

STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

September 10, 2010

David Bingham,
50 White Birch Rd
Salem, CT 06

Dear Mr. Bingham,

This is response to the comments which you submitted regarding the potential transfer of the portion of the former Norwich State Hospital which is located within the City of Norwich.

Your comments focused on the applicability of the Connecticut Environmental Policy Act (CEPA) and a request that the State either retain ownership, or secure conservation easements, over the "*westerly parcel and undeveloped portion of the easterly parcel*".

After reviewing survey maps prepared by the DPW and a site visit by staff of the OPM and DEP, it was determined that the undeveloped "*easterly*" and "*southerly*" parcels are actually located within, and owned by, the Town of Preston. Since these parcels are no longer owned by the State, it is not within the authority of this office to grant the requests for their retention or establishment of conservation easements.

In addition, for the remaining portion of undeveloped property located in Norwich and behind the houses formerly occupied by doctors employed by Norwich Hospital, the DEP has made a management decision to neither retain this property in fee nor place conservation easements on this portion of the facility.

With regard to the undeveloped portion of the facility which is State owned and located between the Thames River and Route 12; DEP has requested that this parcel, consisting of approximately 13.17 acres, be transferred to the permanent custody and control of DEP.

Via a letter to Commissioner Curtis and Commissioner Marrella dated July 22, 2010 (a copy of which is attached) the OPM has transferred to DEP the permanent custody and control of the 13.17 acre parcel of undeveloped land located within the City of Norwich on the former Norwich Hospital and situated between the Thames River and Route 12 and more accurately described on the "*Parcel Inventory and Index Plan*" prepared on behalf of the DPW by Meehan & Goodin, dated May 9, 1999 and listed as Parcel Area 3 on sheet 3 of 6.

With regard to your concerns related to CEPA; an opinion by the Attorney General, dated March 21, 2006 (copy attached), stated *"In our opinion State action requiring specific development triggers the application of CEPA."* It is the State's intent to offer this property for sale "as is" with no specific development requirements.

Sincerely,

A handwritten signature in black ink that reads "Brenda Sisco". The signature is written in a cursive style with a large initial "B" and a distinct "Sisco" at the end.

Brenda L. Sisco
Acting Secretary

Attachments

O'Brien, Patrick M.

From: david bingham [dbbingham@sbcglobal.net]
Sent: Thursday, March 04, 2010 11:07 AM
To: O'Brien, Patrick M.
Cc: Mallory, Shane
Subject: Proposed Land Transfer, Norwich (Norwich State Hospital) Comments

Statement of David Bingham, 50 White Birch Rd, Salem, CT. For ID purposes, I am a Director of the CT Chapter of the Sierra Club, Audubon, and the Rivers Alliance, but am writing as an individual citizen-advocate for the environment:

The portion of the Norwich State Hospital Property that lies within the city of Norwich is more than one parcel. Each parcel has natural resource assets that would have to be protected/mitigated under the requirements of the CT Environmental Protection Act (CEPA) were the land to be developed by the State of CT. Transfer of these lots to private ownership puts these resources at risk, and any transfer agreement thus should recognize and protect the State's interest in these resources.

The western parcel of the land is undeveloped and fully vegetated, is surrounded by intact undeveloped wooded land that forms an important corridor for wildlife, and the entire parcel lies along on the bank of a tidal portion of the Thames River within the Coastal management Zone. Any development of this parcel will significantly impact a sensitive area. Moreover, the visual impact of clearing and developing the parcel will also be significant, since it currently provides a serene green and natural swath of ridgeland when viewed from the Thames River or from the opposite shore. Bald Eagles regularly use this area for surveying the river for fish.

The eastern portion is partially developed, and I have no objection to redevelopment of the footprint of land that was cleared for residential use in the past. However, the easterly and southerly forested portions of this parcel currently enhance a large forest block that extends into Preston, and which Preston has identified for protection as a natural area. Development of this intact forest area detracts from the biodiversity of the entire forest block and especially impacts the nesting and survival of interior forest species such as bobcat and fisher, gray fox, woodland warblers, thrushes, hawks and owls.

The requirements under CEPA to protect these resources involve a process of environmental impact evaluation (EIE) of any proposed development project, to assure that the plan of development identifies and protects these natural resources, explores alternatives that minimize adverse environmental impacts, and provides mitigation for impacts that are likely to occur, in order to balance the State's interest in the benefits of the project against the State's interest in maintaining a sustainable environment.

It is also highly likely that both parcels contain cultural resources in the form of native American archeological sites, that should be evaluated and protected as part of any development plan.

