

DARYL EVERY
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BRAINTREE, MA 02184
EM: daryl@daryleveryesq.com

BY HAND

March 4, 2023

Peter Morin, Chair
Braintree Charter Review Committee
1 John F. Kennedy Memorial
Braintree, MA 02184

RE: *Town of Braintree Charter Improvements – Trust Fund Full Disclosure*

Dear Mr. Morin:

As a resident, voter and taxpayer of Braintree, I am responding to the Braintree Charter Review Committee's request for public comment regarding the current adequacy of the Town of Braintree's Charter for meeting the needs of our community. After having reviewed our town's Charter and seen it in operation, I find that the Charter needs amendment.

In 2005, the Massachusetts State Legislature enacted Chapter 189 of the Acts of 2005, An Act Establishing a Mayor/Town Council for the Town of Braintree, creating a "strong mayor" form of town government where the mayor functions as Braintree's chief administrator and the Town Council as our legislative and investigative body. After more than 15 years of experience with the "strong mayor" structure, it is necessary to amend the Braintree Town Charter to address the Charter's deficiencies associated with trust fund management and the lack of trust fund disclosure to our citizens.

Prior to the adoption of the mayoral government format, the Braintree Town Treasurer was the custodian of all trust fund monies and securities while under the direction of a three-person Braintree Board of Commissioners of Trust Funds. As of the 2006 Town of Braintree Annual Report, the citizens of Braintree were the beneficiaries of 20 trust funds, with a total value of approximately \$10 Million beneficiaries. The value of the four largest trust funds in 2006 were:

- Annie and Norton Hollis School Fund \$2,743,731
- Braintree School Fund Committee, Inc. \$2,503,155
- August J. Peterson Fund \$1,903,598
- Cemeteries Perpetual Care Fund \$1,027,320

Following the adoption of the "strong mayor" form of government, we as a community lost the the vital opportunity for full disclosure that came with a Board of Commissioners of Trust Funds management. Specifically, pursuant to state law, M.G.L. c. 41, Sections 46 and 47, the Braintree Board of Commissioners of Trust Funds was obligated to:

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Braintree Charter Review Committee
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...consistent with the terms of the trusts, manage and control the same [trusts], and distribute the income in accordance with the terms of the respective trusts. The board shall keep a record of its doings, and at the close of each financial year shall make a report to the town, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures.

Importantly, regular posted monthly meetings had to occur and minutes of each meeting had to be maintained. To provide the Charter Committee and the Braintree citizens with an example of the disclosure method regarding the Braintree citizens' trust funds, attached is a copy of the 2006 Report of the Board of Commissioners of Trust Funds which was contained in the 2006 Annual Report of the Town of Braintree, pages 178-186.

With the change from town meeting governance after 2006, annual public disclosure of the Town's trust funds ceased. With the "strong mayor" structure, the mayor now controls the release of information regarding these trusts. Consequently, when individual citizens or citizen groups request for information, they experience either no response or stonewalling, necessitating Freedom of Information Act ("FOIA") requests. Even in instances where members of our Town Council, which is supposed to function as a legislative body with investigative powers, their requests have been frustrated by the lack of prompt or complete information from the chief executive who controls the town officers.

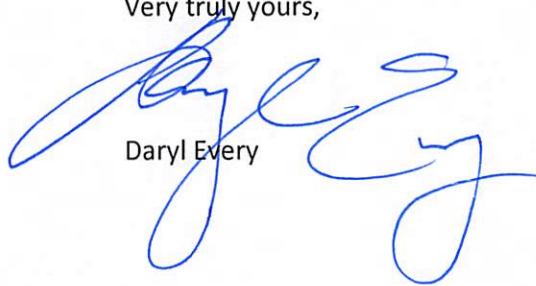
One of the most egregious examples current Town Charter failure to address the proper management of town trust funds involves the August J. Petersen Trust Fund (often referred to as the Peterson Swimming Pool Trust Fund). Over \$1 Million dollars in Petersen Trust funds were distributed unilaterally by Braintree mayors for the construction of an indoor swimming pool. The mayors were highly resistant to the release of any information regarding the trust's management. After much haggling between residents, the Town Council and the Mayor, the Town Auditor's Office released in 2020 a barebones "Audit Report" regarding the Peterson Trust Fund's management. In 2021, the Petersen Pool Advocates, a Braintree citizens group, filed a complaint with the Attorney General's Public Charities Bureau, claiming that Braintree's mayors violated their fiduciary duties to account and gross malfeasance. The success of the "strong mayor" governance structure concerning trust fund management is best reflected in the failed construction project at the Braintree High School which was supposed to be the site of the completed Petersen Pool. (To view the Town Auditor's Report and the Petersen Pool Advocates' 2/16/2021 complaint with the Attorney General's Office, see: www.petersenpooladvocates.org)

