

Port Chester Carver Center

Minutes of the Special Meeting

Friday, May 17, 2019

Present:	<i>Sonia Alcantarilla, Stephanie Barrett, John Condon, Michael Flynn, Amy Fisch, Erica Fritsche, Brendan Goodhouse, Jim Howland, Robert Kaplan, Shaker Khayatt, Rob Kost, Rich Lawrence, Derek Mahoney, Jennifer Prather, Maida Robinson, Claire Steinberg, Brian Stern, Holly Zimmerman</i>
Absent:	<i>Betty Brown, Judy Diaz, Ciara Dilley, Sam Ortiz and Chris Pye</i>
Staff:	<i>Anne Bradner, Leanne Tormey, Colleen Kane</i>

SUBJECT	DISCUSSION	OUTCOME
<p>Call to Order</p> <p>Welcome</p>	<p>Claire Steinberg, President, called the Carver Board meeting to order at 2:00 p.m.</p> <p>Claire thanked the Board for joining for this Special Meeting. She indicated the purpose of the meeting was to consider Carver’s current cash flow situation and recommendations from the senior Carver Officers and the Finance Committee regarding the appropriation for expenditure of additional amounts from certain of Carver’s endowed funds.</p>	
<p>Presentation Regarding Materials Provided to the Board For the Special Meeting</p>	<p>Claire introduced David Samuels to the Board. Carver retained Mr. Samuels to provide advice regarding the potential appropriation for expenditure of endowed funds. Specifically, Mr. Samuels was retained to provide</p>	

advice regarding New York law requirements with respect to appropriation for expenditure from endowed funds. Mr. Samuels' credentials and expertise in this area of the law are summarized in materials provided to the Board in advance of the meeting and incorporated herein by reference ("Special Meeting Materials").

Claire then reviewed the eight factors that should be considered when deciding whether to appropriate from the endowment fund. These are detailed in the first three resolutions, included in the Special Meeting Materials.

Anne Bradner then reviewed Carver's current cash flow projections as set forth in the Special Meeting Materials.

Claire then continued the discussion of the financial issues confronting Carver relevant to the need to consider additional appropriation for expenditure of endowed funds. This discussion included a consideration of alternative sources of funding, as summarized in the Special Meeting Materials.

Discussion of Legal Issues

Mr. Samuels led a discussion of the legal issues to be considered by the Board in connection with its consideration of possible action to approve additional appropriation for expenditure of certain of Carver's endowed funds.

Mr. Samuels gave background on the relevant New York law, including the passage of the New York Prudent Management Of Institutional Funds Act ("NYPMIFA") in 2010. He indicated that in his opinion that the 7% expenditure provision in NYPMIFA did not apply to gifts made before the September of 2010, and therefore specifically did not apply to the Board Designated Fund or the Moore Fund (as defined in the proposed resolutions). Mr. Samuels indicated that, with respect to the Moore Fund, the Board is legally able to appropriate for expenditure all amounts in the Fund above the original amount, provided the Board considers the eight factors listed in the proposed resolutions presented to the Board in the Special Meeting Materials. The only restriction in the original gift related to expenditures that would deplete the original principal amount. Mr. Samuels indicated there is no restriction on

appropriating for expenditure amounts from the Board Designated Fund because the Board created that Fund before September 2010 and there is no donor restriction as to that Fund.

There was a discussion regarding whether Carver had any obligation to treat the Moore Fund as if it were donated after September 2010 as a result of prior discussions with the donor. Mr. Samuels indicated that in his opinion nothing he had seen either in or related to the gift documents or referenced in Carver's financial policies indicated to him that Carver had any such obligation contractually with the donor. Consequently, according to Mr. Samuels, under New York law, the Board has the authority to exercise its discretion to appropriate for expenditure any amounts in the Moore Fund so long as the appropriation for expenditure does not permit the expenditure of amounts that would deplete the original principal amount of \$750,000. Mr. Samuels further advised that there is nothing he has heard or seen that requires Carver to be limited by the 7% expenditure presumption in NYPMIFA for gifts made before September 2010, including with respect to the Moore Fund

