

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR,
et al.,

Plaintiffs,

v.

ATTORNEY GENERAL of the
Commonwealth of Massachusetts, et al.;

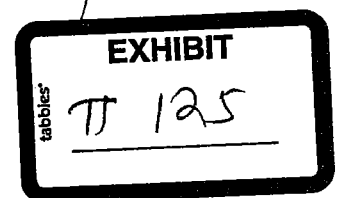
Defendants

**DEFENDANT AND COUNTERCLAIM PLAINTIFF
IPSWICH SCHOOL COMMITTEE'S RESPONSES TO
PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

2. Attached hereto as Exhibit 1 is a true and accurate copy of the minutes of the Ipswich Town Meeting of November 14, 1650.

RESPONSE 2

Admitted.



3. Attached hereto as Exhibit 2 is a true and accurate copy of the minutes of the Ipswich Town Meeting of January 26, 1652.

RESPONSE 3

Admitted.

4. Attached hereto as Exhibit 3 is a true and accurate copy of the Will of William Payne who died in 1660.

RESPONSE 4

Admitted.

5. Attached hereto as Exhibit 4 is a true and accurate copy of the minutes of the Ipswich Town Meeting of January 12, 1756.

RESPONSE 5

Admitted.

6. The land at issue in this action, now known as Little Neck, was devised by the will of William Payne unto the "free school of Ipswich" "which is to be and remain to the benefit of the said scoole of Ipswich for ever as I have formerly Intended and therefore the sayd land not to be sould nor wasted." In that will Mr. Payne named certain individuals as feoffees in trust. That will was made in 1660, by which time William Payne, with others, was holding land for the benefit of the school.

RESPONSE 6

Admitted.

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

RESPONSE 10

Admitted that the Town Meeting so voted in part.

11. The Great and General Court acted upon the January 12, 1756 application of Town Meeting acting in concert with the feoffees, and enacted Chapter 26 of the Province Laws of 1755-56. Attached hereto as Exhibit 5 is a true and accurate copy of Chapter 26 of the Province Laws of 1755-56.

RESPONSE 11

Admitted.

12. In Chapter 26 of the Province Laws of 1755-56, the Great and General Court recognized the private nature of the transfer of Little Neck noting: "Whereas divers piously disposed persons ... granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands .. :."

RESPONSE 12

Admitted that the Act attached as Exhibit 5 contains in part the quoted language; otherwise denied.

13. In Chapter 26 of the Province Laws of 1755-56, the Great and General Court recognized two issues: the 120wer (*sic* --) of the trustees who received the grants to appoint successors and the power to charge and collect rents.

RESPONSE 13

Admitted.

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

RESPONSE 14

Presuming that "often" in the referenced quote should be "of ten," admitted that Exhibit 5 includes the quoted language; otherwise denied.

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

RESPONSE 17

Admitted.

18. By Chapter 5 of the Province Laws of 1765-66, the Great and General Court extended the existence of the "joint committee or feoffees in trust, for twenty-one years, making

no changes, in the constitution of the feoffees and their method of succession." Attached hereto as Exhibit 6 is a true and accurate copy of Chapter 5 of the Province Laws of 1765-66.

RESPONSE 18

Admitted.

19. By Chapter 54 of the Acts of 1786, the constitution and method of succession of the feoffees was made perpetual Attached hereto as Exhibit 7 is a true and accurate copy of Chapter 54 of the Acts of 1786.

RESPONSE 19

Admitted.

20. Little Neck represents a coastal drumlin, an oval, smoothly rounded hill of unstratified glacial drift, containing approximately 36 acres. About 28 acres are upland; the balance of the land is tidal wetland. It is accessed by land only via Little Neck Road which connects Little Neck to Great Neck.

RESPONSE 20

Admitted.

21. Little Neck Road is a flood-prone, filled causeway between Ipswich Bay and Neck Cove, with a history of tidal overwash during major storm events. Little Neck Road parallels Pavilion Beach, so named for a pavilion that was demolished during the Blizzard of 1978.

RESPONSE 21

Admitted.

