

**PRESENTATION OF ARTICLE 15 AT THE 2012 ANNUAL TOWN MEETING
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This article is a non-binding resolution on the sale of Little Neck that gives the voters of Ipswich a voice on one of the most significant decisions the town will ever make. I'm speaking to you tonight as someone who has lived in Ipswich for nearly 30 years, raised three kids educated in the Ipswich public schools, and served for 15 years on the Finance Committee

William Paine, one of the original settlers of the town, left 35 acres at Little Neck for the benefit of the Ipswich schools when he died in 1660. The instructions in his last will and testament were crystal clear: Little Neck was to be held forever by trustees, who are known as Feoffees, and the land was never to be sold or wasted. Eventually 167 summer cottages were built at Little Neck on land that was rented from the Feoffees.

Over the years the Feoffees failed to do their job as trustees of Little Neck and they have provided barely any money to the Ipswich schools, yet the land itself remains as an extremely valuable asset.

A series of events – including an investigation launched by the town more than a decade ago – brought this matter into the spotlight. To get themselves out of a tangle of legal problems, the Feoffees asked the probate court for permission to sell Little Neck to the cottage owners – in direct violation of William Paine's will. More than \$600,000 was appropriated at three separate town meetings to allow the School Committee to oppose the Feoffees in court. The town scored a major victory last year when the probate court denied a request for expedited approval of the sale – after nearly 700 Ipswich citizens had become directly involved in the case by adding their names to a legal brief supporting the School Committee's position. The Finance Committee argued strenuously and persuasively at last year's annual town meeting that sale of the land was not in the community's best interest.

In late December, everything changed. Before the trial in probate court got fully underway, the School Committee completely reversed its position and agreed by a narrow 4-to-3 vote to a settlement that allows Little Neck to be sold. The settlement not only violates the terms of the trust but it also cheats the public schools out of most of the financial value of Little Neck.

I am one of 14 parents who stepped forward in December to object to the settlement in order to protect the interests of our children and future generations of children in the Ipswich public schools. We were forced to act because no other party was defending William Paine's will or adequately protecting the schools' financial interest. The probate court approved the settlement without addressing any of the legal issues raised in our motion to intervene. Our appeal of the probate court settlement is now before the Massachusetts Court of Appeals. As private citizens we intend to actively pursue this appeal – with donated funds and without any financial support from the town -- if you support our efforts tonight by voting yes on Article 15.

Some of you may wonder whether this is still a battle worth fighting, whether it's too late to stop the settlement, and whether an appeal really has a chance of success and is likely to get the town a better result. Those are exactly the right questions and I'll try to answer them one at a time.

Little Neck was placed in trust with explicit instructions that the land never be sold. The courts only have authority to violate that trust if it's impossible or illegal to honor Mr. Paine's instructions or if doing so would defeat his original intent. No such evidence was presented to the Essex Probate Court. In fact, the evidence proves just the opposite: that it is completely feasible to rent Little Neck to cottage owners using stable long-term leases and professional third-party property management. School Committee minutes from November 2008 show that the tenants were prepared to end the litigation with the Feoffees and willing to pay higher rents while keeping the land in trust. Those terms would actually have been better financially for the public schools than the settlement reached last December.

If we allow Mr. Paine's will to be disregarded after 351 years, what comes next? How would we feel at some future date if development sprung up on Crane's Beach because the Trustees of Reservations got permission to violate the terms under which the land was donated in 1945? How can any individual feel confident making charitable gifts – such as donating land for open space and conservation -- if their restrictions can be brushed aside years later whenever they become inconvenient?

Even aside from the principles involved, there are compelling economic reasons to oppose the Little Neck sale. No matter how you look at it, the deal struck in December shortchanges the public schools out of tens of millions of dollars in future income.

Prime real estate like Little Neck is protected from inflation, because the value of the land increases over time, and tenants can be given long-term leases that create a stable cash flow. Four separate appraisals – commissioned by the Feoffees, the tenants, the School Committee and the Finance Committee – are all in close agreement about the annual rental income from Little Neck if the property is held in trust and properly managed. Selling the land -- as proposed by the School Committee -- creates all kind of additional problems because a cash trust loses some of its value every year to inflation. The only way to keep a cash endowment permanent is to plow back some of the earnings every year to keep the principal amount even with inflation. That means substantially less income is available every year to distribute to the schools. The current situation is even worse than that because the School Committee has proposed to spend \$2.4 million from the Little Neck sale right off the top, therefore shrinking the endowment available for future schools needs.

