

NEW JERSEY HISTORIC TRUST

**NJHT Special Board Meeting
Friday, May 4, 2018
101 South Broad Street, Trenton, NJ**

Call to Order

Ms. Foster called the meeting to order at 10:04 a.m.

Open Public Meetings Act

Ms. Guzzo notified the Board that notice of the meeting was made in accordance with the New Jersey Open Public Meeting Act.

Roll Call

Ms. Guzzo called the roll and confirmed the meeting had a quorum.

Trustees via conference call: Janet Foster, Peter Lindsay, Kenneth Miller, Katherine Ng, Meme Omogbai, Patricia Anne Salvatore, Robert Tighue, and Kathrine Marcopul.

Trustees present: Sean Thompson

NJHT Staff present: Dorothy Guzzo, Glenn Ceponis, Catherine Goulet, Carrie Hogan, Michele Racioppi, and Haley McAlpine.

Public via conference call: Dave King and Tony Harrison

Public In Attendance: Donald Palombi

Public Comment

No public comment.

New Jersey Supreme Court Decision Re: Freedom From Religion Foundation v. Morris County Board of Chosen Freeholders

Ms. Guzzo gave an overview of the recent New Jersey Supreme Court decision in the matter of the Freedom from Religion Foundation v. Morris County Board of Chosen Freeholders regarding the use of public tax dollars to restore religious buildings. Ms. Guzzo explained that following a lower court ruling in favor of the County the case was appealed to the New Jersey Supreme Court and an opinion was handed down on April 18, 2018. Ms. Guzzo stated that the Trust had filed an amicus brief but made clear that the Trust was not the defendant in the case. The NJ Supreme Court's decision called the funding of historic preservation of religious institutions with County tax dollars unconstitutional based on the plain language of the New Jersey State Constitution. In its decision the Court especially called out language from certain grant applications where the applicant stated that grant funds would allow the church building to remain open for religious

service. The court also considered the use of grant funds for the restoration of stained glass windows, not as the preservation of works of art or essential parts of the exterior building envelope, but rather as promoting religious imagery. The Court also called out the use of the Morris County grant money to fund certain HVAC systems in churches as assisting with the religious service in the building. Ms. Guzzo stated that to the best of her knowledge the Historic Trust has not funded HVAC systems in buildings used primarily for religious service.

Ms. Guzzo explained that the Morris County historic preservation grant program, while similar to the NJ Historic Trust's, has noteworthy differences. Specifically, the Historic Trust does not identify religious institutions as an eligible applicant type. The Historic Trust funds nonprofit organizations. The only mention of religious institutions in the Historic Trust guidelines and application is to state that grant funds cannot be used to fund restoration of interiors of buildings used primarily for religious service. Ms. Guzzo explained that the Trust has a "net neutral" application that does not distinguish religious institutions as separate from non-profits. Ms. Guzzo stated that this long-established policy had been based on past council from our DAG's and established law and that to exclude religious institutions from our grant program could be considered discrimination under the Establishment Clause of the United States Constitution. In the April decision, the New Jersey Supreme Court did not consider the implications of the federal constitution and instead focused solely on the simple language of the state constitution. Ms. Guzzo also noted the importance of distinguishing between regular building maintenance, which the Trust does not fund, and activities funded by the Trust like restoration, rehabilitation, and preservation. These activities are defined by the Federal Secretary of the Interior Standards for Rehabilitation and are quite different from the basic definition of repair used by the Supreme Court Justices.

Ms. Guzzo stated that the State is still reviewing the Court opinion and its possible implications for the Trust's grant program. Moving forward, Ms. Guzzo stated that she did not believe that the current planning grant round, in which the Trust recently accepted applications, would be affected by the court ruling in part because the round only funds planning documents and not actual construction or "repair" of buildings. Additionally, maximum grant awards of \$50,000 would likely not trigger legal action. The Trust, therefore, would follow its existing regulations and guidelines. The Trust's next capital grant round is scheduled for 2019 with grant awards being made likely in the spring of 2020. Based on the current court opinion Ms. Guzzo thought there would be a good possibility that a law suit against the Trust would be filed if a religious institution is awarded a grant by the Trust at that time. All of this could be subject to change following legal advice to the Trust.

Mr. Ceponis also noted that the twelve churches involved in the Morris County law suit have filed a reconsideration brief with the New Jersey Supreme Court. The reconsideration brief made an argument based on the federal Constitution's Establishment Clause and not just the plain language of the New Jersey Constitution. Mr. Ceponis noted that the process is still on going with the New Jersey Supreme Court and that the church may also decide to take the case to the federal courts.

Ms. Guzzo stated that she wants to prepare additional guidance documents for our grant programs that make clear the importance of highlighting the project's historic preservation value and public benefit. She stated that these guidance documents will be reviewed by the Deputy Attorney General to make sure everyone is comfortable with the language.

Ms. Guzzo also stated that the court opinion emphasized the language used in the eighteenth-century constitution up until its most recent adoption in 1947. The meaning of this plain language, however, predates and ignores the historic preservation movement and the National Historic Preservation Act of 1966, as amended and thus the context for historic preservation was not accounted for in the ruling

Ms. Guzzo stated that the Department is supportive of the Trust's grant programs and that the current planning grant round should not pose any problems. She noted that she had briefed the Lieutenant Governor about the potential for future legal issues and its potential budget implications.

