OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS

The Star Store 20-Year Lease

A Lack of Shared Vision and Collective Accountability Wastes Millions in Public Dollars

September 16, 2024

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Office of the Inspector General
Commonwealth of Massachusetts

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September 16, 2024

Via Electronic Mail

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Re: The Star Store 20-Year Lease: A Lack of Shared Vision and Collective Accountability Wastes Millions in Public Dollars

Dear Governor Healey and Commonwealth Leaders:

The Legislature directed the Office of the Inspector General (OIG) to review expenditures incurred by the Division of Capital Asset Management and Maintenance (DCAMM) and the University of Massachusetts Building Authority (UMBA) in leasing the Star Store in New Bedford for use by the University of Massachusetts Dartmouth (UMD).

The original 20-year lease ran from August 15, 2001, to August 14, 2021. The parties subsequently entered a short-term lease with a continuation of terms from August 15, 2021, to August 14, 2022. Upon the expiration of the short-term lease, UMD remained in the Star Store for another year through a month-to-month tenancy that ended when the Legislature stopped funding the rent payments.

The Legislature's mandate tasked the OIG with reviewing expenses incurred after the initial 20-year lease expired, specifically from September 7, 2021, until UMD vacated the building on August 31, 2023. Based upon the fact that one of my predecessors, Inspector General Robert A. Cerasoli, urged the then-Governor to veto the 1996 legislation that authorized the procurement of the underlying 20-year lease, I used my authority under M.G.L. Chapter 12A to expand the review to revisit the decisions related to the initial procurement and original 20-year lease and to cover the entire period of UMD's occupancy.

I present a summary and findings of said review herein.

The OIG found that the state-funded lease of the Star Store on behalf of UMD was flawed from its inception and resulted in a waste of public funds. The legislation that authorized DCAMM to issue a request for proposals (RFP) for a 20-year lease of a building on behalf of UMD, ostensibly to drive economic revitalization in the Gateway City of New Bedford, was not open, fair, or competitive. In fact, I conclude that it was a procurement in name only.

As forewarned by IG Cerasoli, the 1996 legislation unnecessarily exempted the procurement from existing statutory safeguards and was written so narrowly that there was no competition. Therefore, it comes as no surprise that this sham procurement resulted in a flawed lease that was financially structured to offset a $1.00 option to purchase the building at lease end (which was not executed) with premium rents paid by the Commonwealth. While the OIG found no evidence of fraud in the period of review mandated by the Legislature, the OIG did find that over $4 million in public funds were wasted due to a lack of ownership or oversight of the lease and its provisions.

The parties – the Legislature, DCAMM, UMD, UMBA and the owner of the Star Store – lacked a shared vision about the objectives of the lease, which resulted in a lack of responsibility to adhere to the lease's terms, particularly regarding maintenance and capital repairs. Maintaining the building was essential to ensure that it was in good repair at the lease's end, making the option to own a reasonable one. The Commonwealth funded most of the operational needs of the lease through a special line item, with a minimal amount coming from UMD's budget. As the end of the 20-year lease approached, the parties failed to communicate timely and effectively as to whether the option to purchase would be exercised. As a result, the Commonwealth, after paying very generous lease terms for 20 years and failing to purchase the building, then paid unnecessary and high rent payments for two additional years. When funding was not appropriated in the Commonwealth's FY24 budget, UMD was forced to abruptly vacate the building in August 2023. Since then, the Star Store has languished as a vacant, aging property in the downtown center of New Bedford.

This project may have been beneficial for the local community, as evidenced by the public outcry when UMD's Center for Visual and Performing Arts vacated the Star Store, but there were no defined metrics to objectively measure economic benefits. In the absence of a shared written commitment to the purpose of the project, the OIG could not justify the millions in public funds expended, most especially during the final two years of UMD's occupancy.

This report contains specific findings about this project and recommendations that I hope will prevent similar waste of public funds and assets in the future.

Sincerely,

Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (via email):

Senator Mark Montigny
Representative William Straus
Representative Antonio F. D. Cabral
Representative Chris Hendricks

Representative Christopher Markey
Representative Paul Schmid
Jon Mitchell, Mayor, New Bedford
Martin Meehan, President, UMass
Mark Fuller, Chancellor, UMass Dartmouth
Adam Baacke, Commissioner, DCAMM
Deborah Russell, Director of Leasing, DCAMM
Susanne M. O'Neil, Deputy Inspector General, OIG
Eugenia M. Carris, General Counsel, OIG
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Nataliya Urciuoli, Senior Executive Assistant, OIG
Stacy DeBole, State Librarian, State Library of Massachusetts

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EXECUTIVE SUMMARY

Pursuant to Section 79 of Chapter 28 of the Acts of 2023 (Section 79), the Massachusetts Office of the Inspector General (OIG) conducted a review of expenditures related to the Commonwealth's lease of the Star Store, a large commercial building located at 182 Union Street in New Bedford, for use by the University of Massachusetts Dartmouth (UMD). The original 20-year lease began in 2001, and was later extended through one-year and month-by-month tenancies. The Legislature specifically directed through Section 79 that the OIG review Star Store lease expenses incurred after September 7, 2021. But in light of concerns that former Inspector General Robert A. Cerasoli had expressed about the lease even before it was signed, the OIG began its review with the series of events leading to the original 20-year lease. The OIG's examination extended through the entire period of UMD's occupancy, which ended in August 2023 when UMD vacated the premises.

The Star Store was built in downtown New Bedford in 1844 and operated as a popular department store for many years. In 1995, the city took possession of the building in lieu of unpaid taxes. Later in 1995, the New Bedford Redevelopment Authority designated a developer (Developer) for the Star Store.

In 1996, state lawmakers, at the urging of New Bedford's state senator, passed legislation authorizing the Division of Capital Asset Management and Maintenance (DCAMM) to procure a 20-year lease for a property in New Bedford for use by UMD. While the senator viewed the measure as a linchpin for revitalizing downtown New Bedford, then-Inspector General Cerasoli raised concerns that the anticipated procurement would not be fair and competitive since the Star Store was the only building in downtown New Bedford that met the very detailed criteria specified in the 1996 legislation.

In 1999, the city sold the Star Store to the Developer for $1.00. In 2000, following the request for proposals (RFP) process envisioned by legislators, DCAMM executed an agreement with the Developer to lease the Star Store for 20 years. In addition to base rent payments – which were tied to the repayment of bonds and included the Developer's profit – the Commonwealth as the tenant was required to cover the building's operating costs and real estate taxes through payments designated as "additional rent." Inspector General Cerasoli had previously criticized the "additional rent" provision in the rider of the proposed lease attached to the RFP, writing to DCAMM in 1999, "In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively."

Significantly, the 20-year lease agreement contained an option for the Commonwealth to purchase the building for $1.00 at the conclusion of the lease. The financial structure of the 20-year lease suggests that, barring unforeseen circumstances, it was designed to facilitate the Commonwealth's lease-end purchase of the Star Store.

In 2001, UMD's College of Visual and Performing Arts (CVPA) moved into the Star Store and began using the facility for classes and studio and performance space. In 2021, at the end of the 20-year lease, the Commonwealth did not exercise the purchase option. Instead, the parties extended the lease for another year. During that one-year term, the Commonwealth continued to pay a high base rent that was no longer tied to the repayment of construction costs, plus "additional rent." In August 2022, when the lease extension was set to expire, the Commonwealth again did not exercise the $1.00 purchase option that the extension had preserved. Instead, the CVPA remained in the building without a lease and made monthly rent payments until August 2023.

After paying more than $60 million in rent and other payments over the life of the original lease, the one-year extension, and the subsequent month-to-month tenancy, the Commonwealth failed to exercise the $1.00 purchase option and allowed it to expire.

Through its investigation of the Star Store lease, the OIG assessed the circumstances surrounding the 1997 procurement, the lease terms, the lease management, and whether DCAMM and UMD effectively used the Star Store for public benefit without wasting public dollars. The OIG found that the 1996 legislation prompted a procurement process that was not open, fair, or competitive. With no competition, there was no incentive for the Developer to reduce costs or propose more favorable terms for the Commonwealth. Other lease terms were ambiguous or ignored by the Commonwealth parties and the Developer.

The OIG further found that the Star Store economic development project lacked a clear vision. DCAMM, which acts as the expert in the Commonwealth's real estate construction, purchases, and leases, did not exercise ownership over the project and did not undertake capital improvements that would have made the purchase option more attractive to the Commonwealth.

The University of Massachusetts system and UMD likewise did not ensure that capital repairs and improvements were made over time, despite the Legislature making funds available to protect the value of the Star Store over the course of the lease. UMD seemed uncommitted to maintaining a presence in downtown New Bedford upon the lease's expiration and gave mixed signals on its interest in the purchase option. Yet, some UMD officials began discussions with DCAMM about future long-term lease options, notwithstanding that neither DCAMM nor UMass had committed to seek funding for an additional lease.

When the university did not clearly communicate by the July 14, 2021 deadline that it wanted the state to purchase the building for its continued use, DCAMM and UMD should have made plans to orderly vacate the premises by the lease's end on August 14, 2021. Instead, the collective failure of DCAMM, UMD, and the Legislature to effectively communicate and plan for the end of the 20-year lease wasted over $4 million in public funds through expensive short-term and month-by-month tenancies.

To prevent a similar waste of public funds and assets in future long-terms leases, the OIG herein makes numerous recommendations.

For public entities generally:

1. Public entities entering, managing, or benefiting from leases to which the Commonwealth or one of its subdivisions is a party must establish clearly defined roles and responsibilities and implement processes to ensure accountability to protect the Commonwealth's interests.

2. When public entities are negotiating leases, atypical or nontraditional terms such as "additional rent" provisions should be the exception and must be supported by well documented justification. Public entities must ensure that the lease contains safeguards, processes, and enforceable terms to promote accountability and protect against fraud, waste, and abuse.

3. Public entities must be mindful that their work on a lease does not end when the lease has been negotiated and signed. Public entities must dedicate resources and ensure they have processes in place to administer the lease for its duration. Public entities must take full stock of all rights and duties under the lease to maximize the property's benefit in a fiscally responsible manner.
4. Public entities should proceed cautiously in considering lease durations that exceed DCAMM's standard 10-year term, as longer terms increase the level of risk.

For DCAMM:

1. DCAMM must actively manage leases that include an option to purchase, rather than simply assisting tenant agencies with landlord compliance issues.
2. DCAMM should immediately, clearly, and forcefully call attention to terms and conditions that are not advantageous to the Commonwealth.
3. Should it enter a lease with an option to purchase, DCAMM must be an active manager of the property and advocate for needed maintenance and capital improvements to protect the Commonwealth's investment.
4. DCAMM must monitor and manage leases to ensure that the tenant agency and landlord meet their respective responsibilities and obligations.
5. DCAMM should have processes in place for managing long-term leases, including periodic reviews, to ensure that DCAMM timely responds to options to renew, terminate, or purchase.
6. DCAMM should have processes in place for managing leases with "additional rent" terms, including so-called "triple net" leases, to protect against fraud, waste, and abuse, whether through unwarranted costs or failures to maintain the property.
7. DCAMM should insist upon written compacts that clearly define the roles and responsibilities of stakeholders when entering long-term property investments with multiple parties.
8. DCAMM must ensure that it has processes and procedures in place to timely communicate with appropriate decision-makers for public entity tenants in properties leased by DCAMM.
9. DCAMM should report annually on its lease compliance or enforcement actions.
10. DCAMM should not assume costly property tax assessments through leases with private landlords and should pursue tax increment financing (TIF) agreements.
11. DCAMM should review all of its leases having greater than 10-year terms to examine its management practices, assess risks, and implement improvements for other long-term leases.
12. DCAMM should undertake an internal review of the Star Store lease to determine what could have or should have been done differently to avoid wasting public dollars.

For the UMass system:

1. In cases of special funding outside of the university system's budget appropriations, the UMass system must understand its obligations, understand the underlying purpose of the special funds, and effectively communicate with the Legislature.
2. The UMass system must ensure that it communicates its strategic plan to stakeholders in order to ensure that parties have a shared goal and sustainability plan for long-term property investments.
3. The UMass system must ensure that it memorializes long-term plans to inform its future decision-making and provide context and a sound basis for property investments.
4. The UMass system should insist upon written compacts that clearly define the roles and responsibilities of the stakeholders when entering long-term property investments with multiple parties.
5. If in a similar position with an off-campus property in the future, the UMass system should ensure that it communicates the full cost of occupying and using the property to stakeholders to inform decision-making and mitigate unintended waste.
6. The UMass system must be an active tenant in its leased properties, both ensuring that the properties are maintained and communicating in a timely manner for key decisions such as renewing or terminating a lease or exercising an option to purchase.
7. The UMass system should undertake an internal review of the Star Store lease, and all other leases for terms of 20 years or greater, examine its management practices, assess risks, and implement improvements for other long-term leases.

For the Legislature:

1. The Legislature should require proposals that deviate from standard statutory requirements to contain reporting requirements and safeguards to protect against fraud, waste, and abuse to the same degree as existing statutory protections.
2. The Legislature should limit proposals for noncompetitive procurements.
3. The Legislature should require DCAMM to annually report on its lease compliance or enforcement efforts.
4. The Legislature should require all parties to a legislatively directed land or space lease to execute a written compact that clearly defines the roles and responsibilities of the stakeholders.

LEGISLATIVE MANDATE – OFFICE OF THE INSPECTOR GENERAL REVIEW

Section 79 of Chapter 28 of the Acts of 2023, in part, directed the OIG to investigate expenditures surrounding the Commonwealth's lease of the Star Store:

> Not later than October 1, 2023, the division of capital asset management and maintenance, in consultation with the University of Massachusetts Building Authority, shall submit to the inspector general for inclusion in the annual report pursuant to section 12 of chapter 12A of the General Laws, a report detailing each expenditure made after September 7, 2021, from item 1599-7104 for the facility located at 182 Union street in the city of New Bedford. The report from the division shall identify the purpose of each expenditure and provide documentation therefor, including, but not limited to, amounts paid for rents, utility expenses, deferred maintenance, capital improvements, personnel expenses and any other operating expenses. The inspector general shall review and investigate all such expenditures in accordance with said chapter 12A, including, but not limited to, the production of all records, correspondence and payments relating to the facility and shall refer any appropriate matters in accordance with sections 10 and 11 of said chapter 12A.

STATUS UPDATE – STAR STORE REVIEW – 2023 OIG ANNUAL REPORT

Pursuant to Section 79, the OIG commenced its investigation and reported its progress on pages 62 and 63 of its 2023 Annual Report:

> In 2023, the Legislature directed the Division of Capital Asset Management and Maintenance (DCAMM) to submit a report to the OIG detailing each expenditure made between September 7, 2021, and September 2023 related to the Star Store, a building leased by the state at 182 Union Street, New Bedford, for the University of Massachusetts at Dartmouth's (UMass Dartmouth) College of Visual and Performing Arts. The Legislature further directed the OIG to review those expenditures in accordance with Chapter 12A. While DCAMM did provide the requested records to the OIG, the OIG's Chapter 12A review is ongoing. The OIG expects to issue its findings in a report within 120 days of this report.

Timeline of Key Events Related to the Star Store Lease

Period before lease execution

1987

The Star Store at 182 Union Street in downtown New Bedford becomes vacant.

Jun 1995

New Bedford takes possession of the Star Store in lieu of unpaid taxes.

Nov 1995

The New Bedford Redevelopment Authority designates a developer (Developer) for the Star Store.

Jan 1997

Gov. Weld signs legislation authorizing the Division of Capital Asset Management and Maintenance (DCAMM) to lease property in downtown New Bedford on behalf of the University of Massachusetts Dartmouth (UMD).

Oct 1997

DCAMM issues request for proposals (RFP) for lease agreement.

Joseph G. Tirrell, Untitled, c. 1919. Glass plate negative, 8”x10”. New Bedford Whaling Museum, Photography Collection, 2001.100.85.57. Courtesy of the New Bedford Whaling Museum.

Jan 1998

DCAMM awards RFP to the Developer, the only qualifying candidate.

Sept 1999

The New Bedford Redevelopment Authority sells the Star Store to the Developer for $1.

Feb 2000

DCAMM and the University of Massachusetts (UMass) enter a 20-year lease with the Developer for the Star Store, which includes an option to purchase the building for $1, 30 days prior to the lease's end. The Commonwealth must pay base rent and "additional rent" to cover the Developer's real estate taxes and operating expenses.

