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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.

Updated Timeline of Events and Communications Pertaining to the Sale of Land and Buildings at 22, 26 and 30 Ship Street Circle in Thomaston

August 10, 2011

April 2010

- 4/13/10 - Jennifer Merrow, BGS, sends List of Properties and Legislative Resolves authorizing their sale to Bill Leet, Director of Leased Space, DAFS, noting that sale of these properties would benefit the General Fund pursuant to Part FF.
 - Legislative Resolve 1999 Chapter 114 authorized sale of this property. Section 6 regarding purchase price resolves *“That the commissioner shall have the current market value of the state property determined by an independent appraiser. The commissioner may list the property for sale or lease with private real estate brokers at its appraised value and negotiate sales or leases, solicit bids, sell directly to purchasers or enter directly into leases with tenants. The commissioner may reject any offers. The commissioner shall establish the rent or purchase price and the terms of lease or sale. If the commissioner elects to solicit bids, the commissioner shall publish notices of sale sufficient to advertise the property.”* The repeal date on this resolve was originally August 11, 2005 and was extended via subsequent resolves in 2005 and 2010 to August 11, 2015.

June 2010

- 7/28/10 to 7/30/10 – BGS ran a Legal Notice announcing the opportunity to bid on an RFP for “Real Estate Planning, Management and Sales Services” in the Kennebec Journal for three consecutive days as required by State procurement rules for competitive bidding. The RFP was posted on a State website that was referenced in the Legal Notice. 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.” There were 10 properties listed in the RFP to be sold including the property on Ship Street Circle in Thomaston. The RFP gives the most recent appraised value for that property as \$430,000 but does not indicate when that appraisal was done.

August 2010

- 8/5/10 – The due date for interested bidders to submit proposals in response to the advertised RFP for Real Estate Planning, Management and Sales Services. CBRE/The Boulos Company was the only bidder to submit a proposal. The Boulos proposal included a fairly detailed description of its Approach and Plan which included public marketing of the properties.
- 8/27/10 - J. Merrow sends May, 2006 Independent Appraisal by Amidon Appraisal Company and January, 2009 CBRE/The Boulos Company Opinion of Value and Disposition Strategy to Boulos Company, cc'd to Bill Leet.
 - 2006 Appraised Value \$430,000
 - Town Assessed Value \$512,263
 - 2009 Boulos Opinion of Value \$220,471
 - Amidon’s appraisal notes that it has valued the property 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. Boulos’ Opinion of Value report notes that the property must be subdivided in order to sell houses individually. The Appraisal and the Opinion of Value have differing acreage for this property at 5.03 and 4.16 respectively. It is also unclear whether the Opinion of Value was based on the same assumptions as the Appraisal.

September 2010

- 9/2/10 - Denise Lord, Deputy Commissioner Department of Corrections, email to Chip Gavin, Director Bureau of General Services, informing him that she has let the Commissioner and Warden Barnhart know of the pending sale of the Ship Street Circle properties. She writes *"The warden asked if there was possibility that she might purchase the house she is living in currently.....Is it possible that BGS would consider this? Not sure if there are any prohibitions or concerns about this and will respect your decision."* The Deputy Commissioner also raises a concern regarding the loss of temporary housing for newly hired staff.
- 9/7/10 – Chip Gavin email to Chris Paszyc, Boulos Co. informing him of potential buyer for one of Ship Circle Street residential properties and asking if selling to current occupant at appraised fair market value is a reasonable approach in current market.
- 9/7/10 – Chris Paszyc responds it is reasonable and encourages pursuing any and all buyers in this market.
- 9/29/10 Contract between DAFS and CBRE/The Boulos Company, to market and sell a number of State owned properties including Ship Street Circle parcel in Thomaston, is approved by Bill Leet, Director of Leased Space, and Betty Lamoreau, Chair of the State Purchases Review Committee. Sale price in the contract for Ship Street Circle properties is listed as \$300,000. Contract includes detailed advertising and marketing plan including 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.

October – November 2010

- Emails between Jon Leahy and Chris Paszyc at Boulos and Warden Barnhart sharing town assessor records, tax map, and comparable sales indicate parties are exploring the Warden's interest in the property and she is assessing her financial situation. DOC Deputy Commissioner Lord is cc: on the initial email from Boulos to Warden Barnhart.

