

STATE PROPERTIES REVIEW BOARD

Minutes of Meeting Held On August 30, 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 30, 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 Lehman, Commissioner – DECD
Amy Martinez, Assistant Director – DOT
Melanie Fadoir, Supervising Property Agent – DOT
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 August 26, 2021 Meeting. The motion passed unanimously.

2. COMMUNICATIONS

Staff confirmed with Members the Special Meeting scheduled for Wednesday, September 1, 2021, at 30 Corbin Drive in Darien beginning at 10:30 where the Board will conduct a site visit in conjunction with a DOT Proposal under PRB #21-121.

Additionally, Thursday's Meeting (9-2-2021) has been cancelled with a Special Meeting scheduled for Friday, September 3, 2021, beginning at 9:30.

3. REAL ESTATE- UNFINISHED BUSINESS

PRB #	21-121 – <i>For Discussion Only</i>
Transaction/Contract Type:	RE – DROW Exchange
Origin/Client:	DOT/DOT
DOT Project #:	35-50/35-70
Grantee/Grantor:	Baywater, et al
Property:	Darien, Boston Post Road (multiple parcels)
Project Purpose:	Release DROWs & Restriction in Exchange for new

DROW Facilities
Easement Agreements & Release of Easement/Restriction
Deeds

Item Purpose:

At 9:33, Mr. Lehman, Ms. Martinez, Ms. Fadoir, Mr. Genovese and Ms. Perez joined the Meeting to participate in the Board's review and discussion of this Proposal. All left the meeting at 10:50.

August 24, 2021 Update:

At its meeting held on August 2, 2021 the State Properties Review Board voted to suspend this item pending clarification of the following issues:

1. 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.

DOT Response: See below link

https://www.dropbox.com/sh/w45i51osuiojsnj/AAB8OD2hDor6Y6CejdO_-RjCa?dl=0

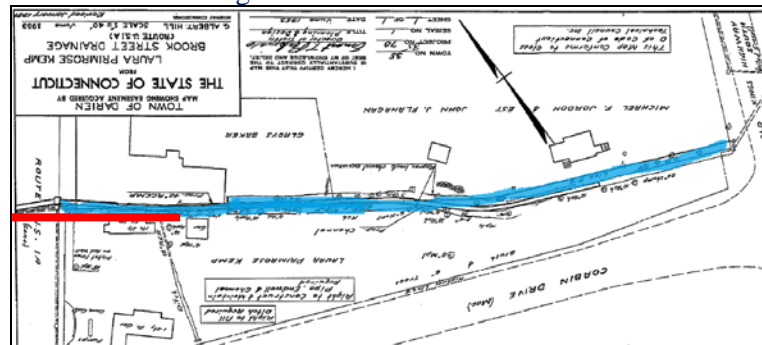
Staff Response: Engineering and Architectural Plans provided. These maps will be utilized throughout the updated analysis of this Proposal. OK (copy/paste link into web browser).

2. 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?

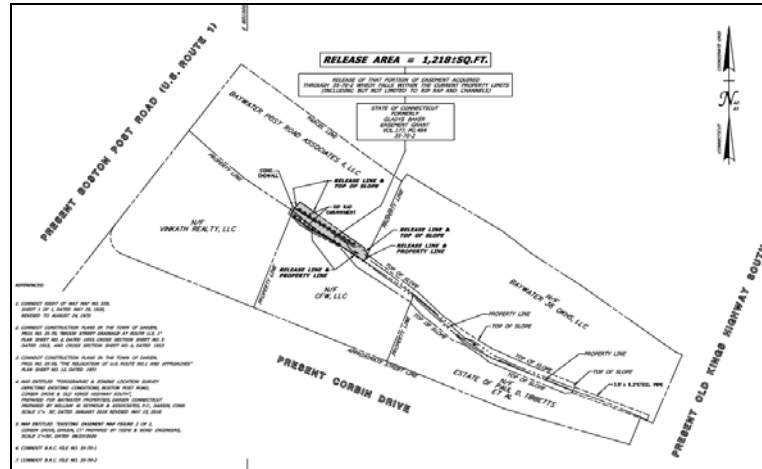
DOT Response: On the northerly side we are releasing 4,724± sq. ft., on the southerly side of Corbin Drive we are releasing approximately 4,275± sq. ft. (see attached maps with areas measured out).

Staff Response: The original Release of Easement deeds provided by DOT release the entirety of the existing DROW Facilities on both the northerly and southerly parcels to the Proponent. The length of the existing DROW facility south of Corbin Drive is approximately 480 feet per Appraisal.

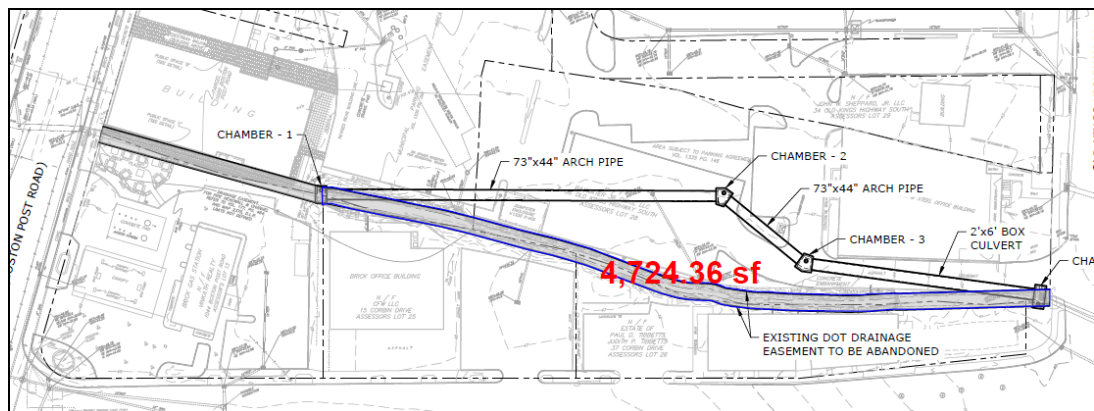
August 24, 2021 Update: Pursuant to a 8-20-21 video conference with DOT it was determined that the Release of Easement deeds provided by DOT needed to be revised to reflect the actual release, commencing at so-called Chamber 1 (following page). The approximate area of the DROW to be retained is underlined in red below. The release of the DROW on the southerly development parcel remains unchanged.



