

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

Appeals Court No. _____
Lower Court No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., PETER
FOOTE, DONALD WHISTON, JAMES FOLEY,
ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the
Town of Ipswich,
Plaintiffs,

v.

ATTORNEY GENERAL OF THE COMMONWEALTH OF
MASSACHUSETTS, IPSWICH SCHOOL COMMITTEE,
and RICHARD KORB, as he is Superintendent
of Schools in the Town of Ipswich,

Defendants.

INTERVENERS' RECORD APPENDIX
MOTION TO STAY JUDGMENT

Catherine J. Savoie, BBO #544599
Posternak Blankstein & Lund LLP
The Prudential Tower
800 Boylston Street
Boston, MA 02199-8004
(617) 973-6100

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ES09E0094QC

Mulholland Jr., Alexander et al vs. Attorney General Commonwealth of Massachusetts et al

CASE TYPE:	Equity Complaint	FILE DATE:	10/06/2009
ACTION CODE:		CASE STATUS:	Closed
DESCRIPTION:		STATUS DATE	01/12/2012
CASE TRACK:		CASE JUDGE	Sahagian, Hon. Mary Anne
CASE SESSION:	Judge Sahagian Salem Session		

LINKED CASE

ES05E0026GC1

PARTIES

Plaintiff Foley, James unknown Unknown, XX	Attorney William H. Sheehan MacLean, Holloway, Doherty MacLean, Holloway, Doherty 8 Essex Center Drive Peabody, MA 01960 Work Phone (978) 762-5808 Added Date: 10/07/2009	457060
Plaintiff Foote, Peter unknown Unknown, XX	Attorney William H. Sheehan MacLean, Holloway, Doherty MacLean, Holloway, Doherty 8 Essex Center Drive Peabody, MA 01960 Work Phone (978) 762-5808 Added Date: 10/07/2009	457060



**MASSACHUSETTS
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Plaintiff McNally, Patrick J unknown Unknown, XX	Private Counsel 457060 William H. Sheehan MacLean, Holloway, Doherty MacLean, Holloway, Doherty 8 Essex Center Drive Peabody, MA 01960 Work Phone (978) 762-5808 Added Date: 10/07/2009 Private Counsel 544493 George A. Hall Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/18/2011 Private Counsel 651401 Christine Marie Griffin Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park, Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/18/2011
Plaintiff Morley, Raymond	Attorney 544493 George A. Hall Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/23/2011 Attorney 651401 Christine Marie Griffin Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park, Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/23/2011



**MASSACHUSETTS
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Plaintiff Mulholland, Alexander B C	Private Counsel 457060 William H. Sheehan MacLean, Holloway, Doherty MacLean, Holloway, Doherty 8 Essex Center Drive Peabody, MA 01960 Work Phone (978) 762-5808 Added Date: 10/07/2009 Private Counsel 654829 Robin Stein City of Salem City of Salem 93 Washington Street Salem, MA 01970 Work Phone (978) 338-4082 Added Date: 12/14/2011
Plaintiff Surpitski, Charles unknown Unknown, XX	Attorney 544493 George A. Hall Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/23/2011 Attorney 651401 Christine Marie Griffin Anderson & Kreiger LLP Anderson & Kreiger LLP One Canal Park, Suite 200 Cambridge, MA 02141 Work Phone (617) 621-6500 Added Date: 02/23/2011
Plaintiff Whiston, Donald unknown Unknown, XX	Attorney 457060 William H. Sheehan MacLean, Holloway, Doherty MacLean, Holloway, Doherty 8 Essex Center Drive Peabody, MA 01960 Work Phone (978) 762-5808 Added Date: 10/07/2009



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Defendant Attorney General Commonwealth of Massachusetts unknown Unknown, XX	Private Counsel 634287 Jed Matthew Nosal Office of the Attorney General Office of the Attorney General 1 Ashburton Place Boston, MA 02108-1598 Work Phone (617) 727-2200 Added Date: 02/18/2011 Private Counsel 473350 Johanna Soris Office of the Attorney General of Commonwealth Office of the Attorney General of Commonwealth 1 Ashburton Place Room 1813 Boston, MA 02108 Work Phone (617) 963-2117 Added Date: 02/18/2011
Defendant Ipswich School Committee unknown Unknown, XX	Private Counsel 395955 Stephen M. Perry Casner & Edwards LLP Casner & Edwards LLP 303 Congress Street Boston, MA 02210 Work Phone (617) 426-5900 Added Date: 02/18/2011
Defendant Korb, Richard unknown Unknown, XX	Private Counsel 395955 Stephen M. Perry Casner & Edwards LLP Casner & Edwards LLP 303 Congress Street Boston, MA 02210 Work Phone (617) 426-5900 Added Date: 02/18/2011



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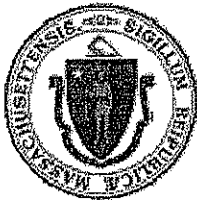
INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
10/06/2009	1	Complaint for Deviation pursuant to G.L. c 214 s. 10B	
10/07/2009		Track assignment notice issued.	
		NOTICE: Track Assignment Notice 14 Month Track Sent on: 07-oct-09 10:14:10	
12/11/2009	2	Summons Filed, Date of Service 11/25/2009 Attorney General	
12/11/2009	4	Summons Filed, Date of Service 11/25/2009 Supt of Schools in Town of Ipswich	
12/11/2009	3	Summons Filed, Date of Service 11/25/2009 Ipswich School Committee	
12/17/2009	5	First Amended Complaint for Deviation Pursuant to G.L.c 214 s 10B	
12/31/2009	6	Answer and Counterclaim of Ipswich School Committee and Richard Korb, Ipswich Superintendant of Schools	
02/18/2010	7	Answer to Copunterclaim of Ipswich School Committee and Superintendent	
08/12/2010	8	Emergency Motion for a Protective order	
08/18/2010	9	Motion for emergency protective order Allowed 08/12/2010 as per order dated 08/12/10	Cronin
08/18/2010	10	Protective Order on Defendant's Emergency Motion; dated 08/12/10	Cronin
09/23/2010	11	Motion to Terminate August 12, 2010 Protective Order	
10/13/2010	12	Motion to terminate 08/12/10 protective order Allowed 10/08/2010	Sahagian
12/02/2010	13	Motion for Partial Summary Judgment	
12/02/2010	18	Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment Authorizing the Feoffees of the Grammar School in the Town of Ipswich to Sell the Land Known as Little Neck, Ipswich, Massachusetts, to Grant a Mortgage on Little Neck in Connection with Refinancing Debt, and to Settle and Compromise Claims Against the Feoffees	
12/08/2010	14	Temporary Order: this mstter shall be scheduled for 2 hour summary judgment on 01/04/11 at 10:00 am in Salem; dated 12/06/10	Sahagian
12/16/2010	15	Motion to Reschedule Summary Judgment Hearing and to schedule case management conference	
12/30/2010	16	Motion to reschedule summary judgment and schedule CMC Allowed 12/24/2010 Motion shall be heard on 01/31/11 at 8 am	Sahagian
01/18/2011	17	Withdrawal of Attorney Stein Esq., Robin	
01/25/2011	19	Appearance by attorney George A Hall Jr., Esq. and appearance by Atty Christine M Griffin	
01/25/2011	20	Motion to Substitute Parties and to Join Parties as Defendants	
01/26/2011	22	Affidavit of Patrick J McNally	



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01/27/2011	26	Motion for Leave to File Amicus Brief	
01/27/2011	27	Amicus Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment	
01/28/2011	23	Ipswich School Committee's Statement in Support of Motion of Selectmen Feoffees to Substitute Parties and to Join Parties as Defendants	
01/28/2011	30	Appearance by attorney Jed Matthew Nosal Esq.	
01/28/2011	31	Appearance by attorney Johanna Soris Esq.	
01/28/2011	28	Ipswich School Committee's Statement in Support of Motion of Selectmen Feoffees to Substitute Parties and to Join Parties as Defendants	
01/28/2011	29	McNally, Morley and Surpitski's Opposition to Plaintiff's Motion for Partial Summary Judgment	
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01/31/2011	34	Opposition of Plaintiffs to Motion of Patrick J. McNally, Charles Surpitski and Raymond Morley to Substitute Parties and Join Parties as Defendants and Motion of Douglas J DeAngelis for Leave to File an Amicus Brief	
01/31/2011	35	Feoffees' Response to Additional Facts Submitted by Ipswich School Committee	
01/31/2011	36	Plaintiffs' Reply Memorandum to Opposition of Defendants Ipswich School Committee and Richard Korb to Plaintiffs' Motion for Summary Judgment	
02/07/2011	38	Reply to Opposition to Motion to Substitute Parties and to Join Parties as Defendants	
02/18/2011	37	Motion for Leave to File Amicus Brief Allowed 01/31/2011 in without attachments	Sahagian
02/18/2011	39	Motion by Plaintiffs for Partial Summary Judgment Denied 02/16/2011 in that there are material facts in dispute	Sahagian
02/18/2011	40	Motion to Substitute Parties and to Join Parties as Defendants Allowed 02/16/2011 as to substitution but denied as to request to join parties as Defendants	Sahagian
06/09/2011	41	Motion for Separate Trials on Plaintiff's Amended Complaint for Deviation and Defendant's counterclaim for revision to governance and administrative structure of the Feoffees, order limiting discovery and setting of trial date	
06/09/2011	42	Memorandum in support of motion for separate trials. etc	
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06/09/2011	44	Memorandum of Law in support of plaintiff's motion for protective order	
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06/15/2011	52	Ipswich School Committee's Consolidated Opposition to Request for Protective Orders Concerning Valuation Experts	
07/15/2011	46	Motion for protective order for James E Monahan, William LaChance and Keepers of Records Denied 06/27/2011	Sahagian
07/15/2011	47	Motion for Separate Trials on Amended complaint and Counterclaim, etc Denied 06/27/2011	Sahagian
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12/07/2011	66	Attorney General's Submission to the Court on her role in the Trial of the above captioned matter	
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12/12/2011	72	Bench Memorandum on Status of Feoffees Trust	
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12/22/2011	67	Motion in limine to exclude evidence of the motives, etc Allowed 12/09/2011	Sahagian
12/22/2011	68	Motion in limine- statute of limitations Denied 12/09/2011	Sahagian



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12/22/2011	69	Motion in limine to exclude evidence Allowed 12/09/2011 except evidence may be presentetd on counterclaim	Sahagian
12/22/2011	70	Motion in limine to preclude evidence of Korb opinions Allowed 12/09/2011	Sahagian
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01/12/2012	77	Judgment on Complaint, dated 12/23/11	Sahagian
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01/27/2012	105	Plaintiff's Summary of Response to Supplemental Papers and Affidavits filed in Support of the motion to intervene of Douglas J Deangelis	
01/30/2012	92	Motion to Strike Supplemental Affidavit of Clark Ziegler and Affidavit of Webster A Collins	
01/30/2012	93	Motion to Strike Portions of the Affidavit of Robert Weatherall, Jr	
01/30/2012	94	Motion to strike portions of the affidavit of Catherine TJ Howe	
01/30/2012	95	Motion to Strike Portions of the Affidavit of Susan Brengle	
01/30/2012	96	Motion to Strike Portions of the Affidavit of Michele Wertz	
01/30/2012	97	Motion to Strike Portions of the Affidavit of Clark Ziegler	



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01/30/2012	106	Affidavit of Peter Foote
01/30/2012	107	Plaintiff's Opposition to Motion of Dougals J DeAngelis et al to report to Appeals Court
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I, Pamela Casey O'Brien, Register of Probate Court for Essex County do hereby certify that the foregoing is a true copy of a document on file in this court.

IN WITNESS, Whereof, I have set my hand and affixed the seal of said Court this FEB 07 2012

ESSEX, SS

Pamela Casey O'Brien

PROBATE COURT

CERTIFIED

REGISTER OF PROBATE

A TRUE COPY

0009

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON,)
JAMES FOLEY, ELIZABETH KILCOYNE,)
PATRICK J. McNALLY, AND INGRID)
MILES AS THEY ARE THE FEOFFEEES OF)
THE GRAMMAR SCHOOL IN THE TOWN)
OF IPSWICH)

Plaintiffs,

v.

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

FIRST AMENDED COMPLAINT FOR DEVIATION PURSUANT TO G.L. c. 214, § 10B

1. Plaintiffs Alexander B.C. Mulholland, Jr., Peter Foote, Donald Whiston, James Foley, Elizabeth Kilcoyne, Patrick J. McNally and Ingrid Miles are the Feoffees of the Grammar School in the Town of Ipswich (the "Feoffees"). The Feoffees own the real estate known as Little Neck, Ipswich, Massachusetts ("Little Neck"), containing approximately twenty-six acres (per Town Assessor's Records), in trust ("the Trust") for the benefit of the Ipswich Public Schools, which Trust was established by the Will of William Payne in 1660.

2. The Attorney General of the Commonwealth of Massachusetts ("Attorney General") is named as a party herein pursuant to Mass.Gen.Laws c. 214 § 10B.

3. The Defendant Richard Korb is the Superintendent of Schools in the Town of Ipswich and, pursuant to Mass.Gen.Laws c. 71, §59, is responsible for the management of the

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Ipswich Public Schools, the beneficiary of the Trust. He has a usual place of business at 1 Lord Square, Ipswich, Massachusetts.

4. The Defendant Ipswich School Committee, pursuant to Mass.Gen.Laws c. 71, §37, has the power to select and to terminate the Superintendent of Schools, shall review and approve budgets for public education in Ipswich, and shall establish goals and policies for the Ipswich Public Schools. It has a usual place of business at 1 Lord Square, Ipswich, Massachusetts.

5. The Feoffees bring this action to obtain permission to deviate from the subordinate term of the Trust which states that Little Neck shall not "be sould nor wasted." Specifically, the Feoffees seek to obtain the power to sell the real estate at Little Neck, in whole or in part, and to grant and receive mortgages of the real estate for the reasons set forth herein.

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

7. The particular land in question, now known as Little Neck, was devised by the Will of William Payne "unto the free scoole of Ipswich", "which is to bee and remain to the benefitt of the said scoole of Ipswich for ever as I have formerly Intended and thearefore the sayd land not to be sould nor wasted." In that Will, Mr. Payne named certain individuals as

feoffees in trust. That Will was made in 1660, by which time William Payne, with others, was holding other land for the benefit of the school.

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

9. The Great and General Court acted upon that application and enacted Chapter 26 of the Province Laws of 1755-56 (See Exhibit C attached hereto). In that enactment, the Great and General Court first recognized the private nature of the transfer of Little Neck: "Whereas divers piously disposed persons . . . granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands . . ." It then recognized two issues: the power of the trustees who received the town grants to appoint successors and the power to charge and collect rents.

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

11. Most notably, the Great and General Court left all decision-making in the hands of a committee whose majority was composed of private citizens and not public officials. It

named four individuals who were "the present surviving feoffees on the part of the private persons granting lands as afores(ai)d," and three of the then Selectmen to constitute the committee or feoffees in trust. To ensure that private citizens would always constitute a majority of the feoffees, the Great and General Court provided that the four private citizens would have the power to appoint the successors to their number, "according to the original intention of their first appointm(en)t"; the remaining three committee members would be the three selectmen most senior in service.

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

13. By Chapter 5 of the Province Laws of 1765-66, the Great and General Court extended the existence of the "joint committee or feoffees in trust, for twenty-one years, making no changes, in the constitution of the feoffees and their method of succession." (See Exhibit C attached hereto).

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

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

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

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

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

19. Prior to June 30, 2006, the various tenants of the Feoffees had been tenants at will. Those tenants rented lots of land owned by the Feoffees on which lots the tenants built

cottages. There are presently 167 such cottages located at Little Neck. Twenty-four of those cottages may be used year round. The remaining 143 cottages may be used seasonally.

20. From time to time, prior to June 30, 2006, the Feoffees proposed to their tenants increases in rents, the tenants agreed to pay said rents and, for the most part, the tenants paid the rents in a timely fashion.

21. During the time period 2003 through 2006, the Feoffees distributed net rental income to the beneficiary of the Trust in excess of \$1,400,000.

22. In addition thereto, for those same four years, the Ipswich Public Schools have received approximately sixty percent of the real estate tax revenue generated by the land and buildings on Little Neck, the Ipswich Public Schools' share being approximately \$1,100,000.

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

24. During that same time period, the Feoffees, in conjunction with the Attorney General and the Ipswich Public Schools, in Probate and Family Court Civil Action No. 05E-0026-GC1, sought and obtained permission from this Court to borrow funds from commercial lenders and to secure such loan(s) with a conditional assignment of leases and rents, betterment fees, and contracts and permits, all in anticipation of spending in excess of \$7,000,000, to construct a common wastewater system so as to comply with an Administrative Consent Order

with the Massachusetts Department of Environmental Protection, and to construct an upgrade to the electrical distribution network on Little Neck, so as to comply with an Order from the Ipswich Department of Public Utilities. (See Exhibits E [Stipulation and Request for Instructions] and F [Order dated August 5, 2005] attached hereto). The Feoffees have completed that construction.

25. Some of the Little Neck residents, now thirty-three in number, have signed the proposed lease or a similar version thereof, seasonal or year-round.

26. Some of the Little Neck residents, apparently believing that the rent was "unlawful and unequitable," have not signed the proposed lease. Two of said tenants have brought an action in the Essex County Superior Court styled Loneragan et al v. Foley et al., Docket Number 2006-02328D (the "Superior Court Action"), both individually and seeking to act in a representative capacity in behalf of an alleged class of persons, which action is pending.

27. Pursuant to a stipulation filed in the Superior Court Action, the non-lessees are paying to the Feoffees an amount equal to the rent paid by them when they were tenants at will, together with real estate taxes and monthly amounts for the use, operation and maintenance of the common wastewater system, and paying into escrow the difference between what the non-lessees are paying and what the lessees are paying to the Feoffees.

28. As a result of (a) many residents refusing to pay the rent prescribed in the lease, which rent the Feoffees, Ipswich School Committee and Superintendent believe to be fair and reasonable, (b) the fees and costs incurred by the Feoffees in connection with the defense of the Superior Court Action, and (c) the mortgage payments due from the Feoffees as a result of the aforesaid construction, the Feoffees have been unable to distribute any rental income to the beneficiary during the last three years.

29. During the last three years, based again on the estimate of sixty percent of tax revenues going to the schools, the Ipswich Public Schools have received approximately one million dollars generated by the land and the buildings on Little Neck.

30. Over the last twelve to eighteen months, the Feoffees have discussed with the Superintendent of Schools, the Ipswich School Committee, and representatives of the residents of Little Neck, both lessees and non-lessees, the possibility of selling all or a portion of Little Neck, both by means of a potential sale of the entirety of Little Neck and by means of dividing Little Neck into 168 lots, by the endorsement of a so-called "Approval Not Required Plan (ANR)," such that each cottage would be on its own lot and the remaining land would be the one hundred sixty-eighth lot, and a sale of individual lots.

31. The Superintendent and the Ipswich School Committee have agreed with the Feoffees that a sale would be prudent, subject to the adequacy of the sale price or prices.

32. After the date of the Feoffees filing their original Complaint for Deviation, the Massachusetts Appeals Court, in the case of Branagan v. Zoning Board of Appeal of Falmouth, entered a Memorandum and Order pursuant to Appeals Court Rule 1:28 which caused the Feoffees and the residents of Little Neck to conclude that an ANR plan was not advantageous.

33. In lieu of an ANR plan, the Feoffees and the non-lessee residents, the latter acting by and through the Little Neck Legal Action Committee (LNLAC), have reached a tentative agreement whereby the Feoffees will create a Condominium at Little Neck consisting of the land, buildings, improvements, and cottages at Little Neck and offer for sale or lease to each of the 167 residents a Condominium Unit which will be defined, in essence, as the cottage he or she now owns.

34. The creation of a Condominium and the Feoffees' sales of Condominium Units will provide the following benefits to the beneficiary of the Trust: (a) it will allow the Feoffees to pay down and pay off their indebtedness and create an endowment fund for the benefit of the Ipswich Public Schools; (b) it will permit a diversification of the assets of the Trust; (c) it will allow the Feoffees, by prudent investment of the proceeds of the sale of the real estate, to obtain a fair rate of return on their assets; (d) it will free the Feoffees from the cost of repairs and improvements to the land, resulting in increased net income to the beneficiary; (e) it will provide a means to end the stalemate now extant over the rent to be charged and paid by the residents of Little Neck, many of whom now contend that they cannot afford to pay the rent prescribed by the lease; (f) it will result in a dismissal of the Superior Court Action; and (g) upon dismissal of said action, it will bring to an end the expenditure of legal fees and costs in that action.

35. The Will of William Payne makes clear that the great thing in the testator's mind, his dominant intent, was to support the Ipswich Public Schools. The Feoffees and their predecessors have carried out that intent for over three hundred years. The relief sought by this complaint for deviation is wholly consistent with that intent.

36. The requirement of the testator that Little Neck not be sold is subordinate to the predominant charitable end which William Payne had in mind at the time he prepared his Will. The power to sell is necessary to avoid a wasting of Little Neck. For the reasons set forth above, the subordinate requirement that Little Neck not be sold is obstructive of, and inappropriate to, the accomplishment of William Payne's principal charitable purpose.

37. For the reasons set forth above, without the deviation requested by the Feoffees, William Payne's principal charitable purpose will continue to be frustrated and there is a danger of a "wasting" of the assets, directly contrary to the explicit language of the Trust.

38. The interest of the Ipswich Public Schools will be best served by granting the relief requested herein.

39. The relief requested herein is a reasonable deviation from the terms of the Will and Trust of William Payne and consistent with the Feoffees' primary charitable purpose.

40. All of the above can be accomplished without the beneficiary's losing, based on the last seven years' average, the annual \$300,000 generated by the real estate taxes on the land and buildings at Little Neck.

41. In the event the Superior Court Action is not resolved, the Feoffees must borrow funds to pay for the defense of same.

42. To accomplish the creation of the Condominium, the Feoffees will incur engineering expense, estimated at \$200,000, for which they anticipate the need to borrow funds.

43. The previous authority of this Court to borrow money was limited to the construction projects mentioned above.

44. The Feoffees reasonably believe that the proposed borrowing as aforesaid may require, on the part of the lender, a mortgage of the real estate at Little Neck.

45. The Feoffees require the power to receive mortgages so as to facilitate the sale of Condominium Units to prospective buyers, all as set forth in the tentative settlement agreement referenced above.

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief and enter judgment as follows:

1. That the Feoffees be permitted to sell the land known as Little Neck in Ipswich, Massachusetts on such terms as are set forth in a settlement agreement between the Feoffees and the LNLAC and as this court deems meet and just;

2. That the Feoffees be permitted to grant and receive mortgages on all or part of the land at Little Neck;

3. That the Feoffees be permitted to borrow funds to defend the Superior Court Action and to implement and accomplish the sale or sales sought to be authorized by this Complaint;

4. That this Honorable Court approve the terms of the settlement of the Superior Court Action and that the Feoffees be authorized to enter into a dismissal of said action;

5. That this Honorable Court declare that the provisions of Massachusetts General Laws Chapter 30B do not apply to the sale of Condominium Units and Little Neck as contemplated by the settlement agreement between the Feoffees and the LNLAC;

6. That this Honorable Court issue such licenses, judgments and other orders as are necessary to implement and accomplish the relief granted by this Court to the Feoffees; and

7. Such other relief as this Honorable Court deems meet and just.

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



William H. Sheehan III BBO #457060
Robin Stein, BBO #654829
MacLean Holloway Doherty Ardoff & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960
(978) 774-7123

Dated: December 17, 2009

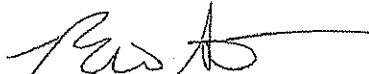
Certificate of Service

I Robin Stein counsel to the Plaintiffs hereby certify that this 17th day of December 2009 I served a copy of the instant first amended complaint upon the following counsel of record via first class mail postage prepaid:

Richard C. Allen, Esq.
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210

Johanna Soris, Esquire
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108

December 17, 2009



Robin Stein

Selected Actions of the Town of Ipswich

At a Town Meeting November 14, 1650

Granted to Mr. Robert Payne, and Mr. William Payne and such others as the Town shall appoint for the use of the school all that neck beyond Chebaco River and the rest of the ground (up to Gloucester Lane) adjoining to it Mayor Dennison, Mr. ?, *undeceivable* chosen by the Town and added to.

At a Town Meeting January 26, 1652

For the better ordering of the schools and the affairs thereof, Mr. Simmons, Mr. Rogers, Mr. Morton, Mayor Denison, Mr. Robert Payne, Mr. William Payne, Mr. Hubbard Ivason 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 such (*sic*) sums as are given to provide a school house and schoolmaster's house, either in building or purchasing, *undeceivable* house with all *undeceivable* speed, And such sums of money, parcels of land, roads 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 *undeceivable* a house to that *undeceivable* from time to time, towards his maintenance, which they shall have power to enlarge by appointing (?) *undeceivable* from year to year, which each scholar shall yearly or quarterly pay or apportionably, 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 *undeceivable* written and such (?) accounts.

At a Town Meeting 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.

there as I did before and then to receive this gift at the
age of 21 years I doe give unto my son Samuell
Hamer all my wearing bloths both lined and unl
lin further I doe give to Mrs. Simpson five pounds to Mrs.
Willson forty shillings to Mrs. Norton three pounds
to James Knollys shillings on English money to John
Darch twenty shillings and to William Dumbrell
I doe give my fourter eyes aders and all my other
working tools with one coat and a pair of breeches
as my will that my wife Elizabeth and James
Hamer and Samuell Hamer my executors or assigns the per
formance of this my will after my debts and funeral
expenses be discharged unto this my will I have
subscribed my own hand and as my will that James
Parr shall take the twenty pounds I doe give to my
two grand children and he pay it till they come to age
Signed and sealed in the presence of three wit
nesses.

Matthew Dillithams

Bedell & sons

Nathaniel Dillithams and Matthew Dillithams deposed
before the magistrates y^e 21th September 1671 that
having subscribed these names both writing
that they were present and saw the said Samu
el Bidfield sign seal and deliver this paper
and heard him publish it to be his last
will & testament and that he there best
derstanding hee was of a sound mind when
hee did.

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William Parr
Attest

I Matthew Parr of Boston in the County of
Southf. in New England having been a long
time by the hand of god much exercised with the
firmly of body yet through the merree of god con
tinued in perfect memory I doe here fore take this
opportunity to make my last will and testa
ment and settle my estate as followeth first I
will bequeath unto Hanna my doovyness of 200
hundred pounds to her sole use and behoofe for
ever And also I give unto my said wife my
dwelling house situate in Boston offe way to
North Church in the Orchard garden in the

under her care she do her long unto the said
for time and term of her naturall life and
also I give unto my said wife my mill at
Anderton with all the house lands parcels
and appurtenances and every of them for her natural
term of her naturall life And also I give unto my
said wife all my household stuff the sum of
improvement of it for time and term of her nat-
urall life I give unto my three grand children
which were the children of my deceased son

Applleton Deceased the sum of fiftene hundred
pounds unto Hanna six hundred pounds unto
Samuel four hundred pounds and to Judith
four hundred pounds And if any of my said
grandchildren shall Depart this life leaving
no issue of their bodies lawfully begotten
behind them Then the said six hundred pounds
shall remaine to them that shall survive and
their heirs for ever But if they shall all de-
part this life leaving no issue of their bodies
as aforesaid to stand then Then my will is that
the said fiftene hundred pounds shall returne
and be repaid back unto my son John Patne
to be and remaine to him his heirs and assigns
forever the which sayd three legacies shall be
payd unto my said grandchildren and every
of them as they shall attaine unto age accord-
ing to law or uppon the day of marriage which
shall first happen providedt allwayes and it
is hereby intended that they and every of them
shall give security to be replemished according
to this my will as is aforesaid and also I give
unto Hanna Applleton my said grandchild all the
household stuff that now standeth in the Hall
chamber to be and remaine to her after my
said wife do depart out of this naturall life and
the rest of my said household stuff I give unto
the other of my grandchildren after my said
wife decease which shall be named in the
devises to the same I give unto the children
of my deceased son Deceased six hundred pounds
unto the children of my deceased son Deceased
four hundred pounds and unto the children of my
deceased son Deceased four hundred pounds

now I give the sum of eight pounds yearly
the sum of four pounds to be paid yearly
of age according to law. I give unto my
Sister Page the sum of three pounds yearly
yearly and every year to her sole use and to
her heirs. During the term of her natural life.
And I give unto my kinsman John Page which
now is in his hands the sum of four pounds
and to the other children of my said sister
Page viz. Benjamin Elizabeth Mary Phoebe
the sum of five pounds each of them. I give
unto the children of my sister Phoebe viz. to
Benjamin Elizabeth and Hannah the sum of four
pounds to each of them and to my kins-
women Elizabeth House daughter to Samuel
and Elizabeth House the sum of four pounds
to give unto the two daughters of my son John
till they are of forty shall be paid yearly
they are of age according to law. my meaning is
for each child to each of them. I give unto my
son in law Samuel Appleton the sum of four
pounds and to William Howard the sum of five
pounds and to Jeremy Bishop four shill-
ings six pence. I give unto Mrs. Anthony Shadden three
of four pounds and unto Mr. Christopher Black
the sum of four pounds I give unto Mr. Joseph
Ganter the sum of four pounds and unto Mr.
Oliver Patches the sum of four pounds I give
unto Mary Ingham the sum of forty shillings
yearly and every year during the term of her
natural life. I give unto the free school of Ips-
wich the title deed of land at Ipswich con-
veyed by the name of Jefferys neede the which
is to be and remain to the benefit of the said
school of Ipswich for ever as I have formerly in-
tended and therefore the said land is not to be
sold nor mortgaged nor given unto the body of the
said school the sum of four hundred pounds which
is now paid for that end unto the
wardens of the workhouse of St. Thomas of
Cambridge and shall be and remain in the
hands of the warden and president of the body
of the said school for the use being and to be

John Ide gave unto Christopher Clarke the sum of
five pounds and I do give to Capt Thomas Clarke
Company to buy them Bullets the sum of five
pounds

John May
Christopher Clarke
Will Howard

At a County Court held at Boston on adjournment
4th November 1666 Mrs Elizabeth Appleton appeared
before the Court and declared by reason of her
illness being a disability to manage such a
trust she did renounce her executorship to the will
of Mr Anthony Stoddard on request of Mr
John Payne son to the late Mr William Stoddard
she did renounce her executorship to this will
at which was done in presence of the will

Edward Rawson Recorder

At a County Court held at Boston the 4th November
1666 Mr John May Christopher Clarke William
Howard deposed each that having subscribed
their names as witnesses to the will aforesaid
and saw and heard the said Mr Will Paine
signe seal & publish it as his last will and
testament in day and year above mentioned
and that when soe he did he was of a sound and
disposing mind to the best knowledge

Edw. Rawson Recorder

Page 30 Original Volume

and I certify that on the 20th of November 1666
at Boston in New England I did see Mr Mathew
Buckner who lately departed this life on the 30th
day of September last being a sick man before
his death he made of his last will and testament
in presence of his wife and some others and
did call us his heirs and some other witnesses
and we were all present together and ac-
quainted with the contents of the same and
on the 20th of November 1666 we were all
present and saw him give us possession of the same

CHAPTER 5.

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.

Whereas divers piously disposed persons, in the first settlement of the town of Ipswich, in 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 the said town forever; of which feoffees John Chate, Samuel Rogers, Aaron Potter and Francis Chate, Esqrs., are the only survivors; and whereas the said town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same uses, give and grant to certain persons in their grants mentioned, and to such others as the said town should appoint, a large farm, then called a heek of land, situate in Chabacco, in the said Ipswich, with some other lands, the rents of which to be applied to the use 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 these grants, which were all designed for one and the same use, disputes have heretofore arisen between the said town and the said feoffees; and also some doubts have arisen whether, by the constitution of those grants as aforesaid, it is in the power, either of the said town or feoffees, to compel the payment of the rents of said farm and other lands granted by said 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, intituled "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 three 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 that all doubts and disputes aforementioned, from the passing of said act, have ceased, and the parties concerned have desired the continuance of the aid of this court touching the premisses; wherefore,—

Be it enacted by the Governor, Council and House of Representatives.

[SECT. 1.] That from and after the first day of March next, the aforementioned John Choate, Samuel Rogers, Aaron Potter 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 said 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 of said lands, not prejudicial to any leases already made and not exceeding the term of twenty-one years at any one time; also to demand receive all 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; also to appoint a clerk and treasurer, also a grammar-school master, from year to year; and, from time to time, to agree with him and them for his and their salaries; and to apply the said rents, grants and annuities for the payment of his and their salaries, and for the discharge of other necessary expences attending this affair, so far as these rents, grants and annuities will go; with a like power from time to time to inspect the said school and master, and, in general, to transact and order all matters and things relative to said school, and to all the lands, grants, rents and 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 aforementioned committee or feoffees,--

Be it further enacted,

[SECT. 2.] That if either the said John Choate, Samuel Rogers, Aaron Potter or Francis Choate, shall decease, or move out of the said town of Ipswich, or otherwise become incapable 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 and qualified 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; no person at any time to be appointed that is not an inhabitant of the said town of Ipswich; and the selectmen aforesaid, by this act incorporated as aforesaid, shall, from year to year, be succeeded by the three eldest, in that office, of the selectmen of that town, other than such of them as be also one of the feoffees constituted as aforesaid; and in case it shall so happen, at any time, that there are not three selectmen chosen by the said town who have served in that office before, then those first named in such choice shall succeed as aforesaid.

And, for rendering the whole more effectual,--

Be it further enacted,--

[SECT. 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 of Feoffees of the Grammar School in the town of Ipswich, in the county of Essex;

and in this power their successors shall, from time to time, be included, with respect to the transactions of those who may have preceded them in that trust.

[SECT. 4.] This act to continue and be in force for the term of twenty-one years from the first day of March next, and no longer.
[Passed June 21; published June 25.]

CHAPTER 26.

AN ACT REGULATING THE GRAMMAR SCHOOL IN IPSWICH, AND
FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE
SAME.

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 honourable 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 other 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 the 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,-

Be it enacted by the Governor, Council and House of Representatives,

[SECT. 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 afores[a]id, together with Francis Choate, Esq., Capt. Nathaniel Tredwell and Mr. John Patch, Junr., three of the present selectmen of said town, shall be and they 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 of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; 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 paym[en]t 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 defr[ā][e]ying 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.

[SECT. 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 ~~selectmen~~ committee or feoffees,--

Be it enacted,

[SECT. 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 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 appointm[en]t, 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 by those first named in the choice of the town.

And for rend[er]ing the whole more effectual,--

Be it further enacted,

[SECT. 4.] That the afores[ai]d committee or feoffees in trust may, in all matters relative to s[ai]d grammar school, in which

they may by force of this act be concerned, sue or be sued by the name or char[er][acter] 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 them in said office.

[SECT. 5.] This act to continue and be in force for the space of ten years, and no longer. [Passed February 17; published February 26.]

EXHIBIT D

1788 - CHAPTER 54.

AN ACT MAKING PERPETUAL, AN ACT RESPECTING THE GRAMMAR
SCHOOL, in IPSWICH, IN THE COUNTY OF ESSEX.

Whereas a Law respecting the said School, was enacted in the year one thousand seven hundred and sixty five, to be in force for the term of twenty one years, from the first day of March, one thousand seven hundred and sixty six, 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, and 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.

COPY

5531C.FEOFFEEES.STIP/WIPJUL/080105/A

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE AND FAMILY COURT
SALEM DIVISION
DOCKET NO. 05E-0026-GC1

FEOFFEEES OF THE GRAMMAR SCHOOL)
IN THE TOWN OF IPSWICH,)
Plaintiffs)
v.)
TOWN OF IPSWICH PUBLIC SCHOOLS)
AND THE ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
Defendants)

STIPULATION AND REQUEST FOR INSTRUCTIONS

Now come the Parties in the above-entitled matter and hereby stipulate and agree as follows:

1. That equitable relief pursuant to M.G.L. Chapter 215, Section 6 in the form of instructions from this Honorable Court is needed regarding the authority of the Plaintiffs to borrow funds as necessary to complete certain construction projects as mandated by the Commonwealth of Massachusetts and the Town of Ipswich;
2. That the Feoffees of the Grammar School in the Town of Ipswich (hereinafter "Plaintiffs") exist under a trust created by a vote of the Town Meeting in November, 1650.
3. That the land in Ipswich commonly known as "Little Neck" was devised to the Plaintiffs by the Last Will of William Paine, who died in 1660 (Suffolk Probate Court 1:346). The Will stated that the devise was "unto the free scoole of Ipswich

the little neck of land at Ipswich for ever as I have formerly intended and therefore for the sayd land not be sould nor wasted."

4. That subsequently Chapter 5 of the Province Laws of 1765-66 established the terms for the management and use of the Plaintiffs' property for the exclusive benefit of the Ipswich Public Schools.
5. That the Plaintiffs rent 167 parcels of land on which tenants have constructed single family dwellings, the net rent proceeds for which are distributed on an annual basis to the Ipswich Public Schools, in accordance with Chapter 5.
6. That the Plaintiffs, in order to comply with the Administrative Consent Order with the Massachusetts Department of Environmental Protection and the Massachusetts Clean Waters Act, M.G.L. Chapter 21, Sections 26-53, must construct a common wastewater collection system with an estimated project cost of \$6.483 million dollars;
7. That if the work is not completed by the end of 2005, the Plaintiffs will not be able to rent lots to the tenants at Little Neck, resulting in a substantial loss of income for Ipswich Public Schools;
8. That the Plaintiffs, in order to comply with an Order from the Department of Public Utilities of the Town of Ipswich that the electrical distribution network on Little Neck must be upgraded at an estimated project cost of \$535,000.00;

9. That this electrical work, if not completed, could affect the safety and welfare of the Little Neck tenants;
10. That pursuant to Section 1 of Chapter 5 of the Province Laws of 1765-66, as made perpetual by Chapter 54 of the Acts of 1786, the Plaintiffs were granted the power "in general, to transact and order all matters and things relative to said school, and to all the lands, grants, rent and annuities that do now, or that hereafter, belong to said school, arising from the donations aforesaid, so as to best answer the general design and interest thereof;"
11. That the Plaintiffs cannot pay these costs to complete the work required by the DEP and the Town and are therefore required to borrow the required funds from one or more commercial lenders;
12. That borrowing said funds without assigning or granting a security interest in the Little Neck land will not be a prohibition of the William Paine bequest against the sale of the property and is acceptable to Ipswich Public Schools;
13. That the Plaintiffs do possess the implied authority under the trust to borrow money upon reasonable terms not involving the assignment of the land or the granting of a security interest in the land, all as necessary to fulfill the purpose of the trust;
14. That the Plaintiffs, in order to complete said work and fulfill its implied authority under the trust, will be

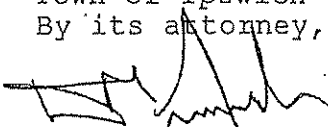
required to give security to commercial lenders in the nature of customary commercial loan documents not involving the assignment of the land or the granting of a security interest in the land, such as, but not limited to, conditional assignments of leases and rents, conditional assignments of betterment fees (or other income from the tenants for the wastewater project) and conditional assignments of the contracts and permits for the projects, which would provide that in the event of a default by the Plaintiffs, the lenders would have the authority to complete the project, collect the rents and otherwise manage the property to protect the lenders' interest and secure the repayment of the debt;

15. That the Plaintiffs have the implied right to borrow money and grant security interests in the leases and rents, betterment fees, contracts and permits;
16. That the Plaintiffs have advised the Ipswich Public Schools that the cost of the electrical system project will be borne by the Plaintiffs, since it relates to an essential service which has been customarily supplied by the Plaintiff to its tenants;
17. That the Plaintiffs have advised the Ipswich Public Schools that the costs of the wastewater project will be paid solely by the tenants, as they have customarily been responsible for all costs for septic management for their dwellings;

18. That it is agreed that the ability of the Plaintiffs to borrow the necessary funds from commercial lenders to complete these projects on a timely basis will or may affect the benefits to be paid to Ipswich Public Schools.

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

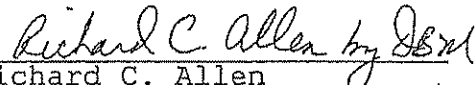
Date: August 1st, 2005



Donald M. Greenough
BBO # 210360
2 Depot Square
Ipswich MA 01938
978-356-1040

Town of Ipswich
Public Schools
By its attorney,

Date: August 1st, 2005



Richard C. Allen
BBO #015720
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
617-426-5900

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE AND FAMILY COURT
SALEM DIVISION
DOCKET NO. 05E-0026-GC1

FEOFFEEES OF THE GRAMMAR SCHOOL.)
IN THE TOWN OF IPSWICH,)
Plaintiffs)
v.)
TOWN OF IPSWICH PUBLIC SCHOOLS)
AND THE ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
Defendants)

~~RECEIVED~~ ORDER

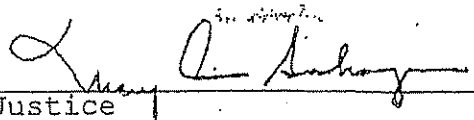
The matter having come before this Court and after hearing finds as follows:

1. The stipulation filed by the Parties dated August 5th, 2005 is incorporated as findings of the Court.
2. The Trust created by the Town of Ipswich, the provisions of Chapter 5, Section 1 of the Province Laws of 1765-66, as made perpetual by Chapter 54 of the Acts of 1786 and the provision of the Last Will of William Paine provide the Plaintiffs with the implied authority to borrow funds from commercial lenders, upon reasonable terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, to complete those construction projects that are the subject of this Petition and set forth in the Stipulation of the Parties.

3. The Plaintiffs; by borrowing funds from commercial lenders to complete those construction projects upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, do not implicate the prohibition in the devise by William Paine against sale of the property.
4. The Plaintiffs have the authority to borrow funds from commercial lenders, upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, to complete those construction projects that are the subject of this Petition and set forth in the Stipulation of the Parties, which authority includes the execution of the customary commercial lending documents necessary for such a borrowing, such as, but not limited to, conditional assignments of leases and rents, betterment fees, and contracts and permits, as security for the repayment of the debt to the commercial lenders.
5. The Plaintiffs have the authority to borrow funds from commercial lenders, upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, to complete said construction projects in keeping with the intent and purpose of the Last Will of William Paine and provisions of Chapter 5, Section 1 of the Province Laws of 1765-66, as made perpetual by Chapter 54 of

the Acts of 1786, and the Trust created by the Town of
Ipswich.

So ordered


Justice

August 05, 2005

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et als., as they are THE FEOFFEES
OF THE GRAMMAR SCHOOL IN THE
TOWN OF IPSWICH

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts;
IPSWICH SCHOOL COMMITTEE;
and RICHARD KORB, as he is
Superintendent of Schools in the
Town of Ipswich

Defendants

ANSWER AND COUNTERCLAIM OF IPSWICH SCHOOL COMMITTEE
AND RICHARD KORB, IPSWICH SUPERINTENDENT OF SCHOOLS

NOW COME the Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB as Ipswich Superintendent of Schools (these Defendants are referred to herein collectively as the "School Defendants") and answer the Plaintiffs' First Amended Complaint dated October 6, 2009 (herein, the "Complaint") as follows:

1. The allegations set forth in Paragraph 1 of the Complaint are admitted.
2. The allegations set forth in Paragraph 2 of the Complaint are admitted.
3. The allegations set forth in Paragraph 3 of the Complaint are admitted.
4. The allegations set forth in Paragraph 4 of the Complaint are admitted.
5. The School Defendants state that Paragraph 5 sets forth legal conclusions to which no response is required.

6. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 6 of the Complaint.

7. The allegations in the first sentence of Paragraph 7 of the Complaint are admitted. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 7 of the Complaint..

8. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 8 of the Complaint.

9. The School Defendants state that Chapter 26 of the Province Laws of 1755-56 speaks for itself. The School Defendants state that the remainder of Paragraph 9 sets forth legal conclusions to which no response is required.

10. The School Defendants state that Paragraph 10 sets forth a legal conclusion to which no response is required.

11. The School Defendants state that Paragraph 11 sets forth legal conclusions to which no response is required.

12. The School Defendants state that Chapter 26 of the Province Laws of 1755-56 speaks for itself.

13. The School Defendants state that Chapter 5 of the Province Laws of 1765-66 speaks for itself.

14. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 14 of the Complaint..

15. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 15 of the Complaint.

16. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 16 of the Complaint.

17. The School Defendants state that Paragraph 17 sets forth a legal conclusion to which no response is required.

18. The allegations set forth in Paragraph 18 of the Complaint are admitted.

19. The allegations set forth in Paragraph 19 of the Complaint are admitted.

20. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 20 of the Complaint.

21. The allegations set forth in Paragraph 21 of the Complaint are admitted.

22. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 22 of the Complaint.

23. The School Defendants admit that the Plaintiffs proposed a rent increase at the time and in the amounts described in Paragraph 23 of the Complaint and that they

offered residents a lease as described. The School Defendants state that the remainder of Paragraph 23 sets forth legal conclusions to which no response is required.

24. The School Defendants admit that the Stipulation and Request for Instructions that is Exhibit E of the Complaint was entered into and that the Court Order that is Exhibit F was obtained. The School Defendants state that Exhibit E and Exhibit F speak for themselves, and that the remainder of Paragraph 24 sets forth legal conclusions to which no response is required

25. The School Defendants admit that the Plaintiffs have informed them that thirty-three Little Neck residents have signed leases as set forth in Paragraph 25 of the Complaint.

26. The School Defendants admit that some Little Neck residents have not signed the proposed lease, and that the civil action identified in Paragraph 26 is pending. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 26 of the Complaint.

27. The School Defendants admit that a stipulation as referenced in Paragraph 27 was filed in the Superior Court Action. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining of Paragraph 27 of the Complaint.

28. The School Defendants admit that the Ipswich Public Schools have not received a distribution from the Plaintiffs during the last three years. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 28 of the Complaint.

29. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 29 of the Complaint.

30. The School Defendants admit that the Plaintiffs have discussed with them the possibility, subject to Court approval, of selling all or a portion of Little Neck through various means of sale. The School Defendants state that the remainder of Paragraph 30 sets forth legal conclusions to which no response is required.

31. The School Defendants deny that they have a present position as to whether a sale would be appropriate.

32. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 32 of the Complaint.

33. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 33 of the Complaint.

34. The School Defendants state that Paragraph 34 sets forth legal conclusions to which no response is required.

35. The School Defendants state that Paragraph 35 sets forth legal conclusions to which no response is required.

36. The School Defendants state that Paragraph 36 sets forth legal conclusions to which no response is required.

37. The School Defendants state that Paragraph 37 sets forth legal conclusions to which no response is required.

38. The School Defendants state that Paragraph 38 sets forth legal conclusions to which no response is required.

39. The School Defendants state that Paragraph 39 sets forth legal conclusions to which no response is required.

40. The School Defendants state that Paragraph 40 sets forth legal conclusions to which no response is required.

41. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 41 of the Complaint.

42. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 42 of the Complaint.

43. The School Defendants state that Paragraph 43 sets forth legal conclusions to which no response is required.

44. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 44 of the Complaint.

45. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 45 of the Complaint.

FURTHER ANSWER

The Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB,
Ipswich Superintendent of Schools, further answer as follows:

1. The Plaintiff's First Amended Complaint does not set forth a specific sale proposal.
2. The School Defendants have not been presented with a specific sale proposal.
3. In the absence of a specific sale proposal acceptable to the School Defendants as the institutional beneficiary, the Plaintiffs have not satisfied conditions precedent to receipt of the relief requested in their Complaint and have not stated a claim upon which relief can be granted.

REQUESTED DISPOSITION OF PLAINTIFFS' REQUESTS FOR RELIEF

WHEREFORE, the Defendants IPSWICH SCHOOL COMMITTEE and
RICHARD KORB, Ipswich Superintendent of Schools, respectfully request that the
Court:

1. Dismiss the Plaintiffs' First Amended Complaint, which does not include a specific sale proposal acceptable to the School Defendants as the institutional beneficiary, with prejudice.
2. Grant the School Defendants their costs and such other and further relief as the Court may deem just and proper.

COUNTERCLAIM

1. This Counterclaim is brought against the Plaintiff Feoffees pursuant to the Court's jurisdiction under G.L. c. 215, §6 and G.L. c. 203, §12 over matters of equity with respect to charitable property and funds.

2. The Defendants Ipswich School Committee and Ipswich Superintendent of Schools (the "School Defendants"), as Counterclaimants, seek an order modernizing the governance and administrative structure for carrying out the Trust that was created by William Paine to benefit the Ipswich Public Schools and that is referenced in the Plaintiffs' Complaint.

3. As referenced in the Plaintiffs' First Amended Complaint, the Trust is presently governed by seven Feoffees, four of whom were appointed privately by their predecessors (herein, the "Privately-appointed Feoffees") and three of whom serve by virtue of being members of the Ipswich Board of Selectmen (herein, the "Selectmen Feoffees").

4. Under the existing governance structure for the Trust, the four Privately-appointed Feoffees serve unlimited terms and select and appoint their successors privately. There are no bylaws and no other comprehensive governance documents or rules.

5. The School Defendants submit that due to evolved circumstances over the years and the Privately-appointed Feoffees' failure to fulfill reasonable expectations, a comprehensive revised governance and administrative structure is in the best interest of the charitable purpose of the Trust.

6. The current governance and administrative structure of the Trust is inadequate and there is good cause to revise it.

7. For many years, the rents charged by the Feoffees to Little Neck residents have been less than fair market levels, resulting in distributions in support of the Ipswich Public Schools that were less than fair market rents would have provided.

8. In recent years, disputes with Little Neck residents regarding rents and charges and with contractors involved with the installation of a sewer system have resulted in a total absence of distributions in support of the Ipswich Public Schools.

9. The Privately-appointed Feoffees have conducted Trust business, both directly and through a Limited Liability Company (LLC), in private, without transparency and public accountability.

10. The Privately-appointed Feoffees have failed to make all necessary and appropriate governmental filings in a timely manner.

11. A modernized Trust governance and administrative structure has been the subject of several years of careful consideration, analysis, and review by the School Defendants, by other Town of Ipswich governmental bodies, and by Ipswich residents. The Trust governance and administrative structure has been the subject of numerous public meetings and public hearings of the School Committee and its subcommittees, the Ipswich Board of Selectmen, the Ipswich Finance Committee, joint Tri-Board meetings of these three governmental bodies, a Town Committee on the Feoffees, and the two most recent sessions of the Ipswich Town Meeting. The Trust governance and administrative structure has been the subject of numerous meetings and discussions with the Privately-appointed Feoffees and counsel for the Feoffees.

12. The governance and administrative structure proposed by the School Defendants is summarized in Exhibit A of this Counterclaim, and a proposed Order of this Court to implement this governance and administrative structure is set forth in Exhibit B of this Counterclaim. Under the proposed Trust governance and administrative structure:

- a. eligibility criteria for service as a Feoffee are specified;
- b. effective upon the effective date of the Trust Administration Order, all seven Feoffees are to be persons appointed for three year terms by governmental bodies of the Town of Ipswich: two by the School Committee; two by the Board of Selectmen; two by the Finance Committee; and one by the Town Meeting.
- c. powers, responsibilities and requirements with respect to the Little Neck property that is the subject of the Trust are set forth;
- d. powers, responsibilities and requirements with respect to funds of the Trust are set forth; and
- e. other governance and administrative standards and procedures are set forth.

13. The School Defendants submit that the proposed Trust governance and administrative structure would provide necessary and appropriate clarification and guidance for carrying out the charitable purpose of the Trust. In addition to the Ipswich School Committee and the Ipswich Superintendent of Schools, the proposed governance and administrative structure is supported by the Ipswich Board of Selectmen (including those serving as Selectmen Feoffees), the Ipswich Finance Committee, representatives of the Town Committee on the Feoffees, and votes at the two most recent Ipswich Town Meetings.

REQUESTED RELIEF WITH RESPECT TO DEFENDANTS' COUNTERCLAIM

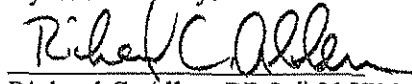
WHEREFORE, the Defendants IPSWICH SCHOOL COMMITTEE and
RICHARD KORB respectfully request that the Court:

1. Pursuant to the Court's equitable powers with respect to estates, charitable trusts, and charitable funds, approve and order for the Trust created by William Paine with respect to the land known as Little Neck to benefit the Ipswich Public Schools the revised governance and administrative structure, including replacement of the existing Feoffees with Feoffees appointed by Ipswich governmental bodies, that is summarized in Exhibit A of this Counterclaim and set forth in the proposed Trust Administration Order attached as Exhibit B of this Counterclaim;
2. Order full distribution to the Ipswich Public Schools from the funds of the Trust of all short-falls resulting from the Feoffees' failure to provide distributions to the Ipswich Public Schools commensurate with fair market rents;
3. Grant the School Defendants their attorneys fees and costs; and
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

IPSWICH SCHOOL COMMITTEE AND
RICHARD KORB, SUPERINTENDENT

By their attorney:


Richard C. Allen, BBO # 015720
Casner & Edwards, LLP

303 Congress Street
Boston, MA 02110
Phone: 617-426-5900 x 339
Fax: 617-426-8810

Dated: December 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Answer and Counterclaim to be served by first class mail upon counsel for the Plaintiffs and upon the Attorney General.


Richard C. Allen

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EXHIBIT A

Summary of revised Trust governance and administrative structure in proposed Trust Administration Order (the "Court Order")

- 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 and appreciation, 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) Eligibility to serve as a Feoffee
 - o To be eligible to be appointed as a Feoffee or to continue to serve as a Feoffee, a person's primary residence shall be in Ipswich.
 - o No person may be a Feoffee while serving as a member of the School Committee, Board of Selectmen or the Town Finance Committee or as Town Manager or Superintendent of Schools.
 - o 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 if his or her lot is rented from the Trust, 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 and his or her lot is rented from the Trust:
 1. the individual's spouse;
 2. a parent of the individual or of the individual's spouse;
 3. a child 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 possess the qualities of integrity and sound judgment and 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. Persons will be appointed who also possess expertise and skills that will enable the Feoffees collectively to carry out their responsibilities.
- No person may be appointed as a Feoffee or continue to serve as a Feoffee who has been convicted of a crime involving dishonesty, false statement, theft, fraud, or moral turpitude.

b) Number and appointment of Feoffees

- 7 Feoffees
- Appointments
 - 2 appointed by School Committee
 - 2 appointed by Board of Selectmen
 - 2 appointed by Finance Committee
 - 1 appointed by Town Meeting
 - Nothing herein shall prevent a person presently serving as a Private Feoffee (a Feoffee not appointed by a public body) from being appointed as a Feoffee by a public body so long as all eligibility requirements herein are met.

c) Term of service

- staggered three-year terms (with appropriate staggering of shorter initial terms)
- no limit as to number of terms served
- suspension or removal
 - Feoffee appointed by School Committee, Board of Selectmen or Finance Committee may be suspended or removed by appointing authority for cause, provided that such Feoffee is given at least seven days written notice of the proposed suspension or removal and the reasons therefor, and an opportunity to be heard at the meeting, and that notice of the proposed suspension or removal is given in the notice of meeting

- Feoffee appointed by Town meeting may be suspended or removed for cause by a Town meeting or by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each body), subject to the same notice and hearing procedure as above
 - "cause" defined as: (i) breach of fiduciary duty; or (ii) failure to carry out his or her duties with reasonable judgment, skill, care or prudence.
 - in the case of a Feoffee vacancy, the appointing authority may appoint a Feoffee to fill the remainder of the term
 - d) Serve without compensation, but reasonable and necessary trust-related expenses paid, such trust-paid expenses to be reported in writing at least quarterly and in detail to the School Committee, the Board of Selectmen and the Finance Committee
 - e) Shall be subject to a conflict of interest policy, approved by the School Committee, that is compliant with the State Public Ethics Statute and good governance standards for governmental bodies and public charities
 - f) Shall meet at least quarterly.
 - g) The Feoffees meeting quorum is a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein or required by law, a majority vote of those present is required for action.
 - h) The Feoffees may elect officers from among their number, establish such officers' responsibilities, and establish committees of Feoffees.
- 5) Responsibilities and powers with respect to sale, rental, and management of real property in addition to those conferred upon trustees by law
- a) lease, rent, improve and manage the Trust real estate (sale, if any, shall be subject to School Committee approval and a Court order separate from this Trust Administration Order).
 - 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) pay all proper charges and expenses

- e) upon approval by the School Committee, borrow funds and mortgage the real estate and the rent income stream therefrom to the extent necessary for the prudent operation and maintenance of the Trust property
 - f) 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) Responsibilities and powers with respect to the funds of the Trust, in addition to those conferred upon trustees by law:
- a) Hold title to and manage the funds of the Trust, with the net proceeds of the sale of Little Neck lots if any to establish a permanent endowment. The amount of said net sale proceeds, after payment, in an amount approved by the School Committee, of debts owed by the Feoffees at the time of this Order or owed at the time of the sale of a lot or lots, and a reasonable expenses and operational reserve agreed to by the School Committee, shall constitute the initial principal or "historic dollar value" of said endowment. The following shall not be distributed: (i) the initial principal; and (ii) the accumulation that is added to principal pursuant to Paragraph (b), below.
 - b) Pursuant to the Trust purpose, make distributions of net investment income and appreciation and net rental income to the School Committee to benefit the public schools, after reasonable expenses and operational reserves and the accumulation described in the following sentence. Prior to distribution, the following amount of income and appreciation shall be accumulated and added to principal, not to be distributed: the smaller of (i) the amount needed to maintain the inflation-adjusted value of the endowment over time; or (ii) 20% of net investment and rental income and investment appreciation. As provided in Part 3 above, 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.
 - c) Hire or employ qualified investment managers and, if appropriate, advisors and other investment professionals, attorneys, or other agents, subject to the approval of the School Committee, and pay reasonable compensation for the services of such persons.
 - d) Establish and periodically review and update the Trust's Investment Policy, with the goal of maintaining an appropriate balance of security

and growth of principal and consistent and beneficial annual distributions to benefit the public schools. The Investment Policy and any amendments shall be communicated to the School Committee, the Board of Selectmen, and the Finance Committee.

