

STATE PROPERTIES REVIEW BOARD

Minutes of Meeting Held On August 2, 2021 – remotely via telephone conference –

Pursuant to Governor Lamont's Executive Order No. 7B regarding suspension of In-Person Open Meeting requirements, the State Properties Review Board conducted its Regular Meeting at 9:30AM on August 2, 2021 remotely via telephone conference at (866)-692-4541, passcode 85607781.

Members Present:

Edwin S. Greenberg, Chairman
Bruce Josephy, Vice Chairman
John P. Valengavich, Secretary
Jack Halpert
Jeffrey Berger
William Cianci

Members Absent:

Staff Present:

Dimple Desai
Thomas Jerram

Guests Present

David Genovese, Baywater Properties
Kate Perez, Baywater Properties

Mr. Valengavich moved and Mr. Halpert seconded a motion to enter into Open Session. The motion passed unanimously.

OPEN SESSION

1. ACCEPTANCE OF MINUTES

Mr. Valengavich moved and Mr. Berger seconded a motion to approve the minutes of the July 29, 2021 Meeting. The motion passed unanimously.

2. COMMUNICATIONS

3. REAL ESTATE- UNFINISHED BUSINESS

4. REAL ESTATE – NEW BUSINESS

PRB #	21-113
Transaction/Contract Type:	RE – Lease
Origin/Client:	DOT/DOT
DOT Project #:	118-033-066-001B
Lessee:	Gilbert Farm, LLC
Property:	Rocky Hill, Silo Dr @ I-91
Project Purpose:	Gilbert Farm Land Lease
Item Purpose:	5-Year Lease

Lease Price: \$900/year, or \$75/month

Under PRB #20-168, the SPRB reviewed a DOT Proposal to lease 3.67 acres of land to Gilbert Farm, LLC for \$85/month, payable only during the months of May through October. At the SPRB meeting held on September 10, 2020, a motion to approve the Gilbert Farm land lease failed for the following reasons:

- Equitable process – as your staff indicated, DOT should work with the Department of

- Agriculture and put it out to bid to open it up to other farmers via bid process.
- Determine appropriate rental rate per month for the entire year

During the Board's review DOT did state that they approached Dept. of Agriculture and they said they would take the property and put it out to bid to open it up to several farmers via bid process.

Under this Proposal (PRB #21-113), DOT is now seeking SPRB approval to Lease this 3.67 acre parcel to Gilbert Farm, LLC for a 5-year term, with two 5-year options to renew the Lease. The rental for the initial 5-year term is \$900, or \$75/month, fixed for the initial term.

The terms of the lease are as follows:

Lessee	Gilbert Farm, LLC
Premises	3.67 acres
Use	Restricted to use for farming (Section 4 of Lease)
Term	Five years commencing upon AG approval, two (2), five-year options to extend
Termination	Either party can terminate with 30 days' notice, with or without cause
Rent	\$75/month, fixed for the term
Option Rent	Updated to market conditions by Lessor
Utilities, costs	All by tenant, if available (no electric, gas, sewer or water currently at site)
Other	Lease includes specifications as contained in "Standard Highway Lease Specifications & Covenants: Non-Governmental Under \$50,000" dated 4/1/2019, which are attached to the lease. The specifications include insurance and indemnification requirements.
Surety Bond	\$10,000 – in DOT's possession

A Rental Justification Report was prepared by DOT Appraiser Kenneth N. Goldberg as of May 14, 2021.

The following pertains to the rental area and the abutter:

Zoning:	R-20 – Residential
Site Size:	3.67 ± Acres (159,865± s.f.)
Present Use:	Open space & farming
Neighborhood:	Residential

Rental Range Estimate: Market research shows that properties of similar size, utility and zone, in the same or a similar market area as the subject property, range in value from \$0.06/s.f. to \$0.16/s.f.; considering the proposed use and available access to the Premises, a lower than normal opportunity percentage rate is being applied to the following calculation to arrive at a rental rate:

Amount of Rental: $159,865 \pm \text{s.f.} \times \$0.06/\text{s.f.} \times 6\% = \$ 575.51/\text{year}$ or $\$ 47.96/\text{month}$
 $159,865 \pm \text{s.f.} \times \$0.16/\text{s.f.} \times 6\% = \$1,534.70/\text{year}$ or $\$127.89/\text{month}$

- **Note:** The Department of Agriculture states that "Type A" tillable soil, which is similar to the Premises has a market value of approximately \$1,960/acre:
 $3.67 \pm \text{acres} \times \$1,960.00/\text{acre} \times 8\% = \$575.46/\text{year}$ or $\$50.00/\text{month}$

It should be noted that the Appraiser's conclusions are unchanged from a previously prepared Rental Justification Report dated April 15, 2020.

