

Minutes of Called Meeting for Business, New Haven Monthly Meeting,
Thursday, September 29, 2011

Those attending included: Kim Stoner (clerk), Greg Melville (acting recording clerk), Frank Cochran (attorney for New Haven Friends Meeting), Allyx Schiavone (director of Friends Center for Children), Dwight Lopes, Maureen Lopes, Jane Coppock, Steve Whinfield, Judith Shea, Wendy Kravitz, Bonnie Muller, Linda Miller, Aaron Freeman, Rod Palmer, Paul Hammer, Maria Lamberto, Ed Shaw, Kathleen Flynn. There were approximately 30 Friends present, but not all names were recorded at the time.

Documents sent out in advance for the Called Meeting for Business:

1. Draft Ground Lease, dated 9/15/11, New Haven Monthly Meeting of Religious Society of Friends as Landlord and Friends Center for Children, Inc. as Tenant
2. Friends Center for Children Campaign Planning Study report, dated July 2011

Documents distributed at the Called Meeting for Business:

1. Memo to New Haven Friends Meeting, from Frank Cochran, re Special Meeting for Business – 9/29/2011
2. Provisions to include in a Land Use Agreement with FCFC – Recommendation from Property Committee, November 14, 2010

Clerk Kim Stoner began the meeting with a period of silent worship. She opened discernment by reviewing the charge of the Special Meeting for Business – to decide the two questions: 1) whether to authorize the Clerk to execute a ground lease and 2) whether conditions to Friends Center for Children, Inc.'s (FCFC) proposed state grant are acceptable to Meeting (NHMM). These were outlined in a memo to the Special Meeting for Business from Frank Cochran, Meeting's counsel, which was distributed.

Frank Cochran's memo briefly summarized the "ground" (i.e., property) lease – including a brief history of the lease's development by counsel, the ad hoc committee and FCFC Board, as well as notes on significant features of the lease. Among these were FCFC's plans to secure state bonding to operate its daycare center in a facility to be built on the land leased from Meeting, the length of the lease (30 years, with three, potential, 10-year extensions – at the end of which the land would revert to Meeting), as well as some details of the conditions which will govern the Meeting's legal and financial standing under the lease.

Clerk took note that Meeting had asked those in attendance at the Threshing Session of June 6, 2010, "Are you guided by Spirit...to accept risks you perceive that may accrue to NHMM in meeting the mission of Friends Center for Children?" [Query #3.]

She also reviewed previous minutes, including a series of approvals of plans for Friends Center's new building by NHMM, which began with Minute 11/09 -03 and Minute 12/09-04, authorizing Meeting and FCFC to proceed with development of the plans. In

the almost-two years since, Meeting has approved seven additional minutes, including a resolution supporting the application of Friends Center for Children, Inc. to the Zoning Board of Appeals of the City of New Haven.

She requested NHMM counsel Frank Cochran review the work of the Meeting's ad hoc committee in minimizing the risks that Meeting will face in entering into the agreement.

Frank Cochran carefully went over, point-by-point, "Provisions to include in a Land Use Agreement with FCFC – Recommendation from Property Committee, November 14, 2010, for final determination by Meeting for Business," copies of which were made available to those in attendance.

Some of the key points:

- The final design will come back to the Meeting for approval.
- Land to be leased: parcel in the southeast quadrant of our property that would include the footprint of the building and the land around it required for playgrounds, and also the side yard adjacent to the railroad property. It does not include the "finger" of Meeting property that runs up to Russell Street, which the City has deemed to be unsafe, due to having been quarried. There will be joint use of the driveways and parking lot.
- Length of the lease is 30 years, with 3 potential 10 –year extensions, totaling 60 years. At the end of this time, the building would revert to NHMM. The lease can be extended and revised during its course. The land record will include a notice of the lease, but not the lease itself.
- Financing: FCFC is preparing to apply for a state grant for \$1 million. There is a capital campaign in process to raise the additional \$2 million that will be needed. FCFC has decided that it will not go forward with the building unless it has this solid financial backing. (Further discussion of the state grant is below.)
- Mortgage financing is the greatest concern. There are provisions in the lease that allow for a mortgage. Frank Cochran recommends that the current draft of the lease be changed to clarify that NHMM has to approve the lender and terms of any mortgage. The director of FCFC stated that FCFC would only consider a mortgage as a "bridge" loan to cover private pledges for \$2 million of the building's \$3-million cost, which might need to be fulfilled over a period of time.
- Subleasing: No sublease without the permission of NHMM. NHMM can refuse a subtenant that is not a Quaker organization.
- Lease should state that if anyone other than FCFC occupies the building, they would have to pay rent at market rate for the land.
- Access of NHMM to the FCFC building: The Attorney General of Connecticut has determined that a day care center built with state funds can not be used for religious purposes. So, we could not, for example, use the FCFC building for First Day School.
- Insurance: Both parties are required to have insurance, and there are provisions to make sure that they indemnify us and vice-versa. There is always the possibility of a lawsuit, but these provisions are the best we can do.

