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No. of Pages: 199

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS PROBATE & FAMILY COURT

No. ES09E0094QC

Before: Sahagian, J

ALEXANDER B.C. MULHOLLAND, JR., PETER FOOTE,
RONALD 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

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,

(DAY ONE)

Monday, December 12, 2011
Salem, Massachusetts
Commencing at 10:45 a.m.

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2

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1

I-N-D-E-X

2

3 OPENING STATEMENT

PAGE

4 (By Mr. Sheehan)

11

5 (By Mr. Perry)

40

6 (By Ms. Soris)

--

7

8

I-N-D-E-X

9

10 WITNESS

PAGE

11 RICHARD KORB

12 (By Mr. Sheehan)

77

13 (By Mr. Perry)

165

14 (By Ms. Soris)

--

15

16

17

18

19

20

21

22

23

24

E-X-H-I-B-I-T-S

1

2

3 JOINT UNCONTESTED EXHIBIT LIST:

PAGE

4 NUMBERS 1 through 146

6

5

6 JOINT CONTESTED EXHIBIT LIST

PAGE

7 LETTERS A through AAAAA

6

8

9

E-X-H-I-B-I-T-S

10

11 NUMBER

PAGE

12 147 11/6/08 School Committee Meeting

13 Minutes

97

14 148 11/11/08 Working Group of Feoffees

15 Meeting Minutes

104

16 149 11/20/08 School Committee Executive

17 Session Meeting Minutes

110

18 A Three E-Mails

121

19 150 E-Mail

125

20 B E-Mail

127

21 151 E-Mail and Attachments

131

22 152 E-Mail

133

23 153 1/15/09 School Committee Meeting Minutes

136

24 154 2/11/09 Memorandum

139

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

E-X-H-I-B-I-T-S

NUMBER		PAGE
155	3/19/09 School Committee Executive Session Meeting Minutes	140
156	5/7/09 School Committee Meeting Minutes	142
C	9/10/09 Document	146
D	E-Mail	148
157	11/18/10 School Committee Executive Session Meeting Minutes	149
E	12/2/10 School Sommittee Meting Minutes	151
158	11/9/10 School Committee Meeting Minutes	155
159	Resposnes to Requests for Admissions	164
CHALK A	Log Book	191

P-R-O-C-E-E-D-I-N-G-S

(Whereupon, the court reporter was accepted and sworn by the clerk)

(Whereupon, the following exhibits were introduced to the Court)

(JOINT UNCONTESTED EXHIBIT LIST, EXHIBIT NUMBERS 1 TO 146)

(JOINT CONTESTED EXHIBIT LIST, EXHIBIT LETTERS A TO AAAAA)

THE COURT: Good morning, counsel.

MR. SHEEHAN: Good morning, Your Honor.

MR. PERRY: Good morning, Your Honor.

THE COURT: Could we have everyone identify themselves for the record, please, and indicate who they represent?

MR. SHEEHAN: Your Honor, Bill Sheehan with Robin Stein for the Plaintiffs, the Feoffees of the Grammar School in the Town of Ipswich.

THE COURT: Thank you.

MS. SORIS: Johanna Soris, with the Attorney

1 General's Office.

2 THE COURT: Thank you.

3 MR. PERRY: Steve Perry for the Ipswich School
4 Committee and Richard Korb.

5 THE COURT: Okay. Should we get you something
6 that you can write on?

7 MS. SORIS: No. I feel quite comfortable right
8 here.

9 THE COURT: All right, okay. Anything before I
10 hear openings?

11 MR. SHEEHAN: I have a trial brief for you,
12 Judge.

13 THE COURT: All right.

14 MR. SHEEHAN: And a witness list for you. We
15 have a joint uncontested exhibit list. And Judge, I have
16 a question for you on how you want to clutter your court-
17 room.

18 We have a hundred and forty-six -- between the
19 two of us we have a hundred and forty six uncontested
20 exhibits. I have sufficient copies so that we have one
21 for each counsel, but we also have one for the witness
22 and one for the court.

23 And my first question to you is, do you want
24 the original tagged exhibits with you, or do you want

1 them with the witness, and where would you like us to put
2 the boxes?

3 THE COURT: I would like the set of exhibits.
4 And so whatever they are, if you've got a set for me I'll
5 ----

6 MR. SHEEHAN: We do.

7 THE COURT: Are they in binders?

8 MR. SHEEHAN: Well, some of them are in binders
9 and some of them are just in Redwells. We ran out of
10 numbers.

11 THE COURT: All right. I'll take the originals
12 here. And then, in terms of having a set available for
13 the witness, wherever you can find a spot?

14 MR. SHEEHAN: Is it all right if I put them on
15 this?

16 THE COURT: You can't put it on top of that
17 because that's actually ----

18 MR. SHEEHAN: All right.

19 THE COURT: So you can't put it there. If you
20 want to -- it's up to you -- do you want to leave it up
21 by the witness stand, or do you want keep them at your
22 table and as you're going, you can refer to them ----

23 MR. SHEEHAN: That makes sense.

24 THE COURT: However you wish to proceed as far

1 as that's concerned, that's fine with me.

2 MR. SHEEHAN: What we'll do, Judge, is just put
3 the set for the witness, we'll put it right next to the
4 witness chair.

5 THE COURT: That's fine.

6 MR. PERRY: Your Honor, here is the rest of the
7 uncontested. But we do a problem which is the numbering
8 on them. These were numbered, originally, with the
9 defendants' numbers, and we'll need to ----

10 THE COURT: Well, what we're going to do, my
11 understanding is that at some point is to have all of the
12 exhibits match the numbers ----

13 MR. SHEEHAN: Correct.

14 THE COURT: ---- on the joint uncontested list;
15 correct?

16 MR. SHEEHAN: Yes.

17 THE COURT: All right.

18 MR. PERRY: But right now they don't, and so
19 we'll have to muddle through until we fix it.

20 THE COURT: That's fine. My understanding was
21 that it was the defendants' exhibits that were off-track,
22 if you will.

23 MR. PERRY: I mean, not due ----

24 THE COURT: In a sense.

1 MR. PERRY: Not due to the defendants' counsel
2 not wanting to have them ----

3 THE COURT: You're not following the numbers,
4 counsel. What I said to Peach was you certainly wouldn't
5 be getting to the defendants' case piece prior to the
6 lunch break. So during the lunch break you can do what-
7 ever you need to do.

8 Is that going to work?

9 MR. PERRY: We may use some of those during the
10 morning, but we'll just have to clarify for the record
11 what the correct numbers are.

12 THE COURT: That's fine. All right.

13 Anything from the Attorney General's Office
14 before we start? Attorney Soris, anything from the AG's
15 Office, preliminarily?

16 MS. SORIS: No, thank you.

17 THE COURT: All right. Thank you.

18 Attorney Perry?

19 MR. PERRY: Your Honor, I have a Bett's Memo
20 that's just on the issue I discussed the other day of
21 public charities and standing, just to clarify at this
22 point.

23 THE COURT: All right. And everyone has
24 received a copy?

1 MR. SHEEHAN: I have seen it, Judge.

2 THE COURT: And Attorney Soris, you received a
3 copy, as well?

4 MS. SORIS: Yes. I received a copy.

5 THE COURT: All right. If there's nothing
6 further, Attorney Sheehan, we'll commence with your
7 opening, please?

8 MR. SHEEHAN: Thank you. Good morning, Your
9 Honor. It is my pleasure this morning to be represen-
10 ting the Feoffees of the Grammar School in the Town of
11 Ipswich.

12 Last night I was reading some old cases invol-
13 ving the Feoffees of the Grammar School of the Town of
14 Ipswich, and one of which I'm going to ask you to take
15 judicial notice of.

16 And that is a case that's found at 174
17 Massachusetts 572, 1899, Feoffees of the Grammar School
18 of Ipswich versus the Proprietors of Jeffrey's Neck
19 Pasture. It was a dispute because the folks at Great
20 Neck didn't want the Little Neckers get out to their
21 land.

22 The reason I want you to take judicial notice
23 of it, Judge, is that the facts about how Little Neck was
24 used many, many years ago and, in particular, it talks

1 about during the greater part of two hundred and fifty
2 years after the will of William Payne, it had been used
3 for pasture land; that is, for cattle grazing.

4 And then a portion of it was cultivated for
5 some time as a farm. And then even as of 1899, summer
6 cottages began to pop on Little Neck. There was a
7 steamboat used -- brought up and down the Ipswich River.

8 Times have certainly changed, Judge. Now, we
9 have a hundred and sixty seven cottage owners. And for
10 the record, Your Honor was out and took a view with us
11 last Wednesday, and we got a good look at Little Neck and
12 we got a look at these one hundred and sixty seven
13 cottages.

14 THE COURT: I do thank you for inviting me out
15 on the worst weather day.

16 MR. SHEEHAN: I apologize for that, Judge.

17 But unlike the good old days, Judge -- or maybe
18 they weren't so good because we couldn't get out there --
19 we now find ourselves -- that is, the feoffees, embroiled
20 in a very nasty and a very costly fight in the Essex
21 Superior Court being waged against the feoffees by over
22 eighty percent of the cottage owners who couldn't be more
23 unhappy with the feoffees and what they have done.

24 And it is that fight which has led us here to

1 the Probate Court because although we have a hundred and
2 forty -six uncontested Exhibits and many others, but we
3 have some contested.

4 And although we're going to hear from lots of
5 witnesses and we're going to hear from a number of
6 experts; nonetheless, this case can really be boiled down
7 very simply: the feoffees in their discretion using
8 prudence.

9 And keeping in mind the standards that governs
10 them which is in the best interest of the Ipswich Public
11 Schools, what they decided to do was settle the Essex
12 Superior Court litigation, and settle it by means of a
13 sale of the land of Little Neck for twenty nine million,
14 one hundred and fifty thousand dollars to the cottage
15 owners. And in order to accomplish that sale, to do it
16 by way of a condominium methodology.

17 We've now presented that proposed settlement to
18 you. And that's not uncommon, as Your Honor well knows
19 for fiduciaries in their prudence and their discretion,
20 after thinking that they have come to good settlement
21 terms, nonetheless, come to the court for the court's
22 blessing. And that's what the Feoffees are doing in this
23 case.

24 But it's not quite that simple because the

1 request by the feoffees of this court to approve that
2 settlement triggered four other issues. It triggers two
3 of them because of the language in the will of William
4 Payne which says in pertinent part that he's giving
5 Little Neck for the benefit of the Ipswich Public Schools
6 to these feoffees, the land not to be sold nor wasted.

7 So the first question is, can this court order
8 a sale consistent with the terms of William Payne's will?
9 And we will contend and we'll show you evidence that
10 there is a wasting going on. There's been a wasting
11 going on since at least 2007.

12 It's not the feoffees' fault, but there's a
13 wasting. And in our view, you can't both not sell and
14 not waste, and we're going to ask the court to make that
15 ruling when the case is all over, and that wouldn't even
16 require a deviation.

17 If, on the other hand, Your Honor does think a
18 deviation is required, the evidence will meet the stan-
19 dards for the deviation which, in essence, is to get away
20 from the frustration of the dominant intent of William
21 Payne, and there's no question what his dominant intent
22 was.

23 He left that property so as to benefit the
24 Ipswich Public Schools. We want to use that property for

1 that very purpose, but sale is required for all the
2 reasons that the evidence will show.

3 There are two other issues in this case. Those
4 other two issues have been brought by counter-claim. In
5 essence, what is sought by that counter-claim is a
6 removal of the life feoffees and then an overhaul of the
7 trust of William Payne as it has been amended by Colonial
8 legislation back in the 1700s.

9 I want to talk first about what the evidence is
10 going to be regarding removal and re-organization, which
11 you're not doing here because there's no allegation of
12 dishonesty, incapacity, hostility, conflict of interest,
13 theft, overpayment; all the things that you probably have
14 seen often, unfortunately, when it comes to removal of
15 feoffees.

16 I say you're not going to see any evidence of
17 it because there's not even an allegation of it in the
18 counter-claim.

19 What the defendants hope to prove as set forth
20 in their counter-claim is a failure to fulfill expecta-
21 tions because the rent has been shut off, and they'd like
22 to say -- and it goes way back as far as not receiving
23 enough rent, the feoffees.

24 And you're also going to hear that the --

1 allegedly, that the prior feoffees have failed to make
2 necessary and appropriate governmental filings.

3 We will prove to you through the testimony of
4 Donald Greenough, the testimony of Peter Foote, and
5 uncontested exhibits, that since 2001 when the Attorney
6 General's Office first informed the feoffees that they
7 were to file a so-called PC form, the feoffees have done
8 so.

9 There's an allegation about the feoffees doing
10 business under a limited liability company. And Donald
11 Greenough will explain to you that the company, LNWS LLC,
12 was simply created for limited liability purposes in the
13 operation of and the building of the common wastewater
14 system.

15 There's an allegation that we're doing these
16 things in private, without transparency and public
17 accountability. The evidence will show that we are a
18 private organization, and I'm going to ask the court to
19 take judicial notice of the decision of Judge Patrick
20 Riley in the Superior Court case where he so ruled,
21 without transparency and without public accountability.

22 I just indicated, we file a report every year
23 as to what we're doing with the Attorney General's
24 office, which is charged with the accountability of the

1 feoffees.

2 And of course, the major issue, Judge, that
3 you're going to hear is an issue regarding rents and, of
4 course, that issue of rents is what brought everybody to
5 the Superior Court.

6 Now, the history here is terribly important.
7 For many, many years there was a steady, uninterrupted
8 flow of monies to the Ipswich Public Schools.

9 Basically, the feoffees generated money to
10 benefit the Ipswich Public Schools in two ways; by
11 allowing the cottages to be built, to be improved, tax
12 money was generated, sixty percent of which goes to the
13 schools. That has always gone on.

14 In addition, rent has been charged, and we're
15 going to take you through not year by year, but we will
16 take you through the annual meetings of the feoffees from
17 1936 to 2006, and show you excerpts as to how those meet-
18 ings were organized and what was done at those meetings.

19 And what those meetings are going to show is
20 that each and every year, discussion had about rent;
21 monies available for distribution to the Ipswich Public
22 Schools; the Ipswich Public Schools personnel present at
23 these meetings; the meetings in public; the meetings --
24 in fact, the meetings often were written up in the press.

1 And that for all those years, 1936 to 1996,
2 with nary a discouraging word the feoffees, the superin-
3 tendent and the school committee -- the superintendent
4 and school committee being the stewards, if you will, for
5 the Ipswich Public Schools -- all marched in lockstep.
6 Everyone was getting along just fine. The tenants were
7 paying the rent, money was going to the schools.

8 In fact, there were years, Judge, when the
9 schools said through the superintendent, we don't need
10 the money. Hang on to it. Wait until we need it.

11 But times changed, Judge. School budgets got
12 tight. Where do we look for money? In 1996, you'll see
13 a major discussion at the annual meeting of the feoffees.
14 And as a result of that discussion, the feoffees promised
15 they would look into the whole issue of raising rent, and
16 also, evaluation of Little Neck, hired Land Vest.

17 And you'll hear from Land Vest. And Land Vest
18 said, you can charge thirty six hundred dollars a year
19 and justify it. We were at nine hundred dollars. And so
20 a vote was made by the feoffees to get to that number,
21 thirty six hundred dollars.

22 And the evidence will show that we got there,
23 but we got there gradually. That there was no complaint
24 about getting there gradually by the school committee or

1 by the superintendent. It was wise to do that because
2 that way we keep that rent flowing. And in fact, the
3 evidence will show that that rent did keep flowing.

4 And by 2003, the rent had quadrupled without
5 objection; without objection from the tenants. And
6 again, we're faced with, should we raise rents? Land
7 Vest said yes. We're relying on Land Vest. The rent was
8 raised again to fifty five hundred dollars. The numbers
9 I'm using are annual rent figures.

10 There were now two new considerations, Judge,
11 when we raised that rent in 2005. The first was that no
12 longer was the feoffees' money being used for enhance-
13 ment. Now, it was being used for the nuts and bolts of
14 the Ipswich School budget. You'll hear Mr. Korb, the
15 superintendent of schools, address that issue.

16 And we had the D.E.P. involved. We received a
17 notice of enforcement around 1998-1999, a Clean Waters
18 Act violation. We hadn't dirtied the water, but we were
19 in violation of the Clean Waters Act. And so, we will
20 take you through it. And we will not take you through a
21 great -- with a lot of detail because there would be a
22 trial unto itself.

23 But we will take you through what the deoffees
24 did dealing with the D.E.P. and building that common

1 wastewater system. And there will be discussion or a
2 description of what the common wastewater system is.

3 And you will hear that the public schools and
4 the feoffees were once again in lockstep. In fact, we
5 came to this court together in 2005 asking for permission
6 to borrow six and a half million dollars, and Your Honor
7 granted that permission and it got built.

8 And now, the wastewater system having been com-
9 pleted, according to Land Vest, the rent could be justi-
10 fied at almost eleven thousand dollars. So the feoffees
11 sought out -- set out to accomplish that, just as they
12 had tried to follow Land Vest's advice in 1997 when the
13 issue first arose.

14 This time, the tenants pushed back. What were
15 the feoffees to do? The feoffees had tried to reach
16 agreement. They have spent a great deal of time trying
17 to reach an agreement. You'll hear evidence as to the
18 proposed leases and so on, to no avail.

19 So the feoffees sent a notice to quit to
20 everyone, and then offered them leases. Some signed;
21 most didn't. Those that didn't sign filed suit.

22 From the feoffees' point of view, the feoffees
23 have done everything they were supposed to do. The
24 eighty percent of the tenants didn't see it that way.

1 What did they see? They saw and they've alleged in the
2 Superior Court that there was a history of conduct by the
3 feoffees, the superintendent, the school committee, the
4 public schools on which they relied; that is, that taxes
5 seemed to be the more important of the two elements of
6 their payments to the feoffees.

7 That rent was designed just to cover costs and
8 generate a rather modest amount to the schools, without
9 complaint by anyone. This is the basis of their claim.

10 They claim that they were unfairly being taxed
11 because they were paying both the taxes on the cottage
12 and on the land. Teh feoffees say, wait a minute. We
13 had you sign something that said you would do that.
14 Nonetheless, this is one of their complaints because of
15 the escalation, the rapid escalation in the rent.

16 They saw it as a twelve fold increase in rent
17 over eight years. The feoffees saw it as trying to
18 comply with what their obligation was. The tenants said,
19 wait a minute. You didn't increase the rent by double or
20 triple or quadruple. You increased it twelve fold in an
21 eight year period of time. It's an improper departure
22 from what you've done in the past. It's outrageous.

23 You can call it whatever you want; a Chapter
24 93A violation, an implied covenant of good good faith and

1 fair dealings breach. All those things you'll see that
2 they filed in their complaint with the Superior Court.

3 What they're alleging, in essence, is that the
4 Ipswich townfolks and persons of the feoffees were trying
5 to balance the budget of the schools on the backs of the
6 non-resident Ipswich -- non-Ipswich residents, Little
7 Neck owners.

8 They filed that suit in the Superior Court. We
9 filed a counter-claim. You'll hear about all that. We
10 discovered the case. We investigated the facts. We had
11 two choices: roll the dice and see what happens in the
12 Superior Court, or seek resolution.

13 And the feoffees determined in their discretion
14 to try to seek resolution. We tried first to do it by
15 way of lease negotiations.

16 You'll hear it all. The parties couldn't reach
17 agreement on the lease. The only way that the parties
18 might find common ground is to settle the Superior Court
19 case and avoid the risks and the costs of litigation in
20 Superior Court versus sell Little Neck to the cottage
21 owners, a concept that had been broached many times
22 before, but never seriously considered because the amount
23 of money wasn't serious.

24 But this time, the amount of money was serious;

1 twenty six and a half million dollars.

2 And I'm going to go through with Mr. Korb in
3 detail, so I'm not going to go into detail in my opening
4 statement what the school committee and the superinten-
5 dent did in reaction to the proposal that was brought to
6 them to sell Little Neck for twenty six and a half
7 million dollars.

8 Suffice to say, for purposes of the opening
9 statement that the school committee seriously considered
10 it, seriously investigated it, and reported to the public
11 that they had done their due diligence. And that they
12 approved the sale and voted for the sale on November 20,
13 2008, and told the feoffees to go forward and get it
14 done.

15 The feoffees sought to do exactly that. And
16 what you will hear is that the original proposal, as well
17 as basically a bulk sale for twenty six and a half
18 million dollars, could not be accomplished because there
19 was no ability to finance that purchase by the cottage
20 owners; if you recall what things were like at the end of
21 2008 - early 2009.

22 How then could we possibly sell that property
23 and settle the Superior Court case? And you will hear
24 evidence that we talked about a condominium approach

1 between the feoffees and the tenants. That was brought
2 back to the school committee. And the school committee
3 unanimously said, that's a great way to do it.

4 When that originally fell apart, because to
5 create a condominium you have to meld the land and the
6 cottages, and the feoffees didn't trust the tenants to
7 not to give them the land to create the condominium. The
8 tenants didn't trust the feoffees enough to give the
9 cottages to the feoffees to create the condominium.

10 And we looked at another proposal, a so-called
11 approval not required plan. This was brought back to the
12 school committee in May of 2009, and you'll see the vote.
13 Great proposal. Go right ahead.

14 Everything was going fine. Public officials
15 can get into it. It's relevant because the defendants in
16 this case are asking that all the feoffees become public
17 appointees. That's why this whole public issue and the
18 public pressure brought to bear is important; and in
19 particular, the public pressure brought by the finance
20 committee. And that is relevant in this case because
21 it's the finance committee under the re-organization as
22 proposed, they're going to have two seats at the table of
23 the feoffees.

24 The finance committee pressured the school

1 committee. You'll see it in e-mails and you'll see it in
2 the ultimate acts of the school committee in November of
3 2009, when in order to get the finance committee off of
4 its back -- and of course, the school committee under-
5 standably concerned about the finance committee because
6 the finance committee holds the purse strings -- says,
7 okay.

8 On November 19, 2009, the school committee
9 votes to rescind its November 20, 2008, vote. Very
10 interesting because that vote was of little use at that
11 point anyway, because the bulk sale approach had failed.

12 And you will hear, Judge, and you will see that
13 this vote to rescind falls on the heels of an e-mail sent
14 to the superintendent and to the school committee by
15 Jamie Fay, Chairman of the Finance Committee, instructing
16 the school committee to rescind the vote with a copy of
17 that e-mail, Judge, to the Salem News, the Ipswich
18 Chronicle and the Boston Globe.

19 So what happened was as the feoffees and the
20 school committee and the superintendent had set out
21 together to accomplish a sale; in fact, you'll even see
22 e-mails from Dick Allen, Mr. Perry's partner, explaining
23 to me how to file a deviation complaint and sending a
24 couple of proposed complaint forms over.

1 And everybody was on the same page until the
2 finance committee got into the act. And now, where does
3 that leave the feoffees?

4 The finance committee, by the way, also tried
5 to get rid of the feoffees legislatively in May of 2009,
6 seeking a home rule petition. And it was, in fact, at a
7 legislative session hearing in October of 2009 that that
8 was really what resulted in the initial filing of the
9 deviation complaint because the feoffees said, look, the
10 place for fights over this stuff is not the legislature.
11 It's the Probate Court.

12 And that's why these issues are before this
13 court. And it's a darn shame that all this happened
14 because we've spent an awful lot of money and an awful
15 lot of time.

16 But the feoffees pursued the sale, and they
17 pursued the sale because it was in their -- with their
18 discretion and in their prudence that they knew that it
19 was the right thing to do. They understood, too, what
20 the school committee was -- the pressure it was under.

21 In fact, when -- and you will see evidence of
22 the school committee's conduct after November of 2009,
23 totally consistent with wanting to sell it. You'll see
24 that the feoffees really hadn't departed too much from

1 even what the school committee wanted even in early 2010.

2 In any event, you will see all that evidence.

3 And then you will see that ultimately in November of 2010
4 by a three to four vote, the school committee decided not
5 to support the settlement agreement; hence, the contested
6 petition before you, today.

7 Now, other than that history which is terribly
8 important, in my view what will the evidence show? It
9 will show that the feoffees face a nearly one million
10 dollar OSHA problem, and I don't think there will be any
11 contest over that. And that it should have been done
12 yesterday, but there's no money to do it, and they were
13 unable to borrow.