Rental Negotiations:

An offer to Ms. Lisa Gilbert, Member of Gilbert Farm, LLC, occurred on February 24, 2020, to lease the Premises at a seasonal rental rate of \$85.00 per month, for the months of May through October, with annual increases of 2.5%, during the initial lease term. These lease terms were rejected by SPRB. On February 22, 2021, via a TEAMS conference call, Ms. Gilbert agreed to pay \$75.00 per month during the initial lease term.

RECOMMENDATION: Board approval of the Lease agreement to Gilbert Farm, LLC is recommended for the following reasons:

1. The commissioner of transportation has the authority under CGS §13a-80 to enter into lease agreements, subject to the approval of OPM (received 6/10/2021), the SPRB & the AG.
2. This is a 3.67 acre lot limited to farming and no other use.
3. The Lessee pays \$75/month. The term of the lease is for 5 years, commencing upon approval of the AG. The lease includes two (2) additional five-year options, subject to a review and update of the rental fee. The State reserves the right to terminate the lease with 30 days' notice.
4. Under PRB #20-168, which was rejected by the Board, the total value of that Lease, assuming both Renewal Options are exercised at the same rate as the last year of the original terms (\$94/month), over the entire 15 years was \$6,935.
5. The total value of this newly-proposed Lease, assuming both Renewal Options are exercised at the same rate (\$75/mo), over the entire 15 years is \$13,500. The \$6,565 increase in this newly-proposed Lease represents savings to the State.

From PRB #20-168

Lease Price: Initial \$85/month – May to October

The terms of the lease are as follows:

Lessee	Gilbert Farm, LLC
Premises	3.67 acres
Use	Restricted to use for farming (Section 4 of Lease Out)
Term	Five years commencing upon AG approval, two (2), five-year options to extend
Termination	Either party can terminate with 30 days' notice, with or without cause
Rent	\$85/month, increasing annually \$2/month.
Utilities, costs	All by tenant, if available (no electric, gas, sewer or water currently at site)
Other	Lease includes specifications as contained in "Standard Highway Lease Specifications & Covenants: Non-Governmental Under \$50,000" dated 4/1/2019, which are attached to the lease. The specifications include insurance and indemnification requirements.

DOT Rental Analysis:

The following pertains to the rental area and the abutter:

Zoning: R-20 – Residential
Site Size: 3.67 ± Acres (159,865± s.f.)
Present Use: Open space & farming
Neighborhood: Residential

Rental Range Estimate: Market research shows that properties of similar size, utility and zone, in the same or a similar market area as the subject property, range in value from \$0.06/s.f. to \$0.16/s.f.; considering the proposed use and available access to the Premises, a lower than normal opportunity percentage rate is being applied to the following calculation to arrive at a rental rate:

Amount of Rental: 159,865± s.f. x \$0.06/s.f. x 6% = \$ 575.51/year or \$ 47.96/month
159,865± s.f. x \$0.16/s.f. x 6% = \$1,534.70/year or \$127.89/month

- **Note:** The Department of Agriculture states that "Type A" tillable soil, which is similar to the Premises has a market value of approximately \$1,960/acre:
3.67± acres x \$1,960.00/acre x 8% = \$575.46/year or \$50.00/month

DOT also provided four sales of land with limited utility selling in the range of \$2,769/ac to \$6,890/acre.

\$/acre	Acres	MV	Rental	Annual	Monthly
\$2,769	3.67	\$10,162	6.00%	\$610	\$50.8
\$6,890	3.67	\$25,286	6.00%	\$1,517	\$126.4

\$2,769	3.67	\$10,162	8.00%	\$813	\$67.7
\$6,890	3.67	\$25,286	8.00%	\$2,023	\$168.6

Based on the analysis of the sales and rental returns, the proposed \$85/month rental appears reasonable. The Lessee executed the Lease on March 12, 2020. The Lessor executed the Lease on June 4, 2020. OPM approved the Lease agreement on July 1, 2020.

