

## STATE PROPERTIES REVIEW BOARD

### Minutes of Meeting Held On September 3, 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 September 3, 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**

Brian Dillon, JUD  
David Wlodkowski, DCS  
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 30, 2021 and September 1, 2021 Meetings. The motion passed unanimously.

#### **2. COMMUNICATIONS**

Staff reminded Board Members that Monday's Meeting (9-6-2021) has been cancelled with a Special Meeting scheduled for Wednesday, September 8, 2021, beginning at 9:30.

#### **3. REAL ESTATE- UNFINISHED BUSINESS**

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

At 9:33 Mr. Genovese and Ms. Perez joined the Meeting to participate in the Board's review and

discussion of this Proposal. Both left the meeting at 9:56.

September 1, 2021 Update:

The State Properties Review Board held a Special Meeting on September 1, 2021 commencing at 10:30AM at 30 Corbin Drive, Darien, Connecticut.

Ms. Fadoir (DOT), Mr. Genovese and Ms. Perez (Baywater) and Darien's First Selectman Jayme Stevenson were all invited to participate in the Board's Site Inspection and discussion of this Proposal. Board Members were provided a summary and proximate location of the existing Drainage Rights of Way encumbering the property as well as the proposed location of the new Drainage Facilities to be acquired via two Easements granted by the Proponent. Additionally, the location of the proposed improvements within the 'Corbin District' was discussed.

Subsequent to the Board's August 30, 2021 Meeting, the following inquiries were made of DOT:

Can you please provide the following information? Some of these items were discussed at yesterday's meeting by the developer as well as DECD. Board is looking for a summary of the following from DOT that shows support for reasons why the easements are being released for \$1000 compared to what is appraised:

1. A capital improvement expense update to date along with an updated economic development multiplier effect of the project that would be inclusive of:
  - a. Jobs long term and short term,
  - b. State and local tax benefits
  - c. Potential benefit to the state and local business growth and retention,
  - d. Housing benefits for disadvantaged individuals,
  - e. It was mentioned by the developer that there was a gift of 1.7 million for this group
2. DOT liability issue and also business impacts due to flooding of the ditch the developer talked about
3. Continued benefit to DOT - use of the improved drainage, etc.

DOT – Director of Rights of Way 8-31-2021 Response: As we discussed, DOT will provide detailed information for bullet items two and three. However, the first bullet requesting quantifiable economic development data is beyond DOT's scope. We concur that there would be recognizable benefits to the state for jobs and taxes, etc, but we would be unable to provide specific data to those benefits.

Staff Response: DOT confirmed that their process does not take into account any economic development data as it is beyond DOT's scope. DOT appropriately excluded any economic benefits of the development project pursuant to standards contained within the Uniform Appraisal Standards for Federal Land Acquisitions.

DOT Response (Director ROW): At a recent SPRB meeting, Mr. David Genovese of Baywater discussed situations whereby he paid for drainage improvements that were the responsibility of the DOT. In 2007 Baywater paid for repairs of the state drainage system from Boston Post Road to Chamber 1 when it developed 1020 Boston Post Road. The cost of this repair was \$114,350.

In 2020 Baywater made repairs to state drainage when it developed 26 East Lane at an expense of \$17,525. DOT continues to work on a permanent solution to the I-95 drainage system that is causing the problem. (Photos of the work at 26 East Lane are attached). Total costs associated with state drainage facilities paid for by Baywater is approximately \$132,000.

The examples above indicate the DOT's struggles to maintain and improve its vast inventory of drainage facilities. With resources stretched, it is not uncommon for deferred maintenance issue to spiral into capital improvements. Which is why for the last decade or so it has been DOT's practice to reduce its inventory of drainage facilities by negotiating a release of Drainage Right of Ways in exchange for an

**Easement to Drain.** The Easement to Drain allows the state to drain water but shifts the responsibility to carry the water and improve or maintain drainage facilities to the property owner.

In Baywater's Corbin Street project the new drainage facility on the northern property was installed at a cost of \$713,525. Photos of the old drainage system are in the attached PDF. The existing facility was at the end of its life and it was only a matter of time before DOT would have had to make a significant invest in the DROW. By releasing the DROW and retaining an Easement to Drain, Baywater paid for a brand new facility that will carry state highway water. This new facility shall be maintained wholly by the owners of the property, not DOT.

Similarly, a new drainage facility carrying state water will be built on the southern property. The cost for this work is estimated to be \$265,300. Total cost for improvements to drainage facilities carrying state water is \$978,825.

The total payout for drainage facilities carrying state water totals approximately \$1.111 Million. (\$978,825 + \$132,000)

DOT's value of the DROW on northern parcel is \$95,000 (\$270,000 Rel - \$180,000 Acq.)

DOT's value of the DROW on the Southern parcel is \$245,000.

Total DOT appraised values is \$340,000.

This project highlights how DOT will receive a benefit of not having to expend funds for capital improvements on its drainage facilities and still utilize the facilities. The burden of capital improvements is shifted from DOT to private property owners and DOT retains use of the facility with no liability or responsibility of maintenance. The private owner will have invested more than \$1Million in drainage infrastructure that the state will utilize forever. The relief of this burden far outweighs any benefit that may be perceived by appraised values (\$340,000).

Staff Response: Staff acknowledge that the investment made by the Proponent relieved DOT from utilizing state resources to improve the drainage infrastructure. Had this exchange, as it relates to drainage infrastructure only, had not occurred DOT would retain the financial liability for the expense of future repairs and maintenance. We also recognize that with this negotiation results in DOT's continued ability to drain state rainwaters from their highways over land of the Proponent at no expense to DOT now, or in the future.

#### DECD Commissioner 9-1-2021 Response:

- ~175 million project – a very significant investment
- Mixed use with Residential, Retail, and Office – Infill location. Will further improve the vibrancy of Darien. We need more investments like this that build footfall/density across Connecticut towns and cities. These types of investments drive growth.
- No state or town of Darien incentives/subsidies in transaction
- ~400 construction jobs + permanent jobs upon completion
- 14 apartments designated to be rented on an affordable basis to adults with developmental and/or intellectual disabilities – ~12 units to be gifted to a non-profit (Abilis) – approximate gift value of ~1.7 million equity

#### **Reasons for urgency**

- Time = uncertainty and can delay or derail projects; this SPRB approval is the last one needed
- Peoples Bank, who committed to a construction loan for phase one and is ready to close upon the financing, is also in the midst of a merger with M&T Bank, and their commitment to close on their loan expires on September 10th.
- Bank of America, for example, a tenant in the new development, has a deliver by date in their lease (early 2023 the latest) – if box isn't delivered by then, lease can be terminated which may jeopardize project, other tenants, etc.

Staff Response: Staff confirmed with DOT that its process of valuing the affected property, both before and after the proposed exchange, appropriately excluded any economic benefits of the development project pursuant to standards contained within the Uniform Appraisal Standards for Federal Land Acquisitions. Furthermore, Staff analysis of this Proposal excludes any consideration of the economic benefits of this proposed development project.

**Recommendation** – Staff recommend the Board approval this Proposal to release a DROW for a \$1,000 administrative fee in exchange for being granted two new Easement Agreements over the development parcels; for the following reasons:

- The proposed sale complies with §13a-80(a) of the CGS in that the legislative delegation received the required notification on May 26, 2021;
- The DOT's process of valuing the affected property, both before and after the proposed exchange, appropriately excluded any economic benefits of the development project pursuant to standards contained within the Uniform Appraisal Standards for Federal Land Acquisitions;
- The descriptions in the Quit Claim Deeds are consistent with the taking maps filed in the Darien Land Records. The Board notes that subsequent to their review, DOT made revisions to the Quit Claim Deeds for DOT Project #35-70-1A, #35-70-1C and #35-70-2A to properly identify the areas of the DROW to be released as well as the DROW to be retained by DOT;
- The DOT's acquisition of two new Easement Agreements over land of the Proponent, and the investment made by the Proponent to install the new Drainage Facilities, relieves DOT from utilizing state resources to improve the drainage infrastructure in perpetuity. Additionally, this negotiated exchange results in DOT's continued ability to drain state rainwaters from their highways over land of the Proponent at no expense to DOT now, or in the future.
- The release value of \$1,000 is reasonable in that it was negotiated to reflect the market value of the Release, the market value of the acquisition of two new Easements and the Proponents prior and future expenses of maintaining the drainage infrastructure that will benefit the State as well as the Proponent, with the Proponent responsible for all future repair/maintenance expenses.

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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/w45i51osuiosnsj/AAB8OD2hDor6Y6CejdO\\_-RjCa?dl=0](https://www.dropbox.com/sh/w45i51osuiosnsj/AAB8OD2hDor6Y6CejdO_-RjCa?dl=0)

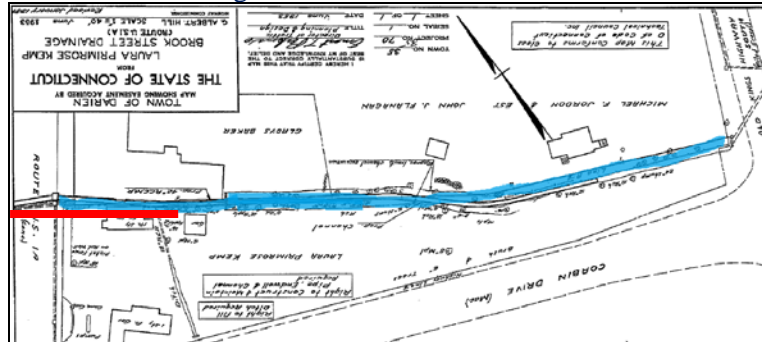
Staff Response: Engineering and Architectural Plans provided. These maps will be utilized throughout the updated analysis of this Proposal. OK (copy/paste link into web browser).

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?

