



REFORMED CHURCH IN AMERICA FOLLOWING CHRIST IN MISSION

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TO: General Synod Council of the Reformed Church in America

FROM: Paul M. Karssen

DATE: April 15, 2009

RE: Proposed Transfer of Kirkside Retirement Facility

Kirkside is a retirement home located in Roxbury, New York, immediately adjacent to the Jay Gould Memorial Reformed Church. Currently it is owned by the General Synod of the Reformed Church in America, and operated by a separate New York not-for-profit corporation called Kirkside, Inc.

The original wing of Kirkside was built in 1865 as a private residence. In 1894 the Jay Gould Memorial Reformed Church was constructed. Shortly thereafter (1896) Miss Helen M. Gould purchased the residence for use as a summer home. In the 1940's the home – then owned by Mr. and Mrs. William Ullman – was placed on the market for sale. In October of 1948 Frank J. Gould gave \$32,000 to the General Synod for the purpose of purchasing the home and using it “for establishment of a home for the aged ministers, their widows, and other church workers, or any other religious purpose that General Synod may determine.”

The General Synod formed Kirkside, Inc. (a New York not-for-profit corporation) to manage and operate the residence in the manner prescribed by Mr. Gould. Residency in the facility by RCA ministers, widows and workers declined over time, thereby making it increasingly difficult to operate the facility as originally intended. In response, residency in the facility was made available to elderly persons with no affiliation to the RCA. Nevertheless, “break even” operations remained difficult.

According to the minutes of the 1979 General Synod:

“The General Synod of 1975 directed that a feasibility study concerning Kirkside as a denominational home be carried out by an objective group determined by the GSEC and the Kirkside Board of Directors. This committee presented its final report to the 1977 General Synod through the GSEC. Upon recommendation of the GSEC, the Synod voted:

That the General Synod instruct its executive committee to terminate the financial support of the General Synod in the operation of the Kirkside home.

That the Board of Directors of Kirkside, Inc., be invited to present to the GSEC prior to April 15, 1978, alternative proposals to continue the home.

That if an acceptable alternative is not presented, the GSEC proceed with implementation of the termination of Kirkside according to the guidelines recommended by the Kirkside Study Committee. (MGS 1977, p. 65)."

MGS 1979, p. 219.

Some agreed with the direction pursued by the General Synod, while others did not. Not surprisingly, a flurry of activity ensued, including (a) efforts by the General Synod and the Kirkside Board of Directors to close Kirkside and relocate its residents, and (b) efforts by members of the Village of Roxbury to keep Kirkside open. These latter efforts included the filing of a lawsuit against the General Synod and the Kirkside Board of Directors.

Ultimately, the lawsuit was dismissed and an agreement was reached among the General Synod, the Kirkside Board of Directors, and the "Keep Kirkside Committee." Among other things, the agreement resulted in the following:

(a) the General Synod leased the facility to either the consistory of Jay Gould Memorial Reformed Church or Kirkside, Inc. for five year renewable periods at a rental rate of \$1 per year;

(b) Kirkside, Inc. operated the facility without any further financial support from the General Synod;

(c) the General Synod agreed to contribute to either the consistory of Jay Gould Memorial Reformed Church or Kirkside, Inc. certain furnishings, equipment, and funds (apparently \$60,000) to assist with "start-up costs" of the facility as it commenced operations independent from the General Synod; and

(d) funds received by the General Synod (up to that date or at any time thereafter) and designated for Kirkside would be "utilized by the General Synod for assistance with housing for retired ministers and missionaries of the Reformed Church in America, provided the funds are received pursuant to will or other instrument of gift dated prior to January 1, 1981" and funds "received in the name of or for the benefit of Kirkside pursuant to will or other instrument of gift dated January 1, 1981, or later [would] be used by the consistory in furtherance of its operation of the property." (MGS 1981, p. 57).

Other than a few minor revisions over the years (such as the renewable lease terms now being ten years and the General Synod conveying certain portions of the property to the Village of Roxbury at the request of Kirkside for use as park space), the arrangements described above have remained essentially unchanged since the early 1980s. The arrangements have not, however, been without risks, challenges and frustrations. For example, the General Synod holds title to a facility that it neither operates or maintains. Nevertheless, because of that ownership potential liability exists for on-site occurrences. In the meantime, Kirkside, Inc. operates, maintains, and makes periodic improvements to a facility it does not own. Instead of ownership, it has a leasehold interest that could terminate at the conclusion of any ten year term, at which time any investments in the building would be lost. Additionally, because Kirkside, Inc. only *leases* the building, it has a difficult time pursuing sources of funding (*e.g.*, grants or loans). Simply put, a typical foundation is unwilling to make a grant and a typical lender is unwilling to make a loan because the grantee/borrower (Kirkside, Inc.) will lose its rights to use the facility if the lease is not renewed.