This is the original taking map with the approximate location of the DROW highlighted in blue. There were three abutters – Baker, Kemp and Jordan/Flanagan – in 1952-1953 when the DROWs were acquired.

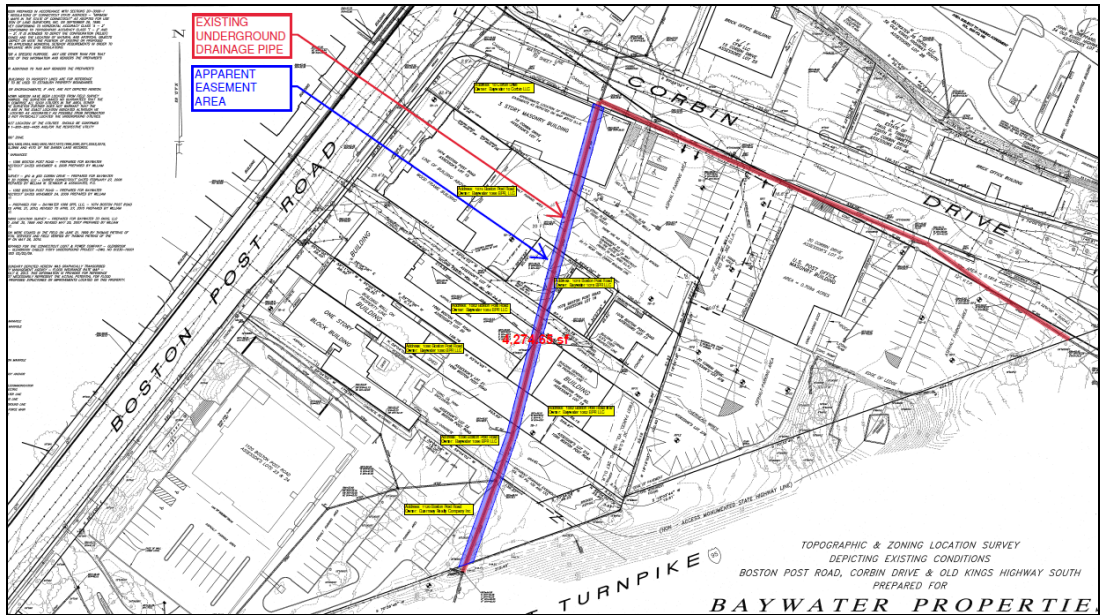
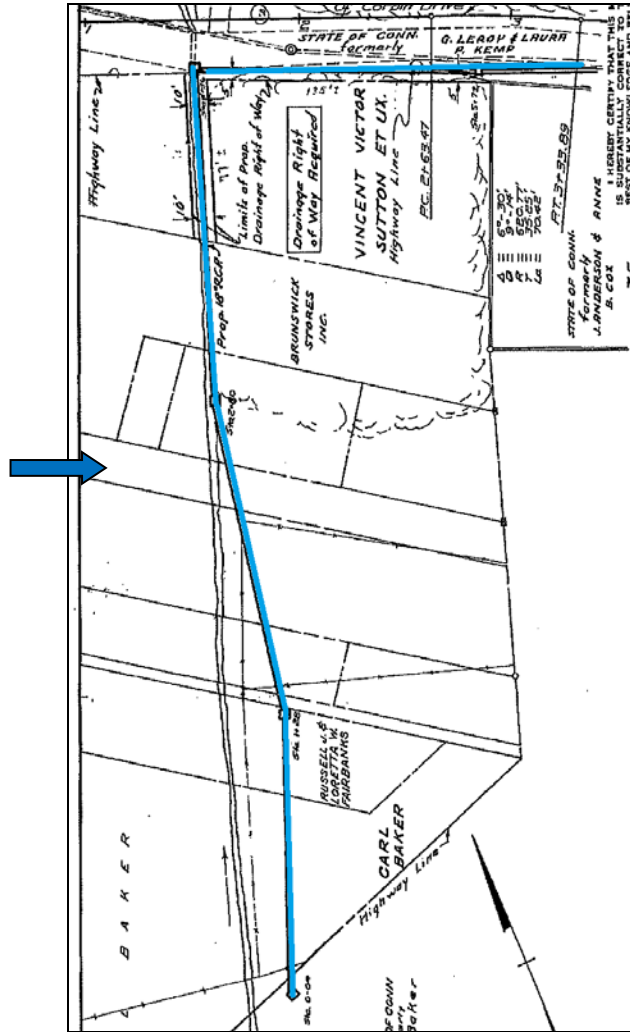


Release Map affecting land of CFW, LLC & Baywater Post Road Associates II, LLC provided by DOT on 8-24-2021



This is a map prepared by the Proponent. The original DOT narrative, DOT response above and narrative within the Appraisal Report all indicate the open channel DROW area highlighted in blue above will be released (appx 4,274 sf), as confirmed with DOT on 8-20-21.

DOT has clearly identified the DROW to be released. OK



Only the DROW area highlighted above is released (appx 4,274 sf) and DOT estimates it is approximately 528 feet in length. Notably, this DROW carries stormwater from the I-95 boundary up to Corbin Drive and then through the drainage piping along Corbin Drive.

The underground drainage piping adjacent to Corbin Drive remains and the Developer is utilizing this piping as part of the Stormwater Management Plan.

3. 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.

DOT Response: The scope of the assignment is to determine the value of the property being encumbered by the DROW vs being encumbered with an easement to drain. DOT completed a full Before and After appraisal report and did not use direct calculations in determining the release value, as the areas for releasing the DROW and reserving the Easement to Drain are both undefined. The appraiser considered any potential change of site utility in after valuation.

Staff Response: OK

4. 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.

DOT Response: \$180,000 appraisal attached

*(see below) The Letter appraisal was completed based on direct valuation using the site survey to estimate the area. The purpose of this abbreviated letter format was to provide an indication of value for negotiations for internal use only within Rights of Way.