Ms. Omogbai stated that it is good that the Trust has time to prepare these guidance documents to offer help to future grantees about the language used in their applications.

Mr. Lindsay suggested looking at the way other states like Delaware, Pennsylvania, and Maryland have structured their grant programs to avoid this issue.

Ms. Guzzo reiterated that the issue was primarily with the wording used by Morris County, which specifically called out religious institutions as an applicant type. She stated that she has gone through the meeting minutes from the Trust's early years and that the Trust has been giving grants for exterior restoration of religious institutions since the establishment of its grant program, all of which had been reviewed by Deputy Attorney Generals. She also noted that in the 1990s there was an amendment to the National Historic Preservation Act that allowed the funding of religious institutions. Further, religious institutions were deemed eligible to receive federal Hurricane Sandy grants. FEMA reiterated this in January of 2018, stating that religious institutions were eligible for relief funds.

Ms. Salvatore and others stated the importance of clarifying what Trust grants are meant to fund, specifically preservation activities and that applicants should focus on this aspect when applying.

Ms. Foster stated that the Trust will continue to accept and review the applications from religious institutions and all applicants as they would normally. She noted that in future grant rounds, the Trust will need to help grantees with application language.

Ms. Guzzo stated that there will be an informal table set up at the upcoming June conference to discuss the issue of funding religious institutions. Ms. Omogbai stated that this was a good idea and would help garner more insight into what grantees are thinking in light of the current situation.

Ms. Guzzo stated that the details of the guidance documents will have to be finalized by December when the Trust announces the capital grant round for 2019. Mr. Miller stated that these guidance documents should be compatible with the New Jersey Supreme Court decision and have been reviewed the Deputy Attorney General.

Ms. Salvatore stated that many churches are struggling to survive and provide wonderful public benefits like food banks. She stated that many don't have the necessary funds to restore a roof or masonry. She stated that there is a level of education involved here.

Ms. Guzzo stated that this is an ongoing issue and that they will revisit it at their June board meeting.

Proposal from 'On Demand with Rob Lowe'

Ms. Guzzo stated that the Trust has an exciting opportunity and that Dave King and Tony Harrison of "On Demand with Rob Lowe" were participating in the meeting to discuss it in more detail. Ms. Guzzo stated that the opportunity comes at a great time, as the Trust has been working on its Strategic plan and a marketing campaign.

Mr. Harrison stated that the show would produce three main video components. The first is a five minute segment that will air on public television during the gap between shows like Antiques Roadshow. He stated that this content reaches 60 million viewers. The second is a one minute educational commercial that will air in cities of our choosing during prime time television on major networks. The third is a six-minute corporate identity piece that will feature a call to action and be distributed via email to one million interested parties. Mr. Harrison stated that the entire production will only require one full day of filming using a pre-approved script to ensure that the messaging stays on track. He stated that the entire production is valued at \$250,000 and that the Trust would only be responsible for a \$19,900 underwriting fee and a \$3,500 travel fee for their film crew. Mr. Harrison noted that the Trust would have final approval of all video products and would have the rights to the edited and unedited footage. He stated that the filming could take place in the next 30-90 days and the footage would be aired 4 weeks after filming.

Ms. Omogbai stated that this was a great opportunity at a great time. Ms. Foster asked how often the public television segment and commercials will air. Mr. Harrison explained that the public television piece will air for an entire year and that the one-minute commercial will air 50 times over the course of 2 to 3 weeks on major networks. He stated that the Trust can coordinate the commercial air time and email blast with their promotional events, but that the public television piece would have to be aired immediately. Ms. Salvatore asked if they would be able to feature their Journey Through Jersey website, to which Ms. Guzzo responded that they could choose the content and focus of the segments. Ms. Guzzo also noted that if the Trust wants to market the license plate program, they have the option to tailor the email campaign to a New Jersey audience.

MOTION: Ms. Omogbai moved to approve the agreement with "On Demand with Rob Lowe" to be featured in public television segments with an allowance of up to \$25,000 to fund the Trust's portion of the overall cost. **SECOND** Ms. Salvatore.

DISCUSSION: Ms. Foster stated that the board would be happy to help with anything the Staff may need. Ms. Guzzo thanked her. Ms. Ng stated that the Trust has to be very careful with the content for the television segments and that they should stick to a clear and focused message to

achieve their goals. Ms. Guzzo agreed and noted that the Trust will have final approval before any segments air. Ms. Salvatore noted that this a great marketing opportunity.

MOTION UNANIMOUSLY APPROVED.

Ms. Guzzo updated the board on the status of the current planning grant round. She noted that they had received around 50 grant applications totaling roughly \$1.3 million in requests. Ms. Foster noted that some religious institutions may not have applied because of the recent court decision which Ms. Guzzo confirmed.

MOTION: Ms. Foster moved to adjourn the meeting. SECOND Mr. Miller. Meeting adjourned 11:03am.