

STATE PROPERTIES REVIEW BOARD

Minutes of Meeting Held On December 27, 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 December 27, 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

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 December 23, 2021 Meeting. The motion passed unanimously.

2. COMMUNICATIONS

3. REAL ESTATE- UNFINISHED BUSINESS

PRB #	21-178
Transaction/Contract Type:	RE – Voucher
Origin/Client:	DOT/DOT
DOT Project #:	301-176-021A
Grantor:	City of Norwalk
Property:	Norwalk, Water St (10) – The Maritime Aquarium at Norwalk
Project Purpose:	Walk Railroad Bridge
Item Purpose:	Voucher

DAMAGES: \$202,100

At its meeting held on December 20, 2021 the State Properties Review Board voted to suspend this item pending response from DOT to the following inquiries:

1. Please quantify the loss of 61 parking spaces to the availability of parking on the entire campus.
DOT Response: The subject property includes a total of 563 parking spaces which are located on various portions of the property. As a result of the project, 61 of the parking spaces will be

temporarily lost for 1 year. This is approximately 11% of the total parking. This is addressed further in response No. 3.

Staff Response: OK.

2. Please clarify if any alternatives were considered to replace the impacted parking spaces.

DOT Response: Building a temporary lot as part of the project to replace the parking that will be temporarily lost was considered early on in the design phase. However, it was not pursued because we would not have been able to condemn a right to build a parking lot if negotiations failed. This remained an option only as part of an agreement with the property owners through negotiations. Highway Design did develop a concept plan and a cost estimate for a temporary lot to aid in our valuation and negotiations. This estimate came to \$250,000.00 which exceeds the appraised value of the proposed impacts. In addition, replacement parking did not come up during negotiations as the owner was satisfied with the State's offer.

Staff Response: OK.

3. Please provide support for the Appraiser's conclusion that the loss of parking diminished the rental rate by 20%.

DOT Response: The subject property includes a total of 563 parking spaces which are located on various portions of the property. As a result of the project, 61 of the parking spaces or approximately 11% of the total available parking will temporarily be lost for 1 year. The 61 impacted parking spaces are located adjacent to the roadway directly across from the main entrance to the subject property. These spaces provide convenient access to the subject buildings and are utilized by employees and visitors. It is noted that based on observations at the time of inspection, and discussions with the property owner representatives, the existing parking is maximized and there is currently limited available excess parking on site. As a result of the existing parking conditions, it is the opinion of the appraiser that the temporary reduction in parking will have a significant negative impact on the overall property value. In recognition of the temporary parking loss, the appraiser reduced the market rental income by 20% during the 1 year construction period. Although the impacted parking represents 11% of the total parking, it is the opinion of the appraiser that a reduction in the market rental income by 20% is considered reasonable given the demand and limited availability of parking on the subject property.

Staff Response: OK.

RECOMMENDATION: Board approval of damages in the amount of \$202,100 is recommended for the following reasons:

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

DAMAGES: \$202,100

DOT PROJECT:

The purpose of the project is to replace the bridge superstructure and rehabilitate the substructure, which will include concrete repairs and the installation of scour countermeasures for scour mitigation at the abutments. The existing superstructure will be replaced with precast pre-stressed concrete deck units.

Bridge No. 00653 is a 44 foot long, single span structure that carries Hopmeadow Street (Route 10). The

structure was originally constructed in 1957 consisting of 16 prestressed deck units. The substructure is constructed of reinforced concrete abutments and wingwalls with spread footings. The bridge received a widened sidewalk and new parapets in 2009, as part of State Project No. 128-143. The rehabilitated bridge has an out-to-out width of 49'-3". The curb-to-curb width is 35'-2" and the sidewalk width is 10'-1½" which carries a portion of the multiuse Farmington Canal Heritage Trail. A 6 inch gas main is supported on the fascia of the sidewalk parapet and eight 4 inch telecommunication conduits are supported on the other parapet fascia.

Maintenance and Protection of Traffic during the project construction will use staged construction to maintain two lanes of traffic during the construction duration. A temporary pedestrian bridge will be constructed to the east of the bridge to enable the Farmington Canal Heritage Trail to remain in use throughout construction at the project location.

There are right-of-way impacts associated with the proposed improvements including temporary construction easements.

Construction is anticipated to begin in spring 2022 based on the availability of funding. The project duration is estimated at one construction season. The estimated construction cost for this project is approximately \$3,000,000. This project is anticipated to be undertaken with 80 percent Federal Funds and 20 percent State funds.

SITE DESCRIPTION: The subject parcel contains 153.61± acres with frontage on both sides of Hopmeadow Street in Simsbury. The property is irregular in shape and contains significant wetland areas. Hop Brook traverses the property in an east-west direction and the Farmington River forms the easterly boundary. The property is industrially zoned within the I-2 zone and conforms to zoning regarding use, but pre-existing non-conforming regarding parking requirements.

Site improvements include paved parking areas, fencing, exterior lighting, a walking bridge, vehicular bridge, curbing, sidewalks and minimal landscaping.

The subject site is encumbered by utility easements and a multi-use trail easement in favor of the Town of Simsbury.

The site is improved with a total of 55 buildings containing a total of 358,951 square feet of gross building area, constructed between 1896 and 1992.

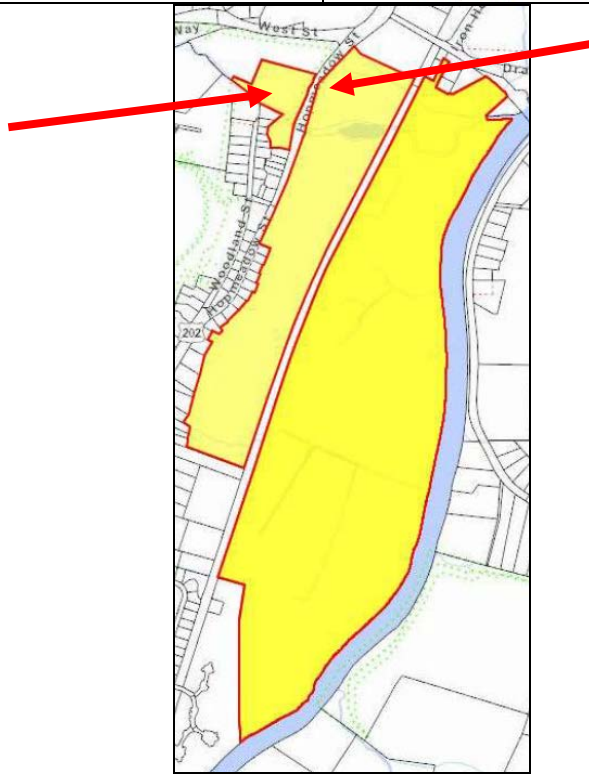
The Appraiser opines the highest and best use of the site, "As-Vacant" is for industrial development. "As-Improved" is for the continuation of the industrial/office use.





View of taking area on east side of Hopmeadow Street looking south

View of parking lot within construction easement area on west side of Hopmeadow Street looking southwest



BEFORE VALUATION: The DOT appraisal was completed June 21, 2021 by independent Appraisers Vincent O'Brien and Michael Fazio, MAI.

