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March 18, 2014

President Shannon and  
The Burlington Board of Finance  
City Hall  
149 Church Street  
Burlington , VT 05401

**Re: The Taft School Lease Will Cause Irreparable Damage**

Dear President Shannon and The Burlington Board of Finance:

I am opposed to the long term lease (sale) of Taft School. I support providing the children of Burlington with the best possible education the taxpayers can afford. I attended the Ira Allen School, a new and modern building at that time, and I am deeply appreciative of the fine education I received. However, I am opposed to fudging figures, wasteful spending, and hiding the true extent of the school department's fiscal problems.

**Introduction**

Beginning in 1980, the Burlington School Department has repeatedly tried to sell Taft School, a violation of Mr. Taft's Last Will and Testament. Attempted sales occurred in 1980, 1987, 1995, and 2006. The school department seems to be on a seven to ten year cycle in trying to break Mr. Taft's Last Will and Testament.

**I. Clarification on the Ownership of the Taft School**

1. In 1938 the Federal government paid for the construction of the Taft School and the purchase of the .42 acre lot next to Mr. Taft's property. Is it a violation of Federal law for the Burlington school department to accept Federal money equal to eighty-five percent of the value of the property; change its use from a City school to university use; lease it for one hundred and sixty years; and not reimburse the Federal government?

2. Has the school department provided the City of Burlington with written documentation from either the Department of the Treasury, the Department of Education, or the local United States Attorney that the Federal government has no remaining interest in Taft School and the adjacent .42 acre parcel next to Mr. Taft's one acre lot? If they have do not have this document, when do they plan to get it?

3. The equity that might remain in the Taft School, if the Federal government must be reimbursed, belongs to the City of Burlington, not the school department. Thus, the City will control the funds from this possible lease. These funds, according to the 2008 Court Order, must

be used for "City schools." Since that Court Order redefined school to mean "educational purposes," it seems reasonable that these funds could be used to pay for sailing lessons, classes at the Echo Center, or even a children's educational center at the Moran Building, perhaps named The Elihu B. Taft Center for Educational Purposes.

4. When the school board voted to lease Taft School they didn't seem to understand the funds would go to the City. They discussed what they would do with the money. As of March 7, 2014, not even the Attorney General's office knew Taft School is owned by the City of Burlington, not the school department.

## **II. Deed for The Taft School**

Has the real property from Mr. Taft's estate been transferred to the City of Burlington? If so, please prove me with a copy of the deed. The Burlington land record Volume 155, Page 55 is not a deed. It is Mr. Taft's Last Will and Testament. Is there a deed? If so, where is it? If not, how can the school department confirm the City has a clear title? Can Taft School be leased without that document? Isn't UVM interested in the lot location, size, and any restrictive covenants prior to their occupancy?

## **III. Current Violations of the Court Orders on Taft School**

1. Burlington Telecom rents space in Taft School to store their equipment. How does storing telecommunication equipment in Taft School meet "school" or even "educational purposes" of the Court Orders? Furthermore, the MOU between the school department and BT was signed before the new 2008 Court Order was issued. In other words, the criterion for a Taft School tenant when this agreement was signed was "school purposes." There does not seem to be any mention of this MOU in the 2008 court filings by the school department. Why? Were they trying to hide their long-held desire to break the intent of Mr. Taft's Last Will and Testament? Do these actions, in addition to other false and misleading information they presented to the Judge, make the 2008 Court Order null and void?

2. There is a Probate Court order on the Taft Estate dated November 20th, 1980 that states: "It is hereby ordered that the City of Burlington shall furnish the office of the Attorney General, counsel for uncertain beneficiaries of the Taft Estate, all executed leases or currently contemplated lease of the space within Taft School," which according to the Taft School Lease includes the homestead premises. The school department has not given the Attorney General's office a copy of parking space lease agreements since June, 2006.

3. According to the 2008 Superior Court Order, the Taft School property can only be used for educational purposes, and the contemplated Taft School Lease states, "The Parking Area shall be used exclusively by Tenant, its invitees and guests as an accessory and in service to the educational use... the Parking Area, or any portion thereof, may not be subleased or rented to any entity not utilizing the Building on the Premises for educational use..." Then why is the parking area at Taft School rented to FAHC, a non-educational institution?

## **IV. The Taft School Lease Is Either a Sale or a Ridiculously Low Rent for the Building**

1. A room in an apartment in this area costs about \$700 a month. UVM will only be paying \$1,666 a month to lease Taft School, a 24,500 sq ft building, and they can charge at least \$1,000

a month for parking spaces on the property. In other words, the monthly cost for UVM to lease Taft School is about \$666, less than the cost to rent a room in that area. Why? Could this be considered an attempt by the school department to defraud the City of Burlington and the Federal government?