*The Department performed an appraisal on the northern part of the development on a “Before and After” basis for the partial release of the Drainage Right of Way (having undefined area) as indicated on map. The appraised value was determined to be \$275,000 (appraisal report signed December 15, 2020). The Department informed Baywater of the asking price, which was rejected outright. Baywater contended that there was a value to the easement to drain that the Department would be retaining. The DOT staff appraiser performed the \$180,000 appraisal for the acquisition of an Easement to Drain (via estimated area from map) on a direct basis for negotiation purposes (appraisal report signed February 4, 2021).

Subsequently, Baywater indicated that they wanted to complete the transactions for both the northern and southern developments at the same time. The Department performed the appraisal of the Southern development on a “Before and After” basis; releasing the undefined Drainage Right of Way while simultaneously acquiring the Easement to Drain. The appraised value was determined to be \$245,000 (appraisal report signed April 15, 2021).

Staff Response: A review of this new Appraisal Report prepared in April 2021 included a 12-15-2020 effective date. A review of this appraisal revealed the following:

SCOPE:

At the request of the Client and Intended User, your appraiser has been asked to estimate value (damages) regarding the State’s proposed acquisition of an Easement to Drain. This proposed easement is to be located within existing subsurface drainage infrastructure that is privately owned, and further comprised of 73” x 44” arch pipe, 2’ x 6’ box culvert, and any associated drainage interchange chambers. With reference to the owner/developer’s development map provided in the addendum of this report, the easement area is outlined in red and has been estimated by your appraiser to total 2,900± square feet. It is your appraiser’s opinion that the Easement to Drain does not impact the approved development plan, with no impact on site utility warranting any further damages. The concealed, subsurface easement can be utilized for ancillary surface parking and access purposes, and there is flexibility for the property owner to move the Easement to Drain with proper State approval. Therefore, a Direct Damage valuation methodology was deemed applicable.

The subject that is the focus of this Appraisal Report encompasses nineteen lots which are separately owned. However, the developer “Baywater Corbin Partners, LLC” has formed a partnership with regard to the nineteen 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 nineteen 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 restricted report. (*Reiteration from Original Report – Number of Parcels Has Been Revised*)

While contrary to what was originally appraised, there are two additional parcels which facilitate the Easement to Drain that are not specified on the mixed-use approval document, nor were included within the original appraisal. As per the municipal assessor, 1020 Boston Post Road in Darien totals 0.4660± acre while 36 Old Kings Highway totals 0.8620± acre. These two parcels must be included as a part of the assemblage to value the Easement to Drain. Your appraiser is valuing the subject property via the *Hypothetical Condition* that the total land area of the assemblage totals 7.6148± acres or 331,701± square feet. If it were found that the assembled land area deviates from what is outlined within this report, your appraiser reserves the right to consider its impact on value.

In this Appraisal Report prepared in April 2021, the Appraiser states the Development Parcel now

consists of 19 parcels, up from 17 parcels. The two additional parcels at 1020 Boston Post Road and 36 Old Kings Highway South facilitate the new Easement Agreement for drainage on the northerly parcel. The Appraiser concluded the 'After' market value of the land from the previous assignment was \$124/sf and there was no change in his opinion in market value for this assignment. The Appraiser calculated the area of the new Drainage Easement Facility was 2,900 square feet, valuing the acquisition as follows: 2,900 sf x \$124/sf x 50% Rights = \$179,800, rounded to \$180,000. OK

5. 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.

DOT Response: \$245,000 appraisal attached

LAR format appraisal was completed based on a before and after. The purpose of this abbreviated letter format was to provide an indication of value for negotiations for internal use only within Rights of Way. Typically, a Before and After valuation would have been completed.

Staff Response: Staff reviewed the Appraisal Report. Included in the Appraiser's 'After' analysis was the following:

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, and at the request 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 scope of appraisal in the "After" condition consists of the release of the Undefined Drainage Right of Way encumbering the south portion of the assemblage, in addition to the acquisition of an Easement to Drain along the south assemblage's rear property line. The assemblage is to be intensely developed in harmony with its existing mixed-use approval. The easement to drain ties into the developer's drainage infrastructure as per the owner/developer's drainage plan. The ongoing maintenance expense of the drainage infrastructure utilized by the easement to drain is considered by your appraiser to be the responsibility of the owner/developer via an *Extraordinary Assumption*, which has a generally diminishing effect on value. If it were found that the maintenance of infrastructure utilized by the Easement to Drain deviates from your appraiser's expectations, or if the easement to drain is otherwise different from what is outlined on said developer-provided drainage plan, your appraiser reserves the right to consider its impact on value.

"After" Condition

In the "After" scenario the Drainage Right of Way is removed, with an Easement to Drain along the rear property boundary is installed. Most conditions are unchanged with respect to level topography and terrain, usable frontage and access points, total site area, etc. While the Drainage Right of Way area can be utilized for surface parking, the site utility is now improved with the removal of the Drainage Right of Way with structural development allowed (at-grade) in the southerly assemblage's center. Alternatively, the Easement to Drain to be installed along the rear property line, being the interstate highway non-access frontage, and provides for adequate storm drainage from the highway corridor. The easement area is within the zone's rear setback area, and is considered not to have a measurable impact on the assemblage's overall utility. However, the Easement to Drain is considered by your appraiser to be inextricably linked with the drainage dynamic of the mixed use development. As a result, your appraiser considers proper maintenance of the storm drainage improvements utilized by the easement to drain to be the responsibility of the property owner/developer, putting downward pressure on value due to increased and ongoing expenses of maintenance over time. Further, the assemblage is now also considered to be fully approved for mixed-use development (in harmony with the existing approval in place), consisting of a retail, restaurant, office, and residential apartments that total 336,110± square feet of gross floor area, with 116 apartments and 744 parking spaces.

Adjustments made in the "After" condition are representative of the cumulative impact of the release and acquisition, by way of the improved site utility and approvals, but diminished by the ongoing maintenance expense of the easement to drain incorporated into the owner's development.

