

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

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

vs.

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

**AFFIDAVIT OF SUSAN BRENGLE**

I, Susan Brengle, being duly sworn depose and say as follows:

1. I reside at 7 Cogswell Street, Ipswich, Massachusetts.
2. I am one of the interveners in this action and I submit this affidavit in support of the motion to intervene. This affidavit is based on my personal knowledge, or information and belief.
3. I have three children who are (or have been) beneficiaries of the William Paine Trust (the "Trust"): a freshman in college who has been through the Ipswich School system; a tenth grader at the Ipswich High School; and a seventh grader at the Ipswich Middle School.

4. Over the past 13 years I have been active in the Ipswich public schools, committing hundreds of hours to the system, ranging from classroom volunteer, to Co-Chair of the successful “Turn the Tide” Proposition 2 1/2 override initiative in 2008, to current Board Member of the Ipswich Education Foundation. I attend School Committee and other town meetings as I am able and, over the years, served on various subcommittees relative to the schools and town. I am regularly approached by members of our community, including members of various town and school committees to consider running for School Committee and Board of Selectman and have been asked to consider joining the Finance Committee at various times.

5. My diverse involvement in the schools, and in the override effort specifically, has given me a deep understanding of the financial pressures our schools face, due in part, I believe to the mismanagement of the Trust by the Feoffees. In fact, an important part of the override campaign was to communicate to voters that passage of the override was only one of the tools to increase school funding and that two other ongoing initiatives were resolution of the Feoffees situation and continued efforts to address inequities in the state’s Chapter 70 funding formula.

6. Since the beginning of this litigation and until December 17, 2011, as a parent of the beneficiaries of the William Paine Trust, I relied on the School Committee to protect the interests of my children, the beneficiaries, and to ensure that the intention of William Paine to benefit the Ipswich School children be realized.

7. Specifically, I relied on the School Committee to uphold the intention of William Paine that the land at Little Neck remain for the benefit of the school children of Ipswich “forever...and therefore the sayd land not to be sould nor wasted.”<sup>1</sup>

8 Given the clarity of this intention of Paine, I believed that the School Committee would enforce these terms as written, and I was assured by the actions and statements made publically by the School Committee that it was doing this.

9. First, the School Committee filed an answer and counterclaim and participated in this lawsuit for the purpose of enforcing the Trust. The School Committee requested and received substantial taxpayer funds to do so.

10. Second, the School Committee, publicly, in their open meetings, at Town Meeting and in the press, consistently informed the beneficiary parents and community at large that it was opposed to a sale and that it would vigorously pursue that position in the litigation. For example, attached as Exhibit A is an article published in the Ipswich Chronicle on October, 2010 reporting on the Ipswich School Committee’s nearly unanimous vote (with one abstaining) against the sale of Little Neck. Attached as Exhibit B is the vote taken by the School Committee (as reported in the Chronicle) on October 21, 2010 to oppose the sale of Little Neck.

11. As a parent of beneficiaries of the Trust, I believe I have an interest in this litigation that is separate and distinct from other members of the community, generally, and I believe that interest has been abandoned by the School Committee in the December, 2011 Agreement for Judgment.

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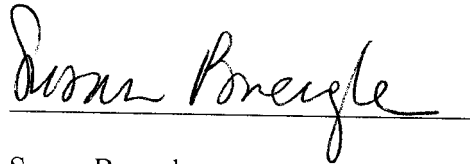
<sup>1</sup> October 2, 1660 will of William Paine, Suffolk Reg. of Probate, 1:346.

12. According to U.S. Census Bureau, only 17% of the voting age population in Ipswich are parents or guardians of school age children.<sup>2</sup>

13. As a member of this minority, I do not believe that the School Committee, in agreeing to a sale of Little Neck, is representing my interests, or the interests of my children, the ultimate beneficiaries of the Trust, or the interest of William Paine who specifically instructed in his will that the land not be sold.

14. To my knowledge, there is no practical, economic or legal reason for the land that has been held in trust for 350 years to be sold in 2012.

Signed under the pains and penalties of perjury this 10<sup>th</sup> day of January, 2012.

