

TOWN COMMITTEE ON THE FEOFFES

Established by vote of Town Meeting on April 2, 2001, to inquire into the operations and financial records of the Feoffees of the Grammar School and report its findings to the Annual Town Meeting in April, 2002. The Moderator was instructed to appoint one member each of the Board of Selectmen, the School Committee, and the Finance Committee, and four otherwise unaffiliated members.

ESTABLISHED FINDINGS

How many Feoffees are there, who they are, who appoints them

- There are 4 Feoffees.
- They currently are Donald Whiston (chairman), Alexander Mulholland, Peter Foote, and James Foley.
- They are all Ipswich residents (as required by statute).
- In the case of a vacancy the remaining members choose the new member.
- The chairman receives a stipend (\$7,800 in FY 2000) for the managerial tasks he performs ; otherwise the Feoffees receive no compensation. (Data from Form PC submitted by the Feoffees to the Attorney General's office).
- Legally, the three Selectmen "eldest in office" are supposed to constitute a joint committee with the Feoffees, sharing power with them (Statutes of 1786, Ch. 5). The Selectmen have not acted in this capacity in the last eighty years (Letter from Donald Whiston, 3/20/02).
- It is the custom for the Chairman of the Board of Selectmen, whether or not he or she is one of the three eldest in office, to preside at the Feoffees' annual meeting.

Historical background

- The Feoffees were established by the Town by a vote of Town Meeting on November 14, 1650 (Town records at Town Hall and Form PC submitted by the Feoffees).
- The vote established a four-member committee to hold land granted by the Town for the support of a "grammar school" (Town records at Town Hall).
- By vote of Town Meeting in January, 1652, the committee (reconstituted) was given the charge "to receive all such sums of money, parcels of land, rents or annuities" as shall be given to support the school.
- The Feoffees used to own other parcels of land (in Ipswich ,Essex, Rowley, and Revere) but now Little Neck is the one parcel they own (Feoffees' "Comments" on earlier draft of these Findings).
- The Feoffees came into possession of Little Neck through the bequest of William Paine, a member of the 1650 committee. Dying in 1660, he left Little Neck to the "free school of Ipswich .. to be to the benefit of the said school for ever ... and therefore the said land not to be sold nor wasted" (Waters'History of Ipswich and Suffolk Registry of Probate, State Archives).

Special acts of the legislature pertaining to the Feoffees

- Questions and uncertainties about the Feoffees in the 18th century led the Town to seek legislation clarifying matters .
- Temporary statutes in 1756 and 1766 were made permanent by a statute passed in 1787 (Province Laws 1755-56, Ch. 26; Province Laws 1765-66, Ch. 5; Statutes 1786, Ch. 54).
- The statutes recognize that the Feoffees hold certain lands "for the use of school-learning" in Ipswich "for ever".
- They incorporate the three Selectmen "eldest in office" as a joint committee with the Feoffees to act with them on all matters.
- They also direct that the joint committee shall annually report on their proceedings at Town Meeting.
- On several subsequent occasions (e.g. in 1835, 1892, and 1906) the Feoffees have obtained authorization from the legislature when they have wanted to sell land (Acts 1835, Ch. 106; Acts 1892 Ch. 66; Acts 1906, Ch. 506).
- The statutes of 1835, 1892, and 1906 all include provisions directing the Feoffees to invest the proceeds and apply the income in accordance with the provisions made permanent by the 1787 statute.
- The Feoffees' financial statements published annually in the Town Report show no such investments still on the books

