ARIZONA STATE LEGISLATURE
Forty-sixth Legislature – Second Regular Session

AD HOC COMMITTEE ON STATE TRUST LAND REFORM

Minutes of Meeting
Wednesday, June 9, 2004
Senate Hearing Room 1 -- 1:00 p.m.

Chairman Bennett and Mr. Gray called the respective houses to order at 1:10 p.m. and attendance was noted by the secretary.

Members Present

Senator Allen	Representative Boone
Senator Bee	Representative Debra Gullett (alternate)
Senator Blendu	Representative Landrum Taylor
Senator Brown	Representative Lopez
Senator Cannell	Representative Nelson
Senator Bennett, Cochair	Representative C. Gray

Members Absent

Representative Flake, Cochair

Speakers Present

Mark Winkleman, Land Commissioner, State Land Department
Patricia Boland, Assistant Attorney General, State Land Department
Arlen Colton, representing himself
Debra Stark, Community Development Director, City of Peoria
David Richert, Planning Director, City of Phoenix

Presentation by State Land Department

Mark Winkleman, Land Commissioner, State Land Department, reviewed a handout relating to the Land Department 2004 Appropriated – General Fund Budget (Attachment 1). He anticipated that SLD will generate $300 million from sales of state trust land at auction by the end of this fiscal year, which is more than triple the average sales over the last five years, but not close to what SLD should be doing.

Displaying a map showing state trust lands and major developments, Mr. Winkleman related that the state is in the midst of a boom, and the population has grown dramatically at about 100,000 residents per year in Maricopa County alone. Maricopa County is being urbanized at a rate of between 15,000 and 20,000 acres per year. In the last five years, SLD sold an average of 2,500 acres of urban land in Maricopa County each year, which is about 15 percent of the total 15,000 to 20,000 acres being urbanized. The Valley is growing in every direction, and area available to grow is in kind of a semicircle around the north, the southeast, and a bit in the southwest. Development is a lot more than 15 percent, so SLD is not keeping up. The land inside the developing areas is about 215,000 acres, so with SLD disposing of about 2,500 acres per year, it would take 86 years at the current pace to catch up to the private sector. The pockets of private property owners are being lined at the expense of beneficiaries from sale of property out on the fringes, SLD is not planning as well as it should because large tracts of land are being planned around state trust land, the infrastructure is not taken into account, and general plans have not been developed to the point of the private sector. The current system is causing sprawl and leapfrog development.

Mr. Winkleman noted that the average sale price of land is about $166,000 per acre this year, so if SLD doubled the output so 5,000 acres are ready for market per year, at $100,000 per acre, for example, $500 million would be generated compared to the $300 million anticipated by the end of this fiscal year. He added that from working in the private sector, the need for reform is very obvious.

President Bennett recognized State Treasurer, David Petersen, in the audience.

When Ms. Lopez asked what prevents SLD from selling more land per year, Mr. Winkleman replied that SLD will push to get more acreage ready for sale, but additional bodies and consultants are needed. SLD is very limited in the way property is disposed of without many of the tools the private sector has. With this proposal, SLD would have the ability to do participations, financing options, and other items in order to keep up. Also, SLD would retain a portion of the proceeds to fund operations.

Mr. Gray assumed the Chair.

Senator Allen stated that from personal observation, SLD has not had the manpower to implement this proposal, which will provide an opportunity to sell more land and provide more money for the education community.

When Mrs. Landrum Taylor asked if more employees could be obtained without this proposal, Mr. Winkleman responded that the Legislature controls SLD's budget because it is a state agency, but the budget was not increased by the Senate or House this year. He explained to Senator Bee that under this proposal SLD would retain about 15 percent of the funds from state trust land sales to supplement SLD operations that would otherwise go to the permanent fund. SLD would develop a proposed budget as part of the Executive budget, which would have to be justified to the newly formed board of trustees.

Senator Bee stated that he heard SLD's annual budget could reach $15 billion and questioned why permanent funding from the base would be used rather than earnings off the fund. Mr. Winkleman responded that money in the permanent fund is money the beneficiaries have not seen, so it is easier to take. Mr. Gray commented that if sales are increased, the interest earned would also increase, so taking some of the future interest money would not impact the current level of receipts from the fund.