Twenty-year lease term

Aug 2001

The lease term commences and UMD occupancy begins on August 15, 2001.

Feb 2016

A study reveals major issues in the Star Store's HVAC equipment and controls system.

Jun 2018

The Legislature authorizes $8M in bonds for upgrades to the HVAC systems at UMD. These funds are never appropriated or spent.

Jan 2020

A *Standard Times* article quotes the UMD chancellor as being "hopeful" that CVPA's participation in New Bedford's local community continues beyond lease's end in 2021.

Jan 2021

Chapter 358 of the Acts of 2020 is signed, making unspent funds from the Jan 2018 bond authorization available for Star Store renovations. Again, no funds are spent for significant capital improvements at the Star Store.

Feb 2021

DCAMM proposes a 10-year lease with the Star Store Developer, including capital improvements that will be paid for by the Commonwealth, without exercising the $1 purchase option at lease's end or vacating the building.

July 2021

- The $1 purchase option in the lease expires on July 14 without DCAMM exercising it.
- With no long-term successor lease in place, negotiations for the 10-year lease pivot toward a one-year short-term tenancy agreement (STTA).

Aug 2021

- 20-year lease ends on August 14, 2021.

One-year STTA term

- DCAMM executes an STTA for one year through August 14, 2022. The STTA extends the $1 purchase option, to be exercised by July 14, 2022.

Aug 2022

- Gov. Baker signs legislation naming the University of Massachusetts Building Authority (UMBA) as the successor agency to DCAMM for the purchase option and directing UMBA to exercise the option by August 14, 2022, terms which are contrary to terms of the one-year lease, which state that the purchase option is non-assignable.
- The one-year STTA ends on August 14, 2022.

- DCAMM attempts to exercise the purchase option on August 10, 2022, but the Developer rejects it as too late.

Month-to-month tenancy

- UMD continues to rent the Star Store on a month-to-month basis with no lease or purchase option.

May 2023

The New Bedford Senator files a budget amendment requiring the Office of the Inspector General to review Star Store spending. The measure prohibits the expenditure of funds for capital improvements until the Developer transfers title of the Star Store to UMass.

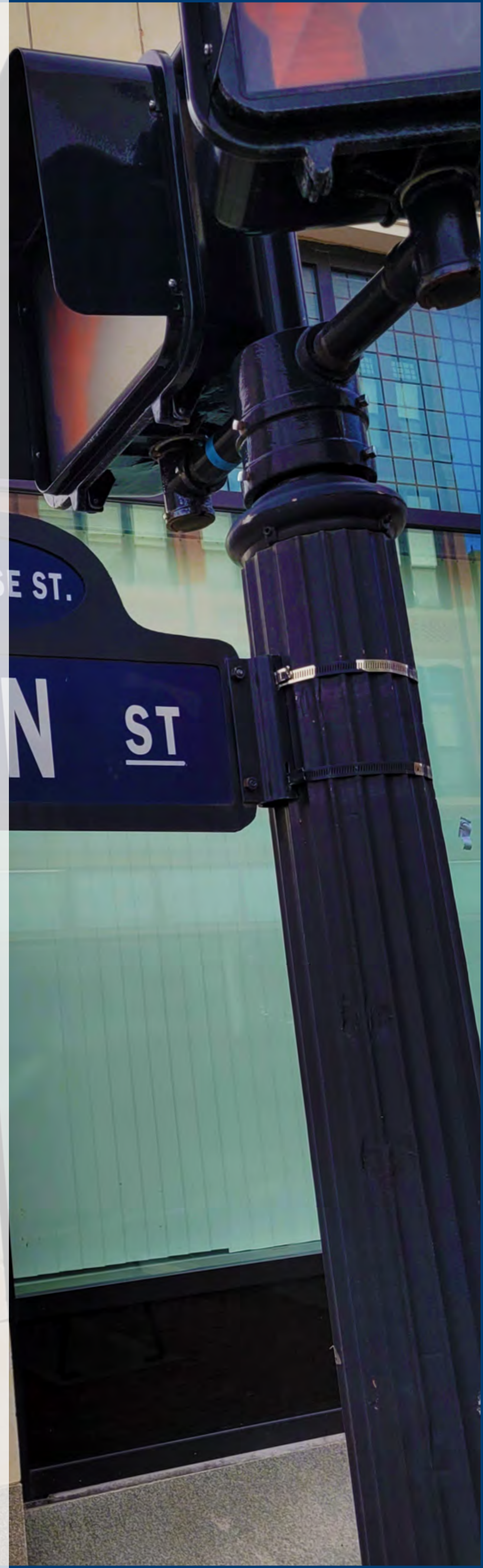
Aug 2023

- The Developer requests that Gov. Healey reject the New Bedford Senator's language and require DCAMM to accept the Star Store as a gift.
- Gov. Healey signs FY24 budget, which eliminates Star Store funding.
- UMD vacates the Star Store by month's end.

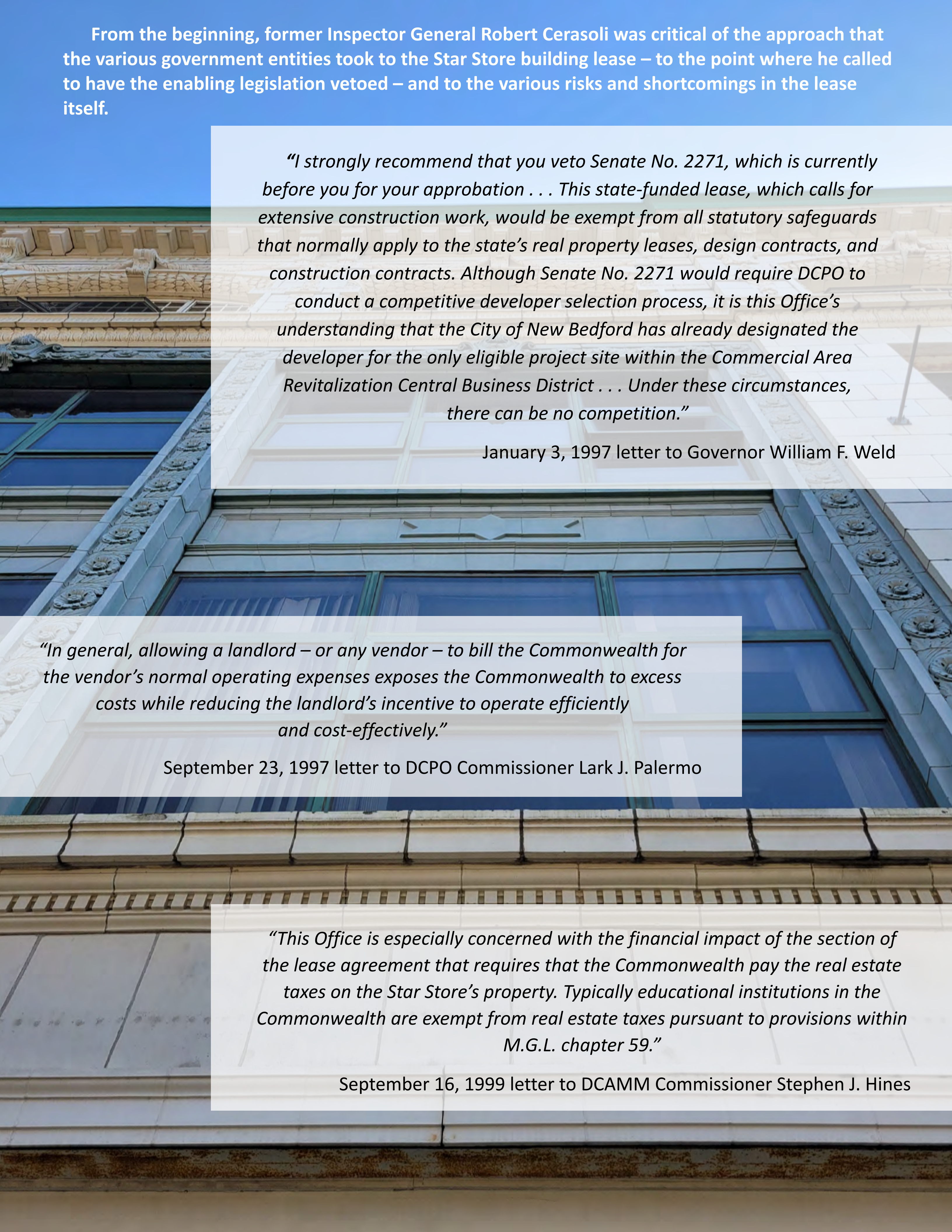
Period following UMD's departure

Sept 2023 – Present

The Star Store remains vacant.



From the beginning, former Inspector General Robert Cerasoli was critical of the approach that the various government entities took to the Star Store building lease – to the point where he called to have the enabling legislation vetoed – and to the various risks and shortcomings in the lease itself.



"I strongly recommend that you veto Senate No. 2271, which is currently before you for your approbation . . . This state-funded lease, which calls for extensive construction work, would be exempt from all statutory safeguards that normally apply to the state's real property leases, design contracts, and construction contracts. Although Senate No. 2271 would require DCPO to conduct a competitive developer selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the Commercial Area Revitalization Central Business District . . . Under these circumstances, there can be no competition."

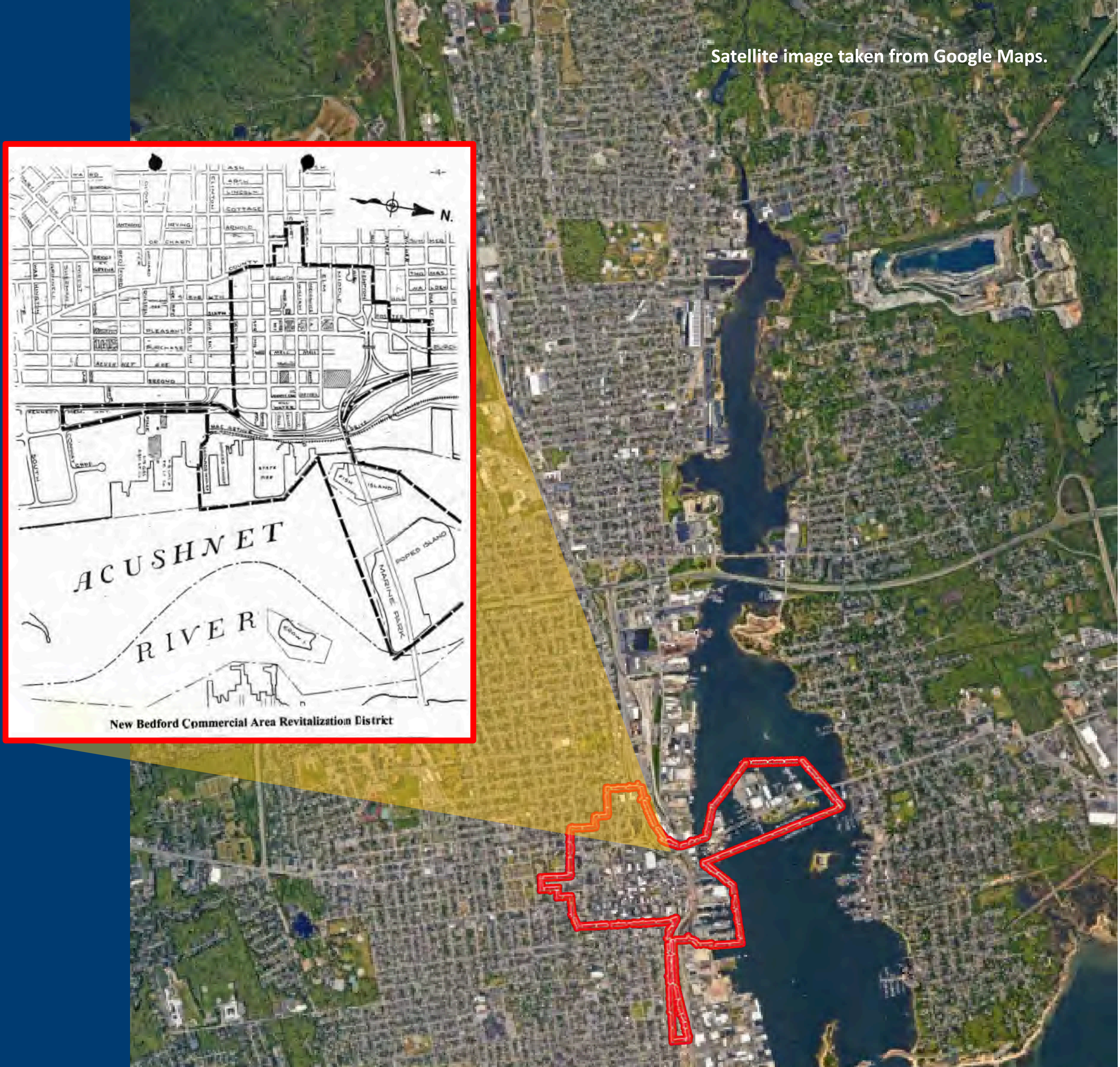
January 3, 1997 letter to Governor William F. Weld

"In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively."

September 23, 1997 letter to DCPO Commissioner Lark J. Palermo

"This Office is especially concerned with the financial impact of the section of the lease agreement that requires that the Commonwealth pay the real estate taxes on the Star Store's property. Typically educational institutions in the Commonwealth are exempt from real estate taxes pursuant to provisions within M.G.L. chapter 59."

September 16, 1999 letter to DCAMM Commissioner Stephen J. Hines



New Bedford Commercial Area Revitalization District

Satellite image taken from Google Maps.

The 1997 RFP required the property that was to be leased on behalf of UMD to be located within a small geographic area in downtown New Bedford, referred to as the New Bedford Commercial Area Revitalization District (outlined in red above). The RFP provided no explanation as to why this area was the preferred location in the city of New Bedford (shown in the Google Maps satellite image above). This restriction limited the pool of potential respondents, to the point where there was in effect one property with a predesignated developer that met the conditions of the RFP.

The black-and-white image of the New Bedford Commercial Area Revitalization District above is taken from the 1997 RFP.

BACKGROUND

I. Office of the Inspector General

The Office of the Inspector General for the Commonwealth of Massachusetts (OIG) is an independent state agency charged with preventing and detecting fraud, waste, and abuse of public funds and assets. The OIG investigates allegations of fraud, waste, and abuse at all levels of government and reviews programs and practices in state agencies and municipalities to identify systemic vulnerabilities and opportunities for improvement. The OIG strives to enhance public confidence in government, ensure accountability, and promote the best interests of the people of the Commonwealth in the use of public funds and property.

The Legislature established the OIG in 1980 as the first state-level inspector general's office in the country.[1] Today, the OIG has a budget of approximately $10 million and a staff of around 90 employees. The OIG has oversight of more than $120 billion in spending and the work of over 300,000 public employees across all state and municipal public entities throughout the Commonwealth, plus suppliers, vendors, contractors, and nonprofits that receive public funds.

II. Scope and Methodology of OIG's Investigation

The OIG investigated not only the narrow period of expenses mandated by the Legislature in Section 79 of Chapter 28 of the Acts of 2023, but also the series of events underlying the execution of the Star Store lease. Further, the OIG reviewed the Star Store lease which the Division of Capital Asset Management and Maintenance (DCAMM) entered for use by the University of Massachusetts Dartmouth (UMD or UMass Dartmouth), up to and including its expiration, to assess (1) the quality, efficiency, and integrity of DCAMM's and UMD's actions, and (2) whether DCAMM and UMD effectively used the Star Store for public benefit without wasting public funds. Included in this assessment, and in accordance with the specific legislative mandate, the OIG reviewed the financial reports which DCAMM and the University of Massachusetts Building Authority (UMBA) submitted to the OIG detailing the expenditures made for the Star Store after September 7, 2021. This review consisted of an analysis of over 300 invoices, as well as related contemporaneous communications and other records, and cross-referencing these expenses with other agreements, such as the lease and bond agreements.

The OIG also interviewed many key actors in the events surrounding the Star Store lease, including, but not limited to, DCAMM employees, UMD employees, MassDevelopment employees, government officials involved in the matter, and the developer ultimately selected to renovate and serve as landlord for the Star Store.

[1] The Legislature created the OIG pursuant to the recommendation of the Special Commission Concerning State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts.

In the course of its investigation, the OIG used its statutory authority to obtain access to relevant documentation and correspondence from public and private entities, including, but not limited to, UMD, DCAMM, MassDevelopment, and the Star Store's developer.

