

No. 2005-33

AN ACT

SB 688

Authorizing the Department of General Services, with the approval of the Governor and the Department of Environmental Protection, to grant and convey to Erie-Western Pennsylvania Port Authority certain lands situate in the City of Erie, County of Erie.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Conveyance in City of Erie, Erie County.

(a) Authorization.—The Department of General Services, with the approval of the Governor and the Department of Environmental Protection, is hereby authorized on behalf of the Commonwealth of Pennsylvania, as the “grantor,” to grant and convey, for consideration of \$1.00, to the Erie-Western Pennsylvania Port Authority, as the “grantee,” two tracts of land as described in subsection (b).

(b) Legal description.—The two tracts to be conveyed are situate in the City of Erie, County of Erie, Pennsylvania, bounded and described as follows:

PARCEL “A”

ALL THAT CERTAIN PIECE OR PARCEL OF LAND situated in the Fourth Ward of the City of Erie, County of Erie, State of Pennsylvania, as depicted on the Description Sketch of Sassafras Street Pier Parcels, dated November 2, 2004, prepared by Urban Engineers of Erie, Inc., and more particularly described as follows:

BEGINNING at the intersection of the northerly extension of the east line of water lot 91 with the easterly extension of the north line of water lots 92 through 120 (said north line lies 1712.58 feet northerly of and parallel with the centerline of Second Street);

THENCE South 63 degrees, 40 minutes, 45 seconds West, along said easterly extension and along said north line of water lots 92 through 120, a distance of 886.42 feet to the northwest corner of water lot 115;

THENCE North 26 degrees, 21 minutes, 15 seconds West, along the northerly extension of the west line of said water lot 115, a distance of 577.42 feet to an intersection with the U.S. Harbor Line (said Harbor Line lies 2,290 feet northerly of and parallel with the centerline of Second Street);

THENCE North 63 degrees, 40 minutes, 45 seconds East, along said U.S. Harbor Line, a distance of 886.42 feet to an intersection with said northerly extension of the east line of water lot 91;

THENCE South 26 degrees, 21 minutes, 15 seconds East along said northerly extension, a distance of 577.42 feet to the point of beginning.

Containing 11.750-Acres.

PARCEL “C”

ALL THAT CERTAIN PIECE OR PARCEL OF LAND situated in the Fourth Ward of the City of Erie, County of Erie, and Commonwealth of Pennsylvania, as depicted on the Description Sketch of Sassafras Street Pier Parcels, dated March 29, 2005, prepared by Urban Engineers of Erie, Inc., and more particularly described as follows:

BEGINNING at the intersection of the easterly right-of-way line of Myrtle Street (60-foot right-of-way) with the north line of water lots 116 through 120 (said north line lies 1712.58 feet northerly of and parallel with the centerline of Second Street);

THENCE South 26 degrees 21 minutes 15 seconds East along said easterly right-of-way line, a distance of 979.81 feet to an intersection with the northerly right-of-way line of the Bayfront Parkway (right-of-way width varies);

THENCE South 64 degrees 12 minutes 52 seconds West along said northerly right-of-way line, a distance of 60.00 feet to an intersection with the westerly right-of-way line of said Myrtle Street;

THENCE North 26 degrees 21 minutes 15 seconds West along said westerly right-of-way line, a distance of 979.25 feet to an intersection with the westerly extension of said north line of water lots 116 through 120;

THENCE North 63 degrees 40 minutes 45 seconds East along said westerly extension, a distance of 60.00 feet to the point of beginning.

Containing 1.349-Acres.

Both Parcels Containing in Total 13.099-Acres.

(c) General conditions.—The conveyance shall be made under and subject to all lawful and enforceable easements, servitudes and rights of others, including, but not confined to, streets, roadways and rights of any telephone, telegraph, water, electric, cable, gas or pipeline companies, as well as under and subject to any lawful and enforceable estates or tenancies vested in third persons appearing of record, for any portion of the parcels or improvements erected thereon.

(d) Additional conditions.—The conveyance shall further be made under and subject to the following conditions, which shall be contained in the deed of conveyance:

(1) Except as provided in paragraph (5), the parcels conveyed in this act shall be used for convention center purposes only. The term “convention center purposes” shall mean activities directly related to the construction, operation and maintenance of a convention center. Should the grantee, its successors or assigns permit the parcels conveyed in this act, or any portion thereof, to be used for any other purpose, the title shall immediately revert to and revest in the grantor.