However, the City of Norwich has no process comparable to CEPA to protect the State's interest, i.e. the statewide public interest, in these natural resources. In fact, the main driver of any proposal may well be to maximize taxable property development within the local zoning regulations. The local regulations do not provide any requirement for an EIE, exploration of alternatives for development, or mitigation of adverse environmental impacts. Indeed, any action by the zoning authority to impose such requirements on a project might well be considered an appealable issue by any private applicant for development of these parcels.

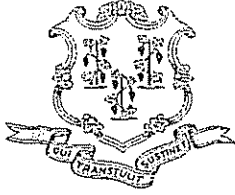
Unless the transfer agreement itself assures that the new owner is held to similar standards, there is a significant risk that a plan will be developed that does not fully identify the resources present nor protect against or mitigate adverse impacts from proposed developments.

While any member of the public does have an opportunity, under CEPA, to seek legal court action to halt or amend a development proposal that may cause significant adverse environmental impacts, it is far better to avoid the need for such litigation by having an orderly process prior to any development. The expense and delay from litigation may deter any development, even when appropriate.

The best way to promote clean-up and achieve appropriate development of the land in an efficient manner, while minimizing the possibility of litigation, is to

- either retain the State ownership of those sensitive portions of the land that are at highest risk (the westerly parcel and the undeveloped portion of the easterly parcel), or
- place appropriate conservation restrictions on the sensitive portions of the land, prior to any transfer, as part of any purchase and sales Agreement(s).

David Bingham, MD



STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

July 22, 2010

Raeanne Curtis, Commissioner
Department of Public Works
165 Capitol Avenue
Hartford, CT 06106

Amey Marrella, Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Dear Commissioners Curtis and Marrella,

As you are aware, the portion of the former Norwich Hospital which is located within the City of Norwich has been declared surplus to State needs and as such the Department of Public Works (DPW), in accordance with CGS 4b-47, placed the required public notice in the *Environmental Monitor* and the public was afforded the opportunity to comment upon the proposed transfer of this property.

This office received two (2) comments both of which sought to have the State either retain ownership, or secure conservation easements, over the "*westerly parcel and undeveloped portion of the easterly parcel*".

After reviewing survey maps prepared by the DPW and a site visit by staff of the OPM and DEP, it was determined that the "*easterly parcel*" referenced in the public comments is actually located within, and owned by, the Town of Preston. Since this piece of property is no longer owned by the State, it is not within the authority of this office to grant the requests for its retention or establishment of conservation easement.

In addition, for the remaining portion of undeveloped property located in Norwich and behind the former doctor's houses, DEP has determined that it is not interested in retaining this property, nor does it recommend conservation easements for this portion of the facility.

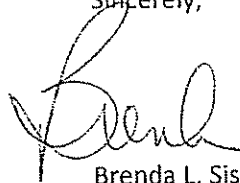
With regard to the undeveloped portion of the facility which is State owned and located between the Thames River and Route 12, DEP has requested that this parcel, consisting of approximately 13.17 acres, be transferred to the permanent custody and control of DEP.

Therefore, by way of this letter, I am transferring to DEP the permanent custody and control of the 13.17 acre parcel of undeveloped land located within the City of Norwich on the former Norwich Hospital and situated between the Thames River and Route 12 and more accurately described on the "*Parcel Inventory and Index Plan*" prepared on behalf of the DPW by Meehan & Goodin, dated May 9, 1999 and listed as Parcel Area 3 on sheet 3 of 6.

Also by way of this letter I am informing the DPW that the remainder of the facility is surplus to the needs of the State of Connecticut and requesting that DPW dispose of this property.

If you have any questions concerning this matter, please contact Patrick O'Brien of my staff at (860) 418-6353.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda L. Sisco".

Brenda L. Sisco
Acting Secretary

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford
March 21, 2006

Mr. Jeffrey Beckham
Managing Attorney, Legal Services Division
Department of Public Works
165 Capitol Avenue
Hartford CT 06106

RE: Seaside Regional Center

Dear Mr. Beckham:

Recently you asked for our opinion as to whether the provisions of the Connecticut Environmental Policy Act ("CEPA") apply to the potential sale of the State's property known as Seaside Regional Center ("Seaside") to Seaside in Waterford, LLC ("Developer") if the town of Waterford chooses not to exercise its statutory right of first refusal. Based on the facts presented to us by the Department of Public Works ("DPW"), if the State sells Seaside to the Developer for the purpose of developing a master planned community for elderly persons, we conclude that CEPA does apply.