Compared to keeping Little Neck as a rental property, the School Committee's settlement would result in the permanent loss of more than a half million dollars in annual funding for the schools in inflation-adjusted 2012 dollars.

Is it too late to stop the settlement? Absolutely not. We intervened in the case immediately when the School Committee abandoned its position. Our pending appeal is based on strong legal arguments that have not yet been heard by a higher court. It's hard to imagine that a sale will proceed, deeds will be exchanged and mortgages will be issued when the underlying authority of the Feoffees to sell the land has not been resolved in court. Even if it does, the courts have ample authority to undo the sale.

What about the likelihood of getting a better result? First and foremost, we have a strong case on the merits. There is compelling evidence that keeping the land in trust, as Mr. Paine directed, is not only feasible but is in the best financial interest of the schools. Under those circumstances the law governing so-called "deviations" from the intentions of charitable donors clearly prohibits the sale of Little Neck. Second, the probate judge made serious errors in her handling of the case. The court had an independent responsibility to determine whether the sale of Little Neck was consistent with William Paine's will, regardless of whether a deal was struck, yet the judge approved the settlement without providing her own factual and legal analysis in a written opinion. Third, our cause has support that goes far beyond Ipswich. The case has already made national headlines and been covered by the Wall Street Journal, among others. Prominent legal and charitable experts have contacted us to offer advice and to say they fully support our position. When this case is heard we expect that organizations concerned about the integrity of charitable gifts and about preserving restrictions on donated land will submit briefs supporting our position.

And what about concern that continuing our appeal will just make things worse and will cost the town more money without improving the result? It's a fair question, but the concern is misplaced. Our objective is not to create delays. We're seeking an expedited review and at our first opportunity we will petition for direct review of the case by the state's Supreme Judicial Court. By late summer we expect to have a decision from the SJC on taking the case. In the meantime, the School Committee is under no obligation to spend taxpayer dollars to fight our appeal. If we win, any extra legal costs will be more than repaid by the increased cash flow from Little Neck. If we lose, the School Committee gets the same legal settlement that was already approved by the probate court.

The only bright spot in the settlement was an agreement that the Feoffees would be replaced by a new publicly-appointed board of trustees. Some highly-qualified Ipswich residents recently stepped up and were appointed last week to fill those new positions. Would overturning the settlement return us to the bad old days, with self-appointed Feoffees who operate without any public accountability? Not at all. Replacement of the Feoffees is a virtual certainty, regardless of what happens with our appeal. The change to a publicly-appointed board has now been endorsed by the Attorney General, by the probate court, by two overwhelming votes of the Ipswich town meeting and by a 9-to-1 vote at last year's annual town election. Our appeal specifically calls for the change in Feoffees to be ratified by the SJC, and we have every reason to believe that the court will do so. The town has always insisted that the governance of the Feoffees be changed, and there can be little doubt that the town will prevail.

In summary, there is a great deal to be gained by rejecting the sale of Little Neck, we have a viable strategy for getting that accomplished, and there is no significant downside to the town in voicing support for our privately-funded appeal and giving us a little more time to see it through.

This last point I want to make is a personal one. Some of you may be reluctant to support Article 15 because it seeks to reverse a decision made by the School Committee. The members who voted for a sale were duly elected and they cast their votes in good faith. In our system of government we often need to place our trust in elected officials who have devoted substantial time to understanding complex issues like this one, rather than substituting our own judgment. That respect for town boards is especially important to me because I've served in town government with almost everyone sitting on the stage behind me – in some cases for 20 years or longer – and I value those relationships.

But the fate of Little Neck is in a completely different league than most other decisions made by the town. It's not like a budget dispute that can be fixed in the next year or a hot-button issue that is forgotten just a few years later. It is – without exaggeration – one of the most significant decisions the Town of Ipswich will have ever made. It is a moral question about whether we will honor the wishes of a town founder, more than three centuries after his death. It's an historic decision that will permanently shape the landscape of our town and the quality of our public schools. And it's an irrevocable decision, so if we get it wrong now we will never again have the opportunity to make it right.

Long after we're gone, those who come after us in Ipswich will judge whether we upheld the trust placed in us by William Paine and whether we looked out for the long-term interests of our community. Let's make them proud that we stood up and did the right thing. Please vote yes on Article 15.