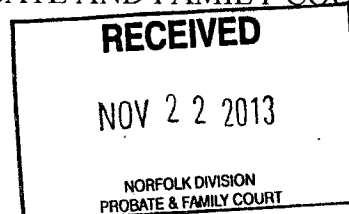


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

PROBATE AND FAMILY COURT
NO.



THE MILTON BOARD OF SELECTMEN,)
Acting as TRUSTEES UNDER THE)
WILL OF WILLIAM STOUGHTON,)
Plaintiff)

v.)

MARTHA M. COAKLEY in her capacity as)
Attorney General of the Commonwealth of)
Massachusetts,)
Defendant)

VERIFIED
COMPLAINT FOR EQUITABLE
RELIEF PURSUANT TO M.G.L. C.214, §10B

INTRODUCTION

1. This action is brought in equity by the Milton Board of Selectmen, acting as Trustees under the Will of William Stoughton, pursuant to Massachusetts General Laws ("M.G.L.") Chapter 214, Section 10B to apply the doctrine of deviation in order to sell a portion of the property held by the Trustees under the Will of William Stoughton and to invest the proceeds of the sale and apply the income and appreciation¹ of said proceeds for the benefit of the poor of the Town of Milton.

JURISDICTION

2. This Court has original and concurrent jurisdiction of the subject matter of this case pursuant to M.G.L. c.215, §6.

PARTIES

3. The Milton Board of Selectmen consists of three (3) elected members. The Plaintiff is the Milton Board of Selectmen, acting as Trustees under the Will of William Stoughton, (hereinafter designated "the Trustees"). The current Trustees are: Denis F. Keohane,

¹ The Trustees intend to manage the fund in accordance with M.G.L. c.180A, §§1-9, (UPMIFA).

J. Thomas Hurley, and Kathleen M. Conlon.

4. The Defendant, Martha M. Coakley, is the duly elected Attorney General of the Commonwealth of Massachusetts with a principal office at One Ashburton Place, Boston, Massachusetts, and is made a party to this action pursuant to M.G.L. c.12, §8G.

FACTUAL BACKGROUND

5. William Stoughton, who served as Lieutenant Governor and Governor of the Massachusetts Bay Colony during colonial rule, lived from 1631-1701. His Will is dated July 6, 1701. Said Will provides in part: “and to the Town of Milton I give out of my great wood Lot there Forty acres, to be conveniently & equally laid out to them. The whole improvement thereof to be for the benefit of the poor of that Town as the Selectmen thereof shall judge best”. Copies of Governor Stoughton’s Will and a transcription of that Will are attached to this Complaint as Exhibits A1 and A2, respectively.²
6. Today the property contains approximately thirty-four (34) acres. By Order of Taking dated April 22, 1896 the Commonwealth of Massachusetts, by the Metropolitan Park Commission, took by eminent domain land in the Town of Milton from Canton Avenue to the Blue Hills Reservation, for the purpose of constructing roadways and boulevards. That land is a portion of Unquity Road in Milton. Of the land taken at that time by the Commonwealth of Massachusetts, approximately six (6) acres was taken from the property which was given to the Town of Milton under the Will of William Stoughton. Said approximately thirty-four (34) acre parcel is hereinafter referred to as the Property.
7. The Property is located off the Taunton Road (today the site of Canton Avenue) on Wigwam Hill near the center of the Town of Milton. In the late 1700s or early 1800s, the

² Said provision appears on the first page of the Will, beginning six (6) lines from the bottom (See Exhibit A1) and on the second page of the transcription of that Will in the second full paragraph (See Exhibit A2).

Property came to be used as a Town Farm for the benefit of the poor in the Town of Milton.

8. In the 1800s several buildings and structures were built on the Property for the benefit of the poor of the Town of Milton. The structures and buildings include the following:
 - a. The Main Almshouse, located at 169 Governor Stoughton Lane, Milton, MA.;
 - b. The Men's Almshouse, located at 175 Governor Stoughton Lane, Milton, MA;
 - c. The Stable, located at 181 Governor Stoughton Lane, Milton, MA;
 - d. The Pest House, located at 208 Governor Stoughton Lane, Milton, MA;
 - e. Two Loading Platforms, located throughout the Property;
 - f. Several Stone Walls, located throughout the Property; and
 - g. An Entrance Bound Stone, located at the entrance to the Property.

