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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT

NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., ET AL

VS

ATTORNEY GENERAL OF THE COMMONWEALTH

OF MASSACHUSETTS, ET AL

DEPOSITION OF HUGH M. O'FLYNN, a witness called
on behalf of the Plaintiffs, taken pursuant to Notice
Under the Applicable Rules of Domestic Relations
Procedure of the Probate & Family Court, before William
E. Beaupre, a P.C.R. and Notary Public in and for the
Commonwealth of Massachusetts, at the Law Offices of
MacLean, Holloway, Doherty, Ardiffe & Morse, P.C., 8 Essex
Center Drive, Peabody, MA on Wednesday, October 26, 2011,
commencing at 10:08 a.m.

WILLIAM E. BEAUPRE, 21 ANCHOR ROAD, LYNN, MA 01904

(781) 598-5286

1 APPEARANCES:

2

3 William H. Sheehan, III, Esq.

4 MacLean, Holloway, Doherty, Ardiffe & Morse, P.C.

5 8 Essex Center Drive

6 Peabody, MA 01960

7 Counsel for the Plaintiffs

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9 Donna M. Brewer, Esq.

10 Casner & Edwards

11 303 Congress Street

12 Boston, MA 02210

13 Counsel for the Defendants

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1 I-N-D-E-X

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3 WITNESS DIRECT CROSS

4 HUGH M. O'FLYNN

5 (By Mr. Sheehan) 5 --

6 (By Ms. Brewer) -- --

7

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

9

10 NUMBER PAGE

11 1 Copy of Notice of Taking Deposition 7

12 2 Copy of Report, 5/21/08 11

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties that the deponent will read and sign the deposition transcript under the pains and penalties of perjury within thirty (30) days of receipt of same or it is deemed read and signed; that the notarization is hereby waived.

It is further stipulated and agreed that all objections, except objections as to the form of the question, and motions to strike will be reserved until the time of trial.

It is further stipulated and agreed that the agreement regarding anything having to do with executive sessions be kept in confidential form until a decision is made at the time of trial.

HUGH M. O'FLYNN, first being satisfactorily identified by his Massachusetts Driver's License and being duly sworn, deposes and says as follows:

MR. SHEEHAN: And by way of stipulations, we'll reserve all objections except as to form until the time of trial, and reserve all motions to strike until time of

1 trial.

2 We'll give the witness an opportunity to read
3 and sign the deposition transcript within thirty days
4 after submission. Otherwise, it will be deemed signed.
5 And we'll waive the notarization, sign under the pains
6 and penalties of perjury.

7 And there may be questions asked pertaining to
8 activities taken by the Ipswich School Committee in
9 executive session. And to the extent there is testimony
10 as to executive session activities, we will agree that
11 they will be -- the testimony will be governed by the
12 same protection that's afforded by a stipulation that was
13 filed with the Essex Probate Court and marked as Korb
14 Number Two.

15 MS. BREWER: Correct.

16 MR. SHEEHAN: Very good.

17

18 DIRECT EXAMINATION

19

20 Q (By Mr. Sheehan) Would you please state your full name,
21 and spell your last name for the record?

22 A Hugh M. O'Flynn, O apostrophe F as in Frank, L-Y-N-N.

23 Q Where do you reside, sir?

24 A 18 Longmeadow Drive, Ipswich, Massachusetts.

- 1 Q You've lived there for how long?
- 2 A Eleven, almost twelve years.
- 3 Q How long have you lived in Ipswich?
- 4 A I grew up in Ipswich. But I've lived in Ipswich for
- 5 fourteen years continuously since I moved back.
- 6 Q And your educational background starting with high
- 7 school, please?
- 8 A I went to the Ipswich public schools, K through 12.
- 9 And then I went to Harvard undergraduate where
- 10 I got a Bachelor's in Biochemistry and a Master's sub-
- 11 sequently in Biomechanical Engineering. I went to
- 12 Columbia Medical School where I graduated and then went
- 13 on to the Hospital for Special Surgery in New York. It's
- 14 an orthopedic hospital associated with Cornell, and I did
- 15 my residency training.
- 16 And then Mass. General for my fellowship in hip
- 17 and knee replacement. And I've been in private practice
- 18 in Beverly since 1999 as an orthopedic surgeon.
- 19 Q Do you practice medicine with others or by yourself?
- 20 A I have a five man group, currently.
- 21 Q The name of that group?
- 22 A Coastal Orthopedic Associates.
- 23 Q Okay. And how long have you been affiliated with Coastal
- 24 Orthopedic Associates?

1 A Since I moved back, twelve years.

2 Q Now, let me show you, Dr. O'Flynn, the notice of taking
3 deposition. Do you recognize that as what brings you
4 here today?

5 A Yes. It was originally delivered to my father, not to
6 me.

7 Q I received a call from your father telling me that.

8 A Mmm-hmm.

9 MR. SHEEHAN: And can we have that notice of
10 deposition marked as Exhibit One, please?

11

12 (Exhibit Number One marked; Copy of Notice of Taking
13 Deposition)

14

15 Q Dr. O'Flynn, Exhibit Number One requests that you review
16 your records to determine whether you have in your
17 possession and control the records identified as exhibit
18 -- on exhibit A as a part of that Exhibit One.

19 Have you done that?

20 A I've reviewed all the records that I have generated and I
21 have reviewed those with my attorney.

22 Q And have you also reviewed records that are described in
23 exhibit A, which were generated by others and sent to
24 you?

1 A I have reviewed those that I had access to, and I have
2 general knowledge of them.

3 Q Did you bring any documents with you today?

4 A Not a piece of paper, but I did give her this.

5 MR. SHEEHAN: Have I already received all of
6 the documents?

7 MS. BREWER: That is the document.

8 THE WITNESS: That's the only one.

9 MS. BREWER: That's all he has.

10 THE WITNESS: That's the only one that I
11 generated myself, and that's dated around our particular
12 meeting.

13 Q Now, I'm a bit confused by the phrase that you generated
14 yourself. Do you have other documents that are described
15 on Exhibit Number One?

16 A School committee documents that have come to me as part
17 of regular school committee business, minutes, etcetera,
18 yes.

19 MR. SHEEHAN: Okay. Have I received all of
20 those?

21 MS. BREWER: You have.

22 MR. SHEEHAN: Can we stipulate that I have now
23 received all of the documents that are described on
24 Exhibit Number One either by way of a document production

1 that counsel made, or by way of the papers that were
2 handed to me today?

3 MS. BREWER: Are you comfortable with that
4 stipulation?

5 THE WITNESS: The only thing I don't have full
6 access to; for example, you're meeting Mr. Traverso this
7 afternoon. He's obviously generated some documents over
8 time.

9 I don't know if you have all those documents
10 that he's generated.

11 MS. BREWER: He's got a separate request to
12 bring documents, so we'll get back to his ----

13 THE WITNESS: So you may not have those. Ed's
14 generated a ream of papers that I have from time to
15 time edited and mostly not edited, but that have been
16 generated and given to the school committee as periodic
17 reports.

18 But in terms of the papers that I've generated
19 myself, that I've formed, that's it.

20 MR. SHEEHAN: Mr. Traverso is coming in this
21 afternoon, and I take it he is bringing with him the
22 documents that you've just referenced?

23 MS. BREWER: Right.

24 MR. SHEEHAN: All right. And fair to say and

1 can you stipulate that after I have received whatever Mr.
2 Traverso brings in this afternoon, that with those docu-
3 ments that he brings in, the documents that you've pro-
4 duced, and the papers you've just handed to me, that I
5 will have received all of the documents described in
6 Exhibit Number One to this deposition?

7 MS. BREWER: To the best of our knowledge,
8 everything.

9 MR. SHEEHAN: All right.

10 Q Now, Dr. O'Flynn, you've handed to me four pages. Do
11 those pages go together?

12 A Yes, they're one report.

13 Q And what are those four pages?

14 A They are a report that was expressing some of my thinking
15 regarding Little Neck sale and rental rates, and I
16 thought it was germane to any discussions regarding the
17 feoffee issues.

18 And it was part of our discussion in terms of
19 coming to decisions as the school committee regarding
20 some issues in that time frame.

21 Q So those four pages, they constitute a single document
22 that you generated?

23 A Yes. And I did give to my school committee colleagues,
24 probably by way of e-mail at the time.

1 Q Okay.

2 A And the report is dated May 21, 2008, and it follows up a
3 discussion regarding the feoffees sub-committee meeting
4 which would probably be dated around that time.

5 MR. SHEEHAN: And let's have those four pages
6 marked, please, as Exhibit Number Two.

7

8 (Exhibit Number Two marked; Copy of 5/21/08 Report)

9

10 MR. SHEEHAN: Off the record for a minute.

11

12 (Off the record discussion)

13

14 MR. SHEEHAN: Back on the record.

15 Q Dr. O'Flynn, have you ever served on a school committee
16 for a city or town?

17 A I've served on the Ipswich School Committee since 2003.

18 Q How many times have you been elected to office?

19 A I've been re-elected -- or I've been elected three times,
20 I guess.

21 Q And your present term expires when?

22 A Next year.

23 Q That would be May of 2012?

24 A I would guess, yes.

- 1 Q Do you expect to run for re-election?
- 2 A Yes.
- 3 Q Now, have you held any positions on the Ipswich School
4 Committee?
- 5 A Yes.
- 6 Q What positions have you held?
- 7 A Chairman.
- 8 Q And when were you the chairman of the Ipswich School
9 Committee?
- 10 A From June of 2010 till July of 2011.
- 11 Q And how did you become chairman of the Ipswich School
12 Committee?
- 13 A Election of the body.
- 14 Q Was that a contested election?
- 15 A No, it was not.
- 16 Q Now, at some point in time did you learn of a group
17 called the feoffees of the grammar school in the Town of
18 Ipswich?
- 19 A Yes.
- 20 Q When did you learn of the feoffees?
- 21 A When I was in grade school.
- 22 Q And how did you learn of them?
- 23 A Because I knew probably that I've been down to Little
24 Neck to visit friends or neighbors.

1 Q What do you understand is the relationship between the
2 feoffees and Little Neck?

3 A The feoffees own the land that comprises Little Neck, and
4 they receive rent from the tenants who have homes there,
5 and they are obliged to provide funds for the schools of
6 Ipswich.

7 Q Do you understand that the feoffees hold title to the
8 land at Little Neck in trust for the benefit of the
9 Ipswich public schools?

10 A That's my understanding.

11 Q At some point in time did you learn of litigation that
12 was filed by certain cottage owners against the feoffees
13 in the Essex Superior Court?

14 A Yes.

15 Q And how did you learn of that litigation?

16 A That litigation was filed when I was on the school com-
17 mittee. I'm sure I was notified by school committee
18 channels.

19 Q Have you read the complaint that was filed against the
20 feoffees by the cottage owners?

21 A At one time I certainly did, yes.

22 Q And are you familiar with the claims made against the
23 feoffees by the cottage owners?

24 A Well, to the extent that I've read it in the past and

1 understood it then, yes. Specific recall now, no. I
2 would have to be re-familiarized with the document if you
3 had specific questions.

4 Q Have you received legal advice, and I'm not asking you
5 now what advice you received, if any, but have you
6 received legal advice with respect to the claims made by
7 the cottage owners against the feoffees?

8 A Yes.

9 Q And from whom did you receive that advice?

10 A Our attorneys.

11 Q And who is that?

12 A Dick Allen, Donna Brewer, Steve Perry. Do you have any
13 other attorneys? That's it. And I don't remember who
14 gave me specific advice on that specific item.

15 Q And are you aware of any exposure that the feoffees are
16 subject to by reason of that litigation in the Essex
17 Superior Court?

18 MS. BREWER: Objection.

19 I'm not going to let him answer that question
20 as worded. His awareness and exposure, that seems to me
21 to be a back door way of asking whether he's received
22 information probably from attorneys on the merits and the
23 demerits of the claims.

24 Q Well, have you received information from counsel on the

1 merits and demerits of the claims?

2 MS. BREWER: Objection.

3 And I instruct him not to answer that. I am
4 not going to let him talk about the subject matter of
5 communications that are protected by the attorney/client
6 privilege.

7 MR. SHEEHAN: Well, with all due respect, the
8 question I just asked doesn't do that. It just asks for
9 whether or not you have received advice ----

10 MS. BREWER: Correct.

11 MR. SHEEHAN: ---- on the merits and demerits
12 of the claims.

13 MS. BREWER: And that identifies a particular
14 subject matter that you're asking if he's received legal
15 advice on.

16 MR. SHEEHAN: Right.

17 MS. BREWER: It's privileged.

18 MR. SHEEHAN: Well, okay. I disagree. We'll
19 quarrel on the record, but I'll reserve my right to get
20 that question answered.

21 Q Are you aware of discussions regarding the possible sale
22 of Little Neck?

23 A Yes.

24 Q And when did you first hear about the possibility of a

1 sale of Little Neck?

2 A I think when Mr. Claeys presented that with the first
3 iteration of attempted sale that the Little Neck tenants
4 did to us. That was the first time I've heard about the
5 idea concept of sale.

6 Q When was that?

7 A I don't have any idea. It would be reflected in the
8 record.

9 Q That was before the superior court litigation, though?

10 A Yes.

11 Q Who is Mr. Claeys?

12 A He's an attorney for the Little Neck tenants.

13 Q Was an offer to purchase made by the tenants prior to the
14 Essex Superior Court litigation?

15 A I don't recall. I think the verbal concept was there.

16 Q And you say that Mr. Claeys was representing the tenants
17 or the cottage owners?

18 A I think that was my knowledge at the time, yes. That
19 pre-dates the litigation.

20 Q Right. And did he appear before the school committee?

21 A Yes.

22 Q Was it in an open session or an executive session?

23 A Open session.

24 Q And as best you can recall, and recognizing you're going

1 back a number of years, what did Mr. Claeys say and what
2 did the school committee say with respect to the subject
3 of sale?

4 A I believe Mr. Claeys proposed consideration of sale by
5 the school committee, and the school committee chose not
6 to discuss that with him.

7 That was all I know.

8 Q Did the school committee later discuss what Mr. Claeys
9 had proposed?

10 A I don't have any direct recollection.

11 Q Okay. Do you recall whether or not the school committee
12 received an offer to purchase or a purchase and sale
13 agreement from the group that Mr. Claeys represented?

