

1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF MCHENRY)

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
 4 MCHENRY COUNTY, ILLINOIS

5 TAXPAYER, WOLF REALTY INC,)
 et al,)
)
 6 Plaintiffs,)
)

7 vs.) No. 15 TX 5
)

8 GLENDA MILLER, in her official)
 capacity as MCHENRY COUNTY)
 9 TREASURER and EX-OFFICIO)
 MCHENRY COUNTY COLLECTOR,)

10)
)
 11 Defendant.)

12 ELECTRONICALLY RECORDED Report of
 13 Proceedings had in the above-entitled cause before
 14 The Honorable Thomas A. Meyer, Judge of the Circuit
 15 Court of McHenry County, Illinois, on the 20th day of
 16 November, 2017, in the McHenry County Government Center,
 17 Woodstock, Illinois.

18 APPEARANCES:

19 DWYER LAW OFFICE, by:
 MR. TIMOTHY P. DWYER,

20 on behalf of the Plaintiffs,
 21

22 MATUSZEWICH & KELLY, LLP, by:
 MR. JAMES P. KELLY,

23 on behalf of the Defendants Algonquin
 Township and Algonquin Township Road
 24 District.

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1 MR. KELLY: Your Honor, James Kelly on behalf of
2 Algonquin Township and Algonquin Township Road District.

3 Your Honor, before we proceed, there's a couple
4 things I would like to bring to the Court's attention.
5 We recently identified a -- actually, a very new statute
6 dealing with this matter. I'd ask leave for at least my
7 township to brief it. It deals specifically with
8 townships and specifically with accumulation of funds.

9 I'm not asking to delay your hearing today, but
10 I believe we should brief it and allow you to have the
11 opportunity to review it before you make a decision.

12 THE COURT: I obviously have no idea what the
13 statute says.

14 MR. KELLY: Correct.

15 THE COURT: Have you seen it?

16 MR. DWYER: Yeah, Your Honor. It's several months
17 old. It's not new, and it's -- and it's definitely --
18 by its very words, it's not retroactive. So in order to
19 brief it, I mean, that would be a waste of time.

20 MR. KELLY: Well, I don't think so, Judge.

21 THE COURT: If he wants to amend, add it in, I'll
22 let it in. My concern is does the disclosure of this
23 statement -- or statute affect what you plan to do
24 today?

1 MR. DWYER: Not at all.

2 MR. KELLY: No.

3 MR. DWYER: No.

4 THE COURT: Then we can proceed. All right.

5 MR. KELLY: Right, Judge.

6 MR. DWYER: We're just waiting for Ms. Bowman.

7 MR. KELLY: Correct.

8 Judge, before we proceed --

9 THE COURT: How many witnesses?

10 MS. KELLY: Right now, I have three.

11 THE COURT: Okay.

12 MR. KELLY: We will not be calling Mr. Brown, who is
13 the CPA that supervised the audit. Mr. Dwyer noticed
14 the deposition of Miss Bowman last Friday, and once
15 before that to take place in St. Charles. I objected
16 because I was in federal court that day and he noticed
17 it up for last Friday -- Strike that, I apologize --
18 last Monday, and I was in Springfield at a meeting I had
19 scheduled a year ago, so I did not attend that
20 deposition. Although I believe she's going to -- I
21 think her testimony will be straightforward with respect
22 to the audit.

23 MR. DWYER: Mr. Kelly has disclosed this woman as
24 his own witness.

1 MR. KELLY: Well, I disclosed her Friday to insure
2 that she --

3 MR. DWYER: At 5:30.

4 MS. KELLY: Yes.

5 (Continuing) -- to insure that she would be
6 called since Mr. Dwyer, it's my understanding, told her
7 to be here today, so --

8 THE COURT: Okay.

9 MR. KELLY: -- I thought it was appropriate.

10 THE COURT: So is she going to be here today?

11 MS. KELLY: Yes.

12 THE COURT: Okay.

13 MR. KELLY: Yes.

14 MR. DWYER: For the record, Your Honor, we deposed
15 Mr. Brown, I don't know, two months, six, seven weeks
16 ago. I -- I was under the impression that he wasn't
17 lucid. I couldn't follow his answers. When Mister --
18 when Mr. Kelly had this thing delayed, I noticed up the
19 deposition of his -- his partner, and also, you know, a
20 participant in the audit, Mrs. Brown -- Mrs. Bowman.
21 Jim said he was going to be out of town. I renoticed it
22 up, not for St. Charles this time, but for Woodstock,
23 and then the day before he objected, after having five
24 days' notice.

1 MR. KELLY: No, I had two days -- two days --

2 THE COURT: It doesn't matter, ultimately. Did the
3 dep go?

4 MR. DWYER: Yeah.

5 MS. KELLY: Dep went.

6 THE COURT: Okay. Then the dep went.

7 So who are we hearing from today?

8 MS. KELLY: Today we'll hear from Miss Bowman,
9 Mr. Miller for a short period of time, as well as
10 Mr. Kunz, the Algonquin Township assessor.

11 MR. DWYER: I'm going to object to that, Your Honor.
12 He testified he had no knowledge of anything.

13 THE COURT: You can put him on. Is anybody here?

14 MR. DWYER: Yes.

15 MR. KELLY: Both --

16 THE COURT: So why don't we start --

17 MR. KELLY: Okay.

18 THE COURT: -- with them, rather than wait for --

19 MR. DWYER: We can start with Mr. Kunz.

20 MR. KELLY: Well, yes, so he can get out of here,
21 absolutely.

22 THE COURT: Okay. If you could approach. Raise
23 your right hand. Do you promise to tell the truth, the
24 whole truth and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE COURT: Please have a seat and speak directly
3 into the microphone.

4 MR. KELLY: Judge, can I stand here instead of
5 (indiscernible).

6 THE COURT: Yeah, you can stand there or if you want
7 to --

8 MR. DWYER: Your Honor, can we approach first.

9 THE COURT: Yeah.

10 MR. DWYER: Miss Bowman's here. I assume since
11 Miss Kelly -- Mr. Kelly is putting on the township case
12 that -- that he's stipulating to that they've exceeded
13 the Miller ratio on seven of the eight funds; otherwise,
14 it's -- I believe it's my case to put on to establish
15 that and it's his to rebut.

16 MR. KELLY: I would not stipulate to that, Judge.

17 THE COURT: Okay. So are you going to call a
18 witness?

19 MR. DWYER: We call Mrs. Bowman.

20 THE COURT: All right.

21 You may step down --

22 MS. KELLY: Judge, I guess that raises an issue. I
23 think we're still in my case.

24 THE COURT: It's been several months. As I recall,

1 I was not comfortable --

2 MS. KELLY: Yes.

3 THE COURT: -- with the -- I couldn't understand
4 what the auditor's --

5 MS. KELLY: Correct.

6 THE COURT: -- reports were, so I think you're
7 right. Any disagreement on that?

8 MR. DWYER: What's that, Your Honor?

9 THE COURT: That it's in his case right now.
10 Because this is on his motion ultimately.

11 MR. DWYER: On his motion --

12 MS. KELLY: Well, I actually had --

13 MR. DWYER: No, no, I'm the movant.

14 MS. KELLY: He was -- there was I think cross --

15 THE COURT: But I think it's on your summary
16 judgment.

17 MR. KELLY: Yes. No, no, no. I was -- I was still
18 in my case I think when --

19 THE COURT: I ruled on his, but I have not ruled on
20 your summary judgment. And that's where I think --

21 MR. DWYER: Judge, he didn't have a motion for
22 summary judgment.

23 MR. KELLY: I don't think you --

24 THE COURT: Hum?

1 MR. DWYER: He didn't have a motion for summary
2 judgment.

3 THE COURT: Yeah, in his response.

4 MR. DWYER: No, he called it a cross motion, but he
5 didn't pray for that, he didn't ask for it, he didn't
6 move for it.

7 THE COURT: Okay. Did you move for it? When you
8 called it a summary judgment, --

9 MR. KELLY: Yes, I did.

10 THE COURT: -- I assumed it was.

11 MR. DWYER: I have the pleadings right here.

12 MR. KELLY: But, anyway, Judge-- So do I.

13 MR. DWYER: Unbelievable.

14 MR. KELLY: That's what I'm thinking too, Tim.

15 MR. DWYER: He didn't set forth any facts for a
16 motion for summary judgment pursuant to the local rules
17 or do anything like that. In fact, Your Honor, we asked
18 some questions about my statement of the cash balance.
19 He couldn't answer the questions and said I don't know.

20 MR. KELLY: Who asked -- I don't know about what?
21 You're misusing terms consistently throughout this
22 proceeding --

23 THE COURT: Without the report of the proceedings, I
24 have no independent recollection of exactly what anybody

1 said. In any event, I'm looking at the August 15 filing
2 of the Algonquin Township --

3 MR. DWYER: You're looking at the title.

4 THE COURT: -- and it says and counter-motion for
5 summary judgment.

6 MR. KELLY: Yes. Judge, I do not pray for it. In
7 my prayer, it does not pray for it.

8 MR. DWYER: No.

9 THE COURT: Okay. Then we don't have a summary
10 judgment.

11 MR. KELLY: However, Judge, I believe it was in my
12 -- in my case that we ended with the lack of clarity,
13 and that's why we wanted to call -- and you asked me if
14 we had any witnesses with respect to clearing this up
15 and of course it's the auditor and it was primarily
16 going to be with respect to also the issue of the
17 sanitary system and the accumulation for road projects.
18 And then I noticed up the accountant and we submitted
19 pursuant to the Court's request 213 interrogatories
20 identifying Mr. Brown, Mr. Kunz, Mr. Miller, and
21 Mr. Lutzow (phonetic).

22 THE COURT: Then I think technically we are in
23 plaintiff's case.

24 MR. KELLY: Okay, Judge.

1 THE COURT: If you don't have a prayer for relief,
2 then --

3 MR. KELLY: No, I know. I know.

4 THE COURT: Okay.

5 MR. DWYER: We call Mary Bowman, Your Honor.

6 THE COURT: Yes.

7 Miss Bowman, if you could approach. Raise your
8 right hand. Do you promise to tell the truth, the whole
9 truth and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE COURT: All right. Please have a seat. And
12 could you tell me how to spell your last name.

13 THE WITNESS: B-o-w-m-a-n.

14 THE COURT: All right. Thank you.

15 THE WITNESS: Sure.

16 MARY BOWMAN,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DWYER:

21 Q Miss Bowman, could you tell the Court your
22 profession.

23 A I'm a certified public accountant.

24 Q Okay. And are you one of the principal

1 accountants that does the comprehensive audit for
2 Algonquin Township?

3 A Yes, I am.

4 Q Okay. And have you done that for the last
5 eight to ten years?

6 A Approximately, yes.

7 Q And who do you work for?

8 A Brown & Co.

9 Q And Brown & Co. does those audits?

10 A Correct.

11 Q Okay. And are you a principal at Brown &
12 Co.?

13 A Yes, I am.

14 Q Okay. And were you deposed in this matter a
15 week ago?

16 A Yes.

17 Q Okay. And you have some exhibits right in
18 front of you.

19 A Okay.

20 Q A manila binder. If I could get you to look
21 at Exhibit A. If you could go to page 13. Are you
22 there?

23 A Yes, sir.

24 Q Okay. And do you see under town fund --

1 Well, first of all, what is this?

2 A It's a fund financial statement for Algonquin
3 Township for March 31, 2014.

4 Q Okay. And is this a balance sheet of the
5 governmental funds as of that date?

6 A It's a short-term balance sheet, so there is no
7 capital assets, no debt on there.

8 Q This is just --

9 A But other than that, yes.

10 Q This is just cash and assets?

11 A Correct.

12 Q Okay. And under town fund and under total
13 assets, it says three million one sixty-six three
14 ninety-three, right?

15 A Correct.

16 Q And that's the cash assets on hand in
17 conjunction with the property tax receivable from the
18 prior year, right?

19 A Well, that was levied in '13 for '14.

20 Q Right. Is that correct?

21 A Correct.

22 Q All right. And the same thing with the road
23 and bridge fund?

24 A Correct, along with some other receivables,

1 yes.