The cart and cattle path from the highway (now Canton Avenue) to the wood lot and later poor farm was named Governor Stoughton Lane in 1933.

9. These structures and buildings were used by the resident poor of the Town of Milton for both shelter and for making a common living. By 1941, however, the direct use of these buildings and structures by the poor of the Town of Milton had ceased. The buildings and structures identified in items 8a through 8d above were then rented out by the Trustees. The rent therefrom was deposited into a fund designated the Governor Stoughton Fund. The Trustees distributed income and appreciation from that Fund to the poor of the Town of Milton.³

10. The Property is located at the end of Governor Stoughton Lane in Milton, and is shown on the Town of Milton Assessors' Maps as Map K, Block 6, Lot 2. A copy of a portion of the

³ A full description of the Historical Use of the Property is contained in the Massachusetts Historic Commission document attached as Exhibit B.

Town of Milton Assessors' Maps which show the Property is attached as Exhibit C.

11. In the past several years, the Trustees and the Public Charities Division of the Office of the Attorney General have communicated many times about how the Property could best be utilized to serve the poor of the Town of Milton.
12. The Trustees concluded that rental of existing buildings and structures on the Property was not adequately providing for the needs of the poor of the Town of Milton.
13. Moreover, some of the buildings are in disrepair. The building at 169 Governor Stoughton Lane and the building at 175 Governor Stoughton Lane feature wiring that is decades old and would require massive upgrades in order to be brought up to current safety standards. Both buildings have structural problems that could require the Trustees to spend precious Trust resources to ensure that they remain safe for human habitation.

At present, only one (1) of the buildings and structures described in item 8 above is being rented, namely, the building at 208 Governor Stoughton Lane. The rental income from that building continues to be deposited into the Governor Stoughton Fund, from which income and appreciation is distributed by the Trustees to benefit the poor of the Town of Milton.
14. The Trustees, therefore, decided that the best option would be to sell or to lease the Property to a third party, and to use the revenue generated from such sale or lease for the benefit of the poor of the Town of Milton.
15. Given that the Trustees are all the Selectmen of the Town of Milton, the Trustees took action to solicit proposals pursuant to M.G. L. c.30B the Commonwealth of Massachusetts Uniform Procurement Act. A copy of M.G.L. c.30B, §16 is attached as Exhibit D.
16. The Trustees subsequently sought an appraisal of the Property.
17. CB Richard Ellis/New England submitted an appraisal report to the Trustees dated April 6,

2009. That report determined that the highest and best use of the Property is residential development, and indicated a fair market value of the Property between three million eight hundred forty-five thousand dollars (\$3,845,000) and eight million five hundred forty-four thousand dollars (\$8,544,000), depending upon the type of residential development of the Property. See Exhibit E, CB Richard Ellis/New England appraisal report.

18. In early 2011, the Trustees voted to declare the Property available for disposition pursuant to M.G.L. c.30B, §16. See Exhibit F, Trustees' Vote.
19. On or about February 14, 2011, the Trustees issued a Request for Proposals (RFP) for the lease or sale of the Property. At all times, the Trustees followed M.G.L. c.30B, including, without limitation, M.G.L. c.30B, §16, and all applicable guidelines, opinions, and manuals issued by the Office of the Inspector General of the Commonwealth of Massachusetts, which is charged with the enforcement of M.G.L. c.30B.

The RFP requested separate price proposals and non-price proposals, as permitted by M.G.L. c.30B, §16. The RFP stated that Proposals were due on or before March 25, 2011, at 2:00 P.M. local time, at Office of the Milton Board of Selectmen, Milton Town Office Building 525 Canton Avenue, Milton, MA 02186. See Exhibit G, RFP.
20. The RFP was duly and properly advertised in the Central Register and in a newspaper of general circulation serving the Milton area within the advertising requirements of M.G.L. c.30B, §16. The RFP was also posted at the Milton Town Office Building within the advertising requirements of M.G.L. c.30B, §16.
21. All advertising requirements under M.G.L. c.30B, §16, were met by the Trustees as they issued the Request for Proposals.
22. The Trustees received price proposals and non-price proposals from five (5) different

entities. See Exhibit H, list of proposers and summary of proposals.