In this Appraisal Report prepared in April 2021, the Appraiser states the Development Parcel now consists of 17 parcels. This analysis reiterates the Proponent's development potential is improved with the removal of the existing DROW facility and relocating to the southerly portion of the site proximate to the non-access frontage of I-95. However, the Proponent's Drainage Plan identifies additional drainage facilities in other areas of the site. The last paragraph accounts for the negative impact of the Proponents required maintenance of the new DROW facility. The Appraiser utilized a Before/After format, similar to the original Appraisal Report and concluded the market value of the Release/Acquisition was \$245,000.

6. Please clarify why DOT is utilizing the cost of acquiring a 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.

DCS Response: It cannot be determined by this office that the "net" value of exchange has been the only method to determine the credence of a settlement, although DOT does often float this

concept to best leverage itself during negotiations. Further, the means and methods for the valuation of this file and all previous files are within the appraisal industry standards. The Department is not limited to one methodology when approaching a particular valuation question, nor is it limited to one factor in negotiating a settlement for release of property rights. The Department weighs all variables in play for each negotiation and can assign different weights to those variables during each negotiation.

Staff Response: It is acknowledged that all aspects of real estate transactions are unique. However, a process of disposing of a state asset should be consistent so future Proponents can receive similar treatment to prior Proponents (see comments under #8 below). OK

7. 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.

DOT Response: Previous submissions by DOT represent its best efforts to obtain the best results for the state. All files are unique, and DOT considers multiple factors in determining the sales price in a settlement. In this instance, the Department continues to have an easement to drain onto the property without the liability and responsibility of the drainage facility. The developer is the one taking the risk in developing this site and a drainage system still needs to be managed by the developer. The Department is in a better position even if the development does not advance as it no longer has responsibility and liability of the drainage facility.

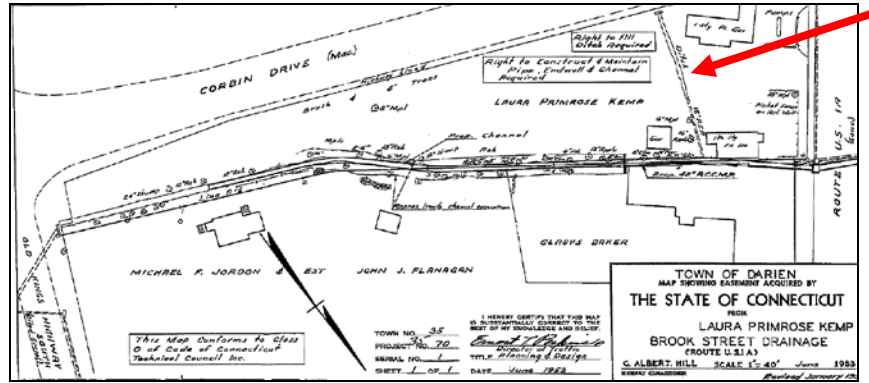
Staff Response: Darien Zoning Regulations include responsibilities of the Developer with respect to Stormwater Management Plans (SMP-see Addenda to this Memo). The SMP provides the Developer options for SMP to include non-structural approaches to controlling runoff to the maximum extent practicable, promoting the infiltration of rainfall into the soil and preservation of existing drainage patterns. In addition the SMP states Conveyance systems for the proposed project must be analyzed, evaluated, designed, and constructed to accommodate existing upstream and off-site runoff onto a site in addition to the on-site runoff from the proposed development.

Furthermore, the SMP encourages the Developer to utilize existing outlets to the maximum extent practicable, unless it is demonstrated that using the existing outlet would exacerbate downstream flooding or result in adverse impacts to downstream properties or properties proximate to the site. The location of the new outlets is critical to avoid adverse impacts to property(ies) proximate to the site. Such point sources shall be located such that they do not adversely affect nearby property or structures that may be proximate to the site and discharge to natural or manmade drainage systems with adequate capacity to handle the anticipated flow. The Developer's plans clearly address the significant expansion of sub-surface system to manage the stormwater from on/off-site locations (see comments under #8 below).

8. 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.

DOT Response: When the appraiser inspected the property in December, he noted that the open channel area appeared to have new pavement. However, the original easement acquisition for 035-070-001 mentions the right to fill ditch was acquired on a map dated June 1953. The Department did not pursue the chain of events that occurred from June of 1953. See attached acquisition map file number 035-070-001.

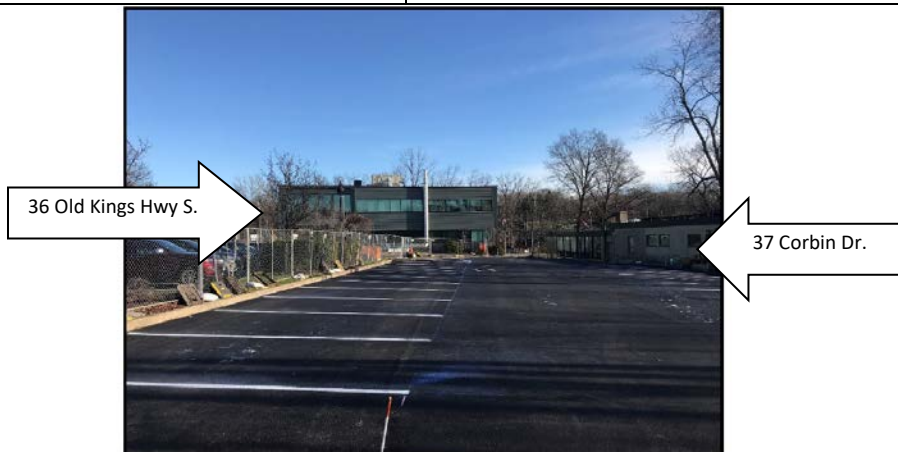
Staff Response: The DOT map referenced identified a 'ditch' in addition to the open channel as follows:



The filling of a ‘ditch’ clearly identified on the DOT map does not necessarily permit filling of the open channel. Staff research revealed that the Proponent filled the open channel in 2020, as authorized by the 2019 OSTA permit (see below).

a) Which of Baywater’s properties are benefitting from the enclosed “Open Channel?”

DOT Response: 15 and 37 Corbin Drive. DOT valued the entire property as a whole due to unity of use and plans on file. The appraiser did not view the parcels individually.