Mrs. Gullett stated that SLD is doing a great job. She has been involved in state land issues and appreciates the efforts that have been made, the press SLD has been receiving, and the enormous return on investment. She asked about other tools in the reform package and differences in the real estate world versus restrictions at SLD. Mr. Winkleman envisioned the use of a tool in the future that would allow participation with the private sector. Much money and time goes into creating master planned communities, of which value of the land is a surprisingly small part. The amount of capital that goes into the land is about 20 percent, so the other 80 percent is actual infrastructure and the entitlement process. SLD would be able to act like property owners by leveraging off homebuilders and master plan developers who have the money and resources to hire consultants to build communities, and part of the staff not on the SLD budget currently would spend a great deal of time looking over the shoulders of those folks to protect SLD's interest. SLD is well situated for that in terms of development because the agency has engineers and planners, but financial safeguards would have to be added in the future. On the professional side, SLD has a very hard-working staff, but like the private sector hires outside attorneys, planners, and engineers because the workload is not always consistent, SLD would use that same flexibility to enhance the value.

Mr. Winkleman indicated to Senator Bee that the 15 percent would go into a management fund, and anything above a specific amount would go into the permanent fund.

Senator Bee stated that constituents of his attempted to purchase leased property, but SLD insisted on a long-term lease. The constituents appealed and won; however, the proposal completely removes the appeals process.

Patricia Boland, Assistant Attorney General, State Land Department, related that there are some instances in which the appeals process has been removed. For example, some of the sales applications for rural land that SLD denied were appealed. The decision to deny was made on the basis that SLD wanted to dedicate resources to valuable land that would bring the most money and deny applications on non-valuable land so resources are not expended on those lands. She noted that even under the Administrative Procedures Act, there has to be a right, privilege, or duty before someone has an appeal right. There is not a right to purchase trust land, so the idea was that SLD should be able to focus resources and applicants did not have any rights. If improvements are made on state land and someone has the right to be reimbursed for those, there is still an appeals process, but in instances where the person did not have a right, the appeals process is eliminated.

Senator Bee noted that the constituent had a lease and structures and attempted to purchase the property after the lease terminated. The constituent wanted to add additional structures, but SLD requested a long-term lease rather than a sale, which would depreciate the value of their asset over the term of the lease to zero, so the constituent appealed and won. Ms. Boland replied that the constituent would not have lost the right to be reimbursed for existing improvements. SLD should have the ability to make the decision as to what instrument or manner of disposition to take with the trust land to maximize revenue for the trust, but to the extent the constituent had a right, those rights could not be taken away. In any event, anybody who believes the commissioner made a decision that is arbitrary or capricious always has the ability to go to court.

Senator Bee questioned how much is spent on the appeals process annually. Mr. Winkleman indicated that he can find out, but noted that people often want to buy land in a remote area and even offer to pay double, but $500 an acre doubled is $1,000 an acre, which takes time to process, so SLD needs to have some ability to make prudent decisions about where to spend time and effort. Senator Allen asked that the figures be provided to the Committee.

Senator Blendu stated that SLD has a formula driven budget where 15 percent would be taken off the top to run the agency, which only leaves 85 percent to invest in the trust. He believes 100 percent of the money should be placed in the trust and the Legislature should fund SLD out of the interest. If SLD can look out 10 years and develop a land use plan, the agency should be able to develop a budget of how much it would take to get this done. Mr. Winkleman responded that the budget process is necessary every year because it is difficult to predict a year in advance, let alone 10 years, so he does not believe anyone is suggesting SLD would automatically receive 15 or whatever percent because that is not the intention.

Senator Cannell remarked that the small pieces of land in rural areas do not mean much in terms of funding the trust, but those lands mean a lot to the communities. It is part of SLD's mission and job to make sure that owning those state lands does not block development in rural areas. It will be difficult to recommend that fellow rural legislators vote for this legislation without inclusion of an FTE who is solely responsible for taking care of the needs of rural communities. Mr. Winkleman responded that with this proposal, individuals would be able to appear before a board to make their case and representatives would probably be from outlying areas to some extent, which would provide a voice that currently does not exist.

Senator Brown cautioned against leaving SLD in the same condition it has been for the last few years and contended that some funding should be provided if the agency is expected to do its job. SLD would still have to go through the legislative process as well as its own in-house process. In order to make money, some money needs to be spent, and SLD should be given some freedom to do that. Additionally, even if the land does not make a profit for the state, it is all part of the state, and most of the state lands lie outside Maricopa County that may not be valuable now, but could be in the future.