III. Star Store, New Bedford

The Star Store is a large commercial building located at 182 Union Street in downtown New Bedford, Massachusetts. The New Bedford Dry Goods Company built the original structure in 1844.[2] After expanding into adjacent buildings and undergoing reconstruction, the Star Store "reopened" in 1915 as one of the largest and most modern department stores in New Bedford, with four stories and 150,000 square feet of floor space, a rooftop garden, 60 telephones, and air ventilation and intercom systems.[3]

The New Bedford Dry Goods Company owned the Star Store until 1969, when it sold the property to Gorin's, a Boston-based department store chain.[4] In the 1980s, the ownership of the Star Store changed hands several times.[5] An investment group led by a Rhode Island developer purchased the Star Store in 1987 with plans to open a hotel on the site, but that plan collapsed with a legal dispute between the group's partners.[6] Hotel Properties, Inc. purchased the property in 1989, but its potential hotel project also failed to materialize.[7] In 1992, New England Federal Savings Bank foreclosed on the developers, who subsequently declared bankruptcy.[8]

New England Federal Savings Bank then sold the Star Store to NEF Properties, Inc. in 1992.[9] In June 1995, after NEF Properties failed to pay approximately $700,000 in local property taxes, the city of New Bedford took possession of the Star Store and nearby properties in lieu of unpaid taxes.[10] The city subsequently transferred the controlling interest of the Star Store to the New Bedford Redevelopment

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[2] William Corey, *$17 million Star Store renovation is a go*, SOUTHCOAST TODAY, August 28, 1998.

[3] *Id.*

[4] *Gorin's, Inc. Buys Star Store In New Bedford*, THE BOSTON GLOBE, June 3, 1969.

[5] Gorin's sold the property to Almy, Bigelow and Washburn, Inc. (Almy), owner and operator of the Edgar Department Stores chain, in 1983. Almy in turn sold the property to Federal Street Investors in December 1984, who sold it again in September 1985. In November 1985, Stuarts Department Store leased the property. William Corey, *$17 million Star Store renovation is a go*, SOUTHCOAST TODAY, August 28, 1998.

[6] *Id.*

[7] The Bristol County Commissioners entered an agreement with Hotel Properties to finance the project, but a key investor backed out of the deal after the state's bond rating dropped. *Id.*

[8] *Id.*

[9] *See* Bristol County Register of Deeds, Southern District, Book 2782, Page 77.

[10] *See* Massachusetts Quit Claim Deed, June 29, 1995. In total, NEF Properties transferred four parcels of land to the city through this quitclaim deed.

Authority (NBRA).[11] On November 14, 1995, the NBRA designated a private developer (Developer) for the now vacant and deteriorating Star Store and the adjacent Purchase Street parking lot.[12]

IV. Events Leading to Star Store Lease (1996 – 2001)

A. Legislative Authorization for Lease (1996 – 1997)

In 1996, the Legislature passed S2271, a measure that included an authorization for the Division of Capital Planning and Operations (DCPO)[13] to lease property for use by the University of Massachusetts Dartmouth (UMD or UMass Dartmouth) in a section of downtown New Bedford that the bill identified as the "Commercial Area Revitalization Central Business District." The state senator representing New Bedford (New Bedford Senator) had advocated for this authorization. The legislation required:

1. The chosen developer of the property to also serve as the landlord and perform certain improvements determined by UMD;[14]
2. DCPO to use "competitive and public processes" to select a developer, although the legislation also exempted the project from existing public bidding statutes;[15]
3. The lease to include an option for DCPO to purchase the property at the end of the lease term on behalf of the Commonwealth for no more than fair market value;[16] and
4. The OIG to review and approve an independent rent appraisal; the developer selection process and criteria; and the lease agreement.[17]

The measure did not specifically name either the Star Store or UMD's College of Visual and Performing Arts (CVPA). However, news outlets at the time reported that the New Bedford Senator's goal in supporting the legislation was for the CVPA to move into the Star Store.[18]

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[11] William Corey, *$17 million Star Store renovation is a go*, SOUTHCOAST TODAY, August 28, 1998. The NBRA is a redevelopment authority established pursuant to M.G.L. c. 121B, § 4. It is responsible for "the urban renewal planning and project implementation in designated urban renewal areas in the City of New Bedford." *See* https://www.newbedford-ma.gov/nbra/. The NBRA has a wide range of statutory powers to engage in urban renewal projects, including the power to acquire and dispose of real property. M.G.L. c. 121B, § 11(d).

[12] *See* Bristol County Register of Deeds, Southern District, Book 4534, Page 181.

[13] DCPO was the predecessor agency to the Division of Capital Asset Management and Maintenance (DCAMM). 1998 Mass. Acts c. 194, § 12. Although the Legislature through M.G.L. c. 75, § 12 has authorized the UMass system to negotiate and execute its own leases, DCPO (now DCAMM) issued the subject RFP pursuant to specific directives in the 1996 legislation.

[14] 1996 Mass. Acts c. 457, § 2(a).

[15] *Id.* Specifically, the legislation exempted the project from the competitive bidding provisions of M.G.L. c. 7; M.G.L. c. 30, § 39M; and M.G.L. c. 149, §§ 44A-44J.

[16] 1996 Mass. Acts c. 457, § 2(c).

[17] *Id.* at § 2(e), (f).

[18] Patricia O'Connor, *Star Store project still in the works*, SOUTHCOAST TODAY, May 7, 1996; Rachel G. Thomas, *Legislation Doesn't Specify Star Store*, SOUTHCOAST TODAY, October 12, 1996.

> *". . . although Chapter 457 requires a competitive selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the target area for the lease."*
>
> -September 1997 letter from former Inspector General Cerasoli to DCPO Commissioner

In a letter dated January 3, 1997, former Inspector General Robert A. Cerasoli urged then-Massachusetts Governor William F. "Bill" Weld to veto S2271, objecting that the legislation as written resulted in only one eligible site for the lease – the Star Store – and would therefore not promote open and fair competition.[19] In his letter, former Inspector General Cerasoli also drew comparisons between the proposed legislation and the Commonwealth's previous "disastrous" experience with the Ruggles Center lease.[20]

Despite the OIG's objections, Governor Weld signed S2271 into law on January 6, 1997. The measure was enacted as Chapter 457 of the Acts of 1996 (1996 legislation).

B. OIG Review of DCPO's RFP (1997)

As mandated by the 1996 legislation, the OIG reviewed DCPO's process and criteria for selecting a developer, designer, and construction contractor as outlined in its draft request for proposals (RFP). In a letter to the then-DCPO commissioner dated September 23, 1997, former Inspector General Cerasoli wrote that the legislation "exempted the lease from all statutory safeguards applicable to public design and construction contracts."[21] Former Inspector General Cerasoli was also concerned that the city of New Bedford had "already designated the developer for the only eligible project site within the target area for the lease,"[22] making the selection of the Developer a foregone conclusion. Notwithstanding his reservations, and in furtherance of the Legislature's directive, former Inspector General Cerasoli made a number of recommendations to increase the RFP's public protections. He made it clear, however, that his approval of DCPO's selection process and criteria should not be interpreted to mean that he believed the transaction protected the public interest.[23]

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[19] *See* OIG's letter to Governor Weld, January 3, 1997, Appendix A, at 59.

[20] The Ruggles Center lease was a long-term design and construction project and lease procured by the Registry of Motor Vehicles (RMV) as part of an effort to revitalize Boston's Roxbury neighborhood. Similar to provisions in the Star Store legislation, Section 3 of Chapter 443 of the Acts of 1990 exempted the Ruggles Center project from the usual state oversight requirements, including public bidding statutes such as M.G.L. c. 30, § 39M and M.G.L. c. 149, §§ 44A-44J. Former Inspector General Joseph R. Barresi opined that the bill "invite[d] waste and abuse" and "open[ed] the door to inflated rents and windfall profits." David Armstrong, Stephen Kurkjian, and Meg Vaillancourt, *Concessions Helped, Hurt Registry Project*, BOSTON GLOBE, September 4, 1995. The Commonwealth agreed to pay $106 million over 15 years to lease the Ruggles Center, which cost its owners $31 million to build; however, the RMV vacated the building 15 months into its occupancy after more than 500 employees fell ill as a result of faulty HVAC systems. Daniel Golden and Stephen Kurkjian, *Weld Defends 'Political Judgments,' Concedes Registry Job Deserved 'Harder Look,'* BOSTON GLOBE, September 5, 1995.

[21] *See* OIG's letter to DCPO commissioner, September 23, 1997, Appendix A, at 60.

[22] *Id.*

[23] *Id.*

In addition to the RFP itself, the OIG also reviewed a draft proposed lease agreement included in the RFP.[24] The rider to the proposed lease stated that UMD would pay base rent and "additional rent," consisting of the landlord's actual operating expenses and property taxes.[25] The landlord's estimate would determine the amount of additional rent, which would be adjusted annually. The landlord's estimates would be based off of actual expenses incurred in the previous year.[26] Former Inspector General Cerasoli elaborated on this condition in his September 23, 1997 letter:

> In this Office's view, landlord services required under the terms of a lease agreement, such as routine maintenance of the property, should normally be included in [the] Commonwealth's rental payments. In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively. However, including the cost of these services in the base rent could also expose the Commonwealth to excess rent costs.[27]

To mitigate this issue, former Inspector General Cerasoli recommended the rider be amended to allow DCPO to approve or disapprove the landlord's initial operating budget and any subsequent changes.[28] DCPO accordingly revised the RFP, and in a letter to the DCPO commissioner dated October 10, 1997, former Inspector General Cerasoli confirmed that the revised RFP was "fully responsive to [the OIG's] recommendations" and formally approved it, but continued to express concerns about the public interest.[29]

C. RFP Award and Purchase of Property (1997 – 1999)

Following the OIG's approval, DCPO issued the RFP on October 29, 1997.[30] The RFP included very specific requirements, including:

1. A lease for 20 years;
2. A property of at least 78,800 square feet;
3. A property within the "Commercial Area Revitalization District" of New Bedford;

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[24] DCAMM Request for Proposals, October 29, 1997, at 342, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download. The rider to the RFP's proposed lease was ultimately incorporated into the executed lease. *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 85.

[25] *See* OIG's letter to DCPO commissioner, September 23, 1997, Appendix A, at 60.

[26] *Id.*

[27] *Id.*

[28] *Id.* This change was included in the final lease. *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 86.

[29] *See* OIG's letter to DCPO commissioner, October 10, 1997, Appendix A, at 67.

[30] DCAMM Request for Proposals, October 29, 1997, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download. *See also* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73.

4. A $1.00 purchase option;
5. A property with a loading dock for trucks up to 40 feet long; and
6. Fifty reserved parking spaces for UMD personnel and 100 public parking spaces within a half-mile walk of the property.[31]

As the OIG had predicted, DCPO received only one qualifying proposal – from the Star Store Developer who was previously designated by the NBRA.[32] On January 30, 1998, DCPO formally awarded the contract to the Developer.

Thereafter, the NBRA formally voted to deed the Star Store – which it had held since June 1995 – to the Developer.[33] NBRA sold the Star Store to the Developer for $1.00 on September 30, 1999.[34]

D. OIG Review of Rent Appraisal and Lease Agreement (1999)

The OIG reviewed the property appraisal and lease as required by the 1996 legislation.[35] In an August 16, 1999 letter, the Division of Capital Asset Management and Maintenance (DCAMM)[36] – the successor entity to DCPO – provided the OIG with a copy of the lease and an independent appraisal of the lease price.[37] DCAMM noted that "the lease contains an option for the Commonwealth to purchase the property at the end of the twenty-year lease term for nominal consideration."[38]

The 20-year lease included an option for the Commonwealth to purchase the Star Store at the lease's end, with a deadline to exercise of **July 14, 2021**.

The OIG reviewed the rent appraisal and, despite noting that the per-square foot costs were "on the high side," approved the methodology in a September 16, 1999 letter to DCAMM.[39] Former Inspector General Cerasoli also raised concerns in that letter about the lease agreement's requirement that the Commonwealth assume the landlord's property tax obligations, which would increase the costs by more

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[31] DCAMM Request for Proposals, October 29, 1997, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download.

[32] *See* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73. *See also* William Corey, *Lone Bid Is in for Star Store Renovation*, SOUTHCOAST TODAY, January 30, 1998. In an interview with the OIG, the Developer recalled that other proposals were submitted. However, the Developer's proposal was the only one that met the minimum requirements.

[33] NBRA Certificate of Vote, August 31, 1999. Note that the certificate may be incorrect in stating that the NBRA's meeting and vote occurred on July 10, 1998. The certificate itself is dated August 31, 1999, over a year after the purported voting date. A vote on July 10, 1998, would also mean that the NBRA granted the deed to the Developer's limited partnership almost six months prior to the partnership's existence, according to records from the Secretary of the Commonwealth. It is more likely that the vote actually occurred on August 31, 1999, or shortly prior thereto, rather than on July 10, 1998.

[34] Purchase and Sale Agreement, September 30, 1999.

[35] 1996 Mass. Acts c. 457, § 4(e), (f).

[36] Prior to 2012, DCAMM was in some instances referred to as "DCAM," although the agency's official name has not changed since 1998. This report uses "DCAMM" for ease of reference.

[37] *See* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73.

[38] *Id.*

[39] *See* OIG's letter to DCAMM commissioner, September 16, 1999, Appendix A, at 76.

than $12 million over the 20-year lease term.[40] Former Inspector General Cerasoli further noted that "this project cannot be considered reasonable if the Commonwealth is further burdened with extraordinary tax obligations that could exceed a half million dollars annually" and to that end recommended that the parties seek a tax increment financing (TIF) arrangement from the city of New Bedford.[41]

". . . it is important to point out that in 1996 this Office had strongly recommended that Governor Weld veto the legislation that created this entire process."

-September 1999 letter from former Inspector General Cerasoli to DCAMM Commissioner

Former Inspector General Cerasoli also repeated his concerns in his September 1999 letter about the "additional rent" stipulation in the rider to the lease, despite the landlord's expenses now being subject to DCAMM inspection and approval.[42] He wrote that routine property maintenance services "are the responsibility of a landlord and should normally be included in the Commonwealth's rental payments" and that including such expenses in the subject lease would expose the Commonwealth to excess costs and reduce the landlord's incentive to operate efficiently and cost-effectively.[43] He reiterated his disapproval of the 1996 legislation.[44]

Following the OIG's September 1999 letter, DCAMM revised the lease to state that the landlord's additional rent estimate was subject to approval by "the tenant" and that additional rent could be withheld if the tenant determined that the estimate was unreasonable.[45] In a November 3, 1999 letter to DCAMM, former Inspector General Cerasoli formally approved the Star Store lease, as required by Chapter 457 of the Acts of 1996.[46]

E. Pre-Lease Activity (1998 – 2000)

In accordance with the terms of the lease agreement, the Developer performed substantial work at the Star Store prior to the execution of the lease to ensure that UMD was in a position to assume the property for use by the CVPA.

Renovations. The Star Store building – which had previously only been used as a department store and was considered for a potential hotel – required extensive construction work to make it suitable for the specific needs of the CVPA. In an interview with the OIG, the Developer claimed that the building was dilapidated prior to the renovations, with no windows or roof. UMD provided the Developer with drawings and specifications for the needed renovations. In June 1999, the Developer and Suffolk Construction Co.

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[40] *Id.*

[41] *Id.* The Developer, DCAMM, and the city of New Bedford ultimately did enter a TIF agreement that drastically reduced the applicable property tax. *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 12, 1999.

[42] *See* OIG's letter to DCAMM commissioner, September 16, 1999, Appendix A, at 76.

[43] *Id.*

[44] *Id.*

[45] *See* OIG's letter to DCAMM commissioner, November 3, 1999, Appendix A, at 79.