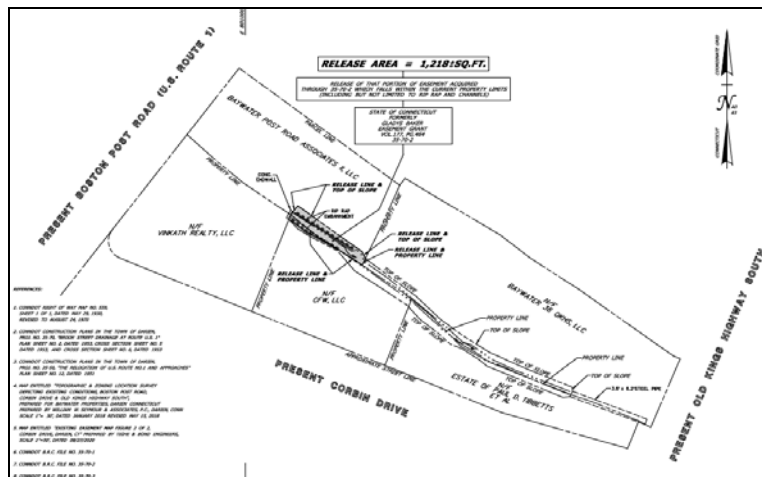
DOT Response: On the northerly side we are releasing 4,724± sq. ft., on the southerly side of Corbin Drive we are releasing approximately 4,275± sq. ft. (see attached maps with areas measured out).

**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.

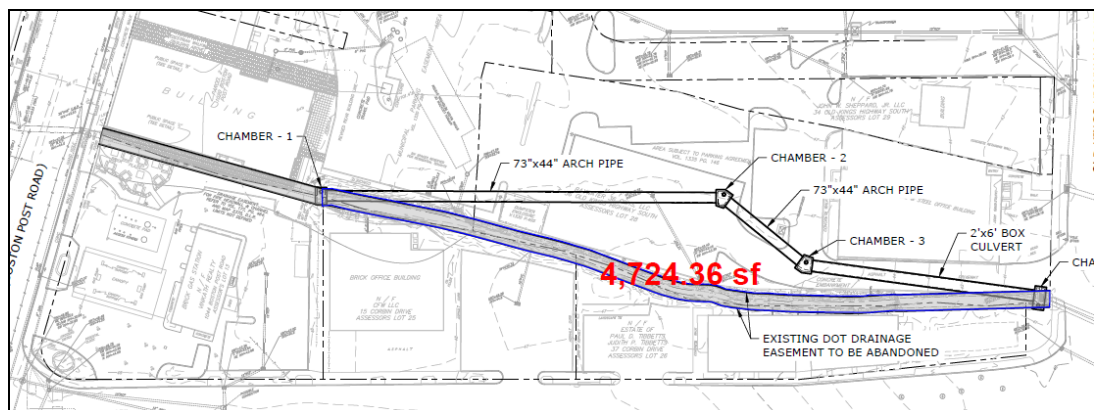
August 24, 2021 Update: Pursuant to a 8-20-21 video conference with DOT it was determined that the Release of Easement deeds provided by DOT needed to be revised to reflect the actual release, commencing at so-called Chamber 1 (following page). The approximate area of the DROW to be retained is underlined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



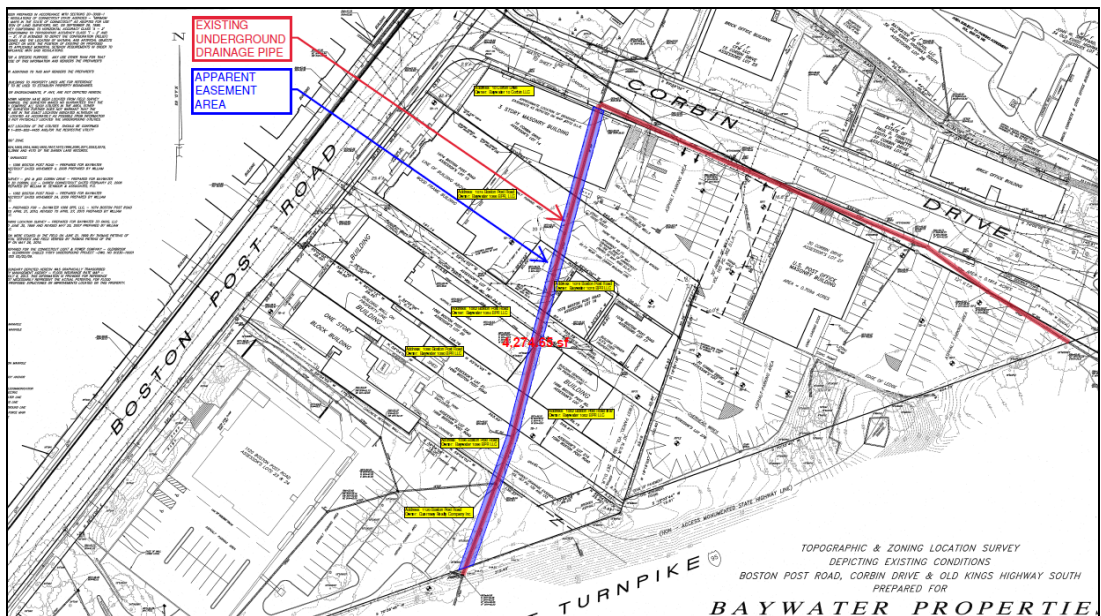
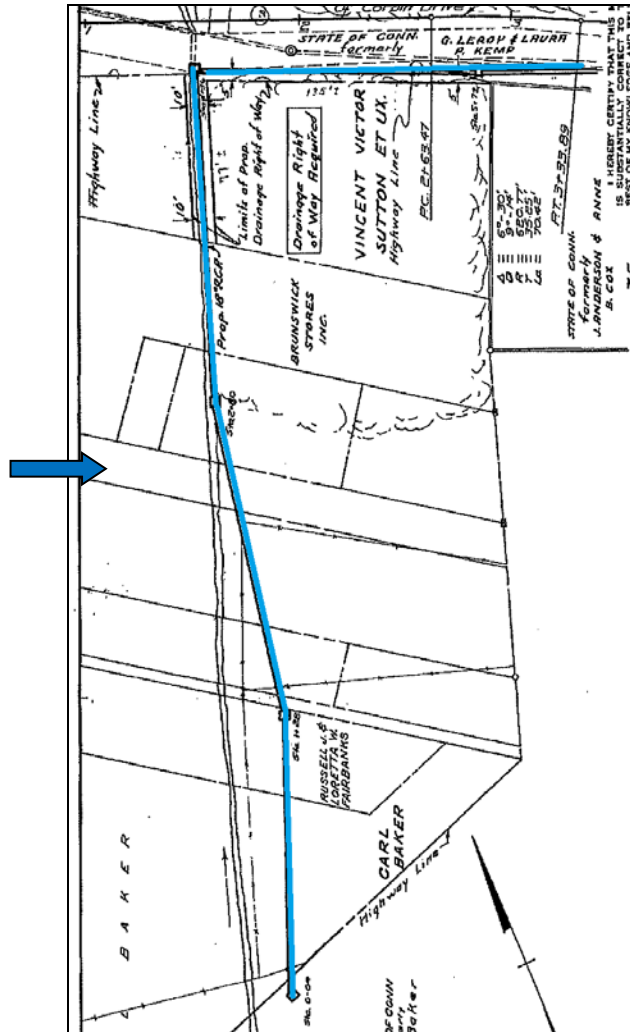
Release Map affecting land of CFW, LLC & Baywater Post Road Associates II, LLC provided by DOT on 8-24-2021



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.

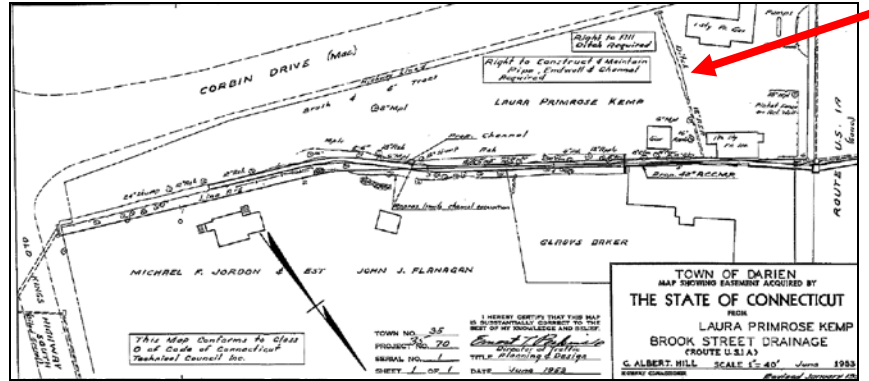
Furthermore, the SMP encourages the Developer to utilize existing outlets to the maximum extent practicable, unless it is demonstrated that using the existing outlet would exacerbate downstream flooding or result in adverse impacts to downstream properties or properties proximate to the site. The location 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.



