existing structures that 12 were allowed to remain in place at the 13 time that the taxi lane was constructed. 14 Q. Is that no time to tell pilots if they're 15 taxiing on this taxiway that there is 16 not a true object free area for them? 17 MR. SIMMS: Objection to form 18 and beyond the scope. Go ahead. 19 A. That is actually included in the facility 20 directory. 21 Q. Why not just remove the TOFA markings? 22 MR. SIMMS: Same objection. 23 A. Again, those aren't TOFA markings. Those 24 are centerline and edge markings per the</p> | <p style="text-align: right;">228</p> <p>1 A. Those were markings that were put in 2 place and shown in the -- and reflected 3 in the as-built plans for that section 4 of apron that was built as part of an 5 AIP project in the late '90s. I just 6 don't recall the exact date. 7 Q. But that relieves in that area anybody 8 from having to comply with the TOFA 9 markings, correct? 10 MR. SIMMS: Same objections. 11 A. Yeah, I'm not sure how to answer that. 12 I don't know. 13 Q. You don't know? 14 MR. SIMMS: He just answered 15 it. 16 A. I don't know, based on the way the 17 question is asked. 18 Q. Well, I mean, you can see that there 19 seems to be taxiway markings through 20 the middle of the green, correct? 21 A. Through the middle of the green, yes. 22 Q. So is someone allowed to fuel an airplane 23 there in the middle of that taxiway? 24 A. You're calling it a taxiway. It's not</p> |

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| <p style="text-align: right;">229</p> <p>1 a taxiway. It's part of the apron. 2 it's part of the ramp. It's not marked 3 as a taxiway. 4 Q. And is this wrong then, because it 5 shows a taxiway markings right there? 6 MR. SIMMS: Objection. Go 7 ahead. 8 A. I don't believe -- the markings aren't 9 necessarily wrong. They were approved by 10 FAA and then Mass Aeronautics Commission 11 now MassDOT. So the markings plan was 12 approved and the markings were installed, 13 so I don't believe it's wrong. 14 Q. So there is taxi lane markings, correct? 15 Do we agree that -- what are those? See 16 these are taxi lane markings here? 17 A. Right. 18 Q. There are taxi lane markings here. What 19 are those? 20 MR. SIMMS: Same objections. 21 Go ahead. 22 A. And this is just my speculation from 23 memory. When the apron was built, those 24 were just guidance to the parking spaces.</p> | <p style="text-align: right;">231</p> <p>1 plan, if I point to -- like can 2 FlightLevel fuel here? 3 MR. SIMMS: Objection. Go 4 ahead. 5 A. Based on this, no. 6 Q. Can FlightLevel fuel here? 7 MR. SIMMS: Same objection. 8 A. No. 9 Q. Can FlightLevel fuel there? 10 MR. SIMMS: Same objection. 11 A. If it's outside the object free area 12 and it's outside the fire protection 13 standards, I don't see why not. 14 Q. Can FlightLevel fuel there? 15 MR. SIMMS: Same objections. 16 A. No. 17 Q. Why not? 18 MR. SIMMS: Same objection. 19 A. Because that's on the object free area. 20 Q. Last question on this, the taxiway lines, 21 the removal or the placement of them, 22 is that an FAA call or is that a Town 23 of Norwood call? 24 A. That call was actually petitioned to</p> |
| <p style="text-align: right;">230</p> <p>1 Q. So those guide, but those are not 2 guidance? 3 MR. SIMMS: What? 4 A. I'm not sure what you're pointing at. 5 Q. Well, can FlightLevel fuel there? 6 A. I would have to see the actual parking 7 spaces that were approved as part of 8 the final plan. 9 Q. Well, doesn't the fuelling plan show 10 where somebody may fuel? Isn't that 11 what this is? 12 A. That's part of it. That's certainly 13 part of it. In this particular area, 14 because, perhaps, the way you phrased 15 it, you said, Can FlightLevel fuel 16 here? 17 Q. Correct. 18 A. Can you show me exactly -- in the green? 