

June 18, 2020

Minutes of the AD-HOC Pine Orchard Union Chapel donation request committee meeting.

June 18th, 2020 @7PM via Zoom videoconferencing application

Present: Richard Greenalch, Robin Sandler, Stephan Ariyan, Barbara Colley, Eric Rose, Hap Storer and Peter Berdon (POA Counsel)

Absent: Linda Sachs and Peggy Taylor

Background: The Pine Orchard Chapel stands in disrepair. Significant work needs to be done to bring the building up to code and allow it to serve as a meeting place for future events. The Pine Orchard Union Chapel Association are asking that the Pine Orchard Association donate \$50,000 of town tax funds to the chapel for said repairs.

The meeting was called to order at 7:06 p.m. by POA President Robin Sandler.

There four Agenda Items

1. Discuss letter from Attorney Peter Berdon (attached)

Robin Sandler open the meeting by asking Attorney Berdon to go through his thought process around his opinion letter.

Attorney Berdon reviewed the what was in the opinion letter specifically looking at whether the POA can donate the requested \$50,000 to the Union Chapel Association. (see attached letter). After Attorney Berdon's review of the opinion letter the floor was open for questions to the Chapel board – none were received, so the floor was open to the POA members.

Robert Buckholz of 9 Island View Ave. asked; given that the Union Chapel recently received 501c3 status, did that filing imply that it was a religious organization. Attorney Berdon stated that he did not have access to the application materials but believed it was. Jen Aniskovich stated that the Union chapel Association is not a religious organization.

2. Discuss the Pine Orchard Union Chapel request that the POA donate \$50,000 to the fund for the restoration of the Chapel.

Robin Sandler gave his interpretation of the opinion as follows:

- a) The Union Chapel's history as a Christian religious building may or may not be an issue.
- b) It appears the POA Board does have the authority to donate to the Chapel.
- c) Therefore, it is up to the Pine Orchard Union Chapel donation request committee to make a recommendation to the POA Executive Board concerning the request.

Stephan Ariyan commented that he would like to focus on whether giving POA tax funds to the Union Chapel was the responsible thing to do. Given what has been presented, he feels the Pine Orchard Union Chapel Association (POUCA) is a very worthwhile organization and the Chapel is an important historical building. Further, the POA should do everything which is reasonable to help raise funds to restore the building. The question then becomes, how do we (the POA) go about doing that. He then went on to say that given the fiduciary responsibility of the POA on how to spend TAX dollars, it is unreasonable to donate tax dollars to an independent, non-public organization. Further, there are just too many extenuating issues in front of us such as the delay in tax collection (due to the pandemic) and potential for a severer hurricane. If we do give the \$50K to the POUAC and we should need funds to run the community, we will have to raise taxes, conduct a

new assessment or borrow funds from a loaning institution. If the POA Executive Board should decide to give the requested funds to the POUAC, it should only be done through a referendum.

Richard Greenalch agreed with Stephan summary and stated again that he believes we can not use POA tax revenue.

Eric Rose believes that give Peter Berdon's opinion and what has been said thus far, that the POA board cannot unilaterally give these funds to the POUCA. However, they can support the POUCA in its efforts and should seek a referendum on the issue to get a majority opinion on the request.

At this point the discussion was opened to the POA General community to comment.

Jennifer Aniskovich stated that the tax exemption status received was not based on religious affiliation. She further augured that there are many instances where the POA spent tax funds without a referendum, such as the triangle which is not owned by the POA. Lastly, Jennifer stated that the reason the POUCA came to the POA for funds was so that the entire community can feel they participate in the restoration of the Chapel.

Stephanie Farber stated that she supports what Stephan Ariyan stated earlier. Also, there are Christian Symbols in the building, and it is a historic Christian building.

Peter Berdon went on to state that his opinion was written with the understanding that the building is a historic Christian building and the POUCA received its tax status base on that.

After discussions back and forth between members of the committee, **Robin Sandler** ask **Stephan Ariyan** to present a motion to the committee.

Stephan Ariyan 1) I make a motion that the POA does recognize the importance of the Union Chapel to the community and support its effort to do the necessary up-grades and **2)** the POA will not use tax revenue towards this effort but rather help them raise the funds through outreach. **3)** If the POA executive Board should decide to give the request \$50K to the POUCA that such action should not be taken without a referendum. The motion was seconded by **Richard Greenalch** and discussion was open. **Eric Rose** recommended that rather than do a referendum *only if* the POA Board recommends giving the funds to the POUCA but rather should do a referendum regardless of the POA Executive Board recommendation. Eric asked Stephan to repeat the three points to all.

