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From: Harvey A. Schwartz <harvey@TheEmploymentLawyers.com>
Reply-To: <harvey@TheEmploymentLawyers.com>
<utrum@ipswich.org>, <selectmanlamp@hotmail.com>,
<ellerkamp@attbi.com>, <RBonsignore@aol.com>, <bhopping@attbi.com>
Date: Tuesday, April 22, 2003 11:37 AM
Subject: RE: Feoffees

Here is an email I received today from Don Greenough. I had sent him the document we gave to the School Committee giving our views on the various items to be included in the new trust document. I told Don we would be meeting with the school committee soon (Do we have a date yet Barry?). In view of this response, I don't think it would be worth it to try to reach any agreement with the Feoffees on these points before we meet with the school committee, but we should consider these views at that meeting.

Harvey A. Schwartz
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-----Original Message-----

From: Don Greenough [mailto:donald.greenough@verizon.net]
Sent: Tuesday, April 22, 2003 11:32 AM
To: Harvey A. Schwartz
Subject: Feoffees

Harvey:

The Feoffees are interested in a new "trust" document, but believe the School Committee should first address the pending matter of the cottage owners' offer to purchase the land. This was presented to the Committee in June, but other than a 20-minute discussion at one public meeting, I am not aware of any further action by the Committee.

A few comments in response to your note:

Membership: In previous discussions, the Feoffees expressed the opinion that if the property was sold, 5 members would be sufficient to manage the resulting investment fund. However, if the property is not sold, the Feoffees favor a 7-member Board. As the rents have

increased over the past four years, the Feoffees have been spending much more time on disputes (parking, construction, noise, etc.) and rent collection. They see a need to delegate responsibility to a typical sub-committee structure (finance, capital projects, school committee liaison, etc.).

Selection: The Feoffees are not favor of any appointments by the Moderator. An alternative would be 2 by BOS, 2 by SC and 1 by FinComm.

Use of funds: The Feoffees would request an explicit prohibition against the funds being used for normal operating expenses.

Selection of uses: The Feoffees believe that the specific expenditure of the funds should be in the discretion of the members of the School Committee, elected by the public, and not the Feoffees. BIG
CHANGE b

Maximize contributions: This will depend on whether the property is sold.

Implementation: The Feoffees suggest that the document be approved by the BOS, SC and FinComm and then formalized through the Probate Court process.

If you have any questions about the comments, call me.

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RICHARD L. KORB
SUPERINTENDENT OF SCHOOLS

Ipswich Public Schools

PAYNE SCHOOL BLDG.
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IPSWICH, MA 01938
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RKsuper@aol.com

Harvey

I spoke with Barry Happing this morning regarding the fact you did not receive an advance copy of the "Draft" of Foeffie's Document. I apologize that you did not receive this before the press printed it.

I have enclosed the Dec 16th Draft, questions from the School Committee dated Dec 18th and Mr Allen's response dated Jan 3. (5 copies)

the SC will be meeting Thursday Jan 8th at Town Hall with Mr Allen to discuss further. I hope you can make it.

Rick Karl

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From: Robert K. Weatherall <utrum@ipswich.org>
To: Harvey Schwartz <harvey@TheEmploymentLawyers.com>
Date: Friday, May 9, 2003 2:53 PM
Subject: Yesterday's School Committee meeting

Dear Harvey: I thought it worthwhile to attend yesterday's School Committee meeting. They used the first quarter of an hour to decide (in executive session) whether to accept or reject the tenants' offer to buy. They decided to reject it. They spent the next two hours conscientiously going over your presentation of our recommendations, referring from time to time to a set of points given to them by their lawyer Rick Allen. They also seemed to have before them Don Greenough's email to you dated April 22.

1. On the matter of how many Feoffees there ought to be, and how chosen, they agreed to 5, but followed the Feoffees' recommendation that 2 should be appointed by the School Committee, 2 by the Selectmen, and 1 by the Fin Com. They felt strongly that they should be able to appoint serving School Committee members if they wished to. Their thoughts on this were closely entwined with their view on who should decide how the Feoffees' money is spent - the decision should rest with the School Committee, not the Feoffees. (More on this below).

2. They agreed to the reporting requirements as described in your presentation.

3. They approved your language describing the purpose of the trust, except that they would like to omit the word "grants". I don't think they like our idea that teachers or students might submit grant applications to the Feoffees.

4. They were strongly opposed to the idea that the Feoffees should decide how the money is spent; Feoffees should simply hand over a check and leave the spending to the School Committee. Clearly, their amour propre was at stake, if nothing else. Joan Arsenault asked me to comment on our language and I said that we were keen to put an obstacle in the way of the Feoffees' simply being used to help cover on-going expenses. I said that they should expect future contributions amounting to \$600,000 or more, sums that future Fin Coms would be sorely tempted to count as a regular part of the school budget.

Since the Feoffees agree with the School Committee on this I think we are likely to have a hard time winning the argument. It occurs to me that we should have no language on this at all, just as there is no language spelling out the present relationship of the Feoffees to the School Committee. At present the Feoffees simply hand over a check, but they have objected to some projects the School Committee had in mind in the past and they could do so again. Let that be the way in the future. When the Fin Com is not pressing the School Committee to spend every dollar it has on operating expenses the Feoffees can simply hand over a check; when the Fin Com gets grabby the Feoffees can turn choosy, and the School Committee will be grateful for their doing so. After all, with the School Committee and the Fin Com both choosing some of the Feoffees there will always be opportunities to shift the ballast in the boat. Is this a way out?

5. They have no more idea than we have how to ensure that the Feoffees contribute as much as they should to the school. I was pleased to hear O'Flynn say several times that he was keen to squeeze the Feoffees. Dianne Ross was also businesslike on the subject.

6. They planned to consult with Rick Allen on the legal steps needed to get a new trust into effect. They agreed that the Selectmen would need to give their o.k., and possibly Town Meeting. I said that in view of the 18th century statutes governing the Feoffees there would also need to be a new statute.

I thought it was a good meeting. Everyone spoke thoughtfully. There was no grandstanding. A member of the small audience present said it was the best School Committee meeting she had attended.

Tue, May 13, 2003 11:01 AM

After the meeting I talked sought out Joan Arsenault and mentioned to her that Whiston and probably also Foote were stepping down and that it would be helpful if the Feoffees didn't immediately point replacements for them. I said it was also a reason to get a new trust instrument approved on. She indicated that she might talk with Don Whiston. Thinking about it today, it occurs to me that if the Feoffees need to appoint someone to get a quorum they should be encouraged to discuss it with the boards who will do the appointing in the future so that they get someone whom the boards might appoint.

The earliest date the School Committee can meet with us is Wednesday, June 18. Too many end-of-the school-year events stand in the way before then. The next available date is Wednesday, June 25. Bob

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From: Robert K. Weatherall <utrum@ipswich.org>

To: "Harvey A. Schwartz" <harvey@TheEmploymentLawyers.com>, Barry Hopping <bhopping@attbi.com>, Harry Lampropoulos <selectmanlamp@hotmail.com>, Robert Bonsignore <RBonsignore@aol.com>, Heather Ellerkamp <ellerkamp@attbi.com>

Date: Monday, May 12, 2003 2:05 PM

Subject: Report on School Committee meeting

Hi all: At Harvey's request I'm forwarding to you my report to him on last week's School Committee meeting. (Barry, I hope you think I got things close enough to the mark). In para 4 you will see my notion on how to deal with the issue of who decides how the Feoffees' money is spent - we should include no language on the subject, just as there is none now in the existing relationship between the Feoffees and the School Committee. Without any declaratory statement the relationship is left open to negotiation between the Feoffees and the Committee. When the School Committee is under pressure to use the Feoffees' money to meet on-going expenses, the Feoffees can help resist this pressure; when there is no such pressure the Feoffees can welcome the School Committee's description of what they want the money for. The School Committee will have more leverage than it has now. The Feoffees will have the power of the purse, but 2 of the Feoffees will be School Committee appointees. Is this a way out? Giving the School Committee full power of decision would put no insulation between them and a penny-pinching Fin Com (or penny-pinching voters). Bob

From: "Harvey A. Schwartz" <harvey@TheEmploymentLawyers.com>

Reply-To: <harvey@TheEmploymentLawyers.com>

Date: Mon, 12 May 2003 11:05:08 -0400

; "'Robert K. Weatherall'" <utrum@ipswich.org>

Subject: RE: Yesterday's School Committee meeting

thanks for this report. I'll push to get a date with them. I am concerned about them wanting to have complete control over the application of the money. We should give some thought to this issue. Why don't you send your email on to the rest of the committee.