How do the Feoffees describe their mission

- The Feoffees acknowledge in various documents that they are "a non-profit charitable organization" (Form PC submitted to the Attorney General's office), that they are "a public trust", and that the land they own "is for the benefit of the public schools in Ipswich" (statements on the rent bill sent to the tenants).
- Elsewhere they declare that, based on the opinions of former Town Counsels Vincent and Dalton, they "have considered themselves as a quasi-public trust, as the distribution of the net income is restricted to the public schools of the Town" (Feoffees' "Comments").
- In April 2001, at the request of the Division of Charities in the State Attorney General's Office, they filed Form PC for each of the years 1997, 1998, 1999, & 2000 . They say they did so voluntarily, "pending resolution of the legal requirement for a municipal entity to file Form PC (Feoffees' "Comments").
- The Feoffees say that if the three Selectmen eldest in office choose not to serve as a joint committee with them they would support judicial or legislative action to have others take their place, chosen by appropriate authorities, e.g. the Selectmen, the Town Manager, Town Meeting, the Moderaator (Letter from Mr. Whiston, 3/20/02).

The Feoffees' management of Little Neck

- Since the late 19th century they have rented lots there on which tenants have been allowed to build cottages.
- There are now 167 cottages.
- Each cottage (and the on-site septic system servicing the cottage) is owned by the tenant.
- The Feoffees are assessed and pay to the Town the real estate taxes on the land and on such structures owned by the Feoffees as a community center and a

wharf; in addition, they collect for the Town and pay over to the Town the real estate taxes on the cottages.

- The tenants do not have leases on the lots. They are tenants at will.
- The Feoffees allow only 24 of the 167 cottages to be used as year-round residences (Feoffees' *Rules and Regulations*).
- The remaining cottages may only be occupied between April 1 and November 30.
- In 1967 the Feoffees voted that no additional cottage should be occupied year round unless the Board of Health issued a certificate for an adequate sewage disposal system.. The Feoffees were concerned by the number of cottages being converted into year-round homes and the sewage problem it created; the land needed to "rest" over the winter "giving the waste products a chance to dissipate" (R. Betts, "History of Little Neck", 1998, p. 6).
- The Feoffees believe "that the additional rent to be gained from year-round rentals would be more than offset by an increase in the school population and the need for additional municipal services for Little Neck" (Feoffees' "Comments").
- As a deterrent to out-of-season use, the Feoffees amended their Rules and Regulations in 1999 to impose an additional rent of \$1,000 per week if a "seasonal" cottage is occupied in the winter months. Since the amendment there has been no out-of-season use by "seasonal" tenants (Feoffees' "Comments").
- As all 167 lots are owned by the Feoffees, the entire property is subject to the Clean Waters Act. In September, 2000, the Feoffees entered into an Administrative Consent Order with the Massachusetts Department of Environmental Protection concerning the repair or replacement of the cottages' septic systems. The Order requires all cottages which do not have a satisfactory drip irrigation system to have a tight tank by November 30, 2003. In May 2001 the Department allowed a delay in execution of the Order pending a review by the Town of the possibility of extending the Town's sewer system to Great and Little Neck (DEP Consent Order and DEP letter dated 5/1/01).
- James Engel, chairman of the Board of Selectmen, is quoted saying that the Town needs to work on getting a guarantee that the "intensity of use of Little Neck will remain unchanged"(Ipswich Chronicle, 12/6/01).
- All "seasonal" tenants are charged the same rent and all year-round tenants are charged the same higher rent. The rent does not depend on the situation of the lot, its size relative to others, whether it has good views or not, the valuation placed on it by the Town Assessors, etc.
- The rents do not include the taxes due on the lots; however the Feoffees pay out of the rents the taxes due on the rest of the land at Little Neck and the taxes on the wharf, community center, etc. In FY 96 the lots were assessed at \$12,431,000, the rest of the land at \$923,500, and the wharf, community center, etc., at \$89,200.
- Tenants must clear with the Feoffees before making additions to their cottages, cannot plant trees which grow higher than a shrub, must keep their cottages and yards "in a good state of preservation and cleanliness", cannot "use a radio, television, or such other device" between 11 p.m. and 9 a.m., must take out insurance which shall insure the Feoffees as well themselves "against all injuries to persons occurring in or about their leasehold", etc., etc. (Feoffees' *Rules and Regulations*)
- Except for their annual meeting the Feoffees' meetings are not publicly posted.