14 In fact, you're going to hear evidence of the
15 feoffees from time to time actually borrowing money on
16 their own and putting it into the feoffees coffers, so
17 that the feoffees could pay their bills. And finally,
18 getting a line of credit with Eastern Bank for four
19 hundred thousand dollars in personal guarantees.

20 That's how strongly they feel. And they're
21 supposedly the people that should be removed. But it's
22 not argument. It's an opening statement.

23 You'll hear from two residents, Phil Gottlieb
24 and Mark DeSalvo. They are Little Neck residents. And

1 they're going to set the factual predicate for their
2 claims in the Superior Court.

3 And then you will hear as to the merits of that
4 Superior Court case. You'll hear from J. Owen Todd, an
5 attorney in Boston. I'm not going to spend a lot of time
6 now on the reputation, ability, education, training and
7 experience of Attorney Todd. And Your Honor probably is
8 well aware of Attorney Todd who, of course, was on the
9 Superior Court bench for a number of years.

10 Owen Todd is going to explain to this court the
11 dangers; dangers from our point of view, not a danger
12 from his point of view. He's going to talk about the
13 lawsuit in the Superior Court, and what he's going to say
14 is, in essence, he's licking his chops. That he's going
15 to make claims of detrimental alliance; and breach of
16 covenant in good faith and fair dealing; Chapter 93A.

17 He's going to seek recovery of all the real
18 estate taxes we've paid under various -- a variety of
19 theories. And then he's going to say, and even if you
20 folks have the right to evict us, you've got to pay us
21 for the cottages.

22 And you're going to hear a lot of talk about
23 the case of Ward V. Perna, and I won't pre-empt that
24 discussion now.

1 That's what J. Owen Todd is going to say. The
2 Honorable Rudolph Cash is going to come in on the other
3 side, and he's going to say just as definitively, I'm
4 sure, don't worry about it. The feoffees are right smack
5 in the middle of that.

6 You're also going to hear, Judge, about values
7 of real estate. And what you're going to hear is testi-
8 mony from four real estate appraisers. I'm going to ask
9 you to keep a couple of things in mind as you hear it.
10 You're going to be hearing about lots, values of lots,
11 aggregate values of lots.

12 And there's no question that in solving for
13 value as that term is defined differently by all four
14 appraisers, they all start out and their methodology
15 begins with pretending that there are a hundred and sixty
16 seven building lots at Little Neck; pretending.

17 Please, don't lose sight of that as the testi-
18 mony comes in from all of those appraisers because
19 there's only one lot of land. It's twenty eight acres of
20 upland called Little Neck. And what we're doing here is
21 the creation of a condominium as a methodology to get the
22 land sold.

23 And the only reason -- and by the way, you may
24 also hear about purchasing of condominium units. Well,

1 when you look at the purchase and sale agreements, and
2 there's a hundred and sixty six of them out of a hundred
3 and sixty seven people, so it's doable. When you look at
4 the purchase and sale agreements you're going to see that
5 they're prefacing a condominium unit.

6 But again, don't be fooled by that. They are
7 buying the units because that's how you end up owning a
8 piece of the condominium. But they're not really buying
9 the units in the sense that the cottages are already
10 theirs. The condominium units are the cottages.

11 The only reason that the feoffees are going to
12 get their mitts on those cottages for a split second is
13 because they have to own those cottages when you create a
14 -- in order to record the master deed. So they'll have
15 the land and cottages at one time.

16 All that is being proposed for your considera-
17 tion, Judge, on this issue as you decide whether or not
18 to approve the settlement as a vehicle by which each
19 family can pay its share of the collective costs of
20 buying one twenty eight acre lot of land at a collective
21 price of twenty nine million, one hundred and fifty
22 thousand dollars.

23 And by the way, you're going to hear from the
24 school committee's appraiser that in his language, the

1 value which most conforms with the standard definition of
2 market value, which is the value of a property between
3 unrelated parties without special interests, that value
4 is twenty million, five hundred thousand dollars. We're
5 proposing to sell it for twenty nine million, one hundred
6 and fifty thousand dollars.

7 Now, I want to quickly add that all of the
8 appraisers are going to say, in essence, well, you should
9 pay more -- they should pay more than that because
10 they're out there and, yes, the fact that they built the
11 cottages and what allows you to create a condominium in
12 the first place.

13 Nonetheless, when you look at it as all of them
14 did, in some form or fashion of a value to a third party
15 buyer, there is more money that should be received. They
16 all agree on that. And they range, Judge, from in
17 essence, twenty five point four million to a high of I
18 think thirty two point four million dollars. When they
19 all look at what a third party buyer -- and again, they
20 use terminology that's a little bit different, one from
21 the other.

22 But that's what they're talking about. Please,
23 keep that in mind as you listen to the evidence.

24 And that range, by the way, Judge, results from

1 primarily how much less valuable condo ownership is than
2 fee ownership. They disagree on that as for a percentage
3 deduction. There's a discount rate that gets applied.
4 There's an estimate of market absorption.

5 And they differ on that, and you'll see all
6 that. And at the end, I'm going to have a chart for you
7 to see where everybody is on all those issues.

8 But don't lose sight of the fact, as the
9 tenants have not lost sight of the fact, that what really
10 creates the value, what creates the twenty million, five
11 hundred thousand dollars of value is that that land is
12 now suitable for condominium development without the
13 tenants, and we can't build a -- we can't create a condo
14 without the tenants. Without a condominium, that land is
15 worth seven to ten million dollars.

16 And you're also going to hear, Judge, that the
17 twenty nine million, one hundred and fifty thousand
18 dollar price should be reduced by some factors, and
19 that's fair. After all, the feoffees did agree to incur
20 the costs of creating a condo really, so that they could
21 control the process. But they did agree to incur the
22 costs.

23 And you'll hear evidence, if we don't stipulate
24 to it, that that cost is about four hundred thousand

1 dollars; two hundred fifty thousand for legals, and a
2 hundred and fifty thousand dollars for engineering.

3 And you're going to hear that there were some
4 credits that are going to pass to the condominium unit
5 buyers at closing. There's a one hundred thousand dollar
6 credit which, in essence, is returning to the residents
7 the money that they put up for -- at the beginning of the
8 common wastewater system in increments of five hundred or
9 a thousand dollars.

10 And so there's a hundred thousand dollars, you
11 can consider that coming off the top of twenty nine
12 million, one fifty.

13 Then, there is also an adjustment in favor of
14 the thirty three leaseholders. And the short reason for
15 that is the feoffees promised the leaseholders, what the
16 evidence will show, they promised the leaseholders that
17 if they settled the case, the lessees would not suffer in
18 contrast or comparison to the non-lessees.

19 After all, it was the lessees who paid the
20 rents that the feoffees were trying to collect, and that
21 extra increment every month of eleven thousand, nine
22 hundred dollars more because of those leases, if every-
23 body had not signed leases, we would have been out eleven
24 thousand, nine hundred dollars a month. And that twelve

1 thousand dollars a month, every month, is terribly
2 important.

3 By the way, the school committee shares that
4 view, that the lessees should be treated just as the non-
5 lessees.

6 The last thing I'm going to say about the real
7 estate as far as what the evidence will show on that, is
8 that although you should consider those off-sets -- and
9 by the way, that offset to the lessees is some seven
10 hundred thousand dollars. It's more than we envisioned
11 it being because we thought we'd have this thing sold by
12 a year and a half ago.

13 But as you consider the set-offs, please also
14 consider the fact that the tenants are buying the land as
15 is. They're going to take care of that million dollar
16 erosion problem.

17 The last thing you're going to hear, Judge ----

18 THE COURT: Attorney Sheehan, I apologize for
19 interrupting you. When you take all of those credits
20 out, what's the net amount?

21 MR. SHEEHAN: When you take the four hundred,
22 plus the hundred, plus the seven hundred, you are now at
23 twenty seven million, nine hundred and fifty thousand
24 dollars. And we would suggest that you will then add

1 back the I think it's nine hundred or nine hundred and
2 fifty thousand dollars that Peter Williams will talk
3 about as far as erosion. So we think it's almost a wash,
4 not quite a wash.

5 The last thing you're going to hear is, okay,
6 what does it all mean to the schools? If you sell it,
7 the evidence will be that we're going to have a twenty
8 two million dollar, give or take, endowment fund. Now,
9 no one ever questioned the wisdom of an endowment. They
10 may have questioned it, whether you're getting enough by
11 way of sale price.

12 And the first time that I'm aware of that
13 anybody questioned whether or not it would be wise to
14 have an endowment fund, was just around summary judgment
15 time. So now, you're going to hear two more experts.
16 You're going to hear someone who is going to say that the
17 endowment fund, in essence, is wise and someone else that
18 says that it isn't going to be wise.

19 And what are you going to hear in that regard?
20 You're going to hear from a fellow named Jerome Haas, and
21 he's going to be called by the plaintiffs, by us. Dr.
22 Haas is a James B. Rubin [phonetic] Professor of Finance
23 Emeritus at Cornell University's Johnson Graduate School
24 of Management.

1 In addition to teaching courses that cover
2 investments and portfolio management, he's had extensive
3 experience as an advisor and board member of several
4 entities entrusted to create and manage portfolios of
5 financial assets.

6 And he's going to testify as to the four funda-
7 mental principles that underly trust -- sound trust
8 management. That pay-outs must be tempered by a need to
9 maintain the real value; that is, you can't let that
10 corpus window over with by way of inflation.

11 Number two, at the outset, pay-outs have to be
12 conservative relative to the long-run potential of the
13 asset, so that you can take care of the bad times.

14 Thirdly, that the pay-out needs to be trimmed
15 below what he's -- you're going to call the long target
16 range, if a combination of portfolio performance and
17 inflation are cutting into the real balances of the
18 portfolio. And then, given a long run desire to maximize
19 the distributions to the beneficiaries and diversely a
20 perpetual horizon of this trust.

21 It's a major feature here. If someone were
22 going to plan for my retirement and I was trying to get
23 out of here in about five or seven years, I'd have to be
24 much more risk adversed.

1 The situation here is, this money is going to
2 be held in perpetuity. And that being said, the way to
3 go, according to Dr. Haas, will be in equities; seventy
4 percent, fifteen percent, fifteen percent government
5 bonds and private bonds. That's his recommendation.

6 Who knows what the -- if there is a sale, who
7 knows, ultimately, what the trustees will actually do?
8 But Dr. Haas is going to explain why he makes that recom-
9 mendation, and he's then going to say, here is the
10 formula with respect to determining what distributions
11 should be, will be, so to make sure that that corpus
12 remains intact; that it contains and keeps its real value
13 against inflation, and yet, returns a significant money
14 -- a significant amount of money to the beneficiary of
15 the endowment fund.

16 He will go through that, and then he will tell
17 you and you will see his charts, his exhibits, and you
18 will see that he studies the performance of a hypothe-
19 tical trust that held the kind of financial assets I just
20 described over what he calls fifty six rolling thirty
21 year periods.

22 What it means is that he took -- okay. Let's
23 say if you started in 1926 because the data goes back to
24 1926, the background data comes from an outfit called

1 Hibbetts & Associates which is where Mr. Zask [phonetic],
2 the expert for the defendant, also gets his data. And I
3 think Mr. Zask may even have worked for Hibbetts &
4 Associates, which is now Morning Star.

5 But what Mr. Haas -- what Dr. Haas will say is,
6 I then took what would have happened to a million dollars
7 which could then be extrapolated into twenty two million
8 dollars; what would happen if we started this trust in
9 1926 and ran through the ups and downs of 1926 to 1955?
10 They looked at what if it started in 1927, and he ran all
11 of those iterations. He then ran random combinations of
12 years.

13 And under all of those circumstances, Judge,
14 and taking into account forty basis points to be paid for
15 an investment advisor, this dynamic pay-out period; that
16 is, adjusting for when times were good, when times were
17 bad, the end result of it all, Judge, is consistent
18 dollar pay-outs averaging four point six percent of the
19 original quote, with the worst case being two point four
20 percent and the best case being seven point six percent.

21 Four point six percent, on average, for a
22 twenty two million dollar fund, a million dollars a year,
23 real money, adjusted for inflation, the corpus stays
24 intact.

1 And in fact, the corpus grows because of the
2 way that this formula works. And we're going to suggest,
3 Judge, that based on Dr. Haas' testimony, you are going
4 to conclude that -- as the feoffees have -- that it makes
5 an awful lot of sense to sell and to then be able to
6 generate that kind of money.

7 Plus, Mr. Zask will take just the opposite
8 approach. His formula, however, Judge, which consists
9 primarily of static payments; that is, whether it's good
10 -- whether a good year or a bad year, we're going to make
11 the distribution.

12 That's a formula designed -- destined to fail.
13 And of course, really, the school committee and the
14 superintendent would like to show you something that
15 failed because they're not in favor of the sale.

16 And what they're going to say, very simply, is
17 this. No, no, no. The evidence that they're going to
18 present is that we're much better off with a rental
19 scenario. And they're going to testify that continued
20 rentals will result in more than a million dollars net
21 annually, and that they all have the charts and all the
22 graphs to show it.

23 Of course, they assume the risk of the very
24 Superior Court litigation which brings us here, they

1 assume that away. They assume that we're going to win
2 everything in the Superior Court case. We're going to
3 get to charge eleven thousand dollars a year in rent.
4 We're going to get to charge that to a hundred sixty
5 seven tenants. And why wouldn't you do it?

6 Of course, Judge, what they've really done is
7 they've begged the question, the question that we are
8 here before you today to begin to answer.

9 And I thank you, Judge, for your careful consi-
10 deration. When this evidence is in and the case is over,
11 I will suggest to you that the evidence will warrant and
12 require a judgment for the plaintiffs on their complaint
13 and a judgment for the plaintiff against the defendants -
14 - or the defendants.

15 Thank you, Judge.

16 THE COURT: Thank you, sir.

17 Attorney Perry?

18 MR. PERRY: Your Honor, when I prepared my
19 remarks I was worried that they were going to be too
20 lengthy. But because Mr. Sheehan told me, once again, he
21 would be brief.

22 The will of William Payne ----

23 THE COURT: He was saying he was going to be
24 brief.

1 MR. PERRY: He probably was, Your Honor.

2 When William Payne called for land in Ipswich
3 to be held in trust forever for the benefit of the
4 schools, and the evidence will show that the owner's
5 intent in that regard was to provide an asset that would
6 inherently last forever. And land is basically a perpe-
7 tual asset. It lasts a very long time.

8 And here we are, three hundred and fifty years
9 later, and that land is still there. And you might ask
10 yourself, what would have happened if that land had been
11 put in twenty towns or something back in 1550, would we
12 have an asset worth tens of millions of dollars today or
13 would it be gone?

14 And I think you know the answer to that. And
15 that's one of the issues that's driving the position
16 that's being taken by the school committee. We want a
17 perpetual asset that will always last and return money to
18 the school children, and will not be subject to the ups
19 and downs of the market. And particularly, not based on
20 an endowment fund that is inadequate, and can get the
21 same returns you can get from a rental.

22 Now, when the land was used originally it was,
23 as Mr. Sheehan said, for grazing or pastures. But for
24 quite a while now it's had houses on it. And in fact, I

1 think the case that Mr. Sheehan referenced, if I remember
2 correctly, may have talked about the development of these
3 houses in the late 1910s originally. But I haven't read
4 that case in a bit.

5 So what we've had is some dramatic growth in
6 value. And obviously, when you have land of that value
7 and you saw the view, if you can rent the land for fair
8 market rent, you're going to create a lot of money.

9 And what you're going to hear is that unfortu-
10 nately, during the whole forty year period that the
11 senior most feoffees have served, the oldest of the
12 feoffees was appointed in '72 or '73. And so during the
13 period from that time to the present the undisputed
14 evidence, Your Honor, will be that they never collected
15 fair market rent. He's admitted that.

16 Now, the feoffees acknowledged that throughout
17 the period that they were serving as feoffees they owed a
18 fiduciary duty to the schools to maximize the rental
19 income that could be recovered. And you're going to hear
20 evidence about a very blatant disregard of that duty, and
21 I don't think it's really been hammered home in any of
22 the proceedings that we've had to date.

23 In 1972 or 1973, the annual rental for these
24 cottages was, I think, a hundred forty five dollars a

1 year. And in 1997 it had risen to I believe six hundred
2 dollars a year, for seasonals. That's how low these
3 rentals were.

4 And we will prove that the reason for this is
5 that during those years, Little Neck was not being run
6 for the benefit of the schools. It was being run for the
7 benefit of the homeowners.

8 Now, why is this? The evidence is going to
9 show that the feoffees we're talking about were drawn
10 from the ranks of the homeowners. There were very, very
11 few Ipswich citizens who lived at Little Neck.

12 The evidence will be that there was only a
13 handful, and yet, you'll hear evidence that before Mr.
14 Whiston became a trustee as of 1972, there were four
15 feoffees. Two of them were homeowners or residents of
16 Little Neck.

17 One was Mr. Goodhue and one, a fellow by the
18 name of Harry Munroe. And I guess where they lived, by
19 the way -- Mr. Goodhue had one of the places up there on
20 River Road, and so did Mr. Munroe. Mr. Munroe may have
21 had two; the one that he constructed more recently and
22 one that was there a long time.

23 So those -- two out of four feoffees at that
24 time were landowners, setting rents for themselves. And

1 when Mr. Goodhue died they replaced him with Don Whiston.
2 Don Whiston is a fine fellow. You'll meet him. But he
3 also grew up on Little Neck and his parents owned a
4 cottage there.

5 So they replaced one resident with another.
6 And then when Mr. Munroe came ill or ceased to serve he
7 was replaced, Your Honor, by his nephew, Alex Mulholland,
8 who you met the other day during the view. And Mr.
9 Mulholland was a Little Neck resident. He didn't own
10 there, but he was the user of the cottage. And he had
11 his uncle there, and the testimony is that he was
12 regarded as a Little Neck resident at that time. I think
13 there were two cottages and apparently, he was using one
14 of them for some period on terms that aren't clear.

15 The next replacement of a feoffee was when Mr.
16 Richardson died, and they elected to replace him with a
17 fellow named James Foley. This was in the late '80s.
18 Mr. Foley grew up on Little Neck. His parents owned a
19 house on Ipswich Road, River Road, next door to Mr.
20 Whiston on River Road.

21 Mr. Foley at the time he was appointed had the
22 qualifications. He was a police officer. He was twenty
23 seven years old. He had not yet gone and gotten his
24 Associate's Degree, but he later got that. He was a high

1 school graduate and he was appointed, as the evidence
2 will show, because he was a Little Neck resident.

3 So at that time as of 1990, the feoffees were
4 made up of four life feoffees, three of whom were
5 associated with families that owned in Little Neck.

6 And the third was a lawyer named George Hayes.
7 Mr. Hayes became a feoffee because his father had been a
8 feoffee, and you'll hear evidence that he was in the
9 process right at that time of having his license to
10 practice law sus-pended for some serious misconduct.

11 Now, Mr. Sheehan said that and I think that he
12 implied in his remarks that there wasn't any uproar from
13 the feoffees back in those days. Everybody was happy.

14 Not true. The minutes of the feoffees will
15 show that as early as 1972, the year before Mr. Whiston
16 was appointed, complaints were made about the failure of
17 making a large enough gift to the schools and to use its
18 assets.

19 And you'll also see an important set of minutes
20 from 1990, when there was a meeting of the four feoffees
21 I described; three of them were conflicted, and the
22 fourth who had just lost his law license.

23 And that meeting was attended by an individual
24 who will be identified to you as the Chair of the School

1 Committee. And the subject of the meeting was what can
2 we do to raise rents or to -- I shouldn't say -- what can
3 we do to raise more money for the schools and why aren't
4 we generating more gifts to the schools?

5 Because what you're going to hear is that in
6 these years the gifts, if they were made at all, were no
7 more than seventy five hundred dollars a year, Your
8 Honor. Seven thousand, five hundred a year was the
9 largest gift made prior to 1994.

10 And so it was this dismal performance -- well,
11 let me back up and say after the meeting in 1990, what
12 happened? Nothing. The rents stayed pretty much where
13 they were.

14 So some of the citizens of Ipswich continued to
15 raise the issue. You'll hear some testimony about that.
16 There was a fellow named Wetherall and a school committee
17 member named Traverso who were particularly involved in
18 complaining that the reservation was being run for the
19 benefit of the residents, so-to-speak.

20 And it was this performance, Your Honor, this
21 total failure to charge any kind of reasonable rent and
22 to give any kind of sizable gifts to the schools by a
23 bunch of feoffees who were affiliated with the home-
24 owners operating under the conflict of interest that led

1 to the ground-swelling in town to do something about it.

2 That's what happened. It wasn't anything to do
3 with events in 2006, 2007, 2008, 2009 and 2010. This has
4 been going on since the late '90s.

5 You'll hear evidence there were town reports
6 and there were meetings. And finally, under the pressure
7 of these public officials who Mr. Sheehan is trying to
8 villify, they finally agreed, the feoffees, we'll try to
9 do something. We'll hire a consultant. We'll have some
10 expert guidance on what fair market rents are and we'll
11 raise the rents.

12 And that's why starting in 1998, they agreed to
13 raise the rents. They were being forced to by people in
14 town. And so their plan, Your Honor, was as Mr. Sheehan
15 described it, was to raise the rent over a period of five
16 years. They got an appraisal from Land Vest. You'll
17 hear evidence that they didn't select, perhaps, anything
18 the wisest choice in consulting.

19 But they got an appraisal from Land Vest that
20 told them that they were a few thousand a year short of
21 where they should be. And they said, we'll try to get up
22 to that level in five years by starting out at -- I
23 forget what it -- fifty percent and going up fifteen
24 percent a year, or something like that.

1 Maybe forty percent to fifty five percent to
2 seventy percent to eighty five percent to a hundred
3 percent, I believe, was the progression. The plan was
4 that at the end of the five years, in 2003, they would
5 have reached the fair market rent that was then deter-
6 mined as of 1998.

7 So within a couple of years it became perfectly
8 obvious, as Mr. Whiston noted in writing, that when they
9 got to 2003, they were still going to be way behind
10 because of a time of rapid appreciation of real estate
11 values. And so they got to 2003, and they were still
12 probably at half the place they should have been because
13 of appreciation.

14 You'll hear evidence that the first true effort
15 to collect market rents was not until 2006. And what
16 happened then, at that time it was met by a claim by the
17 tenants that because of the very history of not charging
18 proper rents, they weren't allowed to do so. That they
19 had some kind of permanent right to pay low rents.

20 And they tried to base on that on claims that
21 Mr. Whiston assured people rent would be low back in the
22 '90s, a claim by the way that's totally barred from the
23 statute of limitations.

24 Now, at the same time this was going on, Your

1 Honor, this was when the wastewater problems also were
2 being addressed in that period of 2003 to 2006. And
3 here's another place where the end result was that the
4 feoffees engaged in behavior that surely benefitted the
5 tenants, although in this instance they certainly didn't
6 mean to.

7 And let me explain what the evidence will show
8 there. The D.E.P. came in and said, you've got to do
9 something about wastewater. And they entered into an
10 order with the feoffees under which the tenants would
11 have to install their own private systems, tight tank and
12 drip systems.

13 And it was quite clear that if this were to be
14 done, it would be the tenants paying for it because the
15 tenants own the existing cesspools and the like that were
16 servicing them at the time.

17 And under equitable law, they had the obliga-
18 tion as well as anybody else not to be generating waste-
19 water in violation of the law, and they were going to
20 have to be paying for the installation of their private
21 system.

22 So the feoffees entered into an order and told
23 the tenants, this is what you're going to need to do.
24 You have to install these systems and they're going to

1 cost, depending whether you're year round or seasonal,
2 maybe fifteen thousand or twenty thousand or thirty
3 thousand for the year round people who had a sort of
4 different kind of system.

5 But it was expensive. They were going to have
6 to install their own expensive, private system.

7 Well, Your Honor, the tenants did not like this
8 solution. They felt, not without reason, that the tight
9 tank solution wasn't the best one for them. They wanted
10 some kind of system that would be amenable to a longer
11 term, better solution or centralized solution. And they
12 lobbied the feoffees for this kind of a centralized
13 solution to their problem.

14 Now, at this time the feoffees were under the
15 understanding that if they did anything with a centra-
16 lized system, it would be paid for by the tenants, and
17 the feoffees will tell you that. They always understood,
18 that this system would be paid for by the tenants.