Harvey A. Schwartz
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website: www.TheEmploymentLawyers.com

-----Original Message-----

From: Robert K. Weatherall [mailto:utrum@ipswich.org]

Sent: Friday, May 09, 2003 2:58 PM

To: Harvey Schwartz

Subject: Yesterday's School Committee meeting

Dear Harvey: I thought it worthwhile to attend yesterday's School Committee meeting. They used the first quarter of an hour to decide (in executive session) whether to accept or reject the tenants' offer to buy. They decided to reject it. They spent the next two hours conscientiously going over your presentation of our recommendations, referring from time to time to a set of points given to them by their lawyer Rick Allen. They also seemed to have

before them Don Greenough's email to you dated April 22.

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After the meeting I talked sought out Joan Arsenault and mentioned to her that Whiston and probably also Foote were stepping down and that it would be helpful if the Feoffees didn't immediately appoint replacements for

them. I said it was also a reason to get a new trust instrument approved soon. She indicated that she might talk with Don Whiston. Thinking about it day, it occurs to me that if the Feoffees need to appoint someone to get a quorum they should be encouraged to discuss it with the boards who will do the appointing in the future so that they get someone whom the boards might appoint.

The earliest date the School Committee can meet with us is Wednesday, June 18. Too many end-of-the school-year events stand in the way before then. The next available date is Wednesday, June 25. Bob

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**Summary of Discussion Regarding Feoffees at
the Ipswich Special School Committee Meeting
Thursday, May 8, 2003**

- I. The School Committee voted unanimously to reject the \$10.2 million-dollar offer.
- II. The need was recognized to set up a joint meeting with the Town Feoffees Committee. Barry Hopping will arrange that with the Town Chair, Harvey Swartz. Those dates that we have tentatively reserved are Wednesday, June 18, at 7:30 p.m. or Wednesday, June 25, at 7:30 p.m. in the HS/MS Ensemble Room. Confirmation of one of those dates will follow.

- III. The School Committee addressed a series of questions relative to the rewrite of the trust and the formation of the new trustees.

A. *Who should the Feoffees be and how should they be chosen?*

It was recommended by the School Committee that the new Feoffees Trust consist of five members: two would be appointed by the School Committee, two appointed by the Selectman, and one appointed by the Finance Committee. It was further recommended that appointees not be a resident of Little Neck and that all appointees shall not be a member of any appointing board. It was also recommended that trustees that are appointed should serve a three-year staggered term, with no term limits. A further recommendation from the School Committee requested that the appointment process be consistent between the three boards. In other words, a common application process should be used by all three appointing boards.

The School Committee would also recommend to the trustees that they hire a professional management firm to manage the Feoffees Trust properties at Little Neck.

B. *What reporting requirements should the Feoffees comply with?*

We will need the recommendations and assistance of Attorney Richard Allen per the reporting proposals. It was the consensus of the committee that the reporting requirements should be at a minimum those that would require compliance with the "Open Meeting's Act" and all other public records and laws applicable to town committees would be followed.

C. *What should the declared purpose of the trust be?*

The School Committee recommends that the trust funds be used to broaden and enrich the education experience of children in the Ipswich Public Schools by providing financial aid to the schools, teachers, and students. The trust document should specifically state that the trust funds are not intended to be used to relieve taxpayers of the expense of providing for public schools and that

the purpose of the trust is to provide supplemental programs rather than to be a substitute source to finance the ordinary and regular expenses of the schools. It was also a recommendation of the School Committee that the amount of money given to the School Committee each year is the decision of the Feoffees and the decision of how the money will be spent is the decision of the School Committee.

D. How should the trust document ensure that the funds are used to supplement the students education?

The School Committee's recommendation is that all trust funds should be held by the Feoffees until they are forwarded to the schools each year. The specific expenditure of such funds shall be at the discretion of the School Committee who are elected by the public.

E. How should the trust document ensure that the Feoffees contribute as much to the schools as would be expected from the size of their assets?

The School Committee's recommendation for this particular question will rely on the working with the Town Feoffees Committee and Attorney Richard Allen to develop and devise appropriate language. The committee spent some time discussing this without coming to a conclusion, as did the Town Feoffees Committee as well. Further discussion with both committees and legal counsel will be needed.

F. What steps will be required to put the new trust document into effect?

It was agreed by the School Committee to recommend that we need to seek Attorney Richard Allen's legal advice and counsel relative to this process. It was assumed that the final trust document would need to be approved by all three boards and formalized by appropriate court action.

IV. Further Discussions and/or Recommendations

A. Before anything is finalized, a further discussion needs to take place relative to the need for an independent audit which would provide the new incoming trustees with documentation as to the funds that they will be working with from this point forward.

B. Methodology for setting rents was discussed. The School Committee will need to confer and get recommendations from legal counsel Richard Allen as to how the rent should be set. However, there were some key suggestions made:

1. Rent should reflect a percentage of the appraised value and not the current practice of everyone paying the same amount for rent.

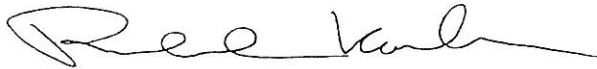
2. Taxes and/or the rents need to be charged on the common land which currently is not the case.

3. There needs to be a fair return on the capital.

4. Enough money needs to be collected to cover the taxes and structures on the common land.

This reflects the sum and substance of the discussion that took place with the School Committee. Official minutes that were taken at the School Committee Meeting will reflect a more accurate accounting.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. L. Korb", with a long horizontal flourish extending to the right.

Richard L. Korb
Superintendent of Schools

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NIXON PEABODY LLP
ATTORNEYS AT LAW

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Charles F. Claeys
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E-Mail Address: cclaeys@nixonpeabody.com

July 7, 2003

Donald M. Greenough, Esq.
2 Depot Square
P.O. Box 790
Ipswich, MA 01938-0790

Re: Little Neck

Dear Don:

As you know, the Ipswich School Committee, at its May 8, 2003 meeting, indicated that it wished the Feoffees to reject the outstanding offer of Little Neck Homeowners, Inc. to purchase Little Neck. On May 20, in follow-up to that meeting, Dick Allen, as counsel to the School Committee, explained to me, as counsel to Little Neck Homeowners, Inc., that the School Committee is not currently interested in seeing the Feoffees sell Little Neck, and wishes instead to focus on restructuring the 350-year-old trust which owns Little Neck.

The Little Neck community would like to participate in the restructuring process and help preserve the character of Little Neck, which is an important part of the uniqueness of Ipswich. The cottage owners have been long-term seasonal residents of Ipswich, frequently with extended families and often over many generations. Many Little Neck residents and their children and grandchildren have become residents of other parts of Ipswich. The Little Neck families have shown great affection for and have always sought to cooperate with and support the Town. As you know, under the rules and regulations of the Feoffees of the Grammar School most of the cottages are limited to seasonal use from April 1 through November 30. In actuality most seasonal residents use the cottages for no more than five months, on a part-time basis. The Little Neck cottages create minimal burden on municipal services because the land rents provide for road maintenance and the upkeep on ball fields, wharf and other common areas; most importantly, summer residents do not use the local school system. Furthermore, the Little Neck

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Donald M. Greenough, Esq.
July 7, 2003
Page 2

community is beneficial to Town businesses as it consists of more than 160 households which purchase goods and services from Town merchants, season after season, and which is comprised primarily of owner/occupants rather than weekly or monthly renters as is common in some oceanside communities.

