

Garden State Preservation Trust
July 31, 2012 Meeting Minutes

Chairman Mike Murphy called the Conference Call meeting to order at 10:04 a.m. Executive Director Ralph Siegel read a statement certifying compliance with the Open Public Meetings Act and then called the roll. Public members on the conference call were: Chairman Murphy, Andrew Buzby, Robert Hughey and Gregory Romano. Ex-officio members on the conference call were Martha Sapp (for DEP Commissioner Bob Martin), Susan Payne (for Agriculture Secretary Douglas H. Fisher), James Requa (for Department of Community Affairs Commissioner Richard E. Constable III) and James Petrino (for Treasurer Andrew P. Sidamon-Eristoff).

Vice-Chairman Ken Atkinson was absent.

OPENING REMARKS

Chairman Murphy thanked the members for taking the time and effort to come onto the conference call. He said these were necessary issues to take up before the end of the summer season. He asked Mr. Siegel to proceed with conducting the meeting by the agenda.

APPROVAL OF MINUTES OF MARCH 28, 2012, BOARD MEETING

Mr. Siegel noted the consideration of these official minutes was a formality because a substantive version of the minutes had been submitted on March 28 and had completed the Governor's veto review process on April 12 with the exception of the 5th Supplemental Bond Resolution, which was approved more quickly via a special letter signed on April 2.

Mr. Siegel asked if there were any corrections or clarifications to the draft minutes of the meeting. Ms. Payne requested a change in wording in a section of the minutes that characterized her remarks at the March 28 meeting.

The minutes were amended to remove the word "deliberately" from the sentence on page 6: "Ms. Payne said she has tracked the decline in activity in permanent preservation and she said she is at a point of frustration because it appears the counties are deliberately slowing down their acquisition rates and their expenditures..." As amended, the sentence read: "Ms. Payne said she has tracked the decline in activity in permanent preservation and she said she is at a point of frustration because it appears the counties are slowing down their acquisition rates and their expenditures..."

Moved by Mr. Romano.
Seconded by Ms. Payne.
Approved 7-0.

Ms. Sapp abstained from the vote because he did not attend the March 28 meeting.

EXECUTIVE DIRECTOR'S REPORT

Mr. Siegel reviewed the Tax Compliance Procedure and the Memorandum of Understanding, noting the endorsement of staff, the Attorney General's office and Bond Counsel Leah Sandbank, Esq., of McManimon, Scotland & Baumann.

Mr. Siegel made reference to his memo to the board, noting that it had been compiled with the assistance of Ms. Sandbank. He reviewed the Tax Compliance Procedure document and explained the need for the conjuncting Memorandum of Understanding to ensure the cooperation of the conservation agencies in order for the GSPT to implement these procedures.

Mr. Siegel explained it was necessary for the GSPT as a bond-issuing agency to file an IRS tax form by August 15, and that the tax form required indication of whether or not the filing agency had a Tax Compliance Procedure in place. He said today's meeting was the deadline for approval of the Tax Compliance Procedure to allow for the Governor's 15-day veto period so that the tax form could be properly marked and filed.

Mr. Siegel said it was a strong recommendation of the staff, Office of the Attorney General and Bond Counsel, as represented by Ms. Sandbank, for the GSPT board to adopt the Tax Compliance Procedure today.

Mr. Siegel noted that the Tax Compliance Procedure include clear provisions to permit for reform and revision of the document at any time "on a going-forward basis." He said the procedure if adopted today would not be carved in stone but would be subject to continuing revision and improvement.

Mr. Siegel asked Ms. Sandbank to explain the nature of the deadline faced by the GSPT.

Ms. Sandbank explained that any agency that issues tax-exempt bonds must file a tax return explaining the bond issue. She said the deadline is set on the 15th day of the third month after the bond issue has been executed. "require basically the 15th day after the second month after the bonds are issued," which turns out to be Aug. 15.

Ms. Sandbank said the IRS this year changed the forms, 8038 and 8038-G, to include a check box to indicate that the agency has a procedure in place to ensure IRS provisions for tax-exempt bonds are being monitored and that the use of the bond funds is in compliance with these provisions. She said this is the impetus for developing the written procedures. She said there is no IRS rule or requirement for written procedures, but the IRS code does require "active monitoring," and it is hard to envision satisfactory compliance without a written procedure that designates the responsibilities and record-keeping necessary for adequate monitoring.

Ms. Sandbank said, "There is a concern in the general marketplace that not checking the box raises a red flag with the IRS because the IRS uses the 8038 form to identify issues to come up on audit." She said there is no certainty that a failure to check the box will result in an IRS audit, it is "prudent" to have written procedures and to so indicate on the 8038 forms. She said the request-for-proposal for Bond Counsel that had been issued by the Treasury Department for the GSPT bond issue specified that the Bond Counsel would be expected to assist in the production of written procedures.