2 Q Okay. And what receivables are those?

3 A Some other receivables, prepaid insurance,
4 inventory of the road salt.

5 Q Okay. So that translates to cash on hand
6 because it's already paid, right?

7 A It's paid, but those assets haven't been used.

8 THE COURT: I'm sorry?

9 THE WITNESS: It's paid, but the assets haven't been
10 used, so they're prepaying for future periods.

11 BY MR. DWYER:

12 Q So it's credited to the total assets of the
13 fund.

14 A Correct.

15 Q Right. The equipment and building fund, that
16 -- the total assets of that fund is two million six
17 fifty-three nine twenty-seven, right?

18 A The equipment and building you said?

19 Q Yes.

20 A Two six five three nine twenty-seven.

21 Q Right.

22 A Correct.

23 Q And that's the cash on hand coupled with the
24 property tax receivable, right?

1 A Correct.

2 Q All right. And same thing with the other
3 funds.

4 A Correct.

5 Q The four eighty-eight five forty-eight,
6 that's basically the general assistance fund, right?

7 A Correct.

8 Q Okay. And the four eighty-eight five
9 forty-eight number is the cash on hand coupled with
10 the property tax receivable, right?

11 A Right.

12 Q Okay. And then if you go to -- Sorry. If
13 you go to page 25 of Exhibit A, it gives you four
14 additional levies, right?

15 A Correct.

16 Q Social Security, retirement, insurance and
17 audit?

18 A Correct.

19 Q All right. And under the ending balance for
20 the Social Security, the township has a hundred and
21 sixty-four thousand one eighty-seven, right?

22 A Correct.

23 Q Okay. And it says that their costs for that
24 year were sixty-one zero one zero?

1 A Correct.

2 Q And under retirement, that's the IMRF fund,
3 right?

4 A Yes, correct.

5 Q And the township has an ending balance of one
6 seventy-five one eighty-seven?

7 A Correct.

8 Q Okay. And what were the costs that year?

9 A Eighty-three thousand eight sixty-six.

10 Q And for insurance, the ending balance is one
11 seventy-five four sixty-eight?

12 A Correct.

13 Q And the costs that year were sixty-nine
14 eighty-nine?

15 A Correct.

16 Q And the audit fund was -- the balance was
17 seventy-four two seventy-one?

18 A Correct.

19 Q And the costs that year were \$3,093, correct?

20 A Correct.

21 Q Okay. Now, those four funds for purposes of
22 accounting for your audit are brought down into the
23 road and bridge fund, right?

24 A Correct.

1 Q And is that because they're not major funds
2 and they don't constitute ten percent?

3 A No, that's just how most townships do that.
4 They combine all those funds into the road and bridge
5 fund.

6 Q Okay. Do you know -- as we sit here, do you
7 know if the township levies for Social Security,
8 retirement, insurance and audit through the road and
9 bridge fund or through their own independent levies?

10 A Their own independent levies.

11 Q You know that for a fact.

12 A Correct.

13 Q Okay. Could you turn your attention to
14 Exhibit J, please.

15 Are you there?

16 A Yes, I am.

17 Q Okay. And do you see the Algonquin Township
18 road and bridge, this is their levy?

19 A Correct.

20 Q For 2014, right?

21 A I'm guessing. The year's been --

22 Q Don't guess. Don't guess.

23 A The year's been cut off from the top.

24 Q Okay. And there they have an IMRF levy,

1 right?

2 A Correct.

3 Q Then a road and bridge levy?

4 A Right.

5 Q An equipment and building levy.

6 A Correct.

7 Q An audit levy.

8 A Correct.

9 Q A liability insurance levy?

10 A Correct.

11 Q And a Social Security levy.

12 A Correct.

13 Q And the next page, under the township, they
14 have a corporate levy and a public assistance levy,
15 right?

16 A Correct.

17 Q So in told, between the whole township audit,
18 you're auditing eight separate funds, right?

19 A Correct.

20 Q Okay. And is there a reason why, if you
21 know, that you don't audit the highway district and
22 the township independently?

23 A I don't know.

24 Q Okay. During the course of your audits for

1 the last eight to ten years, you've always done just
2 one audit for the entire township, right?

3 A Because it's a comprehensive, yes.

4 Q So your answer is because it's a
5 comprehensive audit?

6 A Right. Includes the whole township.

7 Q Okay. Do you know if there's a statute that
8 calls for the township to do one audit?

9 A I believe there is, but I can't guarantee it.

10 Q Okay. Now, Miss Bowman, can we go back to
11 page 13 in Exhibit A. We know that as of March 31,
12 2014, the town fund has three million -- Oh, sorry,
13 are you there?

14 A Yes, sir.

15 Q (Continuing) -- three million one sixty-six
16 three ninety-three in assets, right?

17 A Correct.

18 Q All right. So if you turn over to page 15
19 and we see that the total expenditures for that town
20 fund for the year ended March 31, 2014, was one
21 million four hundred sixty-three eight eighty-five; is
22 that correct?

23 A That is correct.

24 Q Okay.

1 MR. DWYER: Your Honor, can we get a calculator for
2 the witness.

3 Thank you, Judge.

4 BY MR. DWYER:

5 Q I'm sorry, it's not your usual, but
6 Miss Bowman, if you don't mind, we're going to do the
7 same exercise we did at the deposition. Okay?

8 A Okay.

9 Q We're going to take the town fund balance,
10 we're going to look at the last three years'
11 expenditures and then we're going to divide the
12 balance into the average expenditure to get the Miller
13 ratio. All right?

14 A Correct.

15 Q Okay. So, again, we know the balance is
16 three one six six three nine three, right?

17 A Correct, --

18 Q Okay.

19 A -- for total assets.

20 Q And for the '14 expenses, it's one million
21 four sixty-three eight eighty-five?

22 A Correct.

23 Q Okay. You putting that down?

24 And then if you go to Exhibit B, page 14, --

1 A Okay.

2 Q -- Do you want to tab these? They might come
3 in really handy.

4 (Continuing) -- Miss Bowman, then the town
5 fund expenses for the year ended 2013 are one million
6 five five zero zero zero one; is that correct?

7 A Correct.

8 Q Okay. Put that down.

9 A Okay.

10 Q Okay. And Exhibit C, page 11, the total
11 expenditures for the town fund were one million five
12 ninety-three four twenty-one, correct?

13 A Correct.

14 Q Okay. Now, would you add that up.

15 A Four six 0 seven three 0 seven.

16 Q Okay. And you divide it by three? You get
17 one million five, thirty-five seven sixty-nine, right?

18 A Yes.

19 Q Okay. So the three-year average annual costs
20 for the town fund for Algonquin Township of one
21 million five thirty-five seven sixty-nine; is that
22 correct?

23 A That's correct.

24 Q Okay. And now when you divide three million,

1 one sixty-six three ninety-three into one million five
2 thirty-five seven sixty-nine, you get a balance of
3 2.06; is that correct?

4 A Yes.

5 Q Okay. Moving forward to the equipment and
6 building fund, we see on page 13 of Exhibit A that the
7 balance in the equipment and building fund is two
8 million six fifty-three nine twenty-seven; is that
9 correct?

10 A That's correct.

11 Q On the same exhibit, page 15, we see that the
12 -- the expenditures, the total expenditures, for the
13 equipment and building fund is one million four
14 dollars and four -- four hundred and ninety-nine
15 dollars, right? Sorry, \$4,490, right?

16 A Correct.

17 Q Okay. When we go to Exhibit B, page 12 --
18 I'm sorry, page 14, at the end of the year for
19 March 31, 2013, the total expenditures for the
20 equipment and building fund were one million three
21 thirty-five thousand five hundred and sixteen; is that
22 correct?

23 A That is correct.

24 Q Okay. And then when we go to Exhibit C, page

1 11, we see that the total expenditures for the
2 equipment and building fund for the year ending 2012,
3 is \$1,248,112, right?

4 A Correct.

5 THE COURT: What was that number again?

6 MR. DWYER: It was one million two hundred
7 forty-eight one twelve, Your Honor.

8 THE COURT: Thank you.

9 BY MR. DWYER:

10 Q When you add that up and divide it by
11 three --

12 A One one nine six O three nine.

13 Q One million one ninety-six zero three nine,
14 right?

15 A Correct.

16 Q So when you divide twenty-six fifty-three
17 nine twenty-seven into one million one ninety-six O
18 three nine, you get a ratio of 2.21; is that correct?

19 A Correct.

20 Q Okay. Now, the general assistance fund, back
21 to Exhibit A, page 13, that has a balance of four
22 eighty-eight five forty-eight, right?

23 A Correct.

24 Q And on page 15, it shows us that the total

1 expenditures for the year ending March 31, 2014, were
2 one forty-two zero twenty-four; is that correct?

3 A (Inaudible).

4 Q Pardon me?

5 A Correct.

6 Q All right. Thank you.

7 On Exhibit B, page 14, we find that the total
8 expenditures for the general assistance fund,
9 otherwise known as other funds, as of March 31, 2013,
10 is a hundred and thirty-seven thousand three
11 eighty-six; is that correct?

12 A That is correct.

13 Q And then Exhibit C, page 11, we see that the
14 total expenditures for the town fund as of -- ending
15 March 31, 2012, was one forty-nine two twenty-seven;
16 is that correct?

17 A Correct.

18 Q And you add that up and divide it by three
19 and you get one forty-two eight seven nine; is that
20 correct?

21 A Correct.

22 Q When you divide four eighty-eight five
23 forty-eight into one forty-two eight seven nine, you
24 get a ratio of 3.41; is that correct?

1 A Yes.

2 Q Okay. Turning your attention then to page 25
3 of Exhibit A, the Social Security fund has an ending
4 balance of one sixty-four one eighty-seven as of March
5 31, 2014, right?

6 A Correct.

7 Q Okay. And it's -- its 2014 expenses were
8 sixty-one zero one zero, right?

9 A Correct.

10 Q Okay. Now, in -- if you go to Exhibit B,
11 page 14, -- No. Sorry, page 26, Miss Bowman.

12 A Correct.

13 Q (Continuing) -- we see the expenses as of
14 2013 are fifty-seven seven 0 eight; is that right?

15 A That is correct.

16 Q And then Exhibit C, page 20, we see that the
17 expenses for the Social Security ending March 31,
18 2012, is fifty-five three twenty-nine; is that
19 correct?

20 A That is correct.

21 Q And when we add that up and divide it by
22 three, we get a three-year average of fifty-eight zero
23 two two; is that correct?

24 A What did you get?

1 Q Fifty-eight zero two two?

2 A Yes.

3 Q And when we divide the balance of one
4 sixty-four one eighty-seven into fifty-eight zero two
5 two, we get a ratio of 2.82; is that correct?

6 A Correct.

7 Q Okay. Exhibit A, page 25, retirement fund,
8 that has a balance of one seventy-five one
9 eighty-seven, right?

10 A Correct.

11 Q And the three-year -- the costs as of March
12 31, 2014, for that year were eighty-three eight
13 sixty-six; is that correct?

14 A Correct.

15 Q Okay. And the costs for 2013, March 31,
16 2013, were -- I'm sorry, Exhibit B, page 26 -- were
17 seventy-eight one forty-one; is that correct?

18 A That is correct.

19 Q And then on Exhibit C, page 20, we see that
20 the retirement costs for the year 2012 were seven-nine
21 one sixty-six; is that correct?

22 A That is correct.

23 Q All right. And that gives us a balance, a
24 three-year average, of eighty three ninety-one; is

1 that correct?

2 A Correct.

3 Q All right. So when we divide the balance on
4 hand as of March 31, 2014, of one seventy-five one
5 eighty-seven by eighty three ninety-one, we get a
6 ratio of 2.17; is that correct?

7 A That is correct.

8 Q With regard to the insurance fund, we see
9 that we have an ending balance as of March 31, 2014,
10 of one seventy-five four sixty-eight.

11 A Correct.

12 Q Okay. And the costs that year in 2014 were
13 sixty-nine eighty-nine; is that correct?

14 A That's correct.

15 Q All right. And we go to Exhibit B, page 26,
16 and we see the costs for the insurance at the end of
17 2013 were forty-three four ninety-three, right?

18 A Correct.

19 Q And then we go to Exhibit C, page 20, and we
20 see that the costs of the insurance were four seven
21 nine nine two.

22 A Correct.

23 Q You add that up and you divide it by three
24 and you get a three-year average of fifty-eight

1 twenty-four; is that correct?

