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# Cottage owners protest rent hike

*The following letter was addressed to Donald M. Greenough, attorney for the Feoffees. It was also sent to the Chronicle for publication and to Richard C. Allen, attorney for the Ipswich School Committee.*

As counsel for Little Neck Homeowners, Inc., I am writing to express the homeowners' concerns regarding the rapidly rising costs of ownership. In particular, they are concerned about the recently announced 56 percent further increase in land rent for seasonal cottages, increases in property tax assessments, and the \$1,000 assessments against the homeowners toward engineering and other fees associated with the sewage disposal research. These combined charges will bring this year's average costs to a Little Neck homeowner to more than \$8,500. The homeowners believe that this is excessive rent and ownership cost for seasonal cottages. Additionally, this figure does not include the other costs of ownership such as personal property taxes charged to seasonal homeowners, home insurance, utilities and routine maintenance. (As you know, all but 24 of the 167 cottages can be used only on a seasonal basis.)

Prior to 1998 the Feoffees set lot rents to be consistent with seasonal rents on municipal lands in the region (such as Long Beach in Rockport, where the seasonal rents for a similar season (April 15 to Oct. 15) are currently \$1,300 and, for ocean-front, \$2,100 based upon a revolving 10-year lease with built-in CPI). In 1998, the Feoffees announced that, beginning in 1999, they would increase annual lot rents for seasonal properties (which were then \$800) by an additional 300 percent over five years so that, by July of last year annual lot rents reached \$3,200. Taxes to the homeowners on their cottages and the underlying land, which benefit the general town budget, have also increased from an average of \$1,856 in 1998 to an average of \$2,561 per cottage in 2004. Against this background of very sharp rent and tax increases, the homeowners did not expect the further \$1,800 increase in rent. It is clear to the homeowners that the Feoffees and the Town of Ipswich see the Little Neck Homeowners as a captive group of tenants with little or no rights.

The homeowners understand and agree that the land is valuable, but the Feoffees and the Town of Ipswich are now overstat-

ing its value. Everyone seems to forget the intractable sewage disposal problem, which brings with it septic pumping fees and septic truck traffic and calls into question the basic residential value of the land itself. In fact, the town has exacerbated the very serious limitations of the land by its failure to support the sewerage of Little Neck.

Town officials have admitted that failure to sewer Little Neck (in spite of excessive treatment plant capacity) is intended to control growth. Withholding proper sanitation is a very blunt instrument to control growth on the Necks. This should be the function of zoning regulations. In any event, the refusal to support the sewerage of Little Neck results in an intentional reduction in the land value. It should also be noted that the planned tight tank construction and utility repairs this fall and continuing into the spring will adversely affect the use of Little Neck properties. The town cannot intentionally suppress the value and utility of the land and then expect rents based on a much higher value.

Furthermore, the current rent levels do not properly take into account the many other limiting factors that affect the value of cottage ownership, including the seasonal nature of all but a few cottages and the restricted ability of cottage owners to secure mortgages to finance their cottages.

It appears to the homeowners that the local discussions over the past several years about maximizing income from Little Neck have continually focused on the cottage owners as captive tenants. Such discussions have never once acknowledged the cottage owners as seasonal residents, taxpayers and citizens of the town who support local merchants and charities and add to the unique social fabric of the community. Many have summered in Ipswich for over 50 years. As responsible members of this community, the homeowners agree that the land is valuable and that such value should continue to benefit the schools of Ipswich (through rents) and the general town budget (through taxes). However, the current levels of rent and land taxes that they are paying far exceed fair market rental value.

On the subject of the land taxes, it appears to the homeowners that the town is assessing the parcels at Little Neck as if they were comprised of subdividable lots. Of course, the lots are not subdividable

and the land should be assessed based on its actual one-lot status. Not only are there no subdivided lots on Little Neck, but almost all of the houses are crowded together on parcels with dimensions that are below legally subdividable size. These are not legally divided, fee simple lots. Undivided land should not be taxed as though legally divided and fully transferable. There should be a discount applied for lack of fee simple property rights, crowding and seasonal use restrictions. It does not appear that the town has applied such a discount. Additionally, the homeowners, in a preliminary look at other riverfront properties in Ipswich, have noted significantly lower assessed values per acre. Since the Feoffees pass the land taxes on as additional rent to the homeowners, the homeowners request that the Feoffees diligently pursue a retroactive tax abatement for the overtaxing of the land.

Furthermore, the homeowners' board has asked me to remind the Feoffees and the town that the homeowners do not waive any of their rights to challenge the several rent increases. These increases have been dramatically in excess of the level of anticipated rent based on a very long course of custom and practice, the custom and practice against which the homeowners and their predecessors built and owned their cottages. Under pressure to increase rents, the Feoffees appear to have adopted a standard of imposing the highest rents which they feel they can justify under current market conditions. As mentioned above, the homeowners feel that the Feoffees have even exceeded that standard. In the absence (for hundreds of years) of a written lease and a written mechanism for increasing the rents, we believe that equity requires that the prior course of dealing govern the permissible pattern of rents and rent increases. The past course of dealing does not allow for rent increases of several hundred percent over six years and does not contemplate imposition of the highest rents which the Feoffees and the town feel they can justify under current market conditions.

Please call me at your convenience to schedule discussion of the issues raised by this letter.

**Charles F. Claeys**  
Authorized Attorney for  
Little Neck Homeowners, Inc.  
Summer Street  
Boston

# LETTER TO THE EDITOR ▼

## Little Neck is not like Long Beach

### To the editor:

I am a member of the Ipswich School Committee and what follows reflects my own thinking only. Mr. Claeys was wrong when he wrote last week that the Feoffees traditionally set the rents at Little Neck in keeping with rents for municipal land such as at Long Beach in Rockport. I have been following this rent issue since the early 1980s when Robert Weatherall began writing to the *Chronicle* and I know of not a single example of public land being referenced by the Feoffees in any discussions of rents at Little Neck. Readers may recall that every year, Mr. Weatherall questioned the tremendous discrepancy between the value of the land managed by the Feoffees at Little Neck and the dismal return they obtained from those assets for the schools. (From 1980 through 1996, the Feoffees distributed only \$16,761, or less than \$1,000 per year, on land that increased in value to about \$16 million by 1997.) Long Beach first surfaced about a year or so ago when taxpayers in Rockport challenged the low rents paid at Long Beach. Mr. Claeys jumped on the low rents there in a previous letter and uses them again as a convenient but fragile hook upon which to hang his version of how the Feoffees set rents at Little Neck.

In early 2001 when Mr. Whiston, then head Feoffee, spoke before the School Committee, he never once indicated that rents at Little Neck were set with reference to any other place. His defense of the low rents (\$600 per year for seasonal cottages until 1998) was that taxes at Little Neck were high and that compassion should be extended to the tenants or the heavy burden of cottage ownership. He cited mortgages that were impossible to obtain; the insensitivity of the annual lease; the fact that seasonal tenants could not send their children to the Ipswich schools; sewage disposal issues; and other infras-

tructure expenses looming on the horizon. He pointed to other negative factors that Mr. Claeys also cited in his letter. But he never pointed in the direction of Rockport.

Long Beach in Rockport is a totally different situation than Little Neck. Residents of Ipswich should keep in mind that ownership of a cottage at Little Neck brings with it a number of advantages and amenities that go far beyond anything offered at Long Beach. It is these special and unique benefits that make for the "Little Neck experience" and justify much higher rents.

First of all, Little Neck is perhaps the choicest location along the Atlantic coast south of Maine for views and scenic beauty. If real estate values are based upon "location, location, location" then Little Neck has location in nines. But on top of that, when tenants at Little Neck pay their rents they automatically obtain other extremely valuable benefits which are referred to as "the amenities." These amenities greatly increase the value of the tenants' cottages and as they are upgraded they enhance the value of cottages even more. These include:

- Use of a private beach, beach parking lot, wharf, playground, and community house. The rent bills that the Feoffees send to the tenants just indicate the lot numbers for which the rent is due. No mention is made of or value given for the additional real and personal property which rent payment provides access to and use of. However, if a price were put upon the amenities that such access and use provides, it would have the effect of reducing the amount of the rent attributable to the land rent for the lot considerably. Just think of how the value of your property would increase if its ownership gave you free access to all the amenities the tenants at Little Neck enjoy.

Anybody who owns a boat knows how expensive it is to have the free use of a dock. All one has to do

is to price boat club memberships. That the amenities are valuable is also testified to by the advertisement for cottages for sale at Little Neck. The private amenities are showcased. In brief, to be fortunate enough to be a tenant at Little Neck is to be automatically a member of a private beach club and boat club. It doesn't come much better than that in an age when easy access to the water is increasingly restricted.

It should be noted that when the Feoffees spent upwards of \$100,000 to repair the wharf a few years ago, the money available for distribution to the schools was reduced by that amount.

- Additional security. Little Neck receives the same police and fire protection as the rest of Ipswich but on busy summer weekends the tenants enjoy additional security. Extra guards are hired to man the gate. In FY 2003, the last year for which figures are available, additional security cost \$6,566. This too reduced the distribution to the schools.

- Buried electric cables. This adds immeasurably to the beauty and the quality of life at Little Neck. The residents of Little Neck are blessed with clear views in all directions unobscured by the rows of ugly wires which utterly destroy the beauty and reduce the value of homes in many Ipswich neighborhoods. The buried lines at Little Neck must now be replaced at a cost of hundreds of thousands of dollars. Ordinarily those who benefit from underground cables pay for their installation but in the case of Little Neck, it is expected that the cost will be taken from rental income, thus reducing the trust distribution to the schools by that amount.

- No real estate taxes on the amenities. The rent bill that the Feoffees send to the tenants also includes a separate item for taxes. Traditionally, two different taxes have been combined into one figure. They are the real estate tax on land (owned by the

Feoffees) and the personal property tax on the cottages (owned by the tenants). The amount included for the real estate tax on each bill is exactly equal to what the tax would be for the land in that lot and more. Thus the money collected by the Feoffees for real estate taxes is equal to the total amount of tax due for the land in the lots in which the tenants have cottages.

However, there is additional land at Little Neck that tenants don't rent and there are additional structures that tenants don't own. In fact, approximately 10 percent of property at Little Neck is on the "common lands" and structures on that land including valuable "amenity" property — the beach, the wharf, the parking lot, the community building, and the playground.