19 Q. There. 20 A. I would have to see the actual approved 21 tie-down markings that met the review of 22 the FAA and Mass Aeronautics Commission 23 at the time. 24 Q. So as you're looking at this fuelling</p> | <p style="text-align: right;">232</p> <p>1 the FAA on behalf of Boston Executive 2 Helicopters, who were looking for 3 modification to standard to do exactly 4 that, to remove the TOFA restrictions. 5 And the position of the FAA at the time 6 was that their concern was that the TOFA 7 was nonstandard as it was. There were 8 already encroachments on the object free 9 area as a result of existing hangars and 10 fire hydrant, etcetera. 11 So they were not comfortable 12 issuing a modification of standard for 13 that reason, because their concern was 14 by doing so it would set the stage for 15 telling pilots that it was safe at night 16 to be taxiing west on the Gate 3 Taxi 17 Lane now removed without the object free 18 area restrictions in search of fuel. And 19 they just felt that there weren't enough, 20 because they were nonstandard wing tip 21 clearances, there would be an accident, 22 but that was pursued by the airport 23 commission and myself on BEH's behalf. 24 Q. Who at the FAA did you speak to?</p> |

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| <p style="text-align: right;">233</p> <p>1 A. Cliff Vacirca primarily. 2 (Exhibit No. 106, E-Mail, 3 marked for identification.) 4 Q. Have you ever seen this before? Just 5 look at the second part of the e-mail 6 here. So it says, Thursday, February 12, 7 2015. It's from Michael Sheehan. It's 8 to Mark Ryan, Francis Maguire, Kevin 9 Shaughnessy, Martin Ostrchel. That's 10 at least three of the five commissioners, 11 isn't it? 12 A. Mark Ryan, Mike Sheehan -- 13 Q. It's Sheehan, Ryan, Shaughnessy, 14 Ostrchel, that's four, isn't it? 15 A. Yes. 16 Q. And it says, Mark, and we have to go 17 to the second place, you are correct. 18 This is not a bank statement, portfolio, 19 snapshot of combined funds held in BOA. 20 Basically garbage for our purposes. 21 And then it talks a little bit more. 22 And you previously testified that 23 all conversations that you had seen 24 occurred in public session. Is this</p> | <p style="text-align: right;">235</p> <p>1 Q. You were asked a question earlier today 2 to the effect, can you point out the 3 authority within the FAA guidance that, 4 in your view, gives you authority to 5 seek a request from applicants, something 6 more, something beyond what's in the 7 minimum standards? Do you recall that 8 question, something like that? 9 A. Yes. 10 Q. So this document has already been marked. 11 To counsel's benefit it's the FAA 12 assurances. You were asked about this 13 earlier today, right? 14 A. Yes. 15 Q. And this is in reverse order. Why don't 16 you turn to page 11 of that document. 17 A. Okay. 18 Q. And do you see subparagraph H? 19 A. Yes. 20 Q. It says, The sponsor may establish 21 its reasonable and not unjustly 22 discriminatory conditions to be met 23 by all users of the airport as maybe 24 necessary for the safe and efficient</p> |
| <p style="text-align: right;">234</p> <p>1 a conversation in public session? 2 A. It's not in public session, but, 3 you know, again I -- 4 MR. SIMMS: Can you answer 5 the question? 6 THE WITNESS: Yeah. 7 Q. Are there any other such e-mails 8 occurring, not in public session 9 with commissioners talking about 10 ongoing matters like this? 11 A. I don't know. 12 Q. Did you ever have any concerns with 13 respect to that? 14 MR. SIMMS: What was the 15 question? 16 Q. Did you ever have any concerns with 17 respect to the commissioners' e-mailing 18 about present business like this? 19 A. I didn't have any concerns, no. 20 Q. Okay. 21 MR. McCULLOCH: I think I've 22 got nothing else. 23 CROSS-EXAMINATION 24 BY MR. SIMMS:</p> | <p style="text-align: right;">236</p> <p>1 operation of the airport. Did I read 2 that correctly? 