




# Historical roadblock

A standoff over the development of land in Freetown casts a spotlight on a little-known agency with an outsized role over development in Massachusetts

BY PAUL McMORROW



## Peace summits are preceded by battles.

And as far as Beacon Hill turf battles go, the one that necessitated the November sit-down inside Secretary of State William Galvin's offices was a doozy. The spat featured months of political gamesmanship and strident accusations. Among the highlights: State Sen. Michael Rodrigues threatening to legislatively gut one of Galvin's agencies; one of Galvin's top deputies curtly declining to answer any and all inquiries from Fall River-area legislators; and Ken Fiola, director of Fall River's economic development office, calling Galvin's employees liars in the *Boston Globe*.

The blow-up centered around an office park development on the Freetown-Fall River border, and which hurdles that the park's developer, the Westwood-based medical software firm Meditech, should or shouldn't have to clear before getting Galvin's blessing to break ground. Local and state officials strongly backed the proposed 186,000-square-foot office building, which would have brought 800 new technology sector jobs to a region struggling with the highest unemployment rate in the state. The project passed its state environmental review in August, but it couldn't proceed without the say-so of the Massachusetts Historical Commission, which answers to Galvin. Frustration with the commission escalated into an increasingly heated war of words, culminating in the State House peace summit.

The two sides spent an hour and a half talking inside Galvin's wood-paneled offices on the third floor of the State House. They all made happy sounds when they emerged. "It went very well," says Rep. Patricia Haddad, the powerful legislator brokering the talks. "There were some good exchanges." Looking back at the meeting, Galvin says he expected that the standoff with Meditech would be resolved within days.

Yet no resolution came. Instead, Fiola fired off a letter to the state's economic development secretary a week after the summit, saying the office project was dead, and Meditech was likely to expand out of state unless the Legislature passed a law exempting the Freetown office development from Galvin's oversight. It was a bitter end to a project that had been touted as a game-changer for the economically depressed Fall River region just months before.

"In my mind, Meditech was the greatest economic opportunity Fall River has seen in 50 years," says James Karam, a Fall River developer and chairman of the University of Massachusetts board of trustees. "We're stuck at a political impasse, and it makes absolutely no sense. Galvin has dug in his heels, and people are afraid to take him on. This sends a message: Is Massachusetts open for business or not?"

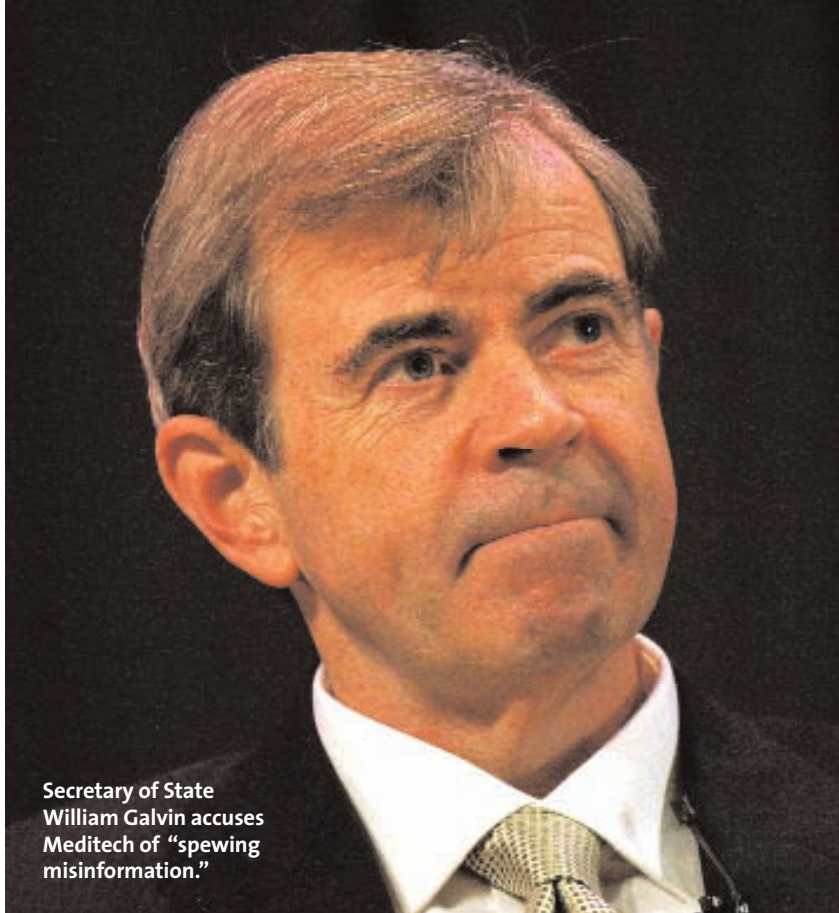
The very public nature of Meditech's flame-out was unusual, but the source of its angst wasn't. Developers and government regulators have long bristled at the heavy hand of Mass. Historical. The agency is frequently derided as imperious, mercurial, and unaccountable. It also plays an outsized role in development in Massachusetts, since it gets a say in most development projects that have the potential to impact historic buildings or landscapes. Mass. Historical can send construction projects months off schedule—or, as in the case of Meditech's Freetown offices, derail them altogether. The agency prevents Massachusetts from carrying out a unified development agenda, say critics of the agency, because Mass. Historical does not play well with others.