Staff inquired with DOT regarding the following:

1. Who is farming currently at this location? If none, is this open space? What is the current use?
DOT Response: Gilbert Farms is using the land and we have been chasing after her for over 3 years.
2. Why lease out and not sale?
DOT Response: This is only available for sale as an abutter bid, there is no access, we have a right of way thru Eversource property, that is why we can't sell, and she is not an abutter.
3. What is the process to determine how the Lessee complies with the conditions of Section 8 of the Lease? Will the lessee be required to conduct environmental assessment? How will DOT know that the lessee met the conditions of Sec. 8?
DOT Response: I do not how to answer #3, however Lisa Gilbert stated that she does practice safe farming, and bad news is the father has been using this land for 50 years unbeknownst to the Department, so damage may already have been done.
4. Has there be environmental assessment done?
DOT Response: No we have not done an environmental assessment.
5. Was this done via advertisement or Gilbert Farm approached DOT?
DOT Response: This came about because CTDOT needed a lay down area for the Bridge job over I-91, and asked about land over there, my staff did a site inspection and noticed the farm. She has a lease with Eversource, so she claims, and they are abutter, and claims she did not know it wasn't all Eversource land.
6. Any concerns from the neighbors because of the farm equipment usage, dust, noise, etc.?
DOT Response: She says they have been out there for 50 years....so I don't think the neighbors have a problem. It should be noted, I approached Dept of Agriculture and they said they would take the property and put it out to bid to open it up to several farmers via bid process.

RECOMMENDATION: Board approval of the lease-out agreement to Gilbert Farm, LLC is recommended for the following reasons:

1. The commissioner of transportation has the authority under CGS §13a-80 to enter into lease agreements, subject to the approval of OPM (received 7/01/2020), the SPRB & the AG.
2. This is a 3.67 acre lot limited to farming and no other use.
3. The Lessee pays \$85/month, May to October, with the rent increasing \$2/month during each successive year. The term of the lease is for 5 years, commencing upon approval of the AG. The lease includes two (2) additional five-year options, subject to a review and update of the rental fee. The State reserves the right to terminate the lease with 30 days' notice.

PRB #	21-121
Transaction/Contract Type:	RE – DROW Exchange
Origin/Client:	DOT/DOT
DOT Project #:	35-50/35-70
Grantor/Grantee:	Baywater, et al
Property:	Darien, Boston Post Road (multiple parcels)
Project Purpose:	Release DROWs & Restriction in Exchange for new DROW Facilities
Item Purpose:	Easement Agreements & Release of Easement/Restriction Deeds

At 9:33 Mr. Genovese and Ms. Perez, both of Baywater Properties, joined the Meeting to participate in the Board's review of this DOT Proposal. Both left the meeting at 10:05.

Exchange Price: \$1,000

This release consists of two drainage facilities in favor of the State of Connecticut located within an assemblage of seventeen (17) parcels encompassing a total of 6.3 acres that are fully approved for a large-scale mixed-use development. It appears as if 14 of the 17 properties are impacted by the release/acquisition.

Under this Proposal (PRB #21-121), DOT is seeking SPRB approval to release the two drainage facilities in favor of the State of Connecticut in exchange for new Drainage Facilities over land of the owner (all are Baywater-related).



In total, the assemblage contains 6.28680± acres (273,853± square feet) of land within the Central Business District – Corbin Subarea (CBD-CS) zone. The assemblage has an estimated 774'± total frontage (625'± and 149'±) along the southeastern edge of Post Road (Route 1), and is bisected into two sections by a two-lane side street Corbin Drive that provides a supplementary, estimated 604'± length of street frontage. There is an additional 32'± length of road frontage along Old Kings Highway South at the east corner of the development, however, does not accentuate utility to the parcel in a substantial manner. The southerly boundary of the assemblage is the Interstate 95 highway corridor, which provides an estimated 1,000'± non-accessible frontage. The land is generally level with road grade, but with a gentle inward pitch to provide to adequate storm drainage. The assemblage is bisected by Corbin Drive, essentially creating two sections to the assemblage; a small northerly portion and a significantly larger southerly portion.

