

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,
2 5TH NOVEMBER 2003 AT 10.30 A.M:

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4 CHAIRMAN: Morning.

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6 MS. DILLON: Good morning, Sir. The first witness is Mr. Fox, Mr. Fox is
7 represented by Mr. Richard Nesbitt, instructed by Orpen Franks.

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9 CHAIRMAN: Mr. Nesbitt.

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11 MR. NESBITT: May it please the Chairman, I am sorry for delaying the
12 Tribunal, I am grateful for the time given, I'll be seeking limited
13 representation for Mr. Fox, I am instructed by Orpen Franks, solicitors.

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15 CHAIRMAN: Very good. That's grand.

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17 MS. DILLON: Mr. Noel Fox, please.

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1 MR. NOEL FOX, HAVING BEEN SWORN, WAS EXAMINED

2 AS FOLLOWS BY MS. DILLON:

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4 Q 1 Good morning, Mr. Fox. The documents that I'll be referring to will come up on
5 the screen that's immediately in front of you there, as and when they are
6 called for. I think, Mr. Fox, that you are an accountant by profession and you
7 are or were a partner in Oliver Freeny and Company?

8 A That is correct.

9 Q 2 And I think that you have known Mr. Denis Mahony, according to Mr. Denis
10 Mahony's evidence, for a considerable period of time and he is both your friend
11 and you are his financial adviser?

12 A Yes, I have known Mr. Mahony for many years, 40 years plus.

13 Q 3 I think that it is also the case, that you have known the Wright family for a
14 considerable period of time?

15 A Yes, we are all in the Malahide area and I would have known the Wright's, as
16 well, for quite a long time.

17 Q 4 You, I think, purchased lands in North County Dublin in the 1970s?

18 A 1971.

19 Q 5 And these are the lands that were at one stage, part of a rezoning application
20 on your behalf and on behalf of Mr. Denis Mahony in 1993?

21 A Yes, 1991 and 1993. Yeah.

22 Q 6 If I can take you back to a period in time, Mr. Fox, prior to the actual
23 rezoning motion itself and show you, sorry, I think it's accepted by you and it
24 seems to be the case from Mr. Mahony's diaries that you had regular contact
25 with Mr. Denis Mahony, certainly from 1990 onwards?

26 A Yes, and before.

27 Q 7 And before?

28 A Yeah.

29 Q 8 In 1991 a submission was made to Dublin County Council on your behalf and on
30 behalf of Mr. Denis Mahony seeking rezoning of your lands and his lands in

1 North County Dublin. If I can just explain to you by way of background, if we
2 could have map 935 please -- 953 please, sorry. This is the Map 8 of the Draft
3 Development Plan for 1991 and you will see on that, Mr. Fox, that there's two
4 portions of land outlined in red.

5 A Yes.

6 Q 9 The northern portion of lands are Mr. Denis Mahony's lands and the southern
7 portion which impinges on the green belt with your lands, is that right?

8 A That is correct.

9 Q 10 In the 1991 Draft Development Plan as published by the council, those lands
10 were zoned B, which is west of the railway line and B and G, east of the
11 railway line. You see that?

12 A I do, yes.

13 Q 11 So that your lands in the 1991 Development Plan, as published and put on public
14 display, were agriculture and green belt?

15 A Correct.

16 Q 12 Right. And the green belt part of the lands formed part of the green belt
17 leading down to the Baldoyle Racecourse lands, isn't that right?

18 A Yes, that is correct.

19 Q 13 Right. Now, that map and the draft statement were put on public display from
20 the 2nd of September 1991 to the 3rd of December 1991. It was open to any
21 member of the public, in that period, to make a submission in relation to
22 changing the status of their lands and such a submission was made on your
23 behalf and on behalf of Mr. Denis Mahony in relation to your combined lands
24 seeking rezoning from green belt and agriculture to low density residential.

25 A Yes.

26 Q 14 Right. You have seen that in the documentation?

27 A Mmm.

28 Q 15 Have you seen that in the documentation?

29 A Yes. I have indeed, yes.

30 Q 16 Now can you tell the Tribunal what you know about the submission that was

1 prepared on your behalf and Mr. Mahony's behalf by Mr. Hogan and could I have
2 page 164 please. This is the covering letter, Mr. Fox, on the submission that
3 was put into Dublin County Council on the 2nd of December 1991 on your behalf
4 and on behalf of Mr. Mahony. And if you look at the last page of that
5 submission, which is page 176, you will see that the map attached to that
6 submission, outlines your lands and Mr. Denis Mahony's lands. They are similar
7 in outline to the larger map we just looked at, isn't that right?

8 A Yes.

9 Q 17 Now can you tell the Tribunal what you know about the preparation and
10 submission of that document to Dublin County Council?

11 A Well, I can only tell them what I have read in the books of evidence I have
12 got, that Mr. Wright asked Mr. Hogan to facilitate us in making this original
13 submission. And Mr. Hogan kindly agreed to do that.

14 Q 18 Did you on any occasion speak to Mr. Hogan?

15 A No, not about that submission. No.

16 Q 19 When you say -- did you ever speak to Mr. Hogan at all?

17 A I think I may have spoken to him one or two times on the telephone and I was
18 really looking for the numbers of engineers in the vicinity. He is an
19 architect in the Malahide area and I think I did ring him looking for people to
20 do drawing holes on our land for us and that would have been last year, before
21 that, I hadn't spoken to him.

22 Q 20 Did you know that the submission had been prepared?

23 A Well it's 12 years ago, Ms. Dillon, I am sure I did, sure it couldn't have
24 moved on without a submission having been made. It would have been an
25 absolutely unorthodox thing to do, put in a submission and I would imagine it
26 was a standard submission that went in, a map or whatever, asking that the
27 lands be rezoned and probably stating what the pluses and minuses of doing that
28 were at the time.

29 Q 21 Mr. Mahony told the Tribunal that he never saw that submission until he was
30 circulated with the documents by this Tribunal.

1 A Yeah.

2 Q 22 Did you see that submission?

3 A No, I did not.

4 Q 23 Did you know about it?

5 A I would have known a submission had to be made. I didn't ask, like, who had
6 made it actually and I didn't get a copy of it.

7 Q 24 But who did you discuss the lands with at that time then?

8 A I would have discussed it with Denis Mahony about pooling our lands together
9 and trying for rezoning but it was a type of forlorn hope really because there
10 were no services in the area at that time, no sewerage, everything was on
11 septic tank so we were going to have a try but I wasn't really hopeful.

12 Q 25 So that -- but certainly as of December 1991, you have a recollection of being
13 involved in a combined effort with Mr. Mahony, certainly taking the first step
14 in having your land rezoned?

15 A The first step and I think then after that, I think you had to get County
16 Councillors to support it. That would have been the second step.

17 Q 26 And did you ever speak to Mr. GV Wright about your aspirations in relation to
18 the rezoning of these lands?

19 A I don't recall having spoken to Mr. Wright about it. I may have but I really
20 don't recall. It's 12 years ago and possibly Mr. Mahony did all the talking
21 with Mr. Wright about it.

22 Q 27 Would you have -- is it likely that you discussed, if you knew of the existence
23 of this submission at the time it was made in December 1991 and if Mr. Wright
24 was the person who organised the submission on behalf of yourself and Mr.
25 Mahony, isn't it likely that you discussed it with Mr. Wright at that time?

26 A It is -- that's logical.

27 Q 28 Yes. But isn't it likely it was discussed at that time?

28 A It is, we must have had some discussion about it at the time.

29 Q 29 Yes. You made no reference in your statement to the Tribunal that you were
30 aware of or knew of the fact that this submission had been made in 1991?

1 A No, because I think we were all thinking of 1993 and the motion, we had
2 forgotten there had to be a foundation document somewhere.

3 Q 30 Yes. Because in your statement at -- page 51 please, you say, and this is your
4 solicitor speaking on your behalf, explains the way his statement is worded,
5 paragraph B and C of that statement, you say "Mr. Fox and Mr. Mahony knew each
6 other well for a long time. In 1993 they jointly applied to have their lands
7 rezoned in the Draft Development Plan, approximately 87 acres in all" and you
8 go on to deal with the events in 1993 to which we'll come to in a moment?

9 A Right.

10 Q 31 But certainly it would appear to be the position, Mr. Fox and you accept it
11 that there was interaction taking place between yourself and Mr. Mahony and
12 Mr. Wright?

13 A Between 1991 and 1993?

14 Q 32 Yes.

15 A There must have been, it may have been intermittent, there must have been some
16 interaction.

17 Q 33 Yes. And if Mr. Wright was the person who organised the submission, that's on
18 page 164, on behalf of yourself and Mr. Mahony, was it your understanding that
19 he was looking after the matter for you?

20 A In what sense, "looking after the matter"?

21 Q 34 Insofar as the preparation of this submission is concerned.

22 A Well Mr. Hogan would have prepared it and Mr. Wright probably would have given
23 him some detail about it.

24 Q 35 Well, you didn't give Mr. Hogan any details?

25 A No.

26 Q 36 You didn't deal with Mr. Hogan in relation to it?

27 A No.

28 Q 37 You were never charged by Mr. Hogan for the preparation of this submission, you
29 never met with or spoke with Mr. Hogan in connection with this submission?

30 A No.

1 Q 38 Neither did Mr. Mahony?

2 A No.

3 Q 39 So therefore what I say to you, were you leaving it to Mr. Wright to ensure
4 that the submission was prepared and in by the 3rd of December 1991?

5 A Yes, that had to be the answer.

6 Q 40 So that you were leaving the matter to be dealt with at that time by Mr.
7 Wright?

8 A Yes.

9 Q 41 Was that because Mr. Wright was a Councillor in the area?

10 A Not really, I'd say it was because he was a friend.

11 Q 42 Yes, but he was also a Councillor.

12 A He may have been, I don't remember back that far. You mean a County
13 Councillor?

14 Q 43 Yes. Well I mean, would you have known that the submission had to be with the
15 Council by the 3rd of December 1991 to be considered by the Council?

16 A I would think -- I must have.

17 Q 44 Yes, who would have told you that?

18 A Mr. Mahony or Mr. Wright, I presume.

19 Q 45 And Mr. Wright is the Councillor, who is the person who would have been aware
20 of the closing date for the submission?

21 A Yes.

22 Q 46 Mr. Hogan, who prepared this submission, told the Tribunal, that on one
23 occasion, when Mr. Wright was on the telephone, he thinks to either yourself or
24 Mr. Mahony, he, Mr. Hogan, was put on the telephone and he spoke to one of you
25 but he does not know which one of you he spoke to, do you have any recollection
26 of any such telephone conversation?

27 A I have no recollection, Miss Dillon, it's too far back.

28 Q 47 Was it the position then thereafter, Mr. Fox, insofar as the person who was
29 dealing with this matter on your behalf and involved certainly in the
30 initiating stages was Mr. Wright, that it was Mr. Wright that yourself and Mr.

1 Mahony were dealing with, in connection with the rezoning?

2 A Yes, and I think the next stage was to get Councillors to propose it and second
3 it. I don't know whether you had to have one proposing and one seconding or a
4 combination of maybe two and two. I really don't know.

5 Q 48 But you had not retained, at that stage, any professional planning consultant
6 or architect or engineer in order to deal with this matter on your behalf, is
7 that right?

8 A No, because there was no work for an architect or engineer at that stage. That
9 would only come if rezoning happened and we were at the planning stage.

10 Q 49 Yes. So --

11 A Then obviously you would have to have a plethora of professionals to go ahead,
12 if one wanted to build.

13 Q 50 But therefore insofar as you were dealing with anyone about the preparation of
14 the motion and the map that would be needed to bring this before the council,
15 it was Mr. Wright you were dealing with?

16 A Mr. Wright, yes.

17 Q 51 If I can bring you forward then to the events of February of 1993, Mr. Fox.
18 Mr. Mahony told the Tribunal that he understood that Mr. Wright was going to
19 look after the motion and the map, that part of it?

20 A Mmm.

21 Q 52 And that certainly, up to the 15th of February of 1993, he, Mr. Mahony,
22 understood that to be the case?

23 A Yes.

24 Q 53 But that at some point thereafter and prior to the 10th of March 1993, he
25 became aware that Mr. Wright was not going to look after the matter and Mr.
26 Wright introduced Mr. Dunlop, that's what Mr. Mahony has said.

27 A That would be correct.

28 Q 54 OK. Now if I can take you back then to a number of meetings, that are recorded
29 in Mr. Mahony's diary, with you in February of 1993, page 235 please. This is
30 the week beginning the 1st of February 1993, Mr. Fox, and in that period, you

1 have a meeting with Mr. Mahony on the 1st of February. There is a meeting with
2 Mr. GV Wright and Mr. Mahony only, on the 9th of February and there is a
3 meeting with you on the 12th of February. Do you see that sequence?

4 A I do, yes.

5 Q 55 Do you have any recollection of what happened at those meetings and if these
6 lands were discussed, leaving aside the GV Wright meeting?

7 A I don't, no. They could have been a combination of business matters or looking
8 to get the motion organised.

9 Q 56 But you were aware in February of 1993, that in order to get your lands on to
10 the floor of the Council to, to be voted on by the council, you needed a map
11 and a motion?

12 A Yes.

13 Q 57 And would you have been aware at that time that there was a closing date for
14 the receipt of such map and motion?

15 A I must have been, yes. Yes.

16 Q 58 And we know that the closing date was in fact the 12th of March 1993?

17 A Mmm.

18 Q 59 Right. If we can turn to page 236 please. Now, you will see, recorded in Mr.
19 Mahony's diary, Mr. Fox, for the 15th of February 1993, a meeting at 7 p.m. N
20 Fox, GV Wright and Mr. Mahony. Now, do you see that?

21 A I do, yes.

22 Q 60 Was the only common matter in which the three of you had an interest at that
23 time, the rezoning of your lands?

24 A Yes.

25 Q 61 So it is likely then the subject for discussion at this meeting was the
26 rezoning of the lands.

27 A It would have been the motion, yes.

28 Q 62 The motion.

29 A Yes.

30 Q 63 Can you recollect whether or not you were aware that there were any

1 difficulties at that stage in relation to the preparation of the motion and the
2 map, by Mr. Wright?

3 A I have been thinking about that and obviously at that point in time, there must
4 have been a lot of pressure on Councillors for -- to propose and second motions
5 right across the county and that perhaps at that stage Mr. Wright had a
6 difficulty with a proposer and a seconder. That may have been what happened at
7 that meeting.

8 Q 64 Well are you speculating Mr. Fox?

9 A I am speculating.

10 Q 65 Do you have a recollection that you were told, by Mr. Wright, that he had
11 difficulty getting a proposer and a seconder?

12 A I don't, no. I am trying to put some logic on it.

13 Q 66 Yes. But Mr. Mahony told the Tribunal that he did not think that there was a
14 difficulty as of the 15th of February, that it was some period of time later
15 than that, that he became aware that Mr. Wright was not going to do the map and
16 the motion?

17 A Right.

18 Q 67 And he thinks, if I understand his evidence correctly, that it was probably
19 closer to the 9th of March, 1993.

20 A OK, I'd have to accept that.

21 Q 68 Do you disagree with Mr. Mahony?

22 A No.

23 Q 69 That would mean, if Mr. Mahony is correct in that and subject to anything Mr.
24 Wright might tell the Tribunal about that meeting, that you did not have a
25 concern as of the 15th of February 1993?

26 A Fine.

27 Q 70 Do you agree with Mr. Mahony?

28 A I do, yes, I'll accept what Mr. Mahony says there.

29 Q 71 That it was some period of time later than that, that you became aware Mr.
30 Wright was not going to do the motion on the land?

1 A Yes, I have no recollection of what we actually discussed on the 15th, maybe
2 that we were all set fair to go ahead, possibly, and then maybe Denis was
3 talking to GV Wright thereafter and found they had a difficulty.

4 Q 72 But at that time in February of 1993, was it your general understanding, before
5 the difficulty arose, that Mr. Wright was going to look after the map and
6 motion?

7 A Yes.

8 Q 73 And that he was going to prepare the map, the motion and get the signatures for
9 you and Mr. Mahony?

10 A Correct, yes.

11 Q 74 Now, at some stage, Mr. Fox, prior to the 9th of March 1993, yourself and Mr.
12 Mahony became alerted to the fact that Mr. Wright was not going to do that,
13 isn't that right?

14 A Yes.

15 Q 75 Can you explain to the Tribunal how and in what circumstances you decided or
16 Mr. Mahony decided to retain Mr. Dunlop?

17 A I think Mr. Mahony told me that Mr. Wright had recommended Mr. Dunlop to him as
18 a professional public relations consultant and lobbyist and that we should go
19 and see him with a view to getting his services or retaining his services.

20 Q 76 And you did so?

21 A We did so, yeah.

22 Q 77 And it was Mr. Mahony who told you, which was consistent, I think, with what
23 Mr. Mahony told the Tribunal yesterday, that Mr. Wright had recommended that
24 Mr. Dunlop be retained?

25 A Yes.

26 Q 78 And that is also consistent with what Mr. Dunlop is talking about?

27 A I presume Mr. Wright would have introduced us to Mr. Dunlop beforehand.

28 Q 79 Yes. If I can could show you a telephone record that does not directly relate
29 to you, Mr. Fox, but it appears to be relevant to the retention of Mr. Dunlop
30 by yourself and Mr. Mahony, page 1112 please. This is a record of telephone

1 messages kept in the office of Frank Dunlop & Associates on the 9th of March
2 1993. And you will see that at 9.15, Senator Wright refers, that he has made
3 contact with Mr. Manny and we understand that, that is Mr. Mahony and that is
4 followed at 10 o'clock by a telephone call from Mr. Mahony about an urgent
5 matter, do you see that?

6 A I do, yes.

7 Q 80 Does that accord with your recollection that it was Mr. Wright who introduced
8 Mr. Dunlop into the equation?

9 A Yes.

10 Q 81 And following that a meeting was set up with Mr. Dunlop?

11 A Yes, that's correct.

12 Q 82 And I think it's now agreed, subject to anything you might say that that
13 meeting took place on the 10th of March 1993 in the Shelbourne Hotel. Do you
14 agree with that?

15 A I have no recollection what date the meeting took place but I did go to a
16 meeting with Mr. Mahony to see Mr. Dunlop once only.

17 Q 83 Yes and did that take place in the Shelbourne Hotel?

18 A It took place in the Shelbourne Hotel over, I think, a small table, we got some
19 coffee and it probably lasted, by the time we had ordered a coffee, maybe 20
20 minutes for it to come and maybe 20 more minutes talking about it, we were
21 probably there 40 minutes.

22 Q 84 You knew, going to the meeting, what you needed was a map and motion to get the
23 matter before the Council?

24 A A motion, yes.

25 Q 85 You knew, I presume, that the closing date was 5 o'clock on Friday, 12th March
26 1993?

27 A We must have known that, yes.

28 Q 86 So when you go to meet Mr. Dunlop, you have an urgent problem?

29 A Yes.

30 Q 87 It seems to be the case and it is recorded on both the diaries of Mr. Mahony

1 and Mr. Dunlop that a meeting took place in the Shelbourne Hotel on the 10th of
2 March 1993. I can show you the documents, 254 please and 255. The first diary
3 extract that you are looking at Mr. Fox, is Mr. Dunlop's diary and it records a
4 meeting at 10 o'clock with Denis Mahony and the second diary extract is Mr.
5 Mahony's diary and it records a meeting at 10 o'clock, on the same date, with
6 Mr. Dunlop. There's no reference to you in either of those entries. And you
7 will see that beneath the words Denis Mahony, there are the words, abbreviation
8 of the Shelbourne Hotel. Do you see that?

9 A Yes.

10 Q 88 Now, when you met Mr. Dunlop, on the one and only occasion on which you met
11 him, did you meet him prior to the motion being submitted?

12 A I don't know when I met him, Miss Dillon.

13 Q 89 I understand that's your position, Mr. Fox, but in an effort to see can it help
14 you, when you met Mr. Dunlop, you met him, I think you agreed with me, on an
15 urgent matter?

16 A Yes.

17 Q 90 Because you needed to get a motion and a map prepared?

18 A Yes.

19 Q 91 Isn't that right?

20 A Yeah and I only met him once and we had no prior discussion about Mr. Dunlop,
21 so it's obvious, it must have been the 10th.