19 And you know what? The tenants leader who they
20 were dealing with also understood that. They understood
21 the tenants were going to have to pay for the system
22 because it was a system being put in for them in lieu of
23 the private system.

24 They even filed with this court, Your Honor, a

1 stipulation, the feoffees did, a stipulation that said
2 that the tenants would pay the entire cost of the waste-
3 water system, which ultimately came to close to seven
4 million dollars.

5 And you incorporated that finding in an order
6 and judgment of this court that the tenants would pay for
7 this system. That's what the -- when you approved the
8 loan, it was based on a stipulation that you ordered and
9 signed that said the tenants would pay for the system.

10 Well, that was the intent of the feoffees, but
11 they made a huge blunder. At the time when they were
12 negotiating with the tenants about putting in a centra-
13 lized system, they just thought they could impose a
14 betterment on all the tenants. They would just send them
15 a bill and say, you owe us forty thousand dollars each
16 for the system, please pay, and if you don't we'll do
17 something.

18 Well, these were tenants at will. And because
19 it's clear legally that they could do that -- well, when
20 did the feoffees figure out that they might not be able
21 to do this? After they've already signed a new order
22 with the state for the centralized system and after they
23 came into this court and found that the tenants would
24 pay, that's when they realized that, oh, maybe we can't

1 really do that.

2 So we're in a situation now where the feoffees
3 repeatedly promised the schools that the tenants would
4 pay the benefit -- the costs of the seven million dollar
5 system, one that by every right the tenants should pay
6 for and which we intend to prove they're not paying for
7 under the proposed settlement because, Your Honor, the
8 price that's being paid by these tenants now -- and we'll
9 get to more about this later -- certainly isn't seven
10 million dollars higher than it would have been had the
11 tenants put their own private tight tanks in.

12 There's no seven million difference. If they
13 had paid their own way, and then weren't behind it, they
14 weren't going to pay seven million dollars less.

15 So the feoffees are not getting for the school
16 committee any kind of reimbursement. And one of the
17 claims that they brought in the Superior Court, the
18 feoffees, is exactly this claim saying the tenants owe
19 them the money for the wastewater system. Now, they may
20 not have brought the best claim yet for that because they
21 brought it as sort of a contract claim.

22 But Your Honor, they have a very strong and
23 unjust enrichment claim for the reimbursement of the
24 wastewater cost which they can bring when -- if they were

1 to return to Superior Court, and if Mr. Todd were running
2 his amended claims that he talked about, that's an
3 amended claim the tenants would pay; some for quantum
4 meruit or unjust enrichment.

5 At this point the feoffees have abandoned any
6 notion of the tenants paying for the wastewater system,
7 and proposing to sell the property for a price that
8 itself, as I'll address, is not fair.

9 In fact, the sale price for the tenants -- and
10 you've heard that there's a hundred sixty seven tenants
11 and a hundred sixty six of them are buying, and the other
12 one, I think is just faces child/mortgage issues.

13 Why are they all jumping on this? It's because
14 this is a windfall for the tenants. All the appraisers
15 will tell you for these lots in the aggregate are worth
16 thirty seven point six to forty two million, for which
17 they're paying the stated price of twenty nine million,
18 which has some adjustments which I'll address in a
19 second.

20 And so here's in a nutshell what we intend to
21 prove as part of our clarification: One, if you can get
22 leases with the tenants, something one could do -- try to
23 do through negotiations or do through court at fair
24 market rents, either these tenants or people who replace

1 them if they choose to leave, there's no doubt that at a
2 fair market rent you'd generate very substantial returns
3 for the school.

4 And Mr. Sheehan referred to it as being around
5 a million dollars a year, and that's true. That's pretty
6 much the math if you collected even at the current rate
7 the lessees are paying, after debts, or you should get a
8 million in expenses in reserve, you get a million
9 odllars.

10 But after the loan is paid off it goes up to
11 one point five million. And that's all in credit. And
12 that's off a thousand dollars because those rents will go
13 up over time. So I'm talking apple for apple, constant
14 dollars. It can be a million dollars a year in today's
15 dollars; growing for inflation, and later a million five
16 inflated dollars for inflation; very substantial amounts.

17 And there's quite a bit of spread to work with
18 there as far as getting -- that is, even if you didn't
19 collect all of that and you gave a little bit, you've got
20 a nice stream of income from the rental of the property
21 if you can resolve the case.

22 Second, the central issue in the Superior Court
23 was, what is the fair market value. The tenants kept on
24 saying that the rents being sought were unfair. But

1 after they settled the case, they had an appraisal done
2 by their appraiser, Mr. LaChance, an uncontested exhibit.

3 And Mr. LaChance said the fair rental value was
4 consistent with what the lessees were paying. Here is
5 the critical issue in the case, and their own appraiser
6 is saying, yes, those rents are okay. He's tried to back
7 away from that after, but that's what he said in the
8 court.

9 And in fact, thirty three people entered into
10 leases and are paying these amounts. So that gives you
11 some indication that there's some market for it. And if
12 Mr. Gottlieb and Mr. DeSalvo don't want to pay those
13 amounts for the views that they had, there's probably
14 other people who would.

15 Now, you've heard about the escrow account
16 before. We had thirty three lessees who were paying nine
17 to seven hundred and ten thousand, eight hundred depen-
18 ding on seasonals versus year round, a year. Then we
19 have the tenants who didn' t sign leases, and they are
20 paying towards their use and occupancy I think it's
21 around fifty five hundred and six thousand.

22 So there's a spread of a little more than four
23 thousand dollars a year for each of the tenants. And if
24 you multiply four thousand a year times a hundred thirty

1 three of them and you get a figure that's over five
2 hundred thousand dollars a year in the delta of what
3 lessees are paying, that everybody -- well, the apprai-
4 sers say is fair versus what the tenants are paying.

5 So what happened early on in the litigation was
6 at a time when Mr. Sheehan and his client were intending
7 to evict the tenants, they got a stipulation that said,
8 pay the difference into escrow. And they were expecting
9 that this would last a few months and there would be a
10 judgment for possession. That's what was being promised.
11 And they ended up with a negotiated payment.

12 So the tenants have been paying -- were paying
13 into escrow the difference. And that proves, among other
14 things, that they could afford it, doesn't it? They have
15 the money. They did it. The money went into escrow.
16 And as of January of 2010, right after the settlement
17 agreement was filed, in round numbers, there was around
18 one point five million dollars in that escrow account.

19 The school committee was always expecting and
20 intending to get that money because they weren't getting
21 any distributions from the feoffees during this period.
22 And that money was being put away, and they thought that
23 was going to be their contribution when the situation got
24 resolved either in court or some other way.

1 What happened was that as part of this settle-
2 ment agreement in 2010 or 2009, the feoffees agreed that
3 the higher escrow amount could sort of go back to the
4 tenants and they could use it for their down payment. So
5 it's basically a forgiveness of that rent. A claim for
6 one point five million of rent was forgiven.

7 And worse than that, they weren't required to
8 pay any further amounts to escrow. So from January of
9 2010 to the present, if you round it off at two years,
10 that's another period of time, Your Honor, when they
11 haven't been paying fair market rent.

12 So they've been saving four thousand a year --
13 four thousand a year each, five hundred thousand a year,
14 collectively, for this over two point five million
15 dollars as of today in the amount of rent being forgiven.

16 And if you assume a closing that would occur in
17 a year, if you approved the sale; now, we have three
18 million dollars that flow to the tenants of saved rent.

19 So when you asked about the purchase price and
20 how -- how you look at it, you've got twenty nine point
21 one million. Now, you're subtracting the hundred thou-
22 sand in wastewater charges that they gave back; you're
23 subtracting the seven or eight hundred thousand for the
24 lessees. So they're getting actual rent paid returned to

1 them, and you're forgiving the claim against the tenants
2 for three million, of which half of which is secured by
3 an escrow account.

4 So that if you made those adjustments you're
5 talking about a figure that's in the -- more like a
6 twenty five million dollar range. And ironically, the
7 spread is growing every month as they fight over this
8 because there's no arrangement for the tenants to pay
9 fair rent.

10 Based on all this information, one of the
11 feoffees acknowledged that he always looked at this as a
12 twenty six million dollar sale. And I think that's
13 probably -- that was a fair number at the time. It's
14 lower now because of the continued rebates and rent
15 forgiveness.

16 And that gets us to the valuation issues, and
17 they are a little confusing, and not all of the valuation
18 experts agree on how it should be done.

19 But one thing that we think the evidence will
20 clearly show is that the appraiser hired by the feoffees
21 wasn't up to the task and didn't do the work in a way
22 that was proper. And in fact, his more recent work
23 really should be stricken under Daubert once you hear
24 what he did.

1 The evidence will show Your Honor that what the
2 Land Vest appraiser, Mr. Monahan, who doesn't, by the
3 way, have the same credentials as the other three. All
4 the other three appraisers the parties are using are
5 what's called MAI, a member of the Appraisal Institute of
6 Appraisers, this guy was an MAI candidate, but never
7 finished and is not an MAI appraiser.

8 THE COURT: Well, are you raising a Daubert
9 challenge?

10 MR. PERRY: Well, Your Honor, my thought was
11 that to have the evidence come in because it's relevant
12 and I would say the feoffees relied on it. But I don't
13 think you can use it as a guide to -- with the value.

14 THE COURT: Well, I ask that because if you
15 were planning on doing that, shouldn't that be then the
16 basis for a motion in limine ----

17 MR. PERRY: Yes. Your Honor, if ----

18 THE COURT: ---- or you should have written
19 about it in an opening statement?

20 MR. PERRY: Your Honor, I have not moved under
21 Daubert because it's clear that the feoffees were relying
22 on his work. And you're going to hear evidence about
23 what he did. I just don't want you to give it any weight
24 when you look at the value of that.

1 THE COURT: You're objection goes to the weight
2 I suppose as to admissibility?

3 MR. PERRY: Well, I think it's admissible for
4 purposes other than the ultimate issue of what the land
5 is worth. And I don't think it's that critical whether
6 you strike it or you just realize that it's not worth
7 anything.

8 THE COURT: And I apologize for interrupting
9 you.

10 MR. PERRY: No, no.

11 THE COURT: But there was a potential ----

12 MR. PERRY: No, we thought of that. But the
13 fact is that you're going to need to hear about this
14 evidence because everybody else is talking about it,
15 anyway. And the feoffees relied on Mr. Monahan in 2008
16 when they entered into the sale in 2009, which I forgot
17 to tell you.

18 In any event, here's what he did though, to
19 appraise these properties. And I think -- this is not
20 too complicated, and I think why it's wrong is pretty
21 apparent. For years and years, the cottages at Little
22 Neck sold for more than the improvements were worth. All
23 of the appraisers recognized that.

24 People would go out and they'd pay four or five

1 hundred thousand dollars for something that would cost
2 about, you know, about a hundred and fifty thousand to
3 build and it was falling down. Or as an example, Mr.
4 Foley from River Road, he sold it for two hundred forty
5 thousand dollars, and the buyer knocked it down, pretty
6 much.

7 And so they were paying for the ability to go
8 there. And it was really -- the sum of what they were
9 paying were attributable to the land, and to the fact the
10 rents weren't high enough. It's like a -- you go in
11 there and you want me to pay rent so you can pay more for
12 the cottage. That's what all the appraisers will say.

13 Well, Mr. Monahan assumed -- he took a look at
14 what the sales prices were in 2006 to 2009 in his most
15 recent appraisal. And he's been using the same method-
16 ology earlier and he said, I'm going to look at what
17 these buyers paid for the cottages, and then I'm going to
18 subtract from that what the houses were really worth.
19 And whatever the difference is, that must be what the
20 land is worth.

21 Now, what the problem is with that is -- well,
22 among other things, each of the buyers he's talking about
23 have entered into a lease. They're all lessees because
24 after 2006, anybody who bought had signed a lease.

1 So he was saying that a buyer would pay exactly
2 the same amount for the right to use on a seasonable
3 basis the house, having no interest in the land, as they
4 would have paid if they were allowed to buy both.

5 All the other appraisers will tell you that's
6 not a valid methodology. You can't assume that somebody
7 would pay the same amount for the real estate and the
8 house as they would pay for just the house, let alone a
9 house that they could only use part of the year, when the
10 proposed sale doesn't have a restriction.

11 But the seasonal part is the least of it. The
12 main point is, if you're going to have to pay rent at ten
13 thousand dollars a year for the real estate, that's fac-
14 toring into what you would pay for the house. You're not
15 going to pay the same rent-free as you would pay -- this
16 adds to the value, as well. It acted like a pretty
17 simple market. He just pulls it out of the air. I think
18 it was like a pretty simple market, he says.

19 Usually, when you have multiple experts for the
20 parties, the landowner is the one who comes in with the
21 highest number. And in this case, the landowner has con-
22 sistently come in with the lowest number, even lower than
23 the tenants in most of these valuations, and that ought
24 to tell you something right there.

1 Now, is the appraisal I was talking about where
2 Mr. Monahan used the sales from 2006 to 2009, where
3 everybody had signed a lease for his valuation, that was
4 something he did in 2010. And the feoffees actually
5 didn't have it when they entered into the settlement
6 agreement.

7 Now, what they had when they entered into the
8 settlement agreement, Your Honor, was a letter from Land
9 Vest in 2008 telling them the following. It said, the
10 value that a third party would pay for this land in order
11 to have a right to sell it, buy them both and convert to
12 condominiums and sell it. That value, he said, was ten
13 to fifteen million. And he said, if you took all the
14 lots and sold them as condominiums and added those unit
15 values, that that would be twenty point eight million.

16 That's what he said in 2008, Mr. Monahan, and
17 that's why the feoffees thought that a sale at twenty six
18 or twenty nine million would be a good deal. They
19 thought they were recouping the wastewater. They thought
20 they were being paid fair market value.

21 The same appraiser who said the lots were worth
22 twenty point eight million in the aggregate in 2008, now
23 says they were actually worth thirty seven point six
24 million. Their appraiser. And that's just phenomenal.

1 And all of the other appraisers say it's even higher than
2 that. That's the problem. The feoffees were relying on
3 at the time a really bad appraisal.

4 And what's even more interesting than that is
5 that the tenants had their own secret appraisal when they
6 were negotiating, and whereas the feoffees were being
7 told that the aggregate value of the lots was twenty
8 point eight million, guess what the tenants' appraiser
9 told the tenants at that time? He had a figure of thirty
10 six million.

11 So given the fact that the tenants -- these
12 valuations numbers, the feoffees have to have an answer
13 to that. And what they're going to tell you is that the
14 issue isn't what all of these lots are worth when you add
15 them up. They're going to try to base it on a hypothe-
16 tical situation.

17 They're going to ask, what would a hypothetical
18 single buyer pay for the rights to buy the entire tract
19 as a single parcel and over a period of four or five
20 years, sell it off to a bunch of hypothetical buyers,
21 including the tenants, and make a profit?

22 Now, of course, nobody can do this. Nobody can
23 come in and buy the property and sell it off that way
24 because half of those properties are leased and you can't

1 form a condominium without the tenants' agreement, any-
2 way.

3 But they take this hypothetical and say, what
4 would you -- what would a third party tell you if we were
5 dis-counting all the purchase prices over time and taking
6 profit out? And that's where they get the twenty five
7 and twenty six million, from that basis.

8 What I think you need to look at is what is the
9 settlement before the court because in the past they did
10 talk about selling it in that manner in one of the old
11 proposals that didn't happen.

12 But right now, the settlement before the court
13 is the following. The feoffees will get title to every-
14 thing and they at their own expense will develop it into
15 condominiums.

16 And then they're not going to sell these higher
17 parcels, as Mr. Sheehan was trying to suggest. What you
18 have in front of you are about a hundred and sixty six
19 purchase and sale agreements under which tenants will buy
20 individual units. And those units will consist of
21 getting back their cottages so it could be -- so it's a
22 wash there, and the land underneath their cottages.

23 And there's a hundred and sixty seven separate
24 purchases and sales going on that you have to look at.

1 So it's perfectly viable to look at each one of those
2 with the appraisal and say, how does this price that's
3 being paid compare to what the fair market value of that
4 condominium unit, excluding the building, is worth?

5 And what you'll find is that especially up on
6 River Road and Cliff Road, there's a total mis-match.
7 The people are getting units that the appraisers say are
8 worth three seventy five and four hundred, and they're
9 paying two hundred. Nobody's paying more than around two
10 hundred.

11 And in fact, that two hundred is a gross price
12 before you take off the rebates and the adjustments. So
13 really, nobody's paying more than a hundred eighty or a
14 hundred ninety for those units. And yet, they're worth
15 three seventy five to four hundred.

16 And that's going to be undisputed, Your Honor.
17 All of these appraisers are going to tell you that there
18 are tenants who are getting units worth three fifty -
19 three seventy five for which they re paying two hundred.

20 Now, even if you looked at it as a bulk sale,
21 however, which it is not. The price would be too low,
22 especially when you look at the adjustments that we
23 talked about. The real pricing of twenty five million,
24 even on a bulk sale basis, you'd have to get thirty two

1 million out of the thirty one point five.

2 And as I've mentioned, you're also putting the
3 school committee in the position of paying for this
4 wastewater system that under the stipulation and judgment
5 the tenants were supposed to be paying for. They got us
6 to build it and now they don't want to pay for it.

7 Mr. Sheehan talked about the rate of return
8 that could be generated from an endowment. And just as
9 the feoffees didn't have good information on what the
10 value of this land was, they also didn't have a good
11 understanding on how much you really could get out of the
12 endowment.

13 So they were bandying about the idea that one
14 could get a five percent real after-inflation rate of
15 return. So you take five percent of twenty two million,
16 and it's like a million. You might remember this from
17 summary judgment, but this is kind of what they were
18 suggesting.

19 We're going to put our evidence through Ezra
20 Zask, who's just as qualified as this gentleman Mr. Haas
21 that Mr. Sheehan is putting on. And what he's going to
22 tell you is that you can't get that kind of return. And
23 the experts actually aren't going to -- they use very
24 similar data and very similar methods.

1 And Mr. Sheehan's expert used an interesting
2 distribution policy he described for how he would make
3 distributions. And we can run numbers with that, too.
4 We're going to come out that the kinds of numbers you can
5 generate from the endowment are probably more like three
6 and a half percent on average, not the four and a half.

7 What's the difference? A few things. One big
8 difference is that you heard Mr. Sheehan say that Mr.
9 Haas, his expert, is assuming that the total expenses for
10 the trust will be forty basis points.

11 That's ludicrous. If you were to talk the
12 other day about how this trust would have to be managed
13 by a competent professional. It's possible professional
14 trustee fees even, God forbid, which I was shuddering at.

15 But let's suppose you just had an investment
16 manager, there's two types of expenses -- or three really
17 that you have to deal with.

18 One, what does the investment manager himself
19 pay for a fee? And I think the evidence is going to show
20 that just the investment management fee for this size
21 endowment tends to run on sixty basis points, or six
22 tenths of a percent.

23 That's what you had in the summary judgment
24 material for Mr. Sheehan that they had a proposal from

1 Cambridge Savings Bank. And it had a fee that if you
2 added it all up was about fifty six basis points. But
3 then they wanted to charge a fee every time a distribu-
4 tion was made, adding it all up to around sixty one basis
5 points.

6 But that's not the whole expense because the
7 returns that these experts are projecting are returns
8 that are -- you would get if you didn't pay any mutual
9 fund expenses on your investments for brokerage fees.
10 And that costs money, too. You can add another twenty,
11 thirty, forty basis points for that.

12 And also, there's going to be accounting fees
13 and there's going to be legal fees. If you add it all
14 up, and the number that our experts use, assuming one
15 percent for your total expense structure including all of
16 that, that's a lot more reasonable than forty basis
17 points.

18 So that reduces the return right there by over
19 a half a percent from what he was saying. The four point
20 six becomes four point one. But here's the other part of
21 the story that Mr. Sheehan wasn't telling you, and this
22 is what you'll learn from our expert.

23 In order to try to get the types of returns
24 that Mr. Haas is suggesting, and this is a man who's

1 saying you should take this endowment and put it
2 immediately seventy to ninety percent in equities. In
3 order to get that kind of return, you face enormous risks
4 that you're going to have a decrease in the endowment.

5 And we'll show charts, and we call them Monte
6 Carlo Simulations of what the chances are on any given
7 distribution policy that you're going to have a decline
8 instead of an increase in your corpus at the end of a
9 particular period. And the chances are very substantial.

10 And what Mr. Haas did when he ran his amounts
11 was he only talked about averages. He didn't show us
12 what happens on the worst third, you know, thirty three
13 percent of the time what happens when you're losing the
14 money.

15 And it will also be interesting to see what
16 happens under Mr. Haas' distribution policy if you ran
17 the numbers any time in the last decade because I think
18 what you find is if you're talking this money and you're
19 putting it in at various times in the last decade; for
20 example in 2003, you'd have lost half of it already. And
21 that's not what Mr. Payne intended.

22 We're not saying that you can't get any kind of
23 reasonable return from endowments. You can take your
24 chances. And there's a good chance it will do okay. The

1 okay is probably three and a half percent or something.
2 There's a chance it will do worse than that.

3 THE COURT: This is probably a rhetorical
4 question. But how many basis points do you think have
5 been extended litigating these things?

6 MR. PERRY: Well, Your Honor, probably ----

7 THE COURT: It was rhetorical. You don't have
8 to answer.

9 MR. PERRY: A good bit, Your Honor. And I
10 guess the longer I speak, the more; right?

11 But if the return is three and a half percent
12 and you had twenty something million, you're talking
13 seven hundred thousand dollars. I assure you that you
14 could enter into leases that would get more than that,
15 and that they've probably been offered.

16 So let me wrap up. The -- even if you were to
17 find that the sale of Little Neck were warranted, which
18 we say it's not for reasons I said. The price that's
19 being paid is unfair.

20 The tenants aren't being made to pay for the
21 value of the wastewater system that they were supposed to
22 pay for; the feoffees promised they'd pay for. They're
23 getting rebates and allowances that make the sales price
24 unfair.

1 And their tenants are getting lots that -- for
2 which they're paying around sixty something percent of
3 the fair market value of those lots, according to virtu-
4 ally all of the appraisals. So it's really inadequate.

5 And finally, we're going to show that the whole
6 mess that we're in right now is the creation of the
7 feoffees and their failure over the last forty years to
8 handle things correctly, starting with the failure to
9 collect market rents at a much earlier stage; which led
10 to the whole desire to replace them; that led to the
11 Superior Court litigation.

12 And then the mis-handling of the wastewater
13 matter where we ended up building this plant for the
14 tenants and don't have a way to collect the money. And
15 now, they're asking to be released from the obligation
16 that hasn't been paid for by the tenants.

17 And because of all these issues, the school
18 committee for the past ten years, probably nine years,
19 has been working with other town bodies on a plan to
20 reform the governance of the trust.

21 And again, this isn't something that came up
22 because of bad blood or politics or local newspapers.
23 This has been going on because the feoffees weren't doing
24 their job, historically, a creature of the late '90s and

1 early two thousands.

2 And the proposed reform would involve having
3 feoffees who served for a limited period of time and
4 could be removed and would be appointed by public parties
5 and who would be accountable to the public parties, who
6 would make this basically a public entity so everything
7 was out in the open.

8 Any issue of the status of this entity for
9 purposes of any revenue collection would be perfectly
10 clear, much more so. And it would be -- then be run for
11 the benefit of the schools. And that's what we're asking
12 for.

13 And so this counter-claim is not some kind of
14 political witch hunt. It's really a well-deserved result
15 of the way the feoffees elected themselves and conducted
16 themselves over the last forty years.

17 And I will ask you to consider that.

18 THE COURT: Thank you.

19 Attorney Perry, you mentioned that the school
20 committee over the last eight or nine years have been
21 working on reforming the trust?

22 MR. PERRY: Yes.

23 THE COURT: And it's taken them that long to
24 ascertain what the reformation should look like because

1 nothing was filed with the court.

2 MR. PERRY: Well, here's what happened.

3 THE COURT: You're saying that the feoffees
4 violated ----

5 MR. PERRY: This is what the evidence will
6 show. That there was some town committee that did an
7 investigation of the feoffees and concluded that there
8 needed to be reforms because of the bad rent through the
9 late '90s.

10 And it came up at town meeting, and the school
11 committee kind of took it over and around 2002 and said,
12 well, we want to be involved. We're the beneficiary.