2 I'm sorry, yes.

3 A Yeah.

4 Q Okay. And then we take the balance on hand
5 as of March 31, 2014, of one seventy-five four
6 sixty-eight, and we divide that into fifty eight
7 twenty-four, and we get a ratio of 3.45; is that
8 correct?

9 A Correct.

10 Q Finally, when we look at the audit fund, it's
11 a balance of seventy-four thousand two seventy-one; is
12 that correct?

13 A That is correct.

14 Q And then we have costs in 2014 of three 0
15 nine three?

16 A Correct.

17 Q And then our costs in 2013 at the end of
18 2013, were three 0 eight three?

19 A Correct.

20 Q And then our costs at the end of 2012 was two
21 nine eight three.

22 A Correct.

23 Q You should -- You should raise your rates.
24 So we get a balance of three 0 five three,

1 right? Three-year average balance.

2 A Oh, yes, correct.

3 Q Okay. And in the audit fund, there's --
4 we've established that there's a balance of
5 seventy-four two seventy-one, right?

6 A Correct.

7 Q And we divide that into the three-year
8 average and we get a ratio of 24.32, right?

9 A Correct.

10 Q Okay. So on every single fund with the
11 exception of the road and bridge fund, the ratios are
12 over 2.0; is that correct?

13 A Correct.

14 Q Okay.

15 MR. DWYER: Does that -- does that clear up Your
16 Honor's issues?

17 THE COURT: Yes.

18 MR. DWYER: Your witness, Jim.

19 THE COURT: Cross?

20 CROSS EXAMINATION

21 BY MR. KELLY:

22 Q Let me ask you -- Do you have the 2015 -- the
23 audit completed in 2015 in front of you?

24 A It does not appear like it.

1 Q Okay. Now, the audit that you have in front
2 of you as Exhibit A is the audit for the year ending
3 in March of 2014, correct?

4 A Correct.

5 Q Okay. So the amount of money, for example,
6 the expenditures when you were looking at page 25 of
7 the 2014 audit, those expenditures were for funds that
8 were expended in 2014, right? Or 2013. 2013 --

9 A Ending --

10 Q -- to 2014 --

11 A Ending March '14, correct.

12 Q Okay. So it's the 2013 --

13 THE COURT: I'm sorry --

14 THE WITNESS: Ending in the year March '14, so it
15 was from April of '13 to March of '14.

16 BY MR. KELLY:

17 Q So the 2013/14 budget year, the expenditures
18 are reflected in this audit, right?

19 A Correct.

20 MR. DWYER: Objection.

21 THE COURT: Basis?

22 MR. DWYER: How could she possibly know that? There
23 is absolutely no foundation.

24 THE COURT: Make an objection. Don't make a

1 speaking objection.

2 MR. DWYER: Lack of foundation.

3 THE COURT: So objection, foundation. Sustained.

4 Counsel.

5 BY MR. KELLY:

6 Q Okay. You're looking at Exhibit A, correct?

7 A Correct.

8 Q And that's the audit that was completed in
9 March 31st of 2014, correct?

10 A Correct.

11 Q Okay. And for what time period is this
12 audit?

13 A April of 2013, April 1st, to March 31, 2014.

14 Q Okay. And that's commonly known as the
15 budget year 2013/14, right?

16 A Correct.

17 Q Okay. And the budget year 2014/2015 is the
18 budget year -- Well, strike that.

19 Now -- so the expenditures that are reflected
20 in this audit were for budget year 2013/2014, correct?

21 A Correct.

22 Q Okay. Now, as far as you know, the levy that
23 is being contested this year is the 2014 levy, right?
24 Did anyone talk to you about that?

1 A No.

2 Q Okay. Now, you prepared -- your office
3 prepared an audit ending on -- which ended the fiscal
4 year March 31, 2015, correct?

5 A Correct.

6 MR. KELLY: One moment, Your Honor.

7 (An discussion was had between Mr. Kelly
8 and Mr. Dwyer undetectable by the
9 electronic recording system.)

10 MR. DWYER: Can we approach.

11 MR. KELLY: Sure.

12 MR. DWYER: You know, forget it, Jim. Here, just
13 give me my copy. Thanks.

14 MR. KELLY: I'll approach and show the witness
15 Exhibit A for defendant (indiscernible).

16 BY MR. KELLY:

17 Q Okay. Take a look at that audit, please, and
18 just review it quickly.

19 A (Indiscernible). Okay.

20 Q Okay. Have you reviewed it?

21 A Yes.

22 Q And is that a true and accurate copy of the
23 audit that Brown & Co. performed after the end of the
24 year ending in March of 2015?

1 A Yes, it is.

2 Q Okay. Now, do you know --

3 MR. KELLY: Judge, I'd move to admit that, the 2015
4 audit.

5 THE COURT: Any objection?

6 MR. DWYER: Yes, Your Honor.

7 THE COURT: Basis?

8 MR. DWYER: I don't know how it's relevant. It was
9 the -- the audit was -- well, it was made after the 2014
10 levy. I can't see its relevance in any questioning, let
11 alone as an exhibit entered into evidence.

12 MR. KELLY: Judge, --

13 THE COURT: Overruled. Proceed.

14 MR. KELLY: Okay.

15 BY MR. KELLY:

16 Q Let me show you what I've marked as Exhibit B
17 and C.

18 MR. DWYER: Are these mine?

19 MR. KELLY: No, these are -- I only have one copy.
20 I didn't know we'd have to be getting into this stuff.

21 THE COURT: What's the problem?

22 MR. DWYER: He only has one copy.

23 MR. KELLY: It's 2014 and 2015 -- Here you can
24 review them.

1 MR. DWYER: I don't want to review them.

2 MR. KELLY: Okay. (Indiscernible).

3 Judge, I ask to approach.

4 THE COURT: You may approach.

5 MR. DWYER: What are they?

6 MR. KELLY: Well, I want to approach the witness and
7 tender them to the witness.

8 MR. DWYER: Oh, I'm sorry. Which -- which
9 certifications are you doing?

10 MR. KELLY: The certification of tax levy dated
11 December 11, 2014, for the township and the tax levy
12 ordinance for the road district dated December 11, 2014,
13 and adopted by the McHenry County board on December 10,
14 2014.

15 MR. DWYER: Okay.

16 THE COURT: Okay. You may approach.

17 MR. KELLY: And, Judge, I'd ask to have these
18 admitted. They were certified at one point I guess. I
19 don't --

20 THE COURT: Any objection?

21 MR. DWYER: No, Your Honor.

22 THE COURT: All right. They'll be admitted.

23 These are marked as Exhibits B and C?

24 MR. KELLY: Yes. And I've marked the township audit

1 as B and the road district audit as C.

2 MR. DWYER: You mean certificate of levy, right?

3 MR. KELLY: Yes. And the actual levy I believe, and
4 the ordinance attached signing it by -- signed by the
5 township supervisor.

6 BY MR. KELLY:

7 Q And if you could just review both these
8 documents. And just let me know when you've reviewed
9 them. Thank you.

10 A Okay.

11 Q Okay. Now, do you know what those documents
12 are?

13 A They're the tax levy that the township has to
14 file every December.

15 Q Okay. And what levy -- for what year is that
16 levy? What is that -- Strike that.

17 What is that levy called commonly in your
18 business?

19 A It's the levy for 2014 which are taxes
20 collected in '15.

21 Q Correct -- Well, thank you.

22 Now, what is the levy for the town fund, if
23 you could look at the Exhibit B?

24 A Just the town fund?

1 Q Yes. Well, if we could explain to the Court,
2 there are two different levies within that ordinance,
3 correct?

4 A Correct, for the town fund and the general
5 assistance.

6 Q Okay. And what is the levy for the town
7 fund?

8 A One five seven eight five (indiscernible).

9 Q Okay. And what is the levy for the general
10 assistance fund?

11 A Two hundred and twenty-one thousand eight
12 (indiscernible).

13 Q Okay. And were those levies or amounts that
14 were levied that you had previously testified to
15 before when questioned by Mr. Dwyer?

16 A No, I don't believe so.

17 Q Okay. Are those numbers found anywhere in
18 Exhibit A which is the Algonquin Township annual
19 financial report ending in March 31, 2014?

20 A No.

21 Q Okay. Now, let's just go back to the
22 Exhibit A which I gave you, which is the 2015 audit.
23 Okay?

24 A Correct.

1 Q Now, if you could flip over to page 15.

2 THE COURT: This is a plaintiff's exhibit?

3 MR. KELLY: I'm -- Judge, yes, Judge.

4 MR. DWYER: Defendant's Exhibit A, Your Honor.

5 MR. KELLY: Defendant's Exhibit A, and let's see if
6 I have an extra copy of that.

7 Judge, give me a moment. I'll see if I have an
8 extra copy of that for the Court.

9 THE COURT: Well, I do have his Exhibit A. Is this
10 a separate --

11 MR. KELLY: Oh, I'm sorry, Judge.

12 MR. DWYER: That's March 31, 2014, Your Honor.

13 MR. KELLY: That's the '14.

14 MR. DWYER: That's the last -- that's the last audit
15 before the levy. This audit was after the levy.

16 THE COURT: Okay.

17 MR. DWYER: So --

18 MR. KELLY: However, it's for the time period --

19 THE COURT: Your audit is after the levy.

20 MR. KELLY: My audit ends -- well, ends after the
21 levy was issued, that's correct. The audit -- the levy
22 was in December 2014. The audit took place -- well,
23 closed the year at March 31, 2015, the fiscal -- Well,
24 let me ask a question of the witness, Your Honor, if I

1 could.

2 THE COURT: Okay.

3 BY MR. KELLY:

4 Q Do you know what the fiscal year for the
5 township is?

6 A It ends March of --

7 Q When does it start and when does it end?

8 A It ends in April -- or starts in April and ends
9 in March.

10 Q Okay. So it starts -- for example, in 2014,
11 it will start on April 1st of 2014 and then it will
12 run to March 31st of April -- of 2015, correct?

13 A Correct.

14 Q Okay. Now, the expenses that you find on
15 page 15 of the -- Before I even ask you that, those
16 two levy documents, B and C, okay, which are the
17 levies that are subject to this litigation, when does
18 that money come in for those levies?

19 A Starts coming in end of May, beginning of June
20 '15, based on when people start paying their property
21 taxes.

22 Q And when else does it come in?

23 A September.

24 Q Okay. And from your knowledge of tax -- the

1 way taxes are paid in McHenry County, there are two
2 separate tax bills, one that comes out in May and then
3 one that comes out in late summer and they're roughly
4 equal, correct?

5 A Correct.

6 Q Now, let's go back again. So this audit
7 ended with the fiscal year on the -- on March 31,
8 2015, and the 2014 audit is for money that will start
9 coming in after this audit -- or after the fiscal year
10 ends, correct?

11 Well, strike that. Let me make it clear.

12 A Thank you.

13 Q The fiscal year for the township for the
14 2014/15 fiscal year ended on March 31st, right?

15 A Correct.

16 Q Okay.

17 THE COURT: March 31st of 2015?

18 MR. KELLY: Yes.

19 THE COURT: Okay. Thank you.

20 BY MR. KELLY:

21 Q And the levy that's subject to this
22 litigation is made in December of 2014, right?

23 A Correct.

24 Q Okay. And those funds come in for the fiscal

1 year that start on April 1st of 2015, correct? That's
2 when those first funds come in.

3 A That is correct.

4 Q Okay. So the -- if you look at this audit --
5 Strike that, Judge.

6 Defendant's Exhibit A, which is your 20 --
7 audit ending March 2015, the expenses that are listed
8 on page 15 -- Could you go to page 15.

9 A Yes.

10 Q Okay. Mr. Dwyer didn't have you testify as
11 to any of those audits, did he?

12 MR. DWYER: Objection, Your Honor. I'm going to
13 have to -- I got to object based on relevance.

14 THE COURT: Overruled.

15 BY MR. KELLY:

16 Q Okay.

17 A I believe when we did it, we did '15, '14 and
18 '13 --

19 Q When --

20 A -- in my deposition.

21 Q Oh, but today.

22 A Today, no.

23 Q Okay.

24 A Today he had me do '14, '13 and '12.

1 Q Okay. Now, the year prior to the funds
2 coming in, the levy -- for the levy being paid, that
3 would be actually the 2014/2015 tax year, right?

