

STATE PROPERTIES COMMITTEE MEETING

TUESDAY, NOVEMBER 9, 2010

The meeting of the State Properties Committee was called to order at 10:07 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; Robert W. Kay, Public Member; Michael Sligar representing the Rhode Island Office of the General Treasurer, Ex-officio Member. Others in attendance were Anthony Paolantonio from the Rhode Island House of Representatives; Meredith Pickering from the Rhode Island Senate Fiscal Office; Annette Jacques, Colleen Kerr, Susan Howe, Gil Bricault, Robert B. Jackson, Christine Brien and Eva Bernardo from the Rhode Island Department of Transportation; Terri Bisson from the Rhode Island Department of Environmental Management; Director Craig Stenning and Christine Botts from the Rhode Island Department of Behavioral Health, Developmental Disabilities and Hospitals; Kevin Nelson from the Rhode Island Department of Administration; Kenneth Burke from the Rhode Island Water Resources Board; Linda Ward from Opportunities Unlimited; and Barbara Sokoloff from Barbara Sokoloff and Associates.

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

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

Committee held on Tuesday, September 28, 2010 by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

A motion was made to approve the minutes from the State Properties Committee held on Tuesday, October 12, 2010, by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM A – Department of Behavioral Healthcare, Developmental Disabilities and Hospitals – A request was made for approval of and signatures on a Purchase and Sale Agreement by and between the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”) and Kenyon Terrace Apartments, Inc. for the sale of a parcel of land and a building located at 327 Kenyon Avenue in the Town of South Kingstown. Director Stenning indicated that as this matter has come before the Committee several times, he would provide a brief summary of the project for the benefit of the Committee. Director Stenning stated that the subject property is a former group home, which has been vacant for several years; however, this initiative will convert said group home into five (5) or six (6) units of affordable housing for individuals with disabilities. Director Stenning noted that this project addresses several goals that both the Department of Administration and BHDDH have set out to accomplish. Director Stenning indicated that over the past two (2) years, BHDDH has been attempting to reduce the number of its real estate holdings. The sale of the subject property will eliminate

BHDDH's responsibility to upgrade the dwelling in order to bring it into compliance with the current State Fire Code, which would result in a substantial expenditure of funds. Additionally, this transaction will alleviate the cost of maintaining the subject property. However, most importantly, the project provides individuals with disabilities with an additional opportunity to secure suitable affordable housing. Director Stenning noted that just yesterday, he attended the ribbon cutting celebration for a housing complex in the City of Warwick, which is an innovative initiative that the Director is pleased to be a part of. Director Stenning stated that in the coming week, he will meet with Rhode Island Housing to discuss several other projects, which involve the use of Threshold Funds that will provide gap funding to ensure that at least one (1) or two (2) units within certain residential housing complexes are allocated to individuals with disabilities. However, the entire Kenyon Avenue residential property will be devoted to individuals with disabilities. The project greatly reduces the amount of service funds expended as this type of facility is designed to provide support as needed, rather than on a twenty-four (24) hour per day basis for all residents. Lastly, this project provides the Town of South Kingston with additional affordable housing, which assists the Town in meeting the requirements of affordable housing as set forth in the statute. Director Stenning noted that Mr. Woolley had some concerns regarding the format of the Purchase and Sale Contract. Director Stenning stated that the requested revisions have been made and the original Contract has been withdrawn. Director Stenning indicated

that the applicant has met with South Kingstown's Town Planner together with the Planning Committee and the approval process for this project is moving forward. Director Stenning stated that as the Committee is aware all the funding for this project has been approved, which includes both federal HUD funds and a combination of funds from Rhode Island Housing. Mr. Woolley stated that he spoke with Christine Botts of BHDDH regarding his concern that the Purchase and Sale Contract did not contain a reverter clause. Mr. Woolley explained that in the event the subject property ceased to be utilized for the expressed purpose for which the BHDDH transferred its ownership, both the Purchase and Sale Contract and the Quit Claim Deed should contain reverter clauses, which stipulate that ownership of the subject property would revert back to the State of Rhode Island. Ms. Sokoloff stated that relative to the financing, HUD does not allow the inclusion of reverter clauses in purchase and sale contracts or quit claim deeds relative to projects they are funding either partially or wholly. Chairman Flynn clarified that the Committee's concern is that as the State of Rhode Island has agreed to sell the property at a purchase price below fair market value; there needs to be some level of assurance that in if the current arrangement should change, the property will continue to be utilized for its intended purpose as a facility to serve members of the disabled population. Director Stenning stated that the Deed contains language which essentially states that if the property was no longer going to be used to serve the populations served by the BHDDH, or others with disabilities, then the property would revert back to BHDDH. Mr.

