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No. of Pages: 99

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 BARRY W. HOPPING, a witness
called on behalf of the Plaintiff, taken pursuant to
Notice under the Applicable Rules of Domestic Relations
Procedures 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, Ardiff & Morse, P.C., 8 Essex
Center Drive, Peabody, MA, on Monday, October 24, 2011,
commencing at 10:10 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.

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6 Peabody, MA 01960

7 Counsel for the Plaintiff

8

9 DONNA M. BREWER, ESQ.

10 Casner & Edwards

11 303 Congress Street

12 Boston, MA 02210

13 Counsel for the Defendants Ipswich School Committee and

14 Richard Korb and Deponent

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I-N-D-E-X

WITNESS	DIRECT	CROSS
BARRY HOPPING		
(By Mr. Sheehan)	5	--
(By Ms. Brewer)	--	--

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

NUMBER		PAGE
1	Copy of 3/19/09 Executive Session Minutes	55
2	Copy of 5/20/10 Ipswich School Committee Minutes	73
3	Copy of E-Mail Exchange	79
4	Copy of Responses to First Request for Admissions	84
5	Copy of Deposition Subpoena	96

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

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

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

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

17
18 BARRY W. HOPPING, first being satisfactorily
19 identified by his Massachusetts Driver's License and
20 being duly sworn, deposes and says as follows:

21
22 MR. SHEEHAN: Okay. And we'll go with the same
23 stipulations that we've been using?

24 MS. BREWER: Yes.

DIRECT EXAMINATION

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

A Barry William Hopping, H-O-P-P-I-N-G.

Q Where do you reside, sir?

A 10 High Street, Ipswich, Mass.

Q Have you ever been deposed before?

A I have.

Q In what context?

A A custody battle involving one of my students at school.

Q Your educational background, please, starting with high school?

A I graduated from Ipswich High School in 1970. And I graduated from the University of Maine in 1974 with a Bachelor's in Education. I graduated from Salem State College with a Master's Degree in 1991.

Q Any schooling beyond your Master's Degree from Salem State College in 1991?

A No.

Q And your work history, please, starting with your first full-time job?

A I taught at the Ipswich Middle School, English/Language Arts, for fifteen years. I finished in approximately

1 1990, I believe, at which time I was named the Athletic
2 Director at Ipswich High School while still teaching
3 morning classes at the -- English classes at the Middle
4 School.

5 I then left Ipswich to become the principal of
6 the Hanscom Middle School on the Hanscom Air Force Base
7 for twelve years. And the past six years, I've been the
8 principal at the Rupert A. North Middle School in
9 Newburyport, Mass.

10 I am also employed at Merrimack College where I
11 serve as an adjunct lecturer one evening a week.

12 Q And how long had you served as the Athletic Director at
13 Ipswich High School?

14 A Approximately a year and a half. And I do have to back
15 up.

16 Q Yes?

17 A I also served briefly as the middle school principal in
18 Ipswich for a year and a half prior to leaving for
19 Hanscom. I left the athletic director's job and became a
20 middle school principal for a year and a half, and then
21 went to Lincoln.

22 Q And what school were you the principal at at Hanscom?

23 A The Hanscom Middle School, grade school to eighth, all
24 military dependents. The school is actually run by the

1 Town of Lincoln. They have the contract for the
2 Department of Defense.

3 Q And what grades does the Ipswich Middle School consist
4 of?

5 A Sixth, seventh and eighth.

6 Q And has it been that way for the last thirty years?

7 A Yes.

8 Q And the North Middle School in Newburyport, what grades
9 does that school consist of?

10 A Six, seven and eight. And that changed four years ago.
11 It was a five to eight middle school. But the -- when
12 they re-consolidated, they closed one of the elementary
13 schools in Newburyport and moved the fourth and fifth
14 grade -- and they call it the Molen [phonetic] Upper
15 Elementary, which is a separate principal there.

16 So I gave up fifth grade and I still had sixth,
17 seventh and eighth, but we shared the same building.

18 Q And what course or courses do you lecture in at Merrimack
19 College?

20 A Curriculum instruction for middle school.

21 Q Have you received any formal educational training other
22 than what you have already described?

23 A I have through conferences and workshops.

24 Q Okay.

1 A And I have also through professional development oppor-
2 tunities that's offered -- that have been offered
3 throughout my career, whether in Ipswich or in Lincoln or
4 in Newburyport currently.

5 Q What subject or subjects have you had courses in other
6 than courses that were designed to lead to a Bachelor's
7 or Master's Degree?

8 A I have had training in inclusion. I have had training in
9 ----

10 Q What does that mean?

11 A That means fully integrating special education students
12 into regular settings.

13 Q All right.

14 A I have had courses on differentiation of instruction.
15 And I have had courses on data, not only data collection,
16 but data analysis and how it informs instruction in the
17 classroom.

18 I've had classes on technology classes, being
19 trained to use our student data management system, X2
20 which is Aspen; Snap Grades, which is an online grading
21 program that our parents are able to access.

22 Q Okay.

23 A And I've had training on supervision and evaluation, and
24 there's a new evaluation document that's coming down from

1 the state. And we've been going through the extensive
2 training of that through research for better teaching.

3 I don't know. I can't think of anything else,
4 to be honest with you.

5 Q Were you working in education when Proposition 2½ was
6 passed in Massachusetts?

7 A I was.

8 Q When was that?

9 A I believe that was 1973.

10 Q What's your understanding of Proposition 2½?

11 MS. BREWER: Objection.

12 A Oh, excuse me. I confused that.

13 Q Oh, do you have a different year?

14 A I don't recall, Bill, exactly when it was passed. And
15 when you asked that question, I immediately thought of ed
16 reform, but that's 1993, not '73. I confused it.

17 Q Are you familiar with Proposition 2½?

18 A Yes.

19 Q And were you teaching when Proposition 2½ was passed?

20 A I believe so, yes.

21 Q It was in the late '70's? Does that sound about right?

22 A Yes, it was. Yes.

23 Q What's your understanding of Proposition 2½?

24 MS. BREWER: Objection.

1 Q Oh, you may answer?

2 MS. BREWER: I'm sorry, sir. Go ahead. I'll
3 interpose objections from time to time. You go ahead and
4 still try to answer the question.

5 THE WITNESS: Okay.

6 MS. BREWER: And you only don't answer if I
7 instruct you not to answer.

8 THE WITNESS: Okay.

9 A My understanding of Prop 2½ is that cities and towns are
10 not able to raise taxes beyond 2½% over the previous year
11 without, in Ipswich's case, a vote of town meeting or an
12 override.

13 Q And you are familiar with ed reform that was passed in
14 Massachusetts in the early 1990's?

15 A 1993, yes.

16 Q What s your understanding of what happened as a result of
17 ed reform?

18 MS. BREWER: Objection.

19 A Well, ed reform changed the way the public schools did
20 business. Much emphasis was placed on site based manage-
21 ment which allowed principals to run their buildings.

22 And it also restricted the role of school com-
23 mittees to an extent where their responsibilities became
24 hiring and firing of superintendents, budget development,

1 policy setting.

2 Q Okay.

3 A And it also changed the responsibility of superintendents
4 themselves where they had to rely more on principals and
5 the way that schools, you know, through -- and also
6 resulted in the formation of school improvement councils
7 which would make recommendations through the principal,
8 through the council, to the superintendent for changes --
9 any changes at the site level.

10 Q Who sits on school improvement councils?

11 A Representation includes parents, and a community member
12 usually from a business or some organization, teachers,
13 one administrator from the building.

14 And also depending on the level of school, high
15 school in particular, there's student representatives, as
16 well. At my middle school, I have two student represen-
17 tatives that sit on our council.

18 Q Now, have you ever been a school committee member?

19 A Yes.

20 Q In what city or town?

21 A Ipswich.

22 Q And when did you become an Ipswich school committee
23 member?

24 A I was elected in 1999. I believe it was April.

- 1 Q And have you served continuously as an Ipswich school
2 committee member since 1999?
- 3 A I have.
- 4 Q And you are elected for what length of term?
- 5 A Three year term.
- 6 Q So you've been elected how many times?
- 7 A I believe five.
- 8 Q Have you ever held any position on the Ipswich School
9 Committee?
- 10 A I serve on their sub-committees.
- 11 Q And have you ever been an officer of the Ipswich School
12 Committee?
- 13 A No.
- 14 Q Have you ever been the chairman of the Ipswich School
15 Committee?
- 16 A Never.
- 17 Q Have you ever been asked to serve as chairman of the
18 Ipswich School Committee?
- 19 A Informally, yes.
- 20 Q And you declined?
- 21 A Yes.
- 22 Q Why?
- 23 A Primarily because of my schedule. I'm out seven nights a
24 week as it is, and I know that a lot of the work that

1 goes into setting agendas and things required meetings
2 with the superintendent in anticipation of the meeting.

3 And I -- between my commitment to Merrimack, my
4 commitment in Newburyport, and also I have a young son
5 and I wanted to spend some time with him.

6 Q How old is your son?

7 A He's nine.

8 Q What sub-committees of the Ipswich School Committee have
9 you served on?

10 A I've served on the collaboration sub-committee with the
11 Town.

12 Q The collaboration?

13 A The collaboration sub-committee. It's just looking to
14 see if we can realize greater efficiencies in certain
15 areas working closely with the town.

16 For example, around human resources, around
17 technology, recreation.

18 Q Okay.

19 A I have served on an athletic sub-committee. I am still
20 actively involved and I still serve. I have served on a
21 policy sub-committee which I am currently the chair of.

22 Q What does the policy sub-committee do?

23 A Well, we re-visit all the policies that basically run the
24 school system. We update them. The policy manual is

1 rather cumbersome right now, and we have removed policies
2 that no longer apply. We have revised policies that do
3 and brought them up to current fashion.

4 Q Now, when you talked about the sub-committee on -- the
5 collaboration sub-committee, that's collaborating with
6 whom?

7 A There are representatives from the town side, the town
8 manager, people from technology, people from -- there's
9 also the board of selectman, and there are also finance
10 committee members involved.

11 And there are two -- there are two members from
12 the school committee, as well as Mr. Korb and Joanne
13 Karp, who is our business person.

14 Q Now, what other sub-committees do you now serve on or
15 have you served on in the past?

16 A I serve on operations currently, which is the responsi-
17 bility of to coordinate the -- or facilitate the writing
18 of the evaluation for the Superintendent.

19 And I have served on a communications sub-
20 committee.

21 Q And what does that committee do?

22 A Nothing, actually. I mean, it just was formed last year.
23 And I got off because there was -- it just didn't have
24 any direction, so.

- 1 Q Okay.
- 2 A I'm trying to think what else, Bill, I have served on. I
3 know there are more than that.
- 4 Q Well, for the moment, that exhausts your recollection?
- 5 A Yes.
- 6 Q All right. And has the collaboration sub-committee ever
7 dealt with feoffees issues?
- 8 A Never.
- 9 Q Has the athletic sub-committee ever dealt with feoffees
10 issues?
- 11 A No.
- 12 Q Has the policy sub-committee ever dealt with feoffees
13 issues?
- 14 A No.
- 15 Q Has the operations sub-committee ever dealt with feoffees
16 issues?
- 17 A Only in response to how it was written into Mr. Korb's
18 evaluation.
- 19 Q What do you mean by that?
- 20 A Well, Mr. Korb is evaluated, as all administrators are,
21 there are certain -- there are certain standards. And
22 then as we compiled the input from the other committee
23 members, there would be reference. And I can't cite
24 specifically which evaluation, but there's been reference

1 in the past of his involvement with the feoffees issue.

2 There had been reference to it in his evalua-
3 tions in the past in conjunction with other pieces that -
4 - around -- there's one of the standards that deals spe-
5 cifically with his interactions and his cooperation in
6 working with other members of town boards, things of that
7 nature.

8 Q And by other town boards, are you including the feoffees
9 as one of them?

10 A It wasn't related specifically to the feoffees. It was
11 more in terms of -- I can't recollect exactly. There was
12 reference to the feoffees in the evaluation, but I just
13 can't remember exactly in regard to what.

14 Q And has Superintendent Korb been evaluated annually since
15 1999?

16 A No, he has not.

17 Q How often has he been evaluated?

18 A He's supposed to be evaluated every year. But we, you
19 know, the school committee has not done that each year.

20 Most recently -- we did not evaluate him for
21 the past two years. We did -- we just recently evaluated
22 him. He agreed to waive the fact that we hadn't done him
23 for the past two years.

24 Q And how many times would you say the school committee has

1 evaluated Mr. Korb since you have been on the school
2 committee in 1999?

3 A Conservative estimate, probably eight or nine.

4 Q Did each of those evaluations contain some reference to
5 the feoffees?

6 A Not to my recollection. I don't know. I have not been
7 involved in operations since 1999, so I don't -- I wasn't
8 - and I wasn't directly involved in pulling everything
9 together and presenting it.

10 Q Okay.

11 A So I don't recall if anything was there to ----

12 Q You have received as a member of the school committee
13 each of Mr. Korb's evaluations; correct?

14 A Yes.

15 Q Have you read them?

16 A Well, it's read into public record. It's one of the --
17 there is what we call an executive summary that's read
18 into public record.

19 I have read the evaluations because I -- in my
20 recent past, I've been most directly involved with
21 pulling it together, so yes.

22 Q Is the executive summary that's made a part of the public
23 record the full evaluation of Mr. Korb?

24 A It is not.

1 Q Where does the full evaluation of Mr. Korb reside?

2 A The central office.

3 Q Is that evaluation a public record?

4 A Yes.

5 Q And of the eight or so evaluations of Mr. Korb, how many
6 have references to the feoffees?

7 A I really can't recall that.

8 Q More than half?

9 A No.

10 Q The most recent evaluation of Mr. Korb, does that contain
11 references to the feoffees?

12 A It does not.

13 Q Has any evaluation of Mr. Korb ever negatively critiqued
14 his performance with respect to any feoffee or feoffee
15 related issue?

16 MS. BREWER: Objection.

17 A Yes.

18 Q Tell me about that, please?

19 A I don't recall specific details. But I know the evalu-
20 ation itself was always suggesting that more should be
21 happening in regard to paying for the schools. I think
22 that's the extent of it that I can recall.

23 And there was not a whole lot of information
24 that had been coming forward, and I think that school

1 committee members were requesting that things be more
2 transparent.

3 Q What be more transparent?

4 A Just whatever interactions were taking place between the
5 feoffees and Mr. Korb or Mr. Korb in dealing with other
6 committees in town, and any conversations that, you know,
7 affected -- not affected, but any other conversations
8 that involved or reference to the feoffees.

9 Q Has the school committee ever made a written demand upon
10 the feoffees for more distributions?

11 A No, not to my knowledge.

12 Q Has the school committee ever made an oral demand upon
13 the feoffees for more distributions?

14 A No.

15 Q Are you aware of any actions taken by the feoffees which,
16 in your view, should result in their removal?

17 MS. BREWER: Objection.

18 A I am not.

19 Q Are you aware of any failures on the part of any feoffee
20 which, in your view, should result in his removal from
21 office?

22 A I don't -- could you re-state that, please?

23 Q Sure. You're not aware of any actions taken by feoffees
24 which would, in your view, warrant their removal from

1 their positions as feoffees?

2 A No, I'm not.

3 Q Are you aware of anything that the feoffees did not do
4 which, in your view, warrants their removal?

5 MS. BREWER: Objection.

6 A No.

7 Q Are you in favor of -- strike that.

8 You are aware that the Feoffees of the Grammar
9 School in the Town of Ipswich have a history that goes
10 back to the 1600's?

11 A I am.

12 Q And that by reason of legislation that was passed by the
13 colonial government in Massachusetts in the 1700's, that
14 there have been according to that legislation four so-
15 called life or private feoffees and three selectmen
16 feoffees?

17 A Right.

18 Q All right. And that structure has been the subject of
19 some discussion in the Town of Ipswich.

20 Is that fair to say?

21 A Correct.

22 Q Now, do you favor the re-structuring of the feoffees?

23 MS. BREWER: Objection.

24 A What do you mean by re-structuring?

1 Q Do you favor changing the number of feoffees from seven?

2 MS. BREWER: Objection.

3 A I'm comfortable with seven.

4 Q Are you comfortable with the concept of life feoffees?

5 A No.

6 Q Do you think there should be any life feoffees?

7 MS. BREWER: Objection.

8 A No.

9 Q Do you think that there should be any persons who sit as
10 feoffees who are selected by private persons?

11 MS. BREWER: Objection.

12 A What do you mean by private?

13 Q Meaning non-public officials?

14 A I guess it would depend on the process by which it
15 happens.

16 Q You are aware that the four life feoffees have a proce-
17 dure by which when one of them dies or ceases to serve as
18 feoffee, the three remaining life feoffees select the
19 fourth life feoffee?

20 A I wasn't aware of that.

21 Q Now, how did you understand the life feoffees were per-
22 petuated?

23 A My understanding was that when -- if and when it was time
24 to step down or if and when it was, you know, -- well,

1 short of someone passing away, that when the decision was
2 made they would no longer continue, they'd appoint their
3 own successor.

