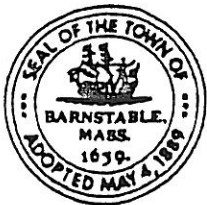


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*Town of Barnstable
Enoch T. Cobb Trust*

David B. Cole, Trustee

January 23, 2001

*420 South Street
Post Office Box 1358
Hyannis, Massachusetts 02601
(508) 775-2334*

Mr. Edmund Traverso, Member
Ipswich School Committee
38 East Street
Ipswich, MA 01938

Dear Mr. Traverso:

Pursuant to your recent request, I am enclosing
certain materials relating to the Enoch Cobb Trust.

The major provision of the cy pres plan adopted by
the Court begins on the next to the last page of the
magazine article.

Very truly yours,


David B. Cole

DBC/ms
Enclosures

PROBATE & PROPERTY

September/October 1996 Volume 19 Number 5



Illustration by Amy L. Young

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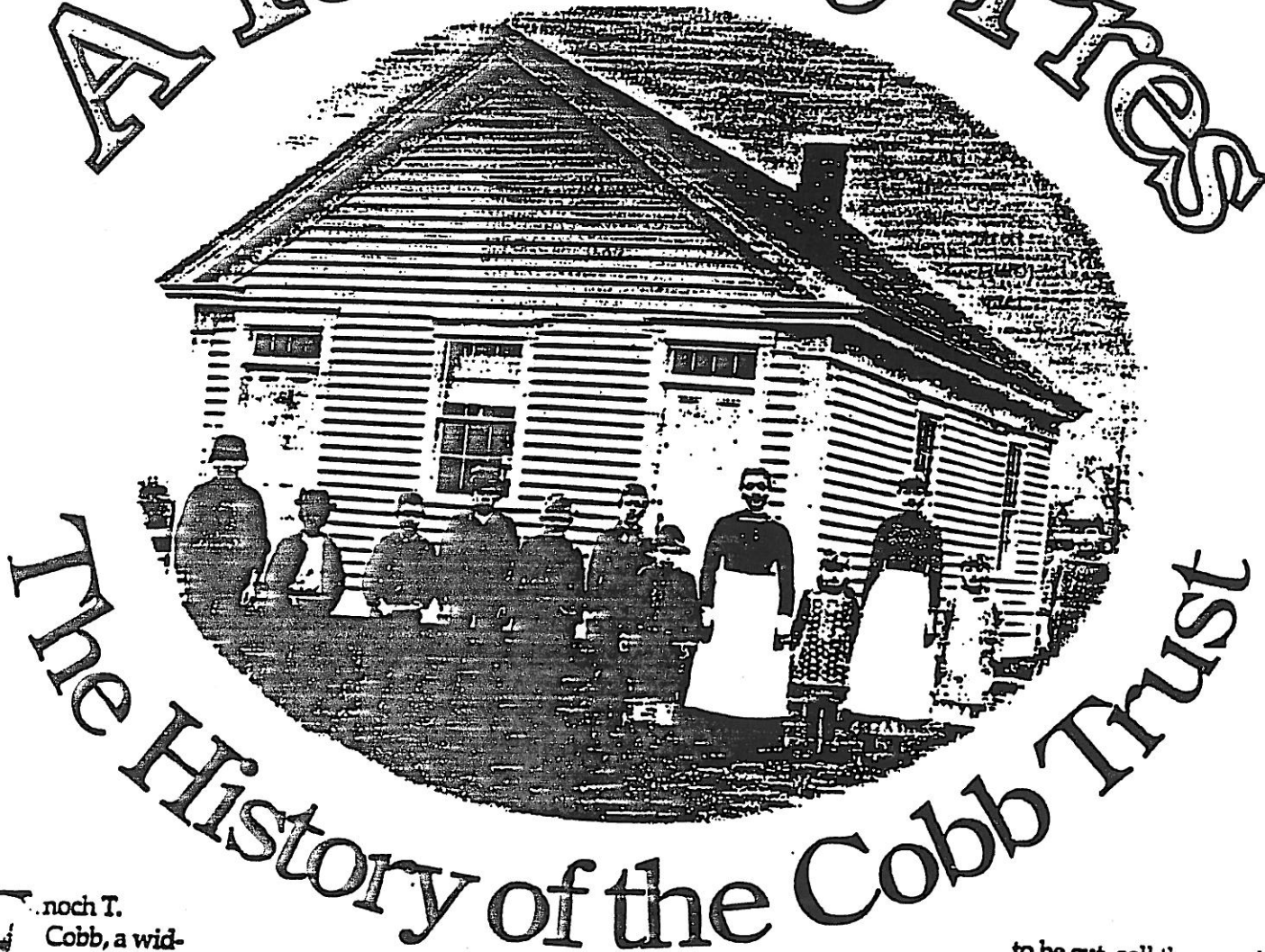
Cover photo by George Fulton

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A Tale of Cy Pres

Photo by Belmann



The History of the Cobb Trust

Enoch T. Cobb, a widower in Barnstable, Massachusetts, died on February 25, 1876. His four children predeceased him. With no spouse and no descendants, Cobb established by his will a rather elaborate disposition of his residuary estate.

The will, written on the day after Christmas in 1867, while Cobb was presumably in a generous frame of mind, established a trust of his residuary estate for the benefit of the town of Barnstable and, more particularly, for the benefit of the public schools of the town.

Cobb directed that the town should, by a town meeting vote,

By David Bruce Cole

indicate its acceptance of the terms of the trust and choose a "suitable person . . . to take charge of such Estate." The will directed this fiduciary (designated as the "Agent") to convert into cash all property in the trust except eight woodlots totalling about 110 acres. The testator's expressed desire was that this land should remain unsold forever and that the fiduciary should "from time to time as the wood on any of said lots shall be fit

to be cut, sell the wood on the same, in small parcels or lots at public auction, for cash. . . ."

The money realized from the sale of the wood, together with the proceeds from the sale of the trust assets other than the eight woodlots, formed the "Cobb Fund," which, when it reached the sum of \$10,000, was to be forever held in trust. The income from the fund was to be used to support the public schools of the town; the testator's wish was that schoolbooks be bought with the income.

Cobb further directed that "[s]aid Fund shall not be invested in any way or manner, except that said Agent shall loan the same to the Town of Barnstable, taking the notes therefor of the Treasurer of the Town, with

lawful interest which interest shall be added to the fund or applied as hereinafter provided."

Following Cobb's death, the town voted to "accept the provisions of the will and devise of Enoch T. Cobb, deceased, to the Town of Barnstable" and chose one Isaac Davis to act as Agent. Davis served as Agent of the trust for many years. He was succeeded by David Davis, who served as Agent until 1917 and was succeeded by Henry C. Davis, who served as Agent of the Cobb trust until his death in 1932. The town did not elect any successor fiduciary from 1933 until 1981. The Cobb Fund was allowed to accumulate until it reached the level of \$10,233, at least as early as 1887, and the Cobb Fund remained constant at that level until 1981.

In the early years of the trust, the Agent "loaned" the securities or bank accounts constituting the liquid trust assets to the town and the town treasurer gave promissory notes to the Agent. The income earned on the promissory notes was used to buy schoolbooks.

Using the trust income to buy schoolbooks made sense initially because the state legislature did not impose an obligation on Massachusetts towns to furnish textbooks from appropriated funds as part of the regular school budget until 1884. But after the furnishing of schoolbooks became a statutory obligation, it became apparent that, if the Cobb trust was to continue enriching the educational experience of local students, the trust income should be expended in ways never contemplated by the decedent.

A recognized principle in trust law is that when a testator evidences a general charitable intent and the particular means suggested in his or her will for carrying out that general charitable intent are no longer practical because of changes in circumstances, it is appropriate for the court to invoke the doctrine of "cy pres" to frame a suitable plan for achieving the testator's general charitable intent. The term *cy pres* derives

from old French, and Black's Law Dictionary defines the phrase to mean "as near as possible."

Instead of submitting a *cy pres* plan to the court for approval, however, an article was placed in the warrant for the 1889 Barnstable annual meeting concerning the Cobb trust. The town's residents voted:

That each scholar on graduating or leaving school with the intention of not returning again be presented by the School Committee with the School Books he is using or studying from at the time of leaving or during the last year of school and that the same be charged to the income of the Cobb Fund.

The Barnstable School Committee had some reservations about whether it could safely follow the instructions of the town meeting vote without violating the explicit terms of the trust. The committee asked for an opinion from counsel. Lawyer J. M. Day rendered the following opinion:

Now for the school committee to present to each scholar on graduating or leaving school with the intent of not returning, the school books he is using or studying from at the time of leaving or during the last year of school is no more in support of public schools than it would be to give the desk at which he sat or any of the educational agencies he had used, or even an interest in the school house itself.

In either case the town must replace the article (if needed for new scholars) so given by the school committee, and if the committee may legally give away the school books as the vote in question provides, it is difficult to see why the town may not by its vote authorize it to do the other things we here named.

For the reason therefore that in our judgment the proposed disposition of school books will not

tend to "support public schools said town" we are of the opinion that the town has no power to make such use of the income of the "Cobb fund."

A second opinion was sought from another lawyer, Hosia M. Knowlton, who reached a similar conclusion:

[T]he action contemplated by the vote benefits neither the town nor the schools nor the pupils while they are connected with the schools.

On the whole I am clearly of the opinion that the appropriation of the income of the Cobb fund contemplated by the vote passed March 5, 1889, is unauthorized by the terms of the bequest, and is therefore an illegal diversion of the same.

The school committee was understandably reluctant to honor a town meeting vote that learned counsel considered illegal. But the matter could not be left unresolved. At the next annual town meeting, in March 1890, the vote was:

That there shall be appointed a committee of three, one of whom shall be the chairman of the school committee whose duty it shall be to take the measures necessary to have the Supreme Judicial Court hear and determine whether the income of the will of Enoch T. Cobb late of Barnstable under the terms and conditions of said will can be applied as per vote of the town at its annual meeting held March 4th 1889. And to hear and determine all other matters and questions arising under said will. The expense of the same shall be defrayed from the income of said fund provided it can be legally done.

David Davis, the trustee of the trust, brought a petition for instructions directly before the highest court of the Commonwealth of

Massachusetts, the Supreme Judicial Court, and the case was considered by the full court. The Massachusetts attorney general was notified of the proceeding but did not care to be heard. At that time the trust fund still amounted to \$10,233, yielding approximately \$500 income annually.

In *Davis v. Inhabitants of Barnstable*, 28 N.E. 165 (1891), the court analyzed the various provisions of the will and concluded that the town could not lawfully apply the income as proposed. The following extracts from the court's opinion are instructive:

The purpose of the gift is to promote public education, and the gift clearly constitutes a public charity....

The question is whether the town can devote the income to purchasing and presenting to the scholars who attend its public schools, from year to year, the books which they were using or studying at the time of their leaving school, or during the last year of their school attendance. It is no doubt true as claimed by counsel for the town, that, in a broad sense, this might tend to promote education in the town of Barnstable through the medium of its public schools.

But, assuming that the object of the testator was not so much to benefit the taxpayers of the town by lessening the burden of taxation as to afford a means of imparting increased efficiency to its public schools, we think that what the town proposes to do goes beyond the fair scope of the bequest....

We are not required to consider whether circumstances might possibly exist which would justify the use of the income in the manner proposed by the town. They do not exist now, and we think that the town cannot lawfully apply the income in the way proposed.

"A recognized principle in trust law is that when a testator evidences a general charitable intent and the particular means suggested in his or her will for carrying out that general charitable intent are no longer practical because of changes in circumstances, it is appropriate for the court to invoke the doctrine of 'cy pres'..."

After Agent Henry C. Davis died in 1932, the method of management of the Cobb Fund via payment by the treasurer to the Agent of interest on promissory notes terminated. The town treasurer continued to have custody of the Cobb Fund bank accounts, and the interest earned by the Cobb Fund each year was credited to the budget of the school department.

As for the eight woodlots that constituted the principal asset of the trust, there is very little evidence to indicate how the testator's directions regarding the sale of wood at public auction were carried out. It appears, however, that—at least since the death of Henry C. Davis in 1932—no wood from those parcels of land has been sold. The eight woodlots, valued in the probate inventory in 1878 at only \$813, have greatly appreciated in value since the decedent's death. A part of the trust land is now zoned for business, and another part of the land is zoned for industrial uses.

