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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

PROBATE & FAMILY COURT

No. ES09E0094QC

Before: Sahagian, J.

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

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 TWO)

Wednesday, December 14, 2011

Salem, Massachusetts

Commencing at 9:55 a.m.

WILLIAM E. BEAUPRE, P.C.R., 21 ANCHOR ROAD, LYNN, MA 01904

(781) 598-5286

1 APPEARANCES:

2

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9

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16

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22

23

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3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4	RICHARD KORB				
5	(By Mr. Sheehan)	--	--	36	--
6	(By Mr. Perry)	--	7	--	63
7	(By Ms. Soris)	--	--	--	--
8					
9	NORMAN SHEPPARD				
10	(By Mr. Sheehan)	66	--	--	--
11	(By Mr. Perry)	--	71	--	--
12	(By Ms. Soris)	--	--	--	--
13					
14	DONALD GREENOUGH				
15	(By Mr. Sheehan)	79	--	--	--
16	(By Mr. Perry)	--	--	--	--
17	(By Ms. Soris)	--	--	--	--
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3 THE CLERK: Mulholland?

4 THE COURT: Good morning, counsel.

5 MR. SHEEHAN: Good morning, Your Honor.

6 THE COURT: Could we have each of you identify
7 yourselves for the record? Oh, I'm sorry. We're missing
8 Attorney Soris, aren't we?

9 MR. SHEEHAN: We are.

10 THE COURT: All right. Never mind. Sorry.
11 When she gets here, we'll start.

12 MR. SHEEHAN: Very good.

13 THE COURT: My apologies.

14

15 (Whereupon, there was a recess, and then the trial was
16 resumed)

17

18 THE COURT: Counsel, may I have each of you
19 identify yourselves for the record, please, and indicate
20 who you represent?

21 MR. SHEEHAN: Good morning, Your Honor. Bill
22 Sheehan with Robin Stein for the plaintiffs, the Feoffees
23 of the Grammar School in the Town of Ipswich.

24 THE COURT: Thank you.

1 MS. SORIS: Johanna Soris, the Office of the
2 Attorney General.

3 THE COURT: Tahnk you.

4 MR. PERRY: And I'm Steve Perry with Anthony
5 Imbriglio for the defendants, the Ipswich School
6 Committee and Richard Korb.

7 THE COURT: All right. Counsel, I want to
8 thank you and your associates for the hard work in
9 preparing the exhibit books, as well as the revised
10 exhibit list. Thank you very much.

11 MR. SHEEHAN: You're welcome, Judge.

12 THE COURT: Any preliminary matters before we
13 get the superintendent?

14 MR. SHEEHAN: None from the plaintiff, Judge.

15 MR. PERRY: No, Your Honor. Thank you.

16 MR. SORIS: And I don't have anything.

17 THE COURT: All right. Superintendent Korb?

18 THE WITNESS: Yes.

19 THE COURT: Good morning, sir. And Not that
20 it's necessary, but I'll just remind you you're still
21 under oath.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: And you thought that putting
24 together the budget was difficult.

1 RICHARD KORB, Previously Sworn, Recalled

2

3 CROSS EXAMINATION, Resumed

4

5 Q (By Mr. Perry) Good morning, Mr. Korb.

6 A Good morning, Mr. Perry.

7 Q We have a new set of exhibit books that we will be able
8 to refer to this morning. And I'm going to ask that you
9 start by pulling out the one that has contested exhibits
10 from the feoffees in them, and that would be this. Mr.
11 Korb.

12 And if you could direct your attention, please,
13 to Exhibit Q in that set of contested exhibits?

14 THE COURT: May I have that?

15 MR. PERRY: Just one second while we get that
16 in front of her, as well.

17 THE COURT: Did you say Q?

18 MR. PERRY: Q, please, yes.

19 THE COURT: Thank you.

20 MR. PERRY: All set? Your Honor, you have it
21 in front of you?

22 THE COURT: I do. Thank you.

23 Q Mr. Korb, were you present at a meeting of the school
24 committee on September 6, 2007?

1 A I was.

2 Q And is it fair to say there was an open session of the
3 school committee on that date?

4 A That is correct.

5 Q Okay. And Mr. Foley, who is one of the feoffees, and Mr.
6 Sheehan came to the school committee and gave an update
7 on the litigation that was going on tenants?

8 Is that right?

9 A That's correct, yes.

10 Q Could you review Exhibit Q, please, and tell me whether
11 those meeting minutes, to the best of your knowledge,
12 accurately reflect the statements that were made by Mr.
13 Sheehan and Mr. Foley at that meeting?

14 A To the best of my ability, they do.

15 MR. PERRY: Your Honor, I'd like to offer
16 Exhibit Q in evidence.

17 MR. SHEEHAN: No objection, Judge.

18 THE COURT: Should I ask why it's in the
19 contested exhibit book then?

20 MR. SHEEHAN: Because Attorney Perry objected
21 to it when I proposed to introduce it into evidence.

22 MR. PERRY: There you go, Your Honor.

23 THE COURT: That's one way to get it in.

24 Counsel, I believe that's One Sixty.

1 Is that correct?

2 MR. SHEEHAN: It is, Judge.

3 THE COURT: Okay, thank you.

4 MR. PERRY: Your Honor, I think there will be
5 quite a number of contested exhibits that may come in
6 without contest, based on different rulings and how these
7 are resolved.

8
9 (Exhibit Number One Sixty marked; 9/6/07 School Committee
10 Meeting Minutes, Formerly Exhibit Q)

11

12 Q If we may turn to the second page, please, Mr. Korb?

13 If you would look at the paragraph that begins
14 with the word litigation in the middle of the page?

15 A Yes, I see that.

16 Q And could you read the sentence beginning with the word
17 while; the paragraph beginning with the word while?

18 A While most non-money issues have been resolved, the
19 biggest issue is the amount that the tenants are willing
20 to pay.

21 The feoffees have an obligation to the school
22 children of the Town of Ipswich to get a fair rate of
23 return, and the feoffees have determined that the
24 assessed value of the property is the fairest way to

1 determine the value of the lots.

2 Q Thank you, sir. Do you recall how the assessed value of
3 the property compared with the sales price either in 2008
4 or 2010?

5 A I don't recall that.

6 Q Let me see if I can refresh your recollection on that
7 point. If you could pull that out, and perhaps I can
8 share with you Exhibit One Sixteen?

9 And at pages 13 through 17 of that exhibit
10 there's a table of the assess-ments on the individual
11 lots that make up Little Neck, distinguished from those
12 on which no cottages are located.

13 Do you see that list?

14 A Yes.

15 Q And could you read for us, please, what the total amount
16 is for the land value only of those lots on page 16 and
17 17?

18 A The total land value is designated as thirty eight
19 million, seven hundred and sixty three thousand.

20 Q Thank you. Do you have the exhibit book in front of you
21 now?

22 A I do, Exhibits A through LL.

23 Q We're done with that one. We'll use mostly these two.

24 A Okay.

1 MR. PERRY: Your Honor, it's the contested
2 exhibits books that have exhibits starting double MM
3 forward. We'll be starting just with the book that has
4 MM through quadruple K.

5 Your Honor, it's in the white box.

6 THE COURT: Thank you. It's at the bottom of
7 the white box.

8 MR. PERRY: I did that deliberately to be sure
9 to put it on the bottom, knowing you'd need it first.

10 Q Now, when we broke on Monday, we were talking a bit about
11 the counter-claim and the request for a reform of
12 governance?

13 A That's correct.

14 Q And I'd like you to turn to the Exhibit TTT in that book,
15 please?

16 A T as in Thomas?

17 Q Yes, please?

18 A I have that as January 17, 2002.

19 Q And at the time of the meeting that's reflected in the
20 minutes that have been marked as TTT that is January 17,
21 2002, was there in place, to your knowledge, a town sub-
22 committee or committee concerning the feoffees?

23 A Yes.

24 Q What was the name of that committee, if you recall?

1 A I believe it was the Feoffee Sub-committee or the Working
2 Group, the Feoffees Working Group of the School or the
3 town.

4 Q Do you recall the individuals who were involved in that
5 committee, some of them?

6 A I believe originally it was -- from the school committee
7 or from the town or ----

8 Q Generally, both?

9 A The names that come to mind was Mr. Bonsignore and Mr.
10 Schwartz. I believe from the school committee it was Mr.
11 Hopping, Mr. Wetherall from the community.

12 There were -- I know there were others, but I
13 believe that was -- those are the ones that come to mind
14 at this time.

15 Q Okay. So just to let us know who those people are.

16 Mr. Bonsignore, what was his background?

17 A I believe he was an attorney.

18 Q And the Mr. Schwartz that you referred to, is that the
19 Attorney Harvey Schwartz?

20 A Harvey Schwartz, correct.

21 Q Robert Wetherall, do you know who he was?

22 A A citizen with longtime interests in the issues.

23 Q And when you say a longtime interest in the issues, was
24 it fair to say that Mr. Wetherall was a longtime critic

1 of the feoffees and somewhat pressing for more from the
2 feoffees?

3 A Yes.

4 Q And then you said that there was a member of the school
5 committee on this committee, as well?

6 A I recall Mr. Hopping as a member originally.

7 Q And Mr. Hopping, do you know what his background is?

8 A Mr. Hopping is a resident of Ipswich. He's an educator,
9 and currently the principal of Ruppert Nock Middle School
10 in Newburyport.

11 Q Did the school committee take a vote at its January 17,
12 2002 meeting concerning the trust?

13 A I would have to check the notes, Mr. Perry.

14 Q If you could just look at the second page?

15 A Yes. There was a vote taken, as referenced in the
16 minutes.

17 MR. PERRY: Your Honor, I'd like to offer
18 Exhibit TTT for the purpose of showing the vote taken on
19 January 17, 2002 to go forward with the task of re-
20 writing the trust and did so inform the committee.

21 THE COURT: Well, who did they think was going
22 to re-write the trust? The school committee, the sub-
23 committee?

24 MR. PERRY: Your Honor, as you'll see, the

1 school committee took the leading four on that, hiring
2 Mr. Allen to do it, and then sought input from both
3 the town committee and various other bodies.

4 I don't want to testify, but that's ----

5 THE COURT: No, no, no. Thank you.

6 Attorney Sheehan?

7 MR. SHEEHAN: Well, I object, Judge, if it's
8 going in for a limited purpose.

9 I got confused by what Mr. Perry said when he
10 offered the document and then purported to limit his own
11 document going into evidence. So maybe we could have
12 that clarified?

13 MR. PERRY: Well, Your Honor, I'm offering the
14 document into evidence and the reason it's admissible it
15 leads to just show the vote.

16 THE COURT: But you're not looking to -- you're
17 looking to have the entire document entered.

18 Is that correct?

19 MR. PERRY: Yes. If the entire document can be
20 entered, yes.

21 THE COURT: Attorney Sheehan?

22 MR. SHEEHAN: I have no objection to it, Judge,
23 as long as you note, please, that I believe we need some
24 clarification on the notation on the column on the right.

