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Sent: Wednesday, April 13, 2005 8:41 PM
To: Richard Korb (rksuper@aol.com)
Subject: Revised Feoffees Trust summary

Rick,

Attached is my revised Feoffees Trust summary. Changes from the January 7 version commented on by the Board of Selectmen are redlined. Many of the changes merely memorialize decisions made in the January 25 and January 27 working meetings. However, the following are new or open issues or otherwise call for particular attention by the School Committee:

- structuring the Feoffee appointments during the five-year transition period so that there is not an even number of Feoffees [A(6)(a)]
-
- application of the Little Neck resident/homeowner disqualification to the present Feoffees, now that we are informed that Don Whiston will be resigning as a Feoffee effective at the time that the new Feoffees structure takes effect [A(6)(a)]
-
- the other revised language regarding Feoffee appointments and terms of service [A(6)(a) and (b)]
-
- an explicit Feoffee power to borrow funds, but not to collateralize the Trust real property [A(7)(g)]

See you tomorrow night.

egards,

Dick

<<Ipswich revised Feoffees Trust summary v.9.DOC>>

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CASNER & EDWARDS, LLP

MEMORANDUM

To: Ipswich School Committee and Superintendent
From: Richard C. Allen
Date: April 13, 2005
RE: Content and procedure for Feoffees Trust (revised April 13, 2005)

Set forth below is my current outline for the revised Feoffees Trust summary, incorporating the discussion at the January 27, 2005 working meeting of the School Committee and the Town Committee.

Changes from the January 7, 2005 version commented on by the Board of Selectmen -- changes discussed in the January 25 and January 27 working meeting, plus others that I recommend -- are presented in redlined format. In some places, the summary is annotated with discussion points regarding open issues.

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

- 1) Name: Feoffees of the Grammar School in the Town of Ipswich Trust
- 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 ~~t~~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 from the date of School Committee approval.

5) Grant Funding 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 documented by the Superintendent and approved by the 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 ~~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 if said vote is taken no later than thirty (30) days after the emergency proposal is submitted to the Feoffees. 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

- 3 appointed by the School Committee, ~~2-3~~ 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)~~, and the 3 present Feoffees who wish to continue to serve in this capacity

[NOTE: Don Greenough indicates that while Donald Whiston will assist with the transition to the revised Feoffees structure, Mr. Whiston intends to resign as a Feoffee effective at the time that the new Feoffees structure takes effect. This means that for the initial five-year period, there will be a total of 10 Feoffees, an even number. An even number could also result if the mathematically right number of resignations, disqualifications, etc. of grandfathered Feoffees were to occur during the course of the five-year grandfathered period.

It would be better to address this now, rather than later coming to a stalemate as a result of having an even number of Feoffees and no mechanism for resolving it by filling a vacancy.

One idea would be to change the initial town body appointments to an even number for now (so that with the 3 grandfathered Feoffees, the total is an odd number), with an additional town body appointment to be made at the end of the five-year grandfathered period or at such earlier time that (due to grandfathered Feoffees resigning, moving out of Ipswich, etc.) the number of grandfathered Feoffees is an even number. Here are some ways that this could work:

- 4 BOS + 3SC+1 FinCom + 3 grandfathered Feoffees for a total of 11 at the beginning of the restructured board, with SC having another appointment at the end of the 5-year grandfathered period or at such earlier time that an even number is created because one or all three grandfathered Feoffees are no longer serving (resignation, moving out of Ipswich, etc.); or
- if there is no separate appointment to be made by FinCom, another possible formula would be 3 BOS + 3SC + 3 grandfathered Feoffees for a total of 9 at the beginning of the restructured board, with SC or BOS (determined now and specified in the document) having another appointment at the end of the five-year grandfathered period or at such earlier time that an even number is created because one or all three grandfathered Feoffees are no longer serving; or
- other formulas would work mathematically as well.]

- no person may be a Feoffee while serving as a member of School Committee, Board of Selectmen, or Finance Committee or as Town Manager or Superintendent of Schools, except that this limitation shall not apply to the present Feoffees while serving the five-year term provided in A(6)(b), below.
- no person may be a Feoffee who is a resident or home owner on Little Neck, nor may a person be a Feoffee (referred to here as the “potential 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)~~

1. the potential Feoffee's spouse;
2. a parent of the potential Feoffee or of the potential Feoffee's spouse;
3. children of the potential Feoffee and/or of the potential Feoffee's spouse;
4. a sibling of the potential Feoffee or of the potential Feoffee's spouse.

[NOTE: in the previous meeting, there was discussion of exempting a present Feoffee from disqualification based on ownership of a Little Neck residence by his child. However, that Feoffee has indicated that he intends to resign as a Feoffee effective at the time that the new Feoffees structure takes effect, so presumably this exception to the above disqualification language is no longer necessary.]

b) term of service

- 3-year staggered terms for the new Feoffees (to initiate the rotation, the initial terms of some new Feoffees would be 1-year or 2-year 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)
- no term limits for these Feoffee seats
- to assist with the transition to the revised Trust structure, the three present Feoffees who wish to continue to serve would each be appointed for a single, non-renewable 5-year term. They also are eligible for appointment at any time by an appointing authority if not subject to the office-holder disqualification or the Little Neck residence or homeowner disqualification provided in A(6)(a), above.
- may be removed by appointing authority for cause (and a present Feoffee serving a 5-year term as provided above may be removed by the Probate Court for cause)

- in the case of a vacancy (other than a vacancy with respect to a five-year term of a present Feoffee), the appointing authority may appoint a Feoffee to fill the remaining remainder of the 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) shall be subject to a conflict of interest policy approved by the School Committee
- e) the meeting quorum is four a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein, a majority vote of those voting present is required for action

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

- a) lease, improve and manage the ~~t~~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~~ use of ~~t~~Trust property
- d) invest ~~t~~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.]~~
- e) accept charitable gifts for the benefit of the Trust
- f) pay all proper charges and expenses
- g) borrow funds to the extent necessary for the prudent operation and maintenance of the Trust property, provided that the Trust real property may not be collateralized
- g) h) pursue, defend and settle all claims and demands relating to the ~~t~~Trust or ~~t~~Trust property, subject to the advice and consent of the School Committee and the Board of Selectmen (if the School Committee or Board of Selectmen are sued with respect to a matter

relating to the Trust or the Trust property, the sued body will notify the other body)

h) i) 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; Feoffees may provide that terms are renewable at the Feoffees' discretion)

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 within four months of the close of the fiscal year. The Trust will use the same fiscal year as the Town.
- g) Feoffees shall, subject to the funding approval procedure in A(5), above, expeditiously distribute the net proceeds of the Trust to the School Committee within six months of the close of the fiscal year. 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) Feoffees shall establish and make available to the Little Neck residents a means of ongoing mutual communication mechanism of an informational and advisory nature, such as an advisory council.
- h) i) 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 ~~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.
- 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 whether or not paid separately by the homeowners or residents. The Feoffees shall take reasonable steps on an ongoing basis to monitor property tax assessments and property taxes levied with respect to Little Neck occupied property, unoccupied property, and common land, to evaluate whether adjustments should be sought, to respond to resident request with respect to property tax matters, and to seek property tax adjustments where determined to be appropriate.
- 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 and practices
- f) additional Feoffee powers are enumerated in A(7), above
- g) the new Feoffees under the revised ~~t~~Trust are to be considered as continuing the present ~~t~~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 ~~t~~Trust:

- 1) Reach agreement (School Committee, ~~Town~~Board of Selectmen, 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~~Board of Selectmen and Feoffees to Essex County Probate Court, seeking approval of the new ~~t~~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 ~~t~~Trust as embodied in the court's order may be sought by ~~the Feoffees~~, the School Committee, and the Board of Selectmen with notice to the Feoffees, or by ~~one of them individually either the School Committee or the Board of Selectmen with upon notice to the others body and to the Feoffees~~

Ipswich School Committee
and Superintendent
April 13, 2005
Page 9

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66 Labor-in-Vain Road,
Ipswich, MA 01938

June 8, 2006

To: Harvey Schwartz, Robert Bonsignore, Paul Surpitski, Joan Arsenault, Robert A. White, Ingrid Miles
From: Robert K. Weatherall (utrum@verizon.net)

Town Committee on the Feoffees

It has been a long time – over a year – since the School Committee last shared with us their deliberations on the terms of a new trust structure for the Feoffees. Here, however, is the most recent draft Attorney Allen has prepared for them.

While they have also been seeking input from members of the Board of Selectmen, the Finance Committee, and the Feoffees, they want to hear from the Town Committee before they proceed further.

The draft follows from a number of discussions which Dick Allen has had with the School Committee since we met with them last year. Changed circumstances have prompted significant changes in the text since Dick prepared his first draft in December 2003. For example, in light of the schools' budget problems the School Committee have sought a significant change in the stated purpose of the trust. Where provision A(3) once said that the purpose of the trust was to "enrich and broaden the education experience of students in the Ipswich public schools" and banned use of the income from the trust to cover "ordinary and regular expenses", it now leaves it entirely up to the School Committee how the income is used, but "with preference when feasible" that it be used for enrichment.

Similarly, in light of the massive sewer project which the Feoffees have had to manage at Little Neck, the latest draft specifies in provision A(4) that persons appointed as Feoffees should have expertise in such areas as real estate and rental property management, construction, finance, and dispute resolution. At the same time the draft calls for as many as 7 appointed Feoffees as against 5 in the original draft.

Two of our members have travel plans for later this month so I am aiming at a meeting in July. For the sake of our Selectman and School Committee members we need to avoid Mondays and Thursdays. Please let me know as soon as you can by email at utrum@verizon.net which Tuesday and Wednesday evenings in July you could manage. I will let you know pronto which date works for most of us.

A first order of business will be to choose a chairman for the year (we had no election last year).

It occurs to me that we might also want to consider whether getting a new trust structure is still such an urgent matter. It has taken the better part of three years to get where we are and there are still unsettled issues. In the mean time the Feoffees have fully recognized their responsibilities, handing over \$570,000 to the schools this past year. For the foreseeable future the hope of using their grants for enhancement is likely to be a will of the wisp. At some point the tenants are certain to make another offer to buy out the Feoffees. Should their offer be acceptable to the Selectmen and School Committee the buy-out will require court approval. Might not that be the time to update the terms of the 1756 statute?

Looking forward to hearing from you about your availability.

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CASNER & EDWARDS, LLP

MEMORANDUM

To: Ipswich School Committee and Superintendent

From: Richard C. Allen

Date: June 2, 2006

RE: Content and procedure for Feoffees Trust (revised June 2, 2006)

Set forth below is my current revised Feoffees Trust summary, with the question of enhancement versus operational use of the distributed funds addressed as follows:

(i) determination of the use of the funds to be made by the School Committee; and (ii) retention of the principle that when feasible the funds are to be used for enhancement.