All typical municipal utilities are available and connected to the assemblage, including city water, city sewer, natural gas, electricity, cable/internet, and landline telephone.

Overall, the assemblage has good utility given the substantial accessible road frontage, location in a commercial enclave, and its large size, being a rare and desirable factor in the marketplace. The commercial zone allows for intense structural development of the property, with the site currently fully approved for mixed-use development for retail, restaurant, office, and residential apartments which total 336,110± square feet of gross floor area with 116 apartments and 744 parking spaces.

The Appraiser opined that the Highest and Best Use of the property is for ground level commercial uses and upper level apartment uses.

From November 27, 2018 Planning & Zoning Commission Meeting:

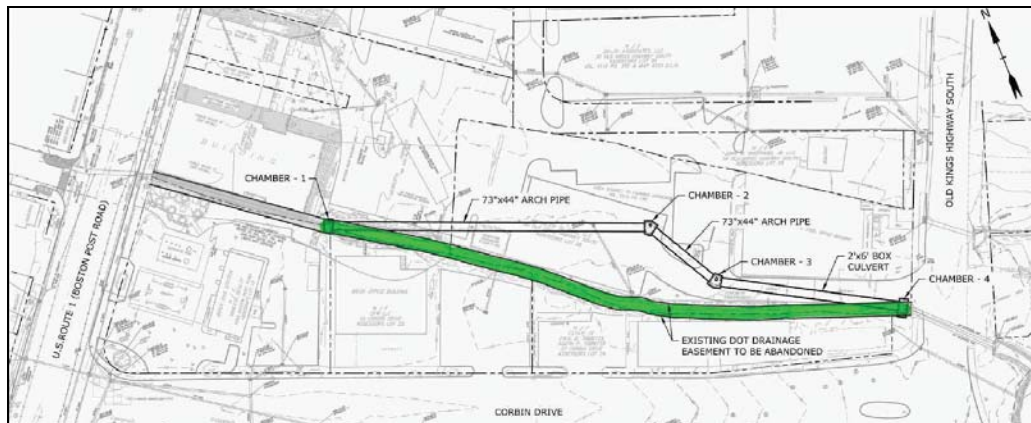
The development program includes 116 one- and two-bedroom residential apartments, 81,200+/- square feet of office space, 81,730+/- square feet of ground floor retail space, 16,910+/- square feet for restaurants and other food service providers. A total of 744 on-site parking spaces will be provided, including 22 handicap accessible spaces. A total of nine buildings are proposed, three of them to the north and east of Corbin Drive, and the remainder to the south and west of Corbin Drive.

Seven of the nine new proposed mixed-use buildings will have residential dwelling units on second and third floors. There are 122 new residential units proposed as part of this redevelopment (67 one-bedroom units and 55 two-bedroom units). Because there are more than five new residential units proposed, there is a requirement for inclusionary units as part of this application, in accordance with Section 580 of the Zoning Regulations. Sixteen (16) below market rate units are proposed as part of the redevelopment. Later within this Resolution, the Commission will make further findings regarding those inclusionary units.

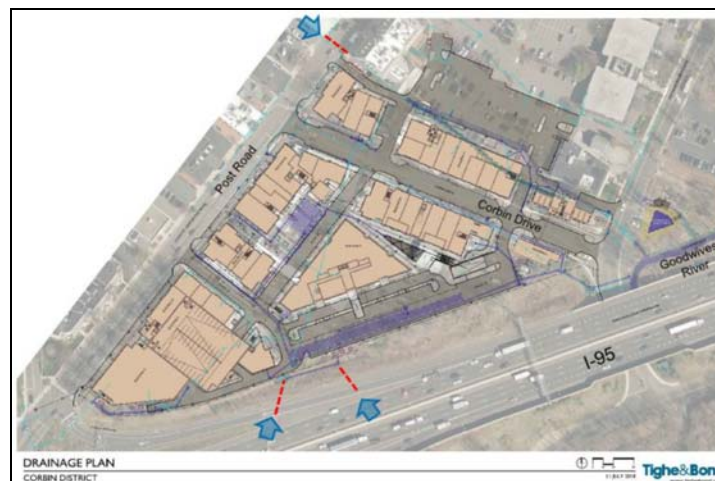
The applicant's May 25, 2018 Parking Demand and Parking Management Plan and accompanying plans indicate that there will be a total of 805 parking spaces for the site, including 22 handicap accessible spaces. The proposed 805 parking spaces are provided as follows:

- a) 240 parking spaces in an underground parking facility below Building 'G', where 122 parking spaces will be reserved exclusively for residential parking.
- b) 308 parking spaces under, on, and above Building 'E'.
- c) 64 parking spaces are proposed in the underground parking facility below Building 'H', on the north side of Corbin Drive.
- d) 132 surface parking spaces on the site.
- e) 26 on-street parking spaces on Boston Post Road and 35 on-street parking spaces on Corbin Drive.

The north property boundary is encumbered by a drainage right of way having an undefined area, and consists of a drainage channel that runs parallel to the north of Corbin Drive.



A second drainage right of way (also having an undefined area) bisects the larger southerly half through its midsection, and then runs along a portion of its Corbin Drive frontage.



The valuation of the subject property is subject to the following Extraordinary Assumptions and Hypothetical Conditions:

EXTRAORDINARY ASSUMPTIONS:

Subject Assemblage

The release consists of an assemblage of seventeen (17) parcels that are fully approved for a large-scale mixed-use development, and is considered to be owned in common via the ownership syndicate "Baywater Properties LLC" via an *Extraordinary Assumption*. Under the regulations of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), the 'larger parcel' must be considered when the individual sites have common ownership and share an integrated Highest and Best Use. It is the opinion of your appraiser that the seventeen lots, being the focus of this report, meet this qualification, in harmony with an *Extraordinary Assumption* with regard to a common ownership entity. As such, the individual parcels which create the subject assemblage are identified as follows:

North Side of Corbin Drive				<i>Assessor Site</i>	<i>Assessor Site</i>
<u>Address</u>	<u>M/L/B/L</u>	<u>Account</u>	<u>Title Ownership</u>	<u>Area (Acres)</u>	<u>Area (Sq. Ft.)</u>
1034 Boston Post Road	72 / 13	05823	Vinkath Realty LLC	0.4815	20,974
15 Corbin Drive	72 / 25	10741	CFW LLC	0.3340	14,549
37 Corbin Drive	72 / 26	10122	Estate of Paul & Judith Tibbetts	0.2870	12,502
South Side of Corbin Drive				<i>Assessor Site</i>	<i>Assessor Site</i>
<u>Address</u>	<u>M/L/B/L</u>	<u>Account</u>	<u>Title Ownership</u>	<u>Area (Acres)</u>	<u>Area (Sq. Ft.)</u>
10 Corbin Drive	72 / 14	05205	Baywater 10 Corbin LLC	0.4891	21,305
1074 Boston Post Road	72 / 15	08561	Baywater 1066 BPR LLC	0.4100	17,860
1078 Boston Post Road Rear	72 / 16	10013	Baywater 1078 BPR 2 LLC	0.0984	4,286
1078 Boston Post Road Rear	72 / 17	05009	Baywater 1078 BPR LLC	0.0803	3,498
Lot 18 Boston Post Road	72 / 18	05826	Baywater 1096 BPR LLC	0.1524	6,639
1082 Boston Post Road Rear	72 / 19	10552	Baywater 1082 BPR LLC	0.1491	6,495
1082 Boston Post Road	72 / 20	05180	Baywater 1084 BPR LLC	0.2371	10,328
1090 Boston Post Road	72 / 21	05411	Baywater 1090 BPR LLC	0.1910	8,320
1090 Boston Post Road	72 / 21A	05410	Baywater 1090 BPR LLC	0.0379	1,651
1096 Boston Post Road	72 / 22	05827	Baywater 1096 BPR LLC	0.2589	11,278
1120 Boston Post Road	72 / 23-24	06422	Guernsey Realty Company Inc.	1.7400	75,794
30 Corbin Drive	72 / 27	05202	Baywater 30 Corbin LLC	0.5091	22,176
Lot 27A Corbin Drive	72 / 27A	05203	Baywater 30 Corbin LLC	0.3809	16,592
Lot 27B Corbin Drive**	72 / 27B	05201	Baywater 30 Corbin LLC	0.4501	19,606
Total Site Area				6.2868	273,853
Total Site Area within Scope:				6.2868 ± Acres, or 273,853 ± Square Feet	