Land Valuation: Based on the sales comparison approach, the Appraiser considered the following four sales in the greater area:

	Subject	Sale # 1	Sale # 2	Sale # 3	Sale # 4
Address	623 Hopmeadow Street, etal.	55 & 60 Hoskins Road	64 Cambridge Drive & 4 Independence Drive	36 Timothy Hill Road	137 Lathrop Road, etal.
City	Simsbury	Simsbury	Monroe	Monroe	Plainfield
Date of Sale	N/A	5/6/2019	5/13/2019	8/12/2019	11/2/2017
Sale Price	N/A	\$7,700,000	\$1,401,000	\$2,030,000	\$3,375,000
Land Acres	153.61	288.46	72.08	47.21	136.83
Land SF	6,691,252	12,565,318	3,139,805	2,056,468	5,960,315
Zone	I-2	I-1/R-40	I2	I2	IND-1
Price/SF Land	N/A	\$0.61	\$0.45	\$0.99	\$0.57

After adjusting for differences, the Appraiser concluded that the fair market value of the subject land was $\$0.65/\text{sf} \times 6,691,252 = \$4,349,314$, rounded to $\$4,349,300$.

The Appraiser then estimated the depreciated value of the site improvements utilizing data from Marshall Valuation Services and concluded $\$2,000,000$.

Building Valuation

Sales Comparison Approach: The appraiser analyzed four sales of similar properties in the central and western part of the state (2020-2021) and concluded that the fair market value of the subject property was $\$24/\text{sf} \times 358,951 \text{ sf} = \$8,614,824$, rounded to $\$8,610,000$.

	Subject	Sale #1	Sale #2	Sale #3	Sale #4
CompID	10693	10695	2909	10697	10696
Name					
Address	632 Hopmeadow Street, etal.	14 Prospect Drive	32 Henry Street	161 Woodford Avenue	3580 Main Street
City	Simsbury	Newtown	Bethel	Plainville	Hartford
Recording Date	N/A	3/31/2021	8/4/2020	7/14/2020	10/21/2020
Sale Price	N/A	\$4,400,000	\$9,350,000	\$4,350,000	\$4,315,000
GBA	358,951	141,282	357,108	270,247	282,778
Year Constructed	1896-1992	1960	1900-1979	1936	1922-1930
Site Size	153.61	41.59	33.81	12.54	12.40
Land to Building Ratio	18.64	12.82	4.12	2.02	1.91
Percent Office	15%	9%	3%	12%	49%
Ceiling Height	16.0	14.0	30.0	16.0	14.0
Price/SF GBA	N/A	\$31.14	\$26.18	\$16.10	\$15.26

Income Capitalization Approach: The Appraiser analyzed four rentals of units in the greater market area as follows:

Property Type	Light Industrial	Industrial	Light Industrial
GBA	444,445	178,640	166,278
Year Built	1957-1970	1950	1960
Land Acres	24.05	8.40	11.40
Land to Building Ratio	2.36	2.05	2.99
Leased Area (SF)	141,000	149,239	163,000
Lease Date	6/15/2021	6/1/2020	10/1/2018
Reimbursement Type	NNN	NNN	NNN
Lease Remarks	Manufacturing and warehouse space	Starting rent for industrial space.	Light industrial space
Lease Rate per SF	\$3.00	\$2.65	\$2.75

The appraiser concluded the fair market rental value of the space within the subject property was as follows:

#	Space Type	Market Rent/SF	Type
1	Industrial	\$2.75	NNN

After fully supporting market-based vacancy, operating expenses and capitalization rate, the Appraiser estimated Net Operating Income and market value as follows:

Rental Income	Annual	Per SF	% of PGI
Industrial (358,951 SF at \$2.75/SF)	\$987,115	\$2.75	100.0%
Total Rental Income	\$987,115	\$2.75	100.0%
Potential Gross Income	\$987,115	\$2.75	100.0%
Less Vacancy & Collection Loss (5.0%)	(\$49,356)	(\$0.14)	-5.0%
Effective Gross Income	\$937,759	\$2.61	95.0%
Operating Expenses	Annual	Per SF	% of EGI
Management Fees	\$28,133	\$0.08	3.0%
Replacement Reserve	\$18,755	\$0.05	2.0%
Total Expenses	\$46,888	\$0.13	5.0%
Net Operating Income	\$890,872	\$2.48	95.0%

Direct Capitalization Summary	
Net Operating Income	\$890,872
Divided By Overall Rate	10.00%
Capitalized Value Indication	\$8,908,715
Rounded (\$24.82 per SF)	\$8,910,000

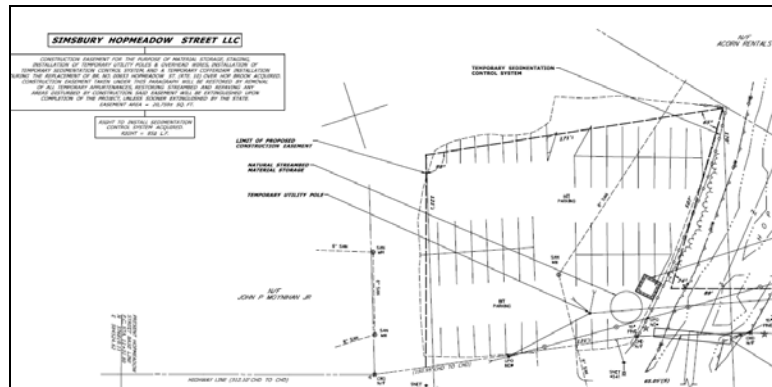
Reconciliation and Value Conclusion - Before

Approach	Opinion of Market Value
Sales Comparison Approach - Land	\$4,349,300
Income Capitalization Approach – Building	\$8,910,000
Sales Comparison Approach Building	\$8,610,000
Conclusion of Market Value	\$8,760,000

TAKING DESCRIPTION:

DOT requires acquiring the following:

- A partial take in fee simple of 474± square feet of land;
- A construction easement for the purpose of material storage, staging, installation of temporary utility poles and overhead wires, installation of temporary sedimentation control system, and a temporary cofferdam, installation acquired over an area of 20,759± square feet; and
- A right to install sedimentation control system acquired over an area of 85± linear feet.



IMPACT OF TAKING:

The Connecticut DOT proposes to take 474 square feet of land located along the subject’s frontage on Hopmeadow Street. A portion of the Taking area lies within Hop Brook. The balance of the Taking area is currently landscaped. As part of the Taking, the Connecticut DOT will acquire a 531 square

foot temporary construction easement (duration of 1 year) on the east side of Hopmeadow Street. The easement is for the installation of a temporary water handling structure during the replacement of Bridge No. 00653. Any areas disturbed by the easement will be regraded and the streambed will be restored.

Additionally, the Connecticut DOT will acquire a second construction easement on the west side of Hopmeadow Street (duration of 1 year) for the purpose of material storage, staging, installation of temporary utility poles and overhead wires, installation of temporary sedimentation control system, and a temporary cofferdam installation. The second construction easement will total 20,759 square feet and will be situated on a parking lot utilized by the subject property. In total, 61 parking spaces will be lost for the duration of the construction easement. Any areas of the parking which were disturbed by the construction easement will be repaved and the streambed will be restored. However, trees and shrubs within the easement will be lost.

Due to the proposed work on Bridge No. 00653 a multi-use pathway will be redirected and a temporary pathway and bridge will be constructed on the subject property. However, the temporary pathway and bridge is located within a previously acquired multi-use trail easement by the Town of Simsbury. Therefore, no compensation associated with the temporary pathway and bridge is concluded.

As part of the Taking, the Connecticut DOT will install a sedimentation control system (236 linear feet on the east side of Hopmeadow Street and 85 linear feet on the west side of Hopmeadow Street).

AFTER VALUATION:

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

Extraordinary Assumptions:

None

Hypothetical Conditions:

The methodology used in this report is in the form of a 29 Point “Before” and “After” Appraisal Report format used for eminent domain purposes. The 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. The appraisal report was based 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. No other conditions were necessary to arrive at a credible value.