Mr. Winkleman agreed to provide historical data regarding what urban state trust land sold for during the past 10 years. He related to Mr. Gray that he talked to Governor Napolitano about this proposal. She was waiting to see what the coalition developed and has not taken an official position, but she is aware of the need and supportive of the concept of reform.

Mr. Gray asked if the current system has some type of regulator so if the lands are not sold too early, wonderful returns on investment can be reaped. In attempting to help education, it is important to be careful not to go too far so that in 10, 15 or 20 years all of the land is sold. Mr. Winkleman answered that it can be good to be last, but that often does not work for SLD because of the magnitude of state trust land. In terms of getting the land ready for sale and going through the planning process, some of the tracts are big, and rather large communities have bypassed state trust land in almost every instance. Infrastructure has been planned for those communities, but not state trust land, so retrofitting is necessary, which is a much more expensive process. Also, people living in the area do not really want to see more people, so when SLD goes through the entitlement process, it is more difficult to receive the same treatment prior lands received, which impairs the value. It would be better for everybody if SLD could keep up.

Mr. Gray implied that an increase of another $3 million or $6 million from the general fund would provide either double or triple the manpower SLD has to ramp up sales and questioned why this proposal would be needed if funding is provided. Mr. Winkleman responded that SLD could use the money from any source, but although the case for more money has been made annually, it has never been obtained. Assuming those funds are not taken from some other agency, which he does not advocate, it would have to come from somewhere, perhaps a tax increase, which the legislators are reluctant to impose.

Senator Allen stated that she has been in the Legislature for 10 years and has never seen SLD funded, so she is not sure it will ever happen except through this proposal.

President Bennett resumed the Chair.

Mr. Nelson remarked that he spent nearly 30 years in the development business. Many of his clients became very wealthy in the 1970s and 1980s because the market was good and they were able to market at the values at that time.

<u>Presentation on Planning the Development of State Trust Lands – Current vs. Proposed</u>

<u>Arlen Colton, representing himself</u>, reviewed a handout relating to Planning for Development of State Trust Lands – Local and State *current processes and issues* (Attachment 2). He related to Senator Allen that he has been working with the coalition that developed this proposal, and he plans to work as a volunteer for the remainder of the process after his contract runs, which is fairly soon.

He related to Senator Cannell that the Land Commissioner does not have his own zoning system on state land separate and above local communities; however, if the local government turns down one of the development plans with a proposed zoning change and the Land Commissioner believes it is in error, the Land Commissioner can "superzone" or basically establish the zoning. Considering that the local government needs to provide infrastructure to serve that piece of property, it is not a tool that is used often.

<u>Debra Stark, Community Development Director, City of Peoria</u>, stated that of Peoria's 170 square miles, about 42 square miles are state land. At the time the city began its general plan, SLD was working on conceptual plans for state lands in Peoria, so because the timing was right, SLD was invited to serve on an advisory committee where land uses were compared. Planning is very critical at the local level because local officials are probably most familiar with what the residents want and need. In the northern portion of Peoria, there are many hillsides, a river, and many washes the city wants to preserve and protect, and the city wanted SLD to see the value of preserving open space on SLD land using the example of West Wing Ranch (Map, Attachment 3). West Wing is about two square miles, and through the planning efforts, 360 acres of hillside were donated to the city at no cost, which is how the mountain preserve program began. In turn, the developer received greater density on the flatter areas of the property, which is nestled between two hillsides. The developer was able to receive benefit and make a profit, and as a matter of fact, houses start at a quarter of a million at West Wing Ranch.

The city hopes to continue the mountain preserve program without expending tax dollars. Through joint planning efforts, several of the state land parcels show open space preservation, so the city had a very successful process with the planning aspect.

Ms. Stark related that the city also worked with SLD on zoning where there has not always been agreement, for example, in Camino a Lago (Attachment 4). A specific area plan was processed to establish land uses for the parcel for the two square mile area, which included two schools, parks, and commercial and residential. Since approval of that parcel, other development occurred to the north. The area still remains vacant yet West Wing Ranch, Pleasant Valley, and Vistancia, a master planned community of about 8,000 acres, are moving forward. These communities were bringing good quality to Peoria and were willing to meet some of the important goals of preservation of open space. The developers in the north are paying for development and pay some of the highest impact fees in Arizona at an average of about $14,000 per house. Even with all of that development and impact fees to help with the regional infrastructure, somehow it must connect to Camino a Lago, but impact fees do not pay for all of of the infrastructure, so taxpayers have to carry some of the burden. That is a consideration she hopes the Members will think about. With some of the tools that will be given to SLD under the proposal, the agency could begin to act more like a private developer and start to develop quicker so there is a more orderly fashion of growth.