- One Feoffee, traditionally the chairman, is designated “manager”. A fellow-trustee (James Foley) likens his responsibilities to those of a “mini town manager, a mini works director”. (Meeting of the Town Committee on 10/24/01).
- The Feoffees have devoted funds each year to maintaining the amenities at Little Neck (the roads, play areas, beach, wharf, etc.), thereby maintaining the value of the property.
- Nevertheless, over the last ten years the Feoffees’ total operating expenses have generally run below 1% of the property’s assessed value.
- Since FY 1991 the Feoffees’ total operating expenses have been as follows:

FY 1991	\$49,357
1992	\$75,253
1993	\$42,569
1994	\$75,314
1995	\$83,063
1996	\$43,624
1997	\$60,006
1998	\$80,015
1999	\$117,736
2000	\$187,948
- The Feoffees’ operating expenses since 1985 have included the installation of a water distribution system costing approximately \$100,000, half of which was paid by the tenants; the replacement of the wharf, costing \$33,000 in design, engineering and permitting expenses and \$82,000 for construction; and engineering and legal fees in excess of \$100,000 in connection with the DEP Consent Order (Feoffees’ “Comments”).

The possibility of a conflict of interest

- At various times one or more of the Feoffees have also been tenants. Two of the present Feoffees were for a time concurrently both Feoffees and tenants.

Value of the Feoffees’ property at Little Neck

- The land, including the cottage-lots, roadways, and land left open for common use, is assessed by the Town Assessors Office at \$14,828,400. The buildings owned by the Feoffees are assessed as follows: the community building \$85,600, the pier \$54,700, a barn \$8,400. The Feoffees’ real estate assets therefore total \$14,977,100. (Figures provided by Frank Ragonese, chief assessor, 12/19/01).
- Prompted by pressure from citizens that the Feoffees increase their contributions to the schools and by proposals from the tenants that they collectively buy out the Feoffees, the Feoffees have in recent years sought separate assessments from LandVest.
- The assessments by LandVest have consistently come in considerably lower than the Town’s assessments. For example, in FY1996 the Ipswich assessors assessed the land at Little Neck at \$13,354,500. In 1997 LandVest, assessing the land as one parcel with restrictions limiting 143 of the lots to seasonal use, gave a valuation of \$9 million.
- The Feoffees are currently raising the rents in equal increments over five years to bring them up to “fair market value” as assessed by LandVest.

- The Feoffees have set the yearly rents as follows since the late eighties (data from Feoffees' annual meeting in 1989 and email from Donald Greenough):

<u>Fiscal year</u>	<u>Seasonal</u>	<u>Year-Round</u>
Prior to FY 1990	\$ 400	\$600
1990	600	800
1998	800	900
2000	1,280	1,440
2001	1,760	1,980
2002	2,240	2,520
2003	2,720	3,060
2004	3,200	3,600

- In 1998 "the Feoffees indicated that after FY 2003 the rents would be adjusted annually based upon current appraisal information" (Donald Greenough in email 10/25/01, letter from Donald Whiston 3/20/02).
The cottages command a good price in the real estate market. Eight cottages were bought by new owners in calendar year 2001. All sold for more than cottage and lot together are assessed for in FY 2002 (Information from Town Clerk's office):

Date of sale	Address	Sale price	FY 2002 Assessment			
			Cottage	Yard	Land	Total
3/01	25 River Rd.	\$331,400	\$77,700	\$500	\$102,800	\$181,000
5/01	9 Middle Rd.	240,000	58,600		100,200	158,800
6/01	35 River Rd.	150,000	31,100		103,200	134,300
6/01	6 Cliff Rd.	332,500	86,600		107,200	193,800
7/01	24 Baycrest	255,000	76,800		70,400	147,200
8/01	4 Cliff Rd.	375,000	78,000		112,300	190,300
8/01	19 King's Way	248,000	41,600		70,400	112,000
11/01	39 River Rd.	240,000	69,700	5,500	102,800	178,000

- 4 Cliff Road has changed hands several times in recent years, with the sale price rising each time: \$120,000 in 5/87, \$146,000 in 8/89, and \$375,000 in 8/01.
- The cottages command good rental prices in the summer. The Feoffees report that typical weekly rental prices in 2001 were between \$650 and \$800 (Feoffees' "Comments").

