

DEPCO Asset Review Committee
February 15, 2005
Minutes of the Meeting

A DEPCO Asset Review Committee meeting was held on Tuesday, February 15, 2005 in the Department of Administration Building, Conference Room B, 2nd floor, One Capitol Hill, Providence.

At 9:30 a.m. Rosemary Booth Gallogly called the meeting to order. Committee members present: Rosemary Booth Gallogly, Lawrence C. Franklin, and Gary Clark.

Ms. Gallogly stated that there were a couple of organizational issues that needed to be taken care of before they discussed the main subject of the agenda. First, she discussed the need to establish a Chair that will serve for the body. She indicated that she was willing to serve in that capacity if anyone wanted to make a motion.

A motion was made by Larry Franklin to nominate Rosemary Gallogly as Chair. The motion was seconded by Gary Clark and passed unanimously.

Ms. Gallogly also stated that this Committee which was established as part of the Memorandum of Understanding when the DEPCO assets came over to DOA needed to have a name. Gary Clark made a motion to have the official name be DOA-DEPCO ASSET MANAGEMENT COMMITTEE. The motion was seconded by Larry Franklin and passed unanimously.

Ms. Gallogly suggested that they establish a regular place for the meetings when they are necessary. Larry Franklin made a motion to establish the Department of Administration as the official location. The motion was seconded by Gary Clark and passed unanimously.

Ms. Gallogly indicated that they should next discuss the review and consideration of a proposed amendment to a settlement agreement dated December 21, 2000, between Wm. Associates, L.P., Woodland Manor I Associates, L.P., Woodland Investment Partners, GRA Associates, Mapleroot Development Corporation, Pasquale B. Confreda, John Assalone, Sr., Domenic Delvecchio, Antonio L. Giordano, The Estate of Robert A. Rocchio (collectively, the "Obligors") and Woodland Manor III Associates, L.P. and DEPCO, as amended from time to time thereafter.

Ms. Gallogly advised the Committee that they would not be voting on any motions that day regarding this item. The purpose is to hear a presentation from William Dolan, Esq., who is Counsel to the State as successor to DEPCO. She also indicated that there would be some time later for questions and answers.

William Dolan indicated that he was present on behalf of the State of Rhode Island, and with him was John McJennett, who was the former Executive Director of DEPCO and is now a consultant with the State on this matter. John McJennett indicated that there was a resolution that was drafted for the Committee's consideration. It was requested that copies be made so that it may be distributed to Committee members.

Mr. Dolan indicated that he had prepared some charts to assist the Committee in its deliberations. A copy of the charts was handed to committee members and recorded as Exhibit 1.

Mr. Dolan indicated that the purpose of putting the charts together was to provide relevant information to assist the Committee in its deliberations. He explained that there are essentially two moving pieces in the settlement agreement that the Committee should consider. He indicated that there is a pre-existing settlement agreement with the State dated December 2000, and that there have been various amendments to that agreement. Under the prevailing fourth amendment, the obligors including WM, GRA and Mapleroot, were required to pay to the State the sum of \$3 million in the spring of 2004. The payment was not made for a variety of reasons. That fourth amendment also permitted the State to setoff an obligation it owed to some of the obligors on these loans as a result of a judgment that had been entered against the Department of Environmental Management. So there really are two pieces – there are the loan obligations that these borrowers have to the State, and there is also an obligation on the part of the State to some of these borrowers as a result of a judgment that was entered against the Department of Environmental Management.

Mr. Dolan proceeded to explain the history of the three loans to three different partnerships. The first one is characterized as the WM loan for which the original borrower was an entity known as WM Associates. The second is what is called the GRA loan because the loan named as GRA Associates as obligor. The third was a loan that is called Mapleroot because it was made to Mapleroot Development Corporation. Those loans were reduced to a judgment entered in favor of DEPCO and the State in the Superior Court for Washington County back in 1996 or 1997. The judgments are on record and they are final. They have not been appealed. The numbers in Exhibit 1 reflect the principal amount of the loan plus the accrued interest that has accumulated under the Rhode Island judgment statutes which is 12%. These amounts are as of February 10, 2005. There is approximately \$6.9 million owed in the WM loan; on the GRA loan, the principal and interest is approximately \$4.7 million; and on the Mapleroot loans, it is approximately \$3.5 million in principal and interest. Exhibit 1 also shows who the judgment debtors are with respect to each of the loans. Mr. Dolan indicated that all of the corporations are defunct. He stressed that they are not in existence, and they do not have any assets. He indicated that there are certain individuals that are obligated on these loans. Exhibit 1 also contains a chart that shows a breakdown by the individual who is responsible for what. This chart allows one to look at each individual who remains as an obligor. In the case of Mr. Giordano the amount owed is \$11.7 million, including principal and interest. There were two elderly gentlemen who have in fact since passed away – Mr. Rocchio and Mr. Assalone. There are claims against each of their estates for \$15.2 million because they are obligated on each of the three loans. There is another gentlemen, Mr. Domenic Delvecchio who is obligated for \$6.9 million worth of the judgment and finally, Mr. Pasquale Confreda is obligated for \$10.4 million.