14 A I can't imagine we would have since they don't own the
15 land.

16 Q Do you know whether or not the tenants group that Mr.
17 Claeys represented presented to Don Whiston of the
18 feoffees a purchase and sale agreement or an offer to
19 purchase the land?

20 A I have no knowledge of that.

21 Q When was the next time that you heard of the possibility
22 of a sale on Little Neck?

23 A I don't recall. Certainly, the minutes may reflect when
24 I might have heard about it in the school committee.

1 But it had been discussed at open session
2 meetings and at closed session meetings from time to time
3 as a possibility when we were discussing rent.

4 Q And was the next time that you heard of discussion about
5 the possibility of sale of Little Neck, was that in con-
6 junction with the superior court litigation?

7 A I believe it ante-dates that.

8 Q I'm sorry?

9 A I believe it ante-dates that.

10 Q Did the school committee ever ask the feoffees to elicit
11 from the cottage owners a proposal to purchase Little
12 Neck?

13 A Not to my knowledge.

14 Q At some point in time after the superior court litigation
15 was commenced, did the school committee take up the sub-
16 ject of the possible sale of Little Neck?

17 A Yes.

18 Q Do you recall when that was?

19 A I do not recall when. I'm sure you could familiarize me
20 if you had appropriate documents.

21 Q Let me show you what's been marked as Korb Number Six.
22 Korb Number Six consists of minutes of a meeting of the
23 Ipswich School Committee in executive session on October
24 16, 2008.

1 Is that correct?

2 A Yes.

3 Q Without reading the minutes, do you have a memory of what
4 transpired at the executive session of the Ipswich School
5 Committee on October 16, 2008 regarding the possibility
6 of the sale of Little Neck?

7 A Not a specific memory to that date. General ideas of
8 what was going on.

9 Q Now, you have -- strike that.

10 Was this the first time, that is on October 16,
11 2008, is this the first time that the school committee
12 discussed the possibility of the sale of Little Neck in
13 conjunction with settlement of the superior court liti-
14 gation?

15 A I do not recall. It is not the first time we discussed
16 sale, or I discussed sale.

17 Q When was the first time you discussed sale?

18 A You have my document from May 21, 2008. That reflects my
19 thoughts on sale at the time.

20 Q What caused you to generate what was marked as Exhibit
21 Number Two to your deposition?

22 A This happened after a wide ranging discussion with myself
23 and Jim Foley and yourself and several Little Neck
24 residents. And it followed that discussion.

1 And this is part of our feoffees sub-committee
2 meeting, which I'm sure there are some notes on that.
3 But I had summarized my thoughts after that meeting to
4 bring them to the school committee.

5 Q And so the document that's been marked as Number Two was
6 authored solely by you?

7 A Yes.

8 Q And it followed a meeting of what you described as the
9 feoffees sub-committee?

10 A Yes.

11 Q What is or was the feoffees sub-committee?

12 A It's a sub-committee of the Ipswich School Committee
13 which discussed issues in regard to the feoffees, parti-
14 cularly at that point it was re-writing the trust and
15 discussing the trust itself.

16 But that was -- I think that ante-dates the
17 concept of litigation, but I don't remember.

18 Q Is the feoffees sub-committee a standing committee of the
19 Ipswich School Committee?

20 A It's been in existence since -- I don't know how long
21 it's been around, but it's been around for a number of
22 years. I don't know if it's a standing committee indefi-
23 nitely, but it's been there for years now.

24 Q Was the feoffees sub-committee in place when you became a

1 school committee member in 2003?

2 A I don't recall. It certainly was by 2008 when I had this
3 and I was on it for a number of years. I'm not currently
4 on it.

5 Q And in May of 2008, who from the Ipswich School Committee
6 made up the feoffees sub-committee?

7 A I know that at least it was Ed Traverso and I. I don't
8 know if there was a third member. Ed and I were on
9 together for a number of years.

10 Q Now, there's reference in Exhibit Number Two to a wide
11 ranging discussion on the feoffees. You've identified
12 the fact that there were two Little Neck residents in
13 attendance at that discussion?

14 A Yes.

15 Q Do you know who they were?

16 A I do not.

17 Q How did the discussion come to take place on or about May
18 21, 2008?

19 A I don't recall. When I -- when you asked me to generate
20 files, I looked through all my feoffees related files in
21 my computer, and this is what I found.

22 Q Was the meeting that is referenced in Exhibit Number Two
23 held on May 21, 2008?

24 A I don't recall. But it must have been very close to that

1 date because I dated it May 21, 2008. So it was either
2 on or close to that date. I presume on.

3 Q Where was the meeting held?

4 A If it was, as I expect, where most of our meetings were
5 held for the feoffees sub-ommittee, it would have been
6 the Payne Building, the Payne School in Ipswich, in the
7 conference room upstairs.

8 Q Did Attorney Allen attend the meeting?

9 A Not to my recollection.

10 Q Was Attorney Allen available by speaker phone at that
11 meeting?

12 A Not to my recollection.

13 Q Now, there's a reference at the top of page two to, and
14 I'll quote, we reviewed Ed's letters.

15 Do you see that?

16 A Mmm-hmm.

17 Q Now, ----

18 A And there's lawsuit, so we did -- that would -- the
19 lawsuit was happening at that time.

20 Q What were Ed's letters?

21 A That's a very broad question.

22 Q Well, I'm just using the language that you used?

23 A And I don't have any -- Ed, as you may be familiar, has
24 from time to time written notes to the school committee

1 broadly, and perhaps you've gotten cc'd on a few of them,
2 I don't know, regarding his thoughts to the feoffees.

3 And typically, they would come in the form of
4 some concept of how rents should be charged more fairly
5 to the schools and how the system should be -- as a
6 member of the feoffees school committee -- feoffees sub-
7 committee had a particular interest in assuring both the
8 adequate dispensation of funds from the feoffee trust and
9 also the appropriate utilization of those funds.

10 But I don't have any specific knowledge of
11 those letters.

12 Q Now, there was a discussion of the legal status of the
13 trust?

14 A Mmm-hmm.

15 Q Tell me about that discussion?

16 A I don't know any more than you see on here. This is just
17 my report to the school committee that date.

18 Q Now, were these notes that you made that we've marked as
19 Exhibit Number Two made with the contemplation that they
20 would be provided by you to the full school committee?

21 A I think they were probably e-mailed to the full school
22 committee at that time.

23 Q Were you charged by the feoffees sub-committee with being
24 the recording secretary as to meetings of the feoffees

1 sub-committee?

2 A I'm not certain if I was the secretary at that meeting or
3 Ed was or Rick was. We had different responsibilities
4 from time to time.

5 But this was my -- I put them down at the time
6 on computer because I thought they were important.

7 Q Did Mr. Korb keep notes of the meeting?

8 A I have no recollection.

9 Q Did Ed Traverso keep notes of the meeting?

10 A I have no recollection.

11 Q Were the notes that you made that we've marked as Number
12 Two, were they notes that you made for your own purpose
13 or were they notes that were made in behalf of the
14 feoffees sub-committee?

15 A I wanted to summarize my knowledge of the financial situ-
16 ation, primarily, at Little Neck and convey that know-
17 ledge, part of which we gained through the meeting, to
18 the school committee.

19 Q Now, also discussed were, and I'll use your language, the
20 outcomes possible with the lawsuit.

21 Do you see that language?

22 A I don't. Can you direct me?

23 Q Yes, the second page, third line from the top?

24 A Mmm-hmm. Yes, I'm sure we discussed that. I'm sure that

1 was something we presented at the time.

2 Q All right. And who discussed the outcomes possible with
3 the lawsuit?

4 A I presume you did.

5 Q Do you have a memory of that?

6 A Not specific.

7 Q Do you know why possible outcomes of the lawsuit were
8 discussed?

9 A Because as school committee, even though I don't think --
10 I don't know if we were involved in the suit at that time
11 -- our interests were involved in the suit. And so I'm
12 sure it was an update of some sort.

13 Q Okay. And were the merits and demerits of that lawsuit
14 discussed at that time?

15 A I don't recall.

16 Q Now, continuing on on the second page of this document,
17 you have recorded, revised trust document on hold until
18 the lawsuit is settled.

19 Who decided to put that issue on hold until the
20 lawsuit was settled?

21 A I don't recall. I think we just didn't discuss the
22 revised trust document at that meeting.

23 Q And there was discussion under the category of legal
24 status of the trust. You've recorded, private trust with

1 transparency is the intent of the feoffees and the
2 current status.

3 Did I read that accurately?

4 A Yes.

5 Q What does that mean?

6 A I think we were trying to make the trust the public trust
7 at that point. And on discussion with you and Mr. Foley,
8 it was your intent that that stay a private trust, but
9 with transparency. I presume that means open meetings
10 and open notes.

11 Q Now, under the category of lawsuit status, would you read
12 those notes to yourself, please, under that category?

13 A I'm not good at legal terms. That's the first thing. So
14 -- but the eviction proceedings will not evict any one.

15 There will be a decision this summer either
16 favoring the feoffees or the tenants which will be
17 appealed and either result in some settlement next summer
18 without a trial or the following summer with a trial and
19 the attendant million dollar expenses.

20 Currently, those who took the lease pay \$9,700
21 - \$10,800 and those who rent and are suing pay \$5,000 or
22 \$5,500, making up the difference in an escrow amount, and
23 also pay for sewer operational costs.

24 Q From whom did you receive that information?

1 A I believe that was upon clarification and discussion with
2 yourself, Jim Foley, and discussion with Ed and I and
3 Rick at that meeting.

4 And it could be that that was pre-existing
5 information, and I was just summarizing it in my dis-
6 cussion.

7 Q Was there discussion at this meeting on or about May 21,
8 2008 about the possibility of sale of Little Neck?

9 A I don't believe at that time either party was considering
10 the sale of Little Neck or discussing it. I brought it
11 forward from time to time, and I did bring it forward on
12 the first page here.

13 Q What did you bring forward?

14 A My thoughts on returns in sale.

15 Q And what were your thoughts on returns in sale?

16 A I had a long discussion of the annual costs, the annual
17 sinking funds for repair, the leases, and everything
18 else.

19 And I believed that if everyone signed that
20 day, we'd get \$626,000 a year with the previous rental
21 agreement that the feoffees had negotiated and then had
22 fallen apart with the lessees that they had proposed.
23 And I can't be -- I'm sorry, I'm not more specific on
24 that.

1 So it was my understanding that the return
2 would represent about 1.75 percent of the land value, and
3 that we would do better with selling to the residents and
4 getting a higher return in the stock market or somewhere
5 else.

6 And I can read that last couple of lines, if
7 you want me to read it, because it is something I wrote.
8 It says if we sold to the residents at \$12 million and
9 got a 5 percent return, we would do better than the
10 \$626,000 annually that I expected from sale -- I mean,
11 from rental.

12 And this was again I wrote in the last line, in
13 short, the rejected lease deal is a poor return for the
14 schools and a bargain for the residents.

15 Q Fair to say that as of May 21, 2008, you favored a sale
16 of Little Neck?

17 A Yes.

18 Q Now, at the top of the page that we've marked as Exhibit
19 Number Two, I see you've written Little Neck real estate
20 is worth roughly \$36 million.

21 Did I read that accurately?

22 A That reflects our understanding of the appraised value of
23 the property at that time.

24 Q The appraised value or the assessed value?

- 1 A Assessed value. I mis-spoke.
- 2 Q And was that the assessed value of the land only?
- 3 A Yes, I believe so. And I used that assessed value to
- 4 project that we were getting a 1.75 percent return on the
- 5 land at the bottom of that same page.
- 6 Q And does this refresh your recollection as to whether the
- 7 subject of sale to the residents came up at the meeting
- 8 on or about May 21, 2008?
- 9 A It doesn't reflect what happened at that meeting. But I
- 10 did from time to time bring up the concept of sale
- 11 myself. I don't know if I brought it up at that meeting.
- 12 And this is simply thoughts of my own on the
- 13 numbers, and then the following pages are more of a
- 14 report on the meeting.
- 15 Q Did you submit this four page document to anyone either
- 16 electronically or otherwise?
- 17 A I'm sure that I did.
- 18 Q To whom did you submit it?
- 19 A The school committee.
- 20 Q And did you submit it to the school committee in the form
- 21 that we have it today, Exhibit Number Two?
- 22 A Exactly.
- 23 Q And did you submit it to the school committee in this
- 24 form as we've marked Exhibit Number Two shortly after May

1 21, 2008?

2 A It's very likely that it would either be at the next
3 school committee meeting or by electronic mail some time
4 in the interval between that meeting and the next school
5 committee meeting.

6 Q Did your submission of the document that you generated
7 marked O'Flynn Number Two result in any discussion among
8 the school committee about sale of Little Neck?

9 A I do not recall.

10 Q Did Ed Traverso react at the meeting on or about May 21,
11 2008 to the subject of sale, if it was raised, as best
12 you can recall?

13 A I do not recall. But we had regular discussions of that.

14 Q When you say we had regular discussions, you and Mr.
15 Traverso?

16 A The feoffees sub-committee.

17 Q Okay. As of May 21, 2008, did anyone on the feoffees
18 sub-committee share your view that the property should be
19 sold?

20 A I don't recall.

21 Q Okay. Do you recall the date when the school committee
22 discussed sale for the first time following the May 21,
23 2008 feoffees sub-committee meeting?

24 A I do not.

1 Q Are you aware of any meetings of the school committee in
2 either open session or executive session between May 21,
3 2008 and October 16, 2008, when the subject of the sale
4 of Little Neck was raised?

5 A I have no specific recollection.

6 Q Do you have a general recollection?

7 A Yes.

8 Q What's your general recollection?

9 A It was discussed. It would be in the records. I don't
10 know where else to find it.

11 Q Did you learn during those discussions between May 21st
12 and October 16, 2008 as to whether any of the school
13 committee members agreed with you as to sale?

14 A Any votes would be on the record. I have fairly consis-
15 tently favored sale throughout my time in the school
16 committee, and that's clear in the record and clear in my
17 voting pattern.

18 And from time to time, school committee members
19 agreed with me. But I think I'm the most consistent sup-
20 porter of that stance.