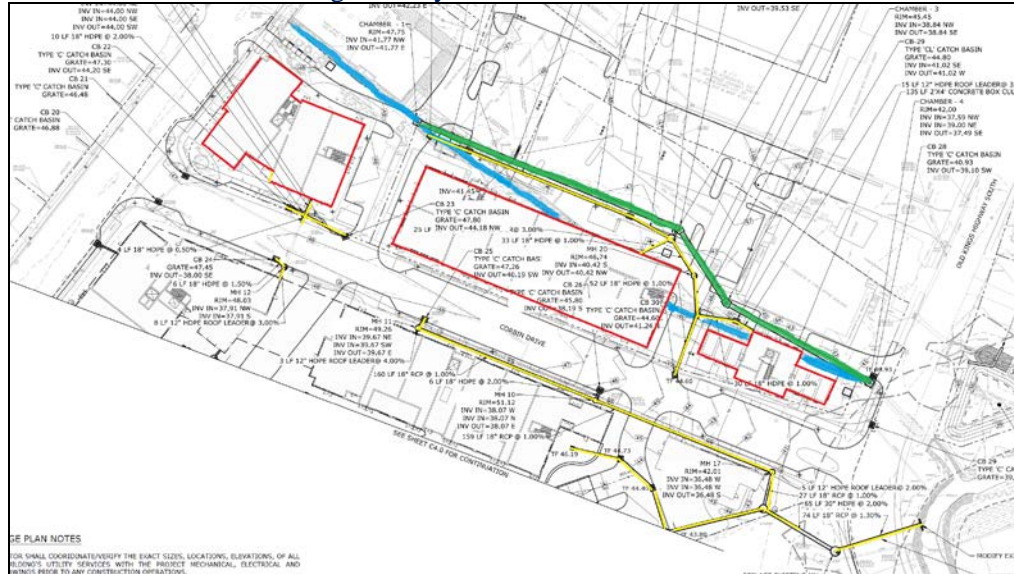


Subject Easement to Drain Location Beneath Newly Paved Parking – North Side of Corbin Drive Assemblage

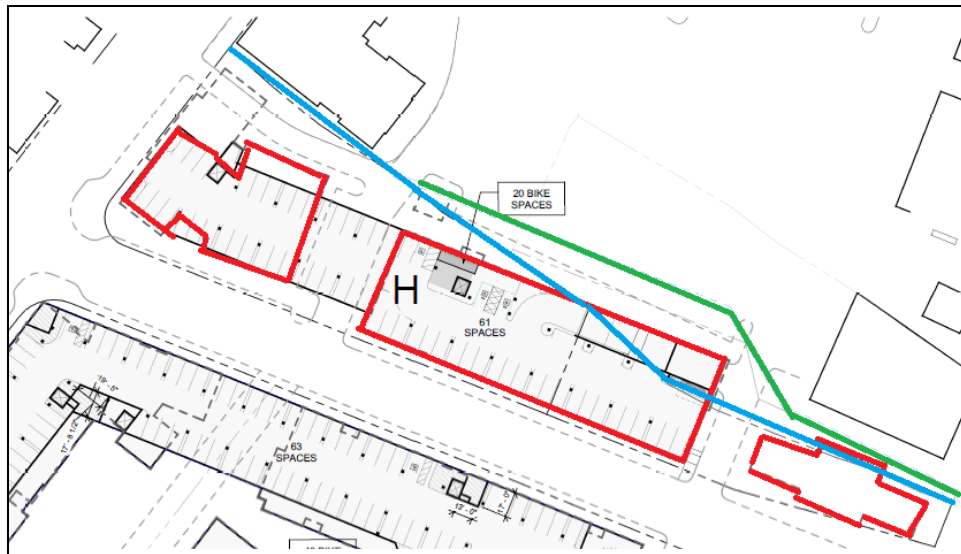
This photo taken from an Appraisal Report prepared in April 2021, with a 12-15-2020 effective date.

Based on the previous images, it appears that property at 36 Old Kings Highway South and 1014-1020 Boston Post Road are also benefiting from the changes to the existing DROW facility.

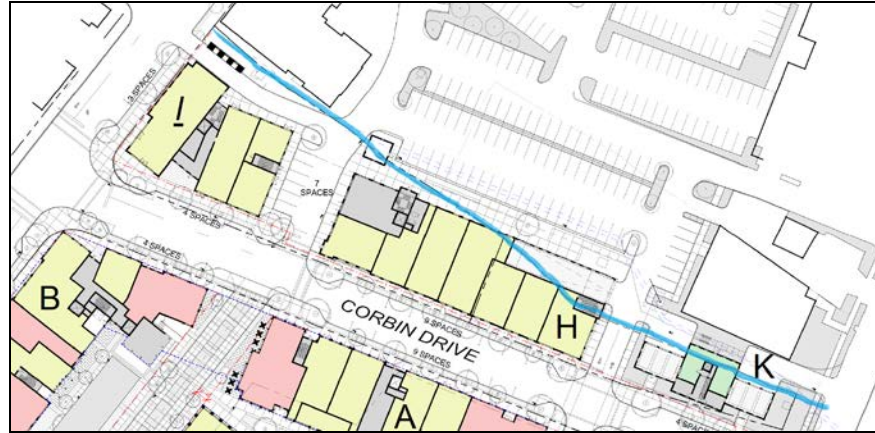
The maps that follow identify the Proponent's development plans and how the northerly parcel benefits from the relocated drainage facility.



The map above highlights the three planned buildings (red) in relation to the new DROW facility (green), existing DROW facility (blue) and proposed/existing underground drainage piping (yellow).



The map above identifies the subsurface parking garage along the northerly side of Corbin Drive with the three planned buildings (red) in relation to the new DROW facility (green) and existing DROW facility (blue).



The map above identifies street level retail (yellow) and restaurant (pink) space as well as street level parking and the existing northerly DROW Facility as it relates to the Proponent's development plans.

- 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?

DOT Response: The Department's decade's long practice has been to remove the maintenance and responsibility of its drainage inventory, which reduces the Department's liability.