22 Q 92 Yes.

23 A It must have been before the motion was sent in on the 12th. I think.

24 Q 93 Correct. It would follow, would it?

25 A Yes.

26 Q 94 That you were at that meeting on the 10th?

27 A Yeah.

28 Q 95 And because the urgent matter which you were concerned with was to get the map
29 and the motion in by the Friday?

30 A Yes.

1 Q 96 And if that was a subject matter that was being discussed, that meeting had to
2 take place before the 12th, isn't that right?

3 A Yes.

4 Q 97 And therefore you were at this meeting?

5 A Yes.

6 Q 98 All right, now can you tell the Tribunal what you recollect about what
7 transpired at that meeting on the 10th of March 1993?

8 A Well I don't recollect a lot. I presume the motion was discussed and I
9 recollect that Mr. Dunlop requested a professional fee and that's about it. I
10 expect that he would invoice his fees in due course and that he would obviously
11 get on with seeking to get councillors to back the motion or propose and second
12 it.

13 Q 99 When you say that --

14 A I don't recall being, taking any part in the meeting actually. I think I was
15 just there listening.

16 Q 100Mr. Dunlop has described Mr. Mahony as the lead driver at the meeting and
17 Mr. Dunlop has told the Tribunal that apart from you greeting him when you
18 first met, you took no part in the conversation thereafter and Mr. Mahony does
19 not dispute that.

20 A No, I think I was a passive member at the meeting.

21 Q 101However nonetheless, Mr. Fox, you were there?

22 A Yes.

23 Q 102All right. Now if we can look first and foremost at what is also a undisputed
24 issue between Mr. Mahony and Mr. Dunlop which is that the fee that was agreed
25 was 10,000 pounds in cash. Mr. Mahony and Mr. Dunlop say that was agreed at
26 this meeting.

27 A Well, my recollection was that a professional fee was asked for and that was
28 the only discussion on the matter. I expect the amount and the quantity of the
29 fee would be invoiced in due course.

30 Q 103Do you recollect 10,000 pounds in cash being discussed?

1 A I don't recollect the quantity.

2 Q 104Would you recollect cash being discussed at all Mr. Fox?

3 A No.

4 Q 105But cash was undoubtedly discussed at this meeting because it was paid on the
5 23rd?

6 A Now, Miss Dillon, that's not clear cash was paid on the 23rd from the
7 transcripts I read.

8 Q 106Mr. Mahony tells the Tribunal, in sworn testimony, that he paid 10,000 pounds
9 in cash to Mr. Frank Dunlop at a meeting on the 23rd of March. Mr. Frank
10 Dunlop does not dispute that. There is no suggestion that you were present at
11 the meeting on the 23rd of March?

12 A There was never a cash transaction discussed with me by Mr. Dunlop or Mr.
13 Mahony at any time.

14 Q 107Yes. But was --

15 A I certainly was never at a meeting that cash was passed over.

16 Q 108So are you saying then, that both Mr. Dunlop and Mr. Mahony are incorrect when
17 they tell the Tribunal that a fee of 10,000 pounds in cash was negotiated and
18 agreed between them on the 10th of March 1993?

19 A Not in my presence, no.

20 Q 109You are saying that did not happen?

21 A That did not happen.

22 Q 110Are you saying you don't recollect it or that you -- it did not happen?

23 A I don't recollect it.

24 Q 111You don't recollect it?

25 A No.

26 Q 112You do recollect fees being discussed?

27 A I do recollect a professional fee being asked for.

28 Q 113And you say that you assumed an invoice would follow?

29 A Absolutely, it was a professional meeting we were at.

30 Q 114Yes. So far as you were concerned, there was no question of a cash amount at

1 this meeting?

2 A No.

3 Q 115And that when Mr. Dunlop and Mr. Mahony both tell the Tribunal, that at this
4 meeting, a fee of 10,000 pounds in cash was agreed, they are both incorrect?

5 A I have no recollection of that conversation at that meeting and I cannot even
6 imagine that took place today.

7 Q 116Yes. But you do recollect what you describe as professional fees?

8 A Yes.

9 Q 117Presumably for Mr. Dunlop or his company being discussed?

10 A For Mr. Dunlop & Associates, who were a substantial professional relations firm
11 at that time.

12 Q 118If you had been present at a meeting, Mr. Fox, at which a cash fee for
13 Mr. Dunlop had been discussed and agreed between Mr. Mahony and Mr. Dunlop,
14 would it have worried you?

15 A I wasn't present at a meeting at which a cash fee was discussed.

16 Q 119I am saying if you had been, Mr. Fox, would it have concerned you that such a
17 fee had been discussed and agreed between Mr. Dunlop and Mr. Mahony?

18

19 MR. NESBITT: Mr. Chairman, the witness has made it very clear, it's his
20 recollection and it's quite unfair to be asked to speculate on a matter that's
21 for yourself and the other members of the investigation.

22

23 CHAIRMAN: Well Mr. Fox is an accountant, I think there's nothing unreasonable
24 about asking what his attitude might have been if cash had been discussed.

25

26 MR. NESBITT: With respect Mr. Chairman, he may be an accountant, it doesn't
27 make a great difference but it's not his job to speculate, it's his job to give
28 evidence to this Tribunal.

29

30 CHAIRMAN: But he can be asked to what his attitude would have been had cash

1 been discussed.

2

3 MR. NESBITT: He has no recollection so I can't understand how he can go
4 beyond that.

5

6 CHAIRMAN: Because there is no evidence that there was cash was discussed at
7 this meeting.

8

9 MR. NESBITT: Indeed and he says he has no recollection and the Tribunal can
10 draw its own conclusion from the evidence. I just complain, with respect, that
11 speculation of a person with no recollection of the events about which he is
12 asked to speculate goes nowhere and achieves no useful purpose and leaves
13 nothing to this Tribunal of any assistance in my respect and I can't put the
14 matter further than that.

15

16 MS. DILLON: He also has introduced the question that he expected an invoice
17 in due course, in relation to the matter, Mr. Fox has already said that.

18

19 CHAIRMAN: Well you can ask the question.

20

21 MS. DILLON: Thank you Sir. Now Mr. Fox, if cash had been agreed as a fee
22 between Mr. Dunlop and Mr. Mahony, would that have been a matter of concern to
23 you?

24 A Cash is legal tender Miss Dillon, I mean if we want to park a car, we pay cash,
25 if we want to shop we pay cash. If cash had to be paid, then I would have
26 expected that there would have been a receipt and some type of a cycle about
27 it.

28 Q 120And if it was a professional fee, Mr. Fox, you would have expected an invoice
29 and a VAT invoice in their own accord?

30 A If the persons sending the fee was registered for VAT, yes. That would be his

1 liability.

2 Q 121 Yes of course, as Mr. Dunlop and his company were?

3 A Yeah fine, then you would have expected VAT.

4 Q 122 Yes, so that one would have expected, if one was, in the normal course, if one
5 is retaining a person to provide professional services, there will be a
6 document trail surrounding the retention of that person for such services?

7 A Yes.

8 Q 123 And where VAT is charged, one would generate a VAT invoice, there would be a
9 cheque or a payment that would include the VAT and there would be the
10 documentation or the entries on the sides of the two parties relating to the
11 payment, isn't that right?

12 A Yes.

13 Q 124 On one hand, you would have the entry in the cash receipts book, you will have
14 the subsequent onward transfer to the relevant account to which the monies are
15 to be lodged and you have the debit entries on the other side with the relevant
16 transactional documents with that?

17 A Yes.

18 Q 125 Isn't that right?

19 A Yes.

20 Q 126 That would be, what one would describe as, a normal professional transaction?

21 A Orthodox.

22 Q 127 Orthodox. Whereas if one has a payment of 10,000 pounds in cash from which
23 there is no identifiable source and which is accompanied by no paperwork
24 whatsoever and which is received with no paperwork whatsoever, that is not an
25 orthodox professional transaction?

26 A No.

27 Q 128 Now, insofar as you have a recollection of a discussion of fees at this
28 meeting, at that time was it your understanding or did you have any arrangement
29 with Mr. Mahony as to how these fees would be split or not, as the case may be,
30 between yourself and Mr. Mahony?

1 A No, we had no discussion, ever, about fees.

2 Q 129And --

3 A They were first raised by Mr. Dunlop and subsequent to that we never had a
4 discussion about them.

5 Q 130Yes. You had never had a discussion with Mr. Mahony about them?

6 A Never, no.

7 Q 131But your recollection, insofar as it goes, of the meeting, is that the
8 discussion was of professional fees and you expected an invoice?

9 A Yes.

10 Q 132Did you make any contribution to the discussion on the topic of the invoice,
11 for example?

12 A No, no. There was no further discussion at that meeting about the fees. They
13 were quoted and that was that.

14 Q 133The fees were quoted?

15 A The figure was obviously mentioned.

16 Q 134Do you recollect the figure?

17 A No.

18 Q 135But you have a recollection that a fee was nominated by Mr. Dunlop?

19 A Yes I do.

20 Q 136And that it was agreed by Mr. Mahony?

21 A Yes. Sorry no, no, I have no recollection other than there was a professional
22 fee quoted and we didn't demur from it, we expected it to be invoiced. That's
23 what I would have -- that's what I thought.

24 Q 137When you say we expected it to be invoiced?

25 A Well, I expected it to be invoiced.

26 Q 138And you never thereafter, discussed the question of the fee?

27 A Never thereafter discussed it.

28 Q 139And you have no recollection of Mr. Dunlop nominating, as Mr. Mahony says he
29 does, a fee in cash?

30 A No.

1 Q 140Would that have raised alarm bells with you if it had happened?

2 A I think I would have answered that at the time, Miss Dillon, if that had
3 happened.

4 Q 141I would have --?

5 A Answered it at the time if it had happened.

6 Q 142How do you mean "would have answered it"?

7 A I would have said well what are we paying cash for?

8 Q 143So you would have demurred had the question of cash come up?

9 A I think so.

10 Q 144OK. You, at some stage, Mr. Fox, withdrew your lands from the rezoning
11 application.

12 A Yes.

13 Q 145The application that was lodged to Dublin County Council on the 12th of March
14 1993 included your lands, isn't that right?

15 A Yes, it did.

16 Q 146Could we take it from that then, the 12th of March, you had not decided to
17 withdraw the lands?

18 A No, I was still thinking about it.

19 Q 147You were still in?

20 A I was still in on the 12th.

21 Q 148Right and the map and motion are at 934 and at 935. If we just have 935 to
22 confirm that they are your lands and they are still in. This is the map that
23 accompanied the motion seeking the rezoning of your lands from agriculture and
24 green belt, to low density residential?

25 A Yes.

26 Q 149Motion and map, the map was provided to Mr. Dunlop by Mr. Mahony, and the
27 motion was prepared by Mr. Dunlop and he obtained the signatures. And the
28 motion on -- and the map were lodged by 5 p.m. on the 12th of March 1993, so at
29 that stage, Mr. Fox, were you still a participant?

30 A Yes.

1 Q 150At what stage did you decide to withdraw your lands?

2 A I withdrew my lands soon after that.

3 Q 151When exactly was that, Mr. Fox?

4 A I can't recall precisely, I have no notes, I have nothing, but it was soon
5 after.

6 Q 152Did you contact Mr. Dunlop?

7 A I contacted Mr. Mahony and told Denis I wasn't going to go ahead and the reason
8 I wasn't going ahead was for commercial reasons. I thought it was, the whole
9 thing was a forlorn hope. You see the dots across the centre of it there,
10 that's a roadway.

11 Q 153It's a reservation for a roadway?

12 A A reservation for the road, it really destroys the site in one sense. And it
13 was becoming clear, we were talking about very low density here and no services
14 in the area and I took the view that we had lived in that area since 1971 and
15 that the city was only, the centre of the city was only six and a half miles
16 away and eventually the city would move out to us and we would just decide what
17 to do then. So I told Mr. Mahony, I didn't really want to go ahead with it.

18 Q 154Mr. Mahony and Mr. Dunlop had a meeting on the 13th of April 1993 and

19 Mr. Dunlop thinks that it is likely that, at that meeting, they discussed the
20 fact that you were withdrawing, on the 13th of April. This is followed, Mr.
21 Fox, by telephone calls to Mr. Dunlop's office by you on the 14th of April and
22 could we have page 1139 please. You will see there, an entry at 1.05, "Noel
23 Fox" with a telephone number and note, "FD, Frank Dunlop, knows him." Do you
24 see that?

25 A Yes.

26 Q 155That is a record of telephone calls that were received in the office of Frank

27 Dunlop & Associates on that day, which would have to be returned by Mr. Dunlop.
28 First of all, can you confirm that that is you?

29 A I have always had it in the back of my mind that I called Frank Dunlop to tell
30 him I wasn't going ahead with this rezoning situation or motion. And I

1 obviously did call him.

2 Q 156 Could we have 1142 please. This is also a record of telephone calls two days
3 later in Mr. Dunlop's office?

4 A He obviously hadn't returned my call and I followed him up again.

5 Q 157 And looking at the time period, Mr. Fox, is it likely that those telephone
6 calls were in connection with your withdrawing?

7 A I had to tell him that I had withdrawn, that he understood I had withdrawn.
8 Each April for the last, since 1991 to 2001, I have attended the Masters Golf
9 Tournament in Augusta, which was in Georgia and it's always the first two weeks
10 of April, so I was clearly away for the early part of April there. So that
11 would have been after I came back, that I called him.

12 Q 158 But be that as it may, it means, Mr. Fox, if you don't dispute the record
13 that's on screen and you -- the previous record that you wanted to speak to
14 Frank Dunlop in or around the 14th and 16th of April 1993?

15 A I probably wanted to speak to him before that, Miss Dillon, but I didn't get
16 around to it.

17 Q 159 Right. And would that have been in connection with your lands?

18 A Yes. That I wasn't going ahead.

19 Q 160 Yes. And do you recollect that you spoke to him about those, about your lands?

20 A I believe I did speak to him and tell him I wasn't going ahead for very
21 commercial reasons.

22 Q 161 In your statement to the Tribunal, Mr. Fox, you don't make any reference to any
23 further conversation --

24 A I don't because it was in the back of my mind and when I saw this, I said gosh,
25 I did ring him.

26 Q 162 And you did speak to him around that time in connection with the fact that you
27 weren't proceeding with your lands?

28 A Yes, I had made up my mind before then, that I wasn't going ahead.

29 Q 163 When exactly, do you think, you made up your mind?

30 A Obviously sometime after the 12th. I made up my mind I wasn't going ahead and

1 I informed Mr. Mahony of that and he would have informed Mr. Dunlop.

2 Q 164Mr. Mahony and Mr. Dunlop had a meeting on the 13th of March -- the 13th of
3 April.

4 A Yes.

5 Q 165Which is just before these phone calls.

6 A Right, and did they have any meetings prior to the 13th and between the 12th?

7 Q 166There was a meeting on the 23rd.

8 A And did they have any phone calls?

9 Q 167There were phone calls passing between the two, yes so other than saying -- it
10 was at some date between the 12th of March, when you were still in?

11 A Yes.

12 Q 168And around this period, which is --

13 A The 13th, 14th, 15th, 16th.

14 Q 169Of April?

15 A Yes.

16 Q 170You decided to withdraw but you can't be more precise than that?

17 A No, I can't be.

18 Q 171Mr. Mahony says that he paid Mr. Dunlop the 10,000 pounds in cash on the 23rd
19 of March 1993 and Mr. Dunlop agrees that that is when the money was paid. At
20 that stage, were you still in?

21 A Well, I certainly was out before any money was paid over to Mr. Dunlop.

22 Q 172Well do you know when the money was paid?

23 A No.

24 Q 173Well then, how do you know that you were --

25 A Because I am sure it would have been discussed with me that he was paying fees
26 to Mr. Dunlop, but no such discussion took place with me.

27 Q 174Well do you recollect a discussion with Mr. Mahony that he was paying fees to
28 Mr. Dunlop?

29 A No, there was no discussion with Mr. Mahony that he was paying Mr. Dunlop fees,
30 none.

1 Q 175With you?

2 A With me.

3 Q 176There was no discussion?

4 A No discussion.

5 Q 177Right. So you don't know when Mr. Mahony paid?

6 A I haven't an idea when Mr. Mahony did that transaction with Mr. Dunlop.

7 Q 178Right.

8 A And I only found out about that transaction in recent times, when the evidence
9 was coming forward, from the Tribunal, to me.

10 Q 179So Mr. Mahony never discussed that with you?

11 A Never discussed that.

12 Q 180Do you know whether it's likely you were still in by the 23rd of March 1993?

13 A Likely out, if he paid him on the 23rd.

14 Q 181Well, why then, would you be contacting Mr. Dunlop on the 16th and the 14th of
15 April?

16 A Because that's when I got around to it. Like, I had a very, very busy schedule
17 in those days, I was working around-the-clock in 1993.

18 Q 182Did you meet with Mr. Mahony to discuss the withdrawal of your lands?

19 A I am sure I did. Yes.

20 Q 183When would that have been?

21 A That obviously was sometime after the 12th.

22 Q 184I don't think, subject to checking, that there's any entry in Mr. Mahony's
23 diary for a meeting with you between the 12th and 23rd of March 1993.

24 A It could be a phone call, it could have been a meeting.

25 Q 185But why are you so sure, Mr. Fox, if you do not know when the money was paid,
26 that you were out by the 23rd of March?

27 A There was no money ever discussed with me so I can't imagine he would be paying
28 money over if I weren't out. I am sure there would have been discussion, by
29 the way, I am paying Mr. Dunlop and let's see how we split it. After all,
30 like, we had twice the amount of land he had going in, so it would have been a

1 two to one split.

2 Q 186But you never discussed --

3 A Never discussed it, ever.

4 Q 187Including after the first meeting?

5 A Never discussed it from then to this day.

6 Q 188But you don't know when you withdrew your lands, Mr. Fox?

7 A It had to be sometime after the 12th, soon after.

8 Q 189But Mr. Mahony never discussed with you that he was paying Mr. Dunlop?

9 A No, Miss Dillon.

10 Q 190Your evidence is, you do not know, until you got the documents from the

11 Tribunal, when it was that Mr. Dunlop was paid?

12 A Yes.

13 Q 191So --

14 A That document is saying that Mr. Mahony thinks it was the 23rd, he doesn't say

15 categorically it was the 23rd, he says something like my diaries indicate to me

16 it was around the 23rd, he isn't categoric.

17 Q 192He has sworn to the Tribunal, but that's a matter to the Tribunal, that it was

18 the 23rd?

19 A Sorry.

20 Q 193Leaving that aside for the moment, if you had no discussion about Mr. Mahony

21 paying the fees or having a meeting with Mr. Dunlop on the 23rd, how do you

22 know that you were out before the money was paid?

23 A Because I would imagine he couldn't have paid over money on my behalf without

24 telling me.

25 Q 194What arrangements did you make to make sure that your lands were not rezoned?

26 A I don't follow that question.

27 Q 195You know, from the map and the motion that was put in, when you were still in

28 on the 12th March, that your lands were now included on an application for --

29 before the council for rezoning, is that right?

30 A Yes.

1 Q 196 You decided to withdraw. How did you go about it?

2 A I told Mr. Mahony. Mr. Mahony obviously told Mr. Dunlop and Mr. Dunlop
3 arranged for the lands to be withdrawn.

4 Q 197 You also contacted Mr. Dunlop?

5 A I did, yes.

6 Q 198 For the similar purpose?

7 A Yes, to make sure.

8 Q 199 To make sure and busy and all, as you were, on two occasions you rang him, on
9 the 14th and 16th April, to make sure that you made contact with him and it's
10 likely the matter was the withdrawal of your lands.

11 A Yes.

12 Q 200 There was no other matter or was there, you were dealing with Mr. Dunlop at
13 that time?

14 A No, absolutely none.

15 Q 201 So isn't it much more likely, Mr. Fox, that in fact your decision to withdraw
16 your lands occurred in or around the 13th, 14th, or 16th of April 1993?

17 A That's not likely at all, Miss Dillon, I was away for the early part of April
18 as I am or was every year in that decade.

19 Q 202 Yes.

20 A And I would have been very busy, that that zoning wouldn't have been uppermost
21 in my mind at the time, I was busy, I was obviously preparing to go away as
22 well.

23 Q 203 But isn't it likely, that if you were contacting Mr. Dunlop around the 14th and
24 16th of April, what you were discussing with him at that time was the
25 withdrawal of your lands?