Additional Extraordinary Assumptions and Hypothetical Conditions are outlined as follows:

- The methodology used in this Appraisal Report is a standard State format in the form of a "Before and After" valuation appraisal used for eminent domain purposes. This appraisal considers that there is a willing seller in an acquisition by eminent domain and has disregarded any effect on the market value brought on by the State's project. I have based my appraisal report on the *Hypothetical Condition* that the proposed road project will be completed as currently proposed, in the Department of Transportation construction plans, on the day after the "as of" date.
- Your appraiser is not a qualified expert in the field of site contamination, soil remediation, environmental hazards and/or other such potentially negative soil conditions. While no other such contamination or potential hazardous conditions were apparent during the property inspection and due diligence process, for the purposes of this report, your appraiser is valuing the subject property with the *Extraordinary Assumption* that the subject in whole is 'Free and Clear' of any and all environmental contamination, hazardous waste material, and any and all other potentially negative soil conditions not specifically indicated, including but not limited to PCBs, VOCs, SVOCs, ACMs, lead paint, underground storage tanks, toxic chemicals and gases, and radioactive material. Your appraiser reserves the right to reconsider value after a qualified soil scientist and/or hazardous material remediation expert has delivered a signed inspection and remediation report.
- COVID-19 PANDEMIC: As of the Effective Date, the world is engaged in a struggle to contain a viral pandemic known as 'COVID-19,' which has significantly incapacitated many nations and economies on a global scale. Countries around the world are struggling to control this novel coronavirus outbreak, causing widespread panic in most, if not all, markets and asset classes on a global scale. The pandemic is an ongoing situation on an unprecedented global scale. The effects of this outbreak are not fully quantified within real estate markets by way of sales and leasing activity, in addition to the impact of rising unemployment, non-payment of taxes and debt instruments, cash liquidity, availability or mortgage money, decreased rates of absorption, and a myriad of other variables integral to real estate valuation and buyer/seller decision making, which further influence the dynamics of supply and demand. The impact of the pandemic will likely not be fully understood for several months. As such, it must be noted that the value presented within this report considers transactions having occurred prior to the outbreak, with limited sales activity available as of the Date of the Report which captures the scope and severity of the pandemic's impact on value on a short-term or long-term basis. It is noted and stressed within the Appraisal Report that conditions may change and could impact future opinions of value.
- The best available information and data has been considered in the appraisal process. Numerous municipal departments, town officials, and data resources which are commonly interviewed and utilized in the verification of property-specific factors impacting value were limited or unavailable during the appraisal process. As such, your appraiser is utilizing the information available as of the date of this report is the best available information via an *Extraordinary Assumption*. If better data or information is found to deviate from what is outlined within this report, your appraiser reserves the right to consider its impact on value.
- The subject that is the focus of this Appraisal Report encompasses seventeen lots which are separately owned. However, the developer "Baywater Corbin Partners, LLC" has formed a partnership with regard to the seventeen ownership entities, and has achieved an approved development plan that is attached within the addendum. However, no formal contract or documentation has been made available to your appraiser. Due to the dynamic of the appraisal problem at hand, at the direction of the Client, your appraiser is valuing the subject via the *Extraordinary Assumption* that all seventeen parcels have common ownership via "Baywater Corbin Partners, LLC." Altering the ownership arrangement has potential to change the Highest and Best Use determinations and could significantly modify the valuation opinion presented within this report.
- The release land that is the focal point of this Appraisal Report consists of a drainage right of way that has an undefined total area. Your appraiser is valuing the subject with the *Extraordinary Assumption* that the drainage right of way is as outlined on the developer-supplied site plan, and encumbers solely the two impacted parcels described herein. Further, your appraiser visited the site for an inspection as of December 15, 2020, at which point it was discovered that the drainage channel has been filled in and paved. It is believed that the drainage has been rerouted through a private subsurface culvert on northerly adjacent land (comprised of two parcels having common ownership syndication via Baywater but are beyond the scope of this appraisal assignment). As such, if it were found that the drainage right of way deviates in location, area, or generally deviates from your appraiser's expectations, your appraiser reserves the right to consider its impact on value.
- The methodology used in this Release Appraisal Report is a standard state format in the form of a Before and After valuation appraisal. Your appraiser is valuing the subject land via a *Hypothetical Condition* that the existing development approval, as allowed by the City of Darien's Planning and Zoning Commission as of December 9, 2018, is not applicable within the "Before" valuation methodology.

