



SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary
August 16, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Craven, Sen. Diamond, Sen. McCormick and Sen. Sullivan,
Absent: Sen. Trahan

Representatives: Rep. Burns, Rep. Pilon, Rep. Fitzpatrick and Rep. Fossel
Absent: Rep. Boland and Rep. Lovejoy

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Maura Pillsbury, Analyst, OPEGA
Etta Begin, Adm. Secretary, OPEGA

Executive Branch Officers and Staff Providing Information to the Committee: Patricia Barnhart, Warden, Maine State Prison
Betty Lamoreau, Acting Director, Bureau of General Services
William Leet, Director of the Division of Leased Space

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience. The Committee welcomed Sen. Diamond to the Committee.

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SUMMARY OF THE MARCH 11, 2011 GOC MEETING

The Government Oversight Committee accepted the March 11, 2011 Summary as written.

Director Ashcroft introduced OPEGA's new Analyst, Maura Pillsbury. The GOC welcomed Ms. Pillsbury.

Chair Katz recognized Rep. Plummer, House Chair of the Criminal Justice and Public Safety (CJPS) Committee and Rep. Haskell and Rep. Blodgett also members of the CJPS Committee.

UNFINISHED BUSINESS

- **Sale of State Property to Prison Warden**
 - **OPEGA Report Back on Selection of CBRE/Boulos Company**
 - **GOC Questions of Individuals Involved in Sale**

Chair Katz said in 2009 the 124th Legislature authorized the sale of \$1.5 million worth of real estate owned by the State to help balance the budget. One of the parcels approved was land and buildings located at Ship Street Circle in Thomaston that housed the State Prison Warden. The State entered into a contract with a commercial realtor to market that property and several other State owned properties. At the end of June, 2011 it became known that the property had been sold to the current Warden of the State Prison. It appeared that the sale had taken place without any public marketing of the property, without any public notice of the property's availability, without an appraisal being done and at a price that raised questions.

The GOC and the CJPS Committee asked OPEGA to conduct a quick review of the proceedings. Those findings were reviewed by the GOC at its July 19th meeting. It was clear what happened, but why and how it could have happened was not. The GOC scheduled a second meeting to ask participants involved in the sale of the property to attend and answer their questions.

Director Ashcroft updated the Committee on what has taken place since its July 16th meeting and referred the members to the Updated Summary of OPEGA Research on Sale of State Property to Maine State Prison Warden and Updated Timeline of Events and Communications. (Copies of the Summary and Timeline are attached to this meeting summary).

Chair Katz recognized Chip Gavin, former Director, BGS. Mr. Gavin was Director from August, 2006 to the first part of 2011.

Mr. Gavin said the Legislature, which reserves for itself the right to determine the sale of State property, assigns to the Commissioner of the Department of Administration and Financial Services (DAFS) the responsibility of disposing of certain State assets, and often times that was assigned to BGS by the Commissioner.

The following are questions asked by the GOC and answered by Mr. Gavin

Absent certain circumstances, does everyone have the opportunity to be a buyer, and would the State try to maximize how much it receives for a sale price? The Department is to carry out the responsibility given to it by the Legislature, within the authority as assigned by the Legislature. Some properties, under the initiative approved, would be publicly marketed and some would not. The property being discussed was authorized for sale by the Legislature with wide discretion to the Department and Commissioner to sell directly to purchasers. There was no lack of public disclosure and it was discussed openly and publicly.

The circumstance of each property sale is different and the Legislature's authorization reflects that. Some parcels sold were publicly marketed, but that was not the case for all parcels, nor was it required. It is

important that the people of Maine get a fair and reasonable value and everyone involved in this sale believed that was happening.

Was the property on Ship Street Circle to be sold by Boulos pursuant to a listing agreement BGS entered into with them? That property, along with a variety of others, was to be sold by the State with the assistance of Boulos under the authority granted by the Legislature. In compliance with the laws of the State of Maine a competitive solicitation for the contract was publicly advertised for three consecutive days in the Kennebec Journal and posted to BGS' website. Boulos was the only bidder.

Was a current appraisal done on the property? BGS used the appraisal done in 2006 because it was the only appraisal available. The record showed that the Department was comfortable proceeding with the updated opinion of value and the other information they had. There was no requirement for an additional appraisal and BGS was trying to meet the objectives laid out by the Legislature of the \$1.5 million goal. He could not respond to why a current appraisal was not done on the property pursuant to the contract with Boulos.