26 A Yes.

27 Q 204 Because, I am assuming you would have known the lands were going -- could come
28 up before the Council?

29 A On the 28th or 29th.

30 Q 205 In order to get your lands out --

1 A I told Mr. Mahony to get them out.

2 Q 206But you didn't stop at that, with respect, you took the additional step of
3 contacting Mr. Dunlop?

4 A Yes.

5 Q 207Isn't that right?

6 A Yes.

7 Q 208Because Mr. Dunlop was the person you had retained in the first place.

8 A Yes.

9 Q 209Isn't that right?

10 A Yes.

11 Q 210So that on the 16th and 14th of April, you are contacting the person you had
12 retained to seek the rezoning for you, to get your lands deleted, isn't that
13 right?

14 A Yes.

15 Q 211OK. So that insofar as the documentary record exists in relation to this
16 matter, it seems to establish that on the 14th and the 16th of April, you
17 attempted to speak to the person you had retained to achieve the rezoning and
18 that the matter you would have had in common to discuss with him at that time
19 was the removal of your lands from the motion, isn't that right?

20 A Yes, yes.

21 Q 212Because it wasn't Mr. Mahony you had retained to achieve the rezoning of your
22 lands, it was Mr. Dunlop?

23 A Yes.

24 Q 213OK. Other than contacting Mr. Dunlop and presumably speaking to him and other
25 than speaking to Mr. Mahony, did you take any other step in relation to taking
26 your lands out of the rezoning motion?

27 A No.

28 Q 214Did you, in that period of time, have occasion to discuss the matter with
29 Mr. GV Wright at all?

30 A No.

1 Q 215 Was it your view, at this time, that having the professional services of
2 Mr. Dunlop having been retained, that that was a matter that should be left to
3 him?

4 A I can't answer that, Miss Dillon, I really don't know. I just told him I
5 didn't want to go ahead.

6 Q 216 You told Mr. Dunlop?

7 A And Mr. Mahony.

8 Q 217 Yes. Mr. Mahony was the adjoining landowner?

9 A Yes.

10 Q 218 And Mr. Dunlop was the professional person?

11 A Yes and it was a joint application so he was my partner in that.

12 Q 219 In the application, Mr. Mahony was, but the person who was handling it for you?

13 A Was Mr. Dunlop.

14 Q 220 But other than Mr. Dunlop, you didn't speak to anyone else?

15 A No.

16 Q 221 Such as Mr. Wright?

17 A Such as Mr. Wright, no.

18 Q 222 You didn't?

19 A No.

20 Q 223 Your lands were removed on the 28th of April, unanimously by the council,
21 Mr. Fox, but prior to that Mr. Mahony, on the 23rd of April, wrote a letter
22 saying that your lands were not being proceeded with, it's at page 321, this is
23 a letter to Councillor David Healy, signed by Mr. Mahony and you will see that
24 it's the 23rd of April and he says that the lands in question have been amended
25 after discussion with local councillors, which reduces the 36 hectares to
26 approximately 14 hectares, it's lands excluded are highlighted in yellow on the
27 attached map, the map is not available and he asks for support for the
28 amendment, isn't that right, do you see that?

29 A I do, yes.

30 Q 224 Had you ever seen that document before?

1 A No, that's the first time I have seen it.

2 Q 225 That would seem, if it is an accurate record of what happened, that certainly
3 by the 23rd of April 1993, you were clearly out of the rezoning application.

4 A Yes.

5 Q 226 Right. And that would be consistent with the telephone calls to Mr. Dunlop on
6 the 14th and the 16th.

7 A Yes.

8 Q 227 So, that coming up to the rezoning meeting on the 28th of April 1993, there was
9 no ambiguity, but that you were out?

10 A No.

11 Q 228 And in fact that is what occurred, your lands were deleted from the rezoning
12 motion and Mr. Mahony proceeded, isn't that right?

13 A Yes, yes.

14 Q 229 Now, did you ever any any discussion with Mr. Mahony about the monies that he
15 had paid to Mr. Dunlop?

16 A Never, no.

17 Q 230 Did Mr. Mahony ever discuss with you that Mr. Dunlop after his lands had been
18 rezoned had come back to him looking for a success fee?

19 A No.

20 Q 231 You will be aware from the documentation, Mr. Fox, that you will have looked
21 at, that in December of 1993, that Mr. Dunlop made contact with Mr. Mahony
22 seeking a success fee and that in February, that success fee was paid.

23 A Yes.

24 Q 232 Agreed at 2,000 pounds and as paid?

25 A I am aware of that.

26 Q 233 Not a matter in which you had any involvement?

27 A No involvement whatsoever.

28 Q 234 I just want to draw two things, in relation to that, to your attention, Mr. Fox
29 and ask you to comment on them. Mr. Mahony and Mr. Dunlop agree, that on the
30 3rd of February 1994, they had a meeting at which Mr. Dunlop sought a 5,000

1 pounds success fee and Mr. Mahony agreed to pay 2,000 pounds, in connection
2 with the rezoning of his lands, all right?

3 A Yes.

4 Q 235 You understand that. Now, on that same day and after his meeting with
5 Mr. Dunlop, Mr. Mahony met you, if we could have 665 please. Now, you will see
6 here, that you have a lunch appointment with Mr. Mahony at 12.45 but prior to
7 that he meets Mr. Dunlop at 11 a.m. and that is the meeting in the Berkley
8 Court, at which Mr. Dunlop seeks a success fee and 2,000 pounds is agreed and
9 then it appears that Mr. Mahony meets you for lunch, do you see that, it's the
10 appointment for you is 12.45?

11 A Yes I do.

12 Q 236 There's nothing to indicate that that meeting did not take place between
13 yourself and Mr. Mahony.

14 A Probably did.

15 Q 237 Did Mr. Mahony ever discuss with you the fact that Mr. Dunlop had suddenly come
16 back to him looking for a success fee?

17 A No. No, he did not.

18 Q 238 Did he mention or do you have any recollection of him mentioning, as would be
19 the norm, that he had a meeting with Mr. Dunlop that morning and that was what
20 Mr. Dunlop was looking for?

21 A No, he never discussed his meeting, with Mr. Dunlop, with me.

22 Q 239 It arose out of a matter in which you both had initially at least a common
23 interest, the rezoning of the lands?

24 A There was no such discussion. Probably what happened there, as I look at it
25 is, you can ask Mr. Mahony but if he met Mr. Dunlop in the Berkley Court hotel
26 at 11, the meeting probably went on, he probably said to himself, who am I
27 going to have lunch with, Noel is just up the road, I'll call him.

28 Q 240 Mr. Mahony was never annoyed with Mr. Dunlop's request for a success fee. And
29 then agreed to pay him, effectively as I understand it, to bring closure to the
30 events in which they had both been involved.

1 A I didn't catch that.

2 Q 241Sorry, he says he agreed to pay him, to bring closure on --

3 A Closure?

4 Q 242That's the word that was put by Mr. Mahony's Counsel to Mr. Dunlop in
5 connection with the matter?

6 A Mmm.

7 Q 243Now, at this meeting that Mr. Mahony had with Mr. Dunlop, it was certainly a
8 somewhat heated meeting, if both versions are correct and immediately following
9 that, he goes to meet his old and trusted friend, which is you Mr. Fox, and you
10 say he never raised with you what had transpired with Mr. Dunlop that morning?

11 A Absolutely not. Mr. Mahony never raised the fees he paid Mr. Dunlop ever with
12 me.

13 Q 244OK.

14 A Be they the cash amount or the success fee.

15 Q 245Mmm. Mr. Mahony says that he paid the 2,000 pounds in cash on the 8th February
16 1994.

17 A Mmm.

18 Q 246And on that day, after that payment, he also meets you, Mr. Fox. Could I have
19 page 670. And if you could leave the present one on screen. On the 8th
20 February 1994, Mr. Fox, it's agreed between Mr. Mahony and Mr. Dunlop that sum
21 of 2,000 pounds in cash was paid to Mr. Dunlop as a success fee and you will
22 see that he meets you that afternoon, do you see that?

23 A What is three --

24 Q 2473 p.m.?

25 A And what is?

26 Q 2489.30 Dunlop. Now, I understand and correct me if I am wrong, Mr. Fox, you have
27 had a very long relationship with Mr. Mahony and you both regard each other as
28 close friends?

29 A Yes.

30 Q 249Right. Mr. Mahony certainly felt put upon by Mr. Dunlop in his request for a

1 success fee which he paid. Now on both dates which he dealt with and concluded
2 these transactions with Mr. Dunlop, he meets his old and trusted friend and his
3 adviser. Now on the 8th February 1994, did you have any discussion with Mr.
4 Mahony about the payment he had made that morning to Mr. Dunlop?

5 A None, or on the 3rd, none.

6 Q 250 Do you think that's strange?

7 A No.

8 Q 251 That he wouldn't discuss this with you, you don't think that's strange?

9 A No, that's the arrangement he came to with Mr. Dunlop.

10 Q 252 But if he felt he was being put upon by Mr. Dunlop in Mr. Dunlop's sudden
11 request for a success fee?

12 A What I could do about it, Miss Dillon, if he was being put upon by a success
13 fee?

14 Q 253 You could talk to him.

15 A To who?

16 Q 254 Mr. Mahony.

17 A But I didn't talk to Mr. Mahony about it, I categorically didn't talk to him on
18 either occasion.

19 Q 255 Certainly if Mr. Mahony had wanted to discuss this with you on both occasions,
20 he had an immediate opportunity on the same day to discuss these events with
21 you?

22 A Yeah, that's if I actually met him on those dates. That's his side of the
23 entries.

24 Q 256 Mmm. Are you saying you didn't meet Mr. Mahony --

25 A No, I can't prove I didn't because I have no diary on my side.

26 Q 257 Certainly there's nothing on the face of the diary entry such as a line through
27 the entry to indicate the meetings did not take place?

28 A Yeah.

29 Q 258 And it is likely, rather than it is unlikely the meetings did take place, isn't
30 that right, Mr. Fox?

1 A It's likely.

2 Q 259And certainly according to --

3 A It says 3 p.m. Fox, the other one says Noel Fox.

4 Q 260Yes. Are you saying it's not you?

5 A I can't say that, Miss Dillon, you know that I can't say that.

6 Q 261Would you have expected, Mr. Mahony, if he had been concerned about the payment
7 or worried about it, to have discussed it with you?

8 A No.

9 Q 262Right. Particularly in view of the fact that the success fee arrangement arose
10 out of what had originally been a joint enterprise between you and Mr. Mahony?

11 A I mean it wasn't as if -- Why go along with this venture at the end of the day,
12 so there was no reason for him to discuss his personal affairs with Mr. Dunlop,
13 with me.

14 Q 263But you had been involved at the beginning, Mr. Fox?

15 A I was involved at the beginning but I was very ambivalent about the whole
16 thing.

17

18 JUDGE KEYS: Mr. Fox, could I ask you one question, you say that you never
19 discussed any fees at all with Mr. Mahony, is that correct?

20 A That is correct, Sir.

21

22 JUDGE KEYS: Even though you jointly agreed to engage Mr. Dunlop to carry out
23 professional work for which a professional fee was quoted, as I understand the
24 situation.

25 A Correct.

26

27 JUDGE KEYS: And that Mr. Dunlop, up to the date you withdrew from the whole
28 transaction, he had carried out some work on your part which I would have
29 thought would have justified you owing him some fee for that work up to the
30 date of withdrawal, would that not be correct?

1 A Up to the 12th.

2

3 JUDGE KEYS: Yes, after all, you had lodged the motion and there was the
4 amendment of the motion to have your lands taken out. Now surely --

5 A Mr. Dunlop never raised a fee on me.

6

7 JUDGE KEYS: The question I am asking you is, did you not feel at this stage
8 that he had done some work for you and you being so close to Mr. Mahony did not
9 say, when the whole matter had been concluded well, Denis, he did some work for
10 me, I know I withdrew from the motion, surely I owe something as part of the
11 deal, which you know, for his successful lobbying, did that not cross your
12 mind?

13 A It didn't.

14

15 JUDGE KEYS: Did you not even make a query or not even raise it with Mr.
16 Mahony that you should offer some contribution for the work he carried out on
17 your behalf?

18 A No.

19

20 JUDGE KEYS: I find that very strange, I mean surely --

21 A It's not so strange really.

22

23 JUDGE KEYS: Of course it is, Mr. Fox. Mr. Fox, this man carried out
24 professional work for you, you owed him, I would have thought, part payment for
25 part of the work because you withdrew, he provided some services for you, you
26 never made an inquiry at all, as to whether in fact, you owed any money to
27 Mr. Dunlop for those services. Is that correct?

28 A That is correct. And I didn't get a bill.

29

30 JUDGE KEYS: You don't have to get a bill. Do you not feel obliged that you

1 owed him some money?

2 A Well do you know, in all the years with Denis Mahony, I am being described as
3 his financial adviser. I was a family friend and met him and gave him advice
4 on many occasions. I never raised a bill.

5

6 JUDGE KEYS: I see.

7 A I was not his audit partner. I was, in the very earlier years but not later
8 on.

9

10 JUDGE KEYS: Is that the reason why you never raised by --

11 A It's not the reason, it's give and take between friends, it never occurred to
12 me.

13

14 JUDGE KEYS: That's exactly what I am saying, give and take. You did work for
15 him, you never billed him, he is a joint venture on this occasion on which
16 services are carried out for you and I take it you didn't bother mentioning to
17 him then that perhaps you owed a consideration because of the service you had
18 given free of charge in the past, is that the explanation?

19 A It didn't occur to me.

20

21 JUDGE KEYS: Didn't occur to you. Just one other matter, when you say that you
22 never discussed fees with Mr. Mahony, I note you said you had no recollection,
23 that's the first meeting at the Shelbourne, you were pressed and said that,
24 correct me if I am wrong, is that there was a professional fee asked for, is
25 that correct?

26 A Yes.

27

28 JUDGE KEYS: And that was nominated.

29 A There was a figure mentioned but I can't recollect the figure.

30

1 JUDGE KEYS: And then there was a question put to you whether cash had been
2 mentioned.

3 A I have no recollection of cash being mentioned.

4
5 JUDGE KEYS: That's what I thought you said, no recollection therefore, cash
6 could have been mentioned but you have no recollection of the word cash being
7 mentioned, is that correct?

8 A No. That's correct.

9

10 JUDGE KEYS: Thank you.

11

12 Q 264MS. DILLON: I want to move on now, Mr. Fox, to deal with the information that
13 you provided to the Tribunal in connection with the 1998 application to have
14 your lands rezoned.

15 A Yes.

16 Q 265When you were originally contacted by the Tribunal to provide a history of your
17 involvement in these lands from the date of their acquisition to date, you told
18 the Tribunal in your statement at page 51 please, in the last paragraph, "In
19 1998, under the Draft Development Plan, substantial development in the
20 surrounding area, having occurred in the intervening period. The lands were
21 again submitted for consideration by Fingal County Council, a portion of which
22 were proposed for rezoning by the Fingal Executive, put on public display,
23 voted for and rezoned by the council. Needless to add, our client did not
24 discuss the rezoning of his lands at this time with Mr. Frank Dunlop."

25

26 That was your initial response to the Tribunal.

27 A Yes.

28 Q 266That was forwarded by your solicitor. Now you subsequently, on foot of an
29 Order for Discovery, swore an Affidavit of Discovery to the Tribunal, isn't
30 that correct?

1 A Yes.

2 Q 267And you were required to make discovery of all documents and records in your
3 power, possession or control relating to the Fox and Mahony lands from the date
4 of acquisition of the lands of the said Noel Fox to date. So that would be all
5 documents to do with your lands?

6 A Yes.

7 Q 268Isn't that right?

8 A Yes.

9 Q 269And in compliance with that order on the 15th of May 2003, you swore an
10 Affidavit of Discovery in which you disclosed, insofar as the lands were
11 concerned, the title deeds of the lands.

12 A Yes.

13 Q 270And you disclosed some political donations to Mr. Michael Kennedy and
14 Councillor GV Wright?

15 A Yes.

16 Q 271And you said that you had no other documents?

17 A Yes.

18 Q 272Is that right, other than diary which had been destroyed, isn't that right?

19 A Yes, yes.

20 Q 273Now, you were then asked to clarify a number of matters as to whether you had
21 ever paid Mr. Dunlop directly or indirectly and you were asked to provide a
22 more detailed narrative statement and on the 22nd of August 2003, you provided
23 a second statement dealing with some other matters that were included and
24 that's at page 56, insofar as it deals with the present issue.

25 A Yes.

26 Q 274And you say "In 1998, under the then Draft Development Plan, substantial
27 development in the surrounding area, having occurred in the intervening period,
28 my wife's lands were again submitted for consideration by Fingal County
29 Council. A portion of the land was proposed for rezoning by Fingal Executive,
30 put on public display, voted and rezoned by the council. At no stage did I

1 ever discuss the rezoning of the lands with Mr. Dunlop at this time."

2

3 Now arising from that on the 17th of September 2003 at page 981 you were asked
4 who had submitted the lands for consideration by Fingal County Council in the
5 1998 lands, you see paragraph 1 there? "Kindly indicate who submitted
6 Miss Pauline Fox's lands for consideration by Fingal County Council in 1998."

7 A Yes.

8 Q 275 "Do any documents exist in respect of this submission and if so, please explain
9 why the said documents were not discovered in your client's Affidavit of
10 Discovery sworn purported compliance with the Order of the Tribunal of the 28th
11 of March 2003. If planning consultants/engineers/architects were retained in
12 respect of the submission to Fingal County Council in 1998, please identify any
13 such consultant". And your response to that on the 9th of October at paragraph
14 1, is page 983 was that you submitted the lands for consideration.

15 A Yes.

16 Q 276 Isn't that right?

17 A Yes.

18 Q 277 Now was it you?

19 A Yes.

20 Q 278 Are you Metworth Limited?

21 A Yes, I am Metworth Limited.

22 Q 279 But you didn't disclose Metworth Limited, Mr. Fox, with respect as the person
23 or body who had made the submission, is that right?

24 A Metworth Limited is me.

25 Q 280 How would the Tribunal have known from your answer to that letter, that
26 Metworth Limited, who in fact made the submission to Fingal County Council in
27 connection with your lands, was you?

28 A Well, I'm sorry about that Miss Dillon.

29 Q 281 Could you just answer the question, Mr. Fox, how would the Tribunal have known
30 that Metworth Limited, who made the submission to Fingal County Council, is in

1 fact, you?

2 A That was an oversight, I should have said it was me.

3 Q 282Because if one looks at the company information of Metworth Limited, Mr. Fox,
4 you don't appear as shareholder or a director of the company, isn't that right?

5 A Correct.

6 Q 283OK. If we could have page 763 please. This is an extract from the companies
7 register in relation to Metworth Limited, which was dissolved?

8 A Yes.

9 Q 284In 1998?

10 A Yes.

11 Q 285The shareholders and directors of that company, Mr. Fox, do not include
12 yourself, isn't that right?

13 A Yes.

14 Q 286So that on seeing the submission that was made by Metworth Limited to Fingal
15 County Council, if the Tribunal were minded to do a company search, it would
16 not disclose the existence of you or any member of your family as having been
17 interested in Metworth Limited?

18 A Yes.

19 Q 287And similarly the Tribunal were relying on your replies to the correspondence
20 that was raised between the two parties, there was never, in your
21 correspondence at this point in time that indicated that you had any
22 association with Metworth Limited, is that right?

23 A Yes.

24 Q 288Now why was that, Mr. Fox?

25 A Metworth was established by the family, it was a shelf company I took from the
26 office and we established it to seek rezoning of the lands and ultimately to
27 build out the lands if we got rezoning.

28 Q 289What interest did Metworth Limited ever have or had in your lands in North
29 County Dublin?

30 A None.

1 Q 290None?

2 A None, other than -- this was a vessel used to apply for zoning.

3 Q 291Why did you feel the necessity to employ a vehicle to apply for rezoning?

4 A Well I wanted to keep it really anonymous and also I was going to use the
5 vehicle the develop the lands if we got rezoning.

6 Q 292You did get rezoning and you dissolved the companies?

7 A Yes.

8 Q 293Why were you going to use it as a vehicle?

9 A The reason I dissolved the company was that the rezoning that we got, when I
10 employed architects and engineers and quantity surveyors to apply for planning
11 permission and really what came to light then was, the zoning we got was five
12 houses to the hectare but we had a problem then with flight paths, we are
13 directly under the flight path and the allowable housing under that was two
14 houses to the hectare and the whole thing became unviable to develop because
15 one would have to put very, very seriously priced houses on such a small
16 development.

