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Little-known panel holds purse strings on sale, lease of state land

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Photo by Phillip Molnar/New Jersey Herald
A marker shows the location of the Tennessee Gas Pipeline compressor station on county Route 650 in Wantage.

In July, the state accepted money from a Texas-based Fortune 500 natural gas company to lay a pipeline across 16 miles of the most environmentally sensitive and restricted lands in northern Sussex County.

Environmentalists fought it, pro-development officials supported it, but everyone seemed to agree the \$45,000 asking price was too cheap to lease the land.

The state body with its hand on the public purse strings quickly quadrupled the price of the lease to \$180,000.

For a 24-year-lease on land that traverses the Highlands, where most of New Jersey receives its drinking water, the El Paso Corp. paid \$15,500 less than the 2009 median cost of a home in Vernon.

The group that sells and leases public land is one that is rarely scrutinized by the public. It is called the State House Commission, and it has controlled what happens to public lands for more than half a century, quietly setting the prices for use of government-owned property.

The last decade of the commission's meetings has been a whirlwind of leases, sales, easements and "disposals" of publicly owned lands. At some meetings, the commission has voted verbally on a bracketed list of requests and sealed as much as a dozen deals with a single vote. Most often, no financial terms are mentioned in public, and the votes are taken within moments of their introduction.

Several times, legislators who are on the commission have left the meeting early, but instructed their neighbors at the table to cast affirmative votes across the board.

Although public attendance at commission meetings is typically less than at local council or Board of Education meetings, the decisions reached by the eight-person body have far-reaching consequences for Sussex County and New Jersey as a whole.

"It's really hard to find their agenda," said Kate Millsaps, a coordinator for the New Jersey Highlands Coalition. "The public really doesn't know what they do."

My land is your land

The State House Commission was created in 1953 by the New Jersey Legislature to control the sale and leasing of state-owned properties.

The governor is the presiding officer -- although he does not partake in day-to-day operations or voting -- and decisions are made by the state treasurer, the director of the Office of Management and Budget, the lieutenant governor, the deputy state treasurer, two appointed members of the state Senate and two appointed members of the General Assembly.

The freewheeling commission's tasks range from setting rental prices for Department of Environmental Protection-owned properties in Swartswood State Park to demolishing Camden's Riverfront State Prison.

The State House Commission is also the clearinghouse for the judicial retirement system, deciding upon pensions and benefits for judges across the state.

Richard Webster, a Rutgers Environmental Law Clinic staff attorney, said the commission's political motivations sometimes give "short shrift" to conservation of public lands.

"It's a political body. Very often there's a political aspect (to its decisions)," Webster said recently. "It takes a narrow view of the issues and a broad view of the politics."

Although lengthy dialogues sometimes do take place, like heated discussions about the building of a psychiatric hospital in Marlboro Township that lasted, off and on, from 2007 to 2009, actions are still approved despite objections to prices and environmental concerns.

There are also the moments of self-recognition at the sometimes-haphazard functions.

"And if it's appropriate, I'll move the motion to approve this very sloppily performed transaction forward," commission member and state Sen. Bob Smith, D-Middlesex and Somerset, said at a June meeting before voting to increase the size of a student housing building at Montclair State University.

Smith told the New Jersey Herald in a phone interview this week that the commission's role is "to do the right thing by the taxpayers." He admitted the recent Tennessee Gas Pipeline deal did just the opposite.

"That pipeline will generate tens of millions of dollars for the company," he said of El Paso Corp. Smith was the only member of the commission to vote against the pipeline.

But no decision in recent commission history garnered as much attention -- on the commission or in Sussex County -- as the purchase of 1,300 acres on Hamburg Mountain by local developer Eugene Mulvihill.

A mountain of controversy

The Hamburg Mountain deal reached in 1986 remains critics' biggest contention with the way the body is run.

Hamburg Mountain, according to testimony from the State House Commission meetings, was a land deal made when the state unloaded 1,300 acres for \$880,000, or some \$675 an acre, to Mulvihill. The conditions of the sale included that the land would be preserved for recreation purposes.

A giant on the commission was state Sen. Walter Kavanaugh, who ran the meetings for many years, using a sense of humor and brusque efficiency to get through agendas, and even controversies, quickly.

But Kavanaugh railed against the Hamburg Mountain deal. He assailed the agreement again and again and again in public, and had especially sharp words for Mulvihill, the developer of the mountain.

"(The deal) stated not building houses," Kavanaugh said at a 2001 commission meeting. "But it was sold to a great American, which was a fellow by the name of Gene Mulvihill. After we sold it, we found out that he was a convicted felon. And I guess he did his time and got some money on the side. He was the one. But he bought the property for 800-some thousand. And just recently, he turned around to Intrawest and sold the property for somewhere between \$5 and \$6 million. Now, there's a great deal of development."

Mulvihill sold most of his Great American resort to Praedium Recovery Fund (which then quickly sold the property to Intrawest) for \$11 million, plus about \$6 million in legal fees, during bankruptcy proceedings in 1998. Also, Mulvihill did plead guilty to falsifying his resort's insurance coverage and underreporting rent owed to the state for land leased to operate a ski area, but that occurred nearly two years before the commission sold the Hamburg Mountain land.

Kavanaugh was correct in his belief the Hamburg Mountain deal was a blow to taxpayers. Just 16 years after selling the top of the mountain to Mulvihill for \$880,000, the state paid more than eight times that amount to get much -- but not all -- of it back.