After Land Valuation: Based on the sales comparison approach, the Appraiser considered the same sales and concluded that the fair market value of the subject land was unchanged at \$0.65/sf, calculated as follows:

After Scenario Land Valuation	
Total SF Land Before Taking	6,691,252
Less SF in Taking Area	474
Total SF Land Unencumbered After Taking	6,690,778
Concluded Value/SF Unencumbered Land x	\$0.65
Fee Value of Unencumbered Land After Taking	\$4,349,006
Rounded After Value of Land	\$4,349,000

The Appraiser then estimated the depreciated value of the site improvements utilizing data from Marshall Valuation Services and concluded \$1,999,000.

After Building Valuation

After Sales Comparison Approach: The appraiser analyzed the same four sales and concluded that the fair market value of the subject property was \$24/sf and adjusted for the DOT's acquisitions as follows:

Indicated Subject Value	
Concluded Value Per SF GBA	\$ 24.00
GBA	358,951
Indicated Value	\$ 8,614,824
Rounded - Before	\$ 8,610,000
Less Taking Area Value	\$ (300)
Less Site Improvements	\$ (1,000)
Rounded - After	\$ 8,608,700

After Income Capitalization Approach: The appraiser analyzed the same four rentals and concluded that the fair market rental value of the subject property was \$2.75/sf and adjusted for the DOT's acquisitions as follows:

Direct Capitalization Summary	
Net Operating Income	\$890,872
Divided By Overall Rate	10.00%
Capitalized Value Indication	\$8,908,715
Rounded - Before	\$8,910,000
Less Adjustments	
Less Taking Area Value	(\$300)
Less Site Improvements	(\$1,000)
Adjusted Value Indication	\$8,908,700
Rounded - After (\$24.82 per SF)	\$8,908,700

Reconciliation and Value Conclusion – After

Approach	Opinion of Market Value
Sales Comparison Approach - Land	\$4,349,000
Income Capitalization Approach – Building	\$8,908,700
Sales Comparison Approach Building	\$8,608,700
Conclusion of Market Value	\$8,758,700

Calculation of Permanent Damages

Item	Value
Before Valuation	\$8,760,000
After Valuation	\$8,758,700
Permanent Damages	\$1,300

Calculation of Temporary Damages

Construction Easement Area #1	20,759 sf x \$0.65/sf x 11.9% x 1 year	\$1,606
	Rounded	\$1,600

Calculation of Temporary Severance Damages

As a result of the second construction easement on the west side of Hopmeadow Street, the subject property will temporarily lose the use of 61 parking spaces (for the 1-year construction period per the DOT). The reduced parking will temporarily have a negative impact on the property (the market rent for the subject property will need to be reduced to compensate a tenant for the temporary loss of parking).

To determine the temporary severance associated with the 61 temporarily impacted parking spaces, the appraiser concludes a rental rate reduction to compensate a tenant for the temporary loss of parking.

The 61 temporarily impacted parking spaces are 10.8% of the subject's total parking. Additionally, the subject property has limited parking prior to the temporary loss of 61 parking spaces. The loss of 61 parking spaces is estimated to reduce the market rent at the subject property by 20%. Therefore, total severance damages due to the temporarily lost use of the 61 parking spaces are concluded as follows:

Temporary Severance Calculation	
Market Rent (Annual)	\$987,115
<u>% Reduction in Market Rent</u>	<u>20.00%</u>
Annual Reduction of Market Rent	\$197,423
Rounded	\$200,000

Total damages are then Permanent Damages plus Temporary Damages plus Temporary Severance Damages, \$1,300 + \$1,600 + \$200,000 = \$202,900 (rounded).

Deducted from the Damages is the allocation of Permanent Damages for DOT Project #128-153-002 (\$800) that impacts another portion of the subject property. Since that is a separate DOT Project and the Damages are less than \$5,000, that Taking is not subject to SPRB review.

Total Damages for DOT Project #128-153-001, reviewed under PRB #21-178 are then \$202,900 - \$800 = \$202,100.

Staff inquired with DOT regarding the following:

1. Please quantify the loss of 61 parking spaces to the availability of parking on the entire campus.
2. Please clarify if any alternatives were considered to replace the impacted parking spaces.
3. Please provide support for the Appraiser's conclusion that the loss of parking diminished the rental rate by 20%.

RECOMMENDATION: Board suspension of damages in the amount of \$202,100 is recommended pending DOT response to the aforementioned issue.

4. REAL ESTATE – NEW BUSINESS

PRB # 21-185
Transaction/Contract Type: RE – Voucher
Origin/Client: DOT/DOT
DOT Project #: 301-176-021A
Grantor: City of Norwalk
Property: Norwalk, Water St (10) – The Maritime Aquarium at Norwalk
Project Purpose: Walk Railroad Bridge
Item Purpose: Voucher

DAMAGES: \$780,000

On November 12, 2019, under PRB File #19-145, the Board approved an Administrative Settlement in the amount of \$40,000,000 for Functional Replacement of impacted land and improvements at the city-owned parcel with leasehold improvements owned by Norwalk Maritime Aquarium. Within the Administrative Settlement were actual damages (\$2,165,000) paid to the City of Norwalk for the following acquired property rights:

1. Easement A is a 1,938 SF Easement to Construct and Maintain the Bridge Acquired. The

easement was located at the north border of the railroad tracks abutting and extending along Parcel A's south border.

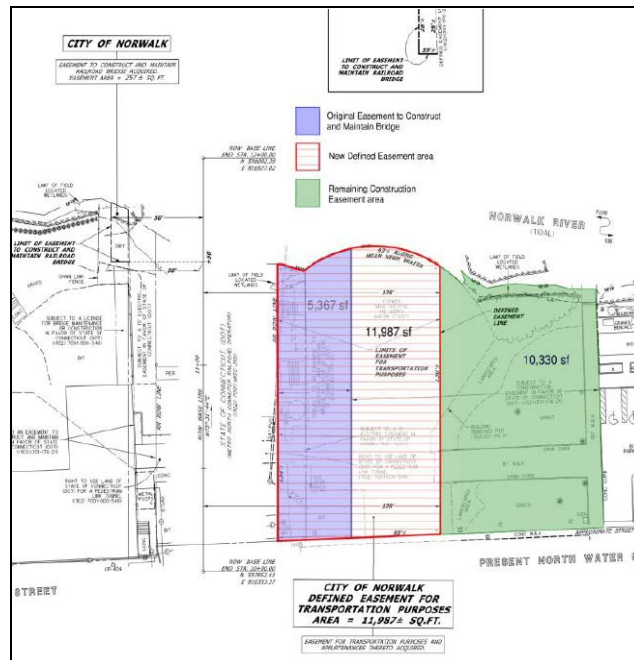
2. Temporary Construction Easement 1 encompassed 5,928 SF and was located at the east side of the site extending from North Water Street at the Ann Street proximate through the site and site improvements the location of the metal bleachers and commencement of Construction Easement 2. The Easement was for the Purpose of Access between Construction Easement 2 and North Water Street during the Walk Bridge replacement.
3. Temporary Construction Easement 2 for the Purpose of Building Removal, Crane Operations and Storage of Equipment and Materials encompassed 21,100 SF and was located at the southeast quadrant of Parcel a extending from the terminus of Construction Easement 1 to the railroad structure, and from the mean high water line at its east border west into the site to roughly ¼ deep into the Tent structure. The shape of the easement was an irregular funnel. Construction Easement and 2 encompassed all or portions of the 7,000 SF Tent Structure, the waterfront planting and stone path, picnic tables, metal bleachers, park benches, walking paths, landscaping, sprinkler system, exterior lighting, fencing, deck and mature trees.
4. The right to remove the Tent Acquired 8,030 SF and the right to remove a Fire Escape.
5. Easement B to Construct and Maintain the Railroad Bridge Acquired encompassed 5,367 SF was located abutting and running parallel to the railroad structure on Parcel B. The easement encompassed part of the IMAX theater building.
6. Temporary Construction Easement 3 for the Purpose of Building Removal, Crane Operations and Storage of Equipment and Materials on Parcel B encompassed 16,950 SF and included all the site area not included in Easement B, the IMAX Theater building, the landscaping, signs, the walking paths, the deck, dock and ramp.
7. The State will acquire the right to remove the deck, dock and ramp.