4 A I don't understand what you're asking.

5 Q Okay. Let me rephrase it. The December 2014
6 levy, those funds are to pay for the 2015/16 tax year,
7 right?

8 A Correct.

9 Q Okay. So the expenses that are reflected in
10 the 2015 audit that we have in front of us as
11 Defendant's Exhibit A, those are expenses for the year
12 2014/15, right?

13 A Based on the levy. I mean, the levy was in
14 December of (inaudible).

15 Q Let me strike that again. Let me try again.

16 As far as -- For the record, if you look at
17 Exhibit A, which is your 2015 audit, did Mr. Dwyer
18 have you testify today with respect to the amounts on
19 page 15 for total expenditures in the town fund? And
20 I'd direct your attention to total expenses of one
21 hundred six hundred thousand sixteen dollars and one
22 hundred forty-two -- or one hundred forty-two dollars.

23 A No, he didn't.

24 Q Okay. Now, if you go to the road and bridge

1 fund, at -- there are expenses of \$2,207,305, right?

2 A Correct.

3 Q Okay. And in building and equipment, there
4 are expenses of \$922,692, right?

5 A Correct.

6 Q Now, the expenses in other funds -- First of
7 all, there is a column that says other funds. Could
8 you describe to the Court before we go any further
9 what other funds mean.

10 A For townships any non-major funds you lump
11 together in other funds. For Algonquin Township it's
12 general business (inaudible).

13 Q Okay. And that's pretty much all it is,
14 right?

15 A That is all it is.

16 Q Okay. And the expenditures for that year,
17 for 2014/15, were one hundred and eighty-four thousand
18 one hundred and fourteen -- or four hundred and
19 fourteen dollars, correct?

20 A Correct.

21 Q Okay. Now, let me direct your attention to
22 page 20 of the audit and that's --

23 MR. DWYER: Which one?

24

1 BY MR. KELLY:

2 Q -- Defendant's Exhibit A. The only audit I
3 think we need to be using here.

4 A Okay.

5 Q Now, if you look at 20, and you look at road
6 and bridge, Mr. Dwyer had you testify to the same
7 sheet in the 2014 audit. Could you tell the Court
8 what this sheet is again.

9 A This is a recap of the fund balance for road
10 and bridge which encompasses Social Security,
11 retirement, insurance, audit and road and bridge.

12 Q Okay. And the amounts listed under balance
13 for each one of those funds, that is the ending
14 balance as of March 31, 2015, correct?

15 A Correct.

16 Q Okay. So it's the beginning balance for the
17 fiscal year of 2015/16.

18 A Correct.

19 Q Okay. Now, I direct your attention to
20 page 13 of the Defendant's Exhibit A.

21 A Okay.

22 Q Now, I hate to ask you to pull out your
23 calculator, but I'm going to do so. The -- if you
24 look at town fund, --

1 A Okay.

2 Q (Continuing) -- okay, with respect to town
3 fund, the -- you know, it has -- says total assets of
4 3,162,101, correct?

5 A Correct.

6 Q Okay. That isn't -- that includes something
7 called property tax receivable, right?

8 A Correct.

9 Q And those funds -- when are those actually
10 received?

11 A They would be received in June and
12 September, --

13 Q Okay.

14 A -- somewhere in that period.

15 Q Of the next fiscal year, right?

16 A Of '15, correct.

17 Q Yes. So that total assets isn't correct of
18 \$3 million. It's less than that. Correct?

19 MR. DWYER: Objection.

20 THE COURT: Basis.

21 MR. DWYER: He's making a conclusion that the
22 witness has not testified to.

23 THE COURT: Overruled.

24

1 BY THE WITNESS:

2 A It's still an asset. It hasn't been received
3 yet, but it is still classified as an asset.

4 BY MR. KELLY:

5 Q But it's not cash on hand.

6 A That is correct.

7 Q Okay. So it's not a beginning fund balance,
8 right?

9 A Correct.

10 Q Okay. Now, a beginning fund balance is the
11 amount you would -- for the sake of us laymen, the
12 amount that's in your checkbook to spend, right?

13 A Correct.

14 Q Okay. What are the -- what are the amounts
15 that are available to be spent in 2016 that create the
16 beginning balance?

17 MR. DWYER: Objection, Your Honor. This is not at
18 all relevant to this case.

19 THE COURT: Why are we into 2016?

20 MR. DWYER: We're talking about 2015 expenditures.
21 This is a 2014 tax levy.

22 MR. KELLY: No, we're not.

23 THE COURT: Hang on. Why are we into 2016?

24 MR. KELLY: We are absolutely not, Judge. What

1 we're talking about is the 2014 levy. That levy you
2 had, okay, the amount of receivable -- this -- Actually,
3 if you look at the receivables, that is essentially the
4 levy, okay, in this audit. That's where I would think
5 we could take it from, although it's slightly different
6 than the levy amounts that you'll find in those
7 ordinances for a technical reason dealing with the
8 McHenry County clerk. However, that's the levy amount.

9 Now, what the Miller formula is talking about
10 is the levy and the beginning balance. Okay. You've
11 got the levy and you've got the beginning balance,
12 looking about the amount that's being available to be
13 spent. Okay? And then you divide that by the three
14 previous years of funds. Though the levy, as you know,
15 can't be added to the 2014/15 year. Okay. It doesn't
16 even come in till next year. So they can't be spent.
17 However, at the end of 2015, March 20 -- March 31st,
18 that's your beginning balance.

19 THE COURT: For the following year.

20 MR. KELLY: (Indiscernible) your beginning balance
21 to the amounts that's receivable, so the only document
22 that is really relevant here where the Court could -- as
23 I said, with the exception of some minor deviations that
24 are created by the county clerk, you would add the

1 receivables to the cash fund balances, which is not the
2 asset number. It is basically the -- in this case for
3 the town fund -- and I actually ask the witness to
4 testify, this -- to this, the investments are
5 restricted, okay, and then the line immediately above
6 that, cash and cash equivalents in that amount, I'll
7 have her testify --

8 THE COURT: But where you're losing me is why are we
9 talking about 2016?

10 MR. KELLY: We're not.

11 THE COURT: I thought I just heard her testify as to
12 that.

13 MR. KELLY: We're talking about the Miller formula
14 which comprises of --

15 THE COURT: Yes.

16 MR. KELLY: -- the beginning balance. Beginning
17 balance is here on the 2015 audit. Okay? Because the
18 funds aren't coming in until -- Judge, this is where we
19 have the problem. The -- it would be better if we
20 called the levy the 2015 levy because it's done at the
21 end of the tax year of -- or not tax -- Strike that,
22 Judge -- December 2014 for the next fiscal year. The
23 next fiscal year starts on March 31st of 2015 -- or
24 April 1st of 2015.

1 THE COURT: Correct me if I'm wrong. Miller talks
2 about cash on hand plus the levy for the coming -- to be
3 collected in the coming fiscal year.

4 MR. KELLY: Correct.

5 THE COURT: So -- and it sounds like you're jumping
6 ahead a year.

7 MR. KELLY: No, Judge.

8 THE COURT: So I'm getting lost here.

9 MR. KELLY: No, Judge, we're not jumping ahead a
10 year. How could you add the tax levy to the beginning
11 balance of the year before -- What year are we adding
12 the tax levy to? Here you have a tax levy in 2014,
13 December 2014, that doesn't come in till the next June.
14 Okay? You're going to add that to the beginning balance
15 of that 2015/16 year for your total amount. It doesn't
16 make sense to go backwards.

17 MR. DWYER: Judge, this is just completely erroneous
18 as a matter of law. The 2014 levies' monies will be
19 used as a criteria under the Miller formula for a basis
20 for the two fifteen levy, because those monies will be
21 coming in in 2014.

22 Now, if you recall, Your Honor, we had a
23 summary judgment motion and Mr. Kelly stood up here and
24 said that 2013 levies coming in in 2014 were not the

1 right criteria; it's actually 2012. Judge, you
2 corrected him -- you denied his -- you denied that
3 argument severely and now Mr. Kelly is coming in here
4 and saying, well, yeah, it doesn't really matter because
5 2015 is the relevant period.

6 Now, and he's talking about an audit that was
7 performed three months after the levy at the very
8 earliest. They couldn't have possibly known these
9 figures or taken them into the consideration in the 2014
10 levy.

11 THE COURT: That's a different argument. What I'm
12 focused on is the timeframe that we are using.

13 MR. DWYER: Right.

14 THE COURT: So if the end of the fiscal year is --
15 at issue is going to be March 31, 2014, then we take
16 cash on hand on March 31, 2014, plus the funds to be
17 collected in the coming fiscal year.

18 MR. DWYER: Exactly.

19 THE COURT: Am I correct? So that would be 2014.

20 MR. KELLY: That's the 2013 levy.

21 MR. DWYER: Right.

22 THE COURT: But there are -- there are funds levied
23 at that point. You don't count past funds. You count
24 the funds coming in that fiscal year, not two years

1 ahead.

2 MR. DWYER: And the witness just testified --

3 MR. KELLY: I didn't bring Mister --

4 MR. DWYER: -- as to those funds.

5 MR. KELLY: I didn't bring Mr. Dwyer's pleadings
6 with me; however, if you look at the first page of the
7 complaint, I believe it talks about the 2014 levy.
8 We've got the 2014 levy that we've introduced into
9 evidence. That levy is paid in June -- you start
10 receiving funds from that levy in 2014 -- 2015, and then
11 later on in September of 2015. I think he's pled in
12 this case the 2014 levy. Now he's trying to substitute
13 in the 2013 levy.

14 MR. DWYER: No, not at all, Your Honor. This whole
15 case is statutory. In November of 2017, you can file a
16 tax objection for the 2016 levy after you've paid your
17 taxes. What -- I'm not confusing anything. Your Honor
18 has it right. At issue here are the funds coming in
19 from 2013 in addition to what was on hand as of March
20 31, 2014, because that's their fiscal year. That's what
21 the witness testified to for the property taxes and the
22 cash assets as of March 31, 2014. That's the total
23 asset of each fund, that cash on hand, the prepaid
24 receivables and the property taxes coming in from 2013.

1 To use that 2015 audit is completely irrelevant to this
2 case.

3 MR. KELLY: Your Honor, I did find a copy of the
4 taxpayer's motion for summary judgment.

5 THE COURT: Well, let's -- let's look at the
6 definition for what Miller talks about. Not looking at
7 Miller's case -- the Miller case, I'm looking at my
8 notes, and this -- I think it's consistent with what I
9 said a few minutes ago, is -- And let's get away from
10 the fiscal year. So if on January 1, 2015, there's a
11 dollar on hand and the taxes levied from 2014 are going
12 to be another five dollars to be collected in the 2015
13 year, those are the two numbers I add together. So it
14 would be the 2014 levy plus cash on hand at the
15 beginning of the fiscal year on 2015. And so the
16 problem I'm having is your question is jumping ahead
17 another year.

18 MR. KELLY: Judge, I just think you stated exactly
19 my argument. I -- the way you --

20 THE COURT: So why don't we talk about -- why don't
21 we talk about those numbers.

22 MR. KELLY: Okay. Well, --

23 THE COURT: Because, as I said before, I'm not an
24 auditor, --

1 MR. KELLY: Right.

2 THE COURT: -- nor am I an accountant, --

3 MR. DWYER: Your Honor, --

4 THE COURT: -- so let's -- And I'll let you talk in
5 a minute.

6 Let's get to the heart of the funds or the
7 amount of -- the amounts of these and the dates on which
8 they're relevant.

9 Counsel.

10 MR. DWYER: This is from the township's response to
11 the motion for summary judgment on page three of 11.
12 They say that the formula used to calculate this amount,
13 i.e., the Miller standard, is simply stated. The Court
14 added the fund balance at the beginning of the fiscal
15 year to the real estate taxes extended for the prior
16 year to determine the total amount of funds available
17 for the fiscal year. I mean, this isn't rocket science.
18 Why are talking about a 2015 audit I have no idea.

19 MR. KELLY: Judge, let me -- let me state --

20 THE COURT: I agree. I'm going to let you proceed.
21 Go ahead.

22 MR. KELLY: The first sentence of the --

23 THE COURT: Just continue. I -- I think we are all
24 on the same page as to what Miller says. The Miller

1 formula controls, so proceed with your question.