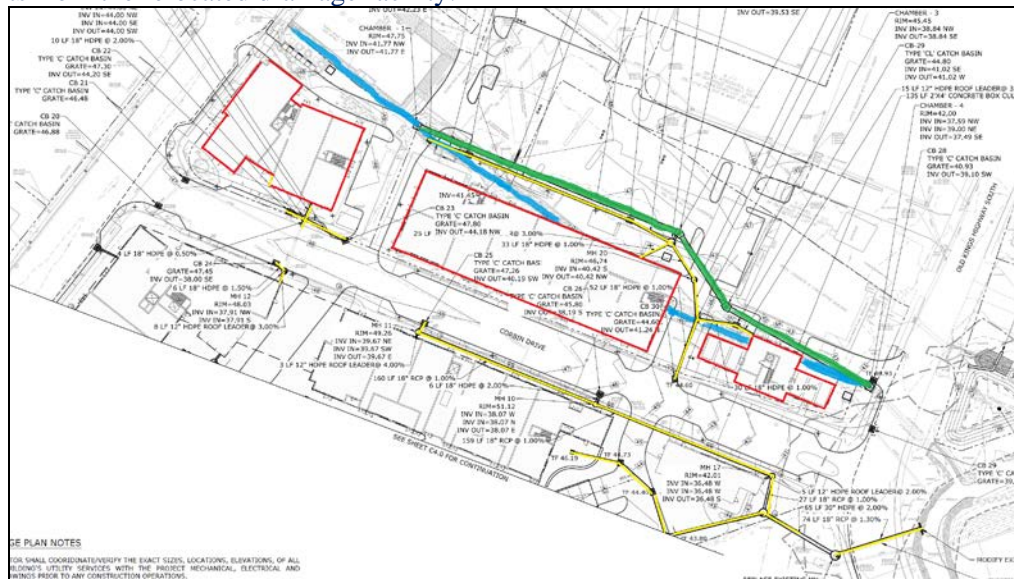


Subject Easement to Drain Location Beneath Newly Paved Parking – North Side of Corbin Drive Assemblage

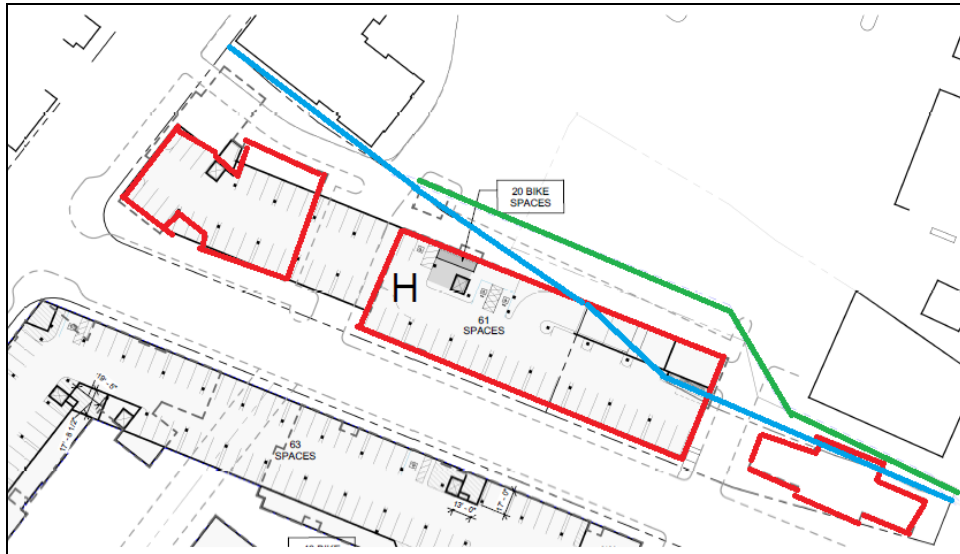
This photo taken from an Appraisal Report prepared in April 2021, with a 12-15-2020 effective date.

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

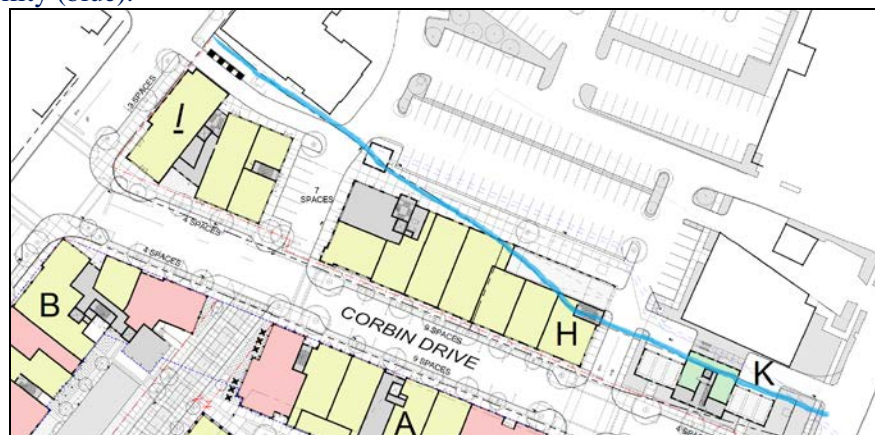
The maps that follow identify the Proponent's development plans and how the northerly parcel benefits from the relocated drainage facility.



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.

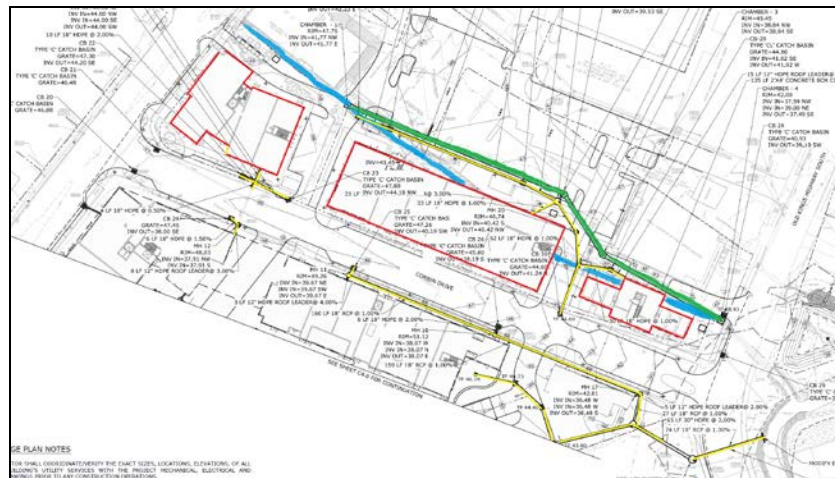


Courtesy: Darien Times

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.

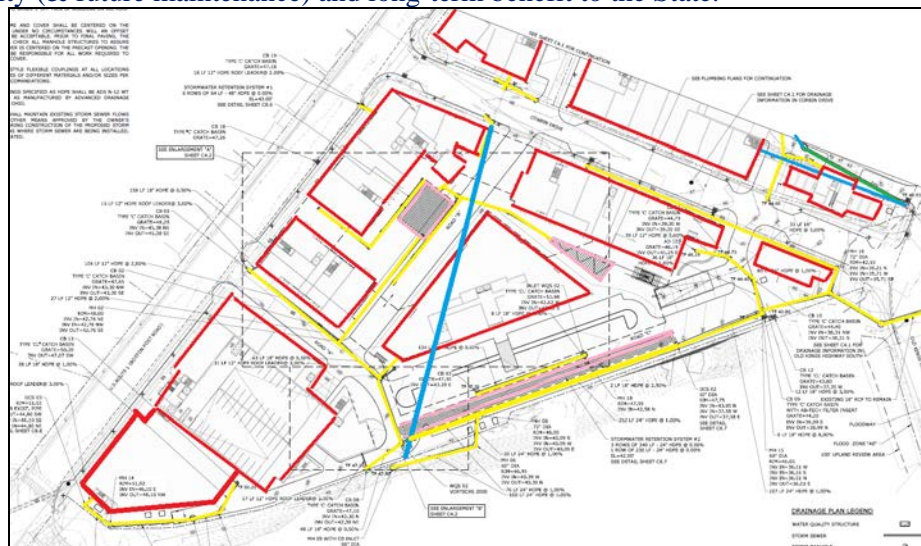
Genovese said the first phase is estimated to take some 15 months to complete, at which point the second phase will begin, and another set of businesses will be relocated.

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.



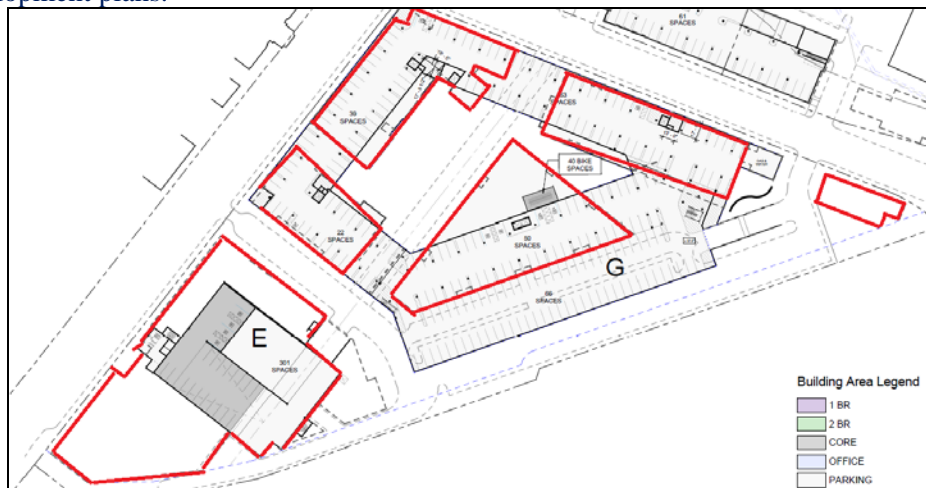
The map above highlights all 10 planned buildings (red) in relation to the new DROW facility (green), existing DROW facility (blue), underground drainage piping (yellow) and subsurface stormwater retention systems (pink).

