

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. ESCV2006-02328

WILLIAM M. LONERGAN, et al,

Plaintiffs,

v.

JAMES W. FOLEY, et al.,
FEOFFEEES OF THE GRAMMAR
SCHOOL IN THE TOWN OF IPSWICH,

Defendants,

v.

DISTRICT ATTORNEY FOR THE
ESSEX DISTRICT, et al.,

Additional Defendants
in Counterclaim.

ANSWER AND COUNTERCLAIM AND JURY DEMAND OF THE DEFENDANTS
FEOFFEEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

NOW COME the Feoffees of the Grammar School in the Town of Ipswich (“Feoffees”) and make answer and counterclaim to the Plaintiff’s Complaint as follows:

FIRST

As to the Plaintiffs' allegations that they bring this action in behalf of an alleged class of persons, the Feoffees deny same, and further answering, say that the prerequisites to a class action are not met and that no class action can be maintained.

SECOND

The Plaintiffs' Complaint violates the provisions of Mass.R.Civ.P. 10(b) which requires a Plaintiff to limit the contents of a paragraph to a statement of a single set of circumstances.

THIRD

Answering the Complaint paragraph by paragraph, the Feoffees say:

1. Admitted that the Feoffees own the land known as Little Neck, Ipswich, Massachusetts; that they have rented lots to the named Plaintiffs and to others; that some of their tenants have constructed cottages on those lots; and that some of their tenants have sold cottages to purchasers of their choosing; otherwise, the allegations of paragraph 1 are denied.

2. Admitted that the Feoffees are the owners of the land at Little Neck, consisting of approximately 36 acres; that there are approximately 211 separately assessed lots; that 167 cottages have been built on those lots, which cottages, but not the lots, are owned by tenants of the Feoffees; that the lots with cottages thereon range in size from 1786 square feet to 7,820 square feet, approximately, with many lots measuring 3,000 square feet, and total approximately 12.5 acres; that on one 11 acre lot which is not rented there is located a community center and a building associated with the management of a centralized wastewater collection system; and that the Feoffees own Little Neck in trust for the benefit of the Ipswich Public Schools; otherwise, the allegations of paragraph 2 are denied.

3. The allegations of paragraph 3 are denied except that the Feoffees admit that tenants whose tenancies at will are terminated and who do not sign leases will not have the right to occupy lots of which they were tenants.

4. The allegations of paragraph 4 are denied except that, at all times, the Feoffees informed potential and actual tenants that they were or would be tenants at will.

5. Admitted that some tenants have financed the purchase of cottages and that some tenants may have raised money to purchase cottages by borrowing against other assets owned by such tenants; otherwise, the allegations of paragraph 5 are denied.

6. Admitted that one or more tenants have constructed or improved cottages and that such action followed consent of the Feoffees; otherwise, the allegations of paragraph 6 are denied.

7. The allegations of paragraph 7 are denied.

8. The allegations of paragraph 8 are denied.

9. The allegations of paragraph 9 are denied.

10. To the extent paragraph 10 contains allegations of fact, the allegations are denied.

11. Admitted that William M. Lonergan, together with his wife Carol Lonergan, own a cottage located at 36 Middle Road, Ipswich, Massachusetts.

12. Admitted that Diane Whitney-Wallace resides at 11 Middle Road, Ipswich, Massachusetts; as to the remaining allegations of paragraph 12, the Feoffees are without knowledge or information sufficient to form a belief as to the truth of same.

13. Admitted as to the identity and address of Mr. Foley and that he has served and acted as a duly constituted member of the Feoffees since 1988; otherwise, the allegations of paragraph 13 are denied.

14. Admitted as to the identity and address of Mr. Foote and that he has served and acted as a duly constituted member of the Feoffees; otherwise, the allegations of paragraph 14 are denied.

15. Admitted as to the identity and address of Mr. Mulholland and that he has served and acted as a duly constituted member of the Feoffees; otherwise, the allegations of paragraph 15 are denied.

16. Admitted as to the identity and address of Mr. Whiston and that he has served and acted as a duly constituted member of the Feoffees since 1973; otherwise, the allegations of paragraph 16 are denied.

17. Admitted that Ms. Kilcoyne is a member of the Board of Selectmen and that on September 25, 2006, said Board voted “. . . to assert the BOS role as Feoffees . . .”; otherwise, the allegations of paragraph 17 are denied.

18. Admitted that Mr. McNally is a member of the Board of Selectmen and that on September 25, 2006, said Board voted “. . . to assert the BOS role as Feoffees . . .”; otherwise, the allegations of paragraph 18 are denied. Further answering, the Defendants say that on May 19, 1998, Mr. McNally made a motion at the annual meeting of the Feoffees to set the rent to be charged to tenants at one hundred percent of fair market value beginning July 1, 2003, which motion carried.

19. Admitted that Mr. Rauscher is a member of the Board of Selectmen and that on September 25, 2006, said Board voted “. . . to assert the BOS role as Feoffees . . .”; otherwise, the allegations of paragraph 17 are denied.

20. To the extent paragraph 20 contains allegations of fact, the allegations are denied.

21. Admitted that for approximately 100 years, tenants have rented lots from the Feoffees on which tenants have built cottages at their cost; otherwise, the allegations of paragraph 21 are denied.

22. The allegations of paragraph 22 are denied.

23. Admitted that the Ipswich Town Meeting of November 14, 1650 granted to four individuals certain land then located in Ipswich “for the use of the school”; that Little Neck was left by will of William Payne, who died in 1660, to certain feoffees for the benefit of the school;

and that, by Chapter 5 of the Province Laws of 1765-66, made perpetual by Chapter 54 of the Acts of 1786, "a joint committee or feoffees in trust" was created, to consist of four persons privately selected and three members of the selectmen of Ipswich; otherwise, the allegations of paragraph 23 are denied. Further answering, the Feoffees attach hereto as Exhibits A, B, C and D, respectively, the applicable votes of the Ipswich Town Meeting, the will of William Payne, Chapter 5 of the Province Laws of 1765-66 and Chapter 54 of the Acts of 1786.

24. The Feoffees are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Admitted that Chapter 26 of the Province Laws of 1755-56 is captioned: "An Act Regulating the Grammar School of Ipswich, and for Incorporating Certain Persons to Manage and Direct the Same," a copy of which chapter is attached hereto and marked Exhibit E. Further answering, the Feoffees say the chapter speaks for itself.

26. Answering the allegations of paragraph 26, the Feoffees say that Chapter 5 of the Province Laws of 1765-66 is attached hereto as Exhibit C and said chapter speaks for itself.

27. The allegations of paragraph 27 are admitted.

28. The allegations of paragraph 28 are denied.

29. The allegations of paragraph 29 are denied.

30. The allegations of paragraph 30 are denied.

31. The allegations of paragraph 31 are denied.

32. The Feoffees respond to the allegations of paragraph 32 by incorporating by reference paragraphs 17 through 19 of this answer; otherwise, the allegations are denied.

33. The allegations of paragraph 33 are denied.

34. Admitted that the Feoffees charged, and the tenants paid, rent for the lots owned by the Feoffees at Little Neck; otherwise, the allegations are denied.