21 Q Do you continue to favor sale?

22 A Yes.

23 Q Do you favor sale at the negotiated price of \$29,150,000?

24 A Yes.

1 Q Why?

2 MS. BREWER: Objection.

3 A She objected.

4 Q That's okay.

5 MS. BREWER: And you can go ahead and answer
6 unless I instruct you not to.

7 THE WITNESS: Okay.

8 A I think it represents the -- our best shot of gaining
9 value for the children of Ipswich from the feoffee trust.

10 Q And what have you done to make that determination?

11 A I have had discussion with our lawyers which are private
12 and I can't reveal to you regarding lawsuit status,
13 etcetera. I've done my own assessment of the financial
14 issues confronting Little Neck, and I believe that our
15 best realization of value is through cash.

16 I've never really believed in rental as the
17 best way to maximize our income. I think that rental is
18 fundamentally flawed. We have a conflict with the resi-
19 dents, the Little Neck residents.

20 Q What is that conflict?

21 A We want to charge the most we possibly can to gain the
22 most money for the students and the children of Ipswich
23 as we can. The tenants/renters/owners, whatever they
24 are, proposed owners, would want the lowest rent they can

1 get.

2 And they have a lot of legal tools at their
3 disposal from resisting expulsion to fair trade rules, to
4 everything else, which keep us from getting the maximum
5 return from the property value.

6 And therefore, I think we would be better
7 served investing in more fungible assets over time as
8 compared to rental.

9 Q You say you've done your own assessment of the financial
10 issues. What assessment have you done?

11 A You have some of that record in front of you on my May
12 21st document. And I've read and understood their finan-
13 cial statements as provided from time to time by the
14 feoffees.

15 Q When you say their financial statements, you're referring
16 to the feoffees ----

17 A Yes.

18 Q ---- financial statements?

19 A Yes.

20 Q What other documents have you relied upon in making your
21 assessment?

22 A Appraisal information from the Town of Ipswich and the
23 wide ranging papers of Mr. Ed Traverso.

24 Q What appraisal information have you reviewed?

1 A We have from time to time both reviewed town appraisals
2 and we've had our own appraisals commission.

3 Q When you say the town appraisal, do you recall the name
4 of the appraiser engaged by the town?

5 A I do not. You'll familiarize me, I'm sure.

6 Q If I were to suggest it was Colliers, Meredith & Grew,
7 does that sound right?

8 A Sure.

9 Q Okay. Now, have you read the Colliers, Meredith & Grew
10 appraisal?

11 A I've read that appraisal, yes.

12 Q Have you reviewed the entire -- read the entire appraisal
13 including the so-called side letter?

14 A I had the opportunity to read both, yes.

15 Q Did you understand what was contained in that appraisal
16 information?

17 A At that time I had a good grasp of it, I think.

18 Q And you said that you also reviewed what you called your
19 own appraisal.

20 Was that an appraisal that was commissioned by
21 the Ipswich School Committee?

22 A I believe, yes.

23 Q And was that the appraisal that was performed by Stephen
24 Foster at Lincoln Financial?

1 A That's my understanding, yes.

2 Q And have you read that appraisal?

3 A Yes.

4 Q And did you understand the contents of that appraisal?

5 A Yes.

6 Q What did you understand Mr. Foster did insofar as his
7 appraisal in behalf of the Ipswich School Committee?

8 A That's a broad question. Can you be more specific?

9 Q Well, what was his methodology, if you know?

10 A I can't comment on it specifically now. I don't have
11 direct recollection of the document or his methodology,
12 as he explained it.

13 He did present to us his methodology and his
14 reason for calculations, reasons for conclusions at the
15 time, which would be contained in the records of the
16 school committee and the appraisal.

17 Q Do you recall that Mr. Foster came up with a value which
18 he called the value most akin to fair market value?

19 A Yes.

20 Q Do you remember what that number was?

21 A No.

22 Q If I were to suggest to you that Mr. Foster in his report
23 of November 5, 2010, stated a value of \$20,500,000 and
24 said this is the value which most conforms with the

1 standard definition of market value, which is the value
2 of a property between unrelated parties without special
3 interest, does that refresh your memory?

4 A Yes. That was part of, again, a discussion of a variety
5 of values, based on a variety of circumstances and that
6 was one circumstance he discussed.

7 Q All right. And given all of the information that you
8 reviewed that was provided by Colliers, Meredith & Grew
9 and by Lincoln Financial in the person of Stephen Foster,
10 you concluded that you would support a sale at the price
11 of \$29,150,000?

12 A I did. I also supported the sale of \$26 million cash.

13 Q Have you reviewed any other appraisal information?

14 A We have had access to other appraisals performed by the
15 feoffees, I believe. I'm not sure if we've seen the
16 tenants' appraisals. I've certainly seen some numbers on
17 that, too.

18 Q And have you reviewed the appraisal information that was
19 prepared by a company called LandVest at the request of
20 the feoffees?

21 A As I recall, we've had several -- we've had at least one
22 presentation in the distant past from LandVest which
23 ante-dates the suit.

24 Q Have you seen an appraisal performed by LandVest in the

1 last two years?

2 A I believe that was provided to us, but you would have to
3 familiarize me with that document again. But they did
4 present to us I don't know what year that was, 2005 maybe
5 they came to us, the school committee. That was a
6 discussion of rentals.

7 Q Have you ever had any conversations with any folks who
8 work at LandVest?

9 A No.

10 Q Now, I want to direct your attention to Korb Number Six
11 which is the October 16, 2008 executive session minutes.

12 Fair to say that on that occasion there was a
13 specific discussion among school committee members on the
14 issue of sale?

15 A Mmm-hmm.

16 Q You have to answer yes or no for us?

17 A Yes. Sorry, I mis-spoke. I should be more clear.

18 Q And at that time you were joined by speaker phone with
19 your attorney?

20 A Yes.

21 Q And there was a question as to whether or not the school
22 committee would support a sale of Little Neck to settle
23 the superior court litigation, which sale would have a
24 price of \$26.5 million?

- 1 A Yes.
- 2 Q And you understood at that time that the goal was to net
3 approximately twenty million dollars, which would be put
4 into an endowment fund?
- 5 A Understood. Yes, that's my understanding.
- 6 Q Okay. And there was a discussion at that meeting which
7 ultimately led to a vote as to whether or not to instruct
8 the feoffees to look into the option of sale of Little
9 Neck?
- 10 A Yes.
- 11 Q And there was a vote that supported the feoffees looking
12 into that option of sale?
- 13 A Yes.
- 14 Q And among others, you were in favor of that option?
- 15 A Yes.
- 16 Q Now, the vote of October 16, 2008 records Mr. Traverso in
17 favor of that option, of exploring that option?
- 18 A Yes.
- 19 Q Do you have a specific memory of Mr. Traverso supporting
20 the exploration of that option?
- 21 A I do.
- 22 Q And do you have a specific recollection of opposition to
23 exploration of sale by Ms. Arsenault, Ms. Ross, or Mr.
24 Loeb?

1 A I believe Ms. Ross and Mr. Loeb spoke to the issue. I
2 don't recall Ms. Arsenault speaking to the issue. I can
3 look through the notes here.

4 There's Ms. Arsenault.

5 Q Did Mr. Loeb ----

6 A He did not speak to the issue at this time.

7 Q Mr. Loeb did not?

8 A Here, he stated he was against it. There it is. He was
9 against for tonight's discussion of sale. He thought it
10 was a town-wide issue. Okay.

11 So I'm just reading the notes here. But -- and
12 I don't see a lot of discussion from Mr. Traverso at the
13 time.

14 Q Other than what is recorded ----

15 A Yes.

16 Q ---- on the October 16, 2008 meeting minutes, do you have
17 any recollection of what transpired at the meeting?

18 A I think my direct recollection is simply what is the
19 document, yes.

20 Q You don't have any memory of other things, other comments
21 of school committee members, other than what is recorded
22 in what we've marked as Korb Number Six?

23 A No, not at that. No specific recollection.

24 Q Prior to October 16, 2008, were you at a meeting of the

1 school committee where the feoffees through their counsel
2 set forth a rent proposal?

3 A Yes.

4 Q And was the school committee told at that time that it
5 could expect no distributions until the Essex Superior
6 Court litigation was resolved?

7 A I don't recall.

8 Q Okay. Do you recall any discussion about how -- with the
9 feoffees or their counsel or both with respect to how the
10 litigation would impact, if at all, distributions to the
11 public schools?

12 A I don't recall specifically, no.

13 Q Do you recall saying words to the effect that the Ipswich
14 School Committee will be in the litigation for the long
15 run and understands that there won't be any distributions
16 coming in the near future, or words to that effect?

17 A Yes, absolutely.

18 Q And you were joined in that sentiment by other school
19 committee members at that same meeting, were you not?

20 A Yes.

21 Q Do you recall specifically Mr. Traverso joining in that
22 sentiment?

23 MS. BREWER: Objection.

24 A I don't recall.

- 1 Q Subsequent to the October 6th -- I'm sorry.
- 2 A October 16th.
- 3 Q The October 16, 2008 meeting, was there a meeting of a
4 group of feoffees regarding the possibility of sale of
5 Little Neck?
- 6 A I'm sure there was. But I don't have any specific know-
7 ledge of what the feoffees' actions are.
- 8 Q Now, let me show you what has been marked as Korb Number
9 Seven?
- 10 A Mmm-hmm.
- 11 Q And let me give you a few moments to familiarize yourself
12 with that document?
- 13 A I was not present at this meeting, was I?
- 14 Q You are not reported as being present.
- 15 A Okay. So I don't have specific knowledge of it, but I
16 can certainly read along with you.
- 17 Q My first question pertains to the second line of the --
18 right underneath minutes of meeting. It's called the
19 working group of the feoffees?
- 20 A Mmm-hmm.
- 21 Q Are you familiar with a working group that was designated
22 by the school committee?
- 23 A Yes, I am.
- 24 Q Is that different from the feoffees subcommittee?

- 1 A It is. It was a group commissioned specifically to bring
2 comfort to those members of the school committee who had
3 voted against exploring sale, to have their questions
4 answered regarding the concept of sale.
- 5 Q And is that why the working group consists of the three
6 people who voted against exploring sale on October 16,
7 2008?
- 8 A It was thought that if we explored sale, that the people
9 who were against it should have an opportunity to have
10 further discussion.
- 11 Q And hence, a working group was created?
- 12 A Yes.
- 13 Q And that working group consisted of three members of the
14 school committee?
- 15 A Yes.
- 16 Q Mr. Loeb, Ms. Ross, and Ms. Arsenault?
- 17 A Who opposed sale at the previous meeting.
- 18 Q Now, did you receive on or after November 11, 2008 the
19 minutes that have been marked as Korb Number Seven?
- 20 A I certainly did, but I don't recall them specifically.
- 21 Q Now, following the meeting of the working group of the
22 feoffees on November 11, 2008, was there a meeting of the
23 full school committee to discuss the sale of Little Neck?
- 24 A I'm certain there was. I don't remember any specifics.

- 1 You can familiarize me.
- 2 Q Now, let me show you what's been marked as Korb Number
- 3 Eight?
- 4 A Mmm-hmm.
- 5 Q And first, do you have a specific memory of an executive
- 6 session of the school committee on November 20, 2008
- 7 wherein the sale of Little Neck was discussed?
- 8 A I don't have a specific memory, although I have some -- I
- 9 have a sense of that meeting and I can review these notes
- 10 and familiarize myself with it.
- 11 Q And fair to say that on November 20, 2008, that there was
- 12 an executive session meeting of the Ipswich School
- 13 Committee?
- 14 A Yes.
- 15 Q And at that executive session, following a discussion on
- 16 health insurance for employees, there was a discussion
- 17 about the litigation in the superior court?
- 18 A Yes.
- 19 Q And there was discussion about the possibility of sale of
- 20 Little Neck to settle that litigation?
- 21 A Yes.
- 22 Q And Mr. Loeb reported to the full school committee the
- 23 results of the working group's meeting on November 11,
- 24 2008?

1 A That's certainly possible. Can you point out to me where
2 he reported that? I don't see it here.

3 Q It's right under the caption, litigation?

4 A Got it, yes, got it.

5 Q Okay. Now, present at this meeting were not only school
6 committee members, but also Attorney Allen and Attorney
7 Sheehan.

8 Is that correct?

9 A Yes, I believe that is true. It's certainly reported as
10 above.

11 Q And Attorney Allen was there representing the school com-
12 mittee; correct?

13 A That's true.

14 Q And Attorney Sheehan was there representing the feoffees?

15 A To my knowledge, that's also true.

16 Q And at that meeting both Attorney Sheehan and Attorney
17 Allen recommended settlement of the litigation by way of
18 sale.

19 Is that so?

20 MS. BREWER: Objection.

21 A I don't see Mr. Allen's recommendation.

22 Q Let me refer you to the top line of what's called page
23 seven. And it's actually the second page of Korb Number
24 Eight. It recites ----

1 A That reflects your hope that Mr. Allen had made it clear
2 why it's best to sell.

3 Q Does that refresh your memory as to Mr. Allen's trying to
4 make it clear why it was best to sell at that time?

5 MS. BREWER: Objection.

6 A It does not. And my impression was that it wasn't Mr.
7 Allen's recommendation either way.

8 Q Did Mr. Allen speak to the pros and cons of the litiga-
9 tion on November 20, 2008?

10 A Yes.

11 Q And did he speak to the pros and cons of the settlement
12 of that litigation?

13 A I don't see that. But he did -- there's a note in this
14 discussion, and I don't have any specific knowledge to
15 this, that he was optimistic about the Attorney General's
16 decision.

17 And that's the only note that I see where he
18 discussed anything.

19 Q Seeing that Mr. Allen was optimistic that the Attorney
20 General would join in the decision to sell, does that
21 refresh your memory as to whether Mr. Allen was in favor
22 of sale?

23 MS. BREWER: Objection.

24 A It's my impression that Mr. Allen had no opinion on sale,

1 but simply was representing us and the wishes of the
2 school committee at the time.

3 Q And as of November 20, 2008, were you comfortable that
4 you had information sufficient to allow you to make a
5 decision as to whether or not to authorize the sale of
6 Little Neck for twenty six and a half million dollars to
7 settle the superior court litigation?

8 A Yes.

9 Q And did anyone at the November 20, 2008 meeting -- and
10 when I say anyone, any member of the school committee --
11 voice any concern that sufficient information was not
12 available?

13 A Yes.

14 Q Who was that?

15 A Mr. Loeb, who asked that the discussion be tabled, and
16 there were several members of the committee who were
17 opposed. I don't know what the reasons for opposition
18 were.