- Appearance: Material alterations to the exterior of the building would have to be approved by NHMM in advance.
- Sale: FCFC can't sell the building. It is a requirement of the lease that FCFC operate a day care center in the building. If they move somewhere else, the building reverts to NHMM.
- There is a risk that NHMM could end up owning a building without any particular use. This risk can not be eliminated. The best way to reduce the risk would be to ask FCFC to make an amendment to their bylaws that would require a member of NHMM to be on their board, so that NHMM would have warning if FCFC were preparing to leave.
- Mediation is written into the agreement, but not arbitration.

Financial failure of FCFC: A bank could not have an operator of the building that would conduct a business counter to the zoning requirements. Because of the zoning, the building could not be used for a purpose other than a daycare center. Also, the State of CT would have an interest – through the lien on its bonding grant – in having a daycare operator in the Center building, to meet the purpose of its \$1 million grant to Friends Center.

State Lien on facilities developed with tax-exempt bond funds: The State lien operates for 10 years and does not need to be repaid as long as there is a non-profit daycare center operating in the building. If not, the money that would need to be repaid is pro rata. If, for example, FCFC went bust after 6 years, and no one else was found to operate a non-profit daycare center in the building, then NHMM, as the owner of the building, would be liable for \$100,000 per year for the remaining 4 years.

In this situation, there would be a number of other options: NHMM would try to find another non-profit to run a daycare center in the building. Or, NHMM could try to run a daycare center itself. If we could not do that, and the state foreclosed on the lien, that would trigger a negotiation with the state about what entity would be in the building. The state would have the same interest in the property that we do – to find a good non-profit organization to run a daycare center in the building. However, NHMM would no longer have an agreement in place with the new occupant.

Is there any possibility that the state would foreclose on the Meetinghouse? No. the lien would not attach to the Meetinghouse or to the Meeting except in so far as the Meeting would own the building.

If FCFC fails and holds a mortgage: If FCFC does not have assets to satisfy the mortgage, the mortgage holder could foreclose and take over the building. This would end the lease agreement. Bank could not change the use of the building because of zoning, but could set up a for-profit daycare center. If so, then the bank would have to pay the lien.

Failure of NHMM: A framework has been set up. Any new owner of the property would be subject to the Land Lease Agreement.

In answer to Friends' concern that Meeting had insufficient knowledge of Friends Center's financial health, Wendy Kravitz, clerk of the FCFC Board, noted that the Center was reporting once a year in June to Meeting. However, she maintained that attention needed to be given to the "care requirement of Friends Center for Children" by Meeting, asking, "What is our care relationship to develop trust?"

In response to query whether NHMM might have representatives on Friends Center's Board, Wendy noted that Friends Council on Education, an umbrella organization for all Quaker schools, suggests a "care relationship" instead of a requirement that a certain number of Quakers be on a Board.

Frank Cochran made a point here that the appropriate place for Meeting's conditions regarding financial reporting by Friends Center is the organizations' Operating Agreement – not the Land Use Agreement. He did add, however, that Meeting would be required under the State's bonding of Friends Center's building to put up a sign on the property regarding the State's participation in the building's construction.

There was extended discussion of whether the State would have a concern about FCFC's operating a daycare center by Quaker principles. Frank answered that the Attorney General's concern was about religion not being a matter of discrimination in regard to admission and or scholarships. He also noted that since the State's lien on the building does not go into effect until the State's financing is effective, Meeting can withdraw our agreement, if we were to find out there were provisions that are not acceptable.

