

MEMORANDUM

TO: Thomas P. McGonigle, Esq., Chief of Staff, Governor's Office
The Honorable Cleon L. Cauley, Sr., Deputy Secretary, DelDOT
The Honorable Walter Edwin Kee Jr., Secretary, Agriculture
The Honorable Collin P. O'Mara, Secretary, DNREC
The Honorable Alan B. Levin, Director, DEDO
The Honorable Anthony DeLuca, Senator, 11th District
The Honorable William J. Carson, Representative, 32nd District
Mr. Andrew Lubin, Citizen Representative
Mr. Ron Gardner, Citizen Representative

FROM: Diana Morrison, Executive Assistant to Deputy Secretary Cleon L. Cauley, Sr., DelDOT

DATE: March 17, 2011

SUBJECT: Minutes of Advanced Acquisition Committee Meeting
March 14, 2011, DART First State Administrative Office – Trolley Square Room

The Advanced Acquisition Committee Meeting was called to order by Thomas P. McGonigle, the Governor's Chief of Staff, at 12:32 p.m. Members in attendance included Secretary of Agriculture Ed Kee; DNREC Secretary Collin O'Mara; DEDO Director Alan Levin; State Representative William J. Carson; State Senator Anthony DeLuca; Natalie Barnhart, on behalf of DelDOT Secretary Carolann Wicks; and Citizen Representatives Ron Gardner and Andrew Lubin.

Additional attendees included: Chad Livengood, The News Journal; Andrew Lippstone, Deputy Legal Counsel, Governor's Office; Nicole M. Faries, Attorney, Pritchett, Jones & Elliott P.A.; Frederick H. Schranck, Deputy Attorney General; DelDOT staff members Cleon L. Cauley, Sr., Deputy Secretary; Geoff Sundstrom, Deputy Director, Public Relations; Brett Taylor, Director, Policy & Communications; Thomas Nickel, Carolyn O'Donoghue, Michael Strange, Phyllis Trala, Planning & Real Estate; and Diana Morrison, Executive Assistant, Office of the Secretary.

Mr. McGonigle advised that the purpose of the meeting was to determine a path forward for the Advanced Acquisition Committee, with the goal of making sure that the process for acquiring real estate for transportation purposes is as open and transparent as possible. In connection with that goal, the Department recently issued proposed regulations for the acquisition of certain interests in real estate. These regulations would implement specific recommendations for advanced acquisitions set forth in the January 7, 2011 to Governor Markell regarding the U.S. 113 North-South Project.

Before discussing specific proposals in detail, Mr. McGonigle stated that it would be useful to understand the Department's existing process for acquiring interests in real property and its plan for acquisitions going forward. To that end, Mr. McGonigle introduced Cleon L. Cauley, Sr., Deputy Secretary for the Department of Transportation. Mr. Cauley in turn introduced Deputy Attorney General Frederick H. Schranck, who would assist him in presenting information to the Committee.

According to Mr. Cauley, DelDOT's property purchases are governed by state law, and when federal funding is involved, are also governed also by federal laws and regulations. The DelDOT Real Estate Manual is reviewed and approved by the federal government. Mr. Cauley noted that 99 percent of the property acquired by DelDOT is authorized via the approved Capital Transportation Program (CTP), with the remaining authorized by Bond Bill language. Mr. Cauley advised that the CTP establishes a six-year plan, with the first year's funding authorized through the General Assembly through the Bond Bill process. The CTP does indicate proposed expenditures for real estate associated with various projects. It should be noted that one percent or less of property acquisitions are authorized outside of the CTP approval.

Mr. Cauley and Mr. Schranck presented the process for a typical property acquisition, starting with identifying the targeted project – *i.e.*, a highway, bridge, pedestrian improvement or similar project. The next phase is project development, which includes environmental, historic, and agricultural review, as well as public/stakeholder involvement. Depending on the scale of the project, the project development phase may include presentations to the Governor, General Assembly, Council on Transportation, Office of Management and Budget, DelDOT, and metropolitan planning organizations, and may include public workshops, public meetings, and working groups. Once the final real estate plans are approved and, with respect to federally funded projects, the environmental process is complete, DelDOT's Real Estate section can begin the acquisition process. DelDOT's process includes identifying funding, valuation of the property (appraisals by Delaware licensed appraisers and/or appraisal waivers for small, low cost transactions), appraisal review, negotiation, offer, and finally, settlement or condemnation proceedings.

Mr. Levin asked if the CTP appraises property, or simply authorizes the property or project presented. Mr. Cauley advised that the CTP includes estimated costs for real estate and sets the budget the Department has to work from in connection with the project. As appraisals and negotiations are finalized, this budget may be higher or lower than the estimate. The General Assembly also reviews the statewide plan that looks at all future plans/development for the state; specific property is not generally included in that plan.

Mr. O'Mara questioned the percentage of temporary construction easements and associated costs. Mr. Schranck advised it is very rare that we do not have to compensate a land owner for use of their property during construction.