"We would like very much to be able to check the box by that date to say that you, the Trust, have these written procedures, so that is why the resolution is before you today," Ms. Sandbank said.

Mr. Petrino, who also serves as director of the Office of Public Finance, explained all agencies issuing tax-exempt bonds will need to adopt written procedures for tax compliance. He said this is not unique to the GSPT “but rather part of a program that we are implementing with all of our tax-exempt bond issuing authorities, and with the State of New Jersey itself.”

DISCUSSION, CONSIDERATION OF THE RESOLUTION #12-003 TO ADOPT A POST-ISSUANCE TAX COMPLIANCE PROCEDURE

Following remarks by Mr. Siegel and Ms. Sandbank, Mr. Petrino at the conclusion of his own brief remarks moved the resolution.

There commenced an extensive board discussion.

Ms. Sapp said she had discussed the procedures with Mr. Siegel prior to the meeting and he had explained the document was flexible and could be changed in consultation with the attorneys. She said her office has concerns about the Tax Compliance Procedure and about the Memorandum of Understanding (MOU). She said she would seek to have the MOU streamlined and adapted to recognize that some monitoring and compliance issues would involve agencies at the DEP other than Green Acres.

Ms. Sapp said, “I just want to make sure that we don’t make anything duplicative or make more work for staff when we are actually already meeting the requirement. We can already check that box on that form.”

Mr. Siegel said, “My major focus during the development of the Tax Compliance Procedure was that we not create the requirement for any new procedure that does not exist already in the paperwork and filing systems of both agencies.”

Mr. Siegel said the attorneys present would confirm this as his goal throughout the process in developing and refining the procedure document.

Mr. Siegel said, “The documents we are voting on are more complicated than I would have liked, but nevertheless that is the baseline intent, to incorporate and in a way to certify the procedures that both agencies already follow. If there are imperfections that need to be streamlined, they can be. It’s my intention to have this be a zero-impact procedural implementation.”

Ms. Payne said she wanted to “echo” Ms. Sapp’s comments. She said the Farmland Preservation Program already tracks and documents all compliance issues. She said the language requiring the program to communicate to the GSPT about every potential violation is “overly broad and would actually cause an enormous amount of additional work.”

Ms. Payne said, “As long as we can change the procedures and the contents of the MOU to reflect what we do, that’s fine, but the language is definitely overly broad.”

Ms. Sandbank said training should be built in to clarify the types of violations of particular concern to the GSPT, to distinguish from “run-of-the-mill” violations of farmland preservation rules or conservation easements that have no real implications concerning tax compliance.

Ms. Sapp pointed out that Green Acres State Acquisitions are placed under the management of other DEP divisions. She said her office is not involved in those properties, and that it would be difficult to expect compliance reports from the superintendents of every state park and wildlife management area.

Mr. Siegel said he believed such reporting was not necessary and was not being contemplated. He said the chief monitoring issue for state-owned lands would be for any change of title; that is, any sale or transfer of the land acquired with funds from tax-exempt bonds. He said he had been of the impression any such transfers or changes were reported back to Green Acres, but that this appears to have been incorrect. But he said as long as there is no transfer of title and the property remains in the hands of the parks or wildlife divisions, the public purpose of the land acquisition will be maintained.

Mr. Siegel said there was no intention for the Tax Compliance Procedure to require new inspections on every parcel of land that has been added as part of a state park or wildlife area as long as those parcels remain a part of that state park or wildlife area. He repeated that he is not asking and will not ask the agencies to do anything they do not already do.

Ms. Sapp confirmed that all transfers of title are publicly reported to the Statehouse Commission. She said major land-use diversions are reported to Green Acres.

Ms. Sandbank said the intention was not to add new work and not to require the agencies to make tax compliance determinations concerning violations or changes of use. She said the idea was to have the agencies simply report possible issues or violations to GSPT, and for Mr. Siegel to sort through them to make the determination of which violations pose tax compliance problems and therefore require monitoring or follow-up action.

Mr. Hughey asked if it was a problem to have attached an MOU to Resolution #12-004 when it is evident changes to the MOU are required. Ms. Sandbank answered that the MOU was in a substantially final form but the resolution stipulates that revisions and changes can be made.

Ms. Payne said she did not agree with the MOU. She said, "There is substantial work" to get the MOU into a shape that reflects what the agencies do. "I think if it is going to be significantly modified, then I think we are all open to that."

Mr. Hughey suggested some changes in language to make it clear Resolution #12-004 acknowledges that the MOU attached to it was a working document subject to revision and served merely as a nonbinding sample.

Mr. Siegel said he agreed with a suggestion made by Ms. Sapp prior to the meeting to create two separate MOUs, one for Green Acres and one for the State Agriculture Development Committee.

Ms. Sapp said she wanted to ensure the Tax Compliance Procedure under Resolution #12-003 has the same flexibility that all have agreed should exist for the MOU under Resolution #12-004.