22. Many years ago the Feoffees began renting small portions of Little Neck to individuals and families who constructed cottages on those portions of land. Those portions of land have commonly been referred to as "lots".

RESPONSE 22

Admitted.

23. There are not multiple lots within the meaning of the Massachusetts subdivision control law at Little Neck. Little Neck is one parcel of land, one lot, within the meaning of the subdivision control law and the Ipswich Protective Zoning By-Law.

RESPONSE 23

Admitted.

24. The use of Little Neck as one lot improved with one hundred sixty-seven cottages, and additional improvements owned by the Feoffees is, in zoning terminology, a lawful pre-existing non-conforming use and each cottage is a lawful pre-existing non-conforming structure. See G.L. c. 40A, §6.

RESPONSE 24

Admitted.

25. The Ipswich assessor has divided Little Neck into 210 lots, each separately assessed for tax purposes. Among those 210 lots are 167 lots improved with cottages. In each instance, the cottage is owned by someone other than the Feoffees.

RESPONSE 25

Admitted.

30. Most of the cottages have been, and are presently, used seasonally. Twenty-four cottage owners have permission from the Feoffees to occupy their cottages on a year-round basis; the remaining owners do not have such permission.

RESPONSE 30

Admitted.

32. On May 19, 1998, at the 349th annual meeting of the Feoffees, the Feoffees voted to increase rents annually over the next five years.

RESPONSE 32

Admitted.

33. As of July 1, 2003, the annual rent charged to each cottage owner was \$3,200 for a seasonal-use cottage and \$3,606 for a year-round use cottage.

RESPONSE 33

Admitted.

34. The following fiscal year, beginning July 1, 2004, the Feoffees increased the annual rent to \$5,000 for a seasonal use cottage and \$5,500 for a year-round use cottage.

RESPONSE 34

Admitted.

35. While the Feoffees were increasing the rent, the wastewater discharge problems at Little Neck increased.

RESPONSE 35

Admitted.

36. On December 10, 1998, the Department of Environmental Protection ("DEP") served on the Feoffees a Notice of Enforcement Action with the following factual allegation: "The Department has become aware of the fact that the Feoffees of the Grammar School own a private parcel of land, known as Little Neck in the Town of Ipswich that discharges in excess of 15,000 gallons per day of sewage. This discharge does not comply with the Clean Waters Act

and the Groundwater Permitting Program Regulations.”

RESPONSE 36

Admitted that the Notice of Enforcement Action contains in part the quoted language.

37. In September of 2000, the Feoffees entered into an Administrative Consent Order with DEP which incorporated a plan and schedule for complying with the Clean Waters Act. The essence of the plan was the installation of a tight tank or a drip irrigation system to service each of the 167 cottages, the former to service the seasonal cottages.

RESPONSE 37

Admitted.

38. In May of 2001, at the request of the Feoffees, the DEP agreed to postpone the implementation of those systems and tight tanks so as to permit the Town of Ipswich to determine whether to extend the municipal sewer service to Great Neck and Little Neck.

RESPONSE 38

Admitted.

39. Due to a lack of support from Great Neck land owners for extension of the municipal sewer, sewer was not extended to Great Neck and Little Neck.

RESPONSE 39

The School Committee admits that the sewer was not extended to Great Neck but can neither admit nor deny without discovery whether this was “due to a lack of support from Great Neck land owners”.

40. A new Administrative Consent Order issued in April, 2004, setting forth a schedule for the installation of tight tanks and drip irrigation systems.

RESPONSE 40

Admitted.

41. The Feoffees engaged Lombardo Associates, Inc. (“Lombardo”) as their engineer to deal with the DEP and investigate alternatives to the installation of tight tanks and drip irrigation systems.

RESPONSE 41

Admitted.

42. Lombardo investigated a variety of options and ultimately recommended to the

Feoffees, and the Feoffees adopted, an on-site sewage collection system consisting of four 30,000-gallon holding tanks installed beneath the ball field, a 2000-gallon spill containment tank, an MIS emergency power building and a 75kw emergency generator and fuel tank. The stated design capacity of the collection system was capped at 50,000 gallons per day based on the aggregate bedroom count of 462 bedrooms (110 gallons per bedroom per day according to then current Title 5 regulations).