All that said, it's unclear whether Mass. Historical deserves all the blame for the Meditech fiasco. *CommonWealth* reviewed hundreds of pages of government documents related to the deal as well as email correspondence between most of the major players and found ambiguity on both sides. Meditech's abrupt decision to walk away from the deal remains unexplained. The firm's refusal to comment, except through a Fall River city official, is bizarre.

Haddad is stumped. "Both sides very much think they've done everything the other side wants them to do, and we can't find the words to bring them to the same place," she says. "The gap isn't that wide, but it's deeply held. For somebody who talks for a living, I'm at a loss."

## THE FORT

From the inside, the headquarters of the Massachusetts Historical Commission looks like a cousin of Boston City Hall, with soaring public spaces, narrow mazes of office



Secretary of State William Galvin accuses Meditech of "spewing misinformation."

suites, and pre-cast concrete everywhere. The building presents an entirely different face on the outside, though. It was built to look like a 19th century fort. Large granite blocks create an imposing, mostly windowless structure that rises above Columbia Point in Dorchester. The structure's front door opens out onto the John F. Kennedy Library and Dorchester Bay; a blank back wall faces the city. The building, which also houses the Massachusetts Archives, was meant as a tribute to early American military installations. However, Mass. Historical's headquarters—an imposing fort sitting off on an island of its own, disconnected from the world around it—also seems to reflect the mindset of the state agency it houses.

People who frequently interact with Mass. Historical are universally uncharitable toward the agency. They employ terms like "zealots," "black box," and variations on the word unresponsive, as in, "notoriously unresponsive," or, "astonishingly unresponsive." "Their arrogance is unbelievable," one development lawyer complains. Another calls Mass. Historical "a rogue agency." A third describes the agency as "arbitrary and capricious," while a former environmental regulator describes it as "completely unreasonable."

Few want their names attached to such characterizations, since Mass. Historical can single-handedly saddle development projects with costly, indefinite delays. With the ability to assert its agenda on others, few performance metrics to adhere to, and insulation from outside pressure, Mass. Historical may be the most powerful development agency in the state. "There's no oversight, and you can't appeal to anyone," says David Begelfer, CEO of the

commercial real estate trade group NAIOP Massachusetts. “They’re not accountable to the governor or the Legislature. It’s like they’re their own fiefdom.”

Mass. Historical was created in 1963, a year before the destruction of New York’s Penn Station galvanized the national historic preservation movement. The agency has a broad charge to prevent or minimize the impact of construction projects on historic properties. The National Historic Preservation Act of 1966 gave the agency historic preservation powers over federally funded projects in-state; a parallel state law allows Mass. Historical to conduct a preservation review for any development projects that involve state-owned real estate, state funds, or state-issued licenses and permits. Mass. Historical frequently piggybacks on environmental reviews under the Massachusetts Environmental Policy Act (MEPA).