A handwritten signature in cursive script, reading "Susan Brengle", written over a horizontal line.

Susan Brengle

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<sup>2</sup> I arrived at this figure by consulting the U.S. Census Bureau website. I calculated the number of households in Ipswich with children between the ages of 6 and 18 (964) and the number of parents or guardians in those households (1,671) and compared that figure to the total Ipswich residents of voting age (10,007).

**EXHIBIT "A"**

# School Committee opposes \$29.1 million Little Neck sale

By Jane Dooley  
Chronicle Correspondent

The Ipswich School Committee voted to oppose the \$29.1 million sale of Little Neck as specified in a settlement agreement between the Feoffees and Little Neck Tenants Legal Action Committee at its meeting Thursday night, Oct. 21.

The School Committee vote was 4-0-1, with Sean Gresh abstaining.

The Committee took the vote with the caveat that it was based on its current knowledge and information.

"I think it is impossible to make a decision without the full information," said Gresh in light of the fact that the School Committee expects to

receive its appraisal on the Little Neck land by mid or late next week.

An appraisal the Finance Committee commissioned values that land at \$42.5 million.

"I think the School Committee wanted to go into Town Meeting saying they were rejecting the settlement agreement and comfort the public that they were rejecting the proposal based on the current information they had," said Richard Howard, FinCom member who attended.

Co-founders of the tenants' group, Bill Gottlieb and Mark DiSalvo, who were not at the School Committee meeting, said they had no objection to the vote taken by the School Committee on the Little Neck

agreement.

"It is no surprise and not troublesome. They have stated this in the past, in the court documents and by prior vote in support of the \$26.5 million deal (proposed before the \$29.1 million settlement agreement). The recent vote is trivial and no great revelation. Clearly influenced by the action Town Meeting is going to take on Monday," said DiSalvo.

The settlement agreement would allow the Feoffees to create a condominium owned by homeowners interested in buying their lots as condominium units.

The Feoffees have filed a complaint in probate court to modify the centuries old trust so they can sell real estate and

grant and receive mortgages versus collect rent from cottage owners for use of the land. Funds received are supposed to go to the beneficiary - the Ipswich Public Schools.

The School Committee has filed suit opposing the sale of Little Neck in probate court, which needs to approve changes in the will for the Little Neck sale to go forward.

The fall Town Meeting on Monday, Oct. 25, includes a warrant article on the Feoffees Trust Agreement. Voters will be asked to transfer \$300,000 in free cash to a special legal account to pay for legal, real estate and professional services required by the School Committee related to the Feoffees litigation and modification of the trust.

**EXHIBIT "B"**

**IPSWICH SCHOOL COMMITTEE MEETING  
THURSDAY, OCTOBER 21, 2010  
MIDDLE/HIGH SCHOOL ENSEMBLE ROOM**

**OPEN SESSION**

**CALL TO ORDER**

J. Loeb, Chair Pro Tem, called the meeting to order at 7:05 p.m. with the following members present: L. Dietz, S. Gresh, and E. Traverso. Also present were R. Korb, Superintendent of Schools; J. Cuff, Financial Director; and Abigail Skelton, Student Representative.

**ANNOUNCEMENTS**

Mr. Loeb read the following announcements:

There will be Executive Session to discuss strategies regarding litigation and real estate matters after which the meeting will adjourn

School Committee will meet at 6:30 p.m., Monday, October 25, before the start of Town Meeting

Town Meeting will take place at 7:30 p.m., October 25, in the Performing Arts Center  
The School Committee Negotiations Team will meet on October 26 at 5:30 p.m. in the Middle/High School Guidance Conference Room

A tentative date for continuation of Town Meeting, has been set for October 26, 7:30 p.m. in the Performing Arts Center

Public Safety Facilities Committee will meet on November 3, 7 p.m., Town Manager's Conference Room, Town Hall

School Committee will meet on November 4, 7 p.m., Middle/High School Ensemble Room

**CITIZENS' COMMENTS**

**SPECIAL ACKNOWLEDGMENT**

Mr. Korb read a letter from Tom Gallagher, Athletic Director, regarding the Mile Lane well project and the donation in the amount of \$40,000 - \$45,000 by the Institution of Savings to the Friends of Ipswich Athletics. Dr. Gresh moved, seconded by Mrs. Dietz, to accept the donation of \$40,000 - \$45,000 from the Institution for Savings for the Mile Lane well project.  
UNANIMOUS.