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 Trust
- 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 support the Ipswich public schools by, at least annually, making distributions of the Trust’s net income, after reasonable expenses and operational reserves, to the Ipswich public schools. The educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
- 4) Trust governance
 - a) Feoffees
 - o 3 appointed by the School Committee, 3 appointed by the Board of Selectmen; and 1 appointed jointly by the School Committee and the Board of Selectmen upon recommendation by the Town Finance Committee, and the 3 present Feoffees who wish to continue to serve in this capacity

- no person may be a Feoffee while serving as a member of the School Committee or the Town Finance Committee or as Town Manager or Superintendent of Schools.
- no person may be appointed as a Feoffee or continue to serve as a Feoffee who is a resident or home owner on Little Neck, nor may a person (referred to here as the "individual") be appointed as a Feoffee or continue to serve as a Feoffee if one of the following is a resident or home owner on Little Neck:
 1. the individual's spouse;
 2. a parent of the individual or of the individual's spouse;
 3. children of the individual and/or of the individual's spouse;
 4. a sibling of the individual or of the individual's spouse.
- In the appointment of Feoffees, the appointing bodies shall appoint persons who acknowledge at the time of appointment the Feoffees' fiduciary duties and obligations of trusteeship and the purpose of the Trust to benefit the Ipswich public schools. Optimally, persons will be appointed who also possess expertise and skills that will maintain and strengthen the ability of the Feoffees collectively to carry out their responsibilities, such as: real estate and rental property management; construction trades; finance; and dispute resolution.

b) term of service

- 5-year staggered terms for the new Feoffees (except that to implement staggered terms so that no more than two Feoffees' terms will expire in a particular year, the initial terms of the Feoffees shall be as follows: (i) the initial terms of the three Feoffees appointed by the School Committee shall be two, five and seven years respectively; (ii) the initial terms of the three Feoffees appointed by the Board of Selectmen shall be three, four and six years respectively; and (iii) the initial term of the jointly appointed Feoffee shall be eight years.)
- no term limits
- to assist with the transition to the revised Trust structure, the three present Feoffees who wish to continue to serve would continue as

Feoffees for open-ended terms, so long as they are not disqualified under the office-holder disqualification or the Little Neck residence or homeowner disqualification provided in A(6)(a), above.

- may be removed by appointing authority for cause (and a present Feoffee serving a continuing term as provided above may be removed by the Probate Court for cause)
- in the case of a vacancy (other than a vacancy with respect to a present Feoffee), the appointing authority may appoint a Feoffee to fill the remainder of the term.
- c) serve without compensation, but reasonable and necessary trust-related expenses paid
- d) shall be subject to a conflict of interest policy approved by the School Committee
- e) the meeting quorum is a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein, a majority vote of those present is required for action. If a matter cannot be resolved because there is an even number of Feoffees and a tie vote, the matter shall be brought to the School Committee, who may decide the matter.

5) 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 use of Trust property
- d) invest Trust assets in accordance with the prudent investor rule set forth in M.G.L. c. 203C or any successor statute.
- e) accept charitable gifts for the benefit of the Trust
- f) pay all proper charges and expenses

- g) borrow funds to the extent necessary for the prudent operation and maintenance of the Trust property, provided that the Trust real property may not be collateralized
- h) pursue, defend and settle all claims and demands relating to the Trust or Trust property, subject to the advice and consent of the School Committee and the Board of Selectmen (if the School Committee or Board of Selectmen are sued with respect to a matter relating to the Trust or the Trust property, the sued body will notify the other body)
- i) 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; Feoffees may provide that terms are renewable at the Feoffees' discretion)

6) 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) Feoffees must annually file an audited financial report with the Town and the School Committee, said audit to be completed within four months of the close of the fiscal year. The Trust will use the same fiscal year as the Town. The Feoffees shall reply in writing within one month to all written requests by the School Committee for additional information concerning the audited financial report.
- g) Feoffees shall distribute the net proceeds of the Trust to the School Committee within six months of the close of the fiscal year. 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 forthcoming distribution, 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) Feoffees shall establish and make available to the Little Neck residents a means of ongoing mutual communication for informational and advisory purposes, such as an advisory council.

7) 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 that is a fair market rent for the property, services and other benefits provided. 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.
- 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 the following costs, 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; (iv) taxes on all the land, including the common or unoccupied land and all improvements; and (v) taxes on residential structures whether or not paid separately by the homeowners or residents. The Feoffees shall take reasonable steps on an ongoing basis to monitor property tax assessments and property taxes levied with respect to Little Neck occupied property, unoccupied property, and common land, to evaluate whether adjustments should be sought, to respond to resident request with respect to property tax matters, and to seek property tax adjustments where determined to be appropriate.
- 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.

Ipswich School Committee

and Superintendent

June 2, 2006

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- 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 and practices
- f) additional Feoffee powers are enumerated in A(5), 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. Other than written leases the substantive content of which has been approved by the School Committee, the new Feoffees will not be bound by existing arrangements as to rents, charges, and rules

B) Process for revising the Trust:

- 1) Reach agreement (School Committee, Board of Selectmen, 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, Board of Selectmen 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, with notice to the other body and to the Feoffees.
- 3) future amendments to the revised Trust as embodied in the court's order may be sought by the School Committee and the Board of Selectmen with notice to the Feoffees, or by either the School Committee or the Board of Selectmen with notice to the other body and to the Feoffees.

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From: Harvey Schwartz <harvey@theemploymentlawyers.com>
Date: Wed Aug 9, 2006 9:52:34 AM US/Eastern
To: Robert Bonsignore <RBonsignore@aol.com>, INGRID MILES <ingridmiles@verizon.net>, <utrum@verizon.net>, <robert.a.white@comcast.net>, <Mikeandsonsoil@comcast.net>, <r.arsenault@comcast.net>
Subject: Re: Meeting of Town Committee on the Feoffees
Received: from 70.20.29.195 ([172.18.12.132]) by vms039.mailsrvcs.net (Sun Java System Messaging Server 6.2-4.02 (built Sep 9 2005)) with ESMTP id <0J3Q00H0QH7X8770@vms039.mailsrvcs.net> for utrum@verizon.net; Wed, 09 Aug 2006 08:52:46 -0500 (CDT)
Received: from mail1.plexuspost.com (70.20.29.195) by sv14pub.verizon.net (MailPass SMTP server v1.2.0 - 112105154401JY+PrW) with ESMTP id <2-9701-200-9701-729-1-1155131565> for vms039pub.verizon.net; Wed, 09 Aug 2006 08:52:45 -0500
Received: (qmail 29831 invoked by uid 510); Wed, 09 Aug 2006 09:52:45 -0400
Received: from 24.128.101.118 by mail1.plexuspost.com (envelope-from <harvey@theemploymentlawyers.com>, uid 508) with qmail-scanner-1.25-st-qms (clamdscan: 0.84/858. spamassassin: 3.0.3. perlscan: 1.25-st-qms. Clear:RC:0 (24.128.101.118):SA:0(-0.2/4.0).. Processed in 3.834478 secs); Wed, 09 Aug 2006 13:52:45 +0000
Received: from c-24-128-101-118.hsd1.ma.comcast.net (HELO ?192.168.2.4?) (harvey@theemploymentlawyers.com@24.128.101.118) by mail1.plexuspost.com with SMTP; Wed, 09 Aug 2006 09:52:41 -0400
In-Reply-To: <bfa.196215.320384b8@aol.com>
X-Originating-Ip: [70.20.29.195]
Message-Id: <C0FF60E2.9D4C%harvey@theemploymentlawyers.com>
Mime-Version: 1.0
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I'm pleased with the way the meeting went last night, although I was surprised at having the chairmanship dumped back upon me. To recap for those who could not attend, there were probably a hundred or so Little Neckers present with grievances to air concerning , primarily, the new proposed leases. The only votes taken were (1) to elect me as chair of the committee and (2) to create a non-voting advisory

member position, who will most likely be a Little Neck resident. The remainder of the hour-and-a-half meeting was taken up with listening to and answering questions from the audience. I believe this was a significant opportunity for them to vent their frustration with the present lease situation and their feelings that they have been given no role to play — except to pay their rent — in the process.

I gave my email address and told people interested in becoming the non-voting member to write to me. We will select that person at the next meeting. I believe the only requirement should be that the person be an Ipswich resident since this is an official town committee.

My single goal is to get the trust creation process back on track and moving to a conclusion. I spoke with Joan after the meeting and she and I will be getting together with Rick Korb to discuss how to get the school committee to focus on the issue again. I suggest that our representatives to the selectmen and finance committee alert their bodies that we intend to move forward with the process. I believe we were literally just a few commas away from agreement on a document, although I expect there has been some significant hardening of positions by various interested persons in the interregnum. Let's see if we can move beyond that.

We proposed our next meeting be on Sept. 13. Bob W. wrote to me that on checking his calendar, that date does not work. I suggest any of the following dates: Sept. 18, 19, 20, 25, 26, 27. Please let me know what dates work and I'll select the one of those that the most people can attend.

One final issue that we discussed was getting a page for the committee on the town's web site. I'll be going away Friday for ten days. Would somebody like to take responsibility for contacting the town's MIS person and arranging for this?

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Boston MA 02108
(617)742-7010

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From: ROBT WEATHERALL <utrum@verizon.net>
Date: Sun Aug 20, 2006 11:33:07 AM US/Eastern
To: Harvey Schwartz <Harvey@TheEmploymentLawyers.com>, Ingrid Miles <ingridmiles@verizon.net>, Robert Bonsignore <RBonsignore@aol.com>, Paul Surpitski <Mikeandsonsoil@comcast.net>, Robert A. White <robert.a.white@comcast.net>, Joan Arsenault <r.arsenault@comcast.net>
Subject: Town Committee on the Feoffees - Minutes of meeting on August 8, 2006
Mime-Version: 1.0 (Apple Message framework v543)
Content-Type: text/plain; charset=US-ASCII; format=flowed
Content-Transfer-Encoding: 7bit
Message-Id: <2DBA75E4-3061-11DB-82D3-000393C42EDC@verizon.net>
X-Mailer: Apple Mail (2.543)

Hi: I rashly agreed at our August 8th meeting to take the minutes. Here's my best attempt at doing so:

Town Committee on the Feoffees
Tuesday, August 8, 2006

Present: Harvey Schwartz, Robert K. Weatherall, Joan Arsenault, Ingrid miles, Robert A. White.

The meeting was called to order at 7:30 p.m.

Robert Weatherall declared his intention to step down as chairman, having held that responsibility since 2004. Ingrid Miles moved that Harvey Schwartz be elected chairman for the ensuing year. The motion was seconded and approved unanimously.

Although the Committee's intention in meeting was to review Attorney Allen's latest revision, dated June 2, 2006, of a new trust structure for the Feoffees, questions from the more than 100 tenants from Little Neck attending the meeting, and the topics they raised, took up all the rest of the evening. A leading concern was their not having a voice at meetings of the Feoffees, or a seat at the table at meetings of the Town Committee. They expressed anger at the Feoffees' requirement that they sign a 20-year lease agreement by January 31, or lose their tenancy. The lease set the rents for the next three years at \$5,300 for seasonal occupants and \$6,400 for year-round occupants, up from current rents of \$5,000 and \$5,500. This increase came on the top of the heavy price they would have to pay for the new sewage system at Little Neck. They complained that they had been allowed little say in the planning of the project. In their view the Feoffees had managed it badly. Another matter on which they took issue was the value the Assessors' Office placed on the lots at Little Neck; they did not have equity in the lots and the lots were not tradeable on an open market.