1 I don't know if that's original or if that was

2 -----

3 THE COURT: Where it says type in vote to move

4 -----

5 MR. SHEEHAN: Yes.

6 THE COURT: ----- for the feoffees trust?

7 MR. SHEEHAN: Right. I don't know who put that
8 in.

9 MR. PERRY: Your Honor, perhaps Mr. Korb can
10 help us. My belief is that the administrative staff of
11 the school committee puts those in to organize it.

12 Q Do you know?

13 A I honestly could not, you know, testify as to who did
14 that.

15 MR. PERRY: Your Honor, I can tell you what's
16 done at the school. This is how we get it from the
17 school and however he put it.put it.

18 A It would either have been the secretary of the school
19 committee that would have put that in. That would be my
20 guess.

21 MR. SHEEHAN: I object to any -- I object to
22 any notations in the columns, Judge.

23 Other than that, I have no objection to this
24 document.

1 MR. PERRY: And I have no objection to exclu-
2 ding whatever is in the columns on these various minutes.

3 THE COURT: All right. This will be part of
4 the record. But to make it clear, gentlemen, I'm simply
5 going to X through that notation on the side.

6 And with that redaction, the rest will go in as
7 One Sixty One.

8
9 (Exhibit Number One Sixty One marked; 1/17/02 School
10 Committee Meeting Minutes, Formerly Exhibit TTT)

11

12 Q Mr. Korb, at that meeting there was a vote to go forward
13 with re-writing the trust and to begin the process by
14 asking Mr. Hopping to inform the feoffees sub-committee
15 of that action?

16 A Yes.

17 Q If we go forward, please, to the next exhibit in your
18 contested exhibit book, UUU?

19 A I have that's February 7, 2002.

20 Q Were you at that meeting?

21 A I was.

22 Q And do you recall a discussion at that meeting concerning
23 the proposed re-organization of the feoffees trust and
24 obtaining counsel for the school committee?

1 A Just let me read through this quickly, if I may?

2 Yes, that's referenced in letter C ----

3 MR. PERRY: I'd offer this in evidence, Your
4 Honor.

5 A ---- on page two.

6 MR. SHEEHAN: No objection, Judge, with the
7 same caveat on the column.

8 THE COURT: Attorney Perry, any problem with
9 that?

10 MR. PERRY: No, Your Honor. And on all of
11 these I would stipulate that we can cross out the notes
12 on the column.

13 THE COURT: All right. So there appear to be
14 two notes in the far right column on page two.

15 Is that correct?

16 MR. PERRY: Yes.

17 THE COURT: And those will be X'd out, and the
18 document will otherwise come in as Exhibit Number One
19 Sixty Two.

20

21 (Exhibit Number One Sixty Two marked; 2/7/01 School
22 Committee Meeting Minutes, Formerly Exhibit UUU)

23

24 Q Mr. Korb, reading from Exhibit Number One Sixty Two which

1 was just admitted, the vote that was taken and unani-
2 mously passed, was to request the superintendent, that's
3 you, to investigate finding counsel for advice on whether
4 or not the school committee should ask for a re-writing
5 of the feoffees trust.

6 And if the answer is yes, what to require with
7 the antitrust agreement to protect the school children of
8 Ipswich?

9 A That is correct.

10 Q Did you then have a role in selecting counsel?

11 A I did.

12 Q Who was it that you selected for that role?

13 A In consultation with the school committee, it was Mr.
14 Richard Allen.

15 Q And what was it about Mr. Richard Allen that led you to
16 select him for this role?

17 A His extensive background and qualifications in charitable
18 trusts.

19 Q Now, would you turn, please, to the next exhibit in the
20 contested exhibit book, which is Exhibit VVV?

21 A I have that, March 21, 2002.

22 Q Were you present at that meeting?

23 A I was.

24 Q Was there a further discussion at that time? I think you

1 want to turn to the second page under D.

2 A I ----

3 Q Well, first of all, did you have individuals at the
4 meeting at that -- one or more individuals at the meeting
5 at that time who had served on the Town committee?

6 A Yes.

7 Q Mr. Bonsignore was there?

8 A Yes, he was.

9 Q And of course, Mr. Hopping who was on the committee, was
10 there, as well?

11 A Right.

12 Q Did you receive a report at that meeting on the status of
13 the re-writing of the trust issues?

14 A That was given by Mr. Bonsignore. And Mrs. Arsenault
15 thanked the committee and expressed her appreciation for
16 the work they had been doing.

17 Q Okay. Did Mr. Hopping provide any information at that
18 meeting?

19 A He did.

20 Q And what was that?

21 A He indicated that the feoffees had been very supportive
22 and receptive to the re-organization of the trust.

23 MR. PERRY: I'd like to offer Exhibit VVV in
24 evidence as our next exhibit?

1 MR. SHEEHAN: No objection, Judge, with that
2 same caveat on the column, if there is a column. I think
3 we're clear on this one.

4 THE COURT: I don't think there's any.

5 All right. This will become Exhibit Number One
6 Sixty Three.

7

8 (Exhibit Number One Sixty Three marked; 3/21/02 School
9 Committee Meeting Minutes, Formerly Exhibit VVV)

10

11 Q So at that time the understanding was that the feoffees
12 were -- on your part, was that the feoffees were coope-
13 rative with this idea of re-writing the trust?

14 A That was my understanding.

15 Q I'd like you to turn to contested Exhibit YYY, please?

16 I'm going to jump ahead a little bit.

17 A I have that, May 8, 2003.

18 Q Were you at the meeting on May 8, 2003?

19 A I was.

20 Q And would you turn please to the second page, Item F,
21 entitled, school committee discussion on direction of
22 feoffees trust?

23 A I have that.

24 Q Would you take a minute, please, to review it?

1 A I've read that.

2 Q Was there an update at that time on issues pertaining to
3 the re-write of the feoffees trust?

4 A There was.

5 Q And discussion of how to do that, what composition of the
6 feoffees might look like?

7 A Correct. That, as well as, yes, the make-up of the
8 feoffees.

9 MR. PERRY: Your Honor, I'd like to offer
10 Exhibit YYY in evidence at this time?

11 MR. SHEEHAN: No objection, Your Honor.

12 THE COURT: Thank you. Exhibit Number One
13 Sixty Four.

14

15 (Exhibit Number One Sixty Four marked; 5/8/03 School
16 Committee Meeting Minutes, Formerly Exhibit YYY)

17

18 Q If you turn to the third page, as well, Mr. Korb, of this
19 exhibit.

20 Was there a discussion of -- was Mr. Wetherall
21 at this meeting?

22 A He was.

23 Q And was Mr. Wetherall, as we discussed, an individual who
24 had been pushing for an increase in rents and an increase

1 in distribution to the school?

2 A He was.

3 Q And it states then at this third page the fair rental
4 income issue was addressed. Mr. Wetherall, member of the
5 town committee, stated that the total rent should be a
6 reasonable percentage of the assessment or appraised
7 value.

8 Is that right?

9 A That is correct.

10 Q And the school committee agreed that this issue would be
11 decided at a future date?

12 A Yes.

13 Q I'd like you to turn, please, to the next exhibit which
14 is in your book, which I believe is ZZZ?

15 A I have that dated June 19, 2003.

16 Q Were you at that meeting?

17 A I was.

18 Q Turn to page four. Do you recall a discussion concerning
19 a sense that the financial reporting of the feoffees was

20 ----

21 A I'm sorry, could you repeat that question?

22 Q Do you recall a discussion about the lack of clarity of
23 the feoffees financial report?

24 A If I could take just a minute and read that, please?

1 Yes, I've concluded that.

2 Q Does this refresh your recollection that ----

3 A It does.

4 Q ---- there was a discussion at that meeting about the
5 perceived lack of clarity and financial reporting from
6 the feoffees?

7 A That's what the minutes indicate, yes.

8 Q And was a vote taken by the school committee to address
9 that issue?

10 A Yes, it was.

11 Q What was that vote?

12 A It was moved by Mr. Traverso and seconded by Mrs. Ross to
13 direct the trust to provide the town and schools with
14 more transparent financial statements readily understood
15 by the lay person.

16 And it was voted it appears here as four in
17 favor, two opposed.

18 Q Five in favor and two opposed?

19 A I'm sorry, five to two.

20 MR. PERRY: And Your Honor, I'd offer this
21 document in evidence.

22 MR. SHEEHAN: Objection on the grounds of
23 relevancy, Judge.

24 THE COURT: Counsel?

1 MR. PERRY: Well, Your Honor, this document is
2 relevant to show the concerns the school committee was
3 expressing in 2003 about the transparency of the finan-
4 cial statements and the need to get clearer statements
5 about -- they were receiving of the finances of the
6 trust.

7 And we expect the evidence to show that there
8 was an improvement in the financial reporting.

9 MR. SHEEHAN: Then I don't see any relevance
10 at all.

11 THE COURT: I mean, unless you're -- unless in
12 your counter-claims you're trying to lay a foundation
13 that as far back as a certain date.

14 But I'm not sure if that's ----

15 MR. PERRY: Well, the counter-claim does com-
16 plain about the lack of transparency and the -- with
17 respect to the financial statements.

18 And I think the evidence will show that while
19 at around the same time the feoffees caught up -- you're
20 going to hear evidence that they started filing their
21 form 990s at the Attorney General's Office. And while
22 those go back to 2001, some of those were after the fact.
23 They weren't prepared in 2001. They were prepared after-
24 wards.

1 But even there, there's going to be evidence
2 about a lack of timeliness from the school committee's
3 standpoint. And this shows the concern with getting
4 financial information in a clear and timely fashion.

5 THE COURT: Nothing was done as a result of
6 it until this action was filed; right?

7 MR. PERRY: Well, as you'll hear, this has been
8 an ongoing process where at times the feoffees were co-
9 operative and at times they jumped off.

10 And then there were intervening events such as
11 the wastewater project and the tenants litigation that I
12 think slowed things down.

13 THE COURT: You indicated in your proffer that
14 there is going to be future evidence to tie this in;
15 correct?

16 MR. PERRY: Future evidence will show that the
17 feoffees did begin to file 990s. I'm not sure of the
18 exact date as to how it relates to this document, and
19 that there's been concerns of timeliness of those.

20 THE COURT: Well, I'll take it in light of the
21 counter-claim. I'm not sure it's going to be the most
22 relevant exhibit.

23 MR. PERRY: I'm not opposed to ----

24 THE COURT: Exhibit One Sixty Five.

1 MR. PERRY: I understand, Your Honor. Thank
2 you.

3
4 (Exhibit Number One Sixty Five marked; 6/19/03 School
5 Committee Meeting Minutes, Formerly Exhibit ZZZ)

6
7 Q As a result of the efforts on the part of counsel, did
8 the school committee over the years review a series of
9 proposed drafts of the revised trust administration
10 order?

11 A They did.

12 Q And was the process that as each draft came in, they were
13 discussed by the school committee, and input was received
14 from various other bodies?

15 A Yes.

16 Q I'd like you to turn to the document that's been marked
17 as contested quadruple G. It's in the same book and it
18 looks like GG, but it's after that.

19 A Quadruple D?

20 Q G?

21 A G?

22 Q It would be the fifth from the end?

23 A Would that be a memorandum from Richard Allen dated
24 January 21, 2004?

1 Q It would be. Now, these memos from Richard Allen that
2 are in the form of Exhibit GGGG, would these be actual
3 language, more or less, of the -- these were the proposed
4 changes to the trust that they sought; correct?