Who then pays the taxes on this property? They appear to be paid by taking the exact amount net from the rental income and including it in the amount shown as collected for taxes. This is probably the main reason why the amount of rent collected by the Feoffees never equals what it should be: the exact amount of taxes is shown as collected by after year without fail. For example in FY 2003, the Feoffees should have collected \$462,400 in rent. Instead their statement for FY 2003 shows they actually collected \$395,088. This caused the distribution to the schools to be reduced by about \$67,000.

Using money collected as rent to pay taxes may be perfectly legitimate, but to use accounting trickery to hide the fact that every year the tax on 10 percent of the property at Little Neck is shifted from the tenants and charged against the money available for the education of the children of Ipswich is contemptible.

Clearly, Little Neck can't be compared to Long Beach. It provides its tenants with much more.

Edmund Traver  
East Str

Rec

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## SOME THOUGHTS ON ATTORNEY ALLEN'S DRAFT

### Para A4 of the draft

If the Feoffees increase their contribution to the Schools in tune with the value of their assets the annual contribution could be twice or three times what it has been. Three percent of the assessors' present \$30 million valuation is \$900,000. Many holders of endowment funds look for a return of 4 or 5 percent.

I see taxpayers in the future putting enormous pressure on the School Committee to count the Feoffees' contributions as a regular part of the School budget. What is there to prevent future School Committees and Superintendents going through the rigmarole each year of declaring a continuing emergency under A(4) to justify spending the Feoffees' money year after year on ongoing programs?

A paragraph along the lines of the following would allow them to spend the money on on-going programs for only two years. It would also make it less necessary to define "emergency".

"Except in an emergency, the Feoffees' contribution to the School Department shall not be used to help maintain existing programs previously funded by the Town. Such funding of programs previously funded by the Town shall not continue for more than two years."

### Para A8

It seems there is nothing in the draft which addresses the timing of the Feoffees' contribution to the Schools. Para A8(g) only requires the Feoffees to say by September 1 what they "reasonably anticipate" they will be contributing. The Feoffees have been paying over their money in the year following the year it was earned, recently as late as January of the year following. This must make it difficult to use the money effectively in the on-going school year. The Feoffees close their books each year on June 30. Why not require them to pay over their net earnings by August 1, in good time before the start of the new school year?

### Para A9

Subsections (a) and (c) talk about the rents at Little Neck delivering a contribution to the Schools which is "fair" and "reasonable" to the Schools. There is no reference to the value of the Feoffees' assets. Our committee's chief reason for being is that till recently no one measured the Feoffees' contributions against their assets. It seems to me para A(9) should stipulate a return on the Feoffees' assets which is "reasonable in light of their value"- or, better, their "market value".

RKW

9/28/04

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**From:** Robert K. Weatherall <utrum@ipswich.org>  
**To:** George Markos <GMarkos@aol.com>, Robert Bonsignore <rbonsignore@aol.com>, Paul Surpitski <Mikeandsonsoil@comcast.net>  
**Cc:** Harvey Schwartz <Harvey@TheEmploymentLawyers.com>, Joan Arsenault <r.arsenault@comcast.net>, INGRID MILES <ingridmiles@verizon.net>  
**Date:** Sunday, October 3, 2004 9:04 PM  
**Subject:** Meeting with School Committee on Tuesday at 7:30 p.m.

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Hi: This is just to confirm our joint meeting with the School Committee this Tuesday, October 5, at 7:30 p.m. in the Ensemble Room at the High School. (The meeting time is not 6:30 as was mentioned last week).

The four of us who met last Tuesday went through Attorney Allen's draft and thought there were four provisions which still needed attention:

1. We didn't think any of Allen's three alternative sentences allowing the Feoffees' contribution to the schools to be used to cover regular budget items in an "emergency" did the trick. (Sections A3 and A4 in the draft). For example, "emergencies" could become a yearly thing. What if Ipswich voters got to thinking that with the Feoffees' money they didn't need to vote so much money for the schools? We didn't come up with any agreed wording.
2. We thought that Section A8(g) could do more than set a date by which the Feoffees tell the School Committee how much money they can "reasonably anticipate" from the Feoffees. Couldn't there be a set date by which the Feoffees actually pay over the money? For example, August 1 - a month after the Feoffees close their books. (As it stands now, they have not been handing over their contribution till December or January).
3. We agreed that sub-sections (a) and (c) in Section A9 don't focus on the right measure when they say that the rents at Little Neck should provide a "fair" or "reasonable" return to the schools. The point to make is that the return be commensurate with the value of the Feoffees' assets.
4. Because the Little Neck tenants appear increasingly eager to buy out the Feoffees, and there are many in town who think the Feoffees would be able to get a better return from their assets if they were in the form of liquid capital, we thought it important that the new document prepare for this eventuality by specifying the approvals the Feoffees and the Town should get before going to a judge.

I think this is a fair summary. I will be happy to receive corrections. Bob

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JOINT MEETING  
IPSWICH SCHOOL COMMITTEE  
TOWN FEOFFEEES COMMITTEE  
TUESDAY, OCTOBER 5, 2004 7:30 P.M.  
MIDDLE/HIGH SCHOOL ENSEMBLE ROOM

**OPEN SESSION**

**I. CALL TO ORDER**

J. Arsenault, School Committee Chairperson, called the meeting to order at 7:40 p.m. with the following members present: J. Loeb, N. Sheppard and E. Traverso of the School Committee and I. Miles, H. Schwartz, and R. Weatherall of the Town Feoffees Committee. Also present were R. Korb, Superintendent of Schools and R. Allen, Legal Counsel.

**II. CITIZENS' QUESTIONS**

Mr. Thom Allen, 18 Bayview Rd., representing the Little Neck Homeowners Inc., requested that the tenants receive a copy of the trust documents. As previously expressed, the tenants would like the committees to consider including in the new trust document a provision for purchase of property.

Mr. Robert Dever, 2 River Rd., also representing the Little Neck Homeowners Inc., stated that they were in attendance to observe and become part of the process if possible. Of concern was the exclusion of the tenants from the process. The value of the Feoffees assets was questioned. The tenants have been allowed to invest and improve the property, resulting in tax revenue which benefits the town and the children attending the Ipswich Public Schools. Faced with high taxes, high rents, legal and political problems, Mr. Dever urged that sale of the property to the tenants be considered.

Dr. O'Flynn joined the meeting at 8:00 p.m.

**III. REVIEW REVISED FEOFFEEES TRUST SUMMARY AND LANGUAGE ALTERNATIVES**

Distributed to committee members were a "Revised Feoffees Trust Summary and Language Alternatives" memo from Richard Allen dated August 19, 2004, a copy of "The content and procedure for Feoffees Trust" (revised August 18, 2004), and a joint committee meeting memo on the draft. Committee members proceeded to review the draft, addressing concerns referenced in the memos.

The language for an "emergency" was discussed in detail. Mr. Allen explained that the use of words previously agreed upon by the committees was inconsistent and referred to an "emergency" spectrum of unanticipated to unanticipatable, unforeseen to unforeseeable. Alternative wording for the last sentence in section A) 3) and two alternative definitions of "emergency" in section A) 4) were suggested by Mr. Allen. Members cautioned using language that was too restrictive, but still would connote an "emergency" as not the norm. Use of the word "unanticipated" in the alternatives was disputed. Alternate phrasing offered by Mr. Weatherall was discussed. Dr. O'Flynn stated that the Feoffees Subcommittee recommended that no changes be made in the language defining an "emergency" and the wording in the draft should remain as written. Consensus was reached to keep the language in section A) 3) as written, and that Mr. Allen wordsmith the grammar in section A) 4).

Timing of the Feoffees report to the School Committee in section 8) g) was questioned. Mr. Allen will check with Mr. Greenough regarding a realistic date by which the Feoffees must report to the School Committee. If September 1<sup>st</sup> is not realistic, the committees agreed that the date could be moved to September 15<sup>th</sup>. Mr. Allen will also check with the town regarding a report date if the Feoffees, as a municipal trust, is included in the town's audit. Mr. Weatherall was concerned with the omission of any language in the trust which addresses the timing of the Feoffees' contribution. Payment should be made expeditiously.

III. REVIEW REVISED FEOFFEEES TRUST SUMMARY AND LANGUAGE ALTERNATIVES  
(continued)

The Town Feoffees Committee questioned the language in section 9) a) Rental of property on Little Neck which stated that rent should be "fair and reasonable to the Ipswich Public Schools as beneficiary of the trust." Mr. Weatherall stated that the sum paid to the town should be reasonable in light of the Feoffees' assets. Mr. Allen explained that rents are not typically based on asset value, but on fair market rent. "Fair market value" was suggested as possible wording. Mrs. Miles reminded the committees that the property is rental property. Mr. Traverso requested that "taxes" in section 9) b) should be changed to "all taxes." This would include taxes for the common land structures and vacant lots. Mr. Dever and Mr. Allen of the tenants association disagreed. The committees agreed that the language in section 9) a) should be changed to read "fair and reasonable." Mr. Allen will add a provision to the trust stating that a reasonable return would be a bench mark, and that the Feoffees would have to explain any deviations from a reasonable return. The language in sections 9) d), e), and f) will remain as written.

Mr. Allen explained that a provision of sale was not written into the trust. A process for revising the trust has been included.

A clarification was asked for by Mr. Allen on deleting language in section 7) h) regarding termination of property managers by the Feoffees. That language should remain in the trust.

Mr. Allen will prepare and forward a revised draft in outline form.

Mrs. Miles moved, seconded by Dr. O'Flynn, to adjourn the meeting at 9:05 p.m.  
UNANIMOUS

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**From:** Robert K. Weatherall <utrum@ipswich.org>  
**To:** Joan Arsenault <r.arsenault@comcast.net>  
**Cc:** Richard Korb <RKsuper@aol.com>  
**Date:** Wednesday, November 17, 2004 10:15 AM  
**Subject:** Allen's latest outline of the trust instrument

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Dear Joan: I picked up copies of Allen's latest drafts yesterday and will send them on to the Town Committee.

I have gone through the texts and have to say I think they capture very well the consensus at our joint meeting on October 5.

Speaking for myself, I have just two suggestions to make of an editorial nature:

1. The wording of A(4) strikes me as very clumsy, especially the first three lines. I think any English teacher would bring out her red pencil. I would reconstruct the paragraph as follows:

"For purposes of A(3), only a lack of funds from other sources to pay for indispensable school services or programs may be considered an "emergency". Funds from the Trust may only be used to fund such services or programs if the School Superintendent documents in writing the funding emergency and the need to draw on Trust funds, and if two-thirds of the School Committee in office vote their approval. The Superintendent's documentation of the emergency and the School Committee's approval shall be effective for no more than one year."