The tenants asked how the Town Committee had been set up and whether a tenant

could be a member. They also wanted to have a copy of Attorney Allen's June 2nd draft. This led to members of the Committee passing two motions:

1. That a tenant who qualified as a resident of Ipswich be elected a non-voting member of the Committee. This proposal was voted unanimously. The suggestion was made that interested tenants should declare their candidacy and the Committee would interview them and choose one. The tenants opted for themselves interviewing candidates and making the choice.
2. That relevant documents pertaining to the Committee's work, for example Attorney Allen's June 2nd draft, be made available to the public on the Town's web page. Robert White has agreed to arrange for this.

The meeting adjourned at 9:00 p.m.

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From: Edmund Traverso <edtraverso@verizon.net>

Date: Sun Aug 20, 2006 9:46:36 AM US/Eastern

To: Robert Weatherall <utrum@verizon.net>

Subject: Meeting Report

Received: from 209.73.179.139 ([172.18.12.133]) by vms047.mailsrvcs.net (Sun Java System Messaging Server 6.2-4.02 (built Sep 9 2005)) with ESMTP id <0J4A00LOWU9QTWD0@vms047.mailsrvcs.net> for utrum@verizon.net; Sun, 20 Aug 2006 08:46:39 -0500 (CDT)

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Received: (qmail 47638 invoked from network); Sun, 20 Aug 2006 13:46:38 +0000

Received: from unknown (HELO ?192.168.0.101?)

(edtraverso@verizon.net@70.19.245.236 with plain) by smtp101.vzn.mail.dcn.yahoo.com with SMTP; Sun, 20 Aug 2006 13:46:36 +0000

X-Originating-Ip: [209.73.179.139]

Message-Id: <6c62577ce1597a95bee93c82b72d0088@verizon.net>

Mime-Version: 1.0 (Apple Message framework v624)

X-Mailer: Apple Mail (2.624)

Content-Type: multipart/alternative; boundary=Apple-Mail-1--466746533

Bob, This is the e-mail I sent to Rick Korb who in turn sent it on to all the members.

EdT

Hello Rick-

Joan will probably fill you in on the details last night but here are a few of my observations.

- The room was filled with one of the biggest crowds of people I have ever seen at an Ipswich meeting.
- The people at Little Neck are angry as the dickens at the Feoffees but also at the schools and the Town Committee to a lesser extent.
- They are angry at the Feoffees for what they see as tremendous waste and extra costs involved with the waste water project. They blame the Feoffees for not overseeing the work properly, for not consulting with the tenants on the project, for operating in secrecy, for not being transparent and accountable to anybody, for heavy handily springing a new lease on them with what they feel is little time for them to examine but that calls for evictions and loss of their cottages if not complied with by a date certain, and for charging too much rent. They blame the schools for being too greedy in demanding larger and larger distributions and for managing the process by which the new Trust Agreement was written to favor the schools at

the expense of the tenants. They blame the Town Committee for excluding any tenant representation in that committee and for not permitting the tenants to make inputs into the drafting of the new Agreement.

- Feelings were running very strong at the start. It is clear that the tenants are mad and are organized. I suspect that we might see legal action being taken around the waste water issue and perhaps around the issue of what they see as over assessments. (The Feoffees did take this issue to Town Hall last year to appeal high assessments but were shot down. They did not appeal to the Appellate Tax Board at the state level which is the logical next step. I suspect they did not because of what I have always perceived as an old alliance between the Feoffees and the Selectmen to keep the taxes as high as possible and the rents as low as possible so more money from Little Neck will flow into the Town side of the budget than would be the case if the rents and taxes were set on the basis of lower taxes and higher rents. On the basis of documentation we have received from Mr. Allen, I believe the Feoffees still don't want to challenge what some call "aggressive" assessing on the part of the Assessors.
- Harvey Schwartz took over as chair of the Town Committee and he is a much more commanding and effective chair than the prior ones. He took charge of the meeting and demanded that people talk in order. He also set an ending time. He listened well to all the complaints and, along with the other members of the Committee, was amenable to the people at the Neck appointing one of their members to sit on the Committee in an advisory, nonvoting capacity. You may recall that Mr. Greenough has always been opposed to any tenant involvement in the process and we went along with his advice. The decision changed the tone of the meeting as it gave the people from Little Neck the feeling that at long last they would be listened to.
- The content of the draft agreement and how it was developed was discussed and it was agreed that the Town Committee would take no immediate action on it but would put it on the Town web site so that the tenants could read it and make suggestions. However, Harvey warned that the final form of the agreement would be decided by the Town Committee, the School Committee, and the Selectmen and that it was hoped that the Feoffees themselves would go along with it.
- This moved the meeting in the direction that agreement on the Trust Agreement should be of the highest priority. Early on one of the tenants asked if it were true that any attempt to get a new Trust Agreement was going to be abandoned but by the end of the meeting it was clear that the people from Little Neck want a new Trust Agreement especially with regard to the provisions that require transparency and accountability in the Feoffees' operations. They also wanted the distributions to go to the enhancement of the school programs and not to the relief of the Ipswich taxpayers. It was clear also that the members of the Town Committee present wanted the same. They were Ingrid, Bob White, Joan, Bob Weatheral, and Harvey.

- One of the tenants, Tom, (who comes to our meetings frequently) made a point about the assessments which is worth thinking about. It is that the lots, in fact all the land, at Little Neck can not be sold. This should have the effect of decreasing their value in the same way that property loses value when owners give the development rights on it to Greenbelt thus preventing it from ever being developed for housing. I had never thought of this and he may, indeed, have a point. I don't know, however, whether or not the assessors have already taken this into consideration but if they have not it might serve as the basis for going to the Appellate Tax Board.
- There was general agreement that the new leases and rent schedule were badly framed and presented but that it ought to be possible to come up with a lease and rent schedule that was fair to both the tenants and the schools.
- By the end of the meeting the mood of the people from Little Neck was greatly improved but they left determined to get justice.

It was not discussed at the meeting but if State Appellate Tax Board agreed with Tom's theory that the land is over assessed at Little Neck, then something along the lines I suggested in my last memo to you might work. That is to say each tenant would pay rent at the same rate on the basis of the value of his or her lot plus 167th of the value of the common lands and structures on them. This is a moodier difference from the rent schedule set for the next three years which has the owners of the least valuable lots paying rent at 8% of the value of their lots while those of the most valuable lots pay at a rate at less than 3%.

The percentage would have to be set high enough to assure sufficient rental income to:

- (1) pay all the real estate taxes on all the land and structures on the common land but not the tenants' buildings which are personal property and taxed as such;
- (2) provide \$100,000 for a sinking fund to cover long term expenses related to maintaining the infrastructure on the common lands and structures;
- (3) provide \$80,000 per year to cover regular expenses. and
- (4) provide the schools with a fair distribution.

I don't pretend to be expert enough to know what this rate should be but I do know that I just got a \$5,000 certificate of deposit at the Ipswich Cooperative paying 5.25% interest. If the return to the schools were figured at that rate and the Appellate Land Court placed the land value of Little Neck at half way between Land Vest's real appraisal (not the \$13,000,000 used for determining rent) and the Assessor's evaluation)- let us say \$25,000,000, then the

gross rent would be \$1,312,500, the taxes would be \$200,429, the sinking fund, \$100,000, the regular expenses \$80,000 and the distribution to the schools, \$932,071. This would translate to a net return on assets to the schools after paying all land taxes and major expenses of 3.7%. Not as good as a certificate of deposit but a hell of a lot better than what the schools have been accustomed to receive over the last twenty years. Also it would put the rent and land tax issues on a clear basis as compared to the arcane process that the Feoffees currently go through so as to make it difficult for the tenants and School Committee members to understand. The schools would also receive \$49,000 less as its share of lost tax receipts. This \$49,000 decrease could be overcome if the rents were set at 5.5%.

Rick, it strikes me that there is a real possibility for the schools and the tenants to form a natural alliance against all the bad practice of the Feoffees right down to the present. I am convinced after last night that the tenants do not want to screw the schools and I'm also sure the we do not want to have the tenants pay anymore rent than what is just. Neither wants the assessments set at an artificially high level so that the Town can collect more taxes than standard assessing processes allow for. Artificially (aggressively) increasing assessments unfairly hurts the tenants in their pocketbooks. Worse still, it hurts the School Committee in its soul rendering it morally unfit to set educational policy for kids.

We might begin to forge the alliance by supporting the action on the part of the tenants to have the lease extended another year for each passing year much in the same way that your three-year contract is extended a year every year. This would give the tenants much more assurance that the values of their cottages would be maintained. The second thing that we should consider is publicly supporting the tenants if they develop a strong case against the Feoffees with regard to the waste water project. The reason for this is that any mismanagement at Little Neck that results in extra expenses for the tenants can't help but get in the way of good relations between the schools and the tenants. Finally, we should also support the idea of once and for all getting a ruling on the taxes at the state level either at the Appellate Board or the Appellate Court.

If you want to pass this on to the other members or to Joan and Dianne only as members of the Feoffee Subcommittee its OK by me.

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Feoffees Committee back on track

By Natalie Miller
natalie.miller@cnc.com

After an 18-month recess, the Town Feoffees Committee reassembled earlier this month to bring their mission back to the table — the rewriting of the Feoffees of the Grammar School Trust.

Newly appointed chairman Harvey Schwartz said the committee is just a few commas and parentheses away from completing the new trust agreement, which will then need to be sent to probate court to be implemented by a judge.

The five-member committee, consisting of Selectman Ingrid Miles, School Committee member Joan Arsenault, Finance Committee member Robert White, Robert Weatherall Sr. and Harvey Schwartz, met to discuss the trust.

The committee formed in 2001 to examine the centuries-old trust and research the status of the Feoffees and the status of the arrangement between the landlords, the town and the School Committee, who is the beneficiaries of the trust.

Schwartz, who has been a member since the beginning, said the committee's conclusion after its research was that the trust needed to be rewritten. The School Committee agreed and showed its support by hiring an attorney to draw up the new trust. Schwartz said the Board of Selectmen added its input and made a few changes, and it was near complete over a year ago when the project lost momentum.

Now that the committee is back on track, the last step, said Schwartz, is to make sure all parties involved are still in agreement.

"That's that we will be doing in the next month," he said, to find out if any more changes need to be made before it is sent to court.

Selectman Ingrid Miles said she agrees that the trust needs to be

"We aren't looking to alter the mission of the trust," said Miles. But instead, "reviewing the trust with intention of looking at how we manage the trust in such a way to come up to the 21st century."

Miles also said there is consensus among the committee to get the trust back to the point where the money is used for enhancement purposes for the schools, as it was originally intended, rather than toward operating costs.

Close to 100 Little Neck residents attended the Feoffees Committee meeting earlier this month to show support for changing the document and voice concerns about the Feoffees.