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

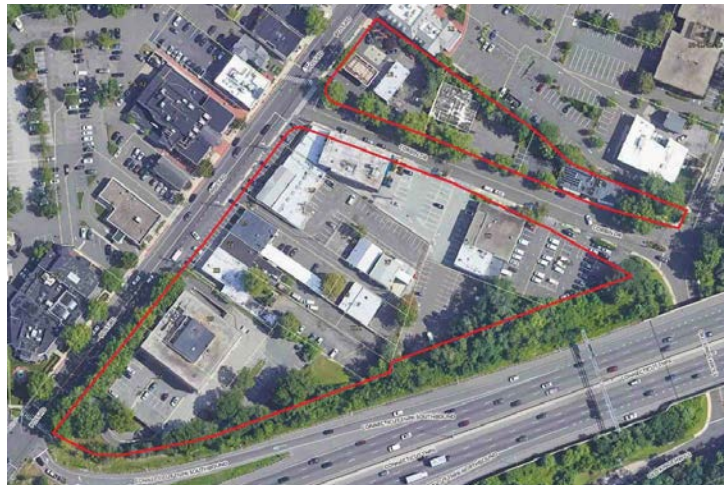
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At 9:33 Mr. Genovese and Ms. Perez, both of Baywater Properties, joined the Meeting to participate in the Board’s review of this DOT Proposal. Both left the meeting at 10:05.

**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:

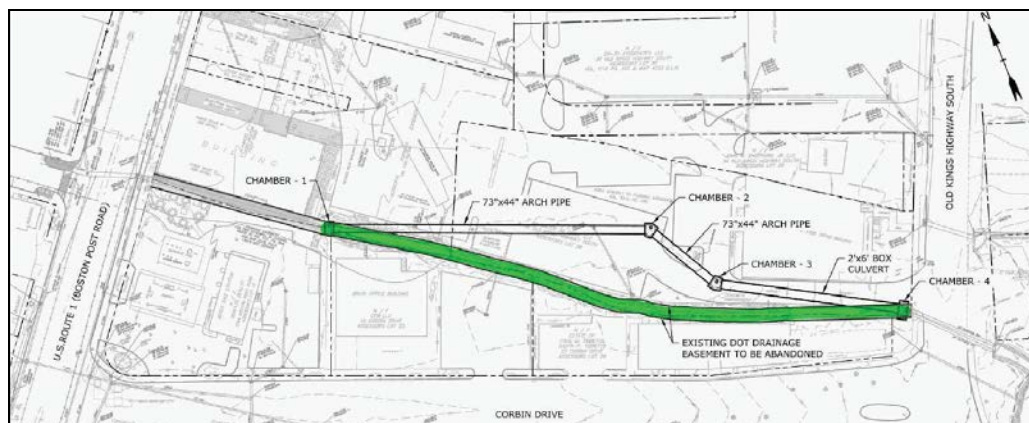
The development program includes 116 one- and two-bedroom residential apartments, 81,200+/- square feet of office space, 81,730+/- square feet of ground floor retail space, 16,910+/- square feet for restaurants and other food service providers. A total of 744 on-site parking spaces will be provided, 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.

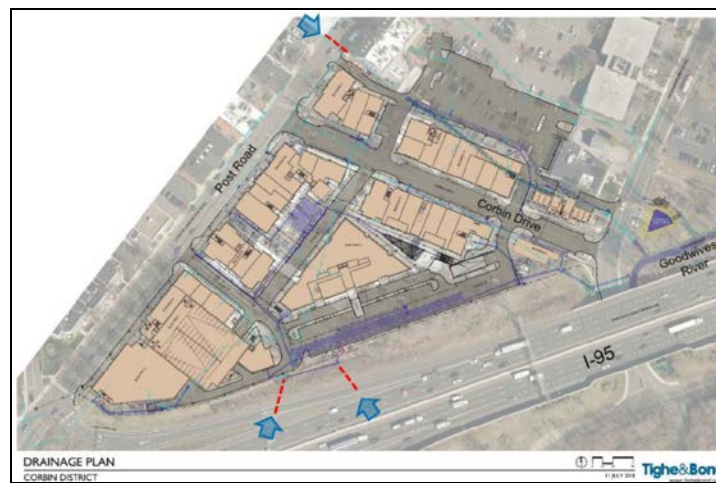
The applicant's May 25, 2018 Parking Demand and Parking Management Plan and accompanying plans indicate that there will be a total of 805 parking spaces for the site, including 22 handicap accessible spaces. The proposed 805 parking spaces are provided as follows:

- 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:

<b>North Side of Corbin Drive</b>				<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
<b>South Side of Corbin Drive</b>				<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
<b>Total Site Area within Scope:</b>				<b>6.2868 ± Acres, or</b>	<b>273,853 ± Square Feet</b>

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**

**5. ARCHITECT-ENGINEER - UNFINISHED BUSINESS**

**6. ARCHITECT-ENGINEER - NEW BUSINESS**

<b>PRB #</b>	21-130
<b>Origin/Client:</b>	DCS/JUD
<b>Transaction/Contract Type</b>	AE / Task Letter
<b>Project Number:</b>	BI-JD-373
<b>Contract:</b>	OC-DCS-MDE-0036
<b>Consultant:</b>	BVH Integrated Services, P.C.
<b>Property</b>	Enfield, Phoenix Ave (111) – Enfield Superior Court
<b>Project purpose:</b>	Roof & HVAC Replacement Project
<b>Item Purpose</b>	Task Letter #4D

At 9:33 Mr. Dillon and Mr. Wlodkowski joined the Meeting to participate in the Board’s review and discussion of this Proposal. Mr. Wlodkowski left the meeting at 10:27 and Mr. Dillon left the meeting at 10:37.

**PROPOSED AMOUNT: \$25,300**

On December 24, 2020 SPRB Meeting the Board approved, under PRB #20-235, Task Letter #4C under the On-Call Contract OC-DCS-MDE-0036 to provide the following professional engineering services:

1. Assess and remediate the remaining Priority 1 issues (life safety items), including fire alarm shutdowns for the rooftop equipment, steel fireproofing, and duct fire dampers.
2. Address Priority 2 items pertaining to the building space pressurization that has compromised the building security. Also included in this second breakout will be any priority 3, 4, and 5 items (BVH Portal Items) that possibly could be captured and corrected while performing remediation to the Priority 2 open items. The items noted on the attachment (BVH Portal list) are highlighted in yellow as “potential” candidates and does not mean these items will be inclusive in this second package. That will be determined after BVH begins its assessment, any site demolition and any design considerations.

No Structural Engineering services were included in Task Letter #4C. The Consultant’s Fee approved under Task Letter #4C was \$128,375.

Under PRB #20-109, Task Letter #4B provided for Structural Engineering services (\$10,800) to “Review existing documents and analyze the existing roof structure under the RTUs to confirm adequacy of the existing frame members and/or identify potential deficiency” but the Task Letter did not provide for the Consultant to provide design services for corrective measures.

Under this Proposal (PRB #21-130), DCS and JUD are seeking SPRB approval to approve Task Letter #4D in the amount of \$25,300 for the Consultant to provide the pre-construction design, bidding and CA services including the following scope of work:

1. Review and perform additional analysis of each roof joist identified in the initial evaluation report, and determine the appropriate method of strengthening, modifying, or supplementing the existing roof joists, as required to conform to the current Connecticut State Building Code requirements.
2. Coordinate with mechanical and provide recommendations and details for leveling and resetting of existing RTUs where required.
3. Review initial recommendations with DAS and CT Judicial prior to completion and finalization of Contract Documents.
4. Prepare Contract Documents, drawings, and technical specifications, as required. See below for additional requirements for the contract documents.
5. Prepare Statement of Special Inspection for the structural scope.

The Consultant’s fee is allocated as follows:

1. Initial Phase Survey: \$2,800
2. Contract Documents Phase: \$19,500
3. Construction Administration Phase \$3,000

The current estimated construction cost is \$1,000,000-\$1,200,000 which will be validated by cost estimate during the pre-construction phase.

DAS is also starting the claims process against the parties from the previous project (BI-JD-343) to recover monies for errors/incomplete work.

In June 2017, SPRB approved (PRB 17-139) BVH Integrated Services, PC (“BVH”) as one of five firms under the latest *On-Call Multi-Disciplined Engineering Series* of consultant contracts. These contracts expired on July 31, 2019 and have a maximum cumulative fee of \$1,000,000.

BVH has been selected and approved for the following task(s) under this series:

• Task Letter #1	Norwalk Comm. College	\$35,000	(canceled, not executed)
• Task Letter #2	Osborn/Northern CI	\$275,000	(18-167)
• Task Letter #3	Osborn/Northern CI	\$120,000	(18-170)
• Task Letter #4	Enfield Court Roof & HVAC	\$49,000	(Informal)
• Task Letter #4A	Enfield Court Roof & HVAC	\$20,000	(Informal)
• Task Letter #4B	Enfield Court Roof & HVAC	\$37,200	(#20-109)
• Task Letter #4B	Enfield Court Roof & HVAC	\$128,375	(#20-235)
		Total	\$664,575

Staff asked following questions for clarification:

1. Please differentiate between DCS use of Project Numbers BI-JD-343 and BI-JD-373 for this project. Why two project numbers?
2. Supplemental Task Justification Memo identifies the project number as BI-JD-343A while Form 1135 identifies as BI-JD-373A. Pl clarify why different project IDs?
3. Will the fees for this TL#4D be covered under any claim against the contractor?
4. Please provide the status of the Claims Consultant – Arcadis – with respect to this project.
5. What is the amount of the claim being assessed, if known at this time.

**RECOMMENDATION:** Board recommendation is to suspend Task Letter #4D for the Consultant to provide expanded MDE services totaling \$25,300 to provide structural engineering design services, bid support and CA Services for this project, pending DCS response to aforementioned issues.

- DCS confirmed \$25,300 is available for the Task Letter.
- The Board approved the current On-Call Contract for a maximum fee of \$1,000,000 and a term that expired on 7/31/2019 (PRB #17-139). Following the subject Task Letter, the On-Call Contract will have an uncommitted value of \$335,425.
- The submittal is accompanied by a Gift & Campaign Contribution Certification notarized on 7/14/2021.
- At its meeting held on June 10, 2019, the Board rejected a DCS proposal under PRB #19-101 for expanded CA Services for this roof & HVAC replacement project in the amount of \$80,080 due to lack of satisfactory documentation to support the compensation.