5 A As indicated in the memo, correct.

6 Q And were these memoranda discussed by the board in open
7 session?

8 A Yes.

9 MR. PERRY: I would like to offer Exhibit
10 GGGGG, Your Honor, to show the form of the proposed
11 governance of changes at that time in the process.

12 MR. SHEEHAN: Objection. Lack of relevance.

13 THE COURT: I'm going to sustain the objection.

14 Q Well, as of January of 2004, do you know what was being
15 contemplated by you in connection with what the compo-
16 sition would be of a revised trust?

17 MR. SHEEHAN: Objection. Lack of relevance.

18 THE COURT: Sustained.

19 MR. PERRY: Your Honor, the intent of this is
20 to show that -- what we intend to show is that the feof-
21 fees were involved in this process and they had input
22 that was taken into account as the document evolved.

23 In fact, the feoffees were in agreement with
24 the need to revise the trust and stated that they would

1 go along with that.

2 THE COURT: Well, counsel, at one time the
3 school committee was saying they were in agreement with
4 the proposal, and that's changed; right?

5 MR. PERRY: Yes. But you let that in.

6 THE COURT: Counsel, I'm going to sustain the
7 objection.

8 MR. PERRY: Fine. Thank you, Your Honor.

9 THE COURT: Just so we're clear, that came in
10 because of your counter-claim.

11 MR. PERRY: Right, Your Honor.

12 Q Now, Mr. Korb, on the issue of revising the trust, was
13 there cooperation with the feoffees for some period of
14 time?

15 A Yes.

16 Q Did that change?

17 MR. SHEEHAN: Objection. Lack of relevance.

18 THE COURT: Counsel?

19 MR. PERRY: Your Honor, I think it's relevant
20 to show that it's the same point, that the feoffees had
21 agreed with a need for change.

22 And that that changed, and that's why we're in
23 front of you with a contested claim for governance
24 reform.

1 THE COURT: I don't think we need it for that
2 purpose.

3 I sustain the objection.

4 Q Now, Mr. Korb, do you recall receiving a lawsuit from the
5 feoffees filed by their counsel in which you were named
6 as a defendant?

7 A Yes.

8 Q Had you been expecting that?

9 A I expected that there was a lawsuit coming. I wasn't
10 sure to what degree I would be identified in it.

11 Q Do you recall the date that the lawsuit was filed by the
12 feoffees that initiated this case?

13 A I don't recall the specific date.

14 Q Could you turn, please, to Exhibit FFFF in your book, and
15 these are minutes of October 15, 2009?

16 A Quadruple F as in Frank?

17 Q It would just be one earlier than the one you were at?

18 A Okay. If I'm on the right page, that would be the open
19 session minutes of October 15, 2009.

20 Q Right. If you'd start with Section D, does this refresh
21 your recollection that Mr. Sheehan initiated the lawsuit
22 on or about October 6, 2009?

23 A I just want to be sure I'm on the right document. This
24 is a school committee presentations.

1 Is that ----

2 Q Yes?

3 A ---- what you're referencing?

4 Q Yes?

5 A Okay. It will be Section D?

6 Q That's right?

7 A Okay. I'm just getting to that.

8 Yes, this references a newly filed lawsuit
9 complaint for deviation by the feoffees.

10 Q And this was at the town meeting in October of 2009?

11 A Yes.

12 Q Were you present?

13 A I was.

14 Q And do you recall that the lawsuit that had been filed at
15 that time was seeking permission to sell Little Neck, to
16 obtain a mortgage, and to borrow funds?

17 A Yes.

18 Q And do you recall, Mr. Korb, that this lawsuit filed in
19 October of 2009 was actually some two months before the
20 settlement agreement that's the subject of this case,
21 which is dated December of 2009 that's Exhibit One
22 Hundred?

23 A Yes.

24 Q And there was no agreement in place; no written agreement

1 between the tenants and the feoffees, it's your under-
2 standing, as of October of 2009?

3 A Not to my understanding.

4 Q And did Mr. Loeb state at that town meeting what the
5 position at that time was of the school committee with
6 respect to the relief sought in the complaint?

7 A I would have to reference that. Is that the -- at the
8 bottom of that page? I would just have to read it.

9 Q It's ----

10 MR. SHEEHAN: I think the answer is that the
11 witness doesn't know, Judge, and I'm going to move to
12 strike any answer other than that I don't know.

13 Q Mr. Korb, could you review the last paragraph of ----

14 THE COURT: Sustained.

15 Q Could you review the last paragraph of this exhibit and
16 see if that refreshes -- the last paragraph of the first
17 page of exhibit?

18 A Of page two or page three?

19 Q Page one -- page two, right. It's entitled page two.

20 A Yes. That's what I was referencing at the bottom of the
21 page.

22 Q If you could please review the last paragraph of that
23 page?

24 A Okay, I've read that.

1 Q Did Mr. Loeb at this meeting make a statement that he had
2 been giving consensus by the board as opposed to all
3 relief mentioned in the complaint?

4 A Yes.

5 Q Now, earlier in your examination you were asked about a
6 communication that came from the finance committee in
7 November of 2009 and a vote that was taken to extend any
8 support of the sale in November of 2009.

9 Do you recall that?

10 A I do recall that, yes.

11 Q So that wasn't the first time the school committee had
12 publicly stated that it was at that time opposed to the
13 sale, was it?

14 A It was not the first time.

15 Q In fact, it happened at a town meeting in October of
16 2009?

17 A Yes.

18 Q Okay. And the settlement agreement that was entered into
19 in this case was two months after the school committee
20 had publicly announced that it was not in favor of the
21 sale?

22 A That is correct.

23 Q You've indicated that -- and we reviewed earlier your
24 testimony the evaluation letter from Land Vest dated

1 November of 2008?

2 A Correct.

3 Q You recall that's the one that referred to an aggregate
4 lot value of twenty point eight million?

5 A Yes.

6 Q Are you aware of any appraisal having been performed that
7 was shared with the school committee between that date
8 and October 15, 2009?

9 A I do not recall any.

10 Q Or between that date and the date that the feoffees
11 entered into the settlement agreement with the tenants in
12 December of 2009?

13 A I do not recall anything.

14 Q If you could pull out the next notebook, the one that has
15 higher quadruple letters? I think it's right there on
16 top.

17 A Quadruple L through ----

18 Q Yes?

19 A ---- quadruple E?

20 Q Actually, I may have mis-led you. Let me -- let's go
21 back to the prior. I apologize.

22 Could you take a look at 000, please?

23 A I believe I have that. That would be the Thursday,
24 January 7, 2010 Ipswich School Committee meeting.

1 Q Were you at that meeting?

2 A I was. Oh, I'm -- excuse me. Let me refresh the minutes
3 here.

4 I was not at that meeting. I was absent due to
5 illness.

6 Q All right. Did you review the minutes of that meeting
7 after it occurred?

8 A I don't recall if I did.

9 Q Were you aware of the meeting taking place?

10 A I was.

11 Q What was the purpose of the meeting?

12 A It was an open session meeting held in the Performing
13 Arts Center. I'm going to have to reference here because
14 again I was not present.

15 Q Well, I don't want you to read from it, Mr. Korb.

16 But you knew that there was going to be a
17 meeting that you planned to attend if you weren't sick;
18 correct?

19 A Correct.

20 Q And in which a presentation was to be made about the
21 settlement?

22 A Correct. The Feoffees of the Grammar School, that's
23 right.

24 MR. PERRY: And Your Honor, because we are --

1 I think counsel are in agreement about authenticity.
2 Although Mr. Korb wasn't at the meeting, I'd still like
3 to offer this at this time as our next exhibit.

4 MR. SHEEHAN: I have no objection to this,
5 Judge.

6 THE COURT: Okay. One Sixty Six.

7
8 (Exhibit Number One Sixty Six marked; 1/7/10 School
9 Committee Meeting Minutes, Formerly Exhibit 000)

10

11 Q If you could turn, please, to the second page of the
12 exhibit?

13 A I have that.

14 Q And just look at the last few sentences on that page?

15 And I'll read that to you. It states, Mr.
16 Sheehan exhibited pro formas assumptions regarding finan-
17 cial arrangements, interest rates, legal and engineering
18 fees, contingency fees, and monies to lessees resulting
19 in a net of twenty one million, five hundred fifty
20 thousand dollars.

21 He remarked that there would be no headaches of
22 real estate ownership for the feoffees, but the condo-
23 minium would require an investment manager. He estimated
24 that the schools would receive in excess of a million

1 dollars each year without risk.

2 A That is what's reflected in the minutes, correct.

3 Q Are you aware of any investments which would allow the
4 recovery of five percent per year without ----

5 MR. SHEEHAN: Objection.

6 THE COURT: Sustained.

7 MR. PERRY: I have nothing further, Your
8 Honor.

9 THE COURT: Redirect? I'm sorry. I apologize.
10 Attorney Soris, anything of this witness?

11 MS. SORIS: No, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. SHEEHAN: My very expensive podium here,
14 Judge.

15

16 REDIRECT EXAMINATION

17

18 Q (By Mr. Sheehan) Superintendent Korb, you're not saying
19 now that you were mis-led into supporting the sale at
20 twenty six and a half million dollars, are you?

21 A No.

22 Q Would you take a look at Exhibit JJ?

23 A Double J?

24 Q Double J?

1 A And if I have the correct one, it says Feoffees Sub-
2 committee, May 21, ----

3 Q That is correct.

4 A ---- 2008?

5 Q Do you recognize those notes as the notes of Dr. O'Flynn
6 of the Feoffees Sub-committee?

7 A I'm looking for any reference. I was not a member of the
8 Feoffese Sub-committee, so I'm looking for any reference
9 to Dr. O'Flynn's notes.

10 Q Well, I will tell you that there's no notation on these
11 notes that Dr. O'Flynn authored them.

12 Have you seen these before?

13 MR. PERRY: Your Honor, may I be heard on
14 objection?

15 And in the motion in limine, you already have
16 ruled out any individual opinions of individual school
17 committee members.

18 And this document, according to what Mr.
19 Sheehan is suggesting, would be notes of an individual
20 member of the school committee, Dr. O'Flynn, as opposed
21 to official minutes of the committee.

22 So I think it's actually -- I don't think it's
23 proper to be making reference to it and in front of the
24 witness under your motion in limine.

1 THE COURT: Well, it's not being offered yet.

2 MR. PERRY: No. But I think the motion in
3 limine ----

4 THE COURT: I don't know where he's going with
5 this at this point in time. Why don't you withhold your
6 objection, ----

7 MR. PERRY: All right. Thank you.

8 THE COURT: ---- and if it's appropriate, you
9 can make a motion to strike, okay?

10 MR. PERRY: Okay. Thank you.

11 THE COURT: Go ahead, counsel?

12 Q Superintendent Korb, do you recognize these notes as the
13 notes of Dr. O'Flynn of the Feoffees Sub-committee?

14 A I do not. I see nowhere where it indicates they're Dr.
15 O'Flynn's.

16 Q All right. You mentioned when you were cross examined by
17 Mr. Perry that the only value information you had in
18 front of you and the committee as to value is that of Mr.
19 Monahan in his November of 2008 report.

