

FRIENDS of the BARNES FOUNDATION

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FRIENDS OF THE BARNES FOUNDATION FILES BRIEF IN MONTGOMERY COUNTY ORPHAN'S COURT

(NORRISTOWN, PA) Friends of the Barnes Foundation (FBF) Attorney Eric Spade, Esquire, will be filing a Brief in Montgomery County Orphans' Court in support of the group's efforts to preserve an intact Barnes Foundation in Merion. The FBF Brief responds to Preliminary Objections filed by the Barnes Foundation and the Attorney General of Pennsylvania in October 2007 in response to the August 2007 Petition filed by the FBF. The Brief sets forth significant developments in Lower Merion Township and Montgomery County that, if undertaken by the Barnes Foundation, would eliminate the Foundation's financial crisis and allow the Foundation to remain at its Merion location as intended by Dr. Albert Barnes when he established the Barnes Foundation.

One significant development was the offer of a \$50,000,000.00 sale and leaseback proposal by the Montgomery County government. The Barnes Foundation refused to even discuss the feasibility of the Montgomery County government's offer. Additionally, the FBF Brief refers to the Pennsylvania General Assembly's enactment of legislation in 2002 containing \$107,000,000.00 in "itemizations" for the benefit of the Barnes Foundation project in Philadelphia, of which the Court was not made aware during the 2003-2004 hearings. It appears that the General Assembly itemized \$107,000,000.00 in expenditures to pay for the construction of a new art gallery building in the City of Philadelphia and to pay for the relocation of the works of art.

The FBF Brief touched on the irony of The Barnes Foundation's position:

. . . The refusal of the Barnes Foundation's leadership to seriously consider Montgomery County's offer is highly ironic given the Pennsylvania General Assembly's enactment of legislation in 2002 containing \$107,000,000.00 in "itemizations" for the benefit of The Barnes Foundation project in Philadelphia. Despite protestations by The Barnes Foundation's leadership and the Attorney General's Office denying any prior knowledge of this 'Immaculate Appropriation' legislation, their pleas of ignorance are incredible. Further, \$25,000,000.00 of the earmarked \$107,000,000.00 has been approved by the Governor to build the new art gallery in Center City Philadelphia. The irony is that the leadership of The Barnes Foundation will accept tax dollars from the Commonwealth to relocate the art gallery to Philadelphia, but it has refused to seriously consider the purchase and leaseback offer of Montgomery County.

FBF Brief, at page 10.

Another significant development was the approval of a zoning change by Lower Merion Township that would allow the Barnes Foundation to more than double the number of visitors to the art gallery's Merion site. On July 18, 2007, Lower Merion Township amended its zoning code to permit visitation at The Barnes Foundation's location in Merion to increase from 62,400 visitors per year to 140,400 visitors and 31,200 students per year. At a ticket price of \$15 per adult, the increased visitation levels would generate \$2,106,000.00 per year. Additional revenues would be received from an increase in the number of student visitors. Total new gross revenues from visitors under the Township ordinance would be in excess of \$2,100,000.00. The Barnes Foundation has rebuffed the Township's invitation to increase its visitation levels at the Merion site. Instead, The Barnes Foundation's leadership intends to proceed with moving forward with the relocation of the artwork and art school to Philadelphia.

These two new developments would generate at least \$3,000,000.00 per year, which would make it possible for the Foundation's Trustees to adhere to the express intent of Dr. Albert Barnes that Merion, Pennsylvania, be the Foundation's permanent home. The Brief reiterates the position of the FBF Petition filed in August 2007, requesting that the Court re-open hearings on the possible relocation of the Barnes art gallery and art collection. The Barnes art gallery is the most significant art

collection in Montgomery County, and it is considered a treasure by the County and the Township that draws visitors from around the world.

In a ruling in December 2004, Montgomery County Orphan's Court stated that under the "doctrine of deviation" the art collection of the Barnes Foundation could be moved to Philadelphia, although it did not require it, as the "least drastic modification of the (Barnes) indenture" to forestall financial ruin of the institution. In their Brief, FBF asks the Court to reconsider its approval of the deviation, citing the compelling change in circumstances that make the deviation from the donor's intent unnecessary.

Lending weight to the FBF position that the Barnes Foundation should avail itself of the new opportunities for securing the Barnes Foundation in its historic home, the Brief points to the fact that no significant and irreversible steps to relocate the art have been taken during the three and a half years since the Court's ruling in December 2004.

Another significant development was the potential eligibility of the Barnes Foundation for obtaining National Historic Landmark status at the Merion site. If the Barnes Foundation obtained National Historic Landmark status at the Merion site, the Foundation would become eligible for federal grants and for additional grants from other philanthropic institutions. At the request and expense to the FBF, Cultural Resources Consulting Group conducted a study and issued a report on the national historic significance of the Barnes Foundation at the Merion site. The report concluded that the Barnes Foundation at the Merion site would be eligible to receive National Historic Landmark status. Relocation of the art collection, however, would eliminate the Merion site's potential as a National Historic Landmark.

Commenting on the Brief, FBF spokesperson Jay Raymond said, "This Brief makes clear the Friends of the Barnes position, which is that those entrusted with the Barnes Foundation can and should focus on responsible stewardship and preserving the intent of the donor, Dr. Albert C. Barnes." The Brief filed by the Friends of the Barnes Foundation is a public document on file with the Clerk of

Court for the Orphans' Court in Montgomery County, Pennsylvania. A copy of the FBF Brief is available upon request from the Friends of the Barnes Foundation. For further information, see the Friends of the Barnes Foundation website at <http://www.barnesfriends.org>

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