For these reasons, over the past several years the Kirkside Board of Directors and GSC staff have discussed the possibility of the General Synod transferring to Kirkside, Inc. the facility and the land upon which it is situated. Doing so should resolve many of the issues summarized above. The discussions have led to an agreement in principle for the General Synod to transfer the Kirkside facility (land and buildings) to Kirkside, Inc. for nominal consideration (probably \$10). Title would be transferred by way of a quit claim deed; the General Synod would make no warranties regarding the condition of the facility itself or regarding ownership of the facility and the property upon which it is situated.¹

Under New York law, transfers such as this by a religious corporation requires court approval (*see* New York Not-For-Profit Corporation Law §509). This is so even if the property in question does not constitute all or substantially all of the religious corporation's assets. The GSC's general counsel has prepared a petition seeking such court approval, with the assistance of outside counsel for Kirkside, Inc. A copy of the petition (approximately 75 pages with exhibits) is available from staff upon request.

Before filing the petition, however, the GSC (in its role as the executive committee of the General Synod) must approve the transaction. This is so (a) because of the New York

¹ Due to the age of the deeds to the properties involved, the boundary line between Kirkside and the adjacent Jay Gould Memorial Reformed Church could not be established with certainty. This issue has been resolved by the processing of a boundary line adjustment. Out of an abundance of caution following the boundary line adjustment process, concurrently with the transfer of the residential facility to Kirkside the General Synod should also transfer to the *church* any property that now – as a result of the boundary line adjustment – is situated on the church's side of the boundary line.

law requirement just mentioned, and (b) because Executive Limitation EL-7 (or at least the spirit of EL-7) requires it.²

The GSC also holds certain funds for the benefit of Kirkside. If the petition is filed and the transfer of the property is approved, staff will then seek approval of a similar transfer of these funds to the Kirkside Board of Directors. For now, however, the following recommendation is made:

Recommendation:

To consent to the transfer of title to the Kirkside facility by the General Synod to Kirkside by adopting the resolution attached as Annex 1.

² EL-7 provides in relevant part that the General Secretary will not “[p]ermit the sale, exchange, or other transfer of any asset of the GSC with a value of \$1,000,000 or more without obtaining the prior consent of the GSC” and will not “permit the sale, exchange, or other transfer of any asset of the GSC with a value that is less than \$1,000,000 unless the asset sold, exchanged or transferred is of lesser or comparable value to the asset being received for it, or unless GSC gives its prior consent.” In this case, the asset is owned by the General Synod, not GSC, and the value of the asset is undetermined.

**ANNEX 1
RESOLUTION**

WHEREAS, the General Synod Council of the Reformed Church in America (GSC) serves, among other things, as the executive committee and as the board of trustees (as may be required by law) of the General Synod of the Reformed Church in America (General Synod); and

WHEREAS, the General Synod of the Reformed Church in America is the owner of certain real property located in Roxbury, New York, and such property may be all or some portion of each of the following parcels:

Kirkside Parcel:

All that certain piece or parcel of land situate in the Hamlet of Roxbury, Town of Roxbury, County of Delaware and State of New York and being more accurately bounded and described as follows:

Beginning at a point on the westerly side of New York State Route 30 at the most southerly corner of lands now or formerly of Ronald and Sandra Kutkiewicz as described in Liber 1144 of Deeds at page 288.

Thence proceeding from said point of beginning and along the aforementioned lands of Kutkiewicz on the following two courses and distances:

1. North 51° 05' 00" West 10.73 feet to a found railroad spike on the westerly edge of the sidewalk,
2. North 52° 02' 55" West 182.17 feet.

Thence along lands of said Kutkiewicz, lands now or formerly of Thomas S. and Mary Hynes as described in Liber 510 of Deeds at page 888, lands now or formerly of Norma Van Mingroot as described in Liber 721 of Deeds at page 424, lands now or formerly of Linden B. and Edna G. Morse as described in Liber 801 of Deeds at page 241, Marion L. Schmidt as described in Liber 752 of Deeds at page 676, North 38° 17' 36" East 365.87 feet to a found iron pipe in a stone wall.

Thence along lands now or formerly of Robert E. and Sharon Cucinotta as described in Liber 783 of Deeds at page 82, North 50° 59' 36" West 165.13 feet along a stone wall to a 5/8" iron rod set with a cap marked RETTEW PC.