"The committee was extremely gracious, opening up the meeting to concerns," said Susan MacDonald.

She said a lot of ideas were tossed around, such as selling the trust and the land and investing the money in the stock market. This would be a much simpler trust to manage, she said, but the problem is that there is a clause in the trust that states that the land cannot be sold. She added that most residents would be willing to buy the land where their homes sit.

"It was helpful to hear from them," said Schwartz.

Because the voice of the residents was so strong at the meeting, Miles motioned to add a member of the Little Neck community to the committee as a non-voting representative. It was unanimously accepted.

The purpose of the non-voting member is to give the community a voice in the committee, to voice ideas, give history and express concern, said Miles.

A representative will be chosen at the next meeting, which will take place in September.

"It's all about who is affected by the process," she said.

Miles said the current lease problems are not in the jurisdiction of the committee, but it does recognize that Little Neck homeowners are the ones who provide the income stream to the trust, which benefits the Ipswich school system.

But, there needs to be "accountability to the townsfolk as to what money is collected and how it is spent," she said. "We want it to be a accountable and transparent pro-

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Feoffees

August 31,
2006

send lawyer to meeting

*Selectmen frustrated with
trustees, hope for private session*

By Natalie Miller
natalie.miller@cnc.com

The Board of Selectmen may be calling the Feoffees of the Grammar School into the executive chamber after Monday night's brief response to the board's request to sit down and chat in open session.

After hearing from concerned Little Neck residents, the board called the Feoffees into Monday's meeting to discuss the landlords' plan for the residents of Little Neck with respect to the disagreement between the two parties on the terms of the new lease.

The Feoffees instead sent their lawyer with a prepared statement, who promptly left before questions could be asked.

Attorney William Sheehan attended the meeting on the Feoffees' behalf and said simply that the "tenants of Little Neck initiated the process of litigation" and it would not be "prudent" to discuss the matter further. He informed the board that he and Attorney Leonard F. Femino sent a response letter to the Little Neck legal counsel earlier that evening.

"I am here because you invited me," he said, "but that is all the Feoffees have to say."

Sheehan left the meeting without saying anything further.

Frustration is high

Little Neck residents whose

trust and managed by the Feoffees, say they were trying to negotiate with the Feoffees on the terms of the new lease, when communication was cut off and a lease, accompanied by a notice of eviction if the lease wasn't signed, was sent to their homes over the July 4 weekend.

"They are trying to scare people into signing a lease that is by all accounts unsignable," said Paula Siebert, member of the Little Neck Homeowners Association, of the Feoffees lease, which states that the rent will increase from \$5,500, at \$9,700 for the year beginning July 7, 2006 and ending June 30, 2007, and will be adjusted every three years by the landlords.

The Feoffees have stayed mostly silent, deferring questions to their lawyers. Attorney Femino told the *Chronicle* that the rent increase includes the estimated \$40,000 per cottage cost of the state-mandated septic system. Little Neck homeowners say the cost of the sewer has rocketed from the initial price tag of \$3.4 million to more than \$6 million.

Residents appealed to the selectmen to find answers to questions they say the Feoffees have refused to answer.

"The Feoffees have a long history of ignoring our requests," said Siebert. "What happens if we all get evicted? We are hoping to impress on you that this is a community in crisis. There needs to be

some leadership."

b Well over a hundred members of the Little Neck community attended Monday night's meeting.

"We are all united in one effort to find a solution to the problem," said resident Robert Dever, chairman of the Little Neck Homeowners Association. "We have been rebuffed at every turn."

Longtime Feoffee Donald Whiston said in an interview with the *Chronicle* that the Feoffees, which consists of residents Alex Mulholland, Peter Foote and Selectman James Foley, have "always been available to" the residents of Little Neck.

"We have been in touch with their lawyers over the last weeks, months, but got to the point of getting nowhere. So we said let's 'draw a line' and see where it goes," he said of the decision to send the leases. "It has to go somewhere."

He said there are so many pieces to the puzzle and everyone is subject to their own interpretation.

"It's not pleasant for the Feoffees," he said. "We are the trustees and have to do what is right for the town. It's awkward for us."

"How do you take care of two masters, he said, speaking of the residents and the schools.

"It's not a pleasant scene," he said. "I've spent most of my life down there. It's disappointing it had to end up this way."

Confusion over trust

Issues concerning the seaside land, which is owned by the trust and managed by the Feoffees, don't just surround the leases. Dever said at Monday's meeting that it is not clear to the residents what the centuries old trust is even all about.

Selectmen Chairman Patrick McNally said he was dismayed this subject hasn't come up in discussion sooner, since the

rewriting of the trust has been in the works for a few years. *See related story.*

He said he found the "timing kind of odd" that the Feoffees are trying to change the way the land is managed when the new trust is so close to being finished.

Whiston has told the *Chronicle* that the Feoffees are not generally in favor of changing the trust and have not been consulted about the reworking of the document.

"I don't think it's broken," he said. "I don't see the benefit in changing it."

Whiston would not comment to the *Chronicle* on the sewer project, the Feoffees application for a Limited Liability Company to run the sewer system, or how much the Feoffees, in particular the manager of new LLC, are making. But, he did say that if someone lived on a street and a sewer line was put on the street, the homeowner would have to pay the betterment.

"If the betterment is X, than that's what it is," he said.

At the selectmen's meeting, William Gottlieb, chairman of the Little Neck Legal Action Committee, called the Feoffees' behavior heavy-handed and arbitrary.

"We are a wonderful, unique community," said. "Some of these homes have been in families for generations."

He said the terms of the lease unilaterally favor the landlords and give no security to the tenants.

"Only a fool would sign that lease," he said and added that he is dismayed that the choice is either sign or be evicted. "This is

our lives, our homes, our families."

Gottlieb said the Feoffees have put the people of Little Neck into a corner and the residents support litigation against the landlords if there can be no discussion toward a common ground.

If that's the case, the residents are prepared to offer that they will only pay the cur-

rent rent, will not pay taxes or a penny of the

septic system costs, which includes a \$2 million engineering fee to Pio Lombardo.

Dever was concerned this would breed more secrecy.

"They don't have to hide in private session or litigation," he said. "We want to hear it. We still need a public discussion. And Jimmy (Foley), we need to let's talk address the issue of a selectmen who is a Feoffee. It is such an obvious conflict and it needs to be addressed. Let's get this thing out in the open."

Gottlieb asked Selectman James Foley, who is also a member of the Feoffees, how much he is being compensated as a Feoffee and appointed manager of the septic system.

Foley's answer, and only words he spoke during the meeting, was, "I have no comment." He remained at his seat at the selectmen's table during the meeting.

McNally said he believes it has taken too long and now it is at the point where the Feoffees are taking advice from their attorneys.

"They are not going to come into public session," he said.

Gottlieb said if private session is the only way the selectmen are going to get answers, then it is unfortunate, but that is what should happen.

Selectman Elizabeth Kilcoyne suggested that the town was part of the Feoffees and should have some say in setting rents and in other decisions.

"It is an important distinction we should make," she said.

McNally agreed.

"There needs to be a broader group of people serving as Feoffees," he said.



PHOTO BY NATALIE MILLER

Little Neck homeowners Paula Siebert, sitting left, and William Gottlieb speak to the Board of Selectmen about their troubles with the Feoffees of the Grammar School Monday night. More than 100 Little Neck residents crowded the Town Hall meeting room and the hallway outside to show their commitment.

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December 11, 2006

(Under the policy of the District Attorney Office, the names of persons seeking opinions on Open Meeting Law matters are not released. Accordingly the interior address information has been redacted from this opinion letter.)

Re: The Feoffees of the Grammar School in the Town of Ipswich

Dear (See Above Note):

You have asked for an advisory opinion regarding the status, relative to the Open Meeting Law, of the Feoffees of the Grammar School in the Town of Ipswich. We have received an inquiry from another source as well. We are advised that the status of this entity, whose origin was in the colonial-era, has become an acute concern because, among other issues, members of the Board of Selectmen are contemplating participating in the meetings of the Feoffees.

Although phrased differently, the inquiries raise two basic questions: 1) When the three Selectmen Feoffees¹ meet with the four Lifetime Feoffees, must the Open Meeting Law be followed? and 2) Are notes and votes of past meetings of the Feoffees subject to public disclosure?

In issuing this opinion, we are doing two things, both of which have significant limitations. First, we are indirectly stating the bases on which we would either undertake or forego an enforcement action under G.L. c. 39, §23B. Second, we are stating our belief as to how a court would decide these issues. As to the first, a lawsuit by this Office is not the only way that an Open Meeting Law matter can be brought to court. Three citizens also can initiate suit. Further, the Attorney General has enforcement authority, although will generally defer to the District Attorney's judgment regarding a local matter. Second, although this Office often issues opinions like this one, the authoritative interpretation of a statute would, of course, come from a court. In an area such as the Open Meeting Law where the case law is sparse, each newly-decided case has the potential to change that interpretation. With those limitations in mind, we issue this opinion.

Your request raises a complicated set of legal issues. With regard to the Feoffees, the response turns on whether that group is a governmental body. In addition to the need to

¹ As explained in the discussion of Province Law 1755-56 at pp. 5, 9-12, we view the current body as composed of two groups, referred to in this opinion as "Lifetime Feoffees" and "Selectmen Feoffees."

determine the nature of the Feoffees, a separate Open Meeting Law issue arises with regard to three Selectmen sitting as part of the Feoffees. In essence, the issue is whether in doing so, the Selectmen Feoffees are conducting "any public business or public policy matter over which the (Board of Selectmen) has supervision, control, jurisdiction or advisory power . . ." See G.L. c. 39, §23A.

A full explanation of the reasoning that has lead to our opinion follows. In summary, though, this Office has concluded:

1. the Feoffees of the Grammar School is a governmental body, and therefore subject to the Open Meeting Law. As with any governmental body, the minutes of meetings of the Feoffees must be kept and made public. Access to other Feoffee records is governed by G.L. c. 66, §10.
2. even though a quorum of the Selectmen is present at a meeting of the Feoffees, a meeting of the Board of Selectmen is not taking place, unless a particular topic of Feoffee business also falls within the jurisdiction of the Board of Selectmen. The fundamental business of the Feoffees -- the management of property, the profits of which go to the public schools -- is not business within the jurisdiction of the Board of Selectmen. Consequently, as the general rule, a meeting of the full group of seven Feoffees does not also constitute a meeting of the Board of Selectmen. Accordingly, the only notice required under the Open Meeting Law is of a meeting of the Feoffees; the notice should be filed with the Ipswich Town Clerk.

The fundamental challenge presented as to the Feoffees is determining the applicability of 20th Century concepts of open government to the governance arrangement of an entity that long-preceded the emergence of those concepts. It is, therefore, necessary to discuss at some length the factual background and the legal principles that lead us to our opinion, including a review of the history of the Feoffees and an analysis of some of the case law related to governmental bodies.