Senator Blendu stated that the justification for impact fees is that it costs money to build houses, but the person who buys the house pays that, not the developer. He questioned if the plans for development include schools. Ms. Stark responded that they do, which is the beauty of planning larger parcels of land that she hopes SLD will begin to do. In the case of Vistancia, which was developed by Sun Belt Holdings and Shea Homes, six different school sites were given to the Peoria Unified School District, and the developers will be assisting with development of the first school.

She related that when SLD tries to work with the developer, the developer will only expend so much money because there is no guarantee they will get the land. A zoning case at Happy Valley and Lake Pleasant Parkway just went through the Planning Commission on the way to the City Council in which SLD partnered with a private developer who shared the cost of rezoning, but it is not the most complete package. Much information must be provided to the City Council and Planning Commission for zoning because residents want the information. The city asked SLD and the developer assisting with the project for a design package, but the response was that it would have to be generic because the developer may not be the successful bidder, and they did not want to get so detailed they do not have a good auction because SLD is limited in what can be done, so the city struggled with the case. Because there is some opposition, and she believes the council will support it because the commission did, there might be a referendum. There is the fear of “superzoning,” although the present Land Commissioner would not do that, but if the people decide to refer the case and the Land Commissioner says he still has the “superzoning” authority and will go ahead and develop the property, that defeats the planning process of involving local residents. With the new reform package, the State Land Commissioner would have additional tools to work better with the cities and allay many of the fears with regard to “superzoning.”

Senator Allen remarked that she realizes Ms. Stark is not concerned about the current Land Commissioner, but she has seen three commissioners during her time at the Legislature, and no one knows what could happen in the future.

Ms. Stark indicated to Mr. Nelson that a few school sites are shown in the development plan for Camino a Lago, but the bidding process will still have to be gone through unless it is auctioned off first, and then the developer will provide the school, but SLD cannot write that part of the development agreement. Much more can be obtained from a private developer with regard to schools, infrastructure, and open space. If SLD had that type of ability, it would be helpful in planning for more orderly growth and everyone would know what they are getting.

Mr. Gray wondered if the value of the land is increased to the developer by not mandating schools and open space. Ms. Stark replied that she does not believe so. Camino a Lago was sold at auction about three weeks ago for over $150,000 per acre, which included designating the two schools and park, and hopefully, a high school will be included as well. She believes developers are seeing that if they provide the amenities, especially with greater masses of land, they can better market the property.

When Mr. Gray remarked that SLD already has the ability to make those kinds of agreements and realized a good return without legislation, Mr. Stark responded that SLD can designate land uses, but cannot give the city open space because of the requirement to sell the land for value. SLD cannot give the city schools and can only hope the land is auctioned to someone who recognizes they may have to dedicate open space and schools. That is successful in Peoria, but not necessarily other locations. Camino a Lago has been such a hot property because of the booming market nearby, so there was a lot of interest because it is an infill parcel.

Mr. Nelson asked what happens if a large area is generally planned and someone comes in with 40-acre, 30-acre, or 20-acre parcels. Ms. Stark replied that a developer with a small parcel of land will not provide a park, especially if the developer is paying impact fees. Mr. Nelson said when the state has the ability to plan large parcels and pull the amenities out, the value of the land further increases to those who want to live in the area. It would be better to work along those lines rather than deal with small individual parcels. Ms. Stark agreed, noting that the auction was only for the southern portion of Camino a Lago, so piecemeal auctioning is being done. The land is meaningful, but it is not being auctioned off in one large parcel. Mr. Nelson stated that as a school board member, he remembers chasing three different pieces of land that a developer paid a higher price for, so it is an ongoing problem between the districts and cities in trying to meet planning requirements when dealing with small parcels.

Senator Bee questioned if school sites designated in the plan are absorbed in the cost of the entire development or if the School Facilities Board steps in and purchases those for construction. Ms. Stark said it depends. In Vistancia, for instance, the six sites are being donated to the school district, so the school district does not have to purchase the land; however, with the exception of the first school, the school district will have to ask the School Facilities Board for money to build the schools. In the case of Camino a Lago, she is not sure yet. The auction was held a few weeks ago, so the city will have to work with the developer. Some school districts love to get the land, but some now ask for developer assistance, which could occur.