Staff Response: These changes to the existing DROW Facility and adjacent facilities have been made to the benefit of the abutting properties – all affiliated with the Proponent – with no analysis regarding whether compensation was due the State. OK

- c) Was it the Developer, CFW or Tibbetts (abutters) who enclosed the "Open Channel?"

DOT Response: The culvert was enclosed in 2020 by Baywater following the installation of the new drainage system on Baywater's private property, outside of the right-of-way. Baywater went through a permitting process with the Town of Darien including an engineering review and worked with DOT on posting a bond for the project and providing maps and drawings documenting the work. There was miscommunication with DOT (Maintenance) and Baywater did not acquire an encroachment permit ahead of the open channel infill. The DOT formally approved the infill of the existing channel and design of the relocated drainage in 2019 (OSTA No: 035-1806-01).

Staff Response: In the 8-20-21 conference with DOT it was confirmed that OSTA approved the fill of the channel, based on the previously-discussed 'Right to Fill Ditch' described in #8 above.

It appears there is disconnect with DOT Divisions of Rights of Way and OSTA with respect to the State's property rights when OSTA is issuing permits. OSTA essentially approved this relocation with no concern about existing property rights.

Contained within an April 17, 2020 *Darien Times* article "Demolition to begin soon for the Corbin District" was the following statement:

The changes, which pertain to the Post Road and Corbin Drive, involve the first phase of the construction project. This will be to relocate the drainage culvert that runs alongside the parking lot behind 1020 Boston Post Road and 36 Old Kings Highway South. Work is expected to begin this summer.

The previous statement in tandem with the OSTA Permit clearly identify the relocation of the channel, which was anticipated to begin in summer of 2020, and based on photos within the December 2020 appraisal report, the work was already complete (see photos in #8(a) above). The proposed new Drainage Facility,

terminating at Old Kings Highway South continues to utilize the existing DROW crossing the roadway discharging into the Goodwives River adjacent to I-95.

Contained within an August 16, 2021 *Darien Times* article “*We're still here': Business as usual for Darien shops as downtown transformation begins*” were the following statements:

Work on the first phase of downtown redevelopment has begun, with the Gulf gas station closed, and two buildings behind it along Corbin Drive vacated and the sites fenced off and being prepped for removal.

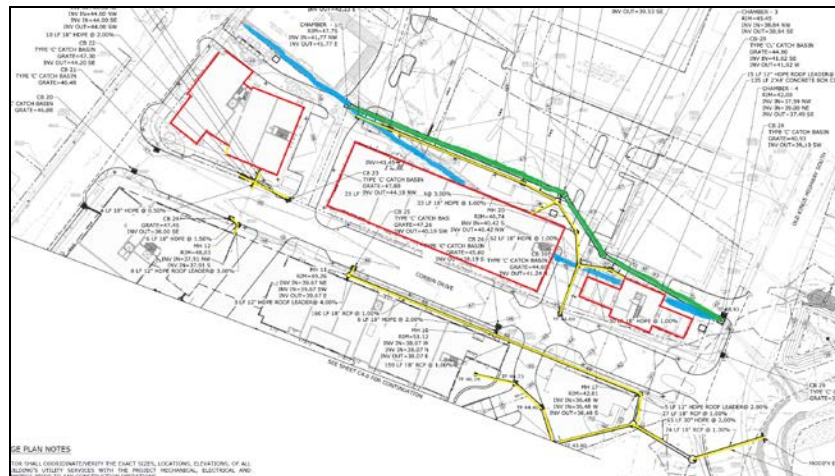


Courtesy: Darien Times

Baywater Properties’ David Genovese, who has spearheaded this downtown redevelopment plan since 2005 with Penny Glassmeyer, said completing this major construction project was only part of his team’s work — they also took great care in making sure all the businesses were relocated so there would be no disruption to their operations.

Genovese said the first phase is estimated to take some 15 months to complete, at which point the second phase will begin, and another set of businesses will be relocated.

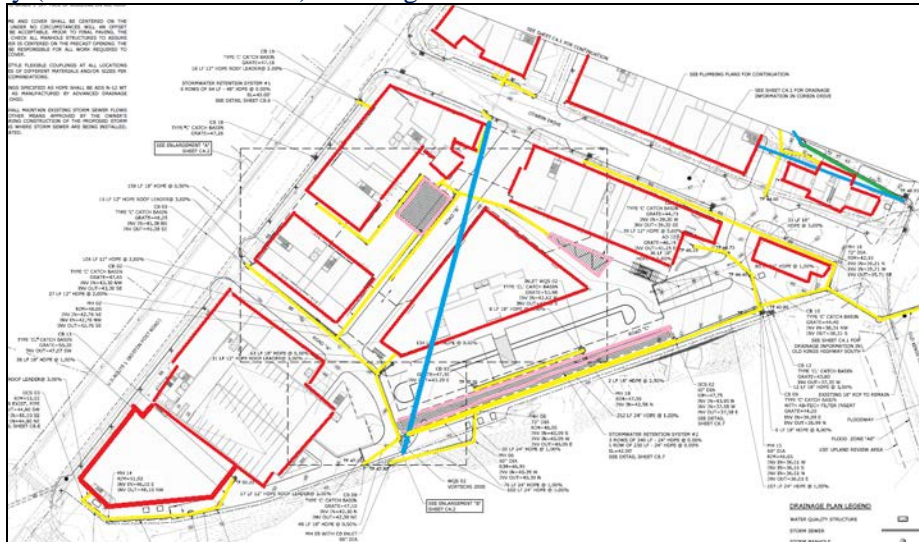
Again, it is reiterated that all of this work, from OSTA permitting the open channel DROW to be filled in and relocated has commenced with the requisite Release of Easement deeds or Easement Deeds between the Proponent and the State.



The Proponent provided DOT with the Architect’s AIA document identifying an original expense of \$649,763 and total expense, after change orders, of \$693,525. In the DOT

narrative, this was a point of negotiation by the Proponent to off-set the Release Value. Based on the Proponent's development plans, it was incumbent on the Proponent to relocate the open channel to accommodate construction of two of the three buildings on the northerly parcel and the appurtenant 61-space subsurface garage below two of the three buildings. Any accommodation to drain water from Boston Post Road/Route 1 will conveniently utilize this drainage facility. This, along with the Stormwater Management Plan discussed in Item #7 above is a requirement of the Darien Zoning Regulations.