20 Do you recall testifying to that?

21 A Yes, Land Vest.

22 Q Do you recall now that you also had in front of you --
23 you and the school committee as early as May 21 of 2008,
24 Dr. O'Flynn's working notes as to value?

1 A I do not -- again, I do not know. I don't recognize
2 these.

3 Q We'll have to get that from Dr. O'Flynn?

4 A That's correct.

5 Q Fair enough. Fair to say that the school committee was
6 considering the sale of Little Neck as early as May of
7 2008?

8 A Yes.

9 Q In fact, the school committee had considered sale off and
10 on from the time that you were the superintendent of
11 schools in 1998.

12 Isn't that so?

13 A That would be fair.

14 Q I'm sorry?

15 A Yes.

16 Q So it didn't come as any surprise to you, Superintendent
17 Korb, did it, when in October of 2008 the feoffees came
18 to you and the school committee with a suggestion of sale
19 in order to settle the superior court litigation?

20 A Correct.

21 Q Okay. Now, you were asked questions about the school
22 committee's hiring an appraiser.

23 Do you recall that?

24 A Yes.

1 Q In 2008, the school committee had budget problems, didn't
2 it?

3 A Yes. Long before that, as well.

4 Q The school committee had budget problems from the time
5 pretty much that you arrived in 1998?

6 A That is correct.

7 Q And they were not unique to Ipswich, were they?

8 A Not in the least, no.

9 Q Proposition 2 1/2 was in place and was restricting a town
10 and city's ability to raise taxes?

11 A Yes.

12 Q And at or about 1998 when you decided to come from
13 Michigan to Ipswich, there were pressures on the budget
14 with respect to payroll?

15 A Pressures on all aspects of the budget.

16 Q Healthcare costs were going through the roof starting
17 around 1998-2000; fair to say?

18 A Fair to say, yes.

19 Q And the school budget is made up of what, eighty five
20 percent or so of labor and labor burdened expenses?

21 A The school committee budget is about eighty five percent
22 personnel intensive.

23 Q And in addition, that was a time when special education
24 costs started spiraling?

- 1 A That's correct.
- 2 Q And all of these things were putting pressure on the
3 school committee and you, financial pressures?
- 4 A Correct.
- 5 Q Now, up until the year 2000 or so, would you agree with
6 me that the feoffees distributions were used for
7 enhancement?
- 8 A That was the original intent.
- 9 Q And by enhancement, we're talking about things over and
10 above the nuts and bolts of the school committee budget?
- 11 A That's correct.
- 12 Q And that's what was going on for many, many years?
- 13 A That's correct.
- 14 Q And then with these pressures, 2000, 2001, 2002, the
15 school committee was looking to the feoffees for the
16 first time for the nuts and bolts of their budget?
- 17 A To assist in supporting the general budget.
- 18 Q Now, the school committee was contemplating hiring an
19 appraiser in 2008?
- 20 A Yes, there were discussions about that.
- 21 Q And you did hire one in 2010?
- 22 A Correct.
- 23 Q Did you have any more money in 2010 than you did in 2008
24 to hire an appraiser?

1 A We were still under tight financial constraints.

2 Q In addition to these budgetary constraints that you were
3 facing, there was a discussion in or about 2005 that you
4 had with Donald Whiston about an electrical system that
5 had to be repaired substantially or maybe even replaced
6 out at Little Neck?

7 A I do recall that discussion.

8 Q And there was discussion between you and Mr. Whiston
9 about whether or not the feoffees should borrow money to
10 install that system, or whether you wanted them to pay
11 that out of ordinary income?

12 A I don't recall the specifics. But in generalities, yes,
13 that was the discussion regarding that.

14 Q And you told Mr. Whiston that you wanted not to receive
15 the money for a particular year, but instead have that
16 money be used for the electrical system rather than have
17 the feoffees borrow?

18 A I don't recall if I specifically directed that or if that
19 was the desire of the school committee.

20 Q Okay. But either you or the school committee said to Mr.
21 Whiston when he asked you and the school committee about
22 whether you wanted to receive cash or whether you wanted
23 the feoffees to use that cash to repair the electrical
24 system, the option that was selected by you or the school

1 committee was repair the electrical system?

2 A I recall repair the electrical system.

3 Q By the way, if a family lives in Ipswich from April 1 of
4 a given year to December 31 of a given year, are they
5 eligible to attend the Ipswich public schools?

6 A Children are eligible to attend if they are a resident of
7 Ipswich, correct, regardless of what time of year it is.

8 Q Now, you were asked about when certain appraisals were
9 received. You did not have them in hand in 2009.

10 Is that correct?

11 A Yes.

12 Q But you did receive appraisals beginning in 2010?

13 A Correct, as I recall.

14 Q And you are aware that after receiving those appraisals,
15 you and Attorney Allen and the feoffees continued to work
16 towards a sale; correct?

17 MR. PERRY: Objection.

18 It's a backhanded way of asking him about his
19 opinion.

20 MR. SHEEHAN: I didn't ask for opinion, at all.

21 THE COURT: I don't think so.

22 Overruled.

23 A Would you repeat the question?

24 Q Sure. After you began receiving appraisals, you and

1 Attorney Allen and the feoffees through their counsel
2 continued to work towards trying to accomplish a sale?

3 A In conjunction with the school committee.

4 Q Okay. And as a result of seeing that information, the
5 determination was made that twenty nine million, one
6 hundred fifty thousand dollars was a fair price?

7 MR. PERRY: The same objection, Your Honor.

8 A determination by whom?

9 THE COURT: Well, do I have exhibits in that's
10 uncontested ----

11 MR. SHEEHAN: You have ----

12 THE COURT: ---- in agreement with that number?

13 MR. PERRY: No, Your Honor. There's no
14 evidence in there -- there's nothing in evidence whatso-
15 ever that said that anybody supported the sale, that I
16 know of, after it was entered into in December of 2009.

17 MR. SHEEHAN: Well, that, we have. That's in
18 evidence.

19 THE COURT: That's what I'm asking?

20 MR. SHEEHAN: Right. And that, we have in
21 evidence, the November 18, 2010 vote of the school com-
22 mittee to -- that was on the issue of whether to support
23 the twenty nine million, one hundred fifty thousand
24 dollars, which failed three to four.

1 MR. PERRY: Failed.

2 MR. SHEEHAN: Failed, right. It did. No
3 question.

4 THE COURT: Sustained.

5 Q The effort to go forward as to trying to find a sales
6 price, that continued after you received the appraisals,
7 didn't it?

8 A To my recollection, it did.

9 Q Okay. And that was an ongoing process from 2008 until
10 ultimately November 18th of 2010?

11 A As I understand it, as I recall.

12 Q Now, you were asked just a few minutes ago about an e-
13 mail that you received from Mr. Fay, weren't you?

14 A Correct. That I was copied on.

15 Q Right.

16 MR. SHEEHAN: Hold on, Judge. We're going to
17 try to find that. It's made its way out of the book.

18 THE COURT: Was that one of the contested from
19 yesterday that you're referencing?

20 MR. SHEEHAN: Yes, it was.

21 MR. PERRY: You excluded it, Your Honor. But
22 Mr. Sheehan has put in a lot of evidence before the
23 exhibit was excluded about the receipt of the e-mail, and
24 that's all I asked about.

1 I think he's now going to re-offer it, and
2 you've already excluded it.

3 MR. SHEEHAN: Judge, the door is open. Mr.
4 Perry asked this witness about that e-mail. I'm now
5 permitted to offer into evidence the entire e-mail, with
6 all due respect.

7 THE COURT: Let me just take a look at it
8 again.

9 MR. SHEEHAN: It was letter D, Judge, marked
10 for identification.

11 MR. PERRY: And I have a response once you're
12 ready.

13 THE COURT: Are you referencing the e-mail from
14 Fay to Loeb?

15 MR. SHEEHAN: Fay to Loeb dated November 17,
16 2009.

17 THE COURT: 2009?

18 MR. SHEEHAN: Right.

19 THE COURT: I'm sorry. And could I have your
20 question again, or has there been a question?

21 MR. SHEEHAN: Yes. My question was ----

22 THE COURT: Can I have it again?

23 Q On or about November 17, 2009, you received a copy of an
24 e-mail from Mr. Fay to Mr. Loeb?

1 MR. PERRY: I don't have an objection to that
2 question, Your Honor. It's the issue of the e-mail
3 coming in, which we aren't at yet.

4 THE COURT: Well, we're not there yet, are we?

5 MR. PERRY: No.

6 THE COURT: Go ahead, please?

7 MR. SHEEHAN: Now, I don't know if you have a
8 copy of this anywhere in those books.

9 MR. PERRY: Probably not.

10 MR. SHEEHAN: I'm not sure that you do.

11 THE COURT: Give me one second.

12 I'm sorry. Go ahead.

13 MR. PERRY: Your Honor, may I just ----

14 THE COURT: Sure. Go ahead?

15 Q Now, let me show you that document. Is that a copy of an
16 e-mail that you received on November 17th from Mr. Fay?

17 A Yes, I was copied on this e-mail.

18 Q Now, Mr. Perry asked you just a few minutes ago if the
19 school committee voted to disapprove of the sale, I think
20 that was how he put it, after this e-mail.

21 Do you recall him asking you that question?

22 MR. PERRY: Objection.

23 I believe my question, Your Honor, was whether
24 they voted to rescind prior approval of the sale.

1 THE COURT: That's what I recall the question
2 to be, but I'm not certain.

3 Do you want it read back?

4 MR. SHEEHAN: Fair enough.

5 Q Do you recall being asked about a vote to rescind the
6 sale?

7 A I do recall that.

8 Q And you were -- you pointed out that that was the second
9 time that the school committee was not in favor of sale.

10 Do you recall that testimony?

11 A I recall that the school committee was opposed to the
12 sale. I don't recall if it's the second time or exactly
13 the time, but probably around there.

14 Q Actually, on October 9, 2009, what the school committee
15 had voted was it would not support the complaint for
16 deviation; correct?

17 A I don't remember. I don't know.

18 Q Well, let's go back to the October 9, 2010 ----

19 MR. SHEEHAN: Are those in evidence or are
20 those things -- they may not be. Are they not in?

21 They're not in. All right. I apologize, Judge. I
22 thought those were in and they're not in.

23 Q But the second vote that you referenced, that's the vote
24 of the school committee on November 19, 2009; correct?

1 A Yes.

2 Q It came on the heels of that e-mail of November 17, 2009?

3 A As referenced by the dates, I will agree.

4 Q Yes.

5 MR. SHEEHAN: I ask, Judge, that this e-mail
6 now be introduced into evidence as the next exhibit.

7 MR. PERRY: Your Honor, the purported relevancy
8 of this was to show that the board reversed some position
9 based on input from the finance committee set forth in
10 this e-mail.

11 And yet, the testimony now is that they
12 publicly announced at a town meeting a month earlier that
13 they were not at that time prepared to support the
14 request for deviation which included the sale.

