

A Reference Sheet (updated through 1/15/12)¹
to accompany
"Issues Identified by the Property Task Group"
Prepared by Charles Brainard

Property Settlement with the Meeting²

The Cost of a) Acquiring and b) Renting/Using the Meeting's Space and Land

Acquisitions in Manhattan (15th St., Rutherford Place)

By the Meeting

1. At 15th St., the New York Monthly Meeting (now the NYQM) paid all the cost of acquiring the three Historic Buildings along Rutherford Place and the large plot of land on a part of which they were sited. \$65,000 for the land and \$58,110.01 for the three buildings. (Figures in 1860 dollars)³ The buildings have about 38,000 actual sq. ft.

Note that the land was more valuable than the buildings.

Note than some recent valuations of the buildings (for fire insurance) have been for their replacement cost, which does not include the value of the land (and that insurance "replacement" would not be a reproduction of the lovely old buildings, and that insurance replacement cost estimates are not appraisals of the value of the old buildings).

2. The Meeting paid a substantial portion (half?, only a portion of the records have so far been made available by the Friends Seminary School Committee) of the cost to

¹ This is a work in process, based on the best information now available to the Property Task Group. All are invited to contribute records and information and to flag errors or lack of clarity which they think might be helpful to the better statement of anything that is discussed here. I am grateful to those Friends who have provided information and understanding that has been used in this update.

² The Meeting was originally named the New York Monthly Meeting. The name of that Meeting was then changed to the New York Quarterly Meeting. Rather than use different names for the same entity, I have opted to use "Meeting" for both (except that in quotes the original name is left if the meaning is clear enough, and except in a context when the meaning is not otherwise clear). The Brooklyn and 15th Monthly Meetings are specified by those names.

³ Minutes of the Property Committee of the New York Monthly Meeting.

construct the 1964 Building and purchase some additional land for it. The largest single contribution was by the Meeting with funds from the sale of its 20th St. Meetinghouse.⁴ The building has about 31,000 sq. ft.

By Friends Seminary⁵

3. Friends Seminary paid a substantial portion (half?, only a portion of the records have been made available by the Friends Seminary School Committee) of the cost to construct the 1964 Building and purchase some additional land for it.⁸
4. Friends Seminary, parents of students, alumni, teachers and other persons relating primarily to Friends Seminary (rather than the Meeting and persons relating primarily to the Meeting) may have been the source of funds for the acquisition of the old Masonic Temple on 15th St (~12,540 sq. ft.) and the town houses on 16th St (~16,700 sq. ft.) but Friends Seminary has not yet provided any records of that.

Renting/Using Space and Land in Manhattan (15th St., Rutherford Place)

5. The Meeting has provided some 31,186 actual sq. ft. of space in the Meeting's Historic Buildings along Rutherford Place for FS use. (For reference, the Schermerhorn St. School Building is about 22,000 sq. ft.; Willoughby about 17,000. Sq. ft.)
6. The Meeting has permitted a substantial portion of its land to be used for Friends Seminary playgrounds.⁶
7. The Meeting has permitted a substantial portion of its land to be used for a part of the 1964 building site, and for its subsequent modest expansion into the inner courtyard.
8. The Meeting has permitted a substantial portion of its land to be used for a portion of Friends Seminary underground athletic center: gym, locker rooms and etc.⁷

⁴ See collection of incomplete records which were supplied by FSSC representatives last summer, and which need to be supplemented.

⁵ For Brooklyn Friends School acquisitions and renting/using, see Appendix A, at the end.

⁶ The plot map of the Meeting's land, and visual inspection.

⁷ The plot map of the Meeting's land, and visual inspection.

9. The Meeting has permitted other portions of its land to be used for underground heating and utility supply facilities which, inter alia, supply the 1964 Building and other buildings used by the school.