The historical information presented here is necessarily limited both by the lack of definitive sources and the lack of extended time needed to research exhaustively the sources that are or may be available. Our research has been limited to that which is reasonably necessary to resolve the questions raised. Doubtless there are more facts that could be (perhaps literally) unearthed that would bear on the topic. "Whether, if these facts could be ascertained, they would materially affect the rights of the parties, is very doubtful." *Feoffees of the Grammar School in the Town of Ipswich v. Elias Andrews*, 49 Mass 584, 591 (1844).²

² Although this case deals directly with the Feoffees, it is not helpful on the current issues, though it is useful for information on the history of the group.

History of the Feoffees

“Feoffee” is a centuries-old term, most nearly equivalent to “grantee,” as that term is used in modern land transactions. A “feoffee” is one to whom a “fee” is conveyed. In the sense here relevant, a “fee” is equivalent to ownership of land. Black’s Law Dictionary, 5th Edition.

Very soon after its first European settlement in 1633, the Town of Ipswich (then Agawam) addressed the need to support education. In 1636, town records state, “A Grammar School is set up, but does not succeed.”³ On November 14, 1650 the Town granted to Robert Paine, William Paine, Major Dennison and William Bartholomew land between the Chebacco⁴ River and the Gloucester line “for the use of the school.” Leases of portions of that land were promptly executed. Conveyances tracing back to within months of the November, 1650 action were at issue in *Feoffees v. Andrews*. The Town addressed the management of the school in greater detail two months later. Town records show that on January 16, 1651,⁵ at Town Meeting:

For the better [ordering] of the schools and the affairs thereof, Mr. Symonds, Mr. Rogers, Mr. Norton, Major Denison, Mr. Robert Paine, Mr. William Paine, Mr. Hubbard, Deacon John Whipple, Mr. Bartholomew were chosen a committee to receive all such sums of money as have been and shall be given towards the building or maintenance of a grammar school and schoolmaster, and to disburse and dispose such sums as are given to provide a school house and schoolmaster’s house, either in building or purchasing [same] house with all [convenient] speed, And such sums of money, parcels of land, rents or annuities as are or shall be given towards the maintenance of a schoolmaster, they shall receive and dispose of to the schoolmaster, that they shall call or choose to that office from time to time, towards his maintenance, which they shall have power to enlarge by appointing from year to year, which each scholar shall yearly or quarterly pay or proportionably, who shall also have full power to regulate all matters concerning the school master and scholars as in their wisdom they shall think meet from time to time, who shall also consider the best way to make provision for teaching to write and cast accounts.⁶

Demonstrating himself to be a “piously disposed person[]”, (Province Laws 1755-56, c. 26, reproduced in the Appendix,) Robert Paine (also spelled Payne) promptly⁷ donated a building for the Grammar School. At about the same time, he also provided a dwelling and two acres of

³ History of Ipswich, Essex and Hamilton, Joseph B. Felt (1834), at page 83.

⁴ Spelling was highly erratic in earlier times. In general, spelling, punctuation, and capitalization have been modernized in this document, except that proper names as they appear in quoted material appear in their original form.

⁵ For clarity’s sake, the date has been modernized. Until 1752, New Year’s Day in the British Empire was March 25. Thus, at the time of this vote, January, 1650 FOLLOWED December, 1650.

⁶ Portions of the original hand-written text which are difficult to decipher are indicated in brackets.

⁷ See marginal note *Feoffees v. Andrews*, 49 Mass 584, 587 (1844).

land for the use of the schoolmaster. In 1683, Robert and Elizabeth Paine conveyed ~~that house~~ and land to the town.⁸

Himself also evidently “piously disposed,” William Paine further enlarged the land available for support of the Grammar School in his will of **October 2, 1660**:

I give unto the free school of Ipswich the little neck of land at Ipswich commonly known by the name Jeffrey's neck. The which is to be and remain to the benefit of the said school forever as I have formerly intended and therefore the said land not to be sold or wasted.

This property, gifted by William Paine, now known as Little Neck, evidently comprises the bulk of the property now under the control of the Feoffees. However, the question before this Office regards the nature of the Feoffees. That question is only tangentially related to the ownership history of a particular parcel.

Significantly, the 1660 will names both three executors and three feoffees:

I do hereby make my son John Paine, my son-in-law Samuel Appleton and the said Mr. Anthony Stodder my executors of this my last will and testament, and I do hereby request and empower the said Mr. Christopher Clarke, Mr. Joseph Tainter and Mr. Oliver Purches to be my overseers and feoffees in trust of this my last will and testament....

The individuals named by Paine were not the same individuals then charged by the Town with managing the property dedicated by the Town for support of the school.

In **1661**, the “feoffees” (evidently, at least in this instance, meaning the persons acting under authority of the Town) bought a barn and orchard from Ezekiel Cheever. In **1662** the Town increased the number of “persons for ordering the school” to nine. In **1696**, the Town granted the school additional land. In **1720**, the Town sued the occupant of the “school farm,” claiming the rent paid was inadequate. Two persons identified as “Feoffees,” Rev. Messrs. John Rogers and Jabez Fitch, feeling the suit was unjust, refused to support it. In this context, “Feoffee” must be referring to the Town-created entity, since successors to the individuals named by William Paine would have no “standing” with regard to the “school farm,” which was the land granted originally by the Town in 1650/1. In **1734**, the Town unsuccessfully sought a grant of land from the General Court for use of the school.⁹

The record of these 17th and 18th Century events may lack the clarity and specificity we now expect to see in land titles. However, “in construing conveyances made early after the settlement of the country, when conveyancing was little understood, the intention of the parties is to govern, without regarding the rigid rules of construction which would be applicable to recent conveyances . . .” *Feoffees v. Andrews*, 49 Mass. at 592.

⁸ History of Ipswich, Essex and Hamilton, *supra*, at 84.

⁹ This paragraph is drawn from History of Ipswich, Essex and Hamilton, *supra*, at 84-85.

There were evidently “endless disputes” between the Town and the Feoffees, regarding management of land to support the school. To avoid the repetition of such disputes, the Town and “the present surviving feoffees on the part of the private persons” turned to the General Court. On **January 12, 1756**, the Town Meeting, with the consent of the Feoffees, asked the General Court “to authorize and empower the present four Feoffees and such successors as they shall time to time appoint in their stead, together with the three eldest Selectmen of this town for the time being, other than such Selectman or men as may at any time be of the four Feoffees, to be a Committee in Trust....” (The entire recorded motion is reproduced in the Appendix.) In response, the General Court and Royal Governor adopted **Province Laws 1755-56, c. 26** (reproduced in the Appendix). The critical language states that the four surviving Feoffees together with three named Selectmen “shall be and are hereby incorporated a joint committee or feoffees in trust....” The duration of the 1756 Act was limited, as requested in the Town Meeting vote, to ten years. The 1756 Act evidently worked to resolve the problems that had prompted its passage, because at the expiration of the initial ten years, the Act was renewed, with minor changes, for an additional twenty-one years, by **Province Laws, 1765-66, c. 5**, (reproduced in the Appendix). Finally, **St. 1786, c. 54** (reproduced in the Appendix) made the 1765 Act perpetual.

By its terms, the 1765 Act incorporates a single entity of seven members, “a joint committee,” divided into two classes: four “Lifetime Feoffees” and three “eldest”¹⁰ Selectmen, the “Selectmen Feoffees.” The power to select successor Lifetime Feoffees is limited to survivors within that class. Succession within the Selectmen Feoffees flows from the electorate’s periodic selection of Selectmen.

Subsequent acts of the General Court have authorized specific actions by the Feoffees, but nothing has changed their fundamental structure since the 1765 Act. See St. 1835, c. 106; St. 1892, c. 66; and St. 1906, c. 506.

Under the 1765 Act, the Feoffees were given two principal duties: (1) manage the land, the income from which is to support the school and (2) manage the school itself.

Legal Framework

The Open Meeting Law, G.L. c. 39, § 23A *et seq.*,¹¹ consists of a single definitions section followed by a single section of substantive provisions. The law requires that a governmental body do its business only at posted meetings, of which the public has had forty-eight hours notice. Those meetings must be open to the public, unless a stated exception applies and certain procedural requirements are met. Generally, Open Meeting Law cases involve a few basic questions: Is the entity a governmental body?; Did it have a meeting?; Was there proper

¹⁰ We express no view as to whether “eldest” refers to time of service or chronological age, because no Open Meeting Law issue turns on that determination. We note, however, that the closing language of c. 5, § 2 implies that length of service as Selectmen is meant, since that language provides for a situation of an entire Board of Selectmen with no prior service.

¹¹ The separate Open Meeting Law, applicable to certain state entities and found at G.L. c. 30A, §11A *et seq.*, is discussed below.

notice? If a closed session occurred, was there an applicable exception, and were the ~~procedural~~ requirements met?

With regard to the Feoffees of the Grammar School, we are presented with the ~~first~~ question: Is it a governmental body? If not, then the Open Meeting Law does not apply.¹²

Case law construing the Open Meeting Law is not extensive, especially as to what is a “governmental body,” perhaps because most entities at issue (school committees, City Councils and the like) are clearly such. Most instructive in the current situation is *District Attorney for the Northern District v. Board of Trustees of Leonard Morse Hospital*, 389 Mass 729 (1983.) There, the Supreme Judicial Court ruled on the status of the Board of Trustees of a hospital created by a will bequest that had been accepted by the Town of Natick. Under the terms of the bequest, the voters of Natick selected the Board members. By c. 216 of the Special Acts of 1916, the General Court incorporated the trustees “with all the powers and privileges and subject to all the duties, restrictions, and liabilities then or thereafter in force relating to charitable, religious, and educational corporations.” *Leonard Morse*, 398 Mass. at 731. Over the years, the value of the original bequest has been dwarfed by the public funds appropriated. Further, public credit had been used to finance great expansion, far beyond the facility funded by the original bequest. Nonetheless, the Supreme Judicial Court concluded that the Board of Trustees was not a governmental body, principally because its origin was by private action. The Court also pointed out that the Trustees lacked traditional governmental powers like taxation, law enforcement and eminent domain.

The case of *Aaron Medlock v. Board of Trustees of the University of Massachusetts*, 31 Mass. App. 495 (1991), is also instructive. The issue was whether the Open Meeting Law applied to the activities of animal care and use committees created to comply with federal requirements. The Appeals Court, noting that the University Trustees had created the committees, simply assumed that they were governmental bodies. The Court read the statute to mean that a “meeting” occurred only if “public business” was done, reasoning that “public business” could only be an activity that fulfilled a “public purpose.” The leading Massachusetts on “public purpose” is *Allydonn Realty Corporation v. Holyoke Housing Authority*, 304 Mass. 288 (1939) which provides a non-exclusive list of relevant factors in determining whether an entity is fulfilling a public purpose: To whom is the benefit available?; Is there a wide-spread need for the benefit?; Is there a direct bearing on public welfare?; Have private efforts failed?; Is there a need for a united control of a united effort?; Is eminent domain power conferred?; and Is the entity consistent with the historical development of the functioning of public government? By applying these factors, the Appeals Court in *Medlock* concluded that, though the animal care and use committees might be “governmental bodies,” they did not gather for any “public purpose,” and therefore had no “meetings.” As such, the Open Meeting Law did not apply to the committees’ activities.