My strong recommendation to the Braintree Town Charter Review Committee Members is that the Braintree Town Charter be amended, at a minimum, to:

- provide for the re-establishment of trust fund accountability required by M.G.L. c. 41, §§ 46 and 47, and

Peter Morin, Chair
Braintree Charter Review Committee
March 4, 2023

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Daryl Every', is written over the typed name. The signature is fluid and cursive.

Daryl Every

DCE/j
Enclosure

2006 ANNUAL REPORT OF THE TOWN OF BRAINTREE

REPORT OF THE BOARD OF
COMMISSIONERS OF TRUST FUNDS

Actions of the Board of Commissioners of Trust Funds are governed by the following sections of Chapter 41 of the Massachusetts General Laws:

SECTION 46 – The town treasurer shall be the custodian of all funds and securities of such trust funds, shall invest and reinvest them and expend therefrom moneys as directed by the commissioners. The treasurer shall furnish a bond satisfactory to them for the faithful performance of his duties.

SECTION 47 – The said board of commissioners shall, so far as consistent with the terms of the trusts, manage and control the same, and distribute the income in accordance with the terms of the respective trusts. The board shall keep a record of its doings, and at the close of each financial year shall make a report to the town, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures.

Regular posted monthly meetings have been held and the minutes of each meeting are kept in a record book.

In compliance with the above two sections of Chapter H of the Massachusetts General Laws, this report is given in complete detail.

The trust accounts' assets are allocated among both equities and debt instruments, with some cash holdings, enabling the trusts to take advantage of both market increases and to generate current income for distribution where appropriate.

Respectfully submitted,

James Carden, Chairman
Richard Flaherty, Vice Chairman
Janice H. Randolph, Secretary

A summary of all the trust funds ranked according to size as of December 31, 2006

Annie and Norton Hollis School Fund	2,743,731
Braintree School Fund Committee Inc.	2,503,155
August J. Peterson Fund	1,903,598
Cemeteries Perpetual Care Fund	1,027,320
Municipal Building and Insurance Fund	543,477
Hollis Park and Playground Trust	220,190
Marion Leary Trust	171,245
James Colbert Trust	121,771
CW & MA Daily Trust	93,279
Charles Thayer Trust	71,738
Nathaniel Hunt Trust	38,053
Charles E. French Trust	27,185
Mary White Trust	20,493
Braintree 400 th Anniversary Fund	17,127
Lucia and Stanwood Hollis Trust	13,096
High School Class of 1918 Fund	4,786
Avis Thayer Trust	1,549
Hannah Hollis Trust	654
Ann Penniman Trust	651
George Kelley Trust	<u>0</u>
All Funds 12/31/2006	9,523,098

TRUST FUND INVESTMENTS AS OF DECEMBER 31, 2006

<u>Shares</u>	<u>Description</u>	<u>Book Value</u>	<u>Market Value</u>
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Charles Edward French Trust – (accepted 10/14/1907). Income to be expended for three silver medals for each high and grammar school for the best scholarship.

280	ExxonMobil	4,412	21,457
	Total Cash	5,728	<u>5,728</u>
	Total Account		27,185

Nathaniel H. Hunt Trust – (accepted 3/19/1908). Income to be expended by the Trustees of the Thayer Public Library for books.

175	AT&T Inc.	4,855	6,256
300	Dow Chemical	5,803	11,970
8	Medco Health Solutions	268	428
68	Merck & Co	4,739	2,965
3000	US Treasury Nts 5/15/07	3,065	2,992
	Total Cash	13,442	<u>13,442</u>
	Total Account		38,053

Anna M. Penniman Trust – (accepted 4/10/1911). Income to be expended for competitive prize to the pupils of the Noah Torrey School for reading and declamation.

Total Cash	651	<u>651</u>
Total Account		651

George W. Kelley Trust – (accepted 3/21/1927). Income to be expended for the care of Lakeside Cemetery.