35. Admitted that rents have increased over the years; otherwise, the allegations are denied.

36. Admitted that, beginning in 1966, the Feoffees separately identified rent and real estate taxes to be paid by the tenants and that the tenants agreed to pay same; otherwise, the allegations of paragraph 36 are denied.

37. Admitted that rents have increased from time to time since 1998; otherwise, the allegations of paragraph 37 are denied.

38. Admitted that the Feoffees have separately identified rent and real estate taxes to be paid by the tenants and that the tenants agreed to pay same; otherwise, the allegations of paragraph 38 are denied.

39. Admitted that certain Feoffees have been compensated for their services; otherwise, the allegations of paragraph 39 are denied.

40. Admitted that the Feoffees communicated to their tenants the need for remedial measures as mandated by the Department of Environmental Protection and estimated the cost thereof; otherwise, the allegations of paragraph 40 are denied.

41. Admitted that the Feoffees retained Pio Lombardo of Lombardo Associates, Inc. to investigate alternatives to individual tight tanks; otherwise, the allegations of paragraph 41 are denied.

42. Admitted that, as requested by the tenants acting through their association and their engineer, the Feoffees authorized construction of a centralized wastewater collection system to which the tenants were to connect so as to comply with the order of the Department of

Environmental Protection and that, from time to time, the Feoffees have estimated the cost of construction; otherwise, the allegations of paragraph 42 are denied.

43. Admitted that, by agreement with the tenants, the Feoffees began collecting from the tenants costs associated with the centralized wastewater collection system; otherwise, the allegations of paragraph 43 are denied.

44. Admitted that the Feoffees kept the tenants advised of costs of the centralized wastewater collection system; that the cost at one time was estimated to be \$35,000 per cottage; and that the Feoffees notified the tenants of their intention to offer the tenants a lease in lieu of the tenancies at will of the tenants; otherwise, the allegations of paragraph 44 are denied.

45. Admitted that the Feoffees borrowed \$6,483,000 and \$535,000 from the Ipswich Co-operative Bank in June, 2005 and, in connection therewith, executed a number of documents which were signed by their then Chairman Mulholland and their then Treasurer Foote, which documents included collateral assignments of leases and rents; contracts, licenses, permits, approvals, agreements and warranties; and betterment fees; otherwise, the allegations of paragraph 45 are denied.

46. Admitted that the Feoffees kept the tenants advised of the increasing cost of the wastewater system and that the dollar figures set forth in paragraph 46 are correct; otherwise, the allegations of said paragraph are denied.

47. Admitted that the Feoffees provided the tenants with a proposed lease and that they provided the tenants with invoices for wastewater disposal charges which included operation and management expenses, all consistent with the operation of a centralized wastewater collection system which the tenants had requested in lieu of individual tight tanks servicing the cottages; that the Feoffees have contracted to dispose of the wastewater from said

system; and that Ms. Whitney-Wallace received an invoice for \$467.36; otherwise, the allegations of paragraph 47 are denied.

48. Admitted that tenants, through counsel, asked to have input as to lease terms and that the Feoffees accepted such input; that among proposed lease provisions were a twenty-year term, rent in a sum certain for three years and future rents to be determined, in part, based upon a classification of lots; and that the rent was designed to be equal to fair rental value; otherwise, the allegations of paragraph 48 are denied.

49. Admitted that the Feoffees, on or about June 27, 2006, offered to enter into a lease with each of its tenants; that a copy of the lease (for seasonal tenants) is a part of Exhibit F attached hereto; and that a similar lease was offered to year-round tenants with the annual rent being \$10,800 instead of \$9,700 for seasonal tenants; otherwise, the allegations of paragraph 49 are denied.

50. Admitted that the Feoffees sent a notice to quit to their tenants in accordance with law, a sample copy of which is attached hereto as Exhibit G; otherwise, the allegations of paragraph 50 are denied.

51. The allegations of paragraph 51 are denied.

52. Admitted that Attorney Neal C. Tully sent to Mssrs. Foote, Foley, Mulholland and Whiston a letter dated July 28, 2006 purporting to be a demand for relief and making the demands described in paragraph 52; otherwise, the allegations are denied.

53. Admitted that the Feoffees, through counsel, responded to the aforesaid July 28, 2006 letter; further answering, the Feoffees attach hereto a copy of said response as Exhibit F, incorporating same herein by reference; otherwise, the allegations of paragraph 53 are denied.

54. Admitted that the Feoffees offered to engage in mediation regarding lease terms, stating that they could not reduce the proposed rent for the first three years, and that the tenants declined to enter into mediation; otherwise, the allegations of paragraph 54 are denied.

55. Admitted that cottages belonging to the tenants were assessed for fiscal year 2005 for nearly twenty million dollars; further answering, the Feoffees are without knowledge or information sufficient to form a belief as to so much of the allegations of paragraph 55 as discuss what the “[P]laintiffs believe”; otherwise, the allegations are denied.

56. The allegations of paragraph 56 are denied.

57. Admitted that, at one time, the tenants agreed to pay the cost of the wastewater system and some tenants paid a small portion of same; otherwise, the allegations of paragraph 57 are denied.

58. To the extent paragraph 58 contains allegations of fact, the allegations are denied; further answering, the Feoffees say that the prerequisites to a class action are not met and that no class action can be maintained.

59. The allegations of paragraph 59 are denied.

60. The allegations of paragraph 60 are denied.

61. The allegations of paragraph 61 are denied.

62. The allegations of paragraph 62 are denied.

63. The allegations of paragraph 63 are denied.

64. The allegations of paragraph 64 are denied.

65. The allegations of paragraph 65 are denied.

66. The allegations of paragraph 66 are denied.

67. The allegations of paragraph 67 are denied.

68. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
69. The allegations of paragraph 69 are denied.
70. The allegations of paragraph 70 are denied.
71. The allegations of paragraph 71 are denied.
72. The allegations of paragraph 72 are denied.
73. The allegations of paragraph 73 are denied.
74. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
75. The allegations of paragraph 75 are denied.
76. The allegations of paragraph 76 are denied.
77. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
78. To the extent paragraph 78 contains allegations of fact, the allegations are denied.
79. The allegations of paragraph 79 are denied.
80. The allegations of paragraph 80 are denied.
81. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
82. The allegations of paragraph 82 are denied.
83. The allegations of paragraph 83 are denied.
84. The allegations of paragraph 84 are denied.
85. The allegations of paragraph 85 are denied.
86. The Feoffees admit receipt of the letter attached to the Complaint and marked Exhibit "A"; otherwise, the allegations of paragraph 86 are denied.
87. Admitted that the Feoffees, through counsel, responded to the July 28, 2006 letter; otherwise, the allegations of paragraph 87 are denied.
88. To the extent paragraph 88 contains allegations of fact, the allegations are denied.