23. The Trustees selected two (2) finalists, the Copeland Family Foundation, Inc. proposal and the Pulte Homes of New England, LLC proposal.
24. The Copeland Family Foundation, Inc. ("Copeland Family Foundation") proposal featured multi-dimensional development of the Property. The Copeland Family Foundation proposed to restore the Men's Almshouse on the site for re-use by the Milton Food Pantry and for the Milton Residents Fund Office. The Copeland Family Foundation also proposed to raze the Main Almshouse and to remove the building. The Copeland Family Foundation also proposed to raze the animal shelter currently operated by the Milton Animal League and to construct "a new and more appropriate building" for an animal shelter. The Copeland Family Foundation also proposed to raze the Stable and to preserve the Pest House as a single family residence for as long as practicable. The Copeland Family Foundation would then preserve the remainder of the fields and orchard as open space.
25. The Copeland Family Foundation proposed to purchase the Property for a total of one million five hundred thousand dollars (\$1,500,000.00) over a period of five (5) years.
26. Pulte Homes of New England, LLC ("Pulte Homes"), the selected proposer, submitted a proposal featuring three (3) different development plans. These three different development plans were labeled "Plan A," "Plan B," and "Plan C".

Plan A featured a plan by Pulte Homes to build a single family community consisting of twenty-seven (27) lots to be situated on the parcel. The homes proposed featured "classic New England architecture". Access to the site would be via Unquity Road. All structures to be built were proposed to comply with current zoning and would feature one hundred (100) foot buffers from existing residential neighborhoods.

Under Plan B, Pulte Homes proposed to divide the Property into two (2) parcels. In the first, thirty (30) acre parcel, Pulte Homes proposed to build a single family community consisting of twenty-three (23) lots to be situated on the parcel. The homes proposed featured “classic New England architecture”. Access to the site would be via Unquity Road. All structures to be built were proposed to comply with current zoning and would feature one hundred (100) foot buffers from existing residential neighborhoods. In the second, four (4) acre parcel, the existing buildings would be demolished. Pulte Homes proposed to work with Habitat for Humanity or another non-profit group to build four (4) affordable homes that would be sold with a deed restriction to ensure that they would be affordable in perpetuity.

Under Plan C, Pulte Homes proposed to divide the Property into two (2) parcels. In the first, thirty (30) acre parcel, Pulte Homes proposed to build a single family community consisting of twenty-three (23) lots to be situated on the parcel. The homes proposed featured “classic New England architecture”. Access to the site would be via Unquity Road. All structures to be built were proposed to comply with current zoning and would feature one hundred (100) foot buffers from existing residential neighborhoods. In the second, four (4) acre parcel, the Trustees would maintain ownership and control over future redevelopment and would decide, at a later time, what, if any renovation/redevelopment would take place at a future date.

27. Pulte Homes offered to purchase the Property for a total of five million dollars (\$5,000,000.00).
28. The Trustees subsequently evaluated these two (2) proposals. In order to aid in the evaluation of said proposals the Trustees obtained a second appraisal, pursuant to a written

Request for Quotations. The appraisal report, issued by J. Murray Regan, a Certified Real Estate Appraiser in the Commonwealth of Massachusetts, appraised the Property under three (3) residential development options: four (4) acre lots, forty thousand (40,000) square foot lots, and a sixty (60) unit Attached Cluster Development, and determined that the fair market value of the Property for each of those three (3) options was two million four hundred seventy thousand dollars (\$2,470,000.00), four million six hundred forty-three thousand dollars (\$4,643,000.00) and six million two hundred thirty thousand dollars (\$6,230,000.00), respectively. A copy of said appraisal report is attached as Exhibit I.