Regarding the Proponent's development of the southerly parcel, it was also a point of negotiation by the Proponent that the state must consider the cost of relocating the DROW Facility (& future maintenance) and long-term benefit to the State.



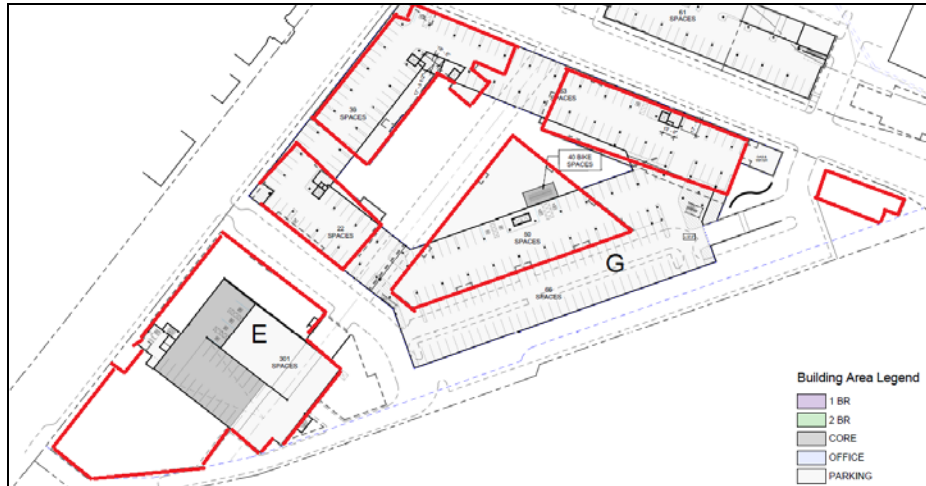
The map above highlights all 10 planned buildings (red) in relation to the new DROW facility (green), existing DROW facility (blue), underground drainage piping (yellow) and subsurface stormwater retention systems (pink).

The current location of the DROW impacts the Proponents development of so-called Building F and a sub-surface garage accommodating 116 vehicles.

Additionally, the proposed new Drainage Facility, terminating at southerly boundary, in the area of the original DROW, and also at Old Kings Highway South, both appear to continue to utilize the existing DROW end points.



The map above identifies street level retail (yellow) and restaurant (pink) space as well as street level parking and the existing northerly DROW Facility as it relates to the Proponent's development plans.



The map above identifies the subsurface parking garage along the southerly side of Corbin Drive.

9. Has DOT developed a cost estimate to restore the enclosed portion of the “Open Channel” to its original condition?

DOT Response: No, DOT did not see a need to pursue this for its appraisals. The original acquisition for 035-070-001 acquired the right to fill ditch. See attached acquisition map file number 035-070-001.

Staff Response: It appears that an internal decision by either ROW or OSTA was made to interpret the Right to Fill Ditch Acquired with approving the open channel infill. That is a legal interpretation beyond Board/Staff qualifications. OK

10. 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?

DOT Response: We included a clause about “any possible fee interest Grantor may hold” in the release deed for 035- 050-009C (Baywater 1096 BPR, LLC) and 035-050-082A (Baywater 1084 BPR, LLC) because the condemnation certificates were ambiguous, and the acquisitions can be read as fee takings and property being taken for drainage purposes as opposed to just a DROW. Because of this, the AAG edited the release deeds to make changes so that we are releasing what was acquired and to make it clear to anyone reviewing title records moving forward. (See attached email from AAG, release deeds, and acquisition deeds).

Staff Response: DOT provided a string of emails (May 2021) between DOT & AG regarding the two releases, the genesis being the construct of the original condemnation documents. Given the ambiguous nature of the language, it was determined to prepare the two “Release of Easement and Quit Claim” instruments as DOT wants to release the rights it acquired in the early 1950s. OK

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.

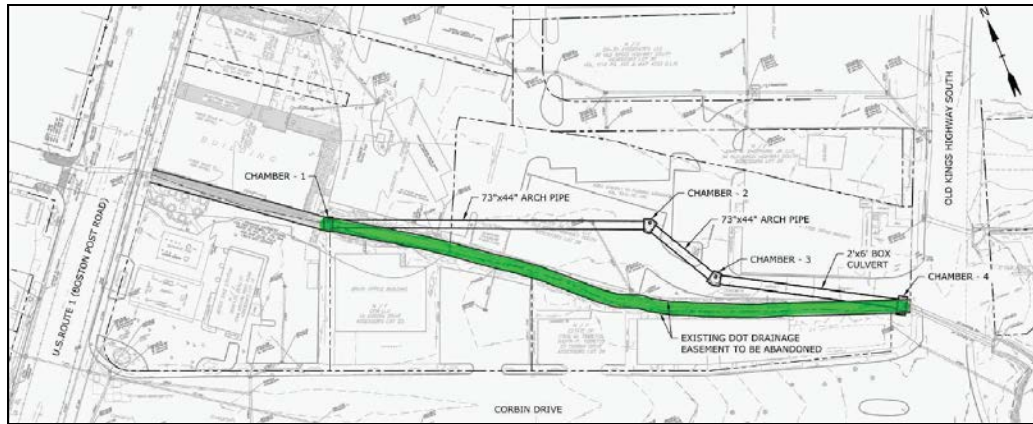
Seven of the nine new proposed mixed-use buildings will have residential dwelling units on second and third floors. There are 122 new residential units proposed as part of this redevelopment (67 one-bedroom units and 55 two-bedroom units). Because there are more than five new residential

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:

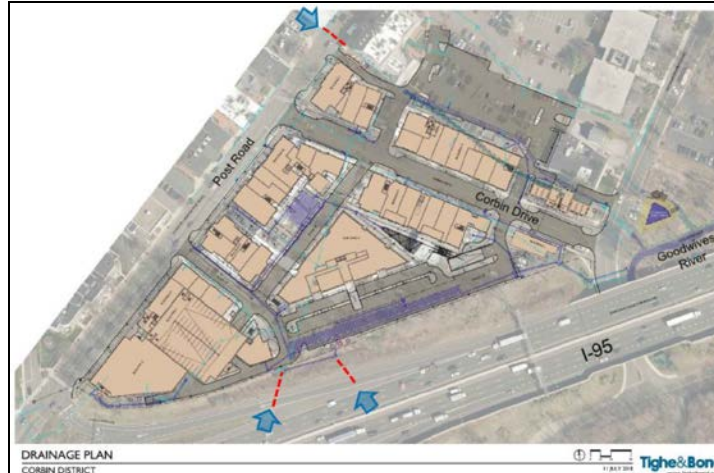
- a) 240 parking spaces in an underground parking facility below Building 'G', where 122 parking spaces will be reserved exclusively for residential parking.
- b) 308 parking spaces under, on, and above Building 'E'.
- c) 64 parking spaces are proposed in the underground parking facility below Building '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 / 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 / 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	<u>0.4501</u>	<u>19,606</u>
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 $273,853 = \$33,683,919$, 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 $273,853 = \$33,957,772$, 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>	\$275,000

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.

1. 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.
2. 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?

3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
 - d) Which of Baywater’s properties are benefitting from the enclosed “Open Channel?”
 - e) 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?
 - f) Was it the Developer, CFW or Tibbetts (abutters) who enclosed the “Open Channel?”
9. Has DOT developed a cost estimate to restore the enclosed portion of the “Open Channel” to its original condition?
10. 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?

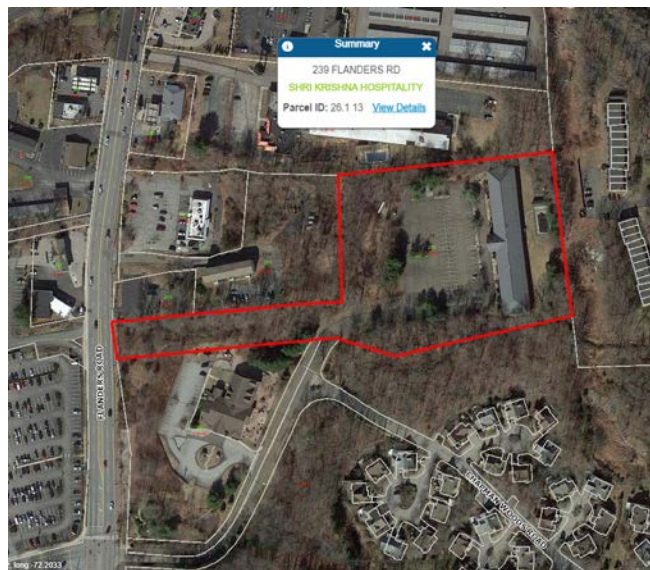
Recommendation – Staff recommend the Board suspend this Proposal to release two DROWs and Restrictions for \$1,000 Admin Fee in exchange for being granted a new easement “Facilities” over the entire development parcel pending DOT response to issues raised by the Board.

4. REAL ESTATE – NEW BUSINESS

PRB #	21-127
Transaction/Contract Type:	RE – Voucher
Origin/Client:	DOT/DOT
DOT Project #:	044-156-004
Grantor:	Shri Krishna Hospitality Trust, LLC
Property:	East Lyme, Flanders Rd (239)
Project Purpose:	I-95 Interchange 74 Improvements at Route 161 and Replacement of Bridge No. 00250
Item Purpose:	Voucher

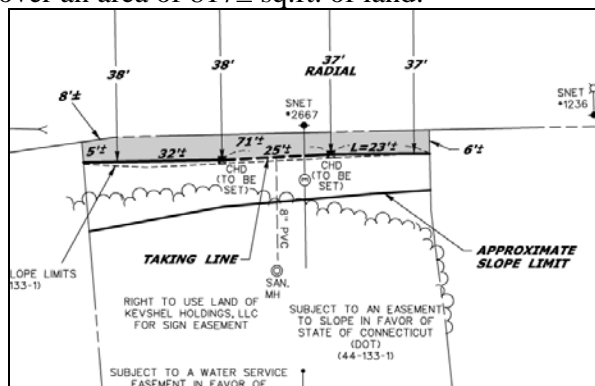
Damages: \$7,050

Description – The subject parcel consists of an irregularly-shaped 5.45 acre rear lot (237,476 sf) with 79.50 feet of frontage on Flanders Road, accessed via a ROW over the southerly abutter. The property is located within an CA commercial zone (Special Permit in 1985), allowing for hotel use.



The Taking: DOT will acquire the following:

1. A partial take in fee simple of 435± sq.ft. of land; and
2. An easement to slope for the safety of the highway and remove, use or retain excavated material acquired over an area of 817± sq.ft. of land.



EOC Valuation: Consistent with DOT's agreement with FHWA an estimate of compensation (EOC) worksheet has been prepared for the subject taking. This process is used for simple acquisitions related to minor site improvements where the total cost is typically less than \$10,000. In this instance, DOT Staff valued the 5.45 acre (237,476 sf) commercially-zoned site at \$8.35/SF (\$1,982,925 lot value). The following table indicates the results of the DOT Estimate of Compensation, prepared as of 7/12/2021:

<i>Item</i>	<i>Calculation</i>	<i>Damages</i>
Partial take in Fee Simple	435± SF @ \$8.35/sf =	\$3,632.25
Easement to Slope	817± SF @ \$8.35/sf x 50%	\$3,410.98
	<i>Total</i>	\$7,043.23
	<i>Rounded</i>	\$7,050

RECOMMENDATION: Board **approval** of damages in the amount of \$7,050 is recommended for the following reasons:

1. The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
2. The acquisition value is supported by the DOT Estimate of Compensation.

5. ARCHITECT-ENGINEER - UNFINISHED BUSINESS

6. ARCHITECT-ENGINEER - NEW BUSINESS

7. OTHER BUSINESS

8. VOTES ON PRB FILE:

PRB FILE #21-127 – Mr. Halpert moved and Mr. Valengavich seconded a motion to approve PRB FILE #21-127. The motion passed unanimously.

9. NEXT MEETING – Special Meeting, Wednesday, September 1, 2021.

The meeting adjourned.

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