¹² The separate question of whether a SELECTMEN’S meeting might be also occurring is discussed below.

Analysis

This brings us to the basic question: Are the Feoffees of the Grammar School a “governmental body”?

The question first arises whether the status of the Feoffees should be analyzed under the “municipal” Open Meeting Law, G.L. c. 39, §23A *et seq.* or the “state” Open Meeting Law, G.L. 30A, §11A *et seq.* We have concluded that the Feoffees as now constituted -- four Lifetime Feoffees and three Selectmen Feoffees -- are a creation of the state (or rather provincial) government. That does not, however, decide the question of which version of the Open Meeting Law should control.¹³ The concerns addressed by the 1765 Act are limited to the Town of Ipswich, the membership on the Feoffees is limited to Ipswich residents, and the benefits (additional funding to the Ipswich Public Schools) are limited to that Town. Further, there is no involvement of any person or place outside the Town of Ipswich.¹⁴ We conclude that it is the “municipal” version of the Open Meeting Law that should be used to determine whether the Feoffees are a governmental body.

Further, under both the “state” and “municipal” versions of the Open Meeting Law, the analysis of governmental body is essentially the same. Though the precise language in the two versions may differ, “[t]hey are framed in common, almost identical, language, and they have the same purpose: ‘to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.’ *Loren F. Ghiglione v. School Committee of Southbridge*, 376 Mass 70, 72 (1978).” *Medlock*, 31 Mass. App. Ct. at 499. Further, although the “public purpose” language explicit in §11A does not appear in §23A, the Appeals Court in *Medlock* expressly noted that the *Allydnn* factors “are also consistent with the factors to be considered in deciding whether an entity is a governmental body.” *Id.* at 501, n 6.

In answering whether the Board of Trustees in *Leonard Morse* was a governmental body, the Supreme Judicial Court looked to the origin of body, discounting the operational facts of extensive public involvement. “The hospital is a charitable institution established under the will of Mary Ann Morse.” *Leonard Morse*, 398 Mass. at 732. “[T]he only reason that the trustees are

¹³ Creation by the General Court does not necessarily make an entity subject to the “state” version of the Open Meeting Law. Obviously every school committee, for example, functions under state mandate, see generally G.L. c. 71, yet their actions are judged under the “municipal” version of the law. See also *Gerstein v. Superintendent Search Screening Committee*, 405 Mass. 465 (1989); *Connelly v. School Committee of Hanover*, 409 Mass. 232 (1991). Further, a local rent control board, existing under St. 1970, c. 842 has been held not to be a state “agency.” *Anthony Gentile v. Rent Control Board of Somerville*, 365 Mass. 343, 349 n.6 (1974). Conversely, the Boston Housing Authority, existing under G.L. c. 121, § 3, was held to be subject to the audit of the Finance Commission of Boston. *Finance Commission of Boston v. John McGrath*, 343 Mass. 754, 763 (1962) (“Such an authority, or any similar authority for other purposes, is a public body, analogous in various respects . . . to a municipal corporation.” citations omitted).

¹⁴ This was not always so. In 1819, the area known as Chebacco, including the land contained in the Town’s original 1650 grant in support of the school, was separated from the Town of Ipswich and created as the Town of Essex. Until given permission by the General Court to sell the land in Essex, see St. 1906, c. 506, the Feoffees continued to own property in that town.

[elected directly by the voters] is because the will of Mary Ann Morse, a private individual, so provided." *Id.* at 733. Applying that principle to this case, we must look to the origin of the Feoffees to determine the nature of the entity.

There are **three plausible characterizations** of the origin of the Feoffees as the entity now functions: it was created by the Town of Ipswich in 1650/1, or by private donors of land, or by the General Court in 1756 or 1765.

Created by the Town?

Town records demonstrate that it created a collective entity in 1650/1. With property under its management and with control of the grammar school itself, this can be fairly characterized as an endowed school committee. Is this a "public purpose?" If that collective entity fulfilled a public purpose when created, and if it still exists, it would, we believe, be a "governmental body" under the Open Meeting Law.

From the earliest days of the Massachusetts Bay colony, communities were encouraged, if not required, to have a public school. In 1650, when the Town arguably created the Feoffees, the operative law was the so-called Old Deluder Satan Law of 1647:

It being one chief point of that old deluder, Satan, to keep men from the knowledge of Scriptures, as in former times, by keeping them in an unknown tongue, so in these latter times, by persuading them from the use of tongues, that so at last the true sense and meaning of the original might be clouded by false glosses of saint-seeming deceivers, that learning might not be buried in the graves of our fathers, in church and commonwealth, the Lord assisting our endeavors . . . It is therefore ordered . . . [that] after the Lord hath increased [the settlement] to the number of fifty householders, [they] shall forthwith appoint one within their town, to teach all such children as shall resort to him, to write and read . . . and it is further ordered, That where any town shall increase to the number of one hundred families or householders, they shall set up a grammar school for the university.¹⁵

The town school committee -- the modern analog of the collective entity created by the Town in 1650/1 -- is clearly a governmental body. In our view, when a town creates a collective body to fulfill a statutorily-required obligation, it has created a governmental body. Therefore, if the Feoffees of the Grammar School that functions today is the descendent of the entity created in 1650/1, we have no doubt that it is a governmental body.

Created by Private Action?

The suggestion has been advanced that the Feoffees were created by the private action of donors to the school. The only specific donors our research identified are the Paines, William, Robert, and Robert's wife, Elizabeth. Robert Paine was among those charged by the Town in

¹⁵ In 1646 Ipswich had 146 households; in 1677 it had around 250 households, History of Ipswich, Essex and Hamilton, Joseph B. Felt (1834). The "university" was what is now Harvard College.

1650 with managing the granted land and the grammar school itself. When he and ~~his wife made~~ their donations to the Town, therefore, he, and, presumably his wife, knew that the ~~Town had a~~ mechanism in place to receive exactly the kind of donations that they were making.

The gift of “*the little neck of land at Ipswich commonly known by the name Jeffrey’s neck*” in William Paine’s 1660 will is different in several ways from the gifts by Robert and Elizabeth Paine. First, the bequest is made “*unto the free school of Ipswich*,” not directly to the Town itself. More important, William explicitly names “*feoffees in trust*,” although the will does not tell us what duties those feoffees were to perform. Further evidence that there was a privately-created entity, separate from the Town-created group, exists in the language of the Town Meeting vote of January 12, 1755, and of the preambles to the 1756 Act and the 1765 Act. (These documents are reproduced in the Appendix.) Collectively those documents indicate that private persons, in granting land for use of the school, had provided for succession in those charged with the management of that land. Those documents cite the failure of the Town in 1650/1 to provide for succession as a source of “*endless disputes*” between the Feoffees, as then existing, and the Town.

As mentioned, in William Paine’s 1660 will three “*Overseers and Feoffees in trust*” were named,¹⁶ but the will contained no language of succession. Further, no mechanism has been identified by which the three feoffees named by William Paine in 1660 could have become “*the present four Feoffees*,” referred to in the Town Meeting vote of January 12, 1756.

However, on the strength of the legislative preambles, we must assume that “*the present four Feoffees*,” referred to in the Town Meeting vote of January 12, 1756 requesting legislative action, are the successors to the Paine feoffees or those of unidentified private donors. If the Feoffees of the Grammar School that functions today is the descendent of the “*feoffees in trust*” created by William Paine or other unknown donors, they would be analogous to the Board of Trustees in *Leonard Morse*, and NOT a governmental body.¹⁷

Created by the General Court?

Next, we examine the implications of the Acts of 1756 and 1765. The 1756 Act expired of its own terms, and was replaced by the nearly identical 1765 Act, which subsequently became “*perpetual*.” Therefore, it is the 1765 Act that we examine.

One could conclude that the 1755 request of the “*the present four Feoffees*” and the Town was in the nature of a petition for reformation of the trust, of the kind that today would be

¹⁶ The 1683 gift by Robert and Elizabeth Paine is to the Town itself, not to any group. That the land given by Robert Paine evidently passed under the control of the Feoffees was presumably by operation of the Town Meeting action that had authorized that group to handle “such sums of money, parcels of land, rents or annuities as are or shall be given towards the maintenance of a schoolmaster”

¹⁷ Our research has not indicated what became of the group indisputably created by the Town in 1650/1. We note that in 1720 individuals other than those named to manage the school’s land in 1650/1 are referred to as “*Feoffees*” and are involved in the Town’s activities, not the activities of any private party. Clearly, notwithstanding the doubts about succession expressed some thirty years later, the Town-created Feoffees had, in fact, dealt with succession at least up to 1720.

directed to the Probate and Family Court.¹⁸ The question arises whether in 1755 or 1765 the Provincial Government had the power to extinguish or reform what we would today ~~probably~~ call a testamentary trust.

At that time, the Province of Massachusetts Bay functioned under the so-called William and Mary Charter of 1691. The authority of the Provincial Government was derived from the power of the British sovereign, and the provisions of British law. As to testamentary matters, Blackstone writes:

Wills therefore, rights of inheritance and successions, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them . . . how futile every claim must be that has not its foundation in the positive rules of the state.
Blackstone's Commentaries, Book Two, Chapter One.

Under the 1691 Charter, legislative power was bestowed to the Governor and General Court:¹⁹

To make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without (so as the same be not repugnant or contrary to the laws of this our realm of England) . . .

Additional specific power with regard to estates was granted by the 1691 Charter to the Royal Governor, comparable to the power of the sovereign in Britain:

We do . . . grant, establish and ordain that the Governor of our said Province . . . with the Council . . . may do, execute or perform all that is necessary for the probate of wills and granting of administrations, for touching or concerning any interest or estate which any person or persons shall have within our said Province . . .

In *Drury & others v. Inhabitants of Natick & another*, 92 Mass 169, (1865), a case regarding a testamentary trust that created a public library, the Supreme Judicial Court discussed the powers of the Provincial General Court:

*Under the Province Charter, the king disallowed all acts continuing in force colonial laws or establishing courts of chancery: the general court seem to have acted in the matter of charities by resolves or acts of incorporation. Drury, 92 Mass. at 180-181.*²⁰

Lacking a Probate Court, but with an available mechanism to address the disputes that had arisen, the Town and Feoffees asked the General Court for help. Between the broad grant of legislative authority and the broad grant of specific power with regard to estates, it is clear that the Governor and Provincial General Court could reform a trust or even abrogate a will.

¹⁸ The ancestor of the Probate and Family Court Department was established by St. 1783, c. 46.

¹⁹ Spelling, capitalization and punctuation are all modernized in quotations from the 1691 Charter.

²⁰ The Chancery Court had equitable rather than common law jurisdiction. Equity jurisdiction extended to wills and estates. Black's Law Dictionary, 5th Edition.

The response of the General Court, with the assent of the Royal Governor, to the request for help from the Town and the Feoffees, can be viewed as a reformation that superseded whatever it was that William Paine or other unidentified donors had done. Indeed, even after the creation of the Probate Court, the General Court made the seven Feoffee governance structure perpetual and thrice granted specific additional power to the group.