2. In an effort to prove this transaction is a bargain, the school department compares the appraised sale price of Taft School to the onetime payment they hope to receive from UVM. And, in the memo from the school department to the Burlington Board of Finance dated March 6, 2014 the word "disposition" (disposing of an asset through a sale) is used to explain what they hope to achieve with Taft School. Clearly, that information makes the transaction look like a violation of Mr. Taft's Last Will and Testament.

3. Burlington Telecom, a current tenant at Taft School, is paying \$6 a sq ft. However, UVM will only be charged eighty-two cents a sq ft, before the profits from the parking. How can this be the fair market value? Is this lease a violation of the Vermont State Statute that municipalities must charge the fair market value for their real estate?

4. The value of a dollar today is much less than it will be eighty or a hundred and sixty years from now, the proposed number of years for this lease. Has that been calculated into the sale price? What calculations were used to determine that UVM paying \$1,666 a month for a 24,500 sq ft building is a fair market price?

5. Who will be overseeing this contract when it expires in one hundred and sixty years? Or, is the school department hoping that the Attorney General's office will again overlook the 1980 Probate Court Order, "all contemplated and executed Taft Leases must be reviewed by the Attorney General's office." For twenty-eight years William Sorrell ignored that directive. If that happens again, UVM could easily become the owner of Taft School.

6. Are there examples of other municipal leases for one hundred and sixty years with an onetime upfront payment? If so, can I have a copy? If not, why not?

7. This lease does not provide for the relocation of the current students at Taft School, some of the most needy and vulnerable pupils in the Burlington school system.

#### **V. The Students at Taft School Are Vulnerable and at High Risk**

1. On Top, a school group located at Taft School, is a special education program for grades 5-12, who have intense educational needs.

2. Horizons, another school program at Taft School, is for high school students who are at high risk.

3. Only one person on the school board gave any consideration to the fact that there are no plans for where these special needs and at risk pupils will attend school, if UVM takes over Taft School.

4. It seems, Taft School is an ideal size and location for these groups. Because of their special needs, they cannot be moved to Burlington High School, nor can nearby school districts enroll them. Yet, the school board approved this lease with no idea where they will be moved to, or what it will cost when another location is found.

#### **VI. We Should Not Turn Our Backs on the Burlington School Children**

1. The City of Burlington just spent \$26 M to renovate some of its schools, without receiving matching State and/or Federal funds. It seems this money was spent because the voters did not want to turn their backs on Burlington's school children. Taft School, which is known to need major repairs, was not included. Why? Yet these needed renovations are one of the reasons the school department claims they want to "unload" the building.

#### **VII. Questions About the Terms of the Taft School Lease**

Page 3.

##### Keeping Mr. Taft's Probated Estate in Probate Court

1. The Taft School Lease should be reviewed in Probate Court (Docket No. 11884), not reopened in Chittenden Superior Court (Docket No. S1504-06 CNC) as it is stated in the lease. It was moved to Chittenden Superior Court in 2006 because the Judge of Probate had a conflict of interest with one of the lawyers. That conflict no longer exists, so the case should be returned to Probate Court, where it belongs.

2. It is interesting to note that the 2006 Taft School Probate Case was initiated because the Burlington school department posted a for sale notice for the school in the Burlington Free Press on April 30th and May 1st and 2nd of 2006, a violation of Mr. Taft's Last Will and Testament. The Attorney General's office, which is supposed to be overseeing the rights of the homeless, and not let the Taft School be sold, did nothing until March 23rd, 2007.

Page 7.

##### Asbestos and Other Hazardous Materials

1. There is asbestos in the ceilings and tunnels of Taft School. In this lease, the City is agreeing to assume all liability for any harm done because of their negligence with hazardous materials. For example, by mistake school contractors working in Taft School displace the asbestos in the ceilings of the classrooms. The building will have to be evacuated and the City of Burlington will have to pay UVM's rental costs at another location until the asbestos, at the City's expense, is removed.

2. There is no mention of whether or not there is lead paint in Taft School which was built in 1939. Is there any information on radon? Mold? If these is hazardous materials are in Taft School and "a tenant, a guest of a tenant, agent or contractor suffers harm," the City of Burlington assumes all liability.

Page 6.

##### Tenant Can Remove All Their Improvements

The lease states that UVM can take all the electrical fixtures with them when they move. And, when they move they can also take the electrical, plumbing, fire, and all heating and cooling

systems they have installed. What will be left? Who will pay for these systems to be replaced? At what cost?

Page 3.

Current Condition of Taft School

In the March 6, 2014 school department memo to the Burlington Board of Finance the information on the Taft School condition is listed as n/a (no answer.) But the lease states "No structural component of the Premises shall require immediate substantive repair," when UVM moves in. Which statement is the correct one?

Page 8.