Woolley stated that the proposed deed in his possession does not include a reverter clause. Director Stenning stated that BHDDH will be glad to revise the proposed Deed if said revision has not already been made. Director Stenning noted that the Deed states that the subject property shall be used for the purposes of housing for disabled individuals and affordable housing as defined by Rhode Island Housing; or as a 'Group or Community Home. Mr. Woolley affirmed that said provision should also state that in the event the property ceases to be utilized for said purposes, that the property shall revert back to the "Seller" with adjustments made for any investments made by the "Purchaser" to improve the property. Ms. Sokoloff requested that she be allowed an opportunity to investigate what, if any, adverse consequences the inclusion of said language may generate. Mr. Woolley asked what the timeframe of this transaction is as it is his understanding from the Purchase and Sale Contract that the closing would not take place until on or before March 31, 2011. Chairman Flynn asked if the tabling of this request for two (2) weeks would have any adverse impact on the project. Director Stenning stated that a continuance of this matter for a period of two (2) weeks, to his knowledge, would not irreparably harm the project. Mr. Woolley explained that he had additional concerns relative to the documents, which he wants to resolve prior to this matter returning to the Committee for approval. A motion was made to table this matter to the State Properties Committee of November 23, 2010, by Mr. Griffith and seconded by Mr. Kay.

Passed Unanimously

At the request of the Department of Administration, Division of Planning, Chairman Flynn requested that if there were no objections the Committee move to hear Item G at this time due to a scheduling conflict for the presenter, Kevin Nelson. A motion was made to hear Item G out of sequence by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

ITEM G – Department of Administration – A request was made for approval of the revised 2010 Amended Rules and Regulations of the State Properties Committee. Mr. Nelson noted that a public hearing was held on Friday, October 22, 2010, regarding the revised version of the State Properties Committee Rules and Regulations. As a result of said hearing, a comment was received, which recommended that the term “fair market value” be included in said Amended Rules and Regulations as one of the criterion that is examined prior to approving the sale of land, which had been acquired for “Open Space” purposes. Mr. Nelson stated that as a result of said recommendation and, because the Department of Environmental Management has adopted companion rules addressing “Open Space” and has included the specific criterion of ‘fair market value’ in its Rules and Regulations; the State Properties Committee is recommending that its Rules and Regulations be further amended at Rule 807 and Rule 808 to include ‘fair market value’ as one of the criterion relied upon prior to approving the conveyance of land initially acquired by the State as ‘Open Space.’ Chairman Flynn noted that having to consider fair market value as criterion, in addition to the standard criterion of assessed open space value, which he

acknowledged could vary extensively, will compel the Committee to seek evidence that appraisers have carefully considered both values in order to establish a balance, which is reflected in a fair and equitable assessment of the subject property's actual value. Mr. Nelson indicated that the argument in favor of including "fair market value" is that conceivably land exists that has very high open space value such as swamp land, which may include some very rare species of life forms that command very low fair market value; however, in a potential conversion process, the land to be lost could cause the opposite affect; as it would have a very high market value with a relatively low open space value. The recommendation asserts that all of these factors must be taken into consideration when a there is a potential for the transfer of open space land. Mr. Nelson explained that if the land being offered to replace land being lost is of little fair market value perhaps a monetary offset could be included as a condition when open space land is being purchased. Said recommendation would essentially provide additional and alternative options when addressing any potential situations of the loss and replacement of open space land. Chairman Flynn noted that the Department of Environmental Management has adopted companion Rules and Regulations regarding open space land. Mr. Nelson stated that is correct and language that appears in the State Properties Committee Amended Rules and Regulations at Rule 807 and Rule 808, states: "the Agency shall be required to demonstrate an acceptable plan for the acquisition for conservation purposes of new and not yet preserved parcel reasonably equal in open space value,