19 Q Other than what might be said in the minutes?

20 A I don't remember anything specifically on that.

21 Q Now, did you make a motion on November 20, 2008?

22 A Yes.

23 Q I'll direct your attention, if you need to, ----

24 A Middle of the second page.

- 1 Q ----- to the second page?
- 2 A Got it. Yes, I did.
- 3 Q What was your motion?
- 4 A I moved that we go forward with the sale of the property.
- 5 Q What happened to that motion?
- 6 A It was seconded. Mr. Loeb moved to table the discussion,
7 but I did not withdraw my motion. And it passed four/
8 two/one; four in favor, two opposed, one abstaining.
- 9 Q Do you agree that the November 20, 2008 meeting minutes
10 as marked in Korb Number Eight are fair and accurate?
- 11 A I believe they are.
- 12 Q What did you understand was going to happen next after
13 that vote of November 20, 2008?
- 14 A My understanding was that there would be a sale and that
15 the litigation would be settled.
- 16 Q And did you understand that the feoffees through their
17 counsel following the meeting of November 20, 2008 would
18 seek to implement the settlement and sale?
- 19 A That was my understanding, yes.
- 20 Q And what happened along the way to the potential sale of
21 Little Neck for twenty six and a half million dollars as
22 authorized in -- on the November 20, 2008 meeting?
- 23 A It's my understanding the Little Neck tenants lost their
24 financing and couldn't come up with the cash, and so the

1 sale didn't work out. It failed.

2 Q All right. Do you recall following the inability of the
3 cottage owners to obtain financing that there were then
4 discussions held between the feoffees and their counsel
5 and the school committee and its counsel as to other
6 potential ways of selling Little Neck?

7 A That, I have a general recollection, but not a specific
8 recollection of.

9 MR. SHEEHAN: Off the record.

10 MS. BREWER: Yes.

11

12 (Off the Record Discussion)

13

14 MR. SHEEHAN: Back on the record.

15 Q I want to show you what's been marked as Hopping Number
16 One?

17 A Mmm-hmm.

18 Q First, do you have an independent memory of what occurred
19 at an executive session meeting of the school committee
20 on March 19, 2009 insofar as the issue of sale of Little
21 Neck?

22 A I'm reviewing the notes. Give me a minute.

23 Q Sure, take whatever time you need?

24 A All right. I have a general recollection, not a specific

1 recollection of the meeting. But I remember the discus-
2 sion and the people in the room.

3 Q And what's your memory of what happened on March 19,
4 2009?

5 A In light of the failure of the previous sale attempt,
6 there was a discussion of alternatives.

7 And also in light of the alternatives and some
8 new knowledge about condominium structure that might be
9 required, there was some discussion of how expenses would
10 be borne, etcetera.

11 Q And was there a vote taken at the March 19, 2009 school
12 committee executive session?

13 A I see record of only one vote beyond going in and out of
14 session, and that was Attorney Allen asked if there was a
15 consensus, not a specific vote.

16 That wouldn't have been necessarily a move to
17 vote by a school committee member, but there was con-
18 sensus support for discussion.

19 Q And did you understand that the request for consensus was
20 a consensus to the feoffees trying to work out a sale
21 with the cottage owners for twenty six and a half million
22 dollars?

23 MS. BREWER: Objection.

24 A The consensus was to work out a sales structure. It

1 didn't say anything about price or anything else, as far
2 as I know. But it was -- it was asking the feoffees to
3 seek an alternative sales structure.

4 Q And there was unanimous support for the feoffees to seek
5 out -- seek to work out such a sales structure?

6 A I don't have independent knowledge of that, but I do have
7 a report with an executive session. I have no reason to
8 doubt its authenticity.

9 Q Now, this represented a change in position for Ms. Ross
10 and Mr. Hopping; correct?

11 MS. BREWER: Objection.

12 A My understanding is that this was to seek an alternative
13 vessel, not necessarily to approve that vessel. And so
14 in that sense, it probably means nothing in terms of
15 whether the sale would be actually approved or not by
16 those individuals.

17 And I'll let them decide for themselves what
18 they want to say about that.

19 Q Do you recall Mr. Hopping as of March 19, 2009 changing
20 his view about sale?

21 A I have no understanding or knowledge of his view of the
22 sale.

23 Q Do you recall Ms. Ross voicing a change in position as of
24 March 19, 2009 regarding sale?

1 A Similar regarding Ms. Ross. I don't have any independent
2 knowledge of her opinion regarding sale at any point.

3 Q Let me show you what's been marked as Korb Number Eleven?

4 A Mmm-hmm.

5 Q And let me ask you first, do you have an independent
6 memory, without your memory being refreshed by looking at
7 that document.

8 Now, do you have an independent memory of a
9 meeting of May 7, 2009, an executive session of the
10 school committee?

11 A I do not have an independent memory, but I do note that I
12 was only there for five minutes.

13 Q At some point in time were you given executive session
14 meeting minutes of May 7, 2009 to review and approve?

15 A Of course.

16 Q And fair to say that these minutes were reviewed and
17 approved by the Ipswich School Committee?

18 A Yes.

19 Q Do you recall whether you voted on the approval of these
20 minutes even though you had to leave early?

21 A I recall -- I do not dispute the fact that I was at this
22 meeting and that the record reflects my opinion at the
23 time.

24 Q And what was your opinion on May 7, 2009?

- 1 A That I favored the ANR plan for sale of Little Neck.
- 2 Q And did you understand that the proposed sale price under
3 the ANR plan was twenty six and a half million dollars?
- 4 A I don't recall that specifically. But as I've stated
5 before, I've favored every sale.
- 6 Q Now, do you recall before you left there being discussion
7 about the goal being to net twenty million dollars for
8 the schools?
- 9 A I don't recall that specifically.
- 10 Q Okay. Now, you were not present at the time of the vote
11 recorded in the May 7, 2009 meeting minutes; correct?
- 12 A I was not.
- 13 Q At some point in time after May 7, 2009, did you learn
14 that Mr. Hopping seconded a motion to approve and support
15 the approval not required proposal outlined by Attorney
16 Sheehan that evening?
- 17 A I have no specific knowledge of Mr. Hopping seconding
18 that motion, and I don't recall being notified of that
19 specifically until now. I'm sure I read it in the
20 minutes.
- 21 Q Did you ever talk to Mr. Hopping about his vote in the
22 affirmative on May 7, 2009?
- 23 A I have not.
- 24 Q Have you talked to -- have you ever talked to Ms. Ross

1 about her vote in the affirmative on May 7, 2009?

2 A I have not.

3 Q Did you ever talk to Mr. Traverso about his vote in the
4 negative on May 7, 2009?

5 A I have not.

6 Q Did Mr. Traverso ever tell you why he voted in favor of
7 sale on November 20, 2007 -- 2008, I'm sorry, but voted
8 against the proposal outlined by Attorney Sheehan on May
9 7, 2009?

10 A Apparently, Mr. Traverso is a flip-flopper. I have no
11 knowledge of Mr. Traverso's reasons for favoring or not
12 favoring sale at any specific time.

13 I've been consistent.

14 Q Has there been in the last twelve months a vote of the
15 school committee on the issue of whether or not to sell
16 Little Neck for \$29,150,000?

17 A I believe there has been, but you'd have to refresh my
18 specific knowledge.

19 Q Well, you're going to have to help me because I haven't
20 been able to find any minutes of a meeting wherein there
21 was such a vote.

22 MS. BREWER: Objection.

23 I believe we've given you open session meeting
24 minutes with the vote on that, the four to zero to one.

1 MR. SHEEHAN: Well, there was a -- stay on the
2 record. There was a vote to rescind approval of the --
3 strike that.

4 Q Now, there was a vote to rescind the vote of November 20,
5 2008.

6 Do you recall that?

7 A Not specifically.

8 Q And I'm not referring to a vote to rescind the November
9 20, 2008 vote.

10 My question is, has there been a vote of the
11 school committee on the issue of whether or not to settle
12 the lawsuit in the superior court and approve the sale of
13 Little Neck for \$29,150,000?

14 MS. BREWER: Objection.

15 A Not to my knowledge.

16 Q Has there been a meeting of the school committee at which
17 there was discussed, although no vote was taken, that the
18 issue of whether or not to support the settlement of the
19 superior court litigation and sell Little Neck in a con-
20 dominium style sale for \$29,150,000?

21 A You're asking, has it been discussed ----

22 Q Yes?

23 A ---- by the school committee?

24 Q Yes?

1 A The answer is it has been, although I don't have a spe-
2 cific date.

3 Q And was a vote ever taken on the issue of settlement and
4 sale at \$29,150,000?

5 A I believe it was.

6 Q What was the result of that vote?

7 A You would have to refresh my memory. I don't have a spe-
8 cific knowledge of the result of that vote, but for the
9 fact that we're in litigation.

10 Q I'm trying to refresh your memory and I have no document
11 with which to try to refresh your memory.

12 Do you recall such a vote on the issue of
13 whether or not to settle the superior court litigation
14 and authorize sale at \$29,150,000?

15 Do you recall a vote that was taken and where
16 the vote was three in favor of settlement and sale and
17 four against?

18 MS. BREWER: Objection.

19 A I don't recall that specific vote. But I understand that
20 the motion to settle failed.

21 Q And did it fail -- by what numbers did it fail?

22 A No recollection, although I supported sale.

23 Q Did others support sale at that time?

24 A I have no specific recollection of other positions. I

1 always supported sale.

2 Q And you do recall a vote being taken on that issue?

3 A I don't have specific knowledge of that vote. But I do
4 know that we're here and it was not settled.

5 And therefore, we had discussions that led to
6 not proceeding with sale.

7 Q Now, do you have a general recollection of a vote being
8 taken on the issue of settlement of the superior court
9 litigation and sale of Little Neck at \$29,150,000?

10 MS. BREWER: Objection.

11 A I have a general recollection that after the twenty nine
12 million dollar proposal, we were uncomfortable with the
13 structure by which some would be allowed to sell and some
14 would have to rent from the feoffees.

15 We appointed a sub-committee to look at that.

16 Q Was that a so-called ad hoc committee?

17 A Ad hoc committee.

18 Q And that was a committee made up of non-school committee
19 members?

20 A Absolutely.

21 Q Mr. Leff and Mr. Ziegler, and Mr. Feldman?

22 A That's my understanding exactly, yes.

23 Q Okay.

24 A And they had a wonderful report to us which was helpful

1 in our understanding of that mechanism by which sale
2 would go forward.

3 Q And what did the ad hoc committee report to the school
4 committee as to the mechanism for the proposed sale?

5 A That it was adequate.

6 Q Has any finance committee member talked to you about sale
7 of Little Neck?

8 A Yes.

9 Q Has any finance committee member tried to convince you
10 that there should be no sale of Little Neck?

11 A In open session, many times.

12 Q And who on the finance committee tried to convince you
13 not to support sale?

14 A I don't have a specific recollection. But from time to
15 time it seems like all of them.

16 Q And at those open sessions, were other school committee
17 members present?

18 A Yes.

19 Q Were all of the school committee members present?

20 A I have no recollection. But certainly, we had tri-board
21 meetings where we discussed the issue both in open and
22 executive session.

23 Q Now, have you ever received any communications from any
24 finance committee member regarding sale outside of a

1 formal meeting?

2 A Communications as in independent discussions?

3 Q Yes?

4 A I can't recall a specific one.

5 Q Has Richard Howard ever talked to you outside of the
6 context of a meeting and discussed with you the subject
7 of sale?

8 A I'm certain, no.

9 Q Has Jamie Fay ever talked to you outside the context of a
10 meeting and discussed with you sale of Little Neck?

11 A Possibly, yes. Jamie Fay and I met a number of times
12 when I was chairman of the school committee to discuss
13 finance committee issues with the school committee
14 budgets globally.

15 And so we had a number of meetings of the
16 chairmen where we may have discussed in general terms
17 feoffee matters. But there was never any intent of him
18 to convey anything but the opinion of his board, and
19 certainly no effort to convince me of anything.

20 Q What is the relationship between the school committee and
21 the finance committee?

22 A That's a broad question. Can you be more specific?

23 Q Well, how do they interact?

24 A The school committee is responsible for its budget. But

1 the finance committee recommends the portion of the over-
2 all town budget that the school committee gets and either
3 supports or does not support our requests for a budget on
4 an annual basis.

5 They also have an interest in any financial
6 issue affecting the schools that is separate from the
7 town monies because they have an interest in the schools
8 being funded appropriately.

9 In that interest, they've pursued the feoffee
10 issue. And obviously, the finance committee has a large
11 influence on the school committee because our budget is a
12 large portion of our discussion and our work.

13 Q In your experience, has the school committee and the
14 finance committee agreed on budgetary needs of the school
15 committee?

16 A Never.

17 Q And how does the school committee budget ultimately get
18 approved in the Town of Ipswich?

19 A The budget is voted on by the school committee after dis-
20 cussion with the FinCom and the town and then brought
21 forward to town meeting where it's approved by town
22 meeting.

23 Q Does the finance committee make a recommendation or give
24 an opinion as to the school committee budget to town

1 meeting?

2 A Yes. The finance committee has a profound impact on our
3 ability to get funds.

4 Q And how is that so?

5 A They approve -- well, they don't approve. They have two
6 methods. If the school committee -- no, no.

7 How's this? The school committee will present
8 to the finance committee every spring their budget for
9 the following year, and the finance committee will
10 provide feedback and discussion and a bracket in which we
11 can expect where our funds will come.

12 We'll approve our budget tentatively, then there
13 will be a bean counting in April, typically, when we'll
14 get our final numbers. And those final numbers will come
15 in discussion with the selectmen in town and the school
16 committee, and then we'll go to town meeting to have
17 those final numbers voted on after that bean counting.

18 Inevitably, there is a hope for more monies for
19 the schools. But we are realistically typically accept
20 what we can get from the town and make adjustments to our
21 budget, as needed.

22 But clearly, over the years our needs exceed
23 our budget of monies, and that's true of every community
24 in the state.

1 Q Are you aware of a discussion or a debate about whether
2 money received from the feoffees should be used for
3 enhancement or enrichment on the one hand, as contrasted
4 with being used to pay what might be referred to as
5 operating expenses of the school department?

6 A It's an ongoing debate. It's been happening since I was
7 first elected to the school committee.

8 Q And what is your -- do you have an understanding as to
9 the intent of the trustee regarding that issue?

10 And that is, whether the monies from the
11 feoffees should be used for enhancement or enrichment in
12 contrast with operating expenses?