- e) Hold, through third party fund custodians independent of Feoffees and of investment advisors, and invest Trust assets in accordance with and furtherance of the Trust's Investment Policy and in accordance with and subject to the standards set forth in the prudent investor rule set forth in M.G.L. c. 203C, the Massachusetts Prudent Investor Act, and any successor statute and M.G.L. c. 180A, the Massachusetts Uniform Management of Institutional Funds Act, and any successor statute (except that the historic dollar value of the Trust endowment shall not be distributed).
- f) If funds are placed in banking institutions, follow good stewardship practices as to coverage by depositor insurance and the rate of interest income generated. Funds placed in banking institutions may be placed in banks located outside Ipswich.
- g) Arrange for investment performance reports at least quarterly to ascertain current and long-term levels of achievement relative to stated goals, with a copy to be provided to the School Committee, Board of Selectmen, and Finance Committee.
- h) Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- i) Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- j) Monitor the performance of investments, managers and advisors to assure that the Trust's investment objectives are being met.
- k) Periodically review and, if appropriate, rebalance the strategic asset allocation of the Trust and make tactical allocation decisions based on the Trust's Investment Policy and information and advice provided by investment advisers and consultants.
- l) Accept charitable gifts for the benefit of the Trust, to be added to principal unless the donor specifies otherwise
- m) Pay all proper charges and expenses, and maintain an operational reserve for this purpose

- n) Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions related to the investment of the Trust's funds.
- o) 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)
- p) Use the same fiscal year as the Town.
- q) Unless the Trust and any affiliated entities are included in the annual Town audit, with payment by the Trust of its proportionate share of the cost, the Feoffees shall cause the finances of the Trust and affiliated entities to be audited, said audit to be completed within four months of the close of the fiscal year. The Feoffees shall file the annual financial statement of the Trust and affiliated entities with the Town for inclusion in the Town annual report.
- r) Maintain regular and open communication with the School Committee, provide periodic reports, and reply within one month to all requests by the School Committee for information concerning the Trust and affiliated entities.
- s) Periodically, based on the expected annual portfolio returns, past distribution levels, and other appropriate factors, and subject to the approval of the School Committee, set the following: (i) the accumulation amount or percentage to be added to principal; (ii) the overall draw on the endowment of funds for expenditure and distribution; and (iii) the measurement date on which to base the calculation of distributions to be made pursuant to Paragraph (u), below (the "Measurement Date").
- t) Report to the School Committee by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and shall, immediately report any adjustment in this amount that may have resulted from the completion of the annual audited financial statement. The Feoffees will also report any additional adjustments that may result from the audit of Town accounts made at a later date as part of the regular Town audit.
- u) At least annually, and no later than the first day of the public schools' fiscal year, distribute to the School Committee all available income and appreciation determined as of the Measurement Date pursuant to Paragraph (s), above, after accumulation, expenses and reserves. The

annual distribution shall be reported at a public meeting called for that purpose and for the purpose of providing the public and the School Committee with additional information pertaining to the Trust and its management in the previous year and to answer inquiries.

- v) At least annually, report on the activities and financial status of the Trust and affiliated entities in a meeting of the School Committee, with any participation in such meeting by the Board of Selectmen and Finance Committee subject to separate arrangement among the bodies.
- w) Trust property shall be held in the name of the Trust, and agreements, obligations, instruments, papers and actions on behalf of the Trust may be made, incurred, executed, signed, or taken in the name of the Trust.
- x) No Feoffee appointed pursuant to the terms of this Order shall be personally liable: (i) for any obligation or liability incurred by the Trust; (ii) for the acts or omissions of another Feoffee; or (iii) otherwise by reason of serving or having served as a Feoffee. Exceptions: (a) breach of duty of loyalty to the Trust; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (c) a transaction from which the Feoffee derived an improper personal benefit. Each Feoffee appointed pursuant to the terms of this Order shall be entitled to indemnification and reimbursement out of the Trust assets to the extent permitted by law. Each Feoffee appointed pursuant to the terms of this Order, both individually and as a Feoffee, shall be defended, indemnified and held harmless in the pending litigation with the residents of Little Neck.
- y) Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
- z) Minor, technical adjustments of Paragraphs (c) through (x), above, may be made upon approval of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee).

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 designed to maximize the financial benefit to the public schools. 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 shall 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, the substantive content of which has been approved by the School Committee.
- 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 Parts 5 and 6, above.

8) Other applicable requirements

- a) The Trust shall be a municipal trust.
- b) The Trust shall be subject to the standards and requirements set forth in the open meeting law and subsequent amendments.
- c) The Trust shall be subject to the standards and requirements set forth in the public records law and subsequent amendments.

- d) The Trust shall be subject to the standards and requirements set forth in the public bidding law and subsequent amendments.
- e) The Trust shall be subject to the standards and requirements set forth in the public ethics (i.e., conflict of interest) law and subsequent amendments.

7428.0/475678.1

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
ET ALS., as they are THE FEOFFEEES
OF THE GRAMMAR SCHOOL IN THE
TOWN OF IPSWICH

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts;
IPSWICH SCHOOL COMMITTEE;
and RICHARD KORB, as he is
Superintendent of Schools in the
Town of Ipswich

Defendants

TRUST ADMINISTRATION ORDER

Pursuant to the Court's equitable powers with respect to estates, charitable trusts, and trustees, the Court hereby approves and orders the following revision and amplification of the governance structure and administrative requirements applicable to the Trust created by William Paine respect to the land known as Little Neck:

1. The formal name for the Trust shall be Feoffees of the Grammar School in the Town of Ipswich Trust.
2. The beneficiary of the Trust shall be the Ipswich public schools.
3. In furtherance of the bequest in 1660 by William Paine who established this Trust "to be and remain to the benefit of the said 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. Eligibility to serve as a Feoffee

- i. To be eligible to be appointed as a Feoffee or to continue to serve as a Feoffee, a person's primary residence shall be in Ipswich.
- ii. No person may be a Feoffee while serving as a member of the School Committee, Board of Selectmen or the Town Finance Committee or as Town Manager or Superintendent of Schools.
- iii. 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 if his or her lot is rented from the Trust, 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 and his or her lot is rented from the Trust:
 - a. the individual's spouse;
 - b. a parent of the individual or of the individual's spouse;
 - c. a child of the individual and/or of the individual's spouse;
 - d. a sibling of the individual or of the individual's spouse.
- iv. In the appointment of Feoffees, the appointing Authorities (defined below) shall appoint persons who possess the qualities of integrity and sound judgment and 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. Persons shall be appointed who also possess expertise and skills that will enable the Feoffees collectively to carry out their responsibilities.
- v. No person may be appointed as a Feoffee or continue to serve as a Feoffee who has been convicted of a crime involving dishonesty, false statement, theft, fraud, or moral turpitude.

b. Number and appointment of Feoffees

- i. The Trust shall be administered by a body of Feoffees as follows: (i) two Feoffees appointed by the Ipswich School Committee; (ii) two Feoffees appointed by the Ipswich Board of Selectmen; (iii) two Feoffees appointed by the Ipswich Town Finance Committee; and (iv) one Feoffee appointed by the Ipswich Town Meeting (The School Committee, the Board of Selectmen, the Finance Committee, and the Town Meeting are each referred to below as an "Appointing Authority.")
- ii. Nothing herein shall prevent a person presently serving as a Private Feoffee (a Feoffee not appointed by a public body) from being appointed as a Feoffee by a public Appointing Authority so long as all eligibility requirements herein are met.

c. Term of service

- i. The term of office for each Feoffee shall be three years, except that to implement staggered terms, the initial term pursuant to this Order shall be two years for one Feoffee appointed by the School Committee, one Feoffee appointed by the Board of Selectmen, and one Feoffee appointed by the Finance Committee. A Feoffee shall hold office until his or her successor is duly appointed, or until he or she sooner resigns, is removed, becomes disqualified, or dies.
- ii. Feoffees may be reappointed, with no limit as to number of terms served.
- iii. Suspension or removal
 - a. A Feoffee appointed by School Committee, Board of Selectmen or Finance Committee may be suspended or removed by his or her Appointing Authority for cause, provided that such Feoffee is given at least seven days written notice of the proposed suspension or removal and the reasons therefor, and an opportunity to be heard at the meeting, and that notice of the proposed suspension or removal is given in the notice of meeting.
 - b. A Feoffee appointed by a Town Meeting may be suspended or removed for cause by a Town Meeting or by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each

body), subject to the same notice and hearing procedure as above.

- c. For purposes of suspension or removal, "cause" is defined as: (i) breach of fiduciary duty; or (ii) failure to carry out his or her duties with reasonable judgment, skill, care or prudence.
 - d. In the case of a Feoffee vacancy, the applicable Appointing Authority may appoint a Feoffee to fill the remainder of the term.
 - d. Feoffees shall serve without compensation, but reasonable and necessary trust-related expenses may be paid, such trust-paid expenses to be reported in writing at least quarterly and in detail to the School Committee, the Board of Selectmen and the Finance Committee.
 - e. The Feoffees shall be subject to a conflict of interest policy, approved by the School Committee, that is compliant with the State Public Ethics Statute and good governance standards for governmental bodies and public charities.
 - f. The Feoffees shall meet at least quarterly.
 - g. The Feoffees meeting quorum shall be a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein or required by law, a majority vote of those present is required for action.
 - h. The Feoffees may elect officers from among their number, establish such officers' responsibilities, and establish committees of Feoffees.
5. In addition to those responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the Little Neck property:
- a. Lease, rent, improve and manage the Trust real estate (sale, if any, shall be subject to School Committee approval and a Court order separate from this Trust Administration Order).
 - 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. Pay all proper charges and expenses.

- e. Upon approval by the School Committee, borrow funds and mortgage the real estate and the rent income stream therefrom to the extent necessary for the prudent operation and maintenance of the Trust property.
 - f. Hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of three years, with termination of the arrangement available to the Feoffees for cause; Feoffees may provide that terms are renewable at the Feoffees' discretion).
6. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the funds of the Trust:
- a. Hold title to and manage the funds of the Trust, with the net proceeds of the sale of Little Neck lots if any to establish a permanent endowment. The amount of said net sale proceeds, after payment, in an amount approved by the School Committee, of debts owed by the Feoffees at the time of this Order or owed at the time of the sale of a lot or lots, and a reasonable expenses and operational reserve agreed to by the School Committee, shall constitute the initial principal or "historic dollar value" of said endowment. The following shall not be distributed: (i) the initial principal; and (ii) the accumulation that is added to principal pursuant to Paragraph (b), below.
 - b. Pursuant to the Trust purpose, make distributions of net investment income and appreciation and net rental income to the School Committee to benefit the public schools, after reasonable expenses and operational reserves and the accumulation described in the following sentence. Prior to distribution, the following amount of income and appreciation shall be accumulated and added to principal, not to be distributed: the smaller of (i) the amount needed to maintain the inflation-adjusted value of the endowment over time; or (ii) 20% of net investment and rental income and investment appreciation. As provided in Part 3 above, 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.
 - c. Hire or employ qualified investment managers and, if appropriate, advisors and other investment professionals, attorneys, or other agents, subject to the approval of the School Committee, and pay reasonable compensation for the services of such persons.

- d. Establish and periodically review and update the Trust's Investment Policy, with the goal of maintaining an appropriate balance of security and growth of principal and consistent and beneficial annual distributions to benefit the public schools. The Investment Policy and any amendments shall be communicated to the School Committee, the Board of Selectmen, and the Finance Committee.
- e. Hold, through third party fund custodians independent of Feoffees and of investment advisors, and invest Trust assets in accordance with and furtherance of the Trust's Investment Policy and in accordance with and subject to the standards set forth in the prudent investor rule set forth in M.G.L. c. 203C, the Massachusetts Prudent Investor Act, and any successor statute and M.G.L. c. 180A, the Massachusetts Uniform Management of Institutional Funds Act, and any successor statute (except that the historic dollar value of the Trust endowment shall not be distributed).
- f. If funds are placed in banking institutions, follow good stewardship practices as to coverage by depositor insurance and the rate of interest income generated. Funds placed in banking institutions may be placed in banks located outside Ipswich.
- g. Arrange for investment performance reports at least quarterly to ascertain current and long-term levels of achievement relative to stated goals, with a copy to be provided to the School Committee, Board of Selectmen, and Finance Committee.
- h. Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- i. Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- j. Monitor the performance of investments, managers and advisors to assure that the Trust's investment objectives are being met.
- k. Periodically review and, if appropriate, rebalance the strategic asset allocation of the Trust and make tactical allocation decisions based on the Trust's Investment Policy and information and advice provided by investment advisers and consultants.
- l. Accept charitable gifts for the benefit of the Trust, to be added to principal unless the donor specifies otherwise

- m. Pay all proper charges and expenses, and maintain an operational reserve for this purpose
- n. Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions related to the investment of the Trust's funds.
- o. 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).
- p. Use the same fiscal year as the Town.
- q. Unless the Trust and any affiliated entities are included in the annual Town audit, with payment by the Trust of its proportionate share of the cost, the Feoffees shall cause the finances of the Trust and affiliated entities to be audited, said audit to be completed within four months of the close of the fiscal year. The Feoffees shall file the annual financial statement of the Trust and affiliated entities with the Town for inclusion in the Town annual report.
- r. Maintain regular and open communication with the School Committee, provide periodic reports, and reply within one month to all requests by the School Committee for information concerning the Trust and affiliated entities.
- s. Periodically, based on the expected annual portfolio returns, past distribution levels, and other appropriate factors, and subject to the approval of the School Committee, set the following: (i) the accumulation amount or percentage to be added to principal; (ii) the overall draw on the endowment of funds for expenditure and distribution; and (iii) the measurement date on which to base the calculation of distributions to be made pursuant to Paragraph (u), below (the "Measurement Date").
- t. Report to the School Committee by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and shall, immediately report any adjustment in this amount that may have resulted from the completion of the annual audited financial statement. The Feoffees will also report any additional adjustments that may result from the audit of Town accounts made at a later date as part of the regular Town audit.

- u. At least annually, and no later than the first day of the public schools' fiscal year, distribute to the School Committee all available income and appreciation determined as of the Measurement Date pursuant to Paragraph (s), above, after accumulation, expenses and reserves. The annual distribution shall be reported at a public meeting called for that purpose and for the purpose of providing the public and the School Committee with additional information pertaining to the Trust and its management in the previous year and to answer inquiries.
 - v. At least annually, report on the activities and financial status of the Trust and affiliated entities in a meeting of the School Committee, with any participation in such meeting by the Board of Selectmen and Finance Committee subject to separate arrangement among the bodies.
 - w. Trust property shall be held in the name of the Trust, and agreements, obligations, instruments, papers and actions on behalf of the Trust may be made, incurred, executed, signed, or taken in the name of the Trust.
 - x. No Feoffee appointed pursuant to the terms of this Order shall be personally liable: (i) for any obligation or liability incurred by the Trust; (ii) for the acts or omissions of another Feoffee; or (iii) otherwise by reason of serving or having served as a Feoffee. Exceptions: (a) breach of duty of loyalty to the Trust; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (c) a transaction from which the Feoffee derived an improper personal benefit. Each Feoffee appointed pursuant to the terms of this Order shall be entitled to indemnification and reimbursement out of the Trust assets to the extent permitted by law. Each Feoffee appointed pursuant to the terms of this Order, both individually and as a Feoffee, shall be defended, indemnified and held harmless in the pending litigation with the residents of Little Neck.
 - y. Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
 - z. Minor, technical adjustments of Paragraphs (c) through (x), above, may be made upon approval of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee).
7. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to rental of residential lots 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 designed to maximize the financial benefit to the public schools. 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 shall 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, the substantive content of which has been approved by the School Committee.
 - 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 Parts 5 and 6, above.
8. Other applicable requirements
- a. The Trust shall be a municipal trust.

- b. The Trust shall be subject to the standards and requirements set forth in the open meeting law and subsequent amendments.
- c. The Trust shall be subject to the standards and requirements set forth in the public records law and subsequent amendments.
- d. The Trust shall be subject to the standards and requirements set forth in the public bidding law and subsequent amendments.
- e. The Trust shall be subject to the standards and requirements set forth in the public ethics (i.e., conflict of interest) law and subsequent amendments.

Justice of the Probate and Family Court
Department of the Trial Court

_____, 2010
7428.0/475679.1

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

MOTION TO INTERVENE

Pursuant to Rule 24(a) of the Massachusetts Rules of Civil Procedure, Douglas J.

DeAngelis hereby respectfully moves for leave to intervene as a party defendant in this action.

In support of this motion, Mr. DeAngelis states the following:

1. The Feoffees of the Grammar School in the Town of Ipswich seek in their complaint to deviate from the terms of the so-called Grammar School Trust, pursuant to which the Feoffees shall maintain the land in Ipswich known as "Little Neck" for the benefit of the Ipswich Public Schools. Also pursuant to the terms of the Trust, Little Neck cannot be sold or wasted.

2. On January 27, 2011, Mr. DeAngelis filed an amicus brief in opposition to the Feoffees' motion for partial summary judgment, in which the Feoffees sought authority to sell

Little Neck for the gross sales price of \$29,150,000. Mr. DeAngelis and the hundreds of individuals in the “Beneficiary Group” he represented were (and are) opposed to the proposed sale of Little Neck for the reasons outlined in the amicus brief.

3. Mr. DeAngelis has not previously moved to intervene because his and the Beneficiary Group’s interest — i.e., opposition to any decision regarding the sale of Little Neck before governance issues within the Feoffees are fixed — was arguably being adequately represented by the Ipswich School Committee and the Attorney General. Indeed, the School Committee has counterclaimed to change the structure of the Feoffees, citing their alleged maladministration of the Trust without any public accountability.

4. In an e-mail to Mr. DeAngelis dated as recently as November 15, 2011, the Chairman of the School Committee reiterated the School Committee’s position as follows: “There wont [sic] be any settlements that involve sale in any respect.” (Emphasis added.)

5. To the extent the School Committee and the Attorney General are now in support of the sale of Little Neck by the current Feoffees, however, and have agreed in principle to such a sale and to abandon the argument that reasonable deviation from the terms of the Trust would be impermissible, the interest of Mr. DeAngelis and the Beneficiary Group is no longer being adequately represented. In fact, there would be a direct conflict of interest.¹

6. Even if the existing parties are in agreement as to the fair market value of Little Neck, such an agreement would not answer the question of whether reasonable deviation would be permissible in the first place. And without any party to oppose reasonable deviation, the

¹ On information and belief, the 180° change in the School Committee’s position occurred at an Emergency Executive Session on Saturday, December 17, 2011. This session was not open to the public, and no notice of it was given until Friday, December 16, 2011.

question could never be fully or appropriately answered in an adversarial proceeding if intervention were denied.

7. Rule 24(a) provides for intervention by right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

8. Mr. DeAngelis has a right to intervene pursuant to Rule 24(a). First, for example, as a resident of Ipswich whose son is eligible to enter the Ipswich school system next year, Mr. DeAngelis has relied on the existence of the Trust and the obligation to maintain Little Neck for the benefit of the schools in deciding to make Ipswich his home. As such, Mr. DeAngelis and many others like him have an interest in ensuring that Little Neck is actually maintained in the Trust for the benefit of the Ipswich Public Schools, or that any decision to sell be made subject to the Massachusetts Open Meeting Law, G.L. c. 30A, §§18-25, with citizens like Mr. DeAngelis having an opportunity to voice their concerns publicly. If intervention were denied, his ability to protect that interest would be impaired or impeded. Second, as addressed above, to the extent the School Committee and the Attorney General are now in favor of Little Neck's sale by the current Feoffees, his interest is no longer being adequately represented.

9. In Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203 (1991), a group of Chelsea parents sought to intervene as defendants in a suit brought by a group of teachers' unions, teachers, and Chelsea citizens against the Chelsea school committee. The parents described their interest in the litigation as "finding a solution to the well-documented inadequacies of the current public school system in Chelsea which will provide improved educational opportunities for the students in the system," supporting the right of the

school committee to enter into educational reform, and maintaining public oversight of the project. Id. at 208. The trial court denied the parents' motion to intervene pursuant to Rule 24(a), and the Supreme Judicial Court affirmed the denial on direct appellate review, holding that the record did not reflect that any of these interests was adverse to the interests of the school committee or the committee's ultimate goal in the litigation. Id. "Although the school committee members may be motivated by somewhat different concerns in pursuing this goal, a different motive in pursuing the same ultimate goal does not constitute inadequate representation, as long as the party demonstrates the intent to litigate vigorously." Id. (emphasis added).

10. Here, in contrast, Mr. DeAngelis' goal for Little Neck to be maintained in the Trust for the benefit of the Ipswich Public Schools is now different from that of the School Committee and the Attorney General. His goal is now diametrically opposed to that of the School Committee and the Attorney General, who no longer intend to litigate at all, let alone vigorously.

11. In short, intervention by right should be granted because Mr. DeAngelis' "objectives in the litigation differ from those of the school committee." See id. at 207. Where the School Committee and the Attorney General are proposing a dismissal of the litigation, and where dismissal would defeat the objectives of Mr. DeAngelis, intervention by right must be granted.

WHEREFORE, Mr. DeAngelis respectfully requests that this Honorable Court:

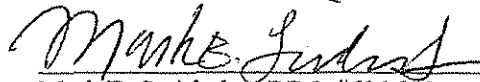
- A. Allow Mr. DeAngelis and others applicants with a similar interest thirty (30) days to file a full memorandum in support of this motion to intervene;
- B. Grant the motion to intervene pursuant to Rule 24(a);

C. Suspend the trial to allow Mr. DeAngelis and other interveners a reasonable opportunity to prepare for trial; and

D. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS,
By his attorneys,



Mark E. Swirbalus, BBO #631650

DAY PITNEY LLP

One International Place

Boston, MA 02110

Tel: (617) 345-4600

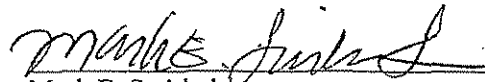
Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: December 20, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 20th day of December, 2011, I served a copy of the foregoing by hand upon counsel of record.



Mark E. Swirbalus

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

**FIRST AMENDED ANSWER AND COUNTERCLAIM
OF THE APPLICANTS FOR INTERVENTION**

Pursuant to Rule 24(c) of the Massachusetts Rules of Civil Procedure, Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, Peter Buletza, Kenneth Swenson, Robert Weatherall, Jr., Joanne Delaney, Cara Doran, Andrew and Susan Brengle, Michele and Jason Wertz, Clark Ziegler, and Carl Nylen, individually and on behalf of their minor children (the "Interveners"), respond as follows to the numbered paragraphs of Plaintiffs' First Amended Complaint for Deviation Pursuant to G.L. c. 214, § 10B (the "Amended Complaint") dated December 17, 2009:

1. Admitted.
2. Admitted.

3. Admitted.
4. Admitted.
5. This paragraph contains a description of the action to which no response is required.
6. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
7. Admitted as to the first sentence of this paragraph. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.
8. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
9. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself. The remainder of this paragraph states a legal conclusion to which no response is required.
10. This paragraph states legal conclusions to which no response is required.
11. This paragraph states legal conclusions to which no response is required.
12. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself.
13. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 5 of the Province Laws of 1765-66, which speaks for itself.
14. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 54 of the Acts of 1786, which speaks for itself.

15. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

16. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. This paragraph states legal conclusions to which no response is required.

18. Admitted.

19. Admitted.

20. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. Admitted.

22. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. Admitted as to the rent-increase proposed by Plaintiffs, and admitted as to the lease offered to the tenants. No response is required to the legal conclusion that Plaintiffs acted consistent with their fiduciary obligations. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

24. The Interveners neither admit nor deny Plaintiffs' characterization of Exhibits E and F, which speaks for themselves. The remainder of this paragraph states legal conclusions to which no response is required.

25. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. Admitted that some Little Neck residents have not signed the lease and that the Superior Court Action was initiated and is pending. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

27. The Interveners neither admit nor deny Plaintiffs' characterization of the stipulation filed in the Superior Court Action, which speaks for itself. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

28. Admitted that no distributions have been received by the Ipswich Public Schools. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

29. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

30. This paragraph states legal conclusions to which no response is required. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

31. Denied as of the date of the Amended Complaint.

32. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. This paragraph states legal conclusions to which no response is required.

35. This paragraph states legal conclusions to which no response is required.

36. This paragraph states legal conclusions to which no response is required.

37. This paragraph states legal conclusions to which no response is required.

38. This paragraph states legal conclusions to which no response is required.

39. This paragraph states legal conclusions to which no response is required.

40. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. This paragraph states legal conclusions to which no response is required.

44. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

- A. Dismiss the Amended Complaint and Plaintiffs' request for deviation pursuant to G.L. c. 214, § 10B;
- B. Grant the Interveners their reasonable costs and legal fees; and
- C. Grant such other and further relief as is just and appropriate.

AFFIRMATIVE DEFENSES

1. The Amended Complaint does not set forth a specific sale proposal.
 2. The Amended Complaint fails to state a claim on which relief can be granted.
 3. Any frustration of the Trust's purpose results from Plaintiffs' acts or omissions.
 4. This Court lacks jurisdiction or authority to alter the terms of the Trust, the administration of which is governed by statute.
 5. The terms of William Payne's will cannot be reformed under Massachusetts law.
- The Interveners reserve their right to add to their affirmative defenses.

COUNTERCLAIM

1. Applicant for Intervention Douglas J. DeAngelis is an individual residing at 28 Turkey Shore Road, Ipswich, Massachusetts. He has a minor child who is eligible to attend the Ipswich Public Schools in 2012-13. He is a member of the Ipswich Open Space Committee and past member of the Ipswich Community Development Plan Implementation Task Force.
2. Applicant for Intervention Catherine T.J. Rowe is an individual residing at 21 Turkey Shore Road, Ipswich, Massachusetts. She has two minor children who attend the Ipswich Public Schools. She has run the Winthrop School Destination Imagination (DI) Program, served as a classroom volunteer, and helped to coach sports teams at Ipswich High School and Ipswich Middle School.
3. Applicants for Intervention Jacqueline and Jonathan Phypers are individuals residing at 444 Main Street, Rowley, Massachusetts. They have two minor children who attend the Ipswich Public Schools pursuant to the School Choice program.

4. Applicant for Intervention Peter Buletza is an individual residing at 15 Blaisdell Terrace, Ipswich, Massachusetts. He has three minor children who attend the Ipswich Public Schools.

5. Applicant for Intervention Kenneth Swenson is an individual residing at 449 Linebrook Road, Ipswich, Massachusetts. He has three minor children who attend the Ipswich Public Schools. He is a member of the Subcommittee on Athletics of the Ipswich School Committee, chairman of the Athletic Fields Subcommittee of the Ipswich Board of Selectmen, and project coordinator for the proposed irrigation well at Mile Lane.

6. Applicant for Intervention Robert Weatherall, Jr. is an individual residing at 33 Labor-in-Vain Road, Ipswich, Massachusetts. He has two minor children who attend the Ipswich Public Schools, and he himself attended the Ipswich Public Schools. He is the senior member of the Ipswich Planning Board, and a past chair of the Ipswich Growth Management Steering Committee.

7. Applicant for Intervention Joanne Delaney is an individual residing at 12 Kinsman Court, Ipswich, Massachusetts. She has one minor child who attends the Ipswich Public Schools. She is a member of "FRIES" (Friends of Ipswich Elementary Schools), a past member of the Ipswich Recycling Committee, and has volunteered as an "ACE" (The American Council on Exercise) program instructor.

8. Applicant for Intervention Cara Doran is an individual residing at 12 Argilla Road, Ipswich, Massachusetts. She has two minor children who attend the Ipswich Public Schools.

9. Applicants for Intervention Andrew and Susan Brengle are individuals residing at 7 Cogswell Street, Ipswich, Massachusetts. They have two minor children who attend the Ipswich Public Schools.

10. Applicants for Intervention Michele and Jason Wertz are individuals residing at 19 Turkey Shore Road, Ipswich, Massachusetts. They have three minor children who attend the Ipswich Public Schools, and another minor child who is eligible to attend in two years. Michele Wertz is the Co-Chair of the Winthrop School Council, which acts as a sounding board for the school principal with a primary focus on budget decisions and school improvement plans, a member of FRIES, and a past member of the Demographic Subcommittee of the Ipswich School Committee.

11. Applicant for Intervention Clark Ziegler is an individual residing at 10 Woods Lane, Ipswich, Massachusetts. He has one minor child who attends the Ipswich Public Schools, and two other children who attended the Ipswich Public Schools. He is a past member and chair of the Ipswich Finance Committee, where he was involved in reviewing and approving school budgets, structuring the bond financing for new school buildings, and determining how much revenue was available to support the school system. Last year the School Committee asked him to join an ad hoc committee to review the economic feasibility of the condominium structure and financing that were proposed in Plaintiffs' settlement with the tenants.

12. Applicant for Intervention Carl Nylen is an individual residing at 34 Brownville Avenue, Ipswich, Massachusetts. He has two minor children who attend the Ipswich Public Schools. He has served as Treasurer and a member of the Leadership Team of "Turn the Tide," a successful Proposition 2½ override initiative, a member of the FRIES Facilities and Playground

Committee, a member of the Ipswich Athletic Fields Study Committee of the Ipswich Board of Selectmen, and an ACE program instructor.

13. The interest of the Applicants for Intervention and their minor children (the “Interveners”) is separate and distinct from that of the general public because, inter alia, of their active involvement in the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically.

14. The Interveners repeat and fully incorporate herein the Counterclaim dated December 30, 2009, as filed by Defendants Ipswich School Committee and Ipswich Superintendent of Schools (the “School Defendants”), seeking an order removing Plaintiffs and modernizing the governance and administrative structure for carrying out the Trust that was created by William Payne to benefit the Ipswich Public Schools.

15. The requested removal and modernization of the governance and administrative structure for carrying out the Trust is necessary before any decision is made regarding the sale of Little Neck, to the extent such a sale were even permissible under the doctrine of reasonable deviation.

16. Prior to December 20, 2011, the Interveners believed – had been led to believe – that the School Defendants were (a) opposed to Plaintiffs’ request for reasonable deviation of the Trust and the proposed sale of Little Neck, and (b) advocating for the removal of Plaintiffs and the modernization of the governance and administrative structure for carrying out the Trust.

17. On December 20, 2011, the School Defendants announced an agreement with Plaintiffs under which Plaintiffs would be permitted to sell Little Neck and thereafter, or in connection therewith, the governance and administrative structure for carrying out the Trust would be altered.

18. As of December 20, 2011, the interest of the Interveners in this matter is not adequately represented by the School Defendants.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

A. Enjoin the sale of Little Neck unless and until Plaintiffs establish that reasonable deviation from the terms of the Trust, specifically including the mandate that Little Neck shall not be sold, is necessary;

B. Deny Plaintiffs' request for reasonable deviation, because (1) Plaintiffs cannot meet their burden of proving that the doctrine of reasonable deviation is applicable under the circumstances, (2) any frustration of the Trust's purpose results from Plaintiffs' acts or omissions, (3) this Court lack jurisdiction or authority to alter the terms of the Trust, the administration of which is governed by statute, and (4) the terms of William Payne's will cannot be reformed under Massachusetts law;

C. Order the removal of Plaintiffs with Feoffees appointed by Ipswich governmental bodies, as summarized in Exhibit A to the School Defendants' Counterclaim and set forth in the proposed Trust Administrative Order attached as Exhibit B to the School Defendants' Counterclaim;


D. Order full distribution to the Ipswich Public Schools from the funds of the Trust of all shortfalls resulting from Plaintiffs' failure to provide distributions to the Ipswich Public Schools commensurate with fair-market rents;

E. Grant the Interveners their reasonable costs and legal fees; and

F. Grant such other and further relief as is just and appropriate.

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS,
JONATHAN PHYPERS, PETER BULETZA,
KENNETH SWENSON, ROBERT
WEATHERALL, JR., JOANNE DELANEY,
CARA DORAN, ANDREW BRENGLE,
SUSAN BRENGLE, MICHELE WERTZ,
JASON WERTZ, CLARK ZIEGLER, and
CARL NYLEN; individually and on behalf of
their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

DAY PITNEY LLP

One International Place

Boston, MA 02110

Tel: (617) 345-4600

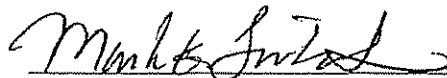
Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: December 30, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 30th day of December, 2011, I served a copy of the foregoing by electronic and first-class mail upon counsel of record.



Mark E. Swirbalus

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.)

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

SUPPLEMENT TO MOTION TO INTERVENE

On December 20, 2011, Douglas J. DeAngelis filed a motion to intervene as a party defendant pursuant to Rule 24(a) of the Massachusetts Rules of Civil Procedure. Within that motion, which is incorporated herein, Mr. DeAngelis previewed that he would be joined by other applicants for intervention and that supplemental materials would be filed in support thereof. Mr. DeAngelis and additional applicants for intervention hereby supplement the motion to intervene as follows:

I. THE APPLICANTS FOR INTERVENTION

1. The applicants for intervention are Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, individually and on behalf of their minor children (collectively, the "Interveners"). As set forth in their Answer and Counterclaim, which is filed

herewith in accordance with Rule 24(c), Mr. DeAngelis is a resident of Ipswich, Massachusetts with one minor child who will be eligible to attend the Ipswich Public Schools next year; Ms. Howe is a resident of Ipswich, Massachusetts with two minor children who attend the Ipswich Public Schools; and Mr. and Mrs. Phypers are residents of Rowley, Massachusetts with two minor children who attend the Ipswich Public Schools.

II. PROCEDURAL BACKGROUND

2. The motion to intervene was filed in direct response to an announcement by the existing parties on December 20, 2011, that a proposed settlement had been reached under which (a) Little Neck would be sold by the Feoffees, and (b) the governance structure of the Feoffees would be reorganized in conjunction with the sale.

3. Prior to the announcement of the proposed settlement on December 20, 2011, no public notice of any agreement had been given. Although notice had been given of an Emergency Executive Session of the Ipswich School Committee on Saturday, December 17, 2011 – the notice was given the previous day, Friday, December 16, 2011 – the purpose of the Emergency Executive Session was not disclosed.

4. If the existing parties had not announced the proposed settlement on December 20, 2011 (i.e., if the School Defendants were continuing to advocate for the removal and reorganization of the Feoffees before any decision to sell Little Neck were made, assuming reasonable deviation from the terms of the Trust were even permissible, thereby allowing public discourse on any decision to sell Little Neck), then there would have been no need for the motion to intervene.

5. At the time of filing, the Court did not permit Mr. DeAngelis to be heard on the motion to intervene, but instead stated that a hearing could and should be scheduled.

6. A hearing has been scheduled for Friday, February 3, 2012, with notice of the hearing given to the existing parties by electronic mail on the morning of Friday, December 23, 2011. In scheduling the hearing, the undersigned counsel conferred with the Court on its availability. A copy of the notice of hearing is attached hereto as Exhibit A.

III. THE INTERVENERS' OBJECTIVE

7. The Interveners are opposed to an agreement to sell Little Neck by the Feoffees as currently constituted, because the Feoffees are not publicly accountable. All decisions regarding Little Neck impact the town in various different ways, because Little Neck is effectively a public asset, and so any decision to sell Little Neck should be made pursuant to a public process with proper analyses.

8. On behalf of hundreds of residents and parents, Mr. DeAngelis filed an amicus brief in opposition to the Feoffees' motion for partial summary judgment on January 27, 2011. The amicus brief sets forth in greater detail why the so-called "Beneficiary Group" has been opposed to the Feoffees' proposed sale of Little Neck. A copy of the amicus brief (together with the list identifying the Beneficiary Group, comprised of 681 residents and parents on behalf of 507 schoolchildren) is attached hereto as Exhibit B and incorporated herein.

IV. THERE IS A CONFLICT OF INTEREST WITH THE SCHOOL DEFENDANTS

9. As of January 27, 2011, when the amicus brief was filed, the Interveners' interest appeared to be consistent with the School Defendants' interest. The School Defendants were opposed to reasonable deviation of the Trust and the Feoffees' proposed sale of Little Neck, and had counterclaimed for the removal and reorganization of the Feoffees.

10. In the event these interests were to diverge, the right to file a motion to intervene pursuant to Rule 24 was expressly reserved within the amicus brief. See Amicus Brief at 19, n.5.

11. The interests remained aligned as of November 15, 2011, when Mr. DeAngelis wrote as follows to the Chairman of the Ipswich School Committee:

After further discussion, we have decided to err on the side of caution and not do anything that could have any negative impact on the Probate Court case. In so doing, we are also trusting your judgment that there is no settlement agreement that the current makeup [of] the school committee would accept if it came in advance of fixing the governance of the Feoffees. This includes a settlement agreement which is coincident with fixing the governance, since such an agreement would not allow any public discourse on the terms of the settlement agreement.

The Chairman responded that “[t]here wont [sic] be any settlements that involve sale in any respect.” A copy of this e-mail exchange is attached hereto as Exhibit C.

12. Until December 20, 2011, the Interveners continued to believe (in reliance on the Chairman’s representation one month earlier) that the School Defendants would not agree to a sale of Little Neck prior to or coincident with “fixing” the governance of the Feoffees.¹

13. The interests of the Interveners and the School Defendants diverged with the announcement of the proposed settlement on December 20, 2011.

V. THE INTERVENERS’ INTEREST IS NOT ADEQUATELY REPRESENTED

14. The touchstone for a motion to intervene pursuant to Rule 24(a) is that the interest of the applicant for intervention is not adequately represented by the existing parties. Rule 24(a) specifically provides for intervention by right “when the applicant claims an interest relating to

¹ Notably, at the Annual Town Election on May 17, 2011, the following referendum question was on the ballot: “Shall the Town’s elected representatives in the General Court, Senator Bruce E. Tarr and Representative Bradford Hill, be directed to promptly secure passage of a Special Act to replace the Feoffees of the Ipswich Grammar School with a rotating, publicly-appointed board of trustees in order to provide a more appropriate degree of openness, accountability and public oversight, with such Special Act to be in the form approved as Article 12 at the 2011 Annual Town Meeting or as previously approved as Article 23 at the 2009 Annual Town?” The town voted overwhelmingly (approximately 90%) in favor of requesting this special legislative action, which is currently pending before the Massachusetts Legislature.

the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

15. In agreeing to the sale of Little Neck by the Feoffees as currently constituted, without appropriate public discourse, and abandoning their arguments against the sale and reasonable deviation of the Trust, the School Defendants are not adequately representing the interest of the Interveners in this action. See, e.g., Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203, 207-08 (1991) (denying motion to intervene where the objective of the applicant parent group was still represented by the school committee in the litigation: "Although the school committee members may be motivated by somewhat different concerns in pursuing this goal, a different motive in pursuing the same ultimate goal does not constitute inadequate representation, as long as the party demonstrates the intent to litigate vigorously.") (emphasis added).²

16. Accordingly, the Interveners must represent their own interest in this action, because otherwise their ability to protect that interest will be impaired or impeded as a practical matter. See Mass. R. Civ. P. 24(a).

17. The fact that the Interveners' interest is not being adequately represented is evident from the proposed settlement itself. For example, if the proposed sale of Little Neck were approved, then the average household in Ipswich would be required to pay approximately \$67 more per year to support the increase in the year-round residences on Little Neck, with no

² In addition, the School Defendants do not adequately represent the interest of Interveners Jacqueline and Jonathan Phypers, whose children attend the Ipswich Public Schools but who are not residents of Ipswich and thus had no vote in the election of the Ipswich School Committee members. As such, the interest of Mr. and Mrs. Phypers and their children is special and distinct from that of Ipswich citizens.

additional benefit. And this analysis assumes that the real estate tax generated by Little Neck would remain flat, when in fact it would likely decrease. Stated differently, retaining the seasonal restriction on Little Neck is worth more to the town and its schools than the income from the proposed sale proceeds.

18. The apparent failure by the School Defendants to analyze the impact of increasing the number of year-round residences on Little Neck, even though this issue had been raised in the amicus brief, illustrates how their representation of the Interveners is inadequate and why the motion to intervene should be granted.

VI. THE INTERVENERS HAVE STANDING

19. Any argument that the Interveners lack standing would be unavailing. Their standing is the same as that of the School Defendants.

20. Although the Attorney General argues that she has exclusive standing to represent the public interest in the Trust,³ the Attorney General waived this exclusivity by allowing the School Defendants to appear in this action. More particularly, the Attorney General permitted the School Defendants to (a) oppose Plaintiffs' request for reasonable deviation and the sale of Little Neck, and (b) file and pursue a counterclaim for the removal and reorganization of the Feoffees. These are the same positions that the Interveners seek to take in this action – their aim is to carry the baton that the School Defendants recently (and surprisingly) dropped.

21. Having opened the door to the School Defendants, without questioning their standing, the Attorney General cannot now close that door to the Interveners who are attempting to do nothing more than continue to protect the very interest and pursue the very claim that the

³ The Attorney General provided the Interveners' counsel with a copy of her opposition to the motion to intervene by electronic mail on Thursday, December 22, 2011. As of this filing, the Interveners' counsel has not received a response from any other existing party.

Attorney General apparently deemed worthy of protection and pursuit by the School Defendants in the first place.

22. The question of standing should not be separated from the question of intervention, but is instead folded within it. If the Court finds that the interest of the Interveners is not adequately represented and that they have a right to intervene, then it must also find that they have standing.

VII. THE MOTION TO INTERVENE IS TIMELY.

23. The Interveners acted as soon as it became apparent that their ability to protect their interest in this action would be impaired or impeded. The motion to intervene was filed literally within minutes of the first public announcement of the proposed settlement.

24. Indeed, it was made clear within the original motion (and again when it was filed in Court) that it was intended to be a mere place-holder, and that additional time would be needed to expand on the argument for intervention. Since then, just three business days and a holiday weekend have passed. More time is still needed to further expand on the argument, to provide the Court with a fuller analysis of the underlying legal considerations, and to disclose additional applicants for intervention.⁴ Accordingly, the Interveners reserve their right to further supplement their motion, but they are sensitive to their good-faith obligation to give the existing parties as much notice as possible of the grounds for intervention.

⁴ As noted above, the Interveners are believed to represent the majority view in town. With more time, it is anticipated that additional applicants will be added to the motion to intervene. Although this matter should not be resolved based on a popularity contest, the number of residents and parents opposed to the proposed settlement is telling.

VIII. THE INTERVENERS WOULD HAVE AN IMMEDIATE RIGHT OF APPEAL

25. Because this motion has been brought pursuant to Rule 24(a), concerning intervention by right, any denial of the motion would be subject to immediate appeal, before entry of final judgment approving the proposed settlement. See Massachusetts Federation of Teachers, 409 Mass. At 204 (“[T]he denial of leave to intervene functions as a final order, because it eliminates the intervener from the litigation. A rule allowing an applicant for intervention to appeal the denial of his motion only after final judgment would render his appeal futile.”)

26. Therefore, to the extent the Court is inclined to deny intervention and approve the proposed settlement without the benefit of the hearing scheduled for February 3, 2012, the Interveners request that they be given reasonable notice of such action prior to entry of final judgment.

IX. CONCLUSION

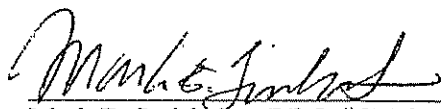
For the reasons stated above and in the original motion to intervene dated December 20, 2011, the Interveners, Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, individually and on behalf of their minor children, respectfully request that this Honorable Court:

- A. Grant their motion to intervene pursuant to Rule 24(a) after the scheduled hearing on February 3, 2012;
- B. Suspend the trial to allow the Interveners a reasonable opportunity as party defendants to prepare for trial; and
- C. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS, and
JONATHAN PHYPERS, individually and on
behalf of their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

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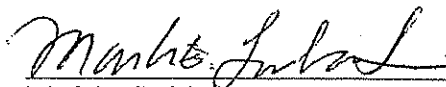
Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: December 27, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 27th day of December, 2011, I served a copy of the foregoing by hand upon counsel of record.



Mark E. Swirbalus

NOTICE OF HEARING

As previously noticed, a hearing on the motion to intervene is scheduled for 9:00 a.m. on Friday, February 3, 2012.



Mark E. Swirbalus

EXHIBIT A



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, DC

MARK E. SWIRBALUS
Attorney at Law

One International Place
Boston, MA 02110

T: (617) 345 4753 F: (617) 345 4745
meswirbalus@daypitney.com

December 23, 2011

Register of Probate
Essex County Probate and Family Court
36 Federal Street
Salem, MA 01970

Attn: Caroline

Re: Alexander B.C. Mulholland, Jr. et al v. Attorney General
of the Commonwealth of Massachusetts, et al.
Essex Probate and Family Court, Docket No. ES09E0094QC

Dear Caroline:

As we discussed today, please mark our Motion to Intervene (filed on behalf of Douglas J. DeAngelis on December 20, 2011) for a hearing in this matter at 9:00 a.m. on Friday, **February 3, 2012.**

Please note that we anticipate supplementing the Motion to Intervene with additional applicants for intervention and a supporting memorandum. We will do so as soon as possible, serving copies on the existing parties.

Thank you very much, and please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark E. Swirbalus'.

Mark E. Swirbalus

cc: Johanna Soris, Assistant Attorney General (by e-mail & first class mail)
Stephen M. Perry, Esq. (by e-mail & first class mail)
William H. Sheehan, III, Esq. (by e-mail & first class mail)

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

**AMICUS BRIEF IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Feoffees of the Grammar School of Ipswich (the "Feoffees") have moved for partial summary judgment, seeking authority to sell Little Neck in deviation from the terms of a centuries-old trust for the benefit of the Ipswich public schools (the "Grammar School Trust" or "Trust"). The Ipswich School Committee and the Superintendent of Schools (the "School Defendants") are opposed the proposed sale of Little Neck, and accordingly they oppose the Feoffees' motion.

A large group of parents and residents of Ipswich (the "Beneficiary Group"), as the *actual* beneficiaries of the Trust, who are also opposed to the proposed sale of Little Neck, hereby respectfully submit this amicus brief in opposition to the Feoffees' motion.¹

This brief is broken down into two sections. In Section I, the Beneficiary Group addresses why the terms of the Trust cannot be modified, why the proposed sale cannot be authorized, and thus why the Feoffees' motion must be denied. In Section II, the Beneficiary Group discusses the administration of the Trust and how best to achieve the benefit the Ipswich schoolchildren *should* be receiving. Hopefully the voice of the actual beneficiaries will help guide a solution that makes sense now and in the future without trampling William Payne's intent. His devise of Little Neck was meant to be an everlasting gift to the schools, and it can and should remain so.

I. THE FEOFFEEES' MOTION MUST BE DENIED

A. Deviation From the Plain and Unambiguous Language of William Payne's Will that Little Neck Never Be Sold Is Not Permissible

Before the Court can even reach the question of whether reasonable deviation would be appropriate, which in and of itself requires resolution of genuine issues of material fact, the Court must first answer the threshold question of whether reasonable deviation is permissible under the circumstances. It is not, as the Supreme Judicial Court held in Museum of Fine Arts v. Beland, 432 Mass. 540 (2000).

Like the present action, Beland involved property held in a charitable trust governed by the terms of a will. Reverend William E. Wolcott died in 1911, and in his will he bequeathed

¹ As of the date of this brief, the Beneficiary Group is comprised of the 400-plus individuals listed on the schedule attached hereto as Exhibit A.

seventeen paintings to the trustees of a charitable trust known as The White Fund. Id. The bequest specifically reads as follows:

3.

Whenever the pictures or any part of them shall come into the actual possession of the said Trustees, they shall offer the same for purposes of exhibition to the Museum of Fine Arts in the City of Boston, unless they shall determine otherwise in accordance with the discretion confirmed on them in the following paragraph:

4.

If at the time of my decease or at any subsequent time there shall exist within the present limits of the city of Lawrence a public art gallery housed in a fire-proof building and under such management as the Trustees of the White Fund shall approve, the said Trustees may deposit the aforesaid pictures with such art gallery for purposes of exhibition.

5.

The ownership and control of the pictures shall be vested permanently and inalienably in trust nevertheless, as aforesaid, in said Trustees of the White Fund and their successors.

6.

My purpose in making this bequest is to create and gratify a public taste for fine art, particularly among the people of the City of Lawrence. And I give to the said Trustees of the White Fund full and absolute authority in any contingency not fully provided for in the above stipulations to take such action as they judge best fitted to serve the purpose described.

Id.

In accordance with Reverend Wolcott's bequest, the trustees offered the seventeen paintings to the Museum of Fine Arts (the "MFA") for exhibition. Id. The MFA was exhibiting only three of the paintings, however, holding the other fourteen in storage with no plans to exhibit them. Id. at 541-42.

Upon learning that the trustees wanted to sell some or all of the paintings, the MFA sought a declaration in Superior Court that the plain and unambiguous language of Reverend

Wolcott's bequest – specifically, his mandate that “ownership and control of the pictures shall be vested permanently and inalienably in trust” – prohibits the trustees from selling the paintings. Id. at 542. The MFA then moved for summary judgment based on this language. Id.

The Attorney General, with support from the trustees, filed a cross-motion for partial summary judgment. Id. They argued that the primary purpose of the charitable trust was not being satisfied and thus the bequest should be modified under the doctrine of cy pres or reasonable deviation, permitting the sale of the fourteen paintings not being exhibited. Id.

The Superior Court granted the MFA's motion, holding that the plain and unambiguous language of the bequest prohibits the trustees from selling the paintings. The Superior Court also denied the Attorney General's cross-motion, holding that a trial was needed to determine whether the doctrine of cy pres or reasonable deviation permitted the sale of the fourteen non-exhibited paintings. Id. The case was subsequently reported to the Appeals Court, and the Supreme Judicial Court granted direct appellate review. Id.

The Supreme Judicial Court held that the doctrines of cy pres and reasonable deviation were inapplicable, and that none of the paintings could be sold because such a sale would be contrary to the plain and unambiguous language of Reverend Wolcott's will:

[T]he provisions of the bequest are not ambiguous. . . . The judge properly concluded that “the phrase ‘permanently and inalienably’ in the will means exactly what it says – the Trustees are to have *permanent* possession and control of the paintings” (emphasis in original). The bequest makes clear that the paintings may not be sold by the trustees.

Id. at 543. It is black-letter law that reformation of wills is prohibited in Massachusetts. See Flannery v. McNamara, 432 Mass. 665, 673 (2000). “Courts have no power to reform wills. Hypothetical or imaginary mistakes of testators cannot be corrected. Omissions can not be supplied. Language cannot be modified to meet unforeseen changes in conditions.” Sanderson v. Norcross, 242 Mass. 43, 46 (1922) (emphasis added).

Though the language of William Payne's will is not quite as contemporary as Reverend Wolcott's will, which was drafted some 250 years later, William Payne's prohibition against a sale is even more direct. He devised Little Neck "unto the free scoole of Ipswich . . . which is to bee and remain to the benefit of the said scoole of Ipswich for ever as I have formerly Intended and thearefore the sayd land not to be sould nor wasted." (Ex. 1 at 3.)

In declining to apply the doctrine of cy pres or reasonable deviation, the Court in Beland rejected the argument that the trustees have power to sell the paintings pursuant to paragraph 6 of the bequest, which grants them "full and absolute authority . . . to take such action as they judge best fitted" to achieve the charitable trust's purpose "to create and gratify a public taste for fine art, particularly among the people of the City of Lawrence." 432 Mass. at 542-43. While acknowledging that only three of the paintings were being exhibited, the Court nevertheless explained as follows:

The current inability to exhibit the other fourteen paintings in Lawrence would not justify the application of cy pres or reasonable deviation to sell the paintings. A sale of the fourteen paintings would be the antithesis of Wolcott's intent because the sale could deprive the public of any opportunity to view them. There is information in the record suggesting that it might be possible to display some or all of the fourteen paintings at a gallery in Lawrence or at a fine arts center in nearby Andover. Besides these locations, there may be other suitable sites that are close enough to Lawrence to warrant loosening the geographic restrictions in the bequest to permit exhibition of some or all of the fourteen paintings. The record shows that the trustees have not made reasonable efforts to explore locations for exhibition. Until such efforts are made, and are shown to be futile, there is no need for further proceedings on the issue of whether cy pres would allow sale of the fourteen paintings in storage.

Id. at 544-45 (emphasis added).

Similarly, there is nothing in the present record suggesting that reasonable efforts have been made by the Feoffees to find a way to maintain Little Neck for the benefit of the Ipswich schools without deviating from the terms of William Payne's will, and thus reasonable deviation

cannot be permitted as a matter of law. See id. Indeed, the Feoffees do not even appear to be arguing that they can no longer maintain Little Neck for the benefit of the schools. Instead, they seem simply to be making the subjective – and hotly disputed – argument that selling Little Neck would be the “better deal.”

After having held Little Neck for 350 years, the pending dispute with the tenants, which represents a blip in the long history of the Grammar School Trust, is not enough to justify undermining the clear mandate of William Payne’s will that the land never be sold. Just as the sale of the fourteen paintings would have been the “antithesis” of Reverend Wolcott’s intent, the sale of Little Neck would be the “antithesis” of William Payne’s intent.² See id.

William Payne’s forbidding the sale of Little Neck is hardly a subordinate term of his will, as the Feoffees maintain and as would be required. See G.L. c. 214, §10B (“Upon a petition to permit reasonable deviation from any of the subordinate terms of a charitable gift of a donor who has died, the court may exercise jurisdiction . . .”) (emphasis added); see also Trustees of Dartmouth College v. City of Quincy, 357 Mass. 521, 528 (1970). His will has just two basic terms – (1) maintain Little Neck forever (2) for the benefit of the schools – and neither can be deemed subordinate to the other.

B. Authority To Sell Little Neck Would Require Legislative Action

Even if reasonable deviation were ultimately found at trial to be permissible and appropriate, this Court lacks the authority to grant reasonable deviation. The Grammar School

² Little Neck is the only parcel of land still held by the Feoffees. As discussed below in Section I.B, all other land was sold. It may be reasonable to assume that the only reason why Little Neck was not sold with the other land is that the sale of Little Neck is expressly forbidden by the plain and unambiguous language of William Payne’s will.

Trust is not like other charitable trusts, because its administration is wholly governed by statute. Accordingly, deviation would require an act of the Massachusetts legislature.