17 Q 294Yes. What I am more interested in, Mr. Fox, why it was that when Metworth
18 Limited was utilised to make the application on your behalf -- just wait for
19 the question please, Mr. Fox -- why it was in 1998 when Metworth Limited was
20 utilised by you to make a submission for rezoning to Fingal County Council that
21 you did not disclose that to the Tribunal but rather told the Tribunal that you
22 submitted the lands?

23 A Yeah. The two are synonymous. I should have said Metworth was me and I am
24 Metworth. I am sorry about that.

25 Q 295Now, Mr. Fox, you are an accountant of many many years experience, isn't that
26 right?

27 A Yes.

28 Q 296I presume there is nothing about separate corporate personality that you know,
29 that you don't know -- that you know all about the distinction between a
30 company and a personal individual.

1 A Yes.

2 Q 297 Isn't that right?

3 A Yes.

4 Q 298 To such an extent that even though you say now you are Metworth Limited, there
5 is absolutely nothing in the Companies Office documentation to indicate that
6 that is so, isn't that right?

7 A No.

8 Q 299 But what you told the Tribunal was that you put the lands in for rezoning,
9 isn't that right?

10 A Yes.

11 Q 300 Now why did you do that?

12 A Because I wanted the lands to go in anonymously, I didn't want to put my name
13 to the rezoning.

14 Q 301 That was at the time you made the rezoning, I am talking about when you told
15 the Tribunal on the 9th of October 2003, Noel Fox submitted the lands for
16 rezoning, why did you do that?

17 A That was an oversight, I should have said Metworth which was me, who submitted
18 the lands for rezoning. I am sorry about that.

19 Q 302 And when you swore your Affidavit of Discovery, Mr. Fox, in compliance with the
20 order, you did not discover any documentation in relation to Metworth Limited,
21 isn't that right?

22 A It was a shelf company and I didn't think of the implication until you pointed
23 it out to me now.

24 Q 303 I suggest to you, Mr. Mahony, that on the 20th of March 2003, you told the
25 Tribunal, in your statement, that the lands were submitted for consideration by
26 Fingal County Council in 1998?

27 A Yes.

28 Q 304 You do so because the Tribunal has asked to provide a statement on the history
29 of the lands up to date, isn't that right?

30 A Yes.

1 Q 305 You then swear an Affidavit of Discovery on the 15th of May 2003 to cover
2 exactly the same topic, so you have dealt, in your statement in March, with the
3 submission though you don't identify who made it. When you come to swear your
4 Affidavit of Discovery in May of 2003, you make no reference to the submission
5 or any documentation in relation to the submission, although you have referred
6 to it in your statement. So I suggest to you, Mr. Fox, it couldn't have been
7 an oversight because you do refer to the submission in your statement. Do you
8 understand the point I'm making?

9 A I do.

10 Q 306 So can you explain?

11 A I can't explain, I should have read the submission much more carefully and I
12 didn't, I am sorry.

13 Q 307 You should have read what?

14 A I should have read over my submission much more carefully and picked up the
15 implication.

16 Q 308 But certainly when it was specifically drawn to your attention by the Tribunal
17 in its letter, when they said, "Kindly indicate", page 981, "who submitted Miss
18 Pauline Fox's lands for consideration by Fingal County Council in 1998" and you
19 were then asked about documents, that's an unambiguous request for information,
20 there wasn't any part of that you didn't understand, is that right?

21 A That's right.

22 Q 309 Your response is at 983 please and your response is "Mr. Noel Fox submitted
23 Mrs. Pauline Fox's lands for consideration by Fingal County Council in 1998.
24 Mr. Fox did not personally retain any documentation in relation to this
25 submission. Our client overlooked existence of documentation, copies of which
26 you now have, and he apologises for this. Our client did not retain planning
27 consultants/engineers/architects in respect of the submission to Fingal County
28 Council in 1998." But in fact you did not submit the planning submissions,
29 isn't that right, Mr. Fox?

30 A Well my company did, I am sorry, what's what I am apologising for.

1 Q 310And it wasn't that you couldn't have understood the question, the question
2 wasn't clear, is that right?

3 A I should have understood the question. I am sorry.

4 Q 311So can you explain then how, to the Tribunal, how it was that you gave the
5 answer to it, that you did?

6 A I obviously didn't have any documentation, I don't have, I retired in 1999 and
7 an awful lot of my documentation I disposed of, so I didn't have the
8 documentation but if I thought long and hard about it, I should have answered
9 that question differently and I didn't.

10 Q 312When the Tribunal asked you to explain -- your involvement in Metworth Limited
11 --

12

13 CHAIRMAN: Sorry Miss Dillon, the stenographer needs a few minutes. We will
14 rise for a few minutes.

15

16 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

17 AND RESUMED AS FOLLOWS:

18

19 Q 313MS. DILLON: If I could move on to deal, Mr. Fox, with the political
20 contributions that you made to Mr. GV Wright. From the information that you
21 have furnished to the Tribunal, it appears that you made contributions to Mr.
22 Wright in 1999, 2001 and 2002.

23 A Yes.

24 Q 314And those contributions were three payments of 500 pounds each and one payment
25 of 634?

26 A Yes.

27 Q 315That's at page 54 I think of your statement. In explanation in respect of in
28 relation to these lodgments, you say the following and which is -- these are
29 the payments that are on screen, Mr. Fox, and the last four payments I think
30 relate to contributions to Mr. GV Wright?

1 A Yes.

2 Q 316And the first is to Mr. Michael Kennedy?

3 A Yes.

4 Q 317Now, these payments are all in 1999, 2001 and 2002?

5 A Yes.

6 Q 318Now, in your statement in relation to these payments, you say at page 57,

7 "Mr. GV Wright has been known to both myself and my wife's family for many
8 years. Out of this association..." -- It says Mr. Ian Foley but I think that
9 should be "Mr. Lar Foley".

10 A Lar.

11 Q 319Laurence?

12 A Lar has since died.

13 Q 320"Now deceased, who as previously explained, was also a close friend of the

14 Wright and Fox families, has over the years contacted me seeking donations to
15 support Mr. Wright's political aspirations with the Fianna Fail party."

16 A Yes.

17 Q 321Now, can you recollect when Mr. Foley died?

18 A I can, yes.

19 Q 322When was that?

20 A It was quite recently, last year.

21 Q 323When you say that Mr. Foley --

22 A Sorry, it may have been -- it's recently. I should recollect.

23 Q 324Yes. When you say in your estimate that Mr. Lar Foley has over the years

24 contacted me seeking donations, are you referring to the four donations that
25 you identified in --

26 A Yes, I am.

27 Q 325And other than that, there were no others?

28 A Correct.

29 Q 326Right. You say: "In respect of the payments detailed in my Affidavit Schedule

30 I Part I, those payments represent contributions. My relationship with

1 Mr. Foley was such that if he rang looking for a political donation for Mr.
2 Wright, I would of course make it. On occasions a request would come with an
3 invitation to attend some function like a golf classic or dinner. The detail
4 of the payments to which I refer are taken from my personal banking records and
5 I believe represent a complete account of payments. I would not make
6 contributions in cash. Insofar as I have ever contributed to money to GV
7 Wright, I have done so in an open and transparent way."

8

9 In relation to that discussion in that part of your statement, the only
10 payments you are talking about are the four payments in 1991, 2002 and 2002
11 identified in your Affidavit of Discovery?

12 A That's correct.

13 Q 327Other than that, you made no other contributions to Mr. GV Wright?

14 A No.

15 Q 328And when you talk about requests to attend functions like golf classics or
16 dinners, are you talking about those being in addition to the four cheque
17 payments that you made?

18 A No, they are the consideration for the payments.

19 Q 329I see. So when you are identifying the four payments that you made, they were
20 payments to Mr. Lar Foley for golf classics?

21 A For those particular dinners or golf classics.

22 Q 330And not other otherwise?

23 A Correct.

24 Q 331So if it's your position then prior to 1999, you did not make any political
25 contributions to Mr. GV Wright?

26 A That is correct.

27 Q 332And would that be true in relation to any company with which you were
28 associated?

29 A Yes.

30 Q 333So that the first occasion you ever made a political contribution to Mr. Wright

1 was 1999?

2 A Correct.

3 Q 334And not otherwise?

4 A Not before.

5 Q 335If I can take you back very briefly for one matter I meant to ask you in

6 relation to the 10th March 1993, do you have any recollection of the words, "We

7 know the way the world works" being used by anybody at that meeting.

8 A No, there was no such mantra used at the meeting.

9 Q 336Are you saying you do not recollect words such as that being used or they were

10 not used?

11 A They were not used.

12 Q 337And that's your position?

13 A Yes.

14 Q 338If you would answer any of the other questions any of the other parties have, I

15 understand counsel for Mr. Mahony save some questions.

16

17 MR. BRADLEY: Yes, Chairman. Conlith Bradley for Denis Mahony.

18

19 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. BRADLEY:

20

21 Q 339In relation to Miss Dillon's last point, in relation to what she referred to in

22 Mr. Dunlop's statement of October 2000 and when he stated that "They informed

23 me they knew the way the world worked and I was going to have to get a lot of

24 work to get it completed." Mr. Dunlop in evidence stated he indicated that as

25 being you or Mr. Mahony or both of you knew that payments had to be made to

26 councillors, could you comment on that?

27 A No, there was no such words used "The way the world worked".

28 Q 340And --

29 A There was certainly no implication that monies would have to be paid to

30 councillors.

1 Q 341Thank you very much.

2

3 CHAIRMAN: Do you want to ask anything, Mr. Montgomery?

4

5 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. MONTGOMERY:

6

7 Q 342Mr. Fox, just I am somewhat perplexed that you spent in your own evidence some

8 40 minutes in the Shelbourne Hotel in the company of Mr. Dunlop and Mr.

9 O'Mahony and have you haven't commented on that what the general tenor of the

10 conversation was during that period. Can you tell us what you talked about?

11 40 minutes is a fairly lengthy period.

12 A It's my assessment of what the period might have been, if we had coffee I

13 presume it took 20 minutes for it to come, maybe it didn't but we were

14 obviously talking about the motions that had to be prepared.

15 Q 343And to go further was there then a conversation as to whom might be approached

16 for support?

17 A There may have been but I just don't recollect that.

18 Q 344Thank you.

19

20 CHAIRMAN: Mr. Kennedy?

21

22 MR. KENNEDY: No, Chairman, I have no questions of Mr. Fox.

23

24 CHAIRMAN: Mr. Nesbitt, do you have questions?

25

26 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. NESBITT:

27

28 Q 345Very briefly, Mr. Fox, I am concerned to deal with one issue that was raised by

29 Miss Dillon towards the end of the examination, that was the part that your

30 company network had to play in the application for consideration in 1998. As I

1 understand it, the only person who put in an application in respect of your
2 wife's land would have been that company, is that right

3 A That's correct, yes.

4 Q 346 So the application or the appropriate documentation on the council file made it
5 clear that was the person making the application in respect of your wife's
6 lands?

7 A Yes.

8 Q 347 And at all material times you have always indicated you take responsibility for
9 that application?

10 A Yes.

11 Q 348 In relation to Metworth, I think you have an explanation as to why you
12 eventually gave up keeping the company as a relevant part of your plans?

13 A I just decided I didn't want to be paying audit fees for something we couldn't
14 use for the time being or registration fees and I just had it dissolved.

15 Q 349 Maybe an accountant would not like admitting that but it's as simple as that.

16 A Sorry.

17 Q 350 Thank you.

18

19 CHAIRMAN: Mr. Fox, I just want to ask you about one thing. One part of your
20 evidence. On the 3rd February of 1994 and again on the 8th February 1994, if
21 we take Mr. Mahony's evidence and his and the contents of his diaries on both
22 those occasions on face value, it would appear that on both occasions he meets
23 both Mr. Dunlop and yourself, not together but separately and you say you can't
24 specifically recall those particular meetings, if they did take place between
25 yourself and Mr. Mahony, is that right?

26 A Yes, Chairman.

27

28 CHAIRMAN: And we know from or at least Mr. Mahony has told us on those
29 occasions, there were discussions and we know from Mr. Dunlop as well that
30 there were discussions between himself and Mr. Dunlop about a success fee. We

1 know that Mr. Mahony was annoyed or agitated at the fact that Mr. Dunlop was
2 looking for a success fee. You were his adviser, Mr. Mahony's adviser, one of
3 his advisors I take it at that time? I know you said that you were a friend of
4 his but were you also an adviser --

5 A He would often ask me for advice on family matters, business matters, yes.

6

7 CHAIRMAN: And would it surprise you that if he had had the somewhat agitated
8 meetings with Mr. Dunlop, would it surprise you that he wouldn't have raised
9 his concern with you?

10 A No, I said it wouldn't surprise me, Chairman.

11

12 CHAIRMAN: And --

13 A I presume that was a matter that was private between Mr. Dunlop and himself.

14

15 CHAIRMAN: But in the sense that less than a year earlier you had been an
16 integral part of the application to rezone with Mr. Mahony so you would have
17 that relationship less than a year earlier, in that context, would it surprise
18 you that he didn't raise it with you at that time?

19 A No. Really, who is saying he was agitated?

20

21 CHAIRMAN: Well we understand from the evidence of Mr. Mahony and Mr. Dunlop
22 that Mr. Mahony was somewhat aggrieved that Mr. Dunlop was looking for this
23 second fee or a success fee at this time.

24 A That's Mr. Dunlop is saying that?

25

26 CHAIRMAN: Yes. So, would you -- but you say that you wouldn't be or at least
27 that you are not surprised that it wouldn't have been discussed with you?

28 A Yes.

29

30 CHAIRMAN: And just leading on from that, how often would you have been meeting

1 Mr. Mahony by arrangement at that time? Would it have been something you would
2 have, that might have happened once a week or once a month or less often?

3 A Less often, I would think.

4

5 CHAIRMAN: Once every two or three months?

6 A Possibly, yes.

7

8 JUDGE FAHERTY: I just have one or two questions, Mr. Fox. Could I just ask
9 you, why didn't you just see through the motion dated the 12th March to the end
10 of 1993?

11 A Because I thought long and hard it about it and felt that the whole proposition
12 was not viable and as things turned out, I think it's important to say that
13 this, that the zoning that Mr. Mahony ultimately got was one house to two and a
14 half acres, he got 12 houses on his 30 acres and that was not viable. He
15 certainly had discussions with me subsequently about that and there was no way
16 that he could open up that site, develop it and put one house on two and a half
17 acres and subsequently he passed those lands on, he got them professionally
18 valued, he got them passed by the revenue valuers, I presume, and transferred
19 them to his daughter and subsequently she applied for a graveyard on that site.
20 There was no commercial reality to the outcome of that.

21

22 JUDGE FAHERTY: In your statement of August of 2000 you actually say at page 56
23 you saw little to be lost in making an application in 1993.

24 A Yes.

25

26 JUDGE FAHERTY: And that was obviously the case and from your evidence today,
27 it would appear to suggest that -- from a financial input on your part, the
28 most you anticipated having to pay out would be an anticipated invoice from
29 Mr. Dunlop, is that the case?

30 A Yes.

1

2 JUDGE FAHERTY: If he were to invoice you. So my question is you really had
3 nothing to lose bar what Mr. Dunlop might in the course of time invoice you and
4 why not just leave your lands in?

5 A We didn't want to, we were really living there and we just at that stage it
6 looked like there might be no zoning got or there might be very very low
7 density and we decided to pull out and decided look, the city is only six and a
8 half miles which, it's s going to come to us some day.

9

10 JUDGE FAHERTY: Well --

11 A I mean we were very happy there as a family. I have five kids, we grew up
12 there, we are close to every amenity we could possibly want and we decided
13 look, let's leave it.

14

15 JUDGE FAHERTY: Mr. Fox, this was 1993, were you aware of newspaper articles in
16 1993, I think there was a series of articles, for example, in the Irish Times
17 about zoning and unnamed County Councillors receiving monies, were you aware of
18 that?

19 A I probably was at that time but I don't recall that.

20

21 JUDGE FAHERTY: And I think Mr. Smith, who was the Environment Minister a month
22 after the withdrawal of your motion made a speech, I think, where he had some
23 harsh words about the planning process in Dublin, isn't that correct?

24 A Mr. Who?

25

26 JUDGE FAHERTY: Mr. Michael Smith, he was then Minister for the Environment.

27 A I don't recollect that.

28

29 JUDGE FAHERTY: But you recollect newspaper articles, this was the middle of
30 the review of the '83 Development Plan, isn't that right?

1 A Yes.

2

3 JUDGE FAHERTY: And I am asking you did those articles or that climate
4 influence you?

5 A No, it was the commercial aspect of it.

6

7 JUDGE FAHERTY: I see. But in relation to the commercial aspect --

8 A That was long before the Celtic Tiger, Portmarnock was a tiny place then.

9

10 JUDGE FAHERTY: The other question, in your statement in August, you said
11 that, this is page 56, you are talking about the meeting in the Shelbourne
12 Hotel and you said, "Mr. Dunlop indicated he could act as a planning consultant
13 for a fee and you say I was not interested in paying Mr. Dunlop to act as
14 planning consultant and in the circumstances, decided that I would not process
15 an application." I am going to suggest to you anybody reading that statement
16 might get the impression that you would have to fork out for Mr. Dunlop and
17 that's the reason you were not progressing on processing your desire to have
18 the lands rezoned. Now you haven't said that today but why did you put that in
19 your statement?

20 A I think that's just part and parcel of my thought process that I was pretty
21 ambivalent about the whole thing and then soon after decided look, I am not
22 going on with it.

23

24 JUDGE FAHERTY: But you couldn't surely have been worried about the type of fee
25 Mr. Dunlop might charge? Could you have been, Mr. Fox?

26 A About the fee?

27

28 JUDGE FAHERTY: Well that's part of what that's suggesting to me, that seems to
29 be part of the reason that you weren't interested in paying Mr. Dunlop.

30 A He quoted a fee, I can't recall what the fee was. We just decided to not to go

1 ahead and not to enter into a contract with anybody on the matter of fees. I
2 mean that could have been a first fee, there might have been more fees. I
3 really don't know.

4

5 JUDGE FAHERTY: But I think at this point the motion would have been coming
6 round and you had managed to get that far without having to engage a planning
7 consultant?

8 A Yes.

9

10 JUDGE FAHERTY: Very well, thank you very much, Mr. Fox.

11

12 JUDGE KEYS: Mr. Fox, just one question, when you decided to withdraw your
13 lands from the application, the joint application with Mr. Mahony, did you tell
14 Mr. Mahony the reason why you were withdrawing your lands?

15 A Yes I think that I didn't think that the whole operation was going to be viable
16 and if he wanted to go ahead, he probably had a better chance with a smaller
17 parcel of land, he was abutting on to Station Road and I think he may have had
18 an entrance on to Station Road or was contemplating one.

19

20 JUDGE KEYS: Because my understanding is that Mr. Mahony's frame of mind in
21 relation to that aspect of it was that he felt you withdrew because you were a
22 private-type person, that the matter could be somewhat contentious when it came
23 to a vote on it and you decided you didn't want the publicity of it. Would
24 that be also correct or is Mr. Mahony incorrect if he says that?

25 A Well really, I was weighing up the commercial aspects much of it.

26

27 JUDGE KEYS: You obviously mustn't have told him that, subject to correction, I
28 don't think he mentions it in his statement, he just says more or less
29 emphasising you were a private type person, it could be a tight vote, it could
30 be risky and you didn't want to bring it on yourself and your family.

1 A I have drawn plenty of publicity now!

2

3 JUDGE KEYS: But --

4 A I have got to go home and face the troops after this.

5

6 JUDGE KEYS: I am just wondering whether in fact Mr. Mahony is wrong on that

7 or --

8 A No, it was commercial.

9

10

11

12 JUDGE KEYS: And did you carry out a survey of your lands before you came to

13 that decision or did you have the expertise to realise it wasn't a

14 commercial --

15 A Basic common sense. If we had got the same zoning, it would have been probably

16 24 houses.

17

18 JUDGE KEYS: But isn't the whole thing really is to get a step in, to get 24,

19 you might get 48, you might get 100 as time progresses?

20 A Common sense would dictate to you that look, the railway is going to be

21 upgraded out there, in time that whole area will change. In the meantime we

22 were enjoying, we were farming the land.