(2) (i) The grantee, its successors and assigns shall provide and maintain at least the following free public access to the bayfront for fishing and other recreational activities and free public parking in connection with such access:

(A) Public walkways on Parcel "A," including water edge promenades providing free public access to the water and allowing for passive and active recreational activities year round and signage indicating the walkways are open to the general public as depicted on the plans presented by BMD Architects, LLC, identified as Site Plan AS100, Sector A AS101 and Sector B AS102 to the Erie City Planning Commission and approved by the Erie City Planning Commission on May 17, 2005.

(B) A free public park area along the public walkway near the water edge on the northwest corner of Parcel "A."

(C) A minimum of ten free public parking spaces available at all times located proximate to the public walkway near the water edge and signage indicating the free public parking. Additional free public parking of up to 55 spaces shall be provided in the parking lots that will service the convention center, to the extent that providing such parking spaces will not interfere with convention center operations and will not otherwise impair the ability of the convention center operations to generate revenue from such parking lots.

(ii) Should the grantee, its successors or assigns wish to modify the public access and parking required by this paragraph, it must obtain the prior written approval of the Department of Environmental Protection and the Department of General Services, which approval shall not be unreasonably withheld. The public access and public parking shall be constructed substantially concurrently with the convention center facilities and shall be open for public use no later than the opening of the convention center facilities for public use.

(3) Before any fill is placed or any structure is erected upon, in or over those portions of the parcels which are presently under water, the grantee, its successors or assigns shall comply with the relevant provisions of the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, which may require further measures to provide for public access and use of the land and adjacent water.

(4) The parcels to be conveyed shall not be further transferred except to another public agency with the prior written consent of and under terms that have been approved in writing by the Department of General Services and Department of Environmental Protection except as provided in paragraph (5). Should the grantee, its successors or assigns convey the parcels, or any portion thereof, in violation of this paragraph, title in the parcels herein conveyed shall immediately revert to and re-vest in the grantor. For purposes of this paragraph, "public agency" shall mean an agency of Federal, State or local government or a municipal authority, including, but not limited to, an authority organized pursuant to the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(5) (i) Notwithstanding the provisions of paragraph (4), the transfer of all or a portion of Parcel "C" to Building Materials Corporation of America may be made by the grantee or its successors or assigns with the prior written consent to all of the terms and conditions of the transfer of the Department of Environmental Protection and the Department of General Services, which consent will not be unreasonably withheld, provided that the terms of the transfer include the prior or concurrent transfer to the grantee or its successors or assigns from Building Materials Corporation of America of the following described tract:

PARCEL "F"

THAT CERTAIN PARCEL OF LAND situate in the Fourth Ward of the City of Erie, County of Erie, and Commonwealth of Pennsylvania, being a portion of water lots 101 through 104, as depicted on the Description Sketch of Sassafras Street Pier Parcels dated March 30, 2005 prepared by Urban Engineers of Erie, Inc., and more particularly described as follows:

BEGINNING at the northeast corner of said water lot 101;

THENCE South 26 degrees 21 minutes 15 seconds East along the east line of said water lot 101 and along the westerly right-of-way line of Sassafras Street (60-foot right-of-way), a distance of 294.12 feet to an intersection with the approximate easterly water's edge of an existing creek; thence northwesterly along said approximate easterly water's edge, the following eight courses: 1) North 67 degrees 28 minutes 49 seconds West, a distance of 25.00 feet; 2) thence North 42 degrees 08 minutes 20 seconds West, a distance of 32.32 feet; 3) thence North 18 degrees 01 minutes 02 seconds West, a distance of 44.43 feet; 4) thence North 32 degrees 16 minutes 04 seconds West, a distance of 33.13 feet; 5) thence North 43 degrees 12 minutes 40 seconds West, a distance of 25.65 feet; 6) thence North 51 degrees 32 minutes 32 seconds West, a distance of 24.01 feet; 7) thence North 59 degrees 26 minutes 47 seconds West, a distance of 42.37 feet; 8) thence North 64 degrees 16 minutes 04 seconds West, a distance of 108.47 feet to an intersection with the north line of said water lots 101 through 104 (said north line lies 1712.58 feet northerly of and parallel with the centerline of Second Street); thence North 63 degrees 40 minutes 45 seconds East along said north line, a distance of 129.65 feet to the point of beginning.

Containing 0.319 Acres.

(ii) Once so transferred, Parcel "C," or such portion thereof that is so transferred:

(A) May be further transferred free of the provisions of paragraph (4).

(B) Shall not be subject to the requirement that the parcel so transferred be used for convention center activities.

(iii) Any portions of Parcel "C" remaining in the grantee, its successors or assigns following a transfer to Building Materials Corporation of America pursuant to this paragraph shall:

(A) Remain subject to the provisions of paragraph (4).

(B) Not be subject to the requirement that the parcel so remaining be used for convention center activities.