13 MS. BREWER: Objection.

14 A It is our intent that the funds from the feoffees be used
15 for enrichment. It is the reality that funds from the
16 feoffees in the absence of adequate funds from other
17 sources have been used for operational expenses.

18 Q And have, in fact, monies from the feoffees been used for
19 operational expenses?

20 A When they're available, absolutely.

21 Q When did that begin?

22 A I don't have a specific recollection. But certainly,
23 throughout my time on the school committee, feoffees
24 monies have been used for routine operational expenses

1 for schools.

2 And when they went away it took a considerable
3 chunk out of our available funds for routine and accepted
4 funds for the schools.

5 Q Have you ever made a demand upon the feoffees in writing
6 for an increase in distributions?

7 MS. BREWER: You mean him, personally?

8 MR. SHEEHAN: Yes.

9 A No.

10 Q To your knowledge, has the school committee ever made a
11 demand upon the feoffees to increase the rents charged to
12 the cottage owners?

13 A We made a verbal demand, at least.

14 Q When was that?

15 A In discussions with the feoffees surrounding the LandVest
16 appraisal for rentals, it was proposed that because of
17 the increased values of the properties at Little Neck
18 that there should be an attempt to move rentals to market
19 rate.

20 And to the extent that market rate was well
21 above what the feoffees were charging at that time, we
22 asked the feoffees to make an effort to increase rentals
23 to reflect the value of the property.

24 Q And what was the reaction of the feoffees?

1 A Cooperative.

2 Q And in fact, are you aware that the feoffees announced in
3 1998 an intent to increase rents at Little Neck to fair
4 market value?

5 A Yes.

6 Q And in fact, the feoffees did increase rent annually
7 starting in 1999 and running through 2003?

8 A That's true. Although not to fair market value, as
9 market value is increasing rapidly through those years.

10 Q Fair to say that the feoffees were chasing fair rental
11 value and weren't catching it?

12 A That's true.

13 Q And in 2003 - 2004, the feoffees increased the rent once
14 again to \$5,000 for seasonal cottage owners and \$5,500
15 for annual cottage owners?

16 A That's my understanding, yes. I was on the school com-
17 mittee at that time.

18 Q And did you understand that those numbers, \$5,000 and
19 \$5,500 were, in the opinion of LandVest, fair market
20 rents?

21 MS. BREWER: Objection.

22 A I have no independent knowledge of that. But I do recall
23 a discussion and meeting with LandVest where the school
24 committee was present, and you could probably dig those

1 notes up.

2 Q Now, in your terms as a school committee member, have the
3 feoffees been responsive to requests of the school com-
4 mittee to increase rents?

5 A In early years, yes.

6 Q At some point in time did that responsiveness stop?

7 A I believe so.

8 Q When?

9 A When we -- and I don't have a specific time. When the
10 feoffees settled -- when the feoffees made the sewer
11 construction or septic system construction out on Little
12 Neck, that large loan that they took out drastically
13 changed their ability to bring a reasonable distribution
14 to the schools.

15 And it happened that at that time the value of
16 property had gone up considerably such that a rental
17 range of \$10,000 or \$11,000 was reasonable for the pro-
18 perty, but that the schools' distribution would not
19 increase significantly because of the large amount of
20 that capital that would have to be dedicated to the
21 capital needs that had presented themselves in Little
22 Neck.

23 It was my opinion that to ensure an adequate
24 distribution of the schools, rentals should be increased

1 fairly significantly. And the amount of increase was not
2 enough to ensure an adequate distribution to the schools,
3 in my opinion.

4 And that that amount of increase negotiated was
5 not enough, in my opinion, to cover the costs associated
6 with running Little Neck that were realistically expected
7 based on the capital needs of the septic system and the
8 increased value of Little Neck.

9 So that second -- the long term lease that had
10 been negotiated with tenants, it was my opinion that it
11 was not an adequate amount.

12 And that was one of the reasons why at that
13 time although the feoffees and the -- the feoffees had
14 sought out a lease arrangement, that I began to agitate
15 for sale because I thought that that cash stream over
16 time crippled by the loan required for the septic system
17 would not be adequate compared to the cash flow that
18 would come from a sale of the property.

19 Q And do you recall that the rents sought under leases by
20 the feoffees were \$9,700 a year for -- from seasonal
21 cottage owners and \$10,800 for annual cottage owners?

22 A It was my impression -- it was my opinion that was too
23 low.

24 Q But you recall those numbers ----

1 A I do.

2 Q ---- sought to be obtained by the feoffees by the cottage
3 owners?

4 A I agree that you sought those numbers. It was my opinion
5 that they were not adequate.

6 Q And you are aware that some eighty percent of the cottage
7 owners thought those demands were too high?

8 A I understand. That's why I think ultimately, rental is
9 an inappropriate solution at any number.

10 My May 21st note was part of my coming to
11 understanding that it would be difficult for the feoffees
12 to ever charge rent that was appropriate to the needs of
13 the school committee for an adequate cash flow on the
14 value of the property.

15 And if the property were truly valued at thirty
16 six million dollars, which was the town attempt at value
17 at that land at that year, that our income flow from the
18 negotiated leases was way too little to justify accepting
19 those leases under time.

20 And it was my understanding that I at some
21 point would have voiced that opinion and voiced a sale as
22 a better option.

23 Q Did the feoffees keep the school committee abreast of
24 their attempts to negotiate a settlement with the cottage

1 owners by way of rent?

2 A Yes. And again, my opinion at the time was that they
3 settled too low and they should have evicted people.

4 And that was not reflected by the tenor of the
5 school committee.

6 Q I'll shift gears a little bit with you, Dr. O'Flynn, and
7 talk to you about the subject of trust reform.

8 And you're familiar with that subject?

9 A I am.

10 Q That subject has been discussed at least since you were a
11 school committee member in 2003 and actually goes beyond
12 that?

13 A Yes. The standing committee was well before that.

14 Q Are you in favor of trust reform?

15 A Yes.

16 Q And are you in favor of continuing to have seven feoffees
17 or trustees?

18 A I have no preference on the number of feoffees or trus-
19 tees.

20 Q Do you favor the designation of all feoffees or trustees
21 by town bodies?

22 A You're asking my opinion?

23 Q Yes?

24 MS. BREWER: Objection.

1 A It is my opinion that the school committee should have
2 control of the feoffees to the extent that they can. I
3 have sought to increase the schools' control over the
4 feoffees, whether through an independent trust body or
5 not.

6 And through compromise, I believe we've made
7 other arrangements.

8 Q All right. If it were up to you, who would select the
9 seven trustees, if there were seven?

10 MS. BREWER: Objection.

11 A The school committee.

12 Q The school committee would select all seven?

13 A Sure.

14 Q You're familiar with the concept of life feoffee?

15 A I am.

16 Q Do you think there should be any life feoffees who
17 continue to serve?

18 MS. BREWER: Objection.

19 A I have no king. I prefer never to have any life anybody.

20 Q Are you aware of any wrongdoing committed by any of the
21 present life feoffees?

22 A Legal wrongdoing, no.

23 Q Any other kind of wrongdoing?

24 A No. My opinion has always been that the feoffees have

1 acted in their best interest to assure the continuity of
2 the feoffees and in an attempt to assuage the concerns of
3 the school committee.

4 But were I the trustee of the feoffees trust, I
5 would have worked much more in concert with the goals of
6 the school committee to ensure adequate flow of monies to
7 the schools, regardless of the wants or needs of the
8 Little Neck residents.

9 Q Well, what do you think the feoffees should have done
10 differently, if anything?

11 MS. BREWER: Objection.

12 A Charged appropriate rents and evicted the tenants. And
13 if that was determined to be a difficult course, I think
14 sale at a value determined between the feoffees and the
15 school committee.

16 And perhaps adequate time for a full discussion
17 making the school committee a party to those negotiations
18 would have smoothed over our ultimate concerns.

19 Q Making the school committee a party to the negotiations
20 regarding sale?

21 A Or rental or anything. When the feoffees worked, they
22 worked with the tenants and then presented to the school
23 committee yes or no.

24 But I think that we might have had better buy-

1 in from the schools had you opened your meetings, opened
2 your doors, which I don't see any reason why the school
3 committee and the feoffees should not have exactly
4 parallel goals and be exactly working together on every
5 need because you are, in fact, obliged by your trust only
6 to provide for the schools and not obliged to the resi-
7 dents or the tenants for anything.

8 And therefore, your goals should have been our
9 goals, and your intent should have been our intent. And
10 to the extent that you could have worked more closely
11 with us at each level, it would have been more approp-
12 riate than presenting to us discussions that already
13 occurred and that, to your opinion, were the best but not
14 necessarily the school committee's opinion.

15 Q Now, was the school committee invited to participate in
16 negotiations regarding rent?

17 A It might have been the case. I don't know.

18 Q Well, the school committee declined to enter those nego-
19 tiations, did it not?

20 A I don't recall.

21 Q And the school committee made a conscious decision not to
22 become involved in the superior court litigation, did it
23 not?

24 A At that time we were trying to limit our exposure to

1 legal expenses and hoped that the feoffees would act in
2 our interests.

3 And until the settlement, I think we always
4 thought the feoffees were acting in our interest, at
5 least to some extent.

6 Q Did you think that the proposed settlement was not in the
7 school committee's interest?

8 A It was my opinion that it was. But the opinion of the
9 school committee is what matters.

10 Q And the school committee's opinion was fluctuated over
11 time?

12 MS. BREWER: Objection.

13 A The school committee is a committee of many, not the
14 opinion of one. And therefore, it responds to its
15 members' changing needs and its members changing member-
16 ship and everything else that goes into that.

17 Q Fair to say that at least through November 20, 2008, the
18 feoffees and the school committee were working together
19 regarding the possible settlement of the superior court
20 litigation and the sale of Little Neck for twenty six and
21 a half million dollars?

22 A Yes.

23 Q And you understood, did you not, that the feoffees would
24 not have gone forward with a potential sale if the school

1 committee had said no?

2 MS. BREWER: Objection.

3 A It's my opinion that that is true.

4 Q Do you know why the school committee declined to partic-
5 ipate in negotiations as to settlement by way of rent?

6 MS. BREWER: Objection.

7 A My understanding at the time was that the feoffees were
8 working in our interest to negotiate the best possible
9 rent.

10 I was not fully satisfied with the result, even
11 though it was stated by the feoffees and yourself that
12 that was the best possible deal that could be obtained at
13 the time, which is why as of May of 2008, I believed sale
14 was a better option.

15 Q Do you have any reason to believe that the feoffees did
16 not negotiate in good faith with the tenants, with the
17 goal of maximizing the rental income for the schools?

18 A I think they tried their best. I don't think they did as
19 well as we hoped.

20 Q Are you aware of any feoffee acting contrary to the
21 interest of the Ipswich public schools?

22 A Not to my knowledge.

23 Q Are you aware of any feoffee who has an attitude of hos-
24 tility towards the Ipswich School Committee?

1 A Yes.

2 Q Who?

3 A I think from time to time various members have internal
4 conflicts. I can't say any particular one. I personally
5 like every member of the feoffees on a personal basis.

6 Q You know Mr. Whiston and Mr. Foley and Mr. Foote and Mr.
7 Mulholland?

8 A To varying degrees I know them all.

9 Q Are you aware of any occasion on which any of the life
10 feoffees has acted out of self-interest?

11 A I understand that the feoffees took paid positions within
12 the feoffee organization. But to my understanding, none
13 of those paid positions were outside of the normal expect-
14 tations of the functions of an independent person beyond
15 the feoffee trust job.

16 And that is, that if they were waste water col-
17 lectors and got paid a fee for that, I don't think the
18 stipend was outside of the expected amount that someone
19 might earn.

20 I think self-dealing is always a concern when
21 you are a trustee and an employee of an organization, and
22 that might have been more -- you might have been more
23 circumspect on some of those as their attorney.

24 Q Are you aware that the feoffees filed annually a form

1 with the Attorney General that sets out, among other
2 things, their compensation?

3 MS. BREWER: Objection.

4 A I'm not aware of that, but I presume it's the case.

5 Q So you've not reviewed any of those forms?

6 A What their compensation is?

7 Q Yes?

8 A What you sent to the Attorney General?

9 Q Yes?

10 A I know there are 990 Forms and other forms. I don't know
11 if those have anything to do with what you're discussing.

12 Q Have you ever reviewed the so-called PC Form that has
13 been filed annually at least since 1998 by the feoffees
14 with the Attorney General?

15 A I'm not sure. I don't have a specific recollection of
16 what a PC Form is. You'd have to familiarize with me and
17 I could tell you whether I recognized it or not.

18 Q Are you familiar with -- you talked about familiarity
19 with a Form 990?

20 A I've seen that, yes. I recall seeing that.

21 Q Have you seen Form 990s completed by the feoffees?

22 A Yes.

23 Q And have you seen those Form 990s as a part of a larger
24 filing made by the feoffees with the Attorney General?

1 A I don't have a specific recollection of what those docu-
2 ments might be.

3 Q Are you familiar with an issue as to whether or not
4 income received by the feoffees is subject to income tax?

5 A 1099 employee versus a ----

6 Q No, this would be I'm referring to income collected by
7 the feoffees from the cottage owners?

8 Are you familiar with a debate as to whether or
9 not monies received by the feoffees from cottage owners
10 should be taxed?

11 A Not specifically regarding income tax from cottage
12 owners. I presume that any income that's earned by
13 anyone would be taxed appropriately.

14 But I don't have any knowledge of whether
15 income tax should be applied to rental payments.

16 Q You're not familiar with any question that was raised by
17 anybody on the school committee about whether or not the
18 feoffees were tax exempt?

19 A Oh, tax exempt is different, sure. So the tax exempt
20 status of a trust, as I understand it, is determined by
21 its charitable needs and whether or not it's a public
22 body.

23 And there was some concern that the change of
24 the feoffees from a land based organization to another

1 trust might invoke a taxable gain by the feoffees if it
2 were in a certain structure.

3 But I'm not a tax attorney, and I don't have
4 specific knowledge of the merits or negatives against the
5 taxable nature of the feoffees trust.

6 Q Are you aware of the school committee taking a position
7 as to whether the feoffees should file with the Internal
8 Revenue Service to determine whether they were tax exempt
9 as a charitable organization?

10 A There has always been a concern by the schools what the
11 taxable status is of the feoffees simply because if it's
12 in our interest to maximize the funds being conveyed to
13 the schools.

