

STATE PROPERTIES REVIEW BOARD

**Minutes of Meeting Held On February 9, 2023
– 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 February 9, 2023 remotely via telephone conference at (860)-840-2075 and use passcode 284890492#.

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

Mr. Valengavich moved and Mr. Berger 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 February 6, 2023 Meeting. The motion passed unanimously.

2. COMMUNICATIONS

3. REAL ESTATE- UNFINISHED BUSINESS

PRB #	22-020
Transaction/Contract Type:	RE – Sale
Origin/Client:	DOT/DOT
DOT Project #:	(102) 180-034-011C
Grantee:	John B. Harrington et al
Property:	Norwalk, Merritt Parkway @ Ponus Ave Ext (4,525 sq.ft.)
Project Purpose:	Sale by Sole Abutter Bid
Item Purpose:	QC Deed

CONVEYANCE FEE: \$20,000 plus \$1,000 Administrative Fee

At the State Properties Review Board meeting held on March 21, 2022, the Board voted to suspend this file pending Board review of DOT responses to earlier Board inquiries, received on March 18, 2022.

Staff had previously inquired with DOT regarding the following issues to which DOT responded

on Friday March 18, 2021. The Board's Memo reviewed on March 18, 2021 did not include the written responses provided by DOT, but were discussed during that Meeting.

1. Please confirm that the statutory authority stated in the QC Deed (CGS 13a-80) is the appropriate enabling legislation to release this parcel.

DOT Response: Yes, CGS 13a-80 is the correct statutory reference and this property has been deemed to be in excess of transportation needs.

Staff Response: Under this proposed sale, DOT cites CGS 13a-80 as the enabling legislation to sell land obtained for or in connection with highway purposes when the property is no longer needed for those purposes – or deemed surplus land.

CGS 13a-26(d) specifically provides enabling legislation for the State to acquire land in conjunction with the State's parkways or freeways beyond the enabling legislation provided in 13a-73(c) and CGS 13b-36(a). But, there is no corresponding statute regarding the sale of land acquired for said parkways and freeways. OK

2. Please clarify if the Release Parcel, located in the Merritt Parkway Right of Way is subject to the language included in CGS 13a-26(b) **Construction** "...The commissioner shall not alter the route submitted except with the advice and approval of the Governor and the Attorney General, and changes therein shall not be approved until a public hearing or hearings are held at which the towns affected and their residents may be heard" and CGS 13a-26(e) "**Alteration.** The commissioner, with the advice and approval of the Governor and the Attorney General, may alter the layout or construction or use of any such authorized parkway or freeway, or designated portions thereof, when, in their opinion, such change would be in the interests of public convenience, safety and necessity."

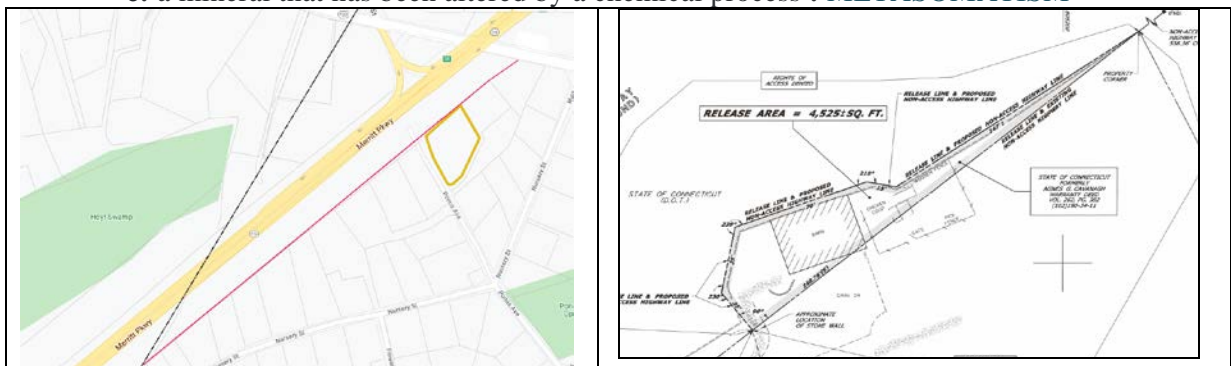
DOT Response: There is no Construction or Alteration of the roadway planned therefore CGS 13a-26 does not apply. The Department has determined this property to be in excess of transportation needs and as such CGS 13a-80 applies.