Mr. Siegel said the Tax Compliance Procedure was written to be just as flexible, and that once approved, it could be changed and revised every three months if need be. Ms. Sandbank agreed that as with the MOU, the Tax Compliance Procedure itself "is a working document," and would not be "set in stone" by the vote.

Discussion revolved around the best form of amendment.

On advice of DAG Cliff Rones, Mr. Siegel read back the suggested amendment to resolution #12-003.

As proposed, the final “whereas” clause of #12-003 had read as follows:

“WHEREAS, it is expected and intended that the Trust, the Office of Green Acres and the SADC will enter into a Memorandum of Understanding in substantially the form attached hereto (the “MOU”) setting forth the agreement between each of the Trust, the Office of Green Acres and the SADC to perform their respective responsibilities described in the Procedures.”

This clause was amended to remove the word “substantially.”

It was amended to read as follows:

“WHEREAS, it is expected and intended that the Trust, the Office of Green Acres and the SADC will enter into a Memorandum of Understanding in the form attached hereto (the “MOU”) setting forth the agreement between each of the Trust, the Office of Green Acres and the SADC to perform their respective responsibilities described in the Procedures.”

Mr. Siegel read this clause into the record.

As proposed, the first NOW BE IT RESOLVED provision in #12-003 had read as follows: *“The Trust hereby approves the Procedures in substantially the form attached hereto.”*

The provision was amended to read as follows:

“The Trust hereby approves the Procedures in the form attached hereto with such changes, additions and modifications as agreed to by the Office Green Acres, the SADC, the Attorney General’s office and Bond Counsel.”

As amended

Moved by Mr. Petrino.

Seconded by Mr. Romano.

Approved 8-0.

DISCUSSION, CONSIDERATION OF THE RESOLUTION #12-004 TO ADOPT MEMORANDUM OF UNDERSTANDING TO IMPLEMENT TAX COMPLIANCE PROCEDURE

The discussion about concerns over the Tax Compliance Procedure led to changes in this resolution as well.

The resolution was amended to allow for multiple MOUs. As a result, the title of the resolution was amended to read as follows:

“Resolution of the Garden State Preservation Trust to approve and adopt Memorandums of Understanding with the Department of Environmental Protection Office of Green Acres and with State Agriculture Development Committee to Cooperatively Implement the Post-Issuance Tax Compliance Procedures and to Designate Associate Tax Compliance Officers.”

As proposed, the final “whereas” clause of #12-004 had read as follows:

“WHEREAS, it is expected and intended that the Trust, the Office of Green Acres and the SADC will enter into a Memorandum of Understanding in substantially the form attached hereto (the “MOU”) setting forth the agreement between each of the Trust, the Office of Green Acres and the SADC to perform their respective responsibilities described in the Procedures.”

This clause was amended to remove the word “substantially.”

It was amended to read as follows:

“WHEREAS, it is expected and intended that the Trust, the Office of Green Acres and the SADC will enter into a Memorandum of Understanding in the form attached hereto (the “MOU”) setting forth the agreement between each of the Trust, the Office of Green Acres and the SADC to perform their respective responsibilities described in the Procedures;”

Mr. Siegel read this clause into the record.

As proposed, the first NOW BE IT RESOLVED provision in #12-004 had read as follows:

“The Trust hereby approves the MOU substantially in the form attached hereto to submitted to the Office of Green Acres and SADC for their consideration and approval.”

The provision was amended to read as follows:

“The Trust hereby approves the MOU in the form attached hereto with such changes, additions and modifications as agreed to by the Office Green Acres, the SADC, the Attorney General’s office and Bond Counsel.”

As amended

Moved by Ms. Payne.

Seconded by Mr. Romano.

Approved 8-0.

EXECUTIVE DIRECTOR'S REPORT Part 2

Mr. Siegel said the agenda item to request board approval to seek appointment of Bond Counsel to evaluate Assembly Bill 323 has been withdrawn from the agenda at the request of the Authorities Unit of the Office of Governor's Counsel.

Mr. Siegel advised the board that with the authorization of the chairman, he was stepping back from a research project discussed at the March 28 meeting to conduct a statewide study concerning the slowdown in preservation activity at the county level. Mr. Siegel said he had scoped out the work and had concluded it was too extensive. He said past research projects undertaken by the GSPT have consumed enormous time and energy and when it came time to produce a policy outcome or a written report, this final product was not properly supported.

BOARD COMMENT

Board members had no added comment.

ADJOURNMENT

Mr. Siegel asked for a motion to adjourn the meeting.

Moved by Chairman Murphy.

Seconded by Ms. Payne.

Approved by voice vote 8-0.

Respectfully submitted

Ralph Siegel
executive director/board secretary
Sept. 18, 2012

Others in attendance: Deputy Attorney General Cliff Rones at the GSPT office.