

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, )

*Plaintiffs,* )

v. )

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

*Defendants.* )  
\_\_\_\_\_)

**SUPPLEMENTAL AFFIDAVIT OF CLARK ZIEGLER**

I, Clark Ziegler, state the following on my own personal knowledge or information and belief:

1. I submit this supplemental affidavit in support of the motion to intervene.
2. I am very familiar with Ipswich public school budgets and with revenue sources available to the Ipswich schools, having served 15 years on the Ipswich Finance Committee including three years as chairman. One of my key roles on the Finance Committee was to compile revenue projections that we used on the Finance Committee, and that were relied upon by the School Committee and Board of Selectmen, to set annual budget targets for the school and municipal budgets based on total estimated revenues and property tax collections within the Proposition 2½ levy limit.

3. To my knowledge, based upon my service on the Finance Committee, the financial challenges facing the Ipswich Public Schools, while significant, are chronic problems that are not substantially different than those experienced by similar communities. The most significant source of school budget stress in Ipswich is not declining revenue but the need to fund collective bargaining agreements with built-in cost increases that exceed annual growth in revenue.

4. According to data compiled and published by the Massachusetts Department of Revenue, annual growth in available local budget revenue in Ipswich (combining property taxes, state aid, local receipts and all other sources) grew at an annual rate of 3.6 percent for the ten years ending in FY2011, the last year for which comparative statewide data is available. That revenue growth is right in line with the state average (3.7 percent) and slightly below the statewide median (4.2 percent).

5. Based upon my service on the Finance Committee, I know that another key fiscal indicator affecting school budgets is the amount of "new growth" (newly developed real estate and improvements to existing real estate that are added to the tax base) in each city and town that is available each year to supplement the maximum 2½ percent increase in property taxes allowed by state law. According to published Massachusetts Department of Revenue data, during the ten fiscal years from FY2003 to FY2012 new growth in Ipswich ranged from 0.98 to 3.81 percent of the levy limit, which is right in line with the statewide median that ranged from 1.11 to 2.59 percent of the levy limit during the same period.

6. It is clear from my personal knowledge and from my review of publicly-available data that the Ipswich Public Schools are at no unusual fiscal disadvantage relative to other cities


and towns and that the school budget situation in Ipswich has not significantly deviated from statewide fiscal trends.

7. The Town of Ipswich, like many other communities in Massachusetts, has approved school operating budget overrides pursuant to Proposition 2½ to meet school funding needs that could not be met through other available revenue sources. School budget overrides were approved by Ipswich voters in 1990 and again in 2008. That option remains available to address future shortfalls in the Ipswich public school budget.

8. Based upon my review of published budget and revenue data, my knowledge of school financing and my 15 years of responsibility for review and approval of Ipswich public school budgets, it is clear to me: (a) that the Ipswich schools do have significant unmet funding needs that have developed over the long term, (b) that these unmet needs have been exacerbated by the failure of the Feoffees to provide regular funding in accordance with their fiduciary duties; and, (c) that there is no fiscal emergency currently facing the school department or any other extraordinary fiscal circumstances that would somehow justify deviation from William Payne's will – violating an explicit prohibition on sale of the Little Neck property – in order to provide a short-term cash infusion to the Ipswich schools.

9. Through a request made pursuant to the Massachusetts Public Records Law, I obtained minutes of Executive Session meetings of the Ipswich School Committee dated November 3, 2011, December 15, 2011, and December 17, 2011. True copies of those minutes are attached as Exhibit A.

Signed under the pains and penalties of perjury this 26th day of January, 2012.

  
\_\_\_\_\_  
Clark Ziegler

# EXHIBIT A

9:15 p.m.

Attending: H. O'Flynn, L. Dietz, B. Hopping, J. Loeb, J. Bauman, S. Gresh, R. Roesler,  
R. Korb, J. Cuff

Tenants of Little Neck Question

Mr. Loeb asked, based on a telephone-call question from Mr. DiSalvo (Tenants Association), if the School Committee would want a meeting with the Tenants. Mr. Loeb read to the Board emails from Tenants' counsel to School Committee counsel Steve Perry and from Feoffees' counsel to School Committee counsel Richard Allen on the same issue. He discussed an email from P. McNally, Selectman Feoffee.

After considerable discussion, and a poll taken by Mr. Loeb, Dr. O'Flynn answered "yes" and Dr. Gresh agreed that they should meet with nothing to lose; but Mrs. Dietz, Mr. Hopping, Mrs. Bauman, Mr. Loeb, and Mrs. Roesler all said "no" with Mrs. Roesler adding that no talk should occur until the governance structure was changed.

Legal Bills

Dr. O'Flynn moved, seconded by Mrs. Bauman, to approve the Action Plan (confidential document dated 10/21/11 to Jeffrey Loeb from Stephen Perry, attorney for the School Committee). Roll call IN FAVOR - Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

Mrs. Dietz moved, seconded by Mrs. Roesler, to return to Open Session at 10 p.m. Roll call IN FAVOR - Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

10:40 p.m.