We therefore conclude that whatever the actions of William Paine and any other private donors may have been, they are irrelevant to the determination of the nature of the Feoffees. Given that “the present surviving feoffees on the part of the private persons,” referred to in the Town Meeting vote of January 12, 1756 requesting legislative action, are apparently the successors of the entity created by private donors, we must note that they joined in the request for that action. If a privately-created entity was extinguished or reformed by the General Court and Royal Governor, it was at its own request.

In 1765, when the Provincial General Court acted, the town was required (by Province Law 1692-93, c. 26, §5) to have a grammar school, just as it had been in 1650. Thus, whether the relevant time is taken as 1650/1 or 1765, the statutory requirement was the same (though the Puritan rhetoric was discarded): every community with more than one hundred households was required to have a grammar school or face a fine. While the exact size of Ipswich in 1765 could not be quickly determined, the 1790 Census shows 601 households.²¹

As noted, the General Court acted on at least three later occasions (1835, 1892, and 1906) regarding the Feoffees, presumably at the entity’s request, granting authority to do things beyond the powers listed in the 1765 Act. These legislative actions demonstrate that both the Feoffees and the General Court viewed the Feoffees as an entity with limited powers, which the Legislature could expand.

If the town action of 1650 /1 is the origin of the Feoffees, then we have a town creating a collective entity to fulfill a statutorily-required function. If, as we think is sounder, the 1765 Act is the origin of the Feoffees, then we have the Provincial government, at the request of the Town and the surviving Feoffees, incorporating a collective entity to fulfill a statutorily-required function.

Considering the 1765 Act, with the *Allydann* factors in mind, we see that the benefit -- the availability of a grammar school -- has wide-spread application, and directly benefits the public. The General Court passed the predecessor of the 1765 Act in response to a request from the Town and the surviving Feoffees. Thus, the 1765 Act has its roots in the failure of other governance arrangements. The confusion that led to the 1756 request amply demonstrated the need for unified control of a unified effort. Finally, as with the Town’s own earlier action, the 1765 Act was passed at a time when the Town was obliged to have a grammar school. It is true

²¹ US Census Department. The known population data-points allow a reasonable projection of the 1765 figure. The household figures for Ipswich for 1800 and 1810 could not be determined, but projecting the state-wide growth figures for the twenty years 1790-1810 backward to 1765 from 1790 yields a number of about 480 households, which is consistent with its known size of 250 households in 1677.

that the Feoffees have no eminent domain power, but under *Allydonn*, no single ~~factor is~~ decisive. We conclude that the 1765 Act was directed at fulfilling a public purpose.

A final issue regarding the Feoffees status as a governmental body needs to be ~~examined~~. The suggestion has been made that the advent of the modern school committee, by depriving the Feoffees of control of the grammar school, effectively precludes the Feoffees from being a governmental body. The Feoffees' power over the Grammar School was lost to the modern school committee at least by 1860.²² However, the power to manage property for the benefit of the public schools is not a power given to school committees in general. As such, the Feoffees retained that power, and exercise it to this day. We also note that, even after the creation of modern school committees, the General Court has twice given the Feoffees power to sell specific parcels. Had the General Court, by creating an Ipswich School Committee, rendered the Feoffees superfluous, it would hardly have given it additional power.

Conclusion Regarding the Feoffees

We conclude that whether the origin of the Feoffees is the Town's 17th century actions or the 1765 Act of the Provincial Government, the entity is a publicly-created collective body fulfilling a public purpose, unlike the hospital in *Leonard Morse*. Further, while c. 216 of the Special Acts of 1916 gave the pre-existing Leonard Morse Hospital Board of Trustees a new label, that act changed nothing about the composition or mode of selection of the Board. Province Laws 1755-56, c. 26, on the other hand, completely remade the composition of the Feoffees, by adding Selectman. At its birth, therefore, the Feoffees constituted a group that would later come under the description of "governmental body." Even if one or more private donations had created a parallel group, that group was superseded by the Province, and later, the Commonwealth.

Selectmen as Feoffees

A question has also been raised regarding the significance under the Open Meeting Law of the actions of the three "eldest" members of the Board of Selectmen as Feoffees.²³ We are advised that the Board of Selectmen in Ipswich has five members. Therefore any three Selectmen would constitute a quorum of that Board. If all three Selectmen Feoffees attend a meeting of the Feoffees, then a quorum of the Board of Selectmen will be present at that meeting. Would such an occurrence amount to a "meeting" of the Board of Selectmen for which a notice must be posted?

G.L. c. 39, §23A defines a "Meeting" as

any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter

²² G.S. 1860, c. 38, §16 provides, in relevant part: "Every town shall at the annual meeting choose, by written ballots, a board of school committee, which shall have the general charge and superintendence of all public schools in town."

²³ We are advised that one current Lifetime Feoffee is also a current Selectman.

over which the governmental body has supervision, control, jurisdiction ~~or advisory~~
power is discussed or considered; but shall not include any on-site inspection of any
project or program.

Under the circumstances described above, a "corporal convening" will have occurred. It would not be a "chance meeting[] or social meeting" -- declared by the statute not to be an Open Meeting Law violation -- since, in fact, the presence of the Selectmen Feoffees will have been planned. The issue becomes whether the Feoffees discuss or consider "any public business or public policy matter over which the [Board of Selectmen] has supervision, control, jurisdiction or advisory power"

With the creation of the Ipswich School Committee, the Feoffee's mandate was limited to managing property, with the profits benefiting the public schools. We must, therefore, examine the role of the Board of Selectmen, relative to the funding of those schools. We are advised that the school budgeting process in Ipswich works essentially as follows: the School Committee formulates an operating budget, based on apparently available property tax and other revenue, likely operational needs, and the requirements of state statute; that Committee's recommendation/request is forwarded to the Town Finance Committee, which attempts to integrate the recommendation/request with other demands on available revenue; the Finance Committee then forwards its total budget, including the School Department's line-item, to the Town Meeting, which is the final actor in the process. Noticeably absent is a formal role for the Board of Selectmen. It is possible or even likely that Selectmen, as a Board or as individuals, express their views during the process, but the school budget is not, in any meaningful sense, within their "supervision, control, jurisdiction or advisory power."

Finally, several additional arguments warrant a response. Just because the Board of Selectmen is a governmental body, a notice of a meeting need not be posted whenever a majority of Selectmen gather because a meeting of the body under the Open Meeting Law occurs only when the public business of the body is being done. See Medlock, 31 Mass. App. Ct. at 502. Further, just because the tenants of the Feoffees are taxpayers, the business of the Feoffees need not be done in public. If business regarding taxpayers always had to be done in public, then every condominium association board would be a governmental body. Finally, the argument that the voters of Ipswich choose the Selectmen, and thus the actions of a majority of Selectmen must always be public, was rejected in *Leonard Morse* where the voters selected the Trustees.

Because the Feoffees are not generally doing business that is also "public business" of the Board of Selectmen, even if all the Selectmen Feoffees and the Lifetime Feoffee who is a Selectman are present, no "meeting" of the Board of Selectmen is occurring, as a general rule. It is possible that certain business before the Feoffees may also fall within the "supervision, control, jurisdiction or advisory power" of the Board of Selectmen. This Office knows too little of the substantive agenda of the Feoffees to predict the circumstances in which this possibility might actually arise. Even if there is no obligation to post a meeting of the Board of Selectmen when they act as Feoffees, the Open Meeting Law does not prohibit a discretionary posting of notice.

Responses to Specific Inquiries

When the three Selectmen Feoffees meet with the four Lifetime Feoffees, ~~must the Open Meeting Law be followed?~~

Yes, because the Feoffees are a governmental body

Are notes and votes of past meetings of the Feoffees subject to public disclosure?

Yes, at least to some extent. G.L. c. 39, §23B requires a governmental body to keep minutes. Minutes are subject to public disclosure, whatever their age. Access to public records generally is governed by G.L. c. 66, §10. Questions with regard to public records access should be directed to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth.

We hope this response has addressed the inquiries made. Please feel free to contact this Office in this or any other regard within our jurisdiction.

Very truly yours,

Charles F. Grimes
Assistant District Attorney

Appendix

Ipswich Town Meeting on January 12, 1756

Whereas, the Town in granting the school farm at Chebaco did not give those persons to whose trust they committed the improvement of said farm a power to appoint successors as the private persons who granted lands in the Town for the same use did, as appears by examining the respective grants, by which means, those grants being differently constituted and the persons entrusted by the Town as aforesaid being long since dead, endless disputes may arise between the Town and Feoffees about the school (to the support of which the whole income if needed is to be applied) unless relief be had from the General Court, and in as much as the present Feoffees have manifested their agreement thereto,

Voted, that a joint application be made to the Great and General Court to obtain an Act, if they see meet, fully to authorize and empower the present four Feoffees and such successors as they shall time to time appoint in their stead, together with the three eldest Selectmen of this town for the time being, other then such Selectman or men as may at any time be of the four Feoffees, to be a Committee in Trust, the major part of whom to order the affairs of the school land, appoint the schoolmaster from time to time, demand receive and apply the income agreeably to the intension of the donor. No Feoffee hereafter to be appointed by the present Feoffees or by their successors other than an inhabitant of this Town, and not to act after he remove his dwelling out of it, and to have no more than four at one time, And least any unforeseen inconvenience may happen in this method, it is agreed that the Act be only for ten years at first.

Province Laws 1755-56, c. 26:

Whereas divers piously disposed persons in the first settlement of the town of Ipswich, within the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in said town forever; of which feoffees the honorable Thomas Berry, Esq., Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, are the only survivors; and whereas the town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same use, give and grant to certain persons in said grant mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the same town, with some of the lands adjoining; all which farm and lands were soon after leased out for the space of one thousand years, the rents to be applied to the uses of learning in said town as aforesaid; but, as is apprehended by some, no power was given by the said town to their trustees to appoint successors in that trust for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, considerable disputes have already arisen between the said town and the feoffees; and not only so, but some doubts are started whether it is in

the power of said town or feoffees to compel payment of the rents of the ~~farm and~~ adjoining land before mentioned; and *inasmuch* as the said town of Ipswich, ~~by their vote~~ of the twenty-second day of January, one thousand seven hundred and fifty-six, ~~by and~~ with the consent of the aforementioned feoffees, have agreed to apply to this ~~court for aid~~ in the manner in said vote mentioned; wherefore,

(Section 1) That from and after the first day of March next, for and during the space of ten years, the aforementioned Thomas Berry, Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, the present surviving feoffees on the part of the private persons granting lands as aforesaid, together with Francis Choate Esq., Capt. Nathaniel Treadwell and Mr. John Patch, Junr., three of the present selectmen of said town, shall be and are hereby incorporated a joint committee or feoffees in trust, with full power and authority by a majority of them to grant necessary leases of any said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities; and if need be, to sue for and recover the same; to appoint grammar-school masters from year to year and time to time, and agree for his salary; to apply the rents and annuities for the payment of his salary and other necessary charges arising by said school; to appoint a clerk and treasurer, and if found necessary, to impose some moderate sum and sums of money to be paid by such scholars as may attend said school, for making up and supplying any deficiency that may happen in the yearly income and annuities of said lands; for defraying the necessary charges that may arise by said school, and enforce the payment; to inspect said school and schoolmaster, and in general to transact and order all matters and things relative to such school, so as may best answer the original intent and design thereof.

