

Updated Summary of OPEGA Research on Sale of State Property to Maine State Prison Warden

August 10, 2011

Background

Part FF of LD 1671, the Supplemental Budget for FY10 and FY11 passed by the 124th Legislature, called for the Commissioner of the Department of Administrative and Financial Services (DAFS) to identify \$1.5 million in proceeds from the sale or lease of State-owned properties to be deposited as undedicated revenue to the General Fund no later than June 30, 2011. The property at Ship Street Circle in Thomaston was among those identified as already authorized for sale by the Legislature that could be sold to meet this requirement. The Legislative Resolve that authorized the sale of this property in 2000 made the Commissioner of DAFS responsible for having the current market value of the property determined by an independent appraiser and setting the purchase price and terms and conditions of any sale. The Resolve describes the various means by which the Commissioner may accomplish a sale, but does not appear to require that the property be publicly marketed.

The Ship Street Circle property is one parcel on Route 1 in Thomaston with three houses on it. The Town of Thomaston property records show the parcel as being 4.16 acres with a tax assessment value of \$512,263. Maine State Prison Warden Patricia Barnhart has been living in one of the residences since she became employed with the State in December 2009. A second residence has been periodically used by the Department of Corrections for lodging special CERT teams, or Maine State Prison security/medical staff who commute long distances when there are special circumstances with their duty assignments, or travel conditions are particularly hazardous. According to information provided by the Prison, this house was used for these purposes a total of 156 nights during the period July 1, 2010 through July 31, 2011. The third residence has not been occupied in a long time and needs repairs. According to Warden Barnhart, it has no appliances, needs some windows replaced and there is a water problem of an undetermined nature in the basement. She says it has been estimated to need about \$15,000 - \$20,000 in repairs, but she had not yet gotten into the details of exactly what those repairs would include.

DAFS had an independent appraisal of the property done in 2006 by Amidon Appraisal Company. The appraisal report shows the parcel as being 5.03 acres and notes that the property has been valued under "extraordinary assumptions" as defined by the Uniform Standards of Professional Appraisal Practice. The extraordinary assumption being that the Ship Circle property can be subdivided into a minimum of three residential lots. The appraised value was \$430,000. In 2009, DAFS obtained an Opinion of Value from CBRE/The Boulos Company (Boulos). The Boulos report notes that the property must be subdivided in order to sell the houses individually. It shows the acreage as 4.16 and gives the value of the property as \$220,471. It is unclear whether the Opinion of Value was based on the same assumptions as the independent Appraisal.

In early September 2010, Warden Patricia Barnhart was informed by DOC Deputy Commissioner Denise Lord that the property at Ship Street Circle was to be sold. The Warden inquired about the possibility of purchasing the home she was living in, a question that Deputy Commissioner Lord passed on to Chip Gavin, the Director of DAFS Bureau of General Services (BGS). Deputy Commissioner Lord noted that she was not sure if there were any prohibitions or concerns with this and she would leave it to Director Gavin's decision.

In mid-September, DAFS signed a contract with Boulos for assistance in marketing and selling a slate of 10 State properties including the Ship Street Circle property. Boulos was the only bidder on an RFP for this service that DAFS issued in June 2010. The opportunity to bid on the RFP was published on June 28, 29 and 30 in the Kennebec Journal through a Legal Notice as is required by the State's Rules for the Purchases of Services and Awards. The comprehensive RFP stated the principal desired outcome was "to accomplish the sale of a sufficient amount of designated state property to generate net revenue to the seller of \$1.5 million by June 30, 2011." The Boulos proposal, and subsequent contract, include a detailed advertising and marketing plan that includes appropriate public notifications. Rider B of the contract shows the total agreement amount on the contract as \$253,170 with a defined commission and fee structure for actual Boulos billings set out in Rider C.

Director Gavin made the assigned Boulos representatives (Jon Leahy and Chris Paszyc) aware of Warden Barnhart's potential interest in purchasing the house she was living in, and in October 2010 they began exploring this interest with her. Warden Barnhart assumed their pursuit of the sale with her meant that the previously raised questions about potential issues with her purchasing the property had been sufficiently addressed. The Warden also stated that she was initially interested in purchasing only the house she was living in. However, Mr. Leahy indicated to her that the State did not want to spend the money or time to divide the property and they began discussing her purchasing the whole lot.

Negotiations involving Warden Barnhart, the Boulos representatives, Director Gavin and Bill Leet, BGS Director of Leased Space, continued from October 2010 through March 2011. Those negotiations involved offers and counter-offers on the price and terms and conditions of the Purchase and Sale Agreement, which included the Warden leasing one of the residences back to DOC for \$1 a year. According to the Warden, she thought one of the benefits to DOC of selling to her was the fact that she was willing to allow DOC to continue using the one house basically rent free. DOC had been concerned about losing the house for lodging, particularly since the other State properties in Thomaston that may have been used for this purpose were already sold or being sold. She did not think many other potential buyers would have been interested in leasing back to DOC at \$1 per year, but she knew what DOC's budget constraints were and was willing to accommodate the Department. She had wanted the State to also pay the property taxes and/or continue to do the maintenance on the properties because she was essentially giving a free lease. The State said no to paying the property taxes, but ultimately agreed to provide the maintenance services.