- 89. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 90. The allegations of paragraph 90 are denied.
- 91. To the extent paragraph 91 contains allegations of fact, the allegations are denied.
- 92. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 93. To the extent paragraph 93 contains allegations of fact, the allegations are denied.
- 94. The allegations of paragraph 94 are denied.
- 95. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 96. The allegations of paragraph 96 are denied.
- 97. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 98. To the extent paragraph 98 contains allegations of fact, the allegations are denied.
- 99. The allegations of paragraph 99 are denied.
- 100. The allegations of paragraph 100 are denied.
- 101. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 102. The allegations of paragraph 102 are denied.
- 103. The allegations of paragraph 103 are denied.
- 104. The allegations of paragraph 104 are denied.
- 105. To the extent paragraph 105 contains allegations of fact, the allegations are denied.
- 106. The Feoffees repeat and reallege paragraphs 1 through 57 of their answer.
- 107. The allegations of paragraph 107 are denied.
- 108. The allegations of paragraph 108 are denied.

FOURTH
AFFIRMATIVE DEFENSES

The Feoffees assert the following affirmative defenses:

1. The Plaintiffs' claims are barred by the statute of limitations.
2. The Plaintiffs' claims are barred by the statute of frauds.
3. The Plaintiffs are estopped from recovery against the Feoffees.
4. The Plaintiffs are guilty of laches and cannot recover against the Feoffees.
5. The Plaintiffs have waived any right to recover against the Feoffees.
6. The Plaintiffs are guilty of unclean hands and cannot recover against the Feoffees.
7. An accord and satisfaction has been reached between the Plaintiffs and the
Feoffees.
8. The Plaintiffs have an adequate remedy at law.
9. The Plaintiffs cannot recover on a contract based theory because they have failed
to perform their obligations under any contract they may have with the Feoffees.
10. The Plaintiffs have failed to satisfy conditions precedent to recovery against the
Feoffees.
11. The provisions of G.L. c. 93A do not apply to the Feoffees.
12. The Plaintiffs have failed to satisfy the conditions precedent to recovery against
the Feoffees under G.L. c. 93A.
13. The purported demand letter of the Plaintiffs fails to satisfy the requirements of
G.L. c. 93A.
14. All monies paid by the Plaintiffs to the Feoffees have been paid by agreement.
15. All claims of the Plaintiffs have been released.

16. Any obligation ever owed by the Feoffees to the Plaintiffs has been paid or satisfied.

17. Any contract based claim of the Plaintiff against the Feoffees fails for failure of consideration.

18. Each of the counts of the Plaintiffs' Complaint fails to state a claim upon which relief can be granted because each fails to set forth facts which constitute all of the elements of a prima facie case.

19. In the event and to the extent the Feoffees constitute a governmental body, they are immune from suit.

20. In the event and to the extent the Feoffees constitute a governmental body, the Plaintiffs have failed to satisfy the statutory and common law conditions precedent to the institution of a civil action against the Feoffees.

21. The Plaintiffs are not entitled to maintain their action as a class action because the prerequisites of Mass.R.Civ.P. 23 are not satisfied.

22. The Plaintiffs are not entitled to maintain their action as a class action because questions of law or fact common to the members of the alleged class do not predominate over any questions affecting individual tenants of Little Neck.

23. A class action is not superior to an action naming each of the tenants whose alleged rights are at issue and who wishes to be a party-plaintiff.

WHEREFORE, the Feoffees demand that all of the Plaintiffs' claims be dismissed with prejudice and with an award of costs to the Feoffees.

COUNTERCLAIM

Introduction and Overview

1. The Feoffees are the owners of the land at Little Neck, Ipswich, Massachusetts and have been since the death of William Payne in 1660. The history of the Feoffees is set forth in paragraphs 175-193, infra.

2. The Feoffees hold title to the land at Little Neck for the benefit of the Ipswich Public Schools.

3. Prior to June 30, 2006, the various tenants of the Feoffees have been tenants at will. Those tenants have rented lots of land owned by the Feoffees on which lots the tenants have built cottages. There are presently 167 cottages located at Little Neck on lots rented by the tenants from the Feoffees. Twenty-four of those cottages are used year round. The remaining 143 cottages are used seasonally.

4. From time to time beginning in 1998, the Feoffees have proposed to their tenants increases in rents, the tenants have agreed to pay said rents and, for the most part, the tenants have paid the rents in a timely fashion.

5. In and about 2005 and 2006, the Feoffees, consistent with their fiduciary obligation to their beneficiary to charge fair market rent, proposed to increase the rent charged to their tenants to \$9,700 per year for seasonal (April 1 to December 31) cottage users and to \$10,800 per year for year-round cottage users. For the first time, the Feoffees offered to their tenants the opportunity to enter into a lease. The proposed lease provided that the rent would not increase for three years. The proposed lease allowed the tenants to terminate the lease upon sixty days written notice.

6. The lots at issue on which cottages are located have assessed values for fiscal year 2007 ranging from a low of \$185,800 to a high of \$382,700. The proposed rate of return for the Feoffees, based on the aforesaid assessed values, ranges from 2.5 to 5.2 percent. In order to account for the differences in values of the lots, the proposed lease provided that, beginning in the fourth year of the lease term, the rent would be adjusted by the Feoffees "after taking into account (a) the fair value of the Lots as to which the Landlord shall receive advice from appropriate professionals, (b) the operating costs of Little Neck, and (c) the charitable purposes of the Landlord."

7. Some of the tenants have signed the proposed lease, seasonal or year-round.

8. Some of the tenants, apparently believing that a rate of return on investment ranging from 2.5 to 5.2 percent is "unlawful and unequitable," have not signed the proposed lease. Two of said tenants have brought this action, both individually and seeking to act in a representative capacity in behalf of an alleged class of persons.

9. The Feoffees bring a counterclaim in three counts seeking declaratory relief concerning all tenants and lessees and seeking money damages against some tenants. In addition to naming their tenants and lessees, the Feoffees also name the District Attorney for the Essex District, insofar as he is an interested party on so much of the Feoffees' counterclaim as seeks a declaration that the provisions of G.L. c. 39, §§23A-23C, the so-called Open Meeting Law, are inapplicable to the Feoffees, and the Attorney General, insofar as he is an interested party on so much of the Feoffees' counterclaim as seeks a declaration that the Feoffees are not a governmental body for purposes of G.L. c. 30B, the Uniform Procurement Act, and as to the aforesaid count concerning the Open Meeting Law.

Parties in Counterclaim

10. The Feoffees, identified in their answer to the Plaintiffs' Complaint, are the Plaintiffs-in-Counterclaim. They bring their Counterclaim in three counts: (1) for a declaratory judgment that the Feoffees are not a governmental body within the meaning of G.L. c. 39 §§23A-23C, inclusive; (2) for a declaratory judgment that the Feoffees are not a governmental body within the meaning of G.L. c. 30B §1 *et seq.*; and (3) for money damages for breach of contract by certain tenants of the Feoffees.

11. The District Attorney for the Essex District has a usual place of business at Ten Federal Street, Salem, Essex County, Massachusetts and is, by reason of his authority set forth in G.L. c. 39, §23B to enter orders pertaining to the provisions of G.L. c. 39 §§23A-C, an interested party as to declaratory relief sought in Count I herein.