Total Cash	0	<u>0</u>
Total Account		0

Hannah R. Hollis Trust – (accepted 3/26/1928). Income to be expended for the care of lawn in Lakeside Cemetery.

Total Cash	654	<u>654</u>
Total Account		654

Charles Thayer Trust – (accepted 3/25/1929). Income to be expended for care of Thayer Family Burial Lots No. 73 and No. 74 in Lakeside Cemetery. Remaining income to be expended by the Town for purposes as it may determine.

97	AT&T Inc.	2,693	3,468
135	Coca Cola	7,435	6,514
250	GE	7,625	9,302
215	Pfizer, Inc.	9,884	5,568
	Total Cash	46,886	<u>46,886</u>
Total Account			71,738

Avis A. Thayer Trust – (accepted 11/9/1934). Income to be expended for suitable awards to fourth grade pupils of the Hollis School for improvement in scholarly attainment.

Total Cash	1,549	<u>1,549</u>
Total Account		1,549

James W. Colbert Trust – (accepted 9/7/1947). Income to be expended for maintenance of the Colbert Library.

210	Coca Cola	9,891	10,133
320	GE	9,901	11,907
200	IBM	6,606	19,430
435	Johnson & Johnson	4,299	28,719
200	Kimberly Clark	5,910	13,590
6	Neenah Paper	101	212
8,000	U.S. Treasury Nts 5/15/07	8,173	7,980
	Total Cash	29,800	<u>29,800</u>
Total Account			121,771

Mary F. White Trust – (accepted 3/13/1954). Income to be expended for the care of Penniman School and lot.

120	Dow Chemical	2,321	4,788
215	Pfizer, Inc.	9,884	5,568
7,000	US Treasury Nts 5/15/07	7,151	6,983
	Total Cash	3,154	<u>3,154</u>
Total Account			20,493

Lucia E. and Stanwood Hollis Trust – (accepted January, 1959). Income to be expended for library books.

43	Del Monte Foods	235	474
97	Heinz, H J	2,193	4,366
7,000	US Treasury Nts 5/15/07	7,151	6,983
	Total Cash	1,273	<u>1,273</u>
Total Account			13,096

N.E. Hollis Park and Playground Trust – (accepted January 1959). Income to be expended for Braintree Parks and Playgrounds.

120	American Elec. Power	5,652	5,110
326	AT & T Inc.	1,310	11,655
600	Bellsouth Corp.	3,841	28,266
400	Bristol Myers Squibb	6,129	10,528
8	Idearc	55	229
168	Verizon Communications	1,352	6,256
440	Wilmington Trust	6,600	18,555
400	Wyeth	6,738	20,368
40	Zimmer Holdings	308	3,135
10,000	US Treasury Nts 8/15/07	9,969	10,063
35,000	FHLB 12/6/07	35,000	34,902
30,000	BankBoston 3/25/08	28,530	30,356
	Total Cash	40,767	<u>40,767</u>
Total Account			220,190

C.W. and M.A. Daily Trust – (accepted 10/19/1963). Income to be expended for scholarships awarded to graduates of Braintree High School.

6	Agere Systems Cl B	228	115
49	Alcatel-Lucent	1,063	697
463	AT & T Inc.	4,549	16,552
21	Avaya	85	293
330	Bellsouth Corp.	1,613	15,546
97	Comcast Corp.	1,604	4,106
11	Idearc	139	315
225	Verizon Communications	3,420	8,379
15,000	Federal Farm Cr Bks		
	Cons Sysw Mtn 2/11/08	15,075	15,100
20,000	Merrill Lynch & Co.		
	10/15/08	20,330	20,357
	Total Cash	11,817	<u>11,817</u>
Total Account			93,279

Cemeteries Perpetual Care Fund – (accepted 3/16/1962). Income to be expended for perpetual care of certain lots.

