

**MINUTES**  
**of the 175<sup>th</sup> MEETING**  
**of the SOUTHEASTERN PENNSYLVANIA SYNOD COUNCIL**  
**of the EVANGELICAL LUTHERAN CHURCH IN AMERICA**  
**Zoom Meeting**  
**February 17, 2023**  
**6:00 p.m.**

This meeting of the Synod Council was called expressly for the purpose of dealing with the proposal from The Mark L.L.C. regarding the property of University Lutheran Church of the Incarnation.

**CALL TO ORDER**

Vice President Tracey A. Beasley called the 175<sup>th</sup> meeting of the Southeastern Pennsylvania Synod Council to order at 6:05 p.m. The Rev. Karl M. Richard, Secretary, confirmed a quorum was present. Bishop Davenport began the meeting with prayer.

Discussion of the following resolutions were the agenda for the meeting:

1. Regarding the Agreement with The Mark:

***THEREFORE, BE IT RESOLVED*** that the Southeastern Pennsylvania Synod Council approves, in principle, the Agreement with **THE MARK AT PHILADELPHIA, LLC**, and desires to enter into this Agreement upon the completion of final details, and  
***BE IT FURTHER RESOLVED*** that the Southeastern Pennsylvania Synod Council entrusts the completion of such details to the Synod's Attorney, the Rev. Kim L. Lengert, Esquire, and that after such details are completed to her satisfaction the Agreement may be executed.

2. Regarding the disbursement of the money from the Agreement:

***THEREFORE, BE IT RESOLVED*** that the Southeastern Pennsylvania Synod Council approves the recommendation of Bishop Davenport, that the money received from this Agreement be conferred to University Lutheran Church of the Incarnation to assist its mission and ministry.

Vice President Tracey A. Beasley welcomed our Synod Attorney, the Rev. Kim L. Lengert, Esq., Mr. Bruce McCullough, Attorney for University Lutheran (UniLu), and the Rev. Meagan Esterby, pastor of UniLu, to the meeting. She then turned the meeting over to our Synod Attorney to give an update on actions in this matter since the January 26, 2023, meeting of the Synod Council.

Prior to Pr. Lengert's sharing, Mr. Richard Daniels showed an architectural rendering of the new building, and described where the building will be constructed.

Pr. Lengert: There was a concern raised last meeting as to whether the anchors, as permanent structures, would interfere with any future construction on the site of University Lutheran. This will not be the case. The anchors are used for added support during the construction phase, and are not needed permanently to support the building when completed. As a result, this will not

affect the possibility of future development. The developer can remove them now, but it would be an additional cost, which would reduce the compensation offered for this project.

Mr. Richard Daniels: I saw that in the drawings and agree that they are temporary supports that will be abandoned in place. This is not a concern for future development or sale.

Mr. Everett Wick: Yes, I agree. They will rust away over about ten or fifteen years, but they can be removed as part of excavation by a future owner.

Pr. Lengert continued with other items of concern:

We have added to the agreement that access to the congregation should not be impeded by the construction, including access for worship services and other activities of ministry.

Additionally, with regard to insurance, if there is any damage to the structure it will be the responsibility of the developer, not the congregation or the Synod.

There will be fencing placed during the construction, which will benefit both the developer and the congregation, as it will discourage people accessing the property to do illicit activities.

Regarding the offer that has been made, it has been increased to \$100,000, and that is the highest the developer is willing to go.

A survey will be done prior to construction so any damage that may occur can be noted and assessed to the developer.

Any damage is the responsibility of the developer to fix.

Mr. Daniels: I believe the Synod should have an engineer, in addition to the developers, at the point of this survey to document and photograph the area, and to assess the progress of the development.

Pr. Lengert: We have amended the proposal so that we can have a mutually agreed upon engineer, at the expense of the developer. We can also have our own engineer, separate from the developer's. The congregation has an engineer. It may make sense for the Synod to use the same firm as UniLu. A copy of the survey will be made available to both the congregation and Pr. Lengert on behalf of the Synod.

As for the umbrella coverage, after further conversations with various people, this should be raised from \$10MM to \$30MM.

Mr. Daniels: With regard to the easement, is that a legal issue, or a technical issue?

Pr. Lengert: It is considered a legal issue, as it deals with access and ownership.

Mr. Daniels: So, we can remove the anchors if we choose.

Pr. Lengert: An easement does not give a right of ownership, just a right of access.

Mr. Daniels: As a legal issue, even though the anchors are not needed after construction, but since they are still there, it makes sense to have the easement.

Pr. Lengert: Yes, it covers all parties more completely.

Pr. Lengert: There were also questions regarding the parties, and who is a signatory on the documents. In the documents the Synod is listed as "adjacent owner," and UniLu is listed as "adjacent congregation." In each previous memorialization of the agreement with Lutheran Campus Ministry and the Synod, University Lutheran has also been included as a signatory on those agreements. For consistency, we need to follow suit, and cannot just drop one of the signers from subsequent agreements. In addition, with this agreement it is UniLU that is most directly affected by the development, and it makes sense to have the most affected party as a signatory on the documents.

This is also a reason for considering University Lutheran as the beneficiary of the financial agreement, as they are the party experiencing the costs, as well as the benefits, of the construction. The benefits will come when there are the students next to the congregation; the costs come with the noise, traffic, dirt, and debris of the construction process. Generally speaking, the party most affected is the party that is compensated for the inconvenience.

Pr. Lengert asked if there were any other questions.

Mr. Bert Glenn: I see that there are about 30 tie-ins that are being placed. I note that they are underground. How deep are they, and do they connect at all to the building of UniLu?

Pr. Lengert: From my understanding, they are not connected.

Mr. Glenn: Will they go through the foundation?

Pr. Lengert: They will not go through the foundation.