2. In light of the detailed wording of A(9)(c), isn't A(9)(a) superfluous? I would move up (c) and make it (a). The language of (a) worries me because the phrase "a fair market rent" normally means fair to people renting. I looked up "definition of fair market rent" on Google yesterday and all the entries referred to rents in relation to tenants' income. For example an entry from HUD refers to 50th and 40th percentile rents "to serve as many families as possible". The word "reasonable" is used three times in (c). There is nothing in (c) that should be read by the Little Neck tenants exploitative. I think A(9)(c) says all that needs to be said on the subject.

I am putting these suggestions in writing because as we saw in October it's hard to revise a text orally across a table. I plan to be there tomorrow. Bob

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**CASNER & EDWARDS, LLP****MEMORANDUM**

To: Ipswich School Committee and Superintendent  
From: Richard C. Allen  
Date: November 19, 2004  
RE: Content and procedure for Feoffees Trust (Revised November 19, 2004)

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Set forth below is my current outline for the revised Feoffees Trust, incorporating the discussion at the October 5, 2004 meeting of the School Committee and the Town Committee on the Feoffees and the November 18, 2004 meeting of the School Committee. The changes from the November 8, 2004 version are made in redlined format (and the Alternative language paragraphs that were in the August 19, 2004 version are deleted).

A) Content of the revised trust (the revised trust will be a court order – see B, below):

- 1) Name: Feoffees of William Payne's Trust
- 2) Beneficiary: the Ipswich public schools
- 3) Trust purpose: to enrich and broaden the education experience of students in the Ipswich public schools by, at least annually, making distributions of the trust's net income, after reasonable expenses and operational reserves, to support supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students. Funds from the Trust shall not be used for the ordinary and regular expenses of the schools, except to address an emergency as defined in A(4), below.
- 4) For purposes of A(3) above, an "emergency" means an indispensable necessity that urgently requires immediate action for which funding is not otherwise available, provided: (a) that the emergency and the proposed use of funds from the Trust are documented in writing by the Superintendent of Schools; (b) that the existence of the emergency and the proposed use of funds from the Trust to address the emergency are approved by a vote of two thirds of the members of the School Committee in office; and (c) that the Superintendent's documentation of the emergency and the School Committee's approval shall be effective for no more than one year.

5) Grant approval procedure: only proposals submitted by the School Committee may be funded, with the Feoffees authorized to decline a School Committee proposal only as follows: (i) the Feoffees shall decline to fund a School Committee proposal to the extent that funds are not available; (ii) the Feoffees shall decline to fund a School Committee proposal to the extent that, the request is not for enhancement purposes or to address an emergency approved by the Superintendent and School Committee pursuant to A(4) above – that is, to the extent that the proposal is for a program or use that does not meet the trust purpose set forth in A(3) and A(4), above, and (iii) the Feoffees may, by a vote of two thirds of the Feoffees in office, decline a School Committee proposal to address an emergency as defined above. A decision by the Feoffees to decline a School Committee request for any reason will, at the request of the School Committee, be reviewable de novo by the Probate Court (i.e., the Court itself will decide how the standards in the Trust apply to the facts, rather than merely deciding whether the Feoffees applied the correct standard and followed reasonable steps in reaching their decision).

6) Trust governance

a) Five Feoffees

- 2 appointed by the School Committee, 2 appointed by the Selectmen; and 1 appointed by the Town Finance Committee
- no person may be Feoffee while serving as a member of School Committee, Board of Selectmen, or Finance Committee
- no person may be a Feoffee who is a resident or home owner on Little Neck, nor may a person be a Feoffee if one of the following is a resident or home owner on Little Neck: a close relative, or any other person who is likely to be perceived as inherently interfering with the person's independent judgment as a Feoffee (to be defined in the court order) (e.g., an employment supervisor of the Feoffee)
- current Feoffees are eligible for appointment

b) term of service

- 3-year staggered terms
- no term limits
- may be removed by appointing authority for cause

- c) serve without compensation, but reasonable and necessary trust-related expenses paid
- d) subject to a conflict of interest policy
- e) the meeting quorum is three Feoffees, and a majority vote of those voting is required for action

7) Powers, in addition to those conferred upon trustees by law:

- a) lease, improve and manage the trust real estate
- b) establish and collect rents and fees
- c) establish and enforce regulations, including through eviction, with respect to residency on and ownership of trust property
- d) invest trust assets
- e) accept charitable gifts
- f) pay all proper charges and expenses
- g) pursue, defend and settle all claims and demands relating to the trust or trust property
- h) hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of 3 years, with termination available to the Feoffees for cause)

8) Applicable requirements

- a) the trust would be a municipal trust, not a separate private trust with separate federal tax ID and separate tax exemption
- b) subject to open meeting law
- c) subject to public records law
- d) subject to public bidding law
- e) subject to public ethics law (i.e., conflict of interest)

- f) explicitly stated requirement: Feoffees must annually file an audited financial report with the Town and the School Committee, said audit to be completed as expeditiously as possible.
  - g) Feoffees shall expeditiously distribute the net proceeds of the Trust to the School Committee. The Feoffees shall report to the School Committee by September 1 of each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will be distributing to the public schools in the coming year, and shall, immediately upon completion of the annual audit, report any adjustment in this amount that results from the audit to the School Committee.
  - h) include IRS-required standard language (e.g., no private inurement, etc.)
- 9) Rental of property on Little Neck
- a) pursuant to the Feoffees' fiduciary duties as trustees of this Trust to benefit the Ipswich public schools, the Feoffees have the responsibility to charge and collect rents, for residence on or other use of the trust property, at a level sufficient to provide a reasonable stream of income to the Ipswich public schools on an annual basis. To the extent possible, the amount of income provided to the Ipswich public schools each year should at a minimum represent a reasonable return on the market value of the Trust's assets; if the income provided to the public schools is lower than the amount that would be such a reasonable return, the Feoffees shall report the reasons for this differential to the School Committee.
  - b) rents should be charged and collected at a level sufficient to cover the following, to the extent that they provide benefit to the residents and are appropriately includable in determining the rent: (i) the cost of extra services provided by or for the Feoffees at or in connection with Little Neck (such as police details, etc.); (ii) the cost of providing and maintaining common or unoccupied land or structures; (iii) the cost of providing and maintaining other amenities; and (iv) taxes on all the land, including the common or unoccupied land and all improvements
  - c) consideration should be given to establishing rents that vary lot by lot, depending on size, location, view, and other factors affecting rental value, including year-round versus seasonal rental

- d) Feoffees are authorized to enter into written rental agreements for periods of years if this will maximize the financial benefit to the public schools
- e) Feoffees are authorized to engage expert assistance in establishing rent levels, length of rentals, and other rental terms
- f) additional Feoffee powers are enumerated in A(7), above
- g) the new Feoffees under the revised trust are to be considered as continuing the present trust for real estate title purposes and other property rights purposes, but prior arrangements with residents may be disclaimed by the new Feoffees

B) Process for revising the trust:

- 1) Reach agreement (School Committee, Town, Feoffees) on plan and court petition
- 2) Discuss plan and petition with Attorney General's Division of Public Charities
- 3) Submit joint petition by School Committee, Town and Feoffees to Essex County Probate Court, seeking approval of the new trust in the form of a proposed court order
- 4) Attorney General as necessary Defendant
- 5) notice to the Little Neck residents

C) Ongoing court oversight

- 1) Court retains jurisdiction of the matter to make such further orders as appropriate
- 2) the reasonableness of rents, of Feoffee expenses, of operational reserves, and of other practices of the Feoffees shall be reviewable by the Probate Court at the request of the School Committee or the Board of Selectmen
- 3) future amendments to the revised trust as embodied in the court's order may be sought by the Feoffees, the School Committee, and the Board of Selectmen, or by one of them individually upon notice to the others.

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December 13, 2004

To: Harvey Schwartz, Robert Bonsignore, Ingrid Miles, Paul Surpitski.

CC: Joan Arsenault

From: Bob Weatherall (utrum@ipswich.org)

Joint Meeting with School Committee and the Feoffees, Wednesday, January 5

The School Committee and the Feoffees have agreed to a joint meeting of all the bodies involved – the School Committee, the Feoffees, and the Town Committee – to discuss a final draft of the proposed new trust structure for the Feoffees. It is hoped that the next step then will be to get the approval of the Finance Committee and the Selectmen, opening the way to take the proposed new trust structure to the Attorney General's office and the Probate Court.

The meeting on January 5 will be at 7: 30 p.m. in the Ensemble Room at the High School. Please let me know if you can attend.

The School Committee's sub-committee on the Feoffees discussed Attorney Dick Allen's most recent draft at a joint meeting with the Feoffees last Friday, December 10. Present were all the Feoffees with their attorney Don Greenough; Joan Arsenault, Hugh O'Flynn and Ed Traverso from the School Committee with the School Committee's attorney Dick Allen; and School Superintendent Dick Korb and the finance director for the Ipswich schools, Gail Zeman. I was there at Joan's invitation.

Enclosed is a copy of the draft on the table, revised by Dick Allen following our joint meeting with the School Committee on October 5. The Feoffees and the Don Greenough had gone through the draft before the meeting and their considered comments on it led to a constructive discussion.

Points addressed at the meeting

Here are the chief points raised and discussed, taking them here in the order in which the topics appear in the draft:

A)(1) The Feoffees felt strongly that we should stay with the historic name, The Feoffees of the Grammar School. It was a part of Ipswich's history and the words "grammar school" were not a stumbling block to anyone. The consensus of the meeting was that we should keep the historic name.

A)(4) Don Greenough worried that the language here was likely to be a frail reed if pressures built up to use the Feoffees' contributions to hold taxes down. One way to strengthen it would be to say that "emergencies" could only be declared so often, for example not more than twice in five years. No vote was taken but there seemed to be a general consensus that this was worth inserting.

A)(6)(a) The Feoffees worried that 5 Feoffees were too few for the Feoffees' growing work load. The work load was relatively light before the increase in rents, but with the rents increasing now year by year the tenants were coming to the Feoffees with all sorts of requests and complaints. The tenants will also be carrying the \$4 million cost of a new sewage system. This will increase their pressure on the Feoffees. The Feoffees recommended raising the number of Feoffees to 7. There was general agreement on this. It was suggested with some demur that the School Committee should have the appointment of 3 Feoffees and the Finance Committee have the appointment of 2 (like the Selectmen).