Payment for Building Space

10. In the past, and unlike Brooklyn Friends School, Friends Seminary has not been asked to pay and has not paid market price for its use of space in the Meeting's Historic Buildings along Rutherford Place or for its half [?] interest in the 1964 building. Instead, FS has been asked to pay the Meeting's expenses for their maintenance and capital improvement (i.e., the expenses someone who has already bought them would pay). The payments are for or in proportion to the space which FS uses. This has amounted to about 20% of the market price of the space.
11. Friends Seminary's share has been calculated as follows:
 - a) All such expenses for building space which it exclusively uses, some 9,875 sq. ft.,
 - b) It's proportionate share of these expenses for specific space which it shares with the Meeting, some 21,311 sq. ft.), and
 - c) It's overall proportionate use share of the buildings for the expenses of overall building work (roof, brick pointing, foundation work, heating system, chimney, sidewalk, fence, etc.). (The overall proportionate share is based on the 24,366 sq. ft. allocated to it, this being both space it exclusively uses and it's proportionate share of the space which it shares.)
12. Based on the cost of such capital expenses and improvements on the building for the last eight years (2004 – 2011, 2011 projected; this being the period of time for which we have so far been able to secure the records from the Meeting office), and based on the above cost sharing arrangement, it appears that Friends Seminary has paid an average of just under \$100,000/year for its use of shared space and overall building work (categories "b" and "c" above). For the spaces it exclusively uses (Category "a" above), it is assumed that the cost would have been pro rata the same as for the spaces it shares, category "b" (same kind of expenses in the same buildings). That would be something like \$32,000 – \$41,000/year (a rather rough estimate since today we don't have the broken down data from Friends Seminary on what all the expenses it has recently reported are for, and we don't have the data from Meeting broken down to separately state the Category "b" and "c" expenses.

Based on what we do know, it appears Friends Seminary payments for these expenses which, but for the sharing agreement, the Meeting would be paying, would average something like \$132,000 to 141,000/year. For the apportioned 24,366 sq. ft., that is \$5.42/ sq. ft. to \$5.79 sq. ft. (For the 31,186 sq. ft. used by FS, and for that market reference, it would be \$4.23/ sq. ft. to \$4.52 sq. ft.)

In addition, Friends Seminary had the extraordinary expenses for the Seeger Center in 1993 and 2010 and for the elevator in 2007 (which might be considered expenses for which the Meeting or a landlord would have paid). These roughly totaled \$1,700,000 - \$1,750,000. Using the larger number, that would be an average of just under \$80,000/year over the 22 years for which Friends Seminary has supplied basic summary data. (Total of 212,000 – 221,000/year, in 2010 dollars; The Friends Seminary figures and its allocation of a share of the elevator cost to the Meeting have just been accepted for now, but not yet been reviewed or fully understood.)

The average payment by Friends Seminary to the Meeting for over the last 22 years for those expenses the Meeting, as building owner or landlord, would otherwise be paying for the buildings capital improvements and maintenance expenses thus appears to be \$212,000 – \$221,000/year, in 2010 dollars, including both the Seeger Center and the Elevator).

Assuming that Friends Seminary were to make such extraordinary capital improvements to the buildings every 22 years, this would amount to paying \$3.28 sq. ft. more, or a total of \$8.70 - \$9.07/ sq. ft. for the apportioned space (For the 31,186 sq. ft. used by FS, and for that market reference, it would be \$7.51/ sq. ft. to \$7.80 sq. ft.)

- 13: The fair market value of the 31,186 sq. ft. of space Friends Seminary used was about \$1,169,475/year. (This is based on a fair market value estimate for ordinary school space of \$35/ sq. ft. to \$40/ sq. ft., with the average \$37.50/ sq. ft. being used. (Schermerhorn St. rents in Brooklyn, on a lease for which the Meeting covers structural and roof issues only, for \$31.00 sq. ft. which escalates 2% each year.)

Friends Seminary has recently looked at space on 16th St., the cost of that space could be averaged in or otherwise taken into account if it were provided.

More generally, while the estimate of estimate of \$35/ sq. ft. to \$40/ sq. ft. was based on a school rental price survey, it was for generic school space and did not take into account the specific school buildings at Rutherford Place. If the Meeting wishes to consider this further, the next step would be to have the estimate refined by an inspection of the buildings, to update the survey and to do this with the participation of both Friends Seminary and Meeting experts or consultants.)

Because 21,315 sq. ft. of that space is shared or used in common with the NYQM, our tradition apportions only 24,366 sq. ft. to FS, and the value of that is about \$913,725/year (a savings of \$255,750, or 22%) compared to the cost to FS if it was renting comparable space, without having an owner or other user which could use and be responsible for the space when FS was not using it. (Much of the Meeting's and its tenant's use of the space is for nights or weekends. For the sharing calculation, the Meeting has counted the space the Meeting uses during the night

e.g., for the shelter, for YSOP at, say, at 2:00 am. as of equal value to the space the FS uses during the day at, say, 2:00 pm.)

The annual subsidy of Friends Seminary by the Meeting thus appears to be something like \$700,000/year (the difference between Friends Seminary payment of a share the capital expenses and improvements for the Meeting's buildings (\$212,000 - \$221,000/year and the value of the space apportioned to it, \$913,725/year (after the 22%, the \$255,750, savings.)