HYPOTHETICAL CONDITIONS:

Hypothetical Conditions necessary to arrive at value -

- The methodology used in this Release Appraisal Report is a standard state format in the form of a Before and After valuation appraisal. Your appraiser is valuing the subject land via a *Hypothetical Condition* that the existing development approval, as allowed by the City of Darien's Planning and Zoning Commission as of December 9, 2018, is not applicable within the "Before" valuation methodology.
- No other Hypothetical Conditions are necessary for the execution of this assignment. If these conditions are modified, your appraiser reserves the right to alter the opinion of value.

An appraisal of the land was prepared by DOT appraiser Steven C. Miller as of December 15, 2020.

Before Land Valuation: Based on the sales data comparison approach, the appraiser analyzed three sales of similarly-zoned land utilized for high-intensity mixed use development in Greenwich ('19), Norwalk ('19) and Stamford ('20) and concluded that the fair market value of the subject land was \$123.00/square foot of land, or $273,853 \times \$123 = \$33,683,919$, rounded to \$33,685,000.

After Land Valuation: Based on the sales data comparison approach, the appraiser analyzed three sales of similarly-zoned land utilized for high-intensity mixed use development in Greenwich ('19), Norwalk ('19) and Stamford ('20) and concluded that the fair market value of the subject land was \$124.00/square foot of land, or $273,853 \times \$124 = \$33,957,772$, rounded to \$33,960,000.

The Appraiser then calculated the value of the Release as follows:

Calculation of Release

Item	Value
Before Release Valuation	\$33,685,000
After Valuation	\$33,960,000
<i>Permanent Damages</i>	<i>\$275,000</i>

DOT Release Narrative

The subject parcels consist of two existing drainage easements in favor of the DOT that traverse two parcels of land; a 450 +/- linear foot open channel easement of approximately 4600 +/- square feet on the north side of Corbin Drive, and the other on the south side of Corbin Drive in Darien consisting of a 568 +/- linear foot enclosed drainage system. Both properties consist of multiple parcels, but all are owned in common with Baywater Properties, LLC (Baywater). All parcels are located in the CBD-CS zone. The release of the drainage easements was requested by Baywater to facilitate a redevelopment on the north and south side of Corbin Street. In exchange for the release of the DROW's the DOT would retain an easement to drain at the site, leaving the property owner the responsibility and liability of existing and future drainage structures.

NORTH - The DOT commissioned an appraisal of the release of the open channel drainage easement on the north property which established a value of \$275,000.00. A subsequent appraisal was commissioned to establish a value of the acquisition of the easement to drain, which was \$180,000.00. The value for the acquisition of the easement to drain was established by using the footprint of the proposed Baywater drainage facility. This resulted in Baywater owing the DOT \$95,000 for the respective transfers. Mr. David Genovese of Baywater rejected this offer based on two issues: 1) that the "after" should not consider his proposed development and new drainage facility and 2) if, in fact, the DOT was using the footprint of the proposed drainage facility as an assessment of damages, then it must consider the costs to construct those facilities.

Mr. Genovese argues that an "after" condition that relieved the DOT of liability and responsibility of the open culvert while maintaining an easement to drain on the property comes at a savings to the DOT in future maintenance and capital costs; while taking on responsibility and liability of the existing structure comes at a cost and risk to Baywater. He further argues that a benefit to property cannot be realized until the new drainage facility is established. Mr. Genovese submitted a copy of the contract for the relocation of the drainage on the north side in the amount of \$649,763 (original contract sum). This includes the cost to establish a new drainage system and fill in the existing open culvert. Additional work has been added to address required work at the headwalls (See attached). Mr. Genovese's argument that the benefit of the property can only be obtained by spending significant funds for the relocated drainage is acceptable, especially considering the risk associated with the development and when he will realize his return of investment.

