

STATE PROPERTIES COMMITTEE MEETING

TUESDAY, APRIL 14, 2009

The meeting of the State Properties Committee was called to order at 10:05 a.m. by Chairman Kevin M. Flynn. Other members present were Robert Griffith representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; John A. Pagliarini, Jr., Public Member; and Xaykham Khamsyvovong representing the Rhode Island Office of the General Treasurer, Ex-officio Member. Others in attendance were Charles Donovan from the Rhode Island House of Representatives; Meredith Pickering from the Rhode Island Senate Fiscal Office; John Faltus, Robert Stankelis and Michelle Sheehan from the Rhode Island Department of Environmental Management; Karen Scott from the Division of Planning, Department of Administration, Robert B. Jackson, John Glynn, Annett Jacques and Bruce Cadden from the Rhode Island Department of Transportation; and John O. Mancini from the Law Offices of Michael A. Kelly.

Chairman Flynn noted for the record that the State Properties Committee did have a quorum present.

A motion was made to approve the regular minutes from the State Properties Committee meeting held on March 17, 2009, as amended, by Mr. Pagliarini and seconded by Mr. Griffith.

Passed Unanimously

A motion was made to approve the regular minutes from the State

Properties Committee meeting held on March 31, 2009, by Mr. Pagliarini and seconded by Mr. Woolley.

Passed Unanimously

A motion was made to approve the executive session minutes from the State Properties Committee meeting held on March 31, 2009, by Mr. Pagliarini and seconded by Mr. Woolley.

Passed Unanimously

ITEM A – Department of Environmental Management – A request was made for approval of and signatures on a Conservation Easement over 124 acres of land located on Bay Avenue, Prudence Island in the Town of Portsmouth; known as the Ballard Property. Ms. Sheehan explained that on March 31, 2009, the State Properties Committee requested that the Department investigate the possibility of the State of Rhode Island reserving the right to place a wind turbine on the subject property in the future. Ms. Sheehan indicated that the Department contacted the Prudence Conservancy and was advised that the Conservancy would not agree to permit the State of Rhode Island to construct a wind turbine on the subject property. The Prudence Conservancy also indicated that it would withdraw its \$150,000 contribution toward the acquisition if the Agreement was revised to include such a provision. Ms. Sheehan stated that in response to her inquiry, NOAA forwarded a letter to the Department indicating that as the grant awarded to the Department was for habitat preservation, NOAA recommended that no structures whatsoever be permitted on the property. Ms. Sheehan clarified that NOAA did not specifically state that it would not permit a wind turbine; however, it

strongly recommended restricting any construction on the property. Ms. Sheehan stated that after researching the wind capacity and the infrastructure requirements on Prudence Island, it did not seem prudent to place a wind turbine on the subject property as roads would have to be constructed and transmission lines installed. Ms. Sheehan stated that as the existing facilities for the reserve are located on the southern portion of Prudence Island, it would be a more logical to place a wind turbine there rather than on the Ballard Property. Mr. Stankelis explained that as the Department's headquarters consist of only four (4) very small buildings, three of which are presently utilized as visitor cottages during the summer months only, very little electricity is required to operate the campus. Mr. Stankelis agreed that the southern portion of Prudence Island would be a more sensible location for a wind turbine. Chairman Flynn thanked both Ms. Sheehan and Mr. Stankelis for providing the supplemental information. A motion was made to approve by Mr. Woolley and seconded by Mr. Pagliarini.

Passed Unanimously

ITEM B – Board of Governors for Higher Education/The University of Rhode Island – A request for approval of and signatures on a Sublease Agreement by and between The University of Rhode Island and the Population Reference Bureau for office space located at 1875 Connecticut Avenue, N.W., Suite 500, Washington, DC. This item was deferred to a future meeting of the State Properties Committee at the request of the Board of Governors for Higher Education and The University of Rhode Island

ITEM C – Board of Governors for Higher Education/Rhode Island College –

A request for approval of and signatures on a License Agreement by and between Omnipoint Communications, Inc./T-Mobile USA and Rhode Island College to allow Omnipoint Communications, Inc./T-Mobile to place telephone equipment on the New Residence Hall roof.