Work is continuing to refine these numbers. New information and any corrections or improvements or supplements pointed out to me will be used to provide a further updated Reference Sheet.

New Information

14. New information provided by Friends Seminary last month provides a basis for reconsidering past work and the understanding.

More particularly, about a month ago, 11/22/11, Friends Seminary School Committee, by one of its new co-clerks, gave the Property Task Group an initial spreadsheet report of capital expenses for the Historic Buildings, and a general indication of what some of the expenses were for, which is being supplemented, evaluated, refined, corrected, etc. and is expected to make a helpful contribution to our factual understanding. This includes new information from Sisi Kamal, Director of Finance for Friends Seminary, which is also much appreciated and promises to be helpful to refining our understanding. It prompted many questions on the spot, some of which were further set forth in writing on 12/11/11.⁸ Most of these are pending and have not yet been discussed (in view of the holidays and uncertainty of Meetings views which would likely be relevant). When this work is done, prior views may be confirmed or changed.

At this point, many of the expenses included in the Friends Seminary 11/22/11 spreadsheet appear to be for fixtures and furnishings and other renovation for school use, for which the Meeting or any other landlord would not be expected to pay for (after years of occupancy, and for only an ordinary rent of something like \$37.50/ sq. ft.). It is to be remembered that, after one purchases or rents a building, one still has to supply fixtures and furnishings and otherwise renovate it (as BFS did for the school buildings it purchased and rented at market price and as FS has done for the school buildings it purchased at market price and for the space of the Meeting for which it has paid a small user fee).

Renovation expenses were *not* included in the report of Brooklyn Friends School acquisition expenses for their school space, which is reported above.

⁸ Copy available on request.

At this point, the \$700,000 estimate of the annual subsidy of Friends Seminary by the Meeting still seems the best estimate we have.

Payment for Land

15. The Meeting's land at 15th St. cost more than the buildings. I do not know the long history; there must have been prior expenses. The only recent payment FS was asked for its use was for the tasteful paving of most of the front courtyard of the Meetinghouse to serve as a safe and attractive playground. Costs of the improvement were shared in proportion to the hours of its use.

A Fair Property Settlement between the Meeting and Friends Seminary

Our charge: "The purpose of the Property Task Force is to develop a proposal for the resolution of all property and related issues in connection with the proposed incorporation of Friends Seminary. The committee should seek a resolution that is fair and will allow the Meeting, Fifteenth Street Monthly Meeting and Friends Seminary to flourish in the present and into the future.

As to fairness:

1. An effort has been made and substantial progress made to determine who paid for the acquisition of the property, both the buildings and the land. The thought was that a fair property settlement would be based on that.
2. Some, and particularly the FS representatives, have sought instead a gift by the Meeting of substantial land and building space, and air rights either a) outright or b) by a 99 year lease for i) nominal payment, ii) payment at a fraction of market value or iii) no cost.⁹
3. This would amount to a huge charitable contribution from the Meeting to FS now and large yearly subsidy for 99 years amounting to something like \$1,000/FS student—with no ability to reevaluate the charitable gift, in view of the needs of FS or in view of the needs of the Meeting, the monthly meetings (or, for that matter, in view of the needs of BFS or other Quaker organizations.)

As to allowing Meeting, 15th St and Friends Seminary to flourish:

1. Friends Seminary is growing, appears in good financial condition, it is seeking more space.

⁹ See Appendix A, Proposal from Friends Seminary Members, to Issues identified by the Property Task Group, posted at NYQM.org

2. FS yearly income (something like \$30,000,000) is roughly 20 times the Meeting yearly income (something like \$1,600,000). FS yearly income has been growing, it is financially healthy as well as a worthy business. The Meeting income has not been growing and it supports itself largely on income from its investments and the rental of its property.
3. FS will probably turn out to have paid for The Annex, three town houses and something like one-half of the 1964 building and, if so, can expect to receive some 45,159 sq. ft. of space—good security and insurance against future increases in space cost.
4. Our monthly meetings are financially struggling; Quaker organizations which support them (NYYM, Powell House, AFSC) are financially struggling; Quaker membership is declining and some of our Friends have financial difficulty in attending Silver Bay or Quaker retreats, or in attending Quaker schools.
5. The Meeting's principal property asset are the historic buildings and one half of the 1964 building. The proposal to take most of that economic value from it leaves it far less secure into an uncertain future.