13 They hired Dick Allen, who was formerly the
14 head of the Charity Division of the Charities Group. And
15 they generated drafts of governance reforms and then they
16 circulated them to the feoffees, to the tenants, and to
17 the selectmen. And it evolved over the years.

18 And they all thought they had sort of an agreed
19 upon approach to this court with a counter -- with a
20 request that let's adopt these governance changes.

21 And there were some negotiations. Should the
22 feoffees have a role? Would they be eliminated entirely?
23 Would they be in a minority? And things shifted over
24 time, and this is all going to be brought to the court at

1 the appropriate time.

2 There was a sale that had been brought at that
3 time, obviously. And there were times when sale was
4 contemplated and that would have gone part and parcel
5 with it. But it was always the intent to bring it to the
6 court.

7 And what happened was that while things were
8 still unresolved, in October of 2009 at a time when the
9 school committee was not on board with the sale, they
10 were sort of neutral. They needed to know more.

11 At that time Mr. Sheehan started this case.
12 This, coincidentally, was right when they were having
13 legislative hearings that they say are barred by the
14 separation of power on reforming the trust. And so they
15 kind of put the issue in front of the court at that time.

16 And so then, rather than doing it cooperatively
17 as was contemplated, if they ever got to a deal with the
18 feoffees and almost everybody else, they filed a counter-
19 claim. And in that version of the counter-claim, there's
20 no role for the feoffees.

21 But that's sort of the history, that everybody
22 sort of thought that they'd be able to work out the
23 governance reforms with the feoffees. And they were
24 talking to them about it in a cooperative manner for

1 seven or eight years before things kind of heated up.

2 THE COURT: Thank you. One final question
3 before I get into any more.

4 Will I be hearing any more evidence or will I
5 have a joint exhibit that sets out an historical perspec-
6 tive on how much has been turned over to the town?

7 MR. PERRY: Yes.

8 MR. SHEEHAN: You will. We don't agree on it,
9 but we will.

10 THE COURT: All right. I'll be hearing from
11 them.

12 MR. PERRY: The specific agreement between them
13 will -- the disagreement will be about whether gifts were
14 made in certain years. But there won't be a terrible
15 dispute about I think the magnitude of what the gifts
16 were, if they were made.

17 There's some years where the feoffees say they
18 gave seventy five hundred and the school says, we didn't
19 get it, or something like that. You should be getting
20 that, Your Honor.

21 THE COURT: All right. Thank you.

22 Attorney Soris?

23 MS. SORIS: Your honor, I really don't have
24 anything to add at the moment. We will be coming along

1 and at the appropriate time I'll chime in.

2 Thank you very much.

3 THE COURT: All right. Thank you very much.

4 Attorney Sheehan, your first witness, please?

5 MR. SHEEHAN: Thank you, Judge. But I'd be
6 remiss if I didn't note that Mr. Perry spoke for a longer
7 period of time than I in his opening.

8 THE COURT: Okay. Thank you.

9 MR. SHEEHAN: I call Richard Korb to the stand,
10 Your Honor.

11

12 RICHARD LEROY KORB, Sworn

13

14 DIRECT EXAMINATION

15

16 Q (By Mr. Sheehan) Good afternoon. Would you please state
17 your full name, and spell your last name for the record?

18 A Richard Leroy Korb, K-O-R-B.

19 Q Where do you reside, sir?

20 A I reside at 8 Mayfair Court in Ipswich, Massachusetts.

21 Q Who do you live there with?

22 A Pardon me?

23 Q Do you live there with anyone or do you live alone?

24 A I live alone, by myself.

1 Q Your present employment?

2 A Superintendent of schools.

3 Q Where?

4 A In Ipswich.

5 Q And how long have you been the superintendent of schools
6 in Ipswich, Massachusetts?

7 A Since July of 1998.

8 Q Would you give us your educational background, please,
9 starting with high school?

10 A I graduated high school from Trenton City St. Francis
11 High School in Michigan. I attended Western Michigan
12 University. And I earned my Bachelor's Degree and also
13 did my graduate work at Western Michigan University in
14 Kalamazoo where I pursued a Master's in Educational
15 Leadership.

16 Q And your employment history, please, starting with your
17 first full-time position after college?

18 A My first full-time position was I taught high school
19 social studies in Kalamazoo, Michigan. I taught there
20 for a period of like five years.

21 And I then left there and became the assistant
22 high school principal and athletic director in a small
23 town outside of Kalamazoo called Mattawan, Michigan.

24 Q Could you spell that for the record, please?

1 A M-A-T-T-A-W-A-N.

2 Q Thank you.

3 A I was there in that position for three years. I then
4 left and went to Lowe, Michigan, where I served for nine
5 years as the -- six years as the assistant high school
6 principal, and then I became high school principal.

7 Then, after that I was elevated to the role of
8 assistant superintendent of schools in Lowell, Michigan.
9 And then the last year of my employment at Lowell,
10 Michigan, I served as the interim superintendent of
11 schools.

12 At that point in time I then officially retired
13 from the State of Michigan, but still had an interest in
14 education, and went on a visit here to Massachusetts to
15 visit a former boss of mine who had learned about an
16 opening of a school system in Ipswich.

17 I applied for that position and was hired on
18 July 1, 1998, and have been in that position since then.

19 Q While you were in Michigan, did you have any experience
20 with an endowment fund?

21 A I did. Upon learning of a contribution from a banker who
22 had passed away and left a significant amount of money.
23 That happened right at the end of my career there.

24 And the endowment fund was established offi-

1 cially after that point in time, but there were early
2 discussions about how that investment was going to be
3 utilized.

4 Q Has that proven to be a good endowment fund for those
5 folks in Lowell, Michigan?

6 A I really don't have any adequate information on where it
7 currently stands.

8 Q You understand you're a defendant in this case?

9 A I do, yes.

10 Q Do you know why you're a defendant in this case?

11 A As superintendent of schools.

12 Q What does it mean to be superintendent of schools in the
13 Commonwealth of Massachusetts?

14 A Well, it's an honor and a privilege, first of all. But
15 it's also a -- it carries the responsibility for the
16 education of children, and to guarantee that they have
17 the best opportunity as possible to receive a quality
18 education.

19 Responsible for that education, in many ways,
20 from both a privilege standpoint and economic standpoint,
21 and trying to prepare them for their lives in society.

22 Q And did you learn at some point in time that being the
23 superintendent of schools in Ipswich also carried with it
24 some kind of a relationship with an entity called the

1 Feoffees of the Grammar School in the Town of Ipswich?

2 A I did.

3 Q When did you find out ----

4 A Shortly thereafter, after assuming the responsibilities,
5 I learned of the term of feoffees and what it meant, and
6 learned of the -- Little Neck.

7 I was invited to a meeting in 1999, the spring
8 of '99, I believe it was, to a feoffees' meeting and
9 learned more about what it was all about.

10 At which time Mr. Whiston had invited me to the
11 meeting, and at that point in time received a check for
12 the schools.

13 Q And did you understand that you were receiving that check
14 pursuant to General Laws Chapter 44, Section 53A?

15 A I was not familiar with that particular section of the
16 law, no.

17 Q You've learned that subsequent to that?

18 A Since then.

19 Q When did you first learn about the statutory provisions
20 that authorized you to receive that money?

21 A Probably during the early 2000s, after a lot of the
22 interest in pursuing litigation events took place.

23 Q And when you got that check for the first time in 1998,
24 that went into a particular account, didn't it?

- 1 A It was in -- actually, it was in 1999.
- 2 Q 1999?
- 3 A Yes.
- 4 Q When you received that first check in 1999, it went into
- 5 a particular account, did it not?
- 6 A It went into a gift account, feoffees gift account for
- 7 the schools.
- 8 Q Feoffees gift account?
- 9 A That's correct.
- 10 Q And has that feoffees gift account been maintained since
- 11 1999 to the present time?
- 12 A Yes, it has.
- 13 Q Did it precede you at that time?
- 14 A Yes, it did, by a significant amount of years.
- 15 Q And you've been the superintendent of schools in Ipswich
- 16 continuously from 1998?
- 17 A Since July of 1998 until now, that's correct.
- 18 Q And are you aware of any facts that would support the
- 19 removal of any of the life feoffees from their positions
- 20 as feoffees?
- 21 MR. PERRY: Objection.
- 22 THE COURT: I'll hear you.
- 23 MR. PERRY: It calls for an informed opinion,
- 24 Your Honor. It calls for personal knowledge. It

1 requires him to determine whether the facts he knows call
2 for removal.

3 MR. SHEEHAN: He's a party in this case and
4 I've asked for facts, his awareness of any facts.

5 THE COURT: I'm going to sustain the objection.
6 Next question.

7 MR. SHEEHAN: May I make an offer of proof,
8 Judge?

9 THE COURT: You may.

10 MR. SHEEHAN: The offer of proof would be that
11 he is not aware of any such facts.

12 THE COURT: Well, I'll tell you counsel my
13 reason for sustainig the objection is I'm not sure if the
14 witness is aware of what facts it's proving could be the
15 issue of the removal of the feoffees. And that was the
16 basis.

17 You can back up and ask him a couple questions
18 leading up to it. I'll give you that opportunity.

19 Q Have any of the life feoffees ever failed to cooperate
20 with you since you've been the superintendent of schools
21 since July of 1998?

22 A No.

23 Q At times have you asked the feoffees for information?

24 A Yes.

1 Q Have they provided that information to you?

2 A To the best of my knowledge, they have.

3 Q And each year, and every year since 1999, they have
4 provided a check to you which you've deposited in the
5 feoffees gift account?

6 A Since 1999 until the year 2006.

7 Q And you understand that that was the -- that was the last
8 year because of the interruption due to this very liti-
9 gation?

10 A That's correct.

11 Q Did you as superintendent of schools ever make a written
12 request or demand on the feoffees to increase the rent
13 that they charge the cottage owners?

14 A Me, personally?

15 Q Yes?

16 A No.

17 MR. PERRY: I didn't hear that.

18 A No. I personally have not had a written request of the
19 feoffees to increase rents.

20 Q Did you ever make any kind of an oral demand or request
21 from the feoffees for them to charge more rent?

22 A I personally did not, no.

23 Q Are you aware of any written request or demand made by
24 the school committee to the feoffees for them to increase

1 the rent charged to the cottage owners?

2 A I am not aware of a written request. I do know that
3 there have been ----

4 Q My question, Superintendent, was are you aware of any
5 written requests or demand made by the school committee
6 to the feoffees for them to increase the rent charged?

7 A Written, no.

8 Q Are you aware of any oral requests or demand that were
9 made by the school committee on the feoffees for the
10 feoffees to increase the rent charged to the cottage
11 owners?

12 A Yes, I am.

13 Q Now, that's a different answer from the one you gave me
14 when you were deposed, isn't it?

15 A I'm not -- I couldn't respond to that.

16 MR. SHEEHAN: May I approach, Judge?

17 THE COURT: You may.

18 MR. PERRY: What page?

19 MR. SHEEHAN: Page 23, top of Page 24.

20 MR. PERRY: All right.

21 Q Now, Superintendent Korb, you appeared in my office on
22 October 20, 2011 to be deposed.

23 Is that correct?

24 A That is correct.

1 Q And you appeared with your counsel?

2 A Yes, I did.

3 Q Donna Brewer was with you?

4 A That's correct.

5 Q And at that time you were asked a series of questions and
6 you gave a series of answers; correct?

7 A Yes.

8 Q And you understood, sir, that the questions were being
9 asked to you in anticipation of getting an honest answer?

10 A Correct.

11 Q And indeed, you were sworn to tell the truth before you
12 began your answers, were you not?

13 A That's correct.

14 Q And you did not have any trouble understanding questions
15 that were asked of you that day, were you?

16 A No.

17 Q You were not suffering any illness or under the influence
18 of any medication at that time?

19 A That's correct.

20 Q And you understood what it meant to tell the truth?

21 A Absolutely.

22 Q And would you take a look at the bottom of Page 23 of
23 your transcript, to the top of Page 24?

24 A I see that, yes.

1 Q Does that refresh your memory that when I asked you the
2 question on October 20th as to whether you were aware of
3 any oral request or demand, your answer at that time was
4 no, wasn't it?

5 A That's correct.

6 MR. SHEEHAN: May I leave that there, Judge?

7 THE COURT: Certainly.

8 Q Have you ever directed the feoffees to distribute monies
9 in behalf of the schools to anyone other than you?

10 A No.

11 Q All the checks that you received from the feoffees have
12 been delivered to you; correct?

13 A On behalf of the school system.

14 Q Correct. And you then put them into that feoffees gift
15 account?

16 A That's correct.

17 Q Have you read the answer and counter-claim filed in your
18 behalf by counsel in this case?

19 A No, not fully.

20 Q Okay. Now, at some point in time were you informed that
21 the feoffees through their counsel had talked to the
22 school committee or its counsel about the possibility of
23 settling the Superior Court case?

24 A I'm aware that they've had discussions with the school

1 committee.

2 Q And you were generally familiar with the Superior Court
3 case; that is, that it had been filed by the tenants?

4 A In a very general nature.

5 Q Right. But you understood that the tenants had filed
6 suit as a result of the feoffees raising rents in 2006?

7 A Yes.

8 Q And in connection with that lawsuit or the -- that was
9 filed in the Superior Court, were you monitoring the
10 progress of that case at all?

11 A No, not really.

12 Q But you found out at some point in time that there was an
13 opportunity to settle that case?

14 A Yes.

15 Q And did you understand when you heard about the possibi-
16 lity of settling, that it would involve a potential sale
17 agreement?

18 A That is correct, yes.

19 Q And you first heard that in October of 2008, did you not?

20 A I don't recall the exact date.

21 MR. SHEEHAN: Now, let's see. The contested
22 exhibits, does the witness have with him the contested
23 exhibits?

24 Thank you. I'm looking at what we have marked

1 on our respective lists as Number One Forty Eight.

2 THE COURT: I'm sorry, counsel. Would that be
3 something in the box of the accordion type folders?

4 MR. SHEEHAN: I think that so far, Judge, you
5 have only the uncontested exhibits. This is one that is
6 contested.

7 THE COURT: All right.

8 MR. SHEEHAN: And I can hand you a Redwell full
9 of the contested exhibits.

10 THE COURT: If you have an extra set, then
11 that's ----

12 MR. SHEEHAN: That is an extra set.

13 THE COURT: All right. That's mine. Thank
14 you.

15 MR. SHEEHAN: I suppose I should say at this
16 time because I'm not sure we've said it on the record
17 that there are in evidence a hundred and forty six uncon-
18 tested Exhibits.

19 THE COURT: I believe you have. But if
20 you have not, we've established that.

21 MR. SHEEHAN: Thank you.

22 Q Superintendent Korb, I'm going to ask you some questions
23 about the documents that are in this file. And for your
24 convenience I'm going to stand some of these up and hope-

1 fully, it will help you find what I'm going to be asking
2 you about.

3 Do you see that -- a document that I've just
4 stood up in that Redwell that actually is on the upper
5 right hand corner, R.L. Korb, Number Six.

6 Do you see that?

7 A I do.

8 MR. SHEEHAN: And Judge, for the moment it's
9 marked Plaintiff's One Forty Eight, even though we're
10 going to revise the markings.

11 Q Would you take that document out of that Redwell? I'm
12 going to ask you some questions about it, Superintendent
13 Korb.

14 First of all, what is that document?

15 A It appears to be the -- it is the -- it indicates the
16 executive session amended November 6, 2008, school com-
17 mittee meeting executive session minutes.

18 Q And those are minutes of a meeting held when?

19 A I would say the meeting would have been held on October
20 16, 2008.

21 Q October 16, 2008?

22 A Yes.

23 Q And that was a meeting in which you were present?

24 A That is correct.

1 Q And the school committee was present?

2 A Yes.

3 Q And Finance Director Jay Cuffe was present?

4 A Yes.

5 Q And in fact, you had Attorney Allen on the speaker phone?

6 A Yes.

7 Q Who is Attorney Allen?

8 A Attorney Allen is the school committee's attorney in this
9 case.

10 Q Now, what's the significance in the upper left hand
11 corner of this document that -- where it says, amended at
12 November 6, 2008 school committee meeting?

13 A That would indicate that the minutes were amended in some
14 form or fashion.

15 Q Now, do minutes of school committee meetings, whether
16 they're held in open session or executive session, get
17 approved by the school committee?

18 A Eventually, yes.

19 Q Tell us about the process by which minutes of a meeting
20 of the school committee are approved by the school
21 committee members?

22 A Usually, it's over a -- it depends upon what the minutes
23 pertain to. And it might take longer to be eventually
24 approved if they contain information that may be sensi-

1 tive to collective bargaining or legal cases and stuff of
2 that nature.

3 It could vary anywhere between a couple of
4 months up to perhaps maybe more than a year before they
5 are eventually approved.

6 Q And in the normal course, when does the school committee
7 affirm or approve, I should say, minutes of a meeting?

8 A Usually, it would be within in a month or two months.

9 Q And it's fair to say from the legend, amended at November
10 6, 2008 school committee meeting, that the minutes before
11 you of the meeting of October 16, 2008 came before the
12 school committee for review and approval, someone had an
13 amendment to make them, and they were amended at the
14 November 6, 2008 school committee meeting?

15 A That's what would appear happened, yes.

16 Q So it's fair to say that this document pertaining to
17 portions of that meeting of October 16, 2008 have been
18 reviewed now and approved by the school committee?

19 A I would have to go back and check on that. I could
20 assume that. But again, I don't know that for a fact.

21 MR. SHEEHAN: Now, Judge, at this time I'm
22 going to ask that this be introduced into evidence as the
23 next exhibit?

24 MR. PERRY: Your Honor, we have an objection

1 based on the motions that we filed that confirmed the
2 prior proposal at the school department. And it's not
3 relevant in our submission on the counterclaim.

4 THE COURT: I'm sorry, I didn't hear the last
5 part of that?

6 MR. PERRY: This particular document we submit
7 is not relevant either on the -- the issue of the
8 counter-claim.

9 You may have also ruled on that, but I don't
10 think has anything to do ----

11 THE COURT: Are you referencing the motions in
12 limine?

13 MR. PERRY: Yes.

14 THE COURT: Which motion do you say it falls
15 within in limine?

16 MR. PERRY: Well, Your Honor, this is minutes
17 of a prior sale. And your ruling on that was that they
18 were inadmissible except on the counter-claim, as I
19 understand it. The prior -- this is one of the prior
20 proposals.

21 And so I think you may have ruled on it and
22 excluded it with the case in chief.

23 THE COURT: Except in the counter-claim?

24 MR. PERRY: Except in the counter-claim.

1 But I think I also need to stand up and reserve
2 my rights and also make sure that I -- whether you're
3 ruling that this particular document comes in on a
4 counter-claim.

5 THE COURT: Anything in response?

6 MR. SHEEHAN: Yes, Judge. As I understand it,
7 there's no question that it's in under the counter-claim
8 under your ruling on the motion in limine.

9 Now, that being said, I'm going to register my
10 objection to the document not going in for all reasons.
11 And my rationale, just for the record, and I don't want
12 to repeat, obviously, the conference that we had on
13 Wednesday.

14 But it is relevant in my view for two other
15 purposes, not just the counter-claim. The first is, this
16 document and other documents where the school committee
17 voted to approve -- review and then ultimately approve a
18 sale of twenty six and a half million dollars.

19 I'd suggest to you that that is a statement by
20 -- an admission by a party to establish that the party
21 itself thought that settlement and sale at twenty six and
22 a half million dollars were prudent.

23 In addition, the conduct of the feoffees, the
24 school committee and the superintendent leading up to the

1 execution of the settlement agreement in December of 2009
2 is going to become the basis of another claim by the
3 tenants, as it was testified to by Attorney Todd as I
4 alluded to a motion in limine.

5 The position of the tenants is going to be that
6 the feoffees have once again exposed themselves to
7 liability by negotiating towards a settlement agreement
8 coming to the end of those negotiations, having reached
9 an agreement in principle by October of 2009. And then
10 so they will say having the rug pulled out from under
11 them by the feoffees and/or the school committee and/or
12 the superintendent.

13 And so it's relevant in my view on the counter-
14 claim as an admission that sale and settlement are pru-
15 dent and appropriate, and for purposes of laying out a
16 factual backdrop for some of what Attorney Todd is going
17 to testify to.

18 THE COURT: I can appreciate you re-arguing the
19 motion in limine. However, my ruling on that stands.

20 But it will come in because I think it -- if
21 that does have to do with issues relative to the counter-
22 claim.

23 One second, please.

24 MR. PERRY: And Your Honor, just for the gui-

1 dance of counsel going forward.

2 Is it understood, generally, that any documents
3 of this nature, if they're admitted are coming in just on
4 the counter-claim, and that the court would be willing to

5 ----

6 THE COURT: Understood by whom, counsel?

7 MR. PERRY: It would ----

8 THE COURT: I can tell you what my understand-
9 ding is, but I have no idea what anyone else's is.

10 MR. PERRY: All right. So we don't need to
11 stand up each time and object, or are you ruling that it
12 generally will be able to come in on a counter-claim and
13 not on the claim?

14 THE COURT: Look, if you want to preserve what-
15 ever your objection may be, I'm certainly not going to
16 take offense to you doing it. But that doesn't mean I'm
17 going to necessarily hear additional offer of proofs
18 every time.

19 But that for the record, if you wish to stand
20 and note your objection, that's fine, okay?

21 MR. PERRY: Thank you.

22 THE COURT: So this will be uncontested number
23 One Forty Seven.

24 MR. SHEEHAN: It's not uncontested.

1 THE COURT: Well, but it is -- I mean, it's
2 coming in now.

3 MR. SHEEHAN: It's Exhibit Number One Forty
4 Seven.

5 THE COURT: Exhibit Number One Forty Seven.

6

7 (Exhibit Number One Forty Seven marked; Copy of 11/6/08
8 School Committee Meeting Minutes)

9

10 Q Now, Superintendent Korb, with reference to what has been
11 marked now as Exhibit Number One Forty Seven.

12 It's fair to say that on October 16, 2008,
13 Attorney Allen was by speaker phone talking to the school
14 committee about the recommendation by the feoffees to
15 sell Little Neck and settle the Superior Court case;
16 correct?

17 A Correct.

18 Q And there was a discussion at that time about a number of
19 the issues that would be involved in the potential
20 settlement.

21 Is that correct?

22 A Yes.

23 Q And there was, among other things, a question as to what
24 that sale would mean to the Ipswich Public Schools?

1 A Yes.

2 Q And the idea was that the Ipswich Public Schools, after
3 various adjustments to the price after paying off a loan,
4 would generate about twenty million dollars?

5 A That's what it indicates, yes.

6 Q And then there was discussion about whether or not the
7 school committee was interested in proceeding forward?

8 A Yes.

9 Q And there was a lengthy discussion about that?

10 A Yes.

11 Q And in fact, there was discussion about whether or not
12 the school committee should get its own appraisal.

13 Isn't that true?

14 A That was suggested, yes.

15 Q And in fact, Attorney Allen suggested to the school
16 committee that it might want to get its own appraisal?

17 A Yes.

18 Q And the school committee decided not to get its own
19 appraisal?

20 A At that point in time.

21 Q And then there was a -- in fact, there was discussion on
22 October 16, 2008, where you advised the school committee
23 of your involvement in that Michigan trust fund?

24 A Of the outlines and the parameters of which it was oper-

1 ated under, yes.

2 Q Right. And on the second page of Exhibit Number One
3 Forty Seven, Mrs. Arsenault who is a member of the school
4 committee asked what would happen if there was no explo-
5 ration of the sale, didn't she?

6 A Yes.

7 Q And there was a discussion at that time between you --
8 and when I say you, I mean the school committee and you
9 and Attorney Allen about the allegations in that Superior
10 Court case, wasn't there?

11 A Yes.

12 Q Ultimately, a motion was made by the school committee in
13 the person of Dr. O'Flynn to explore the option of sale
14 of Little Neck; correct?

15 A Yes.

16 Q And that motion passed?

17 A Yes.

18 Q And then Mrs. Arsenault appointed a working committee;
19 correct?

20 A Yes.

21 Q And the purpose of that working committee was to meet
22 with Attorney Allen and Attorney Sheehan to fully explore
23 the possibility of sale and settlement.