Based on the pleadings and other documents filed in this action, the history of the Grammar School Trust lacks certain detail and some assumptions are being made. It seems clear, however, that by 1756 the Feoffees were holding a number of parcels of land – including Little Neck – for the benefit of the Ipswich schools, but there were questions regarding the powers and duties of the Feoffees.³ These questions were brought to the forefront by the Town's grant of a school farm at Chebacco to the Feoffees, because the grant did not provide the Feoffees with the power to appoint successors. Therefore, in a Town Meeting on January 12, 1756, in order to avoid the "endless disputes [that] may arise between the Town and Feoffees," the following vote was taken:

Voted, that a joint application be made to the Great and General Court [i.e., the Massachusetts legislature] to obtain an Act . . . 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, . . . 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 and receive and apply the income agreeably to the intentions of the donor.

(Ex. 4.)

The legislature acted upon this application, enacting Chapter 26 of the Province Laws of 1755-56, which effectively laid the ground rules for the Grammar School Trust. Chapter 26 defined the "joint committee or feoffees in trust" as being the four named individuals and their successors, together with the three eldest members of the Selectmen for the time being, and gave them "full power and authority by a majority of them to grant necessary leases of any of said

³ This may be because the various parcels of land being held by the Feoffees had come from different sources, at different times, and with different conditions.

land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive said rents and annuities, and, if need be, to sue for and recover same[.]” (Ex. 5.)

Chapter 26 was to expire by its own terms in ten years, and so the legislature extended it for twenty-one years by enacting Chapter 5 of the Province Laws of 1765-66. (Ex. 6.) Then, with the legislature’s enactment of Chapter 54 of the Acts of 1786, the statutory framework governing the powers and duties of the Feoffees became “perpetual.” (Ex. 7.)

Significantly, nothing within this perpetual statutory framework gives the Feoffees the power to sell the land. They are to lease the land and collect the rents for the benefit of the schools. Thus, in order to sell any land, the Feoffees would be required to seek special authority from the legislature. Tellingly, this is exactly what they had done in the past:

- In 1835, the Feoffees applied to the legislature for authority to sell the “school house orchard,” the “school marsh” and an interest in the “Cross farm.”
- In 1892, the Feoffees applied to the legislature for authority to sell an interest in “Neck Pasture” in Ipswich.
- In 1906, the Feoffees applied to the legislature for authority to sell land in Essex.

Copies of the statutes authorizing these sales are attached hereto as Exhibit B.

Legislative authority was and is required by the Feoffees because a court cannot overturn or modify a statute unless it is unconstitutional. See MA Const. Pt. 1, § XXX (“[T]he judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not men.”). The perpetual statutory framework authorizing the Feoffees to lease the land and collect the rents for the benefit of the schools, but not to sell the land, is not alleged to be unconstitutional. Nor could it be. See United States v. Jin Fuey Moy, 241 U.S. 394, 401 (1916) (“A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.”).

Indeed, it would appear that the Feoffees have never sold any land without legislative authority, which makes their present application for authority from this Court so out of place. The Feoffees' neglect to mention their prior applications to the legislature is conspicuous.

C. Summary Judgment Would Be Inappropriate Because a Genuine Issue of Material Fact Exists Regarding the Fair Value of Little Neck

Even if William Payne's will were subject to reasonable deviation, and even if this Court were to have jurisdiction to overturn or modify the legislative acts governing the Grammar School Trust, the Court nevertheless could not grant judgment for the Feoffees as a matter of law because a critical fact – i.e., the fair value of Little Neck, and thus the reasonableness of the proposed sale price – is in dispute.

An appraiser was engaged by each of the Feoffees (LandVest), the Ipswich School Committee (Lincoln Property Company) and the Ipswich Finance Committee (Colliers Meredith & Grew), and their valuations are irreconcilable with each other and the proposed sale price.

In their memorandum, the Feoffees rely on their appraiser's conclusion that the value of Little Neck is \$24,500,000, which assumes that Little Neck is sold to a third-party investor who converts the land to a condominium ownership and resells land interests to the current tenants and perhaps some new buyers. (Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment ("Pls.' Mem.") at 18, ¶ 64.) In contrast, based on the somewhat similar assumptions that Little Neck is sold to a third party and that the tenants transfer their cottages to create a condominium, the appraisers for the School Committee and the Finance Committee conclude that the fair value of Little Neck is \$31,500,000 and \$32,550,000, respectively. (See Exs. 73 & 74.)

Whether these are even the correct assumptions, however, is an open question. For example, the School Committee's appraiser concludes that the aggregate value of the lots

(without the cottages) is \$42,500,000, which is nearly identical to the Finance Committee's appraiser's conclusion that the aggregate value of the lots is \$42,325,000. (See Exs. 73 & 74.) Plugging in yet another set of assumptions, the School Committee's appraiser concludes that the "special value" of Little Neck if sold to a hypothetical association of tenants would be \$42,500,000, whereas the Finance Committee's appraiser concludes that the appropriate price for a sale to a newly-formed cottage association would be \$35,000,000. (See Exs. 73 & 74.)

Even the report by the Feoffees' own appraiser should be seen as an indictment of the proposed sale price. For example, the Feoffees' appraiser notes that the assessed value of the lots is \$40,302,600, and that the "retail" value of the lots \$37,675,000. (Ex. 54 at 19 & 59.) The disparity between this retail value and the proposed sale price suggests that the Feoffees are advocating for a "wholesale" valuation.

Without a trial and the opportunity to test these various valuations and the assumptions on which they are based, including whether Little Neck should be valued at retail or wholesale, it is impossible to know which is correct. What is clear, though, is that the proposed sale price of \$29,150,000 could be – and most likely is – woefully inadequate, particularly when considering that the escrowed rents that should have already gone to the schools would now be re-dedicated to the purchase. This would effectively reduce the price even further. Moreover, despite the tenants' admitted willingness to pay the "reasonable" costs of the wastewater system on Little Neck (Class Action Complaint and Jury Demand, Loneragan v. Foley, Essex Superior Court, Docket No. ESCV2006-02328 ("Tenants' Compl.") ¶ 57), they would pay for none of it under the proposed deal.

The difficulty of trying to appraise Little Neck as a condominium is that there are no direct comparables and there is no precedent. A simple indicator that the proposed sale price is

much too low, however, is that all of the lots on Little Neck have been assigned nearly the same value. The spread between the most expensive "unit," which is located at 16 River Road and valued at \$220,894, and the average "unit," which is valued at \$174,551, is only \$46,000. (See Ex. 48 at Ex. G (Price List by Unit).)

The River Road lot includes .18 acres with 171 feet of ocean frontage overlooking Castle Hill and Crane Beach. Its assessed value is \$377,600, or some \$157,000 more than its assigned value under the terms of the proposed sale, and the total assessed value of the lot and cottage is \$508,800. (See Ex. 54 at 17.) What this means is that the owner could, immediately after consummation of the proposed sale, sell this property for a very substantial profit. Even the owners of the least expensive lots could enjoy a substantial profit.

The Feoffees acknowledge and attempt to justify this windfall to the tenants by arguing that "every sound business decision has an element of benefit for each party to the transaction." (Pls.' Mem. at 33.) The benefit for the tenants is obvious, but the benefit for the actual beneficiaries of the Trust is harder to see. To the extent the argument goes that the schools could finally start to receive *some* benefit from the Grammar School Trust, after years of nothing, that simply is not good enough.

The windfall that would be enjoyed by the tenants highlights one of the Beneficiary Group's primary frustrations. The Trust was established for the benefit of the schools, and yet the interests of the tenants seem to be the controlling consideration. For many decades the tenants paid ultra-low rents, to the detriment of the schools, and when the Feoffees finally tried to bring the rents in line with fair rental values, the tenants filed suit in Superior Court. Because of that litigation, it has now been years since the Feoffees have made any distributions whatsoever for the schools, and the Feoffees' proposed solution is to sell Little Neck to the

tenants for a price that may be far below fair value. The tenants would once again be the winners, and the schoolchildren of Ipswich would once again be the losers.

D. The Proposed Sale Is Short-Sighted, Failing to Take the Long-Term Interests of the Schools Into Consideration

The lack of distributions from the Feoffees for the benefit of the schools has obviously been damaging. As reported in the *Ipswich Chronicle*, and as the Beneficiary Group is fully aware, teaching and library positions have been eliminated; specialty classes have been cut; and individual class sizes have grown beyond an acceptable level. See Jane Dooley, Schools juggle to offset cuts, *Ipswich Chron.*, Sept. 1, 2010. At the risk of hyperbole, the Beneficiary Group's sentiment is that the tenants have been holding the schoolchildren of Ipswich hostage, using their squatters' leverage to force a sale of Little Neck.

While the prospect of the schools' receiving *some* distribution may be appealing, the question is whether breaking the stalemate between the tenants and the Feoffees and realizing a degree of immediate relief is worth the long-term price of doing so. For the Beneficiary Group, the answer is unequivocally "no."⁴

With the aid of pro formas that were prepared by their accountant, the Feoffees map the distributions that might be made over the next five years (2011 through 2015) if the proposed sale were authorized, as compared with the lesser distributions that might be made over the same period if there were no such sale. (See Exs. 55-58.) There are two flaws with this approach.

First, given that the Trust has existed for more than 350 years, and given the expectation that it will continue for another 350 years and beyond, pinning the decision of whether or not to

⁴ The benefit received by the schools has been relatively minimal historically (literally nothing recently), and so although the Feoffees characterize a failure to authorize the proposed sale as "economically disastrous in the short term [because] there will be no money available for distribution to the beneficiary in the next five years" (Pls.' Mem. at 33), it would really just be a continuation of the status quo.

sell Little Neck on the performance of the "asset" over a five-year period should be seen as remarkably superficial. It is difficult to imagine this Court's concluding that deviation is indisputably reasonable based on such a small sample size. In fact, the Feoffees' use of such a small sample is surely indicative of what the larger sample would show.

The short-sightedness of the proposed sale is apparent from the Feoffees' own analysis. For example, although the Feoffees argue that authorization of the proposal sale would create an endowment fund of approximately \$22,000,000 that would generate income of approximately \$1,000,000 per year (Pls.' Mem. at 4), this projected income does not account for any capital reinvestment to ensure that the corpus keeps pace with inflation. Without this kind of capital reinvestment, which would obviously lower the amount of distributable income, the relative value of the principal and the income it could generate would decrease year after year. Moreover, distributable income of \$1,000,000 per year would pale in comparison to the \$1,803,600 in gross rental income or the \$1,428,035 in net operating income that Little Neck would generate, according to the Feoffees' appraiser, if the tenants were paying an average year-round rental rate of \$10,800 per year. (See Ex. 54 at 63.) The Finance Committee's appraiser similarly finds that the total rental value of the lots is \$1,798,813. (Ex. 74.) And assuming the rent would continue to rise with the market, the disparity between rental-based income and the distributable income from a fixed endowment fund would grow only larger over time.

Second, real estate is permanent, whereas investment accounts are not. The Feoffees concede that an investment account would be subject to investor risk. Although the Feoffees describe this as the only risk (Pls.' Mem. at 32) ("The only risk is investment risk . . ."), the actual history of the Grammar School Trust teaches otherwise. For example, when the Feoffees were authorized by the legislature to sell the other parcels of land in 1835, 1892 and 1906 (see

discussion supra at §I.B), they were required to invest the proceeds for the benefit of the schools, with the income from the investments applied to the schools. Those investments, however, apparently no longer exist.

The 1835 statute expressly provides as follows:

That the said feoffees shall invest the net proceeds of said lands, in the stock or stocks of some incorporated bank or banks, or put the same out upon interest in mortgage on real estate, or loan the same to any incorporated town or city in this Commonwealth; and that they be authorized to collect, and again to invest the same, as aforesaid, when and so often as the said feoffees, or a major part of them, shall deem it to be most advantageous for said school, and they shall apply the income thereof, exclusively to the uses appointed by the original donors, and agreeably to an act incorporating certain persons as feoffees of said school, and for regulating the same, passed in the year of our Lord one thousand seven hundred and sixty-five, and which was made perpetual by an act passed on the fourteenth day of February, in the year of our Lord one thousand seven hundred and eighty-seven.

The 1892 statute similarly provides that:

Said feoffees may deposit the net proceeds of such sale in any savings bank in this Commonwealth, or may invest the same in any securities in which such savings banks are now or may hereafter be authorized to invest their deposits, the income thereof to be used for the support of said grammar school, agreeable to an act incorporating certain persons as feoffees of said school and for regulating the same, passed in the year seventeen hundred and sixty-five and made perpetual by an act passed on the fourteenth day of February in the year seventeen hundred and eighty-seven.

The 1906 statute contains the same requirement:

Said feoffees may deposit the net proceeds of such sale in any savings bank in this Commonwealth, or may invest the same in any securities in which such savings banks are now or may hereafter be authorized to invest their deposits, the income thereof to be used for the support of said grammar school, agreeably to an act incorporating certain persons as feoffees of said school and for regulating the same, passed in the year seventeen hundred and sixty-five and made perpetual by an act passed on the fourteenth day of February in the year seventeen hundred and eighty-seven.

(See Ex. B) (attached hereto).

Despite these legislative directives, the only remaining asset of the Trust is believed to be Little Neck and whatever income it produces. The lesson is that, unlike an investment account, real estate cannot simply vanish.

E. Authorization of the Proposed Sale Would Place Additional Burdens on the Town That Have Been Neither Disclosed Nor Analyzed

In a letter to the Court from the Ipswich Planning Board, attached hereto as Exhibit C, the Planning Board discusses the undisclosed problems that could be caused by the sale of Little Neck. Specifically, conversion of Little Neck to a condominium that permits year-round residence for all unit owners would place additional stress on the Town's natural resources, municipal services, infrastructure, fiscal condition, and traffic and pedestrian safety. To permit the proposed sale to go forward without an analysis of these problems could be disastrous.

The root of the problems is easy to explain. At present, Little Neck consists of 24 year-round residences and 143 seasonal residences. If all of these residences become year-round, then that would translate to 346 new year-round residents of the Town (based on Ipswich's average household size of 2.42 individuals), which would represent a 2.7% rise in the population (based on Ipswich's household population of 12,785). (See <http://www.factfinder.census.gov>.)

The impact on the school system would be profound. The school population in Ipswich is 2,122 students, or an average of 0.4 students per household (based on 5,290 occupied housing units in Ipswich) (see id.). Therefore, statistically, an additional 143 year-round residences on Little Neck would mean an additional 57 students being placed into the school system, which would represent a 2.7% rise in the school population, and which in turn would require more books, more teachers, and possibly a new school building. At the same time, the property tax collected for Little Neck, based on the assessed value of the land and buildings, would decrease. As the Feoffees explain in their memorandum, the tenants are currently taxed on the overall

assessed value of \$56,567,000 pursuant to G.L. c. 59, § 2B, which is a “legal fiction” that is advantageous to the Town because this statute allows the Town to tax Little Neck as if it were 210 individual lots and not one lot. (Pls.’ Mem. at 26 & n.6.) If Little Neck were no longer held in the Trust, then this statute would no longer apply, meaning that the tenants could seek an abatement of their property taxes to conform with the purchase price of \$29,150,000. In other words, at a time when additional taxes would be needed to support the increased population of the schools and all of the attendant costs, the Town’s property tax revenue would actually go down, and dramatically so.

Simply put, authorization of the proposed sale could have a significant negative impact on the Town, and it could cause the exact opposite of the purported boon for the school system on which the Feoffees base their argument.

II. BECAUSE LITTLE NECK IS A PUBLIC ASSET, THE ADMINISTRATION OF THE TRUST SHOULD BE A PUBLIC FUNCTION

As the last point illustrates, decisions regarding the Grammar School Trust’s administration touch the entire Town of Ipswich. For this reason, those decisions should be transparent and subject to public accountability. What this means, in short, is that a change is needed. The various allegations made against the Feoffees underscore the need for change.

In their Complaint in the Essex Superior Court action, the tenants allege as follows:

28. Notwithstanding the clear and unequivocal mandate of the referenced Acts, as to who shall and must constitute the Feoffees, no members of the Town of Ipswich Board of Selectmen have acted as Feoffees, according to the Town (of [sic] Ipswich Committee on Feoffees, for over 80 years.

29. Upon information and belief, Defendants Foley, Foote, Mulholland and Whiston have failed to maintain accurate and complete records of their activities and finances, as Feoffees.

30. Upon information and belief, prior to 2001, Defendants Foley, Foote, Mulholland and Whiston failed and refused to either file a State or

Federal tax return, as Feoffees, or to file a "Form PC" with the Commonwealth of Massachusetts Attorney General's Division of Public Charities.

31. Upon information and belief, in 2001, the Massachusetts Attorney General's Division of Public Charities compelled Defendants Foley, Foote, Mulholland and Whiston to properly file tax returns and to file Form PC's, for prior years and in each year going forward.

32. On September 25, 2006, at Plaintiffs' urging, Defendants Kilcoyne, McNally and Rauscher, as the three longest serving Selectmen, asserted and declared at a Board of Selectmen's meeting that they were lawful members of the Feoffees and going forward they would so act.

33. Notwithstanding the efforts of Defendants Kilcoyne, McNally and Rauscher to act as Feoffees, Defendants Foley, Foote, Mulholland and Whiston have refused to meet, in a lawfully constituted session, with Defendants Kilcoyne, McNally and Rauscher and have refused to conduct the business of the Feoffees, inclusive of the participation of Defendants Kilcoyne, McNally and Rauscher.

(Tenants' Compl. ¶¶ 28-33.)

In their Counterclaim in this action, the School Defendants allege as follows:

4. Under the existing governance structure for the Trust, the four Privately-appointed Feoffees serve unlimited terms and select and appoint their successors privately. There are no bylaws and no other comprehensive governance documents or rules.

5. The School Defendants submit that due to evolved circumstances over the years and the Privately-appointed Feoffees' failure to fulfill reasonable expectations, a comprehensive revised governance and administrative structure is in the best interest of the charitable purpose of the Trust.

6. The current governance and administrative structure of the Trust is inadequate and there is good cause to revise it.

7. For many years, the rents charged by the Feoffees to Little Neck residents have been less than fair market levels, resulting in distributions in support of the Ipswich Public Schools that were less than fair market rents would have provided.

8. In recent years, disputes with Little Neck residents regarding rents and charges and with contractors involved with the installation of a sewer system have resulted in a total absence of distributions in support of the Ipswich Public Schools.

9. The Privately-appointed Feoffees have conducted Trust business, both directly and through a Limited Liability Company (LLC), in private, without transparency and public accountability.

10. The Privately-appointed Feoffees have failed to make all necessary and appropriate governmental filings in a timely manner.

11. A modernized Trust governance and administrative structure has been the subject of several years of careful consideration, analysis, and review by the School Defendants, by other Town of Ipswich governmental bodies, and by Ipswich residents. The Trust governance and administrative structure has been the subject of numerous public meetings and public hearings of the School Committee and its subcommittees, the Ipswich Board of Selectmen, the Ipswich Finance Committee, joint Tri-Board meetings of these three governmental bodies, a Town Committee on the Feoffees, and the two most recent sessions of the Ipswich Town Meeting. The Trust governance and administrative structure has been the subject of numerous meetings and discussion with the Privately-appointed Feoffees and counsel for the Feoffees.

(Counterclaim of Ipswich School Committee and Richard Korb, Ipswich Superintendent of Schools ("Countercl.") ¶¶ 4-11.)

From the Beneficiary Group's perspective, determining whether the current difficulties facing the Trust are the Feoffees' fault, as the tenants and the School Defendants contend, is less important than trying to solve the difficulties and ensuring they are not repeated. To that end, the Beneficiary Group supports the School Defendants' proposal (a) regarding the eligibility criteria for service as a Feoffee to eliminate the possibility of additional conflicts of interest, and (b) that all seven Feoffees be appointed for three-year terms by governmental bodies of the Town of Ipswich: two by the School Committee; two by the Board of Selectmen; two by the Finance Committee; and one by the Town Meeting. (*Id.* at ¶ 12.a & b.)

Immediately reworking the make-up of the Feoffees in this way, which contemplates the removal of the privately-appointed lifetime Feoffees, would presumably make a sensible resolution of the Essex Superior Court action more attainable, given that they alone seem to be the target of the tenants' hostility. It would also allow duly-appointed representatives of the

Town to make the decisions affecting the Town in general and its schools in particular, decisions for which these representatives would be accountable. There is no reason why reformation of the Trust must be bundled with the sale of Little Neck.

Notably, William Payne did not actually devise Little Neck to the Feoffees. He devised Little Neck “unto the free scoole of Ipswich,” a fact that was codified when the legislature passed Chapter 26 of the Province Laws of 1755-56, providing that “the lands, grants, rents and annuities . . . belong to said school[.]” (See Exs. 1 & 5.) In other words, Little Neck was always meant and understood to be a public asset, and its administration should be a public function.⁵

Ultimately, if administered properly to supplement the school budget, the income derived from Little Neck will allow Ipswich schools to be among the best in the Commonwealth for countless generations to come. Fostering the highest standards of learning was undoubtedly William Payne’s vision in devising Little Neck, and realizing that vision is the Beneficiary Group’s driving concern.

Expanding on this last point, the Trust’s income must be used to supplement the school budget if the schoolchildren are to benefit from the Trust. Stated differently, if the income is simply absorbed into the school budget and used as a crutch to avoid normal Proposition 2½ overrides that other communities in the Commonwealth must approve, then the result would be lower taxes (i.e., a lower property tax mil rate) without necessarily better schools, which would

⁵ Because Little Neck was a gift or conveyance to the Town, rather than to the Feoffees, members of the Beneficiary Group would have standing to file a “ten-taxpayer” suit pursuant to G.L. c. 214, § 3(11). They have not sought to do so, however, because their hope is that the proper solution can be found without more litigation. They would also have standing to intervene in this action pursuant to Rule 24 if the School Defendants were to succumb to the Feoffees’ pressure to sell Little Neck, because the School Defendants would no longer be adequately representing the beneficiaries’ interests. The Beneficiary Group hereby reserves its right to seek intervention in that event.

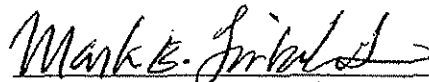
make the taxpayers of Ipswich the de facto beneficiaries. That was not William Payne's intent.

Better schools and a better education – rather than cheaper schools and a cheaper education – are the mandate. The Beneficiary Group submits that the only way to fulfill this mandate is to allow the Feoffees, restructured in the manner described above with public participation and accountability, to have some measure of control over how the income from the Trust is applied to the schools. In this regard, the Beneficiary Group's viewpoint differs from that of the School Defendants, who propose that "[t]he 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." (Countercl. Ex. A at § 3.) A standard that requires the Trust's income to be used to enhance the schools only "when feasible" is simply too weak and would inappropriately allow for discretion in the application of William Payne's non-discretionary charge that Little Neck be held and maintained for the benefit of the schools forever.

Respectfully submitted,

DOUGLAS J. DeANGELIS, on behalf of the
Beneficiary Group,

By his attorneys,



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Dated: January 27, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 27th day of January, 2011, I served a copy of the foregoing by electronic and regular mail upon the following:

William H. Sheehan, III
MacLean Holloway Doherty
Ardiffe & Morse
8 Essex Center Drive
Peabody, MA 01960

Richard C. Allen
Donna M. Brewer
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210

Johanna Soris
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108



Mark E. Swirbalus

Beneficiary Group

	Name	Address	# children in school system
1	Adam Pepper	4 Rosewood Dr	
2	Adolfo Cuevas	10 Plains Rd	
3	Adrienne Mincz	5 Safford Lane	1
4	Agnieszka Flowers	2 Heatherside Ln	
5	Al Boynton	41 High Street	
6	Alan Stevens	10 Sawyer St	
7	Alayna Parro	11 Mile Ln	
8	Alec Style	8 Heartbreak Rd	
9	Alicia Moore	22 Labor in Vain	
10	Allen Gromko	11 Heard Dr	
11	Allison Duback	15 Spillers Lane	2
12	Allison Hubbard	8 Farley Ave	1
13	Allison Kemmerer	45 Essex Rd	
14	Amanda Harrington	6 Drumlin Rd	
15	Amanda Kuhl	3 New Mill Place	2
16	Amy Angell	44 Argilla Rd	4
17	Amy Fanning	140 Topsfield Rd	1
18	Amy Orroth	86 Topsfield Rd	2
19	Andrea Della Valle	22 High Street	
20	Andrew Brengle	7 Cogswell St	
21	Andrew Camilo Adams	16 Fellows Rd	
22	Angela Dorau	52 Central Street	2
23	Angela Dunlop	4 Pitcairn Way	
24	Ann Fitzgerald	42 North Main St	1
25	Ann Koshivas	16 Heard Dr	4
26	Anne Brown	100 High St	2
27	Anne Grimes Rand	36 Water St	1
28	Anne Hezzey	166 Argilla Rd	1
29	Anne Maguire	18 Turkey Shore Rd	
30	Anne Rybicki	7 Randall Rd	2
31	Anne Ward	8 Longmeadow Dr	
32	Annamarie Cerundolo	31 Estes St	2
33	Anthony Lochtefeld	121 Little Neck Rd	
34	Anya McDavitt	173 Argilla Rd	
35	Armand Brouillette	33 Argilla Rd	
36	Arthur Penachio	401 Colonial Drive #42	
37	Arthur Ross	52 Heartbreak Rd	
38	Barta Hathaway	6 Meetinghouse Green	
39	Ben Lawrence	1 Congress Street	
40	Benjamin Staples	6 Agawam Ave	
41	Bernadine Tragert	42 Skytop Rd	
42	Beth O'Connor	3 Marshview Rd	1
43	Bethany Evitts	12 Pitcairn Way	
44	Betsy Castonguay	82 Town Farm Rd	2
45	Betsy Frost	9 Herrick Dr	2
46	Betsy Shields	1 Old England Rd	1
47	Bill Dunlop	4 Pitcairn Way	
48	Bill Gallant	9 Dornell Rd	2
49	Bill Maidment	3 Candlewood Rd	
50	Bill Stewart	7 Fourth Street	1

Beneficiary Group

	Name	Address	# children in school system
51	Blaire Bernard	86 County Rd	
52	Bob Dubrow	6 Sagamore Rd	3
53	Bob Waldner	48 Turkey Shore Rd	
54	Brenda Baugh	121 Little Neck Rd	
55	Brendan Teeling	35 Lakemans Lane	
56	Brett Johnson	12 Mill Road	3
57	Brian Baise	63 Turkey Shore Rd	
58	Brian Parro	11 Mile Ln	
59	Bronwyn Lee West	11 Oakhurst Ave	
60	Bruce Laing	18 Oakwood Knoll	
61	Bruno Hupin	17 Turkey Shore Rd	
62	Caleb Cook-Kollars	18 Oakhurst Ave	
63	Camilla Eagan	38 Argilla Rd	2
64	Cara Doran	12 Argilla Rd	2
65	Carl Gardner	9 Woods Lane	3
66	Carl Nylan	34 Brownville Ave	2
67	Carol Falconer	12 Brentwood Way	
68	Caroline Forrester	19 Appleton Park	2
69	Carolyn Briggs Style	8 Heartbreak Rd	
70	Carrie Woodruff	12 Linden St	
71	Cary Friedman	28 Clark Rd	2
72	Catherine Bartholomew	16 Turkey Shore Rd	2
73	Catherine Petrie	33 Upper River Rd	
74	Catherine Robie	11 Spillers Lane	
75	Catherine Savoie	15 Old England Rd	2
76	Catherine TJ Howe	21 Turkey Shore Rd	2
77	Cathryn Chadwick	27 Fellows Rd	
78	Cathy Hoog	10 Peabody St	
79	Chandler Bailey	19 Town Farm Rd	
80	Chandler Delinks	44 Summer St	
81	Charlene Parro	11 Mile Ln	
82	Charles Doran	12 Argilla Rd	
83	Charles Flowers	2 Heatherside Ln	3
84	Charles Trainer	19 Lafayette #2	
85	Charlie Allen	29 North Main St	
86	Charlotte Dion	26 Topsfield Rd	
87	Charlotte Eliot	275 Argilla Rd	
88	Charlotte Marsh	3 High St	2
89	Chris DeStefano	157 Topsfield Rd	2
90	Chris Parker	9 Drumlin Rd	
91	Chris Vellante	1 Nags Head Road	
92	Christina Ciarametaro	7 Nabby's Point Rd	3
93	Christina Maguire	52 County Street	1
94	Christine Cellucci	21 Mineral Street	
95	Christine Krause	20 Herrick Dr	2
96	Christine Senechal	2 Shagbark Woods	2
97	Christopher Baker	43 Turkey Shore Rd	
98	Christopher Corcoran	31 High St	2
99	Christopher Fay	9 Fellows Rd	
100	Christopher Murray	37 Summer St	

Beneficiary Group

	Name	Address	# children in school system
101	Christopher Sammartano	42 North Main St	
102	Claire Twomey Sabbagh	51 Turkey Shore Rd	1
103	Clark Ziegler	10 Woods Lane	1
104	Cliff Adams	5 Pine St	
105	Cliff Whynott	18 Appleton Park	
106	Coco McCabe	25 Newmarch St	
107	Colin Paget	95 Central St	2
108	Connie Johnson Hambley	52 Warehouse Lane, Rowley	2
109	Constance McCausland	45 High St	
110	Constance Millard	14 Woods Ln	2
111	Courtney Cummins	23 Pleasant St	
112	Curt Sprouse	19 Waldingfield Rd	2
113	Cynthia Bingham	34 Mulholland Dr	
114	Cynthia Ingelfinger	187 Argilla Rd	1
115	Cynthia Richmond	47 Clark Rd	
116	Dan Clapp	2 Lakemans Ln	2
117	Dan McCormick	1 Beechwood Rd	
118	Dan Poranski	53 Farley Ave	
119	Dana Bailey	19 Town Farm Rd	1
120	Dana Beauvais	48 North Main St	3
121	Dana Sigall	17 Summer St	
122	Danyelle Desjardins	26 Turkey Shore Rd	3
123	David Comprosky	12 Edge St	
124	David Kneidler	2 Courtland Way	
125	David Lawrence	11 High Street	
126	David Mooradd	106 Central St	
127	David Morrow	3 Courtland Way	
128	David Reibel	11 South Village Green	
129	David Russell	9 Prescott Rd	
130	David Smith	3 Vermette Ct	
131	David Sulkin	8 Meadowview Lane	
132	David Voci	21 Newmarch St	
133	Dawn Woolfolk	94 Town Farm Rd	3
134	Debi Welling	4 Poplar Street	
135	Deborah Biagg	6 Agawam Ave	
136	Deborah Chandler	14 Pleasant St	2
137	Deborah Clapp	2 Lakemans Ln	
138	Deborah Fowler-Wheaton	3 River Ct	
139	Deborah Lindahl	3 Meadowview Ln	
140	Deborah Logan	197 County Rd	1
141	Deborah Williams	14 Newmarch St	
142	Deerin babb-brott	6 Wainwright St	
143	Denise Lejeune	33 Birch Ln	
144	Denise Morrow	3 Courtland Way	1
145	Dennis Keenan	17 Nabbys Point Rd	
146	Dennis Shaughnessy	92 Old Right Rd	1
147	Diana Somers	4 Cottage Street	2
148	Diane Arsenault	18 Upper River Rd	2
149	Diane Cote	17 Meadowview Ln	
150	Diane Gallant	9 Dornell Rd	

Beneficiary Group

	Name	Address	# children in school system
151	Diane Mayo	180 Argilla Rd	
152	Diane Penachio	401 Colonial Drive #42	
153	Diane Schoonover	3 Scott Hill Rd	2
154	Diane Young	6 Woods Lane	
155	Dianne Dillon	16 Summer St	1
156	Dianne Fischbach	144 Argilla Rd	
157	Dirk Falardeau	66 Old Right Rd	2
158	Dolores Curley	82 Little Neck Rd	1
159	Dolores Lyons	35 County St #1	
160	Dona Gilligan	11 Hood Farm Rd	
161	Donald Della Valle	22 High Street	2
162	Donald Freyleue	6 Highland Ave	
163	Donna Adams	5 Pine St	2
164	Donna Carpenter	23 Ocean Dr	1
165	Donna Whynott	18 Appleton Park	2
166	Dorothy Johnson	15 Heartbreak Rd	
167	Dorothy Monnelly	198 Argilla Rd	
168	Doug DeAngelis	28 Turkey Shore Rd	
169	E. Joseph Guay	23 Heard Dr	
170	Ed Rauscher	10 Argilla Rd	
171	Edith Maxwell	15 Summer Street	
172	Edward Falis	26 Topsfield Rd	
173	Edward Kloman	10 Blaisdell Terrace	
174	Edward Porter Eagan	38 Argilla Rd	
175	Eileen Gromko	11 Heard Dr	
176	Eileen Klapprodt	17 Charlotte Rd	
177	Elane Lee	10 Woods Lane	
178	Elizabeth Hickey	9 Wainwright St	2
179	Elizabeth Johnson	37 East Street	
180	Elizabeth McCarthy	53 Town Farm Rd	
181	Elizabeth Murray	37 Summer St	2
182	Elizabeth Richardson	7 Ipswich Woods Dr	
183	Ella Young	10B Caroline Ave	
184	Ellen Kenyon	28 Meadowview Lane	2
185	Ellen Maher	8 Hemlock Rd	2
186	Eloise Bebout	37B Caroline Ave	
187	Elton McCausland	45 High St	
188	Emilie Dolaher	98 High St	
189	Emily Whooley	5 Abbott Ln	
190	Eric Jacklin	32 Linebrook Rd	3
191	Eric Krathwohl	1 Stage Hill Rd	1
192	Erik Lindahl	3 Meadowview Ln	2
193	Erika Glaster	22 Longmeadow Dr	1
194	Erika Sonder	5 Colby Rd	
195	Ernest DiMuzio	5 Safford Lane	
196	Farrah Dube-Parent	1 Jeffreys Neck Rd	
197	Flutura Lecaj	7 Soffron Lane	
198	Frank Hertz	50 North Main St	
199	Franz Ingelfinger	187 Argilla Rd	
200	Gabriela Kernan	7 Allen Ln	

Beneficiary Group

	Name	Address	# children in school system
201	Gail MacLachlan	17 Summer St	
202	Gail Surpitski	326 Linebrook Rd	
203	Geoffrey Rogers	22 Pineswamp Rd	
204	George Alger	9 Mineral St	
205	George Bento	49 East St	
206	George Gray	3 Brentwood Way	
207	George Koshivas	16 Heard Dr	
208	George Moutevelis	4 Ward Street	
209	George Sherwood	225 Argilla Rd	
210	Geraldine Alger	9 Mineral St	
211	Geraldine Rogers	22 Pineswamp Rd	
212	Gerry Mcmorrow	35 Newbury Rd	
213	Glen Kimmel	28 Brownville Ave	
214	Glenn Gayton	141 Linebrook Road	
215	Glenn Hazelton	4 Old Ipswich Way	1
216	Glenn Henderson	12 Masconomet Rd	
217	Greg Parent	1 Jeffreys Neck Rd	
218	Greg Stanicek	4 Fox Run Rd	1
219	Harvey Schwartz	11 Marshview Rd	
220	Heather Ginolfi	41 Lakemans Lane	2
221	Heather Pillis	1 Mulholland Dr	2
222	Heather Spinetti	90 Old Right Rd	2
223	Heather Waters	9 Lillian Dr	
224	Heidi Kent	94 Haverhill St, Rowley	1
225	Heidi Paek	177 Linebrook Rd	2
226	Helen Parker	235 Argilla Rd	
227	Hope Wigglesworth	15 Ipswich Woods Dr	
228	Howard Lewis	14 Perley Ave	
229	Hugh Lockhart	15 Summer Street	
230	Ian Burt	25B Turkey Shore Rd	
231	Illir Lecaj	7 Soffron Lane	1
232	Ingrid Johnson	39 Boxford Rd	
233	Ingrid Miles	58 North Main St	
234	J. Bradley Schell	29 High Street	
235	Jacob Kelly	16 Masconomet Rd	
236	Jacob Stone	28 Linebrook Rd	
237	Jacqueline Cordima	31 Heartbreak Rd	
238	Jacqueline Marlier	9 Mile Lane	2
239	Jacqueline Phypers	444 Main St, Rowley	
240	James Angell	44 Argilla Rd	
241	James Beauvais	20 Mineral Street	
242	James Coughlin	20 Bush Hill Rd	
243	James Cummins	23 Pleasant St	
244	James Fanning	140 Topsfield Rd	
245	James Guay	23 Heard Dr	2
246	James Hayward	126 Argilla Rd	
247	James Henderson	2 Northgate Rd	
248	James Hickey	9 Wainwright St	
249	James Kernan	20 Plains Rd	2
250	James Martel	13 Brown St	

Beneficiary Group

	Name	Address	# children in school system
251	James McCormack	1 Cobblers Lane	2
252	James O'Kelly	7 Dornell Rd	2
253	James Restuccia	2 Cobblers Ln	3
254	Jamie Lee Wallace	112 Pineswamp Rd	1
255	Jana O'Donnell	20 Edge St	2
256	Janet Foote	7 River Court	
257	Janine Hannibal	7 Sand Pebble Rd	3
258	Jason Wertz	19 Turkey Shore Rd	1
259	Jay Forrester	19 Appleton Park	
260	Jean Swenson	449 Linebrook Rd	
261	Jeannette Esposito	32 Partridgeberry Place	
262	Jeff Blizard	8 Fox Run Rd	3
263	Jeff Corning	44 Brownville Ave	2
264	Jeff Silva	9 Herrick Dr	
265	Jeffrey Duback	15 Spillers Lane	
266	Jen Bauman	23 Turkey Shore Rd	2
267	Jen Blizard	8 Fox Run Rd	
268	Jen Norton	17 Congress St	2
269	Jennie Cook-Kollars	18 Oakhurst Ave	
270	Jennifer Carlson	44 Summer St	
271	Jennifer Chambers	35 County St. #3	
272	Jennifer Greco	42 East St	
273	Jennifer Grenier	476 Wethersfield St, Rowley	
274	Jennifer Kimmel	28 Brownville Ave	2
275	Jennifer O'Connell	22 Greens Point Rd	
276	Jennifer Parro	11 Mile Ln	
277	Jenny Vellante	1 Nags Head Road	1
278	Jeremy Hathaway	117 High St 12A	
279	Jessica Mayo	180 Argilla Rd	
280	Jessie Harvey Bornstein	5 Grant Ct	1
281	Jessie Reid	3 South Village Green	1
282	Jill Gleim	183 Argilla Rd	1
283	Jill Montoni	43 Jeffreys Neck Rd	
284	Jim Berry	142 County Rd	
285	Jim Hoog	10 Peabody St	1
286	Jim Patrick	2 Old England Rd	1
287	Joan Gallagher	22 Howe St	2
288	Joan Williams	1 Maple Ave	
289	Jo-Ann Gorrell	47 Labor in Vain Rd	3
290	Joanna Galoski	28 Mineral St	
291	Joanne Baker	43 Turkey Shore Rd	1
292	Joanne Delaney	12 Kinsman Court	1
293	Joanne Lorello	15 Poplar St	1
294	Joanne Maino	26 Farley Ave	2
295	Joanne Wilson	44 Pineswamp	3
296	Jocelyn Duff	2 Warren Street	2
297	Jodi Quinn	15 South Village Green	2
298	John Balzer	6 Blaisdell Terrace	3
299	John Collyer	70 Jeffreys Neck Rd	
300	John Curley	23 Fairview Ave	2

Beneficiary Group

	Name	Address	# children in school system
301	John Davis	21 Meadowview Ln	
302	John Duff	2 Warren St	2
303	John Gillis	15 Jeffreys Neck Rd	
304	John Hickey	4 Juniper St	
305	John Kelley	401 Colonial Drive	
306	John Maher	8 Hemlock Rd	
307	John O'Connor	3 Marshview Rd	
308	John Soininen	17 County Street	
309	John Sullivan	49 Labor in Vain Rd	
310	John Sultzbach	18 Plains Rd	
311	John Waters	9 Lillian Dr	4
312	John Wheaton	3 River Ct	
313	John Wigglesworth	283 Argilla Rd	
314	Jonathan Cormier	23 Brownville Ave	2
315	Jonathan O'Donnell	20 Edge St	
316	Jonathan Robie	25 Heartbreak Rd	
317	Joseph Ciarametaro, Jr.	7 Nabby's Point Rd	
318	Joseph McCarthy	53 Town Farm Rd	
319	Joseph Tragert	42 Skytop Rd	1
320	Josephine Brouillette	60 Essex Rd	2
321	Josh Geller	11 Greens Point Rd	2
322	Josh Norris	76 Jeffrey's Neck Rd	1
323	Josh Phypers	444 Main St, Rowley	2
324	Joy Jartman	33 Summer St	
325	Judith Hallberg	1 South Village Green	
326	Judith Moseley	12 Brentwood Way	3
327	Judy Beauvais	20 Mineral Street	1
328	Judy Sedgewick	5 Beachview Lane	2
329	Julia Purinton	59 Candlewood Rd	1
330	Julie Goulet	7 Drumlin Rd	2
331	Julie Keefe	46 Broadway Ave	
332	Julie Meneghini	60 Prospect St	3
333	Julie Stone	28 Linebrook Rd	1
334	Julie Warren	6 Abbott Lane	3
335	Julie Williams	9 Nags Head Rd	
336	Karen Babb	10 Abbott Lane	1
337	Karen Donovan	11 South Village Green	2
338	Karen Hoff	30 Allen Ln	2
339	Karen Hruska	5 Cobblers Ln	
340	Karen Kelley-Barnes	39 Fellows Rd	
341	Karen Langlais	14 Linden St	
342	Karen Paget	95 Central St	
343	Karen Ross	220 High Street #3	
344	Karin Geller	11 Greens Point Rd	
345	Kate Duffield	153 Argilla Rd	
346	Kate Eliot	273 Argilla Rd	
347	Kate McCormick	1 Beechwood Rd	3
348	Katherine Coughlin	20 Bush Hill Rd	2
349	Katherine Evans	18 Lafayette Rd	
350	Katherine Lampropoulos	2 Kennedy Dr	

Beneficiary Group

	Name	Address	# children in school system
351	Katherine Wyman	16 Oakhurst Ave	
352	Kathie Eliopoulos	20 Heard Dr	4
353	Kathleen Dailey	24 Green St	
354	Kathleen Guay	22 Bayview Rd	
355	Kathleen MacLennan	17 Newmarch St	
356	Kathleen McMahon	16 Applewood Dr	2
357	Kathleen McMorrow	5 Heartbreak Rd	
358	Kathleen Milano	2 Marys Way	2
359	Kathleen O'Reilly	20 Brown Square	1
360	Kathleen Spinale	27 Pleasant St	2
361	Kathryn Falcione	34 Topsfield Rd	
362	Kathryn McGowan	8 Wainwright St	2
363	Kathryn Sullivan	49 Labor in Vain Rd	2
364	Kathy Bento	49 East St	2
365	Kathy Bruce	41 High Street	
366	Kathy Dolder	53 Farley Ave	
367	Katie Gillis	15 Jeffreys Neck Rd	4
368	Katie Henderson	12 Masconomet Rd	1
369	Katie Hertz	50 North Main St	1
370	Katie McElwain	11 Liberty St	2
371	Katie Norris	76 Jeffrey's Neck Rd	
372	Katie Smith	3 Vernette Ct	
373	Kaye Cook	18 Oakhurst Ave	
374	Keith Vanderbilt	15 Rosewood Dr	2
375	Keith Wetter	6 Lakemans Lane	1
376	Keleigh Calnan	59 Pineswamp Rd	
377	Kelly Russell	16 Bush Hill Rd	2
378	Kelly Schwenkmeyer	10 Blaisdell Terrace	
379	Kelly Wing	4 Mulholland Dr	
380	KellyJane Kloub	65 Mitchell Rd	
381	Ken Swenson	449 Linebrook Rd	3
382	Ken Wing	4 Mulholland Dr	2
383	Kenneth Savoie	15 Old England Rd	
384	Keri MacRae	31 Heartbreak Rd	1
385	Kerrie Bates	43 Summer St	2
386	Kerry Zagarella	137 Linebrook Rd	
387	Kevin Calnan	59 Pineswamp Rd	1
388	Kevin Keefe	46 Broadway Ave	1
389	Kevin Miller	29 Lafayette Rd	2
390	Kevin Whooley	5 Abbott Ln	3
391	Kia Petrie	20 Woods Ln	
392	Kim Bartlett	79 Argilla Rd	
393	Kim Stam	1 Heartbreak Rd	3
394	Kimberly Boynton	41 High Street	
395	Kimberly DeAngelis	7 Woods Lane	
396	Kristen Breen	11 Perley Ave	2
397	Kristie Henderson	2 Northgate Rd	3
398	Kristin Brouillette	105 High St	2
399	Kristin Comprosky	12 Edge St	2
400	Kristin Moutevelis	4 Ward Street	3

Beneficiary Group

	Name	Address	# children in school system
401	Kurt Stam	1 Heartbreak Rd	
402	Larry Constantine	58 Kathleen Circle, Rowley	
403	Laura Lewis	14 Perley Ave	2
404	Laura Rosenberger	4 Riverside Dr	
405	Laura Russell	7 Northgate Rd	
406	Laura Stanicek	4 Fox Run Rd	
407	Laura Trainer	19 Lafayette #2	1
408	Lauren Teeling Adams	16 Fellows Rd	2
409	Laurie Baise	63 Turkey Shore Rd	1
410	Laurie Fenton	7 Perley Ave	2
411	Laurie Miles	218 Argilla Rd	
412	Lawrence Eliot	275 Argilla Rd	
413	Lawrence Kent	94 Haverhill St, Rowley	
414	Lawrence Maguire	18 Turkey Shore Rd	
415	Leah Alexander	6 Blaisdell Terrace	
416	Lee Hathaway	6 Meetinghouse Green	
417	Leigh Mantoni-Stewart	7 Fourth Street	
418	Leslie Carney Lynch	23 Birch Lane	1
419	Leslie Collyer	70 Jeffreys Neck Rd	
420	Lidieth Goodrich	18 County St #5	
421	Linda Coe	150 County Rd	
422	Linda Sulkin	8 Meadowview Lane	2
423	Lisa Burt	25B Turkey Shore Rd	1
424	Lisa Curley	23 Fairview Ave	
425	Lisa Howe	39 Skytop Rd	1
426	Lisa Morello	24 Charlotte Rd	1
427	Lisa Nylen	34 Brownville Ave	
428	Lisa Palance	48 Jeffreys Neck Rd	2
429	Lisa Soininen	17 County Street	1
430	Liz Lombard	51 Heartbreak Rd	2
431	Lori Lynn	33 Linebrook Rd	2
432	Lorraine Seaton	5 Beechwood Rd	
433	Louis Esposito	32 Partridgeberry Place	
434	Louis Martel	7 Drumlin Rd	
435	Lowell Murray	4 Lakemans Ln	2
436	Lucy Lockwood	58 Kathleen Circle, Rowley	2
437	Lydia Queally	449 Linebrook Rd	
438	Marc Castonguay	82 Town Farm Rd	
439	Marcia Chambers	12 Hodgkins Dr	
440	Marcia Gray	3 Beechwood Rd	1
441	Marcia Gray	3 Brentwood Way	
442	Marcia Inman	84 Labor in Vain Rd	
443	Margaret Cannell	12 Edge St	
444	Margaret Quinn-DeBoer	48 Pineswamp Rd	
445	Margaret Teeling	35 Lakemans Lane	
446	Maria Hebbel	108 High St	
447	Marianne Cellucci	21 Mineral Street	
448	Marigold Lewis	14 Alamo Rd	
449	Marion Frost	95 High Street	
450	Mark Coe	150 County Rd	

Beneficiary Group

	Name	Address	# children in school system
451	Mark Evans	197 County Rd	
452	Mark Evitts	12 Pitcairn Way	
453	Mark Leff	19 Ice Pond Dr, Rowley	2
454	Mark Meaney	12 Warner Rd	2
455	Mark Mossler	16 Mohawk St, Danvers	
456	Mark Rosati	12 Upper River Rd	
457	Mark Scarano	33 Mineral St	1
458	Mark Welling	4 Poplar Street	2
459	Martha Mauser	8 East St	2
460	Martin Sorger	34 High Street	2
461	Mary B folliott	91 Old Right Rd	
462	Mary Buckley-Harmon	39 Broadway Ave	3
463	Mary Cunningham	378 Linebrook Rd	
464	Mary Guay	23 Heard Dr	
465	Mary Hanna	3 Poplar St	
466	Mary Harrington	15 Brentwood Way	
467	Mary Kate Shannon	22 Spring St	
468	Mary Pryor	11 Oakhurst Ave	2
469	Mary Weatherall	66 Labor in Vain Rd	
470	Maryann Malarkey	15 Turkey Shore Rd	
471	Mat Cummings	87 Central St	
472	Matteo DiMartino	27 High St	
473	Matthew Bodwell	6 Fille St	2
474	Matthew Grenier	476 Wethersfield St, Rowley	1
475	Maureen Farley	3 Farragut Rd	
476	Maureen Fay	9 Fellows Rd	
477	Maureen Pelletier	11 Warren St	3
478	Meagan Hurley	13 Town Farm Rd	
479	Melissa Cuevas	10 Plains Rd	2
480	Melissa Kielbania	15 Putnam Rd	3
481	Meredith Mcmorrow	35 Newbury Rd	2
482	Michael Cusack	19 Meadowview Ln	
483	Michael Davidson	31 Summer St	2
484	Michael DeBoer	48 Pineswamp Rd	3
485	Michael Dolaher	98 High St	
486	Michael Downing	5 Sawyer St	
487	Michael Duffield	153 Argilla Rd	4
488	Michael Johnson	12 Kinsman Court	
489	Michael Maino	26 Farley Ave	
490	Michael Parro	11 Mile Ln	
491	Michael Raines	5 Cobblers Ln	1
492	Michele Wertz	19 Turkey Shore Rd	
493	Michelle Fyrer	28 Allen Lane	2
494	Michelle O'Connor	38 Candlewood Rd	
495	Michelle Rokes	16 Greens Point Rd	2
496	Mike Gorrell	47 Labor in Vain Rd	
497	Mike Jaeger	14 Crestwood Rd	
498	Miranda Updike	6 Highland Ave	2
499	Mitchell Lowe	33 Summer St	1
500	Mollie Harb	8 Manning St	

Beneficiary Group

	Name	Address	# children in school system
501	Moriah Marsh	117 High St 12A	
502	Murry Cunningham	378 Linebrook Rd	
503	Nancy Zaremba Dawson	11 Scott Hill Rd	1
504	Nathaniel Brown	100 High St	
505	Nathaniel Brown, Jr.	100 High St	
506	Neal Zagarella	137 Linebrook Rd	2
507	Neil Kristian	16 Applewood Dr	
508	Nicholas Kielbania	15 Putnam Rd	
509	Nicole Hupin-Otis	17 Turkey Shore Rd	1
510	Nicole Pellaton	4 Old Ipswich Way	1
511	Nicole Robie	25 Heartbreak Rd	
512	Nina Lapierre	21 Stage Hill Rd	
513	Nina Voci	21 Newmarch St	1
514	Nishan Mootafian	33 Birch Ln	2
515	Pam Jaeger	14 Crestwood Rd	1
516	Pamela Colter	316 High Street	2
517	Pamela Keach	65 Washington St	2
518	Patience Wales	10 Hodges Way	
519	Patricia Bodenstab	24 Northridge Rd	
520	Patricia Cusack	19 Meadowview Ln	2
521	Patricia Dieselman	16 Ipswich Woods Dr	
522	Patricia Dumont	3 Harborview Ln	2
523	Patricia Ganley	25 Jeffreys Neck Rd	
524	Patricia Kneedler	2 Courtland Way	2
525	Patricia Kubaska	14 Ocean Dr	2
526	Patrick Kriksceonaitis	4 Lakemans Ln	
527	Patsy Faria	8 Water St	
528	Paul Brouillette	60 Essex Rd	
529	Paul Gilligan	11 Hood Farm Rd	2
530	Paul Harrington	15 Brentwood Way	
531	Paul Hurley	13 Town Farm Rd	
532	Paul Ricci	10 Sawyer St	
533	Paula O'Kelly	7 Dornell Rd	
534	Peregrine White	5 Marshview Rd	1
535	Perry Eliopoulos	20 Heard Dr	
536	Peter Bartholomew	16 Turkey Shore Rd	
537	Peter Bryant	5 Sawyer St	
538	Peter Buletza	15 Blaisdell Terrace	1
539	Peter Eliot	273 Argilla Rd	
540	Peter Ginolfi	41 Lakemans Lane	
541	Peter Moore	22 Labor in Vain	
542	Peter O'Connor	38 Candlewood Rd	3
543	Peter Ross	1 Blair Dr	
544	Peter Senechal	2 Shagbark Woods	
545	Phil Goguen	4 Kingfisher Rd	
546	Philip Kuhn	10 Hodges Way	
547	Philip Ramasci, Jr.	8 Farley Ave	
548	Priscilla Brooks	283 Argilla Rd	
549	Priscilla Davis	21 Meadowview Lane	4
550	Rachel DiMartino	27 High St	1

Beneficiary Group

	Name	Address	# children in school system
551	Rachel Roesler	20 Spillers Lane	3
552	Ralph Greenberg	23 Howe St	
553	Ralph Williams	9 Nags Head Rd	
554	Randy Howe	39 Skytop Rd	
555	Ray Angelo	5 Colby Rd	
556	Rebecca babb-brott	6 Wainwright St	1
557	Rebecca Gayton	141 Linebrook Road	2
558	Rebecca McCaffy	20 East St	
559	Rebecca Wetter	6 Lakemans Lane	
560	Reid Swetland	5 Fourth St	2
561	Renata Gilmore	126 County Rd B112	
562	Renee Kelly	16 Masconomet Rd	
563	Renee Mossler	16 Mohawk St, Danvers	2
564	Rhonda Maloney	35 Meadowview Ln	2
565	Richard Corder	110 Town Farm Rd	
566	Richard Erickson	218 Argilla Rd	
567	Richard Marquis	30 Allen Ln	
568	Richard Rokes	16 Greens Point Rd	
569	Rick McMorrow	5 Heartbreak Rd	3
570	Rita Greenberg	23 Howe St	
571	Rob Klapprodt	17 Charlotte Rd	4
572	Robert Barnes, Jr.	39 Fellows Rd	
573	Robert Chandler	14 Pleasant St	
574	Robert Craig Dumont, Jr.	3 Harborview Ln	
575	Robert Dick	28 Fellows Rd	
576	Robert Foote	7 River Ct	
577	Robert Greco	42 East St	2
578	Robert Hickey	7 First Street	
579	Robert Knauz	157 Topsfield Rd	
580	Robert O'Connell	22 Greens Point Rd	3
581	Robert Parro	11 Mile Ln	
582	Robert Roesler	20 Spillers Lane	
583	Robert Shannon	22 Spring St	
584	Robert Warren	6 Abbott Lane	
585	Robert Weatherall	33 Labor In Vain Rd	2
586	Robert Weatherall, Sr.	66 Labor in Vain Rd	
587	Robert White	91 Pineswamp Rd	3
588	Robert Wyman	16 Oakhurst Ave	
589	Roberta Driscoll	18 Plains Rd	2
590	Robin Corder	110 Town Farm Rd	2
591	Roger Flather	2 Herrick Dr	2
592	Roger Warner	171 Argilla Rd	
593	Ron Elkin	11 Dartmouth Rd	
594	Rosemary Gardner	9 Woods Lane	
595	Ross York	24 Woods Lane	
596	Ruth McCabe-Sherwood	225 Argilla Rd	
597	Sally Kuhn	155 Argilla Rd	
598	Sandra Hamilton	11 Marshview Rd	
599	Sandra Weatherall	33 Labor In Vain Rd	
600	Sanford Paek	177 Linebrook Rd	

Beneficiary Group

	Name	Address	# children in school system
601	Sara Corcoran	31 High St	
602	Sarah Player	45 Mile Lane	2
603	Sarka Plihaloua	24 Woods Lane	1
604	Scott Babb	10 Abbott Lane	
605	Scott Bauman	23 Turkey Shore Rd	
606	Scott Hambley	52 Warehouse Lane, Rowley	
607	Scott Hanna	3 Poplar St	
608	Scott Howe	21 Turkey Shore Rd	
609	Scott Russell	16 Bush Hill Rd	
610	Sean Dillon	16 Summer St	
611	Seana Hickey	7 First Street	1
612	Seraphima McLean	31 Woods Lane	
613	Seth Ward	8 Longmeadow Dr	
614	Sharon Barrett	28 County St #3	
615	Sharon Buleza	15 Blaisdell Terrace	
616	Sharon Josephson	10 Marshview Rd	
617	Shawn Cayer	3 Cayer Way	2
618	Sherry Hurley	13 Town Farm Rd	
619	Siobhan Cormier	23 Brownville Ave	
620	Sook-Bin Woo	171 Argilla Rd	
621	Stacey Bodwell	6 Fille St	
622	Stephanie Patrick	2 Old England Rd	
623	Stephen McCatty	20 East St	2
624	Stephen Orroth III	86 Topsfield Rd	
625	Stephen Surpitski	326 Linebrook Rd	2
626	Stephenie Sprouse	19 Waldingfield Rd	
627	Steve Miles	58 North Main St	
628	Steve Pelletier	11 Warren St	
629	Steven Harmon	39 Broadway Ave	
630	Susan Brengle	7 Cogswell St	3
631	Susan Dick	28 Fellows Rd	1
632	Susan Markos	1 Island Park Rd	2
633	Susan Trefry	97 Topsfield Rd	2
634	Suzanne Herron	135 Argilla Rd	2
635	Tad Keach	65 Washington St	
636	Tama Donovan	52 High Street	2
637	Tania Lawrence	1 Congress Street	2
638	Tanya Smith	39 Charlotte Rd	2
639	Ted Spinale	27 Pleasant St	
640	Terri Murphy	15 Meadowview Lane	1
641	Terri Unger	1 Blaisdell Terrace	2
642	Thomas Foote	28 County St #3	
643	Thomas Glaster	22 Longmeadow Dr	
644	Thomas Mayo	180 Argilla Rd	
645	Thomas Murphy	33 Hawk Hill Ln	
646	Thomas Sotiridy	3 Liberty Street	
647	Thomas Woolfolk	94 Town Farm Rd	
648	Tim Costikyan	3 Seaview Rd	2
649	Tim Donovan	39 Kimball Ave	2
650	Tim Hannibal	7 Sand Pebble Rd	

Beneficiary Group

	Name	Address	# children in school system
651	Timothy Goodrich	18 County St #5	
652	Tom Fyrer	28 Allen Lane	
653	Tom Hammond	45 Essex Rd	2
654	Tom Herron	135 Argilla Rd	
655	Tom Lorello	15 Poplar St	
656	Tom Reardon	166 Argilla Rd	
657	Tom Woodruff	12 Linden St	
658	Toni Mooradd	106 Central St	
659	Tracy Filosa	6 Sawyer St	3
660	Tracy Maidment	3 Candlewood Rd	1
661	Trina Schell	29 High Street	2
662	Vicki Parker	9 Drumlin Rd	2
663	Victor Fischbach	144 Argilla Rd	
664	Vincent Falcione	34 Topsfield Rd	2
665	Virginia Pepper	4 Rosewood Dr	
666	Virginia Shaughnessy	92 Old Right Rd	
667	Walter Johnson	37 East Street	2
668	Wanda Scott	1 Leslie Rd	2
669	Wayne Castonguay	47 Clark Rd	
670	Wendy White	91 Pineswamp Rd	
671	Will Maker	13 Arrowhead Trail	
672	Will Shields	1 Old England Rd	
673	William Bernard	86 County Rd	
674	William Bingham	34 Mulholland Dr	1
675	William Harrington	6 Drumlin Rd	
676	William Maguire	52 County Street	
677	William McDavitt	173 Argilla Rd	1
678	William Skelton	90 County Rd	2
679	William Spinetti	90 Old Right Rd	
680	William Williams	14 Newmarch St	2
681	Xenia Schneider	14 Mt. Pleasant St	
		Total Schoolchildren Represented	507

EXHIBIT C

RE: Feoffees

Subject: RE: Feoffees
From: "Jeffrey B. Loeb" <JLoeb@richmaylaw.com>
Date: Tue, 15 Nov 2011 13:42:46 -0500
To: "Douglas J. DeAngelis" <ddean@finishlynx.com>

Doug,

Thanks.