The Damages paid to the City of Norwalk were based on a Real Estate Appraisal of the property performed by an independent Appraiser, as of May 16, 2017. The land value at that time was estimated by the Appraiser at \$78/square foot.

The city-owned property consists of two parcels of land: 3.40 acres (north of RR) and 0.85 acres (south of RR), respectively, totaling 4.25 acres, or 185,130 square feet, bisected by the DOT railroad right-of-way, improved with the property known as the Norwalk Maritime Aquarium (Leasehold improvements).

Under this Proposal (PRB #21-185), DOT is now seeking Board approval for the \$780,000 in Damages for the acquisition of the following property rights:

1. A defined easement for transportation purposes – easement for transportation purposes and appurtenances thereto acquired over an area of 275±SF (north of RR) and 11,987±SF (south of RR).



It should be noted that under this Proposal (PRB #21-185) the new Taking Map under DOT Project 301-176-021A reflects a Defined Easement for Transportation Purposes, changed from the prior Taking approved under PRB #18-078 (DOT Project 301-176-021) that stated “Easement B to Construct and Maintain the Railroad Bridge” providing better flexibility for DOT to construct the railroad bridge. Furthermore, the owner was previously compensated for the 5,367 square foot ‘Easement B’ area under 301-176-021 and will not be compensated under 301-176-021A. Only Damages for the net 6,620 square foot area (11,987 sf – 5,367 sf = 6,620 sf) will be compensated under this Proposal (PRB #21-185) – DOT Project 301-176-021A.

Additionally, under PRB #18-078 (DOT Project 301-176-021) the owner was previously compensated for a Temporary Construction Easement encompassing an area of 16,950 square feet for a period of seven (7) years, totaling \$625,000. The Defined Easement Area under this Proposal (PRB #21-185 now encompasses 6,620 sf of the previously compensated construction easement area of 16,950 sf, or 39.1% of the area. DOT calculated the overlap area at 40.12% of the area and calculated the net change at $\$625,000 \times 40.12\% = \$250,750/7\text{-yr construction period} = \$2,985.11/\text{month} (\$35,821/\text{yr})$, or a credit of \$86,570 (rounded) for 29 months.

Before Valuation: An appraisal was prepared by independent appraiser Barbara J. Pape as of December 4, 2020.

Land Valuation: Based on the sales comparison approach, the appraiser analyzed six sales of commercially-zoned land sales in lower Fairfield County, four of which were considered in the original appraisal under PRB #18-078 that sold between 2014 and 2019 (utilizing separate adjustment grids for each parcel) and concluded that the fair market value of the subject land was as follows:

Item	Calculation	Value
Parcel A: 3.40 acres north of RR	148,104 x \$73.10/sf = \$10,826,401	Rd. - \$10,830,000
Parcel B: 0.85 acres south of RR	37,026 x \$64.25 = \$2,378,920	Rd. - \$2,380,000
	Rounded	\$13,210,000

After Valuation:

After Land Valuation: Based on the sales comparison approach, the appraiser analyzed six sales of commercially-zoned land lower Fairfield County, four of which were considered in the original appraisal under PRB #18-078, that sold between 2014 and 2019 and concluded that the fair market value of the subject land was as follows:

Item	Calculation	Value
Parcel A: 3.40 acres north of RR	148,104 x \$73.10/sf =	Rd. - \$10,830,000
Parcel B: 0.85 acres south of RR	37,026 x \$52.35 =	Rd. - \$1,940,000
	Rounded	\$12,770,000

The estimated market value of Parcel B was diminished due to severance to the remainder given the location of the Defined Easement.

The Appraiser then calculated the Damages relative to the two Defined Easements as follows:

Easement Values	Net Area/SF	Factor	Per SF	Adj. Rate/SF	Value
Parcel A/Easement 1	257 SF	25.00%	\$73.10	\$18.28/SF	\$ 4,697
Parcel B/Easement 2 Adjusted*	6,620 SF	99.00%	\$64.25	\$63.60/SF	\$421,032
					\$425,729
Easement Value Rounded:					\$425,730

Calculation of Permanent Damages

Item	Value
Before Valuation	\$13,210,000
After Valuation	\$12,770,000
Severance Damages	\$440,000
Damages for Defined Easement	\$425,730
Less Prior Damages Awarded	-\$86,570
Total Damages	\$779,160
Rounded	\$780,000

RECOMMENDATION: Board **APPROVAL** of damages in the amount of \$780,000 is recommended for the following reasons:

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

October 8, 2019 Update:

At its meeting held on August 1, 2019 the State Properties Review Board voted to suspend this item pending a response to the following issues raised by the Board:

1. Please provide project description that outlines the components that were funded by DOT under the “Initial Statement” and to be funded under “Final Statement”. Basically, outlining any and all changes between two statements including associated increase in the costs of these components.
 - *DOT Response: (Initial Statement) reference the attached Administrative Settlement Agreement (ASA) 5th & 6th WHEREAS; (Final Statement) See attached ASA Amendment Section 3 for referenced changes.*

Staff Response: The 5th WHEREAS clause in the Administrative Settlement Agreement approved by the Board under PRB #18-078 included the following ‘Referenced Improvements’ to be removed and replaced via the Functional Replacement process: Deck/ramp/dock; IMAX Theater; Meerkat Exhibit; Dragon Exhibit; Go Fish Exhibit; Harbor Seal Exhibit; and Fire Escape. The 6th WHEREAS clause states the Department (DOT) has agreed to pay for the functional replacements (Project Expenses). The total project expense for the entire Functional Replacement Property approved by the Board was \$34,552,395.

Within the First Amendment to Administrative Settlement Agreement the 5th WHEREAS clause was replaced to include the acknowledgement that the Walk Bridge project will result in the removal of the following Referenced Improvements: Deck/ramp/dock; IMAX Theater; Meerkat Exhibit; Dragon Exhibit; Go Fish Exhibit; Harbor Seal Exhibit; and Fire Escape. And the language goes further stating that the Department will compensate the City via the Functional Replacement option of paying/reimbursing the City to reconstruct the aforementioned improvements.

In Section 3 of the First Amendment to Administrative Settlement Agreement, Exhibit B was completely replaced.

Please clarify why the amended Agreement requires DOT to incur all costs and expenses, from initial planning, project management, architectural, engineering, staging and construction phases, for the demolition of all of the previously listed ‘Referenced Improvements.’ And, clarify why all DOT costs and expenses attributable to the demolition are not counted against the proposed \$40 million cap. This is a significant change from the original Administrative

Settlement Agreement. At the time this cost was estimated at \$826,700 (2017) not counting for cost associated with the demolition of fire escape.

- *DOT Response: The demolition costs associated with the \$40 Million settlement are related to the demo needed to buildout the respective replacements. The new Theater location will require demo to the existing Aquarium building, the new Seal Exhibit will require related demo to the existing building.*

Those are the cost referenced in the Functional Replacement cost estimate. The demo cost associated with removing structures within the acquired right of way i.e. (The existing IMAX and Annex building, Fire Escape, Vessel Dock & Ramp) are paid for as part the Walk Bridge construction cost.

The reference to the DOT paying the demo cost for the structures within the acquired ROW was incorporated into the amended agreement language for clarification purposes; however, it was always understood that those costs were part of the DOT’s Walk Bridge Project budget; and not a Functional Replacement cost.