**Charitable Contributions
for
Friends Seminary, Brooklyn Friends School and other Quaker Organizations.**

1. It is not clear that the PTG is charged with recommending whatever charitable support is to be given to Friends Seminary. It would be unusual for that recommendation for the Meeting be made by a group, like the PTG, which includes only one potential charity of the meeting, that being Friends Seminary, when the Meetings Quaker and charitable concerns are broader than that.

The NYQM may wish to have the question of charitable giving be the concern of a specific outreach or other committee.
2. If the PTG were to consider and responsibly recommend charitable support to Friends Seminary (as distinct from a fair property settlement), a host of considerations would have to be dealt with, including alternative charitable uses for the funds, the uncertainty of the Meeting's future financial health, etc. These have not been addressed. For a few examples:
 - A. We do know that only a few years ago Trustees were concerned that if the Meeting made a charitable contribution of something like \$65,000 to Quaker schools in Africa, our financial health would be threatened. We would need to understand the basis for that concern in considering a subsidy which is requested to be ten times larger and, not for one time, but to be repeated yearly for 98 years—or forever.

- B. Trustees have recently had a study made of the long term trend of our investment endowment which is not entirely reassuring. This is just one example of the information that should be available to whomever is to recommend to the Meeting what its charitable giving policy should be, including the prudent amount of the giving (which will have an impact on the budget).
3. There should be a complementary review with concern for Friends Seminary's financial health and, in fairness, that of Brooklyn Friends School and other Quaker charities, e.g., that of our other tenants, for example the AFSC.
4. It may be relevant to note re feasibility that
 - A. Assuming an Friends Seminary annual budget of \$29,000,000, an \$700,000 increase to bring Friends Seminary payment to fair market rate would be an increase to FS of 2.4%.
 - B. An increase in Meeting income of \$700,000 would be an increase to the Meeting of about 39%—which would be available for its own needs, its monthly meetings' needs or charity as it decides depending financial conditions.

An Agreed Framework and Procedure for Sharing Space

1. Working out a framework and procedure for resolving all the problems experienced in sharing space would help this be an orderly process, leading to more consensual and mutually comfortable sharing than has been the case in the past.
2. This is included as an additional issue, which the Property Task Group has not yet gotten to.

Expansion

1. Friends Seminary wants to expand. We should have a clear understanding of such plans and thinking as there are, for the sake of being comfortable with them (and not unhappily surprised in the future, neither for what the plans are nor for our failure to provide for them in the formal papers).
2. This is included as an additional issue, which the Property Task Group has not yet gotten to.

The Use and Safeguarding of the Friends Name, Trademark and Service Mark

1. This issue is included in "Issues Identified by the Property Task Group", and that group is considering it. The following is information for understanding the issue.

"Friends" is the Meeting's Service Mark for schools in this area, a mark the Meeting has used to identify its schools in the New York area for 225 years.. More recently, its Friends schools have sold or distributed products using the "Friends" school mark in the New York area.

Owning a Service Mark or a Trademark is what keeps others from using the same identification for their schools or products.

With the separate incorporation by Brooklyn Friends School¹⁰ and with Mary McDowell commencing to use "Friends" in its name¹¹, a formal license by the Meeting of its "Friends" trademark and Service mark to authorize the schools to use it would be very helpful to establishing that others, without the license, may not use it. A short but proper written license agreement from the Meeting to each of these Schools would suffice to protect the marks. It could be royalty free, or \$1.00/year. The Essential Principles could serve for the required assurance of quality. A like license agreement would be needed for Friends Seminary upon its separate incorporation.

It would enhance protection of the Meeting's marks for the Meeting to register them for the New York area at the United States Patent and Trademark Office. The cost of registration is modest.

Possibly the name and mark "Quaker" ought also be protected for the schools and would be available for this protection.

**Long Term Assurances for the Survival of a Friends School
and
For a compatible neighbor for the Meeting**

1. Carrying fair and reasonable insurance for personal injury and other liability and insulating the Friends name and the buildings from further liability.
2. Using separate corporations to insulate crucial assets from unwarranted risks.

¹⁰ Brooklyn Friends School has recently incorporated, with Quakerly Essential Principles in its formal corporate papers and with its warm relations with the Meeting facilitated by having Friends on its board and by the Brooklyn Care Committee

¹¹ Mary McDowell has recently changed its name from "Mary McDowell Center for Learning" to "Mary McDowell Friends School", and has recently established a care relationship with the Brooklyn Friends Meeting.