There wont be any settlements that involve sale in any respect.

Jeff

Jeffrey B. Loeb
Rich May, a Professional Corporation
176 Federal Street
Boston, MA 02110-2223
T - (617) 556-3871
F - (617) 391-5771
email: jloeb@richmaylaw.com
website: www.richmaylaw.com

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

From: Douglas J. DeAngelis [<mailto:ddean@finishlynx.com>]
Sent: Tuesday, November 15, 2011 1:41 PM
To: Jeffrey B. Loeb
Subject: Re: Feoffees

Jeff-

After further discussion, we have decided to err on the side of caution and not do anything that could have any negative impact on the Probate Court case. In so doing, we are also trusting your judgment that there is no settlement agreement that the current makeup up the school committee would accept if it came in advance of fixing the governance of the Feoffees. This includes a settlement agreement which is coincident with fixing the governance, since such an agreement would not allow any public discourse on the terms of the settlement agreement.

Thanks for your efforts.

-doug

Jeffrey B. Loeb wrote:
Doug,

If you are going to ask us to vote in citizen queries (which we generally don't do) could you get me the language today so I can run it by our atty in advance.

Thanks.

Jeff

Jeffrey B. Loeb
Rich May, a Professional Corporation
176 Federal Street
Boston, MA 02110-2223
T - (617) 556-3871

RE: Feoffees

F - (617) 391-5771

email: jloeb@richmaylaw.com <<mailto:jloeb@richmaylaw.com>>

website: www.richmaylaw.com <<http://www.richmaylaw.com/>>

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ddean@finishlynx.com
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179 Ward Hill Avenue
Haverhill, MA 01835
<http://www.finishlynx.com>

0148

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

_____)
ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.)

_____)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

SECOND SUPPLEMENT TO MOTION TO INTERVENE

Applicants for Intervention Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, individually and on behalf of their minor children, hereby further supplement their motion to intervene to include the following, additional applicants, individually and on behalf of their minor children: Peter Buletza; Kenneth Swenson; Robert Weatherall, Jr.; Joanne Delaney; Cara Doran; Andrew and Susan Brengle; Michele and Jason Wertz; Clark Ziegler; and Carl Nylen (the "Intervenors").

An Amended Answer and Counterclaim naming these additional Intervenors has been filed herewith in accordance with Rule 15(a).

Collectively, the Intervenors are comprised of fifteen (15) residents or parents with twenty-two (22) children who attend the Ipswich Public Schools and two (2) children who will

soon be eligible to attend the Ipswich Public Schools; they reside in Ipswich and Rowley, with the children of the Rowley residents attending the Ipswich Public Schools pursuant to the School Choice program; the Ipswich residents pay taxes in Ipswich; and they have been personally involved in the following groups, activities and programs associated with the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically:

- Chair and Member, Ipswich Finance Committee;
- Senior Member, Ipswich Planning Board;
- Member, ad hoc committee delegated by the Ipswich School Committee to review the finances of the Feoffees' settlement with the tenants;
- Member, Demographic Subcommittee of the Ipswich School Committee;
- Member, Subcommittee on Athletics of the Ipswich School Committee;
- Members, "FRIES" (Friends of Ipswich Elementary Schools);
- Member, FRIES Facilities and Playground Committee;
- Co-Chair, Winthrop School Council;
- Coordinator, Winthrop School Destination Imagination (DI) Program;
- "ICE" (Ipswich Citizens for Education);
- "ACE" (The American Council on Exercise);
- Member, Ipswich Recycling Committee;
- Chair, Ipswich Growth Management Steering Committee;
- Member, Ipswich Community Development Plan Implementation Task Force;
- Member, Ipswich Open Space Committee;
- Chair and Member, Athletic Fields Study Committee of the Ipswich Board of Selectmen;
- Coach, Ipswich High School and Middle School;
- Classroom volunteers;

- Treasurer, “Turn the Tide” (Proposition 2½ override initiate); and
- Project Coordinator, Proposed Irrigation Well at Mile Lane.

Because of their involvement in the Town of Ipswich and town governance generally and the Ipswich Public Schools specifically, inter alia, the interest of the Interveners is separate and distinct from that of the general public.

As set forth in the motion to intervene dated December 20, 2011, the supplement to the motion to intervene dated December 27, 2011 (attaching and incorporating the amicus brief dated January 27, 2011, which was also attached and incorporated by the Attorney General into her opposition to the motion to intervene), the Amended Answer and Counterclaim dated December 30, 2011, and the supporting affidavit of Douglas J. DeAngelis dated December 30, 2011, filed herewith,¹ the Interveners’ interest in this matter is not adequately represented by the School Defendants, because:

1. The existing parties have reached a proposed settlement agreement to sell Little Neck even though the terms of William Payne’s will and the Trust prohibit the sale of Little Neck. Massachusetts law does not permit the reformation of a will, and the Feoffees have not proven that reasonable deviation from the terms of the Trust is necessary.

2. Even if the doctrine of reasonable deviation were applicable to the these circumstances, which would require a finding that maintaining ownership of Little Neck was William Payne’s “subordinate” intent, that Little Neck cannot continue to be maintained for the benefit of the Ipswich Public Schools, and that the allegedly failed purpose of the Trust is the result of something other than the acts or omissions of the Feoffees, the Massachusetts

¹ The Interveners intend to submit additional affidavits and a supporting memorandum of law in advance of the hearing scheduled for February 3, 2012.

Legislature alone has the authority to alter the terms of the Trust, the administration of which is governed by statute.

3. The terms of the proposed sale and the increase in the year-round residences on Little Neck would actually cost the town more than the income to be generated from the proposed sale proceeds.

For these reasons and others, the town has consistently voted to fund the litigation opposing the sale of Little Neck, including as recently as Town Meeting in May 2011, when an additional \$300,000 was allocated to the legal fund. In agreeing to the proposed sale of Little Neck after two years of litigation, when the case was nearing the finish line, the School Defendants are not adequately representing the interest of the Interveners, necessitating their intervention by right pursuant to Rule 24(a).

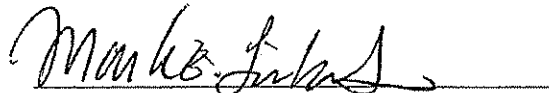
WHEREFORE, for all of the reasons stated in their motion to intervene and its supporting papers, including the affidavits and memorandum of law to be filed, the Interveners respectfully request that this Honorable Court:

- A. Grant their motion to intervene pursuant to Rule 24(a) after the scheduled hearing on February 3, 2012;
- B. Suspend the trial to allow the Interveners a reasonable opportunity as party defendants to prepare for trial; and
- C. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS,
JONATHAN PHYPERS, PETER BULETZA,
KENNETH SWENSON, ROBERT
WEATHERALL, JR., JOANNE DELANEY,
CARA DORAN, ANDREW BRENGLE,
SUSAN BRENGLE, MICHELE WERTZ,
JASON WERTZ, CLARK ZIEGLER, and
CARL NYLEN; individually and on behalf of
their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650
DAY PITNEY LLP
One International Place
Boston, MA 02110
Tel: (617) 345-4600
Fax: (617) 345-4745
meswirbalus@daypitney.com

Dated: December 30, 2011


CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 30th day of December, 2011, I served a copy of the foregoing by electronic and first-class mail upon counsel of record.


Mark E. Swirbalus

NOTICE OF HEARING

As previously noticed, a hearing on the motion to intervene is scheduled for 9:00 a.m. on Friday, February 3, 2012.


Mark E. Swirbalus

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.)

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Applicants for Intervention Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, Peter Buletza, Kenneth Swenson, Robert Weatherall, Jr., Joanne Delaney, Cara Doran, Andrew and Susan Brengle, Michele and Jason Wertz, Clark Ziegler, and Carl Nylen, individually and on behalf of their minor children (the "Interveners"), respectfully submit this memorandum in support of their motion to intervene.

Since filing the motion to intervene on December 20, 2011, the Interveners have made a number of supplemental filings supporting their motion.¹ Each of these supplemental filings and

¹ The prior supplemental filings are as follows: Supplement to Motion to Intervene; Answer and Counterclaim of the Applicants for Intervention; Second Supplement to Motion to Intervene; First Amended Answer and Counterclaim of the Applicants for Intervention ("Countercl."); Affidavit of Douglas J. DeAngelis in Support of Motion to Intervene ("Aff.

their attachments are incorporated into this memorandum, the purpose of which is to synthesize and summarize the grounds upon which the Interveners have moved to intervene as a matter of right pursuant to Rule 24(a) of the Massachusetts Rules of Civil Procedure.

INTRODUCTION

The Interveners are comprised of a representative group of parents of schoolchildren in the Ipswich Public Schools, together with the schoolchildren themselves, who are the true beneficiaries of what is alternatively called the Grammar School Trust, the William Payne Trust, or the Feoffee Trust (the "Trust"). Before addressing why intervention is appropriate, the Interveners first address why they are seeking to intervene.

Despite efforts to brand the Interveners as a band of zealots, they are not. They represent the majority view in the Town of Ipswich in opposition to the proposed sale of Little Neck. Their position is the same as that held by the School Committee – at least until very recently. Their position is also the same as that of the Selectmen Feoffees, who constitute a majority-vote within the Ipswich Board of Selectmen, in their independent opposition to the sale of Little Neck on summary judgment. (See McNally, Morley, and Surpitski's Opposition to Plaintiffs' Motion for Partial Summary Judgment, at 5 ("Based on information that is currently available to the Selectmen Feoffees, they have serious doubts as to whether the sale of the Trust asset is, in fact, the best way to provide a perpetual benefit to the Ipswich Public Schools."); *id.* at 8 ("The

DeAngelis"); Affidavit of Clark Ziegler in Support of Motion to Intervene (Aff. Ziegler"); Affidavit of Robert Weatherall, Jr. in Support of Motion to Intervene ("Aff. Weatherall"); Affidavit of Catherine T.J. Howe in Support of Motion to Intervene ("Aff. Howe"); Affidavit of Michele Wertz in Support of Motion to Intervene ("Aff. Wertz"); and Affidavit of Susan Brengle ("Aff. Brengle").

Two additional documents have been filed simultaneously with this memorandum: Supplemental Affidavit of Clark Ziegler ("Supp. Aff. Ziegler"); and Affidavit of Webster A. Collins, attaching the Real Estate Consulting Report of CB Richard Ellis/New England Partners ("CBRE Report").

Plaintiffs [Lifetime Feoffees] make a variety of arguments in support of their claim that the Trust asset is wasting, including pointing to legal fees and interest payments that have been incurred by the Feoffees and that have co-opted the payments to the School Department in recent years. These short-term problems in the generation of income from the Trust asset are minor when viewed in the context of the 350-year history of the Trust. . . . Viewed in this context, the Plaintiffs have not proven that the sale of Little Neck is necessary, or even preferable, to the continued rental of Little Neck for the purposes of providing a perpetual benefit to the Ipswich School Department.”.)

As the Selectmen Feoffees rightly suggested, the relevant question under prudent investment standards is whether the settlement and sale of Little Neck would provide a greater benefit to the schools in the short term and the long term. Setting aside the issue of whether the doctrine of reasonable deviation allows a trust to be reformed merely because a purportedly “better” or “more convenient” form of trust has been proposed (it does not), and setting aside the additional issue of whether the Court has authority to order deviation from the terms of this statutorily-governed trust (it does not), basic math dictates that the settlement and sale of Little Neck would not provide a greater benefit to the schools in the short term and the long term. In fact, the opposite is true.

For example, the four appraisals submitted by the Feoffees, the Tenants, the School Committee, and the Finance Committee offer widely divergent views on the “fair market value” of Little Neck if it were sold. They are remarkably consistent, however, on the value of the land if it were *not* sold, i.e., the value on which rental rates could fairly be calculated. The aggregate value of the lots from each of the four appraisals are all within 7% of the average, which is \$40,516,250. (See Summary Judgment Record Appendix, Ex. 54 at 59; Ex. 73 at 106, 110; Ex.

74 at 92; Ex. 75 at 23, 42.) This \$40,516,250 represents the value of the corpus of the Trust under a no-sale scenario. Because future income under either scenario (sale v. no-sale) is a function of the value of the corpus, and because the sale scenario is projected to establish an investment-fund corpus with a value of approximately \$22,000,000, the settlement and sale of Little Neck would effectively guarantee that the corpus of the Trust be diminished by more than \$18,000,000 from the \$40,516,250 average aggregate value of the lots. In other words, the settlement and sale would result in an instantaneous wasting of more than \$18,000,000.²

These four appraisals further indicate that the average implied gross return if Little Neck were leased would be 4.62%. (See Summary Judgment Record Appendix, Ex. 54 at 59; Ex. 73 at 106, 110; Ex. 74 at 92; Ex. 75 at 23, 42.) This gross return of 4.62% is significantly higher than if an investment fund were to yield a return of even 5%, which is itself optimistically unrealistic, because more than half of this return would have to be re-invested in the Trust to keep pace with inflation, whereas long-term leases could and would have an adjustment built in for inflation. The School Committee expanded on this point in its summary judgment brief:

If one assumes a total return at this time of 3.5%, based on the rates of return for cash and notes assumed by Clasby, and if one assumes inflation of 3 percent per year, the distribution that could possibly be made to the School Committee if the fund is to be perpetual would be approximately 0.5 percent or around \$110,000 per year, less expenses. This analysis is consistent with what is happening in the bond markets. United States Treasury Inflation Protected Securities (TIPS) provide for a fixed rate of return, with principal increased at the end of the bond period based on changes in the Consumer Price Index. At present, the yield on five-year TIPS is only 0.2 percent. The yield on 30 year TIPS is in the range of 2.0%. (Foster Aff. ¶ 32.) Assuming a conservative investment philosophy, it is not realistic to expect rates of return, after inflation, of 3.5

² This wasting of more than \$18,000,000 far exceeds the \$800,000 that would be infused into the school system as a result of the settlement and sale. On this point it is worth noting that although the \$800,000 would surely be a welcome addition to the school budget, the Ipswich Public Schools cannot be characterized as any worse off financially than the school systems in other towns in Massachusetts. (See, generally Supp. Aff. Ziegler.)

percent, let alone the 5 or 6 percent that the Feoffees conjure up in their memorandum. School Committee Ex. 77 demonstrates that in just the five years covered by Clasby's pro formas, the Trust fund would lose over 10 percent of its value due to inflation if the Feoffees' approach of distributing all Trust income, without adding funds back to the corpus, were followed.

(Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, ¶ 42.)

Moreover, a settlement and sale of Little Neck would result in the conversion of 143 seasonal cottages to year-round residences and an increased burden on the town (e.g., increased infrastructure costs, increased student population). (See Aff. Weatherall, Ex. A.) This increased burden, together with the decrease in tax revenue from Little Neck as a result of the conversion, could actually harm the town. (*Id.* at ¶ 5; Aff. Ziegler, ¶¶ 12-14.) Inexplicably, this cause-and-effect has never been fully analyzed, despite the concerns expressed by the Planning Board. (See Aff. Weatherall, ¶ 6 & Ex. A.)

The fact that the settlement and sale of Little Neck would have a comparatively negative impact of the school system is confirmed by the CBRE Report, authored by Webster A. Collins, who recommends that Little Neck continue to be held in the Trust under a 60-year ground lease structure, with a CPI adjustment to the rent every five years (not to exceed 3% per year), and with management responsibilities delegated to a professional property manager. (See, generally CBRE Report.) Significantly, the CBRE Report notes that a similar structure has proven to be successful in similar circumstances, with similar land, including the trust that continues to hold and maintain Naushon Island (located between Buzzards Bay and Vineyard Sound). (*Id.* at 5-6.) In other words, the continued maintenance and rental of Little Neck would be neither difficult nor revolutionary.

For these reasons and others, the residents of Ipswich voted at Town Meeting to fund the School Committee's opposition to the proposed sale of Little Neck. (See Aff. DeAngelis, ¶ 16.)

While this Court is certainly not bound by the votes of the majority of Ipswich residents, the logic behind these votes and the objective mathematical analyses should not be ignored.

SUMMARY OF ARGUMENT

Under Rule 24(a), “[u]pon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” Mass. R. Civ. P. 24(a) (emphasis added).

The motion to intervene meets these criteria – timeliness, interest, inadequacy of representation, and impairment:

- First, there can be no serious dispute as to the timeliness of the Interveners’ application. They moved to intervene immediately upon the School Committee’s abandonment of its opposition to the sale of Little Neck.
- Second, as actual beneficiaries and the parents of actual beneficiaries of the Trust, the Interveners have an interest in enforcing the express terms of the Trust that is different in both kind and degree from the interests of the named parties. The Interveners’ interest is in maximizing the short-term and long-term benefit intended for the Ipswich schoolchildren under the Trust, and they are willing to fight for it.
- Third, the Interveners’ interest is not being adequately represented, as evidenced by the proposed settlement itself.
- Fourth, the Interveners’ ability to protect their interest would be impaired if intervention were denied, because there would be no party to advocate their position.

Moreover, if intervention were denied, the Court would not be able to fulfill its duty of ensuring the proper administration of the Trust, regardless of whatever the named parties might have agreed to as a matter of expedience. This Court has an independent obligation of review which it cannot meet without a full evidentiary hearing and comprehensive findings of fact, and it cannot conduct an evidentiary hearing or make findings of facts without the participation of a party to advocate that reasonable deviation from the terms of the Trust is the wrong outcome.

ARGUMENT

Contrary to the Attorney General's argument that the Interveners have no standing to intervene, there is no separate test for standing that the Interveners must meet. Tellingly, none of the cases cited by the Attorney General for her exclusive-standing argument involved an application for intervention.³ This is because the test for standing is subsumed within the test for intervention. It would be wholly contradictory for a court to find (a) that an applicant possesses an interest that legally entitles him to intervene in an action to protect that interest, and also (b) that the applicant has no standing to protect that interest. Cf. Commonwealth v. One Hundred Twenty-Five Thousand One Hundred Ninety-One Dollars, 76 Mass. App. Ct. 279, 281 (2010) (standing and intervention requirements analogous). It follows, therefore, that if the Interveners satisfy the elements of Rule 24(a), then they "shall" be permitted to intervene as a matter of right.

I. THE INTERVENERS SATISFY EACH ELEMENT OF RULE 24(a)

A. First Element: The Motion to Intervene Is Timely

The motion to intervene was filed on December 20, 2011, the same day that the settlement agreement to sell Little Neck was announced and just three days following the School Committee's executive session vote to accept the settlement on December 17, 2011. (Aff. DeAngelis, ¶¶ 24-26; Aff. Ziegler, ¶ 4; see Supp. Aff. Ziegler, Ex. A (executive session meeting minutes).) Although an Agreement for Judgment was subsequently approved by the Court on

³ The Attorney General should not be heard to argue that her exclusive standing should be enforced where she herself has allowed the School Committee to take the lead in representing the beneficiaries of the Trust. As illustrated by the Agreement for Judgment, on which the Attorney General is not a signatory, her role in this action has been limited. Accordingly, any exclusive standing held by the Attorney General has already been waived.

December 23, 2011, without notice to the Interveners, the Agreement for Judgment was not entered on the docket until January 12, 2012.

The School Committee's agreement to the sale of Little Neck is directly at odds with the School Committee's public position taken in open session meetings, at Town Meetings, and in the press. (Aff. Brengle, ¶¶ 9-10 & Exs. A, B.) Indeed, at the request of the School Committee, the Town of Ipswich spent hundreds of thousands of dollars in legal fees fighting a sale of Little Neck. (See Aff. DeAngelis, ¶ 16.) As recently as November 15, 2011, the Chairman of the School Committee reiterated its position: "There wont [sic] be any settlements that involve sale in any respect." (Id. at ¶ 22 & Ex. F.)

The motion to intervene was filed immediately – literally within minutes – after the School Committee gave the first public notice of its abandonment of this position. (See id. at ¶ 26.) The Interveners could not have moved to intervene any sooner. Up until it abandoned this position, the School Committee was adequately representing the interest of the Interveners, or so the Interveners reasonably believed in reliance upon the School Committee's public affirmations to that effect (See Aff. Howe, ¶ 8; Aff. Brengle, ¶¶ 6-7; Aff. DeAngelis, ¶¶ 4, 26).⁴

B. Second Element: The Interveners Have a Clear Interest In this Action

The Interveners have a clear interest in this action as the actual beneficiaries of the Trust. They include representative parents of schoolchildren who attend, are eligible to attend, or will be eligible to attend the Ipswich Public Schools, as well as the schoolchildren themselves. (See

⁴ The filing of the motion to intervene should not have surprised the named parties. On page 19 of the Amicus Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment ("Amicus Brief"), incorporated herein, the Beneficiary Group previewed that intervention would be sought, and expressly reserved the right to intervene, "if the School Defendants were to succumb to the Feoffees' pressure to sell Little Neck, because the School Defendants would no longer be adequately representing the beneficiaries' interests."

Counterclaim, ¶¶ 1-12; Aff. Ziegler, ¶ 2; Aff. Weatherall, ¶ 2; Aff. Wertz, ¶ 2; Aff. Howe, ¶ 2; Aff. Brengle, ¶ 3; Aff. DeAngelis, ¶ 4.) As such, any decision regarding Little Neck directly affects the Interveners.

Their interest, consonant with the express language of William Payne's will and the Trust, is in opposing the proposed sale of Little Neck so that it can be maintained "forever" for the benefit of the schoolchildren of Ipswich. This interest in the continued maintenance of Little Neck in the Trust (but not by the current Feoffees) is based on the Interveners' belief, as current and former members of various town governmental bodies and school committees and organizations, that a sale of Little Neck would not benefit the schoolchildren of Ipswich in the short term or the long term. (See Aff. Ziegler, ¶¶ 12-17; Aff. Weatherall, ¶¶ 5-6 & Ex. A; Aff. Wertz, ¶ 4; Aff. DeAngelis, ¶ 7 & Ex. B; see also, generally CBRE Report.)

C. Third Element: The Interveners' Interest Is Not Adequately Represented by the Named Parties

The Interveners' burden of showing inadequate representation of their interest is "minimal." See Frostrar Corp. v. Malloy, 77 Mass. App. Ct. 705, 712 (2010); B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 546 (1st Cir. 2006).⁵ Whether this minimal showing has been made is case-specific, see Maine v. United States Fish & Wildlife Serv., 262 F.3d 13, 19 (1st Cir. 2001) ("Maine"), but the Interveners need only offer "an adequate explanation as to why" their interest is not sufficiently represented by the named parties, and one way for the Interveners to show inadequate representation is to demonstrate that their interest is

⁵ The language of Federal Rule 24(a) is identical to Massachusetts Rule 24(a), and so judicial construction of the Federal rule applies to the Massachusetts rule. Bolden v. O'Connor Café of Worcester, Inc., 50 Mass. App. Ct. 56, 62 n.11 (2000); Attorney General v. Brockton Agricultural Society, 390 Mass. 431, 434 n.3 (1983).

sufficiently different in kind or degree (i.e., intensity) from that of the named parties. See Kellogg USA, 440 F.3d at 546.

As explained below, the Interveners' interest is different in both kind and degree from that of the School Committee and the Attorney General.

1. Ipswich residents with school-aged children are a distinct minority whose interest differs from that of the School Committee

The parent Interveners who reside in Ipswich are a minority within the voting-age population of Ipswich. (See Aff. Brengle, ¶ 12 (census data indicates that only 17% of the voting-age population in Ipswich are parents or guardians of school-age children).) These parents, who do not have the majority-vote needed to elect members of the School Committee, are distinctly positioned and committed as the guardians of their children to enforcing the mandate of the Trust – that Little Neck never be sold – for the benefit of their children.

2. The interest of Rowley parents with Ipswich schoolchildren is not represented by the School Committee

Two of the Interveners, Jacqueline and Jason Phypers, are representative of non-Ipswich residents whose children attend the Ipswich Public Schools through the School Choice program. (Counterclaim, ¶ 3.) Not being residents of Ipswich, they have no voting rights in Ipswich, and thus they did not elect the School Committee and are not represented by it.

3. The recent actions by the Defendants demonstrate the divergent interests of the Interveners and the named parties

Even if the School Committee were able to represent the interest of the Interveners, despite the fact that the parent Interveners – as a voting minority in Ipswich or as non-Ipswich residents – did not elect the School Committee, the named parties' agreement to the settlement and sale of Little Neck proves a divergence of interests.

First, the Interveners are entitled to intervene because the Defendants have failed to represent the Interveners' interest vigorously. See Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203, 207 (1991) ("Chelsea"). In Chelsea, the Court found that "[t]he record reflects that the defendants have both the incentive and the intent to litigate this matter fully." Id. at 209. In that case, the would-be parent interveners "presented no actual disagreement with either the goals or the actions of the school committee." Id. at 207. The facts in this case, as discussed above and in the Interveners' related filings, could not be further from those in Chelsea. Here an actual disagreement exists between the beneficiaries and the Defendants, who have abandoned their resolve to litigate this dispute and their loyalty to the terms of the 350-year old Trust, while the beneficiaries remain steadfastly true to the Trust's language and intent.

The School Committee's willingness to drop its opposition to the sale of Little Neck is itself evidence that the Interveners' interest is sufficiently different in "degree" from that of the named parties. See Kellogg USA, Inc., 440 F.3d at 546 (citing United Nuclear Corp. v. Cannon, 696 F.2d 141, 144 (1st Cir. 2004); Glancy v. Taubman Ctrs., Inc., 373 F.3d 656, 675 (6th Cir. 2004) ("Asymmetry in the intensity . . . of interest can prevent a named party from representing the interests of the absentee.")). Unlike the Defendants, the Interveners are committed in their opposition to the sale of Little Neck, as this motion to intervene shows.

Second, the Defendants' agreement to the settlement and sale of Little Neck is evidence of "collusion," which is one of the factors that may be considered in the inadequacy-of-representation analysis. Chelsea, 409 Mass. at 207 (applicant for intervention demonstrates inadequate representation where school board has colluded with the opposing party or has failed to fulfill its duty of representation); Kellogg USA, 440 F.3d at 546 (collusion cited as illustrative

of inadequate representation). Through the settlement, the Defendants have effectively colluded with the Feoffees and the Tenants to sell Little Neck and thus deprive the Interveners of the full and intended benefit of the Trust. In particular, the School Committee's agreement to the settlement and sale in executive session, behind closed doors, despite its requested receipt of hundreds of thousands of dollars in funding for the specific purpose of opposing the proposed sale, despite its public position for years in opposition to the proposed sale, and despite its chairman's written affirmation of this position as recently as November 2011, smacks of collusion.

4. The governmental entities do not adequately represent the Interveners' interest

While it is true that the Interveners must make a somewhat greater showing of inadequacy of representation because governmental entities are involved, this presumption is easily rebutted where the Interveners' interest diverges from that of the School Committee and Attorney General. See Maine, 262 F.3d at 17-21 (all that is required to rebut presumption that governmental entity's representation is adequate is an explanation as to why it is not). In some situations, the government's representation of the general public interest puts the government in sufficiently sharp conflict with *private* interests such that those private interests may intervene because, in fact, they are not adequately represented by the government. Moore's Federal Practice, par. 24.03[4][a] (3rd ed. 2011). Here, the interest of the beneficiaries in enforcing the Trust on the one hand, and the interest of the School Committee and Attorney General in resolving this case by allowing for the sale of Little Neck on the other hand, are in direct conflict.

D. Fourth Element: The Interveners' Ability to Protect Their Interest Will Be Impaired if They Are Not Permitted to Intervene

The impairment of the Interveners' ability to protect their interest is obvious, because there would be no party to advocate for that interest.

For example, there would be no party to advocate that reasonable deviation from the terms of the Trust is not permissible under the circumstances, because the Feoffees have failed to offer evidence of their reasonable efforts to find a way to maintain Little Neck for the benefit of the Ipswich Public Schools. See Museum of Fine Arts v. Beland, 432 Mass. 540, 544-45 (2000) (reasonable deviation denied where the record showed that the trustees had not made reasonable efforts to explore locations for exhibiting rather than selling the paintings at issue). Indeed, a sale of Little Neck seems wholly unnecessary, and the negotiation of long-term leases on Little Neck seems easily attainable, in light of the Tenants' judicial admissions in their Superior Court Complaint (paragraphs 56-57) that they are amenable to long-term, market-rate leases and are willing to pay their fair share of the wastewater system costs:

56. Plaintiffs have always been and remain willing to pay a fair rent for their use and occupancy of the lots on Little Neck, upon which their homes have been built.

57. Plaintiffs have also been and remain willing to pay a fair and equitable share of the reasonable and legitimate costs of the wastewater system. However, upon information and belief, the wastewater system project has been seriously mismanaged by Defendants Foley, Foote, Mulholland and Whiston and, as delivered, is plagued by deficiencies.

(Class Action Complaint and Jury Demand, Lonergan v. Foley, Essex Superior Court, Docket No. ESCV2006-02328, ¶¶ 56 & 57.)

The CBRE Report recommends how the ground leases on Little Neck could and should be structured, consistent with similar land similarly held in trust. (See, generally CBRE Report.) As Mr. Collins suggests in the CBRE Report, no tenant would have signed the kind of lease that

had been tendered by the Feoffees to the Little Neck Tenants, which unreasonably allowed for the Feoffees to determine the annual rent in their sole discretion. (Id. at 3.) The Feoffees effectively forced the Tenants to file suit. By contrast, the ground lease structure proposed in the CBRE Report places a CPI cap on rent increases not to exceed 3% per year, with the adjustment to be made every five years. (Id. at 3, 8.)

Moreover, there would be no party to advocate the Intervener's position that legislative action is required to change the terms of the Trust, because the administration of the Trust and the Feoffees' authority under the Trust are entirely governed by statute. (See Amicus Brief, pp. 6-9.) Short of a finding of unconstitutionality, this Court lacks subject matter jurisdiction to alter the statute governing the Trust.⁶ (Id.)

The notion that the Massachusetts Legislature is no longer "in the business" of enacting Special Acts regarding the administration of ancient trusts is simply not true. For example, with Chapter 129 of the Acts of 2010, entitled "An Act Relative to the Punchard Free School in the Town of Andover," as approved on June 28, 2010, the Legislature amended Chapter 7 of the Acts of 1851 and Chapter 47 of the Acts of 1877 by codifying the requirements and terms of the trustees of the trust for the benefit of the Punchard School. A copy of this Act is attached hereto as Exhibit A. See also Chapter 221, Acts of 2007 (amending Chapter 254 of the Acts of 1908 to codify who can vote for and serve as trustees of a trust for the benefit of the Jacob Sears Memorial Library in East Dennis, Massachusetts); Chapter 107, Acts of 1999 (amending Chapter

⁶ As the CBRE Report notes, this Court could have a role in setting the market rent for the ground leases (see CBRE Report at 7-8), which could be done on a complaint for instructions or declaratory judgment filed by the Feoffees. Entering an order of instructions or declaratory judgment as to the market rent would be within this Court's subject matter jurisdiction under G.L. c. 215, § 6, because it would be equitable relief regarding the *administration* of the Trust pursuant to the statute, rather than an amendment to the statute itself.

15 of the Acts of 1793, as amended by Chapter 107 of the Acts of 1977, to codify the procedure for removing a trustee of a trust for the benefit of Williams College).

Further bolstering this point, the District Attorney for the Essex District concluded as follows on December 11, 2006:

... 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.

(Opinion of District Attorney, Essex District, December 11, 2006, at 11) (emphasis added) (attached hereto at Exhibit B).

In short, if the motion to intervene is denied, then Little Neck will be sold for condominiums in direct violation of the terms of William Payne's will and the Trust. The impairment of the Interveners' ability to protect their interest is not speculative — it is occurring.

II. DENIAL OF INTERVENTION WOULD UNDERMINE THE COURT'S DUTY TO ENSURE PROPER ADMINISTRATION OF THE TRUST

Despite this Court's apparent lack of authority to amend the legislation governing the Trust, this Court *does* have authority, and a duty, to ensure the proper administration of the Trust according to the statute. Specifically, this Court has a duty separate and apart from the Attorney General in ensuring the proper administration of public trusts. See Matter of the Trust Under the Will of Crabtree, 440 Mass. 177, 192-93 (2003); Matter of the Trust Under the Will of Fuller, 418 Mass. 466, 483-84 (1994) ("Fuller") (judge not bound by settlement between acting trustees and Attorney General); In re Wilson, 372 Mass. 325, 330 (1977) (Attorney General's role in connection with public trusts does not "provide[] a basis for displacing the court's traditional discretion" with respect to public trusts).

The terms of the Trust do not permit the sale of the land. That the Attorney General and School Committee have agreed to such a sale does not relieve this Court of its duty to enforce the Trust. This Court has an “independent obligation” of review, see Fuller, 418 Mass. at 472, which would not be served by accepting a deal – without the benefit of hearing all of the evidence and the chance to make comprehensive findings of fact – struck by parties who would disregard the clear language of the Trust and William Payne’s explicit intent. It is difficult to imagine how this Court could fulfill its independent obligation of review and reach a fully-informed decision without a completed trial and the participation of a party who is actually advocating for adherence to the Trust’s terms. On this additional basis, intervention is warranted and necessary.

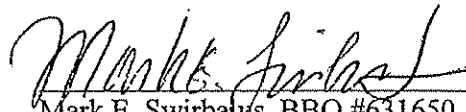
CONCLUSION

For the above reasons and for all of the reasons stated in the motion to intervene, and the supplements thereto, and the affidavits filed in support of the motion, the Interveners respectfully request that this Honorable Court grant the motion to intervene pursuant to Rule 24(a), and grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS,
JONATHAN PHYPERS, PETER BULETZA,
KENNETH SWENSON, ROBERT
WEATHERALL, JR., JOANNE DELANEY,
CARA DORAN, ANDREW BRENGLE,
SUSAN BRENGLE, MICHELE WERTZ,
JASON WERTZ, CLARK ZIEGLER, and
CARL NYLEN; individually and on behalf of
their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

DAY PITNEY LLP

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meswirbalus@daypitney.com

Dated: January 26, 2012

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that I served a copy of the foregoing upon counsel of record by electronic on January 26, 2012, and by first-class mail on January 27, 2012.


Mark E. Swirbalus

NOTICE OF HEARING

A hearing on this motion is scheduled for 8:30 a.m. on Friday, January 30, 2012.

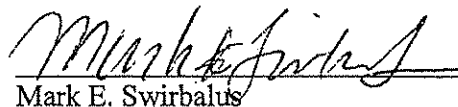
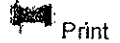

Mark E. Swirbalus

EXHIBIT A



Acts

2010

CHAPTER 129 AN ACT RELATIVE TO THE PUNCHARD FREE SCHOOL IN THE TOWN OF ANDOVER.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Chapter 7 of the acts of 1851 is hereby amended by striking out section 3, as amended by section 1 of chapter 47 of the acts of 1877, and inserting in place thereof the following section:-

Section 3. The board of trustees of the Punchard Free School shall consist of 5 trustees, who shall be residents of the town of Andover elected by the registered voters of the town for a term of 3 years. At each annual town election, the voters shall elect a trustee to take the place of a trustee whose term is about to expire.

SECTION 2. Notwithstanding chapter 7 of the acts of 1851, the trustees who are in office on the effective date of this act shall serve until the expiration of their terms. At the first election of the successors to the trustees who are in office on the effective date of this act, the town shall elect 5 trustees, 2 of whom shall serve for terms of 3 years, 2 of whom shall serve for terms of 2 years and 1 of whom shall serve for a term of 1 year.

SECTION 3. This act shall take effect upon the approval by the Essex division of the probate and family court department of the trial court of changes to the will of the late Benjamin Hanover Punchard that are consistent with the provisions of this act.

Approved, June 28, 2010.

0172

SENATE, NO. 2321

[Senate, March 11, 2010 - New draft of Senate, No. 2152 reported from the committee on Education.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT RELATIVE TO THE PUNCHARD FREE SCHOOL IN THE TOWN OF ANDOVER.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

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2 as amended by section 1 of chapter 47 of the acts of 1877, and inserting in place thereof the
3 following section:-

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5 who shall be residents of the town of Andover elected by the registered voters of the town for a
6 term of 3 years. At each annual town election, the voters shall elect a trustee to take the place of
7 a trustee whose term is about to expire.

8 **SECTION 2.** Notwithstanding chapter 7 of the acts of 1851, the trustees who are in
9 office on the effective date of this act shall serve until the expiration of their terms. At the first
10 election of the successors to the trustees who are in office on the effective date of this act, the
11 town shall elect 5 trustees, 2 of whom shall serve for terms of 3 years, 2 of whom shall serve for
12 terms of 2 years and 1 of whom shall serve for a term of 1 year.

13 **SECTION 3.** This act shall take effect upon the approval by the Essex division of the
14 probate and family court department of the trial court of changes to the will of the late Benjamin
15 Hanover Punchard that are consistent with the provisions of this act.

EXHIBIT B



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT
SALEM NEWBURYPORT LAWRENCE

JONATHAN W. BLODGETT
District Attorney

Ten Federal Street
Salem, Massachusetts 01970

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617-624-2300
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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 ~~the same~~ 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 then 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 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 *Allydorn 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. c. 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)."¹⁵ *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 *Allydorn* 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); *Connolly 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 1630 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, as 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~~ their donations to the Town, therefore, he, and, presumably his wife, knew that the ~~Town~~ 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 become "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 1663 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 suits 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 1760 the Provincial Government had the power to extinguish or reform what we would today 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 *Wheeler v. Wheeler*, 92 Mass. 169, (1865), a case reported in the public library, the Supreme Judicial Court discussed the powers of the Provincial General Court.

*Under the 1691 Charter the king disallowed all acts continuing in force colonial laws or establishing new ones; the general court seem to have acted in the matter of charities by resolution of incorporation. Drury, 92 Mass. at 180-181.*²⁰

Lacking a Probate Court, the Town and Province had no available mechanism to address the disputes that had arisen, the Town and Province 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 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 ~~a~~ perpetual and thence 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 *Allydorn* 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 *Allydorn*, no single Feoffee 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 addressed. The suggestion has been made that the advent of the modern school committee, by depriving 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 notices.

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 ~~lands~~ ^{and} adjoining land before mentioned; and *inasmuch* as the said town of Ipswich, ~~by its vote~~ of the twenty-second day of January, one thousand seven hundred and fifty ~~and~~ with the consent of the aforementioned feoffees, have agreed to apply to this court ~~in the~~ 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 afores(ai)d, 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 paym(en)t 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 defr(a)ying 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 appointm(en)t, 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 afores(ai)d committee or feoffees in trust may, in all matters relative to s(ai)d 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 [redacted]
respect to the transactions of those that may have preceeded (sic) them in [redacted]
(Section 5) This act to continue and be in force for the space of ten years, and [redacted]

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 sue 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 these 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, initialed "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 aforementioned, 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 aforementioned 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 of grammar-school master from year to year and time to time, and agree with ~~him~~ for his and their salaries; to apply the said rents, grants and annuities for the ~~payment~~ his and their salaries and for the discharge of other necessary expenses attending ~~the~~ 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 preceded (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.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

AFFIDAVIT OF DOUGLAS J. DeANGELIS
IN SUPPORT OF MOTION TO INTERVENE

I, Douglas J. DeAngelis, state the following upon my own personal knowledge or information and belief:

1. I reside at 28 Turkey Shore Road, Ipswich, Massachusetts. I have been an Ipswich resident for a little more than 10 years.

2. I am an active member of the community, having served all that time on the Open Space Committee as an associate and now voting member, as well as being a past member of the Community Development Plan Implementation Task Force. I am also a past President and current Vice President of Essex County Greenbelt Association, the local regional land trust.

3. I own my own business and am a computer engineer by training, but also have extensive real estate investments in the United States, Canada and New Zealand.

4. I have one son who is eligible to enter the Winthrop School next year. I do have concerns over class-size in what will be a critical year for his learning to read.

5. As described below, I and others have moved to intervene in this action because of our alarm over the very recent decision by the School Committee to abandon its position with respect to the Feoffees. We had been relying on the School Committee to vigorously litigate the issue of whether deviation from the Trust is permissible and whether the Feoffees should be removed for their mismanagement of the Trust and replaced by town-appointed trustees with public accountability.

6. Like many Ipswich citizens and parents, I followed the Little Neck issue over the years. I became concerned in December 2009 and wrote a letter to Attorney General Martha Coakley dated December 9, 2009. A copy of that letter is attached as Exhibit A.

7. The position I stated in my letter to Attorney General Coakley has not changed significantly, except that as time has passed I have analyzed more closely the financial implications of a sale of Little Neck and have come to the conclusion that one of the most valuable aspects of fee ownership is the ability to control the seasonal use of the structures in a way that is advantageous to the beneficiaries of the Trust. My analysis is attached as Exhibit B.

8. After writing my letter to Attorney General Coakley, I was given a copy of a legal paper prepared by Kathleen Brill, a copy of which is attached as Exhibit C. Appalled by the arguments advanced in that paper, I became more actively involved in an effort to address the mismanagement of the Trust.

9. In December 2010, I learned that the Feoffees had filed for partial summary judgment and that there had been an executive session of the School Committee to discuss the litigation. In that session, three of the seven members voted in favor of accepting the settlement the Feoffees had previously negotiated with the tenants. Up until then, the School Committee had consistently taken the public position of strong opposition to any sale of Little Neck.

10. I immediately began working to persuade the School Committee of what I knew to be true – that this was not acceptable to the vast majority of the parents and beneficiaries.

11. Over the holidays and into January 2011, I worked with my attorney on an amicus brief in opposition to the Feoffees' motion for partial summary judgment. In cooperation with three other parents in town – Jen Bauman, Rachel Roesler and Joanne Wilson – we collected commitments from nearly 700 supporters (the "Beneficiary Group") in the span of just 10 days. For context, this is about three times as many people as typically attend a town meeting in Ipswich. Copies of the amicus brief and the Beneficiary Group list are attached to the supplement to motion to intervene dated December 27, 2011.

12. The Planning Board also voiced its concerns about a sale of Little Neck without the Planning Board's involvement and an analysis of the effect of lifting the restriction on seasonal use. Attached as Exhibit D is a copy of the Planning Board's letter to the Court dated January 23, 2011.

13. In March 2011, after the Feoffees' motion for partial summary judgment was denied, they held their annual meeting. During this meeting, the lifetime Feoffees, consistent with their usual practice, appointed themselves to all the committees, outvoting the Selectmen Feoffees by a count of 4-3.

14. After this meeting, I approached the Feoffees' attorney, William Sheehan, and asked him if the School Committee had seen or voted to authorize the Feoffees' settlement with the Little Neck tenants before the agreement was signed. He said no, and then added that the Feoffees "assumed the School Committee would be okay with it since they had earlier voted to approve a \$26.5M deal."

15. In truth, that earlier vote had been rescinded, and the tenant settlement includes offsets that place the value far below \$26.5M. It also anticipates litigation that could reasonably be expected to cost the beneficiaries well over \$1M in legal fees if the litigation were actively opposed. In fact, on many occasions thereafter, Attorney Sheehan used the threat of those legal fees to argue at Town Meeting against allocating money to the School Committee's fight.

16. In May 2011, Town Meeting sent another strong message to the School Committee that it wanted them to continue the fight in Probate Court by allocating another \$300,000 to their legal fund in very tight fiscal times. In addition, Town Meeting sent a home rule petition to the Massachusetts Legislature, asking it to reorganize the Feoffees, which was another strong message to the School Committee that the town wanted the governance fixed in advance of making any final decision on the fate of Little Neck.

17. A week after Town Meeting, the town voted overwhelmingly (90%) in support of the ballot referendum encouraging our representatives in the Legislature to pursue the home rule petition to reorganize the Feoffees. In addition, three new members of the School Committee were elected.

18. Significantly, in the time between the filing of the amicus brief and today, the town has had the opportunity to elect only three of the seven current members of the School Committee. Those three new members represent the three votes against the proposed settlement

with the Feoffees that was announced in Court on December 20, 2011. I believe that had we been allowed to select seven new members, there would have been seven votes against.

19. In September 2011, we organized a letter-writing campaign to the members of the Joint Committee on Municipalities and Regional Government, which would soon be holding a public hearing on our home rule petition. The campaign was very successful, and we also organized a bus trip to the meeting from Ipswich.

20. Early in November 2011, we learned that the tenants were trying to "buy" a fourth vote on the School Committee by offering a slightly higher price, as evidenced by the minutes from the October 31, 2011 meeting of the lifetime Feoffees attached hereto as Exhibit E. These minutes make clear that the Feoffees were running out of money for their own legal fees, which meant that the town's strategy of continuing to fund the litigation was working. Additionally, the minutes show that the Feoffees' main concern was obtaining releases for themselves, rather than what is best for the Ipswich Public Schools.

21. We also learned that the School Committee took an executive session vote at their meeting on November 3, 2011, concerning whether to consider any improved offer by the tenants, and that there were five votes against considering such an offer. I immediately contacted Jeffrey Loeb, the chairman of the School Committee, and asked why this vote constituted "litigation strategy" such that it was taken in executive session, because the vote was merely reaffirming the School Committee's understanding of the instructions of Town Meeting. I suggested that the vote be taken again in open session. He replied that he did not want to do anything that could affect the School Committee's ability to vigorously pursue litigation.

22. Because our goal has never been to get in the way of the School Committee's vigorous pursuit of the litigation, we were willing to withdraw our request that the vote be taken

in open session. I sent an e-mail to this effect to Mr. Loeb, and he wrote back: "There wont [sic] be any settlements that involve sale in any respect." A copy of this e-mail exchange is attached as Exhibit F.

23. We relied on Mr. Loeb's statement, because he held the fourth vote on the School Committee and thus had the power to make his statement true.

24. On the night of December 16, 2011, after only about seven hours of testimony in Court, and before any evidence had been introduced relating to whether there were grounds for reasonable deviation, I learned of an "emergency" meeting of the School Committee to be held at 9:00 a.m. the following day. I knew enough about the process at this point to know what this meant. I attended with Clark Ziegler and Catherine Savoie, two other residents, and read a statement outlining our position, finishing as follows:

In summary, let me say that I do not, in any way, question your dedication to the Ipswich Public Schools, nor do I question your desire to do the right thing. I do not, in any way, want to minimize the budgeting pressures that you are continually facing. But these are characteristics and challenges of most school committees in the Commonwealth. You are not unique in this way. The way that you are unique is that you have the power to decide the fate of a 350 year old endowment worth tens of millions of dollars. And with that right comes the responsibility to have as much of this conversation as possible IN PUBLIC and take the longest possible view you can.

25. The School Committee then proceeded to vote, in private, to sell Little Neck without giving any possibility for the town at large to voice its approval or lack thereof.

26. I and the members of the Beneficiary Group relied on the School Committee to vigorously litigate whether deviation from the Trust is lawful in these circumstances and whether the Feoffees, given their many years of mismanagement of the Trust, as outlined by the School Committee in its Counterclaim, should be replaced by trustees appointed by the town boards and Town Meeting. Relying on the School Committee, we refrained from intervening. It was not

until the School Committee's executive session vote on December 17, 2011, and the announcement of the proposed settlement with the Feoffees on December 20, 2011, that we realized we could no longer rely on the School Committee to vigorously litigate these issues and were forced to immediately intervene to protect the interests of our children, the true beneficiaries of the Trust.

27. The sale and subsequent conversion of Little Neck to a year-round community is a step that cannot be undone, and should never have been possible without a community-wide discussion. In rushing to this decision, the School Committee has not only misrepresented the beneficiaries, they have followed the same path of secrecy that the Feoffees followed for decades before them. The Town of Ipswich is better than this. Even if four of the seven members of the School Committee believe that settlement of this case is the proper course of action – and I still have no idea what such a decision could be based upon, given the financial analysis – there is no reason why the School Committee could not have presented the logic for their decision in public and made the settlement contingent on a special Town Meeting vote.

Signed under the pains and penalties of perjury this 30th day of December, 2011.


Douglas J. DeAngelis

EXHIBIT A

28 Turkey Shore Rd
Ipswich, MA 01938

December 9, 2009

Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108

RE: Feofees of the Grammar School Trust

Attorney General Coakley:

Let me start by congratulating you on your victory in the Democratic primary. We will all be proud to have you as our next Senator.

I'm writing you today about a situation in my home town of Ipswich. It has come to my attention that the lifetime trustees of the Feofees of the Grammar School Trust have gone to Probate Court in Salem in an attempt to break William Payne's will, which gave the land at Little Neck to the Trust and stipulated that it not be sold.

While I realize that this is a politically charged subject in town, I myself am not a very political person. I come at this from the perspective of my role as President of Essex County Greenbelt, the non-profit land trust serving this region. That perspective leads me to the conclusion that we all must do whatever we can to determine and follow through on the intent of the donor.

With his will, William Payne effectively created an endowment for our local schools. While there are many who believe that they could do a better job managing this endowment if it were in the form of dollars rather than land, Payne did not provide for that option. By explicitly foreclosing the alternative of conversion of the land into dollars, I believe Payne was acknowledging the greater permanence and stability of real estate vs. dollars (which have the pesky habit of being raided for "emergency" capital needs, or devalued by corrupt Wall Street actors). For that reason I ask that you not support the Feofees attempts to sell or mortgage any part of the land on Little Neck.

In my opinion, the core problem on Little Neck is that the lessees have been allowed to pursue a frivolous lawsuit against the Feofees related to the recent increase of the land rent to market rates. For decades, the lessees had been asked to pay only nominal land rent, and this in turn led to poor return on the endowment for the town and huge windfalls for the lessees when they go to sell the buildings on that land. In effect, the market value of the physical structures have been far higher than any rational value because the cost of the land lease has not represented the true value of the land. So now the Feofees, rather than fight the lessees, have decided that the easy way out is to sell the land to the very people who are suing them. If the Feofees could be allowed to collect a market rate for the land lease, then there would be no need to break William Payne's will and the land would function well as a proper endowment forever. For that reason, I also ask that you do whatever you can do derail the lessees lawsuit against the Feofees.

Thanks for your attention to this matter and I stand ready to help in any way I can.

Douglas J. DeAngelis

EXHIBIT B

Financial Analysis of Sale vs. No Sale of Little Neck

Assumptions Common to "No Sale" scenarios:

- Tenants would be given long term leases (in this case 30 years) with no possibility for rent increases above the CPI
- The 143 housing units that are currently seasonal would stay seasonal
- The wastewater loan would be paid off over 20 years with equal principal payments of \$300,000 per year
- A "sinking fund" for capital improvements (such as erosion control) is contributed to in the amount of \$120K per year

Assumptions Common to "Sale" scenarios:

- Sale proceeds of \$24.8M
- Corpus value is adjusted for inflation each year through reinvestment
- Trust expenses of .4% or 40 basis points (includes legal and accounting)
- Seasonal units converting to year-round contribute new students to the Ipswich School System at the rate of an average Ipswich household (.4 students per household)
- Seasonal units converting to year-round contribute new year-round residents at the rate of an average Ipswich household (2.42 residents per household)
- Costs to the town for municipal and school services generally increase at the rate of inflation (if costs were to increase at a higher rate, then the Sale scenarios would become even less attractive)

Additional "Most Likely Scenario" Assumptions

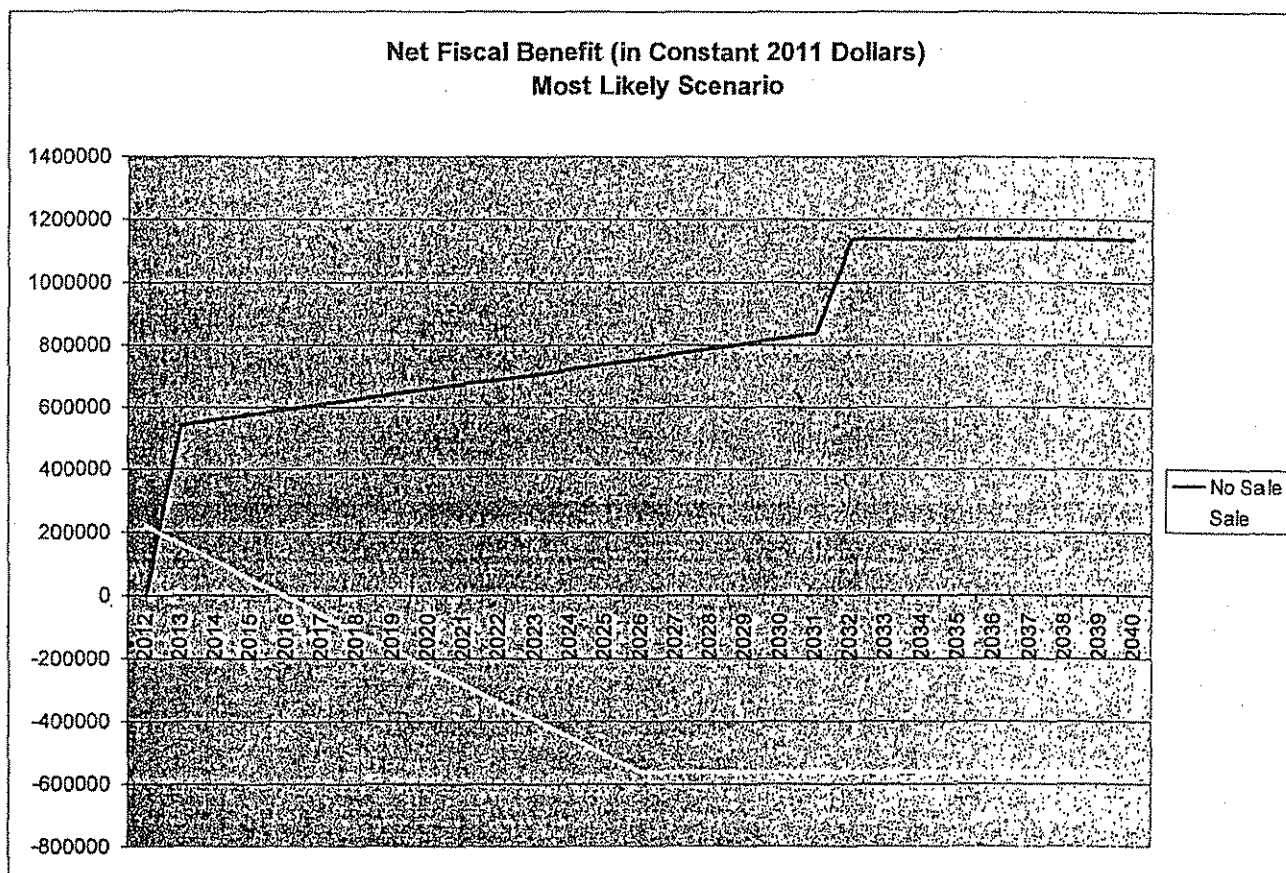
In this scenario and the accompanying chart, I make assumptions that are not overly optimistic or pessimistic for either the "No Sale" or "Sale" options. In this scenario, the sale option generates only a small net benefit for a few years before becoming a drain on the town from then on.