Attending: H. O'Flynn, L. Dietz, B. Hopping, J. Loeb, J. Bauman, S. Gresh, R. Roesler  
R. Korb, Superintendent; S. Perry, Attorney; A. Imbriglio, Legal Intern

Mr. Perry summarized the current status of the case. Mr. Loeb affirmed that the ultimate decision is the School Committee's. Because the last two Town Meetings determined "strategy is to consult with Finance Committee and Board of Selectmen," their input is needed.

Mr. Perry explained

[REDACTED]

He then distributed a settlement offer, dated 12/15/11, an increase by over \$3 million and explained the term "use and occupancy" of rent rebates rather than "purchase price." He reviewed each of the eight bullet points and explained them. He presented a chart showing the original agreement of a \$29,150,000 selling price and the new agreement adding the "use and occupancy" contingency.

Dr. O'Flynn moved, seconded by Mrs. Dietz, to contact the Finance Committee and Board of Selectmen and arrange a meeting as soon as possible to discuss the proposal offered by Mr. Perry. Roll call IN FAVOR - O'Flynn, Dietz, Hopping, Loeb, Bauman, Gresh, Roesler.

Mr. Korb feels that sale is best for the schools.

Dr. O'Flynn moved, seconded by Mrs. Dietz, to adjourn at 12:25 a.m. Roll call IN FAVOR - O'Flynn, Dietz, Hopping, Loeb, Bauman, Gresh, Roesler.

**IPSWICH SCHOOL COMMITTEE MEETING  
AMENDED DECEMBER 17, 2011 EXECUTIVE SESSION MINUTES  
MS/HS ENSEMBLE ROOM**

**CALL TO ORDER**

Mr. Loeb called the meeting to order at 9:05 a.m. with the following School Committee members present: H. O'Flynn, L. Dietz, B. Hopping, J. Bauman, S. Gresh, and R. Roesler; Board of Selectmen present: R. Morley, C. Surpitski, S. Berry, W. Craft, and P. McNally; and Finance Committee present: M. Schaaf, L. Seidler, M. Feldman, R. White, T. Wilson, I. Miles, M. Swan, J. Fay, and R. Howard. S. Perry, Attorney, and R. Korb, Superintendent, were present also.

**ANNOUNCEMENTS**

Mr. Loeb announced that Executive Session will be held to discuss ongoing litigation strategy relative to real estate matters after which the meeting will adjourn.

**CITIZENS' COMMENTS**

Doug DeAngelis read a prepared message urging a procedure in a non-hurried manner with public discourse.

Clark Ziegler asked for public discussion as well.

Kathy Savoie opined, as a litigator herself, that the trial should go on until the judge makes a decision. The legislators are watching this, and she said that the House of Representatives could help toward appointing public officials to a new management board of Feoffees.

**EXECUTIVE SESSION**

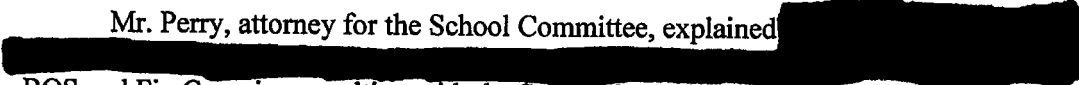
Dr. O'Flynn moved, seconded by Mrs. Dietz, to go into Executive Session for the purpose of discussing strategy with respect to real estate litigation, inviting the Finance Committee and Board of Selectmen to join the School Committee and allowing for Open Session after Executive Session if needed, otherwise to adjourn after Executive Session. Roll call IN FAVOR- Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn.

Mr. Schaaf, Fin Com Chair, accepted a motion from Mrs. Miles, seconded by Mr. White, to consider matters relating to ongoing litigation. Roll call IN FAVOR- Schaaf, Seidler, Feldman, White, Wilson, Miles, Swan, Fay, Howard.

Mr. McNally moved, seconded by Mr. Craft, to consider matters relating to ongoing litigation. Roll call IN FAVOR- McNally, Craft, Morley, Berry, Surpitski.

Mr. Loeb thanked everyone for coming on short notice and gave a quick history of the last 72 hours. The Attorney General's office stated that this emergency meeting is permissible.


Mr. Perry, attorney for the School Committee, explained

 The BOS and Fin Com, in consulting with the School Committee, were asked to keep communications within the group and to keep the judge's remarks and tenants' offers confidential.