This item was deferred to a future meeting of the State Properties Committee at the request of the Board of Governors for Higher Education and Rhode Island College.

ITEM D – Board of Governors for Higher Education/Rhode Island College –

A request for approval of and signatures on a Easement Agreement by and between Cox Communications and the Board of Governors for Higher Education/Rhode Island College to allow Cox Communications to provide service to Metro PCS. This item was deferred to a future meeting of the State Properties Committee at the request of the Board of Governors for Higher Education and Rhode Island College.

ITEM E – Department of Transportation – A request was made for approval of and signatures on three (3) Subordination of Easement documents by and between the Department of Transportation and Guardian Trust and for approval of and signatures on an Access Agreement by and between the Department of Transportation and Conopco, Inc. related to the Peterson-Puritan Superfund Site clean-up. Ms. Jacques explained that the Subordination of Easement documents before the Committee today derive from the fact that the Department of Transportation has a land interest in property located

along Martin Street in the Town of Cumberland. Ms. Jacques stated that the subject property is part of the Peterson-Puritan Superfund Site. Ms. Jacques explained that the Department of Environmental Management together with the Department of Justice prepared a Consent Decree, which sets forth the obligations of the responsible parties relative to the remediation of the Peterson Puritan Superfund Site. Ms. Jacques clarified that neither the Department of Transportation nor the State of Rhode Island is named as a responsible party in this matter. Ms. Jacques stated that the Guardian Trust is a not for profit trust that is working with the responsible parties in order to effectuate the recordings pursuant to the aforementioned Consent Decree. Ms. Jacques explained that subsequent to the determination of the subject property as a Superfund Site, the Department of Transportation commenced the rebuilding of the Martin Street Bridge and in doing so created its land interest in said Superfund Site. The Department has been approached by the Guardian Trust to subordinate its easements to the Conservation Easement that was put in place by the United States Environmental Protection Agency in conjunction with the Rhode Island Department of Environmental Management. The purpose of the subordination is to put the world on notice that the subject property is a Superfund Site that is subject to the terms and condition of a Consent Decree and that environmental remediation work is ongoing in the area. Ms. Jacques explained that the Department of Transportation, through the Access Agreement, grants Conopco Inc., the successor in interest to the responsible parties, access onto the

property to effectuate the necessary remediation work. The Access Agreement also grants Conopco Inc. access to property in the event of an emergency release. Ms. Jacques stated that the Access Agreement contains an indemnification clause, which indemnifies the State of Rhode Island and holds it harmless against any and all claims arising from any occurrence associated with Conopco Inc.'s use of the subject property for the ongoing remediation of the Peterson Puritan Superfund Site. The Agreement requires Conopco, Inc. to secure liability insurance coverage on behalf of the State of Rhode Island. The Department of Transportation acknowledges that if it does not agree to execute the Subordination of Easement documents, the Department of Justice can in fact compel the Department to do so under the Comprehensive Environmental Response, Compensation, and Liability Act (the "CERCLA"). Ms. Jacques stated that at this time, the Department of Transportation is seeking the Committee's approval and execution of both the Subordination of Easement documents and the Access Agreement. Chairman Flynn acknowledged that the Committee is in receipt of a five (5) page memorandum authored by Mr. Mancini, which provides a great deal of background information concerning this matter. Chairman Flynn asked Mr. Mancini if he wished to add anything to Ms. Jacques presentation. Mr. Mancini stated that the three (3) Subordination of Easement documents and the Access Agreement stem from the Declaration of Covenant and Environmental Protection Conservation Easement, which must also be executed by the State of Rhode Island. Mr. Mancini explained that the reason the