Staff Response: The sale of the land within the Merritt Parkway is by definition, an Alteration, and appears to contradict DOT asserting that there is no construction or alteration.

Merriam-Webster <https://www.merriam-webster.com/dictionary/alteration>

Definition of alteration

- 1: the act or process of altering something - The dress needs *alteration* for a proper fit.
: the state of being altered
- 2: the result of changing or altering something: such as
 - a: a change made in fitting a garment no charge for *alterations*
 - b: a change in a legal instrument that alters its legal effect - She made some *alterations* to her will.
 - c: a mineral that has been altered by a chemical process : **METASOMATISM**



The AG was consulted and after a May 5, 2022 communication providing guidance to DOT, it was suggested that DOT approach the Office of the Governor for their concurrence regarding the Governor's approval. In a September 27, 2022 communication from DOT Commissioner to Governor Lamont included the following:

Section 13a-26(e) of the C.G.S. requires Governor approval to alter the layout of Merritt Parkway. Enclosed for your review is the Compilation Plan, prepared by the Department's Central Surveys Office, with the subject release illustrated, as well as the deed to be executed, in accordance with Section 13a-80 of the C.G.S.

It is understood that the Governor's approval is contingent upon the approval of the sale by the Office of the Attorney as well as the acquisition of all other required approvals and the satisfaction of all statutory requirements for the transfer.

Subsequently, the Governor approved the alteration on November 10, 2022. OK

3. If CGS 13a-26 is the relevant enabling legislation, please clarify what section of the Statute provides DOT the authority to Release this Parcel within the Merritt Parkway right of way.

DOT Response: n/a.

Staff Response: See Item #1 above. OK

4. Please provide a copy of the 9-24-2001 Warranty Deed reflecting the Sole Abutter's acquisition of the property from William H. Ziegler.

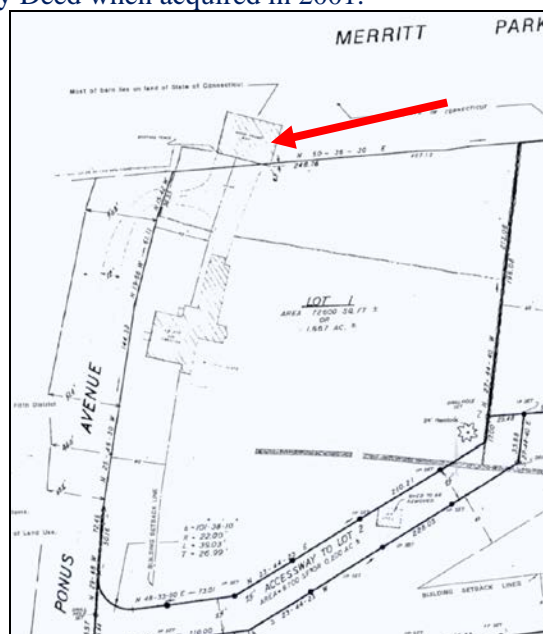
DOT Response: In Title Search.