What had Boulos said would be done and was included in the contract they signed with the State to market the property and did not do? A brochure was not produced, the property was not advertised in various newspapers or on their commercial website, and they did not send out a direct mail flyer to targeted prospects.

In an email from Denise Lord, former Deputy Commissioner, DOC, to Mr. Gavin dated September 2, 2010, she informed him that Warden Barnhart was interested in the property writing "not sure if there are any prohibitions or concerns about this and will respect your decision". Did he see any potential problems with the sale being to the Warden and did he respond to the email? He did not recall the email, but had no doubt to its authenticity or legitimacy. BGS attempted to do reasonable due diligence to make sure they were acting in accordance with the authority granted by the Legislature and laws. At some point he was aware of the Warden's interest and attempts were made by him directly to make sure that the broker was aware of a potential buyer's interest. It is not unique that the occupant of property can be among the most motivated buyers.

Was Mr. Gavin aware that in the State's contract with Boulos it specifically included language that property would not get marketed to someone in violation of 17 MRSA § 3104 and the Attorney General (AG) has determined that the sale was in violation of that section? Had he been aware the sale was in violation of that section, they certainly would have not proceeded. Property transactions are not always straight forward and are not always residential. The Executive Branch tries to carry out the will of the Legislature.

Why would the Legislature dictate to DAFS that State property be sold for anything other than maximizing the investment at a fair price for the State of Maine? There are properties where financial value is an important consideration, but not the only consideration. If DAFS was, or attempting to act within the authority granted by the Legislature, and a known buyer would pay a fair price, and the State also received additional compensation for the property that should also be taken into consideration.

Was it unusual to have only one firm respond to an RFP? He did not recall doing RFPs for the sale of real estate. Sales were done by the Bureau as resources permitted. The RFP was prompted by the Legislature's goal of \$1.5 million and the AFA Committee granted resources to BGS to assist with the sales.

Director Leet was going to pursue the issue of selling this property to a State employee with the AG's Office and it was asked if Mr. Gavin was aware of any communication with the AG's Office regarding the issue? He did not recall specifically what his communications with the AG's Office were, but said they had routine communications with the AG's Office regarding many things.

Was he familiar with the Agreement to Purchase Services document the State had with Boulos which included the Ship Street Circle property containing Boulos' projected sale price of \$300,000 and how that price was arrived at? He did not recall how that number was generated, but BGS was relying on Boulos

to advise them about the reasonableness of sales and was diligent in their attempts to make sure they had received a fair price for the Ship Street Circle transaction. It was his recollection that Boulos knew the State's intentions and constraints put on the sale of the property at the time they signed the contract. He recollected there was at least one other party interested in the property at the time discussions with the Warden were fairly advanced, but did not recall if Boulos was obligated to bring that to the State's attention.

Do all citizens have an equal opportunity to purchase land that the State has for sale, and in the sale of this property, how was that applied? Public advertising was permitted by the Resolve, but not required on this property. BGS was thinking of their budget role established by the Legislature and the time constraints the Bureau was trying to meet. Individuals in the Department believed they had received a good offer given the constraints on the property of DOC's continued use. From the facts available to them at the time and the constraints on the property, BGS did make substantial efforts to ensure they were getting a reasonable value for the property and could not do any better for the people of Maine.

Why didn't DAFS subdivide the land themselves in order to keep the property needed for DOC? BGS was concerned about the time, complexity and cost involved and the Legislature might have questioned it because it would not be typical for the State itself to be the developer.

What process was followed after the new Administration took over? It was important to make sure the incoming Administration was aware of the sale and were in agreement with proceeding so he made efforts during the transition time to avoid a situation where the new Administration would be put in a circumstance they did not agree with.

The members of the GOC thanked Mr. Gavin for his years of public service and for attending the meeting to answer their questions.

Chair Katz recognized Chris Paszyc, Broker, Boulos Company.

The following questions were asked by the GOC and responses by Mr. Paszyc.

What was contemplated, expected and agreed to in the State's contract with Boulos? That everybody was going to have the same opportunity to be able to buy the property; to maximize the State's recovery on the sale of the property; market the property to try to solicit as many people as possible to look at and consider purchasing the property, creating competition between potential buyers, and maximize the price for the client; that marketing approaches would include advertising in the newspapers, holding an open house, direct mail solicitation, the production of a brochure and internet-based advertising.

He noted that did not happen on the Ship Street Circle property because at their September 30th meeting it became apparent that there were limitations on the property and the State had to determine what the continued use by DOC would be.