Thence along lands now or formerly of the Town of Roxbury as described in Liber 1050 of Deeds at page 257 on the following two courses and distances:

1. South 39° 11' 38" West 126.01 feet to a 5/8" iron rod set with a cap marked RETTEW PC,
2. South 29° 32' 29" West 454.29 feet to a 5/8" iron rod set with a cap marked RETTEW PC.

Thence along lands now or formerly of the Jay Gould Memorial Reformed Church as described in Liber 286 of Deeds at page 421, South 50° 49' 03" East 41.32 feet to a found stone monument.

Thence through lands of the grantor along a new division line, South 53° 02' 49" East passing over a 5/8" iron rod set with a cap marked RETTEW PC at 234.40 feet for a total distance of 249.40 feet.

Thence along the westerly bounds of the aforesaid New York State Route 30 North 38° 21' 16" East 202.84 feet to the point or place of beginning.

Containing 2.75 acres of land.

Subject to a thirty foot wide right of way for the purpose of ingress and egress and the construction and maintenance of public utilities from New York State Route 30 to the aforementioned lands of the Town of Roxbury.

Said right of way being more accurately bounded and described as follows:

Beginning at a point on the westerly bounds of New York State Route 30, said point being located on a course of South 38° 21' 16" West 69.60 feet from the point of beginning of the above described parcel.

Thence through lands above described on the following eleven courses and distances:

1. North 51° 49' 39" West 28.70 feet,
2. North 50° 06' 05" West 36.30 feet,
3. North 58° 36' 48" West 18.53 feet,
4. North 47° 10' 18" West 108.63 feet,
5. North 08° 48' 17" West 19.51 feet,
6. North 39° 14' 57" West 10.26 feet,
7. North 48° 27' 20" West 45.07 feet,
8. North 02° 57' 12" West 24.34 feet,
9. North 23° 42' 26" East 56.84 feet,
10. North 38° 40' 17" West 26.21 feet,
11. North 48° 25' 56" West 11.47 feet.

Thence along lands now or formerly of the Town of Roxbury as described in Liber 1050 of Deeds at page 257, North 29° 32' 29" East 30.67 feet.

Thence through lands of the above described premises on the following nine courses and distances:

1. South 48° 25' 56" East 20.42 feet,
2. South 38° 40' 17" East 20.47 feet,
3. North 39° 07' 38" East 15.67 feet,
4. North 35° 26' 21" East 42.98 feet,
5. North 29° 13' 19" East 42.21 feet,
6. North 02° 27' 52" West 33.70 feet,
7. North 09° 49' 06" West 27.07 feet,
8. North 43° 15' 13" West 4.04 feet,
9. North 22° 10' 20" West 8.78 feet.

Thence along the aforementioned lands of the Town of Roxbury on the following two courses and distances:

1. North 29° 32' 29" East 32.38 feet to a 5/8" iron rod set with a cap marked RETTEW PC,
2. North 39° 11' 38" East 5.22 feet.

Thence through lands of the above described premises on the following fifteen courses and distances:

1. South 22° 10' 20" East 25.76 feet,

2. South 43° 15' 13" East 7.90 feet,
3. South 05° 41' 03" East 81.63 feet,
4. South 29° 13' 19" West 52.35 feet,
5. South 35° 26' 21" West 45.57 feet,
6. South 39° 07' 38" West 37.23 feet,
7. South 23° 42' 26" West 52.33 feet,
8. South 07° 47' 42" East 6.70 feet,
9. South 50° 23' 51" East 32.73 feet,
10. South 39° 14' 57" East 21.21 feet,
11. South 08° 48' 17" East 17.23 feet,
12. South 47° 10' 18" East 95.19 feet,
13. South 58° 36' 48" East 17.76 feet,
14. South 50° 06' 05" East 38.08 feet,
15. South 51° 49' 39" East 28.25 feet to the aforementioned westerly side of New York State Route 30.

Thence along New York State Route 30, South 38° 10' 21" West 30.00 feet.

Subject to all legally enforceable covenants, easements, restrictions, conditions and agreements of record.

Subject to any right, title, or interest the State of New York and/or public may have in and to that portion of the surveyed premises that may lie within the bounds of New York State Route 30.

Being a portion of the premises conveyed to the General Synod of the Reformed Church in America by deed from W. Harry and Ethel Ullman dated April 1, 1949 and filed in the Delaware County Clerk's office in Liber 286 of Deeds at page 421.