From 1932 through 1980, the terms of the trust were disregarded and neglected. Despite the direction in the testator's will that the management of the trust assets was to be in the hands of a particular person elected as Agent by town meeting vote, various Boards of Selectmen purported to lease to third parties on long-term leases, at nominal rental rates (ranging from \$1 to \$600 a year), valuable tracts of business-zoned land belonging to the trust. This leasing occurred with no recognition that the land was impressed with a trust or that a fiduciary obligation to generate fair rental income for the benefit of the public schools existed. Whatever

minimal rent the town received from the property sometimes went into Barnstable's general fund without being specifically earmarked for the school department.

By 1981, the Barnstable Municipal Airport was using tracts of the Cobb trust land; that had been authorized or acceded to by past Boards of Selectmen. The airport was paying no compensation for this use to the Cobb trust.

Pandora's Box

In 1981 the airport planned to make major improvements to its runways and counted on receiving federal funds for 90% of the cost. As a condition of its funding, the federal government required certification that the airport held clear, fee simple title to the land it planned to improve. Title lawyers examining title for the airport suddenly ran into a major cloud on the title. They concluded that about 2 acres of the land belonged to the Cobb trust and the airport's use of the land was unauthorized and in violation of the provisions of the trust the town had voted to accept.

Further research revealed that the local post of the Veterans of Foreign Wars had constructed its headquarters building, complete with dining room and cocktail lounge, on Cobb trust land, relying on a 99 year lease at \$1 per year signed by the Board of Selectmen. Another seven acres of trust land had been deeded for no consideration to the Barnstable Fire District, a separate municipal corporation, for a well field. The county's Fire Academy had been constructed on another trust parcel, relying on a long-term lease at a nominal rental.

It became increasingly apparent that a Pandora's box had been opened. Many parties were using Cobb trust land with no benefits flowing to the public school students of the town of Barnstable. No trustee had

been in charge of the trust estate since 1932. Land from which wood was to have been harvested and sold at public auction to buy books was now bare of trees and paved for parking lots and airport runways.

Barnstable town attorneys Bruce Gilmore and Robert Smith determined that a fresh look at the Cobb trust was needed. They decided to put an article in the warrant for the February 4, 1981 town meeting "to see what action the Town will take with respect to naming a suitable person to act as Trustee and Agent under the will of Enoch T. Cobb dated December 26, 1867."

The Author Becomes Involved

Having had some experience in the field of estate planning and trusts, I was approached for the job with the understanding that I would receive reasonable compensation for my services. I was nominated for the position and appointed by unanimous vote.

Because of the past management history of the trust, I decided that it would be prudent to have the trust brought directly within the regular oversight of the probate court. At my request, the court confirmed my appointment as trustee and Agent and directed that an inventory and annual accounts be filed with the court from that time on.

As the new fiduciary for the trust, I instituted a series of legal proceedings naming as respondents the Board of Selectmen and those parties who were then using or occupying Cobb trust real estate.

Because the Division of Public Charities of the Massachusetts Attorney General's office has oversight responsibilities for charitable public trusts, I also named the Massachusetts attorney general as an interested party, hoping that he would support my efforts to revive this trust, which had remained dormant for 50 years. I was quite pleased when an aggressive, public-spirited assistant attorney general, Kevin

Suffern, was assigned to the case. Together we were successful in persuading the probate court judge to declare all past lease arrangements and conveyances null and void.

The judge decided it would be equitable to afford any party using a portion of the trust land an opportunity to lease at a fair rental or to buy at a fair purchase price. Two users opted to negotiate new leases and sales were consummated with the other four parties, all with the approval of the attorney general and the probate court. As a result of these sales, the liquid assets of the trust, which had remained constant at the level of \$10,233 from 1887 to 1932, grew to \$2.9 million in 1987.

Perhaps the most important legal proceeding was my petition as trustee asking the court to frame a cy pres plan for the trust to replace the plan set forth by the testator in his will.

Enoch T. Cobb had evidenced in his will a general charitable intent to benefit the public schools of Barnstable, yet the particular means his will suggested for carrying out that intent was no longer practical because of changes in circumstances unforeseeable by the testator more than 100 years ago.

For example, certain administrative provisions of the decedent's will were no longer feasible. The prohibition on investing trust assets other than in promissory notes of the town treasurer was unworkable because the town was not interested in borrowing money from the trust. The idea of the town treasurer paying interest on a promissory note to the fiduciary of the trust—who would after deducting fees and expenses, pay the money back to the town for the use of the school department—made no sense under modern conditions. The testator's suggestion that trust income be used to buy books seemed unduly restrictive because textbooks are now provided for in the regular school budget.

In preparing a cy pres plan to the court, Mr. Suffern and I determined

that, if the trust were to have significant impact on the educational experience of students, the trust income should not be credited to the school department budget in any way. We believed the income should be used to enrich the educational process with amenities that taxpayers of the town might not otherwise provide.

In due course, an overall cy pres plan was formulated, submitted and approved by the court. The cy pres plan set forth in detail what would hereafter be the Agent's administrative powers and duties, including duty to submit annual accounts to the court. But the major paragraph of the cy pres plan concerned the use of trust income, as follows:

The Trustee/Agent shall invest and reinvest the trust property in accordance with Massachusetts "Prudent Man" standard, and after paying all proper charges and expenses, shall pay the net income therefrom for the benefit of the public schools of the Town of Barnstable in such manner as the Trustee/Agent determines most beneficial. Consistent with the expressed wishes of the testator, emphasis shall be given to providing educational materials for said public schools, especially educational materials not otherwise provided from appropriated funds. Such educational materials may include (but shall not be limited to) library books, musical instruments, art equipment and supplies, audiovisual equipment, television equipment and facilities, other technological teaching equipment, athletic equipment, and other supplies and equipment associated with improving the educational program of the Barnstable public schools. In choosing appropriate uses for the trust income, the Trustee shall invite suggestions from the School Committee or its designated representative and shall

keep in mind that the purpose of the trust is not so much to benefit the taxpayers of the Town by lessening the burden of taxation as to enrich the educational experience of the public school students and increase the efficiency of the public school system.

Since adoption of the cy pres plan in 1982, the trust income has been expended in many ways: for a state-of-the-art running track, science and computer laboratories, television cameras, lights for the football stadium, playground equipment, athletic equipment, musical instruments, band uniforms, books for the school libraries, bleachers for an auditorium, field trips to museums and historical sites, musical and dramatic performances, artists-in-residence, writers-in-residence, classroom enrichment grants to fund proposals submitted by individual teachers, ecological research equipment and multicultural celebrations.

Conclusion

With more than \$3.6 million in liquid investments, the Cobb trust is now a major resource benefiting the public school students of the town. It is certainly ironical that the 50 year period of neglect of the trust actually permitted the trust land to increase in value many times over so that, when the trust was finally reformulated in the 1980s, the potential for public benefit was quite significant.

I suspect there may be many other dormant charitable trust funds out there somewhere that could benefit from a good dose of cy pres.

David Bruce Cole is a partner in Sykes and Cole in Hyannis, Massachusetts.

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- The Construction Manager Who Would Be a Contractor
- Retail Real Estate in the '90s
- Exposure of Foreclosing Lenders for Pre-foreclosure Lease Defaults

November/December Issue



Town of Barnstable
Enoch T. Cobb Trust

David B. Cole, Trustee

December 5, 2000

420 South Street
Post Office Box 1358
Hyannis, Massachusetts 02601
(508) 775-2334

Barnstable School Committee
School Administration Center
P.O. Box 955
Hyannis, MA 02601

Dear Committee Members:

This letter will serve to set forth Cobb Trust commitments for the current school year.

Classroom Enrichment Grants

The Cobb Trust will provide up to \$45,000 for Cobb Fund Classroom Enrichment Grants to fund proposals submitted by individual teachers and recommended to me for funding by Assistant Superintendents Dr. Angela Castoria and Andre Ravenelle. Each grant will be for not more than \$5,000 unless a particular grant proposal is extraordinary or represents a collaboration between or among schools.

Third Grade Field Trips

The Cobb Trust will provide up to \$15,000 to enable third graders to participate in tours of significant Cape Cod landmarks and/or to go on Whale Watch cruises.

Fourth Grade Field Trips

The Cobb Trust will provide up to \$12,000 to enable fourth graders to visit the Museum of Science in Boston.

Fifth Grade Field Trips

The Cobb Trust will provide up to \$6,000 to enable fifth graders to visit the Cape Cod National Seashore and to enable those classes wishing to do so to stay overnight.

Sixth Grade Field Trips

The Cobb Trust will provide up to \$12,000 to enable sixth graders to participate in field trips relating to fresh water pond studies and the ecology of Cape Cod.

Cultural Experience for Kindergartners, Grade One and Grade Two Students

The Cobb Trust will pay up to \$6,000 to cover the cost of a cultural program at the Barnstable High School Performing Arts Center for the benefit of students in the kindergarten through grade two level, including the cost of busing.

CAPE SYMPHONY ORCHESTRA

The Cobb Trust will provide a grant of \$13,200 to the Cape Symphony to underwrite the cost of its Education and Access Program in the Barnstable Public Schools which will include a performance at the Barnstable High School Arts Center to be attended by all third and fourth grade students. Preceding the performance, various Symphony musicians will visit the schools, demonstrate their instruments and discuss the music to be performed. The Cobb Trust will also provide \$2,000 to pay the cost of busing students to the performance.

Joseph and the Amazing Technicolor Dream Coat

The Cobb Trust will pay approximately \$7,000 to cover the cost of busing all fourth through eighth graders to the Barnstable High School Drama Club's Spring production of "Joseph and the Amazing Technicolor Dream Coat" and to cover the costs of royalties relating to said production.

Cultural Experience for High School Students

The Cobb Trust will pay up to \$3,000 to finance a performance to be attended by high school students at the Performing Arts Center.

Cobb Writer-In-Residence Enrichment Program

The Cobb Trust will provide a grant of \$2,500 to enable all third graders at Marstons Mills East Elementary School to participate in a one-week program of writing and illustrating a personal narrative under the direction of Writer-In-Residence, Jeff Kelly.

Renaissance Program

The Cobb Trust will provide a grant of \$2,000 to the Middle School Renaissance Program which encourages and supports academic excellence and provides rewards to academically deserving students.

Math and Science Summer Academy

The Cobb Trust will provide up to \$15,000 towards the expenses of the Barnstable Public Schools Enoch Cobb Math and Science Summer Academy for gifted students. This Academy will take place at the High School as a component of the Extended-Year Learning Program. It will be open to qualified students in grades six through eight meeting certain academic criteria.

New Cobb Summer Academy for Gifted Students, Grade Levels 3 through 5

The Cobb Trust will provide a grant of \$12,000 toward the expense of establishing a new Enoch Cobb Summer Academy to provide an accelerated educational experience for eligible elementary school students.

Elementary School Libraries

The Cobb Trust will provide \$10,000 to purchase books and other materials to upgrade the Elementary School Libraries.

High School Library

The Cobb Trust will provide \$5,000 to purchase books and other materials to upgrade the High School Library.

Barnstable High School Marching Band

The Cobb Trust will provide a grant of \$2,500 towards the expenses of the Band's participation in the 2001 New Year's Day Parade in London, England.

Summer Reading Program

The Cobb Trust will provide a grant of \$5,000 to make available sufficient copies of those book titles included in the suggested Summer Reading Program for Middle School students.

December 5, 2000

Guyer Barn Senior Art Show

The Cobb Trust will provide a grant of \$500 to cover the expenses of the Art Show to be conducted by high school seniors at the Guyer Barn.

The above-listed commitments total \$175,700. It is hoped that I will be in a position to announce additional grants before the end of the current school year.

Sincerely,

David B. Cole
Trustee

DBC/ms
Enclosure

cc: Dr. Russell J. Dever

ENOCH COBB TRUST

Enoch Cobb, who operated a general store in Barnstable, wrote his will on the day after Christmas in 1867 and died in 1876. His first wife, his second wife and all four of his children died before him so he left his property which consisted mainly of woodlots in trust to benefit the public school students of the Town of Barnstable. In his will, he suggested that the wood be cut from time to time and sold at public auction and that the money from the sale of the wood should accumulate until it reached the sum of \$10,000 and thereafter the income should be used to buy school books. In the 1860's public school students were expected to pay for their own books.