Rhode Island Department of Transportation is involved in the Peterson Puritan Superfund Site is the result the Department obtaining certain easements in order to effectuate the work being done to the Martin Street Bridge. Mr. Mancini stated that the Subordination of Easement documents, the Access Agreement and the Declaration of Covenant and Environmental Protection Conservation Easement serve to benefit of the United States Environmental Protection Agency and the Rhode Island Department of Environmental Management with the United States Department of Justice as the enforcer of those rights pursuant to a Consent Decree, which was executed in the early 1980s regarding an extensive and dangerous spill, which took place in the area of Martin Street. Mr. Mancini noted that this project is in its final phase. The first phase was the enforcement phase, which has been completed by the Department of Justice via the entry of the Consent Decree in the United States District Court. The second phase was the ROD phase, which is the identification of the remediation plan, which has also been completed. Mr. Mancini noted that the remediation is ongoing and is expected to continue for the next twenty (20) to thirty (30) years. The third and final phase is the control phase, which puts in place land use restrictions and land use controls. The United States Environmental Protection Agency refers to said restrictions and controls as Declaration of Conservation Easements and the Rhode Island Department of Environmental Management refers to the same as Environmental Land Use Restrictions. Mr. Mancini indicated his client must ensure that any instruments on record affecting any

property within the Superfund Site be subordinated to two (2) items. One is the Declaration of Conservation Easement and the other is the Access Agreement. Mr. Mancini explained that the Access Agreement not only allows Conopco, Inc. access onto the subject property, it also allows access to the United States Environmental Protection Agency and the Rhode Island Department of Environmental Management in the event of a spill or occurrence, which warrants their immediate access. That being said, Mr. Mancini respectfully requested that the State Properties Committee approve and execute the necessary documents. Mr. Woolley stated that he has reviewed the Declaration of Conservation Easement and is satisfied with it as to form. However, Mr. Woolley noted that as said Declaration was not posted on the agenda, he does not believe the Committee can vote to approve the same at this time. Ms. Jacques indicated that she did not receive the Declaration of Conservation Easement as part of the package provided by Mr. Mitchell. Chairman Flynn indicated that as the approval of the Declaration of Conservation Easement was not posted on the agenda and the Committee is unable to approve the same at this time, it was suggested that the matter be tabled to the next meeting of the State Properties Committee at which time all of the documents can be approved and executed. Ms. Jacques indicated that she would submit the Declaration to Director Lewis of the Department of Transportation for execution and the parties will return to the Committee for final approval of all the documents at the April 28, 2008, State Properties Committee meeting. A motion was made to

table this item to the April 28, 2009, meeting of the State Properties Committee at the request of the State Properties Committee by Mr. Griffith and seconded by Mr. Woolley

Passed Unanimously

ITEM F – Department of Transportation – A request was made for approval of and signatures on a License Agreement by and between the Department of Transportation and the Town of Burrillville for use of 400 square feet of State-owned land for purposes of maintaining a business sign. A motion to approve was made by Mr. Pagliarini and Mr. Woolley.

Passed Unanimously

ITEM G – Department of Transportation – A request was made for approval of and signatures on a License Agreement by and between the Department of Transportation and Polaris Real Estate for use of 200 square feet of State-owned property located adjacent to 628 George Washington Highway in the Town of Lincoln. A motion was made to approve by Mr. Pagliarini and seconded by Mr. Woolley.

Passed Unanimously

ITEM H– Department of Transportation – A request was made for approval of and signatures on a Quit Claim Deed conveying 9,238 square feet of land located on the westerly side of Route 114 (Pawtucket Avenue) in the City of East Providence to Gateway Midland, Inc. Mr. Jackson stated that Gateway Midland, Inc. is a California based company which owns the Wampanoag Plaza. Mr. Jackson illustrated the exact location of the subject property utilizing a site map. Mr. Jackson stated that the Committee granted

conceptual approval to dispose of the subject property on August 5, 2008. A motion was made to approve by Mr. Woolley and seconded by Mr. Pagliarini.