The sale of the property was never publicly marketed, nor does it appear there was any public notice of the sale advertised. It appears the incoming administration was made aware of the negotiations and certain special circumstances associated with this potential sale in late December 2010 based on the copy of an email BGS provided from Ellen Schneider, then Commissioner of DAFS, to Sawin Millett, incoming Commissioner of DAFS.

Director Gavin left State employment in early February 2011 when the last details of the terms and conditions on the Purchase and Sale Agreement and related Lease Agreement were being finalized. The sale and related matters became the responsibility of Director Leet. One of the open items was the inquiry by the Warden about whether the Lease Agreement could include a requirement for DOC to continue providing the landscape maintenance, snow removal, and trash removal for all of the Ship Street Circle property, not just the house DOC was going lease, for the period of the lease. An email in the records provided by BGS shows Mr. Leahy passed that inquiry on to Mr. Leet with mention of the fact that such activities were currently conducted by a prisoner work program and

the question, “Is it possible for this to continue?” Another email indicates that Director Leet was exploring whether there were legal or other issues with this with the Attorney General’s office.

In March 2011, the new DAFS Commissioner Sawin Millett appointed Betty Lamoreau, BGS Director of the Division of Purchases, to serve as the Acting Director of the Bureau of General Services. Director Lamoreau signed the final Purchase and Sale Agreement on the Ship Street Circle properties on March 29, 2011 and Warden Barnhart signed it on April 4, 2011. The agreement was for a purchase price of \$175,000 with a leaseback of one residence to the Department of Corrections for \$1 per year for four years. In consideration of the lease rate, DOC was to provide landscape maintenance, snow removal and trash removal at all three residences for the period of the lease. The closing on the sale was June 9, 2011. The Release Deed was conveyed to Patricia Barnhart and Sheehan Gallagher, who is the Warden’s stepson. The Lease Agreement was between those individuals and the State of Maine DAFS Bureau of General Services on behalf of the Department of Corrections.

Shortly after the closing, Warden Barnhart filed with the Town to begin the process of subdividing the one piece of property into separate pieces. She says there were several factors driving this. One was that she had someone approach her with interest in buying the house that needed all the renovations. Another was that she wanted to establish what the clear boundaries were for the house that DOC was leasing, so as to have some basis for establishing liability if someone stayed in the house and caused damage to the property. Lastly, it had been unclear whether the Ship Street Circle Parcel would be subject to Thomaston's current requirements for amount of road frontage needed per lot, or whether it would be grandfathered under the Town's older rules. This determination would ultimately affect how many lots the parcel could be subdivided into.

The Warden says that because the process has been stopped, she still does not know what the determination would be - that is part of what her first meeting with the Town was supposed to be about. She had to pay just one set fee for starting the process regardless of the number of lots proposed but, thereafter, moving forward would have to pay any required subdivision fees to the Town on a per lot basis. She hired a civil engineer to draft up possible subdivision proposals for the first Town meeting. One of those did have seven lots, but there were other proposals with fewer lots as well. According to the Warden, if the Town would not grandfather the parcel then seven lots would never have been possible. She does not know what she would have ultimately decided to break the parcel into or what would have been allowed by the Town.

A detailed timeline of the events and communications surrounding the sale, as gleaned from the records provided by the Bureau of General Services, is attached.

Issues Noted by OPEGA

- No independent appraisal of property was re-done in preparation for sale in 2010.
- Property was not publicly marketed despite the marketing plan in Boulos proposal.
- Sales price appears low in relation to potential total value of the property.
- Public perception issues associated with this sale and the final terms and conditions of the lease agreement were apparently not well considered even by seasoned State government officials.

Actions Taken by the State since July 1, 2011

- Attorney General stated that Contract for Sale, Release Deed and Lease and Memorandum of Lease are void under the terms of Title 17, section 3104 and encouraged parties to unwind the transaction. (see attached)
- Governor LePage issued Executive Order 18 FY11/12 suspending all pending real estate sales and ordering DAFS to establish internal policy guidance for sales of state-owned real estate. (see attached)
- Commissioner of DAFS has drafted the internal policy guidance and procedures for sales of real estate. (see attached)

Additional Information or Explanations Might Be Obtained from:

- Ellen Schneider, Former Commissioner of Department of Administrative and Financial Services
- Chip Gavin, Former Director of the Bureau of General Services - DAFS
- Bill Leet, Director of Leased Space – BGS/DAFS
- Denise Lord – Former Deputy Commissioner of the Department of Corrections
- Patricia Barnhart – Warden of the Maine State Prison
- Jon Leahy – Boulos
- Chris Paszyc – Boulos

Work Done by OPEGA to Date to Develop This Summary

- Reviewed Bureau of General Service documentation related to the sale.
- Reviewed documents related to the Boulos contract with DAFS and the competitive bid process that preceded it.
- Interviewed Warden Barnhart.
- Conducted brief research of relevant statutes and legislation with assistance from the Law and Legislative Reference Library and Attorney General's Office.