Following Cobb's death, the Town voted to accept the provisions of his gift and elected Isaac Davis to take charge of the trust. He acted as trustee until 1917 when his son, David Davis, became trustee. He served as trustee until he died in 1932.

After his death, nobody was chosen to act as trustee until 1981 when David Cole was elected by Town meeting vote. The liquid assets of the Cobb Trust stayed at the level of \$10,233 from 1887 to 1981 and generated income of about \$500 per year.

The eight woodlots valued in 1878 at \$813 greatly appreciated in value during the 50 years that the trust was dormant. During the same period, portions of the land were stripped of their trees and were used by the Barnstable Municipal Airport, and other portions of the land were leased at nominal rates.

After David Cole was appointed trustee, he sought and obtained, from Judge John Harvey, probate court authority to sell portions of the trust land and to establish a new plan for managing the trust and expanding the uses which could be made of the trust income for the benefit of the Barnstable public school students.

The Town attorneys, Bruce Gilmore and Robert Smith, as well as representatives of the Massachusetts Attorney General's Office, provided invaluable assistance to the trustee in facilitating advantageous sales of trust real estate, renegotiating leases, and in securing Court approval for updating of the trust policies and procedures.

During the 19-year period that Cole has acted as trustee, more than \$ 2.3 million has been expended on projects, programs and equipment which have enriched the educational experience of countless Barnstable public school students. Major trust expenditures have included a state-of-the-art running track, science and computer laboratories, television cameras, lights for the football stadium, playground equipment, athletic equipment, musical instruments, band uniforms, books for the school libraries, bleachers for an auditorium, field trips to museums and historical sites, musical and dramatic performances, artists-in-residence, writers-in-residence, classroom enrichment grants to fund proposals submitted by individual teachers, ecological research equipment, and multi-cultural celebrations.

The trust now has liquid assets of about \$4 million and the trust still owns valuable land in Independence Park as well as other land in Hyannis.

A list of Cobb Trust commitments totaling \$175,700 for the current school year is set forth in the attached letter from Trustee David Cole to the Barnstable School Committee which was presented at a recent school committee meeting.

The Cobb trust is now a major resource benefiting the public school students of the town. It is certainly ironical that the 50-year period of neglect of the trust actually permitted the trust land to increase in value many times over so that, when the trust was finally reformulated in the 1980s, the potential for public benefit was quite significant.

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From: "Don Greenough" <dona1d.greenough@verizon.net>
Reply-To: "Don Greenough" <dona1d.greenough@verizon.net>
To: "Robert Weatherall" <utrum@ipswich.org>
Date: Mon, Dec 17, 2001, 12:05 PM
Subject: Feoffees comments on draft findings (draft 11/29/01)

General Comments:

The starting point for the Findings should be the specific charge to the Committee in Article 27: "to inquire into the operations and financial records of the Feoffees of the Grammar School and report its findings to the Annual Town Meeting in April of 2002". The Feoffees question whether a number of the findings contained in the draft, particularly those on pages 4 and 5 regarding the School Committee extend beyond the scope of the Committee.

Although Article 27 does not charge the Committee with making recommendations regarding the future structure of the Feoffees, it has been understood that the Committee would most likely do so.

References to letters, minutes of meetings, etc., should not be necessary. The goal is to have an agreed Findings of Fact on which the Committee and the Feoffees are in complete agreement. There are several documents, which the Feoffees believe should be attached as Exhibits – the 1765 and 1786 statutes, the Feoffees' Rules and Regulations, the DEP Consent Order, etc.

The Feoffees believe that it would be more productive at this time to limit the Findings to only items of fact. After Findings of Fact have been agreed upon, the Committee could then proceed to identify specific issues of concern, arising out of facts. The statement of issues would be followed by the preparation of recommendations, which would prioritize and address each of the concerns. The three components – facts, issues of concerns and recommendations – would then form a comprehensive report to the Town Meeting.

How many Feoffees:

Add as a fact: The Feoffees serve without compensation, except the Manager, who receives an annual stipend, currently \$7,800.

Historical background:

Bullet #4 – the Feoffees also owned land in Revere and Rowley.

Special acts:

Bullet #2 – make reference to Acts of 1766 and 1786 being attached as Exhibits A and B.

How do the Feoffees:

Bullet # 1-4 to be modified to read: Based upon opinions of Town Counsels, most recently F. Dale Vincent and Charles Dalton, the Feoffees have considered

themselves as a quasi-public Trust, as the distribution of the net income is restricted to the public schools of the Town. The Feoffees use the tax identification number of the Town of Ipswich. As a municipal entity, no income or other tax returns have been filed by the Feoffees. In 2001, the Office of the Attorney General requested that the Feoffees file Form PC for 1997-2000, inclusive. Pending resolution of the legal requirement for a municipal entity to file Form PC, the Feoffees voluntarily filed the requested forms with the Commonwealth on April 25, 2001.

Bullet # 5 to be deleted (fact will be covered in next section)

The Feoffees' management:

New Bullet #1 to read: The Act of 1766 states that the assets should be managed by seven persons -- four life members and the three senior members of the Board of Selectmen. Since the early 1900's, Selectmen have not been actively involved in the management of the property. For more than 70 years, the only involvement of the Selectmen has been the ceremonial attendance of one member at the Feoffees' annual public meeting. The Feoffees have acknowledged that the existing form of governance is no longer appropriate due to the lack of interest of the Selectmen.

Bullet #3 to read: Each cottage (and the on-site septic system servicing the cottage) is owned by the tenant.

Bullet #4 to read: The land is assessed to the Feoffees. In addition to rent, the Feoffees collect the real estate taxes for the lot and cottage from each tenant and pay over to the Town the real estate taxes for all of the rented property as well as land and improvements owned by the Feoffees as common areas or amenities.

Add to Bullet #6: There are no statutes or regulations, which would prevent the Feoffees from permitting additional year-round use. The Feoffees have stated that they believe that the additional rent to be gained from year-round rentals would be more than offset by an increase in the school population and the need for additional municipal services for Little Neck.

Bullet #8 to read: As a deterrent to out-of-season use of a lot, in 1999, the Feoffees amended their Rules and Regulations to impose an additional rent of \$1,000/week for such use. Since the amendment, there has been no out-of-season use by tenants.

Bullet #9 – change “April-to-November” to “seasonal”.

Bullet #10 to read: Use of the lots is restricted by Rules and Regulations adopted by the Feoffees, and amended from time to time, to address issues of

concern for the Feoffees or the tenants. The current Rules and Regulations are attached hereto as Exhibit C.

Bullet #11 to read: As the 167 lots are all owned by the Feoffees, the property is subject to the Clean Waters Act. On September 7, 2000, the Feoffees entered into an Administrative Consent Order with the Massachusetts Department of Environmental Protection concerning the repair or replacement of the individual septic systems. A copy of the Order is attached hereto as Exhibit D.

Bullet #12 – delete (will eventually be an issue of concern?).

Bullet #13 – delete (the monthly meetings have only been scheduled during the Committee's term to assure feedback and cooperation with the Committee's work.) If you need a fact on this point: Except for the Annual Meeting, the Feoffees' meetings are not publicly posted.

Bullet #14 to read: One Feoffee, traditionally the Chairman, has been designated as the Manager. His role was described by one Feoffee as a "mini Town Manager, a mini public works director".

Bullet #15 to read: The Feoffees use a portion of the gross income to maintain the common areas and amenities. The three major projects in the past 20 years were: (a) the installation of a water distribution system in 1985-86 (approximately \$100,000, of which one-half was paid by the tenants in 1998-99 by a \$300/cottage special assessment), (b) replacement of the dock (design, engineering and permitting costs of \$33,000 and construction costs of \$82,000), and (c) engineering and legal fees in connection with the DEP Consent Order in 1999-2001, including inspection of all septic systems and intensive soil testing (in excess of \$100,000 to date).

Bullet #17 -- In you summary of operating expenses for 1991-2000, the values for 1998, 1999 and 2000 include expenses in connection with the dock and the DEP work. The correct values: 1998 - \$40,725; 1999 - \$36,520; 2000 - \$50,951.

Possibility of Conflict:

Bullet #2 – delete. The Foley family sold its cottage on November 26, 2001.

Value of the Feoffees' property:

Bullet #1 – need to verify the FY2002 assessment. We believe you may have been inadvertently provided with a sum which included all parcels on Assessors' Map 24C, some of which are not on Little Neck. On December 6th, Frank Ragonese indicated that the total value for Little Neck was \$14,828,400, which included \$1,132,800 of the Feoffees' common areas and amenities and \$13,695,600 for the 167 leased lots.

Bullet #2 to read: To ascertain the fair market rental for the lots and to respond to a potential offer to purchase the property from the tenants, in 1997 and 2001 the property was appraised by LandVest, Inc.

Bullet #3 to read: The total assessment by the Town of the rented lots and Feoffees' lots and improvements have been consistently higher than the appraised value by LandVest for the sale of the property as one parcel with restrictions for seasonal use on 143 lots.

Bullet #5 – second value should be for the years 1990-1997.

Bullet #6 – Change first sentence to: As with other real estate in Ipswich, the cottages typically sell for substantially more than their assessed values.

Bullet #7 to read: Between 10 and 15 cottages are made available for weekly or monthly rental. The rental season is typically the last week of June, the first week of July and the month of August. In 2001, the typical weekly rental was between \$650 and \$800.

Offers by tenants:

Bullet #4 – delete (not relevant)

Bullet #5 to read: Upon receipt of a deposit, the Feoffees will review the offer with the School Committee as described in the Feoffees' letter of November 20, 2001, to the tenants, a copy of which is attached hereto as Exhibit E.

The Feoffees' support:

Bullet #1 – A notation (asterisk?) for 1982-84, 1986-1992 and 1994 should be inserted as "Distribution withheld at Superintendent's request" or similar reference. The payments in 1999 and 2000 to "school account" were the payments to the school.

Bullet #2 – delete. Unnecessary here, will be covered in issues of concern.

New Bullet #2 – In the indicated years, the Feoffees accumulated the distributable income at the request of the Superintendent of Schools until they were notified of his need for funds for a specific program, at which time the funds were distributed.

New Bullet #3 – The Feoffees do not control the use of the funds after distribution. The Superintendent has customarily indicated specific programs for which the distributions were used.

The Feoffees' Accounts:

Delete "It is deficient in many respects" after first bullet.

Bullet #3 – delete (all assets are included).

Bullet #8 – delete or explain that the fact applies to all financial reports in the Town's Annual Report.

Bullet #9 – delete or explain that the fact applies to all financial reports in the Town's Annual Report.

Bullet #10 – The second sentence should be stated as a fact by deleting "It appeared".

The School Committee's:

Other than the bullet concerning the lack of records at the Superintendent's office, the Feoffees believe that the findings of this section are not within the scope of Article 27.

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From: "Robert Weatherall" <utrum@ipswich.org>
To: donald.greenough@verizon.net
Cc: rbonsignore@aol.com
Date: Wed, Dec 19, 2001, 11:38 AM
Subject: Feoffees' comments

Dear D. on: Thanks very much for sending us the Feoffees' comments on our established findings to date. I will circulate them to the committee.

They have given us a lot of material to think about, not least the much reduced assessment of the land at Little Neck. Ragonese himself gave me the figures quoted in our findings. I went to see him this morning and he said that the figures he had given me in October were incorrect. I didn't ask how it happened. I must say I am puzzled by the new figure of \$14,828,400 for the land because five years ago the Assessors' Office gave me a valuation of \$13,354,500 which I quoted in the Chronicle and at a meeting of the School Committee without anyone challenging me. Surely land prices have jumped since 1996.

This has led me to look at the "valuations" quoted by the Feoffees in their financial statements in the annual Town Report (attached). They don't help one get the valuation of the land owned by the Feoffees (despite the wording used in 1991 and 1992 they clearly include the cottages) but here also it would look as if real values at Little Neck have remained stationary. This doesn't make sense. We may want to ask for the Town's assessments of the land at Little Neck for the past ten years to understand this better.

The Feoffees' suggestion on how we might organize our report to the Town are interesting, but I am not sure we have been thinking of the "Established Findings" as if it will become the report we submit. It has rather been a way of assembling the information we have collected in an orderly and accessible fashion so that we don't lose it. It has been a way of educating ourselves. I would say it's more like a researcher's notebook than his research report. In this light I think it's more important for us to include things in it at this stage than to leave them out, e.g. the items about the School Committee or, if I may say so, the fact that some Feoffees in the past have been tenants. But we badly want to have the facts right.