RESPONSE 42

Admitted.

43. In the fall of 2004, a new Administrative Consent Order issued directing the Feoffees to submit plans to DEP for the proposed collection system. The Feoffees did so and on March 24, 2005, the DEP approved the plans. The Feoffees constructed the collection system under the direction of Lombardo.

RESPONSE 43

Admitted.

44. The DEP insisted on the Feoffees' commencing construction prior to the Feoffees petitioning this Court for permission to borrow the funds needed to construct the collection system. Feoffee Alexander B.C. Mulholland, Jr. loaned to the Feoffees nearly one million dollars, to commence construction and avoid enforcement action and penalties imposed by the DEP.

RESPONSE 44

Admitted.

45. Interest paid by the Feoffees on the Mulholland loan was equal to the interest paid by Mulholland on the loan he obtained in order to make his loan to the Feoffees.

RESPONSE 45

Admitted.

46. In order to raise the monies needed to comply with the DEP order, the Feoffees and the Ipswich Public Schools filed with the Probate Court on or about August 5, 2005 a stipulation and request for instructions seeking, in essence, the Court's approval to borrow \$6,483,000 to construct the common wastewater collection system. On that date, the Court (Sahagian, J.) entered an order declaring that the Feoffees had the authority to borrow that sum without violating the terms of the Payne trust.

RESPONSE 46

Admitted.

47. The Feoffees borrowed that sum from two banks, Newburyport Five Cents Savings Bank and the Ipswich Cooperative Bank, n/k/a Institution for Savings in Newburyport and Vicinity. The latter is the servicing lender. The loan was secured by, among others, a conditional assignment of rents and leases recorded at the Essex South District Registry of Deeds.

RESPONSE 47

Admitted.

48. The IFS note has a variable interest rate. Attached hereto as Exhibit 8 is a true and accurate copy of the IFS note.

RESPONSE 48

Admitted.

50. A minority of tenants signed the lease. The Feoffees sent a notice to quit to those tenants who did not sign leases.

RESPONSE 50

Admitted.

51. At present, the Feoffees have 33 lessees, 7 of whom have year-round use cottages and 26 of whom have seasonal-use cottages, paying annual rent of \$9,700 and \$10,800 respectively. Those rent amounts have been in place since July 1, 2006.

RESPONSE 51

Admitted that the quoted amounts are what the lessees are paying, except that the figures are reversed – the rent is \$10,800 for the year-round uses, and \$9,700 for the seasonal-use cottages. Admitted that these rents have not been increased since July 1, 2006.

52. Those former tenants at will who did not sign the lease filed a purported class action lawsuit in the Essex Superior Court sub nom William M. Lonergan, et al v. James W. Foley, et al, Essex Superior Court Civil Action No. 06-02328D (the "Superior Court action").

RESPONSE 52

Admitted that some of the former tenants at will who did not sign leases filed a purported class action on behalf of a purported class of tenants or former tenants. Otherwise denied.

58. At present, the Feoffees have 134 cottage owners who are paying to the Feoffees annual use and occupancy charges of \$5,520 for seasonal use (117 seasonal users) and \$6,000 for annual use (17 annual users). Those charges are in accordance with a stipulation filed in the Superior Court action (the "Stipulation").

RESPONSE 58

Admitted in part and denied in part. The School Committee admits that the charges recited above are sums currently paid by non-lessee cottage owners, but denies that these charges represent all that is due from the non-lessee cottage owners for the use and occupancy of the cottages. The School Committee further denies that amounts are currently being paid in accordance with the Stipulation, which was superseded as part of the proposed sale of Little Neck.

59. The Stipulation also provided that the non-lessees pay into escrow the difference between the rent paid by the lessees and the use and occupation payments made by the non-lessees. The escrow payments have been stayed pursuant to a settlement agreement (the "Settlement Agreement") dated as of December 24, 2009 between the Feoffees and the LNLAC. Attached as Exhibit 9 is a true and accurate copy of the Settlement Agreement.