15 So that's I think the evidence we've heard
16 removes any potential relevancy as to this.

17 MR. SHEEHAN: It's just the opposite, Judge.

18 THE COURT: Mr. Sheehan, I do agree with you.
19 But you know, you don't have a jury. I'm going to say it
20 again. I'm trying to let you all try your case, but this
21 isn't helping me on the ultimate issue.

22 It's -- I won't say any more. Re-living the
23 history doesn't help because I have to deal with the
24 facts that are coming in today for the trial.

1 What's the next number? One Sixty Seven.

2

3 (Exhibit Number One Sixty Seven marked; 11/19/09 E-Mail,
4 Formerly Exhibit D)

5

6 Q Now, may I see Exhibit Number One Sixty? Do you have
7 Exhibit One Sixty in front of you, Superintendent Korb?

8 THE COURT: I don't think he would because that
9 was offered today. And it was previously a contested
10 exhibit, Exhibit Q.

11 MR. SHEEHAN: I didn't know if he had -- thank
12 you, Judge.

13 THE COURT: I'm happy to give you mine if ----

14 MR. SHEEHAN: That would be great.

15 THE COURT: Sure.

16 MR. SHEEHAN: I appreciate it.

17 Q Now, you were asked questions about the second page of
18 Exhibit Number One Sixty. And in particular, you were
19 asked to read a sentence about, the feoffees have
20 determined that assessed value of the property is the
21 fairest way to determine the value of the lots.

22 Do you recall that testimony?

23 A What page is that?

24 Q Middle of page

1 A While most non-money -- beginning there?

2 Q Yes?

3 A Okay, yes.

4 Q All right. Now, that was all in conjunction with a
5 discussion about setting rent, wasn't it?

6 A As I recall.

7 Q Because at that time sale was not being discussed in
8 September of '07?

9 A That would be accurate.

10 Q And the whole point of talking about the assessed value
11 was a discussion that was going on between the feoffees
12 and the school committee that we -- the school committee
13 wanted the feoffees to increase the rent; correct?

14 A I believe that is correct. They were trying to determine
15 the fairest way to return for the school children.

16 Q There was discussion about return to the children, talk
17 about increasing rent?

18 A Mmm-hmm.

19 Q And the school committee requested of the feoffees that
20 they base the rent in some form or fashion on assessed
21 value.

22 Do you recall that?

23 A I do recall that, the fair value, the issue of charging
24 rent at a rate that would be a fair value.

1 Q But in particular, there was a reference by the school
2 committee to assessed value for purposes of trying to
3 calculate rent?

4 A I would have to see that if that's stated in here.

5 Again, I don't recall that.

6 Q All right. And feel free to do that, and you can look at
7 the entirety of this document where we're talking about
8 rent?

9 A Would that be starting with the second page, and starting
10 ----

11 Q Yes. Let me see if I can -- let's see if I can ----

12 A If you can point to a specific ----

13 Q ---- lead you to that spot? That's a fair question.

14 Well, let's take a look at the sentence right
15 before where we were.

16 While most non-money issues have been resolved,
17 the biggest issue is the amount that the tenants are
18 willing to pay.

19 Now, do you recognize that as a reference to
20 attempted lease negotiations that were going on?

21 A That's correct.

22 Q And that most of the non-monetary issues regarding the
23 lease were resolved, but there was still a battle going
24 on as to rent?

1 A Determining the fair value.

2 Q And you were told and the school committee was told the
3 feoffees could not get the tenants to pay the amount of
4 rent that the school committee was looking for?

5 A There was difficulty in achieving that.

6 Q And there was a discussion about whether or not the
7 school committee would back off its position regarding
8 how much rent there should be so as to accomplish a
9 lease?

10 A I recall discussions about that, regarding that.

11 Q And the school committee said, please, do not back off
12 what you're looking for?

13 A Continue to pursue in the best interest of the children.

14 Q And the feoffees said, we will continue to do that?

15 A Yes.

16 Q In fact, would you read the last sentence of the second
17 page of Exhibit Number One Sixty out loud, please?

18 A The school committee members thanked Mr. Sheehan for his
19 time and agree that advocating for the children is tan-
20 tamount, but that a difficult situation exists without
21 feoffees funds.

22 However, they are willing to take the long view
23 and wait for settlement.

24 Q And everybody -- and you understood that the long view

1 meant carrying forward that litigation, recognizing that
2 there weren't going to be any monies in the meantime?

3 A That's correct.

4 Q Okay. And without dragging you unnecessarily into this
5 discussion of lots, you do understand, Superintendent
6 Korb, that there's one single parcel of land out there at
7 Little Neck?

8 A There is one.

9 Q Now, let's take a look at Exhibit Number One Sixty Two.

10 You were asked questions about Exhibit One
11 Sixty Two, and in particular about the hiring of Attorney
12 Richard Allen?

13 A Yes.

14 Q And Richard Allen has represented the school committee
15 and the superintendent faithfully from the time you hired
16 him in 2002 until this very day?

17 A That is correct.

18 Q In fact, his partner Steve Perry is doing the same?

19 A Yes.

20 Q Fair to say that this document, the February 7, 2002
21 minutes and subsequent minutes that you just looked at,
22 all talked about trying to work with the feoffees, among
23 others, on this so-called re-organization?

24 A I would have to refresh my memory and read those quickly?

1 Q Sure.

2 A The school committee direction was to look into the pro-
3 cess of writing a new trust, and directed me to assist
4 them in finding counsel.

5 Q And that was all being done in 2002 - 2003 in conjunction
6 with sales discussions.

7 Did it emerge even as early as 2003?

8 A Yes.

9 Q In fact, Mr. Wetherall was an outspoken advocate for
10 sale, wasn't he?

11 MR. PERRY: Objection.

12 THE COURT: Is there anything in the minutes
13 that have come in? I'm trying to recall. There's
14 something about Mr. Wetherall, his -- I thought that came
15 in on cross.

16 MR. PERRY: We talked about Mr. Wetherall
17 being a critic of the feoffees and pushing for more
18 money, more return from the investments.

19 The question now is his position on sale.

20 THE COURT: Well, but what I'm suggesting to
21 you or asking, quite frankly, is I remember seeing his
22 name in one of the exhibits that just came in, in one of
23 the minutes.

24 I don't recall without looking at it what was

1 said or -- so if you can find that, I'm happy to ----

2 MR. SHEEHAN: We'll try to find that, Judge. I
3 think that's ----

4 THE COURT: Somewhere between One Sixty and One
5 Sixty Seven.

6 MR. SHEEHAN: Yes, it is, Judge. The recent
7 ones from One Sixty to One Sixty Seven.

8 No, I don't have that one. Can we have one
9 moment, please, Judge?

10 THE COURT: Absolutely.

11 MR. SHEEHAN: Mr. Wetherall appears, Judge,
12 at page three of Exhibit Number One Sixty Four.

13 THE COURT: And I think Attorney Perry, as you
14 pointed out, he's mentioned as being a member of the town
15 committee, but expressing his opinion with respect to the
16 rent. And that's I think what you indicated.

17 So as to everything else in the record thus
18 far, I'll sustain the objection.

19 MR. PERRY: Thank you.

20 MR. SHEEHAN: I don't want to quarrel with the
21 court. I'm just not ----

22 THE COURT: You can. It's quite all right.

23 MR. SHEEHAN: I'm just not sure why his opinion
24 as to possible rent would be more relevant than his

1 opinion that the property should be sold?

2 THE COURT: It's not a question of my thinking
3 that his opinion in that regard is more relevant. It's
4 just that that it happened to be in an exhibit that's
5 already been entered.

6 That's what I'm ----

7 MR. SHEEHAN: So what you need to ----

8 THE COURT: If there's something else that's
9 come in, then you don't need to ask this witness about
10 it. If the exhibit is in for all purposes, then you can
11 reference it in your proposed findings.

12 MR. SHEEHAN: Well, all right. If that's -- I
13 will do it that way.

14 THE COURT: Please take no offense. It really
15 makes no difference to me what Mr. Wetherall's opinion
16 is.

17 MR. SHEEHAN: With that, Judge, I'll be happy
18 to move on.

19 THE COURT: Listen, I mean, in the courtroom
20 I apologize. But it really makes no difference to the
21 issues that I'm trying.

22 Q Now, this issue that was raised again by Mr. Perry about
23 financial statements. Let's put that to bed relatively
24 quickly.

1 First of all, you talked about a vote in June
2 of '03 about more financial statements or financial
3 statements being more transparent.

4 Did anybody ask the feoffees to do that?

5 A I don't recall.

6 Q Did you ask the feoffees to do it?

7 A I don't recall. No, I personally did not.

8 Q All right. Do you recall a letter going out from the
9 school committee telling the feoffees to be more trans-
10 parent in their financial statements?

11 A I don't recall any letter going out.

12 Q In any event, can you agree that from -- the financial
13 statements have been filed with the Attorney General's
14 Office from 2001 to 2010?

15 MR. PERRY: Objection.

16 Lack of foundation as to how he would know what
17 date. If the implication is that the -- that that's when
18 they were filed, then I object.

19 If the implication is that they filed -- essen-
20 tially filed for those years, then that's in evidence.

21 MR. SHEEHAN: You know, Judge, I just asked
22 the question. Implication is when ----

23 MR. PERRY: He wouldn't know when they were
24 filed or not.

1 MR. SHEEHAN: I'll ask this question.

2 Q Do you know now that financial statements have been filed
3 by the feoffees from 2001 to 2010?

4 A To my understanding, they've been filed. But I wouldn't
5 know the specific dates they were filed.

6 Q I understand that. Fair to say that -- well, let me ask
7 you a question.

8 Have you ever looked at them?

9 A I don't recall looking at them in any -- with any, you
10 know, specifics. Maybe seeing them, but not delving into
11 them.

12 MR. SHEEHAN: And Judge, there's no need to
13 look at them now, but just I'll make a reference so that
14 the record is clear that those financial statements from
15 2001 to 2010 are -- I'm sorry, from 2002, fiscal year
16 2002 to fiscal year 2010 are in by agreement, Exhibits
17 Twenty One through Twenty Three.

18 THE COURT: Thank you.

19 Q To your knowledge, has anyone claimed that the financial
20 statements as filed with the Attorney General are not
21 transparent?

22 A I've never heard -- I've never -- no. To my knowledge,
23 I've never heard that.

24 Q And those financial statements show how much money the

1 feoffees have taken in?

2 A Again, I would have to look at them to determine that. I
3 don't recall the make-up of those.

4 Q We won't do them with you, Superintendent Korb. Thank
5 you.

6 Now, you indicated that you were unaware of a
7 written agreement that the feoffees and tenants had
8 entered into prior to October 9, 2009.

9 Do you recall testifying to that?

10 A Vaguely, I recall.

11 Q It was in connection with that issue of the first time
12 that the school committee allegedly said they weren't
13 interested in sale.

14 Do you remember being asked questions about
15 that?

16 A I do remember being asked questions. The dates are all
17 coming together. It's confusing.

18 Q I understand. Do you know whether or not the tenants and
19 the feoffees had reached an agreement in principle prior
20 to the filing of the lawsuit in this court in October of
21 2009?