Staff Response:

From the Administrative Settlement Agreement approved under PRB #18-078:

WHEREAS, the acquisition of those property rights will result in the following impacts, all of which to be functionally replaced, except for item iii annex tent structure, by reconstructed improvements (hereinafter, the “Referenced Improvements”):

- (i) Removal and replacement of the deck platform, ramp and dock associated with Tenant’s research vessel, “Spirit of the Sound;”
- (ii) Removal of the IMAX Theater;
- (iii) Removal of the annex (Tent) structure;
- (iv) Removal of the animal exhibits located within the Tent, which include the following: the Meerkat Exhibit, the “Dragon Exhibit,” and the “Go Fish” Exhibit, and the loss of the Harbor Seal Pool Exhibit due to impacts to its outdoor component, as anticipated by the Project’s construction activity; and
- (v) Removal of a fire escape;

WHEREAS, the Department has agreed to pay and/or reimburse the City the costs (hereinafter the “Project Expenses”) for the functional replacements necessitated by the granting of such property rights described above, plus an agreed upon amount specific to the Department’s appraised land value for the proposed easements to be acquired; and

WHEREAS, the City has agreed to pass through and extend to the Tenant the benefits of its rights to any Project Expense payments that it is entitled to receive from the Department in connection with the Project, which shall exclude the amount to be paid as compensation for the easements that are being conveyed by the City to the Department;

The term “Removal” is very clearly stated within the 5th Whereas clause in the approved Administrative Settlement Agreement. And furthermore, Section B of the Administrative Settlement Agreement states:

- B. In lieu of receiving compensation based on the remaining appraised damages, for the impacts to the Property as described above, the City will be paid and/or reimbursed the costs for the functional replacement of the above Referenced Improvements, excluding (iii) Removal of the annex (Tent) structure. This Functional Replacement option is being offered by the Department in accordance with Title 23 C.F.R. §710.509 and Connecticut General Statutes, Sections 13a-73, 13b-23 and Section 13b-36. The Project Expenses paid to the City for the Referenced Improvements will include the costs associated with planning, project management, architectural design, engineering, staging and construction.

If Section B specifically excludes reimbursement of expenses for “(iii) removal of the annex (Tent) structure, than the four other items within the ‘Referenced Improvements’ remain included within the Functional Replacement.

Schedule A of the Original agreement, had included demolition as part of the Project Expenses estimated at \$34,552,395, which was part of the Functional Replacement value.

SCHEDULE A : SECTION E OF ASA (Original Agreement)
 "PROJECT EXPENSES"

The Maritime Aquarium, Norwalk, CT Actions due to DOT Walking Bridge work						
11/18/2017 Building permit 16/1000 with a CoRD 450 P&Z \$33 +\$3/page Plan \$250+10 per parking space Connection Fee Waterpollution Control \$25,000						
CONCEPTUAL DESIGN ESTIMATE, ORDER OF MAGNITUDE FOR CT-DOT						
PROJECT COST SUMMARY	Mezzanine / Meerkat	Go Fish	Entrance	Seal Tank	Theater	TOTAL
	11/18/2017	11/18/2017	11/18/2017	11/18/2017	11/18/2017	11/18/2017
CONSTRUCTION COSTS	3,362 SF	1,450 SF	3,850 SF	7,500 SF	18,500 SF	26,662 SF
A. DEMOLITION	25,000	444,700	21,000	82,000	250,000	826,700
B. SITEWORK	0	122,500	473,250	608,000	965,000	1,168,750
C. CONCRETE	1,500	323,400	270,000	607,500	817,500	2,019,900
D. MASONRY	21,500	111,700	5,400	255,000	344,000	733,600
E. METALS	102,000	109,500	209,000	349,700	418,775	1,208,975
F. WOOD & PLASTICS	66,180	9,450	38,750	4,450	253,000	371,830

2. Provide a copy of the “complete assessment” done by DOT as referenced in the DOT’s Final Statement.

- *DOT Response: See attached accounting statement*

Staff Response:

a). Please provide a copy of each contract or authorization of services and any subsequent amendments identifying the scope of work to be completed and a schedule of fees for the expenditures listed below (taken from ‘TMA Summary Expenses’). And please clarify which “Referenced Improvements” listed in the amended Administrative Settlement Agreement benefitted from the expenditures.

Carmody Torrance	-\$57,845	William Seymour	-\$4,720
Carmody ck # 1008	-\$4,910	Seymour ck # 1009	-\$1,350
Carmody Torr ck# 1023	-\$931	William Seymour ck # 1021	-\$1,903
Total Invoices	-\$63,685	Total Invoices	-\$7,973
Shipman & Goodwin	-\$253,529	CSG Norwalk ck #1020	-\$135,000
Michael Horton	-\$9,263	Arc ck # 1010	-\$1,949
Michael Horton ck # 1022	-\$2,520		
Total Invoices	-\$11,783		
Associated Borings	-\$22,765	Special Testing	-\$9,730
Existing Conditions	-\$40,000		

- *DOT Response: Contracts and amendments/additions to contractors are scanned into IRMS and hard copies stored in ROW project files.*

Staff Response: DOT has the contract information but did not provide to the Board.

b). Please confirm that the entries identified as ‘Plus Interest’ reflect interest earned from the financial institutions and please clarify what transpired during the project that resulted in the four ‘credit’ entries.

Plus Interest as of 12-3-18, FDIC	\$1,644
Plus Interest as of 12-3-18, Checking	\$27,135
Plus interest as of 12-31-18, Checking	\$1,265
Plus interest as of 12-31-18, FDIC	\$6,376
Plus legal expenses paid, credit back	\$100,000
Credit 2672.11 on 1-30-19	\$5,130
Credit 2672.10 on 1-30-19	\$15,818
Plus Interest as of 1-31-19, Checking	\$1,078
Plus Interest as of 1-31-19, FDIC	\$6,384
Plus Interest as of 2-28-19, Checking	\$1,469
Plus Interest as of 2-28-19, FDIC	\$4,123
Credit 2672.06	\$47,755

- *DOT Response:*

The credit interest is verified by bank statements and FDIC statements which are scanned into IRMS and hard copies stored in ROW project files

The credit entries were items identified as non-participating in Functional Replacement and the TMA was required to “pay back” the money into the FR account. These are documented and itemized in the IRMS and hard copies stored in ROW project files.

Staff Response: OK

- 1) Please clarify what services were provided by BBB to account for the additional \$217,495 expended and which "Referenced Improvements" listed in the amended Administrative Settlement Agreement benefitted from the expenditure.
- 2) If this contract was amended after 3-2017 please provide a copy of the amendment(s).
- 3) Please provide a copy of the BBB consultant contract with the City of Norwalk executed in late March 2019 (early April) in the amount of \$1,514,033.16 and clarify what additional design/CA services are being provided in light of the remaining balance of BBB's contract with TMA (\$363,226 balance).

- *DOT Response: No response*

Staff Response: DOT did not provide responses to the prior three inquiries.

d). The Program Management Services Agreement (PMSA) between O&G/AP and TMA (11-30-2016) and subsequent amendments provided Program Management Service for three distinct phases of the project. Phase 1 (Definition of Scope of Program) provides for pre-design services at a cost of \$77,680. The second amendment (May 2018) to the PMSA authorized Phase 2 (Development of Program Plan) and Phase 3 (Implementation of Program Plan) providing Program Management services through the completion of construction documents and bidding. The fee for Phase 2 and Phase 3 is \$779,582. The total fee is \$857,262. The PMSA was assigned from O&G/AP to Karp Builders, LLC in May 2018.