Mr. Dolan explained that the State has previously conducted extensive reviews and analyses of the financial condition of these individuals, and that those are available to the Committee should they desire to look at them. Mr. Dolan indicated that none of the individuals have, in his opinion, current means to pay essentially all or even part of these judgments. After presenting

the substance of the description of the liability on the judgment for the loans, Mr. Dolan indicated there are options for the State to consider in its deliberations.

Mr. Dolan asked if the Committee had any questions so far?

Mr. Franklin asked if both of the estates on Exhibit 1 are liable for the sum total.

Mr. Dolan indicated that both of these gentlemen have passed away, and their estates are essentially assetless. There is essentially nothing in the estates. Even though the State has a judgment for \$15.2 million, these are essentially uncollectable.

Mr. Dolan proceeded to explain the State's obligation on the judgment entered in favor of certain of the obligors and against the Department of Environmental Management. The judgment is actually held by Woodland Manor III, a partnership comprised of certain of the same individuals – Mr. Giordano, and a couple of other individuals. The total judgment with interest as of February 10th is approximately \$6.7 million. It is a final judgment and it has not been appealed. It is collectible and it is one that can be enforced against the State should they desire to do so. Woodland Manor III is not obligated, at least currently, on the DEPCO judgments. It did, however, assume certain liability in connection with the settlement agreement. The settlement agreement provided that certain of the proceeds of some of its assets would go to satisfy the DEPCO judgment. For instance, there is a mortgage on a piece of real estate which, conservatively, is valued at probably less than \$1 million. The proposed settlement agreement would affect a release of the \$6.7 million that is owned by the State on the DEM judgment, and this group of individuals would agree to pay the State \$3 million on or before March 15, 2005 to satisfy in full all of the obligations of the judgments to the State under the State laws.

Mr. Dolan indicated he would describe some factors the Committee should look at to decide whether the proposed settlement agreement amendment is a sound decision. Mr. Dolan discussed the issue that the loan obligations that are in favor of the State, and the DEM judgment are in some respects held by different parties. The judgment against the State is held by Woodland Manor III. The obligors under the DEPCO judgment are WM, GRA and Mapleroot. Under the settlement agreement, the State added Woodland Manor III as an obligor on the State judgments. It did so as a guarantor and they gave the State a mortgage on a piece of property that it owns.

Mr. Dolan described the risk that the State would take in pursuing this in court rather than a settlement. The risk is that Woodland Manor III may dispute the ability of the State to set off in its entirety the State judgments against the DEM judgment. He advised that there is going to be a legal dispute which will be a substantial risk to the State arising from this setoff, if the matter is not settled.

Mr. Dolan described the components to that potential dispute. One concerns attorneys' fees. Adler Pollock & Sheehan represented Woodland Manor III in obtaining the judgment that Woodland Manor III has against the State. Because Adler Pollock Sheehan took the case on a contingency basis, they claim that out of the \$6.7 that is owed by the State on account of the Woodland Manor III judgment, Adler Pollock & Sheehan is entitled to approximately \$2 million.

Mr. Dolan described a scenario in which the State might attempt to “set off” the State’s obligation of \$6.7 million and apply that against the loan obligations. There is a risk that Adler Pollock & Sheehan would be entitled to take its \$2 million right off the top. So the State instead of setting off the full \$6.7 million, it could arguably only set off some \$4.7 million. In the settlement agreement that is proposed, Adler Pollock & Sheehan is walking away. They are not getting a dime from the State. They are going to get their money from the borrowers. They would permit the State to set off in full the \$6.7 million obligation against the loan obligations. Absent a settlement, there is a risk that Adler Pollock & Sheehan Attorney’s lien would take priority, and in that case, the State would be faced with the prospect of actually writing a check for some \$2 million to Adler Pollock & Sheehan.

Mr. Dolan also indicated that because the obligation of the State runs to Woodland Manor III, the State faces the risk that it might not be able to set off dollar for dollar the full amount of the DEM judgment against the obligations. Mr. Dolan expressed his opinion that the State would be able to set off the Mapleroot judgment, which is some \$3.5 million, because Woodland Manor III is just a successor to Mapleroot. Mapleroot was the original plaintiff in the lawsuit against the State, the one that resulted in \$6.7 million judgment. Mr. Dolan indicated that while we should be entitled to the full amount of the Maplewood judgment, which is about \$3.5 million, that would still leave an obligation on the part of the State on account of the DEM judgment.

Ms. Gallogly asked about the risk of making the argument in court relating to Woodland Manor III being a successor to Mapleroot and Mr. Dolan clarified that while the State would make the argument, it is not necessarily one that the State would absolutely prevail on. Mr. Dolan reiterated the risks relating to the Adler Pollock & Sheehan lien and the risks that the State might lose even this argument related to the Woodland Manor III “set off,” and the State might be faced with a result where there is no “set off” to any portion of the DEM judgment against the outstanding obligations.