Mr. Perry detailed an offer that had been made by the Tenants late on Thursday to buy Little Neck property and create a condominium arrangement. The proposal, which the tenants had made clear was their best and final offer, with the financial aspects non-negotiable, includes the following: the tenants would increase the amount paid in use and occupancy by a total of \$2.4 million. This will automatically result in the reduction of lessee rebates of close to \$600,000 for a total increase in proceeds of approximately \$3 million. These amounts would be net income for purposes of making distributions and could be paid to the School Committee in three annual distributions of \$800,000 plus interest. The homeowners could amend their purchase agreements so that the additional amounts were treated as part of the price for purposes of their purchase and sale agreements. The extra use and occupancy payments by the tenants would be paid in cash as part of the closing, except for those tenants who were accepting Feoffees financing, expected to be a relatively small number given current interest rates, in which case they could be paid through five year fully amortizing notes at a 4 percent interest rate. The Feoffees were planning to close on all sales by July 1, 2012, but if there was a delay, the tenants would have to pay use and occupancy starting on July 1, 2012 at the same rate as the tenants, which would also eliminate any lessee rebates from that point forward. The tenants and Feoffees also agreed to accelerate the date when the interest in the escrow account (estimated at \$50,000) would be paid to the School Committee, a feature of the original agreement. The Feoffees had agreed that the engineering and legal costs for achieving the condominium conversion would be capped at \$400,000 if Donahoe could do the engineering and if the Feoffees' current counsel handled the legal work. The School Committee would be able if it wished to apply for an award from the Trust of attorneys' fees, which would allow it to satisfy any unpaid fees or expenses and to repay the Town any amounts that were owed to the Town under the terms of advance of such expenses. With respect to governance, the proposal calls for the current Feoffees to remain in office until the filing of the Master Deed, during which time they would act only in the ordinary course, and no compensation would be paid to them other than the ongoing ordinary payments to Peter Foote. Once the Master Deed was filed, the Feoffees would be reconstituted so that there were five publicly appointed trustees and two life Feoffees, and then on the first to occur of the completion of sales or 90 days after recording the Master Deed, the Feoffees would be reconstituted to seven members, six appointed by Town Boards (two each from the Selectmen, School Committee and FinCom). The seventh individual would be appointed by the life Feoffees, who would continue to be self-perpetuating for the sole purpose of appointing this seventh member on an ongoing basis. The Feoffees would obtain a release from the School Committee and release and indemnity from the Trust for any claims other than claims for unknown deliberate misconduct. The Trust Administration Order that had been submitted to the court would need to be revised given the sale of the property and also to revise the distribution/spending policy for the endowment, as it had been determined that the distribution policy contained in the existing version was inadequate for a permanent endowment. Accordingly, a revised Trust Administration Order consistent with what is outlined above would have to be adopted by the School Committee and submitted to the court with input from the Office of the Attorney General.

Mr. Perry



The trial was to resume on Monday, and a decision needed to be reported to other counsel, and potentially the court, before that occurred.

Following that, Mr. Loeb requested that those around the table ask questions and, in continuing discussion, then to make comments about their feelings of approval or disapproval. Three expressly mentioned the need to ask for a higher price. Several expressed concern that the land that the Feoffees had agreed to sell included approximately one hundred yards of Pavilion Beach and that this would affect the rights of the public to utilize the beach. Others were concerned about the elimination of seasonal use restrictions which could increase the need for town services, including enhanced enrollment numbers in the schools. Mr. Morley felt that it wasn't up to the public, and the School Committee should vote for themselves. Mrs. Dietz needs a change in governance as her priority.

Mrs. Roesler expressed concerns regarding the meeting and votes conducted in executive session, indicating that public input was necessary before taking a vote of such magnitude. She said that it was a shame that a 350-year-old trust would be dismantled with a settlement and does not want a sale to occur on her watch as a School Committee member when Payne's trust expressly forbids it.

Mrs. Roesler also commented that, while a settlement would result in roughly \$25 million placed into an investment trust, the money would be vulnerable to market volatility, and future trustees or School Committee members could decide to dip into the account for large capital improvements to the schools in the future, thus losing the valuable real estate of Little Neck. Long-term leases would produce equal or more of a return to the schools, and the trust would still have the valuable land asset. She expressed frustration that the trial was just getting underway and any talk of a settlement at this point is premature, advocating for allowing the School Committee attorney to present his case.

Mrs. Bauman felt sad that the issue wasn't continuing into litigation.

Mr. Loeb moved, seconded by Dr. O'Flynn, to authorize counsel, as a bottom line, to accept and take action to implement the proposal by the Tenants that he had outlined with the addition of clearing up the right of the public to utilize the 100 yards of Pavilion Beach abutting Little Neck property (at the gate). IN FAVOR – O'Flynn, Dietz, Loeb, Gresh; AGAINST- Bauman, Roesler, Hopping.

The Committee also directed Mr. Perry to attempt to negotiate the following elements with only number 1 as essential to a deal:

1. Use of Pavilion Beach
2. Financial return: intermediate rent between January – July, 2012, (about \$25,000 extra because the schools need the funds
3. A covenant against winter rentals by owners (November – April)

#### ADJOURNMENT

Dr. O'Flynn moved, seconded by Mr. Hopping, to adjourn at 1:32 p.m. IN FAVOR- Roesler, Gresh, Bauman, Loeb, Hopping, Dietz, O'Flynn. The Fin Com (4) and BOS (1) members present adjourned as well.