At the May 8 meeting of the School Committee, a member of the Town Committee on Feoffees made projections about net rental revenues from Little Neck which would require substantial further increases in the costs of cottage ownership for the Little Neck homeowners. It is my understanding that, prior to 1998, the Feoffees set lot rentals to be consistent with seasonal rentals on municipal lands in the region (such as Long Beach in Rockport where the six-month rentals are currently \$900 and, for ocean-front, \$1,500). In 1998, the Feoffees announced that, beginning in 1999, they would increase annual lot rentals (which were then \$800) by an additional 300% over five years so that, by July of this year lot rentals will be \$3,200. Taxes to the homeowners on their cottages and the underlying land, which benefit the general Town budget, also have increased since 1998, so that the average real property taxes charged to each cottage owner now exceed \$2,000, with the result that average annual rent and real estate taxes charged to the cottage owners now exceed \$5,000. (Of course, the cottage owners also bear the other normal costs of seasonal home ownership, including personal property taxes and routine maintenance.)

However, it appears to the homeowners that the total current payments on account of cottage ownership may not properly take into account the many factors which affect the value of cottage ownership, including the limited seasonal nature of all but a few cottages; the limited ability of cottage owners to secure mortgages to finance their cottages; reduced marketability of cottages resulting from the lack of land ownership; and serious Title 5 and Clean Water Act issues which may result in "tight tanks" on Little Neck, with resulting installation and monthly pumping expenses. The Feoffees and residents also face the prospect of replacing the electrical service distributing power throughout the Neck.

The recent developments have created tremendous uncertainty for Little Neck homeowners regarding the future security and costs of cottage ownership and the possible effects on the character of Little Neck as a multi-generational summer community within the Town. The local discussions about maximizing income from Little Neck have continually focused on the cottage owners as "tenants", but such discussions have seldom focused on the cottage owners as residents of the Town (although only part-time) and as a seasonal community which pays real estate taxes as well as rent, supports local merchants and adds to the unique social fabric of the Town.

Donald M. Greenough, Esq.

July 7, 2003

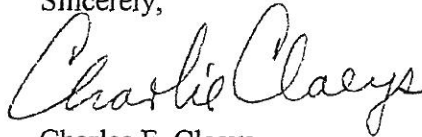
Page 3

In light of the School Committee's recent announcement that it does not wish to see the Feoffees sell the land to the cottage owners, but wishes to work toward restructuring of the land trust, the homeowners would like to participate in the dialogue with the Feoffees and the Town regarding the effects of any restructuring on the future security of cottage ownership, the costs of ownership, and the possible effects of recent and future developments on the character of Little Neck and the Town of Ipswich. As you know, the Town Committee and the School Committee have proposed restructuring of the governance of this historic land trust so that the Feoffees would be chosen from Town Boards and Committees.

Finally, since the School Committee has indicated that it does not wish the Feoffees to sell Little Neck to the Little Neck homeowners and since it is unlikely that the Feoffees would seek amendment of the Trust to allow sale of the land without support of the School Committee, we request that you return to Little Neck Homeowners, Inc. the \$167,000.00 plus interest which you currently hold in escrow as a deposit toward such purchase and sale.

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

Sincerely,

A handwritten signature in cursive script that reads "Charles F. Claeys".

Charles F. Claeys
Authorized Attorney for
Little Neck Homeowners, Inc.

cc: Richard C. Allen, Esq.

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ISSUES TO BE DECIDED CONCERNING THE NEW TRUST

Joint meeting of the School Committee and the Town Feoffees Committee

October 8, 2003

Issue	School Committee suggestion	Town Feoffees Committee suggestion
Should a new trust document be created and put into place?	yes	yes
How many feoffees should there be	There should be 5 Feoffees, all residents of Ipswich.	There should be 5 Feoffees, all residents of Ipswich.
How should the feoffees be appointed	Two appointed by School Committee Two appointed by Selectmen One appointed by Finance Committee No Little Neck residents None should be member of appointing board	One appointed by School Committee One appointed by Selectmen One appointed by Finance Committee Two appointed by Moderator A member of one of the above committees can only be nominated by another committee, not their own. The present Feoffees should be eligible for appointment to the new committee. So long as the Little Neck property is owned by the Feoffees, no resident of Little Neck should be a member
What should their term of office be	They should be appointed for three-year, staggered terms, with no term limits.	They should be appointed for three-year, staggered terms, with no term limits.

What should the reporting requirements for the feoffees be?	At a minimum, the Feoffees should be required to observe the open meeting law, the public records laws and all laws and regulations applicable to town committees.	The Feoffees should be required to observe the open meeting law, the public records laws and all laws and regulations applicable to town committees. The trust document should require the Feoffees to make a detailed financial report to each annual town meeting of their assets, income, expenses, and contributions.
What should the declared purpose of the trust be?	The trust funds are to be used to broaden and enrich the education experience of children in the Ipswich public schools by providing financial aid to the schools, teachers and students. The trust document should specifically state that trust funds are not intended to relieve taxpayers of the expense of providing for the public schools and that the purpose of the trust is to provide supplemental programs, rather than to be a substitute source to finance the ordinary and regular expenses of the schools.	The trust funds are to be used to broaden and enrich the education experience of children in the Ipswich public schools by providing grants and financial aid to the schools, teachers and students. The trust document should specifically state that trust funds are not intended to be used to relieve taxpayers of the expense of providing for the public schools and that the purpose of the trust is to provide supplemental programs, rather than to be a substitute source to finance the ordinary and regular expenses of the schools.

How should the trust document ensure that the trust funds are used to supplement students' education?	There needs to be a fair return on capital	All trust funds should be held by the Feoffees until they are distributed for the schools. On an annual basis, the school committee (or the superintendent) should forward funding proposals to the Feoffees. The Feoffees should have complete discretion as to which proposals they choose to fund each year, although they should have the option to commit to multi-year funding of proposals. Thought should be given to the possibility of providing for direct grants from the Feoffees to students or teachers.
How should the trust document ensure that the Feoffees contribute as much to the schools as would be expected from the size of their assets?	Enough money needs to be collected to cover taxes and structures on the common land	
How is the decision to be made how much money the feoffees are to contribute to the schools each year? Must they contribute every year?		The committee spent a fair amount of time discussing this without coming to a conclusion. We could not decide whether the document should simply ensure oversight of how they handle their operating expenses, which are likely to fluctuate and in some years, because of an emergency, may be very high, or whether the document should more narrowly require an annual contribution of a specific percentage of the value of the trust property.

How is the decision to be made how the money contributed by the feoffees is spent?		On an annual basis, the school committee (or the superintendent) should forward funding proposals to the Feoffees. The Feoffees should have complete discretion as to which proposals they choose to fund each year, although they should have the option to commit to multi-year funding of proposals. Thought should be given to the possibility of providing for direct grants from the Feoffees to students or teachers.
What, if anything, should be done to implement the purpose of "broadening and enriching the education experience," rather than simply providing tax relief?		
What, if anything, should the trust document say about the sale of the trust property?		
How should the new trust document be put into effect?		

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From: Robert K. Weatherall <utrum@ipswich.org>
To: <Harvey@TheEmploymentLawyers.com>, Harry Lampropoulos
<selectmanlamp@hotmail.com>, Robert Bonsignore <RBonsignore@aol.com>,
Barry Hopping <bhopping@attbi.com>
Date: Thursday, October 2, 2003 10:54 AM
Subject: How they do it at the Boston Latin School

Hi: In preparation for next week's meeting, I thought it worth asking how the Boston Latin School Association handles the funds it has raised, and continue to raise, to support programs at Boston Latin. I talked this morning to the Association's CFO, Jim Gard, and to a news office person, Lorraine Driscoll. They told me that the Association has accumulated an endowment amounting to \$18 million and has pledges which should bring it to something like \$37 million. In addition it brings in about \$700,000 a year from an annual giving program.

Most of the income from the endowment is being used to support scholarships, but all of the income from the annual giving program is going to support programs at the school. The headmaster calls it "Surround Care". An alumni committee handles the money and will not use it to pay for anything which the city normally pays for in the city schools. So, for example, it will pay for a Latin teacher but not for teachers in standard subjects. The money is paid over in the form of grants. I failed to ask who decides what activities should be supported but in light of the headmaster's remark I assume the headmaster makes a list each year of projects he would like money for. I asked Mr. Gard if there was any document which sets out how the money should be spent; he said "no", one has to get it from the committee's minutes. But it was clear from what he and Ms. Driscoll said that a guiding principle was to enhance the opportunities for students at Boston Latin and not to give the city any opportunity to reduce its appropriation.