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During the Board’s discussion of this proposal, Msrs. Patrick O’Brien and Brian Dillon, both from the Judicial Branch Facilities Unit, joined the meeting, as did Peter Simmons from DAS/DCS to participate in the discussion and provide background information regarding the project in Enfield. Msrs. O’Brien and Simmons left the meeting at 10:16. Mr. Dillon left the meeting at 10:25.

**PROPOSED AMOUNT: \$128,375**

The project is the result of issues with the installation and design of the HVAC systems from project BI-JD-343. Proper temperature or humidity control was not possible in the building causing comfort and security issues. BVH was hired as an on-call MDE consultant to provide services to investigate the issues with the systems. Previous task letters used the repair project number BI-JD-373. BVH’s tasks included the review of existing conditions and to provide recommendations to correct the issues. This was partially achieved through TL4 (\$49,000). During the investigation phase, the building encountered issues where the gas meter diaphragm was malfunctioning and improper balancing of the space resulted in unintentional opening of doors, etc., causing a security concern. TL4A (\$20,000) was developed to address this issue and completed. TL4B (PRB #20-109 - \$37,200) provided for a retro-commissioning of the building and to verify the testing and balancing (TAB).

Based on these tasks, BVH developed an issues log and prioritized items with input from Judicial. Based on the issues log, additional design work is required to put the project out to bid to correct the



issues. Due to budget constraints, BVH will prepare two bid packages to address priority 1 items in Bid Package #1 and remaining priority 2 and selected priority 3, 4, & 5 items under Bid Package #2.

In June 2017, SPRB approved (PRB 17-139) BVH Integrated Services, PC (“BVH”) as one of five firms under the latest *On-Call Multi-Disciplined Engineering Series* of consultant contracts. These contracts expired on July 31, 2019 and have a maximum cumulative fee of \$1,000,000.

BVH has been selected and approved for the following task(s) under this series:

• Task Letter #1	Norwalk Comm. College	\$35,000	(canceled, not executed)
• Task Letter #2	Osborn/Northern CI	\$275,000	(18-167)
• Task Letter #3	Osborn/Northern CI	\$120,000	(18-170)
• Task Letter #4	Enfield Court Roof & HVAC	\$49,000	(Informal)
• Task Letter #4A	Enfield Court Roof & HVAC	\$20,000	(Informal)
• Task Letter #4C	Enfield Court Roof & HVAC	\$37,200	(#20-109)
		Total	\$501,200

Under this Proposal (PRB #20-235), DCS is seeking Board approval to expend \$128,375 to retain the Consultant under this Task Letter #4C for the following scope of work:

- Assess and remediate the remaining Priority 1 issues (life safety items), including fire alarm shutdowns for the rooftop equipment, steel fireproofing, and duct fire dampers.
- Address Priority 2 items pertaining to the building space pressurization that has compromised the building security. Also included in this second breakout will be any priority 3, 4, and 5 items (BVH Portal Items) that possibly could be captured and corrected while performing remediation to the Priority 2 open items. The items noted on the attachment (BVH Portal list) are highlighted in yellow as “potential” candidates and does not mean these items will be inclusive in this second package. That will be determined after BVH begins its assessment, any site demolition and any design considerations.

More specifically, BVH shall:

- Redesign smoke detectors for all twelve (12) rooftop units (RTU) to address code issues and for proper location, quantity, and material. This measure will address BVH Commissioning Notice Items Nos. 71, 219, 220, 237, 238, 239, 240, 241, and 242.
- Review fire dampers for conformance to code and installation. Provide recommendations for new and/or modifications. This measure will address BVH Commissioning Notice Item No. 213.
- Investigate code-required fire alarm shutdown of RTUs and modify Sequence of Operation (SOP) as required. This measure will address BVH Commissioning Notice Item No. 243.
- Investigate and design a new temperature sensor for Room 147N. This measure will address BVH Commissioning Notice Item No. 58.
- There are many static pressure, exhaust fan, and building pressurization priorities identified in the Commissioning Notice. Design will review the twelve (12) RTUs in terms of exhaust, outside air, and building pressurization, and make design recommendations to the building systems and SOP. This measure will address BVH Commissioning Notice Items Nos. 14, 92, 93, 96, 100, 176, 184, 185, 194, 195, 203, 204, 205, and 260.
- Include any priority 3, 4 or 5 items identified on BVH portal list that can be captured under any of the two phases as requested by DAS and Judicial Branch.
- Perform two (2) professional cost estimates--one at the 50% Contract Document (CD) phase and a final estimate at the conclusion of CDs.
- The project will be designed and constructed in two phases. Prepare two separate bid packages for the two phases.

- Perform field review and documentation of existing conditions for all items including the ones where as-built drawings are not available. Judicial to perform any selective demolition and access requested by BVH to document as-built conditions. (This service is identified as optional additional services in BVH's proposal dated March 17, 2020.)

The current estimated construction cost is \$800,000 to \$1,000,000, which will be validated by cost estimate during the design phase.

BVH to perform design services, MEP field investigation and documentation of existing conditions not available in as-built documents, and bidding and construction administration services for the project.

DAS is also starting the claims process against the parties from the previous project (BI-JD-343) to recover monies for errors/incomplete work.

A summary of the Consultant's fee is as follows:

- 2A. Field Review and Documentation of Existing Conditions: \$12,000
- 2B. Bid Package 1 (Early Package):
  - a. Contract Documents Phase: \$5,518
  - b. Bidding Phase: \$915
  - c. Construction Administration Phase: \$4,387
  - d. Closeout Phase: \$2,011
- 2C. Bid Package 2:
  - a. Contract Documents Phase: \$43,878;
  - b. Bidding Phase: \$2,860;
  - c. Construction Administration Phase: \$16,370;
  - d. Closeout Phase: \$4,236;
- 2D. Record Drawings: \$3,600;
- 2E. Professional Cost Estimate: \$12,600
- 2F. Incorporation of select Priority Items# 3, 4, and 5 to contract documents: NOT-TO-EXCEED \$10,000
- 2G. Continuing Retro-Commissioning: NOT-TO-EXCEED \$10,000

Staff asked following to clarify based on our review:

1. Under PRB #20-109, the Board approved TL #4B, at which time DCS stated the Project is 95% complete. Please clarify what is the status of the project in light of the original \$2,992,700 construction budget, and the projected \$800,000 to \$1,000,000 estimate to effect repairs under this Task Letter #4C.  
**DCS Response:** The 95% completion comment comes from the 1105 prepared by the Branch. This is not a DAS comment. The original project reached substantial completion in January 2018, but the branch has been experiencing problems since then. BVH provided an order of magnitude estimate for the value of the corrective actions. Cost estimating to confirm the amount is part of the scope.  
**Staff Response:** OK
2. How can it be that the repairs will cost almost 1/3<sup>rd</sup> more of the original project in spite of various entities hired to oversee the project – A/E; CA; including DCS oversight?  
**DCS Response:** Our question as well. This project is an anomaly. We are making inquiries or the GC, CA and AE. Our critical action is to provide our client with a functioning building. This task letter supports this effort.  
**Staff Response:** OK
3. Clarify why DCS is seeking to compensate the Consultant \$12,000 for Field Review and Documentation of Existing Conditions in light of their familiarity of the Project through their work performed under Task Letters #4, #4A and #4B (specifically TL# 4B.2C), and in light of the Consultant's correspondence where

it was considered an optional additional service. If this service is required, should it be on a Not-To-Exceed (NTE) basis?

DCS Response: The prior field reviews conducted by BVH were inspections to confirm as-built conditions to the contract documents. This scope is to conduct design level surveys to support the bid documents for the corrections.

Staff Response: OK

4. Why DCS is seeking a NTE \$10,000 fee for Retro-Commissioning when the Consultant provided that service under TL#4B (2A).

DCS Response: This is the scope item that we discussed last week. There will be additional time needed for BVH to support the retro-commissioning as we continue our corrective actions. Unfortunately, we can't provide a list of tasks at this point. To keep our flexibility and timelines, we are proposing a not to exceed scope item to address this need.

Staff Response: OK

5. Please clarify if a Claims Consultant has been retained to initiate a claim against the responsible parties.  
DCS Response: Yes, DAS has retained Arcadis via our on-call contract. A task letter is being drafted, and should be ready very soon. Our intent is for Arcadis to begin work at the beginning of 2021
6. Provide BVH's report prepared based on the past task letters and which identifies issues log.

DCS Response: Attached, please find a copy of the BVH Report for your use.

Staff Response: OK

RECOMMENDATION: Board recommendation is to approve Task Letter #4C for the Consultant to provide expanded MDE services totaling \$128,375 to conduct design level surveys to support the bid documents for the corrections to the HVAC system.

- DCS confirmed \$128,375 is available for the Task Letter.
- The Board approved the current On-Call Contract for a maximum fee of \$1,000,000 and a term that expired on 7/31/2019 (PRB #17-139). Following the subject Task Letter, the On-Call Contract will have an uncommitted value of \$370,425.
- The submittal is accompanied by a Gift & Campaign Contribution Certification notarized on 3/11/2020.
- At its meeting held on June 10, 2019, the Board rejected a DCS proposal under PRB #19-101 for expanded CA Services for this roof & HVAC replacement project in the amount of \$80,080 due to lack of satisfactory documentation to support the compensation.

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## FROM PRB #20-109

During the Board's discussion of this proposal, Mr. Brian Dillon, from the Judicial Branch Facilities Unit, joined the meeting to participate in the discussion and provide background information regarding the project in Enfield. He indicated that Judicial is taking over the project and will be hiring a contractor to complete the corrective action. This will probably happen in next 6 to 9 months.