Church Parcel:

All that certain piece or parcel of land situate in the Hamlet and Town of Roxbury, County of Delaware, State of New York and being more accurately bounded and described as follows:

Beginning at a point on the northwest side of New York State Route 30 at the most easterly corner of lands now or formerly of The Samuel J. and Kay P. Lutz Trust as described in Liber 736 of Deeds at page 134.

Thence proceeding from said point of beginning along the northwest side of New York State Route 30, North 38° 21' 16" East 206.69 feet.

Thence along a new division line North 53° 02' 49" West passing over a 5/8" iron rod set with a cap marked RETTEW PC at 15.00 feet for a total distance of 249.40 feet to a found stone monument.

Thence along land now or formerly of the Jay Gould Memorial Reformed Church as described in Liber 971 of Deeds at page 8 on the following three courses and distances:

1. South 40° 18' 27" West 110.19 feet,
2. North 50° 52' 44" West 29.60 feet,
3. South 39° 56' 09" West 24.43 feet to a found iron pipe.

Thence along lands now or formerly of Robert W. Pirrera and Keith J. Pirrera as described in Liber 1052 of Deeds at page 249, South 40° 26' 35" West 65.74 feet to a found iron pipe.

Thence along lands now or formerly of William F. and Elaine W. Vendetta as described in Liber 741 of Deeds at page 673 and lands of the aforementioned Samuel J. and Kay P. Lutz Trust as described in Liber 736 of Deeds at page 134, South 50° 56' 21" East 89.37 feet to a concrete monument.

Thence continuing along lands of said Lutz Trust, South 51° 44' 56" East passing over a found iron pipe at 187.74 feet for a total distance of 196.38 feet to the point or place of beginning.

Containing 1.24 acres of land.

Subject to all legally enforceable covenants, easements, restrictions, conditions and agreements of record.

Subject to any right, title, or interest the State of New York and/or public may have in and to that portion of the surveyed premises that may lie within the bounds of New York State Route 30.

Said parcel being designated as Parcel C on a map entitled "Map of Survey Boundary Line Adjustment Between Lands of Jay Gould Memorial Reformed Church and General Synod of the Reformed Church in America" dated June 13, 2008 and recorded July 16, 2008 in the Delaware County Clerk's office as map #8581; and

WHEREAS, the legal address of the Kirkside Parcel is 53865 State Highway 30, Roxbury, New York 12474, and the legal address of the Church Parcel is 53837 State Highway 30, Roxbury, New York 12474; and

WHEREAS, GSC, in its capacity as the executive committee and board of trustees of the General Synod, desires to cause the General Synod to transfer any and all interest it may have in the Kirkside Parcel to Kirkside, Inc., a New York not-for-profit corporation, and all interest it may have in the Church Parcel to Jay Gould Memorial Reformed Church of Roxbury, N.Y., a New York corporation ("*Jay Gould Church*"); and

WHEREAS, there has been presented to the GSC a form of petition (the "*Petition*") that, among other things, seeks court approval of the transfer by the General Synod of the Kirkside Parcel to Kirkside, Inc. and of the Church Parcel to Jay Gould Church (as required under the New York Not-For-Profit Corporations Law);

NOW THEREFORE, BE IT RESOLVED, that the GSC, in its capacity as the executive committee and board of trustees of the General Synod, does hereby authorize the transfer of the Kirkside Parcel and the Church Parcel as contemplated, and upon the terms and conditions set forth, in the Petition.

RESOLVED FURTHER, that the GSC hereby approves the form of Petition and the form of all documents (such as, by way of example only, quit claim deeds) attached thereto, and authorizes the officers of the General Synod or GSC or both to execute and deliver all such documents in substantially such form.

RESOLVED FURTHER, that the approval by the GSC (in its capacity as the executive committee and board of trustees of the General Synod) of all such documents shall be evidenced conclusively by the execution of any or all of such documents by any one or more officers of the General Synod or GSC.

RESOLVED FURTHER, that the officers of the General Synod and GSC be, and each of them hereby is, authorized and directed on behalf of the General Synod or GSC (or both) and in their respective names, to take all such other actions and execute all such other documents as the officer or officers taking such actions or executing such documents shall deem necessary or appropriate in order to carry out and perform the purpose of the foregoing resolutions, the taking of such actions or execution of such documents to be conclusive evidence of the necessity or desirability thereof.

RESOLVED FURTHER, that any action taken by any officer of the General Synod or GSC in furtherance of the matters authorized by the foregoing resolutions is hereby ratified, confirmed, and approved as the acts and deeds of the General Synod or GSC, or both.