

MEMO

TO: Kevin Sutherland

FROM: Tim Murphy

CC: Joe Hirsch

RE: Pepperell Park and the Unitarian Universalist Church

Date: April 7, 2017

Kevin, you asked me to consider possible options for disposition of the Unitarian Universalist Church (UU Church) that is located within Pepperell Park. The question arises due to a recent request from the Church for Saco to cede fee title to a portion of the Park where the Church sits, plus a reasonable amount of land for parking.

First, I should note that it is my opinion, without benefit of a formal legal real estate title opinion, that the UU Church is sited within the bounds of Pepperell Park. So, that the Church is "on City land" so to speak is taken as a given here. If a title opinion is required, let me know and we can request one from outside counsel.

My basis for at least believing title rests with Saco is as follows: 1) the physical geometry of the Church site in relation to the residual land/uses on the Park parcel, 2) prior deeds prepared by/for Sir William Pepperell that laid out the Park land with specific required uses including a burial ground, a Church and a school (all three of which can be found on the Park land), 3) the opinion of long time residents like Mayor Mark Johnston who often mentioned that the Church sat on Park land, 4) a Map from the office of Attorney Barb Dresser from the 1870's showing the Park outlined as a single unified parcel with the Church laying within the fee area of the Park, 5) newspaper reporting discovered by Joe Hirsch from 1884 with mapping showing the Church sitting on the Park parcel and 6) the very request of the Church itself which suggests its own records/history confirm the community's common understanding.

Title was further clarified to the parcel in 1961. For reasons partially known, the State of Maine honored a request by the City, made in 1960-1961, to Quitclaim any interests the State of Maine held in the premises. See attached deed recorded in Book 1477, Page 209 of the York County Registry of Deeds.

The basis for this deed out by the State can be found in the cited 1961 Legislative Resolve. See attached copy of the 1961 Resolve. As you will see, the City wanted to build a new school (Fairfield School) and an opinion was formed that a "cloud" existed on title to the Pepperell Park parcel. To remove the cloud and allow for immediate construction starting in Spring 1961, the Maine Legislature passed an Emergency Resolve authorizing the State to convey to Saco the exact land Sir William had passed to the inhabitants back in 1752 and the Massachusetts Legislature passed in 1799.

It's not clear how or why someone thought a cloud on title existed, and I can speculate that the State of Maine got involved because it was the legal successor to the State of Massachusetts (after 1820). I believe Massachusetts took lands from Sir William's Estate upon his passing although that fact is not

expressly stated in the State of Maine 1961 deed, but it does make clear the State of Massachusetts “did grant to the Town of Pepperellborough” the ten acres once held by Sir William and previously granted. Perhaps the cloud was the use of the name Pepperellborough, maybe someone felt that created ambiguity, I’m simply not sure. Nonetheless, it was argued that some interests in the Pepperell Park parcel were not sufficiently ceded by Massachusetts in 1799, that those interests inured to Maine by 1820, and that therefore a deed out from the State was required. The 1961 deed, prepared as party of emergency legislation, addressed this purported cloud.

No party has argued or challenged the City’s title to the Park during my tenure, nor has any title challenge arisen to my knowledge in preceding years. The only evidence of any title question or cloud is the reference in the 1961 Legislative Resolve. Thus, the best evidence, short of a title search, suggests that any residual rights or interests passed from Massachusetts to Maine in 1820, and by 1961, the State was willing to cede any and all interest, to the extent it even had any, to the City of Saco.

So, for all these reasons, I would opine, in the absence of a definitive title opinion stating otherwise, that title rests with the City.

Taken this all as assumed, and as correct, the single issue then boils down to can a portion of the Park be ceded over to the Church, or any other third party. For reasons set out below, I believe the answer is No, fee title cannot be granted over, but alternate remedies otherwise exist that may offer some relief. Let me explain.