fair market value and acreage” which is identical to the language included in the companion Department of Environmental Management Rules and Regulations. In addition to the amendment relative to the transfer of open space, the State Properties Rules and Regulations have also been amended at Rule 203, wherein it is stipulated that all agenda items must be submitted to the Executive Secretary not later than seven (7) days before the Committee meeting and any and all documents that must be executed by the Committee, (i.e. deed, lease, etc.) which have not been supplied sufficiently in advance of the scheduled meeting, may result in the Committee deferring the item until due consideration can be given to the documents. A motion to approve was made by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

ITEM B – Department of Environmental Management – A request was made for approval of and signatures on a First Amendment to Indenture of Lease by and between the Department of Environmental Management and NGC, Inc. for the rental of Dock KK, located at 45 State Street in the Port of Galilee in the Town of Narragansett. Ms. Bisson stated that the subject premises has been leased by NGC, Inc. since 1991. The existing Indenture of Lease is due to expire in 2012. Ms. Bisson explained that NGC, Inc. operates the Town Dock, which is one of the largest wholesalers of fish in the northeast. Ms. Bisson stated that NGC, Inc. wishes to rent a total of 188 feet of the dockage, which constitutes the entire southern portion of the dock. NGC, Inc. will pay an annual rental fee of \$40.00 per foot, which represents the

current rental rate for dock space throughout the Port of Galilee. Said arrangement would annually generate an additional \$7,520 in revenue to the State of Rhode Island. Ms. Bisson explained that the increased rental rate would be retroactive to March 1, 2010; however, any and all terms of the current Indenture of Lease remain in full force and effect inclusive of the rental fee, which NCG, Inc. presently pays to lease the actual land on which the buildings are situated. NCG, Inc. is required to continue to carry the required insurance in addition to securing supplemental insurance coverage. Chairman Flynn asked if the rental fee will be increased. Ms. Bisson indicated that the rental fee will not be increased until the expiration of the existing Indenture of Lease. Mr. Woolley noted that NCG, Inc. is also going to install security cameras. Ms. Bisson noted that the aerial photograph of the dock illustrates that there is a substantial piece of the dock missing. The dock has been damaged countless times by customers attempting to turn into the facility. Ms. Bisson explained that the Department has had difficulty identifying those who are responsible for the damage to the dock; therefore, the film from the cameras being installed by NCG, Inc. will be available to the Department for viewing purposes to determine the parties responsible for future damage. This will allow the Department to locate the culprit(s) and demand reimbursement for damages or prosecute them to the fullest extent of the law. A motion was made to approve by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM C – Department of Transportation – A request for approval of

and signatures on a License Agreement by and between the Department of Transportation and Herb Chambers Cadillac, Inc. for use of 1,380 square feet of State-owned property located adjacent to 1441 Bald Hill Road in the City of Warwick. By way of background Chairman Flynn noted that this matter has come before the Committee several times and has been tabled each time at the Committee's request to provide the Department with the opportunity to research and address certain concerns of the Committee, which have arisen during previous presentations. Chairman Flynn noted that the request was first brought before the Committee on September 14, 2010. During that presentation, concerns arose related to the appraised value of the property and the method utilized to determine the rental rate for the applicant's use of the subject property. However, on September 28, 2010, Mr. Barone, a duly qualified in-house appraiser, explained to the Committee that he utilized the comparable property method to determine the rental rate for the subject property. Mr. Barone stated that in fact the appraised rental rate for the property located adjacent to the subject property is the same per square foot. Mr. Barone's presentation resolved the issue of the appraised value; however, another issue arose concerning the delineation of the property and precisely, which portion of the property would be utilized for the, so called, beautification and the exact portion of the property on which vehicle parking would be allowed. The Committee indicated that the aerial photograph illustrating the subject property was inadequate to accurately determine the intended division of the property.