Most Likely "No Sale" Scenario:

- As an incentive, rents will be set initially at 90% of the fair market rent that was established by all four appraisals (Feoffees, School Committee, FinCom and Tenants)
- A professional property manager is hired and charges 15% of the gross income

Most Likely "Sale" Scenario:

- Corpus safely returns on average 1.5% over the rate of inflation (so 4.5% in an environment of 3% inflation)
- 143 units of seasonal housing convert to full time housing over a span of 15 years
- New year-round residents create an incremental burden on the town budget of only 50% of a typical new resident (since they were already part time residents)



Additional "Pessimistic No Sale/Optimistic Sale" Assumptions

In this scenario and the accompanying chart, I make assumptions that are intended to be pessimistic for the "No Sale" option, and optimistic for the "Sale" option. Even given these starting conditions, the time period during which the sale option generates a higher net benefit is a matter of just a few years. Within a little over 20 years, there is a structural net deficit.

Pessimistic "No Sale" Scenario:

- As an incentive, rents will be set initially at 80% of the fair market rent that was established by all four appraisals (Feoffees, School Committee, FinCom and Tenants)
- A professional property manager is hired and charges 20% of the gross income;

Optimistic "Sale" Scenario:

- Corpus safely returns on average 2.5% over the rate of inflation (so 5.5% in an environment of 3% inflation)
- 143 units of seasonal housing convert to full time housing over a span of 30 years
- New year-round residents create an incremental burden on the town budget of only 25% of a typical new resident (since they were already part time residents)

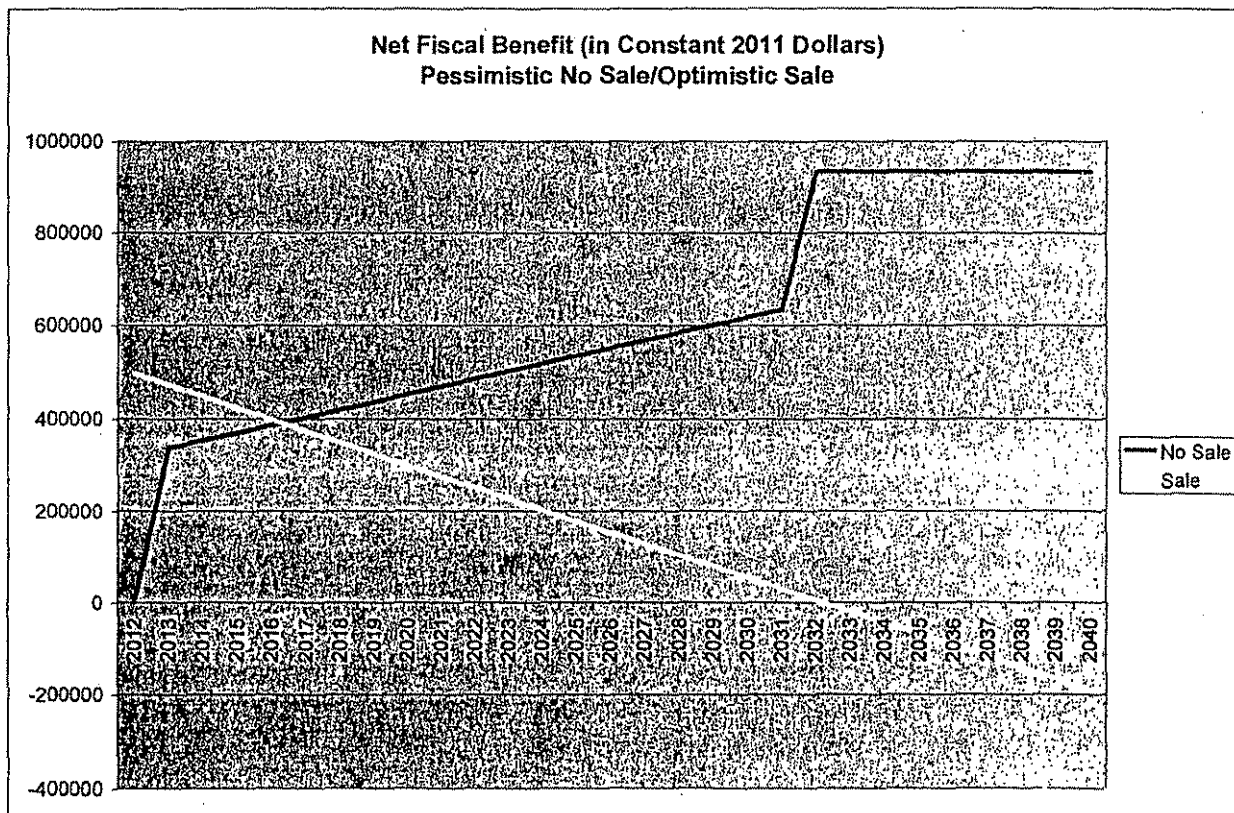


EXHIBIT C

Kathleen Brill
Environmental Law Seminar
Final Paper
May 19, 2010

THE FEOFFEES OF THE IPSWICH GRAMMAR SCHOOL:
AN EXTRAORDINARY QUESTION OF
TRUSTEES' FIDUCIARY DUTY,
THE ATTORNEY GENERAL'S OVERSIGHT RESPONSIBILITY,
AND THE FATE OF THE NATION'S OLDEST LAND TRUST

*"I give unto the free school of Ipswich the little neck of land at Ipswich ...
to be and remain to the benefit of the said school of Ipswich forever ...
the said land not to be sold nor wasted."*

-Will of William Payne, 1660

"I really have a problem with what might happen with the Little Neck land trust. It's described as the oldest land trust in America. It's very unique; ... just as we are concerned about preserving things, why shouldn't we be concerned about preserving institutions?"

Jim Engel, *Ipswich Selectman*, 1999^a

"When [the land at Little Neck] is worth \$15 million, and the schools have only collected \$75,000 in the last two years, something is drastically wrong. We could have been the best school district in Massachusetts had the feoffees operated Little Neck as true trustees. That is, for the kids, not the renters."

Edmund Traverso, *Ipswich School Committee*, 2001^b

"[Coming to a fair and equitable agreement for new lease terms] proved to be something that was emotional, difficult, and in the end, a near impossible task. We came to what I consider to be a better solution, which is a sale."

Mark DiSalvo, *Little Neck resident*, 2008^c

"No one represented [the] public's interest in settlement negotiations."

Editors of the Ipswich Chronicle, 2010^d

"The point of the deal is that it ends the impasse, which for the last four years has only hurt the beneficiaries of the Land Trust - the public schoolchildren of Ipswich."

Bert Seager, *Little Neck resident*, 2010^e

"I guess 'forever' isn't what it used to be. The land itself stands as a monument to the commitment made so many years ago to the children of Ipswich. We should worry that lacking the tangible reminder, over time we will forget that obligation. Can't we find a way to uphold this responsibility?"

Guy Clinch, *Ipswich Resident*, 2010^f

"They will work it out among themselves. [The situation] is so difficult; there is nothing we can add."

Johanna Soris, *Assistant Attorney General*, 2010^g

^a Coco McCabe, *Other Summer Colonies Face Septic Decisions*, BOSTON GLOBE, Apr. 18, 1999, City Edition, at 1.

^b Scott S. Greenberger, *School Funds at Center of Dispute in Ipswich*, BOSTON GLOBE, Mar. 20, 2001, at A1.

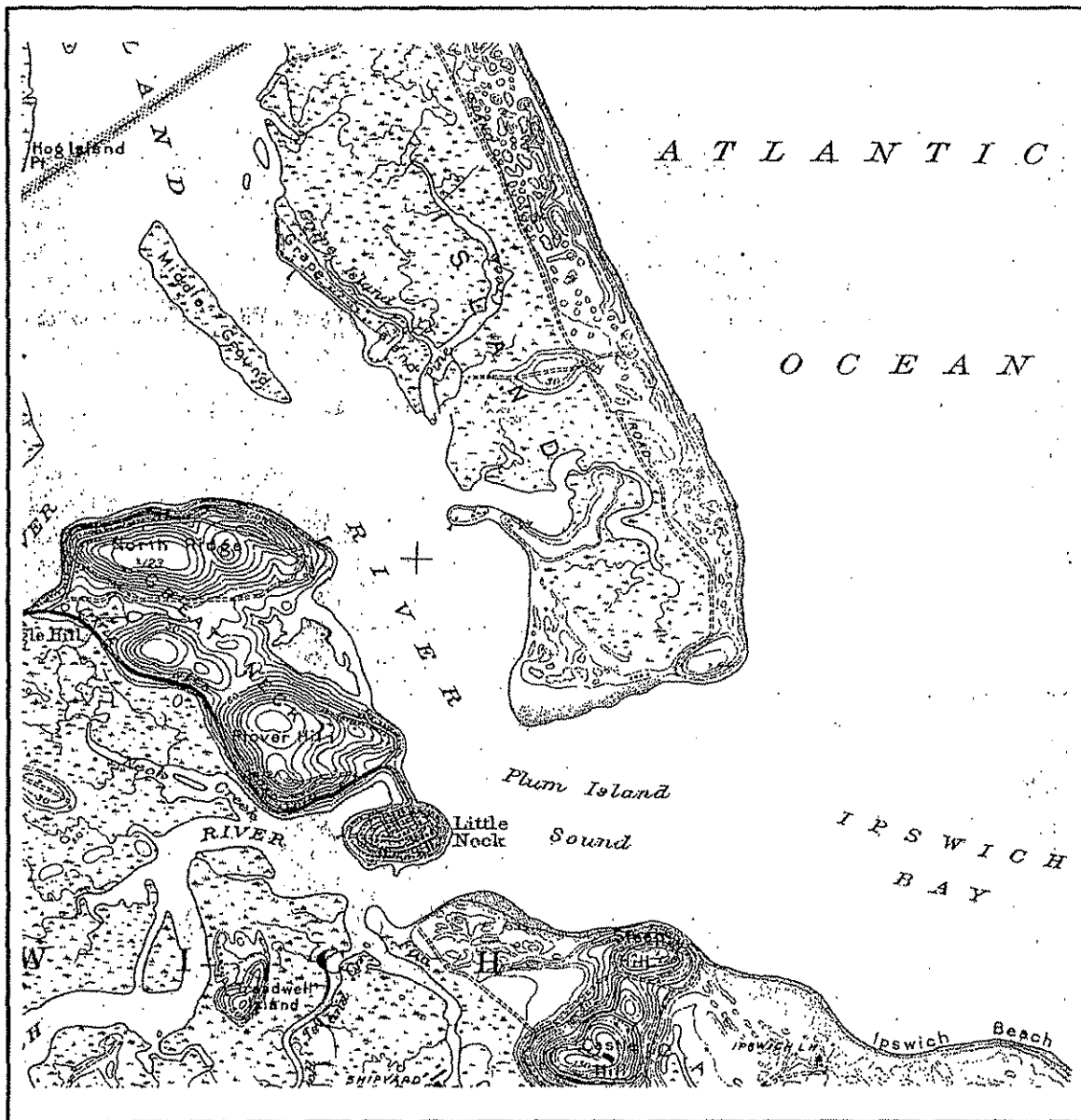
^c John Laidler, *Little Neck Agreement Within Sight*, BOSTON GLOBE, Dec. 18, 2008, Globe North, at 2.

^d *Little Neck Reviews the Right Move*, IPSWICH CHRONICLE, Feb. 4, 2010, Opinion.

^e Letters to the Editor, IPSWICH CHRONICLE, Jan. 25, 2010.

^f *Id.*

^g Telephone Interview with Johanna Soris, Assistant Attorney General (Apr. 27, 2010).



Little Neck
Ipswich, Massachusetts

William Payne, a founding member of the Ipswich School Committee, bequeathed upon his death in 1660 a unique and valuable asset to be held in trust forever for the benefit of the Ipswich Public Schools. That asset was the twenty-seven acres of land at Little Neck, then a bucolic seaside drumlin at the edge of Ipswich, overlooking the Ipswich River, Crane Beach, Plum Island, and the Atlantic Ocean beyond. Payne specified that the land should “be and remain to the benefit of said school of Ipswich forever ... said land not to be sold nor wasted.” In 1660, the trust leased grazing rights to the land to farmers, and turned all the proceeds over to the schools. By 2009, the trust was leasing lots on Little Neck to 167 cottage tenants, who over the past century had built and maintained seasonal or year-round homes on the land. In many recent years, the trust had contributed nothing to the schools. Now, in the first decade of the 21st century, backed by the desire of the tenant families to acquire clear title to their individual houses and lots, the trustees have taken the School Committee to court, seeking a change in the express terms of the trust to allow the land to be sold outright to the current cottage community.

How had the three-hundred-and-fifty year old land trust devolved to the point where the trustees had stopped making payments to the beneficiaries and instead sought authorization for the expressly forbidden sale of the sole remaining asset? The trustees, known locally as the Feoffees of the Ipswich Grammar School, have an obligation under well established principles of trust law to prudently manage the trust according to its stated terms. Yet over the past three decades, the trustees have made payments to the schools in less than half of the fiscal years. Under principles of trust law, the fiduciary duty the trustees owe to the beneficiaries, the town’s schoolchildren, is the highest standard of care known in law or equity: that of undivided loyalty. Yet it would appear that the trustees have continually acted for the benefit of the cottage owners, by keeping rents low, to the detriment of Ipswich’s schoolchildren. According to doctrines of trust law, the trustees have a duty to avoid even the appearance of impropriety in their management of the trust, and must never let their personal interests conflict with their fiduciary duties. Yet the trustees have at various times rented cottages to friends and family members, and even rented cottages themselves, at well below market rates. Abused, violated, and ignored for decades, the nation’s oldest land trust appears to be on the brink of an unnecessary extinction. The fate of the trust, and the interests of its beneficiaries, the schoolchildren of Ipswich, now rests in the hands of the Attorney General and the Probate Court.

Part I of this paper outlines the history of the trust (the “Grammar School Trust” or the “Trust”) beginning with the founding documents from the 1650s and 1660s, which establish the Trust’s charitable purpose, set its terms, and specify the composition of the trustees. The next stage in the evolution of the Trust occurred in the 1700s, during which a series of acts of the Legislature clarified and modified the structure of the Trust. A final series of acts of the Legislature from the 1800s and 1900s authorized the trustees to sell specific trust assets and to invest the proceeds on behalf of the beneficiaries. Part I concludes by summarizing the recent history of the Trust, including the problems that have arisen in the late 1900s and early 2000s with respect to the management of the Trust.

Part II briefly outlines the various duties that trust law places upon the trustees of the Grammar School Trust as fiduciaries, with respect to loyalty, prudent management, and avoidance of conflicts. This part demonstrates that the actions of the trustees in recent decades have breached those fiduciary duties.

Part III summarizes the legal disputes in which the Grammar School Trust is currently embroiled. This part first describes the class action lawsuit filed in Superior Court by the tenants of Little Neck against the trustees in 2006, alleging mismanagement in their role as landlords. This part then describes the proposed settlement agreement for that lawsuit, which would turn Little Neck into a condominium, essentially selling the trust land to the tenants. Part II ends with a discussion of the suit filed by the trustees in Probate Court, in which the trustees are seeking permission to deviate from the terms of the Trust to permit the sale of the trust’s sole asset, the land at Little Neck, and the School Committee is seeking to reform the administrative structure of the trust.

Part IV outlines the legal principles and doctrines that govern reformation of charitable trusts, and applies them to the proposed Grammar School Trust modifications before the Probate Court. This part shows that the fit between the judicial trust modification tools and the trustees’ proposed deviation to permit the sale of Little Neck is weak at best. This part then summarizes the Attorney General’s statutorily mandated role as overseer of public charities and analyzes how her responsibilities relate to the Grammar School Trust.

Part V ends by placing into context the unique and historic nature of both the trust and its sole remaining asset, the land at Little Neck. Noting the potential for complex and short-sited political motivations to overwhelm both the trustees and the beneficiaries, this part concludes

that it is imperative that the Attorney General exercise her oversight responsibilities to protect the Grammar School Trust and its beneficiaries, the schoolchildren of Ipswich.

I. HISTORY OF THE GRAMMAR SCHOOL TRUST

A. Establishment & Early History

In 1650, the Ipswich Town Meeting voted to create a trust entity and granted the two named trustees, William Payne and his brother Robert, legal title to certain parcels of land then held by the Town, “for the use of the school.”¹

In 1652, Town Meeting voted to establish a trust entity with eight trustees, authorize them to manage and regulate “the schools and the affairs thereof,” and empower them to receive all past and future donations of land and money for the “building and maintenance of a grammar school.” The responsibilities of these trustees were similar to those of a modern day school committee. The relationship between the two trusts was not clearly defined, but the 1652 trust seemed designed to expand upon and replace the first trust.

In 1660, Mr. William Payne, a named trustee of both the 1650 and 1652 trusts, passed away, bequeathing from his own personal land holdings the following in his will:

I give unto the free school of Ipswich the little neck of land at Ipswich commonly known by the name of Jeffrey’s neck, [which] is to be and remain to the benefit of the said school of Ipswich forever [as I have formerly intended] and therefore the said land not to be sold nor wasted.²

By 1756, the trustees had become known as the Feoffees of the Ipswich Grammar School. The relationship between the 1650 trust, the 1652 trust, and the terms of the various public and private grants given to the schools had created some confusion, most significantly in the method for appointment of trustees and their successors. Fearing “endless disputes” over the differently constituted grants, the Town, by vote of Town Meeting, petitioned the legislature for an Act that would clarify the terms of the trust and its management.³

¹ First Amended Complaint for Deviation Pursuant to G.L. c. 214, §10B at app. a (Minutes of Town Meeting, Nov. 14, 1650), *Mulholland v. Att’y Gen.*, No. ES09E0094QC (Mass. Prob. and Fam. Ct. filed Oct. 6, 2009).

² First Amended Complaint, *supra* note 1, at app. b (Will of William Payne) (spelling modified by author from the original.)

³ First Amended Complaint, *supra* note 1, at app. a (Minutes of Town Meeting, Jan. 12, 1756).

The legislature responded by passing Chapter 26 of the Acts of 1756. The Act recognized that private persons had “granted and conveyed to the feoffees in trust ... certain lands ... for the use of school-learning in [Ipswich] forever.”⁴ The act identified the confusion caused by the differing language among such private grants and the trusts established at this early juncture by the Town, but noted that “they were all designed for one and the same use.”⁵

The act formally incorporated the four existing privately designated feoffees as lifetime trustees with the power to appoint their successors. The three eldest selectmen of the Town were to serve as additional trustees. The act affirmed the responsibility of the trustees to manage the land for the benefit of the schools, to charge and collect rents, to report annually to Town Meeting, and to “transact and order all matters and things relative to such school, so as may best answer the original intent and design” of the donors.⁶ Any doubts about whether the early public and private grants were vested in the same trust were now erased. For purposes of this paper, that trust will be called the Grammar School Trust.

B. Modern Amendments

Throughout the 18th century, the Town sought the assistance of the legislature in modifying and clarifying the terms of the Grammar School Trust. Although the reformation of a charitable trust is a function primarily reserved for the judiciary today, resort to special act of the legislature was not uncommon in an earlier day.⁷

In 1766, the Town appealed to the legislature to renew the act of 1756, as it had been set to expire after ten years. The Town had found the clarification provided by the prior act to be “of great advantage to the interest of learning” in the Town, as it had resolved all prior doubts and disputes about the trustees and their powers.⁸ The legislature responded by passing Chapter 5 of the Acts of 1766, extending the provisions of the 1756 act for another twenty one years. In

⁴ St. 1756, c. 26, first par.

⁵ *Id.*

⁶ St. 1756, c. 26, §1.

⁷ In some jurisdictions, it was the custom to seek legislative modification of a charitable trust, particularly when the modification sought was authorization to sell trust property free from the restrictions of the trust. 40 A.L.R.2d. 556 § 3(a). The legislative response would be to pass a special act conferring authority for such sale upon the trustees, frequently bundled with restrictions tying the use of the proceeds to the original charitable purpose of the trust. *Id.* The Supreme Judicial Court of Massachusetts confirmed in 1921 that although the Legislature has only a limited power to modify a charitable trust, it does have the power to “authorize the conversion into personalty of real estate held on trusts, which cannot otherwise be conveyed.” *In re Opinion of the Justices*, 237 Mass. 613, 617-18 (1921).

⁸ St. 1766, c. 5.

1787, on the eve of the 1766 act's expiration, the legislature passed an act making the 1766 act perpetual.⁹

In the 19th and early 20th centuries, the Town appealed to the legislature at various times for authorization to sell certain parcels of land then held in trust for the schools. The legislature responded by passing acts in 1835, 1892, and 1906, that authorized the trustees to sell particular parcels of land, and directed the trustees to invest the proceeds and apply the income towards the beneficiaries, in accordance with the provisions made permanent by the 1787 statute.¹⁰

C. Recent History & Origins of Current Dispute

Due to the various legislatively authorized sales of trust assets during the 19th and 20th centuries, the land at Little Neck is now the sole asset remaining in the Grammar School Trust.¹¹ Initially, the trust rented out grazing rights on Little Neck to livestock owners and delivered the proceeds to the grammar school. In the late 1800s, the first cottage was built on Little Neck. In the early 1900s, as the popularity of seaside resorts rose, land use at Little Neck switched from pasture to summer cottage community, and grazing fees were replaced by rental fees. Residents bought the rights to erect cottages on Little Neck, on trust-created lots, which they constructed and then owned. The trustees constructed a communal ball field, wharf, and recreation center on the land. The trustees continue to hold legal title to the land underneath the cottages, with equitable title held by the Ipswich schools, the beneficial owners of the land. There are now 167 residences on Little Neck, 24 of which are occupied year round, and the remainder of which may be occupied for 8 months out of the year. The tenants are tenants at will.

In recent decades, the trustees have not followed the presumptive legal requirements of their roles as landlords and as trustees. They have poorly managed the property, leading to frustration on the part of tenants. They have failed to make payments to the schools, angering the intended beneficiaries. In 2001, after many years of continued frustration, a vote of Town Meeting established the Town Committee on the Feoffees to investigate the operations and financial records of the trust.

⁹ St. 1787, c. 54.

¹⁰ St. 1906, c. 506; St. 1892, c. 66; St. 1835, c. 106.

¹¹ At various times, trust assets included parcels of land in Ipswich, Essex, Rowley, and Revere. No financial investments from those various sales remain among the trust assets. TOWN COMMITTEE ON THE FEOFFEEES, RESEARCH FINDINGS 1-2 (2002), <http://www.town.ipswich.ma.us/Main%20Links.htm> (follow "Town Committee on the Feoffees" hyperlink; then follow "Research Findings" hyperlink).

In 2002, the Town Committee on the Feoffees reported its findings. Although the composition of the Feoffees was required by Chapter 5 of the Acts of 1786 to include the four lifetime appointees and the three eldest selectmen, the Committee found that the selectmen had not acted in that capacity in the last eighty years.¹² The Committee found that of the lifetime Feoffees, many had served as Feoffees while simultaneously residing as tenants on Little Neck. The Committee found that the rents being charged by the Feoffees did not reflect the valuation of the property.¹³ In 1998, the annual cost to cottage owners to rent a seasonal cottage was \$800, while the annual cost to rent a year-round cottage was \$900. The Committee found that cottage owners were able to turn around and rent out their cottages to others during the summer months for between \$650 and \$800 per week.

The Committee reported on the financial payments made by the trustees to the town for the support of the Ipswich Schools. The Committee found that the Grammar School Trust's contributions to the schools had been "much smaller than a beneficiary would normally expect from a trust with assets as valuable" as the land at Little Neck.¹⁴ For the 25 year period surveyed, annual payments were made to the town in less than half of the fiscal years.¹⁵ Between 1976 and 1994, annual payments ranged from \$0 (in thirteen of those years) to \$7500. One of the lifetime Feoffees explained that during some of those years, the schools "didn't request" any money from the trustees.¹⁶ As public dissatisfaction with the Trust's level of contribution rose in the mid 1990s, those payments began to increase. The Committee found that the Feoffees' annual financial statements submitted to the town were "deficient in many respects," including a failure to distinguish between trust assets (real estate) and tenant assets (cottages), a failure to account for interest accrued on savings accounts or transfers in and out of savings accounts, a failure to have figures add up, and a failure to have accounts audited.¹⁷

¹² In 2006, at the urging of the tenants of Little Neck, the three eldest selectmen voted to resume their seats as three of the seven trustee Feoffees. The lifetime Feoffees initially refused to permit the selectmen to participate in any meetings. But after a 2006 Essex County District Attorney opinion classified the Feoffees as a quasi-public entity subject to open meeting laws, the lifetime Feoffees relented in 2007. See Brenda J. Buote, *Little Neck Landlords Open Door*, BOSTON GLOBE, Jan. 4, 2007, Community Briefing, at 2; Steve Landwehr, *Tenants in Deal to Buy Little Neck*, SALEM NEWS, Jan. 14, 2010, available at 2010 WLNR 142573; Steve Landwehr, *Tenants to Buy Ipswich's Little Neck*, SALEM NEWS, Dec. 10, 2008, available at 2008 WLNR 23690906.

¹³ TOWN COMMITTEE, *supra* note 11, at 4-5.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 6.

¹⁶ Scott S. Greenberger, *School Funds at Center of Dispute in Ipswich*, BOSTON GLOBE, Mar. 20, 2001, at A1.

¹⁷ TOWN COMMITTEE, *supra* note 11, at 7.

Finally, the Town Committee on the Feoffees reported that the School Committee had never publicly reminded the Feoffees of their fiduciary responsibilities or asked them to increase their contributions to the schools. The Superintendent of schools during the mid 1990s had been a tenant of the Feoffees at Little Neck. The School Committee voted against the establishment of the Town Committee to investigate the Feoffees.¹⁸

II. VIOLATIONS OF TRUSTEES' FIDUCIARY OBLIGATIONS

It would appear from the history of the last few decades that the Feoffees have violated many of the principles to which such trustees are held under trust law. Any violations of such duties are considered breaches of trust, for which trustees may be held personally liable.¹⁹

The Feoffees, as trustees, have a fiduciary duty to the Ipswich Schools, as the beneficiary of the Grammar School Trust, to act at all times for the sole benefit and interests of the beneficiary, and to prudently manage the trust.²⁰ It would appear that the Feoffees have frequently looked out for the interests of the tenants over the schools, by keeping rents artificially low instead of charging market rate rents to maximize payments to the schools. In recent years, mismanaged capital improvement projects have led to rising debt payments and soaring litigation costs, resulting in a very unfavorable asset-to-liabilities ratio.²¹

The fiduciary duty owed by the trustees to the beneficiaries is highest standard of care at either equity or law, requiring undivided loyalty.²² This standard of care requires trustees to keep regular records of trust activities and report to the beneficiaries.²³ The Feoffees have frequently made no payments at all to the schools, and have insisted that the schools must request the money in order for any to be distributed. The Feoffees have not been forthcoming with information and cannot account for many years worth of transactions.

Fiduciaries have an obligation not to be in a position where personal interests conflict with fiduciary duties. They have the duty to avoid even the appearance of impropriety in this

¹⁸ *Id.* at 7-8.

¹⁹ MARK REUTLINGER, *WILLS, TRUSTS, AND ESTATES: ESSENTIAL TERMS AND CONCEPTS* 226 (1993)

²⁰ *Id.* at 220, 222.

²¹ Sally Kuhn, *Statements Show Feoffees Cash Poor*, IPSWICH CHRONICLE, Feb. 11, 2010.

²² REUTLINGER, *supra* note 19, at 220.

²³ *Id.* at 225.

regard.²⁴ At various times one or more of the Feoffees have also been tenants at Little Neck. Two of the existing Feoffees were simultaneously both tenants and Feoffees. The interests of the tenants and the beneficiaries are inherently conflicting in a scenario where tenant rent payments form the basis for payments to the beneficiaries.

III. CURRENT LEGAL DISPUTES

The Feoffee trustees are now embroiled in two lawsuits related to their role as trustees of the Grammar School Trust and as landlords for the land at Little Neck.

A. Superior Court Lawsuit

In 2006, responding to pressure from the Town to adhere to their fiduciary duties, the Feoffees announced rent increases for the tenants at Little Neck. The increases would raise annual lot rental prices from \$5000 to \$9700 for seasonal cottages, and from \$5500 to \$10800 for year-round residences. The Feoffees threatened to evict tenants who failed to sign new leases with the rent increases.²⁵ The tenants then filed a class action lawsuit in Essex Superior Court alleging mismanagement by the Feoffees in their role as landlords and contesting the terms of the new lease.²⁶ While the lawsuit was pending, the Feoffees agreed to hold off on eviction proceedings if tenants continued to pay the 2005 rent figures, property taxes, and a share of the cost of recent capital improvements.²⁷

In December of 2008, after years of unproductive negotiations to which neither the Town nor the School Committee were made a party, the tenants and the Feoffees agreed to a proposed settlement, which would sell the land of Little Neck to its tenant residents.²⁸ For a sale price of \$26.5 million dollars, the Feoffees agreed to sell the land of Little Neck, which at the time was assessed by the Town at approximately \$56.6 million dollars. Both sides acknowledged that the settlement would require the approval of the Attorney General and the Probate Court. By October of 2009, the deal for sale had fallen through, but the Feoffees nevertheless began to

²⁴ *Id.* at 220.

²⁵ Brenda J. Buote, *Tussle in Ipswich over 1660 Bequest*, BOSTON GLOBE, Nov. 5, 2006, Globe North, at 1.

²⁶ *Lonergan v. Foley*, No. ESCV2006-02328 (Mass. Sup. Ct. filed Dec. 8, 2006). See also 2006.11.05 Boston Globe.

²⁷ Steve Landwehr, *Little Neck Residents Gird for Court Battle*, SALEM NEWS, Mar. 18, 2008, available at 2008 WLNR 5280237.

²⁸ John Laidler, *Little Neck Agreement Within Sight*, BOSTON GLOBE, Dec. 18, 2008, Globe North, at 1.

pursue legal authorization for a sale.²⁹ In January of 2010, the Feoffees announced that a new agreement had been reached, which would instead create a condominium out of the land at Little Neck. The sale price attached to this deal was approximately \$29 million dollars, or about \$174,551 per lot.

B. Probate Court Lawsuit

In October of 2009, the Feoffees filed suit in Probate Court against the Ipswich School Committee and the Superintendent of Schools, requesting permission to change the terms of the trust to permit the sale of the trust's sole asset, the land at Little Neck.³⁰ The suit also named Attorney General Martha Coakley's office.³¹ An amended complaint was filed by the Feoffees in December of 2009, reflecting a new plan to create a Condominium at Little Neck, but not specifying the terms of the proposed sale.³²

In December of 2009, the School Committee filed an answer and counterclaim, requesting dismissal of the petition to permit the sale, and seeking a change in the management of the trust, to make the trustees publicly appointed and publicly accountable.³³ The School Committee had been working on a revised structure for administering the Grammar School Trust since 2006. Earlier in 2009, Town Meeting had voted to send a home rule petition to the Legislature to restructure the Feoffees. That petition languished in Committee, as representatives felt that reformation of the trust was more appropriately the function of the Probate Court.³⁴ A version of this original proposal for modifying the administrative structure of the trust was filed with the School Committee's counterclaim in the Probate Court. The School Committee's proposed revised governance and administrative structure would seek to achieve transparency and accountability. It would replace the existing seven member board with seven new trustees, two of whom would be appointed by the School Committee, two by the Finance Committee, two by the Board of Selectmen, and one by Town Meeting. All trustees would serve three year terms.

²⁹ Steve Landwehr, *Feoffees Sue for Right to Sell Little Neck*, SALEM NEWS, Nov. 7, 2009, available at 2009 WLNR 19762786.

³⁰ *Mulholland v. Att'y Gen.*, No. ES09E0094QC (Mass. Prob. and Fam. Ct. filed Oct. 6, 2009).

³¹ Complaint for Deviation Pursuant to G. L. c. 214, § 10B at 1, *Mulholland*, No. ES09E0094QC.

³² First Amended Complaint, *supra* note 1, at 7-8.

³³ Answer and Counterclaim of Ipswich School Committee and Richard Korb, Ipswich Superintendent of Schools, *Mulholland*, No. ES09E0094QC.

³⁴ Letters to the Editor, IPSWICH CHRONICLE, Jan. 25, 2010.

While the suits in Superior Court and Probate Court have been pending, annual payments to the schools have ceased. Meanwhile, the Feoffees have spent \$700,000 in legal fees over the past three years. The Town's School Committee and Finance Committee have begun evaluating the finances of the Feoffees, as well as the finances of the proposed sale.³⁵ The Town hopes to determine whether the proposed sale is in the best interest of the beneficiary public schools.

IV. TRUST REFORMATION

All parties to the petition for administrative deviation before the Probate Court agree that the terms of the Grammar School Trust must be reformed before the trust can return to serving its intended purpose of benefiting the Ipswich schools. The question for the Probate Court is whether the reform should provide a change in administrative management, allow for a transfer of assets from land to monetary investment, or some mixture of the two. Under traditional principles of trust law, charitable trusts can be reformed only in limited circumstances.

This part reviews the terms, doctrines, and processes applicable to a request for the reformation of a charitable trust. It begins by exploring the elements requisite for the formation of a charitable trust. Under Massachusetts law, a court is permitted to reform the terms of a charitable trust under two doctrines: *cy pres* and administrative deviation.³⁶ These doctrines are separate and distinct, though they are frequently confused. Next, this part explores the trustee's power of sale over a corpus consisting of real property. This part then reviews the court's holdings on the relationship between deviation from a trust's terms and mismanagement. Finally, in light of the complex doctrines of trust reformation and the serious potential for abuse of the trustor's intent, this part emphasizes the importance of the Attorney General's role in overseeing public charities in general and actively participating in the resolution of this particular dispute.

³⁵ Jane Dooley, *Many Stumbling Blocks to Little Neck Sale*, IPSWICH CHRONICLE, Feb. 11, 2010, at 10.

³⁶ See G.L. c. 214, § 10B.

A. Charitable Trusts

First, it is necessary to establish that the Grammar School Trust qualifies as a charitable trust under Massachusetts law.³⁷ The basic elements of a trust are the trustor (donor), the trustee, the corpus (assets), and the beneficiary. Here the trustor is William Payne, the trustees are the Feoffees, the corpus is the land at Little Neck, and the beneficiaries are the public schools of Ipswich. It is evident that the trust also meets all the common law requirements for a charitable trust. Common law holds that a charitable trust must have a primary purpose of benefiting the general public or a segment thereof.³⁸ In this case, the beneficiaries of the trust are the Ipswich Public Schools, and by association therefore the school children and the general public of the Town of Ipswich. The purpose of the trust must also fit within the common law's generally accepted categories of charitable uses.³⁹ Promotion of education and maintenance of schools are universally held to be charitable uses.⁴⁰ In fact, the trustees themselves have indicated to the Commonwealth that they consider themselves to be trustees of charitable trust. The Feoffees have registered with the Attorney General's Public Charities Division as a "non-profit charitable organization conducting business within the Commonwealth."⁴¹ Thus, the Grammar School Trust fits squarely within the category of charitable trusts.

B. Cy Pres

One method available to the courts for reforming a charitable trust is the doctrine of cy pres. Cy pres is applied when the ability of the trustee to carry out the primary charitable purpose of the trust has become impossible to exercise. Cy pres is a rule of judicial construction which can move the court to substitute a different charitable purpose for the failed one.⁴² The term cy pres means "as near as," suggesting that the court must find a substitute charitable

³⁷ The elements of a charitable trust are defined not by statute but by common law.

³⁸ REUTLINGER, *supra* note 19, at 209.

³⁹ See *Jackson v. Phillips*, 96 Mass. 539, 551 (1867) (noting that Massachusetts courts will analyze a trust's alleged charitable purpose by seeing if it fits within the spirit of the preamble of the since-repealed Statute of Elizabeth (also known as the Statute of Charitable Uses)).

⁴⁰ See *id.* (noting that the preamble to the Statute of Elizabeth specifically includes the "maintenance of schools of learn, free schools, and scholars of universities" as a charitable use).

⁴¹ The trust is registered with the Attorney General as Account Number 042372. The filings of the trust are available for view in the Attorney General's database at:
http://www.charities.ago.state.ma.us/charities/index.asp?charities_app_ctx=details&charities_sub_ctx=entry&origin=search&agn=252927283227&bod=1272353659.

⁴² LORING: A TRUSTEE'S HANDBOOK § 8.15.20 (Charles E. Rounds, Jr. and Charles E. Rounds, II, eds., 2009 edition).

purpose that comes as near to the trustor's intent as possible.⁴³ The doctrine is only to be applied when the trustor's original intent has literally become impossible to achieve. The seminal Massachusetts case of Jackson v. Phillips, 96 Mass. 539 (1867), dealt with just such an impossibility: the donor had created a trust to promote the abolition of slavery, but that end had been accomplished with the passage of 13th Amendment. The court applied the doctrine of cy pres, directing that the trustor's funds should instead be applied to educate and aid freed former slaves.⁴⁴ The doctrine of cy pres is inapplicable to the present dispute over the Grammar School Trust, because there is nothing to indicate that the trust's primary charitable purpose of supporting the public schools of Ipswich can no longer be achieved.

C. Administrative Deviation

The equitable doctrine of administrative deviation is applied when a party seeks to change not the primary charitable purpose of the trust, but the administrative terms of the trust. It is a means of relief designed to prevent serious erosion of the trustor's purpose as a result of unanticipated circumstances. For example, in a case where a trustor leaves a structure to be used for the charitable purpose of a convalescent home, but government regulations have since rendered that structure unsuitable for that purpose, the court may utilize administrative deviation to permit the razing of the structure in order to enable the construction of a new convalescent home.⁴⁵ Before applying this doctrine, the courts will require evidence of unforeseen and unforeseeable changes in circumstances, and a frustration of the trustor's objective if the trust conditions are strictly followed.⁴⁶ The test is not what is in the best interest of the beneficiaries, but rather whether the petitioners have demonstrated that the trustor's intent is incapable of fulfillment.⁴⁷ The doctrine does not provide a "license to substitute the court's or the trustee's preferred methods of administration for those established by the [trustor]."⁴⁸

One recent Massachusetts case demonstrates that the court will not issue an administrative deviation from the express intent of the trustor that the corpus not be sold, merely because the trustees request it. In MFA v. Beland, 432 Mass. 540, 542-43 (2000), trustees

⁴³ 14D Mass Practice Series § 18.36.

⁴⁴ Jackson, 96 Mass. at 597-99.

⁴⁵ See Wigglesworth v. Cowles, 28 Mass. App. Ct. 420, 428-30 (1995) (suggesting that such actions on the part of the trustees would have been approved by a reviewing court under the doctrine of administrative deviation.)

⁴⁶ LORING, *supra* note 42, at § 8.15.20.

⁴⁷ *Id.*

⁴⁸ REUTLINGER, *supra* note 19, at 163-64.

requested administrative deviation from the trustor's express direction that the fourteen paintings constituting the trust corpus not be sold. The court refused to apply the doctrine of reasonable deviation, holding that the trustees had made no showing that the terms of the trust prohibiting sale frustrated achievement of the trustor's intent, which was to foster an appreciation for the fine arts.⁴⁹

In a case demonstrating a methodically considered and appropriately granted use of administrative deviation, the court in Trustees of Dartmouth College v. City of Quincy, 357 Mass. 521 (1970), dealt with a trust establishing a school for girls in Quincy. The terms of the trust specified that the school itself was to be for the education of girls born in Quincy, with none other than those permitted to attend.⁵⁰ After seventy-five years of successful female education, the trustees found themselves faced with declining attendance and skyrocketing educational costs.⁵¹ They proposed allowing non-Quincy born girls to fill vacant slots at the school at a full tuition rate, thereby subsidizing the continuing education of the Quincy girls.⁵² In evaluating this request for deviation, the court first noted that the doctrine of cy pres did not apply, because the trust had not become completely impossible to execute in accordance with its terms.⁵³ The court then searched the record for the requisite serious erosion of the trustor's purpose threatened by circumstances unforeseen and unforeseeable by the trustor.⁵⁴ The court found that strict adherence to the terms of the trust would create a "substantial risk of complete failure of the primary charitable gift."⁵⁵ It also found that the donor could not possibly have foreseen "the changes in preparatory education costs and in the habits of [a more mobile and migratory] population" that had taken place in the century since the creation of the trust.⁵⁶ Only after making these requisite findings did the court conclude that administrative deviation was justified.⁵⁷

The trustees of the Grammar School Trust have brought suit in the Probate Court requesting a deviation from the terms of the trust, but have not made any allegations which

⁴⁹ *MFA*, 432 Mass. at 544-45.

⁵⁰ *Dartmouth*, 357 Mass. at 523.

⁵¹ *Id.* at 529.

⁵² *Id.* at 525.

⁵³ *Id.* at 529.

⁵⁴ *Id.* at 531-32.

⁵⁵ *Dartmouth*, 357 Mass. at 529-30.

⁵⁶ *Id.* at 532.

⁵⁷ *Id.*

clearly justify a deviation. The trustees classify the requirement that land not be sold as a “subordinate” requirement that is “obstructive of, and inappropriate to” the accomplishment of the primary charitable purpose of supporting the Ipswich schools.⁵⁸ The plaintiffs have made no showing that the terms of the trust prohibiting sale of the land threaten to seriously frustrate the charitable purpose of the trust. Nor have they made any showing that circumstances unforeseeable by the trustor justify deviating from his express intent. Although the landlord-tenant dispute the trustees find themselves embroiled in today is certainly frustrating, that circumstance appears to be of their own making and is not due to overly restrictive or inflexible trust terms.

D. Trustee’s Power of Sale over Real Property Corpus

At early common law, the courts would not find that a trustee was granted an implied power of sale over real property held in trust, absent a specific grant of such power in the terms of the trust.⁵⁹ At that time, land was so associated with identity that to convert the asset from land to money would work a fundamental change upon the nature of the trust.⁶⁰ In today’s society, where land is increasingly seen as a fungible commodity, courts are more likely to find an implied power of sale, *unless* it appears from the trust instrument that the trustor intended that the land should be retained by the trust.⁶¹ In the Grammar School Trust, the trustor’s intent could not have been more clear: “[the land] is to be and remain to the benefit of the said school of Ipswich for ever as I have formerly intended and therefore the said land not to be sold nor wasted.”⁶²

A survey of Massachusetts case law indicates that when the trust corpus is land, and the terms of the trust explicitly prohibit sale of the land, the court will not permit deviation absent a showing of necessity. In Crawford v. Nies, 220 Mass. 61, 62 (1914), the court encountered a trust with an asset of real estate on Bromfield Street in Boston. The trustor had conveyed the land to trustees, with instructions to build a church upon it and hold it forever in trust for worship

⁵⁸ First Amended Complaint, *supra* note 1, at 8.

⁵⁹ LORING, *supra* note 42, at § 3.5.3.1.

⁶⁰ See *id.* See also 2 Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America, 242 (1836): “[T]he trustee has no right (unless express power is given) to change the nature of the estate, as by converting land into money, or money into land.”

⁶¹ *Id.*

⁶² First Amended Complaint, *supra* note 1, at app. b (Will of William Payne) (spelling modified by author from the original.)

therein.⁶³ As the City of Boston grew up around the church, the neighborhood lost its residential character and the size of the congregation dwindled.⁶⁴ As the terms of the trust had become impracticable to achieve, the court approved a sale of the church land and resultant liquidation of the trust assets.⁶⁵ In Amory v. Attorney General, 179 Mass. 89 (1901), another case where the court approved the sale of trust land despite the trustor's prohibition, the circumstances were similarly dramatic. In this case the trustor had left an estate to be used as a home for the poor and invalid, to be run by a Protestant Episcopalian sisterhood.⁶⁶ As conditions changed over time, the site no longer became suitable for such a home, and indeed, no sisterhood could be found to operate such a home upon it.⁶⁷ Faced with a situation where the land could not be occupied as intended by the trustor, the court permitted the land to be sold, and the liquidated assets to be put toward the trustor's original charitable purpose.⁶⁸

In the case of the Grammar School Trust, no such difficulty in carrying out the will of the trustor has been demonstrated. The terms of the trust can hardly be said to unnecessarily restrain the trustees in their management of the trust. The trust contains no use restrictions like those that justified the court in approving the sale of the land in Crawford and Amory.⁶⁹ In fact, the *only* restriction on the trustees' management of the land in this case is that they not sell or waste it. Aside from that, they are permitted to put it to any profitable use they choose. The minimal restrictions imposed by the trustor have in fact permitted the trust to evolve over time. At the time of the bequest, the land was leased as grazing area for livestock. As conditions changed and the popularity of seaside communities grew, the trustees were able to adapt the use of the land to a summer cottage community while continuing to derive profit for the beneficiaries.

This is not a case where changes in the surrounding neighborhood have made the trustor's intent (to turn a profit from the land) impossible to achieve. If anything, the twenty-seven acre seaside estate has only become more valuable over time. There is nothing inherently

⁶³ Crawford, 220 Mass. at 62-63.

⁶⁴ *Id.* at 63.

⁶⁵ *Id.* In this instance, the court issued its approval after the transfer had already occurred. *Id.* The trustees had sought and received statutory authorization for the sale from the General Court, a practice not uncommon in the 19th century. Similar petitions were brought to and granted by the General Court relative to the Grammar School Trust during the 18th and 19th centuries.

⁶⁶ Amory, 179 Mass. at 104.

⁶⁷ *Id.* at 104-05.

⁶⁸ *Id.* at 105. In reaching this conclusion, the court also relied upon a codicil to the will of the trustor, which authorized the trustees to sell any portion of the real estate which could not be used advantageously. *Id.*

⁶⁹ Amory, 179 Mass. at 104; Crawford, 220 Mass. at 63.

impracticable or wasteful about holding the land in trust. Higher profits for the beneficiaries could easily be achieved through an alternate land management scheme, while retaining underlying fee in the trust. The current drought of revenue flowing to the beneficiaries is entirely the responsibility of the individual trustees, and cannot be blamed upon the terms of the trust.

E. Relationship of Mismanagement of Trust to Deviation from Terms

It may seem as though mismanagement by trustees might be a circumstance justifying deviation from trust terms. But Massachusetts case law suggests that while mismanagement may justify the appointment of new trustees, it does not, in and of itself, justify amendment of the substantive provisions of the trust.

In the 1972 case of Davenport v. Attorney General, 361 Mass. 372, the court encountered a petition to dissolve a trust. The court found that the trustees had “fail[ed] to make substantial expenditures for the charitable purpose over a period of years,” and had mismanaged the affairs of the trust.⁷⁰ The court refused to deviate or dissolve the trust, finding that the trust was still capable of being carried out according to its terms.⁷¹ The court held that “inertia, misconduct, [and] maladministration of ... trustees” does not justify the forfeiture of a charitable trust.⁷² If eligible beneficiaries remain, the solution is to appoint new trustees to properly manage the trust according to its terms.⁷³ “A charitable trust ordinarily will not be permitted to fail or to be thwarted for want of suitable and diligent trustees,” held the court.⁷⁴

In Hadley v. Hopkins Academy, 31 Mass. 240 (1833), a case with remarkable parallels to the Grammar School Trust, a trust had been created to promote a grammar school in the town of Hadley. The board of trustees, consisting of some private citizens and other elected officials, was accused of failing to properly execute the charitable trust.⁷⁵ The court held that the failure of trustees to properly execute the trust would not render the charitable purposes incapable of

⁷⁰ *Davenport*, 361 Mass. at 377.

⁷¹ *Id.* at 367-77.

⁷² *Id.* at 378.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Hadley*, 31 Mass. at 253.

fulfillment.⁷⁶ Instead, the court would direct that the trust be executed as written, and would appoint new trustees to administer the trust.⁷⁷

It is evident here that the trustees of the Grammar School Trust have massively mismanaged the trust. In a suit alleging breach of fiduciary duty, the Feoffees would personally be liable for their repeated failures to comply with the most basic fiduciary duties of trustees. Indeed, the mess that the trustees find themselves in is so complex that it is tempting to look for an easy way out. But mismanagement and maladministration by the trustees do not justify deviating from the express terms of the trustor's intent. The solution, instead, is for the court to step in and replace the current trustees with a new set who can competently and diligently manage the trust according to its terms. The equitable appointment of these new trustees would be a deviation from the administrative terms of the Grammar School Trust, but would leave the charitable purpose and primary terms of the trust, and Payne's gift, intact. To protect the donor's intent and the interests of the beneficiaries, it is essential that that Attorney General step in to play her proper role as protector of public charities.

F. Role of the Attorney General

The Massachusetts General Laws, in Chapter 12, Section 8, provide that "The Attorney General shall enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof."⁷⁸ As the court has summarized this section, the "Attorney General is responsible for ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes."⁷⁹ As the state's highest law officer, the Attorney General represents "those entitled to the beneficial interests in a public charity."⁸⁰ The Attorney General has the "duty to see that the public interests are protected."⁸¹

The General Laws directs the Attorney General to perform a number of duties involving oversight of public charities, including conducting investigations whenever she believes that

⁷⁶ *Id.*

⁷⁷ *Id.* The court ultimately found that the trustees had not clearly failed to execute the trust according to its terms. *Id.* at 267.

⁷⁸ G. L. c. 12, § 8.

⁷⁹ *Weaver v. Wood*, 425 Mass. 270, 275 (1997).

⁸⁰ *Ames v. Att'y Gen.*, 332 Mass. 246, 251 (1955) (citing *Burbank v. Burbank*, 152 Mass. 254, 256 (1890)). As the court in *Burbank* held, the "duty of maintaining the rights of the public is vested in the commonwealth, and it is exercised [...] by the attorney general." *Burbank*, 152 Mass. at 256.

⁸¹ *Ames*, 332 Mass. at 250-51 (citing *Dillaway v. Burton*, 256 Mass. 568, 573 (1926)).

breaches of trust are being committed in the administration of a public charity.⁸² Most relevant to this analysis is Section 8G, which specifically directs that the Attorney General shall be made a party in all proceedings in which she may be interested in the performance of her duties.⁸³ G. L. c. 214 § 10B, which concerns the application of the doctrines of cy pres and administrative deviation to charitable trusts, directly incorporates the role of the Attorney General in these proceedings by specific reference to G. L. c. 12 § 8G.⁸⁴

In any alteration of the Grammar School Trust, therefore, the Attorney General is obligated by law to appear and protect the trust. Deviation, modification, or cessation of the trust would be invalid in her absence. Case law confirms that the Attorney General is a necessary party in a proceeding seeking permission to deviate from the terms of the trust.⁸⁵ Recognizing the strong role that the Attorney General's public charities division should play in such cases, the court has held the Attorney General should cooperate with the court by offering her views, and the court should give such views special consideration due to the official expertise and impartiality of their source.⁸⁶

Scholars acknowledge that the role of the Attorney General in protecting charitable trusts is a complex one. The Attorney General is charged with representing the beneficiaries of charitable trusts, which tend to be a diverse and changing class unable to effectively represent their collective interest. The Attorney General must at the same time act to advocate for the grantor's original intent; indeed, the Attorney General is frequently the only party acting to do so.⁸⁷ The interests of the beneficiaries and the intent of the donor are frequently aligned, but sometimes collide. When they do conflict, the Attorney General is left with the difficult task of determining how much weight must be given to each interest.⁸⁸ Complicating matters further, Attorneys General are political officials, who must ultimately answer to the voting public.⁸⁹ As

⁸² G. L. c. 12, § 8H.

⁸³ G. L. c. 12, § 8G.

⁸⁴ G. L. c. 214, § 10B.

⁸⁵ *Congregational Church Union of Boston and Vicinity v. Att'y Gen.*, 290 Mass. 1, 8 (1935).

⁸⁶ *See In re Wilson*, 372 Mass. 325, 329-30 (1977).

⁸⁷ Richard W. Burke, et. al., *The Use of Liberal Construction, Deviation, and Cy Pres to Adapt Charitable Trusts to Changing Circumstances*, 18 OHIO PROB. L.J. 202, Part II, at n.75-78 and accompanying text (2008).

⁸⁸ Craig Kaufman, *Sympathy for the Devil's Advocate: Assisting the Attorney General When Charitable Matters Reach the Courtroom*, 40 REAL PROP. PROB. & TR. J. 705, 707 (2006).

⁸⁹ *Id.* at 727.

with any governmental branch, they also have limited resources with which to address the many facets of their role as overseers of public charities.⁹⁰

Despite these difficulties, it remains the role of the Attorney General to make sure any proposed changes to charitable trusts are made according to principles of law, if it all.⁹¹ Although the Attorney General has discretion in the exercise of her investigatory and prosecutorial roles, once she is a named party in a petition for deviation, she cannot decline to exercise her statutory duty to protect the public interest. In *In re Barnes Foundation*, one recent high profile case, the court criticized the Attorney General for not discharging his duty to probe, challenge, and question every aspect of the proposed trust modification.⁹² In declining to demand information about alternatives to the proposed modification, “the Attorney General prevented the court from seeing a balanced, objective presentation of the situation, and [his actions] constituted an abdication of that office’s responsibility.”⁹³ The court observed that the Attorney General’s failure to discharge his duties left it up to the court to “raise questions relating to the finances of the proposed move and the plan’s financial viability.”⁹⁴ The court noted that the examination of alternatives was more properly the function of the Attorney General.

As in the *Barnes* case, there is a danger that without the active participation of the Attorney General, the proposed modification of the Grammar School Trust will not receive adequate attention and analysis. The expertise and impartiality of the Attorney General are fundamentally required in this case. The parties to the Probate Court petition for deviation are so immersed in interpersonal conflicts, small town politics, complex relationships, and concerns about personal liability that neither can be said to be looking out exclusively for the interests of the beneficiaries. Nor is either party concerned about honoring the intent of the donor. It is the duty of the Attorney General, as an impartial and educated observer familiar with the principles of trust law, to protect the specific intent of the donor, where doing so will not substantially frustrate the donor’s charitable purpose. In this case, the Attorney General must step in to

⁹⁰ Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement*, 79 IND. L.J. 937, 975 (2004) (noting the many reasons Attorneys General may have for not enforcing the law, including prosecutorial discretion, budget allocation, and political reasons).

⁹¹ Burke, *supra* note 87, at n. 78 and accompanying text.