You will see from the attached 1961 deed from the State of Maine, Sir William Pepperell deeded out in 1752 (See Book 31, Page 219 of the York County Registry of Deeds) a roughly six acre parcel “to the inhabitants of the East Side of Sawco River...” for use as a “meeting house of public worship” and for a “burying place...” and for “setting up a schoolhouse...”. Later, by subsequent confirming deed, in 1799 (See book 64, Page 178 of the same Registry) the State of Massachusetts deeded to the same Inhabitants, by Legislative Resolve, what appears to be the same 6 acres plus 4 more, keeping the same use conditions, but also adding in the use as a “training field” as well.

Sir William’s deed states that the inhabitants are to have and use this land “for the uses aforesd. & no other use whatsoever from henceforth forward forever.” I would read this verbiage as being a restriction on not only use but also on out sales. It is evident that Grantor wanted the inhabitants to “have and hold...henceforth forward forever.” It was likely not even within Sir William’s consideration in 1752, at a time the City was just forming up as a community, that the Inhabitants would consider selling or gifting a portion of the Park to a third party, even if the third party committed to the restricted uses. Instead, the deed suggests the Grantor saw the parcel as the heart of the new community and to serve as a bedrock in its governance and operations. That the community ultimately placed a public house of worship within the Park, placed a burial ground as well as a School (Jordan School) (meaning all 3 of the allowed uses) only suggests the implicit notion that the asset was to remain a community asset, the center hub of the community. Plus, the addition of the fourth use (training field) following the aftermath of the Revolutionary War makes yet further sense as the Park was to be a focus of primary community needs: spiritual, recreational, educational, and self defense.

In effect, time proved Sir William’s grant to be wise and providential.

It could be argued that the transfer of a small portion to the Church, as long as it was use restricted, conforms to the intentions of Sir William. In other words, a deed out to the UU Church, provided it contains the exact same use conditions, meets the requirements of Sir William.

That is certainly an argument that can be made, however, in my opinion it does not fit within the notions of conditions in 1752 wherein the grantor was not simply gifting a Park for use, but was creating a space for the critical functions of a new community within the new world. Settlers had been in the new world since the Pilgrims in 1620 but much land area of the colonies remained undeveloped, even partially unexplored. Clearly, Sir William viewed this parcel as the center of governance for the new community on the east side of the "Sawco River", the hub of critical missions (education, worship, burial). Nothing in his granting verbiage, or the tenor of the times, suggest he anticipated out sales.

Nonetheless, there are other options that could be considered. Those are: 1) a regularly self renewing 1 year lease of a defined area granting exclusive use; 2) cooperation in relocating the existing UU Church building from the Park to a better location that comes into City possession, or 3) purchase of an existing church building by the UU Church.

Option 1. The lease of land does not divest the City of fee title, but would allow the Church to secure exclusive use of a clearly set/defined area for its own benefit. The lease could be set for, as low as, \$1.00 per year, renewing automatically upon payment of another \$1.00 each year thereafter. This can go on for years. The lease would need to set out the use restrictions but those would not bother the UU Church. Land could be set aside to provide some parking. This may be the best immediate and most cost effective option for the UU Church.

Option 2. In 1959, the Episcopal Church building was moved from Pleasant Street over to the corner of Main and Cleveland. So, it's not unheard of for Churches to physically move to more favorable locations. The City comes into possession of parcels, built and unbuilt, often, and we have swapped parcels with parties on occasion. So, it's not impossible to imagine a future time, 1 year, 3 years, from now when a parcel comes into City possession that might suit the Church's needs. This option will require patience and staff at City Hall remaining vigilant for possible re-use. But, were a vacant lot to become open to City control, there could be mutual benefit in relocating the UU Church building. Option 2 could be pursued simultaneously while Option 1 remains in place since the lease is only for \$1.00.

Option 3. From time to time, churches close, and their buildings come up for sale. The Methodist Church on Middle Street comes to mind. That building was for sale for a fair amount of time. It's entirely possible a church building might become open for purchase here or in a neighboring community. Again, there may be mutual benefit in the City assisting the Church since the City would gain full use of the entire Park parcel.

If the Council is interested, I can draft up a short simple lease that allows the use. We would want to get a drawing done that accurately shows the area reserved for the Church's own use/parking. Just let me know if this is of interest.