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FREEDOM OF INFORMATION



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Ed Schwing and the Haddam Bulletin,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-037

Commissioner, State of Connecticut,
Department of Energy and Environmental
Protection; and State of Connecticut,
Department of Energy and Environmental
Protection,

Respondent(s)

July 2, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 25, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE July 13, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE July 13, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE July 13, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Ed Schwing
Melinda M. Decker, Esq.

7/2/12/FIC# 2012-037/Trans/wrbp/LFS/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ed Schwing and the Haddam Bulletin,

Complainants

against

Docket #FIC 2012-037

Commissioner, State of Connecticut, Department
of Energy and Environmental Protection; and
State of Connecticut, Department of Energy and
Environmental Protection,

Respondents

June 21, 2012

The above-captioned matter was heard as a contested case on June 14, 2012, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1)(A), G.S.
2. It is found that on December 22, 2011, the complainants requested copies of the respondents' real estate appraisals for properties involved in the so-called "Haddam land swap," a proposed transaction whereby the State of Connecticut would exchange a 17-acre parcel it owns on the Connecticut River with an 87-acre parcel owned by a private developer.
3. It is found that on December 23, 2011, the respondents acknowledged the complainants' request.
4. It is found that on January 6, 2012, the respondents denied the complainants' request, claiming that §1-210(b)(7), G.S., exempted the records from mandatory disclosure.
5. By letter filed January 20, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for copies of records.
6. Section 1-200(5), G.S., provides:

Public records or files means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is concluded that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. Section 1-210(b)(7), G.S., exempts from disclosure "[t]he contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision."

11. It is found that the General Assembly authorized the proposed land swap transaction in 2011, on the condition that the exchange was for equal value. Special Act No. 2011-16 provided that the fair market values of the parcels to be exchanged were to be determined by the average of the appraisals of two independent appraisers selected by the respondents. The Act required additional consideration if necessary to equalize the value of the swap.

12. It is found that pursuant to Special Act No. 2011-16, the respondents engaged the services of two appraisers, who delivered records and reports to the respondents by December 19, 2011.

13. It is found that upon receipt of the appraisers' reports and for the ensuing several months, the respondents discussed and negotiated various aspects of the appraisals with the private developer.

14. It is found that the respondents delivered the appraisals to the private developer on March 27, 2012. It is found that the appraisals valued the 17-acre parcel owned by the State much higher than the private developer's 87-acre parcel.

15. It is found that as a result of the disparity in the appraisals, the private developer declined to pursue the land swap, and notified the respondents of its decision on April 3, 2012.

16. It is found that the respondents disclosed the appraisals to the public by posting them on their agency website on April 4, 2012.

17. The complainants contend that the appraisal of the 17-acre property was not exempt from disclosure because it was property already owned by the State, and therefore the appraisal of that parcel did not pertain to the acquisition of property.

18. Nothing in the statute, however, requires the appraisal to be of the property that an agency intends to acquire. It is found that the appraisal of the 17-acre property was "relative to the acquisition of [the 87-acre] property," within the meaning of §1-210(b)(7), G.S.

19. The complainants contend that the land swap "proceedings or transactions" were complete upon the passage of Special Act No. 2011-16.

20. It is found, however, that the value of the appraisals was integral to whether the swap would occur, and the negotiations over the appraisal methods and data were proceedings and transactions pertaining to the acquisition of property via the land swap.

21. The complainants also contend that because the respondents told the private developer the appraised values in a meeting on January 11, 2012, the respondents no longer had a valid reason to withhold such information from the public.

22. Nonetheless, it is concluded that the respondents were entitled to rely on the exemption if all elements of the statute were satisfied.

23. It is found that the land swap proceedings and transactions were abandoned on April 3, 2012, when the private developer informed the respondents that they had decided not to pursue the exchange of the properties.

24. It is found that §1-210(b)(7), G.S., exempted the appraisals from disclosure until April 3, 2012.

25. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.


Lisa Fein Siegel
as Hearing Officer

FIC2012-037/HOR/LFS/062192012