4 I was not aware that the three remaining would
5 appoint the fourth. I didn't -- I wasn't aware of that.

6 Q Do you think there should be any life feoffees?

7 MS. BREWER: Objection.

8 A No.

9 Q Do you think that all seven persons who serve as feoffees
10 should be appointed by a public board or agency?

11 MS. BREWER: Objection.

12 A I don't know how I feel about that, to be honest with
13 you.

14 Q Well, you voted to support proposed legislation to change
15 the structure of the feoffees, did you not?

16 A I did.

17 Q And that proposed legislation calls for, for example, the
18 school committee to select two persons who would serve as
19 two of the seven feoffees?

20 A Thanks for that recollection. I feel strongly that the
21 school committee should have authority to appoint a major-
22 ity of the members of the feoffees.

23 Q Why do you say that?

24 A Well, the school committee and the children of the

1 Ipswich Public Schools are the ones that are most
2 directly involved and the ones that are most directly
3 impacted. And I believe that they as a result should
4 have a say.

5 Q Do you think that the finance committee should appoint
6 any feoffees?

7 MS. BREWER: Objection.

8 A I do not.

9 Q Why not?

10 A For the same reason that when the town meeting voted to
11 form a feoffees committee, the same reason the school
12 committee voted against it then, is that I just -- I feel
13 it's a responsibility as elected officials. The finance
14 committee are not elected officials.

15 I feel it's the responsibility of the school
16 committee to oversee the relationship and the monitoring
17 of all things feoffee, to be honest with you.

18 Q All right. Do you favor a provision which would permit
19 the town selectmen to select any persons who would serve
20 as feoffees?

21 MS. BREWER: Objection.

22 A I think the way that the trust is currently written that
23 the selectmen have representation. I don't feel it's
24 necessary to involve any more than the few that are

1 currently serving for that number to change.

2 Q Do you think that the provision in the present governance
3 of three selectmen feoffees should continue?

4 A Yes.

5 MS. BREWER: Objection.

6 Q Why?

7 A They too are elected officials. I think that the school
8 committee and the board of selectmen have a very good
9 working relationship. At least in my experience, the
10 board of selectmen that serve as feoffees have been very
11 good about communicating with the school committee.

12 And it's difficult to remove or to separate the
13 current members of the selectmen who are serving the per-
14 sonalities. I mean, because they're -- again, they're
15 good people.

16 And I just -- that until such time that things
17 change in that regard, I have no exception whatsoever,
18 you know, as far as them serving.

19 Q Have the life feoffees done a good job of communicating
20 with the school committee?

21 A No, not in my opinion.

22 Q What do you think the -- why do you say that?

23 A Well, I think it's -- I think it's shared. I think there
24 was -- the school committee didn't ask questions, again

1 in my experience. And the feoffees, with the exception
2 of once or twice, never came forward and met with the
3 school committee.

4 In the thirteen years or eleven or twelve years
5 that I have been there, there was always an invitation to
6 attend their annual meeting which unfortunately was
7 always scheduled at times that I personally couldn't be
8 there.

9 But I just didn't think there was -- there was not
10 consistent communication back and forth between the two.

11 Q Did the school committee ever ask the feoffees for infor-
12 mation that the feoffees failed to provide?

13 A Not to my knowledge, no.

14 Q Now, since 2006, the feoffees have been in relatively
15 consistent contact with the school committee regarding
16 the issue of rents and the cottage owners; correct?

17 MS. BREWER: Objection.

18 A Certain members of the school committee, yes.

19 Q But not all?

20 A Not all.

21 Q And which school committee members have not received the
22 information from the feoffees regarding rents and cottage
23 owners?

24 A I have not personally received that I -- in my recollec-

1 tion. I can't speak for others. I know that there is
2 better communication that takes place between the chair
3 and the feoffees. I know former member Ed Traverso is in
4 constant communication.

5 But beyond that, I can't speak for the other
6 members. My information is usually through the school
7 committee rather than from the feoffees, and it wasn't
8 frequent.

9 Q Did you ever request information from the feoffees that
10 you were not provided?

11 A I never did.

12 Q If it were up to you and you alone in re-structuring the
13 feoffees, you would have a group of seven which would
14 consist of four appointees of the school committee and
15 three selectmen feoffees?

16 A Correct.

17 Q All right.

18 A Can I just clarify one thing, though?

19 Q Sure.

20 A I have never -- well, you said -- the question was, have
21 you ever requested information from the feoffees and not
22 received it?

23 I have never -- there's a difference between
24 that and the fact that I never requested information from

1 the feoffees, period. So it's not that they didn't come
2 forward with it. It's just I never requested any.

3 Q Would you describe the relationship between the Ipswich
4 School Committee and the Ipswich Finance Committee since
5 1999?

6 A Strained. Well, let me back up. I can't -- I won't say
7 it's been strained all that time. I think it's become
8 strained since their involvement with the feoffees.

9 Q When did that involvement begin?

10 A I don't recall specifically.

11 Q Well, roughly?

12 A I think when -- and I don't know how involved they were.
13 Things began to change in the formation of that town
14 committee that was voted at the town meeting, but I don't
15 know the year that that took place. And I don't know how
16 involved the finance committee was at that point. I
17 don't know if they were behind that.

18 And then it wasn't until we started seeing the
19 warrant articles on the town meeting floor that were
20 being proposed or put forth by the finance committee that
21 it began to very come to the forefront.

22 Q When did those warrant articles begin?

23 A That, I don't recall.

24 Q Was it before or after the subject of the potential sale

1 of Little Neck by the feoffees and the cottage owners?

2 A I believe it was after.

3 Q When you say the relationship has been strained, what do
4 you mean?

5 A I personally feel that the finance committee tends to
6 overstep their bounds. They are an advisory body by town
7 charter, and I feel that at times they -- it comes across
8 as them trying to tell us how to do our jobs.

9 Again, I don't take too kindly to that.

10 Q And has the finance committee tried to tell the school
11 committee how to do your job with respect to feoffee
12 issues?

13 A They've been outspoken in terms of -- not directly. Not
14 to -- it's never taken a form where you should be doing
15 this, you should be doing that, to my recollection.

16 But, you know, in conversations that the fact
17 that warrant articles continue to appear on town meeting
18 floors, things of that nature, it appears to me that they
19 could have a better idea of how to do business.

20 Q Now, on November 17, 2009, the finance committee told the
21 school committee specifically what to do with respect to
22 the sale issue, did it not?

23 MS. BREWER: Objection.

24 A I don't recall.

- 1 Q Well, take a look at Exhibit Number - Korb Exhibit Number
2 Twenty Seven which is before you?
- 3 A How far down is it?
- 4 Q There in the referendum. It's towards the bottom?
- 5 A Towards the bottom?
- 6 Q Yes?
- 7 MS. BREWER: What's the number again?
- 8 MR. SHEEHAN: Number Twenty Seven.
- 9 MS. BREWER: Okay.
- 10 A Okay.
- 11 Q Do you recall that communication from Mr. Faye of the
12 finance committee?
- 13 A I do not.
- 14 Q Do you agree with me that Mr. Faye was a member of the
15 finance committee on November 17, 2009?
- 16 A Yes, I do.
- 17 Q Was he the chairman at that time?
- 18 A Yes, he was. According to this, he was, yes.
- 19 Q Have you ever seen the e-mail that was marked as Exhibit
20 Number Twenty Seven before today?
- 21 A I'm sure I have. I just don't recall. It was sent to
22 us, so I'm sure I got it.
- 23 Q And what was your reaction when you received the communi-
24 cation that's been marked as Korb Number Twenty Seven?

1 MS. BREWER: Objection.

2 A I often times wouldn't even react to these e-mails at
3 all.

4 Q Did you react to this one?

5 A No, not that I recall.

6 Q Did you feel as though you were being pressured by the
7 finance committee?

8 A I crossed that bridge a while ago.

9 Q What do you mean by that?

10 A I was not going to be pressured. I mean, I mentioned to
11 you when I was here a month ago that once this started to
12 become personal, I decided that I was going to remove
13 myself to the extent that I could from any of this.

14 Q When you say it became personal, what do you mean?

15 A I was under the impression I could only speak for myself.
16 But much of what was being said and what was being insin-
17 uated was personal against members of the feoffees who
18 are all friends of mine, and I draw the line there.

19 And you know, maybe I am derelict in my duties
20 as a school committee member. But when friends are
21 involved, and especially when it gets to this point, I
22 just remove myself.

23 Q Well, now, you have never been derelict in your duties as
24 a school committee member, have you?

1 A Well, in terms of probably not being able to answer some
2 of your questions because I don't have a factual recol-
3 lection of what happened and how or why.

4 And I will tell you also that when I saw the
5 path that this was going down, for the reasons I just
6 stated to you, I chose to take a step back.

7 And if one of the responsibilities of the
8 school committee is to stay on top of all things feoffee,
9 then yes, I haven't done due diligence in that regard.

10 Q What do you believe now you should have done that you
11 didn't do?

12 A I don't know if I would have changed anything, though. I
13 don't know if I would have changed a thing. I mean, yes,
14 I would like to maximize the payment to the schools
15 however that plays out.

16 And again, I'm not a real estate agent. I'm
17 not a real estate attorney. I don't even know how that
18 would -- what that would translate into or how that would
19 come forward.

20 But I wouldn't change a thing that I've done
21 because feoffees are personal friends of mine and I am
22 not going to cross that line.

23 Q Have you ever put your friendship with any one or more of
24 the feoffees ahead of your responsibilities as a school

1 committee member?

2 A I think because of the fact that I'm not as knowledgeable
3 as I probably should be, I would say yes.

4 Q Anything other than not being knowledgeable?

5 A No.

6 Q You have never taken any vote -- strike that.

7 You have never voted on any matter involving
8 the schools and the feoffees when you were motivated not
9 for the benefit of the public schools, but to advance
10 your friendship with a feoffee, have you?

11 A I never voted to advance my friendship. I voted -- a
12 case in point was when the school committee voted against
13 the formation of the town committee. I was one of the --
14 probably the strongest advocates to do, you know, just to
15 - we don't need to do this -- and because for a couple
16 of reasons.

17 Number one, my friendships. And number two, I
18 saw it as a slight to the school committee that we had
19 not done our jobs in working more closely with the
20 feoffees.

21 The fact that the town felt obligated to get
22 involved at that point, I took very personally because I,
23 you know, I take my job seriously as an elected official.
24 And if it was something that I hadn't done through

1 communication or whatever, I needed time to sort things
2 out.

3 And I just saw that -- that piece of it was
4 slipping away from us.

5 Q In response to Korb Number Twenty Seven, did the school
6 committee take immediate action?

7 A Not that I recall.

8 Q Would you take a look at Korb Number Twenty Eight?

9 A This is on the feoffees sub-committee?

10 Q Yes, page three, at the bottom of page three?

11 A Okay.

12 Q Did the school committee take a vote on the issue of the
13 sale of Little Neck on November 19, 2009?

14 A Yes.

15 Q What was that vote?

16 A To rescind the vote taken on November 20, 2008.

17 Q Now, you seconded the motion to rescind and voted in
18 favor of that motion; correct?

19 A Correct.

20 Q Why?

21 A I don't believe I voted to support the sale to begin
22 with.

23 Q Any other reason that you voted to rescind the vote of
24 November 20, 2008 supporting the sale?

1 A Not that I recall.

2 Q Now, you did not vote on November 20, 2008 in favor of
3 sale?

4 A Correct.

5 Q And that was because you had not had enough time to eval-
6 uate the issue; correct?

7 A I don't know if that's reflected in the minutes. That's
8 news to me.

9 Q Do you have a memory today as you sit here as to why you
10 did not favor sale on November 20, 2008?

11 A As I conveyed to you a month ago, I'm a Townie. And
12 change is difficult for me to accept and I am very much a
13 status quo person. I don't -- I didn't see any reason to
14 just sell. I still don't see any reason to sell.

15 But there wasn't any underlying motive other-
16 wise. I will always have an idea of what Little Neck is
17 and I'd like to see that continue.

18 Q What's your idea of what Little Neck is?

19 A It's a very quiet summer vacation spot for people, and
20 that I like to take my son and walk the streets. And as
21 you already know, my brother-in-law's mother owns a
22 cottage on Little Neck.

23 Q Who is that?

24 A That's -- her name is Bonita Eaton, E-A-T-O-N. We go

1 down on occasion and watch the fireworks across the
2 river, Castle Hill.

3 Often times, we'll often go down in the fall and
4 just stand out on the point and watch the river come in
5 and out. And it's a very relaxing, quiet spot.

6 Q Were there any financial reasons that you were against
7 the sale?

8 A I think there was some confusion about the various -- we
9 kept hearing the words to the effect that there could
10 always be more money, there could always be more money
11 for the sale.

12 And then when, you know, we got a variety of
13 different appraisals that came it, it was just -- no one
14 would ever convince me that -- nobody really -- I mean,
15 it depends on what you're looking for, I guess, in terms
16 of what you value and what you put a price tag on.

17 Q What did you put a price tag on?

18 A I didn't.

19 Q Fair to say that the reason you were opposed to sale on
20 November 20, 2008 had nothing to do with finances?

21 MS. BREWER: Objection.

22 A I needed to find out -- and I guess finances are more
23 general. I was more concerned about what would generate
24 the greatest revenue for the school children of Ipswich.

1 But sale was never an option for me. And those
2 reasons were strictly personal in terms of, you know,
3 feeling -- as I said, being a Townie, just seeing and
4 remembering what it's always been.

5 And I -- and thoughts of that changing in any
6 way, shape or form just did not interest me, whatever it
7 implied.

8 Q As of the vote of November 20, 2008, had you investigated
9 the issue of which would generate more money for the
10 public schools; the continued rental of the property
11 versus the sale of the property?

12 A I had not. I have had or we have had I believe over time
13 several scenarios presented. And again, not being a
14 numbers person, it s not my background, I did not -- I
15 did not put enough time and effort into trying to figure
16 out what it all meant.

17 It's just that sale wasn't an option. And so
18 whatever else would generate that income is what I was
19 most interested in doing, however that played out.

20 Q When you say sale wasn't an option, you mean sale was not
21 an option in your mind?

22 A For me, personally.

23 Q At the time you voted not to support a sale on November
24 20, 2008, was one of your considerations the possibility

1 that there would be more school children from the Little
2 Neck area in Ipswich in the event there was a sale?

3 MS. BREWER: Objection.

4 A I was concerned because I don't think anybody knew for
5 sure what -- how it was going to -- what it was going to
6 translate into. I mean, it was -- it was discussed at
7 school committee meetings.

8 I never had private conversations with people
9 about that. That was not, no.

10 Q Did the school committee have a position as of November
11 20, 2008 on the issue of the number of school children
12 who would come from Little Neck if there were a sale?

13 A I don't believe so.

14 Q Was that an issue for you personally?

15 MS. BREWER: Objection.

16 A The uncertainty of it I think was. And again, I don't
17 recollect. But any time that you hear of development in
18 town, I think that the same questions get raised. Any
19 type of development in town.

20 It certainly did not affect my vote.

21 Q Do you know of any basis on which the feoffees could
22 prevent a cottage owner from living out the -- living out
23 of Little Neck year-round?

24 A No.

1 Q Are you aware of the genesis of the limitation on the
2 number of year-round cottage owners?

3 A Vaguely. I think there is a number that has been agreed
4 to by whomever. I don't know. But I know that there are
5 some year-round residents now, but I don't know what that
6 number is.

7 Q Do you know that the limitation on the number of year-
8 round residents stemmed from septic issues?

9 A That might have been part of it. But I don't know. I
10 don't know.

11 Q You don't know, okay. Now, let me direct your attention
12 to Korb Number Six?

13 A Mmm-hmm.

14 Q And my first question is, do you have a memory that you
15 attended an executive session of the school committee on
16 October 16, 2008, at which time there was discussion of
17 the possibility of sale of Little Neck?

18 A I don't recall that, no.

19 Q Then I'm going to ask you to review Exhibit Number Six
20 and see if that refreshes your recollection as to whether
21 or not there was such a meeting and what occurred at that
22 meeting?

23 A Okay.

24 Q Does that refresh your memory of what happened on October

- 1 16, 2008 at the executive session?
- 2 A It doesn't. But obviously, it's captured here, so ----
- 3 Q Now that you have seen these minutes, would you agree
- 4 with me that you were present at an executive session ---
- 5 A I was.
- 6 Q ---- on October 16, 2008?
- 7 A Yes.
- 8 Q And at that executive session, the subject of the sale of
- 9 Little Neck came up?
- 10 A Yes.
- 11 Q And there was a poll taken as to whether the school com-
- 12 mittee had any interest in the possibility of sale.
- 13 Fair to say?
- 14 A Mmm-hmm.
- 15 Q You have to answer yes or no.
- 16 A Yes. I'm sorry.
- 17 Q That's all right. And you were open to a possible sale?
- 18 A Yes.
- 19 Q Why were you open to a possible sale?
- 20 A I wish I could explain that, but I don't recollect.
- 21 Q At the time you said you were open to a possible sale on
- 22 October 16, 2008; were you, in fact, open to a possible
- 23 sale?
- 24 A If the minutes reflect that, then I must have been. I'm

1 sure I voiced in favor of that, yes.