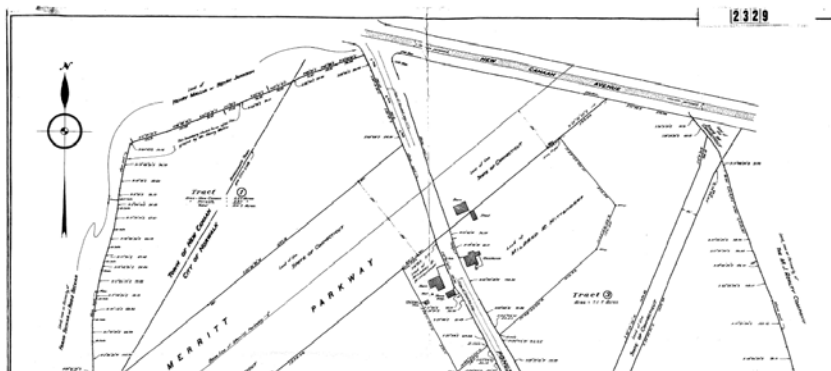
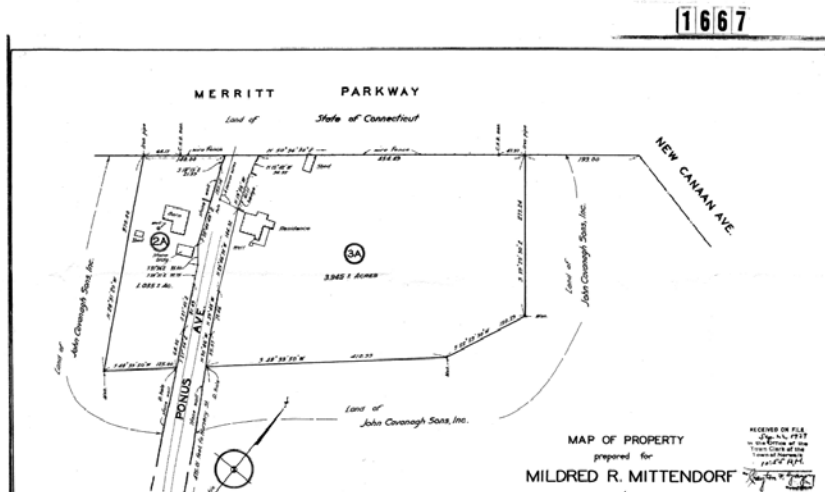
Staff Response: DOT provided a Title Search from the State's original acquisition in 1936 up to, and including, the current ownership by the Petitioner – Harrington, et al – summarized by Staff, including salient facts. OK

5. In the referenced deed in Item #1 above the Town Clerk's Index referenced three surveys: 10199, 1677 and 10352. Please provide a copy of each survey.

DOT Response: Provided.

Staff Response: The following Map (10199) is specifically referenced in the Petitioner's Warranty Deed when acquired in 2001.





OK

Recommendation – Staff recommend approval of the proposed Sale by Sole Abutter Bid in the amount of \$20,000 plus \$1,000 Administrative Fee.

1. The conveyance complies with Section 13a-80 of the CGS governing the release of excess property by the commissioner of transportation.
2. The conveyance complies with Section 13a-26(e) of the CGS governing the alteration of a parkway, with the Governor's approval on November 10, 2022.

Under this Proposal (PRB #22-020) DOT is seeking SPRB approval of a Quit Claim Deed for this Sale by Sole Abutter Bid of a 4,525 square foot piece of land within the Merritt Parkway right of way, abutting 290 Ponus Avenue Extension for \$20,000, plus a \$1,000 Administrative Fee.

By way of background the property was acquired by the Department of Transportation (Department) in 1936 as part of the development/construction of the new Merritt Parkway. The District 3 office notified the Division of Rights of Way of a barn encroachment within the right of way while doing a large clear cutting tree removal along the Merritt Parkway. It appears that when the abutting property at 290 Ponus Ave Ext was acquired, the Buyers (Harrington et al) assumed the barn was on their property. The Barn is predominantly within the right of way and only small portion is on the abutter's (Harrington et al) property. This barn has been restored by the abutter (Harrington et al) and has been awarded Historical Preservation awards. In addition, the homeowner (Harrington et al) is being taxed by the Town of Norwalk on the barn (Staff calculated

at \$447.26/yr-2020), but not taxed on the additional land. Apparently when the State acquired the parcel, the barn which the Department acquired and paid for was not demolished and has remained until present day and has been updated and improved.

DOT stated this request was vetted through the Department's Merritt Parkway Committee and The Merritt Parkway Conservancy and that this is a Historical Highway and release of any portion of the Merritt Parkway is unprecedented and this will be an "exception and not the rule".

For additional background information please visit these websites:

- <https://connecticutbarns.org/find/details/id-151>
- <https://enoskelloghouse.blogspot.com/p/history.html>
- <https://www.merrittparkway.org/>



The Release Area consists of 4,525± square feet (0.104 acre) of land within the Merritt Parkway right-of-way. The Release Parcel has an irregular shape and is generally level, improved with a post-and-beam construction barn (40' x 32'), chicken coop, wood fencing and stone wall. According to the Release Map a small portion of the barn encroaches on to the southerly abutter (Petitioner - Harrington et al).