- 1) Please clarify what services were provided by O&G/AP in exchange for \$392,984.
- 2) Please clarify what services were provided by Karp in exchange for \$85,696.
- 3) Please confirm the status of Karp. Are they actively providing consulting services, or have they been removed from the project.

- *DOT Response:*

AP/O&G contract and scope of services are scanned into IRMS and hard copies are stored in ROW project files. Payments were verified by billing and cancelled checks or transfers by TMA.

KARP contract and scope of services are scanned into IRMS and hard copies are stored in ROW project files. Payments were verified by billing and cancelled checks or transfers by TMA.

We no longer have KARP providing services for the project as they were replaced by CSG.

Staff Response: DOT has the contract information but did not provide to the Board.

e). The Agreement between L. Holzner Electric Company and TMA (10-5-2017) involved the construction of an expanded exhibit space and habitat for the Meerkats. Section 3 of the Agreement provided for a Contract Sum of \$572,000 (Stipulated Sum). Holzner fees paid in the 'TMA Summary Expenses' total \$684,579.

- 1) Please clarify what changes were made to the Agreement resulting in TMA approving \$112,579 in additional expense beyond the original Stipulated Sum.
- 2) Please clarify why in Section 3 (replaced Exhibit B of original agreement) of the amended Administrative Settlement Agreement states that the Meerkat Exhibit is part of the Referenced Improvements to be completed during Phase 2.
- 3) Please confirm the construction status of the Meerkat Exhibit.

- DOT Response:

Due to the age of the existing building, there were additional items that came up during the buildout of the second floor for the Meerkat exhibit. There was a change in the timbers used (Douglas fir), added framing to existing windows, a change order for 1" X 3" ledger to a 6" X 12" ledger, correct the change in existing floor thickness, additional steel and timber reinforcement and through bolts. These items were necessary for the safe installation of the floor.

The Meerkat exhibit has not been constructed.

Staff Response: Seems like the DOT response 'the build out of the second floor for the Meerkat exhibit' is contradictory to 'The Meerkat exhibit has not been constructed.' No further explanation was provided regarding what work was completed at a cost of \$684,579.

Under PRB #18-078 DOT provided the Board with a copy of the Holzner contract specifically identifying the following:

L. Holzner Electric Company
596 John Street
Bridgeport, CT 06604

for the following Project:
(Name, location and detailed description)

Meerkat Platform Project
Maritime Aquarium at Norwalk
10 North Water Street
South Norwalk, CT 06854

The Architect:
(Name, legal status, address and other information)

Beyer, Blinder Belle Architects & Planners LLP
120 Broadway, 20th Floor
New York, NY 10271

The Owner and Contractor agree as follows.

The Project involves the construction of an expanded exhibit space and habitat for the Meerkats.

DOT has acknowledged the Black Dragon Exhibit was replaced with the use of funds thus far. However, no contract for this work was provided to the Board under PRB #18-078.

3. Under the existing approved initial statement dated June 25, 2018, DOT was going to conduct auditing and provide project control oversight of the TMA's design and construction effort. Also, DOT was expected to conduct reviews of the design at 60 and 100 percent of design, as well as construction schedules and schedule of values, etc. In the final statement, DOT states the following:
 - a. "TMA and their Owner Rep went to bid with incomplete design documents" – did DOT review and approve this arrangement?

- *DOT Response: We hired Baker Engineering to review the plans prior to advertising. However, the plans were not complete resulting in the large amount of addendums.*

Staff Response:

- 1) Please clarify who issued the Notice to Proceed to the Architect with the bidding of this project prior to 100% CD and whether DOT approved of advertising this project with incomplete plans.
- 2) Did the 'excessive addendums to the bid packages' expand the Architect's scope of work and did the Architect seek additional compensation?

- *DOT Response:*

This was the result of a fast track effort to meet the vacancy deadlines in connection with Department's Walk Bridge Project schedule. As such, the plans that were put out to bid were incomplete resulting in a large number of addendums.

Staff Response: DOT did not respond to inquiries #1 & #2 above.

- b. "TMA's owner representative never provided updated cost estimates during the design phase" - did DOT review the 60 and 100% design? Did DOT ask for updated cost estimates?

- *DOT Response: Yes;*

Staff Response:

- 1) Please provide the Board with the cost estimates.

- *DOT Response: No response*

Also, as part of the agreement with the City, the representative was supposed to give monthly reports, detailing, at a minimum, project progress, issues and financial reports to DOT and the City. Did DOT receive these reports?

- *DOT Response: No, not in a timely manner; which is why the attached amendment was mandated by the Department.*

Staff Response:

- 1) Please clarify if Construction Solutions Group is providing these same reports.

Did DOT review these reports to catch the higher project cost estimates? The information was not provided in its entirety.

- *DOT Response: Our review did not include the addendums.*

Staff Response:

- 1) Please clarify if DOT's consultant, Baker Engineering, was instructed to review the addendums as part of their consultant contract.
- 2) Please clarify who at DOT determined it was unnecessary to review the addendums in light of the overall project scope.

- *DOT Response: No response*

4. Will the City retain existing consultants (Architect, Owner Representative, Construction Manager, etc.) and enter into a contract or hire new consultants via an open process?
- *DOT Response: Architect – yes; Construction Manager – yes; Owner Rep. – no (City hired their own Owner Rep.) See attached ASA Amendment, Section 6*

Staff Response:

- 1) Norwalk hired Construction Solutions Group as their owner-rep. Consultant fee = \$135,000. Approved by Norwalk Common Council on December 11, 2018.
- 2) Norwalk hired BBB as their architect. Consultant fee = \$1,514,011.16. Approved by Norwalk Common Council on March 26, 2019.

OK

5. If the City will retain existing consultants, how will the contractual fees be calculated (meaning will credit be given for the work already completed?).
- *DOT Response: The work that has been completed is still applicable to the project.*

Staff Response:

- 1) Please clarify what work has been completed that is still applicable to the project in light of the new BBB contract with consultant fees totaling \$1,514,011.16 with respect to the BBB consultant contract with TMA that had expended all but \$363,226 of the original \$3,278,500 contract.

- *DOT Response: No response*

6. Provide a schedule to hire these consultants

- *DOT Response: The consultants are already hired.*

Staff Response:

➤ **OK**

7. Who from the City is going to manage this \$47 million complex project? What are their qualifications? What will be the City's role and responsibilities?

- *DOT Response: The total settlement amount is \$42,165,000.00 (\$12,530,718.00 (\$10,365,718.00/Initial Functional Replacement Payment plus \$2,165,000.00/land value of easements) plus \$29,634,282.00/Balance Payment). The City's Department of Public Works is providing oversight. They have hired CSG (Construction Solutions Group) owner representative.*

Staff Response:

- 1) Norwalk hired Construction Solutions Group as their owner-rep. Consultant fee = \$135,000. Approved by Norwalk Common Council on December 11, 2018. OK

8. Provide a breakdown of \$4,933,187 of the initial payment that is spent including which component of the project these funds were spent on. What percent of the design/bid docs can be re-used by the City?

- *DOT Response: See attached accounting statement*

Staff Response:

- 1) The accounting statement only reveals project expenses. DOT should clearly identify what work was completed to each of the Referenced Improvements within the amended Administrative Settlement Agreement.

- DOT Response:

The \$4,933,187 spent by TMA was reconciled through verification of billing, payments and copies of such items. These items are scanned into IRMS and hard copies are stored in ROW project files.

Staff Response: DOT has the contract information but did not provide to the Board.

9. Is this cap of \$40 Million based on functional replacement of the improvements? Provide a breakdown of these improvements including project schedule and estimates. What happens if the project exceed this cap? What happens if the actual construction cost be below \$40 Million?

- DOT Response: See attached ASA Amendment, Section 3.