3 A. Yes. 4 Q. And is that perhaps one provision in 5 the FAA assurances that, in your view, 6 would allow the airport commission to 7 seek information beyond that obtained 8 in the minimum standards? 9 A. Yes. 10 Q. And before we leave this document let's 11 take a look at subparagraph E. The last 12 sentence reads, Classification or status 13 as tenant or signatory shall not be 14 unreasonably withheld by any airport 15 provided an air carrier assumes 16 obligations substantially similar to 17 those already imposed on air carriers 18 in such classification or status. Did 19 I read that correctly? 20 MR. McCULLOCH: I object to 21 the form. 22 A. Yes. 23 Q. Let me turn your attention to what was 24 marked as Wynne Exhibit 48. I believe</p> |

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| <p style="text-align: right;">237</p> <p>1 this was marked as LeBlanc 9 and then 2 Wynne 48. The same document was marked 3 twice. Now you were asked about the 4 first page of a series of e-mails from 5 May 13, 2014. 6 A. Yes. 7 Q. Now, Wynne 48 incorporates LeBlanc 9, but 8 it continues in an e-mail train that goes 9 beyond May 5, 2014. And I think Mr. Fee 10 asked you a question and you used the 11 word -- do you think you were being a bit 12 opaque, and with respect to the responses 13 you provided to Chris Donovan on May 5, 14 2014. 15 Let me take a look at how this 16 e-mail train continues. I'm showing you 17 an e-mail from you to Chris Donovan of 18 May 7, 2014, two days later. And you 19 write, At least between the Norwood 20 Airport Commission and FlightLevel 21 has not yet, underscored, been written. 22 Reviewed by Norwood Town Counsel and 23 executed by NAC. However, at its 24 March 12th meeting at the request of</p> | <p style="text-align: right;">239</p> <p>1 corner, correct? 2 A. Yes. 3 Q. Now, I want to draw your attention to 4 the middle of the first page. There 5 is a heading Sublease Interest Boston 6 Executive Helicopter/Swift Aviation; 7 Chris Donovan. Okay. The next bullet 8 point, Boston Executive Helicopter has 9 asked the commission to approve the 10 sublease assumption to 2044 as approved 11 by town counsel. 12 Was that approved by the 13 commission in February of 2013? 14 A. Yes. 15 Q. And did Mr. Donovan object to such a 16 long-term lease for BEH? 17 A. No. 18 Q. Did the FAA approve that lease? 19 A. The FAA does not approve leases. They 20 did review it. And with quite a bit 21 of effort on the airport commission's 22 behalf and my behalf as well they gave 23 it a satisfactory review. 24 Q. And what do you mean by "quite a bit of</p> |
| <p style="text-align: right;">238</p> <p>1 FlightLevel the NAC did vote to 2 approve an additional five-year lease 3 to FlightLevel for Lots A, B and C. 4 According to NAC Chairman Tom Wynne 5 and to help provide clarity, quote, 6 for all intents and purposes Lots 7 A, B and C has been released to 8 FlightLevel. Did I read that correctly? 9 MR. McCULLOCH: I object to 10 the form. 11 A. Yes. 12 MR. SIMMS: Off the record 13 for one second. 14 (Back on the record.) 15 MR. SIMMS: So we'll mark 16 this as the next exhibit, please. 17 (Exhibit No. 107, Norwood 18 Airport Commission Meeting, Regular 19 Business Meeting Dated 2/13/13, 20 marked for identification.) 21 Q. Mr. Maguire, we've just marked as 22 Exhibit 107 Norwood Airport Commission 23 meetings from February 13, 2013. And 24 it says approved up on the right-hand</p> | <p style="text-align: right;">240</p> <p>1 effort"? What effort did you undertake 2 on BEH's behalf? 