What actions were taken by Boulos in response to potential buyers? In November the State asked Boulos to pursue Warden Barnhart's interest in purchasing the property. They still did not have a clear understanding of exactly what they were to market to the public so they did not engage in any marketing, which included not putting a for sale sign on the property. Until it became clear what the encumbrances were on the property, it made it very difficult, if not impossible to clearly say what was going to be sold. Boulos and the State had oral conversations regarding that issue. The first contact with the Warden was in November, 2010 and the Purchase and Sale Agreement was signed on March 29, 2011.

How was the initial price of \$300,000 set? Prior to the contract signing Boulos was asked to assign an estimated sales price on each of the properties. They had not yet contracted to do any appraisals and essentially had to make an educated guess as to what the properties may sell for. In the fall of 2008 he inspected the Ship Street Circle properties, and at that point in time, two of the three houses were unoccupied and in need of substantial repairs and renovations. He assumed the Warden's house suffered from many of the same deferred

maintenance issues as the two unoccupied houses. Given the poor to fair condition of the properties and the lack of subdivision, he used a cost per square foot method to develop the value because the property would be looked upon by potential buyers as a housing redevelopment and rehabilitation project, not as a turn key move in ready house. He needed to establish a residential sales baseline to work from so researched recent sales of residential properties in Thomaston and determined the appropriate value range per square foot was \$96 to \$104 per square foot. Using the total square foot figure of 3,364 square feet, calculated a value range of \$321,391 to \$350,898. Based on the inspections and overall conditions of the buildings, a renovation adjustment was necessary, and to determine the adjustment, he used an architect's report commissioned by the State on a comparable property in Thomaston. The report estimated renovations at \$56 per square foot and while the comparable property was in much worse shape, had many of the same issues with the roof, flooring, heating system, windows, and appliances would be needed for at least two of the properties on Ship Street Circle. He applied a \$30 per square foot adjustment to the values which resulted in potential sale prices of \$220,471 to \$249,978, assuming the housing and land would be sold as a package. After consulting their original 2008 opinion of value and looking at recent market data, the figure of \$300,000 was supplied as the sale price, noting the price assumed the property would be subdivided prior to the sale and the three houses would be sold separately, even though from the beginning Boulos knew the State did not want to subdivide the property.

In Boulos' contract with the State it said "STATE EMPLOYEE NOT TO BENEFIT". Did the fact that the Warden of the State Prison was the potential buyer cause any concerns as it related to the contract provision? It did not concern him because the Warden was not receiving any benefit from their contract. The contract is between the State and Boulos and any benefit that is derived under the contract is compensation they receive. Boulos was not to share in any benefit they received under the contract with any State employee.

That no one else knew the property was for sale, it sold to the Warden for a price below appraised, assessed and market value, and included the Warden receiving free landscape maintenance, snow and trash removal for four years, cause Boulos any concern that if the public learned about the details of the sale, it might not looked right? It was assumed the State was cognizant of those issues and that they were addressing them. It did not concern Boulos because it did not bother the State.

Did the \$175,000 the property sold for reflect fair market value? No, but given the encumbrances that were placed on the property, it becomes complicated to be able to access a price and lowers the asking price.

The Warden made an offer of \$150,000, Boulos recommended a counter offer of \$275,000 unencumbered, or \$200,000 with the encumbrances. On the \$275,000 unencumbered price, even though the State was not intending to subdivide the property, they could attempt to capture as much of the predicted subdivided value as possible since any potential purchaser was likely to subdivide the property. A counter offer close to the \$300,000 initially estimated would have given the State most of the predicted value of the subdivided property without having to go through the time, risk and expense of subdividing the property itself. The encumbrance detracted from the sales price of the property and he recommended the State subdivide the property and budgeted \$9,500 to do a subdivision.

Is Boulos a seller's or dual agent also representing the Warden in the purchase of the property? Boulos' company policy is a disclosure agent and in this transaction was the seller's agent and working on the State's behalf. No advice was offered to the Warden. He did note that if Boulos was representing a seller and the purchaser is not represented, they will offer to use a Purchase and Sale Agreement form and ask the purchaser questions of what they would like to do.

Even though the Purchase and Sale Agreement had not been signed at the time, what was Boulos' response to the other person interested in the property? The individual was informed there was substantive agreement between parties on the property and it would be highly inappropriate for Boulos, at that stage given there was substantive agreement between the parties, to introduce another buyer into the negotiations.