6	Agilent Technologies	316	209
2,395	American Elec. Power	103,040	101,979
721	AT & T Inc.	16,403	25,776
1,570	Bank of America	33,976	83,822
600	Bellsouth	3,841	28,266
730	Coca Cola Co.	45,021	35,222
1,470	ExxonMobil	28,605	112,646
3,615	Hewlett Packard	70,403	148,902
23	Idearc	638	659
61	Medco Health Solutions	1,637	3,260
510	Merck & Co.	28,470	22,236
333	Pfizer, Inc.	15,308	8,625
550	Procter & Gamble	25,067	35,349
775	State Street Corp.	34,214	52,266
475	Verizon Comm.	15,690	17,689
800	Wyeth	13,100	40,736
520	3M Company	24,864	40,524
25,000	GE Cap Corp 8/15/07	24,828	24,747
25,000	WalMart 3.375% 10/1/08	24,890	23,976
25,000	Citigroup 4.25% 7/29/09	25,501	24,465
20,000	FHLB 9/17/10	49,907	49,094
	Total Cash	146,872	<u>146,872</u>
Total Account			1,027,320

Municipal Building and Insurance Fund – (accepted 3/23/1966). Monies to supplement Town of Braintree's insurance coverage.

300	Abbott Labs	14,035	14,613
710	AT & T Inc.	19,728	25,382
954	Bank of America	20,624	50,934
545	Bristol Myers Squibb	31,006	14,344
400	Coca Cola Co.	20,104	19,300
697	ExxonMobil	25,599	53,411
465	GE	17,286	17,303
300	Hewlett Packard	15,602	12,357
6	JM Smucker	135	291
1,165	McDonalds Corp.	35,328	51,644
66	Medco Health Solutions	1,893	3,527
555	Merck & Co.	33,107	24,198
593	Pfizer, Inc.	24,996	15,359
440	Procter & Gamble	12,961	28,279
25	Zimmer Holdings	813	1,959
316	3M Corp.	19,943	24,626
150,000	FHLB 12/6/07	149,579	149,579
	Total Cash	36,371	<u>36,371</u>
	Total Account		543,477

August J. Petersen Fund – (accepted 3/23/1964). Funds to be used to construct a public swimming pool in East Braintree.

1,200	Abbott Labs	14,736	58,452
11	Agilent Technologies	417	383
1,100	Alliant Energy Corp.	27,083	41,547
2,035	American Elec. Pwr	89,752	86,650
2,155	AT & T Inc.	58,738	77,041
975	Coca Cola Co.	57,064	47,044
1,245	Dow Chemical	33,686	49,676
980	Emerson Electric	30,148	43,208
1,300	ExxonMobil	34,738	99,619
1980	FPL Group	49,020	107,752
1,795	GE	62,224	66,792
910	Hewlett Packard	23,580	37,483
120	Hospira Inc.	1,016	4,029
1,105	IBM	71,250	107,351
73	Idearc	2,204	2,091
7	JM Smucker	152	339
1,200	Johnson & Johnson	14,430	79,224
400	Kimberly Clark	11,653	27,180
101	Medco Health Solutions	2,911	5,397
840	Merck & Co.	50,357	36,624
12	Neenah Paper Inc.	199	424
1,300	Pepsico Inc.	36,920	81,315
1,380	Pfizer, Inc.	60,652	35,742
2983	Procter & Gamble	106,052	191,717

1	Verigy	3	18
1,470	Verizon Communications	54,192	54,743
940	Wyeth	52,074	47,865
676	3M Company	20,160	52,681
110,000	GE 6/15/07	111,958	109,852
110,000	BankBoston 3/25/08	104,610	111,307
	Total Cash	240,052	<u>240,052</u>
Total Account			1,903,598

Braintree High School Class of 1918 Fund – (accepted March 1969). Income to be expended for purchase of books for Braintree High School Library.

56	ExxonMobil	882	4,291
	Total Cash	495	<u>495</u>
Total Account			4,786

Marion E. Leary Trust – (accepted May 1980). Income to be expended for the beautification of Braintree parks and playgrounds.

180	American Electric Pwr	8,478	7,665
326	AT & T Inc.	1,310	11,655
600	Bellsouth	3,841	28,266
225	Coca Cola Co.	10,001	10,856
335	GE	10,218	12,465
8	Idearc	52	229
7	Medco Health Solutions	237	374
65	Merck & Co.	4,580	2,834
150	Pfizer, Inc.	6,156	3,885
160	Verizon Communications	1,287	5,958
400	Wyeth	6,738	20,368
30,000	Procter & Gamble 6/15/07	31,335	29,949
	Total Cash	36,741	<u>36,741</u>
Total Account			171,245

Town of Braintree – 400th Anniversary Celebration Committee Trust Fund – (accepted May 1, 1991). Trust fund established upon transfer of the sum of \$5,000 from the 350th Anniversary Celebration Committee Fund.