3 A. There was an ongoing dialogue between 4 my office and the office of the FAA 5 Compliance Officer Barry Hammer at 6 the time. We were concerned. We wanted 7 to support Boston Executive Helicopter's 8 interest in a long-term sublease extension 9 following the assumption of a sublease 10 with the approval of the commission. 11 And in so doing we also had to pay very 12 close attention to the corrective action 13 plan that we had submitted to the FAA 14 following the Part 16 Complaint that had 15 been filed by Boston Air Charter about 16 not giving out any more long-term leases. 17 So we had to -- there was a 18 lot of correspondence that went back 19 and forth. It ultimately ended in a 20 meeting at FAA's regional headquarters 21 in Burlington, which I attended and at 22 least one of the airport commissioners 23 attended, to provide some final arguments 24 on Boston Executive Helicopter's behalf</p> |

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| <p style="text-align: right;">241</p> <p>1 to get a satisfactory review by FAA.</p> <p>2 Q. And this was just about a year before</p> <p>3 BEH filed their Part 13 Complaint,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. You were asked before the lunch break,</p> <p>7 when did the NAC un-table the motion</p> <p>8 that was voted on in June of 2014? As</p> <p>9 I recall, you couldn't give a specific</p> <p>10 date, but you said this was an ongoing</p> <p>11 line of communication between BEH and</p> <p>12 the commission even after the June 2014</p> <p>13 vote, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Fee also asked you about some</p> <p>16 meetings involving John Carroll, Jim</p> <p>17 Hillyard, perhaps others. Do you</p> <p>18 recall that testimony?</p> <p>19 A. Yes.</p> <p>20 Q. Just to refresh your recollection of</p> <p>21 when those meetings took place, let me</p> <p>22 show you what has been marked as Bishop</p> <p>23 Exhibit 25. That's a letter from the</p> <p>24 board of selectmen to Jim Hillyard,</p> | <p style="text-align: right;">243</p> <p>1 A. Yes.</p> <p>2 Q. One thing the commission voted at</p> <p>3 that time is five to zero to extend</p> <p>4 BEH's commercial permit for 30 days</p> <p>5 until the next meeting, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Right underneath that it says, On a</p> <p>8 motion by Mr. Sheehan and seconded</p> <p>9 by Kevin Shaughnessy the commission</p> <p>10 voted five to zero to have town counsel</p> <p>11 draft a confidentiality letter that was</p> <p>12 acceptable to Mr. Donovan. Did I read</p> <p>13 that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what that confidentiality</p> <p>16 letter concerned?</p> <p>17 A. To the best of my recollection, it had</p> <p>18 to do with the disclosing of financial</p> <p>19 information that BEH was being required</p> <p>20 to provide to the commission.</p> <p>21 Q. And ultimately am I correct that the</p> <p>22 commission allowed a third party, and</p> <p>23 in fact, we marked it as an exhibit</p> <p>24 earlier today, to review BEH's financial</p> |
| <p style="text-align: right;">242</p> <p>1 indicating that John Carroll has been</p> <p>2 designated to represent the selectmen</p> <p>3 in these discussions, August 6, 2014,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 MR. SIMMS: I don't have a copy</p> <p>7 of this with me, February 2015 minutes.</p> <p>8 MR. FEE: Is it a document</p> <p>9 that's been marked?</p> <p>10 (Off the record.)</p> <p>11 (Back on the record.)</p> <p>12 (Exhibit No. 108, Norwood</p> <p>13 Airport Commission Meeting, Regular</p> <p>14 Business Meeting Dated 2/11/15, marked</p> <p>15 for identification.)