While Mass. Historical’s regulations only give the agency power over properties on the State Register of Historic Places, its regulations allow it to “encourage” the mitigation of impacts on a much wider universe of historic properties. This makes the agency’s reach much wider than it appears to be on paper. Real estate professionals and government regulators say Mass. Historical has blurred this line, treating everything that’s potentially eligible for listing on the State Register as if it were already listed. Meditech’s Freetown parcel, for instance, appears on Mass. Historical’s internal inventory of historic places, but it’s not formally listed on the Register.

Mass. Historical doesn’t have a formal veto over development projects. The agency can only convene what it calls a consultation process—a series of meetings aimed

## Mass. Historical doesn’t have veto power over development projects but its review has a hard edge to it.

at avoiding or mitigating negative effects on historic properties. In practice, though, this review has a hard edge to it. State agencies aren’t allowed to issue any permits until Mass. Historical has completed its consultation, so a disagreement with Mass. Historical can put a development project on hold indefinitely. It’s rare that a dispute with Mass. Historical buries a development project altogether. But development professionals in the private and public sectors routinely complain about projects getting stuck in the agency’s bureaucracy.

### DOESN’T PLAY WELL

In late 2008, Congressional leaders and then-incoming President Barack Obama put the word out to the states that the federal government would be passing some form of economic stimulus. The stimulus would jumpstart construction projects, they said, and it would require that states move money out the door quickly. While the legislation was still being shaped in Washington, Gov. Deval Patrick convened a series of cross-agency working groups. He wanted the groups to identify priority areas where the expected stimulus funds should be steered. He also instructed the groups to identify likely impediments to spending the federal funds quickly. Greg Bialecki, who is now Patrick’s economic development secretary, chaired a task force on coordinating state permitting efforts. The task force’s report, which was issued in February 2009, shows that participants were worried about the potential for Mass. Historical to delay stimulus projects by “several months.”

Brona Simon, Mass. Historical’s executive director, attended a single meeting of the stimulus task force. She said her agency runs its own review of federally-funded projects and would continue to do so, and declined to participate in any further meetings. In a follow-up letter to the state’s permitting ombudsman, Simon took issue with the notion that Mass. Historical would be included in a group of state permitting agencies. “MHC will work directly with the federal agencies as they carry out the Federal Stimulus projects in our state,” she wrote. “Please remove the Massachusetts Historical Commission from your list of ‘Permitting Agencies’ and the Task Force.”

The stimulus task force has become folklore in the development community. To Mass. Historical’s critics, the episode crystallizes the agency’s stubbornness, its strict adherence to regulations it wrote for itself, and its unwillingness to collaborate with others. The statement that Mass. Historical isn’t a permitting agency is true only in the narrowest, most literal sense. It asserts itself on permitting agencies, and those agencies need Mass. Historical’s approval to issue permits. The task force wasn’t just an executive branch creation; the MBTA, which was then an independent authority, participated, as did local governments, the federal Environmental Protection Agency, and the Army Corps of Engineers.

Galvin, who has ultimate authority over the historical commission, says taking part in the task force would have amounted to ceding the commission’s oversight responsibilities. “We have a statutory obligation, and we can’t waive a statute.” While the task force’s public report indicates that it asked for coordination, not rubber-stamping, from Mass. Historic, Galvin argues, “One-stop shopping could be misunderstood as an automatic pass.” He adds, “We didn’t and don’t refuse to cooperate. There is not hostility

to the objective. We try to be effective in other ways.”

Bialecki’s stimulus task force eventually morphed into the Massachusetts Permitting Collaborative, a standing working group that brings together permitting officials across state agencies. Developers meet with the permitting group before formally filing for their MEPA reviews; the meetings identify likely friction points early on, allowing project proponents to move through permitting more quickly. Mass. Historical does not participate in the effort, and it won’t talk to developers who don’t have formal applications before the agency. This means that developers kicking the tires on a potential project don’t know whether Mass. Historical will oppose their projects until they’re already deep in the permitting process.

“They’ve made it very difficult to communicate with them,” Begelfer says. Developers can’t call Mass. Historical with questions, can’t email them, and can’t get meetings. “They don’t respond. They’re notorious.”