PROPOSED AMOUNT: \$37,200

## PROJECT BACKGROUND

In July 2015, the Branch through DAS implemented Project BI-JD-343 – Roof and HVAC Replacement Project – Enfield Superior Courthouse. The scope of work for this project generally included the complete re-roofing of approximately 46,000 gross square feet as well as the removal/replacement of existing packaged HVAC rooftop units and other associated work. The associated work included system commissioning, a new fire alarm panel, bacnet controls and

miscellaneous upgrades to the overall system infrastructure.

The project designer was Aztech Engineers, Inc. along with HAKS, Inc. acting as the contract administrator for DCS. The project was bid and the contract awarded in June 2016. Over the past two years the contract work has proceeded with numerous issues and delays related to design deficiencies, contract work disputes, and requests for additional services which were perceived to be outside of the contract scope.

The project is currently 95% complete but has been experiencing numerous operational problems on a daily basis. The problems have been related to units not working, control sequencing and mechanical shutdowns. These issues are all related to various design and construction disputes between the design team and the contractor. Due to this impasse, the current building occupants have been experiencing building wide fluctuations in both temperature and humidity which are beyond the anticipated normal operating conditions of the system. This issue has still not been resolved and most recently required the property manager to utilize temporary cooling units within the building to maintain temperatures.

The Branch Facilities Unit has determined that a successful completion of the project is highly unlikely based upon the current situation with the design team, construction administrator and contractor. As such, the Branch has requested that DCS close-out the current project and proceed to evaluate next steps under both a claims process with the contractor and E/O Liability with the design team.

Once the close-out is completed, it is the Branch's intention to hire an On-Call Consultant for the purposes of reviewing the as-built condition, identify design to construction deviations, evaluate the operating controls system and then implement a commissioning program for the facility. The initial project scope will also include coordinating with Trane, Inc. for a review of the unit installation, PMs and warranty issues. The Branch is requesting DCS approval to proceed with this project as Agency Administered Design and Construction Project.

In July 2019, DAS/DCS retained BVH Integrated Services (BVH) to provide MDE design consultant services in conjunction with the retro-commissioning of the existing rooftop units, heating hot water system, terminal equipment, and all the temperature controls associated with these systems at the Enfield Courthouse. The initial fee for services was \$49,000 (Informal TL4) and included the following phases of work:

- Investigation Phase - \$30,000
- Implementation Phase - \$15,000
- Recommendation Phase - \$4,000

Commissioning efforts to date under TL4 identified two issues of concern: 1) defects in the gas regulators, and 2) over pressurization of the roof in various sections. The issue with the gas regulators has required four (4) of the RTUs to be subsequently locked out of service by TRANE due to safety issues. This matter must be resolved prior to the start of the heating season so as not to impact the Judicial Branch's ability to operate the facility. In December 2019 DCS retained BVH for additional MDE design consultant services under Task Letter 4A.

From DCS Form 1135: Supplemental request to increase the scope of work for the continuation of retro commissioning for the above referenced project, including but not limited to: review as-built condition, identify design to construction deviations, evaluate the operating controls system & implement a commissioning program on existing project to re-roof and replace HVAC units. Consultant shall coordinate with Trane, Inc., RM Bradley, Eversource & the GC for a review of the unit installation, PMs & warranty issues.

The fee for additional MDE services was \$20,000 (Informal TL4A) and included the following phases of work:

**1.A. Engineering Design Services - \$4,000**

- Review data from Commissioning testing and equipment gas pressure requirements.
- Develop performance specifications and piping details to replace existing gas regulators. This includes review of gas requirements.
- Provide an estimate of the potential costs for installation of gas regulator assembly.

**1.B. Bid and Contract Administration Services - \$9,500**

- Attendance at the contractor pre-bid site walkthrough.
- Review and answer bid Requests for Information (RFIs) and publish responses through Bid Addendum.
- Review the Bids received against the estimate and provide recommendation to JUD.
- Perform two (2) site visits to verify installation and the start-up of gas regulator assemblies, and issue field reports for each site visit.
- After the installation is complete, review and record actual gas pressures, before and after the new RTU gas regulators, and issue a field report of findings. Approval of installation shall be by the authorities having jurisdiction (AHJ).

**1.C. Roof Membrane Investigation Services - \$6,500**

- Review design, as-built and warranty documents for the roof system.
- Perform one (1) site visit to investigate the roof membrane uplift concerns that were found onsite on August 21, 2019.
- Develop and issue a field report indicating the findings and provided recommendations.

In June 2017, SPRB approved (PRB 17-139) BVH Integrated Services, PC (“BVH”) as one of five firms under the latest On-Call Multi-Disciplined Engineering Series of consultant contracts. These contracts expired on July 31, 2019 and have a maximum cumulative fee of \$1,000,000.

BVH has been selected and approved for the following task(s) under this series:

• Task Letter #1	Norwalk Comm. College	\$35,000	(canceled, not executed)
• Task Letter #2	Osborn/Northern CI	\$275,000	(18-167)
• Task Letter #3	Osborn/Northern CI	\$120,000	(18-170)
Total		\$395,000	

Under this new DCS proposal (PRB #20-109), DCS is now seeking approval of an additional \$37,200 in fees for the following services not included in the original project scope:

- Complete the Investigation Phase, which includes Retro Commissioning and TAB (Testing, Adjusting and Balancing) verification services;
- Conduct air and water balancing verification activities during Investigative Phase;
- Review existing documents and analyze the existing roof structure under the RTUs to confirm adequacy of the existing frame members and/or identify potential deficiency;
- If as-built drawings are not available, verify in the field and document the existing conditions as applicable to complete the task;
- Review existing documentation and generate list of items not provided, but required to perform analysis of existing frame;
- Review existing roof framing for equipment weight and snow drifts around the units;
- Prepare and submit a written summary of the analysis assessment and findings, including appropriate Deliverables, conclusions, and recommendations.

The Consultant's fee is based on their 2019 Hourly Rate Schedule and will be billed on an hourly basis not to exceed the following totals:

- Retro-Commissioning and TAB Verification: \$20,000
- Structural Engineering Services: \$10,800
- Field Review and Documentation of Existing Conditions: \$6,400

Staff asked DCS to clarify the following:

1. Please clarify if the retro-commissioning is on the four RTUs that had defective gas regulators, or all eight RTUs.

DCS Response: What I understand occurred (as I wasn't involved at the time) is that the commissioning scope was removed from the DAS CA contract scope during the construction phase. Commissioning wasn't performed. This Task Letter includes scope for BVH to perform commissioning services "after the fact". In that vein, it is "retro" commissioning.

OK

2. Please provide the status of the claims against the design professionals and GC.

DCS Response: Regarding any future claims from the State on this project; DAS hasn't retained a consultant to pursue a claim against the designer, or anyone else. DAS intends to retain such services, but we need the information from BVH's work to inform on this strategy.

Staff Response: Is there a timeframe? I believe the substantial completion was around October 2018 and this issue has been going on for almost 18 months. State must recoup money and professionals involved should be held responsible.

DCS Response: No there isn't. This is a legal matter, so timeframes are different, and not related to Substantial Completion.

Staff Response: The claims process should have started by now to recoup the funds due to errors of other design professionals and General Contractor. Need assurance from DCS that the claims will be filed including the timeframe and report back to the Board on the amounts to be recouped from responsible entities.

RECOMMENDATION: Upon completion of review and discussion it was recommended that the Board approve this proposal.

- DCS confirmed \$37,200 is available for the Task Letter.
- The Board approved the current On-Call Contract for a maximum fee of \$1,000,000 and a term that expired on 7/31/2019 (PRB #17-139). Following the subject Task Letter, the On-Call Contract will have an uncommitted value of \$605,000.
- The submittal is accompanied by a Gift & Campaign Contribution Certification notarized on 5/11/2020.
- At its meeting held on June 10, 2019, the Board rejected a DCS proposal under PRB #19-101 for expanded CA Services for this roof & HVAC replacement project in the amount of \$80,080 due to lack of satisfactory documentation to support the compensation.

<b>PRB #</b>	21-132
<b>Origin/Client:</b>	DCS/DCS
<b>Transaction/Contract Type</b>	AE / Amendment
<b>Contract:</b>	OC-DCS-VEH-0025
<b>Consultant:</b>	Macchi Engineers, LLC
<b>Item Purpose:</b>	Amendment #2 to Restore Section #8 Contract Language

At the June 10, 2021 SPRB Meeting the Board approved, under PRB #21-088, Amendment #1 to the On-Call Contract OC-DCS-VEH-0025 to increase the maximum total cumulative fee to \$550,000, an increase of \$250,000. There were no other changes to the Contract.

Under this Proposal (PRB #21-132), DCS is seeking SPRB approval Amendment #2 to the On-Call Contract OC-DCS-VEH-0025 to restore Section #8 as follows:

**RE: Article B. Paragraph 8 of said contract - "QUALIFICATIONS OF THE ENGINEER FOR THRESHOLD LIMIT REVIEW AND STRUCTURAL ENGINEERING ASSIGNMENTS" is restored to, and incorporated in, the contract.** The Engineer acknowledges that it is a structural engineer, is currently registered in the State of Connecticut as a professional engineer, and has design experience of similar structures or additions to those being reviewed

The DCS request included the following narrative in restoring the language:

The purpose of this submission is to restore paragraph 8, Qualifications of the Engineer for Threshold Limit Review and Structural Engineering Assignments, to the contract. Structural engineering is consistent with the Description of Services set forth in the State Properties Review Board Memorandum that was submitted in conjunction with the on-call series, i.e. "The scope of work under these on-call contracts shall encompass, but not be limited to, the entire spectrum of services affecting vehicular parking structure and/or parking lot management, maintenance and repair, design and related services. Macchi Engineers, LLC, moreover, provides structural engineering services and has extensive experience in the field of parking structure design. Please see their summary of parking garage experience, attached.