Therefore, Chairman Flynn requested that the matter, once again, be tabled to allow the Department to obtain a schematic or photograph of the property, which would clearly demonstrate the delineation of the two (2) separate portions of the subject property. The request deferred on both October 12, 2010, and October 26, 2010, at the request of the Department of Transportation. That being said Chairman Flynn asked Mr. Jackson to begin his presentation. Mr. Jackson presented a map of the subject property for the Committee's review, which more clearly identified the division of the property. Mr. Jackson stated that the applicant has agreed to comply with the specific delineation of the property as established by the Department. Chairman Flynn asked if the Department planned to install some sort of barrier that will prohibit the applicant from violating the terms of the property's division in the future. Mr. Jackson indicated that due to existing shrubbery on the open space portion of the property, the Department does not believe the installation of a dividing barrier is necessary. A motion was made to approve by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

ITEM D – Department of Transportation – A request was made for approval of and signatures on a Grant of Easement Agreement by and between the Department of Transportation and the Narragansett Electric Company over a 5,501± square foot area at Providence Place (formerly Kinsley Avenue) in the City of Providence. Ms. Brien explained that the Narragansett Electric Company has requested this easement area to allow for the installation of distribution equipment

as part of the Brayton Interlocking facility. Ms. Brien indicated that the said equipment will eventually be used to power up transformers, service pedestals, snow melting case, and a signal house, etc. The easement area will provide a means for the Narragansett Electric Company to transport the distribution equipment to its destination. Ms. Brien stated that the power generated will also be utilized as part of the transportation system that carries Amtrak trains to South County. Therefore, a permanent easement is being requested to achieve the same. Chairman Flynn asked if there is any compensation associated with the permanent easement. Ms. Brien clarified the Department's granting of the permanent easement is gratis, because the facilitation of the railway service will benefit the public. Mr. Griffith expressed concern relative to the melting of snow mentioned by Ms. Brien and the proximity of the facility to the Woonasquatucket River. Mr. Griffith indicated that the depositing of snow into the Woonasquatucket River is strictly prohibited. After discussing this concern, it was determined that the installation of the snow melting equipment was not intended to actually deposit snow into the river, but to expedite the inevitable melting of snow to ensure unimpeded access through of the 5,501 easement area in the event it is necessary to maintenance and/or repair any of the installed equipment. A motion was made to approve by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM E – Department of Transportation – A request was made for conceptual approval to sell 4,766 square feet of State-owned property

located at Crary Street and Allens Avenue in the City of Providence to Algonquin Gas Transmission, LLC. Ms. Brien explained that the Department recently granted Algonquin Gas Transmission, LLC three (3) easements. Ms. Brien indicated that Algonquin Gas Transmission, LLC also requested that they be allowed to purchase one of the parcels over which an easement was previously granted to Algonquin Gas Transmission, LLC by the Department. An appraisal of the property established fair market value. The Department has held a check in the amount of \$95,320 in escrow representing the purchase price of said property pending the Committee's approval to dispose of said parcel of land to Algonquin Gas Transmission, LLC. Ms. Brien explained that as the land was acquired by deed, it is not necessary for the Department to notify the former owners of the intended sale. The property will be offered to the City of Providence in accordance with the statute. Chairman Flynn clarified that the disposition of the subject property is in fact mandated. Ms. Brien stated that yes the acquisition of said property has been mandated and the Federal Highway Administration is adamant in its position that the subject property should be sold. Ms. Brien indicated that the parcel's agreed upon purchase price is rather extraordinary given the less than desirable nature and location of the property; however, said property is of great value to Algonquin Gas Transmission, LLC. A motion was made to approve by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM F - Department of Transportation – A request for approval of and signatures on a Quit Claim Deed conveying 8,092 square feet of a