“Most agencies welcome those meetings,” says one development professional, who didn’t want to be named because he regularly works with Mass. Historical. “Brona won’t meet with you until you file. You flat-out can’t get a meeting. And once you do file, the process becomes highly bureaucratic and drawn-out. There’s little opportunity for real dialogue. It becomes a paper-driven process.”

The agency doesn’t do business by email. Whether you’re a bureaucrat or a developer, if you have something to say to Mass. Historical, you put a stamp on it and mail it to Dorchester. This became an issue late in the wrangling over Cape Wind, when the commission supported the Wampanoag tribes’ last-minute bid to block Cape Wind by listing Nantucket Sound on the National Register. Several heavy hitters from the US Department of the Interior flew up from Washington to work through Mass. Historical’s objections. At a meeting with Simon on Cape Cod, however, Simon told the Interior officials she couldn’t discuss a document they had earlier emailed proposing a resolution to the standoff because they hadn’t sent her a hard copy.

### THE REVIEW PROCESS

Stories abound about projects disappearing into Mass. Historical’s bureaucracy, and of project opponents using Mass. Historical’s review to gain leverage in the development process. Galvin is also not above using Mass. Historical’s clout in fights in which he has taken a personal interest.

Galvin is both a Boston College neighbor and a fervent opponent of its Brighton expansion, and his brother is the lead plaintiff in a lawsuit seeking to overturn the college’s Boston Redevelopment Authority-approved plans. Galvin let it be known that Mass. Historical was very



Fall River developer James Karam says people are afraid to take Secretary of State William Galvin on.

interested in the possibility that there might be unmarked graves in the college’s development path—a scenario neighborhood historians dismissed as an urban legend.

Six years ago, the Gutierrez Co., a Burlington-based development firm, proposed redeveloping the Boston Regional Medical Center in Stoneham into a mixed-use complex, with new office space and 450 residential units. The plan immediately ran into opposition from the town of Melrose, and from the Friends of the Middlesex Fells Reservation, an advocacy group for the state park that surrounds the hospital site. Since both Melrose and the Friends of the Fells were concerned about traffic on the DCR parkway running past the development site, DCR asked Gutierrez to fund a study into traffic improvements on the parkway.

After an extensive public process, DCR’s traffic consultant proposed consolidating the four-lane parkway into two lanes, turning the remaining two lanes into a bike path and Fells parking, and rebuilding parkway rotaries to slow traffic. Mass. Historical, which had remained silent while DCR was holding public meetings and crafting its plan for the parkway, flatly rejected DCR’s plans because they would have changed the parkway. (Mass. Historical had jurisdiction over the DCR’s roads because the parkways are on the National Register.)

DCR and Gutierrez responded that changing the parkway was the point. The road had been significantly expanded since it was first built, and now serves primarily as a cut-

through for commuters looking to dodge traffic on Interstate 93. Taking two lanes out of use would have restored the historic character that made it a national landmark in the first place, they argued. But Mass. Historical didn't budge. To get around opposition to any roadway changes from Mass. Historical, Gutierrez wound up shrinking the size of its project so it no longer triggered MEPA review. That maneuver, in turn, attracted a lawsuit from the Friends of the Fells, and the case remains tied up in court.

Northeastern University fared only slightly better when it brought a proposed dormitory before Mass. Historical. The school is partnering with Phoenix Property Co., a Dallas-based developer, to build a 17-story, 720-bed dorm behind the Huntington Avenue YMCA in Boston. The city of Boston has been pressuring Northeastern for several years to house more of its undergraduate students on campus, and a city-appointed task force suggested that the dorm would fit best at the Y site.

The dorm deal is a complex three-way trade. Phoenix is buying the Y's old gymnasium and demolishing it to make way for the dorm, Northeastern is leasing the dorm from Phoenix and buying a wing of the Y building that's currently leased to office tenants, and the Y is taking the cash from the two sales and using it to upgrade its main Huntington Avenue facility. The Y's main building and the neighboring New England Conservatory are both National Register properties, but the gym Phoenix is tearing down isn't.

Northeastern and Phoenix filed paperwork with Mass. Historical last March. In April, the project got its Boston Redevelopment Authority permits. Two weeks later, Mass.