[46] *Id.* The legislation did not specify a mechanism for the Inspector General to reject the lease, but as described herein, former Inspector General Cerasoli repeatedly objected to the legislation and process leading to the Star Store lease.

entered a $14 million contract to renovate the Star Store per the UMD specifications,[47] a cost which was almost double the Developer's prior public estimate of $7.5 million.[48] Although the Developer incurred the costs of the renovations up front, they were to be paid through state-backed bonds. The contract specified that DCAMM would repay the principal and interest of these bonds over the course of the 20-year lease as part of the base rent.[49]

Parking. In November 1998, the Developer and the NBRA entered a purchase and sale agreement for the Star Store, and simultaneously acquired the right to use the adjacent Purchase Street parking lot.[50] In July 1999, the Developer and the NBRA agreed that the Developer would relinquish his designation as developer of the Purchase Street lot in exchange for his use of a portion of the parking spaces in the resulting municipal parking garage at that location for the following 20 years. The Developer would pay $10,000 annually for those spaces.[51]

Historic Preservation. In September 1999, the city of New Bedford, the NBRA, and the Developer signed a preservation restriction on the Star Store property. The restriction required the owner to preserve the exterior façade of the building.[52] The city of New Bedford and the NBRA agreed to pay the total cost of preservation, while the Developer, who officially purchased the property the same day, agreed to contribute $521,000 toward the cost.[53]

Real Estate Taxes and TIF Agreement. As former Inspector General Cerasoli recommended in his September 1999 letter, DCAMM and the Developer entered a 20-year tax incremental financing (TIF) agreement with the city of New Bedford that reduced the Star Store property taxes – taxes for which UMD would otherwise be exempt if it owned the building.[54] Under the October 14, 1999 TIF agreement, the city agreed to accept a reduced $50,000 per year in property taxes[55] (which DCAMM would pay as additional rent) in exchange for certain commitments from DCAMM and the Developer, including (1) the creation of 25 permanent jobs, the majority of which could be filled by New Bedford residents; (2) the already-agreed-

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[47]*Star Holdings L.P. Contract with Suffolk Building Corp.*, June 1, 1999.

[48] Patricia O'Connor, *Star Store Project Still in the Works*, SOUTHCOAST TODAY, May 7, 1996.

[49] *Star Holdings L.P. Contract with Suffolk Building Corp.,* June 1, 1999. Suffolk Construction and certain subcontractors filed five civil actions in Bristol County Superior Court against the Developer between 2001 and 2003 for an alleged failure to pay the renovation costs in full. All of those actions were dismissed or settled.

[50] *Purchase Lot Agreement between Star Holdings Limited Partnership and The New Bedford Redevelopment Authority*, October 12, 1999.

[51] *Id.* It is unknown whether the parties extended this agreement following the expiration of the Star Store lease.

[52] *Preservation Restriction between Star Holdings Partnership and the City of New Bedford*, October 12, 1999.

[53]*Trust Agreement Among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000, at page 27, § 401(b). *See also* MassDevelopment projected budget. The $1,086,153.52 reimbursement included work done for the façade.

[54] *See* M.G.L. c. 59, § 5.

[55] The city of New Bedford reportedly valued the property at $1,552,400 for tax purposes. *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 14, 1999. The local property tax rate at the time is unknown.

upon estimated $18.5 million in capital improvements to the Star Store; and (3) the submission of annual reports to the New Bedford Economic Development Council on job creation, retention, and investment.[56]

Zoning. In October 1998, the New Bedford Zoning Board of Appeals granted the Developer a zoning variance to use the Star Store without the requisite off-street parking, as well as a special permit to alter a pre-existing, nonconforming structure.[57]

F. Lease Execution (2000 – 2001)

On February 28, 2000, DCAMM, on behalf of UMass Dartmouth, executed a 20-year lease with the Developer to house the university's visual arts college in the Star Store.[58] The Developer, DCAMM's acting commissioner, and the then-president of the University of Massachusetts (UMass) signed the lease agreement.[59]

The lease specified that the 20-year term commenced on August 15, 2001, when UMD first occupied the premises.[60] The expiration date was therefore August 14, 2021.[61, 62]

G. Lease Financing (1999 – 2000)

In order to finance the Star Store's acquisition and rehabilitation, the Developer entered a trust agreement with the Massachusetts Development Finance Agency (MassDevelopment)[63] and Wells Fargo on September 1, 2000. The agreement gave the Developer access to up to $21.5 million in bonds secured by the Star Store.[64] MassDevelopment served as the issuer, Wells Fargo as the trustee, and the Developer as the assignor.[65]

The bonds were federally tax-exempt and backed by the Commonwealth, thus carrying an interest rate of 6%, lower than comparable private bonds at the time.[66] The Developer would have been unable to

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[56] *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management,* October 14, 1999.

[57] City of New Bedford Massachusetts Board of Appeals, *Notice of Decision on Zoning Variance Petition 3307A*, October 1, 1998.

[58] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 82.

[59] *Id.*

[60] *Id.* at 83, 84.

[61] *Id.*

[62] The DCAMM commissioner and the UMD chancellor signed an amendment to the lease in December 2001, which allowed modifications to the specified Star Store improvements. *See Commonwealth of Massachusetts First Amendment to the Lease*, December 7, 2001. The amendment also acknowledged that the Developer failed to meet the deadline for substantial completion of the improvements, but the parties disclaimed any resulting damage.

[63] The Legislature created MassDevelopment in 1998 pursuant to M.G.L. c. 23G. It is an industrial development financing board within the Executive Office of Administration and Finance (A&F), but is not subject to A&F's supervision.

[64] *Trust Agreement among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000.

[65] *Id.*

[66] A comparable benchmark, Moody's Daily AAA Corporate Bond Yield Averages, had an interest rate of 7.6% in September 2000, according to the Federal Reserve Economic Database. The bond underwriter's Official Statement was dated September 1, 2000.

secure these bonds without a lease agreement from a public entity.[67] The bonds were secured by the original 20-year lease agreement and the Star Store itself, and ran concurrently with the lease.[68]

The Developer, according to the bond underwriter's Official Statement, paid $36,303,816 of debt service. These costs were paid entirely by the Commonwealth's base rent, which amounted to over $44,444,460 over the course of the lease. With the Commonwealth also covering the Developer's operating costs through "additional rent," the Developer would profit an estimated $8.1 million over the course of the lease.[69] By utilizing state-backed bonds to fund the construction costs, the Developer's construction costs were significantly reduced, theoretically resulting in lower base rent payments for UMD.

V. Provisions of Lease Agreement (2001 – 2021)

A. Rent Payments

> The 20-year Star Store lease was a "triple net" lease, an uncommon arrangement for public entities. The Commonwealth, as the tenant, was responsible for paying the landlord base rent, as well as property taxes and operating expenses.

Under the lease the Commonwealth was responsible for three categories of payments to the landlord: (1) base rent, (2) additional rent, and (3) funding for a replacement reserve account.[70] A specific annual legislative appropriation funded these expenses, an arrangement that is unusual for a lease by a public agency.[71]

1. Base Rent

The lease structured the base rent for the Star Store as set forth below in Figure 1.[72] The lease calculated the base rent at approximately 20% above the payments on the bond used to finance the initial Star Store renovations. As reflected in Figure 1, the Commonwealth paid $44,444,460 in base rent monthly installments to the Developer over the 20-year lease.[73]

[67] In an interview with the OIG, MassDevelopment officials stated that the Developer's limited liability company would have qualified for a tax-exempt bond because it held the lease with UMass Dartmouth. A lease with a private entity would not normally have qualified.

[68] *Trust Agreement among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000; Massachusetts Development Finance Agency Lease Revenue Bonds, 2000 Issue, September 1, 2000.

[69] The bond underwriter's Official Statement notes that "Subsequent to the Date of Occupancy, the annual bond debt service requirement divided by the Base Rent will result in an approximate 1.20:1.00 debt service coverage ratio."

[70] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 82.

[71] *See* 2000 Mass. Acts c. 159, line 1599-7014.The Developer recalled in an interview with the OIG that over the course of the lease, each newly elected governor would cut the Star Store line item in their first proposed budget, but would then reinstate it after realizing that the Star Store was the centerpiece of New Bedford.

[72] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 84, 85.

[73] *Id.*

Five-Year Increments of 20-Year Lease	Annual Base Rent Per Year
Years 1 to 5	$2,158,488
Years 6 to 10	$2,200,980
Years 11 to 15	$2,243,472
Years 16 to 20	$2,285,952
Total Base Rent	**$44,444,460**

Figure 1. Annual Base Rent for Star Store Lease.

2. Additional Rent[74]

In accordance with DCAMM's RFP, in addition to base rent the lease required the Commonwealth to pay for the landlord's real estate taxes and operating expenses, collectively referred to as "additional rent."[75]

As previously discussed, the Star Store's property taxes were drastically lowered pursuant to the TIF agreement between the Developer, DCAMM, and the city of New Bedford, which former Inspector General Cerasoli had insisted upon.[76] The TIF agreement was in effect through June 30, 2020, but according to the New Bedford Assessor's Office it was continued through Fiscal Year 2023, which aligns with UMD's time at the Star Store[77] and is consistent with the invoices for "additional rent" paid to the Developer.

The landlord's operating expenses were defined broadly in the lease to include all expenses related to the operation, maintenance, and repair of the property.[78] The lease specified that operating expenses include:

- Labor costs for the property manager, responsible for the Star Store's operations, maintenance, and repair;
- Costs of supplies, materials, tools, and equipment;
- Utilities (unless UMD had its own accounts with utility companies);
- Costs for landscaping, janitorial services, security, sweeping, snow plowing, sanding, and refuse removal;
- Costs of general maintenance and necessary routine repair;

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[74] *Id.* at 85-89.

[75] *Id.* Part of the Commonwealth's rationale in entering a 20-year lease rather than buying the Star Store was to allow for its development without the requirements and costs that would be involved if the building was a Commonwealth asset. This course meant that the building remained subject to real estate taxes. While many private properties are leased to the state, the Star Store lease was unusual in that the Commonwealth – not the landlord – was responsible for paying real estate taxes.

[76] The TIF agreement, pursued at the suggestion of former Inspector General Cerasoli, reduced the annual tax burden to $50,000 per year, regardless of fluctuations in property value. *See* Footnote 41.

[77] *See* City of New Bedford Assessor's Office property card, outlining taxes owed on the Star Store.

[78] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 87-89.

- Costs of capital improvements;
- The landlord's legal, accounting, and other professional costs related to the Star Store's operation;
- Liability costs for the Star Store itself and the landlord's personal property on the site, provided that property was used for the building's operation and maintenance.

The definition of operating expenses specifically excluded the landlord's own costs solely related to ownership of the building, as opposed to the actual operation.[79]

Figures 2 and 3 – composed from data available from UMD, the Developer, and other sources – reflect the Commonwealth's base rent and additional rent costs vis-à-vis the Legislature's annual appropriations from Fiscal Year 2012 through Fiscal Year 2022.[80] Numbers in red indicate years where UMD's total rent (base rent plus additional rent) exceeded the legislative appropriation. UMD paid the difference from its budget.

Fiscal Year	State Appropriation 1599-7104 for Star Store	Base Rent	Additional Rent	Total Rent
2012	$2,700,000.00	($2,238,233.26)	($272,726.14)	($2,510,959.40)
2013	$2,700,000.00	($2,243,472.00)	($399,688.66)	($2,643,160.66)
2014	$2,700,000.00	($2,243,472.00)	($315,867.87)	($2,559,339.87)
2015	$2,700,000.00	($2,243,472.00)	($355,763.37)	($2,599,235.37)
2016	$2,700,000.00	($2,243,472.00)	($360,261.85)	($2,603,733.85)
2017	$2,700,000.00	($2,280,714.74)	($441,736.09)	($2,722,450.83)
2018	$2,700,000.00	($2,285,952.00)	($452,240.36)	($2,738,192.36)
2019	$2,700,000.00	($2,285,952.00)	($460,658.10)	($2,746,610.10)
2020	$2,700,000.00	($2,285,952.00)	($432,796.46)	($2,718,748.46)
2021	$2,700,000.00	($2,285,952.00)	($380,259.65)	($2,666,211.65)
2022	$332,876.71	($281,829.70)	($58,889.45)	($340,719.14)
Total	**$27,332,876.71**	**($22,918,473.70)**	**($3,930,888.00)**	**($26,849,361.69)**

Figure 2. Appropriations, Base Rent, and Additional Rent from FY12 – FY22.

[79] *Id.* at 89.

[80] The OIG requested records on additional rent paid for the entire lease term, but neither the Comptroller nor DCAMM was able to provide complete data on the additional rent paid by the Commonwealth prior to Fiscal Year 2012. Furthermore, the additional rent data available for Fiscal Year 2012 is incomplete. UMD should have been able to produce records covering the life of the lease, but was unable to do so. Currently, the Commonwealth dictates a six-year retention requirement for lease records. Record retention challenges suggest another reason why leases beyond the Commonwealth's traditional 10-year period are problematic. The Developer likewise could not produce invoices prior to 2011.

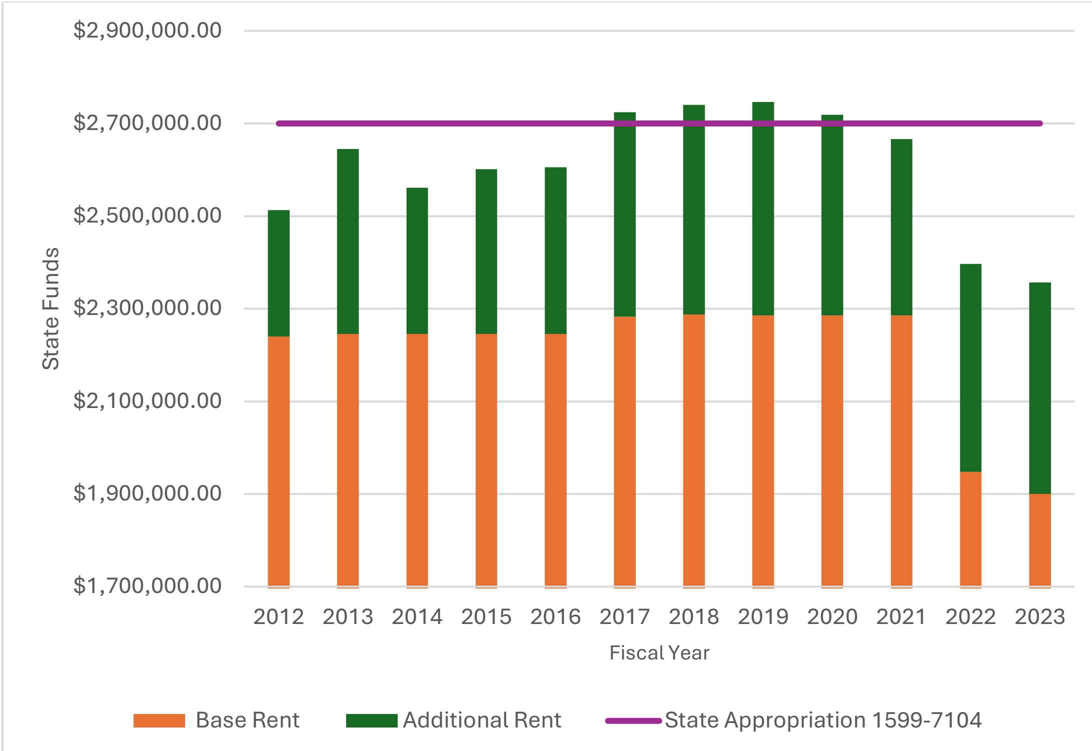

Figure 3. Appropriations Compared to Base Rent and Additional Rent from FY12 – FY23.

3. Replacement Reserve Account

The lease required the Developer to establish an interest-bearing "replacement reserve" escrow account within the first year of the date of occupancy.[81] The account's purpose was to fund the replacement of capital items at the Star Store, such as the roof, walls, structural components, mechanical systems, floors, plumbing, and HVAC systems, provided the replacement was not otherwise covered by the Developer's other lease obligations or by an insurance policy.[82] The lease required UMD to pay the Developer $1,000 per month, which the Developer would deposit into the replacement reserve account.[83] According to the lease, UMD's monthly payments for the account were to increase by 4% each year during the lease term.[84]

> The lease required the Developer to create and UMD to fund a replacement reserve account to address needed maintenance and replacement of capital items in the Star Store. The account was never created nor funded.

Contrary to the lease terms, at no point during the 20-year lease did the Developer open the required replacement reserve account. Nor did UMD make any of the required payments for the account.

[81] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 16.19, Appendix B, at 127.

[82] *Id.*

[83] *Id.*

[84] *Id.*

Had the replacement reserve account been opened and fully funded, it would have accumulated approximately $400,000 over 20 years.

B. Maintenance

According to Section 5.4 of the lease, the Developer, as the landlord, was responsible for general maintenance of the Star Store, including routine repairs and replacement caused by reasonable wear and tear by the tenants.[85] The Developer was also required to fix any defects resulting from the initial renovations.[86]

While Section 5.4 of the Star Store lease stated that all repairs to the property must be completed "at Landlord's sole cost and expense," another provision classified costs to "repair and maintain the Property" as operating expenses which the Commonwealth was responsible for paying as additional rent.