For more information about the BLSA's fund raising see <http://www.blsa.org/>

Bob

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IPSWICH SCHOOL COMMITTEE MEETING
DECEMBER 18, 2003
SUMMARY

OPEN SESSION

1. Questions on the draft content and procedure for Feoffees Little Neck Trust

Mr. Hopping questioned:

- 3) Trust Purpose: Clarification of "enhancement"
- 4) Grant approval procedure: Clarification/Validation of the last sentence: "A decision by the Feoffees to decline a School Committee request for any reason will be reviewable by the Probate Court at the request of the School Committee."

Mrs. Ross questioned:

- 4) Grant approval procedure: Who pays the legal fees if a declining a decision results in a Probate Court action?

Mr. Hopping questioned:

- 5b) Term of service "may be removed by appointing authority at any time without cause": What type of issues/actions would warrant removal by the appointing authority? Civil? Criminal?
- 5c) "Serve without compensation, but reasonable expenses paid": What are reasonable expenses?
- 6) "Powers, in addition to those conferred upon trustees by law": Clarification of the "powers"

Mr. Traverso's questions will be included with the questions posed this evening.

Miscellaneous Questions for Mr. Allen

Mr. Sheppard asked if every tenant pays the same amount of rent?

Mr. Hopping asked if it is appropriate to include in the trust agreement language to address the potential of a future sale?

Mrs. Ross asked if the Title V issue is the responsibility of the Feoffees or the tenants?

2. Voted the Consent Agenda as presented.

3. Mr. Hopping requested a list of events that the FRIES have sponsored to raise money for the elementary schools. (Rene and Janet should have that information)

CASNER & EDWARDS, LLP

MEMORANDUM

To: Ipswich School Committee and Superintendent
From: Richard C. Allen
Date: January 3, 2004
RE: School Committee questions regarding proposed revised Trust

Here are my thoughts in response to the questions from the School Committee that you sent me (cross-references to my December 16 summary are indicated). I look forward to addressing these questions further, as well as any other questions, at the School Committee meeting on January 8.

a) Name of the trust (A(1))

There is flexibility here as to the name to choose. I do not, however, recommend retaining the early reference to the "Grammar School in the Town of Ipswich," as this could lead to misunderstandings as to the scope of the trust.

b) Trust purpose (A(3))

The use of the word "enhancement" is meant to convey the intent, as I understand it, that the funding from the trust is to be used for programs and uses that augment the educational opportunities offered to Ipswich public school students.

"Enhancement" is a word often used by local public schools foundations in describing their missions. Another useful word here might be "enrichment." Perhaps it would be helpful to add the word "enrichment" to the purpose statement as follows:

"To enrich and broaden the education experience of students in the Ipswich public schools by, at least annually, making distributions of the trust's net income, after reasonable expenses and operational reserves, to support supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students. Grants shall not be used for the ordinary and regular expenses of the schools." (emphasis added).

Other formulations are possible.

c) Grant approval procedure (A(4))

The intent of the last sentence here is that if the School Committee disagrees with a decision of the Feoffees to decline a School Committee request, the School Committee would be authorized by the court order establishing the revised trust to bring the matter to the Probate Court, and the Probate Court would be authorized to affirm, overturn or revise the Feoffees' decision.

The School Committee's legal fees would be payable by the School Committee, and the Feoffees' fees would be payable by the Feoffees as a trust expense. Unless the court found that the Feoffees were acting inappropriately, the Feoffees would not be required to pay the fees personally. Thus, unless the court found that there were grounds for charging the Feoffees personally, the cost would, in the end, come out of the funds intended for the Ipswich Public Schools, as nothing here would be grounds for requiring the Little Neck residents to pay.

d) Eligibility to serve as Feoffee (A(5)(a)(4th bullet))

There is flexibility as to what to provide in the trust as to eligibility of the current Feoffees for appointment under the revised trust. My recommendation is to leave the question of further service of current Feoffees up to each appointing body.

e) Removal of a Feoffee (A(5)(b)(3rd bullet))

There is flexibility as to what to provide in the trust as to grounds for removal. The current draft would provide that an appointing body could remove a Feoffee appointed by it at any time for any or no reason.

f) Payment of Feoffee expenses (A(5)(c))

The currently formulated draft trust would provide that the reasonable expenses of the Feoffees would be paid out of the trust. This could be refined to provide expressly that the expenses must be trust-related and necessary.

g) Feoffees' powers (A(6))

The currently formulated draft trust would provide that, in addition to the powers specified in the trust, the Feoffees would have the powers conferred upon trustees by law. This makes it clear that the Feoffees would have the generally-applicable powers necessary to carry out the trust that are difficult to identify and catalog in advance (for example, the power to open and maintain bank accounts comes to mind).

h) Trust as municipal trust (A(7)(a))

There is flexibility here as what the trust could provide. On the one hand, the trust could be designated as a separate private trust, but its tax exemption status would be questionable. My recommendation is that it be a municipal trust of the Town of Ipswich.

i) Private inurement (A(7)(g))

The recommended private inurement language would relate to the Tax Code requirement that for charitable trusts and charitable organizations, "no part of the net earnings ... [shall] inure to the benefit of any private ... individual" 26 U.S. Code § 501(c)(3).

j) Rent to be charged (A(8))

Currently, all seasonal residents pay the same rent, and all year-round residents pay the same, slightly higher rent. This would change under the revised trust.

k) Trust language regarding sale of the property

I do not recommend addressing the sale question in the revised trust if the School Committee is not actively considering sale at this time. The original trust specified that the land is not to be sold, and obtaining court approval to change this would require extra steps.

l) Title V

Title V costs are likely to be a factor to be considered in establishing a fair rental.

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From: Robert K. Weatherall <utrum@ipswich.org>
To: Harvey Schwartz <harvey@TheEmploymentLawyers.com>
Cc: Robert Bonsignore <rbonsignore@aol.com>
Date: Tuesday, January 20, 2004 9:12 AM
Subject: Salem Evening News

Dear Harvey: I had a call yesterday from a reporter at the Salem Evening News who said that he had been trying to reach you. He was at the meeting across the hall from ours on Thursday and wanted to know what had transpired at our meeting. He asked for our views on Allen's draft and I told him our main points - that the new language should allow the Feoffees to sell Little Neck with the approval of the town (I explained why we thought this), that the trust should be called the Feoffees of Paine's Bequest, that the language saying the Feoffees could be fired without cause was much too severe (in fact we doubted how many people would want to be a Feoffee under the new terms), and that the Feoffees should be given more say in how their grants were used. I told him, for example, that we thought individual teachers should be able to make proposals and that the Feoffees should be able to decide which of all the proposals they received should be funded. He asked who would now be in charge of getting the new structure approved by the court and I said that we believed the town, or at least the Selectmen, should have the final say on the text presented to the court. Perhaps injudiciously, I said we were surprised and disappointed that the School Committee had not invited us to their last two meetings with Allen - after all we had attended the earlier meeting with him in the fall and were responsible for a number of the points he had incorporated in his text. I also said we felt we should hear from the Feoffees - they could have important things to say on the new language describing the duties of the Feoffees. I told him that you planned to talk with Jim Foley. I added that we had been appointed by the town to look into the affairs of the Feoffees and that the School Committee had in fact voted against the motion setting us up. Furthermore I was not aware that they had ever taken any initiative in persuading the Feoffees to increase their contributions.

