

**DEPARTMENT OF ADMINISTRATION
STATE PROPERTIES COMMITTEE MEETING MINUTES
OF TUESDAY, MAY 24, 2011**

The meeting of the State Properties Committee was called to order at 10: 04 a.m. by Chairman Ronald N. Renaud. Attendance of the members was taken by roll call and the following members made their presence known: Robert Griffith representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; and Robert W. Kay, Public Member. Others in attendance were Meredith Brady from the Rhode Island Senate Fiscal Office; Anthony Robinson from the State of Rhode Island General Assembly; Annette Jacques, Richard Kalunian, Robert B. Jackson, Eva Bernardo, T.J. Van Fechtmann, Christine Brien, Bruce Cadden and David Coppotelli from the Rhode Island Department of Transportation; John Faltus, Michelle Sheehan and Cynthia Gianfrancesco from the Rhode Island Department of Environmental Management; Tom Brueckner, Kathryn Kelly and Anthony Bucci from the Narragansett Bay Commission; and Geoffrey Marchant from the Town of Richmond.

Chairman Renaud stated for the record that the State Properties Committee did have a quorum present to conduct business.

On a motion made by Mr. Kay and seconded by Mr. Griffith, the State Properties Committee unanimously voted to approve the minutes of the meeting held on April 27, 2011.

Item A - Department of Environmental Management - A request was

made for approval of and signatures on an annual License Agreement, by and between the Department of Environmental Management and the City of Newport to allow the City to hold its annual fireworks display at Fort Adams State Park on Monday, July 4, 2011, with a rain date of Tuesday, July 5, 2011. Mr. Faltus explained that this is a request from the City of Newport to utilize a portion of Fort Adams State Park for its annual 4th of July fireworks display. Mr. Faltus stated that the Department is awaiting an updated Certificate of Insurance from the Rhode Island Interlocal Risk Management Trust, as the current policy expires on June 30, 2011. On a motion made by Mr. Woolley and seconded by Mr. Kay, the State Properties Committee unanimously voted to approve the above request.

Item B - Department of Environmental Management - A request was made for approval of and signatures on a Park Use Agreement, by and between the Department of Environmental Management and the Town of Barrington for use of a portion of Haines Memorial State Park located in the Town of Barrington for public recreational purposes. Ms. Sheehan explained that the Park Use Agreement has been in existence since 1992. Said Agreement allows the Town to utilize a portion of the park as a playing field. On a motion made by Mr. Griffith and seconded by Mr. Woolley, the Committee unanimously voted to approve the above request.

Item C - Department of Environmental Management - A request was made for approval of and signatures on a Park Use Agreement, by and between the Department of Environmental Management and the

City of Pawtucket to allow the City to utilize a portion of Ten Mile River Reservation known as the Doreen Tomilson Sports Complex. Ms. Sheehan stated that this request is very similar to the previous item. The Agreement will allow the City of Pawtucket to utilize the Doreen Tomilson Sports Complex portion of the Reservation as playing fields. On a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to approve the above request.

Item D – Department of Transportation - A request was made for approval of and signatures on a gratis License Agreement, by and between the Department of Transportation and the Town of Lincoln to allow the Town to utilize 200 square feet of State-owned land for the Lincoln Senior Art Center located at 150 Jenckes Hill Road in the Town of Lincoln. Mr. Coppotelli reiterated that the above-referenced License Agreement is for the Town of Lincoln’s Senior Art Center and the Department is seeking approval for a gratis License Agreement. Mr. Coppotelli indicated that the Department’s Design Section approved said gratis License Agreement on April 1, 2011. Mr. Kay asked what the term of the License Agreement is. Mr. Coppotelli noted that the Agreement is for a term of five (5) years and is revocable at will. On a motion made by Mr. Woolley and seconded by Mr. Kay, the Committee unanimously voted to approve the above request.

Chairman Renaud suggested that as Mr. Jackson is not present at this time, and if there are no objections, that the Committee hear Items E and F later in the meeting and allow the presentation of Item

G at this time.