12. The Attorney General of the Commonwealth of Massachusetts has a usual place of business at the McCormack Building, One Ashburton Place, Boston, Suffolk County, Massachusetts and is, by reason of his authority set forth in G.L. c. 39, §23B to enter orders pertaining to the provisions of G.L. c. 39, §§23A-C, an interested party as to declaratory relief sought in Count I herein; and is, by reason of his ultimate authority to enforce provisions of the Uniform Procurement Act pursuant to G.L. c. 30B, §17(d), an interested party as to declaratory relief sought in Count II herein.

13. Nadine Wilkey, Defendant-in-Counterclaim, is a tenant of the lot located at 59 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$327,500.00 for fiscal year 2007.

14. Joan Blake and Richard Hanson, Defendants-in Counterclaim, are tenants of the lot located at 50 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$327,900.00 for fiscal year 2007.

15. Robert A. Schless and Christine Hawrylak, Defendants-in-Counterclaim, are tenants of the lot located at 39 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$316,100.00 for fiscal year 2007.

16. Susan E. Vieno, Defendant-in-Counterclaim, is a tenant of the lot located at 35 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$317,400.00 for fiscal year 2007.

17. Catherine D'Amico Lichoulas, Defendant-in-Counterclaim, is a tenant of the lots located at 31 River Road, 23 Bay Road and 21 Bay Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$323,500.00, \$254,200.00 and \$52,000.00 for fiscal year 2007.

18. Robert M. Maloney, Jr. and Susan Maloney, Defendants-in-Counterclaim, are tenants of the lot located at 29 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$326,600.00 for fiscal year 2007.

19. Florence Lalikos, Defendant-in-Counterclaim, is a tenant of the lot located at 27 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$320,700.00 for fiscal year 2007.

20. James Gillette and Patricia Gillette, Defendants-in-Counterclaim, are tenants of the lot located at 25 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$316,100.00 for fiscal year 2007.

21. Robert Watson, Susan Watson and Sally Watson, Defendants-in-Counterclaim, are tenants of the lot located at 6 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

22. Diane Whitney-Wallace, Defendant-in-Counterclaim, is a tenant of the lots located at 11 Middle Road and 15 Middle Road, Ipswich, Essex County, Massachusetts, which lots had an assessed value of \$46,900.00 and \$252,100.00 respectively for fiscal year 2007.

23. James Krupanski and Irenay O. Krupanski, Defendants-in-Counterclaim, are tenants of the lot located at 9 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$264,000.00 for fiscal year 2007.

24. Kara E. Kelley, Nancy G. Lydon, and Frederick R. Kelley, III, Trustees of the Kelley Little Neck Trust, Defendants-in-Counterclaim, are tenants of the lots located at 3 Middle Road, 6 Middle Road and 7 Middle Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$262,600.00, \$208,400.00 and \$262,600.00 for fiscal year 2007.

25. Alida M. Marchisio, Trustee of the Marchisio Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 8 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$223,300.00 for fiscal year 2007.

26. William A. Gottlieb and Roberta A. Crowley Gottlieb, Defendants-in-Counterclaim, are tenants of the lot located at 14 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$228,700.00 for fiscal year 2007.

27. Ron Thornton and Eleanor Kutz, Trustees of the Trust, Defendants-in-Counterclaim, are tenants of the lot located at 16 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$231,900.00 for fiscal year 2007.

28. Charles M. Devlin, Jr., Mark A. Devlin, William G. Devlin, and Nancy J. Devlin, Defendants-in-Counterclaim, are tenants of the lot located at 26 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$216,300.00 for fiscal year 2007.

29. Roy Benjamin and Sally Benjamin, Defendants-in-Counterclaim, are tenants of the lot located at 28 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$215,200.00 for fiscal year 2007.

30. Peter McDonald and Kimberley A. McDonald, Defendants-in-Counterclaim, are tenants of the lot located at 30 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

31. Richard Saunders, Defendant-in-Counterclaim, is a tenant of the lot located at 25 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$223,200.00 for fiscal year 2007.

32. Douglas Dieringer and Mary Dieringer, Defendants-in-Counterclaim, are tenants of the lot located at 7 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$218,600.00 for fiscal year 2007.

33. John F. Norieka and Donna A. Norieka, Defendants-in-Counterclaim, are tenants of the lot located at 31 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$246,100.00 for fiscal year 2007.

34. Antonio Yemma and Cheryl Yemma, Defendants-in-Counterclaim, are tenants of the lot located at 27 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$249,100.00 for fiscal year 2007.

35. Mary G. Dieringer, Trustee of the 25 Bay Road Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 25 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

36. Malcolm Donaldson and Nancy Donaldson, Defendants-in-Counterclaim, are tenants of the lot located at 16 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$225,500.00 for fiscal year 2007.

37. Thomas Allen and Mary Allen, Defendants-in-Counterclaim, are tenants of the lot located at 18 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$224,700.00 for fiscal year 2007.

38. Elizabeth D. Fankos, Defendant-in-Counterclaim, is a tenant of the lot located at 8 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

39. Michael S. Casey and Kathleen A. Casey, Defendants-in-Counterclaim, are tenants of the lots located at 12 Hilltop Road and 3 Cove Road, Ipswich, Essex County, Massachusetts, which lots each have an assessed value of \$213,300.00 for fiscal year 2007.

40. Wendy Carmichael, Laurel Weaver and James Weaver, Defendants-in-Counterclaim, are tenants of the lots located at 2 Cove Road and 3 Cove Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$41,700.00 and \$213,300.00 respectively for fiscal year 2007.

41. Byard Horsman and Jean Horsman, Defendants-in-Counterclaim, are tenants of the lot located at 4 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$230,400.00 for fiscal year 2007.

42. Walter Fidrocki and Lucille Fidrocki, Trustees of the Fidrocki Trust, Defendants-in Counterclaim, are tenants of the lot located at 12 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$223,500.00 for fiscal year 2007.

43. Robert Varney, Defendant-in-Counterclaim, is a tenant of the lot located at 15 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

44. Herbert B. Cogan, Jr., Defendant-in-Counterclaim, is a tenant of the lot located at 5 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

45. Joanne M. Friske, Trustee of the Joanne M. Fiske Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 22 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

46. Ingrid G. Scheible, Trustee of the Ingrid G. Scheible Memorial Trust and Maura Mastrogiovanni Defendants-in-Counterclaim, are tenants of the lot located at 24 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

47. Marilyn Stallard, Defendant-in-Counterclaim, is a tenant of the lot located at 28 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

48. Cornelia McGilvray and Paul McGilvray, Defendants-in-Counterclaim, are tenants of the lot located at 30 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$220,300.00 for fiscal year 2007.