Passed Unanimously

ITEM I – Department of Transportation – A request was made for conceptual approval to dispose of 12,750± square feet of State-owned property located adjacent to the proposed new section of Evans Avenue in the Town of Tiverton. Mr. Jackson stated that the applicant is the former owner of the subject property. Mr. Jackson illustrated the location of the subject property using the site map. Chairman Flynn asked if the appraisal of the property is an in-house appraisal. Mr. Jackson stated that the appraisal is an internal appraisal. A motion was made to approve by Mr. Pagliarini and seconded by Mr. Woolley.

Passed Unanimously

ITEM J – Department of Transportation – A request was made for conceptual approval to dispose of 6,500± square feet of State-owned property located adjacent to the intersection of Market Street and Old Market Street in the Town of Warren. Mr. Jackson indicated that the applicant is an abutter to the property. Mr. Jackson explained that he had concerns that the subject property would meet the requirements of a stand alone buildable lot. However, Mr. Jackson explained that the Town of Warren has initiated new zoning for the district. Chairman Flynn asked what the current zoning of the subject property is. Mr. Jackson indicated that the property is zoned Rural Business and the minimum lot size is 40,000 square feet. Chairman

Flynn asked Mr. Jackson to clarify that the zoning in this district requires an acre of land per lot. Mr. Jackson provided Chairman Flynn with a copy of the zoning requirements for the Town of Warren. Mr. Jackson indicated that the applicant wishes to utilize the subject property for beautification. A motion was made to approve by Mr. Pagliarini and seconded by Mr. Woolley.

Passed Unanimously

ITEM K – Department of Transportation – A request was made for conceptual approval to transfer of 123,807± square feet of State-owned property located in the Town of East Greenwich; known as Avenger Drive a/k/a East Greenwich High School Service Road. Mr. Jackson explained that the subject property is actually the road that runs from Middle Road to the East Greenwich High School. Chairman Flynn asked if the State of Rhode Island owns any of the property to the east of the subject property. After a detailed discussion regarding whether the State owns any adjoining property, a motion was made to approve by Mr. Woolley and seconded by Mr. Pagliarini.

Passed Unanimously

ITEM L – Department of Environmental Management – A request was made for approval of and signatures on three (3) annual License Agreements by and between the Department of Environmental Management and (1) The Fort Adams Foundation/Trust; (2) The Museum of Yachting; and (3) Newport Rugby Club to allow the aforementioned organizations to hold various events and activities at Fort Adams State Park during the 2009 season. Mr. Faltus indicated

that the License Agreements also allow these organizations to serve alcoholic beverages during the various events and activities. Mr. Faltus noted that the Newport Rugby Club and The Museum of Yachting both currently have insurance coverage in place; however, said policies will expire on May 14, 2009, and June 19, 2009, respectively. Mr. Faltus indicated that the Fort Adams Foundation/Trust obtained a new insurance policy in January 2009, which will remain in full force and effect until January of 2010. All three of the organization's insurance policies include host liquor liability. Mr. Faltus respectfully requested that the Committee grant approval of the License Agreements subject to updated certificates of insurance and endorsements be submitted to the State Properties Committee by The Museum of Yachting and the Newport Rugby Club. A motion was made to approve subject to The Museum of Yachting and the Newport Rugby Club submitting certificates of insurance and endorsements to the State Properties Committee on or before May 14, 2009 and June 19, 2009, respectively by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM M – Department of Administration – A request for approval of and signatures on a License Agreement by and between the Department of Administration and Pride Rhode Island to allow use of the State House Grounds from June 19, 2009, through June 21, 2009. This item is deferred to a future meeting of the State Properties Committee at the request of the Department of Administration.

There being no further business to come before the State Properties

Committee, the meeting was adjourned at 10:37 a.m. A motion was made to adjourn by Mr. Griffith and seconded by Mr. Woolley. Passed Unanimously

Holly H. Rhodes, Executive Secretary