150	AT & T Inc.	3,882	5,005
150	Bellsouth	2,322	7,537
25	Kimberly Clark	1,475	1,699
	Total Cash	2,886	<u>2,886</u>
Total Account			17,127

Braintree School Fund Committee Inc. (created under will dated 1826 and funded with MDC proceeds from a conservation easement in 2002) "The yearly income thereof under the direction of the School Fund Committee in the Town of Braintree shall be forever appropriated for the support of the public schools of Braintree and for the promotion of learning in them."

1,150	Abbot Labs	47,035	56,017
775	American Int'l Group	50,189	55,537
6095	AT&T Inc.	151,459	217,896
1,842	Bank of America	49,906	98,344
1,880	Bristol Myers Squibb	50,008	49,482
1,235	Consolidated Edison	50,168	59,366
2,475	Edison Int'l	50,150	112,563
1,420	ExxonMobil	50,282	108,815
4,980	GE	150,595	185,306
2,305	Hewlett Packard	49,465	94,943
115	Hospira Inc.	3,243	3,862
1,475	Kellogg	49,965	73,838
2,080	McDonalds	50,003	92,206
1,025	Merck & Co.	46,761	44,690
1,090	Pepsico	49,944	68,180
1,455	Pfizer, Inc.	49,759	37,685
2456	Procter & Gamble	99,780	157,847
660	3M Company	49,738	51,434
100,000	FHLB 8/15/07	100,525	98,719
50,000	ChevronTexaco 9/17/07	51,897	49,413
100,000	FHLB 12/6/07	100,000	99,719
50,000	Wells Fargo 4/4/08	51,580	48,964
100,000	WalMart Stores 10/1/08	100,612	95,905
100,000	Pfizer 3/2/09	100,524	96,252
50,000	FHLB Mortgage 4/15/09	50,748	48,265
100,000	FNMA 2/15/10	99,201	96,938
50,000	FHLB 8/13/10	50,370	49,703
100,000	Fed Farm Cr BKS		
	Cons 8/22/11	100,542	98,563
	Total Cash	152,703	<u>152,703</u>
Total Account			2,503,155

A.S. and N.E. Hollis School Fund (accepted 3/19/1959). Income to be expended for the Braintree Public Schools

480	American Elec	20,940	20,438
4,220	AT & T Inc.	84,416	150,865
2,254	Bank of America	45,832	120,341
1,200	Bellsouth	5,823	56,532
1,618	Bristol Myers Squibb	27,705	42,586
600	Central Vermon Pub Srv	7,766	14,130
725	Consolidated Edison	24,797	34,851
800	Edison	10,894	36,384
1600	Emerson Elec	21,031	70,544
800	Energy East	11,372	19,840
2,776	Exxon Mobil	34,195	212,725
1,635	GE	9,401	60,838
600	General Mills	17,728	34,560
800	IBM	17,000	77,720
105	Idearc	1,757	3,008
2,092	Johnson & Johnson	24,482	138,114
17	JM Smucker	263	824
740	JP Morgan	14,550	35,742
600	Kellogg	19,200	30,036
1,150	Kimberly Clark	39,345	78,143
1,025	Merck	46,781	44,690
34	Neenah Paper	673	1,201
1,000	Pepsico	18,964	62,550
200	PNC Finl Svcs	1,752	14,808
1,702	Procter & Gamble	34,427	109,388
2,265	Public Svc Enterp Grp	76,595	150,351
2,111	Verizon	43,212	78,614
1,200	Wyeth	22,050	61,104
161	Zimmer Hldgs	1,387	12,619
800	3M	19,620	62,344
100,000	GE Cap Corp Med Term		
	NTS 6/15/07	101,780	99,865
100,000	P & G CO NT 6/15/07	104,270	99,830
100,000	Citigroup Inc Global		
	Sr NT 2/1/08	99,339	98,201
50,000	Walmart Stores Inc		
	Notes 10/1/08	50,861	47,952
200,000	FHLM Corp 7/15/09	199,138	196,626
50,000	FHL Bks 8/15/11	50,213	48,812
5,000	American & Foreign		
	Power Gold Deb 3/1/30	4,736	3,206
	Total Cash	313,349	<u>313,349</u>
	Total Account		2,743,731