23

24 JUDGE KEYS: I appreciate that.

25 A Actually we were quite happy to stay there. It's not --

26

27 JUDGE KEYS: Just because --

28 A Zoning isn't the be all and end all of things.

29

30 JUDGE KEYS: It certainly wouldn't have prevented you carrying on with the

1 same lifestyle with the zoning of, say, 12 houses or 24 houses or 40 houses or
2 100 houses.

3 A There was no chance of that.

4
5 JUDGE KEYS: No, but correct me if I am wrong, but I have always thought here
6 you have agricultural zoning, you have nothing, now you have 12 as time goes
7 by, you could get 24, you could get 48 and, you know, the density would
8 increase.

9 A We ended up here looking for a graveyard, those people wouldn't be objecting to
10 planes going overhead.

11
12 JUDGE KEYS: There were objections to that too, as I understand it, but in any
13 event, it was purely commercial reasons?

14 A Yes.

15
16 CHAIRMAN: Right. Thank you very much, Mr. Fox.

17
18 THE WITNESS THEN WITHDREW.

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20 MS. DILLON: Mr. Stephen O'Byrnes please.

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1 MR. STEPHEN O'BYRNES, HAVING BEEN SWORN, WAS EXAMINED

2 AS FOLLOWS BY MISS DILLON:

3

4 Q 351 Good afternoon, O'Byrnes. Can I take you back to 1993 and specifically to
5 March of 1993 and at that stage I think that you were an office holder with the
6 Progressive Democrats?

7 A That's correct.

8 Q 352 What office did you hold?

9 A Officially I was the party's press officer.

10 Q 353 Right. You were contacted on the 29th March 1993 by Mr. Denis Mahony?

11 A Yes.

12 Q 354 And that appears initially to have been a telephone contact between Mr. Mahony
13 and yourself which was followed by a meeting on the 30th March 1993?

14 A That is correct, yes.

15 Q 355 Can you tell the Tribunal what you recollect of the meeting?

16 A Obviously as I have indicated in my letter, I have a very vague recollection of
17 the meeting, I met Mr. Mahony in his offices in Kilbarrack and he indicated to
18 me that he was seeking support for a proposed rezoning of some of his lands and
19 I think he would have shown me a map, he got a map out of a cupboard and shown
20 that to me and generally the meeting was quite brief and in ordinary terms, he
21 was inquiring as to the possible attitude of some of the PD councillors to such
22 a proposed rezoning.

23 Q 356 And what did you tell him about what you understood the PD attitude to it?

24 A Broadly speaking, it would have been the policy at the time would have been one
25 of support for whatever the officials of the council were recommending and
26 broadly speaking, I think I would have probably indicated in this case a policy
27 of the party would be support for the retention of the green belt in that area
28 and I think that was about the sum total of our exchange.

29 Q 357 Yes. At that stage I think that there were two then Progressive Democrat
30 councillors, Sheila Terry and Cait Keane, on Dublin County Council?

1 A There were quite a number of more, I think there were six or, I don't know the
2 exact number but there were certainly more than that. The new councils, to my
3 recollection, hadn't been established at that stage so the various councillors
4 who had been elected in the previous elections in 1989 were elected to the full
5 I think 52-member council but there were at least, I could recollect, up to --
6 six if not more, six PD councillors on the council at that stage.

7 Q 358I asked you specifically about Miss Terry and Miss Keane who were then
8 Progressive Democrat councillors because Mr. Mahony went on to meet with both
9 of those to make a presentation to them?

10 A Yes, I am aware of that from the correspondence you furnished me with.

11 Q 359Were you instrumental at all in setting up that meeting?

12 A Not at all.

13 Q 360Did you arrange subsequent to your meeting with Mr. Mahony any meetings with
14 any other councillors within your party?

15 A No, I didn't actually.

16 Q 361The view then that you expressed to Mr. Mahony was that it was general PD
17 policy at that time to support the view of the council officials?

18 A Exactly.

19 Q 362And I think you said that Mr. Mahony produced a map to you?

20 A I think so, I have a fairly clear recollection he got a map out of a filing
21 cabinet because I wasn't -- I mean I wasn't even aware of the particular lands
22 so I'm sure to kind of explain to me what he was talking about, that he
23 produced a map.

24 Q 363I'd like to show you a map, O'Byrnes -- 176 please. Was it a map similar to
25 that?

26 A I assume so because I was here earlier and I saw the map being put up but I
27 genuinely cannot recall -- I would know the area, I was living in Sutton, I
28 would know the broad area that was being covered but I wouldn't have been
29 familiar with townland names and the likes. To the best of my recollection a
30 map was produced and he would have indicated where it was. I would have been

1 familiar with the boundary roads to the area, the railway line, that kind of
2 thing. That would be been the extent of my knowledge.

3 Q 364And would you have been familiar at all with zonings?

4 A Oh yes, in broad terms, yes of course. I mean from, in terms of zoning for
5 residential, for green belt, agriculture, certainly.

6 Q 365Would you have been aware of your own knowledge of the area that a portion of
7 those lands were in the green belt between --

8 A Oh absolutely, that was my sense of that area it would have been agricultural
9 with wheat crops and the like growing. I was, you know, from driving around
10 that area, I wouldn't have been able to say what that townland was but I had a
11 broad knowledge, a broad sense of the area.

12 Q 366Mr. Mahony says in his statement, "My recollection is O'Byrnes did not really
13 have a good knowledge of the area and he was non-committal at the meeting."

14 A I wouldn't have known particular townlands and that but I would have been
15 familiar with the main road and just areas from travelling through it but
16 probably I wouldn't have any intimate knowledge of the area.

17 Q 367Insofar as you say you advised Mr. Mahony it was PD policy to support the
18 officials and insofar as Mr. Mahony says you were non-committal at the meeting,
19 you didn't give him any support or arrange any further meetings or take any
20 further step or act in relation to the matter?

21 A Exactly.

22 Q 368Thank you very much, I don't know if anybody as any questions.

23
24 MR. KENNEDY: Chairman, if I could just ask Mr. O'Byrnes.

25
26 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. KENNEDY:

27
28 Q 369Just remind us when were the PDs founded, Mr. O'Byrnes?

29 A In December 1985.

30 Q 370And we all know why they came about but just in the context of this motion, I

1 find it somewhat unusual that there was support from I believe it to be six or
2 seven PD councillors, your own stated evidence there is that it would be
3 unusual, I won't say to vote with Fianna Fail, but I think what you said you
4 would follow the line given by the council itself through its management, and
5 here we have a case where the exact opposite is happening. As I understand it,
6 all of your councillors, and I believe there were six or seven, not two or
7 three, did vote in favour of this motion and had indicated their support from
8 an earlier time, isn't that the position?

9 A Firstly, I cannot recall how they voted.

10 Q 371 I think it's on the record, I think we can, I think it was six or seven in
11 favour?

12 A OK. I simply don't know how they voted but again my role at the time as I say,
13 I was officially the party's press officer, I was working with the party in
14 related roles but they were all at a national level so I would not have been
15 involved in daily or even regular contact with the councillors for any local
16 authority, Dublin County Council or anywhere else in the country.

17 Q 372 But it would be an unusual alliance would it not, Fianna Fail and the PDs
18 voting in favour of a particular motion so something must have impressed them
19 about this?

20 A It may well have but I wasn't party to any such --

21 Q 373 Even as press officer, as you were at the time, would you agree that something
22 must have impressed them about the merits of this particular application?

23 A I wasn't familiar with the subsequent unfolding of this particular application
24 in any way.

25 Q 374 In the general context of PDs and Fianna Fail and how you would vote and you
26 told us you would normally follow the line given by management?

27 A I suggest to you, Sir, you would need to check that with the individual
28 councillors for their reasoning. I would certainly be able to recall that at
29 different times in different local authorities, different party councils voted
30 in different ways but I do, I am quite certain that there was a general policy

1 which, to the best of my recollection, would have been broadly adhered to of
2 abiding by the recommendations of the management.

3 Q 375 What makes it unique and I think they took that line in the context of the
4 other motions that were on the same agenda at this time for ancillary lands
5 beside this particular plot and particularly for the development by Pennine
6 Holdings of the Baldoyle Racecourse, yet here we are one application out of a
7 number that were vigorously opposed gets through and gets over the try line, if
8 I can put it like that, there was there was something impressive, would you
9 agree, with the people who were promoting the application and that sort of
10 merit got across to politicians of different parties and they voted for it?

11 A I simply don't know. You would have to address those questions to the
12 councillors concerned. I had no role whatsoever in respect of influencing,
13 requesting or speaking with those councillors.

14 Q 376 And have you any knowledge of why they voted as they did?

15 A Absolutely not.

16 Q 377 They were hardly getting soft with Fianna Fail, were they?

17 A You are entitled to your opinion but I'm giving you my clear view on the
18 matter.

19 Q 378 Thank you, Mr. O'Byrnes, thank you very much. That's all, Chairman.

20

21 CHAIRMAN: Thank you.

22

23 JUDGE FAHERTY: Just one question, Mr. O'Byrnes, can I have page 349. My
24 question, it's about what Mr. Kennedy was asking you, Mr. O'Byrnes, if you look
25 at the motion there, Fox and Mahony lands, and the councillors who voted for
26 the motion.

27 A That's the vote down at the bottom?

28

29 JUDGE FAHERTY: Do you identify PD councillors there? I see S Terry, is that
30 correct?

1 A That's correct, yes, if you give me a moment, I'll tell you.

2

3 JUDGE FAHERTY: Yes.

4 A I would identify that there are three PD councillors names on that list there.
5 Sheila Terry, Breda Cass and Cait Quinn.

6

7 JUDGE FAHERTY: Cait?

8 A Quinn and the next page I think are those who voted against the motion. None
9 of those councillors were PD councillors at that time.

10

11 JUDGE FAHERTY: All right. Thanks very much.

12 A Sorry, could you just go back to the, I think I may be mixing up two names.

13 Just the other one.

14

15 JUDGE FAHERTY: 349 please.

16 A Sorry, I did say Cait Quinn, I am mixing up two names, I think Catherine Quinn,
17 who was a PD councillors, and I may be mixing up another PD councillor called
18 Cait Keane who is not there but there is a C Quinn who I imagine was Catherine
19 Quinn.

20

21 JUDGE FAHERTY: So there are two there.

22 A There's three, Breda Cass, Catherine Quinn, that name is obviously Catherine
23 Quinn, not Cait Quinn.

24

25 JUDGE FAHERTY: Miss Quinn was a PD councillor at the time?

26 A She was, and Sheila Terry.

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28 JUDGE FAHERTY: Yes. Thanks very much.

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30 CHAIRMAN: Thank you. Thanks very much Mr. O'Byrnes.

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THE WITNESS THEN WITHDREW.

CHAIRMAN: Two o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL 2 O'CLOCK.

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2.00 P.M:

2

3 MS. DILLON: Good afternoon, Sir. Miss Sinead Collins please.

4

5 MISS SINEAD COLLINS, ALREADY SWORN, WAS

6 EXAMINED AS FOLLOWS BY MS. DILLON:

7

8 Q 379 You are already sworn, Miss Collins. I should point out to you, Sir, prior
9 to taking Miss Collins through her evidence, in accordance with a direction of
10 the Tribunal, we informed all of the affected parties of the ruling there would
11 be no cross-examination of this witness unless written submissions were
12 received. No written submissions have been received and there has been no
13 application for leave to cross-examine this witness. In those circumstances, I
14 propose to take Miss Collins through her statement and ask her to confirm that
15 the contents of same are true and accurate.

16

17 CHAIRMAN: Yes.

18

19 Q 380 MS. DILLON: May it please you Sir. Could I have page number two please?

20 Miss Collins, at paragraph 1 of your statement you say "from June 1982 to
21 December 1993 I was employed as an administrative officer in the Planning
22 Department of Dublin County Council. During the period 1987 to 1993 I worked
23 on the review of the 1983 County Development Plan. An outline summary of the
24 Development Plan review process is attached here at appendix 1."

25

26 Page 111 please.

27

28 Can you confirm that that is the outline of the Development Plan review process
29 and that paragraph 1 of your statement is accurate?

30 A It is, yes.

1 Q 381At paragraph 2, at page 2, you say "included among my duties in relation to the
2 review of the Development Plan were the following. A, to receive and record
3 representations and circulate same to council staff and the elected members of
4 the council. B, to receive motions which had been submitted by the
5 councillors. C, to prepare and circulate the agenda for each special meeting
6 of the council to review the Development Plan. D, to circulate the managers'
7 report and/or the planning officers' reports to the councillors prior to the
8 meeting. E, to record the attendances of councillors at such special meetings.
9 F, to prepare the minutes of each meeting." Do you confirm that that is
10 accurate?

11 A That's correct.

12 Q 382Paragraph 3, "The lands, the subject matter of the present inquiry of the
13 Tribunal, comprising approximately 36 hectares at Drumnigh and Snugborough were
14 zoned B agriculture and B and G green belt in the 1983 Development Plan." Page
15 951 please.

16

17 That is the extract with the subject lands highlighted in red. Can you confirm
18 that paragraph 3 is accurate?

19 A It is.

20 Q 383Paragraph 4, "The lands form part of the map number 8 of the 1991 draft Dublin
21 County Development Plan which was discussed at the special meeting of the
22 County Council dealing with the Development Plan review on the 22nd June 1990,
23 at which meeting Map 8 was noted. The word 'noted' is used to indicate that
24 the councillors had discussed the matter, had generally agreed with and
25 accepted the contents of the document, and passed on to other matters without a
26 vote. The Draft Development Plan, including Map 8, was then put on public
27 display from the 2nd September 1991 to the 3rd December 1991. And attached
28 herewith minutes of meetings of the 8th and 22nd June and Map 8 of the Draft
29 Development Plan 1991, together with extracts showing the zoning of the lands
30 in question at appendix 3" and if I could have map 149 please. This is the

1 enlarged extract, Miss Collins, showing the zoning and the Draft Development
2 Plan 1991 as it was put on public display?

3 A That's correct.

4 Q 384 And can you confirm that the paragraph 4 and the records referred to there are
5 accurate?

6 A They are.

7 Q 385 Paragraph 5, "in the course of this statutory first public display of the 1991
8 Draft Development Plan, representation number 000535 dated 2nd December 1991
9 was received from Messrs. E.M. Hogan & Associates, architects and planning
10 consultants on behalf of Mr. Noel Fox and Mr. Denis Mahony, seeking the
11 rezoning of approximately 36 hectares at Drimnigh & and Snugborough from B
12 agriculture and B and G green belt to A1 low density residential.
13 Representation and map are attached hereto at appendix 4," and that is page 165
14 please. 164, I think, has the covering letter. And if we could just have page
15 176 of that submission. And this appears to be an extract from the 1991 Draft
16 Development Plan which was attached to the submission?

17 A Correct.

18 Q 386 And you confirm then the contents of paragraph 5 of your statement are
19 accurate?

20 A They are.

21 Q 387 Paragraph 6, "On the 12th March 1993, the following motion signed by
22 councillors Liam Creavan, MJ Cosgrave, GV Wright, Sean Gilbride and Christopher
23 Cyril Gallagher was received by Dublin County Council. This motion was entered
24 on the agenda as motion 145B1 of the special meeting of the Dublin County
25 Council dealing with the consideration of the draft Dublin County Development
26 Plan 1991, map number 8, Baldoyle and objections and representations relating
27 thereto. The said agenda is attached at appendix 5" -- that's page 263 -- and
28 you will see that the second representation there relates to the lands in
29 question.

30 A Yes.

1 Q 388 Paragraph 6 continues, "The said motion provided Dublin County Council hereby
2 resolves that the lands outlined in red on attached map and signed for
3 identification purposes, which are the subject of a submission to Dublin County
4 Council under the Draft Development Plan review, reference number 00535, be
5 zoned for A1 low density residential purposes, namely one house per hectare.
6 The said motion is attached herewith", that's pages 9634 and 935. This is the
7 motion, Miss Collins, and behind that of 935 there is the map which has also
8 been signed.

9 A Yes.

10 Q 389 Can you confirm that the contents of paragraph 6 and the exhibits attached to
11 that are accurate?

12 A They are.

13 Q 390 Paragraph 7, "On the 27th April 1993, at a special meeting of the Dublin County
14 Council, the following motion, being motion number 1451 for that meeting, was
15 proposed by Councillor David Healy and seconded by Councillor Larry Gordon"
16 Dublin County Council hereby resolves all lands zoned B and G on the draft plan
17 between Baldoyle and Portmarnock retain this zoning" approximately 18 acres of
18 the lands, the subject of the present inquiry, were included in this proposed
19 motion as they formed part of the green belt area and were zoned B and G. The
20 portion of the lands affected by this proposed motion is shaded green on the
21 map attached hereto at appendix 7." Page 933 please. That is the map in
22 question and the shaded portion is the portion that was in the green belt,
23 Miss Collins?

24 A That's correct.

25 Q 391 You continue at paragraph 7, "This motion was passed by the members of Dublin
26 County Council at this meeting on the 27th April 1993 and the effect of this
27 motion being successful was to retain B and G zoning, green belt for the
28 eastern portion (approximately 18 acres) of the lands, the subject of the
29 present inquiry. The motion signed by Councillors Healy and Gordon and the
30 maps attached hereto and the minutes of the special meeting of Dublin County

1 Council on the 27th April 1993 are attached herewith at appendix 8." And if we
2 have pages 930 first, please. This is the motion.

3 A Yes.

4 Q 392And 931 please? This is the first half of the David Healy map?

5 A That's right.

6 Q 393And 932 is the second portion of that map?

7 A That's correct.

8 Q 394And if we have page 333 please, this is the record of the vote that was taken
9 on the 27th April, Miss Collins, in connection with this motion and can you
10 confirm that the record is accurate?

11 A It is.

12 Q 395Yes. Paragraph 8, "On the 28th April 1993, the special meeting of Dublin
13 County Council took place to continue consideration of map number 8 of the
14 Draft Development Plan 1991 and representations and objections relating
15 thereto. Motion 145B1 was proposed by Councillor Wright, seconded by
16 Councillor Gallagher." 934 please. This is motion 145B1?

17 A Yes.

18 Q 396And 935? This is the map attached to that motion.

19 A Yes.

20 Q 397"The following amendment was proposed by Councillor Wright, seconded by
21 Councillor Gallagher, that the motion be amended by the addition of the words
22 "excluding the lands highlighted in yellow on the attached map signed by the
23 proposers and dated 28th April 1993." This amending motion was signed by
24 Councillors GV Wright, Nora Owen, Liam Creavan, Sean Gilbride and Michael
25 Kennedy. The effect of this amendment, if put in pass by the council, would be
26 to exclude the lands highlighted in yellow on the attached map from the
27 original zoning motion which bore reference number 145B1 and which motion was
28 subsequently dealt with by the members. This amending motion and the map
29 attached herewith at appendix 9." Pages 936 and 937 please. This is the
30 amending motion, Miss Collins, is that correct?

1 A That's correct.

2 Q 398And at 937?

3 A That's correct.

4 Q 399And the lands outlined in yellow are the lands that were being excluded from
5 the rezoning motion?

6 A Correct.

7 Q 400"The amendment to the original motion was proposed by Councillor GV Wright,
8 seconded by Councillor Christopher (Cyril) Gallagher, put to the meeting and
9 passed unanimously. The official record of this vote is at page 405 of the
10 minutes of the meetings held on the 28th April 1993 attached herewith at
11 appendix 10." Page 349 please. And can you confirm, Miss Collins, that the
12 amendment was put and passed unanimously?

13 A Yes.

14 Q 401Paragraph 9 -- sorry, before I leave paragraph 8, can you confirm your
15 statement and the records that are dealt with in your statement are accurate?

16 A I can.

17 Q 402Paragraph 9, "At this meeting of the 28th April 1993, the report of the
18 planning officer in respect of the area including the lands the subject matter
19 of the present inquiry was put to the meeting. Reference was made to the
20 council's policy in relation to development in rural areas and green belt areas
21 as set out in paragraphs 2.3.6, 2.8.10 and 3.2.6 of the Draft Written
22 Statement. The report also pointed out "developments as proposed in the
23 representations would encroach on the agricultural and green belt areas and
24 would be contrary to the development policies of the council and the adopted
25 settlement strategy." Page 348 please. Can you confirm that that is the
26 planning officer's report in question?