24 Isn't that right?

1 A Yes.

2 Q And on that working committee, were Mr. Traverso, Mrs.
3 Ross and Mr. Loeb?

4 A Yes.

5 Q Those were all three members of the -- members of the
6 school committee at that time; correct?

7 A At that time, yes.

8 Q And that Mr. Traverso was selected due to his historical
9 knowledge?

10 A Yes.

11 Q Is that right?

12 A That's what it says.

13 Q In fact, Mr. Traverso had made it his avocation to look
14 into the Feoffees of the Grammar School in the Town of
15 Ipswich, hadn't he?

16 A He had a keen interest in it, yes.

17 Q He had a keen interest. Fairly said. And Mrs. Ross was
18 appointed because of her real estate knowledge.

19 Isn't that right?

20 A That is -- that's fair to say.

21 Q In fact, Mrs. Ross is a real estate broker, is she not?

22 A She was at that time, yes.

23 Q And Mr. Loeb was selected, and he was selected for his
24 legal expertise?

1 A Yes.

2 Q He is an attorney of many years?

3 A Yes.

4 Q He practices in Boston, Massachusetts, does he not?

5 A He does.

6 Q That was the group that was selected by Mrs. Arsenault to
7 look into whether or not the feoffees should be settling
8 and selling the real estate for twenty six and a half
9 million dollars because -- strike that.

10 Had you prior to October of 2008, had you heard
11 about the possibility of sale of Little Neck?

12 A I honestly don't recall.

13 Q At least as far as you can recall, any discussions about
14 the sale of Little Neck prior to October 2008 hadn't
15 gotten very far?

16 A That would be a fair statement.

17 Q This is the first time, certainly since you've been the
18 superintendent, that the school committee appointed a
19 group to look into the sale of Little Neck; correct?

20 A I do believe that's the case, yes.

21 Q And in fact, the group did look into the sale of Little
22 Neck, did it not?

23 A Yes.

24 Q Let me show you the next document in that Redwell of

1 yours. And at the bottom of it, it's marked R.L. Korb
2 Number Seven. It's the minutes of a meeting of November
3 11th, if that would be of assistance?

4 MR. SHEEHAN: May I approach the witness, by
5 the way, Judge?

6 THE COURT: You may.

7 A Yes. Why don't you help me out, Mr. Sheehan, where it
8 is? I have it right here.

9 Q Very good. Now, what is the document that has been
10 marked as R.L. Korb Number Seven?

11 A This is the minutes of the meeting of the Working Group
12 of the Feoffees, Tuesday, November 11, 2008, 7:30 p.m.,
13 at the Payne School.

14 Q And of course, it's marked R.L. Korb Number Seven because
15 it was marked as an exhibit to your deposition?

16 A I'm sorry?

17 Q It was marked as an exhibit to your deposition?

18 A Yes.

19 Q And it's fair to say that this document is the minutes of
20 that so-called Working Group of the Feoffees?

21 A Yes.

22 Q Now, that title, Working Group of the Feoffees, is a
23 little mis-leading, isn't it?

24 A I'm not sure what you mean.

1 Q Well, it wasn't a Working Group of the Feoffees. It was
2 a Working Group of the School Committee; right?

3 A The school committee. It was the School Committee's
4 Working Group.

5 Q It was a Working Group on the Feoffees, perhaps?

6 A Regarding the feoffees, yes.

7 Q Okay. And this Working Group got together on November
8 11, 2008?

9 A That's what it indicates.

10 Q At the Payne School?

11 A That's correct.

12 Q Is that the same Payne?

13 A I don't believe so. It's a different spelling, anyway.

14 Q Who was present on November 11, 2008 at the Payne School?

15 A Well, the minutes indicate that the Working Group members
16 Jeff Loeb, Diane Ross and Joan Arsenault. Also present
17 were myself; Mr. Allen, the attorney; Mr. Sheehan, the
18 attorney for the feoffees; and feoffees members Jim Foley
19 and past feoffees member Don Whiston, as the records
20 indicate.

21 Q I'm not sure Mr. Whiston would appreciate being referred
22 to as a past feoffees member?

23 A I know.

24 Q That is indeed what it says?

1 A I didn't take the minutes.

2 Q Other than that, do you have any reason to think that
3 these minutes are not fair and accurate?

4 A I would have no reason to believe that.

5 MR. SHEEHAN: Okay. Can we have that document,
6 please, Judge, as Exhibit One Forty Eight?

7 THE COURT: Mr. Perry?

8 MR. PERRY: The same objection only, Your
9 Honor, as to it being limited to the counter-claim.

10 THE COURT: All right. Counsel -- Attorney
11 Soris, I'm sorry, do you have an objection?

12 MS. SORIS: No objection, Your Honor.

13 THE COURT: All right. So this will come in as
14 One Forty Eight.

15 MR. SHEEHAN: And my same objection as to it
16 coming in only for only a limited purpose, Judge.

17

18 (Exhibit Number One Forty Eight marked; Copy of 11/11/08
19 Working Group of Feoffess Meeting Minutes)

20

21 Q Now, with respect to what's been marked as Exhibit Number
22 One Forty Eight.

23 There was an update given to you by Attorney
24 Sheehan on the litigation; correct?

1 A Mine says Exhibit One Forty Nine. Is that the new One
2 Forty Eight?

3 Q Yes?

4 THE COURT: By Attorney Sheehan? Is that you?
5 I thought it said -- okay.

6 MR. SHEEHAN: In fact, Judge, no, I don't think
7 we marked it. I'm so used to having these pre-marked.
8 We didn't mark Number One Forty Seven because I didn't
9 give it to the court reporter.

10 So if that could be marked, now?

11 THE COURT: Well, I've got them marked for
12 myself. Have somebody at your table keep track of -- in
13 other words, I want to ----

14 MR. SHEEHAN: So Peach is taking care of it?

15 THE COURT: Yes, for the court.

16 MR. SHEEHAN: Very good. Thank you, Judge.

17 THE COURT: Olay.

18 MR. PERRY: Excuse me. The originals are with
19 you, Your Honor, or with the witness?

20 MR. SHEEHAN: The originals are with the court.

21 THE COURT: They're all here. Yellow tags.

22 MR. SHEEHAN: The yellow tags.

23 MR. PERRY: Why don't you give the witness a
24 pen so we can fix the numbers as we go?

- 1 A I'll use an Ipswich School Committee pen.
- 2 Q So One Forty Eight is now One Forty Seven?
- 3 A So One Forty Nine is now ----
- 4 Q Yes. One Forty Eight is One Forty Seven, and One Forty
5 Nine is One Forty Eight?
- 6 A Sorry for the confusion,, Mr. Sheehan.
- 7 Q I should have stuck one other exhibit in there somewhere,
8 and then these would have all been in order.
- 9 A Who's on first? Who's on second? I don't know.
- 10 Q Okay. And on November 11, 2008, although we've just had
11 a minute or two of some jocularity, it was serious
12 business, wasn't it?
- 13 A Yes.
- 14 Q Because this was a huge matter regarding the possibility
15 of the sale of Little Neck by the feoffees; right?
- 16 A It was a very important issue.
- 17 Q And everybody wanted to make sure they got it right?
- 18 A That is correct.
- 19 Q And there was discussion about the status of litigation?
- 20 A That was given by you, that's correct.
- 21 Q There was a status of negotiations of rent?
- 22 A That's correct.
- 23 Q There was discussion about the escrow account that you
24 heard Mr. Perry talk about in his opening statement?

1 A Yes.

2 Q There was talk about the sewer issue that's the so-called
3 common wastewater system?

4 A Yes.

5 Q Okay. And there were other issues that were discussed,
6 as well?

7 A Yes.

8 Q And the final issue discussed, it says on page two of
9 Exhibit Number One Forty Eight was the sale?

10 A That's correct.

11 Q And it talks about the price of twenty six and a half
12 million dollars?

13 A Yes.

14 Q And it talks about how that price was derived, doesn't
15 it?

16 A Yes.

17 Q That is, that the feoffees didn't start out by saying to
18 the tenants, hey, we want twenty six and a half million
19 dollars for the property; right?

20 A Yes.

21 Q In fact, the feoffees started out at thirty three million
22 dollars?

23 A That's what it indicates.

24 Q Okay. And you were told that despite the efforts of the

1 feoffees to start at thirty three million dollars, the
2 best they could get the tenants to at that time was
3 twenty six and a half million dollars?

4 A Yes.

5 Q That was a so-called compromise figure. And then there
6 was discussion that after the sale, if there were a sale,
7 and the payment of debt, there would be twenty million
8 dollars which it says in the minutes that would then go
9 to the beneficiary, to then go to a trust account?

10 A Yes.

11 Q Now, the Working Group of the Feoffees, on November 11,
12 2008 did not ever take any vote, did they?

13 A It does not indicate so, no.

14 Q This was a group that was charged with finding out all
15 the facts because they were going to report back to the
16 school committee?

17 A Yes.

18 Q This was the group that was going to do due diligence?

19 A Correct.

20 Q And at some point in time, did this group report back to
21 the school committee?

22 A I would assume that. My memory doesn't recall exactly
23 when it did.

24 Q Fair enough. If you look at the next document in your

1 Redwell, in the upper right hand corner it says, R.L.
2 Korb Number Eight.

3 Do you have that document in front of you?

4 A Is this One Forty Nine?

5 Q Well, it will be, I hope, once it gets introduced into
6 evidence.

7 What is the document dated November 20, 2008?

8 A It says, executive session, 11/20/08.

9 Q And it's fair to say that this document is a portion of
10 the minutes of an executive session of the school
11 committee held on November 20, 2008?

12 A Yes.

13 MR. SHEEHAN: And can we have that marked into
14 evidence, Judge, as Number One Forty Nine?

15 THE COURT: I'm sorry. What's the number that
16 you currently have, the yellow sticker?

17 MR. SHEEHAN: The yellow sticker now says One
18 Fifty.

19 THE COURT: Mr. Perry, same objection?

20 MR. PERRY: Same objection.

21 THE COURT: All right. Ms. Soris?

22 MS. SORIS: No objection, Your Honor.

23 THE COURT: All right. Same ruling. It will
24 come in as One Forty Nine.

1 MR. SHEEHAN: Thank you, Judge.

2 And note my objection to the admissibility to -

3 - not for all purposes.

4 THE COURT: Okay. Thank you.

5 MR. SHEEHAN: Thank you.

6

7 (Exhibit Number One Forty Nine marked; Copy of 11/20/08

8 School Committee Executive Session Minutes)

9

10 Q On November 20, 2008, the school committee met.

11 Is that right?

12 A Yes.

13 Q One, two, three, four five, six. There were six members.

14 Someone was missing?

15 A There were six members present.

16 Q Well, Mr. Loeb had excused himself, but then he actually

17 came back, didn't he, making all seven available?

18 A That's right.

19 Q And you were present?

20 A I was.

21 Q Finance Director Cuffe was present?

22 A Yes.

23 Q And Attorneys Sheehan and Allen were present?

24 A Yes.

1 Q Okay. And there was discussion on that occasion about
2 the litigation?

3 A Yes.

4 Q And would you please read the first paragraph under the
5 category, litigation?

6 A Mr. Loeb, Chair, and the Working Group met last Tuesday
7 for fact-finding and due diligence. The non-negotiable
8 price to purchase the property is twenty six point five
9 million dollars.

10 The discussion of value prepared for the feof-
11 fees is that twenty six point five million is thirty
12 percent better than what an appraiser can do. But limi-
13 tations for seasonal use of the property appear legally
14 to be unenforceable.

15 Q Then, there was discussion about an issue regarding lease
16 negotiations and whether or not the parties; that is, the
17 feoffees and the tenants could get together on an issue
18 of residents fifty five years of age or older having
19 special rights?

20 A Correct.

21 Q And there were other discussions about options that were
22 available to the school committee as of November 20,
23 2008; correct?

24 A Yes.

1 Q Leasing was option number one; selling was option number
2 two; and number three was letting the court decide?

3 A Yes.

4 Q Will you look, please, to the second page of Exhibit
5 Number One Forty Nine, and would you read that first
6 paragraph, please, starting with, Mr. Sheehan said?

7 A Mr. Sheehan said he hopes that Mr. Allen and he have made
8 it clear why it is best to sell at this time. Once
9 voted, the attorneys then get a purchase and sales P & S
10 agreement and they go to the Attorney General.

11 There's little doubt that a compelling case can
12 be made by beneficiaries and trustees for deviation from
13 the original terms of the trust.

14 The Attorney General will study the primary
15 intent of the gift-giver who has long since passed away.
16 And if he approves the process, the attorneys go to
17 Probate Court in Salem. The time frame is three to six
18 months.

19 There are two hurdles. Number one, tenants
20 want to take a look at the wastewater system; and number
21 two, getting an appointment with the Attorney General.

22 Q Following the discussion that was held on November 20,
23 2008, and addressing -- directing your attention to the
24 middle of the second page of Exhibit Number One Forty

1 Nine, was a motion made at that time?

2 A Yes.

3 Q Would you read the third paragraph, please, of the second
4 page of Exhibit Number One Forty Nine?

5 A Dr. O'Flynn moved, and seconded by Mr. Sheppard, to go
6 forward with the sale of Little Neck property authorized
7 by the feoffees to the tenants at a price of twenty six
8 point five million.

9 Q And then there was further discussion on the motion,
10 wasn't there?

11 A Yes.

12 Q Then, ultimately, when you look at page three, you see
13 the vote on that motion to sell, do you not?

14 A Yes.

15 Q And there was a roll call vote on the motion?

16 A There was.

17 Q Would you read the results of that roll call?

18 A Roll call vote on the motion in favor; Traverse, O'Flynn,
19 Loeb and Arsenault. Opposed; Hopping and Ross. And
20 abstaining, Sheppard.

21 Q Okay. And as a result of that roll call vote, the school
22 committee voted to approve the sale; correct?

23 A That would be correct.

24 Q Did you understand that the feoffees were going to rely

1 upon that vote taken on November 20, 2008?

2 A I can't speak for what they would rely upon. I don't
3 know what their -- I think, one can assume that they
4 would use that vote to then proceed forward. But I don't
5 know what they -- their response was.

6 Q Did you have an understanding that the reason that the
7 matter was presented to the school committee on November
8 20, 2008, was for the feoffees to determine whether the
9 school committee supported a sale?

10 A Yes.

11 Q Did you understand that the feoffees were not going to go
12 forward with the sale if the school committee were not in
13 support of it?

14 A I would assume that.

15 Q It's fair to say then, that at least it was your under-
16 standing that the feoffees were going to rely upon what
17 the school committee voted and then go forward and try to
18 negotiate a sale?

19 A Correct.

20 Q And in fact, you know that that is what happened?

21 A Yes.

22 THE COURT: We'll take a lunch recess.

23 MR. SHEEHAN: That's great. Thank you very
24 much.

1 THE COURT: I have one matter that came up as
2 an emergency that -- it's coming up from probation at
3 2:00. So it will probably be about 2:15.

4 MR. SHEEHAN: Thank you very much, Judge.

5 MR. PERRY: Thank you.

6 THE COURT: Thank you.

7

8 (Whereupon, there was a luncheon recess and then court
9 was resumed)

10

11 THE COURT: All right. We're back on the
12 record on Mulholland. All right. And Superintendent
13 Korb, are you in the courtroom?

14

15 THE WITNESS: Yes.

16 THE COURT: Sir, if you would please resume the
17 stand?

18 MR. SHEEHAN: Thank you, Judge.

19

20 DIRECT EXAMINATION, Resumed

21

22 Q (By Mr. Sheehan) Now, Mr. Korb, just to follow up on
23 something that we -- that I asked you about earlier
24 before the lunch break. I had asked you, I think, about

1 how that trust fund, how well it worked in Michigan.

2 And did you say you weren't sure?

3 A Yes. I'm not sure of how well it's currently working.

4 All I was aware of was of the contribution by the
5 deceased individual and early discussion as to how it was
6 going to be setting up, trying to utilize the philosophy
7 of taking eighty percent of the earnings and using that,
8 and re-investing twenty percent.

9 That was the model that was under discussion at
10 that time. And I'm really not familiar with how well
11 it's working, now.

12 Q Do you recall saying at your deposition that it was bene-
13 fitting the town tremendously?

14 A It was -- yes, it was. Yes.

15 Q Now, just before we broke we went through the minutes of
16 the November 20, 2008 school committee meeting.

17 But prior to that meeting and after the
18 Feoffees Working Group, you heard from Richard Howard of
19 the Finance Committee, didn't you?

20 A I heard from -- I don't -- I would have to be refreshing
21 my memory. I'm sorry. Which document are you referring
22 to?

23 Q Sure. I think it's going to be Number One Sixty Five in
24 that Redwell?

1 A One Sixty Five?

2 Q Yes. One second. Let's see. One Sixty Five. Do you
3 have that document?

4 A I have document Number One Sixty Five. Now, is that the
5 old Number One Sixty Five?

6 Q The old Number One Sixty Five in the lower right hand
7 corner?

8 A Okay. That's from Richard Allen.

9 Q The top of it is from Richard Allen to me?

10 A To you, okay.

11 Q And actually, it's a string of three e-mails, isn't it?

12 A Okay. I see one, two and three.

13 Q Now, the middle e-mail is from Joan Arsenault to you, and
14 to Attorney Allen and to Mr. Foley; correct?

15 A Correct.

16 Q Do you recall receiving this on or about November 12,
17 2008?

18 A I do.

19 Q And could you just read the e-mail that Joan Arsenault
20 sent to you?

21 A Heads up, FYI, could someone please forward to Attorney
22 Sheehan. I don't have his e-mail address.

23 I totally disagree with the impression that we
24 have not been working together and do not support a town

1 committee. Been there, done that. Thanks, Joan.

2 Q And then Attorney Allen forwarded that e-mail to me after
3 as Ms. Arsenault had requested?

4 A To you. Joan asked me that I e-mail it, forward it to
5 you, yes.

6 MR. SHEEHAN: Could we have that marked, that
7 string of e-mails, Judge, as Number One Fifty?

8 MR. PERRY: Judge, objection in that one, the
9 cases litigated indicate that individual members can't
10 make admissions on behalf of bodies; and two, relevance.

11 THE COURT: As to the former point first, what
12 do you say?

13 MR. SHEEHAN: As to the issue of -- I'm not
14 putting it in as a finance -- this is going to show, once
15 again, that the cooperation, the cooperative effort that
16 was being undertaken among the feoffees, their counsel,
17 school committee, superintendent, and the counsel for the
18 school committee.

19 And in addition, it also introduces the issue
20 of the finance committee, and that is relevant on this
21 whole notion of whether or not there should be political
22 appointees, including the finance committee appointing
23 feoffees.

24 MR. PERRY: My point was, Your Honor, it's not

1 an admission. It's hearsay.

2 THE COURT: Counsel?

3 MR. SHEEHAN: Well, I'm not putting it in for
4 the truth of the matter asserted.

5 If counsel for the school committee wants to
6 suggest that Ms. Arsenault wasn't telling the truth, then
7 I can put it in for -- again, just to show cooperation.

8 THE COURT: But if you're asking for it to come
9 in to show cooperation, because that's what is asserted?

10 So it is the truth of the matter asserted in
11 there, that everyone's working together.

12 MR. SHEEHAN: The suggestion -- and what Ms.
13 Arsenault is saying is that she disagrees with someone
14 saying that they have not been working together.

15 My purpose in putting this in -- I don't mind
16 it going in for the limited purpose of showing coopera-
17 tion among that group, the feoffees, their counsel, the
18 school committee, superintendent and their counsel, all
19 to get this deviation complaint and the sale and settle-
20 ment done.

21 THE COURT: Are you asking that I take this as
22 binding upon the group because Ms. Arsenault disagrees
23 with someone else's impression?

24 MR. SHEEHAN: Whether she agrees or disagrees

1 with Attorney Howard, what's important is that Joan
2 Arsenault was trying to work with the feoffees to get
3 this thing sold. Not what she said or anything else.

4 Just the fact that this -- it's really the
5 facts of the communications. That's what's important.

6 THE COURT: Attorney Perry?

7 MR. PERRY: Well, Your Honor, it's the same
8 objection. It's hearsay and doesn't have any relevance
9 to the issue.

10 THE COURT: Well, I'm not going to take it.
11 But I apologize -- Attorney Soris is just coming in and I
12 apologize. I didn't -- I started before you came in.

13 MS. SORIS: It's my fault.

14 THE COURT: No, no. I'm sorry. I'm used to
15 seeing counsel here and not back there, and my apologies.

16 Counsel, I'm not going to take it in. At some
17 point we're going to have more than enough evidence
18 coming in on that point. So I'm not going to take it at
19 this point.

20 MR. SHEEHAN: Just note my objection, and let's
21 just have it marked. I think we need to mark it for the
22 record. Could that be A?

23 THE COURT: Yes.

24

1 (Exhibit A marked; Copy of Three E-Mails)

2

3

MR. SHEEHAN: Thank you, Your Honor.

4

THE COURT: Thank you.

5

Q We talked just before the lunch break about your under-

6

standing that the feoffees were going to rely on the

7

November 20, 2008 vote?

8

A That's correct.

9

Q And in fact, following that vote, Attorney Allen of the

10

-- representing the school committee and you, sent to

11

feoffees' counsel some proposed deviation complaints,

12

didn't he?

13

A Yes.

14

Q Number One Sixty Six. Could you take a look at Number

15

One Sixty Six?

16

MR. PERRY: One second, please, while we grab

17

that.

18

Q Do you recognize that document?

19

A I don't. I don't see that I was copied on it. But it's

20

a document from Attorney Allen to you. I don't see

21

anywhere that I was copied on it.

22

MR. SHEEHAN: Could I ask that this be marked,

23

Judge, as Number One Fifty?

24

MR. PERRY: And I have no objection to this

1 exhibit.

2 THE COURT: One Fifty, an e-mail from Attorney
3 Allen to Attorney Sheehan.

4 MR. PERRY: I should say I have no objection
5 for the limited purpose consistent with your ruling on
6 the counter-claim. I objection to it as far as -- as far
7 as you introducing it with respect to the case in chief.

8 I apologize. I think it's being offered for
9 the same reason.

10 THE COURT: Attorney Sheehan?

11 MR. SHEEHAN: I'm not sure I understood what
12 Attorney Perry just said.

13 MR. PERRY: I mean, ----

14 THE COURT: I'm not -- I didn't, either. And I
15 was hoping that you did.

16 MR. PERRY: Let me -- I'm sorry.

17 Your Honor, you've ruled on your motions in
18 limine that documents of this nature are admissible with
19 the counter-claim only and not with respect to ----

20 THE COURT: Of which nature, counsel?

21 MR. PERRY: This has to do with the property --
22 this is still an e-mail that's talking about deviation
23 complaints in the context of the school committee's vote
24 in 2008 to support an earlier version of the sale.

1 THE COURT: I'm not sure that's how I took it.
2 Is that the purpose for which you are objecting?

3 MR. PERRY: No. Then I do object to it if it's
4 being offered for some other purpose than that.

5 THE COURT: And you thought that it was being
6 offered for what purpose?

7 MR. PERRY: There's been testimony, Your Honor,
8 that in November of 2008 there was a vote to approve an
9 earlier version of the sale, not the one that's before
10 the court.

11 THE COURT: Okay.

12 MR. PERRY: We had a motion in limine that said
13 none of that should come in on the case in chief or --
14 you said none of it should come in, period.

15 But you ruled that it would be admissible only
16 on the issue of the counter-claim. This is a document
17 showing that in connection with moving forward on the
18 prior proposed sale, counsel for the school committee
19 provided Mr. Sheehan with some sample deviation com-
20 plaints because the deviation complaint would need to be
21 made if they were going forward with that sale.

22 THE COURT: And the purpose, Attorney Sheehan,
23 for your offering it at this point?

24 MR. SHEEHAN: Well, I seek to put it in for all

1 purposes, Judge, as you know. I understand that your
2 ruling has been clear to me, that this would -- I think
3 it's going to come under the same way we've been handling
4 the others.

5 If you would accept this as evidence on the
6 counter-claim, that you would not accept this as an
7 admission by a party through its counsel.

8 Although I would note my objection on that.

9 THE COURT: Absolutely.

10 MR. SHEEHAN: And also, the relevance as to the
11 reliance by the feoffees and ultimately the tenants, as
12 they're going to testify.