Item G – Department of Transportation - A request was made for approval of and signatures on a First Amendment to Easement Deed, by and between the Department of Transportation and the Narragansett Electric Company to expand the original permanent easement area located at Providence Place (former Kinsley Avenue) by 919 square feet in connection with the Brayton Interlocking System. Ms. Brien presented a site map for the Committee’s review. Ms. Brien explained that in November of 2010, the Committee granted a permanent easement to the Narragansett Electric Company; however, it was determined that the Narragansett Electric Company needed an additional 919 square feet to accommodate the project. Ms. Brien illustrated the exact location of the 919 square feet additional easement area using the site map. Ms. Brien stated that it was initially believed that the pad mounted transformer would fit in the narrow hockey stick shaped easement area. However, The Narragansett Electric Company came to realize they would need additional land this additional land in order to accommodate the transformer. On a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to approve the above request.

Item H – 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 City of Newport to allow the City to utilize 30,000 square feet of State-owned land located on Memorial Boulevard, between Chapel Street and Edgar Court in the

City of Newport, to sponsor the Aquidneck Growers' Market. Ms. Bernardo indicated that this License Agreement is for a term of five (5) year and is a gratis agreement. As the Department is requesting the Committee grant approval of the subject License Agreement gratis, Mr. Griffith questioned whether the City of Newport or the Aquidneck Growers' Market is charging the vendors a fee for the opportunity to display and sell their goods and products. Additionally, Mr. Griffith asked if the opportunity to display and sell goods is open to anyone and everyone or whether the City is imposing certain criterion. Ms. Bernardo noted that she believes any grower within this area has an equal opportunity to display and sell goods. However, Ms. Bernardo believes that any interested vendor must appear before the City of Newport to request permission. Mr. Griffith asked whether the Certificate of Insurance extends to product liability. Ms. Bernardo indicated that she has a copy of the Certificate of Insurance for the Committee's review. Mr. Kay asked whether the concessionaires are limited to selling only food. Ms. Bernardo stated that she believes that the intention is for vendors to sell only vegetables. Mr. Kay indicated that he has often seen vendors selling all types of merchandise including jewelry, articles of clothing and other trinkets at these, so called, "markets" and before you know it, the State has opened itself up to all sorts of liability exposure. In view of the concerns raised by the Committee, on a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to table this matter to the next meeting of the State Properties Committee to provide the Department with an

opportunity to obtain answers to the Committee's questions regarding whether the vendors will incur a fee and whether the required and appropriate insurance coverage has been secured by all necessary parties and participants.

Chairman Renaud stated that as Mr. Jackson has returned that perhaps the Committee would consider hearing Items E and F at this time. There being no objections, Mr. Jackson was allowed to present Items E and F for the Committee's consideration out of sequence.

Item E – Department of Transportation – A request was made for approval of and signatures on a License Agreement, by and between the Department of Transportation and SMD Associates for use of 1,640 square feet of State-owned land located adjacent to 614 George Washington Highway in the Town of Lincoln for surface parking and beautification. Mr. Jackson explained that the request before the Committee is for the renewal of an existing License Agreement that has been in existence for some time. Mr. Jackson indicated that the renewed License Agreement is for a term of five (5) years and the license fee was subject to a re-evaluation at the end of the third (3rd) year. The current license fee has been established at \$100.00, per month. The Agreement allows for vehicle parking and beautification only. Mr. Woolley asked how many parking spaces are available on the subject property. Mr. Jackson indicated he would need some time to locate said information. Mr. Woolley asked how the Department of Transportation established the license fee for the subject property. Mr. Jackson indicated the property was recently appraised by the Department's Appraisal Section. Mr. Griffith asked if

the Department of Transportation has considered selling the property outright. Mr. Jackson stated that the Department is not interested in selling the subject property due to the width of the highway; the Department does not want to split it up. Mr. Jackson noted that this decision is the norm along Route 116 and many other highways, as the Department does not want a jagged highway line or for the highway line to curve unnecessarily. The Department wishes it to maintain as straight a highway line as possible. After reviewing the photographs and based upon a discussion concerning the assessed license fee and the Department's reasoning for not wanting to offer the subject property for sale, on a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted that this matter be remanded back to the Department of Transportation for further clarification and consideration.