2 MR. KELLY: In that case, Judge, I will --

3 BY MR. KELLY:

4 Q With respect to the beginning balance, if you
5 were to calculate a beginning balance of cash on hand
6 for the town fund using the information on page 13 of
7 the exhibit -- Defendant's Exhibit A, how would you
8 calculate that?

9 A The one million two five zero four seven two,
10 plus the unrestricted investments of three 0 five
11 seventy-two.

12 Q Okay. And could you give us a total for
13 that.

14 A One five five six one nine zero.

15 THE COURT: What fiscal year?

16 THE WITNESS: That is ending 3/15.

17 THE COURT: I'm sorry?

18 THE WITNESS: 3 of '15, March of '15.

19 THE COURT: Okay.

20 BY MR. KELLY:

21 Q Then --

22 MR. DWYER: Sorry, what was that number, Mary?

23 THE WITNESS: One five five six one nine zero.

24

1 BY MR. KELLY:

2 Q And the amount that was levied in 2014 is
3 listed as property taxes receivable, right?

4 A Correct.

5 Q And what would that calculate to be?

6 A One five seven eight five three nine.

7 Q I'm sorry, I -- and if you added the --

8 A Oh, with the cash on hand?

9 Q Yes.

10 A Three one three four seven two nine.

11 Q I'm sorry, three one three four --

12 A Seven two nine.

13 Q Okay. Now, the expenses that you'd be
14 looking at for this particular time period -- or
15 strike that.

16 What are the expenses -- or let me direct
17 your attention to page 15. What are the expenses for
18 the town fund for fiscal year 2014 to '15?

19 A One six one six one four two.

20 MR. DWYER: Again, Your Honor, I need to object.
21 We're talking about -- we're talking about expenses
22 after this levy was made. This is a complete waste of
23 time.

24 THE COURT: Overruled. Proceed.

1 BY MR. KELLY:

2 Q Now, with respect to the year 20 -- to your
3 2014 audit, which is the year previous to what we just
4 talked about, the expenses for the town fund were one
5 point -- or \$1,463,885, right?

6 A Correct.

7 Q And for the year 2012, it's \$1,550,001,
8 correct?

9 A Correct.

10 Q And if you divide that by three, would it be
11 fair to say that that is equal to one -- the average
12 expense is one million five hundred thousand
13 forty-three dollars three hundred and forty-two cents?

14 MR. DWYER: What? Cents?

15 MR. KELLY: I'm sorry, forty-two dollars.

16 MR. DWYER: Did you say one million five forty-three
17 three forty-two?

18 MR. KELLY: Yep.

19 BY THE WITNESS:

20 A Correct.

21 THE COURT: And to what are -- That's a three-year
22 average?

23 THE WITNESS: That is a three-year --

24 THE COURT: What three years?

1 THE WITNESS: March of '15, March of '14, and March
2 of '13.

3 THE COURT: Thank you.

4 BY MR. KELLY:

5 Q Okay. Now, if we could just drop down and
6 talk about the general assistance fund, for example.
7 If I was to ask you the same questions about the
8 general assistance fund, the amount, for example, on
9 page 13 of the beginning balance --

10 MR. DWYER: Which audit are you on, Jim?

11 MR. KELLY: Same one. Haven't changed.

12 MR. DWYER: We were just on my Exhibit A.

13 MR. KELLY: No, we have not been on Exhibit A -- Oh,
14 we're on Exhibit -- Defendant's Exhibit A.

15 BY MR. KELLY:

16 Q Now, the expenses -- Strike that.

17 The amount of money that -- cash on hand for
18 the road and bridge, how did you -- how would you
19 calculate that?

20 A Three 0 eight -- For road and bridge or general
21 assistance?

22 Q Road and bridge, I'm sorry.

23 MR. DWYER: Your Honor, just for the record, there
24 is no allegation in this case against the road and

1 bridge having excessive accumulation.

2 MR. KELLY: Okay.

3 THE COURT: Okay. Sustained.

4 BY MR. KELLY:

5 Q Then we'll -- for the equipment and building?

6 A One million seventy-six three ninety-six.

7 THE COURT: Since I'm not looking at the document,
8 what year is this?

9 THE WITNESS: March of 2015.

10 THE COURT: All right. Thank you.

11 BY MR. KELLY:

12 Q And it's -- how would you have -- what would
13 you calculate is the total cash on hand for that year?

14 A One million four five one five seventy.

15 Q Okay. And the amount levied?

16 A One million two two nine one eighty-three.

17 Q Okay. And what is the total of those
18 numbers?

19 A Two six eight zero seven five three.

20 THE COURT: Okay. What --

21 THE WITNESS: March of '15.

22 THE COURT: March '15 --

23 THE WITNESS: Correct.

24 THE COURT: What is -- and that's the total --

1 THE WITNESS: Cash on hand plus the levy.

2 THE COURT: All right. What was the total amount
3 again?

4 THE WITNESS: Two six eight zero seven five three.

5 THE COURT: Okay.

6 BY MR. KELLY:

7 Q And if I were to ask you the same questions
8 with regards to the expenses -- and you could flip
9 over to page 15, the expenses for the road and bridge
10 fund for the year prior to the -- strike that -- for
11 this time period is \$992,692, correct?

12 A Nine twenty-two six ninety-two.

13 Q Okay. And then for the previous year, which
14 would really be the year ending in March of 2014, that
15 would be 100 -- strike that -- \$1,004,490?

16 A Correct.

17 Q Okay.

18 MR. DWYER: Where was that?

19 MR. KELLY: One million --

20 MR. DWYER: Where?

21 MR. KELLY: -- four thousand -- She previously
22 testified to it when you questioned her.

23 MR. DWYER: Where are you?

24

1 BY MR. KELLY:

2 Q You previously testified to that number,
3 correct?

4 MR. DWYER: Never mind, Your Honor.

5 BY THE WITNESS:

6 A Correct.

7 BY MR. KELLY:

8 Q Now, for the tax year that ended in 2013, the
9 amount of -- the expenses for equipment and building
10 is one million three hundred thirty-five -- well,
11 strike that -- \$1,335,516, correct?

12 A Correct.

13 Q Okay. And if you divided that by three,
14 you'd come out with an average amount of \$1,110,899,
15 correct?

16 A I get a million eight seventy-five sixty-six.

17 Q Okay.

18 THE COURT: I'm going to interrupt. Without copies
19 of the documents in front of us, I'm not following what
20 she's talking about, nor do I see a trend, nor am I
21 gaining really any -- any insight that I didn't already
22 have.

23 I don't know that -- and one of the problems
24 I'm having is I'm getting a variety of numbers thrown at

1 me. I'm not quite sure what she's looking at -- no
2 offense -- or what year.

3 MR. KELLY: Judge, I have to apologize for not
4 having extra copies. I only had three copies of this
5 particular (indiscernible) --

6 THE COURT: I am more confused now than I was before
7 we started this.

8 MR. KELLY: Judge, I --

9 THE COURT: I need -- so this is -- this is going to
10 be an exercise in futility because I'm not getting the
11 information I think I need the way we're doing this. I
12 need -- What I need is not necessarily how she gets
13 there. I need to know what it is -- what the ratio is.
14 Because I'll let you quibble about whether her numbers
15 are correct, but I have no idea if the numbers are
16 correct.

17 So she's the auditor. Presumably she knows all
18 the numbers that goes into it, so she can give me a
19 conclusion. Is that possible?

20 MR. KELLY: Yes, Judge.

21 THE COURT: Is that possible today?

22 MR. KELLY: Yes.

23 THE COURT: Okay.

24

1 BY MR. KELLY:

2 Q With respect to the equipment and building
3 fund, could you tell the Court what the combination of
4 the 2014 levy amount is and the cash on hand at the
5 beginning of the fiscal year. And that's the
6 equipment and building.

7 A At the beginning of what year?

8 Q Well, let me -- let me see if we can help you
9 on --

10 MR. DWYER: Your Honor, can we approach for a
11 second.

12 THE COURT: Sure.

13 MR. DWYER: You know, we've been doing this for a
14 couple years now and you consistently disallowed me to
15 plead the levy year that's at issue. You just said
16 you're confused and you asked him to do it and now he's
17 talking about adding the levy year at issue.

18 THE COURT: I'm not adding the levy year at issue.

19 MR. DWYER: I know, but Jim is.

20 THE COURT: I'm asking -- all I'm asking is give me
21 the ratios for the years that are relevant to this case.

22 MR. DWYER: I understand.

23 THE COURT: And it sounds to me like ten minutes of
24 direct testimony.

1 MR. DWYER: I thought we had it.

2 THE COURT: And the more numbers you're giving me,
3 the less understanding I have.

4 MR. DWYER: What I'm saying is, Your Honor, I
5 understand that you're getting confused and I think that
6 that's the -- I think that that's the goal here. I
7 think -- I think that as a matter of consistency there
8 is absolutely no way you should allow him to enter any
9 testimony whatsoever about the 2014 levy being added as
10 a formula.

11 THE COURT: The 2014 levy which would be the taxes
12 subsequent to the years in question.

13 MR. DWYER: Exactly.

14 THE COURT: Am I correct?

15 And I'm -- I'm not quite sure where you're
16 going and I think this -- this is not helpful.

17 MR. KELLY: Judge, --

18 THE COURT: This is not helping me.

19 MR. KELLY: -- he pled the 2014 levy.

20 THE COURT: It doesn't -- it doesn't matter what he
21 pled. I mean, that's not my concern right now. This is
22 not helping me. I mean, you took her deposition.

23 MR. KELLY: No, Judge.

24 THE COURT: Oh, I thought her deposition was taken.

1 MR. KELLY: No, Judge -- That's correct, Judge, it
2 was taken last Monday.

3 THE COURT: Yeah.

4 MR. KELLY: I was out of town. Thursday I sent
5 Mr. Dwyer an email telling him that I was out of town.
6 I had scheduled being out of town for over a year.
7 Okay? He refused to change the date. Okay?

8 Prior to that, he had noticed up the deposition
9 and I told him, no, we're not going to St. Charles,
10 number one, and, secondly, I was in federal court.

11 THE COURT: Well, --

12 MR. KELLY: Judge, let me finish.

13 THE COURT: I mean, you're objecting to the
14 deposition --

15 MR. KELLY: Judge, but the --

16 THE COURT: -- and it's too late. The deposition
17 went. And you may have been prejudiced, but it went.
18 There's nothing I can do.

19 MR. KELLY: Judge, I'm not --

20 THE COURT: Okay.

21 MR. KELLY: I don't distrust the witness's
22 testimony, Judge.

23 THE COURT: My concern and -- my concern is I'm not
24 gaining anything by this process.

1 MR. KELLY: Okay, Judge.

2 THE COURT: And I'm wasting your time and I'm
3 wasting your time, I apologize. And I'm wasting their
4 time as well.

5 MR. KELLY: Judge, if you're -- if you have
6 previously -- if it's law of the case that the Court is
7 looking at the 2013 levy, okay, rather than the levy
8 with the two exhibits that I have provided, and you're
9 looking at the beginning balance from 2014, then you
10 know, I don't need to go any further.

11 THE COURT: Okay.

12 Counsel, your response?

13 MR. DWYER: Yes, Your Honor. I read from Algonquin
14 Township's response to my motion for summary judgment.
15 When I say simply stated, the issue is the balance on
16 hand at the previous fiscal year prior to the actual
17 levy and the tax receipts in this case for 2013. That's
18 eminently clear by the Miller standard, by the Court's
19 previous rulings in this case, and by anything else.
20 It's entirely new that Jim is bringing in the '14 levy
21 and adding it on. It's --

22 THE COURT: Let's get on the same page. What's the
23 tax year at issue?

24 MR. DWYER: It's the 2014 levy, Your Honor.

1 THE COURT: Okay. So that would be the -- the 2014
2 levy would be for the 2015 tax year.

3 MR. DWYER: Right.

4 THE COURT: Okay.

5 MR. DWYER: We -- we filed in 2015 in November for
6 taxes already paid.

7 THE COURT: All right.

8 MR. DWYER: It's the -- yeah.

9 THE COURT: So we're on the same page.

10 MR. DWYER: Under the Miller standard, Your Honor,
11 in order to -- when you make an excessive accumulation
12 case, you look at the cash on hand at the end of the
13 last fiscal year prior to the levy, which in this case
14 is March 31, 2014, and the property taxes that are
15 received from the previous year's levy, in this case
16 which is 2013.