</p> <p>16 Q. Mr. Maguire, we just marked as Exhibit</p> <p>17 108 the NAC minutes from February 11,</p> <p>18 2015. Up in the right-hand corner it</p> <p>19 indicates that these were approved in</p> <p>20 March of '15, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And if you look toward the bottom of</p> <p>23 page 1, there's some references to BEH,</p> <p>24 correct?</p> | <p style="text-align: right;">244</p> <p>1 statement, so they weren't submitted</p> <p>2 in any public session, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And the commission then accepted the</p> <p>5 financial statements as reviewed by</p> <p>6 that third-party entity, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that was to accommodate BEH,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Now, if you flip the page, executive</p> <p>12 session says, Discussion regarding</p> <p>13 offering leased area to BEH for</p> <p>14 operation. On a motion by Mr. Sheehan</p> <p>15 and seconded by Mr. K. Shaughnessy the</p> <p>16 commission voted five to zero to offer</p> <p>17 to lease to BEH. Town counsel is writing</p> <p>18 the letter of offer. Did I read that</p> <p>19 correctly?</p> <p>20 A. Yes.</p> <p>21 Q. What happened to the motion to table?</p> <p>22 I guess they weren't following it by</p> <p>23 February 15th, is that right, in your</p> <p>24 view?</p> |

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| <p style="text-align: right;">245</p> <p>1 MR. McCULLOCH: Objection to 2 form. 3 Q. In your opinion? 4 A. In my opinion the commission was not 5 tabling it. They were acting to provide 6 a lease to BEH. 7 Q. And you were shown a number of letters 8 from Peter Eichleay to you and/or the 9 commission basically from 2013 to 2015, 10 which Mr. Eichleay, on behalf of his 11 company, conveyed certain concerns 12 about a second FBO being permitted 13 at the airport. Do you recall being 14 asked about that earlier today? 15 A. Yes. 16 Q. And did you ever promise or make any 17 representations to Peter Eichleay 18 that you were going to take any action 19 on his behalf in response to the concerns 20 he raised in those various letters to 21 the commission? 22 A. No. 23 Q. Did you, in fact, take any actions on 24 behalf of FlightLevel as a result of</p> | <p style="text-align: right;">247</p> <p>1 FlightLevel's supplemental to 2 interrogatories. In a separate lawsuit 3 FlightLevel is involved with BEH. And 4 at his deposition Mr. Eichleay was asked 5 about two meetings that are described 6 on page 5 of the interrogatories. 7 Mr. Eichleay was asked a question and 8 answered, Yes, I was lobbying on behalf 9 of our position that the commission not 10 issue a second FBO given the history 11 and market at the airport. Mark Ryan 12 and Russ Maguire told us that the 13 economic viability of the second FBO 14 was not something we could entertain. 15 And do you recall that discussion 16 with Peter Eichleay in early 2015 or 17 thereabouts? 18 A. I do. 19 Q. Was Mr. Eichleay correct in his testimony 20 in this case that you told him that the 21 economic viability of a FlightLevel and 22 his concern with a second FBO was not 23 something you or the commission would 24 not consider whether or not to issue</p> |
| <p style="text-align: right;">246</p> <p>1 or in response to Peter Eichleay's 2 concerns about a second FBO being 3 permitted at the airport? 4 A. No. 5 Q. Did the commission? 6 MR. FEE: Objection. 7 A. To the best of my knowledge, no. 8 Q. And you were asked, and I wrote this 9 one word down, in particular, was 10 this an example of Mr. Eichleay, these 11 letters, continuing to advocate on behalf 12 of FlightLevel? Does FlightLevel, as 13 far as you know, have a free speech right 14 to advocate on its own behalf before the 15 commission? 16 A. Yes. 17 Q. Does Boston Executive Helicopter have 18 a first amendment right to advocate on 19 its behalf in front of the commission? 