Offers by the tenants to buy out the Feoffees

- Since 1999 the tenants have made three offers to purchase Little Neck.
- Last year (2001) they offered \$10,200,000 (Tenants' Coordinating Committee letter dated 9/13/01).
- The Feoffees asked for a deposit of \$167,000, representing \$1,000 per cottage, before they would consider it.
- The Coordinating Committee asked for \$1,700 per cottage to cover "those owners who may not choose to participate" (Letter from Coordinating Committee).
- The Coordinating Committee have made the deposit (Whiston at Feoffees' annual meeting, 1/15/02).

- The Feoffees will review the offer with the School Committee. No offer will be accepted by the Feoffees without the consent of the School Committee (Greenough's letter of 7/25/01, Feoffees' letter to the tenants dated 11/20/01 and Whiston at Feoffees' annual meeting 1/15/02).

The Feoffees' support of the Ipswich schools

- The Feoffees have made the following payments to the schools since 1976, according to their financial statements in the annual Town Report::

FY	1976	\$7,500	
	1977	7,500	
	1978	0	(i.e. no "gift" is indicated)
	1978	0	(i.e. no "gift" is indicated)
	1979	7,500	
	1980	7,500	
	1981	2,500	
	1982	0	
	1983	0	
	1984	0	
	1985	2,500	
	1986	No Feoffees financial statement	
	1987	0	
	1988	0	
	1989	0	
	1990	0	
	1991	0	
	1992	0	
	1993	4,761	
	1994	0	
	1995	25,000	
	1996	50,000	
	1997	50,000	
	1998	173,000	
	1999	0	(but transfer of \$21,000 to "School Acct")
	2000	25,000	(+ \$25,000 "transfer to School Acct.")
	2001	Financial statement not yet published, 3/27/02	

- The Feoffees handed to the chairman of the School Committee a check for \$282,970.28 at the Feoffees' annual meeting on 1/15/02.
- The Feoffees believe strongly that their payments be used "for special purposes or needs of the schools above and beyond the normal operating expenses funded through the municipal budget process" (letter from attorney Donald Greenough, October 23, 2001).
- The Feoffees say further that if the School Committee, the Selectmen, and the Finance Committee do not agree to a written statement concurring with their position they are prepared to seek judicial or legislative action restricting the use of their payments "for enhancement of the schools" (Letter from Donald Whiston, 3/20/02).

The Feoffees' Accounts

- The only financial statement published by the Feoffees is the two-page financial statement they submit for the Town's annual report.
- For many years past it has been deficient in many respects:
 - It has not distinguished between the Feoffees' real estate assets and the tenants' assets (their cottages).
 - Since FY 1993 it has given essentially the same figure each year for the real estate assets, e.g. \$22,317,500 in FY 1993, \$22,275,300 in FY 2000.
 - It has not distinguished between the real estate taxes paid on the Feoffees' land and buildings and the taxes on the cottages collected by the Feoffees and paid over to the Town.
 - It has shown the balances in various savings accounts but not the interest earned, if any.
 - Nor has it detailed transfers into and out of the savings accounts.
 - Although it has recorded transfers in recent years to a "School Acct." it has not shown the balances in this account.
 - The figures have not always added up, e.g. in FY 1998 "cash receipts" of \$304,779.87 and \$131,828.09 were shown as totaling \$559,607.96.
 - Without explanation different income totals have been shown in different places.
 - The financial statement has not been published until March, half way through the following fiscal year (and school year).
 - There is no indication that the accounts are audited.
- An examination of the Feoffees's accounts for FY 2000 showed deposit slips and cancelled checks agreeing with the chairman's summary of income and expenses and his summary also agreeing with the Feoffees' financial statement in the Town Report. It appeared the accounts for FY 2001 were similarly in order. (Examination by Heather Ellerkamp).