David Richert, Planning Director, City of Phoenix, related that state lands are the most difficult thing that staff, politicians, and citizens work with, which indicates that the statutes need to be brought more contemporary with what is going on. Mr. Winkleman is a breath of fresh air and his staff always works closely with the city, but changes are necessary. Referring to a map, he stated that the City of Phoenix is the only large city in the country, by virtue of the requirements of Growing Smarter, to have an updated general plan. The northern part of the city has blue marking underneath as state trust land, which is basically 55,000 acres above the Central Arizona Project. The Desert Ridge Marketplace is a great place to be, Paradise Ridge will be next to Scottsdale, and the North Black Canyon Corridor is just beginning to come alive. State land bounds all of that, and SLD should be given more resources in order to hire people to get as much out of that land as possible.

Mr. Richert said the most infamous piece of property in the City of Phoenix is 620 acres, which is in the south of South Mountain. The city started planning with SLD, but the land is still not disposed of and now people moved in around it and see the area as their open space where the value can bounce between $50 million and $65 million. To appease constituents, the city promoted a bond fund to get some open space from that and has other financing to purchase north of Chandler Boulevard in the immediate area, so it will remain open space. At the time it was planned, the city extracted some of the open space, but the people wanted it all, so he has been working with Mr. Winkleman on a development agreement. That has now caused problems with people willing to bid on the property, so the new actions in the proposal will help in getting more timely disposition of land in order for SLD to get ahead of the curve instead of always being last. In relation to the question of whether it is better to be the last one out, he believes the land price may be stable or have gone down a bit, and depending on the developing ability of the property, it may be less than originally anticipated.

He stated that the Arizona Preserve Initiative (API) was perceived by the city as an opportunity to buy land. A tax was passed and he worked with the former Land Commissioner, Mike Anable, to purchase 2,000 of the 15,000 acres the city wants to buy, but there is now a threat that the API could be challenged. By virtue of the new regulations, the city would have the ability to buy open space that is actually on the plans before residents move in.

He remarked that Anthem is so successful that the state lands in between need to be developed and planned. He believes in planning with enough flexibility for adjustment, including school and park issues, so SLD can obtain a letter from the planning director stating what will be received if someone is willing to do certain things within specific boundaries, which is what happened with the sales that have been going on. Developers do not want to risk their own capital to develop land anymore.

Mr. Richert related that the current process of dealing with state lands requires individuals with much fortitude to get the work done. Mr. Winkleman is doing that, but the current statutes inhibit what could be the greatest thing this country has seen because there are 9 million acres in the path of development that should benefit the people who come to Arizona.

Senator Allen asked what will happen to the land he referred to or any other open space since the API is under the cloud of a potential lawsuit. Mr. Richert pointed to a piece of property on the map that the city is presently attempting to buy that is stuck. The city would have to zone adjacent privately held land and restrict it to say it will be dedicated, which the city has the authority to do and the SLD has worked on before. Referring to Stetson Hills north of Happy Valley between 39th and 55th Avenues, he noted that the city negotiated 900 acres that was extracted with development. The mayor at that time did not want to work the process that way because it was development driving conservation open space, but rather obtain the open space and let the values grow around it, which studies show grows by leaps and bounds. That is the process the city is moving back toward because even if there is some way Mr. Winkleman can put the land up for sale, the city still has to bid against the world.

Senator Blendu remarked that a better valuation process is needed for open land, which seems to be valued differently than developed land.

Discussion

Senator Bennett related to Mrs. Landrum Taylor that the Members were provided with a stakeholder proposed draft of language to go to the voters through a concurrent resolution (Attachment 5) and statutory amendments (Attachment 6). He noted that testimony was provided about the current process, but the Members need to understand the practical differences in the draft legislation in order to decide if introducing a bill would be wise on behalf of the state.

Ms. Landrum Taylor indicated that since this issue is as large as statehood, as Speaker Flake mentioned at the previous meeting, and has been worked on for so long, she would like to see an intro set before going forward. Mr. Gray stated that because the draft was offered by the stakeholders and the Members are not sure what is included, it would be premature for someone to introduce the legislation. He added that he is disappointed that testimony focused on the current system and not the proposal, which he hopes to hear more about tomorrow.

Senator Allen requested that meetings next week be held in the middle of the afternoon.

Without objection, the meeting adjourned at 3:39 p.m.

Linda Taylor, Committee Secretary
June 16, 2004

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.)