

**CASNER & EDWARDS, LLP**

**MEMORANDUM**

To: Ipswich School Committee and Superintendent  
From: Richard C. Allen  
Date: June 2, 2006  
RE: Content and procedure for Feoffees Trust (revised June 2, 2006)

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Set forth below is my current revised Feoffees Trust summary, with the question of enhancement versus operational use of the distributed funds addressed as follows: (i) determination of the use of the funds to be made by the School Committee; and (ii) retention of the principle that when feasible the funds are to be used for enhancement.

A) Content of the revised Trust (the revised Trust will be a court order – see B, below):

- 1) Name: Feoffees of the Grammar School in the Town of Ipswich Trust
- 2) Beneficiary: the Ipswich public schools
- 3) Trust purpose: in furtherance of the bequest in 1660 by William Paine who established this Trust “to be and remain to the benefit of the free 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) Feoffees
    - o 3 appointed by the School Committee, 3 appointed by the Board of Selectmen; and 1 appointed jointly by the School Committee and the Board of Selectmen upon recommendation by the Town Finance Committee, and the 3 present Feoffees who wish to continue to serve in this capacity

- no person may be a Feoffee while serving as a member of the School Committee or the Town Finance Committee or as Town Manager or Superintendent of Schools.
  - 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, 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:
    1. the individual’s spouse;
    2. a parent of the individual or of the individual’s spouse;
    3. children of the individual and/or of the individual’s spouse;
    4. a sibling of the individual or of the individual’s spouse.
  - In the appointment of Feoffees, the appointing bodies shall appoint persons 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. Optimally, persons will be appointed who also possess expertise and skills that will maintain and strengthen the ability of the Feoffees collectively to carry out their responsibilities, such as: real estate and rental property management; construction trades; finance; and dispute resolution.
- b) term of service
- 5-year staggered terms for the new Feoffees (except that to implement staggered terms so that no more than two Feoffees’ terms will expire in a particular year, the initial terms of the Feoffees shall be as follows: (i) the initial terms of the three Feoffees appointed by the School Committee shall be two, five and seven years respectively; (ii) the initial terms of the three Feoffees appointed by the Board of Selectmen shall be three, four and six years respectively; and (iii) the initial term of the jointly appointed Feoffee shall be eight years.)
  - no term limits
  - to assist with the transition to the revised Trust structure, the three present Feoffees who wish to continue to serve would continue as

Feoffees for open-ended terms, so long as they are not disqualified under the office-holder disqualification or the Little Neck residence or homeowner disqualification provided in A(6)(a), above.

- may be removed by appointing authority for cause (and a present Feoffee serving a continuing term as provided above may be removed by the Probate Court for cause)
  - in the case of a vacancy (other than a vacancy with respect to a present Feoffee), the appointing authority may appoint a Feoffee to fill the remainder of the term.
  - c) serve without compensation, but reasonable and necessary trust-related expenses paid
  - d) shall be subject to a conflict of interest policy approved by the School Committee
  - e) the meeting quorum is a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein, a majority vote of those present is required for action. If a matter cannot be resolved because there is an even number of Feoffees and a tie vote, the matter shall be brought to the School Committee, who may decide the matter.
- 5) Powers, in addition to those conferred upon trustees by law:
- a) lease, improve and manage the Trust real estate
  - 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) invest Trust assets in accordance with the prudent investor rule set forth in M.G.L. c. 203C or any successor statute.
  - e) accept charitable gifts for the benefit of the Trust
  - f) pay all proper charges and expenses

- g) borrow funds to the extent necessary for the prudent operation and maintenance of the Trust property, provided that the Trust real property may not be collateralized
  - h) 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)
  - i) hire or employ property managers and other agents, and pay reasonable compensation for the services of such persons (maximum term of 3 years, with termination available to the Feoffees for cause; Feoffees may provide that terms are renewable at the Feoffees' discretion)
- 6) Applicable requirements
- a) the Trust would be a municipal trust, not a separate private trust with separate federal tax ID and separate tax exemption
  - b) subject to open meeting law
  - c) subject to public records law
  - d) subject to public bidding law
  - e) subject to public ethics law (i.e., conflict of interest)
  - f) Feoffees must annually file an audited financial report with the Town and the School Committee, said audit to be completed within four months of the close of the fiscal year. The Trust will use the same fiscal year as the Town. The Feoffees shall reply in writing within one month to all written requests by the School Committee for additional information concerning the audited financial report.
  - g) Feoffees shall distribute the net proceeds of the Trust to the School Committee within six months of the close of the fiscal year. The Feoffees shall report to the School Committee by September 1 of each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will be distributing to the public schools in the forthcoming distribution, and shall, immediately upon completion of the annual audit, report any

adjustment in this amount that results from the audit to the School Committee.

- h) Feoffees shall establish and make available to the Little Neck residents a means of ongoing mutual communication for informational and advisory purposes, such as an advisory council.

7) Rental of property 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 a fair market rent for the property, services and other benefits provided. 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 should 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 if this will maximize the financial benefit to the public schools
- 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 A(5), above
- g) the new Feoffees under the revised Trust are to be considered as continuing the present Trust for real estate title purposes and other property rights purposes. Other than written leases the substantive content of which has been approved by the School Committee, the new Feoffees will not be bound by existing arrangements as to rents, charges, and rules

B) Process for revising the Trust:

- 1) Reach agreement (School Committee, Board of Selectmen, Feoffees) on plan and court petition
- 2) Discuss plan and petition with Attorney General's Division of Public Charities
- 3) Submit joint petition by School Committee, Board of Selectmen and Feoffees to Essex County Probate Court, seeking approval of the new Trust in the form of a proposed court order
- 4) Attorney General as necessary Defendant
- 5) notice to the Little Neck residents

C) Ongoing court oversight

- 1) Court retains jurisdiction of the matter to make such further orders as appropriate
- 2) the reasonableness of rents, of Feoffee expenses, of operational reserves, and of other practices of the Feoffees shall be reviewable by the Probate Court at the request of the School Committee or the Board of Selectmen, with notice to the other body and to the Feoffees.
- 3) future amendments to the revised Trust as embodied in the court's order may be sought by the School Committee and the Board of Selectmen with notice to the Feoffees, or by either the School Committee or the Board of Selectmen with notice to the other body and to the Feoffees.