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Historical questioned why Northeastern and Phoenix needed to build behind the Y at all. Despite city and neighborhood support, Mass. Historical said the dorm was too tall for the Y site. The agency complained that the building would be visible from two historically protected neighborhoods, the South End and Lower Roxbury. It also suggested a list of alternate sites where it thought the dorm should be built. But doing so would require Northeastern and Phoenix to redo the expensive and time-consuming city and state permitting applications they'd just com-

pleted. Mass. Historical's objections became a vehicle for project opponents who didn't get what they wanted from the city to re-air their grievances. Eventually, the commission relented, but its review of the dorm project took almost eight months, and only resulted in minor changes to the building's design and building materials. The building's height and bed count remained the same as they were in March, but the lengthy review means that the dorm will open at least one semester late.

“Nobody objects to regulations when they're fair and predictable, but when they literally cost a development cycle, it becomes a problem,” says Boston City Councilor Michael Ross, whose district includes Northeastern and the YMCA site. “The Secretary of State assured me they were moving as fast as they could move, but this simply took too long. That can't be the way we do business in the Commonwealth.”

### **MEDITECH FIASCO**

Last April, James Karam shot an email to Patrick's chief of staff, Mo Cowan. Karam told Cowan the software firm Meditech, which has a large presence around the Route 128 belt, was in the early stages of securing permits for a major expansion on industrially zoned land along the Taunton River in Freeport just outside Fall River. It would be the company's second facility in the South Coast. Karam hoped that someone in Patrick's office would place a call to the company, thanking them for their in-state expansion and offering to help steer them through the permitting process.

By July, Karam was emailing Cowan for a different reason. Meditech was cruising through its state environmental review, but had run into a roadblock at Mass. Historical. Meditech's CEO had “a tough situation on his hand with Mass. Historical and Sec. Galvin,” Karam wrote. “Unfortunately they move at their own speed and by their own rules.” Shortly after, Patrick emailed Bialecki. “Greg,” the governor wrote, “Can you help get this expansion project in Fall River back on track?”

The project sailed through MEPA in record time, but remained at loggerheads with Mass. Historical. And without Mass. Historical's approval, Meditech couldn't get the state permits it needed to begin work on its office building. On the same day that it completed its MEPA review, Meditech's vice chairman, Lawrence Polimeno, called the governor's office and said the standoff with Mass. Historical would force Meditech's expansion out of state, according to an email summarizing the discussion. Despite that call, the governor's office issued a press release trumpeting the expansion; two days later, Meditech issued its own press release, saying it was abandoning the project. New Hampshire Gov. John Lynch has called Meditech and

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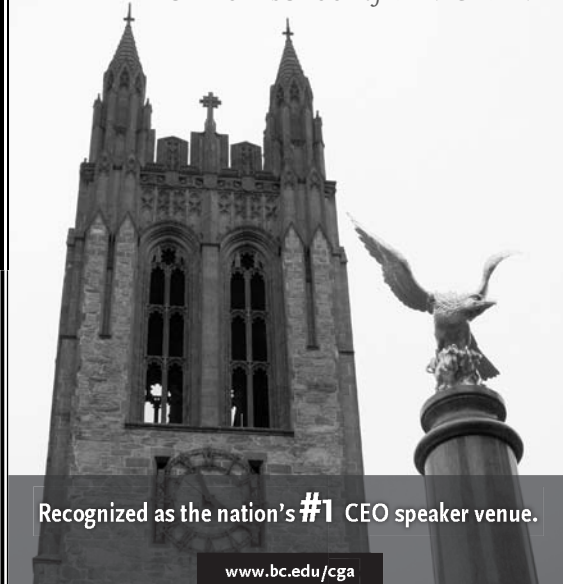
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offered to show the company permit-free building sites.

“My guess is, their next growth will be in southern New Hampshire,” Karam says. Fiola, the Fall River economic development director, says Meditech is scouting for a new home out of state, but the company has given him until the start of the construction season to try to solve the Mass. Historical standoff. “It’s working in our favor that it’s winter and they can’t build right now,” he says.

