

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

---

TRUST ADMINISTRATION ORDER

Pursuant to the Court's equitable powers with respect to estates, charitable trusts, and trustees, the Court hereby approves and orders the following revision and amplification of the governance structure and administrative requirements applicable to the Trust created by William Paine respect to the land known as Little Neck:

1. The formal name for the Trust shall be Feoffees of the Grammar School in the Town of Ipswich Trust.
2. The beneficiary of the Trust shall be the Ipswich public schools.
3. In furtherance of the bequest in 1660 by William Paine who established this Trust "to be and remain to the benefit of the said school of Ipswich forever," the Trust purpose is to support the Ipswich public schools by, at least annually, making distributions of the Trust's net income, after reasonable expenses and operational reserves, to the Ipswich Public Schools. The

educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.

4. Trust governance

a. Eligibility to serve as a Feoffee

- i. To be eligible to be appointed as a Feoffee or to continue to serve as a Feoffee, a person's primary residence shall be in Ipswich.
- ii. No person may be a Feoffee while serving as a member of the School Committee, Board of Selectmen or the Town Finance Committee or as Town Manager or Superintendent of Schools.
- iii. No person may be appointed as a Feoffee or continue to serve as a Feoffee who is a resident or home owner on Little Neck if his or her lot is rented from the Trust, nor may a person (referred to here as the "individual") be appointed as a Feoffee or continue to serve as a Feoffee if one of the following is a resident or home owner on Little Neck and his or her lot is rented from the Trust:
  - a. the individual's spouse;
  - b. a parent of the individual or of the individual's spouse;
  - c. a child of the individual and/or of the individual's spouse;
  - d. a sibling of the individual or of the individual's spouse.
- iv. In the appointment of Feoffees, the appointing Authorities (defined below) shall appoint persons who possess the qualities of integrity and sound judgment and who acknowledge at the time of appointment the Feoffees' fiduciary duties and obligations of trusteeship and the purpose of the Trust to benefit the Ipswich public schools. Persons shall be appointed who also possess expertise and skills that will enable the Feoffees collectively to carry out their responsibilities.
- v. No person may be appointed as a Feoffee or continue to serve as a Feoffee who has been convicted of a crime involving dishonesty, false statement, theft, fraud, or moral turpitude.

b. Number and appointment of Feoffees

- i. The Trust shall be administered by a body of Feoffees as follows: (i) two Feoffees appointed by the Ipswich School Committee; (ii) two Feoffees appointed by the Ipswich Board of Selectmen; (iii) two Feoffees appointed by the Ipswich Town Finance Committee; and (iv) one Feoffee appointed by the Ipswich Town Meeting (The School Committee, the Board of Selectmen, the Finance Committee, and the Town Meeting are each referred to below as an “Appointing Authority.”)
- ii. Nothing herein shall prevent a person presently serving as a Private Feoffee (a Feoffee not appointed by a public body) from being appointed as a Feoffee by a public Appointing Authority so long as all eligibility requirements herein are met.

c. Term of service

- i. The term of office for each Feoffee shall be three years, except that to implement staggered terms, the initial term pursuant to this Order shall be two years for one Feoffee appointed by the School Committee, one Feoffee appointed by the Board of Selectmen, and one Feoffee appointed by the Finance Committee. A Feoffee shall hold office until his or her successor is duly appointed, or until he or she sooner resigns, is removed, becomes disqualified, or dies.
- ii. Feoffees may be reappointed, with no limit as to number of terms served.
- iii. Suspension or removal
  - a. A Feoffee appointed by School Committee, Board of Selectmen or Finance Committee may be suspended or removed by his or her Appointing Authority for cause, provided that such Feoffee is given at least seven days written notice of the proposed suspension or removal and the reasons therefor, and an opportunity to be heard at the meeting, and that notice of the proposed suspension or removal is given in the notice of meeting.
  - b. A Feoffee appointed by a Town Meeting may be suspended or removed for cause by a Town Meeting or by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each

body), subject to the same notice and hearing procedure as above.

- c. For purposes of suspension or removal, “cause” is defined as: (i) breach of fiduciary duty; or (ii) failure to carry out his or her duties with reasonable judgment, skill, care or prudence.
  - d. In the case of a Feoffee vacancy, the applicable Appointing Authority may appoint a Feoffee to fill the remainder of the term.
- d. Feoffees shall serve without compensation, but reasonable and necessary trust-related expenses may be paid, such trust-paid expenses to be reported in writing at least quarterly and in detail to the School Committee, the Board of Selectmen and the Finance Committee.
  - e. The Feoffees shall be subject to a conflict of interest policy, approved by the School Committee, that is compliant with the State Public Ethics Statute and good governance standards for governmental bodies and public charities.
  - f. The Feoffees shall meet at least quarterly.
  - g. The Feoffees meeting quorum shall be a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein or required by law, a majority vote of those present is required for action.
  - h. The Feoffees may elect officers from among their number, establish such officers’ responsibilities, and establish committees of Feoffees.
5. In addition to those responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the Little Neck property:
- a. Lease, rent, improve and manage the Trust real estate (sale, if any, shall be subject to School Committee approval and a Court order separate from this Trust Administration Order).
  - b. Establish and collect rents and fees.
  - c. Establish and enforce regulations, including through eviction, with respect to residency on and use of Trust property.
  - d. Pay all proper charges and expenses.