⁹² *In re Barnes Found.*, No. 58788, 2004 WL 1960204, at *10 (Pa. Ct. Com. Pl. Jan. 29, 2004).

⁹³ *Id.*

⁹⁴ *Id.*

protect the donor, and the ultimate beneficiaries, from a short-sited deviation whose primary purpose would be to reduce the personal liability of the trustees.

There is a need for the Attorney General to review the proposed land sale, not only to see whether it is justified under principles of administrative deviation, but also to see whether it is in the long-term best interest of the beneficiaries. It is a frightening proposition that the Little Neck tenants, whose interests by law have no place in the analysis of the trust reformation, could produce an all-or-nothing deal, whereby the beneficiaries are forced to accept a price well below market value for their real estate or else face unending litigation and the ultimate drain of trust resources. Facing budget shortfalls, political pressures, and litigation costs, it is nearly impossible for the current School Committee to adequately represent the long-term interests of the present and future beneficiaries. That the School Committee has been named a party in the suit does not justify the Attorney General abdicating its statutorily mandated oversight role.

Given the egregious record of the existing trustees and the multiple breaches of fiduciary duty which they have committed, the Attorney General should step in to support the School Committee's counter claim petition to make the trustees publicly accountable. Although the Attorney General has declined to exercise her investigatory or prosecutorial functions with respect to the behavior of the trustees, despite being alerted to their actions, she now has the opportunity to assist the trust in moving forward from an era of maladministration to one of renewed focus on the charitable purpose. She can still fulfill her statutory mandate to prevent breaches of trust in the administration of public charities.⁹⁵

Unfortunately, the Attorney General's public charities division has declined to actively participate in the resolution of this dispute. Though they are a named and necessary party in the litigation, they have indicated an intent to let the parties "work it out among themselves." Citing the complexity of the dispute and their sense that they have "nothing to add" to the resolution thereof, they have declined their role as protector of public charities. The Attorney General's office *does* have something to add: as the law makes the clear, the Attorney General "is *responsible* for ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes."⁹⁶ If the Attorney General declines this role, there will be no one left to protect those

⁹⁵ G. L. c. 12, § 8.

⁹⁶ *Weaver v. Wood*, 425 Mass. 270, 275 (1997) (emphasis added); *see also* G. L. c. 12, § 8.

wishes and to look out for the larger interests of the present and future class of beneficiaries, the schoolchildren of Ipswich.

V. CONCLUSION

In 1614, Captain John Smith recorded one of the first written descriptions of what would come to be known as the town of Ipswich: "... there are many sands at the entrance of the Harbour... Here are many rising hills ..." ⁹⁷ One of those rising hills at the entrance to the harbor is the seaside drumlin of Little Neck. Situated on a peninsula at the mouth of the Ipswich River, this twenty-seven acre estate overlooks the salt marshes of Ipswich, Castle Hill, Crane Beach, Plum Island, and the Atlantic Ocean beyond. Fortunately for the Town of Ipswich, William Payne, one of its earliest residents and strongest proponents of public education, had the foresight in 1660 to place the land of Little Neck in trust forever, to benefit the free education of the Ipswich schoolchildren, never to be sold. For the first century, the income generated from the lease of this and other land held by the Grammar School Trust fully funded the public schools of Ipswich. Even two centuries after the establishment of the trust, the land leases generated the majority of the funds necessary to sustain the public schools. ⁹⁸

But now, three hundred and fifty years after the establishment of the unique and historic Grammar School Trust, the Trust no longer makes any contributions to the schools of Ipswich. Embroiled in litigation due to mismanagement, the trustees seek the court's permission to deviate from the explicit terms of the Trust and to sell the land at Little Neck, the sole remaining asset of the Trust. Motivated by self-inflicted personal liability and the desire to resolve the dispute with the tenant cottage owners, the trustees have proposed a sale which would exchange the land held in trust for a cash value well below market-rate. Yet under trust law, such considerations fall decidedly outside the scope of circumstances which would justify administrative deviation from the explicit terms of the trust. What they instead necessitate is an administrative deviation to bring accountability and transparency to the trustees.

The fate of the venerable and historic trust is now in the hands of the Probate Court and the Attorney General. As overseer of public charities, the Attorney General has a statutory

⁹⁷ Town of Ipswich - History, <http://www.town.ipswich.ma.us/history.htm>.

⁹⁸ Abraham Hammatt, *The Grammar School at Ipswich*, 3 BARNARD'S AMER. J. OF EDUC. (VOL. 9) 135-144 (1878).

mandate to protect the beneficiaries of public charities and to prevent breaches of trust in the administration thereof. In the complex and highly political case of the Grammar School Trust, the impartiality and expertise of the Attorney General are fundamentally required to secure a just resolution that protects both the trust and its beneficiaries, the schoolchildren of Ipswich.

EXHIBIT D



TOWN OF IPSWICH

IPSWICH, MASSACHUSETTS 01938

The Ipswich Planning Board
Office of Planning and Development
Town Hall
Green Street
Ipswich, Massachusetts
01938

The Essex County Probate and Family Court
36 Federal Street
Salem, Massachusetts
01970

January 23, 2011

To the Court,

We of the Ipswich Planning Board urge the Court not to approve the sale of the land known as Little Neck, in Ipswich, to the tenants of that land. There are too many questions to be answered about the effect such a transaction might have on the Town at large.

We know of no proper public process through which the expected consequences of the proposed land sale have been examined.

We assume the proposed land sale places no limit on the seasons of use by the owners of the houses. As the houses predominantly are not, and have never been, occupied in the winter, a change which allows continuous occupation of the houses can be assumed, until otherwise proved, to be detrimental to our Town's natural resources, municipal services, infrastructure, fiscal condition, and to traffic and pedestrian safety. Little Neck is a densely populated area with extraordinarily limited and fragile access.

A restriction to seasonal use of the Little Neck residences is, we presume, to be in the best interests of the Town and would honor the original purpose of the Trust.

page 2

Essential documentation of the Little Neck land and structures should be made available to the Planning Board and to other pertinent Town boards as well as to the citizens. These documents should include a registered survey of the land which includes all structures and shoreline, and shows lot lines, if any. Also essential, at minimum:

- The quantity of vacant lots, capable of accepting a new house, should be shown.
- The roadways, indicating paved width as well as rights-of-way, if any, should be shown.
- Public pathways, if any, should be shown.
- Great Marsh Area of Critical Environmental Concern should be shown.
- An inventory should be made of the natural resources of the subject lands both upland and tidal.
- An inventory should be made of all non-residential uses currently existing.
- Documentation of the current open space with any restrictions on its use, if any, should be shown. Of particular concern is the potential loss of public access to a large portion of Pavilion Beach.

Before any agreement is made relating to a sale of the Little Neck land to its tenants, a public hearing process should be held, with the Planning Board presiding or at least involved. The public hearing process should review the merit and terms of a proposed land sale against the Ipswich Zoning Bylaw, with specific reference to its stated purpose (Section I), and to Section XI (J) parts 1 through 6.

Additionally, the public hearing process would need to ascertain whether the terms of any proposed Little Neck land sale reconciles with both the Town Meeting accepted Community Development Plan, and the Town Character Statement.

To date, no public hearing process, no open citizens' forum of any advertised and substantive kind has occurred in which to debate this monumental land use decision. Until a legitimate path to deciding the future of Little Neck can be established, where all implications can be presented and debated, until we have worked with diligence to protect the Town's interests, no change should be made to the status of the Little Neck residences.

On behalf of the Ipswich Planning Board I am, sincerely,

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

Robert Lunt Weatherall
Member, Ipswich Planning Board

EXHIBIT E

REDACTED

From: Pat McNally [mailto:lawtrick@yahoo.com]
Sent: Wednesday, November 02, 2011 3:18 PM
To: fincom@town.ipswich.ma.us; SCHOOL NEW; Board of Selectmen
Subject: Fw: Feoffee Meeting 10-31-11

Dear Colleagues,

FYI --- See below---the Chair of the Feoffees called a relatively short-notice meeting that none of the BOS members were able to attend. I'm fairly certain that the prevailing votes would have been the same.

Sincerely, Pat

Patrick J. McNally

Board of Selectmen

978.356.4655

----- Forwarded Message -----

From: "feoffees1@aol.com" <feoffees1@aol.com>
To: a.mulholland2@gmail.com; padofote@aol.com; foleyj07@comcast.net;
ray.morley@verizon.net; lawtrick@yahoo.com; olym52@comcast.net; csurpitski@verizon.net
Sent: Wednesday, November 2, 2011 9:56 AM
Subject: Feoffee Meeting 10-31-11

Present were Foote, Foley, Whiston, Mulholland, Atty Sheehan @ Peabody Law office 2 PM.
Selectmen Feoffees absent

Foley moved and Whiston seconded that a Committee on Litigation be established and that all decisions be made by life members as regards the pending court case. all in favor.

Atty Sheehan reported as of today there is no money left in the account for legal fees. Eastern Bank has \$125900. in the loan account which could be used through Dec 31, 2011. After discussion Foley made motion that \$124959.20 be drawn on the line of credit account at Eastern Bank to Maclean Holloway Doherty law firm. Mulholland seconded. all in favor.

Atty Sheehan talked about depositions and discovery issues. Gottlieb and Disalvo want to settle with School Committee by offering more money., hoping to get a 4th vote from school committss. Question as to when are feoffees going away. Atty Sheehan states Feoffees will go away after a sale is approved and Feoffees are given a release. Atty talked about windfall of assessed value of 32 Mill\$ divided by 167 would cost 24000\$ ea to reach more on sale price.

Atty Sheehan to notify Atty Allen of settlement of counterclaim in behalf of feoffees. After discussion on reconstituion of feoffees, Mulholland moved that Feoffees step aside upon sale settlement of LN by agreement.. Whiston seconded. Foley, Whiston, Mulholland voted in favor.

Foote voted no.

After a discussion on hiring expert witness for court case Foley moved to engage Charles River Assoc as expert witness on terms of agreement dtd 10-27-11. seconded by Mulholland. all in favor.

After discussion with Atty, Foley moved to place \$1000 in Eastern Bank savings to establish a deposit relationship. Seconded by Whiston. All in favor.

Foote brought up the residents who for hardship reasons request to stay the winter on LN. Foote made motion, Mulholland seconded, all in favor. Costs to tenants would be \$1100 to \$1800 ea.

Foley and Foote discussed why taxes could not be direct billed to tenants. Currently Feoffees are losing money on having tax money and bills processed by feoffees. Atty Sheehan researched abd found staatute

C59 Sec 2B which allows town to direct bill tenats.

Foely made motion that Atty Sheehan craft a letter to town assessor to tax 167 owners directly. sconded by Mulholland. all in favor.

1739 hrs Mulholland motioned to adjourn, seconded by Foley. all in favor.

EXHIBIT F

RE: Feoffees

Subject: RE: Feoffees
From: "Jeffrey B. Loeb" <JLoeb@richmaylaw.com>
Date: Tue, 15 Nov 2011 13:42:46 -0500
To: "Douglas J. DeAngelis" <ddean@finishlynx.com>

Doug,

Thanks.

There wont be any settlements that involve sale in any respect.

Jeff

Jeffrey B. Loeb
Rich May, a Professional Corporation
176 Federal Street
Boston, MA 02110-2223
T - (617) 556-3871
F - (617) 391-5771
email: jloeb@richmaylaw.com
website: www.richmaylaw.com

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

From: Douglas J. DeAngelis [<mailto:ddean@finishlynx.com>]
Sent: Tuesday, November 15, 2011 1:41 PM
To: Jeffrey B. Loeb
Subject: Re: Feoffees

Jeff-

After further discussion, we have decided to err on the side of caution and not do anything that could have any negative impact on the Probate Court case. In so doing, we are also trusting your judgment that there is no settlement agreement that the current makeup up the school committee would accept if it came in advance of fixing the governance of the Feoffees. This includes a settlement agreement which is coincident with fixing the governance, since such an agreement would not allow any public discourse on the terms of the settlement agreement.

Thanks for your efforts.

-doug

Jeffrey B. Loeb wrote:
Doug,

If you are going to ask us to vote in citizen queries (which we generally don't do) could you get me the language today so I can run it by our atty in advance.

Thanks.

Jeff

Jeffrey B. Loeb
Rich May, a Professional Corporation
176 Federal Street
Boston, MA 02110-2223
T - (617) 556-3871

0240

RE: Feoffees

F - (617) 391-5771

email: jloeb@richmaylaw.com <<mailto:jloeb@richmaylaw.com>>

website: www.richmaylaw.com <<http://www.richmaylaw.com/>>

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Douglas J. DeAngelis
ddean@finishlynx.com
978 556-9780 978 556-9781 fax
800-989-LYNX

Lynx System Developers, Inc.
179 Ward Hill Avenue
Haverhill, MA 01835
<http://www.finishlynx.com>

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

FILED 0003 2012

AFFIDAVIT OF CLARK ZIEGLER
IN SUPPORT OF MOTION TO INTERVENE

I, Clark Ziegler, state the following on my own personal knowledge or information and belief:

1. I reside at 10 Woods Lane, Ipswich, Massachusetts.
2. I have a daughter who is a junior at Ipswich High School. My two older sons were also educated in the Ipswich schools – one graduated from Ipswich High School and the other attended the Winthrop School and then graduated from Landmark.
3. I and others have moved to intervene in this action because of our alarm over the recent decision by the School Committee to abandon its position with respect to the Feoffees and the William Payne Trust. We had been relying on the School Committee to vigorously litigate the issues of whether deviation from the Trust is permissible and whether the Feoffees should be

removed for their mismanagement of the Trust and replaced by town-appointed trustees with public accountability.

4. It was not until the School Committee's executive session vote on December 17, 2011, and the announcement of the proposed settlement with the Feoffees on December 20, 2011, that we realized we could no longer rely on the School Committee to vigorously litigate these issues and were forced to immediately intervene to protect the interests of our children, the true beneficiaries of the Trust.

5. I first became directly involved with the Feoffees in early 2010, when I was asked as one of three real estate financing experts to be part of an ad hoc committee to advise the School Committee on the feasibility of the proposed conversion of Little Neck to a condominium and sale of the land by the Feoffees to the current tenants. As a fifteen-year member of the Ipswich Finance Committee, including three years as chairman, I had long been aware that the Feoffees were not a reliable source of funding for the Ipswich Public Schools, that an investigation of the Feoffees had been launched by a vote of Town Meeting in 2001, and that serious mismanagement of the Trust had been identified in the Town's investigation.

6. As of 2001, the Attorney General was also aware of the Feoffees' mismanagement of the Trust and the likely need to remove them. Attached as Exhibit A is a copy of a letter dated December 17, 2001, from Deirdre Rosenberg, Assistant Attorney General in the Division of Public Charities, where she wrote that "the Attorney General has not decided whether the current Feoffees can continue to serve as trustees of Little Neck. However, I strongly suspect that the answer will be in the negative."

7. In the course of five-months' work on the ad hoc committee delegated by the School Committee, I saw no indication that the Feoffees had any understanding of the costs and

benefits of a sale to the tenants or had done any analysis to show why a sale was necessary or in the best interest of the beneficiaries. I am not aware of any analysis supporting the necessity of a sale having been presented to the School Committee or to the Court.

8. When it became clear to me that the Feoffees were violating the Trust and failing to fulfill their fiduciary responsibilities, I worked with other concerned Ipswich citizens to draft legislation to amend Chapter 5 of the Acts of 1765, the legal authority under which the current Feoffees serve as trustees, to replace the Feoffees with a publicly-appointed board of trustees. This legislation was presented to the 2011 Annual Ipswich Town Meeting on a citizens' petition, was approved by Town Meeting with unanimous support from the School Committee, Board of Selectmen and Finance Committee, and was ratified by a nine-to-one vote in a non-binding town referendum.

9. This citizens' effort to address abuses of the Trust is described in my testimony, and the testimony of citizen leader and School Committee member Rachel Roesler, that was presented at a public hearing before the Massachusetts Legislature's Joint Committee on Municipalities and Regional Government on October 18, 2011.

10. Specifically, I testified as follows at the public hearing:

My name is Clark Ziegler and I have lived in Ipswich for nearly 30 years. My wife and I have raised three kids educated in Ipswich Public Schools; two now in college and one at high school.

Until last year I paid little attention to the Feoffees. As one of a few real estate and finance experts, I was asked by the School Committee to review the viability of the proposed sale of the land at Little Neck to the tenants.

When I got involved I was shocked and appalled at the way the Feoffees conduct their business. There were none of the normal checks and balances associated with a nonprofit or a charitable trust. Meetings were held in secret, records were not kept. The three Selectmen who serve as Feoffees to provide public oversight were systematically excluded from all major decisions. There was no analysis whatsoever to support the

Feoffees' petition to Probate Court to sell the land at Little Neck and violate the explicit terms of their trust.

This past spring, a year after I first got involved, we were still in gridlock, with no money flowing to the Ipswich schools. The legal fees are already well over a million dollars with no end in sight. Every dollar the Feoffees pay their attorney to defend their current practices – which in turn forces the School Committee to spend another dollar to defend the interests of the community – is money that is permanently wasted and cannot be used to save academic programs or prevent teacher layoffs.

I am one of many citizens who has simply had enough. Earlier this year I got together with other parents and taxpayers who feel the same way. Part of that effort was focused on intervening in court, and you will hear in a minute about hundreds of families who made their voices heard through a brief filed in Probate Court. My role was to draft a citizens' petition that put this legislation back before Town Meeting and ultimately before you today as a home rule petition from the Town of Ipswich. I also worked with that citizens group to draft a referendum question that we successfully petitioned the Selectmen to include in this spring's town-wide election.

The decision your committee makes about Senate 1927 is about respect for the democratic process. The legislation has been overwhelmingly supported by votes at the Ipswich Town Meeting, both in 2009 and again this year. It was supported by the voters in a town-wide election by a vote of nine to one. It is unanimously supported by the town's Selectmen, School Committee and Finance Committee.

Yes, there is some opposition to the bill, but that opposition is based on self-interest, not on the public interest. For the Feoffees to say that they will relinquish control after the land at Little Neck is sold – which explicitly violates the trust under which the Feoffees were established – is like saying we're happy to restore public accountability but only after it's too late to make any difference.

I urge your committee to respect the will of the town's voters and elected officials and approve S. 1927 without delay.

11. Ms. Roesler similarly testified as follows at the public hearing before the Joint Committee on Municipalities and Regional Government:

My name is Rachel Roesler and I'm an Ipswich School Committee member and the mother of three children in the Ipswich public schools.

Year after year at Town Meeting I listen to people vent their frustrations over the poor management of this Trust. Solutions are offered, votes are taken, promises are made. Nothing changes. The disputes grow while the money for the schools dwindles. Enough is enough. We're here because it's time for change.

Last year I heard the Feoffees were having a meeting so I tried to attend along with a few other parents. We naively thought that if reasonable people could sit down and talk, perhaps solutions could be found. Instead we were told by Mr. Sheehan that we, as parents of Ipswich school children, have no right to question the actions of the Feoffees. We were made to leave.

The Feoffees are required to hold a public meeting once a year but until this year I was never able to find out when or where it was held. I don't even know if they were held because minutes, if they're taken, aren't made public. This March, after intense public pressure, a meeting was posted and held so the Feoffees could re-elect the positions of Chairman, Vice Chair, Treasurer, and so forth — five positions in total. This is what happened. A lifetime Feoffee would nominate a fellow lifetime Feoffee for a position and then a Selectman Feoffee would nominate a fellow Selectman Feoffee then a vote would be taken. Not surprisingly, the lifetime Feoffee would win the vote by a 4-to-3 count. Because there are four lifetime Feoffees and five positions, one lifetime Feoffee serves in two positions. The Selectman Feoffees are shut out each time and prevented from serving in any meaningful way.

Watching this sham take place, I couldn't help but think that I was watching something akin to a re-shuffling of chairs on the deck of the Titanic. The ship is going down fast but we're powerless to do anything about it.

I decided to run for a position on the School Committee to try and effect change. I also joined with other parents and citizens to start a citizens' action committee. In just one month the citizens' group was 750 members strong and it's growing daily. Many of the members are here today because we are asking for your help.

We know that when it comes to the struggles of properly funding schools, Ipswich is no different from your town. What does make Ipswich different is that our founding fathers did a brilliant and generous thing by establishing a land trust to benefit the schools, in perpetuity. Their one mistake was putting the trust into the hands of a body of people who aren't accountable to anyone but themselves.

My son Nicholas started Kindergarten in 2006. He's a 5th grader now. In all the time he's been an Ipswich student, he has never experienced the

benefit of this trust. Not a single penny has gone to the schools in all the time he's been a student. Money meant for kids is instead going to lawyers, who handle the growing number of legal disputes that seem to follow the Feoffees.

Little Neck is a gem to all who live there but it's nothing to the Ipswich school children. It's just a reminder of what could have been had the Feoffees remembered their duty to the beneficiaries of the Trust they manage.

The legislature attempted to create a more fair and accountable governance structure when it voted to add three Selectman as Feoffees. Unfortunately they are rendered powerless by their minority status. We hope that the legislature will act again but get it right this time. Your support of this bill will ensure that the trust is managed with the beneficiaries' best interest in mind and will enhance the learning experience of thousands of children for generations to come.

12. In my role as a former chairman and member of the Ipswich Finance Committee, and as a member of the Town's Growth Management Steering Committee, I have detailed knowledge of municipal finances and the ways in which land-use decisions impact funding for public schools. Given the constraints of the Proposition 2½ levy limit, the proposed sale of lots at Little Neck below their current assessed value would almost certainly result in a shift of property-tax burden from Little Neck homeowners to other taxpayers in Ipswich. A sale below assessed values would mean that total property-tax contributions to the Ipswich Public Schools from the property at Little Neck would be reduced from current levels, which directly violates the purpose of the Trust.

13. By holding Little Neck in trust the Feoffees now restrict land uses in ways that maximize support for public schools (e.g., the longstanding practice of limiting most cottage leases to seasonal occupancy has minimized the number of public school students from Little Neck and the associated cost-burden on the schools). From my service in town government I am aware that each new year-round dwelling at Little Neck would not produce sufficient revenue — at the town's current property tax limit and after taking into account the Commonwealth's

Chapter 70 education aid formula -- to support the cost of a single additional child in the Ipswich Public Schools.

14. Under the proposed sale each cottage owner would be free to convert his or her cottage to year-round occupancy. Each additional public school student resulting from that change in allowable use would cause a net loss to the school budget and would thus directly harm the beneficiaries of the Trust. While I generally believe that communities should make land-use decisions irrespective of whether they increase students and school costs, this situation is entirely different because the Feoffees have a fiduciary duty to make decisions that benefit the public schools.

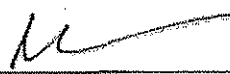
15. It is commonplace in Massachusetts for public and nonprofit property owners to allow residential use of their property while retaining permanent ownership of the land. This structure allows owners with a public or charitable purpose to maintain flexibility as circumstances change over time while continuing to benefit from long-term appreciation in value. In my capacity as Executive Director of the Massachusetts Housing Partnership, I have been directly involved in providing long-term mortgage financing for at least 30 residential real estate projects on leased land. In that capacity I have also been involved in providing 30-year mortgage financing through Massachusetts banks for several developments where individuals are able to purchase and improve homes on leased land.

16. There is no evidence that long-term ground leases at Little Neck are infeasible. In fact, there is overwhelming contrary evidence that this ownership and financing structure has been successful in many other Massachusetts cities and towns. Accordingly, there is no factual justification for violating an express condition of William Payne's will by selling the land at Little Neck and foregoing future appreciation in real estate value.

17. I do not believe the School Committee is representing the beneficiaries' interest because the School Committee has never shown that the sale of Little Neck – a fundamental violation of the Trust under which the land is owned – would yield more benefit to current and future schoolchildren than leasing the land at market rents under more competent management. Even if a sale were somehow found to be more beneficial than leasing, I believe the School Committee has failed to represent the beneficiaries' interest by agreeing to a sale of Little Neck at well below its market value. The report of the appraiser retained by the Ipswich Finance Committee is already part of the record in this matter and incorporated herein.

18. Moreover, that the School Committee would give general releases to the Feoffees as part of the agreement to sell Little Neck is inconceivable to me. Given the well-documented mismanagement of the Trust, and the Court's waiver of the statute of limitations on such claims, there is no reason why the School Committee's agreement to a general release of claims against the Feoffees is in the best interest of the beneficiaries.

Signed under the pains and penalties of perjury this 3RD day of January, 2012.



Clark Ziegler

EXHIBIT A

0250



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

TOM REILLY
ATTORNEY GENERAL

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

December 17, 2001

Ed Traverso
38 East Street
Ipswich, MA 01938

RE: Feoffees of Ipswich

Dear Mr. Traverso:

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

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

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

*Were they
ever
sent?*

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

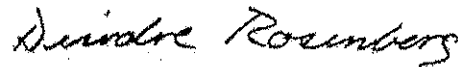
0251

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

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

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

Sincerely,



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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON,)
JAMES FOLEY, ELIZABETH KILCOYNE,)
PATRICK)
J. MCNALLY, and INGRID MILES, as they)
are the Feoffees of the Grammar School in the)
Town of Ipswich,)

Plaintiffs,

v.

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF)
MASSACHUSETTS, IPSWICH SCHOOL)
COMMITTEE, and RICHARD KORB, as he)
is Superintendent of Schools in the Town of)
Ipswich,)

Defendants.

FILED JAN 03 2012

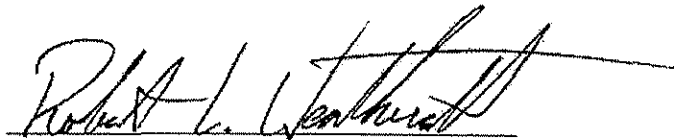
**AFFIDAVIT OF ROBERT WEATHERALL, JR.
IN SUPPORT OF MOTION TO INTERVENE**

I, Robert Weatherall, Jr., state the following on my own personal knowledge or
information and belief:

1. I reside at 33 Labor-in-Vain Road, Ipswich, Massachusetts.
2. I have two children in the Ipswich Public Schools, one at the Winthrop School
and one in the Middle School. I myself attended the Ipswich Public Schools.

3. I am the senior member of the Ipswich Planning Board, with thirteen years of service, and I was the chair of the Ipswich Growth Management Steering Committee.
4. On January 23, 2011, on behalf of the Ipswich Planning Board, I wrote a letter to the Court outlining the reasons why we were opposed to the Feoffees' sale of Little Neck at that time and remain so today. A copy of that letter is attached as Exhibit A.
5. In short, no decision regarding Little Neck should be made before the consequences of such a sale are fully considered as part of a public hearing process. Specifically, the consequence of adding hundreds of year-round residences could have a devastating impact on the Town and our schools, and must be studied.
6. I am moving to intervene because the School Committee has unexpectedly agreed to the Feoffees' sale of Little Neck without conducting such a study or even eliciting the input of the Ipswich Planning Board. Their decision is extremely short-sighted and could burden – rather than benefit – the Ipswich Public Schools in the near-term and the long-term.

Signed under the pains and penalties of perjury this 3 day of January, 2012.

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

Robert Weatherall, Jr.

EXHIBIT A



TOWN OF IPSWICH

IPSWICH, MASSACHUSETTS 01938

The Ipswich Planning Board
Office of Planning and Development
Town Hall
Green Street
Ipswich, Massachusetts
01938

The Essex County Probate and Family Court
36 Federal Street
Salem, Massachusetts
01970

January 23, 2011

To the Court,

We of the Ipswich Planning Board urge the Court not to approve the sale of the land known as Little Neck, in Ipswich, to the tenants of that land. There are too many questions to be answered about the effect such a transaction might have on the Town at large.

We know of no proper public process through which the expected consequences of the proposed land sale have been examined.

We assume the proposed land sale places no limit on the seasons of use by the owners of the houses. As the houses predominantly are not, and have never been, occupied in the winter, a change which allows continuous occupation of the houses can be assumed, until otherwise proved, to be detrimental to our Town's natural resources, municipal services, infrastructure, fiscal condition, and to traffic and pedestrian safety. Little Neck is a densely populated area with extraordinarily limited and fragile access.

A restriction to seasonal use of the Little Neck residences is, we presume, to be in the best interests of the Town and would honor the original purpose of the Trust.

0256

Essential documentation of the Little Neck land and structures should be made available to the Planning Board and to other pertinent Town boards as well as to the citizens. These documents should include a registered survey of the land which includes all structures and shoreline, and shows lot lines, if any. Also essential, at minimum:

- The quantity of vacant lots, capable of accepting a new house, should be shown.
- The roadways, indicating paved width as well as rights-of-way, if any, should be shown.
- Public pathways, if any, should be shown.
- Great Marsh Area of Critical Environmental Concern should be shown.
- An inventory should be made of the natural resources of the subject lands both upland and tidal.
- An inventory should be made of all non-residential uses currently existing.
- Documentation of the current open space with any restrictions on its use, if any, should be shown. Of particular concern is the potential loss of public access to a large portion of Pavilion Beach.

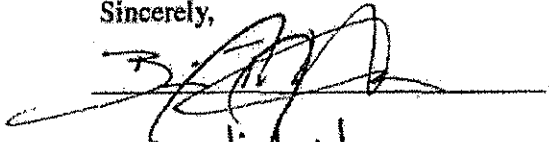
Before any agreement is made relating to a sale of the Little Neck land to its tenants, a public hearing process should be held, with the Planning Board presiding or at least involved.

The public hearing process should review the merit and terms of a proposed land sale against the Ipswich Zoning Bylaw, with specific reference to its stated purpose (Section I), and to Section XI (J) parts 1 through 6.


Additionally, the public hearing process would need to ascertain whether the terms of any proposed Little Neck land sale reconciles with both the Town Meeting accepted Community Development Plan, and the Town Character Statement.

To date, no public hearing process, no open citizens' forum of any advertised and substantive kind has occurred in which to debate this monumental land use decision. Until a legitimate path to deciding the future of Little Neck can be established, where all implications can be presented and debated, until we have worked with diligence to protect the Town's interests, no change should be made to the status of the Little Neck residences.

Sincerely,



Emilio



Robert L. Gauthier

Members, Ipswich Planning Board

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK J.
MCNALLY, and INGRID MILES, as they are the
Feoffees of the Grammar School in the Town of
Ipswich,

vs.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, AND
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich.

AFFIDAVIT OF SUSAN BRENGLE

I, Susan Brengle, being duly sworn depose and say as follows:

1. I reside at 7 Cogswell Street, Ipswich, Massachusetts.
2. I am one of the interveners in this action and I submit this affidavit in support of the motion to intervene. This affidavit is based on my personal knowledge, or information and belief.
3. I have three children who are (or have been) beneficiaries of the William Paine Trust (the "Trust"): a freshman in college who has been through the Ipswich School system; a tenth grader at the Ipswich High School; and a seventh grader at the Ipswich Middle School.

4. Over the past 13 years I have been active in the Ipswich public schools, committing hundreds of hours to the system, ranging from classroom volunteer, to Co-Chair of the successful "Turn the Tide" Proposition 2 1/2 override initiative in 2008, to current Board Member of the Ipswich Education Foundation. I attend School Committee and other town meetings as I am able and, over the years, served on various subcommittees relative to the schools and town. I am regularly approached by members of our community, including members of various town and school committees to consider running for School Committee and Board of Selectman and have been asked to consider joining the Finance Committee at various times.

5. My diverse involvement in the schools, and in the override effort specifically, has given me a deep understanding of the financial pressures our schools face, due in part, I believe to the mismanagement of the Trust by the Feoffees. In fact, an important part of the override campaign was to communicate to voters that passage of the override was only one of the tools to increase school funding and that two other ongoing initiatives were resolution of the Feoffees situation and continued efforts to address inequities in the state's Chapter 70 funding formula.

6. Since the beginning of this litigation and until December 17, 2011, as a parent of the beneficiaries of the William Paine Trust, I relied on the School Committee to protect the interests of my children, the beneficiaries, and to ensure that the intention of William Paine to benefit the Ipswich School children be realized.

7. Specifically, I relied on the School Committee to uphold the intention of William Paine that the land at Little Neck remain for the benefit of the school children of Ipswich "forever...and therefore the sayd land not to be sould nor wasted."¹

8 Given the clarity of this intention of Paine, I believed that the School Committee would enforce these terms as written, and I was assured by the actions and statements made publically by the School Committee that it was doing this.

9. First, the School Committee filed an answer and counterclaim and participated in this lawsuit for the purpose of enforcing the Trust. The School Committee requested and received substantial taxpayer funds to do so.

10. Second, the School Committee, publicly, in their open meetings, at Town Meeting and in the press, consistently informed the beneficiary parents and community at large that it was opposed to a sale and that it would vigorously pursue that position in the litigation. For example, attached as Exhibit A is an article published in the Ipswich Chronicle on October, 2010 reporting on the Ipswich School Committee's nearly unanimous vote (with one abstaining) against the sale of Little Neck. Attached as Exhibit B is the vote taken by the School Committee (as reported in the Chronicle) on October 21, 2010 to oppose the sale of Little Neck.

11. As a parent of beneficiaries of the Trust, I believe I have an interest in this litigation that is separate and distinct from other members of the community, generally, and I believe that interest has been abandoned by the School Committee in the December, 2011 Agreement for Judgment.

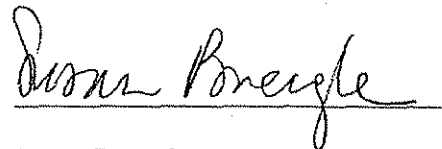
¹ October 2, 1660 will of William Paine, Suffolk Reg. of Probate, 1:346.

12. According to U.S. Census Bureau, only 17% of the voting age population in Ipswich are parents or guardians of school age children.²

13. As a member of this minority, I do not believe that the School Committee, in agreeing to a sale of Little Neck, is representing my interests, or the interests of my children, the ultimate beneficiaries of the Trust, or the interest of William Paine who specifically instructed in his will that the land not be sold.

14. To my knowledge, there is no practical, economic or legal reason for the land that has been held in trust for 350 years to be sold in 2012.

Signed under the pains and penalties of perjury this 10th day of January, 2012.

A handwritten signature in cursive script, reading "Susan Brengle", written over a horizontal line.

Susan Brengle

² I arrived at this figure by consulting the U.S. Census Bureau website. I calculated the number of households in Ipswich with children between the ages of 6 and 18 (964) and the number of parents or guardians in those households (1,671) and compared that figure to the total Ipswich residents of voting age (10,007).

EXHIBIT "A"

School Committee opposes \$29.1 million Little Neck sale

By Jane Dooley
Chronicle Correspondent

The Ipswich School Committee voted to oppose the \$29.1 million sale of Little Neck as specified in a settlement agreement between the Peoffees and Little Neck Tenants Legal Action Committee at its meeting Thursday night, Oct. 21.

The School Committee vote was 4-0-1, with Sean Gresh abstaining.

The Committee took the vote with the caveat that it was based on its current knowledge and information.

"I think it is impossible to make a decision without the full information," said Gresh in light of the fact that the School Committee expects to

receive its appraisal on the Little Neck land by mid or late next week.

An appraisal the Finance Committee commissioned values that land at \$42.5 million.

"I think the School Committee wanted to go into Town Meeting saying they were rejecting the settlement agreement and comfort the public that they were rejecting the proposal based on the current information they had," said Richard Howard, FinCom member who attended.

Co-founders of the tenants' group, Bill Gottlieb and Mark DiSalvo, who were not at the School Committee meeting, said they had no objection to the vote taken by the School Committee on the Little Neck

agreement.

"It is no surprise and not troublesome. They have stated this in the past, in the court documents and by prior vote in support of the \$26.5 million deal (proposed before the \$29.1 million settlement agreement). The recent vote is trivial and no great revelation. Clearly influenced by the action Town Meeting is going to take on Monday," said DiSalvo.

The settlement agreement would allow the Peoffees to create a condominium owned by homeowners interested in buying their lots as condominium units.

The Peoffees have filed a complaint in probate court to modify the centuries old trust so they can sell real estate and

grant and receive mortgages versus collect rent from cottage owners for use of the land. Funds received are supposed to go to the beneficiary — the Ipswich Public Schools.

The School Committee has filed suit opposing the sale of Little Neck in probate court, which needs to approve changes in the will for the Little Neck sale to go forward.

The fall Town Meeting on Monday, Oct. 25, includes a warrant article on the Peoffees Trust Agreement. Voters will be asked to transfer \$300,000 in free cash to a special legal account to pay for legal, real estate and professional services required by the School Committee related to the Peoffees litigation and modification of the trust.

EXHIBIT "B"

**IPSWICH SCHOOL COMMITTEE MEETING
THURSDAY, OCTOBER 21, 2010
MIDDLE/HIGH SCHOOL ENSEMBLE ROOM**

OPEN SESSION

CALL TO ORDER

J. Loeb, Chair Pro Tem, called the meeting to order at 7:05 p.m. with the following members present: L. Dietz, S. Gresh, and E. Traverso. Also present were R. Korb, Superintendent of Schools; J. Cuff, Financial Director; and Abigail Skelton, Student Representative.

ANNOUNCEMENTS

Mr. Loeb read the following announcements:

There will be Executive Session to discuss strategies regarding litigation and real estate matters after which the meeting will adjourn

School Committee will meet at 6:30 p.m., Monday, October 25, before the start of Town Meeting

Town Meeting will take place at 7:30 p.m., October 25, in the Performing Arts Center
The School Committee Negotiations Team will meet on October 26 at 5:30 p.m. in the Middle/High School Guidance Conference Room

A tentative date for continuation of Town Meeting, has been set for October 26, 7:30 p.m. in the Performing Arts Center

Public Safety Facilities Committee will meet on November 3, 7 p.m., Town Manager's Conference Room, Town Hall

School Committee will meet on November 4, 7 p.m., Middle/High School Ensemble Room

CITIZENS' COMMENTS

SPECIAL ACKNOWLEDGMENT

Mr. Korb read a letter from Tom Gallagher, Athletic Director, regarding the Mile Lane well project and the donation in the amount of \$40,000 - \$45,000 by the Institution of Savings to the Friends of Ipswich Athletics. Dr. Gresh moved, seconded by Mrs. Dietz, to accept the donation of \$40,000 - \$45,000 from the Institution for Savings for the Mile Lane well project.
UNANIMOUS.

I. SCHOOL COMMITTEE PRESENTATIONS

A. TECHNOLOGY FOR LEARNING INITIATIVE

Ellen Kallman, President of Ipswich Education Foundation, and Sue Brengle, Chair of the Technology for Learning Initiative Steering Committee, presented the information to be given to the community in the form of corporate donations with the comment that private funding has become a necessity in the schools. A fund-raising letter is going out to parents, the Chronicle will have a lead article, and the Rotary Ball at Turner Hill will hopefully raise a considerable sum for the Initiative. School Committee members applauded the Initiative and pledged their support. Some advance work has been done including the reconvening of the Technology Subcommittee under the direction of Cheryl Forster-Cahill and Chris Burke.

B. RACE TO THE TOP PROPOSAL

Mr. Korb spoke of the cooperative effort among the School Committee (most particularly, E. Traverso), the administration and the ITA to bring money into the system in a four-point improvement plan for curriculum materials and instructional practices in Race to the Top (RTTT). The RTTT initiative will bring \$147,000 over the next four years. Jeff Krieger, ITA Chair, and Sheila McAdams, Winthrop Principal, co-chairs of the initiative, will submit specific goals in a Year 1 plan by October 22. Mrs. McAdams made a brief presentation with discussion by the School Committee.

Mr. Traverso moved, seconded by Mrs. Dietz, that the Ipswich Public Schools adopt the one-year plan of Race to the Top. UNANIMOUS.

C. FINANCIAL REPORT

Finance Director Cuff updated the Committee on FY11 budget status and explained the Circuit Breaker function. She gave her explanation and recommendation for the natural gas contracts. Consensus of the School Committee was to accept the Financial Director's recommendation to use the standard lock-in rate for an extended 24-month period for a natural gas contract with Hess.

She reviewed construction projects on the Doyon and Middle/High School buildings as a result of severe weather last year (insurance funded) and the Winthrop door replacement project coming from budgeted FY11 earmarked monies. Also, she reported on a recent SPED transportation review.

Dr. O'Flynn joined the meeting.

D. FINAL REVIEW FOR OCTOBER 15, 2010, TOWN MEETING

1. Article 3: FY2011 School Budget Amendments
To be presented by Hugh O'Flynn
2. Article 4: FY2011 Whittier Regional High School Budget
To be written by Barry Hopping and presented by Ed Traverso
3. Article 5: Feoffees Litigation
Deferred until 6:30 p.m., October 25, 2010, Ipswich High/Middle School.

E. FEOFFEEES OF THE GRAMMAR SCHOOL

Dr. O'Flynn met with Feoffees Subcommittee. While it was determined by Mr. Korb and Ms. Cuff that the Town Manager had affirmed that Article 5 would be presented by the School Committee at the Fall Town Meeting to compensate the schools for legal work, there was a hold put on the warrant and through a series of circumstances, when the motion was presented, it was by the Finance Committee. A proposal (Triboard Working Group Statement) needs a separate vote from the wording of Article 5 itself.

Mr. Kallman, from the audience, spoke at length regarding the meeting that he attended citing several points that he felt should concern the citizens of Ipswich. Mr. Loeb and Dr. O'Flynn disagreed with Mr. Kallman on the matter of lack of trust among the three boards. There is agreement that there is need to figure out a process. Mr. Korb feels that the School Committee must take the lead on this Article before Town Meeting to send a strong message of

cooperation and responsibility by the key litigant who will be responsible for payment of that money in the future. According to Town Counsel, it is possible to change that motion prior to Town Meeting, and the Board of Selectmen could take that action on Monday night prior to Town Meeting, notifying the Finance Committee in a spirit of collaboration and courtesy.

Mr. Loeb felt that the wording of the Article 5 motion and of the Triboard Working Group Statement is in disagreement, and he could not support and would not present the Article at Town Meeting as it stood. A reworking of the wording of the Triboard Working Group Statement was finalized as follows with a motion made by Dr. O'Flynn, seconded by Mr. Loeb, and voted 4/1 in favor (Dietz opposed):

- 4a. The School Committee shall propose a comprehensive strategy to implement the Purpose above;
- 4b. The Triboard Working Group shall consider this strategy and make recommendations;
- 4c. The Triboard Working Group shall meet as necessary to discuss strategy;
- 4d. All information will be shared promptly and completely with members of the Triboard Working Group and through the representative members to the respective Committees;
- 4e. Requests for the use of the Feoffees Legal Fund shall generally be made prior to the expenditure of the funds, and shall include the vendor, purpose of the expenditure, and estimated amount as provided by the vendor.

Mr. Loeb felt that "if the intent isn't to exclude expenditures since July 1, 2010," he will be more conducive to accepting.

Mr. Loeb moved, seconded by Dr. O'Flynn, that the School Committee take a position based on current knowledge and information that the Committee is opposed to the sale of Little Neck property on the terms as presented in the Feoffees/Tenants Settlement Agreement. IN FAVOR - Loeb, O'Flynn, Traverso, Dietz; ABSTAINING - Gresh.

Dr. O'Flynn announced that the School Committee ordered appraisal will not be forthcoming until after Town Meeting on October 25. It will be shared once the School Committee has studied it. Dr. O'Flynn stated that the position relative to the issue about sponsorship of Article 5 will be taken up on Monday evening before Town Meeting.

Dr. O'Flynn indicated that there would not be an Executive Session this evening due to no new additional information regarding real estate matters.

II. SCHOOL COMMITTEE REPORTS

A. VOUCHERS/BILLS

B. SCHOOL COMMITTEE SUBCOMMITTEE REPORTS

- 1. ATHLETICS SUBCOMMITTEE
- 2. ATHLETIC FIELD STUDY COMMITTEE
- 3. AD HOC TOWN/SCHOOL COLLABORATION COMMITTEE
- 4. COMMUNICATIONS SUBCOMMITTEE

5. DAY CARE CENTER SUBCOMMITTEE
6. EARLY CHILDHOOD SUBCOMMITTEE
7. FEOFFEEES SUBCOMMITTEE
8. NORTH SHORE COALITION FOR SCHOOL FUNDING
9. OPERATIONS SUBCOMMITTEE

10. POLICY SUBCOMMITTEE

Mr. Loeb moved, seconded by Dr. O'Flynn, to accept for adoption the following policies:

- a. School Assignment Areas, JC
 - b. Parents' Choice of Elementary School, JECC
- UNANIMOUS.

Mrs. Dietz reported that Policy Subcommittee had met and is studying fees charged for various school buildings.

11. PUBLIC SAFETY FACILITIES COMMITTEE

Meeting scheduled on November 3.

12. SPECIAL EDUCATION PARENT ADVISORY COMMITTEE (SEPAC)

13. WIND TURBINE SUBCOMMITTEE

Mr. Korb reported that the Committee has accepted a bid for a GE 1.65MW wind turbine within the budget and is forecast for installation in March, 2011.

14. IPSWICH HIGH SCHOOL STUDENT REPRESENTATIVE

15. OTHER

III. SUPERINTENDENT'S REPORT

A. SUPERINTENDENT'S ADMINISTRATIVE REPORT

IV. CONSENT

A. CONSENT AGENDA

Dr. O'Flynn moved, seconded by Mr. Loeb, to approve the Consent Agenda as follows:

- Acceptance of Minutes of September 16, 2010, Open Session
 - Acceptance of Minutes of October 7, 2010, Open Session
 - Acceptance of Minutes of October 7, 2010, Executive Session
 - Approval of the Ipswich Middle School's Grade 8 overnight field trip to the Adirondack Mountains, New York State, June 1-3, 2011.
- UNANIMOUS.

VI. ADJOURNMENT

Mrs. Dietz moved, seconded by Mr. Traverso, to adjourn at 10:15 p.m. UNANIMOUS.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,

v.)

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.

SUPPLEMENTAL AFFIDAVIT OF CLARK ZIEGLER

I, Clark Ziegler, state the following on my own personal knowledge or information and belief:

1. I submit this supplemental affidavit in support of the motion to intervene.
2. I am very familiar with Ipswich public school budgets and with revenue sources available to the Ipswich schools, having served 15 years on the Ipswich Finance Committee including three years as chairman. One of my key roles on the Finance Committee was to compile revenue projections that we used on the Finance Committee, and that were relied upon by the School Committee and Board of Selectmen, to set annual budget targets for the school and municipal budgets based on total estimated revenues and property tax collections within the Proposition 2½ levy limit.

3. To my knowledge, based upon my service on the Finance Committee, the financial challenges facing the Ipswich Public Schools, while significant, are chronic problems that are not substantially different than those experienced by similar communities. The most significant source of school budget stress in Ipswich is not declining revenue but the need to fund collective bargaining agreements with built-in cost increases that exceed annual growth in revenue.

4. According to data compiled and published by the Massachusetts Department of Revenue, annual growth in available local budget revenue in Ipswich (combining property taxes, state aid, local receipts and all other sources) grew at an annual rate of 3.6 percent for the ten years ending in FY2011, the last year for which comparative statewide data is available. That revenue growth is right in line with the state average (3.7 percent) and slightly below the statewide median (4.2 percent).

5. Based upon my service on the Finance Committee, I know that another key fiscal indicator affecting school budgets is the amount of "new growth" (newly developed real estate and improvements to existing real estate that are added to the tax base) in each city and town that is available each year to supplement the maximum 2½ percent increase in property taxes allowed by state law. According to published Massachusetts Department of Revenue data, during the ten fiscal years from FY2003 to FY2012 new growth in Ipswich ranged from 0.98 to 3.81 percent of the levy limit, which is right in line with the statewide median that ranged from 1.11 to 2.59 percent of the levy limit during the same period.

6. It is clear from my personal knowledge and from my review of publicly-available data that the Ipswich Public Schools are at no unusual fiscal disadvantage relative to other cities

and towns and that the school budget situation in Ipswich has not significantly deviated from statewide fiscal trends.

7. The Town of Ipswich, like many other communities in Massachusetts, has approved school operating budget overrides pursuant to Proposition 2½ to meet school funding needs that could not be met through other available revenue sources. School budget overrides were approved by Ipswich voters in 1990 and again in 2008. That option remains available to address future shortfalls in the Ipswich public school budget.

8. Based upon my review of published budget and revenue data, my knowledge of school financing and my 15 years of responsibility for review and approval of Ipswich public school budgets, it is clear to me: (a) that the Ipswich schools do have significant unmet funding needs that have developed over the long term, (b) that these unmet needs have been exacerbated by the failure of the Feoffees to provide regular funding in accordance with their fiduciary duties; and, (c) that there is no fiscal emergency currently facing the school department or any other extraordinary fiscal circumstances that would somehow justify deviation from William Payne's will – violating an explicit prohibition on sale of the Little Neck property – in order to provide a short-term cash infusion to the Ipswich schools.

9. Through a request made pursuant to the Massachusetts Public Records Law, I obtained minutes of Executive Session meetings of the Ipswich School Committee dated November 3, 2011, December 15, 2011, and December 17, 2011. True copies of those minutes are attached as Exhibit A.

Signed under the pains and penalties of perjury this 26th day of January, 2012.



Clark Ziegler

EXHIBIT A

9:15 p.m.

Attending: H. O'Flynn, L. Dietz, B. Hopping, J. Loeb, J. Bauman, S. Gresh, R. Roesler,
R. Korb, J. Cuff

Tenants of Little Neck Question

Mr. Loeb asked, based on a telephone-call question from Mr. DiSalvo (Tenants Association), if the School Committee would want a meeting with the Tenants. Mr. Loeb read to the Board emails from Tenants' counsel to School Committee counsel Steve Perry and from Feoffees' counsel to School Committee counsel Richard Allen on the same issue. He discussed an email from P. McNally, Selectman Feoffee.

After considerable discussion, and a poll taken by Mr. Loeb, Dr. O'Flynn answered "yes" and Dr. Gresh agreed that they should meet with nothing to lose; but Mrs. Dietz, Mr. Hopping, Mrs. Bauman, Mr. Loeb, and Mrs. Roesler all said "no" with Mrs. Roesler adding that no talk should occur until the governance structure was changed.

Legal Bills

Dr. O'Flynn moved, seconded by Mrs. Bauman, to approve the Action Plan (confidential document dated 10/21/11 to Jeffrey Loeb from Stephen Perry, attorney for the School Committee). Roll call IN FAVOR - Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

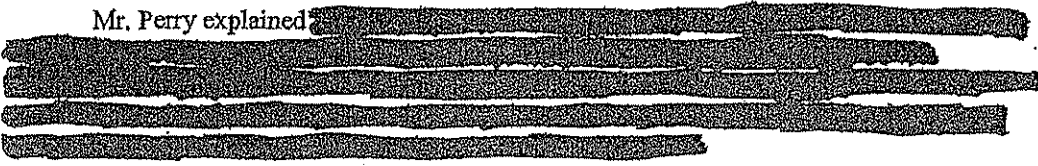
Mrs. Dietz moved, seconded by Mrs. Roesler, to return to Open Session at 10 p.m. Roll call IN FAVOR - Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

10:40 p.m.

Attending: H. O'Flynn, L. Dietz, B. Hopping, J. Loeb, J. Bauman, S. Gresh, R. Roesler
R. Korb, Superintendent; S. Perry, Attorney; A. Imbriglio, Legal Intern

Mr. Perry summarized the current status of the case. Mr. Loeb affirmed that the ultimate decision is the School Committee's. Because the last two Town Meetings determined "strategy is to consult with Finance Committee and Board of Selectmen," their input is needed.

Mr. Perry explained:



He then distributed a settlement offer, dated 12/15/11, an increase by over \$3 million and explained the term "use and occupancy" of rent rebates rather than "purchase price." He reviewed each of the eight bullet points and explained them. He presented a chart showing the original agreement of a \$29,150,000 selling price and the new agreement adding the "use and occupancy" contingency.

Dr. O'Flynn moved, seconded by Mrs. Dietz, to contact the Finance Committee and Board of Selectmen and arrange a meeting as soon as possible to discuss the proposal offered by Mr. Perry. Roll call IN FAVOR - O'Flynn, Dietz, Hopping, Loeb, Bauman, Gresh, Roesler.

Mr. Korb feels that sale is best for the schools.

Dr. O'Flynn moved, seconded by Mrs. Dietz, to adjourn at 12:25 a.m. Roll call IN FAVOR - O'Flynn, Dietz, Hopping, Loeb, Bauman, Gresh, Roesler.

**IPSWICH SCHOOL COMMITTEE MEETING
AMENDED DECEMBER 17, 2011 EXECUTIVE SESSION MINUTES
MS/HS ENSEMBLE ROOM**

CALL TO ORDER

Mr. Loeb called the meeting to order at 9:05 a.m. with the following School Committee members present: H. O'Flynn, L. Dietz, B. Hopping, J. Bauman, S. Gresh, and R. Roesler; Board of Selectmen present: R. Morley, C. Surpitski, S. Berry, W. Craft, and P. McNally; and Finance Committee present: M. Schaaf, L. Seidler, M. Feldman, R. White, T. Wilson, I. Miles, M. Swan, J. Fay, and R. Howard. S. Perry, Attorney, and R. Korb, Superintendent, were present also.

ANNOUNCEMENTS

Mr. Loeb announced that Executive Session will be held to discuss ongoing litigation strategy relative to real estate matters after which the meeting will adjourn.

CITIZENS' COMMENTS

Doug DeAngelis read a prepared message urging a procedure in a non-hurried manner with public discourse.

Clark Ziegler asked for public discussion as well.

Kathy Savoie opined, as a litigator herself, that the trial should go on until the judge makes a decision. The legislators are watching this, and she said that the House of Representatives could help toward appointing public officials to a new management board of Feoffees.

EXECUTIVE SESSION

Dr. O'Flynn moved, seconded by Mrs. Dietz, to go into Executive Session for the purpose of discussing strategy with respect to real estate litigation, inviting the Finance Committee and Board of Selectmen to join the School Committee and allowing for Open Session after Executive Session if needed, otherwise to adjourn after Executive Session. Roll call IN FAVOR- Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

Mr. Schaaf, Fin Com Chair, accepted a motion from Mrs. Miles, seconded by Mr. White, to consider matters relating to ongoing litigation. Roll call IN FAVOR- Schaaf, Seidler, Feldman, White, Wilson, Miles, Swan, Fay, Howard.

Mr. McNally moved, seconded by Mr. Craft, to consider matters relating to ongoing litigation. Roll call IN FAVOR- McNally, Craft, Morley, Berry, Surpitski.


Mr. Loeb thanked everyone for coming on short notice and gave a quick history of the last 72 hours. The Attorney General's office stated that this emergency meeting is permissible.

Mr. Perry, attorney for the School Committee, explained [REDACTED]

[REDACTED] The BOS and Fin Com, in consulting with the School Committee, were asked to keep communications within the group and to keep the judge's remarks and tenants' offers confidential.

Mr. Perry detailed an offer that had been made by the Tenants late on Thursday to buy Little Neck property and create a condominium arrangement. The proposal, which the tenants had made clear was their best and final offer, with the financial aspects non-negotiable, includes the following: the tenants would increase the amount paid in use and occupancy by a total of \$2.4 million. This will automatically result in the reduction of lessee rebates of close to \$600,000 for a total increase in proceeds of approximately \$3 million. These amounts would be net income for purposes of making distributions and could be paid to the School Committee in three annual distributions of \$800,000 plus interest. The homeowners could amend their purchase agreements so that the additional amounts were treated as part of the price for purposes of their purchase and sale agreements. The extra use and occupancy payments by the tenants would be paid in cash as part of the closing, except for those tenants who were accepting Feoffees financing, expected to be a relatively small number given current interest rates, in which case they could be paid through five year fully amortizing notes at a 4 percent interest rate. The Feoffees were planning to close on all sales by July 1, 2012, but if there was a delay, the tenants would have to pay use and occupancy starting on July 1, 2012 at the same rate as the tenants, which would also eliminate any lessee rebates from that point forward. The tenants and Feoffees also agreed to accelerate the date when the interest in the escrow account (estimated at \$50,000) would be paid to the School Committee, a feature of the original agreement. The Feoffees had agreed that the engineering and legal costs for achieving the condominium conversion would be capped at \$400,000 if Donahoe could do the engineering and if the Feoffees' current counsel handled the legal work. The School Committee would be able if it wished to apply for an award from the Trust of attorneys' fees, which would allow it to satisfy any unpaid fees or expenses and to repay the Town any amounts that were owed to the Town under the terms of advance of such expenses. With respect to governance, the proposal calls for the current Feoffees to remain in office until the filing of the Master Deed, during which time they would act only in the ordinary course, and no compensation would be paid to them other than the ongoing ordinary payments to Peter Foote. Once the Master Deed was filed, the Feoffees would be reconstituted so that there were five publicly appointed trustees and two life Feoffees, and then on the first to occur of the completion of sales or 90 days after recording the Master Deed, the Feoffees would be reconstituted to seven members, six appointed by Town Boards (two each from the Selectmen, School Committee and FinCom). The seventh individual would be appointed by the life Feoffees, who would continue to be self-perpetuating for the sole purpose of appointing this seventh member on an ongoing basis. The Feoffees would obtain a release from the School Committee and release and indemnity from the Trust for any claims other than claims for unknown deliberate misconduct. The Trust Administration Order that had been submitted to the court would need to be revised given the sale of the property and also to revise the distribution/spending policy for the endowment, as it had been determined that the distribution policy contained in the existing version was inadequate for a permanent endowment. Accordingly, a revised Trust Administration Order consistent with what is outlined above would have to be adopted by the School Committee and submitted to the court with input from the Office of the Attorney General.