ITEM F – Department of Transportation – A request was made for approval of and signatures on a Quit Claim Deed, by and between the Department of Transportation and the Town of Richmond conveying 38,110 square feet of land located on Railroad Street within the Village of Shannock in the Town of Richmond. Mr. Jackson and Ms. Jacques indicated to the Committee that although the Department did in fact ask that this request be included on the agenda; unfortunately, the Quit Claim Deed has not been executed by Director Lewis. Ms. Jacques explained that while working with Karen Ellsworth, the Town Solicitor of Richmond, a discrepancy in the legal description was discovered yesterday afternoon. Obviously, the legal description had to be amended and by the time it was finalized, there was just not

enough time to have the Quit Claim Deed executed by Director Lewis. However, the Town of Richmond has some federal grant money allocated for the environmental clean up of the property. Ms. Jacques noted that there is a tight window with EPI and EPA for this clean up to take place or the grant money will be lost. Mr. Woolley asked if the Amendment will change the Quit Claim Deed in any other way. Ms. Jacques noted that the Quit Claim Deed has not been changed; the only thing that has changed is Exhibit A. Chairman Renaud stated that it is not the usual course of business for the State Properties Committee to consider approval of any legal document not duly executed by all interested parties; however, given the tight time constraints concerning the federal grant and the potential to lose said grant without the Committee's approval, unless there are any objections from the other members, he would consider approving the request subject to the Department obtaining all necessary signatures and providing a duly executed copy of the same to the State Properties Committee once this has been accomplished. On a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to approve the above request, subject to obtaining appropriate signatures of Director Lewis and any other authorized persons on the Quit Claim Deed and that the Committee be provided with a copy of the duly executed Deed for its records.

Item I – Department of Transportation – A request was made for approval of and signatures on a License Agreement, by and between the Department of Transportation and Olympia Holdings, LLC to allow the applicant to utilize 2,254 square feet of State-owned property

located at 1424 Park Avenue and the City of Cranston, situated adjacent to the Washington secondary bike path. Mr. Cadden stated that due to an omission regarding the use and purpose associated with this License Agreement, he will provide an amended substitute page 1 to Ms. Rhodes to correct any discrepancy. Mr. Cadden explained that the applicant intends to install a patio and landscape the property in conjunction with the existing business; however, no vehicle parking will be permitted whatsoever. Mr. Cadden stated that this business was purchased by the current owner on the assumption that the property line ran adjacent to the bike path. After some questions arose, the Department had the property surveyed to determine the actual property line. Mr. Cadden explained that the current owner's assumption was incorrect and illustrated the exact location of the property line to the Committee. Mr. Cadden indicated that this was an unfortunate misunderstanding, which the Department had to correct. The applicant's brother, Dr. Cosmo Haralambidis, is an orthodontist with an office down the street, who purchased this property for his brother to operate a seasonal ice cream business from. The back end of this business has not been in operation, but will be upon the commencement of this License Agreement. Under the License Agreement, they are allowed access to the front door have four (4) parking spaces. Mr. Cadden noted that at one time, the applicant did remove a couple of railings which separated his business from the bike path, but said encroachment came to the attention of Department and rectified immediately. The Department demanded the Licensee replace the missing railings and return the

property to its previous condition. Mr. Cadden stated that the Licensee did so immediately. Chairman Renaud assumes that the Tenant's plan was for people on the bike path to stop, purchase ice cream and be able to sit out on this landscaped patio. Mr. Cadden agreed the applicant took a shot, but immediately complied with all the Department's demands upon notice. Chairman Renaud asked how the license fee was established. Mr. Cadden indicated that the Department conducted an in-house appraisal of the property to establish the license fee. Mr. Woolley asked if the License Agreement speaks to the possibility that the applicant could potentially operate an alternative business during the off season. Mr. Cadden noted that the License Agreement only speaks to the operation of the ice cream business. Chairman Renaud suggested that Mr. Cadden advise the Department that the State Properties Committee believes it should be looking to sell these small slivers of land to the abutting property owners rather than licensing them. As facilitating said agreements and then monitoring use of properties takes an enormous amount of manpower and time to ensure the licensees are not over stepping their boundaries. A discussion ensued regarding the Department's reasoning for not selling these types of parcels, which included addressing the complications involved when properties are purchased with federal highway funds as well as the Department's desire to maintain it's rights of way parcels in a continuous straight line as stated by Mr. Jackson. Chairman Renaud indicated that the Committee is not trying to make life difficult for small business owners, but also believes decisions have to be made in the best interest

of the State. Ms. Jacques agreed and indicated that she would certainly make the Committee's concerns known. On a motion made by Mr. Griffith and seconded by Mr. Woolley, the Committee unanimously voted to approve the above request.