I think the one important document we don't have is the DEP Consent Order. We have the Feoffees' "Rules and Regulations". I don't think there is any other report we need unless it be Dale Vincent's opinion (we have Charlie Dalton's). The committee may be interested in seeing Dale's opinion; if so, I will get back to you.

Very important: we won't be meeting tonight - we decided it was too close to Christmas. Bob

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LITTLE NECK "VALUATIONS" AS REPORTED IN THE FEOFFEEES'
FINANCIAL STATEMENTS IN THE ANNUAL TOWN REPORT

FY 1991	"Little Neck , Land Valuation"	\$18,371,700
	"Community Center & Barn"	75,600
FY 1992	"Little Neck, Land Valuation"	18,371,700
	"Community Center & Barn"	75,600
FY 1993	"Little Neck Valuation"	22,317,500
	"Buildings & Land"	19,681
FY 1994	"Little Neck Valuation"	22,806,100
	"Buildings & Land"	16,519
FY 1995	"Little Neck Valuation"	22,683,000
	"Buildings and Land"	27,290
FY 1996	"Little Neck Valuation"	22,683,000
	"Buildings and Land"	30,629
FY 1997	"Little Neck Valuation"	22,683,000
	"Buildings and Land"	10,063
FY 1998	"Little Neck Valuation"	22,275,300
	"Buildings and Land"	7,876
FY 1999	"Little Neck Valuation"	22,275,300
	"Buildings & Land"	18,658
FY 2000	"Little Neck Valuations"	22,275,300
	"Buildings & Land"	11,669

52

From: "Robert Weatherall" <utrum@ipswich.org>
To: rbonsignore@aol.com , harvey@theemploymentlawyers.com , mph@ronansegal.com ,
electmanlamp@hotmail.com , bhopping@mediaone.net , ellerkamph@mediaone.net
Date: Thu, Dec 20, 2001, 9:35 AM
Subject: FW: Feoffees comments on draft findings

Here, from Don Greenough, are the Feoffees' comments on our Established Findings. I have sent him an email, with a copy to Robert, thanking him and I will forward it to you. The Feoffees have done a careful job and made some interesting suggestions but their comments also raise questions. I think we need to discuss their comments before we change any of our findings. At the risk of making this message too long, here are comments they make which particularly catch my attention:

The Little Neck assessment, bottom of p. 3: I have already touched on this in my email to Don. The Feoffees say that their land is assessed at \$14,828,400, not \$18,940,500, the figure Ragonese gave me in October. I asked Ragonese about the discrepancy yesterday and he acknowledged that he had given me the earlier number but it was a mistake. The Feoffees say that it was because some land was included which is not on Little Neck. As I told Don, I am still uneasy. I asked the Assessors' Office in the spring of 1996 to tell me what the land at Little Neck was assessed for and they gave me the figure of \$13,354,500. It can't be that land values at Little Neck have increased so little in the last five years. I thought I might clarify things by looking at the valuations the Feoffees quote in their financial statements in the Town Report and there one finds them showing a lower total valuation in FY 2000 than in FY 1993 - unbelievable. I list all their valuations for the last ten years in my email to Don. I can't repress the thought that the Feoffees may have obtained a large abatement since I spoke to Ragonese in October based on the low valuations provided by LandVest. This suspicion is encouraged by an email Don sent to Kerry Mackin in January of this year and which she shared with the Conservation Commission in which he wrote: "The town assesses the land for \$15 million, but the appraisals are significantly less than that. The Town has consistently "over-assessed" the land while the rents were low. Through 1994, the total cost of ownership (rent plus tax for seasonal use) was about the market rate. This arrangement suited the tenants and the Town. For the owners, real estate taxes are deductible and rents are not. From Town Hall's point of view, tax revenue benefits the municipal side as well as the schools. The schools were the losers. In 1995, George Jewell, a member of the school committee, quietly brought his concerns to the Feoffees. It was agreed to have the property appraised and bring the rents up to market value over five years. In 1997, the Feoffees agreed to increase the rents 15% each year to get to market rates. It was expected that the Town would then need to lower its assessment of the land based upon seasonal usage. For FY2001 the Town did not do it". I would add, perhaps they did not do it in FY 2001 but they have done it in FY2002. One important thing we

don't have in our Established Findings is a record of the Town's assessments over the last ten years. I think we need to ask for it, both from the Town and from the Feoffees.

Feoffees' management, bullet #1: The Feoffees say here that they acknowledge the existing form of governance is no longer appropriate but the only reason they give is "the lack of interest of the Selectmen". In the letter we received from Don Greenough on October 24 he refers also to the Feoffees being "life members" and he begins a list of things that need to be reviewed, e.g. the number of trustees, term lengths, term limits, how appointed or elected, etc. Are the Feoffees backing away from this more comprehensive review?

Feoffees' management of Little Neck, bullet #6: The Feoffees imply in their comment that they have restricted year-round residency to prevent an increase in the number of children going to the Ipswich schools. In Betts' history of Little Neck (p. 6) he says that the Feoffees voted in 1967 that there should be no increase in the number of residents "from Oct. 15 to April 19 unless the Board of Health issued a certificate for an adequate disposal system". In their Rules and Regulations the Feoffees give "significant health, safety and liability risks" as the reason for limiting winter occupancy.

The Feoffees' support, bullet #1: Here the Feoffees claim that in all the years in which they made no contribution to the schools it was at the "Superintendent's request". This is extraordinary, if true. I think we need to talk with Dr. Thompson, the previous superintendent. Contrary to the Feoffees' last comment on p. 5, the record of how the School Department has positioned itself with regard to the Feoffees is an important part of the story. Bob

From: "Don Greenough" <donald.greenough@verizon.net>
To: "Robert Weatherall" <utrum@ipswich.org>
Subject: Feoffees comments on draft findings
Date: Mon, Dec 17, 2001, 12:05 PM

Attached are the comments and suggestions of the Feoffees regarding the draft of 11/29. If you need any further information or clarification, please call me.

The Feoffees have suggested that certain documents be attached as

exhibits. If you do not have legible copies of any of them, let me know and I will provide them to the Committee on Wednesday evening.

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From: "Robert Weatherall" <utrum@ipswich.org>
To: rbonsignore@aol.com , harvey@theemploymentlawyers.com , ellerkamph@mediaone.net
selectmanlamp@hotmail.com , bshopping@mediaone.net , mph@ronanseal.com
Date: Sun, Nov 25, 2001, 10:23 AM
Subject: Thoughts on the new Feeoffee structure

I would like to throw these thoughts in the ring:

How many Feoffees should there, how appointed, and for what terms?

I suggest five Feoffees - 2 by appointed by (but not from) the Selectmen, 2 appointed by (but not from) the School Committee, I appointed (but not from) the Finance Committee. They should be appointed for staggered terms for 4 years. I think they should be appointed, not elected, for the same reason the Finance Committee, the Planning Board, the Conservation Commission, the Library Board (and our own committee) are; their role should not be political.

How should their mission be spelled out?

I suggest the following: To apply the income from their assets to enhance the education offered in the Ipswich public schools and to enlarge the educational opportunities of students in the schools.

I add "the educational opportunities of students" because I think it would be splendid if the Feoffees' money could also help open doors for students, e.g. to attend science summer camps, have private music lessons, have the means to go to college, etc. Students who would benefit from such opportunities should not be prevented because their families don't have the money. Knowing doors were open to them would encourage them to reach for their potential. It would have a stimulating influence in all the schools.

Who decides what the Feoffees' money is spent on?

To keep the Feoffees' money out of the hands of the Finance Committee I think it vital that the Feoffees decide what their money is spent on, not the School Committee. I suggest the following language: "The Feoffees shall choose among uses recommended or approved by the School Committee, but the choice shall be made by the Feoffees. The Feoffees' contributions shall not be used to reduce the Town's appropriations for the schools. If the Feoffees' allow their funds to be used for this purpose they shall be in breach of trust."

Should the Feoffees be free to sell Little Neck if they think it would be better for the trust?

I think so, and in revising their charter we should make it possible. They should not be able to sell without approval by Town Meeting, but they should not need approval by the legislature.

As long as the Feoffees own Little Neck they will have difficulty making the most of their assets. Other boards in Town will always be anxious about changes in the character of the place. Look at the challenges put in the way (rightly or wrongly) of other big owners of real estate in town, e.g. Neil Raymond and New England Biolabs. As a town body the Feoffees will always be less free than a private owner to argue their case with the Town. As long as they own Little Neck they will also have two jobs to do, managing Little Neck and deciding on their contributions to the schools. Even with a paid manager the first task is likely to be the more consuming. I see the Feoffees doing better as the managers of liquid assets. We should let them sell if they want to. Let their successors at Little Neck have the hassle of working with the Town. Let the Feoffees concentrate on performing their trust.

Should they still be called the Feoffees of the Grammar School?

I suggest that the trust be renamed the Paine Trust (or the William

Paine Trust). It would be a much better, and more intelligible, description of what they are. The word "Feoffees" has served as a smokescreen keeping the public from knowing what lies behind it. The "Grammar School" is now a misnomer, and misleading. Even some of us were doubtful that the Feoffees were trustees with a legal obligation to the Town. The word "Trust" would make things clear. Naming it the Paine (or William Paine) Trust would honor the very worthy citizen who endowed the trust as it exists today. A good deal is known about him. He deserves to be remembered. Bob

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Re next meeting

Mon, Dec 17, 2001 4:41 PM

From: "Robert Weatherall" <utrum@ipswich.org>
To: rbonsignore@aol.com , harvey@theemploymentlawyers.com , m-p-h@mediaone.net ,
mph@ronansegal.com , selectmanlamp@hotmail.com , bhopping@mediaone.net ,
ellerkamph@mediaone.net
Date: Mon, Dec 17, 2001, 9:42 AM
Subject: Re next meeting

Robert: After our phone conversation last night I called Harvey and Mary to tell them that I had talked with you and that I had urged you to phone them. My calls to them led to fairly long conversations and it became clear to me that many of the opinions you expressed to me are not shared by the rest of the committee. Just to mention three in particular: the rest of us take it seriously that the Selectmen were put off by your invitation to them; we don't think we moved too fast at the meeting you missed; we don't think Harvey was in any way out of order in doing a first draft of a new trust instrument - it has only been circulated to the committee (it has not been made public) and we don't have much time left to us before Town Meeting. We are going to have a hard time of it if on many of the issues our chairman pushes in a direction we don't want to go or don't think makes sense. I am going to stick my neck out and suggest that you should be willing to step down and let us choose someone else to lead us. I am reluctant to say this, I have enjoyed getting to know you. but I think I have to say it. Bob

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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

December 17, 2001

Ed Traverso
38 East Street
Ipswich, MA 01938

RE: Feoffees of Ipswich

Dear Mr. Traverso:

This letter is in answer to yours of December 12, 2001.

The Feoffees are trustees of a trust whose purposes are wholly charitable. That is, they hold the land known as Little Neck for the benefit of the Ipswich schools. Therefore, the trust is required to be registered with the Division of Public Charities of the Attorney General's Office, and to comply with all filing requirements, as set forth in M.G.L. c. 12, s. 8, including providing the Division with a form PC, Federal form 990, and for those charities with a gross annual income of \$250,000 or more, audited financial statements with an independent auditor's report. Because the Feoffees had never been registered with our office, on March 22, 2001, I wrote to their attorney, Donald Greenough, about the registration and filing requirements discussed above. A copy of my letter is enclosed.

Subsequently, on April 25, 2001, the Feoffees submitted Forms PC for the years 1997 through 2000. The forms 990 and audited financial reports were not provided. On April 26, 2001, Mr. Greenough and I discussed the missing material, and he assured me that the Feoffees did intend to provide the 990s and audited financial statements. We again spoke about this matter on at least July 3, 2001, September 17, 2001, October 19, 2001, and, most recently, on December 10, 2001. In our most recent conversation, Mr. Greenough informed me that I would be receiving the required filings within two weeks of the date of that phone call.