Mr. Perry



The trial was to resume on Monday, and a decision needed to be reported to other counsel, and potentially the court, before that occurred.

Following that, Mr. Loeb requested that those around the table ask questions and, in continuing discussion, then to make comments about their feelings of approval or disapproval. Three expressly mentioned the need to ask for a higher price. Several expressed concern that the land that the Feoffees had agreed to sell included approximately one hundred yards of Pavilion Beach and that this would affect the rights of the public to utilize the beach. Others were concerned about the elimination of seasonal use restrictions which could increase the need for town services, including enhanced enrollment numbers in the schools. Mr. Morley felt that it wasn't up to the public, and the School Committee should vote for themselves. Mrs. Dietz needs a change in governance as her priority.

Mrs. Roesler expressed concerns regarding the meeting and votes conducted in executive session, indicating that public input was necessary before taking a vote of such magnitude. She said that it was a shame that a 350-year-old trust would be dismantled with a settlement and does not want a sale to occur on her watch as a School Committee member when Payne's trust expressly forbids it.

Mrs. Roesler also commented that, while a settlement would result in roughly \$25 million placed into an investment trust, the money would be vulnerable to market volatility, and future trustees or School Committee members could decide to dip into the account for large capital improvements to the schools in the future, thus losing the valuable real estate of Little Neck. Long-term leases would produce equal or more of a return to the schools, and the trust would still have the valuable land asset. She expressed frustration that the trial was just getting underway and any talk of a settlement at this point is premature, advocating for allowing the School Committee attorney to present his case.

Mrs. Bauman felt sad that the issue wasn't continuing into litigation.

Mr. Loeb moved, seconded by Dr. O'Flynn, to authorize counsel, as a bottom line, to accept and take action to implement the proposal by the Tenants that he had outlined with the addition of clearing up the right of the public to utilize the 100 yards of Pavilion Beach abutting Little Neck property (at the gate). IN FAVOR – O'Flynn, Dietz, Loeb, Gresh; AGAINST – Bauman, Roesler, Hopping.

The Committee also directed Mr. Perry to attempt to negotiate the following elements with only number 1 as essential to a deal:

1. Use of Pavilion Beach
2. Financial return: intermediate rent between January – July, 2012, (about \$25,000 extra because the schools need the funds
3. A covenant against winter rentals by owners (November – April)

ADJOURNMENT

Dr. O'Flynn moved, seconded by Mr. Hopping, to adjourn at 1:32 p.m. IN FAVOR- Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn. The Fin Com (4) and BOS (1) members present adjourned as well.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

AFFIDAVIT OF WEBSTER A. COLLINS

I, Webster A. Collins, being duly sworn, depose and say as follows:

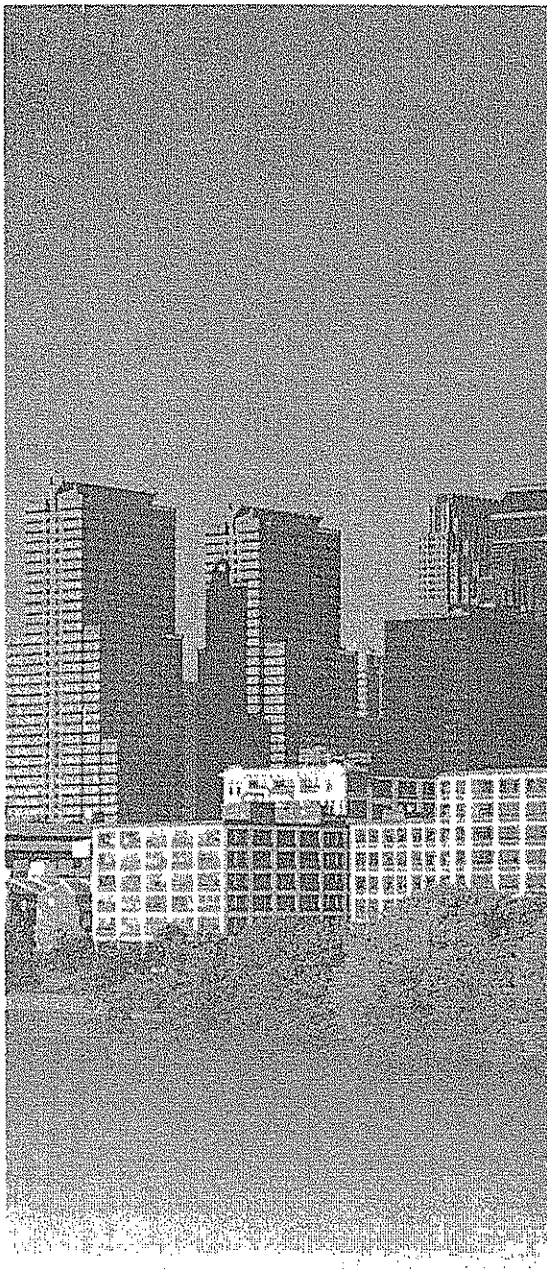
1. I am an Executive Vice President and Partner, P.C. of CB Richard Ellis/New England Partners. I am a real estate appraiser and consultant with more than 30 years of experience appraising real estate and providing consultation services regarding real estate decisions.
2. I have been certified to testify as an expert on real estate matters in courts in Massachusetts and elsewhere on more than 100 occasions.
3. I was asked to consult and give a recommendation regarding the proposed sale, and alternatives to the proposed sale, of the 35 acres of land on Little Neck in Ipswich, Massachusetts.

4. I prepared a Real Estate Consulting Report summarizing my opinions and the steps I took to reach those opinions. A copy of the report, which includes a listing of my qualifications and experience, is attached hereto.

Signed and sworn under the pains and penalties of perjury this ____ day of January, 2012.



Webster A. Collins



THE FEOFFEEES' OF IPSWICH GRAMMAR SCHOOL
35± Acres of Land
Little Neck, Ipswich, Essex County,
Massachusetts 01938

Real Estate Consulting Report

Prepared For:

The Beneficiary Group on behalf of
The School Children of Ipswich

Addressed To:

Mr. Mark E. Swirbalus
Day Pitney LLP
One International Place #17
Boston, MA 02110

VALUATION & ADVISORY SERVICES

CBRE

0282



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January 27, 2012

Mr. Mark E. Swirbalus
Day Pitney LLP
One International Place #17
Boston, MA 02110

RE: The Feoffees of Ipswich Grammar School
35± Acres of Land
Little Neck, Ipswich, Massachusetts

Dear Mr. Swirbalus:

At your request and authorization, CBRE/New England (CBRE) has prepared a Real Estate Consulting Report involving the "fate of the nation's oldest land trust"¹ - the 35 acres of land on Little Neck in Ipswich.

The nature of the problem to be solved dictates that a consulting format be followed:

"Consulting: the act of providing information analysis and recommendations for a proposed real estate decision."²

In this case, the "problem" centers around the land trust created by William Payne involving the referenced "Little Neck of Land at Ipswich to be and remain to the benefit of the said School of Ipswich forever"³. The management of the "Little Neck of land" for centuries has been assigned to Feoffees', all of whom are Ipswich residents as required by statute within the Commonwealth of Massachusetts, governing the authority of the Feoffees' and their administration of the trust.

The problem in part is that under their management, the distributions in support of the Ipswich schools have been far below what investments should produce:

¹ Kathleen Brill, Final Paper, Cover Page, May 19, 2010

² Real Estate Handbook, Published by Barron's, 6th Edition, P. 211

³ Will of William Payne, 1660

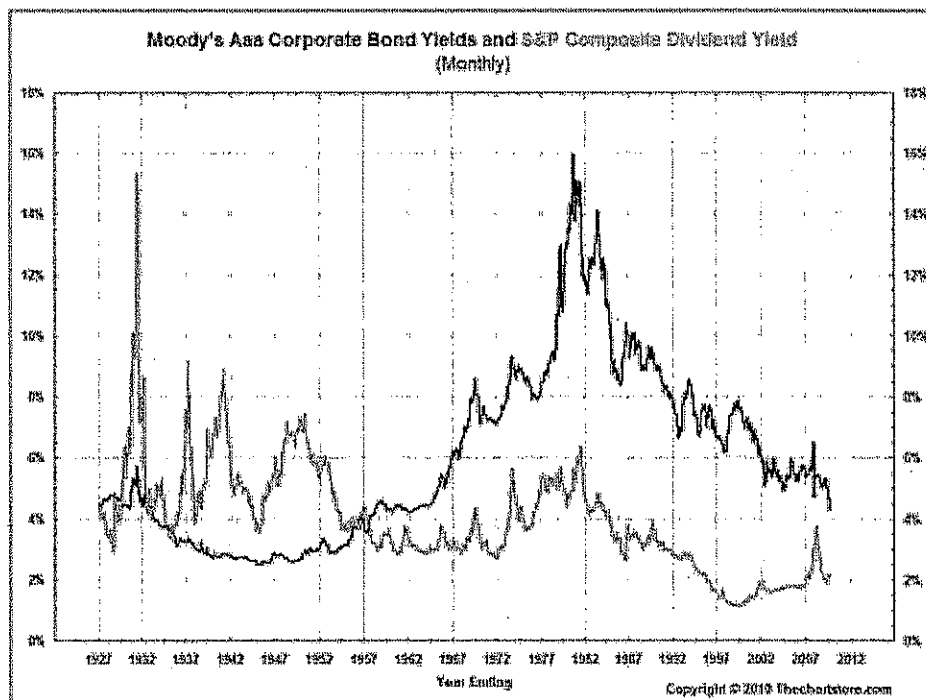
The Feoffees' support of the Ipswich schools

- The Feoffees have made the following payments to the schools since 1976, according to their financial statements in the annual Town Report:

FY	1976	\$7,500
	1977	7,500
	1978	0 (i.e. no "gift" is indicated)
	1979	0 (i.e. no "gift" is indicated)
	1980	7,500
	1981	7,500
	1982	2,500
	1983	0
	1984	0
	1985	0
	1986	2,500
	1987	No Feoffees financial statement
	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 (but transfer of \$21,000 to "School Acct")
	2000	23,000 (+ \$25,000 "transfer to School Acct.")
	2001	Financial statement not yet published, 3/27/02

4

In comparison, safe and secure Moody's Aaa Corporate Bonds and S&P Composite Dividends show a completely different pattern of return.



⁴ Colliers Appraisal, June 25, 2010, P. 14

Clearly, the Feoffees' have not properly complied with their fiduciary duties under the nation's oldest land trust. A spin off their actions has been that historically low rents caused tenants to act as if they owned the land and were not just tenants. There has been no mechanism in place to keep rent at market. This report's recommendation presents a mechanism for fair market rent.

The word fiduciary is also a defined real estate term:

"Fiduciary – one who acts, in a legal role, in the best interest of others. Examples: a broker is a fiduciary for the seller; a banker is a fiduciary for the bank's depositors; an attorney may be a fiduciary for the client; a trustee is a fiduciary for the beneficiaries."⁵

In completing this assignment, CBRE has:

- Studied the location and neighborhood, and at your specific request, not been on the property.
- Analyzed the alternatives presented by review of appraisals. The alternatives considered are:
 - The sale of the property to the tenants – suggested price \$26,700,000 (Peterson/LaChance appraisal)
 - Condominium conversion – suggested price \$25,400,000 (LandVest appraisal)
 - Aggregate value of 167 "condominium" land parcels – suggested price \$42,325,000 (Colliers Meredith & Grew appraisal); (Peterson/LaChance appraisal - \$39,565,000 gross sellout); (LandVest appraisal - \$37,675,000 gross sellout)
- Analyzed the Colliers appraisal suggesting tenants pay rents of:

Land Type	Rent/Yr.
Waterfront A 3 BR	\$18,700
Waterfront A 2 BR	\$15,300
Waterfront B 3 BR	\$16,575
Waterfront C 3 BR	\$12,750
Waterfront D 3 BR	\$12,750
Waterfront E 2 BR	\$8,075
North Interior 2 BR	\$7,225
South Interior 2 BR	\$7,650
Interior A 3 BR	\$12,750
Interior B 3 BR	\$11,688
Total Rent - 167 Lots	\$42,325,000
Rate of Return	4.25%
Total Rental Value	\$1,798,813
Source: Colliers Meredith & Grew	

⁵ Real Estate Handbook, Published y Barron's, Pg. 273

- Reviewed the class action complaint and Amicus brief in opposition to motion for partial summary judgment.
- Applied applicable real estate counseling standards and methodology.
- Analyzed recent ground lease documents available on a confidential basis to the writer of this report.
- Interviewed market professionals and managers involved in part with real estate.
- Reached the following recommendation and conclusions.

RECOMMENDATION AND CONCLUSIONS

CBRE has concluded that:

1. It is feasible to continue William Payne's land trust for the benefit of The School Children of Ipswich.
2. There are trusts which exist where management of assets similar to "Little Neck" continue to this day.
3. Professional management with specific administrative duties and power to manage the land is available in the market to provide the level of service required to produce a realistic rate of return and at a reasonable cost for management.
4. A standard ground lease structure (of 60 years) as recommended herein is necessary in order to provide security to ground lessees over the long term to insure use and occupancy.
5. The level of rents recommended in the Colliers Meredith & Grew appraisal, as adjusted herein, are a realistic starting point with a CPI adjustment in 5-year increments.
6. The ground leases would contain options to renew at market rent.
7. A ground lease option is a far better option than the sale alternative for the reasons presented.

CBRE has concluded that this is an example of the public sector being unable to fairly and properly administer the long term best interests of a private sector donor.

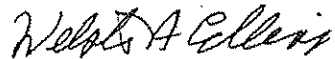
The most recent similar example is the Woodward School for Girls case where the donor of lands was John Adams, second President of the United States.

Mr. Mark E. Swirbalus
January 27, 2012
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If you have any questions, CBRE would be pleased to respond.

Respectfully submitted,

CBRE, Inc. - VALUATION & ADVISORY SERVICES



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INTRODUCTION

"Counseling, in general, is a service that offers informed opinion based upon an organized body of knowledge unavailable or unfamiliar to the layman. It involves collecting and analyzing data within the framework of existing knowledge, from which conclusions are formed, conveyed, and interpreted to the individual being counseled. The person offering such counsel must consider the problem from the client's position and offer such recommendations or alternatives as will work to his best interest within the social, economic and legal framework within which he must operate.

The job of the real estate counselor is not only to present the alternatives available but also to indicate the probable results of following each. In all instances, the client must make the final decision. The counselor functions only as an advisor."⁶

In this case, CBRE's client is the School Children of Ipswich, with services paid for by the Children's Beneficiary Group.

PROPERTY IDENTIFICATION

The property is a waterfront "neck" of land attached to the main land by a connector causeway and road. A site plan from the LandVest appraisal is on the following page.

There are 167 houses on the plan, 24 of which are improved year-round dwellings with the balance being summer/seasonal cottages in use from April 1 to December 31.

Under the will of William Payne, Little Neck is legally only one lot. The lot configurations that exist are non-conforming parcels created over time by those who have been using the land.

Their configuration has been recognized for purpose of assigning ground rent, to be paid and assessing real estate taxes.

Because the land is one lot, concepts that there could be 209 to 211 "lots" implying that the property is a subdivision is not legally correct.

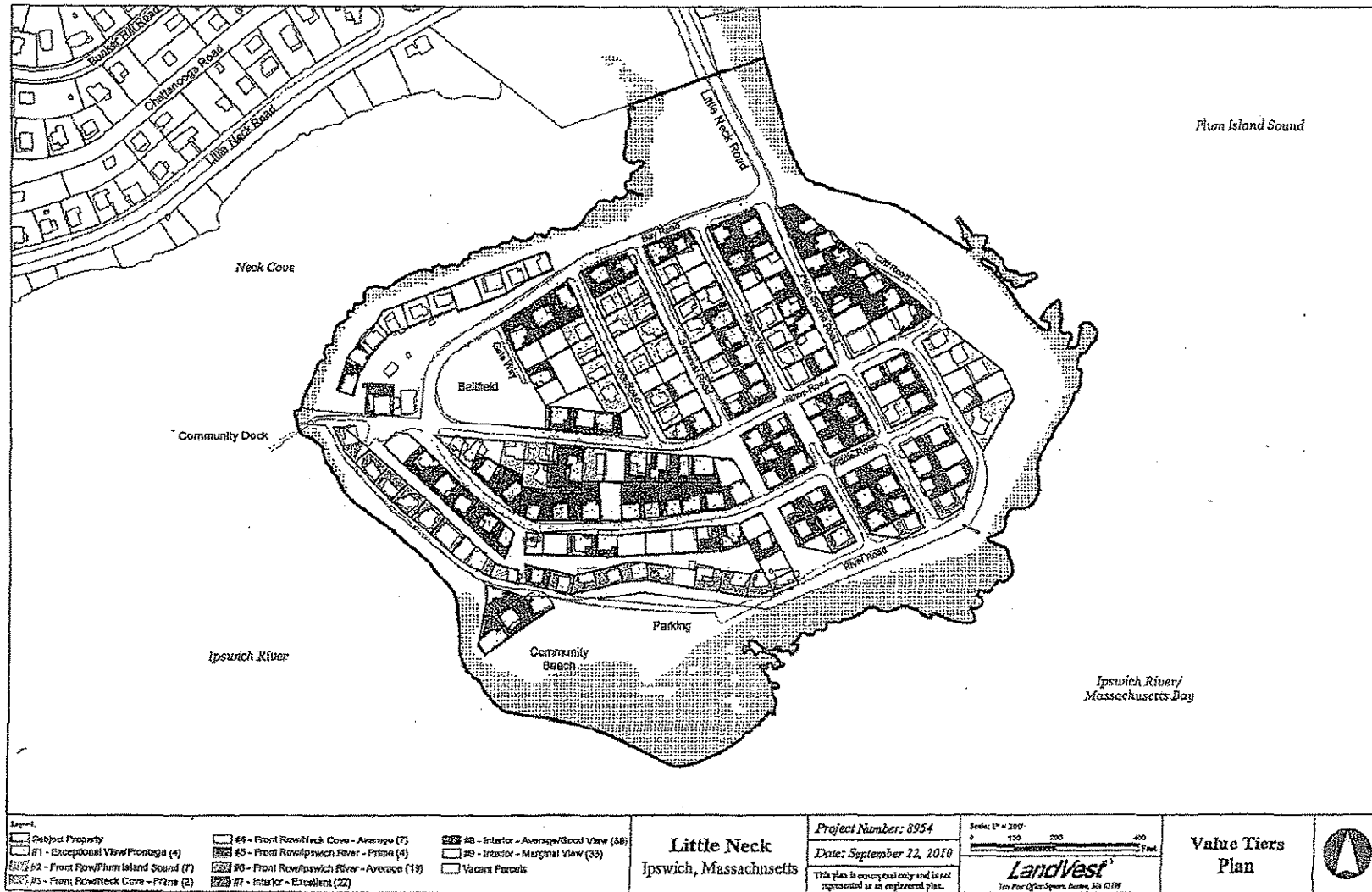
The underlying control of land use is the sewage system which is tied to 462 bedrooms or 2.77 bedrooms per house, on average.

Thus, further build-out is unlikely given the existing houses in place.

THE NATURE OF THE PROBLEM

As addressed in the letter of transmittal, the gap between what the Feoffees' have produced for the benefit of Ipswich School Children and what should have been received is widely apart.

⁶ The Real Estate Counselor, Published by the American Society of Real Estate Counselors, Chicago, IL, 1963, P. 9



The reasons are many. Tenant rents were well-below market.

Tenants acting like land owners resulted in a class action suit against the Feoffees filed December 8, 2006. Claims were made of the Feoffees' "attempting to extract money" from the tenants to which they are "not entitled" (P.3 of complaint). A history of tenancy actions outlines the actions of tenants in financing, renovating, and rebuilding homes. The Feoffees' increasing of rents has been classified as "unjust enrichment".

Next, the Feoffees' themselves were conflicted. 50% of the lifetime Feoffees' owned property on Little Neck during the period of unusually low rents.

They wore two hats. They benefited by well below market rent and could not provide the independence of a fiduciary in their actions.

Finally, the Feoffees' were neither professional managers or good managers. This is proven by the lease the Feoffees' proposed to tenants for signing. Exhibit "A" to that lease which is included in the addenda states that every three years:

"The annual rent shall be determined in the sole discretion of the landlord..."

CBRE suggests that no tenant would ever sign a lease with this clause. The CBRE recommendation attached herein places a CPI cap not exceeding 3% per year on the lease solution presented.

Several other solutions have been presented to solve the problem or to present an alternative to the problem:

1. Sale of the land at a suggested price of \$26,700,000.
2. Condominium conversion and purchase of the interest of The School Children of Ipswich for \$25,400,000.
3. Create a 167 unit condominium owned by The School Children of Ipswich and ground rent each condominium unit to the tenants.

ANALYSIS OF ALTERNATIVES

Alternative #1

Alternative #1 is the tenants' alternative. The firm of Peterson/LaChance Realty Advisors' "extraordinary assumptions" were that:

- "The Probate Court will ultimately allow the conversion to condominiums and sale to the tenants".

- All cottages will be allowed year-round use.
- The seller (The Children of Ipswich) would pay for condominium conversion.
- 32 cottage long-term leases will void them to "achieve a sale".
- \$900,000 in erosion repair would be a conversion cost.
- The value is \$26,700,000 and the "under agreement price of \$29,150,000 reflects tenants giving back value in a transaction."⁷

The problem with this alternative is lack of feasibility under highest and best use. Further, the firm recognized that highest and best use under their assumptions is a hypothetical condition.

A 5-year sellout is projected.

Under the will of William Payne, and the statute governing the trust, the above plan is contrary to that which exists, is an extraordinary assumption unto itself and does not apply. The plan does provide meaningful data as the gross sellout of parcels totals \$39,565,000.

Alternative #2

Alternative #2 is the Feoffees' alternative. This alternative is represented by the LandVest report.

The LandVest report was prepared for the Feoffees' as:

- "A current market value for financing purposes and possible submission to the Essex County Probate and Family Court in connection with the Feoffees' complaint for deviation."

The LandVest report assumes a "condominium conversion" plus "the third party value as though vacant (land).

The further commentary presented is that the report does not address investment value. Like in Alternative #1, highest and best use of "a condominium conversion of the underlying land only by the Feoffees is not legally feasible."

Under the will of William Payne, and the statute governing the trust, the LandVest plan is contrary to that which exists, is an extraordinary assumption unto itself and does not apply. The plan does provide meaningful data in that the "total retail value" of the 167 parcels is \$37,675,000. Their \$25,400,000 net present value, like Alternative #1, is not applicable.

⁷ The referenced agreement between the school committee and the Feoffees' reflects an additional \$3,000,000 "use and occupancy" beyond \$29,150,000 and is in dispute.

Alternative #3

Alternative #3 is the Town of Ipswich's Finance Committee Plan. This alternative is represented by the Colliers Meredith & Grew report. Three options are presented:

- Sale of individual lots under a condominium form of ownership - \$42,325,000
- Bulk Sale - \$35,000,000
- Aggregate Ground Rent - \$1,798,813
- Average annual ground rent - \$10,771/parcel

Under highest and best use, their highest and best use is:

"To restructure the form of ownership to a condominium and sale of the individual units, exclusive of the cottage"; again, not a legal use.

This use presents the highest amount of money to "The Children of Ipswich".

CONCLUSION OF ANALYSIS OF ALTERNATIVES

Basic and fundamental in the analysis of alternatives is the condominium assumption. The William Payne will states:

"I give unto the free School of Ipswich, the Little Neck of land at Ipswich...to be an remain to the benefit of the said School of Ipswich forever...the said land not to be sold or wasted".

In short, the sale of any part of the land as a condominium does not comply with the will. The central issue is:

Are there any alternatives which can comply with the will of William Payne and the statute governing the trust, which does not allow for the sale of the land?

The answer is yes.

A PRACTICAL SOLUTION

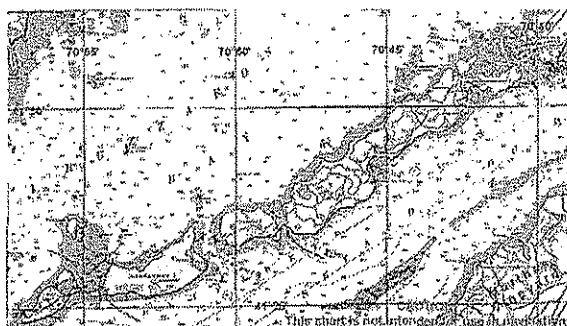
Land for centuries has been one of the most valuable and highly sought after assets in the world. The importance of land holdings dates from the 13 colonies through to the present.

The value of land has been recognized in New England through a number of alternative structures.

- The Boston Ground Rent Trust was formed as a Massachusetts trust in 1886 to invest in ground leases.

- Within Boston, some of the most valuable properties today are on ground leased land where ownership, like William Payne, wishes to hold that land in perpetuity.
- The March 1885 report presented by the Feoffees' to the Town of Ipswich indicates a \$2,000 value for Little Neck. Over the succeeding 125 years, the Children of Ipswich have seen their land grow to \$40,615,250, an 8.25% compounded rate of return.

The CBRE recommendation is to continue the land in trust. As an example, land has been placed in trust in perpetuity with an excellent example being Naushon Island.



Naushon is located between Buzzards Bay and Vineyard Sound. It is a 7-mile long island with an average width of 1 mile. The beneficiaries are the heirs of the 5 children of JM Forbes, a prominent Boston businessman. Upon his death in 1898, the land was placed in trust in perpetuity. The beneficiaries today are very similar in numbers to those involved with Little Neck.

Each user pays rent for use with that rent, set by those who administer the trust, known as Naushon Island Trust, Inc. The land is professionally managed. The trust structure enhances the prestige of the land and prevents divisive action often part of condominium associations management where individual owners have a vote.

The continuation of the trust with a 60-year ground lease structure as outlined in the Letter of Transmittal is believed the best possible use for the following reasons:

- A trust structure in place is the only structure allowed under the will of William Payne.
- The management of the trust can be placed in the hands of independent, impartial, and objective management firms (not banks or investment firms) that flow from the centuries old "old Boston Trustee". Trust management has been in place for centuries.
- Interview has taken place with such prominent firms as:
 - o Welch & Forbes
 - o JM Forbes & Co.
 - o Howland Capital Management

Enough feedback has been received to indicate that professional management is feasible. Alternatively, major real estate management firms could provide a similar service. A typical management fee would be 3% - 4% of revenues collected.

Administration would be based on ground lease terms set by the Feoffees', with instruction from the Essex Probate Court on market rent, if necessary.

The basic financial analysis and side-by-side comparison with other investment alternatives now follows.

FINANCIAL ANALYSIS

The three referenced appraisals plus a Lincoln Property Company Appraisal suggests the following schedule of lot value and rents:

APPRAISAL ANALYSIS			
35± ACRES OF LAND			
Appraiser	Gross Lot Values	Annual Rent/Lot	Imputed Gross Return
LandVest	\$37,675,000	\$10,741	4.76%
Peterson/LaChance	\$39,565,000	\$10,800	4.56%
Colliers Meredith & Grew	\$42,325,000	\$10,771	4.25%
Lincoln	\$42,500,000	\$12,500	4.91%
Average	\$40,516,250	\$11,230	4.62
Compiled by CBRE			

By themselves, the four appraisals when taken together provide a strong indication of the lot values in place. Where the appraisals differ is in "bulk" value but not "lot" value. The percentage difference in lot values is amazingly consistent.

PERCENTAGE VARIATION		
LOT VALUE		
High	\$42,500,000	-7.01%
Average	\$40,516,250	0.00%
Low	\$37,675,000	4.67%
Source: CBRE		

Through the use of the four appraisals, it is possible to assign a fair and equitable rent to each lot.

Stated another way, due to the depth of study that has taken place, it is possible to start with a level playing field in terms of market rent.

CBRE, on a confidential basis, has in its files a number of ground leases. These leases typically are from 60 years to upwards of 99 years. These leases have adjustments over time. In certain instances, they are annual. In other instances, there are at 5 to 10 year intervals.

In this case, and based on the terms of 5 ground leases held in file, the recommended term is a 60-year lease:

RECOMMENDED CONDITIONS IN A 60-YEAR GROUND LEASE

Term:	60 Years
Options to Renew:	Yes - In Perpetuity
Rent:	Market rent set by Feoffees', with possible guidance from the Probate Court on the proper level of rent if necessary.
Adjustments to Rent:	CPI every 5 years not exceeding 3%/year
Type of Lease:	NNN
Tenant Obligations:	Payment of pro-rata share of maintenance costs for utilities and infrastructure.

Source: CBRE

In terms of return, the School Children of Ipswich would receive a 4.62% return on the current value of their asset adjusted for inflation.

In terms of comparison with alternative investments, CBRE's Global Economic Outlook states:

"Across the economic landscape since the demise of Lehman Brothers in 2008, occasional signs of improvement in the global economies in recent years have contrasted with equally frequent setbacks and new challenges to market stability. With the hindsight of these last few years, the outlook for 2012 appears particularly cloudy, no matter the asset class or industry. Market volatility is pervasive across listed stock and equity markets, and it is macro events, rather than economic fundamentals, that are driving market sentiment. In fact, one pundit characterized the outlook for the forthcoming year as a "crapshoot".

Based on the economic times in which we live, ground leases secured by valuable assets above land alone, with inflation protection provides as good and potentially even better alternatives than those which exists in the market. The Baseline economic outlook for the US economy published by PNC suggests the following:

Baseline U.S. Economic Outlook, Summary Table*

	1Q'11a	2Q'11a	3Q'11a	4Q'11f	1Q'12f	2Q'12f	3Q'12f	4Q'12f	2010a	2011f	2012f	2013f
Output & Prices												
Real GDP (Chained 2005 Billions \$)	13226	13272	13332	13435	13517	13602	13662	13764	13088	13317	13641	13982
Percent Change Annualized	0.4	1.3	1.8	3.2	2.5	2.5	2.4	2.4	3.0	1.7	2.4	2.5
CPI (1982-84 = 100)	222.3	224.5	226.2	226.8	226.0	228.3	230.6	232.0	218.1	225.0	230.0	235.3
Percent Change Annualized	5.2	4.1	3.1	1.0	2.2	2.2	2.3	2.4	1.6	3.2	2.2	2.3
Labor Markets												
Payroll Jobs (Millions)	130.5	131.0	131.3	131.7	132.2	132.6	133.0	133.4	129.8	131.2	132.8	134.5
Percent Change Annualized	1.3	1.4	0.9	1.3	1.4	1.2	1.2	1.2	-0.7	1.0	1.3	1.3
Unemployment Rate (Percent)	9.0	9.0	9.1	8.7	8.6	8.5	8.4	8.3	9.6	9.0	8.4	8.1
Interest Rates (Percent)												
Federal Funds	0.16	0.09	0.08	0.07	0.10	0.10	0.10	0.10	0.17	0.10	0.10	0.28
Treasury Note, 10-year	3.46	3.21	2.43	2.05	1.96	2.14	2.33	2.51	3.21	2.79	2.23	3.09

a = actual f = forecast p = preliminary * Please see the Expanded Table for more forecast series.

The "going-in yield" of 4.62% in comparison with PNC numbers and an actual 10-year treasury yield of 2.05% for January 20, 2012, indicates that the continuance of the ground lease provides a stronger return than that suggested above.

CBRE RECOMMENDATION

CBRE recommends that the Colliers rental schedule, which creates tiers of value based on location is the most reasonable rental structure. CBRE has:

- Applied the Colliers rental structure.
- Adjusted the rent structure down to the average of suggested rental value.
- Applied a 4.62% rate of return.
- Derived a yearly rental value for each type of lot.

Type of Lot	Base Price Per Lot Group	Adjustment to Average (4.27%)	Rate of Return	Indicated Net Annual Rental Value
Waterfront A 3 BR	\$440,000	\$421,000	4.62%	\$19,450
Waterfront A 2 BR	\$360,000	\$345,000	4.62%	\$15,900
Waterfront B 3 BR	\$390,000	\$373,000	4.62%	\$17,200
Waterfront C 3 BR	\$300,000	\$287,000	4.62%	\$13,300
Waterfront D 3 BR	\$300,000	\$287,000	4.62%	\$13,300
Waterfront E 2 BR	\$190,000	\$182,000	4.62%	\$8,400
North Interior 2 BR	\$170,000	\$163,000	4.62%	\$7,500
South Interior 2 BR	\$180,000	\$172,000	4.62%	\$7,900
Interior A 3 BR	\$300,000	\$287,000	4.62%	\$13,300
Interior B 3 BR	\$275,000	\$263,000	4.62%	\$12,200

Source: Colliers, CBRE

The condominium/bulk sale alternatives priced at \$26,700,000, \$25,400,000, and \$35,000,000, when invested at rates similar to the array of yields presented in the PNC baseline US Economic Outlook would produce half or less to the Children of Ipswich than the ground lease alternative.

The above recommended rental schedule is based on fair market rent. Of the 167 parcels, 24 are year-round and 143 are seasonal. CBRE concurs with the reasonableness of the 10% rent discount for seasonal occupants as represented by the \$10,800 annual/\$9,700 seasonal rate set by the Feoffees'.

In its analysis of the Little Neck land, CBRE recognizes the importance of continuation of the seasonal lease for 143 parcels. We view the sale alternative as an option that would adversely impact the ground rent analysis contained herein.

The rent analysis in the Colliers report implies year-round occupancy. In itself, this is problematic as if the leases were allowed to be year-round, there would be a negative impact on the effective rate of return:

- Year-round Ipswich residents average 0.4 children per household
- The cost per student in Ipswich is at the \$11,000 per student level.

- Annual student costs to the town for 143 year-round houses would then total \$629,200 per year.
- \$629,200 is a 1.55% annual reduction in the 4.62% rate of return for an effective rate of 3.07% per year.
- Alternatively, even if all rents were reduced 10% for seasonality, the worst case would still be a significantly higher 4.16%.

Overall, the ground lease alternative parallels the wishes of William Payne, produces greater revenue than other alternatives presented, and carries inflation protection moving forward into the future.

If there are any questions, CBRE would be pleased to provide a response.

ASSUMPTIONS AND LIMITING CONDITIONS

1. Unless otherwise specifically noted in the body of the report, it is assumed that title to the property or properties is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. CBRE, Inc. is not aware of any title defects nor has it been advised of any unless such is specifically noted in the report. CBRE, Inc., however, has not examined title and makes no representations relative to the condition thereof. Documents dealing with liens, encumbrances, easements, deed restrictions, clouds and other conditions that may affect the quality of title have not been reviewed. Insurance against financial loss resulting in claims that may arise out of defects in the subject's title should be sought from a qualified title company that issues or insures title to real property.
2. Unless otherwise specifically noted in the body of this report, it is assumed: that the existing improvements on the property or properties being appraised are structurally sound, seismically safe and code conforming; that all building systems (mechanical/electrical, HVAC, elevator, plumbing, etc.) are in good working order with no major deferred maintenance or repair required; that the roof and exterior are in good condition and free from intrusion by the elements; that the property or properties have been engineered in such a manner that the improvements, as currently constituted, conform to all applicable local, state, and federal building codes and ordinances. CBRE, Inc. professionals are not engineers and are not competent to judge matters of an engineering nature. CBRE, Inc. has not retained independent structural, mechanical, electrical, or civil engineers in connection with this appraisal and, therefore, makes no representations relative to the condition of improvements. Unless otherwise specifically noted in the body of the report: no problems were brought to the attention of CBRE, Inc. by ownership or management; CBRE, Inc. inspected less than 100% of the entire interior and exterior portions of the improvements; and CBRE, Inc. was not furnished any engineering studies by the owners or by the party requesting this appraisal. If questions in these areas are critical to the decision process of the reader, the advice of competent engineering consultants should be obtained and relied upon. It is specifically assumed that any knowledgeable and prudent purchaser would, as a precondition to closing a sale, obtain a satisfactory engineering report relative to the structural integrity of the property and the integrity of building systems. Structural problems and/or building system problems may not be visually detectable. If engineering consultants retained should report negative factors of a material nature, or if such are later discovered, relative to the condition of improvements, such information could have a substantial negative impact on the conclusions reported in this appraisal. Accordingly, if negative findings are reported by engineering consultants, CBRE, Inc. reserves the right to amend the appraisal conclusions reported herein.
3. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property was not observed by the consultants. CBRE, Inc. has no knowledge of the existence of such materials on or in the property. CBRE, Inc., however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

We have inspected, as thoroughly as possible by observation, the land; however, it was impossible to personally inspect conditions beneath the soil. Therefore, no representation is made as to these matters unless specifically considered in the appraisal.
4. All furnishings, equipment and business operations, except as specifically stated and typically considered as part of real property, have been disregarded with only real property being considered in the report unless otherwise stated. Any existing or proposed improvements, on or off-site, as well as any alterations or repairs considered, are assumed to be completed in a workmanlike manner according to standard practices based upon the information submitted to CBRE, Inc. This report may be subject to amendment upon re-inspection of the subject subsequent to repairs, modifications, alterations and completed new construction. Any estimate of Market Value is as of the date indicated; based upon the information, conditions and projected levels of operation.
5. It is assumed that all factual data furnished by the client, property owner, owner's representative, or persons designated by the client or owner to supply said data are accurate and correct unless otherwise specifically noted in the appraisal report. Unless otherwise specifically noted in the appraisal report, CBRE, Inc. has no reason to believe that any of the data furnished contain any material error. Information and data referred to in this paragraph include, without being limited to, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any material error in any of the above data could have a substantial impact on the conclusions reported. Thus, CBRE, Inc. reserves the right to amend conclusions reported if made aware of any such error. Accordingly, the client-addressee should

- carefully review all assumptions, data, relevant calculations, and conclusions within 30 days after the date of delivery of this report and should immediately notify CBRE, Inc. of any questions or errors.
6. The date to which any of the conclusions and opinions expressed in this report apply, is set forth in the Letter of Transmittal. Further, that the dollar amount of any value opinion herein rendered is based upon the purchasing power of the American Dollar on that date. This report is based on market conditions existing as of the date applicable to this assignment. Under the terms of the engagement, we will have no obligation to revise this report to reflect events or conditions which occur subsequent to the date of the appraisal. However, CBRE, Inc. will be available to discuss the necessity for revision resulting from changes in economic or market factors affecting the subject.
 7. CBRE, Inc. assumes no private deed restrictions, limiting the use of the subject in any way.
 8. Unless otherwise noted in the body of the report, it is assumed that there are no mineral deposit or subsurface rights of value involved in this appraisal, whether they be gas, liquid, or solid. Nor are the rights associated with extraction or exploration of such elements considered unless otherwise stated in this appraisal report. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.
 9. CBRE, Inc. is aware of legal restrictions in place which impact the property.
 10. Any cash flows included in the analysis are forecasts of estimated future operating characteristics are predicated on the information and assumptions contained within the report. Any projections of income, expenses and economic conditions utilized in this report are not predictions of the future. Rather, they are estimates of market expectations. The achievement of the financial projections will be affected by fluctuating economic conditions and is dependent upon other future occurrences that cannot be assured. Actual results may vary from the projections considered herein. CBRE, Inc. does not warrant these forecasts will occur. Projections may be affected by circumstances beyond the current realm of knowledge or control of CBRE, Inc.
 11. Unless specifically set forth in the body of the report, nothing contained herein shall be construed to represent any direct or indirect recommendation of CBRE, Inc. to buy, sell, or hold the properties at the rental value stated. Such decisions involve substantial investment strategy questions and must be specifically addressed in consultation form.
 12. Also, unless otherwise noted in the body of this report, it is assumed that no changes in the present zoning ordinances or regulations governing use, density, or shape are being considered. The property is analyzed assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, nor national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based, unless otherwise stated.
 13. This study may not be duplicated in whole or in part without the specific written consent of CBRE, Inc. nor may this report or copies hereof be transmitted to third parties without said consent, which consent CBRE, Inc. reserves the right to deny. Exempt from this restriction is duplication for the internal use of the client-addressee and/or transmission to attorneys, accountants, or advisors of the client-addressee. Also exempt from this restriction is transmission of the report to any court, governmental authority, or regulatory agency having jurisdiction over the party/parties for whom this appraisal was prepared, provided that this report and/or its contents shall not be published, in whole or in part, in any public document without the express written consent of CBRE, Inc. which consent CBRE, Inc. reserves the right to deny. Finally, this report shall not be advertised to the public or otherwise used to induce a third party to purchase the property or to make a "sale" or "offer for sale" of any "security", as such terms are defined and used in the Securities Act of 1933, as amended. Any third party, not covered by the exemptions herein, who may possess this report, is advised that they should rely on their own independently secured advice for any decision in connection with this property. CBRE, Inc. shall have no accountability or responsibility to any such third party.
 14. Any value estimate provided in the report applies to the entire property, and any pro ration or division of the title into fractional interests will invalidate the value estimate, unless such pro ration or division of interests has been set forth in the report.
 15. No opinion is intended to be expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants. Values and opinions expressed presume that environmental and other governmental restrictions/conditions by applicable agencies have been met, including but not limited to seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits, licenses, etc. No survey, engineering study or architectural analysis has been made known to CBRE, Inc. unless otherwise stated within the body of this report. If the Consultant has not been supplied with a termite inspection, survey or occupancy permit, no responsibility or representation is assumed or made for any costs associated with obtaining same or for any deficiencies discovered before or after they are obtained. No representation or warranty is made concerning obtaining these items. CBRE, Inc. assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.

16. Acceptance and/or use of this report constitutes full acceptance of the Contingent and Limiting Conditions and special assumptions set forth in this report. It is the responsibility of the Client, or client's designees, to read in full, comprehend and thus become aware of the aforementioned contingencies and limiting conditions. Neither the Consultant nor CBRE, Inc. assumes responsibility for any situation arising out of the Client's failure to become familiar with and understand the same. The Client is advised to retain experts in areas that fall outside the scope of the real estate appraisal/consulting profession if so desired.
17. CBRE, Inc. assumes that the subject analyzed herein will be under prudent and competent management and ownership; neither inefficient or super-efficient.
18. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined and considered in this appraisal report.
19. No survey of the boundaries of the property was undertaken. All areas and dimensions furnished are presumed to be correct. It is further assumed that no encroachments to the realty exist.
20. The Americans with Disabilities Act (ADA) became effective January 26, 1992. Notwithstanding any discussion of possible readily achievable barrier removal construction items in this report, CBRE, Inc. has not made a specific compliance survey and analysis of this property to determine whether it is in conformance with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the ADA. If so, this fact could have a negative effect on the value estimated herein. Since CBRE, Inc. has no specific information relating to this issue, nor is CBRE, Inc. qualified to make such an assessment, the effect of any possible non-compliance with the requirements of the ADA was not considered.
21. Client shall not indemnify Consultant or hold Consultant harmless unless and only to the extent that the Client misrepresents, distorts, or provides incomplete or inaccurate appraisal results to others, which acts of the Client approximately result in damage to Consultant. Notwithstanding the foregoing, Consultant shall have no obligation under this Section with respect to any loss that is caused solely by the active negligence or willful misconduct of a Client and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Consultant. Client shall indemnify and hold Consultant harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the appraisal report to any third party. In the event of any litigation between the parties, the prevailing party to such litigation shall be entitled to recover, from the other, reasonable attorney fees and costs.
22. The report is for the sole use of the client; however, client may provide only complete, final copies of the report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. Please note that our consent to allow a consulting report prepared by CBRE, Inc. or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.

ADDENDA

0301

ADDENDUM A
GLOSSARY OF TERMS

0302

assessed value Assessed value applies in ad valorem taxation and refers to the value of a property according to the tax rolls. Assessed value may not conform to market value, but it is usually calculated in relation to a market value base.[†]

cash equivalency The procedure in which the sale prices of comparable properties sold with atypical financing are adjusted to reflect typical market terms.

contract rent The actual rental income specified in a lease.[‡]

disposition value The most probable price which a specified interest in real property is likely to bring under all of the following conditions: 1) Consummation of a sale will occur within a limited future marketing period specified by the client; 2) The actual market conditions currently prevailing are those to which the appraised property interest is subject; 3) The buyer and seller is each acting prudently and knowledgeably; 4) The seller is under compulsion to sell; 5) The buyer is typically motivated; 6) Both parties are acting in what they consider their best interests; 7) An adequate marketing effort will be made in the limited time allowed for the completion of a sale; 8) Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 9) The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.[‡]

effective rent The rental rate net of financial concessions such as periods of no rent during the lease term; may be calculated on a discounted basis, reflecting the time value of money, or on a simple, straight-line basis.[‡]

excess land In regard to an improved site, the land not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, the land not needed to accommodate the site's primary highest and best use. Such land may be separated from the larger site and have its own highest and best use, or it may allow for future expansion of the existing or anticipated improvement. See also surplus land.[‡]

extraordinary assumption An assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. See also hypothetical condition.[‡]

fee simple estate Absolute ownership unencumbered by any other interest or estate, subject only to the limitations

imposed by the governmental powers of taxation, eminent domain, police power, and escheat.[‡]

floor area ratio (FAR) The relationship between the above-ground floor area of a building, as described by the building code, and the area of the plot on which it stands; in planning and zoning, often expressed as a decimal, e.g., a ratio of 2.0 indicates that the permissible floor area of a building is twice the total land area; also called *building-to-land ratio*.[‡]

full service lease A lease in which rent covers all operating expenses. Typically, full service leases are combined with an expense stop, the expense level covered by the contract lease payment. Increases in expenses above the expense stop level are passed through to the tenant and are known as expense pass-throughs.

going concern value Going concern value is the value of a proven property operation. It includes the incremental value associated with the business concern, which is distinct from the value of the real estate only. Going concern value includes an intangible enhancement of the value of an operating business enterprise which is produced by the assemblage of the land, building, labor, equipment, and marketing operation. This process creates an economically viable business that is expected to continue. Going concern value refers to the total value of a property, including both real property and intangible personal property attributed to the business value.[‡]

gross building area (GBA) The total floor area of a building, including below-grade space but excluding unenclosed areas, measured from the exterior of the walls. Gross building area for office buildings is computed by measuring to the outside finished surface of permanent outer building walls without any deductions. All enclosed floors of the building including basements, mechanical equipment floors, penthouses, and the like are included in the measurement. Parking spaces and parking garages are excluded.[‡]

hypothetical condition That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. See also extraordinary assumption.[‡]

investment value Investment value is the value of an investment to a particular investor based on his or her investment requirements. In contrast to market value, investment value is value to an individual, not value in the marketplace. Investment value reflects the subjective relationship between a particular investor and a given investment. When measured in dollars, investment value is the price an investor would pay for an investment in light of its perceived capacity to satisfy his or her desires,

needs, or investment goals. To estimate investment value, specific investment criteria must be known. Criteria to evaluate a real estate investment are not necessarily set down by the individual investor; they may be established by an expert on real estate and its value, that is, an appraiser.[†]

leased fee

See leased fee estate

leased fee estate An ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.[‡]

leasehold

See leasehold estate

leasehold estate The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.[‡]

liquidation value The most probable price which a specified interest in real property is likely to bring under all of the following conditions: 1) Consummation of a sale will occur within a severely limited future marketing period specified by the client; 2) The actual market conditions currently prevailing are those to which the appraised property interest is subject; 3) The buyer is acting prudently and knowledgeably; 4) The seller is under extreme compulsion to sell; 5) The buyer is typically motivated; 6) The buyer is acting in what he or she considers his or her best interests; 7) A limited marketing effort and time will be allowed for the completion of a sale; 8) Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 9) The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.[‡]

market rent The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby: 1) lessee and lessor are typically motivated; 2) both parties are well informed or well advised, and acting in what they consider their best interests; 3) a reasonable time is allowed for exposure in the open market; 4) the rent payment is made in terms of cash in U.S. dollars and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and 5) the rental amount represents the normal consideration for the

property leased unaffected by special fees or concessions granted by anyone associated with the transaction.[‡]

market value Market value is one of the central concepts of the appraisal practice. Market value is differentiated from other types of value in that it is created by the collective patterns of the market. Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: 1) A reasonable time is allowed for exposure in the open market; 2) Both parties are well informed or well advised, and acting in what they consider their own best interests; 3) Buyer and seller are typically motivated; 4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.[§]

marketing period The time it takes an interest in real property to sell on the market subsequent to the date of an appraisal.[‡]

net lease Lease in which all or some of the operating expenses are paid directly by the tenant. The landlord never takes possession of the expense payment. In a *Triple Net Lease* all operating expenses are the responsibility of the tenant, including property taxes, insurance, interior maintenance, and other miscellaneous expenses. However, management fees and exterior maintenance are often the responsibility of the lessor in a triple net lease. A *modified net lease* is one in which some expenses are paid separately by the tenant and some are included in the rent.

net rentable area (NRA) 1) The area on which rent is computed. 2) The Rentable Area of a floor shall be computed by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor. No deductions shall be made for columns and projections necessary to the building. Include space such as mechanical room, janitorial room, restrooms, and lobby of the floor.^{*}

occupancy rate The relationship or ratio between the income received from the rented units in a property and the income that would be received if all the units were occupied.[‡]

prospective value opinion A forecast of the value expected at a specified future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not

achieved sellout or a stabilized level of long-term occupancy at the time the appraisal report is written.[†]

reasonable exposure time The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based upon an analysis of past events assuming a competitive and open market.^{††}

rent

See

full service lease

net lease

market rent

contract, coupon, face, or nominal rent

effective rent

shell rent The typical rent paid for retail, office, or industrial tenant space based on minimal "shell" interior finishes (called plain vanilla finish in some areas). Usually the landlord delivers the main building shell space or some minimum level of interior build-out, and the tenant completes the interior finish, which can include wall, ceiling, and floor finishes; mechanical systems, interior electric, and plumbing. Typically these are long-term leases with tenants paying all or most property expenses.[‡]

surplus land Land not necessary to support the highest and best use of the existing improvement but, because of physical limitations, building placement, or neighborhood norms, cannot be sold off separately. Such land may or may not contribute positively to value and may or may not

accommodate future expansion of an existing or anticipated improvement. See also excess land.[‡]

usable area 1) The area actually used by individual tenants. 2) The Usable Area of an office building is computed by measuring to the finished surface of the office side of corridor and other permanent walls, to the center of partitions that separate the office from adjoining usable areas, and to the inside finished surface of the dominant portion of the permanent outer building walls. Excludes areas such as mechanical rooms, janitorial room, restrooms, lobby, and any major vertical penetrations of a multi-tenant floor.^{*}

use value Use value is a concept based on the productivity of an economic good. Use value is the value a specific property has for a specific use. Use value focuses on the value the real estate contributes to the enterprise of which it is a part, without regard to the property's highest and best use or the monetary amount that might be realized upon its sale.[†]

value indication An opinion of value derived through application of the appraisal process.[‡]

[†] *The Appraisal of Real Estate*, Thirteenth Edition, Appraisal Institute, 2008.

[‡] *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, 2002.

[§] Office of Comptroller of the Currency (OCC), 12 CFR Part 34, Subpart C – Appraisals, 34.42 (g); Office of Thrift Supervision (OTS), 12 CFR 564.2 (g); Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4th ed. (Chicago: Appraisal Institute, 2002), 177-178. This is also compatible with the RTC, FDIC, FRS and NCUA definitions of market value as well as the example referenced in the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

^{*} 2000 BOMA Experience Exchange Report, Income/Expense Analysis for Office Buildings (Building Owners and Managers Association, 2000)

^{††} *Statement on Appraisal Standard No. 6*, Appraisal Standards Board of The Appraisal Foundation, September 16, 1993, revised June 15, 2004.

ADDENDUM B

MARCH 1885 REPORT TO THE GRAMMAR SCHOOL OF IPSWICH

0306

"The Feoffees of the Grammar School of Ipswich - submit the following report -
March 1885.

The fund of the Feoffees is invested as follows.

One, 5 per cent Water bond of the city of Lynn	\$4,000.00
Two House lots in Revere - value	1,000.00
26 2/3 Old Rights in Jeffries Neck - value	933.33
Little Neck (so called) Valued	2,000.00
School Farm in Essx (so called) - value	1,000.00
Notes of the Town of Ipswich	1,500.00
On deposit in the Ipswich Savings Bank	<u>520.72</u>
	<u>10,954.05</u>

The income received during the year, has been as follows.

Received from the rent of Neck Rights	208.95
" " " " land under houses on Little Neck	97.00
Recd from interest on Lynn City bonds	200.00
" " " " Town notes	75.00
" " rent of School Farm in Essex	<u>46.67</u>
	<u>627.62</u>

The expenses and payments during the year, are as follows.

Paid A. M. Osgood for services as master of the Grammar School	350.00
Paid John N. Nourse for surveying and for a Plan of Little Neck	25.00
Paid sundry bills for labor and repairs at Little Neck	10.66
Deposited in the Ipswich Sav Bank	<u>241.96</u>
	<u>627.62</u>

Theo. T. Cogswell - Treasurer"

Handwritten "Report of the Feoffees of Grammar School Fund -1885- Accepted"
in a file of Feoffees' reports in the Town Clerk's office.

ADDENDUM C
EXHIBIT A TO PROPOSED FEOFFEEES' TENANT LEASE

0308

EXHIBIT A

RENT PAYMENTS

A 1. The annual rent for the first three (3) years of the Term, due to the Landlord shall be as follows, payable in advance in quarterly installments during the term of this Lease:

<u>Year</u>	<u>Annual Rent</u>	<u>Installment</u>
7/1/06 – 6/30/07	\$9,700.00	\$2,425.00
7/1/07 – 6/30/08	\$9,700.00	\$2,425.00
7/1/08 – 6/30/09	\$9,700.00	\$2,425.00

A 2. The annual rent for the Lot shall be adjusted every three (3) years

A 3. Beginning on July 1, 2009, each residential lot at Little Neck will be assigned to one of not more than ten (10) classes to be established by the Landlord for the purpose of more accurately basing the annual rent on the relative values of the lots. On or before June 30, 2008, the Landlord shall provide the Tenant with a schedule identifying each of the lots by parcel number, street address and rental class. On or before December 31, 2008, the Landlord shall notify the Tenant in writing of the annual rent for the Lot to be due to the Landlord for the period of July 1, 2009, through June 30, 2012. The annual rent shall be determined in the sole discretion of the Landlord after taking into account (a) the fair value of the Lots as to which the Landlord shall receive advice from appropriate professionals, (b) the operating costs of Little Neck and (c) the charitable purposes of the Landlord.

A 4. The annual rent for July 1, 2012, through June 30, 2015, shall be determined in the sole discretion of the Landlord after taking into account (a) the fair value of the Lot as to which the Landlord shall receive advice from appropriate professionals, (b) the operating costs of Little Neck and (c) the charitable purposes of the Landlord. The Tenant shall be notified in writing of any change in the annual rent at least ninety (90) days prior to the effective date of such change.

A 5. For each subsequent three-year period of the Term, the annual rent shall be adjusted in the manner described in Paragraph A.4. above.

A 6. The rent described in this Exhibit A does not include the Tenant's payments described in Sections 6 or 7 of the Lease.