Mr. Dolan described the proposed amendment to be considered by the Committee. The proposal provides a full and complete release of the DEM judgment that is held against the State that has a value as of February 10th of some \$6.7 million. It is also being proposed that the balance of the loan obligations that the State has in its favor be satisfied by a payment of \$3 million to the State on or before March 15, 2005. Mr. Dolan also explained where that money is coming from. It is not coming from any collateral that the State has an interest. The source of the payment of \$3 million is a refinancing and sale of other property the Giordano family has an interest in. The family is volunteering to making this payment to the State. Mr. Dolan explained that they clearly have an incentive to get out from underneath this. He explained that while there is some collateral that the State has that secures the judgment, the best estimate is that the value of that collateral is substantially less than the \$3 million that is being proposed as a payment to the State. Mr. Dolan stressed that if the Committee decides to reject this proposal, in addition to the risk of writing a check for the DEM judgment, it is very unlikely that the State would realize more than \$3 million if the State decided just to liquidate the available collateral because there is a substantial risk of collection.

Mr. Dolan expressed his opinion that what is being presented to the Committee is a proposal that resolves all litigation, and results in the State having assurance that the State will never write a check for the DEM judgment to anybody, including the law firm and Woodland Manor III. The State gets \$3 million on the remaining obligations that exist, and in Mr. Dolan's and Mr. McJennett's opinion, achieves a result that makes the best economic sense for the State.

Ms. Gallogly described her frustration with previous settlements that have not materialized and asked Mr. Dolan how this one is any different from previous agreements with Mr. Giordano.

Mr. Dolan explained that all of the other settlements involved essentially a refinancing or an attempt by Mr. Giordano and his family to refinance two principal assets. The difference this time is that he is actually selling those assets to a third-party investor. This sale is to a reputable operator of subsidized low-income housing. They have actually closed one part of the transaction. There is actually some money, also \$1 million, sitting in an account that is available towards the \$3 million. The balance is going to come from a similar transaction that is supposed to close. It is much more realistic than the prior proposal, because those all involved a proposed refinancing with Mr. Giordano and his family. This time there is a third-party buyer who is actually coming in and buying the assets and generating cash through a series of transactions that will result in the payment of \$3 million. Mr. Dolan indicated that it is very realistic to assume that the money will come in and he believes Mr. Giordano and his family have every incentive to see that occur.

Ms. Gallogly asked about financial disclosure and if the State would receive certificates from the individual parties relating to the financial position.

Mr. Dolan indicated that there has been extensive financial disclosure. There are affidavits that were originally prepared and are quite extensive. There has been follow up on that, and there could be a supplementary disclosure to make sure that there are no unaccounted assets that we were not aware of. He advised that would be a prudent and reasonable step.

Ms. Gallogly asked if the Committee could add these or other conditions.

Mr. Dolan indicated he thought that you could add conditions, but that given where the negotiations started, he did not think the State would receive more than \$3 million.

Mr. Clark asked about the last two individuals on Exhibit 1 and if there is any possibility of getting anything from them.

Mr. Dolan explained the problem that all of these four individuals were in partnership with Mr. Giordano and their principal assets consisted of these entities that had borrowed money from Marquette for developments that did not pan out. As a result, most of their liquid assets were put into these entities and they are now gone. As far as we know, there is nothing available that could be realized to satisfy those amounts. Mr. Rocchio and Mr. Assalone have passed away. Mr. Delvecchio and Mr. Confreda are also in quite advanced years and are not gainfully employed or otherwise able to make payments.

Ms. Gallogly asked if their estates were to have some value, if the proposed settlement would eliminate an opportunity to retrieve any of that.

Mr. Dolan indicated that he would not suggest that the State accept the settlement if the Committee felt that either of the estates had an ability to pay. The analyses of the outside consultant and legal counsel indicated that the estates lack the assets to pay. He confirmed that if the Committee accepts the deal, it would completely extinguish the obligations. That is the same proposal that existed in the Fourth Amendment of the Agreement which was previously approved.

Ms. Gallogly asked what would happen if at some point in the future if we discover that there were assets.

Mr. Dolan indicated that there is usually a standard provision, that if one misrepresents their financial condition, in effect they have defrauded the State, and the State would be entitled to go back after them.

Ms. Gallogly asked if there were any questions from the Committee, and asked if there was any public comment.

Mr. Dolan also indicated that the draft resolution that has been presented to the Committee be marked as Exhibit 2 for the record.

Ms. Gallogly indicated that she will announce and post the next meeting of this committee very shortly, and suggested that the meeting be ended. A motion to adjourn was made by Mr. Clark. The motion was seconded by Mr. Franklin and passed unanimously.

The meeting adjourned at 10:05 p.m.