Barbara Colley asked that the motion be reduced to no taxpayer money will be spent (on the Chapel) without a referendum. **Eric** asked if he could present an amendment to the proposed motion. Robin stated yes. **Eric Rose** put forth the following amendment to item **#2** as: the committee does support the use of tax revenue towards this effort **#3** the POA executive Board should give the request \$50K to the POUCA only after a referendum to the community to approve. **Barbara Colley** second the amended motion proposed by Eric. **Stephan Ariyan** objected to Eric's amended motion because it gives taxpayer funds to a non-profit organization.

A vote was then taken on **Eric's motion** to amendment **Stephan Ariyan** original motion:

For: Eric, Hap and Barbara

Against: Robin, Richard and Stephan

The motion to amend does not carry because it is a tie vote 3 to 3

A vote was then taken on **Stephan Ariyan** original three (3) motions

For: Robin, Richard and Stephan

Against: Eric, Hap and Barbara

The motion does not carry because it is a tie vote 3 to 3

Richard Greenalch suggested that we hold the vote next week when Linda Sachs and Peggy Taylor are back.

3. Discuss other ways that the POA can contribute to the Chapel restoration fundraising drive

Robin asked that issue 3 & 4 be put off until next Tuesday.

4. Ad-Hoc committee's recommendation to the POA Executive Board

Robins asked for a motion to adjourn, **Barbara** gave the motion and **Richard Greenalch** second. A vote was taken, and the meeting was adjourned.

Minutes respectfully submitted 6/21/2020 by Peter Robinson
POA Office Manager

June 18, 2020

Via E-mail only to: rbslaw@aol.com

Attn: Robin Sandler, President
Pine Orchard Association
180 Pine Orchard Road
Branford, CT 06405

RE: Legality of Contribution to The Pine Orchard Union Chapel Association for the Restoration of the Chapel located at 25 Chapel Dr., Branford, CT

Dear Attorney Sandler:

Issue Presented: You have asked whether Pine Orchard Association may provide a donation to The Pine Orchard Union Chapel Association to assist in physical repairs to the Chapel building located at 25 Chapel Dr., Branford, CT. We understand that the specific donation request exceeds 50% of the current budget of the POA budget.

Conclusion: Based upon the limited review of this issue imposed by the Board, our research has not revealed either a clear prohibition which prevents the donation nor have we uncovered any authority which provides the clear authority to make the donation. However, given the amount of the requested donation the Board must be mindful of its inherent fiduciary obligation to manage the POA's financial affairs and the limitation of its taxing authority.

Background: The Pine Orchard Association (POA) is a political subdivision of the State of Connecticut whose representatives are elected, and which has the power of taxation.

The Pine Orchard Union Chapel Association (Chapel Association) is an unincorporated association and it holds tax exempt status under Section 503(c) of the Internal Revenue Code. The Chapel Association owns the property known as 25 Chapel Dr. which is located within the bounds of Pine Orchard. Title to the property was initially conveyed to The Chapel Association by a deed recorded in Volume 40 at page 234 of the Branford, Land Records. Significantly, the deed was given "upon the condition that said association is to ...maintain and keep a chapel for public worship..." Subsequent conveyances transferred additional parcels. Presently the property is improved with a "chapel" building reportedly constructed in 1897.

According to the Town historian the Chapel was closed to regular religious services in 1963. Today the Chapel reports its primary uses as "weddings, memorials, parties, concerts and more." There is a single cross located in the building, but other than that singular religious symbol we are not aware of any other religious artifacts in the building. The Chapel Association

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states that its revenues are derived from “nominal” rental fees and “voluntary contributions from area residents to cover expenses.”

Analysis: Because our assignment was limited to three hours to research and analysis of this issue we did not conduct an extensive analysis as to the present day use of the Chapel. For purposes of this analysis, we assumed the Chapel Association to be a non-denominational religious institution. Should the facts be determined otherwise our analysis of the constitutional implications could very well arrive at another conclusion.