Section 5.4 stated that all repairs to the Star Store must be completed "at Landlord's sole cost and expense." Another provision classified costs to "repair and maintain the Property" as operating expenses to be covered by the Commonwealth's "additional rent" payments.[87]

Pursuant to lease requirements, the Developer hired a third-party property manager to maintain the Star Store at the beginning of the lease.[88] For the first 10 years of the lease, the Developer paid the property manager for his services, and then passed these expenses on to UMD. The Developer told the OIG that 10 years into the lease, in order to save costs, UMD hired the property manager as a full-time employee to maintain the property on its behalf.

While certain capital assets such as the roof were reportedly deteriorating by the end of UMD's tenancy, there are no allegations or evidence that the Developer failed to provide routine maintenance services.

C. Capital Replacements and Improvements

The provisions in the lease regarding the replacement reserve account – an account from which the Developer could draw funds to replace "capital items" – authorized, but did not require, the Developer to make such replacements or improvements.[89] By all accounts, neither the Developer nor UMD made any such replacements or improvements, and by the end of the lease the Star Store required an estimated $26.3 million in basic capital expenditures, though some estimates for capital expenditures were as high as $70 million.[90]

Despite the Legislature authorizing appropriations for UMD to perform capital improvements to the Star Store, UMD never made use of those funds.

[85] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 5.4, Appendix B, at 102.

[86] *Id.*

[87] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 88.

[88] *Id.*, § 5.4, at 102.

[89] *Id.*, § 16.19, at 127.

[90] Summary of Gordian Deferred Maintenance Report on the Star Store.

The Legislature twice authorized appropriations for UMD to perform capital improvements at the Star Store. First, following a 2016 study of the building's mechanical and electrical systems that found "numerous issues with the major HVAC equipment and controls system," the Legislature approved up to $8 million in its bond authorization bill.[91] None of those available funds were spent.[92] Later, Chapter 358 of the Acts of 2020 made unspent funds from the previous bond authorization available "for the purposes of renovating the [UMD] Star Store [CVPA] into a twenty-first century arts and design hub connecting downtown arts, commerce and entertainment to working waterfront venues and activities, including expanded mixed use at the New Bedford state pier."[93] Again, none of these available funds were used to make capital improvements at the Star Store.[94]

D. Purchase Option

The original 1996 legislation authorizing the Star Store's lease required that the lease include an option for the commissioner of DCAMM to purchase the property at no more than fair market value.[95] The parties did include an option to purchase – for $1.00 – which stated in relevant part:

> The Purchase Option shall be exercised by Tenant giving written notice of such exercise (the "Notice of Exercise") to Landlord at any time on or before the date which is not less than thirty (30) days prior to the expiration date of the Lease Term. If Tenant gives the Notice of Exercise, the delivery of the deed to the Property to Tenant (the "Closing") shall be on the last day of the Lease Term (or last business day if such a day is not a business day), at a time and place in the greater Boston area to be designated by Tenant in the Notice of Exercise. The purchase price for the Property shall be $1.00 (the "Purchase Price") and shall be paid at the Closing in good funds drawn on a Boston clearinghouse bank (including a check of the Commonwealth or a wire transfer of funds of the Commonwealth) at the Closing.[96]

Thus, under the lease's terms, DCAMM was required to notify the Developer by July 14, 2021, if it intended to exercise the purchase option for the nominal $1.00 price. The lease detailed the duties of the parties once the option was executed.

DCAMM did not exercise the purchase option on or before July 14, 2021.

VI. CVPA's Occupancy of Star Store Under 20-Year Lease (2001 – 2021)

The CVPA formally began its occupancy of the Star Store on August 14, 2001. In addition to the studios used by CVPA students, during the course of the 20-year lease the Star Store also provided space

[91] 2018 Mass. Acts c. 113, line 7066-8100.

[92] Capital Investment Plans 2018 – 2023.

[93] 2020 Mass. Acts c. 358, line 7002-8036.

[94] Capital Investment Plans 2018 – 2023.

[95] 1996 Mass. Acts c. 457, § 2(c).

[96] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 16.20, Appendix B, at 131.

for a university art gallery open to the public, science labs for Bristol Community College students, classrooms for UMD's Workforce Education Program, and broadcast studio space for Rhode Island Public Radio.

Articles in various newspapers, including *The Boston Globe* and New Bedford's *The Standard-Times,* portrayed the CVPA's presence as playing an important role in the economic and cultural revitalization of downtown New Bedford.[97] In March 2015, the *Taunton Daily Gazette* reported on state and local leaders gathering at the Star Store to celebrate the "multi-year revitalization of New Bedford's downtown, where senators said state funding ha[d] helped spur broad private investment and economic growth."[98] Interviewees noted that the influx of thousands of visitors and students to the area had created "ripple effects for local businesses."[99]

As the end of the lease approached, and with the future of the CVPA at the Star Store uncertain, local leaders were vocal about the need to maintain its presence. A January 2020 article by *The Standard-Times* stated that "[s]ince the UMass CVPA has moved in, other businesses have sprouted up around the city block."[100] The then-UMD chancellor claimed in the article that "[o]ver the past 20 years, there have been millions of dollars in investment around the Star Store in the form of galleries, coffee shops, restaurants and programs like AHA! Night. It has been an engine of the city's creative economy."[101] The chancellor was also quoted as being "hopeful" that the CVPA's participation in the local community continued beyond the end of the 20-year lease.[102]

Both the public and state officials believed that UMD's lease of the Star Store had a positive economic impact on the city and were consequently outraged with the CVPA's impending departure from the premises. According to a *Standard-Times* article, a "Save the Star Store" petition in 2023 received close to 5,000 signatures and rallies were planned to protest the CVPA's decision to vacate the building.[103] One interviewee said the loss of the students, faculty, and visitors to the Star Store's art galleries would be an "irretrievable loss and terrible backwards step for downtown."[104] A 2024 article in the *Fall River Herald News* highlighting a local art exhibit noted that, with the Star Store gone, local artists had "fewer opportunities to prominently showcase their art" and were still working to find alternative sites and opportunities, with limited success.[105] The article also reported that many CVPA students who had moved

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[97] Patricia Harris and David Lyon, *New England Art Scene is Lively Work in Progress*, THE BOSTON GLOBE, October 2006.

[98] *State senators, arts leaders celebrate revitalization of New Bedford's downtown*, TAUNTON DAILY GAZETTE, March 14, 2015.

[99] *Id.*

[100] *Star Light Star Bright: The Star Store shines brightly once again in downtown New Bedford*, THE STANDARD-TIMES, January 18, 2020.

[101] *Id.*

[102] *Id.*

[103] Seth Chitwood and Matthew Ferreira, *Star Store in New Bedford Closing, Artists Protest as UMass Dartmouth Readies Location*, THE STANDARD-TIMES, August 31, 2023.

[104] *Id.*

[105] *Star Store student collective takes hold on William Street*, FALL RIVER HERALD NEWS, February 4, 2024.

to New Bedford were faced with the task of finding transportation to the main UMD campus in Dartmouth.[106]

Pursuant to the TIF agreement, the Developer and DCAMM were required to file annual reports to the New Bedford Economic Development Council (NBEDC) disclosing the economic benefits of the project, including the number of full-time jobs created and the total amount of "investment."[107] These filings were often incomplete and were not submitted at all between 2008 and 2017. The reports that were submitted disclosed minimal job creation, with a peak of 37 reported full-time jobs as a result of the project in 2007, and only 2 reported full-time jobs in 2019. The reported total investment capped at $21.5 million in 2006, with no updates thereafter. That figure appears to coincide with the cost of the initial Star Store renovations. DCAMM did not appear to play any role in completing these filings, as all signatures and correspondence were to and from the Developer, and there is no indication that the NBEDC or the city of New Bedford vetted such representations.

VII. Lease-End Discussions on UMD's Future at the Star Store (2019 – 2021)

Like most other institutions of higher learning, UMD and the CVPA were faced with reduced enrollment – and therefore revenues – in the wake of the COVID-19 pandemic, which coincided with the end of the Star Store lease.

As evidenced by emails produced to the OIG, conversations between DCAMM, UMass, and UMD officials relating to the future of UMD's tenancy at the Star Store began in December 2019, when just under two years remained on the Star Store lease. The then-DCAMM commissioner spoke with a representative of the UMass president's office and asked (1) whether UMD wanted to remain in the Star Store, and (2) if so, whether UMD would renew the lease with the Developer or exercise the purchase option.

In a January 15, 2020 conference call, DCAMM and UMass officials discussed the purchase and extended lease options, as well as the question of who would pay for needed improvements to the building. At that time, the CVPA's new dean was still convening stakeholders and reviewing their vision for the CVPA's future.

In a February 2020 email, DCAMM's director of leasing noted to representatives of UMD that DCAMM had previously advised the UMD vice chancellor that UMD needed "to understand the program and approve the future course of action and financial investments entailed." The email further said that the specific state appropriation for rent payments was "not the norm for other higher education leases." UMD agreed to undertake a facilities condition assessment and further agreed to assemble a group of stakeholders, including the Developer, "to discuss the future of the Star Store."

For the facilities condition assessment, UMass and UMD commissioned a private consulting firm, Gordian, to assess the overall status of UMD's physical facilities. In a 2020 report, Gordian estimated that

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106 *Id.*

107 *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 14, 1999.

UMD's overall deferred maintenance obligations for buildings it owned (*i.e.*, not including the Star Store) amounted to approximately $690 million.

In another report, Gordian specifically reviewed the age and condition of the Star Store. It concluded that the property was a "medium risk" facility that would require $3.3 million in immediate renovations to address the "highest risk" issues and a total of $8.3 million in renovations over the next 10 years. Gordian noted that these estimates did not incorporate potential cost escalations resulting from the COVID-19 pandemic, new building codes, and general inflation. Gordian provided UMD with another assessment in March 2022, updating the figures to $4.8 million in immediate renovations, $11.6 million in renovations over the next 10 years, and $28.1 million in total renovations. Separately, UMBA and DCAMM reported the cost of deferred maintenance at the Star Store to be substantially higher, falling in the range of $50 million to $70 million.

While the needs of the Star Store comprised only a fraction of the university's larger financial obligations, UMD officials told OIG interviewers that they were significant costs for the university to assume.

In September 2020, an internal UMD email summarized the issues surrounding the Star Store, noting that the programs housed in the Star Store had experienced enrollment declines, which had impacted the "creative energy the facility generates." The UMD email went on to say that the Star Store would require a "substantial investment" to transform its facilities and technologies. In addition to the deferred maintenance needs that Gordian identified, the email identified other needs:

1. Reconfiguration of space to allow for open areas to accommodate design studios and computer labs;
2. Upgrades to spaces with large-scale art equipment (*e.g.*, printing presses, kilns, and metalworking equipment) for student safety, including ventilation;
3. Upgraded internet access and modern digital art equipment, some of which UMD had on the main campus, but would need to move to the Star Store; and
4. Relocation of the remaining Bristol Community College science lab and the UMD Workforce Education classrooms.

The CVPA's dean was convinced that the Star Store in its current state could not meet the CVPA's changing needs. In December 2020, he emailed a white paper[108] to DCAMM outlining the changing trends in the CVPA program, such as reduced enrollment in traditional arts programs and increased enrollment in "graphic design, illustration, animation, and game art," which were housed at the main UMD campus in Dartmouth. The document outlined the findings of a Star Store working committee,[109] which proposed a "Star Store 2.0" with a reduced footprint for traditional art programs, repurposed space, and consolidation of the CVPA's design programs, while maintaining key amenities such as the university art gallery and kiln.

[108] The author of the white paper is believed to be one or more CVPA students who collaborated with the dean and the Star Store working committee.

[109] The working committee included the New Bedford Senator, the CVPA dean, UMD students, and other stakeholders. The group produced several proposed redesigns for the Star Store.

The dean sent the same document to the Developer in July 2021. The OIG did not find evidence that DCAMM or the Developer ever acknowledged or responded to the document.

In February 2021, an email from DCAMM's director of leasing reported the Developer's estimate of approximately $18 million for deferred maintenance costs and necessary upgrades. That same email stated that in discussions with DCAMM, the Developer said that he could invest $8 million into the Star Store and that if that figure was amortized over a period longer than 10 years, the Commonwealth's rent during that time would be close to or lower than its rent over the initial 20-year lease. The director of leasing was privately skeptical that the Developer would invest that much money and added that the opportunity to revitalize the building for UMD's current needs was contingent on the Developer doing so.

Internally, emails among the UMD administration reflect that the CVPA's presence at the Star Store was becoming a point of contention. In a March 2021 email to the UMD chancellor, the dean said that the CVPA was struggling to fit non-design classes in the Star Store, and that the problem would persist even if facilities and equipment were downsized. The dean pointed out that splitting the CVPA between the Star Store and the main campus in Dartmouth was inhibiting efficient use of space and staff, with the CVPA struggling to move students between campuses in a timely way. The dean also complained that UMD's vice chancellor had "no interest in considering the academic mission of CVPA."

Given those issues, the dean concluded in his March 2021 email that it would be better for DCAMM to put a space request out to bid rather than creating a "white elephant at the Star Store." But the dean was skeptical that the New Bedford Senator, who had been an influential proponent of the Star Store arrangement from the beginning, would support any earmark that wasn't specifically for that property.

DCAMM leadership also appeared cognizant that the CVPA's continued occupancy of the Star Store would require more capital investment and time than was available. On July 23, 2021, more than a week after the purchase option expired, DCAMM's commissioner toured the Star Store. That same day, she acknowledged in an email to other officials:

> The only way to keep this building from failing and keep the program alive is to have the current owner do the work. If this becomes a commonwealth project it will be twice the money and five years later. By law and practice we will not be able to contain the scope and move with the speed the way a private owner can.

In December 2020, with the end of the lease approaching and with no consensus on a long-term solution, DCAMM and the Developer began discussing a potential successor lease agreement.

Emails at the time suggest that a successor lease was DCAMM's preferred course of action, with UMD preferring a 10-year lease that would require the Developer to make certain improvements, such as upgrading the building's mechanical systems and reconfiguring the space for the CVPA's changing needs.

Other emails and internal reports indicate disagreement between DCAMM, UMD, and the Developer as to what would happen to the Star Store following the lease. An internal DCAMM memo from January 2021 stated that UMD had no interest in owning the property and did not have the revenue stream to support operations, maintenance, and the upgrading of an off-campus building should the purchase option be exercised. The memo presented several alternatives, including a 10-year lease with required improvements; exercising the purchase option and obtaining Asset Management Board approval for a public-private partnership; and the Developer donating the property to UMD.

In February 2021, the Developer proposed a 10-year lease to DCAMM, with rent structured around repayment of $18.5 million in improvements to be made by the Developer. However, whether to include another $1.00 purchase option in a new lease agreement was a point of debate. UMD's vice chancellor remarked in an email that leaving out a purchase option would mean "giving up millions of dollars in equity, both now and at the end of the lease." This was followed up with another UMD vice chancellor stating in a March 2021 email, "The University has a great interest in remaining at that location, and, specifically, in that facility. Although I understand that the Commonwealth has no [interest] in the purchase option, the University, through the UMass Building Authority, has an interest in a [purchase] option." However, other conversations in March 2021 indicate that both DCAMM and UMD believed that the absence of the purchase option in a 10-year lease would result in a reduced lease cost.

The Developer opposed including a purchase option in a 10-year lease, speculating to DCAMM that the IRS would consider a lease with a purchase option as an installment sale, giving the Developer a "very large tax bill" in 2022 and necessitating a significantly higher rent to the Commonwealth to compensate.[110]

In April 2021, DCAMM's director of leasing advised the New Bedford Senator that DCAMM was uninterested in owning the Star Store, and by May 2021, all discussion of exercising the purchase option had effectively ceased. By that point, DCAMM, UMD, and the Developer were solely focused on a long-term successor lease. Emails indicate that UMD reviewed architectural plans which the Developer provided for a 14-month renovation of the Star Store, costing $18 million amortized over a 10-year lease – an estimate that assumed the construction would not follow the public bidding requirements.