	<p>and the Board Designated Fund. There is nothing in the financial policies or anything else Mr. Samuels has seen that indicates to him that the donor of the Moore Fund required any such limitation. At most, Carver may have had a misunderstanding that the 7% presumption in NYPMIFA applies to all funds whenever created, but it does not, according to Mr. Samuels, apply to those established before September 2010. Accordingly, Mr. Samuels advised that the proposed resolution with respect to the Moore Fund is consistent with the agreement with her and the law. Mr. Samuels likewise advised that the other proposed resolutions are appropriate and permissible under the law.</p>	
<p>Presentation of the Resolutions</p>	<p>Claire presented the first three resolutions to the Board.</p> <p>Michael Flynn presented the fourth resolution to the Board.</p>	<p>WHEREAS, Port Chester Carver Center, Inc. (“Carver Center”) has maintained certain monies in endowment funds, as reflected in its financial filings and audited financials; and</p> <p>WHEREAS, consistent with its legal and fiduciary obligations, and upon consultation with independent legal counsel, the Board of Carver Center has determined that it is proper and appropriate, and consistent with sound business and financial practices and considerations, to appropriate (for possible future expenditure) certain funds which are currently part of its endowment; and</p> <p>WHEREAS, consistent with the provisions of the New York Prudent Management Of Institutional Funds Act (“NYPMIFA”), the Board of Carver Center has carefully considered the following eight factors, if relevant, when deciding to appropriate from its endowment fund:</p> <ol style="list-style-type: none"> 1. the duration and preservation of the endowment fund;

2. the purposes of the institution and the endowment fund;
3. general economic conditions;
4. the possible effect of inflation or deflation;
5. the expected total return from income and the appreciation of investments;
6. other resources of the institution;
7. the investment policy of the institution; and
8. where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the organization; and

WHEREAS the Board of Carver Center, in or about 2002, allocated \$50,000 to a board designated endowment fund (the "Board Designated Fund"), the value of which has now grown to approximately \$87,000: and

WHEREAS, a contribution to the Program Endowment Fund of Carver Center by Katherine Moore in or about 2002 (the "Moore Fund"), the income and appreciation from which is to be used only in support of programs of Carver Center, has now grown to approximately \$1,300,000,

THEREFORE, the Board hereby resolves as follows:

A. RESOLVED: All of the monies in the Board Designated Fund (including principal, income, and appreciation) are hereby deemed to be unrestricted funds, and can be appropriated and expended as general unrestricted assets by Carver Center without further action by the Board of Carver Center; and it is further

B. RESOLVED: The Board hereby appropriates the sum of \$200,000 from the Moore Fund, to be expended as deemed appropriate in support of the programs of Carver Center, provided, however, that under no circumstances shall the Board expend any monies from the Moore Fund if such an expenditure results in the corpus of the Moore Fund falling below \$750,000; and it is further,

C. RESOLVED: The Board hereby authorizes the President and the Chief Executive Officer, in consultation with outside professionals, to undertake such actions, and execute such documents, as are required to effectuate the

		<p>foregoing; and it is further.</p> <p>D. RESOLVED: Carver’s existing financial policies approved on February 6, 2018 provide a process for the annual approval of amounts appropriated for expenditure from endowed funds. Through the consideration of resolutions today the Board intends to consider whether to appropriate additional amounts from the endowed funds for expenditure outside of the annual budget process and in excess of 7% of the endowed funds. To the extent the Board approves one or more of those additional expenditure resolutions, it hereby also approves a modification in this FY 2019 to its policies regarding the process for approval of the amount of endowed funds appropriated for expenditure. In addition to the amounts already approved by the Finance Committee on recommendation from the Treasurer and approved by the Board pursuant to its approval of the annual Budget, the Board hereby approves additional amounts appropriated for expenditure as set forth in the accompanying resolutions approved by the Board today.</p> <p>A motion was made (duly seconded) to vote to approve each of the above resolutions A through D in light of Carver’s current financial situation as reported to the Board, the information contained in the Whereas clauses copied above and the discussion during the meeting, including the legal advice provided to the Carver Center by David Samuels, and all Board members present unanimously voted to approve the above resolutions.</p>
Suggestion of Creation of a Task Force To Assist in Creation of FY 2020 Budget	Claire told the Board a task force will be formed to assist in the creation of the FY 2020 budget and considering other financial planning issues.	
Adjournment	The meeting was adjourned by Claire Steinberg at approximately 2:55 p.m.	