

**INTERDEPARTMENTAL MEMO
AUDITORS OF PUBLIC ACCOUNTS**

Date: June 9, 2011

**To: John C. Geragosian, Auditor of Public Accounts
Robert M. Ward, Auditor of Public Accounts**

**Cc: Stephen R. Eckels, Deputy State Auditor
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From: Michael DiDomizio, Principal Auditor (860) 240-5329

**Subject: Report on a Legislative Request Regarding the Review of the Department of
Transportation (DOT) Land Acquisition from Aetna Insurance Company**

This report is in response to a request from Senator Jason C. Welch, for our office to review the land acquisition process for certain parcels of land that the DOT acquired from Aetna for the New Britain-Hartford Busway. The request mentions a potential misuse of taxpayer dollars and apparent overpayments by the DOT for the land acquisitions. A copy of the request is attached.

Our review disclosed that there was no misuse of taxpayer dollars. State funds for busway related expenditures were authorized by Public Acts passed by the State Legislature. The land acquisitions were Federally participating and authorized under Federal grants the DOT obtained from the Federal Transit Administration.

Regarding apparent overpayments, the amount DOT paid was in accordance with the Federal regulations governing property acquisitions that are made using Federal funds. The amounts paid were supported by appraisals prepared by independent appraisers that DOT hired. The appraisers were hired to determine the fair market value based on the amount of damages that Aetna would suffer from the taking of the properties. That should not be confused with estimating the fair market value when there is a willing seller and a willing buyer, which in this case would most likely have been considerably less. DOT reviewed the appraisals and made its initial offers to Aetna, totaling \$5,630,000, as required by the Federal regulations. Aetna refused the initial offers, but subsequently ended up accepting them.

Information regarding the property acquisitions and the Federal requirements follow.

Informational Data Regarding Fair Market Value:

The fair market value of certain property when it is "taken" by a governmental entity is not the same as the fair market value of the property if it were to be sold on the open market. The certain property referred to here is that which requires taking only a portion of a whole property; referred to as a "partial take." In such circumstances it is required that consideration be given to the value of the entire property, or business, before taking the property, and the value after the property is taken. This usually results in the fair market value being more than if the property

were to be openly sold, because of the damages to the property or business. The DOT uses independent appraisers to estimate damages. It is indicated in the one of the independent appraisal reports the DOT obtained, to estimate damages, the appraiser estimates the market value of the entire parcel as it exists before the taking (without consideration of the transportation project), then estimates the market value of the remaining parcel (after the taking and completion of the transportation project), with the difference being the damages and/or benefits attributable to the taking. When there is a willing seller and buyer, the valuation is fair market value, without consideration of such damages. In the matter concerning the Aetna properties in question, it is apparent that the pieces taken were more valuable to the business than if Aetna attempted to sell them privately to a willing buyer.

It should also be noted that when independent appraisers are used to perform appraisals to determine the fair market values, such appraisers are required to be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The appraisals are to be prepared according to Federal requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice. The DOT has an appraisal review process which is designed to ensure compliance with these and other Federal requirements.

Independent Appraisals:

The properties were taken in two transactions, identified as Property 116 and Property 116A. Two transactions were required because after the first property was taken for the busway station DOT realized that an additional piece was needed to realign the intersection, thus, Property 116A was taken. The independent appraisal values for each property are summarized below.

For Property 116, there were three independent appraisers. Each issued a comprehensive appraisal report, with their appraised values indicated below:

<u>Russ</u>	<u>Benedict</u>	<u>Amadon</u>
\$3,330,000	\$3,400,000	\$3,506,246

For Property 116A, there were two independent appraisers. Each issued a comprehensive appraisal report, with their appraised values indicated below:

<u>Russ</u>	<u>Benedict</u>
\$2,300,000	\$800,000

We were told that Amadon did not submit an appraisal for Property 116A because he retired after submitting the appraisal for Property 116, and given the complexities of the property being acquired it was not deemed feasible to hire another appraiser. It should be noted that DOT's policies require at least two appraisals, which were obtained.