Announcing that he was retiring after 31 years on the board, Don Whiston urged that his remaining colleagues be continued as members of the new seven-member board. There was an enormous amount for new members to learn and their experience should not be discarded. There was general agreement that this was a good idea but reservations were expressed in the case of Jim Foley because his appointment would violate the provision that "no person may be a Feoffee while serving as a member of [the] Board of Selectmen". There was discussion on this, with the suggestion made that a special provision could allow it in his case, but it was also objected to (with no disrespect to Jim) as a violation of principle.

A)(a) Don Greenough suggested that the obligation on the part of the Feoffees to deliver "a reasonable return on the market value" of their assets could lead them to consider letting all the houses at Little Neck be used all year. This would automatically greatly increase the return. At present it was only on the basis of a gentleman's agreement with the Town that the number of houses occupied year-round was limited to 24. The number was set in part because of problems with sewage. With the proposed new sewage system at Little Neck there would be increasing demand from the tenants to have the limitation removed. The schools might like the increased rental income but would they welcome the almost certain increased student enrollment? Don suggested that provision to keep the present year-round limitation should be included in the trust document. There was no show of hands but there seemed to be general agreement that including a provision confirming the present limitation was a good idea.

Attorney Allen will bring a new revised draft to the meeting on January 5.

See you there.

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**CASNER & EDWARDS, LLP**

**MEMORANDUM**

To: Ipswich School Committee and Superintendent  
From: Richard C. Allen  
Date: January 7, 2005  
RE: Content and procedure for Feoffees Trust (Revised January 7, 2005)

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Set forth below is my current outline for the revised Feoffees Trust, incorporating the discussion at the January 5, 2005 meeting of the School Committee, the Town Committee, and the Feoffees.

The changes from the January 3, 2005 version are presented in redlined format.

A) Content of the revised trust (the revised trust will be a court order – see B, below):

- 1) Name: Feoffees of the Grammar School in the Town of Ipswich
- 2) Beneficiary: the Ipswich public schools
- 3) Trust purpose: in furtherance of the bequest in 1660 by William Paine who established this Trust “to be and remain to the benefit of the free school of Ipswich forever,” the Trust purpose is to enrich and broaden the education experience of students in the Ipswich public schools by, at least annually, making distributions of the trust’s net income, after reasonable expenses and operational reserves, to support supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students. Funds from the Trust shall not be used for the ordinary and regular expenses of the schools, except to address an emergency as defined in A(4), below.
- 4) For purposes of A(3) above, an “emergency” means an indispensable necessity that urgently requires immediate action for which funding is not otherwise available, provided: (a) that the emergency and the proposed use of funds from the Trust are documented in writing by the Superintendent of Schools; (b) that the existence of the emergency and the proposed use of funds from the Trust to address the emergency are approved by a vote of two thirds of the members of the School Committee in office, and (c) that the Superintendent’s documentation of the emergency and the School Committee’s approval shall be effective for no more than one year.

- 5) Grant approval procedure: only proposals submitted by the School Committee may be funded, with the Feoffees authorized to decline a School Committee proposal only as follows: (i) the Feoffees shall decline to fund a School Committee proposal to the extent that funds are not available; (ii) the Feoffees shall decline to fund a School Committee proposal to the extent that, the request is not for enhancement purposes or to address an emergency approved by the Superintendent and School Committee pursuant to A(4) above – that is, to the extent that the proposal is for a program or use that does not meet the trust purpose set forth in A(3) and A(4), above, and (iii) the Feoffees may, by a vote of two thirds of the Feoffees in office, decline a School Committee proposal to address an emergency as defined above. A decision by the Feoffees to decline a School Committee request for any reason will, at the request of the School Committee, be reviewable de novo by the Probate Court (i.e., the Court itself will decide how the standards in the Trust apply to the facts, rather than merely deciding whether the Feoffees applied the correct standard and followed reasonable steps in reaching their decision).

6) Trust governance

a) Seven Feoffees

- 4-3 appointed by the School Committee, 2 appointed by the Selectmen; ~~and~~ 1 appointed by the Town Finance Committee, and 1 elected by Town Meeting (appointed by the Town Moderator if no one is elected at the Town Meeting at which this seat normally is filled)
- no person may be <sup>a</sup> Feoffee while serving as a member of School Committee, Board of Selectmen, or Finance Committee or as Town Manager
- no person may be a Feoffee who is a resident or home owner on Little Neck, nor may a person be a Feoffee if one of the following is a resident or home owner on Little Neck: (i) a close relative; or (ii) any other person who is likely to be perceived as inherently interfering with the person's independent judgment as a Feoffee (to be defined in the court order) (e.g., an employment supervisor of the Feoffee)

b) term of service

- 3-year staggered terms (to initiate the rotation, the initial terms would be one year for ~~two~~ one School Committee appointees and

the Feoffee elected by the Town Meeting or appointed by the Town Moderator, two years for one Selectmen appointee and one School Committee appointee, and three years for one Selectmen appointee, one School Committee appointee, and the Finance Committee appointee)

- no term limits
- may be removed by appointing authority for cause
- in the case of a vacancy, the appointing authority may appoint a Feoffee to fill the remaining term (in the case of a vacancy in the Town Meeting seat, the Town Moderator may appoint a Feoffee to fill the remaining term).
- c) serve without compensation, but reasonable and necessary trust-related expenses paid
- d) subject to a conflict of interest policy
- e) the meeting quorum is ~~three~~ four Feoffees, and a majority vote of those voting is required for action

7) Powers, in addition to those conferred upon trustees by law:

- a) lease, improve and manage the trust real estate
- b) establish and collect rents and fees
- c) establish and enforce regulations, including through eviction, with respect to residency on and ownership of trust property
- d) invest trust assets ~~in investment permissible for municipal trusts~~  
[ALTERNATIVE A: in investments permissible for municipal trusts]  
[ALTERNATIVE B: in accordance with the prudent investor rule set forth in M.G.L. c. 203C or any successor statute.]
- e) accept charitable gifts
- f) pay all proper charges and expenses
- g) pursue, defend and settle all claims and demands relating to the trust or trust property

- h) hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of 3 years, with termination available to the Feoffees for cause)

8) Applicable requirements

- a) the trust would be a municipal trust, not a separate private trust with separate federal tax ID and separate tax exemption
- b) subject to open meeting law
- c) subject to public records law
- d) subject to public bidding law
- e) subject to public ethics law (i.e., conflict of interest)
- f) explicitly stated requirement: Feoffees must annually file an audited financial report with the Town and the School Committee, said audit to be completed as expeditiously as possible.
- 7  
g) Feoffees shall expeditiously distribute the net proceeds of the Trust to the School Committee. The Feoffees shall report to the School Committee by September 1 of each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will be distributing to the public schools in the coming year, and shall, immediately upon completion of the annual audit, report any adjustment in this amount that results from the audit to the School Committee.
- h) include IRS-required standard language (e.g., no private inurement, etc.)

9) Rental of property on Little Neck

- a) pursuant to the Feoffees' fiduciary duties as trustees of this Trust to benefit the Ipswich public schools, the Feoffees ~~have the responsibility to~~ shall charge and collect rents, for residence on or other use of the trust property, at a level sufficient to provide a reasonable stream of income to the Ipswich public schools on an annual basis. To the extent possible, the amount of income provided to the Ipswich public schools each year ~~should~~ shall at a minimum represent a reasonable return on the market value of the Trust's assets; if the income provided to the public schools is lower than the amount that would be such a

reasonable return, the Feoffees shall report the reasons for this differential to the School Committee.

- b) in calculating the rent levels necessary to satisfy the standard set forth in (a), above, rents ~~should~~ shall be charged and collected at a level sufficient to cover the following costs, to the extent that they provide benefit to the residents and are appropriately includable in determining the rent, as well as all other costs of operation of the Trust: (i) the cost of extra services provided by or for the Feoffees at or in connection with Little Neck (such as police details, etc.); (ii) the cost of providing and maintaining common or unoccupied land or structures; (iii) the cost of providing and maintaining other amenities; and (iv) taxes on all the land, including the common or unoccupied land and all improvements
- c) consideration should be given to establishing rents that vary lot by lot, depending on size, location, view, and other factors affecting rental value, including year-round versus seasonal rental. However, no more than twenty-four lots, the number presently eligible for that are not presently year-round rental, shall not be rented on a year-round basis.
- d) Feoffees are authorized to enter into written rental agreements for periods of years if this will maximize the financial benefit to the public schools
- e) Feoffees are authorized to engage expert assistance in establishing rent levels, length of rentals, and other rental terms
- f) additional Feoffee powers are enumerated in A(7), above
- g) the new Feoffees under the revised trust are to be considered as continuing the present trust for real estate title purposes and other property rights purposes, and the new Feoffees will not be bound by existing arrangements as to rents, charges, and rules (except that rents in place when the Court order takes effect shall continue for the remainder of the fiscal year)

B) Process for revising the trust:

- 1) Reach agreement (School Committee, Town, Feoffees) on plan and court petition
- 2) Discuss plan and petition with Attorney General's Division of Public Charities

Ipswich School Committee  
and Superintendent

January 5, 2005

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- 3) Submit joint petition by School Committee, Town and Feoffees to Essex County Probate Court, seeking approval of the new trust in the form of a proposed court order
- 4) Attorney General as necessary Defendant
- 5) notice to the Little Neck residents

C) Ongoing court oversight

- 1) Court retains jurisdiction of the matter to make such further orders as appropriate
- 2) the reasonableness of rents, of Feoffee expenses, of operational reserves, and of other practices of the Feoffees shall be reviewable by the Probate Court at the request of the School Committee or the Board of Selectmen
- 3) future amendments to the revised trust as embodied in the court's order may be sought by the Feoffees, the School Committee, and the Board of Selectmen, or by one of them individually upon notice to the others.