How much of this will be in his article I don't know. I hope I have not spoken out of turn. It seemed to me there should be no harm in putting the School Committee in their place. I think the Feoffees and the Selectmen are likely to take our side. In any case the reporter would have heard all of this if he had attended our meeting, as would Barry Hopping. I will look for the article in the SEN this afternoon. Bob

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From: Robert K. Weatherall <utrum@ipswich.org>
To: <RBonsignore@aol.com>, <Harvey@theemploymentlawyers.com>
Cc: <bshopping@attbi.com>, <selectmanlamp@hotmail.com>
Date: Thursday, January 29, 2004 4:35 PM
Subject: Re: Our review of Allen's draft

on 1/28/04 5:41 PM, RBonsignore@aol.com at RBonsignore@aol.com wrote:

I wish I knew about thier meeting. I would have attended

Dear Robert: I mentioned that the Feoffees were meeting at five on the 27th when I emailed everyone that I had posted our January 15th meeting at Town Hall.

You didn't miss any sort of a debate at the Feoffees' meeting. Don Whiston made his usual remarks reporting on the past year, Dick Korb was presented with a check for \$305,545, and that was that. I asked Don if I could have a copy of the Feoffees' financial report for last year to put in our file and he let me have one.

In his remarks Whiston said that the Feoffees had asked LandVest to assess what the rents at Little Neck should be, granted the value of the property. He mentioned \$15 million as the value, though he acknowledged at another point that the town assessor's valuation was now \$21 million or more (apparently the assessor's valuation of the plots along the water have gone up 35%). In listing their assets in their financial report the Feoffees give \$15,719,618 as the value of their real estate. A fair number of tenants attended the meeting and I got the hunch that they may be preparing to make another offer, this time of \$15 million, in line with the figure Whiston quoted. We shall see.

Before the meeting started I told Dick Korb that we were surprised we hadn't been invited to the meeting at which the School Committee discussed Allen's outline of the new trust; after all, Joan Arsenault had asked me at our meeting with them in the fall if I would serve on a joint committee with some of their members. His answer was that the S.C. wanted to discuss the draft among themselves before hearing our opinion. He said that Joan intended to have a meeting with us in February, also a meeting with the Feoffees. He said the S.C. was not hoping to sew things up before April town meeting but was aiming now at fall town meeting.

I think we should put our heads together with the Feoffees before we meet with the S.C. I think they agree with us that the text specifying the duties of the Feoffees is too confining. They certainly agree with us that the new trust document should allow for the sale of Little Neck. Don Whiston has told me more than once that he's disappointed we haven't sought their views since we met with them in 2001. They are clearly quite ready to hand over to a new board, but they want the new structure to make sense and be workable. Bob

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2/10/04

Dear Joan:

The Town Committee on the Feoffees have held two meetings to discuss Dick Allen's draft of the content for a new trust document since we received his draft in January. There are a number of points in it with which we take issue and which we would like to discuss with the School Committee. We believe we are still some way from a draft which should go forward as the basis for a new trust document. Our joint meeting in October was productive. We look forward to another fruitful meeting of the two committees.

Here are the chief points which concern us :-

The name of the trust: The suggested name for the trust, "Feoffees Little Neck Trust", unnecessarily characterizes the trust as a trust about a certain plot of land. It says nothing about the trust's purpose. If there is no need to mention the trust's purpose it would be better to name the trust for the generous fellow who funded it and call it the Feoffees of William Payne's Trust.

Possible sale of Little Neck: We believe the new document should include a provision allowing the Feoffees to sell Little Neck with the approval of the appropriate bodies in town. It should not require another appeal to the courts; after all it is 250 years since the trust was last amended. Payne funded the trust with a grant of land because it was the only income-producing asset he could use; there were no government bonds then, still less a stock market. It should not be so difficult to convince a probate court that Payne's provision that the land not be sold is in these days too confining. The tenants at Little Neck continue to want to buy out the Feoffees and it should be possible for them to do so if the town agrees to the deal. Because Little Neck is in Ipswich it has all sorts of relationships with the town besides its connection with the Feoffees; it will arguably always be difficult for the Feoffees to maximise the income from it as they could from a real estate holding elsewhere.

Grant approval procedure: We see the Feaffees' money really being in a position to enhance the quality of the schools if particular schools, departments, or even individual teachers could submit competing proposals with the approval of the School Committee. The Feoffees would choose which to approve up to the limit

of the available funds. Why not? One can imagine a modern William Payne doing it this way. This is how they seem to do it in Barnstable.

Trust governance: We are taken aback by the suggestion that a Feoffee should be removable "at any time without cause". Who is likely to want to be a Feoffee on this basis? The managers they hire can only be removed with cause. In their case, why should a limit of 3 years be set on their tenure? The Feoffees should be able to keep a good manager as long as he or she is willing to serve. We should be more trusting of the future board. They will all be appointed by the town, including two by the School Committee and they will individually be accountable to the town every three years. This should be enough to ensure good management.

Rental of property on Little Neck: We believe this section should be about the responsibility of the Feoffees to obtain and pay over to the schools a return on their assets appropriate to the value of their assets, whether their assets are in land or in other securities.. The language in A 8 (c) prescribing "a reasonable stream of assets to the Ipswich public schools" misses the mark. It is not a question of what is reasonable to the schools but what is reasonable, or to be expected, in light of the Feoffees' assets. Beyond that, we should leave it up to the Feoffees how they generate the appropriate return. There is no need for the trust document to go into detail about how the Feoffees should set the rents at Little Neck – whether they charge the same rent for lots of different sizes, and so on. If the Feoffees held financial assets we doubt we would be telling them what assets they should choose and what balance they should strike between stocks and bonds. Let's remind ourselves that the new trust document may have as long a life as the 1756 statute. Even if the Feoffees continue to own Little Neck, it may be quite a different place in forty years.

Ongoing court oversight: Do we need this paragraph saying that how the Feoffees shall be reviewable by the Probate Court? Won't it so without our saying so? Once again the draft is putting too little trust in the trustees. Surely

the apppointing town bodies will be choosing people they trust. Isn't that enough?

We look forward to talking over these thoughts with the School Committee.

Sincerely

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March 24, 2004

Dear Members of the Ipswich School Committee:

The Town Committee on the Feoffees has held two meetings to discuss Dick Allen's draft of the content for a new trust document since we received his draft in January. There are a number of points in it with which we take issue and which we would like to discuss with the School Committee. We believe we are still some way from a draft that should go forward as the basis for a new trust document. Our joint meeting in October was productive. We look forward to another fruitful meeting of the two committees.

Here are the chief points that concern us:

Possible sale of Little Neck: We believe the new document should include a provision allowing the Feoffees to sell Little Neck with the approval of the appropriate bodies in town. It is such a great effort to come up with the trust revisions at this time and then to present the document to the court that it makes sense to address the sale issue at the same time, rather than have to go through this process again if a sale should become more of a reality. After all, it is 250 years since the trust was last amended. This could be the one time we need to do it in this century. We don't believe the Probate Court would have any great difficulty approving a provision allowing for a sale. William Payne funded the trust with a grant of land because it was the only income-producing asset he could use at that time. There were no government bonds then, still less a stock market. The tenants at Little Neck continue to want to buy out the Feoffees and we believe the trust document should make it possible for them to do so if the town agrees to the deal. Just as importantly, because Little Neck has all sorts of relationships with the town besides its connection with the Feoffees, it will always be difficult for the Feoffees to maximize the income from it, as they could from other forms of assets. In short, we believe that a sale of the property may provide a vehicle for greatly increasing the annual income from the trust and that since we are going through this revision process now, it makes sense to include a provision in the new trust document that sets out a procedure for converting the trust assets from real estate to another form of asset if the town should wish to do so and an opportunity should present itself.

Grant approval procedure: We see the purpose of the Feoffees' money as being to enhance the quality of the education provided by Ipswich schools. To meet this purpose we believe that individual schools, departments, or even individual teachers and students should be permitted to submit competing proposals to the Feoffees, with the approval of the School Committee. The trust document could provide for a maximum percentage of annual grants that could be allocated to such proposals and the Feoffees would choose which to fund. One can imagine a modern William Payne doing it this way. This is how they seem to do it in Barnstable. Such a procedure allows the School Committee to review proposals and reject those that have no educational merit, but it provides a vehicle for funding creativity among schools, teachers and students. One could envision a small grant for a science project or a special field trip, or even for advanced study for a student or teacher.