49. Paul Anthony and Laurel A. Anthony, Defendants-in-Counterclaim, are tenants of the lot located at 23 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

50. David Carroll and Carol Carroll, Defendants-in-Counterclaim, are tenants of the lot located at 21 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

51. Michael O'Brien, Defendant-in-Counterclaim, is a tenant of the lot located at 35 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

52. Philip Surette and Nancy Surette, Defendants-in-Counterclaim, are tenants of the lot located at 22 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

53. Richard H. Yacubian and June H. Yacubian, Defendants-in-Counterclaim, are tenants of the lot located at 20 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

54. Peter R. Hull, Defendant-in-Counterclaim, is a tenant of the lot located at 22 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

55. Mary Varney, Defendant-in-Counterclaim, is a tenant of the lots located at 21 Kings Way and 24 Kings Way, Ipswich, Essex County, Massachusetts, which lots each have an assessed value of \$213,300.00 for fiscal year 2007.

56. Wayne W. Morrison and Phyllis J. Morrison, Defendants-in-Counterclaim, are tenants of the lot located at 25 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

57. Dorothy Gorhawl Ingalls, Defendant-in-Counterclaim, is a tenant of the lot located at 19 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

58. John Spenser and Jane Kennedy, Defendants-in-Counterclaim, are tenants of the lot located at 17 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

59. Richard Barton and Joan Barton, Defendants-in-Counterclaim, are tenants of the lot located at 5 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

60. Jason Maloney, Defendant-in-Counterclaim, is a tenant of the lot located at 2 Plum Sound Road, Ipswich, Essex County, Massachusetts which, lot has an assessed value of \$323,500.00 for fiscal year 2007.

61. Janet R. Maloney, Defendant-in-Counterclaim, is a tenant of the lot located at 4 Plum Sound Road, Ipswich, Essex County, Massachusetts which, lot has an assessed value of \$254,200.00 for fiscal year 2007.

62. Grace Hanson, Defendant-in-Counterclaim, is a tenant of the lot located at 6 Plum Sound Road, Ipswich, Essex County, Massachusetts which, lot has an assessed value of \$254,200.00 for fiscal year 2007.

63. Peter Carroll, Trustee of the Carroll Family Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 38 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

64. Philip Deven and Ann Dever, Defendants-in-Counterclaim, are tenants of the lot located at 12 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

65. Malcolm R. Green and Richard S. Green, Trustees of the Light House Trust, Defendants-in-Counterclaim, are tenants of the lot located at 14 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

66. David S. Rocco, Defendant-in-Counterclaim, is a tenant of the lot located at 28 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

67. Francis J. Davis, Jr. and Carol R. Davis, Defendants-in-Counterclaim, are tenants of the lot located at 30 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$221,000.00 for fiscal year 2007.

68. Dawna Blum, Defendant-in-Counterclaim, is a tenant of the lot located at 27 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$266,600.00 for fiscal year 2007.

69. Edward L. Raynard and Shirley M. Raynard, Defendants-in-Counterclaim, are tenants of the lot located at 19 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$219,400.00 for fiscal year 2007.

70. Craig A. Saline and Sharon M. Saline, Defendants-in-Counterclaim, are tenants of the lot located at 13 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

71. Brian Brennan and Eileen Brennan, Defendants-in-Counterclaim, are tenants of the lot located at 5 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

72. Patricia A. Sciple, Defendant-in-Counterclaim, is a tenant of the lot located at 42 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

73. Lisa Manzi, Defendant-in-Counterclaim, is a tenant of the lot located at 43 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

74. Elaine C. Dever, Defendant-in-Counterclaim, is a tenant of the lot located at 2 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$329,600.00 for fiscal year 2007.

75. James Kurnick, Defendant-in-Counterclaim, is a tenant of the lot located at 6 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$317,000.00 for fiscal year 2007.

76. Lillian V. Eaton, Trustee of the Lillian V. Eaton Living Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 10 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$327,500.00 for fiscal year 2007.

77. Dorothy Gorham, Defendant-in-Counterclaim, is a tenant of the lot located at 12 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$325,500.00 for fiscal year 2007.

78. Patrick Merlino, Trustee of the River Road Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 16 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$382,700.00 for fiscal year 2007.

79. Douglas Girdwood and Susan McDonald, Defendants-in Counterclaim, are tenants of the lot located at 4 Cliff Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$345,500.00 for fiscal year 2007.

80. Cornelia Harris, Defendant-in-Counterclaim, is a tenant of the lot located at 61 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$321,600.00 for fiscal year 2007.

81. Martha Sandberg, Defendant-in-Counterclaim, is a tenant of the lot located at 53 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$329,100.00 for fiscal year 2007.

82. Sarah D. Hough and Willis S. Hough, Defendants-in Counterclaim, are tenants of the lot located at 49 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$316,100.00 for fiscal year 2007.

83. Richard Saunders, Defendant-in-Counterclaim, is a tenant of the lot located at 47 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$244,300.00 for fiscal year 2007.

84. Robert Aiello, Defendant-in-Counterclaim, is a tenant of the lot located at 44 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$321,600.00 for fiscal year 2007.

85. Theodore Ciolek, Defendant-in-Counterclaim, is a tenant of the lot located at 48 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$332,400.00 for fiscal year 2007.

86. Robert Seger and Renee Loth, Defendants-in-Counterclaim, are tenants of the lot located at 45 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$250,300.00 for fiscal year 2007.

87. Scot Rodman, Defendant-in-Counterclaim, is a tenant of the lot located at 43 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$315,400.00 for fiscal year 2007.

88. Francis J. Scannell and Brenda Pearse, Defendants-in-Counterclaim, are tenants of the lot located at 41 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$315,500.00 for fiscal year 2007.

89. Joseph Survilas and Nancy Survilas, Defendants-in-Counterclaim, are tenants of the lot located at 37 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$318,600.00 for fiscal year 2007.

90. Richard Doherty and Ann Doherty, Defendants-in-Counterclaim, are tenants of the lot located at 31 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,000.00 for fiscal year 2007.

91. Mildred K. O'Flahavan, Defendant-in-Counterclaim, is a tenant of the lot located at 21 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

92. Edwin Kaine and Diane Kaine, Defendants-in-Counterclaim, are tenants of the lots located at 17 Middle Road and 19 Middle Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$50,800.00 and \$254,200.00 respectively for fiscal year 2007.

93. Cynthia B. Brown, Defendant-in-Counterclaim, is a tenant of the lot located at 5 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$262,600.00 for fiscal year 2007.

94. Norma J. Currie and Yvette A. Beeman, Defendants-in-Counterclaim, are tenants of the lot located at 1 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$185,800.00 for fiscal year 2007.

95. Donald Gresek, Defendant-in-Counterclaim, is a tenant of the lot located at 4 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$207,100.00 for fiscal year 2007.

96. William Hardy and Marion D. Hardy, Defendants-in-Counterclaim, are tenants of the lot located at 12 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$220,100.00 for fiscal year 2007.

97. Bruce H. Spatz, Defendant-in-Counterclaim, is a tenant of the lot located at 22 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$223,700.00 for fiscal year 2007.

98. Garrett Cutler, Bruce Cutler, Joyce Thompson, Defendants-in-Counterclaim, are tenants of the lot located at 23 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$218,100.00 for fiscal year 2007.

99. Diane Walker and Michael Walker, Defendants-in-Counterclaim, are tenants of the lot located at 21 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$216,900.00 for fiscal year 2007.