Why would Boulos not recommend another buyer to compete with the Warden's offer? Typically they would, but essentially an agreement was already struck and you would run the risk of losing the buyer.

Why did Boulos tell a potential buyer that they were closing a deal with somebody else when they did not have a contract to purchase, a deposit on the property, and had not entered into an agreement with the buyer for another 10 weeks, and not give that potential buyer the opportunity to make an offer? He was working under the understanding there was substantive agreement in early 2011 and that would have been inappropriate to do at that juncture.

Mr. Paszyc was thanked by the GOC for being at the meeting to answer questions.

Chair Katz recognized Patricia Barnhart, Warden, Maine State Prison.

Warden Barnhart agreed that at the time she was hired as the Warden, she was permitted to live in the residence on Ship Street Circle, but was told it may be sold and she would have to vacate. The State was under no obligation to find the Warden free substitute housing or pay her any additional compensation.

The Warden said when she took the position of Warden in November, 2009 the Commissioner at that time made it clear that it would only be through the current Administration, which was the former Governor. At that time she had limited dialogue regarding being able to purchase the property. Former Associate Commissioner Denise Lord knew the Warden was concerned about the children being pulled out of school, and in early September, 2010 told her the property was to be sold. She knew the listing was with Boulos, but she did not know what their marketing pieces were.

In response to Committee members' questions regarding the appearance of her purchasing the property and it might appear to be a conflict of interest, Warden Barnhart said she has been before the GOC multiple times and she was aware of the scrutiny and is why Ms. Lord and she communicated about ensuring there was the utmost transparency. She was not aware that the GOC, CJPS or AFA Committees did not know about her real estate purchase. She presumed through the questioning process they would have been fully versed in the transaction. The Warden communicated exclusively with Boulos regarding the purchase of the Ship Street Circle property. Commissioner Magnusson was not involved and Ms. Lord, other than her initial concerns of making sure appearance like this would not get generated, was not involved in the dealings of the transaction. She dealt strictly with Jon Leahy of Boulos.

The Warden purchased the property with the understanding that the lease back would occur. There are no boundaries on any of the properties. It is one parcel of land with three houses and no means to differentiate between house 1, 2 and 3. She did not want there to be any liability for her or the State with the leased house and was told by Boulos that the only way to distinguish the houses was to have boundaries established through dividing the land. Landmark Corporation Surveyors and Engineer was contacted in June, 2011 after the closing. It would be fair to say that she wanted to see what the potential could be and either make improvements on the middle house, or sell it maybe to an employee at the Prison who had expressed an interest. They were trying to parcel off the end house so it had clear boundaries on the leased property, but then someone had expressed interest in the middle house so that also needed boundaries.

Warden Barnhart had not received any feedback from anyone in the Department in response Ms. Lord's email inquiring whether there were any prohibitions or concerns about the transaction. Several months had been allotted for anyone to make inquiries or object and no one did, so she pursued the purchase of the property.

It was the Warden's recollection that Ms. Lord gave her the name and number of Jon Leahy at Boulos. He was her contact person, but she could not recall who called who first. There was a back and forth of telephone communications and then she was sent the initial contracts and information regarding a lease and the addendums. She dealt strictly with Jon Leahy. The Warden told Mr. Leahy the price she wanted to offer and Boulos drafted the contract for her. Regarding the Addendum, Warden Barnhart said, because the State could

not pay an amount more than \$1 for a lease and were not going to be paying the taxes, the State agreed to continue to maintain the property as payment. Instead of a financial payment the State was going to do the lawn mowing, trash removal and snow plowing to try to offset some of the tax cost. Boulos prepared the documents for the Warden and when complete sent them to the State.

The GOC thanked Warden Barnhart for being at the meeting to answer their questions.

Chair Katz recognized Betty Lamoreau, Acting Director, BGS and thanked her for providing the GOC with thorough written information regarding the sale of the Ship Street Circle property.

Director Lamoreau summarized what she knew regarding the sale of the property to the Warden. When she was appointed Acting Director and reviewed the documents in March, understood that the sale was almost complete and the issues being negotiated at that time were related to the lease back so DOC would have continued access to the "Bunk House". She was not uncomfortable with the selling price of the property or that the Warden was getting property maintenance, rubbish disposal and snow plowing because the State was getting what would have cost a considerable amount if they had to lease another apartment or house for the use of the Bunk House for \$1. The \$175,000 plus the value of the lease back clearly brought it into a realm of a fair price considering the encumbrance.

The standard language in the contract is clear and she was aware of Title 17, § 3104, but it did not occur to her that sale of real estate being a State contract and that this provision applied.