With that proviso, Frank Cochran recommended three changes be made to the Ground Lease prior to the Clerk's execution on behalf of Meeting:

1. removal of a troublesome clause, Sec. 5.1(f), saying that no representation, statement or warranty by the Meeting contains any untrue statement or omits a material fact.;
2. addition to Sec. 11.1(a), concerning "assignments, subleases and transfers;" saying that if there is a sublease or assignment, then the subtenant or assignee will pay market rent to the Meeting;
3. addition to Section 12, the mortgage clause, adding language requiring review and approval by the Meeting before Friends Center for Children executes a mortgage. (Allyx Schiavone noted that, as the landholder, NHMM automatically is party to any lending arrangement.)

After eliciting from Frank Cochran that there was allowance for amending the lease, should Meeting wish to do so, Bonnie Mueller asked that Friends sit in silence and reflect on Way forward. She reminded us of the questions that New Haven Friends faced when

we were considering building a Meetinghouse – and our concern then that we were assuming a financial burden that we would not be able to support or sustain.

Clerk asked then to hear from each member of the gathering regarding his or her sentiments for or against her executing the lease.

Friends expressed:

“...a lot of joy to be supported in the work of Friends Center for Children. Support with knowledge that we may make changes down the road, if we need to.”

“Due diligence seems to have been exercised. Seems that the legal discussions are at odds with Quaker testimony of simplicity... but I support going forward.”

“Concerned about the impact of Friends Center for Children upon the community’s use of the Meetinghouse.”

“Trust is the basis for my support. Though we’ve been focused on risk, I’ve thought about the gains to Meeting.”

“It’s ‘a leap of faith.’ Believing in what we are doing is important.”

“I won’t stand in the way, but I am concerned about the people who will feel ‘railroaded’ by this decision, on relatively-short notice. We need to be sensitive to those who may not understand as much about FCFC.”

“Appreciated the “Planning Document” as much as this discussion.”

“Concerned about the protocol of state bonding being ‘inescapable.” [Frank Cochran: “The State bond is a gift – unless FCFC doesn’t operate for 10 years.”]

“The care for one another here is a great gift – including those who express fears of the risks.”

“It is important that we performed due diligence on this, but also that we inform Yearly Meeting about what we are doing. We are not alone in this. Thank you’s to all who have worked so hard.”

“I’m pleased to be part of this Meeting.”

“I see potential risks, but I feel called to go ahead....Important to me that we know what we are doing. Very important that we know what we are leaping over...! Given all the details that we have had to include in our discussions, FCFC has proceeded pretty quickly.”

“The ‘elephant in the room’ is small tonight, perhaps because of the love present...’The risk’ - (always calculated, but never fully known) – is always worth the growth of ‘the leap.’ “

The Clerk declared the sense of the Meeting:

Minute 9/11 – 06 New Haven Meeting approved the Ground Lease, with the following changes suggested by Meeting’s counsel:

1. removal of Sec. 5.1(f), saying that no representation, statement or warranty by the Meeting contains any untrue statement or omits a material fact;
2. addition to Sec. 11.1(a), concerning “assignments, subleases and transfers;” saying that if there is a sublease or assignment, then the subtenant or assignee will pay market rent to the Meeting;
3. addition to Section 12, the mortgage clause, adding language requiring review and approval by the Meeting before Friends Center for Children executes a mortgage.

Minute 9/11 – 07 New Haven Meeting also approved the application by Friends Center for Children for a \$1 million grant from the State of Connecticut with Maureen Lopes recorded as standing aside. Friends appreciate that there are some risks involved, but are ready to go ahead and have the Clerk sign the form for the state lien required for the grant.

Maureen Lopes stood aside expressing a concern that she was not comfortable with ambiguity in different representations she has heard from FCFC, such as the number of children required for FCFC to operate in the black.

Aaron Freeman also stated that his concerns about state restrictions on Friends’ use of the building had not been resolved.

Minute 9/11 – 08 New Haven Meeting requested that FCFC provide written information to Meeting for Business on the basic facts and implications of its application for a grant from the State of Connecticut, and that FCFC continue to provide written information to Meeting for Business on its planning for financial viability.

Dwight Lopes added, “We may have unity, but we are not unanimous. In the process of raising concerns, Meeting can address these items and move forward.”

The Meeting ended with a few moments of silent worship.

Signatures:

Kimberly Stoner (Clerk)

Greg Melville (Acting Recording Clerk)