The School Committee's relations with the Feoffees

- Although the Feoffees' contributions to the schools have been much smaller than a beneficiary would normally expect from a trust with assets as valuable as the Feoffees' assets, the School Committee has never publicly reminded the Feoffees of their fiduciary responsibility and has never publicly pressed them to increase their contributions.
- The Feoffees say that in the years when they made no contributions to the schools - in 1982-84, 1986 -92 and 1994 - it was "at [the] Superintendent's request" (Feoffees' "Comments").
- The Superintendent's office has not kept a record of the Feoffees' contributions.
- In 1991, following a concerned citizen's letters to the School Committee chairman, the School Committee and the Selectmen sought the opinion of Town Counsel on the Feoffees' legal status. His opinion (3/11/91), submitted confidentially to the two boards, characterized the Feoffees as a "quasi-public trust". He attached the text of the 18th century statutes but suggested it was likely that a Massachusetts court would "find the Feoffees' arrangement illegal on state constitutional grounds". He made no mention of William Paine's will. He wrote that if Little Neck were sold, the proceeds could be dedicated "exclusively to the School Budget, exclusively to the General Government Budget, or some combination of both".

- In June, 1996, the same concerned citizen was invited by the School Committee to come and tell them what he knew about the history of the Feoffees. At this meeting, besides sharing a brief written history, he presented a record of the Feoffees' contributions since 1976 as reported annually in the Town Report. He pointed out that their contribution of \$25,000 in FY 1995 represented only 0.19% of the assessed value of the Feoffees' assets at Little Neck (then \$13,354,500).
- In the months following this meeting the School Committee appointed a sub-committee on the Feoffees. Their deliberations were kept confidential.
- The then Superintendent, as a resident of Little Neck, recused himself from discussions of the Feoffees' responsibility to the schools.
- In February, 2001, following growing citizen concern, the School Committee invited the chairman of the Feoffees, Donald Whiston, to an open meeting of the Committee to talk about the Feoffees. He spoke at length, leaving little time for questions or discussion. The majority of the Committee asked no questions and did not press him on the size of the Feoffees' contributions. The School Committee chairman made no statement. The Committee's minutes record that Mr. Whiston appeared before the Committee but do not record any of the brief discussion that followed. (Meeting on 2/14/01).
- Following this meeting 75 citizens signed a petition to put an article on the warrant for the April Town Meeting providing for the appointment of a Town committee to look into the affairs of the Feoffees.
- Counsel for the School Committee wrote to the Superintendent of Schools on March 26 urging that the School Committee "take some public position rather than remain silent...It should be careful not to appear out of step with the citizens' desire to maximize contributions to the school system". He concluded: "The School Committee should be working on a long-range plan with the Feoffees rather than reacting to issues brought before them by the Feoffees or by the public" (Letter from Attorney Richard M. Kallman, 3/26/01).
- At Town Meeting on April 2 the School Committee voted against the appointment of a Town committee. (The Selectmen and the Finance Committee voted for it).
- On January 17, 2002, the School Committee voted unanimously "to go forward with investigating the task of rewriting the Feoffees' trust and to begin the process by asking Mr. Hopping, as a member of the town committee on the Feoffees, to inform them of the School Committee's vote" (School Committee minutes).

Robert J. Bonsignore, Chairman
 Heather Ellerkamp
 Mary Harrington
 Barry Hopping
 Harry Lampropoulos
 Harvey A. Schwartz
 Robert K. Weatherall

March 27, 2002