Director Lamoreau said it was an unfortunate turn of events, but it was good people doing the best they could trying to meet a mandate and they missed something they should not have.

The GOC thanked Director Lamoreau.

Chair Katz recognized William Leet, Director of the Division of Leased Space, BGS.

In response to questions from the Committee of what conversations there were between Director Leet's Office and the AG's Office regarding the proprieties of the sale of real estate to the Warden, he said the questions did not have to do with the sale, but related to the lease back. In a conversation with DOC he wanted to know if there were any issues with a Prison program providing services to a private individual. He posed the question to Attorney William Laubenstein from the AG's Office. He learned the State could not pay the taxes, but could provide the services in lieu of \$1 for the lease. He did not know if Ms. Lord's question of selling the property to the Warden was ever answered.

The Committee thanked Director Leet.

Chair Katz recognized Denise Lord.

Ms. Lord remembered one conversation with the Warden when she told her the Ship Street Circle property was on the list of properties that BGS was directed to look at to sell. The Warden asked if she had anything to worry about and Ms. Lord said she would let her know when the properties went up for sale. She never counseled the Warden about proceeding with a bid or purchase option. When she called her in September to let her know the Bureau was moving forward on the sale, Ms. Lord said DOC would honor the commitment they made to the Warden through the end of calendar year 2010. She told the Warden she did not know if it was legal for the Warden to purchase the property and she had to ask BGS. Ms. Lord was worried about the appearance, given the review by OPEGA and Controller regarding issues at the Prison, and she told the Warden to let her ask the question about the legality. That email of whether the Warden was an eligible buyer is in the GOC's packet of information. That request was to Director Gavin, who called back and said the sale was being handled by a contracted agent for the State, that if the Warden had an interest she should contact Boulos directly and gave Chris Paszyc's contact information. Ms. Lord shared that information with the Warden. It was Ms. Lord's understanding that any questions about her

eligibility were going to be handled through that venue. Mr. Gavin did not give an opinion on her question of propriety, of how it looked, how it appeared. It was a very brief telephone conversation of who the Warden needed to contact if she was interested. Ms. Lord did not receive anymore feedback and does not know if anybody else made inquires regarding the Warden purchasing State property.

The GOC thanked Ms. Lord for answering their questions.

Committee comments following the questions to individuals included:

- When State property is being sold that anyone and everyone has an equal chance to buy it, make sure the State gets the highest price it can on behalf of the tax payers and that they avoid, not only wrong doing, or conflict of interest, but the appearance of conflict of interest.
- The listing agreement called for an appraisal which was never done. It called for marketing of the property, that was never done. There were no newspaper ads, no internet ads, no direct mail or anything that the contract contemplated. A for sale sign was not placed on the property and it appears that a potential buyer who expressed interest in the property was never given an opportunity to participate.
- There is a State statute that essentially prevents the sale of a piece of State owned property to a State employee and that statute was ignored. There were and are good people working for the State, but it is disappointing that they missed red flag, after red flag. There are lessons to learn and the State has to do better in the future to make sure that even the appearance of an inside deal, or a conflict of interest, will be avoided.
- It should be a red flag that when the State only receives one bid from an RFP it should be questioned why only one bid had been received before moving forward. The process and RFP's should be reviewed, more than the Kennebec Journal newspaper should be used to publish RFPs, and there are a number of other ways of getting RFPs out to potential bidders.
 - They need to be sure when talking about the sale of property that it is across the board for all State agencies. It has to be a State policy and it might be beneficial to look at possible legislation so legislators have input as to what the public policy might contain.

Director Ashcroft reminded the Committee that OPEGA is working on reviewing all of the real estate sales by the State over the last five years. Part of the reason that is being done is to determine how often they publicly marketed versus not. OPEGA is also asking the question of whether a real estate broker was used. The Committee may want to wait for that information before discussing introducing legislation regarding a statewide policy for real estate transactions.

Some members of the GOC thought the people of the State of Maine needed to know what happened, the Committee saw signs that have raised concerns and they need to make corrections if need be. There were red flags all through the process, and other than the former Associate Commissioner Lord asking if there was anything wrong or improper with the Warden purchasing the property, nobody else moved on those actions.

SCHEDULE NEXT COMMITTEE MEETING

The next GOC meeting is scheduled for Monday, August 22, 2011 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 1:30 p.m. (Motion by Rep. Fossel, second by Sen. Craven, unanimous).

**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 that 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.