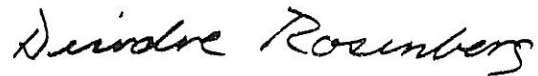
In your letter of December 12, you also asked whether it would be a conflict of interest for a tenant of Little Neck to simultaneously serve as a Feoffee. I believe that it would be. The Feoffee has a duty of loyalty to the Ipswich schools and his own personal interest as a

tenant of Little Neck could very well be, as it appears to have been in the past, at odds with the interests of the intended beneficiaries.

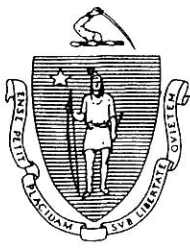
In answer to your final question, the Attorney General has not decided whether the current Feoffees can continue to serve as trustees of Little Neck. However, I strongly suspect that the answer will be in the negative. Also, as we have discussed, there will have to be a court proceeding to restate the trust's purposes and clarify its operating procedures.

I hope this letter has been helpful. Please let me know if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Deirdre Rosenberg".

Deirdre Rosenberg
Assistant Attorney General
Public Protection Bureau
Division of Public Charities



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200

March 22, 2001

Donald M. Greanough, Esq.
P.O. Box 790
Ipswich, MA 01938

RE: Feoffees of Grammar School

Dear Mr. Greanough:

It has come to the attention of this office that your client, the Feoffees of the Grammar School in the Town of Ipswich, has never registered with the Division of Public Charities, and has not filed required forms/reports. Please be advised that all charitable organizations, except those organized exclusively for religious purposes, must register and file annual financial reports with the Division of Public Charities. A trust held for the benefit of a public school by non-municipal trustees is required to register.

A copy of the Form PC (with instructions) is enclosed. You should fill out one for each of the four most recent fiscal years. Also required in order to bring your organization into compliance are copies of the group's articles of organization or official statement of purpose, as well as any amendments to those documents, and a copy of your organization's current bylaws.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Deirdre Rosenberg".

Deirdre Rosenberg
Assistant Attorney General
Public Protection Bureau
Division of Public Charities



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Little Neck's value is more than money

To the editor:

As both a cottage owner at Little Neck and a lifelong summer resident of Ipswich, I've been following the public discussion surrounding the Feoffees of the grammar school with growing concern. I see two fundamental problems with the current debate. First, the current parties place value on Little Neck in strictly monetary terms, without apparent thought to the short and long-term impact that changes in the trust may have on Ipswich. Second, there is a critical voice missing - that of the cottage owners - from the formal discussions about the future of the trust. There are tradeoffs to be considered when increasing the amount of money coming from Little Neck. No one understands these tradeoffs better than the current cottage owners.

Ed Traverso's letter of Dec. 19 ("Golden Fleece More the Case on Little Neck") is a great example of the problems with viewing Little Neck from a purely financial standpoint. In his letter he makes the flawed assumption that most cottage owners rent their cottages for the summer. Based on this, his calculations then assume that if an owner receives \$650 week in rent (low in his estimation, but not in my experience) then \$6,500 for the 10 week summer season results in "gold for the cottage owners [and] a fleecing for the children of Ipswich."

Few — if any — cottage owners use their cottages as purely investment properties, because his numbers don't add up. Rent for the land is soon to be \$3,200, property taxes average \$2,000, which leaves \$800 left over in "profit" from the \$6,500 to pay the loans that most of us carry on the properties. Even then, let's assume Mr. Traverso's financial logic holds water and \$800 per year to maintain the property is a great deal for the cottage owners. Why is it, then, that cottages languish on the real-estate market for years, at prices well below that of waterfront property elsewhere in Massachusetts?

The answer to that lies in the intricacies of the Trust, and the unique geology of the area. For a number of reasons in addition to the one outlined above, a cottage on Little Neck is not a wise financial investment. Some of those other reasons are as follows:

1. The land-rent agreement with the Feoffees stipu-

LETTERS, from page 6

lates that the cottage owners are Tenants-At-Will, and can be told to vacate the property at any time. I could lose the right to live at Little Neck simply by writing this letter. Many potential cottage-buyers pull out of Purchase and Sale agreements on this provision alone.

2. Because there is no lease or deed for the property, no bank will give you a mortgage. Most people take out second mortgages on their primary residences to purchase the cottages.

3. As most are aware, there are major septic issues that are likely to mandate the installation of tight tanks for every cottage on Little Neck. The cost of both installing the tanks and the tanks' monthly pumping are new expenses for us.

4. Much worse than that, this also means at least three pumping trucks per day will be traveling to and from Little Neck all summer long. Imagine what that will do for property values all around town, not just at Little Neck. Many of the major roads in town will be impacted, including Jeffrey's Neck Road, High Street, East Street and Town Farm Road.

5. The owners cannot change the footprint or roofline of our houses, so that expansion is impossible and upgrade is difficult. Most of us consider this a neighborly restriction, as no one can block anyone else's view. However, there is a ceiling on the absolute value of these homes since they cannot be made into five bedroom monoliths.

6. Last, but certainly not least, there are seasonal restrictions in place. While Mr. Traverso is correct, we could live there in the spring and fall, and rent our houses all summer, this really seems to miss the point of a summer home.

Even with all of the above being said, the most basic flaw in the argument remains. The majority of cottage owners do not rent their cottages at all; they live in them for the summer. Mr. Traverso's tried to position this as some sort of great deal for the cottage owners who own the houses for rental income. Using his logic, Little Neck could be positioned as poor performing investment property for childless people looking for short-term spring and fall accommodations, relatively low return on their rental investment by renting the ten weeks of summer, and all the headaches that beset a landlord (just wait until the family that rented your cottage for the last two weeks of July gets a load of the greenheads).

Between the proceeds of the trust and property taxes, the town already receives a significant amount of revenue from the cottage owners at Little Neck. Here are the facts on current revenue from Little Neck, as I understand them. Starting in 2004, the town of Ipswich will receive over \$850,000 in revenue, using the following calculations:

Each property owner's rent is being raised to \$3,200 per year for seasonal houses and \$3,600 per year for the 24 year-round ones. That's over \$540,000 per year, less the expenses for maintaining the property (there are no capital improvements anticipated for at least 10-20 years).

In addition, cottage owners pay full property taxes, equivalent to the taxes paid by homeowners on Great Neck, for essentially ten weeks of town services. According to a letter to the editor of the Chronicle a while back, last year property taxes from Little Neck raised between \$315,000 and \$340,000. 60 percent of that tax revenue goes to the schools, with only two children enrolled from Little Neck.

The combination of high base-level rents, unpredictable and uncontrollable rent increases, and property taxes on our houses commensurate with year-round homes will lead people who might want to buy cottages on Little Neck to demand year-round access to them to make the investment make sense. It will also make cottages more difficult to sell than they already are.

It's important to state that most of the current cottage owners do not want this to become a year-round property, with a potential rental community coming in during either the winter or summer months. Additionally, any discussion of year round use raises the challenges associated with the septic problems, which are inextricably tied to this entire debate.

There is, however, another way for the town to value Little Neck, and by and large that is in its current form. Little Neck today is a strong community of good friends and extended family. We are a tight-knit group of people who have grown up together, love Ipswich, and love the way of life that summering at Little Neck affords our children and us. There are houses for sale on Little Neck right now; some have been on the market

LETTERS TO THE EDITOR

for years. Let me convince people who might want to buy them why - even though it's a terrible financial investment - it's a great idea. At the same time let me convince the rest of the taxpayers of Ipswich how maintaining the community with its present occupants provide value, outside of the tax revenues and land rents, to the town.

- As stated before, the vast majority of homeowners do not rent their cottages, we live in them from the day school gets out until Labor Day. You don't see lots of cars passing through Ipswich every Saturday like you do at the Cape or Wingersheek as cottages turn over. Even those few cottages that are rented are generally rented for a month at a time, to people who come back year after year.

- Many of us have strong ties to Ipswich, lifelong friendships and relationships that belie the seasonal nature of the property. This summer the community raised almost \$5,000 for the Collum family, with no publicity or fanfare. Why? Because some of us actually know the Collums. And, regardless of that, every cottage owner knew about the tragedy, and mourned with the rest of Ipswich.

- The community is economically diverse, a situation that arose when you could buy cottages in the 50's, 60's and 70's for under \$30,000. We are a community of firemen, policemen, engineers, doctors and lawyers. We are plumbers, teachers, judges, construction workers, retirees, and executives. John Volpe, Governor of the Commonwealth of Massachusetts, even lived here many years ago. This is a unique place where people from all walks of life come together.

- There are numerous families who have been coming to Little Neck for generations, who care deeply about preserving the unique history of this place in this historic town. There are also multiple generations of families who live together here each summer. We have great traditions, and a sense of community that is irreplaceable.

There may not be enough non-financial reasons for the town of Ipswich to make this an exclusive enclave for the wealthy by continuing to raise rents, with no ceiling in site. But the public discussion needs to understand that the cottage owners have far more than just a financial interest in the future of Little Neck, and the future of

the Trust. Many of us in the Little Neck community love Little Neck and care deeply about what happens to it. We should be able to find a way for this to work for everyone: the town, the Feoffees, the schools, and the cottage owners.

The cottage owners should be part of the solution, but because we are unable to vote, no elected official in town represents our concerns (isn't that taxation without representation?). While the Feoffees have been attentive and fair stewards of the property, they don't fully represent us. For all intents and purposes we have no voice in town at all. I believe we have a right to be heard in this debate, and we should have a place on the committee deciding the future of this historic Trust. I also want the discussion to consider all of the ramifications of change. In particular the discussion needs to include which type of community the town of Ipswich wants living on Little Neck; a transient rental community, a wealthy year-round one, or a seasonal and long-term, family-oriented one. I, for one, hope the town wants the last one.

Paula Harrington Siebert
Hilltop Road

57

From: "Robert Weatherall" <utrum@ipswich.org>
To: rbonsignore@aol.com , harvey@theemploymentlawyers.com , mph@ronansegal.com ,
ellerkamph@mediaone.net
Cc: selectmanlamp@hotmail.com , bshopping@mediaone.net
Date: Wed, Jan 16, 2002, 1:38 PM
Subject: Feoffees' annual meeting

Hi: Three of us attended the Feoffees' annual meeting yesterday, Harry, Barry, and myself. Here is what I took in from the proceedings, in the order in which topics were addressed (rather than the order of their importance). Harry and Barry may have heard some things differently, and I am eager to hear their thoughts, but here goes:

1. Don Whiston started by addressing the issue of the Feoffees' accounting. He conceded that their accounting system was "antiquated" (although the numbers it generated were "accurate") and to bring them out of the "dark ages" (as he put it) they had appointed Dan Clasby, a CPA familiar with charitable organizations, to keep their accounts and to do an annual audit. Whiston said the Feoffees were aiming to produce their annual financial statement in future within weeks of the closing of the fiscal year in June, not nine months later as they have been doing. (Clasby is still working on their statement for last year).

2. Whiston went on to say that the Feoffees had not objected to the warrant article which set up our committee. It was important "to bring the Feoffees into the 20th century". They were eager to work with us, and were looking forward to our report. They recognized their responsibilities as fiduciaries and wanted to put the past behind them.

3. After talking briefly about the sewerage problem at Little Neck, he said that the Feoffees had received an "unsolicited offer" from the tenants, who had given a deposit of \$167,000 to substantiate the offer. He did not immediately reveal the size of the offer but in response to a question said it was for \$1,200,000 (the value LandVest set on Little Neck in their third and latest evaluation). On further questioning he said that in the proposed deal the whole property would become a condominium, in which the cottage owners would be share owners. (In other words they would not become owners in fee simple of their individual lots; they would hold shares in all the land area of Little Neck). Whiston added that some of the tenants might not feel able (or want) to buy a share but might prefer to continue as tenants, paying rent to the condominium. He mentioned many times that there was a wide disparity of wealth among the cottage owners.

Whiston said that the Feoffees planned to review the offer with the School Committee.

Thinking about the Red Sox, Harry threw out an interesting question: what would happen if a developer, hearing that Little Neck was for sale, came in with a bigger offer? Would the AG's office require the Feoffees and the Town to take it? There was clearly a consensus in the room that Little Neck should stay as it is, retaining its present character. I happened to be sitting next to Richard Betts and Jack Reardon, members of the tenants' committee, and mentioned a suggestion I had heard that Little Neck could be preserved as a historic district. They said that Bill George, former Selectman and former tenant, had made the same suggestion two years ago. I think we are likely to hear of more ideas like this if a sale looks possible. I should add that there was no discussion whether \$10 million was a reasonable figure and no one had an answer for Harry.

