

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 00-2564

\_\_\_\_\_  
ROBERT L. MANDELL, et al. )  
Plaintiffs, )

v. )

TOWN OF READING, )  
Defendant. )  
\_\_\_\_\_

AFFIDAVIT OF SIDNEY R. BOWEN, III

I, Sidney R. Bowen, III, do depose and state:

1. I am a Principal of Earl R. Flansburgh & Associates, Inc. ("Flansburgh"), 77 North Washington Street, Boston, MA 02114 and have personal knowledge of the following facts except for those made upon information and belief which facts I believe to be true.

2. Flansburgh is an established and experienced architectural design firm that specializes in, among other things, the planning and design of public school projects. I personally have over 4½ years of public school project experience, the vast majority of which I gained by working on school projects located in Massachusetts and which were subject to Massachusetts designer procurement requirements.

3. I make this statement in support of Reading's opposition to the Plaintiffs' Motion for a Preliminary Injunction.

4. In order to address increasing enrollments, overcrowding, and aging facilities within the Reading Schools, a capital improvements project is currently being

designed and developed which increases classroom space, and improves/expands educational core facilities.

5. All facility projects are being developed to take advantage of financial assistance currently being offered by the School Building Assistance Bureau ("SBAB") that will reimburse Reading for 66% of all costs associated with the approved projects.

6. During the Summer of 1998, Flansburgh was selected by Reading School Building Committee ("Building Committee") to perform a Feasibility Study to develop SBAB fundable alternatives to address problems of overcrowding and aging facilities in Reading's elementary schools. At the time Flansburgh was selected to perform the Feasibility Study, I understood that Flansburgh would be eligible to perform follow-on design services pursuant to the Massachusetts designer procurement requirements. In fact, it is the standard in the area of school building design in Massachusetts for a master planner or a feasibility designer, who produces a feasibility study satisfactory to a municipality to be eligible to perform the follow-on design work, after an independent review of the feasibility study, in accordance with the procedures set forth in M.G.L. c. 7, §§ 38A½ - 38O.

7. On November 5, 1998, we presented an Executive Summary of our Feasibility Study to the Reading School Building Committee ("Building Committee"). A copy of the November 5, 2000 Executive Summary of the Feasibility Study outlining Option B is attached hereto as Exhibit A.

8. Although the Feasibility Study included several options we had developed to address Reading's growing problems with overcrowding and outdated facilities, the Building Committee determined that Option B, creating five elementary schools of equal size, was the most appropriate option. Option B consists of a program for additions and renovations to the Barrows School and the construction of a new school at a site known as the Dividence Road site

("Project"). The Building Committee recommended this solution through an article at Town Meeting on December 10, 1998 and Town Meeting approved funds for the School Committee to proceed with Option B.

9. Between November of 1998 and the end of January 2000, the Project was challenged by referendum, approved again by a vote at Town Meeting and challenged once again by referendum. Approval for the Project was not finalized until after the last referendum vote on January 11, 2000.

10. As the end of January of 2000 approached, it became apparent that, due to delays caused by the challenges to the Project, Reading would have difficulty obtaining the independent review of Flansburgh's work required by M.G.L. c. 7 and making the final selection of its designer in time to meet the March 1, 2000 Department of Education ("DOE") deadline for submission of Educational Specifications and Preliminary Schematic Drawings. In the event that Reading were unable to meet the Department of Education deadlines, the Reading Public Schools risked losing or delaying receipt, by one or more years, reimbursement of 66% of its costs of design and construction for the Project, thereby potentially delaying the Project, causing increased design and construction costs in an amount estimated to be \$1.5 million, or nearly 10% of the Project's total cost.

11. Therefore, it was critical that certain design work be performed so that Reading could meet the March 1, 2000 deadline. To ensure that Reading met this date, Flansburgh entered into a time and materials contract with the School Committee pursuant to which Flansburgh would begin preparing the schematic drawings necessary to allow Reading to meet the March 1, 2000 deadline before it was awarded the final design contract. A copy of the time and materials agreement with Flansburgh is attached hereto as Exhibit B.

12. When Flansburgh entered into this time and materials contract, I understood that Flansburgh would not be paid for this work unless it was ultimately awarded the designer services contract.

13. If Flansburgh is prevented from continuing its work for Reading as the Plaintiffs have requested, the financial costs to the Town could be severe. Should another design professional eventually be retained, the Town will not be reimbursed for any monies expended since only the professional costs associated with the Architect-of-Record will be considered for reimbursement. Further, Reading will have to resubmit its application to the SBAB and the new designer will not be able to use Flansburgh's documents, but will have to redesign the Project and prepare new schematic design documents and construction drawings for the March 1, 2001 and June 1, 2001 submission deadlines. Moreover, Reading's 2000 priority ranking for funding will be lost significantly delaying reimbursement to Reading by the SBAB. Finally, a year long delay to the Project will result in an increase in design and construction costs for the Project in an amount estimated to be \$1.5 million.

14. I am familiar with the issue raised in the Plaintiffs' Motion in connection with the Reading Conservation Commission ("Conservation Commission") regarding test borings being performed in the wetlands buffer zone at the new school site. A copy of the Conservation Commission's letter to Harry Harutunian, Reading's Superintendent of Schools, dated July 10, 2000 is attached hereto as Exhibit C. In this instance, the contractor performing the boring tests mistakenly crossed, and performed its tests in, the wetlands buffer zone. Upon learning of this error, I contacted the Conservation Commission to determine what would be required of Reading to remedy the problem.

15. Following the Conservation Commission's July 10, 2000 letter, and my communication with the Conservation Commission regarding a remedy to the problem, a second