SOUTH - The DOT commissioned a Before and After appraisal for the property south of Corbin Drive to determine the net gain or loss of the release of the drainage easement. The appraisal established a benefit and that Baywater would owe the DOT \$245,000.00 for the release of a drainage right of way in favor of an easement to drain. This offer was also rejected by Mr. Genovese for the same reasons as stated for the northern property. That the "after" is DOT's right to drain on the property without liability and responsibility for the drainage structure comes at a savings to the DOT in terms of future maintenance and capital costs. Conversely, Baywater would inherit cost, risk and liability of all existing and future drainage structures.

Mr. Genovese also provided estimate of costs from FGB Construction in the amount of \$254,321.00 to establish a new drainage structure. Again, this would have to be expended before the property would realize any benefit. In both the northern and southern properties, the "after" scenario leaves DOT with less liability and responsibility for significant drainage structures. While there may one day be a benefit to the property as a result of relocated drainage, that comes at a significant cost that DOT will not participate in and did not consider in its appraisal reports.

Staff inquired with DOT regarding the following.

- Please provide electronic copies of the Developer's Maps referenced in the November 27, 2018 Zoning Commission approval and any maps related to Flood Damage Prevention Application #383 and Land Filling & Regrading Application #436.
- Please clarify how much land subject to the DROW is actually being released impacting land on the northeasterly side of Corbin Drive. Is it the entire 4,600 sq.ft. on land located northeasterly of

Corbin Drive and the entire 568 linear feet (width not identified) on land located southwesterly of Corbin Drive?

- Please clarify why the Appraiser valued the Release in a Before/After scenario, rather than calculating the value based on the following formula typically used by DOT: (land area subject to DROW) x \$124/sq.ft. x ____% = value of Release.
- Please provide a copy of the real estate appraisal report utilized to determine the \$180,000 in damages to acquire a DROW on the “footprint” of the proposed new Drainage Facility on land of the Developer located northeast of Corbin Drive.
- Please provide a copy of the real estate appraisal report utilized to determine the market value of the Release (\$245,000) of the DROW encumbering the land to the southwest of Corbin Drive as the Appraisal Report only addressed the Release on land located northeasterly of Corbin Drive.
- Please clarify why DOT is utilizing the cost of acquiring an new Drainage Facility to offset the market value of the Release/Exchange in light of preceding DOT submissions to the SPRB did not consider the “Net” value of the Exchange.
- Please clarify why DOT is acknowledging the Developers cost to relocate the two new Drainage Facilities in the negotiations in light of preceding DOT submissions to the SPRB did not consider any Developer costs.
- Please clarify if DOT determined when and who enclosed the “Open Channel” easement and how much of the approximate 4,600 sq.ft. was enclosed.
 - a) Which of Baywater’s properties are benefitting from the enclosed “Open Channel?”
 - b) Did DOT calculate a land rental for the area of the enclosed “Open Channel” and attempt to collect a land rent? What would be the rate-of-return?
 - c) Was it the Developer, CFW or Tibbetts (abutters) who enclosed the “Open Channel?”
- Has DOT developed a cost estimate to restore the enclosed portion of the “Open Channel” to its original condition?
- Two of the releases included “Release of Easement and Quit Claim” deeds to Baywater 1096 Boston Post Road, LLC. Please clarify why “any possible fee interest Grantor may hold” was included in the deed. Is there any market value related to the possible fee interest?

Recommendation – Staff recommend the Board suspend this Proposal to release two DROWs and Restrictions for \$1,000 Admin Fee in exchange for being granted a new easement “Facilities” over the entire development parcel pending DOT response to issues raised by the Board.

5. ARCHITECT-ENGINEER - UNFINISHED BUSINESS

6. ARCHITECT-ENGINEER - NEW BUSINESS

7. OTHER BUSINESS

8. VOTES ON PRB FILE:

PRB FILE #21-113 – Mr. Halpert moved and Mr. Valengavich seconded a motion to approve PRB FILE #21-113. The motion passed unanimously.

PRB FILE #21-121 – Mr. Valengavich moved and Mr. Berger seconded a motion to suspend PRB FILE #21-121. The motion passed unanimously.

9. NEXT MEETING – Special Meeting, Wednesday August 4, 2021.

The meeting adjourned.

APPROVED: _____ **Date:** _____
John Valengavich, Secretary