27 A I can.

28 Q 403"Motion 14.5.B 1 which proposed rezoning of the land, the subject of the
29 present inquiry, to low density residential A1 was proposed by Councillor GV
30 Wright and seconded by Councillor Gallagher. It must be borne in mind, on the

1 previous day at the meeting on the 27th April 1993, approximately 18 acres of
2 these lands (the eastern portion) had been zoned B and G, green belt. It must
3 also be borne in mind by virtue of the amending motion referred to in the
4 preceding paragraph which had been passed on this day, the southern portion of
5 the lands had been removed from this motion to rezone. In effect, when this
6 motion was put to the floor of the chamber for a vote, all of the lands
7 coloured yellow on motion 14.5.B were removed from the motion to rezone. See
8 map attached to appendix 9" and that's the one we had looked at. "This
9 substantive motion was put and on a division the voting was" -- page 349 please
10 -- "for 28, against 11, abstentions two. For: Councillors S Barret, P Brady, S
11 Brock, L Butler, B Cass, B Coffey, MJ Cosgrave, L Creavan, A Devitt, M Farrell,
12 C Gallagher, S Gilbride, R Green, T Hand, F Hanrahan, M Kennedy, S Laing, J
13 Larkin, S Lyons, C O'Connor, J O'Halloran, A Ormond, N Owen, C Quinn, T Ridge,
14 N Ryan, S Terry, GV Wright, (28).

15
16 Against: Councillors M Billane, C Boland, J Dillon-Byrne, N Gibbons, L Gordon,
17 D Healy, J Higgins, B Malone, M Mularney, S Ryan, D Tipping, (11).

18
19 Abstentions: Councillors J Maher, O Mitchell, (2). The motion was then
20 declared passed. The minutes of the meeting of Dublin County Council of the
21 28th April 1993 are attached hereto at appendix 10. The relevant pages are
22 pages 402 to 406." And pages 346 to 350 of the brief and that is the minutes
23 of the meeting we were just looking at on screen.

24 A That's correct.

25 Q 404 Can you confirm that the contents of paragraph 9 and the exhibits are accurate?

26 A They are.

27 Q 405 10. "This proposed amendment to the Draft Development Plan 1993, was put on
28 public display as Change 4 Map 8 for the statutory period of one month in July
29 1993. Map 8 is the relevant map which includes these lands, the relevant
30 extracts from the said map is attached herewith at appendix 11." Page 39

1 please. This is the extract of change 4 on Map 8?

2 A That's right.

3 Q 406 Can you confirm that the records and the contents of paragraph 10 are accurate?

4 A They are.

5 Q 407 Paragraph 11. "The changes proposed to Map 8 were to be considered at a
6 special meeting of Dublin County Council on the 29th September 1993 to include
7 the lands, the subject matter of the present inquiry. Prior to the 29th
8 September 1993, Dublin County Council received three motions proposing that
9 change 4 on Map 8 be deleted thereby zoning the lands B agriculture. The three
10 motions were as follows" and could I have pages 566, 67 and 68. At 566, (a),
11 "That change number 4 on Map 8 be deleted zoning the lands B. This motion was
12 signed by Councillors David Healy and Trevor Sergeant and dated 16th September
13 1993." That's the one that's on the screen.

14 A OK.

15 Q 408 (b) "The second motion proposed that the lands referred to at Map Number 8
16 Change Number 4 in the public display of the proposed amendments to the County
17 Development Plan revert to its former proposed zoning as shown in draft maps
18 displayed in September/December 1991. This motion was signed by Councillors
19 Denis O'Callaghan, Colm Breathnach, Michael Billane, Donal Tipping and Eamonn
20 Gilmore.

21
22 (c) "The third motion proposed that Dublin County Council would resolve that:
23 "The lands referred to as 4 on map number 8 of the Dublin County Council Draft
24 Development Plan Review 1993 amendments be zoned for" -- The actual proposed
25 zoning is left blank in the original motion, but at the meeting on the 28th
26 September 1998 it was identified as "Zoned for B."

27

28 This last motion -- sorry, in relation to paragraph C there, it says at the
29 meeting of the 28th September 1998, Miss Collins, that should be 1993

30 A It should.

1 Q 409 It was identified as zoned for B. "This last motion was signed by Councillors
2 Bernie Malone and Sean Ryan. These three amending motions are attached
3 herewith at appendix 12" and they are pages 566, 568 and 567. That's 566, 568
4 is the second motion and 567 is the third motion. Can you confirm that the
5 contents of paragraph 11 and the exhibits are accurate?

6 A They are.

7 Q 410 Paragraph 12: "Map 8 and the proposed changes thereto came for consideration
8 before the special meeting of Dublin County Council on the 29th September 1993.
9 Included in Map 8 was change 4 which dealt with the lands the subject matter of
10 the present inquiry.

11

12 The meeting considered a report by the manager" -- page 583 please -- "which
13 had been circulated, in which the manager recommended that the proposed
14 rezoning be deleted. It was noted that 2,530 representations objecting to this
15 change had been received by Dublin County Council.

16

17 The motion proposed by Councillor Sergeant and seconded by Councillor Gordon
18 that Change Number 4 on Map 8 be deleted thereby zoning the lands B
19 agriculture, was put and on a division, the voting resulted as follows:

20

21 For, 24, against, 28, abstentions, one.

22

23 For: Councillors M Billane, C Boland, C Breathnach, F Buckley, B Connolly, M
24 Doohan, K Farrell, M Gibbons, L Gordon, J Higgins, S Laing, J Maher, B Malone,
25 M Muldoon, M Mularney, D O'Callaghan, M O'Donovan, P Rabbitte, S Ryan, T
26 Sergeant, A Shatter, D Tipping, P Upton, E Walsh. (24).

27

28 Against: Councillors S Barrett, P Brady, S Brock, L Butler, B Cass, B Coffey,
29 MJ Cosgrave, L Creavan, A Devitt, M Elliott, M Farrell, T Fox, C Gallagher, S
30 Gilbride, M Kennedy, J Larkin, L Lohan, C McGrath, P Madigan, T Morrissey, C

1 O'Connor, J O'Halloran, A Ormond, N Owen, C Quinn, T Ridge, N Ryan, GV Wright.
2 (28)

3

4 Abstentions: Councillor T Kelleher." Is that an accurate record of the
5 meeting?

6 A It is.

7 Q 411Can you confirm the contents of paragraph 12 are accurate?

8 A They are.

9 Q 41213, "The Chairman then declared the motion lost and the remaining motions
10 proposing the rezoning of these lands back to agriculture were not put. The
11 proposed amendment on Change Number 4 Map 8 was then declared confirmed. The
12 minutes of this meeting are attached at appendix 13, the relevant extracts are
13 at pages 1142 to 1143 and 1147 to 1149." And they are pages 578 to 579 of the
14 brief that we have just seen?

15 A That's correct.

16 Q 413Can you confirm that paragraph 13 and the exhibits are accurate?

17 A They are.

18 Q 41414, "At a special meeting of the County Council on the 10th December 1993 the
19 Dublin County Development Plan 1993 was adopted. The site was accordingly
20 zoned residential at a density of one house per hectare in the 1993 Development
21 Plan. The minutes of this meeting are attached herewith at appendix 14."
22 Pages 641, 655 please. This is the commencement of the motion to adopt the
23 Development Plan which is continued on page 656, and which was voted on at 657.
24 With the actual vote on 658.

25

26 Can you confirm that the contents of paragraph 14 and the exhibits contained
27 therein are accurate?

28 A They are.

29 Q 415I have no further questions, Miss Collins, thank you very much indeed.

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CHAIRMAN: Any questions? Thank you very much, Miss Collins.

THE WITNESS THEN WITHDREW.

MS. DILLON: Senator Sheila Terry please.

1 SENATOR SHEILA TERRY, HAVING BEEN SWORN, WAS EXAMINED

2 AS FOLLOWS BY MISS DILLON:

3

4 Q 416 Good afternoon, Miss Terry.

5 A Good afternoon.

6 Q 417 If I can take you back to the events of 1993?

7 A Yes.

8 Q 418 And at that time you were a councillor with Dublin County Council, is that
9 correct?

10 A That's correct.

11 Q 419 Can I ask you, first of all, what do you see as the function of a county
12 councillor in their making of a Development Plan?

13 A Well, obviously to plan for the future in terms of either maintaining a
14 particular zoning or to provide for residential or industrial or commercial
15 development, and to do that by informing myself of all the relevant points and
16 listening to the debate to come to a decision.

17 Q 420 What are the criteria that you would apply as a general rule in accepting or
18 rejecting proposed rezonings of land?

19 A Well, in terms of how I come to a decision?

20 Q 421 Yes.

21 A Well, the process was that many people would contact me and that could be
22 either for or against a particular rezoning and I always made myself available
23 to anybody and, as far as possible, always met with people when they contacted
24 me and that, as I say, that would be whether they were for or against it.
25 Based on that, I would then listen to the full debate and decide whether I felt
26 the particular proposal was good or not for the area and for the future of the
27 county. And I would have to say that I would be a pro-development person, that
28 I believed it was worthwhile rezoning particular pieces of land and others
29 weren't worthwhile, I didn't vote for every particular motion; Whether the
30 development would bring with it benefits to the area, whether that would be in

1 the form of new roads and other, at other occasions there would be particular
2 facilities that would come as a result of various zoning.

3 Q 422Would you consider that the desires of the developer or the landowner of the
4 piece of land in question was a relevant factor to take into account?

5 A Well, I always took it into account if that was presented to me. I considered
6 everything. I didn't consider one person's opinion stronger or greater than
7 anyone else's. Whether the person was a developer, it doesn't mean that his
8 opinion or proposal was stronger than coming from somebody who was a resident
9 in the area. I weighed everything up. I didn't give particular or greater
10 effect to any one person's opinions.

11 Q 423Can I ask you in relation to the piece of land that's the subject matter of the
12 present inquiry. You met Mr. Denis Mahony, isn't that correct?

13 A Yes.

14 Q 424And I think in your statement to the Tribunal you confirmed that you might have
15 met him?

16 A That's right. At that time I couldn't remember accurately whether I did or not
17 and in Mr. Mahony's statement, he said that I met him in the Royal Dublin so I
18 can take it that yes, I did meet, him but I have no strong recollection of
19 meeting him. But at the same time I did feel when I was making my statement
20 that I had met with him.

21 Q 425You were accompanied, I think, to that meeting, which is page 313 please, by
22 Miss Sheila Terry, according to Mr. Mahony?

23 A I am Sheila Terry.

24 Q 426I beg your pardon, by Miss Cait Keane, does that accord with your recollection?

25 A When I was asked that first in my statement, I didn't remember that but, yes, I
26 believe it is true, that I did meet with Mr. Mahony with Cait Keane.

27 Q 427You don't dispute Mr. Mahony's recollection of you, that he met both of you?

28 A I don't, no.

29 Q 428If we could turn to look then, Ms. Keane, at the motion that was originally
30 lodged to rezone these lands which will come up on screen beside you, the

1 original motion is at page 934 and the map which is the relevant portion of
2 that is at page 935. This was the motion that was originally lodged with
3 Dublin County Council. If we could just turn the map, Mr. Kavanagh. And you
4 see there, Miss Terry, that there are two parcels of land?

5 A Yes.

6 Q 429 On the map, the northern portion of those lands was owned by Mr. Denis Mahony,
7 the man that you met on the 15th April.

8 A Yes.

9 Q 430 And the southern portion of those lands were owned by Mr. Noel Fox.

10 A Well, I am taking your word for it, I wouldn't know who owned them.

11 Q 431 Yes. But at the time that that motion was lodged, there was an application for
12 the rezoning of both pieces of land?

13 A Yes.

14 Q 432 And when you received the agenda in connection with these, the agenda referred
15 to proposed rezoning of Fox and Mahony lands.

16 A Yes.

17 Q 433 Isn't that right?

18 A I think so, yes.

19 Q 434 Now, when the matter came before the council on the 28th, the first matter that
20 was dealt with was that Mr. Fox's lands were deleted and the vote in relation
21 to that was unanimous, isn't that right?

22 A Yes.

23 Q 435 You were here for Miss Collins' evidence?

24 A I was, yes.

25 Q 436 Now, you were present at that meeting, isn't that right?

26 A Yes.

27 Q 437 And do you confirm that you probably voted to delete Mr. Fox's lands?

28 A I think the record shows that I voted in that way.

29 Q 438 Well, to be absolutely fair to you, Ms. Terry, at page 345 of the minutes of
30 the meeting of the 28th April, you are recorded as being present?

1 A Yes.

2 Q 439 You certainly voted on the motion subsequent to the rezoning of Mr. Fox's lands
3 and are recorded on that, but the record in relation to the actual rezoning,
4 which is at page 349, is without name, it is simply described as was passed
5 unanimously. You see the third paragraph on that, it says it was proposed by
6 Councillor Wright, seconded by Councillor Gallagher, that the motion be amended
7 by the addition of the words "exclude the lands highlighted in yellow on the
8 attached map," signed by the proposers and dated the 28th April 1993. The
9 amendment was put and passed unanimously?

10 A Yes.

11 Q 440 Thereafter the vote takes place on Mr. Mahony's lands?

12 A Can I just say, I can't be sure when that motion was passed unanimously then.
13 I may well have been, but the voting record of each member isn't, just says
14 unanimously, so I can't be sure whether I was present for that vote or not.

15 Q 441 Well, if you look at the vote that followed immediately on it, you are present,
16 Miss Terry, and you vote in favour of the motion so, I suggest to you, that it
17 is likely and highly likely that you were present when this vote was taken and
18 it was passed unanimously?

19 A I am not disputing that, but I just want to make it clear when it's not there
20 for certain but, I presume I did vote, but I can't be sure of that.

21 Q 442 If you look at the vote in relation to the rezoning of Mr. Denis Mahony's
22 lands, you will see that you voted in favour of it?

23 A Yes.

24 Q 443 And that vote appears, from the records, to have taken place immediately after
25 the vote in which Mr. Fox's lands were deleted.

26 A Yes.

27 Q 444 Is that right?

28 A Yes, well a discussion followed, I don't know how long that discussion took
29 but, I mean, I am not disputing anything with you. I just can only be sure of
30 what the records show.

1 Q 445 Yes. And presumably if there is a vote, Miss Terry, to dezone or remove Mr.
2 Fox's lands, it is because the councillors have formed the view that Mr. Fox's
3 lands should not have been rezoned?

4 A I presume it would have been presented by the people who spoke in favour of
5 that position and that then the council, the full council members who were
6 present, agreed with the position that was put to the council by whichever
7 members proposed, that the lands should be removed from the overall motion.

8 Q 446 Well, Councillor Wright seconded by Councillor Gallagher, it's on the record in
9 front of you, proposed effectively that Mr. Fox's lands be removed from the
10 motion.

11 A Yes.

12 Q 447 Right. And what I'm putting to you is because it was passed unanimously, does
13 that mean it was the view of every councillor, including yourself, that Mr.
14 Fox's lands should not be rezoned?

15 A That's right.

16 Q 448 Good.

17 A If I was present.

18 Q 449 Well, assuming that you were present?

19 A Assuming I was.

20 Q 450 There's nothing to indicate, and it seems more likely than not you were present
21 because you voted in the vote immediately following that. The next motion
22 that's put is a motion to rezone Mr. Mahony's lands, see that, the substantive
23 motion was put and on a division the voting resulted as follows?

24 A Yes.

25 Q 451 And you voted in favour of that?

26 A Yes.

27 Q 452 Were you of the view that Mr. Mahony's lands should be rezoned?

28 A Yes.

29 Q 453 What was the difference between Mr. Fox's lands and Mr. Mahony's lands?

30 A All I can say to you right now, I don't know what the difference was, except as

1 Councillor GV Wright put forward a motion to remove those lands, they were
2 removed and it was agreed unanimously. And why he did that, I don't know, but
3 once he proposed that they should be removed, I wouldn't see any difficulty
4 with somebody making a case for removing or adding lands and if they present
5 the case to do that, I can't say to you what the difference was between Mr.
6 Mahony's lands and Mr. Fox's lands. The fact is they were removed and it was
7 agreed, therefore, we just moved on to deal with Mr. Mahony's lands.

8 Q 454 Well, I'd like you to think about this now, if you voted, and it appears likely
9 that you did, to remove Mr. Fox's lands, it must have been your view as an
10 elected county councillor exercising your function under the Development Plan
11 that Mr. Fox's lands should not be rezoned, isn't that right? That follows?

12 A But there would have been a discussion following the presentation of the motion
13 by Councillor Wright, he would have spoken and given reasons as to why this
14 land should be removed.

15 Q 455 Well, the record of what transpired in relation to the removal of Mr. Fox's
16 lands are on the screen beside you and it simply records that it was proposed
17 by Councillor Wright, seconded by Councillor Gallagher, that the motion be
18 amended by the addition of the words "excluding the lands highlighted in yellow
19 on the attached map" signed by the proposers and dated 28th April 1993. The
20 amendment was put and passed unanimously." A discussion then follows on the
21 substantive motion, which is the rezoning of Mr. Mahony's lands, but if that
22 record was accurate, there was no discussion in relation to the rezoning of Mr.
23 Fox's lands, isn't that correct, if you look at the screen beside you?

24 A Yes. I would expect, and from my memory of dealing with any motions there was
25 always a discussion.

26 Q 456 But --

27 A But I can't be certain today whether there was a discussion or not, but if a
28 motion is presented and proposed and seconded, a motion such as this to remove
29 lands from a rezoning, I would have to say, in my experience, there would
30 always have been a discussion. And based on that discussion, I would have made

1 any decision as to whether to agree or not with the proposal.

2 Q 457Let us assume for the moment you are correct and there was such a discussion.

3 Looking at the record of the meeting there then, what then is the reason why
4 you voted to dezone Mr. Fox's lands and then voted to rezone Mr. Mahony's?

5 A I would have been persuaded by the arguments put forward by the councillors,
6 particularly from that area, that it was an appropriate thing to do, to remove
7 Mr. Fox's lands, based on the arguments put forward by the proposer and
8 seconder, possibly other councillors who spoke and, on the same basis, I would
9 have made my decision to vote for the rezoning of Mr. Mahony's lands, based on
10 the discussion which took place and because I am not from that area and I
11 wouldn't be as familiar with the lands as the local councillors would be, so it
12 was always appropriate, in my view, to listen to the arguments put forward by
13 the local councillors.

14 Q 458Could we have page 937 please, and perhaps the map might assist. Can you
15 recollect what arguments were made as to why Mr. Fox's lands should be dezone?

16 A I can't.

17 Q 459Can you recollect what arguments were made -- 937 please, what arguments were
18 made as to why Mr. Mahony's lands should be rezoned?

19 A I can't particularly remember the arguments.

20 Q 460This is the map, Miss Terry, that was attached to the motion to dezone Mr.
21 Fox's lands, they are the lands described in the minutes of the meeting as
22 highlighted in yellow. You will see and have heard from Ms. Collins' evidence
23 earlier on that the lands east of the railway line had been dealt with the
24 previous day and were zoned B and G and therefore the map, insofar as it was
25 dealing with anything on the day of the vote, was dealing with those lands in
26 yellow that are west of the railway line, do you see that, the agriculture
27 lands?

28 A Yes.

29 Q 461Now looking at that map, can you assist the Tribunal as to what great
30 difference there is on those two pieces of land between Mr. Mahony's lands and

1 Mr. Fox's lands?

2 A The difference between those pieces of land?

3 Q 462Yes, the two pieces that are west of the railway line.

4 A I can't give you any reasons why, any great differences between them.

5 Q 463Well there's one difference, Miss Terry. Mr. Fox didn't want his lands rezoned
6 and Mr. Mahony did. Isn't that right?

7 A I am not aware of that and I wasn't aware of that at the time.

8 Q 464Well the motion that you probably voted, together with the rest of your
9 colleagues, dealt with the map that's presently on screen, isn't that right, to
10 delete the lands highlighted in yellow. Isn't that right?

11 A Yes.

12 Q 465That motion was before the council?

13 A Yes.

14 Q 466Of which you were a member?

15 A Yes.

16 Q 467And you, in all likelihood, voted to dezone or remove Mr. Fox's lands?

17 A Mmm.

18 Q 468Isn't that right?

19 A Yes.

20 Q 469And Mr. Fox has told the Tribunal that he changed his mind and he didn't want
21 his lands rezoned and I think you will have to accept it from me that that is
22 the case.