- e. Upon approval by the School Committee, borrow funds and mortgage the real estate and the rent income stream therefrom to the extent necessary for the prudent operation and maintenance of the Trust property.
  - f. Hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of three years, with termination of the arrangement available to the Feoffees for cause; Feoffees may provide that terms are renewable at the Feoffees' discretion).
6. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to the funds of the Trust:
- a. Hold title to and manage the funds of the Trust, with the net proceeds of the sale of Little Neck lots if any to establish a permanent endowment. The amount of said net sale proceeds, after payment, in an amount approved by the School Committee, of debts owed by the Feoffees at the time of this Order or owed at the time of the sale of a lot or lots, and a reasonable expenses and operational reserve agreed to by the School Committee, shall constitute the initial principal or "historic dollar value" of said endowment. The following shall not be distributed: (i) the initial principal; and (ii) the accumulation that is added to principal pursuant to Paragraph (b), below.
  - b. Pursuant to the Trust purpose, make distributions of net investment income and appreciation and net rental income to the School Committee to benefit the public schools, after reasonable expenses and operational reserves and the accumulation described in the following sentence. Prior to distribution, the following amount of income and appreciation shall be accumulated and added to principal, not to be distributed: the smaller of (i) the amount needed to maintain the inflation-adjusted value of the endowment over time; or (ii) 20% of net investment and rental income and investment appreciation. As provided in Part 3 above, the educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
  - c. Hire or employ qualified investment managers and, if appropriate, advisors and other investment professionals, attorneys, or other agents, subject to the approval of the School Committee, and pay reasonable compensation for the services of such persons.

- d. Establish and periodically review and update the Trust's Investment Policy, with the goal of maintaining an appropriate balance of security and growth of principal and consistent and beneficial annual distributions to benefit the public schools. The Investment Policy and any amendments shall be communicated to the School Committee, the Board of Selectmen, and the Finance Committee.
- e. Hold, through third party fund custodians independent of Feoffees and of investment advisors, and invest Trust assets in accordance with and furtherance of the Trust's Investment Policy and in accordance with and subject to the standards set forth in the prudent investor rule set forth in M.G.L. c. 203C, the Massachusetts Prudent Investor Act, and any successor statute and M.G.L. c. 180A, the Massachusetts Uniform Management of Institutional Funds Act, and any successor statute (except that the historic dollar value of the Trust endowment shall not be distributed).
- f. If funds are placed in banking institutions, follow good stewardship practices as to coverage by depositor insurance and the rate of interest income generated. Funds placed in banking institutions may be placed in banks located outside Ipswich.
- g. Arrange for investment performance reports at least quarterly to ascertain current and long-term levels of achievement relative to stated goals, with a copy to be provided to the School Committee, Board of Selectmen, and Finance Committee.
- h. Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- i. Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- j. Monitor the performance of investments, managers and advisors to assure that the Trust's investment objectives are being met.
- k. Periodically review and, if appropriate, rebalance the strategic asset allocation of the Trust and make tactical allocation decisions based on the Trust's Investment Policy and information and advice provided by investment advisers and consultants.
- l. Accept charitable gifts for the benefit of the Trust, to be added to principal unless the donor specifies otherwise

- m. Pay all proper charges and expenses, and maintain an operational reserve for this purpose
- n. Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions related to the investment of the Trust's funds.
- o. Pursue, defend and settle all claims and demands relating to the Trust or Trust property, subject to the advice and consent of the School Committee and the Board of Selectmen (if the School Committee or Board of Selectmen are sued with respect to a matter relating to the Trust or the Trust property, the sued body will notify the other body).
- p. Use the same fiscal year as the Town.
- q. Unless the Trust and any affiliated entities are included in the annual Town audit, with payment by the Trust of its proportionate share of the cost, the Feoffees shall cause the finances of the Trust and affiliated entities to be audited, said audit to be completed within four months of the close of the fiscal year. The Feoffees shall file the annual financial statement of the Trust and affiliated entities with the Town for inclusion in the Town annual report.
- r. Maintain regular and open communication with the School Committee, provide periodic reports, and reply within one month to all requests by the School Committee for information concerning the Trust and affiliated entities.
- s. Periodically, based on the expected annual portfolio returns, past distribution levels, and other appropriate factors, and subject to the approval of the School Committee, set the following: (i) the accumulation amount or percentage to be added to principal; (ii) the overall draw on the endowment of funds for expenditure and distribution; and (iii) the measurement date on which to base the calculation of distributions to be made pursuant to Paragraph (u), below (the "Measurement Date").
- t. Report to the School Committee by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and shall, immediately report any adjustment in this amount that may have resulted from the completion of the annual audited financial statement. The Feoffees will also report any additional adjustments that may result from the audit of Town accounts made at a later date as part of the regular Town audit.