100. Anne B. Donohoe, Defendant-in-Counterclaim, is a tenant of the lot located at 19 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$218,000.00 for fiscal year 2007.

101. Roland Harrington, Judith Harrington, Richard Siebert and Paula Siebert, Defendants-in-Counterclaim, are tenants of the lot located at 9 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$217,400.00 for fiscal year 2007.

102. John F. Duran, Jr. and Ruth M. Doran, Trustees of the Duran Realty Trust, Defendants-in-Counterclaim, are tenants of the lots located at 10 Middle and 10 Cliff Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$204,300.00 and \$318,500.00 respectively for fiscal year 2007.

103. Barbara Carbone Santoro, Trustee of the Barbara K. Carbone Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 29 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$248,400.00 for fiscal year 2007.

104. Mary F. Johnson, Defendant-in-Counterclaim, is a tenant of the lot located at 19 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$260,000.00 for fiscal year 2007.

105. Peter Holden, Defendant-in-Counterclaim, is a tenant of the lot located at 17 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$255,900.00 for fiscal year 2007.

106. Deborah O. Todd, Defendant-in-Counterclaim, is a tenant of the lot located at 15 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$256,400.00 for fiscal year 2007.

107. Ross Hamlin, Defendant-in-Counterclaim, is a tenant of the lot located at 5 Gala Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

108. Joseph Dowling, Defendant-in-Counterclaim, is a tenant of the lot located at 10 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

109. Stephen Ruta and Dolores Ruta, Trustee of the Dolores Ruta Trust, Defendants-in-Counterclaim, are tenants of the lot located at 6 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

110. Cecily Robinson, Defendant-in-Counterclaim, is a tenant of the lot located at 8 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

111. Nancy Donaldson and Virginia Fitz, Defendants-in-Counterclaim, are tenants of the lot located at 10 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

112. Paul Mattson and Patricia Mattson, Defendants-in-Counterclaim, are tenants of the lot located at 9 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

113. Walter Bagnell and Mary Bagnell, Defendants-in-Counterclaim, are tenants of the lot located at 16 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$203,400.00 for fiscal year 2007.

114. Richard W. Stocker and Myrone Stocker, Defendants-in-Counterclaim, are tenants of the lot located at 18 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$214,400.00 for fiscal year 2007.

115. John Fogarty and Nancy Fogarty, Defendants-in-Counterclaim, are tenants of the lot located at 18 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

116. Michael J. Anthony and Michelle M. Anthony, Defendants-in-Counterclaim, are the tenants of the lot located at 26 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

117. Margaret Attridge, Defendant-in-Counterclaim, is a tenant of the lot located at 8 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$219,400.00 for fiscal year 2007.

118. John F. Duran, III, Trustee of the KSJ Realty Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 27 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

119. Joseph Ferrino and Marie Ferrino, Defendants-in-Counterclaim, are tenants of the lot located at 25 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

120. Deborah Dody, Trustee of the Buckley Family Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 17 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

121. Mark S. Disalvo, Defendant-in-Counterclaim, is a tenant of the lot located at 20 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

122. Albert H. Cairns and Pamela H. Cairns, Defendants-in-Counterclaim, are tenants of the lot located at 32 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

123. Peter A. Benjamin and Linda L. Benjamin, Defendants-in-Counterclaim, are tenants of the lot located at 3 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,500.00 for fiscal year 2007.

124. Elizabeth S. Torrisi, Defendant-in-Counterclaim, is a tenant of the lot located at 21 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,500.00 for fiscal year 2007.

125. Barbara Rowell, Defendant-in-Counterclaim, is a tenant of the lot located at 4 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

126. Cynthia Johnson, Defendant-in-Counterclaim, is a tenant of the lot located at 37 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

127. Barbara A. Pulsford, Defendant-in-Counterclaim, is a tenant of the lot located at 10 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$202,600.00 for fiscal year 2007.

128. Peter Rogal and Pamela Rogal, Defendants-in-Counterclaim, are tenants of the lot located at 16 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

129. John Connor and Janet Connor, Defendants-in-Counterclaim, are tenants of the lot located at 18 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

130. Gerald J. Donovan, Defendant-in-Counterclaim, is a tenant of the lot located at 30 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$210,900.00 for fiscal year 2007.

131. Timothy O'Keefe, Defendant-in-Counterclaim, is a tenant of the lot located at 24 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

132. Mary Gorman, Defendant-in-Counterclaim, is a tenant of the lot located at 37 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

133. William Lonergan and Carol Lonergan, Defendants-in-Counterclaim, are tenants of the lot located at 36 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

134. Robert F. Cole, Jr., Defendant-in-Counterclaim, is a tenant of the lot located at 39 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

135. Charles Huntley and Alberta Huntley, Defendants-in-Counterclaim, are tenants of the lot located at 41 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

136. Sandra Simkins, Defendant-in-Counterclaim, is a tenant of the lot located at 22 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

137. Patricia Bouley, Defendant-in-Counterclaim, is a tenant of the lot located at 25 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$344,100.00 for fiscal year 2007.

138. Edward Goodwin, Defendant-in-Counterclaim, is a tenant of the lot located at 23 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

139. Joyce V. Lyons and Gary A. Snyder, Defendants-in Counterclaim, are tenants of the lot located at 21 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

140. Arthur Veno, Defendant-in-Counterclaim, is a tenant of the lot located at 40 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

141. Arthur Lowden and Diane Lowden, Defendants-in-Counterclaim, are tenants of the lot located at 43 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

142. Charles Story and Douglas Story, Defendants-in-Counterclaim, are tenants of the lot located at 3 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,500.00 for fiscal year 2007.

143. Kathryn A. Stover, individually and as Trustee of the 158 Little Neck Trust, Defendant-in-Counterclaim, is a tenant of the lot located at 15 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,500.00 for fiscal year 2007.

144. Marcia Cowdry, Nadine Wilkery and Richard Cowdry, Defendants-in-Counterclaim, are tenants of the lots located at 9 River Road and 11 River Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$64,700.00 and \$323,500.00 for fiscal year 2007.

145. Jeffrey A. Berman and Beth C. Luchner, Defendants-in-Counterclaim, are tenants of the lots located at 9 River Road and 45 Middle Road, Ipswich, Essex County, Massachusetts, which lots have an assessed value of \$64,700.00 and \$254,200.00 for fiscal year 2007.

146. Robert MacRae and Mary MacRae, Defendants-in-Counterclaim, are tenants of the lot located at 3 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

147. Francine Amore Koris, Defendant-in-Counterclaim, is a tenant of the lot located at 2 Cliff Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,600.00 for fiscal year 2007.

148. Mark Sullivan, Kara Sullivan and Christopher Sullivan, Defendants-in-Counterclaim, are tenants of the lot located at 8 Cliff Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$332,100.00 for fiscal year 2007.

149. Eleanor F. Mann, Defendant-in-Counterclaim, is a lessee of the lot located at 63 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$324,200.00 for fiscal year 2007.