(Section 2) And the said committee or feoffees and their successors shall, at the anniversary meeting of said town in March, yearly, during the continuance of this act, lay before said town a fair account of their proceedings relating to said school for the year then last past.

And for the continuance of the succession of the before-named committee or feoffees, Be it enacted

(Section 3) That if either the said Thomas Berry, Daniel Appleton, Samuel Rogers or Benjamin Crocker, shall decease, or remove out of said town of Ipswich, or otherwise become incapable (sic) or unfit to discharge said trust, it shall and may be lawful for the surviving and qualified remainder of those four gentlemen to appoint some other suitable person or persons in his or their room so deceasing, removing or otherwise unqualified, according to the original intention of their first appointment, so as to keep up the same number of four feoffees thus constituted, and no more; and no person to be appointed a feoffee but an inhabitant of the town of Ipswich; and the aforementioned selectmen shall, from year to year, be succeeded by the three oldest in that office of the selectmen of said town for the time being, other than such of them as may be also one of the aforesaid four feoffees; and in case it should at any time happen that there is not three selectmen chosen by said town that may have served the town before in that office, the deficiency shall be supplied (sic) by those first named in the choice of the town.

And for rend(e)ring the whole effectual,

(Section 4) That the aforesaid committee or feoffees in trust may, in all matters relative to said grammar school, in which they may by force of this act be concerned, sue or be sued by the name or character of the feoffees of the grammar school of the town of

Ipswich, in the county of Essex; and in this power their successors shall ~~be included with~~ respect to the transactions of those that may have preceeded (sic) them in ~~said office.~~ (Section 5) This act to continue and be in force for the space of ten years, ~~and no longer~~

Province Law, 1765-66, c. 5

Whereas divers piously disposed persons in the first settlement of the town of Ipswich, within the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in said town forever; of which feoffees John Choate, Samuel Rogers, Aaron Porter and Francis Choate, Esqrs, are the only survivors; *and whereas* the town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same use, give and grant to certain persons in said grant mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, (sic) in the same town, with some of the lands adjoining; all which farm and lands were soon after leased out for the space of one thousand years, the rents to be applied to the uses of learning in said town as aforesaid; but, as is apprehended, no power was given by the said town to their trustees to appoint successors in that trust for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, disputes have heretofore arisen between the said town and the feoffees; and also, but some doubts have arisen whether, by the constitution of those grants as aforesaid, it is in the power of said town or feoffees to compel payment of the rents of the farm and other lands granted by the town as before mentioned; *and whereas* for the removal of the aforesaid difficulties, on the joint application of both said town and the then feoffees, this court did, in the twenty-ninth year of his late majesty King George the Second, by one act then passed, intialed "An Act for regulating the grammar school in Ipswich, and for incorporating certain persons to manage and direct the same," empower the then surviving feoffees, with their successors, together with part of the selectmen of said town, for the time being, as an incorporate body, to manage and direct the affairs of said school for ten years then next coming, in manner as in said act is expressed, which ten years will expire on the first day of March next; *and whereas* it has been found by experience that the said act has been of great advantage to the interest of learning in said town, and all doubts and disputes aforesaid, from the passing of said act, have ceased, and the parties concerned have desired the continuance of the act of this court touching the premises, wherefore (Section 1) That from and after the first day of March next, for and during the space of ten years, the aforesnamed John Choate, Samuel Rogers, Aaron Porter and Francis Choate, Esqrs., the present surviving feoffees on the part of the private persons granting lands as aforesaid, together with Michael Farlow, Samuel Burnham and Samuel Lord the third, three of the present selectmen of the town of Ipswich, shall be and they are hereby incorporated a joint committee or feoffees in trust, with full power and authority by the whole, or the major part of them to pass necessary leases of any said land not prejudicial to any lease already made, and not exceeding the term of twenty-one years, also to demand and receive the said rents and annuities; on such other grants or leases relative to said school, that now is or that hereafter may be, and if need be, to sue for and recover the

same, either by themselves or by their attorney; to appoint a clerk and treasurer, also a grammar-school master from year to year and time to time, and agree with ~~him and them~~ for his and their salaries; to apply the said rents, grants and annuities for the payment of his and their salaries and for the discharge of other necessary expenses attending ~~this~~ affair, so far as those rents, grants, and annuities will go, ; with a like power from ~~time to~~ time,; to inspect said school and master, and in general to transact and order all matters and things relative to such school, and to all lands, grants annuities that do now, or that may hereafter, belong to said school, arising from the donations aforesaid, so as best to answer the general design and intent thereof, annually laying an account of their proceedings in this trust before the said town, at their March meeting, for their inspection.

And for the continuance of the succession of the before-named committee or feoffees, Be it enacted

(Section 2) That if either the said John Choate, Samuel Rogers, Aaron Porter or Francis Choate, shall decease, or remove out of said town of Ipswich, or otherwise become or unfit to discharge said trust, or unreasonably neglect to do it, it shall and may be lawful for the surviving and qualified remainder of those four persons, from time to time, to appoint some other suitable person or persons in his or their room so deceasing, removing or otherwise unqualified, or neglecting his or their duty as aforesaid, which power of appointment shall descend to those so appointed, so as always to have four of said feoffees constituted in this way, and no more; and no person at any time to be appointed that is not an inhabitant of the said town; and the selectmen aforesaid, by this act incorporated as aforesaid, shall, from year to year, be succeeded by the three oldest in that office of the selectmen of said town for the time being, other than such of them as be also one of the feoffees constituted as aforesaid; and in case it should at any time happen that there is not three selectmen chosen by said town that may have served the town in that office before, then those first named in such choice shall succeed as aforesaid.

And for rendering the whole effectual,

(Section 3) That the aforesaid committee or feoffees in trust may, in all matters relative to said grammar school, in which they may by force of this act be concerned, sue or be sued by the name or the Feoffees of the Grammar School of the town of Ipswich, in the county of Essex; and in this power their successors shall be included with respect to the transactions of those that may have preceeded (sic) them in said office.

(Section 4) This act to continue and be in force for the space of twenty-one years from the first day of March next, and no longer.

St. 1786, c. 54

Whereas (*illegible*)

Was enacted in the year one thousand seven hundred and sixty five, to be in force for a term of twenty one years, from the first of March, One thousand seven hundred and sixty five, which Law has been found beneficial and to answer the purposes for which it was enacted;

Be it therefore Enacted by the Senate, and House of Representatives, in General Court assembled by the authority of the same, That the said Law entitled "An Act for regulating the grammar School in Ipswich, in the county of Essex, and for incorporating certain persons to manage and direct the same," Be and hereby is made perpetual.

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December 15, 2008

IPSWICH

Little Neck agreement within sight

By John Laidler
GLOBE CORRESPONDENT

The landowner and tenants of Ipswich's Little Neck have taken a major step toward resolving their protracted rental dispute, reaching an agreement in principle for the tenants to buy the isthmus for \$26.5 million.

The sale would put an end to litigation and clear the way for the landowner, a nearly 350-year-old trust, to resume its traditional funding support of the Ipswich public schools.

Under the terms of a 1660 bequest of the 27 acres overlooking the Ipswich River, the trust managers, known by the medieval term "feoffees," are required to rent the land and distribute the proceeds to benefit the school system.

That arrangement, which in recent times had resulted in annual payments to the schools, has been frozen for more than two years because of the legal wrangle between the tenants and the feoffees over the terms of a new lease.

Under the agreement, the sale would generate an endowment fund, with investment proceeds used to make annual payments to the schools.

Several legal hurdles remain. The two sides must reach a purchase and sale agreement; the state attorney general must consent to the sale because it in-

Accord near in Little Neck rental dispute

► IPSWICH

Continued from Page 1

volves a trust whose beneficiary is the public; and the sale also would need probate court approval, because it would involve a deviation from the original requirement of the trust that the land not be "sold or wasted," according to the feoffees' attorney, William H. Sheehan III.

Little Neck has 167 homeowners, 143 of them seasonal and 24 year-round.

The Little Neck Legal Action Committee, which represents the 135 homeowners involved in the legal dispute, anticipates forming a business entity to take title to the 27 acres.

Those individuals, along with the 32 remaining homeowners who have agreed to leases with the feoffees, would have the opportunity to participate in the business entity, according to a joint statement on the agreement in principle issued by the committee and the feoffees.

"We are very pleased," said the feoffees' chairman, James W. Foley, who is also an Ipswich selectman. "I know I can speak for the entire feoffees' group that although the feoffees as we have known it will end . . . the time has come."

"This is an agreement that I believe everyone can be pleased with. Hopefully we can move forward. I know it will take some time to go through the attorney general and the court, but I truly believe there will be a successful end to this," Foley said.

Mark DiSalvo, spokesman for the Little Neck Legal Action Committee, said his group also is



LISA POOLE FOR THE BOSTON GLOBE/FILE

A man walks his dog along the shoreline at Little Neck. The Little Neck Legal Action Committee, representing 135 homeowners, hopes to form a business entity to take title to 27 acres.

confidence that a sale will close."

Efforts to resolve the rental dispute, the subject of a lawsuit brought by the Little Neck Legal Action Committee and a counter-suit brought by the feoffees, appeared to have hit an impasse in late March amid circumstances that were themselves a source of conflicting interpretation.

Frustrated by the landlords' decision to end mediation and what they contended was a refusal by the trust to put a reasonable offer on the table, the tenants switched law firms to focus on pursuing their claims in court.

At the time, Sheehan disputed the suggestion that the trust was not attempting to reach an agreement of land ownership.

Little Neck residents, he said, would be able to "enjoy the benefits of land ownership."

tenants opted to dismiss their lawyer.

The two sides resumed talks in the summer, however, leading to the current agreement in principle.

School Committee chairwoman Joan Arsenault said her board welcomes the possible resolution.

"I think we feel it's a positive outcome and a way to move forward," she said.

The potential deal comes as the Ipswich school district is again facing tight fiscal constraints.

Despite winning voter approval of a \$14-million Proposition 2½ override last year, the

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Proposed \$14-million Proposition 2½ override last year, the

Despite winning voter approval of a \$1.4 million Proposition 2½ override last year, the school district had to cut about \$200,000 from this year's budget and, like other town departments, is planning no increase in year's budget.

Arsenault said the district anticipates that if the sale goes through, annual payments from the feoffees would not begin until fiscal 2011.

And she said her committee will not be looking to those payments to solve its budget challenges.

"It was never intended to be part of the operating budget," she said of the payments, the most recent of which was \$588,000 in 2006. "Its intent is for enhancement over and above the operating budget."

Some of the feoffees' most recent payments were used for school operating costs. Arsenault did not rule out that necessity occurring again.

"Nobody I know -- the feoffees, the School Committee, the selectmen, or the Finance Committee ... wants to use it for that," she said.