**I. SCHOOL COMMITTEE PRESENTATIONS**

**A. TECHNOLOGY FOR LEARNING INITIATIVE**

Ellen Kallman, President of Ipswich Education Foundation, and Sue Brengle, Chair of the Technology for Learning Initiative Steering Committee, presented the information to be given to the community in the form of corporate donations with the comment that private funding has become a necessity in the schools. A fund-raising letter is going out to parents, the Chronicle will have a lead article, and the Rotary Ball at Turner Hill will hopefully raise a considerable sum for the Initiative. School Committee members applauded the Initiative and pledged their support. Some advance work has been done including the reconvening of the Technology Subcommittee under the direction of Cheryl Forster-Cahill and Chris Burke.



**B. RACE TO THE TOP PROPOSAL**

Mr. Korb spoke of the cooperative effort among the School Committee (most particularly, E. Traverso), the administration and the ITA to bring money into the system in a four-point improvement plan for curriculum materials and instructional practices in Race to the Top (RTTT). The RTTT initiative will bring \$147,000 over the next four years. Jeff Krieger, ITA Chair, and Sheila McAdams, Winthrop Principal, co-chairs of the initiative, will submit specific goals in a Year 1 plan by October 22. Mrs. McAdams made a brief presentation with discussion by the School Committee.

Mr. Traverso moved, seconded by Mrs. Dietz, that the Ipswich Public Schools adopt the one-year plan of Race to the Top. UNANIMOUS.

**C. FINANCIAL REPORT**

Finance Director Cuff updated the Committee on FY11 budget status and explained the Circuit Breaker function. She gave her explanation and recommendation for the natural gas contracts. Consensus of the School Committee was to accept the Financial Director's recommendation to use the standard lock-in rate for an extended 24-month period for a natural gas contract with Hess.

She reviewed construction projects on the Doyon and Middle/High School buildings as a result of severe weather last year (insurance funded) and the Winthrop door replacement project coming from budgeted FY11 earmarked monies. Also, she reported on a recent SPED transportation review.

Dr. O'Flynn joined the meeting.

**D. FINAL REVIEW FOR OCTOBER 15, 2010, TOWN MEETING**

1. Article 3: FY2011 School Budget Amendments  
To be presented by Hugh O'Flynn
2. Article 4: FY2011 Whittier Regional High School Budget  
To be written by Barry Hopping and presented by Ed Traverso
3. Article 5: Feoffees Litigation  
Deferred until 6:30 p.m., October 25, 2010, Ipswich High/Middle School.

**E. FEOFFEES OF THE GRAMMAR SCHOOL**

Dr. O'Flynn met with Feoffees Subcommittee. While it was determined by Mr. Korb and Ms. Cuff that the Town Manager had affirmed that Article 5 would be presented by the School Committee at the Fall Town Meeting to compensate the schools for legal work, there was a hold put on the warrant and through a series of circumstances, when the motion was presented, it was by the Finance Committee. A proposal (Triboard Working Group Statement) needs a separate vote from the wording of Article 5 itself.

Mr. Kallman, from the audience, spoke at length regarding the meeting that he attended citing several points that he felt should concern the citizens of Ipswich. Mr. Loeb and Dr. O'Flynn disagreed with Mr. Kallman on the matter of lack of trust among the three boards. There is agreement that there is need to figure out a process. Mr. Korb feels that the School Committee must take the lead on this Article before Town Meeting to send a strong message of

cooperation and responsibility by the key litigant who will be responsible for payment of that money in the future. According to Town Counsel, it is possible to change that motion prior to Town Meeting, and the Board of Selectmen could take that action on Monday night prior to Town Meeting, notifying the Finance Committee in a spirit of collaboration and courtesy.