The 140-acre Meditech property is tucked off Route 24 in Freetown near a huge Stop & Shop distribution facility. Dirt bikers ride the trails winding through the land, which offers spectacular views of the Taunton River. Old, abandoned stone walls and two tiny cemeteries from the 1800s are in the area, overgrown with vegetation.

The standoff between Meditech and Mass. Historical originally centered on how much digging Meditech had to do before Mass. Historical would let the office building construction begin. Meditech’s Freetown site was an active Wampanoag gathering place for thousands of years. Mass. Historical believes Meditech’s construction crews would likely unearth Wampanoag gathering place, including unmarked graves.

That’s as much as the two sides agree on, though. When Meditech publicly abandoned the project in September, the company said Mass. Historical wanted it to excavate and sift through 21 acres of land looking for Wampanoag artifacts—a prohibitively expensive exercise. Fiola maintains this was an oral instruction from the historical commission. “How do you expect anyone to invest \$65 million without having that in writing?” Fiola asks. He alleges Mass. Historical went into hiding, dodging Meditech’s calls from June until October, when state Sen. Michael Rodrigues filed a bill to drastically reduce the agency’s reach.

Galvin counters that there’s “no factual basis” for the claim that Mass. Historical ordered Meditech to dig up 21 acres worth of land. “Acreage was never the big issue,” he insists, accusing Meditech’s backers of “spewing misinformation.”

Incredibly, there’s nothing in the public record that confirms either side’s claim. A June letter from Mass. Historical speaks obliquely about “additional locational testing,” while an August letter references “topsoil stripping for limited portions of the project construction impact area.” In late October, Rodrigues and several other Fall River area legislators asked Simon to put the extent of the required work in writing. Galvin’s office rebuffed this inquiry. In a November letter to Bialecki, Galvin says Mass. Historical recommended excavating and sifting “less than one acre.” That letter was the first time a hard excavation number appears in any public record created by Galvin or Mass. Historical. But Meditech’s frequent complaints about Mass. Historical don’t specifically mention the 21-acre demand, either. That detail only began circulating after

the company pulled the plug on the Freetown project. Galvin now says the absence of any mention of the 21-acre excavation demand while the project was still alive is “pretty persuasive” evidence that it wasn’t a real demand.

It’s not clear whether Mass. Historical has retreated from an unreasonable demand, or whether the demand never existed. What is clear is that both sides now agree that the scope of the digging for Wampanoag artifacts on the Meditech site would be quick and limited, and would cost \$97,000. Everybody at the November meeting in Galvin’s office agreed to this. Fiola, acting on Meditech’s behalf, committed to applying for a Mass. Historical excavation permit within two days.

Instead, however, Meditech’s archaeological consultant emailed Mass. Historical, saying Meditech had instructed the firm “not to send the proposal until further notice.” The reversal surprised several meeting attendees, who thought they were trying to sort out a spat over excavation acreage. They’re now dealing with a turf war.

According to Fiola, who has been acting as Meditech’s proxy in negotiations with Galvin, Meditech has now dug in. “Mass. Historical’s behavior to date has been disingenuous and untruthful, and Meditech didn’t feel comfortable moving forward with them,” he says. Meditech’s own

archaeological consultant believes there are Wampanoag artifacts on the Freetown parcel, but the company is insisting that because its site isn’t on the State Register, Mass. Historical has no oversight. The company, Fiola says, is awaiting the passage of legislation that would strictly limit Mass. Historical’s authority to State Register properties. Rodrigues, author of this legislation and a previously outspoken Meditech backer, did not return several calls for comment. Nor did Meditech executives.

Richard Sullivan, Patrick’s secretary of energy and environmental affairs, says the Meditech mess is a major setback for the state’s efforts to expedite permitting. “The answer isn’t always yes, but when a proponent can meet the standards you’ve asked them to meet, they ought to be able to get a permit in a reasonable amount of time,” he says.

When Meditech entered the state permitting process for its Freetown offices, Sullivan says, Gov. Patrick instructed executive agencies “to permit the project at the speed of business. That means being responsive, having a known time for getting permits, and being clear about the requirements to get permits. We did that. We moved them rapidly through MEPA, and quite frankly, the project has not moved the same way with respect to the historical issues at play.” **CW**



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