RESPONSE 59

Admitted that Exhibit 9 is a true and accurate copy of the Settlement Agreement, but denied that the escrow payments have been "stayed." Rather, under the terms of the Settlement Agreement, no further escrow payments shall be made, absent a new agreement or a court order. Further, if the sale is approved, escrow payments that were already made are being returned in their entirety to the tenants in form of a credit toward their purchase of the Little Neck real estate.

63. The average real estate taxes paid per cottage owner in fiscal 2010 was just under \$4,000.

RESPONSE 63

Admitted that the average real estate tax due per cottage owner in fiscal 2010 was just under \$4,000. The School Committee can neither admit nor deny without further discovery whether these amounts were all paid in fiscal 2010.

65. Each cottage owner is charged by the Feoffees .095 cents for every gallon of water used by the cottage owner.

RESPONSE 65

Admitted.

66. The parties in the Superior Court action have engaged in extensive discovery and the costs of litigation were substantial.

RESPONSE 66

Admitted.

67. The parties engaged in extensive settlement discussions, aided for nearly one year by the mediation efforts of a former Superior Court judge.

RESPONSE 67

Admitted.

69. Settlement discussions then turned in a new direction: the possible sale of Little Neck to the cottage owners.

RESPONSE 69

Admitted.

70. On October 8, 2008, LNLAC, acting in behalf of the non-lessees, and the Feoffees reached tentative agreement on a sale price of \$26,500,000 for all of Little Neck in its AS IS condition.

RESPONSE 70

Admitted.

71. The Feoffees met with the Ipswich School Committee on November 20, 2008 and the Committee voted to authorize the Feoffees to enter into an agreement with the cottage owners to sell Little Neck for a price of \$26,500,000, all subject to Probate Court approval.

RESPONSE 71

Admitted.

72. On November 20, 2008, the Ipswich School Committee understood that, following said sale, the Feoffees would no longer own Little Neck and would no longer be collecting rents from Little Neck cottage owners.

RESPONSE 72

Admitted that the members of the School Committee understood that the Feoffees would not own Little Neck if they sold it and that they would not collect rent for periods after such a sale.

73. On November 20, 2008, the Ipswich School Committee understood that the sale proceeds would be invested by the Feoffees who would then pay income generated by that investment to the beneficiary.

RESPONSE 73

Admitted that the members of the School Committee understood that if there were a sale of Little Neck, the net sale proceeds would need to be invested by someone on behalf of the beneficiary. Otherwise denied.

74. The Feoffees and LNLAC jointly announced the tentative agreement to the public on December 9, 2008.

RESPONSE 74

Admitted.

76. The Feoffees and LNLAC discussed the possibility of structuring the sale of Little Neck differently: the Feoffees recording a so-called approval not required (ANR) plan, see G.L. c. 41, §§ 81L and 81P, dividing Little Neck into 168 lots, 167 lots improved with cottages and a 168th lot containing the remaining land, and offering for sale individual lots to cottage owners who, collectively, would acquire the 168th lot.

RESPONSE 76

Admitted.

78. On May 7, 2009, the Feoffees met in executive session with the Ipswich School Committee and presented the ANR sale methodology. The Committee approved such a sale.

RESPONSE 78

Admitted that the School Committee approved pursuing the ANR sale approach outlined that evening by Attorney Sheehan. Otherwise, denied.

79. On May 7, 2009, the Ipswich School Committee understood that, following said sale, the Feoffees would no longer own Little Neck and would no longer collect rents from Little Neck cottage owners.

RESPONSE 79

Admitted that the members of the School Committee understood that the Feoffees would not own Little Neck if they sold it and that they would not collect rent for periods after such a sale.

80. On May 7, 2009, the Ipswich School Committee understood that the sale proceeds would be invested by the Feoffees who would then pay income generated by that investment to the beneficiary.

RESPONSE 80

Admitted that the members of the School Committee understood that if there were a sale of Little Neck, the net sale proceeds would need to be invested by someone on behalf of the beneficiary. Otherwise denied.