4. Whiston turned to the fact that the Feoffees had a growing rent income.

They had taken in (approximately) \$299,000 in FY '01. Thanks to the current step raises in the rents he expected \$380,800 in receipts in '02, \$462,400 in '03, and \$544,000 in '04. He was not explicit, but he talked as if the rents would continue to be raised as assessments rose. He thought that the Feoffees would have no more big expenditures in the future and he expected most of the money to go to the schools. The tenants would be paying the costs of sewage disposal.

5. He then read off the amounts in the Feoffees' various savings accounts (he told me not to bother to write down the amounts). That done, he said the School Committee had asked for \$200,000 this year. They proposed to spend it on upgrading technology in the schools, starting with the elementary schools. Whiston said that it was important for the Feoffees to know where their contribution was going. It was also important that the money not be used to cut the tax rate. So saying, he asked Peter Foote to make a motion. Foote moved that a check be given to the schools for \$282,970.28. The motion was approved unanimously and Joan Arsenault was invited to step forward to receive the money. With that, the meeting adjourned.

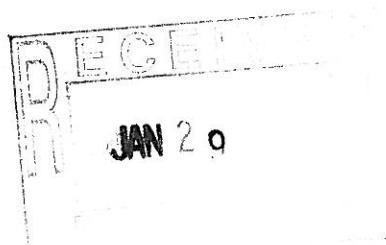
A final observation: Whiston made no reference to the acknowledgment they conveyed to us by way Don Greenough in October that their constitution needs to be reviewed. I got the feeling at the meeting that they were showing us they had reformed themselves. I hope they are still ready to discuss with us how they are appointed, etc., etc., and to consider changes. Bob

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FEOFFEES OF THE GRAMMAR SCHOOL

Financial Statements

June 30, 2001



FEOFFEES OF THE GRAMMAR SCHOOL

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DAN CLASBY & COMPANY
Certified Public Accountants

-1-

INDEPENDENT AUDITORS' REPORT

To the Board of Managers
Feoffees of the Grammar School
Ipswich, Massachusetts

We have audited the statements of assets, liabilities, and net assets - cash basis of **Feoffees of the Grammar School** (a non-profit organization) as of June 30, 2001, and the related statement of activities - cash basis for the year then ended. These financial statements are the responsibility of the Trust's managers. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Trust's managers, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 1, these financial statements were prepared on the cash basis of accounting and are not intended to be presented in conformity with generally accepted accounting principles.

In addition, generally accepted accounting principles require that land be stated at cost. The Organization has stated its land at its assessed value and that, if generally accepted accounting principles had been followed, the land account and the net assets would have been decreased by \$15,419,900.

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net assets of **Feoffees of the Grammar School** as of June 30, 2001, and its activities for the year then ended, on the basis of accounting described in Note 1.

Dan Clasby & Company

September 5, 2002

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FEOFFEEES OF THE GRAMMAR SCHOOLStatement of Assets, Liabilities, and Net Assets -
Cash Basis

As of June 30, 2001

Assets

Cash - operating	\$ 9,989
Cash – savings	289,622
Land and buildings at assessed value	<u>15,419,900</u>
Total Assets	\$ <u>15,719,511</u>

Liabilities and Net Assets

Liabilities	\$ _____ -
Total liabilities	_____ -
Net assets:	
Unrestricted	<u>15,719,511</u>
Total Liabilities and Net Assets	\$ <u>15,719,511</u>

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FEOFFEEES OF THE GRAMMAR SCHOOL

Statement of Activities - Cash Basis

For the Year Ended June 30, 2001

Support and Revenue:	
Buildings, home and land collections	\$ 317,105
Rents	290,723
Interest	<u>11,660</u>
Total support and revenue	<u>619,488</u>
Expenses:	
Real estate taxes	317,105
Gift to town	50,000
Consulting and engineering fees	47,866
Maintenance	12,636
Salaries	9,600
Legal	8,418
Insurance	8,253
Kitchen – Community Center	7,296
Police	7,009
Water and road repairs	3,667
Landscaping	3,135
Docks and floats	1,350
Office expense	911
Telephone	<u>261</u>
Total expenses	<u>477,507</u>
Change in net assets	141,981
Net assets, beginning of year	<u>15,577,530</u>
Net assets, end of year	\$ <u>15,719,511</u>

See Independent Auditors' Report.

The accompanying notes are an integral part of these financial statements.

FEOFFEES OF THE GRAMMAR SCHOOL

Notes to Financial Statements

(1) Summary of significant accounting policies

(a) Nature of organization

Feoffees of the Grammar School (the "Trust") was established by the Town of Ipswich (the "Town") by a vote of Town Meeting on November 14, 1650. The vote established a four-member committee to hold land granted by the Town for the support of a "grammar school". The Trust came into possession of the real property currently held in 1660 through the bequest of William Paine, an original member of the 1650 committee.

The real property consists of a parcel of land of approximately thirty five (35) acres in Ipswich, Massachusetts. On this land are situated one hundred sixty seven (167) cottages, of which one hundred forty three (143) are seasonal and twenty four (24) are year round. The seasonal cottages may only be occupied between April 1 and November 30 each year. The Trust is assessed and pays to the Town the real estate taxes on the land and on such structures owned by the Trust (a community center and a wharf); in addition they collect for the Town and remit to the Town the real estate taxes assessed on the cottages.

Because the Trust designates its net earnings to be for the benefit of the children of the Ipswich Public Schools, with no benefits accruing to its trustees, it has considered itself to be a tax-exempt organization. However until 1997 no federal or state tax returns were filed by the Trust, as it was the position of the Trust that it was a "quasi-public trust" and therefore was not technically required to file the tax returns.

The Trust is supported primarily through rent collections.

(b) Financial statement presentation

The Trust has adopted Statement of Financial Accounting Standards (SFAS) No. 117, "Financial Statements of Not-for-Profit Organizations". Under SFAS No. 117, the Trust is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

The financial statements of the Trust are prepared on the cash basis of accounting. The cash basis of accounting used by Feoffees of the Grammar School recognizes income and the related assets when received rather than when earned and recognizes expenses when paid rather than when the obligation is incurred.

(c) Estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and equity.

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From: "Harvey A. Schwartz" <harvey@TheEmploymentLawyers.com>
Reply-To: <harvey@TheEmploymentLawyers.com>
To: "'Robert Weatherall'" <utrum@ipswich.org>, <rbonsignore@aol.com>,
<harvey@TheEmploymentLawyers.com>, <mph@ronansegal.com>, <ellerkamph@mediaone.net>,
<selectmanlamp@hotmail.com>, <bhopping@mediaone.net>
Date: Tue, Feb 26, 2002, 5:53 AM
Subject: Inspiration

Here is a shot at the inspiration part. Let me know if you think it is too sappy. See you Wednesday.

We see a time in the not at all distant future when the Ipswich Public Schools offer special opportunities for students and teachers not normally available at public schools, all provided by annual grants from the Feoffees of Little Neck, thanks to a financial seed planted nearly 350 years ago that for the first time can be made to blossom for the benefit of our children. Here is what we see happening in Ipswich in a years:

- \$ a seventh-grader fascinated by vernal pools and her teacher receive a \$500 grant to purchase study materials about salamanders and to attend a seminar taught by professional botanists.
- \$ an English teacher with 20 years experience relocates to Massachusetts and is offered jobs by a dozen leading school systems, but chooses to teach in Ipswich because the Little Neck Trust can offer her a thousand dollar grant to spend the summer studying Shakespeare in England.
- \$ thirty high school juniors spend the day at a race track learning defensive driving techniques from professional drivers, creating safer drivers for the rest of their lives.
- \$ a drama class spends a long weekend in New York attending plays on and off Broadway.
- \$ after school tutoring is provided not just for students facing learning difficulties, but for gifted students who don't feel challenged enough.
- \$ a grant lets a young photographer spend a summer creating a photographic documentary of Ipswich clammers, instead of bagging groceries.
- \$ every student musician who wants to play is provided with an instrument.
- \$ a high school French class spends a week in Quebec, a Spanish class goes to Mexico.
- \$ a third grade class spends an evening at the Boston Symphony.
- \$ a research biologist who changes careers to teach can train his students on the same quality equipment he used in industry.
- \$ a young man who stays in school only because of his love of lacrosse gets to spend a month at a summer lacrosse program and returns to school, rather than dropping out.
- \$ a kindergarten teacher fascinated by the Montessori method receives a grant to study different methods of teaching reading.
- \$ a fifth grade class takes a bus to Mystic Seaport in Connecticut and spends a night on a hundred year old whaling ship.
- \$ copies of summer reading books are purchased so every student gets to own every book.
- \$ students in the high school musical work with professional choreographers, sound and lighting technicians and makeup artists, seeing theater as a possible profession.
- \$ student journalists receive grants to visit the Boston Globe and the Herald and to spend a week at local television stations.
- \$ an Ipswich summer math and science academy opens the high school's labs to gifted students who want to do research during summer vacation.

All of this is possible. We know it is possible because just like Ipswich, the Town of Barnstable is the recipient of an ancient gift of land, land that turned out to be the best location for the Cape Cod airport. The sale of that land provided a fund of less than half the value of the Little Neck Trust, yet that fund provides annual gifts to the Barnstable schools for just such programs as we've described.

If this is possible for Barnstable it is just as possible for Ipswich. We see a future in which Ipswich is the talk of the teaching community, in which the story is spread that this is the best place in Massachusetts for a teacher to work, a place where a creative teacher can apply for the tools needed to take extra steps in making education real, a place where the best teachers are themselves given enrichment opportunities to become even better, a place where young teachers hope to be hired and experienced teachers love to remain.

We see a future in which students are taught that is OK to dream and that if they dream of something special in school, with some work and effort they can get something special.

We see a future in which Ipswich students and teachers get the frosting, not just the cake, all without costing the taxpayers a penny, all by managing the gift given by William Payne in 1660 to the school children of Ipswich wisely, a gift that in the past has provided pittance but is just now beginning to reach for its full potential. Among the many other gifts that make Ipswich special is William Payne's gift. We urge the town to use this gift in a special way.

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Hi: Here's Harvey's draft of a new trust instrument. (I have just forwarded separately the outline we came up with in November, also the most recent version of our findings). Let me know if there's anything else you need. Bob

From: "Harvey A. Schwartz" <harvey@TheEmploymentLawyers.com>
To: "Robert Weatherall" <utrum@ipswich.org>
Subject: RE: Draft trust document
Date: Fri, Dec 7, 2001, 5:54 AM

I'll be around Saturday but let me try it this way. let me know if this can be read. It will lose the formatting but should work.

THE WILLIAM PAINE TRUST

This Trust Agreement is intended to govern the conduct and affairs of The William Paine Trust.

Declaration of trust

1. The William Paine Trust is declared to be the successor to the trust known variously as the Little Neck Trust, the Feofees of Little Neck and the Feofees of the Ipswich Grammar School (hereafter referred to collectively as "the Feofees of Little Neck"). The Feofees were originally established by act of the Ipswich Town Meeting on November 14, 1650. A lot of land in Ipswich known as Little Neck was bequeathed to the Feofees through a bequest declared in the will of William Paine, who died in 1660. That lot continues to be owned by the Feofees.

2. From the effective date of this Trust, all land, property, leases, contracts and assets and liabilities of any kind in the name of the Feofees of Little Neck shall be owned, held and bound by the trustees of the William Paine Trust, pursuant to this trust document.

Appointment of Trustees

3. For historical purposes, the trustees of the William Paine Trust will continue to be titled "Feofees" and these trustees shall be known as the Feofees of the William Paine Trust.

4. There shall be five Feofees of the trust. Each Feoffee shall serve for a term of five years. The Feofees shall be appointed as follows: two by the Ipswich School Committee, two by the Ipswich Board of Selectmen, and one by the Town Meeting Moderator.

5. When the first five Feofees under this trust are appointed, in order to establish staggered terms, they shall be appointed for terms as follows: one person for a one-year term by the School Committee, one person for a two-year term by the Board of Selectmen, one person for a three-year term by the moderator, one person for a four-year term by the school committee and one person for a five-year term by the board of selectmen. All appointments and reappointments after these initial appointments shall be for five year terms. A Feoffee may be reappointed any number of times. Upon the appointment of any succeeding or additional Feoffee, the title to the Trust Property shall thereupon and without the necessity of any conveyance be vested in said succeeding or additional Feoffee jointly with the existing Feofees. Any succeeding or additional Feoffee shall have all the rights, powers, authority and privileges of an original Feoffee. No Feoffee shall be required to furnish bond.