ADDENDUM D
QUALIFICATIONS

0310

CB Richard Ellis, Inc.
111 Huntington Avenue, 12th Floor
Boston, MA 02199

TEAM COLLINS

Webster A. Collins, MAI, CRE, FRICS
Harris E. Collins, MAI, CRE, FRICS
James T. Moore
John P. Davis
Mathew J. Santos
Michael Carnell
Kirstyn M. Pearl
Rachel L. Goldberg

WEBSTER A. COLLINS

Webster A. Collins, Executive Vice President and Partner, P.C. of CB Richard Ellis/New England Partners is a real estate appraiser, real estate counselor, and specialist in the sale of investment property. His experience extends over a period of more than thirty years and includes analysis of over \$30.0 billion dollars in property. For New England based capital, he has completed assignments in most major cities throughout the United States.

Appraisal

When completing an appraisal, each assignment will counsel the client on issues of value, market forces, and alternatives or unique aspects that may impact a property. Specific appraisal assignments completed include:

John Hancock Tower Complex -	\$910,000,000 transaction involving the John Hancock Tower Complex and for Manulife the Berkeley Building and Brown Buildings.
Regional Malls -	Burlington Mall, North Shore Mall, Mall at Chestnut Hill, Pheasant Lane Mall, Hanover Mall.
Downtown Boston High-Rise Towers -	53 State Street, One Financial Center, 225 Franklin Street, 101 Federal Street, 265 Franklin Street, One Boston Place, One Federal Street, 125 High Street.
Malden Mills -	New 507,463 square foot manufacturing facility to replace mill buildings destroyed by fire.
Northeast Savings / Rhode Island Depositors and Economic Protection Corporation -	Completion of what is believed to be the largest single commercial appraisal assignment in New England involving 873 Rhode Island properties.

His client base is broad and includes numerous New England entities including John Hancock, MIT, and Brown University.

Although his experience is primarily in New England, he has completed assignments throughout the United States. He is an Emeritus Member of Valuation Network, Inc. (now Integra), a nationwide consortium of over 40 appraisal and consulting firms. He is a past National President.

Webster A. Collins - Page Two

He has developed specific estate and resort property expertise and has valued property on Martha's Vineyard, Nantucket Island, and Block Island. On Nantucket, he has appraised over 70% of all commercial/hotel space.

He is a member of The Appraisal Institute (MAI) and is a Past President of the New England Chapter. He has appraised over 80 million square feet of office space, over 40 million square feet of industrial space, over 20 million square feet of retail, over 25,000 apartment units, and over 10,000 hotel rooms. He is a licensed and certified real estate appraiser in: Massachusetts, New Hampshire, Rhode Island, New York, and on a temporary basis in other locations where clients own property.

Real Estate Counseling

Real estate counseling is a separate discipline which offers advisory services on a wide range of real estate issues. Examples of services provided by Mr. Collins include:

- Market studies including supply and demand analysis - He called the 1979, 1987 and 1994, 2001 and 2004 Boston office market turns.
- Feasibility studies - He completed the feasibility studies for the IBM Building in Waltham and the re-use alternatives of Fenway Park for the Boston Red Sox.
- Development Planning – He has subdivided land and through the approval process, he has obtained permits. He has prepared development impact reports.
- Air rights leases and ground leases - Copley Place is built on air rights where Mr. Collins served as advisor to the ownership.
- Asset Management and leasing team support - He has advised on over five million square feet of lease negotiations.
- Real estate tax abatements - Involvement includes testimony on downtown high-rise and suburban office buildings, shopping centers, hotels, and apartments.
- Rehabilitation studies and development consulting - He advised and implemented the Paine Office Building and 711 Atlantic Avenue rehabilitations.
- Service as an investment fiduciary responsible for individual properties held in trust.
- Eminent domain – He has provided litigation support on hundreds of properties and provided expert witness testimony on the largest taking in the history of Massachusetts - 150 Causeway Street. His testimony has been upheld by the Supreme Court of Rhode Island.

Any counseling services are undertaken based on a pre-agreed upon fee for services. Mr. Collins is a member of the American Society of Real Estate Counselors (CRE) and has served on their Board of Governors. He has served as Editor of The Counselor, published by The Society; is the author of a monograph: Office Rehabilitation: Key Ingredients for Successful Projects; and has published over 80 articles in such publications as The Appraisal Journal, Real Estate Issues, and New England Real Estate Journal. Mr. Collins is a fellow in the Royal Institute of Chartered Surveyors (FRICS).

Webster A. Collins - Page Four

He has qualified and testified as an expert witness on real estate matters on over one hundred occasions before tribunals arbitrating disputes, courts, Appellate Tax Boards, and federal jurisdictions. He has testified in all New England states as well as in seven other states, and at the Supreme Court of the State of New York. He is an expert on estate and gift tax matters involving Internal Revenue Service and state taxation authorities including determination of discounts for partial interests. He is an expert in eminent domain. He co-manages CBRE's Litigation Support Group for the United States.

Investment Sales

The selling of investment property is a specialty unto itself that utilizes all aspects of a counselor's skill in analysis and negotiation. Investment sales involves the proper buyer-seller matching that comes about only when a counselor is able to apply the sum total of his or her years of experience.

Under a team approach, Mr. Collins, in recent years, has participated in over \$750,000,000 in transactions which among others include:

Harbor South -	A 203,000 square foot office building.
Woburn Industrial Center -	A 506,000 square foot, 6-building industrial park.
250 Boylston Street -	A landmark office building across from the Boston Public Garden for conversion to condominiums.
One Marlboro Place -	A 160,000 square foot research and development building.
Canton Commerce Center -	A 360-acre office, research and development park.
Chemfab Home Office -	A 164,000 square foot sale/leaseback with sale of 155 acres of excess land.
Lewiston Mall -	A 266,441 square foot regional shopping mall (but not including the TJX store).

Community Involvement

Mr. Collins is involved with various community activities. A summary of his involvement includes:

- ◇ Director for twenty-two years of the Boston Five Cents Savings Bank, now part of Citizens Financial
- ◇ Beth Israel Deaconess Medical Center - Overseer and Member of Building and Ground Committee
- ◇ Lehigh University – Collins-Goodman Endowed Chair in Real Estate Studies
- ◇ Editorial Board - Real Estate Issues
- ◇ Appraisal Foundation - Firm representative on Industry Advisory Council
- ◇ Director of Joseph Farber & Co., Inc., Denver's largest appraisal and consulting firm and part of director team which sold the company to employees.
- ◇ Trustee - Greater Boston Real Estate Board Pension Fund
- ◇ Advisor - William S. Ballard Scholarship Fund

Webster A. Collins - Page Four

- ◇ Director – Milton Fuller Housing Corporation
- ◇ Member - Lambda Alpha - Honorary Land Society

Summary

In summary, the cumulative total of Mr. Collins' experience has resulted in his completing over 5,500 reports involving over 170 million square feet of property and since his joining his firm as a partner in 1983 becoming one of the top producers in the history of the firm. Since 1989, the firm has presented awards for achievement. For seven consecutive years, Mr. Collins was awarded the "Partners' Cup" for top production.

Mr. Collins is committed to the mission of his firm and creates teams for most assignments in order to provide clients with the best possible service. In 2003, the "Partners Cup," which he continues to hold, was converted to an overall performance prize and presented to Mr. Collins by his peers.

Background Information on CBRE/New England

- a. CBRE - N.E. Partners, LP (CBRE/NE) is a strategic joint venture between Whittier Partners Group, LLC (50%), a privately held limited liability corporation and CBRE (50%), the world's largest commercial real estate services company which is publicly traded on the NYSE. This joint venture combines national resources with regional control and ownership to offer clients a balanced service platform.
- b. CBRE provides services through 425 principal offices in 61 countries. CBRE was created in 1998 after CB Commercial, founded in 1906, acquired REI Limited, the holding company for all Richard Ellis operations outside of the United Kingdom.



● CBRE WHOLLY OWNED OFFICES: 300
○ CBRE AFFILIATE OFFICES: 122

The New England operation was formed in 1997. It currently employs 480 individuals and has 6 offices located in strategic business centers throughout New England. Their headquarters is in Boston, MA with regional offices in Hartford, CT, New Haven, CT, Providence, RI, Manchester, NH and Portland ME. CBRE/NE is the largest full-service commercial real estate services company in New England.

Regional Office

Satellite Office

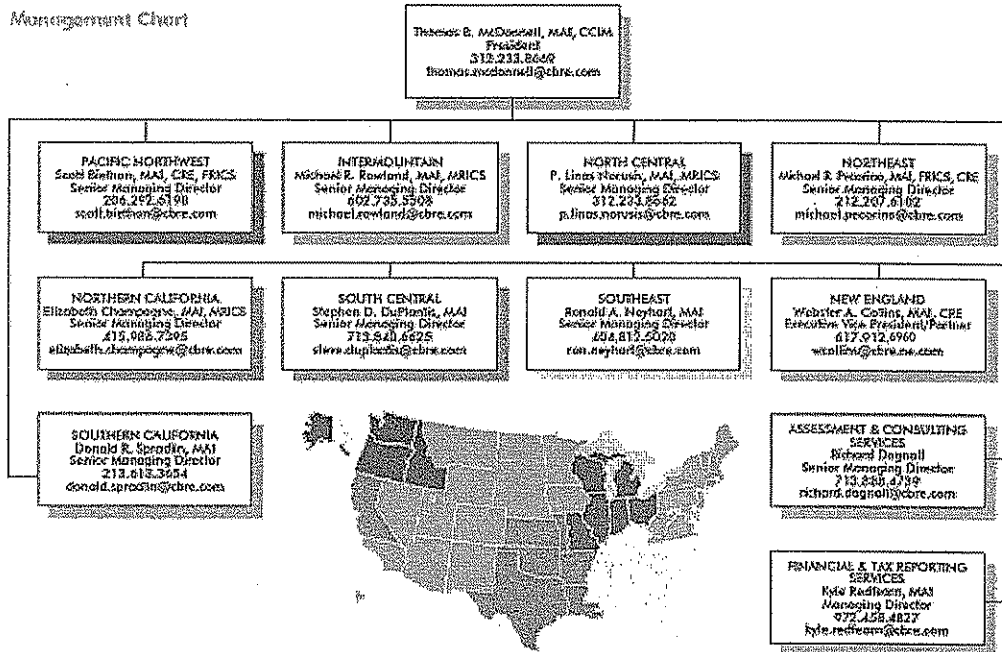
- As part of CBRE/NE's broad platform of real estate services, Valuation & Advisory Services provides accurate, reliable and timely valuations critical to the success of every real estate transaction or financing. All CBRE/NE reporting conforms to the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice.

Our experience in New England involves a 25%-50% market penetration involving most product types.

- 0316

- o Over 55 Valuation Offices – United States
- o Over 450 Valuation Offices – Worldwide

1. The Valuation & Advisory Group is organized as follows:



2. Our staff has access to the entire CBRE real estate services platform, an invaluable tool for market research and insight. This network includes Asset Services, Brokerage Services, Capital Markets, CBRE Consulting, CBRE Investors, Trammell Crow Development and Investment, Global Corporate Services, and all our Specialty Services groups.

The Valuation & Advisory Services Group within CBRE functions as a separate unit within the firm. The group cooperates with all other groups and has the advantage of access to information from its Brokerage Group.

The most common property types we appraise are:

Office – many assignments completed for major pension funds and for financing institutions and insurance companies.

Industrial – includes warehouses, research and development, manufacturing, incubator, cold storage, self-storage, maquiladoras and special industrial uses.

Retail – includes single-tenant, strip, neighborhood, community and power centers, as well as over 50 regional malls each year.

Multi-Housing – small and large apartment buildings and complexes for conventional, FNMA, Freddie Mac and HUD financing.

Vacant Land – both finished sites and raw land.

Hotel, Resort and Golf Courses – our hospitality specialists appraise over 1,000 hotels and approximately 25 golf courses annually.

Special Use – includes automotive dealerships, race tracks, marinas, branch banks, theaters, ice rinks, bowling centers, service stations, hospitals, nursing homes, senior housing and large land parcels.

The following chart shows assignments completed by general property type (US only).

Performance and Results

Valuation & Advisory Services assignments completed by general property type (United States only)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Retail	1,388	1,588	1,849	2,527	3,514	5,499	6,130	7,950	6,941	5,816	7,002
Office	1,169	1,225	1,285	1,864	2,412	3,115	3,954	5,079	3,989	4,150	4,483
Industrial	1,185	1,389	1,352	1,554	2,234	3,359	4,397	5,010	4,920	4,750	5,462
Multi-housing	1,375	1,908	2,059	2,815	2,708	3,730	4,751	5,613	5,260	5,082	5,399
Land	669	547	691	640	1,080	1,588	2,557	3,412	4,498	4,112	5,937
Other	1,385	822	353	1,048	1,004	1,262	1,968	1,935	2,647	3,297	3,462
TOTAL	7,171	7,477	7,770	10,448	12,902	18,553	23,757	28,999	28,255	28,207	29,745

Conclusion

Whether or not the assignment involves appraisal, consulting, or expert testimony, the mission of the firm is to provide the best advice, guidance and judgments as relates to the issues involved.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, as they are)
the Feoffees of the Grammar School in the Town)
of Ipswich,)

Plaintiffs,)

v.)

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.)

**MOTION OF THE PROPOSED INTERVENERS TO STAY ENTRY OF JUDGMENT,
AND IN THE ALTERNATIVE, TO STAY THE JUDGMENT, PENDING THE
RESOLUTION OF THEIR MOTION TO INTERVENE**

The proposed interveners in this action, a group of parents of Ipswich Public School students and their children, who are beneficiaries of the trust of William Payne, have moved to intervene in this action, alleging various interests separate and distinct from those of the general public. Although they relied upon the public pronouncements of the School Committee that it would vigorously defend this case and prosecute the counterclaim, it is now clear that the School Committee will not vigorously defend the case and protect the interests of the beneficiaries of the Trust. Upon learning of the School Committee's abandonment of its defenses and counterclaim, the proposed interveners immediately sought intervention through a series of filings including a

Motion to Intervene, a Supplement to the Motion to Intervene, and a Second Supplement to the Motion to Intervene.

On January 3, 2012, the interveners learned, through their attorney, that an Agreement for Judgment between the existing parties to this action had been approved by the Court and that a Judgment issued dated December 23, 2011.¹ The Judgment has not, however, entered on the docket. Accordingly, the proposed interveners hereby move to immediately stay entry of the Judgment on the docket, and in the alternative, to stay the Judgment, pending the resolution of their motion to intervene, including any appeals regarding the motion. As grounds for this motion, the proposed interveners state:

1. The parent interveners are all members of a large group of nearly 700 residents or parents of children in the Ipswich Public Schools (“the Beneficiary Group”), children who comprise the *actual* beneficiaries of the trust. The parents have always been opposed to the Feoffees’ proposed sale of Little Neck. (See Amicus Brief in Opposition to Plaintiffs’ Motion for Partial Summary Judgment, dated January 27, 2011, filed by the Beneficiary Group.)

2. Many of the parent interveners are also former and current members of various Ipswich town boards, including the Ipswich Planning Board and the Ipswich Finance Committee, among others.

3. Some of the parent interveners are residents not of Ipswich, but of Rowley, and as such they have no vote in the selection of the Ipswich School Committee.

4. All of the parent interveners claim an interest separate and distinct from that of the general public in the matter at hand, being parents of the actual beneficiaries of the Trust.

¹ Up until January 3, 2012, no attorney in the case had supplied the interveners’ counsel with a copy of the approved Agreement for Judgment or the Judgment.

5. As detailed in the previously referenced filings in support of their motion to intervene, including the affidavits of certain interveners, incorporated herein by reference, they relied upon the School Committee to vigorously defend the terms of the Trust as written, including the mandate that the land shall not “be sold nor wasted.”

6. Moreover, based on public votes of the School Committee, the School Committee’s position taken at Town Meeting authorizing the expenditure of substantial legal fees to defend against the sale of Little Neck, and press coverage concerning the School Committee’s position opposing the Feoffees’ proposed sale of Little Neck, the parent interveners relied upon the School Committee to adequately represent their interest and the interest of their children as beneficiaries of the Trust in enforcing the trust provision that the land not be sold.

7. Notwithstanding the School Committee’s public position – taken in public School Committee meetings, at Town Meeting, and in the press – to vigorously defend the lawsuit and oppose the Feoffees’ proposed sale of Little Neck, the School Committee inexplicably entered into the Agreement for Judgment which attempts to accomplish just that objective: the sale of Little Neck. Moreover, the Agreement for Judgment includes numerous provisions that will actually harm the Ipswich Public Schools, in direct violation of the purpose of the Trust.²

8. Throughout this entire litigation and after the taxpayers of Ipswich have spent hundreds of thousands of dollars in legal fees, there has never been a judicial decision on the fundamental question presented by this case, i.e., whether a deviation from the plain and unambiguous language of William Payne’s will that Little Neck never be sold is permissible

² These harms are detailed in the supporting affidavits of Clark Ziegler and Douglas DeAngelis, inter alia, which are incorporated herein by reference.

under the circumstances. Absent a judicial decision specifically addressing this issue, the Agreement for Judgment should not be allowed to stand, and it is subject to challenge on appeal.

9. The interveners intend to challenge the judgment on appeal as is their right in the event that their motion to intervene is denied. See Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203, 204 (1991) (an order denying intervention is immediately appealable by the applicants claiming intervention as of right).

10. In order to present this case to the Appeals Court (or to a single justice of the Supreme Judicial Court) in an orderly fashion, the proposed interveners respectfully request that entry of Judgment on the docket be stayed pending the resolution of their motion to intervene, including any appeals regarding the motion. If Judgment is entered, the proposed interveners respectfully request, in the alternative, that the Judgment be stayed.

11. A stay of entry of Judgment and a stay of the Judgment itself will prevent irreparable harm to parties who would otherwise change their positions in reliance upon the Judgment.

12. The proposed interveners are filing this motion in this Court in the first instance as required by Rule 6(a)(1) of the Massachusetts Rules of Appellate Procedure.

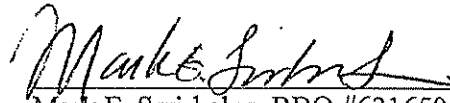
Conclusion

For the above reasons and for all of the reasons stated in the motion to intervene and the supplements thereto, and the affidavits filed in support of the motion, the proposed interveners respectfully request that this Honorable Court issue an immediate order staying entry of the Judgment on the docket of this case, and alternatively, if Judgment enters, staying the Judgment itself pending the resolution of their request for intervention, including any appeals therefrom.

Respectfully submitted,

DOUGLAS J. DeANGELIS, CATHERINE
T.J. HOWE, JACQUELINE PHYPERS,
JONATHAN PHYPERS, PETER BULETZA,
KENNETH SWENSON, ROBERT
WEATHERALL, JR., JOANNE DELANEY,
CARA DORAN, ANDREW BRENGLE,
SUSAN BRENGLE, MICHELE WERTZ,
JASON WERTZ, CLARK ZIEGLER, and
CARL NYLEN; individually and on behalf of
their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

DAY PITNEY LLP

One International Place

Boston, MA 02110

Tel: (617) 345-4600

Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: January 5, 2012

CERTIFICATE OF SERVICE


I, Mark E. Swirbalus, hereby certify that on this 5th day of January, 2012, I served a copy of the foregoing by first-class mail upon counsel of record.



Mark E. Swirbalus

NOTICE OF HEARING

A hearing on this motion is scheduled for 9:00 a.m. on Friday, January 13, 2012.



Mark E. Swirbalus

1/26/12

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et al.,

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts, et al.;

Defendants

**OPPOSITION OF IPSWICH SCHOOL COMMITTEE AND RICHARD KORB
TO MOTION TO STAY ENTRY OF JUDGMENT OR TO STAY JUDGMENT**

Fifteen individuals have filed a motion to intervene on the grounds that they are active in community affairs and have children in or eligible to attend the Ipswich Public Schools. Without citing any authority in support of their request, they now seek to delay the sale of Little Neck, by staying enforcement of the Agreement for Judgment that the Feoffees and School Committee entered into and that the Attorney General and this Court approved. This Court should deny both the motion to intervene and the motion for a stay of judgment because under settled case law, the proposed interveners lack standing. Moreover, they have not satisfied the requirements of Rule 24(a) so a denial of their motion to intervene will not be by any standard an abuse of discretion. Their threat to pursue what would be a legally frivolous appeal provides no basis for delaying the enforcement of the judgment.

The interveners acknowledge that the trust in question is a "public charity" as that term is defined in Massachusetts cases. *See, e.g., Peakes v. Blakely*, 333 Mass. 281, 284-85 (1955) (gifts

in trust to Brookline School Committee for benefit of Brookline High School, held to be public charitable trust); *Peirce v. Attwill*, 234 Mass. 389, 391 (1920) (trust for benefit of town of Middleborough held to be public charity); *Trustees of Dartmouth College v. Quincy*, 331 Mass. 219, 225 (1954) (trust established to support school for Quincy girls held to be “a charitable trust for the benefit of the public”); *Burbank v. Burbank*, 152 Mass. 254 (1890) (even if benefits “are confined to specified classes, as decayed seamen, laborers, farmers, etc., of a particular town, it is well settled that it is a public charity”).

Black letter law establishes that when, as here, a public charity benefits a specified class of the public, such as the townspeople and schoolchildren of Ipswich, the individual members of the beneficiary class lack standing to challenge any aspect of the charity’s operations. To establish standing an individual must show a distinct and separate interest in the trust – such as an individual right to hold office that is being denied. Only the Attorney General of the Commonwealth has standing to protect the public’s generalized interest in the operations of the charity. *E.g.*, *Rogers v. Roman Catholic Archbishop of Boston*, 72 Mass. App. Ct. 1117 (2008) (unpublished opinion attached as Exhibit A) (church parishioners lacked standing to stop sale of real estate held for benefit of parish); *Cassell v. Christian Science Board of Directors*, 67 Mass. App. Ct. 1119 (2006) (unpublished opinion attached as Exhibit B) (church member lacked standing to vindicate a generalized interest in church operations shared with all church members); *Garland v. The Beverly Hospital Corp.*, 48 Mass. App. Ct. 913 (1999) (rescript) (Gloucester resident lacked standing to challenge operation of charitable trust established to benefit Gloucester residents); *Weaver v. Wood*, 425 Mass. 270 (1997) (members of Christian Science Church lacked standing to challenge church’s alleged violation of deeds of trust); *Worcester Memorial Hospital v. Attorney General*, 337 Mass. 769 (1958) (trustees and members

of hospital lacked standing to appeal hospital merger); *Dillaway v. Burton*, 256 Mass. 568 (1926) (trustees under settlors' will lacked standing to prevent breaches of trust in administration of charitable corporation created under the will); *Burbank v. Burbank*, 152 Mass. 254 (1890) (Pittsfield residents lacked standing to challenge settlement pursuant to which real estate left in trust for Town's benefit was instead sold to Town).

The proposed interveners do not claim that they or their children have some special rights under the William Paine trust distinct from the interest held by other parents, children and citizens of Ipswich. They do not claim that they have any special right to make decisions, as do the Superintendent and School Committee, concerning if, how, and when funds received from the trust are to be expended. Rather, they claim that what distinguishes them from other parents in Ipswich, and gives them a special and distinct right to substitute their judgment for that of the Attorney General, is that they are active in town affairs. Thus, paragraph 13 of their proposed Counterclaim describes their "separate and distinct" interest in the trust as follows: "The interest of the Applicants for Intervention and their minor children is separate and distinct from that of the general public because, inter alia, of their active involvement in the town of Ipswich and town governance generally and the Ipswich Public Schools specifically."

The would-be interveners cite to no case holding that activism in town affairs confers upon them rights greater than those held by other members of the general public. Indeed, in each of the cases in which standing was found to be wanting, the individuals who sought to intervene were, by definition, activists – individuals who were active in their church, or in their hospital, or in their community. It was perhaps because of the multitude of such activists in every community that the Legislature deemed it necessary to designate a single authority – the

Attorney General – to act as the sole and exclusive representative of the community's generalized interest in overseeing the operations of charitable trusts.

These principles were explained in the seminal case of *Burbank v. Burbank*, 152 Mass. 254 (1890), which involved strikingly similar facts to those here. There, a decedent left in trust certain land, which was eventually to go to the town of Pittsfield for use as a hospital and public park, but only after the decedent's heirs died many years in the future. In the meantime, the town would have to comply with onerous and expensive conditions. The town and heirs were able to reach a compromise agreement pursuant to which the town was able to buy the land immediately. The attorney general assented to the settlement, and a judge approved it. But as in the instant case, a group of citizens sought to scuttle the settlement, claiming on appeal that they, not the attorney general, represented the beneficial interest of the citizens of Pittsfield. The Supreme Judicial Court dismissed their claims, stating as follows:

The petitioners, R.W. Adam and others, show no other interest in these charitable devises and bequests than that of the general public, and of all other citizens of Pittsfield. They appear to have filed their petition without any leave of court so to do, and have sought to bring here by appeal the decree sanctioning the proposed compromise which was rendered by a single judge after a hearing to which the attorney general was a party. They claim the right to represent the beneficiaries of this charitable trust, and complain that this decree has been rendered "without the appointment of trustees to act for the beneficiaries, and without the concurrence or assent of the beneficiaries, and without such beneficiaries or trustees for them being made parties thereto," etc. But the law has provided a suitable officer to represent those entitled to the beneficial interest in a public charity. It has not left it to individuals to assume this duty, or even to the court to select a person for its performance. *Nor can it be doubted that such a duty can be more satisfactorily performed by one acting under official responsibility than by individuals, however honorable their character and motives may be.*

152 Mass. at 256 (emphasis added). The Court went on to say, in language that is just as true today as it was then,

No proceedings in regard to a public charity, no matter how general the assent of those beneficially interested, would bind [the attorney general] if not made a party; *nor can any proceeding in regard to a public charity to which he has been made a party be*

invalidated by those beneficially interested, but having no peculiar and immediate interests distinct from those of the public.

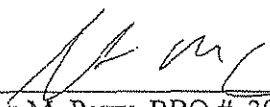
Id. (emphasis added).

Here, the would-be interveners claim to be beneficially interested in the trust, but they possess no peculiar and immediate interests distinct from those of the public. Their allegation that they are civically active parents of current Ipswich schoolchildren establishes only that they are among the many members of the general public for whose benefit the trust was created. This generalized interest does not give them standing, nor does it permit them to hold up the sale of the property. It is the exclusive role of the Attorney General to protect the public's generalized beneficial interest in the operation of the trust. And the Attorney General, who has been intimately involved in the case, has concluded, as have the parties, that the proposed sale and restructuring of the trust pursuant to the Agreement for Judgment – rather than engaging in years more of expensive and wasteful litigation – is in the best interests of the Ipswich Schools.

CONCLUSION

For the foregoing reasons, the proposed intervenors' motion to stay the entry or enforcement of the judgment should be denied.

Respectfully submitted,
IPSWICH SCHOOL COMMITTEE and
RICHARD KORB
By their attorneys,

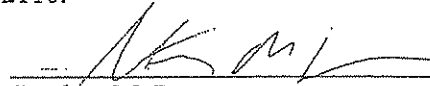


Stephen M. Perry BBO # 395955
Andrew T. Imbriglio BBO # 676049
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
(617) 426-5900

Dated: January 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2012, I caused a copy of the foregoing document to be served by first class mail upon all counsel of record and upon Mark E Swirbalus, Day Pitney LLP, One International Place, Boston MA 02110.



Stephen M. Perry

EXHIBIT A

Unpublished Disposition
72 Mass.App.Ct. 1117
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.
Jon ROGERS & others;
v.
ROMAN CATHOLIC ARCHBISHOP OF BOSTON.

No. 07-P-629. | Sept. 19, 2008.

By the Court (LENK, DUFFLY & GREEN, JJ.).

Opinion

MEMORANDUM AND ORDER PURSUANT TO
RULE 1:28

*1 This is an appeal from the dismissal of a complaint brought by three plaintiffs, Jon Rogers, James Donahue, and James Clifford, parishioners of the St. Frances X. Cabrini Parish (parish), seeking declarative and injunctive relief allegedly on behalf of themselves and other parishioners of the parish. They seek to permanently enjoin the defendant, Roman Catholic Archbishop of Boston (RCAB), from transferring, converting, securing, or conveying real estate and personal property held in the name or for the benefit of the parish, and a declaration that, pursuant to G.L. c. 67, §§ 44-46, the RCAB holds such property in trust for the sole benefit of the parishioners of the parish. The complaint was dismissed for failure to state a claim. Mass.R.Civ.P. 12(b)(6), 365 Mass. 755 (1974).

As alleged in the amended complaint, the parish was created in the late 1950's in Scituate; parishioners gave money and other goods to outfit the first rectory and provided the funds for the purpose of purchasing parcels of land for church buildings and for the cost of building the church, rectory, and parish center. The parish is fully self-supporting and owes no indebtedness to the RCAB or vendors of the parish. Parishioners pay for the upkeep of the church, all maintenance, renovation, and repair, and for the salary and benefits of the pastor and other parish employees.

Rogers is chairperson of the Friends of St. Frances X. Cabrini Parish, which was established to represent the parishioners; all decisions were made by a vote of its members. RA 15. Following suppression of the parish, effective October 29, 2004, bank accounts and items of property were seized by the RCAB. Thereafter, members

of the Friends of St. Frances X. Cabrini Parish voted unanimously to initiate this suit. RA 17

The three named plaintiffs have not alleged claims that are "readily distinguishable from those of the general class of parishioner-beneficiaries" or claims that are "personal, specific, and exist apart from any broader community interest in keeping [the church] open." *Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 245, 867 N.E.2d 300 (2007). The plaintiffs claim generally that they bring this action on behalf of all parishioners as beneficiaries of a trust in which all parish property is held under G.L. c. 67, §§ 44-46.2

Even assuming that under §§ 44-46, the RCAB holds parish property in trust for the parishioners, principles of standing articulated in *Maffei* apply; such a trust is a charitable trust subject to G.L. c. 12, § 8, unless the plaintiffs allege personal interests in the property distinct from those of the general public and from those of parishioners generally.³ *Maffei v. Roman Catholic Archbishop of Boston*, *supra* at 244-245, 867 N.E.2d 300. "A public charity can arise in two general ways, either by being organized with the intent to limit the organization's use of its funds to charitable purposes, or by engaging in conduct which results in the entity holding funds for charitable purposes. Such conduct includes accepting funds on express trust for charitable purposes as well as holding the entity out as charitable and soliciting and accepting donations on the basis of a charitable appeal." *Attorney Gen. v. Weymouth Agric. & Indus. Soc.*, 400 Mass. 475, 477, 509 N.E.2d 1193 (1987). "When a trust is charitable, and is created not to benefit one or more individuals but is devoted to purposes that are beneficial to a broader community, the Legislature has determined that the Attorney General is responsible for ensuring that its charitable funds are used in accordance with the donor's wishes." *Weaver v. Wood*, 425 Mass. 270, 275, 680 N.E.2d 918 (1997).

*2 We also disagree that allegations that the RCAB has engaged in "several illegal actions [that] have directly affected them as individuals," Appt.Br. at 10, and that two of the plaintiffs "hold official positions at the church," *ibid.*, suffice to confer standing. See *Weaver v. Wood*, *supra* at 276-277, 680 N.E.2d 918. "[W]e have never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted ultra vires." *Id.* at 277, 680 N.E.2d 918.

Because the plaintiffs lack standing, we affirm the judgment of dismissal.

So ordered.

893 N.E.2d 802 (Table), 2008 WL 4266850

Footnotes.

- 1 As set forth in the caption of the amended complaint, the plaintiffs are: "Jon Rogers, As Chairperson of the Friends of Saint Frances X. Cabrini Parish, and Individually, James Donohue, As Parish Councilor of Saint Frances X. Cabrini Parish, and Individually; and James Clifford, Individually and on behalf of the other members of Saint Frances X. Cabrini Parish." RA 13
- 2 The plaintiffs argue on appeal that all such gifts were conditional and made "with a specific purpose rather than a general charitable intent.... These gifts were not made for the benefit of the general public or for the Roman Catholic Church in general, nor were they made with the object of generally advancing the religion; rather they were made specifically for Saint Frances X. Cabrini Parish, and for the benefit and enjoyment of the other parishioners." Appt.Br. at 8.
- 3 Although we do not reach the issue, we are not persuaded by the plaintiffs' arguments that by application of §§ 44-46, all parish property is subject to principles of trust law not circumscribed by First Amendment considerations.

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EXHIBIT B

Unpublished Disposition
67 Mass.App.Ct. 1119
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Maryfrances CASSELL,
v.
CHRISTIAN SCIENCE BOARD OF DIRECTORS.

No. 06-P-285. | Dec. 11, 2006.

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 The plaintiff, Maryfrances Cassell, a member of the First Church of Christ, Scientist, in Boston (Church), sought removal of the defendant Christian Science board of directors (board), alleging that in allowing trust property to be used for a peace rally, the board violated the terms of the 1892 deed of trust, executed by Mary Baker G. Eddy, conveying land on which to build a church wherein the doctrines of Christian Science would be practiced. A judge of the Probate and Family Court granted the board's motion to dismiss the plaintiff's complaint for lack of subject matter jurisdiction. The plaintiff now appeals.

In 1997, when analyzing a similar claim by Church members, the Supreme Judicial Court stated that "the Church is a public charity established by Eddy under a series of charitable trusts." *Weaver v. Wood*, 425 Mass. 270, 274 (1997).¹ Pursuant to G.L. c. 12, § 8, the Attorney General is responsible for enforcing the terms of charitable trusts.² See *id.* at 275 ("the Legislature has determined that the Attorney General is responsible for

ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes"). Indeed, "it is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings." *Id.* at 276, quoting from *Dillaway v. Burton*, 256 Mass. 568, 573 (1926). As enforcement of charitable trust terms is the exclusive domain of the Attorney General, the plaintiff has "no enforceable legal interest in the administration of the charity, and [has] no standing to pursue such claims." *Weaver*, *supra* at 278. Compare *Krauthoff v. Attorney Gen.*, 240 Mass. 88, 92 (1921).

It is true that an individual plaintiff may have standing to sue a public charity when her complaint articulates an interest in the charity that is distinguishable from those interests in the charity held by the public at large. *Weaver*, *supra* at 276. See *Lopez v. Medford Community Center, Inc.*, 384 Mass. 163, 167 (1981). However, the plaintiff here seeks to vindicate a generalized interest presumably shared with all members of the Church. The Supreme Judicial Court has "never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted ultra vires." *Weaver*, *supra* at 277.

For the reasons stated herein and by the judge below, the dismissal of the plaintiff's complaint is affirmed.³ Because we hold that the plaintiff lacks standing to bring her claim, we do not reach the board's second argument.

Judgment affirmed.

Parallel Citations

858 N.E.2d 316 (Table), 2006 WL 3592969
(Mass.App.Ct.)

Footnotes

- ¹ The plaintiff is correct that, unlike her claim, the *Weaver* plaintiffs also challenged actions undertaken by the Christian Science Publishing Society. See *Weaver v. Wood*, 425 Mass. at 271. However, this distinction is not material for purposes of ascertaining whether the plaintiff here has standing to pursue her claim. The defendants in *Weaver* included present and past directors of the Church's board, and the court determined that the Church as a whole was a public charity. *Id.* at 270, 274, 277. Its finding in this regard was not confined to the Christian Science Publishing Society, a particular arm thereof.
- ² General Laws c. 12, § 8, inserted by St.1979, c. 716, states: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof."
- ³ At oral argument, the plaintiff requested relief in the nature of certiorari. That request, whether or not construed as a request for a report, is inappropriate in view of the plaintiff's opportunity to petition for further appellate review, and therefore is denied. See Mass.R.A.P. 27.1, as amended, 426 Mass. 1602 (1991).

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., et al.)
Plaintiffs,)
)
v.)
)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
et al.)
Defendants.)

AGREEMENT FOR JUDGMENT

Now come the parties by and through their counsel and stipulate and agree that the following judgment be entered on the docket pursuant to Mass.R.Civ.P. 58:

"1. On the plaintiffs' Complaint, judgment as follows:

A. The plaintiffs Feoffees of the Grammar School in the Town of Ipswich ("Feoffees") have presented to this Court for approval a certain Settlement and Agreement and Release ("Settlement Agreement") dated December 24, 2009, by and between the Feoffees and the Little Neck Legal Action Committee which was acting in a representative capacity in behalf of certain plaintiffs who filed a putative class action against the Feoffees in the Essex Superior court denominated William A. Lonergan et al. v. James W. Foley et al., Civil Action No. 06-02328D (the "Superior Court Action"). The Court has authority to approve a proposed settlement of claims and demands proposed by a trustee pursuant to G.L. c. 204, § 13.

The proposed settlement as set forth in the Settlement Agreement provides, in essence, for the Feoffees, who hold title to the land at Little Neck, Ipswich, Massachusetts for the benefit of the Ipswich Public Schools, to create a condominium at

Little Neck consisting ultimately of 167 units and to sell those units to the 167 cottage owners who currently reside at Little Neck, or their successors. The combined sale price of the 167 units is \$29,150,000, less certain adjustments, as set forth in the Settlement Agreement. The Settlement Agreement also provides for the dismissal of all claims and counterclaims in the Superior Court Action without monetary consideration to any party. This Court is not satisfied with this aspect of the settlement, particularly with respect to the claim of the Feoffees against those who did not sign leases ("Non-Lessees") for use and occupancy. The Court hereby authorizes and permits the Feoffees to settle the Superior Court Action on the condition that the Non-Lessees pay in the aggregate a total of \$2,400,000 more to the Feoffees on account of their use and occupancy. This amount will be treated as additional trust income for distribution to the School Committee over a period of three years as will be more fully set forth under the terms of the Trust Administration order discussed below. Under the terms of the Settlement Agreement and, specifically, the individual condominium purchase and sale agreements executed between the Feoffees and unit buyers, the lessees are to receive an adjustment to their purchase prices so that the total rent paid by each lessee will equal the use and occupancy payments made by a Non-Lessee. As a result of the increased use and occupancy payments by the Non-Lessees set forth herein, the aggregate credit to be received by the lessees at the time of sale for the difference between rent paid by lessees and use and occupancy paid by the Non-Lessees will be reduced by approximately \$600,000, so that the Feoffees, after the sale of all of units, will have received close to \$3,000,000 more than the monies described in the Settlement Agreement. The total consideration set forth in the Settlement Agreement, as modified by this Judgment, results in a fair and

satisfactory settlement of the Superior Court Action and a fair and reasonable price for the sale of Little Neck.

Each Non-Lessee may pay its share of the aforesaid use and occupancy charges in one of two ways: (1) in cash at the time he or she purchases the condominium unit as more specifically set forth in the Settlement Agreement; or (2) in the event the Non-Lessee obtains purchase money financing from the Feoffees, the Non-Lessee may pay the use and occupancy payment at the time the Non-Lessee purchases the condominium unit by way of a five-year, fully amortized unsecured promissory note bearing interest at the rate of four percent per annum with five equal annual principal and interest payments due on the anniversary date of the note; provided, however, that the full balance of such promissory note shall be due and payable immediately upon prepayment by the Non-Lessee of more than 10 percent of the principal due to the Feoffees under the purchase money financing.

Each Non-Lessee may elect to treat its share of the use and occupancy payment as consideration for the condominium unit in addition to the price set forth in Exhibit G to the Settlement Agreement. Each Non-Lessee who elects to do so will execute an amendment to the purchase and sale agreement with the Feoffees that reflects the new purchase price for the relevant condominium unit. In accordance with the principle of equal treatment of the lessees and Non-Lessees, each lessee may elect to treat his or her particular share of the aforementioned approximate \$600,000 of rent previously paid to the Feoffees as consideration for the condominium unit in addition to the price set forth in Exhibit G to the Settlement Agreement and execute an amendment to the purchase and sale agreement as described above.

The date contained in the Settlement Agreement for delivery of so many of the Cottage Transfer Documents, as defined in the Settlement Agreement, as pertain to the release of an outstanding UCC Financing Statement or other security interest in a cottage which is to become a condominium unit, is extended to a date twenty days before the date of the recording of the Master Deed.

Each cottage owner shall maintain casualty and liability insurance on his or her cottage pending the sale to him or her of the condominium unit consisting of said cottage.

B. The proposed settlement by sale of Little Neck also presents the issue of whether deviation, pursuant to G.L. c. 214 § 10B, is warranted from the provision of the will of William Payne which directs that the land at Little Neck is "not to be sold nor wasted." Due to the dispute that is the subject of the Superior Court litigation, there has not been a distribution from the Feoffees to the School Committee since 2006, and absent this settlement, litigation could be expected to continue for an additional prolonged period at substantial expense and with the accompanying risks and uncertainties to the Trust, all of which has been and will continue to be a substantial impairment to the accomplishment of the purposes of the Trust. Deviation from the no sale provision of said will is hereby granted, and the Feoffees are hereby authorized and permitted to sell the land at Little Neck on the terms set forth in the Settlement Agreement as modified by this Judgment. The Court's authorization to the Feoffees of the sale as set forth in this Judgment is also pursuant to G.L. c. 203 § 16.

C. The Feoffees are hereby authorized and permitted to receive mortgages from buyers of condominium units on the terms set forth in the Settlement Agreement as modified by this Judgment.

D. The Feoffees shall grant to the Town of Ipswich a non-exclusive easement for use by the general public of that portion of Pavilion Beach owned by the Feoffees that lies outside the entrance columns of Little Neck. Said easement shall be given on the conditions, to be stated in the grant of easement, that the Town of Ipswich accepts the easement and agrees to insure, indemnify, defend and hold harmless the grantor, and its successors in title, including the trustees and unit owners of the condominium, from and against all claims arising out of the use by the public of said portion of Pavilion Beach.

E. The Feoffees in office for the period through the filing of the Master Deed shall be subject to the following constraints: (1) they shall operate the trust for the benefit of the beneficiary in the ordinary course and not engage in any unusual or out of ordinary course transaction without the written consent of the School Committee or Superintendent Korb except as may be specifically provided for in the Settlement Agreement and this Judgment; (2) they shall not enter into any contracts which will bind the Feoffees after June 30, 2012; and (3) they shall not compensate any of the life Feoffees or Selectmen Feoffees from and after December 19, 2011, except for Peter Foote who shall be compensated for his services as treasurer and manager at the rate of \$840 per week, payable as it has been previously, until the first to occur of a) the date upon which a majority of Feoffees determine his services are no longer needed; b) the date upon which substantially all of the units have been sold; or c) the date that is 90 days after the recording of the Master Deed. Notwithstanding the foregoing, the Feoffees are hereby authorized to engage providers of engineering, surveying, architectural and legal services as needed, in an amount not to exceed \$400,000 in the aggregate, to create the condominium documents and record the Master Deed and to represent the Feoffees in the

closing of 167 condominium unit sales. Insofar as no condominium sales will occur until such time as the trust has been reconstituted as a public body which is an agency of the Town of Ipswich or its subdivisions, as referred to below, the Court finds that the Feoffees will be exempt under the provisions of M.G.L. c. 64D, section 1, from the payment of taxes or fees under Chapter 64D in connection with the sale of the condominium units. Nothing herein shall prevent the Feoffees from performing any obligations they may have pursuant to paragraph 1 of the Settlement Agreement.

F. Absent extraordinary circumstances, the Feoffees shall record the Master Deed on or before May 1, 2012. The Feoffees and their successors, including any Feoffees appointed in place of the present Feoffees pursuant to the change in the Trust's governance, shall comply with all of the terms of the Settlement Agreement including, but not limited to, scheduling and conducting the unit closings in a diligent and expeditious manner. Unless caused by a breach by the School Committee of its obligations under this Judgment, or by a breach on the part of the reconstituted Feoffees in office after the filing of the Master Deed, any Non-Lessee who has not purchased his or her unit on or before July 1, 2012, whether due to a delay in the recording of the Master Deed or otherwise, but who has not breached his or her obligations under his or her purchase and sale agreement, shall begin paying monthly rent as of July 1, 2012 at the rate presently paid by lessees, with the rent for any partial months to be prorated. For avoidance of doubt, the rights and obligations with respect to any Homeowner who fails to close shall be as stated in paragraph 4 of the Settlement Agreement.

G. The Feoffees shall distribute to the School Committee within fourteen days of the entry of this Judgment (rather than ten days after the recording of the Master

Deed as originally provided in the Settlement Agreement), the interest from the Winchester Co-operative Bank, in the approximate amount of \$50,000, said interest to be returned to the Feoffees (for escrow purposes) in the event the Master Deed is not recorded. In addition, to the extent cash flow allows, the Feoffees shall make monthly distributions of net rental income to the School Committee until the completion of the sales process.

H. It is declared that Massachusetts General Laws Chapter 30B does not apply to conveyances of condominium units as set forth in the Settlement Agreement as modified by this Judgment.

I. In the event that the provisions of Massachusetts General Laws Chapter 255E apply to the Feoffees, all parties to this action shall cooperate with the Feoffees in their obtaining a license under said chapter.

2. On the Defendants' counterclaim, judgment as follows:

The Ipswich School Committee and the Superintendent of Schools have presented to this Court a proposed revision to the trust of which the Feoffees are trustees, including a change in the manner in which the seven Feoffees are selected to serve as trustees. Presently, the seven Feoffees consist of four Feoffees who serve for life, absent resignation, with such a life Feoffee's replacement made by the remaining three life Feoffees, and the three longest-serving Selectmen serving ex-officio.

The Court finds that such a revision is fair and reasonable and is especially warranted both by the benefits of the trust's becoming a public entity and agency of the Town or its subdivisions and by reason of the sale of Little Neck, which obviates any need for the experience and familiarity with Little Neck provided by the life Feoffees.

Effective upon the recording of the Master Deed which creates the condominium contemplated by the Settlement Agreement, two of the life Feoffees will resign from and split off from the Feoffees and form their own unincorporated association to be named and known as the Life Feoffees. Contemporaneously with that split-off, the Feoffees will be reconstituted as follows: the Selectmen Feoffees shall resign and their replacements will be selected, one each, by the Selectmen, the School Committee and the Finance Committee. The other four Feoffees will be the two life Feoffees who have not become Life Feoffees, one additional appointee of the Selectmen, and one additional appointee of the School Committee. Upon the first to occur of the sale of the last condominium unit or ninety days from the date of the recording of the Master Deed, the two life Feoffees then still serving as Feoffees will resign and join the Life Feoffees. The Life Feoffees shall then appoint one Feoffee and the Finance Committee shall appoint one Feoffee. In all other respects the selection and appointment of Feoffees thereafter shall be in accordance with a Trust Administration Order which the School Committee will submit to the Court for approval with input from the Office of the Attorney General and which will provide that the Trustees will consist of two appointees each by the Selectmen, the School Committee and the Finance Committee and one appointee of the Life Feoffees, all of whom will serve for fixed terms as will be set forth in the forthcoming Trust Administration Order. The Feoffees hereby consent to such Trust Administration order provided that it is not inconsistent with the provisions hereof.

Following the spin-off, the Life Feoffees shall be a private body, selecting their members and successors as they see fit in their sole discretion. The Life Feoffees may maintain custody of the original historical books and records of the Feoffees, copies of all of which shall also be made freely available to the reconstituted Feoffees. From the time the Feoffees are initially

reconstituted following the filing of the Master Deed, the Feoffees shall be deemed for all purposes a public body and shall be governed by the aforesaid Trust Administration Order.

The Feoffees, the School Committee and the Superintendent, and their members, predecessors, successors, representatives, assigns, agents, servants, attorneys, employees, executors, administrators, and heirs release and forever discharge the Feoffees, the Life Feoffees, their members, predecessors, successors, representatives, assignees, agents, attorneys, employees, executors, administrators, and heirs of and from any and all claims, debts, demands, defenses, liabilities, costs, attorneys' fees, actions suits at law or equity, compensation, obligations, contracts, losses, expenses, damages, whether general, specific or punitive, exemplary contractual or ex-contractual and causes of action of any kind or nature, known or unknown, derivative or direct, asserted or unasserted, from the beginning of the world to the date of this judgment; provided, however, this release shall not apply to any unknown claims of intentional misconduct.

Except for claims for intentional misconduct that are excluded from the release set forth above, the Feoffees shall, and are hereby authorized to, indemnify, defend and hold harmless the Selectmen Feoffees and Life Feoffees, both individually and in their capacity as Feoffees, their predecessors, heirs, predecessors, successors, representatives, assignees, agents, attorneys, employees, executors, administrators, and heirs of and from any and all claims, debts, demands, defenses, liabilities, costs, attorneys' fees, actions, suits at law or equity, compensation, demands, obligations, contracts, losses, expenses, damages, whether general, specific or punitive, exemplary, contractual or ex-contractual and causes of action of any kind or nature, known of unknown, derivative or direct, asserted or unasserted, from the beginning of the world to the date of this judgment, whether those claims are made against the Selectmen Feoffees or Life Feoffees

in their individual capacity or representative capacity or both, arising out of or related to their actions or omissions or status as Selectmen Feoffees or Life Feoffees, including, but not limited to, any and all claims, whether now in existence or later added, in the Superior Court litigation or relating to conducting the instant Probate Court action.

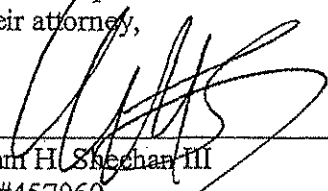
Nothing in the release or indemnity obligations set forth in this Judgment shall be deemed applicable to any claim, action or demand that may asserted in the future by the Office of the Attorney General.

3. Judgment is entered without costs. Due to the benefit to the Trust that has been created, the School Committee and Richard Korb are entitled to an award of attorneys' fees and expenses which they shall submit to the Court within sixty days from the date of this Judgment with notice to counsel for the Feoffees and the Office of Attorney General. Any such award will be paid out of the sale proceeds. All parties acknowledge that the fees and expenses of the Feoffees have already been paid from trust assets.

4. All rights of appeal are hereby waived."

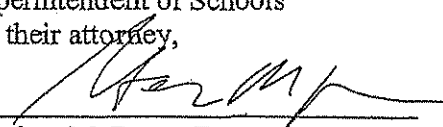
Respectfully submitted,

Feoffees of the Grammar School in
the Town of Ipswich
By their attorney,



William H. Sheehan III
BBO #457060
MacLean Holloway Doherty
Ardiff & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960
(978) 774-7123
wsheehan@mhdpc.com

Ipswich School Committee
and Richard Korb,
Superintendent of Schools
By their attorney,



Stephen M. Perry, Esq.
BBO # 395955
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
(617) 426-5900

Approved and so Ordered as a Judgment of the Court:

By the court: (Sahagian, J.)

ES09E

Commonwealth of Massachusetts

The Trial Court

Essex Division

Probate and Family Court Department

Docket No. ES09E-0094-QC

Judgment on Complaint ~~for~~ Deviation Pursuant
to G.L.c. 214^B 10B filed October 6, 2009

Alexander B.C. Mulholland, Jr.,
Peter Foote, Donald Whiston,
James Foley, Elizabeth Kilcoyne,
Patrick J. McNally, and Ingrid Miles as
They Are The Feoffees Of The Grammar School
In The Town of Ipswich

v.
Attorney General Of The Commonwealth
Of Massachusetts, Ipswich School Defendants
Committee, and Richard Korb, As He Is
The Superintendent Of Schools In the
Town Of Ipswich


This action came on for (trial) (~~hearing~~) before the Court, Mary Anne Sahagian,

Justice presiding, and the issues having been duly (tried) (~~heard~~) and findings having been duly rendered.

It is Ordered and Adjudged

The signed Agreement for Judgment filed December 23, 2011
is hereby incorporated into and made a part of this Judgment.

Date December 23, 2011


Justice of the Probate and Family Court

THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

ESSEX, ss. PROBATE & FAMILY COURT

Feb. 06 2012

~~allowed~~

The within action is hereby denied -

[Signature]
Justice of Probate & Family Court

MOTION TO INTERVENE

Pursuant to Rule 24(a) of the Massachusetts Rules of Civil Procedure, Douglas J.

DeAngelis hereby respectfully moves for leave to intervene as a party defendant in this action.

In support of this motion, Mr. DeAngelis states the following:

1. The Feoffees of the Grammar School in the Town of Ipswich seek in their complaint to deviate from the terms of the so-called Grammar School Trust, pursuant to which the Feoffees shall maintain the land in Ipswich known as "Little Neck" for the benefit of the Ipswich Public Schools. Also pursuant to the terms of the Trust, Little Neck cannot be sold or wasted.

2. On January 27, 2011, Mr. DeAngelis filed an amicus brief in opposition to the Feoffees' motion for partial summary judgment, in which the Feoffees sought authority to sell

THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK
J. MCNALLY, and INGRID MILES, as they are
the Feoffees of the Grammar School in the Town
of Ipswich,

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, and
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich,

Defendants.

ESSEX, ss. PROBATE & FAMILY COURT

Feb. 06 2012

~~allowed~~

The within action is hereby denied -

Justice of Probate & Family Court

MOTION OF THE PROPOSED INTERVENERS TO STAY ENTRY OF JUDGMENT,
AND IN THE ALTERNATIVE, TO STAY THE JUDGMENT, PENDING THE
RESOLUTION OF THEIR MOTION TO INTERVENE

The proposed interveners in this action, a group of parents of Ipswich Public School students and their children, who are beneficiaries of the trust of William Payne, have moved to intervene in this action, alleging various interests separate and distinct from those of the general public. Although they relied upon the public pronouncements of the School Committee that it would vigorously defend this case and prosecute the counterclaim, it is now clear that the School Committee will not vigorously defend the case and protect the interests of the beneficiaries of the Trust. Upon learning of the School Committee's abandonment of its defenses and counterclaim, the proposed interveners immediately sought intervention through a series of filings including a

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,
PETER FOOTE, DONALD WHISTON, JAMES
FOLEY, ELIZABETH KILCOYNE, PATRICK J.
MCNALLY, and INGRID MILES, as they are the
Feoffees of the Grammar School in the Town of
Ipswich,

vs.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
IPSWICH SCHOOL COMMITTEE, AND
RICHARD KORB, as he is Superintendent of
Schools in the Town of Ipswich.

NOTICE OF APPEAL

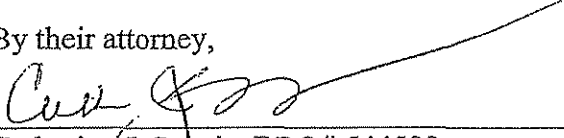
Please take notice that the proposed Interveners in the above-captioned matter,
Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers, Jonathan Phypers, Peter
Buletza, Kenneth Swenson, Robert Weatherall, Jr., Joanne Delaney, Cara Doran, Andrew
Brengele, Susan Brengele, Michele Wertz, Jason Wertz and Clark Ziegler, individually and
on behalf of their minor children, hereby appeal from:

1) This Court's order dated February 7, 2012 denying their motion to intervene;
and
2) This Court's Judgment on Complaint for Deviation Pursuant to G.L. c. 214,
§10B, entered on January 12, 2012.

Respectfully Submitted,

DOUGLAS J. DeANGELIS, CATHERINE T.J.
HOWE, JACQUELINE PHYPERS, JONATHAN
PHYPERS, PETER BULETZA, KENNETH
SWENSON, ROBERT WEATHERALL, JR.,
JOANNE DELANEY, CARA DORAN,
ANDREW BRENGLE, SUSAN BRENGLE,
MICHELE WERTZ, JASON WERTZ and
CLARK ZIEGLER, individually and on behalf of
their minor children,

By their attorney,



Catherine J. Savoie, BBO# 544599
POSTERNAK, BLANKSTEIN & LUND, L.L.P.
The Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 973-6100
csavoie@pbl.com

Dated: February 8, 2012

CERTIFICATE OF SERVICE

I, Catherine Savoie, hereby certify that on this 8th day of February, 2012, I

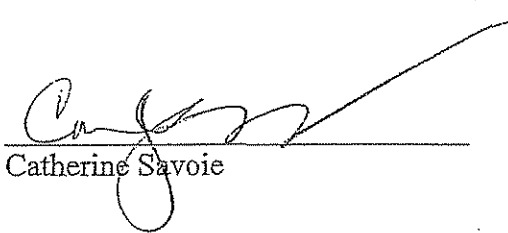
served a copy of the foregoing by first-class mail upon the following counsel:

William Sheehan, III
MacLean Holloway Doherty
Ardiffe & Morse
8 Essex Center Drive
Peabody, MA 01960

Johanna Soris
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
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Stephen Perry
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303 Congress Street
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Mark E. Swirbalus,
Day Pitney LLP
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Boston, MA 02110



Catherine Savoie