A photo of The Enos-Kellog House from the 1800's hanging in the home which was purchased by John Harrington a decade ago and who has spent that time restoring the historic property 210 Ponus Ave. in Norwalk, Conn.
Courtesy: <https://www.thehour.com/realestate/article/Habitat-Family-shares-love-of-historic-saltbox-10938962.php#photo-12387780>
(2-16-2017)

The Barn - Restored 2013



Exterior Pre-restoration (2013)



Interior Pre-restoration (2013)





Photos courtesy of: <https://enoskellogghouse.blogspot.com/2017/>

The Sole Abutter at 210 Ponus Avenue Extension consists of approximately 72,600 square feet (1.67+/- acres) of residentially zoned land improved with a circa 1784, 3,264+/- square foot, colonial residence (6/4/2.3). The property's northwesterly boundary is currently formed by the Merritt Parkway/CT Route 15 right-of-way. A 40'x32' barn is located at the end of the property's driveway, however most of the barn is located within the aforementioned Merritt Parkway/CT Route 15 right of way. The sole abutter property is a legally non-conforming lot of record due to front yard setback zoning requirements.

The Sole Abutter acquired this property on 9-24-2001 for \$500,000.

After the assemblage, the parcel consists of 77,125± square feet (1.77± acre) parcel.

Appraisal Report – With the release of this parcel via a Sale by Sole Abutter Bid, DOT Appraiser Matthew G. Malia appraised the property as of May 12, 2021, in both the Before and After assemblage. Based on the sales comparison approach, the Appraiser utilized three sales of similarly-zoned land in Norwalk that sold in 2018-2021 and concluded the fair market value of the Larger Parcel (land only) was $\$3.25/\text{sf} \times 72,600 \text{ sf} = \$235,950$, rounded to \$236,000.

Note: Staff researched the Multiple Listing Service for closed sales beyond the May 12, 2021 as of date. Two sales were identified ranging in price from $\$3.23/\text{sf}$ to $\$4.83/\text{sf}$. The Appraiser's Comparable Sale #1 sold for $\$4.82/\text{sf}$.

It should be noted that the local Assessor values the Larger Parcel at $\$4.10/\text{sf}$ (2018 revaluation).

In the After Valuation, the Appraiser utilized the same three sales and concluded the fair market value of the subject property, as assembled, was $\$3.25/\text{sf} \times 77,125 \text{ sf} = \$250,656$, rounded to \$251,000.

Value of the Release

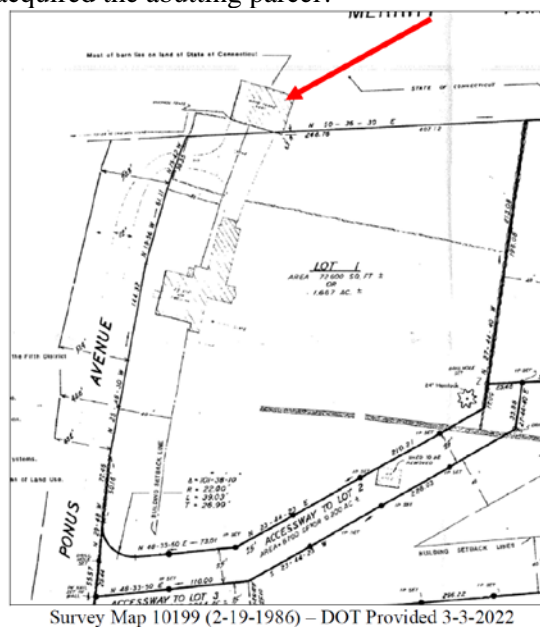
Item	Value
After Valuation	\$251,000
Before Valuation	\$236,000
Value of Release	\$15,000