2 And I do recollect that there was a time when I
3 felt that I wanted me -- I can only speak for myself --
4 but wanted to get out from under everything.

5 Q And you understood that the concept of a potential sale
6 of Little Neck was in the context of resolving litigation
7 that had been brought against the feoffees by certain
8 cottage owners?

9 A I will admit that the litigation piece from all angles is
10 something that's way beyond me and that I have removed
11 myself from in terms of trying to find out exactly what's
12 going on.

13 I couldn't tell you right now what's currently
14 on the table and why.

15 Q Have you ever read the complaint that was filed against
16 the feoffees by the cottage owners?

17 A I don't recall reading it. But if I did, it was just
18 briefly. I don't understand a lot of it.

19 Q Fair to say you've not tried to make an analysis of the
20 merits or demerits of that litigation?

21 A I can honestly say no.

22 Q Okay. Now, do you recall some time shortly after that
23 litigation was commenced, Mr. Foley and Attorney Sheehan
24 appearing before the school committee to give the school

1 committee an update on the litigation?

2 A I don't recall that. I do know that at one point you and
3 Jim did come to us. I don't know when. You know, any
4 time frame I don't recall exactly.

5 Q Well, I'll come back to that. Sticking with the subject
6 of potential sale.

7 Following the executive session on October 16,
8 2008 -- strike that.

9 At the conclusion of the executive session on
10 October 16, 2008, Dr. O'Flynn moved to explore the option
11 of sale of Little Neck, didn't he?

12 A It says so here, yes.

13 Q And you voted in favor of that exploration; correct?

14 A Yes.

15 Q And did you understand that the feoffees would then con-
16 tinue to attempt to settle their differences with the
17 cottage owners by way of a potential sale?

18 A I did not.

19 Q What did you think was going to happen next after you
20 voted to explore the option of sale?

21 A That the dialogue would continue.

22 Q What dialogue would continue?

23 A Why the intent of the feoffees was to sell. Again, it
24 was my lack or limited understanding of what everything

1 meant and I needed more information.

2 Q Now, did you understand that Attorney Allen was to let
3 Attorney Sheehan know that the school committee was
4 willing to explore the possibility of sale?

5 A I believe that's correct.

6 Q Fair to say then that you understood that following the
7 vote of the school committee on October 16, 2008, that
8 the feoffees would continue their dialogue with the
9 cottage owners about the possibility of sale?

10 A Yes.

11 Q Now, sticking with the Korb Exhibits, let's take a look
12 at Korb Exhibit Number Seven. Korb Exhibit Number Seven
13 talks of, using the language of the document, the so-
14 called working group of the feoffees.

15 Now, do you see that at the top of Korb Number
16 Seven?

17 A Yes.

18 Q Can we agree that that may not be the most accurate of
19 titles for the group because there were no feoffees on
20 that working group; correct?

21 A I don't know where that came from.

22 Q Okay. What happened was that a working group of school
23 committee members was appointed to do further diligence
24 with respect to the issue of potential sale; correct?

1 A If that was the charge, yes. I don't recollect. Again,
2 that was another opportunity for me to take a step back
3 and not volunteer my services.

4 Q Well, on October 16, 2008, there was a vote to create
5 that working committee, was there not?

6 A I guess.

7 Q No memory of that?

8 A No.

9 Q Korb Number Six will speak for itself.

10 A Okay.

11 Q Have you ever seen the document that we've marked as Korb
12 Number Seven before today?

13 A I don't recall, to be honest with you.

14 Q Have you ever seen minutes of any meeting of the school
15 committee's working group on the sale?

16 A Not to my recollection.

17 Q And without reading for the moment the document we've
18 marked as Korb Number Seven, do you have a memory of
19 whether or not this working group ever reported back to
20 the full committee on the issue of sale?

21 A I don't recall.

22 Q Let me go back a moment to Korb Number Six.

23 Now, you indicated that you had no interest on
24 serving on this working committee; correct?

1 A If I look back to the minutes, I know that from past
2 experience and past practice, no.

3 Q Well, I'm not suggesting there's anything in the document
4 that says you were interested?

5 A Right.

6 Q You were not interested in working on that committee,
7 were you?

8 A No.

9 Q All right. When -- strike that.

10 Do you recall the appointment of the working
11 group, that is, Ms. Arsenault appointing Mr. Traverso,
12 Ms. Ross and Mr. Loeb?

13 A I don't recall that.

14 Q Okay. And do you recall Ms. Arsenault saying that she
15 was appointing Mr. Traverso because of his historical
16 knowledge on the issuse?

17 A That was -- well, I don't recall that specific instance.
18 Ed was often cited for his historical perspective on the
19 issue.

20 Q And Diane Ross was a member of the school committee at
21 that time?

22 A Yes.

23 Q She was a licensed real estate broker?

24 A Yes, she was.

1 Q And were there any other licensed real estate brokers who
2 were on the school committee in 2008?

3 A No.

4 Q And Attorney Jeffrey Loeb, he was an attorney in the
5 Commonwealth of Massachusetts at that time?

6 A Yes.

7 Q Were there any other attorneys on the school committee in
8 October of 2008?

9 A No.

10 Q Now, directing your attention to Korb Exhibit Number
11 Eight. Exhibit Number Eight are minutes of an executive
12 session held on November 20, 2008?

13 A Mmm-hmm.

14 Q You have to answer yes or no.

15 A Yes. I'm sorry.

16 Q No problem.

17 A Yes. I didn't know it was a question.

18 Q And minutes of an executive session, how do they get
19 approved?

20 A They -- executive session minutes come before the policy
21 sub-committee at a future date or a later date, and the
22 policy sub-committee makes the decision to release them.

23 We don't vote -- actually, we don't take a vote
24 on any minutes, to be honest with you. We just receive

1 minutes of even our open sessions. There's no formal
2 vote to accept the minutes as written.

3 Executive session minutes are released, as I
4 said, some time after the actual executive session
5 itself.

6 Q The school committee makes no provision for approving
7 minutes on a regular basis?

8 A Not our practice, no.

9 Q Do you follow Robert's Rules?

10 A I thought we did, to the extent that -- we do for the
11 most part, yes.

12 Q All right.

13 A I correct myself. My apologies. I correct myself.

14 Under consent agenda, at every meeting there is a vote
15 taken. The consent is listed as -- there are various
16 items listed under consent.

17 Unless a school committee member takes
18 exception to anything and they ask for a particular piece
19 to be removed for further discussion, the chair reads, I
20 move that we accept the minutes of -- I move that we
21 accept the minutes of blah, blah, blah, down.

22 And that's where they're voted. I apologize.

23 Q Now, at the end of each school committee meeting, it is
24 routine for the committee to approve prior meeting

- 1 minutes?
- 2 A Yes.
- 3 Q So they vote the minutes of open sessions and minutes of
4 executive sessions?
- 5 A Correct.
- 6 Q It doesn't always get done at the very next meeting, but
7 ----
- 8 A Correct, yes.
- 9 Q And fair to say then that the November 20, 2008 executive
10 session meeting minutes have been approved by the school
11 committee?
- 12 A If they have been released, yes. I'm not certain if they
13 have been released.
- 14 Q Well, executive session minutes -- executive session
15 meeting minutes get approved ----
- 16 A Prior to ----
- 17 Q ---- before there is any release of them; correct?
- 18 A Yes. Then they've been approved.
- 19 Q And whether the issue -- whether executive session
20 meeting minutes have been to be released is a different
21 issue from approval, though; right?
- 22 A Correct, correct.
- 23 Q And so fair to say that the November 20, 2008 executive
24 session meeting minutes, which we've marked as Korb

1 Number Eight, are minutes that have been approved whether
2 or not they've been released?

3 A Correct.

4 Q And you're not sure whether or not these minutes have
5 been released; right?

6 A I am not certain.

7 Q Okay. Now, did you participate in an executive session
8 on November 20, 2008?

9 A I did.

10 Q And the executive session dealt with the superior court
11 litigation brought by the tenants against the feoffees,
12 and it dealt with potential sale; correct?

13 A I haven't read over this. But ----

14 Q Without reading the minutes, do you have a memory of a
15 November 20, 2008 meeting in executive session of the
16 school committee to discuss those two subjects?

17 A I do not.

18 Q Please take a look at Korb Number Eight and take as much
19 time as you need?

20 A Okay.

21 Q Does that refresh your memory of the events of November
22 20, 2008 at executive session?

23 A Not much, to be honest with you.

24 Q Well, I want to direct your attention to the bottom of

1 the second page, and that would be page seven in the ----

2 A Right.

3 Q On the bottom it has page seven, but it's the second page
4 of Korb Number Eight. And you are identified as in the
5 notes.

6 And I quote, Mr. Hopping was concerned about
7 the town at large and making sure that procedures are
8 approp-riate. He said he can't support the bill, not
9 until he works out some of the ramifications of keeping
10 the town unaware of proceedings.

11 Did I read that accurately?

12 A Yes, you did.

13 Q Now, were you concerned about the town at large?

14 A Apparently.

15 Q What were you concerned about?

16 A A transparent process; making sure that what was happe-
17 ning, people were aware of.

18 Q And when you said -- did you say you wanted to make sure
19 that the procedures were appropriate?

20 A Apparently, I said that, yes.

21 Q What did you mean?

22 A I don't recollect exactly what I was referring to. I
23 think it was all the process.

24 Q What do you mean by that?

- 1 A That people were informed every step of the way.
- 2 Q When you say people, who do you mean?
- 3 A Townspeople. That's what I was referring to with the
4 town at large.
- 5 Q And did you say that evening that you couldn't support
6 the sale that night until you worked out some of the
7 ramifications?
- 8 A I don't necessarily agree with the wording of how it's
9 captured there. I could not support the sale that night
10 apparently until I had some of my questions answered in
11 terms of how the process was going to take place and how
12 the town was going to be kept in the loop in terms of
13 what was going on.
- 14 Q And what -- strike that.
- 15 Did you do anything to work out some of the
16 ramifications?
- 17 A I did nothing.
- 18 Q Why not?
- 19 A As I have suggested or I have stated previously, I chose
20 not to get more directly involved in the matter.
- 21 Q Now, let me direct your attention to Korb Number Eleven?
- 22 A Mmm-hmm.
- 23 Q And first, let me ask you?
- 24 A Mmm-hmm.

1 Q Do you recall without reading the document, do you recall
2 attending an executive session of the school committee on
3 May 7, 2009 at which time the issue of sale of Little
4 Neck was discussed?

5 A I do not.

6 Q Please take your time and read Exhibit Number Eleven and
7 see if that refreshes your memory as to what occurred on
8 May 7, 2009?

9 A Okay.

10 Q Does that refresh your memory as to what occurred on May
11 7, 2009?

12 A It does not.

13 Q Now, do you recall the subject of potential sale of
14 Little Neck being discussed on May 7, 2009 by the school
15 committee in executive session?

16 A I do not.

17 Q Do you recall voting in favor of a sale?

18 MS. BREWER: Objection.

19 A I do not.

20 Q Now, you would agree with me that Exhibit Number Eleven
21 records you as being in favor of approving and supporting
22 the approval not required proposal outlined by Attorney
23 Sheehan?

24 MS. BREWER: Objection.

- 1 A I do not recall that.
- 2 Q You do see that it is so recorded?
- 3 A I do.
- 4 Q And do you disagree with the recordation of the executive
5 session?
- 6 A I don't even understand what approval not required means.
7 I know it's explained further up. I don't recall voting
8 in support of that.
- 9 But if the minutes show it ----
- 10 Q Well, do you have any reasons that these minutes are
11 inaccurate?
- 12 A Absolutely not.
- 13 Q You would agree with me that at some point in time after
14 May 7, 2009, you received these minutes for eventual
15 consent by you and others to accept them as accurate?
- 16 A That's correct.
- 17 Q All right. And fair to say that you did not record any
18 objection to the minutes as recorded as show on Korb
19 Number Eleven?
- 20 A I did not.
- 21 Q And this was some six months or so after you said that
22 you wanted to look into other issues; in particular,
23 issues with respect to the town at large?
- 24 A Correct.

1 Q And fair to say that you changed your position on the
2 sale between November of 2008 and May of 2009?

3 MS. BREWER: Objection.

4 A I at no point ever -- was ever convinced that sale is
5 where I wanted to go. I was open to conversation. I was
6 open to gathering more information. My position about
7 not wanting to sell Little Neck hasn't changed, and
8 feeling that I needed to explore and not to be as myopic
9 and closed to the possibility.

10 Q All right.

11 A As I said to you earlier, the fact that conversation was
12 going to continue I wanted to be somewhat better informed
13 than I had been up to that point.

14 Q Are you saying now that you don't know what approval not
15 required means?

16 A I am saying that right now, yes. And if I hadn't read
17 the first paragraph, I still wouldn't know.

18 Q And do you agree that there was discussion on May 7, 2009
19 about the goal of selling Little Neck and netting twenty
20 million dollars for the schools?

21 A If that's what's reflected in the minutes, then yes.

22 Q Do you recall Attorney Allen being in favor of the sale?

23 A Yes.

24 Q And do you recall Attorney Allen being in favor of the

1 sale at a price of \$26,500,000?

2 A Yes.

3 Q Do you recall between the November 20, 2008 meeting and
4 the May 7, 2009 meeting, a meeting wherein there was
5 discussion in executive session about the possibility of
6 creating a condominium at Little Neck?

7 A I do recall a discussion. I don't recall the exact date.

8 Q Okay. Let me show you that document and see if you can
9 identify that for me?

10 A Mmm-hmm.

11 Q Have you had an opportunity to read that document?

12 A Yes.

13 Q Now, my first question to you is, do you have a memory
14 independent of the document of an executive session of
15 the school committee on March 19, 2009 wherein the issue
16 of condominium and sale of Little Neck was discussed?

17 A I do not.

18 Q Okay. And does the document that I've just handed to you
19 refresh your memory as to such a discussion?

20 A Again, time frame aside, yes. I mean, I do remember -- I
21 recall the conversation, or the discussion.

22 Q And do you agree that the document that I've just handed
23 to you constitutes minutes of an executive session
24 meeting of the school committee held on March 19, 2009?

- 1 A Yes.
- 2 Q And that those minutes were approved subsequent to March
3 19, 2009?
- 4 A Yes.
- 5 Q All right. And any reason to believe that any of the
6 information contained in the March 19, 2009 minutes is
7 incorrect?
- 8 A No.
- 9 MR. SHEEHAN: Can we have that marked, please,
10 as Exhibit Number One for this deposition?
11 (Exhibit Number One marked; Copy of 3/19/09 Executive
12 Committee Minutes)
- 13 Q Did you support a condominium sale structure for Little
14 Neck on March 19, 2009?
- 15 A I don't recall.
- 16 Q Do you see at the bottom of page one of Hopping Exhibit
17 Number One ----
- 18 A Mmm-hmm.
- 19 Q ---- that the minutes reflected that there was unanimous
20 support for such a sale structure?
- 21 A I do.
- 22 Q But you don't have any memory today of being in support
23 of that structure?
- 24 A I don't. I don't remember the actual vote being taken.

1 Q Do you have a memory of being opposed to a condominium
2 structure?

3 A Not at that time.

4 Q Do you oppose the sale as -- strike that.

5 Are you familiar with the terms of a settlement
6 agreement that was entered into between the feoffees and
7 a group called the Little Neck Legal Action Committee on
8 behalf of non-lessees?

9 A I am not.

10 Q Have you ever seen a settlement agreement?

11 A I don't recall.

12 Q I'm going to show you a document. And I'm not going to
13 ask you to read that or study it or understand it all,
14 but have you generally seen that document before?

15 It looks like something you probably would
16 remember if you'd seen it.

17 A I honestly don't recall having seen this, especially with
18 all the tabs.

19 Q In this form, though?

20 A No, I don't recall having seen this.

21 Q Do you remember a meeting of the school committee that
22 was held not where you usually meet, but out in the
23 auditorium, and there was a discussion about the settle-
24 ment agreement?

1 A I do. You were sitting off to the right of us.

2 Q And among others, Attorney Sheehan spoke to discuss that
3 settlement agreement.

4 Is that fair to say?

5 A I don't recall specifically what was presented that
6 evening. But I do recall being there and you being
7 there.

8 Q Do you understand that there is a settlement agreement
9 between the feoffees and the Little Neck Legal Action
10 Committee wherein there is a proposal by the feoffees to
11 sell all of Little Neck for a gross sale price of
12 \$29,150,000, sale being to the cottage owners?

13 A I do recall that.

14 Q Do you favor that sale or do you oppose that sale?

15 MS. BREWER: Objection.

16 A I oppose the sale.

17 Q And would you give me all of the reasons, please, even if
18 it's a bit repetitious, that you presently oppose the
19 sale at a gross sale price of \$29,150,000?

