

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

_____)
ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.)

_____)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

SECOND SUPPLEMENT TO MOTION TO INTERVENE

Applicants for Intervention Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, individually and on behalf of their minor children, hereby further supplement their motion to intervene to include the following, additional applicants, individually and on behalf of their minor children: Peter Buletza; Kenneth Swenson; Robert Weatherall, Jr.; Joanne Delaney; Cara Doran; Andrew and Susan Brengle; Michele and Jason Wertz; Clark Ziegler; and Carl Nylén (the “Interveners”).

An Amended Answer and Counterclaim naming these additional Interveners has been filed herewith in accordance with Rule 15(a).

Collectively, the Interveners are comprised of fifteen (15) residents or parents with twenty-two (22) children who attend the Ipswich Public Schools and two (2) children who will

soon be eligible to attend the Ipswich Public Schools; they reside in Ipswich and Rowley, with the children of the Rowley residents attending the Ipswich Public Schools pursuant to the School Choice program; the Ipswich residents pay taxes in Ipswich; and they have been personally involved in the following groups, activities and programs associated with the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically:

- Chair and Member, Ipswich Finance Committee;
- Senior Member, Ipswich Planning Board;
- Member, ad hoc committee delegated by the Ipswich School Committee to review the finances of the Feoffees' settlement with the tenants;
- Member, Demographic Subcommittee of the Ipswich School Committee;
- Member, Subcommittee on Athletics of the Ipswich School Committee;
- Members, "FRIES" (Friends of Ipswich Elementary Schools);
- Member, FRIES Facilities and Playground Committee;
- Co-Chair, Winthrop School Council;
- Coordinator, Winthrop School Destination Imagination (DI) Program;
- "ICE" (Ipswich Citizens for Education);
- "ACE" (The American Council on Exercise);
- Member, Ipswich Recycling Committee;
- Chair, Ipswich Growth Management Steering Committee;
- Member, Ipswich Community Development Plan Implementation Task Force;
- Member, Ipswich Open Space Committee;
- Chair and Member, Athletic Fields Study Committee of the Ipswich Board of Selectmen;
- Coach, Ipswich High School and Middle School;
- Classroom volunteers;

- Treasurer, “Turn the Tide” (Proposition 2½ override initiate); and
- Project Coordinator, Proposed Irrigation Well at Mile Lane.

Because of their involvement in the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically, inter alia, the interest of the Interveners is separate and distinct from that of the general public.

As set forth in the motion to intervene dated December 20, 2011, the supplement to the motion to intervene dated December 27, 2011 (attaching and incorporating the amicus brief dated January 27, 2011, which was also attached and incorporated by the Attorney General into her opposition to the motion to intervene), the Amended Answer and Counterclaim dated December 30, 2011, and the supporting affidavit of Douglas J. DeAngelis dated December 30, 2011, filed herewith,¹ the Interveners’ interest in this matter is not adequately represented by the School Defendants, because:

1. The existing parties have reached a proposed settlement agreement to sell Little Neck even though the terms of William Payne’s will and the Trust prohibit the sale of Little Neck. Massachusetts law does not permit the reformation of a will, and the Feoffees have not proven that reasonable deviation from the terms of the Trust is necessary.

2. Even if the doctrine of reasonable deviation were applicable to the these circumstances, which would require a finding that maintaining ownership of Little Neck was William Payne’s “subordinate” intent, that Little Neck cannot continue to be maintained for the benefit of the Ipswich Public Schools, and that the allegedly failed purpose of the Trust is the result of something other than the acts or omissions of the Feoffees, the Massachusetts

¹ The Interveners intend to submit additional affidavits and a supporting memorandum of law in advance of the hearing scheduled for February 3, 2012.

Legislature alone has the authority to alter the terms of the Trust, the administration of which is governed by statute.

3. The terms of the proposed sale and the increase in the year-round residences on Little Neck would actually cost the town more than the income to be generated from the proposed sale proceeds.

For these reasons and others, the town has consistently voted to fund the litigation opposing the sale of Little Neck, including as recently as Town Meeting in May 2011, when an additional \$300,000 was allocated to the legal fund. In agreeing to the proposed sale of Little Neck after two years of litigation, when the case was nearing the finish line, the School Defendants are not adequately representing the interest of the Interveners, necessitating their intervention by right pursuant to Rule 24(a).

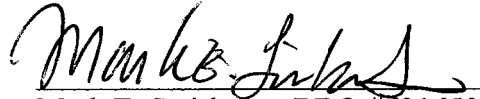
WHEREFORE, for all of the reasons stated in their motion to intervene and its supporting papers, including the affidavits and memorandum of law to be filed, the Interveners respectfully request that this Honorable Court:

- A. Grant their motion to intervene pursuant to Rule 24(a) after the scheduled hearing on February 3, 2012;
- B. Suspend the trial to allow the Interveners a reasonable opportunity as party defendants to prepare for trial; and
- C. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS,
JONATHAN PHYPERS, PETER BULETZA,
KENNETH SWENSON, ROBERT
WEATHERALL, JR., JOANNE DELANEY,
CARA DORAN, ANDREW BRENGLE,
SUSAN BRENGLE, MICHELE WERTZ,
JASON WERTZ, CLARK ZIEGLER, and
CARL NYLEN; individually and on behalf of
their minor children,

By their attorneys,



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Dated: December 30, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 30th day of December, 2011, I served a copy of the foregoing by electronic and first-class mail upon counsel of record.



Mark E. Swirbalus

NOTICE OF HEARING

As previously noticed, a hearing on the motion to intervene is scheduled for 9:00 a.m. on Friday, February 3, 2012.



Mark E. Swirbalus