14 And so to the extent that we're concerned that
15 any position taken by the feoffees may change their
16 taxable status, or that any lack of filings by the feof-
17 fees may lose the protection of their taxable status, we
18 have interest in their decisions and their structure and
19 whether they're a public or private trust and their
20 nature of how they compensate and make agreements,
21 etcetera.

22 Q Has the school committee ever requested the feoffees to
23 file with the Internal Revenue Service for an opinion as
24 to whether the feoffees are tax exempt?

1 A I don't have any independent knowledge. But I know that
2 we discussed the taxable nature of this -- both with our
3 attorney, which is subject to attorney/client privilege
4 obviously, but also probably with the feoffees from time
5 to time.

6 And Mr. Traverso is typically concerned about
7 that issue and I'm sure will have some of his discussions
8 available to you tomorrow or this afternoon.

9 Q Now, are you aware that counsel to the school committee
10 specifically requested counsel to the feoffees not to
11 seek an opinion letter from the Internal Revenue Service?

12 A No, I'm not surprised. I think that's his discussion. I
13 can't comment on attorney/client privilege, but that
14 would be something that would fit with our discussions
15 previously.

16 Q Okay. Now, have you investigated the issue of historical
17 distributions by the feoffees to the Ipswich School
18 Committee?

19 A Yes.

20 Q Are you aware of any year during which the feoffees did
21 not distribute money to the Ipswich public schools up to
22 and including 2006?

23 A It's my opinion that in a number of those years there
24 were no disbursements, at least by our records that there were.

1 Q What records were those?

2 A Those are filings that were -- and I don't recall the
3 specific filing. I was -- I went to the Ipswich public
4 schools from kindergarten through graduation from high
5 school. And I recall that they bought computers one year
6 and paid for some trips for teachers a few other times
7 when I was there.

8 But in reviewing notes, I saw a number of zeros
9 along with a few other smaller disbursements. But certainly
10 in those days the amount of money disbursed by the trust
11 was much, much less than that in the last few years
12 before the trust blew up.

13 Q And the notes that you looked at, were those notes that
14 appeared on the town website?

15 A I don't recall whether -- I don't know the context of the
16 town website.

17 Q Well, what notes are you referring to when you say you
18 saw notes that reflected a lack of distributions for some
19 years prior to 2006?

20 A I think this was a summary of the town report that was
21 dug out by either one of the members of the school com-
22 mittee or someone else that would have reflected the
23 annual distribution.

24 But I don't have any independent knowledge of

1 where that information came from. If you presented it to
2 me, I could comment on whether I had seen it before.

3 Q Did you ever seek to verify the information that you were
4 given from the compilation of town reports?

5 A Not independently, no.

6 Q Okay. Did the school committee ever seek to verify that
7 information?

8 A It's possible that we did.

9 Q Do you recall that?

10 A No.

11 Q Now, you've indicated that in your view the school
12 committee should appoint all of the trustees or feoffees.

13 Do you have an opinion as to whether a finance
14 committee should appoint any feoffees or trustees?

15 MS. BREWER: Objection.

16 A I've always been opposed to the finance committee having
17 appointing membership, but that was part of a negotiation
18 discussion of a political nature.

19 Q And why did you personally oppose the finance committee
20 appointing any trustees or feoffees?

21 A The trust is -- it's goal is to provide funds for the
22 children of Ipswich.

23 And to the extent that the FinCom and the
24 selectmen have control of a separate purse string which

1 is local funds for the schools, it was my concern that
2 the selectmen or the FinCom could use the distribu-tion
3 of feoffee money as a substitution for the distribu-tion
4 of town money if they had control of that trust group.

5 Whereas, if they did not have control of that
6 trust group, they would not have their hands on the purse
7 strings of all the funds that the schools could use.

8 So it was always my opinion that it would be
9 best served by appointees from the school committee whose
10 goal is purely for the benefit of the kids as opposed to
11 the benefit of the taxpayer which is the, you know, the
12 intent of the FinCom and selectmen.

13 Q Did you ever voice that opinion to other school committee
14 members?

15 A I think from time to time the school committee did voice
16 those opinions. But there was a full negotiation between
17 many groups on the trust matters.

18 Q Did anyone on the school committee share your opinion as
19 to not having finance committee or selectmen appointees
20 serving on the trust?

21 A My opinion and reality are different things. The select-
22 men have by tradition always been on the trust and there-
23 fore, there was no way we were keeping them out of that
24 discussion.

1 And the FirCom feels that as the financial
2 stewards of the town that they should have ability to
3 participate in the financial sources that fund any part
4 of the town, whether it's the schools or town function.

5 So there were other opinions that were always
6 important to the political nature of any town body.

7 Q Sure. My question was a little bit different.

8 Do you know whether any school committee
9 members shared your opinion that the finance committee
10 and the selectmen should not have designees serving as
11 trustees?

12 A I have no knowledge of their opinions.

13 Q Was the subject not discussed among the school committee
14 members?

15 A Extensively.

16 Q And did no one else opine as to the -- as to finance
17 committee appointees serving?

18 A I'm sure they did, and you might find specific notes to
19 that effect elsewhere.

20 But I don't have any independent recollection
21 of whether the finance committee's participation in the
22 final trust was approved by one school committee member
23 or not. It was a part of a negotiation that was broad
24 and wide ranging.

1 Q Did any school committee member ever say to you, either
2 in the context of a meeting or otherwise, that he or she
3 agreed that the finance committee should not make
4 appointments to the trustees?

5 A Not that I know of. But remember, I also voted in favor
6 of the final trust structure, which included the FinCom
7 people. So it's part of a negotiation.

8 Q Understood.

9 MR. SHEEHAN: Okay. It's 12:05. We've been at
10 it since a little bit after 10:00. Let's take a little
11 break, five or ten minutes.

12 THE WITNESS: That's fine.

13 MS. BREWER: Yes.

14

15 (Recess)

16

17 MR. SHEEHAN: Back on the record.

18 Q There are 167 cottages at Little Neck.

19 Is that right?

20 A That's my understanding, yes.

21 Q Do you understand who built them?

22 A Yes.

23 Q Who built them?

24 A The people who are renting them.

1 Q Over what period of time have those cottages been erected
2 at Little Neck?

3 A A hundred years.

4 Q Have you done any investigation regarding zoning issues
5 at Little Neck?

6 A Independently, no.

7 Q And has the school committee looked into the issue of
8 zoning?

9 A Oh, I think it's been discussed.

10 Q What has been the discussion regarding zoning issues as
11 they pertain to Little Neck among the school committee
12 members?

13 A That Little Neck is non-conforming. And that is, that
14 because it's one lot and because lots have been divided
15 up over time by the feoffees, or I'm not sure how they
16 were divided up, that they have never met codes that
17 would work as independent lots.

18 Q Do you know what significance that has, if any, for the
19 feoffees or for the Ipswich public schools?

20 MS. BREWER: Objection.

21 A There are a couple pieces to it. One would obviously be
22 that in terms of independent lots, they would be non-
23 conforming. I presume that if the giant lot would be
24 blown up, it would have to meet criteria.

1 And therefore, it's been made abundantly clear
2 by the feoffees that there would have to be some sort of
3 condoization of the whole property, rather than indivi-
4 dual lots being sold off.

5 Q All right. And has the school committee come to the same
6 determination?

7 A Yes.

8 Q How many of those cottages are occupied by year-round
9 residence?

10 A You can give me a specific number, but I think twenty
11 four.

12 Q And of the twenty four cottages that are authorized for
13 year-round use, do you know how many of those cottages
14 are actually occupied year-round by the ----

15 A No.

16 Q Has the school committee ever discussed the subject of an
17 increase in the number of students to the Ipswich public
18 schools in the event the feoffees or a court removed the
19 restriction on the number of year-round cottages?

20 A Yes.

21 Q Tell me about that conversation?

22 A Once the septic system was constructed, that the natural
23 restriction on year-round residences, which had been due
24 to giving rest to the soil because of the multiple septic

1 systems out there, was no longer valid.

2 And therefore, there wasn't a specific justi-
3 fication from septic reasons to keep year-round people
4 from coming. So it was understood that any change in the
5 status of the trust may lead to year-round occupation of
6 those lots.

7 And that year-round occupation of those lots
8 would by its very nature make both the property and the
9 homes more valuable and would allow year-round residents
10 to access the services of the town and particularly the
11 schools.

12 Q Now, were there any school committee members who favored
13 keeping restrictions in place so as to keep down the
14 number of students who might go to the Ipswich public
15 schools from Little Neck?

16 A There were discussions as to making it a fifty five or
17 older community, or trying to keep the current restric-
18 tions in place.

19 But it was I believe -- I can't really comment
20 on attorney/client privileges necessarily as to the
21 advice of our attorneys.

22 But I think that ultimately, we understood that
23 it would be difficult to keep those restrictions in place
24 permanently in any new structure.

1 Q Now, are you familiar with a so-called Brill, B-R-I-L-L,
2 Report?

3 A I'm not.

4 Q Have you ever heard of the name Kathleen Brill?

5 A I've never heard the name, that I can recall.

6 MR. SHEEHAN: Off the record.

7

8 (Off the Record Discussion)

9

10 MR. SHEEHAN: Back on the record.

11 Q Let me show you what has been marked as Hopping Exhibit
12 Number Four.

13 You're familiar with that document, are you
14 not?

15 A Generally, and at one point specifically.

16 Q And looking at the last page of Hopping Number Four, that
17 is your signature.

18 Is that correct?

19 A That's my John Hancock.

20 Q And it recites right above your signature that this was
21 signed under the penalties of perjury this 10th day of
22 May, 2011?

23 A I agree.

24 Q And it's fair to say then that you reviewed this document

1 before you signed it?

2 A Yes.

3 Q And that as best you could determine, everything in this
4 document was true?

5 A Everything in this document I reviewed at that time. I
6 can't say I have specific recollection of everything in
7 this document.

8 Q At the time that you reviewed it, is it fair to say that
9 you reviewed it for its truth?

10 A To the extent that I understood it, yes.

11 Q And was there anything that was contained in what we've
12 now marked as Hopping Number Four that you did not under-
13 stand?

14 A To my current knowledge, no.

15 Q Okay.

16 A But at that point I reviewed it, I signed it. I don't
17 have any specific recollection of that review, and it's
18 an extensive document, thirty plus pages.

19 Q Do you recall while you were reviewing it for the first
20 time -- strike that.

21 Did you understand that you were being asked to
22 sign the document on behalf of the Ipswich School
23 Committee?

24 MS. BREWER: Objection.

- 1 A Yes.
- 2 Q And did you read it with that understanding?
- 3 A I did.
- 4 Q During the course of your reading that document, did any
5 questions occur to you which you later got answered?
- 6 A I have no specific recollection. But I do have general
7 recollection of reviewing it as a school committee with
8 our attorneys.
- 9 Q Let me direct your attention to paragraph number 31 on
10 page 7?
- 11 A Mmm-hmm.
- 12 Q What is the basis for the denial in response number 31?
- 13 A That waste water concerns were one reason for limiting
14 year-round use, but denied this is the sole basis.
- 15 Q Yes. What were the other bases for the limitation of
16 twenty four year-round cottages?
- 17 A Well, the main basis had historically been waste water
18 concerns. But the secondary concern was that students
19 admitted to the schools, trash pick-up, and other
20 services from the town would incur more expense to both
21 the school district and the town and therefore, be some-
22 thing that would be of concern to us.
- 23 Q And was that concern communicated to the feoffees?
- 24 A Yes.

1 Q Okay. And was that concern communicated to the feoffees
2 so that they would not increase the number of year-round
3 cottages?

4 A It may have been. That may be -- that's up to the
5 feoffees, I presume. But yes, that was the intent.

6 Q Is there any other basis or was there any other basis for
7 limiting the twenty four year-round cottages?

8 A So the specific reasons were waste water historically.

9 But always, when the schools reviewed the
10 future status of Little Neck, they were concerned about
11 the extra students that would provide an extra demand on
12 the schools and financial demand, and whether that demand
13 would be appropriately balanced by the income to the
14 schools.

15 So to that extent, yes, it was concerning to
16 us. That would be the main other concern.

17 Q Are you aware of any other bases on which the feoffees
18 limited the number of year-round cottages to twenty four?

19 MS. BREWER: Objection.

20 A If you have a specific thing to comment on, I'm happy to
21 comment on it. But I don't have any other knowledge of
22 why that would have been limited otherwise.

23 Q And I don't have any other particular. I'm just trying
24 to get at the rationale for the reason -- rationale,

1 rather, for the response to number 31 where it was denied
2 that the waste water concerns ----

3 A Were the sole basis.

4 Q ---- were the sole reason?

5 A The other reason would have been the schools would have
6 incurred more expense.

7 Q And you're not aware of any other reasons?

8 A I can't think of any others off the top of my head, but I
9 don't have full knowledge. An aside -- well, that's it.

10 Q You were a school committee member when the feoffees and
11 the Ipswich public schools went to the probate court for
12 approval to borrow monies so as to construct the waste
13 water system?

14 A I was.

15 Q You had no objection to that borrowing?

16 A It was necessary.

17 Q The school committee had no objection to that borrowing?

18 A We approved it.

19 Q Are you aware of any mis-management of the construction
20 of the waste water system by the feoffees?

21 A No.

22 Q Are you familiar with the different engineering alterna-
23 tives that the feoffees looked into with respect to the
24 waste water issue at Little Neck?

1 A Yes.

2 Q What engineering alternatives did the feoffees explore?

3 A There was a hope that they could connect to the under-
4 utilized town sewer system through a line that would be
5 brought specifically to them or generally to the entire
6 Neck.

7 There was a vote town-wide or Great Neck-wide,
8 perhaps Little Neck was included, regarding sending a
9 sewer line out which would have directly helped the cause
10 of the Little Neck residents or of the feoffees and sewer
11 in the Neck, which failed.

12 And so it was without other alternative, they
13 sought the tight tank under the ballfield.

14 Q And are you familiar with an alternative that would have
15 involved direct drilling ----

16 A Yes.

17 Q ---- through the bay ----

18 A Yes.

19 Q ---- to get to the mainland?

20 A Or through the marsh.

21 Q Through the marsh?

22 A Yes, not through the bay.

23 Q Strike that. Through the marsh.

24 What happened with respect to that alternative?

1 A I don't know. It failed, apparently.

2 Q If you would take a look please at page 15, paragraph
3 number 73?

4 A Mmm-hmm.

5 Q What is the basis for the denial that's contained in
6 response number 73?

7 A So admitted that the school committee understood that if
8 there were a sale, the net proceeds would be invested on
9 behalf of the beneficiary; right?