The New Bedford Senator continued to insist that the Commonwealth should own the Star Store building. On May 17, 2021, he introduced a budget amendment continuing a $2.7 million Star Store appropriation into Fiscal Year 2022 and permitting a one-year successor lease that would require DCAMM to exercise the purchase option at the end of the lease.[111] In a June 23, 2021 letter to the DCAMM commissioner, the New Bedford Senator criticized the "no-bid lease extension" process, and declared that a new long-term lease was "contrary to the original intent of the campus' creation and . . . an insult to taxpayers and the pursuit of good government."[112] He also demanded that DCAMM account for

> DCAMM's director of leasing privately acknowledged that DCAMM had waited "too long to start the process of thinking about the future," and had therefore locked itself into an untenable position.

[110] The Developer appears to have been correct in this assertion. When evaluating whether a lease with a purchase option is in fact an installment sale, the IRS looks to factors that include (1) whether the rent was substantially more than fair market value; and (2) whether the option price was a bargain for the buyer. While the OIG does not have data on whether the rent was greater than fair market value, it is clear that the $1.00 option would be far below the building's value. The IRS also considers whether the lease requires the tenant to pay for improvements on the property – as was the case here – which is indicative of the tenant's intent to purchase the property. As a result, the rent payments would be treated as taxable sales installments, and the Developer would lose the ability to deduct allowances for depreciation and rental expenses.

[111] This language ultimately was not included in the Fiscal Year 2022 budget.

[112] New Bedford Senator's letter to DCAMM, June 23, 2021.

the state appropriation given the building's reportedly deteriorating condition, and suggested that taking ownership of and renovating the building would be "far less" costly than a new lease.[113]

The DCAMM commissioner responded to the New Bedford Senator in a letter on July 13, 2021, which stated that there were "significant issues with exercising the purchase options [sic] in the current lease," reiterating the cost of renovations, the fact that UMD did not have a separate source of funding for these renovations, and that the replacement reserve account which was meant to pay to replace capital items was never funded. The DCAMM commissioner said that, rather than exercising the purchase option, "[w]ith the August 2021 lease expiration rapidly approaching, we are focused on responsibly securing a short-term agreement to allow UMD to continue its occupancy for the upcoming school year." The commissioner stated that once the "immediate occupancy crisis" was resolved, DCAMM and UMD would make a decision on how to procure future occupancy.[114]

The day before DCAMM sent this letter, the DCAMM director of leasing conceded to his colleagues the New Bedford Senator's point that they were using a "no-bid" process. His email stated:

> I can't refute the "no bid" point. We locked ourselves into the position we are in by:
>
> 1. Not being flexible with our ability to purchase and flip the property to another developer;
> 2. Not starting this process 2-3 years earlier to determine how the space would be utilized differently in the future;
> 3. Not sending the required reserve funding to the owner to maintain the systems of the building over the past twenty years.
>
> The only way to actually have the building available to students in September is to either enter into [a short-term tenancy agreement (STTA)], or a no-bid "unique" lease and hope the owner is reasonable. If the owner is willing to move forward with the STTA we have provided, we may have some additional options.

The New Bedford Senator's intervention effectively ended all discussion of a new 10-year lease, and the parties turned to negotiating a one-year short-term tenancy agreement (STTA) that included the purchase option. DCAMM's director of leasing speculated in an email that the Developer sought to shift the burden of repairs, expressing concern that "the building systems are at the end of their useful life" and that the Developer did not want the responsibility of replacing them.

> A lack of consensus among all government entities involved led to the 20-year lease ending without the Commonwealth purchasing the property, vacating the premises, or signing a successor lease.

On August 14, 2021, the original lease lapsed without a signed STTA in place.

113 *Id.* The OIG does not have the New Bedford Senator's underlying costs to verify the accuracy of this assertion.

114 DCAMM commissioner's letter to New Bedford Senator, July 13, 2021.

VIII. Short-Term Tenancy and Subsequent Month-to-Month Tenancy (2021 – 2023)

A. One-Year Short-Term Tenancy Agreement (2021 – 2022)

The parties continued to negotiate terms of a one-year STTA in the weeks following the expiration of the original lease. DCAMM and the Developer finally executed an STTA on August 31, 2021.[115] The STTA specified a lease term of one year, retroactively beginning on August 15, 2021, and running through August 14, 2022. It substantially incorporated the terms of the original lease, including the purchase option.[116]

DCAMM agreed to pay $1.9 million in base rent for the one-year STTA, a reduction from the prior year, but not an amount seemingly based on any debt service, additional renovations, or any other cost the Developer bore, thus giving the Developer a much higher profit ratio.[117] There is conflicting information as to whether the base rent was set at this amount in exchange for the $1.00 purchase option.[118] In addition to the base rent, the STTA incorporated the additional rent provision from the original lease that required the Commonwealth to pay for the Developer's operating expenses and property taxes.[119] The STTA did not incorporate the never-fulfilled replacement reserve account requirement from the original lease agreement. It also made the Commonwealth solely responsible for the "entire cost of any and all repairs, maintenance, improvements or Capital Improvements" required to meet building codes or insurance carrier requirements.[120]

The STTA was the first year in which the Developer received rent from UMD while not having to service the initial debt. With the Commonwealth covering all of the Star Store's operating expenses and the Developer not making any capital improvements to the property, the Developer essentially made $1.9 million in profits during the STTA.[121] Furthermore, because the Developer's TIF agreement expired, the additional rent that UMD paid was scheduled to increase as well, although based upon information and belief the TIF agreement was extended throughout the remainder of UMD's occupancy.

[115] *Commonwealth of Massachusetts Short Term Tenancy Agreement*, August 31, 2021. All communications reportedly went through DCAMM and the Developer, and the Developer did not have any direct communication with anyone at UMD.

[116] *Id.*

[117] *Id.*

[118] In a March 2021 email, DCAMM's director of leasing relayed the Developer's position that the inclusion of the $1.00 purchase option would result in a rent increase. By contrast, in an interview the director indicated that the rent was based on appraisals and comps and was not higher due to the inclusion of the purchase option. The Developer represented that he had a "moral responsibility" to include the option.

[119] *Commonwealth of Massachusetts Short Term Tenancy Agreement*, August 31, 2021, at 2. Upon information and belief, the TIF agreement was extended by an additional year, keeping the property taxes at $50,000.

[120] *Id.* at 9. As these costs were included as additional rent under the original lease, the significance of this additional language is unclear.

[121] In the prior year, the Developer's profit was approximately $383,252. *See* Figure 1.

Fiscal Year	State Appropriation 1599-7104 for Star Store	Base Rent	Additional Rent	Total Rent
2022	$2,367,123.29	($1,665,753.42)	($390,487.31)	($2,056,240.73)
2023	$2,700,000.00	($1,900,000.00)	($456,643.45)	($2,356,643.45)
2024	$ -	($234,246.58)	($83,155.36)	($317,401.94)
Total	**$5,067,123.29**	**($3,800,000.00)**	**($930,286.12)**	**($4,730,286.12)**

Figure 4. Appropriations, Base Rent, and Additional Rent for FY22 – FY24 During STTA and Subsequent Occupancy.

After executing the STTA, the parties continued to discuss the future of the Star Store. In early October 2021, DCAMM's director of leasing circulated an internal document proposing three possible options following the end of the STTA:

1. Exercise the purchase option and require DCAMM or UMBA to renovate and reconfigure the building;

With the Star Store's Developer no longer having to service the debt for initial renovations and the Commonwealth responsible for operating expenses, in the final two years of UMD's tenancy nearly all multimillion dollar rent payments made by the Commonwealth were profits for the Developer.

2. Enter a new long-term (10-year) lease to commence following the completion of necessary renovations and improvements, which could either be competitively procured or continued with the Developer, with the building's "unique" characteristics serving as justification for a noncompetitive process; or

3. Propose a long-term lease to the Asset Management Board, requesting waiver of the applicable public construction laws.

DCAMM also explored whether it could access pandemic relief funds to purchase the building.

In January 2022, DCAMM and UMD leadership believed that, due to a lack of funding for Star Store repairs, they had no option but to renew the lease. The parties subsequently obtained an appraisal of the building and estimated costs of renovations, including updated estimates from Gordian, which they received in March.[122]

In April 2022, DCAMM emailed a letter to the Developer asking him to provide information on rent, landlord services, and costs of interior alterations for a lease of up to 15 years. The Developer answered through email later that month that he was meeting with engineers and working on the estimates.

On May 13, 2022, the New Bedford Senator filed an amendment to the Fiscal Year 2023 budget requiring that DCAMM exercise the purchase option of the STTA by July 15, 2022. The Developer provided DCAMM the proposal for a 10-year lease on June 6, 2022, but the proposal was problematic in that it

[122] Cushman and Wakefield Appraisal Report, February 1, 2022; UMass Dartmouth Star Store Facilities Assessment and Planning Final Presentation, March 2022.

excluded costs for key maintenance, including the HVAC. Over the next few days, the Developer and DCAMM continued to negotiate the terms for this lease.

UMD arranged a meeting in mid-June with DCAMM to discuss “creative options” in response to the New Bedford Senator’s insistence that legislative funding for another lease be withheld. They made little progress, and on July 12, 2022 – mere days before the deadline to exercise the purchase option – the New Bedford Senator wrote a letter to the DCAMM commissioner urging DCAMM to purchase the Star Store and use the $2.7 million legislative appropriation to address the building’s maintenance and renovations.[123] The letter also asserted that “[n]o more state funding should be devoted to this building until ownership is transferred and the taxpayer’s investment has been secured.” The New Bedford Senator also wrote to then-Massachusetts Governor Charlie Baker advocating that DCAMM exercise the purchase option.

Despite the insistence of the New Bedford Senator, DCAMM did not exercise the purchase option. DCAMM’s senior counsel prepared a draft of a Notice of Exercise of Purchase Option and sent it to the DCAMM commissioner and DCAMM chief of staff on July 15, but no DCAMM official signed the notice or sent it on to the Developer. On the same day, DCAMM responded to the New Bedford Senator in a short letter, stating that DCAMM was proposing an “alternative path” and requesting a commitment to at least five years of legislative appropriations prior to exercising the purchase option.[124]

On July 28, 2022, the Governor sent back a section of the budget as an amendment which required DCAMM to exercise the purchase option and transfer the Star Store to UMBA by October 1, 2022. The filing letter which accompanied the amendment included a statement that the Governor intended to include $30 million for five years of capital and operating repairs in a supplemental budget. The chief of staff proposed that DCAMM assign the purchase option to UMBA, to avoid complications with a transfer of real property. The amendment language ultimately designated UMBA as the successor agency to DCAMM with respect to the Star Store STTA, and directed UMBA to exercise the purchase option before August 14, 2022. According to DCAMM emails, DCAMM did not consult with UMBA prior to proposing this language.

On August 4, 2022, Governor Baker signed Chapter 141 of the Acts of 2022. Section 1 of the law mirrored the language filed by Governor Baker, making UMBA the successor agency to DCAMM with respect to the purchase option and directing UMBA to exercise the option prior to August 14, 2022.[125]

Despite this newly-signed legislation making UMBA the successor agency, DCAMM sent a letter to the Developer on August 10, 2022, attempting to exercise the purchase option.[126] The Developer responded to DCAMM in an emailed letter the following day, objecting to the attempt to exercise the purchase option as untimely.[127] The Developer asserted that the STTA required DCAMM to exercise the

[123] New Bedford Senator’s letter to DCAMM, July 12, 2022.

[124] DCAMM letter to New Bedford Senator, July 15, 2022.

[125] Acts 2022 c. 141, § 1.

[126] DCAMM letter to the Developer, August 10, 2022.

[127] Developer’s letter to DCAMM, August 11, 2022.

option at least 30 days prior to the expiration of the lease – or no later than July 14, 2022.[128] He further argued that the lease specifically prohibited DCAMM from assigning the purchase option to another state agency and prohibited assignment of the lease itself without the Developer's written consent.[129] Notwithstanding his assertions, the Developer said he was open to reaching "an agreement that will be amicable to both sides" but did not offer a specific resolution.[130]

Upon receipt of the Developer's rejection, DCAMM's director of leasing conceded in an internal email that there were "no real surprises" by his denial.

B. Month-to-Month Tenancy (2022 – 2023)

UMD continued to occupy the Star Store after the STTA had expired in August 2022, while DCAMM and the Developer negotiated another extension to the lease. Because the Legislature had appropriated funds for Fiscal Year 2023, UMD was able to pay the Developer on a month-to-month basis at the same rate set in the STTA.

C. End of Legislative Appropriations (2022 – 2023)

In September 2022, Governor Baker filed a supplemental budget that included up to $20 million for capital repairs to the Star Store, but the Legislature did not pass that bill.[131] DCAMM and UMD had no assurances from the Legislature that future funding would be forthcoming, and emails from the New Bedford Senator's office to UMBA show that the senator was increasingly concerned about the legislative lease payments to the Developer with no simultaneous debt service.

The lack of assurances from the Legislature stalled negotiations between DCAMM and the Developer over a successor lease, and in early 2023 the Developer informed DCAMM through emails that he intended to donate the Star Store to UMD or UMBA to recoup the tax benefits. In June 2023, DCAMM concluded that it could accept the Star Store building as a donation, but that UMBA could not.

In May 2023, the New Bedford Senator introduced a budget amendment that would ultimately become Section 79 of Chapter 28 of the Acts of 2023, which prohibited any additional expenditures on the Star Store from any account until the property was conveyed to UMBA.[132] In July 2023, the Executive Office of Administration and Finance (A&F) informed DCAMM by email that the legislative Fiscal Year 2024 budget conference committee had eliminated the Star Store funding line item in its entirety. DCAMM met with A&F in early August 2023, seemingly to discuss DCAMM's views on Section 79.

On August 4, 2023, the Developer wrote to Massachusetts Governor Maura Healey requesting that she veto Section 79, declaring that it had "long been [his] intention to gift or convey the property for

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[128] *Id.* The Developer states that the original lease with purchase option expired on August 14, 2021.

[129] *Id.*

[130] *Id.*

[131] *See* H5260.

[132] Mass. Acts 2023 c. 28, § 79.

$1 despite DCAM[M] missing their opportunity to exercise the option in accordance with the lease."[133] The Developer proposed new language that would require DCAMM to accept title to the Star Store.[134]

On August 9, 2023, Governor Healey signed the Commonwealth's Fiscal Year 2024 budget, Chapter 28 of the Acts of 2023. For the first time since 2001, the state budget did not include a specific appropriation for the Star Store and prohibited the expenditure of any state funds for the Star Store.[135]

Section 79 also directed DCAMM and UMBA to produce a report to the OIG detailing expenditures relating to the Star Store made after September 7, 2021.[136] The law further required the OIG to review said expenditures for evidence of fraud, waste, and abuse, and to make appropriate findings.[137]

IX. UMD's Termination of Tenancy (2023)

On August 14, 2023, UMD notified DCAMM that it intended to vacate the Star Store due to the lack of available funding. That same day, DCAMM notified the Developer in writing that it was terminating the tenancy and would vacate the building by August 31, 2023.

X. Star Store Today (2023 – present)

As of the date of this report, the Developer still owns the Star Store, and the building remains vacant. The CVPA has temporarily moved into a big-box warehouse in Dartmouth.[138] UMD has built space on campus for some CVPA courses and has stated that it has no interest in returning to the Star Store as it focuses on developing its Dartmouth campus.

The Developer stated in an OIG interview that he is still searching for a buyer or donor recipient. The Developer also stated in the interview that the TIF agreement has lapsed and that his annual property tax bill for the Star Store is over $500,000 based on an assessed value of over $20 million. He further stated that he has not paid that full amount. Instead, he is continuing to pay the $50,000 per year he owed under the TIF agreement while he appeals the Star Store's assessed value to the Appellate Tax Board.[139]

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133 Developer's letter to Governor Maura Healey, August 4, 2023.

134 *Id.*

135 Mass. Acts 2023 c. 28, § 79.

136 *Id.*

137 *Id.*

138 *What's Next for UMass Dartmouth Arts? School Isn't Saying*, New Bedford Light, May 20, 2024.

139 As noted above, the parties did not file complete annual reports with the NBEDC on the economic benefits of the project as required by the TIF agreement. These reports would have helped to assess the economic impact of the project in downtown New Bedford. As it stands, without these reports it is difficult to objectively evaluate the economic value of the 20-year Star Store lease or the presence of the CVPA to downtown New Bedford's economy.

FINDINGS

Overview

The Commonwealth's leaders play a critical role in helping to drive economic growth across the state, particularly in gateway cities. The fact that the Commonwealth assumed a central responsibility in a plan to revive downtown New Bedford was both a reasonable and admirable governmental function. The missteps surrounding the Star Store lease that are outlined in the findings below were not a result of the initiative itself, but in its myriad details and the actions and inactions of key parties that set the trajectory for the present outcome – the waste of taxpayer dollars and a large abandoned commercial building in downtown New Bedford.