- u. At least annually, and no later than the first day of the public schools' fiscal year, distribute to the School Committee all available income and appreciation determined as of the Measurement Date pursuant to Paragraph (s), above, after accumulation, expenses and reserves. The annual distribution shall be reported at a public meeting called for that purpose and for the purpose of providing the public and the School Committee with additional information pertaining to the Trust and its management in the previous year and to answer inquiries.
  - v. At least annually, report on the activities and financial status of the Trust and affiliated entities in a meeting of the School Committee, with any participation in such meeting by the Board of Selectmen and Finance Committee subject to separate arrangement among the bodies.
  - w. Trust property shall be held in the name of the Trust, and agreements, obligations, instruments, papers and actions on behalf of the Trust may be made, incurred, executed, signed, or taken in the name of the Trust.
  - x. No Feoffee appointed pursuant to the terms of this Order shall be personally liable: (i) for any obligation or liability incurred by the Trust; (ii) for the acts or omissions of another Feoffee; or (iii) otherwise by reason of serving or having served as a Feoffee. Exceptions: (a) breach of duty of loyalty to the Trust; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (c) a transaction from which the Feoffee derived an improper personal benefit. Each Feoffee appointed pursuant to the terms of this Order shall be entitled to indemnification and reimbursement out of the Trust assets to the extent permitted by law. Each Feoffee appointed pursuant to the terms of this Order, both individually and as a Feoffee, shall be defended, indemnified and held harmless in the pending litigation with the residents of Little Neck.
  - y. Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
  - z. Minor, technical adjustments of Paragraphs (c) through (x), above, may be made upon approval of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee).
7. In addition to responsibilities and powers conferred upon trustees by law, the Feoffees shall have the following responsibilities and powers with respect to rental of residential lots on Little Neck:
- a. Pursuant to the Feoffees' fiduciary duties as trustees of this Trust to benefit the Ipswich public schools, the Feoffees shall charge and

collect rents, for residence on or other use of the Trust property, at a level that is designed to maximize the financial benefit to the public schools. To the extent possible, the amount of income provided to the Ipswich public schools each year shall at a minimum represent a reasonable return on the market value of the Trust's assets; if the income provided to the public schools is lower than the amount that would be such a reasonable return, the Feoffees shall report the reasons for this differential to the School Committee.

- b. In calculating the rent levels necessary to satisfy the standard set forth in (a), above, all costs of operation of the Trust shall be taken into account, including the following costs, to the extent that they provide benefit to the residents and are appropriately includable in determining the rent: (i) the cost of extra services provided by or for the Feoffees at or in connection with Little Neck (such as police details, etc.); (ii) the cost of providing and maintaining common or unoccupied land or structures; (iii) the cost of providing and maintaining other amenities; (iv) taxes on all the land, including the common or unoccupied land and all improvements; and (v) taxes on residential structures whether or not paid separately by the homeowners or residents. The Feoffees shall take reasonable steps on an ongoing basis to monitor property tax assessments and property taxes levied with respect to Little Neck occupied property, unoccupied property, and common land, to evaluate whether adjustments should be sought, to respond to resident request with respect to property tax matters, and to seek property tax adjustments where determined to be appropriate.
- c. Consideration shall be given to establishing rents that vary lot by lot, depending on size, location, view, and other factors affecting rental value, including year-round versus seasonal rental. However, no more than twenty-four lots, the number presently eligible for year-round rental, shall be rented on a year-round basis.
- d. Feoffees are authorized to enter into written rental agreements for periods of years, the substantive content of which has been approved by the School Committee.
- e. Feoffees are authorized to engage expert assistance in establishing rent levels, length of rentals, and other rental terms and practices.
- f. Additional Feoffee powers are enumerated in Parts 5 and 6, above.

8. Other applicable requirements

- a. The Trust shall be a municipal trust.

- b. The Trust shall be subject to the standards and requirements set forth in the open meeting law and subsequent amendments.
- c. The Trust shall be subject to the standards and requirements set forth in the public records law and subsequent amendments.
- d. The Trust shall be subject to the standards and requirements set forth in the public bidding law and subsequent amendments.
- e. The Trust shall be subject to the standards and requirements set forth in the public ethics (i.e., conflict of interest) law and subsequent amendments.

---

Justice of the Probate and Family Court  
Department of the Trial Court

\_\_\_\_\_, 2010  
7428.0/475679.1