The relationship between religion (and religious organizations) and government has a long and storied history in our country which is addressed in the federal constitution and Connecticut's state constitution. Most people in our country are familiar with the general fundamental principal of the establishment clause, contained in both the state and federal constitutions, which prohibits the establishment of a “state sponsored religion”. The application of these constitutional provisions to actual cases had resulted in the development of a complex web of jurisprudence. Connecticut alone has nearly more than 50 Connecticut Supreme Court case which address or touch upon the Connecticut Constitutional provision. None of these cases, however, appear to be directly on point. The Connecticut Supreme Court has upheld our state statute requiring towns that provide public school transportation to provide that transportation to parochial school children as well. Snyder v. Town of Newtown, 147 Conn. 374, 161 A.2d 770 (Conn. 1960) The court in reaching this conclusion held: “We conclude that the word ‘support’ in article seventh was never intended to be employed in so narrow a sense as to prevent every sort of incidental public assistance to, and encouragement of, religious activity.” 147 Conn at 387. Furthermore the Court has upheld property tax schemes which exempt religious institutions from municipal taxation and in so doing has reasoned: “Exemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others.” Lyman v. Adorno, 133 Conn. 511, 516 52 A.2d 702 (Conn. 1947). While not conclusive, these cases lead one to conclude that the Connecticut Courts are unlikely to find a violation of the state constitution when public funds are used solely to support the preservation of a historic structure which happens to be a church.

At the federal level the resolution of the issue is equally opaque. In Trinity Lutheran Church of Columbia, Inc. V. Comer, Director, Missouri Department Of Natural Resources the Supreme Court held that Missouri could not exclude religious institutions from a state program to make playgrounds safer even though the state's Constitution called for strict separation of church and state. 582 U.S. ____ (2017). Yet one year later the Supreme Court refused to hear an appeal from the New Jersey Supreme Court which prohibited churches from participating in grant programs for historic preservation. Morris County Board of Chosen Freeholders v. Freedom From Religion Foundation No 18-364, (petition for certiorari denied March 4, 2019). From 2012 to 2015, Morris County, N.J., gave more than \$4.6 million to 12 churches to fix facades, stained-glass windows and aging roofs under a historic preservation program limited to local government, charitable conservancies, and religious institutions. Writing for the New Jersey Supreme Court, Chief Justice Stuart Rabner said the grant program amounted to impermissible state support of religion. “This case does not involve the expenditure of taxpayer money for nonreligious uses, such as the playground resurfacing in Trinity Lutheran,” Chief Justice Rabner wrote. (A-71-16) (2018) “The appeal

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instead relates to grants that sustain the continued use of active houses of worship for religious services and finance repairs to religious imagery. In our judgment, those grants constitute an impermissible religious use of public funds.” Importantly while denying the writ of certiorari, Justices Kavanaugh, Alito, and Gorsuch issued a statement making clear that barring sites from a historic preservation program because they are religious creates “serious tension with this Court’s religious equality precedents.” Whether the Supreme Court will similarly refuse to consider similar issues in the future is in serious doubt.

While these cases provide guidance as to whether a local government can provide incidental fiscal support to religious institutions in connection with a broader program, they do not provide clear guidance as to whether or not a local government can develop a program to specifically benefit a single religious entity. The cases previously considered by the court generally involve the question of whether a religious organization is barred from participating in a grant program solely because of the religious nature of the organization. It is likely that a program developed specifically to benefit a single religious organization will receive great scrutiny.

The Charter of the Association establishes the purposes of the Association as follows: “The object of this Association is to provide for the improvement of the lands in said district, and for the health, comfort, protection and convenience of persons living therein.” Section 2. The power to adopt an annual budget is reserved to the Executive Board. Bylaws Section 2. We find nothing within the Bylaws or Charter specifically prohibits the establishment of a donation to the Chapel Association. One can certainly argue that the Chapel, whose recent historical use can perhaps best be characterized a meeting and event space, is an important public space which provides comfort and convenience to the residents of Pine Orchard. However, also we understand the requested donation approaches the annual budget of the POA. The Board needs to be mindful of the cap of taxation of 7 mils imposed by the Charter, Section 20 and its responsibility to handle the POAs budgetary matters in a fiscally prudent manner. Should the Board deem the constitution issues to be of little or no concern, leaving only the budgetary matters at issue, the board can consider issuing a referendum on the matter.

If you have any further questions with respect to this matter, please do not hesitate to contact me.

Sincerely yours,



Peter A. Berdon

PAB:me