1 1 3

Jan 24

**CASNER & EDWARDS, LLP**

**MEMORANDUM**

To: Ipswich School Committee and Superintendent  
From: Richard C. Allen  
Date: January 10, 2005  
RE: Feoffees Trust – talking points for Board of Selectmen meeting

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1. School Committee and Superintendent, Town Committee, and Feoffees are asking the Board of Selectmen to vote to join in a Probate Court petition to be filed by the School Committee, the Town of Ipswich, and the Feoffees to revise the administrative structure of the Feoffees Trust (formally the Feoffees of the Grammar School in the Town of Ipswich).
2. The Trust is the legacy of the bequest of Little Neck in 1660 by William Paine, pursuant to which Little Neck was to be rented out with the proceeds to benefit the public schools of Ipswich forever. Mr. Paine's will specified that the property is never to be sold.
3. The Feoffees were established by the Town earlier in the 1600's to carry out trusts such as that granted by William Paine. Mr. Paine had served as a Feoffee. The Little Neck Trust is now the one trust handled by the Feoffees. This Trust is generally understood to be the oldest continuing charitable trust in America.
4. As documented in findings of the Town Committee on the Feoffees, rents charged and collected at Little Neck during the 25 years that ended in 2000 resulted in little or no income to the Ipswich Schools. There were concerns that the rents charged for use of Little Neck properties were not at market levels.
5. As a result of these concerns:
  - a. in 2001, the Town Committee on the Feoffees was formed, with membership from the Board of Selectmen, the School Committee, the Finance Committee, and members of the public; and
  - b. in 2002, the School Committee hired special outside counsel, who is an expert in charitable trust matters, and began working on a proposed comprehensive revision of the Trust administrative structure.

6. The Town Committee and the School Committee have devoted significant attention to the Trust revision. The Town Committee studied the past and present practices of the Feoffees, issued a comprehensive report, and prepared recommendations for a revised Trust document. The School Committee and School Superintendent, in conjunction with special counsel, have devoted substantial time and effort, through the course of many School Committee and subcommittee meetings, to working out the important details of the proposed comprehensive revision. Numerous meetings have been held by the School Committee jointly with the Town Committee and the Feoffees, and public input has been received in the many public meetings.
7. The result of this long and careful process is a proposed comprehensive revision of the administrative mechanism of the Trust. The revision would be presented to the Essex County Probate Court in the form of a joint petition by the School Committee, the Town of Ipswich, and the Feoffees, seeking approval of the revised mechanism in the form of an order of the Court, which has equitable powers with respect to charitable trusts.
8. The proposed revised Trust mechanism is outlined in a January 7, 2005 memorandum from Attorney Richard C. Allen to the School Committee and Superintendent, which embodies the consensus reached by the School Committee, the Town Committee, and the Feoffees. The Memorandum has been distributed to the Board of Selectmen. Some key points are as follows:
  - a. The Feoffees would be comprised of 7 persons: 3 appointed by the School Committee, 2 appointed by the Board of Selectmen, 1 appointed by the Finance Committee, and 1 elected by Town Meeting (or appointed by the Town Moderator if no one is elected). Feoffees would serve three-year staggered terms, and could be re-appointed. [January 7, 2005 Trust Summary, Section A(6).]
  - b. The Feoffees would continue to be the record owner of the Little Neck land and be responsible its upkeep and rental. Residents would continue to own their structures.
  - c. The Feoffees would be required to charge and collect rents at a level sufficient to provide a reasonable stream of income to the Ipswich Public Schools on an annual basis, in addition to covering all applicable costs. No more than 24 lots, the number presently eligible for year-round rental, would be eligible to be rented on a year-round basis. [Section A(9).]
  - d. The money received by the Ipswich public schools from the Trust would, in furtherance of William Paine's intent that the Trust "be and remain to the benefit of the [Ipswich public schools] forever," be devoted to enriching and broadening the education experience of the students through support of supplemental enrichment programs and uses that provide

education enhancement for Ipswich public school students. Funds from the Trust would not be eligible for use for the ordinary and regular expenses of the schools, except to address an emergency documented in writing by the Superintendent and approved by a vote of two thirds of the members of the School Committee in office. An emergency is defined as "an indispensable necessity that urgently requires immediate action for which funding is not otherwise available." The Feoffees may decline a School Committee emergency proposal by a vote of two thirds of the Feoffees in office, with review of this action by the Feoffees available to the School Committee in the Probate Court. [Section A(3), (4), (5).]

Additional details of the comprehensive revision are set forth in the January 7 memorandum.

9. Pursuant to William Paine's direction that the Little Neck land is not to be sold, the proposed revision does not provide for sale of the property.
10. Consideration and approval by Town Meeting of this litigation to revise the administrative mechanism of this charitable Trust is not required.

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1 14

**From:** Robert K. Weatherall <utrum@ipswich.org>  
**To:** <edward.rauscher@sepracor.com>  
**Cc:** <ingridmiles@verizon.net>, <james.foley@town.ipswich.ma.us>, <elizabethkilkoyne@hotmail.com>, <lawtrick@yahoo.com>, <judys@town.ipswich.ma.us>, <Harvey@TheEmploymentLawyers.com>, <RBonsignore@aol.com>, <Mikeandsonsoil@comcast.net>, <robert.a.white@comcast.net>, <r.arsenault@comcast.net>, <NORMSHEP@aol.com>, <jeffrey.loeb@comcast.net>, <bhopping@comcast.net>, <DianneRoss@comcast.net>, <hugh@oflynn.org>, <trav@ipswich.org>, <RKsuper@aol.com>  
**Date:** Thursday, January 13, 2005 4:10 PM  
**Subject:** Re Feoffees Trust Document

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As indicated by the passages in red in the January 7 draft, the Feoffees trust document continues to be a work in progress. So we should welcome the questions raised at Monday's meeting. The better the final document the better for all of us. Here are my thoughts on the questions raised. I am taking the liberty of sharing them directly with everyone:

#### Section A 6, Trust Governance

In an earlier draft we had the language "current Feoffees are eligible for appointment". We were not unanimous on whether this should override the provision that "no person may be a Feoffee" while serving as a Selectman. Don Whiston has convinced us that the new team will have much to learn from the existing team. Don himself is stepping down. I have been in favor of not distinguishing between his colleagues in welcoming their help. I suggest we add a fourth bullet under Section A 6(a) and the language "Notwithstanding anything in the preceding paragraph, the current Feoffees are eligible for appointment".

Pat McNally's question about the meaning of "close relative" in the same preceding paragraph has led me to think that we can't possibly specify all the possible occasions for a conflict of interest. For example, what about the would-be Feoffee who would prefer to see the Feoffees' money used to lower taxes? Wouldn't his or her appointment occasion a conflict of interest? Perhaps the way to go is to enjoin the appointing boards to take proper care that their appointments don't occasion a conflict.

Also under the Governance heading I hope we can take another look at the notion that Town Meeting should elect one of the Feoffees. This provision was only added in December and I think we will regret it in the future. Town Meetings are already a burden to sit through. This will make matters worse. The faithful few on whom we depend for a quorum won't be eager for another delay before

the real business gets started, hearing speeches from candidates they don't know and can't question. In previous drafts we had the Finance Committee choosing two of the Feoffees. Let's go back to that idea.

#### Section A 7, Powers

We have not decided how the Feoffees should be allowed to invest their liquid assets. Should they be restricted to the investment opportunities permitted to municipal funds, or should they be allowed more leeway under the "prudent man rule", the leeway given to town library boards and private trusts? I urge that the Feoffees be given this broader scope. This may not be important as long as the Feoffees' major asset is their land at Little Neck but it will be immensely important if the tenants one day buy out the Feoffees. Then the Feoffees should be free to hire expert fund managers to invest their assets as the experts think best.

Bob

1 15

**FEOFFEES TRUST REVIEW**  
**BOARD OF SELECTMAN COMMENTS**  
**17 JANUARY 2005**

The first section of this document is a synopsis compiled by the Chair (Rauscher) of comments received by Selectmen McNally, Kilcoyne and Miles. The Chair incorporated his comments with the others in this synopsis. The second section of this document is the unedited commentary by each Selectman in order. No comments were received from Mr. Foley [currently a Feoffee].

1. General Issues
  - a. Timing: The BOS will vote on the issue only after another 30 – 60 days to get comment from Town Counsel, and discuss.
  - b. Final Document: The BOS wants to review the final document before voting, and may need an additional 14 – 21 days after receipt to review.
  - c. Feoffee: Keep the word but document it as meaning “Trustee”.
2. Content (letter ‘A’):
  - a. Name (A,1): Change to “Trust of the Feoffees of the Grammar School”
  - b. Beneficiary (A, 2): Change to “Town of Ipswich Public Schools”
  - c. Definition of Emergency (A,4):
    - i. Clarify what “...no more than one year” means. A year from when?
    - ii. It says “two-thirds in office” is “a two-thirds vote” meant?
  - d. Grant Approval Procedure (A,5)
    - i. Change title to “Funding Approval Procedure”.
    - ii. Change “...approved by Superintendent and School Committee” to “presented by Superintendent and approved by School Committee” or something similar that shows the elected body (School Committee) does the approving.
    - iii. Two-thirds vote of the Feoffees required to deny a request – is that understanding correct?
3. Trust Governance:
  - a. 3 Appointed by Board of Selectmen, 3 by School Committee, one by Town Meeting, or 2, 2 and 3.
  - b. Current Feoffees remain until they move out of Ipswich, resign or expire.
  - c. Delete second bullet in it’s entirety or replace with “no more than one of each member of the following committees may serve concurrently: School, Board of Selectmen (and Town Manager), Finance Committee”
  - d. Delete third bullet in entirety or replace with no more than 2 residents and more tightly define “close relative”.
4. Term of Service (6, B): Change language to reflect appointing authority. Make provision for mid-term replacement in case of resignation or removal so that replacement for completion of term rests with appointing authority.
5. Conflict of Interest Policy (6, D): To what policy does the document refer?

6. Powers, in addition... (7): To what law does the document refer? There should be a structure outlined for account reporting and standards.
- a. Alternatives (7, D): To what alternatives does the document refer?
  - b. Accept Charitable Gifts (7, E): Add "for the benefit of the trust"
  - c. Pursue, defend... (7, G)
    - i. Should be with advice & consent of Board of Selectmen and School Committee *or*;
    - ii. Dollar value limit before the Feoffees have to come before Board of Selectmen and School Committee
    - iii. Provide for what the course of action should be if Feoffees sue the Board of Selectmen and/or School Committee.
  - d. Hire or employee (7, H): O.K. if 'agent' means other type of employee. If not, please clarify.
7. Applicable Requirements (8): Please define the fiscal year.
- a. "Expediently": Thought to be too vague. Provide language such as "within three months of the close of the fiscal year". <<End of Comments on Sec. A<<
8. Process for Revising Trust (B): Will this be included in the final trust document?
- a. Reach Agreement... (B, 1 & 3): Change "Town" to "Board of Selectmen".
  - b. Notice to... (B, 5) include Town Meeting and language on public input before change is made, such as "The Feoffees, School Committee and Board of Selectmen will meet at least twice jointly in public session to discuss proposed changes to the Trust". <<End of Comments on Sec. B<<
9. Ongoing Court Oversight (C, 3): Only the School Committee or the Board of Selectmen should be allowed to seek changes to the Trust.