Staff research determined that in both the 5<sup>th</sup> Series (2015) and current 6<sup>th</sup> Series (2019) both had Section 8 qualifications 'struck' from the On-Call Contract (the four previous series in 1997, 2001, 2005 and 2009 were not researched). Furthermore, the RFP for the 6<sup>th</sup> Series of this On-Call Contract also stated "..Some background in structural engineering will help in evaluation the condition of parking garages."

Macchi Engineers, LLC has been assigned the following Tasks under this On-Call Contract:

• Task Letter #1	Lafayette Street Garage Inv. & Repairs	\$88,200	(Informal)
• Task Letter #1A	Lafayette Street Garage Inv. & Repairs	\$10,000	(Informal)
Total Fee to Date:		\$98,200	

Task Letter #1B to the On-Call Contract, in the amount of \$222,900, will be reviewed by the Board under PRB #21-131.

Staff inquired with DCS regarding the follow:

- Please clarify what precipitated DCS to restore Section #8 requirements of requiring the Consultant to acknowledging that there is a structural engineer on staff to provide services under OC-DCS-VEH-0025. **DCS Response:** The Web Advertisement for this on-call series anticipated that tasks may involve designs for vehicular parking structures, including parking garages, and stated that a background in structural engineering will be helpful in evaluating the conditions of a parking garage. In accordance with the Web Ad, the scope of work for this on-call contract may require the entire spectrum of services affecting vehicular parking structures and/or parking lot management, maintenance and repair, design and related services. The SPRB Memo submitted with the series reiterates this broad scope of work. DAS selection of Macchi to perform a study of the parking structure at 101 Lafayette Street is consistent with the services required under the on-call contract, including the structural engineering to be performed as part of the work. Macchi, in particular, has extensive parking garage experience that includes projects involving state parking structures, and was selected to conduct a study and prepare schematics for the project. The agency wants to continue with Macchi for design development and construction documents. Restoring Section 8 to the contract adds the consultant's acknowledgement and affirmation that it is a structural engineer, registered in the State of Connecticut as a professional engineer, with design experience of similar structures to those being reviewed. The prior deletion of the language seems in error, given the language in the Web Advertisement and SPRB Memo, particularly when such deletion is not accompanied by language restricting the firm from performing structural engineering work (which

the Web Advertisement specifically mentions as helpful). Be that as it may, and to remove any doubt that Macchi may continue to perform such services under this on-call contract, we seek to have the stricken paragraph 8 restored to the contract. Macchi past work on the project, its strong structural engineering practice in general and with parking structures particular, and the description of the intended services of this on-call series, support the restoration of this provision to contract. In addition, it benefits the State because it demonstrates a reliance upon Macchi's affirmation to the State that the firm is experienced with this type of structure.

Staff Response: OK

**RECOMMENDATION:**

It is recommended that the Board approve this Contract Amendment #2 to restore Section 8 requirements of the On-Call Contract requiring the Consultant - Macchi Engineers, LLC – acknowledging that there is a structural engineer on staff to provide services under OC-DCS-VEH-0025.

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At the State Properties Review Board meeting held on September 19, 2019, the Board approved #19-171 to #19-174, four Consultant Contracts under the 6<sup>th</sup> series of On-Call Vehicle Consulting Contracts awarded by the Department of Construction Services (“DCS”) since 2002. The four (4) On-Call Contracts that were approved had a maximum total cumulative fee of \$300,000 per contract and a common expiration date of 11/30/2021.

Under this Proposal (#21-088), DCS is now resubmitting this firm to the Board for approval under Contract Amendment #1 to OC-DCS-VEH-0025 to increase the maximum total cumulative fee to \$550,000, an increase of \$250,000.

Macchi Engineers, LLC has been assigned the following Tasks under this On-Call Contract:

• Task Letter #1	Lafayette Street Garage Inv. & Repairs	\$88,200	(Informal)
• Task Letter #1A	Lafayette Street Garage Inv. & Repairs	\$10,000	(Informal)
Total Fee to Date:		\$98,200	

Changes to the Contract OC-DCS-VEH-0025 include the following:

- Article E is changed to increase the maximum total cumulative fee to \$550,000;
- Article W is changed to update Non-Discrimination language;
- The Attachment containing the SEEC Campaign Contribution Restriction has been changed to reflect the most recent edition of the form.

DCS provided the following explanation for requesting the increase:

Macchi Engineers was selected via DAS On Call Contract OC-DCS-VEH-0025 to support the Judicial Branch with the structural study of the Lafayette Street Garage in Hartford; DAS Project Number BI-JD-375. The task letter's fee for this study was \$88,200. The results of the study is that structural repairs are needed to the building, and a DAS Administered Project has been initiated to design the repairs. As Macchi has already expended significant time and effort to become oriented and familiar with the building and structural conditions of the Lafayette Street Garage, it is more efficient and cost effective to extend Macchi's services into the design phase rather than begin with another structural engineer. DAS On Call Contract OC-DCS-VEH-0025 has an available balance of \$201,800; this amount is insufficient to support a task letter letter for the design and construction phase support. An increase to the VEH On-Call Contract series in the amount of an additional \$250,000 is requested to support this crucial project.



Staff Inquired with DCS regarding the following:

1. Please provide electronic copies of the two previously issued Informal Task Letters (#1 & #1A).

**DCS Response:** DCS provided copies of Task Letters #1 and #1A.

**Staff Response:** Task Letter #1 provided for an Investigative Review of the parking garage and Schematic Design services for a total fee of \$88,200. Task Letter #1A provided Bidding and CA Phase services to address life safety issues relative to loose concrete at the garage for a total fee of \$10,000.  
OK

**RECOMMENDATION:**

It is recommended that the Board **APPROVE** this Contract Amendment #1 to increase the maximum total cumulative fee to \$550,000 for Macchi Engineers, LLC and OC-DCS-VEH-0025.

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**UPDATE: 9/12/19**

**RECOMMENDATION** – DCS provided answers to the questions raised by the Board on Sept. 10<sup>th</sup> (see attached). Upon review of the information provided by DCS, staff recommends **APPROVAL** of the four On-Call Contracts that have a maximum total cumulative fee of \$300,000 per contract and a common expiration date of 11/30/2021.

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This is the 6<sup>th</sup> series of On-Call Vehicular Parking Consulting Contracts awarded by the Department of Construction Services (“DCS”) since 2002. The four (4) On-Call Contracts that are the subject of this memorandum have a maximum total cumulative fee of \$300,000 per contract and a common expiration date of 11/30/2021. The prior series of On-Call Scheduling Consulting Contracts expired on 07/15/2019.

DAS/DCS has made some minor revisions to the boilerplate contract for this series to include:

- Removal of references to Division of Construction Services (DCS);
- Expanded *Indemnification* language;
- Expanded *Suspension of the Work* language;
- Expanded *Termination of Contract* language; and
- Addition of *Notices* clause.

The 5<sup>th</sup> series of On-Call Vehicular Parking Consulting Contracts was approved by the Board in April 2015 under PRB Files #15-085 and #15-086 and lastly in August 2015 under PRB Files #15-160 and #15-161. A contract amendment extending the expiration date until July 15, 2019 was approved under PRB #17-071 to #17-074. Only two (2) of the firms under this current 6<sup>th</sup> series RFP submittal have been previously approved for *Vehicular Parking Consulting On-Call Contracts*: Macchi Engineers, LLC and Alfred Benesch & Company, Inc.

A Request for Qualifications (RFQ) for the consultant services was released on April 11, 2019 and elicited six responses. Four of the six respondents were considered “responsive” to the submittal requirements and as such interviewed. The State Selection Panel consisted of three members and rated each firm based upon a weighted ranking system.

At the completion of the State Selection Panel process; DCS Management Team reviewed the results and recommended the approval of four firms under this series. This submittal is for SPRB review and approval of the following four firms under this series.

**PRB 19-171 – Macchi Engineers, LLC (“MEL”)** originally established in 1945 and is locally located in Hartford. MEL has a staff of 11 employees including 5 civil/structural engineers, 1 construction

inspector and 2 CADD techs. The company has not been awarded any on-call contract or formal contracts with the DCS in the past two years.

MEL will be operating under their Professional Engineering Corporation License (**PEC#0000720**). Fenner & Esler Insurance Inc. reported that MEL has incurred three (3) general liability or professional policy losses or claims during the past 5 years. Two of these claims are related to state funded projects: Ella Grasso Regional THS and UCONN Stamford parking garage. Both claims remain open. A third claim is not state related. MEL scored a total of 280 out of a possible 320 points.

**PRB 19-172 – Alfred Benesch and Company, Inc. (ABC)** originally established in 1946, has a local staff of 23± employees including 1 project executive, 12+ civil/structural engineers and 3 transportation engineers. ABC is locally located in Rocky Hill through its 2012 acquisition of Purcell Associates. The company has been awarded the following On-call or Formal Contract with the DCS in the past two years.

OC-DCS-CIV/SUR/LA-0035					
• Task Letter #1	SCSU-Parking Lot #9 Renovation		\$97,300	(Informal)	
• Task Letter #2	New CSP Forensic Laboratory		\$199,275	(PRB #18-196)	
• Task Letter#3	Eastern CT Fire School		\$15,000	Pending 8/15/2018	
			<hr/>		
			\$311,575		
OC-DCS-MDE-0022					
• Task Letter #4B	Enfield C.I. Water Tower		\$114,910	(PRB #17-046)	
• Task Letter #4C	Enfield C.I. Water Tower		\$4,099	(PRB #18-048)	
			<hr/>		
			\$119,009		

ABC will be operating under its Professional Engineering Corporation License (**PEC#.0001421**). Ames & Gough Insurance Inc. reported that ABC has incurred 75 general liability or professional policy loss or claims during the past 5 years. Sixteen claims remain open. One of these claims is related to a new football field at Derby High School regarding a flooded residential basement and remains open. ABC scored a total of 279 out of a possible 300 points.