13 So I'm seeking to put it in for those three
14 reasons. And I suspect that if you're going to say it
15 goes in on the counter-claim, we'll note our objection
16 and keep moving.

17 THE COURT: Is your objection to my taking it
18 on the counter-claim?

19 MR. PERRY: No.. I have no objection on the
20 counter-claim.

21 THE COURT: And that's the purpose for which
22 I'll take it.

23 And Attorney Sheehan, your objection is noted.

24 MR. SHEEHAN: Thank you, Judge.

1 (Exhibit Number One Fifty marked; Copy of E-Mail from
2 Attorney Allen to Mr. Sheehan)

3

4 Q Now, Mr. Korb, if you would take a look at the next -- I
5 think it's the next document in order in your package.

6 It is an e-mail from me to Attorney Allen
7 covering a draft purchase and sale agreement?

8 A One Sixty Seven?

9 Q One Sixty Seven in the lower right hand corner.

10 NOW, have I characterized that fairly, is that
11 an e-mail from Attorney Allen, your attorney, to me
12 covering a -- strike that -- an e-mail from me to your
13 attorney, Richard Allen, covering a draft purchase and
14 sale agreement?

15 A Right. It's a P & S agreement document.

16 Q Correct.

17 MR. SHEEHAN: And could we have that marked,
18 please, as Exhibit One Fifty One?

19 THE COURT: Attorney Perry?

20 MR. PERRY: Same objection on the relevance,
21 Your Honor.

22 THE COURT: What about on the counter-claim?

23 MR. PERRY: Well, we've taken our position that
24 I don't think it's relevant on the counter-claim, and

1 you've been overruling that.

2 THE COURT: I'm trying to balance whether you
3 make your case. I mean, at some point when does enough
4 become enough, in light of the fact that I'm only taking
5 it at this point on the -- as it pertains to their
6 counter-claim.

7 I mean, I don't know how many more documents
8 you anticipate putting in.

9 MR. SHEEHAN: I'm going to try to slim it down,
10 but ----

11 THE COURT: Is that an answer to my question?

12 MR. SHEEHAN: I guess it wasn't a complete
13 answer to your question. But I do want to at least give
14 the court the full picture. This is a busy time, between
15 November 20 and January. I promise you, it speeds up
16 dramatically after January.

17 THE COURT: Well, I'm not sure that this one is
18 the most helpful, anyway, that this here is a draft P & S
19 that your clients haven't even seen.

20 So there may be no rhyme or reason to why I
21 won't take this one, but I expect there are some coming
22 in that I will. So I'll let you just keep going, and
23 then I have a chance to peruse these.

24 MR. PERRY: Your Honor, to speed things along,

1 we are not disputing for purposes of the counter-claim,
2 that after the school committee voted in favor of that
3 particular sale, there was cooperation in trying to
4 effect it until it fell through.

5 THE COURT: And does that help you, Attorney
6 Sheehan, or not enough?

7 MR. SHEEHAN: It's helpful. Not enough, but
8 helpful.

9 THE COURT: Okay. That's going to enable him
10 to pare it down, Attorney Perry.

11 MR. SHEEHAN: It is. Is that one in or out,
12 Judge?

13 THE COURT: That one's out.

14 MR. SHEEHAN: Out. And letter B, please,
15 Judge, for identification?

16 THE COURT: Yes.

17 MR. SHEEHAN: Thank you. Note my objection.

18

19 (Exhibit B marked; Copy of Purchase and Sale Document)

20

21 Q There was a concern on the part of the school committee
22 and the superintendent to keep these discussions and the
23 potential sale quiet until there was a press released
24 agreed upon by all; correct?

1 MR. PERRY: Objection.

2 He's being asked to speak about the school
3 committee's concern.

4 THE COURT: That's fair. Do you want to re-
5 phrase?

6 MR. SHEEHAN: Fair enough.

7 Q Now, were you concerned about keeping the whole discus-
8 sion confidential until there was a press release to the
9 public?

10 A I was not asked of that opinion by the school committee
11 and I did not offer any concerns about that.

12 Q And by the way, you did offer your position to the school
13 committee and to the feoffees through their counsel at
14 the October of 2008 meeting that you were in favor of
15 sale?

16 MR. PERRY: Objection, Your Honor.

17 It calls for an opinion about the sale, which
18 is the subject of our motion in limine concerning this
19 witness.

20 THE COURT: That's sustained.

21 MR. SHEEHAN: Well, if Your Honor please?

22 THE COURT: Go ahead, counsel?

23 MR. SHEEHAN: The motion in limine as to state-
24 ments of Mr. Korb, your ruling was at least that they

1 could come in for relevance on the counter-claim.

2 MR. PERRY: That's correct, Your Honor. You
3 did rule that. If this were relevant on the counter-
4 claim, then on the ruling you would let it in.

5 Our position is that it's not particularly
6 relevant on the counter-claim.

7 THE COURT: I'm not sure how it's relevant even
8 on the counter-claim, counsel. And again, I was giving -
9 - I was attempting to give you some latitude on the issue
10 of whether or not the feoffees should be removed, that
11 being one of the main issues in the counter-claim.

12 What this witness thought about whether the
13 discussion should be kept hush-hush I don't think has any
14 relevance on that point. So my ruling stands.

15 Do you want that marked as Exhibit C?

16 MR. SHEEHAN: No, because I haven't even posed
17 an exhibit yet, Your Honor.

18 THE COURT: All right.

19 MR. SHEEHAN: But let me just make the offer of
20 proof, Judge, for the record, that the offer of proof
21 would be that Mr. Korb would testify that at this time
22 period in November of 2008, he had -- he favored sale and
23 had told the feoffees through their counsel that he
24 favors sale.

1 But I understand the court's ruling and we'll
2 move right on from there.

3 Q Was there a press release, Mr. Korb?

4 A Yes.

5 Q That announced the proposed -- the proposed sale?

6 A Yes, there was.

7 Q And was that press release vetted by Attorney Allen, the
8 tenants' attorney and the feoffees' attorney?

9 A To my knowledge, it was. I can't speak for the feoffees'
10 attorney.

11 Q Let me show you Number One Fifty Two?

12 THE COURT: One Sixty Eight.

13 A One Sixty Eight is the press release.

14 THE COURT: One Sixty Eight is the e-mail,
15 enclosed please find the proposed press release. Is that
16 the one you're referencing, counsel?

17 MR. SHEEHAN: Well, actually, I was looking at
18 the press release itself. But ----

19 A The press release is attached to the ----

20 MR. SHEEHAN: It's really -- it's actually two
21 different documents. So let's do that, Judge. Let's
22 take a look at Number One Sixty Eight.

23 Q What's Number One Sixty Eight? And this is the proposed
24 press release that was sent by me to Attorney Allen?

1 A That's what it indicates, yes.

2 Q And ultimately, that press release was, in fact, released
3 and published in the newspaper?

4 A Yes.

5 MR. SHEEHAN: Okay. Could we have that marked,
6 please, Judge, as the next exhibit?

7 THE COURT: Mr. Perry?

8 MR. PERRY: Same objection, Your Honor.

9 THE COURT: Is that the e-mail or the ----

10 MR. SHEEHAN: E-mail with the attachments.

11 THE COURT: With the attachments. All right.

12 So One Fifty One.

13 MR. PERRY: I'm sorry, Your Honor, have you
14 ruled on this?

15 THE COURT: I thought I heard you say no
16 objection. I'm sorry.

17 MR. PERRY: No. I said same objection.

18 THE COURT: Oh, I'm sorry.

19 MR. PERRY: I apologize, Your Honor. I'm
20 mumbling.

21 THE COURT: I'll allow it in.

22

23 (Exhibit Number One Fifty One marked; Copy of E-Mail with
24 Attachments)

1 MR. SHEEHAN: Now, I'm going to move out of
2 December, Judge.

3 THE COURT: Okay.

4 MR. SHEEHAN: There's one more in December.

5 Q Would you take a look at what's been marked in the lower
6 right hand corner as One Seventy Three?

7 THE COURT: Attorney Sheehan, I apologize. Did
8 you say One Seventy?

9 MR. SHEEHAN: One Seventy Three.

10 THE COURT: Thank you.

11 Q Do you recognize that document, Mr. Korb, as an e-mail
12 exchange between Attorney Allen and me?

13 A Yes.

14 Q And Attorney Allen was looking for some assistance in
15 correcting an impression left by the Salem Evenings News
16 reporter?

17 A That is correct.

18 MR. SHEEHAN: And could we have that marked,
19 please, Judge, as Number One Fifty Two? And on that, I
20 promise to leave December.

21 MR. PERRY: Your Honor, I have no objection to
22 this going in for the limited purposes of showing the
23 information Mr. Sheehan was providing to the school
24 committee and to Dr. Korb at the time, but not for the

1 truth of the assertions that Mr. Sheehan is making in his
2 commentary.

3 THE COURT: I'll take it for that purpose.

4 But Attorney Sheehan, I'll note your objection.

5 MR. SHEEHAN: Thank you, Judge.

6 THE COURT: You're welcome.

7

8 (Exhibit Number One Fifty Two marked; Copy of E-Mail)

9

10 Q Now, Mr. Korb, following the press release the school
11 committee held an open session to discuss sale; correct?

12 A I do believe that's correct.

13 Q And in fact, it was held at the Performing Arts Center?

14 A Yes.

15 Q Is that typically where the school committee meets?

16 A No.

17 Q Where does the school committee typically meet?

18 A It typically meets in a room adjacent to the Performing
19 Arts Center called the Ensemble Room.

20 Q And why was the school committee -- why did the school
21 committee meet on January 15, 2009 at the Performing Arts
22 Center?

23 A My guess would be because they were anticipating perhaps
24 a -- to be able to accommodate a larger crowd than we

1 could accommodate in the Ensemble Room.

2 Q Now, let me show you what has been marked in the lower
3 right hand corner as R.L. Korb Number Twenty Six. It's
4 also One Fifty Four?

5 A One Fifty Two?

6 Q One Fifty Four. Do you recognize that document as the
7 school committee meeting minutes of their meeting on
8 January 15, 2009?

9 A Yes.

10 MR. SHEEHAN: Could I have that marked, please,
11 Judge, as the next exhibit?

12 MR. PERRY: Your Honor, I just need a second to
13 review this, please?

14 THE COURT: Certainly.

15 MR. PERRY: Your Honor, first of all, I would
16 object to this being introduced at all on the -- but the
17 counter-claim.

18 With respect to the counter-claim itself, I
19 have an objection as to the hearsay of the comment by Mr.
20 Loeb about the collective vision of the school committee.
21 Although, I think I should read the whole document.

22 I think the simple question is there's a sen-
23 tence about Mr. Loeb replying that collective vision of
24 the school committee that they wish to keep the feoffees,

1 who were hiring an investment advisor.

2 I do want to point out that a document later on
3 clarifies that -- when they talk about keeping the feof-
4 fees, they didn't necessarily mean these feoffees. They
5 meant hiring Feoffees that would have a different
6 governance as indicated on page three.

7 But to the extent that if Mr. Sheehan were
8 going to argue that this meant that the school committee
9 wanted to keep the feoffees collectively, then I would
10 object to it on grounds that Mr. Loeb -- there's no such
11 vote and Mr. Loeb would not be able to speak to it.

12 THE COURT: Attorney Sheehan, do you want to
13 address that?

14 MR. SHEEHAN: Well, it sounds more like a
15 matter for cross examination than it is to whether or not
16 this document is admissible, the minutes of a school
17 committee meeting.

18 And in fact, it's quite ironic that I'm
19 listening now to what Mr. Perry is saying, since I heard
20 for an hour and a half last Wednesday that I would not be
21 permitted, no one would be permitted to vary the terms of
22 the school committee minutes based on the Pearl Evidence
23 Rule, which is precisely what he's trying to do now.

24 He can cross examine Mr. Loeb or anybody else

1 he wants. But with all due respect, this is an admis-
2 sible document.

3 THE COURT: All right. One Fifty Three will
4 come in.

5 MR. SHEEHAN: Thank you, Judge.

6

7 (Exhibit Number One Fifty Three marked; Copy of 1/15/09
8 School committee Meeting Minutes)

9

10 Q I want to spend a little time on One Fifty Three, Mr.
11 Korb?

12 A That's the old One Fifty Four?

13 Q Yes. In the interest of time, I'm not going to have you
14 read word for word, but I'd like to go through this a
15 little bit on this -- these minutes.

16 What Mrs. Arsenault said at this meeting -- and
17 she was the Chairwoman or the Chairperson of the School
18 Committee at that time?

19 A That's correct.

20 Q And she addressed the crowd and she said, among other
21 things, that late in November having carefully studied
22 the history of the trust, the litigation and the proposed
23 sale, the school committee voted four to two to one to
24 authorize going forward with the sale; correct?

1 A That's correct.

2 Q And then there was discussion about that matter, and then
3 Mr. Loeb was asked about the trust in the feoffees;
4 correct?

5 A Yes.

6 Q And Mr. Perry quite accurately read that Mr. Loeb replied
7 to a question that, it is the collective vision of the
8 school committee that they would keep the feoffees who
9 will hire a new investment advisor who will help with the
10 investing and who will report back to the schools;
11 correct?

12 A That's what it says.

13 Q And then, when you turn to the second page of Exhibit
14 Number One Fifty Three, Mr. Loeb provides another assu-
15 rance to the crowd, doesn't he?

16 A Yes.

17 Q And he assured the crowd -- assured the audience, I
18 should say, that the school committee did go through due
19 diligence; the sub-committee working on the matter who
20 originally opposed the sale about the appraisal, and was
21 satisfied that the price was good and fair; correct?

22 A Correct.

23 Q Now, following that meeting on January 15, 2009, Ms.
24 Arsenault, the School Committee Chair, then wrote to the

1 board of selectmen to move the process of settlement and
2 sale forward, did she not?

3 And we'll take a look at what is marked Number
4 One Fifty Five for the moment?

5 A One Sixty Five or One Fifty Five?

6 Q One Fifty Five?

7 A Yes. I have a memorandum to the board of selectmen from
8 Joan Arsenault, Chair of the School Committee, dated
9 2/11/09.

10 MR. SHEEHAN: I'd ask that that be the next
11 exhibit, Judge, Number One Fifty Four.

12 A Oh, I'm sorry. One Fifty Five?

13 Q No, you've got the right one.

14 A Okay.

15 THE COURT: Attorney Perry?

16 MR. PERRY: I'm reading it, Your Honor.

17 I just have the same objection, that this is
18 irrelevant certainly on the case in chief.

19 MR. SHEEHAN: Even I don't contend that this is
20 relevant on the case in chief, Judge. But it's important
21 on the counter-claim.

22 THE COURT: Attorney Perry, I'll hear you on
23 the counter-claim?

24 MR. PERRY: Your Honor, given what else you've

1 offered -- let in on the counter-claim, I don't think
2 that this ought to be excluded.

3 THE COURT: I'll save my commentary and simply
4 indicate it comes in as One Fifty Four.

5 I'm not sure it makes a lot of difference, but
6 there it is.

7

8 (Exhibit Number One Fifty Four marked; Copy of 2/11/09
9 Memorandum)

10

11 Q And the next time the issue of sale was addressed by the
12 school committee was on March 19, 2009, wasn't it?

13 A I ----

14 Q Take a look at Number One Fifty Six in your package?

15 A Okay. It is March 19, 2009, executive session?

16 Q Yes. Do you recognize that document as the minutes of
17 the executive session of the Ipswich School Committee on
18 March 19, 2009?

19 A Yes.

20 MR. SHEEHAN: I'd ask that that be introduced,
21 Judge, as Number One Fifty Five.

22 MR. PERRY: Your Honor, with respect to the
23 case in chief, this would contain hearsay and also be
24 irrelevant.

1 With respect to the counter-claim, I think it's
2 just cumulative.

3 THE COURT: Attorney Sheehan, I'm going to ask
4 again, how much more evidence -- again, in light of my
5 ruling, that I'll take it on the counter-claim, how much
6 more do you plan on putting in?

7 MR. SHEEHAN: I have this one and one more.

8 THE COURT: And I'll take it as it relates to
9 the counter-claim.

10 And I'll note your objection.

11 MR. SHEEHAN: Thank you, Judge.

12 THE COURT: One Fifty Five.

13

14 (Exhibit Number One Fifty Five marked; Copy of 3/19/09
15 School committee Executive Messian Meeting Minutes)

16

17 Q On March 19, 2009, Mr. Korb, the feoffees reported to the
18 school committee that the bulk sale approach, that one
19 time approach, the one time sale of twenty six and a half
20 million dollars could not be consummated by the tenants
21 group; correct?

22 A Yes.

23 Q And what was discussed with the school committee on March
24 19, 2009, was a condominium approach to sale?

1 A Correct.

2 Q And there was no vote. But that Attorney Allen who was
3 present asked for basically a nose count; right?

4 A Asked for a consensus of support.

5 Q Right. And would you read the last paragraph of the
6 first page of Exhibit Number One Fifty Five?

7 A When Mr. Allen asked whether there might be a consensus
8 of support of the feoffees seeking to work out a sale
9 structure of Little Neck properties, there was unanimous
10 support from the seven board members.

11 Q And did you -- you were present at that meeting?

12 A I was present at that meeting.

13 Q And did you understand that as a result of that vote that
14 the feoffees would continue to work with the tenants,
15 this time on a condominium approach, to sale of Little
16 Neck?

17 A That would be my understanding.

18 Q And the subject of sale came up one more time in May of
19 2009; correct? And I'm going to direct your attention to
20 what's now Number One Fifty Seven?

21 A One Sixty Seven?

22 Q One Fifty Seven?

23 A One Fifty Seven. You said that was May 7th?

24 Q Yes?

1 A Yes. Yes, executive session dated May 7, 2009.

2 Q And is that document a portion of the minutes of the
3 meeting of the Ipswich School Committee held on May 7,
4 2009?

5 A Yes.

6 MR. SHEEHAN: I'd ask that that be the next
7 exhibit, Judge, Number One Fifty Six?

8 MR. PERRY: Your Honor, we don't object to this
9 going in on the counter-claim to explain the prior docu-
10 ment, but object to it for any other purposes.

11 THE COURT: I'll take it for that purpose.

12 And Attorney Sheehan, your objection is noted.

13 MR. SHEEHAN: Thank you, Judge.

14 THE COURT: You're welcome. One Fifty Six.

15

16 (Exhibit Number One Fifty Six marked; Copy of 5/7/09
17 School Committee Executive Session Meeting Minutes)

18

19 Q And as of May 7, 2009 the feoffees, the school committee
20 and the superintendent all recognized that the goal was -
21 - and I'm looking now at the fourth paragraph of the
22 first page, the goal remains to net twenty million
23 dollars for the schools. If the feoffees are successful,
24 the million dollar escrow will eventually see its way to

1 the schools.

2 Do you see that?

3 A I do see that.

4 Q Now, in May of 2009, the finance committee proposed for a
5 town meeting a warrant article to remove the feoffees by
6 legislation; correct?

7 A I do recall that, yes.

8 Q And that warrant article passed at the town meeting;
9 correct?

10 A Yes.

11 Q And there was a legislative committee that was scheduled
12 to hear and did hear testimony regarding the proposed
13 legislation?

14 A Yes.

15 Q And that proposed legislation didn't go anywhere, did it?

16 A I don't exactly know what the end result was. But ----

17 Q It never passed the legislature?

18 A It was never passed.

19 Q And ----

20 THE COURT: Attorney Sheehan, I apologize.

21 What was the time?

22 MR. SHEEHAN: October. The time of the warrant
23 article was May of 2009. The legislative session in
24 October of 2009.

1 THE COURT: Thank you.

2 Q And it was in October of 2009 at or about the time of
3 that legislative session that this action was filed by
4 the feoffees in the Probate Court?

5 A Yes.

6 Q Now, are you aware of a series of e-mails sent to you and
7 the superintendent and the school committee by the
8 finance committee in September, October and November of
9 2009 pertaining to the school committee and sale?

10 A I'm familiar with the e-mails. But I would have to see
11 specific ones to know any kind of specifics.

12 Q Let me show you what's marked in the lower right hand
13 corner, for the moment, as Number One Fifty Eight?

14 A Is that dated 9/10/09?

15 Q It is. Do you recognize that document as a document sent
16 to you and others by Jamie Fay, who was then the chair of
17 the finance committee?

18 A Yes. It was sent to Mr. Loeb and Mr. McNally. And I was
19 copied on it, along with the town manager and other
20 members.

21 MR. SHEEHAN: And could we have that marked,
22 please, as Number One Fifty Seven, Judge?

23 MR. PERRY: Objection, Your Honor.

24 This contains hearsay concerning what the

1 intent of the article is. Plus, relevance.

2 THE COURT: Attorney Sheehan?

3 MR. SHEEHAN: Well, Judge, I'm not putting it
4 in for the truth of any of the matter asserted. Merely,
5 for the -- to prove that the finance committee was acting
6 with the school committee and the superintendent trying
7 to get the school committee and the superintendent to do
8 away with the sale.

9 THE COURT: To -- I'm sorry. What was the last
10 ----

11 MR. SHEEHAN: To avoid the sale and to get rid
12 of the feoffees.

13 MR. PERRY: Your Honor, this doesn't have any-
14 thing to do with the sale. It just indicates that they
15 continued the efforts to, throughout these documents, to
16 re-form the trust.

17 This involved the removal of feoffees.

18 MR. SHEEHAN: Judge, to remove -- seeking to
19 remove the feoffees is tantamount to seeking to avoid the
20 sale.

21 THE COURT: I'm going to sustain your objec-
22 tion, Attorney Perry.

23 MR. SHEEHAN: Please, note my objection, Judge,
24 and mark that as C?

1 THE COURT: I will. Absolutely.

2 MR. SHEEHAN: Thank you.

3

4 (Exhibit C marked; Copy of 9/10/09 Document)

5

6 Q Let me show you what is in the right hand corner as
7 Plaintiff's Number One Sixty.

8 Do you recognize that as an e-mail sent to you
9 and others from Mr. Fay, Chairman of the Finance
10 Committee?

11 A It was sent from Mr. Fay to Mr. Loeb. And I was copied
12 on it, along with other members of the committee.

13 MR. SHEEHAN: Let's have that marked, please,
14 Judge, as -- that would then be Number One Fifty Seven, I
15 believe.

16 MR. PERRY: Your Honor, same objection to the
17 -- both hearsay and relevance.

18 THE COURT: And Attorney Sheehan, tell me how
19 this would relate to either whether or not your clients
20 have met the burden on deviation of the law, and that
21 they assume -- or that they will meet that burden?

22 Number two, if they do, how this is going to
23 help the finder of fact with respect to the proposed sale
24 price?

1 And number three, how would this be relevant
2 even on the issue of the counter-claim?

3 MR. SHEEHAN: Well, it's not relevant on the
4 question of deviation, Judge. It is relevant on the
5 issue of re-organization of the feoffees because what it
6 shows is the finance committee seeking to influence the
7 school committee, and the finance committee is now
8 seeking two seats at the table as the feoffees by way of
9 being able to appoint two persons publicly.

10 And what is happening here is that they -- in
11 essence, it's an attempt to usurp authority by the
12 finance committee, and that tends to prove that they
13 should not have any appointees as suggested by the
14 defendant.

15 THE COURT: And did you want to add anything,
16 Attorney Perry?

17 MR. PERRY: I just want to add, Your Honor,
18 that what this document actually shows is that it states
19 that the feoffees trust agreement had been prepared and
20 adopted by the School Committee.

21 And that's what the issue that the fincom is
22 raising in this e-mail was the same one you raised with
23 me, which was after having carefully adopted in the words
24 of this e-mail, this document, why haven't you filed it

1 yet?

2 That's what this is saying. And it's basically
3 saying, why are you waiting for the deviation complaint?

4 THE COURT: Exhibit D. Everyone's objections
5 are noted. That in fact that it's the motions in limine.

6 But I am not going to permit my session to be
7 used to highlight town politics in the Town of Ipswich,
8 and my ruling still stands in that regard. What they may
9 or may not have done is irrelevant.

10 What's before me now, I have to determine the
11 issues, not influenced by the school committee, the
12 fincom committee or anyone else in the Town of Ipswich.