150. Mary C. Anderson, Trustee of The 57 River Rd. Trust, Defendant-in-Counterclaim, is a lessee of the lot located at 57 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$328,400.00 for fiscal year 2007.

151. Patricia Martin, Defendant-in-Counterclaim, is a lessee of the lot located at 55 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$326,100.00 for fiscal year 2007.

152. Phyllis Cronin and Joseph Cronin, Defendants-in-Counterclaim, are lessees of the lot located at 46 River Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$350,000.00 for fiscal year 2007.

153. Charles A. Laughton, Trustee of the Lot 26 Little Neck Nom. Trust, Defendant-in-Counterclaim, is a lessee of the lot located at 29 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$259,400.00 for fiscal year 2007.

154. Mary Spinney Donaldson, Susan Donaldson and Andrew Donaldson, Defendants-in- Counterclaim, are lessees of the lot located at 20 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$224,300.00 for fiscal year 2007.

155. Barbara Lewis, Defendant-in-Counterclaim, is a lessee of the lot located at 24 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$218,100.00 for fiscal year 2007.

156. Michael M. Kersker and Janice G. Kersker, Defendants-in-Counterclaim, are lessees of the lot located at 15 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$221,000.00 for fiscal year 2007.

157. John Reardon, Trustee of the John A. Reardon Trust, Defendants-in-Counterclaim, are lessees of the lot located at 11 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$249,100.00 for fiscal year 2007.

158. Clifford Bouvier, Defendant-in-Counterclaim, is a lessee of the lot located at 35 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$269,100.00 for fiscal year 2007.

159. Charles Laughton and Ellen F. Laughton Defendants-in-Counterclaim, are lessees of the lot located at 33 Bay Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$248,400.00 for fiscal year 2007.

160. Mary C. Anderson, Trustee of The Baycrest Trust, Defendant-in-Counterclaim, is a lessee of the lot located at 12 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$230,300.00 for fiscal year 2007.

161. Kyle Gillietti, Defendant-in-Counterclaim, is a lessee of the lot located at 17 Cove Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

162. Richard Gilbert and Marilyn Gilbert, Defendants-in-Counterclaim, are lessees of the lot located at 33 Hilltop Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

163. Richard Betts, Trustee of the Richard Betts Trust, Defendant-in-Counterclaim, is a lessee of the lot located at 9 Baycrest Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$202,600.00 for fiscal year 2007.

164. Roland Harrington and Judith Harrington, Defendants-in-Counterclaim, are lessees of the lot located at 8 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

165. Faye Kurnick, Defendant-in-Counterclaim, is a lessee of the lot located at 29 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$224,700.00 for fiscal year 2007.

166. John Cook and Barbara Cook, Defendants-in-Counterclaim, are lessees of the lot located at 27 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

167. Frank Kiley, Defendant-in-Counterclaim, is a lessee of the lot located at 11 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$202,600.00 for fiscal year 2007.

168. Julia Collings, Defendant-in-Counterclaim, is a lessee of the lot located at 3 Kings Way, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$323,500.00 for fiscal year 2007.

169. Donald K. Greenwood and Marsha A. Dean, Defendants-in-Counterclaim, are lessees of the lot located at 26 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

170. Raymond S. Hodgdon, Jr. and Enos F. Hodgdon, Defendants-in-Counterclaim, are lessees of the lot located at 20 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

171. Steven Moore and Nancy Moore, Trustees of the Nancy A. Moore Revocable Trust, Defendants-in-Counterclaim, are lessees of the lot located at 24 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

172. Richard B. Betts, Trustee of the Richard S. Betts Trust, Defendant-in-Counterclaim, is a lessee of the lot located at 15 Plum Sound Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$213,300.00 for fiscal year 2007.

173. David C. Pickul and Kimberly W. Pickul, Defendants-in-Counterclaim, are lessees of the lot located at 6 Cliff Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$329,900.00 for fiscal year 2007.

174. Philip L. Rhodes and Kathleen M. Rhodes, Defendants-in-Counterclaim, are lessees of the lot located at 35 Middle Road, Ipswich, Essex County, Massachusetts, which lot has an assessed value of \$254,200.00 for fiscal year 2007.

Facts Common to Counts I and II
History of the Feoffees

175. A number of private individuals, among them Roger Payne and William Payne, a/k/a William Paine, and their successors, were granted, both by the Town of Ipswich and by other private individuals, land for the benefit of the Ipswich Public Schools, all as evidenced by the minutes of the Town Meeting of November 14, 1650 and the minutes of the Town Meeting of January 26, 1652 (See Exhibit A attached hereto), the Will of William Payne who died in 1660 (See Exhibit B attached hereto), and the minutes of the Town Meeting of January 12, 1756 (See Exhibit A attached hereto).

176. The particular land in question, now known as Little Neck, was devised by the will of William Payne unto the “free scoole of Ipswich” “which is to be and remain to the benefitt of the said scoole of Ipswich for ever as I have formerly Intended and therefore the sayd land not to be sould or wasted.” In that will Mr. Payne named certain individuals as feoffees in trust. That will was made in 1660, by which time William Payne, with others, was holding land for the benefit of the school.

177. On January 12, 1756, Town Meeting, acting in concert with the feoffees holding title to, among others, the land in question, voted to apply “to the Great and General Court to obtain an Act, if they see meet, fully to authorize and empower the present four Feoffees and such successors as they shall time to time appoint in their stead, together with the three eldest Selectmen of this Town for the time being, other then such Selectman or men as may at any time be of the four Feoffees, to be a Committee in Trust, the major part of whom to order the affairs of the school land . . .”

178. The Great and General Court acted upon that application and enacted Chapter 26 of the Province Laws of 1755-56 (See Exhibit C attached hereto). In that enactment, the Great

and General Court first recognized the private nature of the transfer of Little Neck: “Whereas divers piously disposed persons . . . granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands . . .” It then recognized two issues: the power of the trustees who received the town grants to appoint successors and the power to charge and collect rents.

179. The Great and General Court addressed and resolved those two issues by incorporating “a joint committee or feoffees in trust, with full power and authority by a majority of them to grant necessary leases of any of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; . . .”

180. Most notably, the Great and General Court left all decision-making in the hands of a committee whose majority was composed of private citizens and not public officials. It named four individuals who were “the present surviving feoffees on the part of the private persons granting lands as afores(ai)d,” and three of the then Selectmen to constitute the committee or feoffees in trust. To ensure that private citizens would always constitute a majority of the feoffees, the Great and General Court provided that the four private citizens would have the power to appoint the successors to their number, “according to the original intention of their first appointm(en)t”; the remaining three committee members would be the three selectmen most senior in service.

181. Chapter 26, by its own terms, was to expire in ten years.

182. By Chapter 5 of the Province Laws of 1765-66, the Great and General Court extended the existence of the “joint committee or feoffees in trust, for twenty-one years, making

no changes, in the constitution of the feoffees and their method of succession.” (See Exhibit C attached hereto).

183. By Chapter 54 of the Acts of 1786, the constitution and method of succession of the feoffees became permanent. (See Exhibit D attached hereto)

184. The acts provided that the feoffees would annually “account of their proceedings in this trust before the said town, at their March meeting, for their inspection.” No other oversight by the town or its citizenry over the actions of the feoffees was granted by the legislation incorporating the seven feoffees.