ITEM J – Department of Transportation – A request was made for approval of and signatures on a Warranty Deed conveying 13,271 square feet of land located at 1703 Mineral Spring Avenue in the Town of North Providence; designated as New State Highway Plat 2712; Parcel 1A to the Department of Transportation. Mr. Kalunian stated that the matter before the Committee, concerns the former site of the Ford dealership located at Routes 7 and 15 in the Town of North Providence, which has been converted into a Lowe's store. Mr. Kalunian stated that the Department, through a physical alteration permit, asked the landowner who developed the site into a Lowe's store to reconstruct the roadway to its full width in both directions at the intersection. However, it was discovered that there was an environmental land use restriction on the property when the Department of Transportation acquired it. Since that time, the Department of Transportation obtained a "No Further Action" letter from the Department of Environmental Management (the "DEM") as well as a "Final Letter of Compliance" which the attorney for the applicant had not provided to the Department of Transportation in a reasonable and timely manner. Mr. Kalunian noted that based upon conversations with the applicant's attorney, it was represented to him that the bulk of the contamination was located within the actual site of the former Ford dealership. However, the landowner has cleaned

up the land in accordance with the necessary standards. Mr. Kalunian deferred to Ms. Jacques to explain the circumstances involved in this matter in greater detail. Ms. Jacques explained that in this particular case, the fact that the Department did not take the property prior to the cleanup clearly establishes that the former owner was responsible for the contamination. The former owner has gone through the appropriate DEM procedures to have the wells closed. Ms. Jacques stated that this is not an open ended matter; although, in some cases the wells have to remain open for years of testing. However, in this case, all the wells were closed and they have the final seal of approval from DEM, which states that remediation was accomplished in accordance with DEM's requirements and to its satisfaction and that the level of contamination is below ground water standards. Ms. Jacques indicated that she was unable to locate any State case law regarding this issue; although, she found what she considers a clear statutory defense in federal case law. She stated that she discovered a federal statutory defense, particular to transportation agencies, stating that any claim that alleges a transportation agency is responsible for the contamination can be defended as long as the an agency can show the site was contaminated by the third party, prior to said agency taking ownership of the same. Ms. Jacques emphasized that this defense is specific to transportation agencies because in situations such as this, the Department of Transportation needs to own and have control of the roadways. As part of the physical alternation permit, a portion of the Department's permitting process allows the

DOT to demand any third party wishing to widen the edges of egress/ingress must also widen and pave the road and widen the sidewalks to ensure everything is up to code. This process prevents the Department from inheriting any violations for which it is not responsible. Ms. Jacques stated that with regard to this particular case, the Department is even more protected as a result of the environmental land restrictions and the third party's compliance with the DEM mandated remediation orders. Therefore, relative to the DOT, this is closed matter. On a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to approve the above request.

ITEM K – The Narragansett Bay Commission – A request was made for approval of the fee simple acquisition of property located at 29 Manton Avenue in the City of Providence; Assessor's Plat 62, Lots 551 & 556. On a motion made by Mr. Woolley and seconded by Mr. Kay, the Committee unanimously voted to approve the above request.

ITEM L – The Narragansett Bay Commission – A request was made for approval of the fee simple acquisition of property located at 187 Valley Street in the City of Providence; Assessor's Plat 33, Lot 592. On a motion made by Mr. Woolley and seconded by Mr. Griffith, the Committee unanimously voted to approve the above request.

ITEM M – The Narragansett Bay Commission – A request was made for approval of the fee simple acquisition of property located at 189 Valley Street in the City of Providence; Assessor's Plat 33, Lots 348. On a motion made by Mr. Griffith and seconded by Mr. Woolley, the Committee unanimously voted to approve the above request.

ITEM N – The Narragansett Bay Commission – A request was made for approval of the fee simple acquisition of property located at 12, 24 & 28 Tippecanoe (Gennaro) identified as City of Providence Assessor’s Plat 33, Lots 347, 349 & 622. On a motion made by Mr. Kay and seconded by Mr. Woolley, the Committee voted unanimously to approve the above request.

There being no further business to come before the State Properties Committee, on a motion made by Mr. Griffith and seconded by Mr. Woolley+ the May 24, 2011 meeting was adjourned at 10:54 a.m.

Holly Rhodes, Executive Secretary