By way of background, Seaside was at one time a State owned hospital for patients with tuberculosis and was later used as a residential facility for the mentally disabled until it closed in 1997. The entire property is listed on the National Register of Historic Places, as well as the State Register of Historic Places. The property was declared surplus, and offered first in 1999 to the Town of Waterford, which declined to purchase the property. Subsequently, the Office of Policy and Management ("OPM") published a Request for Qualifications ("RFQ"), for which responses were due in May 1999, followed by a Request for Proposals ("RFP"), for which responses were due in September 1999. In response to the RFQ and RFP, the State entered into negotiations with the Developer for the sale of the property, those negotiations broke down sometime in 2001.

Both the RFQ and RFP state that the sale of the property will be for a master planned community for the elderly and will include independent living, assisted living, specialized healthcare and related services that provide a continuum of care. There are also other development obligations, including but not limited to the construction of a public gazebo and a parking lot on the property. You ask whether CEPA is applicable to the sale of Seaside in light of the specific requirements in the RFQ and RFP for the proposed development of this property.

CEPA places affirmative obligations upon State agencies when they are recommending or initiating an action that may significantly affect the environment. Conn. Gen. Stat. Section 22a-1b(c) reads, in relevant part:

Each state department, institution or agency responsible for the primary recommendation or initiation of actions which may significantly affect the environment shall in the case of each such proposed action make a detailed written evaluation of its environmental impact before deciding whether to undertake or approve such action. (Emphasis supplied.)

Since in this instance the State is clearly initiating an action -- the sale of the property -- the issue is whether or not the sale of Seaside to the Developer with certain specific development requirements constitutes an action that may significantly affect the environment. Section 22a-1c defines "actions which may significantly affect the environment" as:

[I]ndividual activities or a sequence of planned activities proposed to be undertaken by state departments, institutions or agencies, or funded in whole or in part by the state, which could have a major impact on the state's land, water, air, historic structures and landmarks as defined in section 10-410, existing housing, or other environmental resources, or could serve short term to the disadvantage of long term environmental goals. Such actions shall include but not be limited to new projects and programs of state agencies and new projects supported by state contracts and grants, but shall not include (1) emergency measures undertaken in response to an immediate threat to public health or safety; or (2) activities in which state agency participation is ministerial in nature, involving no exercise of discretion on the part of the state department, institution or agency.

In correspondence dated January 23, 2006, OPM advised DPW of its opinion that CEPA is not applicable to this sale. In support of its position, OPM states that the development agreement between the State and the Developer "does not require any one particular use by said Purchaser; without such information, an EIE [Environmental Impact Evaluation] cannot be performed." This reasoning ignores the language in both the RFQ and RFP requiring development of elderly housing.

Based on this language, there is no question that the sale of Seaside is contingent upon the development of elderly housing and that this requirement is a specific use. The RFQ is entitled "Elderly Housing Development Opportunity." It states that the State and Town of Waterford "hope to achieve several redevelopment objectives at Seaside," directs that each proposer should factor "desired redevelopment objectives" into their proposals and includes as one of the objectives "Elderly Housing." The Purchase and Sale Agreement is replete with references to elderly housing. Paragraph 14 for example, states: "The Purchaser shall construct

... age-restricted housing." Also see paragraph 44 - ("The Purchaser agrees that its purchase of the Property and its other undertakings in this Agreement are and will be used for the purpose of development of the property.").

In further support of its position, OPM advises that "the only State action is going to be the State offering to the town of Waterford the right to buy the site or selling the site to a private party." You have advised us, however, that the Town of Waterford has declined to exercise its statutory right of first refusal; and clearly the State is not merely "selling the site to a private party," but rather requiring that the Developer carry out specific development plans.

Unlike the transaction between the State and the Towns of Norwich and Preston, which involved the simple transfer of the Norwich State Hospital in an "as is condition," without any provisions as to its future use, it appears that in this matter the State is initiating the development of Seaside for specific uses -- housing for the elderly and the development of a public beach, parking lot and gazebo. In our opinion State action requiring specific development triggers the application of CEPA.

Based upon all of the information contained in the RFQ, RFP, and the proposed Purchase and Sale Agreement, as well as the information which you provided to this office, the State is obligating the Developer to undertake certain specific and defined activities in order to be eligible to purchase Seaside. Therefore, CEPA does apply and the State must conduct an environmental impact evaluation ("EIE") before proceeding with the sale of this property to the Developer.

Very truly yours,


RICHARD BLUMENTHAL

c: Gareth D. Bye, Director of Legal Affairs, OPM
Secretary Robert L. Genuario, OPM
David LeVasseur, Undersecretary
Richard Nucleo