Mr. Loeb felt that the wording of the Article 5 motion and of the Triboard Working Group Statement is in disagreement, and he could not support and would not present the Article at Town Meeting as it stood. A reworking of the wording of the Triboard Working Group Statement was finalized as follows with a motion made by Dr. O'Flynn, seconded by Mr. Loeb, and voted 4/1 in favor (Dietz opposed):

4a. The School Committee shall propose a comprehensive strategy to implement the Purpose above;

4b. The Triboard Working Group shall consider this strategy and make recommendations;

4c. The Triboard Working Group shall meet as necessary to discuss strategy;

4d. All information will be shared promptly and completely with members of the Triboard Working Group and through the representative members to the respective Committees;

4e. Requests for the use of the Feoffees Legal Fund shall generally be made prior to the expenditure of the funds, and shall include the vendor, purpose of the expenditure, and estimated amount as provided by the vendor.

Mr. Loeb felt that "if the intent isn't to exclude expenditures since July 1, 2010," he will be more conducive to accepting.

Mr. Loeb moved, seconded by Dr. O'Flynn, that the School Committee take a position based on current knowledge and information that the Committee is opposed to the sale of Little Neck property on the terms as presented in the Feoffees/Tenants Settlement Agreement. IN FAVOR - Loeb, O'Flynn, Traverso, Dietz; ABSTAINING - Gresh.

Dr. O'Flynn announced that the School Committee ordered appraisal will not be forthcoming until after Town Meeting on October 25. It will be shared once the School Committee has studied it. Dr. O'Flynn stated that the position relative to the issue about sponsorship of Article 5 will be taken up on Monday evening before Town Meeting.

Dr. O'Flynn indicated that there would not be an Executive Session this evening due to no new additional information regarding real estate matters.

## II. SCHOOL COMMITTEE REPORTS

### A. VOUCHERS/BILLS

### B. SCHOOL COMMITTEE SUBCOMMITTEE REPORTS

1. ATHLETICS SUBCOMMITTEE
2. ATHLETIC FIELD STUDY COMMITTEE
3. AD HOC TOWN/SCHOOL COLLABORATION COMMITTEE
4. COMMUNICATIONS SUBCOMMITTEE

5. DAY CARE CENTER SUBCOMMITTEE
6. EARLY CHILDHOOD SUBCOMMITTEE
7. FEOFFEEES SUBCOMITTEE
8. NORTH SHORE COALITION FOR SCHOOL FUNDING
9. OPERATIONS SUBCOMMITTEE

10. POLICY SUBCOMMITTEE

Mr. Loeb moved, seconded by Dr. O'Flynn, to accept for adoption the following policies:

- a. School Assignment Areas, JC
  - b. Parents' Choice of Elementary School, JECC
- UNANIMOUS.

Mrs. Dietz reported that Policy Subcommittee had met and is studying fees charged for various school buildings.

11. PUBLIC SAFETY FACILITIES COMMITTEE

Meeting scheduled on November 3.

12. SPECIAL EDUCATION PARENT ADVISORY COMMITTEE (SEPAC)

13. WIND TURBINE SUBCOMMITTEE

Mr. Korb reported that the Committee has accepted a bid for a GE 1.65MW wind turbine within the budget and is forecast for installation in March, 2011.

14. IPSWICH HIGH SCHOOL STUDENT REPRESENTATIVE

15. OTHER

**III. SUPERINTENDENT'S REPORT**

**A. SUPERINTENDENT'S ADMINISTRATIVE REPORT**

**IV. CONSENT**

**A. CONSENT AGENDA**

Dr. O'Flynn moved, seconded by Mr. Loeb, to approve the Consent Agenda as follows:

- Acceptance of Minutes of September 16, 2010, Open Session
  - Acceptance of Minutes of October 7, 2010, Open Session
  - Acceptance of Minutes of October 7, 2010, Executive Session
  - Approval of the Ipswich Middle School's Grade 8 overnight field trip to the Adirondack Mountains, New York State, June 1-3, 2011.
- UNANIMOUS.

**VI. ADJOURNMENT**

Mrs. Dietz moved, seconded by Mr. Traverso, to adjourn at 10:15 p.m. UNANIMOUS.