

CITY COUNCIL AGENDA STATEMENT



Meeting Date: March 14, 2023
To: Honorable Mayor and Council Members
From: George Garrett, City Manager

Agenda Item: **Resolution 2023-30**, Authorizing The City To Pursue The Dissolution Of An Extinct Church Located At 500 42nd Street, Having Real Estate Number 00336520-000000, Further Authorizing The City To Contact The Nearest Church Of The Same Denomination As Part Of The Dissolution Process; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

New Mt Zion Baptist Church is listed as the owner of record for parcel 00336520-000000. This property was involved in civil litigation under Case No.: 20-SC-000007-M. A motion to dismiss the case on the grounds that the church was extinct was filed on August 8th 2020. The order granting the motion to dismiss was ordered and filed on September 11th, 2020. Subsequent motions were filed over the next two years, and a final order was filed December 1st 2022 reaffirming there was no additional pending action, and the September 11th order prevailed.

Florida Statute 617.2005 entitled “Extinct churches and religious societies; dissolution.” states the following:

Any church or religious society in this state which has ceased or failed to maintain religious worship or service, or to use its property for religious worship or services according to the tenets, usages, and customs of a church of the denomination of which it is a member in this state for the space of 2 consecutive years, or whose membership has so diminished in numbers or in financial strength as to render it impossible for such church or society to maintain religious worship or services, or to protect its property from exposure to waste and dilapidation for a period of 2 years, shall be extinct. Upon the facts being established to the satisfaction of the circuit court in and for the county in which such church or society has been situated, an order of such court may be made dissolving the church or religious society and the property of such church or society, or the property which may be held in trust for such church or society, may by court order be transferred to and the title and possession thereof vested in the denomination of which such church or society was a member. A copy of the decree of dissolution shall be filed with the Department of State.

Therefore the City is seeking authorization to pursue the above statutory process as referenced in the motion to dismiss.

CONSISTENCY CHECKLIST:

Yes	No
_____	<u> X </u>
_____	<u> X </u>

1. Comprehensive Plan
2. Other – 2010 Sewer Mandate

FISCAL NOTE:

APPROVED BY FINANCE DIRECTOR:

RECOMMENDATION:

Approval of Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-30**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO PURSUE THE DISSOLUTION OF AN EXTINCT CHURCH LOCATED AT 500 42ND STREET, HAVING REAL ESTATE NUMBER 00336520-000000, FURTHER AUTHORIZING THE CITY TO CONTACT THE NEAREST CHURCH OF THE SAME DENOMINATION AS PART OF THE DISSOLUTION PROCESS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, New Mt Zion Baptist Church owns property at 500 42nd Street, (RE No 00336520-000000); and

WHEREAS, A Civil Court order found that the above church was extinct on September 11, 2020; and

WHEREAS, the City Council did review Florida Statute 617.2005 regarding the process for dissolution of extinct churches and religious societies; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council authorizes the City Manager and City Attorney to pursue the dissolution process as set forth in the Florida Statutes.

Section 3. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14TH DAY OF MARCH, 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**

Steve Williams, City Attorney

IN THE CIRCUIT COURT OF THE 16th JUDICIAL
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

CASE NO.: 20-SC-00007-M

DIANE SCOTT o/b/o
NEW MT. ZION M.B. CHURCH,

Plaintiff,

v.

BURNETTE STEWART JONES,

Defendant

_____ /

MOTION TO DISMISS

COMES NOW Defendant, Burnett Stewart Jones, by and through undersigned counsel, and moves this Honorable Court for an order dismissing the instant case and as grounds therefore would show and state:

1. The instant action was purportedly brought by Diane Scott on behalf of “New Mt. Zion MB Church”.
2. The New Mount Zion Baptist Church (“Church”) formerly operated at 500 42nd St. Marathon, Florida (“Property”).
3. Title to the Property is vested in New Mount Zion Baptist Church and/or Great Union Baptist Association.
4. There is no legal entity named the “New Mt. Zion MB church”, “New Mount Zion Baptist Church” or “Great Union Baptist Association”.
5. There is no functional religious association, no elected governing board, no congregation or governing body that is operating a church on the Property or which can authorize actions or agents to act on behalf of the putative church.