81. The Feoffees and LNLAC awaited a decision in the Appeals Court case of Branagan v. Zoning Board of Appeal of Falmouth in which the issue of the status of houses on lots so created was to be determined. The Branagan court held on October 16, 2009 that such

houses did not enjoy the benefit of being prior non-conforming structures, the new ANR plan having changed that status.

RESPONSE 81

The School Committee can neither admit nor deny without conducting discovery whether the Feoffees and LNLAC awaited the *Branagan* decision. The second sentence of Request 81 is admitted.

82. The Branagan decision doomed the ANR sale methodology.

RESPONSE 82

The School Committee can neither admit nor deny whether the Appeals Court decision in *Branagan* "doomed" the ANR sale methodology, but admits that the Feoffees and LNLAC did not wish to proceed with the ANR sale methodology in view of the *Branagan* decision.

83. The Feoffees and LNLAC then discussed the only other available, practicable approach to sale: the creation of a condominium pursuant to the Massachusetts Condominium Law, G.L. c. 183A, §§ 1 et seq.

RESPONSE 83

Admitted that the Feoffees and LNLAC next negotiated a condominium methodology, but otherwise denied.

86. Months of negotiations between the Feoffees and LNLAC, neither side wanting to give up control of its property to the other, resulted in the execution of the Settlement Agreement.

RESPONSE 86

Admitted.

88. On January 4, 2010, the Feoffees met with their lessees and their counsel and explained the Settlement Agreement. The lessees were invited to participate in the purchase; indeed, their support of the purchase was critical to the sale of Little Neck.

RESPONSE 88

Admitted.

90. The Ipswich School Committee created an Ad Hoc Committee consisting of local businessmen Mitch Feldman, Mark Leff, and Clark Ziegler to study the technical feasibility and practicality of the proposed condominium creation and sale.

RESPONSE 90

Admitted.

91. The Ad Hoc Committee, the Feoffees and LNLAC met and exchanged information between February, 2010 and May, 2010, resulting in a May 20, 2010 memorandum from the Ad Hoc Committee to the Ipswich School Committee.

RESPONSE 91

Admitted.

92. That memorandum concluded, in pertinent part, that "... the conversion of Little Neck to a condominium appears to be practical and achievable." As to the seller financing offered by the Feoffees under the Settlement Agreement, the Ad Hoc Committee concluded that "the availability of seller financing as a backup at a time when conventional credit markets are impaired strikes us as part of the 'glue' that would make any condominium agreement possible." and "The purchase prices established in the settlement agreement appear to result in a low loan to-value ratios (sic) and cost burdens not significantly greater than current rents. If so, that increases the potential for private mortgage financing and reduces the risk of loss on seller financing that might be provided by the Feoffees."

RESPONSE 92

Denied that the above quote includes the pertinent parts of the memorandum. Admitted that the memorandum includes, out of context, the selective quotes set forth above, although not in the order presented in the Request.

93. The Ad Hoc Committee also made a series of financial recommendations: that the so-called Balance of Purchase Price Note to cover the non-buyers' share of the overall price of \$29,150,000 be no greater than \$3,000,000; that the Feoffees obtain a satisfactory loan commitment to refinance the existing loan for the wastewater treatment system; that the Feoffees engage an experienced outside firm to manage all loan servicing and collections and to monitor property tax payments and insurance coverage on cottages; and that the Feoffees utilize a professional third party investment advisor.

RESPONSE 93

Denied as stated. The Ad Hoc Committee was not tasked with evaluating the fairness of the sale and did not endorse the sale. The recommendations set forth above were conditional recommendations as to protections that should be built in if a decision were ultimately made to back the sale.

95. 158 of 167 cottage owners are ready, willing and able to purchase condominium units as evidenced by duly executed purchase and sale agreements and by the delivery, in escrow pending the creation of the condominium, of bills of sale to the Feoffees for those 158 cottages, resulting in a Balance of Purchase Price Note of \$1,584,266, nearly half of the \$3,000,000 ceiling recommended by the Ad Hoc Committee.