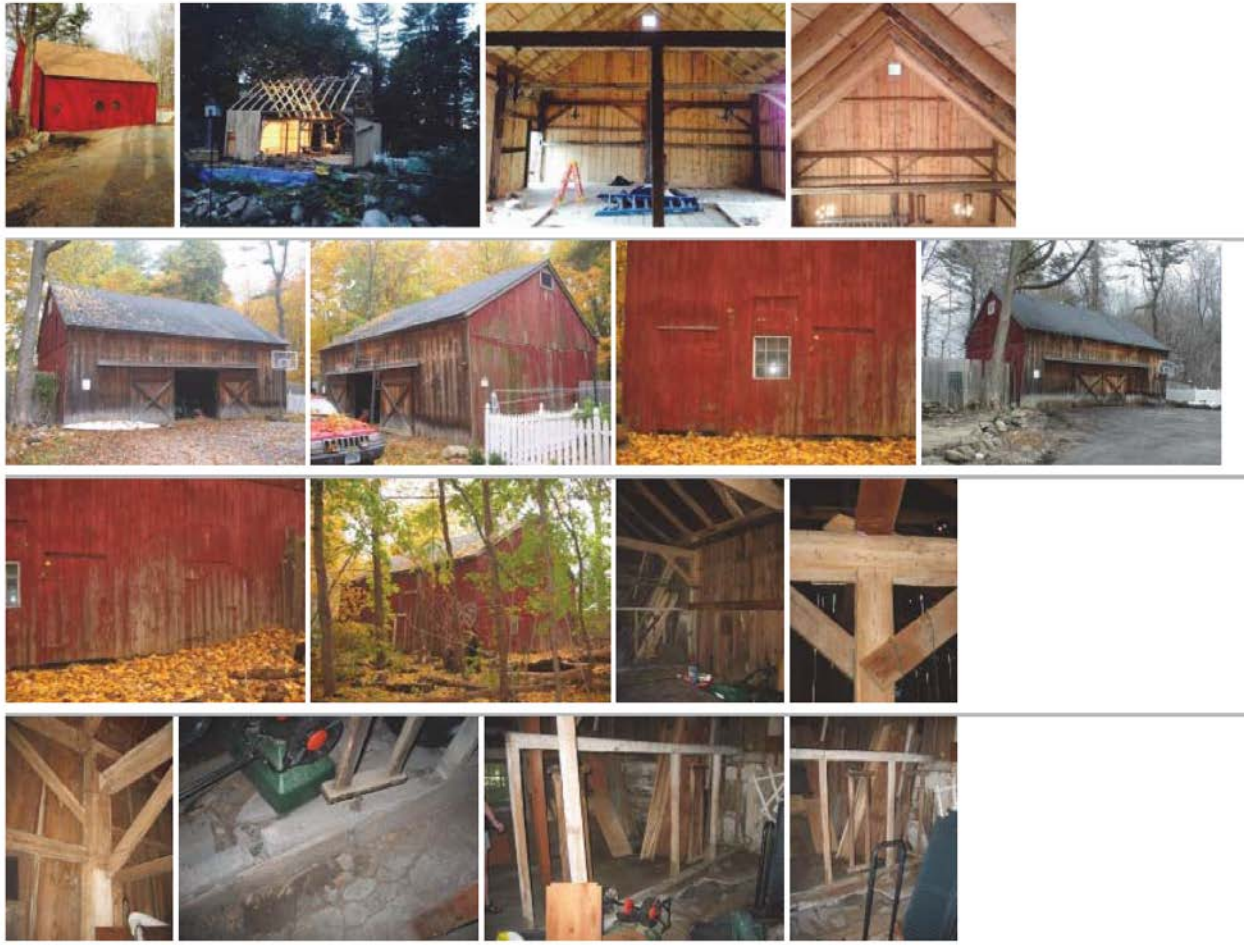
Sale by Abutter Bid & Negotiations –

DOT offered the property to the Abutters (Harrington et al) in the amount of \$21,000.00 which includes a \$1,000.00 Administrative Fee.