Trust governance: We are taken aback by the suggestion that a Feoffee should be removable "at any time without cause." If this is the standard then why set any term length at all? Who is likely to want to be a Feoffee on this basis? We should be more trusting of the future board. They will all be appointed by the town, including two by the School Committee, and they will individually be accountable to the town every three years. This should be enough to ensure good management. Removal for cause before the expiration of their term is the standard applied to members of other town boards and committees and should be the standard for the Feoffees, too.

Rental of property on Little Neck: We believe the responsibility of the Feoffees should be to obtain and pay over to the schools a return on their assets appropriate to the value of their assets, whether their assets are in land or in other securities. The language in Paragraph A 8 (c) prescribing "a reasonable stream of assets to the Ipswich public schools" misses the mark. It is not a question of what is reasonable to the schools – what is reasonable to the schools, after all, is to obtain as much funding as possible – but rather what is reasonable, or to be expected, in light of the value of the Feoffees' assets. In short, their obligation is to obtain a reasonable return on their assets. Beyond that, we should leave it up the Feoffees how they generate that appropriate return. There is no need for the trust document to go into detail about how the Feoffees should set the rents at Little Neck, whether they charge the same rent for lots of different sizes, and so on. If the Feoffees held financial assets the trust document would certainly not tell them what assets they should choose and what balance they should strike

between stocks and bonds. Let's remind ourselves that the new trust document may have as long a life as the 1756 version. Even if the Feoffees continue to own Little Neck, it may be quite a different place in forty years. We believe it best to hold them to the legally required fiduciary duty and to leave it to them to work out the details of their property management.

Ongoing court oversight: Do we need this paragraph saying how the Feoffees shall be reviewable by the Probate Court? Won't it be so without the document saying so? Once again the draft is putting too little trust in the trustees. Surely the appointing town bodies will be choosing people they trust. Isn't that enough?

The name of the trust: The suggested name for the trust, "Feoffees Little Neck Trust," unnecessarily characterizes the trust as a trust about a certain plot of land. Since we are preparing a document that is likely to last into the next century, long after it is possible the real estate will be sold, we believe it would be better to name the trust for the generous fellow who funded it and call it the "Feoffees of William Payne's Trust."

We look forward to talking over these thoughts with the School Committee.

Sincerely,

Harvey A. Schwartz
Chairman
Town Committee on the Feoffees of
Little Neck

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CASNER & EDWARDS, LLP

MEMORANDUM

4-1-04
II-B. Feoffees
Update

To: Ipswich School Committee and Superintendent

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

Date: March 30, 2004

RE: Feoffees Trust and Town Committee questions

As requested, here are my suggestions in response to issues or concerns raised in a March 24, 2004 letter from Harvey A. Schwartz, Chairman, Town Committee on the Feoffees of Little Neck. I have set forth each point in Mr. Schwartz' letter, followed by my response.

Grant approval procedure

TOWN COMMITTEE: We see the purpose of the Feoffees' money as being to enhance the quality of the education provided by Ipswich schools. To meet this purpose we believe that individual schools, departments, or even individual teachers and students should be permitted to submit competing proposals to the Feoffees, with the approval of the School Committee. The trust document could provide for a maximum percentage of annual grants that could be allocated to such proposals and the Feoffees would choose which to fund. One can imagine a modern William Payne doing it this way. This is how they seem to do it in Barnstable. Such a procedure allows the School Committee to review proposals and reject those that have no educational merit, but it provides a vehicle for funding creativity among schools, teachers and students. One could envision a small grant for a science project or a special field trip, or even for advanced study for a student or teacher.

RESPONSE: This is a policy judgment question for the School Committee and other interested parties. It would be reasonable, however, for the School Committee position to be that while it expects to encourage teachers and others to recommend creative uses of the fund, the hands of this School Committee and School Department and those in the future should not be tied by procedural or allocational mandates in the court order.

Trust governance

TOWN COMMITTEE: We are taken aback by the suggestion that a Feoffee should be removable "at any time without cause." If this is the standard then why set any term length at all? Who is likely to want to be a Feoffee on this basis? We should be more trusting of the future board. They will all be appointed by the town, including two by the School Committee, and they will individually be accountable to the town every three years. This should be enough to ensure good management. Removal for cause before the expiration of their term is the standard applied to members of other town boards and committees and should be the standard for the Feoffees, too.

RESPONSE: This is a policy judgment question for the School Committee and the other interested parties.

Rental of property on Little Neck

TOWN COMMITTEE: We believe the responsibility of the Feoffees should be to obtain and pay over to the schools a return on their assets appropriate to the value of their assets, whether their assets are in land or in other securities. The language in Paragraph A 8 (c) prescribing "a reasonable stream of assets to the Ipswich public schools" misses the mark. It is not a question of what is reasonable to the schools – what is reasonable to the schools, after all, is to obtain as much funding as possible – but rather what is reasonable, or to be expected, in light of the value of the Feoffees' assets. In short, their obligation is to obtain a reasonable return on their assets. Beyond that, we should leave it up to the Feoffees how they generate that appropriate return. There is no need for the trust document to go into detail about how the Feoffees should set the rents at Little Neck, whether they charge the same rent for lots of different sizes, and so on. If the Feoffees held financial assets the trust document would certainly not tell them what assets they should choose and what balance they should strike between stocks and bonds. Let's remind ourselves that the new trust document may have as long a life as the 1756 version. Even if the Feoffees continue to own Little Neck, it may be quite a different place in forty years. We believe it best to hold them to the legally required fiduciary duty and to leave it to them to work out the details of their property management.

RESPONSE: This is a policy judgment question for the School Committee and other interested parties. However, given the purpose of the trust and past controversies regarding rent levels and the amounts flowing from the trust to the schools, it would be understandable if the School Committee were to insist that the subject of rent levels and amount flowing from the trust to the schools should be addressed in the court order.

The name of the trust

TOWN COMMITTEE: The suggested name for the trust, "Feoffees Little Neck Trust," unnecessarily characterizes the trust as a trust about a certain plot of land. Since we are preparing a document that is likely to last into the next century, long after it is possible the real estate will be sold, we believe it would be better to name the trust for the generous fellow who funded it and call it the "Feoffees of William Payne's Trust."

RESPONSE: There is flexibility here. I do recommend, however, that the current phrase "the Grammar School" be revised, as it could be a source of confusion as to the scope of the trust.

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4-1-04

CASNER & EDWARDS, LLP

V - Executive Session
(b) Potential Litigation

MEMORANDUM

To: Ipswich School Committee and Superintendent

From: Richard C. Allen

LEGAL ADVICE SUBJECT TO
ATTORNEY-CLIENT PRIVILEGE

Date: March 30, 2004

RE: Feoffees Trust and Town Committee questions

As requested, here are my suggestions in response to issues or concerns raised in a March 24, 2004 letter from Harvey A. Schwartz, Chairman, Town Committee on the Feoffees of Little Neck. I have set forth each point in Mr. Schwartz' letter, followed by my response.

Possible sale of Little Neck

TOWN COMMITTEE: We believe the new document should include a provision allowing the Feoffees to sell Little Neck with the approval of the appropriate bodies in town. It is such a great effort to come up with the trust revisions at this time and then to present the document to the court that it makes sense to address the sale issue at the same time, rather than have to go through this process again if a sale should become more of a reality. After all, it is 250 years since the trust was last amended. This could be the one time we need to do it in this century. We don't believe the Probate Court would have any great difficulty approving a provision allowing for a sale. William Payne funded the trust with a grant of land because it was the only income-producing asset he could use at that time. There were no government bonds then, still less a stock market. The tenants at Little Neck continue to want to buy out the Feoffees and we believe the trust document should make it possible for them to do so if the town agrees to the deal. Just as importantly, because Little Neck has all sorts of relationships with the town besides its connection with the Feoffees, it will always be difficult for the Feoffees to maximize the income from it, as they could from other forms of assets. In short, we believe that a sale of the property may provide a vehicle for greatly increasing the annual income from the trust and that since we are going through this revision process now, it makes sense to include a provision in the new trust document that sets out a procedure for converting the trust assets from real estate to another form of asset if the town should wish to do so and an opportunity should present itself.