10 Q Right.

11 A That's clear. Denied was that the feoffees -- so I'm not
12 sure what you're asking.

13 Q Well, I'm trying to understand what was being denied in
14 response number 73, if you know?

15 A I think they admitted that if there were a sale, that the
16 funds would need to be invested on behalf of the bene-
17 ficiary. The proposition was that the funds would need
18 to be invested and the income would be sent to the
19 feoffees.

20 I think the only thing that we didn't admit to
21 was that the feoffees would do the investing, and I think
22 that we contested that. Someone would have to do the
23 investing, and maybe it wouldn't be the feoffees.

24 I don't know. I don't know the basis of that

1 denial.

2 Q Okay.

3 A I think we admitted to the bulk of that.

4 Q And that's your best explanation of that portion of the
5 number 73 that was denied?

6 A To the extent that I'm not an attorney, I don't fully
7 understand what was denied.

8 Q Similarly, with respect to paragraph number 80 on the
9 following page, would you read that to yourself?

10 A Mmm-hmm.

11 Q And my same question, what was being denied and what was
12 the basis of the denial?

13 A It's the same question.

14 Q Same answer?

15 A Same answer. You would have to check with my attorneys
16 because I don't fully understand what was denied.

17 Q Now, with respect please to request number 78 and the
18 response, would you take a look at that, please?

19 A Once again, it strikes me that we admitted number 78.
20 And I don't know what otherwise denied pertains to. All
21 three of these strike me that we admitted, and I'm not
22 sure what denied implies.

23 But again, I'm not an attorney.

24 Q Number 84, please, on page 17?

1 A I don't know what GL183A number one is.

2 Q Do you have an understanding that under Massachusetts
3 law, a condominium must consist of land and buildings?

4 A I don't have that understanding independently, no. But
5 now that you're telling me, that's fine.

6 MS. BREWER: Objection.

7 Q Do you know the basis on which response number 84 denies
8 the request?

9 A I do not.

10 Q Are you familiar with the settlement agreement that was
11 entered into on or about December 24, 2009 between the
12 feoffees and the Little Neck Legal Action Committee?

13 A The condo agreement for \$29.1 million, that one?

14 Q Yes. Among other things, there was a provision in there
15 for the condominiumization of Little Neck and the sale of
16 those units for \$29,150,000?

17 A I've reviewed it and discussed it in the past. I don't
18 have a specific knowledge of it. You can present it to
19 me and I can certainly review specific sections, if you
20 had a question.

21 Q Well, my question is going to pertain to request number
22 87 at page 18, and then the response thereto.

23 And to give you -- to focus your review of --
24 it's a fairly lengthy one, number 87 ----

1 A Apparently, there is.

2 Q My question is going to be how request number 87 fails to
3 fairly summarize all the material terms of the settlement
4 agreement?

5 MS. BREWER: Objection.

6 A To the extent that one page cannot summarize a many page
7 agreement, I presume there is something there that our
8 attorneys noticed or noted that fully summarizes it.

9 And I can't comment on it specifically because
10 I have not reviewed the full document recently.

11 Q Now, with respect to number 89, please, do you recall the
12 January 7, 2010 meeting?

13 A I do, a unique meeting.

14 Q That was a meeting that ----

15 A On the stage.

16 Q ---- was moved to another location in anticipation of a
17 crowd?

18 A Bright lights.

19 Q Is that the only time that the Ipswich School Committee
20 has met on the stage?

21 A But for town meetings, to my opinion -- to my understand-
22 ing, yes. So this goes back 2003.

23 Q Do you know what material terms were not presented or
24 adequately explained?

1 A That was the first opportunity we had to receive that
2 proposal and discuss it.

3 So to the extent that we had our first look at
4 it then without full opportunity to discuss the
5 implications of the condominiumization, the fee
6 structure, etcetera, there was some concern over that
7 whole picture, which is why we set up an ad hoc committee
8 that was to discuss that in more detail.

9 We took it into consideration at the time and
10 then more fully understood it over time.

11 Q Do you know to what response number 89 is referring when
12 -- insofar as the response denies that all of the mate-
13 rial terms of the settlement agreement were presented or
14 adequately explained?

15 MS. BREWER: Objection.

16 A No. But for the fact that we believed as a school com-
17 mittee at that time that we did not fully understand the
18 context of the condominiumization and the value of mort-
19 gages in that structure.

20 Q Hence, the ad hoc committee?

21 A Hence, the ad hoc committee and further discussion of
22 value, etcetera.

23 Q And did you mean to suggest when you signed the answer to
24 number 89 that certain terms of the settlement agreement

1 were mis-represented by the feoffees to the school com-
2 mittee?

3 MS. BREWER: Objection.

4 A No, were mis-understood by the school committee or not
5 fully understood by the school committee rather than mis-
6 understood.

7 Q Now, are you aware of any mis-information ever provided
8 to the school committee by the feoffees in the context of
9 potential sale and settlement of the superior court liti-
10 gation?

11 A No.

12 Q Would you take a look, please, at page 20, number 93?

13 A So number 93 summarizes the recommendations of the ad hoc
14 committee regarding the specific portions of the Little
15 Neck Legal Action Committee/Feoffee agreement that we had
16 tasked them with evaluating.

17 And so to the extent that the school committee
18 asked them for their opinion, it didn't mean it was our
19 opinion, nor did it mean that it was a full understanding
20 or discussion of the entire document.

21 Q All of the recommendations that are set forth in request
22 number 93, were those recommendations requested of the ad
23 hoc committee by the school committee?

24 MS. BREWER: Objection.

1 A The ad hoc committee recommended those be stipulations
2 that we put forth for any continuation of that settle-
3 ment.

4 Q And were the recommendations that are set forth in number
5 93, were they all within the scope of what the ad hoc
6 committee was asked to do?

7 A Yes.

8 Q Are you familiar with the so-called balance of purchase
9 price note?

10 A Familiarize me.

11 Q Do you recall that there was a provision in the settle-
12 ment agreement for how to handle cottages whose owners
13 did not want to participate in the condominium purchase?

14 A Yes. I understood that at the time and I have a general
15 idea of it now.

16 Q And there was a concern on the feoffees' part and the
17 school committee's part that there had to be enough indi-
18 vidual cottage owners who wanted to participate without
19 there being too much financial risk?

20 A Yes. We set up a number, a level at which participation
21 had to be and you met that number.

22 Q And are you aware that now, we have 165 signed purchase
23 and sale agreements from the 167 cottage owners?

24 A That's remarkable, and I'm pleased to hear that.

1 Q Did you know that before you came in here today?

2 A I didn't know the 165. I knew the number was 156 at the
3 last number I heard.

4 But that's remarkable in our current economic
5 environment.

6 Q And that the 165 purchases would result in a balance of
7 purchase price note much less than three million dollars,
8 wouldn't it?

9 MS. BREWER: Objection.

10 A Understood.

11 Q One of the recommendations that the ad hoc committee made
12 was that the feoffees obtain a satisfactory loan commit-
13 ment to refinance the existing loan for the waste water
14 treatment system.

15 Are you familiar with that recommendation?

16 MS. BREWER: Objection.

17 A Yes, very familiar.

18 Q And are you aware that the feoffees went to the Cambridge
19 Savings Bank in order to refinance the existing loan?

20 A I was aware of that, yes.

21 Q And did you know that the Institution for Savings, which
22 holds the current note, was not interested in restruc-
23 turing the note?

24 A That was my understanding as well, yes.

1 Q Fair to say that the feoffees did make arrangements to
2 obtain a loan commitment to refinance the existing loan
3 for the waste water treatment system?

4 MS. BREWER: Objection.

5 A There was a specific concession that concerned the school
6 committee on that refinancing that was that the body of
7 land would be collateral for that loan.

8 And that specifically constituted sale of the
9 property, which the school committee ultimately voted
10 that they were opposed to.

11 Q The mortgage was a concern if there might not be a sale
12 of the condominium units; correct?

13 A Of course it was, yes.

14 Q If the condominium units were to be sold, the mortgage
15 commitment required by the Cambridge Savings Bank would
16 not be a concern?

17 A That's true.

18 Q And one of the recommendations by the ad hoc committee
19 was that the feoffees engage an experienced outside firm
20 to manage all loan servicing and collections, and to
21 monitor property tax payments and insurance coverage on
22 cottages?

23 A There was a concern that the feoffees did not have the
24 expertise to manage that complex thing themselves. That

1 was the recommendation of the ad hoc committee.

2 Q And are you aware that the Cambridge Savings Bank agreed
3 to perform all those functions?

4 MS. BREWER: Objection.

5 A It was my understanding at the time that you had conveyed
6 to us that that was true.

7 Q And so that recommendation of the ad hoc committee was
8 satisfied by the feoffees?

9 MS. BREWER: Objection.

10 A Yes. And I also understood that.

11 Q And there was a recommendation that the feoffees utilize
12 a professional third party investment advisor with
13 respect to any endowment fund?

14 A Yes. That's particularly important to us.

15 Q And did you understand that the feoffees readily agreed
16 with that?

17 A Yes. Well, we have no specifics, but that is obviously
18 an important piece.

19 Q And page 21, request number 100, please?

20 A Mmm-hmm.

21 Q What's the basis for the denial of request number 100?

22 A We have no knowledge of their opportunity to obtain a
23 fair return.

24 Q Any other basis for the denial?

1 A Certainly, there is a concern about the condominium
2 structure. But I don't know why either one would be
3 denied. I leave that up to what the attorneys discussed
4 with me at the time.

5 Q You yourself would -- if you were answering this in your
6 own behalf as opposed to the ----

7 A The school committee.

8 Q ---- on behalf of the Ipswich School Committee, you would
9 have admitted number 100, wouldn't you?

10 MS. BREWER: Objection.

11 A Yes.

12 Q Do you have an understanding with respect to the superior
13 court litigation as to whether or not the plaintiffs in
14 that case, the cottage owners, are seeking money damages?

15 A Yes.

16 Q And what is your understanding?

17 A That they're seeking money damages from the feoffees
18 regarding previous commitments regarding fair rent levels
19 in the future, and regarding the expense of the septic
20 system.

21 Q And is it your understanding that the trust assets are at
22 risk in the event of a money damage award?

23 A Yes.

24 Q Was that a part of your reasoning in favor of sale?

1 A A small part.

2 Q A small part because you thought exposure was small?

3 MS. BREWER: Objection.

4 A My opinion regarding the exposure was not the reason I
5 favored sale. My opinion regarding rent income and the
6 inability to obtain an adequate rent stream was my reason
7 for supporting sale.

8 Q Are you aware that at one time Don Whiston's family had a
9 cottage out on Little Neck?

10 A I was, and Jim Foley's family, too.

11 Q Do you contend that one of the reasons rents were less
12 than fair market for many years was that Don Whiston was
13 interested in personal or family savings on rent?

14 A I do not.

15 Q And do you contend that the feoffees set rents at less
16 than fair market rents so as to benefit Jim Foley or his
17 family insofar as the family owned cottage at Little
18 Neck?

19 A I do not contest either of those. But I do feel that
20 they're a -- a trustee has to be able to put their own
21 interests in silo if they have a conflict of interest.

22 To the extent that they may have had a conflict
23 of interest, they should have acknowledged that in their
24 dealings, generally speaking.

1 Similarly, our superintendent lived out there
2 and lived out there for many, many years, and there was
3 an inherent conflict there, as well.

4 So to the extent that anyone living in Ipswich,
5 including myself, who has relatives who are Little Neck
6 residents is conflicted, I've accepted that and been able
7 to silo that myself. So I don't know why Mr. Whiston or
8 Mr. Foley could not do the same.

9 Q Fair to say that that's more of an appearance of improp-
10 priety than an actual impropriety?

11 MS. BREWER: Objection.

12 A I can't comment on that. I can say there's always a
13 concern when there's an apparent conflict of interest.

14 Q Now, the school committee had a meeting with Mr. Foster
15 to discuss the Foster or Lincoln Financial appraisal.

16 Is that correct?

17 A That's true.

18 Q Okay. And at that meeting Mr. Foster told the school
19 committee that the number on the Colliers, Meredith &
20 Grew appraisal was incorrect, didn't he?

21 MS. BREWER: Objection.

22 A He had a different opinion as to the number.

23 Q Okay.

24 A But I think you can have a hundred appraisers and have a

1 hundred opinions, and that's probably what he put there.

2 Q Did Mr. Foster explain to the school committee why the
3 forty two million dollar number of Colliers, Meredith &
4 Grew was not accurate, in his view?

5 MS. BREWER: Objection.

6 A Mr. Foster justified the reason for his appraisal number,
7 but I can't recall that he disputed the other number. He
8 simply validated his own.

9 I think he used a lot of the Colliers, Meredith
10 & Grew information.

11 Q Now, are you familiar with an issue of erosion at Little
12 Neck?

13 A Generally, yes.

14 Q And what is your familiarity with that issue?

15 A There was storm water damage several years ago, and then
16 there's a continuing ongoing risk of erosion at Little
17 Neck.

18 Q And have the feoffees engaged in repair of the erosion
19 damage over the last three or four years?

20 A I believe there's an ongoing risk and an ongoing expense
21 that may have to go forward with a breakwater or some-
22 thing.

23 But to the extent that they did whatever
24 repairs were necessary, I have no knowledge of it.

1 Q Now, are you aware that the feoffees have not undertaken
2 erosion repair work because they can't afford to do so?

3 A There are many things we can't afford.

4 Q Are you aware that the feoffees are unable to afford the
5 necessary erosion repair work?

6 A I didn't know to what extent they could or could not
7 afford, so I don't.

8 Q All right. And do you understand that the proposed sale
9 at \$29,150,000 involves the condominium unit owners
10 taking on the issue of erosion?

11 A Yes, I understood that.

12 Q So that if the erosion remediation cost was \$900,000 and
13 that cost was passed on, in essence, to the condominium
14 unit owners, that the effective sale price would go up by
15 \$900,000?

16 MS. BREWER: Objection.

17 A I have no opinion on that.

18 MR. SHEEHAN: Dr. O'Flynn, I have no further
19 questions. I want to thank you very much for taking the
20 time to come in here this morning and for all the time
21 you've served on the school committee.