185. At no time has the land at issue ever been owned by the Town of Ipswich.

186. At all times the land at issue has been privately owned by persons who, in the majority, have been privately selected.

187. The Feoffees are administering private land owned by them in trust, not public land owned by the town.

188. For at least the last one hundred years, the Feoffees have received no public monetary support.

189. The Feoffees do not have the power to tax, to take property by eminent domain, to regulate conduct coercively or to control any governmental authority.

190. The Feoffees’ decision – making does not involve public business or public policy.

191. The sole business of the Feoffees is the management and rental of privately-owned land, the profits, if any, from which are distributed to the Ipswich School Department. The Feoffees have no control over how the distributions are to be used by the school department.

The present-day Feoffees have no supervision, control, jurisdiction, or power over the operation of the Ipswich public schools.

192. The Ipswich School Committee and the Superintendent, and not the Feoffees, are the sole powers managing the public business of the schools of Ipswich. The Feoffees in no way control the school committee.

193. The Great and General Court provided in its series of special acts for a committee not to be controlled by elected officials and to obligate that committee only once a year to make its account to town meeting.

COUNT I

For Declaratory Relief as to the Open Meeting Law (G.L. c. 39, §§ 23A-23C)

194. The Feoffees repeat and reallege the allegations of paragraphs 1 through 193.

195. G.L. c. 39, §23B provides:

[A]ll meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating a decision on any matter except as provided by this section.

196. G.L. c. 39, §24 provides:

The provisions of this chapter shall be in force only so far as they are not inconsistent with the express provisions of any general or special law; . . .

197. Certain terms found in G.L. c. 39, §23B are defined in G.L. c. 39, §23A:

“Deliberation,” a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

“Governmental body,” every board, commission, committee or subcommittee of any district, city, region or town, however

elected, appointed or otherwise constituted, . . .; provided, however, that this definition shall not include a town meeting.

“Meeting,” any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

198. The Feoffees are not a governmental body as defined above.

199. The Feoffees do not engage in meetings as defined above.

200. The Feoffees do not engage in deliberations as defined above.

201. The provisions of G.L. c. 39, §§23B are inconsistent with the express provisions of the special laws described above and attached hereto as Exhibits C, D and E.

202. On December 11, 2006, the District Attorney opined in writing that the Feoffees are a governmental body and that the provisions of the Open Meeting Law apply to them.

203. The Feoffees contend that they are not a governmental body and that the provisions of the Open Meeting Law do not apply to them.

204. An actual controversy has arisen as to whether the Feoffees are a governmental body and as to whether the provisions of the Open Meeting Law apply to them.

205. The controversy involves a determination of right, duty and status of the Feoffees under deeds, wills, acts and statutes and is a proper subject for declaratory relief pursuant to the provisions of G.L. c. 231A.

WHEREFORE, the Feoffees pray that this Honorable Court determine the controversy and declare that the Feoffees are not a governmental body and that the provisions of the Open Meeting Law, G.L. c. 39, §§ 23A-23C are not applicable to the Feoffees and, further, enter such other relief as it deems meet and just.

COUNT II
For Declaratory Relief as to the Uniform Procurement Act (G.L. c. 30B, §1 et seq.)

206. The Feoffees repeat and reallege the allegations of paragraphs 1 through 193 and 195 through 205.

207. G.L. c. 30B, §2 provides the following definition:

“Governmental body”, a city, town, district, regional school district, county or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.

208. The Feoffees are not a governmental body as defined above.

209. Requiring the Feoffees to abide by the provisions of G.L. c. 30B, §16, including, but not limited to, the offering of real estate for rent to the public by way of advertisement and requests for proposals, would be inconsistent with the powers of the Feoffees to rent and lease land as set forth in the special laws described above and attached hereto as Exhibits C, D and E.

210. By reason of the aforesaid opinion of the District Attorney that the Feoffees are a governmental body, an actual controversy has arisen as to whether the Feoffees are a governmental body and as to whether the provisions of the Uniform Procurement Act apply to them.

211. The Feoffees contend that they are not a governmental body and that the provisions of the Uniform Procurement Act do not apply to them.

212. The controversy involves a determination of right, duty and status of the Feoffees under deeds, wills, acts and statutes and is a proper subject for declaratory relief pursuant to the provisions of G.L. c. 231A.

WHEREFORE, the Feoffees pray that this Honorable Court determine the controversy and declare that the Feoffees are not a governmental body and that the provisions of the Uniform Procurement Act, G.L. c. 30B, §§1 et seq. are not applicable to the Feoffees and, further, enter such other relief as it deems meet and just.

COUNT III

For Damages Against the Defendants-in-Counterclaim Identified in Paragraphs 13 - 148

213. The Feoffees repeat and reallege the allegations of paragraphs 40 through 43 of their answer and paragraphs 1 through 148 of their counterclaim.

214. The tenants, directly and through their agents and association, offered to the Feoffees to pay costs of the installation of a centralized wastewater collection system if the Feoffees undertook to construct same in lieu of the individual tight tanks and individual disposal systems which the tenants opposed.

215. The tenants knew or should have known or expected or should reasonably have expected that the Feoffees would rely and act upon said offer.

216. The tenants' offer was intended to induce action on the part of the Feoffees and the Feoffees did, in fact, rely and act upon the tenants' offer and constructed a centralized wastewater collection system which cost the Feoffees millions of dollars.

217. The Feoffees' reliance upon the tenants' offer was reasonable and detrimental to the Feoffees.

218. Many of the tenants made some payments to the Feoffees, but millions of dollars remain due and owing to the Feoffees from the tenants identified as Defendants-in-Counterclaim in paragraphs 13 through 148.

219. Failure to obligate the said tenants to pay costs of the centralized wastewater collection system would constitute an injustice and cause the Feoffees, a non-profit organization which holds title to the land at Little Neck in trust for the benefit of the Ipswich Public Schools, to suffer severe economic harm.

WHEREFORE, the Feoffees demand judgment against the Defendants-in-Counterclaim identified in paragraphs 13 through 148 of the Counterclaim, jointly and severally, in an amount to be determined by the trier of fact, together with interest and costs and such other relief as this Honorable Court deems meet and just.

JURY DEMAND

The Feoffees demand a jury trial.

Respectfully submitted,
Feoffees of the Grammar School in the
Town of Ipswich
By its attorney,

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Dated: December 29, 2006

CERTIFICATE OF SERVICE

I, William H. Sheehan III, attorney for the Defendants Feoffees of the Grammar School in the Town of Ipswich, hereby certify that I served a copy of the within Answer and Counterclaim and Jury Demand of the Defendants Feoffees of the Grammar School in the Town of Ipswich by mailing the same, first class mail, postage prepaid, to the following attorney:

Neal C. Tully, Esq.
Masterman, Culbert & Tully LLP
One Lewis Wharf
Boston, MA 02110

William H. Sheehan III

Dated: December 29, 2006