RESPONSE: (Note: my response to this point addresses possible court strategy, so I recommend that it not be discussed in an open session of a public meeting.)

The donor William Payne specified as follows in his bequest: "I give unto the free scoole of Ipswich the little neck of land at Ipswich commonly knowne by the name of Jefery's neck. The which is to bee and remaine to the benefit of the said scoole of Ipswich forever as I have formerly Intended and therefore the sayd land not to be sould nor wasted."

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Thus, the Payne bequest included a prohibition on sale intended by the donor to remain forever. Such a charitable restriction remains in effect in perpetuity unless modified by a court. A donor restriction will be enforced by the court unless it cannot be followed, to maintain both the sanctity of contract and the public's willingness to make charitable gifts. It is not sufficient that the requested change would be more convenient or that it is currently the preferred course.

While not subject to the stringent cy pres standard of impossibility or impracticability because a change of purpose would not be involved, nonetheless the court cannot remove a donor restriction like this without a showing that the restriction will substantially impair the accomplishment of the charitable purpose. The Attorney General's Office, who will be a necessary party to the court proceeding, will instinctively begin at this position. To seek authorization to sell the property, we would need to take the position that, and be prepared to show that, we need the sale authority now because the rental approach is no longer appropriate and we want to begin the sale process. We could not credibly seek sale authority as an abstract matter on the ground that we might want to use it later.

Perhaps I should call Attorney Schwartz and talk this issue through with him on your behalf?

Ongoing court oversight

TOWN COMMITTEE: Do we need this paragraph saying how the Feoffees shall be reviewable by the Probate Court? Won't it be so without the document saying so? Once again the draft is putting too little trust in the trustees. Surely the appointing town bodies will be choosing people they trust. Isn't that enough?

RESPONSE: The question of whether the reasonableness of rents and other practices of the Feoffees should be reviewable in court, at the request of either the School Committee or the Board of Selectmen, is a policy judgment for the School Committee and the other interested parties.

If, however, you decide that the reasonableness of rents and other practices of the Feoffees should be reviewable in court upon request of the School Committee/Board of Selectmen, then it would be safest to specify this in the court order. Otherwise, a future court might conclude that these actions are not reviewable.

CASNER & EDWARDS, LLP

MEMORANDUM

To: Ipswich School Committee and Superintendent
From: Richard C. Allen
Date: July 1, 2004
RE: Executive Session parameters for Feoffees matters

Set forth below is a summary of when executive session is and is not appropriate for consideration of Feoffees matters.

First of all, it is important to understand that the strong bias of the enforcing authorities (District Attorney's Office and Attorney General's Office) is in favor of open meeting discussion by governmental bodies and that the statutory exceptions permitting executive session are to be narrowly construed. This would be an especially strong enforcement bias in the present situation where the matter involved is of such public significance in the community. Naturally, no one wants an action taken by the School Committee with respect to the Feoffees matters annulled because the discussion improperly occurred in executive session.

There are two bases in the open meeting law for consideration of Feoffees matters in executive session in School Committee meetings and subcommittee meetings:

- a) "to consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body"; and
- b) "to discuss strategy with respect to ... litigation if an open meeting may have a detrimental effect on the litigating position of the governmental body."

In each case, it is not the topic per se that brings the discussion under the open meeting exemption. Rather, to be exempt from the open meeting requirement, discussion in open session must be detrimental to the School Committee's negotiating position or litigating position.

Accordingly, here are suggested parameters for the consideration of Feoffees matters:

1) Rental and sale

- a. Discussion of the general pro's and con's of rental versus sale should be held in open session
- b. Discussion of the matter as a real estate transaction (e.g., potential rental or sale value of the property, the position to take in rental or sale negotiations, etc.) may and should be held in executive session.

2) Future trust structure and court proceeding

- a. In my view, most of the issues relating to the future trust structure and the court proceeding should be held in open session.
- b. If the discussion evolves to negotiation or litigation strategy (e.g., discussion of opening positions and fall-back positions for negotiation of a particular point, or the consideration of the pro's and con's of particular case strategies or particular arguments for presentation to the court), the School Committee may and should go into executive session at that time.

3) The procedure for going into executive session

- a. For any executive session, the School Committee should be sure to take a recorded vote (i.e., recording how each member voted) in public session approving the move into Executive Session, stating the reason for going into Executive Session, and stating whether the body will be returning to Open Meeting.
- b. The minutes must record: the date, time and place of the executive session meeting; the members present or absent; and the action taken (including a record of any vote taken, indicating how each member voted).

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REPORT OF THE TOWN COMMITTEE ON THE FEOFFEEES

April 5, 2004

If you were here at Town Meeting in 2001 and voted for the appointment of our committee you may be surprised that we still have work to do three years later. We are surprised ourselves. But we think we are nearly there.

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

We are at the stage of working with the School Committee, and with the School Committee's lawyer, on what should go into a new trust document for the Feoffees. We met together with the School Committee's lawyer in October to give him our thinking. He has since come up with a detailed outline of a new trust structure. The School Committee have discussed it among themselves and we have sent them our comments on it, but they have had of other things to keep them and we have not yet had a joint meeting to see where we agree and where we differ. We are looking for a meeting this month. We also want to sit down with the Feoffees.

We think it important to look ahead in framing the terms of the new trust document. The last time the terms of the trust were changed was nearly three hundred years ago and it was done by statute. The new structure we agree on will require the approval of a judge, and once approved any changes will similarly require the approval of a judge. So it may be some time before it is changed again.

In this connection, we think it important that the language of the new document guard against the possibility of the Feoffees' growing contribution being seen in the future as a regular part of the school budget, justifying a reduction in the town's appropriation. It should be spelled out in the terms of the trust that the Feoffees' funds are to be used to enhance and enrich the education provided by

the schools, not to cover regular expenses. In keeping with this the Feoffees should have some leverage with respect to how the funds are used.

Because it may be some time before the terms of the trust are revised again we also think the new language should allow for the sale of Little Neck with the approval of the appropriate Town authorities. The tenants at Little Neck have shown an interest in buying out the Feoffees. We believe that if the price were right, the investment of the proceeds in other assets could generate a higher income for the schools.

We were short two members this past year and we will lose another this week when Harry Lampropoulos steps down as Selectman. We ask that the Finance Committee appoint a replacement for Mary Harrington whom we lost when she stepped down from the Finance Committee, that the Selectmen appoint a replacement for Harry Lampropoulos, and that the Moderator appoint a replacement for Heather Ellerkamp who resigned in the fall.

I move that the committee be continued for one year and that the aforementioned vacancies on the committee be filled as directed under Article 27 of the April 2, 2001, Annual Town Meeting.

ROBERT K. WEATHERALL

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From: Robert K. Weatherall <utrum@ipswich.org>
To: Harvey Schwartz <Harvey@TheEmploymentLawyers.com>, Robert
Bonsignore <RBonsignore@aol.com>, Barry Hopping <bhopping@attbi.com>,
George Markos <GMarkos@aol.com>, Paul Surpitski
<Mikeandsonsoil@comcast.net>
Cc: Joan Arsenault <r.arsenault@comcast.net>
Date: Friday, June 18, 2004 10:05 AM
Subject: Re: New members of the Committee on the Feoffees

on 6/16/04 8:47 AM, Harvey Schwartz at Harvey@TheEmploymentLawyers.com wrote:

OK. Lets confirm July 8 at 5:30 with the School Committee and June 30 at 7 pm for us to meet at town hall. Bob, will you post that meeting please?

Harvey A. Schwartz
Rodgers, Powers & Schwartz PC
18 Tremont Street
Boston MA 02108
(617) 742-7010
Web site: www.TheEmploymentLawyers.com

Hi: I have posted our meeting on Wednesday, June 30, at 7 p.m.

I have added our two new members, George Markos and Paul Surpitski, to the address list above. Greetings to you both - we are very glad to have you join us. Hopefully, the Selectmen will appoint one of their number to replace Harry Lampropoulos at their meeting on Monday.