Mr. Cauley advised the Advanced Acquisition Committee's statutory function is to confirm acquisitions are consistent with state planning goals for three particular project types: (1) new corridors; (2) expansion of existing corridors; and (3) the department's Corridor Capacity Preservation Program. This is known as a "consistency review." Mr. Cauley briefed the members on the components and differences of the three types of acquisitions described above.

New corridors are major new highways on previously unused alignments, such as the tolled portion of State Route 1 in Kent and New Castle Counties. Expansions of existing corridors add new travel lanes for several miles, such as the dualization of Naamans Road from Concord Pike to Philadelphia Pike, which also require significant additional property acquisitions. The Corridor Capacity Preservation Program includes a mix of new construction, purchase of development rights, and other design or configuration changes. Acquisitions made under that Program require review and approval by this Committee.

Mr. McGonigle questioned where the other highly publicized properties fall in this chart. Mr. Cauley suggested that all acquisitions are purchases – but the irregular or “non-formulaic” acquisitions are considered to be “special acquisitions” for purposes of this Committee. In response, Mr. Cauley stated that generally speaking, acquisition of interests in real property fall into two categories: (1) new corridors and expansion of existing corridors; and (2) advanced acquisitions – *i.e.*, hardship acquisitions, protective buy acquisitions, and special property acquisitions.

Hardship acquisitions have been handled by the Committee in the past, and come up when the Department has a project with probable impacts leading to a total acquisition of private property, in circumstances where the owners are not in a position to wait for the final project plans to be completed. For example, retirements, medical matters, or other personal reasons may support the advanced acquisitions of these parcels. Protective buy acquisitions have also been handled by the Committee previously, and often arise when development pressures convince the Department that it would in the state’s interest to buy the parcel ahead of the time when it would be absolutely needed for the project. Special property acquisitions are the catch-all category for other non-formulaic acquisitions in connection with transportation projects.

Mr. Cauley and Mr. Schranck presented the newly proposed regulations for Advanced Acquisitions. The proposed regulations would increase transparency in the Department’s real estate acquisition process by (1) requiring the Committee to review advanced acquisitions, including reservation agreements; (2) providing a process for the Committee to review the merits of advanced acquisitions; (3) requiring the Department to obtain independent appraisal for advanced acquisitions; (4) requiring that advanced acquisitions and reservations be reviewed by legal counsel; (5) requiring that the terms of advanced acquisitions be reflected in an agreement signed by the Department and the property owner; and (6) setting out the process for the Committee to conduct consistency reviews.

Mr. Cauley explained that the reason the committee does not have to review every parcel DelDOT acquires is because the majority of the department’s real estate activities involve small scale routine (highway/bridge) acquisitions with predominantly low dollar transactions with adjoining property owners. In addition to DelDOT’s professionally licensed real estate staff and the assistance of outside counsel, the department now has a designated Deputy Attorney General to assist with all transactions. Mr. Lubin questioned “If a property should come before the committee, are the terms subject to negotiation?” Mr. Lubin suggested that if the final negotiated terms vary from what was approved by the committee, then the committee should have an opportunity to review the revised terms for approval. Mr. Levin questioned, “If committee votes splits evenly, will the Secretary/Department have the power to approve or veto?” Mr. McGonigle advised that a split vote would not be acceptable, there would need to be an affirmative vote by the committee.

Mr. O’Mara questioned the guidelines for DelDOT submissions to the Committee for proposed advanced acquisitions. He wanted to ensure that a rigorous review of the property was completed prior to presentation to the committee.

Mr. Lubin questioned the condemnation process. He wanted to know if the committee had to be the final body on approval process for condemnation. The answer to the question is no.

Proposals for Committee Procedures:

- Vigorous review of plan presented by DelDOT
- Access to appraisal, not necessarily a second appraisal, but consultant to review appraisal submitted.
- Access to legal counsel, *i.e.* Deputy Attorney General.

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- Mr. Lubin suggested property information forwarded at least two weeks prior to hearing; offering time for review of details as well as property inspection.
- Submit written comments. Mr. O'Mara suggested allowing enough time for review prior to hearing.
- Enhanced public notice - Committee feels information should be emailed/forwarded to Bond Bill Committee for their review, as well as legislators regarding properties that are located within their district. The Committee feels the person sending the meeting notice should distribute the appropriate information to the legislators.

Mr. McGonigle stated DeIDOT will be working with outside sources to the Chairperson and Committee for approval prior to being placed on the website.

Public Comment – None.

Mr. McGonigle requested a motion to adjourn, so moved by Mr. Kee, seconded by Mr. Levin. The motion passed unanimously.

The Advanced Acquisition Committee Meeting minutes are recorded to the best of my knowledge. Please forward necessary additions or corrections to Diana Morrison either by mail, 800 S. Bay Road, P.O. Box 778, Dover DE 19903, or via email at Diana.Morrison@state.de.us. Thank you.

cc: Cleon L. Cauley, Sr., Deputy Secretary, Office of the Secretary, DeIDOT
Frederick H. Schranck, Deputy Attorney General, State of Delaware
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Natalie Barnhart, Chief Engineer/Director of Transportation Solutions, DeIDOT
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