29. At the meeting of the Trustees on June 27, 2011, the Trustees unanimously voted in favor of a motion which provides in part:

“that the Milton Board of Selectmen, sitting as Trustees of the Governor Stoughton Trust (“the Trustees”), pursuant to Chapter 30B, Section 16 of the Massachusetts General Laws, vote as follows:

- A. to accept the proposal of Pulte Homes of New England, LLC as being the most advantageous proposal from a responsible and responsive proposer for purchase of the Governor Stoughton Trust Property, which proposal was submitted in response to the Request for Proposals for the Lease or Sale of the Governor Stoughton Trust Property issued by the Trustees; and that the Trustees vote to award to Pulte Homes of New England, LLC a contract for the purchase of said property, subject to the following conditions:
 - 1. negotiation of a Purchase and Sale Agreement which shall include a provision that the deed from the Trustees to Pulte Homes of New England, LLC shall include a restriction that the design, architectural style, construction, and intensity of the development and use of the Governor Stoughton Trust Property, including without limitation the number of buildings and dwelling units, if any, shall be as set forth on page(s) 21-22 of non-price proposal submitted by Pulte Homes of New England, LLC;
 - 2. approval of said purchase by the office of the Attorney General of the Commonwealth of Massachusetts; and
 - 3. approval of said purchase by a Massachusetts court of competent jurisdiction.
- B. in the event that each of the foregoing conditions is not satisfied, to accept the proposal of the Copeland Family Foundation, Inc., as being the second most

advantageous proposal from a responsible and responsive proposer for purchase of the Governor Stoughton Trust Property, ...". See Exhibit J for a copy of the entire vote.

30. The time for acceptance of the Copeland Family Foundation proposal has expired.
31. On or about October 26, 2011, the Trustees and Pulte Homes signed a Purchase and Sale Agreement for the Property. A copy of said Purchase and Sale Agreement is attached hereto as Exhibit K.
32. Section 6 of said Purchase and Sale Agreement, on page 3, provides that the agreed Purchase price is five million dollars (\$5,000,000.00).
33. Rider A, Section 12 of said Purchase and Sale Agreement at pp. 18 and 19 provides that the BUYER agrees to build a single family community utilizing the Milton Custer Zoning By-Law consisting of twenty-three (23) single family residences to be located on the twenty-three (23) lots to be situated on the Property, and that the BUYER may need an additional special permit or special permits and or a variance or variances to obtain approval of the proposed development. A copy of the Town of Milton Zoning By-Laws is attached hereto as Exhibit L. The Attached Cluster Development Zoning By-Law is set forth in Section VI K. therein.
34. The Trustees and Pulte Homes signed a First Amendment to Purchase and Sale Agreement effective as of January 5, 2012. Said First Amendment amended Rider A, Section 12 and the two (2) pages attached to said Purchase and Sale Agreement to include only the text of the Plan C submitted by Pulte Homes, which was approved by the Trustees. A copy of said First Amendment is attached hereto as Exhibit M.
35. Rider A, Section 15 of said Purchase and Sale Agreement (Exhibit K) at page 20 provides that "The sale of the Premises by the SELLER to the BUYER in accordance with this

Agreement is contingent upon approval thereof by the Office of the Attorney General of the Commonwealth of Massachusetts”. The Attorney General has assented to this Complaint.

36. Rider A, Section 16 of said Purchase and Sale Agreement (Exhibit K) at page 20 provides in part “The sale of the Premises by the SELLER to the BUYER in accordance with this Agreement is contingent upon approval thereof by a Massachusetts court of competent jurisdiction”.
37. The Governor Stoughton Trust for the poor of Milton holds three hundred eighty-seven thousand six hundred sixty-five and 61/100 dollars (\$387,665.61) in liquid assets. The Property has been generating moderate income for several years. From July 1, 2002 through June 30, 2012, the Trustees have expended two hundred thousand seven hundred fifty-eight and 36/100 dollars (\$200,758.36) dollars from the Governor Stoughton Fund for the poor of Milton. See Exhibit N.
38. This Court has the power to permit deviation to allow the land to be sold and the proceeds to be invested for the benefit of the poor of Milton. The leading Massachusetts case on deviation is *Trustees of Dartmouth College v. City of Quincy*, 357 Mass. 521 (1970) (the Dartmouth Case) wherein the Supreme Judicial Court considered a deviation from the terms of a charitable gift made by way of a testamentary trust created by Dr. Ebenezer Woodward, who died in 1869, “for the education of females . . . who are native born, born, I wish it to be understood, in the Town of Quincy, and none other than these, to be allowed to attend this Institute which I wish to be as perfect as well conducted as any other in the state”. Dartmouth, *supra*, 357 Mass. at 523. Dartmouth College was named to receive the gift over in the event the trust property was used “for any other purpose than contemplated