Repair Work

The City is agreeing to pay for all remedial (repair) work, but only after UVM approves of it. This work includes the cost of contractors, engineers, and attorneys.

Page 11.

Subletting

1. According to this lease, subletting is permitted: the City of Burlington is agreeing to let UVM sublet the entire building. Is UVM planning on moving? If UVM charged the fair market value of \$6 a sq ft for the 24,500 sq ft building, they would make a substantial profit, especially when the City of Burlington is paying for all the maintenance, renovations, and property taxes on Taft School.

2. If UVM decides to sublet Taft School and the Burlington school department has not found a permanent location for its students, would the school department be interested in being UVM's tenant? UVM would certainly charge the fair market value, which would be a price the school department would probably find prohibitive, especially when they are paying all the maintenance and renovations costs associate with the upkeep of the building.

Page 2.

Square Footage

The lease states the square footage of Taft School is 45,184. Yet, the school department has repeatedly stated that the building is 24,500 sq ft (more recently 21,655 sq ft) and that the building is too small to meet their needs. Someone is not telling the truth.

Page 4.

Zoning

The zoning and planning approval clause in this lease indicates there could be extensive changes to the exterior of the building. There is no statement in the lease that the City can object to these changes. That should be considered unacceptable, and a violation of Mr. Taft's Last Will and Testament.

Page 1.

How Does this Sale Benefit the Burlington School Children?

The fifth WHEREAS on page one states, "The Burlington School District and its governing body, the Burlington School Board, have determined that their educational purposes can be best

served by leasing the premises on a long term basis to UVM." How can selling a school building before the department knows where the seventy at risk and/or special needs students in the building will be moved to, be in the best interest of the school children?

Page 13.

Parties Signing the Lease

If this lease is approved, Mayor Weinberger will sign it on behalf of the City of Burlington. The person signing on behalf of UVM is the David V. Rosowsky, the Provost and Senior Vice President at UVM. Why isn't Thomas Sullivan, the President of UVM, signing it? President Sullivan is a lawyer: he attended a top law school; clerked for a Federal Judge; worked at one nation's most outstanding law firms; and is a nationally recognized authority on antitrust law and complex litigation. He has even written eleven books and over fifty scholarly articles. He is a very smart man.

Page 1.

The Lease Misquotes Court Documents

1. The third WHEREAS on page one misrepresents Mr. Taft's Last Will and Testament.
2. The fourth WHEREAS on page one misrepresents the conclusions of the 2008 Superior Court Order (Docket No. S1504-06 CNC.)

**VIII. School Maintenance Money Inappropriately Spent by the Burlington School Department**

Two hundred and ten thousand dollars (\$210,000) of maintenance money was used to buy 59 Murray Street, a building the school department could not use. The department plans to use maintenance money to pay the \$200,000 yearly mortgage on St. Joseph for at least the first two years. Yet, in court testimony "the city [school department] stated that the Taft School is in need of significant repairs, and that it cannot maintain the property without the gift being a significant drain on its budget." Would someone please explain why maintenance money is being used to buy a house and pay mortgages when Taft School needs maintenance work?

**IX. Student Enrollment**

1. The school department has at least two sets of numbers on student enrollment. One set indicates a decline in enrollment, and the other - the one they promote - shows an increase. Is that a standard policy in school departments?
2. It is important to distinguish between optimum class size and maximum class size. Data from the school department shows that the class sizes in the Burlington schools are at least ten percent below their maximum capacity.
3. Is the shortage of classroom space in the Burlington schools caused, not by an increase in student enrollment, but because the school department is using the classroom space for purposes other than education and for programs not mandated under Vermont State Statute?
4. It is commonly known at the school administrative offices that if the Burlington schools had a real need for additional classroom space a new building would be constructed "without delay."

5. Why is the school department trying to sell Taft School when they claim there is increase in student enrollment and a shortage of classroom space?

**X. Two Sets of Numbers**

1. It seems the school department not only has at least two of numbers on student enrollment, they also have two sets of numbers for the renovation costs for St. Joseph's School, the school's equity in the Ira Allen Building, and the size and condition of Taft School.

**XI. Suggestions**

1. I strongly urge the Burlington Board of Finance and the City Council not to approve the Taft School Lease.

2. I also suggest there be an investigation into the school department's habit of keeping two sets of numbers.

Thank you.

Sincerely,

Martha R. Lang.

cc:

Jeffery Amestoy, Esq.  
Eileen Blackwood, Esq.  
Burlington Board of Finance **via email**  
Burlington City Council **via email**  
Joanna Donovan, Chair, House Education Committee  
Susan Fowler, Esq.  
Dennis Pearson, Esq.  
Robert Rusten, CAO  
Joan Shannon  
Thomas Sullivan, Esq.  
Miro Weinberger, Mayor