Staff Response:

- 1) Section 3 of the First Amendment dictates that the 'Referenced Improvements' be undertaken in two Phases. Phase 1 includes reconstruction of the 4-D Theater, Harbor Seal Exhibit and Fire Escape. Upon completion of Phase 1 DOT and Norwalk will complete an accounting of the remaining funds and "agree upon the scope of the remaining Referenced Improvements within 1 year of the completion of Phase 1, taking into consideration the balance of funds available under the Cap, to be applied toward the second phase ("Phase 2"). The scope of said remaining Referenced Improvements may include the Go Fish Exhibit, Meerkat Exhibit or some modified version thereof."
- 2) The First Amendment does not address the status of any excess funds if the project comes in under budget.
- 3) In the event the \$40 million cap is reached, there is nothing preventing DOT from seeking to amend the Administrative Settlement a second time.

10. What will be the source of these funds? What approvals are required to secure these funds?

- DOT Response: State funds; already budgeted.

Staff Response:

➤ OK

11. Per DOT memo, the bids came in at \$51 Million. Who will pay for the shortfall (\$11 Million), assuming that the bids in the future come in at \$51 Million? Are there any component/s not being built or reduced in scope or expanded in scope to bring down the project cost to \$40 Million?

- DOT Response: See attached ASA Amendment, Section 3.

Staff Response:

➤ See response to #9 above.

12. Has the City council approved this cap? Is there an agreement between DOT and the City for this increased cap? If not, is there a draft agreement and when is it expected to be fully executed? If yes, pl provide a copy of the executed agreement.

- DOT Response: Yes; See Agreements as fully executed.

Staff Response:

- 1). Norwalk Mayor Rilling signed on June 20, 2019 and DOT Terry Obey signed on July 15, 2019.
- 2). Please clarify whether the First Amendment to Administrative Settlement Agreement was presented to the Norwalk Common Council and whether a Resolution by the Common Council approving of the First Amendment is required.

- *DOT Response: No response*

13. Provide the schedule of release of funds (payment schedule for \$40 Million) to the City.

- *DOT Response: See ASA Amendment, Section 12*

Staff Response:

% Complete	Interim Payment	Cumulative
Upon execution of the original agreement	\$ 10,365,718.00	\$10,365,718.00
Upon execution of GMP Contract with CM	\$ 10,000,000.00	\$20,365,718.00
Upon completion of 35% of construction	\$ 10,000,000.00	\$30,365,718.00
Upon completion of 70% of construction	\$ 9,000,000.00	\$39,365,718.00
Upon completion of 100% of construction	\$ 634,282.00	\$40,000,000.00

OK

14. Has DOT determined if there was mismanagement of this project? If yes, was that entity held responsible?

- *DOT Response: Yes; they are no longer involved with the Project*

Staff Response:

- 1). Please clarify whether DOT believes there is a basis to pursue professional liability claims against the entity.

- *DOT Response: No response*

15. Please clarify if DOT believes December 31, 2020 provides sufficient time to design-bid-build a new IMAX Theater. How was this date derived? What are the consequences if this date is pushed back?

- *DOT Response: Yes; The deadlines are in accordance with the current Walk Project schedule*

Staff Response:

- a). Please clarify when this new schedule was finalized.
- b). Section 7 of the Iwerks agreement requires TMA to pay increased Licensing and Maintenance Charges if the 4-D attraction is not open to the public by **June 30, 2019**. Please clarify what is the impact to the Licensing and Maintenance Charges due to the new schedule.
- c). In terms of the Functional Replacement, and the replacement of the 4-D Theatre in Phase 1 of the amended Administrative Settlement Agreement, please clarify how much, if any, of the \$5,650,000 contract with Iwerks is reimbursable to TMA under the amended agreement.

- *DOT Response:*

- a). No response.
- b). None, the contract was amended to reflect a new schedule. **OK**
- c). FR covers the costs of the physical items of the theater and the installation only. All costs associated with maintenance and licensing fees are paid by the user which is TMA. The equipment and installation charges total \$1,600,000.00. **OK**

16. Are there any reasons that DOT may come back in the future with a revised settlement agreement with higher cost?

- *DOT Response: No; not to our knowledge.*

Staff Response:

In the event the \$40 million cap is reached, there is nothing preventing DOT from seeking to amend the Administrative Settlement a second time.

17. This settlement agreement must include a section as it relates to DOT's oversight of this project including expenditure of these funds based on what DOT has learned since inception of this project.

- *DOT Response: See attached ASA, Section G*

Staff Response:

1) Section G of the original Administrative Settlement Agreement (ASA) states DOT or its Designee will maintain an oversight role during design and construction of the 'Referenced Improvements.'

- a). DOT had an oversight role in the original ASA and is now before the Board seeking approval of an additional \$5,447,605, as well as incurring all costs and expenses with the demolition of the 'Referenced Improvements' estimated in 2017 to cost \$826,700, excluding the cost of the demolition of the fire escape.
- b). Please clarify how the forthcoming DOT oversight role will prevent cost and schedule overruns and why DOT is now undertaking the obligation of demolition and its expense?

- *DOT Response:*

- a). See response #1 with respect to question 1a)
- b). ???

Staff Response:

- a) DOT returns to its explanation that demolition costs were always a DOT expense.
- b) DOT did not respond.

18. What is the status of State's larger project? Is it on schedule? Will it impact this project/settlement?

- *DOT Response: The project is on schedule.*

Staff Response:

➤ **OK**

19. Per Section 7 of the 1st Amendment, please provide the procurement process undertaken by the Tenant with respect to said Retained Professionals.

- *DOT Response:*

20. Section 9 of the 1st Amendment, why “design errors or omissions” are included in this section? Why DOT will allow to use “Owner’s contingency” for “design errors or omissions”?

- DOT Response:

21. Section 15, please provide Schedule B

- DOT Response:

Schedule B was attached to the August attachments “TMA Rev 2 Reprogram 4-2-19”

Staff Response: No record of this attachment in Sharepoint or email.

RECOMMENDATION: Board approval is recommended for the following reasons:

- The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
- The functional replacement effort is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and C.G.S. 13a-73, 13b-23 and 13b-36.
- The presentation provided by DOT stated improvements subject to the functional replacement are now prioritized into two phases and acknowledged that a significant portion of the requested funding will be allocated to Phase 1. Any funding remaining after completion of Phase 1 will be allocated to Phase 2 improvements, capped at a total functional replacement cost of \$40,000,000.
- The Board understands that the subject Administrative Settlement Agreement has been approved in the amount of \$40,000,000. Any increase in this amount must be approved by the Board.
- DOT will provide periodic project progress updates to the Board including the use of contingency funds.

At its June 25, 2018 meeting, the Board approved PRB #18-078, an Administrative Settlement consisting of the following:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

Total damages = \$12,530,718

In June 2018, DOT informed the Board that upon completion of the design, retention of the Construction Manager-At Risk, and the bid process complete, DOT will submit a second Administrative Settlement for Board approval reflecting the DOT’s final commitment in the Functional Replacement Project.

A note on the SPRB Action Memo stated: “It should be noted that due to unusual circumstances of “functional replacement” provision, the Board is agreeing to approve a portion of the larger settlement without having written contracts in place.”

The current proposal before the Board is an Administrative Settlement present by DOT in the amount of \$29,634,282, calculated as follows:

Functional Replacement Estimate (capped)	\$40,000,000
Less:	
PRB #18-078 Administrative Settlement	-\$10,365,718
PRB #19-145 - Current Administrative Settlement	\$29,634,282

Staff inquired with DOT regarding the following:

- Please provide project description that outlines the components that were funded by DOT under the “Initial Statement” and to be funded under “Final Statement”. Basically, outlining

20. Section 9 of the 1st Amendment, why “design errors or omissions” are included in this section? Why DOT will allow to use “Owner’s contingency” for “design errors or omissions”?