20 MS. BREWER: Objection.

21 A Again, my reasons for not selling are not lengthy.

22 And again, going back to what I had stated pre-
23 viously, that I don't want to see the Neck change. And I
24 mentioned a month ago in your office the reasons why I

1 also oppose sale, which may or not even be a possibility.

2 But I just -- and I worry about some other out-
3 side organization or some outside party stepping in and
4 saying, okay, give us this and we'll give you that.

5 And I just, you know, I'm concerned about what
6 Little Neck may become as a result of that.

7 Q And when you say what Little Neck may become, you're con-
8 cerned that it would no longer be primarily a summer
9 community?

10 A No. I am concerned -- I'm more concerned with the fact
11 that whomever makes the purchase may decide to do what-
12 ever they want with that property. And I think the
13 example I used when I talked to you a month ago was a
14 hotel or something of that nature.

15 And as wild as that may seem in terms of, you
16 know, selling it now or whatever, but it's just I've had
17 reservations right along of just saying, okay, let's do
18 this.

19 Q If a hotel owner came to the feoffees this afternoon and
20 offered a hundred million dollars for Little Neck, would
21 you support that sale?

22 A No.

23 Q Your opposition to sale doesn't have anything to do with
24 financial return by the feoffees to the school committee?

1 A I don't know. I don't know what the numbers, how they
2 would project. I don't know enough about what that looks
3 like in the short and the long term on the investment.
4 And I don't know whether a rental agreement continuing
5 into the future, what that would result in for the
6 schools.

7 Again, I haven't done enough in terms of
8 crunching the numbers to make that kind of a judgment one
9 way or the other. I just again, I'm just opposed to sale
10 because of being, you know, native to the town, I just
11 don't want to see it change.

12 Q Your opposition is not finance driven?

13 A It's not finance driven.

14 Q Now, have you read any of the appraisals that have been
15 completed on Little Neck?

16 A Not in their entirety, no.

17 Q And have you tried to determine and understand the metho-
18 dology offered by any of the appraisers?

19 A The only thing I understand about the appraisers is that
20 they're all looking at something a little bit different,
21 which resulted in the discrepant values that were brought
22 forth.

23 And I know to the extent that what they were
24 looking at and why, one other thing that I just -- I was

1 overwhelmed with all that information.

2 MR. SHEEHAN: This is a good time to take a
3 little break. We'll recess. It's 11:40 and we'll come
4 back in about ten minutes.

5 MS. BREWER: All right.

6

7 (Recess)

8

9 MR. SHEEHAN: Back on the record.

10 Q Do you recall the feoffees, either individual or through
11 their counsel, reporting to the school committee through-
12 out calendar years 2007 and 2008 on the negotiations that
13 were taking place between the feoffees and the tenants?

14 A I don't recall specifically, no, with any time frame.

15 Q Do you recall in a general way that you and the school
16 committee were kept apprised of what was going on with
17 respect to such negotiations?

18 A Through their legal counsel, yes.

19 Q Do you -- the feoffees through their legal counsel told
20 the school committee that it should not expect to receive
21 any distributions while the litigation was pending, did
22 it not?

23 A I don't recall.

24 Q Do you recall Mr. Traverso responding to the suggestio

1 that the feoffees would not be able to distribute monies
2 while the litigation was pending with a resounding, it's
3 about time that the feoffees did something for the bene-
4 fit of the public schools, or words to that effect?

5 A No, I don't recall.

6 Q Do you recall Hugh O'Flynn, and specifically stating that
7 he understood that it would be a long haul with respect
8 to the litigation, but that it would be worth waiting for
9 distributions?

10 A I don't recall that.

11 Q You don't recall any discussions like that whatsoever?

12 A Mr. Traverso said a lot. And you know, I don't quite
13 recall the gist of his comments over time.

14 And Dr. O'Flynn, I don't know whether -- I
15 don't recall him making that statement, no.

16 Q And do you recall there being any statements made by the
17 feoffees, either through their counsel or not, advising
18 the school committee that there would be no funds distri-
19 buted to the schools in light of the litigation?

20 A I don't recall that.

21 Q Did the school committee ever inquire of the feoffees in
22 calendar year 2007, why there were no funds being distri-
23 buted to it by the feoffees?

24 A Whoever made that, through the chair or whatever, I don't

1 recall that question being raised.

2 Q Did you expect as a member of the school committee to
3 receive any funds during calendar year 2007 from the
4 feoffees?

5 A I have always expected to receive funds from the feoffees
6 for the school children of Ipswich.

7 Q You didn't receive any monies in calendar year 2007, did
8 you?

9 A No.

10 Q In 2006, you received nearly \$600,000; correct?

11 A I don't recall that specific amount. But ----

12 Q Well, you recall that in calendar year 2006, the school
13 committee received the largest sum of money it had ever
14 received from the feoffees in any one calendar year, do
15 you not?

16 A I don't recall it being presented in that way. But ----

17 Q What's the most money that the feoffees ever distributed
18 to the school committee in any particular calendar year?

19 A Like you stated, \$600,000. I would be -- I believe that
20 that's it.

21 Q What, if anything, did you do when there was no money
22 distributed by the feoffees to the school committee in
23 school year -- in calendar year 2007, 2008 or 2009?

24 A Me, personally?

1 Q Yes?

2 A As a member of the school committee?

3 Q Yes?

4 A I might have voiced my disappointment. But I don't
5 remember taking any specific action, if that's what
6 you're asking about.

7 Q Did anyone explain to the school committee why no monies
8 were distributed by the feoffees to the public schools
9 chair of the school committee in calendar years 2007,
10 2008 and 2009?

11 A I don't recall specifically in terms of what the reasons
12 were. I mean, I heard personally, and I think that the
13 committee also heard there had been reasons such as a
14 dock needed to be replaced and there was erosion that
15 needed to be addressed.

16 If litigation was part of that, then I'm sure
17 that it was raised at some point. I just don't recall,
18 you know, the gist of those conversations or those dis-
19 cussions.

20 Q How have rents collected by the feoffees changed insofar
21 as amounts from 1998 to the present?

22 A I have no idea.

23 Q And how have the amounts of distributions by the feoffees
24 to the school committee changed from 1998 to the present?

1 A Some years there's been some distributions and other
2 years there has not. I don't know specific amounts when
3 there were distributions made. I have become -- well, I
4 have been always concerned about how the money has been
5 spent that's come forward.

6 The original intent was to be able to provide
7 enrichment and extension beyond what students were doing
8 in the classroom and to provide opportunities to extend
9 their learning.

10 And we've been using it most recently to pay
11 for transportation and fuel costs and things that should
12 be addressed within the operating budget.

13 Q When did that first start happening?

14 A In terms of the re-prioritizing of what was being paid?

15 Q Moving money in essence that was received from the
16 feoffees from an enrichment or enhancement component to a
17 for paying bills that should have been covered by the
18 operating budget?

19 Q The last significant purchase that I was aware of, and
20 I'm not even certain I was on the committee at the time,
21 was when the money was used to provide professional
22 development for over twenty teachers to go down to I
23 believe it was North Carolina, and it was a Daggart
24 Conference on best practice. And I believe that it was

1 Dick Thompson at the time made the decision that he would
2 send teachers for that training.

3 Since then, I'm not -- I can't list specifi-
4 cally what some of the -- some of the monies, or what the
5 money has been used for. I'd like to believe it was
6 being used for professional development along the way.

7 I think the decision to address transportation
8 and energy costs and things of that nature has happened
9 in the past eight to ten years.

10 Q Did you oppose spending the money in that way?

11 A I think I voiced my disapproval. But I think ultimately
12 I supported it because the bills had to be paid. I'm not
13 certain. I know I've spoken to the original intent of
14 the trust.

15 Q What's a Daggart Conference?

16 A He is a very well recognized and respected educator, and
17 it's his conferences are designed to help teachers become
18 better practitioners in the classroom.

19 Q Have you attended such a conference?

20 A I have not.

21 Q Okay. Do you know if the feoffees paid for that Daggart
22 Conference directly to the vendor of the conference, or
23 did they distribute monies to the school committee which
24 in turn paid for attendance at that conference?

1 MS. BREWER: Objection.

2 A My recollection is that they did not pay directly to the
3 vendor. It came to the school.

4 Q Now, you mentioned the name Dick Thompson. Who is he?

5 A He was the previous superintendent before Mr. Korb.

6 Q Now, prior to 2006, are you aware of any calendar year in
7 which the feoffees did not make a distribution of monies
8 to the public schools?

9 A I am not.

10 Q You mentioned a strained relationship between the school
11 committee and the finance committee; correct?

12 A Correct.

13 Q Was one of the elements of that strained relationship a
14 disagreement as to whether monies from the feoffees
15 should be used to pay expenses that would otherwise be
16 found in the operating budget?

17 A That did not figure into my thinking.

18 Q All right.

19 A I had been concerned that the greater the distribution
20 that at some point it would begin to affect or impact
21 what the town votes as our operating budget; that more
22 money in from the feoffees would be less from the tax
23 base, yes.

24 Q That's a concern of yours?

1 A It is.

2 Q Is it a concern of other school committee members?

3 A I can't speak to that. I don't know.

4 Q Have other school committee members voiced that concern?

5 A I can't remember specifically. And it hasn't been
6 widespread, but I think it has been shared with others.

7 Q And in your view, is that a reason not to have finance
8 committee designees serving as feoffees?

9 MS. BREWER: Objection.

10 A No.

11 Q Has there been a vote in the last twelve months of the
12 school committee in either open session or executive
13 session to support the settlement agreement sale price --
14 gross price of \$29,150,000, at which the vote to support
15 the sale failed by a vote of three to four?

16 A I don't recall that exact time frame.

17 Q Do you recall a vote of the school committee on the issue
18 of whether or not to support a sale at the price of
19 \$29,150,000?

20 A I don't recall that exact vote. There have been so many
21 votes taken, I just -- I don't -- I mean, I'm learning of
22 votes that were taken that I don't even remember.

23 Q And one of the votes you looked at earlier today was a
24 vote in November of 2009 to rescind a vote of November of

1 2008; correct?

2 A Yes.

3 Q After that vote to rescind in November of 2009, was there
4 another vote taken by the school committee on the issue
5 of whether or not to sell?

6 A I believe there was.

7 Q And that vote failed, did it not?

8 A I believe so.

9 Q And was the vote three to four against?

10 A I believe so.

11 Q And who was in favor of the sale and who was against the
12 sale?

13 A That, I don't recall.

14 Q You were against the sale?

15 A Yes, I was.

16 Q And Mr. Loeb was against the sale?

17 A I don't recall. I think -- I know Mr. -- Dr. O'Flynn
18 supported the sale. I don't even recall Norm Shepard
19 voting. Mr. Traverso, I believe was opposed to the sale.
20 Mr. Loeb was opposed to the sale; myself.

21 And beyond that, I don't -- I can't -- I don't
22 recall.

23 Q Was that a vote taken when Mr. Gresch was a member of the
24 school committee?

1 A 2009? No.

2 Q Has Mr. Gresch ever voted on the issue of whether or not
3 to sell Little Neck?

4 A He has not.

5 Q And has Ms. Dietz, D-I-E-T-Z, ever voted on the issue of
6 whether or not to sell?

7 A I don't -- I don't recollect when she was elected to the
8 committee. I know that Mr. Gresch has only been there --
9 I think this is his second year.

10 MR. SHEEHAN: Now, while we're on the record,
11 Donna, I do want to make a formal request for that school
12 committee minutes -- meeting minutes of this three to
13 four vote. I still have not received that.

14 MS. BREWER: Yes, I know. And I still haven't
15 found it, so I don't know that there was a formal vote.
16 But I am looking for it.

17 MR. SHEEHAN: Okay. And even if it were not a
18 formal vote, whatever minutes reflect that action, I do
19 need.

20 MS. BREWER: If there was a three to four vote
21 and I can find meeting minutes that reflect that, I will
22 give it to you.

23 MR. SHEEHAN: Okay. Even if it were -- it may
24 have been done in the -- without a formal vote. It may

1 have been done by way of a counting of noses or seeking a
2 consensus.

3 Whatever the format was, if you would look for
4 that and provide that, I'd appreciate it.

5 MS. BREWER: I am looking for it. Whether I
6 can provide it or not will depend on what it is.

7 Q Did you learn in the summer of 2009 that the condominium
8 sale concept was something that both the feoffees and the
9 cottage owners were working on?

10 A I don't recall, you know again, the time frame.

11 Q I want to represent to you that the settlement agreement
12 that we've talked about, and we're not going to mark it
13 as an Exhibit. I don't think we really need to do that.

14 But it's the settlement agreement entered into
15 as of the 24th day of December of 2009?

16 A Mmm-hmm.

17 Q Do you know whether or not the feoffees kept the school
18 committee apprised of the number of cottage owners who
19 were willing to buy condominium units if the feoffees
20 sold them?

21 A I recall at some point there was a deadline established
22 by which there had to be a firm number coming forward. I
23 do believe that was in the context of that conversation
24 in terms of ones that were willing to buy.

1 I don't remember the exact number of people.
2 There was a number that they were hoping to reach of
3 people who were willing to commit.

4 Now, if that's in the context of that, then
5 yes, I do recall having a vague recollection of that.

6 Q Did the school committee appoint an ad hoc committee to
7 look into the feasibility of a condominium sale?

8 A I don't recall. I really don't.

9 Q Do you know a Clark Ziegler?

10 A I do.

11 Q Now, do you know a Mark Leff, L-E-F-F, or a Mitchell
12 Feldman?

13 A I do.

14 Q And do you recall the school committee asking Mr. Leff,
15 Mr. Feldman and Mr. Ziegler to look into the feasibility
16 of a condo,minium sale?

17 A I do recall that now, yes.

18 Q And there was a so-called ad hoc committee that was
19 appointed?

20 A Yes.

21 Q And the ad hoc committee reported back to the school
22 committee, did it not?

23 A Yes, it did.

24 Q And it reported that the condominium sale was feasible.

1 Is that right?

2 A I don't recall it specifically. But -- I don't, to be
3 honest with you.

4 Q Do you recall the ad hoc committee reporting ----

5 A I do remember it, yes.

6 Q ---- to the school committee?

7 A Yes.

8 Q I'm going to show you that document and I'm going to ask
9 you if you can identify that for me?

10 A Mmm-hmm.

11 Q The first question is, do you have an independent memory
12 of the May 20, 2010 school committee meeting at which
13 there was a report by the ad hoc feoffees committee?

14 A I do.

15 Q Tell me what your memory is of what transpired on May 20,
16 2010?

17 A That the three members of the ad hoc committee came and
18 made a presentation to the school committee.

19 Q And what did they say?

20 A Basically what's captured in these minutes which I again,
21 my own recollection is that I would not have been able to
22 tell you exactly what they said unless I had seen this.

23 Q Okay. With your recollection having been refreshed by
24 looking at the May 20, 2010 meeting, what did the ad hoc

1 committee report?

2 A To be honest with you, much of it I don't understand.

3 Q Okay. Fair to say that the document I've handed to you
4 contains minutes of a Ipswich School Committee open
5 meeting on May 20, 2010?

6 A Yes.

7 Q And those minutes have been reviewed and approved by the
8 school committee?

9 A Yes, they have.

10 MR. SHEEHAN: Can we have those marked, please
11 as Number Two?

12

13 (Exhibit Number Two marked; Copy of 5/20/10 Ipswich
14 School Committee Meeting Minutes)

15

16 Q The ad hoc committee reported that the proposed condo-
17 minium form of sale was economically feasible, correct?

18 A Where does it say that exactly?

19 Q At the top of page three?

20 A Yes, it's in the last line.

21 Q That the feasibility was more advantageous than origin-
22 ally believed; correct?

23 A Originally thought to be believed, yes.

24 Q Do you know how many cottage owners have signed purchase

1 and sale agreements to purchase condominium units?

2 A I do not.

3 Q Do you know whether or not the feoffees kept Attorney
4 Allen apprised as purchase and sale agreements were
5 signed?

6 A I would assume so. I have never ----

7 Q Did Attorney Allen report to the committee as purchase
8 and sale agreements were being signed?

9 MS. BREWER: Objection.

10 Don't answer that. I don't want him discussing
11 attorney/client privileged communications.

12 Q Do you recall Attorney Allen reporting to the school
13 committee as to the number of purchase and sale agree-
14 ments signed while a feoffee or a feoffee's counsel was
15 present at a school committee meeting?

16 A I don't recall that.

17 Q Have you reviewed the complaint for deviation that was
18 filed by the feoffees in the Essex Probate Court?

19 A I have not.

20 Q Have you reviewed the answer and counter-claim filed in
21 your behalf in that action?

22 A I have not.

23 MS. BREWER: Objection.

24 Q The feoffees file annually with the Attorney General's

1 Office the so-called Public Charity Form.

2 Is that correct?

3 A I really don't know.

4 Q All right. Have you ever looked into the finances of the
5 feoffees?

6 A I have not.

7 Q Okay. Have you ever looked at any of their financial
8 statements?

9 A I have not.

10 Q Have you ever looked at any of their Form PC's filed with
11 the Attorney General?

12 A I have not.

13 Q Are you familiar with the zoning of Little Neck?

14 A No.

15 Q Do you know how it is that there are 167 cottages on a
16 single parcel of land at Little Neck?

17 A I never asked.

18 Q Are you familiar with something called a Brill, B-R-I-L-
19 L, Report?

20 A I am not.

21 Q Do you know who this Brill is?

22 A No, I don't know.

23 Q Have you ever gone on the town's website and looked at
24 feoffee related materials?

1 A Not once.

2 Q Are you familiar with the fact that the finance committee
3 put on the town's website a portion, and only a portion,
4 of the Colliers, Meredith and Grew appraisals?

5 A I had heard that, yes.

6 Q From who did you hear that?

7 A I don't recall specifically. And I think I was in the
8 audience one evening at a meeting and someone had said
9 that. It just didn't get my attention who it was.

10 Q Are you familiar with the so-called open meeting law
11 issue involving the feoffees?

12 A I am familiar with open meeting law, but not as it
13 pertains to the feoffees.

14 Q Okay. And does the open meeting law prevent the school
15 committee from conducting business other than either in
16 an open session or a duly authorized executive session?

17 MS. BREWER: Objection.

18 A Would you re-state that, please?

19 Q Sure.

20 MR. SHEEHAN: Could you read that back?

21

22 (Whereupon, the pending question was read back by the
23 court reporter:

24 Question: Okay. And does the open meeting law prevent

1 the school committee from conducting business other than
2 either in an open session or a duly authorized executive
3 session?)

4

5 A I don't believe so.

6 Q What do you understand the open meeting law to mean as it
7 pertains to school committee meetings?

8 MS. BREWER: Objection.

9 A The school committee meetings are the business meetings
10 of the school committee.

11 And my understanding is that unless it is
12 issues pertaining to personnel or to litigation or to
13 possible real estate transactions, things of that nature,
14 that things remain in open session.

15 Q And do you understand that the open meeting law prohibits
16 school committee members from transacting business by e-
17 mail?

18 A Yes.

19 Q Would you agree with me that the school committee has
20 transacted business by e-mail with respect to feoffee
21 related issues?

22 MS. BREWER: Objection.

23 A To the extent I'm not certain of, I know that I have been
24 very guarded in terms of not communicating via e-mail.

1 We have been within the past few years reminded
2 of open meeting law and what people have access to in
3 terms of public records. And we had a ruling from Mike
4 Gilbert, who is the President of the Massachusetts
5 Association of School Committees, on open meeting law and
6 open and public record.

7 So I don't think the exchanges are anywhere
8 near what they were at one time, you know, years ago.
9 But again, I have no recollection of even to that extent.

10 I have an awful habit of deleting and shredding
11 most of what I get. And I choose not to get involved in
12 exchanges of any kind if I feel it's not appropriate.

13 Q Are you familiar with e-mail exchanges among the school
14 committee members -- among the majority of school
15 committee members involving feoffee related issues?

16 MS. BREWER: Objection.

17 A I don't know how many people actually got involved in
18 that. We never had a conversation regarding who was
19 going back and forth and who wasn't. I just knew that I
20 wasn't going to do it.

21 And I can't recall, and I'm not saying I have
22 never done it, but I will say that I didn't make a prac-
23 tice of it.

24 Q Do you know of any e-mail communications among a majority

1 of the school committee members regarding feoffees issues
2 in the last five years?

3 A I am not aware of them. We have never had a conversation
4 that focused specifically on that in terms of who is and
5 who isn't.

6 Q I'm going to show you that document and ask you if you
7 can identify this for me?

8 A Okay.

9 Q Can you identify that document for me?

10 A I can.

11 Q What is it?

12 A It was an e-mail exchange that -- pertaining to an
13 appraisal that a majority of the members commented on.

14 And it concluded when Jeff Loeb suggested or
15 said that not to hit reply all function, that discussion
16 needs to be had if at all in person and except and not
17 via e-mail.

18 MR. SHEEHAN: Okay. Could we have that e-mail
19 exchange marked as the next Exhibit, Number Three, I
20 think it is?

21

22 (Exhibit Number Three marked; Copy of E-Mail Exchange)

23

24 Q Generally, what was the subject of this e-mail exchange

1 that was marked as Hopping Number Three?

2 A If I read correctly, that was a -- that it was an attempt
3 to bring people on board to give us per the perpetual
4 opinion of the appraisal that was being done by Colliers,
5 Meredith and Grew, to which I responded ----

6 Q The school committee was dissatisfied with the report of
7 Colliers, Meredith and Grew; correct?

8 MS. BREWER: Objection.

9 A Was that -- you'll have to refresh my memory in terms of
10 which one that was.

11 Q Colliers, Meredith and Grew prepared an appraisal report,
12 a part of which appeared on the town website, and that
13 part talked of a value of \$42,000,000?

14 A That was the finance committee, correct.

15 Q Correct.

16 A Okay.

17 Q The finance committee -- and I'll represent to you that
18 it was the finance committee that engaged Colliers,
19 Meredith and Grew?

20 A Correct, yes.

21 Q Fair to say that the school committee found that report
22 unpersuasive?

23 A Yes.

24 Q And then went out and decided to hire its own appraiser?

- 1 A That's correct.
- 2 Q And hired a fellow named Stephen Foster from Lincoln
3 Financial?
- 4 A Yes.
- 5 Q In fact, Stephen Foster from Lincoln Financial told the
6 tri-board that the Colliers, Meredith and Grew number of
7 \$42,000,000 was simply inaccurate, didn't he?
- 8 A That's correct.
- 9 Q And Mr. Foster did his own appraisal?
- 10 A Yes.
- 11 Q And reported his findings and his conclusions to the
12 school committee?
- 13 A Correct.
- 14 Q And Mr. Foster identified what he called the number most
15 akin to fair market value, didn't he?
- 16 A I don't know exactly.
- 17 Q Okay.
- 18 A I don't remember the exact language, but ----
- 19 Q Do you remember Mr. Foster reaching a conclusion as to
20 the value which most conforms with the standard defini-
21 tion of market value?
- 22 A I don't recall that exact language, no.
- 23 Q Do you recall Mr. Foster determining that a value, which
24 he called market value to a third party at market terms,

1 assuming no tenants, that that value was \$20,500,000?

2 A I don't recall that.

3 Q Do you remember what -- strike that.

4 What value, if any, do you associate Mr. Foster
5 with, with respect to Little Neck?

6 A I am confused because when you mentioned Mr. Foster, the
7 number that popped into my head was somewhere in the low
8 thirties, thirty three, in that range.

9 I might be confusing my appraisals, but ----

10 Q The first time you ever heard of Mr. Foster coming up
11 with a number of \$20,500,000 was just now?

12 A I'm not saying that. I mean, I'm saying I might have
13 heard it. I just don't recall that number.

14 Q Do you recall a discussion among school committee members
15 as to whether or not to intervene in the superior court
16 litigation between the feoffees and the cottage owners?

17 A I do not.

18 Q And do you recall any discussion about whether or not to
19 intervene in that action or become involved in that
20 action?

21 A I don't recall that.

22 Q Are you familiar with assessed values of the land at
23 Little Neck?

24 A I am not.

1 Q Do you know whether those assessed values have gone up or
2 down over the last two or three years?

3 A I am not aware of either way.

4 Q Are you familiar with responses that have been made by
5 the Ipswich School Committee to what are called the first
6 request for admissions by the plaintiff feoffees?

7 A If that -- I am not. If that was -- I think it -- what
8 I'm thinking of is the paperwork we received in antici-
9 pation of this meeting here, and that's probably totally
10 different from what you're ----

11 Q I asked you earlier about the limitation as to the number
12 of year-round cottages on Little Neck?

13 A Right.

14 Q Are you familiar with an action that was brought by the
15 D.E.P. against the feoffees?

16 A I am not.

17 MR. SHEEHAN: Off the record. Let's just take
18 a break for a couple of minutes.

19 MS. BREWER: All right.

20

21 (Recess)

22

23 MR. SHEEHAN: Back on the record.

24 MS. BREWER: Are you going to have that marked

1 now or after?

2 MR. SHEEHAN: Yes. Let's have this marked as
3 Number Four, Defendant and Counterclaim Plaintiff,
4 Ipswich School Committee's Responses to Plaintiff's First
5 Request for Admissions.

6

7 (Exhibit Number Four marked; Copy of Defendant and
8 Counterclaim Plaintiff, Ipswich School Committee's
9 Responses to Plaintiff's First Request for Admissions))

10

11 Q I'm going to direct your attention to Number Thirty One,
12 please, and it's at page seven.

13 A Mmm-hmm.

14 Q Would you read Request Number Thirty One and Response
15 Number Thirty One to yourself, please?

16 A Can I ask for an explanation?

17 Q Well, I'm going to put a question to you, and that may
18 have the effect of explaining.

19 A Okay.

20 Q Request for Admissions, let me first give you an idea of
21 what Request for Admissions are. In this instance, the
22 feoffees have set forth a series of what they say are
23 facts.

24 A Mmm-hmm.

1 Q And they have sought to have the school committee admit
2 those facts so that they need not be proven at trial.
3 That's the kind of document that you're looking at which
4 may help you a little bit.

5 And Paragraph Thirty One references the number
6 of year-round cottages, and it says and I quote, the
7 limit of twenty four year-round cottages was based on
8 waste water discharge concerns at Little Neck.

9 Have I read that accurately?

10 A Yes.

11 Q And the response on behalf of the school committee is,
12 admitted that waste water concerns were one reason for
13 limiting year-round use, but denied that this was the
14 sole basis.

15 Did I read that correctly?

16 A Yes, you did.

17 Q Do you know what other bases there were for limiting
18 year-round use?

19 A Well, there was discussion, and that was not a concern of
20 mine, but there was discussion about the possibility of
21 increase in the number of school children.

22 Q And whose concern was it if it wasn't yours?

23 A I don't recall who specifically -- it was never put to a
24 vote or there was no action taken, but I know it was

1 discussed.

2 Q And was it a concern of some one or more members of the
3 school committee?

4 A Yes.

5 Q You just can't recall who?

6 A I can't recall who it was.

7 Q Were there -- and was that concern communicated to the
8 feoffees?

9 A I am not certain of that. I don't know what communica-
10 tion took place with the feoffees after that.

11 Short of my visit to your office of a month or
12 so ago, I haven't had any real direct conversations with
13 the feoffees about -- that I recall.

14 Q Now, directing your attention to number forty six at page
15 nine?

16 A Mmm-hmm.

17 Q Do you have any knowledge concerning the borrowing by the
18 feoffees so as to construct the common waste water
19 system?

20 A Beyond the fact that they borrowed money, no.

21 Q Take a look, please, on page fifteen at request number
22 seventy Three and the response?

23 A Mmm-hmm.

24 Q Have you had a chance to look at that?

- 1 A I have.
- 2 Q What is the basis for the denial?
- 3 A I don't recall.
- 4 Q Did you ever know?
- 5 A No.
- 6 Q And request number eighty on the following page?
- 7 A Mmm-hmm.
- 8 Q Have you had a chance to read number eighty?
- 9 A I have.
- 10 Q What is the basis for the denial?
- 11 A I'm not aware of the reason why.
- 12 Q You understood, didn't you, at the time of the November
13 20, 2008 vote that if there were a sale, the proceeds
14 from the sale would be put into an endowment fund and
15 income from the endowment fund would be available for the
16 public schools?
- 17 A Correct.
- 18 Q And you had that same understanding on May 7, 2009?
- 19 A It's been my understanding from day one.
- 20 Q All right.
- 21 A Can I ask a question?
- 22 Q Yes?
- 23 A What is the difference between number seventy three and
24 number -- well, on the next page, on page sixteen that

1 you just referenced?

2 Q Well, I don't often answer the questions in a deposi-

3 tion.

4 A Oh, I'm sorry.

5 Q But I will. It's just different dates.

6 A Okay.

7 Q That's a fair question.

8 A Okay. Thank you.

9 Q That's the first question ever asked by a deponent that

10 I've answered.

11 A Okay.

12 Q Now, with respect to request number seventy eight?

13 A Yes.

14 Q Would you read that request and the response to yourself,

15 please?

16 A Okay.

17 Q Have you had a chance to do that?

18 A Yes.

19 Q What is the basis for the denial?

20 A I don't understand the response myself.

21 Q Okay.

22 A I don't understand the, admitted to pursuing it, but

23 otherwise denied. I don't quite understand that.

24 Q That's my question to you. And if you don't understand

1 it, ---

2 A I don't.

3 Q ---- that's a fair answer.

4 Now, are you familiar with the Massachusetts
5 Condominium Law?

6 A I am not.

7 Q Would you turn to page nineteen, paragraph eighty nine
8 for me?

9 A Mmm-hmm.

10 Q Have you had a chance to read that to yourself?

11 A I have.

12 Q All right. What, if any, material term of the settlement
13 agreement was either not presented or not adequately
14 explained at the January 7, 2010 meeting of the Ipswich
15 School Committee?

16 A Beyond remembering that the meeting took place, I can't
17 even tell you what was presented or explained or not
18 explained.

19 Q Please take a look at page twenty, request number ninety
20 three and the response thereto?

21 A I've read it.

22 Q All right. Are you aware of the so-called balance of
23 purchase price note?

24 A I am not.

1 Q Are you aware of the issue of the feoffees re-financing
2 the existing loan for the waste water treatment system?

3 A I am not.

4 Q Do you know if the feoffees have made arrangements to
5 engage an experienced outside firm to manage all loan
6 servicing and collections?

7 A I am not aware of that, no.

8 Q Okay. Are you aware that the feoffees have engaged an
9 experienced outside firm to monitor property tax payments
10 and insurance coverage on cottages?

11 A I am not aware of that, either.

12 Q All right. And are you aware that the feoffees have made
13 arrangements to engage a professional third party
14 investment advisor with respect to the endowment fund?

15 A No.

16 Q Okay. And page twenty one, request number one hundred,
17 please?

18 A I've read it.

19 Q What is the basis of the denial of request number one
20 hundred?

21 A I don't know.

22 Q You indicated that a relative of yours, I think it was by
23 marriage, owns or owned a cottage at Little Neck?

24 A That's correct. And there's also a -- and my niece's

1 husband's parents own a cottage on Little Neck, as well.
2 That's been -- and I disclosed that at public meeting, as
3 well.

4 Q Have you ever requested of the feoffees favorable rent
5 treatment for either of those cottages?

6 A Never.

7 Q Are you aware that at one time the family of Donald
8 Whiston owned a cottage at Little Neck?

9 A I was not aware of that.

10 Q Are you aware that at one time the family of James Foley
11 owned a cottage at Little Neck?

12 A I was made aware of that through -- once the attention
13 was shifted to the feoffees, you know, in recent years, I
14 was made aware of that. I couldn't tell you where the
15 cottage was or I mean, it never came up in conversation.

16 So ----

17 Q Do you contend that the feoffees kept the rents at Little
18 Neck artificially low so as to benefit the family of
19 James Foley?

20 MS. BREWER: Objection.

21 A No.

22 Q Do you contend that the feoffees kept the rents at Little
23 Neck artificially low so as to benefit the family of
24 Donald Whiston?

- 1 A No.
- 2 MS. BREWER: Objection.
- 3 Q Page twenty two, request number 107, please?
- 4 A I've read it.
- 5 Q What is the basis of the denial?
- 6 A I don't understand what's being denied.
- 7 Q Page twenty three, request number 111, please?
- 8 A I've read it.
- 9 Q What is the basis of the denial?
- 10 A I'm not -- I don't know.
- 11 Q Page twenty five, request number 121, please?
- 12 A I've read it.
- 13 Q What is the basis of the denial of request number 121?
- 14 A I'm not certain.
- 15 Q Would you agree that if the land of Little Neck were sold
16 and the loan paid off, that that would end the interest
17 expense associated with the loan?
- 18 A I'm not certain as to what the other expenses being refe-
19 renced here even refer to.
- 20 Q Okay. Take a look at the request above, number 120? And
21 I'll represent to you that that's -- those are the two
22 expenses that are the subject of request number 121?
- 23 A Mmm-hmm.
- 24 Q Have you had a chance to look at number 120?

1 A May I ask another question?

2 Q Sure.

3 A Is the interest expense on the loan?

4 Q Yes.

5 A Okay.

6 Q Given that the interest expense is on the loan, which
7 loan would be paid off if there were a sale of the land
8 at Little Neck.

9 Do you understand the basis of the denial as to
10 whether or not that expense would be substantially ended?

11 A I don't know.

12 MS. BREWER: Objection.

13 A I don't. I don't understand the denial.

14 Q All right. You would agree with me, would you not, that
15 if the loan were paid off the interest expense associated
16 with the loan would come to an end?

17 A That would make sense, yes.

18 Q And if the litigation were ended, the expense of the
19 litigation would also come to an end; correct?

20 A Right.

21 MS. BREWER: Objection.

22 Q Take a look, please, at Number 124?

23 A I've read it.

24 Q Do you agree that the income that's generated by the tax

1 levy in the Town of Ipswich is divided roughly sixty
2 percent to the school budget and forty percent to other
3 town budget items?

4 A Yes.

5 Q And you would agree with me, would you not, that the
6 feoffees by allowing cottage owners to build cottages on
7 land at Little Neck, have increased the amount of taxes
8 that are generated by Little Neck?

9 A I would assume so.

10 Q And finally, page twenty nine, request number 141?

11 A I've read it.

12 Q Do you understand the basis for the -- strike that.

13 What is the basis for the denial of request
14 number 141?

15 A I don't know.

16 Q Do you personally favor year-round tenancy for all of the
17 cottages at Little Neck?

18 MS. BREWER: Objection.

19 A I think the year-round tenancy would change the character
20 of what Little Neck is all about.

21 I know I understand apparently according to the
22 numbers today, there are twenty four currently. I would
23 prefer to keep it that way.

24 Q Are you aware of any dishonest conduct by any feoffee?

1 A I am not.

2 Q And are you aware of any dishonest motive held by any
3 feoffee?

4 A No.

5 Q Are you aware of any selfish motive held by any feoffee?

6 A No.

7 Q Are you aware of any hostility between any feoffee and
8 the Ipswich Public Schools?

9 A No.

10 MR. SHEEHAN: Mr. Hopping, I have no further
11 questions. I want to thank you for your time today.

12 Attorney Brewer has the opportunity to inquire.

13 MS. BREWER: But I think I'll let you go, Mr.
14 Hopping. So thank you for coming.

15 THE WITNESS: Thank you.

16

17 (Recess)

18

19 MR. SHEEHAN: Back on the record.

20 Mr. Hopping, I just want to get the deposition
21 subpoena that brought you here today to get that marked.

22

23 DIRECT EXAMINATION, Resumed

24

1 Q (By Mr. Sheehan) Do you recognize that document that I
2 just handed you as the subpoena that brings you here
3 today?

4 A I do.

5 MR. SHEEHAN: And could we have that marked,
6 please, as Hopping Number Five?

7

8 (Exhibit Number Five marked; Copy of Deposition Subpoena)

9

10 THE WITNESS: And the gentleman who delivered it
11 was rather curt to my wife, but beyond that ----

12 MR. SHEEHAN: And I have not control over that,
13 unfortunately.

14 THE WITNESS: Yes.

15 Q And a few questions about Exhibit Number Five?

16 A Yes.

17 Q Did you make a diligent search for all of the documents
18 identified in Exhibit Number five?

19 A I did.

20 Q And did you find any such documents?

21 A I did not.

22 MR. SHEEHAN: Fair enough. I have no further
23 questions.

24 MS. BREWER: All right.

1 MR. SHEEHAN: Thank you.

2 THE WITNESS: Thank you.

3

4 (Whereupon, the deposition in the above entitled matter
5 was concluded at 1:03 p.m.)

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SIGNATURE PAGE FOR THE DEPONENT

I, BARRY W. HOPPING, 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.

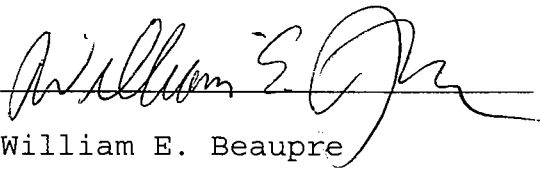
BARRY W. HOPPING

C E R T I F I C A T E

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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 98, 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 18th day of November, 2011.


William E. Beaupre

Notary Public

My Commission expires April 5, 2013

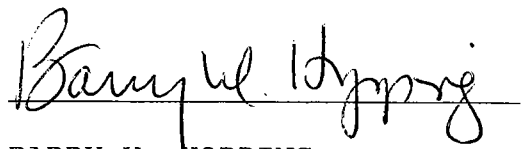
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SIGNATURE PAGE FOR THE DEPONENT

I, BARRY W. HOPPING, 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
6	8	North to 'Nock'
6	23	grade school to 'fourth'
7	14	Molen to 'Molin'
14	13	Karp to 'Cuff'
24	13-14	-serving the personalities(?)
27	21	delete 'very'
34	24	Bonita to 'Lillian'
65	17	delete 'it's'

Signed under the pains and penalties of perjury this 5th day of December, 2011.


BARRY W. HOPPING



EXECUTIVE SESSION

3/19/09

PAGE 6

In attendance: E. Traverso, H. O'Flynn, N. Sheppard, J. Arsenault, B. Hopping, D. Ross
8 p.m. R. Korb, J. Cuff
J. Foley, Feoffees Chair, and W. Sheehan, Attorney for Feoffees
Speaker phone: R. Allen, School Committee Attorney

Mr. Sheehan reported that he and J. Foley had met with two members of the tenants association and, over the past two weeks, have worked through a proposed plan whereby those who are currently lessees (32) will be able to purchase their unit as soon as a condominium is created by a master deed which identifies the units.

Under the master deed, the Feoffees will own all of the buildings/grounds and those individuals who can afford to will purchase the unit (building and land) immediately. A lease for the others will give them an option to purchase at the price then available, an incentive to purchase earlier than later. The Feoffees would hold a combination of assets — cash and condominiums. Unit owners and lessees of the condominiums will bear expenses (of common areas), one of which is erosion which is close to \$750,000 and another is the waste-water treatment plant. The escrow amount could pay for legal and engineering work. The plan is to pay off the septic system mortgage. Outliers, those who chose not to buy nor lease with option to purchase, would be carved out of the condominium plan. Feoffees' duties will be to collect rents and own the outliers properties.

Mr. Loeb joined the meeting at 8:25 p.m.

There were several questions regarding eviction process, condo management, sale price and assessed values, and how the proposed new trust and its governance, the creation of which cost the School Committee considerable time, will endure. Mr. Sheehan feels that the Trust Administration Order would stay with a minority provision for private trustees and added language for the rental arrangements, and the benefactor (schools) remains a public entity.

School Committee input would be to set prices for rental arrangements, have involvement in the Trust document, but have no say in the running of the condominium association. The condo association would have control of common areas and hire a property manager.

Mr. Sheehan has prepared a "lease option to purchase" document and put it in the hands of the Legal Action Committee (of Little Neck). Mrs. Ross commented that it is a well-thought-out proposal which gives tenants a say that they have not had for years. Mr. Loeb asked for the concept of price in a pro forma. Mr. Traverso asked for a financial statement for 2008 and maybe some of '09 to be aware that there are no unusual expenses. Mrs. Arsenault will put out emails to the other Boards when the time comes to make this public. Mr. Traverso feels that the Finance Committee has a perfect right to look into the relation of the Feoffees and the Town's protection.

When Mr. Allen asked whether there might be a consensus of support of the Feoffees seeking to work out a sale structure for the Little Neck properties, there was UNANIMOUS support from the seven Board members.

ISC 003392

Mr. Foley, Chair of the Feoffees for the last two years, commented that he wants the Feoffees to have a much more open relationship with the Feoffees and the School Committee. The timeframe will likely be at least two weeks before an answer is forthcoming for the proposal.

Mr. Loeb moved, seconded by Mrs. Ross, to move into Open Session at 9:50 p.m. Roll call
IN FAVOR - Traverso, O'Flynn, Sheppard, Arsenault, Hopping, Loeb, Ross.



**IPSWICH SCHOOL COMMITTEE MEETING
THURSDAY, MAY 20, 2010
MIDDLE/HIGH SCHOOL ENSEMBLE ROOM**

OPEN SESSION

CALL TO ORDER

J. Arsenault, Chair Pro Tem, called the meeting to order at 6 p.m. with the following members present: E. Traverso, B. Hopping, L. Dietz, and H. O'Flynn. Also present were R. Korb, Superintendent, and R. Markel, Town Manager.

ANNOUNCEMENTS

Mrs. Arsenault announced that there will be Executive Session to discuss strategy in collective bargaining and possible litigation after which the meeting will reopen at 7 p.m.

RULE OF NECESSITY

Mrs. Dietz moved, seconded by Mr. Markel, to invoke the Rule of Necessity.

UNANIMOUS.

EXECUTIVE SESSION

Mr. Hopping moved, seconded by Dr. O'Flynn, to go into Executive Session for the purpose of strategy in collective bargaining and possible litigation after which the meeting will return to Open Session. Roll call IN FAVOR - Hopping, O'Flynn, Arsenault, Dietz.

Open Session resumed at 7:05 p.m. with the following members present: H. O'Flynn, E. Traverso, L. Dietz, J. Arsenault, and J. Loeb. Also present were Superintendent R. Korb; Abigail Skelton, Student Representative; and Principals B. Cahill, C. Forster-Cahill, D. Archambault, and S. McAdams.

ANNOUNCEMENTS

Mr. Loeb, Chair, read the following announcements:

High School Honors Reception will be held on May 25, 7 p.m., Performing Arts Center

Early Childhood Study Committee will meet May 26, 3:30 p.m., Payne School

ITA Negotiations Team will meet May 26, 7 p.m., Middle/High School Guidance
Conference Room

Memorial Day exercises with veterans will be held at each school on May 28, beginning
at the High School at 8 a.m.

Senior Prom will be held on May 28, Castle Hill, promenade at 6 p.m.

Schools/offices will be closed on Monday, May 31, in observance of Memorial Day

High School Baccalaureate will be held on June 2, Performing Arts Center, 7 p.m.

School Committee will meet on June 3, 7 p.m., Middle/High School Ensemble Room.

CITIZENS' COMMENTS

SPECIAL ACKNOWLEDGMENTS

Mr. Korb and Mr. Loeb presented Joan Arsenault with a plaque and the gavel with words of appreciation regarding her twelve-year dedication. Brad Hill, Massachusetts House of Representatives, and a stand-in for Bruce Tarr, Massachusetts Senate, read congratulatory citations in recognition of Mrs. Arsenault's twelve years, seven of which were as Chair of the School Committee.

Mrs. Arsenault commented that it was an honor to work with the Superintendent, faculty, and staff and was proud to have served.

I. SCHOOL COMMITTEE PRESENTATIONS**A. SCHOOL CHOICE ADDITIONAL REQUESTS FOR 2010-2011**

After a short discussion, Dr. O'Flynn moved, seconded by Mrs. Dietz, to accept Choice additional numbers of 3 students in Grade 6. IN FAVOR - Traverso, O'Flynn, Arsenault, Dietz; OPPOSED - Loeb.

After discussion, Dr. O'Flynn moved, seconded by Mrs. Arsenault, to accept Winthrop additional Choice students in Grade 1 – 1 student, and in Grade 2 – 2 students. UNANIMOUS.

The Board also voted on a Consent Agenda item regarding Student Handbook changes while the four principals were present. Mrs. Arsenault moved, seconded by Mrs. Dietz, to accept the handbook changes as recommended in all four schools for 2010-11. UNANIMOUS.

B. CAPITAL MAINTENANCE RECOMMENDATIONS

Paul Bedard began with a quick update on the well drilling at the Mile Lane fields. Town Counsel informs that the Town and the School Department are exempt from setback rules. The Water Commissioners have agreed and the Planning Board will issue a special permit to allow the drilling of the well. Mr. Korb and Mr. Bedard reviewed the Capital Maintenance Projects, taking up the end-of-year funds recommendations first. By using in-house labor, savings realized in energy areas and locked-in natural gas prices, and the DPW offer from Rick Clark on the Doyon driveway, Phases I and II (Doyon's propane line and driveway patching/Winthrop's cafeteria floor and new maintenance equipment), Mr. Bedard is confident these projects can be done with end-of-year funds.

The men reviewed the Phase I and Phase II priority issues, all but one of which National Grid will offer credits up to 50% reimbursement. These come under the \$100,000 Town Meeting funds for maintenance.

Dr. O'Flynn moved, seconded by Mrs. Arsenault, to approve Capital Projects budget priorities as set forth. UNANIMOUS. Mr. Bedard will give a report later on the end-of-year items.

C. FINANCIAL REPORT

As Ms. Cuff was on vacation, Mr. Korb asked if the Committee had any questions about the audit report and the Food Services audit, commenting that energy and cost savings through the winter allow the budget to be in good financial shape.

D. AD HOC FEOFFEEES COMMITTEE

Mr. Loeb thanked the three gentlemen whose expertise brought the report to fruition. Mitch Feldman began by reviewing meetings, the latest on April 28 with the tenants and Feoffees legal counsel. In a memorandum, dated 5/20/10, the economic feasibility appeared to be more advantageous than originally thought in a manageable scenario.

Mark Leff reported on feedback. "Balance of purchase" financing for those tenants who are unwilling or unable to purchase would be provided by the Feoffees on a limited basis. Interest in purchasing has been shown by 164 of the 167 tenants at costs not significantly greater than current rents. The question of Feoffees acting as mortgagees becomes a question of becoming investors when the time comes.

Clark Ziegler presented a list of recommendations which include the complete reconstitution of the Feoffees into a governing board with transparency, control of oversight, and expertise to insure that the value of Little Neck is maximized and the interests of the Ipswich Schools as beneficiaries are projected, and the engagement of an outside firm experienced in loan servicing, collecting, and monitoring of payments, taxes and insurances on the cottages.

All School Committee members thanked the three men. Mr. Traverso remarked that they seemed to be saying that low selling prices lessen the risk for money to come to the schools, and he felt the Feoffees should be seeking the most money for the schools. Mr. Loeb reported that the next step, the appraisal — the value of the property — puts the School Committee in a better position for the purchase/sale of the transaction. Dr. O'Flynn and Mr. Traverso remarked that the governance piece — new Feoffees — is non-negotiable and also comes next.

Mr. Howard of the Finance Committee asked several questions and offered several cautions. The appraisals will be ready at the end of May. Mr. Gottlieb of the Tenants Association thanked the three men for their expert advice and hoped that the Board of Selectmen, Finance Committee, and School Committee would work with the tenants in a spirit of cooperation and participation. Mr. Loeb expects that the tenants will negotiate terms of the project with the beneficiaries of the Trust.

II. SCHOOL COMMITTEE REPORTS**A. VOUCHERS/BILLS****B. SCHOOL COMMITTEE SUBCOMMITTEE REPORTS****1. ATHLETIC SUBCOMMITTEE**

Dr. O'Flynn commented on many issues discussed. A balanced budget and no increase in fees for FY11 bears well, but fees will increase the next year. The Mile Lane well gift requires permission from the Water and Planning Boards. The pressbox at the High School field will hopefully be built before the fall with donated materials. Basketball coaches requested and received a recommendation from the Athletic Subcommittee that the policy for cutting team members be changed from 15 to 12 if the coaches choose to do so. A large sum of money is currently owed in user fees.

2. ATHLETIC FIELD STUDY COMMITTEE

The Committee is still looking at property behind the Doyon School.

3. AD HOC TOWN/SCHOOL COLLABORATION COMMITTEE

Mrs. Dietz said that the group will meet when the findings come in.

4. DAY CARE CENTER SUBCOMMITTEE

5. DEMOGRAPHIC STUDY SUBCOMMITTEE

6. EARLY CHILDHOOD SUBCOMMITTEE

Mr. Traverso reported that in a meeting with a representative from Pathways for Children in Gloucester the nucleus for growth would be a Birth-to-3 and Head Start in Ipswich. On June 17 there will be an update on a shift in programming.

7. FEOFFEES SUBCOMMITTEE

8. NORTH SHORE COALITION FOR SCHOOL FUNDING

9. OPERATIONS SUBCOMMITTEE

10. POLICY SUBCOMMITTEE

a. Agenda Format, BEDB, Proposed Adoption, First Reading

Mrs. Arsenault moved, seconded by Mrs. Dietz, to accept the policy for first reading. Mr. Traverso was opposed because he doesn't think that one person alone should have the power to set up an agenda. IN FAVOR - Loeb, Arsenault, Dietz, O'Flynn; OPPOSED - Traverso.

11. PUBLIC SAFETY FACILITY COMMITTEE

Mr. Loeb reported that consensus of the Committee is to meet with the Board of Selectmen to find out where their priorities lie with regard to public safety in the Town.

12. WIND TURBINE SUBCOMMITTEE

Mr. Korb reported that various options are being considered while everyone waits.

13. IPSWICH HIGH SCHOOL STUDENT REPRESENTATIVE

Abby Skelton congratulated the seniors upon their graduation.

III. SUPERINTENDENT'S REPORT**A. SUPERINTENDENT'S ADMINISTRATIVE REPORT**

Mr. Korb spoke of Senate Bill 3206, pending at the national level, which would provide \$23 billion for distribution to the States and would save current education jobs or create new ones. After discussion, Dr. O'Flynn moved, seconded by Mrs. Dietz, to send a letter as a School Committee to Senator Brown to support Bill S3206. UNANIMOUS.

IV. CONSENT

A. CONSENT AGENDA

Mrs. Arsenault moved, seconded by Dr. O'Flynn, to accept the Consent Agenda as follows:

- Acceptance of the Minutes of May 6, 2010, Open Session
- Acceptance of the Minutes of May 6, 2010, Executive Session
- Acceptance of the Minutes of May 11, 2010, Open Session
- Acceptance of the donation of \$3,292 from the Friends of Ipswich Elementary Schools to the Doyon School to pay for Student Leadership Team Mentor stipends to fourteen Doyon staff members.

UNANIMOUS.

VII. ADJOURNMENT

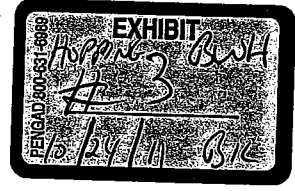
Mrs. Arsenault moved, seconded by Mrs. Dietz, to adjourn at 9:05 p.m. **UNANIMOUS.**

Grant Seltner

From: "Jeffrey B. Loeb" <JLoeb@richmaylaw.com>
To: "Barry Hopping" <bhopping@newburyport.k12.ma.us>; "Laura Dietz" <lhdietz@gmail.com>; "Rksuper"
 <rksuper@aol.com>
Cc: <bhopping@verizon.net>; <jeffrey.loeb@comcast.net>; <hugh@oflynn.org>; <normshep@aol.com>;
 <edtraverso@verizon.net>; <fseltenr@ipswichschools.org>; <seangresh@gmail.com>
Sent: Wednesday, August 11, 2010 9:39 AM
Subject: RE: Signed engagement letter Steven Foster

Can everyone please stop using the reply all function. This is a discussion that needs to be had (if at all) in person in exec and not via email.


Jeffrey B. Loeb
 Rich May, a Professional Corporation
 176 Federal Street
 Boston, MA 02110-2223
 T - (617) 556-3871
 F - (617) 391-5771
 email: jloeb@richmaylaw.com
 website: www.richmaylaw.com



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 Please consider the environment before printing this e-mail

From: Barry Hopping [mailto:bhopping@newburyport.k12.ma.us]
Sent: Wednesday, August 11, 2010 9:34 AM
To: 'Laura Dietz'; 'Rksuper'
Cc: bhopping@verizon.net; jeffrey.loeb@comcast.net; Jeffrey B. Loeb; hugh@oflynn.org; normshep@aol.com; edtraverso@verizon.net; fseltenr@ipswichschools.org; seangresh@gmail.com
Subject: RE: Signed engagement letter Steven Foster

Hi, everyone... does this now suggest that we'll have a third set of numbers calculated independently of the other two appraisals? Does this not also suggest a possible scenario where all three appraisals will be so discrepant that we will be back debating the actual value of Little Neck with the Feoffees and FinCom? Please excuse my confusion...

Barry

From: Laura Dietz [mailto:lhdietz@gmail.com]
Sent: Wednesday, August 11, 2010 8:24 AM
To: Rksuper
Cc: bhopping@verizon.net; bhopping@newburyport.k12.ma.us; jeffrey.loeb@comcast.net; jloeb@richmaylaw.com; hugh@oflynn.org; normshep@aol.com; edtraverso@verizon.net; fseltenr@ipswichschools.org; seangresh@gmail.com
Subject: Re: Signed engagement letter Steven Foster

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Laura

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SC,
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----- Forwarded message -----

From: "Allen, Richard" <allen@casneredwards.com>

To: <hugh@oflynn.org>, <hughoflynn@comcast.net>, <rksuper@aol.com>

Date: Tue, 10 Aug 2010 09:50:46 -0400

Subject: Signed engagement letter Steven Foster

Hugh and Rick, .

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Dick

<<Ipswich engagement letter Steven Foster-Lincoln Property Company.pdf>>

Richard C. Allen
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
Phone: (617) 426-5900 x 339
Fax: (617) 426-8810
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--

Laura
978.857.3785 (mobile)

Fran Seltenrich

From: "Barry Hopping" <bhopping@newburyport.k12.ma.us>
To: "Laura Dietz" <lhdietz@gmail.com>; "Rksuper" <rksuper@aol.com>
Cc: <bhopping@verizon.net>; <jeffrey.loeb@comcast.net>; <jloeb@richmaylaw.com>; <hugh@oflynn.org>; <normshep@aol.com>; <edtraverso@verizon.net>; <fseltenr@ipswichschools.org>; <seangresh@gmail.com>
Sent: Wednesday, August 11, 2010 9:33 AM
Subject: RE: Signed engagement letter Steven Foster

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To: Rksuper
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ISC 000662

8/11/2010

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Laura
978.857.3785 (mobile)

Fran Seltnerich

From: "EDMUND TRAVERSO" <edtraverso@verizon.net>
To: "Laura Dietz" <lhdietz@gmail.com>; "Rksuper" <rksuper@aol.com>
Cc: <bhopping@verizon.net>; <bhopping@newburyport.k12.ma.us>; <jeffrey.loeb@comcast.net>; <jloeb@richmaylaw.com>; <hugh@oflynn.org>; <normshep@aol.com>; <fseltenr@ipswichschools.org>; <seangresh@gmail.com>
Sent: Wednesday, August 11, 2010 9:14 AM
Subject: Re: Signed engagement letter Steven Foster
Hello all-

Laura's point is well made. Why do we only distrust the appraisal that is in the favor of the kids and not the one that is not?

Regards,

EdT

From: Laura Dietz <lhdietz@gmail.com>
To: Rksuper <rksuper@aol.com>
Cc: bhopping@verizon.net; bhopping@newburyport.k12.ma.us; jeffrey.loeb@comcast.net; jloeb@richmaylaw.com; hugh@oflynn.org; normshep@aol.com; edtraverso@verizon.net; fseltenr@ipswichschools.org; seangresh@gmail.com
Sent: Wed, August 11, 2010 8:24:20 AM
Subject: Re: Signed engagement letter Steven Foster

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--
Laura
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ISC 000666

8/11/2010

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

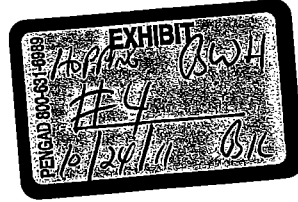
ALEXANDER B.C. MULHOLLAND, JR,
et al.,

Plaintiffs,

v.

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

Defendants



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

The Ipswich School Committee hereby admits, denies and states in response to plaintiffs'

Requests for Admissions as follows:

1. A number of private individuals, among them Roger Payne and William Payne, a/k/a William Paine, and their successors, were granted, both by the Town of Ipswich and by other private individuals, land for the benefit of the Ipswich Public Schools, all as evidenced by the minutes of the Ipswich Town Meeting of November 14, 1650, the minutes of the Ipswich Town Meeting of January 26, 1652, the Will of William Payne who died in 1660, and the minutes of the Ipswich Town Meeting of January 12, 1756.

RESPONSE 1

Admitted in part and denied in part. The minutes of the Ipswich Town Meeting of January 26, 1652, indicate that at least one of the individuals, Mayor Denison, may have been appointed in his capacity as a town official. Moreover, those same minutes indicate that the referenced citizens comprised a committee appointed by Town Meeting, thereby constituting municipal representatives and appointees.

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

RESPONSE 2

Admitted.

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

RESPONSE 3

Admitted.

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

RESPONSE 4

Admitted.

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

RESPONSE 5

Admitted.

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

RESPONSE 6

Admitted.

7. The Will of William Payne makes clear that the great thing in the testator's mind, his dominant intent, was to support the Ipswich Public Schools.

RESPONSE 7

Admitted that supporting the Ipswich Public Schools through the continued ownership of Little Neck was his dominant intent; otherwise denied.

8. The relief sought by this complaint for deviation is wholly consistent with that intent.

RESPONSE 8

Denied.

9. The requirement of the testator that Little Neck not be sold is subordinate to the predominant charitable end which William Payne had in mind at the time he prepared his Will.

RESPONSE 9

Denied in the context of this case.

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

RESPONSE 10

Admitted that the Town Meeting so voted in part.

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

RESPONSE 11

Admitted.

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

RESPONSE 12

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

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

RESPONSE 13

Admitted.

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

RESPONSE 14

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

15. The Great and General Court left all decision-making in the hands of a committee whose majority was composed of private citizens and not public officials. It named four individuals who were “the present surviving feoffees on the part of the private persons granting lands as afores(ai)d,” and three of the then Selectmen to constitute the committee or feoffees in trust.

RESPONSE 14

Admitted that the Act set forth in Ch. 26 of the Province Laws 1755-56 contained the quoted language and that it left certain, but not “all,” decision-making in the hands of a committee, at least three of the members of which were required to be selectmen. Otherwise denied, as the Great and General Court did not use the term “private citizens” in reference to any of the Feoffees, did not set a limit on the number of Feoffees who were or could be public officials, and did not require that a majority of the Feoffees be “private citizens.” The Act did not characterize the Feoffees as private and it expressly contemplated that in addition to the three selectmen trustees, the so-called private Feoffees could also be (but need not be) elected public servants.

16. The Great and General Court provided that the four private citizens would have the power to appoint the successors to their number, “according to the original intention of their first appointm(en)t”; the remaining three committee members would be the three selectmen most senior in service.

RESPONSE 16

Denied that the Great and General court used the term “private citizens” to the four Feoffees who were at the time the surviving Feoffees on “the part of the private persons granting lands” Otherwise admitted.

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

RESPONSE 17

Admitted.

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

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

RESPONSE 18

Admitted.

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

RESPONSE 19

Admitted.

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

RESPONSE 20

Admitted.

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

RESPONSE 21

Admitted.

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

RESPONSE 22

Admitted.

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

RESPONSE 23

Admitted.

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

RESPONSE 24

Admitted.

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

RESPONSE 25

Admitted.

26. Historically, the cottage owners were tenants at will of the Feoffees and each paid to the Feoffees both rent and an amount equal to the taxes assessed by the Town on both the cottage and the lot on which the cottage was located.

RESPONSE 26

Ipswich objects to this request on the grounds that "historically" is vague and undefined. Subject to this objection, the School Committee denies this request as not all tenants have always paid their rent and taxes, and some tenants have signed leases.

27. The rent and taxes were paid every six months.

RESPONSE 27

Denied. See Objection and response to Response 26.

28. Prior to 2006, the Feoffees raised the rent from time to time and the tenants paid the increased rent.

RESPONSE 28

Admitted in part and denied in part. The School Committee admits that the Feoffees at least once raised the rent prior to 2006, but denies that all tenants paid the increased rent.

29. Beginning in 2006, some tenants refused to pay the rent charged by the Feoffees.

RESPONSE 29

Admitted that as of 2006, some tenants refused to pay rent charged by the Feoffees. The School Committee cannot neither admit nor deny whether this was the first time that some tenants refused to pay the rent charged by the Feoffees.

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

RESPONSE 30

Admitted.

31. The limit of twenty-four year-round cottages was based on wastewater discharge concerns at Little Neck.

RESPONSE 31

Admitted that wastewater concerns were one reason for limiting year-round use, but denied that this was the sole basis.

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

RESPONSE 32

Admitted.

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

RESPONSE 33

Admitted.

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

RESPONSE 34

Admitted.

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

RESPONSE 35

Admitted.

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

and the Groundwater Permitting Program Regulations.”

RESPONSE 36

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

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

RESPONSE 37

Admitted.

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

RESPONSE 38

Admitted.

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

RESPONSE 39

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

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

RESPONSE 40

Admitted.

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

RESPONSE 41

Admitted.

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

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

RESPONSE 42

Admitted.

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

RESPONSE 43

Admitted.

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

RESPONSE 44

Admitted.

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

RESPONSE 45

Admitted.

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

RESPONSE 46

Admitted.

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

RESPONSE 47

Admitted.

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

RESPONSE 48

Admitted.

49. At or about the same time the Feoffees sought instructions for borrowing, the Feoffees began discussions with the tenants' legal representative about the terms of a lease. Discussions failed to bring agreement. In 2006, the Feoffees offered a lease to each cottage owner at an annual rental of \$9,700 for a seasonal use cottage and \$10,800 for a year-round use cottage.

RESPONSE 49

The School Committee can neither admit nor deny without conducting discovery the allegations of the first sentence as to the timing of the discussions. Admitted that at some point the Feoffees' discussed with a lawyer for some or all of the tenants the terms of a lease. Denied that the discussions failed to bring agreement as to the terms of a lease, as at least some such agreement appears to have been reached. Admitted as to the last sentence of Request 48.

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

RESPONSE 50

Admitted.

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

RESPONSE 51

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

2006.

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

RESPONSE 52

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

53. Those tenants act by and through an unincorporated association called the Little Neck Legal Action Committee ("LNLA").

RESPONSE 53

The School Committee can neither admit nor deny the allegations of this paragraph without conducting discovery.

54. In that action, the plaintiffs alleged, among others, that the Feoffees had unlawfully raised rents and collected real estate taxes and wastewater assessments from the cottage owners. The plaintiffs in that action also alleged that their status was something other than tenants at will and that they had equitable rights to remain on Little Neck or, in the alternative, that the Feoffees, in the event they evicted the cottage owners, were obligated to pay the cottage owners the fair market value of the cottages. The plaintiffs' counts included claims for breach of the covenant of quiet enjoyment, breach of the covenant of good faith and fair dealing, violation of civil rights, violation of 8.1. c. 93A, §§ 2 and 9, unjust enrichment, and recovery of past rent, real estate taxes and wastewater assessments.

RESPONSE 54

Admitted in part and denied in part. The School Committee admits that the claims recited above were asserted but only against the non-selectmen Feoffees. The complaint stated that claims were asserted against the selectmen Feoffees, only as necessary parties and for purposes of obtaining declaratory relief.

55. Trust assets belonging to the Feoffees are at risk in the event of a judgment against the Feoffees in the Superior Court action.

RESPONSE 55

Denied.

56. The Feoffees filed an answer denying all alleged wrongdoing and a counterclaim.

RESPONSE 56

Admitted.

57. The following are allegations set forth in the Feoffees counterclaim, which allegations have been denied by the defendants-in-counterclaim in the Superior Court action and which allegations are presently disputed:

a. After the Department of Environmental Protection notified the Feoffees of wastewater issues, the Feoffees identified a centralized wastewater facility that could be constructed for all of Little Neck, which would save the Little Neck cottage-owners the expense of constructing their own systems.

b. The tenants, directly and through their agents and association, offered to the Feoffees to pay the costs of the installation of a centralized wastewater collection system, which would serve in lieu of the individual tight tanks and disposal systems.

c. In reliance on the tenants' offer, the Feoffees constructed a centralized wastewater collection system at a cost of millions of dollars. Although a number of tenants made some payments to the Feoffees on account of the wastewater system, millions of dollars remain due and owing to the Feoffees for the costs of the construction of this wastewater facility.

d. The Feoffees are and at all relevant times have been under a fiduciary obligation to maximize revenues available to the School Committee through the collection of rents and other charges at fair market value from the occupants of the Little Neck property.

RESPONSE 57

Objection. This request does not specify by whom the allegations are presently alleged to be disputed. Without waiving this objection, the School Committee admits that each of the factual assertions in (a) through (d) above was asserted in the Feoffees' counterclaim and denied in the response to the counterclaim, but denies that the allegations in (a), (b), (c), and (d) are genuinely in dispute at the present time.

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

RESPONSE 58

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

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

RESPONSE 59

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

60. The Feoffees will only be entitled to collect the monies in the escrow account if they are successful in the Superior Court action.

RESPONSE 60

Denied.

61. The total annual rent and use and occupancy now charged by the Feoffees is \$1,075,536.

RESPONSE 61

Denied. While the Feoffees are presently collecting, due to the Settlement Agreement, only a total of \$1,075,536 per year, they intend to charge approximately \$2.5 million in additional use and occupancy charges for the period from July 1, 2007 through October 31, 2011 if the Court fails to approve the proposed sale of Little Neck.

62. All cottage owners are responsible for paying, in addition to rent or use and occupancy, real estate taxes on their cottages and the lots on which their cottages are located.

RESPONSE 62

Admitted.

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

RESPONSE 63

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

64. Each cottage owner also pays significant costs for the collection and removal of the effluent from Little Neck.

RESPONSE 64

Ipswich objects to this request on the grounds that “significant” is vague and undefined. Without waiving this objection, Ipswich denies that each cottage owner pays significant costs for the collection and removal of effluent.

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

RESPONSE 65

Admitted.

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

RESPONSE 66

Admitted.

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

RESPONSE 67

Admitted.

68. Those settlement discussions ended unsuccessfully in 2008.

RESPONSE 68

The School Committee can neither admit nor deny this request without conducting further discovery as there is evidence that some agreement was reached concerning terms for a new lease.

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

RESPONSE 69

Admitted.

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

RESPONSE 70

Admitted.

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

RESPONSE 71

Admitted.

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

RESPONSE 72

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

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

RESPONSE 73

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

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

RESPONSE 74

Admitted.

75. The Feoffees and LNLAC began negotiations for a mutually acceptable purchase and sale agreement. Those negotiations came to a halt when in March, 2009, LNLAC advised the Feoffees that, due to the general downturn in the economy and the scarcity of credit for the proposed purchase, LNLAC was unable to obtain financing for the purchase.

RESPONSE 75

The School Committee can neither admit nor deny without conducting discovery.

76. The Feoffees and LNLAC discussed the possibility of structuring the sale of Little

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

RESPONSE 76

Admitted.

77. Such an ANR plan is permitted by reason of the 167 cottages having pre-existed the adoption of the subdivision control law by the Town of Ipswich.

RESPONSE 77

The School Committee can neither admit nor deny this allegation without discovery.

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

RESPONSE 78

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

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

RESPONSE 79

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

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

RESPONSE 80

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

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

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

RESPONSE 81

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

82. The Branagan decision doomed the ANR sale methodology.

RESPONSE 82

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

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

RESPONSE 83

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

84. G.L. c. 183A, §§ 1 et seq. require that a condominium consist of land and buildings; the statute does not permit a so-called dirt (land only) condominium.

RESPONSE 84

Denied.

85. The condominium approach to sale required either that the Feoffees convey the land to the cottage owners who would then create the condominium or that the cottage owners convey their cottages to the Feoffees who would then create the condominium.

RESPONSE 85

The School Committee can neither admit nor deny this request without conducting discovery.

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

RESPONSE 86

Admitted.

87. The Settlement Agreement, which contemplated that not all cottage owners might be willing and able to purchase units, contained the following provisions:

- a. Cottage owners convey their cottages, in escrow, to the Feoffees so as to permit the Feoffees to create a condominium to be owned by the cottage owners who participate by purchasing condominium units;
- b. A condominium unit will consist of a cottage. Each unit owner will enjoy exclusive common area in the lot on which his or her cottage sits and will own an undivided interest in all common areas, permitting the owner to enjoy existing amenities (beach, dock, community building, etc.); “
- c. Total purchase price of 167 Units: \$29,150,000;
- d. Condominium and sale subject to Probate Court approval sought by way of complaint for deviation;
- e. Feoffees not obligated to proceed unless \$26,500,000 of purchase and sale agreements (“P&S”), with deposits, received on or before March 5, 2010;
- f. All buyers treated equally, whether lessees or non-lessees;
- g. All non-buyers treated equally, whether lessees or non-lessees;
- h. Seller financing available to buyers: five-year, interest only note secured by a first mortgage, six percent per annum interest rate, fixed, up to 90% of purchase price;
- l. Buyers acquire Little Neck “as is”;
- j. Dismissal of Superior Court action upon recording of Condominium Master Deed, with civil action to be stayed pending same;
- k. Escrowed funds may be used for P&S deposits by those buying and for use and occupancy arrears by those not buying;
- l. Lease option for non-lessees electing not to buy;
- m. Interest on escrow account to be paid to the Ipswich School Committee following recording of the Master Deed, denominated as gift of LNLAC;
- n. Balance of purchase price note, to cover non-buyers’ share of \$29,150,000, from Condominium trustees: six percent per annum interest rate, fixed; five-year maturity; twenty year amortization.

RESPONSE 87

Denied. This request fails fairly to summarize all of the material terms of the Settlement Agreement.

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

RESPONSE 88

Admitted.

89. On January 7, 2010, the Feoffees and LNLAC appeared before the Ipswich School Committee in an open session held in the Ipswich High School auditorium and presented the terms of the Settlement Agreement.

RESPONSE 89

Admitted that the meeting occurred, but denied that all of the material terms of the Settlement Agreement were presented or adequately explained.

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

RESPONSE 90

Admitted.

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

RESPONSE 91

Admitted.

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

RESPONSE 92

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

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

RESPONSE 93

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

94. The Feoffees have met and exceeded the financial recommendations of the School Committee's Ad Hoc Committee.

RESPONSE 94

Denied.

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

RESPONSE 95

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

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

RESPONSE 96

Admitted.

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

RESPONSE 97

Admitted.

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

RESPONSE 98

Admitted.

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

RESPONSE 99

Admitted.

100. The creation of a Condominium and the Feoffees' sales of Condominium Units will allow the Feoffees, by prudent investment of the proceeds of the sale of the real estate, to obtain a fair rate of return on their assets.

RESPONSE 100

Denied.

101. The creation of a Condominium and the Feoffees' sales of Condominium Units will free the Feoffees from the cost of repairs and improvements to the land, resulting in increased net income to the beneficiary.

RESPONSE 101

Admitted that costs for repair and improvement of the land will cease following a sale, but denied that there will be increased net income to the beneficiary compared to a no-sale scenario.

102. The creation of a Condominium and the Feoffees' sales of Condominium Units will provide a means to end the stalemate now extant over the rent to be charged and paid by the residents of Little Neck, many of whom now contend that they cannot afford to pay the rent prescribed by the lease.

RESPONSE 102

Admitted that the proposed sale would resolve the dispute between the Feoffees' and the tenants, but denied that the tenants' refusal to pay fair market rent constitutes a "stalemate." Further denied that many tenants cannot afford to pay the rent prescribed by the leases.

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

RESPONSE 103

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

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

RESPONSE 104

Admitted.

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

RESPONSE 105

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

106. Mr. Monahan has recently completed his appraisal of Little Neck and concluded that, as of September 11, 2010, the fair market value of Little Neck, is \$25,400,000. Attached hereto as Exhibit 10 is a true and accurate copy of Mr. Monahan's appraisal.

RESPONSE 106

Admitted that Exhibit 10 is a true and accurate copy of Mr. Monahan's appraisal and admitted that \$25,400,000.00 represents what he says is his opinion of the fair market value under a certain set of assumptions, but denied that Mr. Monahan has ever in fact determined in accordance with appropriate valuation methodology the fair market value of Little Neck.

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

RESPONSE 107

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

108. That value assumes a sale of Little Neck to a profit-minded third party investor who would convert the land to a condominium ownership and resell land interests to both current tenants and, presumably, some new buyers.

RESPONSE 108

The School Committee admits that Mr. Monahan purported to calculate the value to a profit-minded third party investor who would convert the land to a condominium ownership and resell land interests to both current tenants and, presumably, some new buyers, but denies that he in fact properly calculated such a value.

109. That value assumes that the highest and best use of the Property is as a site for a one hundred sixty-seven unit condominium.

RESPONSE 109

Admitted that Mr. Monahan's opinion of value contains that assumption.

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

RESPONSE 110

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

111. According to the appraisal of Little Neck commissioned by the School Committee and performed by Stephen Foster of Lincoln Financial Company ("Lincoln"), the highest and best use of the Property is as a site for a one hundred sixty-seven unit condominium.

RESPONSE 111

Denied. That appraisal stated that the highest and best use of the Property is the current use as a 167-unit cottage community.

112. Mr. Monahan also determined the value of Little Neck if the land were vacant: \$7,220,000. The value of the land if vacant assumes a 24-lot residential subdivision consistent with present zoning requirements.

RESPONSE 112

Admitted that Mr. Monahan's report purported to value on a hypothetical basis what Little Neck would be worth if it were vacant and did not have grandfathered preexisting structures on it. Otherwise denied.

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

RESPONSE 113

Admitted.

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

RESPONSE 114

Admitted.

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

RESPONSE 115

Admitted.

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

RESPONSE 116

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

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

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

RESPONSE 117

Admitted.

118. The Feoffees have not had sufficient monies to make any distributions to the beneficiary since fiscal year 2006.

RESPONSE 118

Denied.

119. Monies that otherwise would have been distributed to the beneficiary were needed to pay the substantial interest expense on the wastewater system loan and the substantial legal expenses incurred by the Feoffees, primarily in the defense of the Superior Court civil action.

RESPONSE 119

Denied.

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

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

RESPONSE 120

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

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

RESPONSE 121

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

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

RESPONSE 122

Admitted.

123. G.1. c. 59, §2B creates a legal fiction which is advantageous to the Town of

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

RESPONSE 123

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

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

RESPONSE 124

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

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

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

RESPONSE 125

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

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

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

RESPONSE 126

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

denied.

127. Among the relief requested by the Feoffees is the refinance of the existing IFS debt by means of a credit facility from Cambridge Savings Bank ("CSB"). The interest saving is obvious. The IFS note now bears interest at an annual rate of 6.75%. The CSB loan will be at 5.5% for three years. Based on a \$6,000,000 balance, the annual interest savings is \$75,000.

RESPONSE 127

Admitted that the Feoffees seek to refinance the debt and that the refinancing would lower the interest rate from 6.75% to 5.5%. Denied that the annual interest savings is \$75,000, as the present note is not interest only, while the refinancing is, and the new note is only for three years. Denied that the interest saving is "obvious" or that there is any true savings, in the context of a sale that would cost the School Committee many times as much in lost rent revenue and millions of dollars in past-due use and occupancy charges.

128. The CSB loan will be interest only for the first year, resulting in monthly payments of \$27,500. That payment compares to the \$50,145.65 monthly payment to IFS effective April 7, 2011. The cash flow savings is over \$22,500 per month, over \$270,000 for a year.

RESPONSE 128

Denied that one can properly compare an interest only payment of \$27,500 per month to a payment of interest and principal of \$50,145.65. Admitted that making interest only payments rather than paying down the principal would result in a cash flow savings of roughly the amount alleged.

129. The refinance to which CSB has committed satisfies the recommendation of the School Committee's Ad Hoc Committee for such a refinance.

RESPONSE 129

Denied.

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

RESPONSE 130

Admitted.

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

RESPONSE 131

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

132. CSB has offered to provide the professional third party investment advice recommended by the Ad Hoc Committee.

RESPONSE 132

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

133. The Feoffees and their tenants are not in agreement as to the issue of fair market rent for the Little Neck cottage lots.

RESPONSE 133

Denied, as the recent evaluation by the tenants' valuation expert, Petersen LaChance, agreed with the Feoffees that \$9,700 and \$10,800 represent fair market value rents for the seasonal and year-round uses, respectively.

134. Four appraisals of Little Neck have recently been completed.

RESPONSE 134

Admitted that four appraisals of Little Neck have been completed but denied that they were all completed "recently."

135. Each appraiser's opinion of market value of Little Neck, as defined by Lincoln, is as follows:

- a. LandVest (Feoffees) \$25,400,000
- b. Petersen/LaChance(Tenants) \$26,700,000
- c. Colliers, Meredith & Green (FinCom) \$26,400,000
- d. Lincoln Properties (School Committee) \$20,500,000

RESPONSE 135

Denied.

136. The opinion of market value set forth by each appraiser includes the value of the wastewater system.

RESPONSE 136

Admitted that some of the opinions of value of the appraisers take into account the benefit to the cottage-owners of the existing wastewater system; otherwise denied.

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

RESPONSE 137

Admitted.

138. There is no reason to assume that in a continued rental scenario all tenants would elect to rent on a year-round basis.

RESPONSE 138

Objection: This request for admission assumes that the choice as to whether properties may be leased for year-round versus seasonal use rests with the tenants, when in fact it is up to the Feoffees to decide. To the extent a response is required, the request is denied.

139. At no time has Little Neck ever been owned by the Town of Ipswich.

RESPONSE 139

The School Committee can neither admit nor deny this request without further discovery.

140. At all times Little Neck has been privately owned by persons who, in the majority, have been privately selected.

RESPONSE 140

Denied.

141. The Feoffees are administering private land owned by them in trust, not public land owned by the town.

RESPONSE 141

Admitted that Little Neck is owned in trust for the benefit of the Ipswich schools; otherwise denied.

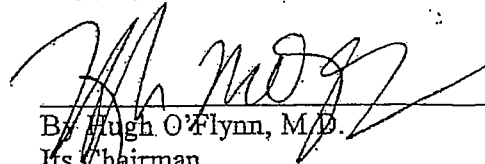
142. The cost to remedy damage due to erosion of land at Little Neck is approximately \$900,000.

RESPONSE 142

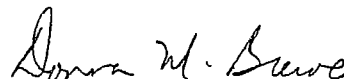
The School Committee can neither admit nor deny without conducting discovery.

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

IPSWICH SCHOOL COMMITTEE,

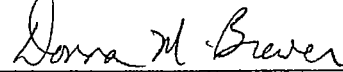

By Hugh O'Flynn, M.D.
Its Chairman

AS TO OBJECTIONS,


Richard C. Allen, BBO # 015720
Stephen M. Perry, BBO # 395955
Donna M. Brewer, BBO #545254
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
Phone: 617-426-5900
allen@casneredwards.com
perry@casneredwards.com
brewer@casneredwards.com

CERTIFICATE OF SERVICE

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



Donna M. Brewer

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., et al.)
Plaintiffs,)
v.)
ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
et al.)
Defendants.)

DEPOSITION SUBPOENA
AND
SUBPOENA DUCES TECUM



To: Barry Hopping
10 High Street
Ipswich, MA 01938

GREETINGS.

YOU ARE HEREBY COMMANDED, in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rules 26, 30, and 34 of the Massachusetts Rules of Civil Procedure, to appear and testify on behalf of the Plaintiffs, Feoffees of the Grammar School in the Town of Ipswich, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths, commencing at 10:00 a.m. on October 24, 2011, at the office of William H. Sheehan III, 8 Essex Center Drive, Peabody, MA and there to testify as to your knowledge at the taking of the deposition in the above-entitled action.

And you are further required to bring with you the documents listed on Exhibit A hereto.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Dated at: Peabody, Massachusetts, this 22nd day of September, 2011.

Attorney for The Feoffees of the Grammar School in the Town
of Ipswich
8 Essex Center Drive
Address
Peabody MA
City or Town State

Notary Public
My Commission Expires:

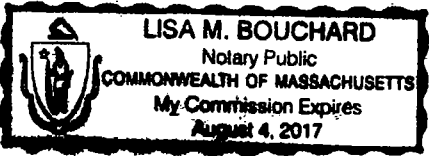


Exhibit A

1. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the Town of Ipswich Finance Committee or any member(s) thereof.

2. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the Town of Ipswich Board of Selectmen or any member(s) thereof.

3. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the defendant Ipswich School Committee or any member(s) thereof.

4. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the defendant Attorney General of the Commonwealth of Massachusetts.

5. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the Town of Ipswich Tri-Board or any member(s) thereof.

6. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the Town of Ipswich Committee on the Feoffees or any member(s) thereof.

7. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to the Ad Hoc Committee created to evaluate the sale that is at issue in this action or any member(s) thereof.

8. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to any other department or board of the Town of Ipswich or any member(s) thereof.

9. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated by you to any department, agency, division, board or commission of the Commonwealth of Massachusetts or the United States of America.

10. All documents that relate, in whole or in part, to the Feoffees, this action, or Little Neck, authored by, generated by, delivered by, or otherwise communicated to you by any board, committee commission, agency, department, division or member(s) thereof identified in paragraphs 1-9 hereof.

11. All documents supporting the claim of the Ipswich School Committee and the deponent that the privately-appointed Feoffees have conducted Trust business in private, without transparency and public accountability and, if you are claiming that doing so was improper, all documents supporting that allegation.

12. All documents supporting the claim of the Ipswich School Committee and the deponent that the Feoffees have failed to fulfill reasonable expectations and are unfit to continue to serve as Feoffees.

13. If the deponent is claiming that the Feoffees acted improperly as to the design, construction, implementation or maintenance of the Little Neck common wastewater system, all documents supporting that claim.

14. All documents supporting the claim of the Ipswich School Committee and the deponent that the governance and administrative structure of the Trust is inadequate and there is good cause to revise it.

15. All documents authored by or in behalf of the deponent and communicated to the Feoffees wherein the deponent complained of, or criticized, the conduct of the Feoffees.

16. All documents relative to the Ipswich School Committee's efforts to reorganize or reconstitute the Feoffees including all draft trusts and notes related thereto.

17. All notes of any conversations or meetings that relate, in whole or in part, to the Feoffees, this action, or Little Neck, in which you participated or for which you were present.

18. All records relative to distributions made to the Ipswich Public Schools by the Feoffees.

19. All documents that relate, in whole or in part, to opinions of value of Little Neck, the propriety or lack thereof of the proposed sale of Little Neck, or the propriety or lack thereof of the Feoffees creating an endowment fund with proceeds from the proposed sale of Little Neck.

20. All documents that are not otherwise responsive to the requests herein that relate, in whole or in part, to the Feoffees, Little Neck or this action.

21. Copies of all documents supporting the School Committee's response to admission 31 of the Feoffees' first request for admissions from the School Committee in this action (the "Admissions")

22. Copies of all documents supporting the School Committee's response to admission 60 of the Admissions.

23. Copies of all documents supporting the School Committee's response to admission 84 of the Admissions.

24. Copies of all documents setting forth the “appropriate valuation methodology” referenced in the School Committee’s response to admission 106 of the Admissions.

25. Copies of all documents supporting the School Committee’s response to admission 135 of the Admissions.

26. Copies of all documents supporting the School Committee’s response to admission 136 of the Admissions