6. In addition to the Feofees appointed under this trust document, the persons presently serving as Feofees of Little Neck at the time of creation of this trust document may, if they so choose, serve as Feofees of the

William Paine Trust for five years. These presently serving Feofees may also be appointed as Feofees of the William Paine Trust by any appointing authority.

7. Feofees must be residents of the Town of Ipswich, registered to vote in Ipswich. Any Feoffee who ceases to be an Ipswich resident shall resign.

Legal status of the trust

8. The William Paine Trust is a not-for-profit Massachusetts trust. It is not an entity or instrumentality of the Town of Ipswich or the Commonwealth of Massachusetts. The assets of the trust are not to be considered as assets of the Town of Ipswich but are and shall remain solely the assets of the Trust. The Feofees shall comply with all state and federal laws regulating the activities and responsibilities of public charities.

9. Even though the trust is not an instrumentality of the Town of Ipswich or the Commonwealth of Massachusetts, the Feofees shall comply with all laws applicable to official committees of the Town of Ipswich in regard to public access to records of the Trust, open meetings, posting of meetings and the right of members of the public to speak and be heard at meetings. Members of the public shall have access to documents and records of the trust to the same extent as members of the public have access to records of the Town of Ipswich.

Purpose of the trust

10. The purpose of the William Paine Trust is to enhance the education offered in the public schools of the Town of Ipswich, Massachusetts. Therefore the students of the Town of Ipswich public schools are declared to be the beneficiaries of the trust. Specifically, the trust is intended solely to provide supplemental benefits to the beneficiaries above and beyond expenses provided for the beneficiaries by the taxpayers and other income and assets of the Ipswich School Committee.

11. It is specifically NOT the purpose of the trust to provide for the normal expenses of providing a public school system. Funds of the trust shall not be used to provide services, equipment or facilities for the public schools that are the obligation of the town to provide, or that have traditionally or previously been provided by the town through the town budget. It is specifically NOT the purpose of the trust to replace town funds for the schools or to either directly or indirectly provide tax relief to the taxpayers of Ipswich. In order to prevent the use of trust funds for this purpose the Feofees shall have complete discretion to withhold any or all distributions of trust assets if it appears to the Feofees that their distribution is replacing or being used instead of funds previously or traditionally provided by the town through the town budget.

12. Any ten residents of the Town of Ipswich shall have standing to bring an action in the courts of the Commonwealth to enjoin the Feofees from distributing funds for a purpose not provided for in this trust document, including a distribution of funds for the purpose of replacing or funding an activity in the public schools traditionally or previously funded through the town budget.

Distribution of funds

13. The Feofees shall have complete discretion in determining the amount of the trust's income or assets to be distributed to the beneficiaries in any given year if a majority of the Feofees find that the funds distributed would be used for other than the purpose of the trust. Absent such a finding, however, all net income received by the trust shall be distributed each year and not retained by the trust.

14. Each year, seventy-five percent of the total amount to be distributed shall be provided for purposes requested by the Ipswich School Committee. All requests for funding by the School Committee shall be made in writing on

a form approved by the Feofees and shall include at least the following information: the purpose for which the money is requested, the amount of money requested, the duration of the project or activity for which the money will be used, and the person responsible for overseeing the use of the money. The Feofees may select among various grant applications submitted by the School Committee if such applications exceed the amount of money available for distribution to the School Committee. The Feofees shall not fund any application for a purpose not permitted by this trust document.

15. Each year, twenty-five percent of the total amount to be distributed shall be for grants to individual teachers and/or students. Teachers and students seeking grants from the Feofees shall submit their request in writing, on a form approved by the Feofees, and shall include at least the following information: the purpose for which the money is requested, the amount of money requested, the duration of the project or activity for which the money will be used, and the person responsible for overseeing the use of the money. All applications from students and teachers shall be reviewed by the principal of the student's or teacher's school and shall indicate whether or not the application is supported by the principal. Lack of support may be considered by the Feofees in deciding whether to make the grant, but such support shall not be a necessary precondition to making the grant. All such grants to teachers or students shall be for educational purposes and activities during the time when the student or teacher is enrolled or employed in the Ipswich public schools. Grants shall not be for college or post-high school education. Grants may be for attendance at conferences, courses, programs or any other activity outside of Ipswich or during summers if the recipient of the grant intends to return to the Ipswich public schools as either a student or teacher.

16. The Feofees shall have sole discretion to award or deny any grant.

17. All applications for grants submitted by the School Committee, teachers or students shall be public records, immediately available for inspection by the public.

18. Grants shall not be made for use by or at private schools, nor shall grants be made to students or faculty of private schools.

19. On an annual basis, prior to the annual town meeting, the Feofees shall prepare an itemized list of all grants made in the previous year, which list shall state the description, purpose, amount and recipient of each grant made by the Feofees.

Powers of Feofees

20. The Feofees shall have the powers and responsibilities of trustees of charitable trusts pursuant to the laws of the Commonwealth of Massachusetts.

21. The Feofees shall hold the principal and income of the Trust for the benefit of the Beneficiaries and shall distribute such principal and income only in compliance with this trust document. The Feofees shall make only such conveyances of Trust Property as are in compliance with this trust document. Otherwise the Feofees shall have full power and authority to deal in or with the Trust Property including without limitation, the power and authority: to borrow money; to invest the funds of the trust; to lease all or any part of the trust property by one of more leases; to grant or acquire rights or easements and enter into agreements or arrangements with respect to the Trust Property; to acquire any real or personal property and any leasehold interest in such property; to hire employees; and to take any other actions in accordance with this trust document, provided that the Feofees shall not be required to take any action as will in the opinion of the Feofees involve them in any personal liability, unless first indemnified to the satisfaction of the Feofees.

22. Sale of the trust property - Any sale of real property owned by the

trust or the Feofees shall be subject to the approval of a majority vote of the Ipswich Town Meeting.

23. The Feofees shall not be liable for any error of judgment nor for any loss arising out of any act or omission in the execution of the Trust so long as they act in good faith, but shall be responsible only for their own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Feofees and the Feofees shall have full power and authority to execute all Deeds and other Instruments necessary or proper to carry such transactions into effect, subject to the terms of this trust document. No purchaser or lender shall be under any liability to see to the application of the purchase money or of any money or property loaned or delivered to the Feofees or to see that the terms and conditions of this Trust have been complied with, except that no sale of any real property by the Feofees shall be valid unless approved by a majority vote of the Ipswich Town Meeting. Every instrument executed by a person who according to the records in said place of recording or registry appears to be a Feofee hereunder shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof this Trust was in full force and effect and that the Feofees were duly directed by all of the beneficiaries to execute and deliver the same, and no such instrument need have affixed thereto any direction or assent of said Beneficiaries or any of them. Any person dealing with the Trust Property or the Feofees may always rely on a certificate signed by a person who is a Feofee hereunder as to whether or not this Declaration of Trust has been terminated, as to who are the Beneficiaries hereunder, or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Feofee or are in any other manner germane to the affairs of the Trust.

24. The Feofees shall have no power or authority to incur any liability on behalf of any beneficiary or make any contract binding upon the beneficiary. No Feofee and no beneficiary of this Trust shall ever be personally or individually liable for any of the debts, contracts, liabilities, warranties or other obligations of the Feofees or of the Trust, except as specifically provided by separate written instrument. Each person who deals with a Feofee or with the Trust, shall look solely to the Trust Property for satisfaction of any claim which such person may have against the Feofee or the Trust.

25. This Declaration of Trust may be amended from time to time by an instrument in writing. Such amendment shall be approved by majority vote of the Ipswich Town Meeting. be so registered or recorded.

Effective date of this trust

26. This trust shall be effective on the date of approval of the last of the following persons or entities:

- . the Ipswich Town Meeting, by majority vote;
- . the Feofees of Little Neck, by majority vote, and
- . the Essex County Probate and Family Court.

<>

----- Headers -----

Return-Path: <ulrum@ipswich.org>

Received: from rly-za05.mx.aol.com (rly-za05.mail.aol.com [172.31.36.101]) by air-

za01.mail.aol.com (v83.35) with ESMTP id MAILINZA11-0130132550; Wed, 30 Jan 2002
13:25:50 -0500
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(v83.35) with ESMTP id MAILRELAYINZA510-0130132413; Wed, 30 Jan 2002 13:24:13 -0500
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by helios.worx.net (8.9.3/8.9.3) with ESMTP id NAA14825
for <rbonsignore@aol.com>; Wed, 30 Jan 2002 13:19:27 -0500
Message-Id: <200201301819.NAA14825@helios.worx.net>
X-Mailer: Microsoft Outlook Express Macintosh Edition - 4.5 (0410)
Date: Wed, 30 Jan 2002 13:23:31 -0800
Subject: FW: Draft trust document
From: "Robert Weatherall" <utrum@ipswich.org>
To: rbonsignore@aol.com
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A FIRST STAB AT THE CONCLUSIONS WE HAVE ARRIVED AT,
BASED ON OUR FINDINGS, WITH SOME QUESTIONS
(revised 2/21/02)

1. We find that the Feoffees are trustees, with a clear fiduciary responsibility to the Ipswich public schools. The property they hold was given to them in trust for the benefit of "the free school of Ipswich" (Paine) and for "the use of school-learning in Ipswich for ever" (the 18th century statutes). The Feoffees themselves agree that they are a public trust and that they hold Little Neck for the benefit of the Ipswich public schools.
2. We agree that they have been failing in their trust. For decades past their contributions to the schools have fallen far short of what an impartial observer would expect from an endowment of \$10 to 15 million. We have not attempted to answer the question what their contribution should be. In the old days, when Little Neck was rented to farmers, the Feoffees rented to the highest bidder (the old minutes expressly say so). We doubt the Town would accept a recommendation that the rents be raised to the point where there was a rapid turnover in the tenants. Should the measure be the income we would expect the Feoffees to pay over if their assets were in stocks and bonds, say 5 percent? The Feoffees seem to have had this percentage in mind when they started increasing the rents on the basis of LandVest's assessments; the \$544,000 they will be collecting in FY 04 when they complete the series of increases will be 5.3% of the \$10,200,000 value LandVest sets on Little Neck. But should LandVest's assessment be the basis?. The Town's assessment is much higher, \$15 million. Or do the prices Little Neck cottages command suggest a still higher valuation?
3. We believe that the Feoffees need to be much more accountable to the Town. They have conducted their affairs as if they were a private organization, not a body created by the Town. Apart from their annual meeting, at which no decisions are made, they are not in the habit of posting their meetings. They do not publish a written annual report. Their published financial statements are incomplete. As a result few in town have understood their role and they have largely escaped from public scrutiny. Open communication between the Feoffees, the School Committee, and the public at large is critical.
4. We believe strongly, as do the Feoffees, that their contributions should supplement the school budget, not provide an opportunity for the Town to reduce its appropriation. It should be noted that the Feoffees were established by the Town in 1650 to be the body responsible for funding the grammar school; there was no separate appropriation from the Town. So there is nothing in the trust as it has come down to us which stands in the way of the Feoffees' contributions being used to make up for cuts in the school budget. It is a reason for seeking new trust language.
5. We believe a new trust instrument is also badly needed for other reasons. The Feoffees themselves acknowledge the desirability of a new trust instrument. At present they are self-appointing and serve for unlimited terms. We believe it important that they be appointed by the Town and for limited terms. While the

School Committee should have a share in the appointment process, it should not be entirely in their hands. The time is also ripe to rescind the 18th century statutory provision which makes the three selectmen eldest in office a joint committee with the Feoffees. The provision has long been disregarded and is inoperable in this day and age. A new trust instrument would allow the Town to update the trust in all particulars and set it on a solid footing for the future.

6. We believe there is a strong consensus in town, and among the tenants, that Little Neck should remain as it is, a community of summer cottages. Changes in the terms of the trust should not undercut this. If the tenants are allowed to buy out the Feoffees it should be with restrictions in place which preserve the character of the community. While we want and expect the Feoffees to get a high return on their assets it is no part of our thinking that they should put Little Neck up for sale to the highest bidder, to a Donald Trump for example.