rectangular shaped parcel of land located on George Washington Highway (Route 116) in the Town of Smithfield to Salvatore and Gauthier Investments, LLC. Ms. Bernardo noted that on or about March 31, 2009, the State Properties Committee approved and executed the Quit Claim Deed conveying the subject property to SAG Investments. Ms. Jacques indicated she would explain what previously transpired relative to the conveyance of the subject property as best she could. Ms. Jacques stated that Salvatore and Gauthier Investments, LLC created a fictitious name for itself, to wit, SAG Investments, LLC. At the time of the purchase of the property, the Buyer requested that the Quit Claim Deed be prepared in the name of SAG Investments, LLC. The Buyer provided the Department with corporate disclosures and the Deed was prepared in accordance with their request. The Department came before the State Properties Committee; requested and received approval of the Quit Claim Deed. Ms. Jacques assumes that, for whatever reason, Salvatore and Gauthier Investments, LLC chose not to consult their attorney relative to the preparation of the Quit Claim Deed. Ms. Jacques surmised that what prompted the resurgence of this matter was that either, Salvatore and Gauthier Investments, LLC attempted to merge the subject property with adjacent property owned by them, or perhaps they attempted to sell the subject property. In any event, they are now unable to obtain title to the property in the name of SAG Investments, LLC, because SAG Investments, LLC is actually a fictitious business name. The corporate name of the entity is actually Salvatore and Gauthier Investments, LLC. Ms. Jacques indicated that

the Department was recently contacted by Salvatore and Gauthier Investments, LLC's legal counsel, who explained the problem concerning the Quit Claim Deed and stated that said Deed had never been recorded. Their attorney requested that the Department simply re-execute another Deed using the actual corporate name Salvatore and Gauthier Investments, LLC. in order to resolve the problem caused by his client. The Department requested and was provided with the original Deed in order to destroy the same. Ms. Jacques indicated that the Department then requested that Salvatore and Gauthier Investments, LLC, through its attorney, provide the Department with corrected certificates of corporate disclosure in the accurate corporate name of Salvatore and Gauthier Investments, LLC.; the Department received said certificates shortly thereafter. The Department of Transportation is now before the Committee respectfully requesting that the Committee re-execute a Quit Claim Deed conveying 8,092 square feet of land located on George Washington Highway (Route 116) in the Town of Smithfield to Salvatore and Gauthier Investments, LLC. Lastly, Ms. Jacques stated that a closing on the property has already taken place and that the Department previously received and cashed a check for the agreed upon purchase price. As far as the Department was concerned, this matter had been completed. A motion was made to approve by Mr. Griffith and seconded by Mr. Kay.

Passed Unanimously

The Committee moves to go into Executive Session, pursuant to Rhode Island General Law 42-46-5(a)(5) for the specific purpose of

discussion or consideration related to the acquisition or lease of real property for public purpose, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

A motion to enter into Executive Session was made by Mr. Griffith and seconded by Mr. Woolley.

A roll call vote was taken and the votes were as follows: Mr. Griffith voted

“Aye”; Mr. Woolley voted “Aye”; Mr. Kay voted “Aye”; and Chairman Flynn voted “Aye”.

A motion was made to return to the regular session of the State Properties

Committee by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

The State Properties Committee closed the Executive Session and returned to

the regular session of the meeting at 11:14 a.m.

ITEM E1 – Department of Transportation – A request was made to proceed with the acquisition of land and easements by virtue of Condemnation Plat 2719 in connection with the Rehabilitation of the Pocasset River Bridge No. 23 (Route 2) Reservoir Avenue in the City of Cranston. After discussion in Executive Session, a motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM E2 – Department of Transportation – A request to discuss the matter of Chapel Associates, LLC vs. State of Rhode Island, through the Department of Transportation, Providence County Superior Court, CA No. 10-5198. This matter is deferred to the Tuesday, December 7, 2010 meeting of the State Properties Committee at the request of the Department of Transportation.

ITEM E3 – Water Resources Board – A request to discuss the Revised Divestment Strategy for the Big River Management Area Leases. After discussion in Executive Session, it is determined that no action by the State Properties Committee is required at this time. There being no further business to come before the State Properties Committee, the meeting was adjourned at 11:15 a.m. The motion to adjourn was made by Mr. Griffith and seconded by Mr. Woolley. Passed Unanimously

Holly H. Rhodes, Executive Secretary