Mr. Daniels: According to the plans it says that they will not interfere with the foundation of University Lutheran.

Mr. Glenn: As opposed to what I heard at the last meeting, am I hearing correctly that these tie-ins are simply for construction, they are not necessary for the ongoing structural integrity of the building, and they will degrade away over time, or can be removed at a future date?

Pr. Lengert: That is correct.

Pr. Heidgerd: Does the agreement provide for any damage that may come from potential settlement during the construction?

Pr. Lengert: Yes, and that is why there will be electronic monitoring throughout the construction process, in addition to physical inspections. There will be a post-construction survey as well.

Mr. Daniels: In item 3, it says, "If the project is abandoned, the agreement is automatically terminated." I believe we should add that "if it is abandoned, we need to confirm that the developer will restore permanent equivalent, subject to approval by the Synods' engineer, support to the church's property." If the project is abandoned, we do not want a huge hole for 30 years.

Pr. Lengert: My understanding is that "abandonment" would happen if they cannot get all the proper permits and documents to begin the project.

Mr. Wick: There may also be delays in financing which could cause the project to be abandoned, and in such a case, there should be provision that our property should be made whole.

Pr. Lengert: There is a provision in the post-construction survey that if there is any concern, a written request can be made and prompt an inspection and address of the issues.

Mr. Wick: In section 2b, it states that if they submit a change of work order, we have only 5 business days to respond. This is not a great deal of time.

Pr. Lengert: I have submitted a request to change that to 15 days.

Mr. Daniels: Under the section for insurance indemnification, it states the developer will continue the coverage for a period of 3 years. My concern is, if there is a defect that shows up beyond the 3-year window, it could adversely affect the congregation. I would like to see us have coverage for 12 years to match the statute for an owners' recourse against a builder.

Pr. Lengert: I can check on that. If there is a defect that no one can find, we can likely bring suit regardless, but I will check on this.

Pr. Heidgerd: Will the \$100,000 come to UniLu before a shovel hits dirt?

Pr. Lengert: According to the contract, it comes when the developer has secured the parcel and the rights to proceed with the building.

Mr. Wick: Is there a need for a firewall between our property and theirs? What set-back for fire protection is needed? Do we have assurance that they are not using our easement to avoid this set-back.

Pr. Lengert: I do not believe the City of Philadelphia will allow this. The building codes are the building codes.

Mr. Daniels: I suggest we run this past the engineer we retain, and that our engineer can be aware if code violations come.

Vice President Beasley asked if Mr. McCullough or Pr. Esterby had anything they would like to say.

Mr. McCullough: Since they have no right to enter our property, I do not believe they will be able to build on our side. In Philadelphia, many buildings are built next to each other.

We have been aware for some time that there was interest in the property next door. We knew something was going to be built. We were not sure if there would be pressure to purchase the property of University Lutheran, and if we would be negotiating for a “St. Peter’s Citicorp” type of situation. That company did not get the property. This company, which is building this thin 34 story tower, did. As there are no variances required, we had limited options for negotiation. But the developer has been generally cooperative with us in the process, even as it will cause disruption. And we are hopeful for the mission opportunity presented by having this many students inches away from the church.

Mr. Daniels: We should be aware that they will be swinging a crane over our property.

Pr. Lengert: We have included that when the crane does swing over our property, it will not have load, and it is also the reason for the higher liability insurance.

Mr. Daniels: Paragraph 7 – designated on-site representative: will this person be on-site daily, and will he or she be able to reach our Synod offices?

Pr. Lengert: Since Pr. Esterby is there each day, I recommend that she be the on-site person for both the adjacent owner and the adjacent congregation.

Mr. Daniels: In the section about correspondence, how would that be handled?

Pr. Lengert: All papers are to be copied to me, in case there is a legal issue included.

Mr. Daniels: “Each party shall look to the assets of the other party for satisfaction.” Are there limits to how far they can reach into the Synod’s assets? Can we limit this to the Chestnut Street property?

Pr. Lemgert: The congregation, the Synod, and Lutheran Campus Ministry are all indemnified against any suit by the developer.

With no further questions, Vice President Beasley called on Secretary Richard to bring the resolutions before the Synod Council.

1. Regarding the Agreement with The Mark:

**S.C.23.02.04. THEREFORE, BE IT RESOLVED that the Southeastern Pennsylvania Synod Council** approves, in principle, the Agreement with THE MARK AT PHILADELPHIA, LLC, and desires to enter into this Agreement upon the completion of final details, and **BE IT FURTHER RESOLVED that the Southeastern Pennsylvania Synod Council** entrusts the completion of such details to the Synod's Attorney, the Rev. Kim L. Lengert, Esquire, and that after such details are completed to her satisfaction the Agreement may be executed.

**The Synod Council unanimously adopted the resolution.**

2. Regarding the disbursement of the money from the Agreement:

**S.C.23.02.05. THEREFORE, BE IT RESOLVED that the Southeastern Pennsylvania Synod Council** approves the recommendation of Bishop Davenport, that the money received from this Agreement be conferred to University Lutheran Church of the Incarnation to assist its mission and ministry.

**The Synod Council unanimously adopted the resolution.**

Mr. Daniels: before we close, I was checking the tax records for the City of Philadelphia and was surprised to see we have taxable property on this site. Why do we have taxable property?

Mr. McCullough: We rent out the parking lot.

The meeting adjourned at 6:58 p.m. with prayer by Pr. Joseph Klinger.

The next meeting of the Southeastern Pennsylvania Synod Council will be March 30, 2023, at 6:00 p.m., and will be held via Zoom.

Respectfully submitted,  
The Rev. Karl M. Richard, Secretary  
Southeastern Pennsylvania Synod, ELCA

*Approved by Synod Council, March 30, 2023*