22 A I don't recall. I'm sorry..

23 Q Okay. And we did look at one -- in detail at one school
24 committee meeting minutes where there was discussed the

1 lease negotiations and an update on litigation.

2 And fair to say that the feoffees were keeping
3 you and the school committee up to date on the status of
4 litigation and on lease negotiations, both before and
5 after September of 2007?

6 A Yes.

7 Q And fair to say that at all times regarding the attempt
8 to negotiate a lease, the Ipswich School Committee was
9 consistent and did not want the feoffees to back off the
10 numbers?

11 MR. PERRY: Objection, Your Honor.

12 It's calling for him to testify what the school
13 committee wanted without votes of the school committee or
14 any particular minutes.

15 MR. SHEEHAN: Judge, he can testify as to what
16 he heard the school committee say to the feoffees at
17 meetings, unless we're going to -- I don't want to go
18 through -- I'm trying not to go through minute by minute
19 on all of it.

20 MR. PERRY: Well, my sense is that the school
21 committee can act only by formal action by a vote. And
22 it's very dangerous when we starting asking this witness
23 what the school committee thought.

24 THE COURT: I don't think that's what he --

1 what was your question?

2 MR. SHEEHAN: My question was, fair to say that
3 at all times the school committee told the feoffees,
4 don't move away from the nine thousand, seven hundred -
5 ten thousand, eight hundred dollars rents?

6 THE COURT: To the extent he knows, counsel.

7 MR. SHEEHAN: Right.

8 THE COURT: If it's in the minutes and this
9 witness knows, he may answer.

10 A My recollection is that the school committee continued to
11 maintain a position of maximizing the rents to the best
12 of the ability of negotiations.

13 I don't recall the specific numbers, whether it
14 was nine thousand or ten thousand dollars, but they
15 wanted to maximize the return to the schools for the
16 betterment of the children.

17 MR. SHEEHAN: Fair enough. I have no further
18 questions, Judge.

19 THE COURT: Thank you. Recross?

20 MR. PERRY: Yes, Your Honor. Thank you. Your
21 Honor, we made the mistake of not bringing with us the
22 exhibits that have been ruled out.

23 THE COURT: Are you going to reference One
24 Sixty Seven?

1 MR. PERRY: One Sixty Seven.

2

3 RECROSS EXAMINATION

4

5 Q (By Mr. Perry) Do you have a copy in front of you, Mr.
6 Korb?

7 A I do. Is that the e-mail from Mr. Fay to Mr. Loeb?

8 Q Yes. Would you read, please, the last sentence of the
9 second to last paragraph, any future actions?

10 A Starting with, any future actions?

11 Q Yes, please?

12 A Any future actions by town boards with respect to the
13 sale of Little Neck should be developed in the context of
14 an appraisal based valuation of the assets and an under-
15 standing of the fiscal impacts to the community.

16 Q Did you think that was a reasonable thing to do at that
17 time?

18 MR. SHEEHAN: Objection.

19 MR. PERRY: I'll withdraw that.

20 THE COURT: Thank you.

21 Q In fact, as you told us, there was no appraisal in place
22 in November of 2009 beyond what had been provided a year
23 earlier from Land Vest?

24 A Yes, correct.

1 Q The finance committee in this e-mail -- well, at least
2 Mr. Fay was taking the position that there needed to be
3 an appraisal based process?

4 A As I understand this, yes.

5 Q And this was a month before any final written binding
6 settlement was entered into, to your understanding,
7 between the tenants and the Feoffees?

8 A To my understanding.

9 Q As of late 2009, had the school committee been given a
10 seat at the table in connection with negotiations going
11 on with the tenants?

12 A I believe they were.

13 Q Who was representing the -- you're saying that the school
14 committee was at those negotiations?

15 In other words, when Mr. Sheehan was negotia-
16 ting with whoever was representing the tenants, was the
17 school committee there at the negotiations?

18 MR. SHEEHAN: Objection.

19 He's now impeaching his own witness, Judge.

20 THE COURT: Sustained.

21 Q Are you aware of anybody from the school committee being
22 at the negotiations?

23 A I am not aware of -- when I -- so I can explain what my
24 comment was earlier, I was ----

1 MR. SHEEHAN: I move to strike anything other
2 than ----

3 THE COURT: Anything after, I'm not aware of
4 that.

5 A I'm not aware of that, no.

6 Q In what sense were you saying that they had a seat at the
7 table?

8 MR. SHEEHAN: Objection.

9 THE COURT: Sustained.

10 MR. PERRY: He can't explain his answer, Your
11 Honor? It's not a leading question.

12 THE COURT: This is day two, and I've still got
13 the first witness on the stand.

14 MR. PERRY: All right. All right. Fair
15 enough.

16 Q Mr. Korb, ----

17 THE COURT: I retire in seven years.

18 Q Mr. Korb, was there an escrow account that you're aware
19 of that the tenants were paying into?

20 A Yes.

21 Q Now, Mr. Sheehan had asked whether it was any surprise as
22 to the feoffees continuing to pursue sale.

23 Do you recall him asking you that?

24 A I do.

1 Q Was it a surprise that the escrow account wasn't going to
2 the schools?

3 A I was surprised by that.

4 MR. KORB: I have nothing further. Thank you.

5 MR. SHEEHAN: No further questions, Judge.

6 THE COURT: Your next witness, please?

7 MR. SHEEHAN: And Mr. Sheppard to the stand,
8 please, Judge.

9 THE COURT: Good morning, sir.

10 THE WITNESS: Good morning.

11

12 NORMAN F. SHEPPARD, Sworn

13

14 DIRECT EXAMINATION

15

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

19 A Norman Fred Sheppard, S-H-E-P-P-A-R-D.

20 Q Where do you live, sir?

21 A On 4 Lillian Drive, Ipswich.

22 Q Were you a member of the Ipswich School Committee?

23 A At one time, yes.

24 Q For how many years?

1 A Twenty four.

2 Q And at the time you retired in 2011 from the Ipswich
3 School Committee, you were the dean in terms of service
4 on the Ipswich School Committee?

5 A I do believe, yes.

6 Q You learned of the feoffees for the first time in 1987,
7 when you began your service as a school committee member;
8 correct?

9 A Yes.

10 Q And you became aware while you were a school committee
11 member that there was litigation in the Essex Superior
12 Court brought by the residents or certain residents of
13 Little Neck against the feoffees.

14 Do you recall that?

15 A Yes, I do. Yes.

16 Q All right. And before that litigation, the feoffees con-
17 tributed dollars to the superintendent of schools for the
18 benefit of the Ipswich Public Schools from your first
19 year in 1987 until that litigation interrupted those dis-
20 tributions.

21 Isn't that true?

22 MR. PERRY: Your Honor, Mr. Sheppard is not
23 currently a member of the school committee, and I think
24 that Mr. Sheehan should not be leading him.

1 THE COURT: What does the first portion have to
2 do with the latter portion?

3 MR. PERRY: Well, I think he's just a witness
4 here today as opposed to speaking on behalf of the school
5 committee.

6 Therefore, since Mr. Sheehan called him, he
7 ought to ask him non-leading questions.

8 THE COURT: Counsel, yes. It's going to add to
9 the length, these types of matters. But if you want to
10 do that, that's ----

11 MR. PERRY: I don't mind on the preliminary
12 questions, Your Honor. But when he starts saying sub-
13 stantive, I think it's important.

14 MR. SHEEHAN: Fine, Judge. I'm sorry.

15 Q While you were a school committee member from 1987 until
16 the Essex Superior Court litigation, are you aware of the
17 distributions or non-distributions made by the feoffees
18 to the Ipswich Public Schools during those years?

19 A Yes.

20 Q And did the feoffees make a contribution to the schools
21 every year from 1987 until the superior court litigation
22 interrupted it?

23 A I do believe, yes.

24 MR. SHEEHAN: Judge, at this time I would like

1 to read admissions numbers 115, 116, and 117. That's
2 with reference to Exhibit Number One Fifty Nine.

3 THE COURT: Thank you.

4 MR. SHEEHAN: And I can start ----

5 THE COURT: I'm sorry, the admission numbers
6 again?

7 MR. SHEEHAN: Number 115, 116, and 117,
8 although I'm going to start with number 117.

9 THE COURT: Thank you.

10 MR. SHEEHAN: Request: The amounts distributed
11 by the feoffees to the beneficiary in the years immed-
12 iately preceding fiscal year 2006 were as follows.
13 Fiscal year 2002, \$282,970.00; 2003, \$245,000; 2004,
14 \$308,545; 2005, \$300,000.

15 Response: Admitted.

16 Request number 115: The annual filings for
17 the period July 1, 2005 to June 30, 2009 show that the
18 last year during which a distribution was made to the
19 beneficiary was fiscal year 2006. The distribution that
20 year was \$588,000.

21 Response: Admitted.

22 Request number 116: The distribution of
23 \$588,000 was the largest ever by the feoffees, made
24 possible by the increased rents collected by the feoffees

1 and by the fact that substantial interest expense on the
2 borrowing in connection with the wastewater system
3 construction had not yet been incurred.

4 Response: Admitted that the distribution was
5 the largest ever. Otherwise, denied.

6 Q Are you aware of any demands that were ever made by the
7 school committee during your tenure upon the feoffees to
8 increase their distribution?

9 A No.

10 Q You're still employed, aren't you?

11 A Pardon?

12 Q You're still employed, aren't you?

13 A Part-time.

14 Q Where do you work?

15 A At Crane's Beach.

16 Q What do you do?

17 A I'm just a ranger; just patrol;, make sure people behave
18 themselves.

19 Q Where's Crane's Beach in connection with Little Neck?

20 A Right across it.

21 Q Do you work at Crane's Beach during the wintertime?

22 A Yes, I do.

23 Q Do you have an opportunity while you're at Crane's Beach
24 in the wintertime to make observations of Little Neck in

1 the wintertime?

2 A No, I do not.

3 Q Have you ever seen Little Neck in the wintertime?

4 A Well, I can see it sometimes if I'm out on the main
5 beach, I can see down there. But I haven't had any real
6 close-up.

7 Q It's a bleak place in the winter, isn't it?

8 A It most certainly is.

9 MR. SHEEHAN: No further questions, Judge.

10 THE COURT: Not yet. You can stay there. Not
11 yet.

12 Attorney Perry?

13

14 CROSS EXAMINATION

15

16 Q (By Mr. Perry) Mr. Sheppard, ----

17 A Yes.

18 Q ---- when you were on the school committee, did you serve
19 together with a fellow named Ed Traverso?

20 A Yes. He sat right next to me.

21 Q And he spent a lot of time concerning himself with the
22 affairs of the feoffees?

23 A Yes, he did.

24 Q And he had scrutinized town records and he ----

1 MR. SHEEHAN: Objection.

2 A I believe he had.

3 THE COURT: Sustained.

4 MR. SHEEHAN: Move to strike.

5 THE COURT: That may go out.

6 MR. SHEEHAN: Okay.

7 Q Now, did Mr. Traverso ever make any statements about --
8 without telling me what they were, but did he ever make
9 any statements about the contributions that had been made
10 over the years by the feoffees?