<<<<End of Synopsis<<<<

**SECTION II: ORIGINAL COMMENTS FROM THE BOARD OF SELECTMEN**  
**COMMENTS ON "FEOFFEES TRUST"---from Pat McNally**  
**Comments Relate To Allen Memorandum of 1/7/05**

**Here are my comments on above Trust. I took into consideration that it took a long time, with much interaction among many parties, to negotiate the document. I did not attempt to rewrite the Trust (I would have structured it differently, but that's OK as long as it is a clear document). However, I do have relatively strong feelings about the comments that follow, and "trust" they will be fully explored.**

1. The above Memorandum, in its first paragraph, states that it is an "outline." I wish to see the new Trust or Amended Trust, or whatever the document will be called, that the School Committee's attorney plans to submit to the Essex Division of the Probate Court for approval/judgment. That is the document that I will ultimately need to support---not an outline.
2. Is there any Mass. Law that needs to be changed to allow modification of the Trust---example: 1787 Special Act of the Legislature?
3. The word "Trust" should be placed in A)1)? Example "Trust of the Feoffees of the Grammar School in the Town of Ipswich." This is a Trust and it should be called a "Trust."
4. "Town of" should be inserted before "Ipswich" in A)2)?
5. In A)4), what does "no more than one year" mean? "One year" from when? Please clarify. Also, I take A)4) as it is stated: "two thirds... in office" not "two thirds... voting." Is this correct?
6. Is "Grant" the word to use in A)5)? I do not think the word is used any other place in the document. Perhaps "Funding Approval Procedure" is more descriptive. Also, in A)5), I do not think the "emergency approved by the Superintendent... pursuant to A)4)" is appropriate. The Superintendent in A)4) is a documenter, not an approver. Please clarify. Also, is it a "two thirds" vote of the Feoffees "in office?"

7. While I like the word "Feoffees" and want to keep that folksy word, somewhere in the document, Feoffee should be defined as being synonymous with "Trustee."
8. In A)6)a), I recommend that the Board of Selectmen appoint the same number of Feoffees (3) as the School Committee. Finance Committee should not appoint any. Also, I recommend deletion of the entire third bullet in A)6)a).
9. In A)6)b), change the appointment terms if appointment authority changes, as recommended in #8 above. Also, in last bullet of A)6)b), change "remaining" to "remainder of the" term.
10. In A)6)d), what "policy" is referred to?
11. In A)6)e), add "unless otherwise stated in this Trust document." There are some cases where a 2/3 vote is necessary.
12. In A)7), what "law" is referred to?
13. In A)7)d), what "Alternative" is it?
14. In A)7)e), add "for the benefit of the Trust."
15. In A)7)g), are the Feoffees/Trustees really empowered to do this without approval of any authority (School Comm/BOS). Should be a limit (dollar or other). Also, what happens if/when the School Comm/BOS sues the Feoffees? It has happened in history.
16. In A)7)h), if "agents" means any other type of employee, etc., I am OK---if not, please clarify.
17. In A)8)f) & g), I recommend a specific not-to-exceed date. "Expeditiously" is too loose. The date could be, for example, "within three months of the close of the Trust's fiscal year." By the way, what is the fiscal year?---it needs to be defined.
18. I assume Section B) will not be in the final Trust document.
19. I assume Section C), in some form, will be in the final Trust document. I do not think in C)3) that it is appropriate for the Feoffees/Trustees to be involved in seeking amendments to the Trust---only the School Committee or BOS should be doing this.

I reserve the right to raise other issues as this process progresses. None of my comments are meant to be legal advice---they are my comments as a member of the BOS. Thank you.

Sincerely, Pat

Pat McNally  
Board of Selectmen  
978.356.4655

Feoffees Trust outline dated 1/7/05

Comments by Elizabeth Kilcoyne 1/13/05

10. This is a municipal trust using the town's federal tax ID(according to 8)a). It appears that the Town, i.e. the Selectmen, is liable for the actions of the trustees who are our agents. Therefore, at a minimum, the Selectmen should appoint the majority of the trustees (4). Boards that are not elected and do not have liability should not appoint trustees to the Feoffees. Suggest the School Committee appoint the remaining 3. Also, since the Town is liable for the trust, I would encourage us to appoint a Selectman to the Feoffees.
11. There are many clauses in this document that appear to be in conflict. For instance, does the School Committee apply for the \$, as stated in 5) or does the trust distribute the net proceeds as stated in 8)g)? There are other clauses that have been identified by Pat.
12. The accounting of funds in the trust is not mentioned other than reference to an annual audit. Suggest inserting accounting language in section 7)h).
13. This discussion has been going on for at least 3 years. I see no reason why we need to respond in 4 days. We should be involving town counsel in this review process to be sure we are protecting the town, as we are not municipal trust experts.
14. It seems that this document needs a lot more work before the BOS can give it a final review. I look forward to reviewing the Trust Agreement that will be presented to the court.

E-mail from Ingrid Miles

Here are my comments re revised Trust Document intent as this is not the final form:

In our joint meetings, I suggested 3 SC appointments and 3 BOS appointments and one at large (Town Meeting or Town Moderator) and still support that. FinCom rep wanted the FinCom included in the appointment process. This consequently misused out the 3 BOS appointees to 2 with the argument to maintain balance of school committee and municipal appointments.

Regarding the nearest relative, it should be clearly defined.

I would change the phrase of fair and reasonable rents to market value rents.

Re composition of the Trustees: I would like to see the existing board supplement the proposed 7 as an advisory board if they so wish to stay on board with a sunset clause to ensure continuity and stability; I had suggested this previously. Does this have to be written into the Trust; I'm not an expert in these matters.

Otherwise, I have deferred to Pat's excellent legal scrutiny of the document with which I concur and offer the following:

Re A)4) Having participated through the document revisions to clarify Pat's comments re: " In A)4), what does "no more than one year" mean? "One year" from when? Please clarify. Also, I take A)4) as it is stated: "two thirds... in office" not "two thirds... voting." Is this correct?"

One year means from issuance of or documenting an emergency as I understand it though it now appears to be unclear to the unaware; also, the 2/3 ....in office is a supermajority vote meaning 2/3 of the school committee membership is required.

Re A)5) I agree with Pat re the word Grant as it is not used elsewhere and replace with the phrase "Funding Approval Procedure" is adequate and clear. Also in Item 5 reference to superintendent as documenter is better than approver as noted in documenting the emergency.

Ingrid

<<<<END OF DOCUMENT<<<<

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January 14, 2005

Board of Selectmen  
Town of Ipswich  
Ipswich, MA 01938

Re: Memorandum of Casner & Edwards dated January 7, 2005 which  
outlines proposed changes to the Trust of William Payne

Ladies and Gentlemen:

On behalf of Little Neck Homeowners, Inc., I present the following initial questions and comments regarding Casner & Edwards' proposal on behalf of the School Committee.

1. It is proposed that the new Feoffees not be bound by existing arrangements and rules. How will the seasonal cottage community character of Little Neck be preserved? For example, the Feoffees have strictly enforced limits on footprints and roof lines, they have enforced the prohibition on the erection of fences and overgrowth of vegetation; have mediated parking and other disputes, etc. Who will now perform those and similar functions and pursuant to what set of rules?
2. It is proposed to make the trust a municipal trust (8a) in which the town owns the land. Why then is it proposed (9biv) that the town tax itself on the land? If the town taxes itself on its land, who has the power to seek an abatement? The homeowners believe that the taxes are already too high. The current Feoffees agreed that they are too high and reportedly filed an abatement application which they did not pursue because of the pending changes. In the future, if the town sets a tax for itself to pay on its own land to pass on to the homeowners, the town will have a conflict in considering the filing of abatements against itself. Shouldn't the homeowners simply pay the Town fair market rental for the land? Even if the Feoffees are treated as nominal title holders, now that they will be constituted from town boards, there is an irreconcilable conflict.

Board of Selectmen  
Town of Ipswich  
January 14, 2005  
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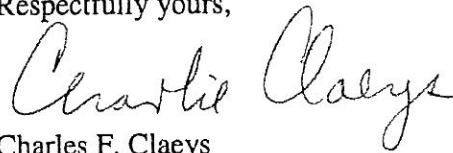
3. The Memorandum proposed (9a) that the income provided to the Ipswich public schools each year shall at a minimum represent a "reasonable return on the market value of the Trust's assets". It is not appropriate to apply the standard of an investment trust or index fund to a land trust. This is a land trust. The income should be based on fair market rentals.

4. When can we review the proposed new trust document?

5. Will a manager of the land be appointed immediately? How will that manager assume the responsibilities and functions of the current Feoffees? Shouldn't the current Feoffees continue in office through a suitable transition period?

I have also enclosed my letters dated July 7, 2003 and August 9, 2004 addressed to the Feoffees and expressing some of the concerns of the homeowners. Since you are the political stewards of the Town, the homeowners hope that you will recognize them as part of the Ipswich community and consider their questions, comments and concerns.

Respectfully yours,



Charles F. Claeys

CFC/tlm  
Enclosures

cc: Donald M. Greenough, Esq.  
Richard C. Allen, Esq.  
Board of Directors, Little Neck Homeowners, Inc.

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**CASNER & EDWARDS, LLP**

**MEMORANDUM**

To: Ipswich School Committee and Superintendent

From: Richard C. Allen                      SUBJECT TO ATTORNEY-CLIENT  
PRIVILEGE

Date: January 25, 2005

RE: Content and procedure for Feoffees Trust [OPEN ISSUES]

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Set forth below is the January 7, 2005 version of the outline for the revised Feoffees Trust, annotated (in redlined format) with the open issues at this time, including: (i) the issues identified by the Board of Selectmen in the January 10, 2005 Board of Selectmen meeting and subsequently in their written comments; and (ii) the issues raised in and subsequent to that meeting by Little Neck Homeowners, Inc.

First, some general issues:

1. The Selectmen, the Feoffees, and Little Neck Homeowners, Inc. have all expressed interest in seeing the revised Trust language itself (that is, the proposed Probate Court order that we will be asking the Court to issue). My view is that this is very understandable caution and that this should be accommodated. I will begin working on the court order language unless instructed otherwise.
2. The Selectmen also requested that once they are presented with the Trust document, there be a period of time to enable the Selectmen to get comment from Town Counsel and to discuss the matter. My view is that this should be accommodated.

Board of Selectmen synopsis (at No. 8) proposes the following as a public input process: "The Feoffees, School Committee and Board of Selectmen will meet at least twice jointly in public session to discuss proposed changes to the Trust."