in this will”. Dartmouth, *supra*, 357 Mass. at 527. By 1968, the trustees were unable to cover the operating expenses of the Woodward School with income from the trust fund. The school had a capacity of one hundred students, however only seventy-five or fewer students had attended the previous two years. “Financial difficulties had adversely affected the school’s accreditation. Tuition income, however, could be increased materially if the school was able to operate at capacity, and accreditation could probably be restored. It had been lost largely because of uncertainty concerning the school’s financial future.”

Dartmouth, *supra*, 357 Mass. at 525.

Faced with the need for additional income, the trustees formulated a proposal to permit non-Quincy born girls to attend the school only to fill otherwise unused seats and have the non-Quincy girls pay more tuition than Quincy girls, the tuition differential being equal to the income of the trust fund which, in essence would benefit equally each of the Quincy-born girls attending the school. Such a proposal, said the trustees, would assure economic viability and keep the high admission standards desired by the grantor. The Supreme Judicial Court held that the proposal of the trustees constituted a reasonable deviation from the express terms of Dr. Woodward’s trust language despite the specific prohibition against admission to the school of non-Quincy born girls.

39. Similarly, William Stoughton, by his testamentary trust, intended to benefit the poor of Milton. Three centuries have passed since he established this charitable trust. The Selectmen of the Town of Milton acting as the Trustees of the Governor Stoughton trust have determined in accordance with the law of deviation and the facts of this case that the Governor Stoughton Trust in its present form as a land trust does not adequately benefit the poor of Milton. They have also determined through a process that conforms to both

municipal and trust laws that the sale of the Property for five million dollars (\$500,000,000) to Pulte Homes, the highest proposer with the most viable plan for redevelopment, is the best plan to aid the poor of Milton.

WHEREFORE, the Plaintiff prays that this Court, under the doctrine of deviation, issue a Decision, Order and Judgment that the Milton Board of Selectmen, acting as Trustees under the Will of William Stoughton, are authorized to sell to Pulte Homes of New England, LLC a portion containing approximately thirty (30) acres of the Property given to the Town of Milton under the July 6, 1701 Will of William Stoughton for a price of five million dollars (\$5,000,000.00), in accordance with the Purchase and Sale Agreement dated October 26, 2011 between the Town of Milton, acting by its Board of Selectmen as Trustees under the Will of William Stoughton, and Pulte Homes of New England, LLC, as amended by a First Amendment to Purchase and Sale Agreement effective as of January 5, 2012, and to deposit the net proceeds of said sale into the Governor Stoughton Fund to be held as an endowment fund administered by said Trustees, the income and appreciation of said Fund to be used for the benefit of the poor of the Town of Milton, as the Milton Board of Selectmen, acting as Trustees under the Will of William Stoughton, shall determine; and that this Court order such further relief that it deems just and proper.

VERIFICATION OF COMPLAINT

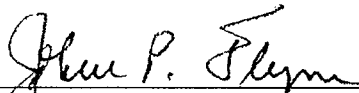
I, Denis F. Keohane, Chairman of the Board of Selectmen of the Town of Milton, Massachusetts, hereby verify that I have read the foregoing Verified Complaint, and that is true to the best of my knowledge, information and belief.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.


Denis F. Keohane

Dated: 10/8, 2013

Respectfully submitted,
The Milton Board of Selectmen,
Acting as Trustees under the
Will of William Stoughton,
By their attorneys,


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Dated: November 20, 2013