RESPONSE 95

Admitted, except as to any implication that the Ad Hoc Committee endorsed the sale. The Ad Hoc Committee was not tasked with assessing the fairness of the sale, and its financial recommendations were conditional recommendations as to protections that should be built in if a decision were ultimately made to back the sale.

96. Another seven cottage owners have executed and delivered purchase and sale agreements and bills of sale in escrow, but, at the moment, their cottages are subject to chattel mortgages which, unless discharged, prevent those cottages from being included "in the condominium.

RESPONSE 96

Admitted.

97. Those seven cottages may be added to the condominium in a subsequent phase or phases, but the Feoffees will already have received that portion of the \$29,150,000 represented by those cottage owners by way of the Balance of Purchase Price Note.

RESPONSE 97

Admitted.

98. The creation of a Condominium and the Feoffees' sales of Condominium Units will allow the Feoffees to pay down and payoff their indebtedness and create an endowment fund for the benefit of the Ipswich Public Schools.

RESPONSE 98

Admitted.

99. The creation of a Condominium and the Feoffees' sales of Condominium Units will permit a diversification of the assets of the Trust.

RESPONSE 99

Admitted.

103. The creation of a Condominium and the Feoffees' sales of Condominium Units will result in a dismissal of the Superior Court Action.

RESPONSE 103

Admitted that if there is a sale pursuant to the Settlement Agreement, the Superior Court Action will be dismissed. Otherwise, denied.

104. A dismissal of the Superior Court action will bring to an end the expenditure of legal fees and costs in that action.

RESPONSE 104

Admitted.

105. James E. Monahan of LandVest, Inc. has consulted with the Feoffees since 1997 concerning valuation of Little Neck and fair rental values of lots.

RESPONSE 105

Admitted that James E. Monahan of LandVest has consulted with the Feoffees from time to time since 1997, and that he has purported to provide valuations of Little Neck and fair rental values of lots. Otherwise denied.

107. That value includes the value of the common wastewater system.

RESPONSE 107

Admitted that the fair market value of Little Neck includes the value to the cottage-owners of having the use of the common wastewater system. Otherwise denied.

110. Such a use can be made of the Property only if the cottage owners agree with the Feoffees to create such a condominium.

RESPONSE 110

Admitted that a condominium consisting of land and cottages cannot be created without the cottage-owners' consent.

113. Daniel Clasby is the certified public accountant of the Feoffees. He has prepared financial statements for the Feoffees and their filings with the Division of Public Charities of the Massachusetts Office of the Attorney General.

RESPONSE 113

Admitted.

114. Attached hereto as Exhibits 11-14 are the annual filings prepared by Mr. Clasby in behalf of the Feoffees for fiscal years ending 2006-2009, respectively.

RESPONSE 114

Admitted.

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

RESPONSE 115

Admitted.

116. The distribution of \$588,000 was the largest ever by the Feoffees, made possible by the increased rents collected by the Feoffees and by the fact that substantial interest expense on the borrowing in connection with the wastewater system construction had not yet been incurred.

RESPONSE 116

Admitted that the distribution was the largest ever. Otherwise denied.

117. The amounts distributed by the Feoffees to the beneficiary in the years immediately preceding fiscal year 2006 were as follows:

<u>Fiscal Year</u>	<u>Distribution</u>
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2002	\$282,970
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2003	\$245,000
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2004	\$308,545
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2005	\$300,000
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RESPONSE 117

Admitted.

120. Below is an itemization of the interest expenses and legal expenses for fiscal years 2006-2009.

<u>Fiscal Year End</u>	<u>Interest Expense</u>	<u>Legal Expense</u>
June 30, 2006	\$0	\$3,673
June 30, 2007	\$521,842	\$251,714
June 30, 2008	\$479,663	\$287,901
June 30, 2009	\$468,562	\$191,505

RESPONSE 120

Admitted that these figures are the interest and legal expenses for the given fiscal years as shown in the Feoffees' financial statements.

121. The proposed sale of Little Neck and the concomitant settlement of the Superior Court action will substantially end the interest expense and legal expense described in Par. 120 hereof.