By all accounts, repurposing the Star Store for use by the University of Massachusetts Dartmouth (UMD) was a legislative priority for New Bedford's state senator (New Bedford Senator), consistent with the objective of growing the city's economy. While UMD became the long-term tenant under the lease arrangement authorized by Chapter 457 of the Acts of 1996, it is unclear to what extent the University of Massachusetts (UMass) proposed or advocated for the legislation. The Star Store lease was not a UMass or UMD project. Rather, UMD and its College of Visual and Performing Arts (CVPA) benefited from the Legislature's willingness to use a standalone funding mechanism outside of the university system's traditional budget process to fund the lease and nearly all of its related costs.

From the beginning, a lack of shared goals between UMass and the Legislature was apparent. In an attempt to revitalize New Bedford, the Legislature incentivized UMass to locate the CVPA in the Star Store for the long-term lease with minimal university expenses, but UMass was not interested in investing its own funds in the downtown building at the expense of developing its Dartmouth campus. Given its role as a signatory to the lease and the manager of Commonwealth properties, the Commonwealth's Division of Capital Asset Management and Maintenance (DCAMM) should have taken a more active role. DCAMM should have engaged with the Legislature and UMass to ensure that all parties were invested in exercising the lease-end option to purchase, to keep the public tenants in the Star Store, and to agree on the circumstances under which this option would be beneficial to all parties.

DCAMM documents and officials characterized the Star Store project as unique for both DCAMM, as the Commonwealth's real estate expert, and the Commonwealth as a whole. DCAMM should have acknowledged that the limitations specified by the Legislature in effect amounted to an illusory procurement for UMD space. Several aspects of the lease arrangement were unusual in terms of DCAMM procurements, such as the statutory requirement that DCAMM secure a lease with very specific terms (including the lease-end option to purchase) and the fact that the Legislature, rather than the tenant agency, advocated for and funded the space. The OIG found no evidence that DCAMM raised concerns about the leasing arrangement or objected to its inability to negotiate favorable terms for the Commonwealth in light of the 1996 legislation's stringent specifications favoring one property.

Nonetheless, DCAMM could have negotiated a lease-end purchase that would have rendered the less-favorable lease terms more palatable. DCAMM failed to engage with officials from UMass, UMD, or the Legislature to ensure that all parties were aware that the financial structure of the lease significantly favored exercising the $1.00 purchase option at the lease's end.

The OIG investigation also showed that UMass did not effectively manage the lease or adhere to its terms. For instance, the required reserve replacement account was not established or funded. Additionally, notwithstanding the lease-end option to purchase the Star Store, UMass did not make sufficient efforts to maintain the building or make needed capital improvements, despite the Commonwealth making funds available for those purposes. Protecting the condition of the building was critical to maximizing the Star Store's value were it to have become a public asset through the purchase option. Nor did DCAMM address the confusion as to whether the option to purchase, if exercised, would make the Star Store a university asset or a Commonwealth asset.

The OIG's investigation indicates that UMass was agreeable to housing the CVPA in downtown New Bedford's Star Store for many years as long as the Commonwealth was assuming the costs. However, as the end of the original 20-year lease term approached, differing views emerged among UMass system officials, UMD leadership, administrators, deans, and students on the best course to move forward. Some wanted UMD to own the building by exercising the lease's purchase option; others advocated for a new long-term lease that would include a major space renovation; and others wanted the CVPA to return to the Dartmouth main campus. As those conversations unfolded, leaders from the UMass Office of the President (an original signatory to the lease) and UMD did not identify a single party to clearly and directly communicate the university's position to DCAMM or the Legislature. When the university did not clearly communicate that it wanted the state to purchase the building for its continued use by the July 14, 2021 deadline specified in the lease, DCAMM and UMD should have adhered to the only remaining lease option: vacating the Star Store by the end of the lease on or about August 14, 2021.

To reiterate, while DCAMM was hands-off through much of the life of the lease, as it began to engage in lease-end conversations around 2019, DCAMM erred by:

- Not obtaining clarity from UMass whether to exercise the purchase option by the lease's deadline;
- Not obtaining an assurance of continued funding from the Legislature prior to engaging UMass or UMD regarding a subsequent long-term lease, as DCAMM knew that UMass, while a beneficiary, was not funding the 20-year lease or any subsequent extension; and
- Not planning to vacate the building by the lease's end when it received neither of these authorizations.

If the Commonwealth were to make any future use of the Star Store and avoid wasting the public funds that were expended in short-term arrangements following the end of the lease, it was imperative for DCAMM to advise the Legislature and the New Bedford Senator of the stance of the parties involved and the options available to them: (1) UMass was not clear if it was interested in pursuing the $1.00 purchase option, although it seemed to have some interest in renovating and entering a subsequent long-term lease as long as the Commonwealth was funding it; (2) if UMass would not commit to the purchase option, DCAMM's only option would be to vacate the space at the lease's end; and 3) alternatively, if the Legislature had an interest in DCAMM pursuing the purchase option, it would need to clarify how the building would be operated and occupied, as DCAMM cannot dictate that state agencies occupy certain spaces.

For its part, UMass did not manage the lease as it does for its other leases of private property. UMass never attempted to align a long-term plan with the long-term plan of the Legislature, and indeed never committed to one long-term plan at all. Nor did it designate a leader to be the decision-maker, thus allowing the purchase deadline to pass without deciding to purchase or vacating the building.

In the future, the Legislature should ensure that the government entities involved in similar long-term funding and leasing arrangements sign a compact to ensure that they share a long-term vision for the project and understand the strategic goals needed to achieve it.

As an economic development project, the Star Store lease provided many years of value to downtown New Bedford, although the extent of economic benefits is not easily measured. But the lack of shared vision and collective ownership of the lease did allow millions of public dollars to be wasted. The lease was financially structured so that the Star Store would become a Commonwealth asset at the end of 20 years. As long as the parties properly maintained the building during the 20-year term – including making capital repairs that the Commonwealth provided funding for – the option at the end of the lease was illusory. UMass should have been clear that it had no interest in "owning" the Star Store if it was going to have to invest its own money. Yet, due to the lack of communication and cooperation among the government entities involved, the Commonwealth paid very generous lease terms for 20 years and then failed to purchase the building; paid high rent payments for two additional years; and ultimately allowed the Star Store to languish as a vacant, tax delinquent, aging property in the center of New Bedford.

The OIG believes that the Commonwealth can and must do a better job of protecting public dollars. While government agencies should "dream big" and think creatively to bring economic growth to the Commonwealth and its municipalities, they must memorialize long-term strategies and goals in writing and hold their partners accountable. While government agencies in the right circumstances can deviate from general practices, such as in procuring property leases or establishing the length of those leases, Commonwealth agencies must understand that such circumstances require greater oversight by the agencies involved, not less.

Finding 1: The 1996 legislation was flawed, setting up a procurement process that was not open, fair, or competitive.

Section 2 of Chapter 457 of the Acts of 1996 authorized DCAMM to procure a 20-year lease of property in New Bedford for use by UMD. As forewarned by former Inspector General Robert Cerasoli, the 1996 legislation needlessly exempted the procurement from existing statutory safeguards and narrowed the scope of the procurement so significantly that only one property fit the legislation's criteria.

In light of his concerns, former Inspector General Robert Cerasoli objected to the legislation and called on former Governor Weld to veto the measure, stating in a January 3, 1997 letter:

> I strongly recommend that you veto Senate No. 2271, which is currently before you for your approbation. Section 2 of Senate No. 2271 would authorize the development and lease by that state of property in the so-called Commercial Area Revitalization Central Business District within the city of New Bedford for use by the University of Massachusetts at Dartmouth. The arrangement proposed in this legislation mirrors the

> disastrous Ruggles Center lease in a number of respects. This state-funded lease, which calls for extensive construction work, would be exempt from all statutory safeguards that normally apply to the state's real property leases, design contracts and construction contracts. Although Senate No. 2271 would require DCPO [now DCAMM] to conduct a competitive developer selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the Commercial Area Revitalization Central Business District. Moreover, the legislation requires the developer to be the landlord for the property. Under these circumstances, there can be no competition.

From its inception, the 1996 legislation was intended to apply only to the Star Store. The New Bedford Senator publicly stated that the purpose of the 1996 legislation was to lease the Star Store. The New Bedford Senator even appeared before the New Bedford Redevelopment Authority with the Developer to advocate for the project before the legislation was passed. Furthermore, the legislation did not specify metrics to measure the project's economic impact in New Bedford.

Finding 2: The resulting request for proposals (RFP) was an RFP in name only and resulted in a flawed lease.

The narrow scope of the RFP showed that the RFP was a mere formality and that there was never a truly open, fair, and competitive procurement process to select a site for the lease. The 1997 RFP DCAMM issued pursuant to the 1996 legislation limited qualifying proposals to those properties located in a relatively small area of downtown New Bedford that had a large physical space, a loading dock suitable for large trucks, and substantial dedicated parking spaces, as well as an owner who had both the appetite for a 20-year lease and a willingness to ultimately part with the property for $1.00. These detailed requirements effectively narrowed down the range of potential respondents to the Star Store. Future DCAMM officials not involved in the RFP would privately acknowledge that the procurement was not competitive. DCAMM officials should have objected at the time.

With no competition, there was no incentive for the Developer to reduce costs or propose terms favorable to the Commonwealth. The Developer made millions in profits while the Commonwealth bore every expense related to the Star Store lease.

Finding 3: The project lacked a clear vision.

The Legislature adopted the plan to house the CVPA in New Bedford to help revitalize the city's downtown. As noted above, the long-vacant Star Store was the predetermined property. The building needed extensive renovations to accommodate the CVPA. Rather than purchasing the building and undertaking a public construction project, the proponents crafted a 20-year lease with the renovations to be completed by a developer, funded by a state bond and an option for the Commonwealth to purchase the property at the end of the lease. In authorizing this project, the Legislature also directed the OIG to review and approve the appraisal and DCPO's [now DCAMM's] process for selecting the developer. The OIG wrote extensively of the flaws in the process and opined that the proposal was not in the public interest. The Legislature nevertheless approved the measure. Although the Legislature included oversight protections for the procurement and lease negotiation phases of the project, it did not establish safeguards for the lease period itself to ensure that the building was properly maintained in anticipation of the Commonwealth's ultimate purchase of the property. With no party to the original lease assigned overall responsibility for the project, the New Bedford Senator's goal of making the Commonwealth a permanent occupant of the Star Store was destined to fail from the outset.

Finding 4: The original lease terms were unfavorable to the Commonwealth, while other terms were ambiguous or ignored.

A. Acting at the Legislature's direction, DCAMM negotiated a lease for which the Commonwealth paid a premium.

The original lease required UMD to pay not only a high base rent – set at 20% above the principal and interest the Developer owed on the state-backed bonds – but also to pay property taxes and operating expenses as "additional rent." The lease was in effect a "triple net lease," an arrangement common in long-term private sector leases, but less common in the public sector. The Developer retained a third-party property manager to handle the day-to-day work of maintaining the property. UMD covered those costs as part of additional rent, so the Developer's profits were unaffected. Notably, these advantageous terms appear to have been predetermined, as this arrangement was already included in the proposed lease attached to the RFP.

Former Inspector General Cerasoli objected to these terms in a September 23, 1997 letter to the DCPO Commissioner, stating as follows:

> In this Office's view, landlord services required under the terms of a lease agreement, such as routine maintenance of the property, should normally be included in Commonwealth's rental payments. **In general, allowing a landlord - or any vendor - to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively.** However, including the cost of these services in the base rent could also expose the Commonwealth to excess rent costs. Of these two unfavorable options, the method outlined in the Rider may be preferable if DCPO is accorded sufficient authority to approve or disapprove the landlord's initial operating budget and any changes thereafter.

Ultimately the lease did include a provision allowing UMD and DCAMM to review and approve of operating expenses. According to the Developer, the provision was never used to prevent any expenses from being paid.

Of note, because the Developer in effect received the building for free and therefore did not hold large mortgages, the rent agreement was essentially structured to pay for the cost of construction – an arrangement that today likely would be prohibited as an illegal circumvention of public construction laws.

B. The lease included provisions that were ambiguous.

While the landlord was clearly responsible for routine repairs, responsibility for capital replacements and improvements – such as HVAC system and roof – was less clear. That ambiguity resulted in a lack of responsibility by any party for those larger improvements. Thus, when the Legislature made money available for that purpose, none of the parties – the Developer, DCAMM, nor UMD – sought to leverage those funds to initiate improvements.

C. The lease included provisions that the parties ignored.

The Developer was required to establish a reserve replacement account to which UMD would contribute. The purpose of the account was to ensure that in the later years of the lease term, funds would be ready to cover the costs of capital improvements. The Developer and UMD ignored these provisions. While the amount that would have been deposited into the replacement reserve account would have been insufficient to support the costs of the Star Store's needed improvements, the facts that the Developer did not open the required account and that UMD did not make any of the required payments demonstrate that neither DCAMM nor UMD took ownership of a lease to which they were both signatories. By the end of UMD's occupancy, the Star Store's systems had deteriorated and needed replacement. UMD cited these problems as part of the reason it declined to take possession of the building. UMD and DCAMM's failure to maintain the building as detailed by the lease terms resulted in a waste of public dollars.

Finding 5: DCAMM failed to exercise ownership over the project.

Because the lease had an option to purchase to effectuate the goal of the Commonwealth eventually owning the property, DCAMM should have gone beyond its usual role and actively managed the building. DCAMM was heavily involved in the initial procurement, negotiating the lease, and overseeing the renovations. UMD was responsible for day-to-day oversight.

During the 20-year lease, DCAMM did not undertake capital improvements. Nor did it take advantage of funds the Legislature appropriated for such improvements. The costs of the deferred capital improvements made it less desirable for the Commonwealth to exercise the purchase option.

Further, DCAMM did not begin to ascertain the Commonwealth's interest in purchasing the property until early 2020. Its needs assessment of the continued viability of the Star Store occurred too late for other stakeholders to engage in a thoughtful and deliberative process with DCAMM about the viable future options for the Star Store.

As signatory to the lease, DCAMM should have actively managed the project not only to ensure that the Commonwealth was meeting its contractual obligations, but – given the nominal purchase price

– to ensure that the building was being maintained in a manner consistent with a building that had a high probability of becoming a Commonwealth asset at the lease's end.

Finding 6: UMass was not committed to the long-term plan for the Star Store.

While proponents of downtown redevelopment had identified UMD's CVPA as a viable economic catalyst for the area, the OIG found little evidence that UMD was enthusiastic about the lease. For example, the OIG found no evidence to indicate that UMD understood or accepted the overarching premise that the lease would spur economic growth in downtown New Bedford. Although university officials told the OIG that each campus of the system operates independently, the UMass president signed onto the plan on behalf of UMD, perhaps incentivized because the project was funded by the Legislature outside of the university's annual appropriation. At the outset, the university did not incur renovation costs to prepare the building for the school. And the Legislature made a separate appropriation for rent payments for the duration of the lease. The university did shoulder incidental costs, such as those associated with shuttling staff and students to the Star Store from the Dartmouth campus. Although the OIG found that UMD generally kept up with day-to-day maintenance of the building, UMD did not treat the building as an asset that the Commonwealth would one day own for UMD's benefit. UMD did not ensure capital repairs and improvements were made over time. The OIG found no evidence that UMD took steps to advocate for the release of funds to be used for capital improvements. Until 2020, UMD did not communicate regarding the continued viability of its occupancy of the Star Store. UMD's inaction on these matters contributed to the increased costs necessary to modernize the building at the end of the lease. UMD then used the high cost of renovations as justification for not moving forward to ask DCAMM to acquire the building under the purchase option for a nominal $1.00.

Finding 7: The Commonwealth spent over $60 million on the Star Store since executing the original lease in 2000.

As shown in Figures 5 and 6, the OIG verified almost **$60.5 million** in public expenditures on the Star Store since DCAMM and the Developer executed the original lease in 2000. These expenditures include base rent, additional rent, and UMD's ancillary expenses, such as shuttling students between the Star Store and the main campus in Dartmouth. This amount does not include additional rent expenses prior to Fiscal Year 2012, ancillary expenses prior to Fiscal Year 2012 or during the 45-day month-to-month tenancy in Fiscal Year 2024, or the costs of UMD moving out of the building.