I will mail to George and Paul a copy of the letter we have received from Joan Arsenault and Dick Korb about our joint meeting with the School Committee on Thursday, July 8. I will also send them a copy of Harvey's March 24 letter to the School Committee setting out our views on their draft of a new trust structure for the Feoffees. Joan and Dick - I think we should leave it to you to give them your latest draft. Bob

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THE FEOFFEEES' CONTRIBUTIONS TO THE SCHOOLS 1976 –

as reported by the Feoffees in the Annual Town Report

1976	\$7,500	
1977	7,500	
1978	0	(i.e. no "gift" reported)
1979	7,500	
1980	7,500	
1981	2,500	
1982	0	
1983	0	
1984	0	
1985	2,500	
1986	No Feoffees' report	
1987	0	
1988	0	
1989	0	
1990	0	
1991	0	
1992	0	
1993	4,761	
1994	0	
1995	25,000	
1996	50,000	
1997	50,000	
1998	173,000	
1999	0	
2000	25,000	

as reported in the Feoffees' SFAS Financial Statements

2001	50,000
2002	282,970
2003	245,000

not yet formally reported

2004	305,545
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Town Assessors' assessments of the Feoffees' property at Little Neck:

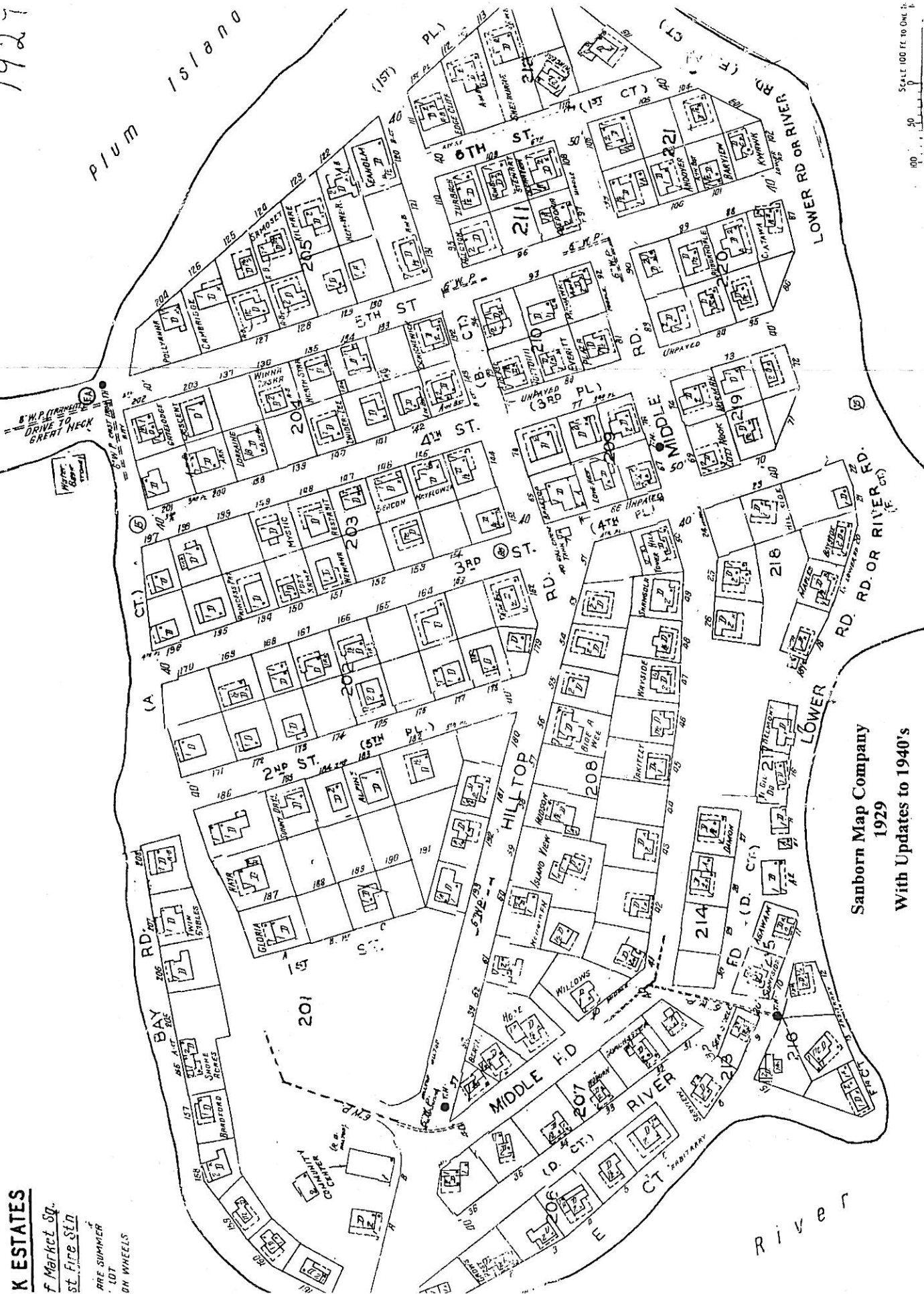
FY 1986	\$5,462,080
1996	13,354,500
2002	20,468,400
2004	31,278,800

(For comparison, Dow 30 Industrials Index in 1986: a low of 1,502, a high of 1,956, closed at 1,896. Dow on 9/28/04 = 9,988.54)

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1929

PLUM Island



K ESTATES

f Market Sq.

st Fire Stn

PRE SUMMER

LOT

ON WHEELS

Saunborn Map Company
1929
With Updates to 1940's

SCALE 100 FT TO ONE IN.

104



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August 9, 2004

Donald M. Greenough, Esq.
Counsel to the Feoffees
2 Depot Square
P.O. Box 790
Ipswich, MA 01938-0790

Re: Little Neck

Dear Don:

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

Prior to 1998 the Feoffees set lot rents to be consistent with seasonal rents on municipal lands in the region (such as Long Beach in Rockport, where the seasonal rents for a similar season (April 15 to October 15) are currently \$1,300 and, for ocean-front, \$2,100 based upon a revolving ten-year lease with built-in CPI). In 1998, the Feoffees announced that, beginning in 1999, they would increase annual lot rents for seasonal properties (which were then \$800) by an additional 300% over five years so that, by July of last year annual lot rents reached \$3,200. Taxes to the homeowners on their cottages and the underlying land, which benefit the general Town budget, have also increased from an average of \$1,856 in 1998 to an average of \$2,561 per cottage in 2004. Against this background of very sharp rent and tax increases, the homeowners

Donald M. Greenough, Esq.
August 9, 2004
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did not expect the further \$1,800 increase in rent. It is clear to the homeowners that the Feoffees and the Town of Ipswich see the Little Neck Homeowners as a captive group of tenants with little or no rights.

The homeowners understand and agree that the land is valuable, but the Feoffees and the Town of Ipswich are now overstating its value. Everyone seems to forget the intractable sewage disposal problem, which brings with it septic pumping fees and septic truck traffic and calls into question the basic residential value of the land itself. In fact, the Town has exacerbated the very serious limitations of the land by its failure to support the sewerage of Little Neck.

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

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

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

On the subject of the land taxes, it appears to the homeowners that the Town is assessing the parcels at Little Neck as if they were comprised of subdividable lots. Of course, the lots are not subdividable and the land should be assessed based on its actual one-lot status. Not only are there no subdivided lots on Little Neck, but almost all of the houses are crowded together on parcels with dimensions that are below legally subdividable size. These are not legally divided,

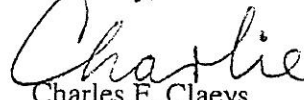
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fee simple lots. Undivided land should not be taxed as though legally divided and fully transferable. There should be a discount applied for lack of fee simple property rights, crowding and seasonal use restrictions. It does not appear that the Town has applied such a discount. Additionally, the homeowners, in a preliminary look at other river front properties in Ipswich, have noted significantly lower assessed values per acre. Since the Feoffees pass the land taxes on as additional rent to the homeowners, the homeowners request that the Feoffees diligently pursue a retroactive tax abatement for the overtaxing of the land.

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

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

Sincerely,



Charles F. Claeys

Authorized Attorney for
Little Neck Homeowners, Inc.

cc: Richard C. Allen, Esq., School Committee Counsel
Editor, The Ipswich Chronicle