DOT paid a total of \$56,000 for the independent appraisals, as summarized below:

<u>Russ</u>	<u>Benedict</u>	<u>Amadon</u>
\$20,900	\$20,100	\$15,000

Federal Regulations:

Because the acquisitions were Federally participating the DOT was required to comply with Federal regulations; Title 49 Code of Federal Regulations (CFR) Part 24, Sections 101 through 108. DOT has an appraisal review process that meets the Federal requirements, which at a minimum requires a qualified review appraiser to examine the presentation and analysis of market information in all appraisals to assure that they (1) meet the definition of appraisal; (2) meet the appraisal requirements; (3) meet any other applicable requirements; and (4) support the appraiser's opinion of value. The review appraiser is required to identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted, and prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisals. Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition.

Just compensation is to be established and offered in accordance with 49 CFR 24.102(d), which requires that, before the initiation of negotiations, the Agency, in this case DOT, shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation, as previously described. Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. The Federal regulations specifically state that the initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

DOT's Appraisal Reviews:

The independent appraisals were reviewed by a DOT review appraiser. The Federal regulations specifically use the term "review appraiser" rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Every appraisal was accepted and both of the Russ appraisals were approved. The approved appraisals were certified by the DOT review appraiser and signed off by the DOT Supervising Appraiser and the Division Chief of the Division of Appraisals. The amounts per the Russ appraisals, \$3,330,000 and \$2,300,000, were initially offered to Aetna, and ultimately paid to Aetna. As previously indicated, Aetna refused the initial offers, requiring the DOT to condemn the properties, which is allowed under Section 13a-73 (b) of the General Statutes. When the DOT commissioner condemns property under this statute, the commissioner determines the amount of the damages and deposits that amount with the clerk of the superior court for the judicial district in which the land affected is located. The property owner may then accept the amount by written request for payment from the court, or appeal the amount. Section 13a-76 of the General Statutes allows the property owner to apply to the court for a reassessment of the damages within six months after the DOT commissioner's filing, after which the court or judge trial referee shall hear the applicant and the commissioner, review relevant evidence regarding the value, and ultimately reassess the damages. If the reassessed amount of the

damages awarded to the property owner exceeds the amount of the assessment determined by the commissioner, the court or judge trial referee is required to award to the property owner the appraisal fees as the court or judge trial referee determines to be reasonable, as well as the court costs.

In this case, Aetna accepted the amount that DOT deposited with the court. In total, DOT paid \$5,630,000, which was made up of Federal funds totaling \$4,504,000 and State funds totaling \$1,126,000. As previously indicated, the amounts represent just compensation, not the fair market value when there is a willing seller and a willing buyer.

Summary:

As previously indicated, Federal regulations require the review appraiser to identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted, and prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisals. There is no mention of any requirement to recommend an appraisal based on valuation alone, and to do so could result in additional costs if the matter ends up being contested in court. That is not to say that the higher appraisal should always be selected, but that the review appraiser should apply the criteria detailed in the CFRs applicable to property acquisition. Apparently, for Property 116A, the higher appraisal was chosen because the review appraiser could not justify picking the lower appraisal (it was determined that the higher one was better supported overall and was in line with the previous three appraisals received on the other Aetna property). If the appraisal for Property 116A was chosen based exclusively on the lower estimated value (\$800,000) it could be argued that the Federal regulations were not met, and could have gone against the Department in the long run, if Aetna was to challenge that value and it was determined that the better documented appraisal should have been used.

Because of the expertise that is required of the independent appraisers and the review appraiser, we did not attempt to evaluate the independent appraisals, but instead reviewed to determine that DOT complied with the applicable Federal regulations and that there is documentation to support DOT's process for acquiring these properties.

Please contact me if you have any questions or need additional information.