In 2002, Intrawest sold some 400 acres of property on the mountain back to the DEP for \$7.1 million and donated more than 1,390 acres to the state.

The deal was prompted by environmental groups trying to stop Intrawest, the developer of the Mountain Creek Resort, from building hotels, a conference center, a mountaintop ski lodge, condominiums, townhouses and a golf course on top of Hamburg Mountain (all despite a deed restriction that would, hypothetically, have stopped them).

Kavanaugh, who died in 2008 just two days after leaving office, replied with disbelief that the new owners could "weasel around" the restrictions that the state had supposedly set on Hamburg Mountain.

Under the Intrawest deal, the state owned the property and no other mountaintop development was permitted, but Intrawest reserved the right to maintain and improve ski trails and expand ski operations.

"It's unbelievable that anybody in their right mind would think that we sold land at that price and then ... allow somebody to develop it,"

Kavanaugh said. "We've got to be fools to let that happen. It just doesn't happen."

"My concern is, the government gets so big, and when we do things, it just kind of slips through the cracks," the senator said of the Mulvihill deal.

Mulvihill's son, Andy, along with a team of investors, bought the Mountain Creek Resort in May. The investors did not disclose how much they paid Intrawest for the property, but Andy Mulvihill, a principal investor, said the group is planning to develop the mountain further.

According to a statement from the Mulvihill-owned Crystal Springs, the purchase of Mountain Creek sets the stage for development of a "mega-resort," combining the best of high-end amenities and outdoor recreation, from golf courses to zip lines.

When questioned about his father's run-in with the commission, Andy Mulvihill quickly defended three decades of development of the mountain.

"He created a lot of jobs and brought ratables to the town," he said of his father's work. "I'm very, very proud of what he has done."

The Hamburg Mountain deal actually became a running joke for years on the Kavanaugh-led commission, when the commission was voting on relatively cheap leases.

"I would call it a joke but it's not funny," said Jeff Tittel, director of the New Jersey Sierra Club, last week. "These lands were purchased for the public trust, and we are giving these lands away and violating that trust."

From trenton with love

Aside from knowing that State House Commission meetings take place in Trenton, good luck with any other detail.

Agendas are hard to find, forums change nearly every meeting, and the few individuals who have made a point of following the commission find themselves banging their heads against a wall trying to plan schedules.

For the 2010 session on Montclair State University's student housing, notice of the meeting was given June 9 at 5 p.m. to the Secretary of State and the State House press row, and posted at the office of the State House Commission. The commission met the next day at 9 a.m.

The commission acknowledged the meeting was a violation of the Open Public Meetings Act, but also gave its reasoning that the meeting was an emergency.

Tittel, who has been a regular in the audience at commission meetings for decades and who has participated in occasional controversies flaring over Hamburg Mountain, the "diversion" of parkland and other decisions, lamented over finding agendas and times. He said the Tennessee Gas Pipeline agreement was done with an extra degree of secrecy.

"It was done so people wouldn't know what's going on," Tittel said.

State Sen. Gerald Cardinale, R-Bergen, who has been on the commission since 2007, said, in general, that meeting times and agendas are readily available to the public. But he admitted the pipeline deal created some frustration because of last-minute cancellations and reschedulings.

"It wasn't like it was kept secret," said Cardinale, noting the 50 or so people at the June meeting where the pipeline lease was approved.

When the New Jersey Herald attempted to find upcoming meeting agendas this week, the paper's reporters contacted the only listed number for the State House Commission, Secretary Robert Shaughnessy Jr., and were told by a staffer to contact a spokesperson for the Treasury Department.

The spokesperson then told the reporter to contact Shaughnessy. When told of the situation, the spokesperson called back and, after speaking with Shaughnessy directly, advised the paper to contact the lieutenant governor's office. The secretary of the lieutenant governor "went out in the hall" to check if any agendas for the commission were listed. There were none posted, but said she would call back.

A representative for the lieutenant governor called back three hours later and said the paper should call Shaughnessy.

The future

In the wake of public anger from the Tennessee Gas Pipeline deal, the DEP said recently it would be overhauling the process of leasing and selling public land with an eye toward getting higher prices for taxpayers.

"This process is broken," DEP Commissioner Bob Martin said in a recent written statement. "How we determine compensation for allowing use of our precious state property, much of it preserved as unique open space and recreational land, needs to be overhauled."

As was the problem with the pipeline, the DEP has spent much of its recent history appraising state-owned land as not developable, and then selling the property on the cheap to developers -- who then develop the land.

"The problem is we get into a routine," Smith said. "DEP traditionally looked at open space for appraisals, not as anything income-generating."

Martin announced the creation of a "special panel" made up of representatives from five state agencies that will "develop and recommend a new leasing formula that will treat all companies that do business with the state fairly and equally, while getting the best deals for taxpayers."

According to Martin, the panel will deliver its recommendations later this year to Gov. Chris Christie.

Smith also said he plans to introduce new legislation "in the fall" to the state Legislature to "try and correct the problem."

"If they were serious, they would put a moratorium on diversions of public lands until there is a new program in place," Tittel said of both the DEP's and the State House Commission's current appraisal and leasing methods.

Perhaps the best way to view any new method is through Smith's comments last year. "But I do think the senator is right to be paranoid," he said during discussion of the Camden riverfront in October 2009. "Because the one thing I've learned in New Jersey state government is: Paranoia, every once in a while, is the appropriate approach."

Former Herald Staff Writer Seth Augenstein contributed to this article.

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