Fiscal Year	State Appropriation 1599-17104 for Star Store	Base Rent	Additional Rent	UMass Extra Expenses	Total Verified Star Store Operating Costs
2001	$1,700,000.00				$ -
2002	$2,430,267.00	($1,892,373.04)			($1,892,373.04)
2003	$2,730,267.00	($2,158,488.00)			($2,158,488.00)
2004	$2,665,093.00	($2,158,488.00)			($2,158,488.00)
2005	$2,565,093.00	($2,158,488.00)			($2,158,488.00)
2006	$2,565,093.00	($2,158,488.00)			($2,158,488.00)
2007	$2,700,000.00	($2,195,741.26)			($2,195,741.26)
2008	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2009	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2010	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2011	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2012	$2,700,000.00	($2,238,233.26)	($272,726.14)	($640,863.17)	($3,151,822.57)
2013	$2,700,000.00	($2,243,472.00)	($399,688.66)	($608,256.65)	($3,251,417.31)
2014	$2,700,000.00	($2,243,472.00)	($315,867.87)	($646,416.25)	($3,205,756.12)
2015	$2,700,000.00	($2,243,472.00)	($355,763.37)	($624,510.93)	($3,223,746.30)
2016	$2,700,000.00	($2,243,472.00)	($360,261.85)	($556,002.79)	($3,159,736.64)
2017	$2,700,000.00	($2,280,714.74)	($441,736.09)	($728,410.42)	($3,450,861.25)
2018	$2,700,000.00	($2,285,952.00)	($452,240.36)	($703,565.33)	($3,441,757.69)
2019	$2,700,000.00	($2,285,952.00)	($460,658.10)	($804,037.98)	($3,550,648.08)
2020	$2,700,000.00	($2,285,952.00)	($432,796.46)	($674,032.19)	($3,392,780.65)
2021	$2,700,000.00	($2,285,952.00)	($380,259.65)	($509,910.13)	($3,176,121.78)
2022	$2,700,000.00	($1,947,583.12)	($449,376.75)	($372,368.67)	($2,769,328.54)
2023	$2,700,000.00	($1,900,000.00)	($456,643.45)	($513,026.08)	($2,869,669.53)
2024	$ -	($234,246.58)	($83,155.36)		$(317,401.94)
Total	**$60,555,813.00**	**$(48,244,460.00)**	**$(4,861,174.11)**	**($7,381,400.59)**	**$(60,487,034.70)**

Figure 5. Total Verified Costs of Star Store, Base Rent FY02 – FY24, Additional Rent FY12 – FY24, UMass Extra Expenses FY12 – FY23[140]

[140] Information provided by UMD's CFO. UMD's estimates were used for 2017 to 2021 for internet costs, and no costs were provided for years prior to 2017. UMD's estimates were used for 2017 and 2021 for A&A Metro Shuttle Contract (Continuous Loop) costs, and no costs were provided for years prior to 2017. This shuttle is different from the CVPA college-funded shuttles,

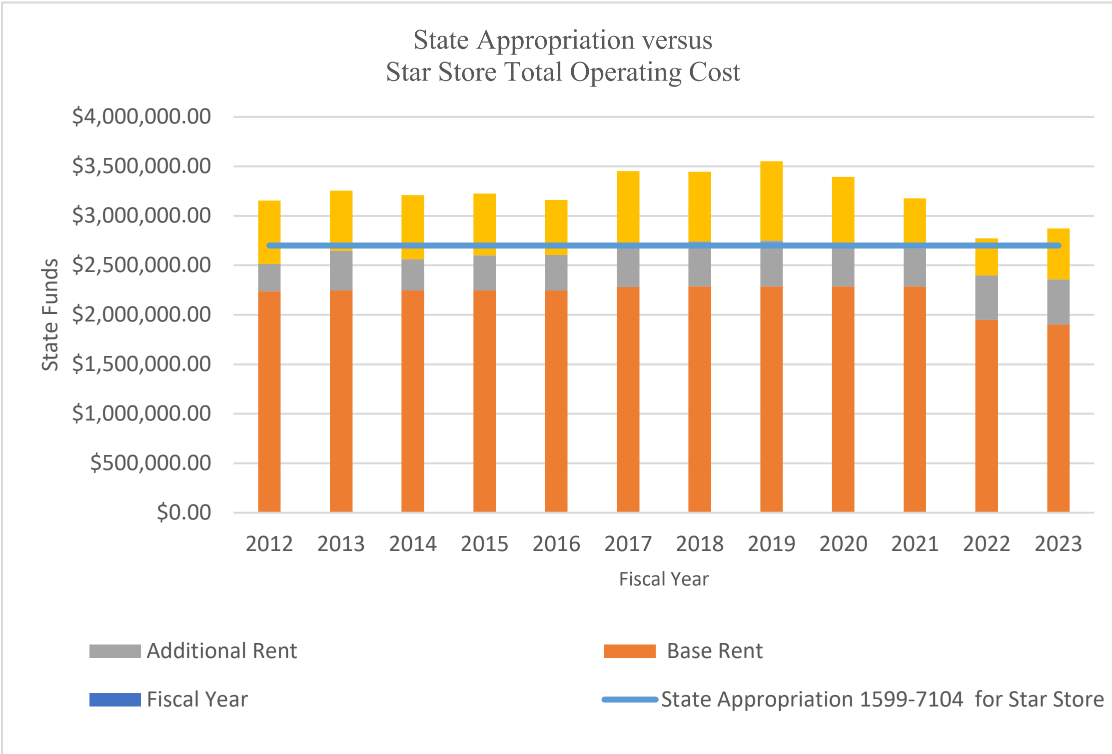

Figure 6. State Appropriation inflow next to Total Operating Cost expense made up of the Base Rent, Additional Rent & UMass's Extra Expenses.

Finding 8: The collective failure of DCAMM, UMD, and the Legislature to communicate and plan for the end of the 20-year lease resulted in the waste of over $4 million in public funds through the short-term and month-by-month tenancies.

The parties' actions and inactions at the end of the original lease term demonstrated poor fiscal management. DCAMM and UMD engaged in virtually no discussions of whether and how to exercise the purchase option and take possession of the Star Store until early 2020, when only about 18 months remained to do so. Likewise, DCAMM and UMD did not assess the Star Store's overall condition or cost analysis until 2020.[141] Discussions in 2020 were largely speculative and high-level; productive discussions did not begin in earnest until January 2021, after a new interim UMD Chancellor was named and when only six months remained until the lease expired.

DCAMM's director of leasing privately acknowledged in a July 2021 internal email that DCAMM waited "too long to start the process of thinking about the future" and had therefore locked themselves into an untenable position.

which were intermittent. In Fiscal Year 2010, the Commonwealth provided the appropriation in the form of federal ARRA funds instead of state funds. The ARRA funds came directly to UMD.

[141] In February 2016, the Developer commissioned a study of the building's HVAC and electrical systems only.

The delay and lack of coordination may have made negotiating more favorable lease terms difficult. When DCAMM entered discussions with the Developer and UMD on a successor 10-year lease, it did so without the assurance of funding. DCAMM therefore should have presented UMD with two options at the end of the 20-year lease term: affirm its intent to purchase the Star Store or vacate the premises at the end of tenancy. Instead, the parties entered the one-year STTA – which substantially incorporated the terms of the original lease, but without debt service or required renovations gave the Developer a much higher profit margin. During the STTA period, DCAMM's discussions with the Developer were still focused on negotiating a successor 10-year lease. The New Bedford Senator was actively urging an exercise of the purchase option. Because of the delay in communication and lack of agreement in July and August 2022, DCAMM did not exercise the option by the July 14, 2022 deadline. DCAMM attempted to salvage the deal with legislation filed by Governor Baker making UMBA the successor agency for the now-expired option, which was signed into law on August 4, 2022. On August 10, 2022, DCAMM attempted – and failed – to exercise the option in violation of the lease.

With no title to the property and no successor lease to the STTA in place, UMD became a tenant-at-will for the following year. Ultimately, the Developer accepted additional rent payments and therefore the terms of the STTA continued. Occupying the property without a written lease for an additional year created uncertainty and demonstrated a lack of strategic planning.

The Developer was very well compensated from August 2021 to August 2023 – the two years beyond the original 20-year lease – raising significant concerns that the Commonwealth's inactions wasted public funds. Had the Commonwealth parties acted prudently, they would have come to a consensus on whether to exercise the purchase option or vacate the Star Store within the original lease period. Rather, the Commonwealth parties entered the STTA and subsequent month-to-month tenancy, thereby diverting almost $4 million of taxpayer funds into the Developer's profits while still not obtaining title to the property.

Finding 9: The OIG has no reasonable grounds to refer the Star Store matter for prosecution or civil recovery.

In accordance with the specific mandate of Section 79 of Chapter 28 of the Acts of 2023 and the OIG's general mandate under Chapter 12A of the Massachusetts General Laws, OIG investigators reviewed public expenditures related to the Star Store after September 7, 2021, for evidence of fraud, waste, and abuse in the expenditure of public funds. The review consisted of an analysis of over 300 invoices during that time period, as well as contemporaneous related communications and other records. Based on the evidence it reviewed, the OIG does not have reasonable grounds to refer this matter for prosecution or civil recovery pursuant to § 79 and M.G.L. c. 12A, §§ 10 and 11.

CONCLUSIONS AND RECOMMENDATIONS

I. Recommendations Regarding the Star Store Property

As of the date of this report, a bill before the Legislature proposes to have the state take title to the now-vacant Star Store, which remains the property of the Developer. The OIG advises the interested parties to carefully consider this proposal so that the Commonwealth does not repeat the mistakes it made in the execution, administration, and outcome of the Star Store lease. To that end, the OIG makes the following recommendations specific to the Star Store property:

1. To the extent that one or more stakeholders, whether through special legislation or otherwise, advocates for a public entity to own and operate the Star Store as a taxpayer-supported public building, the Legislature, the Administration, the city of New Bedford, and any other public stakeholder must first assess the viability of the project based on the current state of the building. Before undertaking any such project, all stakeholders must agree on shared goals, reach a consensus on what type of public entity is best suited to occupy the Star Store, fully understand what the occupancy and operation should entail to best meet the shared goals, and commit to the necessary state and local financing required to update and sustain the building for the next generation and beyond. The parties must memorialize these matters in a compact before committing any further state funds – appropriated or capital – to this site. Each state and municipal entity involved needs to explicitly understand its role, create a sustainability plan, and implement accountability measures.

2. Based upon the experience with UMD and the CVPA, the Legislature should reject any additional funding for an additional lease term for the Star Store.

3. Should the Star Store property become available to the city of New Bedford at a future time through a donation or tax taking, and should the city consider retaining the property for its own use, the city should first undertake a full assessment of the immediate and long-term capital investments the building needs to serve as an asset to the city and to meet its long-term economic development and infrastructure plans. Until such an assessment is completed, the Commonwealth should certainly not commit any funds to advance this purpose.

4. Should the property return to the market, the Commonwealth, UMD, the CVPA, and the city of New Bedford should continue to support the economic development of downtown New Bedford through smart and long-term strategic planning, balancing the benefits to be gained in the short term for the community with the imperative of not burdening public finances with uncertain and escalating costs.

II. General Recommendations

A. For Public Entities Generally

To prevent waste of public funds and assets in the future, similar to the waste incurred through projects like the Star Store lease or the Ruggles Center in Roxbury, the OIG makes the following recommendations:

1. Public entities entering, managing, or benefiting from leases to which the Commonwealth or one of its subdivisions is a party must establish clearly defined roles and responsibilities and implement processes to ensure accountability to protect the Commonwealth's interests.
2. When public entities are negotiating leases, atypical or nontraditional terms such as "additional rent" provisions should be the exception and must be supported by well documented justification. Public entities must ensure that the lease contains safeguards, processes, and enforceable terms to promote accountability and protect against fraud, waste, and abuse.
3. Public entities must be mindful that their work on a lease does not end when the lease has been negotiated and signed. Public entities must dedicate resources and ensure they have processes in place to administer the lease for its duration. Public entities must take full stock of all rights and duties under the lease to maximize the property's benefit in a fiscally responsible manner.
4. Public entities should proceed cautiously in considering lease durations that exceed DCAMM's standard 10-year term, as longer terms increase the level of risk.

B. For DCAMM

DCAMM, as the Commonwealth's expert in property purchases and leases, must fully understand long-term implications as it negotiates proposed lease terms. Understanding terms such as options to purchase and "additional rent" provisions will help to ensure long-term value for the Commonwealth and protect the Commonwealth's interests. Based on lessons learned from the Star Store lease, the OIG makes the following recommendations specific to DCAMM:

1. DCAMM must actively manage leases that include an option to purchase, rather than simply assisting tenant agencies with landlord compliance issues.
2. DCAMM should immediately, clearly, and forcefully call attention to terms and conditions that are not advantageous to the Commonwealth.
3. Should it enter a lease with an option to purchase, DCAMM must be an active manager of the property and advocate for needed maintenance and capital improvements to protect the Commonwealth's investment.
4. DCAMM must monitor and manage leases to ensure that the tenant agency and landlord meet their respective responsibilities and obligations.

5. DCAMM should have processes in place for managing long-term leases, including periodic reviews, to ensure that DCAMM timely responds to options to renew, terminate, or purchase.
6. DCAMM should have processes in place for managing leases with "additional rent" terms, including so-called "triple net" leases, to protect against fraud, waste, and abuse, whether through unwarranted costs or failures to maintain the property.
7. DCAMM should insist upon written compacts that clearly define the roles and responsibilities of stakeholders when entering long-term property investments with multiple parties.
8. DCAMM must ensure that it has processes and procedures in place to timely communicate with appropriate decision-makers for public entity tenants in properties leased by DCAMM.
9. DCAMM should report annually on its lease compliance or enforcement actions.[142]
10. DCAMM should not assume costly property tax assessments through leases with private landlords and should pursue tax increment financing (TIF) agreements.
11. DCAMM should review all of its leases having greater than 10-year terms to examine its management practices, assess risks, and implement improvements for other long-term leases.
12. DCAMM should undertake an internal review of the Star Store lease to determine what could have or should have been done differently to avoid wasting public dollars.

C. For the UMass System

The Commonwealth's public universities play meaningful roles in their local communities. As a stakeholder in those communities and a steward of public funds, the public university system must ensure that it is fully committed to investments made on its behalf, such as the Star Store lease. Based on lessons learned from the Star Store lease, the OIG makes the following recommendations to the UMass president and UMD:

1. In cases of special funding outside of the university system's budget appropriations, the UMass system must understand its obligations, understand the underlying purpose of the special funds, and effectively communicate with the Legislature.
2. The UMass system must ensure that it communicates its strategic plan to stakeholders in order to ensure that parties have a shared goal and sustainability plan for long-term property investments.
3. The UMass system must ensure that it memorializes long-term plans to inform its future decision-making and provide context and a sound basis for property investments.

[142] Currently, DCAMM files an annual report with a list of properties owned and leased by the Commonwealth.

4. The UMass system should insist upon written compacts that clearly define the roles and responsibilities of the stakeholders when entering long-term property investments with multiple parties.
5. If in a similar position with an off-campus property in the future, the UMass system should ensure that it communicates the full cost of occupying and using the property to stakeholders to inform decision-making and mitigate unintended waste.
6. The UMass system must be an active tenant in its leased properties, both ensuring that the properties are maintained and communicating in a timely manner for key decisions such as renewing or terminating a lease or exercising an option to purchase.
7. The UMass system should undertake an internal review of the Star Store lease, and all other leases for terms of 20 years or greater, examine its management practices, assess risks, and implement improvements for other long-term leases.

D. For the Legislature

The Legislature provides the critical funding and leadership necessary to achieve economic development goals. Over time, and for good reason, the Legislature has enacted numerous laws to promote open and transparent procurements, including land acquisitions. Funding without adequate oversight or unburdened by generally applicable laws and processes creates opportunities for fraud, waste, and abuse. Based on the Star Store lease, the OIG makes the following recommendations to the Legislature:

1. The Legislature should require proposals that deviate from standard statutory requirements to contain reporting requirements and safeguards to protect against fraud, waste, and abuse to the same degree as existing statutory protections.
2. The Legislature should limit proposals for noncompetitive procurements.
3. The Legislature should require DCAMM to annually report on its lease compliance or enforcement efforts.
4. The Legislature should require all parties to a legislatively directed land or space lease to execute a written compact that clearly defines the roles and responsibilities of the stakeholders.