17 As you recall, Mr. Kelly came to the court at
18 the summary judgment saying, no, 2012 was the same one.
19 Now he's coming to the court and saying you need to
20 consider the actual monies from the 2014 levy when Your
21 Honor has -- Your Honor has said absolutely no in every
22 single pleading before the court.

23 MR. KELLY: Judge, there was --

24 MR. DWYER: But now we're hearing evidence on it.

1 MR. KELLY: Judge, that would -- that would give you
2 three years' worth of funds. I mean, the beginning --
3 I'm just --

4 THE COURT: It's three years, we divide by three.

5 MR. KELLY: Yeah, but that's not the formula.

6 THE COURT: Okay. But that's the testimony that
7 we're having. That's the testimony that went in.

8 MR. KELLY: That we've added three years' worth of
9 funds.

10 THE COURT: Uh-hum (indicating an affirmative
11 response). I think.

12 MR. DWYER: Absolutely, Your Honor.

13 THE COURT: And we're on the same page. Go ahead.

14 MR. KELLY: That wouldn't make any sense, Judge,
15 I've got to tell you. The formula is the amount of
16 money you have on hand. Okay?

17 THE COURT: Yes.

18 MR. KELLY: Plus whatever the levy is. You know,
19 let's for the sake of argument, the levy for the year
20 before and the levy coming up, that's only the money you
21 have on hand plus that levy. That's two times --

22 THE COURT: The taxes to be collected.

23 MR. KELLY: Taxes to be collected.

24 THE COURT: Yes. And this exercise is not

1 explaining it to me. I am no closer to -- and I think
2 if you just break it down and put it in writing, I'm
3 going to get it better, because I'm not getting anywhere
4 with this.

5 MR. DWYER: Your Honor, --

6 MR. KELLY: Well, then, Judge, in that case, I will
7 have no further testimony from this witness. However, I
8 would like to call Mister --

9 MR. DWYER: Wait a second. I'm not done. I need to
10 cross examine --

11 THE COURT: Okay.

12 MR. KELLY: -- (indiscernible).

13 THE COURT: But go ahead.

14 MR. KELLY: Judge, that's fine. I --

15 THE COURT: You said you wanted to do one other
16 thing.

17 MR. KELLY: I will be calling Mr. Miller and --

18 THE COURT: Okay.

19 MR. KELLY: -- but I have no further questions.

20 THE COURT: With respect to the deposition that we
21 were talking about earlier, I assume she testified in
22 her deposition about these same issues.

23 MR. KELLY: Judge, I don't know. I wasn't there,
24 number one. And, secondly, --

1 THE COURT: Was there a representative there from
2 your office?

3 MR. KELLY: No. Both myself and my associate were
4 out of town at a prescheduled meeting that was scheduled
5 a year ago and it was not something that just came up.
6 Further, -- and I just want to make this clear to the
7 Court -- the first time it was scheduled, I sent
8 Mr. Dwyer a communication and to all attorneys that said
9 please coordinate with all the attorneys. And you know
10 what? He never did that. Zero.

11 THE COURT: And I can't do anything retroactively.
12 If you wanted to quash a deposition notice --

13 MR. KELLY: I could have come -- Friday you were
14 closed, Judge. The Friday -- it was Veteran's Day --

15 THE COURT: Oh, that -- okay. Do you have anything
16 further from this witness?

17 MR. KELLY: No, Judge. That's fine.

18 THE COURT: You want to cross, but what is the point
19 of crossing? And, I'm sorry, redirect.

20 MR. DWYER: Your Honor seems confused and I would
21 like to eliminate that confusion.

22 THE COURT: All right. Go ahead. I'll let you,
23 and --

24

REDIRECT EXAMINATION

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BY MR. DWYER:

Q Miss Bowman, before I -- before I say anything, have you talked to Mr. Kelly within the last week about your testimony?

A Yes.

Q Mr. Kelly call you?

A Yes.

Q Okay. How many times?

A One.

Q Okay. And did you go over your testimony with Mr. Kelly?

A No.

Q What did you talk about?

A Just what year was in question.

Q Okay. And is it -- in your mind, is the year 2015 in question?

A Well. That is the -- that's where the levy appears.

Q I'm sorry.

A The levy for '14 appears on the 3/15 financial (inaudible).

Q Okay. Do you understand what the Miller formula is?

1 A Sort of.

2 Q Yes or no, --

3 A No.

4 Q -- do you understand what the Miller formula
5 is?

6 A No.

7 Q Okay. Do you know why we're here today?

8 A Yes.

9 Q What in your words -- explain to the Court
10 why we're here today.

11 A Because you're questioning the levy for '14
12 that they're accumulating (indiscernible).

13 Q Okay. And do you know how to analyze an
14 excessive accumulation case based upon that?

15 A Kind of, sort of.

16 Q Yes or no?

17 A No.

18 Q No, you don't.

19 A No.

20 Q Okay. You said sort of. What's your sort of
21 understanding?

22 A Well, I understand what cash on hand is and
23 what the receivables for the levy are.

24 Q Okay. And we went over in Exhibit A the

1 assets on hand for each fund, right?

2 A Correct.

3 Q And those assets you testified are available
4 to each fund, that's your audit, right? For
5 example, --

6 A Some are restricted, but, yes, they're there.

7 Q Okay. They're restricted. You have to spend
8 it on that fund, but for each -- under total assets,
9 for each balance sheet as of March 31, 2014, on
10 Plaintiff's Exhibit A, that's the fund balance for
11 each fund.

12 A No, that's the total assets.

13 Q Okay. What's the difference between fund
14 balance and total assets?

15 A The liabilities and the outflows of the
16 property taxes.

17 Q What does that mean?

18 A It means that they have expenses that they're
19 going to incur already -- you know, the payables,
20 there's accrued payroll taxes that they still owe on
21 that have not yet been paid.

22 Q Actually, the only thing it means -- Well,
23 for example, under the town fund --

24 MR. KELLY: Objection. He's testifying, Judge.

1 THE COURT: Sustained.

2 BY MR. DWYER:

3 Q Other receivables, what is that?

4 A I'm not sure, but it could be culverts, it
5 could be permits, it could be (indiscernible).

6 Q It's money that they have.

7 A No, it's money that they expect to collect.

8 Q Okay. It's money that they expect to
9 collect.

10 A Correct.

11 Q And you don't know where it's from.

12 A Not off the top of my head.

13 Q It's \$3,859.

14 A Correct.

15 Q Would that change the analysis at all that we
16 did before?

17 A Not necessarily.

18 Q Just incredibly marginally, right?

19 A Correct.

20 Q And, likewise, the prepaid insurance?

21 A Correct.

22 Q So they've already paid for the insurance.

23 A Correct.

24 Q So you're giving them a credit.

1 A Correct.

2 Q So that's basically cash on hand, right?

3 A Well, it's not cash on hand. They can't spend
4 it on any other use.

5 Q They've already spent it --

6 A Correct.

7 Q -- for something that's going to come due the
8 next year.

9 A Correct.

10 Q So you're giving them a credit.

11 A Right. But they can't use it for any other
12 reason.

13 Q Of course not. So that's an asset of a fund.

14 A Correct.

15 Q So when you get three million one sixty-six
16 three ninety-three, those are the total assets for the
17 town fund, right?

18 A Correct.

19 Q And, likewise, throughout for the entire
20 analysis.

21 THE COURT: I'm going to interrupt you. When you
22 say assets for the town fund, is that the same thing as
23 cash on hand?

24 THE WITNESS: No.

1 THE COURT: Why are they different?

2 THE WITNESS: Because cash on hand is what you can
3 go out and spend if you wanted to buy a candy bar, you
4 know, whatever.

5 THE COURT: But the -- if you allocate -- I mean,
6 they've allocated a certain amount of money for the
7 insurance payments, and by making those payments ahead
8 of time, it is -- the credit they receive is the
9 functional equivalent of cash on hand, isn't it? If you
10 prepay \$100, you still get the credit for that hundred
11 dollars.

12 THE WITNESS: Right, but you can't use it for any
13 other reason other than insurance.

14 THE COURT: Okay. But if it's -- Okay. And the
15 amounts that had been prepaid total how much?

16 THE WITNESS: About \$8,000.

17 THE COURT: All right. So as Counsel said, it --

18 THE WITNESS: It seems marginal.

19 THE COURT: -- it's not going to make a significant
20 difference in the total amount of funds.

21 THE WITNESS: Correct.

22 THE COURT: So what is the cash on hand at the end
23 of the fiscal year in question? Or, I'm sorry, at the
24 beginning of the 2015 fiscal year?

1 THE WITNESS: Along with the property tax
2 receivables it's three million.

3 THE COURT: So what is cash on hand before
4 receivables?

5 THE WITNESS: One million five seven nine one six
6 four.

7 THE COURT: One million five seven nine --

8 THE WITNESS: One six four.

9 THE COURT: One six four?

10 THE WITNESS: Correct.

11 MR. DWYER: I'm sorry, one million what?

12 THE WITNESS: Five seven nine one six four.

13 MR. DWYER: Okay. Now, that, Your Honor, --

14 THE COURT: I'm going to ask you one ask one more
15 question, then you can -- then you can undo anything
16 I've asked.

17 MR. DWYER: Thank you. You're going in the right
18 (indiscernible).

19 THE COURT: So what are the receivables for the
20 coming fiscal year in 2015?

21 THE WITNESS: One million five seventy-eight five
22 thirty-six for the property taxes.

23 THE COURT: Okay. So, I'm sorry, say that again.

24 THE WITNESS: One million five seven eight five

1 thirty-six.

2 THE COURT: Five three six?

3 THE WITNESS: Correct.

4 THE COURT: And that would be the equivalent of
5 taxes levied for --

6 THE WITNESS: '13 --

7 THE COURT: For what?

8 THE WITNESS: -- in this case. '13. This is the
9 levy of '13 --

10 THE COURT: Okay. You see, this is where I'm
11 getting lost. We're talking about I believe -- Are you
12 presently on the 2015 fiscal year?

13 MR. DWYER: No, Your Honor. She's right, '13.

14 THE COURT: Okay. So this is actually the beginning
15 of the 2014 fiscal year.

16 MR. DWYER: That's correct.

17 THE COURT: So the number you gave me was for -- the
18 cash on hand at the beginning of the 2014 fiscal year is
19 one million five hundred and seventy-nine thousand one
20 sixty-four; is that correct?

21 THE WITNESS: That was at the end of March of '14.

22 THE COURT: Okay.

23 THE WITNESS: Which would be the beginning of April
24 of '14.

1 THE COURT: All right. What am I missing?

2 MR. DWYER: Nothing. You're not missing anything.

3 BY MR. DWYER:

4 Q What's the total of the one five seven nine
5 one sixty-four and the property taxes receivable of
6 one five seven eight five thirty-six?

7 A Three one five seven seven zero zero.

8 Q Three one five seven --

9 A Seven zero zero.

10 Q Okay. 700.

11 Now, we established before that the
12 three-year annual cost for the town fund was one
13 million five thirty-five seven sixty-nine; is that
14 correct?

15 A I believe so.

16 Q Okay. Divide three million one five seven
17 seven hundred into one million five thirty-five seven
18 sixty-nine, if you would.

19 A Could you repeat that.

20 Q Three one five seven --

21 A (Indiscernible) number first, the one million
22 number.

23 Q No, no -- Oh, okay. The one five three five
24 seven six nine?

1 A One five three five --

2 Q Seven six nine.

3 A Thank you.

4 Q Three one five seven seven hundred.

5 A Three one five --

6 Q Three one five seven seven hundred.

7 A Thank you.

8 Q And the ratio you get?

9 A 4.8.

10 Q Pardon me?

11 A 4.8.

12 Q That can't be right. It's got to be 2.4,
13 right?

14 MR. KELLY: It can't be four.

15 BY THE WITNESS:

16 A Three five --

17 BY MR. DWYER:

18 Q You divide three one five seven seven hundred
19 into --

20 MR. KELLY: No.

21 BY MR. DWYER:

22 Q -- one five three five seven six nine.

23 MR. DWYER: Hey, you can have a chance.

24 THE COURT: Just ask the questions. Make an

1 objection. Don't do (indiscernible), anything else.