**PRB 19-173 – Weston & Sampson Engineers, Inc (WSE)** was originally established in 1899. WSE, located in Albany, NY, has a local branch in Rocky Hill and has a local staff of 27± employees including 1 project executive, 5+ civil/sanitary engineers and 4 water resources engineers and retained a sub-consultant (Parking Garage Specialist) located in Blue Bell, PA. The company has not been awarded an On-call Contract or formal contract with the DCS in the past two years.

WSE will be operating under its Professional Engineering Corporation License (**PEC#.0000428**). Ames & Gough Insurance Inc. reported that WSE has incurred 4 general liability or professional policy loss or claims during the past 5 years. One claim remains open. None of these claims involved state-related projects. WSE scored a total of 278 out of a possible 300 points and was the third most qualified firm.

**19-174 – Vanasse Hangen Brustlin, Inc. (VHB)** originally established in 1978, located in Springfield, has a local branch in Wethersfield Hill and has a local staff of 45± employees including 1 program manager, 19+ civil/transportation engineers and 1 environmental planner and retained a sub-consultant (Simpson Gumpertz & Heger – parking structural engineering) located in Waltham, MA. The company has not been awarded an On-call Contract or Formal Contract with the DCS in the past two years.

VHB will be operating under its Professional Engineering Corporation License (**PEC#.0000456**). Poole Professional LTD reported that VHB had 162 general liability or professional policy loss or claims during the past 5 years. None appear to be state-related. Four appear to be municipally related. VHB scored a total of 268 points out of 300 points and was identified as the fourth most qualified firm.

A summary of the Consultants’ professional fee schedule is as follows:

Macchi Engineers	Proposed	Alfred Benesch	Proposed	Weston & Sampson	Proposed	Vanasse Hangen Brustlin	Proposed
Officer/Principal	\$200	Officer/Principal	\$198	Officer/Principal	\$220	Officer/Principal	\$220
Project Manager	\$150	Senior Project Manager	\$182	Project Manager	\$165	Project Manager	\$185
Senior Engineer	\$125	Senior Project Engineer	\$143	Senior Engineer	\$120	Senior Engineer	\$165
Engineer 2		Project Engineer II	\$136	Engineer 2		Engineer 2	
Engineer	\$100	Project Engineer I	\$116	Engineer	\$105	Engineer	\$155
Senior Designer	\$115	Senior Designer	\$98	Senior Designer	\$160	Senior Designer	\$140
Designer	\$100	Designer II	\$112	Designer	\$100	Designer	\$130
Field Engineer	125	Field Engineer		Field Engineer	\$95	Field Engineer	\$120
CAD Operator	\$95	CAD Operator		CAD Operator	\$95	CAD Operator	\$110
Administrative Assistant	\$75	Project Assistant	\$75	Administrative Assistant	\$65	Administrative Assistant	\$100

Staff have requested clarification of the following issues:

1. Please provide a Task Log for the Consultants under OC-DCS-VEH - 0022 & 0023.

**DCS provided the task log.**

**RECOMMENDATION** – Staff recommend **APPROVAL** of the four On-Call Contracts that have a maximum total cumulative fee of \$300,000 per contract and a common expiration date of 11/30/2021.

**PRB # 17-071, DESMAN, Inc.....Contract #OC-DCS-VEH-0021**  
**PRB # 17-072, Macchi Engineers, LLC.....Contract #OC-DCS-VEH-0022**  
**PRB # 17-073, Alfred Benesch & Company, Inc.....Contract #OC-DCS-VEH-0023**  
**PRB # 17-074, Walker Parking Consultants, Inc.....Contract #OC-DCS-VEH-0024**

This series of On-Call Vehicular Parking Consulting Contracts was approved by the Board in April 2015 under **PRB Files #15-085 and #15-086** and then again September 2015 under **PRB Files #15-161 and #15-162**. This was the 5<sup>th</sup> series of Claims Analyst Consulting Contracts awarded by the Department of Construction Services (“DCS”) since 2002. DCS is now resubmitting these four firms to the Board for approval under a contract amendment to extend the contract expiration dates from July 15, 2017 until July 15, 2019. DCS is requesting that these contracts be extended for an additional two years while maintaining the current maximum contract value at \$300,000.

**RECOMMENDATION** – Board approval for the following firms to have the contract expiration date extended to July 15, 2019 while maintaining the current contract value of \$300,000 is recommended. Each consultant has also provided the required updated Gift/Campaign and Consulting Affidavits accompanied by appropriate Corporate Resolutions.

**PRB # 17-071, DESMAN, Inc.....Contract #OC-DCS-VEH-0021**  
**PRB # 17-072, Macchi Engineers, LLC.....Contract #OC-DCS-VEH-0022**  
**PRB # 17-073, Alfred Benesch & Company, Inc.....Contract #OC-DCS-VEH-0023**  
**PRB # 17-074, Walker Parking Consultants, Inc.....Contract #OC-DCS-VEH-0024**

**The original project submittal memo was as follows:**

This is the 5<sup>th</sup> series of On-Call Vehicular Parking Consulting Services Contracts awarded by the Department of Construction Services (“DCS”) since 2002. The On-Call Contract that is the subject of this memorandum has a maximum total cumulative fee of \$300,000 per contract and a common expiration date of 07/15/2017. DCS has approved the selection of four firms under this series. This on-call series has been developed by DCS for the purposes of providing vehicular parking engineering services related to the design layout, egress requirements and roadway/traffic impacts for various state funded surface lot or parking garage construction projects.

DCS has made some minor revisions to the boilerplate contract for this series to include the following: state’s rights for inspections, state ethics law, updated executive orders, new non-discrimination language and sovereign immunity language. The 3<sup>rd</sup> series, awarded in 2009, had a term of 24 months and a maximum total cumulative fee of \$300,000/contract. A 4<sup>th</sup> series was previously advertised and issued by DCS in 2013 but subsequently cancelled by the agency. This series included **OC-DCS-VEH -0017** through **OC-DCS-VEH-0020**. These contracts were never submitted to SPRB for review and approval. Three of the four (4) selected firms under this current 5th series RFP have been previously approved for *On-Call Cost Vehicular Parking Consultant Services Contract*. DESMAN, Inc. has been previously awarded a contract under the 2<sup>nd</sup> and 3<sup>rd</sup> series. Walker Parking Consultants, Inc. was awarded a contract under the third series.

A Request for Qualifications (RFQ) for the consultant services was released in February 2014 and elicited six (6) responses. All of the respondents was considered “responsive” and as such were considered for review. Thereafter, the DCS selection panel began the process of evaluating all four proposals. The State Selection Panel consisted of 4 members and rated each firm based upon a weighted ranking system with the following scoring methodology:

<i>Problem Solving</i>	<i>30 Points</i>
<i>Approach to Scope &amp; Work Effort</i>	<i>15 Points</i>
<i>Organizational / Team Structure</i>	<i>25 Points</i>
<i>Past Performance Record</i>	<i>20 Points</i>
<i>Contract Oversight Capabilities</i>	<i>10 Points</i>
<b>TOTAL POINT VALUE</b>	<b>100 Points</b>

**RECOMMENDATION** – Board approval of the following firms as potential vehicular parking consultant for projects of various sizes and scope is recommended. The consultant has provided the required insurance, professional license, Gift/Campaign and Consulting Affidavits accompanied by appropriate Corporate Resolutions. The two firms recommended for approval at this time is the following.

**PRB # 15-085, DESMAN, Inc.....Contract #OC-DCS-VEH-0021**  
**PRB # 15-086, Walker Parking Consultants, Inc.....Contract #OC-DCS-VEH-0024**

**DESMAN, Inc.(DES)** originally established in 1973, has a local staff of 9± employees including 1 project executive, 2+ professional engineers and 2 construction inspectors. DES is locally located in Rocky Hill. The company has not been awarded an On-call or Formal Contract with the DCS in the past two years.

DES will be operating under its Joint Professional Corporation License (**JPC#.000065**). OneBeacon Insurance Inc. reported that DES has incurred 20 general liability or professional policy loss or claims during the past 5 years. Four of these claims are currently open with loss reserves not yet established. DES scored a total of 300 out of a possible 300 points.

**Walker Parking Consultants, Inc. (WPC)** originally established in 1965 and has a regional office in Boston, Massachusetts. This office has a local staff of 20± employees including 1 project executive, 5+ professional engineers and 2 construction inspectors. The company has not been awarded an On-call or Formal Contract with the DCS in the past two years.

WPC will be operating under its Professional Engineering Corporation License (**PEC#.000674**). XL Design Professional Insurance Inc. reported that WPC has incurred over 40 general liability or professional policy loss or claims during the past 5 years. None of these claims appear to involve State of Connecticut funded projects and they all are in various phases of the claim process. WPC scored a total of 256 out of a possible 300 points.

**7. OTHER BUSINESS**

Mr. Halpert informed the Board that he had visited the Darien property being reviewed by the Board under PRB #21-121 on 9-1-2021, after the other Members had left the site visit. Upon Chairman Greenber's request, Mr. Valengavich moved to approve Board Fees and Mileage for Mr. Halpert's Site Visit. It was seconded by Mr. Berger. The motion passed unanimously.

**8. VOTES ON PRB FILE:**

**PRB FILE #21-121** – Mr. Halpert moved and Mr. Valengavich seconded a motion to approve PRB FILE #21-121. The motion passed unanimously.

**PRB FILE #21-130** – Mr. Valengavich moved and Mr. Berger seconded a motion to suspend PRB FILE #21-130. The motion passed unanimously.

**PRB FILE #21-132** – Mr. Halpert moved and Mr. Berger seconded a motion to approve PRB FILE #21-132. The motion passed unanimously.

**9. NEXT MEETING** – Special Meeting, Wednesday, September 8, 2021.

The meeting adjourned.

**APPROVED:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
John Valengavich, Secretary