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6. Furthermore, the putative Church lacks an ordained minister or pastor. In fact, the last pastor of the Church is deceased and has been for several years.

7. Plaintiff has no legal authority to act for the benefit of the former religious association that once operated the Church or to bring actions on its behalf.

8. The New Mount Zion Baptist Church is an extinct church as defined under Fla. Stat. § 617.2005 and the property and any remaining assets thereof should be transferred to another church of the same denomination.

WHEREFORE, Defendant prays this Honorable Court enter an order dismissing the instant action and awarding Defendant attorney's fees as and costs for the filing of the frivolous action of the Plaintiff.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of foregoing was electronically filed using the E-Portal system and was served via U.S. Mail this 10th day of **August, 2020** to: Diane Scott o/b/o New Mt. Zion Church, *Plaintiff*, 7151 Overseas Highway, Apt 303, Marathon, FL 33050.

HERSHOFF, LUPINO & YAGEL, LLP

Attorney for Defendant

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Tavernier, FL 33070

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By: /s/ Russell A. Yagel

RUSSELL A. YAGEL, ESQ.

Florida Bar No.: #727090

DEBORAH A. SERAFINI, ESQ.

Florida Bar No.: #177180

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IN THE COUNTY COURT OF THE 16TH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR MONROE COUNTY

CASE NO. 20-SC-00007-M

DIANE SCOTT o/b/o
NEW MT. ZION M.B. CHURCH,
Plaintiff,

v.

BURNETTE STEWART JONES,
Defendant.

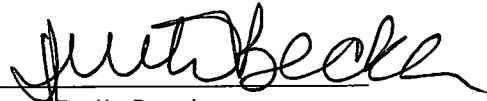
ORDER GRANTING MOTION TO DISMISS

THIS MATTER came on to be considered before the Court on Defendant's Motion to Dismiss, and the Court having reviewed the Defendant's Motion, Plaintiff's response, and Defendant's response to Plaintiff's response, and being otherwise fully advised in the premises, hereby grants the Motion.

Ordered and Adjudged that the Defendant's Motion to Dismiss is granted.

The Court reserves jurisdiction on Defendant's request for fees and costs.

DONE and ORDERED at Marathon, Monroe County, Florida, this 11 day of September, 2020.



Ruth Becker
COUNTY JUDGE

cc: Russell Yagel, Esq., RYagel@HLYlaw.com; DSerafini@HLYlaw.com
Diane Scott, 7151 Overseas Hwy Apt 303, Marathon, FL 33050

alubz
cnp

CLERK OF
MONROE COUNTY FLA DT

2020 SEP 14 PM 12:00

FILED FOR RECORD

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR MONROE COUNTY

CASE NO. 2020-SC-7-M

DIANE SCOTT o/b/o NEW MT.
ZION M.B. CHURCH,
Plaintiff(s),

v.

BURNETTE STEWART JONES,
Defendant.

ORDER DENYING MOTION FOR HEARING

THIS MATTER came on to be considered before the Court on Plaintiff's Motion for Hearing, and the Court having reviewed the Motion and the complaint having been dismissed on September 11, 2020, there is no pending action. The court has no jurisdiction in the matter. It is therefore:

ORDERED and ADJUDGED that the Defendant's Motion is denied

DONE and ORDERED at Marathon, Monroe County, Florida, this 1
day of ~~November~~ 2022.

DECEMBER


James W. Morgan
County Court Judge

cc: Diane Scott, o/b/o New Mt. Zion MB Church, 7151 Overseas Hwy, Apt 303, Marathon, FL 33050

*12-6-22
EF*

CLERK OF COURT
MONROE COUNTY, FL

2022 DEC -7 AM 7:46

FILED FOR RECORD