11 THE COURT: Just yes or no, sir, please?

12 A No.

13 Q You don't recall him doing that?

14 A No, I don't recall him doing that.

15 Q What's your date of birth, sir?

16 A 1936.

17 Q Now, you heard mention as you were sitting here of an
18 individual named Bob Wetherall?

19 A Yes.

20 Q I'd like to show you some -- an annual meeting minute of
21 the feoffees?

22 A I cannot read them.

23 Q I will read them to you?

24 A Okay.

1 MR. PERRY: And with the court's permission.

2 These are in evidence, Your Honor. But it's
3 part of joint Exhibit Eleven, but it's voluminous, so
4 I've made a copy of just this document.

5 Can I hand you that?

6 THE COURT: Yes. Thank you.

7 Q I'll read from these and then ----

8 A Okay.

9 Q ---- just ask you.

10 So these are minutes of an annual meeting of
11 January 20, 1972. They state, a letter from Robert
12 Wetherall -- on the second page in the middle. A letter
13 from Mr. Robert Wetherall to Chalres A. Goodhue, Jr. was
14 read by Mr. Hayes.

15 And by the way, was Mr. Wetherall at one time a
16 school committee member, if you recall?

17 A I don't recall.

18 Q Okay. Mr. Wetherall criticized the donation of seven
19 thousand dollars that seemed small in comparison to the
20 feoffees' holdings.

21 And then it goes on to say Mr. Munroe, who's
22 one of the feoffees, pointed out that in addition to the
23 outright gift of seven thousand, five hundred dollars,
24 approximately forty two thousand dollars, roughly sixty

1 percent of property taxes paid to the town by the
2 feoffess, went to the support of the school system.

3 Now, with respect to Mr. Wetherall's criticism
4 of the level of gifts, did you know about that when you
5 joined the school committee?

6 A No, I did not.

7 Q And I'd also like to ask you about some meeting minutes
8 from 1990, which you can -- if you were having less
9 difficulty with your eyes it would be very easy to read,
10 I'm afraid.

11 A Right.

12 MR. PERRY: Your Honor, also from -- these are
13 also from Joint Exhibit Eleven.

14 Q Now, do you know an individual named Jeff Simon?

15 A Yes, I do,

16 Q Who is he?

17 A He was the -- at one point he was the chairman of the
18 school committee.

19 Q And he served even before you did; right?

20 A I believe so, yes.

21 Q So in 1990, he was a member of the school committee,
22 wasn't he?

23 A Yes.

24 Q And perhaps chairman?

1 A It could be, yes.

2 MR. PERRY: If we go to the second page, Your
3 Honor, I'd like to read him -- I understand it's a little
4 difficult, but I'll do the best I can.

5 Q It states, apparently, Mr. Wetherall and Mr. Simon were
6 at this meeting. And it states, Mr. Wetherall raised the
7 issue of house sales, and its valuation may be under-
8 stated and the public should have major outcry to force
9 feoffees to do more.

10 And then it states -- and Mr. Simon, he was a
11 school committee fellow?

12 A Yes. Mr. Simon was.

13 Q Mr. Simon stated he wanted to increase dialogue, but not
14 on paper with the feoffees. Perception in town is that
15 trust is being run for benefit of cottage owners and not
16 for benefit of school system.

17 We have had discussions with town counsel on
18 what course of action the school committee should take to
19 get more money from trust.

20 And it goes on two paragraphs later to say Mr.
21 Simon thought value of land should be used -- I can't
22 make out the next couple of words -- for how much rent
23 should be; i.e. ten million at five percent equals five
24 hundred thousand dollars return on investment.

1 Were you aware when you joined the school
2 committee that as early as 1990 a school committee member
3 had been at a feoffees meeting complaining about the
4 level of contributions to the school and the amount of
5 the revenues?

6 A I had ----

7 MR. SHEEHAN: Objection to the form of that
8 question.

9 THE COURT: Re-phrase it, please.

10 MR. PERRY: All right.

11 Q Were you aware when you joined the school committee that
12 a representative of the school committee had asked -- had
13 gone to the feoffees to see if more could be done to pro-
14 vide money for the school?

15 A I heard something about that, yes.

16 Q And did you know that a member of the school committee
17 had expressed as early as 1990 that Little Neck was being
18 run for the benefit of the cottage owners rather than the
19 schools?

20 MR. SHEEHAN: Objection to form.

21 A I ----

22 THE COURT: Hold on, sir.

23 Sustained. He's going to ask another question.

24 THE WITNESS: Sorry.

1 Q Are you aware that from 1990 to 1996 that there was no
2 increase in the rent being paid?

3 A Yes.

4 MR. PERRY: I have nothing further. Thank you.

5 MR. SHEEHAN: And just in the interest in com-
6 pleteness, Judge, I'd like to read the paragraph from the
7 1990 minutes that followed what Mr. Perry read.

8 We, the feoffees, are very open to having dis-
9 cussions with the school committee, but not in the news-
10 paper.

11 And I'd also like to read the set that follow
12 on paragraph to the note that was read by Mr. Perry from
13 the 1972 minutes. That was the one where Mr. Wetherall
14 made a comment.

15 Superintendent of Schools John Stella pointed
16 out that the letter from Mr. Wetherall was from him as an
17 individual and not an official communicate from the school
18 committee.

19 Mr. Stella had been asked to invite the feof-
20 fees to a meeting with the school committee.

21 THE COURT: Do they teach the doctrine of
22 verbal completeness at law schools any more?

23 Anything else? Anything to add, Attorney
24 Soris? Anything of this witness?

1 MS. SORIS: I'm fine.

2 MR. SHEEHAN: No, I have no further questions,
3 Judge.

4 THE COURT: Thank you, Mr. Sheppard. You're
5 all set.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you very much.

8 MR. SHEEHAN: Donald Greenough.

9 THE COURT: Attorney Perry, do I need to hold
10 on to these if they're -- I just gave you these for
11 convenience, I assume?

12 MR. PERRY: Just for convenience. We may make
13 reference to some again, but we do have another one. So
14 you don't need ----

15 THE COURT: Well, I'll give them back to you --
16 --

17 MR. PERRY: Yes.

18 THE COURT: ---- if you need to use them again.

19 MR. PERRY: Thank you.

20 THE COURT: All right.

21 Attorney Sheehan?

22 THE COURT: Thank you.

23

24

1 DONALD GREENOUGH, Sworn

2
3 DIRECT EXAMINATION

- 4
- 5 Q (By Mr. Sheehan) Good morning. Would you please state
6 your full name, and spell your last name for the record?
- 7 A My name is Donald Major Greenough, G-R-E-E-N-O-U-G-H.
- 8 Q And where do you live, sir?
- 9 A I live at 32 Fellows Road in Ipswich.
- 10 Q Do you live there with anyone?
- 11 A I live there with my wife Lucia.
- 12 Q How long have you lived in Ipswich?
- 13 A Since 1985.
- 14 Q And your educational background, please, starting with
15 high school?
- 16 A I graduated from Danvers High School in 1972. And I
17 graduated from Rutgers University in 1976. And I
18 graduated from the Boston University School of Law in
19 1979.
- 20 Q Do you practice law in the Commonwealth of Massachusetts?
- 21 A I do.
- 22 Q And how long have you practiced law in the Commonwealth
23 of Massachusetts?
- 24 A Since December of 1979.

1 Q Are you licensed to practice in the Commonwealth of
2 Massachusetts?

3 A Yes.

4 Q And what's been the nature of your practice from 1979 to
5 the present?

6 A My practice has been estate planning and administration,
7 business law and real estate law.

8 Q And with respect to real estate law, have you done any
9 work in the area of condominiums?

10 A Yes.

11 Q What have you done?

12 A Formed condominiums for clients; reviewed condominium
13 documents for condominiums for which my clients might be
14 interested in.

15 Q What is a condominium?

16 A Well, a condominium is a form of ownership in which
17 people acquire an interest in a structure, and then the
18 underlying land is owned in effect jointly by the condo-
19 minium unit owners.

20 Q Okay. And what do you need to create a condominium in
21 Massachusetts?

22 A To have an effective condominium I believe that you need
23 to have both land and structures.

24 Q Do you have any familiarity with Little Neck in Ipswich,

1 Massachusetts?

2 A Yes.

3 Q When did you first become familiar with Little Neck?

4 A Probably at some point in 1980.

5 Q And how did you become familiar with Little Neck in
6 Ipswich?

7 A I was employed by a law firm then known as Hayes, Ledoux,
8 Whipple & King that had an office in Ipswich. And I
9 spent a couple days a week in the Ipswich office.

10 Q Now, during what period of time did you work for the firm
11 of Hayes, Ledoux, Whipple & King?

12 A From December -- actually, I clerked there in law school,
13 so I probably started in January of 1979 and I worked
14 there through December of 1988.

15 Q And what did you do after December of 1988?

16 A I left to become self-employed.

17 Q And have you remained self-employed since December of
18 1988?

19 A Yes.

20 Q Where is your office located?

21 A 57 South Main Street, Ipswich.

22 Q Has your office been located in Ipswich, Massachusetts
23 since December of 1988?

24 A Yes.

1 Q Have you ever heard of the Feoffees of the Grammar School
2 in the Town of Ipswich?

3 A Yes.

4 Q When did you first hear of the feoffees?

5 A 1980.

6 Q How did you hear about the feoffees?

7 A A partner -- one of my employers, George Hayes, had grown
8 up in Ipswich and was very active in the Ipswich com-
9 munity. And I remember him being involved with the
10 feoffees at that time.

11 Q And have you ever served as counsel for the feoffees?

12 A Yes.

13 Q And from when to when did you serve as counsel to the
14 feoffees?

15 A I would probably say beginning some time in 1987 through
16 2007.

17 Q Were you counsel to the feoffees for that entire period
18 of time?

19 A It's difficult to say. There may have been years in
20 which the feoffees did not require any legal services
21 from me.

22 Q And generally speaking, did you represent them from 1987
23 to 2007?

24 A Yes.

1 Q Were you counsel to the feoffees when the rents began to
2 increase in 1999?

3 A Yes.

4 Q Okay. And were you counsel to the feoffees during the
5 Department of Environmental Protection enforcement
6 action?

7 A I was one of the attorneys that was used during that
8 period.

9 Q Did that action require some specialized work in the area
10 of environmental issues?

11 A Yes.

12 Q And were those environmental issues addressed by an
13 attorney other than you, personally?

14 A Yes.

15 Q Who was that?

16 A Richard Chip Nylan.

17 Q Do you know what firm he's with?

18 A No.

19 Q And where is his office?

20 A Boston.

21 Q Okay. And were you counsel to the feoffees during the
22 construction of the common wastewater system on Little
23 Neck?

24 A Yes.

1 Q Were you counsel to the feoffees in 2005 when the issue
2 of borrowing authority came before this court?

3 A Yes.

4 Q And were you counsel to the feoffees in an attempt to
5 negotiate a lease with residents in the Town of Ipswich
6 prior to the institution of a suit in the superior court?