13

14 (Exhibit D marked; Copy of E-Mail)

15

16 Q I show you Exhibit Number One Sixty Three, please, the
17 lower right hand corner, Mr. Korb?

18 A Yes. Dated November 18, 2010?

19 Q November 18, 2010?

20 A Yes. It's a copy of the executive session minutes from
21 that date.

22 Q And is that -- is this document a copy of a portion of
23 the minutes of that November 18, 2010 meeting?

24 A Yes.

1 Q Okay. And this was the meeting at which, ultimately, the
2 settlement agreement was voted?

3 A Yes.

4 MR. SHEEHAN: All right. And if I could have
5 this marked, please, Judge, as Exhibit Number One Fifty
6 Seven?

7 MR. PERRY: Your Honor, we have no objection to
8 this exhibit.

9 THE COURT: Thank you. It will be One Fifty
10 Seven.

11 MR. SHEEHAN: Thank you.

12

13 (Exhibit Number One Fifty Seven marked; Copy of 11/18/10
14 School Committee Executive Session Meeting Minutes)

15

16 Q Now, after the vote of November 18, 2010, there was a
17 meeting held in open session on December 2, 2010, and
18 that's Exhibit Number One Sixty Four?

19 A I have those.

20 Q And is that document a copy of the minutes of the school
21 committee meeting of December 2, 2010?

22 A It is.

23 MR. SHEEHAN: And I'd ask that that be marked,
24 Judge, as the next exhibit?

1 MR. PERRY: Your Honor, I think -- I assume
2 that this is personally being offered with respect to the
3 paragraph on the top of page two.

4 THE COURT: Under Feoffees of the Grammar
5 Schools?

6 MR. PERRY: Exactly. Yes. Mr. Sheehan, is
7 that correct? You're ----

8 MR. SHEEHAN: Yes. Yes, the second page.

9 MR. PERRY: Yes. And Your Honor, I object on
10 the grounds that -- of relevance. And notwithstanding
11 the trial evidence will also note that I'm sure that Mr.
12 Loeb didn't think that as a matter of law the feoffees
13 have a right to sell as opposed to explaining what the
14 summary judgment motion before the court was.

15 But I would object to this. Certainly, if Mr.
16 Loeb was stating such an opinion, I would object to it.

17 THE COURT: Attorney Sheehan?

18 MR. SHEEHAN: Well, Judge, you've heard my I
19 guess now sort of tiring rationale. But it remains the
20 same. It's all part of the package trying to explain
21 what has happened over the last two years.

22 THE COURT: Exhibit E shall stand.

23 Your objection is noted for the record.

24 MR. SHEEHAN: Thank you, Judge.

1 (Exhibit E marked; Copy of 12/2/10 School Committee
2 Meeting Minutes)

3

4 MR. SHEEHAN: And Judge, if I could have one
5 moment? I'm trying to find ----

6 THE COURT: Sure.

7 MR. SHEEHAN: ---- a document that I'm having
8 trouble locating?

9 Somehow, Judge, with our sophisticated numbe-
10 ring system we seem to have mis-placed One Sixty Two.

11 THE COURT: Okay. Are you looking for One
12 Sixty Two?

13 MR. SHEEHAN: I am.

14 THE COURT: I have a One Sixty Two.

15 MR. SHEEHAN: All right. I'm sure I have one
16 too, Judge. I just can't put my hand on it right now.
17 And I think the witness has one.

18 THE COURT: It's of a school committee meeting
19 November 9, 2010?

20 MR. SHEEHAN: Correct.

21 MR. PERRY: I do have one, as well.

22 MR. SHEEHAN: All right. Let me ask you some
23 questions about that. I think I know it.

24 THE COURT: Do I take the ----

1 Q Now, the document that you have is marked Number One
2 Sixty Two in the lower corner. Is that a -- are those
3 minutes of a school committee meeting in November of
4 2010?

5 A It's a meeting of the school committee, the finance
6 committee and board of selectmen the day of November 9,
7 2010 that was held in the Town Hall, typically referenced
8 as a tri-board meeting.

9 Q This is a tri-board meeting?

10 A That's what this would be.

11 Q All right. And what's the tri-board?

12 A The tri-board is, as it implies, the meeting of three
13 boards.

14 Q And what are those boards?

15 A The school committee, the finance committee and the board
16 of selectmen.

17 Q And they meet together from time to time?

18 A From time to time.

19 Q And they met together on November 9, 2010?

20 A These minutes would indicate so.

21 Q And are these -- is that document a fair and accurate
22 recitation of the minutes of the meeting of November 9,
23 2010?

24 A I have not had a chance to read them in full.

1 Q Okay. Well, the first ----

2 A I'm sure -- it would appear that -- I'm sure that it
3 would be.

4 MR. SHEEHAN: All right. I'll ask that this be
5 marked, Judge, as Number One Fifty Eight?

6 MR. PERRY: Your Honor, I object to this
7 exhibit.

8 This is a meeting where a witness you'll be
9 hearing from -- a witness you'll be hearing from, an
10 expert witness at trial, Mr. Foster the appraiser ----

11 THE COURT: Mmm-hmm?

12 MR. PERRY: ---- met with this committee.

13 And these minutes -- and this is somebody's
14 minutes purported to re-count what he said at that
15 meeting.

16 And it would be appropriate to cross examine
17 him -- he testified -- Mr. Sheehan can ask him about any
18 inconsistent statements he made.

19 But it's hearsay as to the statement that Mr.
20 Foster made at the meeting unless he comes and testifies
21 that there's something inconsistent, at which point he
22 can be cross examined on this and he can explain any such
23 statements.

24 So it shouldn't come in now for the truth of

1 the assertions that he's -- that this non-party allegedly
2 made at the meeting.

3 THE COURT: Attorney Sheehan is not offering
4 any of this for the truth of the matter asserted,
5 Attorney Perry.

6 MR. PERRY: Well, I think at this point, Your
7 Honor, this is after they had already voted no on the
8 sale. So I don't think it has anything to do with the
9 counter-claim.

10 MR. SHEEHAN: No. This, -- Judge, first of
11 all, this is -- these are the minutes of the tri-board
12 meeting.

13 The fact that they say something is not hear-
14 say. This is a permanent record, the binding record of
15 this tri-board including the school committee as to what
16 transpired on November 9, 2010.

17 And I am putting this in for the truth of what
18 is contained in those minutes.

19 MR. PERRY: And Your Honor, again, what the --
20 what's contained is hearsay within hearsay. When it
21 lists in these minutes what Mr. Foster said, and then
22 they're offering it for the truth of what Mr. Foster
23 said, that is hearsay.

24 So sure, the minutes themselves are a record of

1 what occurred. The question is whether what occurred at
2 that meeting is hearsay.

3 And you're better off having Mr. Foster on the
4 stand explaining any of these comments that he's alleged
5 to have made rather than having it just come in now
6 unexplained and not contradicting any of his testimony.

7 THE COURT: Am I going to be hearing from Mr.
8 Foster?

9 MR. PERRY: And you will be, yes.

10 MR. SHEEHAN: Let me add, Judge, at the risk of
11 quarreling over these -- over the records.

12 The suggestion has been made by the defendants
13 that they were relying on improper, incorrect information
14 of Mr. Monahan.

15 This disputes that notion. This is the school
16 committee's own appraiser stating the value. And it is
17 before the date on which the school committee decided not
18 to go forward with the settlement agreement.

19 It is most relevant.

20 THE COURT: It's in as One Fifty Eight.

21 MR. SHEEHAN: Thank you.

22

23 (Exhibit Number One Fifty Eight marked; Copy of 11/9/10
24 Tri-Board Meeting Minutes)

1 Q Now, Mr. Korb, we have just run through I think all of
2 the minutes of the school committee from October of 2008
3 until their ultimate vote in November of 2010 regarding
4 sale.

5 You're not aware of any other votes, are you?

6 A I am not aware of any others.

7 Q Now, prior to the issue of sale coming up in October of
8 2008, fair to say that the school committee was updated
9 from time to time by the feoffees as to rent negotiations
10 going on?

11 A Yes.

12 Q And you were being told -- you and the school committee
13 were being told where the various parties were with
14 respect to numbers?

15 A Yes.

16 Q And the school committee was adamant in addressing the
17 feoffees and their counsel that the school committee did
18 not want to come off of what the feoffees said was the
19 fair rental value of ten thousand, eight hundred dollars?

20 A I don't recall the specifics of those conversations. I
21 do know they were very concerned about wanting to have
22 the rents reflect an equitable and fair value.

23 But to the specific numbers, Mr. Sheehan, I
24 couldn't swear to that.

1 Q Fair to say that as of February of 2007, the feoffees and
2 the school committee were in agreement on what fair
3 market rent should be?

4 MR. PERRY: Objection.

5 It calls for hearsay as to the school commit-
6 tee.

7 THE COURT: Sustained. Sustained.

8 Q Well, you were present at the meetings between the school
9 committee -- among the school committee, you and the
10 feoffees; correct?

11 A Most of them, yes.

12 Q Discussing rent?

13 A Yes.

14 Q And there was discussion about fair market rent?

15 A Mmm-hmm.

16 Q Which is -- which was the number -- the number was ten
17 thousand, eight hundred dollars, wasn't it?

18 A Again, I would have to go back and see that.

19 Q Was there discussion between the feoffees and the school
20 committee about the superior court litigation interrup-
21 ting the flow of monies from the feoffees to the schools?

22 A Yes.

23 Q And did the feoffees inform the school committee and you
24 that while the litigation was pending that there would be

1 no money to distribute to the schools?

2 A Yes.

3 Q And in reliance upon that, you then had to go look for
4 money elsewhere, didn't you?

5 A As best as I could, yes.

6 Q Sure. And you sent a note to your administrative staff -
7 ---

8 A Correct.

9 Q ---- saying that the feoffees are not going to be able to
10 come up with any money this year?

11 A Something to that effect. I just knew that we -- it was
12 going to affect the entire budgeting process.

13 Q You didn't expect to receive any money from the schools
14 in 2007 -- from the feoffees for the schools in 2007, did
15 you?

16 A I did not.

17 Q And you didn't expect to receive any money from the feof-
18 fees for 2008?

19 A I was hoping that the issue would be resolved ASAP so we
20 could realize that influx of financial support, correct.

21 Q And you understood that so long as that litigation was in
22 place, that there wasn't going to be any money for the
23 schools?

24 A That is correct.

1 Q And there's no need to go through all of the minutes of
2 the meetings in 2007 - 2008 to establish that, is there?

3 A No.

4 MR. SHEEHAN: I can pick up on a hint from time
5 to time.

6 Q Do you recall that the finance committee engaged a firm
7 called Colliers, Meredith and Grew to do an appraisal of
8 Little Neck?

9 A Yes.

10 Q And do you recall some controversy arising out of that
11 appraisal?

12 A I do recall some controversy.

13 Q And what happened, was it not, was that the finance
14 committee got two documents from Colliers, Meredith and
15 Grew; an appraisal and a side letter?

16 A Again, I recall the controversy regarding the numbers.
17 And I don't recall the two separate documents, but the
18 controversy regarding the appraised value.

19 Q And do you recall that there was a controversy involving
20 the finance committee's posting on the Town's website the
21 number of forty two million dollars?

22 A I do recall a bit of controversy about that, yes.

23 Q Okay. And do you know now that in addition to supplying
24 the Town of Ipswich with a forty two million dollar

1 appraisal that Colliers, Meredith and Grew also wrote to
2 Town counsel a side letter?

3 A I'm not familiar with a side letter, no. It may have
4 been, but I'm not familiar with it.

5 Q Fair enough. Now, you've gone through the budget process
6 for thirteen years?

7 A Yes.

8 Q And in the Town of Ipswich as in all other cities and
9 towns, there's a division between the school budget side
10 and the the municipal budget side?

11 A That is correct.

12 Q And in Ipswich, fair to say that the school budget is
13 about sixty two percent of the total budget?

14 A That's correct.

15 Q So generally speaking, tax revenues that are generated
16 goes sixty two to the schools and thirty eight to the
17 Town?

18 A Basically, yes.

19 Q Basically. Do you know how much money is generated by
20 the Little Neck residents paying taxes?

21 MR. PERRY: Objection. Relevancy.

22 THE COURT: Attorney Sheehan?

23 MR. SHEEHAN: Relevance, Judge. That's part of
24 what the feoffees are donating to the schools.

1 MR. PERRY: Your Honor, it's not part of what
2 the feoffees are donating to the schools. They pay real
3 estate taxes because everybody in town pays real estate
4 taxes.

5 And the idea that a trust for the benefit of
6 the schools would distribute less money from the asset
7 because the homeowners also pay their taxes like every-
8 body else pays, it actually has no place in this court
9 whether or not the tenants want to make that their posi-
10 tion in some other court, that it's not legally relevant
11 what their taxes with respect -- or how much their fund-
12 ing the schools with respect to the issue of whether the
13 trustees are doing their job to maximize the revenues to
14 the trust.

15 THE COURT: Well, the alternative would be to
16 have the feoffees be paying it out of the rent; right?

17 I mean, there's only two choices; right?

18 MR. PERRY: Right.

19 THE COURT: So it seems to me that if they went
20 with that alternative, an argument could certainly be
21 made that they weren't maximizing.

22 MR. PERRY: We're not -- my comment isn't that
23 the -- of course, the fact that the tenants are paying
24 the taxes is something that one would take into account

1 in determining the fairness of the rent.

2 But the amount, the magnitude being generated
3 from the taxes is not relevant to any issue in the case.

4 THE COURT: Well, I have to disagree with you.

5 Overruled.

6 Q Do you know how much money on average over the last few
7 years in total taxes the feoffees have been able to
8 recover from the tenants and pay to the town budget?

9 A I do not know.

10 MR. SHEEHAN: Judge, at this time I'd like to
11 introduce into evidence the responses to the requests for
12 admissions that were made, the admissions that were made
13 by the school defendants.

14 I think you're going to find that at Number --
15 the old Number One Twenty Five? And I'd offer these as
16 under Rule 36?

17 MR. PERRY: Your Honor, parts of this would --
18 first of all, they are admissions, so we understand that.

19 Parts of them would be relevant only to the
20 counter-claim. For example, those overall same materials
21 that we've been talking about on the motions in limine.

22 So assuming it's being admitted consistent with
23 your prior ruling, we have no objection.

24 THE COURT: Attorney Sheehan?

1 MR. SHEEHAN: I haven't parced this for that --
2 for the determination of which might be in and which
3 admissions might be in only for a limited purpose.

4 But unless there's been an objection made at
5 the time the admission is requested, it's too late to
6 object to them now.

7 MR. PERRY: Your Honor, I don't believe that
8 the responses to admissions needs to state objections or
9 relevancy to ----

10 MR. SHEEHAN: Oh, indeed they do, Judge.

11 In fact, we'll see a couple of objections in
12 allowing it and admitting in part and denying it in part,
13 there are objections stated.

14 But there's no objection to what I'm about to
15 read now.

16 THE COURT: Do you have the rule there?

17 MR. SHEEHAN: Yes, I do, Judge.

18 THE COURT: My inclination, quite frankly, is
19 to have it come in as One Fifty Nine. But let me take a
20 look at the rule?

21 MR. SHEEHAN: That bnook's gotten heavier and
22 heavier over the years.

23 THE COURT: Attorney Sheehan, you can have this
24 back. And it's coming in as One Fifty Nine.

1 MR. SHEEHAN: Thank you, Judge.

2

3 (Exhibit Number One Fifty Nine marked; Copy of Responses
4 to Requests for Admissions)

5

6 MR. SHEEHAN: Judge, let me at this time read
7 for the record request number sixty three.

8 The average real estate taxes paid for a cot-
9 tage owner in fiscal 2010 was just under four thousand
10 dollars. Response, admitted.

11 That the average real estate tax due for a
12 cottage owner in fiscal 2010 was just under four thousand
13 dollars. The school committee can neither admit nor deny
14 without further discovery whether these amounts were all
15 paid in fiscal 2010.

16 Q Now, Superintendent Korb, at four thousand dollars a
17 piece times a hundred and sixty seven cottage owners,
18 that is more than six hundred and fifty thousand dollars
19 that was paid in taxes by the cottage owners in fiscal
20 2010; correct?

21 A That would appear to be the case.

22 Q Sixty two percewnt of which goes to the schools, give or
23 take?

24 A Give or take.

1 MR. SHEEHAN: And I have no further questions,
2 Judge. Thank you.

3 THE COURT: Thank you.
4 Attorney Perry?

5

6 CROSS EXAMINATION

7

8 Q (By Mr. Perry) Mr. Korb, you were asked about minutes
9 that referred to the vote by the school committee in
10 November of 2008 at which the school committee voted to
11 approve a proposed sale of Little Neck that was then
12 before it?

13 A Yes.

14 Q And do you remember what type of valuation information
15 the committee had before it at that time?

16 A To my recollection, it was from Land Vest.

17 Q And do you have Exhibit -- I don't know if you do.

18 Exhibit One Fifteen ----

19 MR. SHEEHAN: That would be in the uncontested,
20 Judge. Mr. Korb, it's going to be on the box to your
21 right.

22 MR. PERRY: May I approach, Your Honor?

23 THE COURT: Certainly.

24 Q Was the information in the Land Vest appraisal with the

1 letter -- the advisory letter dated November 10, 2008 the
2 information that the school committee had on value and
3 that you had on value at the time of the discussions in
4 November of 2008?

5 A It is.

6 Q If you would turn to the third page of this document?

7 MR. PERRY: One second while the court finds
8 it?

9 THE COURT: One Fifteen?

10 MR. PERRY: Yes, Your Honor, One Fifteen. It's
11 not a big document, this one.

12 THE COURT: Thank you.

13 Q I think if you -- first of all, Mr. Korb, if you turn to
14 the second page of the document, Land Vest makes refer-
15 ence there to a 2006 report; correct?

16 A I'll have to find it. At our 2006 appraisal, yes. Okay.

17 Q And there's a paragraph that reads that the aggregate lot
18 value for our 2006 report totaled just under twenty
19 million prior to accounting for the aforementioned legal
20 and re-sale expenses.

21 This value as of January of 2006 provided the
22 useful benchmark for the crotch point in the current
23 valuation of the subject property.

24 Now, did you understand what was meant by an

1 aggregate lot value?

2 A No. Personally, no.

3 Q Now, if you turn to the -- are you given to understand
4 that to be if you took the value of each lot and added
5 them up ----

6 MR. SHEEHAN: Objection.

7 THE COURT: I'll hear you?

8 MR. SHEEHAN: You can't impeach your own wit-
9 ness. He's just said he doesn't know what aggregate
10 value is.

11 THE COURT: Sustained.

12 Q On the next page, Mr. Korb, it says the application of a
13 five percent value increase to our previous aggregate lot
14 value of nineteen million, eight hundred seventy
15 thousand results in a current aggregate lot value of
16 approximately twenty million, eight sixty three thousand
17 prior to cost accounting.

18 I read that correctly, didn't I?

19 A Yes.

20 Q Now, was that the appraisal information that the school
21 committee and you had from Land Vest when this decision
22 was being made?

23 A Yes, it is.

24 Q And do you recall that there were discussions in the

1 November 20, 2008 minutes which have been marked as

2 Exhibit One Forty Nine?

3 A I don't have that.

4 Q All right. Well, any ----

5 A Wait a minute. Maybe I do. Maybe the date is up here?

6 THE COURT: Did you say One Forty Nine?

7 Q I think it's One Forty Nine, the 11/20/08 minutes?

8 A November 20, 2008?

9 Q Yes?

10 A I have that.

11 Q Okay. And ----

12 THE COURT: Your Number One Fifty, sir, down at
13 the bottom?

14 A This says One Forty Eight. One Forty Nine is scratched
15 out and One Forty Eight.

16 Q Right?

17 A So November 11, 2008?

18 THE COURT: I ----

19 MR. PERRY: You know what, Your Honor? Well,
20 Mr. Sheehan ----

21 THE COURT: My Exhibit One Forty Nine are the
22 minutes of the executive session of 11/20/08.

23 Is that not what your records say?

24 MR. PERRY: That's right.

1 THE COURT: All right. So that's -- so sir,
2 down below in the corner you should see Exhibit Number
3 One Fifty?

4 A Okay.

5 MR. PERRY: Well, he may have written over it?
6 A Executive session, November 20, 2008?

7 Q Yes?

8 A I have it.

9 Q Okay.

10 A The old One Fifty, the new One Forty Nine.

11 THE COURT: That's it. Thank you.

12 MR. PERRY: Exactly. Thank you.

13 Okay. We'll be dealing with that confusion for
14 a little bit, I'm afraid.

15 Q Now, I think Mr. Sheehan read this previously, but I want
16 to put it in context.

17 It says in the first paragraph, the discussion
18 of value prepared for the feoffees is that twenty six
19 point five million is thirty percent better than what an
20 appraiser can do?

21 A Yes.

22 Q And will you agree that thirty percent more than twenty
23 million is around twenty six million?

24 A Correct.

1 Q So this, did you understand that to be a reference to the
2 Land Vest appraisal letter of November of 2008 that we
3 just referred to?

4 A That would reference the twenty million, yes.

5 Q Okay. Now, at the time that you had this information,
6 what assumptions were you making about the abilities and
7 qualifications of Land Vest?

8 A I assumed -- I made the assumption that Land Vest was a
9 competent and qualified organization. And I think that's
10 the assumption that we all made to make that appraisal
11 judgment.

12 And that goes into if -- goes into, you know,
13 that company was qualified to do so.

14 MR. SHEEHAN: Move to strike that portion of
15 the answer that talked about the assumption that all of
16 us make.

17 THE COURT: Sustained.

18 Those were the -- were those the assumptions
19 that you made, sir?

20 THE WITNESS: That was an assumption I -- in
21 our discussions with the school committee that as a
22 committee and as superintendent, we assumed that they
23 were -- you know, it was a legitimate company that was
24 doing ----

1 THE COURT: All right. But ----

2 THE WITNESS: ---- their due diligence.

3 THE COURT: But setting aside what the school
4 committee may have done, were those the assumptions that
5 you made?

6 THE WITNESS: Yes. Yes.

7 THE COURT: That may come in.

8 MR. PERRY: Thank you.

9 Q And do you also recall that when we looked at Exhibit One
10 Forty Seven earlier, that there had been some suggestion
11 and even advice that from the school committee's counsel
12 that the school committee should perhaps have its own
13 appraisals done?

14 A That was suggested as an option.

15 Q Okay. And that was also a suggestion that you heard at
16 different times from the finance committee, didn't you?

17 A Yes.

18 Q Okay. And as of 2008 before voting on this transaction
19 the school committee, in fact, did not get its own
20 appraisals?

21 A Correct.

22 Q And the minutes that have been marked into evidence cite,
23 well, members would like another appraisal -- appraiser --
24 - I'm reading from Exhibit One Forty Seven -- Mr. Loeb

1 couldn't see the tenants agreeing to a twenty five
2 thousand dollar expense for another appraisal; right?

3 A Yes.

4 Q Now, what were the restraints on the school committee as
5 far as spending money on an appraisal at that time?

6 A Well, throughout the majority of this process, all of the
7 associated expenses relative to this issue had been paid
8 for out of the school budget.

9 And it was simply a matter of trying to
10 balance, you know, the expenditures for education versus
11 the expenditures associated with this case.

12 And it wasn't until the Town meeting voted to
13 approve additional funding to where we are now that
14 really, you know, freed up the ability.

15 But it was very restrictive because it was
16 again, trying to balance the educational needs against
17 spending money for an appraiser.

18 Q So did the school committee have the financial ability
19 back in 2008 to be engaged in the kind of proceeding
20 we're in now?

21 A Well, they did not have the financial ability. There
22 were no line items for such expenses.

23 Q Now, you've said that at the time of this vote that the
24 school committee had the information in front of it from

1 Land Vest that's been marked as Exhibit One Fifteen.

2 And I'd like to show you a subsequent report
3 from Land Vest that's in evidence. That's Exhibit One
4 Sixteen.

5 THE COURT: I'm sorry, what was the number?

6 MR. PERRY: It should be One Sixteen, Your
7 Honor?

8 THE COURT: The Land Vest Appraisal Report of
9 September 11, 2010?

10 MR. PERRY: That's it, Your Honor.

11 THE COURT: Do you want the witness to get his
12 copy? Is that what ----

13 MR. PERRY: Yes. Do you have my copy?

14 You can find that in the ----

15 THE COURT: It's probably on the floor there,
16 sir.

17 A What number is it, Mr. Perry?

18 Q One Sixteen.

19 A One Sixteen, right here?

20 Q Yes, that document?

21 A This is One Eleven.

22 Q Okay. Right here?

23 A I have it.

24 Q And you see that this is a report by Land Vest dated

1 October 25, 2010?

2 A Yes.

3 Q And this report then was prepared almost a year after the
4 feoffees entered into the settlement agreement dated
5 December of 2009 that is the subject of this proceeding?