(iv) Notwithstanding the provisions of paragraph (4), the transfer of the following described portion of Parcel "A" to Building Materials Corporation of America may be made by the grantee or its successor or assigns with the prior written consent to all of the terms and conditions of the transfer of the Department of Environmental Protection and the Department of General Services, which consent will not unreasonably be withheld, provided that the terms of the transfer include the prior or concurrent transfer to the grantee or its successors or assigns from Building Materials Corporation of America of Parcel "F" pursuant to subparagraphs (i), (ii) and (iii):

PARCEL "E"

THAT CERTAIN PARCEL OF LAND situate in the Fourth Ward of the City of Erie, County of Erie, and Commonwealth of Pennsylvania, as depicted on the Description Sketch of Sassafra Street Pier Parcels dated March 30, 2005 prepared by Urban Engineers of Erie, Inc., and more particularly described as follows:

BEGINNING at a point in the north line of water lots 105 through 111 (said north line lies 1712.58 feet northerly of and parallel with the centerline of Second Street) which point lies 139.09 westerly of the northeast corner of water lot 101;

THENCE S63 degrees 40 minutes 45 seconds W along said north line of water lots 105 through 111, a distance of 223.79 feet to an intersection with the approximate water's edge of Presque Isle Bay; thence N25 degrees 57 minutes 02 seconds E along said approximate water's edge of Presque Isle Bay, a distance of 98.79 feet; thence N10 degrees 06 minutes 45 seconds E continuing along said approximate water's edge of Presque Isle Bay, a distance of 114.09 feet to an intersection with the approximate westerly water's edge of an existing creek; thence easterly and southeasterly along said approximate westerly water's edge, the following five courses: 1) N 70 degrees 08 minutes 12 seconds E, a distance of 14.68 feet; 2) thence S53 degrees 30 minutes 37 seconds E, a distance of 40.54 feet; 3) thence S35 degrees 05 minutes 09 seconds E, a distance of 28.20 feet; 4) thence S40 degrees 44 minutes 07 seconds E, a distance of 59.80 feet; 5) thence S68 degrees 01 minutes 36 seconds E, a distance of 38.49 feet to the point of beginning.

Containing 0.365 Acres.

Once so transferred, Parcel "E":

(A) may be further transferred free of the provisions of paragraph (4); and

(B) shall not be subject to the requirement that the portion so transferred be used for convention center activities.

(v) Parcel "F" shall be subject to the provisions of paragraphs (1) and (4) following any transfer to the grantee or its successors or assigns pursuant to this paragraph. Should the grantee, its successors or assigns use all or any portion of Parcel "F" in violation of the provisions of paragraph (1) or transfer all or any portion of Parcel "F" in violation of the provisions of paragraph (4), the title thereto shall immediately revert to and revest in the grantor. Simultaneously with the conveyance of Parcel "F" pursuant to paragraph (5)(i), the grantee shall execute and record a declaration of restrictive covenants setting forth the provisions of paragraphs (1) and (4), which declaration shall be subject to the prior approval of the grantor.

(vi) The covenants in this subsection shall run with the land and shall be binding upon the grantee and its successors and assigns.

(e) Nature of private rights.—Upon the completion of the public improvements to Parcel "B," also known as Sassafras Street, as depicted on Description Sketch of Sassafras Street Pier Parcels dated March 30, 2005, prepared by Urban Engineers of Erie, Inc., any private rights that Building Materials Corporation of America, its successors or assigns have or may have had to the use of Sassafras Street will be under and subject to all rights of the public and will be subject to the authority of the Department of Transportation or its successor in interest.

(f) Land use restriction.—All conveyances authorized or referred to under this act shall be made under and subject to the condition, which shall be contained in the deeds of conveyance, that no portion of the parcels conveyed shall be used as the location for a licensed gaming entity authorized under 4 Pa.C.S. Part II (relating to gaming) or similar type of facility authorized under the laws of this Commonwealth. The condition shall be a covenant running with the land and shall be binding upon the grantee, its successors and assigns. Should any grantee, its successors or assigns permit any parcel conveyed in this act, or any portion thereof, to be used in violation of this subsection, the title shall immediately revert to and revest in the grantor.

(g) Deed.—The deed of conveyance shall be by Quitclaim Deed and shall be executed by the Secretary of General Services in the name of the Commonwealth.

(h) Costs and fees.—Costs and fees incidental to this conveyance shall be borne by the grantee.

(i) Expiration of authority to convey.—In the event that the conveyance authorized hereby does not occur within 18 months following the effective date of this section, the authority contained herein shall become void.

Section 2. Effective date.

This act shall take effect immediately.

APPROVED—The 5th day of July, A.D. 2005.

EDWARD G. RENDELL