7 A Yes.

8 Q And were you counsel to the feoffees at the time the
9 superior court litigation was begun?

10 A Yes.

11 Q Let's start by looking at Exhibit Number Nine?

12 A You're going to have to walk me through what the system
13 is?

14 THE COURT: If you figure it out, let me know,
15 would you?

16 A Let's see. All I see are letters. And I don't see any
17 numbers yet, so.

18 MR. SHEEHAN: Judge, if I could just have a
19 minute. We're going to try to set this up a little bit
20 so the ----

21 THE COURT: Well, you can't -- remember I dis-
22 cussed that I had a meeting to attend?

23 MR. SHEEHAN: Right.

24 THE COURT: So I'm leaving at noon.

1 You referenced Number Nine? I'm sorry.

2 MR. SHEEHAN: That was ----

3 THE COURT: Nine. Attorney Sheehan?

4 MR. SHEEHAN: All set.

5 THE COURT: Oh, you've got it?

6 MR. SHEEHAN: Thank you, Judge.

7 Q What is Exhibit Number Nine?

8 A It appears to be Ipswich Assessor's Map Number 24C.

9 A And what does it depict?

10 A It depicts a portion of the Town of Ipswich; mainly,
11 Little Neck and a portion of what's generally called
12 Great Neck.

13 MR. SHEEHAN: Judge, at this time I'd like to
14 read admissions numbers 20, 21 and 22?

15 Request number 20: Little Neck represents a
16 coastal drumlin, an oval smoothly rounded hill of
17 unstratified glacial drift containing approximately
18 thirty six acres. About twenty eight acres are upland.
19 The balance of the land is tidal wetland.

20 It is accessed by land only via Little Neck
21 Road which connects Little Neck to Great Neck.

22 Response: Admitted.

23 Number 21: Little Neck Road is a flood prone
24 filled causeway between Ipswich Bay and Neck Cove with a

1 history of tidal overwash during major storm events.

2 Little Neck parallels Pavillion Beach so named
3 for a pavillion that was demolished during the Blizzard
4 of 1978.

5 Response: Admitted.

6 Number 22: Many years ago the feoffees began
7 renting small portions of Little Neck to individuals and
8 families who constructed cottages on those portions of
9 land. Those portions of land have commonly been referred
10 to as lots.

11 Response: Admitted.

12 Q And Exhibit Number Nine shows those so-called lots,
13 doesn't it?

14 A Yes.

15 Q Now, in your practice of law, are you familiar with the
16 Ipswich Protective Zoning By-Law?

17 A Yes.

18 Q I'm going to ask you to take a look at -- oh, before I
19 do.

20 When did Ipswich adopt zoning?

21 A I would have to guess it would be 1957.

22 Q Well, I was going to suggest 1957, but you guessed it
23 right on the nose.

24 Are you familiar with that zoning by-law?

1 A Yes.

2 Q Would you take a look at Exhibit Number eight, please?

3 Do you have Exhibit Number Eight in front of
4 you?

5 A Yes.

6 Q Does Exhibit Number Eight include portions of the Ipswich
7 Zoning By-Law?

8 A Yes, portions.

9 Q And it has portions that talk about the zone in which
10 Little Neck is located?

11 A Yes.

12 Q What zone is Little Neck located in?

13 A RRB.

14 Q And that's a rural residence district?

15 A Yes.

16 Q And what use is permitted, or use or uses are permitted
17 in an RRB district?

18 A Primarily, residential.

19 Q Okay. And does the RRB zoning district have dimensional
20 requirements for lot size and so on?

21 A Yes.

22 Q That lot size dimension requirements in the zoning by-law
23 doesn't have any effect on Little Neck, does it?

24 A No.

1 MR. SHEEHAN: Judge, at this point I would like
2 to read admissions 23, 24 and 30?

3 Admission 23: There are not multipple lots
4 within the meaning of the Massachusetts Sub-Division
5 Control Law at Little Neck. Little Neck is one parcel of
6 land, one lot within the meaning of the Sub-Division
7 Control Law and the Ipswich Protective Zoning By-Law.

8 Response: Admitted.

9 Number 24: The use of Little Neck as one lot
10 improved with one hundred sixty seven cottages and
11 additional improvements owned by the feoffees is in
12 zoning terminology a lawful pre-existing non-conforming
13 use, and each cottage is a lawful pre-existing non-
14 conforming structure. See General Laws Chapter 40A,
15 Section 6.

16 Response: Admitted.

17 Number 30: Most of the cottages have been and
18 are presently used seasonally. Twenty four cottages have
19 permission from the feoffees to occupy their cottages on
20 a year-round basis. The remaining owners do not have
21 such permission.

22 Response: Admitted.

23 Q Now, there is a non-conforming structure and non-confor-
24 ming use provision of the Ipswich Zoning By-Law, isn't

1 there?

2 A Yes.

3 Q And what does the zoning by-law provide with respect to
4 non-conforming structures? And let's see if we can
5 direct you to the right page here?

6 MR. SHEEHAN: This is Attorney Stein's chance
7 to shine, Judge.

8 Q Page four, the second page of the exhibit.

9 Would you tell the court, in general, what
10 happens or what the meaning is, the effect is of a non-
11 conforming structure?

12 A I'm not sure I understand the question?

13 A Fair enough. It was a poor question.

14 Are you familiar with what a non-conforming
15 structure is within the meaning of the zoning by-law of
16 the Town of Ipswich?

17 A Yes.

18 Q What is it?

19 A It would not comply under the current zoning by-law.

20 Q And what does that mean with respect to what can be done
21 to that structure?

22 A It limits the expansion or alteration of a non-conforming
23 structure.

24 MR. SHEEHAN: At this point, Judge, I'd like to

1 read Admission Number 25?

2 Request: The Ipswich Assessor has divided
3 Little Neck into two hundred and ten lots, each sepa-
4 rately assessed for tax purposes.

5 Among those two hundred and ten lots are one
6 hundred sixty seven lots improved with cottages. In each
7 instance the cottage is owned by someone other than the
8 feoffees.

9 Response: Admitted.

10 Q While you were counsel to the feoffees, did you ever get
11 involved in the transfer of any cottages at Little Neck?

12 A Yes.

13 Q Tell me how one goes about transferring a cottage at
14 Little Neck?

15 A Are you talking about from a marketing perspective or
16 from a legal perspective?

17 Q A legal perspective?

18 MR. PERRY: Can we just have a time frame
19 because I believe it changed over time as far as what the
20 requirements were?

21 THE COURT: If it has, why don't you give us a
22 time frame, please?

23 Q Did it change from 1987 until 2007?

24 A Yes.

1 Q Okay. How did it -- or what was the -- how did you
2 transfer -- how was a house transferred in 1987?

3 A In 1987, a cottage would be transferred by way of a bill
4 of sale; in effect, replace a deed.

5 And there would also be a letter agreement
6 between -- among the -- in effect the sellers and the
7 buyers acknowledging the transfer and acknowledging the
8 the buyers would comply with the rules and regulations of
9 the feoffees.

10 Q Okay. And how did that change from 1987 to 2007?

11 A When written leases were executed by tenants in ---

12 Q In 2006 or so?

13 A Perhaps 2006. At that time there was a little bit more
14 formal requirement as far as the buyers coordinating the
15 execution of a new lease with the feoffees.

16 Q Aside from those cottages which were the subject of a
17 lease, were cottages transferred in the same way from
18 1987 to 2007?

19 A I believe so.

20 Q And why was a bill of sale used as opposed to a deed?

21 A Because the cottages were viewed as chattel property.
22 They were not real estate. And a deed would indicate
23 that there was an ownership of real estate.

24 Q And what did the feoffees do, if anything, at the time a

1 cottage was transferred from a seller to a buyer?

2 A I don't know. I was not a feoffee.

3 Q Well, did you assist the feoffees from time to time when
4 there was a transfer from seller to buyer of a cottage?

5 A Yes.

6 Q And were there documents involved from the feoffees'
7 perspective?

8 A I believe the feoffees contacted the new owners to
9 confirm the billing address.

10 Q Okay. And you mentioned some kind of a document that was
11 executed in addition to a bill of sale?

12 A Yes.

13 Q Exhibit Number Twelve, I believe. And actually, Exhibit
14 Number Twelve are all notices -- are all notices that
15 were given by a seller to a buyer, and then addressed to
16 the feoffees.

17 Is that accurate?

18 A That appears so.

19 Q Did that document talk about the obligation to pay rent
20 and taxes?

21 A The ones that I've reviewed do.

22 Q And what did the document -- what did those documents say
23 about the obligation to pay rent and taxes?

24 A In effect, that the buyer agreed to pay the ground rent

1 taxes which would be imposed against the cottage build-
2 ding.

3 MR. PERRY: Objection, Your Honor.

4 These documents that I'm looking at say we
5 agree to pay the ground rent and taxes which may be
6 imposed against the cottage building and said lot for the
7 year.

8 A Just I was paraphrasing.

9 Q That's fine. Was there also reference to the rules and
10 regulations of the feoffees?

11 A I had just picked one at random from May 4th of 1994,
12 signed by the Tetreaults.

13 And that states, we also agree to abide by such
14 rules and regulations as may be adopted from time to time
15 by the Feoffees of the Grammar School in Ipswich, and
16 applicable to persons having an interest in land at
17 Little Neck.

18 MR. SHEEHAN: And Judge, just let the record
19 reflect that Exhibit Number Twenty is an example of rules
20 and regulations, and no need to put it in front of the
21 witness at this time.

22 THE COURT: Thank you.

23 Q Mr. Greenough, with respect to the feoffees or the
24 cottage owners, who pays the taxes on the land on which

1 cottages are located?

2 A The feoffees.

3 Q And do they get reimbursed by the cottage owners?

4 A I believe that the policy was that they billed the taxes
5 at the same time that they billed the rent.

6 Q So that the taxes on the land on which the cottages were
7 located were passed through by the feoffees to the
8 cottage owners?

9 A Yes.

10 Q And who pays the taxes on the cottages?

11 A On the structures?

12 Q On the structures?

13 A The tenants. The cottage owners.

14 Q And does the tax that's -- the tax bill that's sent by
15 the assessor, does that show a tax on both the land and
16 the cottage?

17 MR. PERRY: Can we just get a kind of time
18 frame in case this may have changed?

19 Q In 1987, did the tax bill show a tax on both the land and
20 the cottage?

21 A I don't know.

22 MR. SHEEHAN: And Judge, again, I want to make
23 reference to Exhibit Number Eighteen which sets forth the
24 assessed values of the land and structures at Little Neck

1 for years 2007, 2008, 2010, 2011. No one was able to
2 find 2009.

3 And we don't need to put these in front of the
4 witness. But I just wanted to identify those exhibits.

5 THE COURT: And I apologize, but we're going to
6 have to suspend. And we'll pick up I believe on Monday
7 the 19th; correct?

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

9 THE COURT: All right.

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11 (Whereupon, the trial in the above entitled matter was
12 suspended)

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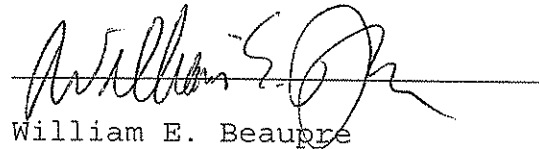
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C E R T I F I C A T E

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 95,
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 17th day of February, 2012.



William E. Beaupre

Notary Public

My Commission expires April 5, 2013