2 BY THE WITNESS:

3 A Three one five seven seven hundred?

4 BY MR. DWYER:

5 Q Yeah, divided by one five three five seven
6 six nine.

7 A Divided by one five --

8 Q Three five seven six nine.

9 A (Indiscernible) calculator. 2.05.

10 Q 2.05. So you testified before that the ratio
11 using the other receivables and the prepaid insurance
12 was 2.06, right?

13 Okay. So the difference when you eliminate
14 the other receivables, the prepaid insurance, is
15 marginal, 2.05.

16 A Correct.

17 Q All right. Now, if you look at March 31,
18 2014, the balance sheet on page 13, the equipment and
19 building fund, that doesn't have any other
20 receivables, right?

21 A Correct.

22 Q So the cash on hand plus the taxes are
23 actually two million six five three nine two seven,
24 right?

1 A Correct.

2 Q All right. And when we did that analysis
3 against the three-year average of one million one
4 ninety-six O three nine, that ratio was 2.21, right?

5 A Right.

6 Q Okay. On the other funds, there's \$81 in
7 other receivables, right?

8 A Right.

9 Q Do you know what that is?

10 A No, I don't.

11 Q But that's not going to affect the --

12 A No.

13 Q -- the ratio of 3.41 that we established,
14 right?

15 A Correct.

16 Q Okay. It might be 3.40, but, in any event,
17 it's going to be right around there. The Social
18 Security fund, there are no other receivables for the
19 Social Security fund, the IMRF fund, the insurance
20 fund or the audit fund, are there?

21 A There aren't.

22 Q Okay. So when you said that the ratio in the
23 audit fund was 24.32, that's absolutely true, right?

24 A Correct.

1 Q Okay. And when you said that the ratio in
2 the insurance fund was 3.45, that's absolutely
3 correct, right?

4 A Correct.

5 Q And when you said that the ratio in the IMRF
6 fund was 2.17, that's correct, right?

7 A Correct.

8 Q Okay. Could you look at Exhibit K in
9 Plaintiff's Exhibit A, please -- Plaintiff's exhibit
10 package.

11 MR. DWYER: Your Honor, I had a feeling that
12 Mr. Kelly would come to court with a different analysis,
13 so this is an analysis which includes his 2015 audit.

14 BY MR. DWYER:

15 Q If you look at the 2015 audit that Mr. Kelly
16 has submitted as Defense Exhibit A, page 13, and you
17 look at Exhibit K, Plaintiff's Exhibit K, you find the
18 total assets for the town fund to be three one six two
19 one 0 one, right?

20 A Correct.

21 Q Okay. And you find the average three-year
22 expenditures to be one five four three three four
23 three, right?

24 A Correct.

1 Q And, actually, Mr. Kelly went over that and
2 established that that was a three-year average, right?

3 A Correct.

4 Q Okay. And then the Miller ratio is what,
5 2.05?

6 A Correct.

7 MR. DWYER: Okay. Do you want me to keep going,
8 Jim? Do you want me to do each fund?

9 MR. KELLY: Go ahead.

10 MR. DWYER: Pardon me?

11 MR. KELLY: Which one are you in? Road and bridge
12 -- equipment and building?

13 MR. DWYER: Never mind.

14 MR. KELLY: No, you don't have to do equipment and
15 building if --

16 MR. DWYER: Will you stipulate to Exhibit K or do we
17 want --

18 MR. KELLY: No, we're not going to stipulate to it.

19 MR. DWYER: Okay, then. Your Honor, we're going to
20 go through it. It will take ten minutes, I'm sorry.

21 THE COURT: Okay.

22 MR. DWYER: Unless -- unless -- unless Your Honor
23 says that the 2015 numbers are irrelevant and then I
24 won't do it.

1 THE COURT: No, proceed.

2 BY MR. DWYER:

3 Q Public assistance fund, that's other funds
4 under Defense Exhibit A, right?

5 A Correct.

6 Q That's five twenty-nine.

7 THE COURT: You're going through Exhibit K; is that
8 correct?

9 MR. DWYER: I am, Your Honor.

10 THE COURT: All right. I think we can do this --
11 You've had an opportunity to review Exhibit K.

12 THE WITNESS: Correct.

13 THE COURT: My question is, are those numbers
14 accurate for each --

15 MR. DWYER: Well, let me refresh the witness's
16 recollection, Your Honor.

17 THE COURT: Okay.

18 BY MR. DWYER:

19 Q Miss Bowman, did we go through these numbers
20 at your deposition last Monday?

21 A Yes, we did.

22 Q Do you recall these being the numbers that we
23 discussed and calculated?

24 A To the best of my recollection, yes.

1 MR. DWYER: Okay. And let me just go over the
2 equipment and building fund, Your Honor. That's kind of
3 a good one there.

4 THE COURT: All right.

5 BY MR. DWYER:

6 Q The equipment and building fund that
7 defendant has given you for March 31, 2015, you have
8 the total assets, which is both -- which is cash on
9 hand and property tax and receivable only for two
10 million six hundred and eighty-seven fifty-three; is
11 that right?

12 A That is correct.

13 Q Okay. And can you calculate this, because I
14 haven't done the 2015. So in this audit on page 15,
15 the expenditures for that year were nine twenty-two
16 six ninety-two, right?

17 A Correct.

18 Q Okay. And if you go to my Exhibit A, 2014,
19 you'll see that the expenditures for the building and
20 equipment fund were one million zero zero four four
21 ninety, right?

22 A Correct.

23 Q And then Exhibit B, under expenditures for
24 the equipment and building fund for the year ending

1 March 31, 2013, was one million three thirty-five five
2 sixteen, right?

3 A Correct.

4 Q What happens when we add that to three -- add
5 that together and divide it by three?

6 A You get one O eight seven five six six.

7 Q Okay. And that's what Exhibit K says down
8 under the equipment and building fund, right?

9 A Correct.

10 Q And then when we divide 2,680,753, which is
11 the balance under Defendant's Exhibit A in the
12 equipment and building fund, into that three-year
13 average of one O eight seven five six six, you get a
14 ratio of 2.46.

15 A Correct.

16 Q And then we went through these numbers at
17 your deposition, right?

18 A Correct.

19 Q And they appear to be correct to you.

20 A Correct.

21 Q And then for the township fund, the Miller
22 ratio is 2.05.

23 A Correct.

24 Q For the public assistance fund, the Miller

1 ratio is 2.43.

2 A Correct.

3 Q For the Social Security fund, the Miller
4 ratio is 3.05.

5 A Correct.

6 Q For the IMRF fund, the Miller ratio is 3.01.

7 A Correct.

8 Q For the audit fund, the Miller ratio is
9 25.41.

10 A Correct.

11 Q For the insurance fund, the Miller ratio is
12 3.02.

13 A Correct.

14 Q For the equipment and building fund, the
15 Miller ratio is 2.46.

16 A Correct.

17 Q The only -- the only fund under the 2.07
18 standard is the road and bridge fund, where the Miller
19 ratio is 1.28, right?

20 A That is the Miller ratio, yes.

21 MR. DWYER: Your Honor, does that clear things up?

22 THE COURT: I don't know.

23 Counsel? Mr. Kelly?

24 MR. KELLY: Judge, no questions.

1 THE COURT: Okay. Are you done?

2 MR. DWYER: Yes.

3 THE COURT: Okay. You may step down. Thank you.

4 What do you want to do next?

5 MR. DWYER: Call Mr. Miller.

6 THE COURT: Oh, I'm sorry. Is Mr. Miller here?

7 MR. KELLY: Yes.

8 MR. DWYER: Yes.

9 THE COURT: All right. Come on up.

10 Mr. Miller, if you could raise your right hand.
11 Promise to tell the truth, whole truth and nothing but
12 the truth, so help you God?

13 THE WITNESS: I do.

14 THE COURT: Your name for the record?

15 THE WITNESS: Robert J. Miller.

16 THE COURT: All right. Have a seat.

17 ROBERT J. MILLER,
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. DWYER:

22 Q Mr. Miller, you've been the road district
23 commissioner for a long time, right?

24 A Yes, I have, 24 years.

1 Q From what year to what year, sir?

2 A '93 till 2017.

3 Q And in the course of those duties, did you as
4 a matter of course draft the budget and appropriation
5 ordinance?

6 A Yes, I worked on it every year.

7 Q Okay. And did you also draft the tax levy
8 ordinance?

9 A I worked on it every year as well.

10 Q When you say you worked on it, did anyone
11 else --

12 A It was done in conjunction with the
13 supervisor's office.

14 Q Okay. So you worked with the supervisor's
15 office.

16 A Correct.

17 Q All right. May I call your attention to
18 Exhibit E in the binder.

19 I'm sorry, Bob, Exhibit F.

20 A F? Okay.

21 Q Is this the budget appropriation that the
22 road district did for the years April 1, 2015, ending
23 March 31, 2016?

24 A Yes, appears to be.

1 Q And is there anything on here about
2 accumulating funds for any specific purpose?

3 A On the form itself?

4 Q Yes.

5 A No.

6 Q Okay.

7 THE COURT: I'm sorry?

8 THE WITNESS: No.

9 THE COURT: Okay.

10 BY MR. DWYER:

11 Q Did you -- did you have a referendum to
12 accumulate any funds for any specific purpose?

13 A No.

14 Q Okay. If you would, turn to Exhibit G.

15 A E as in Edward?

16 Q G, sorry, as in -- as in Gigi.

17 A All right.

18 Q And what is this, if you will?

19 A This is the budget appropriation ordinance for
20 -- filed May 15, 2014.

21 Q Okay. And this is for the year 2014 through
22 2015, right?

23 A Correct.

24 Q All right. And would this include the 2014

1 tax levy?

2 A Yes, it would.

3 Q Okay. And so is there anything on here that
4 -- that says that you're going to accumulate any funds
5 for any specific purpose?

6 A Not on this specific document, no.

7 Q Okay. And did you have a referendum to
8 accumulate any funds for any specific purpose?

9 A We did not.

10 MR. DWYER: Okay. Your Honor, I think that's all I
11 have, subject to cross examination, but at this time I
12 would move to admit Plaintiff's Exhibits A through K.

13 THE COURT: Any objection to the exhibit?

14 MR. KELLY: I'd object to H. It's an ordinance. It
15 stands for -- or a statute. It stands for itself. I --

16 THE COURT: I can take judicial notice of it.

17 MR. KELLY: Yes.

18 THE COURT: Its relevance will be determined later.

19 MR. KELLY: And I'd object to J. I don't believe
20 it's -- I'd object to J and --

21 THE COURT: J, and any others?

22 MR. KELLY: That's it, Judge.

23 THE COURT: I'm sorry?

24 MR. KELLY: That's it.

1 THE COURT: Response?

2 MR. DWYER: Your Honor, Exhibit J is a document
3 generated by the McHenry County clerk and you can take
4 judicial notice of it pursuant to -- I think it's five
5 -- 5/8-212 or 213.

6 THE COURT: I can take judicial notice of it, but
7 how do I confirm it was prepared by who you say it is?

8 MR. DWYER: Your Honor, it's --

9 THE COURT: Any objection to that?

10 MR. KELLY: Judge, you can take judicial notice of
11 it. I --

12 THE COURT: I'm sorry?

13 MR. KELLY: You can take judicial notice of it.

14 THE COURT: All right. I'll take judicial notice of
15 it.

16 MR. DWYER: Actually, the numbers reflect the levy
17 that Mr. Kelly testified to.

18 THE COURT: Then I will admit A through K and the
19 statute, but with respect to H, which is the statute, it
20 speaks for itself, so I don't really need to admit that
21 as an exhibit, but I will. In any event, do you have
22 any cross?

23 MR. KELLY: Not with respect to the -- no. No, Your
24 Honor.

1 THE COURT: No? Okay.

2 MR. DWYER: Your Honor, we -- this is Mr. Kelly's
3 witness. We could just do it all at once.

4 THE COURT: You can do it --

5 MR. DWYER: I mean, I'm finished.

6 THE COURT: Do you rest?

7 MR. DWYER: I rest, Your Honor.

8 THE COURT: All right. Your case.

9 MR. KELLY: Sure.

10 ROBERT J. MILLER,
11 called as a witness herein, having been previously duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. KELLY:

15 Q Mr. Miller, you testified that you --
16 previously that you had worked with the township on
17 putting together the budget and levy ordinances,
18 correct?

