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The Honorable Jennifer Cohan
Secretary of the Delaware Department of Transportation
DelDOT Administration Center
800 South Bay Road
Dover, DE 19901

RE: *Conveyance of K252 & K253 to JMER Properties, LLC*

Dear Madam Secretary:

Please accept this correspondence as an inquiry from my client with reference to December 31, 2018 conveyance of the parcels identified as K252 and 253 (hereinafter “the parcels”) from the Department of Transportation (hereinafter “the Department”) to JMER Properties, LLC, MSK Ventures, LLC, and Johnny Nichols Nurseries, LLC (hereinafter “JMER” collectively). Review of this transaction has led my client to some troubling questions which you may be able to clarify and to which I believe you are most able to respond.

As you are aware, any conveyance of land owned by the Department, which is no longer needed for Department use is governed by the provisions of 17 *Del.C.* §137(b).¹ Following a FOIA request which the Department graciously responded to, it appears that the Department acquired the parcels on or about October 20, 2008 for a total price of \$2,780,000.00. Based upon your Department’s response to my client’s FOIA request, it further appears that JMER approached to Department indicating its interest in purchasing the parcels on July 19, 2018.

My client has expressed concern that the Department deviated from the normal procedure of public notice and auction as required pursuant to 17 *Del.C.* § 137(b)(3), and in expedited

¹ 17 *Del.C.* § 137(b)(3) “[. . .]The Department shall notify the public of the sale by posting a “Notice of Sale” on the property at least 2 weeks before the sale and by publishing a “Notice of Sale” for at least 1 day a week for 2 consecutive weeks in a newspaper having general circulation in the county where the property is located. The “Notice of Sale” shall describe the property to be sold, state the date, time, location of the sale, terms and conditions, and amount of the minimum acceptable bid. [. . .] The Department shall offer the property for sale at a price not less than 85 percent of the approved appraised value and shall reject any bid of a lesser amount. The Department may reject any bid for due cause.”

fashion, moved forward with the sale of the parcels to JMER. Materials provided to my client following a FOIA request indicate that following a meeting with you, it was agreed that the acquisition process would be expedited. The expedited process is reflected in (1), the Department responding to a solicitation by JMER to purchase the parcels; (2), the Department not giving public notice that it sought to dispose of the parcels following JMER's solicitation; (3), e-mail correspondence to members of JMER indicating that the Department was "flying through" procedures pertaining to the sale; (4), the significant disparity between the price paid by private developers in 2004/2005, the price paid by the Department for the parcels in 2008, and the price for which the parcels were sold in 2018 reflecting substantial deviation from the statutory framework for the Department to dispose of lands owned by it; (5), and that the parcels were appraised at between \$379,000.00 and \$442,000.00; the parcels were sold for \$275,000.00 reflecting merely 62-72% of the appraised value. By statute, sales of lands held by the Department must be at 85% of appraised value.²

With respect to this transaction, my client seeks clarification as to why the Department agreed to expedite the sale of the parcels, bypassing statutory requirements in the process. Further clarification is sought with respect to the substantial disparity in price of acquisition and subsequent sale. My client is also curious as to why the Department sought and acquired the parcels during the 2008 recession as part of a corridor preservation project. Please indicate what conditions changed between 2008 and the time the parcels were conveyed to JMER in 2018 leading the Department to change its position with respect to the parcels being necessary for corridor preservation. Finally, my client seeks clarification as to why this transaction was conducted in a manner that appears intended to avoid any public scrutiny.

Your prompt attention to these inquiries is greatly appreciated.

Respectfully,



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² 17 Del.C. § 137(b)(3).