Staff inquired with DOT regarding the following issues:

1. Please confirm that the statutory authority stated in the QC Deed (CGS 13a-80) is the appropriate enabling legislation to release this parcel.
2. Please clarify if the Release Parcel, located in the Merritt Parkway Right of Way is subject to the language included in CGS 13a-26(b) **Construction** "...The commissioner shall not alter the route submitted except with the advice and approval of the Governor and the Attorney General, and changes therein shall not be approved until a public hearing or hearings are held at which the towns affected and their residents may be heard" and CGS 13a-26(e) "**Alteration**. The commissioner, with the advice and approval of the Governor and the Attorney General, may alter the layout or construction or use of any such authorized parkway or freeway, or designated portions thereof, when, in their opinion, such change would be in the interests of public convenience, safety and necessity."
3. If CGS 13a-26 is the relevant enabling legislation, please clarify what section of the Statute provides DOT the authority to Release this Parcel within the Merritt Parkway right of way.
4. Please provide a copy of the 9-24-2001 Warranty Deed reflecting the Sole Abutter's acquisition of the property from William H. Ziegler.
5. In the referenced deed in Item #1 above the Town Clerk's Index referenced three surveys: 10199, 1677 and 10352. Please provide a copy of each survey.
6. Please provide DOT communications with the Merritt Parkway Conservancy regarding their consent to this Release.
7. Please clarify what utilities, other than electricity, are available within the Barn on the Release Parcel.
8. Please clarify if the DOT Staff Appraisers have researched what, if any, contributory value of similar barns add to other properties in the local and greater market area. Or, conversely, if this were an acquisition by DOT what would the impact on the loss of the Barn be on the Larger Parcel's overall value.
9. Have the Petitioners (Harrington et al) provided any information from a relevant Title Report when they acquired the abutting parcel?





Photos courtesy of <https://connecticutbarns.org/find/details/id-151#>

PARKWAYS

Sec. 13a-26. Parkways and freeways. (a) **Definitions.** As used in this section, “parkway” means any state highway receiving special treatment in landscaping and marginal planting, especially designed for, and devoted exclusively to, the use and accommodation of noncommercial motor vehicle traffic and to which access may be allowed only at highway intersections designated by the commissioner and designed by him so as to eliminate cross traffic of vehicles, and “freeway” means any state highway designed to separate through, high-speed, noncommercial motor vehicle traffic from all other types of traffic by the use of independent traffic lanes. Connection between local traffic and through traffic lanes shall be provided at intervals in the discretion of the commissioner.

(b) **Construction.** The commissioner shall, upon direction by the General Assembly, lay out and construct any state highway as a parkway or freeway. Said commissioner, prior to such construction, shall submit to the General Assembly the following information concerning such construction of any parkway or freeway: The approximate cost of the parkway or freeway and a definite route with an official map showing the towns through which it will pass. The commissioner shall not alter the route submitted except with the advice and approval of the Governor and the Attorney General, and changes therein shall not be approved until a public hearing or hearings are held at which the towns affected and their residents may be heard.

(c) **Service highways.** As an adjunct of any parkway or freeway, the commissioner is authorized to lay out and construct highways and drives, to be designated as service highways, to provide access from areas adjacent to a parkway or freeway and to provide for the restriction or elimination of cross traffic on such parkway or freeway, when he deems the same to be necessary in the public interest.

(d) **Acquisition of land.** The commissioner may purchase or take any real property or rights in real property necessary or required for the construction, alteration, extension, widening, change of grade or improvement of such parkways, freeways or service highways in the same manner as is provided in the general statutes in the case of state highways. The provisions of the general statutes relating to state highways not inconsistent with the provisions of this section shall apply to parkways, freeways and service highways.

(e) **Alteration.** The commissioner, with the advice and approval of the Governor and the Attorney General, may alter the layout or construction or use of any such authorized parkway or freeway, or designated portions thereof, when, in their opinion, such change would be in the interests of public convenience, safety and necessity.