19 A That's correct. The budget and appropriations
20 as well as the levy ordinances, I worked with the
21 supervisor's office, yes.

22 Q Okay. Not only did you work on the township
23 road district's but you also worked on the
24 supervisor's budgets, correct?

1 A That is correct.

2 Q And in the last 24 years that -- we'll just
3 go -- we'll limit the timeframe. In the last five
4 years, have you attended a majority of all the
5 township board meetings?

6 A Yes.

7 Q Okay. Have you attended all of the budget
8 and appropriation hearings?

9 A Yes, I have.

10 Q Have you attended all of the budget and
11 appropriation meetings at which the budget and
12 appropriation ordinance was voted on and adopted by
13 the township?

14 A Yes, I did.

15 Q And that's both for the road district's
16 budget and appropriation and township's?

17 A That is correct.

18 Q Okay. And involved in -- or with respect to
19 the township's, you were involved in discussions with
20 regard to why the township needed to accumulate funds,
21 correct?

22 A Yes, I was involved.

23 Q Okay. And do you recall when that was
24 approximately?

1 A Over the course of the last three years.

2 Q Okay. And could you tell the Court as to why
3 the township needed to accumulate funds for the town
4 fund.

5 A We are -- the facility was on a rather
6 antiquated septic system with well and septic being
7 their only -- being serviced by a very small and
8 antiquated system, so we were in negotiations with
9 Crystal Lake and Cary on upgrading to city services.

10 Q Okay. And prior to -- You've been the
11 highway -- you were the highway commissioner there for
12 24 years, right?

13 A Correct.

14 Q Do you recall when the septic system was
15 installed?

16 A Before my time.

17 Q Okay. So it's been there for over 24 years.

18 A Correct.

19 Q And did you and the supervisor engage an
20 engineering firm to make a study as to what it would
21 take to upgrade the system?

22 A Yes, we did.

23 Q Now, the reason --

24 THE COURT: Is there any dispute as to whether or

1 not the infrastructure needed renovation?

2 MR. DWYER: I have no idea, Your Honor.

3 THE COURT: I think we kind of dealt with this
4 before, --

5 MR. DWYER: We did.

6 THE COURT: -- so -- so you don't have to go
7 further. I -- I think it's -- it's not a stretch of any
8 imagination for me to take judicial notice of the fact
9 that all towns have infrastructure work they need to do,
10 so I don't -- he doesn't have to justify that to me. I
11 assume there is going to be work. The problem is, and
12 this is a legal argument, as to whether they can
13 accumulate funds off budget essentially because, as I
14 understand it, there is no -- there is no --

15 MR. KELLY: Line item --

16 THE COURT: -- there is no line item in the budget,
17 there is nothing that says we're accumulating funds for
18 X, Y or Z. So he doesn't need to justify it for me. I
19 will take judicial notice that every town in this state
20 has infrastructure work it needs to do.

21 MR. KELLY: Okay. Could I just ask Mr. Miller a
22 couple of questions with regard to --

23 THE COURT: Sure.

24 MR. KELLY: -- the amounts so that the Court has the

1 scope.

2 THE COURT: That's fine.

3 MR. KELLY: Okay.

4 BY MR. KELLY:

5 Q Mr. Miller, this study, was there a
6 determination or an estimate as to what it would cost
7 to replace the well and septic system?

8 A Yes, there was.

9 Q How much was it?

10 A It was approximately 900,000 for water and
11 900,000 for sewer.

12 Q Okay.

13 THE COURT: 1.4 total?

14 THE WITNESS: Just a little under two million.

15 THE COURT: Okay.

16 MR. KELLY: No further questions, Judge.

17 THE COURT: Any cross?

18 MR. DWYER: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. DWYER:

21 Q What was spent on just under the two million?

22 A I'm sorry?

23 Q How much was spent out of just under the two
24 million?

1 A What was spent on the engineering?

2 Q No, you said it was just under two million,
3 right?

4 A That was the estimate.

5 Q Yeah, what was spent?

6 A We were accumulating the funds to do the
7 improvement.

8 Q What was spent?

9 A Nothing was spent.

10 Q Okay. There was no money spent at all.

11 A Yes, on engineering.

12 Q Oh, how much?

13 A I'm not privy to how much it was.

14 Q You don't know?

15 A I don't remember.

16 Q So do you know what fund it came from?

17 A I believe it came from the town fund.

18 Q Okay. And you're the road district
19 commissioner?

20 A Highway commissioner, correct.

21 Q What did you have to do with the town fund?

22 A They asked me to do it.

23 Q Okay. And so nothing was spent other than
24 the study.

1 A I'm not sure if we spent any money to do any
2 soil borings since I left. I don't know. They may have
3 done some --

4 Q Since you were there --

5 A Not that I'm aware of.

6 Q Since you were there, nothing was done except
7 for the study and you don't know how much that cost.

8 A Correct.

9 Q Okay. Have they replaced the septic system
10 yet?

11 A Not that I'm aware.

12 Q Okay.

13 MR. DWYER: Nothing further, Judge.

14 THE COURT: Anything further?

15 MR. KELLY: Nothing further, Judge.

16 THE COURT: Because I cut you off.

17 MR. KELLY: No, no, that's fine, Judge.

18 THE COURT: All right. Anything further from this
19 witness?

20 MR. KELLY: No, Judge.

21 THE COURT: All right. You may step down.

22 Next witness?

23 MR. KELLY: Nothing further, Judge.

24 THE COURT: All right. If you could approach.

1 Two issues that I wanted to address. You
2 indicated you wanted to file a supplemental brief
3 incorporating an argument based on the new statute. I
4 already indicated I would do that. One of the other
5 things that I -- so we'll come back to that in a minute,
6 but one of the other things that I was concerned about
7 was your objections to -- your implicit objections
8 regarding Miss Bowman's deposition. I have no idea what
9 she said in her deposition. I suspect you're not
10 entirely sure either, so what, if anything -- because I
11 think you're entitled to see what she said before we go
12 further.

13 MR. KELLY: I don't know (indiscernible) -- I don't
14 know if it's been ordered or not, Judge, to be quite
15 frank. But as to what she testified to here, I'd like
16 to make it clear, I believe she testified accurately to
17 what her role was with respect to the audit.

18 THE COURT: Okay.

19 MR. KELLY: I don't want to cast any aspersions on
20 her or the testimony elicited by Mr. Dwyer.

21 THE COURT: I don't know if she said anything in her
22 dep that you might find useful, so what do you want to
23 do? You want to file a brief.

24 MR. KELLY: I want to file a brief and I think we

1 can have that done, but for Thanksgiving coming up, I
2 would tell you this week, but I'd say some time next
3 week, if possible. And it should take -- I mean, it's
4 very -- should be relatively short.

5 THE COURT: Well, the problem is, I have to use up
6 my vacation or I lose it, so you will note I'm out the
7 last two weeks.

8 MR. DWYER: Your Honor, I see that you don't want to
9 come in and listen to our arguments about this
10 fascinating issue because you're going to be on
11 vacation?

12 THE COURT: No, I'm not coming in.

13 MR. KELLY: He's got another one coming up the same
14 time.

15 THE COURT: So -- but what I'm anticipating is with
16 respect to this briefing schedule, we're going to get
17 into January, so even if you want to expedite it,
18 there's just about no way to get it done before
19 December 15.

20 MR. KELLY: Just give me two weeks -- I mean, Judge,
21 I can have it done. I've already, you know --

22 THE COURT: That would be December 4th from today.

23 MR. DWYER: I'll just file a response in a week.

24 THE COURT: And then it's too late.

1 MR. DWYER: Oh, no? What, do two days?

2 THE COURT: Well, you see, I've got --

3 MR. DWYER: Are you all jammed up?

4 THE COURT: I am getting jammed up.

5 MR. DWYER: Yeah.

6 THE COURT: I mean, I could do a hearing the
7 afternoon of the 12th.

8 MR. DWYER: Judge, we're talking about ten minutes
9 here, if that. Oh, I know, you've heard that before,
10 right?

11 THE COURT: I can work backwards from the 12th --

12 MR. DWYER: Uh-huh.

13 THE COURT: -- in the afternoon.

14 MR. DWYER: It's -- it's pretty simple stuff. It
15 was a statute that was passed about two months ago by
16 the general assembly and what they said is that the
17 townships in order to have a cause of action, you need a
18 2.5 ratio. The question is whether it's retroactive or
19 not, you know --

20 MR. KELLY: I think it clarifies the Miller, is the
21 purpose of it.

22 THE COURT: I haven't seen it, so I have no idea.
23 So if -- can we do the hearing -- actually, I could do
24 it on the 13th at 1:30. That gives you one more day.

1 MR. DWYER: I can't. The 13th and the 14th I'm out.

2 THE COURT: Yeah, the 12th is the last day I can set
3 aside.

4 MR. KELLY: I just can't -- unfortunately, -- I know
5 I have my glasses -- I cannot see the calendar.

6 THE COURT: Is there a calendar right here?

7 MR. DWYER: Yes.

8 MR. KELLY: Oh, there is. I'm sorry.

9 THE COURT: 12th is a Tuesday.

10 MR. KELLY: The 13th or the 12th? I can do either
11 the 12th or the 13th, Judge.

12 MR. DWYER: He wants to know when you can get your
13 brief.

14 THE COURT: I can do a hearing on the 12th in the
15 afternoon.

16 MR. KELLY: Could we have until the 5th, Judge.

17 MR. DWYER: Really? To do --

18 MR. KELLY: Yeah, (indiscernible).

19 THE COURT: But then that leaves almost no time for
20 a reply.

21 MR. KELLY: Okay. So you -- We'll get it done by
22 the 4th, Judge, filed by the 4th, and over to Mr. Dwyer.
23 Is that -- I mean --

24 THE COURT: Can you get -- I would need your

1 reply --

2 MR. DWYER: By the 6th?

3 THE COURT: Well, if -- I would need it by the 8th.

4 MR. DWYER: Well, oh, absolutely, Judge. There is
5 no problem. This is not -- this is a really, really
6 simple thing. The question is whether or not this
7 actually is retroactive or not and I think the Supreme
8 Court is pretty clear on what language has to be there.

9 THE COURT: I anticipate then when we come back on
10 the 12th at 1:30, assuming that that works for both of
11 your schedules, is that we will have a discussion of
12 today's testimony and that statute, so if you want to
13 incorporate into your brief essentially a closing
14 argument, --

15 MR. KELLY: Oh, okay.

16 THE COURT: -- if you want to cite the case law with
17 respect to its applicability to the testimony today,
18 bearing in mind that I'm following Miller, you can
19 incorporate that.

20 MR. DWYER: Are you asking for a short trial brief,
21 Your Honor?

22 THE COURT: Yeah, essentially.

23 MR. DWYER: Okay. All right.

24 THE COURT: Because I'm -- we're going to wrap it up

1 one way or another when we come back on the 12th. Does
2 that present any problems for anybody?

3 MR. DWYER: Not for me.

4 THE COURT: All right.

5 MR. KELLY: Judge, I can -- by the 4th I can get it
6 done.

7 THE COURT: Okay.

8 MR. DWYER: And then you'll of course email it to
9 me, right?

10 MR. KELLY: Yeah.

11 MR. DWYER: Okay.

12 THE COURT: I don't know what I'm going to do if I
13 ever resolve these cases.

14 MR. DWYER: Well, Your Honor, once you start
15 resolving them in the right manner, then they're going
16 to start settling them and get rid of them.

17 THE COURT: I don't want to do that. So -- well,
18 all right, so 1:30, you can make it.

19 MR. KELLY: Okay. Judge.

20 THE COURT: Okay.

21 (Which was and is all of the evidence
22 offered at the hearing of said cause
23 this date.)

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)
4

5 I, Stacey A. Collins, an Official Court
6 Reporter of the 22nd Judicial Circuit of Illinois, do
7 hereby certify the foregoing to be a true and accurate
8 transcription to the best of my ability and based on the
9 quality of the recording of all the proceedings heard on
10 the electronic recording system in the above-entitled
11 cause.

Stacey A Collins

12
13 _____
14 Stacey A. Collins, CSR
15 Official Court Reporter
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