December 2010

- 12/8/10 –Warden Barnhart email to Jon Leahy, Boulos, justifying purchase price she offered for the Ship Street properties. Key points are that properties on Main Street sold for approximately 39% of the appraised value given in the 2006 Amidon appraisal report, current condition of Ship Street Circle properties, and proximity of power station, active train tracks and hobo camp down by the river.
- 12/8/10 – Jon Leahy email to Bill Leet and Chip Gavin notifying them of Warden Barnhart's \$150,000 offer with her rationale.
- 12/13/10 – J. Leahy email suggests counter offers to C. Gavin and B. Leet with and without DOC leasing for \$1/year one building for three years. Recommended counter offer with lease is \$200,000 and without is \$275,000.
- 12/17/10 – Emails between Jon Leahy and Chip Gavin indicate Warden has countered at \$175,000 with three year lease of \$1/year for building DOC is currently in and Chip is going to pass that on for consideration.
- 12/28/10 – Email from DAFS Commissioner Ellen Schneiter to Sawin Millett with cc: to Chip Gavin. She is advising Sawin that there is an issue regarding an offer made on three properties they have been trying to sell in Thomaston. Email says there is a potential buyer (but does not say who), but that there are special circumstances involved that she wants to be sure he understands. She indicates DAFS can move forward with the sale quickly if the sale is "given the green light" and that she has asked C. Gavin to contact him regarding the matter.

- 12/29/10 – Emails between C. Gavin and J. Leahy. C. Gavin is requesting Boulos opinion of value for the Ship Street properties and sales information on Thomaston Main Street properties. Leahy provides the Boulos 2009 opinion of value of \$220,471 for Ship Street and adds information on Main Street buildings having sold for 41% of 2006 appraised value after being on the market for 9 months. He also provides Thomaston's current assessed value of Ship Street Circle properties of \$504,659.
- 12/29/10 – Evening emails between C. Gavin and E. Schneider indicate C. Gavin has set a meeting with S. Millett for 8:30 am the next morning.

January 2011

- 1/6/11 – Emails between J. Leahy and Warden Barnhart indicating State has counter-offered at \$175,000 with a 4 year lease to DOC for \$1/yr.
- 1/18/11 – Email from J. Leahy to C. Gavin and Jane Surran Pyne indicating Warden has agreed to counter-offer and requesting J. Pyne assistance in drafting the Purchase and Sale Agreement with the leaseback language included.
- 1/18/11 – B. Leet asks C. Paszyc where negotiations are with Ship Street Circle property as he has spoken with Bill Bird of Thomaston who is interested in purchasing. As negotiations are close to being finalized, B. Leet had referred Mr. Bird to C. Paszyc.
- 1/19/11 – J. Leahy informs C. Gavin, B. Leet and C. Paszyc that he had spoken with B. Bird. Mr. Bird heard about property selling at Thomaston Town Hall. He was told they were in basic agreement with a prospective buyer and he accepted that response.

January – March 2011

Negotiations continue for purchase and lease back of one building to DOC. Final purchase price of \$175,000 with the Warden leasing back to DOC 30 Ship Street Circle for four years at \$1/year, snow removal, trash removal and landscape maintenance for entire parcel to be responsibility of DOC. Lease agreement prepared by Jane Surran Pyne, Esq. for State. Of note:

- 1/31/11 – Email from J. Leahy to B. Leet with cc: to C. Gavin and J. Pyne forwarding several comments and questions from Warden on proposed transaction. Within this list, he says the Warden would like to continue having the State handle the lawn/plowing/trash for the properties. It is noted that these activities are currently handled by a prisoner work program. The stated question is, "Is it possible for this to continue?"
- 2/3/11 – J. Leahy checks in with C. Gavin on responses to Warden's comments and questions. C. Gavin informs him that this matter and all sales transactions are now in B. Leet's hands.
- 3/9/11 – B. Leet informs J. Leahy that Corrections and BGS are OK with revised contract, he has been trying to get answer from AG's office on whether it is appropriate and legal for Corrections to continue providing snow and trash removal and landscape maintenance on all properties.
- 3/14/11 – Betty Lamoreau is copied on email from B. Leet to J. Pyne requesting a few minor changes to the Purchase and Sale Agreement including to make it clear that Corrections will provide landscape maintenance, snow removal and trash removal for all properties "in exchange" for a lease rate of \$1 annually.
- 3/29/11 – Purchase & Sale Agreement signed by Betty Lamoreau, Acting Director BGS.

April 2011

- 4/4/11 – J. Pyne informs J. Leahy, cc's to B. Lamoreau, B. Leet, and J. Merrow at BGS and C. Paszyc at Boulos that B. Lamoreau has signed P&S.
- 4/4/11 – Warden Barnhart signs P&S.

May - June 2011

- Final release deed, lease agreement and lease memorandum prepared.
- 6/9/11 – Closing. State receives check in the amount of \$163,994.41.
- 6/24/11 – Lease amended to ensure it remains in effect even if a portion or entire property is transferred or sold, but provision for DOC to provide ground maintenance would become null and void.
- 6/30/11 – Summary of sale process from C. Paszyc to B. Leet. He says the asking price had it gone to market would have been \$221,000, but this was before they found out DOC had to stay and had no money to pay a lease. Also states that assessed values bear no relation to actual market value and this is typical of government owned property on municipal tax rolls. Attached summary from J. Leahy states that leasing back to DOC would have made property difficult to sell. Warden Barnhart was willing to lease back and it took some time to work through detailed lease back negotiation.
- 6/30/11 – Initial news story on sale and Warden Barnhart's 7 unit subdivision proposal to the Town of Thomaston.