3. Selectman McNally asks whether special legislation is needed to accomplish the contemplated changes. My view is no, what the Probate Court will be asked to do is within its authority granted from the Legislature to supervise estates, trusts and trustees. I understand Donald Greenough to be of the same view.

A) Content of the revised trust (the revised trust will be a court order – see B, below):

- 1) Name: Feoffees of the Grammar School in the Town of Ipswich

BOARD OF SELECTMEN SUGGESTION: document that the word Feoffee means “trustee” and use the following as the Trust name: “Trust of the Feoffees of the Grammar School in the Town of Ipswich”

COMMENT: it may be useful to distinguish more precisely in this way between the Feoffees as the body holding the property and other assets in trust (i.e., the trustee) and Trust itself. I checked with Don Greenough about the view of the Feoffees here, and he is comfortable with this distinction, suggesting this alternative: “Feoffees of the Grammar School in the Town of Ipswich Trust.”

- 2) Beneficiary: the Ipswich public schools

*St. John's / Ipswich Public Schools*

BOARD OF SELECTMEN SUGGESTION: “Town of Ipswich Public Schools”

COMMENT: no legal objection to this suggested change.

- 3) Trust purpose: in furtherance of the bequest in 1660 by William Paine who established this Trust “to be and remain to the benefit of the free school of Ipswich forever,” the Trust purpose is to enrich and broaden the education experience of students in the Ipswich public schools by, at least annually, making distributions of the trust’s net income, after reasonable expenses and operational reserves, to support supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students. Funds from the Trust shall not be used for the ordinary and regular expenses of the schools, except to address an emergency as defined in A(4), below.
- 4) For purposes of A(3) above, an “emergency” means an indispensable necessity that urgently requires immediate action for which funding is not otherwise available, provided: (a) that the emergency and the proposed use of funds from the Trust are documented in writing by the Superintendent of Schools; (b) that the existence of the emergency and the proposed use of funds from the Trust to address the emergency are approved by a vote of two thirds of the members of the School Committee in office; and (c) that the Superintendent’s documentation of the emergency and the School Committee’s approval shall be effective for no more than one year.

BOARD OF SELECTMEN QUESTION: in subparagraph (c) above, does "vote of two thirds of the members of the School Committee in office" mean that a super-majority of two thirds of all School Committee members is needed, not just two thirds of the School Committee members present and voting?

ANSWER: yes.

BOARD OF SELECTMEN QUESTION: in subparagraph (c) above, "effective for no more than one year" means one year from when?

ANSWER: this can be clarified by adding "from the date of School Committee approval" to the end of subparagraph (c).

- 5) Grant approval procedure: only proposals submitted by the School Committee may be funded, with the Feoffees authorized to decline a School Committee proposal only as follows: (i) the Feoffees shall decline to fund a School Committee proposal to the extent that funds are not available; (ii) the Feoffees shall decline to fund a School Committee proposal to the extent that, the request is not for enhancement purposes or to address an emergency approved by the Superintendent and School Committee pursuant to A(4) above – that is, to the extent that the proposal is for a program or use that does not meet the trust purpose set forth in A(3) and A(4), above, and (iii) the Feoffees may, by a vote of two thirds of the Feoffees in office, decline a School Committee proposal to address an emergency as defined above. A decision by the Feoffees to decline a School Committee request for any reason will, at the request of the School Committee, be reviewable de novo by the Probate Court (i.e., the Court itself will decide how the standards in the Trust apply to the facts, rather than merely deciding whether the Feoffees applied the correct standard and followed reasonable steps in reaching their decision).

BOARD OF SELECTMEN  
SUGGESTIONS/QUESTIONS:

- in heading of paragraph (5), change "Grant approval procedure" to "Funding approval procedure"

COMMENT: no objection

- in subparagraph (ii), change "an emergency approved by the Superintendent and School Committee" to "an

emergency documented by the Superintendent and approved by the School Committee”

COMMENT: no objection

- in subparagraph (iii), is a super-majority of two-thirds of the Feoffees needed to decline a School Committee proposal to address an emergency?

ANSWER: yes

#### 6) Trust governance

##### a) Seven Feoffees

- 3 appointed by the School Committee, 2 appointed by the Selectmen; 1 appointed by the Town Finance Committee, and 1 elected by Town Meeting (appointed by the Town Moderator if no one is elected at the Town Meeting at which this seat normally is filled)

BOARD OF SELECTMEN SUGGESTION:  
3 Feoffees appointed by Board of Selectmen, 3 by School Committee, and 1 by Town Meeting (or 2 by Selectmen, 2 by School Committee, and 3 by Town Meeting), and Finance Committee should not appoint. (Selectwoman Kilcoyne suggests that Selectmen appoint a majority, including appointing a Selectman.)

BOARD OF SELECTMEN SUGGESTION: each current Feoffee may remain until he moves out of Ipswich, resigns, or dies.

ANOTHER BOARD OF SELECTMEN SUGGESTION: current Feoffees as an advisory board with a sunset clause to ensure continuity and stability.

COMMENT: possible alternatives here include: (i) an initial board of Feoffees that is larger than 7, consisting of the 7 new Feoffees plus those current Feoffees who wish to serve, with the current Feoffees not

replaced when their service ends; (ii) current Feoffees serving a fixed term of years, with eligibility at the end of such term for inclusion in an appointing body's appointments; or (iii) current Feoffees as advisory board.

NOTE: add "or becomes disqualified" if, pursuant to the discussion below, such Feoffee would be disqualified from serving because he or she holds a disqualifying Town office or is subject to a Little Neck residence disqualification.

- no person may be a Feoffee while serving as a member of School Committee, Board of Selectmen, or Finance Committee or as Town Manager

BOARD OF SELECTMEN SUGGESTION: delete this bullet in its entirety, or replace it with "no more than one of each member of the following committees may serve concurrently: School Committee, Board of Selectmen (and Town Manager), Finance Committee"

COMMENT: the latter suggestion would permit the current Feoffee who serves as Selectman/Town Manager to continue serving as a Feoffee while serving in such Town office.

The question above as to whether persons holding certain Town offices are in an institutional conflict of interest and should be precluded from serving as a Feoffee is separate from the question below as to whether there are persons whose situations involve enough of a personal, business or family conflict of interest that they should be precluded from serving as a Feoffee while the conflict of interest situation exists.

- no person may be a Feoffee who is a resident or home owner on Little Neck, nor may a person be a Feoffee if one of the following is a resident or home owner on Little Neck: (i) a close relative; or (ii) any other person who is likely to be perceived as inherently interfering with the person's independent judgment as a Feoffee (to

be defined in the court order) (e.g., an employment supervisor of the Feoffee)

BOARD OF SELECTMEN SUGGESTIONS:

(i) delete this bullet in its entirety; or else (ii) define “close relative” and provide that no more than two Little Neck residents may serve as Feoffees at a time.]<sup>1</sup>

COMMENT: the main question here is this: should a person be disqualified from service as a Feoffee if he or she is a resident of Little Neck, if a close relative is a resident, or if anyone else who might be perceived as interfering with the Feoffee’s independent judgment, such as the Feoffee’s employer or employment supervisor, is a resident?<sup>2</sup>  
Or, on the other hand, should he or she be permitted to serve as a Feoffee while recusing himself or herself from acting when the matter under consideration involves a personal conflict of interest? Thus, the question boils down to whether there should be a per se disqualification here, or whether the question of appointment should be left to the appointing bodies?

I understand that a close relative of Mr. Whiston now is a Little Neck owner and resident, which triggers this question: if there will be a residential conflict-of-interest disqualification in the Trust document from service as a Feoffee, should this disqualification be applied to the current Feoffees?

A key component of this question is whether, in the carrying out of the Feoffees’ responsibilities, there are sufficient matters with respect to which a Feoffee with such a conflict of interest could act on

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<sup>1</sup> Note: this draft Trust provision is separate from and would not affect the question above as to whether persons holding certain Town offices (e.g., School Committee, Board of Selectmen, Town Manager, Finance Committee) are in an institutional conflict of interest and should be precluded from serving as a Feoffee.

<sup>2</sup> If a Little Neck residence disqualification from service as a Feoffee is to be included in the Trust document, it is correct that the applicable standard should be precisely set forth in the Trust document.

an ongoing basis without having to recuse himself or herself?

For example, a Feoffee with a Little Neck residence conflict of interest would not, in my view, be able to act with respect to most matters relating to Little Neck itself. On the other hand, it is likely that he or she could still act with respect to the oversight of the Feoffees' funds and the distributions to the schools, and perhaps some general business matters such as the contracting of certain services by the Feoffees. The question, here, then, is whether this is sufficient?

The Massachusetts conflict of interest statute for municipal employees (the Feoffees would be viewed as "municipal employees" under the statute, even though uncompensated) is triggered if any of the following has a financial interest in the matter involved: "[the employee], his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment. G.L. c. 268A, §19. "Immediate family" is defined as "the employee and his spouse, and their parents, children, brothers and sisters" (G.L. c. 268A, §1(e) (definition of "immediate family").

A municipal employee is prohibited from participating "in a particular matter in which to his knowledge he or [any of the persons identified above] has a financial interest." G.L. c. 268A, §19. It is clear, in my view, that any Feoffees matter relating to the Little Neck property would be a "matter in which [the family member, etc. owning or residing on Little Neck] has a financial interest."

There is an exception under G.L. c. 268A, §19 if the municipal employee has previously disclosed the situation to the official responsible for the

appointment of the employee and received in advance a written determination "that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee." However, it would be difficult, in my view, for the appointing official to conclude that ownership or residence on Little Neck by the Feoffee or a close relative, etc. would qualify for this exception to the municipal employee conflict of interest prohibition.

While the following IRS requirements are not directly applicable, it may be useful to keep in mind the scope of family-member conflict of interest generally used by the IRS: (i) in the self-dealing rules for private foundations (Internal Revenue Code §4946(d)), "family" is defined as the individual's "spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren. Internal Revenue Code §4946(d); and (ii) in the Intermediate Sanctions regulations for non-private foundation public charities under Section 501(c)(3), "family" is defined as the person's spouse, brothers or sisters (by whole or half blood), spouses of brothers or sisters (by whole or half blood), ancestors, children (including legally adopted children), grandchildren, great grandchildren, and spouses of children, grandchildren, and great grandchildren.<sup>3</sup>

The Attorney General's Form PC applies its transaction disclosure requirement to the following family members: a spouse (other than a spouse who is legally divorced from the individual or who is residing apart under a decree of separate maintenance), a child (including legally adopted children), grandchild, sibling, parent, and grandparent. While the requirement of filing a Form PC does not apply to a municipal trust, the Attorney General would be likely to view these

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<sup>3</sup> The IRS regulation specifies that legally adopted persons are included within the definition of children, grandchildren, and great grandchildren.

persons as "family" for purposes of a conflict of interest complaint or investigation.