7. The charge we were given at Town Meeting was only to gather information and report back. Among the things we have learned is that there needs to be a new trust instrument. We believe our work during the past year has qualified us to prepare one and we propose that the Town continue us as a Committee for that purpose.

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REPORT OF THE TOWN COMMITTEE ON THE FEOFFEEES
April 1, 2002

Those of you were here at last year's Town Meeting, and stayed till midnight, will remember that you voted to set up a committee to inquire into the operations and financial records of the Feoffees, and report back in a year.

I am reporting for the committee, in the absence of our chairman.

Your vote last year directed the Moderator to appoint a seven-member committee— one a Selectman, one a member of the Finance Committee, one a member of the School Committee, and four unaffiliated members.

Harry Lampropoulos is the Selectmen, Mary Harrington represents the Finance Committee, and Barry Hopping the School Committee. The four unaffiliated members are Robert Bonsignore, whom we appointed chairman, Heather Ellerkamp, Harvey Schwartz, and myself.

We have met virtually every month since last June and have covered a great deal of ground. The Feoffees met with us at one meeting. Attorney Don Greenough, representing the Feoffees, has attended many of our meetings and has helped us with our information-gathering. An attorney from the Attorney General's office also came down to meet with us.

We present our findings in the handout which I hope you picked up coming in. It would take too long to go through them all in detail here. We hope you will read them at your leisure. We know a lot more about the Feoffees than at the beginning. One important thing is how to pronounce their name. They are the "Feoffees", not the "FEEFEES".

The key things we have learned are the following, stating them as simply and briefly as possible:

1. The Feoffees as an institution were set up by the Town in November, 1650, by a Town Meeting vote. In other words they are, and should be, treated as a Town committee.

2. The Town appointed the first members, but very early on, the existing members were authorized to make the new appointment when the departure of a Feoffee created a vacancy..

For more than 300 years the Feoffees have been a self-perpetuating body. The Town has had no hand in choosing them.

Unlike the members of other Town boards, a Feoffee, once appointed, serves until he dies or resigns.

3. In the 18th century some issues came between the Town and the Feoffees and the Town sought legislation to clarify matters.

The Great and General Court passed a statute, which was confirmed more than once and has not been repealed, appointing the three senior Selectmen a joint

committee with the Feoffees. That is why Jim Engel could tell us at last year's Town meeting that he was a Feoffee. But it is a long time – the Feoffees say 80 years - since the three senior Selectmen have formed a working committee with the Feoffees, participating in their decision-making. No one faults them for their non-participation. They have enough on their plate to attend the Feoffees' monthly meetings.

4. The Feoffees were set up as a board of trustees to hold in trust land given by the Town, and by private donors, as an endowment for the grammar school – which back then meant a school preparing students for college. They are the administrators of a trust, and their duty is to generate an income from the property they hold to support the Ipswich schools.

5. The one piece of land which they continue to hold is Little Neck, which was bequeathed to the Town by a leading Ipswich citizen, William Paine, in 1660. At that time Little Neck was open land and it was worth what farmers were prepared to pay to graze their cattle there. Today it is as you see it, and it is assessed by the Assessors at just under 15 million dollars. William Paine gave Ipswich quite a present.

6. This year the Feoffees have made a notable contribution to the schools, and we are delighted, but it is only recently that their contributions have begun making a difference. There were ten years in the 80s and 90s when they contributed nothing. In other years their contribution was no more than a token. The reason is that they were charging only a token rent for the lots the Little Neck cottages stand on. In FY 2000 they started raising the rents in stages, to bring them up to market value. That is how they could write a check for \$288,000 this year after giving only \$25,000 in three years ago. But they are using an estimate of market value which can be questioned. They have retained a consultant who values the land at Little Neck at \$10 million, a third less than the Town Assessors, who assess the rest of us in town, assess it at.

7. On the other hand we are ready to praise them for the way they have looked after the property William Paine bequeathed to them. Little Neck is an attractive place and it reflects their good management. For 30 years or more they have allowed only 24 of the 167 cottages to be occupied year-round. Like the Selectmen and others in town, we would like to see Little Neck remain that way. While we believe the Feoffees should seek a high return on their assets it is no part of our thinking that they should put Little Neck up for sale to the highest bidder, to a Donald Trump for example.

8. It has taken a year for us to learn what we have learned about the Feoffees because they publish very little about themselves. Unlike other Town boards they do not post their meetings – the one exception being their annual meeting at which they present their check to the Town. They present an oral report at the annual meeting but no written report. They normally publish a financial

statement in the Town Report but appear not to have done so this year. They have no hand-out to tell you who they are and what they do. The cry these days is for institutions to be transparent. The Feoffees are very far from being a transparent institution.

So what are our conclusions? We started out from different positions but after a year's work we agree on the following:

We believe the time has come to put the Feoffees on a modern footing. Most importantly, we believe they should be appointed or elected like other Town boards. We are not saying the present Feoffees should step down, but they should come up for reappointment or re-election every three years or so like the members of other town boards. They need to be answerable to the Town.

It is also time to ask how many Feoffees there should be. If the three senior Selectmen sat with them there would be seven of them. We believe that the 18th century statute should be crossed off the books but that the number of Feoffees should not be left at four. There should be an odd number as on other Town boards, say 5 or 7.

We believe the Feoffees should be required to post their meetings, to observe the open meeting rules, and to publish a written annual report

Lastly, there is an urgent need to nail down what the Feoffees' contributions to the schools may be spent on. William Paine bequeathed Little Neck to help pay the schools' regular operating expenses. There is nothing in his will or in the 18th century statutes to prevent the contributions being used to help meet on-going expenses. With the School Committee and the Feoffees themselves, we believe strongly that their contributions should supplement the school budget, not be used to help meet ordinary expenses. That way, the money will allow the schools to do things they could not do otherwise. It is exciting to think of the possibilities.

Most of this will require a new legal instrument supplanting the language of William Paine's will and the provisions of the 18th century statute.

It will need to be approved by a judge and almost certainly the legislature but that need not stand in our way. We have begun thinking what should be in this new instrument but we have not had time to take it very far.

We would like to have the committee continued so that we can work on a new instrument and bring it to the Town. The School Committee have also come to the conclusion that a new trust instrument is desirable and have told us that they would like to work on it with us. We feel the information we have gathered this past year has put us in a good position to take on the job.

How the Feoffees fulfil their responsibilities is a matter of interest to the whole Town – witness the vote at last year's Town Meeting.

We believe the job is an appropriate extension of the job you gave us last April.

I move that the committee be continued for this purpose.

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From: "Don Greenough" <dona1d.greenough@verizon.net>
Reply-To: "Don Greenough" <dona1d.greenough@verizon.net>
To: <utrum@ipswich.org>
Cc: <rbonsignoe@aol.com>
Date: Wed, Feb 27, 2002, 10:57 AM
Subject: proposed Findings (1/30/02)

Bob:

I'm sorry I didn't respond earlier to the 1/30/02 revision, however I was waiting for input from the Feoffees and was out of my office last week. The Feoffees met on February 15th and reviewed the revised findings. They were disappointed that the findings did not reflect more of their comments emailed to you on December 17th, however that is your decision and will be respected. They did ask me to comment on one section.

In the section entitled "How the Feoffees describe their mission" I believe that the manner in which you have selected certain segments of my letter of October 23, 2001, do not accurately reflect my message to your committee. My letter described the two issues which the Feoffees felt were most important to be discussed that evening. I believe that you are inadvertently misrepresenting the Feoffees' position the first issue and ignoring the second issue.

The second paragraph of my letter proposed that there were "two areas of concern which I believe are of equal interest to the committee" for the dialogue that evening. The first issue which the Feoffees wished to discuss as an agenda item that evening was the form of governance (because four life members and one Selectman sitting in at the annual meeting does not appear to be sufficient and the statutory scheme of four life members and the three senior members has not been followed for many years). The discussion for that evening was to include the number of trustees, term lengths, etc. The manner in which you have selectively quoted from my letter does not provide the context of suggesting an item for discussion at a particular meeting.

In lieu of referring to my letter, it may be more accurate refer to the minutes of the October 23rd meeting and cite the statements of the Feoffees made that evening.

Of perhaps more importance for the portion of your findings regarding the Feoffees' mission, in my letter, and during the meeting as well, the Feoffees expressed their strong belief that the income should be used for special projects or needs of the schools above and beyond the normal operating expenses funded through the municipal budget. This view of the Feoffees' mission appears to be absent from your findings.

I do not plan to attend this evening's meeting. If there is a further revision of the findings, I would greatly appreciate the opportunity to review it if emailed or faxed to my office.

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FEOFFEES OF THE GRAMMAR SCHOOL

Ipswich, Massachusetts 01938

March 20th, 2002

Robert J. Bonsignore, Esquire
Bonsignore & Brewer
23 Forest Street
Medford, MA 02155-3820

re: Feoffees of the Grammar School in the Town of Ipswich

Dear Mr. Bonsignore:

After reviewing your proposed "Established Findings", we believe that the Committee might be assisted by a written statement from the Feoffees concerning several items in your report. We understand that the minutes of your meeting of October 24th, 2001, which we attended, do not go into sufficient detail to be incorporated in your report. As you may remember, that meeting lasted only a little over an hour and we believe that some issues were not fully explored.

We believe that there are three issues to be clarified or addressed: the setting of the annual rent for the lots, the lack of restrictions on use of the funds by the schools, and our governance.

RENT

Prior to FY2000 we annually reviewed the rent for seasonal and year-round cottages, taking into account the local real estate market, the assessed values and the rents charged for similar seasonal lots by the Towns of Essex (Conomo Point) and Rockport (Long Beach). Little Neck rents were consistent with, or higher, than those for Conomo Point and Long Beach, which are administered by the Boards of Selectmen for the respective towns. The rents at Conomo Point (\$1,000) and Long Beach (\$400) have not been significantly changed since we instituted our increases in July, 1999.

Based on the 1997 LandVest appraisal, we realized that our rents needed to be increased and we entered into a five-year plan to increase the rents in equal increments to the LandVest value through FY2004. After that year, we plan to adjust the rents on an annual basis.

USE OF FUNDS BY THE SCHOOLS

The Feoffees have no authority to limit how the funds distributed to the schools are to be used. Over the past 25 years, it has been customary for the Superintendent to request funds from time to time for specific projects, such as teacher training or classroom renovation. Unneeded funds remained invested by the Feoffees. Because of the confusion caused by this process, the Feoffees now distribute all net income on an annual basis.

We are concerned that the annual distribution of a substantial check will tempt the Finance Committee or others to use the Feoffees' income to fund normal operating expenses which have been traditionally paid through the municipal budget. We feel very strongly that the income should continue to be used for enhancements to the schools and their programs. We hope that the School Committee, Board of Selectmen and Finance Committee will reach a written agreement reflecting our position. If an agreement cannot be reached, we would support an effort by the School Committee to seek judicial or legislative action to restrict the use of the income for enhancement of the schools, and not operating, purposes.

GOVERNANCE

The statutory structure of governance for the Feoffees – four self-appointing life members and the three most senior members of the Board of Selectmen – has not been used for over 80 years. Instead, management has been by a de facto system -- only the four life members have been engaged in the operations of Little Neck. In addition, one Selectman has acted as a Feoffee at the annual meetings.

We will actively solicit the participation of three Selectmen in the management of Little Neck. If the Selectmen do not choose to participate, we would support an effort by the School Committee to seek judicial or legislative action to change the structure to replace the Selectmen with other persons to be designated by appropriate authorities (Selectmen, Town Manager, Town Meeting and/or Moderator). Given the nature of the position, we suggest that an appointee's term be for a minimum of four years.

We recognize that much has changed in the 200 years since the issue of governance was last described by a legislative act, but we believe that there continues to be a role for life members. We understand that the School

Committee may prefer that a majority of the Feoffees be appointed members instead of life members. In that event, the retention of three life members (with a vacancy to be filled by vote of the remaining six Feoffees) would both maintain the historical link and provide a long-term presence on the board, whether managing Little Neck or an investment fund resulting from a sale of the property.

If the Committee would like any further clarification of the above, or requires any additional information to complete its report, please contact me.

Sincerely yours,

A handwritten signature in cursive script, reading "Donald F. Whiston". The signature is fluid and elegant, with a long horizontal stroke at the end.

DONALD F. WHISTON

cc: Robert Weatherall
cc: Donald M. Greenough, Atty.