20 A. Yes. 21 Q. And to you directly? 22 A. Yes. 23 Q. I show you what's been marked as 24 Eichleay's Exhibit 75, which is</p> | <p style="text-align: right;">248</p> <p>1 an FBO to Boston Executive Helicopter? 2 MR. FEE: Objection. 3 A. That's correct. We were not going -- 4 we were going to continue to, wherever 5 possible, foster the competition. 6 Q. Was there a meeting of the commission 7 yesterday? 8 A. Yes. 9 Q. And was BEH on the agenda? 10 A. Yes. 11 MR. SIMMS: Mark this. 12 (Exhibit No. 109, Agenda 13 Dated Thursday, June 15, 2017, marked 14 for identification.) 15 Q. Is that a copy of the agenda that was 16 prepared for the meeting of the Norwood 17 Airport Commission yesterday, June 15, 18 2017? 19 A. This is a copy of the posting of the 20 meeting. 21 Q. Fair enough. Was BEH's application 22 for a FBO license discussed last night? 23 A. Yes. 24 Q. What items, if any, remain outstanding?</p> |

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| <p style="text-align: right;">249</p> <p>1 In other words, what documentation, as 2 we sit here today, does BEH still need 3 to provide to the commission for its 4 release of the FBO license? 5 A. There's only one item that remains. 6 It's a scaled fuel plan drawing that 7 is stamped by an engineer. 8 Q. And is that a new request or has that 9 been outstanding for a couple of years? 10 A. It's been outstanding for many, many 11 months. 12 Q. Did Mr. Donovan object to providing 13 those drawings to the commission -- 14 MR. FEE: Objection. 15 Q. -- last night? 16 A. Last night his plan, as he stated at the 17 meeting, was to use FlightLevel's fuel 18 plan drawings to represent his company. 19 Q. What was the commission's response? 20 A. The commission did not agree with that 21 and felt that he needed to submit his 22 own fuel plan drawing that was stamped 23 by an engineer. 24 Q. Did Attorney Fee accompany Mr. Donovan</p> | <p style="text-align: right;">251</p> <p>1 Q. Are you aware that at his deposition 2 in this case Moshe Yanai testified 3 that during a visit to promote trade 4 in Massachusetts he reached out to 5 then Governor Duval Patrick to see 6 if the Patrick Administration would 7 intervene on behalf of BEH. Are you 8 aware of that? 9 A. Yes. 10 Q. And is there any law or regulation 11 that you're aware of prohibiting 12 private entities, whether it's BEH 13 or FlightLevel, from seeking out 14 assistance of public officials, 15 whether federal or state public 16 officials? 17 A. Not to the best of my knowledge. 18 MR. SIMMS: No further 19 questions. 20 MR. FEE: Will you mark this, 21 please. 22 (Exhibit No. 110, Letter Dated 23 5/11/15, marked for identification.) 24 REDIRECT EXAMINATION</p> |
| <p style="text-align: right;">250</p> <p>1 at last night's meeting? 2 A. Yes. 3 Q. Did Mr. Fee make any comments or 4 representations to the commission with 5 respect to providing the certified 6 drawings of BEH's fuel plan? 7 A. He agreed that BEH would provide the 8 plan as requested by the commission. 9 Q. And the he you're referring to is 10 Mr. Fee? 11 A. Mr. Fee agreed, on behalf of BEH, that 12 BEH would provide the plan. 13 Q. Is the issue of BEH providing ample 14 spill insurance, is that still an 15 issue before the commission? 16 A. No. 17 Q. That's been resolved? 18 A. Yes. 19 Q. You were asked earlier about a letter 20 of credit or personal guarantee, either 21 from Mr. Donovan or Moshe Yanai or from 22 someone at BEH, is that still an issue 23 before the commission? 24 A. No.</p> | <p style="text-align: right;">252</p> <p>1 BY MR. FEE: 2 Q. Mr. Maguire, I'm going to show you 3 a document that's been marked as 4 Exhibit 110. And it appears to be 5 a letter from Mr. Friedenbergs dated 6 May 11, 2015 to you. Do you recall 7 receiving that document? 