23 A I'll accept that.

24 Q 470Mr. Mahony wanted his lands rezoned as you subsequently voted in favour of,
25 isn't that right?

26 A Yes.

27 Q 471Now, having looked at the map and having considered everything, isn't the only
28 difference between those two pieces of land that are west of the railway line,
29 that Mr. Mahony wanted his lands rezoned and Mr. Fox did not?

30 A I'm sorry, I am amusing you here because I am -- whether Mr. Mahony or Mr. Fox

1 wanted their lands rezoned is not something that was important to me. I mean,
2 I wasn't aware of Mr. Fox or who Mr. Fox is, whether he wanted his lands
3 rezoned or not. We dealt with the motions as they came on the papers.

4 Q 472Right, let's call it Mr. A and Mr. B and let's pretend who owns the land.

5 A Even at that, I am still a bit lost, what you are trying to get from me? I am
6 sorry.

7 Q 473I am trying to establish from you why it was on one vote you would have voted
8 to remove Mr. Fox's lands from the motion thereby rendering those lands
9 agricultural and, on the other hand, you voted to rezone Mr. Mahony's lands
10 thereby rendering those lands residential, and I have asked you to look at the
11 map and identify the features that would have allowed you to come to these two,
12 I suggest, inconsistent views, of the same land?

13 A Well I have explained to you how I would come to vote on something and that was
14 based on the arguments put forward by councillors on the day.

15 Q 474Which were?

16 A Well in one motion, which was passed unanimously, to remove lands. Now I don't
17 know -- we don't have accurate -- we don't have minutes of what people say,
18 unfortunately. And if that were available to us today and to you, it may be
19 more clear as to why we would vote one way or the other.

20 Q 475Well, would you like to look at that map, Miss Terry, and give me or see are
21 there any reasons, infrastructural or otherwise, that would have allowed you to
22 delete Mr. Fox's lands and in a consistent fashion then rezone Mr. Mahony's
23 lands?

24 A By looking at that map I cannot see that. I will have to come back to what I
25 have said and I have said it twice, I think, I would have made my decision,
26 cast my vote based on what had been proposed and the motion to delete Mr. Fox's
27 land was proposed by Councillor Wright and seconded by Councillor Gallagher, I
28 think, and if they made a good case to withdraw that piece of land from the
29 motion, I would have seen nothing wrong with that and -- but again it would
30 have been based on the discussion and in the same way I would have based my

1 reason for voting for Mr. Mahony's lands on the same basis. I am not sure
2 whether we are on the same track here or not.

3 Q 476I'm simply trying to establish from you, Miss Terry, as someone who voted to
4 keep Mr. Fox's lands agriculture, that you immediately follow that by rezoning
5 Mr. Mahony lands for residential?

6 A Because a councillor proposed to remove Mr. Fox's lands. Now --

7

8 JUDGE FAHERTY: Miss Terry, just so as you understand it, I understand Miss
9 Dillon's questioning, it was Mr. Wright proposed removal of Mr. Fox's lands for
10 the motion?

11 A Yes.

12

13 JUDGE FAHERTY: Equally and was seconded by Mr. Gallagher. Equally, as I
14 understand it, it was Mr. Wright who proposed the rezoning of Mr. Mahony's
15 lands, seconded by Mr. Gallagher. And I think what Miss Dillon is asking you,
16 given that the lands are adjoining each other, both west of the railway line,
17 what objective criteria essentially was put to you by local councillors if you
18 say that that's what happened so you could differentiate between the two
19 adjoining plots of land. I think that's --

20

21 MS. DILLON: That is correct.

22

23 JUDGE FAHERTY: -- effectively what Miss Dillon is putting to you. Do you
24 understand the question?

25 A I understand the question.

26

27 MS. DILLON: Would you like to answer the question, Miss Terry?

28 A I have answered it as best I can.

29

30 CHAIRMAN: Well do you remember any of the arguments?

1 A I don't.

2

3 CHAIRMAN: That were put before each of the votes?

4 A I don't, Your Honour, in this instance.

5

6 CHAIRMAN: Or is it possible that you might have simply voted on the basis of a
7 request from Mr. Wright or someone supporting the motion? If, for example, Mr.
8 Wright had stood up and said 'I'm proposing that the Fox lands be deleted', and
9 then there was no discussion, would you have proceeded to vote in those
10 circumstances, simply because someone was proposing that something be done?

11 A I would say that that would be that, he would just stand up and propose to
12 remove lands without giving some explanation as to why he was removing them.

13

14 CHAIRMAN: But if no reason was given or no arguments were put up, might you
15 have voted, in any event, without the aid of such arguments?

16 A I don't think so, I think I would have, I would need to know why the land was
17 being removed or an argument put forward as to why or explained, if he had said
18 that Mr. Fox didn't want his lands to be rezoned, therefore he was removing the
19 lands, perhaps that was put forward, but I can't remember the argument for
20 removing Mr. Fox's lands.

21

22 Q 477MS. DILLON: Looking at the map that's on screen and ignore the lands that
23 were east of the railway line, Miss Terry, can you identify any characteristics
24 on that map that would allow for a different zoning between the northern
25 portion of land and the southern?

26 A Well, the northern lands appear to be adjacent to existing development whereas
27 the southern lands are further away from the existing development.

28 Q 478Yes.

29 A Therefore it's also, it's always more appropriate to develop lands to provide
30 for residential lands adjacent to existing residential lands. It wouldn't be

1 very appropriate, let's say, to just rezone the lands outlined in yellow and
2 not rezone the lands to the north, leaving an agricultural gap when the
3 existing development on the southern --

4 Q 479 If the lands had not been removed, Miss Terry, in other words, if Mr. Wright
5 had not moved the application to delete Mr. Fox's lands and what had come
6 before the council to be voted upon was the rezoning of the entire package at
7 that stage west of the railway line only, would you have voted in favour of it?

8 A I probably would.

9 Q 480 And that meant that there's no difference between the lands to the north and
10 the lands to the south, isn't that right?

11 A Well there is a difference in that one pocket of land is adjacent to existing
12 development and the other one is further away.

13 Q 481 Yes, but --

14 A But as a full package, I would see no difference between them.

15 Q 482 You were not present at the meeting in September or the confirming meeting in
16 September?

17 A So the record shows.

18 Q 483 Mr. Mahony's diary also shows an entry in November of 1993 that may or may not
19 relate to you, it is an entry for a Sheila Terry, do you have any recollection
20 of meeting Mr. Mahony after the vote? September of 1993?

21 A No.

22 Q 484 Do you ever remember meeting with Mr. Mahony again for any reason?

23 A No.

24 Q 485 Did you ever receive any political contributions from Mr. Mahony?

25 A I have no recollection of receiving a contribution for Mr. Mahony but Mr.
26 Mahony does say he --

27 Q 486 He has corrected that, in fairness to yourself, Miss Terry, he said he was in
28 error when he said that and he has said what he had originally identified as a
29 political contribution to you was, in fact, a payment to a GAA organisation.

30 A Mmm.

1 Q 487 I don't have any further questions, I don't know if anybody has any.

2

3 MR. BRADLEY: No questions.

4

5 CHAIRMAN: OK.

6

7 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS

8 BY MR. MONTGOMERY:

9

10 Q 488 MR. MONTGOMERY: Good afternoon, Miss Terry, I represent the family of the
11 late Cyril Gallagher. You have given in great detail why you would vote for or
12 against a particular motion. May I ask you as to whether the, for want of a
13 better word, the influence of ordinary members of your party would ask you to,
14 perhaps, vote in a particular way would have an influence on your decision,
15 particularly if they were local councillors?

16 A Before council meetings, we regularly -- I couldn't say always -- but regularly
17 met to discuss the business for the day and we would discuss the various
18 motions and we may say how we were going to vote. They would be our own
19 personal opinions and if somebody felt strongly one way or the other, they
20 would express their opinion to us, but we were never asked or as a group
21 decided to vote one way or the other and I think the record will show that,
22 that among our group, Progressive Democrats Group, individuals made up their
23 own mind and we weren't strongly influenced by anybody. But yet would listen
24 to a debate among ourselves if somebody had a strong point to make one way or
25 the other.

26 Q 489 In your obvious knowledge of local affairs, do you think the same would apply
27 to the other two political parties or three political parties? Looking at the
28 records before, it appears a lot of the voting is on party lines.

29 A I wouldn't like to comment on how the other parties conducted their affairs.
30 That's something that I wouldn't know.

1 Q 490No, but the record does show that a lot of voting, not just in relation to this
2 motion, but generally, that a lot of the voting --

3 A Sorry? Yeah, you could say, looking at the votes, that many members from a
4 couple of political parties would have voted in one way, usually for a
5 rezoning, but you would also find individuals within those groups who voted
6 differently, not particularly with the group, so but I couldn't say whether
7 other parties had a whip on this or not, even though they are not supposed to
8 have a whip.

9 Q 491Sorry Senator, I wasn't even referring to this particular motion, I am talking
10 about in general terms. You see, I am putting it to you that local
11 councillors would tend to support each other insofar as it was possible, if one
12 councillor came up with something that appeared to be appropriate for a
13 particular area, that if they convince other local councillors generally get
14 cross party support or, in the alternative, only their own party, that the
15 likelihood would be that the local councillors would support them and thereby
16 perhaps bring in other councillors, would that be a fair statement?

17 A That certainly could happen. I couldn't say it always happened because there
18 was always general agreement among local councillors. In fact I would have to
19 say it would probably be rarely that you would get the four or five local
20 councillors to agree unanimously on something, but I would have to say that if
21 a councillor or a few councillors strongly believed in voting one way or the
22 other, they would ask others to support them on it.

23 Q 492Well, if I can turn to a different matter, what would you consider the
24 influence of a political lobbyist to be as against the influence on councillors
25 on each other?

26 A What would I think of the influence of a political lobbyist on councillors?

27 Q 493On voting patterns, as against the influence that local councillors would have
28 on each other?

29 A I suppose I can answer that question now, with hindsight, knowing what we know
30 today. I would have to speak on how I conducted my affairs and how I think

1 most councillors conducted their affairs in those days, in that -- and I
2 suppose I'd better just speak for myself -- that while I met with lobbyists and
3 listened to their argument, they didn't influence me in how I would vote, other
4 than taking account of their argument, but there were many other sides to the
5 story other than a lobbyist point of view. But I would have to say that they
6 didn't have a strong influence on how I voted.

7 Q 494Mr. Frank Dunlop, in his evidence over the last number of days, has made
8 various allegations; one of the things that he said that was very noteworthy
9 was that a lot of, or a number, rather, of the councillors were people he could
10 rely on all the time, whereas the councillors themselves would say, would have
11 said that, in fact, what influenced them was either their own direct knowledge
12 of the affairs of the particular area with which the motion was concerned,
13 rather than what might be alleged by Mr. Dunlop. If I could ask you to forget
14 about the present knowledge that you may have, but with the experience and
15 knowledge that you had at the time that you were then on the council, would you
16 think that it would be a comment with which you could live with, that
17 Mr. Dunlop has made?

18 A Sorry, the last sentence, was it?

19 Q 495A comment that you could live with, that Mr. Dunlop had made, which was
20 effectively that he had bought quite a large number of the local council
21 because that is his evidence.

22

23 MS. DILLON: If Mr. Montgomery is suggesting to this witness that she was a
24 bought councillor by Mr. Dunlop, then he had better refer to the transcript
25 where Mr. Dunlop made that allegation because --

26

27 MR. MONTGOMERY: I don't mean --

28

29 CHAIRMAN: I think Mr. Montgomery is asking the witness what she will say about
30 Mr. Dunlop's evidence to the effect that he could depend on a certain number of

1 councillors voting in a particular way.

2

3 MR. MONTGOMERY: Thank you very much, Chairman, that is exactly what I meant.

4

5 MS. DILLON: But, with respect, I am not trying to paraphrase Mr. Dunlop's
6 evidence, I don't recollect Mr. Dunlop to have said that he bought a large
7 number of the councillors and certainly not in this module. What he said was
8 that he paid money to four councillors, but that he could rely on the support
9 of other councillors to whom he had not paid money and, therefore, what I am
10 drawing to Mr. Montgomery's attention is that where he says that Mr. Dunlop --
11 and I am quoting from what Mr. Montgomery said -- "a comment you could live
12 with which Mr. Dunlop had made was, effectively, he had bought quite a large
13 number of the local council." I do not recollect Mr. Dunlop to have given
14 that evidence, maybe he did.

15

16 MR. MONTGOMERY: Effectively that's what he said.

17

18 CHAIRMAN: I think he said he paid some councillors but could rely on a number
19 of councillors for support.

20

21 MS. DILLON: Yes, but that's, I think, very different to having bought a large
22 number of councillors.

23

24 CHAIRMAN: All right. Well, do you want to comment on the question put in that
25 way? What your recollection is about that.

26 A Well, of course I didn't know that Mr. Dunlop paid any councillor in return for
27 their vote or to influence how they would vote and neither did I know that he
28 could rely on people's vote, per se. So at that time I wasn't aware of
29 Mr. Dunlop's influence over people.

30

1 MR. MONTGOMERY: Thank you very much.

2

3 CHAIRMAN: Mr. Kennedy, did you want to --

4

5 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS

6 BY MR. KENNEDY:

7

8 Q 496MR. KENNEDY: I am Martin Kennedy, Solicitor, I represent Mr. GV Wright. At
9 the start of your evidence you said there you were unashamedly a
10 pro-development person in your role as councillor.

11 A I don't think I used those exact words.

12 Q 497I don't think -- I thought you did?

13 A Unashamedly.

14 Q 498That's my, you said you were a pro-development person?

15 A Yes.

16 Q 499Would you have been aware of the context in this module, from the Portmarnock
17 area, for the local councillors, for the previous, I think it was 17 years,
18 there had been no development of any substance in this area and that the
19 council had continually refused to change the Draft Development Plan claiming
20 drainage was a continuous problem in the area? What I'm asking you there,
21 would you have been aware of that, there had been little or no development for
22 a long number of years in that area before this motion came before the house?

23 A I wouldn't have recalled that today and I can't say whether that was presented
24 to me on the day or during the discussion of the meeting it. It may well have
25 been. I can't remember.

26 Q 500If you had been aware, might that be a reason, when you acknowledge you are a
27 pro-development person, for you to encourage a particular development if you
28 thought it merited encouragement or being passed?

29 A Yes.

30 Q 501You have been pressed somewhat by Miss Dillon about the motion that came before

1 the house or the council to do with the deletion of Mr. Fox's land. Now, I
2 understand the evidence that we have heard, and Miss Dillon may correct me on
3 this, my understanding is that Mr. Fox indicated before the motion came a
4 letter was written by his partner or associate, Mr. Mahony, to David Healy that
5 he, in fact, wanted his lands deleted, that may be the simple answer to the
6 dilemma that Miss Dillon was putting to you. Were you aware that he had
7 actually requested the deletion of his lands?

8 A I can't remember that.

9 Q 502OK. There may also be another reason. You will probably recall, as we all do,
10 that there was huge controversy about the proposal to develop the ancillary
11 lands on the eastern side of the railway line which effectively comprised all
12 of the Baldoyle Racecourse, were you aware of that?

13 A Aware of -- sorry, just --

14 Q 503There was a lot of controversy about the proposal which was being promoted
15 enthusiastically by Mr. Dunlop to rezone what we can call the Baldoyle
16 Racecourse area, a green belt area?

17 A Yes, I remember some discussion about that.

18 Q 504Well there was more than some discussion, there was huge controversy at the
19 time and looking at the map that you have in front of you, the area attached to
20 the right of the railway line as you look at it, some of that, the area
21 coloured yellow is, in fact, part of Mr. Fox's holding so there might have been
22 some logic in him wanting his lands deleted because he was straddling both
23 sides of the railway, so to speak, do you understand what I'm describing? Part
24 of his holding to the right of the railway line as you look at that map was
25 part of the green belt area to which there was huge opposition?

26 A Yes.

27 Q 505You have also fairly said that when you vote for motions, you take account of
28 the views of local councillors and the merits of the application itself.

29 A Yes.

30 Q 506And you pointed to the fact that Mr. Mahony's holding is adjacent to

1 development, the lands that have already been developed. There's a railway
2 station quite adjacent, can you recall that or do you know that, Portmarnock
3 railway station, a short walk to the Mahony lands and back on to the Mahony
4 lands, would that be something you would take into account, the proximity of
5 public transport?

6 A Yes, I mean that obviously is a very good reason for providing development in
7 an area where there is public transport, particularly if there's a rail line,
8 and I would expect that that would have been highlighted to the councillors on
9 the day.

10 Q 507I see. This motion appears to be singularly unique in that it was one of a
11 number of motions that came before the council at the end of March, sorry at
12 the end of April, and of 1993, the most contentious one being the Baldoyle
13 Racecourse motion, and I think I'm right in saying that this, was it the only
14 motion that got through the loop, or one of the only motions that got through,
15 the one relating to the Mahony lands?

16 A I couldn't give you an accurate response to that right now without checking it.

17 Q 508Would you have voted against the application for the Baldoyle Racecourse? I
18 believe you did. This was the one that Mr. --

19 A I would have to check that.

20 Q 509This is the one that Mr. Dunlop had certain interests in?

21 A I think I did vote against the Baldoyle Racecourse rezoning, but I would have
22 to check it.

23 Q 510There was a huge vote against, can you recall that?

24 A Yes.

25 Q 511And this motion we are now discussing, this motion was the subject of a vote
26 the following day, after the other motion had been defeated in relation to the
27 Baldoyle Racecourse, that was the sequence of events, do you recall that?

28 A I don't recall the sequence of events, no.

29 Q 512You believed this motion merited support, is that it?

30 A Yes.

1 Q 513And were you aware that there was cross party support to the motion? And
2 obviously there was, the vote reflects that, but before the vote, would you
3 have discussed this with, say, councillor Nora Owen, who was a very high
4 profile politician living in Malahide, living in this area. Would you have
5 discussed it with Nora Owen?

6 A I don't recall discussing it with Nora Owen.

7 Q 514Well would you normally discuss it with your Fine Gael colleagues on the
8 council?

9 A At that time I was a member of the Progressive Democrat Party.

10 Q 515Oh. I wasn't aware of that. I see Fine Gael at the bottom of your letterhead.
11 We are all entitled to cross the railway line. So, at the time you were PDs?

12 A Yes.

13 Q 516Well that leads me into asking you something that I was touching on this
14 morning with Mr. O' Byrne; Did all the PD councillors on the council vote in
15 favour?

16 A On the Mahony lands?

17 Q 517On this module, yes, on this motion.

18 A They didn't all vote and they didn't all vote in one particular way either, I
19 think. The records which we saw earlier would show that.

20 Q 518My impression is that the -- well the majority of all who were there did vote
21 in favour?

22 A I think you will find a further witness who will come forward later who didn't
23 vote. She may not be the only one, I would need to check it.

24 Q 519There was certainly cross party support, PDs, Fine Gael, Fianna Fail, all voted
25 in favour of this motion.

26 A Yes.

27 Q 520Is that unusual or unique?

28 A No.

29 Q 521Which is a healthy sign, is it not, one would expect to see pro-development
30 people in all shades of political persuasion?

1 A Yes.

2 Q 522And the council is not Dail Eireann, it's there to, I would like to think, to
3 help promote enthusiastically development where development is merited, would
4 you agree with that proposition?

5 A Where it's merited, yes.

6 Q 523And you saw merit in this particular proposal?

7 A Yes.

8 Q 524Mr. Montgomery asked you about the role of the lobbyist, they are not around
9 any more, are they, in this type of arena?

10 A I don't think so, I couldn't be sure --

11 Q 525Would it be --

12 A -- whether they are or not because I certainly wasn't so aware of the lobbyist
13 when, certainly back in 1993.

14 Q 526Would it be reasonable to suggest that almost by definition there's a lack of
15 sincerity or real enthusiasm on the part of any lobbyist, he is not really
16 close enough to the merits of any particular motion. He is there for -- he is
17 paid, he is an employee of people to try and encourage others but, at the end
18 of the day, most of us make up our own minds, isn't that the way it should be,
19 and that's apparently the way you dealt with this particular motion?

20 A That's the way it should be, yes.

21 Q 527And were you aware of any mysterious activity about this particular motion at
22 the time?

23 A I don't recall any mysterious activity in relation to this motion.

24 Q 528Thank you, Miss Terry.

25

26 JUDGE FAHERTY: Miss Terry, can I ask you, were you present at special meeting
27 of the 27th April?

28 A Yes.

29

30 JUDGE FAHERTY: Page 333. And I think you voted on a motion put forward by

1 Councillor Dermot Healy, do you recall that?

2 A This was Mr. Healy's motion, I think there was some difficulties in the chamber
3 to some extent about this motion but, in any event, it went ahead.