- DOT Response:

21. Section 15, please provide Schedule B

- DOT Response:

Schedule B was attached to the August attachments “TMA Rev 2 Reprogram 4-2-19”

Staff Response: No record of this attachment in Sharepoint or email.

RECOMMENDATION: It is recommended that the board _____ this proposal, pending DOT response to the previous inquiries.



At its June 25, 2018 meeting, the Board approved PRB #18-078, an Administrative Settlement consisting of the following:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

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Less:	
PRB #18-078 Administrative Settlement	-\$10,365,718
PRB #19-145 - Current Administrative Settlement	\$29,634,282

Staff inquired with DOT regarding the following:

- Please provide project description that outlines the components that were funded by DOT under the “Initial Statement” and to be funded under “Final Statement”. Basically, outlining

any and all changes between two statements including associated increase in the costs of these components.

- Provide a copy of the “complete assessment” done by DOT as referenced in the DOT’s Final Statement.
- Under the existing approved initial statement dated June 25, 2018, DOT was going to conduct auditing and provide project control oversight of the TMA’s design and construction effort. Also, DOT was expected to conduct reviews of the design at 60 and 100 percent of design, as well as construction schedules and schedule of values, etc. In the final statement, DOT states the following:
 - “TMA and their Owner Rep went to bid with incomplete design documents” – did DOT review and approve this arrangement?
 - “TMA’s owner representative never provided updated cost estimates during the design phase” - did DOT review the 60 and 100% design? Did DOT ask for updated cost estimates? Also, as part of the agreement with the City, the representative was supposed to give monthly reports, detailing, at a minimum, project progress, issues and financial reports to DOT and the City. Did DOT receive these reports? Did DOT review these reports to catch the higher project cost estimates?
- Will the City retain existing consultants (Architect, Owner Representative, Construction Manager, etc.) and enter into a contract or hire new consultants via an open process?
- If the City will retain existing consultants, how will the contractual fees be calculated (meaning will credit be given for the work already completed?).
- Provide a schedule to hire these consultants
- Who from the City is going to manage this \$47 million complex project? What are their qualifications? What will be the City’s role and responsibilities?
- Provide a breakdown of \$4,933,187 of the initial payment that is spent including which component of the project these funds were spent on. What percent of the design/bid docs can be re-used by the City?
- Is this cap of \$40 Million based on functional replacement of the improvements? Provide a breakdown of these improvements including project schedule and estimates. What happens if the project exceed this cap? What happens if the actual construction cost be below \$40 Million?
- What will be the source of these funds? What approvals are required to secure these funds?
- Per DOT memo, the bids came in at \$51 Million. Who will pay for the shortfall (\$11 Million), assuming that the bids in the future come in at \$51 Million? Are there any component/s not being built or reduced in scope or expanded in scope to bring down the project cost to \$40 Million?
- Has the City council approved this cap? Is there an agreement between DOT and the City for this increased cap? If not, is there a draft agreement and when is it expected to be fully executed? If yes, pl provide a copy of the executed agreement.
- Provide the schedule of release of funds (payment schedule for \$40 Million) to the City.

- Has DOT determined if there was mismanagement of this project? If yes, was that entity held responsible?
- Please clarify if DOT believes December 31, 2020 provides sufficient time to design-bid-build a new IMAX Theater. How was this date derived? What are the consequences if this date is pushed back?
- Are there any reasons that DOT may come back in the future with a revised settlement agreement with higher cost?
- This settlement agreement must include a section as it relates to DOT's oversight of this project including expenditure of these funds based on what DOT has learned since inception of this project.
- What is the status of State's larger project? Is it on schedule? Will it impact this project/settlement?

RECOMMENDATION: Staff recommend **suspension** of this file to allow DOT to clarify the aforementioned issues.

June 21, 2018 Update

This file PRB # 18-078 continued to be suspended in order to get additional information and clarification of the request from DOT.

At the June 21, 2018 SPRB meeting DOT Transportation Principal Property Agent, James Mason and Terry Obey, Director Rights of Way presented a brief summary of the Functional Replacement project with the City of Norwalk related to the Walk Bridge Replacement. Mason explained that this is a unique project for DOT as the Federal Government has approved the Functional Replacement of portions of the Maritime Aquarium, which is owned by the city of Norwalk. This Functional Replacement project, in lieu of DOT's typical condemnation proceeding, which would have paid the City \$22,520,000 for damages, is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and also incorporated in Connecticut statutes 13a-73, 13b-23 and 13b-36. DOT acknowledged given the complexities of the Functional Replacement, it is very likely that DOT will not undertake this type of project going forward.

DOT's original submission to SPRB sought approval of an Administrative Settlement, seeking \$34,552,395 plus an additional \$2,165,000 for actual damages due to easements. This was unacceptable to the Board without executed contracts in place for the Functional Replacement of the Maritime Aquarium, owned by the City of Norwalk. Board Staff sought a revised settlement providing the Board an opportunity to review contracts in place for the initial design with a subsequent submittal to the Board when actual construction costs were known.

The revised Administrative Settlement, before the Board for approval, is seeking payment of \$2,165,000 for actual damages due to easements plus an initial payment of \$10,365,718. This initial \$10,365,718 payment will facilitate the functional replacement effort through design, acceptance of a construction

contract via lowest bid and provide initial funding to the City for construction payments in the early stages of construction as materials may have lengthy lead-times for delivery.

Upon completion of the design, retention of the Construction Manager-At Risk, and the bid process complete, DOT will submit a second Administrative Settlement for Board approval reflecting the DOT's final commitment in the Functional Replacement Project.

The Administrative Settlement Statement presented to the Board for approval, as revised, is requesting:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

Total damages = \$12,530,718

RECOMMENDATION: Board approval is recommended for the following reasons:

1. The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
2. The functional replacement effort is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and C.G.S. 13a-73, 13b-23 and 13b-36.
3. All future disbursements by DOT with respect to the functional replacement effort, including the awarding of a construction contract via lowest bid must seek prior SPRB approval.

It should be noted that due to unusual circumstances of “functional replacement” provision, the Board is agreeing to approve the larger settlement without having written contracts in place. It is also recommended that DOT present negotiation terms of this type of projects to the Board early on before signing any agreements with third parties.

At the May 17, 2018 SPRB meeting this file was suspended for the following reasons:

- Submission of the completed proposal with signatures from the City; and
- Conduct site inspection.

The City of Norwalk has since signed the Administrative Settlement on May 22, 2018, and the State DOT will sign upon approval of this Settlement by the State Properties Review Board. And, a site visit was conducted by the Board on May 22, 2018.

In the interim SPRB Staff have requested DOT revise the original Settlement Statement to accurately reflect what the DOT is seeking the Board to approve.

The Administrative Settlement Statement presented to the Board for approval, as revised, is requesting:

- Approval of monetary damages due to the Easement = \$2,165,000; and
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- All future disbursements by DOT with respect to the functional replacement effort, including the awarding of a construction contract via lowest bid must seek prior SPRB approval.

5. ARCHITECT-ENGINEER - UNFINISHED BUSINESS

6. ARCHITECT-ENGINEER - NEW BUSINESS

7. OTHER BUSINESS

8. VOTES ON PRB FILE:

PRB FILE #21-178 – Mr. Valengavich moved and Mr. Berger seconded a motion to approve PRB 21-178. The motion passed unanimously.

PRB FILE #21-185 – Mr. Berger moved and Mr. Valengavich seconded a motion to approve PRB 21-185. The motion passed unanimously.

9. NEXT MEETING – Thursday, December 30, 2021.

The meeting adjourned.

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