8 MR. SIMMS: Let me take a 9 look at it. 10 A. Yes, I recall that document. 11 Q. Was that in response to your request 12 that the FAA approve the sublease 13 agreements that the NAC had entered 14 into with FlightLevel? 15 A. Yes, with a slight change that they -- 16 I believe the proper action we were 17 seeking was a review versus an approval. 18 MR. FEE: I have no further 19 questions. 20 REDIRECT EXAMINATION 21 BY MR. McCULLOCH: 22 Q. I just have one. You were shown these 23 minute meetings on February 11, 2015, 24 minute meetings by your attorney.</p> |

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| <p style="text-align: right;">253</p> <p>1 A. Yes.</p> <p>2 Q. I could point, he read to you from</p> <p>3 this line where it said, and I cannot</p> <p>4 read upside, but it said, On motion by</p> <p>5 Mr. Sheehan, seconded by Mr. Shaughnessy</p> <p>6 the commission voted five to one to</p> <p>7 extend BEH commercial permit for 30 days.</p> <p>8 A. Yes.</p> <p>9 Q. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Was that BEH's FBO permit?</p> <p>12 A. No.</p> <p>13 Q. That was BEH's commercial permit to run</p> <p>14 its 135 charter operation at the airport,</p> <p>15 is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And during the whole pendency of this</p> <p>18 action, BEH was on every 30 days, instead</p> <p>19 of being renewed annually, every 30 days</p> <p>20 BEH would have its commercial permit</p> <p>21 renewed, correct?</p> <p>22 MR. SIMMS: What's the pendency</p> <p>23 of this action?</p> <p>24 A. That was until the next commission</p> | <p style="text-align: right;">255</p> <p>1 SIGNATURE PAGE/ERRATA SHEET</p> <p>2 Re: BOSTON EXECUTIVE HELICOPTERS, LLC</p> <p>3 Vs: FRANCIS T. MAGUIRE, ET AL</p> <p>4 (6/16/17) - DEPOSITION OF FRANCIS T.</p> <p>5 MAGUIRE, III</p> <p>6 I, FRANCIS T. MAGUIRE, III, do</p> <p>7 hereby certify that I have read the</p> <p>8 foregoing transcript of my testimony</p> <p>9 and it is a true and correct record</p> <p>10 of my testimony with the exception of</p> <p>11 the corrections, if any, listed below.</p> <p>12 PAGE LINE CORRECTION</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 Signed under the pains and penalties</p> <p>20 of perjury this _____ day of</p> <p>21 _____, 2017.</p> <p>22 _____</p> <p>23 FRANCIS T. MAGUIRE, III</p> <p>24 _____</p> |
| <p style="text-align: right;">254</p> <p>1 meeting.</p> <p>2 Q. Do you know what fiscal-year permit that</p> <p>3 was?</p> <p>4 A. I believe that they were extending --</p> <p>5 Q. The '14?</p> <p>6 A. I want to say the FY 2014 permit.</p> <p>7 Q. Thank you.</p> <p>8 MR. FEE: We have no further</p> <p>9 questions. All set. Thank you.</p> <p>10 (Whereupon the deposition</p> <p>11 ended at 5:15 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p style="text-align: right;">256</p> <p>1 COMMONWEALTH OF MASSACHUSETTS</p> <p>2 Norfolk, ss.</p> <p>3</p> <p>4 I, JUDITH R. SIDEL, a Certified Shorthand</p> <p>5 Reporter and Notary Public, in and for</p> <p>6 the Commonwealth of Massachusetts, do</p> <p>7 hereby certify that:</p> <p>8 FRANCIS T. MAGUIRE, III, the</p> <p>9 witness whose deposition is hereinbefore</p> <p>10 set forth, was duly sworn by me and that</p> <p>11 such deposition is a true and accurate</p> <p>12 record to the best of my knowledge,</p> <p>13 skills and ability, of</p> <p>14 the testimony given by such witness.</p> <p>15 IN WITNESS WHEREOF, I have</p> <p>16 hereunto set my hand and affixed my</p> <p>17 Notarial Seal this # day of June 2017.</p> <p>18</p> <p>19 JUDITH R. SIDEL</p> <p>20 NOTARY PUBLIC</p> <p>21</p> <p>22 Commission expires:</p> <p>23 April 27, 2023.</p> <p>24</p> |

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