22 And now, Attorney Brewer has the opportunity to
23 inquire.

24 MS. BREWER: I'm going to let you go at this

1 time. Thank you very much, Dr. O'Flynn.

2 THE WITNESS: Thank you. I appreciate it.

3

4 (Whereupon, the deposition in the above-entitled matter
5 was concluded at 12:52 p.m.)

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SIGNATURE PAGE FOR THE DEPONENT

I, HUGH M. O'FLYNN, do hereby certify that I have read the foregoing and that to the best of my knowledge said deposition is true and accurate (with the exception of the following desired changes listed below):

PAGE	LINE	CHANGE
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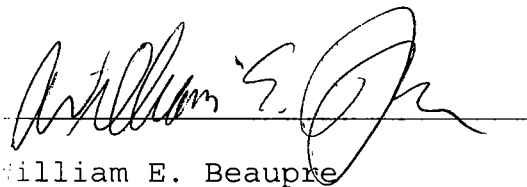
Signed under the pains and penalties of perjury this _____ day of _____, 2011.

HUGH M. O'FLYNN

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 108, 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 21st day of November, 2011.

A handwritten signature in black ink, appearing to read "William E. Beaupre", is written over a horizontal line.

William E. Beaupre

Notary Public

My Commission expires April 5, 2013

Feoffee Subcommittee

May 21, 2008

Numbers

Little Neck Real Estate is worth roughly \$36,000,000

Common lands are 10% of the total, taxes are \$40,000

Residents pay Home and Lot taxes on their property separately

Sewage project debt payment is approximately \$650,000 annually

Sewage operating costs are about \$80,000 annually

Operations Costs are \$150,000 annually

A sinking fund for major repairs should be about \$100,000 annually

Year round lessees pay \$10,800 (24 ultimately)

Seasonal Lessees pay \$9700 (143 ultimately)

Seasonal Renters pay \$5000 to the feoffees,

\$480 in sewage operating expenses

And \$4700 into escrow

Year round renters pay \$5500 to the feoffees

\$480 sewage

\$5300 escrow

What do we get if everyone signs today?

$10800 \times 24 + 9700 \times 143 = 1646300$ income 4.57% return but 5% of 2006 value

$1646300 - 650000 - 80000 - 150000 - 100000 - 40000 = \$626,000$ annually or 1.75% return on land

How much does each lessee pay the schools outside other Feoffee expenses?

$626000 / 167 = \$3577$ at a 5% return this values the land in each lot at 70K

If we sold to the residents at \$12,000,000 and got 5% return we'd do better

In short the rejected lease deal is a poor return for the schools and a bargain for the residents

Feoffee Subcommittee

May 21, 2008

The Feoffees Subcommittee met and had a wide ranging discussion on the Feoffees. Ed Traverso and I, along with two Little Neck residents started, followed shortly by Rick Korb, Jim Foley, and Bill Sheehan. We reviewed Ed's letters, discussed the legal status of the trust, the outcomes possible with the lawsuit, the costs of running Little Neck, the relative return on the land value and the rent level. We specifically reviewed the concepts of common land, taxes, responsibility for sewage costs, and future options for rents. We only touched on the revised trust.

Revised Trust document.

On hold until the lawsuit is settled

Financial status of the trust

Jim Foley will bring Dan Clasby to another meeting. The Escrow account has \$480k now

Legal status of the Trust

Private trust with transparency is the intent of the Feoffees, and the current status

Lawsuit status

Not good at legal terms, but the eviction proceedings will not evict anyone. There will be a decision this summer either favoring the feoffees or the tenants which will be appealed and either result in some settlement next summer without a trial or the following summer with a trial and the attendant million dollar expenses. Currently those who took the lease pay 9700/10800 and those who rent and are suing pay 5000/5500 making up the difference in an escrow account and also pay 480 of sewer operational costs

Tax Payment.

At this point the Feoffees don't want to see taxes. Both home and lot taxes are paid by the resident to the town directly. Ed brought up the tax deductibility issue and the idea that the Feoffees pay tax on common lands out of proceeds to the school

Common lands

There are three types of common land. The ball field, beach, parking lot, dock etc are truly common amenities which are shared. There are empty lots whose neighbors keep empty by paying the

taxes. There are empty lots which no one will pay for. There is one buildable lot. Jim would like to have abutters buy the empty lots. Common lands are considered by the feoffees to be part of the rent

Operational expenses

Sewage project debt payment is approximately \$650,000 annually

Sewage operating costs are about \$80,000 annually

Operations Costs are \$150,000 annually

A sinking fund for major repairs should be about \$100,000 annually

Ed and I would add taxes on common land of \$40,000

These fairly fixed costs, without any payment to schools, are divided equally \$6100/renter

These costs will be present as part of the overall costs no matter how the pie is sliced

Philosophy

The Feoffees believe that all taxes should be paid by the resident and that rent should cover everything else. Specifically subsumed in rent is operation expense, sinking fund, sewer debt and operations, common land tax, and a contribution to the schools. Ed believed that these items should be charged to the resident and rent should go to the schools. Ed considered common land of any sort a nonperforming asset that should be paid for by the tenants.

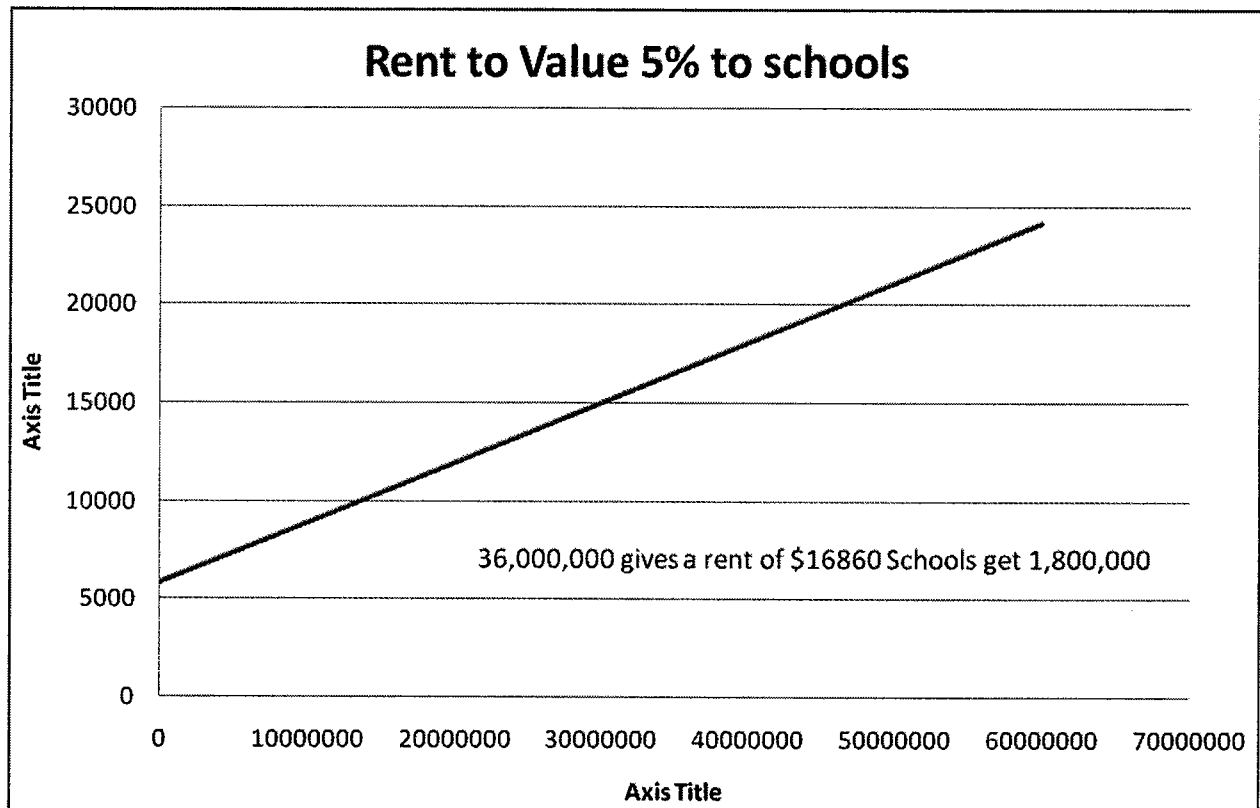
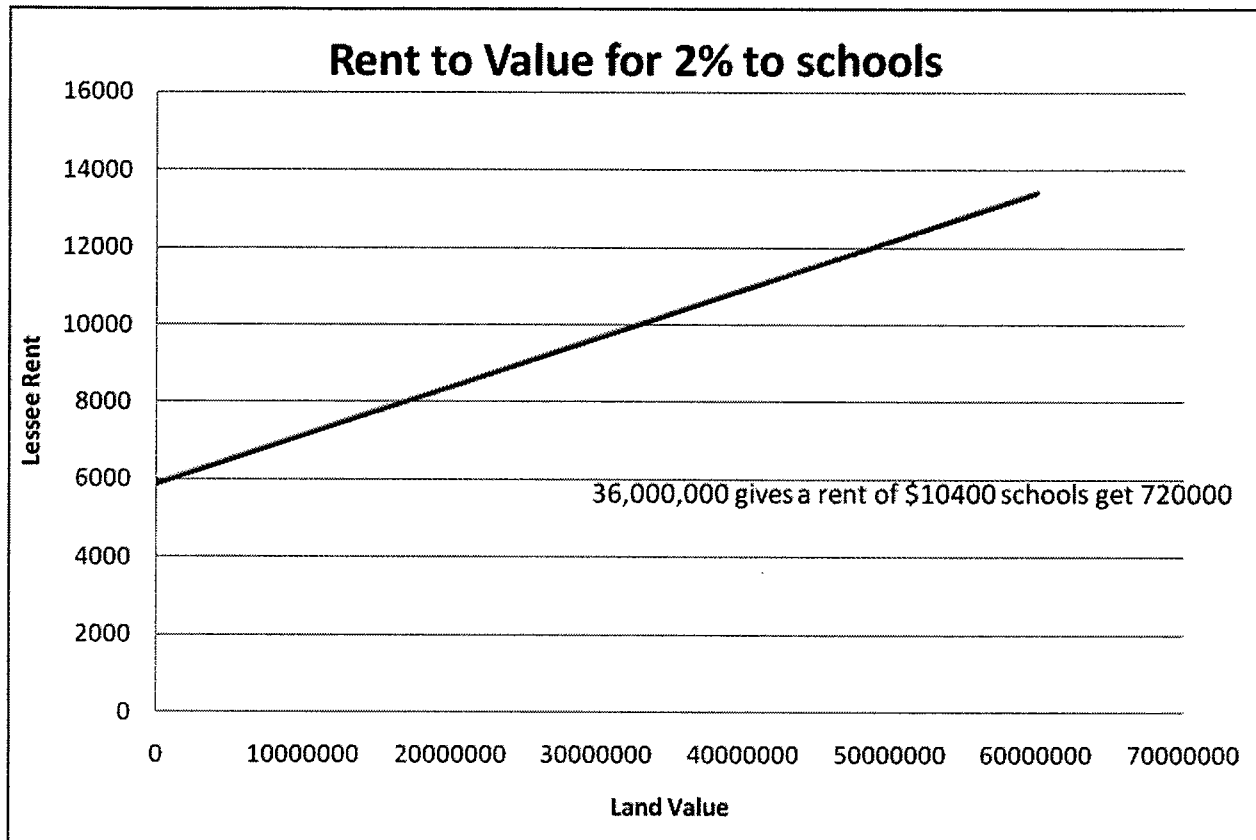
Top down

The feoffees charge 5% of the assessed value for rent. Backing out expenses, this leaves 1.75% for the schools. They came to the number through negotiation, but were rebuffed in spite of the very low real return on the land value. The Feoffees understand the issues Ed brings up on common land, sewer costs, etc , but say they believe these costs should all be part of rent. Rent is even at all cottages at the request of the Little Neck residents.

Bottom up

When we create a formula where the schools receive a fixed percent of the asset value for rent, and known expenses are then added, we can get a graph of rent vs value for any chosen return. I created a few of these graphs, which I also attached below, not separating seasonal and annual rent.

The Feoffees feel that whatever they charge the rent, it can only go up to what is reasonable and fair as rent, regardless of the return to the schools. They could have charged 7 or 8 percent but did not think this could lead to an agreement . Ultimately, they tried to charge what they believed would lead to an agreement.



Feoffee Subcommittee

May 21, 2008

Numbers

Little Neck Real Estate is worth roughly \$36,000,000

Common lands are 10% of the total, taxes are \$40,000

Residents pay Home and Lot taxes on their property separately

Sewage project debt payment is approximately \$650,000 annually

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Year round lessees pay \$10,800 (24 ultimately)

Seasonal Lessees pay \$9700 (143 ultimately)

Seasonal Renters pay \$5000 to the feoffees,

\$480 in sewage operating expenses

And \$4700 into escrow

Year round renters pay \$5500 to the feoffees

\$480 sewage

\$5300 escrow

What do we get if everyone signs today?

$10800 \times 24 + 9700 \times 143 = 1646300$ income 4.57% return but 5% of 2006 value

$1646300 - 650000 - 80000 - 150000 - 100000 - 40000 = \$626,000$ annually or 1.75% return on land

How much does each lesee pay the schools outside other Feoffee expenses?

$626000 / 167 = \$3577$ at a 5% return this values the land in each lot at 70K

If we sold to the residents at \$12,000,000 and got 5% return we'd do better

In short the rejected lease deal is a poor return for the schools and a bargain for the residents



Feoffee Subcommittee

May 21, 2008

The Feoffees Subcommittee met and had a wide ranging discussion on the Feoffees. Ed Traverso and I, along with two Little Neck residents started, followed shortly by Rick Korb, Jim Foley, and Bill Sheehan. We reviewed Ed's letters, discussed the legal status of the trust, the outcomes possible with the lawsuit, the costs of running Little Neck, the relative return on the land value and the rent level. We specifically reviewed the concepts of common land, taxes, responsibility for sewage costs, and future options for rents. We only touched on the revised trust.

Revised Trust document.

On hold until the lawsuit is settled

Financial status of the trust

Jim Foley will bring Dan Clasby to another meeting. The Escrow account has \$480k now

Legal status of the Trust

Private trust with transparency is the intent of the Feoffees, and the current status

Lawsuit status

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