Accordingly, if the Trust document is to include a Little Neck residence disqualification, the following categories could be considered for inclusion within the disqualification. That is, an individual would be disqualified from service as a Feoffee if any of the following persons is a resident or homeowner on Little Neck:

1. the potential Feoffee
2. his or her spouse;
3. a parent [or grandparent] of the potential Feoffee or of his or her spouse.
4. children [or grandchildren] of the potential Feoffee and/or his or her spouse, [or a spouse of such child or grandchild]
5. a sibling [or spouse thereof] of the potential Feoffee or his or spouse;
6. [employer or immediate employment supervisor of the potential Feoffee or his or spouse].

The persons not in brackets above are "immediate family" under the Massachusetts conflict of interest statute; the persons in brackets are listed for consideration based on IRS, Attorney General, or other definitions.

Other formulations would suffice as well.

b) term of service

- 3-year staggered terms (to initiate the rotation, the initial terms would be one year for one School Committee appointee and the Feoffee elected by the Town Meeting or appointed by the Town Moderator, two years for one Selectmen appointee and one School Committee appointee, and three years for one Selectmen appointee, one School Committee appointee, and the Finance Committee appointee)

BOARD OF SELECTMEN COMMENT: this paragraph would need to be adjusted to reflect any

changes in the appointment of Feoffees in Section A(6)(a).

RESPONSE: agreed

BOARD OF SELECTMEN COMMENT: need provision for mid-term replacement in case of resignation or removal.

RESPONSE: see Section A(6)(b), below]

- no term limits
- may be removed by appointing authority for cause
- in the case of a vacancy, the appointing authority may appoint a Feoffee to fill the remaining term (in the case of a vacancy in the Town Meeting seat, the Town Moderator may appoint a Feoffee to fill the remaining term).

BOARD OF SELECTMEN COMMENT: change "the remaining term" to "the remainder of the term."

RESPONSE: ok

- c) serve without compensation, but reasonable and necessary trust-related expenses paid
- d) subject to a conflict of interest policy

BOARD OF SELECTMEN QUESTION: to what policy does this refer?

RESPONSE: add "approved by the School Committee."

- e) the meeting quorum is four Feoffees, and a majority vote of those voting is required for action

BOARD OF SELECTMEN COMMENT: add "unless otherwise stated in this Trust document"

RESPONSE: agreed

7) Powers, in addition to those conferred upon trustees by law:

BOARD OF SELECTMEN QUESTION: to what  
"law" does this refer?

RESPONSE: there is a general body of  
Massachusetts law regarding trusts and trustees –  
both statutory and common law – that is too  
extensive to enumerate in the Trust document.

BOARD OF SELECTMEN COMMENT: there  
should be a structure outlined for account reporting  
and standards.

RESPONSE: in Section A(8)(f), an annual audit is  
required. Thus, the financial accounts must comply  
with generally accepted accounting principles.

- a) lease, improve and manage the trust real estate
- b) establish and collect rents and fees
- c) establish and enforce regulations, including through eviction, with respect to residency on and ~~ownership~~ <sup>use</sup> of trust property
- d) invest trust assets [ALTERNATIVE A: in investments permissible for municipal trusts] [ALTERNATIVE B: in accordance with the prudent investor rule set forth in M.G.L. c. 203C or any successor statute.]

BOARD OF SELECTMEN QUESTION: to what  
alternatives does the document refer?

RESPONSE: the investment authority to be stated  
here is still to be determined by the bodies involved.  
The prudent investor rule would provide more  
flexibility of investment; the requirements for  
municipal trusts, which will apply unless a different  
standard is provided in the Trust document, are  
more cautious.

- e) accept charitable gifts

BOARD OF SELECTMEN COMMENT: add "for the benefit of the trust" ✓

RESPONSE: ok

- f) pay all proper charges and expenses
- g) pursue, defend and settle all claims and demands relating to the trust or trust property

BOARD OF SELECTMEN COMMENT: require (i) advice and consent of Board of Selectmen and School Committee; or (ii) dollar value limit above which the Feoffees have to come before Board of Selectmen and School Committee.

RESPONSE: advice and consent of School Committee, with School Committee information report to Town Manager.

BOARD OF SELECTMEN COMMENT: should provide for what the course of action should be if Feoffees sue the Board of Selectmen or School Committee.

RESPONSE: sued body notify the other body.

- h) hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of 3 years, with termination available to the Feoffees for cause)

BOARD OF SELECTMEN QUESTION: does "agent" mean other type of employee?. If not, please explain.

RESPONSE: the Feoffees would be authorized to hire (subject to applicable laws such as the public bidding laws – see Section A(8)(d)) a management company, a rental agent, a collection agent, a rental valuation expert, or other necessary services on a contract basis without the providers of these services becoming Town employees.

8) Applicable requirements

- a) the trust would be a municipal trust, not a separate private trust with separate federal tax ID and separate tax exemption
- b) subject to open meeting law
- c) subject to public records law
- d) subject to public bidding law
- e) subject to public ethics law (i.e., conflict of interest)
- f) explicitly stated requirement: Feoffees must annually file an audited financial report with the Town and the School Committee, said audit to be completed as expeditiously as possible.

BOARD OF SELECTMEN COMMENT:

"expeditiously" is too vague. And, need to specify the fiscal year.

RESPONSE: add the following: "within four months of the close of the fiscal year. The trust will use the same fiscal year as the Town."

- g) Feoffees shall expeditiously distribute the net proceeds of the Trust to the School Committee. The Feoffees shall report to the School Committee by September 1 of each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will be distributing to the public schools in the coming year, and shall, immediately upon completion of the annual audit, report any adjustment in this amount that results from the audit to the School Committee.

BOARD OF SELECTMEN COMMENT:

"expeditiously" is too vague.

RESPONSE: delete "expeditiously" and add to the end of the first sentence, "within six months of the close of the fiscal year."

BOARD OF SELECTMEN COMMENT:

"distribute" is inconsistent with the funding approval process in A(5).

RESPONSE: add "subject to the funding approval  
procedure in A(5), above" ✓

- h) include IRS-required standard language (e.g., no private inurement, etc.)

9) Rental of property on Little Neck

- a) pursuant to the Feoffees' fiduciary duties as trustees of this Trust to benefit the Ipswich public schools, the Feoffees shall charge and collect rents, for residence on or other use of the trust property, at a level sufficient to provide a reasonable stream of income to the Ipswich public schools on an annual basis. To the extent possible, the amount of income provided to the Ipswich public schools each year shall at a minimum represent a reasonable return on the market value of the Trust's assets; if the income provided to the public schools is lower than the amount that would be such a reasonable return, the Feoffees shall report the reasons for this differential to the School Committee.

BOARD OF SELECTMEN (SELECTWOMAN  
MILES) COMMENT: would change fair and  
reasonable rents to market value rents. ✓

RESPONSE: to be discussed.

- b) in calculating the rent levels necessary to satisfy the standard set forth in (a), above, all costs of operation of the Trust shall be taken into account, including rents shall be charged and collected at a level sufficient to cover the following costs, to the extent that they provide benefit to the residents and are appropriately includable in determining the rent, as well as all other costs of operation of the Trust: (i) the cost of extra services provided by or for the Feoffees at or in connection with Little Neck (such as police details, etc.); (ii) the cost of providing and maintaining common or unoccupied land or structures; (iii) the cost of providing and maintaining other amenities; and (iv) taxes on all the land, including the common or unoccupied land and all improvements; and (v) taxes on residential structures if not paid separately by the homeowners or residents.

COMMENT: I suggest the redline changes in  
(A)(9)(b) as a clarification. The "shall be taken into  
account" language should make it clearer that this

section is not suggesting that rents be charged merely at a level that recovers costs. Subsection (v) is added to make it clear that if the property tax mechanism changes in the future so that the tax is paid by the Feoffees and not the residents, this is to be taken into account in setting the rent levels.

- c) consideration should be given to establishing rents that vary lot by lot, depending on size, location, view, and other factors affecting rental value, including year-round versus seasonal rental. However, no more than twenty-four lots, the number presently eligible for year-round rental, shall be rented on a year-round basis.
- d) Feoffees are authorized to enter into written rental agreements for periods of years if this will maximize the financial benefit to the public schools
- e) Feoffees are authorized to engage expert assistance in establishing rent levels, length of rentals, and other rental terms
- f) additional Feoffee powers are enumerated in A(7), above
- g) the new Feoffees under the revised trust are to be considered as continuing the present trust for real estate title purposes and other property rights purposes, and the new Feoffees will not be bound by existing arrangements as to rents, charges, and rules (except that rents in place when the Court order takes effect shall continue for the remainder of the fiscal year)

B) Process for revising the trust:

BOARD OF SELECTMEN QUESTION: will this section be included in the Trust document?

RESPONSE: no

- 1) Reach agreement (School Committee, Town, Feoffees) on plan and court petition

BOARD OF SELECTMEN COMMENT: change "Town" to "Board of Selectmen"

RESPONSE: ok

- 2) Discuss plan and petition with Attorney General's Division of Public Charities
- 3) Submit joint petition by School Committee, Town and Feoffees to Essex County Probate Court, seeking approval of the new trust in the form of a proposed court order

BOARD OF SELECTMEN COMMENT: change  
"Town" to "Board of Selectmen"

RESPONSE: ok ✓

- 4) Attorney General as necessary Defendant
- 5) notice to the Little Neck residents

BOARD OF SELECTMEN COMMENT: add  
notice to Town Meeting

RESPONSE: to be discussed.

C) Ongoing court oversight

- 1) Court retains jurisdiction of the matter to make such further orders as appropriate
- 2) the reasonableness of rents, of Feoffee expenses, of operational reserves, and of other practices of the Feoffees shall be reviewable by the Probate Court at the request of the School Committee or the Board of Selectmen
- 3) future amendments to the revised trust as embodied in the court's order may be sought by the Feoffees, the School Committee, and the Board of Selectmen, or by one of them individually upon notice to the others.

BOARD OF SELECTMEN COMMENT: only the  
School committee or the Board of Selectmen should  
be allowed to seek changes to the Trust.

RESPONSE: to be discussed.