(f) **Vehicle use of Wilbur Cross Parkway and Merritt Parkway. Regulations.** The provisions of this part restricting the use and accommodation of motor vehicle traffic on parkways to noncommercial vehicles shall not apply to use of the Merritt and Wilbur Cross Parkways by (1) taxicabs, as defined in section 13b-95, (2) vanpool vehicles, as defined in section 14-1, or (3) service buses, service buses for students with special needs, or two-axle, four-wheeled type II, registered school buses with a gross vehicle weight rating of ten thousand pounds or less, which are owned by or under contract to a public, private or religious school or public school district and which are engaged in the transportation of school children to and from school or school activities, provided (A) such service buses conform to the regulations establishing the maximum weight, length, height or width of vehicles permitted to use such parkways; (B) such school buses are not more than ninety-eight inches high, eighty-four inches wide and two hundred three inches long; and (C) such service buses for students with special needs are not more than one hundred twenty inches high, ninety inches wide and two hundred eighty-eight inches long. The Office of the State Traffic Administration shall adopt regulations in accordance with chapter 54 establishing the maximum allowable length and height for any vanpool vehicle using said Merritt and Wilbur Cross Parkways and, not later than July 1, 1984, publish in the Connecticut Law Journal a notice of intent to adopt proposed regulations, as defined in section 4-166, reducing the maximum weight, length, height or width of, or limiting the registration classes of, motor vehicles permitted to use such parkways, in order to fully carry out the prohibition on the operation of commercial motor vehicles on such parkways.

(1949 Rev., S. 2257, 2258; 1958 Rev., S. 13-139; 1959, P.A. 434, S. 1; 1963, P.A. 226, S. 27; P.A. 79-175, S. 1, 3; P.A. 80-483, S. 58, 186; P.A. 84-327, S. 1, 3; P.A. 85-255; P.A. 94-94; May 25 Sp. Sess. P.A. 94-1, S. 69, 130; P.A. 12-132, S. 6; P.A. 14-199, S. 15.)

History: 1959 act removed exception for Merritt Parkway in Subsec. (e); 1963 act replaced previous provisions: See title history; P.A. 79-175 added Subsec. (f) re taxicabs and vanpool vehicles on Merritt and Wilbur Cross Parkways; P.A. 80-483 made technical changes; P.A. 84-327 amended Subsec. (f) to substitute state traffic commission for commissioner of transportation and to require commission to publish notice in Connecticut Law Journal re proposed parkway motor vehicle regulations; P.A. 85-255 amended Subsec. (f), permitting certain school vans to use the Merritt and Wilbur Cross Parkways; P.A. 94-94 amended Subsec. (d) by deleting "is authorized to" after "commissioner" in the first sentence and inserting "may" in lieu thereof, and amended Subsec. (f), to permit single-axle, type II, registered school buses with a gross vehicle weight rating of 9,600 pounds or less to use the Merritt and Wilbur Cross Parkways, and adding a proviso that such school buses are to be no more than 98 inches high, 84 inches wide and 203 inches long; May 25 Sp. Sess. P.A. 94-1 amended Subsec. (f)(3) to delete reference to "single-axle" and substitute reference to "two-axle, four-wheeled" type II registered school buses; P.A. 12-132 amended Subsec. (f) by replacing "State Traffic Commission" with "Office of the State Traffic Administration", effective July 1, 2012; P.A. 14-199 amended Subsec. (f) to add service buses for students with special needs and replace "nine thousand six hundred" with "ten thousand" re maximum vehicle weight in Subdiv. (3), to designate existing provisions re service buses and school buses as Subparas. (A) and (B), to add Subpara. (C) re service buses for students with special needs and to make a technical change, effective June 12, 2014.

See Sec. 13a-58 re public hearing on proposed layout of new highways.

Rules pertaining to abutters on conventional highways are not applicable to a trunk line highway. 144 C. 289. Cited. 180 C. 11.

Conditions outlined under which parkways and freeways may be established. 18 CS 263.
Distinguishing features of parkways discussed. 4 Conn. Cir. Ct. 373.

4. **REAL ESTATE – NEW BUSINESS**
5. **ARCHITECT-ENGINEER - UNFINISHED BUSINESS**
6. **ARCHITECT-ENGINEER – NEW BUSINESS**
7. **OTHER BUSINESS**
8. **VOTES ON PRB FILE:**

PRB FILE #22-020 – Mr. Valengavich moved and Mr. Berger seconded a motion to approve PRB FILE #22-020. The motion passed unanimously.

9. **NEXT MEETING** – Tuesday, February 14, 2023.

The meeting adjourned.

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