4
5 JUDGE FAHERTY: This was Mr. Healy's motion, as I understand it, and I stand to
6 be corrected by counsel for the Tribunal, Councillor Healy wanted to retain the
7 B and G zoning, isn't that correct, the green belt?

8 A Yes.

9
10 JUDGE FAHERTY: In all of this area?

11 A Yes.

12
13 JUDGE FAHERTY: And I think that motion was passed 43 to 23, isn't that
14 correct?

15 A That's right.

16
17 JUDGE FAHERTY: And you were, you are there recorded as voting in favour of
18 this motion.

19 A Yes.

20
21 JUDGE FAHERTY: So effectively, as I understand it, you voted on that day to
22 retain Mr. Fox's, or 18 acres of Mr. Fox's lands that would have been east of
23 the railway line as a green belt.

24 A Yes.

25
26 JUDGE FAHERTY: And why were you so persuaded to vote that way, Miss Terry?

27 A Well I would expect from what, on looking at the map now, I think I probably
28 feel the same then as I do now, that it made sense to retain all of the green
29 belt in one parcel rather than allowing this piece to the east to encroach on
30 to the green belt.

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JUDGE FAHERTY: And by whom -- whose arguments or what arguments would you have been so persuaded, at the time, I am not talking about hindsight, which is a great science, but if you can recall at the time?

A I wouldn't be able to tell you whose arguments I would have been persuaded by. Sorry that was the question, I can't remember whose arguments I was persuaded by on that day.

JUDGE FAHERTY: I see. And on the next day obviously, on that day, as I understand it, the roads engineer was in support of retaining the green belt, isn't that correct? There's a report, I think, on page 332 from Mr. Henry. If you just look at the screen, you will see it. He seems to be suggesting that anything other than green belt wouldn't be feasible given the roads infrastructure and the cost, as I understand it.

A Yes.

JUDGE FAHERTY: Now, when you were at that time, what type of credence did you give to reports of planning officials?

A I would have given a certain amount of credence to them, but I would have to say that, thinking back on all of the reports, that they were of a negative nature, that they were very few and I wouldn't even be able to recall any now that were positive in their reporting as to how infrastructure could be improved.

JUDGE FAHERTY: Well, on the 28th, what credence did you give the manager's report, that was the motion to rezone? I think you reported on the rezoning of Mr. Mahony's lands, he said it would be contrary to the development policies and adopted settlement strategy. Page 348. Well, first of all, did you know what the manager's attitude was?

A We would have been presented with the manager's report.

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JUDGE FAHERTY: Was that at the meeting or prior to the meeting?

A The manager's report would be presented at the meeting.

JUDGE FAHERTY: Yes. And did, on that day, what credence did you give that report, can you recall?

A I can't recall what credence I would have given to it on the day and I would have to explain that the reason for that is that we dealt with so many motions over a period of time that it would be very difficult for me to think back to exactly how I felt about the manager's report on any particular date.

JUDGE FAHERTY: All right. Now, my other question is this: I understood you to say, and if you didn't say this, I may have misinterpreted what you said, that when you -- when Mr. Fox, the motion to amend the original motion was put by Mr. Wright and Mr. Gallagher, that was to delete Mr. Fox's lands from the motion, I understood you to say that if a local councillor was telling you that that was the wish of the landowner that he or she wished to not proceed, that you would accept that.

A Yes.

JUDGE FAHERTY: And why would you just accept the wish of the landowner, Miss Terry?

A Well if the landowner didn't want his land rezoned, I would have to respect that wish.

JUDGE FAHERTY: Does it follow then, as a corollary, if a landowner wanted his lands rezoned, no matter what they were or what zoning, that you would respect that wish?

A No.

1 JUDGE FAHERTY: Well that's what I want you to explain.

2 A I think there was a difference, if somebody doesn't and states that they don't
3 want their land rezoned, I think that's cut and dry. But where somebody wants
4 to have their land rezoned, that has to be taken into consideration and
5 examined and decided upon.

6

7 JUDGE FAHERTY: I see. You said a few minutes ago that you thought, I got the
8 impression you said that the planners and the officials weren't very supportive
9 or very much in favour of rezonings back in the early 1990s,

10 A That would have been my opinion.

11

12 JUDGE FAHERTY: You felt they were sort of negative.

13 A Yes.

14

15 JUDGE FAHERTY: So let's suppose in this case, we know the manager in relation
16 to the Fox and Denis Mahony motion was against it, they didn't want the
17 rezoning, isn't that correct?

18

19 A That is correct. The manager didn't, yes.

20

21 JUDGE FAHERTY: But let's suppose for the moment that the manager, in fact, was
22 supporting the rezoning --

23 A Of Mr. Fox?

24

25 JUDGE FAHERTY: Yes, but that the land -- for good reason -- but that the
26 landowner didn't want the zoning?

27 A Well my opinion would be that if the landowner doesn't want the land rezoned,
28 and even if the reasons were extremely good for it, you couldn't do it without
29 his consent, that would be my opinion.

30

1 JUDGE FAHERTY: I may be wrong in this, but there have been situations, I
2 understood, in the course of the two Development Plans, Miss Terry, where the
3 planners have recommended rezonings, independent of any submission, and have
4 dezoned indeed, isn't that correct?

5 A Yes, they would make representations, but that would still be subject to the
6 owner's consent. In my opinion, I mean if a landowner came to me and said 'I
7 don't want my lands included', I would say well, you are entitled to that
8 opinion and I would say that the council would have to make, well I suppose
9 they could still zone it --

10

11 JUDGE FAHERTY: Isn't that the point; if there was good reason, say, there was
12 need for, say, housing or industrial development in a certain area and there
13 was good fundamental infrastructure in place and the services were there and
14 the planners, in their wisdom, said this should be rezoned --

15 A Yes?

16

17 JUDGE FAHERTY: And if you are saying then a landowner wished not to have the
18 particular lands rezoned, why would you prefer the wishes of the landowner over
19 the objective criteria, assuming there is objective criteria for rezoning set
20 out by the planners?

21 A Well, I think one case is simple and the case you are making has merit and
22 obviously would need to be looked at. If we look at the simple case of an
23 individual, i.e, Mr. Fox, making a case to somebody and a motion being put
24 forward asking that these lands would be withdrawn, I think that is
25 straightforward.

26

27 JUDGE FAHERTY: But do you recall the case that was made by Mr. Wright, and
28 that's the question Miss Dillon was asking you earlier on, for the actual
29 deletion of Mr. Fox's lands on the day?

30 A I don't recall that, no.

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JUDGE FAHERTY: I see. Thank you very much, Miss Terry.

A Thank you.

CHAIRMAN: Thank you very much, Miss Terry.

A Thank you.

THE WITNESS THEN WITHDREW.

MS. DILLON: Miss Cait Keane please.

1 MISS CAIT KEANE, HAVING BEEN SWORN, WAS EXAMINED

2 AS FOLLOWS BY MISS DILLON:

3

4 Q 529 Good afternoon, Miss Keane. The first point I want to confirm -- you did
5 not, in fact, vote on the motion on the 28th April in connection with these
6 lands?

7 A I did not vote on the motion.

8 Q 530 However, you were asked by the Tribunal to provide a statement to include any
9 dealings that you might have had with Mr. Denis Mahony?

10 A That's right, yes.

11 Q 531 And if I can have page 66, sorry, before that I should say you were a
12 councillor at this time, is that right?

13 A I was a councillor and still am a councillor.

14 Q 532 You were a member of the Progressive Democrats?

15 A I was and am still a member of the Progressive Democrats.

16 Q 533 In your letter to the Tribunal you state, "Having checked the minutes you send
17 me re: lands at Drumnigh, Portmarnock of Mr. Noel Fox and Mr. Denis Fox, Dublin
18 County Development Plan 1993, as obvious from the minutes I was not present in
19 the chamber for that particular vote. I cannot remember having any "dealings"
20 (your word) with Mr. Noel Fox and Mr. Denis Mahony."

21 A I couldn't remember, it was eight or nine years previous and I didn't have any
22 dealings, but I did check the information that you sent me and I did see on the
23 information, on one of the folders, that I did meet, or Mr. Mahony said in his
24 statement and I actually wrote it down. "On the 15th April, I met with Sheila
25 Terry and" -- this is a statement from Mr. Mahony -- "with Sheila Terry and
26 Cait Keane at the Royal Dublin. I did not know either but when I contacted
27 Sheila Terry, she agreed to listen to a short presentation by me. She was
28 accompanied on the day by Cait Keane." I also saw this entry in the file on
29 the diary that I was sent as well by your Tribunal here and an entry on the
30 diary said at 12.30, the 15th April, S Terry. My name was not on the diary. I

1 didn't -- I am taking the statement that Mr. Mahony has read in as truthful and
2 I accept it, that I can't even remember meeting him, but I accept it if he says
3 it, that I did, because I met an awful lot of people during the course of the
4 Development Plan.

5 Q 534 Now you, in fact, are recorded as being present on the 28th April?

6 A That's right, yes.

7 Q 535 You do not appear to have voted on the motion in question?

8 A That wouldn't be unusual because Development Plan meetings went on very often
9 for five or six hours. I was teaching at the time and sometimes, I very
10 often -- I usually got a substitute teacher in, but some days I couldn't and I
11 may have missed maybe an hour or two hours of a meeting and I would have been
12 at three hours of the meeting. But if you are present for any part of the
13 meeting, you are registered in the minutes as being present. It doesn't
14 delineate which part of the meeting you were there for.

15 Q 536 Do you think it's likely because you were not present or not reported as being
16 present or more accurately not recorded as voting in relation to these lands,
17 that you were also not present when the vote was passed deleting Mr. Fox's
18 lands?

19 A I presume I would have been present, if I were there for one vote and if it was
20 only within five minutes of another, I would have been there for the second
21 vote, so looking just at it for face value, that would be my presumption.

22 Q 537 What do you see as a function of a councillor in the course of the Development
23 Plan?

24 A Well, in the course of the Development Plan would have been to plan for the
25 sustainable development of the County of Dublin at the time. We have a duty as
26 councillors to look on the county to, number one, there's a rezoning to provide
27 houses for the people and the citizens of Dublin and, number two, for the
28 sustainable development of the county and, number 3, to basically provide for
29 all of the -- where it's green belts that have to be preserved, there's, you
30 know, different features of the county, architectural, archeological, whatever,

1 there are many and varied you have to take into consideration, but there's a
2 duty as well on a local authority to ensure for public housing needs, that the
3 citizens of Dublin will have somewhere to live as well.

4 Q 538Yes, you will have seen from the documentation that was furnished that, in
5 fact, in December of 1991, a representation or submission was made in
6 connection with these lands.

7 A A submission? By?

8 Q 539By Messrs. Hogan seeking the rezoning of both parcels of land to -- I beg your
9 pardon, to residential.

10 A That wouldn't be unusual, the submission would come from somewhere always,
11 yeah.

12 Q 540That would be unusual?

13 A It wouldn't be unusual, the submission had to come from somewhere.

14 Q 541But the submission that was made on the 2nd December 1991 was that the both
15 parcels of land, Mr. Fox's and Mr. Mahony's, would be rezoned residential?

16 A That is my understanding and that is my reading of the file as well as I have
17 seen it.

18 Q 542And the next step in the proceedings then, in order to get the matter dealt
19 with by the council, is to bring a motion together with a map that's signed by
20 one or more councillors?

21 A That's correct.

22 Q 543And that was done by a motion and a map that were lodged on the 12th March of
23 1993 in relation to both pieces of land?

24 A That would be the common procedure, yes.

25 Q 544The map is at 935. This is the original map that was attached to the motion
26 that was lodged.

27 A Yes.

28 Q 545And what was being suggested on one motion was the rezoning of both parcels of
29 land, i.e. Mr. Fox's and Mr. Mahony's, and included in that was the part that
30 was in the green belt and the balance which was agriculture?

1 A Yes.

2 Q 546 I think you will have seen in the documentation that, certainly by the 23rd
3 April 1993, Mr. Mahony had written to at least one councillor informing them
4 that Mr. Fox's lands were not being proceeded with?

5 A Mmm.

6 Q 547 At page 321. Do you ever recollect seeing a letter such as this?

7 A Well if I saw the letter, I couldn't recollect it now anyway, you know.

8 Q 548 And then what happened was that on the 27th April, a portion of Mr. Fox's lands
9 were affected by a David Healy motion keeping the green belt as green belt?

10 A I think I voted for David Healy's motion, the green belt, I wouldn't have voted
11 for a green belt. I know I voted for David Healy's motion for to keep B and G
12 from Portmarnock to, there was a motion -- I'll give you the date.

13 Q 549 Yes, you did, that's correct, at page 333. Yes, you did. And on the following
14 day then the motion that's dealing with these lands came before the council and
15 there was an amending motion, in effect, at page 343. This is the motion to
16 delete Mr. Fox's lands and there outlined in yellow on 937?

17 A Yes.

18 Q 550 The lands that are highlighted in yellow on that map were being deleted from
19 the motion to rezone and then the council were going to proceed to a vote which
20 you did not participate in, in relation to the northern portion of those lands.

21 A Obviously if I didn't participate in a vote, I wasn't in the chamber because I
22 wouldn't have been in the chamber and not participating in a vote.

23 Q 551 Would you have been circulated with the documentation in advance?

24 A I would have been circulated with the documentation, yes, but if I weren't in
25 the chamber I couldn't exercise my statutory duty.

26 Q 552 What do you say is your statutory duty?

27 A To consider every proposal that's put before me, to consider the merits for or
28 against the rezoning, to take into consideration representations that were made
29 to me by both residents' associations, people living in the area, be they
30 individuals or groups of residents' associations. To meet with anybody who had

1 any information on the land and even at some times to visit the parcels of land
2 to familiarise myself with the land in question.

3 Q 553 Certainly from what you say it would appear that you would have seen your
4 function in an objective way?

5 A Absolutely.

6 Q 554 And, in fact, I think it has been described here and elsewhere that the
7 function of a county councillor in the making of a Development Plan was a quasi
8 judicial function?

9 A Absolutely.

10 Q 555 And therefore the desires of the owners of the land --

11 A Not relevant.

12 Q 556 Not relevant?

13 A To me.

14 Q 557 So you disagree with Miss Terry insofar as the desire?

15 A Did she say they were relevant, I am speaking for myself, I am not agreeing or
16 disagreeing with her; As far as I am concerned, the sustainable development of
17 the county, the ownership doesn't come into consideration.

18 Q 558 And therefore it is a matter of indifference to you --

19 A Absolutely.

20 Q 559 The view of the landowner or developer or indeed the lobbyist?

21 A Absolutely. Having said that, I would meet with everybody, be they landowner,
22 developer, lobbyist, resident, resident association, I would meet with anybody,
23 the purpose being to familiarise myself, particularly in light of the fact I
24 wouldn't be from the area and I would need to, by looking at the maps, seeing
25 what the map showed me. Also meeting and seeing what everybody else had to say
26 about it, whatever persuasion they were, be they lobbyist or resident or owner
27 or whatever. I would meet with everybody that it would give me more
28 information. I felt that was one of my duties as well, to collect all the
29 information and knowledge I could about a thing before I voted on it.

30 Q 560 Insofar as the desire of a landowner to have his land rezoned or not zoned as

1 the case may be?

2 A Would be irrelevant because the desire of a landowner, naturally enough, I
3 presume always would be, except in this particular instance, I believe the
4 desire of one of the landowners would be to remove, which would be irrelevant
5 as well, one was to keep it or zone it, they wouldn't be relevant to me. I
6 make my decisions on, as I said, looking at the map as well and looking at and
7 listening to -- I make my own decision, the relevance -- or the owner I do not
8 take into account.

9 Q 561And do you see that the councillor, in exercising their vote in respect of a
10 rezoning matter or the making of a Development Plan, is exercising a quasi
11 judicial function?

12 A A quasi judicial function and the function we are charged with to exercise our
13 own views, not anybody else's.

14 Q 562Were you ever approached by Mr. Dunlop to seeking your support in respect of
15 any matter?

16 A Well --

17 Q 563Sorry, I shouldn't put the question in that way, I beg your pardon. Were you
18 approached by Mr. Dunlop in connection with these lands?

19 A I don't believe I was because I don't have any recollection of it, but I can
20 see from my recollection of meeting Mr. Mahony, I didn't recollect that so I
21 don't recollect meeting Frank Dunlop about these lands at all or indeed any
22 lands.

23 Q 564Thank you very much, will you answer any questions that anybody else may have
24 for you.

25 A Thank you.

26

27 MR. BRADLEY: I have no questions.

28

29 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS

30 BY MR. KENNEDY:

1

2 Q 565MR. KENNEDY: Miss Keane, just one question. You have told us that you voted
3 on the 27th --

4 A Whom am I speaking to?

5 Q 566Martin Kennedy, solicitor, for Mr. Wright. You voted for the Healy motion
6 which was to retain green belt the day before the Fox Mahony motion came up,
7 you can't recall, you might not have been in the chamber, you didn't vote
8 because you weren't there. If I could beam you back and let's assume we are in
9 chamber now?

10 A We are not in the chamber, we are in the Tribunal.

11 Q 567Please look at the map that's on your screen and if the following arguments
12 were articulated at the meeting before the vote was taken, and I am looking at
13 Mr. Mahony's portions of the land north to the yellow and to the east of the
14 railway line, there's a railway station very close at hand, you know where the
15 railway station in Portmarnock is?

16 A Down this side of it here, yes.

17 Q 568If you look at the map and just follow the shaded line up to where it's crossed
18 by, you see some houses on the railway line, the road in front of those houses
19 crosses the railway line, that's where the Portmarnock railway station is. So
20 if you were made aware of, if you were made aware of the fact that had the
21 council been somewhat less than enthusiastic in the previous 17 years in
22 promoting development in the area, claiming that drainage was a problem, seeing
23 that there is some housing very adjacent to the railway line, how would you
24 have voted?

25 A How might I have voted?

26 Q 569Yes.

27 A Well, you are putting me in a position now that I haven't considered. I,
28 before any vote, would take serious consideration looking at, as I said, going
29 out into the area maybe, not all the time. Meeting with residents, meeting
30 with different people. Now, on the spot here, I haven't done a serious

1 consideration. Theoretically, I will answer it, in that this is in close
2 proximity, as you said, to a railway station. Theoretically, it is a good idea
3 to have public transport and, indeed, in the strategic planning guidelines, it
4 would be put forward now. We didn't have strategic planning guidelines at the
5 time. But now it would be put forward that high quality bus corridors or
6 railway stations would be an advantageous position to have houses beside and I
7 would agree with that position and, looking at the other side of it here, it's
8 in close proximity to a green belt. You also have to take into consideration
9 the creeping development persuasion of what, if you rezone quite close to a
10 green belt, it gives an argument well, there's houses right beside it and you
11 could have a creeping effect. Obviously you have to weigh one against the
12 other. The third instance would be, as a councillor, you have to ensure that
13 there's going to be enough land zoned at the end of the Development Plan to
14 provide houses for the people of Dublin. You would have to look at, you know,
15 how much land was rezoned and if there was extra needed at the particular time
16 or could you hold back until the next Development Plan and say, well, this can
17 wait until the following five or six years when we are doing another
18 Development Plan and we can put it in then if it's needed. You'd have to take
19 the number of houses per population or projected population into consideration.

20 Q 570 How might you have voted?

21 A I am not going to answer that question. You, if you want me to -- you are
22 putting me, if I were in a chamber I would give serious consideration to how I
23 would vote. It's hypothetical and you are putting to me a very serious
24 question, a hypothetical question, for a serious vote and I would never take it
25 lightly. My vote is very seriously thought out. I would consider it a long
26 time. You are putting me on the spot. I wouldn't vote on a hop, nobody would
27 persuade me to do that.

28 Q 571 Thank you.

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30 CHAIRMAN: Thanks. Thank you very much.

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THE WITNESS THEN WITHDREW.

MS. DILLON: There are no further witnesses available today, we will resume with Mr. Mahony in the morning.

CHAIRMAN: Sorry?

MS. DILLON: There are no further witnesses.

CHAIRMAN: All right. Half ten tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 6TH NOVEMBER 2003 AT 10.30 A.M:

