

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT
NO. ES09E0094QC

_____)
 ALEXANDER B.C. MULHOLLAND, JR,)
 et als., as they are THE FEOFFEES)
 OF THE GRAMMAR SCHOOL IN THE)
 TOWN OF IPSWICH)
)
 Plaintiffs,)
)
 v.)
)
 ATTORNEY GENERAL of the)
 Commonwealth of Massachusetts;)
 IPSWICH SCHOOL COMMITTEE;)
 and RICHARD KORB, as he is)
 Superintendent of Schools in the)
 Town of Ipswich)
)
 Defendants)
 _____)

ANSWER AND COUNTERCLAIM OF IPSWICH SCHOOL COMMITTEE
AND RICHARD KORB, IPSWICH SUPERINTENDENT OF SCHOOLS

NOW COME the Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB as Ipswich Superintendent of Schools (these Defendants are referred to herein collectively as the "School Defendants") and answer the Plaintiffs' First Amended Complaint dated October 6, 2009 (herein, the "Complaint") as follows:

1. The allegations set forth in Paragraph 1 of the Complaint are admitted.
2. The allegations set forth in Paragraph 2 of the Complaint are admitted.
3. The allegations set forth in Paragraph 3 of the Complaint are admitted.
4. The allegations set forth in Paragraph 4 of the Complaint are admitted.
5. The School Defendants state that Paragraph 5 sets forth legal conclusions

to which no response is required.

6. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 6 of the Complaint.

7. The allegations in the first sentence of Paragraph 7 of the Complaint are admitted. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 7 of the Complaint..

8. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 8 of the Complaint.

9. The School Defendants state that Chapter 26 of the Province Laws of 1755-56 speaks for itself. The School Defendants state that the remainder of Paragraph 9 sets forth legal conclusions to which no response is required.

10. The School Defendants state that Paragraph 10 sets forth a legal conclusion to which no response is required.

11. The School Defendants state that Paragraph 11 sets forth legal conclusions to which no response is required.

12. The School Defendants state that Chapter 26 of the Province Laws of 1755-56 speaks for itself.

13. The School Defendants state that Chapter 5 of the Province Laws of 1765-66 speaks for itself.

14. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 14 of the Complaint..

15. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 15 of the Complaint.

16. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 16 of the Complaint.

17. The School Defendants state that Paragraph 17 sets forth a legal conclusion to which no response is required.

18. The allegations set forth in Paragraph 18 of the Complaint are admitted.

19. The allegations set forth in Paragraph 19 of the Complaint are admitted.

20. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 20 of the Complaint.

21. The allegations set forth in Paragraph 21 of the Complaint are admitted.

22. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 22 of the Complaint.

23. The School Defendants admit that the Plaintiffs proposed a rent increase at the time and in the amounts described in Paragraph 23 of the Complaint and that they

offered residents a lease as described. The School Defendants state that the remainder of Paragraph 23 sets forth legal conclusions to which no response is required.

24. The School Defendants admit that the Stipulation and Request for Instructions that is Exhibit E of the Complaint was entered into and that the Court Order that is Exhibit F was obtained. The School Defendants state that Exhibit E and Exhibit F speak for themselves, and that the remainder of Paragraph 24 sets forth legal conclusions to which no response is required

25. The School Defendants admit that the Plaintiffs have informed them that thirty-three Little Neck residents have signed leases as set forth in Paragraph 25 of the Complaint.

26. The School Defendants admit that some Little Neck residents have not signed the proposed lease, and that the civil action identified in Paragraph 26 is pending. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 26 of the Complaint.

27. The School Defendants admit that a stipulation as referenced in Paragraph 27 was filed in the Superior Court Action. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining of Paragraph 27 of the Complaint.

28. The School Defendants admit that the Ipswich Public Schools have not received a distribution from the Plaintiffs during the last three years. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the remaining allegations of Paragraph 28 of the Complaint.

29. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 29 of the Complaint.

30. The School Defendants admit that the Plaintiffs have discussed with them the possibility, subject to Court approval, of selling all or a portion of Little Neck through various means of sale. The School Defendants state that the remainder of Paragraph 30 sets forth legal conclusions to which no response is required.

31. The School Defendants deny that they have a present position as to whether a sale would be appropriate.

32. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 32 of the Complaint.

33. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 33 of the Complaint.

34. The School Defendants state that Paragraph 34 sets forth legal conclusions to which no response is required.

35. The School Defendants state that Paragraph 35 sets forth legal conclusions to which no response is required.

36. The School Defendants state that Paragraph 36 sets forth legal conclusions to which no response is required.

37. The School Defendants state that Paragraph 37 sets forth legal conclusions to which no response is required.

38. The School Defendants state that Paragraph 38 sets forth legal conclusions to which no response is required.

39. The School Defendants state that Paragraph 39 sets forth legal conclusions to which no response is required.

40. The School Defendants state that Paragraph 40 sets forth legal conclusions to which no response is required.

41. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 41 of the Complaint.

42. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 42 of the Complaint.

43. The School Defendants state that Paragraph 43 sets forth legal conclusions to which no response is required.

44. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 44 of the Complaint.

45. The School Defendants are without information or knowledge sufficient to form a belief as to the accuracy of the allegations set forth in Paragraph 45 of the Complaint.

FURTHER ANSWER

The Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB, Ipswich Superintendent of Schools, further answer as follows:

1. The Plaintiff's First Amended Complaint does not set forth a specific sale proposal.
2. The School Defendants have not been presented with a specific sale proposal.
3. In the absence of a specific sale proposal acceptable to the School Defendants as the institutional beneficiary, the Plaintiffs have not satisfied conditions precedent to receipt of the relief requested in their Complaint and have not stated a claim upon which relief can be granted.

REQUESTED DISPOSITION OF PLAINTIFFS' REQUESTS FOR RELIEF

WHEREFORE, the Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB, Ipswich Superintendent of Schools, respectfully request that the Court:

1. Dismiss the Plaintiffs' First Amended Complaint, which does not include a specific sale proposal acceptable to the School Defendants as the institutional beneficiary, with prejudice.
2. Grant the School Defendants their costs and such other and further relief as the Court may deem just and proper.

COUNTERCLAIM

1. This Counterclaim is brought against the Plaintiff Feoffees pursuant to the Court's jurisdiction under G.L. c. 215, §6 and G.L. c. 203, §12 over matters of equity with respect to charitable property and funds.

2. The Defendants Ipswich School Committee and Ipswich Superintendent of Schools (the "School Defendants"), as Counterclaimants, seek an order modernizing the governance and administrative structure for carrying out the Trust that was created by William Paine to benefit the Ipswich Public Schools and that is referenced in the Plaintiffs' Complaint.

3. As referenced in the Plaintiffs' First Amended Complaint, the Trust is presently governed by seven Feoffees, four of whom were appointed privately by their predecessors (herein, the "Privately-appointed Feoffees") and three of whom serve by virtue of being members of the Ipswich Board of Selectmen (herein, the "Selectmen Feoffees").

4. Under the existing governance structure for the Trust, the four Privately-appointed Feoffees serve unlimited terms and select and appoint their successors privately. There are no bylaws and no other comprehensive governance documents or rules.

5. The School Defendants submit that due to evolved circumstances over the years and the Privately-appointed Feoffees' failure to fulfill reasonable expectations, a comprehensive revised governance and administrative structure is in the best interest of the charitable purpose of the Trust.

6. The current governance and administrative structure of the Trust is inadequate and there is good cause to revise it.

7. For many years, the rents charged by the Feoffees to Little Neck residents have been less than fair market levels, resulting in distributions in support of the Ipswich Public Schools that were less than fair market rents would have provided.

8. In recent years, disputes with Little Neck residents regarding rents and charges and with contractors involved with the installation of a sewer system have resulted in a total absence of distributions in support of the Ipswich Public Schools.

9. The Privately-appointed Feoffees have conducted Trust business, both directly and through a Limited Liability Company (LLC), in private, without transparency and public accountability.

10. The Privately-appointed Feoffees have failed to make all necessary and appropriate governmental filings in a timely manner.

11. A modernized Trust governance and administrative structure has been the subject of several years of careful consideration, analysis, and review by the School Defendants, by other Town of Ipswich governmental bodies, and by Ipswich residents. The Trust governance and administrative structure has been the subject of numerous public meetings and public hearings of the School Committee and its subcommittees, the Ipswich Board of Selectmen, the Ipswich Finance Committee, joint Tri-Board meetings of these three governmental bodies, a Town Committee on the Feoffees, and the two most recent sessions of the Ipswich Town Meeting. The Trust governance and administrative structure has been the subject of numerous meetings and discussions with the Privately-appointed Feoffees and counsel for the Feoffees.

12. The governance and administrative structure proposed by the School Defendants is summarized in Exhibit A of this Counterclaim, and a proposed Order of this Court to implement this governance and administrative structure is set forth in Exhibit B of this Counterclaim. Under the proposed Trust governance and administrative structure:

- a. eligibility criteria for service as a Feoffee are specified;
- b. effective upon the effective date of the Trust Administration Order, all seven Feoffees are to be persons appointed for three year terms by governmental bodies of the Town of Ipswich: two by the School Committee; two by the Board of Selectmen; two by the Finance Committee; and one by the Town Meeting.
- c. powers, responsibilities and requirements with respect to the Little Neck property that is the subject of the Trust are set forth;
- d. powers, responsibilities and requirements with respect to funds of the Trust are set forth; and
- e. other governance and administrative standards and procedures are set forth.

13. The School Defendants submit that the proposed Trust governance and administrative structure would provide necessary and appropriate clarification and guidance for carrying out the charitable purpose of the Trust. In addition to the Ipswich School Committee and the Ipswich Superintendent of Schools, the proposed governance and administrative structure is supported by the Ipswich Board of Selectmen (including those serving as Selectmen Feoffees), the Ipswich Finance Committee, representatives of the Town Committee on the Feoffees, and votes at the two most recent Ipswich Town Meetings.

REQUESTED RELIEF WITH RESPECT TO DEFENDANTS' COUNTERCLAIM

WHEREFORE, the Defendants IPSWICH SCHOOL COMMITTEE and RICHARD KORB respectfully request that the Court:

1. Pursuant to the Court's equitable powers with respect to estates, charitable trusts, and charitable funds, approve and order for the Trust created by William Paine with respect to the land known as Little Neck to benefit the Ipswich Public Schools the revised governance and administrative structure, including replacement of the existing Feoffees with Feoffees appointed by Ipswich governmental bodies, that is summarized in Exhibit A of this Counterclaim and set forth in the proposed Trust Administration Order attached as Exhibit B of this Counterclaim;
2. Order full distribution to the Ipswich Public Schools from the funds of the Trust of all short-falls resulting from the Feoffees' failure to provide distributions to the Ipswich Public Schools commensurate with fair market rents;
3. Grant the School Defendants their attorneys fees and costs; and
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

IPSWICH SCHOOL COMMITTEE AND
RICHARD KORB, SUPERINTENDENT

By their attorney:



Richard C. Allen, BBO # 015720
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Boston, MA 02110
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Dated: December 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Answer and Counterclaim to be served by first class mail upon counsel for the Plaintiffs and upon the Attorney General.

A handwritten signature in black ink that reads "Richard C. Allen". The signature is written in a cursive style with a horizontal line underneath it.

Richard C. Allen

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