6 A Yes.

7 MR. PERRY: If you could just give me a minute,
8 Your Honor?

9 THE COURT: Certainly.

10 Q Now, if you had the benefit of this document -- and of
11 course, you did not have this document at the time in
12 2008, nor in 2009?

13 A Correct.

14 MR. PERRY: Your Honor, I'm sorry. There's a
15 reference in here where the aggregate lot value, and I
16 thought I had it and I have to find it.

17 Q Okay. Would you turn, please, to page fifty nine?

18 A You said sixty nine?

19 Q Fifty nine, please?

20 A Fifty nine.

21 Q Do you see the table in the middle of the page, retail
22 unit value estimates?

23 A Yes.

24 Q And what is the figure at the bottom of that table?

1 A The figure -- totals figure is thirty seven and six
2 hundred and seventy five thousand.

3 Q And that has a note that says, total is within three
4 percent of 2010 aggregate assessed value?

5 A That's correct.

6 Q And then it says, as a very general check on the above
7 outlined aggregate retail value of thirty seven million,
8 seven hundred and sixty five thousand dollars, and
9 capitalized at a safe rate range of four and a quarter to
10 five and a quarter percent, the indicated total rental
11 value of the subject property ranges between one million,
12 six hundred and five thousand and one million, nine
13 hundred eighty two thousand, six hundred and sixty two.

14 And I may have rounded a little bit, but that's
15 essentially what it says?

16 A That is correct, sir.

17 Q And you didn't have that information when -- the school
18 committee did not have that information, to your know-
19 ledge, when it was voting on the earlier proposal?

20 A Not to my knowledge, no.

21 Q Now, would it be relevant -- and would you consider it
22 relevant in making any kind of decision to know whether
23 the value of the lots was thirty seven million versus
24 twenty million?

1 MR. SHEEHAN: Objection.

2 THE COURT: Sustained.

3 Q Now, in addition, Mr. Sheehan showed you a document that
4 has been marked as Exhibit One Fifty Two?

5 A Is that the press release, Mr. Perry?

6 A No.

7 A One Fifty Two?

8 Q All right.

9 THE COURT: It says One Seventy Three at the
10 bottom.

11 A One Seventy Three.

12 Q One Seventy Three morphed into One Fifty Two?

13 THE COURT: One Fifty Two?

14 A One Fifty Two?

15 Q Yes. And that's the famous e-mail from Mr. Sheehan ----

16 MR. SHEEHAN: Objection, Judge.

17 Q ---- to ----

18 MR. SHEEHAN: And I appreciate the attempt at
19 flattery, but I object.

20 THE COURT: I'm not sure how successful it was,
21 but I will sustain your objection.

22 Q This is an e-mail from Mr. Sheehan to Mr. Allen that's
23 been admitted into evidence.

24 And am I correct that while this was not

1 addressed to you, it's the -- was a -- it included -- the
2 substance of this information was passed on to you?

3 A Yes. That was -- I saw it after the fact.

4 Q And again, does this document again indicate that same
5 appraiser meaning Land Vest, the value of the lots in the
6 aggregate that is looking at the properties as if they
7 were a hundred and sixty seven individual lots, are
8 twenty million, eight hundred and sixty three thousand,
9 or one hundred and twenty five thousand per lot?

10 A That's what it says.

11 Q Now, in addition to the information that the school
12 committee was acting on at the time about what the
13 appraised value of the property was according to Land
14 Vest, was there also information being provided to the
15 committee and to you about what kinds of returns you
16 might expect if there were an endowment?

17 A Yes.

18 Q And what was the figure that was being bandied about, if
19 you recall?

20 A A five percent figure.

21 Q And do you have any knowledge whether it's realistic to
22 take five percent a year and add an endowment fund that's
23 going to -- trying to manage in a way that keeps up with
24 inflation?

1 A I'm not a financial -- I don't have the background and
2 financial expertise to make that judgment.

3 Q But you were in the courtroom today when Mr. Sheehan said
4 that there was an expert who would say that an average
5 return of four point six percent was available?

6 A I heard that, yes.

7 Q And you also heard that that was based on paying only
8 forty basis points in taxes?

9 A I did hear that.

10 Q And that's lower than five percent even if you pay only
11 forty basis points?

12 A Yes.

13 Q Would you agree that in trying to evaluate whether a sale
14 should be made or not, it's important to have accurate
15 information about the value and about what return can be
16 realized?

17 MR. SHEEHAN: Objection.

18 THE COURT: Sustained.

19 MR. PERRY: I'll move on, Your Honor.

20 Q Now, were you aware at the time that the committee was
21 deciding whether to approve this sale and when you were
22 involved in that process, were you aware of whether any
23 appraisal had been done on behalf of the tenants?

24 A I was not aware of that. Not at that time.

1 MR. PERRY: All right. And Your Honor, I have
2 an exhibit that to my understanding is by agreement
3 uncontested. But it's not in the -- well, I think it is
4 in the -- this has been added; right?

5 MR. SHEEHAN: That was your Defendant's Uncon-
6 tested Six?

7 MR. PERRY: Yes. But that's now probably
8 Uncontested ----

9 MR. SHEEHAN: Uncontested Number One Thirty.

10 MR. PERRY: All right.

11 THE COURT: All right.

12 MR. PERRY: So may I approach, Your Honor, and
13 show this to the witness?

14 THE COURT: Yes. Hold on one second, please?

15 And are you referencing the Peterson LaChance
16 letter?

17 MR. PERRY: Mmm-hmm.

18 THE COURT: Is that what you're referencing?

19 MR. PERRY: I am.

20 THE COURT: OKay.

21 Q Now, if you look at Exhibit One Thirty you'll see that
22 this is a letter dated February 4, 2005 to the Little
23 Neck Association by Peterson LaChance?

24 A Yes.

1 Q Do you recognize the name of that firm ----

2 A I do.

3 Q ---- as being the tenants' appraiser?

4 A Appraiser. Appraisal for the tenants.

5 Q And on the second page they give a figure based on an
6 assumed sale to a third party, and that figure is what?

7 A Sixteen million, five hundred thousand.

8 Q And then on the -- if you go two pages further or a page
9 or two further, you see that there's a list of all of the
10 units and a December 4 market values for each of those
11 individual addresses.

12 Is that right?

13 A I do see that, yes.

14 Q And then on the next page after that, page four, there's
15 a figure for the gross sale of all those units, is there
16 not?

17 A There is.

18 Q And what is that figure?

19 A It's thirty six million, four hundred and sixty eight
20 thousand.

21 Q Which is very similar to the thirty seven million dollar
22 figure that we just talked about?

23 A Correct.

24 Q Now, Mr. Korb, one of the documents you were shown was

1 Exhibit One Fifty Six, although it probably has a diffe-
2 rent number on it.

3 And that's the May 7, 2009 minutes?

4 A One Fifty Six or ----

5 Q I think it's One Fifty ----

6 A One Fifty Seven, now One Fifty Six?

7 Q It probably says ----

8 A May 7th?

9 Q Yes?

10 A I have it.

11 Q Thank you. You were asked some questions about the so-
12 called ANR proposal that the school committee had voted
13 to explore or to support?

14 A Yes.

15 Q And it states in the middle of that page, Land Vest will
16 appraise each of the lots and add the individual lot
17 value one sixty -- one -- one hundred sixty even of the
18 determined total value of the common areas.

19 And this is a plan to sell the lots at those
20 appraised values as you understood it; right?

21 A As I understood it.

22 Q So if the appraisal of those lots were to come out as
23 they did in the 2010 appraisal, do you recall what the
24 purchase price would be under this scenario?

1 A I don't recall.

2 Q Okay.

3 A Thirty -- thirty six - thirty seven, or something like
4 that.

5 Q Thirty seven point six million?

6 A Thirty seven point six million.

7 Q But this is a very different concept than the one that's
8 before the court?

9 A Yes.

10 Q I want to direct your attention to One Fifty Three which
11 is the minutes of January 15, 2009?

12 A One fifty Three?

13 Q Right. January 15, 2009, the ----

14 THE COURT: And it says One Fifty Four at the
15 bottom, sir.

16 A One Fifty Four.

17 THE COURT: Korb Number Twenty Six.

18 THE WITNESS: Okay. One Fifty Six, Your Honor?
19 Is that what you said?

20 THE COURT: Why don't you take mine? Here you
21 go.

22 THE WITNESS: Thank you.

23 THE COURT: And I'll just take that one back.

24 MR. PERRY: Thank you, Your Honor.

1 THE WITNESS: And I thought doing the school
2 budget was tough.

3 Q Now, this is the document where earlier Mr. Sheehan had
4 asked you ----

5 A Yes.

6 Q ---- or had read the portion that reads at the bottom of
7 the first page to a question of whether a separate trust
8 and feoffees will be needed after the sale.

9 And Mr. Loeb replied that the collective vision
10 of the school committee that they wished to keep the
11 feoffees or hire an investment advisor who will help with
12 the investing ----

13 A Yes.

14 Q ---- and will report back to the schools?

15 If you go to the third page of those minutes,
16 if you look at the -- the minutes are now discussing the
17 trust governance reform that were part of this whole
18 process; correct?

19 A I see it, yes.

20 Q And what were the proposed reforms that went hand in hand
21 with keeping the feoffees -- according to this document,
22 Item Four B?

23 MR. SHEEHAN: Objection to the form.

24 Q Could you read for the court ----

1 THE COURT: Sustained.

2 Q I'll withdraw the question.

3 Could you read for the court the discussion
4 Four B, number and appointment of feoffees?

5 A It is entitled, number and appointment of feoffees. And
6 a discussion as to the sense of the committee, Mrs. Ross
7 and Mr. Sheppard preferred five members for the feoffees'
8 board make-up, and the rest wanted seven members, most by
9 appointment by the school committee, the fincom, and the
10 board of selectmen.

11 There was some interest in an appointment by
12 Town meeting, perhaps at the recommendation of the Town
13 moderator.

14 On the question of private feoffees, Sheppard
15 and Traverso wanted to have a fresh start and not have
16 any of the current feoffees; while five accepted that two
17 feoffees could remain with two to three year terms for
18 all feoffees.

19 Q Thank you. Now, you mentioned that you were involved in
20 the budgeting process and that times have been tight?

21 A They've been tight.

22 Q And what are the needs of the schools in terms of the
23 regularity of payments from the trust that's managed by
24 the feoffees?

1 A Well, it would be absolutely critical for planning pur-
2 poses to have some sense of continuity and consistency,
3 so that we could plan appropriately as to what we could
4 count on for budgeting purposes.

5 Q And would a solution -- and how would that tie into a
6 potential solution that would involve the long term
7 lease of the land at Little Neck?

8 A Could you repeat your question, Mr. Perry?

9 Q How would -- would those goals be met or not be met if
10 there would be a long term lease of the land at Little
11 Neck?

12 A Those goals could be met with a long term lease if it was
13 the right number.

14 THE COURT: May I have that back?

15 THE WITNESS: You sure can. Thank you.

16 Q There were a few questions addressed to you concerning
17 the finance committee.

18 And I know we're not going to get into politics
19 here, but does the finance committee have any expertise
20 or perspectives that are of assistance in evaluating the
21 issues that we're dealing with?

22 A I would have no opinion on that.

23 Q Now, when you came on to the role as superintendent, was
24 anybody keeping track of what the gifts had been to the

1 schools?

2 A Prior to my arrival?

3 Q Yes?

4 A Yes.

5 Q And how was that being done?

6 A It was kept in a log that was kept in my office showing
7 the yearly disbursements, the gifts to the schools
8 yearly. And it was written in and recorded by an admin-
9 istraive assistant and verified by the director of
10 finance and operations.

11 MR. SHEEHAN: And I move to strike, Judge, as
12 to anything other than 1998 forward.

13 THE COURT: Attorney Perry, how would he have
14 personal knowledge of what was done before he arrived?

15 MR. PERRY: Well, I think if I showed him a
16 document he may be able to tell us whether it's a
17 business record.

18 That's really the issue.

19 THE COURT: You can try.

20 MR. PERRY: All right.

21 Q Mr. Korb, let me show you a document that's got a label
22 on it of Defendant's Contested Fifty Three, and ask if
23 you know what it is?

24 A This is the log called -- it's a history of the feoffees'

1 contributions to the schools. And this says, as recorded
2 by the feoffees in Ipswich Annual Town Report.

3 Q Do you know who kept that record?

4 A This particular record here? Something -- something like
5 this or similar to this was kept in my office. And this
6 may have been also kept at Town Hall or other places, as
7 well.

8 Q Who in your office was responsible for dealing with that
9 document?

10 A My administrative assistant Fran Silkenrich [phonetic]
11 and Director of Finance and Operations, Joanne Cuffe.

12 Q Was that a document that was kept by the superintendent's
13 office in the regular course of business?

14 A Yes.

15 Q And was it the regular course of the business of the
16 superintendent's office to keep that record?

17 A Yes.

18 MR. PERRY: Your Hoonor, I would offer it into
19 evidence as the business record of the -- kept by the
20 current custodian.

21 It is not going to -- if you've got a record
22 going back to 1970, we're never going to be able to put
23 on witnesses and verify ----

24 THE COURT: Attorney Sheehan?

1 MR. SHEEHAN: Hearsay within hearsay, Judge.
2 I'm looking at the caption, history of feoffees'
3 contributions to the schools as reported by the feoffees
4 in Ipswich annual report.

5 And first of all, it's not -- and I haven't
6 heard anything that would satisfy the business record
7 exception.

8 And secondly, this is isn't -- on its face it's
9 not a record of the superintendent of schools.

10 THE COURT: Well, do I understand that this is
11 a compilation, if you will, of information that was also
12 printed in an annual town report that would report ----

13 MR. SHEEHAN: See, but that's what the fight is
14 all about.

15 THE COURT: But -- oh, I'm sorry. Go ahead?

16 MR. SHEEHAN: You may recall you asked a
17 question earlier today, is there going to be something
18 that comes in to show me what monies? And then I said,
19 yes, but there will be a quarrel about it.

20 But this particular witness can't testify and
21 he hasn't identified his administrative assistant as
22 having had any personal knowledge before 1998 either, to
23 talk about this document.

24 This is, with all due respect, not a school

1 record kept in the ordinary course of business of the
2 schools on its face.

3 THE COURT: But what I'm asking is, have you
4 gentlemen looked at the town report? I'm just wondering
5 if I couldn't use it as a chalk? Is there an objection
6 to that, as well?

7 MR. SHEEHAN: I ----

8 THE COURT: I have the town report. Have you
9 compared them? I don't know?

10 MR. SHEEHAN: I have no objection to it being
11 received as a chalk. We will be introducing evidence
12 through one of the feoffees that will show you by way of
13 financial statements and by way of annual reading minutes
14 of the feoffees what was made available to the schools
15 each year.

16 THE COURT: By what was made available, do I
17 assume you mean what was paid over ----

18 MR. SHEEHAN: Well, as a ----

19 THE COURT: ---- to the school superintendent?

20 MR. SHEEHAN: You will hear evidence that --
21 and I indicated in my opening statement that from time to
22 time said, I don't want it this year.

23 But other than that, yes. Your Honor, if it
24 didn't get it in here -- if it didn't get it in here, I

1 can get it in the probably the next year, also.

2 MR. PERRY: There's a difficulty with that,
3 Your Honor, because they do have minutes that will say of
4 -- they voted that yes. And then there's no record in
5 the town report that it was made and no check is being
6 proffered to show it was made.

7 So -- and then perhaps it was put in some
8 account that was called, you know, for the schools, and
9 whether that ever got there.

10 And so I think we both have the same problem of

11 ----

12 MR. SHEEHAN: It has not been an easy task,
13 Judge.

14 MR. PERRY: And so this is what we have, Your
15 Honor. And so maybe if you could take it as a chalk, and
16 Mr. Sheehan will have his opportunity to ----

17 THE COURT: I'll take it as a chalk at this
18 point.

19 MR. PERRY: Yes.

20 THE COURT: All right. And so this will be --
21 thank you, sir. So this will be Defendant's Chalk A?
22 Yes?

23 MR. PERRY: Yes. Thank you.

24

1 (Defendant's Exhibit Chalk A marked; Copy of Log Book)

2

3 Q Before I move on to the last subject which is going to
4 take a little while to go through, I'm afraid.

5 You were asked a question earlier about whether
6 you were aware of any oral requests, I believe was the
7 question, by school committee members for a raise in
8 rent. And then you were impeached by your deposition
9 where you were asked a question -- but you said yes
10 today.

11 And earlier, you said no to a question about
12 whether you had been aware of any oral requests or
13 demands by the school committee for a raise in rent.

14 And I just wanted to know if you would like to
15 explain why today you said that, yes, you're aware of
16 oral requests for an increase in rent?

17 A Well, even if you read earlier in the deposition that I
18 gave on that day with Mr. Sheehan, I indicated that I was
19 aware of discussions that had taken place between the
20 school committee and the feoffees with a goal of trying
21 to increase the rent and increase the distribution, you
22 know, to the Town.

23 There was a lot of information in the news-
24 papers. I mean, there was a lot of, you know, a lot of

1 talking about that.

2 I was not aware, and when I heard the word
3 demand which was a -- quite a strong term, and I said,
4 no, I was not aware of the demands in the deposition.
5 And I think demand is a very strong word.

6 But I was certainly aware of discussions that
7 took place and the interest that the school committee had
8 in an increase in those rents.

9 So if I in some way mis-lead them, my response
10 to that is well, I wanted to clarify that.

11 Q And did those discussions include discussions with the
12 feoffees?

13 A Yes.

14 Q Now, you are aware that part of this case is a request by
15 the school committee to change the way in which the
16 ancient trust is governed?

17 A Governance?

18 Q Yes?

19 A Yes.

20 Q And you've been present for a large -- not all, but
21 you've been present for a large part of that process,
22 haven't you?

23 A I have.

24 Q Can you tell me as you recall it, what the early stages

1 were of this about the issue about the governance of the
2 trust?

3 MR. SHEEHAN: Objection, Judge.

4 I don't see it as relevant. I don't see any
5 relevance to the history of this attempt to change it.

6 MR. PERRY: Your Honor, the claim has been made
7 by Mr. Sheehan quite vociferously that this entire effort
8 was all a product of villifying the feoffees because they
9 wanted to sell the land.

10 And I would like to have an explanation of what
11 this process was and what the real roots of it were as it
12 evolved over time. And it pre-dated this sale quite
13 considerably.

14 THE COURT: I'll allow it.

15 Q So the question is, if you could tell us please what you
16 recall about the inception of this effort to form the
17 trust?

18 A My recollection is that there was a desire to increase
19 the membership of the feoffees of the board to not ensure
20 broader representation on the fence as members of the
21 feoffees, but also to and for representation and the
22 cross section of the community as appointed by the
23 various boards whether that's the school committee, town
24 select -- or kind of the fincom members or the board of

1 selectmen.

2 There was some mention also of the possibility
3 of the town moderator. But as I recall, the emphasis
4 here was to try to again have a more representative group
5 appointed as feoffees to be more representative of the
6 community, in total.

7 Also, during those discussions, while there
8 were some who advocated the removal of the feoffees,
9 there were others who advocatred that members of the
10 feoffees be maintained by a governance board in a
11 minority position; particularly because of the historical
12 value that they had and relative to the trust.

13 Q Okay. Let me show you a document that's been marked as
14 Contested Exhibit Fifty Eight? And these are school
15 committee minutes dated January 17, 2002?

16 And I have a fairly simple question about ----

17 A Yes. The January 17, 2002 school committee minutes.

18 Q And my question is, is it correct, sir, that as early as
19 that date the school committee was convening to determine
20 what position it wished to take on issues regarding
21 governance of its trust?

22 A That is correct.

23 MR. PERRY: I'd like to offer it in evidence,
24 Your Honor?

1 MR. SHEEHAN: Yes. My objection, Judge, and
2 let me do something that maybe will speed things along.

3 We have known, I've known and everyone has
4 known that this governance issue has existed for quite a
5 long period of time. And we're not suggesting that the
6 reformation of governance, that that issue arose as a
7 result of sale.

8 What we're saying is that we object, among
9 other things, we object of course to the life feoffees
10 being removed as part of the re-governance.

11 We also object to finance committee members
12 appointing any designees. And that was the purpose that
13 I was trying to introduce evidence regarding the finance
14 committee's conduct in the last year or two.

15 But the notion that governance has been an
16 issue and discussed, there is no question about it. And
17 maybe that will help speed things along.

18 In fact, there's going to be and I think it
19 might even be an uncontested exhibit. But we've got a
20 letter from Mr. Whiston who was then the chairman of the
21 feoffees going to the attorney who was heading up this
22 effort in 2002. And we might be able to save a whole lot
23 of time.

24 THE COURT: Well, it seems that this was raised

1 when you were examining the witness, and I think his
2 offer to save time wasn't quite enough.

3 But let's see. And what do you say, Attorney
4 Perry?

5 MR. PERRY: Your Honor, I think that we should
6 probably give you this evidence in as succinctive way as
7 possible. And let me try to narrow down the number of
8 minutes we need to get you, given the concession that's
9 been made.

10 THE COURT: Is Superintendent Korb, I assume
11 he's going to be back on the stand on Wednesday.

12 Is that a safe assumption?

13 MR. PERRY: It's a safe assumption, Your Honor,
14 except that there's a family emergency that Mr. Korb is
15 dealing with that could require him at any time to go to
16 Michigan, and there will nothing we could do about that.

17 So that's the only issue there, is somebody in
18 his family.

19 THE COURT: Well, ----

20 THE WITNESS: I will be available if certainly,
21 the -- my father's in hospice at this point in time. And
22 so -- but I would be available if necessary, Your Honor.

23 I have no problem being here. I've blocked out
24 the week.

1 THE COURT: Well, sir, family matters ----

2 THE WITNESS: Well, I did -- I spent the last
3 three days there. So it's been I came back. That's all.

4 THE COURT: Well, certainly from my perspective,
5 and I can't speak for Attorney Sheehan, I'm not going to
6 create a fuss if you need to be with family, sir.

7 THE WITNESS: Oh, yes, of course.

8 THE COURT: Right.

9 THE COURT: So we'll susp[end for now.

10 I do want to talk to counsel on some scheduling
11 matters. And you're not going to be happy with me, but
12 how do I deal with these exhibits? And I'm going to give
13 them back to you.

14 And I will say that in fairness to you all, you
15 didn't get the order that it was off the list.

16 MR. SHEEHAN: We did not.

17 THE COURT: And you didn't ----

18 MR. SHEEHAN: I'm glad to hear that. And we
19 couldn't find it.

20 MR. PERRY: But we were trying to cooperate on
21 the exhibits. We had different ideas as to how we should
22 do them and ----

23 THE COURT: I'm not pointing fingers. I just
24 want to talk about how we can get them put together.

1 And I look at Attorney Stein because unfortu-
2 nately, I know it's going to fall on her probably to put
3 these together and Attorney Perry, your colleague.

4 But so if everyone can step out except counsel,
5 please? I just want to talk to them about scheduling
6 matters and exhibits. Okay.

7 So we'll pick up on Wednesday morning.

8 Thank you.

9 MR. SHEEHAN: Thank you, Your Honor.

10 MR. PERRY: Thank you, Your Honor.

11 MS. SORIS: Thank you, Your Honor

12

13 (Whereupon, the trial in the above entitled matter was
14 suspended at 4:00 p.m.)

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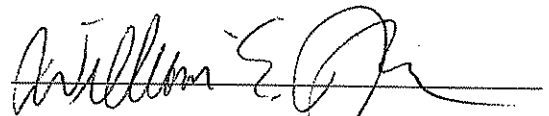
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C E R T I F I C A T E

I, William E. Beaupre, a P.C.R. and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, Pages 1 to 198, inclusive, is a true and accurate transcript of my System Tapes to the best of my knowledge, skill and ability.

In Witness Whereof, I have hereunto set my hand and Notarial Seal this 16th day of February, 2012.



William E. Beaupre

Notary Public

My Commission expires: April 5, 2013