3. Providing that if the school ceases operation, the buildings and land revert to the Meeting.

A) A part of this might be some limit or condition on mortgaging of the buildings,

a) E.g., that the Meeting might have an option to buy buildings being foreclosed upon at a fair, perhaps arbitrated price,

b) E.g., that the buildings could be sold only for approved uses, those compatible with being adjacent to a Friends Meeting. The same restriction would apply to permissible uses available to the lender upon foreclosure of a Mortgage. This is particularly important for the 1964 Building, which FS has physically connected to our historic buildings.

B) Similar concerns, and especially the last, would pertain if FS determined, for whatever reason, to vacate the Rutherford Place campus.

3. A portion of this issue is included in "Some Issues Identified by the Property Task Group", and that group is considering it. This is to include the other portions of the issue, which the Property Task Group has not yet gotten to.

— Charles Brainard

Appendix A

Acquisitions and Renting/Using Space and Land in Brooklyn

1. Brooklyn Friends School paid (from tuition, contributions and other funds from the BFS community) for substantially all the cost of acquiring the Pearl St. School Building and associated land and for substantially more than two-thirds (~75%??) the cost of acquiring the Schermerhorn St. School Building and associated land. It also pays market price rent for using the Willoughby St. Building and associated land. (It also paid and pays all the expenses of renovating and of operating those buildings, but those are not part of the purchase or rental price.)¹²

¹² This is reported in an extended study of the source of funds for acquiring the school buildings made by the Brooklyn Friends School Committee for the consideration of the Meeting. See 4/20/08 and 6/21/08 BFSC reports, both the overall discussion and the supporting papers, posted on the NYQM website, and the CRB 12/11/11 spreadsheet summary of the payments for acquisition of space, further annotated 1/15/12, available on request.

- A. BFS made the Schermerhorn St. School building available to the Meeting to rent about 1973, the Meeting located a tenant for it and it's 22,000 sq. ft. in Brooklyn are now rented by the Meeting for about \$31.00 sq. ft., which is about \$700,000/year net income.¹³ On 7/12/08, and notwithstanding that some 75% of the funds for acquiring the building had come from BFS, the Meeting affirmed that "the building and land at 112 – 116 Schermerhorn Street remain the property of [the Meeting], free and clear of all claims to title"¹⁴
2. In ~ 2009, when BFS wished to to use the Meeting's Schermerhorn St. School building, and offered \$9,800,000 for this building. It was told by the Meeting it would have to pay market price to do so, and that the building's market price was \$12,000,000 - \$14,000,000 (some thought it was worth more). At this price, BSC chose not to proceed. (BSC had paid about 75% of the buildings acquisition cost, a share worth about \$9,750,000 in 2009; the total value of that share and their current offer was about \$19,550,000.)¹⁵

¹³ NYQM Statements of Operation.

¹⁴ "free and clear of all claims to title" was (and is) understood by me to mean free and clear of both equitable and legal claims. Cf. NYQM Minute 2008.07.07)

BFSC had asserted equitable claims and consideration for its having paid acquisition costs to both buildings in its Proposals for Property Transfer of both 4/20/08 and 6/21/08:

"BFS was responsible for most of the costs of purchasing the school buildings on Schermerhorn Street The Quarter has realized very substantial benefits from the lease of the Schermerhorn school properties, in excess of \$4 million since 1973."

"Given that BFS funds were used to purchase and renovate 375 Pearl Street and that BFS has paid all maintenance and operating expenses for the property, the only fair option [for transfer of title to it] would be no cost." That was the conclusion of the recitation of reasons for transferring the property for nominal further cost, the reason being that BFS had bought and paid for it.

The Minute meant that BFS would no longer have any equitable claim to Schermerhorn St. (They never had, and I don't think were ever thought or said to have, any legal claim to that building, or to Pearl St. before its transfer for separate incorporation.)

The Minute states that "We reaffirm" that understanding. Despite some inquiry, I don't yet know of any prior affirmation of the understanding, but then I haven't read the entire history. Perhaps there was one. But it wouldn't make much difference: the date of the Meeting realizing the benefit of the building (whether BFS bought it for the Meeting in the first place or whether BSC contributed/ceded/transferred/or gave up its equitable, moral or any other interest in or claim to the Schermerhorn St. School to the Meeting at some later time doesn't have much to do with the value to the Meeting of BFS having largely paid the costs of acquiring the building.

¹⁵ Reports of NYQM Counsel.