RESPONSE 121

Admitted that a sale may end some of these expenses, but denied as to whether such expenses would be "substantially" ended.

122. The 2010 assessed value of land and buildings at Little Neck as to which the taxes are passed through to the cottage owners is \$56,567,000, an average assessed value of \$338,725.

RESPONSE 122

Admitted.

123. G.1. c. 59, §2B creates a legal fiction which is advantageous to the Town of Ipswich in that it allows the Town to tax Little Neck as if it were 210 individual lots and not one lot. The statute says, in pertinent part: "[R]eal estate ... held in trust for the benefit of ... a . . . town, or any instrumentality thereof . . . if ... leased or occupied for other than public purposes, shall for the privilege of such . . . lease or occupancy, be valued, classified, assessed and taxed annually ... to the . . . lessee or occupant in the same manner and to the same extent as if such ... lessee or occupant were the owner thereof in fee "

RESPONSE 123

Admitted that the statute contains in part the quoted language, but denied that it creates a legal fiction.

124. Little Neck generates substantial real estate tax revenue to the Town of Ipswich, about sixty percent of [sic] which goes to the benefit of the Ipswich Public Schools.

RESPONSE 124

Objection. The real estate tax revenues generated by Little Neck are not relevant to any issues in the case. Without waiving this objection, the School Committee responds as follows:

Admitted that Little Neck generates substantial real estate tax revenue to the Town of Ipswich and that the Town of Ipswich utilizes the tax revenues for a variety of public services, including its school system, which accounts for approximately 60% of the Town budget. Otherwise denied.

125. At the existing rate of \$11.54, Little Neck generates over \$650,000 in taxes which are paid by the cottage owners, about \$390,000 of which benefits the public schools.

RESPONSE 125

Objection. The real estate tax revenues generated by Little Neck are not relevant to any issues in the case. Without waiving this objection, the School Committee responds as follows:

Admitted that at the existing rate of \$11.54, Little Neck generates over \$650,000 in taxes which are payable by the cottage owners and that the Town of Ipswich utilizes the tax revenues for a variety of public services, including its school system, which accounts for approximately 60% of the Town budget. Otherwise denied.

126. That revenue stream to the schools will not be interrupted by the proposed sale; if the creation of the condominium has the effect of increasing the value of real estate at Little Neck, that revenue stream will increase.

RESPONSE 126

Admitted that tax revenues will continue whether or not there is a sale and that the tax revenues will increase or decrease based on future tax rates and assessments; otherwise denied.

130. CSB has agreed to provide partial releases of its mortgage as condominium units are sold.

RESPONSE 130

Admitted.

131. CSB has agreed to perform the loan servicing and collections services as recommended by the Ad Hoc Committee.

RESPONSE 131

Admitted that CSB has offered to provide loan services and collection services for a fee, but denied that the Ad Hoc Committee reviewed or recommended any specific proposal such as that proposed by CSB.

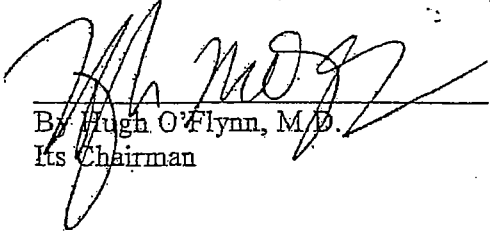
137. There is no guaranty that the value of Little Neck will appreciate in the future.

RESPONSE 137

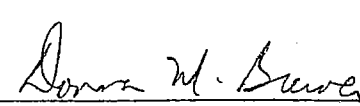
Admitted.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 10 DAY OF May, 2011

IPSWICH SCHOOL COMMITTEE,


By Hugh O'Flynn, M.D.
Its Chairman

AS TO OBJECTIONS,


Richard C. Allen, BBO # 015720
Stephen M. Perry, BBO # 395955
Donna M. Brewer, BBO #545254
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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2011, I caused a copy of the foregoing document to be served by first class mail upon all counsel of record.


Donna M. Brewer